



**NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
DEPARTMENT OF INTERNATIONAL LAW**

**INVESTIGATING THE ANTECEDENTS AND
CONSEQUENCES
OF WOMEN RIGHTS VIOLATION IN GUINEA:
A CASE STUDY OF CONAKRY**

LL.M THESIS

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**Nicosia
December, 2023.**

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MASTERS THESIS

2023

Approval

We certify that we have read the thesis submitted by
titled "Investigating the Antecedents and Consequences of Women Rights
Violation in Guinea: A Case Study of Conakry." and that in our combined opinion
it is fully adequate, in scope and in quality, as a thesis for the degree of Master of Laws
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Declaration

I hereby certify that all; materials, discussion, and conclusions in this thesis were gathered and presented in accordance with the academic standards and moral principles of the Institute of Graduate Studies at Near East University. I further affirm that I have properly cited and referenced any information and data that are not unique to this work, as required by these rules and conduct.

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ABSTRACT

Investigating the Antecedents and Consequences of Women Rights Violation in Guinea a Case Study of Conakry

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This study analyses Guinea's legal duties under International Human Rights Law and identifies the deficiencies in its legislative and regulatory framework pertaining to women's rights. The concept of women's rights, with a specific focus on the legal definitions of feminism and feminist ideologies was also explored. The study also investigates the judicial implementation of human rights, analyzing the involvement of courts in prosecuting and penalizing infractions such as female genital mutilation, early marriage, and gender-based violence. Additionally, the legislative and institutional structure concerning women's rights in Guinea, specifically focusing on the deficiencies present in the 1965, 1998, and 2016 Penal Codes, the Reproductive Health Law of 2000, and Children's Code of 2008 were also analyzed. Suggestions on the implementation of human rights legislation in Guinea, and its role in addressing the existing biases, stereotypes, discriminatory traditions, as well as the high levels of illiteracy were advanced by the researcher. It is hoped that these substantial challenges when mitigated will enhance the effective enforcement of international human rights agreements for benefit of women and girls in Guinea.

ABSTRACT

Turkish Translation

Gine'deki Kadın Hakları İhlallerinin Öncüllerini ve Sonuçlarını Araştırmak: Konakri Örneği
Fatoumata Jamal Bangoura

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Bu çalışma, Gine'nin Uluslararası İnsan Hakları Hukuku kapsamındaki hukuki görevlerini analiz etmekte ve kadın haklarına ilişkin yasal ve düzenleyici çerçevedeki eksiklikleri tespit etmektedir. Feminizmin ve feminist ideolojilerin hukuki tanımlarına özel olarak odaklanılarak kadın hakları kavramı da araştırıldı. Çalışma aynı zamanda kadın sünneti, erken evlilik ve cinsiyete dayalı şiddet gibi ihlallerin kovuşturulması ve cezalandırılmasında mahkemelerin katılımını analiz ederek insan haklarının yargısal uygulamasını da araştırıyor. Ayrıca, Gine'de kadın haklarına ilişkin yasal ve kurumsal yapı, özellikle 1965, 1998 ve 2016 Ceza Kanunları, 2000 Üreme Sağlığı Kanunu ve 2008 Çocuk Kanunu'ndaki eksikliklere odaklanılarak analiz edildi. Araştırmacı tarafından, Gine'de insan hakları mevzuatının uygulanmasına ve bu mevzuatın mevcut önyargılara, stereotiplere, ayrımcı geleneklere ve yüksek düzeydeki okuma yazma bilmeme sorununu gidermedeki rolüne ilişkin öneriler geliştirildi. Bu önemli zorlukların hafifletilmesi durumunda, Gine'deki kadın ve kızların yararına uluslararası insan hakları sözleşmelerinin etkili bir şekilde uygulanmasını artıracığı umulmaktadır.

Key Words: Women Rights, Guinea, Female Genital Mutilation; Early Marriage, Gender-Based Violence

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List of Abbreviations

AU	African Union
CEDAW	Convention on the Elimination of All Forms Discrimination Against Women
CIA	Central Intelligence Agency – United States of America
ECOWAS	Economic Community of West Africa States
FGM	Female Genital Mutilation
GBV	Gender-Based Violence
HRW	Human Rights Watch
HTP	Harmful Traditional Practices
ICC	International Criminal Court
NIEC	National Independent Electoral Commission
HTP	Harmful Traditional Practices
UN	United Nations
WHO	World Health Organization

CHAPTER ONE

1.0. Introduction

Historically, gender issues were of no significance in traditional African civilization since each person had a place in the family and in the greater community. Every gender played a customary part in the evolution of civilization. In other words, women's roles were complementary to men's. The issue of gender disparity did not exist. Each function was valued equally regardless of who played it since it contributed to the overarching objective of survival and reproduction.¹

Therefore, it is impossible to undervalue the leadership roles that women have played in the development of many African communities. It is likewise impossible to overstate the contributions made by women to the social, economic, political, and educational advancement of African nations.

However, contemporary African researchers have placed a lot of emphasis on the discussion of women's rights. Since most feminist researchers agree that some components of African culture are antagonistic to women, there needs to be a radical transformation so that the African women can live dignified lives.²

Guinea, unlike many of its neighbors especially Liberia and Sierra Leone, has not experienced prolonged civil war. But the country since it gained independence from France in 1958³, has been marred by political instability, authoritarianism, state-sponsored violence, minimal political and individual freedom, state-controlled media and periodic waves of preventive arrests. These occurrences constituted gross human right violations and abuse meted on Guineans women and girls which has been described as war crimes and crimes against humanity by global human right organizations such as the Human Right Watch.⁴

1.1. Background of the Study

¹ Afisi, O. T. (2010). Power and womanhood in Africa: An introductory evaluation. *The Journal of Pan African Studies*, 3(6), 229-238.

² Familusi, O. O. (2012). African culture and the status of women: The Yoruba example. *The Journal of Pan African Studies*, 5(1), 299-313.

³ Ikenze, S. A. N. (2016). The Political Economy of Conflict in Liberia, Sierra Leone, and Côte d'Ivoire: Foreign Economic Intervention and the Spatial Distribution of Violent Conflict.

⁴ Adebajo, A. (2002). *Building Peace in West Africa: Liberia, Sierra Leone, and Guinea-Bissau*. Lynne Rienner Publishers.

Guinea is a country located in West Africa with an estimated population of 12.5 million. It has an area of 245,857 square kilometers with a total land boundary of 3,399 kilometers. It is bordered by Cote d'Ivoire, Guinea-Bissau, Liberia, Mali, Senegal, Sierra Leone, and the Atlantic Ocean.⁵ Studies have revealed that many parts of Guinea are governed by customary law and traditional practices that do not conform to national legislation and human rights best practice. Thus, access to justice is a significant issue, compounded by high illiteracy rates among both men and women as well as the general absence of awareness among the population about the existence of laws that protect the rights of civilians.⁶

Universally, Gender-Based Violence is a problem. A third of women worldwide, or around 35 percent, report having experienced physical or sexual abuse at some point in their lives, whether it was at the hands of a stranger or an intimate partner, according to estimates from the WHO. This syndrome has a frequency of 33% in the WHO areas of Africa and the Eastern Mediterranean, which are the most impacted, World Health Organization (2018)⁷. Gender-based violence is an issue that is a reflection of the uneven power dynamics produced by the gender binary system and is frequently committed by those who have greater physical, cultural, or social power and inflicted on those who have not, Tsapalas et al, (2021)⁸.

The history of rights demonstrates that while the fight for the acknowledgment of women's rights was challenging enough, it has been far harder to recognize the right of women to a life free from gender violence. This is evidenced by the fact that gender violence was not officially included in the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In order to correct this "oversight," the Committee on the Elimination of Discrimination against Women issued General Recommendations No. 12 (1989) and No. 19 (1992), which emphasized that gender violence is a form of discrimination against women⁹

⁵ Podiotis, P. (2020). Towards International Relations Data Science: Mining the CIA World Factbook. *arXiv preprint arXiv:2010.05640*.

⁶ Piurko, Y., Schwartz, S. H., & Davidov, E. (2011). Basic personal values and the meaning of left-right political orientations in 20 countries. *Political Psychology*, 32(4), 537-561.

⁷ Mostafavi, E., Ghasemian, A., Abdinasir, A., Mahani, S. A. N., Rawaf, S., Vaziri, M. S., ... & Swaka, A. (2022). Emerging and re-emerging infectious diseases in the WHO Eastern Mediterranean region, 2001-2018. *International journal of health policy and management*, 11(8), 1286.

⁸ Tsapalas, D., Parker, M., Ferrer, L., & Bernales, M. (2021). Gender-based violence, perspectives in Latin America and the Caribbean. *Hispanic health care international*, 19(1), 23-37.

⁹ Union, I. P., & United Nations. Division for the Advancement of Women. (2003). *The Convention on the Elimination of All Forms of Discrimination Against Women and Its Optional Protocol*. UN.

Human rights are inextricably linked to each other. These rights include freedom from abuse and discrimination; the best possible level of bodily and mental health, an education, the opportunity to own property and exercise one's right to vote; and the ability to be paid equally. But sex and gender discrimination against many women and girls continues to exist globally. Numerous issues, including domestic and sexual abuse, lower wages, limited access to education, and insufficient healthcare, which disproportionately impact women and girls, are caused by gender inequality.¹⁰ Women's rights movements have been working hard for a long time to rectify this inequity, advocating for legislation or marching to the streets to demand that their rights be upheld.¹¹

The rights and privileges demanded by women and girls across the world are referred to as "women's rights." They served as the cornerstone for both the feminist movements of the 20th and 21st centuries, as well as the women's rights movement in the 19th century.¹² These rights are institutionalized or supported by legislation, local tradition, and conduct in certain nations, but they are suppressed and disregarded in others. This diversion from more general concepts of human rights by asserting an underlying historical and customary prejudice against the exercise of rights by women and girls, in favor of males and boys has been worrisome.¹³ The right to bodily integrity and autonomy, to be free from sexual violence, to hold public office, to enter into contracts, to have equal rights in family law, to work for fair wages or equal pay, to have reproductive rights, to own property, and to education are all issues that are frequently connected to meanings of women's rights.¹⁴

1.2. Problem Statement

The high prevalence of political turbulence and violence in Guinea has led to substantial insecurity for both men and women.¹⁵ Most often women have to endure torture, rape and other forms of ill treatment from either an intimate partner, family member or duty bearer at the expense of basic services such as water, education and healthcare.¹⁶ Women's health problems are exacerbated by the prevalence of domestic abuse, which affects women everywhere. Victims typically recognize

¹⁰ Lockwood, B. B. (2006). Women's rights: A human rights quarterly reader. (*No Title*).

¹¹ Pedriana, N. (2006). From protective to equal treatment: Legal framing processes and transformation of the women's movement in the 1960s. *American Journal of Sociology*, 111(6), 1718-1761.

¹² DuBois, E. C. (1998). *Woman suffrage and women's rights*. NYU Press.

¹³ Arvonne, S. F. (2017). Becoming human: The origins and development of women's human rights. In *Equality and Non-Discrimination under International Law* (pp. 215-268). Routledge.

¹⁴ Ramachandran, G. (2009). Against the right to bodily integrity: of cyborgs and human rights. *Denv. UL Rev.*, 87, 1.

¹⁵ Diallo, P. (2017). Social insecurity, stability and the politics in West Africa: A case study of artisanal and small-scale diamond mining in Guinea, 1958–2008. *The Extractive Industries and Society*, 4(3), 489-496.

¹⁶ Nussbaum, M. C. (2000). Symposium on cosmopolitanism duties of justice, duties of material aid: Cicero's problematic legacy. *Journal of Political Philosophy*, 8(2), 176-206.

the assailants as friends or family.¹⁷ The prevailing atmosphere of uncertainty and exemption from punishment has resulted in ineffective implementation of both national and municipal legislations. Although violence against women appears to be widespread, there is a lack of definitive statistics to accurately quantify the full scope of this assault.

Under many regimes in Guinea, the government has utilized the Guinean armed forces and police, collectively known as the Guinean Security and Defense Forces, to forcefully repress political dissent. An incident of violence occurred on 28 September 2009, where the Guinean Security and Defence Forces, primarily consisting of police personnel, encircled and blocked off a stadium. This stadium was hosting around 50,000 civilians who were peacefully protesting against Captain Camara's plan to participate in the forthcoming presidential election. Subsequently, they commenced shooting and physically assaulting protesters, resulting in the death of over 150 individuals and causing injuries to more than 1,500 others.¹⁸

Women were subjected to public and systematic sexual assault by groups of males, sometimes with the use of objects. A group of ladies were forcibly disrobed, forcefully loaded onto military vehicles, and transported to undergo a prolonged period of sexual assault by multiple perpetrators.¹⁹

The international community, comprising the Economic Community of West African States (ECOWAS), the African Union (AU), the United Nations (UN), and the European Union (EU), vehemently denounced these actions. ECOWAS and the EU implemented arms embargoes, while France and the EU terminated military support. The International Criminal Court (ICC) officially classified the occurrence as a crime against humanity in February 2010. In addition, despite the fact that rape and domestic abuse are prohibited by the Penal Code, law enforcement rarely takes action, and the number of reported incidents remains low due to the significant societal stigma associated with victims.²⁰ Consequently, perpetrators are rarely charged or punished under the law.

¹⁷ WHO Expert Committee on the Selection, Use of Essential Medicines, & World Health Organization. (2014). *The Selection and Use of Essential Medicines: Report of the WHO Expert Committee, 2013 (including the 18th WHO Model List of Essential Medicines and the 4th WHO Model List of Essential Medicines for Children)* (Vol. 985). World Health Organization.

¹⁸ Gnimassou, R. M. A., & Gaanderse, M. (2011). Guinea. *THE SECURITY SECTOR AND GENDER IN WEST AFRICA*, 115.

¹⁹ Arieff, A., & Cook, N. (2010). *Guinea: Background and Relations with the United States*. Washington, DC: Congressional Research Service.

²⁰ Day, A., O'Kane, D., Candice, O., Gerace, A., & Casey, S. (2018). The forgotten victims: Prisoner experience of victimisation and engagement with the criminal justice system. *Research report*.

A government analysis of gender issues in Guinea conducted in the framework of the project to draft the National Gender Policy reveals that, despite the aforementioned formal legal frameworks, the everyday lives of women in Guinea are largely regulated by customary practices that emphasise “traditional” gender roles and disregard the principles of gender equality enshrined in the constitution. For instance, Guinea’s Committee for the Prevention of Harmful Traditional Practices against Women and Children states that the practice of female genital mutilation (FGM) remains extremely common.²¹ Even though FGM is outlawed in the Penal Code, no perpetrators have ever been convicted of the crime.

In the political sphere, women do not engage as actively as men in public debate, and are poorly represented in national political and government bodies.²² For instance, in 2009, the National Independent Electoral Commission was composed of 33 men and 2 women (5.71%). Meanwhile, only 3 of the 30 former government ministers were women (10%), while 5 of the 34 ministers in the then Transitional Government of National Unity were women (14.71%).²³ Thus, it against this background that this study was being conducted to underscore the antecedents and consequences of gender-based violence amongst in Guinea generally and Conakry in particular.²⁴

1.3. Aim and Objective of the Study

1.3.1. Aim

The overall aim of this study is to examine the antecedents and consequences of women's rights violation in Guinea, by discussing the connection between human rights, social justice, and the well-being of women and girls.

1.3.2. Objectives

1. To explore the causes of women’s right violation and abuse occurring in Guinea generally and Conakry in particular.

²¹ Balde, M. D., Soumah, A. M., Diallo, A., Sall, A. O., Mochache, V., Ahmed, W., ... & Pallitto, C. C. (2022). Involving the health sector in the prevention and care of female genital mutilation: results from formative research in Guinea. *Reproductive health*, 19(1), 156.

²² Jalušič, V., & Antić, M. G. (2001). WOMEN-POLITICS-EQUAL OPPORTUNITIES. *Prospects for Gender Equality Politics in Central and Eastern Europe*, Ljubljana: Peace Institute.

²³ Tax, V. V. A., Economic, W. W. A., Ezekwesili, O. K., Tall, M. M., Shetty, S., Leader, T. T., & Francisco, M. PREM 4 Africa Region.

²⁴ Mohammed-Bashar, F. (2020). *Integrated Threat Management: An Alternative Approach to Regional Security System for ECOWAS* (Doctoral dissertation, Walden University).

2. To examine the effects of women's right violation and abuse on the health and wellbeing of women and girls in Conakry, Guinea.
3. To solicit coping strategies for dealing women's right violation and abuse occurring in Guinea generally and Conakry in particular.

1.4. Research Questions

1. What are the causes of women's right violation and abuse occurring in Guinea generally and Conakry in particular?
2. How does women's right violation and abuse affect the health and wellbeing of women and girls in Conakry, Guinea?
3. What strategies do women and girls used to deal with violation and abuse occurring in Guinea generally and Conakry in particular?

1.5. Significance of the Study

Firstly, the study contributes to the broader discourse on human rights, emphasizing the Universal Declaration of Human Rights, which asserts the equal rights of men and women.²⁵ Investigating women's rights violations is integral to upholding the principles of dignity and equality enshrined in international human rights frameworks.²⁶

Secondly, the research provides an opportunity to delve into the cultural and societal factors contributing to women's rights violations in Guinea. Understanding the specific cultural context is crucial, as cultural norms can either perpetuate or challenge gender-based discrimination and violence.²⁷

Thirdly, Findings from the study can inform the development of targeted policies and interventions aimed at preventing and addressing women's rights violations in Guinea. Research outcomes may

²⁵ Kunz, J. L. (1949). The United Nations declaration of human rights. *American Journal of International Law*, 43(2), 316-323.

²⁶ Khushalani, Y. (1982). *The Dignity and Honour of Women as Basic and Fundamental Human Rights*. Martinus Nijhoff Publishers.

²⁷ Mshweshwe, L. (2020). Understanding domestic violence: masculinity, culture, traditions. *Heliyon*, 6(10).

guide policymakers and advocates in crafting strategies that are sensitive to the local context and effective in challenging gender inequality.²⁸

Fourthly, by identifying antecedents and consequences, the study contributes to the empowerment of women by shedding light on the factors that hinder or facilitate their rights. Empowering women involves addressing the root causes of gender-based discrimination, and this study can provide insights to empower women through education, economic opportunities, and legal protections.²⁹

Furthermore, the study adds to the global conversation on women's rights by offering a case study that can be compared and contrasted with similar situations worldwide. The global community acknowledges the interconnectedness of women's rights issues and the importance of sharing knowledge and experiences to promote positive change.³⁰

Finally, the research adds to the academic discourse on gender studies, human rights, and sociology by offering a detailed examination of women's rights violations in a specific geographic and cultural context. Academic contributions in this field are essential for building a comprehensive understanding of the complex dynamics surrounding women's rights.³¹

1.6. Scope and Limitation of the Study

The study focuses on Conakry, Guinea, providing an in-depth examination of women's rights violations within this specific geographic context. The geographic scope allows for a nuanced understanding of the cultural, social, and legal factors influencing women's rights in Conakry³²

Meanwhile, the research aims to investigate both the antecedents (root causes) and consequences of women's rights violations, providing a comprehensive view of the issue. This dual focus contributes to a holistic understanding of the dynamics surrounding women's rights and their implications on individual women and society at large.³³

²⁸ Masih, J. O. L. L. Y., & Nim, D. H. E. E. R. E. A. J. (2017). Trend Forecasting of Twitter Followers for Plan International. *International Journal of Mechanical and Production Engineering Research and Development*, 7(6), 87-96.

²⁹ Ibid20

³⁰ Women, U. N. (2021). Women's representation in local government: A global analysis. *Hämtad*, 27, 2022-01.

³¹ Kabeer, N. (2005). Gender equality and women's empowerment: A critical analysis of the third millennium development goal. *Gender and development*, 13(1), 13-24.

³² Ibid27

³³ Hancock, B., Ockleford, E., & Windridge, K. (2001). *An introduction to qualitative research*. London: Trent focus group.

Also, the study delves into the cultural and societal factors influencing women's rights, recognizing the importance of context in shaping gender norms and behaviors. The cultural and societal dynamics explored in this research align with the broader call to understand the local nuances of gender issues.³⁴

Utilizing empirical research methods, such as case studies, that seeks to generate primary data for a robust analysis. Empirical research methods enhance the credibility and depth of the study, providing firsthand insights into the experiences of women in Conakry

However, due to the case study approach focusing on Conakry, the findings may not be easily generalizable to other regions or countries. While the case study provides detailed insights into the specific context, caution is needed when extrapolating the results to broader settings. Additionally, conducting research on women's rights violation involves sensitive topics. Cultural norms may impact the willingness of participants to share their experiences openly.³⁵ Cultural sensitivity is crucial in navigating the ethical considerations associated with studying deeply personal and potentially stigmatized issues.³⁶

Furthermore, the availability and reliability of existing data may pose challenges. In some instances, official statistics or records related to women's rights violations may be limited or inconsistent. Relying on available data sources may present constraints, emphasizing the need for caution in drawing definitive conclusions.³⁷

Essentially, the study's findings may also be influenced by the temporal context in which the research is conducted. Societal attitudes and policies regarding women's rights can evolve over time. Recognizing temporal constraints is essential, as shifts in societal perceptions and legal frameworks may impact the relevance of the study's findings³⁸.

1.7. Definition of Key Terms

1. **Abuse:** The intentional and harmful mistreatment or misuse of power, often involving physical, emotional, psychological, or verbal harm inflicted on another person. This behavior is typically

³⁴ Ibid27

³⁵ Liamputtong, P. (2006). Researching the vulnerable: A guide to sensitive research methods. *Researching the Vulnerable*, 1-256.

³⁶ Ibid29

³⁷ Ibid33

³⁸ Ibid35

characterized by a violation of trust and can occur in various relationships and settings, including interpersonal relationships, families, workplaces, institutions, or broader societal contexts. Abuse can take many forms, and recognizing the different types is essential for understanding and addressing this pervasive issue.

- 2. Female Genital Mutilation**, commonly referred to as female genital cutting or female circumcision, is the act of partially or completely removing external female genitalia or causing harm to female genital organs for reasons unrelated to medical necessity. This treatment is commonly conducted on prepubescent girls and is mostly linked to cultural, religious, or societal motivations within specific communities.

FGM encompasses various forms, including partial clitoral removal and more severe operations that involve the removal of the clitoris and labia, as well as the constriction of the vaginal aperture. The World Health Organization (WHO) categorizes Female Genital Mutilation (FGM) into four primary classifications: Clitoridectomy refers to the partial or complete removal of the clitoris, while excision involves the partial or complete removal of both the clitoris and the labia minora, with or without removal of the labia majora. Vaginal constriction achieved through the formation of a seal. Infibulation is a practice that involves cutting and repositioning the labia, often through stitching, to create a seal. This seal leaves a small opening for urine and menstrual blood.³⁹ Additionally, harmful procedures such as pricking, piercing, or incising the clitoris and/or labia, stretching of the clitoris and/or labia, or any other procedure that aims to damage or distort the female genital organs may also be performed.

- 3. Gender-Based Violence:** Denotes any form of harmful action committed against an individual without their consent, and is rooted in socially attributed distinctions between genders. Gender-based violence (GBV) arises from unequal power dynamics between genders and comprises a spectrum of behaviours and acts that inflict physical, sexual, emotional, or economic damage or distress onto someone due to their gender.
- 4. Harmful Traditional Practices**, refer to conventions, rituals, or behaviours deeply rooted in the cultural or traditional practices of specific communities. However, these practices are acknowledged as harmful since they negatively affect the health, well-being, and human rights

³⁹ Berg, R. C., & Denison, E. (2012). Does female genital mutilation/cutting (FGM/C) affect women's sexual functioning? A systematic review of the sexual consequences of FGM/C. *Sexuality research and social policy*, 9, 41-56.

of individuals. These traditions frequently originate from cultural, societal, or religious beliefs and are often passed down from one generation to the next.

5. **Human Rights:** These are essential entitlements and liberties that are intrinsically held by every person, irrespective of their nationality, ethnicity, gender, religion, or any other trait. These rights are universally recognised, cannot be taken away, and cannot be separated from one another. They serve as the foundation for human dignity, equality, and justice. International documents frequently codify human rights.
6. **Penal Code:** A comprehensive set of laws that defines crimes and prescribes the punishment for individuals convicted of those crimes. It serves as a legal framework within a jurisdiction, outlining the offenses against the state or society, the elements that constitute each offense, and the penalties or sanctions associated with convictions.
7. **Violence:** The "deliberate use of physical force or power, threatened or real, against oneself, another person, or against a group or community that results in or has a high risk of resulting in damage, death, psychological distress, maldevelopment, or deprivation".⁴⁰
8. **Violation:** The act of breaking, disregarding, or infringing upon a law, rule, agreement, or established standard. It involves a breach of a set of principles or regulations that are intended to govern behavior, maintain order, or protect rights. Violations can occur in various contexts, including legal, ethical, social, or institutional settings. The term is often used to describe actions that go against established norms or standards and may result in negative consequences, such as legal penalties, sanctions, or damage to relationships.
9. **Women's Rights:** The fundamental entitlements and freedoms that women should enjoy on an equal basis with men in various aspects of life. These rights cover a broad spectrum of social, political, economic, and cultural dimensions, aiming to ensure that women have the same opportunities, protections, and privileges as men. The concept of women's rights is rooted in the principles of equality, justice, and human dignity.

⁴⁰ Mikton, C. R., Butchart, A., Dahlberg, L. L., & Krug, E. G. (2016). Global status report on violence prevention 2014. *American journal of preventive medicine*, 50(5), 652-659.

CHAPTER TWO

CONCEPTUALIZING WOMEN'S RIGHTS VIOLATIONS IN GUINEA

2.0. Introduction

The socio-cultural context of Guinea plays a significant role in shaping gender norms and influencing the prevalence of women's rights violations.⁴¹ Traditional practices and societal expectations of women often contribute to the perpetuation of gender-based discrimination. The country, like many developing countries in Africa and Asia, grapples with the complex issue of women's rights violation.⁴² Therefore, understanding the antecedents and consequences of such violations is essential for developing effective interventions and promoting gender equality.⁴³

2.1. Feminist Theory: Empowering Perspectives on Women and Society

Feminist theory constitutes a diverse and dynamic body of thought that critically examines the structures of power, oppression, and inequality embedded in societal norms and practices.⁴⁴ It emerges from a commitment to challenging and dismantling patriarchal systems that have historically marginalized women.

This theoretical framework encompasses various perspectives, each offering unique insights into the complex interplay of gender, identity, and social dynamics. It is rooted in the historical struggles of the women's liberation movements, feminist theory gained prominence during the late 19th and 20th centuries. Feminists sought to address not only legal and political inequalities but also the pervasive cultural and societal norms that perpetuated gender-based discrimination.⁴⁵

⁴¹ Mandian, T. C. A., Daud, S., & Kamaruddin, R. (2017). Ethnicity Cultural And Political leadership with Regard To Instability in Republic of Guinea Conakry. *International Journal of Innovation and Applied Studies*, 20(1), 380.

⁴² Chaney, Paul. "Civil society and gender mainstreaming: Empirical evidence and theory-building from twelve post-conflict countries 2005–15." *World development* 83 (2016): 280-294.

⁴³ Balde, M. D., Soumah, A. M., Diallo, A., Sall, A. O., Mochache, V., Ahmed, W., ... & Pallitto, C. C. (2022). Involving the health sector in the prevention and care of female genital mutilation: results from formative research in Guinea. *Reproductive health*, 19(1), 156.

⁴⁴ Hirudayaraj, M., & Shields, L. (2019). Feminist theory: A research agenda for HRD. *Advances in Developing Human Resources*, 21(3), 319-334.

⁴⁵ Fredman, S., Kuosmanen, J., & Campbell, M. (2016). Transformative equality: Making the sustainable development goals work for women. *Ethics & International Affairs*, 30(2), 177-187.

Meanwhile, feminist theories share common tenets that form the foundation of their analyses. These include the recognition of the social construction of gender, the critique of patriarchy as a systemic form of oppression, and a commitment to advocating for gender equality in all spheres of life.⁴⁶ Intersectionality is a key concept within feminist theory. Coined by Kimberlé Crenshaw, it emphasizes the interconnectedness of social categories such as race, class, sexuality, and gender. This perspective recognizes that individuals experience multiple forms of oppression simultaneously, and understanding these intersections is crucial for a comprehensive analysis of power dynamics.

Feminist theory is not monolithic; that is to say it encompasses various schools of thought. Some prominent types include Liberal Feminism, which focuses on legal and political equality; Radical Feminism, critiquing the root causes of patriarchy; Marxist Feminism, which examines the intersection of capitalism and gender oppression and Postcolonial Feminism, which addresses the unique challenges faced by women in postcolonial contexts.⁴⁷

Broadly speaking, feminist theories challenge traditional gender norms, questioning the binaries of masculinity and femininity.⁴⁸ They analyze how societal expectations shape individuals' roles and perpetuate inequalities, limiting the potential for personal and collective growth. Feminist theory continues to evolve, incorporating new voices and perspectives⁴⁹. Queer feminism, ecofeminism, and trans feminism represent some of the contemporary developments within this field, expanding the discourse to include a broader spectrum of gender identities and environmental considerations.⁵⁰

Therefore, feminist theory stands as a critical lens through which to analyze and transform societal structures. By interrogating power dynamics, promoting inclusivity, and advocating for equity, feminist theorists contribute significantly to the ongoing pursuit of a more just and egalitarian world.⁵¹

2.2. Girl Child Marriage and Its Implication

⁴⁶ Crenshaw, K. (2013). Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. In *Feminist legal theories* (pp. 23-51). Routledge.

⁴⁷ Mohajan, H. (2022). An Overview on the Feminism and Its Categories.

⁴⁸ Krylova, A. (2016). Gender binary and the limits of poststructuralist method. *Gender & History*, 28(2), 307-323.

⁴⁹ Connelly, M. P., Li, T. M., MacDonald, M., & Parpart, J. L. (2000). Feminism and development: Theoretical perspectives. *Theoretical perspectives on gender and development*, 51-159.

⁵⁰ MacGregor, S. (2017). Gender and environment: An introduction. In *Routledge handbook of gender and environment* (pp. 1-24). Routledge.

⁵¹ Cornwall, A., & Rivas, A. M. (2015). From 'gender equality and 'women's empowerment' to global justice: reclaiming a transformative agenda for gender and development. *Third world quarterly*, 36(2), 396-415.

In Guinea, the practice of girl-child marriage persists, presenting challenges that extend beyond cultural norms to impact the physical and mental health of young brides⁵². Meanwhile, child marriage remains a significant concern worldwide, with profound implications for the health and well-being of young girls.⁵³ This section explores the phenomenon of girl-child marriage in Guinea and delves into its consequences on the health and overall well-being of the affected girls.

Girl Child Marriage presents itself as both a cultural and social challenge. The country, like many other societies, still grapples with these deeply ingrained cultural norms that contribute to the prevalence of girl-child marriage. Traditional beliefs often prioritize early marriage as a means of preserving family honour, safeguarding girls from perceived moral threats, and ensuring economic stability through dowries.⁵⁴ Studies have shown that there are attendant health implications for girl brides with varying physical health consequences. Girls who marry early often face the risks associated with early pregnancies. Complications during childbirth, including obstetric fistula and maternal mortality, are more prevalent among adolescent mothers.⁵⁵ The limited access to comprehensive sexual reproductive health information and services places Child brides at increased risks of sexually transmitted infections (STIs) and complications during childbirth.⁵⁶

The psychological impact girls in child marriage face often expose young brides to increased levels of stress, anxiety, and depression due to the abrupt transition to marital responsibilities and the potential for spousal and familial conflicts.⁵⁷ Early marriage frequently leads to the discontinuation of formal education, limiting girls' opportunities for personal development and empowerment.⁵⁸

While Guinea has established a legal minimum age for marriage (16 for girls and 18 for boys), enforcement remains a challenge. However, gaps in implementation, coupled with the persistence of cultural practices, contribute to the continued occurrence of girl-child marriages.⁵⁹

⁵² Efevbera, Y., & Farmer, P. (2021). 'It is this which is normal' A qualitative study on girl child marriage and health in conakry, Guinea. *Social Science & Medicine*, 273, 113762.

⁵³ Greene, M. E., & Stiefvater, E. (2019). Social and gender norms and child marriage. *Advanced Learning and Information on Gender Norms*.

⁵⁴ Packer, C. A. (2002). *Using Human Rights to Change Tradition: traditional practices harmful to women's reproductive health in sub-Saharan Africa* (Vol. 13). Intersentia nv.

⁵⁵ Wardlaw, T., You, D., Hug, L., Amouzou, A., & Newby, H. (2014). UNICEF Report: enormous progress in child survival but greater focus on newborns urgently needed. *Reproductive health*, 11(1), 1-4.

⁵⁶ Szymborski, J., & Zatoński, W. (2017). The activities of the Government Population Council aimed at limiting health care inequalities. *Journal of Health Inequalities*, 3(1), 30-40.

⁵⁷ Burgess, R. A., Jeffery, M., Odero, S. A., Rose-Clarke, K., & Devakumar, D. (2022). Overlooked and unaddressed: A narrative review of mental health consequences of child marriages. *PLOS global public health*, 2(1), e0000131.

⁵⁸ van Klaveren, M., Tijdens, K., van Klaveren, M., & Tijdens, K. (2012). Demography, Health and Inequality: Basic Perspectives in the Life of Young Women. *Empowering Women in Work in Developing Countries*, 23-54.

⁵⁹ Geldenhuys, K. (2021). When girls become brides much too soon: the shame of forced child marriages. *Servamus Community-based Safety and Security Magazine*, 114(5), 22-27.

Strengthening the enforcement of existing legal frameworks and advocating for policy changes can contribute to preventing girl-child marriage. As such, collaborative efforts between government agencies, non-governmental organizations, and international partners are essential for creating a comprehensive and effective strategy.⁶⁰ As well as promoting awareness and education within communities is crucial for challenging deeply rooted cultural norms. Programs that engage community leaders, parents, and girls themselves can contribute to shifting perceptions and reducing the prevalence of girl-child marriage.⁶¹ Given that by tackling the root causes of girl-child marriage, Guinea can strive to create an environment where girls are protected, empowered, and able to realize their full potential.

While there are no known verdicts of early marriage cases in Guinea, here is an excerpt from a case of Early Marriage from the High Court of India:

The T.Sivakumar vs The Inspector of Police case in the Madras High Court concerned a petition for a Writ of Habeas Corpus. The purpose of the petition was to secure the release of the petitioner's minor daughter, Sujatha, from the illegal custody of respondents 2 and 3. Sujatha willingly left her parents' home and engaged into marriage with the second party, declaring that she is not being wrongfully detained by anyone. The court ruled in favour of the petitioner, confirming that the juvenile detainee is not being kept unlawfully by any party.

The Division Bench, presided over by Justice C. Nagappan, directed that the juvenile offender be placed in a Government Children's Home. The attorney contended that precedent has firmly established the legal validity of child marriages, rendering them immune to invalidation or annulment. Furthermore, the husband of the minor in such a marriage possesses the legal entitlement to custody. The court also oversaw a case involving a juvenile detainee who was enrolled in the P.B. College of Engineering in Irrungattukottai for a B.Tech programme. The issue was around the historical tradition of child marriages in India and the implementation of the "Child Marriage Restraint Act, 1929" which was designed to limit such marriages.

The Prohibition of Child Marriage Act aims to deter child marriages and enhance the welfare of children and women. In situations where there is a conflict between the Hindu Marriage Act and another regulation, the latter takes precedence and supersedes the former. Section 3 of the Prohibition of Child Marriage Act will take precedence over the Hindu Marriage Act.

2.3. Gender-Based Violence within the Guinean Context

⁶⁰ Human Rights Watch. (2015). *World report 2015: Events of 2014*. Policy Press.

⁶¹ Lee-Rife, S., Malhotra, A., Warner, A., & Gliński, A. M. (2012). What works to prevent child marriage: a review of the evidence. *Studies in family planning*, 43(4), 287-303.

Gender-based violence (GBV) remains a pervasive global issue that affects millions of women and girls, and its impact is deeply rooted in cultural and societal norms. This section explores the concept of Gender-Based Violence in Conakry, Guinea, and analyzes how societal perceptions contribute to its prevalence. Drawing on relevant studies and reports, this discussion aims to shed light on the complexities surrounding GBV and the experiences of women in Conakry. Guinea's Constitution of 2010 spoke unequivocally about the respect for and protection of fundamental human rights and freedoms.

Guinea is a unitary republic, indivisible, secular, democratic and social. It assures the equality before the law of all the citizens without distinction of origin, of race, of ethnicity, of gender [sexe], of religion and opinion ...⁶²

Traditional gender roles in Conakry often confine women to subordinate positions, limiting their autonomy and reinforcing power imbalances. Women are expected to adhere to societal expectations, contributing to a culture where human rights violations may be normalized⁶³. Survivors of GBV in Conakry and other parts of Guinea face societal stigmatization, often resulting in silence and underreporting. Fear of judgment and reprisals creates an environment where perpetrators act with impunity, perpetuating a cycle of violence.⁶⁴ Economic factors, including poverty and limited access to education and employment opportunities, contribute to the vulnerability of women in Guinea. These economic and social disparities can exacerbate gender-based discrimination and violence.⁶⁵

GBV is described as any act that results in physical, sexual, or psychological harm to individuals based on their gender⁶⁶ practices. The prevalence of GBV in Conakry is deeply intertwined with cultural norms. Patriarchal structures and gender inequalities contribute to the perpetuation of violence against women.⁶⁷ Traditional practices, such as female genital mutilation, further exacerbate the vulnerability of women to GBV.⁶⁸

The human being has [the] right to the free development of his personality. He has [the] right to life and physical and moral integrity; no one may be subjected to torture, to pain [peines] or cruel, inhuman or degrading treatments.

⁶² Article 1 of the National Constitution of Guinea 2010

⁶³ Cusack, S. (2013). Gender stereotyping as a human rights violation. *United Nations Human Rights, Office of the High Commissioner, Año*, 13-30.

⁶⁴ Taylor, S. (2018). Advocacy and the women, peace and security agenda. *The Oxford Handbook of Women, Peace, and Security*, 67.

⁶⁵ Muluneh, M. D., Francis, L., Agho, K., & Stulz, V. (2021). A systematic review and meta-analysis of associated factors of gender-based violence against women in sub-Saharan Africa. *International journal of environmental research and public health*, 18(9), 4407.

⁶⁶ World Health Organization. (2013). *Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines*. World Health Organization.

⁶⁷ Sidibé, M., Loures, L., & Samb, B. (2016). The UNAIDS 90–90–90 target: a clear choice for ending AIDS and for sustainable health and development. *Journal of the International AIDS Society*, 19(1).

⁶⁸ Roth, K., & Myers, J. J. (2017). Human Rights Watch World Report 2017.

No one is required to execute a manifestly illegal order.

The law determines the order manifestly illegal.

No one may take advantage [se prévaloir] of a received order or of an instruction to justify acts of torture, abuse [sévices] or cruel, inhuman or degrading treatments committed in the exercise or on the occasion of the exercise of their functions.

No situation of exception or emergency should [ne doit] justify the violations of human rights. (Art. 6)⁶⁹

Addressing Gender-Based Violence requires a comprehensive approach that considers cultural factors, legal frameworks, and community engagement⁷⁰. The perception of women, shaped by traditional gender roles and societal stigmatization, plays a pivotal role in the prevalence of GBV. It is also worth noting that, this violence manifests in various forms, including intimate partner violence, sexual assault, and harmful traditional practices. Therefore, ongoing efforts by both governmental and non-governmental entities are crucial in creating a society where women are protected, empowered, and free from the scourge of gender-based violence.

The consequences of women's rights violations extend beyond the physical realm, impacting the psychological and social well-being of individuals. Stigmatization, lack of agency, and restricted opportunities can lead to mental health issues and perpetuate cycles of violence⁷¹. Worth noting is that Guinea has made strides in addressing GBV through legal frameworks. The 2016 Law on Eliminating Violence in the Name of Custom represents progress, but challenges in implementation persist⁷²

Therefore, efforts to combat GBV in Conakry should include community-based initiatives and awareness campaigns. Already, organizations like UNICEF are fully aware of the ramifications of this menace and are continually emphasizing the importance of education on gender equality and the detrimental effects of GBV in fostering societal change⁷³.

While the number of prosecutions and conviction of GBV Cases remain unknown in Conakry, Guinea. Here is an excerpt of a GBV from the High Court of India

Notable contentious instances of domestic violence in India

⁶⁹ National Constitution of Guinea 2010

⁷⁰ Casey, E., Carlson, J., Two Bulls, S., & Yager, A. (2018). Gender transformative approaches to engaging men in gender-based violence prevention: A review and conceptual model. *Trauma, Violence, & Abuse, 19*(2), 231-246.

⁷¹ Muluneh, M. D., Francis, L., Agho, K., & Stulz, V. (2021). A systematic review and meta-analysis of associated factors of gender-based violence against women in sub-Saharan Africa. *International journal of environmental research and public health, 18*(9), 4407.

⁷² Stefan, C. G. (2021). Lessons in Atrocity Prevention: A Closer Look at Guinea. *Journal of International Peacekeeping, 24*(3-4), 367-401.

⁷³ Fergus, L., & van't Rood, R. (2013). Unlocking the potential for change: Education and prevention of gender-based violence.

The case of Lalita Toppo v. the State of Jharkhand and Anr. occurred in 2018.

Case Background

The Complainant, who was not the legally married wife of the Respondent, went to court to seek financial support under the Protection of Women from Domestic Violence Act, 2005. She believed that she would not be eligible for financial support under Section 125 of the Code of Criminal Procedure, 1973, based on the Lalita Toppo v. the State of Jharkhand and Anr. (2018) case, which was heard by the Supreme Court of India.

The appellant in this instance was involved in a cohabiting relationship with her partner, with whom she had a kid. The Gumla Family Court approved the appellant's plea for financial assistance following the separation of the spouse, awarding her a monthly sum of Rs 2000 and Rs 1000 for her child. The High Court overturned the family court's verdict and found in favour of the partner in response to the appellant's appeal. Subsequently, the Appellant proceeded to the Supreme Court.

Legal matters at stake in the case

Is it possible for a cohabiting partner to submit a support claim under the 2005 Domestic Violence Act?

Court's ruling

As per a three-judge bench of the Supreme Court consisting of the then-CJI Ranjan Gogoi, Justices U.U. Lalit, and K.M. Joseph, a live-in partner will have the right to get greater legal protection than what is specified in Section 125 of the Code of Criminal Procedure, 1973. The court cited the Domestic Violence Act and clarified that although the petitioner in this case is not the legally wedded spouse and is thus not obligated to be supported under Section 125 of the Code of Criminal Procedure, she still has the option to seek financial support under the Act.

The Court further observed that economic abuse is recognized as a type of domestic violence under the provisions of the Domestic Violence Act.

2.4. Female Genital Mutilation

Guinea has the second highest prevalence of FGM/E worldwide, after Somalia. Although FGM/E is forbidden by law, it is practised in every region, by all ethnic or religious groups and social classes, and 97% of Guinean women and girls aged 15-49 have suffered excision.⁷⁴ Although FGM/E is decreasing worldwide, a national Demographic and Health Study (EDS) found in 2012 that FGM/E had slightly increased since 2002.⁷⁵

Guinea's Constitution guarantees respect for the physical and moral integrity of all individuals and the principles of equality and non-discrimination. The Penal Code prohibits and provides

⁷⁴ See mapping in UNICEF, *Female Genital Mutilation/Cutting: A statistical overview of exploration of the dynamics of change*, July 2013, New York.

⁷⁵ Guinea's 4th Demographic and Health Study was carried out in October 2012 by the *Institut national de la statistique (INS)*.

*for life imprisonment for, any mutilation of the genital organs of men (castration) or women (excision).*⁷⁶

This prohibition is reaffirmed in Guinea's 2008 Children's Code, which makes perpetrators liable to imprisonment of between three months and two years and/or a fine, sanctions which are further strengthened if the victim suffers permanent disability or death. In November 2010, the Guinean Ministry for Social Action, the Advancement of Women and Children's Issues published five decrees which, *inter alia*, prohibited FGM/E in all public and private health centres throughout the country.⁷⁷

Most Guinean women have suffered Type 2 FGM/E, in other words, the total or partial ablation of the clitoris and labia minora, with or without ablation of the labia majora. According to the 2012 EDS study, 84% of women aged 15 to 49 have suffered ablation; 8%, infibulation; and 6%, cutting with no removal of flesh. The most extreme form of FGM/E, Type 3 (infibulation), is practised among the Peuhle ethnic group and by the Tomas.⁷⁸ Age appears to have no impact on the type of FGM/E practised.

“Non-excision of girls is considered dishonourable in Guinean society.⁷⁹ This is indicated by the use of the term “washing”; non-excised girls are considered “dirty”, and in every Guinean community, to say that a woman is not excised is a grave insult. Social pressure is such that girls may request excision for fear of being excluded or forced to remain unmarried if they do not suffer the practice”.

In most countries where FGM/E is practised (19 out of 29), women and girls are largely in favour of abolishing the practice; in Guinea, in 2012, 76% of women and girls wanted the practice to continue— up from 65% in 1999.⁸⁰ Despite its health risks, many women perceive FGM/E as a symbol of female power, an affirmation of self and a liberation from male oppression. The daily lives of many women and girls involve submission, hard labour and deprivation, without the possibility of participating in decision-making. Excision gives women and girls an identity, a certain social and adult status, collective recognition and a sense of belonging to a community.⁸¹ Moreover, the period of initiation ceremonies is free of male authority and daily chores.⁸² When

⁷⁶ CRC/C/GIN/2, paras. 357-358.

⁷⁷ Ministry of National Solidarity and the Promotion of Women / Ministry of Health and Public Hygiene / Ministry of Security / Ministry of Justice / Ministry of Territorial Administration and Political Affairs.

⁷⁸ EDS-MICS 2012, pp. 328-329.

⁷⁹ UNICEF Innocenti Research Centre, *Changing a Harmful Social Convention: the practice of excision / female genital mutilation*, 2005, reprinted May 2008, Florence, p. 19.

⁸⁰ EDS-MICS 2012, p. 337; UNICEF, *Female Genital Mutilation/Cutting: A statistical overview of exploration of the dynamics of change*, July 2013, New York, p. 87 and diagramme 8.1A, p. 90.

⁸¹ On FGM/E as a factor of social integration in the sub-region cf. Boubacar Traoré Lamine, *FGM / Excision - Attitudes and perceptions in the West African sub-region, problems and prospects*, pp. 5-7.

⁸² Plan International, *Tradition and rights - Excision in West Africa*, Regional Office for West Africa, Dakar, July 2006, p.

they leave the excision camps, girls receive presents, clothes, jewels and food, factors which contribute to encouragement and acclaim for the practice.⁸³

Furthermore, UNICEF found that 68% of Guinean women and 57% of men viewed excision as a religious practice, notably of Islam. This belief is propagated by some religious leaders, despite the 2007 religious verdict or fatwa by the al-Azhar Council of Islamic Research which states that FGM/E have no basis in Islam and constitutes a sin. There is also a widespread perception that excision is a hygiene issue which enables women to pray properly.⁸⁴

In 2014, the General Secretariat for Religious Affairs, a government body charged with regulating religious affairs, declared that FGM/E was not an Islamic obligation and organised several workshops for imams on the subject. The Roman Catholic Church also prohibited excision in an open letter by the Archbishop of Conakry to all believers in 2012. It will be essential to involve religious authorities in awareness campaigns regarding FGM/E so that they can dismantle the perception of the religious requirement of FGM/E.⁸⁵

Like GBV and Early Marriage the number of prosecutions and conviction of FGM Cases remain unknown in Conakry, Guinea. Here is an excerpt of FGM cases from a Court in Bristol, United Kingdom.

Within a week of the Bristol case, there was another court case in 2018, initiated by the Metropolitan Police, which was covered by both the Guardian and the Daily Mail. Twenty In July 2017, a 16-year-old girl reported that she had experienced female genital mutilation (FGM) on two occasions. The first instance occurred in either 2009 or 2010, and the second instance took place in 2013. According to her account, on both occasions, she was compelled to recline on a mat in the hallway of her residence, with her lower body exposed, while an unidentified somebody proceeded to perform genital mutilation on her. Additionally, her father allegedly encouraged this person's actions. The court was informed that the girl had undergone a cutting procedure as a disciplinary measure for her act of embezzling funds from her own household.

The father, a 50-year-old solicitor of West African descent, was additionally charged with perpetrating physical harm against his children. He refuted all allegations. He asserted that

⁸³ Plan International, *Tradition and rights - Excision in West Africa*, Regional Office for West Africa, Dakar, July 2006, p. 13.

⁸⁴ UNICEF, *Female Genital Mutilation/Cutting: A statistical overview of exploration of the dynamics of change*, July 2013, New York, p. 69.

⁸⁵ UNICEF, *Female Genital Mutilation/Cutting: A statistical overview of exploration of the dynamics of change*, July 2013, New York, 72.

his Catholic faith precluded his endorsement of FGM, as if this assertion automatically absolved him of any guilt. The defence counsel, a well-known attorney, argued that the parents' divorce had caused the mother to manipulate the children's perception of their father, resulting in them distorting their own personal narratives. An expert in the field of medicine provided testimony indicating that the girl's genitalia had undergone a cutting procedure, with the resulting scars being characterised as atypical. Although no other culprit was uncovered, the father was acquitted. The explanation for this acquittal is challenging due to the limited availability of information.

The results in all three cases will have been a source of humiliation for the police and the CPS, considering the immense pressure they faced to identify and penalise the numerous offenders who were thought to be there. An emotive story published by The Guardian, two weeks after the Bristol case concluded, was captioned 'Those implicated in FGM will discover methods to circumvent UK legislation: Despite a nearly fivefold rise in reported FGM cases, the absence of proof to substantiate its occurrence is impeding legal actions.'⁸⁶

2.5. Existing Legal and Policy Frameworks: Progress and Gaps

At the legal level, the Government of Guinea, through the Ministry of Social Affairs, has ratified the main international and regional instruments relating to the advancement of Women and Children's rights, since 2009. This is part of the country's intensified efforts to strengthen its institutional framework on gender empowerment and women's rights and has a legal arsenal that guarantees the principle of equality between men and women as well as striving towards upholding and respecting fundamental human rights and freedoms for its citizens. This is sanctioned by its constitution:

The State must ensure the diffusion and the teaching of the Constitution, the Universal Declaration of the Rights of Man of 1948, the African Charter of the Rights of Man and Peoples of 1981 as well as all international instruments duly ratified relative to Human Rights.

⁸⁶ Berer, M. (2019). Prosecution of female genital mutilation in the United Kingdom: Injustice at the intersection of good public health intentions and the criminal law. *Medical Law International*, 19(4), 258-281. <https://doi.org/10.1177/0968533220914070>

The State must integrate the rights of the human person in the programs of literacy [alphabétisation] and of teaching in the different schooling and university cycles and all the programs of training of the armed forces, the forces of public security and similar forces.

The State must equally ensure in the national languages by all means of mass communication, in particular by radio and television, the diffusion and the teaching of these same rights. (Art. 25).⁸⁷

1. **Women Rape and Domestic Violence:** The law criminalizes rape and domestic violence, but both occurred frequently, and authorities rarely prosecuted perpetrators. The law does not address spousal rape or the gender of survivors. Rape is punishable by five to 20 years in prison. Survivors often declined to report crimes to police due to custom, fear of stigmatization, reprisal, and a lack of cooperation from investigating police or gendarmes. Studies indicated citizens also were reluctant to report crimes because they feared police would ask the survivor to pay for the investigation.

In domestic violence cases, authorities may file charges under general assault, which carries sentences of two to five years in prison and fines. Violence against a woman who causes an injury is punishable by up to five years in prison and a fine. If the injury causes mutilation, amputation, or other loss of body parts, it is punishable by 20 years of imprisonment; if the victim dies, the crime is punishable by life imprisonment. Assault constitutes grounds for divorce under civil law, but police rarely intervene in domestic disputes, and courts rarely punish perpetrators.

2. **Female Genital Mutilation/Cutting (FGM/C):** Although the Transition Charter does not explicitly prohibit FGM/C, it grants individuals the right to their physical integrity. Before September 2021, the constitution and laws prohibited FGM/C. The country had an extremely high FGM/C prevalence rate. According to a 2018 UNICEF survey, 94.5 per cent of women and girls ages 15 to 49 had undergone the procedure, which was practised throughout the country and among all religious and ethnic groups. The law specifies imprisonment of five to 20 years and a fine if the victim is severely injured or dies; if the victim dies within 40 days of the procedure the penalty is up to life in prison or death. The law provides for imprisonment of three months to two years and fines for perpetrators who do not inflict severe injury or death.

⁸⁷ lbib1

These laws were not effectively nor regularly enforced. In October 2021 the CNRD appointed Morissanda Kouyate, a lifelong advocate for women's rights and the eradication of FGM/C, as minister of foreign affairs, international cooperation, African integration, and Guineans abroad.⁸⁸

3. **Child, Early, and Forced Marriage:** The law criminalizes early and forced marriage. The legal age for marriage is 18. Ambiguity remains, however, because the law refers to customary marriages for children who receive consent from both their parents or their legal guardians.

According to Girls Not Brides, *an international network of civil society organizations committed to ending child marriage, prevalence rates in Guinea are 47 per cent of child marriages by 18 years of age and 17 per cent of child marriages by the age of 15*

4. **Sexual Harassment:** The law prohibits all forms of workplace harassment, including sexual harassment; however, the Transition Charter does not explicitly mention workplace or sexual harassment. Before September 5, the constitution prohibited harassment based on sex, race, ethnicity, political opinions, and other grounds. The Ministry of Labor did not document any case of sexual harassment, despite its frequency. The law penalizes sexual harassment. Sentences range from three months to two years in prison and the payment of a fine, depending on the gravity of the harassment. Authorities rarely enforced the law. According to the Union of Guinean Workers, women working in the public sector reported professional repercussions, marginalization, and threats by superiors when women did not accept their advances.⁸⁹
5. **Reproductive Rights:** There were no reports of coerced abortion or involuntary sterilization on the part of government authorities. Low accessibility and poor quality of family planning services as well as a limited mix of methods hindered access to contraception. Cultural barriers included a lack of male partner engagement or support for a woman's decision to use family planning services; lack of decision-making power for women, as women in many cases needed approval from their husbands before using health services, including family planning; and expectations for newlywed couples to have children. Religious beliefs also hindered access.

According to the 2018 Demographic and Health Survey,

⁸⁸ Fulu, E., & Warner, X. (2018). Literature review: ending violence against women and girls

⁸⁹ Healy, G., Bradley, H., & Forson, C. (2011). Intersectional sensibilities in analysing inequality regimes in public sector organizations. *Gender, Work & Organization*, 18(5), 467-487.

“Modern contraceptive prevalence rate among women ages 15-49 who were married or in a relationship was 11 per cent. About 55 per cent of women gave birth with a skilled healthcare professional present. Lack of quality health care, a limited health workforce, and sociocultural barriers also affected women’s access to skilled health attendants, particularly when no midwives were available”.

UNICEF Multiple Indicator Cluster Survey (2016),

“The maternal mortality rate was 550 per 100,000 live births. Lack of accessible, quality health services, discrimination, gender inequalities, early marriage, and adolescent pregnancy all contributed to the maternal death rate”.

According to the UN Population Fund, the adolescent birth rate was 120 per 1,000 girls ages 15- 19 years. The government provided access to sexual and reproductive health services for survivors of sexual violence.

Multisectoral committees at the national, regional, and local levels addressed gender-based violence, including sexual violence. Committee participants included health professionals, police, and administrative authorities. Health professionals provided health care, including sexual and reproductive health services, to survivors of sexual and domestic violence. The UN Population Fund contributed emergency contraception through family planning partner clinics. Emergency contraception was also included in rape kits. Lack of access to adequate menstrual hygiene supplies or facilities impacted women and girls’ participation in educational, social, and economic opportunities.

“The government does not explicitly guarantee nor ban girls from staying in school during pregnancy and motherhood. Religious, cultural, and societal stigma or pressures, however, often led the families of pregnant girls or adolescent mothers to deprioritize their education” (Human Rights Watch Report, 2017).

- 6. Discrimination:** The law does not provide for the same legal status and rights for women as for men, including inheritance, property, employment, credit, and divorce. Although the law prohibits gender discrimination in hiring, the government did not effectively enforce this provision. There were no known limitations on women’s working hours, but there are legal restrictions to women’s employment in occupations and tasks deemed hazardous and in

industries such as mining and construction. Traditional practices historically discriminated against women and sometimes took precedence over the law, particularly in rural areas. Government officials acknowledged that polygyny was common. Divorce laws generally favour men in awarding custody and dividing communal assets. Legal testimony given by women carries less weight than testimony by men in a customary practice. A 2019 amendment to the law makes monogamy the standard for marriage, except in the case of an “explicit agreement” with the first wife.⁹⁰

2.6. Research Gaps

Firstly, current research lacks a comprehensive examination of the intricate cultural dynamics in Conakry that contribute to the persistence of women's rights violations.⁹¹ Previous studies have touched on cultural factors but have not delved deeply into the nuanced ways in which local customs and traditions impact women's rights.

Secondly, there is a paucity of research evaluating the effectiveness of existing legal frameworks in Guinea in preventing and redressing women's rights violations. While legal provisions exist, there is a dearth of studies assessing their implementation and impact on reducing incidents of gender-based violence and discrimination.

Thirdly, research has not adequately explored the intricate interplay between socioeconomic factors and women's rights violations in Conakry, including the role of economic disparities in exacerbating vulnerabilities. A closer examination of the socioeconomic determinants is crucial for understanding the multifaceted nature of women's rights challenges in the region.⁹²

Fourthly, there is a lack of in-depth analysis regarding the long-term health consequences of women's rights violations, particularly in terms of maternal health and reproductive rights. Research has primarily focused on documenting instances of rights violations, with limited attention to the broader health implications and reproductive rights of affected women⁹³.

Furthermore, research inadequately considers intersectionality, neglecting how factors such as race, ethnicity, and class intersect with gender to shape the experiences of women in Conakry.⁹⁴

⁹⁰ Kelberga, A., & Martinsone, B. (2021). Differences in motivation to engage in sexual activity between people in monogamous and non-monogamous committed relationships. *Frontiers in Psychology, 12*, 753460.

⁹¹ UNICEF, (2020).

⁹² World Bank, (2019)

⁹³ World Health Organization, (2018).

⁹⁴ Crenshaw, K. W. (2013). Mapping the margins: Intersectionality, identity politics, and violence against women of color. In *The public nature of private violence* (pp. 93-118). Routledge.

To comprehensively address the various dimensions of women's rights violations, future research should adopt an intersectional lens, acknowledging the intersecting identities that contribute to vulnerabilities.

Finally, the availability and accessibility of support services for women who experience rights violations are not thoroughly analyzed in existing research. While some studies touch on the aftermath of violations, a gap exists in assessing the effectiveness and availability of support mechanisms, including legal aid and counselling.⁹⁵

⁹⁵ Amnesty International, (2019)

CHAPTER THREE

ANALYSIS OF INTERNATIONAL LAW JURISPRUDENCE ON WOMEN'S RIGHT VIOLATIONS

3.0. Research Methodology

The doctrinal legal research methodology was used in this thesis project. This methodology involves analyzing case law, arranging, ordering, and systematizing legal propositions, and studying legal institutions through legal reasoning or rational deduction.⁹⁶ The researcher adopted this method of inquiry due to the logical and systematic legal propositions that will entail the study of legal institutions and policies. The investigation's central question will be: what is the stands of Human Rights Law regarding women rights? It will concern analysing the law and coming up with a logical reason behind it.

3.1. Foundation of International Human Right Law

One of the cornerstones of International Human Rights Law is the Universal Declaration of Human Rights (UDHR).⁹⁷ The UDHR, was established in 1948, has served as a roadmap for the development of other legally enforceable international human rights agreements. It remains a source of inspiration for everyone, whether in confronting injustices, during periods of conflicts, in nations experiencing repression, or in our endeavors to ensure the widespread enjoyment of human rights.

The statement signifies the widespread acknowledgment that fundamental rights and essential liberties are innate to every individual, cannot be taken away, and are equally valid for all. It emphasizes that each person is inherently free and equal in terms of dignity and entitlements.⁹⁸ Irrespective of that person's nationality, place of residence, gender, national or ethnic origin, color, religion, language, or status, the international community made a pledge on December 10, 1948, to ensure the preservation of dignity and justice for every individual.

Throughout the years, the dedication has been transformed into legal provisions, encompassing treaties, customary international law, fundamental principles, regional agreements, and domestic legislation, all of which serve to articulate and ensure the protection of human rights⁹⁹.

⁹⁶Jain S. N, 'Doctrinal and Non-Doctrinal Legal Research, in *Legal Research and Methodology*,' (3rd edn, Indian Law Institute India 2006) p 68.

⁹⁷ Brown, G. (2016). *The Universal Declaration of Human Rights in the 21st century: A living document in a changing world* (p. 146). Open Book Publishers.

⁹⁸ Rao, N. (2011). Three concepts of dignity in constitutional law. *Notre Dame L. Rev.*, 86, 183.

⁹⁹ Schrijver, N. J., & Weiss, F. (Eds.). (2004). *International law and sustainable development: principles and practice* (Vol. 51). Brill.

Undoubtedly, the UDHR has served as a source of inspiration for over 80 international human rights treaties and declarations, numerous regional human rights conventions, domestic human rights bills, and constitutional provisions. Collectively, these instruments form a comprehensive and legally enforceable framework for the advancement and safeguarding of human rights.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights became effective in 1976, after the progress made by the UDHR¹⁰⁰. The two Covenants have largely established the rights that are currently protected by the UDHR, thereby imposing a legal obligation on States that have ratified them. The rights that were established include fundamental rights such as the right to life, equality under the law, freedom of speech, the rights to employment, social security, and education¹⁰¹. The International Bill of Human Rights is composed of the Covenants, along with the UDHR.

Over the years, international human rights accords have increasingly narrowed their scope and specialization, targeting specific issues and socioeconomic groups in need of protection.¹⁰² The corpus of global human rights legislation continues to expand, develop, and provide more detailed explanations of the essential rights and liberties outlined in the International Bill of Human Rights. It tackles issues such as racial discrimination, torture, forced disappearances, disabilities, and the rights of women, children, migrants, minorities, and indigenous populations.

The fundamental tenets of human rights initially established in the UDHR, including universality, interdependence, indivisibility, equality, and non-discrimination, as well as the concept that human rights involve both rights and responsibilities for both those who have a duty to uphold them and those who possess them, have been reaffirmed in various international agreements, declarations, and resolutions pertaining to human rights.¹⁰³ Currently, every member State of the United Nations has officially approved at least one of the nine fundamental international human rights agreements, and 80 percent of them have approved four or more, so demonstrating the widespread acceptance of the Universal Declaration of Human Rights (UDHR) and international human rights.¹⁰⁴

When States become parties to international treaties, they accept responsibilities and obligations under international law to uphold, safeguard, and fulfil human rights. The duty of respect entails

¹⁰⁰ Pinto, M. (2022). International covenant on economic, social and cultural rights. *United Nations Audiovisual Library of International Law*, disponível em https://legal.un.org/avl/pdf/ha/icescr/icescr_e.pdf, acesso em, 11(01).

¹⁰¹ Black, H. L. (1960). The bill of rights. *NyUL Rev.*, 35, 865.

¹⁰² Karimova, T. (2016). *Human rights and development in international law*. Routledge.

¹⁰³ Ibid6

¹⁰⁴ Ibid5

that States are required to abstain from any form of interference or restriction that might impede the full enjoyment of human rights.¹⁰⁵ States have a duty to safeguard persons and organizations from human rights violations. The commitment to fulfil entails that States are required to actively take measures to enable the realization of fundamental human rights.¹⁰⁶

By ratifying international human rights treaties, governments commit to implementing domestic policies and legislation that align with their treaty obligations and responsibilities.¹⁰⁷ The domestic legal system is the primary means of safeguarding the human rights that are protected by international law.¹⁰⁸ When domestic legal processes are unable to address violations of human rights, regional and international mechanisms and procedures exist to enable individuals and groups to file complaints. These mechanisms aim to guarantee that international human rights standards are upheld, put into action, and enforced at the local level.¹⁰⁹

3.2. Sources of International Human Rights Law

International law originates from various sources and is created through a complex process. It is derived from international treaties, customary practices, general principles of law, and judicial decisions.¹¹⁰ The creation of international law involves the negotiation and adoption of treaties, state practices, and the interpretation and application of legal principles by international courts and tribunals. These questions are more challenging than one may anticipate and necessitate significant attention. Attempting to transfer ideas from national legal systems to the distinct framework of international law is notably hazardous. The concept of a "Code of International Law" does not exist.¹¹¹ International law lacks a governing body similar to a Parliament and does not possess any kind of legislation in the traditional sense.¹¹² The jurisdiction of the International Court of Justice as well as other international courts and tribunals is contingent upon the assent of States and does not possess the same coercive authority as national courts.

¹⁰⁵ Skogly, S. I., & Gibney, M. (2017). Transnational human rights obligations. In *Globalization and Common Responsibilities of States* (pp. 453-470). Routledge.

¹⁰⁶ Ibid2

¹⁰⁷ Von Stein, J. (2016). Making promises, keeping promises: democracy, ratification and compliance in international human rights law. *British Journal of Political Science*, 46(3), 655-679.

¹⁰⁸ The domestic legal system is the primary means of safeguarding the human rights that are protected by international law

¹⁰⁹ Reif, L. C. (2000). Building democratic institutions: The role of national human rights institutions in good governance and human rights protection. *Harv. Hum. Rts. J.*, 13, 1.

¹¹⁰ Lowe, A. V. (2007). *International law*. Oxford University Press.

¹¹¹ Levi, L. (1887). *International law: with materials for a code of international law* (Vol. 62). K. Paul, Trench.

¹¹² Allott, P. (1999). The concept of international law. *European Journal of International Law*, 10(1), 31-50.

International law is predominantly established through the decentralized activities of the 192 States comprising the international community. The Statute of the International Court of Justice, Article 38, enumerates these sources as follows:

- (a) International Treaties made between States;*
- (b) Customary International law based on the practices of States;*
- (c) General Principles of law recognized by civilized nations;*
- (d) Judicial Decisions and writings of highly esteemed legal scholars.*

3.2.1. Customary International Law

Commencing with customary law is advantageous due to its status as the most ancient source and its ability to establish regulations that are obligatory for all States. Customary law does not originate from written sources. A customary law rule, such as the one that mandates States to provide immunity to a visiting Head of State, is composed of two elements. Firstly, it is necessary to establish a consistent and widespread State practice, meaning that States must generally have a practice of granting immunity to a visiting Head of State. Secondly, there must be what is referred to as "opinio juris," which is typically understood as a belief in legal obligation. In other words, States must grant immunity because they are legally obligated to do so.

According to the ICJ, the acts in question must not only be a consistent practice, but they must also be performed in a manner that demonstrates a belief that this practice is mandatory due to the presence of a regulation that requires it. The States involved must perceive that they are adhering to what essentially constitutes a legal duty.¹¹³

The new rule of Customary International Law maintained that both factors must be present for the creation of a new rule of customary international law. Mere practice is insufficient. For instance, consider the Case of the SS Lotus (1927).¹¹⁴ Furthermore, it is not possible to establish a rule solely based on opinio juris without the existence of actual practice. This is exemplified in the Advisory Opinion on Nuclear Weapons (1996).¹¹⁵

However, these factors necessitate a more thorough analysis. In terms of practical application, this encompasses not only the actions of a state's leadership, but also those of its courts and

¹¹³ North Sea Continental Shelf Cases: International Court of Justice Reports, (1969), p. 3 at 44.

¹¹⁴ Berge, G. W. (1927). Case of the SS Lotus. *Mich. L. Rev.*, 26, 361.

¹¹⁵ Aznar-Gomez, M. J. (1999). The 1996 Nuclear Weapons Advisory Opinion and Non Liquefaction in International Law. *International & Comparative Law Quarterly*, 48(1), 3-19.

parliament. The content encompasses both the verbal expressions and the actions of the States. Furthermore, it is imperative to thoroughly scrutinize the practice to ascertain its true implications for the field of law. The existence of torture in certain States does not negate the presence of adequate legislation prohibiting its use. According to the ICJ's decision in the Nicaragua case,¹¹⁶

the existence of customary rules can be inferred if the practice of states is generally in line with a particular rule, and instances where states act contrary to that rule are generally considered as violations of the rule, rather than indications of a new rule being recognized (ICJ in Nicaragua, ICJ Reports of 1986, p. 3 at 98).

Concerning opinio juris, the conventional interpretation of a conviction in duty (as exemplified by the North Sea Continental Shelf decisions (1969).¹¹⁷ is somewhat inadequate. Firstly, it fails to acknowledge the fact that numerous rules are permissive, such as those concerning sovereignty over the continental shelf. In these cases, the prevailing opinio juris is not a belief in obligation, but rather a belief in entitlement. Furthermore, it is worthy to note that discussing the views of a State can be considered contrived. Opinio juris can be more accurately understood as either the affirmation of a legal entitlement or the recognition of a legal duty.¹¹⁸

Once there is an ample amount of practice combined with a shared belief in its legal obligation, a novel customary rule will arise. Except for the "persistent objector" principle, the new norm applies to all States.¹¹⁹ The persistent objector principle grants a State the ability to resist the adoption of a new rule if it has consistently refused to accept it, even before it became officially recognized as such.

3.2.2. International Treaties

Treaties, sometimes known as agreements, conventions, exchanges of notes, or protocols, serve as a significant source of law, either between States or between States and international organisations.¹²⁰ Technically, a treaty does not function primarily as a legal source, but rather as a means to establish legal obligations.¹²¹ Treaties are legally enforceable agreements that apply exclusively to the States that have voluntarily entered into them.¹²² The decision to

¹¹⁶ Hight, K. (1987). Evidence, the court, and the Nicaragua case. *American Journal of International Law*, 81(1), 1-56.

¹¹⁷ Ibid

¹¹⁸ MacCormick, N. (1994). The concept of law and 'the concept of law'. *Oxford Journal of Legal Studies*, 14(1), 1-23.

¹¹⁹ Petersen, N. (2007). Customary Law without Custom-Rules, Principles, and the Role of State Practice in International Norm Creation. *Am. U. Int'l L. Rev.*, 23, 275.

¹²⁰ Treaties, sometimes known as agreements, conventions, exchanges of notes, or protocols, serve as a significant source of law, either between States or between States and international organisations.

¹²¹ Mechlem, K. (2009). Treaty bodies and the interpretation of human rights. *Vand. J. Transnat'l L.*, 42, 905.

¹²² Chayes, A., & Chayes, A. H. (1991). Compliance without enforcement: state behavior under regulatory treaties. *Negotiation Journal*, 7, 311-330.

become a party to a treaty is fully at the discretion of each State, and there is no need to sign or ratify a treaty.¹²³ A treaty is legally binding on the states that have ratified it because they have voluntarily agreed to be bound by its terms and obligations¹²⁴. The explanation lies in the existence of a customary international law principle known as *pacta sunt servanda*, which mandates that all States must uphold their treaty obligations. Therefore, treaties can be more precisely characterised as legal instruments that impose obligations.

However, numerous accords also hold significance as authoritative declarations of customary law. A treaty, which is the result of voluntary negotiations among numerous States, is commonly seen as a formalisation of previously uncodified customary laws.¹²⁵ It is evident that this occurs when a treaty clause is meant to codify the current law. An exemplary instance is the Vienna Convention on the Law of Treaties, 1969.¹²⁶ Although less than 50% of the countries in the world are signatories to it, yet every court that has examined the issue has regarded its primary provisions as formalising customary law. Consequently, these provisions are considered applicable to all countries, regardless of whether they are party to the Convention or not.

According to the view, when a treaty provision codifies a rule of customary law, the original practice and *opinio juris* are the actual sources of law, while the treaty provision serves as mere evidence.¹²⁷ However, it is important to note that documenting an unwritten rule result in a modification of said rule. Subsequently, the written provision will serve as the primary reference point, and discussions over the scope of the rule will primarily focus on interpreting the text rather than analyzing the actual implementation.¹²⁸

In addition, even if a provision in a treaty is not meant to be a formal codification but rather a new norm intended to modify existing ones, it can still become customary law if it is consistently followed in practice. For example, refer to the North Sea Continental Shelf cases (1969)¹²⁹.

A short period of time alone is not enough to create a new customary international law based on a previously conventional rule, it is essential that during this period, there is extensive and nearly unanimous State practice, specifically from States

¹²³ Rogoff, M. A. (2017). The International Legal Obligations of Signatories to an Unratified Treaty. In *The Law of Treaties* (pp. 191-227). Routledge.

¹²⁴ Bradley, C. A. (2012). Treaty Signature.

¹²⁵ *Ibid*⁹

¹²⁶ Aust, A. (2006). Vienna convention on the law of treaties (1969). *Max Planck Encyclopedia of Public International Law*.

¹²⁷ Baxter, R. R. (1965). Multilateral treaties as evidence of customary international law. *Brit. YB Int'l L.*, 41, 275.

¹²⁸ Kuckartz, U. (2013). Qualitative text analysis: A guide to methods, practice and using software. *Qualitative Text Analysis*, 1-192.

¹²⁹ *Ibid*¹

whose interests are directly affected. Furthermore, this practice should demonstrate a general recognition that a legal rule or obligation is involved. The reference is from the International Court of Justice Reports, 1969, page 43.

The agreement of a significant number of States on a treaty provision is a crucial kind of State practice. If those and other States later adhere to the treaty provision, particularly if they are not signatories to the treaty, it has the potential to swiftly become part of customary international law.

Some writers have made a distinction between "traités contrats" (contractual treaties), which are solely agreements between the parties involved, and "traités lois" (law-making treaties).¹³⁰ From an application perspective, this creates more confusion rather than providing assistance. All treaties are inherently contractual in nature, establishing legal obligations between the parties involved.¹³¹ However, certain factors can also influence the overall legislation.

The most significant changes in international law after 1945 have occurred through the implementation of many treaties addressing diverse aspects of international law, such as war, terrorism, diplomacy, and treaty-making.¹³²

3.2.3. General Principles

Although treaties and custom are the primary sources of international law, it is crucial not to overlook the other sources indicated in Article 38 of the ICJ Statute.¹³³ The general principles of law recognised by civilised nations, which constitute the third source, are rarely referenced in judicial decisions. These provisions are commonly used when the International Court of Justice (ICJ) or another international tribunal wishes to incorporate a notion, such as the legal personality of corporations (as seen in the Barcelona Traction Co. decision in 1970),¹³⁴ that is widely recognised in national legal systems. However, international law rarely incorporates a legal notion from a specific country legal system in its entirety. Instead, the focus is on identifying a principle that is recognised, in some form, across a broad spectrum of national legal systems.¹³⁵

¹³⁰ McNair, A. D. *Legal Character of Treaties*, 1930.

¹³¹ Jenks, C. W. (1953). The conflict of law-making treaties. *Brit. YB Int'l L.*, 30, 401.

¹³² Crawford, J. (2006). *The creation of states in international law*. Oxford University Press.

¹³³ Yasuaki, O. (2022). The ICJ: an emperor without clothes? International Conflict resolution, article 38 of the ICJ Statute and the Sources of International Law. In *Liber amicorum judge Shigeru Oda* (pp. 191-212). Brill.

¹³⁴ Lillich, R. B. (1971). Two Perspectives on the Barcelona Traction Case. *American Journal of International Law*, 65(3), 522-532.

¹³⁵ Lowe, A. V. (2007). *International law*. Oxford University Press.

3.2.4. Judicial Decisions

Article 38(1)(d) designates judicial decisions as a secondary method for establishing legal principles. Unlike common law countries, international law does not have a theory of binding precedent. Undoubtedly, according to the Statute of the International Court of Justice (ICJ),¹³⁶ a ruling made by the Court does not have legal force on anyone other than the parties involved in the specific case in which the ruling was made. Furthermore, its binding effect is limited solely to that particular case, as stated in Article 59 of the Statute.¹³⁷

However, it is important to note that the ICJ often cites its previous rulings, and most international courts use earlier judgements as a reference for interpreting international law.¹³⁸ Therefore, it would be incorrect to conclude that the term "subsidiary" implies a lack of significance.

Article 38(1)(d) does not make a distinction between decisions rendered by international courts and those rendered by national courts. The former, referring to international treaties and conventions, are often regarded as the primary and most reliable sources of international law on most subjects. However, it is important to note that they may not be as applicable to matters that are typically dealt with by national courts, such as the law on sovereign immunity. Decisions made by a State's courts are seen as part of the State's practice and can directly influence the development of customary international law.¹³⁹

3.3. Overview of International Obligation undertaking by Guinea

Starting from 2010, Guinea has been actively aligning its legislation with international conventions and establishing a national human rights institution.¹⁴⁰ In view of efforts to combat impunity, the Government since 2015, have achieved several convictions and rulings have been issued for human rights abuses, including those committed by individuals involved in the intercommunal violence in Kankan in 2013.¹⁴¹ Human Rights Committee of Experts have praised Guinea for abolishing the death sentence, including its removal from the Military Justice Code of 2017.¹⁴² They also

¹³⁶ Ibid21

¹³⁷ El Zeidy, M. M. (2006). Critical thoughts on Article 59 (2) of the ICC Statute. *journal of international criminal justice*, 4(3), 448-465.

¹³⁸ Llamzon, A. P. (2007). Jurisdiction and compliance in recent decisions of the International Court of Justice. *European Journal of International Law*, 18(5), 815-852.

¹³⁹ Benvenisti, E. (1993). Judicial misgivings regarding the application of International Law: An analysis of attitudes of National Courts. *Eur. J. Int'l L.*, 4, 159.

¹⁴⁰ Starting from 2010, Guinea has been actively aligning its legislation with international conventions and establishing a national human rights institution.

¹⁴¹ McGovern, M. (2017). *A socialist peace?: explaining the absence of war in an African country*. University of Chicago Press.

¹⁴² Makunya, T. M., Afoyomungu, O. L., Azanu, R. F. M., & Murden, D. (2021). Selected developments in human rights and democratisation in Africa during 2020.

acknowledged Guinea's endeavors to address gender-based violence and harmful cultural practices, such as the prohibition of female genital mutilation and early marriage.

However, the absence of concrete advancements, particularly with the widespread prevalence of female genital mutilation became a cause for concern¹⁴³. The practice affected 96 percent of girls and women aged 15 to 49, and 46 percent of girls under the age of 14. Another significant issue raised was the lack of accountability for human rights abuses, particularly the September 2009 massacre, which the United Nations Security Council has regarded as a crime against humanity.¹⁴⁴

As part of its commitment to the protection of fundamental human rights and justice the International Criminal Court's Office of the Prosecutor (ICC-OTP) carried out a preliminary study of the situation in Guinea since October 2009.¹⁴⁵ Based on their investigation it was determined that there is a valid and justifiable reason to assume that crimes against humanity were committed during and after the events in question¹⁴⁶.

According to Article 17 of the Rome Statute, the ICC-OTP is required to evaluate the eligibility of the case during its preliminary assessment.¹⁴⁷ Subsequently, the two sides have engaged in contact and fostered a collaborative alliance with the goal of pursuing justice for grave offences. Guinea is dedicated to maintaining a fair and efficient legal process for serious offences and have made efforts commence trial on the 13th anniversary, which September 2009 massacre was schedule commence take place on 28 September 2022.¹⁴⁸

The Government of the Republic of Guinea and the International Criminal Court's Office of the Prosecutor (ICC-OTP) have reached an agreement to enhance the concept of complementarity and ensure accountability for the international crimes that took place in Guinea in 2009¹⁴⁹. The parties have agreed to provide regular updates to the International Criminal Court's Office of the Prosecutor (ICC-OTP) regarding the progress of legal proceedings related to the events¹⁵⁰. They have also committed to improving and maintaining communication channels between the ICC-OTP, the Government of Guinea, judicial officials, and members of the Steering Committee. The

¹⁴³ Ibid44

¹⁴⁴ Stefan, C. G. (2021). Lessons in Atrocity Prevention: A Closer Look at Guinea. *Journal of International Peacekeeping*, 24(3-4), 367-401.

¹⁴⁵ Caban, P. (2011). Preliminary examinations by the Office of the Prosecutor of the International Criminal Court. *Czech Yearbook of Public & Private International Law*, 2.

¹⁴⁶ Ibid47

¹⁴⁷ Badagard, L., & Klamberg, M. (2016). The gatekeeper of the ICC: Prosecutorial strategies for selecting situations and cases at the International Criminal Court. *Geo. J. Int'l L.*, 48, 639.

¹⁴⁸ Colish, W. (2013). The International Criminal Court in Guinea: A Case Study of Complementarity. *Revue Québécoise de droit international*, 26(2), 23-45.

¹⁴⁹ Ibid50

¹⁵⁰ Ibid47

ICC-OTP also commits to supporting Guinea in ensuring that those responsible for the events of September 2009 are held responsible.¹⁵¹

3.4. Women's Rights are Human Rights

The United Nations (UN) Convention on the Elimination of Discrimination against Women (CEDAW) is the most extensive treaty encompassing the rights of women.¹⁵² The convention denounces all types of gender-based prejudice and emphasizes the significance of ensuring equal political, economic, social, cultural, and civil liberties for both women and men. CEDAW which was adopted on 18 December 1979 and came into effect on 3 September 1981. As of May 2014, 188 out of the 193 UN Member States are signatories to CEDAW including Guinea which ratified the convention in 1982.¹⁵³

Women are entitled to the equal enjoyment of human rights and fundamental freedoms as their male counterparts.¹⁵⁴ State parties are obligated under international human rights treaties to proactively assure the legal protection of women's human rights and to eradicate any forms of discrimination, inequality, and practices that have a detrimental impact on women's rights.¹⁵⁵ According to international human rights legislation, women may have the right to some additional rights, such as those related to reproductive healthcare.

CEDAW mandates equal rights for women in the realms of politics, economics, society, culture, and civil matters, irrespective of their marital status. It also obliges states to pass laws at the national level to prohibit any form of discrimination as outlined in articles 1, 2, and 3.

Women, being a particularly vulnerable demographic, are granted special recognition and safeguards by both the United Nations and other regional human rights frameworks¹⁵⁶. Several international human rights treaties explicitly forbid gender-based discrimination and mandate that States guarantee the safeguarding and fulfilment of women's rights across several domains, such

¹⁵¹ Ibid50

¹⁵² McQuigg, R. J. (2018). Is it time for a UN treaty on violence against women?. *The International Journal of Human Rights*, 22(3), 305-324.

¹⁵³ United Nations Treaty Series, Volume 1249, Page 13. (<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&msgid=IV-8&chapter=4&clang=en>)

¹⁵⁴ O'Hare, U. A. (1999). Realizing human rights for women. *Hum. Rts. Q.*, 21, 364.

¹⁵⁵ Southard, J. L. (1996). Protection of women's human rights under the Convention on the Elimination of All Forms of Discrimination Against Women. *Pace Int'l L. Rev.*, 8, 1.

¹⁵⁶ O'Hare, U. A. (1999). Realizing human rights for women. *Hum. Rts. Q.*, 21, 364.

as: property ownership, freedom from violence, equitable access to education, and involvement in governance.¹⁵⁷

Article 4 of the CEDAW, allows States to implement interim measures aimed at expediting the attainment of gender equality in practice.

Supplementary agreements, which may address specific human rights matters or protect the rights of vulnerable populations, are also relevant to women. These human rights treaties generally include a non-discrimination provision that prohibits discrimination based on gender and other factors.¹⁵⁸ This provision confers upon women the entitlement to completely and equitably avail themselves of the principles delineated in these accords.

Article 5 of the CEDAW grants States the authority to implement measures aimed at changing social and cultural norms that sustain discrimination. States parties universally recognise that contracts and other private instruments that restrict the legal rights of women "shall be deemed null and void" (Article 15).

States have expressed numerous objections to CEDAW, asserting that it hampers the treaty's application within their own countries. Most reservations are intended to maintain the dominance of national or religious laws, which can potentially contradict the principles of CEDAW. Some states parties are even seeking for their States to be exempted from the arbitration clause outlined in Article 29. Nonetheless, CEDAW continues to be the most universally relevant human rights pact specifically focused on women's rights.

CEDAW mandates that States must implement suitable measures to eradicate discrimination in areas pertaining to marriage and family, and emphasises the equal obligations of both men and women in the realm of family life (Article 16).

3.5. Gender-Based Violence Targeting Women

Violence against women refers to any type of gender-based violence that inflicts or is expected to inflict bodily, sexual, or psychological pain or suffering upon women. This includes behaviours such as intimidation, manipulation, or unfair restriction of liberty, irrespective of whether they take place in public or private contexts.¹⁵⁹ Unrestricted access to safety and absence of apprehension regarding physical harm are crucial for the complete satisfaction of all fundamental

¹⁵⁷ Ada Tchoukou, J. (2023). The Silences of International Human Rights Law: The Need for a UN Treaty on Violence Against Women. *Human Rights Law Review*, 23(3), ngad016.

¹⁵⁸ Vandenhoele, W. (2005). *Non-discrimination and equality in the view of the UN human rights treaty bodies*. Intersentia nv.

¹⁵⁹ This definition is stated in the United Nations General Assembly Resolution 48/104, Declaration on the Elimination of Violence against Women, A/RES/48/104, 20 December 1993, article 1.

human entitlements. According to international human rights law, it is the responsibility of States to abstain from engaging in acts of violence against women, such as ensuring that soldiers do not commit rape. Additionally, States are obligated to establish laws and policies that deter others from committing such acts, such as by making domestic violence a criminal offence.¹⁶⁰ While the State cannot be held responsible for completely eradicating all instances of violence between individuals, it is imperative for the State to establish efficient measures to decrease the occurrence of such violence, bring the perpetrators to justice, and provide support to the victims.¹⁶¹

The case of Rosendo Cantú et al. v. Mexico was heard by the Inter-American Court of Human Rights and the decision was rendered in favour of the plaintiffs. The specific citation for this case is 48-52, 56. Initial objections, substantive matters, compensation, and expenses. August 31, 2010 verdict. The reference is to Series C No. 216 of the Inter-American Commission on Human Rights (IACHR), specifically Report No. 80/11, Case 12.626, which involves Jessica Lenahan (Gonzales) and others in the United States. The report was published on 21 July 2011.

Aside from the general protection against violence that is applicable to everyone, encompassing the rights to life and freedom from cruel treatment, women may be entitled to specific safeguards against violence committed by the government or other individuals, as stipulated in specialist agreements.¹⁶²

For example, the Inter-American Court of Human Rights examined Mexico's responsibility for violations of both the American Convention on Human Rights and the Convention of Belém Do Pará over a significant increase in murders and kidnappings of young females in Ciudad Juarez. Consult the case of González et al. ("Cotton Field") v. Mexico at the Inter-American Court of Human Rights.

The preliminary objection, merits, restitution, and costs will be taken into consideration. Ruling issued on November 16, 2009. Serial C Number 205, paragraph 232. The Court concluded that the State was responsible for violating the victims' rights to life, humane treatment, personal freedom, fair legal proceedings, and judicial protection. This violation was in relation to the State's obligation under the Belém do Pará Convention to prevent, punish, and eradicate violence against women. Refer to paragraphs 388 to 389 in the same source.

The Court detected multiple anomalies in the management of evidence, such as the purported falsification of culprits, delays in the investigations, and the lack of

¹⁶⁰ See Article 7 of the Belém Do Pará Convention.

¹⁶¹ The European Court of Human Rights case Eremia v. Republic of Moldova, number 3564/11, Judgement of 28 May 2013,

¹⁶² See Article 4 of the Maputo Protocol and Article 7 of the Convention of Belém Do Pará.

comprehensive inquiries that took into account the wider framework of violence against women in which the three women were murdered. Furthermore, the Court observed the absence of inquiries into public officials about their apparent grave carelessness. Consequently, the Court determined that the failure of the judiciary to effectively address instances of violence against women creates a climate of impunity. This not only enables and promotes the recurrence of violent acts in general, but also conveys the message that violence against women is permitted and regarded as a regular aspect of daily existence (Paragraph 388).

Hence, the Court determined that Mexico had failed to enact the necessary domestic legislation or steps to ensure that authorities conducted a comprehensive investigation, as required by the American Convention and Convention of Belém do Pará. Same (paragraph 389). Violence against women encompasses sexual violence in conflict-affected countries, genital mutilation, and domestic abuse.

3.5.1. Female Genital Mutilation, also referred to as female circumcision, is the act of modifying or removing specific sections of the female genitalia without medical justification. Female genital mutilation (FGM), as defined by the World Health Organisation (WHO), encompasses intentional treatments that deliberately alter or inflict injury upon the female genital organs for reasons unrelated to medical necessity. Female genital mutilation (FGM) does not provide any health benefits and frequently results in fatalities or serious health issues among young women.¹⁶³

According to the UN Committee on Economic, Social and Cultural Rights (CECSR) which interpreted Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) as requiring States parties to the ICESCR to protect women from being forced to participate in harmful cultural practices.¹⁶⁴ In order to protect the right to health, the CEDAW Committee recommends that all States enact and enforce laws to outlaw the practice of Female Genital Mutilation (FGM). Furthermore, the UN General Assembly, Commission on the Status of Women, and other UN organisations have called upon the international community to take aggressive measures to address the issue of Female Genital Mutilation (FGM).¹⁶⁵

This document is referred to as "CEDAW Committee, General Recommendation No. 24, Women and Health." It is a publication of the Committee on the Elimination of

¹⁶³ "Female Genital Mutilation factsheet, World Health Organisation (2014), No. 241.

¹⁶⁴ CESCR, General Comment No. 14, "The Right to the Highest Attainable Standard of Health," found in UN Document E/C.12/2000/4, (11 May 2000), paragraphs 22 and 35.

¹⁶⁵ A/45/38(SUPP) p. 438, 1990 (Fletcher, L., Taylor, A., & Fitzpatrick, J. (1994). Human Rights Violations Against Women. *Whittier L. Rev.*, 15, 319.

*Discrimination against Women (CEDAW), that provides guidance and recommendations on the topic of women's health.*¹⁶⁶

3.5.2. Domestic Violence

This can take various forms, including emotional, psychological, physical, and sexual abuse. Despite the fact that this type of mistreatment occurs within personal relationships and typically happens in private settings, it is still the responsibility of States to establish legal systems that safeguard women from domestic violence. This includes conducting thorough investigations and prosecuting those who are accountable.¹⁶⁷ Human rights organisations have determined that States are obligated to actively investigate and prosecute cases of domestic violence. The Inter-American Commission made a significant ruling on Brazil, stating that the government has a clear responsibility to actively prevent and put an end to violence against women, which includes taking legal action against domestic violence.

The Inter-American Commission on Human Rights (IACHR) has chronicled the case of Maria da Penha Maia Fernandes (Brazil) in Report No. 54/01, which is dated 16 April 2001. Similarly, the European Court of Human Rights held Bulgaria responsible for its failure to promptly take interim measures to protect the applicant from further instances of abuse. The court further elucidated the nation's responsibility to conduct thorough investigations and establish effective processes for prosecuting allegations of domestic violence. The content pertains to the legal case of Bevacqua and S. before the European Court of Human Rights (ECtHR). The European Court of Human Rights rendered a verdict on 12 June 2008 in the matter of Bulgaria v. 71127/01. Opuz v. Turkey, no. 33401/02, is another significant case in which the European Court of Human Rights rendered a ruling on 09 June 2009.

The CEDAW Committee has observed that women's rights to life and physical and mental well-being are of utmost importance and should not be overridden by other rights, such as the right to property and privacy.¹⁶⁸ When the government is aware of the potential for violence, it is obligated to intervene in order to protect the individual who is in danger.

In the case of Eremia v. Republic of Moldova, the European Court of Human Rights (ECtHR) concluded on 28 May 2013 that the State had breached Article 3 (which forbids inhuman and degrading treatment) and Article 14 (which forbids

¹⁶⁶ The UN Doc. CEDAW Committee, General Recommendation No. 14 A/54/38/Rev.1 (I), 1999.

¹⁶⁷ See the Inter-American Commission on Human Rights (IACHR) case of Jessica Lenahan (Gonzales) et al. in the United States, which was decided on 21 July 2011.

¹⁶⁸ This statement was made by the CEDAW Committee, specifically by Ms. A. T. The case of Hungary, Communication No. 2/2003, was decided on 26 January 2005.

discrimination) in connection with Article 3. The State's failure to safeguard the first applicant from a recognised risk of domestic abuse and its failure to penalise the wrongdoer constitute this breach.

Also In the case of Kontrová v. Slovakia case, the ECtHR determined on May 31, 2007 that the State had not fulfilled its duty to safeguard the applicant's family. The applicant's husband, who had a history of many violent assaults reported to the authorities, murdered their children as a consequence of this failure. The police were notified of his possession of a pistol and his threats towards the applicant and her family.

The aforementioned cases speak volume of commitment of CEDAW Committee's towards women's right violation and abuse. They investigated two grievances concerning women who were killed by their partners after experiencing multiple episodes of violence that persisted for an extended duration. These verdicts specifically underscored that these women had submitted several appeals for assistance to law enforcement and the judicial system.

However, in the Goekce v. Austria case, as stated in Communication No. 5/2005 on 6 August 2007. Furthermore, the Committee expressed its opinions on the Yildirim v. Austria issue in Communication No. 6/2005 on the same day.

The CEDAW Committee concluded that the State violated Article 2(a, c-f) of the Convention on the Elimination of All Forms of Discrimination against Women. This article requires States to take appropriate actions to eliminate discrimination based on gender.

In addition, the Committee identified a breach of Article 3 in combination with Article 1 of the Convention, as well as General Recommendation 19, which specifically deals with violence against women. Based on the evidence, the Committee determined that the police had or should have had the awareness that the victims were in considerable danger and as a result, they are responsible for their failure to exercise proper care. The CEDAW Committee issued its views on the Goekce v. Austria case and the Yildirim v. Austria case. These views were issued on 6 August 2007, and can be found in paragraph (12.1.3 to 12.3).

3.5.3. Child Marriage

Child marriage not only contravenes the provisions of CEDAW but also infringes against the safeguards established in the Convention on the Rights of the Child.¹⁶⁹ States can prohibit the practice of child marriage by establishing a minimum age requirement for marriage. The Maputo Protocol mandates African States to establish legislation that establishes the minimum age for marriage as 18. (Article 6 of the Maputo Protocol).

Every individual who has reached the age of majority possesses the entitlement to enter into matrimony and establish a family.¹⁷⁰ Women has the entitlement to engage in matrimony or establish a family, although they cannot be obligated to undertake any of these actions. The implementation of these rights should not impede women's exercise of other fundamental rights, as occurs when national laws restrict women's political participation or property ownership based on their marital or familial status.¹⁷¹ As per international human rights laws, women have the right to exercise their autonomy in making decisions about when, if, and with whom they choose to be married (CEDAW, article 16).

Marriage can only be consensual, as any form of coercion or lack of verbal assent would constitute a violation of the woman's inherent human rights. While arranged marriages and other customary practices are not explicitly forbidden by international human rights legislation, they should not hamper a woman's legal capacity to exercise her right to make choices.¹⁷²

Women possess equal rights to their male spouses both during a marriage and during its dissolution, as stipulated by international human rights legislation (CEDAW, Articles 1, 2, 9, 11, and 16). Furthermore, the European Convention on Human Rights also has relevant information in article 5.¹⁷³ Consequently, it is imperative that both individuals in a marital union possess equitable legal entitlements, ensuring that a woman does not forfeit any essential rights as a result of marriage or divorce. For example, refer to the Maputo Protocol, specifically its articles. The numbers 6 and 7. The marital status of a woman is insufficient for determining

¹⁶⁹ The text refers to the General Recommendation No. 21 of the CEDAW Committee, which addresses the topic of equality in marriage and family relations. This recommendation was issued in 1994 and has several paragraphs. The source cited is a publication titled "Marrying too Young: End Child Marriage" by UNFPA in 2012, specifically pages 36-37.

¹⁷⁰ Tylor, E. B. (1889). On a method of investigating the development of institutions; applied to laws of marriage and descent. *The Journal of the Anthropological Institute of Great Britain and Ireland*, 18, 245-272.

¹⁷¹ CEDAW, article 16; International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966, entered into force on 3 January 1976), 993 UNTS 3 (ICESCR), article 10; Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953), 213 UNTS 221 (European Convention on Human Rights, as amended) (ECHR), articles 9 and 12.

¹⁷² The text refers to the General Recommendation No. 21 of the CEDAW Committee, which addresses the topic of equality in marriage and family relations. This document is identified as UN Doc. The document A/49/38, published in 1994, has several paragraphs. 15 & 16.

¹⁷³ The American Convention on Human Rights, which was adopted on November 21, 1969, and came into effect on July 18, 1978. It may be found in the United Nations Treaty Series (UNTS) volume 1141, page 123, article 17(4).

her entitlements and obligations, including her citizenship, parental rights, eligibility for public assistance, and the ability to possess or transfer property.¹⁷⁴

Similarly, the Inter-American Commission on Human Rights concluded that certain provisions of Guatemala's Civil Code are inconsistent with the American Convention on Human Rights. The rules in question conferred to the husband the power to act on behalf of the marital union, encompassing the exclusive prerogative to oversee marital assets. In addition, they granted the wife the explicit "right and responsibility" to take care of underage children and manage the family. Moreover, they specified that the employment of a married woman necessitated the approval of her spouse and should not undermine her duties as a mother and caretaker of the household. The text refers to the case of Maria Eugenia Morales de Sierra from Guatemala, as detailed in Report No. 4/01 by the Inter-American Commission on Human Rights on 19 January 2001.

In the Airey v. Ireland case, the European Court of Human Rights concluded that the applicant's entitlement to the protection of her family and personal life, as ensured by Article 8 of the European Convention on Human Rights, was infringed. This infringement arose because the applicant was unable to secure a legal separation from her spouse as a result of the exorbitant expenses associated with the legal proceedings. Moreover, this circumstance was determined to be in contradiction with Article 6, which ensures the entitlement to avail oneself of the judicial system. The Airey v. Ireland case, is part of the European Court of Human Rights (ECtHR) Series A no. 41, that was resolved on 6 February 1981.

The Inter-American Commission concluded that these provisions violate articles 1(1) (which mandates the duty to uphold rights without discrimination), 2 (which necessitates the adoption of measures to implement the Convention domestically), 11(2) (which underscores the significance of respecting private life), 17(4) (which safeguards the rights of the family) "in conjunction with the provisions of Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women," and 24 (which ensures equal protection) of the American Convention. The reference can be found in the specified paragraphs. The numerical values are 45 and 83.

Also, worth noting is that, the United Nations Human Rights Committee determined that the social security regulations of the Netherlands violated the ICCPR by imposing gender-specific conditions on women who were seeking unemployment benefits, while exempting men from

¹⁷⁴ See the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), article 16, and the Maputo Protocol, articles 6, 20, and 21.

such requirements.¹⁷⁵ The laws were determined to infringe upon women's entitlement to equality.

In the case of *Graciela Ato del Avellanal v. Peru*, the Human Rights Committee identified violations. Specifically, in the context of Peruvian law, only the husband, and not the wife, had the right to initiate legal proceedings to address property claims related to marriage against third parties. The Human Rights Committee thus, determined that such statute violates Article 14(1) of the ICCPR by denying women equal treatment in the courts.¹⁷⁶

3.6. Conclusion

We realised that from the analysis of the above chapter, which encompasses: the foundation of international environmental law, sources of international environmental law, an overview of international obligation undertaking by Guinea, and Global Women Rights Issues and laws applicable by judicial means. Thus, the researcher established a clear-cut dichotomy concerning an international legal agreement, which creates a plethora of legally binding instruments for promoting and protecting the rights of women and girls in Guinea Conakry.

¹⁷⁵ UN Human Rights Committee, *S.W.M. Broeks v. The Netherlands*, Communication No. 172/1984, Views of 9 April 1987; UN Human Rights Committee, *F.H. Zwaan-de Vries v. The Netherlands*, Communication No. 182/1984

¹⁷⁶ Also see *Graciela Ato del Avellanal v. Peru*, which was heard by the Human Rights Committee. This case is identified by Communication No. 202/1986 and the Committee's decision was issued on 28 October 1988.

CHAPTER FOUR

LEGAL FRAMEWORK AND HUMAN RIGHTS LEGISLATIONS

4.0. Introduction

Policies and laws designed to enhance the promotion and protection of human rights of Guineans started with the promulgation of the 1965 Criminal Code (or Penal Code).¹⁷⁷ This Penal code addressed offences with heightened severity, raising the maximum sentence to 10 years and allowing for banishment to a specific location along with the loss of all civil rights. A civil lawsuit was to be permitted for the purpose of seeking compensation for damages.¹⁷⁸ However, most of the relevant human rights laws relating to women and girls were enacted in the 2000s. This was due to concern stemming from country's prolonged era of military rule during which incidents of gender-based violence, female genital mutilation and early marriage went on unabated.

This section of the research will examine Human Rights Legislation in Guinea, legal and institutional framework, analysing the legal gaps of human rights laws. Finally, the researcher will explore problems associated with the enforcement of human right laws in Guinea. The investigation will be tailored to meet the central research question.

4.1. Examining Human Rights Legislations in Guinea

4.1.1. Legislations Dealing with Gender Based Violence

The Constitution of Guinea which is one of the principal legislations that guarantee fundamental human rights and freedom of all Guineans irrespective of their sex or gender was very plain on issues of equality of rights.¹⁷⁹

Article 18 states that all individuals are afforded equal treatment under the law. Both men and women possess equal rights. Individuals shall not be granted any privileges or subjected to any disadvantages based on their gender, birth, race, ethnicity, language, beliefs, or political, philosophical, or religious opinions (see also to article 8).

¹⁷⁷ Hazard, J. N. (1966). Guinea's Non-Capitalist Way. *Colum. J. Transnat'l L.*, 5, 231.

¹⁷⁸ Hensler, D. R., & Peterson, M. A. (1993). Understanding mass personal injury litigation: A socio-legal analysis. *Brook. L. Rev.*, 59, 961.

¹⁷⁹ Republic of Guinea Constitution of 2010

*Article 48: Every individual has the entitlement to freely cultivate and express their unique character. He possesses the entitlement to life as well as the preservation of his physical and moral well-being; no individual may be subjected to torture, to pain [peines] or to cruel, inhuman or degrading treatment.
The law determines the order manifestly illegal.*

*No one may take advantage [se prévaloir] of a received order or of an instruction to justify acts of torture, abuse [séVICES] or cruel, inhuman or degrading treatments committed in the exercise or on the occasion of the exercise of their functions.
No situation of exception or of emergency should [ne doit] justify the violations of human rights. (see also Article 6)*

4.1.2. Legislations Dealing Female Genital Mutilation

The original anti-FGM/C legislation passed by the Government of Guinea was the Penal Code of 1965.¹⁸⁰ The principal legislation that regulate FGM in Guinea is the Criminal Code of 2016.¹⁸¹ which explicitly forbids the practice of FGM, regardless of whether it is carried out using traditional or modern techniques. Article 259 of the criminal code outlines the specific punishments for engaging in, facilitating, assisting, or encouraging FGM in Guinea:

- *Engaging in female genital mutilation (FGM), whether through traditional or modern means, or advocating for or taking part in these activities in any capacity, is subject to imprisonment for a minimum of three months to two years or a fine ranging from 500,000 to 2,000,000 Guinean francs (about US\$55–2206), or both.*
- *If the crime was planned in advance or if the victim was attacked unexpectedly, the punishment is a jail sentence ranging from two to five years or a fine of 1,000,000 to 3,000,000 Guinean francs (equivalent to about US\$110–3307), or both.*

¹⁸⁰ Ibid1

¹⁸¹ Criminal Code 2016 (Law No. 2016/059/AN) <https://ihl-databases.icrc.org/en/national-practice/criminal-procedure-code-2016?activeTab=national-implementation-of-ihl?title=&typeOfPractice=18557&state=17928&language=&from=&to=&sort=country&order=&topic=>

- *The parents or any other individual with legal control or guardianship over the child who arranges or aids in female genital mutilation (FGM) will face the same penalty as those who carry out the procedure.*
- *The harshest punishment will be imposed when Female Genital Mutilation (FGM) is performed in a healthcare facility, whether public or private, and is carried out by a healthcare professional, specifically doctors, nurses, midwives, or technicians.*

The 2010 Constitution of Guinea was also very clear on its stances regarding issues of human rights violations as enshrined in articles 5, 6, 8 and 23.

Article 5 imposes a duty on the State to uphold and safeguard human dignity, whereas Article 6 safeguards bodily integrity.

Article 8 of the legislation declares that every individual is entitled to equal treatment under the legal system, while Article 23 assigns the State the duty to actively support the welfare of its inhabitants and safeguard the rights of both individuals and advocates of human rights.

Additionally, the Children's Code of 2008¹⁸², makes violence against children a criminal offence. It specifically deals with female genital mutilation (FGM) under Articles 405-410.

Guinea's Reproductive Health Law of July 2000¹⁸³ incorporates Article 6, which forbids all types of violence or sexual abuse. It also asserts that individuals possess the entitlement to be free from torture, as well as cruel, inhuman, or degrading treatment, both generally and specifically concerning their reproductive organs.

4.1.3. Legislation Dealing with Early Marriage

In addition to the constitution, there are several statutes, such as the criminal code, the Children's Code, and the Civil Code that all forbids early marriage¹⁸⁴ in Guinea.

¹⁸² Children's Code of 2008 (Law L/2008/011/AN) <https://ihl-databases.icrc.org/en/national-practice/childrens-code-guinea-l2008011an-act-august-19-2008?activeTab=national-implementation-of-ihl?title=&typeOfPractice=18557&state=17928&language=&from=&to=&sort=country&order=&topic=>

¹⁸³ Reproductive Health Law of July 2000 Law No L/2000/010/AN (Article 6 and 13)

¹⁸⁴ Ernoux, A. (2020). À propos des observations finales du Comité des droits économiques, sociaux et culturels concernant le cinquième rapport périodique de la Belgique 1. *Revue Trimestrielle des Droits de l'Homme*, (3), 757-759.

The Civil Code of Guinea, holds that the consent of the woman is necessary for marriage. This makes the consent of both spouses a prerequisite for the marriage to be legally recognized.¹⁸⁵ Moreover, the Civil Code provides implicit protection for children against forced or early marriage by articles 280 to 286. Therefore, Articles 280 to 286 of the Civil Code and are hereby presented for this purpose:

Article 280, individuals who are below the age of 18 for men and below the age of 17 for women are prohibited from getting married.

Nevertheless, the President of the Republic has the authority to make exceptions to age requirements for compelling reasons, as recommended by the Minister of Justice, through the issuance of a Decree. The request is directed to either the public prosecutor or the President of the Court, who then forwards it to the Prosecutor General. The marriage certificate includes an attached copy of the Decree.

Article 281, the act of becoming married necessitates the agreement of both individuals involved.

Article 282 stipulates that permission must be given willingly and without any form of corruption or impairment.

Article 283 states that the expression of intent to marry is made at the marriage ceremony and is officially recorded by the Civil Registrar.

Article 284, individuals who are under the age of 21 are prohibited from getting married unless they have the consent of their father. If the father is not present, they must seek the consent of the person who is responsible for leading the family.

This consent is granted either verbally during the marriage ceremony or beforehand through an official and specific document. If the age gap between the prospective spouses exceeds thirty years, the marriage can only be solemnised with the explicit permission of the Minister of the Interior.

Article 285 states that any civil registrar who performs a marriage without ensuring that the required consent of the father or head of the family has been obtained will be subject to legal action. They may be fined between 500 and 5,000 Guinean francs (equivalent to approximately 0.09 to 0.90 US\$) and imprisoned for a period of 6 months to 1 year, or receive one of these two penalties.

¹⁸⁵ Sarich, J., Olivier, M., & Bales, K. (2016). Forced marriage, slavery, and plural legal systems: an African example. *Hum. Rts. Q.*, 38, 450.

Article 286, making promises of marriage or engagement does not create a legal obligation to get married...

Article 268 of the Guinean Children's Code of 2008, individuals who are under the age of 18, regardless of their gender, are prohibited from getting married.

It is also important to underscore that, forced marriage is deemed a punishable offence according to the Penal Code of the Republic of Guinea, which stipulates that such conduct is illegal. The Penal Code stipulates that

“Anyone who engage in or attempt to engage in sexual activity with a minor under the age of thirteen during a customary marriage may face imprisonment for a period ranging from two to five years”¹⁸⁶.

4.2. Legal Framework

After attaining the height of independence, Guinea enacted several legislations used to enhance fundamental human rights. These laws were codified into the Criminal Code (or Penal Code) of 1965. These national and international legislations and agreements become the legal framework for protecting and safeguarding of fundamental human rights and freedom of women in Guinea.

However, the real impetus to bring out a well-developed legal framework came after the United Nations Convention on the Elimination of all Forms of Discrimination against Women of 1979. As a result of the influence of this declaration, several legislations like: Constitution of Guinea 2010, Criminal Code of 2016; The Children Code of 2008 and The Reproductive Health Law 2000, were amongst numerous legislations enacted to enforce and implements international human rights laws pertaining to the protection of the women’s rights. In addition to the above legal provisions, Guinea is a signatory and a party to various regional and international treaties and agreements. Some of them include but not limited to the following:

- African Charter on the Human and People’s Rights (ACHPR)
- African Charter on the Rights and Welfare of the Child (CHRWC)
- African Youth Charter
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)
- Convention on the Right of the Child (CRC)

¹⁸⁶ The Republic of Guinea Criminal Code (or Penal Code) of 2016

- International Covenant on Civil and Political Rights (ICPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Protocol to the African Charter on the Human and People's Rights on the Right of women in Africa (Maputo Protocol)

All these laws constitute the building blocks for establishing the legal framework for the safeguarding and protection of the women's right. However, despite this seemingly impressive range of human rights laws, the nature of legislations enacted so far has not fully provided the platform for the Guinean women to enjoy their fundamental rights and freedoms.¹⁸⁷

4.3. Institutional Framework

The legal framework and the institutional framework are interdependent and must collaborate harmoniously to effectively protect the human rights of women.¹⁸⁸ The implementation of government policies and legislation for safeguarding these rights would be difficult without a strong institutional framework¹⁸⁹.

Guinea formally accepted and implemented the primary international and regional agreements concerning women's rights at a legal level.¹⁹⁰ The country possesses a comprehensive set of laws, such as the Basic Law and Penal Code, that ensure the fundamental principle of gender equality. Nevertheless, this framework has hindered women from fully exercising their rights due to the insufficient enforcement of the laws and the presence of legal loopholes in specific areas.¹⁹¹

Since 2009, the Government of Guinea, under the Ministry of Social Affairs, the Advancement of Women and Children, has made significant efforts to enhance its institutional framework regarding gender-based violence, FGM and early marriage. These initiatives encompass the implementation of a National Plan on United Nations Security Council Resolutions 1325 and its associated resolutions (2009), a National Strategy to Counter Gender-Based Violence (GBV) since 2010, and a National Gender Policy (2011). However, the successful execution of these gender framework

¹⁸⁷ An-Na'im, A. A. (Ed.). (2013). *Human Rights Under African Constitutions: Realizing the Promise for Ourselves*. University of Pennsylvania Press.

¹⁸⁸ Stein, M. A., & Stein, P. J. (2006). Beyond disability civil rights. *Hastings LJ*, 58, 1203.

¹⁸⁹ Muchlinski, P. (2012). Implementing the new UN corporate human rights framework: Implications for corporate law, governance, and regulation. *Business Ethics Quarterly*, 22(1), 145-177.

¹⁹⁰ Donnelly, J. (1986). International human rights: a regime analysis. *International Organization*, 40(3), 599-642.

¹⁹¹ Merry, S. E. (2003). Constructing a global law-violence against women and the human rights system. *Law & Social Inquiry*, 28(4), 941-977.

documents is hesitant because of the absence of institutional processes and practical operational tools.

The Guinean Government also made substantial progress in developing standards and institutional framework to tackle FGM/C. Various legislative measures and regulations have been enacted to prevent and punish FGM/E.¹⁹² In 2011, the Office for protection of Gender, Children and Morals (OPROGEM) underwent a process of reorganisation and was established in all eight regions of the country, in addition to various police stations. In 2012, the Government developed a National Strategic Plan to end Female Genital Mutilation. This plan was effective from 2012 to 2016. This plan incorporated a detailed strategy for execution in the year 2013.¹⁹³

4.4. Analysis of the Legal Gaps of Human Rights Laws in Guinea

4.4.1. Penal Code of 2016

The Criminal Code 2016 does not explicitly mandate individuals to disclose their knowledge of FGM, but it does provide an autonomous obligation to report instances of FGM to the appropriate public authorities.

In Guinea, the Civil Code only acknowledges civil marriage, thus it is mandatory to have a civil ceremony before any religious or traditional marriage ceremony. Nevertheless, this stipulation is infrequently adhered to, resulting in scenarios where several weddings are neither acknowledged by the government or legally binding in a court of law.³

4.4.2. Constitution of 2010

The 2010 Constitution of Guinea does not explicitly cover issues related to violence against women and girls, harmful practices, or female genital mutilation (FGM). Even though there are certain sections that compels the State to uphold and safeguard human dignity, as well as physical well-being. These legislations seeks to establish the principle of legal equality for all individuals, and assigns the State the duty to actively support the welfare of its inhabitants and protect the rights of both individuals and advocates of human rights.

¹⁹² Mbaku, J. M. (2021). International human rights law and the tyranny of harmful customary and traditional practices on women in Africa. *Cal. W. Int'l LJ*, 52, 1.

¹⁹³ Ahmed, W., Mochache, V., Stein, K., Ndavi, P., Esho, T., Balde, M. D., ... & Pallitto, C. (2021). A hybrid, effectiveness-implementation research study protocol targeting antenatal care providers to provide female genital mutilation prevention and care services in Guinea, Kenya and Somalia. *BMC Health Services Research*, 21(1), 1-10.

4.5. Problems with Human Right Laws Enforcement in Guinea

4.5.1. Political Instability

Since achieving independence from France in 1958, Guinea has been marred by series of oppressive regimes¹⁹⁴. From Ahmed Sékou Touré to Lansana Conté, and then to Captain Moussa Dadis Camara, Alpha Conde and recently Col. Mamadou Doumbouya all of these leaders have utilised militias and security forces to quash dissenting opinions and boycott¹⁹⁵.

This had made it difficult for Guineans to enjoy fundamental human rights and sustainable democratic governance¹⁹⁶. Little wonder why Guinea has been lagging behind in its international human rights obligation such as the CEDAW and other international covenants that relate to the protection of the rights of women.

4.5.2. Corruption

Corruption has a direct and indirect impact on human rights in Guinea.¹⁹⁷ Corruption within the court system undermines the autonomy of the judiciary and infringes upon the right to a just trial. The Anti-Corruption Agency (ANLC) in Guinea is an independent organisation that was created through a presidential decree in 2004.

The ANLC, which operates under the direct authority of the President, is presently the primary state institution dedicated exclusively to combating corruption.¹⁹⁸ Nevertheless, it has proven to be mainly ineffectual in fulfilling its purpose, as it has failed to get any successful convictions.

4.5.3. Cultural and Religious Sensitivity

¹⁹⁴ Schmidt, E. (2005). Top down or bottom up? Nationalist mobilization reconsidered, with special reference to Guinea (French West Africa). *The American Historical Review*, 110(4), 975-1014.

¹⁹⁵ Arieff, A., & Cook, N. (2010). *Guinea: Background and Relations with the United States*. Washington, DC: Congressional Research Service.

¹⁹⁶ Gellar, S., Groelsema, B., Kante, M., & Reinstsma, M. (1994). Democratic Governance in Guinea: An Assessment. *Associates in Rural Development (ARD): Burlington, VT*.

¹⁹⁷ Peters, A. (2018). Corruption as a violation of international human rights. *European Journal of International Law*, 29(4), 1251-1287.

¹⁹⁸ Badet, G., Damiba, L., Engueléguélé, S. B., Gaima, E., Iwuamadi, C. K., Ndiaye, S., & Williams, S. (2016). Effectiveness of anti-corruption agencies in West Africa. *Open Society Foundations, New York*.

Cultural norms and religious beliefs continue to impact women and girls willingness to stand up and speak out against women rights violations including gender-based violence, early or forced marriage and female genital mutilation occurring in Conakry and other parts of Guinea.

Forced marriage is prevalent and pervasive in Guinea. Forced marriage primarily affects underage females residing in rural and conservative regions. Several Guinean ethnic groups, especially those with a robust clan system, adhere to stringent regulations concerning marriage following the demise of a spouse. These regulations entail the obligatory union between the brother-in-law and the sister of a deceased wife, as well as the compulsory marriage between the sister-in-law and the brother of a deceased husband. Having cultural sensitivity is essential when dealing with this highly personal and potentially stigmatising issue in Guinea.

4.6. Conclusion

The protection of fundamental human rights and freedoms for women and girls can only be achieved when proper legislations are enacted and enforced. However, enforcement of legislations depends upon the legal and institutional framework that exists in a country. The research concludes that the legal and institutional framework in Guinea are fragile and inadequate in terms of administering and implementing human rights laws. In the course of the study, several legal loopholes were discovered during the investigation of existing human right legislations. These legal loopholes depict the central idea of inefficient and ineffective human right laws in the country. Therefore, there is uttermost need to review such laws in the country, thereby aiding its effective and efficient enforcement.

CHAPTER FIVE

FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

5.0. Introduction

This section of the work is the conclusive part. It gives a broader analysis of the interconnection of the chapters, which gears towards the attainment of the aim of the research. It also encompasses a brief fact regarding the findings and concrete recommendations, which bears on the researcher's opinion. A summarized conclusion of the entire study is also given.

5.1. Findings

- 5.1.1. The researcher discovers that despite the country's ratification of various conventions that ensure the right to equality, which are considered to have more authority than domestic law, there are numerous discriminatory provisions in the general law and practices that perpetuate discrimination against women in Guinea.¹⁹⁹
- 5.1.2. The researcher finds that while the Constitution guarantees equality for all people, it lacks a specific definition of discrimination against women as outlined in article 1 of the CEDAW, which forbids both direct and indirect forms of discrimination.
- 5.1.3. The researcher additionally discovers that the civil code has elements within family law that exhibit bias against women, and these legal loopholes further strengthen discriminatory social customs.
- 5.1.4. The researcher finds that, although these practices are prohibited by law, they are widely accepted in society and not punished. These practices include female genital mutilation, polygamy, forced marriage (including levirate and sororate), as well as discrimination in child custody and inheritance.
- 5.1.5. The researcher observes that the Government employs social practices and conventions as a means to rationalise the lack of enforcement of the civil law.
- 5.1.6. Despite the implementation of the 1998 and 2016 Penal Codes, the researcher observes a significant occurrence of violence directed towards women and girls, encompassing domestic violence, physical assault, rejection, underage and coerced marriages, as well as mistreatment of widows and menopausal women. It is worth noting that there is limited or no evidence of the government taking legal action against these offences.

¹⁹⁹ Olukoshi, A. (2001). West Africa's political economy in the next millennium: retrospect and prospect.

- 5.1.7. The significant incidence of illiteracy among women and girls, along with the limited educational opportunities for females, particularly in rural regions, are key factors that contribute to the marginalisation and deprivation of women.
- 5.1.8. The Government has made some progress in addressing the fundamental health needs of the population. However, the researcher found that maternal and infant mortality rates are still high, female genital mutilation is still practiced and prevalent, women have limited access to healthcare facilities, and there is a lack of access to family-planning services in Guinea. These factors hinder women from enjoying their sexual reproductive health, which is protected by international human rights and the Reproductive Health Law of 2000.²⁰⁰

5.2. Recommendations

- 5.2.1. The researcher proposes that the Guinean Government revise the Constitution to incorporate a definition of gender discrimination based on article 1 of the CEDAW. This provision requires the State party to address the conflict between constitutional guarantees and discriminatory civil laws. This should be done by implementing a comprehensive action plan for legal reform and establishing a mechanism that allows women to challenge discrimination and effectively protect their constitutional rights in court.
- 5.2.2. The Researcher urges the Government to guarantee the complete enforcement of laws and policies that promote legal equality and aim to eradicate discrimination against women. Additionally, the Researcher recommends the establishment of a monitoring system to ensure the effective implementation of these laws.²⁰¹
- 5.2.3. The Government should ensure that individuals entrusted with the task of enforcing laws and policies related to the welfare of women and girls at all levels possess a comprehensive understanding of their provisions. Wide dissemination of these laws and policies can be accomplished through public education and legal literacy efforts.
- 5.2.4. The Researcher suggests that the Government create a strategic plan, which involves a public-awareness initiative aimed at both women and men, with the assistance of civil society and social partners, in order to bridge the divide between legal regulations and societal norms and practices, particularly in relation to family law.

²⁰⁰ Packer, C. A. (2002). *Using Human Rights to Change Tradition: traditional practices harmful to women's reproductive health in sub-Saharan Africa* (Vol. 13). Intersentia nv.

²⁰¹ De Schutter, O. (2006). Three models of equality and European anti-discrimination law. *N. Ir. Legal Q.*, 57, 1.

- 5.2.5.** The Government should enhance its endeavours to enhance the literacy rate among girls and women by expanding the educational opportunities for girls and young women at all levels, thus reducing the rate of school dropout among females. The study suggests that the Government implement further targeted initiatives in the field of education, such as providing incentives for parents to enrol their daughters in school and hiring more female teachers.
- 5.2.6.** The Researcher suggests that the Government should prioritise its policies and allocate resources towards enhancing the condition of women's health, specifically in relation to maternal and newborn mortality. The government should enhance women's accessibility to healthcare and family planning services.
- 5.2.7.** The Government should enhance its endeavours to advance women into positions of authority by arranging specialised training courses for women and by carrying out awareness campaigns on the significance of women's involvement in decision-making at all levels.
- 5.2.8.** The researcher suggests that the Government should prioritise addressing violence against women and acknowledge that such violence, including domestic abuse, is a breach of women's human rights as defined by international human rights standards.
- 5.2.9.** It is imperative for the Government to prioritise the needs of rural women and ensure that they are included in policies and initiatives across all sectors. Additionally, they should be actively involved in decision-making processes and have unrestricted access to healthcare services and financial facilities. The researcher suggests the eradication of prejudice pertaining to the possession and succession of land.

5.3. Conclusion

At the introduction of this work, the researcher established the legal obligation of Guinea under International Human Right Law with a precise cut analysis of its enforcement mechanism in protecting the women rights. This work aims to investigate the legal gaps that exist within the Guinea's legal and regulatory framework on women's rights. The research analysed three fundamental human rights law principles that form the basis in meeting the aim, scope, and research questions.

The first idea analysed in this work is the conceptualisation of women right. This entails the legal definitions of the concepts of feminism and feminist theories. Furthermore, the nexus between human rights and women rights and principles of international human rights laws were explored.

The second field analysed international law jurisprudence on Human Right law. Enforcement of Human Rights by judicial means, which captured the unique role of the court prosecuting and handing out sanctions to women rights violation such as female genital mutilation, early marriage and gender-based violence against women and girls, was vividly examined. Case studies by way of judicial precedents were not available for Guinea therefore the researcher utilized case studies from other countries within the framework of international human rights laws.²⁰²

Furthermore, the legal and institutional framework of women rights in Guinea was also explored. The investigation entails analysing the legal gaps within the 1965, 1998, and 2016 Penal Codes, the Reproductive Health Law of 2000 and Children's Code of 2008. This analysis helps to expose the weakness of these acts in terms of enforcement and implementation. In addition, challenges that serve as an impetus in implementing women rights law in the country were also analysed.

It can be concluded that in enacting human rights legislations in Guinea, the prevailing condition must be taken into cognisance. Copying legislations from other countries seem unlikely to produce a fruitful result. The researcher learnt that prejudices and stereotypical attitudes towards women's roles in the family and society persist due to the belief in male superiority and the resulting subordination of women. Additionally, discriminatory customs and traditional practices, along with a high illiteracy rate among women, contribute to this issue. These challenges pose significant barriers to the implementation of International human rights conventions aimed at ensuring the rights of women and girls in Guinea.

²⁰² Martin, F. F., Schnably, S. J., Wilson, R., Simon, J., & Tushnet, M. (2006). *International human rights and humanitarian law: treaties, cases, and analysis*. Cambridge University Press.

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