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*Can traditional justice mechanisms improve
responses to conflict-related sexual violence?*

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Abstract

This thesis is a socio-legal analysis of whether traditional justice mechanisms can improve responses to conflict-related sexual violence. Combining an in-depth analysis of the role and function of traditional justice mechanisms in relation to conflict-related sexual violence with original qualitative empirical data collected during fieldwork in Liberia, the thesis explores the necessity of using traditional justice to increase the capacity to deliver justice, alongside practical concerns around meeting the needs of victims. In reality, resource restrictions combined with crimes committed on a mass scale mean that no one form of mechanism can deliver justice by itself. The findings suggest that traditional justice can both assist efforts to provide justice as well as meet victims' needs, and thus can improve responses. The thesis concludes with recommendations for policy makers on the use of traditional justice in relation to conflict-related sexual violence both within and beyond Liberia.

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Table of Abbreviations

CRSV	Conflict-Related Sexual Violence
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
IHL	International Humanitarian Law
IHRL	International Human Rights Law
INCHR	Independent National Commission on Human Rights of Liberia
INGO	International Non-Governmental Organisation
ISIL	Islamic State in Iraq and the Levant
LISGIS	Liberia Institute of Statistics and Geo-Information Services
LURD	Liberians United for Reconciliation and Democracy
MODEL	Movement for Democracy in Liberia
NGO	Non-Governmental Organisation
NPFL	National Patriotic Front of Liberia
NPHC	National Palava Hut Commission
SCSL	Special Court for Sierra Leone
SGBV	Sexual and Gender-Based Violence
TJM	Traditional Justice Mechanism
TRC	Truth and Reconciliation Commission
ULIMO	United Liberation Movement of Liberia for Democracy
UN	United Nations
UNDP	United Nations Development Programme
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNTAET	United Nations Transitional Administration in East Timor
WACPS	Women and Children Protection Section
WHO	World Health Organisation

Map of Liberia



Figure 1: Map of Liberia¹

¹ Library of Congress, 'Map of Liberia (2004)' LOC [online] available at: <<https://www.loc.gov/resource/g8880.ct001198/>> accessed 12 August 2019.

Diagram of Liberian Judiciary

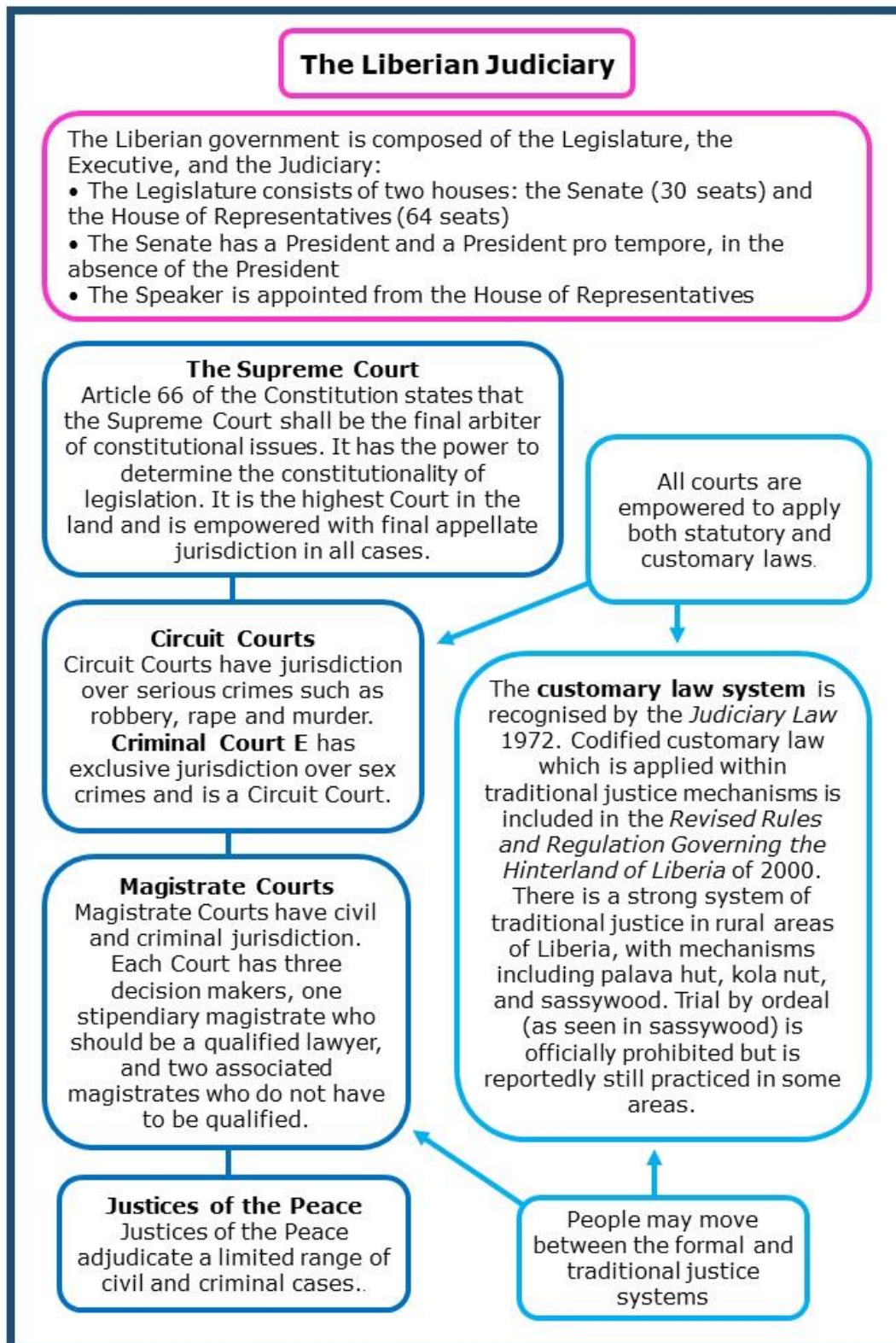


Figure 2: Diagram of Liberian Judiciary

Chapter 1: Introduction

A simple definition of conflict-related sexual violence (CRSV) is an act of sexual violence such as (but not limited to) rape, sexual slavery, forced prostitution, forced pregnancy or forced abortion with a nexus to an armed conflict.¹ CRSV was recognised as an international challenge at the Fourth World Conference on Women held in Beijing, China, in September 1995.² The United Nations Security Council (UNSC) has since adopted nine resolutions on women, peace and security which address CRSV, beginning with Resolution 1325 in 2000, through to Resolution 2467 in 2019.³ Despite international condemnation, CRSV is a perpetual issue. Sexual violence continues to be used as a strategy within armed conflicts and offences can occur at checkpoints, during house searches, as acts of torture, as an instrument of repression or displacement and as a tactic of terrorism.⁴ During the 1995 World Conference on Women, women from the Balkans testified to their experiences of rape as a weapon of ethnic cleansing.⁵ In 2020, sexual violence continued to be used as a weapon of ethnic cleansing, as seen in Myanmar, where Rohingya people have been forced to flee their homeland and ongoing persecution prevents their return following 'clearance operations' in 2016 and 2017.⁶ The issue of CRSV therefore requires continued attention as it remains a constant threat to social, economic and physical security.

1.1 The Inadequacy of Formal Legal Responses to Conflict-Related Sexual Violence

Traditionally, there has been significant focus by policy makers, practitioners and academics on the development of international criminal justice in response to CRSV.⁷ Having neglected crimes of sexual violence until the 1990s, following the establishment of the *ad hoc* International Criminal Tribunals for the former Yugoslavia and Rwanda, international courts and tribunals (including internationalised and hybrid tribunals) have made important contributions to developing the norm of accountability for CRSV.⁸ Such mechanisms have enhanced understanding of how CRSV can constitute core international crimes (namely, war crimes, crimes against humanity and genocide), provided accountability for perpetrators of CRSV, and have developed key definitions of offences (including the act of rape) within the law.⁹ Indeed, with a progressive range of sexual

¹ This list of acts is not exhaustive, for the full definition of CRSV for the purpose of this thesis, see Section 4.1.

² Dorothea Hilhorst and Nynke Douma, 'Beyond the Hype? The Response to Sexual Violence in the Democratic Republic of the Congo in 2011 and 2014' (2018) 42 *D* 79, 83.

³ UNSC Resolution 2467 (23 April 2019) UN Doc S/Res/2467 (2019); Dorothea Hilhorst and Nynke Douma (n2) 83; Christine Bell and Catherine O'Rourke, 'Peace Agreements or Pieces of Paper - The Impact of UNSC Resolution 1325 on Peace Processes and Their Agreements' (2010) 59 *ICLQ* 941, 973-974.

⁴ UNSC Report of the Secretary-General on CRSV (15 April 2017) UN Doc S/2017/249 [8]; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [12], [75]; UNSC Report of the Secretary-General on CRSV (29 March 2019) UN Doc S/2019/280 [13].

⁵ Dorothea Hilhorst and Nynke Douma (n2) 83.

⁶ UN News 'No other conclusion, ethnic cleansing of Rohingyas in Myanmar continues - senior UN rights official (6 March 2018)' *UN* [online]; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [55]; UNSC Report of the Secretary-General on CRSV (29 March 2019) UN Doc S/2019/280 [66], [67]; Zoltan Barany, 'Where Myanmar went wrong: from democratic awakening to ethnic cleansing' (2018) 97 *FA* 31.

⁷ Kelly Askin, 'Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles' (2003) 21 *BJIL* 288, 349; Phillip Weiner, 'The Evolving Jurisprudence of the Crime of Rape in International Criminal Law' (2013) 54 *BCLR* 1207, 1209-12011; Alison Cole, '*Prosecutor v. Gacumbitsi*: The New Definition for Prosecuting Rape Under International Law' (2008) 8 *ICLR* 55, 83; Cassie Powell, 'You Have No God: An Analysis of the Prosecution of Genocidal Rape in International Criminal Law' (2017) 20 *RJLPI* 25, 28-29.

⁸ See establishing Resolutions, UNSC Resolution 827 (1993) (25 May 1993) UN Doc S/RES/827 (1993); UNSC Resolution 955 (1994) (8 November 1994) UN Doc S/RES/955 (1994).

⁹ Acts of sexual violence and the concept of sexual violence itself continues to be developed in international law, with approaches to crimes such as forced marriage and forced pregnancy still evolving, *Prosecutor v. Jean-Paul Akayesu* (Judgement) ICTR-96-4-T (2 September 1998) [685]-[697]; *Prosecutor v. Dragoljub Kunarac and Others* (Judgement) IT-96-23-T & IT-96-23/1-T (22 February 2001) [459]-[460]; *Prosecutor v. Anto Furundžija* (Judgement) IT-95-17/1-T (10 December 1998) [176], [177]; *Prosecutor v. Mikaeli Muhimana* (Judgement and Sentence) ICTR-95-1B-T (28 April 2005) [550]-[551]; *Prosecutor v. Zejnil Delalić* (Judgement) IT-96-21-T (16

violence crimes explicitly enumerated within its Statute, the International Criminal Court (ICC) has further advanced understandings of sexual violence through its jurisprudence.¹⁰ However, these international and internationalised responses are – inherently – limited in their ability to provide a comprehensive response to CRSV within any given conflict situation.

Judicial responses to war crimes, crimes against humanity, and genocide (including sexual violence) at the international or internationalised level often concentrate on ‘high-level’ individuals who are believed to bear the greatest responsibility.¹¹ This targeted focus is necessary due to the restricted resources and mandates of internationally supported courts and tribunals, as well as the limitations of domestic justice systems.¹² Consequently, putting aside questions around the merits and drawbacks of pursuing accountability for CRSV through formal prosecutions at the international and national levels,¹³ as a pragmatic matter of capacity, international and internationalised legal responses to CRSV can only ever be complementary to responses within national legal systems. However, at the same time, the formal domestic justice system of an affected state can lack the capacity to address CRSV due to the scale on which the crimes were committed as well as the impacts of an armed conflict. Such impacts can include the destruction of physical and legal infrastructure, loss of trust in state institutions (for example, the police), and the limited ability of state institutions to reach beyond major cities. Subsequently, there may be many ‘low-level’ individuals within a community or state who are accused of committing CRSV, but who are not being held accountable, nor do they have the opportunity to clear their names.¹⁴ There is then a need to improve responses to CRSV for people who are accused of such crimes, who must have the opportunity to challenge accusations which are made against them as well as to receive expeditious justice.

Alongside issues arising for the accused, there also exists an essential need to improve responses to CRSV for victims, many of whom are not currently able to seek or access justice and who have ongoing needs which are unmet. Poor responses to CRSV fail to realise the rights of the victims, including the right to remedy and reparation as

November 1998) [478]-[479]; *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu* (Judgement) SCSL-2004-16-A (22 February 2008) [187]-[196]; *Prosecutor v. Dominic Ongwen* (Judgment) ICC-02/04-01/15 (4 February 2021) [2748]-[2753]; *Prosecutor v. Dominic Ongwen* (Sentence) ICC-02/04-01/15 (6 May 2021) [290]; *Prosecutor v. Dominic Ongwen* (Decision on the confirmation of charges against Dominic Ongwen) ICC-02/04-01/15 (23 March 2016) [86]-[96], [99].

¹⁰ Rome Statute of the International Criminal Court (1998), Articles 7(1)(g), 7(2)(f), 8(2)(b)(xxii), 8(2)(e)(vi).

¹¹ See, Office of the Prosecutor of the International Criminal Tribunal for Rwanda, *Prosecution of Sexual Violence: Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions* (ICTR, 2014) Annex B: Statistics from the ICTR’s Rape and Sexual Violence Cases; Kim Seelinger, ‘Domestic accountability for sexual violence: The potential of specialised units in Kenya, Liberia, Sierra Leone and Uganda’ (2014) 96 *IRRC* 539, 540.

¹² For example, the Extraordinary Chambers in the Courts of Cambodia, the Special Court for Sierra Leone and the Special Criminal Court in the Central African Republic. The Special Criminal Court in the Central African Republic has scope to address a wider range of accused, but has not been functioning long enough to demonstrate its focus in practice, Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006); Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone (2002); Human Rights Watch ‘Central African Republic: New Court Should Step Up Effort (24 July 2019)’ *HRW* [online]; Valerie Oosterveld and Patricia Sellers, ‘Issues of Sexual and Gender-Based Violence at the ECCC’ in Simon Meisenberg and Ignaz Stegmüller (eds.) *The Extraordinary Chambers in the Courts of Cambodia: Assessing their Contribution to International Criminal Law* (The Hague: Asser Press 2016) 332; Tim Allen and Anna Macdonald, ‘Post-Conflict Traditional Justice: A Critical Overview’ (2013) 3 *JSRP* 1, 6; Lars Waldorf, ‘Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice’ (2006) 79 *TLR* 1, 41, 48.

¹³ See, n7.

¹⁴ For example, the ICTY included charges of CRSV in the indictments of 78 individuals, however, estimates from Bosnia-Herzegovina alone approximate 20,000 and 50,000 cases of rape between 1991 and 1993. Similarly, the ICTR included charges of sexual violence in 52 indictments, however, it is estimated that over 250,000 women were raped during the genocide in Rwanda, Kim Seelinger (n11) 548; Lars Waldorf (n12) 41, 48; International Criminal Tribunal for the Former Yugoslavia ‘Crimes of Sexual Violence: In Numbers (September 2016)’ *ICTY* [online]; Office of the Prosecutor of the International Criminal Tribunal for Rwanda (n11) 5.

consolidated in UN General Assembly resolution 60/147.¹⁵ Failures to realise these rights prevent victims from accessing alternate forms of redress such as healthcare, education programmes and employment schemes. Victims may also face additional impacts of CRSV where inadequate responses exacerbate associated issues, including facilitating a culture of impunity around sex crimes which increases peacetime sexual and gender-based violence.¹⁶ Improving responses to CRSV by increasing the capacity of domestic justice systems to provide justice and meet victims' needs is therefore a matter of urgency.

Notably, this thesis is focused specifically on CRSV, as opposed to other forms of sexual and gender-based violence. The key characteristic is therefore that an act of sexual violence has a nexus to an armed conflict. This includes acts of sexual violence which may constitute core international crimes (war crimes, crimes against humanity and genocide), as well as acts which don't meet such gravity thresholds or other definitional elements of the core crimes, but nevertheless have a nexus to an armed conflict. The thesis uses the definition of CRSV provided by the UN Secretary-General,¹⁷ which specifies that the nexus or link to an armed conflict may arise from: the perpetrator, for example, their being affiliated with an armed or terrorist group; the targeting of victims based on their real or perceived identity; and contextual links associated with situations of conflict such as a climate of impunity, cross-border consequences such as displacement, violations of a ceasefire, as well as trafficking committed in the context of an armed conflict.¹⁸

1.2 Research Question: Examining the relationship between conflict-related sexual violence and traditional justice mechanisms in legally pluralist societies

With recognised limits on the resources and capacities of formal judicial responses, this thesis considers whether traditional justice mechanisms (TJMs) can offer benefits which supplement formal justice systems and improve responses to CRSV. When doing so, it is guided by the question: '*Can traditional justice mechanisms improve responses to conflict-related sexual violence?*' In order to answer this question, the thesis engages two related questions: 1) '*Are TJMS appropriate for addressing CRSV?*', and, to the extent that they are, 2) '*How might they be optimised for this purpose?*'

For the purpose of this thesis, 'improve responses' refers to increasing the capacity of domestic justice systems to provide justice, in light of the recognised accountability gap around CRSV and the necessity of meeting the needs of victims. Further to that, 'increasing capacity' refers not only to increasing the ability of states to address CRSV through their existing legal and socio-cultural frameworks, including by filling any gaps which may exist, but also to expanding the range and accessibility of options for victims who are seeking justice and redress.

To answer the above questions, this thesis looks to the Liberian experience of incorporating TJMs as part of their response to conflict-related crimes, including CRSV. It explores how TJMs have been utilised and experienced by different stakeholders within the Liberian justice system and has sought to identify what other post-conflict states may learn from the Liberian experience. Accordingly, whilst this thesis is based on the existing research, in order to elevate our understandings of traditional justice in relation to CRSV and reflect the empirical reality, it incorporates the voices of victims and views of other stakeholder groups. This has been accomplished through qualitative data collected in Liberia, which has experienced high levels of CRSV and an initial post-conflict justice response through

¹⁵ See, UNGA Resolution 60/147 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (16 December 2005) UN Doc A/RES/60/147.

¹⁶ Katie Tayler-Smith et al., 'Sexual violence in post-conflict Liberia: survivors and their care' (2012) 17 *TMIH* 1356.

¹⁷ See Section 4.1 for a discussion on defining CRSV.

¹⁸ UNSC Report of the Secretary-General on CRSV (30 March 2021) UN Doc S/2021/312 [5].

a Truth and Reconciliation Commission (TRC).¹⁹ Liberia's experience is instructive for other post-conflict states which are affected by CRSV and already have a plural approach to justice. Such states can take lessons from the TRC's embrace of Liberia's legal pluralism within its Recommendations for Accountability, its explicit recognition of victims of CRSV, and subsequent efforts to implement the Recommendations as well as to provide justice.

Liberia is not unique either in its integration of traditional justice within the justice structure of the state, nor in its recourse to TJMs in order to respond to conflict-related violence. Traditional justice has continuing importance for many people around the globe.²⁰ South America, Southeast Asia and Africa demonstrate particularly high levels of reliance on traditional justice. In Guatemala and East Timor it is estimated that TJMs hear over 80 percent of cases in rural areas, whilst in Malawi and Sierra Leone they hear between 80-90 percent of disputes.²¹ 'Very heavy reliance' on traditional justice is also reported in Indonesia, Papua New Guinea and Vanuatu.²² The statistics evidence particularly high levels of reliance on TJMs in 'fragile states', including post-conflict states.²³ Commonly seen factors which affect reliance on traditional justice and decisions to take an issue before a TJM include barriers to accessing the formal justice system such as prohibitive costs, limitations on the reach of the state, geographic or logistical restrictions, and the need to maintain good community relationships.²⁴ People living in disadvantaged and rural communities are consistently shown to be the most reliant on TJMs.²⁵ Subsequently, beyond Liberia, multiple post-conflict states have taken a legally plural approach to addressing conflict-related crimes.²⁶

Simply put, legal pluralism describes any situation in which multiple legal systems coexist, for example, where TJMs operate at the same time as the formal justice system.²⁷ Classical definitions of legal pluralism provide for the presence within a social context or geographical location of at least two 'legal orders', which are rules and practices with their own source of authority.²⁸ This classical definition of legal pluralism and 'legal order' is

¹⁹ James Pugel, *What the Fighters Say: A Survey of Ex-Combatants in Liberia* (United Nations Development Programme Liberia, Joint Implementation Unit 2007) 11; Shai Divon and Morten Bøås, 'Negotiating justice: legal pluralism and gender-based violence in Liberia' (2017) 38 *TWQ* 1381; Morten Bøås, 'The liberian civil war: new war/old war?' (2005) 19 *GS* 73; Liberian Truth and Reconciliation Commission *Volume One: Preliminary Findings and Determinations* (Republic of Liberia Truth and Reconciliation Commission, 2009) 10.

²⁰ Pewee Flomoku and Counsellor Lemuel Reeves, 'Formal and informal justice in Liberia' (2008) 23 *A* 44; Peter Leeson and Christopher Coyne, 'Sassywood' (2012) 40 *JCE* 608, 611; Tim Allen and Anna Macdonald (n12) 3; Fieldwork Interviews A1-6, B1-2.

²¹ Ewa Wojkowska, *Programme Doing Justice: How informal justice systems can contribute* (Oslo Governance Centre: United Nations Development 2006) 11-12; United Nations Children's Fund, *'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste* (UNICEF Papua New Guinea 2009) 2; Danish Institute for Human Rights, *Informal Justice Systems: Charting a Course for Human Rights Based Engagement: A Summary* (Geneva: United Nations Development Programme 2012) 7.

²² United Nations Children's Fund (n21) 1-2, 4.

²³ For example, Afghanistan, where TJMs reportedly address over eighty percent of cases arising in rural areas, Kara Jenson, 'Obstacles to Accessing the State Justice System in Rural Afghanistan' (2011) 18 *IJGLS* 929, 934; Tim Allen and Anna Macdonald (n12) 1, 3.

²⁴ Fieldwork Interviews A1-6, B1-2, C4, E1; Freida McCormack, 'Prospects for Accessing Justice for Sexual Violence in Liberia's Hybrid System' (2018) 7 *IJSD* 1, 9; Shannon Daley, 'Closing the Gap between Law and Reality: Women's Constitutional Rights in Afghanistan' (2014) 29 *CJIL* 329, 338; Tamara Relis, 'Unifying benefits of studies in legal pluralism: accessing actors' voices on human rights and legal pluralities in gender violence cases in India' (2016) 48 *JLPUL* 354, 359; Sara Cummings, 'Liberia's "New War": Post-Conflict Strategies for Confronting Rape and Sexual Violence' (2011) 43 *ASLJ* 223, 226; United Nations Children's Fund (n21) 3; Peter Leeson and Christopher Coyne (n20) 611.

²⁵ United Nations Children's Fund (n21) 3; Shannon Daley (n24) 338.

²⁶ Kim Seelinger (n11) 561.

²⁷ Ida Nursoo, 'Indigenous law, colonial injustice and the jurisprudence of hybridity' (2018) 50 *JLPUL* 56, 64; Phil Clark, 'Hybridity, holism, and traditional justice: the case of the Gacaca courts in post-genocide Rwanda' (2007) 39 *GWIL* 765; Berihun Gebeye, 'Decoding legal pluralism in Africa' (2017) 49 *JLPUL* 228, 231; Shaun Larcom, 'Problematic legal pluralism: causes and some potential 'cures'' (2014) 46 *JLPUL* 193, 194.

²⁸ Mechanical definitions include Iyi's, which describes a situation where the traditional justice system exists alongside the formal justice system and may be afforded some official recognition, John-Mark Iyi, 'Fair hearing without lawyers? The Traditional Courts Bill and the reform of traditional justice system in South Africa' (2016) 48 *JLPUL* 127, 128; Elies van Sliedregt and Sergey Vasiliev, 'Pluralism: A New Framework for International Criminal Justice' in Elies van Sliedregt and Sergey Vasiliev (eds.) *Pluralism in International Criminal Law* (Oxford:

broad enough to encompass the interactions between state law, religious law, customary law and quasi-legal entities.²⁹ At the same time, classical definitions are narrow enough to exclude social conventions and moral exercises which are sometimes included as legal norms within inter-disciplinary academic literature.³⁰ Where people are already using TJMs, the incorporation of traditional justice into post-conflict justice may provide a more relevant and discursive approach for populations than formal justice mechanisms alone. This in turn may facilitate addressing some of the impacts of CRSV which prosecutions cannot, such as restoring community relationships. Engaging with legal pluralism and taking a socio-legal approach facilitates consideration within the thesis of context-specific issues, such as the meaning of justice to victims of CRSV, including restorative ideas, reparations and alternate forms of redress.

The fieldwork in Liberia was conducted during September 2018, with two further visits to the country for projects in March and July 2019.³¹ Whilst further travel was prevented during 2020, owing to the Covid-19 pandemic, it was still possible to work from the UK with Liberian partners in Liberia on an additional project. These subsequent visits and continued collaboration with Liberian partners made it possible to follow the changing socio-political context and ongoing efforts to bring justice for conflict-related crimes. Travelling to Liberia in 2018 to conduct interviews has allowed the voices of affected communities, including victims of CRSV, to underpin and inform the thesis as well as clarifying the findings to make recommendations for policy makers which reflect reality. Additionally, by incorporating the voices of victims and views of other stakeholders, the thesis was able to infuse discussions of ongoing issues such as fundamental rights protections with real-world perspectives from affected communities. Breadth of analysis is provided by existing studies as plural approaches to justice and the use of traditional justice in relation to CRSV can now be examined over a long time period, and lessons can also be taken from previous uses of traditional justice, such as the Rwandan *Gacaca* Courts. The thesis therefore considers the contributions of pre-existing TJMs to responses to CRSV.

1.3 Originality and Contribution

By engaging with existing legally plural responses to CRSV, this thesis has been able to contribute to ongoing wider debates around responding to CRSV which are yet to fully explore relationships between justice mechanisms - such as TJMs and domestic courts - as well as addressing the ongoing impacts of the crimes. Academics have discussed traditional justice amid increasing recognition of its benefits as part of post-conflict justice strategies by international donors and organisations, such as the United Nations (UN).³² At the same time, the nature of CRSV as well as its impacts and ongoing perpetration have made it a growing area of research for academics across multiple disciplines. Legal scholars have focused on closing the related impunity gap by improving the ability of states to provide criminal accountability and justice, as well as ending the invisibility of male victims.³³ Research from politics and sociology has focused on the root causes of CRSV,

Oxford University Press 2014) 17; Jürg Helbling, Walter Kälin and Prosper Nobirabo, 'Access to justice, impunity and legal pluralism in Kenya' (2015) 47 *JLPUL* 347, 351; Shaun Larcom (n27) 194.

²⁹ Shaun Larcom (n27) 194.

³⁰ There is a large body of academic literature on legal pluralism from fields including law, anthropology, politics and sociology, James Richardson, 'The Social Construction of Legal Pluralism' 7 *DAS* 390, 396; Shaun Larcom (n27) 194.

³¹ Travel to Liberia was prevented in 2020 and 2021 due to COVID-19, however, a project on accountability for conflict-related crimes was conducted with Liberian partners.

³² Fergus Kerrigan (ed.), *Informal Justice Systems: Charting a Course for Human-Rights Based Engagement* (Danish institute for human rights 2012) 11; Ewa Wojkowska (n21) 9; Luc Huyse and Mark Salter, 'Traditional Justice and Reconciliation after Violent Conflict Learning from African Experiences' (Stockholm: International Institute for Democracy and Electoral Assistance 2008) 17; Philipp Kastner, 'A Resilience Approach to Transitional Justice?' (2020) 14 *JIS* 368, 382.

³³ Emma Macfarlane, 'Resolutions without resolve: Turning away from U.N. security council resolutions to address conflict-related sexual violence' (2020) 27 *MJGL* 435, 446; Catherine O'Rourke, 'Transitional justice and gender',

as well as the socio-economic and cultural impact of these crimes.³⁴ Despite the large body of research on CRSV and academic interest in traditional justice, there is limited research into the relationship between the two.³⁵ This thesis therefore provides an original contribution by conducting an empirical, socio-legal study of the relationship between CRSV and traditional justice. It recognises the importance of taking a legally pluralist approach in order to maximise resources, address the needs of victims and identify and address gaps within current responses to CRSV. In particular, it explores the need for domestic justice systems in post-conflict states to increase their capacity to provide justice for CRSV and argues that TJMs can improve responses by supplementing formal justice systems.

1.4 Key Terms: 'Post-Conflict Justice'

The role of TJMs in relation to CRSV is specifically considered as part of post-conflict justice efforts. Whilst recognising the existing framework and body of research on transitional justice, this thesis uses the term 'post-conflict justice'.³⁶ In particular, the thesis has sought to avoid an over-focus on the need to rebuild rule of law, which has increasingly become a central aspect of transitional justice debates.³⁷ Additionally, there are increasing critical arguments that transitional justice does not engage effectively with various forms of economic, structural, cultural and gender-based violence and – crucially – that it marginalises traditional justice.³⁸ Although the issues which are discussed in this thesis may also be the subject of existing debates within the sphere of transitional justice discourse, such as the role and use of TJMs, it has been beneficial to engage with responding to CRSV from a broader perspective. By not using the dominant framework of 'transitional justice' and instead engaging with a broader concept of 'post-conflict justice', this thesis was able to avoid the limitations of transitional justice debates. It has subsequently been possible to engage more fully with the perspectives of different stakeholders, including victims, as well as the impacts of CRSV which continue to affect people's daily lives. In so doing, the thesis has been able to engage with the wide range of socio-economic and cultural issues which influence responses in practice. This, in turn, has facilitated an exploration of whether traditional justice is able to improve responses to CRSV by increasing the ability of post-conflict states to meet the needs of victims.

As there is no single definition of post-conflict justice, this thesis draws upon the seven *Chicago Principles on Post-Conflict Justice* owing to their specific focus on meeting local needs, which is an important aspect of both traditional justice and responding to CRSV.³⁹ The *Chicago Principles* were devised in response to uncoordinated and poorly integrated post-conflict justice strategies which failed to meet the needs of their operational

in Lawther C., Moffett L and Jacobs D. (eds) *Research Handbook on Transitional Justice* (Cheltenham: Edward Elgar Publishing Limited 2017) pp.117–142, 134; Sabine Freizer, 'Reparations after conflict related sexual violence' (2016) 27 *SHR* 14, 24; Beyzit Akman, 'Tribunal vs. Truth: ICTY and TRC in the Case of the Former Yugoslavia' (2008) 2 *HUMSEC* 125, 134-135; Will Colish, 'The International Criminal Court in Guinea: A Case Study of Complementarity' (2014) 26 *RQDI* 23, 25-26; Mark Ellis, 'Evaluating State Capacity to Conduct War Crimes Trials Consistent with the Rome Statute' (2012) 44 *STLP* 107, 108; Hilmi Zawati, 'The International Criminal Court and Complementarity' (2016) 12 *JILIR* 208, 224-225.

³⁴ Robert Ulrich Nagel and Austin C. Doctor, 'Conflict-related Sexual Violence and Rebel Group Fragmentation' (2020) 64 *JCR* 1, 5; Anne-Kathrin Kreft, 'Civil society perspectives on sexual violence in conflict: patriarchy and war strategy in Colombia' (2020) 96 *IA* 457, 458; Philipp Schulz, 'Examining Male Wartime Rape Survivors' Perspectives on Justice in Northern Uganda' (2020) 29 *SLS* 19, 23.

³⁵ Tamara Relis (n20) 356, 445; Dara Kay Cohen and Amelia Hoover Green, 'Duelling incentives: Sexual violence in Liberia and the politics of human rights advocacy' (2012) 49 *JPR* 445.

³⁶ See for example, Dustin Sharp, 'What Would Satisfy Us? Taking Stock of Critical Approaches to Transitional Justice' (2019) 13 *IJTJ* 570.

³⁷ United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies* (12 October 2011) UN Doc S/2011/634* [11]-[13]; Catherine O'Rourke (n28) 117, 120; United Nations, 'Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice' (New York, United Nations, March 2010) 7-9.

³⁸ Dustin Sharp (n36) 570-571.

³⁹ M. Cherif Bassiouni, *The Chicago Principles on Post-Conflict Justice* (Chicago: International Human Rights Law Institute 2007) 16.

contexts.⁴⁰ Accordingly, post-conflict justice shall include those efforts, strategies and programmes in the aftermath of armed conflicts which aim to: conduct prosecutions; respect the right to truth and encourage formal investigations; acknowledge the status and rights of victims; implement vetting policies, sanctions, and administrative measures; support initiatives to memorialise, educate on, and preserve historical memory; support and respect traditional and religious approaches to violations; and, engage in institutional reform to support the rule of law, fundamental rights, restore trust and good governance.⁴¹ The thesis concentrates on post-conflict justice as collecting empirical data in relation to mechanisms which remain functioning during active armed conflicts was beyond the scope of this study.

1.4.1 'Traditional Justice'

'Traditional justice' remains the most commonly used term within the global literature and was also the preferred term used by people who participated in the fieldwork. 'Traditional justice system' will therefore be used as an umbrella term referring to the network of TJMs within a state. 'Traditional justice mechanism' is used to describe the individual fora which make up the traditional justice system.

However, choosing to use the term 'traditional justice' requires explication as the large body of literature on the subject continues to debate the concept and applies varying definitions.⁴² 'Traditional' is often used interchangeably with 'informal', 'customary', 'community-based' and 'local', sometimes within a single academic article.⁴³ The list of terms considered here is not exhaustive, with 'indigenous' being another commonly used alternative. In recent years the term 'informal justice' has gained prominence both in academic literature and within NGO reports following negative connotations around the term 'traditional justice', which primarily arose within Western literature.⁴⁴ Some authors have been keen to disassociate from assumed perceptions that traditional justice is primitive or synonymous with a lack of development.⁴⁵ Further impetus to move towards 'informal' over 'traditional' comes from recognition that some of the discussed justice mechanisms had been introduced or transformed during colonial times.⁴⁶ Colonial interference arguably does call into question the appropriateness of labelling those mechanisms which did not arise from the local population as 'traditional'. However, in Liberia, participants referred to 'traditional justice', 'traditional methods' or similar.⁴⁷

There are several disadvantages to using the term 'informal' over 'traditional'. One is the possible implication that informal justice mechanisms are not formally regulated or that they operate with little or no state involvement.⁴⁸ Many states have in fact enacted legislation to regulate traditional justice, from laws which prohibit justice mechanisms outside the formal system to those which provide operational space for TJMs. Examples include the constitutional recognition of traditional justice in Sierra Leone and the Solomon Islands, and regulating legislation such as the Liberian *Hinterland Regulations* at the same

⁴⁰ Zakia Afrin, 'Post-Conflict Justice in Iraq' (2008) 23 *ASICL* 23, 24; Bruce Ottley and Theresa Kleinhaus, 'Confronting the Past: The Elusive Search for Post-Conflict Justice' (2010) 45 *IJ* 107, 111; M. Cherif Bassiouni (n39) 16.

⁴¹ M. Cherif Bassiouni (n39) 16-17.

⁴² Tim Allen and Anna Macdonald (n12) 2.

⁴³ As recognised in Tim Allen and Anna Macdonald (n12) 2; see for examples of interchangeable use of terms, Bruce Oswald, 'Informal Justice and United Nations Peace Operations' (2014) 10 *IOLR* 166, 169; Pewee Flomoku and Counsellor Lemuel Reeves (n16) 44.

⁴⁴ Tsehai Wada Wourji, 'Coexistence between the Formal and Informal Justice Systems in Ethiopia: Challenges and Prospects' (2012) 5 *AJLS* 269, 279, 293; Torunn Wimpelmann, 'The Informal Justice Paradigm and the Appropriation of Local Reality' (2013) 64 *NILQ* 397, 402.

⁴⁵ See for example Patrick Akers, 'Establishing Rule of Law through Informal Justice Systems and Development Programs' (2016) 30 *NDJLEP* 115, 119.

⁴⁶ Danish Institute for Human Rights (n21) 9.

⁴⁷ Fieldwork Interviews A1-6, B1-2, C3, C4, D2, E1-2.

⁴⁸ Torunn Wimpelmann (n44) 408.

time as prohibiting the TJM, Sassywood.⁴⁹ External non-state actors such as the UN have also imposed reformatory measures onto justice mechanisms outside of the formal system, as seen in Kosovo and East Timor.⁵⁰ Using the term 'informal' is then a misnomer for justice mechanisms which function with the involvement of the state or which are provided a role in relation to the formal justice system by state legislation. The implication of informality may also prove problematic where justice systems overlap as it may imply that cases dealt with 'informally' are less important or taken less seriously.⁵¹ In contrast, the use of the term 'traditional' distinguishes between the two justice systems without excluding the possibility of formal oversight or input.

Similar problems arise from the use of the term 'customary', which may not account for mechanisms which apply both customary norms and formal state legislation.⁵² In Rwanda, the adapted Gacaca system addressed crimes committed in connection with the 1994 genocide by applying codified law rather than local customary norms.⁵³ Using 'customary' as an umbrella term may also fail to recognise different approaches to customary law.⁵⁴ In some places customary norms have been codified, whilst in other places customary norms are unwritten and passed down verbally between generations. Definitions of 'customary' often acknowledge that within a single state, norms can vary between social, religious or ethnic groups. However, the association with an overarching system of law may mean that the term implies a homogeneity which does not exist.⁵⁵ The term 'traditional' can often be perceived as synonymous with custom, but its use provides greater conceptual clarity where it references mechanisms which apply customary law.

TJMs are distinct from the formal state courts and are situated within local communities. Each may serve a different community and may function in a different way to others, with no universally recognised homogenous operating model.⁵⁶ Accordingly, the thesis has focused on the use of TJMs, as defined here, and whether they can improve responses to CRSV. As has been highlighted, TJMs may have differing relationships with the state and formal justice institutions, as well as differing functions or roles within communities. This means that the role and functionality of TJMs in relation to CRSV requires careful consideration and the ability to account for their operational context. Essentially, there cannot be a one size fits all approach.

1.5 Key Themes

Several key themes have emerged from conducting an empirical, socio-legal examination of whether traditional justice can be used to improve responses to CRSV. Themes include the impact on victims of CRSV and the urgency of addressing generated needs. This should inform the design of post-conflict justice strategies and the justice mechanisms themselves, especially the procedures, punishments, and options for redress, including reparations programmes. Another theme is the importance of legal pluralism, and engaging TJMs within post-conflict responses to CRSV from the outset where traditional justice is already relied upon. This includes accounting for the pre-existing approach to traditional justice within a state and carefully considering the role and purpose of using

⁴⁹ Rules and Regulations Governing the Hinterland of Liberia (2001), Article 73; see also Solomon Islands' Constitution of 1978 with Amendments through 2009, 76; The Constitution of Sierra Leone (1991) 170(3); Fieldwork Interview C4.

⁵⁰ Hansjorg Strohmeyer, 'Making Multilateral Interventions Work: The U.N. and the Creation of Transitional Justice Systems in Kosovo and East Timor' (2001) 25 *FFWA* 107, 109.

⁵¹ Bruce Baker, 'Where Formal and Informal Justice Meet: Ethiopia's Justice Pluralism' (2013) 21 *AJICL* 202, 214.

⁵² Justin Sandefur and Siddiqi Bilal, 'Delivering justice to the poor: theory and experimental evidence from Liberia' (2013) 20 *WBWAPE* 1, 6.

⁵³ Organic Law No. 40/2000 of 26/01/2001 Setting Up Gacaca Jurisdictions and Organising Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Between October 1, 1990 and December 31, 1994 (2001); Lars Waldorf (n12) 52.

⁵⁴ Deborah Cummins, 'A State of Hybridity: Lessons in Institutionalism from a Local Perspective' (2013) 37 *FFWA* 143, 144.

⁵⁵ Justin Sandefur and Siddiqi Bilal (n52) 6.

⁵⁶ United Nations Children's Fund (n21) 2; Tim Allen and Anna Macdonald (n12) 1, 2.

TJMs, for example, aims may include restorative justice processes as well as contributing to reconciliation and facilitating reparations programmes. Finally, it is also important to consider the functionality of TJMs, specifically their procedures and jurisdiction in relation to CRSV. Concerns around traditional justice may include the need for any necessary adaptations, fundamental rights protections, and socio-cultural issues such as the presence of stigma. These issues must be considered in light of the needs of victims, the relationship between TJMs and formal justice mechanisms, and the resources which are available to provide post-conflict justice.

1.6 Outline

Chapter 2 considers the Liberian context and provides important historical, cultural and social background to the data collection and analysis. This includes exploring Liberia's pre-existing plural approach to justice. Chapter 3 then provides an overview of the methodological approach and ethical considerations which influenced the research design. Core concerns included security issues and potential risks such as re-traumatisation for participating victims of CRSV, as well as the geographical context and practical issues around conducting fieldwork within Liberia.

Chapter 4 then examines the concept of CRSV as it continues to be perpetrated, as well as the associated impacts. Important emerging themes include the need to provide victims with meaningful participation in justice processes, as well as centralising their needs and desires throughout the design and implementation of post-conflict justice.⁵⁷

Chapter 5 builds on the initial findings in relation to CRSV from Chapter 4 by examining the relationship between CRSV and TJMs. Specifically, the chapter considers situations wherein there is a plural approach to justice and traditional justice already exists alongside the formal justice system. By looking at pre-existing and previous uses of TJMs it is possible to examine the impacts of developing mechanisms beyond their original purposes in order to respond to CRSV, as well as the positive and negative consequences for victims. To this end, previous uses of TJMs such as the Rwandan use of Gacaca, can provide lessons for Liberia. In particular, Liberia similarly has the common use of the TJM palava hut within an existing traditional justice system as well as a lack of capacity within the formal justice system. The Rwandan experience can also prove instructive as, whilst criticised, Rwanda did provide a strategy for delivering post-conflict justice and accountability on a mass scale throughout its territory.⁵⁸

To improve understanding around the role of TJMs in relation to CRSV, the association between traditional justice and restorative justice is then explored in Chapter 6. Through this chapter, the thesis provides an examination of the appropriateness of restorative justice and traditional justice processes for CRSV. Such an exploration is especially important given that there are concerns around the ability of TJMs to address crimes of the nature and gravity of CRSV, and around whether they are able to meet the needs of victims. Accordingly, the chapter considered the options for justice which were identified in previous chapters, including providing reparations, remedy and forms of redress such as access to healthcare as well as restorative programmes.

Having considered the relationship between TJMs and CRSV as well as their role in relation to other justice mechanisms, Chapter 7 then considers practical challenges, risks, benefits and arguments around using traditional justice to address CRSV. Crucial to this discussion are concerns around human rights and the use of TJMs, which must be balanced with pragmatic limits on resources and the realities of addressing mass atrocity crimes in practice. This is an important discussion given concerns around the procedures and

⁵⁷ See, United Nations, Guidance Note of the Secretary-General Reparations for Conflict-Related Sexual Violence (June 2014).

⁵⁸ Phil Clark (n27) 784; Fieldwork interview D1.

punishments which may be used within some pre-existing TJMs, for example, trial by ordeal.

Finally, Chapter 8 provides concluding remarks on the findings of the thesis around the use of TJMs in relation to CRSV. The thesis has found that there is merit in the use of traditional justice to improve responses to CRSV. In particular, that TJMs are able to increase the capacity of states to address CRSV by providing justice processes which go beyond the scope of formal justice mechanisms, that they can increase the capacity of states to meet the needs of victims, and that they are an important asset in efforts to prevent formal justice systems becoming overwhelmed. Chapter 8 provides a discussion of the key findings of the thesis which incorporates recommendations for policy makers on the use of TJMs in relation to CRSV.

Chapter 2: The Liberian Context

In order to explore whether TJMs can improve responses to CRSV in Liberia, it is necessary to understand the relevant historical context and the influence of Liberia's history on its contemporary approaches to justice. Liberia is a small West African nation which shares borders with Sierra Leone, Guinea and Côte d'Ivoire. Between 1989 and 2003, Liberia experienced two violent Civil Wars with high levels of CRSV.¹ These armed conflicts stemmed from the country's history as a resettlement area for freed slaves, with resulting long-standing ethnic and socio-economic divisions embedded by corrupt and abusive regimes.² Liberia's previous history and the subsequent armed conflicts have embedded a plural approach to justice. The traditional justice system which existed prior to the 1822 arrival of freed slaves continues to function alongside the American style of statutory, formal justice which was imposed by the Americo-Liberians.³ The government's codification of customary law in the *Hinterland Regulations* of 1949 provided space for the traditional justice system within the state apparatus.⁴ As a result, Liberia has relevant international and regional law, formal state law, codified customary law, and uncodified customary law. The traditional and formal justice systems are not totally separate and TJM use in Liberia has continued alongside domestic and international post-conflict justice reform processes.⁵ Pre-existing relationships between justice mechanisms have therefore also been considered as factors which shape the post-conflict roles and functions of TJMs in relation to CRSV.⁶

2.1 Influential Liberian History

Between 1822 and 1861 the territory of Liberia was used as a settlement area for the repatriation of freed slaves to the African continent from the United States of America.⁷ The Republic of Liberia was founded in 1847 by the repatriated freed slaves, known as Americo-Liberians.⁸ The *Constitution of 1847* entrenched a system of exclusive, suppressive political and legal institutions which prioritised Americo-Liberians.⁹ This created long-standing ethnically-based social inequalities for the sixteen indigenous tribes: Bassa, Belle, Dey, Gbandi, Gio, Gola, Grebo, Kissi, Kpelle, Krahn, Kru, Lorma, Mano,

¹ Liberian Truth and Reconciliation Commission *Volume One: Preliminary Findings and Determinations* (Republic of Liberia Truth and Reconciliation Commission, 2009) 10; see also Peter Dennis, 'A Brief History of Liberia' (The International Center for Transitional Justice May 2006).

² Americo-Liberians first held power through the True Whig Party, established in 1869, with support from the United States which arguably prevented French or English colonisation and helped to suppress indigenous uprisings, Kenneth Cain, 'The Rape of Dinah: Human Rights, Civil War in Liberia, and Evil Triumphant' (1999) 21 *HRQ* 265, 267; Morten Bøås, 'The liberian civil war: new war/old war?' (2005) 19 *GS* 73, 76-78; Veronika Fuest 'This Is the Time to Get in Front': Changing Roles and Opportunities for Women in Liberia' (2008) 107 *AA* 201, 205; Jun Wei Quah, 'Peace in Our Time: Averting Transitional Justice's Mid-Life Crisis in Liberia' (2018) 8 *SSLR* 1, 2; Ilmari Käihkö, 'The MODEL social structure of an armed group: from Liberian refugees to heroes of Côte d'Ivoire and liberators of the homeland' (2018) 29 *SWAI* 776, 780; United Nations, *United Nations Development Assistance Framework for Liberia 2008-2012* (United Nations and the Government of Liberia, May 2007) 8.

³ The formal system is governed by statutory law and the Constitution provides that the highest formal court is the Supreme Court, see Constitutional Convention of 1986, Article 66; Shai Divon and Morten Bøås, 'Negotiating justice: legal pluralism and gender-based violence in Liberia' (2017) 38 *TWQ* 1384; Berihun Gebeye, 'Decoding legal pluralism in Africa' (2017) 49 *JLPUL* 228, 237.

⁴ There have since been amendments to the *Hinterland Regulations*, see Rules and Regulations Governing the Hinterland of Liberia (2001); Stephen Lubkemann, Deborah Isser and Peter Chapman, 'Ideals-Oriented Rule of Law Policy-Making in Liberia' in Melanie Wiber and Helene Maria Kyed (eds.) *The Journal of Legal Pluralism and Unofficial Law* (Berlin: Lit Verlag 2012) 77.

⁵ People can move between the formal and traditional justice systems, and formal representatives such as the town magistrate can also preside over TJMs.

⁶ Shaun Larcom, 'Problematic legal pluralism: causes and some potential 'cures'' (2014) 46 *JLPUL* 193, 194.

⁷ Veronika Fuest (n2) 204-205; Shai Divon and Morten Bøås (n3) 1384.

⁸ Kenneth Cain (n2) 265, 267; Shai Divon and Morten Bøås (n3) 1384.

⁹ For example, Constitutional Convention of 1847, Article 5: Miscellaneous Provisions, Article 15, has directions for the 'improvement of the native tribes and their advancement in the arts of agriculture and husbandry'; Morten Bøås (n2) 76.



Fig. 3: Photograph of tribal masks taken during fieldwork

Mandingo, Mende, and Vai, which exist within linguistic groups and often speak either Mende or Kwa.¹⁰

A coup d'état in 1980 led by Samuel K. Doe (an ethnic Krahn) saw the establishment of the People's Redemption Council and the first Liberian President of indigenous descent.¹¹ The First Civil War began on 24 December 1989 when Charles Taylor led his armed group, the National Patriotic Front of Liberia (NPFL), into Liberia with the intention of ousting Doe.¹² The conflict took on identity-based dimensions with Taylor's forces targeting Krahn and Mandingo people whom they presumed, based on identity, supported President Doe.¹³ Gio and Mano communities were targeted by the Doe regime until his capture and murder in 1990, and then by predominantly Mandingo and Krahn armed groups.¹⁴

Peace was temporarily secured with the election of Taylor as President of Liberia in 1997.¹⁵

The Taylor regime laid the foundations for the Second Civil War through its authoritarian, corrupt and violent nature.¹⁶ In 1999, the armed group Liberians United for Reconciliation and Democracy (LURD) was formed and began operating in Lofa County in the north, with the intention to remove Taylor.¹⁷ The capital city of Monrovia became surrounded in 2003 when another armed group, the Movement for Democracy in Liberia (MODEL), started operating out of Côte d'Ivoire and advanced from the south.¹⁸ With peace talks ongoing, Taylor accepted asylum in Nigeria and left Liberia on 11 August 2003.¹⁹ The *Comprehensive Peace Agreement* was signed in Accra on 18 August 2003, officially ending the Second Civil War.²⁰ It is estimated that by this time, over 250,000 people were killed

¹⁰ Fieldwork notes; Ezekiel Pajibo, *Traditional Justice Mechanisms: The Liberian Case* (Stockholm: International Institute for Democracy and Electoral Assistance 2008) 18.

¹¹ Mark Huband, *The Liberian Civil War* (Abingdon: Frank Cass Publishers 1998) xviii; Stephen Ellis, *The Mask of Anarchy* (London: Hurst and Company 1999) 65-66; Augustine Toure, *The Role of Civil Society in National Reconciliation and Peacebuilding in Liberia* (International Peace Academy 2002) 7-8.

¹² The Doe regime prioritised the Krahn group to which it belonged, increasingly politicising ethnic identity and dividing ethnic-tribal groups. Once inside Liberia, the NPFL was joined by many ethnic Gio and Mano people who had been subject to abuses by the Doe regime, James Pugel, *What the Fighters Say: A Survey of Ex-Combatants in Liberia* (United Nations Development Programme Liberia, Joint Implementation Unit 2007) 11; Morten Bøås (n2) 80.

¹³ James Pugel (n12) 34; Liberian Truth and Reconciliation Commission, *Volume Two: Consolidated Final Report* (Republic of Liberia Truth and Reconciliation Commission, 2009) 229.

¹⁴ In particular, the United Liberation Movement of Liberia for Democracy (ULIMO) which later split into ULIMO-K and ULIMO-J after their respective leaders, Kromah and Johnson. Another significant opposition group arising in 1994 was the Liberian Peace Council. The armed groups were not necessarily homogenous and there were examples of individuals fighting in forces that were typically targeting their ethnic-tribal group, Quentin Outram, 'It's terminal either way': an analysis of armed conflict in Liberia, 1989-1996' (1997) 24 *RAPE* 355, 356; James Pugel (n12) 11, 27-28; Morten Bøås (n2) 80; Ilmari Käihkö (n6) 781; Kenneth Cain (n2) 270-271.

¹⁵ Future President Ellen Johnson Sirleaf finished second, James Pugel (n12) 11.

¹⁶ Kenneth Cain (n2) 272-273.

¹⁷ James Pugel (n12) 11.

¹⁸ LURD reached Monrovia in June 2003, MODEL was the last armed group to enter the Liberian armed conflicts, many of their leadership had served in the military under President Doe, Ilmari Käihkö (n6) 780-800; James Pugel (n12) 11.

¹⁹ Ilmari Käihkö (n6) 792.

²⁰ *Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and the Political Parties*, Accra, Ghana (2003) Preamble, Article II, Annex I; The Ceasefire and Cessation of Hostilities Agreement had been signed in Ghana on 17 June 2003, see *Agreement on Ceasefire and Cessation of Hostilities Between*

and over 1 million people were internally-displaced, with hundreds of thousands of refugees.²¹ CRSV had been committed on a mass scale with all armed factions engaging in rape, sexual slavery and other sexual violations.²²

2.2 Liberia's Approach to Justice

The destruction caused by the Liberian armed conflicts meant that both institutional and physical infrastructures required rebuilding.²³ The state apparatus also lost some of its legitimacy during the armed conflicts as the government, the judiciary, the armed forces, and the police were corrupted.²⁴ In contemporary Liberia, the government is composed of the Legislature, the Executive and the Judiciary. The Legislature is composed of the Senate (which has 30 seats) and the House of Representatives (which has 64 seats). The formal justice system consists of the Supreme Court, Circuit Courts, Magistrate Courts and Justices of the Peace. Article 66 of the Constitution states that the Supreme Court shall be the final arbiter of constitutional issues. It has the power to determine the constitutionality of legislation and is the highest court in the land, empowered with final appellate jurisdiction in all cases.²⁵ Circuit Courts have jurisdiction over serious crimes such as rape and murder, whilst Magistrate Courts have civil and criminal jurisdiction, and Justices of the Peace adjudicate a limited range of civil and criminal cases.

Improvements have been made to Liberia's formal justice system through training and upgrades to the physical infrastructure, as the system had been completely dysfunctional when Ellen Johnson Sirleaf came to office in 2006.²⁶ In relation to sexual violence, following pressure from civil society groups such as the Association of Female Lawyers of Liberia, Criminal Court E (a Circuit Court) was established on 3 December 2008, with exclusive jurisdiction over sex crimes: rape, gang rape, aggravated involuntary sodomy, involuntary

the Government of the Republic of Liberia and Liberians United for Reconciliation and Democracy and the Movement for Democracy in Liberia, Accra, Ghana (2003).

²¹ Liberian Truth and Reconciliation Commission (n1) 1, 61.

²² Liberian Truth and Reconciliation Commission (n1) 9, 63.

²³ Buildings, power supplies and logistical networks sustained significant damage which continue to hinder the functioning of the state as services remain poor, Kari Larson et al., *Police Practices in Liberia: A Study of the Legal Frameworks and Practices of Fair Trial, Corruption and Civilian Oversight* (Danish Institute Against Torture 2018) 17-18; International Monetary Fund, 'Liberia: Poverty Reduction Strategy Paper—Second Annual Progress Report, 2009–10' (Washington: International Monetary Fund, Country Report Number 11/214, July 2011) 14; Niels Nagelhus Schia and Benjamin de Carvalho, "Nobody Gets Justice Here!" *Addressing Sexual and Gender-Based Violence and the Rule of Law in Liberia* (Oslo: Norwegian Institute of International Affairs 2009) 17; Benjamin de Carvalho and Niels Nagelhus Schia, 'Sexual and gender-based violence in Liberia and the case for a comprehensive approach to the rule of law' (2011) 14 *JIRD* 134, 137; Andrea Kaufmann, 'Mobilizing for Improvement: An Empirical Study of a Women's Organization in West Point, Liberia' (2011) 20 *WZKA* 163, 175; Marie-Claire Omanyondo, *Sexual and Gender-Based Violence and Health Facility Needs Assessment (Montserrado and Bong Counties) Liberia* (World Health Organisation 2004) 4; Liberia Institute of Statistics and Geo-Information Services, *Household Income and Expenditure Survey 2014: Statistical Abstract* (LISGIS, March 2016) 1.

²⁴ See Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and the Political Parties, Accra, Ghana (2003) Preamble, Article II, Annex I; Liberian Truth and Reconciliation Commission (n13) 238; James Pugel (n12) 14.

²⁵ Constitutional Convention of 1986, Article 66.

²⁶ Ellen Johnson Sirleaf was Liberia's first democratically elected post-conflict President and the Sirleaf administration built on existing structures. The Ministry of Gender, Children, and Social Protection had been established during the Second Civil War by a specialised Act in 2001. The Women and Children Protection Services of the Liberia National Police was established on 2 September 2005 to manage sexual abuse cases nationally. The Sexual and Gender-Based Crimes Unit was set up within the Ministry of Justice on 27 February 2009, with the intention to investigate and prosecute sexual violence offenses. The Ministry of Gender leads efforts to implement the international treaties to which Liberia is a party such as CEDAW and relevant UN resolutions such as Resolution 1325, An Act To Amend Chapter 38 Ministry of Gender and Development, Of the Executive Law, To Establish The Ministry of Gender, Children and Social Protection; Government of Liberia, *Sustaining Peace and Securing Development: Liberia Peacebuilding Plan* (Monrovia: Government of Liberia 2017) 3; Liberian Truth and Reconciliation Commission (n13) 239, 278-279; Shai Divon and Morten Bøås (n3) 1381; Neill Wright, Enda Savage and Vicky Tennant, *Real-time evaluation of UNHCR's IDP operation in Liberia* (Geneva: UNHCR Policy Development and Evaluation Service 2007) 8; Pewee Flomoku and Counsellor Lemuel Reeves, 'Formal and informal justice in Liberia' (2008) 23 *A* 44.

sodomy, voluntary sodomy, corruption of minors, sexual abuse of wards and sexual assault.²⁷ Additionally, the Sexual and Gender-Based Violent Crimes Unit was later established in 2009 to increase investigation and prosecution capacity.²⁸

In practice, victims are still struggling to get justice for sexual violence and face barriers such as corruption, costs, inability to travel, and the slow nature of Criminal Court E, which has a backlog of cases.²⁹ Criminal Court E meets twice a year and if the tenure closes without a person's case being heard then the accused must remain in pre-trial detention.³⁰ This situation can fail to deliver justice as accused persons may spend years in pre-trial detention, while victims may wait years for a resolution and may perceive convicted perpetrators who have already served their sentence in pre-trial detention as being quickly released. Additionally, the police lack the necessary vehicles, funding and equipment needed to address cases, with victims often being asked to pay towards the expense of investigations.³¹ Ultimately, the formal justice system including the police and the courts cannot reach across the entire Liberian territory at this time, and the number of violations which occur is beyond its capacity.³²

The traditional justice system within Liberia is therefore performing an important role in regulating the lives of people beyond the reach of the state, and without TJMs there would be a serious threat to peace and stability.³³ Liberia's plural approach to justice recognises the role of TJMs and facilitates interaction between the traditional and formal justice systems. For example, all courts in Liberia are empowered to apply both statutory and customary laws, with the customary law system recognised by the 1972 *Judiciary Law*.³⁴ Codified customary law which is applied within traditional justice mechanisms is included in the 2000 *Revised Rules and Regulations Governing the Hinterland of Liberia*.³⁵ As acknowledged above, people in rural communities currently rely on TJMs for pragmatic and practical reasons as formal justice mechanisms are too far to reach on foot and there is little or no transport infrastructure.³⁶ The current legal pluralism seen in Liberia is therefore a result of both the absence of the state, which creates a need for continuing reliance on TJMs, and on the state's approach to justice: the codification of customary law as part of the *Hinterland Regulations* recognised the traditional justice system and its role within the state.³⁷

²⁷ An Act Amending Title 17 of the Revised Code of Laws of Liberia, Known as the Judiciary Law of 1972, By Adding Thereto A New Chapter to be Known as Chapter 25 Establishing Criminal Court E of the First Judicial Circuit, Montserrado County and Special Divisions of the Circuit Courts of Other Counties of the Republic to Have Exclusive Original Jurisdiction Over the Crimes of Rape, Gang Rape, Aggravated Involuntary Sodomy, Involuntary Sodomy, Voluntary Sodomy, Corruption of Minors, Sexual Abuse of Wards and Sexual Assault Respectively, 2008; Sara Cummings, 'Liberia's "New War": Post-Conflict Strategies for Confronting Rape and Sexual Violence' (2011) 43 *ASLJ* 223, 228-229, 239; Freida McCormack, 'Prospects for Accessing Justice for Sexual Violence in Liberia's Hybrid System' (2018) 7 *IJSD* 1, 5.

²⁸ Sara Cummings (n27) 228-229, 239; Freida McCormack (n27) 5.

²⁹ Freida McCormack (n27) 6, 8; Jonathan Compton, 'The Peril of Imposing the Rule of Law: Lessons from Liberia' (2014) 23 *MJIL* 47, 66.

³⁰ Whilst time served is deducted from custodial sentences, people may be acquitted or receive a shorter sentence. Monrovia Central Prison works with the court system and the police to mitigate challenges including a coalition with the Department of Prosecutions and fast-track court processes; Fieldwork interview C1.

³¹ The United Nations Development Programme recognised in 2016 that despite good progress, Liberia's formal justice system still lacked the capacity to 'deliver justice and maintain law and order', United Nations Development Programme, *Global Programme on Strengthening the Rule of Law and Human Rights for Sustaining Peace and Fostering Development* (2016) 91; Benjamin de Carvalho and Niels Nagelhus Schia (n23) 136; Freida McCormack (n27) 9.

³² Fieldwork interviews E1.

³³ Fieldwork interviews A2, E1, E2.

³⁴ Judiciary Law of 1972.

³⁵ Regulations Governing the Hinterland of Liberia (2001).

³⁶ Fieldwork interviews A2, C3; for an exploration of related issues see, Olajumoke Yacob-Haliso, 'Investigating The Role Of Government Legislation And Its Implementation In Addressing Gender- Based Violence Among Returnee Refugee Women In Liberia' (2012) 10 *W* 132.

³⁷ Regulations Governing the Hinterland of Liberia (2001).

People in Liberia can move between the formal and traditional justice systems as well as choosing the most appropriate forum for their needs in many cases. The adversarial nature of Liberia's formal justice system can stand in contrast to the traditional justice system. Cases taken before the formal justice system generally produce a 'winner' and 'loser' which whilst resolving the matter can exacerbate animosity between the parties to the situation.³⁸ The formal justice system does not have the ability to maintain and restore the relationships within the communities and may have a negative impact on the social networks within Liberia which people rely on.³⁹ Cases are therefore often brought before the formal justice system where the priority is achieving redress via punishment alone, or where future relationships are not a priority, such as if the attacker was a stranger from a different community.⁴⁰ Cases are often brought before the TJM within a community in the first instance before being able to proceed to the formal justice system if the community leader cannot address the situation:

'they bring their complaint, we go into the place to judge the case but if you by-by the community leadership and carry complaint straight to the police station, you go there, they withdraw the case and bring the case back'.⁴¹

Additionally, once a decision is reached within a TJM it is often accepted by parties to the situation, however, if a victim is not satisfied they may then take the case to the formal justice system. There can also be a blurring of the traditional and formal justice systems, for example, where the town magistrate who represents the formal justice system may also preside over TJMs.⁴² Similarly, the police as part of the formal justice system may also have a mediation role to resolve some matters brought before them without the need to go before the formal courts.⁴³

Accordingly, there is a strong traditional justice system operating in rural areas of Liberia, made up of multiple mechanisms including palava hut and kola nut. The most common form of TJM in Liberia is known as palava hut, which is seen across the country being used with minimal differences by Liberian population groups.⁴⁴ Palava hut is a discussion forum in which the Community Chairman and a group of leaders such as the Co-Chair, Youth Chair, Women's Leader and elders may address a range of matters including domestic disputes, land disputes or debts.⁴⁵ The discussion often takes place within a physical palava hut, but where a community does not have this structure there may be similarly practiced TJMs in alternate venues, such as the home of the Community Chairman.⁴⁶ Parties to a situation may seek forgiveness or apologies and are given the opportunity to explain their version of events, as well as to ask and to answer questions. The Chairman may ask for witnesses, and community members may take part in discussion processes.⁴⁷

Other models of TJM include kola nut, which may address civil matters including adultery through deliberation by a convened group of the local leaders, Chiefs, and village elders.⁴⁸ One pre-existing Liberian TJM which will not be considered for use in order to address conflict-related crimes is sassywood. Sassywood is a system of trial by ordeal which is based on a belief in the supernatural and can range from harmless acts to those which

³⁸ Shai Divon and Morten Bøås (n3) 1388.

³⁹ Shai Divon and Morten Bøås (n3) 1388.

⁴⁰ Shai Divon and Morten Bøås (n3) 1388.

⁴¹ Fieldwork Interview E2, community leader.

⁴² Shai Divon and Morten Bøås (n3) 1388.

⁴³ Shai Divon and Morten Bøås (n3) 1388.

⁴⁴ Fieldwork Interviews A6, B1, C2-C4, E1; Liberian Truth and Reconciliation Commission (n13) 273; Freida McCormack (n27) 1, 4.

⁴⁵ Community Chairman is an elected role, Fieldwork Interviews A1, A3, A4, A6, B1-2, C2, C4, E1-2; Christian-Radu Chereji and Charles Wratto King, 'A Comparative Study of Traditional Conflict Resolution Methods in Liberia and Ghana' (2013) 5 CSC 3, 10; Freida McCormack (n27) 3.

⁴⁶ For example, the home of the Community Chairman, Fieldwork Interviews A1, A3-4, A6, B1-2, C2, C4, E1-2.

⁴⁷ Fieldwork Interviews A1, A3-4, A6, B1-2, C2, C4, E1-2.

⁴⁸ Jun Wei Quah (n6) 7; Freida McCormack (n27) 3.

may cause death.⁴⁹ It is also an example of formal recognition and regulation of traditional justice within Liberia as trial by ordeal is now prohibited owing to recognition of its inhumane nature.⁵⁰ Despite this prohibition which has made sassywood illegal, as well as active campaigns against its use, sassywood is reportedly still practiced in some parts of Liberia. Although enforcing the ban is challenging, the use of sassywood and trial by ordeal has been reduced via education and advocacy programmes.⁵¹

Additionally, Liberian civil society and members of the legal profession have worked to educate community leaders away from making decisions within TJMs on serious crimes, such as aggravated assault or rape (although it still occurs).⁵² For example, the Association of Female Lawyers of Liberia conducts work with traditional and community leaders who operate the TJMs to provide clarity on which crimes they can handle and which should be handled by the formal justice system.⁵³ Speaking as a Community Chairman, one participant described their role as collaborative with the formal justice system, stating that should an act of rape occur, their role involves gathering evidence which is then turned over to the police.⁵⁴ The pre-existing relationship between CRSV and TJMs is significant for their role within post-conflict justice. Their current functionality may also influence responses to CRSV, for example, efforts to address CRSV as part of post-conflict justice must be distinguished from the role of TJMs in relation to peacetime sexual and gender-based violence.

'But the only case that we can't tamper with is raping case, we don't tamper with it [...] the police will handle it and those the relevant authority will carry on the investigation'⁵⁵

2.3 The post-conflict justice strategy in Liberia

Taking a plural approach to post-conflict justice, which incorporates traditional justice, effectively builds on Liberia's pre-existing legal pluralism. It is also a pragmatic response to limited resources: the reality is that the formal justice system does not have the capacity to deliver post-conflict justice across the entire Liberian territory, and many victims of conflict-related crimes including CRSV will not be able to access formal justice mechanisms directly. To provide accessible post-conflict justice for victims across Liberia, there is therefore a need to engage with traditional justice from the outset and support the formal justice mechanisms in order to address capacity limitations.⁵⁶

Liberia's post-conflict journey has already included truth-telling and reconciliation processes through the Liberian Truth and Reconciliation Commission (TRC). As stipulated by the *Comprehensive Peace Agreement*, a Liberian TRC was established and began operating on 22 February 2006, releasing its final report in 2009.⁵⁷ The *Comprehensive Peace Agreement* had called for the establishment of a TRC to 'address issues of impunity'

⁴⁹ An accused person may have to drink a poison, touch a heated object, or lift a heavy object with their ability to do so determining their guilt or innocence, Fieldwork Interview C4; Freida McCormack (n27) 3-4.

⁵⁰ Rules and Regulations Governing the Hinterland of Liberia (2001), Article 73; Fieldwork Interview C4; Freida McCormack (n27) 4.

⁵¹ Fieldwork Interviews C3, C4.

⁵² Fieldwork Interviews C1, C3; Freida McCormack (n27) 10, 12.

⁵³ This often depends on the gravity of the crime. However, as some rural areas cannot easily access the police stations or the courts and therefore rely on the traditional justice system for assistance, it is important to conduct training in order to assist their work. Such training by the Association of Female Lawyers of Liberia has been conducted with partners including Action Aid Liberia and supported by the European Union, Fieldwork interview C3.

⁵⁴ Fieldwork Interview E2.

⁵⁵ Fieldwork Interview E2, community leader.

⁵⁶ Fieldwork interview C3.

⁵⁷ Its temporal mandate went from January 1979 to 14 October 2003, with the possibility to investigate incidents prior to 1979 if a special application was made, Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and the Political Parties, Accra, Ghana (2003) Article XIII; Liberian Truth and Reconciliation Commission (n1) 7, 10, 25.

and provide 'an opportunity for both the victims and perpetrators of human rights violations to share their experiences'.⁵⁸ The TRC was a non-judicial mechanism which was not designed to prosecute any accused, but to establish the truth and facilitate reconciliation. The intention was to provide a 'clear picture of the past' in order to 'facilitate genuine healing and reconciliation'.⁵⁹

The key part of the research question in the Liberian context is how to *improve responses*. The TRC took a progressive approach to CRSV, looking at patterns of violence and underlying contributory factors as well as acknowledging that all armed factions had engaged in rape, sexual slavery and other such 'dehumanizing' violations.⁶⁰ From 17,160 of the TRC's collected statements, 163,615 violations were reported against around 86,647 victims.⁶¹ The combined totals of reported 'Rape' (2,308), 'Sexual Abuse' (2,301), 'Gang Rape' (1,107), 'Sexual Slavery' (1,023), and 'Multiple Rape' (65) is 6,804 or 4 percent of all reported violations.⁶² The TRC considered each category of crime in more detail, noting that many acts of CRSV were deliberately committed publicly and brutally.⁶³ Through the TRC, Liberia has already acknowledged the nature and gravity of the CRSV which took place. Whilst acknowledgement is an important part of responding to CRSV, the impetus now is on taking action to address these crimes and their impacts.

The legacy of the TRC includes information which can inform responses by exploring the nature of the crimes and the experiences of different victim groups. This includes explicit recognition of male victims of CRSV, with 6 percent of reported incidents of rape being committed against men.⁶⁴ Whilst over 70 percent of the total reported CRSV was committed against females, accordingly, around 30 percent was committed against males.⁶⁵ Women were 'significantly overrepresented' as victims of rape, sexual slavery and other forms of sexual violence, however there were 'relatively more' male than female victims of 'Sexual Abuse'.⁶⁶ Notably, the TRC's definition of sexual abuse aggregated several crimes, including forced nudity, and during the armed conflicts stripping people naked was a violation used for humiliation by armed groups.⁶⁷ The TRC's finding is instructive for constructing a response as CRSV must be addressed inclusively and not as if it is an exclusively female issue. It is commendable that the TRC did not lose male victims in the statistics or treat them as a footnote. Accordingly, there must be efforts to engage male victims with the process of designing responses to CRSV. The ability of TJMs to address the CRSV which has been committed against males may be limited if men are not able or willing to speak on the issue within their communities, despite evidence of such crimes. One unclear factor from the report is how much CRSV was reported against males

⁵⁸ Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and the Political Parties, Accra, Ghana (2003) Article XIII.

⁵⁹ Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and the Political Parties, Accra, Ghana (2003) Article XIII.

⁶⁰ Liberian Truth and Reconciliation Commission (n1) 9, 63.

⁶¹ The TRC collected 17,416 statements with the aim of representing the entire country through statement-taking, outreach, and hearings, 256 statements reported violations which were outside the TRC's temporal mandate or did not record the location of the violation. This is the largest data repository in relation to the armed conflicts, Kristen Cibelli, Amelia Hoover and Jule Krüger, *Descriptive Statistics from Statements to the Liberian Truth and Reconciliation Commission* (Benetech 2009) 3-5, 53; Liberian Truth and Reconciliation Commission (n13) 40-43, 213, 226; Dara Kay Cohen and Amelia Hoover Green, 'Dueling incentives: Sexual violence in Liberia and the politics of human rights advocacy' (2012) 49 *JPR* 445447.

⁶² Of the reported violations, 69 percent were a combined total of acts of 'Forced Displacement' (58,849), 'Killing' (28,042), 'Assault' (13,222), and 'Abduction' (13,045). A large percentage is also made up by 'Forced labour', 'Looting' and 'Torture', Liberian Truth and Reconciliation Commission (n13) 212-213.

⁶³ Liberian Truth and Reconciliation Commission (n13) 212; Kristen Cibelli, Amelia Hoover and Jule Krüger (n61) 12-15.

⁶⁴ Liberian Truth and Reconciliation Commission (n13) 223.

⁶⁵ Liberian Truth and Reconciliation Commission (n1) 11, 51.

⁶⁶ Liberian Truth and Reconciliation Commission (n13) 222; Kristen Cibelli, Amelia Hoover and Jule Krüger (n61) 14-15.

⁶⁷ Liberian Truth and Reconciliation Commission (n13) 222; Kristen Cibelli, Amelia Hoover and Jule Krüger (n61) 15.

by the victims themselves or by women who witnessed violations against their family members and other community members.⁶⁸ Accordingly, the willingness of men to speak on their experiences of CRSV is unclear and the role and functionality of TJMs may not encompass all crimes, however, male victims must also be able to seek and receive justice.

The legacy of the TRC also includes Recommendations on Accountability which continue to shape campaigns for justice that are orchestrated by politicians, legal personnel and civil society.⁶⁹ The TRC's Recommendations on Accountability envisage a system of justice mechanisms, each with specific purposes which supplement the others.⁷⁰ At the forefront is a proposed 'Extraordinary Criminal Tribunal for Liberia' which is intended to prosecute persons accused of serious violations of international humanitarian and human rights law.⁷¹ Whilst the recommended Extraordinary Criminal Tribunal is a necessary component of responding to CRSV and providing justice, it will – by itself – not be sufficient to meet the identified needs of victims.⁷² Such a tribunal will be limited by its resources and mandate to trying a small number of people. The Special Court for Sierra Leone, for example, issued 13 indictments.⁷³ In Liberia, people view the prospect of prosecutions as having a significant role in ending impunity and providing a deterrence.⁷⁴ However, other justice mechanisms must operate to supplement the Extraordinary Criminal Tribunal in order to create tangible impact for the entire population. Within the TRC's recommendations, the Extraordinary Criminal Tribunal would be supplemented by domestic criminal prosecutions, public sanctions, the use of traditional justice, and recommended procedures relating to economic crimes.⁷⁵

The Recommendations on Accountability draw upon Liberia's existing accountability frameworks, including traditional justice, to incorporate them within post-conflict justice efforts from the outset. In doing so the TRC has provided an example of best practice for other states who should also consider the need to draw upon *all* of their existing response frameworks when designing post-conflict justice efforts. Additionally, when forming the Recommendations on Accountability the TRC Commissioners actively sought to learn from the experiences of other states, including Rwanda and Sierra Leone, and avoid repeating past mistakes. In subsequent discussions on implementing the TRC recommendations, Liberian policy makers have continued to seek the advice of the TRC Commissioners as well as peers from Sierra Leone and Rwanda, again providing an example of best practice.⁷⁶ For Liberians, as recommended by the TRC and recognised by participants, to address conflict-related crimes, the country requires a comprehensive approach which utilises all of Liberia's available resources, including TJMs.⁷⁷

Subsequently, the Liberian population should be informed about the TRC recommendations, especially the Recommendations on Accountability (and recommendations on reparations). However, despite its significance, a participating NGO staff member and a community member noted that communities have not been sufficiently educated about and made aware of the whole TRC process.⁷⁸ Additionally, the information which communities do have is often vague: people have heard about the TRC, heard some

⁶⁸ More than 50 percent of the statements were given by women, Dara Kay Cohen and Ragnhild Nordås, 'Sexual violence in armed conflict: Introducing the SVAC dataset, 1989–2009' (2014) 51 *JPR* 418, 421; Liberian Truth and Reconciliation Commission (n1) 51; Liberian Truth and Reconciliation Commission (n13) 223.

⁶⁹ Liberian Truth and Reconciliation Commission (n13) 268, 270-271, 273-274 and 276.

⁷⁰ Liberian Truth and Reconciliation Commission (n1) 7, 10, 25; Liberian Truth and Reconciliation Commission (n13) 268, 270-271, 273, 274.

⁷¹ Liberian Truth and Reconciliation Commission (n13) 268.

⁷² Fieldwork interview D1.

⁷³ The Residual Special Court for Sierra Leone, 'The RSCSL Archives (2020)' *RSCSL* [online]; Fieldwork interview D1.

⁷⁴ Fieldwork interviews A5, A6, D1-D2, E1-E2.

⁷⁵ Liberian Truth and Reconciliation Commission (n13) 270-271, 274.

⁷⁶ Subsequent project work conducted in Liberia in 2019.

⁷⁷ Fieldwork interviews C1, D1.

⁷⁸ Fieldwork interviews B1, D1.

people testified and now potentially some people may go to court.⁷⁹ One participating community member had heard the TRC reports being discussed under palava huts, but its work did not seem personally relevant.⁸⁰

'I heard people talking about TRC report under the palava huts [...] But for me, for me to be frank it was not general to me so I did not waste my time to look after it'⁸¹

During the fieldwork, I found limited general understanding of the TRC, and some people who had engaged with the TRC's work had become disillusioned and disengaged due to the lack of genuine participation from accused persons. Speaking from civil society, one participant noted that outreach at the community level on the TRC process may further increase demand for justice processes and for genuine reconciliation.⁸² The lack of educated awareness of the TRC's work among the general population may be a cause for concern if Liberia does further implement the TRC recommendations, as victims of CRSV are not necessarily aware of the various options for seeking justice and that they are entitled to the reparations programme and alternate forms of redress.

Ultimately, despite ongoing pressure from civil society and the public to implement the TRC's recommendations there has been little progress, although President Weah has lent greater vocal support to the recommendations than former President Sirleaf.⁸³ Whilst the recommendations have not been fully implemented, they continue to inform the work of the Independent National Commission on Human Rights of Liberia (INCHR) as well as activist led movements for accountability, which provide a source of pressure on the government.⁸⁴ For the Liberian population the TRC recommendations therefore remain extremely relevant. They provide a landmark which continues to influence post-conflict justice policy, including in relation to CRSV, and forms the basis for a comprehensive approach to post-conflict justice in Liberia.

For policy makers in post-conflict states which have been affected by CRSV, and where there is pre-existing legal pluralism through the use of traditional justice, considering the Liberian approach of incorporating TJMs into the design of post-conflict justice strategies may be beneficial. Whilst Liberian policy makers have sought to avoid repeating past mistakes by learning from experiences of other states such as Rwanda and Sierra Leone, the Liberian approach itself highlights strengths and weaknesses in taking a plural approach. For example, the ability to engage with and address ongoing impacts of crimes as well as provide accessible justice for victims across a territory. It also highlights issues arising in relation to implementing recommendations made by the TRC – a non-judicial mechanism – within a post-conflict context where high profile accused may continue to hold power, and within a context of very limited resources. Another issue is the need to ensure that a plural approach to justice does not become subverted, for example, by accused individuals who may seek to use traditional justice to avoid prosecution within a formal court. Accordingly, with challenges around providing post-conflict justice, a large number of people affected by CRSV and ongoing impacts of these crimes, Liberia is an important example which can explicate issues around responding effectively to CRSV.

⁷⁹ Fieldwork interview D1.

⁸⁰ Fieldwork interview B1.

⁸¹ Fieldwork Interview B1, community member.

⁸² Fieldwork interview D1.

⁸³ Liberian Truth and Reconciliation Commission (n13) 268; Rodney Sieh 'Liberia: How George Weah's Vision 2020 Could Make or Break the Coalition for Democratic Change's Regime (8 January 2020)' *Front Page Africa* [online]; Gerald Koinyeneh 'Liberia: Prof. Alaric Tokpah Describes Forceful Dispersal of Protestors As 'Dangerous Dictatorship (13 January 2020)' *Front Page Africa* [online]; The Analyst News 'Momentum Grows For War Crimes Court -26 Lawmakers Consent Following Pres. Weah's Letter (23 September 2019)' *Liberian Analyst* [online].

⁸⁴ Paul James-Allen, Aaron Weah, and Lizzie Goodfriend, *Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia* (New York: International Center for Transitional Justice 2010) 27.

Chapter 3: Methodology and Ethics

Academic interest in CRSV has experienced considerable growth since the 1990s, with increasing scholarship from lawyers, sociologists, political scientists and health scientists.¹ Across the disciplines one common feature of the existing literature is a recognition that the resources to respond to CRSV do not match the scale of the generated needs.² This includes restrictions on provisions for criminal accountability and justice, such as the limited resources of internationally supported mechanisms as well as the limited capacity of states to deliver justice on a mass scale.³ Particular concerns include the risk of overwhelming domestic justice systems, delivering justice to rural areas, and ensuring that all victim groups affected by CRSV can seek and access justice.⁴ Examining ways to increase the capacity of states to respond to CRSV is therefore essential.

At the same time, academic interest in traditional justice has often focused on how far TJMs can protect fundamental rights and their relationship with social norms, specifically, the risk of enforcing discriminatory or harmful norms.⁵ However, there is growing interest in TJMs as an important aspect of justice in some societies, as well as their role within post-conflict justice strategies.⁶ Whilst there is a growing interest in both CRSV and traditional justice, a gap exists in the literature as there is limited research which considers TJMs in relation to CRSV.⁷ Specifically, there is limited discussion of whether TJMs are able to meet the needs of victims of CRSV and thus whether they are able to fulfil a supplementary role in delivering justice. This thesis therefore explores the relationship between CRSV and traditional justice with a focus on whether TJMs are appropriate for such crimes, and if so, whether the use of traditional justice can improve responses to CRSV by increasing the capacity of states to provide justice.

Accordingly, this thesis is a qualitative socio-legal study with a focus on the voices and views of affected communities in relation to justice for CRSV. In particular, it is informed by interviews conducted in Liberia in order to include the voices of stakeholder groups,

¹ See for example, Sunneva Gilmore and Kieran McEvoy, 'Bridging justice and health: reparations for conflict-related sexual violence' (2020) 23 *TOAG* 6; Jo Spangaro; Chinelo Adogu; Anthony B. Zwi; Geetha Ranmuthugala; and, Gawaine Powell Davies, 'Mechanisms underpinning interventions to reduce sexual violence in armed conflict: A realist-informed systematic review' (2015) 9 *CAH* 19; James Tonny Dhizaala, 'Transitional Justice in Liberia: The Interface Between Civil Society Organisations and the Liberian Truth and Reconciliation Commission' in Jasmina Brankovic and Hugo van der Merwe (eds.) *Advocating Transitional Justice in Africa: The Role of Civil Society* (Cham: Springer International Publishing, 2018); Sabine Freizer, 'Reparations after conflict related sexual violence' (2016) 27 *SHR* 14, 24; Anne-Kathrin Kreft, 'Civil society perspectives on sexual violence in conflict: patriarchy and war strategy in Colombia' (2020) 96 *IA* 457, 458.

² Leena Grover, 'Transitional Justice, International Law and the United Nations' (2019) 88 *NJIL* 359, 377; Amanda Lucey and Liezelle Kumalo, 'Sustaining peace in practice Liberia and Sierra Leone' (Institute for Security Studies, Policy Brief 2018) 6; David Mandel-Anthony, 'Handwriting Accountability for Mass Atrocities' (2019) 11 *DLR* 934.

³ Charles Jalloh, 'Prosecuting Those Bearing Greatest Responsibility: The Lessons of the Special Court for Sierra Leone' (2013) 96 *MLR* 863, 869; Ferdinand Kwaku Danso, 'Rebuilding Relationships after Civil War: Relational Justice and Ex-Combatant Reintegration in Liberia' (2017) 10 *DICMD* 6.

⁴ Catherine O'Rourke, 'Transitional justice and gender', in Lawther C., Moffett L and Jacobs D. (eds) *Research Handbook on Transitional Justice* (Cheltenham: Edward Elgar Publishing Limited 2017) pp.117-142, 134; Emma Macfarlane, 'Resolutions without resolve: Turning away from U.N. security council resolutions to address conflict-related sexual violence' (2020) 27 *MJGL* 435, 446; Mark Ellis, 'Evaluating State Capacity to Conduct War Crimes Trials Consistent with the Rome Statute' (2012) 44 *STLP* 107, 108.

⁵ Brynna Connolly 'Non-State Justice Systems and the State: Proposals for a Recognition Typology' (2006) 38 *CLR* 239, 263.

⁶ Fergus Kerrigan (ed.), *Informal Justice Systems: Charting a Course for Human-Rights Based Engagement* (Danish institute for human rights 2012) 11; Ewa Wojkowska, *Programme Doing Justice: How informal justice systems can contribute* (Oslo Governance Centre: United Nations Development 2006) 9; Luc Huysse and Mark Salter, 'Traditional Justice and Reconciliation after Violent Conflict Learning from African Experiences' (Stockholm: International Institute for Democracy and Electoral Assistance 2008) 17; Philipp Kastner, 'A Resilience Approach to Transitional Justice?' (2020) 14 *JIS* 368, 382.

⁷ Tamara Relis, 'Unifying benefits of studies in legal pluralism: accessing actors' voices on human rights and legal pluralities in gender violence cases in India' (2016) 48 *JLPUL* 354, 356, 445; Dara Kay Cohen and Amelia Hoover Green, 'Dueling incentives: Sexual violence in Liberia and the politics of human rights advocacy' (2012) 49 *JPR* 445.

including victims. In addition to conducting the empirical research in Liberia which contributes to knowledge and understanding around CRSV in relation to law, the thesis also interprets the data in light of multi-disciplinary scholarship from politics, sociology, and health sciences. Through this socio-legal approach, the thesis is enriched by being able to take a holistic view of the issues which are associated with CRSV. Subsequently, the conclusions and recommendations are informed with both a breadth and depth of related knowledge from across disciplines. At the same time, the literature which is considered examines a range of situations in which CRSV has affected communities, including Rwanda, Uganda, Sierra Leone, East Timor and Afghanistan. The incorporation of research including previous experiences from other situations provides a contextual breadth which goes beyond the Liberian context. The study therefore combines pre-existing literature from different disciplines with data collection in Liberia.

3.1 The importance of empirical research

Supplementing the existing literature with empirical research which focused on the relationship between traditional justice and CRSV is important as the consequences of becoming known as a victim can be life-changing or life-threatening.⁸ Subsequently, theoretical recommendations which are made in relation to the use of traditional justice and which are detached from the voices of affected communities may not be relevant to people's lives.⁹ One example is the previous assumption that communal truth-telling is always a healing experience for victims: evidence of the negative effects and potential re-traumatising nature of this process have altered this view.¹⁰ Additionally, the nature of TJMs, which includes the community-based nature of traditional justice, may mean that participation in TJMs as part of post-conflict justice efforts would require victims to speak on their experiences in front of their peers.¹¹ The empirical research therefore forms a central aspect of the research design, which has a focus on the voices of victims to ensure that the subsequent recommendations incorporate the forms of support required by participants. Areas of discussion included the appropriateness of TJMs for CRSV, any need for optimisation measures, willingness and ability to speak out as well as the support which may be necessary.¹²

Alongside the voices of victims, discussion which seeks to improve responses to CRSV must also include the views of people who design, establish and operate post-conflict justice mechanisms. The willingness and ability of officials and community leaders to address the issue of CRSV, including by using TJMs, is essential. If officials within a formal justice system cannot foresee a role for TJMs or cannot foresee themselves working with community leaders (or vice versa), then any theoretical plan in which TJMs operate to supplement formal justice mechanisms is potentially unrealistic. Additionally, the use of TJMs will potentially consume resources in relation to monitoring, training, support services, development programmes, and links between justice mechanisms.¹³ The perspectives of officials are therefore instructive as ensuring that CRSV is addressed at the community level might not be a priority for resource allocation. A successful response

⁸ Irma Specht, *Red Shoes: Experiences of girl-combatants in Liberia* (Geneva: International Labour Office 2006) 78.

⁹ Dara Kay Cohen and Amelia Hoover Green (n7) 450; United Nations, 'United Nations Development Assistance Framework for Liberia 2008-2012' (United Nations 2007) 16.

¹⁰ Karen Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts' (2008) 39 *SD* 55-56, 71; Shanee Stepakoff et al., 'A Trauma-Informed Approach to the Protection and Support of Witnesses in International Tribunals: Ten Guiding Principles' (2017) 9 *JHRP* 268, 269; Nicola Henry, 'The Impossibility of Bearing Witness: Wartime Rape and the Promise of Justice' (2010) 16 *VAW* 1098, 1099-1100; David Mendeloff, 'Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice' (2009) 31 *HRQ* 592, 596.

¹¹ John-Mark Iyi, 'Fair hearing without lawyers? The Traditional Courts Bill and the reform of traditional justice system in South Africa' (2016) 48 *JLPUL* 127, 135.

¹² Fieldwork Interviews A1-6; Jelke Boesten, 'Revisiting Methodologies and Approaches in Researching Sexual Violence in Conflict' (2018) 25 *SP* 457, 461; Karen Brounéus (n10) 69.

¹³ Danish Institute for Human Rights, *Informal Justice Systems: Charting a Course for Human Rights Based Engagement: A Summary* (Geneva: United Nations Development Programme 2012) 20.

to CRSV requires the willingness of officials and community leaders to work together and act on the concerns of victims.

By conducting empirical research in Liberia, it is possible to demonstrate the reality faced by victims of CRSV and processes of seeking and receiving justice within a legally pluralistic society. The interviews provided perspectives within a context where there have been no domestic formal prosecutions for conflict-related crimes (to date), where there is a limited capacity to enforce sentences such as imprisonment, and where traditional justice forms a significant aspect of providing justice for the population during day to day life. The issue of addressing CRSV is therefore considered within an environment where people are still actively campaigning to receive justice for conflict-related crimes.¹⁴ By speaking to people in Liberia who are affected by CRSV, it was possible to understand different conceptions of justice and inform the thesis in relation to what victims need in order to feel that they have received justice. The ongoing need for justice for sex crimes including CRSV has been the subject of consistent activist led campaigns within Liberia, with recognition of this need also coming from the top down. Yet the response to CRSV has been fragmented and without a state supported and structured approach. Subsequently, response efforts within Liberia have had very limited success, with impunity remaining the norm and the attention of international actors being dominated by the rape of women and girls.¹⁵

3.2 Conducting the fieldwork and interviews

The fieldwork was conducted in Liberia between the 9th and 25th of September 2018. Further travel to Liberia in March and July 2019 facilitated an in-country update on the changing socio-economic and political situation. Whilst the Liberian armed conflicts and post-conflict context can mostly be considered a typical example from the region, some characteristics could be considered atypical. For example, the nature of the armed conflicts meant that Liberia experienced especially high levels of cannibalism and female perpetration.¹⁶ Accordingly, the Liberian data adds depth to the analysis whilst the consideration of other situations through pre-existing sources adds breadth and increases the generalisability of the findings.¹⁷

During the fieldwork, sixteen semi-structured interviews were conducted with victims of CRSV as well as 'key informants' who were invited to participate due to their specialised knowledge.¹⁸ Participating individuals were grouped for the purpose of recruitment and data processing as follows: 6 self-identified victims of CRSV (female); 4 officials (3 male, 1 female); 1 community leader (male); 3 NGO staff (male); and 2 men from the community (male). The term 'participants' will be used throughout the thesis to refer to the interviewees.

All of the participating groups include individuals who experienced the armed conflicts and all of the participants discussed other forms of violence as well as CRSV. Participants spoke of wider impacts on family members and about the impacts of CRSV on population groups such as women and girls. In order to be as inclusive as possible, for this thesis, the term

¹⁴ See Annex 1 for the application to the Research Ethics Committee.

¹⁵ Benjamin de Carvalho and Niels Nagelhus Schia, 'Sexual and gender-based violence in Liberia and the case for a comprehensive approach to the rule of law' (2011) 14 *JIRD* 134-136.

¹⁶ Fieldwork Interview C2; Liberian Truth and Reconciliation Commission *Volume Two: Consolidated Final Report* (Republic of Liberia Truth and Reconciliation Commission, 2009) 273; Freida McCormack, 'Prospects for Accessing Justice for Sexual Violence in Liberia's Hybrid System' (2018) 7 *IJSD* 1, 4; Jason Seawright and John Gerring, 'Case Selection Techniques in Case Study Research' (2008) 61 *PRQ* 294, 304; Peter Swanborn, Case Study Research: What, Why and How? (London: SAGE Publications 2010) 50; John Gerring, 'Case Selection for Case-Study Analysis: Qualitative and Quantitative Techniques' in Janet Box-Steffensmeier, Henry Brady and David Collier (eds.) *The Oxford Handbook of Political Methodology* (Oxford: Oxford University Press 2008) 6-7, 11, 13-14.

¹⁷ Khairul Noor, 'Case Study: A Strategic Research Methodology' (2008) 5 *AJAS* 1602-1603; Robert Yin, *Case study research: Design and methods* (London: Sage Publications, Third Edition 2003) 10.

¹⁸ Fieldwork Interviews C1-4, D1-2, E1-2.

'victim' is defined broadly in line with the UN's *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* to mean:

'persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power'.¹⁹

'Official' refers to individuals who hold an official position within the formal justice system, government, commissioners, and legal personnel. 'Community leader' is a male in the elected role of town Chief who as part of these duties leads the community TJM. 'NGO staff' includes people working at NGOs concerned with justice and human rights in Liberia, and 'men from the community' refers to adult male community members who do not hold official positions within the formal or traditional justice system.

3.3 Ethical and practical considerations

Full approval was gained from the University of Nottingham School of Law's Research Ethics Committee prior to commencing fieldwork.²⁰ The physical, psychological, and social safety of everyone connected with this research was the highest priority. Accordingly, it was necessary to work with a Gatekeeper NGO who were able to provide guidance on local socio-cultural issues in relation to sex, gender, justice issues and CRSV. Within Liberia there are multiple local NGOs focused on issues around justice, providing legal assistance, human rights, and supporting victims of the armed conflict. Additionally, local NGOs frequently work collaboratively or form coalitions to address a common issue. The assistance and local knowledge of the Gatekeeper NGO was vital to the study, as some individuals did not want to become publicly known as victims or to be seen speaking to a researcher.²¹ The Gatekeeper organisation therefore assisted with participant recruitment through their pre-existing connections to communities and key informants. This provided a discreet recruitment process which drew on their local community knowledge in relation to CRSV and allowed individuals to be invited to participate without the wider community knowing. It also allowed key informants who were identified through their current or previous role to be invited to participate discreetly. Concerns around stigma and security, as well as secrecy and taboos around CRSV, mean that it would not have been possible or appropriate to advertise publicly for participants. Nor would it have been possible or appropriate for someone unfamiliar to independently approach individuals or communities seeking participants on the subject of CRSV.

To ensure that participants had anonymity and confidentiality, safety measures went beyond discreet recruitment to also include providing transport to interviews in private locations. Anonymity and confidentiality were required throughout the data storage, analysis, and publication processes, accordingly, the data is anonymised. Additionally, the need for anonymity has required the anonymisation of the Gatekeeper NGO in order to avoid cross-referencing with locations or known activities in order to work out participant identities. This is also important in order to ensure that inaccurate assumptions cannot be made about whether or not a person who did not participate was involved in the study. The need for anonymity has meant that limited information about the Gatekeeper NGO has been included. The meta data and redacted transcripts are available via the UK Data Service archive as this study and the overseas fieldwork were funded by the Economic and Social Research Council.

¹⁹ UNGA Resolution 40/34 (1985) (29 November 1985) UN Doc A/RES/40/34; see also, UN Office for Drug Control and Crime Prevention, *Handbook on Justice for Victims* (New York: UNODCCP, Centre for International Crime Prevention 1999).

²⁰ See Annex 1 for the Research Ethics Committee application.

²¹ Fieldwork interview A6; Myriam Denov, 'Wartime Sexual Violence: Assessing a Human Security Response to War-Affected Girls in Sierra Leone' (2006) 37 *SD* 319, 324.

During the fieldwork and interview process it was also important to signpost relevant support services for participants, however, the limited number of psychiatric practitioners in Liberia meant that it was not possible to locate robust psychological health support.²² The research design was therefore especially conservative. For example, focus groups could have supplemented the semi-structured interviews as victims of CRSV in previous studies have reported increased comfort and trust from group situations where they spoke with other victims.²³ However, the risks of dealing with cultural issues such as taboos around sex and becoming known as a victim (even amongst peers) without robust in-country support meant that one-to-one interviews were more appropriate. The Gatekeeper NGO was also able to provide their contact details in order to provide support should there be a future need.

Interviewing individuals who have experienced armed conflict and CRSV also carries risks of distress including re-traumatisation which necessitate thorough preparation, listening without judgement and understanding the differing impacts which can be faced by individuals.²⁴ The interviews were semi-structured with open questions to provide flexibility and greater control for participants, whilst at the same time covering the same subject areas and producing richer data by allowing people to expand the discussion.²⁵ As the interviews took place a long time after the events, recall could have been a limitation, however this was largely mitigated as the interview questions focused on opinions on justice.²⁶ Where participants wanted to share relevant aspects of their experiences the process was carefully monitored for any signs of distress. The questions were also designed to try and minimise bias towards accountability as well as encourage participants to state their genuine views.²⁷

As the participants were recruited by drawing on the contacts of the Gatekeeper NGO or by inviting individuals to interview due to their role, the data forms a non-random convenience sample.²⁸ Advantages of convenience sampling include overcoming access issues and having greater trust through the connection with the Gatekeeper NGO, which was vital given the subject of justice for CRSV.²⁹ The non-random nature of the data could be a disadvantage as it potentially creates selection bias which can limit the representativity of the sample.³⁰ However, the purpose was not to draw conclusions about the entire population, but to provide in-depth data which frames the issue and informs the way in which CRSV is addressed.³¹ Non-random convenience sampling was therefore

²² Efforts were made via The Carter Center, the World Health Organisation and the Liberia Association of Psychosocial Services, Nissim Cohen and Tamar Arieli, 'Field research in conflict environments: Methodological challenges and snowball sampling' (2011) 48 *JPR* 423, 427; The Carter Center, 'Liberia (2019)' *The Carter Center* [online]; Liberia Association of Psychosocial Services, 'About LAPS (2016)' *LAPS* [online].

²³ Rebecca Campbell et al., 'Training Interviewers for Research on Sexual Violence: A Qualitative Study of Rape Survivors' Recommendations for Interview Practice' (2009) 15 *VAW* 595, 606-607.

²⁴ Preparation included familiarity with the Liberian context such as socio-cultural norms and taboos around sex. See the Research Ethics Application for the full ethics procedures in place around this study including issues such as secure data storage and self-care measures for the Researcher, Rebecca Campbell et al., (n23) 602-603; Myriam Denov (n21) 324.

²⁵ Rebecca Campbell et al., (n23) 602; Francoise Roth, Tamy Guberek, and Amelia Hoover Green, *Using Quantitative Data to Assess Conflict-Related Sexual Violence in Colombia: Challenges and Opportunities* (Benetech 2011) 36; Khairul Noor (n17) 1604.

²⁶ See Annex 4 for an example question set; Marie-Claire Omanyondo, *Sexual and Gender-Based Violence and Health Facility Needs Assessment (Montserrado and Bong Counties) Liberia* (World Health Organisation 2004) 8.

²⁷ Kathryn Roulston and Stephanie Anne Shelton, 'Reconceptualizing Bias in Teaching Qualitative Research Methods' (2015) 1 *QA* 1, 8.

²⁸ Nissim Cohen and Tamar Arieli (n22) 426-427.

²⁹ Time, budget and security constraints as well as logistical challenges of the Liberian rainy season meant that people beyond the geographical and social reach of the Gatekeeper NGO could not be included, Nissim Cohen and Tamar Arieli (n22) 427-428; Marie-Claire Omanyondo (n26) 8.

³⁰ There can be selection bias from participants who are people willing to take part, owing to the creation of missing data from people who cannot or will not speak. However, the small qualitative nature of the study makes such missing data less of a concern. For a discussion of selection bias, see the use of non-random convenience sampling in Marie-Claire Omanyondo's WHO study of sexual violence in Montserrado and Bong Counties, Marie-Claire Omanyondo (n26) 12; Nissim Cohen and Tamar Arieli (n22) 428-429.

³¹ Francoise Roth, Tamy Guberek, and Amelia Hoover Green (n25) 36.

appropriate owing to the nature of the research as a qualitative study focused on personal opinions around justice for CRSV.³²

Full and informed consent was obtained before the interviews, raising concerns around asking participants to sign a form which they could not read and necessitating verbal consent procedures.³³ Some people worried that they would not know the answers to questions and were reassured that the questions did not have correct or incorrect answers, but rather that they were asking for opinions. The interviews were conducted in English and Liberian English, which at times required interpretation. Interpretation was provided by the same individual at every interview except one, where no interpreter or chaperone was required.³⁴ Alongside linguistics the interpreter performed a cultural role. For example, providing a formal introduction where required and accompanying the researcher where it would be inappropriate for a female to be sitting alone and interviewing a male on the issue of justice for sex crimes.

All of the participants were happy to be audio recorded and the recordings were transcribed by the researcher.³⁵ Analysis of the transcripts was supplemented by fieldnotes, especially on media content regarding justice for conflict-related crimes and the Extraordinary Criminal Tribunal, which has been recommended by the TRC.³⁶ At the time of the interviews in September 2018, there was significant Liberian media attention and public debate around justice for war crimes.³⁷ With attention heightened around the possibility of an Extraordinary Criminal Tribunal, one challenge was the perceived positionality of the researcher.³⁸ Conducting this research as a white-British researcher offered the advantage of having no ethnic-tribal association nor connections to ex-combatants or other community members, which could have been of concern to participants.³⁹ Some cultural issues around discussing sex and justice for CRSV were also lessened due the social distance between the researcher and the community.⁴⁰ Disadvantages included initial assumptions by some participants due to the high prevalence of foreign aid programmes in Liberia that the researcher might be able to facilitate access to assistance.⁴¹ The parameters of the study were made clear prior to participants agreeing to take part, including that there was no capacity to provide material gain.

Limitations of the study include missing data such as the views of accused individuals. Conducting interviews with persons who are accused of CRSV was not possible due to concerns such as the possibility of interviewees incriminating themselves and the perceived danger where accused persons were not in custody. Subsequently, there is specific missing data. As TJMs should operate fairly and effectively with accused persons genuinely engaged in the process, their perspectives would prove instructive in future

³² Françoise Roth, Tamy Guberek, and Amelia Hoover Green (n25) 24.

³³ The participants were supported by an interpreter provided by the Gatekeeper NGO when going through the consent form and participant information sheet. See Annex 2 for the Consent Form, and Annex 3 for the Participant Information Sheet. One participant gave verbal consent and also wished to make an X on a consent form as they had no signature.

³⁴ Having the same interpreter throughout the data collection process minimised variation. The Interpreter was very experienced having regularly performed similar work and was fully briefed on the role, the aims, sensitivities, confidentiality, limits and implications of the research, Rosalind Edwards, 'A critical examination of the use of interpreters in the qualitative research process' (1998) 24 *JEMS* 197, 200, 203.

³⁵ The data does not include found quantitative data such as types of violence in an amount that is of statistical relevance, Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis* (London: Sage Publications 2006) 70.

³⁶ The media contextualised the people, the events, and constructed narratives, Frida Moller, 'News Reports Versus Written Narratives: Collecting Information Using Different Types of Empirical Sources' in Kristine Hoglund and Magnus Oberg (eds.) *Understanding Peace Research: Methods and Challenges* (Oxon: Routledge 2011) 85.

³⁷ See for example, William Harmon, 'War Crimes Court Liberia Campaign Intensifies at US Congress (11 September 2018)' *Liberian Daily Observer* [online]; Front Page Africa, 'Should War-Time Crimes be Punished in Liberia Today? (3 September 2018)' *FPA* [online].

³⁸ Kathy Charmaz (n35) 67; Kathryn Roulston and Stephanie Anne Shelton (n27) 8.

³⁹ Irma Specht (n8) 118.

⁴⁰ Shana Swiss et al., 'Violence Against Women During the Liberian Civil Conflict' (1998) 8 *JAMA* 625, 626.

⁴¹ Irma Specht (n8) 118.

research.⁴² Additionally, whilst the participants came from different locations and ethnic groups, the limited sample size means that it was not possible to explore differing perspectives which may exist between different population groups. Despite this, the incorporation of empirical research has strengthened and enriched this thesis. As acknowledged above, it is essential that the use of TJMs for CRSV is considered inclusively of the voices and views of affected communities. By speaking to victims, community leaders, officials and other stakeholder groups, it was possible to draw practical and pragmatic conclusions which are also mindful of the needs of victims, including what might constitute satisfying justice for CRSV.

⁴² On this issue, the thesis relied on secondary data including that from previous uses of TJMs in other states, Phil Clark, 'Hybridity, holism, and traditional justice: the case of the Gacaca courts in post-genocide Rwanda' (2007) 39 *GWIL* 765, 803; Brynna Connolly (n5) 246.

Chapter 4: Challenges Associated with Conflict-Related Sexual Violence

Similar to many armed conflicts, the Liberian Civil Wars were marked by high levels of CRSV which often intersected with other crimes. Improving responses to CRSV requires understanding the nature of the crimes as well as addressing their impacts. This includes acknowledging complex dynamics such as where children were forcibly recruited into armed groups and made to commit acts of sexual violence, or where individuals committed crimes against their own community.¹ A person may have been a victim, witness, or perpetrator of CRSV (or more than one of these) at the same time or at different times during an armed conflict. For example, former child soldiers may be victims of CRSV and require justice, whilst at the same time, they may have created victims who also deserve justice. Formal courts are not by themselves enough as they cannot address the range of impacts which can arise from CRSV, such as the destruction of communities. Supplementing formal prosecutions and facilitating access to reparations programmes as well as alternate forms of redress through appropriate models of traditional justice may therefore be an essential aspect of improving responses to CRSV.

4.1 Defining conflict-related sexual violence

'Conflict-related sexual violence' is conceptualised differently by different researchers, civil society, legal jurisdictions and the UN.² The term gained prominence following its use in UN resolutions and continues to form the basis for an annual report on CRSV from the UN Secretary-General.³ Inconsistency appears as some studies define CRSV based on the identity of involved individuals, whilst others determine it temporally or geographically.⁴ CRSV is also used interchangeably with other terms including 'sexualised war violence', 'sexual violence in conflict' and 'wartime rape'.⁵ These terms are often defined differently or left undefined, the same term may be used in different ways or to refer only to rape, and terms may be used subject to stereotypes.⁶ For example, the idea that CRSV is synonymous with rape is inaccurate and perpetuates the harmful idea that rape is the only act of sexual violence: other such stereotypes include the idea that CRSV is exclusively perpetrated against female civilians by adult male soldiers.⁷

¹ Liberian Truth and Reconciliation Commission *Volume One: Preliminary Findings and Determinations* (Republic of Liberia Truth and Reconciliation Commission, 2009) 62.

² UNSC Report of the Secretary-General on CRSV (30 March 2021) UN Doc S/2021/312 [5]; Kirsten Campbell, 'Producing Knowledge in the Field of Sexual Violence in Armed Conflict Research: Objects, Methods, Politics, and Gender Justice Methodology' (2018) 25 *SP* 469, 471; Anette Bringedal Houge, 'Sexualized war violence. Knowledge construction and knowledge gaps' (2015) 25 *AVB* 79, 82; Amnesty International 'Wounds That Burn Our Souls' *Compensation for Kosovo's Wartime Rape Survivors, But Still No Justice* (Easton Street, London: Amnesty International 2017) 5; Dr Denis Mukwege Foundation 'Forms of wartime sexual violence' (2019) *Dr Denis Mukwege Foundation* [online]; Human Rights Watch 'Sexual violence in conflict' (2019) *HRW* [online].

³ UNSC Report of the Secretary-General on CRSV (29 March 2019) UN Doc S/2019/280 [4]; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [1]; UNSC Report of the Secretary-General on CRSV (15 April 2017) UN Doc S/2017/249 [2]; See UNSC Resolution 1820 (2008) (19 June 2008) UN Doc S/RES/1820; UNSC Resolution 1889 (2009) (5 October 2009) UN Doc S/RES/1889; UNSC Resolution 1960 (2010) (16 December 2010) UN Doc S/RES/1960.

⁴ Francoise Roth, Tamy Guberek, and Amelia Hoover Green, *Using Quantitative Data to Assess Conflict-Related Sexual Violence in Colombia: Challenges and Opportunities* (Benetech 2011) 29.

⁵ Evelyn Kamau, 'Domestic Adjudication of Sexual and Gender-Based Violence in Armed Conflict: Considerations for Prosecutors and Judges' (2011) 4 *AJLS* 85, 86; Kirsten Campbell (n2) 470-471; Anette Bringedal Houge (n2) 81.

⁶ Kirsten Campbell (n2) 470; Anette Bringedal Houge (n2) 81-82; Lotte De Schrijver et al., 'Prevalence of sexual violence in migrants, applicants for international protection, and refugees in Europe: a critical interpretive synthesis of the evidence' (2018) 15 *IJERPH* 1979, 1992.

⁷ Jerker Edström, Chris Dolan, Thea Shahrokh, with David Onen, *Therapeutic Activism: Men of Hope Refugee Association Uganda Breaking the Silence over Male Rape in CRSV* (Institute of Development Studies 2016) 6-7; Ellen Gorris 'Invisible victims? Where are male victims of CRSV in international law and policy?' (2015) 22 *EJWS* 412, 414; Rosanne Anholt 'Understanding sexual violence in armed conflict: cutting ourselves with Occam's razor'

Reported figures around CRSV may also be distorted where studies have separately reported rape, gang-rape, vaginal or anal penetration with an object and internal body cavity searches including vaginal or anal penetration with fingers. By international legal definitions, these acts may all constitute the crime of rape.⁸ Similarly, so-called transactional sex or being 'compelled to engage in sex in order to receive something such as food, water, protection, for your family or other reasons' can be conflated with sex work.⁹ The demonstrable lack of conceptual clarity and resulting inconsistency poses challenges for policy makers, researchers, the third sector and members of the press who are reviewing or collating secondary data.¹⁰

Legal definitions of sexual violence could provide some guidance. In international criminal law, the Rome Statute has provided gender-neutral definitions of acts of CRSV.¹¹ However, the Rome Statute is a treaty resulting from political negotiations which culminated in 1998, and it does not explicitly criminalise all conduct: notably absent are forced abortion and forced marriage.¹² The ICC has since developed forced marriage as a stand-alone crime through its jurisprudence in *Ongwen*, where the Prosecutor charged forced marriage as an other inhumane act under article 7(1)(k).¹³ There remained a need to distinguish forced marriage from the crime of sexual slavery, with the Chamber noting that its central element is the imposition of 'marriage' on the victim.¹⁴ Yet the Rome Statute has not been universally ratified and even State Parties have retained variations in their domestic legislation.¹⁵ It therefore does not represent the approach taken by all states at the domestic level.¹⁶ Basing a definition of CRSV on international criminal law approaches may therefore not explicitly acknowledge some common forms of conduct, nor be applicable within each domestic jurisdiction. This is particularly the case if treaty-based approaches such as the Rome Statute are drawn upon.

(2016) 6 *JiHA* 1, 4; Dara Kay Cohen, 'Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War' (2013) 65 *WP* 383, 404.

⁸ Marie-Claire Omanyondo, *Sexual and Gender-Based Violence and Health Facility Needs Assessment (Montserrado and Bong Counties) Liberia* (World Health Organisation 2004) 16-18.

⁹ UNAIDS 'Transactional sex and HIV risk: from analysis to action' (Geneva: Joint United Nations Programme on HIV/AIDS and STRIVE 2018) 4-5; Marie-Claire Omanyondo (n8) 16; Françoise Roth, Tamy Guberek, and Amelia Hoover Green (n4) 28; Kirsten Johnson et al., 'Association of Combatant Status and Sexual Violence with Health and Mental Health Outcomes in Postconflict Liberia' (2008) 6 *JAMA* 676, 680.

¹⁰ Liberia experienced sensationalist international media coverage of the number of women raped during the armed conflicts, which often misrepresented one World Health Organisation study, Marie-Claire Omanyondo (n8) 16; Kirsten Campbell (n2) 470; Anette Bringedal Houge (n2) 81; Dorothea Hilhorst and Nynke Douma, 'Beyond the hype? The response to sexual violence in the Democratic Republic of the Congo in 2011 and 2014' (2018) 42 *D* 79, 87.

¹¹ Rome Statute of the International Criminal Court (1998); International Criminal Court, *Elements of Crimes* (The Hague: International Criminal Court 2011).

¹² Forced pregnancy is included but was contentious during negotiations as State Parties were worried that the Court would then be able to hold them accountable for their domestic policies on abortion, see Rome Statute of the International Criminal Court (1998); Rosemary Grey, 'The ICC's First 'Forced Pregnancy' Case in Historical Perspective' (2017) 15 *JICJ* 905, 921.

¹³ Forced marriage was first distinguished from sexual slavery by the Special Court for Sierra Leone, *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu* (Judgement) SCSL-04-16-T (20 June 2007); *Prosecutor v. Dominic Ongwen* (Decision on the confirmation of charges against Dominic Ongwen) ICC-02/04-01/15 (23 March 2016) [87]; Valerie Oosterveld, 'Gender and the Charles Taylor Case at the Special Court for Sierra Leone' (2012) 19 *WMJWL* 7, 15.

¹⁴ This means that forced marriage carries additional harms beyond sexual slavery, particularly, the violation of the right to consensually marry and establish a family, *Prosecutor v. Dominic Ongwen* (Decision on the confirmation of charges against Dominic Ongwen) ICC-02/04-01/15 (23 March 2016) [93]-[94]; Hannah Baumeister, *Sexualised Crimes, Armed Conflict and the Law: The International Criminal Court and the Definitions of Rape and Forced Marriage* (Abingdon, Oxon: Routledge 2018) 2000; Annie Bunting, 'Forced Marriage' in *Conflict Situations: Researching and Prosecuting Old Harms and New Crimes* (2012) 1 *CJHR* 165, 179-180; Valerie Oosterveld and Patricia Viseur Sellers 'Issues of Sexual and Gender-Based Violence at the ECCC' in Simon Meisenberg and Ignaz Stegmüller (eds.) *The Extraordinary Chambers in the Courts of Cambodia: Assessing their Contribution to International Criminal Law* (The Hague: Asser Press 2016) 331.

¹⁵ There are 123 States Parties, plus Sudan voting to ratify the Rome Statute in August 2021, France24 'Sudanese cabinet votes to back International Criminal Court (3 August 2021)' *France24* [online]; International Criminal Court 'The States Parties to the Rome Statute' *ICC* [online].

¹⁶ Kirsten Campbell (n2) 471.

Domestic legal definitions of CRSV raise problems of disparity, as domestic jurisprudence is often related to local perceptions around sex and gender.¹⁷ Variation exists between states as their legislation is context specific. There can also be variation within a state where CRSV is experienced or perceived differently between regions or communities.¹⁸ Providing a definition of CRSV based on a consensus from domestic jurisdictions where it exists, or the most frequently provided for acts, is one possible approach. However, this may exclude acts which are less frequently provided for at the domestic level (or which remain contentious), such as forced pregnancy. As the empirical research was conducted in Liberia, a definition could arise from Liberian domestic jurisprudence. However, this approach would limit the external applicability of this thesis as the overarching definition of CRSV must not be contextually limited. Ultimately, reliance on domestic legal definitions does not resolve the conceptual difficulties and disparity which exists around CRSV.

To resolve these issues this thesis adopts the UN Secretary-General's definition of CRSV. The UN definition has been constructed over the last seven years to encompass documented conduct and reflect the nature of the crimes.¹⁹ This definition contains a list of acts which is applicable across the globe. It also explicitly recognises forced marriage and forced abortion. In 2021 the UN Secretary-General defined CRSV as:

'rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict'.²⁰

The UN Secretary-General clarifies what is meant by 'linked to a conflict' and the definition encompasses targeting based on the real or perceived identity of the victim:

'This link may be evident in the profile of the perpetrator, who is often affiliated with a State or non-State armed group, which includes terrorist entities or networks; the profile of the victim, who is frequently an actual or perceived member of a persecuted political, ethnic or religious minority, or targeted on the basis of actual or perceived sexual orientation or gender identity; the climate of impunity, which is generally associated with State collapse; cross-border consequences such as displacement or trafficking; and/or violations of the provisions of a ceasefire agreement. The term also encompasses trafficking in persons for the purpose of sexual violence and/or exploitation, when committed in situations of conflict'.²¹

The inclusive definition of the UN Secretary-General provides for a broad range of acts, perpetrators, victims and circumstances whilst being specific enough to apply to ongoing situations. It provides clarity on crucial issues such as which acts are included within the term and provides criteria around what makes these acts conflict-related. The defined link encompasses both the instability in between the two Liberian Civil Wars (1997-1999) and the CRSV which was committed in the aftermath of the official end of the Second Civil War. Specifically, Liberia experienced post-conflict instability after the end of the Civil War in 2003, and Ellen Johnson Sirleaf would not take office as President until 2006.

¹⁷ For example, some states including Liberia criminalise homosexual acts, Liberian Code of Laws Revised, Volume IV, Title 26 (Approved 19 July 1976, Published 3 April 1978) Section 14.73; Kim Seelinger, 'Domestic accountability for sexual violence: The potential of specialised units in Kenya, Liberia, Sierra Leone and Uganda' (2014) 96 *IRRC* 539, 547, 552.

¹⁸ For example Marie-Claire Omanyondo found that Muslim communities had a greater aversion to discussing sexual violence and certain sex acts than Christian communities, Marie-Claire Omanyondo (n8) 12.

¹⁹ UNSC Report of the Secretary-General on CRSV (30 March 2021) UN Doc S/2021/312 [5]; UNSC Report of the Secretary-General on CRSV (29 March 2019) UN Doc S/2019/280 [4]; UNSC Report of the Secretary-General on CRSV (23 March 2015) UN Doc S/2015/203 [2]; UNSC Report of the Secretary-General on CRSV (15 April 2017) UN Doc S/2017/249 [2].

²⁰ UNSC Report of the Secretary-General on CRSV (30 March 2021) UN Doc S/2021/312 [5].

²¹ UNSC Report of the Secretary-General on CRSV (30 March 2021) UN Doc S/2021/312 [5].

4.2 Conflict-related sexual violence during the Liberian Civil Wars

During the Liberian armed conflicts sexual violence was committed by all of the warring parties, including as a tactic of war, terror, punishment and control, as well as being committed beyond the official end of the Second Civil War.²² Acts of CRSV were committed against every population group and have had long-lasting repercussions for the victims.²³ This includes the prolific use of child soldiers and targeting of young people which saw children subjected to acts including rape, sexual slavery, forced prostitution and other forms of sexual violence.²⁴ Children made into child soldiers by armed groups were also forced to commit sex crimes.²⁵ One example was using CRSV for forced recruitment into armed groups and retention, such as by forcing children to rape members of their own family in order to prevent them from trying to return home.²⁶ Armed groups also used forced drug taking as a method of making children 'kill, maim and rape without conscious [sic]'.²⁷ Where girls were taken as child soldiers and used by fighters as bush wives, many were later abandoned or widowed, often leaving them responsible for resulting children.²⁸ Liberia has subsequently faced complex arising issues including the destruction of familial or community relations which mean that some former child soldiers wish to return home but cannot, or dare not. There is a remaining question of how to provide justice for the CRSV which was committed and experienced by former child soldiers, who are themselves victims. The discursive approach of TJMs and associated leadership of respected individuals within communities can therefore make a significant contribution to community relations and acknowledging past crimes.

The CRSV which occurred in Liberia was complex and cannot be homogenised. The TRC engaged with patterns of violence within the armed conflicts, including estimating that they had the highest level of female perpetrators of comparable conflicts and acknowledged that women 'bore a disproportionate amount of suffering'.²⁹ They also found gender-based CRSV, with all armed factions having 'systematically targeted women' based primarily on their gender.³⁰ Women and girls had different experiences depending on their age, identity, and role within the armed conflicts.³¹ Contrary to stereotypical ideas, women and girls were also perpetrators of CRSV.³² Their vulnerability to rape before, during and after recruitment into armed groups meant that some tried to protect themselves by taking a fighter boyfriend or becoming a fighter themselves.³³ Female combatants were more likely than female civilians to be victims, and those forced to perform cooking or housekeeping roles were at greater risk than those in combat roles (male combatants were

²² Sara Cummings, 'Liberia's "New War": Post-Conflict Strategies for Confronting Rape and Sexual Violence' (2011) 43 *ASLJ* 223, 228-229, 234.

²³ Ex-combatants who experienced CRSV during the Liberian armed conflicts have also reportedly experienced worse mental health outcomes, such as post-traumatic stress disorder, Kirsten Johnson et al., (n9) 689.

²⁴ The National Demobilisation, Disarmament, Rehabilitation and Reintegration database has former combatant registrants as young as seven, James Pugel, *What the Fighters Say: A Survey of Ex-Combatants in Liberia* (United Nations Development Programme Liberia, Joint Implementation Unit 2007) 19; Liberian Truth and Reconciliation Commission, *Volume Two: Consolidated Final Report* (Republic of Liberia Truth and Reconciliation Commission, 2009) 211-212, 224.

²⁵ Liberian Truth and Reconciliation Commission (n1) 62; Kenneth Cain, 'The Rape of Dinah: Human Rights, Civil War in Liberia, and Evil Triumphant' (1999) 21 *HRQ* 265, 270-279.

²⁶ Irma Specht, 'Red Shoes: Experiences of Girl Combatants in Liberia' (Geneva: International Labour Office, Programme on Crisis Response and Reconstruction 2006) 29, 77-78; Liberian Truth and Reconciliation Commission (n24) 212.

²⁷ Liberian Truth and Reconciliation Commission (n1) 51.

²⁸ Irma Specht (n26) 63, 67.

²⁹ Liberian Truth and Reconciliation Commission (n1) 51; Mats Utas, 'Victimcy, Girlfriending, Soldiering: Tactic Agency in a Young Woman's Social Navigation of the Liberian War Zone' (2005) 78 *AQ* 403, 405.

³⁰ Liberian Truth and Reconciliation Commission (n24) 222-223; Liberian Truth and Reconciliation Commission (n1) 11, 51, 212.

³¹ Shana Swiss et al., 'Violence Against Women During the Liberian Civil Conflict' (1998) 8 *JAMA* 626, 627-628; Mats Utas (n29) 415, 423; Emmanuel Kwesi Aning, 'Gender and civil war: The cases of Liberia and Sierra Leone' (1998) 1 *CW* 1, 11-13.

³² Irma Specht (n26) 49; Andrea Kaufmann, 'Mobilizing for Improvement: An Empirical Study of a Women's Organization in West Point, Liberia' (2011) 20 *S* 163, 173.

³³ Irma Specht (n26) 16, 33, 54-55; Mats Utas (n29) 415-416.

also more likely than civilian males to have experienced CRSV).³⁴ There were all-female units such as LURD's Women's Artillery Commandos, a fighting force integrated into the structure of the armed group.³⁵ One female former LURD general interviewed by Specht reported uniting and motivating girls to fight because of the shared experience of being raped.³⁶ She explained that they nicknamed their unit 'Mother Unit' because they saw themselves as revenging sexual violations committed against every woman.³⁷ Charles Taylor's forces also recruited women and girls, however, whilst there was a female fighting unit they also fought in mixed units.³⁸ Females in units with men and boys were at greater risk of CRSV, especially rape, than those in female only units.³⁹ Captured female combatants from other armed groups were frequently raped.⁴⁰ CRSV had a significant influence on the pathways taken by female combatants as well as civilians and any effective response is one which acknowledges these patterns of violence.

4.3 Gendered dimensions of conflict-related sexual violence

Gendered dimensions of CRSV are significant as responses, including the role and functionality of TJMs within post-conflict justice efforts, must account for the nature of the crimes and their long-term effects. The gender-based dimensions of CRSV and its impacts have had a devastating effect on the physical, social and economic security of women and girls in Liberia. Their vulnerability is acknowledged by the TRC, which recognised the cumulative effect of a pre-existing patriarchal culture, armed conflicts involving large-scale and extreme forms of sexual violence and ongoing gender-based discrimination.⁴¹ It was further recognised that persistent gender-based issues include the marginalisation of women and the denial of their opportunities for self-actualisation.⁴² Groups using CRSV for gain can also entrench structural discrimination by reducing women and girls to commodities or a form of currency.⁴³ The reduction of women and girls to objects during the armed conflicts combined with impunity around CRSV created a significant shift in Liberian culture which has caused an increase in peacetime sexual and gender-based violence.⁴⁴ Liberia is provided as an example in the 2020 UN Handbook for Field Missions on Preventing and Responding to CRSV, which recognises the 2009 statement of then President Ellen Johnson Sirleaf that the armed conflicts had introduced 'a culture of violence' and specifically that '[r]ape was never a problem for us in our traditional society.

³⁴ Pugel's survey of 590 ex-combatants in 2006 drew its sample from the National Commission on Disarmament, Demobilisation, Rehabilitation, and Reintegration database, and aimed to be representative by gender. Johnson et al., found significantly higher rates among ex-combatants with 42 percent of female ex-combatants reporting CRSV compared to 9 percent of non-combatants, and 33 percent of male ex-combatants compared to 7 percent of non-combatants; Kirsten Johnson et al., (n9) 683, 689; James Pugel (n24) 31; Shana Swiss et al., (n31) 628.

³⁵ Irma Specht (n26) 23, 113.

³⁶ Irma Specht (n26) 22, 33.

³⁷ Irma Specht (n26) 23, 33, 57.

³⁸ All of the armed groups used men, women, boys and girls as soldiers, Irma Specht (n26) 23.

³⁹ One determining factor was the willingness of the commander to allow it coupled with the proximity of fighters to that commander, Irma Specht (n26) 24-25, 51.

⁴⁰ Irma Specht (n26) 51.

⁴¹ Liberian Truth and Reconciliation Commission (n24) 212, 223; Veronica Fynn Bruey, 'Redefining Women's Roles in International and Regional Law: The Case of Pre and Post War Peacebuilding in Liberia' in Seema Shekhawat (ed.) *Gender, Conflict, Peace, and UNSC Resolution 1325* (London: Lexington Books 2018) 33.

⁴² The WHO and the Liberia Institute of Statistics and Geo-Information Services similarly recognised long-standing exclusion of women from political life, their lower social status, limited education and employment opportunities and limited access to medical care, Liberian Truth and Reconciliation Commission (n24) 223-224; Marie-Claire Omanyondo (n8) 4; Liberia Institute of Statistics and Geo-Information Services, *Liberia Demographic and Health Survey 2007* (Monrovia: LISGIS, June 2008) 213-214, 216, 236; Veronika Fuest "This Is the Time to Get in Front": Changing Roles and Opportunities for Women in Liberia' (2008) 107 *AA* 201, 206.

⁴³ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [17], [75]; Alicia Luedke and Hannah Logan "That thing of human rights": discourse, emergency assistance, and sexual violence in South Sudan's current civil war' (2018) 42 *D* 99, 108, 110-112; Sara Davies and Jacqui True, 'Reframing conflict-related sexual and gender-based violence: Bringing gender analysis back in' (2015) 46 *SD* 1, 12.

⁴⁴ Fieldwork interview D2; Katie Tayler-Smith et al., 'Sexual violence in post-conflict Liberia: survivors and their care' (2012) 17 *TMIH* 1356; Patrick Vinck and Phuong Pham, 'Association of exposure to intimate-partner physical violence and potentially traumatic war-related events with mental health in Liberia' (2013) 77 *SSM* 41, 48.

Today it is a serious problem'.⁴⁵ Ongoing sexual and gender-based violence may influence the forms of redress which are sought for CRSV and the willingness or ability of women and girls to speak out.

Gendered social roles also mean that sustenance activities which are seen as the responsibility of women, such as market trading, arable farming and fetching firewood can be disrupted due to CRSV.⁴⁶ Targeting women carrying out these tasks creates both social and economic insecurity by limiting access to resources, increasing female insecurity and preventing women fulfilling their prescribed social roles.⁴⁷ In Liberia, the TRC identified circumstances in which women were particularly vulnerable to CRSV, such as leaving their homes to seek food or assistance and during displacement.⁴⁸ By contrast, men and boys were overrepresented as victims of killing, assault, torture, forced labour and forced recruitment.⁴⁹ The TRC posited that this explains why, despite the significant risks of CRSV, women were seeking food while men 'dared not venture out'.⁵⁰ By forcing people to breach prescribed social roles or expectations, CRSV creates social insecurity through its destructive impact on relationships. This may both influence the use of TJMs as part of efforts to address CRSV by weakening community links, and also require their use in order to provide a forum in which communities can discuss such issues.

Gender-based issues also affect male victims as the open discussion of male experiences of CRSV can be especially problematic where domestic legal frameworks fail to provide for male victims or where they reinforce harmful socio-cultural norms. In peacetime Liberia, the traditional justice system has addressed sexual and gender-based violence concerning situations where the attacker is male and the victim is female.⁵¹ To examine the post-conflict functionality and role of TJMs in Liberia it is necessary to explore both Liberia's domestic legislation and the presence of harmful conceptions of gender, sex and masculinity which may heighten stigma around male victims and make discussion of male CRSV challenging.⁵² The TRC identified two applicable crimes within Liberia's domestic law: rape and sexual assault.⁵³ However, Liberia's Penal Code provides two definitions of the act of rape following an amendment in 2005. One for offences committed on or after 17 January 2006, and one for acts committed prior to that date.⁵⁴ Whilst the definition for offences on or after 17 January 2006 is more progressive and gender neutral, it is the old

⁴⁵ United Nations, 'Handbook for Field Missions on Preventing and Responding to Conflict-Related Sexual Violence' (New York, United Nations 2020) 7.

⁴⁶ This pattern has been seen in the CAR, the DRC, Myanmar, Nigeria, South Sudan and the Sudan, UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [17]; Emma Sidebotham, Joanne Moffatt, and Kevin Jones, 'Sexual violence in conflict: a global epidemic' (2016) 18 OAG 247.

⁴⁷ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [17], [57], [59]; Emma Sidebotham, Joanne Moffatt, and Kevin Jones (n46) 247.

⁴⁸ Liberian Truth and Reconciliation Commission (n24) 222.

⁴⁹ Liberian Truth and Reconciliation Commission (n24) 226.

⁵⁰ Veronika Fuest (n42) 209-210; Liberian Truth and Reconciliation Commission (n24) 226.

⁵¹ Freida McCormack, 'Prospects for Accessing Justice for Sexual Violence in Liberia's Hybrid System' (2018) 7 *IJSD* 1, 5, 7, 11.

⁵² Sandesh Sivakumaran, 'Sexual Violence Against Men in Armed Conflict' (2007) 18 *EJIL* 253, 255; Ellen Gorris (n7) 419; Gabrielle Ferrales et al., 'Gender-Based Violence Against Men and Boys in Darfur: The Gender-Genocide Nexus' (2016) 30 *GAS* 565, 572-573; United Nations High Commissioner for Refugees, *Working with Men and Boy Survivors of Sexual and Gender-Based Violence in Forced Displacement* (Geneva: United Nations High Commissioner for Refugees 2012) 3-4, 6; Kim Seelinger (n17) 560; Karen Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts' (2008) 39 *SD* 55, 59.

⁵³ Sexual Assault has one definition in the Penal Code as a second degree misdemeanour. A person commits sexual assault if they knowingly have 'sexual contact with another person' or causes such other to have 'sexual contact' in specified circumstances, again conditions exist around spousal attacks, Liberian Code of Laws Revised, Volume IV, Title 26 (Approved 19 July 1976, Published 3 April 1978) Section 14.77, Liberian Truth and Reconciliation Commission (n1) 34.

⁵⁴ *Act to Amend the New Penal Code Chapter 14 Sections 14.70 and 14.71 and to Provide for Gang Rape* 29 December 2005, Amended texts: Liberian Code of Laws Revised, Volume IV, Title 26 (Approved 19 July 1976, Published 3 April 1978) Sections 14.70 and 14.71 are repealed and are replaced by new sections which introduce the offence of gang rape into the Model Penal Code 1956; Veronica Fynn Bruey (n41) 32; Sara Cummings (n22) 236; Jonathan Compton, 'The Peril of Imposing the Rule of Law: Lessons from Liberia' (2014) 23 *MJIL* 47, 65.

provision which applied at the time of the Civil Wars.⁵⁵ The definition of rape for offences before 17 January 2006 is gendered, with high thresholds and specific circumstances which do not account for male victims, spousal rape or female perpetrators.⁵⁶ Additionally, domestic provisions which are not explicitly acknowledged by the TRC include: gross sexual imposition (applicable on or before 16 January 2006); aggravated involuntary sodomy; involuntary sodomy; corruption of minors; and sexual abuse of wards.⁵⁷

Provisions which criminalise homosexual acts, such as voluntary sodomy, may deter male victims from bringing cases if there is lack of clarity around CRSV, misperceptions around other provisions, harmful conceptions of masculinity and honour, and a potential reinforcing of stigma or taboos.⁵⁸ Criminalising homosexual acts can also add to barriers faced by male victims where harmful or homophobic conceptions of sexuality and gender exist. Subsequently, male victims may fear accusations of homosexuality or of facing prosecution themselves if they do not prove lack of consent, or if they fail to prove that they were the victim of a crime.⁵⁹ For many male victims, issues such as homophobia mean that they are unable to access any form of justice or redress, and that the attackers are operating with impunity. Due to the possible repercussions, males may be unable or unwilling to speak openly within their communities about their experiences of CRSV and the use of TJMs to address male experiences may not be possible or safe at this time. Carefully defining the crimes which each mechanism will address is therefore important for victims of CRSV amid potentially problematic domestic legislation. Accordingly, domestic legislation influences the reporting of CRSV, and in Liberia, will potentially influence the role of traditional justice (namely, through the National Palava Hut Commission) as speaking out about male experiences of sexual violence may be especially challenging for victims.

4.4 The stigma around conflict-related sexual violence

Victims of CRSV in Liberia and around the globe demonstrably face multiple forms of stigma and associated discrimination, with variation occurring both between states and within states due to local attitudes towards sex and gender.⁶⁰ Stigma exacerbates other impacts of CRSV and is a persistent challenge for response efforts. It is therefore one of the most significant challenges for the related role and functionality of TJMs. Sarah Murray et al., define stigma as a process in which a powerful difference is 'identified, labelled, stereotyped, and used to socially distance, ultimately resulting in discrimination'.⁶¹ This socially constructed process is at the same time being 'internalised and lived' by the

⁵⁵ Liberian Code of Laws Revised, Volume IV, Title 26 (Approved 19 July 1976, Published 3 April 1978) Section 14.70.

⁵⁶ Liberian Code of Laws Revised, Volume IV, Title 26 (Approved 19 July 1976, Published 3 April 1978) Section 14.70; Liberian Truth and Reconciliation Commission (n24) 34; Kim Seelinger (n17) 560-561.

⁵⁷ Liberian Code of Laws Revised, Volume IV, Title 26 (Approved 19 July 1976, Published 3 April 1978) Section 14.71, 14.72, 14.73, 14.75, 14.76, 14.78, 14.79.

⁵⁸ Liberian Code of Laws Revised, Volume IV, Title 26 (Approved 19 July 1976, Published 3 April 1978) Section 14.73.

⁵⁹ Criminalisation of adultery may similarly make female victims of rape vulnerable to prosecution where they fail to prove lack of consent, Ugandan Penal Code, Penal Code Act 1950, Article 154; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19]; UNSC Report of the Secretary-General on CRSV (29 March 2019) UN Doc S/2019/280 [19]; Philipp Schulz, 'Examining Male Wartime Rape Survivors' Perspectives on Justice in Northern Uganda' (2020) 29 *SLS* 19, 42.

⁶⁰ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19]; Kim Seelinger (n17) 547, 552; Leah Woolner et al., 'I Asked Myself If I Would Ever Love My Baby': Mothering Children Born of Genocidal Rape in Rwanda' (2018) 25 *VAW* 703, 710, 713; Lisa Davis, 'Iraqi Women Confronting ISIL: Protecting Women's Rights in the Context of Conflict' (2016) 22 *CUNY* 101, 120; Amnesty International, 'We Need Support, Not Pity' *Last Chance for Justice for Bosnia's Wartime Rape Survivors* (London: Amnesty International 2017) 50; Human Rights and Protection Service (HRPS) of the United Nations Mission in Liberia (UNMIL), 'Addressing Impunity for Rape in Liberia' (HRPS and Office of the United Nations High Commissioner for Human Rights [OHCHR] 2016) 14-17.

⁶¹ Sarah Murray et al., 'Stigma Among Survivors of Sexual Violence in Congo: Scale Development and Psychometrics' (2018) 33 *JIV* 491, 493.

targeted individual.⁶² This section does not propose to be exhaustive; instead it has identified regularly appearing patterns of stigma and discrimination associated with CRSV which must inform responses and can influence the use of TJMs.

CRSV-related stigma can arise in connection with concepts of honour and ideas around female virginity which may extend beyond the victim to include the entire family.⁶³ Families or communities can be more likely to punish the victims than the perpetrators in some situations, with victims facing violence, life-long stigmatisation, rejection, and socio-economic marginalisation.⁶⁴ There is a connection to discriminatory ideas of victim blaming, or the sense that victims are at fault for the sexual violence which they have experienced. This form of stigma is extremely dangerous for women and girls and can lead to honour killings in both confirmed and assumed cases of CRSV.⁶⁵ Repercussions from stigma associated with concepts of honour or loss of virginity which must be mitigated include physical insecurity, discrimination and subsequent reliance on harmful coping mechanisms.⁶⁶ This may necessitate including a socio-cultural element within responses to CRSV which mitigates long-lasting impacts and contributes to combatting stigma: in 2004 Amnesty International found that ten years after the genocide in Rwanda, victims of CRSV often continued to experience very low social status.⁶⁷ Similarly, the lack of support in Liberia has contributed to some victims of CRSV feeling disconnected from wider society eighteen years after the Second Civil War officially ended.⁶⁸ TJMs may then have a role in supporting the reintegration and participation of victims within their communities through the leadership of respected individuals and community leaders.

'[P]eople can see our tears at least then they can be able to know, to us, that we may not be thinking ourselves-- that we are no more normal in this society, we are not important in your society because of what happened.

[...] Saying it is another thing, and then the very same people that I'm trying to share my experience, my past with, they will be the ones to call me names, they will be the ones to laugh at me tomorrow or will forever- you know her? They rape'.⁶⁹

State authorities can either counter or fuel the stigma which leads to discrimination within communities. The most problematic contexts in which to address CRSV are where the government itself discriminates against victims. One commonly occurring example is the treatment of women and girls who have been forcibly taken by terrorist or extremist groups, and who can then face public recriminations by authority figures.⁷⁰ Such actions reinforce stigma and embed wider social views that women and children who are formerly associated with terrorist or extremist groups are always affiliates.⁷¹ The failure of states

⁶² Sarah Murray et al., (n61) 493.

⁶³ Rima Mourrada, Jennifer Schlecht, and Jocelyn DeJong, 'A qualitative study exploring child marriage practices among Syrian conflict-affected populations in Lebanon' (2017) 11 *CAH* 53, 58, 61; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [45].

⁶⁴ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19]; Jerker Edström, Chris Dolan, Thea Shahrokh, with David Onen (n7) 25; Sarah Murray et al., (n61) 493, 505; Leah Woolner et al., (n60) 709; Kim Seelinger (n17) 547, 552.

⁶⁵ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [45], [75]; Lisa Davis (n60) 114.

⁶⁶ Rima Mourrada, Jennifer Schlecht, and Jocelyn DeJong (n63) 58, 61; Veronika Fuest (n42) 210.

⁶⁷ Amnesty International, *Rwanda: 'Marked for Death' Rape Survivors Living with HIV/AIDS in Rwanda* (London: Amnesty International 2004) 5.

⁶⁸ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19]; Fieldwork interviews A6, E2.

⁶⁹ Fieldwork Interview A6, victim of CRSV.

⁷⁰ In 2017, a Somali minister appeared on national television calling 'Al-Shabaab wives and children' 'enemies of the State' and threatened to expel them from Government-controlled towns. In Libya, Nigeria and Somalia returning women and girls have been detained as accomplices, UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19], [62].

⁷¹ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19].

to recognise victims of CRSV can also extend the longevity of negative repercussions, accordingly, the UN continues to advocate for victims of CRSV to be recognised by states as victims of armed conflict who are entitled to redress.⁷² Many victims live in poverty with limited opportunities and may be afraid to seek help due to the fear of stigma, instead turning to harmful coping mechanisms to survive, such as prostitution.⁷³ Twenty-five years after the armed conflict in Bosnia and Herzegovina, victims still face stigma, trauma and exclusion with support services largely delivered by NGOs, reinforcing the idea that CRSV does not require a large-scale social or sustained public sector response.⁷⁴ Notably, where there are failures to acknowledge certain victim groups there are barriers to both justice and support services. This will also be a challenge for the role and functionality of TJMs in relation to CRSV as a lack of formal recognition for victims will likely have a negative influence on responses and could mean that some victims are not recognised as such by communities, or may not be or feel able to speak about their experiences.

Additionally, local conceptions around sex and gender create different experiences of stigma.⁷⁵ In particular, stigma can influence the impacts and expectations around CRSV. For example, the celebration of men released from detention contexts whilst released women may be shamed and rejected due to assumptions that they have been raped in detention.⁷⁶ Accordingly, the fear of stigma and stigma-related discrimination affects different victim groups in different ways. Members of the lesbian, gay, bisexual, transgender and intersex community can also be especially reluctant to report CRSV due to heightened fears of reprisals and stigma which may exist around homosexuality.⁷⁷ Subsequently, reported CRSV may not truly reflect the situation, meaning that stigma can influence the entire response infrastructure and make it inadequate to meet victims' needs.⁷⁸

Persistent related challenges include harmful conceptions of sex and gender which reinforce stigma, for example, the refusal to acknowledge that men can be sexual victims or the perception of penetrative attacks as incompatible with masculinity.⁷⁹ Stigma can have a negative impact on men and boys in the aftermath of CRSV due to deep-rooted taboos around talking about males as victims, which ultimately mean that their experiences are not acknowledged or provided for within responses. This links to the aforementioned issue of failures within response efforts to explicitly acknowledge some victim groups, which can exacerbate the effects of stigma. It also includes the erasure of some victim groups from the narrative, for example, the removal of male experiences from the globally reported narrative in some situations. In September 2020, ahead of a planned UN appearance, Human Rights Watch called for President Weah to 'Showcase Justice on

⁷² Trial International, *Unforgotten: Annual Report on the Prosecution of Sexual Violence as an International Crime* (Trial International 2019) 36; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [87]; UNSC Report of the Secretary-General on CRSV (29 March 2019) UN Doc S/2019/280 [22], [28], [136], [141].

⁷³ Fieldwork interviews A6, B1, E2.

⁷⁴ Amnesty International (n60) 50; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [14], [40], [82]; UNSC Report of the Secretary-General on CRSV (3 June 2020) UN Doc S/2020/487 [21].

⁷⁵ Kim Seelinger (n17) 547, 552.

⁷⁶ As seen in Syria, however, both within Syria and elsewhere CRSV is reportedly committed against both men and women in detention, UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [75]; UNSC Report of the Secretary-General on CRSV (3 June 2020) UN Doc S/2020/487 [57]; Brian Stauffer, 'They Treated us in Monstrous Ways': Sexual Violence Against Men, Boys, and Transgender Women in the Syrian Conflict (29 July 2020) *Human Rights Watch* [Online].

⁷⁷ In Colombia, the 2020 UNSG report found 365 victims, 35 were men and 3 people identified as lesbian, gay, bisexual, transgender, queer or intersex. The report acknowledged victims are often reluctant to come forward. CRSV is the primary reason cited by LGBTI persons for fleeing Syria, UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19], [26]-[27], [34], [76]; UNSC Report of the Secretary-General on CRSV (29 March 2019) UN Doc S/2019/280 [19], [36]-[37]; UNSC Report of the Secretary-General on CRSV (3 June 2020) UN Doc S/2020/487 [24]-[25]; Brian Stauffer (n76).

⁷⁸ Amnesty International (n60) 50.

⁷⁹ Solange Mouthaan, 'Sexual Violence against Men and International Law - Criminalising the Unmentionable' (2013) 13 *ICLR* 665, 668-669; Jerker Edström, Chris Dolan, Thea Shahrokh, with David Onen (n7) 6-7; Ellen Gorris (n7) 414; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19].

[the] International stage' to advance efforts to establish an Extraordinary Criminal Tribunal, stating: 'Women and girls were subjected to horrific sexual violence including gang rape, sexual slavery, and torture'.⁸⁰ There was no mention of males. Where male experiences of CRSV are not acknowledged at all, regardless of their proportion within reported acts of CRSV, victims are frequently left unsupported as appropriate specialised services are often inadequately or rarely provided.⁸¹

'Justice can be done for everybody not only women per se. Because even some women they not really face the problem during the war time badly more than the men, some men they really bad through problems and things. More than some women, so I believe that justice can be done for everybody'.⁸²

Responses to CRSV must therefore ensure that they recognise and account for stigma as well as encompass all victim groups. This includes children born of rape who may experience long-lasting effects of stigma throughout their lives. The association of being a child born of rape, or in connection with a certain group or event, can significantly outlast the armed conflict and can affect the ability of victims to access redress.⁸³ This has been seen in Colombia, where children of conflict-related rape have been legally recognised as victims, but accessing redress without being stigmatised remains a challenge.⁸⁴ Fear of stigma can prevent victims from accessing support both from civil society and the state for a long period of time, with hesitation to access services also affecting mothers if it means declaring a child born of rape.⁸⁵ Accordingly, whilst addressing stigma is important, it is vital to find ways to respond to CRSV despite the presence of stigma.

This may include finding ways which allow victims to confidently seek redress, such as providing confidential spaces in which people may access assistance.⁸⁶ One participating victim of CRSV called for equal access to justice and recognised the suffering of all victim groups, but argued that the difficulty of speaking on CRSV owing to taboos and stigma generates the need for a specialised forum alongside state courts and hearings within TJMs wherein women can raise the harms they have suffered.⁸⁷ Such a forum – or holding subject specific hearings within TJMs or other justice mechanisms – may be important for victims who wish to remain unknown within their communities owing to fears of stigma, humiliation, rumours, gossip, name-calling or ridicule by the people with whom they try to share their experiences.⁸⁸ Additionally, providing such opportunities within communities may allow populations to discuss crimes which they have experienced, with community leaders potentially having a vital role within efforts to mitigate CRSV-related stigma. For example, efforts to counter stigma, foster family reunification and prevent the out-casting of victims following CRSV committed against populations in Iraq have included declarations

⁸⁰ Elise Keppler, 'Liberia's President Should Showcase Justice on International Stage (17 September 2020)' *Human Rights Watch* [Online].

⁸¹ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19]; Brian Stauffer (n76); Smriti Brar, 'Revisiting the Intricacies of Sexual Violence in Armed Conflict: A Jurisprudential Perspective' (2017) 16 *YBIHRL* 212, 222; Philipp Schulz, 'Transitional Justice for Male Victims of Conflict-Related Sexual and Gender-Based Violence?' (2015) 6 *IJRLTJHR* 39, 45-46.

⁸² Fieldwork Interview A4, victim of CRSV.

⁸³ Myriam Denov and Atim Angela Lakor, 'When war is better than peace: The post-conflict realities of children born of wartime rape in northern Uganda' (2017) 65 *CAN* 255, 263.

⁸⁴ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19].

⁸⁵ Consequences of declaring the birth can be significant: local officials in Iraq marked birth certificates with 'ISIL terrorist' and denoted children as Muslim regardless of the mother's religious denomination if they were suspicious about parentage, UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [1], [34], [43]; Susan Harris Rimmer, 'Orphans or Veterans: Justice for Children Born of War in East Timor' (2007) 42 *TILJ* 323, 330; Lisa Davis (n60) 144-145.

⁸⁶ Sunneva Gilmore, Julie Guillerot and Clara Sandoval, 'Beyond the Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes' (Reparations, Responsibility and Victimhood in Transitional Societies, March 2020) 33.

⁸⁷ Fieldwork interviews A6.

⁸⁸ Fieldwork interviews A6, E2.

by religious leaders.⁸⁹ Simultaneously, in November 2017 the Iraq women's parliamentary committee quashed proposed amendments to Personal Status Law No. 188 (1959) in relation to polygamy and lowering the age of marriage.⁹⁰ It is then essential that responses to CRSV counter its impacts at all levels and include people from the diverse roles and communities within an affected state. Community leaders may therefore be at the forefront of these efforts and TJMs may have an important role within responses to CRSV as mechanisms through which victims can access further information on responses to CRSV, raise issues which they are facing and access redress.

4.5 The impact of conflict-related sexual violence on communities

The use of TJMs and their functionality within post-conflict justice will be influenced by the destructive impact which CRSV can have on communities, especially the destruction of social roles and relationships. Community links may be broken by activities which bring CRSV into homes or involve acts being committed in front of family or community members, such as pillaging and forced evictions to gain control of resources.⁹¹ In Liberia and elsewhere, including the Democratic Republic of the Congo, violations have included raping victims in front of their relatives, removing foetuses from pregnant women and forced incest.⁹² Committing such acts publicly spreads terror and breaks down relationships through violating taboos and personal boundaries which creates social insecurity by damaging family and community structures.⁹³ CRSV can therefore have a collective impact on communities as well as re-shaping socio-cultural norms. Accordingly, whilst the functioning of TJMs may be influenced by weakened community links, the role of TJMs in rebuilding community relations in the wake of CRSV may be especially valuable.

CRSV can influence communities through changing social dynamics and population distribution due to displacement, which occurs both as a deliberate goal and a by-product of CRSV.⁹⁴ Forced displacement has been driven by CRSV across the globe including in Colombia, Iraq, Myanmar, Syria and the Horn of Africa.⁹⁵ Responses to CRSV must therefore also address the needs of displaced people amid large-scale humanitarian crises.⁹⁶ Victims may be displaced for years due to conflict, instability and impunity around or fear of CRSV.⁹⁷ Women have reported being reluctant to return to areas controlled by forces they have fled and returning refugees have experienced further CRSV, including in

⁸⁹ In 2020, religious leaders from communities across Iraq released an Inter-Faith Statement which underlined their commitment to supporting survivors of the crimes committed by Da'esh and ensuring their reintegration into their respective communities, Inter-Faith Statement on the Victims of Da'esh (United Nations, 2020); UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [45]; Sylvia Wittmer, 'Treatment of Female Captives and Rape Victims in a Post-Conflict Scenario – A Religious Perspective' (2016) 46 *WIAW* 151, 168.

⁹⁰ Human Rights Watch 'Iraq: Don't Legalize Marriage for 9-Year-Olds: Draft Law Huge Step Back for Women, Girls (11 March 2014)' *HRW* [online]; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [45].

⁹¹ See UNSC Resolution 2331 (2016) UN Doc S/RES/2331; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [9], [16]; UNSC Report of the Secretary-General on CRSV (15 April 2017) UN Doc S/2017/249 [8].

⁹² UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [36], [37].

⁹³ Sarah Murray et al., (n61) 506; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [9].

⁹⁴ Kenny Coman and Nikita Malik, 'Trafficking Terror and Sexual Violence: Accountability for Human Trafficking and Sexual and Gender-Based Violence by Terrorist Groups under the Rome Statute' (2019) 52 *VJTL* 43, 53; Christine Gibbons, 'CEDAW, the Islamic State, and Conflict-Related Sexual Violence' (2018) 51 *VJTL* 1423, 1429.

⁹⁵ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [15].

⁹⁶ Typical needs in displacement contexts include: protection, sustenance, shelter, sanitation, health care, education, child-friendly spaces and programmes for resettlement and community empowerment, UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [15], [47], [55], [75]. [80]; UNHCR 'Operational Update: Jordan' (January 2019) 1-3.

⁹⁷ This can be seen in Syria, Iraq, Darfur, and Myanmar where Rohingya refugees have highlighted impunity around CRSV as a particular concern, UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [15], [70]; Zoltan Barany, 'Where Myanmar went wrong: from democratic awakening to ethnic cleansing' (2018) 97 *FA* 12-13.

Burundi and Darfur.⁹⁸ Other causes of extended displacement include victims being unable to return home if they have been rejected by their families or communities.⁹⁹ As has been the case for some Liberians, victims may become internally displaced for long time periods or they may be forced to relocate. Such disruption to communities can influence the functioning of TJMs, for example, by removing long-standing community leaders. However, the post-conflict use of adapted TJMs (such as the Rwandan Gacaca system and the proposed Liberian National Palava Hut Commission) may, owing their altered nature, not need to rely so heavily on long-standing community links.¹⁰⁰

Displaced people also often face ongoing risks of CRSV in transit or camps.¹⁰¹ In Liberia, there were 35 IDP camps and an estimated 500-600,000 IDPs by the end of the Second Civil War.¹⁰² To survive displacement, some young girls turned to harmful coping mechanisms including forms of CRSV such as prostitution and transactional sex, with issues such as sexual extortion by camp officials or traffickers being common.¹⁰³ In 2004 the World Health Organisation (WHO) acknowledged that CRSV was happening within Liberian IDP camps, and that there was 'no adequate means of addressing these issues'.¹⁰⁴ Protection needs are extremely challenging and have yet to be met in any situation meaning displaced people, especially women and girls, continue to experience CRSV.¹⁰⁵ Needs such as providing victim-friendly spaces are also challenging to meet in displacement contexts and victims are often left with little support.¹⁰⁶ Efforts to address CRSV within post-conflict contexts should therefore account for all forms of violence and victims should be able to seek redress for all crimes, including those committed within displacement contexts.

Responses may have to be particularly attune to needs where communities have experienced CRSV as part of ethnic cleansing campaigns, which can be committed on a large scale, require the consideration of ethnic dimensions within responses, and involve acts with long-term impacts such as forced sterilisation and forced pregnancy.¹⁰⁷ CRSV can be a tactic of ethnic cleansing where victims are targeted based on ethnic, religious, political or clan affiliations, often with the intention to forcibly displace the population and damage social structures.¹⁰⁸ Whilst targeting based on identity was seen on a large scale in Liberia, a confirmed example where CRSV became a tactic of ethnic cleansing was seen in Myanmar during 'clearance' operations in October 2016 and August 2017, with sexual violence being used to force the Rohingya community to flee their homeland and prevent

⁹⁸ Zoltan Barany (n97) 12-13; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [15], [70].

⁹⁹ Sarah Murray et al. (n61) 506; Leah Woolner et al., (n60) 709.

¹⁰⁰ Liberian Truth and Reconciliation Commission (n24) 273; Phil Clark, 'Hybridity, holism, and traditional justice: the case of the Gacaca courts in post-genocide Rwanda' (2007) 39 *GWIL* 765.

¹⁰¹ Certain groups are especially at risk of CRSV, for example people with disabilities and girls who have been separated from their caregivers; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [15], [47], [55], [76].

¹⁰² A further 233,264 people were registered with UNHCR as refugees in neighbouring countries with another 350,000 people believed to have crossed borders as unregistered refugees, Neill Wright, Enda Savage and Vicky Tennant, *Real-time evaluation of UNHCR's IDP operation in Liberia* (Geneva: UNHCR Policy Development and Evaluation Service 2007) 7.

¹⁰³ Detention centres in Libya are an ongoing example amid the 'migration crisis' with reported gang-rape and sexual torture, Veronika Fuest (n42) 210; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [15], [47]; Kenny Coman and Nikita Malik (n94) 45; Liberian Truth and Reconciliation Commission (n24) 222-223; Lotte De Schrijver et al., (n6) 1981.

¹⁰⁴ Marie-Claire Omanyondo (n8) 4.

¹⁰⁵ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 provides a breakdown of each situation.

¹⁰⁶ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [57], [59].

¹⁰⁷ UN News 'No other conclusion,' ethnic cleansing of Rohingyas in Myanmar continues – senior UN rights official (6 March 2018) *UN* [online]; Zoltan Barany (n97) 31; Evelyn Kamau (n5) 86; Drazen Petrovic, 'Ethnic Cleansing - An Attempt at Methodology' (1994) 5 *EJIL* 342, 365-358.

¹⁰⁸ As seen in the CAR, the DRC, Iraq, Mali, Nigeria, Somalia and South Sudan, UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [12], [43]; Albert Doja 'Rethinking the policies of mass rapes as a military strategy and instrument of ethnic cleansing' in Inal Tuba and Merrill Smith (eds.) *Rape Cultures and Survivors: An International Perspective* (Santa Barbara, California: Praeger 2018) 39-40.

their return.¹⁰⁹ Whether it is as part of a deliberate campaign such as ethnic cleansing, or whether it occurs as a by-product, the displacement and destruction of communities caused by CRSV is often on a mass scale. The need to address such mass crimes will necessitate the use of all available justice mechanisms, including TJMs, in order to increase the capacity of affected states to provide redress for victims as well as protect domestic justice systems from becoming overwhelmed by the number of cases.

4.6 The need for justice for conflict-related sexual violence: The Liberian example

In Liberia, the need for justice for sex crimes including CRSV has been the subject of consistent activist led campaigns, and has been recognised from the top down. The scale of ongoing problems was underlined in September 2020 when President Weah addressed the first national conference on sexual and gender-based violence.¹¹⁰ Weah highlighted the need to improve and strengthen the enforcement of existing legislation, policies and standards that support the prevention of and response to sexual and gender-based violence, especially rape, child marriage and female genital mutilation.¹¹¹ The conference was convened to seek solutions to the surge of sexual and gender-based violence which has led to the declaration of rape as a national emergency and public protests due to the 'Rape Crisis'.¹¹² The Roadmap on Ending Sexual and Gender Based Violence (2020-2022) was introduced, having been presented by the Inter-Ministerial Taskforce on Anti-Sexual and Gender-Based Violence.¹¹³ However, to fully address Liberia's contemporary issues with sexual violence, there is an urgent need to provide justice and accountability for CRSV. Doing so would support efforts to end the culture of impunity around sex crimes and support women (and their children) who live with the impacts of CRSV, including socio-economic hardship, and thus remain vulnerable to further violence.

Providing justice for victims of CRSV is then a matter of urgency which should already have occurred within a reasonable time frame.¹¹⁴ It is also essential for realising the right to remedy as set out in the UN General Assembly's Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.¹¹⁵ This includes providing access to redress for the physical and mental health needs (especially trauma) which are generated by CRSV as well as substance abuse and socio-economic issues. It may also include measures to provide protections from subsequent high levels of sexual and gender-based violence which has roots in armed conflicts with high levels of CRSV.¹¹⁶

¹⁰⁹ Medical personnel documented the CRSV injuries among many of the almost 700,000 Rohingya people fleeing Rakhine state, patterns included rape, gang-rape, forced nudity, sexual slavery, and vaginal searches by male officials, UN News (n105); Resolution adopted by the Human Rights Council on 5 December 2017, Situation of human rights of Rohingya Muslims and other minorities in Myanmar (5 December 2017) UN Doc A/HRC/RES/S-27/1 [6]; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [55], [56]; UNSC Report of the Secretary-General on CRSV (29 March 2019) UN Doc S/2019/280 [66], [67]; Zoltan Barany (n95) 31; Ariella Levine, 'A Modern Day Holocaust: The Genocide of the Rohingya Muslims of Myanmar' (2018) 19 *RJLR* 398, 402-404.

¹¹⁰ 'A National Call To Action: Inclusive Involvement to Fight Rape and Sexual and Gender-Based Violence in Liberia', The Executive Mansion 'President Weah Vows to Support Roadmap on Ending Rape, SGBV (8 September 2020)' *The Executive Mansion* [online].

¹¹¹ The Executive Mansion (n110).

¹¹² Darlington Porkpa 'Liberia president Weah declares rape a national emergency after protests (13 September 2020)' *RFI* [online].

¹¹³ The taskforce was established by the President in July 2020, Willie N. Tokpah 'Liberia: Days After Anti-Rape Protest, Govt. Unveils US\$6M Road Map to Curb SGBV by 2022 (1 September 2020)' *Front Page Africa* [online].

¹¹⁴ Recalling that victims of CRSV in Liberia are facing an extensive delay between the crimes occurring and responses, with 2021 marking 32 years since the start of the First Civil War in 1989 and 18 years since the official end of the Second Civil War in 2003.

¹¹⁵ The UN General Assembly's Guidance collates international provisions, UNGA Resolution adopted by the General Assembly on 16 December 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (21 March 2006) UN Doc A/RES/60/147.

¹¹⁶ Fieldwork interview C3.

Additionally, as noted by a participating victim, an official and a community member from Liberia, not providing justice potentially builds anger, resentment, despondency and disengagement among victims who may feel that society does not care about what happened.¹¹⁷

'before our past President got into power some women that were victim they expressed their self to [Ellen Johnson Sirleaf], we have put her in power to her because we want justice. We have been victim a very while so we few of us we say we put you in the chair you will make a difference.

ES: Do you feel that she did?

No. She didn't because the government by-election most women cry at the back and side and say that she down low them, she never came to the women. [...] I warn you I put you in power to help me get money to make business to get tutor for my children, she never made up to most of the need so the going election most women did not vote because they said they tired¹¹⁸

The response to CRSV in Liberia has so far been fragmented with the rape of women and girls dominating the attention of international actors such as the UN.¹¹⁹ Critics have argued that the focus on rape has caused the neglect of other issues such as corruption: one participant in Carvalho's study stated that victims of CRSV are not receiving justice because *nobody* in Liberia receives justice.¹²⁰ Notably, impunity around CRSV is not operating in a vacuum. Since the end of the Second Civil War there have been no conflict-related prosecutions within Liberia. Without a state supported and structured approach, national and international response efforts in relation to CRSV have had very limited success in Liberia and impunity remains the norm.¹²¹ Subsequently, justice for conflict-related crimes such as sexual violence was considered a priority by all of the participating stakeholder groups, including victims of CRSV.¹²² This reflects the national mood as the Weah administration has faced public pressure to establish the recommended Extraordinary Criminal Tribunal.¹²³ Large public demonstrations have taken place calling for justice for war and economic crimes, including demonstrations on the issue of conflict-related rape, with sustained media and public advocacy driven by civil society collaboration.¹²⁴ President Weah, under public pressure, sought the advice of the Legislature on implementing the recommendations of the TRC and the possibility of establishing an Extraordinary Criminal Tribunal in September 2019 and 2021, but has not committed to substantive action.¹²⁵

Liberia is not unique, and impunity around CRSV remains the norm in many situations. Reasons include the scale of the crimes, reluctance to report crimes, lack of resources, destruction of infrastructure, subversion of the law, inadequate legal frameworks and lack

¹¹⁷ Fieldwork interviews A2, C4, B2.

¹¹⁸ Fieldwork Interview A2, victim of CRSV.

¹¹⁹ Benjamin de Carvalho and Niels Nagelhus Schia, 'Sexual and gender-based violence in Liberia and the case for a comprehensive approach to the rule of law' (2011) 14 *JIRD* 134, 136.

¹²⁰ Benjamin de Carvalho and Niels Nagelhus Schia (n119) 137.

¹²¹ Benjamin de Carvalho and Niels Nagelhus Schia (n119) 135.

¹²² Fieldwork interviews A1-6, B1-2, C4, D1-2, E1-2.

¹²³ A conference on accountability in November 2018 marked the first time that government officials, UN officials, diplomats and civil society collectively discussed how to operationalise accountability, titled: 'Opportunities and Challenges for Truth and Justice in Liberia for Past Crimes', The Center for Justice and Accountability 'Liberia: Video Appeal for War Crimes Court (11 November 2018)' *CJA* [online]; Fieldwork interviews E1-E2.

¹²⁴ Some pressure has also been applied by INGOs, see for example Human Rights Watch 'Liberia: Video Appeal for War Crimes Court (14 May 2019)' *HRW* [online]; Elise Keppler (n81).

¹²⁵ By the end of September 2019, 43 representatives had signed a Resolution which was required as a prerequisite to establishing the Tribunal, Leroy M Sonpon III '43 Lawmakers Sign for War, Economic Crime Courts (23 September 2019)' *The Liberian Daily Observer* [online]; Joaquin M. Sendolo '9 Lawmakers Sign Resolution for War Crimes Court (23 July 2019)' *The Liberian Daily Observer* [online]; James Harding Giahue 'Liberia: President Weah Seeks Legislature's Advice for War Crimes Court (14 September 2019)' *Front Page Africa* [online].

of willingness to prosecute.¹²⁶ The pervasive lack of political will to hold high-level accused persons accountable within many situations, including Liberia, arguably stems from the issue of former warlords and high profile accused continuing to hold positions of power.¹²⁷ The *Comprehensive Peace Agreement* which ended the Second Civil War had been negotiated by parties to the conflict. It therefore offered 12 seats each within the transitional government to the Government of Liberia, and two armed groups: Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL).¹²⁸ Negotiations also resulted in provisions for a TRC as opposed to prosecutions which allowed accused individuals to avoid the prospect of court, but crucially, secured peace.¹²⁹ However, without accountability for conflict-related crimes including CRSV, Liberia has seen a culture of impunity and associated issues filter into post-conflict life.¹³⁰ A participating official and a community leader highlighted the associated issue that victims are also seeing people who held power during the armed conflicts and committed violations against them live prosperously without consequences, whilst they continue to struggle and do not feel the dividends of peace.¹³¹ Accordingly, holding high-level accused persons accountable to end impunity, corruption and facilitate development for a prosperous future in Liberia was considered important by participating victims, men from communities, NGO staff and community leaders.¹³²

*'People are still grieving. They are living and seeing those perpetrator who did those crimes against them being the very ones in authority, being the very ones who are dominating them and that is unfair to all the people. In the time of peace it is those who are victimised that should be able to have voice. And not those who victimised them'.*¹³³

4.7 Improving responses to conflict-related sexual violence in Liberia

Improving responses to CRSV means addressing all forms of violence as well as mitigating the social, economic and cultural impacts by meeting the generated needs and providing fair justice for both the victims and the accused. Whilst there have been measures aimed at promoting and protecting the rights of women and girls in Liberia, in practice, work must continue to realise their rights as they still face inequality.¹³⁴ The education gap between girls and boys is slowly closing. However, women continue to hold a lower social status with limited access to medical care and high teenage pregnancy rates.¹³⁵ These barriers make competing with male counterparts more challenging, but essential, and this should be encouraged, along with the coordination and collaboration of women.¹³⁶ In order

¹²⁶ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [20].

¹²⁷ For example, whilst sitting as President, Ellen Johnson Sirleaf was among people named by the TRC in a list of political leaders and financiers of warring factions, Liberian Truth and Reconciliation Commission (n24) 271; See also, Dounard Bondo, 'Liberia: Prince Johnson and George Boley, former warlords who remain powerful in politics (20 July 2021)' *The Africa Report* [online].

¹²⁸ Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and the Political Parties, Accra, Ghana (2003) Article XXIV(3), (4) and (5).

¹²⁹ Comprehensive Peace Agreement (n128) Article XIII; Priscilla Hayner, 'Negotiating peace in Liberia: Preserving the possibility for Justice' (International Center for Transitional Justice 2007) 26.

¹³⁰ Corruption and allegations of corruption have plagued Liberia's post-conflict administrations, judicial integrity and hindered economic prosperity. Liberia ranks 137 on the corruption index as of 2019, and 53% of public service users reported paying a bribe within 12 months, Transparency International, 'Country Data: Liberia (2020)' *Transparency International* [online].

¹³¹ Fieldwork interviews C4, E1.

¹³² Fieldwork interviews A1-2, A4-5, B1-2, D2, E1-2.

¹³³ Fieldwork Interview E1, NGO staff.

¹³⁴ UNGA Human Rights Council Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* (24 August 2020) UN Doc A/HRC/WG.6/36/LBR/1 [71].

¹³⁵ For measures on education see, UNGA Human Rights Council Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* (24 August 2020) UN Doc A/HRC/WG.6/36/LBR/1.

¹³⁶ Female collaboration has included the Women of Liberia Mass Action for Peace which helped to end the Second Civil War, activism compelling action on the Rape Crisis and the long-standing work of the Association of Female

to understand and meet their needs, it is essential that Liberian women both receive justice for CRSV and meaningfully participate during the design and delivery of responses, including reparations programmes, as well as acting as decision makers within justice processes including TJMs.¹³⁷

'[...] in the remote areas it just for the case the women will not talk until then they got to be part of decision making. Because you can't allow the men to always make decision for you, the man just not be saying the right thing and the man just not know what you want, so you have to tell them, you have to tell them to be part of the decision making thing, the decision making body. You have a right to speak up for yourself and demand your rights'.¹³⁸

4.7.1 Difficulties around prosecuting conflict-related sexual violence

Where states have the political will to meet their responsibilities to investigate and prosecute CRSV their ability to do so depends on them having the capacity: states must be both *willing* and *able*. To enable states to meet the needs of victims of CRSV and provide effective post-conflict responses, comprehensive domestic capacity building is often essential.¹³⁹ The domestic legal system may lack capacity due to a lack of legal infrastructure which may never have existed, or may have been destroyed during an armed conflict.¹⁴⁰ This can take the form of physical infrastructure where there simply isn't a courthouse, prison or offices with basic supplies from which legal personnel can conduct investigations and bring prosecutions.¹⁴¹ For example, Somalia got its first forensic laboratory in September 2017, meaning that prior to then forensic evidence was unable to assist victims.¹⁴² Similarly, in September 2021, forensic equipment was donated to the Government of Liberia by the Spotlight Initiative to assist with the prosecution of sex crimes, which had previously been reliant on foreign pathologists.¹⁴³ The need to increase infrastructure also extends to human resources, with states often requiring training and knowledge transfer for staff and legal personnel, particularly specialised training for staff who will address CRSV.¹⁴⁴ Capacity issues are often caused by funding shortfalls and states may not have adequate resources, including not being able to pay the required legal personnel.¹⁴⁵ It is also common to see an underrepresentation of female staff, which hinders responses to CRSV throughout the process, beginning with deterring reporting.¹⁴⁶

Lawyers of Liberia (established on 24 February 1994), Fieldwork interviews C3, E1; Franck Kuwonu 'Women: Liberia's guardians of peace (April 2018)' *Africa Renewal* [online].

¹³⁷ See, United Nations, Guidance Note of the Secretary-General Reparations for Conflict-Related Sexual Violence (June 2014).

¹³⁸ Fieldwork Interview C3, official.

¹³⁹ Kim Seelinger (n17) 540.

¹⁴⁰ Danish Institute for Human Rights, *Informal Justice Systems: Charting a Course for Human Rights Based Engagement: A Summary* (Geneva: United Nations Development Programme 2012) 17; Kim Seelinger (n17) 549.

¹⁴¹ Alejandro Chehtman, 'Developing Bosnia and Herzegovina's Capacity to Process War Crimes Cases: Critical Notes on a Success Story' (2011) 9 *JICJ* 547, 550; Will Colish, 'The International Criminal Court in Guinea: A Case Study of Complementarity' (2014) 26 *RQDI* 23, 38; Brynna Connolly 'Non-State Justice Systems and the State: Proposals for a Recognition Typology' (2006) 38 *CLR* 239, 240.

¹⁴² Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict 'UN Special Representative of the Secretary-General on Sexual Violence in Conflict Expresses Deep Concern Regarding New Draft Somali Legislation on Sexual Crimes (11 August 2020)' *UN* [online]; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [63].

¹⁴³ The Spotlight Initiative is a joint initiative of the Government of Liberia and the United Nations, with funding from the European Union, see Gradijah Walker Bou Hussein, 'The Spotlight Initiative Donates Forensic Equipment to the Government of Liberia (22 September 2021)' *United Nations Liberia* [online].

¹⁴⁴ Alejandro Chehtman (n141) 550; Will Colish (n136) 42; Brynna Connolly (n141) 240.

¹⁴⁵ Alejandro Chehtman (n141) 550; Will Colish (n136) 38; Brynna Connolly (n141) 240; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [98].

¹⁴⁶ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [20].

Another significant challenge is having the legal capacity to address CRSV on a large scale, such as mass rape.¹⁴⁷ This may be especially difficult in post-conflict contexts where domestic legal systems can be overwhelmed by huge case-loads.¹⁴⁸ In Rwanda, the overwhelming number of cases following mass arrests after the genocide was one driving factor for adapting the Gacaca system.¹⁴⁹ In Liberia, the TRC has recommended the supplementary use of traditional justice through the National Palava Hut Commission, which is intended to increase the capacity to provide justice for victims and deliver aims which the formal system cannot, such as assisting reconciliation through community discussions. The use of the National Palava Hut Commission in relation to CRSV may therefore function to supplement the formal justice system in order to prevent it becoming overwhelmed. It may also provide avenues of justice for victims who might not otherwise be able to access the formal justice system or for whom the formal justice system is less able, such as people seeking restorative, reconciliatory or other discursive processes.

Within the formal justice system, the prosecution of CRSV frequently does not get prioritised and where prosecutions take place for conflict-related crimes, the legal framework may be inadequate for CRSV.¹⁵⁰ The capacity to address CRSV requires a legal framework which is inclusive of all victim groups, all perpetrator groups and all of the relevant conducts. States may rely on their own domestic law, ratified and domesticated treaties, and customary international law to prosecute acts of CRSV as domestic or international crimes.¹⁵¹ Trials conducted using domestic law can fail to adequately criminalise the CRSV which has taken place or may rely on legislation for other crimes, as seen in the prosecutions of members of Boko Haram or the so-called Islamic State under terrorism legislation.¹⁵²

For Liberia, as has been discussed, the domestic legal framework may also exclude certain groups, such as male victims: this is not uncommon and states may find their domestic legislation to be inadequate where it has been politically distorted, contains discriminatory elements, or fails to reflect international criminal law standards.¹⁵³ A particularly egregious example of inadequate legislation is where states will exempt a rapist from prosecution if they marry their victim, as seen in countries including Iraq, Somalia and Syria.¹⁵⁴ The approach of forcing or pressuring victims to marry their attacker may also be followed in TJMs, which were relied upon to address around 90 percent of cases of rape in Somalia and South Sudan in 2017.¹⁵⁵ Practices which absolve perpetrators where they marry their victims can increase forced marriage, do not provide redress nor deter prospective perpetrators.¹⁵⁶ The post-conflict use of TJMs to address CRSV, including within Liberia, must then recognise the need to protect victims and may require training, representative decision making and oversight in order to ensure that victims' rights are protected.

¹⁴⁷ Will Colish (n141) 37-38.

¹⁴⁸ Evelyn Kamau (n5) 86; Kim Seelinger (n17) 548; Will Colish (n141) 41.

¹⁴⁹ Tim Allen and Anna Macdonald, 'Post-Conflict Traditional Justice: A Critical Overview' (2013) 3 *JSRP* 1, 6; Lars Waldorf, 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice' (2006) 79 *TLR* 1, 41, 48, 87.

¹⁵⁰ Trial International (n71) 16-17.

¹⁵¹ Will Colish (n141) 40; Kim Seelinger (n17) 540.

¹⁵² UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [20], [45].

¹⁵³ For example, the two definitions of rape seen in Liberia's Penal Code. Gendered rape provisions can be seen in other contexts such as Uganda, Ugandan Penal Code, Penal Code Act 1950, Article 123; Liberian Code of Laws Revised, Volume IV, Title 26 (Approved 19 July 1976, Published 3 April 1978) Section 14.70; Liberian Truth and Reconciliation Commission (n1) 34; Kim Seelinger (n17) 549, 552, 560-561; Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (23 August 2004) UN Doc S/2004/616 [27]; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [45].

¹⁵⁴ Heba Kanso 'Will Iraq be next to abolish controversial 'marry your rapist' law? (29 March 2019)' *Reuters* [online]; Lisa Davis (n60) 113; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [20].

¹⁵⁵ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [20].

¹⁵⁶ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [20].

Positive steps have been taken in some countries, such as the removal of the link between rape and adultery within the domestic penal codes of Afghanistan, Somalia and Sudan.¹⁵⁷ This potentially makes married women less vulnerable to prosecution or persecution for adultery where they have been raped. However, the introduction or amendment of legislation does not mean that these developments are widely known about and operating in practice. States may lack the resources to implement the legislation and communities may not see newly imposed legislation as legitimate.¹⁵⁸ Similarly, where existing domestic legislation is adequate the content of the law may not be widely known by the population. It may also not be widely known by legal personnel within post-conflict states where the legal infrastructure might have been severely disrupted. This will also be a challenge faced within Liberia, where consistent communication across the entire territory can be difficult. Accordingly, the support provided by TJMs may include taking part in efforts to disseminate relevant information, including information on possible avenues of justice for CRSV and justice processes, by community leaders.

4.8 What constitutes 'satisfying justice' for conflict-related sexual violence?

The idea of using TJMs to address CRSV raises the question of whether the use of traditional justice is appropriate for crimes of this nature and gravity. This links to the issue of what victims of CRSV want in order to feel satisfied that they have had justice, and if that is possible in reality. For example, even if it were desired, it is not possible for every rapist to receive a custodial sentence following large-scale crimes such as mass rape. At the other end of the scale, if people wish to draw a metaphorical line in the sand and move on, does raising the issue of justice for historic crimes stir tensions where neighbours had been living side-by-side in tolerance?¹⁵⁹ In Liberia, there is a paradox where calls for justice exist alongside a clearly observable cultural tendency towards letting bygones be bygones.¹⁶⁰ Whilst participating victims reported wanting justice, some stated that they have also tried to let the past go.¹⁶¹ One reason for this is being unable to identify attackers or not knowing their location and so feeling like there is no prospect of justice.¹⁶² Other reasons include the current climate of impunity for conflict-related crimes including CRSV, and the need to move on.¹⁶³ Despite this there was a strong desire among participants to get justice for conflict-related crimes, and for victims to receive redress. The Liberian culture of letting 'bygones be bygones' was also a concern for two officials who participated in relation to the use of traditional justice for international crimes, with recognition that processes must include options for redress, and victims must feel free to seek the justice they desire – without pressure to forgive.¹⁶⁴

For participating victims, concepts of justice were often tied to meeting their subsequent needs generated by crimes, ending ongoing suffering as well as impunity, and the idea that accountability processes could provide assistance in their daily life.¹⁶⁵ Providing justice for CRSV therefore requires addressing the needs of victims, including through alternate forms of redress and compensation. Healthcare, jobs and education were identified as the three priority needs by participating victims, with the latter two being linked to the need for money and the ability to make a living.¹⁶⁶ Access to medical care was a consensus

¹⁵⁷ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [21].

¹⁵⁸ Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (23 August 2004) UN Doc S/2004/616 [27].

¹⁵⁹ Karen Brounéus (n52) 68.

¹⁶⁰ Fieldwork Interviews D1.

¹⁶¹ Fieldwork Interviews A1-4, A6.

¹⁶² Fieldwork Interviews A3, A4, A6.

¹⁶³ Fieldwork Interviews A1-4, A6.

¹⁶⁴ Fieldwork Interviews A1-3, A6, C2, C4; Debey Sayndee and Silke Pietsch, *Liberia between Reconciliation Commission and Roadmap – Steps Forward in a Halted Process?* (University of Liberia: Kofi Annan Institute for Conflict Transformation, Policy Brief Number 1, June 2013) 3.

¹⁶⁵ Fieldwork interviews A1-6.

¹⁶⁶ Participants noted that there are high levels of trauma and substance abuse issues in communities. Liberia also faced an ebola epidemic between 2014-2016 and is addressing the COVID-19 pandemic, Fieldwork interviews A1, A4-6, C2; Sunneva Gilmore, Julie Guillerot and Clara Sandoval (n86) 32.

priority, with one participating victim considering access to physical and mental healthcare as both a form of redress and a necessity to move Liberia forward.¹⁶⁷ Several participating victims were experiencing ongoing health issues associated with CRSV and one prioritised getting treatment for both herself and her mother as part of getting justice.¹⁶⁸ Untreated healthcare needs are common and also exacerbate issues including trauma, suicide risk, untreated sexually transmitted diseases or physical injuries, reliance on harmful coping methods and infant mortality.¹⁶⁹ The healthcare needs which are generated by CRSV often exceed the available services, with poor infrastructure and lack of transport often making accessing support difficult outside of urban areas.¹⁷⁰ Needs can begin when an incident occurs if immediate emergency medical treatment is required and can extend to the need for treatment of life-long conditions such as HIV.¹⁷¹ CRSV may also have been perpetrated by government agencies or forces who are then connected to the delivery of healthcare, and thus pose a real or perceived barrier for victims.¹⁷²

Additionally, where an armed conflict has disrupted family and community links, victims may now have little support.¹⁷³ The TRC highlighted the need to provide appropriate support services, especially for former child soldiers, as one of the 'most difficult challenges for Liberia'.¹⁷⁴ Efforts to address CRSV must also recognise any imbalance in services, with people often having less access to mental health support. This is problematic when high levels of psychological trauma are common in relation to CRSV, and if left unaddressed, can be debilitating and life-long.¹⁷⁵ Trauma can prevent people from working or functioning within their community meaning it impacts on relationships, economic stability and leaves people vulnerable.¹⁷⁶ The challenges of addressing psychological needs are often exacerbated by a lack of resources, expertise, and political will. The situation as it exists in Liberia is not uncommon, where the population has been left without adequate psychological support services since the official end of the armed conflict in 2003.¹⁷⁷ Providing access to health care as a form of redress for CRSV is an essential aspect of efforts to provide justice for victims. Accordingly, the role of TJMs in some cases may be to determine the status of an individual as a victim of a crime which entitles them to healthcare, and subsequently may include facilitating access to services.

Another priority which was connected to justice by participants is security and the desire for a better future. Participating victims desired not just physical, social and economic security but also long-term state security in terms of a peaceful and prosperous Liberia.¹⁷⁸ The idea that getting justice would be a deterrence against future conflict and a driver of movement towards a better future was consistently present.¹⁷⁹ Victims prioritised improving their socio-economic security as part of justice processes through access to

¹⁶⁷ Fieldwork interviews A4-6.

¹⁶⁸ Fieldwork Interviews A5; Irma Specht (n26) 76.

¹⁶⁹ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [19], [26]; Amnesty International (n60) 50.

¹⁷⁰ UNSC Report of the Secretary-General on CRSV (3 June 2020) UN Doc S/2020/487 [20]-[22]; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [14], [40], [57]; Rashida Manjoo and Calleigh McRaith, 'Gender-Based Violence and Justice in Conflict and Post-Conflict Areas' (2011) 44 *CILJ* 11, 16; Nicola Henry, 'The Impossibility of Bearing Witness: Wartime Rape and the Promise of Justice' (2010) 16 *VAW* 1098, 1103-1104.

¹⁷¹ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [75]; Christopher Bailey, 'Women in the Crosshairs: Expanding the Responsibility to Protect to Halt Extreme Gender-Based Violence' (2018) 78 *AFLR* 75, 86.

¹⁷² UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [14], [57]; Nicola Henry (n169) 1103-1104.

¹⁷³ Helen Basini 'Gender Mainstreaming Unraveled: The Case of DDDR in Liberia' (2013) 39 *II* 551; Irma Specht (n26) 15, 70; Liberian Truth and Reconciliation Commission (n24) 212.

¹⁷⁴ Liberian Truth and Reconciliation Commission (n24) 212.

¹⁷⁵ Alicia Luedke and Hannah Logan (n43) 100; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [14]; UNSC Report of the Secretary-General on CRSV (29 March 2019) UN Doc S/2019/280 [73], [76]-[77]; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [62], [63].

¹⁷⁶ Fieldwork Interviews A1-A3, A5, C1-C2, E2.

¹⁷⁷ Fieldwork Interviews A1-6, C1, E2; Patrick Vinck and Phuong Pham (n44) 48.

¹⁷⁸ Fieldwork Interviews A6.

¹⁷⁹ Fieldwork Interviews A2.

economic support including assistance finding work, supporting their children and gaining an education.¹⁸⁰ There are strong links between CRSV and economics with an identifiable pattern of CRSV being extremely economically damaging for victims and communities whilst being profitable for perpetrators.¹⁸¹ For combatants, CRSV can form a central feature of pillaging and strategies to take control of resources or territory.¹⁸² It can also be used by commanders as a method of compensating fighters for frontline hardships and used to supplement their income.¹⁸³

Social and economic impacts of CRSV are often inter-linked and compounded by structural discrimination within economies which can increase the impact of financial instability on women and girls.¹⁸⁴ As in many post-conflict situations, women and girls in Liberia have received little help to care for children or themselves.¹⁸⁵ Where socio-economic insecurity results from CRSV meaning victims cannot meet their basic needs, some victims turn to harmful coping mechanisms such as child marriage, transactional sex, prostitution and traffickers.¹⁸⁶ Improving responses to CRSV must therefore include increasing the capacity of states to improve conditions for victims. Post-conflict justice efforts have often included measures which aspire to some form of restitution for property which had been taken or destroyed. However, these have had mixed results, and the restoration of social relationships necessary for economic security after CRSV is an even bigger challenge. Potentially socio-economic security is an area where traditional justice may be an asset by increasing the capacity for mediation and the ability to reach a consensus on what measures may satisfy both victims and post-conflict communities which have been collectively traumatised by CRSV.

Additionally, in order for justice to be 'satisfying' it must encompass all victim groups. This means that post-conflict justice efforts must also account for groups such as children born of conflict-related rape, who may need support from birth and throughout their lives if they are abandoned, face abuse or discrimination.¹⁸⁷ Failing to meet their needs can perpetuate health issues, poverty, abuse and leaves children vulnerable to traffickers or recruitment into harmful groups.¹⁸⁸ Accordingly, the role of community leaders - as leaders of TJMs - may therefore be essential as part of efforts to facilitate a broad approach to accessing services and reparations programmes, and countering stigma. As well as signposting routes for victims to report an incident or seek justice, awareness campaigns can also highlight what conduct is criminalised and - crucially - challenge harmful misinformation. Alongside government led recognition of the crimes, TJMs may provide community recognition of crimes and contribute to justice efforts which address CRSV by providing accurate, accessible and clear information around the crimes which have been committed and the available forms of redress and reparations.¹⁸⁹

Finally, efforts aimed at increasing domestic capacity to provide satisfying justice must be comprehensive, engage all judicial institutions as well as community leaders, and cannot

¹⁸⁰ Fieldwork interviews A1-6.

¹⁸¹ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [17]; David Sverdllov, 'Rape in War: Prosecuting the Islamic State of Iraq and the Levant and Boko Haram for Sexual Violence against Women' (2017) 50 *CILJ* 333, 339.

¹⁸² See UNSC Resolution 2331 (2016) UN Doc S/RES/2331; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [1], [16]; Alicia Luedke and Hannah Logan (n43) 108.

¹⁸³ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [17]-[18]; Lisa Davis (n60) 121; Alicia Luedke and Hannah Logan (n43) 100.

¹⁸⁴ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [17].

¹⁸⁵ Raising children born of rape has hindered the ability of affected women and girls in Liberia to remarry, Liberian Truth and Reconciliation Commission (n1) 63; Fieldwork Interviews B1, E2; Aisha Hutchinson et al., 'Understanding Early Marriage and Transactional Sex In the Context of Armed Conflict: Protection at a Price' (2016) 42 *IPSRH* 45, 46.

¹⁸⁶ Rima Mourtada, Jennifer Schlecht, and Jocelyn DeJong (n63) 61; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [18], [57].

¹⁸⁷ Susan Harris Rimmer (n83) 329; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [14]; Myriam Denov and Atim Angela Lakor (n81) 260-261; Leah Woolner et al., (n60) 713-714.

¹⁸⁸ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [14].

¹⁸⁹ UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [40].

be simply transplanted or imposed.¹⁹⁰ Whilst acknowledging potential issues at the domestic level it is essential to include local actors such as state officials, legal personnel, community leaders and civil society in the design and implementation of responses to CRSV – and preferably for them to lead responses.¹⁹¹ TJMs can make positive contributions for responses to CRSV by providing a forum for discussion and acting as part of contextually appropriate efforts to provide justice with sensitivity to the local situation. Additionally, TJMs can help to facilitate local ownership over justice and response processes where community leaders are responsible for disseminating information and leading efforts to address CRSV within their own communities, which is essential for both effectiveness and longevity.¹⁹²

Whilst speaking about what would make her feel satisfied in relation to justice, one participating victim imagined a society free from the stigma and associated repercussions of CRSV.¹⁹³ She imagined that experiencing CRSV in the past would not shape or define a person's future. For this participant, getting satisfying justice was intrinsically linked to the need to address socio-economic and health-related impacts of CRSV. Justice efforts cannot simply consider custodial sentences, or apologies, but must include restitution, compensation and access to comprehensive reparations programmes which seek to improve the lives of victims. Ultimately, the challenges of CRSV remain significant. The fact is that social acceptance of victims remains low, whilst the life-changing impacts remain high. It is common for victims of CRSV to be particularly in need of support to meet basic needs including economic, education and healthcare needs as well as the need to support people who were born as a result of conflict-related rape.¹⁹⁴ Responses are demonstrably inadequate from the difficulties around prosecuting CRSV through to ongoing socio-economic exclusion.¹⁹⁵ For responses to CRSV to improve – and for victims to receive satisfying justice – efforts must acknowledge and address the nature of the crimes as well as operating sensitively within local contexts. Where states are willing to address CRSV, increasing their ability to do so through domestic capacity building may in part be achieved by engaging with TJMs and especially through the work of traditional, religious and community leaders.¹⁹⁶

'If here right now if the justice could be able to [meet] my needs to be able to help people or [they say] okay what are some of the things that will make [you] to be happy, like maybe I will help you to at least go to school [...]

she will feel happy like she is also contact in the society or she will be recognised in the society tomorrow that what happened to her in the past will not be able to make change her person or her future'.¹⁹⁷

¹⁹⁰ Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (23 August 2004) UN Doc S/2004/616 [17], [23]; Tim Allen, 'Ritual Abuse? Problems with Traditional Justice in Northern Uganda' (2008) 5 CC 47.

¹⁹¹ Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (23 August 2004) UN Doc S/2004/616 [25]; United Nations, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice* (New York: United Nations 2010) 5.

¹⁹² Alicia Luedke and Hannah Logan (n43) 111; Brynna Connolly (n136) 243; Hope Among 'The application of traditional justice mechanisms to the atrocities committed by child soldiers in Uganda: A practical restorative justice approach' (2013) 13 *AHRLJ* 441, 458.

¹⁹³ Fieldwork Interviews A6.

¹⁹⁴ Fieldwork interviews A1-6, B1-2, C2, E2.

¹⁹⁵ UNSC Resolution 2331 (2016) UN Doc S/RES/2331; UNSC Report of the Secretary-General on CRSV (16 April 2018) UN Doc S/2018/250 [1], [16], [59], [82].

¹⁹⁶ Kim Seelinger (n17) 540; Will Colish (n141) 37-38.

¹⁹⁷ Fieldwork Interview A6, victim of CRSV.

Chapter 5: Responding to Conflict-Related Sexual Violence in Legally Plural Societies

With a need to expand the capacity of states to respond to CRSV, it is important to explore the use of TJMs as well as the incorporation of traditional justice within post-conflict justice efforts. This is possible by considering examples from previous situations wherein TJMs have been provided a role within post-conflict justice efforts, as well as exploring the Liberian experience, wherein TJMs are an integral part of the justice system and traditional justice has been given a recognised role in post-conflict justice efforts from the outset. Taking a legally plural approach to post-conflict justice has been seen in multiple situations where international, regional and domestic mechanisms have often operated simultaneously, for example, Sierra Leone and East Timor.¹ Legal pluralism can simply describe a situation in which multiple legal systems coexist, such as both a traditional and a formal justice system.² However, classical definitions of legal pluralism provide for the presence of more than one 'legal order' within a social context or geographical location, namely, rules and practices with their own source of authority.³ This definition of legal pluralism encompasses the interactions between state law, religious law, customary law and quasi-legal entities.⁴ Classical definitions of legal pluralism are also narrow enough to exclude social conventions and moral exercises which are sometimes included as legal norms within inter-disciplinary academic literature.⁵ Where a traditional justice system already exists and populations are relying on traditional justice in their daily lives, incorporating TJMs within post-conflict justice efforts may provide a more accessible and socio-culturally relevant approach than formal justice mechanisms alone. By supplementing formal justice mechanisms with more discursive and community-based TJMs, post-conflict justice efforts may address some of the impacts of CRSV which prosecutions cannot, such as restoring community relationships.

5.1 Responding to conflict-related sexual violence and the role of legal pluralism

Legal pluralism already successfully functions in many contexts and most societies now operate with some degree of pluralism due to regional and international systems of law.⁶ For example, Liberia is a member of the UN, the African Union and is a party to international treaties which may govern conduct at the same time as its formal domestic law, codified customary law and uncodified norms which are applied within TJMs.⁷ At the local level there can also be a plurality to existing TJMs as their presence in different communities creates diversity between mechanisms, in part due to the range of actors involved such as community leaders, local elders, religious officials, state officials and NGO staff.⁸

¹ Kim Seelinger, 'Domestic accountability for sexual violence: The potential of specialised units in Kenya, Liberia, Sierra Leone and Uganda' (2014) 96 *IRRC* 539, 561.

² Ida Nursoo, 'Indigenous law, colonial injustice and the jurisprudence of hybridity' (2018) 50 *JLPUL* 56, 64; Phil Clark, 'Hybridity, holism, and traditional justice: the case of the Gacaca courts in post-genocide Rwanda' (2007) 39 *GWIL* 765; Berihun Gebeye, 'Decoding legal pluralism in Africa' (2017) 49 *JLPUL* 228, 231; Shaun Larcom, 'Problematic legal pluralism: causes and some potential 'cures'' (2014) 46 *JLPUL* 193, 194.

³ See Iyi for a mechanical definition of legal pluralism, John-Mark Iyi, 'Fair hearing without lawyers? The Traditional Courts Bill and the reform of traditional justice system in South Africa' (2016) 48 *JLPUL* 127, 128; Elies van Sliedregt and Sergey Vasiliev, 'Pluralism: A New Framework for International Criminal Justice' in Elies van Sliedregt and Sergey Vasiliev (eds.) *Pluralism in International Criminal Law* (Oxford: Oxford University Press 2014) 17; Jürg Helbling, Walter Kälin and Prosper Nobirabo, 'Access to justice, impunity and legal pluralism in Kenya' (2015) 47 *JLPUL* 347, 351; Shaun Larcom (n2) 194.

⁴ Shaun Larcom (n2) 194.

⁵ There is a large body of academic literature on legal pluralism *supra* Chapter 1, n26.

⁶ James Richardson, 'The Social Construction of Legal Pluralism' 7 *DAS* 390, 396; Lars Viellechner, 'Responsive legal pluralism: The emergence of transnational conflicts law' (2015) 6 *TLT* 312, 314; Jamila Hussain, 'More Than One Law for All: Legal Pluralism in Southeast Asia' (2011) 7 *DAS* 374, 375.

⁷ See United Nations Treaty Collection, 'United Nations Treaty Series Online (2019)' *UN Treaty Collection* [online].

⁸ United Nations Children's Fund, 'Traditional Justice Systems in the Pacific, Indonesia and Timor-Leste (UNICEF Papua New Guinea 2009) 3.

Accordingly, whilst the state might be internationally viewed as the legitimate enforcer of the law, many populations, including many Liberians, continue to rely on traditional justice. Reasons include the cost, the type of violation, the need to maintain social harmony, living beyond the reach of the state or dysfunctionality within the formal justice system.⁹ The advantages of TJMs therefore include being located where people live, being free or inexpensive and being more 'user friendly' as issues are resolved in local languages through widely accepted cultural paradigms.¹⁰ Many plural approaches to justice also offer greater flexibility: In Liberia, individuals can move between formal and traditional justice systems to access support or to pursue the justice which they require.¹¹

Additionally, whilst the state asserts its jurisdiction over social, ethnic or religious groups within its territory, legal orders may exist within these groups which claim their authority from alternate sources.¹² Central to legal pluralism is the idea that there is not necessarily a single validating source of law within society.¹³ Accordingly, legal pluralism is better able to incorporate community-based traditional justice and victims' conceptions of justice than centralist or positivist approaches, which can often have a narrower conception and define law in terms of the state.¹⁴ Whilst the uniform application of central law might be a theoretical ideal, in reality states have varying resources and relationships with communities.¹⁵ Situations with more pervasive state infrastructure allow many aspects of life to be governed by the formal justice system.¹⁶ However, in states such as Liberia, where state infrastructure has a limited reach beyond the major cities, many people live their daily lives without much contact with the formal justice system and thus rely on alternatives.¹⁷

'I grew up my grandmother, you know, places where most of the cases are being judged within the community. By the traditional people. The first thing is I believe traditional people they are fair and clear cut when it come to informing people in like if it's a traditional settle I enter into the compound the first thing the town chief or the youth chairman will call me or I need to go there and speak to them [...] they understand I'm here to spend some time with you people. And the youth chairman or the town chief of that town will be clear to me they will give me all the information [...] they will give you all the guidelines about the law, about that town. They will not say this the state law, but they will tell you according to our traditional, here we don't [...]'¹⁸

⁹ Fieldwork Interviews A1-6, B1-2; Shai Divon and Morten Bøås, 'Negotiating justice: legal pluralism and gender-based violence in Liberia' (2017) 38 *TWQ* 1381, 1382; Niels Nagelhus Schia and Benjamin de Carvalho, "*Nobody Gets Justice Here!*" *Addressing Sexual and Gender-Based Violence and the Rule of Law in Liberia* (Oslo: Norwegian Institute of International Affairs 2009) 12-13; Benjamin de Carvalho and Niels Nagelhus Schia, 'Sexual and gender-based violence in Liberia and the case for a comprehensive approach to the rule of law' (2011) 14 *JIRD* 134, 136; Jonathan Compton, 'The Peril of Imposing the Rule of Law: Lessons from Liberia' (2014) 23 *MJIL* 47, 66.

¹⁰ Freida McCormack, 'Prospects for Accessing Justice for Sexual Violence in Liberia's Hybrid System' (2018) 7 *IJSD* 1, 10.

¹¹ Freida McCormack (n10) 8-9; Sharon Abramowitz and Mary Moran, 'International Human Rights, Gender-Based Violence, and Local Discourses of Abuse in Post-Conflict Liberia: A Problem of "Culture?"' (2012) 55 *ASR* 119, 140-141.

¹² Shaun Larcom (n2) 193.

¹³ Shaun Larcom (n2) 194.

¹⁴ Shai Divon and Morten Bøås (n9) 1384-1385; Berihun Gebeye (n2) 232; Paul Jackson, 'Decentralised Power and Traditional Authorities: How Power Determines Access to Justice in Sierra Leone' (2011) 63 *JLPUL* 207, 208; Phil Clark (n2) 765.

¹⁵ Deborah Cummins, 'A State of Hybridity: Lessons in Institutionalism from a Local Perspective' (2013) 37 *FFWA* 143, 156; Berihun Gebeye (n2) 232.

¹⁶ James Richardson (n6) 391.

¹⁷ Jürg Helbling, Walter Kälin and Prosper Nobirabo (n3) 352; James Richardson (n6) 391; Berihun Gebeye (n2) 244.

¹⁸ Fieldwork Interview B2, community member.

Accordingly, limitations on their resources and reach mean that for many post-conflict states, relying solely on formal justice systems for post-conflict justice in order to address crimes such as CRSV will limit success. This is especially true where a state is unable to exercise authority or provide a functional justice system over its entire territory.¹⁹ It is also commonly seen (beyond Liberia), for example in 2008, six years after the armed conflict in Sierra Leone, the formal justice system continued to face a huge backlog of cases, poor records, extensive pre-trial detention and overcrowded prisons.²⁰ However, the formal and traditional justice systems in Sierra Leone worked cohesively and were not separated nor exclusive. This facilitated efforts to include TJMs within the structures of the formal justice system as part of post-conflict justice processes which meant that people had the ability to 'forum shop' according to their needs, cost, or geographical location.²¹ Similarly, in East Timor, the population spontaneously used TJMs to fill gaps within the post-conflict justice system. Rural areas became frustrated with a slow and centralised response by the UN mission (UNTAET) and did not wait for an official legal framework.²² The existing TJM known as lisan was already in use across East Timor and villages had organically started using the process to reintegrate returning ex-combatants and refugees.²³ Traditional justice was subsequently incorporated into post-conflict justice strategies utilised by UNTAET, which was acting in place of the state.²⁴ Lisan operated in both its original form as well as being incorporated into the Community Reconciliation Procedures which were operated by the Commission for Reception, Truth and Reconciliation (CAVR) established by *Regulation 2001/10*.²⁵

Ultimately, responding to CRSV in post-conflict contexts requires a holistic approach which addresses the needs of victims, including justice and accountability as well as healthcare and socio-economic security.²⁶ The scale on which such needs are often generated means that addressing them requires the simultaneous and coordinated operation of political, social and legal institutions.²⁷ Additionally, owing to the diversity of populations in many states as well as the prevalence of traditional justice, policy makers in post-conflict

¹⁹ Tamara Relis, 'Unifying benefits of studies in legal pluralism: accessing actors' voices on human rights and legal pluralities in gender violence cases in India' (2016) 48 *JLPUL* 354, 359; Kari Larson et al., *Police Practices in Liberia: A Study of the Legal Frameworks and Practices of Fair Trial, Corruption and Civilian Oversight* (Danish Institute Against Torture 2018) 17-18; International Monetary Fund, 'Liberia: Poverty Reduction Strategy Paper—Second Annual Progress Report, 2009–10' (Washington: International Monetary Fund, Country Report Number 11/214, July 2011) 14; Niels Nagelhus Schia and Benjamin de Carvalho (n9) 17; Benjamin de Carvalho and Niels Nagelhus Schia (n9) 134, 137; Andrea Kaufmann, 'Mobilizing for Improvement: An Empirical Study of a Women's Organization in West Point, Liberia' (2011) 20 *S* 163, 175; Marie-Claire Omanyondo, *Sexual and Gender-Based Violence and Health Facility Needs Assessment (Montserrado and Bong Counties) Liberia* (World Health Organisation 2004) 4; Liberia Institute of Statistics and Geo-Information Services, *Household Income and Expenditure Survey 2014: Statistical Abstract* (LISGIS, March 2016) 1.

²⁰ Paul Jackson, 'Decentralised Power and Traditional Authorities: How Power Determines Access to Justice in Sierra Leone' (2011) 63 *JLP* 207, 214.

²¹ Paul Jackson (n20) 215-216.

²² UNTAET passed *Regulation 2000/11* in 2000 which granted the District Court in Dili exclusive jurisdiction over serious crimes committed between 1 January and 25 October 1999, including sexual offences. Special panels were established to hear the cases, with a Prosecutor's Office and Serious Crimes Unit, United Nations Transitional Administration in East Timor 'Regulation No.2000/11' (6 March 2000) UN Doc UNTAET/REG/2000/11, Article 10.1(e) and 10.2; Amy Senier, 'Traditional Justice as Transitional Justice: A Comparative Case Study of Rwanda and East Timor' (2008) 23 *FJHS* 67, 75-76.

²³ Deborah Cummins (n15) 145; Amy Senier (n22) 69, 81.

²⁴ East Timor experienced extremely violent campaigns which included CRSV and scorched earth tactics by armed groups opposing independence following the withdrawal of Indonesia in 1999. UNTAET was empowered by UNSC Resolution 1272 (1999) to exercise legislative and executive authority, United Nations Security Council 'Resolution 1272 (1999)' (25 October 1999) UN Doc S/RES/1272; Geoffrey Robinson, 'East Timor 1999 Crimes against Humanity' (Los Angeles: University of California, Report Commissioned by the UN Office of the High Commissioner for Human Rights 2003) 48; James Traub, 'Inventing East Timor' (2000) 79 *FA* 74, 75-78; Roger Clark, 'Decolonization of East Timor and the United Nations Norms on Self-Determination and Aggression' (1980) 7 *YJJWPO* 2, 7-9.

²⁵ United Nations Transitional Administration in East Timor 'Regulation No.2001/10' (13 July 2001) UN Doc UNTAET/REG/2001/10; United Nations Children's Fund (n13) 5; Tim Allen and Anna Macdonald, 'Post-Conflict Traditional Justice: A Critical Overview' (2013) 3 *JSRP* 1; Kim Seelinger (n1) 548.

²⁶ Phil Clark (n2) 765.

²⁷ Phil Clark (n2) 765.

contexts often need to address CRSV amid legally plural approaches to justice and heterogenous populations which draw upon more than one source of law.²⁸ Legal pluralism is therefore appropriate as it is able to account for different cultural, ethnic and religious groups, facilitating holism and the ability to examine the role of traditional justice as one part of an overall response to CRSV.²⁹

The role of legal pluralism may also be embedded within post-conflict justice both conceptually and structurally as post-conflict justice strategies are often themselves legally plural in nature, such as when an international response operates at the same time as a domestic response.³⁰ Similarly, a domestic justice system might rely on traditional justice to increase its capacity to address conflict-related crimes (often at the same time as an internationally supported response), as seen in states such as Rwanda and Sierra Leone.³¹ With no internationally agreed 'formalised typology' for TJMs, governments, the UN and international donors have taken varying approaches to traditional justice within post-conflict settings.³² Accordingly, legal pluralism is an important aspect of responding to CRSV. The existence of legal pluralism within a state and the extent to which the traditional and formal justice systems are intertwined has practical implications and thus will affect the role and functions of TJMs in response to CRSV.³³

The role of legal pluralism and the use of TJMs within responses to CRSV may also be essential owing to pragmatic reasons such as capacity issues. The consistently arising issue of the lack of capacity to address conflict-related crimes is a significant factor which may affect the use of TJMs, as they are able to provide an existing resource which can be incorporated into responses to crimes such as CRSV. This has been seen in Liberia, where the Liberian TRC recognised the limited resources within the country to deliver post-conflict justice, and subsequently recommended a plural approach which utilised the existing traditional justice system.³⁴ It is therefore essential to consider the role of TJMs in order to explore how they might improve responses; for example, they might make a significant contribution to efforts to meet the needs of victims. The TRC also recognised the need to adopt 'specific mechanisms and procedures' designed to address the experiences of women, vulnerable people and gender-based violence, as well as the experiences of child soldiers.³⁵ Exploring the role for TJMs as a resource which may improve responses to CRSV must then include consideration of the relationship between traditional justice and the formal justice system, identify the gaps which exist and which TJMs may be able to address, as well as the potential risks or support measures which are necessary if TJMs are to address CRSV.

5.1.1 Cases brought by states other than the affected state

To be effective, the use of traditional justice to address CRSV must operate to improve responses alongside formal courts. The role of TJMs within a state may therefore also be affected by prosecutions brought by other jurisdictions, particularly as the use and role of traditional justice can be especially affected by the narrative around post-conflict justice

²⁸ Jamila Hussain (n6) 375.

²⁹ Phil Clark (n2) 765; Jamila Hussain (n6) 375.

³⁰ Valerie Oosterveld and Patricia Sellers, 'Issues of Sexual and Gender-Based Violence at the ECCC' in Simon Meisenberg and Ignaz Stegmiller (eds.) *The Extraordinary Chambers in the Courts of Cambodia: Assessing their Contribution to International Criminal Law* (The Hague: Asser Press 2016) 332.

³¹ For example, the ICTR and SCSL functioned at the same time as the domestic justice system, see also the provisions on complementarity in the Rome Statute of the International Criminal Court (1998); Statute of the International Criminal Tribunal for Rwanda (1994); Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone (2002); Valerie Oosterveld and Patricia Sellers (n30) 332.

³² Tim Allen and Anna Macdonald (n25) 7.

³³ For example, in Liberia, the actively state supports TJMs including palava hut whilst prohibiting the use of sassywood, Fieldwork Interviews C2, C4, E1; Jürg Helbling, Walter Kälin and Prosper Nobirabo (n3) 351.

³⁴ Liberian Truth and Reconciliation Commission *Volume One: Preliminary Findings and Determinations* (Republic of Liberia Truth and Reconciliation Commission, 2009) 26.

³⁵ Liberian Truth and Reconciliation Commission (n34) 26.

within a state. There has been a surge in actions by states around the globe to prosecute international crimes which have been committed by or within other states. This has increased the relevance of legal pluralism for addressing crimes including CRSV as victims are now also able to seek justice in other states, and some affected states are cooperating with other jurisdictions in order to facilitate their investigations and prosecutions (as seen in Liberia in *Massaquoi*).³⁶ Proceedings by other states may provide the only avenue of justice for victims in states such as Syria and Liberia, where there is an absence of domestic justice and no prosecutions have occurred locally.³⁷ This includes proceedings based on the principle of universal jurisdiction, which allows states to prosecute international crimes wherever they have been committed due to their nature and gravity.³⁸ Arrests in relation to crimes committed in Liberia have taken place in the United States, Belgium, Switzerland, the United Kingdom, France and Finland.³⁹ Notably, Switzerland held the first trial of a Liberian national for war crimes in relation to the Liberian Civil Wars, and subsequently convicted Alieu Kosiah on 21 out of 25 charges, including rape.⁴⁰

States which are seeking to prosecute crimes committed abroad have also used alternative approaches to bring proceedings against individuals who are accused of international crimes. This includes pursuing immigration charges where there is an absence of directly applicable legislation, as seen in the October 2017 conviction of Mohammed Jabbateh in the United States.⁴¹ Jabbateh, a former commander in the armed groups ULIMO and ULIMO-K, had lied about his activities during the First Liberian Civil War whilst entering the United States and was then charged with two counts of fraud in immigration documents and two counts of perjury. The proceedings were the first time that victims from Liberia, including victims of CRSV, had testified in a criminal trial about crimes committed during the First Liberian Civil War.⁴² Victims may then have more options available to them through being able to also seek and receive justice through proceedings which are not explicitly prosecuting core international crimes.

However, as there is a pre-existing context of pluralism in Liberia, the cases which are being brought abroad are influencing efforts to provide justice within the country and sometimes have negative repercussions where proceedings are not successful. This is illustrated by the impact on justice efforts, and narratives around post-conflict justice, which followed proceedings in the United Kingdom relating to crimes committed in Liberia. Charges of torture and conspiracy to commit torture were brought in the United Kingdom against Agnes Reeves Taylor (a former wife of Charles Taylor) relating to her role in the NPFL during the first Liberian Civil War. The charges were brought based on the principle of universal jurisdiction, under section 134 of the *Criminal Justice Act 1988*, which implements the UK's international legal obligations under the UN Convention Against Torture.⁴³ The case was referred to the Supreme Court on appeal in relation to a narrow point of law, specifically, the meaning of 'person acting in an official capacity' in section 134(1) of the *Criminal Justice Act 1988*. The charges were subsequently dismissed on 6 December 2019 and the case did not go to trial after the Central Criminal Court applied the governmental control test set out by the Supreme Court.⁴⁴ Despite the *prima facie* evidence supporting the charges, at the time of the alleged offences, the NPFL did not

³⁶ New Narratives, 'Massaquoi hearings in Liberia end, to resume in Finland (11 October 2021)' *Premium Times* [online].

³⁷ Charles Taylor was convicted by the Special Court for Sierra Leone for crimes committed in Sierra Leone, he was not charged for crimes committed in Liberia.

³⁸ See Valérie Paulet, 'Universal Jurisdiction Annual Review 2021' (Geneva: TRIAL International 2021).

³⁹ See for example, the work of Civitas Maxima 'Our Public Cases (2020)' *Civitas Maxima* [online]; Alpha Sesay 'United States Court of Appeals Judges Uphold Charles Taylor Jr.'s (Chuckie Taylor) Convictions And 97 Years Jail Sentence (21 July 2010)' *International Justice Monitor* [online].

⁴⁰ Civitas Maxima, 'Alieu Kosiah' *Civitas Maxima* [online].

⁴¹ See BBC, 'Liberia warlord "Jungle Jabbah" jailed for 30 years in the US (20 April 2018)' *BBC News* [online]; Fieldwork interview D2.

⁴² Civitas Maxima, 'Mohammed Jabbateh (2020)' *Civitas Maxima* [online]; Fieldwork interview D2.

⁴³ See, *R v Reeves Taylor* (Approved Judgement) Michaelmas Term [2019] UKSC 51 (13 November 2019).

⁴⁴ For the test see, *R v Reeves Taylor* (Approved Judgement) Michaelmas Term [2019] UKSC 51 (13 November 2019); TRIAL 'Agnes Reeves Taylor (8 July 2020)' *TRIAL International* [online].

appear to be exercising 'functions normally exercised by governments over their civilian populations'.⁴⁵ After being released, Reeves Taylor returned to Liberia. The return of Reeves Taylor had a stifling effect on the momentum towards establishing an Extraordinary Criminal Tribunal and civil society actors working to bring justice to Liberia experienced increased threats to their safety.⁴⁶

Additionally, there was a negative impact in relation to the role and use of TJMs as part of Liberia's post-conflict justice efforts. The return of Reeves Taylor also reignited an existing narrative within Liberia wherein post-conflict justice is being framed as a zero sum choice between the use of traditional justice – via the recommended National Palava Hut Commission – and formal courts (particularly by high-profile individuals who are seeking to avoid prosecution).⁴⁷ This potentially has a direct impact on the use of traditional justice within Liberian efforts to address post-conflict crimes. Specifically, the TRC recommended use of the National Palava Hut Commission is now being re-framed and presented as an alternative to prosecutions, rather than one single aspect of a comprehensive approach to providing justice. Accordingly, where legal pluralism exists it is important to clearly establish the relationship between justice mechanisms and to account for the impact which they may have on each other. Especially where this may include one form of justice, in this case traditional justice, being used to avoid prosecutions.

There are therefore risks which accompany universal jurisdiction proceedings where the affected state has a plural approach to justice: cases which are conducted by other jurisdictions have the potential to influence the relevant political and security situation, as well as the narrative around post-conflict justice. Discussion within an affected state around the role of traditional justice and the use of TJMs within an overall post-conflict justice strategy may be directly influenced (negatively or positively) by prosecutions in other jurisdictions. However, alongside the risks which come with such legally plural approaches there are also notable positives. The conviction of Mohammed Jabbateh provided a pivotal moment and significant impetus for activism in Liberia around establishing the TRC's recommended Extraordinary Criminal Tribunal, as well as the need to implement its other recommendations (including that on the National Palava Hut Commission).⁴⁸ For one participant from civil society, whilst cases abroad are not very accessible for many Liberians, who do not have easy access to the internet and television, simply hearing that an accused is on trial has also been satisfying for the victims with whom they have spoken.⁴⁹ The impact of the Reeves Taylor case has also highlighted the importance of ongoing efforts by other states to pursue justice for Liberians. The temporary lull in momentum towards establishing the recommended Tribunal which was caused by the lack of a trial in the UK has, to a large extent, been countered by the Swiss proceedings against Alieu Kosiah and Finnish proceedings against Gibril Massaquoi.⁵⁰ The Finnish proceedings have included hearings conducted on Liberian soil to facilitate witness testimony, with Finnish legal personnel travelling to Liberia to visit sites of crimes and hear testimony.⁵¹ Both cases have provided victims of CRSV with the opportunity to testify and have injected new impetus into Liberian-led initiatives for accountability and justice to be

⁴⁵ For the test see, *R v Reeves Taylor* (Approved Judgement) Michaelmas Term [2019] UKSC 51 (13 November 2019); TRIAL (n44).

⁴⁶ For the role of NGOs see, Olympia Bekou, 'Doing Justice for the Liberian Victims of Mass Atrocity NGOs in Aid of Universal Jurisdiction' (2015) 13 *JICJ* 219, 227; Civitas Maxima, 'Agnes Reeves Taylor vs The Truth (28 July 2020)' *Civitas Maxima* [online]; Gerald C. Koinyeneh, 'Liberia: Human Rights Defender Hassan Bility Debunks Agnes Reeves Taylor's Claims United Kingdom Court Dismissed Case Over Lack of Evidence (7 August 2020)' *Front Page Africa* [online]; Human Rights Watch 'Protect Human Rights Defenders in Liberia (5 August 2020)' *HRW* [online]; Leroy M. Sonpon 'War Crimes Court Establishment Suffers Setback (8 October 2019)' *The Liberian Daily Observer* [online].

⁴⁷ Gerald C. Koinyeneh (n46).

⁴⁸ The trial also gained international attention, see BBC, 'Liberia warlord "Jungle Jabbah" jailed for 30 years in the US (20 April 2018)' *BBC News* [online]; Fieldwork interview D2.

⁴⁹ Fieldwork interview D2.

⁵⁰ Front Page Africa 'Alieu Kosiah Case: Verdict Date Announced (19 May 2021)' *FPA* [online].

⁵¹ Rédaction Africanews 'Liberia war crimes: First hearings in Gibril Massaquoi trial held in Sierra Leone (11 May 2021)' *Africa News* [online].

provided at home. The role of cases brought by other states, not only in providing justice but also in spurring on justice efforts for victims within Liberia illustrates the need to recognise and incorporate multiple forms of justice, with each supporting the others.

*'Just to hear that this guy is on trial for crimes X Y or Z is satisfying because in any case Liberia is an incredibly poor country it has resources but those resources have been mismanaged over the years so many people do not have access to television, the radio or the internet forum and it's impossible to take all of the victims to court outside of Liberia. Even in Liberia you going to have limited courtroom space you know so it's not everybody say for example survivor of the Sinjar Massacre or the Lutheran Church Massacre or the Barkedu Massacre when you conduct a trial with respect to any of those massacres it is practically impossible for all of the survivors to be in the courtroom logistical, distance, road condition, so what generally satisfies people is to even hear that [name] is on trial for crimes committed against you people, that is satisfying.'*⁵²

5.2 Implementing the recommendations of the Liberian Truth and Reconciliation Commission and providing justice for conflict-related sexual violence

As has been previously acknowledged, the Liberian TRC outlined a plural approach to post-conflict justice which draws upon pre-existing justice mechanisms within Liberia. Its Recommendations on Accountability include the establishment of an Extraordinary Criminal Tribunal, Domestic Criminal Prosecutions, Public Sanctions and the National Palava Hut Commission.⁵³ The 'Extraordinary Criminal Tribunal for Liberia' was recommended to try violations 'of international humanitarian law, international human rights law, war crimes and economic crimes including but not limited to, killing, gang rape, multiple rape, forced recruitment, sexual slavery, forced labor, exposure to deprivation, missing, etc. [sic]'⁵⁴ Notably, of the eight explicitly mentioned crimes, three are acts of CRSV. Whilst a draft Statute is in development, there remains a lack of clarity among the public over the kind of institution which might be established, its jurisdiction and its relationship with the other proposed accountability mechanisms.⁵⁵ For example, one participating victim of CRSV was familiar with the concept of an Extraordinary Criminal Tribunal due to the prosecution of Charles Taylor by the Special Court for Sierra Leone, with proceedings in The Hague.⁵⁶ However, what such a tribunal might look like for Liberia remains unclear.

There was a general consensus among all of the participants that commanders who made children into soldiers during the armed conflicts should face formal courts including the proposed Extraordinary Criminal Tribunal, whilst former child soldiers should not.⁵⁷ Despite this, participating victims often wanted a more direct sense of justice for crimes including CRSV than holding only the higher-level perpetrators accountable, even if that would not involve a formal court.⁵⁸ Accordingly, there will be a relationship between different justice mechanisms as whilst prosecutions are an essential aspect of providing justice for CRSV, a formal mechanism to try commanders will not by itself be sufficient. The simultaneous implementation of the accompanying TRC recommendations will be essential as the

⁵² Fieldwork Interview D2, NGO staff.

⁵³ Liberian Truth and Reconciliation Commission, *Volume Two: Consolidated Final Report* (Republic of Liberia Truth and Reconciliation Commission, 2009) 270-271, 274.

⁵⁴ Liberian Truth and Reconciliation Commission (n53) 268.

⁵⁵ Fieldwork interviews A5, A6.

⁵⁶ Fieldwork interviews A6.

⁵⁷ Fieldwork Interviews A1-6; B1-2; C1-2, C4; D2; Fieldwork observations; Liberian Truth and Reconciliation Commission (n34) 26.

⁵⁸ Fieldwork Interviews A1-6; B1-2; C1-2, C4; D2.

existence of other mechanisms, including the National Palava Hut Commission, can provide a greater number of victims with justice forums.

Alongside formal justice mechanisms the use of traditional justice such as the National Palava Hut Commission may also provide not just an additional forum – but an alternative forum – in which victims can participate. This may allow victims to seek and receive other forms of justice such as restorative processes, reparations and alternative forms of redress where their attackers would not be formally prosecuted. Such an approach will be important for victims of CRSV where they may not know their attacker, or where their attacker will not face prosecution as post-conflict justice must resonate with people and provide victims of CRSV with options to seek and receive justice where they will not be able to access the formal courts. With a strong traditional justice system already existing in Liberia, responses to CRSV can utilise this plural approach to justice which incorporates TJMs in order to more effectively address the range of crimes which were committed, as well as their impacts.

5.2.1 Piloting the recommended National Palava Hut Commission

Under the *Act Establishing the Truth and Reconciliation Commission*, the INCHR is responsible for the implementation of the TRC's recommendations and is therefore responsible for operating the recommended National Palava Hut Commission.⁵⁹ The National Palava Hut Commission was recommended by the TRC as a traditionally oriented additional mechanism for justice and accountability which is intended to foster 'national healing and reconciliation at the community and grass root levels' based primarily on the existing commonly used Liberian TJM, palava hut.⁶⁰ The use of palava hut forms a significant aspect of the plural approach to justice taken by the TRC which was designed in harmony with pre-existing approaches to justice within Liberia. Drawing on palava hut to enhance post-conflict justice has practical and cultural relevance in Liberia, where the formal justice system is under-resourced and TJMs retain significance for many people.⁶¹ The common practice of palava hut and familiarity with the mechanism among the diversity of Liberian population groups is an asset for using a nation-wide, adapted TJM within post-conflict justice, and to address CRSV.

There is a strong foundation of legal pluralism on which to build, with plural approaches to justice being embedded throughout Liberia: beyond palava hut, other TJMs such as kola nut are also in existence across the country and led by town Chiefs or Chairmen, village elders, religious leaders, women and youth leaders, and Zoes, who are the leaders of traditional secret societies.⁶² As the National Palava Hut Commission is envisioned to be inclusive for the population, it may also draw on other such mechanisms, 'including penalties and sanctions' according to local culture, traditions, and customs.⁶³ Whilst this approach could introduce inconsistency, embracing the existing pluralism and embedding adaptability as well as the ability to provide relevant justice for communities is necessary as the TRC prescribed that the National Palava Hut Commission model 'shall be established in all Statutory Districts'.⁶⁴

⁵⁹ The *Act Establishing the Truth and Reconciliation Commission* was passed in 2005, however, the first board of INCHR Commissioners was not constituted until September 2010, over a year after the final TRC report, An Act to Establish to Truth and Reconciliation Commission (TRC) of Liberia Enacted by the National Transitional Legislative Assembly on 12 May 2005, Section 46; Fieldwork interview C2.

⁶⁰ Liberian Truth and Reconciliation Commission (n53) 273.

⁶¹ Fieldwork Interviews A6, B1, C3, C4, E1-2; Peter Leeson and Christopher Coyne, 'Sassywood' (2012) 40 *JCE* 608, 611; Bruce Oswald, 'Informal Justice and United Nations Peace Operations' (2014) 10 *IOLR* 166, 169; Pewee Flomoku and Counsellor Lemuel Reeves, 'Formal and informal justice in Liberia' (2008) 23 *A* 44; Golam Rasul and Islam Taufiqul, 'Performance and Effectiveness of Village Courts in Bangladesh: A Comparative Study in Two Unions Between Project and Non-Project Area' (2017) 5 *JSAS* 27, 35; Freida McCormack, 'Final Research Report: Gender, transitional justice and justice sector reform in Liberia' (August 2017) [online] 2.

⁶² The male Poro and female Sande secret societies remain influential, with the Zoes also performing social and cultural roles such as rites of passage, Freida McCormack (n10) 3.

⁶³ Liberian Truth and Reconciliation Commission (n53) 273.

⁶⁴ Liberian Truth and Reconciliation Commission (n53) 273.

At this time, with resistance to formal prosecutions from government officials, the implementation of the TRC's recommendations has focused on the National Palava Hut Commission with a pilot programme having been conducted in 2016 and 2017, and the subsequent launch of hearings by the INCHR in 2020.⁶⁵ Preparations by the INCHR included a full ethnographic survey of Liberia to gain an understanding of palava hut in the traditional context.⁶⁶ It looked at how Liberia's sixteen tribes practice palava hut, finding many similarities between communities as well as some variations, such as the shape of the physical palava hut.⁶⁷ The National Palava Hut Commission was piloted in Lofa County in the Voinjama District, and in Grand Gedeh county.⁶⁸ To prepare, the INCHR conducted training for decision makers, counsellors, note takers and interpreters.⁶⁹ Prior to participation, counselling was provided for both the victims and the accused to prepare them for meeting face to face.⁷⁰ Whilst such training and counselling processes took time, the organisers sought to meet the needs of the stakeholders and to ensure that the pilot process provided valuable insights which can be replicated across Liberia.⁷¹

The pilot process itself involved a discussion with the committee of decision makers, with observers from the community.⁷² The victim explained what had happened, often recalling a lot of places and names along with people who were also there as witnesses or accomplices.⁷³ The accused would also speak and describe what happened, although sometimes at first they wouldn't remember.⁷⁴ The pilot was well received and many people came forward to participate, having prepared for seventy-five people in each location, in total over three hundred and fifty people arrived.⁷⁵ The level of participation made identifying victims and witnesses easier than had been anticipated, whilst locating the accused was more challenging.⁷⁶ However, some people who brought a grievance knew where their attacker was and the INCHR was able to use their directions to find them.⁷⁷

Some perpetrators who participated in the pilot process actively sought forgiveness after having lived in fear of their victim. For example, two young men had committed crimes against a woman and had been avoiding her since.⁷⁸ Accordingly, seeking forgiveness within the pilot National Palava Hut Commission transcended gender or authority roles.⁷⁹ One man who was formerly a general and had harmed a woman took part, kneeling so she could put her hand on his back in forgiveness, in line with the process he could not

⁶⁵ J. H. Webster Clayeh, 'INCHR Commences Palava Hut Hearing for War Victims and Perpetrators in Liberia's Worst War-affected Counties (18 November 2020)' *Front Page Africa* [online].

⁶⁶ The UN Peacebuilding Fund provided one million United States Dollars of initial funding for the NPHC, Fieldwork interview C2.

⁶⁷ The survey took place before and after the Ebola epidemic, providing the foundations for regional consultations, Fieldwork interview C2.

⁶⁸ Fieldwork interview C2.

⁶⁹ Speaking from civil society, one participant noted the importance of such training for minimum standards of accountability, Fieldwork interviews D1, C2.

⁷⁰ The counselling meant that all of the accused all agreed to appear before the pilot NPHC and meet their accusers. They were not told what victims had said prior to appearing, they were told that they had allegations against them and that they needed to prepare to go through the process, Fieldwork interview C2.

⁷¹ Fieldwork interview C2.

⁷² Fieldwork interview C2.

⁷³ Fieldwork interview C2.

⁷⁴ Fieldwork interview C2.

⁷⁵ During 2016 alone, 125 victims sought justice for conflict-related crimes using the process, UN Peacebuilding Support Office, 'Peacebuilding Fund Annual Progress Report Country: Liberia, Community Base Truth Telling and Atonement Project' (Reporting Period 1 January-31 December 2014); United Nations Development Programme, *Global Programme on Strengthening the Rule of Law and Human Rights for Sustaining Peace and Fostering Development* (2016) 91; Fieldwork interview C2.

⁷⁶ Fieldwork interview C2.

⁷⁷ The concept of the NPHC has evolved since the TRC recommendations made in 2009 through the pilot programme and initial hearings from a compulsory process for people named by the TRC, to a voluntary process where victims alerted the organisers to accused, Fieldwork interviews B1, C2, C4, E2; Liberian Truth and Reconciliation Commission (n53) 273.

⁷⁸ Fieldwork interview C2.

⁷⁹ The pilot did not deal with cases which involved matters such as children born of rape because nobody brought such issues before the NPHC committee at that time, Fieldwork interview C2.

rise before she did.⁸⁰ This process was mediated by traditional leaders and in some cases was charged with powerful emotions including grief, requiring hours of talking.⁸¹ The pilot National Palava Hut Commission was a process of reconciliation not with the *obligation* on victims to provide forgiveness, but where any forgiveness given is earned because the perpetrator is seeking amends and being remorseful.⁸² In two instances the victims had their property destroyed and the perpetrators were told to restore the property, agreed and subsequently did.⁸³ Notably, since the pilot programme ended in 2017, there have not been any reported reprisals.⁸⁴ The pilot of the National Palava Hut Commission is therefore encouraging as victims, accused persons and wider community members were able to effectively participate, and there is now a precedent for providing support through counselling as well as training for decision makers. In order to ensure that a future expanded use of the National Palava Hut Commission remains positive and effective, there should be consideration of possible targeted support measures in relation to CRSV. These should build on the experience of the pilot and incorporate issues which had not arisen, such as reparations for children born of rape. This may include providing training for community members who can then offer ongoing support for victims after participation.

There are also some areas of concern arising from the pilot. In particular, it will be essential to ensure that there is a truly plural approach to post-conflict justice within Liberia. This means providing victims of CRSV with the ability to make choices about post-conflict justice by ensuring that the National Palava Hut Commission does not become a replacement for formal prosecutions. It should be viewed and operated as one supplementary mechanism within a broader approach to post-conflict justice for victims, as was intended by the TRC recommendations. This will be especially important given the local context, with one participating official and a member of civil society raising concerns that drawing on traditional justice may not be appropriate for conflict-related crimes without also providing prosecutions, or if crimes will simply be 'let go'.⁸⁵

Notably, one strain of advocacy in Liberia has prioritised moving on from and forgetting the past, in conjunction with the cultural Liberian concept of letting bygones be bygones.⁸⁶ Whilst post-conflict justice was a priority for participating victims of CRSV, some had been advised to let the past go in order to move on with life: especially where they did not know the attacker and without forums for post-conflict justice.⁸⁷ However, as one participating official stated, it is not possible to elect to forget, the reality is that people who lived through the armed conflicts cannot choose to not know what happened.⁸⁸ The population has experienced traumatic crimes with long-term effects and people remember them well, testifying to their experiences in universal jurisdiction cases and the initial National Palava Hut Commission hearings.⁸⁹ The National Palava Hut Commission pilot tangibly demonstrated that despite some calls to leave the past in the past, there is a demand for justice.⁹⁰ It is therefore essential to ensure that victims of CRSV feel able to participate in a range of justice processes (or not as they desire), and that there is a focus on providing justice and the needs of victims rather than solely forgiveness and reconciliation – or the concept of letting bygones be bygones.

⁸⁰ Fieldwork interview C2.

⁸¹ Fieldwork interview C2.

⁸² Fieldwork interview C2.

⁸³ In one case rebuilding a house, another by restoring a farm, Fieldwork interview C2.

⁸⁴ Fieldwork interview C2.

⁸⁵ Fieldwork interview D1, C2; Christo Zorgbo Gorpudolo, 'Community-based restorative justice in peacebuilding: A case study of Liberia's Palava Hut pilot project' (Research paper, The Hague, The Netherlands, December 2019) 37.

⁸⁶ Fieldwork interview C4.

⁸⁷ Letting the past go and moving on was considered by one victim to be the best way of making the future of Liberia better, Fieldwork interviews A1, A3, A4.

⁸⁸ Fieldwork interview C4.

⁸⁹ Fieldwork interviews C2, C4.

⁹⁰ In the pilot areas more people would attend should the NPHC become operational, Fieldwork interview C2.

'the Liberian way is let by-gone be by-gone I come here and say oh sorry I killed your ma you killed my pa I vote for you. If we don't do it that way I think [traditional justice] can be a good supplement and it can also be home grown. And it can really have an impact if it's managed properly, I think organised and run properly I think it can really have an impact'.⁹¹

5.2.2 The necessity of incorporating traditional justice within responses to conflict-related sexual violence and the Rwandan experience

Where there exists a plural approach to justice which already includes traditional justice, the barriers that prevent victims from accessing formal justice and the limitations of the state which create a reliance on TJMs, such as a lack of resources, also affect the state's ability to respond to CRSV. The impacts of this can be illustrated and examined retrospectively through the relationship between CRSV and the Gacaca system in Rwanda, which was an adaption of a TJM known to much of the population, akin to palava hut in Liberia. Rwanda increased its capacity to provide justice following CRSV committed on a mass scale by giving traditional Gacaca a role which supplemented the formal justice system.⁹² This was particularly necessary following the Rwandan government's policy of prosecuting crimes associated with the 1994 genocide, which generated mass arrests and overwhelmed the Public Prosecutor's Office, courts, and prisons.⁹³ A Commission created in October 1998 found that adapting traditional Gacaca could provide culturally relevant justice on a mass scale within a reasonable time-frame.⁹⁴ The approach of Rwanda, which has also been taken elsewhere including Afghanistan, Sierra Leone, East Timor and Uganda, was to adapt a TJM to address conflict-related crimes, expanding the scope and functions beyond its original purpose.⁹⁵ Rwanda provides the most formalised example of adapting a pre-existing TJM through legislation and ultimately addressing a large number of cases involving CRSV.

There are therefore important lessons from the Rwandan experience for states which have a plural approach to justice and must also address CRSV, both beyond and including Liberia. This includes the need for provisions for CRSV to account for how justice mechanisms will function in practice and particularly their respective roles. Sexual violence associated with the genocide was addressed in Rwanda through a combination of the formal justice system and the Gacaca system working in cooperation, with laws which were reactively amended in response to arising issues. The 1996 *Genocide Law* established specialised chambers within Rwanda's formal courts and defined 4 categories of crime based on the severity of the acts.⁹⁶ To ease the burden on the formal courts, the first *Gacaca Law* of 2001 provided for Gacaca Courts to hear category 2, 3 and 4 crimes.⁹⁷

⁹¹ Fieldwork Interview D1, NGO staff.

⁹² Domitilla Mukantaganzwa, *National Service of Gacaca Courts: Gacaca Courts in Rwanda* (Kigali: Government of Rwanda, National Service of Gacaca Courts 2012) 14-15; UNESCO Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségué, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994 (E/CN.4/1996/68) (29 January 1996) UN Doc E/CN.4/1996/68; Sarah Wells 'Gender, Sexual Violence and Prospects for Justice at the Gacaca Courts in Rwanda' (2005) 14 *RLWS* 167, 182; Anne-Marie de Brouwer and Etienne Ruvebana, 'The Legacy of the Gacaca Courts in Rwanda: Survivors' Views' (2013) 13 *ICLR* 937, 964; Gregory Gordon, 'Complementary and Alternative Justice' (2009) 88 *OLR* 621-623, 641.

⁹³ Around 120,000 suspected *genocidaires* were arrested and held in Rwanda's prisons causing serious overcrowding, Phil Clark (n2) 776; Brynna Connolly 'Non-State Justice Systems and the State: Proposals for a Recognition Typology' (2006) 38 *CLR* 239, 267.

⁹⁴ The 13 member commission was created in October 1998, *Organic Law n°40/2000* of January 2001, Article 1; Domitilla Mukantaganzwa (n92) 29-30; Amnesty International, *Rwanda: Gacaca, A Question of Justice* (Amnesty International, AI Index: AFR 47/007/2002, December 2002) 20.

⁹⁵ Shannon Daley, 'Closing the Gap between Law and Reality: Women's Constitutional Rights in Afghanistan' (2014) 29 *CJIL* 329, 338; Paul Jackson (n14) 214.

⁹⁶ *Organic Law n°08/96* of 30/8/1996; Sarah Wells (n92) 172; Brynna Connolly (n93) 268.

⁹⁷ *Organic Law n°40/2000* of January 2001; *Organic Law n°08/96* of 30/8/1996; Domitilla Mukantaganzwa (n92) 18-23; Sarah Wells (n92) 173; Brynna Connolly (n93) 268.

Sexual violence was provided for as rape and sexual torture and classified as category 1, meaning that the Gacaca Courts did not initially have the jurisdiction to hear sexual violence cases.⁹⁸ However, in practice the Gacaca system operated to supplement the formal justice system and dealt with sexual violence from the outset. During the pre-trial phase the Gacaca system had an information gathering role and Gacaca Courts would also provide sentencing judgments in category 1 cases where a perpetrator confessed prior to listing by the Prosecutor.⁹⁹ For future efforts, anticipating this occurrence and engaging TJMs on the issue of CRSV from the outset will ensure that post-conflict justice strategies are better equipped to provide an effective response. This will include having community leaders and decision makers within TJMs who are prepared to address CRSV as it will arise during discussion or hearings.

The Rwandan experience also highlights the need to ensure that victims maintain their agency and have the ability to make informed decisions for themselves throughout justice processes. As a reaction to increasing capacity challenges in 2008, when the formal system faced another backlog, Rwandan officials again relied on Gacaca to ease the caseload.¹⁰⁰ In May 2008 the *Gacaca Law* was amended to provide Gacaca Courts with jurisdiction over some category 1 cases.¹⁰¹ Ninety percent of the cases transferred from the formal courts to Gacaca Courts involved rape or sexual torture.¹⁰² The amendment illustrates the pragmatism of the Rwandan government to addressing CRSV as well as its paternalistic approach, which tried to protect the privacy and security of victims by providing specific procedural rules for sexual violence, including closed sessions.¹⁰³ However, in reality, the location of Gacaca Courts within communities meant that people could become aware of the nature of proceedings.¹⁰⁴ Victims had also been encouraged to report CRSV with the reassurance that their cases would be heard in confidence within the formal justice system. Transferring cases to Gacaca Courts therefore breached trust for victims where hearing the case away from their community was a significant factor in the decision to pursue justice.¹⁰⁵

Many victims worried about going through testifying again in the Gacaca, feared breaches of confidence, biased judges, or repercussions and some women asked for their cases to be discontinued instead for reasons including having not told their families.¹⁰⁶ A few victims interviewed by Human Rights Watch wanted their cases moved to the Gacaca for speed and one appreciated the ability to speak more freely with less formality.¹⁰⁷ This illustrates the need to engage TJMs from the outset within a well-designed post-conflict justice strategy which anticipates and mitigates the burden on formal justice mechanisms. Being able to understand and foresee the outcomes of seeking justice is especially important for victims of CRSV, who may potentially face stigma and possible repercussions for both

⁹⁸ Gacaca Courts would not get jurisdiction to hear CRSV cases until 2008, additionally only sexual torture was in the 1996 *Genocide Law*, the 2001 *Gacaca Law* provided for rape, *Organic Law n°08/96* of 30/8/1996; *Organic Law n°40/2000* of January 2001; Sarah Wells (n92) 175, 184.

⁹⁹ *Organic Law n°40/2000* of January 2001; Sarah Wells (n92) 173; Lars Waldorf, 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice' (2006) 79 *TLR* 1, 62.

¹⁰⁰ Domitilla Mukantaganzwa (n92) 198; Human Rights Watch, *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts* (Human Rights Watch 2011) 112-113; Anne-Marie de Brouwer and Etienne Ruvebana (n92) 940.

¹⁰¹ *Organic Law n°13/2008* of 19 May 2008; Domitilla Mukantaganzwa (n92) 198; Usta Kaitesi, *Genocidal Gender and Sexual Violence: The legacy of the ICTR, Rwanda's ordinary courts and gacaca courts* (Cambridge: Intersentia 2013) 233; Anne-Marie de Brouwer and Etienne Ruvebana (n92) 940.

¹⁰² *Organic Law n°13/2008* of 19 May 2008; Domitilla Mukantaganzwa (n92) 198; Human Rights Watch (n100) 112-113; Anne-Marie de Brouwer and Etienne Ruvebana (n92) 940.

¹⁰³ The only people present in closed hearings were victims, the accused, judges and trauma counsellors, *Organic Law n°13/2008* of 19 May 2008; Domitilla Mukantaganzwa (n92) 199; Anne-Marie de Brouwer and Etienne Ruvebana (n92) 940; Anne-Marie de Brouwer and Sandra Ka Hon Chu, 'Gacaca Courts in Rwanda: 18 Years After the Genocide, Is There Justice and Reconciliation for Survivors of Sexual Violence?' (7 April 2012) *IntLawGrrls* [Online]; Human Rights Watch (n100) 112.

¹⁰⁴ Human Rights Watch (n100) 112.

¹⁰⁵ Human Rights Watch (n100) 112.

¹⁰⁶ Human Rights Watch (n100) 114-115.

¹⁰⁷ Human Rights Watch (n100) 113.

bringing cases or being exposed as having experienced sexual violence.¹⁰⁸ Responding to CRSV within legally plural contexts therefore requires appropriately using TJMs in a supplementary fashion from the start, in order to ensure that justice mechanisms have consistent roles throughout the process of post-conflict justice. In turn, this also ensures that victims of CRSV have foreseeable outcomes when they seek justice and can make fully informed choices.

5.2.3 Taking a less formalised approach to the use of traditional justice and the Ugandan experience

There are multiple ways in which states can take a plural approach to post-conflict justice and in which they can build on existing domestic pluralism. In contrast to states such as Rwanda, which have substantially developed TJMs within a legal framework which prescribed their jurisdiction, role and relationship to other justice mechanisms, some states have been less prescriptive. Indeed, the Liberian approach whilst comprehensive does not provide an additional legislative framework for post-conflict justice within which TJMs would operate. The extent to which this is required is something for states to consider. The Ugandan government took a less formalised approach to the post-conflict use of TJMs which subsequently created uncertainty for victims of CRSV.¹⁰⁹ In Uganda, the exploration of using traditional justice to address conflict-related crimes was driven by poor progress towards peace. Particularly the strained relationship between the government, the ICC, and leaders of the Lord's Resistance Army (LRA), an armed group formed in 1987 led by Joseph Kony (an ethnic Acholi).¹¹⁰ The government had repeatedly entered peace talks, and in January 2004, President Museveni invited ICC officials onto Ugandan territory.¹¹¹ In June 2007, after two decades of armed conflict, leaders from the LRA agreed to '[a]lternative justice mechanisms' listed in the *Agreement on Accountability and Reconciliation*.¹¹² The Ugandan government subsequently embraced the existing legal pluralism as part of its post-conflict justice strategy, and encouraged communities to rely on traditional justice to address conflict-related crimes. However, they did not provide oversight nor introduce a legal framework to guide the post-conflict use of TJMs. Whilst other TJMs were also named in the 2007 *Agreement*, without further direction, the Acholi TJM *mato oput* became the focus as Acholi people had been both linked with and targeted by the LRA.¹¹³ This raised questions around the relevance of post-conflict justice proceedings for other ethnic groups and highlights the need to ensure that any use of TJMs is appropriate for all affected communities. In particular, it is essential to avoid having an

¹⁰⁸ Fieldwork interviews A5-6.

¹⁰⁹ Brynna Connolly (n93) 247; Kim Seelinger (n1) 561.

¹¹⁰ Ketty Anyeko et al., 'The Cooling Hearts': Community Truth-Telling in Northern Uganda' (2012) 13 *HRD* 107, 111, 114; Abdul Karim Bangura, 'The Politics of the Struggle to Resolve the Conflict in Uganda: Westerners Pushing Their Legal Approach versus Ugandans Insisting on Their Mato Oput' (2008) 2 *JPAS* 142, 143.

¹¹¹ Peace agreements included the *Amnesty Act, 2000* which provided for amnesty, demobilisation, and resettlement, attracting thousands of Lord's Resistance Army fighters; *Amnesty Act, 2000*, Part II Article 3(1) and Part II Article 3(2), Part III Article 11; *Agreement on Cessation of Hostilities Between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, Sudan, of 26 August 2006*; International Criminal Court 'Uganda: Situation in Uganda (2019)' ICC [Online]; Linda Keller, 'Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms' (2008) 23 *CJIL* 209, 213, 215-216; Christopher Bailey, 'The Quest for Justice: Joseph Kony and the Lord's Resistance Army' (2016) 40 *FILJ* 247, 255-256, 315.

¹¹² *Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement Juba, Sudan* of 29 June 2007, Article 5.3; Moses Chrispus Okello and Lucy Hovil, 'Confronting the Reality of Gender-based Violence in Northern Uganda' (2007) 1 *IJTJ* 433, 434; Linda Keller (n111) 213, 217.

¹¹³ In the early 1990s, Kony turned on the Acholi people and committed crimes against them to punish their lack of support for the LRA. *Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement Juba, Sudan* of 29 June 2007 Article 3.1 states: 'Traditional justice mechanisms, such as Culo Kwor, Mato Oput, Kayo Cuk, Ailuc and Tonu ci Koka and others as practiced in the communities affected by the conflict, shall be promoted, with necessary modifications, as a central part of the framework for accountability and reconciliation'; Linda Keller (n111) 224, 230-231; Christopher Bailey (n111) 252-253; Moses Chrispus Okello and Lucy Hovil (n112) 434.

over-focus on one mechanism by stakeholders, such as international funders, as taking a narrow approach may be to the detriment or exclusion of some victim groups.

The lack of official oversight or a legal framework for the use of TJMs as part of post-conflict justice in Uganda has proven problematic for both victims of and people suspected of CRSV. Without a legal framework which categorises conflict-related crimes and assigns them to justice mechanisms, the treatment of people who committed acts of CRSV may vary.¹¹⁴ This is a challenge of legal pluralism: without clarity, decision makers, victims and accused persons (where applicable) may have difficulty identifying the applicable law or selecting the appropriate justice mechanism.¹¹⁵ Where the formal and traditional justice systems operate cohesively, individuals can make strategic choices and move between them.¹¹⁶ Accordingly, in order for victims to make informed decisions when seeking justice for CRSV, they must have clear guidance on the role and functions of each justice mechanism. Factors to consider include overcoming rivalrous compliance, for example where religious obligations to carry a Kirpan (a traditional small sword) contrast with state prohibitions on carrying knives.¹¹⁷ Or incoherence, such as where conduct is prohibited by one justice system but not the other, or where conduct is an offence in the formal and traditional justice system but has significantly different sanctions.¹¹⁸ This is particularly problematic if one justice system's sanctions are prohibited by the other and especially pertinent for CRSV, as existing legislation around sex crimes may not match socio-cultural norms or beliefs around sex and gender which are enforced within TJMs.

Additionally, a post-conflict legal framework for addressing CRSV could have provided greater clarity around the conduct which was to be considered and thus resolved some of the difficulties created by Uganda's domestic legal system. Uganda's criminalisation of adultery and homosexuality exacerbates stigma around CRSV, potentially preventing victims of all identities reporting rape.¹¹⁹ Uganda's *Penal Code Act* has also framed sex crimes as 'Offences Against Morality' rather than serious violations akin to murder.¹²⁰ Finally, whilst 'any person' could commit an act of rape, the definition only included 'unlawful carnal knowledge of a woman or girl' leaving male victims without access to justice and unrepresented as victims.¹²¹ The lack of clarity around the response to CRSV and the applicable law meant that existing domestic provisions potentially influenced the perceptions of sexual violence and prevented some people from participating in post-conflict justice.¹²² Where there is a plural approach to post-conflict justice, it is essential to clarify which crimes will be addressed in which mechanism as well as the applicable sanctions. This is particularly pertinent for CRSV, as negative social and legal norms around sexual violence have a significant impact on providing justice for sexual violence and can especially affect the use of TJMs, which may enforce such norms.

In Uganda this un-adapted, less regulated approach was particularly problematic due to the association of mato oput with negative norms around sexual violence. For example,

¹¹⁴ Ketty Anyeko et al., (n110) 122.

¹¹⁵ Jamila Hussain (n6) 375; Jürg Helbling, Walter Kälin and Prosper Nobirabo (n3) 351.

¹¹⁶ Alexandre Marc, *Understanding Access to Justice and Conflict Resolution at the Local Level in the Central African Republic (CAR)* (Social Cohesion and Violence Prevention Team, Social Development Department, The World Bank Group 2012) 73; Jürg Helbling, Walter Kälin and Prosper Nobirabo (n3) 351.

¹¹⁷ Ida Nursoo (n2) 64; Phil Clark (n2) 765; Berihun Gebeye (n2) 231; Shaun Larcom (n2) 194.

¹¹⁸ Shaun Larcom (n2) 197, 204.

¹¹⁹ *Penal Code Act 1950*, Chapter XV: Offences Relating to Marriage and Domestic Obligations, Section 154 Adultery; *Penal Code Act 1950*, Chapter XIV: Offences Against Morality, Article 145 Unnatural Offences.

¹²⁰ The applicable domestic law in Uganda included but is not limited to the *Constitution of the Republic of Uganda 8 October 1995*; the *Penal Code Act 1950*, Chapter XIV of the *Penal Code Act*, 'Offences Against Morality', Sections 123-151 contained acts including Rape, Abduction, 'Indecent assaults, etc.', Defilement, Abortion, and Incest; *Children's Statute 1996 (No. 6 of 1996)*; Moses Chrispus Okello and Lucy Hovil (n112) 436; Jacqueline Kigganda, 'How Can the International Criminal Court Influence National Discourses on Sexual Violence? Early Intimations from Uganda' (2007) 4 *EOTI* 45, 49.

¹²¹ *Penal Code Act 1950*, Chapter XIV: Offences Against Morality, Section 123 Definition of Rape; Jacqueline Kigganda (n120) 49-50.

¹²² Ketty Anyeko et al., (n110) 122.

socio-cultural norms which label or ostracize women who change sexual partners caused some women who were raped, including those taken as 'bush wives', to stay with or face forced marriage to their rapist.¹²³ There is therefore a need to work with communities, community leaders and decisions makers within TJMs to mitigate the negative repercussions around CRSV and for community leaders to prescribe appropriate processes and punishments. The Ugandan experience illustrates the necessity of an overarching legal framework for post-conflict justice which incorporates TJMs and sexual violence. It also illustrates the need for information dissemination and public education on the forums in which people can seek justice as well as which laws are applicable to CRSV, including basic information such as which acts constitute a crime. Without this clarity, CRSV is particularly susceptible to harmful socio-cultural norms and confusion within plural systems around which mechanisms should try which crimes, meaning that victims can subsequently feel unable to seek justice.

5.2.4 Lessons on legal pluralism and the use of traditional justice in relation to conflict-related sexual violence

Where states have a plural approach to justice in which both formal and traditional justice systems already exist, responses to conflict-related crimes such as sexual violence must acknowledge TJMs and clarify their role within post-conflict justice from the outset. Building on an existing plural approach to justice is particularly important for victims of CRSV, who will need clear, accessible and culturally appropriate mechanisms through which they can seek and receive justice. For example, in Liberia, policy makers must clarify whether victims of CRSV who are unable to seek justice for such crimes in the formal courts will be able to raise the situation within the National Palava Hut Commission (such as where the attacker was a child soldier). If so, what would be the criteria and which crimes would the National Palava Hut Commission be able to hear? There is also the related question of the role for TJMs in relation to CRSV in terms of the need to supplement the formal justice system, and in what ways TJMs may best fulfil this function? For example, will they assist with the process of determining victim status and access to reparations programmes? This may be particularly important for victims who cannot identify their attacker (or attackers) or where the attacker has passed away. The use of TJMs to supplement formal justice mechanisms may therefore assist victims in bringing their situations before justice fora, and in doing so, it may also be essential for increasing the capacity of and protecting the formal justice system.¹²⁴

Expecting only formal justice mechanisms to address CRSV without mitigating the limitations on their capacity risks overwhelming the domestic courts and prisons to the point where justice processes fail to function, as previously seen in Rwanda. In contemporary Liberian life, TJMs are a strategic resource which have an important role in mitigating issues within the formal justice system – including a lack of capacity – which already face the overburdened court and prison system. For example, the traditional justice system makes an especially valuable contribution to reducing the number of pre-trial detainees by resolving appropriate cases before they go to court.¹²⁵

The reality is that Liberia's formal justice system including its domestic courts face a significant capacity issue even before the additional burden of investigating and prosecuting conflict-related crimes. Supplementing the recommended Extraordinary Criminal Tribunal with prosecutions in Liberia's domestic courts will be important due to the limited capacity of such a Tribunal.¹²⁶ Subsequently, the risk of Liberian domestic courts becoming overwhelmed is high and necessitates the use of traditional justice via the National Palava Hut Commission. In particular, prosecuting CRSV within the subject-

¹²³ Kevin Jon Heller, 'Deconstructing International Criminal Law' (2008) 106 *MLR* 975, 987-988.

¹²⁴ Jonathan Compton (n9) 66; Freida McCormack (n10) 10.

¹²⁵ Fieldwork interview C1.

¹²⁶ Fieldwork interview B1.

specific Criminal Court E will increase the burden on the Court and will likely add to the existing backlog of cases.¹²⁷ As such the TRC's envisaged Domestic Criminal Prosecutions may exacerbate pre-existing issues such as long pre-trial detention and prison overcrowding which could jeopardise the ability of accountability mechanisms to protect fundamental rights and deliver justice to victims of CRSV.¹²⁸ Proactively addressing these existing issues and seeking to mitigate the potential effects of additional cases, including through the use of traditional justice where appropriate, is therefore essential.

Both acknowledging such a context of operation and engaging with existing traditional justice systems from the outset can improve responses to CRSV. One official who participated in the study recognised the role for traditional justice as an important resource within Liberia's post-conflict justice strategy.¹²⁹ It was particularly highlighted that state prisons currently work with some community Chiefs and TJMs as rural areas can have their own prison system, and sometimes have their own policing system.¹³⁰ Although despite this, it should be noted that Chiefs and TJMs within Liberia generally do not have the authority to hand down custodial sentences, nor is there an intention for the recommended National Palava Hut Commission to do so. Within daily life, if an individual violates traditional norms which make them subjectable to court processes or prison, they must be turned over to the formal justice system.¹³¹ Accordingly, and akin to what is currently occurring as part of everyday life in Liberia, the National Palava Hut Commission may be able to increase the capacity to deliver post-conflict justice within appropriate parameters and with clarity around which crimes they are able to address.

With this recognised need for traditional justice to supplement formal justice mechanisms there is also a need to clarify their respective jurisdictions and mandates as well as to communicate this to communities. This includes determining the roles of TJMs as part of what should be a comprehensive approach to post-conflict justice, and crucially, how and in which forums CRSV will be addressed. In order to improve responses and effectively address CRSV, defining the roles and functions of each relevant justice mechanism (including but not limited to TJMs) in relation to CRSV is critical. To this end there must be consideration of provisions around CRSV and the potential areas wherein TJMs can support the delivery of justice during the design of post-conflict justice strategies. For example, the TRC stated that its mandate gave it the flexibility to also investigate crimes not of an international character ('Egregious Domestic Crimes') 'including sexual violations (e.g. rape and molestation)'.¹³² It further stated that 'to the extent Liberian law criminalises sexual crimes' and where statutes of limitation do not apply, Liberian law would be used to determine responsibility.¹³³ The Liberian TRC has subsequently provided initial guidance on the role of Domestic Prosecutions by recommending that the domestic courts prosecute 'certain individuals' who have 'committed egregious violations' against the population, where the crimes do not meet the 'gross violations' threshold, at the discretion of the Prosecutor.¹³⁴ However, this leaves a broad scope for interpretation. Again, as stated, victims will require a clear definition of the jurisdiction of each justice mechanism, the laws which apply, and if there is variance from existing domestic norms

¹²⁷ Cecil Griffiths, *Mapping Study on Gender and Security Sector Reform: Actors and Activities in Liberia* (Geneva: Centre for Democratic Control of Armed Forces 2011) 26; Veronica Fynn Bruey, 'Redefining Women's Roles in International and Regional Law: The Case of Pre and Post War Peacebuilding in Liberia' in Seema Shekhawat (ed.) *Gender, Conflict, Peace, and UNSC Resolution 1325* (London: Lexington Books 2018) 32; Freida McCormack (n10) 4, 6, 8.

¹²⁸ The prison system faces acute over-crowding: Monrovia Central Prison has capacity for 374 people but is holding over 1000 people, 75-80% of the detainees are being held on pre-trial detention. Charges are contemporary crimes associated with current issues including drug issues, debt, property, murder, aggravated assault and most often misdemeanour offences, Fieldwork interview C1; United States Department of State, Country Reports on Human Rights Practices for 2018 (Bureau of Democracy, Human Rights and Labor 2018) 3.

¹²⁹ Fieldwork interview C1.

¹³⁰ Fieldwork interview C1.

¹³¹ Fieldwork interview C1.

¹³² Liberian Truth and Reconciliation Commission (n35) 34.

¹³³ Liberian Truth and Reconciliation Commission (n35) 34.

¹³⁴ Liberian Truth and Reconciliation Commission (n54) 270.

– including customary norms. This should be provided alongside the relationship between formal justice mechanisms such as the Tribunal and the state courts as well as their relationships with the National Palava Hut Commission.

Ultimately, in Liberia, as seen in Rwanda and multiple other post-conflict states, it will not be logistically, practically and realistically possible to hold everybody who committed conflict-related crimes accountable. Nor will it be possible to provide a custodial response for all crimes which might otherwise incur a prison sentence, such as many crimes of CRSV (for example, rape). Accordingly, the National Palava Hut Commission must work strategically with the Tribunal and domestic courts to maximise resources and the delivery of justice.¹³⁵ It is therefore encouraging that the TRC embraced the existing legal pluralism within Liberia and took a comprehensive approach to designing post-conflict justice. What will be important going forwards is that the recommendations are implemented cohesively. The Extraordinary Criminal Tribunal, Domestic Criminal Prosecutions and the National Palava Hut Commission must supplement each other and make the best use of Liberian resources to deliver justice for Liberians for conflict-related crimes. In particular, there must be a cohesive and comprehensive approach to crimes of CRSV with mechanisms supplementing each other in order to provide justice.

5.3 Questions arising from the use of traditional justice to address conflict-related sexual violence

Relationships between TJMs and formal justice mechanisms vary between contexts and influence how victims might seek justice for CRSV. Plural justice systems of the kind seen in Liberia, where there is an existing relationship between functional formal and traditional justice systems may be in a more advantageous position than states such as Rwanda, where the use of Gacaca was outdated. Efforts to address CRSV which utilise both justice systems in a supplementary fashion are stronger than those which would fully incorporate TJMs into the formal justice system and thus decrease their legitimacy and flexibility. At the same time, a state deploying an adapted TJM to address CRSV has international obligations and must ensure that mechanisms are protecting fundamental rights.¹³⁶ There is therefore a trade-off, with mechanisms requiring either oversight through greater incorporation within the formal hierarchy, or a limitation on their powers and jurisdiction: as intended in Liberia, where the National Palava Hut Commission is not envisaged to hand down custodial sentences.

Responding to CRSV requires a comprehensive and nuanced approach which engages all available mechanisms and centralises victims. There is no one response which can meet the needs of all victims or mitigate all of the impacts of CRSV. Additionally, TJMs can improve responses to CRSV only as one part of the overall approach. Victims must retain the ability to choose whether they wish to seek justice and how they wish to approach seeking justice; if they wish to seek reparations, if they wish to pursue formal prosecutions, and/or take part in truth-telling. Relevant TJMs which are born of legally pluralist approaches to justice and are operating as one part of a multi-faceted response to CRSV may therefore improve responses by providing people with an additional option to pursue justice if they wish.

Improving responses to CRSV by taking a plural approach and incorporating traditional justice also provides an opportunity to enhance capacities to address the long-term health, social, economic and cultural impacts of CRSV which prosecutions cannot fully comprehend. TJMs perform functions which state courts cannot, such as contributing to social discussion and harmony, meaning that they may be able to fill gaps within the formal justice system. It is too idealistic to believe that TJMs are free from their own biases, pressures, or corruptions (akin to formal justice systems). As they enforce the norms of

¹³⁵ Fieldwork interview D2.

¹³⁶ Brynna Connolly (n93) 291.

the community in which they function, some may need to adapt in order to address CRSV: the pilot of the National Palava Hut Commission in Liberia included role specific training which was well-received by communities.¹³⁷ However, the limitations on the capacities and resources of formal justice systems create a necessity to use traditional justice within post-conflict justice processes. This raises questions around how TJMs may be used in relation to improving responses to CRSV. These questions include whether victims are willing and able to testify within their own communities? What are the possible implications of asking them to do so? And, what is the relationship between CRSV, restorative justice and the role of TJMs?

¹³⁷ Fieldwork Interview C2.

Chapter 6: Are Restorative Forms of Justice Appropriate for Conflict-Related Sexual Violence?

Crimes of CRSV are often committed on a large scale and create large numbers of both victims and accused persons. Limitations on the capacity of formal justice systems mean that not all accused individuals can be prosecuted within a court or face a custodial sentence. Additionally, many victims face resulting needs such as social, economic and health difficulties. Traditional justice may be able to improve responses to CRSV by supplementing formal justice mechanisms. TJMs may be able to increase the capacity of states to provide justice and subsequently also provide more victims with the opportunity to seek and receive redress. As TJMs are often well placed to facilitate restorative forms of justice and reconciliation processes, the appropriateness of such approaches to justice for addressing CRSV as well as meeting the needs of victims is a key consideration. Accordingly, it is important to include discussion of restorative justice whilst considering the role of TJMs in relation to CRSV. Decisions around what constitutes appropriate justice for CRSV should be shaped by affected communities, and in particular, they must account for the opinions of victims.¹ Arising questions include whether restorative justice and alternate forms of redress can meet the needs of victims; whether victims wish to participate in discursive mechanisms and directly engage with their attackers, and if so, what might such interactions seek to achieve?

6.1 Traditional Justice and Restorative Justice

Discussion of restorative justice is essential in relation to the role of TJMs as part of responses to CRSV, as both academics and policy makers have made a strong connection between traditional justice and restorative justice.² Accordingly, if TJMs are often used with restorative aims, the appropriateness of restorative justice for CRSV will shape the relationship between traditional justice and victims of such crimes. Within the academic literature there has been a tendency to focus specifically on the restorative aspects of TJMs, despite there often being a retributive element.³ This focus has been fuelled by comparative writing which frames traditional justice as purely restorative in order to contrast it to retributive formal justice mechanisms, often deeming one to be legitimate or superior.⁴ However, this approach often assumes that formal and traditional justice mechanisms operate in parallel or totally separately, despite considerable overlap between justice systems in many states.⁵ Additionally, there is cross-over between forms of justice, for example, restorative justice processes have been introduced to formal criminal justice systems through rehabilitation programmes.⁶ The appropriateness of traditional justice to

¹ Phil Clark, 'Hybridity, holism, and traditional justice: the case of the Gacaca courts in post-genocide Rwanda' (2007) 39 *GWIL* 765, 772.

² See for example, Domitilla Mukantaganzwa, *National Service of Gacaca Courts: Gacaca Courts in Rwanda* (Kigali: Government of Rwanda, National Service of Gacaca Courts 2012) 33; Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement Juba, Sudan of 29 June 2007, Article 5.3; United Nations Transitional Administration in East Timor 'Regulation No.2001/10' (13 July 2001) UN Doc UNTAET/REG/2001/10.

³ Kathleen Daly 'What is Restorative Justice? Fresh Answers to a Vexed Question' (2016) 11 *VAO* 9, 14-15; Kate McKenna, 'Gacaca – A Paradigm for Restorative Justice in Rwanda' (2006) 9 *CLR* 7, 20-21; Phil Clark (n1) 772, 834; Stephanie Vieille, 'Frenemies: restorative justice and customary mechanisms of justice' (2013) 16 *CJR* 174, 174-175; Julie Macfarlane, 'Working towards Restorative Justice in Ethiopia: Integrating Traditional Conflict Resolution Systems with the Formal Legal System' (2007) 8 *CJCR* 487, 489, 491.

⁴ Julie Macfarlane (n3) 489, 491; Kathleen Daly (n3) 14; Phil Clark (n1) 772; Kate McKenna (n3) 20-21.

⁵ Phil Clark (n1) 834; Berihun Gebeye, 'Decoding legal pluralism in Africa' (2017) 49 *JLPUL* 228, 230.

⁶ See for example, examinations of incorporation of restorative justice in Norway, Germany, Ireland and Belgium, including for sexual violence offences, Marie Keenan, Estelle Zinsstag and Caroline O'Nolan, 'Sexual violence and restorative practices in Belgium, Ireland and Norway: a thematic analysis of country variations' (2016) 4 *RJIJ* 86-114, Marie Keenan, 'Training for Restorative Justice Practice in Sexual Violence Cases' (2018) 1 *IJRJ* 291-302. In Liberia, people may initially seek justice from a TJM before going on to a formal justice mechanism if they are dissatisfied. TJMs may also perform cleansing rituals after certain crimes, including where a perpetrator

address CRSV must therefore be considered in light of all of the functions of TJMs, without minimising areas of overlap between justice systems.⁷

Subsequently, the consideration of restorative justice in relation to CRSV requires exploring the multiple definitions and forms of restorative justice. Classic definitions of restorative justice emphasise the humanity of the parties to a situation and consider that punishing perpetrators is by itself insufficient.⁸ Rather than viewing criminality strictly as a violation of the law, theories of restorative justice conceptualise crime as a violation of one person by another.⁹ This is significant for victims of CRSV, who often continue to live with the harms which were caused by violations. Accordingly, to repair such harms and address long-term physical, psychological and socio-cultural impacts of CRSV, restorative justice processes including alternate forms of redress and reparations can be an important aspect of justice.¹⁰

Some definitions of restorative justice have stretched the concept to include any approach to justice with reconciliation as an aim.¹¹ The concept of reconciliation itself has varying definitions revolving around repairing relationships which have been damaged by violations: it goes beyond peaceful coexistence wherein parties avoid each other, individuals and community groups must interact to resolve situations.¹² Reconciliation can therefore be a significant component of justice following armed conflicts which have destroyed inter-personal and community links through crimes such as CRSV, and have created the need to reintegrate both accused and victims into their communities.¹³ Subsequently, when theories of restorative justice are applied in post-conflict contexts, reconciliation is frequently made a priority and often connected to traditional justice.¹⁴ This includes Liberia, where the TRC recommended the use of the National Palava Hut Commission with the intention to foster healing and reconciliation at the community level.¹⁵

*'[Describes case relating to the armed conflict within the pilot National Palava Hut Commission] and then I said yes, yes here we have a case we have a victim we have a perpetrator but we did not say let it just go we had reparation. Whatever farm this guy made would never pay and account for the people lost but it's a symbol, it's a sign that it's not just by-gone be by-gone. I said yes, this is something we can build on. That's reparation, that's reparation. I made you loss, I can try, just try to prove that I'm sorry, he just doesn't say it and walk away. I said yes this is reparation. You know so yes, traditional justice mechanisms should work and I think we should put more energy into it.'*¹⁶

convicted and punished by the formal justice system returns to a community; Fieldwork Interviews A3-4, A6, B1, C1, C4, E2; Kate Bloch, 'Reconceptualizing Restorative Justice' (2010) 7 *HRPLJ* 201, 203.

⁷ Kathleen Daly (n3) 15.

⁸ Kathleen Daly (n3) 10, 12; Stephanie Vieille (n3) 177; Kate Bloch (n6) 203.

⁹ Phil Clark (n1) 773.

¹⁰ Sunneva Gilmore, Julie Guillerot and Clara Sandoval, 'Beyond the Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes' (Reparations, Responsibility and Victimhood in Transitional Societies, March 2020) 5.

¹¹ Eva Achjani Zulfa 'Restorative Justice in Indonesia: Traditional Value' (2011) 1 *ILR* 33, 35; Kate Bloch (n6) 203.

¹² Albert Dzur and Alan Wertheimer, 'Forgiveness and Public Deliberation: The Practice of Restorative Justice' (2002) 21 *CJE* 3, 8; Phil Clark (n1) 770-773.

¹³ Ryota Jonen, 'Role of Reconciliation in Post-Conflict Liberia' (2000) 32 *PR* 41, 45; Fieldwork interviews D1-2.

¹⁴ Phil Clark (n1) 773.

¹⁵ Liberian Truth and Reconciliation Commission, *Volume Two: Consolidated Final Report* (Republic of Liberia Truth and Reconciliation Commission, 2009) 273; Fieldwork interviews C2, D2; Paul James-Allen, Aaron Weah, and Lizzie Goodfriend, *Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia* (New York: International Center for Transitional Justice 2010) 20.

¹⁶ Fieldwork Interview D1, NGO staff.

Within Liberia, there is a consensus that providing post-conflict justice and effectively addressing conflict-related crimes will also be essential for efforts towards reconciliation to be successful as the two are intrinsically linked.¹⁷ This connection between justice and reconciliation is particularly important given the close-knit nature of Liberian communities, as individual harms may impact every community member.¹⁸ The Liberian Peacebuilding Office has developed a reconciliation roadmap which defines the concept as a multi-stage process involving formal and traditional justice.¹⁹ Objectives include overcoming 'social, political and religious cleavages', mending and transforming relationships, healing 'physical and psychological wounds' and addressing historical wrongs.²⁰ Reconciliation is intended to form one of the components of justice for large scale crimes, alongside accountability, memorialisation, and the protection of peace.²¹ The Roadmap also recognises the need for multiple approaches to post-conflict justice. In particular, it states that the pursuit of restorative forms of justice would not preclude also pursuing retributive and restitutive forms of justice in Liberia.²² This also links with – or returns to – the idea of legal pluralism, and the necessity of operating multiple justice mechanisms cohesively in order to provide victims with what they need in order to receive satisfying justice. The Roadmap's explicit recognition that victims require the opportunity to seek multiple forms of justice is especially important within Liberia. In particular, it provides room for *both* restorative and retributive forms of justice in a context where the Liberian population is being presented with an either/or choice between the two. For states which are now seeking to address CRSV, recognising and publicly acknowledging the need for both restorative and retributive forms of justice is especially relevant for victims, who may require both in order to meet their needs.

6.2 Are traditional justice mechanisms appropriate for conflict-related sexual violence?

During the fieldwork in Liberia one official and one member of civil society raised concerns around using traditional justice to address conduct which constitutes an international crime with far-reaching implications.²³ For most participants in the fieldwork, especially officials, the most appropriate form of justice depended on the nature and gravity of the crime or the overall role of the accused.²⁴ The nature of a person's participation in the armed conflicts was consistently seen as a decisive factor, with communities considered unable to deal with people who led and organised massacres or crimes considered to be especially egregious such as cannibalism or forced cannibalism.²⁵ Communities were considered as potentially able to deal with serious crimes such as killing if the accused was a low-level person who was following a group, was known to the community to have been a good child before the armed conflict, and if they show remorse.²⁶

'The other question that still rests in my mind is can traditional justice actually account for war crimes and crimes against humanity? And I'm not sure of it. I am not certain about that. Because war crimes and crimes

¹⁷ Fieldwork Interviews A3, A6, B1-2, C2, C4, D1-D2, E1; Christo Zorgbo Gorpudolo, 'Community-based restorative justice in peacebuilding: A case Study of Liberia's Palava Hut pilot project' (Research paper, The Hague, The Netherlands, December 2019) 16; Priyal Singh and Lesley Connolly, 'The road to reconciliation: A case study of Liberia's reconciliation roadmap' (2014) 30 *ACCORD* 1, 4.

¹⁸ Fieldwork interview C1.

¹⁹ The Peacebuilding Office found that for many Liberians, reconciliation meant that political leaders must treat them fairly and bring an end to corruption: especially the squandering of resources which prevents them from seeing the advantages of peace, Priyal Singh and Lesley Connolly (n17) 4; Fieldwork interview C2.

²⁰ Priyal Singh and Lesley Connolly (n17) 4; Fieldwork interviews C2, D1.

²¹ Fieldwork interview D1.

²² Fieldwork interview C2.

²³ Fieldwork interviews C1, D1.

²⁴ There was a consensus that the Tribunal should prosecute individuals deemed to bear most responsibility, for example, planning, organising and financing the armed conflicts, Fieldwork interviews B1, C1, C3-4, D1, E2.

²⁵ Fieldwork interview C4.

²⁶ Fieldwork interview C4.

*against humanity have far reaching international implications. So yeah, so there where we are. On what level do we handle what issue? Definitely traditional mechanism would be an option, option to supplement an international war crime court. Internationally best practice war crime court.*²⁷

It has been argued within academic literature and by NGOs that traditional justice is unable to adequately address CRSV.²⁸ Arguments within the academic literature include that TJMs do not have the appropriate procedures or punishments for sexual violence, nor do they have the gravity for conflict-related crimes.²⁹ There are also questions around whether restorative and reconciliatory aims which may underpin the use of TJMs in post-conflict contexts are appropriate or possible to achieve in relation to CRSV.³⁰ Returning to the Ugandan example (*supra* 4.2.2), the use of mato oput in communities beyond Acholi populations and without adaptations for conflict-related crimes was called into question as crimes committed by the LRA were argued by some communities to outstrip its traditional reconciliatory powers.³¹

Despite the aforementioned, restorative processes of reconciliation through remorse and forgiveness have been connected to the use of traditional justice to address CRSV, for example, by enhancing the integration of victims and perpetrators.³² For this to occur, both perpetrators and victims must be present and genuinely engaged with justice processes, which may not be possible for victims of CRSV where their attackers are unidentified, deceased, moved away or will not admit their crimes.³³ Additionally, this concept requires genuine engagement from accused persons in justice processes. For example, in the Gacaca Courts, not all apologies were perceived to be genuine and forgiveness was reported as harder or impossible where a victim knew of more crimes than the perpetrator had admitted, was the last survivor from a family, or experienced especially cruel violence.³⁴ However, it did occur and in de Brouwer's study of Gacaca, most participants said they had been able to forgive where the perpetrator had genuinely asked for forgiveness and told them where their relatives remains were.³⁵ Some victims also forgave perpetrators who did not ask for it where they confessed, including where they were not known to the perpetrator.³⁶ As community-run mechanisms with few

²⁷ Fieldwork Interview D1, NGO staff.

²⁸ Sarah Wells 'Gender, Sexual Violence and Prospects for Justice at the Gacaca Courts in Rwanda' (2005) 14 *RLWS* 167, 181; John-Mark Iyi, 'Fair hearing without lawyers? The Traditional Courts Bill and the reform of traditional justice system in South Africa' (2016) 48 *JLPUL* 127, 134; Cecily Rose, 'Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanisms in Northern Uganda: A Proposal for Truth-Telling and Reparations' (2008) 28 *BCTWLJ* 345, 365; Erin Baines, 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in northern Uganda' (2007) 1 *IJJ* 91, 107; Steven Roach, 'Multilayered in Northern Uganda: ICC Intervention and Local Procedures of Accountability' (2013) 13 *ICLR* 249, 250, 253-254.

²⁹ See, Human Rights Watch, *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts* (Human Rights Watch 2011); Sarah Wells (n28) 181; Brynna Connolly 'Non-State Justice Systems and the State: Proposals for a Recognition Typology' (2006) 38 *CLR* 239, 256.

³⁰ United Nations Children's Fund, 'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste (UNICEF Papua New Guinea 2009) 6; Tim Allen and Anna Macdonald, 'Post-Conflict Traditional Justice: A Critical Overview' (2013) 3 *JSRP* 1, 16.

³¹ Ketty Anyeko et al., 'The Cooling Hearts': Community Truth-Telling in Northern Uganda' (2012) 13 *HRD* 107, 116-117; Linda Keller, 'Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms' (2008) 23 *CJIL* 209, 226.

³² Kate Bloch (n6) 206; Amy Senier, 'Traditional Justice as Transitional Justice: A Comparative Case Study of Rwanda and East Timor' (2008) 23 *FJHS* 67, 68.

³³ In Uganda, traditional mato oput required processes of remorse and providing compensation which proved difficult in the post-conflict context. Many victims did not know their attackers, which meant that the traditional mato oput processes of mediation between the parties or of seeking of forgiveness could not occur, Linda Keller (n31) 232.

³⁴ Statistically, only 225,012 of the 1,681,648 Gacaca cases (13 percent) resulted in guilty pleas and apologies, Penal Reform International, *Eight Years on... A Record of Gacaca Monitoring in Rwanda* (Glasgow: Bell and Bain Limited 2010) 37; Anne-Marie de Brouwer and Etienne Ruvebana, 'The Legacy of the Gacaca Courts in Rwanda: Survivors' Views' (2013) 13 *ICLR* 937, 955-956.

³⁵ Anne-Marie de Brouwer and Etienne Ruvebana (n34) 951, 954.

³⁶ Anne-Marie de Brouwer and Etienne Ruvebana (n34) 956.

enforcement options, the genuine engagement of people with justice processes is essential if TJMs are to be appropriate for and improve responses to CRSV.³⁷

There may be challenges for the use of the National Palava Hut Commission as, whilst it was not a TJM, Liberia has already enacted a non-judicial form of restorative justice through its truth and reconciliation commission. The Liberian TRC had the potential to address conflict-related crimes and facilitate sincere reconciliation through truth-telling processes in which people remorsefully stated what they had done and asked forgiveness from the Liberian people.³⁸ In practice, people witnessed some accused individuals lying about their behaviour and appearing to boast of what they did without regret.³⁹ The TRC subsequently has a mixed legacy as such incidents did not foster reconciliation and its reconciliatory intentions were not achieved.⁴⁰ However, the TRC process operated in isolation and this perhaps underlines the importance of *both* providing accountability through formal justice mechanisms and supplementing procedures with alternate justice processes. Additionally, TJMs may achieve other aims for victims of CRSV, such as providing information on redress options, facilitating access to redress, and providing a forum for discussion and participation in justice processes where people cannot access formal justice mechanisms. One encouraging factor is that unlike the TRC process, participation in the piloted National Palava Hut Commission was considered to be genuine by fieldwork participants who were familiar with the process.⁴¹

For the post-conflict use of TJMs to function successfully and for restorative justice to be appropriate for CRSV, communities and community leaders must take ownership of processes.⁴² Recognising this, one participating community leader interviewed for this study noted the need for collective action on justice, which he considered could only be achieved with broad popular support.⁴³ The INCHR continues to advocate to the government on behalf of the various voices within the Liberian population to ensure that all forms of restorative justice and reconciliation are represented, as a one size fits all approach will not be sufficient.⁴⁴ By allowing affected communities meaningful participation and leadership during the design and implementation of post-conflict justice strategies, community leaders can be empowered in their role of facilitating discussion.⁴⁵ This process already began in Liberia with community leaders having led and held hearings during demobilisation on events which took place during the armed conflicts, and engaging their communities to address complex issues such as reintegrating former child soldiers.⁴⁶ The appropriate role and function of TJMs in relation to CRSV is ultimately influenced by the willingness of communities to participate and how people implement and conceptualise justice in practice.⁴⁷

³⁷ Hope Among, 'The application of traditional justice mechanisms to the atrocities committed by child soldiers in Uganda: A practical restorative justice approach' (2013) 13 *AHRLJ* 441, 454-455.

³⁸ Speaking as a community leader, participant E2 anticipated a genuine reconciliatory process for the nation in which a perpetrator would announce their crimes and show remorse, Fieldwork interviews B1, E1-E2.

³⁹ Aaron Weah, 'Hopes and Uncertainties: Liberia's Journey to End Impunity' (2012) 6 *IJJ* 331, 337; Fieldwork interviews B1, D1, E1.

⁴⁰ Fieldwork interviews D1, E1.

⁴¹ Fieldwork interviews C2, D1.

⁴² One participating NGO staff member noted that memorial initiatives which have been led by organisations and then inserted into communities have not been as successful as those initiatives where there is community ownership, Fieldwork interview D1.

⁴³ Fieldwork interviews C4, E2.

⁴⁴ Fieldwork interview C2.

⁴⁵ Fieldwork interview C1.

⁴⁶ Children had been drugged, given arms and committed atrocities against their own communities, giving rise to conflicting views on retribution and reconciliation. The process included a traditional meeting, a mitigation hearing and former child soldiers going through a short rehabilitation process before community leaders again approached their communities to discuss the reacceptance of their children, Fieldwork interview C1.

⁴⁷ This can vary between community, ethnic and religious groups, and in Liberia, is influenced by traditional practices, religion and the post-conflict context, Fieldwork interview A2; Christian-Radu Chereji and Charles Wratto King, 'A Comparative Study of Traditional Conflict Resolution Methods in Liberia and Ghana' (2013) 5 *CSC* 3, 10.

6.2.1 Are victims willing and able to participate in traditional justice mechanisms on the issue of conflict-related sexual violence?

A key question is therefore whether victims of CRSV would be willing and able to participate in post-conflict uses of traditional justice, such as the National Palava Hut Commission. During the fieldwork some participating victims were sceptical of being able to speak on their experiences of CRSV within community-based justice forums like the proposed National Palava Hut Commission due to the fear of exposing themselves as victims of sexual violence and the risk of repercussions.⁴⁸ However, whilst some victims who participated in the study did not feel willing or safe to talk about their pasts with other people, three said that women in their communities did talk privately with each other.⁴⁹ One official who participated noted that women are talking about their experiences with each other but are not yet speaking publicly about their experiences of conflict-related crimes.⁵⁰ Significant progress has been made on discussing the broader issue of rape through the work of the Association of Female Lawyers of Liberia together with other civil society.⁵¹ This includes efforts to change the issue of rape from a taboo subject which people were afraid to speak about, to an issue which can be discussed and is now the subject of large public protests.⁵² Training around gender-based issues including discrimination, rights, and sexual violence, which has been delivered by the Association of Female Lawyers of Liberia demonstrates that with time, people gain the confidence to be open. Notably, in mixed sessions women often waited for the man to take the lead before talking and in rural areas women would not talk until they become part of decision making.⁵³

The need to build the trust and confidence of victims in justice processes in order for them to feel able to speak out will be an important factor in the appropriateness and role of TJMs – and restorative processes – in relation to CRSV. For example, the Gacaca system built confidence over time as it improved its ability to support victims and address sexual violence. Following negative initial experiences with justice processes the government of Rwanda recognised the difficulties of addressing CRSV, including the level of trauma.⁵⁴ Many participants in de Brouwer's study felt that although the Gacaca process was extremely difficult at the time, on retrospective reflection testifying had been empowering and unburdened them.⁵⁵ Challenges highlighted by victims of CRSV included difficulties around participating in Gacaca during its early stages and the fear of having violations exposed due to negative repercussions and possible consequences such as stigma or reduced marriageability.⁵⁶ Speaking on CRSV within Gacaca was also difficult at first due to cultural norms around publicly speaking on the taboo topic of sex.⁵⁷ One crucial lesson is that it was possible for this to change over time. Specifically, the change occurred as people became familiar with Gacaca processes, participation improved and people started to talk more openly about the sexual violence which had happened during the period of

⁴⁸ Fieldwork interviews A3, A6.

⁴⁹ One participating victim of CRSV (A5) noted that such discussions were simply talk, and that in relation to justice the women don't have the power to take any action, Fieldwork interviews A2-6.

⁵⁰ Fieldwork interview C3.

⁵¹ The Association of Female Lawyers of Liberia operates a legal aid clinic which provides assistance for women and children predominantly in Montserrado County. Whilst they get calls from other counties for help there are logistical issues due to the poor transport infrastructure and rainy season, Fieldwork interview C3.

⁵² Similarly, women were not previously reporting domestic violence as they were taught to accept it, Fieldwork interview C3.

⁵³ The training involves men and women with a focus on the rights of women, sometimes in mixed sessions and sometimes in sex-segregated sessions, Fieldwork interview C3; Peace Medie, 'Fighting Gender-Based Violence: The Women's Movement and the Enforcement of Rape Law in Liberia' 2013 448 *AA* 377, 390.

⁵⁴ Anne-Marie de Brouwer and Etienne Ruvebana (n34) 959; Human Rights Watch (n29) 117.

⁵⁵ Charles Jalloh and Andrew Morgan, 'International Criminal Justice Processes in Rwanda and Sierra Leone: Lessons for Liberia' in Charles Jalloh and Olufemi Elias (eds.) *Shielding Humanity: Essays in International Law in Honour of Judge Abdul G. Koroma* (Leiden: Brill Nijhoff 2015) 447; Anne-Marie de Brouwer and Etienne Ruvebana (n34) 959, 971.

⁵⁶ Usta Kaitesi, *Genocidal Gender and Sexual Violence: The legacy of the ICTR, Rwanda's ordinary courts and gacaca courts* (Cambridge: Intersentia 2013) 210; Anne-Marie de Brouwer and Etienne Ruvebana (n34) 948.

⁵⁷ Usta Kaitesi (n56) 210.

the genocide.⁵⁸ This has been seen elsewhere, such as in Papua New Guinea and South Africa, where victims who reported experiencing extremely traumatic incidents took the longest time to gain trust and engage with truth-telling processes.⁵⁹ Accordingly, for victims of CRSV to feel willing and able to participate in post-conflict TJM processes they need to understand and be familiarised with such processes. There also needs to be engagement with community leaders to assist with ensuring that people are able to participate freely and encourage mass discussion on issues which may be shrouded in socio-cultural taboos.

To increase the willingness and ability of victims to participate in post-conflict justice, including the use of TJMs with discursive and restorative process, it will also be essential to include affected communities in the design and delivery of post-conflict justice strategies. To this end, victims' groups, community leaders and officials from the formal justice system should collaborate to ensure that the needs of victims are accounted for and that there is an appropriate response for CRSV. The environment within TJMs should be conducive to victims testifying without pressure and accommodate the full range of sexual violence committed against all victim groups, as well as the impacts.⁶⁰ To facilitate this function of TJMs, there must be a relationship with the formal justice system as policy makers who are designing post-conflict justice strategies need to collaborate with and listen to the communities who will ultimately implement their plans. Policy makers and officials (including the police) need to also be responsive to the concerns of victims particularly around security and potential repercussions of participation. In conjunction with this, an outreach strategy which is designed for all victim groups could support justice processes for communities, with engagement from community leaders, to provide clarity around processes, rights, accessibility, and possible reparations options.⁶¹

'The women are not really speaking out but then again through our training you know it takes time and gradually they will be open'.⁶²

6.3 Can restorative justice processes address the needs of victims of conflict-related sexual violence?

Ultimately, for states to improve responses to CRSV it is important to identify and address the existing gaps which exist, such as that victims are often left with needs which go unaddressed. The fundamental question of whether TJMs can improve responses to CRSV can be distilled to whether they have a role in meeting or whether they function with the ability to meet the needs of victims in ways which are currently lacking. On one level this is a more simplistic question of whether they are able to increase the capacity of affected states to provide justice for CRSV. On another level the question is far more complex as victim populations and individuals face a range of diverse issues. No formal – or single – justice system can meet all of the needs of victims. Whilst crimes of the nature and gravity of CRSV are rightly considered to be some of the most egregious, people do not necessarily relate to the legal categorisation of the crime and may wish to seek alternate forms of redress in order to remedy ongoing issues which the formal justice system cannot.⁶³ One participating victim of CRSV felt that formal courts and retributive ideas including prosecutions or custodial sentences should apply to high-level accused such as leaders, organisers and financiers, with restorative justice processes being preferred to address the

⁵⁸ Anne-Marie de Brouwer and Etienne Ruvebana (n34) 948.

⁵⁹ John Braithwaite and Ray Nickson, 'Timing Truth, Reconciliation, and Justice after War' (2012) 27 *OSJDR* 443, 444.

⁶⁰ Rather than having, for example, a strict focus on rape, Sunneva Gilmore, Julie Guillerot and Clara Sandoval (n10) 21.

⁶¹ Sunneva Gilmore, Julie Guillerot and Clara Sandoval (n10) 22.

⁶² Fieldwork Interview C3, official.

⁶³ Fieldwork Interviews A1-6.

ongoing impacts of the crimes which continue to affect daily life.⁶⁴ This reflects the general consensus as participants from all groups, including other victims of CRSV, connected justice processes to meeting their daily needs. These needs also included broader goals such as ending impunity, the restoration of dignity to victims, protecting peace by providing a deterrent effect, and working to build a just society in which people are equal in the eyes of the law.⁶⁵ The use of TJMs may therefore have an important role in providing alternate forms of redress which can support victims of CRSV to re-establish their lives.

For many Liberians alternate forms of redress are long overdue and will be essential where the armed conflicts took away family and community members who would have formed their support network.⁶⁶ For some victims, restorative aims including reconciliation are part of seeking justice and trying to mitigate impacts of CRSV such as socio-economic insecurity or ostracization.⁶⁷ Participants highlighted the need to rebuild community links and provide social support for victims, as well as individual and collective reparations programmes.⁶⁸ TJMs may have an important related role as there is a need to overcome isolation where victims of CRSV have no one to guide them through justice processes.⁶⁹ Participating victims raised issues around their sense of personal identity, value, importance, and their connection to and engagement with society.⁷⁰ There has been a lack of advice for victims of CRSV who may be facing isolation in the face of generated needs such as healthcare, food insecurity, physical and economic security and self-actualisation.⁷¹ For one participating victim the most satisfying form of justice would be if victims of CRSV could engage with, be recognised by and fully accepted within society, and that the past would not change their future.⁷² Similarly, another participating victim stated that to feel satisfied that they have had justice, people should be free to live and build a life.⁷³ Community leaders through TJMs may then have a role in providing people with clear advice in relation to justice, encouragement to build a future and the opportunity to be personally supported in their choices.

With a dependency on social and community links for survival in Liberia, participating victims highlighted the need for restorative processes to increase national and community unity as well as to find common ground with people who are accused.⁷⁴ For one participating victim of CRSV, the recommended Extraordinary Criminal Tribunal is an important avenue of justice which could also provide the chance to find common ground with other people through testifying to what happened.⁷⁵ However, only a limited number of people would be able to testify and the Tribunal would ultimately be an adversarial rather than discursive, restorative mechanism. One official and one member of civil society considered that the National Palava Hut Commission could provide the opportunity for people to be heard and tell their stories, to bear witness and be empowered through recognising and recording what happened during the armed conflicts.⁷⁶ To meet the

⁶⁴ Fieldwork interview A4.

⁶⁵ One official noted that in order for some people to feel that justice has been done, the accused must be prosecuted and face a punitive punishment. Participating victims considered it important that justice was provided equally, despite a person's experiences or social or financial circumstances. Concerns existed around people taking up arms again in any future conflict, continued criminality, and welfare concerns for ex-combatants who require support, Fieldwork interviews A1-2, A4-6, B1-2, C2, C4, D2, E1-E2.

⁶⁶ Some victims of CRSV lost all of their family members during the armed conflicts and remain in the local area where crimes were committed against them, Fieldwork interviews A1, A3, C4, E2.

⁶⁷ Penal Reform International (n34) 59; Anne-Marie de Brouwer and Etienne Ruvebana (n34) 958.

⁶⁸ Fieldwork interviews A1-6.

⁶⁹ Participating victims raised the issue that some women, especially victims of CRSV, experience feelings of isolation and a lack of encouragement. One participant (A6) notes that people sometimes treat known victims of CRSV differently, as less important or as not normal due to their experiences, Fieldwork interviews A3, A6.

⁷⁰ Fieldwork interview A2.

⁷¹ For one participating victim (A1), justice matters in order to restore the self-esteem of the victims given the memories of the past, Fieldwork interviews A1, A2, A4.

⁷² Fieldwork interview A6.

⁷³ Fieldwork interview A2.

⁷⁴ Fieldwork interviews A1-2, A4, A6.

⁷⁵ Fieldwork interview A2.

⁷⁶ Fieldwork interviews C2, E1.

specific needs of CRSV, it may be possible for TJMs to also provide specialist or subject-specific hearings. These may be valuable not only for hearing offences but also for discussing what the needs of victims are now and how they might be addressed. The adaptation of traditional justice via the National Palava Hut Commission may then have a role in supporting justice processes for victims of CRSV in ways which the formal justice system cannot facilitate: In this case, providing a discursive forum in which victims may seek to find common ground.

6.3.1 The need for reparations programmes for victims of conflict-related sexual violence

As recognised above, for victims of CRSV, the effects and impacts of the crimes which they have experienced can be long-lasting. Accordingly, seeking to improve their daily lives and being able to access resources which can provide assistance must form part of justice processes. The lack of compensation or reparations for sexual violence was a point of contention within the Gacaca system and victims of CRSV were critical that reparations were only considered in Gacaca Courts for property.⁷⁷ Limited access to alternate redress in Gacaca was dissatisfying for victims and negatively affected the reconciliation process, despite recognition that most perpetrators would potentially struggle to pay compensation.⁷⁸ Victims of CRSV desired accessible healthcare, psychological support, housing, and living means such as land or other forms of compensation.⁷⁹ Accordingly, to improve responses to CRSV, it will be important to address the harms which are specifically caused by CRSV by facilitating access to suitable forms of redress, such as reparations which aim to alleviate the impacts of the crimes.⁸⁰

'Yeah like the way I was telling during the war and my mother she hurting, at least in that way I can get help, she can get help too, I will be satisfied in that area. [...] Like from that time I have been experiencing pain in my stomach [...] But the force that they were using on me they were really like violent so from there I also experience pain. My mother was, she got me to the nearby clinic and I had an infection, started developing infection. So from that time I always experiencing infection from that time. Yeah my stomach it pain me already to be sick'.⁸¹

There is recognition of the need to address ongoing issues after the armed conflicts in Liberia, with the TRC making Recommendations on Reparations. This included memorials and measures to address the needs of victims such as cash or material assistance and access to education alongside 'psychosocial, physical, therapeutic, counselling, medical, mental health and other health related services'.⁸² For victims of CRSV, especially important long-term recommended reparations are 'community development projects and programs', which encompassed free education programmes and economic advancement such as micro credit and small enterprise programmes for the empowerment of women.⁸³ Whilst the TRC recommended the resourcing of a reparation trust fund 'to ensure that the

⁷⁷ Confessions, guilty pleas, and apologies had a role in reconciliation through sentences of community service including assisting victims and their families by farming or constructing housing, or the community by constructing roads. Traditionally people would be given something by way of compensation, such as money, for family members who had been lost, Anne-Marie de Brouwer and Etienne Ruvebana (n34) 960-961; Human Rights Watch (n29) 80; Penal Reform International (n34) 45-47, 66-67; Domitilla Mukantaganzwa (n2) 23.

⁷⁸ Unpaid reparations were a significant issue for victims in de Brouwer's study as many still lived in poverty, Anne-Marie de Brouwer and Etienne Ruvebana (n34) 961, 967; Human Rights Watch (n29) 80.

⁷⁹ Sarah Wells (n24) 196.

⁸⁰ Sunneva Gilmore, Julie Guillerot and Clara Sandoval (n10) 5.

⁸¹ Fieldwork Interview A5, victim of CRSV.

⁸² The reparations were recommended with the aim of rehabilitating people to live a normal life and restoring damaged infrastructure, Liberian Truth and Reconciliation Commission (n15) 276-279.

⁸³ For many people the armed conflicts meant that they were unable to attend school and graduate with employable skills, communities now face issues with violence against women, criminality and poverty, Fieldwork interviews C4, E2; Liberian Truth and Reconciliation Commission (n15) 277.

reparation programme is well managed and timely executed', so far there has been no significant progress and the reparations programme has not been implemented.⁸⁴ Implementing the recommended reparations programme would make a significant contribution to justice for CRSV and improve the circumstances in which many victims live. Failure to implement the reparations programme to date has had a detrimental effect on Liberian society by also creating failures to address the impacts of the conflicts, including for victims of CRSV.⁸⁵

'Some people now they want they want settle, they want business, they want school, most important people want education. [...] most of the women that you see in the market or even some of the men, people that you see that pushing wheelbarrow because why? They don't have a hand to go back to school, women are on the street loitering around because that'.⁸⁶

Reparations programmes should consider the specific needs generated by CRSV as well as the requirements for specialist expertise and a gender-balanced staff with appropriate training during both design and implementation.⁸⁷ Victims should meaningfully participate in the design, implementation and monitoring of a reparations programme in ways which go beyond consultation.⁸⁸ For example, victims should be fully informed of their rights, have the opportunity to share their views and influence debates, and act alongside policy makers to shape implementation.⁸⁹ Whilst it is important for all victim groups to have a voice, less vocal groups such as victims of CRSV including males and LGBTQ victims should be especially considered.⁹⁰ In this regards, TJMs may have a significant role which improves responses to CRSV through their being directly present in communities to provide information on and facilitate access to reparations programmes and alternate forms of redress.

6.4 Going beyond the formal justice system in response to conflict-related sexual violence

Having often been connected with restorative processes, traditional justice has been used within post-conflict justice efforts to make contributions which go beyond the scope of the formal justice system. This has particularly occurred where there are complex post-conflict social dynamics in communities with returning ex-combatants, former child soldiers and the 'wives' of ex-combatants.⁹¹ All of whom may have been victims of, witnessed or perpetrated sexual violence. In Liberia, the precise role for the adapted National Palava Hut Commission in relation to CRSV is still to be determined. The TRC recommendations leave scope for interpretation and the operation of the National Palava Hut Commission prior to the establishment of the recommended Tribunal or domestic prosecutions could potentially influence the relationship between these mechanisms. The TRC was inclusive of restorative processes, stating that justice mechanisms should provide opportunities for people to relate their experiences, address concerns and recommend measures 'for the rehabilitation of victims', 'in the spirit of national reconciliation and healing'.⁹² Notably, this is not an argument for side-stepping or replacing prosecutions, it perhaps adds weight to the need for a supplementary role provided to the National Palava Hut Commission to

⁸⁴ Liberian Truth and Reconciliation Commission (n15) 276; Fieldwork interviews A4, B1, C2.

⁸⁵ For example, the prison system also faces unaddressed socio-economic and healthcare issues which stem from the armed conflicts, such as psychological trauma, Fieldwork interview C1.

⁸⁶ Fieldwork Interview A5, victim of CRSV.

⁸⁷ Sunneva Gilmore, Julie Guillerot and Clara Sandoval (n10) 19-20.

⁸⁸ Sunneva Gilmore, Julie Guillerot and Clara Sandoval (n10) 22.

⁸⁹ Sunneva Gilmore, Julie Guillerot and Clara Sandoval (n10) 22.

⁹⁰ Sunneva Gilmore, Julie Guillerot and Clara Sandoval (n10) 23.

⁹¹ Linda Keller (n31) 233.

⁹² Liberian Truth and Reconciliation Commission *Volume One: Preliminary Findings and Determinations* (Republic of Liberia Truth and Reconciliation Commission, 2009) 26.

ensure that crimes including CRSV are addressed comprehensively.⁹³ The use of TJMs may therefore be appropriate within a role fulfilling needs which the formal justice mechanisms cannot. This may include restorative justice processes, providing guidance on reparations processes within communities, and hearing victims who wish to participate in justice processes but otherwise cannot as one part of an overall approach to addressing CRSV.⁹⁴

⁹³ Fieldwork Interviews C4, D1-D2.

⁹⁴ Fieldwork Interviews C4, D1-D2.

Chapter 7: Can Traditional Justice Mechanisms Improve Responses to Conflict-Related Sexual Violence?

The current lack of effective and robust responses to CRSV in many contexts fosters impunity and often leaves victims without justice, support or access to redress. However, questions remain around whether TJMs are able to improve responses for crimes of the nature and gravity of CRSV. Whilst there is a practical need to increase the capacity to provide justice and address the needs of victims, responses can only be improved if justice measures are safe and have long-term positive impacts. For example, it does not matter if traditional justice could theoretically be used to improve responses to CRSV if, in reality, victims who have previously participated in TJMs consistently faced damaging consequences such as ostracization. Post-conflict justice efforts might then include TJMs in supporting roles within an overall response to CRSV, such as facilitating restorative justice, alternate forms of redress or reparations and acting as community focal points to provide widespread access to information for victims. Ultimately, the incorporation of TJMs within post-conflict justice efforts must be attune to the needs and voices of victims with a focus on supplementing responses to CRSV in order to provide an improvement.

7.1 The nature of traditional justice in relation to improving responses to conflict-related sexual violence

Traditional justice entwines justice processes with cultural practices and facilitates access to community leaders in a way in which the formal justice system with its adversarial processes does not.¹ Accordingly, one benefit of engaging with traditional justice which can improve responses to CRSV is that TJMs may be able to contribute to restoring social cohesion following the destruction of community relationships which has been caused by CRSV. This is important in states where the formal justice system has a limited reach, such as Liberia, wherein people can depend on social and community relationships for their economic and physical security.² Participants in the fieldwork including victims, an official and a member of civil society highlighted the need to maintain good relations in their communities as one reason for taking an issue to the town chief rather than the state.³ Cases taken before the formal justice system generally produce a 'winner' and 'loser' which can exacerbate animosity between the parties.⁴ In contrast, decision makers in TJMs may focus on restitution and the need to mitigate the impact of an offence in order to prevent animosity or future disturbances of the peace.⁵ The formal justice system does not have the ability to maintain and restore relationships within communities, and may damage the social networks on which people rely.⁶ Cases are often brought before a formal justice mechanism when the priority is achieving redress primarily via punishment, or where future relationships are not important, such as if the accused is a stranger from a different community.⁷ In contrast, the support which traditional justice can provide in relation to social links may be an important aspect of justice processes following the destructive impacts of CRSV, including the need to reintegrate both victims and accused within their communities.

¹ Shai Divon and Morten Bøås, 'Negotiating justice: legal pluralism and gender-based violence in Liberia' (2017) 38 *TWQ* 1381, 1387-1388.

² Jun Wei Quah, 'Peace in Our Time: Averting Transitional Justice's Mid-Life Crisis in Liberia' (2018) 8 *SSLR* 1, 6; Shai Divon and Morten Bøås (n1) 1387.

³ Fieldwork Interviews A1, A5-6, C4, E2.

⁴ Jun Wei Quah (n2) 6-7; Shai Divon and Morten Bøås (n1) 1388.

⁵ United Nations Children's Fund, '*Traditional Justice Systems in the Pacific, Indonesia and Timor-Leste*' (UNICEF Papua New Guinea 2009) 6, 21; Hope Among 'The application of traditional justice mechanisms to the atrocities committed by child soldiers in Uganda: A practical restorative justice approach' (2013) 13 *AHRLJ* 441, 443; Jun Wei Quah (n2) 6; Shai Divon and Morten Bøås (n1) 1387.

⁶ Shai Divon and Morten Bøås (n1) 1388.

⁷ Shai Divon and Morten Bøås (n1) 1388.

At the same time, if TJMs are to be beneficial and improve responses to CRSV, then the nature of traditional justice which prioritises the collective good of the community over individuals requires measures to prevent certain groups, such as minorities or women, being pressured to accept unfair or discriminatory decisions.⁸ Gender representation within TJMs will be particularly significant if their use is to improve responses to CRSV, for example by providing women with the ability to bring their own cases as well as take part in decision making. Whilst this may require adapting a pre-existing TJM to make it more representative, concepts of traditional justice are dynamic and can change over time in line with social and political attitudes.⁹ There are multiple examples of successful adaptations around representation, such as the increasing female participation seen within mechanisms in Guatemala.¹⁰ Similarly, women in Rwanda had not previously participated within traditional Gacaca, but the government imposed change within adapted Gacaca Courts and women participated as judges, representatives, witnesses, victims and accused.¹¹ Accordingly, the ability of TJMs to change over time and respond positively to adaptations in relation to representation means that with such measures in place, they are able to improve responses by providing a representative local justice forum in which to address issues related to CRSV.

In Liberia, the potential for progressive change which can assist responses to CRSV has been demonstrated by the Liberian Peacebuilding Office and the INCHR's modernisation of traditional palava hut, which would not previously include women or young people as decision makers.¹² In modernised approaches, alongside the Chief and male elders, there is a representative leader from the youth and women as well as efforts to ensure disability and religious representation.¹³ In 2016 it was reported that of the conflict-related cases addressed by the pilot National Palava Hut Commission, 60 percent of the beneficiaries were female, which the UNDP noted as a 'significant improvement' in a 'previously male-dominated process'.¹⁴ For one participating official, having female decision makers is essential, as women have the right to participate as decision makers within post-conflict justice processes and their presence will provide a gender-perspective when deciding

⁸ Fieldwork Interview C4, E2; United Nations Children's Fund (n5) 6, 21; Tim Allen and Anna Macdonald, 'Post-Conflict Traditional Justice: A Critical Overview' (2013) 3 *JSRP* 1, 10, 13; Hope Among (n5) 443; Brynna Connolly 'Non-State Justice Systems and the State: Proposals for a Recognition Typology' (2006) 38 *CLR* 239, 285.

⁹ Hope Among (n5) 451; Lars Waldorf, 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice' (2006) 79 *TLR* 1, 9, 52; Bruce Baker, 'Where Formal and Informal Justice Meet: Ethiopia's Justice Pluralism' (2013) 21 *AJICL* 202, 207; Kofi Quashigah, 'Justice in the Traditional African Society within the Modern Constitutional Set-up, Jurisprudence' (2016) 7 *JLPT* 93, 105-106; Hendrik Herman, 'Types of Leadership and the Customary Courts in the Papua's Customary Communities' (2013) 49 *JLPG* 45, 46; Gregory Gordon, 'Complementarity and Alternative Justice' (2009) 88 *OLR* 621, 635; Danish Institute for Human Rights, *Informal Justice Systems: Charting a Course for Human Rights Based Engagement: A Summary* (Geneva: United Nations Development Programme 2012) 15; Jonathan Compton, 'The Peril of Imposing the Rule of Law: Lessons from Liberia' (2014) 23 *MJIL* 47, 54.

¹⁰ Lovisa Dahlström, 'The Importance of Women in Transitional Justice: Women's work for justice in Guatemala and Liberia' (Department of Political Science, Goteborgs Universitet 2018) 37.

¹¹ In contrast, the lack of oversight created difficulty in Uganda, where women had participated in the armed conflict but traditional *mato oput* minimised their role and subsequently hindered justice processes, Domitilla Mukantaganzwa, *National Service of Gacaca Courts: Gacaca Courts in Rwanda* (Kigali: Government of Rwanda, National Service of Gacaca Courts 2012) 50; Pdraig McAuliffe, 'Romanticization versus Integration: Indigenous Justice in Rule of Law Reconstruction and Transitional Justice Discourse' (2013) 5 *GJIL* 41, 84; Cecily Rose, 'Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanisms in Northern Uganda: A Proposal for Truth-Telling and Reparations' (2008) 28 *BCTWLJ* 345, 365; Erin Baines, 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in northern Uganda' (2007) 1 *IJTJ* 91, 107; Steven Roach, 'Multilayered in Northern Uganda: ICC Intervention and Local Procedures of Accountability' (2013) 13 *ICLR* 249, 250, 253-254.

¹² The experience of the Liberian Peacebuilding Office is instructive for the NPHC, for example, the attrition rate where people wish to be on a committee in order to be trained and relocated for better job opportunities, Fieldwork interview C2.

¹³ In collaboration with UNDP, specific training was provided for decision makers for the pilot NPHC, training was provided to 249 members, 47 percent of whom were female, Fieldwork interview C2, D1; United Nations Development Programme, *Global Programme on Strengthening the Rule of Law and Human Rights for Sustaining Peace and Fostering Development* (2016) 91; See also, UN Peacebuilding Support Office, 'Peacebuilding Fund Annual Progress Report Country: Liberia, Community Base Truth Telling and Atonement Project' (Reporting Period 1 January-31 December 2014).

¹⁴ United Nations Development Programme (n13) 91.

cases.¹⁵ Such adaptations of TJMs are then possible, but as seen in Liberia, they must be locally led in order to prevent alienating communities and elders who are responsible for traditional justice and norm enforcement once international interest in a situation has ended.¹⁶

Ultimately, the nature of traditional justice means that if TJMs are engaged from the outset they may bring additional benefits beyond what the formal justice system can provide. Such benefits may include their potential to act as a source of in-community support for victims. This builds on trends occurring in daily life, such as seen in Liberia, where women who have experienced peacetime sexual and gender-based violence report using community-based processes for support.¹⁷ Support activities within Liberian communities are led by female family or community members or female Zoes, alongside healthcare providers, NGOs, and the formal justice system.¹⁸ Existing crossties which can be built upon between the formal and traditional justice systems include collaborative work between the Gender Ministry and women's groups such as the Sande society.¹⁹ Such collaboration can offer victims benefits when they are using TJMs within post-conflict justice responses such as increased options for support and redress as well as choices around their participation within justice processes. The use of traditional justice through mechanisms such as the National Palava Hut Commission can therefore offer victims an accessible and community-based option for seeking justice. In particular, TJMs may offer the opportunity to seek alternate forms of redress, may provide victims with a chance to participate in justice processes where they cannot access formal courts, may provide access to reparations, and may act as a focal point within communities where people might seek advice.

7.1.1 Concerns around fundamental rights protections

Core features of traditional justice, such as prioritising community harmony and being community-run without providing formal legal representation, are part of what make traditional justice accessible and resource effective: and they almost by default contradict some fundamental rights.²⁰ Accordingly, any discussion of using traditional justice to address CRSV must explicitly acknowledge criticisms in relation to international human rights law (IHRL).²¹ For instance, the Gacaca Courts were criticised by Amnesty International as if they were retributive deterrent based mechanisms, akin to Rwanda's state courts, and therefore must operate in a similar fashion (*infra* 6.1.2).²² This approach raises the question of whether TJMs are ever truly akin to formal courts and thus whether they must apply international norms and address CRSV in the same way. If TJMs are operated as courts rather than as social mechanisms, then arguments around issues such as adherence to fair trial norms have greater weight.²³

¹⁵ Fieldwork interview C3; See also, Front Page Africa, 'Liberia: WONGOSOL's Calls for Women's Involvement In Advocating in Implementation of TRC Recommendations (12 November 2021)' *FPA* [Online].

¹⁶ Stephanie Barbour, 'Supporting Accountability for Sexual Violence in the Syria and Iraq Conflicts Innovations, Good Practices, and Lessons Learned through Private Criminal Investigations' (2020) 18 *JICL* 397, 401.

¹⁷ Erica S. Lawson and Vaiba K. Flomo, 'Motherwork and gender justice in Peace Huts: a feminist view from Liberia' (2020) 41 *TWQ* 7-10; Freida McCormack, 'Prospects for Accessing Justice for Sexual Violence in Liberia's Hybrid System' (2018) 7 *IJSD* 1, 7.

¹⁸ Erica S. Lawson and Vaiba K. Flomo (n17) 7-10; Freida McCormack (n17) 7.

¹⁹ Freida McCormack (n17) 7.

²⁰ Shai Divon and Morten Bøås (n1) 1387-1388.

²¹ United Nations Children's Fund (n5) 4; United Nations, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice* (New York: United Nations 2010) 2, 3, 6; Brynna Connolly (n8) 246; Phil Clark, 'Hybridity, holism, and traditional justice: the case of the Gacaca courts in post-genocide Rwanda' (2007) 39 *GWIL* 765, 803.

²² Amnesty International, *Rwanda: Gacaca, A Question of Justice* (Amnesty International, AI Index: AFR 47/007/2002, December 2002) 21.

²³ John-Mark Iyi, 'Fair hearing without lawyers? The Traditional Courts Bill and the reform of traditional justice system in South Africa' (2016) 48 *JLPUL* 127, 134.

The discussion of whether or not TJMs can truly be considered as 'courts' and therefore critiqued and operated in the same way as formal justice mechanisms can be explored through the Rwandan experience. The *Gacaca Laws* did substantially develop traditional Gacaca from being purely social mechanisms for dispute resolution into government administrated mechanisms with custodial sentencing powers which were enforced by the state.²⁴ Several adaptations altered the nature of Gacaca from a social mechanism towards that of a court, for example, participation was changed from voluntary to compulsory.²⁵ Additionally, adapted Gacaca Courts implemented the government's statutory approach to post-conflict justice and used judge-made decision making.²⁶ However, the implementation and application of legislation does not necessarily mean that a TJM is akin to a formal court. Many TJMs routinely implement codified customary law and state legislation as well as unwritten local norms. At the same time as the Gacacas were applying state legislation, decision making remained participatory: the Gacaca judges were thousands of lay people elected to the role by communities, with community participation to support or challenge testimony intended to be a central aspect of the Gacaca process.²⁷

Despite the formalisation of TJMs in some contexts through adaptations which take them beyond their original purpose and nature as social mechanisms, traditional justice is not intended to function in the same way as formal courts. TJMs are fundamentally different as they deliberately function as an accessible alternative to the formal justice system, delivered within communities to provide mass justice. Operating many mechanisms within communities across a territory means that traditional justice systems are not operating with the same functions, resources, contexts, aims, or infrastructure as formal justice systems.²⁸ In order to ensure that the role provided for TJMs in relation to CRSV is appropriate, it will be important to account for their nature as community-based mechanisms which provide justice on a large scale.

Accounting for the nature of TJMs and mitigating risks is particularly important as States have faced conflict between their international obligations and the practical need to rely on traditional justice to overcome capacity limitations.²⁹ Critics have focused on the need to meet international standards and have questioned whether TJMs have the ability to protect fundamental rights, arguing that states incorporating traditional justice into their formal justice system become complicit in violations.³⁰ For example, the first *Gacaca Law* was criticised by NGOs including Amnesty International for failing to guarantee the fair

²⁴ The first *Gacaca Law* came into effect on 15 March 2001 and established jurisdiction for adapted Gacaca Courts to prosecute crimes of genocide and crimes against humanity committed between 1 October 1990 and 31 December 1994, *Organic Law n°40/2000* of January 2001, Article 1; *Organic Law n°40/2000* of January 2001; *Amendment of 18/04/2000 of the Fundamental Law of the Republic of Rwanda*, O.G no9 of 01/05/2000; *Organic law n°08/2004* of 28 April 2004; *The Constitution of the Republic of Rwanda* of 04/06/2003 amended, O.G.R.R Special n° of 04/06/2003; *Organic Law n° 08/96* of 30/8/1996; Domitilla Mukantaganzwa (n11) 12, 18-23, 47, 53, 60-61, 78, 84; 937-938, 950.

²⁵ Brynna Connolly (n8) 268; Sarah Wells 'Gender, Sexual Violence and Prospects for Justice at the Gacaca Courts in Rwanda' (2005) 14 *RLWS* 167, 180.

²⁶ Tim Allen and Anna Macdonald (n8) 6; Anne-Marie de Brouwer and Etienne Ruvebana, 'The Legacy of the Gacaca Courts in Rwanda: Survivors' Views' (2013) 13 *ICLR* 937, 951.

²⁷ Between 9 April and 10 May 2002 people who were to become Gacaca Court judges were trained in law, objectives and functioning of the *Gacaca Courts*, ethics, administration, and cooperation with the formal justice system including the Prosecutor's Office, police and prisons. A second phase of training took place in 2006 which focused on trial procedure. Further training was provided in 2007 on the implementation of the *Organic Law n°10/2007* of 1 March 2007, Amnesty also observed that the judges were trained on how to recognise and deal with trauma, but this is not recognised in the official report, Domitilla Mukantaganzwa (n11) 51-52, 91, 127; Amnesty International (n22) 26; Penal Reform International, *Eight Years on... A Record of Gacaca Monitoring in Rwanda* (Glasgow: Bell and Bain Limited 2010) 29-30.

²⁸ Phil Clark (n21) 822.

²⁹ Human Rights and Protection Section (HRPS) of the United Nations Mission in Liberia (UNMIL), 'An Assessment of Human Rights Issues Emanating from Traditional Practices in Liberia' (Monrovia, HRPS and the Office of the United Nations High Commissioner for Human Rights [OHCHR] 2015) 6-7; Brynna Connolly (n8) 256, 257, 259.

³⁰ Formal systems can also fail to protect fundamental rights with biases of gender, religion, or ethnicity and may also be affected by an individual's wealth or connections, United Nations Children's Fund (n5) 6; Tim Allen and Anna Macdonald (n8) 16; Brynna Connolly (n8) 256-257.

trial standards which are enshrined in international treaties to which Rwanda is a party.³¹ The Rwandan government argued its priority was ending long-term detention without trial, providing justice for victims, and reconciliation, not international standards.³² Indeed, by incorporating traditional justice into post-conflict justice and using the Gacaca System to expedite justice, the Rwandan government prioritised some rights, such as freedom from arbitrary detention, over others, such as the right to formal legal representation.³³

Concerns around the need to protect the fundamental rights of accused individuals who participate within TJMs are particularly important to address where a mechanism can hand down retributive punishments such as custodial sentences. This may be particularly pertinent for crimes of sexual violence, which are often considered to be among the gravest crimes and within formal justice systems can often carry a custodial sentence. For example, the Human Rights Committee expressed concern in 2009 that the Gacaca system was not respecting some fair trial norms, especially regarding the rights of the accused.³⁴ Concern was highest in cases such as those of rape and sexual torture, where Gacaca Courts could hand down sentences of up to 30 years imprisonment.³⁵ The Committee stated that for Gacaca Courts to hand down binding judgments recognised by the state, they should meet *ICCPR* guarantees including basic fair trial standards, having challengeable decisions in line with Article 14, and be limited to minor civil and criminal matters.³⁶ The call to limit Gacaca Courts to minor crimes is questionable given that they were established in the wake of the genocide with the primary purpose of providing related justice. However, the Committee was correct that giving a TJM the ability to hand down long custodial sentences does require due process protections to ensure that people facing those sentences have their rights protected.³⁷ The approach taken in states such as Liberia, where TJMs are not anticipated to hand down custodial sentences is therefore more appropriate – especially where such mechanisms will hear cases which the formal justice system cannot or as part of efforts to avoid overwhelming formal justice systems.

Although it is common for academic and NGO commentaries to call for more formality within TJMs, it is impractical to assess traditional and formal justice in the same way. Adherence to fundamental legal principles and the protection of fundamental rights is an obligation on states where they are parties to international treaties, and should be a priority within formal courts. However, whilst there may be some state involvement, TJMs are not formal courts and their social or quasi-legal nature means that the norms which are prioritised may depend on what they seek to achieve. Whilst recognising the importance and relevance of human rights law, *strict* adherence may not be possible or desirable within TJMs. This does not mean that there should not be checks and balances to mitigate risks, nor does it mean that it should be possible for an individual to be handed a custodial sentence including up to life imprisonment without a fair trial.

It is therefore a key lesson that any government which relies on the use of traditional justice to increase their capacity to hear cases must subsequently take measures to mitigate the risks of rights violations. For states such as Liberia, which are facing the prospect of addressing CRSV which has been committed on a large scale, there is then a need to balance delivering mass justice for CRSV with a range of issues around rights

³¹ As a party to both the *International Covenant on Civil and Political Rights* and the *African Charter on Human and Peoples' Rights*, Rwanda had international obligations which guaranteed minimum fair trial rights. Among their concerns the Committee noted issues around impartiality and lack of legal training for the judges, the right to a defence, and the principle of equality of arms, *Organic Law n°40/2000* of January 2001; Amnesty International (n22) 2, 30.

³² Kate McKenna, 'Gacaca - A Paradigm for Restorative Justice in Rwanda' (2009) 9 *TCLR* 5, 17.

³³ Kate McKenna (n32) 17; Human Rights Watch, *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts* (Human Rights Watch 2011) 27.

³⁴ UNGA Report of the Human Rights Committee Volume I: General Assembly Official Records Sixty-Fourth Session Supplement No.40 (A/64/40) (2009) UN Doc A/64/40 [88] (p48).

³⁵ UNGA Report of the Human Rights Committee Volume I (n34).

³⁶ UNGA Report of the Human Rights Committee Volume I (n34).

³⁷ Erin Daly, 'Between Punitive and Reconstructive Justice: The Gacaca Courts in Rwanda' (2002) 34 *NYUJILP* 355, 383.

protections for both victims and accused persons. Ultimately, if TJMs are to improve responses to CRSV then they must be able to provide fair justice which meets the needs of the people who are relying on them. This includes the need to provide appropriate processes, punishments and forms of redress. States must therefore decide what measures are required to mitigate the related risks as well as meet the needs of both the victims and accused persons. For example, to protect the rights of individuals, TJMs should not have the power to hand down custodial sentences. Additionally, states must ensure that there is adequate oversight, such as the ability to challenge decisions, which is facilitated in Liberian daily life by the opportunity to take a case to the formal justice system if the parties are not satisfied with the outcome of traditional justice processes.³⁸

7.1.2 Concerns around the lack of formal legal representation

A key concern for critics is that TJMs do not provide people with formal legal representation, and solicitors or other legal professionals are not involved in the day-to-day functioning of traditional justice.³⁹ However, this lack of formal legal representation is part of the flexible approach to procedures and evidence taken by TJMs, which allows them to provide quick and cost-effective justice.⁴⁰ This enhances the popularity of TJMs for populations in situations where a state's formal justice system has severe backlogs and delays.⁴¹ In contrast to formal written rules of procedure and evidence, rules within TJMs are rarely written down and there is the ability to flexibly adapt to individual needs. One example is the ability to conduct proceedings in local languages, which may be important for victims of CRSV who find giving testimony traumatic.⁴² Notably, there can be representation within TJMs, for example, where family or community members represent people they know for reasons including necessity if a mechanism excludes female participation, or by choice where a person does not feel confident to speak.⁴³ However, the community-based nature of TJMs places community participation at their core, rather than representation by legal professionals.

The lack of formal legal representation may also be a pragmatic characteristic of TJMs arising from their contexts of operation. This is in part because of their nature, as seen in South Africa, where the *Traditional Courts Bill* Section 7(4)(b) provides that no party may be represented in a TJM by a formal legal representative acting in that capacity.⁴⁴ The reasoning stems from differences between the philosophical underpinnings of traditional and formal justice: TJMs focus on the community over the individual.⁴⁵ Introducing formal legal representation into TJMs which do not have formal rules of procedures and evidence was rejected as it would bring technical processes which may have a distorting effect.⁴⁶ Having proceedings with legal representation would potentially stifle the discursive, community-based environment of TJMs and create procedural or access barriers which negate the purpose of relying on traditional justice.⁴⁷ For example, involving legal

³⁸ Similar recommendations were made to Rwanda by the Human Rights Committee, see UNGA Report of the Human Rights Committee Volume I (n34).

³⁹ Erin Daly (n37) 376-377; Sarah Wells (n25) 193.

⁴⁰ Fieldwork Interview C4; Stephanie Vieille, 'Frenemies: restorative justice and customary mechanisms of justice' (2013) 16 *CJR* 174, 177; Kate Bloch, 'Reconceptualizing Restorative Justice' (2010) 7 *HRPLJ* 201, 176-177; Ewa Wojkowska, *Programme Doing Justice: How informal justice systems can contribute* (Oslo Governance Centre: United Nations Development 2006) 17.

⁴¹ As seen in Liberia, where people can spend years in pre-trial detention, Fieldwork Interview C1; Laura Bacon, 'Liberia's Gender-Sensitive Police Reform: Improving Representation and Responsiveness in a Post-Conflict Setting' (2015) 22 *IP* 372, 383.

⁴² In contrast, formal justice systems may insist that legal proceedings are conducted in the official language of the state or lack the resources to provide interpreters, Ewa Wojkowska (n39) 16.

⁴³ Erin Daly (n37) 376-377; Tommaso Sbriccoli, 'Legal pluralism in discourse: justice, politics and marginality in rural Rajasthan, India' (2013) 45 *JLPUL* 143, 157; CB Soyapi, 'Regulating Traditional Justice in South Africa: A Comparative Analysis of Selected Aspects of the Traditional Courts Bill' (2014) 17 *PER* 1440, 1445.

⁴⁴ Traditional Courts Bill (2017) Section 7(4)(b); John-Mark Iyi (n22) 133; CB Soyapi (n43) 1450.

⁴⁵ John-Mark Iyi (n23) 135; CB Soyapi (n43) 1451.

⁴⁶ United Nations Children's Fund, (n5) 6; John-Mark Iyi (n23) 135.

⁴⁷ United Nations Children's Fund (n5) 6; Phil Clark (n21) 822, 824; John-Mark Iyi (n23) 135.

professionals would increase running costs and slow proceedings, which are potentially significant negative impacts for victims of CRSV, who can face poverty as a result of the crimes (or the post-conflict context) and do not have money for proceedings.⁴⁸ At the same time, the factors which affect the provision of formal legal representation also influence the reliance on traditional justice, including a lack of resources.⁴⁹ In Rwanda, the government argued that the right to formal legal representation was less of a priority as there were simply not enough lawyers for everyone, and they would have slowed and changed the nature of Gacaca proceedings.⁵⁰ On this the government was correct, as there was a finite and limited number of legal professionals.

However, if a government is going to accept that not providing formal legal representation is a core feature of traditional justice which it is using within post-conflict justice, then it must also accept responsibility for mitigating the associated risks. One aforementioned way to mitigate risks is to minimise the potential for harm by limiting the possible sanctions within TJMs. Another way is to ensure that, along with the decision makers, communities who will operate TJMs within post-conflict justice are informed of the processes as well as the purpose of their participatory role. Without advocates to guide proceedings, effectively addressing CRSV will require overcoming a lack of familiarity with adapted justice mechanisms, and ensuring that populations understand the available options for redress. It is therefore essential that governments work with civil society to ensure that they adequately disseminate information on seeking justice for CRSV to their populations prior to and during the operation of post-conflict justice processes.⁵¹

In particular, it is essential to ensure that communities understand how an adapted TJM is intended to function within post-conflict justice, as well as understanding the role of communities within it.⁵² This includes ensuring that victims, accused, officials, community leaders and broader community members have awareness of relevant provisions for sexual violence, such as where the option for closed hearings is provided.⁵³ There must be a deliberate effort to inform communities about the functioning of TJMs. In particular, campaigns to disseminate information must avoid being simply top-down or over-focused on rallying support for an adapted TJMs to the neglect of informing the population about their role.⁵⁴ Whilst knowledge and understanding can grow over time, having a greater understanding from the outset through preparation of the population may help victims of CRSV to come forward as well as encouraging both more and better quality participation.⁵⁵

In the absence of involved legal professionals, information dissemination should be used to contribute to oversight and the efficient functioning of post-conflict justice processes in relation to CRSV. Information on justice processes must be disseminated to communities, with further targeted information provided for people who will participate in TJMs either as victims or accused persons. Where accused persons do not have formal legal representation, they must be made aware of their options and the potential risks or benefits of their choices (especially in an adapted system which may be less familiar).⁵⁶ For victims of CRSV, information dissemination which allows them to make informed choices is essential, as is the support and guidance of community leaders if they choose to participate in justice processes by themselves.

⁴⁸ Sarah Wells (n25) 185; Human Rights Watch (n33) 113; United Nations Children's Fund (n5) 6.

⁴⁹ United Nations Children's Fund (n5) 6.

⁵⁰ Within the Gacaca Courts, legal representation was not explicitly forbidden, but lawyers were sometimes limited by measures such as not being permitted to sit beside their client, Human Rights Watch (n33) 26, 28-29.

⁵¹ The government also did not take offers of assistance or suggestions such as that of the Danish Institute of Human Rights for collaborative, donor-funded work with the Rwandan Ministry of Justice to provide pre-trial advice to people on their rights, options and the Gacaca process; Human Rights Watch (n33) 29.

⁵² Amnesty International (n22) 22; Domitilla Mukantaganzwa (n11) 32.

⁵³ Many people were familiar with traditional Gacaca which resolved disputes discursively and publicly, Lars Waldorf (n9) 62-63; Amnesty International (n22) 22.

⁵⁴ Amnesty International (n22) 22.

⁵⁵ Amnesty International (n22) 22.

⁵⁶ Erin Daly (n37) 382.

In Liberia, whilst all of the participants were very familiar with traditional palava hut, the concept of the National Palava Hut Commission was not known to participants who were also not familiar with either the pilot or the TRC recommendations. This highlights the need for outreach programmes and dissemination of the TRC's work, and the work of the INCHR. It also highlights the need at the time of implementation for comprehensive outreach and training on the National Palava Hut Commission with communities as well as decision makers. Information dissemination on the response to CRSV should take place in multiple forms and at all levels, including both the general population across the state and within the formal justice system. The aim should be to ensure that the maximum number of people understand how an adapted TJM will function and what it is intended to achieve. In relation to traditional justice and CRSV, information dissemination also contributes to the protection of people's fundamental rights by informing them of those rights, their options and by contributing to the efficient functioning of a newly adapted mechanism. This will be essential to help mitigate some risks which arise from not having formal legal representation within TJMs. Ultimately, with mitigation measures in place to address risks which are associated with the less formal nature of TJMs, their speed, cost and location within communities as accessible forums in which people can participate are significant benefits which can improve responses to CRSV.

7.2 Meeting the protection needs and mitigating the risks associated with conflict-related sexual violence

Concerns around fundamental rights protections within TJMs are also linked to concerns around the needs of victims of CRSV, who may require protection against risks which arise from the nature of the crimes which they have experienced. High levels of trauma, insecurity and socio-cultural issues which are associated with CRSV create the need to provide support for victims before, during and after their participation in justice processes.⁵⁷ Accordingly, the need to support and protect victims who choose to testify in TJMs is critical, with primary concerns including the possibility of repercussions such as insecurity and stigma.⁵⁸ Mitigating such risks will be essential if the use of TJMs is to improve responses to CRSV and not exacerbate the difficult circumstances which can be faced by victims.

To this end it will be essential for community leaders, policy makers and officials from the formal justice system to listen to the concerns of victims and act upon them. One way to achieve this is through collaboration between the formal and traditional justice system as well as the engagement of both state officials and community leaders. Collaboration will be especially necessary in order to effectively respond to the concerns of victims and meet their needs in situations where neither justice system has adequate resources to do so alone. Previous uses of traditional justice in relation to CRSV have highlighted some now foreseeable risks (and potential solutions) for protecting participating individuals. For example, one simple measure is to anticipate and prepare for support needs as well as incorporating protections for victims during the design phase of post-conflict justice, with appropriate allocation of resources and a commitment to addressing the concerns of victims.

Alongside victims, people who are accused of CRSV will also experience greater protection within TJMs where best practices cascade from the top down. In particular, good practices may become the norm and exist throughout justice processes where the formal justice system is operating fairly and upholding fundamental rights. Conversely, patterns such as preventing the accused from challenging the accusations against them within TJMs can

⁵⁷ These identified issues were linked to other problems including intimidation and attacks on victims, witnesses, and judges as well as general challenges around participation including people refusing to testify, trying to evade Gacaca by moving to new areas, or giving partial confessions, Domitilla Mukantaganzwa (n11) 60, 86; Human Rights Watch (n33) 20; Penal Reform International (n27) 27.

⁵⁸ Fieldwork interviews A1-6.

begin with state authorities. For example, staff from the Office of the Prosecutor in Rwanda brought detainees before communities who were often not permitted to speak beyond identifying themselves.⁵⁹ Amnesty International also reported that when detainees were brought before communities, staff from the Public Prosecutor's Office stated their intention to collect incriminating evidence.⁶⁰ This creates a culture in which the corresponding TJMs may treat people as guilty from the outset. Similarly, the right to be informed of the charges and prepare a defence before appearing in the Gacaca Courts was supposed to be protected by a summons procedure.⁶¹ However, there were multiple reported instances where people were not provided with enough pre-trial information or only learnt of the charges against them on the day of the trial and did not have enough time to prepare a defence.⁶² Accordingly, both the formal justice systems and TJMs must work collaboratively to deliver justice in a manner which meets the needs of victims and provide adequate protections for both victims and the accused.⁶³

7.2.1 The risk of trauma and possible negative consequences of participating in traditional justice mechanisms

One particular area of concern if TJMs are to improve responses to CRSV is mitigating the risks for victims of trauma, isolation and insecurity during post-conflict justice processes.⁶⁴ The need to account for such risks from the outset is demonstrated by multiple previous situations. Victims from Rwanda and East Timor who have participated in TJMs have found seeing their attackers and hearing them describe attacks very difficult, reporting feeling ill in the days before, during, and after providing testimony, with the process of testifying being traumatic.⁶⁵ In Gacaca Courts, victims broke down whilst testifying, with some being taken home, some reappearing after a break, and some continuing to testify after they had regained their composure.⁶⁶ Similarly, victims of CRSV from East Timor also reported that testifying to and thus reliving crimes was traumatic, with trauma being especially intense in cases of rape.⁶⁷ Accordingly, one significant issue is the need to provide support in relation to the psychological health of victims as part of traditional justice processes, in particular to address the risk of trauma or re-traumatisation.

Encouragingly, with the increasing understanding and empirical research around the mental health impacts of testifying to CRSV, contemporary justice responses can also increasingly provide safeguards for victims.⁶⁸ This includes refining the use of TJMs by providing appropriate training for decision makers as well as providing an appropriate environment in which people can testify. For example, mitigating risks around – or providing an alternative to – outdoor or public testimonies which may involve many

⁵⁹ Amnesty International (n22) 23; Human Rights Watch (n33) 35-36.

⁶⁰ Between October 2000 and October 2001 3,466 detainees were brought before communities in which they had committed crimes and around 40 percent were released, Amnesty International (n22) 23-24.

⁶¹ Human Rights Watch (n33) 34.

⁶² Some accused never received a summons and Gacaca Courts heard cases *in absentia* meaning people were sentenced without ever knowing that they faced charges, violating their rights to be present at the trial and challenge the evidence, Amnesty International (n22) 23; Human Rights Watch (n33) 34-36, 38, 42.

⁶³ Charles Jalloh and Andrew Morgan, 'International Criminal Justice Processes in Rwanda and Sierra Leone: Lessons for Liberia' in Charles Jalloh and Olufemi Elias (eds.) *Shielding Humanity: Essays in International Law in Honour of Judge Abdul G. Koroma* (Leiden: Brill Nijhoff 2015) 467.

⁶⁴ Usta Kaitesi, *Genocidal Gender and Sexual Violence: The legacy of the ICTR, Rwanda's ordinary courts and gacaca courts* (Cambridge: Intersentia 2013) 206-207; Penal Reform International (n27) 33; Karen Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts' (2008) 39 *SD* 55, 68-69.

⁶⁵ People reported reliving the attack and experiencing uncontrollable crying, shaking, and fainting, Karen Brounéus (n67) 68-69; Anne-Marie de Brouwer and Etienne Ruvebana (n26) 958-959.

⁶⁶ Anne-Marie de Brouwer and Etienne Ruvebana (n26) 959.

⁶⁷ Victims in East Timor also reported frustration at having to go through reliving their experiences when leaders had impunity, Cheah Wui Ling, 'Forgiveness and Punishment in Post-Conflict Timor' (2005) 10 *UCLA JILFA* 297, 348; Amy Senior, 'Traditional Justice as Transitional Justice: A Comparative Case Study of Rwanda and East Timor' (2008) 23 *FJHS* 67, 79.

⁶⁸ Brounéus' research asked whether testifying to CRSV in gacaca courts had negative implications for the mental health of the victims, Karen Brounéus (n64) 63.

community members, the accused, and family and friends of both the accused and the victim.⁶⁹ Such mitigation measures have been demonstrably successful within the Gacaca system, which developed its processes after the initial use of public testimonies among the friends and family of the accused was found to increase feelings of insecurity: Karen Brounéus concluded that the location and circumstance of Gacaca Courts in 2008 (prior to training for judges and mitigation measures), were not optimal for the mental health of people testifying to CRSV.⁷⁰

Using TJMs to address CRSV will then require specific measures around security and mental health support, such as providing safe spaces. It is also essential to ensure that victims are prepared for justice processes and supported before, during and after participating. There are many measures which may be taken within communities, including having designated individuals to accompany victims through processes and provide support. Support for victims of CRSV may therefore take the form of appropriate training programmes for individuals within communities to act as counsellors or as designated individuals who can accompany victims who are testifying within TJMs.⁷¹ For example, in Liberia, this may involve providing training for Zoes or other community leaders, alongside people who will act as decision makers within TJMs, in order to ensure that victims have multiple points of contact for support. This will be especially important as many victims will be facing the prospect of participation in TJMs by themselves, after having lost their friends and family during armed conflicts.⁷²

7.2.2 The need to take a holistic approach to addressing the risks associated with conflict-related sexual violence

The issues which can face victims seeking justice for CRSV, such as aforementioned risks of physical, mental or social insecurity, are often complex and may require a cohesive effort by multiple actors including community leaders, state authorities and NGOs. For example, for some victims of CRSV, the protection needs which are associated with participating in TJMs may be connected to each other, or may exacerbate each other. In some cases, the immediate psychological consequences of testifying to CRSV can also be related to social impacts. This may include feelings of increased isolation and of loneliness where victims have felt unsupported by community members who had seen their emotional vulnerability during their participation in a TJM, but did not subsequently check on their welfare.⁷³ Addressing the needs of victims therefore requires a holistic approach which acknowledges and responds to the complicated and inter-connected issues which may arise. For example, it is especially important to address social or physical insecurity which can be a problem for victims who are testifying within their communities, owing to the potential for the intimidation of victims and witnesses. This was demonstrable during processes in Rwanda, wherein the initial phase of the Gacaca saw some community members shouting comments during hearings, people being attacked immediately after hearings, and a lack of response from officials to complaints.⁷⁴ Some victims had lived peacefully prior to testifying but then faced reprisals after identifying their attackers such as having their house attacked and being ostracised by the community.⁷⁵ Critically, support for the use of TJMs from the state authorities can have a significant positive impact in relation to mitigating risks for victims. In Rwanda, the security situation improved by the end of 2008 due to an increase in responsiveness by authorities, including police

⁶⁹ Karen Brounéus (n64) 63.

⁷⁰ Many participants risked their psychological health to testify, Karen Brounéus (n64) 63, 71.

⁷¹ Tim Allen and Anna Macdonald (n8) 9; Shannon Daley, 'Closing the Gap between Law and Reality: Women's Constitutional Rights in Afghanistan' (2014) 29 *CJIL* 329, 338.

⁷² Counselling and mental health care provisions were lacking throughout the gacaca process and remained lacking at the end of the process in 2012, Anne-Marie de Brouwer and Etienne Ruvebana (n26) 960.

⁷³ People also reported feelings of shame at having shown these emotions in front of the attackers and their families, Karen Brounéus (n64) 69.

⁷⁴ Karen Brounéus (n64) 68.

⁷⁵ Penal Reform International (n27) 33; Karen Brounéus (n64) 66-67; Sarah Wells (n25) 180; Anne-Marie de Brouwer and Etienne Ruvebana (n26) 952.

attendance where needed.⁷⁶ This can be improved and built into post-conflict justice by taking a holistic approach to addressing CRSV and ensuring that traditional and formal justice systems work cohesively.

Accordingly, TJMs can improve responses to CRSV where they form one part of an overarching approach to post-conflict justice, which ensures that there is a positive and supportive response from authorities to complaints by victims. The support of the formal authorities when combined with well-trained decision makers within communities who are attuned to the needs of victims can make a significant difference to the experience of victims and the effectiveness of using TJMs to address CRSV. For example, improving the response to complaints and concerns of victims meant that by the end of the Gacaca process, victims were reporting feeling safe to testify.⁷⁷ Security needs can also be context specific. This was seen in East Timor there were predictions of revenge attacks arising from the work of the Commission for Reception, Truth and Reconciliation in East Timor, however, such attacks were not widely reported.⁷⁸ Similarly, there have not been any reported reprisals following the pilot and initial National Palava Hut Commission hearings in Liberia.⁷⁹ To mitigate the negative social and security impacts of testifying within TJMs, it is essential that complaints raised by victims of CRSV are acted upon, and that foreseeable issues are addressed before they arise.⁸⁰ Ultimately, security risks are demonstrably mitigatable and so doing facilitates the ability of TJMs to address CRSV thus improving responses and providing an additional fora for victims. Whilst the level of risk varies between contexts, the physical, social and economic security for victims of CRSV should be prioritised from the outset of post-conflict justice programmes and will require both political will and the investment of resources.⁸¹

Incorporating TJMs within a holistic approach to CRSV requires the meaningful participation of victims during the design phase in order to ensure that victims have the opportunity to express their concerns and embed measures which meet their needs. This may include efforts to ensure the simultaneous and cohesive support of judicial, political and health institutions. A failure to include victims can lead to well-intentioned efforts which have unintended consequences and deny people their agency. Potential issues may include problems which can specifically arise around CRSV, such as perpetrators publicly confessing and revealing the identity of victims who wish to remain anonymous.⁸² Methods of addressing this issue include possible protective legislation. The Rwanda Government, for example, enacted a revised *Gacaca Law* in 2004 which included provisions on CRSV which banned public accusations or confessions of sexual violence, moving the responsibility for investigating charges onto prosecutors.⁸³ However, such an approach

⁷⁶ One woman reported having stones thrown at her house, two were accused of making false allegations, and two were forced to relocate due to threats, however, for most the situation was markedly improved. In one incident a man threatened his victim the night before their hearing and the police arrested him, Human Rights Watch (n33) 118; Anne-Marie de Brouwer and Etienne Ruvebana (n26) 953.

⁷⁷ Anne-Marie de Brouwer and Etienne Ruvebana (n26) 953.

⁷⁸ Amy Senier (n67) 78.

⁷⁹ Fieldwork interview C2.

⁸⁰ This is adeptly illustrated by the fact that people felt more able to participate in Gacaca Courts and speak about CRSV once security was improved. In the early years security was a significant problem for victims and witnesses who often faced reprisals, isolation, and feared for their safety. All of the women in Brounéus' study had faced physical insecurity as a result of participating, Karen Brounéus (n64) 66, 71; Usta Kaitesi (n64) 212; Anne-Marie de Brouwer and Etienne Ruvebana (n26) 953.

⁸¹ United Nations Children's Fund (n5) 6; Lars Waldorf (n9) 13.

⁸² People initially struggled to come forward for reasons such as trauma, humiliation, fear of outing themselves as victims, fear of stigma, and fear of repercussions. The Gacaca pilot was launched on 18 June 2002, and the trial phase was launched within the 118 pilot areas on 10 March 2005. The *Gacaca* Courts closed on 18 June 2012, after operating for 10 years and processing over 1 million suspected *genocidaires*. They judged 1,958,634 cases concerning 1,003,227 people (10 percent of whom were women). 14 percent were acquittals (and 13 percent of the convictions were guilty pleas), 9 percent of the cases were tried on appeal, Lars Waldorf (n9) 51; Usta Kaitesi (n64) 206-207; Domitilla Mukantaganzwa (n11) 34; Sarah Wells (n25) 175, 187.

⁸³ Making sexual violence a category 1 crime was campaigned for by activists who rightly argued that rape was among the most serious crimes of genocide, *Organic law n°08/2004* of 28 April 2004, Article 24; Domitilla Mukantaganzwa (n11) 60, 86, 196; Human Rights Watch (n33) 20; Lars Waldorf (n9) 50, 53-54, 63; Sarah Wells (n25) 174, 185.

must be mindful of the over-arching post-conflict justice framework. For example, issues such as cost or location may mean that victims are not able to participate in other justice processes such as trials for conflict-related crimes in formal courts. Removing the ability of victims to participate in TJMs in relation to CRSV therefore also removed an opportunity to seek justice. This was a particularly significant negative consequence for people who may not otherwise have had access to justice. Accordingly, the recognition of TJMs as an important additional forum in which victims can participate and seek justice – and thus their ability to improve responses to CRSV – is a central aspect of designing post-conflict justice strategies.

Measures to protect victims participating within TJMs therefore require a nuanced approach which balances rights protections with security, depending on the role and functions of a particular mechanism. Balances between protecting the safety of victims and the rights of accused persons within TJMs may include measures such as allowing victims of CRSV to write a letter which is then presented on their behalf, rather than a victim appearing in person.⁸⁴ This approach has assisted victims who are too frightened to appear in person or directly confront their attackers, but is a compromise with the accused's right to confront their accuser.⁸⁵ Holding closed sessions in TJMs for sexual violence has also been used in previous situations, such as Rwanda, and again acts as a compromise which carried risks as the lack of oversight during these hearings has prompted fair trial concerns.⁸⁶ Closed sessions cannot rely on community participation for collaborative truth-telling and to corroborate or challenge testimonies, which is considered to be important for upholding fair trial standards.⁸⁷ But such measures have also allowed victims to participate who might not otherwise have done so. Whilst these issues present significant challenges, it is possible to mitigate risks and provide victims with the opportunity to participate in TJMs. Within a context such as Liberia, where reprisals have not been associated with the National Palava Hut Commission pilot, another option is to hold a subject-specific hearing on CRSV in which communities which include victims can discuss the crimes which were committed as well as the appropriate responses.

7.2.3 The need for clarity around conflict-related sexual violence

Another layer of protection for both victims and accused can come from providing clarity around the response to CRSV. Where there is clarity both around the whole response to CRSV and the specific role and functions of TJMs within that, people are able to make informed choices and understand what they might expect from processes. Experiences in countries such as Rwanda, East Timor and Uganda have illustrated the need for a clear legal framework to avoid confusion and to prevent the inconsistent treatment of people who have experienced, perpetrated or been accused of CRSV.⁸⁸ Despite concerns around the formalisation of TJMs, such as an initial decrease in trust, the more legislative approaches taken to post-conflict justice in states such as Rwanda and East Timor have significant merit.⁸⁹ Whilst traditional justice must remain community-operated and responses to CRSV require the support of community leaders, some involvement of the state (or other governing authority such as the UN) is necessary to provide oversight and clarify the jurisdiction and role of TJMs. In contrast, in Uganda, having a lack of clarity caused confusion around which forum was appropriate for which crime. It also provided the opportunity for problematic pre-existing domestic provisions or socio-cultural norms to become overly influential and prevent victims from seeking justice.

⁸⁴ Usta Kaitesi (n64) 216; Human Rights Watch (n33) 117.

⁸⁵ Human Rights Watch (n33) 117.

⁸⁶ Human Rights Watch (n33) 112.

⁸⁷ Human Rights Watch (n33) 112; Anne-Marie de Brouwer and Etienne Ruvebana (n26) 948; Penal Reform International (n27) 24.

⁸⁸ Ketty Anyeko et al., 'The Cooling Hearts': Community Truth-Telling in Northern Uganda' (2012) 13 *HRD* 107, 122.

⁸⁹ Lisan was operated in its original form by communities and retained greater initial trust, whilst Rwanda's adapted Gacaca Courts lost trust initially and gained it over time, Lars Waldorf (n9) 7-8, 26.

Where they are provided a clear role, jurisdiction, and functions, TJMs are able to improve responses to CRSV by increasing the range of justice fora which are available to victims as well as being able to address situations which the formal justice system cannot: for example, taking a discursive approach to addressing crimes committed by child soldiers and their reintegration. To this end, the categorisation of sexual violence crimes requires careful consideration within post-conflict justice, specifically in relation to which crimes will be addressed in which justice mechanism. Acts of sexual violence such as rape are, rightly, often categorised among the most serious crimes and the use of TJMs to address such conduct is often debated: their appropriateness for this purpose is sometimes called into question as CRSV may be considered as suitable only for the formal courts.⁹⁰ However, such an approach has previously caused many victims to face familiar access barriers such as cost, geographical location, and lack of procedural familiarity as well as new barriers, such as being unable to bring their situation before a formal court (for example, where the attacker was a child soldier or owing to capacity limitations).⁹¹ It is then inappropriate to have a blanket ban on CRSV being heard within TJMs. Whilst doing so might be considered a justified attempt to protect victims, it is in fact paternal and removes the agency to choose from victims as well as removing the ability of some victims to participate in justice processes at all. Accordingly, as part of a more nuanced approach to addressing crimes of CRSV, TJMs can improve responses by their presence as additional more accessible justice fora which offer a wider range of justice options and allow victims to retain and make choices.

The ability of TJMs to improve responses to CRSV is in part owing to the ability of traditional justice to address a wide range of conduct and provide a wider range of options for redress. This may include discussion around a wider range of acts of sexual violence than the formal justice system, such as those committed by child soldiers, or which are associated with witchcraft and abandonment.⁹² The ability to discuss a broad range of conduct may also prove useful and facilitate addressing issues such as the need to provide support for children who have been born of rape. However, to take such an approach, the role and functions of TJMs as part of responding to CRSV must be agreed at the outset and disseminated to populations in order for traditional justice to enhance and improve responses, rather than create confusion. Populations must understand what conduct TJMs will address, the processes which they will use and the potential sanctions.⁹³ This is particularly important to dispel concerns around which acts are in fact crimes of CRSV and to provide clarity for victims who may be influenced by harmful domestic norms or perceptions of sex and gender (for example, where there is a link between rape and adultery, or a risk of being prosecuted for homosexual acts).

Additionally, providing a clear role with distinct functions for TJMs in relation to CRSV is essential for practical reasons, for example, clarifying the role for TJMs in relation to or within the hierarchy of the state courts. This will be necessary for decision makers to understand where they have the ability to transfer cases between justice mechanisms and may also provide oversight via an appeals process.⁹⁴ For example, as the National Palava Hut Commission is not envisaged to have custodial sentencing powers in Liberia, its role must be clarified in relation to other justice mechanisms to ensure that cases are referred to formal justice mechanisms where appropriate.⁹⁵ Where traditional justice is drawn upon, further clarity must be provided to distinguish post-conflict justice from mechanisms which

⁹⁰ Sarah Wells (n25) 185.

⁹¹ Sarah Wells (n25) 185.

⁹² Freida McCormack (n17) 10; Jun Wei Quah (n2) 8.

⁹³ For D2 it is important that justice comes before ethnic considerations as ending impunity in Liberia will begin with holding people accountable for conflict-related crimes, Fieldwork interviews D2; United Nations Children's Fund (n5) 5.

⁹⁴ Where decisions made in TJMs can be appealed within the formal justice system, processes should not resemble a retrial, Brynna Connolly (n8) 286, 291-292; Shai Divon and Morten Bøås (n1) 1387.

⁹⁵ Kim Seelinger, 'Domestic accountability for sexual violence: The potential of specialised units in Kenya, Liberia, Sierra Leone and Uganda' (2014) 96 *IRRC* 539, 561.

address non-conflict related and peacetime crimes. For example, in Liberia, the population must understand the distinction between the functions of the National Palava Hut Commission and the functions of traditional palava hut. In particular, that the National Palava Hut Commission will address conflict-related crimes including CRSV, but that it will not be an appropriate mechanism to address peacetime sexual and gender-based violence, nor will it provide other forms of dispute resolution. Making links between TJMs and other justice mechanisms may, however, be more resource intensive and may mean that the use of TJMs ultimately rests with the state, undermining the community-led nature of traditional justice.⁹⁶ However, the limited incorporation of TJMs within the formal justice system may offer them greater autonomy whilst providing the state the ability to monitor adherence to fundamental human rights as well as provide a coherent response to CRSV.⁹⁷

One key aspect of the ability of TJMs to approve responses to CRSV is that they may be able to fill some of the gaps which exist within responses. In particular, to improve responses by providing a forum in which victims can seek alternate forms of redress, raise issues such as the impacts of the crimes which they have experienced, and provide access to justice where situations would not be considered by the formal courts. Accordingly, with the use of TJMs as part of responses to CRSV the situation for victims is improved by their subsequently having increased opportunities to seek justice. It may also, where possible or appropriate, facilitate increased choices for victims around which method of justice they wish to pursue as best fitting for their personal circumstances. Again, this requires clarity in relation to the role and functions of TJMs in order for victims of CRSV to make informed decisions with foreseeable consequences. For instance, within Liberia, whilst CRSV is distinct from peacetime sexual and gender-based violence, related challenges which are currently being faced by the domestic justice system are signposts for issues which may arise. This includes attrition where victims of sexual violence start the legal process and then withdraw the case due to pressure from family members, or where livelihoods are dependent on the accused: for women, real and perceived reliance on men presents a barrier for justice.⁹⁸ If a matter is handled by the formal justice system through the police or the courts, it might be felt by others that the issue should not have been taken beyond the community and the victim may face grudges or revenge attacks.⁹⁹ Although it is easy to move between the justice systems, it is easier to move from traditional justice processes to formal justice processes – as a form of escalation – than to start with the formal justice system and then bring an issue back to the community level.¹⁰⁰ Simultaneously, victims will then also require clear information, support and assurance on issues related to CRSV such as security and procedural practices if they are to bring cases before the formal courts.

Again, there is an emphasis on engagement and clarity around the functions of TJMs in relation to CRSV. The specific role for TJMs and the functions which they will need in order to address such crimes can be explored and decided by meaningfully engaging with victims and community leaders during the design and delivery of post-conflict justice. Community leaders must be willing to work with other stakeholders (such as the state) in order to address issues which are related to CRSV. This may include the possibility that TJMs may need to be adapted or that they may need to apply new legislation or norms in order to effectively address such crimes.¹⁰¹ For example, legislating around CRSV and against discrimination is highly important but is not by itself enough as pre-existing TJMs may apply and enforce customary norms or social norms which differ from formal state

⁹⁶ Brynna Connolly (n8) 286.

⁹⁷ Brynna Connolly (n8) 283.

⁹⁸ Fieldwork interview C3.

⁹⁹ For this reason, one participating victim (A6) would rather take an issue to the community Chairman who knows everyone as once an issue is taken to the police or the courts friends can become enemies, Fieldwork interviews A5-6.

¹⁰⁰ Fieldwork interviews A4-6, C3.

¹⁰¹ United Nations Children's Fund (n5) 4; United Nations, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice* (New York: United Nations 2010) 2, 3, 6.

legislation.¹⁰² As seen in Afghanistan, where the Constitution recognises women as citizens and provides them with extensive rights.¹⁰³ However, these rights are often not respected within pre-existing TJMs, where women may be treated as the property of a male relative.¹⁰⁴ Operating collaboratively to develop solutions may therefore avoid unintended consequences such as alienating local elders who are ultimately responsible for TJMs, and can increase the effectiveness of measures.¹⁰⁵ To this end, listening to the concerns of victims and engaging community leaders on how to effectively address CRSV will be vital if TJMs are to improve responses.

Further to this, the use of TJMs within post-conflict justice may also improve responses to CRSV by engaging community leaders with efforts to address such crimes. For example, clarity can be enhanced through relevant co-developed and delivered training, with an important lesson from previous situations being the need to provide training to decision-makers on addressing CRSV from the outset.¹⁰⁶ Training should recognise the prevalence of CRSV and that it may arise as part of people testifying regardless of whether a TJM has jurisdiction to address such crimes. This was seen in Rwanda, where initial training for Gacaca judges did not cover CRSV as Gacaca Courts did not originally have jurisdiction over sexual violence crimes. However, the issue arose anyway and the challenging and complex nature of CRSV cases meant that when the jurisdiction of Gacaca Courts was expanded in 2008, Gacaca judges had to be given training on the legal and psychological aspects of addressing sexual violence.¹⁰⁷ The engagement and proficiency of such training will be vital for creating clarity around how to address crimes of CRSV; without this victims may face issues around the interpretation and implementation of the relevant law. For example, one participant in de Brouwer's research reported a woman for handing her to her rapists but the judges dismissed the incident arguing a woman cannot sexually abuse another woman, which was not the reported crime.¹⁰⁸ Another victim testified to CRSV in a closed session but stated that the judges did not stop community members who were listening and shouting in through the windows.¹⁰⁹ However, most participants in de Brouwer's study commended the Gacaca judges' professionalism, local knowledge and their allowing them to take breaks during testifying.¹¹⁰ The judicial training on CRSV was positively received and victims spoken to by Human Rights Watch thought judges acted appropriately.¹¹¹ On this issue, Liberia may have an advantage compared to other situations as the population is actively calling for justice and thus the participation levels in the pilot and the initial use of the National Palava Hut Commission have been high.¹¹² Additionally, training is already being conducted with traditional leaders both to implement the National Palava Hut Commission and in understanding statutory laws suggesting that there is a receptiveness to adapt where necessary.¹¹³ Ultimately, clarity is required at all levels for TJMs to improve responses to CRSV: from governing officials to community leaders to victims and the broader population, everyone must be aware of the options for seeking justice and redress, as well as what they can expect from each justice fora.

¹⁰² For example, one participating community member in Liberia explained that on arriving to stay in a new village they will have the local norms explained to them by community leaders, Fieldwork Interviews B1.

¹⁰³ Shannon Daley (n71) 333-334.

¹⁰⁴ Shannon Daley (n71) 350.

¹⁰⁵ Sarah Wells (n25) 177; Brynna Connolly (n8) 291; Padraig McAuliffe (n11) 84-85.

¹⁰⁶ Amnesty International (n22) 26; Domitilla Mukantaganzwa (n11) 51-52, 91, 127.

¹⁰⁷ The training focused on rape and sexual torture as the two crimes enumerated in the Genocide Law, Domitilla Mukantaganzwa (n11) 156-157; Anne-Marie de Brouwer and Sandra Ka Hon Chu, 'Gacaca Courts in Rwanda: 18 Years After the Genocide, Is There Justice and Reconciliation for Survivors of Sexual Violence?' (7 April 2012) *IntLawGrrls* [Online].

¹⁰⁸ Anne-Marie de Brouwer and Etienne Ruvebana (n26) 949.

¹⁰⁹ Anne-Marie de Brouwer and Etienne Ruvebana (n26) 949.

¹¹⁰ Of their 28 participants, 3 were unhappy with the judges' professionalism and 2 would have preferred to have their cases dealt with by professional judges, Anne-Marie de Brouwer and Etienne Ruvebana (n26) 948.

¹¹¹ Issues found by HRW included that one woman knew all of the judges from her community therefore did not feel comfortable to reveal everything, Human Rights Watch (n33) 117.

¹¹² See J. H. Webster Clayeh, 'INCHR Commences Palava Hut Hearing for War Victims and Perpetrators in Liberia's Worst War-affected Counties (18 November 2020)' *Front Page Africa* [Online].

¹¹³ Front Page Africa, 'UNDP Sponsored Her Voice Liberia Project to provide Training for Traditional Leaders in Understanding Statutory Laws (4 February 2021)' *Front Page Africa* [Online].

7.3 The relationship between traditional justice mechanisms and other justice mechanisms in Liberia

There have been extremely limited opportunities for victims of conflict-related crimes including CRSV, to seek justice within Liberia. There have been proceedings by other states which have provided limited opportunities for victims to participate in trials (*supra* 4.1.1). However, in the absence of domestic prosecutions or an internationally supported response located within Liberia, such as a hybrid tribunal or extraordinary chambers (akin to Sierra Leone or Cambodia), traditional justice has provided an opportunity for victims to participate in justice processes. Following the pilot, the first hearings of the National Palava Hut Commission commenced in 2020, with victims and accused freely participating in five days of hearings and truth-telling processes in Tienii, as part of the Peacebuilding, Reconciliation, and Social Cohesion Project supported by the United Nations Development Programme (UNDP).¹¹⁴ The approach taken by the INCHR to training, representation and implementation during the pilot process and initial hearings is instructive for the future of the National Palava Hut Commission and its relationship with CRSV, especially through its illustration of the willingness to participate in justice processes within communities.

However, whilst piloting the National Palava Hut Commission and then beginning hearings in 2020 has provided a much-needed domestic avenue for justice, there is a risk that traditional justice processes via the National Palava Hut Commission will end before the other recommended justice mechanisms are established. The TRC mandated a five-year period of operation for the National Palava Hut Commission, however it is unclear when that period should start:¹¹⁵ the TRC released its final report in June 2009, meaning that the mandate potentially should have operated between July 2009 and 2014. However, several of the five statutory departments of the INCHR were not completely established until 2017 and the first official hearings occurred in 2020. This potentially means that the five-year mandate started in 2020, if the operation of the National Palava Hut Commission adheres to the TRC recommended timeline.

Operating the National Palava Hut Commission without other forms of post-conflict justice presents risks as it could both undermine their role as a supportive mechanism during the operation of other post-conflict justice mechanisms, such as domestic prosecutions, and – crucially – it could facilitate the avoidance of prosecution by some accused who may argue that no other mechanisms are needed.¹¹⁶ In particular, within Liberia, the relationship between traditional justice and formal justice needs careful consideration within post-conflict justice efforts. The role of TJMs and use of traditional justice requires clarification for the population from policy makers in light of the current narratives which are surrounding post-conflict justice. This includes targeted efforts to influence the narrative by some high profile accused, which seek to use traditional justice processes as a way to avoid prosecution.¹¹⁷ This includes propaganda which has pitted traditional and formal justice against one another and pushed the idea that palava hut would be a healing process whilst prosecutions would be destabilising for the country.¹¹⁸ This is often linked to the persistent framing of post-conflict justice as a choice between the retributive recommended Extraordinary Criminal Tribunal and the restorative National Palava Hut

¹¹⁴ J. H. Webster Clayeh (n112).

¹¹⁵ Fieldwork interviews C2.

¹¹⁶ The 2009 government was divided on the TRC as recommendations affected members of the administration, including to bar the then President Ellen Johnson Sirleaf, from holding public office, Al Jazeera 'Did Ellen Johnson Sirleaf do enough for Liberia? (24 May 2019)' *Al Jazeera* [online]; Fieldwork interviews C2, D2.

¹¹⁷ Their efforts have included seeking to make amends with victims to prevent a prosecution and encouraging the use of the NPHC over formal courts, Fieldwork interview C4, D2; Al Jazeera (n115).

¹¹⁸ See for example, Obediah Johnson, 'Liberia: Rep. Larry P. Younquoi Wants Prince Johnson Resign from the Senate; Wants Him Face War Crimes Prosecution (9 July 2021)' *FPA* [online]; Front Page Africa, 'One Arrest in Liberia for War Crimes this Year – Bility (5 October 2018)' *FPA* [online]; The Economist, 'Victims of Liberia's civil war are still waiting for justice (13 November 2021)' *The Economist* [Online].

Commission (which they position as being preferable).¹¹⁹ The population must be aware that the use of traditional justice via the National Palava Hut Commission is in a supporting role and operates as only one aspect of the post-conflict justice processes. This is particularly pertinent as the return of Agnes Reeves Taylor to Liberia in 2020 (*supra* 4.1.1) reignited debate around the use of traditional justice to address conflict-related crimes.¹²⁰ Accordingly, clarifying the role of the National Palava Hut Commission is essential and Liberian authorities must ensure that the public, especially victims of the armed conflicts, are fully informed that the National Palava Hut Commission is supplementing prosecutions and will go on to support them, it does not replace them.¹²¹

*'Palava hut over the years in my view has been a way to side step the TRC recommendations. [...] You know big or powerful individuals have ability to finance getting on the radio and to be heard and when people hear one thing over and over and over they tend to sort of take it to be true. And that is what the perpetrators and their supporters have actually been trying to do to shut down war crime court, to make palava hut the only method of implementation of the TRC report which I think would be, actually would do injustice to victims and also the work of the TRC itself [...] to just take one of the methods one of the recommendations as the best in my view does disservice to the whole exercise.'*¹²²

Undoubtedly, post-conflict justice is not a zero-sum choice between retributive and restorative approaches. Examples from Rwanda, Sierra Leone, Uganda and elsewhere around the globe demonstrate the simultaneous and coordinated operation of multiple justice mechanisms to deliver retributive and restorative justice.¹²³ TJMs can improve responses to CRSV through supporting other justice mechanisms in order to expedite justice for victims and accused, as well as seeking to prevent formal justice mechanisms from becoming overwhelmed. They are also able to provide an alternate forum for justice in which victims who may not be able to access the formal courts can participate. To this end, the aims of incorporating traditional justice into post-conflict justice strategies must not be subverted. For victims of CRSV to seek and receive justice in a manner appropriate to their circumstances, each recommended justice mechanism should be established to function alongside the others.

In light of this context, there is a co-dependent relationship between justice mechanisms and perhaps an argument that traditional and formal justice mechanisms which seek to address conflict-related crimes need to be implemented simultaneously: there is certainly an argument against the selective implementation of accountability mechanisms.¹²⁴ Improving responses to CRSV does not operate within a vacuum and it will be important that efforts exist within a comprehensive approach to post-conflict justice. Ultimately, if the other justice mechanisms do not exist within Liberia then the National Palava Hut Commission cannot improve responses to CRSV by fulfilling its role as a supplementary mechanism which provides a restorative, community-based option for victims and access to alternative forms of redress. Conversely, for victims of CRSV traditional justice via the

¹¹⁹ J. H. Webster Clayeh (n112); Fieldwork Interviews C4, D2.

¹²⁰ Accused individuals who have retained positions of power have the biggest platforms and ability to influence public opinion through the ability to make statements and access radio broadcasts: one of the most popular form of communication in Liberia, Fieldwork interview C4; Darlington Porkpa, 'Liberia warlord Taylor's ex-wife slams dismissed torture charges upon return (29 July 2020)' RFI [online]; Lennart Doodoo, 'Liberia: 'Mother of NPFL Revolution' Denies Role In Liberia's War But Admits Carrying A Pistol for Self-Protection (28 July 2020)' *Front Page Africa* [online]; Rodney Sieh, 'Liberia: War Crimes Implications of UK Probe Lingers as Agnes Taylor Returns (23 July 2020)' *Front Page Africa* [online].

¹²¹ Fieldwork interviews D2.

¹²² Fieldwork Interview C4, official.

¹²³ Ewa Wojkowska (n40) 11-12; United Nations Children's Fund (n5) 2; Danish Institute for Human Rights (n9).

¹²⁴ Fieldwork interviews C2, C4, D2.

National Palava Hut Commission – as one aspect of post-conflict justice processes – could provide a Liberian-driven accountability mechanism in which large numbers of victims and accused can participate and which could provide significant tangible impact for many victims.¹²⁵

7.4 Conclusions on the pragmatic need to use traditional justice mechanisms to improve responses to conflict-related sexual violence

Amid resource and capacity restrictions in Liberia, there is clear scope for traditional justice to improve responses to CRSV. In line with the recommendations which were made by the TRC, the use of TJMs must function as part of a coherent approach to post-conflict justice. Such an approach must recognise that no single accountability mechanism can address CRSV in isolation, and that supplementing formal prosecutions with forms of redress which seek to improve the daily lives of victims is essential. As mechanisms which often have restorative aims alongside the ability to facilitate access to alternate forms of redress or reparations programmes, TJMs are ideally situated as community-based, supplementary justice mechanisms. Indeed, providing post-conflict justice across the whole territory will require the use of traditional justice, with the National Palava Hut Commission potentially having an important role in assisting victims of CRSV (as well as others) who face access barriers to the formal justice system.¹²⁶ With much of the formal justice system located in Montserrado County, attending centralised hearings may not be possible for many victims in Liberia.¹²⁷ Additionally, the monetary cost involved in pursuing justice through the formal justice system is a significant barrier for many victims of CRSV who are among those facing the most severe socio-economic hardships.¹²⁸ Along with the costs of transport, hiring legal representation may be beyond what people can afford.¹²⁹ Without community-based support to seek justice and additional justice fora which support the formal justice system, victims of CRSV will be at a significant disadvantage. This is perhaps the most crucial role for TJMs as an asset which can improve responses to CRSV, namely, their ability to supplement formal prosecutions and provide an alternate – accessible – avenue of justice for victims. Accordingly, whilst the National Palava Hut Commission is underway in Liberia, for it to improve responses to CRSV, it must go on to function as one option within a range of avenues for justice. For victims of CRSV in Liberia to receive an effective remedy, the Extraordinary Criminal Tribunal, Domestic Criminal Prosecutions and the reparations programme must also be established.

Ultimately, there are undoubtedly risks and challenges which come with using TJMs as part of post-conflict justice efforts in relation to CRSV. However, the reality is that limited resources and capacity issues mean that for many affected states, the formal justice system alone cannot adequately respond to CRSV which has been committed on a mass scale. Traditional justice has not only been an essential part of post-conflict justice strategies in states around the globe, it has also been a necessary part of responding to CRSV. By building TJMs into post-conflict justice strategies from the outset, and clearly defining their role in relation to CRSV, policy makers can avoid repeating previous

¹²⁵ Fieldwork interviews D1.

¹²⁶ Fieldwork interview C3; Shai Divon et al., *Gender Based Violence and Access to Justice: the Case of Ganta, Liberia* (Oslo, Norwegian Institute of International Affairs 2016) 12.

¹²⁷ Joyclyn Wea, 'Decentralise Criminal Court E (3 September 2020)' *New Republic* [online]; Cecil Griffiths, *Mapping Study on Gender and Security Sector Reform: Actors and Activities in Liberia* (Geneva: Centre for Democratic Control of Armed Forces 2011) 8.

¹²⁸ Some women seek help from the Association of Female Lawyers of Liberia because they wish to go to the formal justice system, but they can't afford it. The organisation provides legal representation, it does not give money, Fieldwork interview C3.

¹²⁹ Money is also linked to corruption (or perceived corruption) in the domestic courts with the feeling that if an accused has money, they will always succeed. This has been connected to post-conflict justice and the risk of lack of equality before the courts. One participating victim (A1) suggested that the domestic courts should not try some people – they should be tried outside of Liberia where they would not have influence, Fieldwork interviews A1-5, B1, E1; Randi Solhjell and Debey Sayndee, 'Gender-Based Violence and Access to Justice: Grand Bassa County, Liberia' (Norwegian Institute of International Affairs Report, Report Number 6, 2016) 10.

mistakes. This includes recognising that CRSV is particularly susceptible to harmful norms, stereotypes and inadequate pre-existing legislation around the conduct which will be considered as crimes, as well as the processes, remedies and sanctions which are available within each justice mechanism, including TJMs. It will also be vital to recognise the potential of TJMs to improve responses to CRSV from the outset, as well as the scale of the crimes, and thus incorporate traditional justice within the design of post-conflict justice efforts in order to avoid overwhelming domestic state courts and prisons.

Chapter 8: Concluding Remarks and Thesis Findings

This thesis has sought to examine whether TJMs can improve responses to CRSV. At this time CRSV is a perpetual issue which is seen around the globe and such sexual violence continues to be committed on a large scale, including as a strategy within armed conflicts. Responding effectively to provide accountability and meet the needs of victims is a matter of urgency as CRSV remains a constant threat to social, economic and physical security.¹ Justice efforts must therefore go beyond retributive justice and custodial sentences to include restorative forms of justice such as restitution, compensation and access to comprehensive reparations programmes which seek to improve the lives of victims. They must acknowledge and address the nature of the crimes as well as operating sensitively within local contexts.

The thesis has shown that there is significant merit in the use of TJMs in order to improve responses to CRSV and that the use of traditional justice is able to supplement formal justice mechanisms by addressing impacts of CRSV which formal courts cannot, such as providing restorative processes within communities.² Additionally, TJMs can supplement the formal justice system by helping to prevent institutions such as courts and prisons becoming overwhelmed and in doing so assist in expediting justice.³ Finally, TJMs can also supplement formal justice systems by providing victims who are not able to access courts with fora in which they can participate. After considering the appropriateness of traditional justice for CRSV and the necessity of meeting the needs of victims, further key findings of the thesis are examined in turn.

8.1 The appropriateness of traditional justice for conflict-related sexual violence and improving the situation for victims

The idea of using TJMs to address CRSV raises the question of whether the use of traditional justice is appropriate for crimes of such a nature and gravity. As discussed in Chapter 4, the appropriateness of traditional justice in relation to CRSV should be decided based on the views of victims, and in particular, what they feel is needed in order to have satisfying justice.⁴ Participating victims connected concepts of justice with addressing the impacts of the crimes they have experienced and which continue to affect their daily lives: healthcare, employment and education have all been identified as priority needs and essential for making a living.⁵ Incorporating these needs into responses to CRSV is also essential as family and community links have often been disrupted, leaving victims with little support. The use of TJMs may therefore be appropriate where they have a role fulfilling needs which formal justice mechanisms cannot.

As discussed in Chapter 4, existing responses to CRSV are demonstrably inadequate from the difficulties around investigating and prosecuting crimes, through to failures to address impacts faced by victims such as socio-economic exclusion.⁶ With recognition that no single form of mechanism can address CRSV in isolation, it is essential to supplement formal prosecutions with forms of redress which seek to improve the daily lives of victims.⁷ Indeed, one of the most important benefits of using traditional justice in relation to CRSV is the potential to improve conditions for victims, such as by facilitating alternate forms of redress and compensation. Additionally, as discussed in Chapter 4, there is a vital role for community leaders – who must be incorporated within efforts to address CRSV as leaders

¹ As discussed in Chapter 1, Section 1.1.

² As discussed in Chapter 6, Section 6.3.

³ As discussed in Chapter 4, Section 4.6.

⁴ As discussed in Section 4.8.

⁵ As discussed in Chapter 4, Section 4.8.

⁶ As discussed in Section 4.7.1.

⁷ As discussed in Chapter 6, Section 6.3.1.

of TJMs – where they are able to facilitate a cohesive response to CRSV which includes facilitating access to services and reparations programmes, as well as countering stigma.⁸

The fact is that social acceptance of victims remains low, whilst the life-changing impacts of CRSV remain significant. In Liberia as well as other affected states, improving responses to CRSV will require a comprehensive approach which connects justice mechanisms with access to healthcare and other support services. Incorporating traditional justice provides an opportunity to enhance capacities to address the long-term health, social, economic and cultural impacts of CRSV which prosecutions cannot fully comprehend. The use of TJMs in relation to CRSV may therefore be both appropriate and necessary, for example, where they are able to determine the status of an individual as a victim of a crime which entitles them to healthcare, and subsequently facilitate access to support services. Ultimately, addressing the impacts and challenges of CRSV requires the use of every available resource. Where states are willing to address CRSV, increasing their ability to do so may in part be achieved by engaging with TJMs, and especially through the work of traditional, religious and community leaders.

8.2 Increasing the capacity of states to improve responses to conflict-related sexual violence

With recognised restrictions on the resources and capacity of formal justice systems in post-conflict states there is clear scope for TJMs to improve responses to CRSV.⁹ For states such as Liberia, providing post-conflict justice across the whole territory will require the use of traditional justice: as discussed in Chapter 5, Liberia's state court system faces capacity issues even before the additional burden of addressing conflict-related crimes is factored in. Investigating and prosecuting CRSV within the domestic system will subsequently increase the burden on the state courts and will likely add to the existing backlog of cases.¹⁰ The discussion around the limitations of domestic courts in Chapter 5 built on findings in Chapter 4, that proactively addressing capacity issues and seeking to mitigate the associated risks is essential in order to prevent formal justice systems from becoming overwhelmed.¹¹ In Liberia, the National Palava Hut Commission may have an important role in mitigating capacity-related risks and supporting the state courts to address conflict-related crimes. We can draw on the Liberian experience to make recommendations for other conflict-affected criminal justice systems which must address CRSV. The risk to the formal justice system of a large case-load in relation to CRSV (as well as other conflict-related crimes), should be recognised and mitigated during the design of post-conflict justice strategies. Where a state has a plural approach to justice, with an existing traditional justice system, policy makers should use all of their available resources including TJMs to support the state courts.

Additionally, with the frequent connection between traditional justice and restorative processes, Chapter 6 found that TJMs have often been used within post-conflict justice efforts to increase capacity by contributing in ways which go beyond the scope of the formal justice system.¹² This is particularly the case where crimes such as CRSV create complex post-conflict social dynamics with returning ex-combatants, former child soldiers and victims living among their attackers.¹³ TJMs can perform functions which state courts cannot, such as contributing to social discussion and harmony, meaning that they may be able to fill gaps within the formal justice system. Certainly, as discussed in Chapter 4, the National Palava Hut Commission in Liberia incorporates restorative and reconciliatory processes which may be essential for communities where relationships have been

⁸ As discussed in Section 4.8.

⁹ As discussed in Chapter 5, Section 5.2.4.

¹⁰ As discussed in Chapter 5, Section 5.2.4.

¹¹ As discussed in Section 4.5.

¹² As discussed in Section 6.2.

¹³ As discussed in Chapter 6, Section 6.2.

damaged by CRSV.¹⁴ Beyond Liberia, the need to address the destruction of family and community relationships as a result of CRSV should be considered during the design of post-conflict justice strategies. This should include drawing on traditional restorative and reconciliatory processes where appropriate.

TJMs also have the ability to increase capacity to address CRSV and improve responses by supplementing formal prosecutions with an alternate and readily accessible avenue of justice. For some victims this will be the most crucial contribution of traditional justice to CRSV responses. In Liberia, the National Palava Hut Commission increases the capacity to address CRSV by providing a tangible alternative point of access to justice for victims who would not be able to access the formal justice system. Chapter 7 highlighted significant barriers to accessing formal courts such as geographical location and living beyond the reach of the state, as well as the monetary cost involved of bringing a case in a formal court. The cost of formal justice is often a barrier for victims of CRSV, as they are often living with severe socio-economic hardships.¹⁵ Additionally, traditional justice may provide an avenue of redress for victims of CRSV who are not able to access the formal justice system due to their circumstances, such as where their attacker was a child soldier or by providing access to reparations where their attacker is not known.

Ultimately, as discussed in Chapters 5 and 6, no one form of justice is by itself an effective response to CRSV as none can singularly meet the needs of victims.¹⁶ Formal courts cannot address the range of impacts which can arise from CRSV, including the destruction of communities. Supplementing formal prosecutions and facilitating access to reparations programmes through TJMs may therefore be an essential aspect of improving responses. For victims of CRSV this is especially important as the scale and nature of the crimes generates needs which are best addressed through the cohesive and simultaneous operation of political, social and legal institutions.

8.3 The need for a targeted response to conflict-related sexual violence

For TJMs to improve responses to CRSV, they must operate as one part of a comprehensive post-conflict justice strategy. It is then essential that TJMs are incorporated into post-conflict justice strategies from the outset in order to function coherently with other mechanisms in response to CRSV. Accordingly, Chapter 6 found that for TJMs to improve responses to CRSV, there must be a targeted response within a state.¹⁷ Failure to specifically address CRSV allows its impacts to become entrenched within a society and leaves victims without the specific support and protections they require. In Liberia, this means acknowledging that whilst the TRC has recognised the sexual violence which was committed during the armed conflicts, there is now a critical need to take targeted action in order to address CRSV and its impacts.¹⁸ With little to no response to CRSV in Liberia at this time, a major crisis has developed around sexual and gender-based violence.¹⁹ It is both commendable and correct that the incumbent Weah government has declared rape a national emergency, established a subject-specific task force, and as of July 2020, made addressing sexual and gender-based violence a priority.²⁰ However, without including measures to address CRSV – which is one of the root causes of Liberia’s ongoing problems – the measures are incomplete. For this reason, it is essential that justice is provided for conflict-related crimes and that CRSV is addressed as a part of a comprehensive justice strategy which draws on the resource asset of Liberia’s TJMs.

¹⁴ As discussed in Section 4.7.

¹⁵ See for example, the discussion in Sections 7.1.2 and 7.2.3.

¹⁶ See for example, the discussion in Chapter 5, Section 5.1.

¹⁷ As discussed in Chapter 1, Section 1.4.1 and Chapter 6, Section 6.2.

¹⁸ As discussed in Chapter 5, Section 5.1.

¹⁹ As discussed in Chapter 4, Section 4.6.

²⁰ As discussed in Chapter 4, Section 4.6.

TJMs may therefore enhance government led recognition of CRSV through providing community recognition of crimes, as well as contributing to justice efforts by providing accurate and accessible information on acts of CRSV and available forms of redress. Having a targeted response also increases the ability for CRSV to be addressed using appropriate, consistent criteria by increasing clarity on the role and functions of TJMs in relation to CRSV. As discussed in Chapter 7, specifically providing a clear legal framework and relevant guidance around CRSV for officials and community leaders can prevent confusion or inconsistent treatment.²¹ For example, by defining conduct and explaining which conduct is addressed in which justice mechanism as well as the relevant sanctions which may apply to each offence. Such clarity around CRSV is important to help victims understand where they might seek justice and protect the rights of accused persons by increasing predictability. Chapter 7 found that this is especially important in relation to CRSV, which can be subject to harmful domestic legislation and socio-cultural norms.²²

Having a targeted response can also help to ensure that appropriate state resources are ring-fenced specifically to address CRSV. Subject specific resources may enhance efforts to ensure that relevant authorities – such as police – are able to be responsive to complaints, alongside training programmes and sanctions where authorities do not respond. Additionally, such an approach may assist with determination of the role for TJMs: for example, in Liberia, it will be important to ensure that the National Palava Hut Commission is seen as one aspect of post-conflict justice, and as one option for victims which works alongside formal prosecutions. This will mean ensuring that the recommended Extraordinary Criminal Tribunal and Domestic Prosecutions are also implemented as well as the National Palava Hut Commission.

Beyond Liberia, where post-conflict justice strategies are being designed it will be important to both explicitly address CRSV and plan the implementation process in order to ensure that justice mechanisms function simultaneously and support each other. It is not enough for a state to simply acknowledge that CRSV has happened (although that is important); there must be a considered effort to address the crimes and their impacts. As part of such processes, responses to CRSV must specifically incorporate all crimes and all victim groups. This necessitates the signposting of available routes for victims to seek justice and awareness campaigns which disseminate information to populations explaining what conduct is criminalised and challenge harmful misinformation. This may include cooperative efforts between state authorities, NGOs, communities and community leaders with funding from donors. Multiple audiences should be targeted to ensure that community leaders, community members, victims, accused persons (low and high level) and officials within the formal justice system become familiarised with responses to CRSV. Such activities should use multiple mediums and ensure that information is provided in clear, accessible and appropriate language, including translation into local languages (beyond the official working language of a state), with visual representations to increase accessibility.²³

8.4 Risks and practical issues for policy makers around using traditional justice to address conflict-relates sexual violence

There are undoubtedly risks and challenges which come with using TJMs as part of post-conflict justice efforts in relation to CRSV. As discussed in Chapter 7, policy makers must often balance the obligations on a state to uphold and protect fundamental rights with the need to address CRSV which has been committed on a mass scale.²⁴ However, the thesis has shown the use of TJMs to be an important part of improving responses to CRSV as the reality is that limited resources and capacity issues mean that for many affected states,

²¹ As discussed in Section 7.2.3.

²² As discussed in Section 7.2.3.

²³ See the discussions in Chapter 5, Section 5.2.3 and Chapter 7, Section 7.1.

²⁴ See the discussion in Section 7.1.1.

the formal justice system alone cannot adequately respond. As found in Chapter 7, traditional justice has not only been an essential part of post-conflict justice strategies in states around the globe, it has also been a necessary part of responding to CRSV.²⁵

There is then a trade-off, with the use of TJMs requiring either oversight through greater incorporation within the formal hierarchy, or a limitation on their powers and jurisdiction in order to protect the rights of individuals. For example, in Liberia, the National Palava Hut Commission is not envisaged to be able to hand down custodial sentences. As also seen in Liberia, there may be an existing relationship between formal and traditional mechanisms within a state. As discussed in Chapter 5, this may be advantageous and facilitate efforts to address CRSV cohesively and allow mechanisms from both justice systems to function in a supplementary fashion.²⁶ For example, it may be possible to mitigate some of the risks of TJMs by allowing people to transfer cases between justice systems, such as where a TJM is unable to resolve a case, parties are unhappy with the outcome, or where a case develops beyond the scope of traditional justice.

For both Liberian policy makers and those elsewhere, it will be essential to avoid repeating previous mistakes around TJMs and CRSV. There are repeatedly arising practical implications of addressing CRSV, as found in Chapter 7, such as high levels of trauma and insecurity which require welfare support.²⁷ In particular, there is a critical need to both address the stigma which is associated with CRSV, and to improve responses in spite of the ongoing presence of stigma.²⁸ This means that policy makers must acknowledge and mitigate issues such as victim blaming, socio-economic exclusion and displacement. In order to do this effectively, it is essential that the voices and concerns of victims are central within the design of post-conflict justice strategies in response to CRSV. Policy makers must consider local perceptions of CRSV, including harmful conceptions of honour, virginity, sex, sexuality and gender, along with any differences between domestic and international crimes. They must also learn from the previous experiences of other states, where possible, in order to foresee and mitigate issues.

Akin to formal courts, TJMs are also subject to their own biases, pressures, or corruptions as they enforce the norms of the community in which they function. Accordingly, Chapter 4 found that some TJMs may need to adapt in order to address CRSV.²⁹ In Liberia, this has meant providing role specific training prior to the pilot of the National Palava Hut Commission, which was well-received by communities.³⁰ Such training will be a necessary aspect of using TJMs to address CRSV and more generally to improve responses. Both within Liberia and beyond, training should be provided on CRSV which covers how cases should be addressed, the relevant legal framework, which conduct will be addressed in which mechanism, and all forms of redress.³¹ Additionally, as discussed in Chapter 5, training should be provided for groups including selected members of communities who can then act in a supporting role for victims of CRSV going through justice processes, including accompanying victims during hearings and assisting them when coming forward. Such training programmes should be designed in light of potential issues around lack of infrastructure and resources, and should specifically include female personnel.³²

Ultimately, policy makers both within and beyond Liberia will need to take a nuanced approach to addressing CRSV. They must facilitate meaningful participation for victims, and take care to facilitate the agency of victims such as the ability to choose whether and how they wish to seek justice. The design of post-conflict justice strategies must be

²⁵ See the discussion in Section 7.4.

²⁶ As discussed in Section 5.1.

²⁷ As discussed in Section 7.2.1.

²⁸ As discussed in Chapter 4, Section 4.4.

²⁹ As discussed in Section 4.7.

³⁰ As discussed in Section 4.7.

³¹ As discussed in Chapter 5, Section 5.2.1.

³² As discussed in Chapter 5, Section 5.2.1.

informed with the voices of victims to create mechanisms, procedures, sanctions and reparations which meet their needs. Additionally, in order to implement strategies effectively and anticipate challenges which may arise, it is also important to learn from victims who have participated in previous efforts to address CRSV in order to mitigate foreseeable problems, take away best practice and avoid repeating past mistakes. This will require actively engaging with and providing meaningful participation for victim groups during the design and implementation of post-conflict justice strategies. For example, Chapter 4 found that alternative forms of redress and reparations schemes should not be structured around a simplistic concept of the victim, single identity concepts, or other harmful and limiting concepts such as gendered ideas: rather, they should allow for a case-by-case approach and the right of *all* victims to an effective remedy.³³ This may include supporting responses to CRSV which target groups who can be underrepresented, such as holding discussions around and providing specialised services for male and LGBTQ+ victims.

To this end, TJMs may provide assistance by facilitating specialist hearings on CRSV which may be valuable not only for hearing offences, but also for hearing what victims needs are and how they feel that these needs might be addressed. Similarly, as discussed in Chapter 4, participating victims of CRSV had mixed views on what might be appropriate, with one person suggesting a subject-specific forum to focus on crimes against women.³⁴ If this approach was to be pursued then several subject-specific sessions may be necessary as efforts should be made to ensure that the environment is conducive to recording the full range of sexual violence committed against all victim groups: including males and members of the LGBTQ+ community.³⁵

Any effective response to CRSV will be designed and implemented by stakeholders within an affected community. As found in Chapter 4, local actors such as state officials, legal personnel, community leaders and civil society must all be involved in the design and implementation of responses to CRSV – and preferably they must all have an aspect to lead within responses. For Liberia this means informing justice strategies with the voices of victims and facilitating a holistic approach to addressing CRSV which encompasses health, social and economic needs. Such an approach may mean ensuring that the National Palava Hut Commission is connected to other justice processes as well as with healthcare providers, socio-economic support and provisions for the security of victims. Beyond Liberia, the use of TJMs in relation to CRSV should similarly be considered positively with the ability to facilitate both local ownership over justice processes and provide connections between different mechanisms in responses to CRSV as part of a cohesive overall approach.

8.5 Future research and prospects

For the Liberian population the TRC recommendations provide a significant foundation on which they are able to build. The recommendations continue to shape post-conflict justice policy, including in relation to CRSV, and form the basis of a comprehensive approach to post-conflict justice in Liberia. Whilst the National Palava Hut Commission is underway in Liberia, for it to improve responses to CRSV, it must go on to function in a supplementary way in relation to other justice mechanisms. For victims of CRSV in Liberia to receive an effective remedy, the Extraordinary Criminal Tribunal, Domestic Criminal Prosecutions and the reparations programme must also be established.

Conducting empirical research in Liberia has highlighted and facilitated in depth discussion of several key issues which arise in relation to CRSV, including capacity issues and meeting the needs of victims. The participation of affected communities, including victims, has

³³ See the discussion in Section 4.4.

³⁴ See the discussion in Section 4.4.

³⁵ Sunneva Gilmore, Julie Guillerot and Clara Sandoval (n5) 21.

enhanced understanding around what is required to provide satisfying justice and where there are opportunities for TJMs to make important contributions. The contributions of participants have also helped to clarify the findings and ensure that they reflect the empirical reality. Scope to expand this research includes examining how the meaningful participation of and collaboration with affected communities on the issue of CRSV can be enhanced and improved. Further empirical research which centralises the voices of affected communities can also build upon current understandings and assist with producing accountability models which can meet the needs of victims. There were also areas of research beyond the scope of this study, including how to address CRSV which is allegedly committed by regional and international peacekeeping missions, and the contributions of TJMs which continue to function during armed conflicts.

This thesis has made an original contribution to the literature through its socio-legal examination of the role and functionality of TJMs in relation to CRSV. It has made findings which are of use to scholars and policy makers in the fields of law, politics and international relations, transitional justice, peace studies, and sociology and social policy. As discussed in Chapter 3, the empirical data collected for this thesis has added substantial depth to the large-scale socio-legal analysis which considered existing multi-disciplinary research on CRSV and traditional justice systems in multiple countries.³⁶ Undertaking extensive empirical research in Liberia as well as returning for subsequent projects over a period of two years made it possible to make findings which recognise the voices of victims as well as the views of officials, community leaders, NGO staff and other community members.³⁷ By combining existing research with original empirical data, this thesis has made findings on the use of traditional justice in relation to CRSV which are applicable within and beyond Liberia.

Having examined the use of traditional justice in relation to CRSV and the limited justice options for affected communities, it is clear that TJMs can improve the currently lacking responses. The key findings are that there is a need to increase the capacity to respond to CRSV in ways which account for the realities of having limited resources and which go beyond the formal justice system. Secondly, there is a need to inform the design of post-conflict justice strategies with the voices of victims in order for mechanisms, procedures, sanctions and reparations to meet their needs. Thirdly, for TJMs to improve responses to CRSV, there must be a targeted response within a state. Failure to specifically address CRSV allows its impacts to become entrenched within a society and leaves victims without the specific support and protections which they require. Finally, there is a need to provide clarity on the role of traditional justice in relation to CRSV within each context, such as if they will facilitate restorative processes or access to reparations and clarifying their relationship with other post-conflict justice mechanisms. Such an approach requires working collaboratively with community leaders in order to effectively address CRSV, and recognising that they will ultimately be leading within communities in order to implement significant aspects of post-conflict justice.

³⁶ As discussed in Section 3.1.

³⁷ As discussed in Section 3.1.

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Appendix

Annex 1: University of Nottingham School of Law Research Ethics Committee application form

School of Law

Postgraduate Research Programme



The University of
Nottingham

UNITED KINGDOM • CHINA • MALAYSIA

SCHOOL OF LAW RESEARCH ETHICS COMMITTEE

CHECKLIST & APPLICATION FOR APPROVAL

For the avoidance of doubt, research involving human participants (either through interview or questionnaire) and/or the use of confidential, personal or commercially sensitive data must be submitted for approval by the Schools Research Ethics Committee, as must any research that is likely to give rise to the risk of harm/potential conflict of interest.

Name: Emma Sheffield

Please provide a **brief** outline of the aims and objectives of your research (max 200 words):

This research aims to examine if traditional justice mechanisms (TJMs) can improve responses to conflict-related sexual violence (CRSV). Whilst achieving this aim, the research has two main objectives: to centralise the voice of survivors, and to use the empirical findings to facilitate a deeper understanding of when and how TJMs might act in complementarity with other justice mechanisms to address CRSV. To meet these objectives, the research design includes a case study of Liberia involving empirical data gathering through semi-structured interviews and focus groups with members of CRSV affected communities. Stakeholders include: survivors of CRSV; perpetrators in custody; community leaders, such as religious leaders or elders who act as decision makers within TJMs; officials from the state justice system; and, staff from non-governmental organisations (NGOs). Interviews and focus groups will focus on the use of TJMs for CRSV, including: the appropriateness of the forum; procedures seen as necessary; punishments considered appropriate; support people feel is needed to process such cases within their local communities; and the relationship between other justice mechanisms and TJMs.

Please provide the following information and attach a copy of the information sheet and consent form to be given to participants, which includes these details:

- (a) the basis on which participants are selected and recruited

The basis on which participants are recruited and selected varies depending on the category to which a participant belongs; survivors, perpetrators, community leaders, officials, or NGO staff. To minimise risks participation is limited to adults, defined as found in the University of Nottingham Code of Ethics to be individuals aged sixteen years or over. For survivors of CRSV, the sensitive nature of the study and potential risks for participants necessitates utilising a combination of convenience sampling which builds on pre-existing links with the Liberian NGO, [redacted], and subsequent chain sampling. Participants will be selected by the NGO partially based on their experiences, and ability and willingness to speak on the issues of traditional justice and justice for CRSV. Community leaders can be similarly recruited via pre-existing links with [redacted].

Staff of [redacted] will also be invited to participate based on their experiences, role within the NGO, and willingness to speak on issues associated with use of traditional justice for CRSV.

Perpetrators of CRSV will be recruited via the relevant Liberian authorities; [redacted]. To minimise potential risks to the researcher, participant selection will be limited to individuals who are in custody at the time of participation.

Officials will be selected based on their experiences and role within the Liberian justice system. Where there are no pre-existing links, officials will be directly contacted by the researcher by letter, email, or referral in line with usual protocols. Initial contact will contain participant information including the aims of the study, and key consent issues.

(b) the potential for participants to withdraw (and the relevant deadline for withdrawal if applicable)

The potential for participants to withdraw, relevant deadlines, and modalities of withdrawal varies dependent on the group to which the participant belongs and the nature of their participation.

Participating officials may withdraw or cease participation at any time during the interview, and will have a two week (14 day) period from the date of the interview within which they may withdraw and request their data be removed from the study. The Informed Consent form and Participant Information Sheet contains contact details for the researcher including an email address and contact via the School of Law. If, during an interview, a participant states they do not want something they have said to be published, this will be duly noted and the relevant statements will be redacted during the transcription process.

NGO staff taking part in individual semi-structured interviews may withdraw or cease participation at any time during the interview, and will have a two week (14 day) period from the date of the interview within which they may withdraw and request their data be removed from the study. The Informed Consent form and Participant Information Sheet contains contact details for the researcher including an email address and contact via the School of Law. If, during an interview, a participant states they do not want something they have said to be published, this will be duly noted and the relevant statements will be redacted during the transcription process.

Survivors taking part in individual semi-structured interviews may withdraw or cease participation at any time during the interview, and may, during this time, request their data be removed from the study. If, during an interview, a participant states they do not want something they have said to be published, this will be duly noted and the relevant statements will be redacted during the transcription process. Due to potential risks of pressure or coercion to withdraw later being applied to participants, and lacking means of communication following the departure of the researcher from the location, survivors will not be offered the opportunity to withdraw at a later date.

Community leaders taking part in semi-structured interviews may withdraw or cease participation at any time during the interview, and may, during this time, request their data be removed from the study. If, during an interview, a participant states they do not want something they have said to be published, this will be duly noted and the relevant statements will be redacted during the transcription process. Due to potentially lacking means of communication following the departure of the researcher from the location, community leaders will not be offered the opportunity to withdraw at a later date.

Perpetrators taking part in semi-structured interviews may withdraw or cease participation at any time during the interview, and may, during this time, request their data be removed from the study. If, during an interview, a participant states they do not want something they have said to be published, this will be duly noted and the relevant statements will be redacted during the transcription process. To mitigate risks to the researcher, all communication with participating perpetrators will be conducted via a gatekeeper; therefore, as contact cannot be direct, potential risks of pressure or coercion to withdraw later being applied to participants mean perpetrators will not be offered the opportunity to withdraw at a later date.

Participants taking part in focus groups may withdraw from the study at any time prior to the focus group beginning. Once the focus group has commenced, participants may choose to withdraw by leaving the group or by not participating in discussion. The difficulties of extracting individual data from a group situation and from audio recordings of group discussion mean participants may not be able to later withdraw data already collected. If participants have concerns over specific comments they have made and raise them at the time of speaking, or prior to the researcher leaving the location of the focus group, every effort will be made to redact such comments.

(c) the procedures used for collecting and storing data

Collected data will be used to inform the applicant's PhD thesis, presentations relating to the PhD, reports related to the PhD particularly to funders, and may also be used in future publications. Informed consent will be obtained from all participants prior to their participation in interviews and focus groups, this will include information on data collection, storage, and use. Data collection will primarily include audio recordings and taking written notes during semi-structured interviews and focus groups.

Audio recordings will be collected on a digital voice recorder, used exclusively for the purpose of the research, and used only by the researcher. Whilst in Liberia, as soon as possible after recording, data will be transferred from the recording device to a password protected USB stick and then deleted from the recording device. If a secure internet connection is possible, the data may be transferred to a secure folder on the University of Nottingham's Research Drive via <https://files.nottingham.ac.uk> this folder will be accessible only to the researcher. If a secure internet connection is not possible, the data will be transferred to the University of Nottingham's Research Drive on return to Nottingham.

For officials it may be necessary due to limited schedule time to conduct an interview via telephone or other electronic communication. Where this is necessary the interview will be recorded on the dedicated recording device for this research, in line with other audio recordings, the data will be transferred to a secure folder in the University of Nottingham's Research Drive and will then be deleted from the recording device. Should an interview via telephone be necessary, the researcher will be in a private room.

Transcription of audio recordings will be carried out by the researcher and employed transcribers also bound by the applicable confidentiality and anonymity restrictions. Where confidentiality and anonymity restrictions apply, any identifying material will be omitted; this will vary depending on the participant and the group to which they belong e.g. all perpetrators will remain anonymous, whilst an official may not. Soft copies of the transcripts will be securely stored on the University of Nottingham's Research Drive in the same way as the recordings. Transcripts will be labelled according to the designated data coding system e.g. Participant 1/Group 1/Interview 1. The key for the data coding system

which contains confidential original data and identifying data will be securely electronically stored on the University of Nottingham's Research Drive akin to the original audio recordings. Only the researcher will have access to the original data and the data coding key. Any hard copies of the transcripts will be kept in a locked filing cabinet, accessed only by the researcher.

Where, prior to or during the interview, a participating official requests that a copy of the interview transcript later be sent to them, and it is possible to send an e-copy directly to the interviewee, a soft copy will be provided. Where, during participant recruitment, an official requests the ability to review transcripts prior to their inclusion in the data, some conditionality such as time-limits may need to apply. Such stipulations may have to be assessed and agreed on a case-by-case basis.

Handwritten notes will be made in a dedicated notebook used only by the researcher, on return to Nottingham the notebook will be kept in a locked filing cabinet accessed only by the researcher. The handwritten notes will be typed up and saved to the University of Nottingham's Research Drive.

In line with my data management plan, the University of Nottingham's Code of Ethics, and School of Law Procedures, data will be stored securely and confidentially by the University of Nottingham, for no less than 7 years from the date of the first publication and no more than 25 years. Coded and anonymised transcripts will be stored confidentially by the researcher, hard copies or electronic copies kept on a password protected external hard drive will be stored inside the locked filing cabinet for 7 years from the date of collection and then destroyed.

To meet funder stipulations (ESRC), limited specifically selected anonymised outputs and any arising publications will be made available on Researchfish. No original data, identifying data, sensitive data, or data otherwise protected by confidentiality requirements of the study will be made available on Researchfish. Such restrictions are also in line with ESRC stipulations and Researchfish guidelines.

(d) the levels of i) participant anonymity & ii) confidentiality

Anonymity: Requirements will vary depending on the group to which the participant belongs. Due to potential repercussions including significant social stigma and possible insecurity for themselves and their families, participating survivors must remain anonymous. Measures must be taken to prevent inadvertent identification of participants such as use of pseudonyms to prevent identification of villages or other locations. Similarly, all perpetrators must remain anonymous to minimise risks of distress to family members and prevent identification of victims, witnesses, or other affected persons. Community leaders may request to be named, however they will be asked to remain anonymous to minimise security risks, especially where their being identified would risk identifying others. All participants requiring anonymity will be referred to in line with the coding system e.g. Participant 1, Group A.

For participating NGO staff, unless the identity of the gatekeeper NGO is also kept anonymous, full anonymity will not be possible as [redacted] has a limited number of staff and some staff members are identified in publications and online. Therefore, anonymity requirements, such as identifying participants only as staff members from the NGO rather than by role or name, will be jointly decided between the participant, [redacted], and the researcher on a case-by-case basis. Risks taken into consideration in such decisions will include the security of participants, possible identification of others, conflicts of interest, and possible mistaken identification of a participant for other staff members.

Anonymity measures necessary for officials will similarly be determined on a case-by-case basis. Where there are few officials, or a single individual in a post, anonymity may not be possible. Such concerns will be discussed with potential participants prior to their consenting and agreeing to taking part.

Confidentiality: Original data and consent forms which may contain participants' names or signatures must be stored securely and confidentially. The data coding key which contains original data and names must also be kept confidentially and securely. Only the researcher will have access to this information. Measures necessary for such storage are outlined above, in line with my data management plan, relevant policies, and legislation including the Data Protection Act. The names of participants who must or have asked to remain anonymous will not be released to people outside the project. Nor will information which a participant has requested be removed from the study.

	Yes	No
Does the study involve participants who are particularly vulnerable or in a dependent position?	X	<input type="checkbox"/>
Does the study involve participants who are unable to give informed consent?	<input type="checkbox"/>	X
Will participants take part in the study without having given their prior written consent?	X	<input type="checkbox"/>
Does the study risk any (real or apparent) conflict of interests - for the researcher, any gatekeepers relied upon for initial access, or the participants?	X	<input type="checkbox"/>
Will the study involve discussion of sensitive topics affecting individual respondents (e.g. sexual activity, drug use, death or illegal activities)?	X	<input type="checkbox"/>
Is the study likely to cause offence, anxiety or harm to participants?	X	<input type="checkbox"/>
Will financial inducements (other than expenses) be offered to participants?	<input type="checkbox"/>	X
Will the study place the researcher at any risk greater than that encountered in his / her daily life?	X	<input type="checkbox"/>
Is CRB clearance, or approval from any other Ethics Committee, required?	<input type="checkbox"/>	X

If you have answered 'yes' to any of the above, please provide the following information below and attach a copy of the information sheet and consent form to be given to the participants.

For example, if you do not intend to secure prior written consent, please explain why and provide information on whether consent will be obtained in any other way. Or if your study involves participants who are particularly vulnerable, please explain the steps that will be taken to minimise the risk of harm and / or of any potential conflict of interests that may arise.

Vulnerability: within this research participating survivors of CRSV are particularly vulnerable. Care must be taken to minimise risks of retraumatisation, hence the study will focus on justice for such crimes and will not ask participants to recall personal experiences. Signposting will be provided for all participants to local support providers, including specific points of access for differing needs. Pre-determined procedures will be in place to help the researcher respond to challenging situations which may arise during data gathering, such as a vulnerable participant reporting ongoing sexual abuse or asking for assistance. Measures may include providing signposting for participants to support services. Participants may also face social or security repercussions if associated with sexual violence, therefore recruitment will be conducted discreetly via a gatekeeper NGO to mitigate associated risks. Care will be taken during the course of the research to ensure that interviews and focus groups take place in environments in which participants feel secure and able to participate freely.

Recruitment of survivors via a gatekeeper NGO may create real or perceived vulnerability where the participant is dependent on the organisation, or uses their services. Therefore, particular care will be taken to ensure that participants are aware that choosing to take part is voluntary and their involvement or choosing not to be involved with the research will in no way affect their relationship with the NGO or specific individuals.

Participating perpetrators are particularly vulnerable due to their being in custody at the time of recruitment and participation. Therefore, it will be essential to ensure individuals in custody are participating freely, and that all participating survivors and perpetrators are fully aware of the limitations of the study; e.g. the researcher will not be able to expedite justice. After data collection, the anonymity measures described above are necessary for survivors and perpetrators to prevent exposure of associated individuals.

Prior written consent: Whilst anticipated language barriers can be overcome via translating written materials prior to travel and through employing interpreters, it is very likely that there will be significant literacy barriers which are harder to overcome. UNICEF figures estimate the literacy rate of the adult female population of Liberia to be around 30%, with rural areas having particularly low levels of literacy. As the study focuses on female victims of CRSV, potentially many of whom moved from rural areas into Monrovia during the conflict, it can be anticipated that within the group of survivor participants illiteracy will be an obstacle to written consent.

Where literacy is very limited, but there is some, the researcher and interpreters will verbally explain the consent and information forms to participants. Participants will then be given extensive opportunity to ask questions, and discussion or questions asked by the researcher and/or interpreter will aim to ensure participants have fully understood the project and its implications before they provide a signature or mark the consent form. The use of extended explanations, discussion, or questions to ensure participants are fully informed will be documented by the researcher. Once audio recording begins participants will have the key consent issues reiterated prior to commencing, and will be asked to provide verbal consent for the tape.

Where a participant is completely illiterate and is unable to write they will be unable to sign and provide written consent; many participants may fall into this category. Therefore, the researcher and interpreter must go through the project information verbally with such potential participants, who may be accompanied by a literate associate or gatekeeper whom they trust. Where this is the case the participant may provide verbal consent to the researcher, who will note that verbal consent has been provided and document the process by which the consent was sought and gained. Once verbal consent has been obtained the researcher will, prior to commencing, reiterate to the participant on the audio recording the key consent issues, and participants will then be asked to reiterate their providing

verbal consent for the purpose of the tape. Due to the ethical implications arising from asking an individual to mark or sign a form which they cannot read, participants with no literacy will not be asked to mark a consent form; instead the researcher will name one for them and note on it that the individual provided verbal consent. Despite limitations of literacy all participants will be provided copies of the information and consent forms.

Conflict of interest: As stated above under vulnerability, recruitment of participants via gatekeeper organisations on which they are dependent may create real and perceived conflicts of interest. These risks will largely be mitigated as above. Whilst there may be a perceived conflict of interest occurring for NGO staff participants, [redacted] focuses on trials within formal justice systems. The researcher will ask staff to speak on possible complementarity of TJMs broadly, it will not ask them to comment on specific cases, officials, events, or functions of the Liberian Ministry of Justice. However, as stated above, participants will be informed prior to the interview commencing that if they say something they do not wish to be included they may inform the researcher at the time and it will be redacted during the transcription process.

Discussion of sensitive topics and offence, anxiety or harm to participants: Discussion will focus on justice and responses to sex crimes including victim or witness support, procedures, and punishments people feel are appropriate. To minimise the risk of distress, and other risks including individuals exposing themselves as victims of specific crimes, the interviews and focus groups will be semi-structured and participants will be asked questions which do not call for discussion of their personal experiences of CRSV. All participants will be advised of the topics covered prior to participation, and that they do not need to share personal experiences of sex crimes. Whilst participants will be told of the nature and parameters of discussion prior to participation, participants may go beyond the remit and choose to share some of their experiences. Should this occur the researcher will monitor discussion, halting it or changing the direction if necessary.

Within the parameters of the research, participants may find the content of discussion offensive where discussion of sex and sex crimes is strictly taboo, and may be anxious about participating in discussion of such issues. Additionally possible harms include individuals becoming distressed, for example by hearing accounts from other participants or by disclosing personal information during discussion. To minimise these risks, as stated, the researcher will carefully monitor discussions and will provide signposting information to all participants including local support organisations and local service providers. It will be essential to ensure participants are fully aware that participation is voluntary and that choosing to participate does not create pressure to discuss things they do not feel comfortable talking about. As recruitment is to be done via a gatekeeper NGO, discussion with the NGO on necessary support and drawing on their experiences and knowledge of best practice will be essential.

Risk of harm to the researcher greater than daily life: To minimise risks of psychological harm from working with survivors of CRSV and possible discussions around sex crimes the researcher will contact the supervisors at pre-arranged points during data gathering. As stated, pre-determined procedures such as providing signposting will be in place to help the researcher respond to ethically challenging situations which may arise during data gathering, such as a participant reporting ongoing sexual abuse or asking for assistance.

Security risks associated with meeting perpetrators of CRSV are minimised by meeting individuals in custody. As the study is supervised by Roisin Mulgrew, and Olympia Bekou their combined experience of interviewing prisoners in custody, research on CRSV, and travel to developing and post-conflict countries provides valuable guidance and ensures potentially arising issues are highlighted.

Risks of harm associated with travel to Liberia include the need to ensure relevant vaccinations are up to date, additional necessary vaccinations are obtained, and anti-malarial tablets are arranged. Measures to address security concerns around travel to Liberia are also necessary such as being accompanied by an interpreter, and traveling using prearranged drivers recommended or employed via [redacted]. Procedures have been established for response to an accident or emergency, and a copy of the Emergency Response Plan will be left with the security office and the supervisors of the study. This contains emergency contacts and procedures drafted in line with security office guidelines, University of Nottingham fieldwork and ethics policies, and funder stipulations (ESRC). Emergencies planned for include serious accident or injury.

Please remember to attach a copy of your interview protocol / survey to this application.

For completion by Thesis Supervisor

- There may be ethical issues requiring review by the REC raised in this proposal. This form should be referred to the relevant Research Ethics Officer for further action via Kobie Neita - Kobie.neita@nottingham.ac.uk



Signature Date...07/02/2018.....

Print NameProfessor Olympia Bekou.....

Annex 2: Example consent form



The University of
Nottingham

UNITED KINGDOM · CHINA · MALAYSIA

PARTICIPANT CONSENT FORM

Interview: Group A

Researcher: Emma Sheffield, PhD Student, School of Law

Project Title: *Can traditional justice mechanisms improve responses to conflict-related sexual violence?*

I confirm that:

- I have read the Participant Information Sheet OR had the Participant Information Sheet read to me³⁸
- The nature of the project has been explained to me
- I have been given the opportunity to ask questions
- I understand the purpose of the project and my involvement in it
- I agree to take part in the project, and understand that taking part is voluntary
- I understand that I may stop taking part
- I understand that deciding to stop taking part will not affect me now or in the future
- I understand that taking part involves an interview with the researcher and an interpreter
- I understand that I will remain anonymous; my name will not be known to people outside the project
- I understand that publications will use anonymised quotes
- I understand that information gathered may be published in the researcher's PhD thesis, academic journals, reports, online, and other research outputs
- I understand that the researcher may take written notes, and the interview may be audio recorded
- I understand that audio recordings may be transcribed by the researcher and by professional transcribers

³⁸ Where a participant has limited literacy

- I understand that audio recordings and transcripts will be stored confidentially and securely by the University of Nottingham for at least 7 years, and not more than 25 years from the date of collection
- I understand that audio recordings and transcripts will be stored confidentially and securely by the researcher for 7 years from the date of collection
- I understand that I may contact the researcher if I need further information, and I may contact the Research Ethics Coordinator of the School of Law, University of Nottingham, if I wish to make a complaint relating to the research

Contact details for the Researcher:

Email: ljxelshe@nottingham.ac.uk

Telephone: +44 (0)7904701531

Interpreter Name (if required):

Research Participant Print Name:

Research Participant Signed:

Date:

Researcher Signed:

Date:



Annex 3: Example participant information sheet



INFORMATION SHEET

Interview: Group A



Researcher: Emma Sheffield, PhD Student, School of Law

Project Title: *Can traditional justice mechanisms improve responses to conflict-related sexual violence?*

This project asks if traditional justice can be used for conflict-related sexual violence. Focus is on justice within communities.

You are being asked to take part in an interview where we will talk about justice for sexual violence which happened in connection with the wars. Taking part involves a conversation with the researcher, with an interpreter, at an agreed place and time.

Your comments will be reported using anonymous quotes, and personal information will be kept confidential. Your name will not be told to people outside the project. People agreeing to take part will be referred to in writing in line with the project code system, for example, as 'Participant A1'.

Taking part is voluntary. You can choose not to take part without repercussions. You can choose to stop taking part without an explanation. You do not have to answer any question that you do not want to.

Interviews may be audio recorded and written notes may be taken. Audio recordings may be transcribed by the researcher and employed transcribers who will keep data confidential. Transcripts will not contain identifying information.

The interview will inform the researcher's PhD thesis. It may also be reported in academic publications, reports, and other research outputs authored by the researcher.

Transcripts, audio recordings and handwritten notes will be stored securely and confidentially by the University of Nottingham for between 7 and 25 years, and by the researcher for 7 years.

The University of Nottingham is registered as a Data Controller under the Data Protection Act 1998. The University will protect your data in accordance with General Data Protection Regulation and the Data Protection Act 2018.

The University of Nottingham definition of personal data can also include special categories of data. Information about criminal offences is subject to strict requirements. "Processing" means any operation using your personal data including getting, storing, transferring and deleting.

- The basis for this here is that you are giving you consent.

You have the right to be informed, please ask any questions that you may have.

You have the right to see information which is held about you.

If data about you is incorrect, you have the right to have it corrected.

You can ask that data is deleted and where this is appropriate, reasonable steps will be taken to do so.

If you think there's a problem with the accuracy of the data, or that data about you is being used unlawfully, you can request that any current processing is suspended until a resolution is agreed.

For more information on your rights or, if you wish to exercise any right, for any queries you may have or if you wish to make a complaint **please contact the Data Protection Officer:**

The Data Protection Officer

Data Protection Officer,

Legal services

A5, Trent Building,

University of Nottingham,

University Park,

Nottingham

Ng7 2RD

They can be emailed at dpo@nottingham.ac.uk.

Please ask any questions you may have.

Should you have questions in the future, the researcher can be contacted via:

Email: llxelshe@nottingham.ac.uk

Phone: +44 (0)7904701531

Annex 4: Example question set



The University of
Nottingham

UNITED KINGDOM · CHINA · MALAYSIA

INTERVIEW

Group A

Researcher: Emma Sheffield, PhD Student, School of Law

Project Title: *Can traditional justice mechanisms improve responses to conflict-related sexual violence?*

Today we will talk about justice for sexual violence which happened in connection with the wars: conflict-related sexual violence.

1. What is justice for conflict-related sexual violence to you?
 - Do you want anything to happen?
 - What do you want?
 - Is anything stopping you getting what you want?
2. Where would you go / where have you gone for this justice?
 - A local chief or elder?
 - The police?
 - Other?
 - How do you decide where to go?
 - Are you faced with barriers such as cost / transport / issues specific to sexual violence?
3. What is traditional justice to you?
 - Do you know the National Palava Hut Commission?
 - Do you know the Women's Peace Hut project?
 - Are you willing to share your opinions / experiences of them?
4. Can traditional justice mechanisms address conflict-related sexual violence?
 - How? or Why not?
 - Would women be able to speak within their communities?
 - What support would be needed for the women?
 - What are the good points of doing this?
 - What are the bad points of doing this?
5. What punishments are appropriate for people who committed conflict-related sexual violence?
6. What do you think people who survived conflict-related sexual violence want or need?
7. Do you have anything else you wish to add?

Annex 5: Timeline of Liberian events and relevant legislation

1847 Liberia becomes an independent state with a constitution modelled on the United States of America

1948 The Regulations Governing the Hinterland of Liberia provide rules around traditional justice including provisions on trial by ordeal, the duties of clan and town chiefs, punishment of crimes, the use of corporal punishment, and customary marriage

1971 President Tubman dies and is succeeded by William Tolbert Jr.

1972 The Judiciary Law - Title 17 - Liberian Code of Laws Revised, provides for the organisation of the courts, including recognition of traditional justice mechanisms and customary law

1979 Over 40 people are killed in riots following a proposed increase in the price of rice

1980 A successful military coup is led by Samuel Doe, an ethnic krahn. President Tolbert and 13 of his aides are publicly executed

- The People's Redemption Council is formed and led by Doe, the constitution is suspended

1985 Doe stages a presidential election to increase his international legitimacy

December 1989 The First Civil War begins as Charles Taylor leads his armed group (the National Patriotic Front of Liberia [NPFL]) into Liberia from Cote d'Ivoire

1990 Economic Community of West African States sends a peacekeeping force (ECOMOG)

- Doe is executed by the Independent National Patriotic Front of Liberia (INPFL), a splinter group of the NPFL, led by Prince Johnson

1991 The armed group United Liberation Movement of Liberia for Democracy (ULIMO) is formed to oppose Taylor

- The NPFL backs the Revolutionary United Front (RUF), which begins operating in Sierra Leone

1997 After years of brutal armed conflict, Taylor is elected as President of Liberia. Future president Ellen Johnson Sirleaf finishes second

1999 The Second Civil War begins as the armed group, Liberians United for Reconciliation and Democracy (LURD) is formed to oust Taylor

2001 Revised Rules and Regulations Governing the Hinterland of Liberia, include the law governing the traditional court system

2003 Monrovia becomes surrounded by armed groups.

- The Special Court for Sierra Leone issue a sealed indictment against Taylor for crimes committed in Sierra Leone
- Taylor leaves Liberia after handing power to Moses Blah and an interim government is established
- The UN launches a peacekeeping mission (UNMIL), deploying thousands of troops

18 August 2003 The Comprehensive Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement of Democracy in Liberia (MODEL) and the Political Parties is signed in Accra, Ghana.

2005 Ellen Johnson Sirleaf becomes President, she is the first woman to be elected as a head of state on the African continent

10 June 2005 The Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia is approved

2009 The Truth Commission submits its final report to the Liberian Parliament

2011 President Ellen Johnson Sirleaf is re-elected

22 February 2006 The Truth and Reconciliation Commission officially begins operating

2012 Charles Taylor is convicted by the Special Court for Sierra Leone

2014-2016 Liberia suffers an outbreak of Ebola virus

2018 UNMIL successfully completed its mandate

2017 George Weah elected president