



**UNIVERSITY of the  
WESTERN CAPE**

**LLM**

**TRANSNATIONAL CRIMINAL JUSTICE: AN INTERNATIONAL AND AFRICAN**

**PERSPECTIVE**

**THE TREATMENT OF GENDER- ISSUES AND DEVELOPMENT IN THE SIERRA**

**LEONEAN TRANSITIONAL JUSTICE CONTEXT**

**UNIVERSITY of the  
BY  
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Special Court for Sierra Leone

Transition

Truth and Reconciliation Commission

Uganda

Women



## DEDICATIONS

To my beloved mother and victims of the conflict.



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## LIST OF ABBREVIATIONS AND ACRONYMS

ESCR	Economic, Social and Cultural Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
NGO	Non-Governmental Organisation
SC	Security Council of the United Nations
SCSL	Special Court for Sierra Leone
STDs	Sexually Transmitted Diseases
TRC	Truth and Reconciliation Commission
UN	United Nations
UNIFEM	United Nations Development Fund for Women



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### 1.1 Problem Statement

Transitional justice mechanisms have become commonplace as a tool for recovery for societies emerging from conflict and repressive regimes. The extent to which women's rights concerning development and long-term economic advancement in the arena of transitional justice is dealt with is almost negligible.<sup>1</sup>

The significance of including development as a means of protecting marginalised groups such as women has been mostly disregarded in the transitional justice context.<sup>2</sup> Currently, the discourse on gender justice has placed civil and political rights as well as sexual crimes against women at the centre stage. Transitional justice mechanisms have failed to give effect to long-term sustainable and substantive change in women's lives following conflict and periods of repressive rule.<sup>3</sup>



The core aims of transitional justice are prosecution of offenders, reconciliation and reparations for the victims of gross human rights abuses. Reparations are usually used as a medium through which restitution and compensation for the harm suffered by victims are made possible. Reparations are also deemed as an essential element for the healing and recovery of the individual victim and the society affected by egregious human rights violations.<sup>4</sup>

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<sup>1</sup> Aguirre D & Pietropaoli I (2008:356).

<sup>2</sup> Aguirre D & Pietropaoli I (2008:356).

<sup>3</sup> Buckley S (2013:358).

<sup>4</sup> Wemmers MJ (2014:10).

However, the very concept of restitution and reparations in the field of transitional justice remains an enigma. First, reparations from the western legal standpoint of *restitutio in integrum* connotes personal compensation for loss or damage suffered as an attempt to restore the victims to their status before the loss or damage occurred.<sup>5</sup> However, most women have admitted that they do not desire to be restored back to the position they were in before the conflict.<sup>6</sup> In an ideal situation, reparations efforts from a gender perspective would consider that victims who have survived conflict and repressive regimes mostly desire fundamental economic, social and cultural rights and development.<sup>7</sup>

Fundamental and far-reaching social transformation is the certain expectation following a conflict, but usually, instead of the transitioning period becoming a time of healing and newly found hope for better economic prosperity, women find themselves forced back into discrimination, inequality and extreme poverty.<sup>8</sup>

## 1.2 Sierra Leone as a case to this study

The heart-rending eleven-year long civil war in Sierra Leone was mainly triggered by Charles Taylor due to his tremendous support of the RUF and Foday Sonkah.<sup>9</sup> The war was mainly motivated by economic reasons and national elites' greed to control and acquire the country's vast diamond resources.<sup>10</sup>

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<sup>5</sup> Schabas W & Wald PM (2004:189).

<sup>6</sup> Murungi B, Forum available at <http://www.ictj.org> (accessed on 25 February 2017).

<sup>7</sup> Schabas W (2004:189).

<sup>8</sup> Aguirre D & Pietropaoli (2008:365).

<sup>9</sup> Women's Empowerment in Sierra Leone available at <http://www.ictj.org> (accessed on 24 February 2017).

<sup>10</sup> Women's Empowerment in Sierra Leone available at <http://www.ictj.org> (accessed on 24 February 2017).

The effects of the war were devastating, not only due to the gruesome brutality of the conflict but also due to the devastating effects it had on Sierra Leone's already weak economy. The civil war was notorious for the fact that civilians were not merely accidental victims, but were the main target.<sup>11</sup> The most affected group of persons in this tragic civil war were also the nation's most vulnerable, namely children, the elderly and women.<sup>12</sup>

The pre-conflict status of Sierra Leonean women was already filled with high inequality and substantial social obstacles. Patriarchy, culture and religious values hindered women from participating in any meaningful aspects of life, dare say political and economic participation.<sup>13</sup>

The civil war aggravated their marginalisation.

In a way, however, the gross human rights violations inflicted upon Sierra Leonean women increased their demands to be accorded equality and human rights to be greater. As a result of the war, women now found themselves tasked with activities that were previously considered as the domain of men.<sup>14</sup> Thus in a cruel plot twist, the very violent upheaval of the civil war facilitated the correction of gender discrimination and promotion of women's empowerment. Sadly, after the war, most Sierra Leonean women lost their newly found emancipation and were back to square one.

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<sup>11</sup> Doxtader E& Villa-Vicencio (2003:38).

<sup>12</sup> McFerson HM (2012:46).

<sup>13</sup> Women's Empowerment in Sierra Leone available at <http://www.ictj.org> (accessed 24 February 2017).

<sup>14</sup> McFerson HM (2012:48).

Sierra Leone is unique, as it is one of the first states that had a truth and reconciliation commission that dealt with economic, social and cultural rights and which even had the Special Court for Sierra Leone to deal with atrocities perpetrated during the conflict. Therefore, it was one of the countries who transitional justice context also delved in to the arena of economic, social and cultural rights.

However, currently, the women of Sierra Leone are still one of the world's poorest demographic group and are among the most marginalised women in the world, socially, economically and politically.<sup>15</sup> This phenomenon makes one ponder on whether the transitional justice process has failed to achieve the economic development and emancipation of Sierra Leonean women.

### **1.3 The theoretical basis of the study**

The study is based on the philosophy that the main reason why women emerging from post-conflict societies or repressive regimes fail to untangle themselves from the shackles of poverty to which they are enslaved, is due to inadequate attention being given to social, economic and cultural rights in various transitional justice mechanisms. Also, the lack of clear strategy on means to implement economic rights of women in Sierra Leone contributes to their plight.

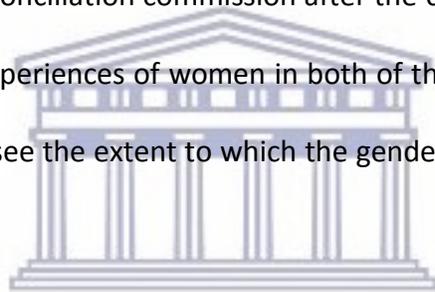
Moreover, the gender dimension in matters of transitional justice has been a highly-neglected subject. This study, therefore, lies on the assumption that if more energy is placed in finding means to ensure poverty alleviation in transitioning societies, women's economic empowerment

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<sup>15</sup> McFerson HM (2012:48).

is attainable. Also, ensuring that women's economic empowerment is set at the centre stage of the transitional justice process, would put women emerging from post-conflict societies in a much better position to improve their economic situation. Transitional justice would be one step further into playing a vital role in the realisation of economic, social and cultural rights for women and society in general.

This study also draws inspiration from the experience in Uganda which was another African state afflicted by the violence unleashed by the Lord's Resistance Army during the 1980s and which also established a truth and reconciliation commission after the conflict. This comparative study is an attempt to analyse the experiences of women in both of these two countries both before and after the civil wars and to see the extent to which the gender dimension was treated in the transitional justice process.



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Both Sierra Leone and Uganda had different experiences, and each country encountered its challenges. The comparisons between the two countries, however, leads to a better conclusion of whether indeed there is a connection between the economic disability of women after conflict and the inadequate attention paid to the realisation of women's economic, social and cultural right in the transitional justice process.

#### **1.4 The research question**

This study answers the following question: To what extent were the economic needs of women addressed in transitioning Sierra Leone?

### **1.5 Limitations of study**

This paper limits itself to the situation of women and children in Sierra Leone's and Uganda's transition. Given that the study focusses mainly on Sierra Leone, it examines the roles played by the truth and reconciliation commissions of both countries as well as the part played by the Special Court for Sierra Leone. The study also deals with the recommendations made by the truth commissions in so far as they relate to alleviating poverty and the plight of women and children.

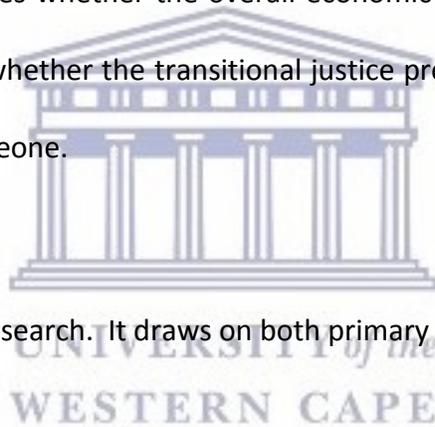
However, this study does not delve into all the individual specific economic, social and cultural rights per se; instead, it assesses whether the overall economic situation and advancement of women were considered and whether the transitional justice process improved the position of women in post-conflict Sierra Leone.

### **1.6 Research methodology**

This study is based on library research. It draws on both primary and secondary sources.

### **1.7 Significance of study**

This study is significant as much of the current literature on transitional justice has neglected to address the economic needs of women. The literature does not inquire about how women who have been victims of gross human rights violations are treated in countries undergoing transition. Moreover, this study focusses on the economic needs of women and the transitional justice tools used by the affected women to recuperate and start their lives afresh, but with a greater sense of empowerment.



## **1.8 Chapter Outline**

### **Chapter One: Introduction**

This chapter introduces the topic and provides a background and general overview to the study. In this chapter the researcher analyses the historical background of the conflict in Sierra Leone and Uganda.

### **Chapter Two: The link between transitional justice, women and development**

This chapter introduces the theory on how transitional justice is linked to women, development and economic rights. It highlights how transitional justice mechanisms can be utilised as practical tools to induce change and economic advancement for women in post-conflict transitioning states.

### **Chapter Three: Political, economic and social background of Sierra Leonean women**

This chapter delves into both the pre-conflict and post-conflict situation of women in Sierra Leone and also briefly highlights the experience of women in Uganda through comparison. The chapter sheds light on the position of women before the conflict and the unique situation women find themselves in after the conflict.

### **Chapter Four: The role played by transitional justice mechanisms in Sierra Leone and Uganda**

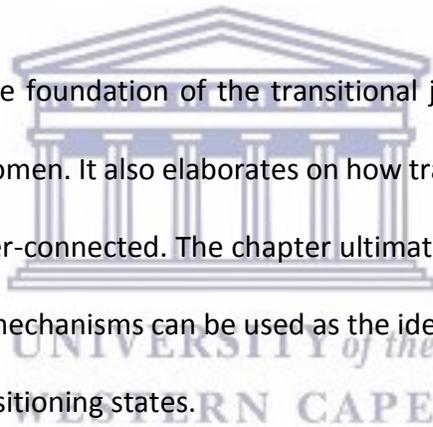
This chapter examines the role played by the truth and reconciliation commissions of both Sierra Leone and Uganda and the Special Court for Sierra Leone. The chapter focusses mainly on the aspect of reparations and how the reparations granted by the truth and reconciliation

commissions were useful in advancing the economic advancement of Sierra Leonean women. The chapter also briefly highlights some of the critical decisions made by the Special Court for Sierra Leone on children and gender-based crimes.

#### **Chapter Five: Summary of findings, comparative analysis, challenges and recommendations**

It is the final chapter of the paper. It waters down the main findings from the study and compares the outcome of the role played by transitional justice mechanisms in Sierra Leone and Uganda. It also highlights the overall challenges facing the economic empowerment of women in transitioning states and the recommendations emanating therein.

The next chapter lays down the foundation of the transitional justice theory. It analyses how transitional justice relates to women. It also elaborates on how transitional justice, development and economic rights are all inter-connected. The chapter ultimately demonstrates how through this nexus, transitional justice mechanisms can be used as the ideal tools to spearhead women's economic advancement in transitioning states.



## CHAPTER TWO

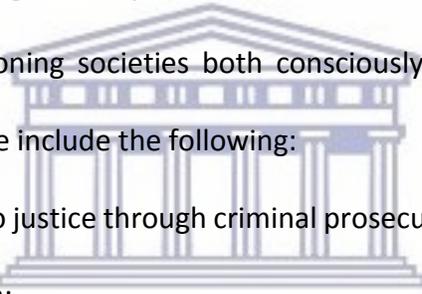
### THE LINK BETWEEN TRANSITIONAL JUSTICE, WOMEN AND DEVELOPMENT

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#### 2.1 The meaning and aims of transitional justice

Transitional justice, per the United Nations Approach to Transitional Justice and the Rule of Law of 2004, consists of a set of processes that deal with society's attempts to come to terms with a legacy of large-scale past abuses to promote accountability and attain reconciliation.<sup>1</sup>

Transitional justice emerged as an urgent response to both specific and numerous cases of mass human rights violations. Its origins lie with the need to ensure justice after situations of violence and authoritarianism.<sup>2</sup> According to Tony Addison, a renowned transitional justice scholar, transitional justice and transitioning societies both consciously and subconsciously aspire to achieve a variety of goals.<sup>3</sup> These include the following:

- 
- a) Bringing perpetrators to justice through criminal prosecutions, truth-telling, reparations and institutional reform;
- b) Implementing a scheme of distributive justice which refers to the elimination of absolute poverty. Societies may set a higher goal of reduction of economic and social inequality. In this regard, the notion of bias includes gender inequality as well as horizontal inequities;
- c) Advancing prosperity, which involves raising society's level of output and income, more commonly known as economic growth. The scale of this task depends on the economic impact of past-autocratic rule or conflict experienced by the transitioning state;

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<sup>1</sup> UN Security Council Resolution on the Rule of Law and Transitional Justice S/2004/416 23 August 2004.

<sup>2</sup> Huggins C (2009:324).

<sup>3</sup> Addison T (2009:68).

- d) Participating in civic processes, whose expression lies in democratisation or the return to democracy after authoritarian government; and
- e) Peace-seeking, which involves ending large scale and low-intensity violence, depending on the nature of the genesis, evolution and ending of the conflict.

## 2.2 Women and transitional justice

In periods of conflict and repressive rule, women often become the victims of human rights violations because of their gender and their marginalised position in society. Even after the war has ended, women still experience discrimination and endure higher risks of exploitation. Poverty and ostracisation by family members and social networks also exacerbate this situation.<sup>4</sup>

For instance, women whose husbands were victims of forced disappearances face unjust legal obstacles due to their ambiguous status of being neither married nor widowed. Their legal incapacity hinders them from acquiring important resources for their livelihood, such as access to land and lucrative employment.<sup>5</sup>

Furthermore, it was only recently that international criminal tribunals such as the ICTY and ICTR issued paradigm-shifting decisions on matters of sexual violence against women. Some of their landmark judicial decisions finally recognised rape and other forms of sexual abuse as the most grievous offences over which they had jurisdiction.<sup>6</sup>

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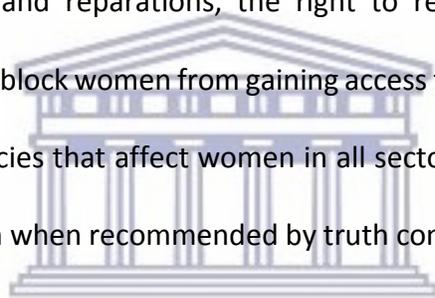
<sup>4</sup> Women and transitional justice available at <https://www.ictj.org> (accessed 18 October 2017).

<sup>5</sup> Women and transitional justice available at <https://www.ictj.org> (accessed 18 October 2017).

<sup>6</sup> See *Akayesu* case.

Previously, the masculine nature of international humanitarian law and transitional justice did not fully appreciate the atrocities committed against women because of their gender or how these atrocities might amount to the violation of international humanitarian law norms.<sup>7</sup> Moreover, the public nature of trials and the adversarial system provided limited protection for female witnesses. The aggressiveness of the adversarial court system made many victims of sexual violence to relive the trauma of egregious sexual abuses.<sup>8</sup>

Regarding truth commissions and reparations, the right to reparations for women can be hindered by larger issues which block women from gaining access to social services. The existence of discriminatory laws and policies that affect women in all sectors of society can hamper their access to such reparations even when recommended by truth commissions and other tribunals.<sup>9</sup>



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These deprivations arise partly out of the fact that there are very few women who hold leadership positions in international criminal tribunals or truth commissions. Also, women are rarely consulted during the peace-making process and the design of transitional justice mechanisms implemented in post-conflict situations or after authoritarian rule.<sup>10</sup>

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<sup>7</sup> Hayner PB (2001:24).

<sup>8</sup> Fischer M (2011:87).

<sup>9</sup> Aloain FN (2009:1055).

<sup>10</sup> Hayner PB (2001:26).

Therefore, it is imperative to formulate transitional justice responses that are gender-sensitive following periods of conflict and repressive rule. Transitional justice tools and mechanisms are required to combat both the marginalisation of women and to provide them with protection in the future.<sup>11</sup>

Transitions provide opportune moments to promote gender equality and economic empowerment. Transitional justice mechanisms can be applied in such a way as to achieve justice in respect of egregious human rights violations and to address gender inequality on a broader front. Transitional justice remedies can, therefore, encompass transformative justice as well.<sup>12</sup>

For instance, although it is accepted that women are severely affected by sexual violence during periods of conflict, the exclusion of other forms of violence can be detrimental to them as well. While acts of sexual violence are among the most brutal attendant horrors of war, to focus solely on sexual crimes at the expense of other forms of violence such as loss of property and displacement, hinders the full understanding of the experiences suffered by women in conflict and periods of transition.<sup>13</sup>

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<sup>11</sup> McGoven PL (2008:265).

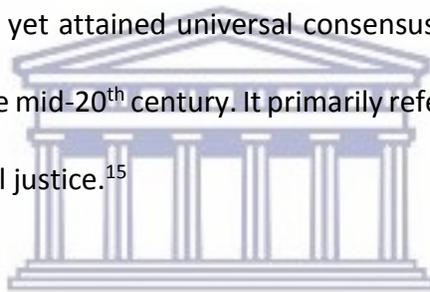
<sup>12</sup> Franke KM (2006:813)

<sup>13</sup> Bell C (2007:321).

Transformative justice aims to address first and foremost existing social inequalities. It, therefore, promotes the correction of unequal gendered power relations that often place women in vulnerable positions in society. Implementation of transitional justice goals with a view towards transformative justice is key to empowering women in post-conflict societies since it focuses not only on the immediate causes of conflict, but also on the underlying structural inequalities within the community.<sup>14</sup>

### **2.3 The meaning of development**

The meaning and understanding of the concept “development” as a process of multidimensional and qualitative change has not yet attained universal consensus. The concept of development came into general use during the mid-20<sup>th</sup> century. It primarily refers to and lingers on the process of economic progress and social justice.<sup>15</sup>



The meaning of development refers to the idea of bringing about sustainable increments in the well-being of the inhabitants of society.<sup>16</sup> However, Amartya Sen, the Indian economist and philosopher, as well as other like-minded social theorists, define development as a process through which conditions are created for all people to develop their fullest possible range of capabilities.<sup>17</sup> This paper relies on the combination of both these notions in the understanding of development.

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<sup>14</sup> Franke KM (2006:813).

<sup>15</sup> Cobian R A & Reategui F (2009: 162).

<sup>16</sup> Cobian R A & Reategui F (2009: 162).

<sup>17</sup> Sen A (1999: 12).

### 2.3.1 The connection between transitional justice and development

Transitional justice needs to be directed at liberating previously oppressed societies. This transformative change occurs by not only addressing the injustices of the past through measures that will ensure an equitable future, but also by delving into the abuses committed during the conflict and the human rights violations perpetrated before the conflict or which contributed to the conflict.<sup>18</sup> Therefore, undergirding these objectives is the notion that transitional justice has a significant role to play in fostering development and economic growth through the realisation of economic rights in transitioning states.

Transitional justice, economic rights and development are interdependent. It means that development has a crucial role to play to help bring forth sustainable peace and progress. Moreover, for transitional justice to be truly effective, development has to be seen as the core objective.<sup>19</sup>



Transitional justice contributes to the real essence of development through its mechanisms, namely, truth commissions, prosecutions and reparations.<sup>20</sup> Of these mechanisms, reparations are the most important. When egregious human rights violations are committed, international law recognises the right to reparations. Reparations primarily provide the tangible goods or services to victims and survivors of authoritarian regimes and conflict.<sup>21</sup>

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<sup>18</sup> Arbour L (2006:2).

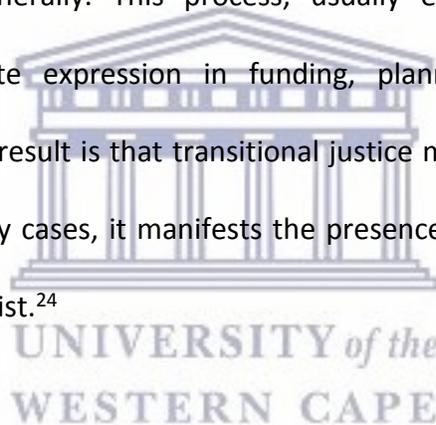
<sup>19</sup> Lenzen M (2009:50).

<sup>20</sup> Duthie R (2009:10).

<sup>21</sup> Lederach P & Maisese M (2003: 42).

For instance, truth commissions, by their very nature, result in reports recommending comprehensive reparations and institutional reforms that deal ultimately with the basic delineation of social policy. The accountability mechanisms of reparations, the dispensing of justice, and the implementation of recommendations for institutional reform, contribute to systematic and cultural change. Truth commissions are consequently inherently consistent with aims of attaining the ultimate objectives of development.<sup>22</sup>

Reparations may overlap with plans and programmes to improve the material conditions of life for the population more generally. This process, usually encapsulated under the term “development,” finds concrete expression in funding, planning and implementation of development programs.<sup>23</sup> The result is that transitional justice makes a unique contribution to the process of change. In many cases, it manifests the presence of state institutions in places where they formerly did not exist.<sup>24</sup>



Both individual and collective reparations, especially in the form of administrative projects, have crucial spill-over effects on aspects of development. For instance, they increase the state's ability to become a competent service provider.<sup>25</sup>

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<sup>22</sup> Teitel R (2000:7).

<sup>23</sup> Duthie R (2009:10).

<sup>24</sup> Roht-Ariazza N & Orlovsky K (2009:46).

<sup>25</sup> Mussman M (2000: 5).

Regarding prosecutions, international criminal tribunals such as the ICTY have begun to acknowledge that the destruction of social and economic assets, read socio-economic rights, can constitute an international crime.<sup>26</sup> However, despite these developments, violations of social and economic rights still remain outside the mainstream conceptual boundaries of international crimes at present. There is hence a need to grant economic and social rights the same status as other gross human rights violations. There is also a need to address such rights specifically and not merely as a consequence of redress measures for other crimes against international law.

For these aspirations to be realised, the efforts considered to be the mainstay of the transitional justice process should be geared towards recognising victims as rights bearers as well, and not only as victims in the commonly understood sense of the word. This paradigm shift places the victims of conflict in a situation of power where they can demand their rights, as opposed to feeling as though the state is doing them a favour. Development activists and role-players in the transitional justice arena need to formulate policies and shape their programs in a way that reflects this jurisprudential thinking instead of remaining fixated with the idea that victims are passive targets of violence.<sup>27</sup>

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<sup>26</sup> See *Prosecutor v Zoran* IT-95-16 where the Trial Chamber of the ICTY in its decision of 14 January 2000 at para 631 took into account economic and social rights in the criminal process, holding that the destruction of the homes and property of Bosnian Muslims constituted the crime of persecution as a crime against humanity.

<sup>27</sup> Roht-Ariazza N & Orlovsky K (2009: 46).

Moreover, a true human-rights based approach towards victims would lead to a more refined kind of development, since it would require looking very deeply into the relationship between a state and its citizens regarding the long-term socio-economic rights guarantees, particularly for the most vulnerable and marginalised in society.<sup>28</sup>

## **2.4 Economic rights and development**

Transitional justice has notoriously become a major component of the post-conflict toolkit in many societies undergoing transition. Economic grievances often serve as the primary catalysts for the eruption of conflict alongside other causes such as corruption, scarcity and mismanagement of resources. However, such socio-economic concerns are, in practice, hardly addressed during the transition and peacebuilding process.<sup>29</sup>

The realm of transitional justice has traditionally focused on past breaches of civil and political rights. However, scholars like Dustin Sharp vehemently disagree with this dominant trend and aver that socio-economic grievances cannot be ignored as they are a crucial element of the dynamics of past conflict and gross human rights violations. Therefore, the need to grasp this nexus is vital.<sup>30</sup> Several authors share Sharp's viewpoint, but with caution. They contend that one should be careful when considering the inclusion of economic rights violations within the realm of transitional justice.

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<sup>28</sup> Uvin P (2004: 3).

<sup>29</sup> Sriram CL (2014:27).

<sup>30</sup> Bix G (2013:9).

Crensel and Abour argue that, addressing economic, social and cultural rights may lead to a project that dives into the realms of development, which requires tools and strategies that differ from those utilised in transitional justice.<sup>31</sup> Their argument presupposes that transitional justice and development are and should be entirely separate entities. The realisation of economic and social rights within the transitional justice context is made difficult also because they consider them as aspirational goals that are only achievable in certain countries which have a high level of economic development.<sup>32</sup>

However, in reality, transitional justice, socio-economic rights and development all work together to achieve the desired result. They are not at all separate entities as advocated by the scholars Crensel and Abour. For instance, truth commissions can recommend that schools, hospitals or other community projects be established. It ultimately leads to realising the socio-economic rights to health care and education, thus achieving the development sought for the transitioning state. Accordingly, these three concepts can all be strategically fused together to attain a better result.<sup>33</sup>

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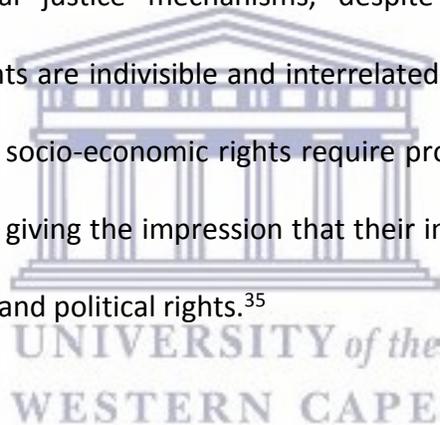
<sup>31</sup> Crensel E (2008:173).

<sup>32</sup> Arbour L (2006:2).

<sup>33</sup> La Plante LJ (2008:331).

Also, reform proposals and reparations indirectly assist in the realisation of human rights as part of the state's obligation "to take steps" to give full effect to socio-economic and cultural rights. The duty to take steps also includes the obligation to ensure both immediate and progressive action. The initial hesitance to consider addressing socio-economic rights as a transitional justice device is due mainly to the inherited bias that exists between civil and political rights on the one hand, and socio-economic rights on the other.<sup>34</sup>

The above-sketchd dichotomy has tended to jeopardise the potential that lies within the implementation of transitional justice mechanisms, despite the now existing universal understanding that human rights are indivisible and interrelated. This phenomenon is partially attributable to the notion that socio-economic rights require progressive realisation, based on the state's available resources, giving the impression that their implementation is of secondary significance, in contrast to civil and political rights.<sup>35</sup>



It bears noting, however, that the consideration of socio-economic rights in a post-conflict setting has a valuable impact. For instance, truth commissions assist in identifying the actual causes and culprits of the conflict. They also serve as a stimulus for generating an appreciation that the implementation and realisation of economic rights are vital in transforming the existing power relations that currently subject individual groups within the society, such as women, to

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<sup>34</sup> Sharp DN (2014:3).

<sup>35</sup> Sharp DN (2014: 3).

subordinate positions.<sup>36</sup> Therefore, ensuring the accessibility of socio-economic rights for all members of society will help change the status quo.

A transitional justice project that embraces socio-economic rights should, therefore, strive to empower women while assisting them and should correct structural barriers inhibiting individual and collective development.<sup>37</sup>

## **2.5 Conclusion**

The link between transitional justice, economic rights, development and women is significant in understanding how transitional justice can galvanise the economic empowerment of women in post-conflict countries. The subsequent chapters of this paper will compare the war-ravaged nations of Sierra Leone and Uganda. Through this comparison, one will be able to analyse critically how either the effective or ineffective use of transitional justice mechanisms can affect the economic development of women in post-conflict transitioning states.

Both Sierra Leone and Uganda are African. Both were colonised by England, which left its common law stamp on them. Both gained their independence within a year of another, and both of them have been plagued by internal conflict over long periods of time. Sierra Leone suffered conflict for more than a decade from 1991 until the formation of the Special Court for Sierra Leone in 2004, while Uganda experienced continual conflict. The comparison aims to assess the role played by transitional justice mechanisms in both Sierra Leone and Uganda, especially in

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<sup>36</sup> Ore GA (2014:127).

<sup>37</sup> Borloz VM (2001:272).

regard to how these have contributed to improving the economic situation of women after the conflict.

The following chapter will deal with the historical overview of the position of women in both Sierra Leone and Uganda to assess their position in society before and after the conflict. The chapter serves as a backdrop to which the role played by transitional justice mechanisms in promoting women's empowerment in these two countries can later on be assessed.



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## CHAPTER THREE

### POSITION OF WOMEN IN SIERRA LEONE AND UGANDA BEFORE AND AFTER THE CONFLICT

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#### 3.1 Introduction

The prevalence of patriarchal social structures in society has historically contributed to women's subordination and the widespread discrimination against women. Women's lack of equality attributes to their socioeconomic dependence and lack of decision-making power. Manifestations of this inequality have made the marginalisation of women a common phenomenon all around the world.<sup>1</sup>

Women are more vulnerable to discrimination and violence in the course of a conflict, during the termination of the conflict, as well as in the process of resettlement following resolution of the conflict.<sup>2</sup>The embedded expressions of inequality in a pre-conflict society enhance women's particular vulnerability during and after the conflict.

In situations of conflict, the inequality of women is expressed in various, quite contradictory ways. For instance, conflicts tend to create new employment opportunities for women in the formal work sector outside the realms of home and family. Such opportunities occur as a result of the fact that the majority adult male population is engaged in war.<sup>3</sup>Ironically, as soon as the

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<sup>1</sup> Abysekera S (2011:50).

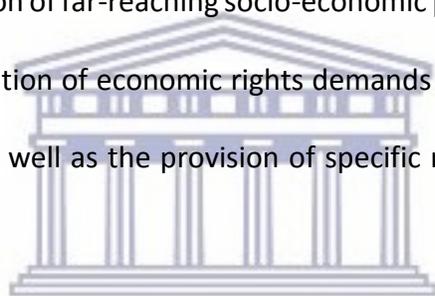
<sup>2</sup> Abysekera S (2011:50).

<sup>3</sup> Ore G & Gomez F (2011:5).

war is over, women are automatically expected to resume their traditional roles in the home, notwithstanding any progress or social transformation resulting from the conflict.

However, how inequality is addressed and recognised in post-conflict settings can provide a critical and significant opportunity for long-term and sustainable reconstruction within communities that have been affected by conflict. Particularly, by way of improving the socio-economic situation of the most vulnerable and marginalised sections of society.<sup>4</sup>

It is inevitable that the translation of far-reaching socio-economic principles into practice requires strong political will. This realisation of economic rights demands both the removal of structural discrimination and violence, as well as the provision of specific rights and entitlements for the most marginalised in society.<sup>5</sup>



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The current national and international jurisprudence tend to neglect the realities of structural violence in which women find themselves. Courts of law consider socioeconomic rights as secondary, which consequently reinforces the traditional marginalisation of women's rights. Ultimately, the exclusion of economic rights severely hampers women's attempts to overcome victimisation, as socioeconomic rights influence critical areas related to women's empowerment.<sup>6</sup>

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<sup>4</sup> Ore G & Gomez F (2011: 5).

<sup>5</sup> Woronuck B (1999:8).

<sup>6</sup> Meintjes S (2002:4).

This chapter, therefore, will argue that the fulfilment of social and economic rights is fundamental to achieving genuine social transformation demanded by women in transitioning societies. Ignoring a core set of human rights will not attain the fruitful conversion of post-conflict society. It is therefore imperative to include socio-economic rights since their acquisition will help challenge dominant social structures more assertively. Economic rights challenge the existing dominant structures that maintain social and economic inequality more assertively, especially for women.<sup>7</sup>

### **3.2 Historical overview of gender relations in Sierra Leone**

Sierra Leone is predominantly a patrilineal society with few existing matrilineal smaller groups such as the Sherbo and Mende ethnic groups.<sup>8</sup> Consequently, central issues that affect gender relations such as traditions pertaining descent and inheritance are male orientated. The few existing matrilineal groups do not conform to the common matrilineal lineage. Rather, in such communities, women's inheritance and political rights are acknowledged, but cannot be extended or passed on to their children.<sup>9</sup>

Sierra Leone's legal system consists of a Constitution as well as statutory and customary laws. However, despite the existence of a Bill of Rights in the Constitution, Sierra Leone's social and gender relations are characterised by discrimination. For instance, the Bill of Rights guarantees human rights for all individuals regardless of sex. However, the same Constitution accepts

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<sup>7</sup> Meintjes S (2002:4).

<sup>8</sup> Babiker M (2011: 2) available at <http://www.afdb.org> (accessed 13 May 2017).

<sup>9</sup> Babiker M (2011:2).

discrimination in matters of marriage, divorce, devolution of property and adoption.<sup>10</sup> Women ultimately find themselves having no legal recourse when faced with discrimination in these major spheres of civic life that significantly impact gender relations in society.

During the pre-colonial era, Sierra Leonean women often occupied a position of influence and power. However, with the onset of colonialism and advent of post-independence patrimonial politics, as well as the outbreak of the brutal civil war, women were relegated to a very diminished status.<sup>11</sup>

### **3.2.1 Post-conflict Sierra Leone and the position of women**

The post-conflict state building process is an opportune phase to strengthen and promote the participation of women in political processes. This aspiration can be achieved by affording women full civic and political rights enshrined in the Constitution and by including women in the staffing and the decision-making processes of state institutions.<sup>12</sup> It is vital that the opportunities to transform existing gender roles are used entirely during peace processes and social reform initiatives.<sup>13</sup>

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<sup>10</sup> Article 28 of the Constitution of Sierra Leone.

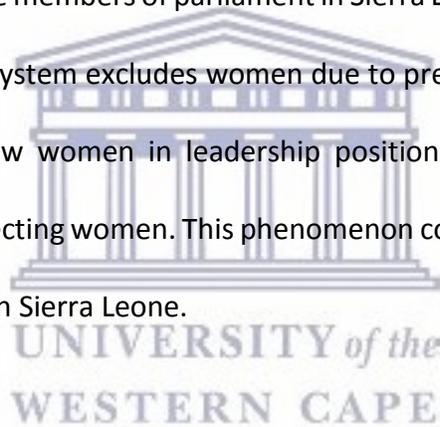
<sup>11</sup> McFeron H (2012:46) available at <http://www.vc.bridgew.edu/jiws> (accessed 24 February 2017).

<sup>12</sup> Castillejo C (2009:20).

<sup>13</sup> Lyytikainein M (2009: 18).

Currently, Sierra Leone comprises of three layers of government, namely, the formal national government in the form of an elected parliament and president; official local governments consisting of district councils and ward committees; and conventional chieftom structures which operate at the local government level and are semi-regulated by national legislation.<sup>14</sup> In all these levels of leadership, women face unique challenges. For example, during the 2002 elections in Sierra Leone, only 18 women were selected as members of parliament out of 124 candidates. The number dropped to 16 during the elections in 2007.

Currently, the number of female members of parliament in Sierra Leone is 13 out of 128 members of parliament.<sup>15</sup> The chieftom system excludes women due to pre-existing patriarchal traditions and stereotypes. There are few women in leadership positions, who use their influence to formulate policies and laws affecting women. This phenomenon continues to perpetuate poverty and inequality among women in Sierra Leone.



The Sierra Leonean government has, however, since taken some positive steps towards realising women's rights. These include the drafting of three Gender Bills and improving access to justice for women.<sup>16</sup> The Sierra Leonean government has also formulated policies embracing gender equality.<sup>17</sup>

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<sup>14</sup> Castillejo C (2009:20).

<sup>15</sup> Available at <http://www.parliament.gov.sl> (accessed 13 June 2017).

<sup>16</sup> The Devolution of Estates Bill, The Gender and Domestic Violence Bill and the Recognition of Customary Marriages Bill.

<sup>17</sup> 2005-2007 Sierra Leone Poverty Reduction Strategy Paper.

However, attitudes of government agencies and employees on gender issues vary widely among ministries and departments. There is usually great contradiction between the goals of the ministry at large in promoting gender equality and the lower departments that are responsible for the implementation of such policies. For instance, subaltern state officials continue to impede the efficient implementation of the government's policies on gender equality due to discriminatory beliefs that they still hold themselves.<sup>18</sup>

Lack of political will to include women in politics is also evidenced by the negative response to the campaign for a 30% quota for women in all levels of decision-making, a measure that was recommended by the Sierra Leonean Truth and Reconciliation Commission in its report in 2004.<sup>19</sup> Moreover, the Ministry of Social Welfare, Gender and Children's Affairs in Sierra Leone was reported to suffer a severe lack of funds since the Ministry's needs are not truly considered a priority in the national budget. For instance, the Ministry had previously planned a Gender Strategy to alleviate poverty among women, since June 2008. However, the ministry has not launched the program up to date due to a shortage of funds.<sup>20</sup>

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<sup>18</sup> Lyytikäinen M (2009: 22).

<sup>19</sup> Witness to Truth: Report of the Sierra Leonean Truth and Reconciliation Commission, 2004.

<sup>20</sup> Castillejo C (2009:22).

### 3.3 The position of women in Uganda

The plight of women in Uganda is not too dissimilar to that of women in Sierra Leone. Uganda is a country that has been tremendously affected by conflicts over a long time. These conflicts stem back from the Kabaka crisis in 1966, the coup d'état of Idi Amin in 1971, the five-year guerilla war from 1980 to 1986, and the more recent conflict which started in 2006 in northern Uganda by the Lord's Resistance Army (LRA).<sup>21</sup>

During these conflicts, particularly the most recent, spearheaded by the LRA under Joseph Kony in northern Uganda, women and girls have been the victims of grievous war crimes and crimes against humanity. They were targeted mainly because of their gender, and their assumed inferior position in society. Also, opponents utilise sexual violence against women as a strategy to demoralise and humiliate the opposing faction.<sup>22</sup>

Gender-related crimes perpetrated in the northern Ugandan conflict include rape, forced incest, deliberate transmission of sexually transmitted diseases (STDs) such as HIV/AIDS, female genital mutilation, sexual slavery and forced marriages, just to name a few. These crimes have had devastating effects on the victims and their families, both directly and indirectly.<sup>23</sup>

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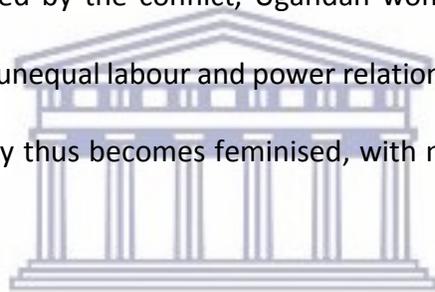
<sup>21</sup> Report submitted to Friedrich Ebert Stiftung (FES), 2005, available at <http://www.fes.de>focus>gender>Docs> (accessed on 12 June 2017).

<sup>22</sup> Available at <http://www.vrwg.org/vvf> (accessed 12 June 2017).

<sup>23</sup> Report prepared by UNDP, 'Gender equality and women empowerment in Uganda' <http://www.ug.undp.org> (accessed 13 June 2017).

The victims of gender-based violence committed during the conflict still experience trauma, feelings of hopelessness and are often stigmatised by their spouses and relatives. Moreover, they encounter gynaecological problems, physical deformation, STDs, reproductive health complications and related infirmities. Moreover, the brutalised women experience grave economic deprivations, such as being dispossessed of their land as a result of geographic displacement. Their increased vulnerability after the conflict has also forced some women in Uganda to resort to prostitution to escape destitution.<sup>24</sup>

Apart from the injustices caused by the conflict, Ugandan women have to contend too with structural social inequality and unequal labour and power relations, as is the case with women in many African countries. Poverty thus becomes feminised, with more and more women finding themselves destitute.



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Patriarchal social structures shackle the women in Uganda. It hinders the majority of women from attaining meaningful access to economic resources and positions of influence that could have shaped their livelihoods for the better.<sup>25</sup>

However, the government of Uganda has made several attempts to improve the situation of women through various laws and policies. These include the prohibition of female genital mutilation, improving women's ability to own and inherit land, as well as recognise customary

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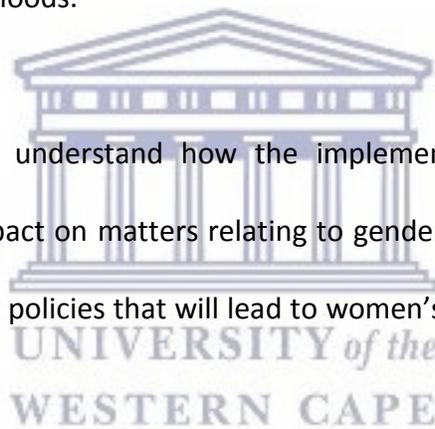
<sup>24</sup> Women's rights in Uganda: gaps between policy and practice at <https://www.fidh.org/IMG/pdf/uganda582> (accessed 13 June 2017).

<sup>25</sup> Perlman ML (2014:22).

marriages to afford security under the law.<sup>26</sup> Though these efforts are commendable, there is still room for improvement. More effort is required to implement women's economic, social and cultural rights in practice.

Women encounter unique challenges during a conflict. These hardships affect them not only during the conflict but even years after the conflict has ended. These adversities include STDs, including HIV/AIDS, unwanted pregnancies as a consequence of rape, forced marriages and ostracism by their respective communities. Consequently, this situation forces some women to go elsewhere in search of livelihoods.<sup>27</sup>

Therefore, it is important to understand how the implementation of transitional justice accountability mechanisms impact on matters relating to gender and development. A grasp of these issues helps to formulate policies that will lead to women's economic empowerment and social transformation.



### **3.4 Conclusion**

The next chapter delves into the transitional justice tools deployed by both Sierra Leone and Uganda. The chapter analyses how the transitional justice mechanisms utilised in these countries helped to improve both the economic and social welfare of women or whether they failed to achieve this purpose.

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<sup>26</sup> Final Report for the GEKS Uganda Assessment of November 2015.

<sup>27</sup> Ahikire J & Mwiine AA (2013:25).

## CHAPTER FOUR

### THE ROLE PLAYED BY TRANSITIONAL JUSTICE MECHANISMS IN SIERRA LEONE AND UGANDA

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#### 4.1 Introduction

The most distinctive feature of Sierra Leone's post-conflict transition was the simultaneous existence of both a truth commission and an international criminal justice body in the form of a special court. These two institutions worked contemporaneously, a phenomenon that was unprecedented as truth commissions are usually set up as alternatives to instituting criminal prosecutions.<sup>1</sup> The unique situation in Sierra Leone demonstrated the possibility of having both a truth commission and an international criminal justice mechanism operating simultaneously.

#### 4.2 The Sierra Leonean Truth and Reconciliation Commission

##### 4.2.1 Historical background

The establishment of truth and reconciliation commissions is an ambitious project for any country that is struggling to cope with the bitterness and severe trauma caused by war or despotic rule. Sierra Leone is no exception. The negotiators of the Lomé Peace Agreement recognised the need for Sierra Leone, as a nation, to express and acknowledge the profound suffering the country had encountered during the brutal eleven-year-long civil war that started in 1991.<sup>2</sup>

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<sup>1</sup> Roht-Ariazza & Mariezcuerrena J (2006:21).

<sup>2</sup> Witness to Truth Report of 2004 vol 1 available at <http://www.sieraaleonetr.org> (accessed 14 April 2017).

The war is traceable in part to the greed of the national elites for the country's vast mineral resources, and partly to the role played by the rebels under the Revolutionary United Front, supported by Foday Sonkah and Charles Taylor.<sup>3</sup>Sierra Leoneans, therefore, had a justified burning desire to know what truly happened, what caused the conflict and who was responsible for the commission of such gruesome atrocities.<sup>4</sup>

It was necessary to establish a truth and reconciliation commission to motivate national healing and help the country move forward. The need for such a commission emerged after the conclusion of the Lomé Peace Agreement on 5 July 1999. The parties to the Lomé Peace Agreement were the Sierra Leonean government and the RUF. Consequently, The Truth and Reconciliation Commission Act materialised in the year 2000.<sup>5</sup>

The Truth and Reconciliation Commission Act was enacted on 22 February 2000, but the commissioned started its work only on 5 July 2002. The Act provided for the appointment of seven commissioners who were sworn in by the President.<sup>6</sup> Commissioners were drawn from a cross-section of the Sierra Leonean community, with some support from the international community as well.<sup>7</sup>

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<sup>3</sup> Schabas W (2008:22).

<sup>4</sup> Witness to Truth Report of 2004 vol 1 available at <http://www.sierraleonetr.com>. (accessed 14 April 2014).

<sup>5</sup> Schabas W (2008:15).

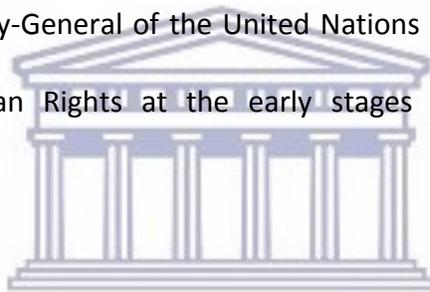
<sup>6</sup> Witness to Truth Report of 2004 vol 1.

<sup>7</sup> Art XXVI of the Lomé Peace Agreement of 1999.

The Sierra Leonean TRC received most of its funds from the United Nations Office of the High Commissioner for Human Rights (OHCHR). However, ultimately, the Commission failed to achieve its intended budget goal of US\$ 9.9 million,<sup>8</sup> for only half the pledges made were in fact redeemed.<sup>9</sup>

#### 4.2.2 Mandate of the Sierra Leonean TRC

The TRC was a creature of the Sierra Leonean Parliament, pursuant to the terms of the Lomé Peace Agreement.<sup>10</sup> Despite its being a national institution, the TRC was tinged with an international character. This international hue was imparted by the involvement of the Special Representative of the Secretary-General of the United Nations for Sierra Leone as well as the High Commissioner for Human Rights at the early stages of the Sierra Leonean TRC's foundation.<sup>11</sup>



Moreover, the two UN representatives had the task of recommending the appointment of three members of the commission, who were not Sierra Leonean citizens.<sup>12</sup> The Commission was mandated to deal strictly with the gross human rights violations that had occurred since the genesis of the Sierra Leonean civil war in 1991.<sup>13</sup>

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<sup>8</sup> Witness to Truth Report of 2004 vol 1.

<sup>9</sup> Witness to Truth Report of 2004 vol 1.

<sup>10</sup> Art XXXVI of the Lomé Peace Agreement of 1999.

<sup>11</sup> Schabas W (2008:23).

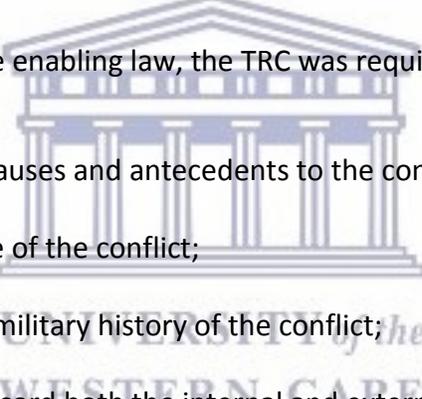
<sup>12</sup> Sec 3 of the Truth and Reconciliation Act of 2000. The three international members included Satang Jow, a former Minister of Education from the Gambia, Yasmin Sooka, a South African human rights lawyer, and William Schabas.

<sup>13</sup> Art XXVI (2) of the Lomé Peace Agreement of 1999.

However, although the Commission's temporal jurisdiction seemed overtly restricted to the period between 1991 and 1999, in practice, the commission did not limit itself to this time frame, as the TRC Act mandated the Commission to investigate more fully also the antecedents to the conflict.<sup>14</sup>

The Commission was required to write a final report and recommend measures that would assist in the rehabilitation of victims of gross human rights violations.<sup>15</sup> The report delved into Sierra Leone's colonial history, especially in the capital city of Freetown, as well as the hinterland and the tyrannical and corrupt reign of successive post-colonial regimes.<sup>16</sup>

In line with section 6(2)(a) of the enabling law, the TRC was required to do the following:

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- a) Accurately, explain the causes and antecedents to the conflict;
  - b) Find out the exact nature of the conflict;
  - c) Record the political and military history of the conflict;
  - d) Investigate, name and record both the internal and external actors in the conflict;
  - e) Deal with the situation of women and children in armed conflict; and
  - f) Set out the national vision for Sierra Leone and the way forward.

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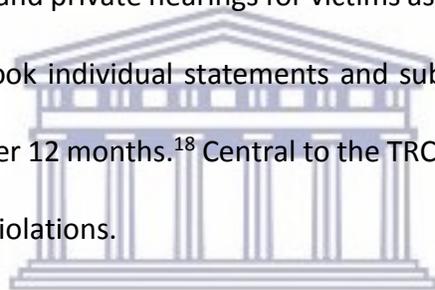
<sup>14</sup> Sec 6(2) of the Truth and Reconciliation Act of 2000.

<sup>15</sup> Horovitz S (2008:30).

<sup>16</sup> Schabas W (2008:24).

The commission paid particular attention to children, including child perpetrators as well as victims of sexual abuse, and women. This chapter shall explore these particular aspects of the Sierra Leonean TRC's work in greater detail. Furthermore, the TRC Act mandated the Commission to report on violations of international humanitarian law, which also implied that responsibility for the atrocities was attributable to individuals, governments, transnational corporations and private security companies.<sup>17</sup>

In addition, the Sierra Leonean TRC was required to investigate and to do research into the key focus areas. It held both public and private hearings for victims as well as the perpetrators of any human rights abuses. It also took individual statements and submitted the final report to the Sierra Leonean government after 12 months.<sup>18</sup> Central to the TRC's work were the investigations into human rights abuses and violations.



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Interesting, too, is that the Sierra Leonean TRC did not confine itself to classic violations of bodily integrity, which typically envisaged breaches of civil and political rights. Rather, it also considered economic, social and cultural rights. Statement takers were given instructions to serve as guidance while conducting interviews.<sup>19</sup>

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<sup>17</sup> Sanders L (2001:1402).

<sup>18</sup> Sec 7 of the Truth and Reconciliation Act of 2000.

<sup>19</sup> Schabas W (2008:26).

The significance of this bold step to affirm the indivisibility of human rights as required under international law became evident when victims preferred that compensation be in the form of guaranteeing socio-economic rights such as schooling for their children, medical care, decent housing and living conditions.<sup>20</sup> This proved that victims who had experienced severe brutality believed that their future security lay in their acquiring economic and social rights rather than being restored to the position they had been in before the civil war started.

#### **4.2.3 The Sierra Leonean TRC and the question of amnesty**

Before discussing the details of how the Commission dealt with the issue of women and children, it is important to address first beset the question of amnesty, which was a major and rather controversial issue concerning the Commission.

The Sierra Leonean government desired to use the Abidjan Peace Accord as the basis for negotiations with the RUF rebels.<sup>21</sup> The Sierra Leonean Human Rights Committee, however, expressed grave reservation towards the conferring of blanket amnesty to all the perpetrators of gross human rights violations during the civil war, as stated under Article 14 of the Abidjan Peace Accord of 1996.<sup>22</sup>

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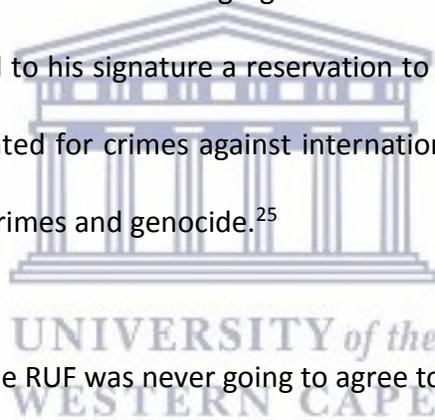
<sup>20</sup> Berewa S (2001:55).

<sup>21</sup> Shaw R (2010:38).

<sup>22</sup> Witness to Truth Report of 2004 vol 1.

The American clergyman, Jesse Jackson, had brokered the peace accord and had even included a clause that granted all combatants and collaborators complete absolution and reprieve for their heinous acts committed during the war. This meant that General Foday Sonkah, notorious for his hideous acts of terror, would enjoy absolute pardon for his conduct during the war.<sup>23</sup>

The Human Rights Committee, however, was of the view that this arrangement would nurture a culture of impunity within the Sierra Leonean society. Instead, it proposed that the Sierra Leonean TRC deal not only with the historical account of what took place, but that it also recommend criminal prosecutions for the most egregious crimes.<sup>24</sup> Also, the former UN Secretary General, Kofi Annan, appended to his signature a reservation to the effect that amnesty would not apply nor would it be granted for crimes against international law. These crimes included crimes against humanity, war crimes and genocide.<sup>25</sup>



However, it was evident that the RUF was never going to agree to peace without the granting of amnesty. Hence, ultimately, the Sierra Leonean TRC refrained from recommending criminal prosecutions in its report. However, the emergence of the Special Court for Sierra Leone (hereafter SCSL) reversed this position, holding itself not bound by the amnesty provisions in the Abidjan Peace Accord and the Lomé Peace Agreement.<sup>26</sup>

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<sup>23</sup> Sixth TRC press briefing available at <http://www.sierra-leone.org.trcbriefing.html> (accessed on 2 August 2017).

<sup>24</sup> Witness to Truth Report of 2004 vol 1.

<sup>25</sup> Schabas W (2008:34).

<sup>26</sup> Witness to Truth Report of 2004 vol 1.

#### **4.2.4 Women and the Sierra Leonean TRC**

The enabling Act required the Sierra Leonean TRC to pay particular attention to issues concerning women and children in Sierra Leone following the conflict. This responsibility stemmed from the obligation imposed on the TRC, pursuant to the TRC Act. The Act required the Commission to delve into women's issues and cases of sexual abuse. Later on, the TRC investigated much further.<sup>27</sup>

The Sierra Leonean TRC reserved one day per week for the sake of collecting testimonies of female victims of sexual abuse. These were taken in closed sessions and usually in the presence of women members of staff.<sup>28</sup> The Commission also went to great lengths and seized the opportunity to deal with the challenges confronting Sierra Leone on the broad human rights front. The Commission's recommendations can be broken down as follows:

#### **4.2.5 Recommendations of the Sierra Leonean TRC with regard to women**

First and foremost, the commission proposed the creation of a new Constitution. It recommended that such a Constitution come into being by participatory and consultative programs that would ensure equal protection for all by the law.<sup>29</sup> The proposed Constitution was to guarantee significant human rights such as the right to human dignity, human life and equality, regardless of race, sex or political affiliation. The Commission went even further by recommending that the Constitution aim to promote a human rights culture within Sierra Leone and that all customary laws were to be subject to the Constitution.

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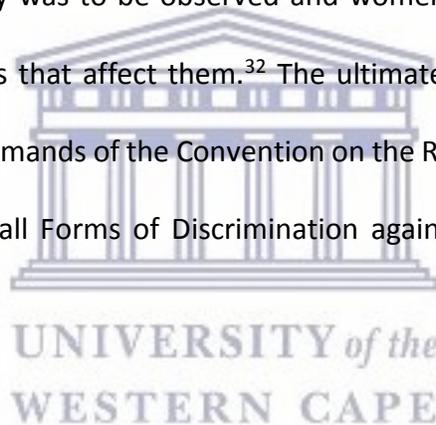
<sup>27</sup> Secs 6(2) and 17 of the TRC Act of 2000.

<sup>28</sup> Schabas W (2008:31).

<sup>29</sup> Ch 3 of the Witness to Truth Report of 2004, para 38 of vol 2.

The Commission furthermore recommended that in the event customary law was in contravention with the Constitution, Sierra Leonean courts should be empowered to declare the former unconstitutional.<sup>30</sup> In this regard, the Commission recommended that section 27(4)(d) and (e), which excluded certain areas such as adoption, marriage and divorce from the protection of discrimination be repealed.<sup>31</sup>

Additionally, the Commission recommended that customary law be codified and that the drafters of the code pay particular attention to the customary law that offended fundamental human rights. The principle of equality was to be observed and women were to be consulted on the changes to the customary laws that affect them.<sup>32</sup> The ultimate objective was to ensure that customary law abides by the demands of the Convention on the Rights of the Child (CRC) and the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) to which Sierra Leone is a state party.



The Commission also acknowledged the existence structural gender inequality in all spheres of Sierra Leonean social, political and economic life. It accordingly recommended measures that would help to address this situation. These recommendations included law reform, the abolition of discriminatory laws and practices, particularly in matters pertaining to matrimonial relationships, land rights and administration of estates.

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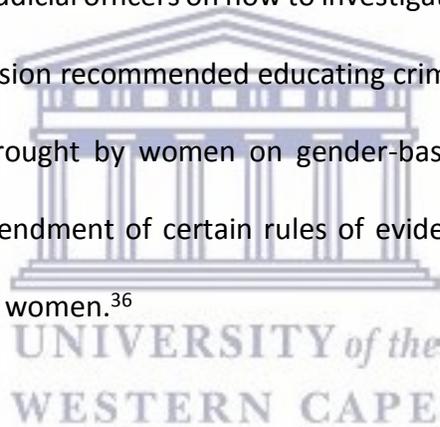
<sup>30</sup> Para 45 of ch 3 of the Witness to Truth Report of 2004 vol 2.

<sup>31</sup> Sec27(4)(d) and (e) of the Sierra Leonean Constitution of 1991.

<sup>32</sup> Para 110 of ch 3 of the Witness to Truth Report of 2004 vol 2.

They also encompassed the building of institutional capacity, the establishment of education programmes to counter attitudes and norms which lead to the oppression of women and hinder the transformation of women's lives.<sup>33</sup> The Commission regarded access to education, health, economic resources and political participation as key priorities for ensuring the progressive development of women in Sierra Leone.<sup>34</sup>

Apart from this, the Commission also recommended that the Ministry of Social Welfare and Gender Affairs, together with the Police Gender Desk, develop educational programmes for the police, public prosecutors and judicial officers on how to investigate and prosecute gender-based crimes.<sup>35</sup> Likewise, the Commission recommended educating criminal justice officials on how to properly handle complaints brought by women on gender-based violence. The Commission furthermore called for the amendment of certain rules of evidence and procedure that were discriminatory and offensive to women.<sup>36</sup>



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<sup>33</sup> Para 112 of ch 3 of the Witness to Truth Report of 2004 vol 2.

<sup>34</sup> Para 321 of ch 3 of the Witness to Truth Report of 2004 vol 2.

<sup>35</sup> Para 329 of ch 3 of the Witness to Truth Report of 2004 vol 2.

<sup>36</sup> Para 330 of ch 3 of the Witness to Truth Report of 2004 vol 2.

In addition, the Commission recommended that the Ministry of Social Welfare and Gender Affairs, together with UNIFEM, establish a network that would coordinate the work of all organisations working on women's issues to publish a directory setting out each and every service they offer so that women can be aware of how to gain access to such services when necessary.<sup>37</sup> The Commission encouraged the Sierra Leonean government to ratify the Protocol to the African Charter on the Rights of Women (Maputo Protocol), which urges signatories, amongst others, to address harmful practices.<sup>38</sup>

As regards political matters, the Commission recommended that political parties in Sierra Leone be required to ensure that at least 30 percent of their electable candidates be women and that this apply to all public elections whether they be at the national, local or district level. The Commission urged the National Electoral Commission to enforce this minimum representation.<sup>39</sup>

It also made recommendations regarding women's skills and economic empowerment. The Commission recommended, for instance, that the Ministry of Social Welfare and Gender Affairs establish a network of service providers and agencies offering a variety of skills training programmes. The Ministry had to ensure that even rural-based women have access to such programmes.<sup>40</sup>

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<sup>37</sup> Para 340 of ch 3 of the Witness to Truth Report of 2004 vol 2.

<sup>38</sup> See art 1 of the Maputo Protocol which defines harmful practices as behaviours, attitudes and practices which negatively affect the fundamental rights of women, especially their right to life, health, dignity, education and physical integrity.

<sup>39</sup> Para 349 of ch 3 of the Witness to Truth Report of 2004 vol 2.

<sup>40</sup> Para 354 of ch 3 of the Witness to Truth Report of 2004 vol 2.

The members of the Commission proposed, too, that micro-credit schemes be started for especially internally displaced women, female heads of households, war widows and ex-combatants. The Commission was of the view that those providing such micro-credit loans should also incorporate into their services basic business management courses relating to the use of micro-credit.<sup>41</sup>

What is more, the Commission urged the government to aim towards enrolling girl children in schools and other training institutions. In addition, it advocated free and compulsory education for girls up to senior secondary school level, to cater for the problem of low-income families according priority to the education of boys.<sup>42</sup>

The Commission also condemned the prevalent practice of expelling pregnant girls from educational institutions and insisted that the government should stop this discriminatory practice. Another recommendation was that the Ministry of Social Welfare and Gender Affairs consider establishing educational programmes for adults where they could learn elementary literacy and numeric skills.<sup>43</sup>

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<sup>41</sup> Para 356 of ch 3 of the Witness to Truth Report of 2004 vol 2.

<sup>42</sup> Para 359 and 360 of ch 3 of the Witness to Truth Report of 2004 vol 2.

<sup>43</sup> Para 361 of ch 3 of the Witness to Truth Report of 2004, vol 2.

Gaining access to justice was a problem plaguing Sierra Leonean women. The Commission, therefore, called out prominent legal aid centres in Sierra Leone such as the Fourah Bay University Legal Aid Clinic to focus mainly on issues of domestic violence and matrimonial matters, as well as problems related to land rights, inheritance and divorce.<sup>44</sup>

The Commission also recommended for the provision of psychological and reproductive health services to women who had been affected by conflict.<sup>45</sup> It was one of the methods the Commission used to relieve trauma for the victims and restore their sense of self-worth.

#### **4.2.6 Reparations made by the Sierra Leonean TRC**

The Sierra Leonean Truth and Reconciliation Commission followed the guidance of the Lomé Peace Agreement in interpreting its mandate regarding victims of the war.<sup>46</sup> Furthermore, the TRC Act authorised the Commission to recommend political, legal, administrative or other reforms aimed at addressing the needs of victims and which would promote healing and reconciliation and prevent a recurrence of past atrocities.<sup>47</sup>

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<sup>44</sup> Para 363 of ch 3 of the Witness to Truth Report of 2004 vol 2.

<sup>45</sup> Para 368 of ch 3 of the Witness to Truth Report of 2004 vol 2.

<sup>46</sup> Art XVI of the Lomé Peace Agreement recommended that measures for the rehabilitation of victims and human rights violations.

<sup>47</sup> Sec15 (2) of the Truth and Reconciliation Act of 2000.

Importantly, in its deliberations on the making of reparations, the Commission took account of the need to prioritise the victims whose situation had made and continued to make them especially vulnerable to human rights abuses. The Commission had to make these recommendations against the background of the paucity of the state's resources which would have to be mustered to ensure the widest possible access to the reparations by the victims.<sup>48</sup>

#### 4.2.7 Specific reparations

Healthcare for individual beneficiaries was one of the leading issues dealt with by the Commission. When devising the recommendations relating to health care, the Commission considered important factors such as the health care system and structure at that particular time in Sierra Leone.<sup>49</sup>

The Commission recommended that medical centres with expertise in particular areas and which were reachable by transport be identified for people referred to such specialist health facilities.<sup>50</sup> Healthcare facilities were to be made available at primary health units, district hospitals and tertiary care units.<sup>51</sup> The Commission gave priority to certain categories of victims such as amputees and victims of sexual violence. These victims enjoyed access to free primary, secondary and tertiary physical health care.<sup>52</sup>

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<sup>48</sup> Para 6 of ch 4 of the Witness to Truth Report of 2004 vol 2.

<sup>49</sup> Para 106 of Chapter 4 of the Witness to Truth Report of 2004 vol 2.

<sup>50</sup> Para 107 of Chapter 4 of the Witness to Truth Report of 2004 vol 2.

<sup>51</sup> For instance, Connaught Hospital in Freetown was to serve as the coordinating centre for all medical services relating to amputees.

<sup>52</sup> See paras 126 and 134 of ch 4 of the Witness to Truth Report of 2004 vol 2 where the victims of sexual violence received free fistulae surgery. There was also the creation of a Fistula Repair and Training Centre in Freetown. The Centre gave prosthetic and orthotic devices to amputees.

The Commission also recommended as reparations the provision of mental health care and psycho-social support. In this regard, the Commission advised that victims and their dependents receive counselling and psychological support free of charge.<sup>53</sup> Hospitals and trauma centres provided both individual and group counselling to war victims and their dependents. The Sierra Leonean government was responsible for the coordination of the institutions that were responsible for such services. The Commission recommended that the government establish at least one mental health care facility in each district, with trained counsellors and at least one psychiatrist per district.<sup>54</sup>

Also, trauma counselling was to be available in all medical facilities and reproductive health centres for women. The government was to assist organisations involved with trauma counselling services for women, such as the Rainbow Centre and Sexual Assault Referral Centre.<sup>55</sup>

The issue of HIV/AIDS and other STIs was also a central part of the reparations provided for by the Commission. Free HIV and other STI testing and medication was available for all victims of sexual violence.<sup>56</sup> The government trained counsellors that were engaged in counselling people living with HIV. The Sierra Leonean government also established special HIV/AIDS programmes and initiatives.<sup>57</sup>

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<sup>53</sup> Para 159 of ch 4 of the Witness to Truth Report of 2004 vol 2.

<sup>54</sup> Para 160 of Ch 4 of the Witness to Truth Report of 2004 vol 2.

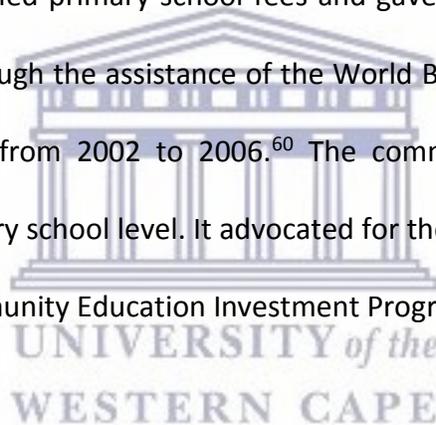
<sup>55</sup> Para 163 and 164 of Ch 4 of the Witness to Truth Report of 2004 vol 2.

<sup>56</sup> Para 145 of ch 4 of the Witness to Truth Report of 2004 vol 2.

<sup>57</sup> In 2002, President Kabbah launched the Sierra Leone AIDS Response Project (SHARP). This programme was a four-year plan with approximately US\$ 15 million from the World Bank. See Report on Comprehensive Assessment of the HIV/AIDS Situation in Sierra Leone and the National Response.

Pensions for individual beneficiaries were also part of the reparations. The Ministry of Finance was tasked to coordinate and oversee pay-outs to pensioner victims. Adult amputees who had lost 50% or more of their earning capacity and war widows were prioritised.<sup>58</sup> The Commission also recommended the provision of education for individual beneficiaries as a form of reparation. It encouraged the continuation of education initiatives such as the Universal Free Primary Education Policy introduced by the Sierra Leonean government in 2001.<sup>59</sup>

Also, the Sierra Leonean government decided to waive all examination fees for all girl children for the national exams, abolished primary school fees and gave secondary scholarships to girl children. The government through the assistance of the World Bank, rehabilitated 140 primary schools and 60 high schools from 2002 to 2006.<sup>60</sup> The commissioners recommended free education until senior secondary school level. It advocated for the expansion of existing training programmes such as the Community Education Investment Programme.<sup>61</sup>



The Commission also recommended vocational training, micro-credit and micro-projects for individual or collective groups of beneficiaries. In respect to this recommendation, the government was to assess the current needs of the Sierra Leonean market. The objective was to advise the trainees on the best business opportunities that were available.<sup>62</sup> Also, skills training was to include small -scale business management and training courses.<sup>63</sup>

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<sup>58</sup> Para 172 of ch 4 of the Witness to Truth Report of 2004 vol 2.

<sup>59</sup> Para 173 of ch 4 of the Witness to Truth Report of 2004 vol 2.

<sup>60</sup> Para 176 and 177 of ch 4 the Witness to Truth Report of 2004 vol.2.

<sup>61</sup> Para 178 of ch 4 of the Witness to Truth Report of 2004 vol.2.

<sup>62</sup> Para 189 of ch 4 of the Witness to Truth Report of 2004 vol 2.

<sup>63</sup> These were in the form of Financial Service Associations, commonly known as *esusu* in Sierra Leone.

The Sierra Leonean government also provided micro-credit for all the wounded, amputees or anyone that had lost 50 per cent or more of their earning capacity upon completion of their skills training programme.<sup>64</sup> Moreover, amputees, the war-wounded and victims of sexual violence had the option to select one family member to enroll in the programme their stead.<sup>65</sup>

The Commission included symbolic reparations in the form of public apologies, memorials, commemoration ceremonies, mass-graves and reburials in the reparations programme. Part of the symbolic reparations included the building of national war memorials for the victims of the war.<sup>66</sup>

Ultimately, the Commission also recommended community reparation schemes. The commissioners consulted members of the community about their concerns and what they wanted to see addressed. Furthermore, the Commission was responsible for publicising the reparations program and ensuring that as many people as possible had access to the many reparations that were available.<sup>67</sup>

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<sup>64</sup> Para 193 of ch 4 of the Witness to Truth Report of 2004, vol 2.

<sup>65</sup> Para 194 of ch 4 of the Witness to Truth Report of 2004, vol 2.

<sup>66</sup> Para 195 of ch 4 of the Witness to Truth Report of 2004, vol 2.

<sup>67</sup> Para 198 of ch 4 of the Witness to Truth Report of 2004 vol 2.

### 4.3 The Special Court for Sierra Leone

"I believe that crimes of this magnitude committed in this country are of concern to all persons in the world, as they significantly diminish respect for international law and the most fundamental human rights. I hope that the United Nations and the international community can assist the people of Sierra Leone in bringing to justice those responsible for these grave crimes."<sup>68</sup>

Fortunately, the United Nations did, in fact, respond to Sierra Leone's call. As a result, the United Nations acceded to the request of the government of Sierra Leone to create the SCSL, which started its work in August 2002. The Court was vested with the jurisdiction to try all persons who held the greatest responsibility for the brutal civil war in Sierra Leone and for crimes committed since 30 November 1996.<sup>69</sup>

The SCSL was the first international criminal tribunal to ever exist in Sierra Leone. Also, Sierra Leone was specifically chosen to serve as the prime location for this court to facilitate the accessibility of evidence more quickly. This initiative facilitated efficiency in the handling of the cases and preparation of witnesses.<sup>70</sup> Moreover, the establishment of the SCSL assured that the country had professionals with the capacity to ensure the observance of the rule of law in the country.

#### 4.3.1 The jurisdiction of the SCSL

The Court had temporal jurisdiction, specifically restricted to human rights violations that had occurred after 30 November 1996, as per the signing of the Abidjan Accord. The temporal jurisdiction was intentionally left open-ended to address the gross human rights violations that

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<sup>68</sup> Letter sent by President of Sierra Leone, Aman Tejan Kabbah, to the UN Secretary-General dated 12 June 2000.

<sup>69</sup> Horowitz S (2008:40).

<sup>70</sup> Scharf MP (2000:3).

had occurred but at the same time, not to over-burden the Court.<sup>71</sup>The Court's material jurisdiction was limited to international crimes such as war crimes and crimes against humanity. It also included domestic crimes such as arson and sexually assaulting young girls.<sup>72</sup>

The Court's personal jurisdiction was limited to those who bore the *greatest responsibility* for the crimes. The rationale behind this restriction was due to financial constraints, but also because of the impossibility of bringing approximately 40,000 combatants to justice.<sup>73</sup> However, as much as the SCSL had power to try domestic crimes, all the accused were charged with international crimes. The Prosecutor indicted former members of the AFRC and RUF for crimes such as rape, murder, extermination, enslavement, sexual slavery, crimes against humanity and acts of terrorism.

They were also charged with outrages upon personal dignity, mutilation, collective punishment. Charges included pillage, recruitment of child soldiers and attacks against peacekeepers in violation of Common Article 3 of the Geneva Conventions and Additional Protocol II.<sup>74</sup>

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<sup>71</sup> Paras 25-28 of Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, UN Doc S/2000/915 of 4 October, 2000.

<sup>72</sup> Arts 1-4 of the Statute of the Special Court for Sierra Leone.

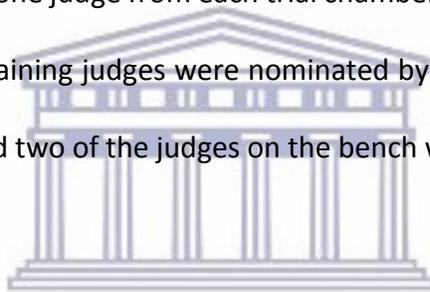
<sup>73</sup> Horowitz S (2008:48).

<sup>74</sup> See the *RUF* and *AFRC* case. The former AFRC and RUF members were charged with similar crimes as they were alleged to have participated in a joint criminal enterprise which resulted in these crimes, even though they had not directly or physically committed these offences. The prosecutor also charged them under the doctrine of command responsibility.

### 4.3.2 The structure of the SCSL

The structure of the Court resembled the tripartite organisational structure of the ad hoc tribunals and the International Criminal Court. It consisted of the Office of the Prosecutor, the Chambers and the Registry. However, one unique feature about the Court is that it possessed a Defense Office which, although having been established by the Registry, worked in complete independence of it.<sup>75</sup>

The Chambers comprised two trial chambers and an appeals chamber. Each trial chamber consisted of three judges, with one judge from each trial chamber being nominated by the Sierra Leonean government. The remaining judges were nominated by the United Nations. The Sierra Leonean government appointed two of the judges on the bench while the UN Secretary-General appointed the rest.<sup>76</sup>



### 4.3.3 The enforcement mechanism of the SCSL

The Special Court was a creature of a bilateral treaty. Consequently, it did not enjoy the same international enforcement mechanisms as the ad hoc tribunals (ICTY and ICTR).<sup>77</sup> Although the SCSL was a product of a bilateral treaty, the Sierra Leonean authorities were still legally bound to comply with the treaty's provisions.<sup>78</sup> However, to cater for the lack of wide geographic

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<sup>75</sup> Rule 45 of the Special Court Rules and the Special Court's first Annual Report of 19 August 2004 at 18.

<sup>76</sup> Horovitz S (2008:51).

<sup>77</sup> The SCSL was not established by the United Nations Security Council under Chapter VII of the UN Charter like the ICTY and ICTR. Security Council Resolutions under Chapter VII constitute actions against states that threaten international peace and security.

<sup>78</sup> Art 16 of the Special Court Agreement and section 21 of the Special Court Agreement (Ratification) Act of 2002.

enforcement powers, certain provisions in Security Council Resolutions required third states to cooperate with the Special Court.<sup>79</sup>

#### 4.3.4 Gender and the SCSL

The Court's jurisprudence had a massive impact on the development of international law. The Court handed down ground-breaking judgments, one of which held forced marriages to be a crime against humanity, thus affirming universal condemnation of such acts.<sup>80</sup> However, in some instances, the Court was completely silent on matters of gender-based violence at a time when it needed to be vocal on this particular issue. For instance, the court did not address gender violence in the *Fofana and Kondewa* case.<sup>81</sup>

However, the SCSL, for the most part, played a crucial role in naming and addressing violations on sexual violence. The court named and labelled these violations as crimes against international law. Naming is one of the key tools used in law, and it is used authoritatively to acknowledge wrongs that have been committed and to provide appropriate legal redress. Therefore, it is imperative not to underestimate the Court's decision to name individual acts as constituting sexual violence.<sup>82</sup>

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<sup>79</sup> UN Security Council Resols 1470 and 1478 urged 30 states parties to work with the SCSL. However, the overall lack of powers guaranteed under Chapter VII of the UN Charter highly contributed to the Court's difficulty in attaining custody over Charles Taylor who had sought asylum in Nigeria at the time.

<sup>80</sup> See the judgment of the *AFRC* case.

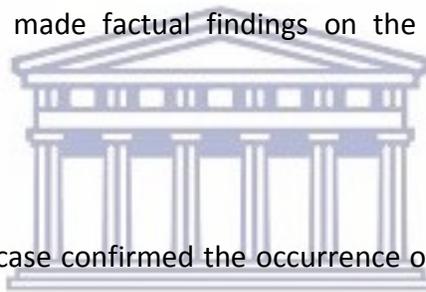
<sup>81</sup> See the *Fofana and Fondewa* case.

<sup>82</sup> *Oosterveld V* (2006:4).

The widespread experience of sexual violence moved the Court to capacitate the Office of the Prosecutor generously to tackle violence against women. The sub-section below looks at how the SCSL dealt with the crime of rape, as a crime against humanity, sexual slavery and forced marriage.

#### **4.3.5 Rape**

The Court probed the widespread human rights abuses that occurred in Sierra Leone during the civil war. It handed down its most profound decisions in the AFRC, RUF and Taylor judgments. These decisions provided a unified and detailed analysis of the crime. Both cases sketched the legal parameters of rape and made factual findings on the types of rape that had been committed.



The trial chamber in the AFRC case confirmed the occurrence of rape during the civil war. The Court went on to categorise the types of rape that had occurred. These included multiple rapes, gang rapes, rape in public, rape with weapons and other objects, rape where civilians were forced to rape each other and rape in front of family members.<sup>83</sup> The Court confirmed that both members of the AFRC and RUF, together with affiliated fighters, were accountable for the rape of civilian women and girls. The Court also acknowledged that all types of women, including young girls, the elderly and men were victims of rape.

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<sup>83</sup> See para 1031-1035 of the AFRC case.

Also, the Court noted the intersection of rape and other inhumane acts such as forced labour, abduction, forced nudity, murder, sexual mutilation, forced marriage and physical assault. Moreover, the Court pointed out that incidences of rape within the RUF- and AFRC-controlled areas was not accidental; it was not only tolerated but also institutionalised.

#### 4.3.6 Sexual Slavery

Sexual slavery as a war crime was first addressed by the SCSL in the *RUF* case and subsequently in the *Taylor* trial. Sexual slavery was expressly prohibited also in the Statute of the SCSL.<sup>84</sup> In both the *RUF* and *Taylor* trial judgments the SCSL affirmed that sexual slavery does not consist of one intrusive event, but that it was a continuous act comprising of several actions over a period of time and possible change of geographic location.<sup>85</sup>

This was an important decision since it acknowledged that the perpetrators of this crime usually travelled to different locations and took their slaves with them wherever they went.<sup>86</sup> This assertion by the Court lessened the onus of proof on the part of the prosecutor, who was no longer required to prove the specific locations where sexual slavery occurred.<sup>87</sup>

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<sup>84</sup> Art 2 of the Special Court for Sierra Leone.

<sup>85</sup> Art 2 (g) of the Statute for the Special Court for Sierra Leone.

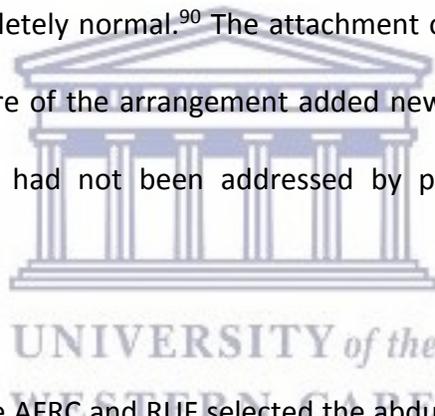
<sup>86</sup> See para 119 of the *Charles Taylor* case.

<sup>87</sup> See para 1018 of the *Charles Taylor* case.

The SCSL declared the first two elements of the offence to be the same as those contained in the analogous provision in the ICC Statute. This declaration helped to solidify the position of the crime of sexual slavery under international law.<sup>88</sup> The Court also made a significant breakthrough by stating that the requirement to prove lack of consent was irrelevant. The Court held that in a situation such as war, it is reasonable to infer that it is impossible to give consent, and this fact alone was sufficient to prove the lack of consent.<sup>89</sup>

#### 4.3.7 Forced Marriage

During the civil war, forced marriages were widespread. The idea of taking women as 'wives' was understood and became completely normal.<sup>90</sup> The attachment of the term 'wife' for captured women and the intimate nature of the arrangement added new elements to the character of violence against women that had not been addressed by previous international criminal tribunals.<sup>91</sup>



The high-ranking officials of the AFRC and RUF selected the abducted women and girls as wives for themselves. The women commandeered by the AFRC and RUF combatants were turned into wives through informal ceremonies commonly known as bush marriages. After the ceremony, the women were required to comply with every command of their 'husband'.<sup>92</sup>

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<sup>88</sup> The SCSL stated that the crime of sexual slavery required the existence of three elements; that the accused exercised any or all of the rights of ownership over a person or persons, that the enslavement involved sexual acts and that the defendant intended to commit the act of sexual slavery or acted with reasonable knowledge that this was likely to occur.

<sup>89</sup> See para 1466 and 1470 of the RUF case.

<sup>90</sup> Slater R (2012:736).

<sup>91</sup> For instance, in the *Kunarac* case, although the case involved incidences of repeated rape and the long-term abuse of two Muslim women, who had been detained by Serb soldiers, the ICTY did not consider this as forced marriage. The term 'wife' was not used formally or informally in this case.

<sup>92</sup> Belair K (2006:551).

The army officials forced the bush wives to perform domestic chores and engage in sexual relations. These sexual relations were often characterised by extreme violence, rape and forced pregnancies.<sup>93</sup>

The SCSL attributed the following characteristics to the crime of forced marriage. First, the Prosecutor had to prove that the victim experienced great suffering through the inhumane act. In this case, forced marriage was the inhumane act. Secondly, the Prosecutor had to prove that there were similarities in character to other crimes against humanity such as rape and sexual slavery. Thirdly, the Prosecutor had the onus of proving that there was a nexus between the enumerated act and broader systemic violence. Finally, the Prosecutor had to show also that there was a need to create forced marriage as a new distinct crime.<sup>94</sup>

It was the last element that was most controversial and difficult to prove. The trial chamber in both the AFRC and RUF trial concluded that the charge of forced marriage was a subset of the crime of sexual slavery. The trial court justified this position by focusing on the sexual aspects of the offence. However, the appeal chamber in both these cases criticised the trial court finding heavily. It highlighted the non-sexual aspects of forced marriage such as forced migration and domestic labour as well.

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<sup>93</sup> Toy-Cronin BA (2010:539).

<sup>94</sup> Trial Chamber decisions of the Special Court for Sierra Leone in the *RUF and AFRC* cases.

#### 4.3.8 Children and the SCSL

The SCSL also made landmark decisions regarding the recruitment of children under 15 years of age as child soldiers. In the case of *Prosecutor v Sam Hinga Norman*, the SCSL officially held that recruitment of child soldiers was a crime against international customary law that attracted individual criminal responsibility.<sup>95</sup>

The SCSL went even further and defined ‘participating in hostilities’ to not only include deployment of children under 15 years of age at the frontline, but also carrying weapons and being conscripted or enlisted in the first place. This was the first time that the recruitment of child soldiers was charged as a crime in an international tribunal.<sup>96</sup>

Therefore, the SCSL’s jurisprudence on women, children and gender issues, particularly in the realm of gender and sexual violence that had occurred during the civil war, was momentous. Also, the Court reaffirmed the significance of dealing with sexual abuse and how gender is a significant factor contributing to the commission of these crimes.

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<sup>95</sup> See *Prosecutor v Sam Hinga Norman* available at <https://www.casebook.icrc.org> (accessed 24 October 2017).

<sup>96</sup> Smith A (2006:36).

#### **4.5 A Comparative perspective: Truth commissions and transitional justice in Uganda**

The road to transitional justice in Uganda has been nothing short of complicated. Over the years, Uganda has established two truth commissions and currently has now signed an agreement to ensure the creation of yet another truth commission following the atrocities committed by the LRA until 2006.<sup>97</sup>

##### **4.5.1 The Commission of Inquiry into Disappearances of People in Uganda of 1971**

This commission was created by former President Idi Amin on 25 January 1971. To say that this commission was nothing short of a farce, would be an understatement. The Commission aimed to investigate the so-called accusations on forced disappearances during Idi Amin's government. This decision to establish the creation a Commission was made in the light of extreme international pressure exercised on the Amin regime. The Commission was composed of three commissioners. These included a Pakistani judge who was the head of the Commission, a Ugandan army officer and two police superintendents.<sup>98</sup>

##### **4.5.2 Mandate of the Commission**

This Commission had the mandate to compel any relevant witnesses to testify, collect any evidence from any official source and conduct public hearings. The Commission interrogated more than 500 witnesses and heard over 300 cases on disappearances during its lifetime.<sup>99</sup>

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<sup>97</sup> The Commission of Inquiry into Disappearances of People in Uganda since 25 January 1971, the Commission for the Inquiry into the Violations in Uganda of 1986 and the Agreement of Accountability and Reconciliation of 19 February 2008. The Pakistani judge serving as one of the commissioners was later ordered to be killed by Idi Amin for failure to comply with his orders.

<sup>98</sup> Carver R (1990:356).

<sup>99</sup> Carver R (1990:358).

The Commission made recommendations after its findings. It recommended that law enforcement officials be educated on human rights and that the Ugandan police and security forces be reformed. Unfortunately, none of these recommendations were implemented. The Commission did not even publish its final report.<sup>100</sup>

#### **4.5.3 The Commission of Inquiry of Violations in Uganda of 1986**

The Commission functioned from 1986 to 1994. It was established in response to the loss of people's lives during Amin dictatorship which lasted from 1971 to 1979. Atrocities continued to be perpetrated under Amin's successor, Milton Obote, who held office from 1980 to 1985. The present incumbent president, Yoweri Museveni, established the Commission in a desperate attempt to restore the country's reputation after he officially overthrew Milton Obote in 1986.

#### **4.5.4 Mandate of the Commission**

The Commission was mandated to investigate all human rights violations committed under the preceding Ugandan regimes. The timeframe went back as far as 9 October 1962, right after Uganda's independence until January 1986 when President Museveni assumed power. The Commission focused on killings, detention, arbitrary arrests, discrimination and forced disappearances that had occurred during that period.<sup>101</sup> The Commission was then expected to make recommendations to help prevent future violations. It released its report in 1986. However, the document was not readily made available to the public.<sup>102</sup>

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<sup>100</sup> Benomar J (1993:8).

<sup>101</sup> Hayner PB (2002:5).

<sup>102</sup> Available at <http://www.ictj.org/sites/uganda/doc> (accessed 12 August 2017).

The Commission of Inquiry Legal Act of 1986 regulated the workings of the Commission<sup>103</sup> which consisted of six commissioners, headed by a former Supreme Court Justice by the name of Arthur Oder. There were no female members.<sup>104</sup>

#### **4.5.5 Women and the Commission for Inquiry of Violations in Uganda**

Overall, the Commission recommended the release of detainees and the teaching of human rights education in schools, universities and within Uganda's armed forces.<sup>105</sup> Although this recommendation was not directly related to women, the fostering of a human rights culture in Uganda could have helped to promote women's advancement.

#### **4.5.6 The new proposed truth and reconciliation commission in Uganda**

After a brutal conflict between the LRA and the national government of Uganda (1986-2006) in the Northern parts of Uganda; the government of Uganda and the LRA finally held peace talks which began in Juba, Sudan, in 2006.<sup>106</sup> Both parties signed the Agreement on Accountability and Reconciliation in 2008.<sup>107</sup>



As a result, the Ugandan government established the Justice, Law and Order Section in 2009 and a High-level Transitional Justice Working Group in the same year. The Justice and Law Order Section in 2009 undertook a comprehensive survey as to what Ugandans would prefer after the civil war in Northern Uganda.<sup>108</sup>

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<sup>103</sup> The Commission of Inquiry Legal Act, Notice No.5 of 1986.

<sup>104</sup> Quine JR (2004:18).

<sup>105</sup> Huskamp TP (2005:22).

<sup>106</sup> Vlassenroot K & Allen T (2010:230).

<sup>107</sup> Cecily R (2008:371).

<sup>108</sup> Acirokop P (2012:418).

The survey revealed that an overwhelming number of Ugandans desired that the truth be revealed and that there be reconciliation and reparations as the primary solutions to the conflict that had occurred.<sup>109</sup> The Working Group consists of 5 committees working in the following areas: truth and reconciliation; international crimes and prosecutions; traditional justice and sustainable funding and integrated systems. Also, Ugandan civil society organisations formulated a Working Bill, the aim of the Bill was to guide the formation of the truth commission if it ever came into being.<sup>110</sup>

As at the time of writing, the new truth and reconciliation commission has yet to be established. It has been long overdue since concerns of finding a suitable transitional justice mechanism surfaced in 2008. Therefore, at this juncture, one can only speculate about the prospective establishment of any form of transitional justice mechanism in Uganda.

The next chapter compares the findings of both Sierra Leone and Uganda and whether they effectively used transitional justice mechanisms to galvanise women's economic and empowerment after conflict. The chapter also discusses the overall challenges that face the quest for attaining economic empowerment in transitioning countries after conflict. Through this critical analysis, the chapter ultimately provides solutions and recommendations to assist transitioning states to promote women's economic empowerment after war and conflict.

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<sup>109</sup> Research conducted by the African Institute for Strategic Research, Governance and Development that took place in Kampala, Uganda in August 2011. The survey confirmed that 70 per cent of the respondents desired the establishment of a truth and reconciliation commission in Uganda.

<sup>110</sup> The Working Bill was prepared by the Department of Peace and Conflict Studies and the Refugees Law Project at Makerere University in 2009.

## CHAPTER FIVE

### SUMMARY OF KEY FINDINGS, CHALLENGES, RECOMMENDATIONS AND CONCLUSION

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#### 5.1 Summary of key findings and comparative analysis

This study ultimately reveals that with a bright and dedicated focus, transitional justice mechanisms can be utilised as a medium for economic and transformative change in transitioning states. The significant efforts taken by the Sierra Leonean TRC emphasise this fact. In addressing economic inequalities and providing appropriate recommendations, given the available resources, through its mandate, the Commission to a great extent, highly elevated the position of women in Sierra Leone.

The SCSL also established a great legacy in deciding landmark cases on gender and sexual violence that have made tremendous contributions to international law. The study also revealed that the Special Court for Sierra Leone mainly focused on sexual violence against women and girls.

The study also shows, however, that without political will and clear set goals, transitional justice mechanisms cannot contribute towards economic change for everybody in general and especially for women and other marginalised groups in society. A clear illustration of this fact is reflected in Uganda's lack of political will to create legitimate truth commissions that genuinely aimed at addressing human rights violations.

Additionally, the study also revealed, that the political will of the State plays a significant role in the quest for women's economic empowerment. In as much as truth commissions, prosecutions and other transitional justice mechanisms can make all the necessary recommendations to realise economic empowerment for women, the State has the final say.

## **5.2 Challenges facing economic empowerment for women in transitioning states**

The international community has made remarkable strides in promoting gender equality and women's economic empowerment and development in transitional justice initiatives and post-conflict reconstruction over the years. However, these efforts have not yet come to true fruition as regards the realisation of economic and social rights for women. The quest for women's economic empowerment in transitional states is still fragile and subject to many challenges.

These challenges include, among others, lack of prioritisation by national governments and international donor agencies on policy and budgetary allocations for gender issues, lack of harmonised initiatives to incorporate women in peace-building and post-conflict reconstruction and the lack of women in key decision-making positions on key funding mechanisms and priority allocation.<sup>1</sup>

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<sup>1</sup> United Nations Committee on Economic, Social and Cultural Rights (CESR) concluding observations/comments, Azerbaijan E/C.12/1 14 December 2004, para 53.

In addition to this, laws, policies and attempts to empower women economically are treated with contempt, as they are regarded as threats to traditional values and customs, especially by men and other elites of their encrusted powers.<sup>2</sup>

Moreover, there is an accountability deficit that exists in matters pertaining to women's leadership, participation, and protection from violence. States and other responsible agencies are not held accountable when they fail to implement set objectives that align with development and women's economic empowerment.<sup>3</sup>

There is also a severe lack of donor alignment on women's empowerment in peace-building funding mechanisms. Donor agencies and organisations tend to focus on the essentials such as ensuring elementary levels of education for women but do not go the whole hog by granting women broad-based economic empowerment.<sup>4</sup> Consequently, as a culmination of these challenges, women's economic and security needs are not given adequate priority in resource allocation and are largely neglected due to lack of motivation and political will.

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<sup>2</sup> Aguilar GA (2006:125).

<sup>3</sup> UNIFEM working paper on progress of the world's women of 2008/2009 p.101.

<sup>4</sup> Whittington SA (2007:25).

### 5.3 Recommendations

Since women's economic disempowerment is deeply entrenched in social and structural discrimination that has existed way before the eruption of conflict, the first recommendation is to tackle structural discrimination against women in all its forms to make a clean break with the exclusion of women – an exercise that requires judicial and legislative reforms where anti-discriminatory laws are adopted. It is equally necessary that laws protecting and promoting women's economic empowerment are harmonised.

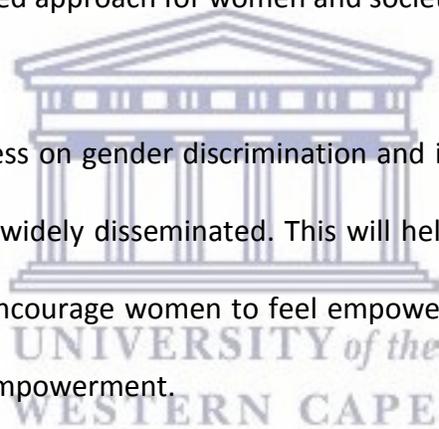
In almost all African states, including Sierra Leone and Uganda, customary law occupies a significant role in the legal system. Such customary laws usually discriminate against women, placing them at a disadvantage in the social, political and economic spheres. Therefore, it is vital that transitioning states utilise the post-conflict period as the opportune moment to review and amend gender discriminatory laws. More importantly, the rights of women need to be constitutionally entrenched, leaving no room for discrimination.

Constitutions should expressly prohibit any discriminatory legal provisions or provisions, including customary law norms and religious rites, whose effect lead to either direct or indirect discrimination. Equally important is that there should also be programmes that are focused on alleviating poverty and unemployment among women and other marginalised minorities in society, such as youth and the elderly.

In addition, donors involved in post-conflict reconstruction should endeavour to promote the participation of women in state reconstruction and service delivery. This would enhance very significantly women's having a say in vital decisions in critical areas that affect their lives.

Human rights institutions and organisations should also be created, with the monitoring and promotion of economic and social rights being part of their mandate. Economic and social rights norms need also to be integrated into the mandate of human rights agencies and truth commissions, to guide local organisations and donors towards the best implementation strategy for a comprehensive rights-based approach for women and society in general.

Finally, education and awareness on gender discrimination and impacts of women's economic disenfranchisement should be widely disseminated. This will help to stamp out discriminatory mindsets over time and also encourage women to feel empowered to strive for opportunities that enhance their economic empowerment.



#### **5.4 Conclusion**

Transitional justice is turning a new leaf. Its potential lies not only in addressing civil and political rights, but economic, social and cultural rights as well. Transitional justice has much to contribute towards societal transformation, especially in pushing the agenda for economic change. It is vital that transitional justice focuses on challenging unequal and previously unquestioned dogmas on the status of women, for this offers women a platform from which to articulate their needs and realise them.

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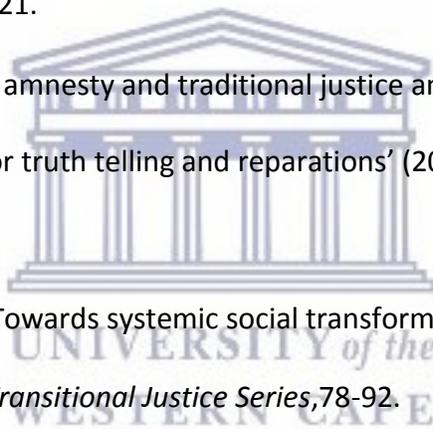
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