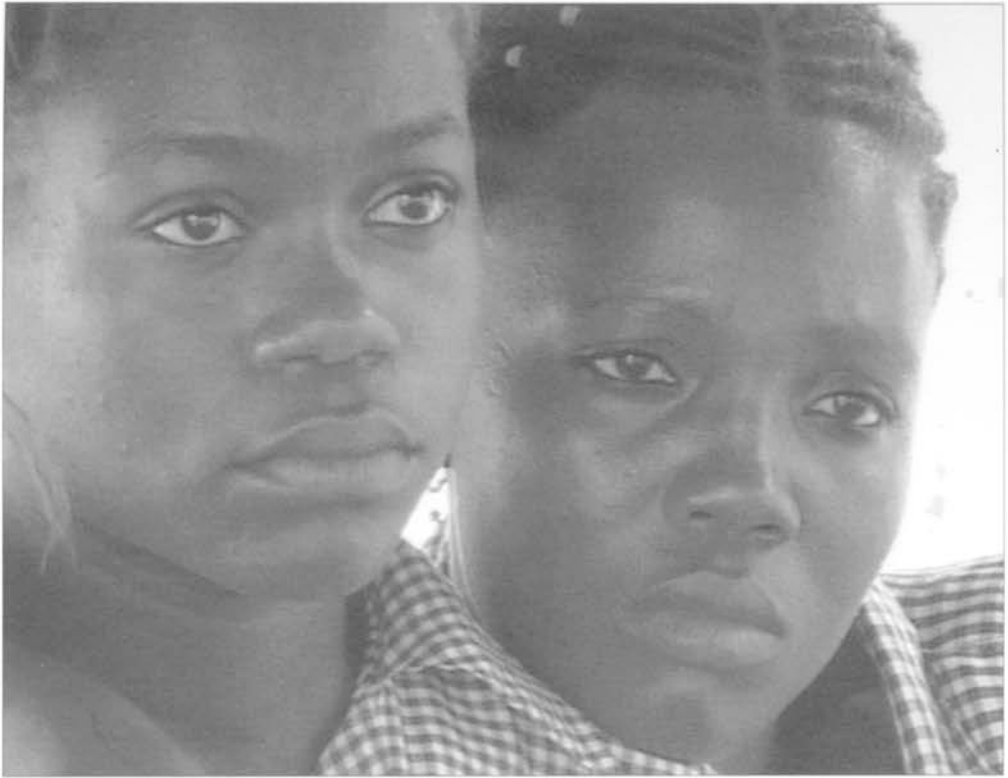


## Part 2

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# Human Rights and Legal Reform



Women have shouldered the burden of war, FAWE centre, Freetown

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**Valerie Nicol**

*Barrister-at-Law and member of the Network of Women Ministers and Parliamentarians (NEWMAP)*

One of the greatest obstacles to the development of a country is the little recognition that is given to the role and worth of a woman in her community and in her country as a whole. Her traditional role is seen to be inferior to that of the man and she is still typecast as mother and homemaker. In times of conflict and crisis, however, her role undergoes a dramatic and significant change. Often she is forced to become the sole breadwinner and the person who has to make all the major decisions in order to protect her family.

Sadly, however, when normalcy and peace return that selfsame woman is again relegated to her inferior position behind the man and the kitchen sink or pump, despite the active role she may have played during conflict.

'Promoting gender equality through legal reform' appears to be a very daunting task for Sierra Leone when viewed in the context of our legal system and the fact that little or no legal reform has taken place over the last two decades. The legal system of Sierra Leone, together with the high rate of illiteracy, in themselves are problems to be tackled, coupled with what may be described as a lack of political will to ensure that the laws of Sierra Leone keep up with at least other developing nations and with international conventions to which Sierra Leone has become a signatory or state party. In working towards gender equality through legal reform one must take cognisance of the traditional cultural and religious beliefs and practices in our society, which in most cases give men a title of supremacy and authorise them to play a role of dominance over women. Added to this, or possibly because of this, Sierra Leone has a pluralistic legal system made up of the General Law, Customary Law and Muslim Law.

General Law is defined in the Local Courts Act No. 2 of 1963 Laws of Sierra Leone (1960) revised edition as 'the common law, equity and all enactments in force in Sierra Leone except in so far as they are concerned with Customary Law'.

Customary Law, which is largely unwritten, refers to laws governing the various ethnic groups in the country except the Creoles, and varies from locality to locality.

Muslim Law governs people who are of the Islamic faith.

This pluralistic system causes confusion and denies women equal opportunities, not only in regard to their male colleagues, but also as against their female counterparts living in different regions of Sierra Leone or governed by different traditions and customs. One must also look at the constitution of Sierra Leone Act No. 6 of 1991 which provides in chapter/111 for the recognition and protection of fundamental rights and freedoms of the individual and contains conventionally accepted human rights such as civil and political rights, individual liberties and due process of law regardless of race, tribe, place of origin, political opinion, colour, creed or sex (Section 15). Section 27 of the constitution provides for equality before the law. On the face of it that section appears to be gender neutral, making for equality before the law and protection against discrimination for all. However Section 27 (4) (a), in particular, limits the scope and application of Section 27(1) and (2) by not making it applicable ‘with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law’. This in effect exempts and turns a blind eye to the root cause of discrimination suffered by women in Sierra Leone.

Therefore in considering the areas of law which need reform to bring about gender equality in Sierra Leone, one has to consider these areas under the General Law, Customary law and Muslim law. Perhaps the areas of greatest concern, where there is great need for reform are under (1) Family Law; (2) Law of Inheritance; (3) Land Law; (4) Violence.

## **Family Law**

The rights available to a woman during and after marriage depend upon which form of marriage was contracted—whether it was a Christian or a civil marriage, both forms of which are recognised as marriages under the General Law, and referred to as Statutory Marriage, Customary Law Marriage or Muslim Law Marriage.

## **Marriage**

### ***General Law***

The Christian Marriage Act and the Civil Marriage Act apply to marriages contracted under the General Law. The feature of these types of marriages is that they are monogamous in character. S.2 of the Matrimonial Causes Act, Cap 102 of the Laws of Sierra Leone 1960 defines marriage as ‘the union of one man and one woman for life to the exclusion of all others’. In this respect a woman who has contracted a marriage under the General Law has some semblance of equality with her husband. Whilst these provisions are applicable throughout the country, only those who profess to be of the Christian faith may opt for marriage under the Christian Marriage Act. However marriage under the Civil Marriage Act is open to couples regardless of their religious beliefs.

There is no express legal minimum age stipulated for marriage. If the requisite consents are obtained, a person can marry at any time. However, the practice for most marriages under the General Law is that most couples attain the age of 18 before marrying.

In order for a marriage to be valid under the General Law, it is stated in the Civil Marriage Act that a person below 21 who is subject to the General Law can only marry with the consent of his/her parents or guardians, whilst a person subject to Customary Law and below the age of 18 must obtain the requisite consent if he/she is marrying under the provisions of the General Law. A further prerequisite for a marriage to be valid under the General Law is that there should be no subsisting marriage of either parties with any other person. Prior to 1965 it was possible for a party who had contracted a marriage under Customary Law to enter into a monogamous marriage because marriage under Customary Law was not recognised. After 1965, however, Customary Law Marriages are now equated in law with Civil and Christian marriages. Therefore a marriage contracted with a third party under the General Law by one person during the subsistence of a Customary Law marriage with another person renders the subsequent statutory marriage Null and Void.

The position remains unclear in law wherein a man who marries under the General Law, which stipulates one wife, decides to marry a second wife under Customary Law without first obtaining a divorce. The second 'wife' is thus left unprotected under the law.

Under the General Law spouses have a corresponding duty to cohabit with each other, which usually means sharing a common matrimonial home. Sometimes a spouse has to work in a different town from where the family resides; however if the intention is to live together then cohabitation is considered to be continuous. When one partner refuses to cohabit with the other he/she may find him/herself being petitioned for desertion. Despite the fact that more wives are working now, it tends to be the husband who determines the location of the matrimonial home.

### ***Customary Law***

Marriages under Customary Law are polygamous in nature, with the husbands having the capacity to marry several wives. There are no uniform procedures, and these vary from tribe to tribe and region to region. There are, however, several characteristics of Customary Law marriages which have been classified, and they include polygamy, alliance of two families, marriage consideration (dowry), inferior status of the woman vis-à-vis her counterpart in the statutory marriage under the General Law, procreation of children, and the peculiar nature of divorce which can be obtained with ease and could be extra-judicial.

Here also there is no fixed age limit for an individual to be seen as capable of marrying under Customary Law. The capacity to marry is determined on the individual's physical development and his or her ability to consummate the marriage. Both parties must have reached puberty and be capable of procreating.

There have been known instances where very young girls, not having attained puberty, have been given in marriage to much older men, especially to elders and chiefs, or men perceived to have influence, particularly political influence. The man has to consent to the marriage, even when it is his first to be contracted, whereas the woman's consent is subordinate to that of her father's. This rule has less relevance when the woman has been married before and is now either divorced or widowed.

Before her marriage, a girl has no right or status as far as marriage is concerned. Decisions pertaining to her initiation into the secret society and consent for her marriage are made for her and taken by her mother in the former case, and parents in the latter case. She is to all intents and purposes treated as a Minor under the guardianship of her father or father's brother whilst single under Customary Law.

Marriage under Customary Law does not confer absolute right to guardianship of children nor does it confer any to property on divorce.

For a Customary Law marriage to be valid, the male spouse should provide a marriage consideration—mostly money and gifts of clothing and ornaments and in some cases livestock. The woman is regarded as her husband's chattel and he can divorce her at will. If the wife initiates the divorce, however, she is compelled to return the marriage consideration, and then the children belong solely to the husband.

### ***Muslim Law***

These are marriages that are contracted and celebrated in accordance with the Islamic religion. This type of marriage is applicable throughout Sierra Leone, but only for those who profess the Islamic faith. It is a potentially polygamous marriage where the husband can marry up to four wives with the proviso that he treats and loves each one equally.

There is no legal minimum age requirement for marriage but both the man and the woman are required to have reached the 'proper age', which has been said to be 18 years—an age when they are supposedly capable of discerning right from wrong and can be held responsible for their actions. Unlike under Customary Law, where a woman can be married off before reaching the age of 18 and without her consent, the Muslim woman's consent is always obtained, and in any case she cannot marry under the age of 18 (H.M. Joko-Smart: 'Women, Children and the Law in Sierra Leone', Sierra Leone Bar Association Third Annual Conference, May 1982).

At marriage, Muslim Law gives the husband absolute right over the wife, and the husband is regarded as trustee, guardian and protector of the wife. In this respect the wife occupies a lower status in the home. He is also responsible for the full maintenance of his wife.

Marriage under Customary Law is by far the marriage that discriminates most against women, and this is the marriage contracted by the majority of women in Sierra Leone.

The discriminations against women that exist during marriage infringe the principles of justice, and are in conflict with Articles 16 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and Article 18 of the African Charter on Human and People's Rights, which enjoin state parties (of which Sierra Leone is one) to take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, on a basis of equality of men and women. Article 16 of CEDAW imposes an obligation to ensure the right to freely choose a spouse and enter into marriage only with free and full consent.

## **Maintenance of Spouse**

### *General Law*

The husband under the General Law has a duty to maintain his wife, and this includes the provision of shelter and the necessities of life. The wife has no such corresponding duty to maintain her husband. Where a husband fails in his legal duty to maintain his wife during cohabitation:

- ◆ A presumption of agency is raised. This simply means that she has the power to pledge her husband's credit for the purchase of necessities, and the husband would be responsible to settle the bill. The goods regarded as necessities depend on the husband's status. This process is of limited use, however, because most wives are unaware of it—and in the case where a wife is aware of it, the husband may expressly forbid that she pledges his credit, which would rebut the presumption; and he may inform tradesmen that he is unwilling to pay for credit pledged on his behalf by his wife. The wife is also deprived of the right of maintenance if she commits adultery. The agency is terminated at the death of the husband, when the parties cease to cohabit, and upon a decree of divorce or nullity.
- ◆ An Application to the Magistrate Court can be made for maintenance where the husband refuses or neglects to maintain his wife and family under the Married Women's Maintenance Act 1888 Cap. 100 of the Laws of Sierra Leone.

This statute is archaic and no longer serves the needs of women because Magistrates only have the power to award the sum Le8.00 (less than 1 pence) per week for the wife and her family. Even if the sum capable of being awarded were

adequate, she would only have access to this law if she had been deserted by her husband. The Act would also not apply if the wife had committed adultery (S.2(12)).

- ◆ Under the Matrimonial Causes (Amendment) Act No. 16 of 1961, a married woman whose husband has wilfully neglected to provide reasonable



Children are our future

maintenance for her and her infant children may apply to the court for periodic payments (S.4.). The shortcomings of this Act for the wife include the fact that the application has to be made to the High Court, which is more expensive.

The determination of reasonableness may create a problem with the court, because most wives do not know their husband's true earnings or any other additional sources of income. This would make it difficult to determine their exact income.

In any case, before she can apply, the wife has to have grounds for Judicial Separation, which means she has to show adultery, cruelty or desertion. This burden may prove onerous to the wife, as the husband may not be maintaining her, but yet not be guilty of these acts of adultery, cruelty and desertion. Also, alleging these grounds would be tantamount to indicating to the husband that the marriage is at an end.

After cohabitation, where a husband fails to comply with an order of the courts for the resumption of marital rights, the court may make a further order requesting the husband to make periodic payments to the wife as may be just.

This provision is rarely used because it is lengthy and not easily enforceable as S.18 prohibits attachment of the husband in case of default.

When making an order for divorce or nullity of marriage, the court has a discretion to order that the husband pays a lump sum or makes such periodic payments to the wife as

the court considers reasonable, having regard to the wife's fortunes, the ability of the husband to pay and the conduct of the parties (S.21 Cap. 102). The court can also direct that the husband makes monthly or weekly payments for her maintenance or support as the court considers reasonable. These could also be interim orders during the hearing of the petition. The court may direct that the alimony be paid either to the wife or to a trustee approved by the court.

The reality, however, is that the husband usually defaults in payment and, because of the difficulties involved in the enforcement of the orders, these orders remain only on paper, with the wife carrying the burden of looking after the children.

It should be noted that under these provisions the court has the power when the husband is granted a decree for divorce or judicial separation by reason of adultery, cruelty or desertion of the wife, to order such settlement of the wife's property as it thinks reasonable, the settlement of such property to be made for the benefit of the innocent party, presumably the husband and the children of the marriage or any or either of them (S.22 (1) ).

It should be noted that the property of the wife includes the profit of her trade or earnings. There is, however, no such corresponding provision for the wife.

### ***Customary Law***

There is no legal responsibility for a husband to maintain his wife under Customary Law. The extent of his liability largely depends on his economic status and her duties in the matrimonial home (Joko-Smart, 'Sierra Leone Customary Law', 1983).

It appears that the general rule is that the daily upkeep of the wife and children in the rural areas is the sole responsibility of the wife through her subsistence farming activities.

The husband becomes liable to provide financial assistance in times of illness or death in the family or to provide clothing for his wife for special occasions and festivals.

In some instances the husband may assume full financial responsibilities for running the home depending on his economic status and level of literacy. This is, however, more prevalent in the mining areas. Sometimes the husband provides seed money for petty trading by the wife, the profit from which she uses to upkeep the home.

The wife appears to be entitled to certain maintenance during the period of breastfeeding of her child whilst she is residing with her parents. Even then she is not 'maintained' directly, as the husband's main obligation is to her parents.

### **Muslim Law**

The husband has a moral obligation according to the Qur'an to maintain his wife. This includes the right to shelter, to general care and wellbeing, as well as to clothing. The Muslim wife, like the wife under the General Law, has no corresponding duty to maintain her husband.

The Qur'an makes it clear that during cohabitation, the husband has a duty to feed and clothe nursing mothers.

The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child. No one should be charged beyond his capacity. A mother should not be made to suffer because of her child, nor should he to whom the child is born (be made to suffer) because of his child (Sura 11 v. 233).

The Qur'an exhorts the husband to be kind to his wife and to discharge his responsibilities cheerfully without reproach or injury (Hammudah Adbalaliti, *Islam in Focus*, 1988: 117).

It should be noted that the obligation is a moral one, which is not enforced in Sierra Leone. The wife who has been deserted by her husband during cohabitation and has not provided maintenance for her, can apply to the Magistrate Court for maintenance under the Married Woman's Maintenance Act 1988 (Cap. 100), which is an act to provide maintenance for married women.

The Muslim Law is silent with respect to the provision of maintenance for the wife when cohabitation ceases, regardless of what her circumstances might be.

### **The Law of Inheritance**

Inheritance is the acquisition of property, that is, land or moveable property on the death of some person. Such acquisition arises either as a result of the deceased's wishes stated in writing or orally before his death, which is known as testate succession; or by operation of laws or customs relevant to deceased—that is, intestate succession.

When instructions are left in writing (by Will) or orally, in the case of natives, these determine who the beneficiaries are, the persons who would administer the estate and the quantum of property that he or she inherits. In Sierra Leone the provisions of a valid Will are strictly enforced. A wife for whom no provisions were made in her deceased husband's Will has no legal procedure through which she can apply to the courts for some provision to be made for her as a dependant out of the estate of her deceased husband. It must be noted, however, that there is provision in S.29 of the



Muslim children learning Arabic

Administration of Estate Act Cap. 45 for petitions to the court by persons who are interested in the estate of a deceased person who has died intestate and where there is no widow/widower or next-of kin on legal, equitable or moral grounds.

Virtually any person in Sierra Leone can make a Will irrespective of whether the testator is a native, non-native, Muslim or Christian. S.4 of the Interpretation Act 1971 as amended by S.1 (3) of the Sierra Leone citizenship (Amendment) Act 1976 defines the term 'native' as: 'a Citizen of Sierra Leone who is a member of a race, tribe or community settled in Sierra Leone, other than a race, tribe or community: Which is of European or Asiatic or American; or Whose principal place of settlement is in the western area'.

A 'non-native' is defined as 'Any person other than a native'.

The enactment of the Muslim Marriage (Amendment) Act of 1998 has removed all doubt as to whether a Muslim could make a valid Will.

Under the Wills Act of 1837 a native has the capacity to make a Will in so far as property located in the western area. However in Joko-Smart's 'The inheritance of property in Sierra Leone: an analysis of the law and problems involved' Sierra Leone series No. 24 1996: 10ff, doubts have been expressed regarding the capacity to do so in respect of property located in the provinces under the jurisdiction of a local court. Where intestate succession is to be determined, the Sierra Leone woman finds herself in a very unenviable position. Her position in respect to inheritance to her husband's estate depends first on whether:

- (1) She and her husband are classified as natives or non-natives (her personal law);
- (2) The type of marriage that she contracted.

### ***Non-native who is not a Muslim***

The personal law of a non-native who is not a Muslim is the General Law and the relevant statute is the Administration of Estate Act Cap. 45 as amended by public notice No. 28 of 1964, and Act No. 19 of 1972, S.19 of Cap. 45 makes *inter alia* the following provisions for distribution after costs, administration fees, debts, etc., are settled:

- ◆ If a woman dies intestate the whole of her estate shall go to her husband.
- ◆ Where a man dies intestate leaving widow and children or issue (children, grandchildren and other lineal descendants) the widow shall be entitled to one-third of the estate and the children and issue the remaining two-thirds equally between them.
- ◆ If a man dies leaving children or issue but no widow, the children or issue take the whole between them.
- ◆ If a man dies leaving a widow but no children the widow shall take one-half absolutely and the other half shall be divided amongst his nearest relatives or next-of-kin.

### ***Muslim***

The distinction between a native and a non-native is irrelevant because the same rules apply to all those who profess to be Muslims. The widow of an intestate Muslim man cannot under any circumstances take out letters of administration for the estate of her deceased husband, unlike the widow who is a non-native and a non-Muslim, who may administer the estate of her intestate husband.

S.9(2) of the Muslim Marriage Act as amended only entitles:

- ◆ the eldest son of the intestate if he is of full age according to Muslim law;
- ◆ the eldest brother of the intestate if of full age according to Muslim law;
- ◆ the Administrator and Registrar-General to administer the estate of the intestator.

The estate is distributed in accordance with Muslim law:

- ◆ On the death of the wife the husband takes half of her estate if there are no children and the rest go to her beneficiaries.
- ◆ If the deceased wife leaves a child the husband only gets one-fourth.

- ◆ On the death of the husband the widow receives one-fourth of his estate if he has no children.
- ◆ If there are children she receives one-eighth.
- ◆ If there is more than one widow then their collective share is one-fourth if there are no children and one-eighth if there are children, which is to be divided equally.

The general principle in Muslim law that there is a share for men and a share for women is applicable so that female children get half of what male children receive. If, however, the only heirs of the deceased are girls and they are more than two, they will have two-thirds of the share. If only one child, she will receive one-half (*Woman and the Law in West Africa*).

### **Customary Law**

The position is that the eldest surviving brother of the deceased is invariably the administrator of the estate, though the modern trend is for the eldest son if at mature age at the death of his father (Joko-Smart, 1983) to do so. If there is no adult son, then the eldest of the deceased's brothers shall so act.

If the wife of the deceased were to marry one of the deceased's brothers and he inherits the whole or part of the estate of the deceased, then she can benefit from her late husband's estate indirectly, and similarly so if she has an adult son who is the administrator of the estate.

The majority of the tribes of Sierra Leone are patrilineal, therefore the main beneficiaries of the estate of a deceased man consist of his sons, his brothers and uncles. The traditional Sherbro society is matrilineal, so that it is the children of the deceased's sisters who inherit, failing which the children of any female relative are the beneficiaries.

The position of the woman who has not undergone any recognised form of marriage but who has cohabited with a man until his death leaving property capable of being inherited is not protected under the law as far as right of inheritance is concerned. If there are children, they themselves may not benefit from the estate of their father.

However under S.29 of the Administration of Estate Act, Cap. 45, referred to earlier, they could petition on equitable or moral grounds to secure a share in the estate of the intestate who leaves no widow or next of kin. However, it has been held in *Re Thomas* (deceased) that the mere tie of blood relationship between the petitioner and the

deceased does not entitle the petitioner per se to a share in the estate. There must be some close relationship and a proved need on the part of the petitioner.

In the case of a child who has been adopted, Section 14 of the Adoption Act No. 9 of 1989 states that for the purposes of inheritance an adopted child is to be treated as if he were the natural child of his adopted parent only.

## **Land Law**

In Sierra Leone, in so far as Land Law is concerned, two systems of law operate—that is, the General Law which applies to the Western Area and Customary Law which applies to land in the provinces.

The importance of land cannot be underestimated: 'He who owns the soil owns the sky above and the soil below.' Ownership of it indicates economic, social and political power.

Under the General Law applicable today (The Law of Property) Adoption Act 1960 of the Laws of Sierra Leone, there are no clear discriminatory areas affecting women's title to property. However very often the law and practice differ. This is the case wherein most landlords are reluctant to rent premises to women, particularly single women.

Under Customary Law there is no legislation which defines Land and the Land Tenure System which operate in the provinces. There are two schools of thought, with the old school believing that there is only one form of land holding, which is communal ownership. The modern view, however, is that there are two forms of holding, they being family and individual. The extent of individual land holding is unclear and is said to be more prevalent in large urban towns.

Under communal and family land holding, ownership is determined upon the lineage of the community. Most of the tribes in Sierra Leone, with the notable exception of the Sherbros, are patrilineal, and therefore even though ownership of land is vested in the community and women form part of that community, yet control of the land is in the hands of the men who wield power in their community.

Women are given exclusive use of some lands for their secret society and other activities, but by and large women are only allowed to use the land for subsistence farming.

Where a man and his wife are granted family land by the wife's family, they are entitled to occupy it but the ultimate ownership remains in the wife's family. The husband's right to occupy the land continues even after his wife's death, even if there are no children and he

remarries. If, however, he or his family challenges the deceased wife's family's ownership of the land, he may be required to give up possession of the land—otherwise he continues in occupation until his line becomes extinct when it reverts to his late wife's family.

If the land is granted by the husband's family, she is allowed to continue to use and occupy the land. However the position is unclear as to whether she would be allowed to continue in occupation if she remarries outside her deceased's husband's family.

It is still uncommon for women to own land in the provinces.

## **Violence**

Violence against women is a universal phenomenon which cuts across all economic, social or culture barriers and has been recognised as a serious obstacle to development and peace with obvious implications for gender equality.

Violence against women has been defined in the Beijing Declaration as:

any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public life or private life (Beijing Declaration 1996: 73).

Defined as it is, it includes *inter alia* domestic violence, marriages entered into without the consent of the bride, rape and sexual assaults, and Female Genital Mutilation (FGM).

There are no specific laws which protect women against violence. However, the Offences Against the Persons Act 1861, which is the legislation most commonly used, offers the same protection to both men and women, and this law is available to every woman in Sierra Leone. The reality, however, is the difficulty of getting cases of violence reported heard and determined.

As a result of the rate of illiteracy and because of some traditional beliefs, the majority of women believe that the husband, father or brother has a right to use force against her, be it physical or psychological.

In some areas in Sierra Leone wife beating is viewed as the overt show of a man's love for his wife.

The majority of cases that arise in the rural areas are settled according to various recognised traditional ways; whilst violence is not necessarily condoned, it is tolerated.

In the urban areas it is estimated that less than half of cases which arise get as far as the police, and less than a third of those reach the courts, especially in cases of sexual violence.

Female Genital Mutilation (FGM) is widespread in Sierra Leone. Although Sierra Leone is a signatory to the Convention on the Rights of the Child (CRC) and CEDAW, which affirm the rights of the girl-child and woman to protection from harmful traditional practices including FGM, a survey of females in the Western Area by Koso-Thomas in 1987 found that 89.7 per cent were circumcised. Despite the medical evidence of pain and suffering associated with FGM, this subject is almost a total taboo in Sierra Leone. Very little has been done to sensitise the public about the harmful effects on the woman who undergoes FGM.

There is no specific law against FGM in Sierra Leone, although one might succeed on a charge under Section 43 of the offences against the Persons Act 1861 for aggravated assault.

## **Conclusion**

This paper has shown that women are at a great disadvantage compared to men in Sierra Leone. It has also highlighted that even woman-to-woman, some are more equal than others. It is safe to say that the majority of women in Sierra Leone have Customary Law as their personal law, and Customary Law has been shown to be the most discriminatory of all the types of laws in all the areas dealt with in this paper.

Perhaps the first step towards breaking the barriers of gender inequalities in Sierra Leone is for the creation of a unified system of laws after comprehensive research in the area of customary laws governing the different ethnic groups, especially in the areas of family law, inheritance and property rights for all women in Sierra Leone, irrespective of their region of birth, ethnic background or religion.

In seeking to achieve gender equality women should also refrain from fostering or enhancing discriminatory practices, especially harmful traditional practices against women, like the sanctioning of gender-based violence, which it is said is perpetrated by women against women.

A minimum age for marriage should be adopted for women across Sierra Leone with the prerequisite condition that her consent is given informedly and freely.

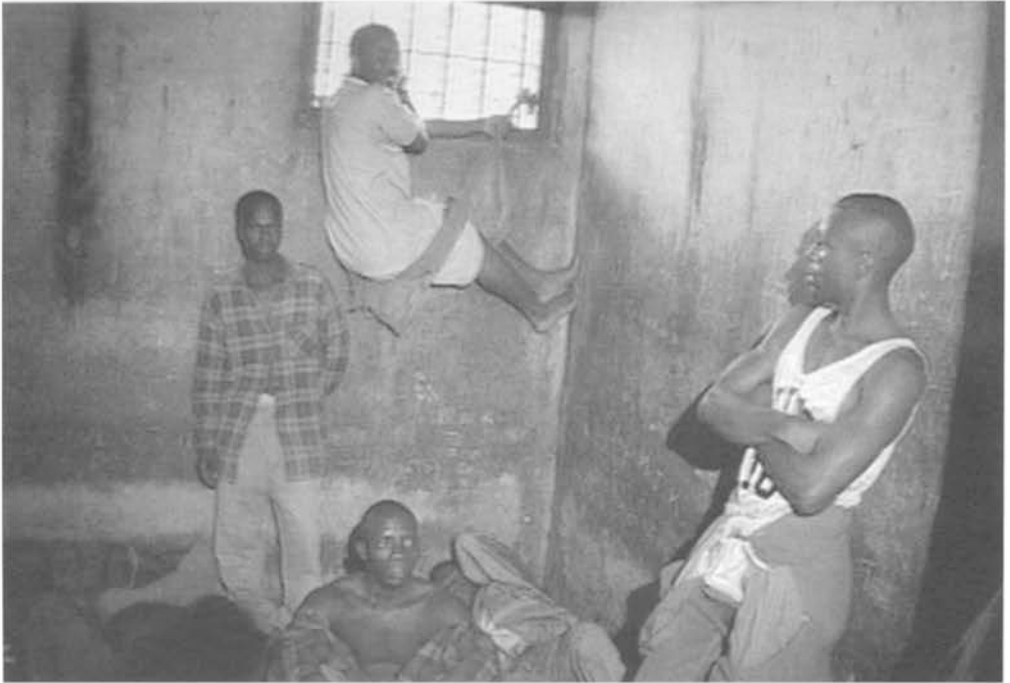
It is also recommended that married women and unmarried women who have cohabited with a man for a specific period of their lives should have an improved status

and share in the administration of their husbands' or partners' estates. Further, it is recommended that the same rights of succession that apply to legitimate children be applied to illegitimate children.

The enactment of laws that would effectively prohibit violence against women, including a ban on all harmful traditional practices, would not only help in reducing the cases of violence against women, but would send signals that Sierra Leone shall no longer tolerate or condone any form of violence against the mothers and daughters of the soil.

Sierra Leone is a state signatory to almost all of the international conventions and agreements including the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). CEDAW seeks to address pervasive social, cultural and economic discrimination against women, and the CRC, in addition to upholding specific rights of children, also deals on a broader spectrum with gender relations. By expediting the process for incorporating the CEDAW and the CRC into our National Laws, most of the stumbling blocks towards gender equality would have been removed.

The government has eventually to take the fundamental decision to forge ahead on gender equality. Civil society groups can, however, through advocacy and lobbying, force government's hand to move that much more quickly so that government could show its commitment to a more gender equitable society.



Men and women in prison cells

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## Gender and Human Rights in Post-Conflict Reconstruction

## 2.2

**Florence Butegwa**

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As Sierra Leone emerges from the conflict you need to ask yourself, ‘What does post-conflict reconstruction mean?’ People often talk about reconstruction as the task of rebuilding the infrastructure, repaving the roads, reconnecting the electricity, repairing the schools and wells, and so on. This is very, very important. However, equally important is the framework within which you carry out this reconstruction—the values you bear in mind as you undertake your country’s reconstruction and development. Over the last two decades there has been a debate on development taking place both internationally and at the national level, which many of you may have been engaged in or heard about. The debate has centred on whether development is about economic growth or something more.

When we talk about development we are talking about more than income. We are talking about the quality of life and a whole range of issues including health, education, the environment, freedom of thought, speech, expression and religion. And once you understand this, you are talking about development and reconstruction that are founded in a belief in the rights of individuals and people. However, in the process of post-conflict reconstruction, I see these rights as made up of two competing strands, so that when I speak about where the challenges lie, you will be able to understand them in this context.

In many conflicts you have two sides fighting each other. In the Sierra Leone conflict you have had many different sides fighting each other. In the process of peace building and reconstruction, you have on the one hand, the drive towards a cessation of hostilities, reconciliation, nation building, unity, development, and moving on. While on the other hand, you have a drive towards justice, compensation for the loss caused, the suffering and the injuries. This is a complex set of drives, which a country needs to negotiate in its reconstruction process.

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It is in this context that I would like to focus on human rights for men, women and young people. I would particularly like to challenge you to think of human rights for women as building on the legal reform that Valerie Nicol has talked about, but going even further. Because in addition to the right to equality and equal treatment, women are entitled to the right to participate in public life, to health, to education, to bodily integrity, to be free from torture and cruel treatment.

Within that broad context, we have several challenges to think about. We don't have a respect for human rights unless we have peace or we are moving towards peace and peace-building. This is a challenge for the women, men and young people of this country, and for the friends of Sierra Leone. If you can think of peace-building as a project, then each person needs to be motivated to be part of this project. The question of what a person gains from participating is not something that the president or the government are going to define. It is something that needs to be defined by the entire population. As the women of Sierra Leone, you need to think of what is at stake for yourself. What should be the purpose of project for peace? Young people also need to ask this question. And the same is true for men, for the chiefs, for the religious leaders. And the composite picture you come up with is what will drive you towards peace.

The other challenge is to see human rights as part of the solution. Human rights are often talked about as stemming from politicians and leaders. On the contrary, human rights are about the day-to-day concerns of people. Human rights include the right to an adequate standard of living, the right to food, clothing and housing. Previous presenters have talked about violence against women. Human rights include violence against women—women have a right to be free from torture, cruel and inhuman treatment. And when a woman is battered, that is cruel; when she is raped or gang raped, that is torture, that is cruelty, that is inhuman treatment.

People in every country, as in Sierra Leone, are concerned about access to health care. I haven't looked at Sierra Leone's statistics for HIV infections, but in most African countries there is an extremely high infection rate. HIV affects your immune system and you are likely to fall sick with all kinds of opportunistic infections. Therefore the demand for medical treatment is that much higher, and combined with the fact that incomes are very low, this means that the majority of people cannot afford to go to private clinics. There is a right to health, so health as a concern for each one of us is part of our human rights. And you can say that about each of the concerns talked about earlier—for example, about unemployment levels in Freetown and in Sierra Leone in general. There is a human right to work, a right to earn a living.

The point I am making is that as we engage in the process of reconstruction, let us use human rights as the basis for what we do or what we define as priorities. Let us start from the point of view that if people are entitled to certain rights, there are other people who have corresponding obligations, legal duties, to make sure that people can enjoy these rights. In the human rights system, the state, the government of Sierra Leone, is under an obligation to create an environment that enables people to enjoy these rights. But the obligations go further. Sierra Leone has development partners, for example, friendly governments, donor agencies and, if you look at the various human rights instruments, there is some obligation for international cooperation, for development assistance that is founded on the concept of human rights. And when we come to the rights of women, since gender equality applies to the whole range of rights, let us use this as a guiding principle. As we undertake the process of law reform, let us not have an Education Act that is totally blind to the rights of girls and women, and expect the Gender Ministry some years later to start seeking to engender that law. Let us not have a law or a policy on agriculture that totally ignores women.



Re-living a painful experience, FAWE centre, Freetown

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