

Systematic Gender Violence and the Rule of Law: Aboriginal Communities in Australia and Post-War Liberia

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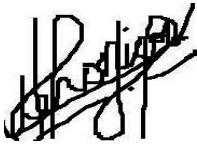
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ABSTRACT

The gender-agenda is borderless. Arguably, legal justice for Indigenous girls and women survivors of violence is unfair, inequitable, and sometimes arbitrary. Systematic violence against girls and women pervades cultures and societies; operates at three main levels: institution and state, structural and cultural, and community and individual; and manifests in myriad shapes, forms and categories. Systematic violence in this research comprises historical, colonial and contemporary aspects of violence and its impact on Indigenous girls and women. Unlike comparative studies, this research is founded on heuristic arguments derived from validating the formation, establishment and continuity of the voices of Indigenous peoples in Liberia and Australia. While many studies isolate ‘gender-based violence’ and the ‘rule of law’ in separate contexts, none has explored the extent to which the Western concept of the rule of law impacts systematic violence against Indigenous girls and women in Australia and post-war Liberia.

The research assesses the efficacy of the ‘rule of law’ in dispensing justice to Indigenous girls and women who have suffered systematic gender-based violence. The scope of the research demands a comprehensive and complex systematic empirical approach that draws on the principles of phenomenology, community-based participatory research, and feminist and Indigenous methods. The study adopts an interdisciplinary mixed-methods approach informed by theories of decolonization, feminist jurisprudence, intersectionality, critical legal/race studies, and social determinants of health. Data is drawn from case law, secondary data, empirical evidence, textual/content analysis, electronic mailing and informal participant observation. Over a period of two years, a survey of 231 social service providers working with Indigenous girls and women; in-depth interviews with 29 Indigenous Women Advocates; and 22 informal email exchanges with male colleagues were conducted in both Australia and Liberia. Statistical analyses were carried out on records of 127 708 convicts to Australia; 14 996 former slave returnees to Liberia; 2701 sexual and gender-based violence cases reported to the Ministry of Gender, Children and Social Protection in Liberia; seven case files from the Sexual and Gender-based Crimes Unit in Liberia; and 1200 interview entries from the Longitudinal Study of Indigenous Children in Australia. This analysis of historical documents, jurisprudence and case studies triangulates a philosophical inquiry intended to migrate issues of violence against Indigenous girls and women from the margins of complex socio-legal structures towards the core of Western-centric perspectives, such as the rule of law. Situated between dominant academic conventions and resistance, the research provokes readers to consider ontological, epistemological and ethical arguments regarding access to justice outcomes for Indigenous girls and women.

Contrary to the research hypothesis and despite socioeconomic differences between Australia and Liberia, findings show that: although the principle of the rule of law is an emancipatory tool for justice and redress generally, it can also be an apparatus for persistent systematic violence against Indigenous girls and women. Furthermore, the intersection of colonial history, race, gender, class and social status exacerbates the ongoing perpetration of institutional/state, structural/cultural and interpersonal/community violence against Indigenous girls and women. In conclusion, the research recommends adopting a holistic approach to educating girls and women and encouraging boys and men to participate equally in the gender justice agenda, to ensure justice for Indigenous girls and women. The research also suggests incorporating diverse and comprehensive conceptual and methodological frameworks into further research. Finally, throughout the work, this dissertation attempts to give agency to Indigenous ways of being, knowing and doing justice.

Keywords: Aboriginal, Indigenous, Australia, Liberia, rule of law, gender justice, customary law, systematic violence, Indigenous women advocate

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ABBREVIATIONS

ABS	Australian Bureau of Statistics
ACRWC	African Charter on the Rights and Welfare of the Child
ACS	American Colonization Society
AASC	African American Settler-Colonists
AFELL	Association of Female Lawyers in Liberia
AHRC	Australian Human Rights Commission
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islanders Studies
AIC	Australian Institute of Criminology
AIWH	Australian Institute of Health and Welfare
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination
CRC	Convention on the Rights of the Child
C107	Indigenous and Tribal Populations Conventions, 1957
C169	Indigenous and Tribal Populations Conventions, 1989
DHS	Demographic Health Survey
DSS	Department of Social Services
FaHCSIA	Families, Housing, Community Services and Indigenous Affairs
HCA	High Court of Australia
ICC	International Criminal Court
ICJ	International Court of Justice
ICL	Indigenous Customary Laws
INCHR	Independent National Commission on Human Rights
IWAs	Indigenous Women Advocates
LISGIS	Liberia Institute of Statistics and Geo-Information Services
LNP	Liberia National Police
LSIC	Longitudinal Study of Indigenous Children
MoGC&SP	Ministry of Gender, Children and Social Protection
MoH	Ministry of Health
NTI	Northern Territory Intervention
OAU	Organisation of African Unity
RCIADIC	Royal Commission into Aboriginal Death in Custody
RCIRCSA	Royal Commission into Institutional Responses to Child Sexual Abuse
RoL	Rule of Law
SGBV	Sexual and Gender-based Violence
SGBV CU	Sexual and Gender-based Violence Crimes Unit
TAST	Trans-Atlantic Slave Trade
TIP	Trafficking in Persons
TRC	Truth and Reconciliation Commission of Liberia
UDHR	Universal Declaration of Human Rights
UNDP	United Nations High Development Program
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFPA	United Nations Populations Fund
UNHCHR	United Nations High Commission for Human Rights
UNICEF	United Nations Children's Fund
UNMIL	United Nations Mission in Liberia
VAIG/C&W	Violence Against Indigenous Girls/Children and Women
SVAW	Systematic Violence Against Women
WACPS	Women and Children Protection Section

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DEDICATION

To a very strong woman (my mother), a very special man (my husband) and our future (our son); and all Indigenous girls and women in Liberia and Australia...your strength, quiet patience, teachings and resilience produced this work.

CHAPTER 1: INTRODUCTION

I'm a mother of 11. My first daughter I born her in 1975, June 5. I am not educated but I remember. My first daughter got pregnant for one boy. At the time, I was selling small small thing. That boy looked at the girl and said, "ohn that belly you have, it is not for me". So, my husband looked at the situation and said, "will it be OK to take someone who has no money to the police station who might end up being jailed? What would I get out of it? It will be all right. Let me take care of my daughter". So, we took care of our daughter until she delivered. We also helped to take care of our grandchild until she walked. After the baby was one year six months, my daughter took the baby back to the same person who said he's not the father. That's the man she's with right now. [Martha, Liberia]

I am an Indigenous woman from Wakka Wakka Wulli Wulli. I suppose as a young person I saw a lot of violence, not in my own family so much, but you in the broader community there was just the violence of people's lives because of drinking, depression and trauma. In Queensland, where I grew up, even though I was sexually abused at school by white people. It happened when I went away to a boarding school. Of course, you don't tell your family anything. You just get over it and get on with your life. I went through this court case and a whole negotiation with the Catholic Church in the 1990s, where I had to put a Catholic priest in jail for sexually abusing me as a child. [Alison, Australia]

1.0 Background

The persistence of violence against Indigenous girls and women in Australia and Liberia reflects the breakdown of the rule of law. This dissertation argues that the relatively high prevalence of systematic violence against Indigenous girls and women is a result of institutions established by the state through law and policies; or of stereotypes and beliefs held by dominant (white) males in a social system that values patriarchy and misogyny handed down through cultural constructs that otherwise determine societal structure; or of direct and physical infliction of interpersonal violence at home, in the workplace and in the community. The root of systematic violence is inextricably tied to the colonial history of nation-building founded in the imposition of settlers' law, emblemised in the creation of a constitution that denied recognition of Indigenous Peoples as the original custodians of the land prior to the arrival of the settler-colonists in Australia and Liberia. Generally, the constitution of any nation, in tandem with specific legislation, and public policies, is created with a declared intent to guarantee legal justice and equal protection to all citizens. However, findings from this research project suggest that several factors, including the existence of discriminatory law and policy, lack of access to courts, poor health, high illiteracy rate, corruption, and extremely low participation in political, judicial, public and community life, disproportionately deny Indigenous girls and women equal protection under the law. The critical gap in access to justice and services between Indigenous and non-Indigenous populations shown in this research clearly indicates a failure in the implementation of the rule of law. This failure of the law to adequately address systematic violence leads to questions about whether the concept of the 'rule of law' is an effective mechanism for restoring justice to Indigenous girls and women survivors of such violence.

Although this research is specifically focused on systematic violence against Indigenous women in Australia and Liberia, it is worth pausing to accentuate the complex, widespread and manifold impacts of the fatal and indelible occurrences of violence against women, as disclosed by *Martha* and *Alison* – two Indigenous Women Advocate interviewees quoted above. Consider the following three instances. In an incident dubbed the *Delhi Gang Rape*,¹ a 23-year-old young female, whilst using local public transportation, was fatally beaten and raped on 16 December 2012 in Munirka, India by five imposters claiming to be local public transport servicemen. Fortunately, the deceased young woman of the Delhi Gang Rape received some justice when the four of the accusers were convicted and sentenced to death on 13 September 2013.² In the early hours of 23 March 2013, 14-year-old South African Thandeka Madonsela met her untimely death after being raped, disemboweled, and murdered by two boys, aged 16 and 17 years.³ The last heard of Madonsela's accusers is that they were released into the custody of their parents after their initial arrest and appearance in court.⁴ On 4 April 2013, in Nova Scotia, Canada, 17-year old Rehtaeh Parsons took her life 17 months after photos of her were circulated on the Internet by the four boys who allegedly gang-raped her. In Parsons's case, not only did the justice system⁵ fail to arrest or charge anyone until four months after the incident occurred,⁶ but also there was no jail time for the perpetrators so that '[i]n the end, she did not receive the support and assistance a young person in crisis required'.⁷ These stories of shocking violence evidence the pervasive nature of violence against women as a scourge of global proportions. As narrated by *Martha* and *Alison* above, violence against girls and women comes in various forms and is not confined to Indigenous women. Diverse occurrences of violence against women are predicated on, *inter alia*, the intersection of gender, race, class, social status and identity – a concept described as *intersectionality*⁸ in sociological studies or the public health principle *social determinants of health*.⁹

¹ Maitreyee, 'Delhi Gangrape Redux? This Time a Minor Raped inside a Bus' *One India* (Online), 15 April 2013 <Read more at: <http://news.oneindia.in/2013/04/15/delhi-minor-raped-inside-a-bus-driver-held-1193979.html>>.

² BBC News, 'Death Penalties for Delhi Gang Rape' *BBC News* (London, UK), 13 September 2013 <<http://www.bbc.com/news/world-asia-india-24078339>>.

³ Tankiso Makhetha, 'Teens Accused of Rape, Murder of Girl, 14' *IOL News* (Pretoria), 27 March 2013 <http://www.iol.co.za/news/crime-courts/teens-accused-of-rape-murder-of-girl-14-1.1492436#.UWw7i7_UO5o>.

⁴ Tankiso Makhetha, 'Teens Accused of Girl's Rape, Murder Released | IOL News' *IOL News* (Pretoria, Johannesburg), 28 March 2013 <<https://www.iol.co.za/news/crime-courts/teens-accused-of-girls-rape-murder-released-1493161>>.

⁵ CBC News, 'Rehtaeh Parsons Case to Get Independent Review' *Canadian Broadcasting Corporation* (Halifax, NS), 15 April 2013 <<http://www.cbc.ca/news/canada/nova-scotia/story/2013/04/15/ns-rehtaeh-bully-independent-review.html>>.

⁶ CBC News, 'Rehtaeh Parsons Suspects in Court to Face Child Porn Charges' *Canadian Broadcasting Corporation* (Halifax, NS), 15 August 2013 <<http://www.cbc.ca/news/canada/nova-scotia/story/2013/08/15/ns-rehtaeh-parsons-accused-appearance.html>>.

⁷ Murray D Segal, 'Independent Review of the Police and Prosecution Response to the Rehtaeh Parsons Case' (Ministry of Justice and Attorney General Office, 8 October 2015) 157, iii <<https://novascotia.ca/segalreport/Parsons-Independent-Review.pdf>>.

⁸ Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Colour' (1991) 43(6) *Stanford Law Review* 1241.)

⁹ Richard G Wilkinson and Michael G Marmot (Eds.) *The Solid Facts* (World Health Organization, Regional Office for Europe, 2nd Ed., 2003) 7.

Whilst intersectionality and social determinants of health are two separate concepts derived from different disciplines, this study attempts to bridge conceptual gaps in correspondence with the ‘multiplier effect’¹⁰ of violence against Indigenous girls and women.¹¹ Through interdisciplinary lenses, the multiplier effect of violence argues that many factors, such as the colonial history of nation-building, discriminatory laws, patriarchy, and dominant Western¹² hegemony, act together to exacerbate the incidence of systematic violence. Therefore, without acknowledging and thoroughly examining these factors, any other explanation of the current state of affairs regarding systematic violence is incomplete. In *Silencing the Past*, Michel-Rolph Trouillot highlights the many ways uneven distribution of power between competing groups and individuals results in unequal access to the production of history.¹³ For Trouillot, ‘[h]istory is the fruit of power, but power itself is never so transparent that its analysis becomes superfluous. The ultimate mark of power may be its invisibility; the ultimate challenge, the exposition of its roots’.¹⁴ Thus, a brief overview of the colonial history, initiated by the subjugation of Indigenous Peoples in Australia and Liberia is in order.

In Australia, the historical trajectory of the colonising project, which began with the arrival in the 1700s of convicts, lends itself to violent affairs of massacre,¹⁵ land dispossession,¹⁶ denial of Aboriginal citizenship,¹⁷ forced adoption,¹⁸ disenfranchisement,¹⁹ stolen wages,²⁰ sexual abuse,²¹ deaths in custody,²² unlawful state interventions,²³ and outright exclusion of Indigenous

¹⁰ This research uses the concept of the ‘multiplier effect’ to underpin the cumulative effect of several socio-political, physical, health, and economic factors acting simultaneously to exacerbate the effect of violence against Indigenous girls and women in Liberia and Australia.

¹¹ Contrary to conventions, in this dissertation, ‘girls’ and ‘children’ are put before ‘women’ and ‘boys’ and ‘children’ precede ‘men’ as a sign of prioritising younger generation over the older ones.

¹² In this research, the term *Western European* including English culture. Even though Australia is in the Southern end of the global hemisphere, it is perceived as Western because of its colonial history.

¹³ Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Beacon Press, 2001) xix.

¹⁴ *Ibid.*

¹⁵ John Summons, *Massacre at Myall Creek* (Cambridge University Press, 1993); La Trobe University, ‘The Myall Creek Massacre with Richard Broome’ <<http://www.latrobe.edu.au/news/articles/2012/podcasts/podcasts/the-myall-creek-massacre/transcript>>; Mark Tobin and Mark Colvin, *Campaign for Recognition of Massacre Victims* (8 November 2010) PM with Mark Covin <<http://www.abc.net.au/pm/content/2010/s3060567.htm?source=rss>>.

¹⁶ *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

¹⁷ Bain Attwood, *The 1967 Referendum: Race, Power and the Australian Constitution* (Aboriginal Studies Press, 2nd Ed, 2007); Faith Bandler, *Turning the Tide: A Personal History of the Federal Council for the Advancement of Aborigines and Torres Strait Islanders* (Aboriginal Studies Press, 1989); Michael Mansell, ‘Law Reform and the Road to Independence’ in *Proceedings of a conference held 23-25 June 1992* (Australian Institute of Criminology, 1993) 9; Jonathan Pearlman and Joel Gibson, ‘When I Was Fauna: Citizen’s Rallying Call’ *Sydney Morning Herald* (Sydney, NSW), 23 May 2007 <<http://www.smh.com.au/news/national/when-i-was-fauna-citizens-rallying-call/2007/05/22/1179601412706.html>>.

¹⁸ *Cubillo and Gunner v The Commonwealth* [2001] FCA 1213.

¹⁹ Kevin Gilbert, *Aboriginal Sovereignty: Justice, the Law and Land* (Burrumbunga Books, 3rd Ed. 1993); Sue Taffe, *Black and White Together FCAATSI: The Federal Council for the Advancement of Aborigines and Torres Strait Islanders, 1958-1973* (University of Queensland Press, 2005); Andrew Schaap, Gary Foley and Edwina Howell (Eds.) *The Aboriginal Tent Embassy: Sovereignty, Black Power, Land Rights and the State* (Routledge, 2013); Alycia Muir, *Why All the Secrecy? A History of the Aboriginal Activism of Redfern* (Bachelor Honours of Arts (Honours) Thesis, The University of Newcastle, 2005).

²⁰ Government of Queensland, *History of Stolen Wages and Savings in Queensland - Aboriginal and Torres Strait Islander Affairs*, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (29 April 2011) Aboriginal and Torres Strait Islander Affairs, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (Queensland Government) <<http://www.datsima.qld.gov.au/atsis/aboriginal-torres-strait-islander-peoples/claims-and-entitlements/history-of-stolen-wages-and-savings-in-queensland>>.

²¹ Chris Cunneen, ‘Judicial Racism’ in *Proceedings of a conference held 23-25 June 1992* (Australian Institute of Criminology, 1993) 1.

Peoples from equal protection provided in the Australian Constitution.²⁴ Indigenous Peoples are the original custodians of land in Australia, their cultures and way of life has survived for at least 60 000 years.²⁵ Conflicts with settlers and destruction caused by introduced diseases and alcohol reduced the Aboriginal population from 300 000 to 60 000 in the first hundred years of the convicts' arrival.²⁶ The purpose of transporting convicts to Australia was not only to punish and reform criminal offenders. James Edward Gillespie suggests that at the onset of English colonisation, statesmen, reformers and businessmen also sought to utilise new lands for solving troublesome social problems whilst simultaneously adding material wealth to the motherland.²⁷ Convict transportation to Australia was meant not only to reform and punish criminal offenders but also to yield 'a profitable service to the commonwealth'.²⁸ In solving the 'convict problem', judges imposed sentences of transportation for terms of seven years, 14 years or life, thereby 'shovelling out' English paupers and vagrants to Australia.²⁹

With time, as colonial attitudes toughened, the expansion of settlement saw deadly clashes against the First Peoples at the frontier, which threatened to wipe out Indigenous Peoples.³⁰ For example, during the Black War in Tasmania, the effects of white settlement nearly brought Indigenous Peoples to the verge of extinction.³¹ A moderate estimate puts violent deaths of Aboriginal Queenslanders at 10 000 between 1824 and 1908.³² For those Aborigines who managed to survive frontier battles, their traditional ways of knowing and being either completely destroyed or intentionally suppressed. The reduction in the Aboriginal population and prolonged human rights abuses, combined with the quest for sovereignty, self-determination and recognition³³ create an ever-present need for (customary) law reform to achieve gender justice and equality under the law,³⁴ even as Aboriginal children became more vulnerable to laws and policies that forcibly separated them from their mothers. Although race

²² Patrick L Dodson, 'Royal Commission into Aboriginal Deaths in Custody: National Report Volumes 1-4' (Government Report, Royal Commission into Aboriginal Deaths in Custody, 15 April 1991).

²³ Northern Territory. Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Rex Wild and Pat Anderson, *Ampe Akelyernemane Meke Mekarle Little Children Are Sacred* (Department of the Chief Minister, Office of Indigenous Policy, 2007).

²⁴ RECOGNISE, *Constitutional Recognition of Indigenous Australians - RECOGNISE* (2013) RECOGNISE <<http://www.recognise.org.au/>>; Mick Dodson, 'Constitutional Recognition of Indigenous Australians' (2012) 57 *Papers on Parliament* 11.

²⁵ The Uluru Peoples, 'Uluru Statement from the Heart' <https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF>.

²⁶ Australian Law Reform Commission, 'Recognition of Aboriginal Customary Laws (ALRC Report 31)' (Government Report 31, Australian Law Reform Commission, 12 June 1986) 737, 18 <<http://www.alrc.gov.au/publications/report-31>>.

²⁷ James Edward Gillespie, 'The Transportation of English Convicts after 1783' (1922) 13(3) *Journal of the American Institute of Criminal Law and Criminology* 359, 359.

²⁸ *Ibid* 360.

²⁹ *Ibid* 361.

³⁰ Australian Law Reform Commission, 'Recognition of Aboriginal Customary Laws (ALRC Report 31)', above n 26, 24.

³¹ Henry Reynolds, *A History of Tasmania* (Cambridge University Press, 2012) 47.

³² Australian Law Reform Commission, 'Recognition of Aboriginal Customary Laws (ALRC Report 31)', above n 26, 18.

³³ Shelley Bielefeld, 'The Intervention, Stronger Futures and Racial Discrimination: Placing the Australian Government under Scrutiny' in Elisabeth Baehr and Barbara Schmidt-Haberkamp (Eds.) *And there'll be NO Dancing'. Perspectives on Policies Impacting Indigenous Australia Since 2007* (Cambridge Scholars Publishing, 2017) 145, 145.

³⁴ The Uluru Peoples, above n 25.

was a significant factor of the development of law and policy in Australia, much can be learned about other aspects of colonial nation building that contribute to violence against Indigenous girls and women by observing the parallel colonial effort undertaken half a world away, in Liberia.

In Liberia, a century and a half of compounding factors instigated by the trans-Atlantic slave trade³⁵ resulted in the establishment of a settler-colonist state following Paul Cuffe and Marcus Garvey's *Back-to-Africa Movement*.³⁶ The social disparity between Indigenous Peoples in Liberia and so-called Americo-Liberians³⁷ began with the American Colonisation Society's³⁸ founding of the 'Colony' of Liberia in 1816 as a 'haven'³⁹ for freeborn persons and emancipated slaves in the Americas. This population of colonist-settlers expanded to include those recaptured across the Atlantic between 1808 and 1860 during Britain and the United States' interdiction on slavery.⁴⁰ According to William E. Allen, unlike Paul Cuffe and Marcus Garvey's *Back-to-Africa Movement*, Reverend Robert Finley of New Jersey provided the most crucial impetus for the colonisation movement. Similar to the idea of the 'convict problem' in England, Finley was convinced that the United States had a moral⁴¹ obligation to 'repair the injuries' and solve the 'negro problem' resulting from the slave trade. Noting that, '[e]verything connected with their [the slaves'] condition, including their colour, is against them',⁴² Finley was committed to returning the slaves to Africa as a solution to the 'negro problem' in America's Deep South. Interestingly, the partitioning of Africa during the Berlin Conference in 1884-85, when colonisers scrambled for Indigenous African lands, happened amid the *Back-to-Africa Movement*. Thus, as European colonisers scuffled for Indigenous African lands, Liberia remained in the hands of Black settler-colonists, supported by the philanthropic American Colonisation Society. One would imagine that such an arrangement would shield Indigenous Peoples in Liberia from exploitation, abuse and disenfranchisement since their Black settler-colonists were an oppressed minority and Africans themselves. Quite the contrary occurred, as a population once in search of refuge, security and safety instigated a system of social hierarchy that would forever relegate Indigenous Peoples in Liberia to a lower class and status, branded as

³⁵ Gerald Horne, *The Deepest South: The United States, Brazil, and the African Slave Trade* (New York University Press, 2007) 2.

³⁶ James Ciment, *Another America: The Story of Liberia and the Former Slaves Who Ruled It* (Hill and Wang, 1st Ed, 2013) xix; Henry Louis Gates Jr., *100 Amazing Facts About the Negro* (Pantheon Books, 2017) 28–30.

³⁷ The term 'Americo-Liberian' is put into inverted commas to assert the author's hesitation and disapproval of its pejorative meaning. Refer to the terminology section for alternative replacement of the term.

³⁸ Fox Early Lee, *The American Colonisation Society 1817-1840* (The John Hopkins Press, 1919) vol 3; Library of Congress, *American Colonization Society (Prints and Photographs Reading Room, Library of Congress)* (22 October 2010) Records and photographs of the American Colonization Society <<http://www.loc.gov/rr/print/coll/007.html>>.

³⁹ Merran Fraenkel, *Tribe and Class in Monrovia* (Oxford University Press, 1966) 9.

⁴⁰ John HT McPherson, *History of Liberia* (Forgotten Books, 2010).

⁴¹ David Kazanjian describes Liberia's unique characteristic as a 'colony' over which no state formally exercised sovereignty, having been founded and ruled by a private philanthropic organisation, the American Colonisation Society (see, David Kazanjian, *The Brink of Freedom: Improvising Life in the Nineteenth-Century Atlantic World* (Duke University Press, 2016) 54.

⁴² William E Allen, 'Historical Methodology and Writing the Liberian Past: The Case of Agriculture in the Nineteenth Century' (2005) 32 *History in Africa* 21, 23.

‘country’, ‘uncivilised’ and ‘bush’.⁴³ Liberia declared its independence from the American Colonisation Society in 1847, and, from that time until 1980,⁴⁴ this elite oligarchy of former slave settler-colonists perpetrated oppression,⁴⁵ disenfranchisement,⁴⁶ land expropriation,⁴⁷ denial of entry of Indigenous Peoples in Liberia into the Commonwealth of Liberia,⁴⁸ prohibition of property inheritance in customary marriages,⁴⁹ and withholding access to education⁵⁰ from Indigenous Peoples in Liberia, whilst subjecting them to labour exploitation⁵¹ and pervasive violence.⁵² As discussed in this dissertation, especially in chapters 2 and 7, systematic violence against Indigenous Peoples in Liberia is examined through the lenses of slavery,⁵³ language group discrimination,⁵⁴ tribalism and classism,⁵⁵ Christianisation of the ‘country people’,⁵⁶ travel bans,⁵⁷ land dispossession,⁵⁸ exploitation,⁵⁹ dehumanising treatment,⁶⁰ and oppressive elite

⁴³ In Liberia, freed slave returnees to Liberia see themselves as more civilised and enlightened than Indigenous Peoples in Liberia, hence derogatorily refer to Indigenous Peoples in Liberia as ‘country or ‘bush’ people.

⁴⁴ Carl Patrick Burrowes, *Power and Press Freedom in Liberia, 1830-1970: The Impact of Globalization and Civil Society on Media-Government Relations* (Africa World Press, 2004) 87–89. The True Whig Party of Liberia, the only political party in the country, began its rule in 1869 until 1980 except when briefly interrupted with a coup d’état in 1871.

⁴⁵ Anecdotally, The Onion, a satirical media house, illustrates racism in Liberia with two fountains having a description on top of each, which says, ‘Blacks only’.

⁴⁶ Veronica Strong-Boag et al. *Africa Women Suffrage and beyond: Confronting the Democratic Deficit* (2013) Women Vote <http://womensuffrage.org/?page_id=203>. Indigenous women and men in Liberia got the right to vote in 1946.

⁴⁷ Yekutiel Gershoni and Makhon le-mehkar ‘al shem Heri S. Truman, *Black Colonialism: The Americo-Liberian Scramble for the Hinterland* (Westview Press, 1985).

⁴⁸ The American Colonization Society, *Liberia’s 1839 Constitution* (2013) TLC Africa <<http://www.tlcafrica.com/constitution-1839.htm>>; Hilary Teage, *Liberian Declaration of Independence* (1847) One Liberia <http://onliberia.org/con_declaration.htm>. The *Commonwealth of Liberia Constitution* 1839 and the *Declaration of Independence* 1847 did not recognise Indigenous Peoples in Liberia rights.

⁴⁹ See, section 3.5 of the *Act to Govern the Devolution of Estates and Establish Rights of Inheritance for Spouses of Both Statutory and customary marriages* 2003.

⁵⁰ Government of Liberia and UNICEF, ‘National Policy on Girls’ Education’ (Policy Report, Ministry of Education, 2005) 40, 95–97; Mary Antoinette Grimes Brown, *Education and National Development in Liberia, 1800-1900* (PhD Thesis, Faculty of Graduate Studies, Cornell University, 1967) 94–97. According to Mary Antoinette Grimes Brown, schools afforded in pre- and colonial Liberia were established and intended to educate settlers’ children. The number of natives involved tended to be relatively small and that funds were not available to increase the number of natives being educated at the time.

⁵¹ The Analyst, *Exploitation in Liberia* | *International Labour Rights Forum* (2006) Stop Child & Forced Labour: Stop Firestone <<http://www.laborrights.org/stop-child-labor/stop-firestone/news/10929>> at 16 June 2013.

⁵² Truth and Reconciliation Commission of Liberia, ‘Truth and Reconciliation Report’ (Government Report Volume 1-2, Government of Liberia, 19 December 2009) 107; Truth and Reconciliation Commission of Liberia, *Press Releases: Prince Johnson Displayed Doe’s Skull...Commany Wesseh* (2013) Press Release <http://trcofliberia.org/press_releases/91>.

⁵³ Christian Abayomi Cassell, *Liberia: History of the First African Republic* (1970) vol. 1. Ibid; Robert T Brown, ‘Simon Greenleaf and the Liberian Constitution of 1847’ (1980) 9(2) *Liberian Studies Journal* 51; Charles Henry Huberich, *The Political and Legislative History of Liberia* (The Lawbook Exchange, 2010) vol 1 and 2.

⁵⁴ Benjamin G. Dennis, *Slaves to Racism: Racism’s Impact on National Character in America to Liberia* (2008).

⁵⁵ Fraenkel, above n 39; Stephen S Hlophe, *Class, Ethnicity, and Politics in Liberia: A Class Analysis of Power Struggles in the Tubman and Tolbert Administrations, from 1944-1975* (University Press of America, 1979); Alan Huffman, *Mississippi in Africa: [The Daga of the Slaves of Prospect Hill Plantation and Their Legacy in Liberia Today]* (University Press of Mississippi, 2010); J Gus Liebenow, *Liberia: The Evolution of Privilege* (Cornell University Press, 1969).

⁵⁶ Amos Jones Beyan, ‘The American Colonization Society and the Socio-Religious Characterization of Liberia: A Historical Survey, 1822-1900’ (1984) 10(2) *Liberian Studies Journal* 1.

⁵⁷ John McCorquodale, *Aborigines and the Law: A Digest* (Aboriginal Studies Press, 1987) 5. See sections 12 and 13 of the *Emigration Act* 1910 (No 26 of 1910).

⁵⁸ Claude Andrew Clegg, *The Price of Liberty: African Americans and the Making of Liberia* (The University of North Carolina Press, 2004); Gershoni and Makhon le-mehkar ‘al shem Heri S. Truman, above n 47.

⁵⁹ Eugene P Plotzki, ‘The Bong Mine Venture’ (1992) 17(1) *Liberian Studies Journal* 66. RJ Harrison Church, ‘The Firestone Rubber Plantations in Liberia’ (1969) 54(4) *Geography* 430; ibid; Alfred Lief, *The Firestone Story: A History of the Firestone Tire & Rubber Company* (Whittlesey House, 1951).

regimes of former slave settler-colonists.⁶¹ Over more than a century, perpetration of these acts by the settler-colonists' single-party government culminated in a 14-year civil war from 1989 through 2003.⁶² Even in the attempt to balance the power dynamic between settler-colonists and Indigenous Peoples in Liberia, the war itself brought a new wave of intense and systematic violence against girls and women.

Systematic violence against Indigenous Peoples in Australia and post-war Liberia is gendered and racialised, with Indigenous girls and women disproportionately represented amongst survivors of such abuse. Although Indigenous girls and women are more vulnerable to systematic violence than non-Indigenous girls and women, often, their voices are silenced, their stories are not believed, or their desires to participate in the gender-agenda to effect local change are not supported. Whether an Indigenous woman's voice will be heard depends on an intersection of her race, class, social status, language group, and political clout, *inter alia*. Therefore, it is important to recognise the disproportional representation of Indigenous girls and women in the gender-agenda. Building its performance on *transnational feminist*⁶³ *essentialism*,⁶⁴ *womanism*,⁶⁵ *motherism*,⁶⁶ and *indigeneity*,⁶⁷ the feminist gender-agenda has made significant improvements to the lives of women. On the one hand, accomplishments claimed by women's movements and social justice activists are described resulting from mere chance rather than from a calculated effort. On the other hand, inherent convergence of race, education, or geographical location convolutes the dynamics of gender equality with inconsistent outcomes. An assessment of the gender-agenda through the lens of the white feminist movement in Australia indicates a significant level of favouritism and preference for racial superiority. In

⁶⁰ Claire Scobie, 'The Long Road Home: Aborigines Reclaim Their Ancestors' Remains from British Museums' *The Guardian* (Sydney, NSW), 27 June 2009 <<http://www.theguardian.com/world/2009/jun/28/aborigines-reclaim-ancestors-remains>>; Lyndon Ormond-Parker, 'Aboriginal Remains Return Home' (2003) 5(24) *Indigenous Law Bulletin* 4; David Langsam, 'Quest for the Missing Dead' *The Guardian* (Sydney, NSW), 24 February 1990 <<http://dingonet.com/questfor.htm>>; Rachel Perkins, *The First Australians: Episodes 1-7* (Blackfella Films, 2008). On 24 February 1990, Robert Langsam of the Guardian reported that, '[t]he remains of thousands of Australian Aborigines are scattered throughout Britain's public and private museums... In 1803, knighted and famous for his work, [Joseph] Banks received a gift from the New South Wales Governor, Philip Gidley King ... the preserved head of the Aboriginal Warrior Pemulwoy'. Pursuant to Article 12 (1) and (2) of the UN Declaration on the Rights of Indigenous Peoples, Aboriginal and Torres Strait Islander Peoples remains around the world are gradually being repatriated to Australia (see, <http://ncis.anu.edu.au/research/heritage_history_repatriation.php>).

⁶¹ Amos Sawyer, *The Emergence of Autocracy in Liberia: Tragedy and Challenge* (Institute for Contemporary Studies, 1992).

⁶² Stephen Ellis, *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimension of an African Civil War*. (New York University Press, 2007); Eckhard Hinzen and Robert Kappel, *Dependence, Underdevelopment, and Persistent Conflict: On the Political Economy of Liberia* (Übersee-Museum, 1980) vol 11; George Klay Kieh, *Liberia's State Failure, Collapse and Reconstitution* (Africana Homestead Legacy Publishers, 2012).

⁶³ Chandra Talpade Mohanty, *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity* (Duke University Press, 2003) 2; Sylvanna M Falcón, 'Transnational Feminism and Contextualized Intersectionality at the 2001 World Conference Against Racism' (2012) 24(4) *Journal of Women's History* 99, 100.

⁶⁴ Susan D Carle (ed), *Lawyers' Ethics and the Pursuit of Social Justice: A Critical Reader* (New York University Press, 2005) 226 <<https://nyupress.org/books/9780814716403/>>.

⁶⁵ Patricia Hill Collins, 'What's in a Name? Womanism, Black Feminism, and Beyond' (1996) 26(1) *The Black Scholar: Journal of Black Studies and Research* 9.

⁶⁶ Catherine Obianuju Acholonu, *Motherism: The Afrocentric Alternative to Feminism* (Afa Publications, 1995).

⁶⁷ Kathleen Birrell, *Indigeneity: Before and Beyond the Law* (Routledge, 2016) 9.

spite of their struggles, white women were given more opportunity to push the gender-agenda forward whilst Indigenous women were simultaneously dehumanised and dismissed.⁶⁸

In Australia, early nineteenth century *First Wave*⁶⁹ western feminists transmuted women's identity and societal role. At the time, women's right to vote was a crucial indicator of social justice and equality. During the Inaugural meeting of the Dawn Club in July 1889, Louisa Lawson, a notable suffragist who started the first all-women newspaper (The Dawn), conveyed the significance of women's right to vote: 'A woman's opinions are useless to her, she may suffer unjustly, she may be wronged, but she has no power to weightily petition against man's laws, no representatives to urge her views, her only method to produce release, redress, or change, is to ceaselessly agitate'.⁷⁰ Whilst Lawson's observation is considered true for all women, including Indigenous women in Australia, reality suggested otherwise. Although New Zealand was the first country to grant women the right to vote in 1893, Australia was the first country⁷¹ to accord white women⁷² both the right to vote in federal elections and the right to be elected to the national parliament in 1902.⁷³ Notably, Section 41 of the Commonwealth Constitution⁷⁴ provided for the colony of South Australia to grant suffrage to Aboriginal women as early as 1894.⁷⁵ However, despite this achievement for white Australian women, and Indigenous Peoples in one jurisdiction, six decades elapsed before Indigenous Peoples were granted the right to vote in federal elections in 1962. The debate over whether Indigenous or white women should be accorded the same right to vote raises the issue of diversion whereby feminism, for all its divergence and convergence,⁷⁶ is still mired in traditional norms that perpetuate patriarchal values.⁷⁷ That is, asserts Patricia Smith, feminists get caught in a double bind as outsiders seeking reform whilst criticising the very procedures that they must use to achieve the desired change.⁷⁸ Here, is the situation of Lawson critiquing a patriarchal system that endorses and allows men to flourish as political beings, and at the same time blocking the opportunity for Indigenous women in Australia to vote because they are not white. In another example, unlike for white Australian women, discriminatory law and policy also extended to the

⁶⁸ *Uncommon Ground: White Women in Aboriginal History* (Aboriginal Studies Press for the Australian Institute of Aboriginal and Torres Strait Islander Studies, 2005) xxiv.

⁶⁹ Rebecca West, *Black Lamb and Grey Falcon* (Penguin Books, 2014) <<http://rbdigital.oneclickdigital.com>>; Mary Wollstonecraft, *A Vindication of the Rights of Woman: With Structures on Political and Moral Subjects* (J Johnson, 1792) <<https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/785/vindication.pdf>>.

⁷⁰ Australian Broadcasting Corporation, *Women and Democracy* (1998) Women and Votes <<http://www.abc.net.au/ola/citizen/women/women-home-vote.htm>>.

⁷¹ Douglas A. Brownridge, *Violence Against Women: Vulnerable Populations* (2009) 4.

⁷² Australian women who were British subjects and 21 years and older. See Australia Electoral History available at <http://www.aec.gov.au/Elections/australian_electoral_history/wright.htm>.

⁷³ Marion Simms, 'Women in Parliament' in Brian Galligan & Winsome Roberts (eds) *Oxford Companion to Australian Politics* (2007) 686, 639–43.

⁷⁴ Australian Electoral Commission, *History of the Indigenous Vote* (Australian Electoral Commission, 2007) 5.

⁷⁵ Australian Government, above n 71.

⁷⁶ Drucilla Cornell, 'The Philosophy of the Limit: Systems Theory and Feminist Legal Reform' in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (eds), *Deconstruction and the Possibility of Justice* (Taylor and Francis, 2016) 68.

⁷⁷ Patricia Smith, 'Four Themes in Feminist Legal Theory: Difference, Dominance, Domesticity, and Denial' in *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Blackwell Pub, 2005) 90.

⁷⁸ *Ibid* 91.

children of Aboriginal women as the Australian state instituted a program that separated ‘mixed blood’ children from their mothers, to be raised by white Australians.

During the Aboriginal Welfare Conference in Canberra in 1937, the States and Commonwealth of Australia agreed that the objective of Aboriginal affairs should be an ‘absorption of natives not of full blood’.⁷⁹ The States and the Commonwealth were concerned with protecting the future of most ‘mixed blood’ Aborigines in settled areas. The racist and patriarchal sentiment underlying this policy of ‘absorption’ is clear in former Prime Minister John Curtin’s (1941-45) assertion that, ‘[t]his country shall remain forever the home of the descendants of those people who came here in peace in order to establish in the South Seas as an outpost of the British race’.⁸⁰ The primacy of Curtin’s white Australia policy statement not only embellishes an arrogant doctrine of *terra nullius* (a land without owners)⁸¹ but it also silences the truth about Australian history by displaying an institutional denial of Aboriginal value and agency from the highest levels of the government. Furthermore, Curtin’s expression exemplifies the blatant distortion of written history (rather than ‘herstory’⁸² – i.e., history viewed from a female or feminist perspective) as a structural tool of discrimination, subjugation, and systematic violence against Indigenous Peoples in Australia. By 1961, ‘assimilation’ as a widely-held goal for all Aboriginal Peoples was adopted into policy by the Commonwealth and all States at the Native Welfare Conference of Federal and State Minister.⁸³ The white Australian policy is only one example of discriminatory law and policy that precipitated systematic violence against Aboriginal girls and women. Since Australia’s founding, white Australians’ refusal to acknowledge the existence of the First Australians, maintenance of a white Australia policy, and infantilising Indigenous Peoples in Australia resulted in a history of massacres,⁸⁴ ethnic cleansing,⁸⁵ forced removal of children,⁸⁶ the imposition of foreign laws and sustained social and political exclusion.⁸⁷ Similarly, the cultural biases of an elitist-colonist class led to the political and legal disenfranchisement of Indigenous Peoples in Liberia.

⁷⁹ Australian Law Reform Commission, ‘Recognition of Aboriginal Customary Laws (ALRC Report 31)’, above n 26, 19.

⁸⁰ Commonwealth of Australia, *Australian Immigration Fact Sheet 8. Abolition of the ‘White Australia’ Policy* (15 April 2013) Fact Sheet 8 – Abolition of the ‘White Australia’ Policy <<http://www.immi.gov.au/media/fact-sheets/08abolition.htm>>.

⁸¹ NSW Department of Education, *Racism. No Way.: Fact Sheets - Terra Nullius* (2010) Teaching Resources <<http://www.racismnoway.com.au/teaching-resources/factsheets/10.html>>.

⁸² Hazel V Carby and Heidi Safia Mirza, ‘White Woman Listen! Black Feminism and the Boundaries of Sisterhood’ in *Black British Feminism: A Reader* (Routledge, 1997) 45, 44.

⁸³ Australian Law Reform Commission, ‘Recognition of Aboriginal Customary Laws (ALRC Report 31)’, above n 26, 19.

⁸⁴ La Trobe University, ‘The Myall Creek Massacre with Richard Broome’, above n 15.

⁸⁵ Russell McGregor, ‘“Breed out the Colour” or the Importance of Being White’ (2002) 33(120) *Australian Historical Studies* 286.

⁸⁶ Australian Broadcasting Corporation, *The Apology to the Stolen Generations of Australia* (ABC, 2008) <<http://australia.gov.au/about-australia/australian-story/sorry-day-stolen-generations>>.

⁸⁷ Alisoun Neville, ‘Cubillo v Commonwealth: Classifying Text and the Violence of Exclusion’ (2005) 5 *Macquarie Law Journal* 31. Also see, *Cubillo v Commonwealth* (200) 174 ALR 97.

Regarding Liberia's experience, in addition to applying the fallacy of *terra nullius*,⁸⁸ two primary perspectives informed the settler-colonists' development of early Liberia. One was the idea of creating a 'Little America' in 19th century West Africa. The other was an attempt to forge an 'African nationality' by incorporating ideas from both Indigenous African culture and Western culture. Eventually, the 'Little America' idea prevailed, though it had regularly faced challenges with a certain level of regularity since the 1850s.⁸⁹ Whilst disenfranchising Native Liberians by generating antagonistic ethnic and class distinctions,⁹⁰ former slaves basked in pride over the colonisation of Liberia.⁹¹ As in the women's suffrage movement in Australia, the sentiment amongst the empowered class was one of support for equality, rights, and freedom. Washington Watts McDonogh, a Former Slave Returnee to Liberia, writes back to his previous master in the United States from Liberia on 7 October 1847 expressing satisfaction with his new found freedom: 'I'll never consent to leave this country for all the pleasures of America combined together to live, for this is the only place where a coloured person can enjoy his liberty, for there exists no prejudice of colour in this country, but every man is free and equal'.⁹² However, from its founding, it was clear that the sentiment 'every man is free and equal' did not apply to Indigenous Peoples in Liberia. The American flag was first raised on arrival of the settler-colonists to Providence Island in 1822. At the time, Elijah Johnson, a Black settler-colonist and agent of the American Colonisation Society, declared: '[f]or two long years I have sought a home; here I have found one, here I remain'.⁹³ Later on, when 'threatened by attacks from surrounding savage tribes'⁹⁴ (e.g., the Grebo Attacks on 8 September 1876⁹⁵ and the Gola-Bandi Hut Tax Resistance of 1918⁹⁶), Johnson refused assistance from a British marine force, telling the commander, '[w]e want no flagstaff put up here that will cost more to get it down than it will to whip the natives'.⁹⁷ Johnson's statement highlights the duality of projecting independence from white colonial violence, whilst simultaneously projecting violence toward fellow Native Africans. As in Australia, the disenfranchisement of Indigenous Peoples led to a gap between the rights afforded women in the settler-colonist and Indigenous populations.

⁸⁸ Huberich, above n 53, 254; Niels Nagelhus Schia, 'Reforms, Customs and Resilience: Justice for Sexual and Gender-Based Violence in Liberia' in Anastasia Powell, Nicola Henry and Asher Flynn (eds), *Rape Justice: Beyond the Criminal Law* (Palgrave Macmillan, 2015) 143, 12 and 16–17. African American settler-colonists applied the doctrine of *Terra Nullius* to the formation of Liberia in the sense that, though lands were purchased (however unfairly traded), the parts of Liberia settler-colonists were living on have not been subjected to the sovereignty of any state, or over which any prior sovereignty has expressly or implicitly relinquished sovereignty under international law.

⁸⁹ D Elwood Dunn, 'Liberia and Independent Africa, 1940s to 2012: A Brief Political Profile' 1, 4–6 <https://books.google.com/books?id=seTnAgAAQBAJ&dq=building+little+america+in+liberia&source=gbs_navlinks_s>.

⁹⁰ David Kazanjian, *The Brink of Freedom: Improvising Life in the Nineteenth-Century Atlantic World* (Duke University Press, 2016) 54.

⁹¹ *Ibid.* 3.

⁹² *Ibid.*

⁹³ Colin M Waugh, *Charles Taylor and Liberia: Ambition and Atrocity in Africa's Lone Star State* (Zed Books, 2011) 17.

⁹⁴ American Colonisation Society, 'A Visit to Monrovia' (1876) LII(1) *The African Repository* 13, 16.

⁹⁵ American Colonisation Society, 'The Grebo Attacks' (1976) LII(1) *The African Repository* 11, 12.

⁹⁶ Monday B Abasiattai, *African Resistance in Liberia: The Vai and Gola-Bandi* (Liberia Working Group, 1988) 21.

⁹⁷ American Colonisation Society, above n 94, 16.

In Liberia, women's suffrage is also an indicator of social justice and equality. Upon the declaration of independence of Liberia in 1847, Former Slave Returnee women seized the right to vote by virtue of being wives of Former Slave Returnee males. However, it took almost 100 years to accord similar political rights to Indigenous women in Liberia. Additionally, whilst Former Slave Returnee women persistently fought for equality in the workplace, access to education and other social and welfare rights, similar concerns of Native Liberians were dismissed because they were perceived by the dominant culture as 'uncouth', 'country' and 'primitive'. Unfortunately, women's suffrage was only one aspect of political life from which Indigenous Peoples in Liberia were excluded.

Underrepresentation of Indigenous Peoples in Liberia in legal, political, and economic life culminated in a 14-year civil war. Liberia is recognised for being Africa's oldest republic and the second republic (after Haiti) founded by displaced Africans.⁹⁸ Joseph Saye Guannu argues that between 1822 and 1839 Liberia, mainly Montserrado County, was a colony of the American Colonisation Society until African settler-colonists from the United States broke ties by signing Liberia's Declaration of Independence on 26 July 1847.⁹⁹ The Liberian Declaration of Independence,¹⁰⁰ copied from that of the United States, was followed by a constitution drafted, in part, by Simon Greenleaf, a Harvard Law Professor¹⁰¹ and an African American settler-colonists to Liberia. After 133 years of rule by the Liberian True Whig Party,¹⁰² the first Indigenous leader, Samuel Kanyon Doe, seized power through a bloody *coup d'état* on 12 April 1980.¹⁰³ The coup left former president William R. Tolbert dead, with 13 cabinet ministers, executed extra-judicially for 'high treason'. Many others were arrested, detained and tortured.¹⁰⁴ This was the 'evolution of authoritarianism and deceptive inclusion' in Liberia, writes Jeremy Levitt.¹⁰⁵ Nearly 10 years after Doe came to power, Liberia's violent civil war began on 24 December 1989. Fourteen years of Liberia's civil war resulted in some 250 000 deaths with

⁹⁸ Huberich, above n 53, v.

⁹⁹ See One Liberia, available at <http://onliberia.org/con_declaration.htm>.

¹⁰⁰ Joseph Saye Guannu, *Liberian History Before 1857: A Reference for Elementary Pupils* (Exposition Press, 1st ed, 1977) 27.

¹⁰¹ Amos Sawyer, *Beyond Plunder: Toward Democratic Governance in Liberia* (L. Rienner Publishers, Inc, 2005) 17–21.

¹⁰² Liebenow, above n 55, 112.

¹⁰³ D Elwood Dunn, *Liberia: A National Polity in Transition* (Scarecrow Press, 1988) 86–98; Conan Le Cilaire, *Liberia Execution* (1980) <<https://www.youtube.com/watch?v=DnDGgvrD2bM>>; Leon Dash, 'Liberian Soldiers Taunt, Shoot 13 Former Leaders' *The Washington Post* (Monrovia, Liberia), 23 April 1980 <http://www.washingtonpost.com/wp>. After 133 years of a one-party state, former President William R. Tolbert was assassinated in a *coup d'état* that eventually sizzled into a Kangaroo Military Court treason trials against and subsequent execution of thirteen cabinet ministers of African Emigrant heritage. Those executed by firing squad were, Frank E Tolbert Sr., President of Pro-Temp of the Liberian Senate and brother of President Tolbert; C Cecil Dennis Jr., Minister of State and Foreign Affairs; Cyril A Bright, Minister of Planning and Economic Affairs; James A A Pierre, Chief Justice of Liberia; Richard A Henriens Sr., Speaker of the House of Representatives; Frank Stewart, Direct of the Budget; John W F Sherman, Minister of Commerce; Clarence Parker III; Chairman of the National Investment Council; James T Phillips Jr.; Joseph J F Chesson Sr.; E Reginald Townsend; and D Franklin Neal Sr.

¹⁰⁴ D Elwood Dunn and Svend E Holsoe, *Historical Dictionary of Liberia* (Scarecrow Press, 1985) 50–51.

¹⁰⁵ Jeremy I Levitt, *The Evolution of Deadly Conflict in Liberia: From 'Paternalitarianism' to State Collapse* (Carolina Academic Press, 2005) 181.

approximately 500 000 persons being internally and internationally displaced.¹⁰⁶ Mostly fought by males, the civil war demolished infrastructure and perpetuated a societal collapse that gave way to injustice and human rights abuses, which ultimately saw girls and women used as the spoils of war and weapons of war.¹⁰⁷ A study conducted by the World Health Organization in 2005 with 1 628 women in six of Liberia's 15 counties revealed that 90.8 percent experienced multiple acts of sexual violence, including having objects, such as corn sticks, cassava, and flashlights, forced into their vagina or anus. These acts of violence directly resulted in 16.8 percent pregnancy and 15.6 percent vesicovaginal fistula.¹⁰⁸ In addition, the rate of forcible abduction was relatively high at 48.5 percent.¹⁰⁹ Given Australia and Liberia's histories of political and legal disenfranchisement of Indigenous Peoples, the violence that such disenfranchisement perpetrates or permits against Indigenous women and girls, and the history of abuse without justice that accompanies it, it is necessary to ask whether Indigenous girls and women could be considered equal before the law.

1.0.1 Statement of the Problem

Equality before the law is a basic human right that should be protected by the rule of law in order to guarantee equal treatment in all aspects of governance, including rights to fair trial, impartial jury and unbiased judges. The United Nations and dominant Western societies promote the rule of law as a fundamental principle of governance. A cadre of international instruments provides for the rule of law. For example, Articles 6, 7 and 8 of the *Universal Declaration of Human Rights* 1948; Article 5 of the *International Convention on the Elimination of all Forms of Racial Discrimination* 1965; Article 26 of the *International Covenant on Civil and Political Rights*, 1966; Article 3 of the *International Covenant on Economic, Social and Cultural Rights* 1966; and Article 3(1) of the *African Charter on Human and Peoples' Rights* 2005 all provide for equal treatment of all persons before the law. Nationally, Article 11(c) of the *Liberian Constitution* 1986 states that '[a]ll persons are equal before the law and are therefore entitled to the equal protection of the law'. Even though the *Australian Constitution* 1901 contains no explicit provision on equality for all persons before the law, Article 10 of the *Australian Racial Discrimination Act* 1975 (Cth.) guarantees 'rights to equality before the law'. Ultimately, the rule of law is enshrined in these international and

¹⁰⁶ 'The Liberian Civil War: Child Soldiers, Rape, and Higher Education' in *International Association of University Presidents* (African Methodist Episcopal Zion University, 2014) 1, 1–2; Robert M Press, "'Guided by the Hand of God": Liberian Women Peacemakers and Civil War' (2010) 8(1) *The Review of Faith & International Affairs* 23, 1.

¹⁰⁷ Spoils of war (vis-à-vis rape as a weapon of war) is not a new concept. In Deuteronomy 20:14 God told the Israelites to enjoy and take for themselves Canaanite women, children, animals and all that is in the city as their spoil.

¹⁰⁸ Government of Liberia, 'National Plan of Action for the Prevention and Management of Gender Based Violence in Liberia (GBV-POA)' (Government Policy, Ministry of Children, Gender and Social Development, November 2006) 43, 9.

¹⁰⁹ Government of Liberia, 'National Plan of Action for the Prevention and Management of Gender Based Violence in Liberia' 9.

national instruments to monitor changes in the performance of the justice system,¹¹⁰ and as a means to uphold individual dignity and maintain civil, political, and social rights.¹¹¹

Some international legal instruments have been established to guarantee rights for women and Indigenous Peoples. In 1975 in Mexico City, the first United Nations (UN) World Conference on Women established the ‘decade of women’, an event that marked the birth of International Women’s Day. Five years later, in Copenhagen, Denmark, 64 States signed the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) 1979. To date, 187 countries have ratified CEDAW.¹¹² With respect to CEDAW, the gender-agenda is progressing at a moderate pace, considering the recent establishment of UN Women in 2010, a global institution governed by CEDAW. Addressing justice for survivors of sexual violence in war by categorising rape as a crime against humanity, the International Criminal Court of the *Rome Statute* was established in 1998.¹¹³ A little over a decade ago, the United Nations General Assembly adopted the *Declaration on the Rights of Indigenous Peoples* (UNDRIP) 2007 with a majority vote of 144 states. Australia was one of four countries (the others being Canada, New Zealand and the United States) that voted against the UNDRIP. However, two years later, Australia expressed support for UNDRIP. Interestingly, the UNDRIP mentions women only three times, leaving Rauna Kuokkanen, Damien Short and Corinne Lennox to question whether the landmark instrument addresses the rights of Indigenous women.¹¹⁴ James Anaya believes that, as the most prominent manifestation of international concerns for Indigenous Peoples, the UNDRIP represents widespread recognition of the ongoing effects of historical forces of oppression linked to colonialism and invasive settlement.¹¹⁵ Despite these modest advances (inter)nationally, there are inconsistencies with the application of uniform legal standards in restoring fairness and justice to Indigenous girl and women survivors of systematic gender violence. As noted above, the principle of the rule of law, entrenched in the constitution of the State, is the fundamental requirement for legal justice. By reducing, if not eliminating, arbitrariness and abuse of discretionary power, whether exercised by the judiciary, executive or legislature, the rule of law accords due process of law as a basis for securing substantive rights whereby like cases are treated alike (*vis-à-vis* the binding precedents doctrine).¹¹⁶ Thus, given the theoretical underpinnings of the rule of law, this study asks: At what level of certainty can

¹¹⁰ Department of Peacekeeping Operations and Officer of the High Commissioner for Human Rights, ‘The United Nations Rule of Law Indicators: Implementation Guide and Project Tools’ (UN Report, United Nations Publications, 2011) 137, v <http://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf>.

¹¹¹ Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford University Press, 1979) 210–211.

¹¹² Australia ratified CEDAW on 28 July 1983 and Liberia on 17 July 1984 (*see*, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en>).

¹¹³ As at 12 April 2012, 121 countries had ratified the *Rome Statute* including Liberia (22 September 2004) and Australia (1 July 2002). *See* <http://www.iccnw.org/documents/RATIFICATIONSbyRegion_2Arpil2012_eng.pdf>.

¹¹⁴ Corinne Lennox and Damien Short, ‘Indigeneity’ in Damien Short and Corinne Lennox (Eds.), *Handbook of Indigenous People’s Rights* (Routledge: Taylor & Francis Group, 2015) 1, Abstract.

¹¹⁵ S James Anaya, *International Human Rights and Indigenous Peoples* (Wolters Kluwer Law & Business, 1st Ed. 2009) 1–2.

¹¹⁶ Tom H Bingham, *The Rule of Law* (Penguin, 2011) 37–109.

all citizens be treated equally before the law, irrespective of whether the law arises from Anglo-American-Liberian, Anglo-Australian or Indigenous Customary Law?

Australian and Liberian law and policy sometimes ignore, contradict, or supersede the rule of law from the perspective of Indigenous women and girls. For example, the *Liberian Penal Law* did not mention sexual violence against women until 2011. In Australia, the Commonwealth Government of Australia suspended the *Racial Discrimination Act 1975* (Cth.) in order to deny protection of Aboriginal Peoples affected by the *Northern Territory National Emergency Response*.¹¹⁷ In light of this duality, this research explores the efficacy of the rule of law for Indigenous girls and women. For the purpose of this research, the rule of law comprises four aspects. That is, to achieve the rule of law: 1) all should be treated fairly and equally before the law; 2) all (especially the state) should be accountable to and be bound by the law and the courts; 3) everyone should benefit from public laws; and 4) in constitutional democracies, government should be based on the political doctrine of the separation of powers. By reducing, if not eliminating, arbitrariness and abuse of discretionary power, whether exercised by the judiciary, executive or legislature, the rule of law accords due process as a basis for securing substantive rights whereby like cases are treated alike (vis-à-vis the binding precedents doctrine).¹¹⁸ This research critically assesses how the enactment of discriminatory laws not only impacts the implementation of the four major aspects of the rule of law, listed above, to inflict systematic violence against Indigenous Peoples in Liberia and Australia but also compromises the efficacy of the rule of law. Grounded in empirical data, this research is based on content analysis, textual evidence and empirical examination of the rule of law, including an assessment of procedural fairness in the legal system, access to courts, legal representation, reliability of evidence, constitution of an impartial and independent judiciary, jury representation, sentencing and judicial review.¹¹⁹ The desired outcome of the research is to determine whether justice, as perceived by research participants, coupled with analyses of case law, historical documents, government reports, newsprint and secondary data, can be restored to Indigenous girls and women who have experienced systematic gender violence in Australia and Liberia.

¹¹⁷ The Australian Human Rights Commissions reports on the suspension and reinstatement of the *Racial Discrimination Act 1975* (Cth): in June 2007, the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse provided its report, *Little Children are Sacred*, to the Chief Minister of the Northern Territory. On 21 June 2007, in response to the Board of Inquiry's findings, the Howard Government announced the 'national emergency response to protect Aboriginal children in the Northern Territory' from sexual abuse and family violence. Also, on 21 June 2007 the Government enacted the Northern Territory National Emergency Response legislation. The Northern Territory National Emergency Response (NTER) legislation applied to a wide range of 'prescribed areas' in which Aboriginal people are the sole or predominant inhabitants, including Aboriginal land, declared town camps and other declared areas (see: <<https://www.humanrights.gov.au/publications/suspension-and-reinstatement-rda-and-special-measures-nter-1>>).

¹¹⁸ Bingham, above n 116, 37–107.

¹¹⁹ Hilaire Barnett, *Constitutional and Administrative Law* (Routledge, 9th Ed - 2011) vol 1.

1.0.2 Hypothesis

The principle of the rule of law is applied fairly and adequately when restoring justice to Indigenous girls and women survivors of systematic gender violence in Australia and post-war Liberia.

1.0.3 Research Question

Is the rule of law, an accepted truth that all are equal before the law, an essential axiom for restoring justice to Indigenous girl and women survivors of systematic gender violence in Australia and Liberia?

1.0.4 Aims and Objectives

The study investigates the application of the rule of law in restoring justice to Indigenous girl and women survivors of systematic gender violence in Australia and post-war Liberia by:

- 1) identifying and assessing the types, severity, prevalence and incidence rates of systematic gender violence in Australia and Liberia, drawing on case law, secondary data and textual analysis of historical documents, reports, newsprint and other public documents;
- 2) assessing the extent to which social service providers working in the area of violence against women perceive the law to be just (or unjust) as applied to Indigenous girls and women in Australia and post-war Liberia, using a survey instrument; and
- 3) examining the extent to which Indigenous women advocates working in the area of violence against women perceive the law to be just (or unjust) as applied to Indigenous girls and women in Australia and Liberia, using a semi-structured interview.

1.0.5 Terminology and Operational Definitions

Violence, like gender, is not a simple concept, but varies widely in its severity, ranging from minor forms¹²⁰ to aggressive acts of physical brutality including battery and rape, inflicted domestically or by a stranger.¹²¹ Although it is a representative category of injury, pain, and death, Sally Engle Merry argues that violence 'is very much shaped by cultural implications'.¹²² Merry adds that the social and cultural dimensions of violence are what give violence power and meaning. Violence is not senseless but almost always a manifestation of conscious human behaviour.¹²³ The socio-cultural dimensions of violence are varied. Some are subtle and nuanced, whilst others are overt. Language, in the form of words, phrases, idioms, and metaphors used to describe Indigenous Peoples in Liberia and Australia, is a social construct that may embody a

¹²⁰ Douglas A Brownridge, *Violence Against Women: Vulnerable Populations* (Routledge, 2009) 4.

¹²¹ Nahid Toubia, 'Women's Reproductive and Sexual Rights' in *Gender Violence and Women's Human Rights in Africa* (Centre for Women's Global Leadership, 1994) 42, 5.

¹²² Sally Engle Merry, *Gender Violence: A Cultural Perspective* (John Wiley and Son Ltd., 2009) 5.

¹²³ *Ibid*

form of cultural/structural violence. Perpetrators of structural and cultural violence do not hesitate to exercise mastery of semantics and morphology to exclude or denigrate Indigenous Peoples and women. This function of language prompts the application of extreme care when operationalising key terms in this research, lest the study fall prey, inadvertently, to perpetuating the very violence it is attempting to prevent. Following is a brief etymology, description and explanation of major terms used in the dissertation.

Aboriginal, Indigenous or Native: The word ‘Indigenous’, as a global expression of identity and concomitant struggle of First Peoples, connotes not merely ‘nativeness’ to land or region but also a political, legal, and cultural identity with international valency.¹²⁴ The capitalised plural proper noun ‘Indigenous Peoples’ signifies a ‘collective, rather than purely individual, dimension to [Indigenous] livelihoods, and an extension of self-determination to those who may not yet, or indeed ever, be defined as nations’.¹²⁵ Kathleen Birrell reasons that irrespective of the heterogeneity of Indigenous Peoples, which persist despite colonization, indigeneity itself has become a varied cohesive marker of unity, distinctively defined by cultural resistance to colonial imposition and a spiritual and ancestral agitation against neo-colonial expansion.¹²⁶ Through international recognition, marginalised groups labelled as ‘local’, ‘native’, ‘tribal’ or ‘peasant’ are now empowered to identify as Indigenous Peoples. Nevertheless, the term is laden with the delusion that only people conforming to a white colonial image of an Aboriginal person, as in those sitting in the desert with a spear, qualify as authentic Indigenous persons.¹²⁷ Deconstructing the politics of indigeneity, Manuhua Barcham et al argue that prioritisation of identity over difference leads to the creation of an existential dichotomy of *being* and *non-being* that has effectively excluded recognition of the dynamic process of *becoming* for Indigenous Peoples.¹²⁸

Challenged interpretations that reduce indigeneity to issues of authenticity, are ever present amongst Indigenous Peoples in Africa, and certainly in Liberia. Cheryl Suzack explains that problems of definition and representation affect Indigenous communities, especially Indigenous women in Africa, more generally through law’s pervasive ideological devaluation and confinement of indigeneity.¹²⁹ For example, some conceptions of indigeneity recognised and accepted as Indigenous Peoples only within the restricted sense of First Peoples in Australia, New Zealand, Canada and the United States. A growing consensus considers some communities of hunter-gatherers and pastoralists as Indigenous Peoples in Africa. In an attempt to identify Indigenous groups, a list compiled by the African Commission on Human and Peoples’ Rights

¹²⁴ Birrell, above n 67, 7.

¹²⁵ Ibid.

¹²⁶ Ibid 8.

¹²⁷ Ibid 9–10.

¹²⁸ Manuhua Barcham, ‘(De)Constructing the Politics of Indigeneity’ in Duncan Ivison, Paul Patton and Will Sanders (eds), *Political Theory and the Rights of Indigenous Peoples* (Cambridge University Press, 2002) 137, 138.

¹²⁹ Cheryl Suzack, ‘Emotion before the Law’ in Cheryl Suzack et al (eds), *Indigenous Feminism: Politics, Activism, Culture* (University of British Columbia Press, 2010) 126, 131.

(ACHPR) and the International Working Group on Indigenous Affairs (IWGIA) names 59 different Indigenous groups across 26 African countries as Indigenous Peoples.¹³⁰ Finding ways to define indigeneity outside of a settler-colonist perspective is an active area of development.

Felix Ndahinda, Korir Sing'Oei and Ridwan Laher contend that the case of recognition and protection of Indigenous Peoples in Africa builds on the idea that such communities share common experiences of subjugation, marginalisation, dispossession, exclusion or discrimination with other Indigenous Peoples worldwide.¹³¹ A case in point is the 40-year struggle of the *Endorois* community that resulted in a landmark ruling on Indigenous Land Rights by the *African Commission on Human and Peoples' Rights*.¹³² On 2 February 2010, the *Endorois* community case set a precedent for identifying Indigenous Africans as the original landowners. Challenging the myth that special rights of Indigenous Peoples are discriminatory, applicants of the *Endorois* community argued that 'Indigenous Peoples' in the African context did not necessarily mean 'First Inhabitants' as it does in the Americas and Australia.¹³³ A key instrument for advocacy by the African Commission on Human and Peoples' Rights is the *African Commission's Working Group of Experts on the Situation of Indigenous Populations/Communities in Africa*, which is noted for recognising the existence of particularly marginalised groups in Africa. This instrument helps support Indigenous Peoples, such as the *Endorois* community, whose rights are protected by the *African Charter on Human and Peoples' Rights* 2005.¹³⁴ Beyond the African region, international institutions are also actively finding ways to recognise the world's Indigenous Peoples.

Even though a number of different international legal instruments define or imply a definition of Indigenous Peoples, there is no universally agreed definition of Indigenous Peoples in international law. The International Labour Organisation (hereafter the ILO) provides the first internationally adopted labour standards of Indigenous workers in the *Abolition of Penal Sanctions (Indigenous Workers) Convention (No 104)* 1955. Also, the ILO's *Conventional Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (No 107)* 1957 (hereafter ILO C107) was the first international instrument to expressly recognise the rights of Indigenous Peoples. Since 2 June 1959, when ILO C107 entered into force, only 27 countries have ratified – Liberia and Australia are not included. Not only are governments reluctant to ratify ILO C107 but Indigenous Peoples are concerned that 'its ideology promoted the assimilation and integration of Indigenous

¹³⁰ Felix Ndahinda, 'Historical Development of Indigenous Identification and Rights in Africa' in Korir Sing'Oei and Ridwan Laher (eds), *Indigenous People in Africa: Contestations, Empowerment and Group Rights* (Africa Institute of South Africa, 2014) 24, 24.

¹³¹ *Ibid.*

¹³² *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, 276 I 2003

¹³³ Cynthia Morel, 'The Endorois Community versus Kenya' in Korir Sing'Oei and Ridwan Laher (eds), *Indigenous Peoples in Africa: Contestation, Empowerment and Group Rights* (Africa Institute of South Africa, 2014) 194, 4.

¹³⁴ George Mukundi and Tuuli Karjala, 'Advocacy for Indigenous Peoples' Rights in Africa: Dynamics, Methods and Mechanisms' in Korir Sing'Oei and Ridwan Laher (eds), *Indigenous People in Africa: Contestations, Empowerment and Group Rights* (Africa Institute of South Africa, 2014) 104, 108. Article 20 of the African Charter on Human and Peoples' Rights provide for self-determination of all oppressed and colonised peoples.

Peoples into the dominant society’.¹³⁵ Concerns of States and Indigenous Peoples led to the creation of ILO’s *Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No 169)* 1989 (hereafter ILO C169), which is the only international treaty open for ratification that is concerned exclusively with the rights of Indigenous Peoples.

Without a clear definition of who Indigenous Peoples are, Article 1(a) of ILO C169 states that the Convention applies to ‘tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations’. Although ILO C169 expanded recognition for Indigenous rights, it still did not receive support from Indigenous Peoples because of two concerns: 1) its refusal to recognise a right to self-determination, and 2) its requirement on governments to facilitate Indigenous participation and consultation rather than obtain consent from Indigenous Peoples.¹³⁶ This is why, as with ILO C107, only 22 countries have ratified ILO C169 (entered into force 5 September 1991), again not including Australia and Liberia. A more thoughtful consideration for Indigenous Peoples’ needs came in 1971: The Sub-Commission on Prevention and Protection of Minorities was mandated by the Economic and Social Council (hereafter ECOSOC) to direct Jose R. Martinez Cobo, then Special Rapporteur, to conduct a study on discrimination against Indigenous Peoples.¹³⁷ Cobo’s study concluded in 1987, crafted a working definition of Indigenous Peoples. According to Cobo,

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.¹³⁸

The United Nations Permanent Forum on Indigenous Issues (hereafter UNPFII), established in July 2000, is an advisory body to ECOSOC, with a mandate to discuss Indigenous issues regarding their social, economic, cultural, development, environmental, and human rights. The UNPFII asserts that the diversity of Indigenous Peoples makes agreeing on an official definition challenging. However, the term ‘Indigenous’ should be understood based on the following: self-identification accepted at the individual and community levels; historical continuity with pre-colonial-settler societies; strong link to territories and natural resources; distinct social, economic or political systems; distinct language, culture and beliefs; status as

¹³⁵ Jill Webb, ‘Indigenous Peoples and the Right to Self-Determination’ (2012) 7(13) *Journal of Indigenous Policy* 75, 83.

¹³⁶ Sarah Pritchard and Charlotte Heindow-Dolman, ‘Indigenous Peoples and International Law: A Critical Overview’ (1998) 3(4) *Australian Indigenous Law Reporter* 473, 479.

¹³⁷ José R Martínez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations* (United Nations, 1987); Netherlands Centre for Indigenous Peoples, *Definition of Indigenous Peoples* (1 November 2010) Indigenous Peoples Definition <<http://indigenouspeoples.nl/indigenous-peoples/definition-indigenous>>.

¹³⁸ Martínez Cobo, above n 137.

non-dominant groups of society; and a resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

Most recently, the *UN Declaration on the Rights of Indigenous Peoples* was adopted by the General Assembly on 13 September 2007, with Peru as the main sponsor, supported by other European and Latin American countries as co-sponsors. During the UN General Assembly (GA10612), the *Declaration on the Rights of Indigenous Peoples* was adopted by a majority of 144 states in favour; 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Australia, Kenya, Nigeria, Russian Federation, Samoa, and Ukraine); and four votes against (Australia, Canada, United States and New Zealand). Since the adoption of the *Declaration on the Rights of Indigenous Peoples*, Australia and the other three countries that voted against, have all reversed their decision. Nearly 20 years after Cobo's definition, the *Declaration on the Rights of Indigenous Peoples* still has no clear-cut definition of Indigenous Peoples. It was the absence of a formal definition of Indigenous Peoples that partly informed the African Group's decision to defer consideration of the Draft Declaration in 2006.¹³⁹ Megan Davis asserts that for some states, particularly in Asia and Africa, Cobo's definition of Indigenous Peoples is unacceptable. The argument is that, since Africa is the origin of humankind, in some places, no Indigenous Peoples existed.¹⁴⁰ Therefore, it is more appropriate to describe Indigenous Peoples in Africa as Minority Groups.

In Australia, there are examples of earlier legislation defining Aboriginality by reference to degrees of blood using phrases such as 'octoroon', 'quadroon', 'half-caste'¹⁴¹ 'native', or 'full-blood'.¹⁴² In 1985, a survey of definitions of 'Aboriginal' or derivative terms in some 700 examples of Australian legislation found about 67 identifiable classifications used from the time of white settlement to the present. The classifications can be grouped under six broad headings of Aboriginality: 'according to anthropometric or racial identification; territorial habituation, affiliation or attachment; blood or lineal grouping, including descent; subjective identification; exclusionary and other; and Torres Strait Islanders'.¹⁴³ Although the definitions of Aboriginal Peoples in Australia differ from each other, RoaRane Meghana suggests that certain commonalities exist - such as cultural distinctiveness, self-identification, the experience of subjugation, and occupation of the land prior to outside settlers - that are significant to understanding the term 'Indigenous Peoples'.¹⁴⁴ Aware of the growing debates concerning appropriate terminology, Mick Dodson proposes the usage of 'First Australian' when in the

¹³⁹ Megan Davis, 'Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples' (2008) 9(2) *Melbourne Journal of International Law* 439, 3.

¹⁴⁰ *Ibid* 5.

¹⁴¹ James Crawford, 'Legal Pluralism and Indigenous Peoples' in Oliver Mendelsohn and Upendra Baxi (eds), *The Rights of the Subordinated Peoples* (Oxford University Press, 1996) 178, 189.

¹⁴² Law Reform Commission of Western Australia, 'Aboriginal Customary Laws: The Interaction of Western Australian Law with Aboriginal Law and Culture' (Private Report Project 94, Law Reform Commission of Western Australia, September 2006) 432, 61 <http://www.lrc.justice.wa.gov.au/_files/p94_fr.pdf>.

¹⁴³ *Ibid*.

¹⁴⁴ RaoRane Meghana, 'Aiming Straight: The Use of Indigenous Customary Law to Protect Traditional Cultural Expressions' (2006) 15(3) *Pacific Rim Law and Policy Journal* 827, 831.

Australian Capital Territory.¹⁴⁵ The Social Justice Report (2012) uses *Aboriginal and Torres Strait Islander Peoples* to refer to the 'First Peoples'.¹⁴⁶ So, in the Australian context as in Africa, the definition of Indigenous is still evolving.

Notwithstanding the controversy regarding a universally accepted definition of Indigenous Peoples, this research draws on Cobo's working definition of Indigenous Peoples as the First Peoples in Liberia and Australia before the arrival of the settler-colonists. The central connection to the land, importance of historical pre-colonial-settler-societies, and desire to preserve ancestral environments and systems, as iterated by the UNPFII above, make Cobo's definition more meaningful for this research study. The terms Aboriginal and Indigenous are used interchangeably when referring to the First Peoples in Australia and Liberia prior to the arrival of settler-colonists. Whilst the term 'Aboriginal' seems more culturally accepted in Australia, 'Indigenous' or 'Native People' is commonplace in reference to the First Peoples in Liberia. Though well-meaning, this usage is contrary to that of Guannu's (considered an apologist for the Indigenous Peoples in Liberia perspective), who classifies the 'tribal people' of Liberia as 'Natives, Africans, and Aborigines'.¹⁴⁷ To this end, this research uses the capitalised versions of Aboriginal and Indigenous to connote a collective proper noun of Aboriginal and Torres Strait Islanders in Australia and Indigenous or Native Peoples in Liberia. Although the terms 'Indigenous' and 'Aboriginal' arouse some rancour amongst Native Peoples in Liberia¹⁴⁸ and Aboriginal Peoples in Australia,¹⁴⁹ there is some level of acquiescence internationally, which would make coining new terminology unnecessarily onerous.

Indigenous Customary or Traditional Laws: Generally, Indigenous Customary Laws ensure effective protection of the traditional cultural expressions of Indigenous Peoples.¹⁵⁰ In Australia, Aboriginal Customary Laws govern all aspects of Aboriginal life, from establishing a person's rights and responsibilities to others to controlling land and natural resources.¹⁵¹ Aboriginal

¹⁴⁵ Dodson, 'Constitutional Recognition of Indigenous Australians', above n 24. In response to a question asking his preference for the term 'First Australians' rather than 'Traditional Owners' Dodson (2012) responds: 'To some people it's [traditional owner] an artefact of anthropological thinking that has been grasped by lawyers and put into legal form and doesn't truly reflect the status in a way that the "first peoples" or the "first Australians" or "first nations" does. Again, it is like native title, it's something that came over on the ships and it is not about our status before those ships arrived. We weren't called Australia back then but when we say first Australians everybody in this room would know who we were talking about. There are some Aboriginal and Torres Strait Islander peoples who object to that term. If I was in the Northern Territory I would say "traditional owners"'

¹⁴⁶ Australian Human Rights Commission, 'Social Justice Report 2012: Aboriginal and Torres Strait Islander Social Justice Commissioner' (Government Report ABN 47996232602, Australian Human Rights Commission, 26 October 2012) 240.

¹⁴⁷ Guannu, above n 100, 7.

¹⁴⁸ Heneryatta Ballah, 'Ethnicity, Politics and Social Conflict: The Quest for Peace in Liberia' [2003] *CiteSeerX* 52, 52.

¹⁴⁹ Katherine Lambert-Pennington, "'Real Blackfellas": Constructions and Meanings of Urban Indigenous Identity' (2012) 20(2) *Transforming Anthropology* 131, 132; Shannan Dodson, 'Too White, Too Black, or Not Black Enough? This Is Not a Question for Others to Decide' *The Guardian* (Sydney, NSW), 8 June 2017 <<http://www.theguardian.com/commentisfree/2017/jun/09/too-white-too-black-or-not-black-enough-this-is-not-a-question-for-others-to-decide>>; McCorquodale, above n 57, 9. According to McCorquodale, the term 'native' (like co-equal 'tribal') was first replaced with 'people' at the enactment of the *Australian Institute of Aboriginal Studies Act* 1964.

¹⁵⁰ Meghana, above n 144, 827.

¹⁵¹ Law Reform Commission of Western Australia, above n 142, 61.

customs and laws are part of an oral culture that is called ‘the law’ rather than laws. James Crawford asserts that the singularity of Indigenous Customary Law emphasises its unity and immutability rather than variety and change.¹⁵² In *Milirrpum v Nabalco Pty Ltd* 1971, although Justice Richard Blackburn found that native title rights were extinguished during British colonisation, he did not hesitate to rule that the Yolngu People’s communal landholding and kinship rules were a system of laws.¹⁵³ Although there are multiple perspectives on what is identified as Indigenous Customary Laws, the Australian Law Reform Commission characterises ‘Aboriginal Customary Laws’ as a ‘body of rules, values and tradition...accepted as establishing standards or procedures to be followed or upheld’.¹⁵⁴ In Liberia, a distinction is also drawn between Anglo-American-Liberian law and Liberian Customary Laws.

In Liberia, as in Australia, the exact meaning of customary law has not been strictly defined. At the founding of Liberia, African American settler-colonists created the Ministry of Interior to regulate the ‘uncivilised Natives’ whilst adopting Anglo-American statutory law for themselves.¹⁵⁵ Later, the obsolete *Rules and Regulations Governing the Hinterland*, 1949 (revised in 2000), were instituted to ‘provide adequate protection for all persons travelling through, or who desire to dwell permanently in those parts [of Liberia]...in keeping with the true spirit, purpose and intent of our Declaration of Independence and the Organic Law of the Country’.¹⁵⁶ Executive Order No 20 established the Liberia Law Reform Commission on 11 June 2009 pursuant to the *Accra Comprehensive Peace Agreement* 2003, which recognised the need for an extensive overhauling of Liberia’s governance framework.¹⁵⁷ Even though the Law Reform Commission acknowledges a dual legal system in the country, it makes no mention of reforming Indigenous Customary Laws in its Strategic Plan 2011-16.¹⁵⁸ Although the dual legal system has been acknowledged, neither the Ministry of Interior nor the Law Reform Commission published a definition of customary or traditional law. Notwithstanding, research conducted by the United States Institute of Peace (2009) and the International Crisis Group (2010) suggests that Indigenous Customary Laws in Liberia include (but are not limited to) the following: trial by ordeal in traditional courts (e.g., sassywood);¹⁵⁹ sorcery and magical

¹⁵² Crawford, above n 141, 190.

¹⁵³ *Milirrpum v Nabalco (The Gove Land Rights case)* 1971 17 FLR 141. The Gove Land Rights case was the first litigation on native title in Australia. The final decision noted that the British Crown had the authority to extinguish native title rights of Aboriginal Peoples if it existed. The *Milirrpum* decision led to the establishment of the Woodward Royal Commission, which eventually resulted in the recognition of Aboriginal Land rights in the Northern Territory. In 1975, then Prime Minister Gough Whitlam also drafted the *Aboriginal Land Rights Act* 1976. Two decades later, *Mabo v Queensland (No 2)* (1992), the High Court of Australia overruled *Milirrpum*.

¹⁵⁴ Australian Law Reform Commission, ‘Recognition of Aboriginal Customary Laws (ALRC Report 31)’, above n 26, 98–101.

¹⁵⁵ International Crisis Group, ‘Liberia: Resurrecting the Justice System’ (107, International Crisis Group, 6 April 2006) 1, 7 <http://www.operationspaix.net/IMG/pdf/ICG_liberia_resurrecting_the_justice_system_2006-04-06_.pdf>.

¹⁵⁶ *Rules and Regulations Governing the Hinterland* 1949 (forward).

¹⁵⁷ Ministry of Foreign Affairs, ‘Law Reform Commission of Liberia: Strategic Plan 2011-2016’ 9 <http://liblrc.org/uploads/3/2/5/8/3258104/lrc_strategic_plan.pdf>.

¹⁵⁸ *Ibid* 1–66.

¹⁵⁹ International Crisis Group, above n 155, 14, 9; Deborah H Isser, ‘Looking for Justice: Liberian experiences with and perceptions of local justice options’ (USIP Report 63, United States Institute of Peace, 2009) 104, 8, 10, 38, 49,

powers;¹⁶⁰ *Sande* and *Poru* Institutions (also known as Secret Society);¹⁶¹ and spiritual rituals performed by elders.¹⁶² This study uses the composite ‘Indigenous Customary Law’ to distinguish diverse recognition of Aboriginal customs and lore from that of ‘customary international law’. Thus, Indigenous Customary Laws encompass oral, religious and sacred customs, traditions, rules and practices, which may differ amongst individual communities as practiced and applied by Indigenous Peoples in Liberia and Australia.

Tribe, Ethnicity, Country and Language Group: As with the political disenfranchisement of Indigenous Peoples through the colonial nation-building process, classification of indigeneity and the denigrating terminology used to describe those classifications disproportionately affect Indigenous women more than men. For example, consider a social placement and gender construct ascribed to Indigenous Glebo women by their Former Slave Returnee immigrant sisters from across the Atlantic. Mary Moran (1990) presents a challenge facing Glebo women in the social ranking order of Maryland County in Liberia:

The opposite of civilised [or *kwi* in Kru language] is country, tribal, or native. Most terms opposed to *kwi* are not neutral but denigratory. (...) Glebo women achieve civilized status in much the same manner as men, through formal education and training, yet they remain almost totally economically dependent on male wage earners. Being civilized severely constrains a woman’s ability to support herself by limiting her to economic activities in which she must compete (often unequally) with men. Men have the advantage, on the whole, of higher levels of education because parents are usually more willing to invest in the schooling of sons than of daughters. A common rationale offered for the preference... [is that] they [boys] cannot ‘spoil themselves’ with early pregnancies, (...) ideally a civilized woman should resemble a Western-style housewife, (...) [yet] their [Glebo women] claim to civilize status is tenuous, depending both on their daily public behaviour and on the financial situations of their husbands, lovers, and fathers. (...) Men acquire civilized status for life, and though they may experience downward social and economic mobility through unemployment, alcoholism, or criminal behaviour, they do not return to the status of natives. Civilized women [on the contrary] lose prestige by engaging in the ‘wrong’ types of work, such as subsistence farming or marketing. ‘She used to be civilized’ is frequently heard to describe a literate woman who has been forced by economic necessity to ‘tie lappa and make market,’ giving up the most visible symbol of civilized womanhood, the Western-style dress.¹⁶³

Such categorisation of the Glebo woman shows that Native Liberian women are denigrated not only by males but also by Former Slave Returnee females. However, the irony presented in Moran’s observation is the fact that the development of social stigmas and cultural beliefs are discriminatory towards women simply because of their sex. No matter how downtrodden men are by experience, they can never lose their social status of being ‘civilised’ or superior to women. At the same time, when an educated woman decides to farm or sell products in the

63, 68, 97 <<http://www.usip.org/publications/looking-justice-liberian-experiences-and-perceptions-local-justice-options>>.

¹⁶⁰ International Crisis Group, above n 155, 14; Isser, above n 159, 20, 24, 65, 67.

¹⁶¹ International Crisis Group, above n 155, 3, 12, 13; Isser, above n 159, 7, 24, 37, 55, 79.

¹⁶² Isser, above n 159, 8, 36, 46, 51.

¹⁶³ Mary H Moran, *Civilized Women: Gender and Prestige in Southeastern Liberia* (Cornell University Press, 1990) 2–5. Lappa is a rectangular traditional fabric, worn like a wrap by Liberian women. It is usually associated with poor, illiterate, Indigenous women who earn their living by selling in the market (market women).

market, she instantly loses her civilised status. Avoiding the perpetration of these negative social constructs requires thoughtful consideration of the term tribe.

The term 'tribe' originates from the Latin word *tribus* meaning 'a group of persons forming a community and claiming descent from a common ancestor'.¹⁶⁴ The word 'tribe' with 'no consistent meaning' was later popularised by European settler-colonialists and has come to 'promote a myth of primitive African timelessness'.¹⁶⁵ As the term seeped into the Continent, Africans (scholars and laypersons)¹⁶⁶ and foreign researchers¹⁶⁷ followed suit in its usage with less hesitation for the etymology and social construct of the terminology. Teah Wulah writes, 'very recently in Liberia, it was an insult to be called a 'countryman', which meant you were from a tribe'.¹⁶⁸ Today everyone in Liberia wants to have a 'country name' to reflect the complexity of what it actually means to identify as a Native Liberian or an African American Former Slave.¹⁶⁹ Abayomi Karnga, a Liberian historian whose heritage lies with recaptured slaves¹⁷⁰ from the Belgian Congo region of Africa, writes, '[t]he Kwia, or Bele, group consists of the Gbetars, Gabos and Betus (all being commonly known as "Kru")... [a]ll these spoke practically the same tongue, and could more or less understand each other... [t]hese tribes lived formerly in the interior of Africa before coming to the sea coast'.¹⁷¹ As early as 1869, 22 years after Liberia declared its independence from the American Colonisation Society, the word 'tribe' was used by then ex-President Joseph Jenkins Roberts¹⁷² to denigrate Indigenous Peoples in

¹⁶⁴ Robert J Gregory, 'Tribes and Tribal: Origin, Use, and Future of the Concept' (2003) 1(1) *Studies of Tribes and Tribals* 1.

¹⁶⁵ Chris Lowe, 'The Trouble with Tribe'.

¹⁶⁶ Tuan Wreh, *The Love of Liberty: The Rule of President William V. S. Tubman in Liberia, 1944-1971* (C. Hurst, 1976) 132–133.

¹⁶⁷ Liebenow, above n 55, 30–52.

¹⁶⁸ Helene Cooper, *The House at Sugar Beach: In Search of a Lost African Childhood* (Simon and Schuster, 2008) 6; Helene Cooper, *The House at Sugar Beach: In Search of a Lost African Childhood* (University of Maryland, Baltimore Campus, 2010) <<https://www.youtube.com/watch?v=v8oR6g5rgzs>>. Cooper, a supposedly renowned Liberian-born American journalist who is currently a New York Time's correspondent at the Pentagon, flaunts her historical and ancestral ignorance in calling Indigenous Peoples in Liberia 'native country people' and BLACK African-American emigrants 'American': 'Liberia is nowhere near the Congo River, but the term *Congo* is endemic. We are called the Congo people – my family and the rest of the descendants of the freed American slaves who founded Liberia in 1822. It is a somewhat derogatory term invented by the native Liberians back in the early nineteenth century, after Britain abolished slave trade on the high seas...the native Liberians, many of whom happily engaged in the slave trade and didn't like this new business of freeing the slaves and dumping them in Liberia, called the newcomers Congo People...We got the native Liberians back by calling them Country People, far more derogatory, in our eyes' (p6). Cooper also boasts of her great, great, great great, grand-father, Elijah Johnson, who boarded the first ship from New York in 1820 to West Africa and the four Cooper brothers (along with one Ann Cooper) from Norfolk Virginia, who boarded the *Harriet* in 1829 (also see her presentation at the University of Maryland, Baltimore available at: <<https://www.youtube.com/watch?v=v8oR6g5rgzs>>). What is interesting to note of Elijah Johnson and the Cooper brothers is that, the former boarded the *Elizabeth* in New York on 9 March 1820 as a freeborn person who 'reads' and had an 'unknown' occupation; whilst the latter, also 'freeborn', were counted amongst those with 'unknown' literacy, and two marked as 'seaman' for occupancy and the other two 'unknown'. Johnson, who was friends with Jehudi Ashmun, first colonial agent of the ACS, was one of the original signers of the Declaration of Independence in 1847.

¹⁶⁹ Teah Wulah, *The Forgotten Liberian: History of Indigenous Tribes* (AuthorHouse, 2005) iv.

¹⁷⁰ Tom W Shick, *Behold the Promised Land: A History of Afro-American Settler Society in Nineteenth-Century Liberia* (Johns Hopkins University Press, 1980) 66–72. Between 1846 and 1860, a total of 5457 Africans from originating mainly from the Congo River and Key West, Florida en route to be sold into slavery in the Americas were recaptured and settled in Liberia.

¹⁷¹ Abayomi Karnga, *History of Liberia* (D. H. Tyte, 1926) 11.

¹⁷² Abayomi Karnga describes former President Roberts as an Octoroon – a person who is one-eighth Black by descent (see Karnga, *History of Liberia* (1926) xiv. Tom Shick (1980) affirms that '[o]ne conspicuous mark of the free Afro-American community was the high percentage of mulattoes' who, based on their skin tone, residence in

Liberia. In responding to the editor of the *North American and United States Gazette* on charges that ‘slavery is being practiced in Liberia’, President Roberts writes:

...-while it accords to the people of Liberia much credit for their governmental capacity, their courage and steadiness in maintaining themselves amongst the savages, and for their conciliatory and human policy toward the barbarous tribes which they have come in contact – places both Liberia and myself in a decidedly false position, (...) I am guided in my estimate solely by personal visits to the several tribes within the jurisdiction of the Republic, and those occasions computing the numbers of their respective inhabitants (...) at six hundred thousand souls, (...) these tribes never engaged in the sale of slaves to foreign dealers; and as far as I know, never tolerated domestic slavery amongst themselves.¹⁷³

Aboriginal Australians were also relegated to inferior status by white settler-colonists who used language as a tool of exclusion and denigration. According to Honourable William Henry Mackie, Advocate General and Colonist of the Western Australian Legislative Council (1831-34) in *R v Wewar* 1842,¹⁷⁴

There are two cases in which such a right may be exercised. First, in the case of an uninhabited country; which is not the present case. Secondly when a large extent of country is roamed over by wandering savages, who make no use, or a very trifling use, of the soil, and subsist by the chase and spontaneous products of the earth. (...) Those savage tribes have no right to exclude the rest of mankind from which they themselves make no proper use. (...) But as jurisdiction is clearly an inseparable incident of sovereignty, it follows that the British nation having, under the principle of the law of nations just stated, taken possession and assumed the sovereignty of a territory bounded by certain parallels and meridians, the law of that nation must be paramount coextensively with that territorial sovereignty.¹⁷⁵

The fascination with Mackie’s profession in *R v Wewar* is the sheer audacity and arrogance displayed of applying settler law to justify such violation during the process of dispossessing sovereign Indigenous nations of their land. What is even more disturbing is the use of derogatory language to describe Aboriginal Peoples, their cultures and their way of life, thereby initiating a belief system that seeped into the structural formation of long-held traditions that are violent and abusive towards Indigenous Peoples in Australia. A striking similarity with these degrading social constructs as stated above (.g, tribal and ethnicity) mandates that this research use terms that invoke respect for and dignity of Indigenous Peoples in Liberia and Australia.

cities and economic opportunities, were able to accumulate property and maintain social connections of value over time. Apart from twice being elected as president of Liberia, former President Roberts was a successful businessman. As an elite Liberian, he accumulated land, property and money during his lifetime and died ‘a venerated statesman in 1876’ (see Shick, *Behold the Promised Land* (1980) pp. 13, 49).

¹⁷³ ACS, *The African Repository* (American Colonization Society, 1869) vol XLV, 14–15, 17.

¹⁷⁴ *R v Wewar* 1842 was the first case in New South Wales Supreme Court to debate jurisdictional issue Western Australia. In the case published in the *Perth Gazette* (1842) *Wewar* was captured and charged with ‘wilful murder’ of Dyung under British law. As stated on Kaartdijin Noongar’s website, ‘Henry Trigg interpreted *Wewar* as saying: ‘I cannot understand why the Governor is sulky or severe with me, if a white man kills a white man we never interfere. Sometime back the white man killed many of the natives and the Governor took no notice, now why should the Governor take any notice of me if I kill a fellow native that steals my wife, or kills my brother, when it is according to our law’. See Kaartdijin Noongar – Noongar Knowledge, ‘Impacts of the Law Pre-1905’ (2012), available at: <<http://www.noongarculture.org.au/impacts-of-law-pre-1905/>>

¹⁷⁵ Ann Hunter, ‘The Boundaries of Colonial Criminal Law in Relation to Inter-Aboriginal Conflict (‘inter Se Offences’) in Western Australia in the 1930s-1840s’ (2004) 8(4) *Australian Journal of Legal History* 251.

In Australia, the words ‘brute’ and ‘miserable’ coupled with ‘tribal’ or ‘native’ are used sparingly,¹⁷⁶ mostly by non-Aboriginal social scientists to group cultures and customs. William Dampier,¹⁷⁷ as quoted by Sharman Stone, reports that, ‘...the natives, lacking any of the refinements necessary for dignified human existence, were closest to the “brutes”’.¹⁷⁸ As quoted by Kay Anderson and Collin Perrin, Dampier elaborates, ‘there is reason to believe that we have as yet seen only the most destitute of the whole nation; and that there are tribes farther to the northward, perhaps in inland countries of the great Austral land, who are by no means so miserable or so savage as the people near the southern shores’.¹⁷⁹ Here, the term ‘tribe’ as referenced by Dampier still seems to convey the relative subordination of Aboriginal cultures. Due to the negative connotation of the terms, ‘tribe’ and ‘tribal’ are not used to refer to Indigenous groups in this research.

‘Language (or Language Group)’¹⁸⁰ or ‘Country’ (rather than ‘ethnicity’), connotes the diversity of Aboriginal peoples in Australia. Whilst the term ‘country’¹⁸¹ is used in both Liberia (infrequently) and Australia to denote Indigenous connection to land and family origins, ‘ethnicity’ seems unattractive because of its roots in paganism and heathenism, i.e., one who is not a Christian or a Jew.¹⁸² Kevin Dunn et al (2010) warn that Indigeneity is not synonymous with a broad cultural diversity which sees Aboriginal Australians as an ethnic group in the scramble for equal opportunity and equal sense of belonging in the multicultural confabulation.

¹⁷⁶ Robert MW Dixon, *Searching for Aboriginal Languages: Memoirs of a Field Worker* (University of Chicago Press, 2011) 133.

¹⁷⁷ Henry Reynolds, *Dispossession: Black Australians and White Invaders* (Allen and Unwin, 1996) 97–98 <<http://www.contentreserve.com/TitleInfo.asp?ID={BA893BD4-818E-47F0-B657-3EC1F37227BF}&Format=410>>. Reynolds quotes Dampier’s description of Australia’s Indigenous, in which he compares the Aborigines to Negroes: ‘[t]he inhabitants of this Country are the miserable People in the World... [They] have no Houses, and skin Garments, Sheep, Poultry, and Fruits of the Earth... and setting aside their Humane Shape, they differ but little from Brutes. They are tall, strait-bodied, and thin, with small long limbs. They have great Heads, round Foreheads, and great Brows. Their Eye-lids are always half closed, to keep the Flies out of their Eyes; they being so troublesome here, that no fanning will keep them from coming to one’s Face; and without the Assistance of both Hands to keep them off, they will creep into ones Nostrils, and Mouth too, if the Lips are not shut very close; so that from their Infancy being thus annoyed with these Insects, they do never open their Eyes as other People: And therefore they cannot see far, unless they hold up their Heads, as if they were looking at somewhat over them. They have great Bottle-Noses, pretty full Lips, and wide Mouths. The two Fore-teeth of their Upper-jaw are wanting in all of them. Men and Women, old and young; whether they draw them out, I know not: Neither they any Beards. They are long-visaged, and of a very displeasing Aspect, having no one graceful Feature in their Faces. Their hair is black, short and curl’d, like that of the Negroes; and not long and lank like the common *Indians*. The Colour of their Skins, both of their Faces and the rest of their Body, is Coal-back, like that of the Negroes of *Guinea*. They have no sort of Cloaths, but a piece of the Rind of a Tree or four small green Boughs full of Leaves, thrust under their Girdle, to cover their Nakedness. They have no Houses but lie in the open Air without any covering; the Earth being their Bed, and the Heaven their Canopy. Whether they cohabit one Man to one Woman, or promiscuously, I know not; but they do live in Companies, 20 or 30 Men, Women, and Children together...’ (97-8).

¹⁷⁸ Sharman Nance Stone, *Aborigines in White Australia: A Documentary History of the Attitudes Affecting Official Policy and the Australian Aborigine, 1697-1973* (Heinemann Educational, 1974) 13 <<http://catalog.hathitrust.org/api/volumes/oclc/1655220.html>>.

¹⁷⁹ Kay Anderson and Colin Perrin, “‘The Miserablest People in the World’: Race, Humanism and the Australian Aborigine’ (2007) 18(1) *The Australian Journal of Anthropology* 18, 9.

¹⁸⁰ Patrick McConvell, Doug Marmion and Sally McNicol, ‘National Indigenous Languages Survey Report 2005’ (Government Report, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2005) 255, 3 <<http://aiatsis.gov.au/publications/products/national-indigenous-languages-survey-report-2005>>. The NILS report states that of the 250 original Australian Indigenous languages (i.e., before arrival of the colonisers), only 145 are still spoken today - 110 of which are critically endangered.

¹⁸¹ Anthony Appiah and Henry Louis Gates (eds), *Africana: The Encyclopedia of the African and African American Experience* (Oxford University Press, 2nd ed, 2005) 477.

¹⁸² Douglas Harper, *Online Etymology Dictionary* (2014) Online Etymology <<http://www.etymonline.com/index.php?term=ethnic>>.

Instead, ‘the political position of Indigenous Australians [should be] perceived as revolving around the cleavage between Indigenous and non-Indigenous Peoples particularly within the context of colonisation and such issues as land, health, heritage, identity, education and forced removal of children in settler society’.¹⁸³ In light of the above, the use of ‘language’ or ‘Language Group’ when characterising Indigenous Peoples in Liberian and Australian cultures, customs, traditions, mother tongue/lingua and ancestral lineages is more appropriate than ‘ethnicity’.

Former Slave Returnee or African American Settler-Colonist: Tony Martin, the renowned Trinidadian-born Africanist, used the term Afro-American to describe the various ancestral lineages of African peoples forced into slavery across the Americas.¹⁸⁴ The label, which later morphed into ‘African-American’ and displaced the enslaved ‘negro’ descriptor,¹⁸⁵ commands more respect than the term ‘Americo-Liberian’, which was crafted in Liberia. Terms like these were used by white agents of the American Colonisation Society to aid in the process of separating Former Slave Returnees from Indigenous locals. D. Elwood Dunn and Svend Holsoe (1985) argue,

The long struggle for social and political integration and unification represents the attempt to overcome this basic problem. First there was the task of developing a community amongst the various settlements of early nineteenth-century Liberia (i.e., amongst black American emigrants from Georgia, New York, Mississippi, etc.). This process underscored the distinction between immigrant and indigenous groups. Agents of the American Colonisation Society themselves identified in the 1820’s the two principal population groups as: 1) black American immigrants who were referred to interchangeably as “Americans,” “colonists,” “settlers,” “Americo-Liberians,” “citizens,” and “civilized”; and 2) the indigenous population groups variously identified as “native,” “savages,” “heathens,” “aborigines,” “country people,” “uncivilised element,” [bush] and “indigenous Liberians”.¹⁸⁶

Given the nature of their emigration as Former Slaves in search of refuge, it is reasonable to describe the historical analogues of the term ‘Americo-Liberian’ as synonymous to that of ‘refugee’,¹⁸⁷ ‘expatriate’,¹⁸⁸ or ‘deportee’¹⁸⁹ descending from formally enslaved Africans. However, contrary to the negative connotation of these terms, the term ‘Americo-Liberian’ carries a connotation of superiority over Indigenous Peoples in Liberia. To a settler-colonist in Liberia, the moniker ‘Americo-Liberian’ implies ‘we are not Africans but civilised

¹⁸³ Kevin M Dunn et al, ‘Indigenous Australians’ Attitudes towards Multiculturalism, Cultural Diversity, “race” and Racism’ (2010) 13(4) *Journal of Australian Indigenous Issues* 19.

¹⁸⁴ Tony Martin, *The Pan-African Connection: From Slavery to Garvey and Beyond* (Majority Press, 1st Majority Press, 1984) 3.

¹⁸⁵ Lerone Bennett, Jr., ‘What’s in a Name? Negro vs. Afro-American vs. Black’ (1967) 23 *Ebony* 46.

¹⁸⁶ Dunn and Holsoe, above n 104, 178–179.

¹⁸⁷ The Declaration of Independence of the Constitutional Convention of 1847 confirms the returnees desire to seek refuge in Africa: ‘All hope of a favourable change in our country was thus wholly extinguished in our bosoms, and we looked with anxiety abroad for some asylum from the deep degradation.’ See Charles Henry Huberich, ‘The Political and Legislative History of Liberia’ (1947) 829.

¹⁸⁸ Fraenkel, above n 39, 8.

¹⁸⁹ Henry Noble Sherwood, ‘Mississippi Valley Historical Review 2’ in Staudenraus (ed), *The African Colonization Movement, 1816-1865* (Columbia University Press, 1961) 484; Penelope Campbell, *Maryland in Africa: The Maryland State Colonization Society, 1831-1857* (University of Illinois Press, 1971) 3.

Americans'.¹⁹⁰ As such, the juxtaposition of 'Americo-Liberian' with 'country people' vilifies Indigenous Peoples in Liberia, whilst elevating Former Slave Returnees to a higher social class. Furthermore, the term is a misnomer as it fails to recognize the distinction between Liberians of African descent taken to the Americas as slaves, Africans snatched from various locales before embarking on the 'middle passage',¹⁹¹ and Africans from ships bound for the Americas that were intercepted at sea by the British Navy and sent to Liberia.¹⁹² In this dissertation, the terms African American settler-colonists or Former Slave Returnees are used collectively to represent all newcomers of African descent arriving in Liberia after 1820. The 'African' in the phrase 'African American' encompasses all Africans whether they came from the United States or other parts of Africa. The term 'settler-colonist' is applied more generally to include both white English and Black African American emigrants in Australia and Liberia, respectively.

The term 'Negritude' is not frequently used in this research. However, it is included here to clarify the origin of the discourse in relation to the conceptual mindset behind such term as 'civilised Americo-Liberian' and 'inferior uncivilised'¹⁹³ Indigenous Liberians'. According to Tony Martin and Franz Fanon, the word *Negritude* arose as a sign of resistance on the part of African writers, refuting the view of European cultural imperialists by stating that, '...everything white was not pretty, that everything black was not ugly; that whites were not inherently superior in intelligence, and Africans were not naturally stupid'.¹⁹⁴

*Systematic Violence and Violence Against Women: Governments of both Liberia*¹⁹⁵ and Australia,¹⁹⁶ in their National Action Plans on violence against women, adopt the UN *Declaration on the Elimination of Violence against Women's* 1993 (hereafter DEVAW)

¹⁹⁰ See the *Liberian Declaration of Independence* 1847, available at <http://www.onliberia.org/con_declaration.htm>.

¹⁹¹ Charles Johnson, *Middle Passage* (Simon & Schuster, 1998).

¹⁹² After the enactment of the *Abolition of the Slave Trade Act* 1807 in the UK Parliament.

¹⁹³ Barbara A West, *A Brief History of Australia* (Facts On File, 2010) 266; Ingereth Macfarlane and Mark Hannah (eds), *Transgressions: Critical Australian Indigenous Histories* (ANU E Press, 2007) 195–196. The term '(un)civilize' also invokes similar negative connotation in Australia. In 1810, the same year Lachlan Macquarie takes over as governor of the New South Wales colony, violence against Indigenous Peoples in Australia increased. Macquarie believed the best way relate to Aboriginal Peoples was to 'civilize' them by replacing their traditional with a European way of life. During his regime, he opened the first Aboriginal mission in Parramatta called Parramatta Native Institution for Aboriginal children (also see Governor Macquarie's Proclamation to the Aborigines of 4 May 1816, available at <http://www.historyservices.com.au/resource_material_proclamation04051816.htm>). The purpose of the mission school was to 'civilise, educate and foster habits of industry and decency in the Aborigines', (i.e., to train Indigenous in domestic, agricultural and other forms of labour). He later passed laws mandating that any Aboriginal who resisted subjection to British control should be shot down. Ingereth Macfarlane (2007 at 90) further explains Russell Clarks choice of works in describing Aboriginal Australian as uncivilised: 'Clark compared jagged mountain peaks to the sharpened teeth of savages and divided Aboriginal people into two categories: 'semi-civilised' allies like Kennedy's faithful guide Jacky Jacky and 'primitive' tribal enemies. The latter were presented as either wandering marauders or treacherous cowards'.

¹⁹⁴ Martin, above n 184, 24. Unfortunately, Macquarie (Macquarie University is named in his honour) was not the only one to 'legalise' violence against Aborigines. Sir Thomas Brisbane (Brisbane, Queensland's capital city, is named in his honour) also issued a Declaration of Martial Law in 1824 – which gave settlers the right to murder Aborigines 'lawfully' (see <http://www.nma.gov.au/engage-learn/schools/classroom-resources/multimedia/interactives/bells_falls_gorge_html/cabinet_items/transcript_declaration_of_martial_law>).

¹⁹⁵ Government of Liberia, 'National Plan of Action for the Prevention and Management of Gender Based Violence in Liberia', above n 109, 8.

¹⁹⁶ Council of Australian Government, 'The National Plan to Reduce Violence against Women and Their Children 2010 – 2022 (The National Plan)' (Department of Families, Housing, Community Services and Indigenous Affairs, 2010) 61, 2.

definition of violence against women. Article 1 of DEVAW states that, “‘violence against women means’ any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life’.¹⁹⁷ In this research, gender violence or violence against women encompasses physical, psychological and sexual harm inflicted (whether by commission or omission) upon Indigenous girls and women. Gender violence is examined at three levels: the state or institutional, structural or cultural, and community or interpersonal infliction of physical, psychological and sexual harm against Indigenous girls and women. Systematic gender violence is a collective reference to the three levels as described above¹⁹⁸ and in more detail in chapters 3 and 8.

Genocide, War Crimes, and Crimes Against Humanity: Article 6 of the *Rome Statute of the International Criminal Court 1998* (hereafter the *Rome Statute*) defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group by a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring its physical destruction in whole or in part; d) imposing measures intended to prevent births within the group; and e) forcibly transferring children of the group to another group. Article 7 of the *Rome Statute* defines crimes against humanity as widespread acts or parts of systematic attack directed against any civilian population, which include murder, extermination, enslavement, sexual slavery, torture, rape, forced prostitution, forced pregnancy, and religious persecution, amongst others. Article 8 of the *Rome Statute* states that the International Criminal Court shall have jurisdiction over war crimes, in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. War crimes of this type include grave breaches of the Geneva Conventions, wilful killing, inhumane treatment, wilfully causing great suffering, and appropriation of property, amongst others. In this research, systematic gender violence broadly encapsulates all components of Articles 6, 7 and 8 of the *Rome Statute*.

Victims/Survivors: In this study, the term ‘survivor(s)’ rather than ‘victim(s)’ is preferred. Theories of rape and feminist studies have long engaged with the connotation and ideological distortions of labelling women and girls as ‘survivors’ or ‘victims’ of gender violence. Whilst victimhood tends to imply a level of passivity, survivorship is associated with empowerment. Preference for the latter term over the former adopts a more psychological approach to engendering a greater sense of self-worth and respect.

¹⁹⁷ Declaration on the Elimination of Violence against Women, GA, 85th plen mtg, UN doc, A/RES/48/104 (20 December 1993) and Commission on the Status of Women, *Report on the fifty-seventh session Supplement 7*, UN ECOSOC, 57th sess., UN Doc E/CN.6/2013/11 (4-15 March 2013).

¹⁹⁸ Limited space does not permit a comprehensive examination of violence against queer/gay Indigenous persons in this research, since doing justice to such a topic requires additional research method and design.

Rule of Law: The *Duhaime Legal Dictionary* explains the principle as a concept whereby ‘individuals, persons and government shall submit to obey and be regulated by law, and not arbitrary action by an individual or a group of individuals’.¹⁹⁹ Former Lord Chief Justice of England and Wales, Thomas Bingham, wary about global diversity and the generalisation of applying foreign concepts to all, purports that the rule of law means ‘all persons and authorities within the State, whether public or private should be bound by and entitled to benefits of laws publicly made, taking effect (generally) in the future and administered in courts’.²⁰⁰ The *UN Secretary-General*, in his report on the rule of law and transitional justice in conflict and post-conflict societies (2004), defines the phrase as

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.²⁰¹

From the three definitions stated above, the three major characteristics of the rule of law are centred on 1) indiscriminate submission and obedience to laws publicly made; 2) administration of the law in the courts; and 3) avoidance of arbitrariness of the law when dispensing justice. To this end, this research operationalises the rule of law as an umbrella phrase comprising the following attributes pertinent to equal treatment for all Australian and Liberian citizens: equality before the law, access to the law, integrity of the law, public confidence in the law, transparency and accountability, administration of justice by independent adjudicators, competency of the law, and limitation on the exercise of power by the executive, judicial and legislative branches of government. Chapter 4 further expands on the concept of the rule of law.

Restorative Justice: The concept of restorative justice, conceived out of the frustration with retributive and rehabilitative justice models,²⁰² gained recognition with Howard Zehr’s²⁰³ victim-offender reconciliation programmes. The victim-offender reconciliation programme is an independent organisation working outside the criminal justice system wherein the offender, the victim and community members who have been affected by criminal offence²⁰⁴ are brought together in a ‘Peacemaking Circle’.²⁰⁵ As opposed to the over-emphasis on punishment,

¹⁹⁹ See Duhaime Learn Law at <<http://www.duhaime.org/LegalDictionary/R/RuleofLaw.aspx>>.

²⁰⁰ Tom H Bingham, ‘The Rule of Law’ (2007) 66(01) *The Cambridge Law Journal* 67.

²⁰¹ UN Security Council, ‘UN Secretary General Report: The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies’ (UN Document S/2004/616, United Nations, 23 August 2004) 24, 4.

²⁰² Tali Gal, *Victims to Partners: Child Victims and Restorative Justice* (PhD Thesis, The Australian National University, 2006) 7.

²⁰³ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press, 3rd ed, 1990) 160.

²⁰⁴ Elmar GM Weitekamp and Hans-Jürgen Kerner, *Restorative Justice: Theoretical Foundations* (Willan Pub, 2002) 3–5.

²⁰⁵ Howard Zehr, ‘Doing Justice, Healing Trauma: The Role of Restorative Justice in Peacebuilding’ (2008) 1(1) *South African Journal of Peacebuilding* 1. Peace Circles is not mediation. Usually facilitated by a ‘circle keeper’ who uses talking piece and a circular process to guide the exchange, it draws on the core values of all its participants.

retribution and rehabilitation found in criminal legal processes, Gerry Johnstone (2002) argues, that restorative justice prioritises the needs of the survivors whilst simultaneously ensuring that the offender is fully aware of the damage and liability she or he has caused to people.²⁰⁶ A form of ‘Indigenous restorative justice’ is practiced in the Community/Koori Courts²⁰⁷ in Australia and the Palava Hut Forum²⁰⁸ in Liberia. A Community Court is a ‘modified summary court sentencing process that allows community participation’.²⁰⁹ According to Mary Spiers-William (2013), Community Court is grounded in the ethos of pluralism. That is, without necessarily applying Indigenous Customary Laws in Australia, Community Court suggests that there are other ways of knowing and doing justice.²¹⁰ Supporting cultural strengths, Community Court (like circle sentencing processes) influences Indigenous communities through restorative justice paradigms. Similarly, Kylie Cripps (2011) asserts that the Victoria Koori Court, established by the enactment of the *Magistrates’ Court (Koori Court) Act 2002*, is an ‘inclusive, innovative, culturally appropriate and modern approach to strategically reduce Aboriginal overrepresentation within the criminal justice system.’²¹¹ In rural Liberia, a Palava Hut is a simple round open-space structure in the centre of a village built with thatch roofing and mud-bricks. It is a meeting point for all villagers to resolve disputes and settle conflicts, usually headed and guided by the local chief and elders. During the *Palava Hut*, offenders are given the opportunity to admit to wrongdoing with the aim of seeking forgiveness from the elders and the community.²¹² Although there are many definitions of restorative justice as described by Zehr, and the Community Court and the Palava Hut paradigms,²¹³ this research uses the Restorative Justice Council’s definition, which states, ‘[r]estorative processes bring those harmed by crime or conflict, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a

²⁰⁶ Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (Routledge, 2nd ed, 2011) 1–2.

²⁰⁷ Karen Wilcox, ‘Connecting systems, protecting victims: towards vertical coordination of Australia’s response to domestic and family violence’ (2010) 33(3) *University of New South Wales Law Journal* 1013–1037; Mary Spiers-Williams, ‘Why are there no adult community courts operating in the Northern Territory of Australia?’ (2013) 8(4) *Indigenous Law Bulletin* 7–11; Magistrates’ Court of Victoria, *Koori Court* (2012) Magistrates’ Court of Victoria <<http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/koori-court>> at 3 September 2014; Health Info Net, *Galambany Circle Sentencing Court* (2014) Australian Indigenous <<http://www.healthinfonet.ecu.edu.au/key-resources/programs-projects?pid=1470>> at 4 September 2014; Kylie Cripps, ‘Speaking up to the silences: Victorian Koori Courts and the complexities of Indigenous family violence’ (2011) 7(26) *Indigenous Law Bulletin* 31–34. Also see the *Magistrates’ Court (Koori Court) Act 2002* (Vic).

²⁰⁸ Truth and Reconciliation Liberia, ‘Towards National Reconciliation and Dialogues: The Palava Hut or Peace Forums’ (Government Policy 3, The Truth and Reconciliation Commission, 2009) 148, 1–2; Ellen Johnson Sirleaf, ‘Annual Message on the State of the Republic: Consolidating for Continuity’ (Presidential Annual Address at the Fourth Session of the 53rd National Legislature of the Republic of Liberia, Capitol Hill, Monrovia, 26 January 2015) 29 <<http://www.emansion.gov.lr/2content.php?sub=55&related=24&third=55&pg=sp>>. The TRC recommendation for ensuring peace and reconciliation is exemplified by the *Palava Hut or Peace Forums*. The *National Palaver Hut Program* is a traditional mechanism used in rural (Indigenous) Liberia to resolve conflicts and adjudicate matters of grave concern to the community. *Palava hut* derives legitimacy from a host of cultural influences including the *Poro*, *Sande*, and *Bodio* traditional institutions and has the utmost viability in rural areas. Decisions reached through the *Palava Hut* are binding.

²⁰⁹ Williams, above n 207.

²¹⁰ *Ibid.*

²¹¹ Cripps, above n 207, 31.

²¹² UN Women, *Liberian Women Building Peace - Progress of the World’s Women* (2011) UN Women: Progress of the World’s Women <<http://progress.unwomen.org/case-study-liberia/>>.

²¹³ Marian Liebmann, *Restorative Justice: How It Works* (Jessica Kingsley Publishers, 2007) 25.

positive way forward'.²¹⁴ Chapters 8 elaborates on these principles and on research participants' lived experiences of restorative justice.

1.0.6 Scope and Limitations

This research is not a comparative study for reasons embedded in the diverse nature of both countries' cultures, traditions, and histories. A robust comparative study necessitates the maintenance of constant environmental conditions to examine similarities and differences based on empirical observation. Since conducting such study is beyond the scope of this Ph.D. research, for the purpose of fostering debate and critical thinking, this study is limited to select Indigenous communities in Australia and Liberia.

The study considers the following polarities whilst refraining from imposing limited dichotomies such as advanced (eg, Australia) versus developing (e.g., Liberia) countries. Liberia is a post-war recovering State and Australia is not. Political, social and economic stability (e.g., access to justice or implementation of the rule of law) in Australia is relatively more organised and systematised, compared to Liberia. Australia is a continent-country (7.7 million square kilometres) whilst Liberia is one of Africa's smallest countries (111 369 square kilometres), slightly bigger than the Australian state of Tasmania which is 90 758 square kilometres. The population of Liberia is 4.1 million, whilst that of Australia is 24 million. Historians use the concept of *Indirect Rule*²¹⁵ to explain the colonial governing of Indigenous Peoples in Liberia. In Australia, the strategy of *assimilation* describes the process of genetic admixture (i.e., miscegenation) to rid Indigenous Peoples in Australia of their existence.²¹⁶ Even though the continent of Africa is considered the cradle of humankind, generally, Indigenous Peoples in Liberia do not share a common linguistic heritage or social experience with Indigenous Peoples in Australia. For example, there are only 16 major language groups²¹⁷ in Liberia today, whereas about 145 of the 250 original languages still exist in Australia.²¹⁸ Unlike Australia, in the earlier history of Liberia, Indigenous Peoples were recognised by the state in

²¹⁴ Restorative Justice Council, *What Is Restorative Justice / Restorative Justice Council* (2013) Restorative Justice: Providing Quality Assurance and the National Voice for Restorative Practice <http://www.restorativejustice.org.uk/what_is_restorative_justice/#.UjBvORYm5WA>.

²¹⁵ Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Harvard University Press, 1st ed, 2012); Levitt, above n 105, 138. In explaining the engrained nature of Liberia's indirect rule system, Levitt (2005) asserts that it was during the Arthur Barclay's regime that an increasingly centralised and authoritarian rule sparked a socio-political order that resulted in several settler-native conflicts between 1910 and 1931. He argues that the underlying philosophy of the indirect rule system 'was to control the ruling lineages or indigenous elite who in turn controlled the African masses. The well-designed system allowed the settler ruling elite (the dominant class/authority) to use and manipulate indigenous structures to rule over the native population'.

²¹⁶ Catriona Elder, 'What Is the White in White Australia? A Reading of A. O. Neville, Australia's Coloured Minority' [1998] *The Olive Pink Society Bulletin* 28; Katherine Ellinghaus, 'Absorbing the "Aboriginal Problem": Controlling Interracial Marriage in Australia in the Late 19th and Early 20th Centuries' (2003) 27 *Aboriginal History* 183; Katherine Ellinghaus, 'Biological Absorption and Genocide: A Comparison of Indigenous Assimilation Policies in the United States and Australia' (2009) 4(1) *Genocide Studies and Prevention* 59; Anna Haebich and RHW Reece, *Neville, Auber Octavius (1875-1954)* (1988) Australian Dictionary of Biography <<http://adb.anu.edu.au/biography/neville-auber-octavius-7821>>; Auber Octavius Neville, *Australia's Coloured Minority: Its Place in the Community* (Currawong Publishing, 1947).

²¹⁷ Wulah, above n 169.

²¹⁸ McConvell, Marmion and McNicol, above n 180, 3.

various legal, political and social instruments *via* the Supreme Court jurisprudence of ‘separate but equal’,²¹⁹ similar to the arrangement in apartheid South Africa.²²⁰ See chapter 2 for more detail on the history of Indigenous Peoples in Liberia and Australia.

Whilst there is little or no research comparing historical and cultural experiences, the parallel occurrence of systematic gender violence in the two countries is worth exploring; since, the essence of this study is to examine the ‘common collective’ of Indigenous experiences, whilst contributing to global gender-agenda advocacy. Indigenous groups in both Liberia and Australia refer to their social identity as ‘black’ even though the term has different connotations in each cultural setting. Both countries have a history of invasion and subjugation by alien settler-colonists who once had a troubled past (i.e., former convicts from the United Kingdom versus former slaves from the United States). Both States are colonies of settlers who arrived by ‘boats’ and dispossessed Indigenous Peoples of their native lands based on the doctrine of *terra nullius*.²²¹ In both countries, the transplantation of colonial Anglo-Australian/Anglo-American-Liberian common law usurps Indigenous Customary laws and traditional lore.²²² Although both countries have had their first female president/prime minister – indicative of some level of gender equality – the relatively high prevalence of systematic gender violence disproportionately affects Indigenous children and women. Generally, mainstream political leadership excludes Indigenous women from participating in both countries. Also, Indigenous Peoples in both countries have little or no representation within structures that govern their community or group, a diagnostic phenomenon William Easterly borrows from Rudyard Kipling called ‘the Whiteman’s burden’.²²³ That is, Indigenous Peoples are generally perceived as children who are incapable of managing their own affairs, and, hence, must be controlled by

²¹⁹ Marie Tyler-McGraw, *An African Republic: Black & White Virginians in the Making of Liberia* (The University of North Carolina Press, 2007) 176 <<http://www.amazon.com/African-Republic-Virginians-Franklin-American/dp/0807831670>>; Lawrence D Taplah, *Liberia, a Bulwark of Rage My First Home* (Authorhouse, 2015) 2.

²²⁰ John Dugard, *Human Rights and the South African Legal Order* (Princeton University Press, 2015) 64 <<https://doi.org/10.1515/9781400868124>>. According to Dugard, in the seminal decision of *Plessy v Ferguson* 1896, the Supreme Court of the United States approved the constitutionality of ‘separate but equal’ facilities for different racial groups. In South Africa, the doctrine was approved by the Appellate Division only in 1934 in respect of subordinate legislation.

²²¹ Henry Reynolds, *Aboriginal Sovereignty: Reflections on Race, State, and Nation* (Allen and Unwin, 1996) 1–15; Huberich, above n 53, 254. Reynolds asserts that up until *Mabo v Queensland, no. 2* (1992), European settlers and their descendants in Australia use *terra nullius* to set-up the Colony’s legal, political and constitutional framework. He provides an insight into the case put forward by Queensland, that: ‘...when in 1879, in the name of the Queen the colonial government annexed the Murray Islands it gained both sovereignty and the ownership of all the property, that from that moment forward the Islanders were only in occupation of their land with permission of the government, that in point of law they could have been driven into the sea at the time’. But of course, six of the seven judges ruled in favour of *Mabo*, noting that, ‘...Murray Islanders were entitled, as against the whole world, to possession, occupation, use and enjoyment of their traditional land. The Islanders had owned their land before 1879; they had not been disposed by the claim of sovereignty; nothing the Queensland Government had done between 1879 and 1992 had extinguished their native title’ (Reynolds (1996) p2). Justice Brennan reasoned, ‘[t]he fiction by which the rights and interests of indigenous inhabitants in land were treated as non-existent was justified by a policy which has no place in the contemporary law of this country. The policy appears explicitly in the judgment of the Privy Council in *In re Southern Rhodesia* in rejecting an argument (66) *ibid.*, at p 232 that the native people ‘were the owners of the unalienated lands long before either the Company or the Crown became concerned with them and from time immemorial ... and that the unalienated lands belonged to them still’ (*Mabo v Queensland* (No 2) [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992) *para* 42).

²²² Mick Dodson, ‘Customary Law and the Sentencing of Indigenous Offenders’ (2008) 20(5) *Judicial Officers’ Bulletin* 37.

²²³ William Easterly, *The White Man’s Burden* (Penguin Books, 2007).

settler-colonists. Liberian and Australian Indigenous communities also experience land dispossession at the hands of the State.

Indigenous Peoples in Liberia and Australia have both experienced land dispossession, perpetrated by the State, in favour of multinational extraction industries and are still inundated with misappropriation of their lands, hunting grounds, water holes and sacred sites in the interest of neoliberalism (vis-à-vis greed, capitalism and exploitation).²²⁴ Susan Lawler²²⁵ describes a case in point in a La Trobe University podcast, where she discusses the utility of water in mining. Centring her presentation on the historical significance of the ‘gold rush’²²⁶ era in Victoria, Australia, where mining companies constructed 127 dams, Lawler examines the specific manner in which mining had impacted the environment and Aboriginal communities in the Victoria area. According to her, tunnel races as long as 24 kilometres diverted water from an upper catchment area and reintroduced it for power, steam boilers, hydraulic loosing, rock crushing and gold washing, resulting in sludge formation and water pollution. Today, projects such as Save the Kimberly²²⁷ raise awareness around the threats faced by some 30 Aboriginal language groups impacted by mining industries. Similarly, in Liberia, a report prepared by Forest Peoples Programmes highlights the struggles Indigenous Gola Peoples are experiencing with the Sime Darby Plantation project, where the government of Liberia is ‘giving away’ traditional lands to a foreign company for agricultural use without permission from the local people.²²⁸ Such practices are all too common in Liberia, where American, Swedish and German companies such as Firestone, the Liberian-American-Swedish Minerals Company and Bong Mining Company left track records of extraction and plundering of natural resources in exchange for little or no benefits to Indigenous communities.²²⁹ Chapter 2 provides more insights on various types of institutions/state violence inflicted against Indigenous Peoples in Liberia and Australia.

Considering these parallels between the two countries, the intention of this research project is to capture similar topical issues within a realistic time frame, insofar as available funding allows. In-depth analyses of the study include the history of colonialism and nation building, access to justice, access to social services (e.g., health, education and employment) and the practical application of Indigenous Customary Laws with respect to systematic gender violence and the rule of law. Harmful traditional practices, such as female genital cutting, forced

²²⁴ Irene Watson, ‘Aboriginality and the Violence of Colonialism’ (2009) 8(1) *Borderlands* 1.

²²⁵ Susan Lawler, ‘Environmental Impact of Mining in Victoria (29 August 2012)’ <<https://itunes.apple.com/us/itunes-u/australian-history/id391323919?mt=10>>.

²²⁶ The discovery of gold in the early 1800s in the Fish River of Victoria converged prospectors from Asia, Europe and American, not only resulted in massive transformation of the built/natural environment but also welled up social tensions of race and division as they relate to the land usage, ownership, and destruction.

²²⁷ Kirsti Melville, *Red Dirt Dreaming Part One - The Kimberley* (Australia Broadcasting Corporation, 2013); Save the Kimberly, *Save the Kimberly: Wilderness, Culture, Heritage* (2013) Home <<http://www.savethekimberley.com/>>.

²²⁸ Green Advocates and Forest Peoples Programme, “‘We Who Live Here Own the Land’ - Customary Land Tenure in Grand Cape Mount, and Community Recommendations for Reform of Liberia’s Land Policy & Law’ (Forest Peoples Programme, December 2012) 26.

²²⁹ Plotzki, above n 59.

marriage and denial of land and property ownership to Indigenous girls and women are also considered. An analysis of multiple data sources informs and enriches the scope and robustness of the study. Chapter 6 provides a detailed description of the research methodology.

1.0.7 Rationale of Inquiry

The main logic behind the study lies in a simple fact – a lack of high-quality, evidence-based research on the topic area. Herewith are three justifications for embarking on this research project:

- The pervasiveness of gender violence presents a unique opportunity to explore the effectiveness of global alliances amongst groups of similar identity struggle;
- The mechanisms by which gender violence persists have common roots which allow for a useful parallel study between Liberia and Australia;
- The perception that advanced countries are superior to developing countries in terms of political governance, economic wealth and institutional arrangements are pervasive and counterproductive. This research stands to test this perception using two globally distinct communities that are experiencing and addressing a common problem;
- Highlighting similar struggles in diverse cultures and geographies promotes the value of global alliances - termed a common collective in this research. An observation deliberated during the 57th Meeting of the Commission on the Status of Women between 4 and 15 March 2013 affirms the need to form global alliances in responding to systematic violence against girls and women.²³⁰ According to the Commission on the Status of Women:

that violence against women and girls is rooted in historical and structural inequality in power relations between women and men, and persists in every country in the world as a pervasive violation of the enjoyment of human rights (...) [We must] carry out continued multidisciplinary research and analysis on the structural and underlying cause of, cost and risk factors for violence against women and girls and in its types and prevalence, in order to inform the development and revisions of law (...) [and] promote the sharing of best practices and experiences, as well as feasible, practical and successful interventions and experiences in other settings.

Against this background, it is assumed that comprehensive research of this sort will provide for robust and valuable evidence-based findings that are not only needed for effective, global, legal reform to address systematic violence against girls and women and whose design can also be replicated in other jurisdictions to effect social change.

1.1 Theoretical, Conceptual and Legal Framework

According to the United Nations, there are approximately 370 million Indigenous Peoples in the world living across 90 countries. Indigenous Peoples across the globe speak some 7 000

²³⁰ Commission on the Status of Women, 57 Meeting on the Status of Women; Concluding statements aimed at eliminating and preventing all forms of violence against women and girls, 4-15 March 2013.

languages and represent 5 000 different cultures. Though less than five percent of the world's population, Indigenous Peoples account for 15 percent of the poorest peoples in the world. Based on mixed methodology, which includes surveys, secondary data, in-depth interviews, electronic mailing and participant observation, this research shows that contextualising the concept of intersectionality informed by multiple interrelated theoretical frameworks not only enables, but also legitimises more complex dialogues about systematic violence against this extremely diverse group of people. As Indigenous girls and women in Liberia and Australia are not homogenous, the five interrelated theories are drawn on in this research, befittingly explain the varying simultaneous locations of systematic violence and how they function together to sustain global prevalence.

Endorsers of the *Convention on the Elimination of All forms of Discrimination* 1965 (CERD), more importantly, recognise the effects of the by-products of systematic violence as having broader implications beyond Indigenous struggles. Hence there is a need for Indigenous women activists to link their marginalization to that of other communities such as Indigenous Africans, a concept Chandra Mohanty describes as feminism without borders. Feminism without borders is not the same as borderless feminism. Feminism without borders acknowledges the fault lines, conflicts, differences, fears, and containment that borders represent.²³¹ That there is no one sense of a border means the lines between and through nations, races, classes, sexualities, religions, and disabilities are real; and that feminism without borders must envisage change and social justice work across these lines of demarcation and division.²³² Mohanty asserts that silences and exclusions tend to draw attention to the tension between the simultaneous plurality and narrowness of borders and the emancipatory potential of crossing through and over these borders in our everyday lives.²³³ Angela Harris critiques feminist essentialism regarding intersections of gender, race, and other social identity as attributes relating to person value formation.²³⁴ As all women are not considered the same along the intersecting socio-economic spectrum, Harris warns against equating more powerful female voices in the legal academy, usually those of educationally privileged middle-class white women, with the perspective of all women.²³⁵ Forging the concept of a global Indigenous women's common collective, this research agrees with Mohanty's position, that adopting an anti-racist feminist perspective, beyond conceptual barriers and walls, matters in the struggle for social justice in decolonising Indigenous girls and women in both advanced economies (e.g., Australia) and the Global South (e.g., Liberia).

Patricia Smith says it may be viewed as a question mark.²³⁶ Smith argues that women are traditionally viewed not only as different but also as subordinate, a status enforced by

²³¹ Mohanty, above n 63, 2.

²³² Ibid.

²³³ Ibid.

²³⁴ Carle, above n 64, 226.

²³⁵ Ibid 261.

²³⁶ Smith, 'Four Themes in Feminist Legal Theory: Difference, Dominance, Domesticity, and Denial', above n 77, 91.

institutional, cultural and interpersonal interactions and social practices of coercion and violence.²³⁷ These attitudes and practices, Smith laments, are being combated by feminist activists, but are yet widely discounted in law and largely denied in popular discourse. Smith asserts that, whilst ‘male dominance’ is often considered a laughable topic reserved for radical feminist fanatics, its effects (e.g., domestic violence, sexual harassment, and rape) are serious social problems that speak to the complexity of tackling systematic violence from a collective feminist movement approach, whereby, Indigenous women in Australia may not necessarily see their struggle against gender violence as similar to that of Native women in Liberia.

Notwithstanding, the issues of colonisation, racism, patriarchy, class, gender and (mental) health are all pertinent to the common experience of girls and women in both Australia and Liberia. That being said, caution is required when performing a critical analysis of the root causes of systematic gender violence and theorizing the kinds of legal mechanisms that could be harnessed to augment justice, fairness and equality for Indigenous girls and women in these two countries. A thought process that resonates with themes of the Commission on the Status of Women’s 57th Meeting is needed to end impunity by punishing perpetrators of violence,²³⁸ which is nuanced in ‘other factors’ referenced by the Commission on the Status of Women’s definition of gender violence. Some legal feminists’ support for punishing perpetrators under both national and international law attracts a pessimistic view that feminism is partly responsible for the pervasive nature of male violence against women as a ‘laughable topic’.²³⁹ Others believe that feminist ideology is a driving force behind the heightening levels of women inflicting violence against other women and children. Nonetheless, systematic violence is not a joke and should be targeted head-on by women of all backgrounds and identities.

Regarding feminism being responsible for the heightened level of violence against girls and women, Audrey Bolger’s²⁴⁰ and Kerry Carrington’s²⁴¹ research work substantiates the assumption that female violence against children, women and men is on the rise. With particular respect to Indigenous communities, whilst it is evident that state/institutional violence exacerbates intersections of race, class, gender and indigeneity, in-group violence is arguably prevalent. Chapters 2, 3 and 4 argue that seemingly high occurrences of in-group violence are partly due to harmful traditional practices (e.g., male-only inheritance of land and property, and male elders’ entitlement to sacred sites and performance of rituals). Since statistically speaking, male violence against women is disproportionately higher than the reverse relationship, this research focuses on male violence against women and the extent to which competing factors

²³⁷ Ibid 93.

²³⁸ Ibid at 6-7.

²³⁹ Smith, ‘Four Themes in Feminist Legal Theory: Difference, Dominance, Domesticity, and Denial’, above n 77, 93.

²⁴⁰ Audrey Bolger, *Aboriginal Women and Violence: A Report for the Criminology Research Council and the Northern Territory Commissioner of Police* (Australian National University, North Australia Research Unit, 1991) 1. Bolger references an 18 month research study conducted in Numbulwar between 1977 and 1978 which shows that of the 101 fights recorded 51 participants were women and 53 were men, suggesting that women were involved in fighting almost as often as men, with 47 per cent of fights taking place between husband and wife.

²⁴¹ *Young Women and Crime: Australasian Youth Justice Conference, Australian Institute of Criminology 2013* (Criminology TV, 2013) <<https://www.youtube.com/watch?v=4pAZc611WiY>>.

such as colonial history, race, class, gender, and indigeneity intersect to impact the applicability of restorative justice²⁴² for survivors of systematic violence.

Cognisant of the diverse nature of gender violence, this research takes an interdisciplinary approach. It would be unrealistic to attempt a complete application of five far-reaching theoretical perspectives in one study. Notwithstanding, the motivation and justification for using specific, relevant aspects of each theory to inform the study stem from the need to innovate holistic, evidence-based, multi-faceted *modus operandi* that represent the complexity of addressing the problem of systematic gender violence as alluded to by the Commission on the Status of Women above. The entrenched, pervasive and persistent nature of systematic violence against Indigenous girls and women demands (both practically and ethically) the incorporation of diverse techniques that are supported by hard evidence.²⁴³ It is against this backdrop that five related theories are drawn on to inform the conceptual framework of this study in hopes of bringing Aboriginal women's gender justice concerns from the margins to the centre. They are: First, **intersectionality**,²⁴⁴ which addresses the multiple ways in which race, gender, class, and the law interact to shape Indigenous girls and women's experiences of violence. Second, **critical race/legal theory**²⁴⁵ argues that the idea of race and racism should be critically analysed from a legal point of view; since social systems, such as the international and domestic law regime in settler-colonist cultures, are structured on white privilege, elitism, supremacy and power of the law. Third, **feminist jurisprudence**²⁴⁶ suggests that the law is

²⁴² James Ptacek, *Restorative Justice and Violence Against Women* (Oxford University Press, 2010).

²⁴³ Commission on the Status of Women, *Report on the fifty-seventh session Supplement 7*, UN ECOSOC, 57th sess., UN Doc E/CN.6/2013/11 (4-15 March 2013) 2. The Commission on the Status of Women 57th meeting affirms this complex and pervasive entrenchment of violence against women in general: '10. Commission affirms that violence against women and girls is rooted in historical and structural inequality in power relations between women and men and persists in every country in the world as a pervasive violation of the enjoyment of human rights'.

²⁴⁴ Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Colour', above n 8; Nina Lykke, *Feminist Studies: A Guide to Intersectional Theory, Methodology and Writing* (Routledge, 2010); Evelyn M Simien, 'Doing Intersectionality Research: From Conceptual Issues to Practical Examples' (2007) 3(02) *Politics & Gender* 264; Anna Carastathis, 'The Concept of Intersectionality in Feminist Theory' (2014) 9(5) *Philosophy Compass* 304; Thinking Girl, *Feminist Friday - Intersectional Identity* (12 May 2006) Thinking Girl - because women are people too <<https://thinkinggirl.wordpress.com/2006/05/12/feminism-friday-intersectional-identity/>>; Susanne V Knudsen, *Intersectionality - A Theoretical Inspiration in the Analysis of Minority Cultures and Identities in Textbooks*, Private Document, 2006; Lykke.

²⁴⁵ Kimberlé Crenshaw, *Critical Race Theory: The Key Writings That Formed the Movement* (New Press, 1995); Makau Mutua, 'Critical Race Theory and International Law: The View of an Insider-Outsider' (2000) 45 *Villanova Law Review* 841; Richard Delgado, *Critical Race Theory: An Introduction* (New York University Press, 2nd ed, 2012); Richard Delgado and Jean Stefancic, *Critical Race Theory: The Cutting Edge* (Temple University Press, 2nd ed, 2000); Cynthia Levine-Rasky, *Whiteness Fractured* (Ashgate, 2013); Emily J Cross, *Critical Legal Studies: Challenging Tradition Legal Thought*, National Collegiate Honours Council, 2012 <<http://www.nchchonors.org/wp-content/uploads/2012/03/Cross-Emily-University-of-Montana-Paper.pdf>>; Myra Williamson, 'Critical Legal Studies, Feminism and Critical Race Theory' (Class Lecture at the Kuwait International Law School Class, Social Theory and Law 336, Kuwait, 2012) <<http://webcache.googleusercontent.com/search?q=cache:dYr8p9uzLYgJ:www.drmyrawilliamson.com/lectures/student-presentations-task-sheet2.pdf+&cd=2&hl=en&ct=clnk&gl=au>>; Cornell University Law School, *Critical Legal Theory* (26 June 2014) Legal Information Institute <http://www.law.cornell.edu/wex/critical_legal_theory>; Matthew H Kramer, *Critical Legal Theory and the Challenge of Feminism: A Philosophical Reconception* (Rowman & Littlefield, 1995); Balakrishnan Rajagopal, 'Culture, Resistance, and the Problems of Translating Human Rights' (2006) 41 *Texas Journal of International Law* 419; Harvard University Law School, *Legal Theory: Critical Theory* (26 June 2014) The Bridge <<http://cyber.law.harvard.edu/bridge/CriticalTheory/critical1.htm>>.

²⁴⁶ Cheryl Suzack, *Indigenous Women and Feminism: Politics, Activism, Culture* (UBC Press, 2010); Joyce A Green, *Making Space for Indigenous Feminism* (Fernwood Pub. ; Zed Books ; Distributed in the USA exclusively by Palgrave Macmillan, 2007); bell hooks, *Ain't I A Woman: Black Women and Feminism* (South End Press, 1981); Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Routledge, 2nd ed, 2009); bell hooks, *Feminism Is for Everybody: Passionate Politics* (South End Press, 2000); bell

comparable to a torsion spring whereby the same law that liberates girls and women from social injustices is also responsible for their being discriminated against and subjugated. Fourth, **decolonisation**²⁴⁷ is a fundamental element of political violence (either perpetrated by the colonised or the colonisers) that is tightly associated with the liberation and self-determination revolution and process. Fifth, **social determinants of health**²⁴⁸ is a public health principle which states that the conditions in which people are born, live, work, grow, and age, are shaped by the distribution of a host of social factors that each impact the physical, mental and spiritual health of the individual. This study further explores the concept of the law as a social determinant of health. Social determinants of health can be considered an application of intersectionality within the field of public health.

Patricia Hill Collins describes intersectionality as a way of understanding and analysing the complexity in the world, in both women and human experiences.²⁴⁹ Arguing that the events and conditions of social life, political and legal life and the self can seldom be understood as shaped by one factor, Collins maintains that intersectionality encapsulates the many factors in

hooks, *Feminist Theory: From Margin to Centre* (South End Press, 2nd ed, 2000) vol 5; Mary Jane Mossman, 'Feminism and Legal Method: The Difference It Makes' (1987) 3(147) *Wisconsin Women's Law Journal* 147; Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *The American Journal of International Law* 613; Rosemary C Hunter et al, *Feminist Judgments: From Theory to Practice* (Hart, 2010); Morrison Torrey, 'Feminist Legal Scholarship on Rape: A Maturing Look at One Form of Violence against Women' (1995) 2(1) *William and Mary Journal of Women and the Law* 35; Susan Armstrong, 'Is Feminist Law Reform Flawed? Abstentionists and Sceptics' (2004) 20(43) *Australian Feminist Law Journal* 43; Heather Douglas et al (eds), *The Australian Feminist Judgments Project Righting and Re-Writing Law*. (Hart Publishing, 2014); Diane Bell, 'White Women Can't Speak?' (1996) 6(2) *Feminism and Psychology* 197; Philomina E Okeke, 'Postmodern Feminism and Knowledge Production: The African Context' (1996) 43 *Africa Today* 223.

²⁴⁷ Frantz Fanon, *The Wretched of the Earth* (Grove Press, 2004); Frantz Fanon, Haakon Chevalier and Adolfo Gilly, *A Dying Colonialism* (Grove Press, 1994); Reiland Rabaka, *Africana Critical Theory: Reconstructing the Black Radical Tradition, from W.E.B. Du Bois and C.L.R. James to Frantz Fanon and Amilcar Cabral* (Lexington Books, 2009); Radhika Mohanram, *Black Body: Women, Colonialism, and Space* (University of Minnesota Press, 1999) vol 6; Frantz Fanon, *Black Skin, White Masks* (Pluto Press, 2008); Joseph Celucien, 'Prophetic Religion, Violence, and Black Freedom: Reading Makandal's Project of Black Liberation through a Fanonian Postcolonial Lens of Decolonization and Theory of Revolutionary Humanism' (2012) 3(4) *Journal of Race, Ethnicity, and Religion* 1; Frantz Fanon, *Toward the African Revolution: Political Essays* (Grove Press, Grove Press, 1994).

²⁴⁸ Michael Marmot, 'Social Determinants of Health Inequalities' (2005) 365(9464) *Lancet* 1099; Bronwyn Carson, *Social Determinants of Indigenous Health* (Allen and Unwin, 2007); Tom Calma, 'Creating Futures: Influencing the Social Determinants of Mental Health and Wellbeing in Rural, Indigenous and Island Peoples' (2011) 15(s1) *Australas Psychiatry* S5; Carson; Henrique F Tokpa, *Education and Other Determinants of Income Among Heads of Households in Rural Liberia* (PhD Thesis, Florida State University, 1988); Stephen R Zubrick et al, 'Social Determinants of Aboriginal and Torres Strait Islander Social and Emotional Wellbeing' in Nola Purdie, Pat Dudgeon and Roz Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (Commonwealth of Australia, 2010) 76; Nola Purdie et al, *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (Australian Institute of Health and Welfare, 2010) <http://www.ichr.uwa.edu.au/files/user5/Working_Together_book_web.pdf>; Darren Dick and Tom Calma, 'Social Determinants and the Health of Indigenous Peoples in Australia – a Human Rights Based Approach' in *International Symposium on the Social Determinants of Indigenous Health* (Australian Human Rights Commission, 2007) 10; Wilkinson and Marmot, above n 9; Indigenous Health Adelaide, 'Social Determinants and Indigenous Health: The International Experience and Its Policy Implications' (Symposium Report, Commission on Social Determinants of Health, Government of South Australia, Canadian National Collaborating Centre for Aboriginal Health, 30 March 2007) 41 <http://www.who.int/social_determinants/resources/indigenous_health_adelaide_report_07.pdf>; Nicholas Biddle, 'Measures of Indigenous Wellbeing and Their Determinants Across the Lifecourse' (CAEPR Lecture Series 2, Centre for Aboriginal Economic Policy Research, Australian National University, 19 May 2011) 1 <<http://caepr.anu.edu.au/sites/default/files/page/2011/01/Lecture02Paper.pdf>>; Paul Hunt, 'Missed Opportunities: Human Rights and the Commission on Social Determinants of Health' (2009) 16(1 Suppl) *Global Health Promotion* 36; Michael Flood and Bob Pease, 'Factors Influencing Attitudes to Violence against Women' (2009) 10(2) *Trauma, Violence, and Abuse* 125.

²⁴⁹ Patricia Hill Collins and Sirma Bilge, *Intersectionality* (Polity Press, 2016) 2

<<http://www.wiley.com/WileyCDA/WileyTitle/productCd-0745684491,subjectCd-SO10.html>>.

diverse and mutually influencing ways that generally shape the experiences of women.²⁵⁰ These many axes, be they race, class, gender, colonial history, or indigeneity, simultaneously work together and influence each other.²⁵¹ In this regard, intersectionality, as an analytical tool, expounds and enhances access to the complexity of intersecting factors of systematic violence that Indigenous girls and women face. The idea of intersectionality helps critical legal theorists appreciate the complexity of social life by broadening the range of social and legal subordinated groups, thereby demonstrating why such analysis of intersecting factors of systematic violence on the racial impact of the law and the legal system must be highly contextualised.²⁵²

Combining political struggles for racial justice, critical race theory critiques conventional legal norms which are viewed as part of illegitimate hierarchies.²⁵³ In the 1970s, shared commitments to criticise not merely particular legal rules or outcomes but also larger structures of conventional legal thought and practice, occasioned a family of new radical legal theories called critical legal theory (CLT), which later centred on race to form critical race theory (CRT). Critical race theory is a interpretive device scholars use to examine systematic racism across dominant legal cultures.²⁵⁴ According to 258 critical legal scholars, most of whom are people of colour, dominant legal doctrines and conceptions perpetuate patterns of injustice and dominance by whites, men, the wealthy, employers, and heterosexuals.²⁵⁵ Proponents of this school of thought argue that law is politics²⁵⁶ in such a way as to permit and benefit 'white privilege'²⁵⁷ and maintain white peoples' favoured place in society for the purpose of 'legitimately' keeping the marginalised populations down.²⁵⁸ Although in Liberia the dominant force of law was not the white man, but privileged Black elitist African American Former Slave Returnees, the legal framework adopted and implemented was white-male engineered Anglo-American law. According to Crenshaw, espousers of critical race theory seeks to understand how white/elitist supremacy maintains and subordinates people and examines the relationship between social structure, racial power and professed ideals such as the 'rule of law' and 'equal protection'.²⁵⁹ Informed by critical race theorists, this research questions dominant modes of

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Mark V Tushnet, 'Critical Legal Theory' in Martin P Golding and William A Edmundson (eds), *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Blackwell Pub, 2005) 80, 88.

²⁵³ Allen Brizee et al, 'Literary Theory and Schools of Criticism' <<https://owl.english.purdue.edu/owl/owlprint/722/>>.

²⁵⁴ Ibid.

²⁵⁵ Abram Chayes et al, *Critical Race Theory* (2017) The Bridge - Legal Theory: Critical Theory <<https://cyber.harvard.edu/bridge/index.htm>>.

²⁵⁶ Alan Hunt, 'The Theory of Critical Legal Studies' (1986) 6(1) *Oxford Journal of Legal Studies* 1, 3.

²⁵⁷ Allen Brizee et al describes white privilege as various social, political, and economic advantages white individuals experience in contrast to non-white citizens based on their racial membership. These advantages can include both obvious and subtle differences in access to power, social status, experiences of prejudice, educational opportunities and much more. For critical race theory scholars, the notion of white privilege offers a way to discuss dominant culture's tendency to normalize white individuals' experiences and ignore the experiences of non-whites (see Brizee et al, *Literary Theory and Schools of Criticism*, 2017).

²⁵⁸ Crenshaw, *Critical Race Theory*, above n 245, xiii; Osagie K Obasogie, 'Foreword: Critical Race Theory and Empirical Methods' (2013) 3(2) *UC Irvine Law Review* 183, 183; Roberto Mangabeira Unger, *The Critical Legal Studies Movement: Another Time, A Greater Task* (Verso, 2015) 2.

²⁵⁹ Crenshaw, *Critical Race Theory*, above n 245, xiii; Chayes et al, above n 255.

legal reasoning that pretend to be neutral and objective in dispensing justice to Indigenous girls and women, whilst sheltering structures of power.²⁶⁰

Critical theorists also maintain that despite claims of being just, determinate and governing expressions of power, the law mystifies outsiders about its legitimate outcomes in courts and legislatures.²⁶¹ Denouncing rights as ‘illusions’ and ‘myths’ designed to mask fundamental social, political and economic inequalities,²⁶² critical race theory maintains that judges (for instance) in the court system do not simply apply logic to the law as written, but rather seek to impose rulings that support and reinforce the *status quo* by looking for provisions in the law that will support their interpretation.²⁶³ Reinforcing the *status quo* in this manner attracts arbitrariness that the very rule of law claims to avoid because it perpetuates stereotypical cultural beliefs and stigmas. These cultural beliefs and stigmas are often racial. Therefore, empirical critical race theory attempts to critique the legal system by highlighting the effects of racial stereotypes on legal outcomes. Empirical critical race theory interrogates stereotypical descriptions of what is known as a ‘crime of identity’ by relying on narrative or storytelling.²⁶⁴ Richard Delgado captures the essence of empirical critical legal theory when he writes that, ‘[o]ur social world, with its rules, practices, and assignments of prestige and power, is not fixed; rather, we construct with its words, stories and silence. But we need not acquiesce in arrangements that are unfair and one-sided. By writing and speaking against them, we may hope to contribute to a better, fairer world’.²⁶⁵ Contributing to a better world, the empirical form of critical race theory lends itself to phenomenological inquiry²⁶⁶ and feminist legal theory by emphasising the importance of finding ways for individuals from diverse backgrounds to share their experiences through locating their own uniqueness in their racial, class, gender, Indigenous identity and colonial history.²⁶⁷

Feminist legal theory or feminist jurisprudence draws from the experiences of women of diverse backgrounds and from critical perspectives developed within other disciplines to offer powerful analyses of the relationship between law and gender, thereby creating new understandings of the limits of the law, and opportunities for legal reform²⁶⁸ As the laws governing Indigenous women around the world have their roots in settler-colonist law, Indigenous women the world over share similar experiences in their relationship to the legal system. For Indigenous women, the scar of colonisation involves their removal from positions

²⁶⁰ Chayes et al, above n 255.

²⁶¹ Ibid.

²⁶² Ian Ward, *Introduction to Critical Legal Theory* (Cavendish, 2nd ed, 2004) 157.

²⁶³ Anthony Walsh and Craig Hemmens, *Law, Justice, and Society: A Sociolegal Introduction* (Oxford University Press, Fourth, 2016) 23 <<https://global.oup.com/academic/product/law-justice-and-society-9780190272753?cc=us&lang=en&#>>.

²⁶⁴ Mario L Barnes, ‘Empirical Methods and Critical Race Theory: A Discourse on Possibilities for a Hybrid Methodology’ [2016] *Wisconsin Law Review* 443, 444–446.

²⁶⁵ Delgado and Stefancic, above n 245, xviii.

²⁶⁶ Kramer, above n 245, 39.

²⁶⁷ Brizee et al, above n 253.

²⁶⁸ Katharine T Bartlett and Rosanne Terese Kennedy (eds), *Feminist Legal Theory: Readings in Law and Gender* (Westview Press, 1991) 1 <<https://westviewpress.com/books/feminist-legal-theory/>>.

of power, the replacement of their traditional gender roles with Western patriarchal practices, and the exertion of colonial control over their communities through the management of women's bodies and acts of sexual violence.²⁶⁹ In recent times, Indigenous politics have increasingly encompassed issues that cut across boundaries of nation, language, and culture. As these shifts have facilitated critical engagement with women's shared experience of the collusion between colonialism and patriarchy, the foundation has been laid for Indigenous feminists to also conceptualise their cultural and political practices.²⁷⁰

As gender perspectives began to reshape Indigenous politics, the growing legal recognition in settler-colonist countries of the rights of Indigenous Peoples to cultural and political autonomy brought to the fore questions about Indigenous women's access to civil rights and sovereignty. This claim to political autonomy forces Indigenous women to navigate between the private and public spheres. Entering the public sphere to advocate for justice or reforms that would improve their lives in the private sphere often leads to challenges, as women are perceived as being weak for exposing their 'dirty laundry' in public. Carol Hanisch, in her ground-breaking piece, *The Personal Is Political*, debunks the idea that to admit to having problems in one's life implies one is weak.²⁷¹ For Hanisch, there is no 'weakness' in discussing gender violence as there is no personal solution, only collective ones in combating issues as grave as systematic violence.²⁷² So, when private problems become a political discussion, then the personal is political. The political then becomes legal when women seek justice and equality before the law for private or domestic abuse. Therefore, feminist legal theory is especially applicable to the challenge Indigenous women face. However, it is important to recognise that feminism and feminist legal theory are predominantly Western concepts in themselves and may not apply completely to all cultures.

Indigenous African women occupy an alternative space to contemporary discourse on feminism called womanism. Resisting the stereotype of passivity and invisibility, womanism is Indigenous African women scholars' call to break the yoke of silence and challenge mainstream Western women's theorising of gender issues, which poses as a global concept for all women.²⁷³ The concept of womanism aligns with Harris' warning regarding generalising powerful and educated white women's view of feminism to include all women. Similarly, educated Indigenous women in Western cultures do not represent Indigenous African women voices. In a way, womanism exemplifies bell hooks' phenomenon of migrating vulnerable women 'from the margins to the centre' by resisting 'exclusionary practices of privileged women who dominate

²⁶⁹ Shari M Huhndorf and Cheryl Suzack, 'Indigenous Feminism: Theorising the Issues' in Cheryl Suzack et al (eds), *Indigenous Women and Feminism: Politics, Activism, Culture* (University of British Columbia Press, 2010) 1, 1.

²⁷⁰ *Ibid.*

²⁷¹ Carol Hanisch, 'The Personal Is Political' in Shulamith Firestone and Anne Koedt (eds), *Women's Liberation* (Notes From the Second Year - Radical Feminism, 1969) 76, 75
<http://library.duke.edu/digitalcollections/wlmpc_wlms01039/>.

²⁷² *Ibid.*

²⁷³ Mary Ebum Modupe Kolawole, *Womanism and African Consciousness* (Africa World Press, 1997) 1–2, 18.

feminist discourse, making it impossible for new and varied theories to emerge'.²⁷⁴ Like some Indigenous women in Australia, as products of multiple subjugation (e.g., patriarchy, harmful tradition, colonialism, racism, and gender imperialism), Indigenous African women perceive womanism as the totality of feminine self-expression, self-retrieval, and self-assertion, which embraces the intersection of race, gender, class and cultural consciousness.²⁷⁵ Many African women, such as Ama Ata-Aidoo, Daphne Williams-Ntiri, Molaria Ogundipe-Leslie, Micere Mugo, Bolanle Awe, Rebecca Njau, Ellen Kuzwayo, Chikwenye Okonjo Ogunyemi, Nawal El Saadawi and Amina Mama, who have been crying out against all forms of oppression as women, resist subscribing to the Western concept of feminism as a rejection of the imperialistic attempt to force them to accept a foreign 'ism'.²⁷⁶ Indeed Rose-Marie Tong acknowledges that feminist theory, like many other theories or perspectives, attempts to describe women's oppression by explaining its causes and consequences and prescribing strategies for their liberation.²⁷⁷ Feminism, for all its divergence, continues to join in a united call for justice for women for the fundamental purpose of reversing gender inequality.²⁷⁸ And, it is this fundamental purpose that gives rise to women's effort to explain how gender hierarchy intersects with the law to undermine the legitimacy of Indigenous women's demand for justice as paramount. This suggests that another way to strengthen a collective Indigenous feminist movement approach to gender justice is to evaluate subjugation and oppression through the lens of the decolonisation project.

Decolonisation theory recognises the effects of colonisation are intergenerational and persist after legal independence, not only in state institutions but also in cultural institutions and individuals' psyches. In 1945, when the UN was established, some 750 million people, almost a third of the world's population, were dependent on colonial powers and lived in territories that were non-self-governing.²⁷⁹ Articles 73 and 74, Chapter XI of the *United Nations Charter* 1945 declare principles to support decolonisation efforts including respect for self-determination of all peoples. To hasten the process of decolonisation, on 14 December 1960, the United Nations General Assembly adopted the *Declaration on the Granting of Independence to Colonial Countries and Peoples*.²⁸⁰ Article 1 of that Declaration affirms that '[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, contrary to the Charter of the United Nations and an impediment to the promotion of world peace and co-operation'.²⁸¹ Article 2 of the *Declaration on the Granting of Independence*

²⁷⁴ bell hooks, *Feminist Theory From Margin to Centre* (South End Press, 1984) 9.

²⁷⁵ Kolawole, above n 273, 24–25.

²⁷⁶ *Ibid* 20–21.

²⁷⁷ Rosemarie Tong, *Feminist Thought A Comprehensive Introduction* (Taylor and Francis, 2013) 1.

²⁷⁸ Cornell, above n 76, 68.

²⁷⁹ United Nations, *The United Nations and Decolonisation* (2017) History
<<http://www.un.org/en/decolonization/history.shtml>>.

²⁸⁰ UN General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, A/RES/1514(XV), available at: <http://www.refworld.org/docid/3b00f06e2f.html> [accessed 16 August 2017].

²⁸¹ *Ibid*.

to *Colonial Countries and Peoples* states that ‘[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.²⁸² More recently, Article 3 of the Declaration on the Rights of Indigenous Peoples affirms that ‘Indigenous peoples have the right to self-determination [and] by virtue of that right they [can] freely determine their political status and freely pursue their economic, social and cultural development’. Although, since the founding of the United Nations in 1945, more than 80 former colonies have gained independence, some 17 Non-Self-Governing Territories across the globe remain colonised. Unfortunately, Indigenous Nations, which include one-half of Indigenous women, are part of the estimated two million people living in these 17 non-governing territories across the world.²⁸³

Colonisation, the imposition of the foreign laws and a central government on Indigenous Peoples, has consistently been marked by violence and armed conflict,²⁸⁴ as indicated by Fanon.²⁸⁵ However, the subjection of Aboriginal peoples to a foreign state authority does not necessarily extinguish the traditions and ways of life of its peoples. Survival of Indigenous cultures in recognisable form implies persistence of Indigenous Customary Laws.²⁸⁶ Hence, the question arises as to whether the acknowledgement of Indigenous custom entails some recognition of Indigenous Laws. The answer is not certain. Paul Keal argues that decolonisation from British rule in once colonised states did not necessarily give self-determination to Indigenous Peoples.²⁸⁷ For many, Keal maintains, decolonisation means merely exchanging one set of colonial masters for another without ordinarily acknowledging First Peoples’ customs and laws.²⁸⁸ In former settler-colonist states such as Australia and Liberia, achieving independent status did nothing to change the situation of Indigenous Peoples who had been dispossessed of their lands, lost control of their affairs and were denied the rights of full citizenship.²⁸⁹ Rosa Brooks characterises supplanting colonial laws over Indigenous customs and laws as ‘The New Imperialism’. That is, ‘[i]t should go without saying that the project of intervening in “other” cultures in order to change and “improve” them is a fundamentally arrogant and imperialist project, with many pitfalls’.²⁹⁰ To this end, this dissertation borrows from critical legal pluralists, such as Brooks, endeavouring to listen, critique, express their view and think critically about the impact of colonial law on Indigenous Peoples. For Indigenous Peoples, the unending process of decolonisation is inextricably tied to their health and wellbeing.

²⁸² *Ibid.*

²⁸³ United Nations, above n 279.

²⁸⁴ Crawford, above n 141, 178–179.

²⁸⁵ Fanon, *Toward the African Revolution*, above n 247; Fanon, above n 247; Fanon, above n 247.

²⁸⁶ Crawford, above n 141, 178–179.

²⁸⁷ Paul Keal, *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society* (Cambridge University Press, 2003) 113.

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

²⁹⁰ Rosa Ehrenreich Brooks, ‘The New Imperialism: Violence, Norms, and the “Rule of Law”’ (2003) 101(7) *Michigan Law Review* 2275, 2339.

The social determinants of the health model encompass conditions in which we live, work and grow. These social factors (e.g., education, employment, health and the legal system) act together to impact us, intersecting with our race, gender, class, and social status, in complex ways to produce, perpetuate and sustain inequality and injustice. Widening gaps in equity lead to repeated calls for innovative, multifaceted approaches that promote health and wellbeing, through action on social and economic determinants of health to create conditions that are conducive to improving Indigenous girls and women's growth and development.²⁹¹ Both the Commission on the Status of Women's definition of gender violence²⁹² and the five conceptual frameworks of this study underscore the complex nature of the legacy of systematic violence, a process crystallised in settler-colonists' law, yet manifested across diverse socio-economic statuses that would benefit from critical analysis and application of the social determinants of health. To address the complexity of systematic violence, such a research study must move beyond a traditional mode of simplistic and direct causal relationships towards unconventional, complex matrices of relations. Therefore, this research is informed by a cadre of theoretical and methodological approaches to appreciate the multiple interwoven factors that contribute to systematic violence against Indigenous girls and women and suggest opportunities for restoring justice to those affected.

1.2 Contribution and Significance of Research

Various research studies have been conducted on sexual and gender-based violence. Most are small, skilled consultancy projects sponsored by the United Nations, and few are independent academic research studies focused on health implications. Of the academic research studies conducted, almost all focus on large urban areas with few directly addressing Indigenous populations and the rule of law. Liberia and Australia were chosen as part of this Ph.D. study partly because one is considered a developing country and the other is perceived as an advanced country. As a matter of fact, during an Internet and Research Training session at Australian National University on 13 March 2013, when keywords of 'gender violence' AND 'rule of law' AND 'Australia' AND 'Liberia' were typed into Google Scholar, this research title surfaced as the number one search result. This study promises to bridge a major research gap in examining the efficacy of the rule of law in addressing gender injustices against Indigenous children and women. This research is vital and unique in that the situation of a war survivor with lived experiences of trauma and abuse returning as a researcher to the very community that once inflicted violence upon her to collect data is rare. Beyond the rarity of this research is the unusual position of the researcher's empathy and ability to gain community trust in gathering valuable data on such a sensitive topic having had a similar experience. The impetus for taking

²⁹¹ Paula Hanasz, 'The Social Sciences Shape the Nation' (Public Report, Academy of the Social Science in Australia Inc., 2017) 154, 100 <<http://www.assa.edu.au/publication/the-social-sciences-shape-the-nation/>>.

²⁹² Commission on the Status of Women, 57 Meeting on the Status of Women; Concluding statements aimed at eliminating and preventing all forms of violence against women and girls, (4-15 March 2013) 2.

this stance is the fact that not all are equal under the law. Hence the quest is to not only assess the efficacy of the rule of law but also to ultimately allow Indigenous girls and women to voice out their own opinions about how to engineer social change to advance their own ways of knowing, being and doing justice.

1.3 Communication of Findings

Upon successful completion of the study, findings and results will be disseminated using four major avenues: 1) peer-reviewed journal publications; 2) academic conference presentations; 3) seminars and colloquia organised by the National Centre for Indigenous Studies at the Australian National University, and other universities and local institutions; and 4) engagement with communities that participated in the research project.

1.4 Personal Challenge

Irrespective of the challenges faced by virtue of being a war survivor exposed to many forms of abuse, thinking of better ways to address systematic gender violence beyond successfully completing this Ph.D. study is personally important. The journey and process in itself are therapeutic and empowering. Thus, with years of experience advocating for gender justice and equality, coupled with strong support from the supervisory panel, the challenge is tackled head-on, which adds to the value and authenticity of an original idea such as this one.

1.5 Summary: Thesis Structure and Flow

In summary, this dissertation adopts an interdisciplinary approach to investigating theoretical, empirical, and practical concerns of the application of the rule of law for restoring justice to Indigenous girls and women who are survivors of systematic violence in Australia and post-war Liberia. As befits interdisciplinary research, five theoretical frameworks drawn from Indigenous studies, gender studies, feminist jurisprudence, psychology, public health and international law inform the study design. Researching this topic from a legal perspective requires a law-in-context approach to robustly assess the multifaceted nature of systematic gender violence. It particularly requires the dissection of various laws and policies and an intuitive understanding of gender violence at the local, national and international levels.

Further, the role of the international community and Indigenous girls and women in these legal processes of assessing justice for all must also be considered, if any viable reform is probable. In light of these considerations, the dissertation is structured in nine chapters grouped into three major sections. The first part comprises chapters 1: Introduction, 2: Review of the Literature, 3: Violence Against Indigenous Women, and 4: The Rule of Law, which covers the background, concept and thematic review of the core literature gathered during the research. Chapter 1 introduces the historical background of violence against Indigenous women, provides key definitions operationalised in the dissertation and discusses the theoretical framework

underpinning the research. Chapter 2 surveys relevant literature to establish existing knowledge in addition to identifying corresponding gaps in the subject area. Chapter 3 identifies the three interconnected levels of systematic violence (i.e., institutional/state, structural/cultural and interpersonal/community) and discusses their sources, prevalence and impact, using diverse case examples to explain the complex nature of systematic gender violence against Indigenous girls and women. Chapter 4 examines the efficacy of the principle of the rule of law (or equality before the law) in guaranteeing access to justice for Indigenous girls and women survivors of systematic violence. Relevant application of the Indigenous Customary Laws is also considered as a viable alternative to dispensing justice alongside the Western dominant legal system.

The second part of the dissertation includes chapters 5: Researcher's Positionality and Reflexivity, 6: Methodology and Design and 7: Findings and Results. Chapter 5 narrates a personal reflection on the research process that discloses my personal story as a survivor of gender violence. The survivor discourse used here not only frees my mind of the inherent biases I am conflicted with internally but most importantly, opens public space for me to 'speak-out' about my experience in the academy. Chapter 6 describes the methodological design of the research, outlining the procedure used to obtain, analyse, interpret and conclude the research findings. Chapter 7 presents the major findings and results gleaned from historical, textual, statistical, electronic and empirical data gathered through stationary, observatory and fieldwork studies.

The final part entails chapters 8: Discussion and Analysis and 9: Conclusion and Recommendation. Chapter 8 discusses, critically analyses, synthesises, assimilates and collates major findings produced from the research data by interweaving theoretical frameworks with textual materials and empirical findings to explore possible relationships, parallels and associations between systematic gender violence and the rule of law pertinent to Indigenous girls and women in Australia and post-war Liberia. The relationships and connections induced from the research are not intended to be generalizable, as the data collected is not structured to show statistical significance. Chapter 9 concludes the dissertation with some useful recommendations for law and policy reform to enhance gender justice for Indigenous girls and women.

CHAPTER 2: A REVIEW OF THE LITERATURE

*Among those torn by the antipodal relationship between their democratic ideals and their tyrannical dominion over slaves, and thus attracted to the concept of black removal, was Thomas Jefferson, author of the Declaration of Independence, third president of the United States, and Virginia planter. As early as 1776, Jefferson, a member of the Virginia legislature, had come to the conclusion that the migration of blacks beyond American borders might resolve his own moral dilemma as a revolutionary slaveholder and free the country from this unflattering quandary as well.*²⁹³

*My Lords, the several goals and places for the confinement of felons in this Kingdom being in so crouded [sic] a State ... I ... signify to your Lordships His Majesty's Pleasure, that you do forthwith take such measures as may be necessary for providing a proper number of vessels for the conveyance of 750 convicts to Botany Bay, together with such Provisions, necessaries and implements for agriculture as may be requisite for their use after their arrival...*²⁹⁴

2.0 Introduction

A survey of relevant literature in this research is crucial for determining established knowledge and corresponding gaps on systematic violence against Indigenous women. Although there is a wealth of resources on the three separate topics, no study combines ‘gender violence’ and the ‘rule of law’, against ‘Indigenous Peoples in Liberia and Australia’. Informed by the five theoretical frameworks described in chapter 1, this chapter explores relevant data sources across disciplines (*see* Table 2.1). The literature review process of this research was conducted in three phases: the search phase, the gap identification phase, and the assessment phase. The first phase entailed locating relevant materials. In the second, the literature was examined to identify discrepancies in the research area. The final phase explored opportunities where this research study could expand and contribute to the field. The review of the literature is divided into three chapters comprising a general thematic overview (chapter 2), ‘Violence against Indigenous Girls and Women’ (chapter 3) and ‘The Rule of Law’ (chapter 4).

The literature review assesses systematic gender violence in Liberia and Australia broadly regarding its history, impact, and consequence since there is no comprehensive research on the topic. The review process offers an opportunity to delve into a small but detailed critical appraisal of what relevant resources are available. Conducting research in Australia in 2014, some 1 400 items were scoured from diverse sources including the Australian National University Libraries; the Australian Institute of Aboriginal and Torres Strait Islander Studies; the National Library of Australia, the National Archives of Australia; the National Film and Sound Archive, the Australian Institute of Criminology; Parliament of Australia; the Australian Institute of Health and Welfare, the Department of Families, Housing, Community Services and Indigenous Affairs; University of Tasmania’s Riawunna Centre, and the Cascade Female

²⁹³ Clegg, above n 58, 21.

²⁹⁴ Andrew Tink, *Lord Sydney: The Life and Times of Tommy Townshend* (Australian Scholarly Publishing, 2011) Back Cover.

Factory, Port Arthur, amongst others. A considerable amount of literature, mostly historical, anthropological, and legal, has been published on ‘gender violence against women and law’, generally, and ‘gender violence against Aboriginal women and law’, specifically, in Australia. However, the same cannot be said for Liberia.

There is a dearth of contemporary academic resources concerning gender violence and the rule of law in Liberia. This lack of academic resources for Liberia exist primarily because the country has not gained the attention of Western research institutions interested in conducting research or publishing data. Moreover, the moderate infrastructure that was available to support academic research before 1989 was destroyed during the Liberian civil war and is still in dire need of repair or reconstruction. As a result, in the last two decades, the majority of the resources produced regarding gender violence in Liberia are grey literature, i.e. unpublished reports, dissertations, and out of print pamphlets. Currently, newsprint and United Nations publications are the most common sources of information about violence against girls and women in Liberia. Relevant journal articles and books on gender violence in Liberia tend to predate 1989 and are almost impossible to obtain. A visiting scholar position with the University of Washington School of Law, from January to December 2015, opened access to resources on the legal history and founding of Liberia, which was not easily available in Australia. These obstacles explain the relative over-reliance on newsprint and non-academic materials on Liberia. However, it also highlights the value of research such as this, as an opportunity to begin capturing and analysing primary sources of data and contributing them to the literature.

A rigorous and continuous method was applied to the literature review process. Although materials were continuously searched and used throughout the Ph.D. study, the focused literature review effort involved locating and reviewing sources using Zotero, EndNote and Excel over a period of 24 months. Materials obtained were sub-divided into six groups: 1) general readings; 2) introduction; 3) literature review; 4) methodology and design; 5) results and analysis; and 6) discussion. After each resource had been selected and summarised, six key themes emerged. Resources pertaining to each thematic component were further subdivided into three subcategories, *a*, *b* and *c*, where ‘a’ indicated essential material; ‘b’ a somewhat important source; and ‘c’ a source generally or tangentially linked to the subject matter. All subcategory ‘a’ materials were examined thoroughly using a critical review grid. A composite matrix for comparison and distinction collated summary findings of the literature review. Discursive arguments and inferences arising from the themes situate systematic gender violence and the rule of law in Indigenous Australia and Post-war Liberia within a niche of work done in this area. As a result, this study is positioned to contribute to the wider discourse on violence against Indigenous Peoples.

2.1 Thematic Components

The grounded theory approach informs the literature review in that keywords, phrases, and contents signal emerging themes. According to Glaser and Strauss, who first described the method, grounded theory is ‘the discovery of theory from data – systematically obtained and analysed in social research...[which] fits empirical situations... [and] provides us with relevant predictions, explanations, interpretations and applications’.²⁹⁵ Following Glaser and Strauss’ grounded theory for the literature review process directs the study to examine the research question in the context of existing knowledge. As a result, the six major themes discussed in this chapter were not predetermined but rather flowed out of resources obtained.

The themes discussed in this chapter are arranged in a logical order, starting with the history of Indigenous Peoples in both Australia and Liberia. Irrespective of the thematic topic, the literature review shows strained relationships between settler-colonisers and Indigenous Peoples. Whether explicitly written or implied, there is discernible evidence that the social, political, and legal interactions between settler-colonists and Indigenous Peoples during the formation of the colonial state were not always peaceful and respectful. In fact, in most instances, the law, legal system, and institutions were used as a colonial tool of control, authority, discrimination, subjugation, and exclusion of Aboriginal Peoples. The literature review also reveals some disturbing *inter se* relationships in Aboriginal society. However, many of those harmful *inter se* relationships have their roots in structural or cultural violence inflicted on Indigenous Peoples by settler-colonists through the nation-state building process. As a result, the entire nation-building process in both Liberia and Australia was underpinned by brute force and cultural and institutional violence.

2.1.1 Theme 1: *History, Indigeneity/Aboriginality, Politics and Governance*

*Those who have no record of what their forebears have accomplished lose the inspiration which comes from the teaching of biography and history, [but] what we need is not a history of selected races or nations, but the history of the world void of national bias, race hate, and religious prejudice.*²⁹⁶ Carter Godwin Woodson, Distinguished author and Father of Black History

History, pertinent to the (de)colonisation process, sovereignty, and recognition of Indigenous Peoples, is integral to this research study. Antony Anghie affirms that colonial practices of cultural subordination and economic exploitation play a role in generating an important analytic understanding of contemporary institutional governance.²⁹⁷ Therefore, any possibility of curbing systematic gender violence involves a tie between Liberia’s and Australia’s historical pasts before settler-colonists arrived. Because settler-colonists’ institutional governance is

²⁹⁵ Barney G Glaser and Anselm L Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine Transaction, 1967) 1.

²⁹⁶ National Association for the Advancement of Coloured People, *NAACP History: Carter G. Woodson* (2015) NAACP History <<http://www.naacp.org/pages/naacp-history-Carter-G.-Woodson>>.

²⁹⁷ Antony Anghie, ‘Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations’ (2002) 34 *New York University Journal of International Law* 513.

characterised by systematic violence, the impact of colonial history on Indigenous peoples is assessed from two perspectives: a) documentation of Indigenous forebears' existence and their contribution to nation-building without bias, racial hate, and religious prejudice; and 2) composition of the current social, political, legal, and religious structures connecting indigeneity with exclusionary settler-colonists' governance, which constitute both subtle and explicit forms of systematic violence. An overview of four locations selected in each country for this study follows a law-in-context historical brief. The historical brief uniquely locates Australia and Liberia within the confines of the research methodology, data collection, findings, and discursive analysis (*see* Appendix III).

- Liberia (Land of the Free): The Grain Coast

The African continent prides itself on being the cradle of humankind. Recent fossil discoveries in the Afar region of Ethiopia establish the presence of *Homo* [our genus] at 2.80 to 2.75 Ma [million years ago].²⁹⁸ However, archaeological evidence to support prehistoric inhabitation of Liberia's Grain Coast (formally part of Upper Guinea Coast, remotely shielded from the outside world)²⁹⁹ is scarce. In the early 1970s, archaeologists and anthropologists struggled to piece together the prehistoric habitation of the land area now called Liberia. Frederick D. McEvoy expresses frustration with difficulty in obtaining prehistoric human archaeological evidence on Liberia:

At the conference on Liberian Research and Scholarship held at Robertsport in 1967, it was emphasized in some discussions that there existed at that time “a serious lag” in the development of knowledge pertaining to the prehistory of the region of West Africa which is now included within the boundaries of the Republic of Liberia. The final report of the conference concluded that, “no archaeological work has been done in Liberia, and no Liberians have been or are being trained in this field”.³⁰⁰

Earliest accounts of migration to Liberia started in the 8th century. The Dahn [Gio], Kpelle, Loma, Gbandi, Mende, Vai,³⁰¹ and Mandingo involuntarily migrated at different times, between the 8th and 18th centuries, due to socio-political and economic crises within the Sudanic Empire.³⁰² Unfortunately, since the arrival of African American settler-colonists to Liberia in the early 1800s, not much has changed by way of current scholarship on prehistoric Liberia. Of the estimated 270 resources consulted under this theme, none provided substantial information on

²⁹⁸ Brian Villmoare et al, 'Early Homo at 2.8 Ma from Ledi-Geraru, Afar, Ethiopia' (2015) 347(6228) *Science* 1352.

²⁹⁹ Guannu, above n 100, 10; Karnga, above n 171, 20. According to Guannu, the name *Malaguetta* pepper was given to the territory lying between Cape Mesurado and Cape Palmas. Later, when the British and French came, they named the same area the *Grain or Pepper Coast*. From Karnga's account, the settlers' third attempt to purchase land from Indigenous Liberia later landed them on Providence Island on 7 January 1822. By April of the same year, the Grain/Pepper Coast (as it was called by early Spanish explorer due to the high presence of Malaguetta pepper) was named Liberia (Liber = free in Latin) by Goodloe Harper. Harper was a member of the US senate from Maryland in 1816. The capital city of Maryland County is named after him.

³⁰⁰ Frederick D McEvoy, 'Some Proposals for Liberian Archeology' (1970) 111(1) *Liberian Studies Journal* 129.

³⁰¹ Nnamdi Azikiwe, *Liberia in World Politics* (University of Michigan, 1934) 22–23. NB: the Vai and Bassa, without European aid, invented a written language.

³⁰² Dunn, *Liberia*, above n 103, 9; Sawyer, *The Emergence of Autocracy in Liberia*, above n 61, 44–48.

the existence of Liberia before the 1800s³⁰³ except for the tangential reference to the regions by both Liberian and foreign scholars.³⁰⁴ Historians, who are often non-Africans or non-Liberians, begin Liberian history from 1820, when the first cargo of African American former slaves³⁰⁵ from New York, United States, embarked on their tumultuous journey to ‘freedom’ on the West African coastline.³⁰⁶ Assuming an 1820 historical beginning is not only disrespectful to Native Peoples in Liberia but is also highly contentious, as pre-Liberia existed long before African American settler-colonists arrived on the Grain Coast.³⁰⁷ The land was already occupied by Native Peoples when Europeans first arrived in the 15th century.

By the 15th century, Europe’s insatiable thirst for trade, empire expansion and land grabbing, led them to the coast of Africa. The earliest European arrivals included the Portuguese, who entered the Grain Coast in 1461. They named Cestos, Sanquin, Cape Mount, Cape Palmas, and Cape Mesurado on the Atlantic coast of present-day Liberia. The 15th century marks the beginning of the trans-Atlantic slave trade in Africa. A spike in the trans-Atlantic slave trade began at the end of Portuguese trade in the 15th century, in which an estimated 300 000 persons (or 11.6 percent) of the 5.6 million slaves exported out of Africa between 1690 and 1807 were from the Grain Coast.³⁰⁸ The slave trade left a mark on the whole of West Africa that also has unique implications for Liberia. By 1847, African-American settler-colonists had established

the first independent republic in Africa.

Table 2.1: Population characteristics of Liberia 1992 and 2008

Language	1972	2008	Foreign Born	1972	2008
Kpelle	211,081	705,554	Guinea	8,579	33,746
Bassa	165,856	466,477	Ghana	6,896	6,744
Gio	83,208	267,923	Sierra Leone	4,685	11,816
Kru	80,813	209,993	Lebanon	2,077	831
Grebo	77,007	348,758	USA	1,876	431
Amos Jones Beyan, ‘Transatlantic Trade and the Coastal Area of Pre-Liberia’ (1995) 57(4) <i>The Historian</i> 757;					
Mano	72,122	273,439	Ivory Coast	1,731	9,180
Andreas W Massing, ‘An Inferential History of Pre-Liberia, 1460-1490: Mapping Liberia - a Conjectural History of Early Liberia’ (Liberian Studies Association Annual Conference at the German Technical Corporation (GTZ),					
Lorma	53,891	178,443	Italy	699	
Moravia, Liberia, 25 March 2007			Mali	565	1,209
http://www.onlinelibrary.org/A/5206/conjecture%20history%20early%20Liberia.ppt.>					
Dunn and Holsinger above n 104; D Elwood Dunn, Amos Jones Beyan and Carl Patrick Burrowes, <i>Historical Dictionary of Liberia (Historical Dictionaries of Africa)</i> (Scarecrow Press, 2nd ed, 2000); D Elwood Dunn, <i>Liberia</i>					
Mandingo	29,750	110,590	Spain	470	
Vai	28,898	140,251	Sweden	383	
Gbandi	38,599	103,750	UK	298	
<i>Timeline of African History: Ancient African Civilizations</i> (2008) African and African Diaspora Studies					
http://www.humanities.mcmaster.ca/africahistory/studying%20africa/ancient.html>					
Dunn, <i>Liberia</i> , above n 103, 19–20. Supported by the ACS and \$100,000 grant from the US Congress, the ACS and its auxiliaries (The Indiana Colonization Society; the Colonization Societies of New York, Virginia, Maryland, Mississippi, and the Young Men Colonization Society of Pennsylvania) began an expedition from New York Harbour on 31 January 1820.					
Other	23,478	20,934	Senegal	326	
³⁰⁶ Ibid 17. According to Dunn and Tarr ‘[t]he America sense of moral guilt (atonement) resulting from the inhumanities of the slave trade and slavery found expression in a series of proposals for abolition or colonization spanning the Revolutionary period through the life of the Liberian colony. It involved as much the activities of private persons as of government officials. In 1691 the Virginia legislature enacted a law that forbade emancipation of slaves unless linked to deportation from the colony. A group of Quakers in Germantown, Pennsylvania, under George Keith’s inspiration elaborated in 1713 a colonization plan that envisaged the colonization of Africa of Westernized blacks as a means of bringing ‘civilization, Christianity and legitimate commerce’ to Africans. The Rev. Samuel Hopkins of Rhode Island is credited for a 1773 idea of a missionary effort in Africa to be undertaken by properly trained black Americans’.					
³⁰⁷ Fred PM van der Kraaij, ‘The Grain Coast or Malaguetta Coast or Pepper Coast before 1822’.					
³⁰⁸ Dunn, <i>Liberia</i> , above n 103, 12–14. Noteworthy in 1930, former President Charles Dunbar Burgess King was accused of slavery by the League of Nations after rounding up Indigenous Liberians to work as labour on a cocoa plantation in Spanish Colonial Equatorial Guinea with pay.					
Total	998,834*	3,476,608		29,107**	73,861

Fynn Bruey: *Systematic Gender Violence and the Rule of Law in Indigenous Liberia and Australia* 51

NB: *Dan Language Group is missing. **This figure includes the African American emigrants from the US.

Indigenous groups had on the development of modern Liberia because of a lack of research evidence.³⁰⁹ However, the trans-Atlantic slave trade is central to Liberia's history, as colonist-settlers to Liberia were descendants of Native Africans who were sold into slavery.³¹⁰ African-American returnees, whose ancestors walked their native lands of West Africa 400 years prior, became settler-colonists in the land of their forebears. These African descendants with their newfound identity as 'freed slaves' participated in violent frontier battles and unfair land negotiations with their Native African brothers and sisters. In years to come, they would claim control and assert political, legal, and social power over Native Peoples in Liberia for at least 133 years (1847-1980) but with very little development of the country.

Azikiwe recognises Liberia's peculiar position as Africa's oldest republic:

It is one of the few independent sovereignties of that vast continent, and is the only one on the whole Atlantic seaboard. It has exercised sovereign attributes for half a century, competently contracting treaties with foreign states, and preserving its sphere of legitimate control peacefully among the interior tribes and along the coast, in virtue of formal treaties of cession dating back to its earliest history. At no time has Liberia trespassed on the domain of its neighbours or invaded their comparatively recent sphere of influence. Ever paying due respect to the rights of other sovereignties, its attitude has entitled it to unquestioning respect for its own vested right and to especial sympathy for its fruitful mission to fulfil what Baron Lambert has well called 'une mission civilisatrice pour la Cote de Guinee'.³¹¹

However, as will be seen in chapters 3 and 4, systematic violence orchestrated against Native Peoples in Liberia during state formation undermines Liberia's claim to being 'a civilising mission for the coast of Guinea'.³¹²

Despite Liberia's being the oldest republic in Africa, the 'civilising' efforts of the country's founders did not result in economic, legal, or social systems that benefit Liberia's Indigenous citizens. Though perceived as one of the richest countries in natural resources,³¹³ Liberia is also one of the world's poorest countries.³¹⁴ Writing in the 1930s, Azikiwe saw

³⁰⁹ Liebenow, above n 55, 36.

³¹⁰ Cassell, above n 53, 1.

³¹¹ Azikiwe, above n 301, 18–19.

³¹² Ibid 19.

³¹³ Government of Liberia, 'Liberia Demographic and Health Survey 2013' (Government Report, Liberia Institute of Statistics and Geo-Information Services, August 2014) 480, 7, 9 <<http://dhsprogram.com/what-we-do/survey/survey-display-435.cfm>>; Kira Kay, 'For Liberia, Natural Resources Are Blessings, Curses on Road to Democracy' *PBS Newshour* (Arlington, VA), 31 October 2011 <http://www.pbs.org/newshour/bb/world-july-dec11-liberia_10-31/>. Of the 9 333 household interviewed in the Liberia Demographic Health Survey, 2013, only 14 per cent of household use improved toilet facilities, 45 per cent have no toilet facility at all, 90 per cent have no access to electricity, 98 per cent use fuel [wood] for cooking, 1 in 4 children under 5 has a birth certificate, 47 per cent of females and 33 per cent of males age 6 years and old have never attended school. In the PBS Newshour report, President Ellen Johnson Sirleaf attests, 'Liberia is natural resource-rich. We have minerals. We have agriculture. We have marine resources. If we discover oil, added to the other natural resources we have, that transformation is very possible. Liberia's experience, in a way, has been a resource curse. We have always had these natural resources. They just haven't been used well for development of the people'. But PBS Special Correspondent, Kira Kay, squarely hammers down Liberia's main challenge to realising growth and development, '[u]nequal access to the benefits of natural resources created societal rifts that led to war in Liberia. Diamonds and timber bankrolled warlord President Charles Taylor'.

³¹⁴ Khalid Malik & United Nations Development Programme, *Human Development Report 2013: The Rise of the South: Human Progress in a Diverse World*. (2014) 162, 166, 170, 174, 178, 187 <http://issuu.com/undp/docs/hdr_2013_en?mode=window> at 28 March 2013; Malcolm McPherson & Kpedee Woiwor, *National Human Development Report 2010: Liberia* (2010) 14 <http://hdr.undp.org/sites/default/files/liberia_2010.pdf>; Economywatch, 'Why Liberia has not been able to break

Liberia's agricultural system as primitive. Although, its 'native traditions predominate the society,' Azikiwe laments that 'there are no first-class harbours, there are no railroads, the principal highway routes total about 1000 mileage, and the postal system is not advanced'.³¹⁵ Based on both the Liberia Demographic Health Survey³¹⁶ and the United Nation's Human Development Report,³¹⁷ Azikiwe's observations about Liberia remain valid today, especially regarding the court system.³¹⁸

Despite the challenges still faced by Liberians, the country has grown significantly since 1847. According to the National Population and Housing Census the population of Liberia in 2008 was 3 476 608, with an annual growth of 2.1 percent³¹⁹ (*see* Table 2.1). Then, 50 percent of Liberia's 3.4 million inhabitants were female. Although Monrovia is home to more than half of Liberia's population, Native Peoples occupy the vast majority of the 15 counties but have little or no access to basic amenities (*see* Table 2.2).³²⁰ Today, Liberia's rich population mosaic

its resource curse', *Oil Price*, 25 November 2012, at <http://oilprice.com/Geopolitics/Africa/Why-Liberia-Has-Not-Been-Able-to-Break-its-Resource-Curse.html>.

³¹⁵ Azikiwe, above n 301, 25, 28–29.

³¹⁶ Liberia Institute of Statistics and Geo-Information Services et al, 'Liberia Demographic and Health Survey 2013' (Government Report, LISGIS, 2014) 480. The UNDP Human Development Index (HDI) ranks Liberia at 177 out of 188 countries.

³¹⁷ UNDP, 'Human Development Report 2015: Liberia' (UN, United Nations Development Program, 2015) 7, 2 <http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/LBR.pdf>.

³¹⁸ Liberia Institute of Statistics and Geo-Information Services, 'National Population and Housing Census' (Government Report, Liberia Institute of Statistics and Geo-Information Services, 2009) 352, 7; Government of Liberia, 'Grand Kru County Development Agenda' (Government Report, Ministry of Planning and Economic Affairs, 2008) 76, 18 <http://www.mia.gov.lr/doc/Grand%20Kru%20CDA_web.pdf>. According to the *Grand Kru County Development Agenda* (2008), majority of these facilities are in extremely deplorable conditions. Some are actually non-functioning or non-existent. For example, here is what the CDA report has to say about the rule of law: '[t]here is a Circuit Court in Barclayville [capital city of Grand Kru] but it is not operational due to the absence of the Circuit Judge. There is no Resident Judge for the 12th Judicial Circuit Court. The November Term of Court [in 2008] was opened ceremonially without a judge. There is also a Debt Court, Traffic Court, Revenue Court and a Magisterial Court in Barclayville. There are twenty-eight magisterial courts, operated by 28 stipendiary magistrates and 56 associate magistrates in the rest of the County, all operating from private homes'.

³¹⁹ Liberia Institute of Statistics and Geo-Information Services, above n 318, 6–7.

³²⁰ Government of Liberia, 'Bomi County Development Agenda' (Government Report, Ministry of Planning and Economic Affairs, 2008) 70, 24 <http://www.mia.gov.lr/doc/Bomi%20CDA_web.pdf>. During the civil war, some of the schools were burnt down whilst others were looted. Few have been rehabilitated. Approximately 50 per cent of 95 primary schools in Bomi have no latrines or safe drinking water; The total number of schools in Bong includes fourteen high schools with one private university and one 1 technical college (also *see* LISGIS, 'Bong county profile' (2013), available at

<<http://www.lisgis.net/county.php?&fd0e78b77a58d689bbb27b3e1c037717=Qm9uZw%3D%3D>>. Government of Liberia, 'Grand Kru County Development Agenda', above n 318, 25. Grand Kru has an education supervisory team with a County Educational Officer (CEO) and eight District Education Officers (DEOs). However, of the 166 schools counted, only five are equipped with desks, chairs, students and trained teachers. Government of Liberia, 'Margibi County Development Agenda' (Government Report, Ministry of Planning and Economic Affairs, 2008) 70, 26 <http://www.mia.gov.lr/doc/Margibi%20CDA_web.pdf>. NB: Of the 290 educational facilities in Margibi, only 50 are functional. Government of Liberia, 'Maryland County Development Agenda 2008-2012' (Government Report, Ministry of Planning and Economic Affairs, 2008) 68, 29. The education sector in Maryland is in a very poor state, with most schools dilapidated from years of neglect. Government of Liberia, 'Sinoe County Development Agenda' (Government Report, Ministry of Planning and Economic Affairs, 2012) 84, 29–30 <<http://www.emansion.gov.lr/doc/SinoeCDA.pdf>>. All of the schools operating in Sinoe County are below minimum standards and are either run from private homes or church buildings or mosques. A total of 730 teachers (mainly based in Greenville, the capital city) serving the 17,715-enrollment population, three hold a Master of Science degree, three Bachelor of Arts, 17 Bachelor of Science, six Associate degrees, and the remainder 172 hold either A or B certificates to teach only elementary level. Many of Grand Bassa 257 educational facilities are operated by volunteers in makeshift fixtures in churches and private accommodations, sometimes with no chairs and desks available for students use (Government of Liberia, *Grand Bassa County Development Agenda* (2012) 28). Of the 1096 schools reported in Montserrado, 757 is found in greater Monrovia alone, serving a population of ~750 000. In 2006, the Norwegian Refugee Council recorded only 209 functioning schools in Montserrado. Government of Liberia, *Montserrado County Development Agenda* (2008) 30). There is a general lack of modern school buildings in River

comprises Native Peoples, American and Caribbean returnees,³²¹ and expatriates of Lebanon, India, Europe, and other African and American countries (*see* Table 2.2).³²² The 16 major Language Groups in Liberia are part of the Niger-Congo area and belong to four families: 1) Atlantic-Congo (Kru, Bassa, Belle, Dei, Grebo, and Krahn: 2) Atlantic-Mel (Gola and Kissi); 3) Mande (Gbandi, Gio, Kpelle, Loma, Mandingo, Mano, Mende, and Vai); and 4) Indo-European. All of the Language Groups in Liberia are phonetically related, which is an indication of some level of connection between Native Peoples in that region of Africa.³²³ Of the 15 counties in Liberia, this research focused on four counties that represent a variety of geographic locations, with diverse Language Groups and varying economic conditions.

Lofa County

Lofa County, located in the north-western corner of Liberia, was established in 1964. The political establishment of Lofa is a symbol of unity, as displayed in the regional flag. Lofa has seven political districts: Foya, Kolahun, Salayea, Vahun, Voinjama (the capital), Zorzor, and Quardu Gbondi with one township. Lofa has six major language groups: Lorma, Kissi, Gbandi,

Table 2.2: Population distribution in Liberia: sex ratio, health, and educational facilities¹

County	Female	Males	Total (%)	Sex Ratio	College ¹	School	Health
Bomi	41,179	42,940	84,119 (2.42)	104.3	1	105	17
Bong	168,622	164,859	333,481 (9.62)	97.8	1	367	33
Gbarpolu	39,482	43,906	83,388 (2.40)	111.2	0	63	12
Grand Bassa	110,780	110,913	221,693 (6.39)	100.1	1	257	31
Grand Cape Mount	62,133	65,679	127,943 (3.70)	105.7	1	124	33
Grand Gedeh	60,264	64,994	125,258 (3.61)	107.8	1	266	17
Grand Kru	28,265	29,648	57,913 (1.67)	104.9	0	166	12
Lofa	143,252	133,611	276,863 (7.98)	93.3	1	297	49
Margibi	104,083	105,840	209,923 (6.05)	101.7	1	290	36
Maryland	65,083	70,855	135,938 (3.92)	108.9	1	151	23
Montserrado	568,508	549,733	1,118,241 (32.25)	96.7	2	1096	165
Nimba	231,913	230,113	462,026 (13.32)	99.2	1	554	41
River Cess	34,285	37,224	71,509 (2.06)	108.6	0	No data	10
River Gee	31,926	34,863	66,789 (1.93)	109.2	0	120	14
Sinoe	47,624	54,767	102,391 (2.95)	115.0	0	175	5
Total	1,739,945	1,736,663	3,467,608 (100.27)	100.2	11	4031	481

Source: Adopted from LISGIS' National Population and Health Census Data (2009) available at <<http://www.lisgis.net>> and the County Development Agendas (2008) prepared by the Ministry of Planning and Economic Affairs available at <<http://www.mia.gov.lr/>>

Kpelle, Mande, and Mandingo, all of which maintain the *Poro* and *Sande* institutions, which are

Ge. Most schools have not chairs and/or desks for student use. There is an immense lack of trained teachers, even though there is one primary school teacher training institute: the Webbo Rural Teacher Training Institute (*see*, Government of Liberia, *River Gee County Development Agenda* (2008) 26).

³²¹ Martin, above n 184, 9. In 1859 a Jamaican, Robert Campbell (a teacher and chemist) joined Afro-American, Martin R. Delany, in an expedition to explore the Niger Valley (present day Nigeria) with the purpose of returning and re-settling West Africans there. As a result of the US Civil War, couple with British occupation of Nigeria, the plan did not pan out. In 1965, in consultation with President Daniel Bashiel Warner (who was also concerned about integrating Indigenous Liberians in to the wider society) and Edwin Wilmot Blyden (then Secretary of State) 346 Barbadians sponsored by the ACS emigrated to Liberia and settled in Crozerville.³²¹ Springing out of the Barbadian emigrants to Liberia is (to name but a few) Arthur Barclay (president, 1904-1912), Edwin Barclay, nephew of Arthur (Secretary of State, 1920-1930 and Acting President, 1930-1944), and Mary Antoinette Brown Sherman, first female president of the University of Liberia. Other emigrant to Liberia of Afro-Caribbean heritage were Edwin Wilmot Blyden born in St Thomas, Danish West Indies (US Virgin Islands) to free black parents from the Igbo tribe of present-day Nigeria. Blyden is considered the father of pan-Africanism. As a writer, he was the editor of the *Liberian Herald* and the president of Liberia College (now the University of Liberia), 1880-1884.

³²² Dunn, *Liberia*, above n 103, 27; Wreh, above n 166, 133-134.

³²³ Liebenow, above n 55, 1; *ibid* 37.

responsible for ushering boys and girls into adulthood, respectively. Its lush tropical rainforest and fertile soil produce rice, cocoa, and coffee, whilst its mineral wealth includes gold and diamonds. Two colleges, 469 schools, and 49 health centres serve the county's 276 863 inhabitants.³²⁴ Lofa had 53 health facilities: four hospitals, six health centres and 41 clinics, all of which were destroyed during the civil war. However, 49 have been rehabilitated³²⁵ with the help of the World Health Organization, the United Nations Children's Fund, and other major international non-profits.³²⁶ In 2007, Lofa had six doctors, three dentists, four pharmacists, and two registered nurses as full-time health workers of the Ministry of Health and Social Welfare.

Nimba County

Nimba County, like Bong and Lofa, was one of the original nine counties of Liberia. Along with Lofa, in 1964, Nimba became a county after former president William V S Tubman abolished the original five Provincial political sub-divisions of which the hinterland (mostly Indigenous Peoples) was not a part. Once part of the Central Province of Liberia, which included Bong and Lofa counties, Nimba is 2 300 square kilometres, comprising five major Indigenous Language Groups (*Maan, Daan, Mandingo, Krahn* and *Gbii*), 17 districts, and over 100 towns, with many clans and chiefdoms. Nimba is home to 13.32 percent of Liberia's population, mostly of the Mano and Gio Language Groups. Dominated by mountains, rivers, and lush vegetation, this county has natural resources (mainly iron ore, diamonds, gold, timber, and rubber) that have been exploited for over half a century (*see* chapter 3 for more detail). Sanniquellie, the capital city of Nimba, is the birthplace of the Organisation of African Unity (now the African Union).³²⁷ Until 2013, there was no public college or university in Nimba. The African Bible College is a private institution established in 1977 that was granted full university status in 2008. To date, there are 554 schools for a student population of 145 272.³²⁸ A total of 526 assigned health workers, including one medical doctor, staff the entire 41 functioning health facilities, serving a population of 732 195 in Nimba.³²⁹

Maryland County

Maryland was first established as a colony of the Maryland State Colonisation Society on 12 February 1834. In 1857, by an act of legislation, Maryland joined the Republic of Liberia. Harper City, which sits in the centre of Cape Palmas, honours a prominent American politician

³²⁴ Government of Liberia, 'Lofa County Development Agenda 2008-2012' (Government Report, Ministry of Planning and Economic Affairs, 2008) 116, 23 and 24. Total population of Lofa is obtained from LISGIS' Lofa County Profile, 2013 available at: https://www.lisgis.net/pg_img/CSIO%20Lofa%20December,2013%20Reports.pdf.

³²⁵ *Ibid* 23.

³²⁶ *Ibid*.

³²⁷ University of Wisconsin Press, 'Sanniquellie Conference' (1962) 16(2) *International Organization* 444.

³²⁸ Government of Liberia, 'Nimba County Development Agenda 2008-2012' (Government Report, Ministry of Planning and Economic Affairs, 2008) 70, 25.

³²⁹ *Ibid* 24.

and member of the American Colonisation Society, Robert Goodloe Harper. The main Language Group in Maryland is *Grebo*. Maryland has seven administrative districts, 15 chiefdoms and 26 clans across 47 townships.³³⁰ An estimated 98 percent of the county is said to be Christian, dividing the last two percent between Muslims and Traditionalists. A land dispute is of serious concern in Maryland. Arbitrary allocation of land during former President Charles Taylor's regime escalated inter-town and inter-clan conflicts, resulting in security intervention. Rubber, gold, manganese, and bauxite are vital economic resources of the Maryland economy. The education and health sectors of Maryland are in a deplorable state from years of neglect. There are 151 schools serving a population of 29 823 (44 percent of whom are girls) with 1 071 teachers (26 percent of whom are female). Maryland has one tertiary institute, William VS Tubman University, established in 1978 as a technical college but now raised to a full university status since April 2009 (*see* Table 2.2).³³¹ Maryland's 135 938 inhabitants have only 16 health clinics and one referral hospital.

³³⁰ Government of Liberia, 'Maryland County Development Agenda 2008-2012', above n 320, 5–8.

³³¹ Government of Liberia, 'Bomi County Development Agenda', above n 320, 21–22. Less than 15 per cent of the population in Bomi has access to health care. Of the 17 (one hospital and 16 clinics) functional health facilities, nine are run by World Vision Liberia, three by Save the Children UK and two by African Humanitarian Action. Government of Liberia, 'Bong County Development Agenda' (Government Report, Ministry of Planning and Economic Affairs, 2008) 86, 28 <http://www.mia.gov.lr/doc/Bong%20CDA_web.pdf>. Of the 33 health clinics in Bong County, 26 are supported by international NGOs as there is no formal health system administration ever in the County. Government of Liberia, *Gbarpolu County Development Agenda* (2008) 17 <<http://www.emansion.gov.lr/doc/GbarpoluCDA.pdf>>. Government of Liberia, 'Grand Cape Mount County Development Agenda' (Government Report, Ministry of Planning and Economic Affairs, 2008) 107, 29 <http://www.mia.gov.lr/doc/Grand%20Cape%20Mount%20CDA_web.pdf>. The 33 functional health facilities in Grand Cape Mount include one hospital, one health centre, 30 clinics and one health post. Government of Liberia, 'Grand Kru County Development Agenda', above n 318, 22–23. The health sector in Grand Kru is in dire need of assistance with health professionals are completely absent or inadequately trained. According to the Comprehensive Food Security and Nutrition Survey, Grand Kru has the highest chronic child malnutrition rates (47.3 per cent) with more than 70 per cent of households having no access to basic food. Access to health services such as immunization, Vitamin A supplementation and de-worming is extremely low, and infant and child feeding practices are poor due to poverty and lack of information. Like its health sector, education in Gbarpolu is next to destroyed and not yet fully function (p. 17). Government of Liberia, 'Lofa County Development Agenda 2008-2012', above n 324, 23. Prior to the civil war, all 53 of Lofa's health facilities (4 hospitals, 6 health centres and 41 clinics) were destroyed. To date, 49 of these facilities have been rehabilitated and currently managed mainly by international organizations. Government of Liberia, 'Margibi County Development Agenda', above n 320, 27. Apart from the two hospitals, the Government owns 19 clinics amongst the 36 functioning health facilities in the Margibi. Government of Liberia, 'Maryland County Development Agenda 2008-2012', above n 320, 30. According to the County Health Team in Maryland, before the civil crisis, there were 23 health facilities. However, only 17 are in operation. The remaining six are yet to be reactivated. Government of Liberia, 'Nimba County Development Agenda 2008-2012', above n 328, 24. Access to health care facilities for the estimated population of 732 195 in Nimba is 435:1. The 526 health workers include 21.2 per cent nurse aids, 17 per cent registered, 13 per cent trained traditional midwives, and 0.9 per cent medical doctor. Government of Liberia, 'Sinoe County Development Agenda', above n 320, 27–28. Sinoe has one of the lowest presence of the Ministry of Health assigned workers in Liberia. Of the 33 health facilities, existing prior to the civil war only five are functional. By March 2007, only three medicine stores and no pharmacy were present in the County. Of the 17 basic health units in Grand Gedeh, only 11 are functional in three districts, including one hospital, all of which are run by three NGO's (MSF, Merlin and Caritas). No pharmacy or medicine stores available in Grand Gedeh (Government of Liberia, *Grand Gedeh County Development Agenda* (2008) 24-25). Of the 165 functioning health facilities in Montserrado, six are hospitals, 44 clinics, and 10 health centres. This county alone has 96 pharmacies, 228 drug stores, 97 full-time medical doctors, 106 physician assistants, 6 dentists, 188 register nurses, 65 lab technicians, and 30 full-time counsellors (*see*, Government of Liberia, *Montserrado County Development Agenda* (2008) 28). The closest hospital to River Cess is the public facility in Buchanan, Grand Bassa. The County does not have an assigned doctor and most health workers are untrained (*see*, Government of Liberia, *River Cess County Development Agenda* (2008) 21). River Gee's 14 health facilities include three health centres and 11 public clinics which have not had any regular assistance from NGO's, UN or government agencies. The County has no referral hospital, no medical doctor, and a serious need for trained and qualified health workers (Government of Liberia, *River Gee County Development Agenda* (2008) 22-23).

Montserrat County

As one of three original counties signatory to Liberia's Declaration of Independence 1847, Montserrat is as old as the Republic. Partly because of rural-urban drift, which was compounded by forced internal migration during the civil war, Montserrat houses 43 percent (1.5 million people) of Liberia's population. A century-old centralised government headed by early immigrant settler-colonists directed internal migration towards the nation's capital, Monrovia. The high density of Monrovia's population, in part, explains the disproportionate focus of public and private socio-political development in the capital. Montserrat has 21 townships, seven cities, one borough, two chiefdoms and two statutory districts. Todee is the most rural district in Montserrat and is home to many Indigenous Liberians.³³² To date, all of Liberia's 16 major Language Groups populate Montserrat County. To the neglect and detriment of rural counties such as Gbarpolu,³³³ Grand Kru,³³⁴ River Cess,³³⁵ River Gee,³³⁶ and Sinoe;³³⁷ Montserrat has almost one third (27 percent) of the estimated 4 031 schools;³³⁸ one third (34 percent) of all health facilities;³³⁹ and two of the eleven tertiary institutions in Liberia. Currently, tertiary institutions in Liberia offer only bachelor and master's degrees.³⁴⁰ There is no Ph.D. program offered in Liberia (*see* Table 2.2).³⁴¹ Although Montserrat has been transformed over the last century from being domination by the English speaking African American settler-colonists³⁴² to constituting multi-lingual abode for all Liberians, it is still relatively underdeveloped and unsophisticated. As iterated by Azikiwe earlier (1930), Montserrat (like all of Liberia) has no public electricity grid (except for dotted areas in Monrovia), no potable

³³² Government of Liberia, 'Montserrat County Development Agenda 2008-2012' (Government Report, Ministry of Planning and Economic Affairs, 2008) 82, 1–3.

³³³ Government of Liberia, 'Gbarpolu County Development Agenda' (Government Report, Ministry of Planning and Economic Affairs, 2008) 68 <<http://www.emansion.gov.lr/doc/GbarpoluCDA.pdf>>.

³³⁴ Government of Liberia, 'Grand Kru County Development Agenda', above n 318.

³³⁵ Government of Liberia, 'River Cess County Development Agenda' (Government Report, Ministry of Planning and Economic Affairs, 2008) 66 <<http://emansion.gov.lr/doc/RivercessCDA.pdf>>.

³³⁶ Government of Liberia, 'River Gee County Development Agenda' (Government Report, Ministry of Planning and Economic Affairs, 2008) 76 <<http://www.emansion.gov.lr/doc/RiverGeeCDA.pdf>>.

³³⁷ Government of Liberia, 'Sinoe County Development Agenda', above n 320.

³³⁸ Government of Liberia, 'Montserrat County Development Agenda 2008-2012', above n 332, 30.

³³⁹ *Ibid* 28.

³⁴⁰ *See*, Starz, National Commission on Higher Education, 'List of tertiary institutions in Liberia' (2014) available at <<http://starzit.com/wp-content/uploads/2014/12/NCHE.pdf>> and Ministry of Education, 'List of higher education institutions in Liberia' (2013) available at <<http://www.moe.gov.lr/pages1.php?pgID=62>>.

³⁴¹ It must be emphasised here that the number of health facilities, schools and colleges are simply mere numbers. There is a total of 34 tertiary institutions in Liberia, four of which offers bachelors and/or masters' degrees: University of Liberia (public) in Montserrat, William V S Tubman University (public) in Maryland, Cuttington University (private and faith-based) in Bong, and Stella Maris Polytechnic (private and faith-based) in Montserrat. The remaining 30 colleges: 17 are faith-based, 8 public and 5 private schools; 17 are based in Monrovia/Montserrat County and 18 offers associate degrees. Interestingly, 26 of the 34 institutions were established after the civil war. In other words, only eight higher education institutions served Liberia's 1.8 million population before 1990. There is no PhD granting institutions ever in Liberia. Note that only public tertiary institutions are listed in this column (*see*, Starz, National Commission on Higher Education, 'List of tertiary institutions in Liberia' (2014) available at <<http://starzit.com/wp-content/uploads/2014/12/NCHE.pdf>> and Ministry of Education, 'List of higher education institutions in Liberia' (2013) available at <<http://www.moe.gov.lr/pages1.php?pgID=62>>).

³⁴² Government of Liberia, 'Montserrat County Development Agenda 2008-2012', above n 332, 6. Note that at the time of founding, three main Indigenous language groups occupied Monrovia, the Dey, Kpelle and Gola.

water delivery system, no public transportation systems, no public telecommunications facilities and extremely limited road access to other parts of the country.³⁴³

Interestingly, most cities, townships, and districts in Montserrado are named after early settlers, places or plantations from in the United States. For example, New Georgia was named after Georgia in the United States by recaptured slaves who waited seven years for the outcome of a court decision in Georgia regarding their fate.³⁴⁴ The Virginia Colonization Society, ‘the prototypical state that had set the tone and pace of colonial settlement, American republicanism, and plantation slavery’,³⁴⁵ put immense pressure on policymakers to mandate provisions to ensure the deportation of Black Africans from the United States, and is remembered in Liberia as Virginia Township.³⁴⁶ When 309 freed African American former slaves immigrated to Liberia from Louisiana, they created a colonial duplex called Mississippi by a river in Sinoe County Liberia, ‘not unlike the geographical intimacy characterising their former homes’.³⁴⁷ These borrowed names highlight a generational link between former slave settler-colonists and the philosophical founding of Liberia that is scarred with cyclical impacts of social inequality and injustice between recent immigrant settler-colonists and Native Peoples in Liberia. It is this painful reminiscence of slavery, deprivation, and abuse, tainted with the love for heritage, which fastens African American settler-colonists to the nostalgia of recreating place names that give meaning to their existence in Liberia.

- Australia

*If he should locate Terra Australis, Cook was to explore the coast and to return with charts, views, and hydro-graphic details. In addition, he was to gather information about the nature of its soil, products, beasts, birds, fishes, and minerals and to report on the nature of its inhabitants.*³⁴⁸ Board of Admiralty to James Cook, 1768-1771.

Aboriginal Australians are believed to owe their heritage to ancient Egyptian voyagers who arrived on the Australian shores 50 000 years ago.³⁴⁹ Archaeological evidence shows that Aboriginal culture is one of the earliest centres of civilisation, spanning at least 40 000-50 000 years.³⁵⁰ Well-documented archaeological records from the last 200 years establish Aborigines as the original dwellers of Australia.

[A lock] of hair taken from an unknown young man near Kalgoorlie in the 1920s has provided solid genetic evidence that Aboriginal Australians are descended from the first

³⁴³ Government of Liberia, ‘Liberia Demographic and Health Survey 2013’, above n 313; Liberia Institute of Statistics and Geo-Information Services, above n 318.

³⁴⁴ Clegg, above n 58, 92.

³⁴⁵ Ibid 21.

³⁴⁶ Ibid 148.

³⁴⁷ Timothy F Reilly, ‘The Louisiana Colonization Society and the Protestant Missionary, 1830-1860’ (2002) 43(4) *Louisiana History: The Journal of the Louisiana Historical Association* 433.

³⁴⁸ Alan Edwin Day, *Historical Dictionary of the Discovery and Exploration of Australia* (Scarecrow Press, 2003) xxxviii.

³⁴⁹ Ibid xvii, xlii.

³⁵⁰ Al J Grassby and Marji Hill, *Six Australian Battlefields* (Allen and Unwin, 1998) 1; Val Attenbrow, ‘The Aboriginal Prehistory and Archaeology of Royal National Park and Environs: A Review’ (2012) 134 *Proceedings of the Linnean Society of New South Wales* B39.

modern humans to walk out of Africa nearly 75,000 years ago (...) The first Aboriginal genome reinforces archaeological evidence that people arrived on the Australian continent at least 50,000 years ago and that they share one of the oldest continuous cultures in the world.³⁵¹

However, like Liberia, much of modern-day Australia is heavily influenced by European views.³⁵² As with Liberia, Australia's history tends to begin with the arrival of Europeans in Australia's case, in 1770 when Captain James Cook, or other wandering Europeans,³⁵³ arrived. Telling Aboriginal history through the colonial worldview with particular regard to 'who owns the Australian past' is problematic, as it reinforces false assumptions about the sovereignty and agency of Aboriginal People.³⁵⁴

Australia was not *terra nullius*³⁵⁵ when Captain Arthur Phillip raised the British flag at Sydney Cove shortly after the First Fleet³⁵⁶ landed on the shores of *Eora* country on 18 January 1788.³⁵⁷ The estimated 1.6 million First Australians, organised by territorial boundaries, laws, culture and customs, lived across the entire continent.³⁵⁸ Of the more than 250 original languages, only about 145 are still spoken to some degree today and about 110 are severely endangered³⁵⁹ (see Tables 2.3³⁶⁰ and 2.4³⁶¹). Richard Baker argues that 'Aboriginal people [specifically the Yanyuwa people] gave up their bush life out of choice',³⁶² to come into European settlements.

³⁵¹ Leigh Dayton & Stuart Rintoul, 'Genes map Aborigines' arrival in Australia', *The Australian*, 23 September 2011, at <http://www.theaustralian.com.au/news/health-science/genes-map-aborigines-arrival-in-australia/story-e6frg8y6-1226144089835>.

³⁵² Day, above n 348, xlii, 1–2.

³⁵³ James Sykes Battye, *Western Australia: A History From Its Discovery to the Inauguration of the Commonwealth* (Clarendon Press, 1924) 11–16 <<http://gutenberg.net.au/ebooks05/0500301h.html>>.

³⁵⁴ *Telling Stories: Indigenous History and Memory in Australia and New Zealand* (Allen and Unwin, 2001) xv, 2–7; Government of Australia, *Convicts and the British Colonies in Australia: A Penal Colony* (2014) Australian Stories <<http://www.australia.gov.au/about-australia/australian-story/convicts-and-the-british-colonies>>; Government of Australia, *Convicts and the British Colonies in Australia* (4 November 2014) Convicts and the British Colonies in Australia <<http://www.australia.gov.au/about-australia/australian-story/convicts-and-the-british-colonies>>. In his book, Attwood seek to provide an account what makes sense regarding the ongoing controversy over Aboriginal history (vis-à-vis the so-called 'history wars' by tracing the underlying roots of the debate, as well as critically examining the new conservative or revisionist authors claims about the frontier, and suggests approaches that Aboriginal history seems to demand of settler Australians as historians or/and citizens (p. 7). For example, for centuries, white Australians fabricated Aboriginal Australians' relationship with white settlers regarding the modern nation-State as Joseph Banks Penal Colony.

³⁵⁵ Grassby and Hill, above n 350, ix. In *Six Australian Battlefields*, Grassby and Hill confide that the goal of the book is to 'demonstrate that Australia was not terra nullius when Captain Cook took possession of half the continent for the King of England....'

³⁵⁶ The First Fleet to Australia comprised eleven ships bearing 751 British convicts, their children and 252 Marines and their families

³⁵⁷ Government of Australia, above n 354. According to the Australian Government website, 'while the vast majority of the convicts to Australia were English and Welsh (70%), Irish (24%) or Scottish (5%), the convict population had a multicultural flavour. Some convicts had been sent from various British outposts such as India and Canada. There were also Maoris from New Zealand, Chinese from Hong Kong and slaves from the Caribbean'.

³⁵⁸ Perkins, above n 60.

³⁵⁹ McConvell, Marmion and McNicol, above n 180, 3; Kazuko Obata and Jason Lee, 'Languages of Aboriginal and Torres Strait Islander Peoples - A Unique Australian Heritage' <<http://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1301.0Feature%20Article42009%E2%80%9310?opendocument&tabname=Summary&prodno=1301.0&issue=2009%9610&num=&view=>>>; Australian's International Public Affairs, *Australia Facts* (2015) About Australia <<http://www.about-australia.com/facts/>>; M Paul Lewis, Gary F Simons and Charles D Fennig, *Languages of the World: Australia* (2015) Ethnologue <<http://www.ethnologue.com/country/AU/languages>>.

³⁶⁰ Table 2.5: shows the 38 strongly spoken Aboriginal languages (i.e. a 100 or more speakers) in 1996 and/or 2001.

³⁶¹ Table 2.6: shows the population distribution of Indigenous Australians between 1901 and 2013.

³⁶² Richard Baker, 'Coming in? The Yanyuwa as a Case Study in the Geography of Contact History' in Valerie Chapman and Peter Read (eds), *Terrible Hard Biscuits: A Reader in Aboriginal History* (Allen and Unwin, 1996) 123, 164.

Baker identifies³⁶³ the control of Aboriginal land by British settlers as a crucial factor in this migration from rural to urban living. Despite Baker's observation, white Australian settler-colonists dispossessed Indigenous Peoples in Australia of their land. As with the founding of Liberia, the arrival of the First Fleet was not without violent exchange.³⁶⁴ Rene Adams and Yasmin Hunter suggest that 'the colonisers tried to kill Aboriginal people with guns and diseases; [and] whole tribes were herded together and murdered'.³⁶⁵ Chapter 3 chronicles a number of frontier battles and other forms of systematic violence against Indigenous Peoples perpetrated by settler-colonists in Australia. Not only did white Australian settlers forcibly dispossess Indigenous Peoples of their land, but they also extended and imposed British common law in claiming jurisdiction over Aboriginal lands, property, and lives.

The Australian Federation was established between 1788 and 1863.³⁶⁶ On 5 July 1900, the *Commonwealth of Australia Constitution Act* (United Kingdom) was passed, received Royal Assent from Queen Victoria on 9 July 1900, and came into force on 1 January 1901, with Sir Edmund Barton sworn in as the first interim Prime Minister.³⁶⁷ For some, the birth of this modern-day Australian Constitution began a pattern of white colonial arrogance and disrespect for Indigenous Australians (*see* chapter 4).³⁶⁸ This research aligns with the Recognise Campaign that asserts,

³⁶³ Ibid 165.

³⁶⁴ Mitch Torres, *Jandamarra's War* (Electric Pictures Pty Ltd., 2011); Bain Attwood, *Telling the Truth About Aboriginal History* (Allen & Unwin, 2005) 106–123; Grassby and Hill, above n 350; Nicholas Clements, *The Black War: Fear, Sex and Resistance in Tasmania* (University of Queensland Press, 2014); La Trobe University, 'The Myall Creek Massacre with Richard Broome', above n 15; JL Kohen, 'Pemulwuy (1750–1802)' in *Australian Dictionary of Biography* (National Centre of Biography, Australian National University, 2005) <http://adb.anu.edu.au/biography/pemulwuy>.

³⁶⁵ Rene Adams and Yasmin Hunter, 'Surviving Justice: Family Violence, Sexual Assault and Child Sexual Assault in Remote Aboriginal Communities in NSW' (2007) 7(1) *Indigenous Law Bulletin* 26; Adriana Vanden Heuvel et al, 'The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples' (Government Report, Australian Institute of Health and Welfare, 2015) 200, 2 <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129551281>>.

³⁶⁶ Day, above n 348, xiv. New South Wales (1788), Van Diemen's Land (1825), Western Australia (1829), South Australia (1836), Victoria (1851), Queensland (1859), and Northern Territory (1863).

³⁶⁷ Parliamentary Education Office, *How Australian Formed Its Constitution* (2015) The Australian Constitution <<http://www.peo.gov.au/learning/closer-look/the-australian-constitution/how-australia-formed-its-constitution.html>>. Note the original colonies of the Federation of Australia were, New South Wales, Victoria, South Australia, Queensland and Tasmania. The Constitution provided for Western Australia to join the Commonwealth of Australia, of which it agreed on 31 July 1900 – just two weeks after the Act was passed. The original *Commonwealth of Australia Constitution Act* 1910 was legally bound to Britain, until series of statutes were passed, progressively giving the Commonwealth greater constitutional independence. For example, the *Statute of Westminster Adoption Act* 1942 provided that Australian laws could no longer be overruled by an Act of British Parliament; the *Privy Council (Limitations of Appeals) Act* 1968 and the *Privy Council (Appeals from the High Court) Act* 1975 limited and ended appeals from the High Court of Australia to the Privy Council in the UK; and the *Australian Act* 1986 finally removed all remaining legal links between the Australian and British governments, except that the Queen of England is still the Head of State of the Commonwealth.

³⁶⁸ RECOGNISE, above n 24; Bain Attwood et al, *The 1967 Referendum, or, When the Aborigines Didn't Get the Vote* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 1997); Gary Foley, 'How to Steal the Human Rights of Aboriginal People' <<https://vu.academia.edu/GaryFoley>>; Mansell, above n 17; Dan Harrison, 'Patrick Dodson Warns Aboriginal People Will Be Refugees in Their Own Country If Communities Close' *The Sydney Morning Herald* (Sydney, NSW), 21 November 2014 <http://www.smh.com.au/action/printArticle?id=63429039>; Mick Dodson, 'Constitutional Recognition of Indigenous Australians' (Public Lecture at the National Centre for Epidemiology and Population Health Annual Lecture, Finkel Lecture Theatre, John Curtin School of Medical Research, 12 November 2014); Dodson, 'Constitutional Recognition of Indigenous Australians', above n 24; Mick Dodson, 'Citizenship in Australia: An Indigenous Perspective (A Call

Before the Australian Constitution was written, Aboriginal and Torres Strait Islander people had lived here for more than 65,000 years, maintaining the oldest living culture on the planet. Yet the Constitution doesn't recognise this and still allows for racial discrimination. As it stands, the nation's founding document makes no mention of the First Australians and more than sixty-five thousand years of Australia's history, prior to British colonisation. RA [Reconciliation Australia] supports the public campaign to correct this wrong, and meaningfully recognise First Nations' people in the Australian Constitution.³⁶⁹

On the one hand, the rise to independence and the economic success of those once considered the 'scum of people'³⁷⁰ and 'illiterate freight of misery'³⁷¹ by British society is a celebrated miracle. On the other, the colonisation of Aboriginal Australia perpetrated all manner of systematic violence against Indigenous Peoples. Stan Grant describes his thoughts on the experience of Australia's Aboriginal Peoples with colonisation by saying that they were '[e]stranged in the land of our ancestors, marooned by the tides of history on the fringes of one of the richest and demonstrably most peaceful, secure and cohesive nations on earth'.³⁷² Without any redress or reparation to, or recognition of, the First Peoples in Australia, white colonist-settlers continue to use their legislative and constitutional powers to subjugate and oppress Aboriginal Peoples. It is due to the persistence of such injustice that this research questions the principle of equal treatment under the law. As with the Liberian side of this study, searching for answers to the research question in Australia focused efforts in four geographically, economically. And demographically diverse regions.

Northern Territory

The Northern Territory is home to one of the oldest living cultures in the world as archaeological records show that the Yolngu people settled in the Northern Territory some 50 000 years ago. According to the National Archives of Australia, originally, the 'Northern Territory was a part of New South Wales until ceded to South Australia in 1863 and then to the Commonwealth in 1911'.³⁷³ The Commonwealth granted the Northern Territory limited self-government in 1978.³⁷⁴ Darwin, the capital city of the Northern Territory, was founded in 1869. Its population grew after gold was discovered near Pine Creek in 1871.³⁷⁵ The Northern Territory has an area of 1 349 142 square kilometres and a coastline that stretches over 1 600

for Structured and Comprehensive Representation of Indigenous People in Australia's Constitution' (1997) 22(2) *Alternative Law Journal* 57.

³⁶⁹ RECOGNISE, 'What Is Reconciliation?' <<https://www.reconciliation.org.au/what-is-reconciliation/>>.

³⁷⁰ Years before English convicts were sent to Australia, Lord Bacon predicted 'that it was a shameful and unblessed thing to take the scum of people and wicked, condemned men to be the people with whom you plant, for they will ever live like rogues and not fall to work, but be lazy and do mischief and spend victuals, and be quickly weary'. (see, Gillespie, above n 27, 375).

³⁷¹ Bethia Penglase, '1788: That Illiterate "Freight of Misery"?. -Literacy of First Fleet Convicts-' (1989) 75(2) *Journal of Royal Australian Historical Society* 99.

³⁷² Stan Grant, 'I Can Tell You How Adam Goodes Feels. Every Indigenous Person Has Felt It' *The Guardian* (Sydney South, NSW), 30 July 2015 <<http://www.theguardian.com/commentisfree/2015/jul/30/i-can-tell-you-how-adam-goodes-feels-every-indigenous-person-has-felt-it>>.

³⁷³ National Archives of Australia, *The Northern Territory of South Australia, 1863-1911* (2015) Commonwealth Government Records about the Northern Territory <<http://guides.naa.gov.au/records-about-northern-territory/part1/chapter1/index.aspx>>.

³⁷⁴ Also see the *Northern Territory (Self-Government) Act* 1978.

³⁷⁵

km and holds approximately three percent of Australia's 21.6 million people and 30 percent of Australia's 669 881 Aboriginal people. The Northern Territory also has the highest proportion of Aboriginal Peoples of any Australian state or territory (*see* Table 2.4).

Unfortunately, the Northern Territory's remote location and a large population of Aboriginal Peoples has made it the target of ridicule and State-sponsored violence throughout Australia's history. In 1915, Elsie Masson wrote of the Northern Territory that the rest of Australia seemed ignorant about or indifferent to the 'hopeless unwanted land... [but] it is part of Australia, and yet utterly remote from the civilised states, separated from them by a fortnight's journey by sea...with a swarming native population.'³⁷⁶ A century after Masson's denigrating observation of the 'uncivilised territory with a swarming native population', Tony Abbott unfolded a 20-year plan for the development of the Northern Territory, from which respectful and equal participation by northern Aboriginal Peoples in Australia is completely absent.³⁷⁷ The Abbott government Coalition's 2030 Vision for Developing Northern Australia states that '[n]o longer will Northern Australia be seen as the last frontier, it is in fact, the next frontier'.³⁷⁸ Without a doubt, the infrastructural needs of Northern Australia are enormous. There are, for example, 36 000 kilometres of road in the Northern Territory alone, connecting remote communities of Aboriginal Peoples in Australia. However, although Abbott's 2030 Vision envisages Northern Australia as containing a highway network providing the only paved road links between remote areas of the north and the rest of Australia,³⁷⁹ poor implementation of government projects in the Northern Territory risks remote Aboriginal dwellers becoming 'refugees in their own country'.³⁸⁰ Adequate roads are not the only challenge facing Aboriginal Peoples in the Northern Territory.

Access to health and education is a challenge for Aboriginal Australians in the Northern Territory. The expansive Northern Territory³⁸¹ has only five public hospitals providing care to its 211 945 residents (*see* Table 2.4). Health services include the Aerial Medical Service, which started in 1943. The Northern Territory Department of Health also funds the Royal Flying Doctor Service that delivers healthcare services to people living and working in rural and remote areas, which includes Northern and Central Australia.³⁸² Of the 591 503 people registered as health practitioners in Australia in 2013, only 310 were registered as Aboriginal Australians

³⁷⁶ Elsie R Masson, *An Untamed Territory: The Northern Territory of Australia* (Macmillan, 1915) 3 <<https://archive.org/details/untamedterritory00mass>>.

³⁷⁷ Shalailah Medhora, 'Northern Australia Plan Aims to Make Region an "Economic Powerhouse"' *The Guardian* (Canberra, ACT), 18 June 2015 <<http://www.theguardian.com/business/2015/jun/18/northern-australia-plan-aims-to-make-region-an-economic-powerhouse>>.

³⁷⁸ Government of Australia, 'The Coalition's 2030 Vision for Developing Northern Australia: A White Paper on Developing Northern Australia' (Government Report, Liberal Party, June 2013) 46, 2 <<http://www.liberal.org.au/2030-vision-developing-northern-australia>>.

³⁷⁹ *Ibid* 23.

³⁸⁰ Harrison, above n 368.

³⁸¹ Northern Territory Department of Health, *Hospitals* (29 June 2015) Hospitals <<http://health.nt.gov.au/Hospitals/>>.

³⁸² Northern Territory Department of Health, *Aerial Medical Services* (3 October 2014) Aerial Medical Services <http://health.nt.gov.au/Hospitals/Aerial_Medical_Services/index.aspx>.

and 70 percent of those practitioners work in the Northern Territory.³⁸³ The Northern Territory Clinical Schools based in Darwin, train and provide placement opportunities for medical students from Flinders and James Cook Universities.³⁸⁴ Generally, educational institutions are not well represented in the Northern Territory. According to the Australian Bureau of Statistics, there were 9 393 schools recorded in Australia for the year 2013. Serviced by 5 896 (75 percent females) in-school staff;³⁸⁵ however, only two percent (192) of these schools are in the Northern Territory (*see* Table 2.5).

Australian Capital Territory

*The Ngambra [now Galambany] Circle Sentencing Court is a specialised court within the ACT Magistrates Court established to sentence Aboriginal and Torres Strait Islander offenders who plead guilty to an offence. The majority of offenders before the Ngambra Circle Sentencing Court are for offences relating to domestic violence attributable to long-term alcohol and drug abuse.*³⁸⁶

Table 2.3: Nineteen strongly spoken Aboriginal languages in Australia

Languages	# of Speakers 1996	# of Speakers 2001
South Australia		
Adnymanthanha	7	107
Western Australia		
Bardi	380	235
Bunuba	165	190
Jaru	344	575
Kija	408	227
Kuku Yalanji	245	203
Miriwoong	111	140
Nyangumarta	259	245
Yindjibarndi	332	233
Western Desert Language	4180 ¹	4,292 ¹
Queensland		
Cape York Peninsula Aboriginal		236
Guugu Yirridhirr	739	581
Kala Lagaw Ya	0	816
Meriam Mir	317	182
Wik Munghan	49	668
Torres Strait Creole (Broken)	0	1,240
Northern Territory		
Alyawarr	1,452	1,373
Anindilyakwa	1,240	1,310
Anmatyerre	1,224	864
Arrente	3817	2,444
Burarra	696	780
Dhuwaya	3,645	1,387
Djinang	120	102
Gunwinggu	1405	916
Gurindji	545	553
Maung	239	315
Mudburra	115	57
Murrinh-Patha	1,430	1,157
Nunggubuyu	356	39
Northern Aboriginal	169	3,992
Tiwi	1832	2,050
Iwaidja	739	581
Walmajarri	858	596
Warlpiri	2,666	2,937
Warumugu	0	396
Yanyuwa	0	78
Other		
Australian Indigenous	798	10,697
Australian Aboriginal	0	4,068
Total	36,582	32,097

³⁸³ Australian Institute of Health and Welfare, *Services, Workforce and Spending* (March 2015) Health workforce <<http://www.aihw.gov.au/workforce/>>.

³⁸⁴ Northern Territory Department of Health, *Aboriginal* 2005:381.

³⁸⁵ David Unaipon College of Indigenous Education and Research, 'More Aboriginal and Torres Strait Islander Teachers Initiative' 5 <<http://matsiti.edu.au/docs/MATSITI-project-plan.pdf>>. In 2013, the ABS recorded, 448,711 in-school staff in all of Australia. In that same year, 3 645 516 students attended schools, of which Aboriginal students make up a pathetic five per cent (182 636). According to More Aboriginal and Torres Strait Islander Teachers Initiative, Aboriginal teachers comprise an estimated one per cent of the teaching communities in Australia. Despite the approximately 300 Aboriginal graduates from university each year, in 2008, there were 1977 A teachers in Australian Schools.

³⁸⁶ 'ACT Aboriginal and Torres Strait Islander Population: A Demographic Analysis' (Government, Policy Division, ACT Chief Minister's Department, July 2010) 40, 31 <http://www.cmd.act.gov.au/_data/assets/pdf_file/0011/154487/ACT-Aboriginal-Torres-Strait-Islanders.pdf>.

³⁸⁷ Department of Finance, *Canberra - Australia's Capital City* (4 February 2010) Australia's Stories <<http://www.australia.gov.au/about-australia/australian-story/canberra-australias-capital-city>>.

Archaeological evidence suggests that the Ngunnawal people inhabited the Canberra region of the Australian Capital Territory for some 21 000 years. Taking advantage of road construction across the Blue Mountains and the Bathurst Plain in 1815 and 1820, settler-colonists brought disease (e.g. influenza, smallpox, and tuberculosis) to the Canberra area and disrupted land use and free movement of Aboriginal Peoples across the Continent.³⁸⁷ On 1 January 1911, the Australian Capital Territory was declared the capital city of Australia with the opening of the first Commonwealth Parliament in 1927. Like the Northern Territory, the Australian Capital Territory became a self-governing

territory in 1989.³⁸⁸ Situated between Melbourne and Sydney, with a 2 360 square-kilometre area, the Australian Capital Territory has the smallest population of Aboriginal Australians (~6 200 people). Situating the nation's capital in the Australian Capital Territory led to rapid development of the capital city.

The Australian Capital Territory has well-developed health and education systems, but those systems are not working equally for Indigenous and non-Indigenous Australians. Currently, the Australian Capital Territory operates five public hospitals (58 facilities in all) and 130 schools for its 357 222 residents. Investment in health by the Australian Capital Territory government stands at \$1.3 billion annually.³⁸⁹ The Australian Capital Territory enjoys the highest life expectancy in Australia; it stands at 85.1 years for females born today.³⁹⁰ However, according to the Chief Officer's Annual Report of the year 2011-2012, the Australian Capital Territory had the highest number (15.5 per cent) of mental and behaviour problems in Australia?³⁹¹ Whilst more than three-quarters of Aboriginal and Torres Strait Islanders reported good to excellent health, the number hospitalised for chronic kidney disease was four times greater for non-Indigenous Australians. Also, low birth weight was more than twice as common amongst babies born to Aboriginal mothers as amongst their non-Aboriginal counterparts.³⁹² Similar disparities are found in the education system.

Whilst pastoral stations and churches form the bases of early 19th-century schools in the Australian Capital Territory, in later years the Territorial government administered their own public-school education. The Australian Capital Territory Department of Education and Training School Census 2015 shows a steady increase in the enrolment of Indigenous children between 2011 and 2015. That is, 1 569 and 2 082 Indigenous children compared with 66 144 and 71 917 non-Indigenous student enrolments.³⁹³ However, in 2012, the retention rate of Aboriginal students in year 7-10 (96.3 percent) and 7-12 (63.1 percent) was much lower than that of non-Aboriginal students in year 7-10 (102.6 percent) and year 7-12 (90.4 percent).³⁹⁴

³⁸⁸ Ibid. See, the *Australian Capital Territory (Self-Government Act) 1988*

³⁸⁹ ACT Health, "F.4 Asset Management", (20 August 2015), available at: <<http://www.health.act.gov.au/datapublications/reports/annual-reports/2013-2014-annual-report/section-f-financial-management/f4>>.

³⁹⁰ ACT Health, 'Annual Report 2013-2014' (Government, ACT Government Health Directorate, 2014) 280, 14 <<http://www.health.act.gov.au/datapublications/reports/annual-reports/2013-2014-annual-report/section-f-financial-management/f4>>.

³⁹¹ ACT Government, 'The Australian Capital Territory Chief Health Officer's Report 2014' (Government Report, Department of Health, May 2014) 126, 5 <<https://www.health.act.gov.au/sites/default/files/ACT%20Chief%20Health%20Officers%20Report%202014.pdf>>.

³⁹² Ibid 6.

³⁹³ Department of Education and Training, 'ACT School Census' (Government Report, ACT Government, February 2015) 10, 2 <http://www.det.act.gov.au/__data/assets/pdf_file/0003/714522/2015-Feb-Census-Publication.pdf>.

³⁹⁴ Ministry of Council of Education and Early Childhood Development and Youth Affairs, 'Aboriginal and Torres Strait Islander Education Action Plan 2010-2014' (Government Report, Ministry of Council for Education, 2012) 49, 36 <<http://scseec.edu.au/site/DefaultSite/filesystem/documents/ATSI%20documents/2012%20ATSI%20Report/ATSIEAP%202012%20Report.pdf>>; Standing Council on School Education and Early Childhood, and Education Services Australia, 'Aboriginal and Torres Strait Islander Education Action Plan 2010-2014: 2012 Annual Report' (Education, Standing Council on School Education and Early Childhood, 2013) 378, 291 <<http://www.scseec.edu.au/site/DefaultSite/filesystem/documents/ATSI%20documents/2012%20ATSI%20Report/ATSIEAP%202012%20Report.pdf>>.

Unique to the Australian Capital Territory is the Galambany Circle Sentencing Court (hereafter the Galambany Court), which is one of 18 Indigenous sentencing courts in Australia. Established in 2004, the Galambany Court aims to offer an alternative criminal pathway for Aboriginal Peoples. The conceptual framework behind the Galambany Court was created with the intent of promoting Indigenous justice practices and mitigating the inefficiency and incompetence of the settler-colonist legal system. However, the Galambany Court has been criticised for ‘using only white settler-colonists law to sentence offenders already deemed guilty through plea or finding’ rather than applying any form of Indigenous customary laws.³⁹⁵

Queensland

*[T]he Government is not going to allow white and near white children whether their parents are black or white to remain on the Settlements at the cost of the tax payer. You have to educate coloured people to make the sacrifice to have their children adopted and so give them the chance to enjoy the privileges of the white community.*³⁹⁶

An original member of the Federation of Australia, Queensland separated from New South Wales in 1851. On 6 June 1859, Queen Victoria approved the establishment of the new colony.³⁹⁷ The 2011 Census in Australia puts the population of Aboriginal Peoples in Queensland at 155 825 (see Table 2.4) from 48 communities (see Table 2.5)³⁹⁸ residing across its 1 727 000 square-kilometres. Historically, Queensland has had a relatively high proportion of settler-colonists in its population. The Commonwealth Bureau of Census and Statistics, 1966, indicated that 98 percent of Queenslanders were British (including Irish) born in (461 829) or outside (173 215) of Australia’s second largest state.³⁹⁹ As in the Australian Capital Territory, these non-Indigenous Australians in Queensland are better served by the state’s health and education system.

Despite progressive education policies, there is still a gap between Aboriginal and non-Aboriginal students. Queensland abolished payment of fees to national schools, a move that prompted the *State Education Act* of 1875.⁴⁰⁰ February 2015 data from the Queensland Department of Education and Training reported that 9.4 percent (49 727) of its 524 823 full-time students enrolled in State School were Aboriginal students. However, the 2012 school

³⁹⁵ Sarah Xin Yi Chua and Tony Foley, ‘Implementing Restorative Justice to Address Indigenous Youth Recidivism and Over-Incarceration in the ACT: Navigating Law Reform Dynamics’ (2014) 18(1) *Australian Indigenous Law Reporter* 138, 142–143.

³⁹⁶ *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families* (Human Rights and Equal Opportunity Commission, 1997) 62.

³⁹⁷ Queensland Government, *Creation of a State* (5 March 2013) About Queensland and its government <<https://www.qld.gov.au/about/about-queensland/history/creation-of-state/>>.

³⁹⁸ Government of Queensland, *Aboriginal and Torres Strait Islander Community Histories* (2015) Government <<http://www.qld.gov.au/atsi/cultural-awareness-heritage-arts/community-histories/index.html>>.

³⁹⁹ John Patrick O’Neill, ‘Census of Population and Housing: Part 3 - Overseas-Born Population’ (Population: Related Characteristics Volume 2, Commonwealth Bureau of Census and Statistics, Commonwealth of Australia, 30 June 1966) 90, 14 <[http://www.ausstats.abs.gov.au/ausstats/free.nsf/0/EDE3C1DB8B4FD932CA257880008214E1/\\$File/1966%20Census%20-%20Volume%20%20Population%20-%20Related%20Characteristics%20-%20Part%203%20Overseas-Born.pdf](http://www.ausstats.abs.gov.au/ausstats/free.nsf/0/EDE3C1DB8B4FD932CA257880008214E1/$File/1966%20Census%20-%20Volume%20%20Population%20-%20Related%20Characteristics%20-%20Part%203%20Overseas-Born.pdf)>.

⁴⁰⁰ Greg Logan and Eddie Clarke, ‘State Education in Queensland: A Brief History’ (Government Report No. 2, Policy and Information Services Branch, Queensland Department of Education, 1984) 28, 2 <<http://education.qld.gov.au/library/docs/edhistory/stateedu.pdf>>.

retention rate of Aboriginal and Torres Strait Islander students in years 7-12 (62.1 percent) is significantly lower than that of non-Aboriginal students (85.2 percent).⁴⁰¹ Challenges also face Aboriginal Peoples in the health system.

The Queensland Chief Health Officer's Annual Report (2014) affirms that the State is 'outliving much of the world – of 187 countries, as Queensland ranked amongst the top 10' for higher life expectancy. In spite of the improvement in the State's health, Aboriginal Queenslanders' death rate is 60 percent greater than that of non-Indigenous Peoples. An estimated 40-50 percent more Indigenous Queensland women smoke during pregnancy. Therefore, the infant mortality rate for babies born to Indigenous Queenslanders mothers is 87 percent higher than the non-Indigenous rate, with no change since 2002.⁴⁰² The Chief Health Office Annual Report further stipulates that 'the leading causes of burden of Indigenous Queenslanders were mental disorders (17 percent), cardiovascular disease (15 percent), diabetes (10 percent) and chronic respiratory disease (9 percent)'.⁴⁰³

Table 2.4: Population characteristics of Australia, 1901⁴⁰⁴ and 2011

States	1901 (%)	Foreign born (%)	2011 (%)	Indigenous (%)	Foreign born (%)
Victoria	1,201,070 (31.8)	UK (18.0)	5,354,042 (24.9)	37,990 (0.18)	England (4.2)
Queensland	498,129 (13.2)	Other Europe (2.0)	4,332,739 (20.1)	155,825 (0.72)	New Zealand (2.2)
New South Wales	1,354,846 (35.9)	Asia (1.2)	6,917,658 (32.2)	172,620 (0.80)	China (1.5)
South Australia	363,157 (9.6)	New Zealand (0.7)	1,596,572 (7.4)	30,430 (0.14)	India (1.4)
Western Australia	184,124 (4.9)	Other (0.8)	2,239,170 (10.4)	69,664 (0.32)	Italy (0.9)
Tasmania	172,475 (4.6)	Not Stated (0.2)	495,354 (2.3)	19,625 (0.09)	
Northern Territory	N/A		211,945 (1.0)	56,776 (0.26)	
Australian Capital Territory	N/A		357,222 (1.7)	5,185 (0.02)	
Total	3,773,801 (100)	857,575 (22.7)	21,507,717 (100)	548,369 (2.53)¹	2,194,724 (10.2)

Source: Australian Bureau of Statistics.

Queensland also represents an Australian jurisdiction that perpetrated state violence against Indigenous women and girls through a policy of forced adoption. An *Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* carried out by the Human Rights and Equal Opportunity Commission in 1997 found that between 1 in 10 and 3 in 10 Indigenous children were forcibly removed from their families between 1910 and 1970.⁴⁰⁵ Queensland and Western Australia governments confirmed that during that time all Indigenous children in their States were affected. On 13 February 2008, the Queensland

⁴⁰¹ Standing Council on School Education and Early Childhood, and Education Services Australia, above n 394, 142.

⁴⁰² Government of Queensland, 'The Health of Queenslanders 2014: Fifth Report of the Chief Health Officer Queensland' (Government Report, Department of Health, 2014) 208, vii
<<https://www.health.qld.gov.au/publications/research-reports/reports/cho-full-report.pdf>>.

⁴⁰³ Ibid 154.

⁴⁰⁴ Dennis Trewin, 'Selected Social and Housing Characteristics' (Government Report, Australian Bureau of Statistics, 2001) 136, 5
<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/1EA78AFE3DE2EDCACA256BDA0073EB53?OpenDocument>>.

⁴⁰⁵ Reconciliation Australia, 'Apology to Stolen Generations: Questions and Answers' 2
<https://www.qcaa.qld.edu.au/downloads/approach2/indigenous_read012_0801.pdf>.

Parliament made an apology to pay tribute to Stolen Generations of Indigenous Peoples.⁴⁰⁶ In spite of the apology, no compensation was given to Stolen Generations survivors.

Western Australia

Archaeological evidence from Perth and Albany suggests that the Noongar people have lived in the area for at least 45,000 years... Once the Europeans had arrived on the West Coast, Captain James Stirling noted that the Noongar people 'seemed angry at the invasion of their territory'... Conflict between the Noongar people and the European settlers continued until Governor Stirling believed that if the Noongar people attacked en masse the settlement may be under threat. Settlers had begun to take the law into their own hands after attacks on homesteads by Noongar people. This led to conflicts such as the Pinjarra Massacre in April 1834.⁴⁰⁷

Both archaeological records and historical facts establish the Noongar as First Peoples in Western Australia. The archaeological evidence shows that Aboriginal ancestors probably arrived in Western Australia around 38 000 BC. But, James Sykes Battye⁴⁰⁸ writes that the discovery and history of Western Australia is generally credited to Dutch and English explorers beginning in the early 1600s.⁴⁰⁹ After Englishman William Dampier's denigration of Aborigines as 'the miserablist people in the world, who differ little from brutes'⁴¹⁰ and Captain Cook's 'discovery' of *Terra Australis*, Lieutenant George Vancouver claimed King George III Sound on behalf of the British Crown in 1791. King George Sound, present-day Albany, is home to the Menang Noongar people. The Menang Noongar people are composed of 66 Indigenous language groups. Captain James Stirling officially claimed the territory of Western Australia (then the Swan River Settlement) in 1829, becoming its first governor until 1832.⁴¹¹ The colony joined the Commonwealth of Australia on 1 January 1901.

⁴⁰⁶ c=AU; o=The State of Queensland; ou=Parliament of Queensland, *Queensland Parliament Marks Apology to Stolen Generations, 13 February 2008* (2011) The Queensland Parliament <<https://www.parliament.qld.gov.au/get-involved/events-and-activities/2008/2008-02-13-ApologyToStolenGeneration>>.

⁴⁰⁷ South West Aboriginal Land and Sea Council, *The Noongar People* (2015) History <<http://www.noongar.org.au/noongar-people-history.php>>.

⁴⁰⁸ James Sykes Battye (1871-1954) born to parents from Yorkshire, England, was the first chief librarian of the Victoria Public Library in Perth from 1894-1954. He died in office 60 years later. The State Library of Western Australia is named in his honour (see, <http://adb.anu.edu.au/biography/battye-james-sykes-5156> and http://www.slwa.wa.gov.au/about_us/125_facts_for_125_years).

⁴⁰⁹ Battye, above n 353, 6–11.

⁴¹⁰ Ibid 29.

⁴¹¹ See, F. K. Crowley, 'Stirling, Sir James (1791–1865)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, <http://adb.anu.edu.au/biography/stirling-sir-james-2702/text3791>, published first in hardcopy 1967, accessed online 13 August 2015.

Table 2.5: Population distribution showing sex, health and educational facilities

States	Females	Males	Total (%)	University ¹	School ¹	Health
NSW	3,504,780	3,408,878	6,917,653 (32.2)	11	3,081	269
VIC	2,721,423	2,632,619	5,345,042 (24.9)	9	2,219	286
QLD	2,184,518	2,148,221	4,332,739 (20.1)	10	1,719	150
SA	809,354	787,218	1,596,572 (7.4)	5	722	82
WA	1,112,992	1,126,178	2,239,170 (10.4)	5	1,067	70
TAS	252,679	242,675	495,357 (2.3)	1	263	48
NT	102,428	109,517	211,945 (1.0)	1	192	5
ACT	180,476	176,746	357,222 (1.7)	2	130	58
Total	10,873,704	10,634,013	21,507,717 (100)	44	9,393	

Source: Australian Bureau of Statistics (2013), State Department of Education and Health websites and annual reports

The size and scope of Western Australia and its health and education programs are quite large. Western Australia is the largest state in Australia with a total land area of 2 529 875 square kilometres, accounting for 33 percent of Australia’s total land mass.⁴¹² Aboriginal Peoples constitute 2.75 percent (69 664) of Western Australia’s 2 239 170 million inhabitants according to the Australian Bureau of Statistics Census 2011 (*see* Table 2.4). The Western Australia Country Health Service has the largest health delivery service in Australia and one of the largest in the world. The Western Australia Country Health Service has 70 hospitals, delivering care to 530 000 people, including 480 000 Aboriginal Australians across a 2.5 million square kilometre area (*see* Table 2.5).⁴¹³

In spite of its well-developed health and education systems, Western Australia still struggles to dispense services equitably to Aboriginal Peoples. In 2006, the leading causes of death amongst Indigenous Peoples in Western Australia were cardiovascular disease, injury and neoplasms (almost entirely cancers). The death rate from intentional self-harm was 3.1 times higher for Indigenous Peoples than for non-Indigenous Peoples. Between 2009 and 2011, mortality for Indigenous infants was 2.4 times higher than for non-Indigenous infants.⁴¹⁴ In 2014, 283 739 students (48 percent girls) were enrolled in Western Australia’s public school. Of these, 23 219 (8 percent) were Aboriginal. Western Australia’s Department of Education Annual Report (2014) laments that ‘closing the gap between the performance of Aboriginal and non-Aboriginal students in literacy, numeracy, attendance and retention continues to be a major challenge’.⁴¹⁵ The overall retention rate for the 650 Aboriginal students in Year 8-12 for 2013 was 43.8 percent compared with 79.3 percent of all public-school students in Western Australia.

⁴¹² For Teachers For Students, Australian Education Resources “Western Australia” (12 August 2015), available at: <<http://www.forteachersforstudents.com.au/site/themed-curriculum/western-australia/facts/>>.

⁴¹³ Government of Western Australia, ‘WA Country Health Service Annual Report, 2013-14’ (Government Report, Western Australia Country Health Service, 2014) 158, 12 <http://ww2.health.wa.gov.au/~media/Files/Corporate/Reports%20and%20publications/Annual%20reports/wachs_a_nnuual_report2014.ashx>.

⁴¹⁴ Neil Thomson et al, ‘Overview of the Health of Indigenous People in Western Australia 2013’ (Academic, Australian Indigenous HealthInfoNet, September 2013) 76, 1–4 <<http://www.healthinfonet.ecu.edu.au/uploads/docs/wa-overview-2013.pdf>>.

⁴¹⁵ Western Australia Government, ‘Department of Education Annual Report 2013-14’ (Government, Department of Education, 2014) 157, 14 <<http://www.education.wa.edu.au/home/detcms/public-education/content/about-us/publications/annual-reports/2012-2014/departement-of-education-annual-report-2013-2014.en?cat-id=14662810>>.

Only 27.2 percent of Aboriginal students graduated from Year 12 compared to 70.5 percent of all students enrolled in public school.⁴¹⁶ Notably, there were 96 Focus schools (69 government schools, 15 Catholic schools and 12 independent schools) in Western Australian that had 9 723 Aboriginal students enrolled in 2012. Focus schools are mainly the lowest 5 percent of schools based on overall performance, and they are encouraged to use flexible and innovative approaches to address the educational needs of Aboriginal students.⁴¹⁷

2.1.2 Theme 2: White Supremacy, Patriarchy and Racism

The twisted idea of white supremacy arms James Cowles Prichard and many other white people with the belief that Africans and Aboriginal Peoples in Australia are sub-humans, inferior and barbaric. For example, ethnographer and anthropologist James Cowles Pritchard claims that,

Negroes, Hottentots, Esquimaux, and Australians are not, in fact, men in the full sense of the term, or beings endowed with mental faculties similar to our own. These and other barbarous tribes are inferior in their original endowments to the proper human family, which supplied Europe and Asia with inhabitants; that, being organically different, they are separated by an 'impassable barrier' from the race which displays in the highest degree all the attributes of humanity, and can never be raised to an equality with it...that the ultimate lot of the ruder tribes is a state of perpetual servitude; and that if, in some instances, they should continue to repel the attempts of the civilised nations to subdue them, they will at length be rooted out and exterminated from every country on the shores of which Europeans shall have set their feet.⁴¹⁸

Many 'great' white men (e.g. Winston Churchill,⁴¹⁹ Abraham Lincoln, and Thomas Jefferson) also espoused racism against Indigenous Peoples in Australia and Africa.⁴²⁰ According to Tom Heyden, '[i]n Churchill's view, Protestant Christians were at the top, above white Catholics, whilst Indians were higher than Africans'.⁴²¹ In line with this thinking, 'Churchill saw himself and Britain as being the winners in a social Darwinian hierarchy'.⁴²² The inherent nature of white superiority, propagated mostly by white males, has a destructive effect on the subjugated, even

⁴¹⁶ Ibid 149, 151.

⁴¹⁷ Standing Council on School Education and Early Childhood, and Education Services Australia, above n 394, 175.

⁴¹⁸ James Cowles Prichard, *The Physical and National History of Mankind* (1847) XXIV(IV) *The British and Foreign Medical Journal of Practical Medicine and Surgery* 49–80; Henry Reynolds, *This Whispering in Our Hearts* (1998) 24. Also see, Appendix III.

⁴¹⁹ The Staff Reporter, 'The Churchill You Didn't Know' *The Guardian* (London, UK), 28 November 2002 <<http://www.theguardian.com/theguardian/2002/nov/28/features11.g21>>.

⁴²⁰ Edward Long, *History of Jamaica. Or, General Survey of the Ancient and Modern State of That Island.: With Reflections on Its Situation, Settlements, Inhabitants, Climate, Products, Commerce, Laws, and Government* (Oxford University, 1774)

<http://books.googleusercontent.com/books/content?req=AKW5Qadfavo5XVmZMOIa29Jhw680STcnX-qvy3MXHVY1bmEQtuQf8rTGI2i2SvaeILCMHMxVN9IK97JpJv5Da7tlw435FR_w5Y6DUjryN-fpwbcn_jgrlFdTImmK6ly-aicjCU1tWpSP1qkO1wcKfKLRL9_4kTdAJ6wAPkWSIre54RZCDJ4e9P2euWTHYQXG5Q3HZ53SIX7ufWHblwsYNJeIP75DsPVP_HzycMCZQICrg5cE-Dv2JSHH28jhF_VW8ldYMF1pejy>; Darren Curnoe, *How Did We Get Here? - Are Races Real?* (UNSWTV, 2015) <<https://www.youtube.com/watch?v=8C4te2CTleo>>. Edward Long claims that Africa is 'everything that is monstrous in nature, where these creatures [Africans] are frequent and familiar; where the passion rage without any control; and the retired wilderness presents opportunity to gratify them without fear of detection!' Notwithstanding, since all humans are one race. It is argued that the idea of race is based on pseudoscience.

⁴²¹ Tom Heyden, 'The 10 Greatest Controversies of Winston Churchill's Career' *BBC News* (London, UK), 21 January 2015 <<http://www.bbc.com/news/magazine-29701767>>.

⁴²² Ibid.

if it is done subliminally. Fanon,⁴²³ Malcolm X,⁴²⁴ W E B Du Bois,⁴²⁵ Walter Rodney,⁴²⁶ C L R James⁴²⁷ and Cornel West,⁴²⁸ all confront the issue of racism and self-hatred amongst Black people from colonial Africa within the specific context of consciousness-raising, enlightenment, and liberation of the masses from oppression. As a case in point, a former slave who returned to Liberia justified his vote for American-born settler-colonist, Stephen Allen Benson, who was of mixed heritage, by stating,⁴²⁹ ‘[t]he folks [white slave owners in America] will think as how we darkies aint fitten to take care o’ ourselves – aint capable. [Stephen Allen] Benson’s ‘coloured people all over’...I vote for Benson, sir, ‘cause I wants to know if (sic) we’s going to stay nigger or turn monkey’.⁴³⁰ Here the voter struggles with his own identity as a Black African, whilst placing his hopes for redemption in Benson, a process described by Fanon as ‘revolutionary elite’⁴³¹ and by E Franklin Frazier as ‘Black Bourgeois’, whereby, lighter-skinned Africans are seen as superior to darker ones in an acceptance of Churchill’s hierarchy of social Darwinism.⁴³² As a result of these attitudes, racism shaped the political evolution of Liberia and Australia.

Australia’s history of racism within the political class begins at its founding. Henry Reynolds offers a disturbing overview of a discussion on race by Australia’s first Federal Parliament, who were all white men. Reynolds recounts that there was little doubt that ‘there was a demonstrable hierarchy of races with the northwest Europeans, the Nordics or Caucasians at the top and the Africans, Melanesians and Aborigines at the bottom’.⁴³³ Isaac Isaacs,⁴³⁴ the future High Court judge and Governor-General, noted that in promoting the advancement of Australia, he ‘would not suffer any black or tinted man to come in and block the path of progress’.⁴³⁵ On the contrary, he said he ‘would resist to the utmost, if it were necessary, any murky stream from disturbing the current of Australian life’.⁴³⁶ Reynolds goes on, ‘[i]n the

⁴²³ Fanon, *Toward the African Revolution*, above n 247, 78; Fanon, above n 247, 150.

⁴²⁴ Malcolm X, ‘Who Taught You to Hate Yourself?’ (Video at the Funeral Services of Ronald Stokes, Los-Angeles, 5 May 1962) <<https://genius.com/Malcolm-x-who-taught-you-to-hate-yourself-annotated>>.

⁴²⁵ WEB Du Bois, *The Education of Black People: Ten Critiques 1906-1960* (Monthly Review Press, 1973) 62; WEB Du Bois, *Black Reconstruction: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1960-1880* (Harcourt Brace and Company, 1st ed, 1935) 166.

⁴²⁶ Walter Rodney, *How Europe Underdeveloped Africa* (Black Classic Press, 2011) 225.

⁴²⁷ CLR James, *The Black Jacobins: Toussaint L’Ouverture and the San Domingo Revolution* (Vintage Books, 2nd revised, 1989) 163–164.

⁴²⁸ Cornel West, *Race Matters* (Vintage Books, 2nd ed, 2001) 53–55.

⁴²⁹ National Portrait Gallery, “Stephen Allen Benson (1816-1865)”, (2015) available at: <<http://www.npg.si.edu/exh/awash/benson.htm>>.

⁴³⁰ Karnga, above n 171, xiv–xv.

⁴³¹ Fanon, above n 247, 200.

⁴³² E Franklin Frazier, *Black Bourgeoisie: The Rise of a New Middle Class* 112.

⁴³³ Henry Reynolds, *Nowhere People* (Penguin, 2005) 85.

⁴³⁴ Zelman Cowen, “Isaacs, Sir Isaac Alfred (1855–1948)”, Australian Dictionary of Biography, National Centre of Biography, Australian National University, available at: <http://adb.anu.edu.au/biography/isaacs-sir-isaac-alfred-6805/text11773>>, published first in hardcopy 1983, accessed online 14 August 2015.

⁴³⁵ Reynolds, above n 433, 86.

⁴³⁶ *Ibid.*

House of Representatives Richard Edwards,⁴³⁷ the member for Oxley, [Queensland] referred to the danger of contamination and the “great desire we have to preserve the purity of our race”.⁴³⁸

Resistance to stirring the racial pot by glorifying white supremacy can also be heard in the voices of Sir John Forrest and Sir George Reid. Forrest did not ‘want to see any more colour in [his] race, at any rate of a black kind’.⁴³⁹ His colleague Reid⁴⁴⁰ was convinced that ‘the current of Australian blood shall not assume the darker hues’.⁴⁴¹ James Ronald,⁴⁴² a member for South Melbourne, added, ‘the country should never try to blend a superior with an inferior race’.⁴⁴³ South Sydney’s G B Edwards⁴⁴⁴ proclaimed that ‘racial contamination would proceed from the lowest strata of society and filter up until it comes to the highest, permeating the whole nation’.⁴⁴⁵ John C Watson,⁴⁴⁶ former Prime Minister, declared that those of ‘our daughters and sisters who married non-Europeans were regarded as self-sentenced outcasts’.⁴⁴⁷ In his analysis of these racist views, Reynolds reflects on how unfathomable it is that settler-colonists had such a propensity to ignore their relatively recent past as outcast criminals from Britain whilst ascribing all things progressive to white people and reducing all things primitive to the darker race. Even more perplexing is the context in which such subjective ideologies have a quarter, in this case, the Federal Parliament of Australia, which is the law-making branch of government where the principle of equality and justice should be epitomised, respected, and promoted.

Settler-colonisers thrive on creating racial, class, and gender stratifications. Liberia’s African American settler-colonist elite, like their fellow Australian settler-colonists, craved to be counted as equals in their new homes. Ultimately, they yearned for freedom from discrimination and abuse. For these troubled settler-colonists, being ‘civilised’ means attaining a superior social standing through adopting a white (i.e. ‘Westernised’) lifestyle. They regarded the civilised as those who followed the Western way of life, as opposed to an Indigenous African one. Upon their arrival from the Deep South, former slaves struggled to re-create Monrovia as an American ‘westernised’ capital city,⁴⁴⁸ leaving the primitive ‘country people’ in the bush. Merran Fraenkel, a white American who first visited Liberia in the late 1960s, argues that in colonised Liberia, ‘civilisation is a process in which all Monrovians are involved, and

⁴³⁷ Australian Senate, “Richard Edwards (1842-1915), Member for Oxley (Queensland) 1901-1913”, (2015) available at: <http://exhibitions.senate.gov.au/pogg/members/pdf/edwards_r.pdf>.

⁴³⁸ Reynolds, above n 433, 86–87.

⁴³⁹ Ibid 87.

⁴⁴⁰ W. G. McMinn, “Reid, Sir George Houstoun (1845–1918)”, Australian Dictionary of Biography, National Centre of Biography, Australian National University, available at: <<http://adb.anu.edu.au/biography/reid-sir-george-houstoun-8173/text14289>>, published first in hardcopy 1988, accessed online 14 August 2015.

⁴⁴¹ Reynolds, above n 433, 87.

⁴⁴² Australian Senate, “James Black Ronald (1861-1941), Member of Southern Melbourne (Victoria) 1901-1906”, available at: <<http://exhibitions.senate.gov.au/pogg/members/ronald.htm>>.

⁴⁴³ Reynolds, above n 433, 88.

⁴⁴⁴ Member of Parliament (Liberal, NSW), 1910-1911

⁴⁴⁵ Reynolds, above n 433, 87.

⁴⁴⁶ Bede Nairn, “Watson, John Christian (Chris) (1867–1941)”, Australian Dictionary of Biography, National Centre of Biography, Australian National University, available at: <<http://adb.anu.edu.au/biography/watson-john-christian-chris-9003/text15849>>, published first in hardcopy 1990, accessed online 14 August 2015>.

⁴⁴⁷ Reynolds, above n 433, 93.

⁴⁴⁸ Fraenkel, above n 39, 196. According to Fraenkel, the Kru used the term *kwi klo* to describe Monrovia as ‘the white man’s town’ or Town Centre.

theoretically a person's social position is measurable against a scale of ranking based on varying degrees of civilisation' (see Figure 2.1 below).⁴⁴⁹ Unfortunately, this social ranking is still in effect in Liberia today.

This social class ranking observed in Liberia is quite similar to the kind envisaged by Churchill, Edwards, Forrest, Reid, Ronald and Edwards described above. Earlier writers and thinkers, such as Edward Wilmot Blyden, an African American Returnee to Liberia from the US Virgin Island, critique Fraenkel's argument with respect to the validity of Liberian history told by non-Liberians. In contrast to Fraenkel's linear relationship of social ordering in Liberia, that is, the creation of a class system that places elites at the top and Indigenous Peoples at the base

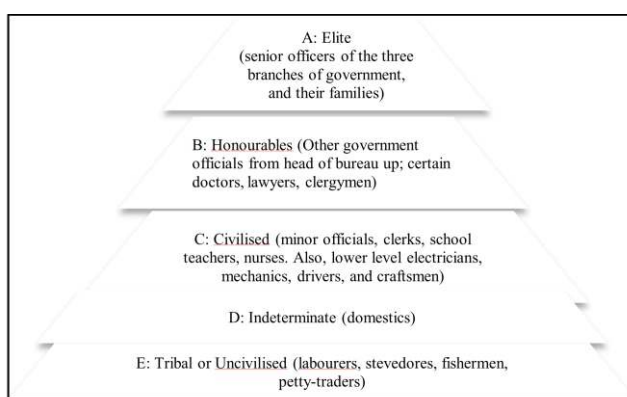


Figure 2.1: Pyramid of social class in Liberia

Source: Merran Fraenkel, *Tribe and Class in Monrovia* (London: Oxford University Press, 1966) 199.

(see Figure 2.1), Blyden dissected a much more complex Liberia beneath the surface of what would generally pass for conventional wisdom regarding Liberia's elitism and classism. Blyden constantly challenged the conventional wisdom of using a simplistic analogy to describe black Africa as uncivilised and inferior.⁴⁵⁰ Another Liberian scholar, Abayomi Karnga, expands on Blyden's critique.

Karnga, a Liberian historian descending from recaptured slaves who were returned to Liberia, believes that some white people are 'true friends of the Negro race', although, he warns of an 'army of Negro-phobist among the same race'.⁴⁵¹ Based on Blyden's and Karnga's divergent views, it can be argued that African American settler-colonists are internally conflicted by their *Black Skin White Mask*,⁴⁵² as Frantz Fanon aptly titled his ground-breaking book. Fanon expanded on Karnga's concept that, driven by conditioning and indoctrination,⁴⁵³ 'Negro-phobists' developed a proclivity to reject their own. Malcolm X also vehemently spoke

⁴⁴⁹ Ibid 197. Fraenkel describes social hierarchical structure in Liberia: the top social stratum is referred to locally as 'the elite', 'society', 'high society' or 'big shots' although the last of this term may have a much wider connotation. The nucleus of the elite consists of a number of Americo-Liberian.

⁴⁵⁰ Ruth Blyden, *Blyden, Edward Wilmont (1832-1912)* (2015) Black Past <<http://www.blackpast.org/gah/edward-wilmot-blyden-1832-1912>>.

⁴⁵¹ Karnga, above n 171, x.

⁴⁵² Fanon, above n 247.

⁴⁵³ Carter Godwin Woodson, *The Mis-Education of the Negro* (The Associated Publisher, 1933) 1 <<https://devontekwatson.files.wordpress.com/2013/10/miseducation-text.pdf>>; Carter Godwin Woodson, *The Education of the Negro Prior to 1861 - A History of the Education of the Coloured People of the United States from the Beginning of Slavery to the Civil War* (Putnam, 1915) 3. Carter Woodson, the Father of African American History, opens *The Mis-education of the Negro*: 'The 'educated Negroes' have the attitude of contempt toward their own people because in their own as well as in their mixed schools Negroes are taught to admire the Hebrew, the Greek, the Latin and the Teuton and to despise the African'.

against this kind of Negro-phobia⁴⁵⁴ that Gerald Taiaiake Alfred calls ‘inward self-hating’.⁴⁵⁵ Unfortunately, the political and administrative structures established in Liberia generated similar problems of identity and social stratification amongst Indigenous Liberians.

A system of ‘indirect rule’ imposed on Indigenous Liberians by settler-colonists contributed to the stratification and denigration of Indigenous Liberians. Indirect rule is a strategy devised by settler-colonists and their descendants to maintain control over Indigenous Peoples through an efficient administrative service, whereby certain Indigenous Persons are selected by a settler-colonist administration and given special standing within the colonial structure and power over other Indigenous Peoples. In Liberia, this form of administration has a direct link to the settler-colonists’ slave history, where slave masters infantilised Black slave men and rewarded disloyalty and deception shown by slaves towards fellow slaves.⁴⁵⁶ The practice of indirect rule typifies the unequal and traitorous relationship between servant and master, thereby breeding a culture of self-hatred and resentment amongst Black folks over time.

From its founding, Liberian settler-colonist leadership searched for ways to manage Indigenous Peoples. In his Annual Address to the Liberian Legislature on 15 December 1904, President Arthur Barclay (1904-1912), praised the effectiveness of indirect rule through Honourable HJ Moore, Secretary of the Interior, who was,

...recognised as the Agent of the Government of Liberia among the tribes of the hinterland of Montserrado, among whom he was widely known. His tactful management maintained the peace of a great part of the province for many years, especially of the districts contiguous to the Americo-Liberia townships... Secretary Moore received from his father much useful information and sound advice as to the manner in which the native population ought to be controlled and governed.⁴⁵⁷

Warily recognising Native Peoples in Liberia as citizens, President Arthur Barclay sought to pattern control of Native Peoples in Liberia along the lines of indirect rule. He set out to use traditional chiefs as instruments of the central government to maintain law and order at the local level. The policy not only offered an economic advantage to African American settler-colonists by extending political power to them, but it also perpetuated social division within the hinterland. More than 20 Indigenous language groups were divided, a number much closer to the existing 16 language groups found in Liberia today. Irrespective of the socio-political

⁴⁵⁴ X, above n 424. Malcolm X delivers a powerful speech at Ronald Stokes’ funeral in Los Angeles on 5 May 1962: ‘Who taught you to hate the texture of your hair? Who taught you to hate the colour of your skin to such extent that you bleach to get like the white man? Who taught you to hate the shape of your nose and the shape of your lips? Who taught you to hate yourself from the top of your head to the soles of your feet? Who taught you to hate your own kind? Who taught you to hate the race that you belong to, so much so that you don’t want to be around each other?’

⁴⁵⁵ Gerald Taiaiake Alfred, ‘Colonialism and State Dependency’ (2009) 5(2) *Journal de la Santé Autochtone* 42. Alfred seamlessly connects the impacts of colonialism on Indigenous men and violence against Indigenous women: ‘Indigenous men’s difficulties in comprehending and dealing effectively with the source of their own disempowerment has led to a compounding of the problem for Indigenous women and children, who are frequently the targets of men’s raging manifestations of internalized self-hatred. This problem exists in various forms and intensities across the entire economic and social spectrum...’

⁴⁵⁶ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: The New Press, 2011) at 118; Jeff Forret, *Slave Against Slave: Plantation Violence in the Old South* (Baton Rouge, LA: Louisiana State University Press, 2015) at 41.

⁴⁵⁷ D Elwood Dunn (ed), *The Annual Messages of the Presidents of Liberia 1848-2010: State of the Nation Addresses to the National Legislature - from Joseph Jenkins Roberts to Ellen Johnson Sirleaf* (De Gruyter, 2011) 430.

impact on various language groups in Liberia, in the end, it created an opportunity for African American settler-colonists to capitalise on such political fragmentation to exploit Native Peoples.⁴⁵⁸ Even though, in later years, a more cohesive paramount chieftainship somehow reversed the process of fragmentation, to date, only the Dey, Mende, Gbandi, Kissi, and Belle Peoples unite under single paramount chiefs. The same cannot be said of the Kpelle, for example, who were dispersed amongst four administrative areas. In other cases, fragments of several mutually hostile ethnic groups were incorporated within single districts. Patterns of indirect rule in Liberia still exist today.

Currently, the indirect rule in Liberia is operationalised in the Department of the Interior (now the Department of Internal Affairs).⁴⁵⁹ According to Liebenow, the Liberian Department of the Interior was created during the presidency of James Spriggs Payne (1968). The effectiveness of the Department of the Interior was blunted by a lack of qualified African American settler-colonists interested in living in the hinterland. Difficulties posed by geography also hindered the systematic supervision of the administrative officers. These challenges eventually led to the absence of explicit policy to address dependency relationships between Native Peoples in Liberia and settler-colonist administrators.⁴⁶⁰ Even as indirect rule endeavours to stratify and separate, cultural forces of assimilation work to blur the lines between social and political classes.

The politics of assimilation juxtaposes the implementation of the indirect rule. Liebenow reasons that the challenge of assimilating and integrating Native Peoples into a foreign colonial style has everything to do with settler-colonists' unfamiliarity with their physical and human environment. Exacerbating this problem, rather than adapting to Indigenous customs, African American settlers tend to establish small 'protective' enclaves, which keep them in isolation and enable them to nurture and reconstruct of their previous lifestyles.⁴⁶¹ Liebenow needs to be understood from a political, rather than a historical perspective, which takes Liberia from the 1960s and compares it with decolonizing the African States. His work has been criticised for completely ignoring the unique circumstances under which Liberia was formed. Nonetheless, Blyden entertains a different view.

Blyden's view is that the African American colonist-settlers' objective should be to achieve assimilation with Native Africans in Liberia rather than with Euro-Americans in the United States. Blyden's stance on embracing racial nationalism as a way to minimise the cultural difference between Native Africans and their distant New World cousins is founded in unity and collective force. Blyden believes that '[w]hen alien and hostile races have come

⁴⁵⁸ Liebenow, above n 55, 57–58.

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid.

⁴⁶¹ Shick, above n 170, 31, 33–34; Cassell, above n 53, 13–29, 31–50, 108; Campbell, above n 189, 30–58. The American Colonisation Society raised funds to set colonies in Liberia by organising State auxiliary chapters. For example, the Bassa Cove settlement was founded in 1934 by land purchased by the Young Men's Colonisation Society of Pennsylvania and New York; the Sinoe settlement was founded in 1838 by the Mississippi State Colonisation Society in order to relocate slaves from Mississippi; and the most elaborate of them all was the Cape Palmas settlement organised by the Maryland State Colonisation Society in 1831.

together, one has had to succumb to the other; but when different people of the same family have been brought together, there has invariably been a fusion and the result has been an improved and powerful class.⁴⁶² Blyden's philosophy could be a long-term reality in the making, considering the significant amount of time it is taking to address the impact of colonisation on Native Peoples in Liberia. In Australia, the concept of assimilation became the dominant management strategy.

Native-Settler governance in Australia is fundamentally different from models seen across colonial Africa, including in Liberia. Whilst the idea of the indirect rule is not usually applied to Aboriginal-colonists relations in Australia, it can be seen through the Native Police, Colonial Secretary⁴⁶³ (now Indigenous Affairs directly under the surveillance of the Department of the Prime Minister and Cabinet)⁴⁶⁴ or even supra-structurally by the establishment of the Governor General Office.⁴⁶⁵ Instead of indirect rule, Ben Silverstein argues that rather than by direct rule, Australia's settler-colonist management of Indigenous Peoples was articulated through affecting their elimination by controlling modes of production, as in the settler capitalism seen in Liberia and the rest of Africa.⁴⁶⁶

Aboriginal Peoples in Australia were eliminated through racist policies that enacted aggressive forms of extermination or assimilation, including massacres and forced adoption. Other policies were predicated on the racist idea of Aboriginal inferiority, including stolen wages, and the Northern Territory intervention. As examples of explicit state instituted violence against Aboriginal women and girls, these topics are covered in more depth in chapter 3. Fortunately, these attempts to eliminate Aboriginal Peoples have failed. However, they have left Aboriginal Peoples on the margins of political and legal life in Australia. Movements in Australia by Indigenous advocates are now focused on elevating the political and legal standing of Aboriginal Peoples, whether through constitutional recognition, self-determination, or sovereignty rather than indirect governance.⁴⁶⁷

Indigenous Peoples' desire for self-determination and their corresponding struggle to overcome patriarchy, white dominance, racism, and elitism in Liberia and Australia are constantly stymied. Any opportunity for them to interact with settler-colonist governments as

⁴⁶² Edward Wilmot Blyden, *Liberia's Offering: Being Addresses, Sermons Etc.* (John A Gray Printer, 1862) 88.

⁴⁶³ Kathy Frankland, 'A Brief History of Government Administration of Aboriginal and Torres Strait Islander Peoples in Queensland' 1 <http://www.slq.qld.gov.au/__data/assets/pdf_file/0008/93734/Admin_History_Aboriginal_and_Torres_Strait_Islanders.pdf>.

⁴⁶⁴ See, the Australian Government Department of the Prime Minister and Cabinet, available at: <<https://www.dpmc.gov.au/indigenous-affairs>>.

⁴⁶⁵ See, the Governor-General of the Commonwealth of Australia, available: <<https://www.gg.gov.au>>. The office of Governor-General was established by the Constitution of the Commonwealth of Australia in 1901. Appointed at the pleasure of the Queen on the advice of the Prime Minister, the Governor General is a representative of the Queen in the Commonwealth. S/he may exercise such powers and functions of the Queen as she may be pleased to assign, but subject to the Constitution of Australia.

⁴⁶⁶ Ben Silverstein, 'Indirect Rule in Australia: A Case Study in Settler-Colonial Difference' in Fiona Bateman and Lionel Pilkington (eds), *Studies in Settler Colonialism* (Palgrave Macmillan UK, 2011) 90, 96 <<http://link.springer.com/10.1057/9780230306288>>.

⁴⁶⁷ Ben Worsley, 'Indigenous Referendum: Australians Invited to Join Community Conference on Recognition Vote' *ABC News* (Sydney, NSW), 6 July 2015 <<http://www.abc.net.au/news/2015-07-06/australia-big-enough-for-indigenous-referendum-says-abbott/6598144>>.

independent and sovereign nations with rights to freely determine their political status and pursue their social, economic, and cultural development,⁴⁶⁸ or even participate in public affairs, is solely dependent on the approval of settler-colonist governments. Jill Webb argues that, despite the explicit language used in Article 1 of both the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, there is still contention about whether the ‘all peoples’ who have the right to self-determination includes Indigenous Peoples.⁴⁶⁹ Reynolds argues that, for Aboriginal and Torres Strait Islanders, it is not simply about participating in public leadership roles or seeking inclusion in ‘working out how to arrange the pieces on the board to construct the most desirable Australian nation’; rather, it is a question of the Board itself and the rules of the game.⁴⁷⁰ John Bern et al., see a recurring concern about how Indigenous self-government and representation should be structured, given the plurality of interests and the diversity of Aboriginal communities.

Reynolds suggests that self-determination should be understood as a single Aboriginal nation since white Australia sees itself as one sovereign nation since the colonisation.⁴⁷¹ Michael Mansell’s approach to Indigenous sovereignty highlights the relevance of maintaining Aboriginal local government control in communities, lest their sovereignty is lost to assimilation.⁴⁷² Michael Dodson purports that self-determination is possible within the parameters of a modern nation-state; hence, it would be ‘naïve to assume that self-determination equates with separatism’.⁴⁷³ Together Dodson and Mansell sum up two schools of thoughts regarding Indigenous Australians’ desire to claim recognition as First Peoples, as narrated in Reynolds (1996):

If we are going to enjoy our rights, and more than that to survive as distinct peoples and cultures, creative new concepts and structures will have to be set in place. We assert, and will continue to assert, that there are indigenous political and legal systems which must be recognised as having a place, whether that place be within the basic structures underlying so-called mainstream society, or parallel to that society. But the fact is that the foundations of the Australian nation exclude and fail to recognise those pre-existing social and political orders.⁴⁷⁴

[Aboriginal] people must be allowed to go beyond struggling for better conditions. The right to control ourselves on our own land without interference from others is a basic right. To be and act as a nation of people independent of whites ought not to be a controversial issue but an entitlement. To impose our own laws in our own communities; to raise our own finances from our own portions of the continent; to have our own Olympic team and our own diplomats and passports is our right as a nation of people. Those rights are or should be the aim of our movement.⁴⁷⁵

⁴⁶⁸ Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights states that, ‘[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.

⁴⁶⁹ Webb, above n 135, 81.

⁴⁷⁰ Reynolds, *Aboriginal Sovereignty*, above n 221, 137.

⁴⁷¹ Reynolds, *Aboriginal Sovereignty*, above n 221.

⁴⁷² Michael Mansell, *From Democracy to Statehood: Aboriginal Self-Determination* (Federation Press, 2016).

⁴⁷³ Michael Dodson, ‘Assimilation versus Self-Determination: No Contest’ (Sydney, NSW, 1996)

<<https://www.humanrights.gov.au/news/speeches/assimilation-versus-self-determination-no-contest-dodson-1996>>.

⁴⁷⁴ Reynolds, *Aboriginal Sovereignty*, above n 221, 137–138.

⁴⁷⁵ *Ibid* 138.

Settler-colonists' encroachment upon Indigenous spaces and on-going denial of recognition have resulted in persistent cultural and structural violence with racism, patriarchy, white supremacy, and elitism at its helm. For some Indigenous Peoples, the connection amongst language, culture, the land, and full autonomy over Aboriginal Customary Laws requires fundamental constitutional recognition.⁴⁷⁶ The Referendum Council, appointed to advise the Prime Minister and Leader of the Opposition about options for constitutional reform, perceives Australia's nationhood as unfinished business. Substantive structural reform requires recognition of the ancient jurisdiction of First Nations law which was violated when the British came to Australia to possess ownership of sovereignty that was not ceded.⁴⁷⁷ As a result, a 'fuller expression of Australia's nationhood' is required, so that First Nation sovereignty can effectively and powerfully shine through. Although Indigenous research advocates suggest equal participation, recognition, and self-government as necessary ingredients for fair play in the politico-legal domain, such advancement is often complicated by other deeply rooted problems, such as land dispossession, decolonisation, and the post-colonial struggle of Indigenous Peoples.

2.1.3 Theme 3: (Land) Dispossession and (De) Colonisation

*Having sold their ownership 'natives' became tenants of the state on government land.*⁴⁷⁸

Studies have shown that Indigenous Peoples tend to live off the land through complex use of farming, hunting, and fishing across Africa and with complex rituals and languages; but their cultures and languages were shattered by colonisation.⁴⁷⁹ Captain Arthur Phillip attests to the fact that Indigenous Peoples in Australia (e.g., Cammeragal and Cadigal) are the original dwellers of Australia.⁴⁸⁰ In addition to Phillip's account, archaeological and anthropological findings, as noted above, show that Indigenous Peoples in Australia and Liberia inhabited the land long before settlers arrived. However, settler-colonists used discourse in the law to aid their justification for dispossessing Indigenous Peoples of their land.⁴⁸¹ The historical legacy of dislocation and dispossession, characterised by social disadvantage⁴⁸² and the forces that would see it continue, is ever-present.⁴⁸³

⁴⁷⁶ The Referendum Council, 'Final Report of the Referendum Council' (Indigenous Employment and Recognition, Department of the Prime Minister and Cabinet, 30 June 2017) 183, 16 <<https://www.referendumcouncil.org.au/final-report>>.

⁴⁷⁷ Ibid 17.

⁴⁷⁸ Wily, above n 304, 73.

⁴⁷⁹ Heather Douglas, *Indigenous Crime and Settler Law: White Sovereignty After Empire* (Palgrave Macmillan, 2012) 37.

⁴⁸⁰ Reynolds, *Aboriginal Sovereignty*, above n 221, 24–25.

⁴⁸¹ Paul Keal, *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society* (Cambridge University Press, 2003) 113

<<http://www.ourpgs.com/books/law/European%20conquest%20rights%20indigenous%20people.pdf>>.

⁴⁸² Australian Law Reform Commission, *Aboriginal Customary Laws* (30 July 2010) Australian Government: Australian Law Reform Commission 21 <<http://www.alrc.gov.au/inquiries/aboriginal-customary-laws>>.

⁴⁸³ Keal, above n 481, 113.

According to Reynolds, the concept of *terra nullius* is ‘the single most important feature of the British expropriation of Aboriginal land’; it enabled the settler-colonists to convince themselves that they had a legal and moral right to the land.⁴⁸⁴ James Prichard opted for complete extermination should ‘inferior and barbarous’ Aboriginal Peoples reject European civilisation. For exhibiting such inhumane attitudes, June Oscar (2015) calls English settler-colonists, ‘greedy to consume the worlds of others’.⁴⁸⁵ Fanon (1963) rebukes the philosophical ‘justification’ of the settler-colonists in claiming ownership of what is not theirs:

The settler makes history; his life is an epoch, an odyssey. He is the absolute beginning: “This land was created by us”; he is the unceasing cause: ‘if we leave, all is lost, and the country will go back to the Middle Ages.’ Over against him torpid creatures, wasted by fevers, obsessed by ancestral customs, form an almost inorganic background for the innovating dynamism of colonial mercantilism. The settler makes history and is conscious of making it. And because he constantly refers to the history of his mother country, he clearly indicates that he himself is the extension of that mother country. Thus, the history which he writes is not the history of the country which he plunders but the history of his own nation in regard to all that she skims off, all that she violates and starves. The immobility to which the native is condemned can only be called in question if the native decides to put an end to the history of colonization – the history of pillage – and to bring into existence the history of the nation – the history of decolonization.⁴⁸⁶

Unfortunately, *terra nullius* was an idea so repeatedly endorsed that it became a ‘doctrine of discovery’,⁴⁸⁷ accepted first by the settler-colonists and now by most Australians because of a distorted colonial curriculum taught in schools.⁴⁸⁸

European Australians, enamoured with false ideas founded in European common law and Christian beliefs, have attempted to address injustices done when they dispossessed Aboriginal Peoples of their lands. Moral and social justice approaches adopted by colonial Australians include (but are not limited to) apology⁴⁸⁹ and sorry⁴⁹⁰ days. Decolonising approaches and efforts to reinforce claims to original land ownership include (but are not limited to) Welcome to Country or Acknowledgement of Country.⁴⁹¹ Legal justice has taken the form of

⁴⁸⁴ Reynolds, *Dispossession*, above n 177, 67.

⁴⁸⁵ June Oscar, ‘Encountering Truth: The Real Life Stories of Objects from Empire’s Frontier and beyond’ (Menzies Lecture Seminar: British Museum Exhibition at the Indigenous Australia Enduring Civilisation, King’s College, London, 29 April 2015) <<http://www.kcl.ac.uk/artshums/ahri/eventrecords/2014-2015/MCAS/June-Oscar.aspx>>.

⁴⁸⁶ Fanon, above n 247, 51.

⁴⁸⁷ Webb, above n 135, 76.

⁴⁸⁸ Ashley M Foley, *Terra Nullius: The Aborigines in Australia* (Bachelor Honours of Arts (Honours) Thesis, Salve Regina University, 2009) 40

<http://digitalcommons.salve.edu/cgi/viewcontent.cgi?article=1033&context=pell_theses>; Sarah Booth, *Teaching Aboriginal Curriculum Content in Australian High Schools* (Master of Education (Research), Edith Cowan University, 2014) 8 <<http://ro.ecu.edu.au/cgi/viewcontent.cgi?article=2523&context=theses>>; Commonwealth of Australia, ‘The Shape of the Australian Curriculum: History’ (Government Policy, National Curriculum Board, May 2009) 16, 8 <http://docs.acara.edu.au/resources/Australian_Curriculum_-_History.pdf>.

⁴⁸⁹ Australian Broadcasting Corporation, *National Apology for Forced Adoptions* (2013)

<<http://www.youtube.com/watch?v=5hVbokTpYeg>>; Julia Gillard, *National Apology for Forced Adoptions* (Attorney-General’s Department, Government of Australia, 2013)

<<http://www.ag.gov.au/About/ForcedAdoptionsApology/Pages/default.aspx>>.

⁴⁹⁰ Paul Keating, *Prime Minister Paul Keating’s Speech at Redfern* (AIATSIS, Government of Australia, 1992). A coalition of Australian community groups came together in 1998 and declared 26 May as ‘National Sorry Day’ – an annual day to be remorseful of colonial policies that stole some 50 000 Aboriginal children from their families between 1910 and the 1970s.

⁴⁹¹ Reconciliation Australia, ‘Welcome to Country Q & A Factsheet’ <<http://www.unisa.edu.au/Documents/QA-welcome-to-country.pdf>>. Welcome to Country is a ceremony performed (singing, dancing, smoking or a speech) by

international law and domestic land dispute settlements.⁴⁹² International law efforts include founding the United Nations Trusteeship Council and establishing the *Declaration on the Granting of Independence to Colonial Countries and Peoples* 1960. But according to Webb, none of these approaches rendered independence to Indigenous Peoples as they are not included in the ‘all peoples’ provision stated above.⁴⁹³ Domestic efforts include, but are not limited to, *Terry v Wilson* 1849,⁴⁹⁴ *Mabo* 1992⁴⁹⁵ and *Akiba* 2013.⁴⁹⁶ These land settlement cases identify Indigenous Peoples as the First Peoples of the land. However, implementation and acquisition of Native Title in Australia by virtue of being Indigenous is far from simple and direct ownership. Against this backdrop, a full acknowledgement of colonial possession of Indigenous land begs an assessment of what transpired when 427 convict vessels arrived on the shores of Indigenous lands between 1788 and 1868. Similarly, settler-colonists to Liberia found Indigenous peoples inhabiting the lands they ‘discovered’ and chose to inhabit.

As in Australia, appropriation of land by American colonists to settle African American Former Slaves in Liberia included violence against the land’s Indigenous inhabitants.⁴⁹⁷ Although historical materials researched in this study do not point to a violent conflict between Indigenous Liberians and settlers, except for in the work of a few scholars such as Jeremy

Aboriginal Australians to welcome visitors to their traditional land. Acknowledgement of Country is a way of showing awareness of, respect for and recognising continuing connection of Aboriginal Australians as original owners of the land on which a meeting or an event is being held. Matilda House-Williams, a Ngambri, Ngunnawal and Wiradjuri elder, was the first Indigenous invited to offer a ‘Welcome to Country’ at the opening of the 42nd Federal Parliament of Australia on 12 February 2008 (see, <http://genderinstitute.anu.edu.au/australian-inspring-women-matilda-house-williams-ngambri-ngunnawal-wiradjuri-elder>).

⁴⁹² Glen Cordingley, ‘Station Gives Yawuru a New Start’ *The West Australian* (Broome, WA), 3 September 2014 <<https://au.news.yahoo.com/thewest/business/wa/a/24881704/station-gives-yawuru-chance-to-rebuild/>>.

⁴⁹³ Webb, above n 135, 82.

⁴⁹⁴ Reynolds, *Dispossession*, above n 177, 67.

⁴⁹⁵ Diane Bell, ‘Aboriginal Customary Law: What Is Law [and What Is Not]?’ (Seminar at the SA Law Society Seminar, Adelaide, South Australia, 29 July 2006); Greg McIntyre, ‘Mabo: A Catalyst for Social Change’ (Public Lecture at the Public Lecture with Greg McIntyre, Sparke Helmore 2, ANU College of Law, 13 May 2013) <http://ncis.anu.edu.au/events/past/index.php#greg_mcintyre>; Henry Reynolds, ‘After Mabo, What about Aboriginal Sovereignty’ [1996] (April) *Australian Humanities Review* <http://www.australianhumanitiesreview.org/archive/Issue>; Lisa Strelein, *Compromised Jurisprudence: Native Title Cases Since Mabo* (Aboriginal Studies Press, 2nd ed, 2009) 116; Henry Reynolds, *Why Weren’t We Told?: A Personal Search for the Truth About Our History* (Penguin, 2000) 249; Reynolds, *Aboriginal Sovereignty*, above n 221, 1–2, 13–15; Henry Reynolds, *The Law of the Land* (Penguin Books, 1992) 187; *Telling Stories: Indigenous History and Memory in Australia and New Zealand*, above n 354, 31; Richard Broome, *Aboriginal Australians: Black Responses to White Dominance, 1788-2001* (Allen and Unwin, 3rd ed, 2002) 233, 235–240; Chris Cunneen, *Indigenous People and the Law in Australia* (Butterworths, 1995) 108–118; Max Griffiths, *Aboriginal Affairs: A Short History* (Kangaroo Press, 1995); Sarah Keenan, ‘Moments of Decolonization: Indigenous Australia in the Here and Now’ (2014) 29(2) *Canadian Journal of Law and Society* 163, 239; *An Unruly Child: A History of Law in Australia* (Allen and Unwin, 1995) 11, 119–120; Martin Mhando, *Liyarn Ngarn* (2007) <<http://www.imdb.com/title/tt2199740/>>; *Practising Reconciliation?: The Politics of Reconciliation in the Australian Parliament, 1991-2000* (Department of Parliamentary Services, 2005) 47–77.

⁴⁹⁶ Lauren Butterly, ‘Unfinished Business in the Straits: *Akiba v Commonwealth of Australia* [2013] HCA 33’ (2013) 8(8) *Indigenous Law Bulletin* 1.

⁴⁹⁷ Dunn and Holsoe, above n 104, xiii–xiv. Dunn and Holsoe list several disputes between the colonists and Indigenous Liberians in the early days of establishment. For example, in 1822, the first major armed conflict between repatriate and Indigenous Liberians takes place. In 1838, Dei-Gola war in which Liberia first attempts mediation, then sides with the Gola. In 1856 war breaks out between the independent colony of Maryland and the Grebo Confederation. That same year, the Kru Confederation attacks settlement in Sinoe County. An instance worth noting here regarding frontier battles and Indigenous land dispossession in Liberia. As Liberia *HIStory* has been mostly written by descendants of Afro-Americans and foreigners a logical reasoning points to distortions in favour of ‘his’ or ‘her’ story. A case in point is the Matilda Newport account of the Crown Hill Battle. Children of Liberia was thought of her heroic feat in using a pipe to set-off a canon that wore off natives causing settler emigrates to defeat Indigenous Liberia. At present, this account is said to have been fabricated and distorted by African-American emigrates to elevate the persistent superiority and victory in conquering the fellow brothers and sisters.

Levitt,⁴⁹⁸ neither is there any written documentation (e.g., title or deeds) to evidence land purchase by treaty nor fair deal, apart from a limited anecdotal citing,⁴⁹⁹ including an expropriation narrative stored in the Liberian National Archives.⁵⁰⁰ According to Fanon, conveniently distorting the history of violence is the settler-colonists' conscious effort to make and write the 'history of his own nation'. Unfortunately, the gluttony of settler-colonists spoken of by Oscar (above) is no longer an event of the past perpetrated by white settler-colonists in Australia but rather a present-day occurrence displayed by Black African American settlers against Black Native Africans in Liberia.

Government-sanctioned land disposition continues to plague Indigenous communities in Liberia. For example, Liberia now accounts for 45 percent of West Africa's remaining forest, over 60 percent of which has been offered to logging companies with no consultation or benefit to Native Peoples in Liberia.⁵⁰¹ For example, Emmanuel Weedee narrates that when Chief Manjo of the Kpelle Language Group was asked how did 90 000 hectares of their community-owned forest had been signed away to a logging company with nothing in return, he responded, 'I don't know book' (meaning he is not literate). However, a 13-page contract that shows the forests have been awarded to a Liberian company called Bopolu Development Corporation for the next 20 years carried Chief Manjo's signature. Notwithstanding, the Chief claims 'his hand' did not sign the agreement.

This alleged forging of Chief Manjo's signature to dispossess Native Kpelle People of their land is a serious offence that requires prosecution or at least investigation. But who will advocate for the Kpelle People if they have neither legal support nor educational aptitude to file a claim for such violation? As far back as 1926, Karnga wrote of settlers-colonists' land-grabbing exploits in Liberia.⁵⁰² Karnga was writing at the time when Firestone Rubber Plantation purchased a million acres of Native Peoples' land for six cents per acre for 99 years (*see* chapters 3 and 6 for more details). For Indigenous Liberians, resistance to African American settlers-colonists' control over their land finally comes through a new *Land Rights Draft Bill* in

⁴⁹⁸ Levitt, above n 105, 31–85.

⁴⁹⁹ Karnga, above n 171, 21–27. Prior to their arrival on 15 December 1821, a small tract of land was bought by ACS from King Peter (probably Zolu Duma of Vai country), George, Yoda and Long Peter (of De/Dei and Mamba/Mahnbahn ethnic groups) on Bushrod Island. After the acquisition of Providence Island (Cape Mesurado) by Eli Eyers and Captain Robert Stockton, on 7 January 1822, the settler-colonists built town houses on the mainland of Monrovia (named after James Monroe in 1824). On the 18 December 1832, 33 volunteers set out from Monrovia to establish a new colony called Edina. In 1835, another settlement was founded by the Pennsylvania Society, called Bass Cove. In 1837, Marshall (in honour of James Marshall, Chief Justice, USA) was built at the mouth of the Farmington River and Thomas Buchanan (first Governor of the ACS and cousin of former US President James Buchanan) built Bassa Cove. In 1838 Greenville (named after James Green) was built by the Mississippi Colonisation Society and Bexley, on the St. John's River was built by Lewis Sheridan. Cape Palmas was founded by the State of Maryland in the US through the Maryland Colonisation Society in 1927. Dr James Hall in 1831 bought land from King Jude and other Grebo Chiefs to establish the Maryland settlement. By 1854, Maryland becomes an independent republic and later acceded to the Commonwealth of Liberia in 1857.

⁵⁰⁰ Svend E Holsoe and Megan MacDonald, *Liberian Government Archives, 1828-1911* (2016) Indiana University Archives Online <http://webapp1.dlib.indiana.edu/findingaids/view?doc.view=entire_text&docId=VAB6927>.

⁵⁰¹ Emmanuel Weedee, 'Over 60 per Cent of Liberia's Rain Forest Offered to Logging Companies' *Heritage* (Monrovia, Liberia), 4 September 2012 <<http://allafrica.com/stories/201209200720.html>>.

⁵⁰² Karnga, above n 171, x.

2014. Although the 2014 Draft Bill is a small step in comparison to the *Mabo* case in Australia, it is as good as it can get, for now, subject to its actual passage and implementation.⁵⁰³

2.1.4 Theme 4: (Mental) Health, Education, Housing, Employment & Development

Socio-economic well-being (housing, education, employment, and health) of Indigenous Peoples is an ongoing concern. Although progress has been made in some areas, as noted above, significant change is slow and sometimes troubling. In 2009, the Government of Australia promised to improve housing conditions for Aboriginals living in the townships in the Northern Territory. The Rudd Government claimed to have allocated \$672 million for 750 new homes and 2 500 refurbishments.⁵⁰⁴ By 2014, the National Commission of Audit found that the Abbott Government had cut \$534 million over a five-year period from Aboriginal funding for social services,⁵⁰⁵ whilst maintaining some \$22 billion for defence. Media reporting alleged that the government of Australia's political moves had a direct and fatal impact on 11-year old Peter Little⁵⁰⁶ and Deadly Awards Founder Gavin Jones.⁵⁰⁷ The experiences of Little and Jones also suggest a direct link between public law and policy, mental illness, and access to employment as it pertains social services for Indigenous Peoples. In 2012-2013, the Australian Institute of Health and Welfare reported that 48 percent of Indigenous adults confided that either they or their relatives had been removed from their natural families. Of those taken away, 35 percent reported higher psychological stress compared with those who were not (29 percent).⁵⁰⁸ These outcomes point to government policy and the legal system as a social determinant of health for Aboriginal Australians, and the same is true in Liberia.

The intersectionality of government policy, poverty, education, and access to healthcare is also a problem for the mental and physical health of Indigenous Peoples in Liberia. Former Chief Medical Officer of Liberia (now Minister of Health) Bernice Dahn, disclosed that 400 000 persons are suffering from mild mental illness and 115 000 others from mental disorders, mainly attributable to the 14-year civil war⁵⁰⁹ and the recent Ebola Virus Disease crisis.⁵¹⁰

⁵⁰³ EJ Nathaniel Daygbor, 'Land Bill Reaches Capitol Building' *The New Dawn* (Monrovia, Liberia), 7 August 2015 <<http://www.thenewdawnliberia.com/news/8108-land-bill-reaches-capitol-building>>. Daygbor reports that, the draft Land Reform Act (LRA) sets out a wide range of protection for customary land rights ensuring that communities are empowered to self-identity in defining the area of their customary land in pursuit of keeping with their custom, history and norms.

⁵⁰⁴ Shar Adams, 'Inclusion the Key to "town Camps" Solution' *Epoch Times* (Sydney, NSW), 10 November 2009 <http://www.theepochtimes.com/n2/australia/aborigines>.

⁵⁰⁵ Indigenous Affairs Commonwealth Parliament, *Indigenous Affairs* (2014) Parliament of Australia <http://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/budgetreview201415/indigenous?print=1>.

⁵⁰⁶ Susan Allan, 'Eleven-Year-Old Aboriginal Boy Commits Suicide' *World Socialist Web Site* (Geraldton, WA), 8 December 2014 <https://www.wsws.org/en/articles/2014/12/08/suic>.

⁵⁰⁷ Rick Feneley, 'Deadly Awards Founder Gavin Jones Dies after Funding Cut' *The Sydney Morning Herald* (Sydney, NSW), 14 July 2014 <<http://www.smh.com.au/entertainment/deadly-awards-founder-gavin-jones-dies-after-funding-cut-20140714-zt78p.html>>.

⁵⁰⁸ Heuvel et al, above n 365, 50.

⁵⁰⁹ Basia Tomczyk et al, 'Women's Reproductive Health in Liberia: The Lofa County Reproductive Health Survey January-February 2007' (NGO, Centre for Disease Control and Prevention, 2007) 133, 20.

⁵¹⁰ Norimitsu Onishi, 'Clashes Erupt as Liberia Sets a Quarantine' *The New York Times* (Monrovia, Liberia), 20 August 2014 <http://www.nytimes.com/2014/08/21/world/africa/ebola-outbreak-liberia-quarantine.html?smid=fb-share&_r=1#>.

Emmanuel Bowier, a former Minister of Information turned trauma therapist, attests that ‘Liberia is a big psychiatric ward’.⁵¹¹ Unstable housing and social environment not only cause long-term mental health problems for a relatively young population;⁵¹² but it is also a pre-determinant for low literacy rates, substance abuse,⁵¹³ and family violence in Liberia and Australia.

The prevalence of Aboriginal male violence contextualises the vulnerability of Indigenous girls’ and women’s experience of gender violence and the States’ responsibility to provide such social services. Caroline Atkinson’s ‘Violence Continuum’ shows that the State is not the only culprit for violent crimes; Aboriginal males are engaged in a complex cyclical web⁵¹⁴ of violence against Aboriginal girls and women to the extent that some perceive family violence as a norm in Aboriginal communities.⁵¹⁵ Remote communities on the edges of towns and cities ‘are plagued by violence and alcohol and they are creating communities of fringe dwellers’, says Aboriginal and Torres Strait Islanders Social Justice Commissioner Mick Gooda.⁵¹⁶ Jacqueline Fitzgerald and Don Weatherburn’s (2000) study of police records in New South Wales found that Aboriginal people are between 2.7 times and 5.2 times more likely to become victims of violent crime.

Further, Fitzgerald and Weatherburn record that not only are Aboriginal women up to 6.6 times more likely to become victims of violent offences than New South Wales women as a whole⁵¹⁷ but also that most violent offences against Aboriginal children and women are committed by Aboriginal men.⁵¹⁸ Aboriginal Peoples in Australia are the most incarcerated people on the planet, says the Uluru Statement from the Heart.⁵¹⁹ In a more recent study (2017), the Australian Law Reform Commission states that Aboriginal Peoples in Australia are at

⁵¹¹ Helen Liebling-Kalifani et al, ‘Women War Survivors of the 1989-2003 Conflict in Liberia: The Impact of Sexual and Gender-Based Violence’ (2011) 12(1) *Journal of International Women’s Studies* 1.

⁵¹² Heuvel et al, above n 365, 8. According to the Institute of Health and Welfare’s ATSI Health and Welfare report (2015) 36 per cent of all Aboriginal living in Australia in 2011 were aged 15 or under – a relatively young population.

⁵¹³ Peter D’abbs, ‘Controlling “Rivers of Grog”’: The Challenge of Alcohol Problems in Australian Indigenous Communities’ (2010) 37 *Contemporary Drug Problems* 499.

⁵¹⁴ Ron Brown, ‘Australian Indigenous Mental Health’ (2001) 10 *Australian and New Zealand Journal of Mental Health* 33.

⁵¹⁵ Caroline Lisbeth Atkinson, *The Violence Continuum: Australian Aboriginal Male Violence and Generational Posttraumatic Stress* (PhD Thesis, Charles Darwin University, 2008) 237–238 <http://laal-ospace.cdu.edu.au/eserv/cdu:44891/Thesis_CDU_44891_Atkinson_C.pdf>.

⁵¹⁶ Bridget Brennan, ‘Rethink Aboriginal Town Camps: Mick Gooda’ *ABC News* (Alice Springs, N.T), 3 March 2014 <<http://www.abc.net.au/news/stories/2011/03/03/3153800.htm?site=alicesprings>>.

⁵¹⁷ Haley Clark, ‘Sexual Assault Forum, Melbourne: Organised by Victorian Women Lawyers, June 2007’ (2008) 17 *Australian Centre for the Study of Sexual Assault Newsletter* 22, 5–6. A study analysis of 850 randomly selected rape cases reported to police around Victoria over three years (2000-2002) found that police laid charges in only 15 per cent of cases. This finding suggests that even when rape cases are reported to law enforcement, the chance that police will proceed with investigations is only 40 per cent.

⁵¹⁸ Jacqueline Fitzgerald and Don Weatherburn, ‘Aboriginal Victimization and Offending: The Picture from Police Records’ (2001) 26(4) *Aboriginal and Islander Health Worker* 26; Diane Bell, ‘Intra-Racial Rape Revisited: On Forging a Feminist Future beyond Factions and Frightening Politics’ (1991) 14(5) *Women’s Studies International Forum* 385.

⁵¹⁹ The Uluru Peoples, above n 25.

higher risk of imprisonment and recidivism.⁵²⁰ The Law Reform Commission reports that up to 76 percent of Aboriginal and Torres Strait Islander prisoners in 2016 had been previously imprisoned; compared with 49 percent of the non-Indigenous prison population.⁵²¹ Rene Adams and Yasmin Hunter describe how problematic and rampant Aboriginal male violence against Aboriginal girls and women is:

[w]omen can be walking around the town with black eyes, with some women believing that if their partners don't hit them, they don't love them. When a man is flogging his partner, people in the community will often not interfere because they believe that family violence is 'their business'. This makes it hard for victims to disclose violence or ask other community members for their support. When family violence occurs, the charges are frequently dropped because the victim does not attend court. Almost all of the women and children exposed to family violence and sexual assault are severely affected by the acts of violence. These disorders are usually undiagnosed and the victims are left to cope with these symptoms on their own. Drug and alcohol abuse is common among victims in these areas, and it is used as a means of blocking out memories of the abuse. A significant number of victims become suicidal.⁵²²

Unfortunately, the same social determinants of health that predispose Indigenous women and girls to violence are also those that perpetuate their continued vulnerability.

The literature affirms that the two most difficult aspects of leaving an abusive relationship are finding accommodation and securing employment; however, those elements of independence are even more difficult to achieve when the intersecting factors of access to employment and housing disproportionately affect Indigenous women and girls. For example, on Census night in 2011 in the Northern Territory, the highest rate of homelessness in Australia (731 per 10 000 persons) was recorded.⁵²³ According to the Australian Capital Territory Shelter, even though Indigenous Peoples in Australia comprise approximately one percent of the resident population in the Australian Capital Territory, 16 percent of homeless service users identified as Indigenous in 2010-2011.⁵²⁴ A 2006 report by Chris Chamberlain and David Mackenzie found that homeless women outnumbered men by 53 to 47 percent.⁵²⁵ Whilst there is no exact pathway into homelessness for women affected by domestic and family violence, Selina Tually et al., argue otherwise. Tually et al. submit that 'women experiencing domestic and family violence generally reach what is known as a crisis point or tipping point in their lives'

⁵²⁰ Australian Law Reform Commission, 'Incarceration Rates of Aboriginal and Torres Strait Islander Peoples' (Discussion Paper 84, Australian Law Reform Commission, 19 July 2017) 236, 93 <<https://www.alrc.gov.au/publications/indigenous-incarceration-rates-dp84>>.

⁵²¹ Ibid.

⁵²² Adams and Hunter, above n 365.

⁵²³ Australian Bureau of Statistics, 'Census of Population and Housing: Estimating homelessness, 2011 (12 November 2012), available at:

<<http://www.abs.gov.au/ausstats/abs@.nsf/MediaReleasesByCatalogue/0DB52D24450CC7ACCA257A7500148E4C?OpenDocument>>.

⁵²⁴ Staff Reporter, 'Homelessness in the ACT - a Snapshot' 2

<http://www.actshelter.net.au/_literature_93363/Homelessness_in_the_ACT>.

⁵²⁵ Chris Chamberlain and David Mackenzie, 'Counting the Homeless 2006: Australian Capital Territory' (Government, Australian Institute of Health and Welfare, June 2009) 59, 31 <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442465036>>.

(i.e. a point where they fear for their or their children's safety).⁵²⁶ Therefore, Adams and Hunter (above) reason that Indigenous women fear to leave, fail to present in court or become suicidal.

Research also shows that discrimination against Aboriginal women hinders the potential for gainful employment especially in small businesses where employers tend to have a preference for light-skinned Aborigines.⁵²⁷ When Aboriginal girls and women lack a secure home, a stable income, and access to education, and when they face ongoing racism and other forms of prejudice, freedom from systematic violence is only a fanciful aspiration. Researchers often recommend education and awareness to fight deeply rooted issues of gender violence. Research evidence affirms that 'education is a powerful predictor of wealth'.⁵²⁸ Higher educational attainment for girls and women directly reduces gender violence and certainly delays childbearing. However, there are educational inequities facing Indigenous women and children in Australia that find their roots in the experiences of white settler-colonists in Britain.

Explaining how Indigenous Peoples in Australia were 'civilised' through the process of forced removal/adoption yet denied equal opportunity to move upward on the socio-economic ladder, Rosalind Kidd (1997) cites a historical trend, which started in the mother country, England. According to Kidd, a few 'ragged schools', mostly set up by philanthropic agencies in the 1840s, operated in slums as preventive agencies for the suppression of crime.⁵²⁹ In addition to fostering order and obedience, ragged schools were meant to awaken moral and religious principles amongst the heathens, through behavioural indoctrination.⁵³⁰ On the other hand, a government education reform scheme removed children from so-called degenerate circumstances for retraining. Early on, parental consent (abolished in 1854 to widen the state's powers of compulsory committal) was sought for such 'removals'.⁵³¹ However, 'paupers, mendicants, vagabonds, foundlings, and deserted children' as well as those deemed to be 'vicious or in mortal danger' were classified as delinquent and sent to reformatories.⁵³² Further refinements in 1857 enabled children from 7 to 14 years to be sent to a certified industrial school if parents could not guarantee good behaviour.⁵³³ By the dawn of the 19th century, one in every 230 juveniles between five and fifteen years in Britain was under the jurisdiction of reformatory and industrial schools.⁵³⁴

⁵²⁶ Selina Tually, Debbie Faulkner and Cecile Cutler, *Women, Domestic and Family Violence and Homelessness a Synthesis Report* (Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, 2008) 16

<[http://www.ofw.facs.gov.au/publications/synthesis_report04/Women,%20Domestic%20and%20Family%20Violence%20Synthesis%20Report%20\(Flinders%20University%202008\).pdf](http://www.ofw.facs.gov.au/publications/synthesis_report04/Women,%20Domestic%20and%20Family%20Violence%20Synthesis%20Report%20(Flinders%20University%202008).pdf)>.

⁵²⁷ Wendy Anders, *Family Violence in Indigenous Communities: What Is the Impact of Domestic Violence on Indigenous Families?* (Bachelor Honours of Arts (Honours) Thesis, Yooroang Garang School of Indigenous Health Studies, University of Sydney, 1999) 20.

⁵²⁸ Sean Coughlan, 'Asia Pops Biggest Global School Rankings' *BBC News* (London), 13 May 2015 <<http://www.bbc.com/news/business-32608772>>.

⁵²⁹ Rosalind Kidd, *The Way We Civilise: Aboriginal Affairs - the Untold Story* (University of Queensland Press, 1997) 19.

⁵³⁰ *Ibid.*

⁵³¹ *Ibid.*

⁵³² *Ibid.*

⁵³³ *Ibid.*

⁵³⁴ *Ibid.* 20.

Reformatory conviction found its way into colonial Australia's benevolent societies, set up to promote 'the physical and moral well-being of the destitute labouring classes'.⁵³⁵ For example, after 1852, white children deemed to be 'at risk' from a corrupting environment in New South Wales were removed without parental consent and placed in service to responsible families. From the 1860s onwards, young females in Tasmania were forcibly removed from the streets to be given basic training or apprenticed out as domestic workers.⁵³⁶ Soon, Aboriginal children began to get caught in the net of the reformatory system. In Queensland, the *Industrial and Reformatories School Act 1865* authorised the removal of any destitute child under 17 found wandering or begging in the streets, any child dwelling with a reputed thief, prostitute or drunkard, and any child born of an Aboriginal or half-caste mother.⁵³⁷ The police commissioner himself called for a girls' reformatory. He noted that '[t]here are in Brisbane alone over fifty girls, under 14 years of age, who are being "dragged up" in the lowest haunts of vice, and who, unless rescued in time, have no other life than one of infamy and crime'.⁵³⁸ Pursuant to the *Establishment and Management of Asylums for Orphans and Deserted and Neglected Children Act 1879*, children deemed to be deserted or neglected could be confined and later hired out in domestic or farm service. For Aboriginal children, removal from their families and incarceration within a reformatory threatened not only their mental health but also the persistence of their Aboriginal culture. Similarly, in Liberia, patterns of educational inequity in the Deep South of America were replicated by former slaves when they arrived in Africa.

In colonial America, education was forbidden to slaves. Fearing that 'literate slaves would forge passes or convince other slaves to revolt'⁵³⁹ the General Assembly of the State of North Carolina at the Session of 1830 passed an *Act to Prevent All Persons from Teaching Slaves to Read or Write, The Use of Figures Excepted*.⁵⁴⁰ Antonio Bly, whilst contesting historians' presumption 'that most, if not all, slaves of that period [during the American revolution] were denied access to books and literacy,' admits that '[l]ess is known of those

⁵³⁵ Ibid.

⁵³⁶ Ibid.

⁵³⁷ Ibid.

⁵³⁸ Ibid 19–21.

⁵³⁹ Kimberly Sambol-Tosco, *The Slave Experience: Education, Arts, and Culture* (2004) Slavery and the Making of America <<http://www.pbs.org/wnet/slavery/experience/education/history2.html>>.

⁵⁴⁰ The Act provided, '[w]hereas the teaching of slaves to read and write, has a tendency to excite dis-satisfaction in their minds, and to produce insurrection and rebellion, to the manifest injury of the citizens of this State: *Therefore, Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same*, That any free person, who shall hereafter teach, or attempt to teach, any slave within the State to read or write, the use of figures excepted, or shall give or sell to such slave or slaves any books or pamphlets, shall be liable to indictment in any court of record in this State having jurisdiction thereof, and upon conviction, shall, at the discretion of the court, if a white man or woman, be fined not less than one hundred dollars, nor more than two hundred dollars, or imprisoned; and if a free person of color, shall be fined, imprisoned, or whipped, at the discretion of the court, not exceeding thirty nine lashes, nor less than twenty lashes. II. *Be it further enacted*, That, if any slave shall hereafter teach, or attempt to teach, any other slave to read or write, the use of figures excepted, he or she may be carried before any justice of the peace, and on conviction thereof, shall be sentenced to receive thirty-nine lashes on his or her bare back. III. *Be it further enacted*, that the judges of the Superior Courts and the justices of the County Courts shall give this act in charge to the grand juries of their respective counties' *see*, History is a weapon, available at <<http://www.historyisaweapon.com/defcon1/slaveprohibit.html>>. Notice how the same law provides for different punishment based on skin colour.

fugitive slaves who could read and write'.⁵⁴¹ Bly estimates that of the 1 000 runaway notices placed in the *Virginia Gazette* between 1736 and 1776, five percent (55) were described as literate. This suggests that some slaves were acquiring education in spite of policies forbidding them to do so. Kimberly Sambol-Tosco's historical overview of slave experiences of education suggests that,

[i]n the absence of formal education, slaves in both the rural and urban South often found alternative paths to learning. On plantations, the pursuit of education became a communal effort -- slaves learned from parents, spouses, family members, and fellow slaves and some were even personally instructed by their masters or hired tutors. Slaveholders were motivated by Christian convictions to enable Bible-reading among slaves and even established informal plantation schools on occasions in part because of slaveholders' practical need for literate slaves to perform tasks such as record-keeping. In the North, where black education was not forbidden, African-Americans had greater access to formal schooling and were more likely to have basic reading and writing skills than Southern Blacks.⁵⁴²

So, with the Christianising mission, education became partly accessible to slaves in America. The education of slaves in America is relevant to this research because a relatively high proportion of settler-colonists who returned to Liberia were illiterate, acting as a determinant of the type of socio-economic, political, and legal structures established in Liberia.

In Liberia, illiteracy and lack of education amongst settler-colonists contributed to the transposition of harmful policies to Liberia. Analysis of the 14 996 former slave emigrants sent to Liberia between 1821 and 1904, compiled by Tom Shick, Robert Brown,⁵⁴³ and Peter Murdza Jr.⁵⁴⁴ shows that 52 percent (7 854) were from the Deep South.⁵⁴⁵ Of these, only 15 percent (2 199) indicated that they could read, write, or spell. Woodson adds the provision that the listed 'read, spell, and write' indicated on the departure records for former slave emigrants referred to nothing more than basic skills. According to Woodson, '...not a few masters maintained that the more brutish the bondmen the more pliant they become for purposes of exploitation. It was this class of slaveholders that finally won the majority of Southerners to their way of thinking and determined that Negroes should not be educated'.⁵⁴⁶ Subsequently, the back-to-Africa mission brought mainly former Deep Southern ex-slaves to Liberia. Interestingly, in Liberia, strong (though not sustained) efforts were made by some African American settler-colonists⁵⁴⁷ not only

⁵⁴¹ Antonio T Bly, "'Pretends He Can Read": Runaways and Literacy in Colonial America, 1730–1776' (2008) 6(2) *Early American Studies: An Interdisciplinary Journal* 261.

⁵⁴² Sambol-Tosco, above n 539.

⁵⁴³ Robert T Brown, *Immigrants to Liberia, 1844-1864: An Alphabetical Listing* (Liberian Studies Association, 1980) vol no. 7.

⁵⁴⁴ Peter J Murdza Jr., *Immigrants to Liberia, 1865 to 1904: An Alphabetical Listing* (Liberian Studies Association, 1975) vol 4.

⁵⁴⁵ The Deep South can be defined as the seven states that seceded from the United States before the start of the American Civil War. These states originally formed the Confederate States of America. They are, (in order of secession): South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas. The first six states were those that held the largest number of slaves. A broader definition of the 'Deep South' also includes the 'Cotton Belt', which, in addition to the Confederate States, includes, North Carolina, Tennessee, and Arkansas.

⁵⁴⁶ Woodson, above n 453, 3.

⁵⁴⁷ Marie Tyler-McGraw, Deborah Lee, Scot French, "Virginia Emigrants to Liberia: The Roberts Family" (1 May 2008), available at: <http://www.vcdh.virginia.edu/liberia/index.php?page=Stories§ion=The%20Roberts%20Family>.

to attain the highest level of education but also to abolish slavery⁵⁴⁸ in any shape or form in their newly established colony.⁵⁴⁹ Nevertheless, given the settler-colonists' challenging background of having relatively low access to education and professional employment, one can understand their inability to establish and sustain a high-quality education system in Liberia whilst, at the same time, denying Indigenous populations access to an equal educational opportunity. These inequities are still being addressed today.

Liberian and international institutions are still trying to address the educational and economic inequities facing Indigenous women and girls. For example, recognising some of the barriers and impacts of unemployment, Liberia's Ministry of Gender, Children and Social Protection partnering with the World Bank, Nike Foundation, and Bilateral Door, established an economic empowerment program for adolescent girls and young women in 2008. *Empowering Girls and Young Women in Liberia: Adolescent Girls Initiative* focuses on practical training and skills with the aim of providing safe, sustainable employment to 2 500 young Liberian women between the ages of 16 and 27.⁵⁵⁰ Evaluation of the adolescent empowerment program shows an overall 47 per cent increase in employment of the 2 042 randomly assigned trainees assessed, compared with those in the control group (~33 per cent).⁵⁵¹ This empowerment scheme shows that creating holistic and comprehensive socio-economic programs to address the long-term impact of discrimination and violence is not only critical but also self-sustaining. In Liberia, increased access to education also produced Indigenous youths who later became aware of social inequality. Dissatisfied with a second-class status in their country, Indigenous Peoples in

⁵⁴⁸ Paul Korvah narrates a personal account: '[i]n 1929, I had the opportunity to go along with my uncle Akoi Tellewoyan to Voinjama Headquarters. This was my first visit to the seat of our District government. The Secretary of the Interior, James Cooper, was coming up from Monrovia and all the chiefs were summoned to meet with him. The purpose of the meeting was not exposed to the people until the council was ready. Here in this council a proclamation was read setting all slaves as well as all persons pawned free. It abolished slavery completely in the country. Until then, domestic slavery was rampant in the interior. A man in financial distress or otherwise could pawn his son, daughter, nephew, niece, his younger brother, or wife to settle his obligations. Until he had money to redeem his pawn, the pawn would stay in the custody of the lender of the money'.

⁵⁴⁹ Brown, above n 50, 86–87. Korvah further attests to the Government of Liberia efforts to curb slavery in the hinterland: 'With the coming of Negro settlers from the United States of America in 1822, Western education with its emphasis on literacy was introduced into the non-literate setting of the Grain Coast, more than two centuries after its appearance on the Guinea Coast. Schools were begun and continued for approximately ten years by individual settlers who belonged to Christian Church societies organised before their arrival in Liberia. During these years, no schools were established by the American Colonisation Society which launched the settlement and at that time dominated the Colonial Government. The one effort made by the Society to affect a public-school system in 1826 was unsuccessful. In the early 1830's, education shifted from the hands of individual settlers to benevolent associations of ladies in the United States of America, who were interested in aiding education development in Liberia, and to American Protestant Church Missions. Throughout this period, as we the case for the rest of the century, the Christianising – "civilizing" theme dominated education. Emphasis in the schools was on the teaching of the Christian religion...In the Mission schools planted amongst the Grebos, Krus, and Bassas, the vernacular language of the area was taught, mainly in connection with the reading of the Bible. Some manual activities were provided for, but technical skills which would have facilitated economic sufficiency were subordinated as were civic and social learning for adjustment in the new environment. Practically all of the schools planted were within the colonial settlements. Children who attended them were the children of settlers, children of recaptured Africans and Indigenous native African children residing in the Colony. Children of tribes outside the Colony, even those tribes under the influence of the Colonial Government, were served only by the "bush" schools.'

⁵⁵⁰ World Bank Group, 'Empowering Girls and Young Women in Liberia: Adolescent Girls Initiative' 1 <<http://siteresources.worldbank.org/EXTGENDER/Resources/AGILiberiaBrief.pdf>>.

⁵⁵¹ World Bank Group, 'Can Skills Training Increase Employment for Young Women? The Case of Liberia' (UN, Adolescent Girls Initiative - The World Bank, 1 January 2015) 17, 3–4, 9 <<http://documents.worldbank.org/curated/en/2015/01/23805000/can-skills-training-increase-employment-young-women-case-liberia>>.

Liberia mobilised through protests and civil actions to fight against discrimination and injustice.⁵⁵²

Whilst education access can improve quality of life and potentially reduce injustices, one must be mindful of problems associated with Western dominated formal education, which may also be a conduit of colonial systematic violence. Ralph Beals and Harry Hoijer perceive education as a continuous process which includes all of the learning (formal and informal) that results in both the acquisition of culture by the individual and accommodation to living as a member of society.⁵⁵³ Indeed, the lasting effects of formal and informal education depend on its quality and type. Sometimes formal education, which is mostly seen as Western-imposed education, can cause harm to a person, society, or country. For example, the belief that traditional schools in Liberia are primitive and inferior to Western formal education has denigrated and marginalised Native Peoples' cultural practices in Liberia. This denigration is not always perpetrated by Western actors. Through the 'tyranny and viciousness of Eurocentric orthodoxy ... some uninformed, brainwashed African scholars themselves categorize their own indigenous ways of knowing as "myths", "superstition", and "non-science"'.⁵⁵⁴ As described earlier by Fanon et al., the convention is that Western education is perceived as superior to Indigenous knowledge. The fact that elders practice oral and living Indigenous knowledge to educate the next generation, presents no justification for dismissing unwritten traditional knowledge as non-existent. In support of traditional schools (i.e. the *Poro* and *Sande* Institutions) in Liberia, Augustus Caine warns that, '[a]ny failure on the part of the older generation to impart its values to the coming generation or to train new individuals for particular positions inevitably means that the society and its culture will be impoverished'.⁵⁵⁵ This problem is even more pronounced in Australia, where generations of children were

⁵⁵² Liebenow, above n 55, 78. The influx of foreigners under Tubman's Open-Door Policy exposed Indigenous Liberians to individuals from several continents and reversed the long-standing attempt by the Americo-Liberian to insulate the tribal people against alien influences.

⁵⁵³ Ralph L Beals, Harry Hoijer and Virginia More Roediger, *An Introduction to Anthropology* (MacMillan, 1953) 570.

⁵⁵⁴ Gloria Emeagwali and George J Sefa Dei, *African Indigenous Knowledge and the Disciplines* (2014) vii, ix <<http://dx.doi.org/10.1007/978-94-6209-770-4>>.

⁵⁵⁵ Augustus Feweh Caine, *A Study and Comparison of the West African 'Bush' School and the Southern Sotho Circumcision School* (Master of Arts, Northwestern University, 1959) 7; Bai T Moore, *Liberian Culture at a Glance: A Review of the Culture and Customs of the Different Ethnic Groups in the Republic of Liberia* (Ministry of Information, Cultural Affairs and Tourism, 1979) 17. The *Poro* and *Sande* Institutions (derogatorily called Bush School) emphasise the individual's place and function in the society by clearly defining their role and status from childhood to old age. *Poro* and *Sande* education involves a cycle of initiation sessions, four years for boys and three years for girls. During the initiation sessions, the boys are carried away from the village and kept in a grove for four years, where they are not seen by women. Likewise, the girls are kept in a grove for three years where they are not seen by men. Usually, at the end of these initiation sessions, the boys and girls are ushered back into the village by elaborate ceremonies. They are required to exhibit the skills they have learned whilst in the initiation groves, such as dancing, singing, arts and crafts, to mention a few. Western education introduced here by the settlers, and later by missionaries, did not take into account the cultural value of the Indigenous systems. Rather, the latter was looked upon as something inferior. Although Western education has made a tremendous impact on the Indigenous systems, adaptations have been made to retain the roots which support the accumulated experiences which Caine calls our cultural heritage. Caine asserts that the aim of the *Sande* and *Poro* Schools (i.e. the traditional education system for boys) is to transform boys to men and girls to women. As training is separated into male only and female only initiations, to become a 'man', a boy must be familiar with the history of his group, its legal and moral principles. He must learn to work to support his family and discharge his other kinship obligations. These trainings are charged to elders who, by oral traditions, learned from the fore-bearers to pass down onto new generation.

forcibly removed from Aboriginal communities for education in Western institutions. Some interventions to prevent this cultural damage are now being attempted in Australia. For example, charged with a moral and cultural obligation, an Aboriginal outstation in remote Arnhem Land is preparing to open its own school that blends Indigenous and Western teaching. The school at Kabulwarnamyo, located on the west Arnhem Land plateau about 650 kilometres south-east of Darwin, will be launched starting with ten children. It is a move that rejects the federal government's push to send children from outstations to larger regional communities and towns.⁵⁵⁶

A well-thought-out system of health, education, housing, and employment may intersect to provide a holistic approach to addressing the developmental needs of Indigenous Peoples in Liberia and Australia. A probable reason why Liberia has not been able to 'break its resource curse'⁵⁵⁷ lies in its ongoing failure to implement a multi-faceted intervention that seeks to unearth the causes of violence against women and children. Or, as Alfred puts it, typically, all colonised Indigenous societies have 'entrenched dependencies, in physical, psychological and financial terms, on the very people and institutions that have caused the near erasure of our existence and who have come to dominate us'.⁵⁵⁸ Indigenous Peoples in Liberia's and Australia's ongoing struggle to attain equal access to socio-economic wealth and resources partly reflect a failure of law and policy, which this research examines.

2.1.5 Theme 5: (Aboriginal) Feminism, International Human Rights Law and Protection

The arrival of settlers in Liberia and Australia brought a new legal order with racist and gender ideologies that perceived Indigenous women⁵⁵⁹ as subservient to men.⁵⁶⁰ See chapter 3 for more discussion on gender relations between Indigenous Peoples and settlers in Liberia and Australia. Pervasive gender inequalities compelled white women in Australia and elite African American settler-colonist women in Liberia to fight for gender parity. Albeit contentious,⁵⁶¹ feminism was built on the affluence of Western white women, as discussed in chapter 1. Therefore, white feminists inherently leverage white privilege, i.e., advantages and benefits that white people derive socially, politically, legally, and economically, as a result of being white, to help them

⁵⁵⁶ Emma Masters, 'Remote Indigenous Outstation Rejects Federal Policy and Opens Own School' *ABC News* (Darwin, NT), 22 July 2015 <<http://www.abc.net.au/news/2015-07-22/remote-nt-indigenous-community-opens-own-school/6639220>>.

⁵⁵⁷ Kay, above n 313; *ibid*; Economywatch, above n 314; Staff Reporter, 'Liberia: Rich but Poor - African Progress Panel Lists Resource Cursed' *Front Page Africa* (Monrovia, Liberia), 8 May 2014 <<http://www.frontpageafricaonline.com/index.php/politic/1585-liberia-rich-but-poor-africa-progress-panel-lists-resource-cursed-nations>>.

⁵⁵⁸ Alfred, above n 455.

⁵⁵⁹ Libby Connors, 'Women on the South-East Queensland Frontier' (2008) 15(2) *Queensland Review* 19.

⁵⁶⁰ Carol Thomas and Joanne Selfe, 'Aboriginal Women and the Law' in *Proceedings of a conference held 23-25 June 1992* (Australian Institute of Criminology, 1993) 1, 168 <http://www.aic.gov.au/media_library/publications/proceedings/21/thomas.pdf>.

⁵⁶¹ Bell, 'XIV. 'White Women Can't Speak?', above n 246; Jackie Huggins et al, 'Letter to the Editors: Response to "Speaking About Rape Is Everyone's Business"' (1991) 14(5) *Women's Studies International Forum* 505; Rebecca Stringer, 'Impractical Reconciliation: Reading the Intervention through the Huggins-Bell Debate' (2012) 27(71) *Australian Feminist Studies* 19.

gain some level of gender equality with white men.⁵⁶² Notwithstanding the general lack of support from Western feminism,⁵⁶³ Indigenous women in both post-war Liberia and Australia have been making invaluable contributions to the gender-justice and equality agenda for a long time (e.g., Truganini⁵⁶⁴ in Australia and Chief Suakoko in Liberia). For example, during the civil war in Liberia, Indigenous women movements spearheaded the peace process that not only brought the civil war⁵⁶⁵ to an end in 2003 but also instigated the creation of *United Nations Security Council Resolutions (UNSCR) 1325 2000* (on women and peace and security)⁵⁶⁶ and *United Nations Security Council Resolutions (UNSCR) 1820 2008* (on sexual violence in war).⁵⁶⁷ Similarly, in Australia, Aboriginal women's advocacy for change cuts across disciplines, ages, and professions.⁵⁶⁸ However, serious gaps in Indigenous women's treatment within social, political, and legal spheres still exist.

Violence against Indigenous women and girls in Australia is still not adequately understood or addressed by the people and institutions charged with its elimination. Carol Thomas and Joanna Selfe lament a problematic lack of statistical data on violence against women in the legal system.⁵⁶⁹ The lack of data feeds into a widespread ignorance of systematic gender violence, rights of the abused, and a resulting reluctance to name violence for what it is: abuse of girls and women, says Diane Bell.⁵⁷⁰ Bell argues that the task of confronting violence against women who are already on the margins of society requires theorising around the issues of race, indigeneity, and gender intersectionality.⁵⁷¹ Openly discussing the issue of rape in Aboriginal society is particularly difficult, partly because of a genuine fear of reinforcing racial

⁵⁶² Victoria Hovane, 'White Privilege and the Fiction of Colour Blindness: Implications for Best Practice Standards for Aboriginal Victims of Family Violence' (2006) 27 *Australian Domestic & Family Violence Clearinghouse Newsletter* 8.

⁵⁶³ *Third World Women and the Politics of Feminism* (Indiana University Press, 1991) 3.

⁵⁶⁴ Max Delano Beers, *Max Adventures: Redemption of Truganini* (Max Delano Beers and Amazon Digital Services, Smashwords, 2012).

⁵⁶⁵ Leymah Gbowee and Ali Benton, 'Leymah Gbowee: An Extraordinary Life'

<<http://www.abc.net.au/radionational/programs/drive/leymah-gbowee3a-an-extraordinary-life/4626452>>; UN Women, above n 212; Press, above n 106; Pari Farmani, *Etweda Cooper* (April 2007) *Inclusive Security* <<https://www.inclusivesecurity.org/experts/etweda-cooper/>>; Peace Women Across the Globe, 'Mary Brownell (Liberia)' <http://wikipacewomen.org/wpworg/en/?page_id=3096>; Ghana Business News, 'Dr. Evelyn Kandakai, First Woman to Head WAEC after 62 Years' *Ghana Business News* (Accra, Ghana), 11 April 2015 <<https://www.ghanabusinessnews.com/2015/04/11/dr-evelyn-kandakai-first-woman-to-head-waec-after-62-years/>>.

⁵⁶⁶ The UNSCR 1325 was created six years after the Liberia Women Mass Movement. Understanding that the impact of armed conflict on women and girls mandates effective institutional arrangements to guarantee their protection and full participation in promoting international peace and security, paragraph 1 of UNSCR 1325 '[u]rges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict'.

⁵⁶⁷ Reaffirming commitment to UNSCR 1325 (2000), UNSCR 1820 (2008) specifically focused on the impact, prevention and cessation of widespread systematic wartime sexual violence against girls and women.

⁵⁶⁸ Larissa Behrendt, *Indigenous Legal Relations in Australia* (Oxford University Press, 2009)

<<http://www.amazon.com/Indigenous-Relations-Australia-Larissa-Behrendt/dp/0195562011>>; Concerned Australians, *Enough Is Enough - Statement on the Stronger Futures in the Northern Territory Bill 2011 and Two Related Bills* (2011) <<http://vimeo.com/33827160>>; Megan Davis, 'How Do Aboriginal Women Fare in Australian Democracy?' (2007) 6(28) *Indigenous Law Bulletin* 9; National Centre of Biography, *Peris, Nova (1971-?)* (10 August 2017) *Indigenous Australia* <<http://ia.anu.edu.au/biography/peris-nova-17821>>; Anita Heiss, *Government Policy in Relation to Aboriginal People* (2013) Barani <<http://www.sydneybarani.com.au/sites/government-policy-in-relation-to-aboriginal-people/>>; Marilyn Lake, *Faith: Faith Bandler, Gentle Activist* (Allen and Unwin, 2002).

⁵⁶⁹ Thomas and Selfe, above n 560, 170–171.

⁵⁷⁰ Bell, 'Intra-Racial Rape Revisited: On Forging a Feminist Future beyond Factions and Frightening Politics', above n 518.

⁵⁷¹ *Ibid.*

stereotypes of retribution and exhibiting cultural arrogance.⁵⁷² Rather than prioritising women in research and law reform, their suffering is being clumped together and branded as ‘domestic violence’, ‘customary practice’, or an ‘expression of distress’.⁵⁷³ When an opportunity does arise to offer Indigenous women meaningful participation in addressing social ills that befall them, doing so is still a challenge. For example, Elena Marchetti criticises the Royal Commission into Aboriginal Deaths in Custody (hereafter RCIADIC) for failing to consider the problems confronting Indigenous women.⁵⁷⁴ Marchetti argues that RCIADIC did not dedicate a chapter to considering the problems of Indigenous women and ‘...expressly referred to Indigenous women in only five of its 339 recommendations’⁵⁷⁵ (see Appendix AX for more detail). This lack of focus on Indigenous women’s suffering allows the perpetuation of violence with modes specific to Indigenous Peoples.

Indigenous women face unique threats of violence that require targeted interventions to eliminate. Kerry Arabena submits that Aboriginal and Torres Strait Islander women’s reproductive health has been so subjected to colonial control that it constitutes structural violence. According to Arabena, Indigenous Peoples are not only seen as property that benefits Western medicine but also is degraded to sex symbols. Arabena’s themes and Bell’s thesis both contain references to sexual and reproductive violence against Aboriginal girls and women committed by both settlers and Indigenous males. Assessment of Bell’s and Arabena’s views acknowledges that protection for Aboriginal girl and women survivors of systematic violence must extend beyond physical safety and physical location to incorporate cultural safety, protection from threats to cultural identity, cultural appropriateness, and cultural relevance. Clearly, protecting Indigenous girls’ and women’s rights must be seen through a human rights lens. Otherwise, mainstream services will continue to employ colour-blind practices⁵⁷⁶ and implement white models that disempower and fail to promote the safety of Aboriginal survivors.⁵⁷⁷ International, regional, national, and local legal instruments and mechanisms may serve to define and protect those human rights.

Liberia and Australia⁵⁷⁸ have legal obligations under both domestic and International law to protect Indigenous women’s rights. International women scholars are raising the gender justice platform to prominence, subject to the adoption of *Convention on the Elimination of all forms of Discrimination against Women* 1979, the *United Nations Convention on the Rights of*

⁵⁷² Ibid.

⁵⁷³ Ibid.

⁵⁷⁴ Elena Marchetti, *Missing Subjects: Women and Gender in the Royal Commission into Aboriginal Deaths in Custody* (PhD Thesis, Faculty of Arts, Griffith University, 2005) 2–3.

⁵⁷⁵ Ibid 3.

⁵⁷⁶ Lorana Bartels, *Indigenous Women’s Offending Patterns: A Literature Review* (Australian Institute of Criminology, 2010) 30. A point is worth noting here of Bartels research, which observed that ‘Indigenous women are increasingly over-represented in criminal justice processes, occurring at an intolerably high level of family violence, over policing for selected offences, ill health, unemployment and poverty’.

⁵⁷⁷ Hovane, above n 562.

⁵⁷⁸ Andrew Byrnes, ‘The Convention on the Elimination of All Forms of Discrimination against Women and the Committee on the Elimination of Discrimination against Women: Reflections on Their Role in the Development of International Human Rights Law and as a Catalyst for National Legislative and Policy Reform’ 12 <<http://law.bepress.com/cgi/viewcontent.cgi?article=1212&context=unswwps-flrps10>>.

the Child 1989, the *Cairo Conference on Population and Development* 1994⁵⁷⁹ and the *United Nations Declaration on the Rights of Indigenous Peoples* 2007. Sub-regionally, Liberia is party to the *African Charter on the Rights and Welfare of the Child* 1990 and the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* 2003. However, it is important to examine these instruments beyond signing and ratifying, to evaluate their ability to address the intersecting factors affecting humans who are both Indigenous and women. For example, Rauna Kuokkanen (2015) points out that the *Declaration on the Rights of Indigenous Peoples* 2007 is widely understood to reflect rights already found in other international human rights treaties, '[y]et out of 46 Articles the UNDRIP mentions women only in three'.⁵⁸⁰ The *Convention on the Elimination of all Forms of Discrimination against Women* 1979 is a non-binding international human rights instrument. Apart from the fact that General Comments made by its 23 all-female committee members include no enforcement mechanism, the document makes no reference to Indigenous women. Therefore, CEDAW must be interpreted in tandem with other human rights documents such as the UNDRIP.⁵⁸¹ Further, international and regional instruments must still be domesticated in State law and policy to affect individuals in those States.

Apart from the Australian Human Rights Commission and the Independent National Human Rights Commission (a national body in Liberia), states and counties have been slow to establish and implement local human rights institutions and laws to protect Indigenous women's rights. Although the Liberian *Constitution* 1986 contains a bill of rights, there are no public human rights laws have been established at the county level in Liberia.⁵⁸² Conversely, the Commonwealth of Australia has no Bill or Charter of Rights⁵⁸³ and the Australian Capital Territory is the first of only two States in Australia to pass a *Human Rights Act* 2004. According to Jon Stanhope, the Human Rights Act was part of a broad program of the Australian Capital Territory Government, which included commissioning Hillary Charlesworth's inquiry into a

⁵⁷⁹ UNFPA, International Conference on Population and Development, available at < <http://www.unfpa.org/icpd>>.

⁵⁸⁰ Lennox and Short, above n 114, 1–2. Available at SSRN: <<http://ssrn.com/abstract=2414293>>, 1-2. Article 21.2 calls for states to take effective measures to ensure the improvement of Indigenous peoples' economic and social conditions whilst paying particular attention to 'the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities.' Article 22.1 reiterates the need to attend to 'the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities' in implementing the Declaration. Finally, Article 44 states that the Declaration applies equally to 'male and female Indigenous individuals.' Besides these three articles, the language of the UNDRIP is gender-neutral and it does not elaborate what the 'rights and special needs' of women or the other aforementioned groups might be.

⁵⁸¹ Helen Tugendhat and Eleanor Ditaan-Bang-oa, *Realising Indigenous Women's Rights: A Handbook on the CEDAW* (Tebtebba Foundation, Forest Peoples Program and Asia Indigenous Women's Network, 2013) x. Also see, Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations of the Committee on the Elimination of Discrimination against Women: Australia, 12-30 July 2010, CEDAW/C/AUS/CO/7, 7-8 and Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations of the Committee on Combined Seventh and Eighth Periodic Reports of Liberia: Liberia, 24 November 2015, CEDAW/C/LBR/CO/7-8, 4-6, and 8.

⁵⁸² Seodi White and Rosemarie James, 'An Analysis of Laws from a Gender Perspective in Liberia: Final Assessment Report' (Government Report, Office of the Gender Advisor (UNMIL) and Ministry of Gender Development, 1 August 2009) 55, 12–16.

⁵⁸³ *Bills of Rights in Australia: History, Politics and Law* (University of New South Wales Press, 2009) 23 <http://www.amazon.com/Bills-Rights-Australia-History-Politics/dp/1921410175/ref=sr_1_2?s=books&ie=UTF8&qid=1362561405&sr=1-2&keywords=Bills+of+rights+in+australia>.

Bill of Rights for the Australian Capital Territory, to decriminalise abortion.⁵⁸⁴ Note that the focus on abortion is not an issue unique to Aboriginal women. Although the Australian Capital Territory's *Human Rights Act* applies only to territorial law, Jeremy Gans argues that the *Human Rights Act* has had three major, albeit precarious, national impacts:

- 1) its enactment on 10 March 2004 broke a century-long taboo on domestic human rights law protection in Australia;
- 2) as the first Australian domestic human rights law, it has now generated the first decade's worth of human rights precedents to be considered in other Australian jurisdictions; and
- 3) its enactment led directly to the formation of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).⁵⁸⁵

The Attorney General of the Australian Capital Territory, Simon Corbell, remembers the difficulties of implementing the *Human Rights Act*:

Those of us who remember the lead up to the Human Rights Act being passed by the Legislative Assembly might remember the grim warnings in the media around the effect a Human Rights Act would have on the Territory. Despite the evidence, we had about the kinds of effects Human Rights legislation had had in other jurisdictions, we were given to understand that everything would become a human rights issue, people would prosecute outlandish rights, and the courts would grind to a halt under the weight of human rights litigation. And then 1 July 2004 came and went, and life continued.⁵⁸⁶

Heidi Yates affirms that the Australian Capital Territory's *Human Rights Act* shines a ray of hope on other jurisdictions where, anecdotally, public servants may feel less empowered in their decision-making, and where it may help to identify potential conflicts even when the ruling government is antagonistic towards such legislation.⁵⁸⁷ The existing Australian Human Rights Commission and the establishment of the Human Rights Acts in the Australian Capital Territory and Victoria have been met with much enthusiasm. However, their impact on Aboriginal women has yet to be determined.

Ensuring that local implementation of human rights law will benefit Indigenous women requires understanding the issues and perspectives of those women. Bell argues that new understandings tend to emerge when women are allowed to speak, as in the gutsy provocation of renowned Australian film actress and Aboriginal activist Rosalie Kunoth-Monks:

I am not something that fell out of the sky for the pleasure of somebody putting another culture into this cultured being ... I am not an Aboriginal, or indeed indigenous, I am ... [a] first nation's person...a sovereign person from this country. I speak my language,

⁵⁸⁴ Jon Stanhope, 'ACT Human Rights Act - Tenth Anniversary' (University Gathering at the Ten Years of the ACT Human Rights Act Continuing the Dialogue, Acton, ACT, 2014).

⁵⁸⁵ Jeremy Gans, 'The Impact of the Human Rights Act 2004 (ACT) on Other Australian Jurisdictions' (University Gathering at the Ten Years of the ACT Human Rights Act Continuing the Dialogue, Acton, ACT, 2014).

⁵⁸⁶ Simon Corbell, '10 Years of the Human Rights Act Conference: Speech by the Attorney-General of ACT' (University Gathering at the Ten Years of the ACT Human Rights Act Continuing the Dialogue, Acton, ACT, 1 July 2014) <<http://www.hrc.act.gov.au/res/10%20Years%20of%20the%20Human%20Rights%20Act%20Conference%20Speech.doc>>.

⁵⁸⁷ Heidi Yates, 'The Impact of the Human Rights Act in the Community' (University Gathering at the Ten Years of the ACT Human Rights Act Continuing the Dialogue, Acton, ACT, 2014).

and I practice my cultural essence of me...don't try and suppress me, and don't call me a problem, I am not the problem.⁵⁸⁸

However, Bell warns that women's perceptions of themselves present analytical challenges to understanding their contribution to a society that is constrained by male dominance.⁵⁸⁹ An example is Caroline Bledsoe's controversial assertion about Liberian traditional female society, '...that Sande seeks to produce symbolically pure adult women as well as bonds of female solidarity...[however,] Sande elite often side with elite men and exploit subordinate women'.⁵⁹⁰ Against this backdrop, extreme care must be taken when addressing systematic gender violence in collective terms such as 'feminism' or human rights, since both males and females are capable of inflicting harm, albeit at different rates; and, international law instruments that protect women are not implemented and enforced simply because a state party signs or ratifies them. The goal of this research is to seek insights from Indigenous Women Advocates and other participants into how such challenges should be tackled.

2.1.6 Theme 6: (Harmful) Religious and Traditional Practices

*The only means of rendering this colony what it was intended to be made, a truly Christian and civilized asylum of an outcast race of men, [was] the immediate engagement of at least one laborious Christian minister, of the most respectable qualifications; but above all, of the most ardent piety, and untiring zeal.*⁵⁹¹

*Ignoring these brutalizing and dehumanizing conditions [of the slave trade], westerners persisted in the perception of the black man as degraded and consequently lacking in civilization – hence the need for combining the Christianizing mission with a “civilizing” effort. Such a perception led to the belief that the slave trade was a blessing in disguise. This is why American slavery was projected, in the thinking of providentialists, as a part of God's plan to uplift Africa by bringing [its] degraded children into contact with the more elevated culture of the Americas.*⁵⁹²

According to Dunn's quotation (above), no amount of dehumanisation, torture, or abuse, whether through the slave trade, violent frontier battles, or massacres can ever make settler-colonists criminals because they are the true executors of God's divine plan to Christianise and civilise Indigenous heathens. Given that they consider their own to be the one true monotheistic religion, settler-coloniser Christians do not acknowledge Indigenous religion in Australia and Liberia. Aboriginal religion has been viewed as myth, magic, superstition, rituals, and ceremonies but certainly not 'in the sense of propitiation or conciliation of the higher powers'.⁵⁹³ Although, according to Archbishop George Daniel Browne, as referenced by Dunn, some missionaries discovered their mistake, which was critical in converting believers of African

⁵⁸⁸ ABC News, 'Rosalie Kunoth-Monks Inspires with Her Q&A Speech: "I Am Not the Problem"' *ABC News Q&A* (Sydney, NSW), 10 June 2014 <<http://www.news.com.au/national/rosalie-kunothmonks-inspires-with-her-qa-speech-i-am-not-the-problem/story-fncynjr2-1226949124486>>.

⁵⁸⁹ Diane Bell, *Daughters of the Dreaming* (Spinifex Press, 3rd ed, 2002) 230.

⁵⁹⁰ Reverend Jehudi Ashmun (1794-1828) the First Colonial Agent of ACS in Liberia. Caroline Bledsoe, 'The Political Use of Sande Ideology and Symbolism' (1984) 11(3) *American Ethnologist* 455.

⁵⁹¹ D Elwood Dunn, *A History of the Episcopal Church in Liberia, 1821-1980* (American Theological Library Association and The Scarecrow Press, 1992) 17.

⁵⁹² *Ibid* 19.

⁵⁹³ Ronald M Berndt, *Australian Aboriginal Religion* (Brill, 1974) vols 1-4, 1.

Traditional Religion to Western Christianity.⁵⁹⁴ Irrespective of missionaries' efforts to shrug off African Traditional Religion, these beliefs are still real in the lives of many African Christians, a phenomenon known as African syncretism,⁵⁹⁵ where two or more different religious practices are mixed or combined.⁵⁹⁶

Indigenous Peoples the world over have a strong relationship with their creator;⁵⁹⁷ however, this relationship is not considered valid by settler-colonists. Teah Wulah lists the different names used to identify the Creator in Indigenous Liberia. They are *Gala, Ngala, Wala vo, Go, Zena, Abi, and Nyesoa*.⁵⁹⁸ According to Wulah, when someone harms another in the village, the villagers would say, *Nyesoa mu jae* (Kru) meaning *God or our Creator will see you*. When a child is born with any defects, it is believed to be the work of the Creator. The seat of their Creator is the Sky. She is inescapable because she lives everywhere.⁵⁹⁹ The belief is that the Creator made good and evil, and whoever was bad was to go to her through death. The Creator also gives human intelligence, compassion, mercy, and conscience. When a person dies, their soul joins the company of their ancestors and automatically becomes a candidate for reincarnation.⁶⁰⁰ However, settler-colonists to both Australia and Liberia believed in the truth and superiority of their own conception of a Creator, resulting in the denigration of Indigenous religious beliefs and practices. In a condescending tone, Basedow attests to the existence of Aboriginal religion in Australia:

It has often been written that the Australian aboriginal is without religious ideas and without religious ceremonies. Such assertions are grossly incorrect and by no means portray the psychological side of the primitive man in its true light. He has, to the contrary, religious institutions and obligations which verge on the basis of all modern conceptions and recognition of divine supremacy. If we can class Nature-worship, Ancestor-worship, and Sex-worship as the beginnings of all religious teachings, then the Australian aboriginal has certainly inherited by instinct and tradition a valid solid foundation from which we might trace the origin of many, if not most, of our most sacred beliefs in Christianity. At the same time, it must not be forgotten that it is really a difficult matter to distinguish clearly between mythological beliefs and what we class as religion.⁶⁰¹

Although Basedow recognises a shared foundation between Christianity and Indigenous Religion, his assessment still portrays Indigenous peoples as 'primitive' and conveys the classification of practices as religious or not is within the purview of the settler-colonists. As a result of views like these, settler-colonists felt justified in embarking on a Christianising mission in Liberia and Australia.

⁵⁹⁴ Dunn, above n 591.

⁵⁹⁵ Kasomo Daniel, 'An Assessment of Religious Syncretism. A Case Study in Africa' (2012) 2(3) *International Journal of Applied Sociology* 10.

⁵⁹⁶ Emmanuel Dolo, *Ethnic Tensions in Liberia's National Identity Crisis: Problems and Possibilities* (Africana Homestead Legacy Publishers, 2007) 91.

⁵⁹⁷ Patricia R Derrington, *The Serpent of Good and Evil: A Reconciliation in the Life and Art of Miriam-Rose Ungunmerr-Baumann* (Hyland House, 2000).

⁵⁹⁸ Wulah, above n 169, 209.

⁵⁹⁹ *Ibid* 210.

⁶⁰⁰ *Ibid* 211.

⁶⁰¹ Herbert Basedow, *The Australian Aboriginal* (F. W. Preece and Sons, 1925) 257–258.

Religion has always played a vital role in the civilising and Christianising of Indigenous Peoples in Liberia⁶⁰² and Australia.⁶⁰³ Modern Liberia derives, in part, from deep stirrings within the American conscience about how to address questions of slavery and race. One of the factors that spurred religious revivals in 18th-century America was the situation of black slavery. These crusades paved the way for the Great Awakening of the early 1740s. Some white Christians began to look upon black people as objects ‘of God’s loving concern’, who were ‘entitled to share in His redeeming grace in alignment with white humanity’.⁶⁰⁴ The Reverend Robert Finley of New Jersey was the apparent initiator of the debate with the founding of the American Colonisation Society, which spearheaded the return of African American settler-colonists to Liberia.⁶⁰⁵

Religious organizations engaged in the Christianising mission in Liberia began imposing their beliefs on Indigenous people when they arrived in Africa. Immigrants constructed churches almost as quickly as they built their homes. In 1859, news reached America that scores of children and youths had converted to Christianity. Christianity was but one element of a ‘civilised’ culture that the settlers struggled to preserve. The immediate influences of African society, many of which the settler-colonists considered unfavourably, forced the settlers to maintain an exaggerated, yet often a pompous alternative,⁶⁰⁶ that is, Christianity is next to civilisation and is superior to Traditional African Religion. One of the dominant religious groups involved in Christianising Indigenous Liberians was the Episcopal Church.

The Episcopal Mission Church contributed significantly to Christianising Indigenous Liberians and affording ‘bush boys’ the white man’s education. Paul Degein Korvah’s narrates his experience regarding white missionaries replacing ‘country names’ with civilised Christian/Western names: ‘Father Patrick became interested in me because I was good in my catechism. It was he who baptised us, my friend Mawolo and me. He gave us the Christian names of Peter and Paul, respectively’.⁶⁰⁷ Christian missionaries went even further with disciplining Christian ‘converts’ who entered the traditional schools or sent their children there. The new Christian mission schools also created competition for traditional schools. Indigenous children who entered the Christian schools were often withdrawn after brief periods to attend traditional schools. In fact, the majority of Indigenous Liberian children attended only the traditional schools in the early 1800s.⁶⁰⁸ Conflicts between Indigenous and Western educational systems persist to the present day, challenging the effective education of Liberian children in

⁶⁰² Cassell, above n 53, 124.

⁶⁰³ Christine Choo, *Mission Girls: Aboriginal Women on Catholic Missions in the Kimberley, Western Australia, 1900-1950* (University of Western Australia Press, 2001); Tony Swain, Deborah Bird Rose and Australian Association for the Study of Religions (eds), *Aboriginal Australians and Christian Missions: Ethnographic and Historical Studies* (Australian Association for the Study of Religions, 1988).

⁶⁰⁴ Dunn, above n 591, 13.

⁶⁰⁵ *Ibid* 15.

⁶⁰⁶ Shick, above n 170, 53.

⁶⁰⁷ Korvah, above n 548, 111.

⁶⁰⁸ Brown, above n 50, 62.

both institutions. However, this conflict highlights that despite the imposition of settler-colonists' values on Indigenous Peoples, traditional knowledge persisted. Unfortunately, the cultural violence of stripping Indigenous Peoples of their Indigenous names and traditional education was not the only effect of the Christianising mission, as a policy of Christian superiority was also adopted by the State.

The settler-colonists of Liberia, borrowing from their slave masters, initially envisaged Liberia as a Christian nation with an evangelical mission. For example, a name considered for the capital city of Liberia was 'Christopolis'. A close interconnection of church and state is implicit in the political ideology of the nation-building process in Liberia (e.g. Jehudi Ashmun, a missionary and administrator, was appointed as the first governor of the colony of Liberia from 1822 to 1828).⁶⁰⁹ In later years, former president Tubman (1944-1971) explained his stance as a religious man: '[w]hen I state that the history of Church is coeval with that of the founding of the State I do not intend only to imply that that is a thing or fact apart but to give the impression that their respective fabrics are indissolubly interwoven... You may be assured that Liberia, having always been, shall continue to be a Christian state....'⁶¹⁰ Meanwhile, adherents to the Muslim religion have also always existed peacefully alongside Christians in Liberia, flanked by devotees of Traditional African Religion, save for a number of disputes in Lofa and other places in the past years. Arguably, like Liberian traditional religious practices, Islam was gradually pushed out of the cities and relegated to Indigenous communities such as the Vai, Gola, Mende, and Mandingo.⁶¹¹ Today, the Government of Liberia continues to claim that the country is a Christian nation even though the country is 86 percent Christian, 11 percent Muslim and 0.5 percent Indigenous religious beliefs, according to the National Population and Housing Census 2013.⁶¹² In Liberia, Christian affiliation was the most conspicuous example of settler solidarity, but the settler elite also found other ways to insulate themselves and consolidate power.

Parallel to Christianity was the existence of fraternal organisations in Liberia, once again borrowed from colonial masters in hopes of building a 'little America' in Africa. The first independent Masonic Order of Liberia started in 1851. Undoubtedly, many settler-colonists were already initiated Prince Hall Masons when they came to Liberia.⁶¹³ Several leading settlers convened and established the Independent Restoration Grand Lodge. The first president of Liberia Roberts (1848-1856 and 1872-1876) held the first Grand Master position between 1869 and 1872.⁶¹⁴ The conveners believed that they had full right and authority to act, noting that American Masons had established the precedent when they broke away from the original

⁶⁰⁹ Arthur Orrmont, *Fighter against Slavery: Jehudi Ashmun* (J. Messner, 1966).

⁶¹⁰ The Article 1 and the Preamble of the Constitution of Liberia 1847 and 1986, respectively, acknowledge the goodness of God, the Divine Creator in the existence of a 'Free, Sovereign and Independent State'. Also see, Fraenkel, above n 39, 153.

⁶¹¹ *Ibid* 155-156.

⁶¹² Government of Liberia, 'Liberia Demographic and Health Survey 2013', above n 313, 24.

⁶¹³ Shick, above n 170, 53.

⁶¹⁴ *Ibid*.

English Grand Lodge after the American Revolution.⁶¹⁵ A settler-colonists association, created through the order, offered the opportunity to transmit the accepted societal values of Christian propriety, which included good moral character and charitable nature. It also was clearly a political institution serving the needs of the settler-colonist elite in much the same way that the *Poro* and *Sande* Societies functioned within traditional Liberia.⁶¹⁶ The secrecy that shrouded the Masons as with the *Sande* and *Poro* traditional schools probably lent additional legitimacy to the highly placed elites and gave them a safe forum to discuss differences of opinion.⁶¹⁷ Whilst the fraternal orders continued to exclude women from the political elite, the traditional societies also perpetrate cultural violence against Indigenous women and girls.

Although the *Sande* and *Poro* societies represent a valuable decolonising force in Liberia, some of their practices still adversely affect women and girls. Legalisation of the *Poro* and *Sande* traditional institutions, previously banned as potential political threats to settler-colonists' rule, appears to fortify traditional participation in national politics.⁶¹⁸ However, as CEDAW's concluding statement asserts:

The Committee notes the State party's efforts to address stereotypes and harmful practices by, among other things, issuing circulars banning certain practices that perpetuate discriminatory gender stereotypes. The Committee is, however, concerned at the persistence of adverse cultural practices and traditions, as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in society and in the family, which are perpetuated by secret tribal societies such as the *Sande* and the *Poro*. The Committee notes that such stereotypes contribute to the increase in child and/or forced marriage, the abduction of girls and polygamy, and hence to the disadvantaged and unequal status of women in society. The Committee is particularly concerned that the secret tribal societies continue to perpetrate harmful practices, including female genital mutilation, through their initiation rites, and that practices such as trial by ordeal for women and girls accused of witchcraft, as well as ritual murders, are rife.⁶¹⁹

Therefore, this study further explores the effects of these harmful traditional practices on Indigenous women and girls in Liberia. Also, similar complex intersections of history, religion, and state institutions affect Aboriginal women and girls in Australia.

In Australia, according to Reynolds, missionaries, clergymen, and other humanitarians were inspired to lead Aboriginal Peoples in the 1830s and 1840s.⁶²⁰ Based on the premise that one God created humankind as descendants from Adam and Eve, Reynolds asserts that Christian missionaries went out to redeem their 'brethren' from the scourge of everlasting torment in hell. Whilst some missionaries endeavoured to save Aboriginal Australians as equal heirs to the Lord's kingdom (the 'saviours'), many despised them with a passion (the

⁶¹⁵ Ibid 57.

⁶¹⁶ Ibid.

⁶¹⁷ Ibid.

⁶¹⁸ J Gus Liebenow, *Liberia: The Quest for Democracy* (Indiana University Press, 1987) 57–58.

⁶¹⁹ Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations of the Committee on Combined Seventh and Eighth Periodic Reports of Liberia: Liberia, 24 November 2015, CEDAW/C/LBR/CO/7-8, para 21.

⁶²⁰ Reynolds, above n 418, 22.

‘destroyers’).⁶²¹ A case in point is that of Reverend William Horton, the first resident Wesleyan Methodist minister to arrive in Van Damien’s Land in 1821. About Aboriginal Peoples in Tasmanian, he wrote, ‘I should affirm, without hesitancy that they are a race of being altogether distinct from ourselves and class them amongst the inferior species of irrational animals’.⁶²² It is this twisted perception that armed settler-colonists with boldness to dehumanise and denigrate Indigenous Peoples in the name of religion and civilisation.

2.2 Summary

This chapter identifies themes that highlight the complex intersection of race, gender, class, indigeneity, colonial history, religion, health, and education that contribute to systematic gender violence against Indigenous Peoples. This intersectionality necessitates the use of theories drawn from the critical race, decolonisation, social determinants of health, and feminist jurisprudence to effectively analyse the material. Although research data and resources collected on the literature review do not directly address Indigenous women and girls specifically, materials obtained situate major issues regarding violence against Indigenous women by providing a broad understanding of work done, which helps identify gaps and challenges in the topic area. The next two chapters focus on the specifics of systematic gender violence and the rule of law as they pertain to Indigenous girls and women in post-war Liberia and Australia.

⁶²¹ Reynolds, *Dispossession*, above n 177, 155–182.

⁶²² Reynolds, above n 418, 23.

CHAPTER 3: VIOLENCE AGAINST INDIGENOUS GIRLS AND WOMEN

*Violence is generally seen as a manifestation of patriarchal values of male supremacy involving factors such as ownership of property, power and control, female subordination, and the institution of marriage and the family. Male violence relates to gender inequity. Thus, it is a political issue. It is not only women who are traumatized by the violence. Children do not only observe their parents' conflict, there is increasing evidence that the abuse of children is endemic in Australia.*⁶²³

*For two long years, I have sought a home. Here I have found one, and here will I remain.*⁶²⁴ *We want no flagstaff put up here that will cost us more to take down than to whip the natives.*⁶²⁵

3.0 Introduction

Wendy Anders's quotation captures the quintessence of systematic violence against Indigenous girls and women, the complexity of that violence, and its correlation to various facets of society. The prevalence of violence against girls and women is disproportionately higher and mostly perpetrated by men. Global estimates published by the World Health Organisation show that roughly 1 in 3 women (35 percent) worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime.⁶²⁶ Worldwide, 38 percent of murdered women dies at the hands of their male intimate partner.⁶²⁷ Due to their intersectional identity as both women and Indigenous, which is shaped by socio-economic factors, Aboriginal women are susceptible to male need for power, control and dominance, the impetuses of men's incessant desire to inflict violence on girls and women. According to the principle of the social determinants of health, socio-economic conditions, such as good education, quality health, and meaningful employment reduce inequities.

Although there has never been a better time to be born a female,⁶²⁸ the global gender disparity, which is inextricably linked to physical, sexual and psychological violence against women, shows that the status of girls and women is still lagging behind. Women makeup two thirds (496 million) of the world's 781 million illiterate adults aged 15 and over, a proportion that has not changed for two decades.⁶²⁹ Out of 142 countries worldwide, Liberia ranks 111th on the Global Gender Gap index (the relative gaps between women and men across health, education, economics, and politics) and occupies the second lowest rank on literacy. Australia

⁶²³ Anders, above n 527, 3; Steven Sovran, 'Understanding Culture and HIV/AIDS in Sub-Saharan Africa' (2013) 10(1) *SAHARA-J: Journal of Social Aspects of HIV/AIDS* 1.

⁶²⁴ Azikiwe, above n 301, 49. According to Azikiwe, upon arrival to the West African coast, many of the former slaves succumbed to disease and persistent resistance from the Indigenous. The Above quotation is Elijah Johnson's to Dr Elijah Ayres, when faced with the possibility of returning to the United States.

⁶²⁵ Staff Reporter, 'History and Us: Elijah Johnson, Great Liberian Pioneer' *Daily Observer* (Monrovia, Liberia), 10 December 2013 <<http://www.liberianobserver.com/history-us/history-and-us-elijah-johnson-great-liberian-pioneer>>; Cooper, *The House at Sugar Beach*, above n 168, 69.

⁶²⁶ World Health Organisation, *Violence against Women* (November 2016) WHO <<http://www.who.int/mediacentre/factsheets/fs239/en/>>.

⁶²⁷ *Ibid.*

⁶²⁸ *Ibid.*

⁶²⁹ United Nations, 'The World's Women 2015: Trends and Statistics' (UN Report, Statistic Division, Department of Economic and Social Affairs, 2015) 260, 79.

ranks 24th overall and first in literacy on the same index.⁶³⁰ Whilst, globally, life expectancy is higher for women (67-72 years) than for men (63-68 years), sub-Saharan Africa has the narrowest gender gap. This region contains all 30 countries in the world with the lowest life expectancy of 60 years and under. In Liberia, life expectancy at birth is 61 years for women and 59 years for men. In Australia, life expectancy at birth is 85 years for women and 80 years for men. According to the *World's Women Report 2015*, across all sectors and occupations, women earn less than men earning between 70 and 90 percent of what men earn in full-time employment in most countries.⁶³¹ Globally, women occupy only 22 percent of seats in national legislatures.⁶³² As of 1 January 2015, women represented eight out of 73 and three out of 30 seats in the Liberian House of Representatives and the Senate, respectively.⁶³³ In Australia, women occupied 40 out of 150 and 29 out of 76 seats in the House of Representatives and Senate, respectively.⁶³⁴ These statistics underscore the prevalence of social and political factors which intersect to place women in Liberia and Australia in an increased state of vulnerability to men in their families, communities, and governments. However, is it also important to consider the additional factors affecting girls?

By virtue of being children, Indigenous girls are at even greater risk of becoming targets of violence. According to Behrendt, Aboriginal children, by nature of being smaller, feeble and less powerful, are more susceptible to generalised violence. In a recent TEDx talk,⁶³⁵ Susan Bissell affirmed that '1 in 8 children disclose that they have experienced violent discipline in the very place that they are supposed to feel most safe'.⁶³⁶ As with women, systematic violence against Indigenous girls is sustained through both the multiplier effect phenomenon⁶³⁷ and intersecting factors. Anna Carastathis affirms that intersecting factors are operative and equally salient in constructing 'institutionalised practices and lived experiences, since a real-life person is not, for example, a [girl or] woman on Monday, a member of the working class on Tuesday...' ⁶³⁸ But that girls and women are often at a crossroads of diverse violence on a daily basis with increased exposure to traumatic death. Therefore, it is necessary to identify the various intersecting sources of violence that determine the conditions under which women and girls live.

Understanding violence against women and girls requires mapping out the interconnecting systems that enable or directly perpetrate that violence. E Hunter's honest

⁶³⁰ Yasmina Bekhouche et al, *The Global Gender Gap Report 2014* (World Economic Forum, 2014) 28, 104 <http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf>.

⁶³¹ United Nations, 'The World's Women 2015: Trends and Statistics', above n 630, 87.

⁶³² Inter-Parliamentary Union, 'Women in Politics: 2015' <http://archive.ipu.org/pdf/publications/wmnmap15_en.pdf>.

⁶³³ *Ibid.*

⁶³⁴ *Ibid.*

⁶³⁵ TED is a nonpartisan non-profit devoted to spreading ideas, usually in the form of short, powerful talks (*see*: <https://www.ted.com>).

⁶³⁶ Susan Bissell, 'Unveiling a New Superpower' (You-tube videos at the TEDx Talks, India, 13 August 2015) <<https://www.youtube.com/watch?t=219&v=I-BKGebLy28>>.

⁶³⁷ That is intersecting factors of race, class, social status and gender exacerbates Aboriginal women and girls' vulnerability to generalised violence.

⁶³⁸ Carastathis, above n 244.

attempt to explicate the diverse intercultural and historical contexts underlying Aboriginal personal violence, based on his three years of experience living in the Kimberley,⁶³⁹ attracts Joseph Reser's critique:

His [E Hunter's] 'analysis' also typifies a particular type of perspective and thinking with respect to Aboriginal issues as a historical, system level, 'sympathetic' account, written by a non-Aboriginal, of the cumulative and devastating impact of culture contact and rapid social and cultural change on Aboriginal communities and consciousness.... While the argument and perspective [re the period of destabilisation and increased alcohol availability where males appeared to be more vulnerable to the consequences of their own reckless behaviour and females increasingly likely to be the victim of male's behaviour] in the initial section of Hunter's paper is interesting, it does not really say very much about the nature or causes of intercultural violence, nor does it in any way explain why the violence described was intercultural or the dynamics of this violence. Rather, what is presented is a selective and superficial overview of diverse and unintegrated perspectives on alcohol and aggression, with none of the qualifications one might expect with respect to unresolved issues and cultural bias.⁶⁴⁰

The 'superficiality', 'selectivity' and 'unintegrated' perspectives Reser alludes to demand that this research adopt systematic praxis and theory to find the nature and causes of violence against women. However, a phenomenological approach that values survivor discourse requires that generalised data be interwoven with personal lived experiences to help shed light on the complicated nature of violence against Indigenous girls and women. Therefore, this chapter defines violence, discusses how three intertwined levels of systematic violence affect Aboriginal Peoples and describes select sources of the violence which permeates the lives of Indigenous societies in post-war Liberia and Australia. Unique case examples from both countries and ongoing challenges faced by remedying interventions illustrate the prevalence, sources, impact, and severity of violence. As a framework, this dissertation maintains that systematic violence, socially constructed by patriarchal and parochial arrangements, occurs at three levels: state/institutional, structural/cultural and community/interpersonal levels, and encompasses acts, omissions, or threats to life.⁶⁴¹

3.1 What is Violence? – Interpersonal, Structural and Institutional

Greg Barak argues that whilst there appears to be more demonising of perpetrators of violence, the sources, origins, or causes of violence get relatively little attention and even less concern compared with the historical explanation of non-violence.⁶⁴² As a proponent of James Gilligan's 'germ theory'⁶⁴³ of violence, Barak reasons that theories of violence (and non-violence) are efficient in that they 'frame the problem of social violence in an appreciation of its genesis or

⁶³⁹ EM Hunter, 'The Intercultural and Socio-Historical Context of Aboriginal Personal Violence in Remote Australia' (1991) 26(2) *Australian Psychologist* 89. Hunter, (though wary of 'unwisely' stating that alcohol is the direct cause of violence) draws some positive correlations between the year alcohol became freely available to Aborigines in the Kimberley (1957-1971) and that of infant and adult mortality rates.

⁶⁴⁰ Joseph P Reser, 'The "Socio-Historical" Argument and Construction of "Aboriginal Violence": A Critical Review of Hunter (1991)' (1991) 26(3) *Australian Psychologist* 209.

⁶⁴¹ Susan SM Edwards, *Sex and Gender in the Legal Process* (Blackstone Press, 1996) 1.

⁶⁴² Gregg Barak, *Violence and Nonviolence: Pathways to Understanding* (Sage Publications, 2003) 9.

⁶⁴³ James Gilligan, *Violence: Reflections on a National Epidemic* (Vintage Books, 1997) 89; Barak, above n 643, 10.

roots rather than in condemnation or repudiation of the behaviour.⁶⁴⁴ Feminist theory states that to curb personal violence and societal structures that perpetuate gender inequalities, male dominance must be tackled.⁶⁴⁵ From a decolonisation perspective, Frantz Fanon suggests that,

The violence which has ruled over the ordering of the colonial world, which has ceaselessly drummed the rhythm for the destruction of native social forms and broken up without reserve the systems of reference of the economy, the customs of dress and external life, that same violence will be claimed and taken over by the native at the moment when, deciding to embody history in his own person, he surges into the forbidden quarters.⁶⁴⁶

In the context of the combined theories of feminism, decolonisation, intersectionality and critical legal theory, examining three interconnecting levels of systematic violence⁶⁴⁷ promises to explicate the complex layers of violence with respect to the role of law as a mechanism for justice, equality and fairness. The three levels of violence assessed in this research are 1) personal/community violence; 2) structural/cultural violence; and 3) institutional/state violence. Together they are referred to as systematic violence because of their ability to be organised methodically and purposefully.

Personal and community violence: If separated, the three levels of violence could be broken down into six distinct types of violence. However, for the purpose of this research interpersonal violence is grouped with community violence. The reason stems from the perception that interpersonal and community violence occurs at the lowest social stratum, i.e., it occurs at home and in the local community, between individuals. At this level, violence is a direct source happening in private settings. That is, a human being is a direct object or perpetrator of the violence,⁶⁴⁸ rather than an entity such as an employer or other institution.⁶⁴⁹ This form of violence is perpetuated by individuals (e.g., family members, neighbours, or friends) and is, for the most part, tied to the home and their locale. Examples of personal and community violence in this research include rape, domestic violence, and the exploitation of children.

Structural and cultural violence: Johan Galtung suggests that the major distinction between personal and structural violence has to do with identifying the aggressor or actor.

⁶⁴⁴ Barak, above n 643, 9. Drawing on public health and preventive medicine, Gilligan purports that violence is neither biological nor universal, nor is it found in genetic materials or evolutionary development. Like germs the pathogens that cause deadly forms of violence are human emotions (e.g., shame) located in social sewer systems (e.g., prisons and mental hospitals) which are like waste receptacles for human garbage. 'As incarcerated others, belonging to the internal worlds of 'society of captives', these violent and nonviolent persons become victims of the institutional and structural relations of violence that accumulate and intensify behind prison walls'.

⁶⁴⁵ Carrie L Yodanis, 'Gender Inequality, Violence against Women, and Fear: A Cross-National Test of the Feminist Theory of Violence Against Women' (2004) 19(6) *Journal of Interpersonal Violence* 655.

⁶⁴⁶ Fanon, above n 247, 40.

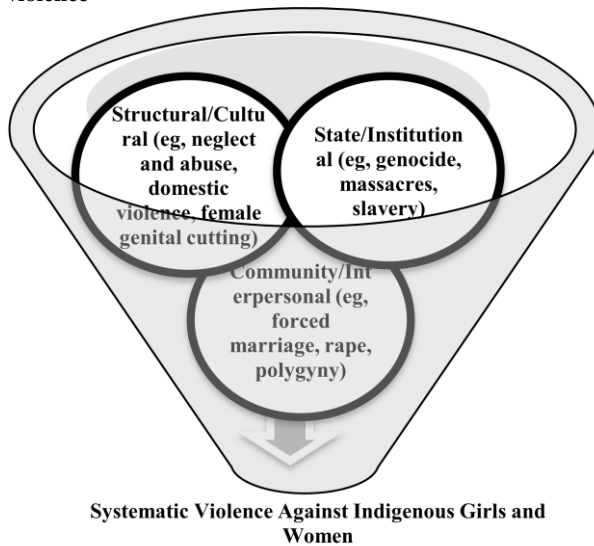
⁶⁴⁷ Kumar Rupesinghe, Marcial Rubio Correa and United Nations University (eds), *The Culture of Violence* (United Nations University Press, 1994) 46. Felipe MacGregor and Marcial Rubio defines violence as '[a] physical, biological or spiritual pressure, directly or indirectly exercised by a person on someone else, which, when exceeding a certain threshold, reduces or annuls that person's potential for performance, both at an individual and group level, in the society in which this takes place'.

⁶⁴⁸ Johan Galtung, 'Violence, Peace and Peace Research' (1969) 6(3) *Journal of Peace Research* 167.

⁶⁴⁹ Barak, above n 643, 23.

Unlike personal (or direct) violence, where the aggressor or is an acting subject,⁶⁵⁰ the perpetrator in structural or cultural violence tends to be hidden, embedded within societal structures (e.g., traditions, stereotypes and stigmas, or social groups).⁶⁵¹ The vectors of structural violence are shaped, maintained, and eventually transformed with the margins of humans' ability to mould and form behaviour. In many cases, victims of structural and cultural violence are shaped by the same intangible beliefs.⁶⁵² Felipe MacGregor and Marcial Rubio's argue that

Figure 3.1: Flow diagram showing interaction of systematic violence



structural violence results from the working of social structures which are closely related to cultural violence.⁶⁵³

Barak observes two kinds of group structural violence. One establishes, defends and extends hierarchy and inequality through the beating, exploiting, harassing, killing and torturing of persons. The other is pursued to decrease privilege and increase liberty, by attacking those persons, symbols, and things that represent the 'establishment' or the 'powers that be'.⁶⁵⁴ Galtung's

definition of cultural violence is also linked to structural violence. According to Galtung, cultural violence is '...any aspect of a culture [the symbolic sphere of our existence – exemplified by religion and ideology, language and art, empirical/formal science] that can be used to legitimize violence in its direct or structural form.'⁶⁵⁵ Examples of structural and cultural violence in this research include abuse and neglect by social services, racism and stigmatisation of Indigenous Peoples, female genital cutting, forced marriage, and polygyny.

Institutional and State Violence: Although the State is a type of institution, this study identifies state violence as a unique form of violence using legal instruments and authority to promulgate systematic violence against Indigenous girls and women. MacGregor and Rubio conceptualise institutional violence as a 'type of structural violence which is formally implanted in the institutions and is accepted or at least tolerated, with the complicity of the people'.⁶⁵⁶ Barak describes the 'people' MacGregor and Rubio mention as institutional agents (e.g., corporate, workplace, military, religious and state).⁶⁵⁷ Institutional violence may be impersonal

⁶⁵⁰ Rupesinghe, Rubio Correa and United Nations University, above n 648, 47.

⁶⁵¹ Ibid 50.

⁶⁵² Ibid 4, 49.

⁶⁵³ Ibid 42, 49.

⁶⁵⁴ Barak, above n 643, 5.

⁶⁵⁵ Johan Galtung, 'Cultural Violence' (1990) 27(3) *Journal of Peace Research* 291.

⁶⁵⁶ Rupesinghe, Rubio Correa and United Nations University, above n 648, 51.

⁶⁵⁷ Barak, above n 643, 23.

but still causes emotional, psychological and physical trauma to individuals. Some institutional violence is overt, whilst some are covert, making it challenging to pinpoint.⁶⁵⁸ Examples of state and institutional violence in this research include massacres, land dispossession, state-sponsored genocide, and military actions against Indigenous civilians.

A caveat is in order when interpreting the three levels of systematic violence. Each component of systematic violence overlaps and touches the others to form a web of interactions (see Figure 3.1). This complex interaction of systematic violence against Indigenous girls and women demands a comprehensive theoretical framework to address the research question both from both the literature review and an empirical perspective.

3.2 Australia

Drawing on decolonisation theory, it is not possible to assess the impact of colonial violence on Aboriginal Peoples, without briefly considering Australia's convict history as an explanation, in part, of why 'the oppressed, instead of striving for liberation, tend themselves to become oppressors or sub-oppressors [because] the very structure of their thought has become conditioned by the contradictions of the concrete, existential situation by which they were shaped'.⁶⁵⁹ Furthermore, white Australian convict history provides ample evidence that systematic violence is not confined to Aboriginal girls and women, but affects all women. Chapter 7 presents a statistical analysis of convict transportation to Australia.

After decades of feeling ashamed to admit to their convict past,⁶⁶⁰ Australians now feel a sense of pride⁶⁶¹ about their journey from being convicts to playing an integral role in building the Australian nation-state.⁶⁶² Today, roughly one in seven Australians are descended from

⁶⁵⁸ Deane Curtin (ed), *Institutional Violence* (Rodopi, 1999) xii.

⁶⁵⁹ Paulo Freire, *Pedagogy of the Oppressed* (Continuum International, 30th Anniversary, 2005) 45.

⁶⁶⁰ Shick, above n 170, 21. A sense of pride filters through the echo of Historian Michael Cathcart, as he presents Rogue Nation. He rhetorically posits the essence of the documentary, '...how a remote convict settlement, a place of misery in exile begin to change into a place of opportunity and hope? How a group of outcast and people on the make begin to transform themselves into a nation...' Interestingly, the same can be said for the Afro-American settlers in Liberia, who despite their dehumanising experience enslavement for well over three centuries and their bravery in treading those perilous voyages back to Africa (i.e., 4 571 Afro-Americans immigrated to Liberia between 1820-43, Liberian census record showed only 2 388 persons living in that year; still to this date, embody a deep sense of pride, entitlement and superiority over 'uncivilised' Indigenous Liberians.

⁶⁶¹ PBS, 'Voyage of the Courtesans', *Secrets of the Dead*, 2005 <<http://www.pbs.org/wnet/secrets/voyage-of-the-courtesans/159/>>. Although the history of convicts arrival in the penal colony of Australia (carefully orchestrated by English white males) cannot always be glorified, female convicts, one the other hand, who were referred to by colonists as 'an unfortunate and unnecessary cargo' / 'a cargo have been praised as the founding mothers; who will restore the dying colony, breathing life and civilisation into it'. In responding to Captain Phillip's request to redeem the colony by sending more food and women, British Under Secretary Evan Nepean, rounded up 225 condemned women mostly of child-bearing age including five infants on board the Lady Juliana, potentially, the same ship used to haul shackled slaves from Africa. Women, whether consenting or not, became 'wives' of crewmembers and prisoners so that after ten months at sea, Ann March (along with seven others) was pregnant for John Nicol, the Ship Surgeon. Mary Wade, Ann March and Elizabeth Barnsley will all go on to be successful founding mothers of the colony adding significantly to its economic wealth.

⁶⁶² Port Arthur Historic Sites, *Pack of Thieves? 52 Port Arthur Lives* (Port Arthur Historic Site Management, 2001) 5; Peter Gunn and Rebecca Kippen, 'Household and Family Formation in Nineteenth Century Tasmania Dataset' <<http://www.femaleconvicts.org.au/index.php/convict-institutions/children/pregnancy-and-children>>. In *Pack of Thieves? 52 Port Arthur Lives*, The Port Arthur Historic Sites writes, '[w]e tend to think of convicts as shadowy figures. They skulk in dimly lit back lanes of an imagined Dickensian London or they clank down Australian roads in long shuffling chain gangs, their backs bent. We see them, not as individuals, but as something other and alien – perhaps even as dangerously subhuman. This is particularly true of the convicts sent to Port Arthur, Australia's most

convicts,⁶⁶³ including former Prime Ministers John Howard⁶⁶⁴ and Kevin Rudd.⁶⁶⁵ But the sense of pride descendants of convicts feels today was not always there. In fact, the grim reality of Australian convict history is also plagued with trauma, discrimination and abuse against both females and males. Between 1787 and 1868, the British transported approximately 160 000 convicts to Australia⁶⁶⁶ on 825 voyages (using 423 convict ships), though few came from Canada, America, Bermuda and other British colonies.⁶⁶⁷ A majority⁶⁶⁸ of the convicts were

famous convict settlement. As these men had been sentence to transportation twice (once in the British Isle and effectively a second time by a colonial court before being banished to the confines of a penal station) they are regarded as doubly banished damned ‘hardened’ repeat offenders – the sweepings of the Australian transportation system’. The seemingly twisted sense of pride perceived by the author of *Pack of Thieves: 52 Port Arthur Lives* was actually experienced during the researcher’s visit to Port Arthur, Tasmania between 31 October and 6 November 2014 when a tour guide commented that (paraphrased), life at Port Arthur was good, considering how poor England was at the time, people lied and admitted to crimes they did not even commit in order to come to VDL for warm bath, clothes, some bread and soup. He went on to say that, ‘women and girls were happy to bear children for prison staff, commanders and prisoners who became paupers after their freedom. He claimed women were happy to be mothers, even if they were raped’ because such a life was never to be had given the conditions under which they came from in England. Suffice to say, prior to visiting Port Arthur, almost three hours were spent at the Cascade Female Factory in Hobart where facts and record showed that 21 per cent (241) of all the children (1 148) born to female convicts in Hobart nursery between 1845 and 1857, were born to women under sentence in the Cascade Female Factory. According to Gunn and Kippen: ‘[p]regnant convicts were usually returned to the Government for their confinement and remained with their babies until they were weaned—initially, weaning occurred at six months, but was later extended to nine months in an attempt to reduce the death rate of infants in the nurseries. After weaning, the mother had to serve six-month imprisonment in the Crime Class at a female factory as punishment for getting pregnant. The children, if they survived the terrible conditions, remained in the various nurseries until they reached the age of 2 or 3 years when they were removed to the Orphan Schools, unless their mother had gained her freedom in the meantime or could prove she could support the child’. A brief statistical overview of Gunn and Kippen (2006) data, shows not only that 21 per cent of all 525 children born to mothers from the Cascade Female Factor died from diarrhoea; but that only four of these children had a father name recorded.

⁶⁶³ Parramatta Female Factory Precinct, *Convicts and Characters* (2015) Parra Girls

<<http://www.parragirls.org.au/convict-connections.php>>; Tony Rennell, ‘The Founding Fathers of Australia: The Story of Convicts Shipped to the New World’ *Daily Mail* (London), 25 July 2007

<<http://www.dailymail.co.uk/news/article-470887/The-founding-fathers-Australia-The-story-convicts-shipped-New-World.html>>; John N Molony, *The Native-Born: The First White Australians* (Melbourne University Press, 2000) 1. In other words, Molony suggests that, ‘[t]here is an abundance of evidence that the early native-born, 90 per cent of whom sprang from convict parentage, were made to feel second-rate and outsiders to society because of their parentage’.

⁶⁶⁴ Melissa Stevens, ‘Howard’s Secret Criminal Past’ *The Daily Telegraph* (London, UK), 14 February 2007

<<http://www.dailytelegraph.com.au/news/nsw/howards-secret-criminal-past/story-e6freuzi-111112988170>>.

According to Stevens, Howard’s maternal great-great-great-grandfather, William Tooley was convicted of complicity in the theft of a tortoiseshell watch and transported for life on the Fanny in 1816. His mother’s maternal ancestor also began through a convict forebear, Thomas Barker, who was transported for life after being convicted of two counts of robbery, arriving on the Bengal Merchant in 1835. Noteworthy, it was during the Howard government that *Northern Territory National Emergency Response Act 2007* was enforced. The NTERA was a legislative response of the Commonwealth Government’s inquiry into the protection of Aboriginal children from sexual abuse.

⁶⁶⁵ Bonnie Malkin, ‘Australian Prime Minister Kevin Rudd Descended from Thieves’ *The Telegraph* (London, UK), 31 July 2008 <<http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/australia/2479134/Australian-prime-minister-Kevin-Rudd-descended-from-thieves.html>>; Mary Wade History Association, *Mary Wade To Us: A Family History 1778-1986* (MacArthur Press, 1986) 4–8, 72. As documented by the Mary Wade History Association, in addition to being a former Prime Minister of Australia, Kevin Rudd is also known for being a descendant of Mary Wade, the youngest convict to Australia aboard the all-female vessel Lady Juliana arriving in Sydney on 3 June 1790. On 14 January 1789, 10 years old Mary Wade was found guilty of stealing one cotton frock, value at 3s, one linen tippet, value 2d, and one linen cap, value at 2d. She was sentenced death by hanging. It is quite frightening how the Lord Chief Baron likened 10-year-old Mary (and her friend Jane Whiting) act to that of a violent crime, even though he admitted to the Jury (apparently, all men) at the trial that her crime was less than a robbery: On the other hand, Rudd’s paternal great-great-great-great father, Thomas Rudd arrived on board the Earl Cornwallis in 1801, having been convicted of stealing a bag of sugar.

⁶⁶⁶ The *Penal Servitude Act 1857*, repealed sections 1, 2, 3, and 4, of the *Penal Servitude Act 1853*, which provided for the sentencing of transportation of any person contrary to the *Transportation Act 1717* (4 Geo. 1 cap XI). Although the last transportation of 281 convicts on board the Hougoumont arrived in Western Australia on 9 July 1868.

⁶⁶⁷ Port Arthur Historic Sites, above n 663, 5–8; Port Arthur Historic Sites, *Pack of Thieves? 52 Female Factory Lives* (Port Arthur Historic Site Management, 2014) 8–11; State Library of Queensland, *880 Convict Voyages to Australia*

penalised unjustly for petty crimes. Not only were their sentences disproportionate to the crimes committed, but some were put in gaols that were unfit for habitation.⁶⁶⁹ They were ripped from their homeland and social support system to endure long treacherous journeys by sea.⁶⁷⁰ On arrival in Australia, they were condemned to hard labour spending an average of nine years in prison in addition to facing deliberate starvation.⁶⁷¹ Their sweat and blood produced food, clothing, furniture, and infrastructure, and girls and women (consenting or not) were at the mercy of males' sexual desire,⁶⁷² both on board the ships⁶⁷³ and during imprisonment in Australia.⁶⁷⁴ As one of the few British penal colonies in the world, Australia accepted a large

(2015) Convict Records <<http://www.convictrecords.com.au/timeline>>; Perth Dead Persons Society, *Convict Ships to Australia* (2002) Convicts to Australia <<http://members.iinet.net.au/~perthdps/convicts//shipNSW1.html>>.

⁶⁶⁸ Of the 127 470 convict records collected by the State Library of Queensland, there were total of 873 623 years of sentences, 28 000 of which were life sentences. The top five crimes committed were, stealing (17.9 per cent); larceny (10.2 per cent); burglary (5.6 per cent); sheep stealing (4.4 per cent); and theft (3.3 per cent).

⁶⁶⁹ Siân Rees, *The Floating Brothel: The Extraordinary True Story of an Eighteenth-Century Ship and Its Cargo of Female Convicts* (Hyperion, 2002) 5, 35–36. Consider Rees description of the Newgate gaol condition: '[b]y December 1788, 151 female convicts in Newgate Gaol were living in three cells built to house a maximum of 70. They lived on rations fixed for that theoretical maximum and not the number actually confined. Each cell had one window opening onto an interior wall. There were no beds; a ramp at one end of the room with a wooden beam fixed to its top end served as mattress and pillow. To sleep on the ramp and beam was a privilege, to be paid for weekly. To rent a blanket woven of raw hemp cost extra. Those who could afford neither curled up together on stone slabs awash with saliva and urine. Before the cells were opened each morning, turnkeys would drink a glass of spirits to keep them from fainting, for the 'putrid stream or myasma' was enough to knock them off their feet. The population of Newgate was malnourished, debilitated, cold, inadequately clothed and infested with disease-bearing lice. Its cells were a happy home for typhus. ... the gaol went into crisis each winter and generally staggered through until spring, providing nothing terrible happened. But the winter of 1788 was exceptionally severe; the gaols were hopelessly crowded and there were not enough funds in the pot to pay for food, let alone medicine'. Unfortunately, it did not help that in 1783, some 130,000 males were discharged when the American colonies defeated King George's British and German forces forcing London to house tens of thousands of ex-soldiers'.

⁶⁷⁰ Robert Hughes, *The Fatal Shore: A History of the Transportation of Convicts to Australia, 1887-1868* (Vintage Books, 1st ed, 1988) 1–2, 83, 129–130. According to Hughes, the founding of the Australian nation-state is framed on England's pursuit to eliminate the 'criminal class'. He writes, '[b]ut here [Australia], the process was to be reversed: not Utopia, but Dystopia; not Rousseau's natural man moving in moral grace amid free social contracts, but man coerced, exiled, deracinated, in chains.... In their most sanguine moments, the authorities hoped that it would eventually swallow a whole class—the "criminal class," whose existence was one of the prime sociological beliefs of late Georgian and early Victorian England. Australia was settled to defend English property not from the frog-eating invader across the Channel but from the marauder within. English lawmakers wished not only to get rid of the "criminal class" but if possible to forget about it. Australia was a cloaca, invisible, its contents filthy and unnameable'. Hughes also documents the experiences of Thomas Hodden and Peter Withers as they reflect on their 'transportation' in letters to their dear wives. Thomas Hodden: 'It's with sorrow that I have to acquaint you that I this day receiv'd my Tryal and has receiv'd the hard sentence of Seven Years Transportation beyond the seas....' Peter Withers: 'My Dear Wife believe me my Hark is almost broken to think I must lave you behind. O my dear what shall I do i am all Most distracted at the thoughts of parting from you whom I do love so dear'. In spite of their fear, pain and trauma, the first fleet (11 ships) set sail on 13 May 1787. After 252 days *via* Rio de Janeiro and Cape Town, the crammed ships with 48 dead (40 convicts, five convicts' children, one marine's wife, one marine's child and a marine) docked in Sydney Cove on 18 January 1788 (p. 83).

⁶⁷¹ *Ibid* 84.

⁶⁷² Rees, above n 670, 5–11. On 29 July 1789, Lady Juliana left England with 226 female convicts, heading for Port Jackson, Australia. The real purpose for their 'transportation' after being pardon by mad King George III, was to appease the sexual needs of ever expanding male convict population in Australia. In Rees's words, '[b]y the first week in December 1788, all these "disorderly women" (and Francis Bunting) were awaiting trial in Newgate Gaol, London, part of a turbulent population of seven hundred accused or convicted prisoners' (p. 5).

⁶⁷³ Babette Smith, *A Cargo of Women: Susannah Watson and the Convicts of the Princess Royal* (Allen and Unwin, 2nd ed, 2008) 51. Smith acknowledges the stereotypical perception of female convicts being naughty. She writes, '[t]he female convict ships were also notorious for the relationships that developed between the women prisoners and the crew. In 1829 women convicts no longer travelled on the same ship as male prisoners and this, had reduced the outright prostitution of female prisoners which had occurred in earlier years. Nevertheless, the women were largely at the mercy of the male passengers, officers and crew, even if it was only to exchange sex willingly for extra privileges'.

⁶⁷⁴ Deborah Oxley, *Convict Maids: The Forced Migration of Women to Australia* (Cambridge University Press, 1996) 12. Contrary to common belief that convict women were 'damned whores originating from a professional criminal class, unskilled in all but vice and unfit to contribute anything positive to colonial development', Oxley presents an inventory of data to prove otherwise.

number of female convicts. At least 24 960 female convicts (15 percent of all convicts to Australia) were shipped to Australia, with more than 9 000 occupying at least one of 12 female factories built across the colony.⁶⁷⁵

Van Diemen's Land, modern-day Tasmania, is one example of the Australian penal colony system. Colonised by the British in 1803 as a primary penal settlement, mostly for repeat offenders⁶⁷⁶ in Australia, 75 000 (40 percent) of all convicts to Australia were shipped to Van Diemen's Land up until 1853. Van Diemen's Land hosted roughly half (13 000) of all female convicts between 1803 and 1853. The Cascades Female Factory, one of five correction facilities constructed in Van Diemen's Land, held approximately 6 000 prisoners.⁶⁷⁷ Some of those prisoners were children as young as 11 years old. Violence against female convicts took root in England, occurred on board as they were being transported to Australia, and persisted during their imprisonment in Australia. This violence was enabled by the convicts' stigmatisation as being immoral and bad.⁶⁷⁸ They were often labelled as prostitutes and compelled to share factories with men and young boys.⁶⁷⁹

The stories of Elizabeth Hayward and Charlotte Williams bring alive the collective experience of women's vulnerability to male violence during Australia's colonial period. On 13 May 1787, when the First Fleet departed from Portsmouth, England, the youngest female, Elizabeth Hayward, was aboard *The Lady Penrhyn*. Prior to leaving, 13-years old Elizabeth had stolen a linen gown, a silk bonnet and a bath cloth cloak, all at the value of seven shillings.⁶⁸⁰ Tried and found guilty by the second Middlesex Jury before Mr. Recorder Thomas Cross at the Justice Hall in the Old Bailey, Elizabeth was sentenced to transportation for seven years.⁶⁸¹ Charlotte, an illiterate Welsh mother of nine children, was sentenced to transportation for 14 years along with her son, 13-year old Evan.⁶⁸² Her two older sons, Thomas and James, were convicted of sheep stealing on the testimony provided by Charlotte's 11-year-old daughter,

⁶⁷⁵ National Archives of Australia, *Social History: Your Story, Our History* (2015) Women transported: myth and reality <<http://www.naa.gov.au/collection/publications/papers-and-podcasts/social-history/women-transported.aspx>>.

⁶⁷⁶ All early convicts from England were sent to Botany Bay. By the dawning of the 1800s settlers' authority recreated now penal settlement for repeat offenders in Botany Bay, Norfolk Island, Van Diemen's Land, Port Macquarie and Moreton Bay (see <http://members.iinet.net.au/~perthdps/convicts/res-02.html>).

⁶⁷⁷ Port Arthur Historic Sites, *The Australian Convict Sites* (2011) Cascades Female Factory Historic Site <http://www.femalefactory.org.au/history/the_australian_convict_sites>; Government of Australia, above n 354; Female Convicts Research Centre Inc, *Female Convicts* (2015) Female Convicts Research Centre <<http://www.femaleconvicts.org.au>>; La Trobe University, 'The First Fleet: The Real Story with Alan Frost' <<http://www.latrobe.edu.au/news/articles/2011/podcasts/the-first-fleet-the-real-story/transcript>>; Port Arthur Historic Sites, above n 668, 8.

⁶⁷⁸ There were three phases of female transportation to Van Diemen's Land: exile or open prison (1803–13), assignment (1814–42), and probation (1843–53). In each, the numbers of convict women arriving in Van Diemen's Land increased, and they were subjected to more severe penal conditions (see, http://www.utas.edu.au/library/companion_to_tasmanian_history/F/Female%20convicts.htm).

⁶⁷⁹ The Point Puer Boys' Prison at Port Arthur ('lauded as an inescapable prison where prisoners committed crimes just to be killed rather than endure the bad conditions') was the first reformatory built exclusively for juvenile male convicts in the British Empire. Renowned for its stern discipline and harsh punishment, the Boys' Prison held some 3 000 boys, as young as nine years, who were sentenced between 1834 and 1849 (see, <http://www.portarthur.org.au/index.aspx?base=1923>).

⁶⁸⁰ Cheryl Timbury, 'Elizabeth Hayward'.

⁶⁸¹ Ibid.

⁶⁸² Port Arthur Historic Sites, above n 668, 92–14.

Rachel, the prosecution's key witness – all of whom were sentenced to life.⁶⁸³ During the trial, the judge asked Rachel about her mother, Charlotte: could she read? Could she say prayers? Rachel replied 'no' to both questions.⁶⁸⁴ The judge continued asking, did she know it was wicked to tell lies? And, did she know where people who tell lies went to after they were dead? 'Yes,' Rachel replied to both questions, adding 'to hell' after her affirmation of the former question.⁶⁸⁵ Today, in English law, not only is an 11-year-old not competent to testify except in carefully guided circumstances provided by law,⁶⁸⁶ but she or he also cannot be sentenced for life, except for very serious offences, such as murder.⁶⁸⁷ Unfortunately, this pattern of over sentencing, separating families, and mass incarceration were repeated in Australia as a means to subdue and control Aboriginal Peoples.

3.2.1 Aboriginal Incarceration and Deaths in Custody

Settler-colonists in Australia began incarcerating Aboriginal Peoples soon after the arrival of the First Fleet,⁶⁸⁸ and Aboriginal Peoples in Australia are still overrepresented in Australia's prisons. Although Aboriginal Peoples in Australia make up 2.8 percent of the country's population, they account for 27 percent of the total Australian prisoner population, with sexual assault being the fifth most common offense after acts intended to cause injury; unlawful entry with intent; offences against justice and robbery and extortion.⁶⁸⁹ Alarming, a report released by the Human Rights Law Centre and the Change the Record Campaign in May 2017 found Aboriginal women comprise 34 percent of the total adult female prison population in Australia, an increase of 148 percent since the *Royal Commission into Aboriginal Deaths in Custody*

⁶⁸³ Ibid 92–94.

⁶⁸⁴ Ibid.

⁶⁸⁵ Ibid.

⁶⁸⁶ Ibid. Later, Rachel's father (Charlotte's husband) would die on 2 March 1835 in the River Thames prison, Thomas died on 16 July 1833 in the colonial hospital, less than a year after he was transported. After her arrival on the Frances Charlotte, the master to whom Charlotte was assigned charged her with neglect of duty, and she was reprimanded to VDL to serve out her sentence. As a model convict, she gained conditional pardon on 18 November 1841. The rise in female convicts was guarded by policies that focused on morality and economics where convict females were encouraged to reform and be rewarded. Upon arrival, they were assigned to colonial masters as servants. On sustaining a 'good behaviour' record, rendered female convicts' permission to receive a ticket-of-leave (a kind of parole document initially issued in Britain, and later in the Australian Colony) – which allowed the holder to work for wages, and choose her own residence, but could not leave the district without permission of the resident magistrate. Men with ticket-of-leave were permitted to marry, bring their family from England, and permitted to acquire property (also *see*,

http://www.utas.edu.au/library/companion_to_tasmanian_history/F/Female%20convicts.htm).

⁶⁸⁷ Sentencing Council, *Sentencing Children and Young People: Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery - Definitive Guideline* (Sentencing Council for England and Wales, 2017) 20.

⁶⁸⁸ Donald James Weatherburn, *Arresting Incarceration: Pathways Out of Indigenous Imprisonment* (Aboriginal Studies Press, 2014) 1.

⁶⁸⁹ Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Prisoner Characteristics* (8 December 2016) 4517.0 - Prisoners in Australia, 2016

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics~5>>; Australian Bureau of Statistics, *Census: Aboriginal and Torres Strait Islander Population* (27 June 2017) Australian Bureau of Statistics: Media Release <<http://www.abs.gov.au/ausstats/abs@.nsf/MediaReleasesByCatalogue/02D50FAA9987D6B7CA25814800087E03?OpenDocument>>.

1991.⁶⁹⁰ The most common charge for incarceration of Aboriginal males in Australia is ‘acts intended to cause injury’.⁶⁹¹ To the contrary, Indigenous females, Indigenous women, who tend to be younger, or more likely to have a mental disability, or subjected to sexual violence, are most prosecuted for driving and traffic violations, assault, thefts, and offences against justice.⁶⁹² This over-representation of Aboriginal males in the Australian prison system today reflects multiple layers of disadvantage and marginalisation,⁶⁹³ which partly explains why inter-generational trauma caused by interpersonal, cultural and institutional violence recur in Indigenous communities.

Mass incarceration is a clear example of institutional violence whereby the state inflicts violence directly or indirectly on Indigenous women and girls. Weatherburn describes five impacts of over-representation of Indigenous Peoples in the Australian prison system. They are 1) inability of the criminal justice system to fulfil its objective of deterrence; 2) criminogenic effect resulting from protracted contact with the criminal justice system; 3) economic and social disadvantages; 4) international criticism; and 5) detrimental and unabated consequence of European settlement and colonisation of Aboriginal lands.⁶⁹⁴ Without a doubt, the protracted situation of mass incarceration of Aboriginal Peoples has significant risk factors. For example, losing a parent (or both parents) to incarceration heightens a child’s susceptibility to neglect, deviant behaviours, poor parental care, violence and abuse, and delinquency.⁶⁹⁵ These vulnerabilities exacerbate a child’s inability to access education, perform well and stay in school. The multiplier effect of the impact of incarceration heightens intersectionality concepts and worsens the impact on Aboriginal girls and women, who are already affected by many other disadvantages. The impact on individuals and families reaches a peak when incarcerated Aboriginal Peoples die in custody.

Aboriginal deaths in custody have become a large enough problem to warrant national attention. In response to growing public concerns about the deaths of Aboriginal Peoples in Australia whilst in the custody of law enforcement, Prime Minister Bob Hawke announced the establishment of the Royal Commission into Aboriginal Deaths in Custody on 10 August

⁶⁹⁰ Adrienne Walters and Shannon Longhurst, ‘Over-Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women’s Growing Over-Imprisonment’ (NGO Report, Human Rights Law Centre, May 2017) 51, 10.

⁶⁹¹ Australian Bureau of Statistics, *Chapter - Division 02 - Acts Intended to Cause Injury* (2 June 2011) 1234.0 - Australian and New Zealand Standard Offence Classification (ANZSOC) <<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/604F197FD705B5ADCA2578A200140AEC?opendocument>>. According to the Australian Bureau of Statistics, ‘acts intended to cause injury exclude attempted murder and those resulting in death, which are intended to cause non-fatal injury or harm to another person and where there is no sexual or acquisitive element.’

⁶⁹² Walters and Longhurst, above n 691, 12.

⁶⁹³ *Ibid* 16.

⁶⁹⁴ Weatherburn, above n 689, 7–10. In March 2000, the Committee for the noted ‘with grave concern that the rate of incarceration of Indigenous Peoples [in Australia] is disproportionately high compared with the general population.’ When more than 1 in 10 Aboriginal have been imprisoned and 1 in 5 have at some stage lost a parent to prison then continuously populating prison cells with Aboriginal does not deter them from committing crimes. Research shows that having a prior criminal record reduce employability, which leads to higher crime rates. Research data confirms that difference in arrest rates for Indigenous and non-Indigenous Australians may explain about 15 per cent of the difference in levels of employment between the two groups.

⁶⁹⁵ *Ibid* 74, 77.

1987.⁶⁹⁶ The Royal Commission into Aboriginal Deaths in Custody was tasked with inquiring into the deaths of Aboriginal and Torres Strait Islanders between 1 January 1980 and 31 May 1989 whilst in police custody, in prison or in any other place of detention.⁶⁹⁷ Initially, the inquiry embarked upon a six-month examination of 44 cases. A body of five male⁶⁹⁸ Commissioners, working with a budget of \$44 million concluded their report in 1991⁶⁹⁹ with 339 recommendations after four years of investigating 99 deaths of Aboriginal Peoples in custody.⁷⁰⁰ Three findings of the Royal Commission are relevant. First, Aboriginal deaths in custody are not the product of deliberate violence or brutality by police or prison officers. Second, deaths in custody are particularly distressing for families and friends and engender suspicion and doubt in their minds. Third, 63 deaths occurred in police custody, 33 in prison custody and three in juvenile detention. Unfortunately, Aboriginal deaths in custody continue to rise. Of the 99 deaths in custody examined by the Royal Commission, 11 percent (n=11) were females between the ages of 14 and 62. However, a study conducted by the Australian Institute of Criminology's Lisa Collins and Jenny Mouzos shows an overall increase in the number of deaths in custody of Indigenous Peoples since 1989. Aboriginal women continue to be represented in these numbers.

Aboriginal women's deaths in custody are particularly concerning. According to Collins and Mouzos, of the 1442 people who died 'in all forms of custody in Australia', five percent (n=75) were females, including 24 Aboriginal women.⁷⁰¹ At the time of their deaths, Collins and Mouzos (2002) report, the 'most serious offence' of Aboriginal females in custody was a violation of 'good order' (such as public drunkenness, prostitution and disorderly conduct). Furthermore, Collins and Mouzos's findings suggest that the most serious offence resulting in incarceration (and eventually death) of both Aboriginal females in custody is nearly twice as high as that of non-Aboriginal females.⁷⁰² The death of Faith Barnes in custody, 'a picture now familiar to the Commission', is a case in point:

At about 11.00 am on 26 October 1982, she [Faith Barnes] was found lying apparently asleep in the street beside the Kalgoorlie Police Station. She had, it seems, been there for at least an hour. Known to have an alcohol problem, she was thought to be drunk, and taken to the lockup without any further inquiry being made as to the cause of her unconsciousness. She could not be roused and had to be carted or partly dragged, to the

⁶⁹⁶ National Archives of Australia, *Royal Commission into Aboriginal Deaths in Custody - Fact Sheet 112* (2015) Fact Sheets <<http://www.naa.gov.au/collection/fact-sheets/fs112.aspx>>.

⁶⁹⁷ Pursuant to the *Commission of Inquiry (Deaths in Custody) Act 1987* as amended on 15 June 1988 and 15 June 1989,

⁶⁹⁸ The five commissioners were, Patrick Dodson, a Yawuru man from Broome and former Chairman of the Council of Aboriginal Reconciliation of Australia; D.J. O'Dea, Hal Wootten, AC, QC, L.F. Wyvill, QC and Elliott Johnston. QC. Hal Wootten was a former judge of the Supreme Court of NSW and Elliott Johnston was a judge of the Supreme Court of SA.

Aboriginal activist Rob Riley was appointed Head of the Aboriginal Issues Unit of the Commission until Ruby Hammond was appointed to the position in 1999

⁶⁹⁹ The 99 cases comprised 32 Women in Western Australia, 27 in Queensland, 21 in SA and the NT and 19 across NSW, VIC and TAS.

⁷⁰⁰ Max Blenkin, 'Hawke Govt Launched Aboriginal Death Probe' *The Australian* (Sydney South, NSW), 1 January 2014 <<http://www.theaustralian.com.au/news/latest-news/hawke-govt-launched-aboriginal-death-probe/story-fn3dxuwe-1226792800340>>.

⁷⁰¹ Lisa Collins and Jenny Mouzos, 'Deaths in Custody: A Gender-Specific Analysis' [2002] (238) *Australian Institute of Criminology Trends and Issues* 1.

⁷⁰² *Ibid.*

exercise yard where she was left lying on the bare concrete. A number of cell checks were made between that time and 4.00 in the afternoon, when it was noticed that there was dried blood on the side of her head. After further attempts to rouse her were unsuccessful, an ambulance was called, and she was taken to the Kalgoorlie Regional Hospital. There, Barnes was found to be semi-conscious but unresponsive to spoken command. Later that night, after her condition had failed to improve, she was transferred to the Royal Perth Hospital. Admitted in the early hours of the following morning, she was found to have a severe head injury. An emergency operation was performed to remove blood clots from inside her skull. After surgery had been completed, she suffered an unexpected cardiac arrest. Resuscitation was unsuccessful, and she was declared dead at 7.36 on the morning of 27 October 1982. Faith Barnes had a severe alcohol problem. Her treatment by those who took her into custody at Kalgoorlie for the last time was totally devoid of kindness or humane consideration. Her treatment at the hands of some members of her own community was even worse. Between 1975 and her death, she received medical treatment for head injuries on at least sixteen occasions, being admitted to hospital on at least five of these occasions. A proportion of these injuries resulted from severe assaults. She was also treated for other traumatic injuries at various times. At the time of her death she was approximately 27 years old. It is not known how she came by the severe head injury which caused her death. (...) However, she came by her injuries, the neglect demonstrated by the Kalgoorlie police responsible for her custody is disgraceful. She should never have been placed in custody in her semi-conscious condition without a prior medical examination to ensure that her unconsciousness was alcohol-related as thought, and not caused by injury or illness. (...) Not much is known of Faith Barnes, save what may be gleaned from public records. What is known presents a depressing picture. It is even not certain when or where she was born. Various birth dates appear in government records. 4 December 1954 is the most likely date. She was probably born in Kalgoorlie, as this was more commonly given as her place of birth on government records. Her mother was Hazel Wuni. She died in August 1957 when Faith was not yet three. Her father Bordie Parker, was usually employed as a station hand in the Leonora area. He died in August 1966. Faith had a younger sister Christine born in July 1956.⁷⁰³

Aboriginal deaths in custody, an extension of mass incarceration, constitute more state violence against Aboriginal women. However, there was a time in Australia's colonial past, before Aboriginal Peoples were fully subject to the penal system when Aboriginal Peoples were not tried and convicted for perceived crimes. Rather, Aboriginal Peoples were massacred by settler-colonists and agents of the colonial government.

3.2.1 Massacres

From the moment the British invaded Australia in 1788, they encountered resistance from Aboriginal and Torres Strait Islander Peoples, who are the original owners and custodians of their land. In the frontier wars, which continued from the point of European contact until the 1960s, massacres became the defining strategy to curb resistance posed by Indigenous Peoples in Australia. Ryan reasons that a massacre on Australia's frontier included six or more deaths of people who were defenceless against assault.⁷⁰⁴ Countless violent attacks took place between settler-colonists⁷⁰⁵ and Aboriginal Peoples in Australia, resulting in thousands of Aboriginal

⁷⁰³ Daniel John O'Dea, 'Faith Barnes' (Royal Commission into Aboriginal Deaths in Custody, 5 November 1990) 25, 3–4 <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/individual/brm_fb/2.html>.

⁷⁰⁴ Lyndall Ryan et al, *Colonial Frontier Massacres in Eastern Australia: 1788-1872* (2017) The Centre for 21st Century Humanities, University of Newcastle <<https://c21ch.newcastle.edu.au/colonialmassacres/>>.

⁷⁰⁵ Daley (2013) estimated that at least 2, 000 early soldiers, police and settlers died at the hands of Aboriginal raiders who resisted the pastoral settlement on traditional lands, stole livestock and carried out retaliatory raids.

children, women and men being killed⁷⁰⁶ (see Appendix IV). The first map of massacres constructed by Lyndall Ryan presents timelines, sites and information of massacres in Eastern Australia from 1794 until 1872. Daley asserts that '[a]ccording to very conservative estimates, at least 20 000 Indigenous Australians⁷⁰⁷ died at the hands of Australian-based military regiments, police forces and settlers' militia from 1788 until the last known "massacre" at Coniston, Northern Territory, in 1928.'⁷⁰⁸ This is a clear example of state-sponsored violence against Aboriginal Peoples, but there is also concern about the effects that linger effects to the present day.

Massacres of Aboriginal Peoples are not properly represented in Australian history. Accurate data that accounts for the full span of massacres against Aboriginal Peoples in Australia is hard to find. Nevertheless, Ian Clark suggests that an estimated 107 separate massacres and killings occurred in western Victoria between 1803 and 1859.⁷⁰⁹ However, Clark also discloses that 'generally, the violent history of western Victoria has been repressed, and many people who were in effect murderers have been honoured by memorials to pioneers, and by street and town names.'⁷¹⁰ Paul Daley critiques the failure to include frontier violence⁷¹¹ against Aboriginal Peoples in Australia as part of Australia's War Memorial history. This absence from historical record represents structural violence which still affects Aboriginal Peoples in the present day. In keeping with the phenomenological approach of this research and promoting the historical record of Aboriginal history, herewith is a selection of nine major massacres and violent conflicts that took place between settlers and Aboriginal Peoples in Australia between 1804 and 1928.

⁷⁰⁶ Ryan et al, above n 705.

⁷⁰⁷ Stephen Glynn Foster, Bain Attwood and National Museum of Australia (eds), *Frontier Conflict: The Australian Experience* (National Museum of Australia, 2003) 88–91.

⁷⁰⁸ Paul Daley, 'Why Does the Australian War Memorial Ignore the Frontier War? The Battle between Aboriginal People and the Settlers Is at the Heart of Nationhood but Absence from War Dead Commemorations' *The Guardian* (Canberra, ACT), 12 September 2013 <<http://www.theguardian.com/world/2013/sep/12/australian-war-memorial-ignores-frontier-war>>.

⁷⁰⁹ Ian D Clark, *Scars in the Landscape: A Register of Massacre Sites in Western Victoria, 1803-1859* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 1995) 9.

⁷¹⁰ *Ibid* 4.

⁷¹¹ Reynolds, *Dispossession*, above n 177, 24; Personal from Samson Ceasar, 'Liberian Letters: Samson Ceasar to Henry F. Westfall 1835 August 3', 3 August 1835 <<http://search.lib.virginia.edu/catalog/uva-lib:501742>>; Azikiwe, above n 301, 71; Foster, Attwood and National Museum of Australia, above n 708, 6–8. Reynolds argues that, '... [t]he traditional account [of Australian history] is of peaceful settlement, of a struggle against the land, not against other human beings for possession of land. The bloodshed has often been conveniently forgotten. Yet the issue of frontier violence was frequently at the forefront of public debate during the 19th century. Explorers were often quite frank about their part in the violent dispossession of the Aborigines. Some glorified the struggle, seeing it as one of the achievements of settlement...' Interestingly, Caesar's letter to a friend, after his arrival in Liberia from the United States, commands a personal touch to frontier violence in Liberia. He writes, 'I am sorry to have to inform you that we have been attacked by the natives at the place called Bassaw Cove about one hundred miles from here they killed about 15 or 20 Americans our people attacked them twice and the first time we lost one man they sent up for more men they went down and made the second attack and drove the natives all out of Town....'

Risdon Cove Massacre 1804: On 3 May, British soldiers were ordered to fire a cannon at some 300 Aboriginal women, children and men, who approached the Risdon Cove settlement in Van Diemen's Land in resistance to the occupation of their homeland by colonists.⁷¹²

Appin Aboriginal Massacre 1816: Ordered by then New South Wales Governor Lachlan Macquarie, an estimated 14 Aboriginal children, women, and men were killed whilst others were driven off a cliff in Appin, southwest Sydney (now a Crown land).⁷¹³ Macquarie, whom Macquarie University is named after, is celebrated as the most popular governor to tirelessly advocate for emancipists and convicts.⁷¹⁴

Bathurst/Wiradjuri/Bell Falls Massacre 1824: A battle between three settler stockmen and Aboriginal Peoples over stolen cattle left seven white settlers and 16 Aboriginal Peoples dead. Sir Thomas Makdougall Brisbane, then governor at Brisbane House, later declared martial law, ordering that, 'any retaliatory bloodshed be stopped by any means necessary, with the use of firearms against the Wiradjuri in the area west of Mount York on the Great Dividing Range'.⁷¹⁵ However, the very same martial law justified the killing of many more Aboriginal Peoples by white settlers.⁷¹⁶ The capital city of Queensland and the Brisbane River, the longest in south-east Queensland, are named after Major-General Brisbane, who was also knighted as a soldier serving with distinction.⁷¹⁷

Pinjarra Battle/Massacre 1834: Led by Governor James Stirling, 15-30 Aboriginal Peoples of Binjareb country were massacred by white Australian settler-colonists in Pinjarra, Western Australia. According to the Museum Without Walls, 'All accounts acknowledge that women

⁷¹² Lyndall Ryan, 'Risdon Cove and the Massacre on 3 May 1804: Their Place in Tasmanian History [Paper Presented at the "Tasmanian Aboriginal History: Fabrication or Fact?" Conference, University of Tasmania, Launceston, 16 May 2003]' (2004) 9 *Tasmanian Historical Studies* 107.

⁷¹³ Tobin and Colvin, above n 15; Grassby and Hill, above n 350, 161–168. Regarding the oppressed loyalty to the oppressor, in making relocations venues a constant reminder of ties to the 'master', the city Sydney was named after Lord Sydney, aka Thomas Townshend, 1st Viscount Sydney (1732 – 1800) who as member of the House of Lords in 1783 responsible for prisons and colonies, sculpted the idea of Botany Bay as a penal colony. Andrew Tink quotes Lord Sydney, '[t]he several Goals and Places for the Confinement of Felons in this Kingdom being in so crowded a State ... I ... signify to your Lordships His Majesty's Pleasure, that you do forthwith take such Measures as may be necessary for providing a proper number of vessels for the conveyance of 750 Convicts to Botany Bay, together with such Provisions, necessaries and Implements for agriculture as may be requisite for their use after their arrival...' (also see, <http://www.scholarly.info/book/276/>).

⁷¹⁴ ND McLachlan, 'Macquarie, Lachlan (1762–1824)' in *Australian Dictionary of Biography* (National Centre of Biography, Australian National University, 1967) <<http://adb.anu.edu.au/biography/macquarie-lachlan-2419>>.

⁷¹⁵ JD Heydon, 'Brisbane, Sir Thomas Makdougall (1773–1860)' in *Australian Dictionary of Biography* (National Centre of Biography, Australian National University, 1966) <<http://adb.anu.edu.au/biography/brisbane-sir-thomas-makdougall-1827>>; Sonia Feng and Melanie Pearce, 'Bloody Part of Australian History Laid Bare in Bathurst' *ABC News* (Orange, NSW), 15 August 2017 <<http://www.abc.net.au/news/2017-08-15/scars-of-martial-law-laid-bare-in-bathurst/8804586>>.

⁷¹⁶ Grassby and Hill, above n 350; Robbie Thorpe, *The Bathurst Massacres* (2015) Treaty Republic <<http://treatyrepublic.net/content/bathurst-massacres>>; Staff Reporter, *Transcript: Declaration of Martial Law* (2015) Bells Falls Gorge: An Interactive Investigation <http://www.nma.gov.au/engage-learn/schools/classroom-resources/multimedia/interactives/bells_falls_gorge_html/cabinet_items/transcript_declaration_of_martial_law>; Foster, Attwood and National Museum of Australia, above n 707, 152–157.

⁷¹⁷ Royal London, 'How Did the City of Brisbane Get Its Name?' *The Telegraph* (London, UK), 23 July 2016 <<http://www.telegraph.co.uk/only-in-britain/thomas-makdougall-brisbane-born/>>.

and children were amongst the dead.’⁷¹⁸ Stirling Highway, a suburb in Perth, and the Royal Australian Navy Base, HMAS Stirling, are all named in honour of Stirling, the first Governor of Western Australia.⁷¹⁹

Waterloo Creek/Slaughterhouse Creek/Australia Day Massacre, 1838: On 26 January, a clash broke out between white mounted police in Sydney and Aborigines. Dispatched by Lieutenant Governor Colonel of Van Diemen’s Land and later acting Governor of New South Wales Kenneth Snodgrass, the Sydney mounted police attacked a group of Kamilaroi people in remote bushland killing approximately eight to 50 Aborigines.⁷²⁰

Myall Creek Massacre 1838: According to Jeffrey Grey, in 1838 a ‘war of extirpation’ was waged along the Gwydir River as Aboriginal Peoples in the district were consistently pursued by mounted and armed stockmen, for the purpose of killing them.⁷²¹ On 10 June, 28 Aboriginal Peoples were killed at Myall Creek, New South Wales; the resulting trial and verdict were considered the first successful prosecution and conviction of European settlers for the mass murder of Aboriginal Peoples in Australia.⁷²² In July, 14 Aboriginal Peoples were killed near Murrumbidgee and Murray rivers for stealing sheep belonging to the Bowman, Ebdon and Yaldwyn stations in New South Wales. Edmund Denny Day, a local magistrate, offered reports of a ‘war of extirpation’ around the same time along the Gwydir River. Denny stated that ‘Aborigines in the district were repeatedly pursued by parties of mounted and armed stockmen, assembled for the purpose, and that great numbers of them had been killed at various spots’.⁷²³

Kilcoy and Whiteside Poisonings (~1842-67): Known as the largest and most documented massacres in southeast Queensland. Sometime in January or February 1842, bags of flour laced with strychnine were given to Indigenous Peoples. Although exact numbers are unknown, up to 70 Aboriginal Peoples lost their lives. Aboriginal Peoples in Whiteside, Central Queensland, ‘had been murdered in cold blood by giving them arsenic and strychnine in their foods.’⁷²⁴

⁷¹⁸ Staff Reporter, ‘Pinjarra Battle/Massacre 1834’ (Public-Private, Mudurah Community Museum, 2015) 4 <<http://www.mandurahcommunitymuseum.org/downloads/Pinjarra%20Massacre.pdf>>; Grassby and Hill, above n 350, 192–199.

⁷¹⁹ Royal Australian Navy, *HMAS Stirling* (2018) About the Royal Australian Navy <<http://www.navy.gov.au/establishments/hmas-stirling>>; City of Stirling, *Stirling* (2016) City of Stirling <<http://www.stirling.wa.gov.au:80/Council/Suburbs/Pages/Stirling.aspx>>.

⁷²⁰ Foster, Attwood and National Museum of Australia, above n 708; Bain Attwood and Tom Griffiths, *Frontier, Race, Nation: Henry Reynolds and Australian History* (Australian Scholarly Pub, 2009); Attwood, above n 364, 57.

⁷²¹ Jeffrey Grey, *A Military History of Australia* (Cambridge University Press, 2008) 37.

⁷²² La Trobe University, ‘Aboriginal Australian History with Richard Broome’ <<http://www.latrobe.edu.au/news/articles/2010/podcasts/aboriginal-australian-history/transcript>>; Summons, above n 15; La Trobe University, ‘The Myall Creek Massacre with Richard Broome’, above n 15; James C Docherty, *Historical Dictionary of Australia* (Scarecrow Press, 2007) 210 <<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=238232>>.

⁷²³ Grey, above n 119, 37.

⁷²⁴ Robert Ørsted-Jensen, *Frontier History Revisited: Queensland and the ‘History War’* (Lux Mundi Publisher, 2011) 79, 88.

Forrest River Massacre 1926: On 20 May Moran reports, in East Kimberley, Constable St. Jack left Wyndham on patrol to Nulla Nulla station to investigate complaints by the co-owner, Leopold Overheu, of Aboriginal Peoples killing cattle on his lease.⁷²⁵ The next day, Ernest Umbah (an Aboriginal man) was arrested for trespassing on Nulla Nulla, a place that was ‘designed to keep bush Aborigines from possibly corrupting contact with whites in the town’.⁷²⁶ By the third day, it is reported that white pastoralists raided a Corroboree in Durridgee and shot at a gathering of approximately 250 Aborigines. With the killing of Frederick Hay from Nulla Nulla station by Lumbia (an Aboriginal man) in a dispute over cattle killing, Reverend E R G Gribble is accused of spreading wildfire rumours of the massacre of Aborigines in Durridgee.⁷²⁷ Like Keith Windschuttle’s⁷²⁸ dismissal of the black war, a period marked by a series of conflicts between Tasmanians and British settlers,⁷²⁹ Rod Moran disputes the claims of mass murder of Aboriginal Peoples at Forest River in 1926. He argues that with no ‘legal or empirical substantive basis of the allegations put forward by Rev Gribble, what remains is myth and rumours’.⁷³⁰

Coniston Massacre 1928: On 7 August, Frederick Brooks, a dingo trapper and prospector on Coniston station, Central Australia, was murdered, allegedly by Aboriginal men, Padygar and Arkikra, who was later arrested, tried and acquitted in Darwin.⁷³¹ It was reported that Aboriginal Peoples pushed his mutilated body into a rabbit burrow for allegedly interfering with an Indigenous man’s wife. Led by Gallipoli, veteran and hardened bushman Mounted Constable George Murray and a party of eight well-armed horsemen murdered approximately 100 Aboriginal Peoples between 16 August and 18 October near Yuendumu, Alice Springs, Northern Territory.⁷³²

3.2.2 *Genocide, Miscegenation, and Eugenics*

The genocide Australia needs to recognize is not the one that may have been envisioned in the removal policy, but the one the removal policy was intended to complete. The racist categories of ‘half-castes’, ‘quadroons’ and ‘octoroons’, the inhuman calculus of

⁷²⁵ Reynolds, above n 418, 178–188.

⁷²⁶ Rod Moran, *Massacre Myth: An Investigation into Allegations Concerning the Mass Murder of Aborigines at Forrest River, 1926* (Access Press, 1999) xvi.

⁷²⁷ *Ibid* xvii–xix.

⁷²⁸ Keith Windschuttle, *The Fabrication of Aboriginal History* (Macleay Press, 2002); Keith Windschuttle, ‘White Settlement in Australia: Violent Conquest or Benign Colonisation?’ (2003) 31 *Melbourne Historical Journal* 1.

⁷²⁹ Clive Turnbull, *The Black War: The Extermination of the Tasmanian Aborigines* (F. W. Cheshire, 1948); James Bonwick, *The Last of the Tasmanians or The Black War of Van Diemen’s Land* (Sampson Law, Son & Marston, 1870) 30. Bonwick (1807) provides an interesting reason why the Black War ensued between British settlers and Aborigines, ‘[t]he misfortune of the Natives of both New South Wales and Van Diemen’s Land was, that the men who came to settle amongst them were chiefly of a class expatriated for their non-observance of rules of propriety; and who, having been indifferent about the virtues when with their countrymen at home, were not likely to be more courteous and conscientious in dealing with savages abroad’.

⁷³⁰ Moran, above n 727, 205.

⁷³¹ Staff Reporter, *Coniston Massacre* (2015) First Australians <http://www.nma.gov.au/exhibitions/first_australians/resistance/coniston_massacre>.

⁷³² Reynolds, above n 418, 190–200; Mitchell Rolls and Murray Johnson, *Historical Dictionary of Australian Aborigines* (Scarecrow Press, 2011) xxxiii, 51.

*'breeding out the colour,' and the progression from biological 'absorption' to societal 'assimilation' were the twentieth century outgrowths of a nineteenth century catastrophe.*⁷³³

The Australian state perpetrated genocide against Aboriginal Peoples late into the 20th century through marriage laws, miscegenation, and eugenics. In 1944, Raphaël Lemkin in 1944 coined the term genocide, which means the destruction of a nation or an ethnic group.⁷³⁴ Article 2 of the *Convention on the Prevention and Punishment of the Crime of Genocide* 1948⁷³⁵ defines genocide as acts 'committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group'.

One tool of genocide used against Aboriginal Peoples was a program of controlling miscegenation, by isolating Aboriginal Peoples through the administration of discriminatory marriage laws. *Oxford Dictionary* defines miscegenation as 'the interbreeding of people considered to be of different racial types'. As a British colony, white Australian settler-colonists inherited and administered marriage law based on British common law tradition.⁷³⁶ The *Aboriginal Protection Act* 1869 (Vic) authorised the Board for the Protection of Aboriginal Peoples to refuse marriage applications from Indigenous Peoples in Victoria.⁷³⁷ The *Aboriginal Protection and Restriction of the Sale of Opium Act* 1897 (Qld) restricted the Aboriginal woman to marry only an Aboriginal man, except where permission was granted by the Aboriginal Protector to marry a non-Aboriginal person.⁷³⁸ The *Aborigines Act* 1905 (WA) attempted to regulate relationships between white men and Aboriginal women by requiring that the Chief Protector approve all marriages of Aboriginal women to non-Aboriginal men, as well as transferring guardianship of mixed-race children to the Protector.⁷³⁹ Regardless, since 'Europe is male [and] the conquered land is female', irrespective of the colonising project's aim to displace or replace Indigenous Peoples, Aboriginal girls and women were sexually abused by white, male settler-colonists.⁷⁴⁰ Sexual exploitation of and abuse of Aboriginal women by white settlers is a paradox that developed into a new problem for proponents of a white Australia.

Mixed-race children were often the result of violence against Aboriginal women.⁷⁴¹ As during the trans-Atlantic slave trade, where paradoxically, the 'abhorrent' young slave girls

⁷³³ Tony Barta, 'Sorry, and Not Sorry, in Australia: How the Apology to the Stolen Generations Buried a History of Genocide' (2008) 10(2) *Journal of Genocide Research* 201, 209.

⁷³⁴ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Lawbook Exchange, Ltd, 2nd ed, 2008) 79.

⁷³⁵ Australia ratified the *Convention on the Prevention and Punishment of the Crime of Genocide* 1948 on 8 July 1949 and Liberia's 20 June 1950.

⁷³⁶ House of Representatives Standing Committee on Social Policy and Legal Affairs, 'Advisory Report: Marriage Equality Amendment Bill 2012 and Marriage Amendment Bill 2012' (Text, The Parliament of the Commonwealth of Australia, June 2012) 67, 9
<https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill%20marriage/report/final.pdf>.

⁷³⁷ Katherine Ellinghaus, 'Regulating Koori Marriages: The 1886 Victorian Aborigines Protection Act' (2001) 25(67) *Journal of Australian Studies* 22, 23.

⁷³⁸ Ellinghaus, 'Absorbing the "Aboriginal Problem": Controlling Interracial Marriage in Australia in the Late 19th and Early 20th Centuries', above n 216, 197.

⁷³⁹ *Ibid* 187.

⁷⁴⁰ Patrick Wolf, 'Nation and Miscegenation: Discursive Continuity in the Post-Mabo Era' (1994) 36 *Social Analysis: The International Journal of Social and Cultural Practice* 93, 93–95.

⁷⁴¹ Phillip Noyce, *Rabbit-Proof Fence* (2002).

provided gruesome pleasure for white abusers, such as the affliction of Aboriginal lasses, handmaidens, mission girls, wards of the state and ‘other wives’ in Australia.⁷⁴² The dilemma of striving to eliminate Aboriginal Peoples, whilst at the same time, sexually abusing Indigenous women not only feed into the idea of miscegenation but also caused a disruption. Patrick Wolf asserts that, ‘...the chronic negator of the logic of elimination had been the White penis.’⁷⁴³ Whilst uncovering his Aboriginal ‘family secret’, Reynolds⁷⁴⁴ reflects, ‘[i]f all humankind was one species then all people could intermarry and produce fertile and healthy offspring. If on the other hand, polygenetic is right, then intermarriage was unnatural, i.e., sexual intercourse across colour lines is akin to bestiality. In cases where children resulted, then they could be unhealthy, degenerate and infertile’.⁷⁴⁵ The latter viewpoint, according to Reynolds, is the fundamental basis upon which white Australian settler-colonists feared mixed blood people and eventually sought to exterminate them.⁷⁴⁶ Hence arose their resolve to legally prohibit miscegenation, promote eugenics and commit genocide against Indigenous Peoples. Therefore, preventing interracial marriage with Aboriginal Peoples and promoting assimilation by ‘breeding out the colour’ became the solution for addressing the ‘half-caste problem’.⁷⁴⁷

To address the increasing number of biracial children in Australia, the state adopted policies intended to separate those children from their Aboriginal communities and breed them with white Australians until their offspring were no longer black in colour. In 1883, Francis Galton, a cousin of Charles Darwin, coined the term ‘eugenics’, which has its root in Greek meaning ‘good birth’ or ‘noble in heredity’.⁷⁴⁸ Eugenics denote ‘the science of improving human stock by giving the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable’.⁷⁴⁹ Assimilation policies in Australia that nurtured and sustained genocide and miscegenation are founded in eugenics theories.⁷⁵⁰ Russell McGregor describes ‘breeding out the colour’ as ‘an intensely racist’ assumption of ‘hybrid inferiority’ that is both a form of eugenics and ‘a stratagem to erase colour, to bleach Australia white through programs of related reproduction’.⁷⁵¹ The eugenics policy of removing interracial children from their families to be raised in parochial institutions and white Australian families has become known as the Stolen Generation.

⁷⁴² William E Allen, ‘Making History in the Bedroom: Americo-Liberians and Indigenous Liberians Sexual Unions, 1880s- c. 1950s’ (2009) 34(2) *Liberian Studies Journal* 16, 20.

⁷⁴³ Wolf, above n 740, 94, 112.

⁷⁴⁴ Reynolds, above n 433, xi–xxii, 29–49, 227–241.

⁷⁴⁵ *Ibid* 19.

⁷⁴⁶ *Ibid* 227–241.

⁷⁴⁷ McGregor, above n 85, 1.

⁷⁴⁸ Daniel J Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity* (Harvard University Press, 1st Harvard University Press paperback, 1995) xiii.

⁷⁴⁹ *Ibid*.

⁷⁵⁰ Jessica Schimmel, ‘Killing without Murder: Aboriginal Assimilation Policy as Genocide’ (2005) 13(7) *The Lehigh Review* 35, 35.

⁷⁵¹ McGregor, above n 85, 1.

3.2.3 Stolen Generation/Forced Adoption/Bringing Them Home

For many years past under successive governments, the policy has been that, where half-caste children are found living in camps of full-blood natives, they should, if possible, be removed to better care so that they may have a better opportunity for education. The theory behind this policy is, that if the half-caste child remains with the bush tribe, he will grow up to have neither the full satisfaction in life which the tribal native has nor the opportunity to advance to any other status. Paul Hasluck, Minister of External Affairs (1964–1969)⁷⁵²

As you well realize, dark children could not possibly be absorbed as whites, therefore, it is my wish that every care be taken in the admittance of children in order to ensure that they are fair enough to be regarded as white... C L McBeath, Acting Commissioner of Aboriginal Affairs (1947)⁷⁵³

Assimilation policy, the civilising mission and the Christianising project perfected the practice of eugenics, miscegenation, genocide, and forced adoption (*inter alia*) of Indigenous Peoples, as is evident in Hasluck and McBeath's assertions above. Peter Read, a renowned Australian historian who started his academic research in Indigenous history, coined the phrase 'The Stolen Generation'.⁷⁵⁴ The term refers to the practice of forcibly removing Aboriginal children from their families⁷⁵⁵ supported by settler-colonist policy, which demonstrates how the law can be used as an effective tool of systematic violence.⁷⁵⁶ The works of Auber Octavius Neville

⁷⁵² Reynolds, above n 433, 211–212.

⁷⁵³ Ibid 213.

⁷⁵⁴ *Tripping Over Feathers: Scenes in the Life of Joy Janaka Wiradjuri Williams: A Narrative of the Stolen Generations* (UWA Pub, 2009) xiv.

⁷⁵⁵ Darlene Johnson, *Stolen Generations* (Ronin Films, 2000) <www.tomzubycki.com>. In *Stolen Generations*, Johnson tells the story of three Aboriginal Peoples that were separated from their families: Bobby Randall, a Yankunytjatjara elder, artist and Indigenous Person of the Year (1999) who was removed at the age of four and placed in a mission dormitory. Cleonie Quayle, a mother of four, remember being coerced at the age of five to sit in the back seat of a black car. Hoping that she was going for vacation, Cleonie spent the next 12 years in foster care where she experienced sexual abuse. Daisy Howard, an Indigenous woman from Kimberley, was separated from her half-sister for 50 years. Daisy who was removed to a cattle station became a domestic worker whilst her sister remained in Country with their parents (*see*, <http://aso.gov.au/titles/documentaries/stolen-generations/clip3/>).

⁷⁵⁶ The *Aborigines Protection Act 1869* (Vic) establishes an Aborigines Protection Board in Victoria to manage the interests of Aborigines. The Act empowers the Governor to order the removal of any child from their family to a reformatory or industrial school. In 1883, the New South Wales Aborigines Protection Board was established to manage the lives of 9 000 Aboriginal Peoples. The *Aboriginal Protection and Restriction of the Sale of Opium Act 1897* (QLD) allowed the Chief Protector to remove local Aboriginal Peoples onto and between reserves and hold children in dormitories. Until 1965 the Director of Native Welfare was the legal guardian of all 'Aboriginal' children whether their parents are living or not. Under the *Aborigines Act 1905* (WA), the Chief Protector was made the legal guardian of every Aboriginal and 'half-caste' child under 16 years old. Other states followed suit, for example, Victoria (1910) and New South Wales, (1909). Under the *Neglected Children and Juvenile Offenders Act 1905* (NSW), if a court found a child to be neglected, the *Aborigines Protection Act 1909* (NSW) gave the Aborigines Protection Board power to assume full control and custody of the child of any Aborigine. The *Aborigines Act 1911* (SA) made the Chief Protector the legal guardian of every Aboriginal and 'half-caste' child with additional wide-ranging powers to remove Indigenous Peoples to and from reserves. The *Northern Territory Aborigines Ordinance 1911* (Cth) gave the Chief Protector power to assume 'the care, custody or control of any Aboriginal or half caste if in his opinion it is necessary or desirable in the interests of the Aboriginal or half-caste for him to do so'. The *Aborigines Ordinance 1918* (Cth) extended the Chief Protector's control even further. The *Aborigines Protection Amending Act 1915* (NSW) gives power to the Aboriginal Protection Board to separate Indigenous children from their families without having to establish in court that they were neglected. The *Infants Welfare Act 1925* (Tas) was introduced, allowing the removal of Indigenous children on Cape Barren Island from their families. Between 1928 and 1980, the head teacher on Cape Barren was appointed as a special constable with the powers and responsibilities of a police constable, including the power to remove a child for neglect under child welfare legislation. In 1940, the NSW Aborigines Protection Board lost its power to remove Indigenous children and renamed the Aborigines Welfare Board, which was finally abolished in 1969. The Aboriginal Child Placement Principle, developed on the efforts of the Aboriginal and Islander Child Care Agencies, was incorporated in NT welfare legislation to ensure that Indigenous children are placed with Indigenous families when adoption or fostering is necessary. Other states followed suit, NSW (1987), Victoria (1989), South Australia (1993), Queensland and the ACT (1999), Tasmania (2000) and Western Australia (2006). *See*, the Australian Human Rights Commission's "Timeline – History of

describe a carefully planned and implemented approach to perpetrate violence against Aboriginal Peoples. As a Chief Protector of Aboriginal Peoples (1915-36) and Commissioner for Native Affairs (1936-40), Neville shaped official policy affecting Aboriginal Peoples in Australia.⁷⁵⁷ According to A Haebich and R H W Reece, the purpose of regulations instigated by Neville under the *Aborigines Act* 1905 was to ‘bring about permanent segregation of Aborigines of full descent, who were believed to be near extinction’.⁷⁵⁸ As a way of wiping out Indigenous blood, the white Australia policy segregated and trained part descent Aborigines and reintegrated them into society as domestics and farm workers in hopes of blending them with the white population by way of intermarriage.⁷⁵⁹ Segregating biracial Aboriginal children required removing them from their mothers and placing them in the care of institutions. Forced adoption of Aboriginal children was in effect in Australia for approximately 60 years and affected generations of Aboriginal women and children. Even though it is challenging to estimate the exact number of Aboriginal children who were forcibly removed from their families, the *Bringing Them Home* report suggests that ‘between one in three and one in ten Indigenous children were forcibly removed from their families and communities in the period from approximately 1910 until 1970.’⁷⁶⁰ Joy Janaka Wiradjuri Williams’s story highlights the intergenerational violence inflicted on many Aboriginal women and their children.

Joy Janaka Wiradjuri Williams (1942-2006), a Wiradjuri woman, was one of those Aboriginal children forcibly removed by the State of New South Wales.⁷⁶¹ Read narrates the events of Joy’s life, beginning in 1943 before she was born. Joy’s mother, Doretta Williams, became pregnant by a white soldier soon after she left the Cootamundra Training Home for Aboriginal Girl’s in New South Wales to work as a domestic servant for a white family. The

separation of Aboriginal and Torres Strait Islander children from their families – text version”, available at <<https://www.humanrights.gov.au/timeline-history-separation-aboriginal-and-torres-strait-islander-children-their-families-text#date-1869>>.

⁷⁵⁷ Reynolds, above n 433, 210, 212, 214–216.

⁷⁵⁸ Haebich and Reece, ‘Neville, Auber Octavius (1875-1954)’, above n _____. Also see, Museum Victoria for “breeding out” images of Aborigines from his book, “Australia’s Coloured Minority: It’s Place in the Community” (1947), available at, <http://museumvictoria.com.au/collections/items/1496210/book-a-o-neville-australia-s-coloured-minority-its-place-in-the-community-currawong-publishing-co-1947>.

⁷⁵⁹ Haebich and Reece, ‘Neville, Auber Octavius (1875-1954)’, above n _____. Also see, Museum Victoria for “breeding out” images of Aborigines from his book, “Australia’s Coloured Minority: It’s Place in the Community” (1947), available at, <http://museumvictoria.com.au/collections/items/1496210/book-a-o-neville-australia-s-coloured-minority-its-place-in-the-community-currawong-publishing-co-1947>.

⁷⁶⁰ Commonwealth of Australia, ‘Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families’ (Government Report, Human Rights and Equal Opportunity Commission, 1997) 524, 31.

⁷⁶¹ National Library of Australia, *Bringing Them Home Oral History Projects* (2013) Oral Projects <<http://pandora.nla.gov.au/pan/133365/20120410-1246/www.nla.gov.au/oh/bth/index.html>>; State of Tasmania, ‘Stolen Generations of Aboriginal Children Act 2006: Report of the Stolen Generations Assessor’ (Government Report, Office of the Stolen Generations Assessor, Department of Premier and Cabinet, February 2008) 30, 4–5. The force removal of Aboriginal children did not only occur in NSW, but across Australia. Between 1998 and 2002, the National Library of Australia (NLA) chronicled over 300 interviews of Indigenous Peoples and others involved in or affected by the process of child removals. Before the 1930s Indigenous children living in and around Cape Barren were not disturbed. As such, Tasmania had no specific race policies for Indigenous children (see, the *Adoption Act 1920* (Tas)). However, creation of child welfare legislature between 1935-1975 saw the force removal of Aboriginal children from their families (see the *Infants Welfare Act 1935* (Tas); *Adoption Act 1968* (Tas) and the *Child Welfare Act 1960* (Tas)). In 2006, the State of Tasmania established the *Stolen Generations of Aboriginal Children Act*, an AUD \$5 million fund to enable the Tasmanian government to make ex-gratia payments to members of the stolen generations. The question of whether the objective of this Act has been achieved cannot be attended to adequately given constraints of the dissertation.

Aborigines Welfare Board ‘snatched’ baby Joy from her mother and placed her in the United Church’s Bomaderry Aboriginal Children’s Home. At the age of four and a half years, Joy was transferred to the Lutanda Children’s Home at Wentworth Falls. There she remained until she was 18 years old, subject to s7 (2) of the *Aborigines Protection Act* 1909-43. However, the cycle of forced adoption did not stop with Joy.

Joy’s experience exemplifies the profound intergenerational trauma associated with forced adoption.⁷⁶² Like her mother, young Joy grew up in an institution, and she later became a trained nurse in Sydney. Joy had a daughter, like her mother, who was also taken away by the New South Wales Department of Child Welfare. Eventually, Joy’s daughter found her. However, as for her grandmother and mother, forced separation created a lifelong legacy of pain and suffering.⁷⁶³ Though Joy went on to be a successful author and poet, earning a Master of Arts degree in Creative Literature in 1989, her fight for justice was impossible. Joy initiated Australia’s first Aboriginal compensation test case in 1993, based on three generations of family history. She sued the New South Wales government for negligence, breach of fiduciary duty, breach of statutory duty and trespass against the Aboriginal Welfare Board for her removal, psychiatric injury, and harm whilst in care.⁷⁶⁴ Joy lost her case in the Supreme Court in August 1999.⁷⁶⁵ Her appeal to the New South Wales Court of Appeal in 2000 also failed. Finally, the High Court of Australia rejected her application for leave to appeal on 22 June 2001.⁷⁶⁶ Joy is not alone in her struggle for justice, healing and restoration.

A search for justice for the Stolen Generation has garnered apology from some political figures, but no reparation scheme has been created. After decades of the abuse of Indigenous Peoples, on 10 December 1992, at the launch of the International Year of the World’s Indigenous Peoples, Prime Minister Paul Keating delivered his Redfern speech. Keating admits that ‘we did the dispossessing, we took the traditional lands and smashed the traditional way of life, we brought the diseases and the alcohol, we committed the murders, we took the children from their mothers...’⁷⁶⁷ On 21 March 2013, former Prime Minister Julia Gillard delivered another solemn national apology for forced adoption of Aboriginal Peoples in Australia on behalf of Australia’s settler-colonist government. In an emotionally charged environment, Gillard said she was sorry for forced adoption or removal policies and practices. Gillard acknowledged that, ‘today this Parliament on behalf of the Australian people takes

⁷⁶² Read, above n 754, xiv–xv.

⁷⁶³ Ibid.

⁷⁶⁴ *Williams v The Minister, Aboriginal Land Rights Act 1983 and Anor* [1999] NSWSC 843

⁷⁶⁵ In his ruling, Judge Abadee held, 1) there was no duty of care, breach of duty or relevant causation established. The plaintiff’s action in negligence failed; 2) No trespass was established. No private action for breach of statutory duty was available; 3). Assuming a fiduciary relationship (not decided) there was no breach of fiduciary duty. In any event had a fiduciary duty or breach of fiduciary duty been established there would have been a basis for denying equitable compensation by reason of laches, prejudice or delay; 4) Any assessment of damages or equitable compensation was highly speculative, however, a ‘contingent’ assessment of damages was appropriate in the circumstances; and 5) There was no entitlement to exemplary or aggravatory damages in any contingent assessment (see *Williams v The Minister, Aboriginal Land Rights Act* 1983 and *Anor* above).

⁷⁶⁶ Read, above n 754, xxvii–xxviii. Also see, the AustLit biographical page of Joy Williams.

<<http://www.austlit.edu.au/austlit/page/OLD?id=A1gy&idtype=oldid>>

⁷⁶⁷ Keating, above n 490.

responsibility and apologises for the policies and practices that forced the separation of mothers from their babies which created a lifelong legacy of pain and suffering...’,⁷⁶⁸ Although former Prime Minister John Howard refused to apologise to The Stolen Generation,⁷⁶⁹ remorse expressed by Keating and Gillard produced some positive outcomes in the states of New South Wales⁷⁷⁰ and South Australia,⁷⁷¹ but not without critique.⁷⁷² However, a National Stolen Generation Reparations scheme is yet to be established.⁷⁷³ In *Nulyarimma v Thompson* 1999, even though the Federal Court of Appeal acknowledged that many Indigenous Peoples were wiped out by ‘exotic disease’, ‘direct killing’ and ‘removal’ from their families, the ‘social devastation’ it caused is not considered genocide.⁷⁷⁴ Hence the case was dismissed. Questioning whether the ‘moral gene’ of white Australians is being protected, Colin Tatz asserts that genocide denialists ‘are not men with credentials in history, or in any other disciplines [because] they won’t be writing the textbooks for our schools and university curricula.’⁷⁷⁵ Tragically, the creation of a reparations scheme was hindered when it became clear that one of the effects of removing children from their families was an increased vulnerability to sexual abuse and exploitation at the hands of the institutions that were supposed to protect them.

3.2.4 Social Services and Child Abuse

Children have always been vulnerable to adults’ neglect and abuse, whether by forced marriage, denial of access to social services or forcibly conscripted as child soldiers during the war and violent conflict.⁷⁷⁶ In Australia, the removal of Aboriginal children as a form of genocide and

⁷⁶⁸ Commonwealth of Australia, ‘Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families’, above n 761, 4; Gillard, above n 489; Frederick Douglass, *Narrative of the Life of Frederick Douglass* (Anti-Slavery Office, 1845) 2. The long-suffering alluded to in Gillard’s National Apology can be felt through the expressions of a confidential submission made to the Human Rights and Equal Opportunity Commission’s National Inquiry into Separation of ATSI children from their families: ‘Our life pattern was created by the government policies and are forever with me, as though an invisible anchor around my neck. The moments that should be shared and rejoiced by a family unit, for [my brother] and mum and I are forever lost. The stolen years that are worth more than any treasure is irrecoverable’. Former slaves returning to Liberia had experienced separation from their mothers for centuries past. Frederick Douglass, the great African-American abolitionists and reformist, once wrote, ‘My father was a white man. He was admitted being such by all I ever heard speak of my parentage. The opinion was also whispered that my master was my father; but of the correctness of this opinion, I know nothing; the means of knowing was withheld from me. My mother and I were separated when I was but an infant – before I knew her as my mother. It is a common custom, in the part of Maryland from which I ran away, to part children from their mothers at a very early age’.

⁷⁶⁹ Australian News, *John Howard Restates Opposition to Indigenous Apology* (You Tube, 2008) <<https://www.youtube.com/watch?v=pn4I-NhhR1w>>.

⁷⁷⁰ Aboriginal Affairs, *Stolen Generation Reparations Scheme and Funeral Assistance Fund* (2017) New South Wales <<https://www.aboriginalaffairs.nsw.gov.au/healing-and-reparations/stolen-generations/reparations-scheme>>.

⁷⁷¹ Department of State Development, *Stolen Generations Reparations Scheme* (2017) Government of South Australia <<https://statedevelopment.sa.gov.au/aboriginal-affairs/stolen-generations-reparations-scheme>>.

⁷⁷² Barta, above n 734, 209.

⁷⁷³ Australian Human Rights Commission, ‘National Stolen Generations Reparations Scheme Needed’ *AHRC Media Releases* (Sydney, NSW), 21 November 2017 <<https://www.humanrights.gov.au/news/media-releases/national-stolen-generations-reparations-scheme-needed>>.

⁷⁷⁴ *Nulyarimma v Thompson* [1999] FCA 1192, paras 5, 6.

⁷⁷⁵ Colin Tatz, ‘Confronting Australian Genocide’ (2001) 25 *Aboriginal History* 16, 34.

⁷⁷⁶ Peter W Singer, *Children at War* (University of California Press, 2006) 19, 77, 82–83. According to Singer, the UN reports that 27 000 children were combatants during the Liberian civil war, 80 per cent of which were direct combatants. Fourteen-year-old Z recounts his experience: ‘My missions included diamond mining near Kono [Sierra Leone], drug purchasing, collecting ammunition in Liberia, looting villages and capturing civilians. I used to buy drugs at the Liberian border from a man called Papi. They forced us to take them. This is where they would cut and put the ‘brown-brown’ [cocaine mixed with heroine and gun powder]. We would then inhale cocaine. During

eugenics. Placement against their will with white foster parents, on missions, and in religious institutions condemned them to sexual and physical abuse, leaving traumatic scars that will last for generations.⁷⁷⁷ For 35 years, the Aboriginal Legal Service of Western Australia has been striving for Aboriginal justice through reparation schemes. One concern they share in advocating for reparations for the forced removal of Aboriginal children in institutional care is that ‘the extent of institutional child sexual abuse against Aboriginal children will be under-reported to the Commission [the Royal Commission into Institutional Response to Child Sexual Abuse].’⁷⁷⁸ Alice Barter, Sarouche Razi and Victoria Williams⁷⁷⁹ describe the primary problem in *Redress Western Australia*:

[Aboriginal Legal Service of Western Australia] submitted over 1000 redress applications and participation in the scheme was traumatic for all involved. The primary issue that arose in [Western Australia] was the strong sense of injustice over the change in compensation offered by the State Government and the fact that the quantum offered was extremely low. When the scheme was first announced, the maximum payment available under the scheme was \$80 000. However, when the number of applications and potential costs became apparent, the Government reduced the upper ceiling to \$45 000. Given this significant and unexpected change, combined with the fact that the amount was lower than what was potentially available under victim compensation schemes, and drastically lower than damages payable in a successful civil litigation matter, there was a sense of injustice in the community. Gulmina Miocevic, Managing Solicitor of the Civil and Human Rights Unit at [Aboriginal Legal Service of Western Australia] during [Western Australia’s] redress scheme, described it as ‘a slap in the face...it was a complete betrayal of trust. It left a bitter taste in everyone’s mouth from there onwards.’ From the Government’s perspective, the reasons behind the somewhat arbitrary monetary figure were pragmatic, as there would be significant evidentiary problems with claims and there was a huge potential cost to the Government in providing large amounts of compensation.⁷⁸⁰

Stolen Generation children were often moved into mission schools run by the church, which made Aboriginal children vulnerable to abuse by members of those institutions. In Australia, a recent report of the Royal Commission into Institutional Responses to Child Sexual Abuse identified nearly 1880 alleged perpetrators (diocesan and religious priests, religious brothers, religious sisters, lay employees or volunteers) in claims of child sexual abuse.⁷⁸¹ The Catholic Church authorities show the highest number of alleged perpetrators by religious status, they include priests, religious brothers and lay people of the Archdiocese of Melbourne and the

operations, I sometimes would take it two or three times a day. I felt strong and powerful. I felt no fear. When I was demobilised, I felt weak and cold and had no appetite for three weeks’.

⁷⁷⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, ‘Analysis of Claims of Child Sexual Abuse Made With Respect to Catholic Church Institutions in Australia’ (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017) 282, 12–13
<<https://childabuseroyalcommission.gov.au/getattachment/f0b33690-aea6-4f56-9e12-88e72157273f/Analysis-of-claims-of-child-sexual-abuse-made-with>>.

⁷⁷⁸ Alice Barter, Razi Sarouche and Victoria Williams, ‘Why the Caged Bird Sings: Issues with the Royal Commission into Institutional Responses to Child Sexual Abuse’ (2014) 8(13) *Indigenous Law Bulletin* 7.

⁷⁷⁹ The Redress Western Australia (WA) Scheme was established by the Government of WA to acknowledge and apologise to adults who, as children, were abused and/or neglected whilst they were in the care of the state. It ran from 2008 to 31 December 2011 (see, <http://www.findandconnect.gov.au/ref/wa/biogs/WE00505b.htm#tab5>).

⁷⁸⁰ Barter, Sarouche and Williams, above n 779.

⁷⁸¹ Royal Commission into Institutional Responses to Child Sexual Abuse, ‘Analysis of Claims of Child Sexual Abuse Made With Respect to Catholic Church Institutions in Australia’, above n 777, 15.

Christian Brothers in Australia.⁷⁸² Whilst the Royal Commission into Institutional Responses to Child Sexual Abuse recommends that appropriate redress for survivors should include: direct personal response; counselling and psychological care, and payments, it did not hold the Catholic Church criminally liable.⁷⁸³

Difficult socio-economic situations increase Native children's vulnerability to sexual abuse. For Indigenous communities in both Liberia and Australia, not only is child sexual abuse significantly higher than in non-Indigenous communities, but the degree of under-reporting is also severe.⁷⁸⁴ For instance, of 566 incident reports of child sexual abuse analysed in two Indigenous jurisdictions in Australia, 125 cases (22.1 percent) were from Indigenous children and 441 (77.9 cases) were from non-Indigenous children.⁷⁸⁵ Low reporting of sexual abuse against Indigenous children reduces access to services and increases neglect as the cycle of abuse continues.

It is clear from the literature that the intergenerational systematic violence perpetrated by the state against Aboriginal Peoples extends from Australia's convict history through to the present day. Cultural stereotypes enabled state policies that resulted in the massacres of Aboriginal Peoples. Those massacres gave way to a system of segregation and genocidal eugenics enshrined in law that continued to destroy Aboriginal families and disrupt Aboriginal culture for nearly a century. The effects of those programs further enabled structural violence against Aboriginal children as clergy and other adults in power at mission schools and other foster homes sexually abused and exploited Aboriginal girls and boys. However, the state policy of forced adoption is not the only social determinant predisposing Aboriginal women and girls to sexual violence. Looking for more intersecting factors, the next sections consider these factors starting from the level of interpersonal violence, rape and intimate partner abuse.

3.2.5 Rape

Rape has been perpetrated by Aboriginal and non-Aboriginal men in Australia, against Aboriginal and non-Aboriginal women and girls, but the penalties for Aboriginal men were often more severe. The prevalence of inter-racial sexual crimes in colonial New South Wales resulted in the execution of many Aboriginal men. According to Fred Cahir and Ian Clark,⁷⁸⁶ even though white offenders of attempted rape received two years of hard labour, Aboriginal men were hanged. Moowattin was the first Indigenous man executed for raping a white woman in 1812. The State of New South Wales hanged Mickey Mickey and transported Charley Myrtle

⁷⁸² Ibid.

⁷⁸³ Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final Report Recommendations' (Government, Commonwealth of Australia, November 2017) 115, 51–55, 73 <<https://www.childabuseroyalcommission.gov.au/recommendations>>.

⁷⁸⁴ Cate Bailey, Martine Powell and Sonja Brubacher, 'Reporting Rates of Child Sexual Abuse in Indigenous Communities in Two Australian Jurisdictions' (2017) 68 *Child Abuse & Neglect* 74, 74.

⁷⁸⁵ Ibid 76.

⁷⁸⁶ Fred Cahir and D Ian Clark, 'The Case of Peter Mungett: Born out of the Allegiance of the Queen, Belonging to a Sovereign and Independent Tribe of Ballan' (2009) 8 *Provenance: The Journal of Public Record Office Victoria* 15.

to Van Diemen's Land for life in 1835, also for rape. Paddy, an Aboriginal man, received capital punishment for rape in 1854.⁷⁸⁷ Peter Mungett, a member of the Marpeang Baluk clan, was brought before the criminal sessions in Melbourne on a charge of rape against a 6-year-old non-Aboriginal girl. On 20 February 1860, Mungett was found guilty and sentenced to death.⁷⁸⁸ Rape as a form of systematic violence is not confined to Indigenous communities but rather is perpetrated by both Aboriginal and non-Aboriginal men.⁷⁸⁹ Therefore, rather than dealing with simplistic dichotomies (e.g., rape by Aboriginal men versus rape by non-Aboriginal), the research seeks to assess the issue of systematic violence holistically as a common but relevant scourge in society.

Susan Brownmiller believes that from prehistoric times to the present, rape has played a critical function, being nothing more than a conscious process of intimidation by which all men keep all women in a state of fear. Brownmiller goes on to say that from the humblest beginnings of the social order based on a primitive system of retaliatory force (i.e., the *lex talionis*: an eye for an eye), woman was unequal before the law.⁷⁹⁰ Brownmiller argues that not only might women be subjected at will to a thoroughly detestable physical conquest for which there could be no retaliation in kind (*vis-à-vis* a rape for a rape), but the consequences of such a brutal struggle might be death, injury, impregnation or the birth of a dependent child.⁷⁹¹ Brownmiller asserts that 'female fear of an open season of rape, and not a natural inclination toward monogamy, motherhood or love, was probably the single causative factor in the original subjugation of women by man, the most important key to her historic dependence, her domestication by protective mating.'⁷⁹²

Brownmiller's ground-breaking work, *Against Our Will*, was written in 1975. In 2017, the United Nations Children's Fund report that around 120 million girls worldwide, just over one in 10, still experience 'forced intercourse or other forced sexual acts' at some point in their lives⁷⁹³ is troubling. Whilst rape and sexual abuse against girls and women are everyday violent occurrences affecting close to a billion women and girls over their lifetimes, law and policy intended to protect or prevent such violence are often insufficient, inconsistent, not systematically enforced, and sometimes even promote more violence against them.⁷⁹⁴ Patricia Smith assesses two pervading concerns of rape law: 1) that the law tends to protect male

⁷⁸⁷ Ibid.

⁷⁸⁸ Ibid.

⁷⁸⁹ Lani Brennan and Hazel Flynn, *Lani's Story: Not a Victim. A Survivor* (HarperCollins, 2013); Joan Kimm, *A Fatal Conjunction: Two Laws, Two Cultures* (Federation Press, 2004) <http://www.amazon.com/Fatal-Conjunction-Two-Laws-Cultures/dp/186287509X/ref=sr_1_1?s=books&ie=UTF8&qid=1361924786&sr=1-1&keywords=a+fatal+conjunction>; Cathy Eatock, 'End Violence against Aboriginal Women' [2013] (954) *Greenleft Weekly* <<https://www.greenleft.org.au/content/end-violence-against-aboriginal-women>>.

⁷⁹⁰ Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (Fawcett Columbine, 1st Ballantine Books, 1993) 16.

⁷⁹¹ Ibid.

⁷⁹² Ibid.

⁷⁹³ Equality Now, 'The World's Shame: The Global Rape Epidemic - How Laws Around the World Are Failing to Protect Women and Girls from Sexual Violence' (Private Report, Equality Now, 2017) 68, 5 <https://www.equalitynow.org/sites/default/files/EqualityNowRapeLawReport2017_Single%20Pages.pdf>.

⁷⁹⁴ Ibid.

interests in pursuing sexual intimacy; and 2) men fearing that women could bring false charges against them.⁷⁹⁵ Though legitimate concerns, Smith opines that such a focus has virtually no recognition of women's competing interest in the self-determination of their own intimate relations.⁷⁹⁶ Thus, a major problem with rape law, according to Schulhofer as noted by Smith, is its failure to recognise women's right to sexual autonomy, which requires freedom of choice, the right to accept and decline sexual advances.⁷⁹⁷

The legal definition of rape affects the core of women's right to control their own sexual relations. Data obtained from 11 focus group sections held in Victoria, Australia, shows that 'many participants were critical that the rape definition effectively maintains the onus on a rape survivor to unequivocally demonstrate non-consent'.⁷⁹⁸ According to Larcombe, a legal definition of rape in Australia exonerates an accused who 'reasonably believes in consent'. The assumption that a woman reasonably consented to rape is shrouded with myths and stereotypes held by cultural beliefs propagated mostly by men. Larissa Gabrielle Johnson says, 'rape myths include attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women'.⁷⁹⁹ Such male aggression is not restricted to sexual offenders but is also pervasive in law, policy, and the court system. This is an example of how cultural violence infiltrates the legal system to result in laws that codify that violence and contribute to its persistence. A case in point is that of a 15-year-old Aboriginal girl in the Northern Territory of Australia.

In the case of Jackie Pascoe Jamilmira, the structural violence of cultural stereotypes combined with the machinations of the legal system to deny justice to an Aboriginal girl survivor of rape. According to Sonia Shah, a state judge defended the right of an Aboriginal man (Jackie Pascoe Jamilmira) to have sex with an underage girl, claiming it was a 40 000-year-old traditional practice. This judgement set off a national debate over the role of culture in practices that deny women autonomy.⁸⁰⁰ It was reported that the girl's parents had 'promised' her as a wife to the man, who was later convicted of slaughtering his former wife. When the girl resisted his advances, she said, he punched her, 'put his foot onto my neck' and raped her.⁸⁰¹ When the police arrive to arrest Pascoe, he brandished a shotgun to showcase his bravery and confidence.⁸⁰² Fearing for her safety the young girl declined to speak with prosecutors, though

⁷⁹⁵ Smith, 'Four Themes in Feminist Legal Theory: Difference, Dominance, Domesticity, and Denial', above n 77, 95.

⁷⁹⁶ Ibid.

⁷⁹⁷ Ibid.

⁷⁹⁸ Wendy Larcombe et al, "'I Think It's Rape and I Think He Would Be Found Not Guilty': Focus Group Perceptions of (Un)reasonable Belief in Consent in Rape Law' (2016) 25(5) *Social & Legal Studies* 611, 1.

⁷⁹⁹ Larissa Gabrielle Johnson and Anthony Beech, 'Rape Myth Acceptance in Convicted Rapists: A Systematic Review of the Literature' (2017) 34 *Aggression and Violent Behavior* 20, 1.

⁸⁰⁰ Sonia Shah, 'Judge Rules Rape of Aboriginal Girl "Traditional"' *Women's eNews* (North Queensland, Australia), 29 November 2002 <<http://womensenews.org/2002/11/judge-rules-rape-aboriginal-girl-traditional/>>.

⁸⁰¹ Ibid.

⁸⁰² Ibid.

the judge was able to press rape charges against Pascoe.⁸⁰³ Government-sponsored legal aid lawyers provided Pascoe's defence, netting him a nominal 24-hour-sentence on appeal.⁸⁰⁴

Moral relativism applied by a white anthropologist was instrumental in reducing Pascoe's sentence. Expert testimony submitted by an anthropologist in the case called the man's arrangement with the girl 'traditional' and therefore 'morally correct'.⁸⁰⁵ The judge ruled that a 15-year-old Aboriginal girl 'knew what was expected of her [and] didn't need protection' when a 50-year-old man committed statutory rape against her and shot a gun into the air when she complained about it.⁸⁰⁶ Several high-ranking government officials nodded with approval when the appeal judge upheld Pascoe's defence, explaining that whilst Pascoe knew he had done something wrong in the eyes of western law, his conduct was 'Aboriginal custom' and part of his culture.⁸⁰⁷ The above case is yet another sad example that such violence is justified and supported by men and the law. It also exemplifies a legal system upholding the myth that sexual violence is widespread and acceptable in Aboriginal cultures.

Contrary to widespread belief,⁸⁰⁸ Indigenous cultures do not condone abuse, despite Aboriginal children and women's relatively high vulnerability to family violence.⁸⁰⁹ Cases of fatal rape cited in chapter one corroborate this fact, that all societies, ethnicities and classes denigrate and abuse children and women.⁸¹⁰ Notwithstanding, the unique risk factors and attributes of persistent systematic gender violence against Indigenous girls and women make it challenging to prevent and eradicate. Larissa Behrendt elaborates,

[s]exual abuse of women and children has never formed part of traditional cultural practices and is considered abhorrent by Indigenous men and women of all generations. Sexual abuse and violence are behaviours that are learned, and studies and reports have found them to be generational and cyclical; abusers have often been victims of abuse themselves. (...) The colonisation of Australia left a legacy of abuse in many Indigenous communities. In 1898, a Northern Territory judge proposed laws to prohibit European settlers from kidnapping Aboriginal children "for the purpose of having carnal knowledge or intercourse" on stations far away from their homelands. The recent report on abuse in the Northern Territory by Pat Anderson and Rex Wilde, *Little Children are Sacred*, observed that the sexual abuse of children has not only been perpetrated by Aboriginal people, the report said, "The phenomenon knows no racial, age or gender borders. It is a national and international problem".⁸¹¹

It should be noted that it is not in all cases that the legal system endorses stereotypes and myths of sexual violence in Aboriginal culture. In her article 'Speaking About Rape is Everyone's Business', Diane Bell cites a case in the Northern Territory of Australia where the

⁸⁰³ Ibid.

⁸⁰⁴ Ibid.

⁸⁰⁵ Ibid.

⁸⁰⁶ Ibid.

⁸⁰⁷ Ibid.

⁸⁰⁸ *Gender Relations in Aboriginal Society: What Can We Glean from Early Explorers' Accounts?*, 1991 5 <<http://www.anu.edu.au/polsci/marx/interventions/gender.htm>>.

⁸⁰⁹ Sue Gordon, Kay Hallahan and Darrell Henry, 'Putting the Picture Together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities' (2002) 7(4) *Australian Indigenous Law Reporter* 49.

⁸¹⁰ Fraenkel, above n 39, 145–150.

⁸¹¹ Larissa Behrendt, *Indigenous Australia for Dummies* (For Dummies, a branded imprint of Wiley, 2012) 411.

presiding judge doubts that forcible sexual intercourse is normative behaviour in Aboriginal culture. In *R v Dennis Narjic* 1988⁸¹²:

Dennis Narjic of Port Keats, Northern Territory had pleaded guilty to four counts of rape of one young Aboriginal woman and to two of another young woman in 1986. When defence counsel indicated that the pre-sentence report would canvass the customary elements of the case, viz the tribal elders had indicated that there was ‘little likelihood of any payback’, Mr. Justice Maurice asked: Are you telling me it’s normative behaviour to have forcible sexual intercourse with your wife’s younger sisters...never once have I had a glimmer that it’s normal part of cultural life for Aboriginal people to treat women in this way...for the kind of sadistic behaviour involved...⁸¹³

Rape is one form of interpersonal or community violence, although it is clear that structural and state violence can also play a part in denying Aboriginal women and girls the justice they deserve. However, rape is not the only prevalent form of violence against women in their families and communities. Domestic violence perpetrated by women’s intimate partners is also a dominant source of systematic violence, and cultural and state factors are also at work in those situations.

3.2.6 Domestic, Family, Intimate and Community Violence

Intimate partner violence against women includes any violence (physical, sexual, psychological, or emotional) or use of threat by a partner or a former partner. Partner violence against women is defined as physical, sexual or emotional abuse with coercive control of a woman by a man or a woman who is, or was, in an intimate relationship with the woman.⁸¹⁴ Intimate partner abuse, often used interchangeably with the terms ‘domestic violence’ and ‘intimate partner violence’, is ‘behaviour occurring within the context of a relevant relationship that is physically, sexually, emotionally, psychologically or economically abusive, threatening, coercive, controlling or dominating and causes a person to fear for their safety or wellbeing or that of someone else’.⁸¹⁵ Approximately four decades ago, before it gained attention in community public health, family violence was seen as a private home affair requiring no little or no interference from the state or legal system.⁸¹⁶ Now, intimate partner abuse is strongly correlated with deleterious physical and mental health consequences in survivors, leading to post-traumatic stress disorder, substance abuse, suicide, sexually transmitted diseases and traumatic brain injury.⁸¹⁷

Unfortunately, this type of abuse is prevalent in Australia. The Australian Bureau of Statistics’s *Bridging the Data Gaps for Family, Domestic and Sexual Violence, Australia* (2005)

⁸¹² *R v Dennis Narjic* (Unreported, NT Supreme Court, 1988).

⁸¹³ Diane Bell, ‘Speaking about Rape Is Everyone’s Business’ (1989) 12(4) *Women’s Studies International Forum* 403.

⁸¹⁴ Naira Kalra, Gian Luca Di Tanna and Claudia García-Moreno, ‘Training Healthcare Providers to Respond to Intimate Partner Violence against Women’ [2017] (2) *Cochrane Database of Systematic Reviews* 1, 1.

⁸¹⁵ Anna Towler, Areana Eivers and Ron Frey, ‘Warning Signs of Partner Abuse in Intimate Relationships: Gender Differences in Young Adults’ Perceptions of Seriousness’ [2017] *Journal of Interpersonal Violence* 088626051769686, 2.

⁸¹⁶ Fadwa Al-Yaman, *Family Violence Among Aboriginal and Torres Strait Islander Peoples* (Australian Institute of Health and Welfare, 2006) 1.

⁸¹⁷ Towler, Eivers and Frey, above n 816, 2.

estimates that 40 percent of all women (3 065 800) and 50 percent of men (3 744 900) had experienced some form of violence. In 2011-12, 6.4 million incidents of physical or threatened assault occurred, affecting an estimated 1.1 million people in Australia.⁸¹⁸ A further 19.1 percent (1 469 500) of women and 5.5 percent (408 100) of men from the above survey experienced sexual violence; of which 1.7 million constituted violence from a current and previous partner in their lifetime, and of these, 76 percent were women.⁸¹⁹

Intersecting factors of gender, age, ability and mental health all contribute to the vulnerability of women in abusive relationships. An Australian study examining 49 males and 152 females between the ages of 18 and 26 reveal that females were more likely to rate all early warning sign behaviours (i.e., dominance-possessive, denigration, and conflict-retaliation) more seriously than males.⁸²⁰ Findings from a study carried out by Gary Byrne confirm that children and adults with intellectual disability are at a higher risk of abuse than their non-disabled peers.⁸²¹ Another Australian study of 109 high school girls, ages 14-17, found not only that more physical and sexual violence is associated with longer relationship length but also that depressive symptom contributed significantly to recent domestic violence experiences.⁸²² The Government of Victoria's establishment of the Royal Commission into Family Violence reflects the importance of the issue. Findings and recommendations of the Victoria Government's Royal Commission into Family Violence show that over the past five years the number of family incidents recorded by Victoria Police increased substantially, from 53 633 in the year ending September 2012 to 78 819 in the year ending September 2016.⁸²³

Aboriginality is also an intersecting factor that increases the risk of women facing intimate partner abuse, which comes at a significant cost to the state. In Australia, Aboriginal women are 35 times more likely than non-Indigenous women to sustain a serious injury requiring hospitalisation due to violence committed by a spouse or partner.⁸²⁴ The cost of domestic violence alone in 2002-03 was \$8.1 billion, with the largest cost (\$3.5 billion) resulting from pain, suffering and premature mortality.⁸²⁵ Nearly a decade later, the Department of Families, Housing, Community Services and Indigenous Affairs expressed serious concerns over the extremely high economic cost caused by violence against women. In 2009, an

⁸¹⁸ Australian Bureau of Statistics, 'Bridging the Data Gaps for Family, Domestic and Sexual Violence, Australia' (Government Report, Australian Bureau of Statistics, 2013) 68, 2
<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4529.0.00.002main+features132013>>.

⁸¹⁹ Ibid.

⁸²⁰ Towler, Eivers and Frey, above n 816, abstract.

⁸²¹ Gary Byrne, 'Prevalence and Psychological Sequelae of Sexual Abuse among Individuals with an Intellectual Disability: A Review of the Recent Literature' [2017] *Journal of Intellectual Disabilities* 1, 1.

⁸²² Christie J Rizzo et al, 'Individual and Relationship Characteristics of Adolescent Girls With Histories of Physical Dating Violence' [2017] *Journal of Interpersonal Violence* 1, 1-2.

⁸²³ Sarah Coghlan and Melanie Millstead, 'Identifying the Differences between Generalist and Specialist Family Violence Perpetrators: Risk Factors and Perpetrator Characteristics' (2017) 8 *Crime Statistics Agency Briefing Note* 1, 1.

⁸²⁴ Australian Bureau of Statistics, 'Defining the Data Challenge for Family, Domestic and Sexual Violence Australia' (Government Report 4529.0, Australian Bureau of Statistics, 2013) 79, 12
<<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4529.0/>>.

⁸²⁵ Al-Yaman, above n 817, 1.

estimated \$13.6 billion was spent on violence against women; a figure predicted to increase to \$15.6 billion by 2021.⁸²⁶

Andrea Pickett's story of intimate partner abuse captures the vulnerability of women, especially when cultural biases intersect to prevent effective law enforcement. Domestic abuse against Aboriginal women in Australia is a 'sick situation [that] is severely perverted', says Marcia Langton.⁸²⁷ According to the Australian Bureau of Statistics' *National Aboriginal and Torres Strait Island Social Survey* 2008, of the 171 048 Aboriginal women aged 15 years and over surveyed, 25 percent (42 255) experienced physical violence in the last 12 months leading up to the survey. Of this group, 32 percent identified a current or previous partner, and 28 percent a family member, as the perpetrator of their most recent incident of physical assault.⁸²⁸ Unfortunately, unlike Lani Brennan,⁸²⁹ Andrea Louise Pickett did not survive to tell the story of abuse she suffered at the hands of her husband. As a matter of fact, Andrea's case is one of 'very few, if any, inquests into domestic violence-related homicides of Aboriginal women that have been held, despite the high rate of homicides and evidence of systematic failures'.⁸³⁰

Andrea was married to Kenneth Charles Pickett for 23 years and bore him three children. In 2008, she finally gathered the courage to leave her husband, citing domestic violence and abuse as the reason. Kerry O'Brien affirms that 'with a demonstrably violent husband threatening again and again to kill her, she repeatedly went to police and other agencies for help. They failed her. In fear and despair, she predicted her death and she was proved right'.⁸³¹ On 12 January 2009, Andrea was stabbed to death on the front lawn of a relative's house in North Beach, Western Australia by her estranged husband. According to the Coroner's report at the time of her death, Kenneth was on a violence restraining order intended to protect Andrea and

⁸²⁶ The National Council to Reduce Violence against Women and their Children, 'The Cost of Violence against Women and Their Children' (Government Report, Department of Families, Housing, Community Services and Indigenous Affairs, March 2009) 84, 5

<https://www.dss.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf>.

⁸²⁷ Gail Boserio, 'Domestic Abuse of Indigenous Women a "National Crisis"' *Australian Broadcasting Corporation* (Sydney, NSW), 4 May 2015 <<http://www.abc.net.au/radionational/programs/latenightlive/crisis-of-domestic-abuse-of-indigenous-women/6442954>>.

⁸²⁸ Australian Bureau of Statistics, 'National Aboriginal and Torres Strait Islander Social Survey, 2008' (Government Report, Australian Bureau of Statistics, 2013) 119, 42–43 <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4714.0/#>>.

⁸²⁹ Brennan and Flynn, above n 790. In her book, (*Lani's Story*), Lani Brennan, an Aboriginal woman of Maori and Murri heritage, recounts how she escaped a physically and sexually abusive relationship and later survived the criminal justice system for four years in search of justice. On Lani's book promo video, a Crown Prosecutor disclosed, 'she's [Lani] been hit with iron bar, bottle, hammer, chisels, golf club, had an electric cord tied around her neck' (see <http://www.harpercollins.com.au/9780732293482/lanis-story>).

⁸³⁰ Australian Human Rights Commission, 'Independent Interim Report on CEDAW: Australian Human Rights Commission Report to the Committee on the Elimination of All Forms of Discrimination against Women' (Government Report, Australian Human Rights Commission, 31 August 2012) 25, 54

<http://www2.ohchr.org/english/bodies/cedaw/docs/followup/ngos/AHRC_Australia.pdf>. Of interest to note here is that the relatively high neglect on the part of government service to address domestic violence in Western Australia does not tally with the exponential rate at which it occurs. The Western Australian Coroner's Inquest into the Death of Andrea Louise Pickett states domestic and family violence incidents steadily increased from approximately 22 000 in 2005 to 35 000, a 59 per cent increase in just five years. As signatory to CEDAW, Australia is required subject to Article 18, to submit report, at least every four years and further whenever the Committee so requests, legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the Convention.

⁸³¹ Quentin McDermott, *A Matter of Life and Death* (News 24, ABC iView, 2012).

was paroled on a charge that he had threatened to kill Andrea.⁸³² ‘Why was so little done by police, prisons, parole services, the courts and child protection departments to stop her predictable, brutal murder?’⁸³³ Quentin McDermott and Peter Cronau’s question regarding the failure of the law and the law enforcement agency to protect Andrea casts doubt on whether she is part of the ‘all are equal under the law’ principle of the rule of law.⁸³⁴

It might seem acceptable to dismiss Andrea’s case as an outlier. However, consider that the life of each individual the law protects is valuable, irrespective of race, colour or national or ethnic origin (s10 of the Racial Discrimination Act). But sadly, comments made by individuals in *A Matter of Life and Death* highlight structural factors that ultimately denied Andrea the social protections otherwise guaranteed by the state for effective social services and law enforcement:⁸³⁵

Unfortunately, a number of the first times Andrea made complaints to the police, it didn’t appear as though her complaints were taken seriously. *Richard Bannerman, Lawyer for Andrea’s Family*

One in two women are still being turned away from crisis accommodation and so we worry; we’re concerned about what happens for those women. I think we’ve had two new refuges funded in the metropolitan area in about 20 years and so with the population growth, with the increased demand, refuges cannot possibly cope with being able to accommodate. *Angela Hartwig, Western Australia Domestic & Family Violence Council*

She had been to the police. Crisis Care couldn’t help her; she had too many kids for ‘em and no way was she splitting them because she thought he’d use the kids against her. I know he’s going to do it [kill me] and she said one way or another he’ll do it. *Lorraine Bentley, Andrea’s mother*

Look as an Aboriginal person in Western Australia, one of the most redneck states probably in the world, it’s just standard procedure for us; you’re not gonna get help from the police, you know, when it comes to dealing with our issues. *Dennis Simmons, Andrea’s Cousin*

As a father, as a husband and as a former police officer, I’m very sorry ah in relation to what happened to Mrs. Pickett and her extended family. Um but I want to reassure the people of Western Australia that the government hasn’t been sitting back idly waiting for a coroner’s report...there have been some fundamental failures on behalf of a number of government departments in respect to this. *Murray Cowper, Western Australia Minister for Corrective Services*

When Andrea Pickett most needed help, officers here at Mirrabooka Police Station failed to provide it, and as a result, Kenneth Pickett was free to hunt her down and kill her. As anger grew over the failings in the system which had enabled him to carry out

⁸³² Western Australia Coroner, ‘Inquest into the Death of Andrea Louise Pickett’ (Coroner Inquest, Perth Coroners Court, 2012) 64, 3 <<http://www.apf.gov.au/DocumentStore.ashx?id=f5aa63db-14c1-4ef4-9705-02e10e7fdb42&subId=303034>>.

⁸³³ McDermott, above n 832.

⁸³⁴ Official Response to Andrea Pickett and Saori Jones from Karl J O’Callaghan, ‘Response to Four Corners from Western Australia Police’, July 2012 1–2 <http://www.abc.net.au/4corners/documents/domestic2012/WA_Police_Response.pdf>. In his response to Four Corners, the Commissioner of Police, WA (Karl J O’Callaghan) elaborates Western Australia Police approach in curbing over 42 000 incidents of family and domestic violence across the state in financial year 2011. The report also highlights the significant reduction in homicides involving family and domestic relations from 19 in 2002 to 11 2012 (at the time of completing the report). Whether the lower death rates is as a result of the WA Police Department’s direct effort to address domestic violence against Indigenous women is beyond the scope of the chapter.

⁸³⁵ McDermott, above n 832.

his crime, changes were announced in the way the police respond to threats of domestic violence. *Quentin McDermott, Four Corners Reporter*

As in the rape case described above, cultural stereotypes and structural problems combined with ineffective or biased institutions to deny justice and protection for Andrea Pickett. However, it is also important to recognise how state violence affects Aboriginal communities in ways that promote interpersonal violence.

The marginalisation and disenfranchisement of Aboriginal men, often perpetrated by the state, is a determining factor in the prevalence of intimate partner abuse. The main reasons that domestic violence against Indigenous girls and women result in a disproportionately higher mortality rate lie in the historical, political, social and cultural contexts within which it occurs. 'High unemployment, low economic status, poor housing and overcrowding, poor health, high mortality, poor governance in local communities, and a lack of support services ...'⁸³⁶ are all results of Australia's colonial legacy and contributing factors that increase incidence rates of domestic violence. Alcohol and drug abuse are also closely linked to domestic violence.⁸³⁷ In Judy Atkinson's *Beyond Violence*, when asked, '[w]hy are men violent?' a research participant from Western Australia responded: 'men are unhappy – no job – angry – bored – they feel they have nothing. They don't talk about their problems, not to anyone, so they drink, and the grog lets them take it out on their women'.⁸³⁸ Discriminatory policies of wage dispossession, land dispossession, and human rights violation are all social determinants of Aboriginal health that lead to the depression and anger described by Atkinson's research participant.

3.2.7 *Stolen Wages*

Perceived as 'children' requiring 'parental' care, settler-colonists felt the need to redeem Indigenous Peoples from themselves by 'managing' their monies, property, and other possessions.⁸³⁹ As employers of Aboriginal Peoples in Australia, states, territory governments and their agencies (e.g., Aboriginal Protection Boards) were empowered⁸⁴⁰ to withhold up to 75 percent of earnings of any property belonging to tens of thousands of Aboriginal Peoples for

⁸³⁶ Al-Yaman, above n 817, 3–4.

⁸³⁷ Anders, above n 527, 17.

⁸³⁸ Judy Atkinson, *Beyond Violence: Finding the Dream* (The Aboriginal and Islander Sub-program, National Domestic Violence Education Program, Office of Status of Women, 1990) 14.

⁸³⁹ John Thomas Bigge, 'Report of the Commissioner of the Inquiry on the State of Colony of New South Wales' (Government Report, Colonial Parliament of New South Wales, 1822) 186 <http://www.jenwilletts.com/commissioners_of_enquiry.htm>. According to Judge and Royal Commissioner John Bigge's recommendation concerning care of convict's property (including their money) on their arrival in the colony, convicts '...Clothes and Beddings should be taken care of on their Landing and that the Money belonging to Individuals be taken and deposited...and not allowed to be held by the Superintendent or any other person'.

⁸⁴⁰ Mark Copland, 'Stolen Wages - An Opportunity for Justice?' (Background Report, Australian Catholic Social Justice Council, 2006) 8, 2–3 <<http://www.socialjustice.catholic.org.au/publications/discussion-guides/60-stolen-wages-an-opportunity-for-justice>>; Rosalind Kidd, *Trustees on Trial: Recovering the Stolen Wages* (Aboriginal Studies Press, 2006) 27. Pursuant to the *Aborigines Act 1869* (NSW); *Industrial Schools Act 1867* (TAS); *Aboriginal Protection and Restriction of Sale of Opium Act 1897* (QLD); *Aborigines Act 1905* (WA); *Aborigines Act 1910* (Vic); *Aborigines Act 1911* (SA); and the *Native Welfare Act 1963* (WA), the Chief Protector of Aboriginals became the legal guardian of every child under 21 years even when parents were living, with power to authorise adoption or marriage.

well over 150 years.⁸⁴¹ The ‘safe-keeping’ of Aboriginal finances included the management of funds they had earned through sweat and blood (often splashed with violence and abuse).⁸⁴² In addition to a formal apology and the return of \$40 million of some \$187 million underpaid during an 11-year period,⁸⁴³ the Human Rights and Equal Opportunity Commission sought information about stolen wages between 1975 and 1986. The main concerns of the Human Rights and Equal Opportunity Commission, which was conducted by the Senate Legal and Constitutional References Committee, were claims of racial discrimination regarding underpayment of wages to Aboriginal Peoples.⁸⁴⁴ In the conclusion of its *Inquiry into Stolen Wages*, the Senate Legal and Constitutional References Committee recommended that the Commonwealth government fund the establishment of a national oral history and archival research project in order to aid Indigenous Peoples in Australia who were subjected to protection regimes in telling their stories as evidence for receiving repayment monies from the government.⁸⁴⁵

Following complaints of racial discrimination against Aboriginal Peoples in Queensland, the court in *Bligh and Others v State of Queensland* (1996) (otherwise known as the *Palm Island Stolen Wages Case*) found that six of the complainants experienced discrimination by the State.⁸⁴⁶ Commissioner William Carter concluded that,

I am more than comfortably persuaded that in the case of each of the above complainants that they were afforded less favourable terms of employment and less favourable conditions of employment than those offered by another employer to other persons having the same qualifications and employed in the same circumstances on work of the same description. The complainants were demonstrably the victims of racial discrimination. The sole source of that discrimination was in each case the fact that each was an Aborigine.

Commissioner Carter’s affirmation of differential treatment based on the complainant’s Aboriginal identity affirms that the program was outright racist and patronising.

⁸⁴¹ Department of Aboriginal Affairs, *Stolen Wages Reparation Scheme WA* (2012) Stolen Wages <<http://www.daa.wa.gov.au/en/Stolen-Wages/>>.

⁸⁴² Reynolds, above n 126, 35; Queensland AnTAR, ‘Queensland Stolen Wages Fact Sheet’ 1 <<http://www.reconciliation.qut.edu.au/issues/recweek/StolenWagesFactSheet.pdf>>. Reynolds narrates an exchanged between George Augustus Robinson (1791-1866) and a bunch of stockmen whilst *en route* to take up a new position as Chief Protector of Aborigines in 1938: ‘Robinson concluded that the general feeling towards the Aborigines was fierce and hostile. The [stock] men openly asserted that they would not hesitate to “get rid” of the blacks provided they could do so without detection... The overlanders wished them ‘to be burnt-hung-drown- by any means they wished them got rid of’.

⁸⁴³ Copland, above n 841, 4.

⁸⁴⁴ The Human Rights and Equal Opportunity Commission, ‘Submission of the Human Rights and Equal Opportunity Commission to The Senate Legal and Constitutional References Committee: Inquiry into Stolen Wages S’ (Government, Human Rights and Equal Opportunity Commission, 1 August 2006) 10, 2 <<https://www.humanrights.gov.au/inquiry-stolen-wages>>.

⁸⁴⁵ Standing Committee on Legal and Constitutional Affairs, ‘Unfinished Business: Indigenous Stolen Wages’ (Government, The Senate, December 2006) 124 <https://www.aph.gov.au/~media/wopapub/senate/committee/legcon_ctte/completed_inquiries/2004_07/stolen_wages/report/report_pdf.ashx>.

⁸⁴⁶ Human Rights and Equal Opportunity Commission, ‘Inquiry into Stolen Wages’ (Human Rights and Equal Opportunity Commission, 2006) 10, 16 <<https://www.humanrights.gov.au/inquiry-stolen-wages>>.

The Queensland government estimate put wages stolen from Aboriginal Peoples throughout the 19th and 20th centuries at \$500 million in Queensland alone.⁸⁴⁷ To provide some redress for stolen wages of Aboriginal Peoples, the Western Australia Cabinet approved the establishment of the Stolen Wages Taskforce. The primary goal of the Stolen Wages Taskforce was to identify the scope and extent of stolen wages and to suggest policy options and administrative remedies for those affected.⁸⁴⁸ Having examined the practice of government control over Aboriginal Peoples' finances between 1905 and 1972, the Stolen Wages Taskforce arrived at two findings. First, direct control of Aboriginal Peoples' lives, property and monies were under the legal guardianship of the Chief Protector or Commissioner. Second, the most extensive control was common amongst those living on Government Settlements under the guardianship of the Chief Protector.⁸⁴⁹ Furthermore, three recommendations offered by the Stolen Wages Taskforce are crucial to this research. One, the *Western Australia Constitution Act* 1889 must be amended to recognise Aboriginal Peoples as the original inhabitants of Australia. Two, the state must establish an *ex gratia* 'common experience payment' scheme for survivors of stolen wages. Three, Australia must create a community healing program and provide therapeutic services for survivors, their families, and community members.⁸⁵⁰

A study conducted by Andrew Gunstone between 2008 and 2009 not only demonstrated that 'there had been a range of stolen wages practices imposed upon numerous generations of Indigenous Victorians',⁸⁵¹ but also equally criticised the Queensland and the Western Australia stolen wages schemes for being insufficient in providing appropriate reparations to Indigenous Peoples.⁸⁵² In *Trustees on Trial: Recovering the Stolen Wages*, Rosalind Kidd identifies 'coerced dependency' as a long-term impact of deliberate legal abuse and discrimination against Aboriginal Peoples with respect to stolen wages. Kidd argues that because 'Indigenous Peoples were hostage to the extraordinary discretionary powers of their colonisers',⁸⁵³ the *Aboriginal Affairs Act* (1965) made Aboriginal Peoples free from state control except for those selected as needing assistance by the magistrate. Although Aboriginal Peoples were supposed to be 'free from state controls', Kidd asserts that state power was still 'maintained overall personal finances and property, and over wages, terms and conditions of 5000 workers in the pastoral industry and 2500 on reserves'.⁸⁵⁴ In 1968, the Queensland government set wages of Aboriginal Peoples at less than 45 percent of the minimum amount for white families'.⁸⁵⁵ Kidd's assertion

⁸⁴⁷ Kidd, above n 841, 9.

⁸⁴⁸ Stolen Wages Taskforce, 'Reconciling the Past: Government Control of Aboriginal Monies in Western Australia, 1905-1972' (Department of Indigenous Affairs, Western Australia, 2008) 108 <http://www.daa.wa.gov.au/Documents/Stolen%20Wages/Report_of_the_Stolen_Wages_Taskforce_2008.pdf>; Department of Aboriginal Affairs, above n 842.

⁸⁴⁹ Stolen Wages Taskforce, above n 849, 5–6.

⁸⁵⁰ *Ibid* 7–8.

⁸⁵¹ Andrew Gunstone, 'Indigenous Stolen Wages and Campaigns for Reparations in Victoria' (2014) 8(12) *Indigenous Law Bulletin* 3.

⁸⁵² *Ibid*.

⁸⁵³ Kidd, above n 841, 22.

⁸⁵⁴ *Ibid* 27.

⁸⁵⁵ *Ibid*.

supports *Bligh's* view that white Australian settlers' control over Aboriginal Peoples' lives and property did not stop with declaring them 'free from state control', but rather, sustained a coercive culture of dependency into 'inter-generational spokes' of trauma, domestic/family violence, apathy and 'slavery'⁸⁵⁶ (as Stephen Gray refers to it).⁸⁵⁷ Unfortunately, not only has the state dispossessed Aboriginal Peoples of their wages, but their land has also been forfeit to the state since Australia's colonial beginnings.

3.2.8 Native Title (*The Mabo Case*)

The idea of *terra nullius* asserts that the land was devoid of human inhabitants before the arrival of settler-colonists, which gives the 'discoverers' the right to claim that land. Of course, this idea comes with the absurd implication that Aboriginal Peoples in Australia mysteriously 'appeared' from somewhere, ignoring their connection to that land for the previous 40 000 years. Before *Mabo* shattered this *Deceptive Act*, Justice Blackburn affirmed in *Miliripum v Nabalco Pty Ltd and the Commonwealth (the Gove Land Rights Case)* 1971 that, 'Australian common law did not recognise native title and that the plaintiffs did not have rights which could be recognised as property rights in Australian law'.⁸⁵⁸ On 20 May 1982, Eddie Koiki Mabo (1936 – 92), a Torres Strait Islander from Mer, Murray Island, and four others filed a lawsuit in the State of Queensland claiming customary ownership of their land.⁸⁵⁹ On 3 June 1992, Mabo's case progressed from the Queensland Supreme Court to the High Court of Australia. The High Court held that the *Queensland Coast Islands Declaratory Act* 1985⁸⁶⁰ conflicted with s10 of the *Racial Discrimination Act (Cth.)* 1975.⁸⁶¹ Hence, it was invalid (*see Mabo v Queensland (No 1)* (1988)). The High Court also ruled⁸⁶² (on a six to one majority, Dawson dissenting⁸⁶³) that,

⁸⁵⁶ Andrew Gunstone, 'Indigenous Stolen Wages: History and Reparations' <<https://www.tasa.org.au/wp-content/uploads/2014/12/Gunstone.pdf>>.

⁸⁵⁷ {Citation}

⁸⁵⁸ Behrendt, above n 568, 204.

⁸⁵⁹ Duncan Kennedy, 'Eddie Mabo, the Man Who Changed Australia' *BBC News* (London, UK), 6 June 2012 <<http://www.bbc.com/news/magazine-18291022>>.

⁸⁶⁰ Behrendt, above n 568, 248. Note that the Queensland Coast Islands Declaratory Act 1985 (QLD) was passed during the litigation of *Mabo (No 2)* in an attempted to enforce *Deceptive Act of Terra Nullius*.

⁸⁶¹ Section 10 of the RDA (Rights to equality before the law) states (with the purpose of effecting Article 2 of the *ICERD* 1965): (1) If, by reason of, or of a provision of, a law of the Commonwealth or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin. (2) A reference in subsection (1) to a right includes a reference to a right of a kind referred to in Article 5 of the Convention. (3) Where a law contains a provision that: (a) authorizes property owned by an Aboriginal or a Torres Strait Islander to be managed by another person without the consent of the Aboriginal or Torres Strait Islander; or (b) prevents or restricts an Aboriginal or a Torres Strait Islander from terminating the management by another person of property owned by the Aboriginal or Torres Strait Islander; not being a provision that applies to persons generally without regard to their race, colour or national or ethnic origin, that provision shall be deemed to be a provision in relation to which subsection (1) applies and a reference in that subsection to a right includes a reference to a right of a person to manage property owned by the person.

⁸⁶² Racism No Way, *Fact Sheet: Edward Koiki Mabo 1936-1992* (2015) Teaching Resources <<http://www.racismnoway.com.au/teaching-resources/factsheets/54.html>>.

⁸⁶³ In *para 2, Mabo v Queensland [No 2]* (1992) 175 CLR 1, Dawson J was of the opinion that Aboriginal Title was a type of occupancy the existence of which depended on the permission of the Crown, the withdrawal of which (which was the same as the extinction of aboriginal title) might be effected by specific legislation or inferred from a course of action by the Crown inconsistent with the continued existence of Aboriginal Title; in this case any rights of the

putting to one side the Islands of Dauar and Waier, the land leased to the Board of Missions and any land which was validly appropriated for use for administrative purposes the use of which is inconsistent with the continued enjoyment of the rights or privileges of the Meriam people under native title, the Meriam people are entitled as against the whole world to possession, occupation, use and enjoyment of the lands of the Murray Islands.⁸⁶⁴

Following the High Court decision in *Mabo (No 2)*, the Commonwealth Parliament passed the *Native Title Act 1993* (Cth.), enabling Aboriginal Peoples in Australia to claim traditional rights to unalienated land. According to the Federal Court of Australia, Native Title is the Australian legal system's recognition of Aboriginal Peoples in Australia's inherent right to lands and waters according to their Traditional Laws and customs.⁸⁶⁵

The significance of *Mabo* to this research lies in its connection to Indigenous women. Although Eddie Mabo did not live to see the outcome of his case, he left behind his wife and 10 children (including six daughters) and generations of Aboriginal women and men who remain in a struggle to repossess their stolen land from settler-colonists in Australia. Aboriginal Australians' fight for their land rights after *Mabo* includes the following cases: *Wik Peoples* (1996),⁸⁶⁶ *Fejo* (1998),⁸⁶⁷ *Yanner* (1999),⁸⁶⁸ *Yarmirr* (2001),⁸⁶⁹ *Ward* (2002),⁸⁷⁰ *Yorta Yorta*

Native inhabitants which might have existed in the land were not recognized by the Crown or were extinguished by the Crown on annexation.

⁸⁶⁴ Mason C.J., Brennan, Deane, Toohey, Gaudron and McHugh JJ at *para 2, Mabo v Queensland [No 2]* (1992) 175 CLR 1.

⁸⁶⁵ Federal Court of Australia, *Native Title Guide* (2015) Law and Practice <<http://www.fedcourt.gov.au/law-and-practice/areas-of-law/native-title>>. Further described by the FCA, Native Title may include co-existing rights of several Indigenous groups' right to access an area of land or participate in decisions concerning how the land or waters may be used. Native Title cannot be bought or sold. It can be transferred by Traditional Laws or customs, or surrendered to government, which can then pay compensation to the Native Title holders in the same way as it does when acquiring rights to other property.

⁸⁶⁶ *Wik Peoples v Queensland* [2004] FCA 1306. In *Wik*, the High Court of Australia held that: (1) that the [pastoral] leases did not confer rights to exclusive possession of the areas on the grantees. (2) That the grants of the [pastoral] leases did not necessarily extinguish all incidents of Native Title in respect of the areas. The decision of the Federal Court of Australia (Drummond J): *Wik Peoples v Queensland* (1996) 63 FCR 450, varied.

⁸⁶⁷ *Fejo and Another on behalf of Larrakia People v Northern Territory v Northern Territory* (1998) 195 CLR 96. In *Fejo*, the High Court of Australia held that, '(1) Native Title is completely extinguished by the grant of a freehold estate. The rights under fee simple are inconsistent with the continued existence of any form of Native Title and no co-existing or concurrent rights can survive; (2) the grant of freehold extinguishes Native Title permanently regardless of the land being held by the Crown in the future; (3) whilst the existence of Indigenous law is necessary to establish Native Title, it is not sufficient to invite recognition under the common law; (4) statutory rights under the Native Title Act are valuable rights that may warrant protection by injunctions. General principles of injunctive relief apply' (also see <http://www.atns.net.au/agreement.asp?EntityID=1613>). The HCA ordered the appellants to 1) 'remit the matter to the Full Court of the Federal Court of Australia to be dealt with consistently with the reasons for judgment of this Court; and 2) the appellants pay the respondents' costs of the proceedings in this Court'.

⁸⁶⁸ *Yanner v Eaton* (1999) 201 CLR 351; 166 ALR 258. In *Yanner*, the High Court of Australia held that, '(1) the Native Title rights or interests relied on by the [Aboriginal] man had not been extinguished by the way in which the *Fauna Conservation Act* regulated the exercise of those rights... (2) [t]hat by the operation of s 211 of the *Native Title Act* and s 109 of the *Constitution*, the *Fauna Conservation Act* did not prohibit or restrict the [Aboriginal] man, as a Native Title holder, from hunting or fishing for the crocodiles he took for the purpose of satisfying personal, domestic and non-commercial communal needs'. The decision of the Supreme Court of Queensland (Court of Appeal) reversed.

⁸⁶⁹ *The Commonwealth of Australia v Yarmirr* [2001] HCA 56. In *Yarmirr*, it was held by the High Court of Australia that, 'that native title rights and interests were capable of being recognised by the common law in respect of the sea and sea-bed beyond the low-water mark'. Decision of the Federal Court of Australia (Full Court): *The Commonwealth v Yarmirr* (1999) 1010 FCR, affirmed.

⁸⁷⁰ *Western Australia v Ward* [2002] HCA 28. In *Ward*, it was held by the High Court of Australia that 'where claims are made under the NTA [Native Title Act] for rights defined in that Act the determination of native title rights and interests is governed by the Act. The Act provides for the partial extinguishment or suspension of native title rights... Native title rights and interests are a bundle of rights the individual components of which may be extinguished

(2002),⁸⁷¹ and *Wilson* (2002).⁸⁷² These cases are testaments first, to the resilience of Indigenous Peoples; and second, to the double standard in the application of the principle of the rule of law regarding equality under the law. For Aboriginal Peoples in Australia, equality under the law principle applies differently, especially when it comes to settler-colonists control over their land. Whilst a safer aspiration of making the law efficient dwells in the idea of ‘progressive realisation’, Aboriginal Peoples’ repossession of their land after *Mabo* is still a long time coming. For example, the most recent policy on Northern Australia not only epitomises paternalistic leadership⁸⁷³ but also suggests that ‘[n]ative title should be seen as a source of Indigenous economic opportunity’,⁸⁷⁴ rather than as an inherent right. Beyond Native Title issues, recent policy in the Northern Territory has even stripped Aboriginal Peoples of the human rights they were entitled to under the Australian Constitution.

3.2.9 Northern Territory Intervention, Little Children are Sacred

The diverse sources of violence against Indigenous girls and women provide evidence that misery is not only Aboriginal girls and women’s *palava* (business).⁸⁷⁵ In fact, the colonial legacy of systematic gender violence that Behrendt alluded to above is aptly articulated by Paul Wilson,

separately...resumption of land under s 109 [of the Constitution] did not extinguish native title’. Decision of the Federal Court of Australia (Full Court) *Western Australia v Ward* (2000) 99 FCR 316 reserved.

⁸⁷¹ *Members of the Yorta Yorta v Victoria* [1998] FCA 1606. In *Yorta Yorta*, it was held by the High Court of Australia that, ‘[t]he native title rights and interests that were the subject of the Act were those which existed at sovereignty, which survived that fundamental change in legal regime and which, by resort to the processes of the new legal order, could be enforced and protected’. Decision of the Federal Court of Australia (Full Court): *Yorta Yorta Aboriginal Community v Victoria* (2001) 110 FCR 244, affirmed.

⁸⁷² *Wilson v Anderson* (2002) 213 CLR 401; 190 ALR 313; 76 ALJR 1306. In *Wilson*, the High Court of Australia held that, ‘it was inappropriate to answer the questions reserved otherwise than to say that, by the operation of ss 23B and 23E of the NTA and s 20 of the *Native Title (New South Wales) Act 1994* (NSW), the grant of the lease extinguished any Native Title in relation to the land covered by the lease and that the extinguishment was taken to have happened when the lease was granted...[t]here was sufficient material before the Court to provide substantial answers to the questions reserved. Questions (a) and (b) should be answered in the affirmative and question (c) that Native Title rights were extinguished, not suspended, by the grant of the lease at the time of that grant’. The questions asked (a) whether by virtue only of the *Western Lands Act* and regulations in force at the time of the lease, or (b) by virtue of the Act and those regulations and one or more of the terms and conditions of the lease, the lease conferred on the lessee a right to exclusive possession of the leased land; and if (a) or (b) is answered affirmatively, (c) whether any Native Title rights the exercise of which involved the presence on the leased land by the holders of Native Title were extinguished by the grant of the lease or suspended on its grant for its duration. Decision of the Federal Court of Australia (Full Court): *Anderson v Wilson* (2000) 97 FCR 453, reversed.

⁸⁷³ Medhora, above n 377. Claiming to transform Northern Australia into an economic powerhouse with little or no sign of consulting Indigenous Australia, four grey-headed white men graced the cover of the online news. The Abbott government arrogance ranges from the release of AUD \$110m per year over a four-year period to expedite Native Title claims, to establishing Australia as a ‘dam-loving’ country, whilst at the same time, fast-tracking visas for Indian and Chinese temporary workers for ten years. Comments made by a reader called ‘Halycon’, captures the worrying effect of this White Paper: ‘I wish our leaders would spend a few more weeks in northern Australia. They clearly don’t know what they are talking about on some issues, such as water and soils. There does not seem to be any allowance in this plan for Indigenous employment and training. Whilst we are letting in potential workers from India and China and other places, we ignore the huge unemployment rate for Aboriginal Australians in the north. All the talk of dams and transport infrastructure are just rehashing of the last 100 years in the north. Look how long it took to finally get a railway from Adelaide to Darwin. These people (our politicians) must live in their own little dream world’ (see, <http://www.theguardian.com/business/2015/jun/18/northern-australia-plan-aims-to-make-region-an-economic-powerhouse#comments>).

⁸⁷⁴ Commonwealth of Australia, ‘Our North, Our Future: White Paper on Developing Northern Australia’ (Policy Document, Department of the Prime Minister and Cabinet, 2015) 189, 6
<https://northernaustralia.dpmc.gov.au/sites/default/files/papers/northern_australia_white_paper.pdf>.

⁸⁷⁵ Bell, ‘Speaking about Rape Is Everyone’s Business’, above n 814; Huggins et al, above n 561. In her article, ‘Speaking about rape is everyone’s business’, Diane Bell expresses discontent for the ‘resounding silence of social scientists’ regarding rape against Aboriginal women by Aboriginal men.

who noted that '[w]hites have, by political, legal and sometimes police action, created conditions which foster murder and assault in Aboriginal communities ... [and] [w]e cannot divorce the sense of hopelessness and futility that exists amongst Aborigines – born of dispossession and exploitation...'⁸⁷⁶ Wilson's insightful analysis of a *sui generis* case of Peter Alwyn⁸⁷⁷ reveals a relatively high occurrence of violence in Aboriginal communities. As indicated by the testimony above and supported by examples of traumatising disenfranchisement, it would be overly simplistic to blame Aboriginal men for the relatively high incidence rates of violence in Indigenous societies. Nevertheless, without excusing Aboriginal male perpetrators of violent crimes committed against Aboriginal children and women, the state's reaction to that interpersonal violence can constitute an act of state violence in itself. A primary example of such state violence is Australia's Northern Territory Intervention.

On 15 May 2006, the Australian Broadcasting Corporation's Late-Line broadcasted 'Crown Prosecutor Speaks Out About Abuse in Central Australia'. In her interview with presenter Tony Jones, Nanette Rogers, then Crown Prosecutor in Alice Springs, Northern Territory, said,

I think there are a number of reasons for that [abuse in Central Australia]. The first is that violence is entrenched in a lot of aspects of Aboriginal society here. Secondly, Aboriginal people choose not to take responsibility for their own actions. Thirdly, Aboriginal society is very punitive so that if a report is made or a statement is made implicating an offender then that potential witness is subject to harassment, intimidation and sometimes physical assault if the offender gets into trouble because of that report or police statement.⁸⁷⁸

When asked to provide more details on the case of the rape of a two-year-old in 2004, Rogers responded,

Yes, the two-year-old was playing outside with some other children. Her mother was away from the house, drunk in a small town. The offender woke up, took the small child, carried it out bush, had the child out bush for some hours. Undressed the child and inserted, simultaneously, two fingers in her vagina and two fingers in her anus and moved his fingers up and down a number of times causing injuries. He then - I'm sorry, he had his trousers off while this was happening. Then he placed the child on his lap and had his penis next to the child's vagina and tried to masturbate and so on. And eventually returned the child back to his father's camp. He was carrying the child with

⁸⁷⁶ Paul R Wilson, *Black Death, White Hands* (Allen & Unwin, 1982) 9, 118–119. In his book, Paul Wilson assesses the trial of Alwyn Peter, a young Aboriginal man from Weipa South charged with killing his girlfriend. Interesting to note, as Wilson recounts, was that Bill O'Connor, the Public Defender of Peter chose to make his trial a test case by examining whether Alwyn's actions could be explained, if not justified, by historical events surrounding his life. In concluding his book, Wilson offers two choices in an attempt to addressing the issue of violence in Aboriginal community: 1) government should continue with the piecemeal reforms (improved Aboriginal health, housing, education, etc.) even though there's a little change that result from it; and 2) Aboriginal people should have the right to determine their own future and to own their own land, unburdened by white officials and white rules. By so doing, '[o]nly then can we begin to erase from our collective conscience the guilt of all those black deaths that have, directly and indirectly, flowed from our white hands'.

⁸⁷⁷ Ibid 1–2; Bernadette Brennan (ed), *Just Words? Australian Authors on Writing and Justice* (University of Queensland Press, 2008) 167–168. Alwyn Peter, a 24-year old Aboriginal man from Queensland was acquitted from stabbing his 19-year old girlfriend, Deidre Gilbert, to death. By the time Peter appeared in Court on 8 September 1981, he was the fifteenth Aboriginal male in three years (at the time) to have killed another Aboriginal person on an Aboriginal government reserve, where living conditions were said to have been 'intolerable from most white Queenslanders'. Also see, *R v Alwyn Peter* Supreme Court of Queensland, Brisbane (Dunn J.) [1983].

⁸⁷⁸ Australian Broadcasting Corporation, 'Crown Prosecutor Speaks out about Abuse in Central Australia', *Lateline*, 15 May 2006 <<http://www.abc.net.au/lateline/content/2006/s1639127.htm>>.

its legs on the side. The child was crying throughout the assault. The child was still crying and bleeding. He handed the child to his drunken father. He himself had been drinking. The father then took the child back to the area that the child had been removed from and when the mother returned from town, where she'd been drinking, the child was crying, and the other children indicated that the offender had taken her away some time before and it was then that the bleeding and so on was noticed in her nappy.⁸⁷⁹

The former Crown Prosecutor's revelation of such 'horrific cases'⁸⁸⁰ of sexual assaults in Central Australia shocked many. Subsequently, the release of the *Ampe Akelyernemane Meke Mekarle (Little Children are Sacred) Report (2007)*⁸⁸¹ served as a catalyst for the Commonwealth Government's launch of an emergency intervention response barely six days⁸⁸² after the report was released: The Northern Territory Intervention.⁸⁸³ On 21 June 2007, Prime Minister John Howard announced a series of measures to be introduced in Aboriginal communities across the Northern Territory to address what it described as the 'national emergency confronting the welfare of Aboriginal children' on child abuse and family violence.⁸⁸⁴ The *Northern Territory National Emergency Response Act 2007* (hereafter the *Northern Territory Emergency Response Act*) formed the legal basis of the Northern Territory Intervention.⁸⁸⁵ Legitimising the *Northern Territory Emergency Response Act* meant that the Federal Parliament of Australia had to suspend the *Racial Discrimination Act*. In essence, the Howard government stayed provisions (precisely, Part II, ss 9 (1),⁸⁸⁶ 9 (1A)⁸⁸⁷ and s10⁸⁸⁸) of the *Racial Discrimination Act* so as to

⁸⁷⁹ Ibid.

⁸⁸⁰ Terri Libesman, *Decolonizing Indigenous Child Welfare Comparative Perspectives* (Taylor and Francis, 2013) 165 <<http://public.eblib.com/choice/publicfullrecord.aspx?p=1576079>>.

⁸⁸¹ Northern Territory. Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Wild and Anderson, above n 23, 16–18. Pursuant to the *Inquiries Act 1945* (NT) (amended by the Act 2011 (NT)), Rex Wild, QC and Patricia Anderson, an Alyawarr woman; were appointed co-chairs of the board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse on 8 August 2006 (see, <http://www.inquirysaac.nt.gov.au/tor.html>). The Inquiry Board main term of reference was to 'examine the extent, nature and contributing factors to sexual abuse of Aboriginal children, with a particular focus on unreported incidences of such abuse'. Having held 260 meetings/consultations/forums with stakeholders across some 10 sub-regional communities in the Northern Territory coupled with 65 'strong' written submissions received from individuals and organisation the Board of Inquiry emphasised that '...the Inquiry has not spent its time investigating the extent and nature of all cases of alleged sexual abuse in the Territory'. Notwithstanding, 'the Inquiry accepts that sexual abuse of Aboriginal children is *common, widespread and grossly under-reported*'. Urging the Commonwealth government to lead and 'accept responsibility to protect our kids' because they are sacred, the Board of Inquiry's primary concern was twofold: 1) their dismay at the miserable school attendance rates for Aboriginal children and the apparent complacency with that situation; and 2) that unless alcoholism is conquered, there is little point in attending to any of the other recommendations made in the report. Alarming, the Howard government birthed the Northern Territory Intervention.

⁸⁸² Australian Human Rights Commission, 'Social Justice Report 2007' (Government Report 2, Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 11 February 2008) 435, 205 <https://www.humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport07/pdf/sjr_2007.pdf>.

⁸⁸³ Behrendt, above n 568, 81–84.

⁸⁸⁴ Australian Human Rights Commission, 'Social Justice Report 2007', above n 882, 197; Behrendt, above n 568, 71.

⁸⁸⁵ Australian Human Rights Commission, 'Social Justice Report 2007', above n 882, 205–209. The Northern Territory Emergency Response is a package of policy changes to Aboriginal land rights, community living, alcohol usage, computer utility, welfare funding, cessation of applying Aboriginal customary law in bail/sentencing, deployment of the Australian Federal Police, amongst others. All five bills (480 pages long) containing legislations needed to enforce the NTI passed through the House of Representatives on the same day (7 August 2007) and received Royal Assent, thus enacted as legislation on 17 August 2007.

⁸⁸⁶ Part II, Section 9 (1) of the RDA: It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

⁸⁸⁷ Part II, Section 9 (1A) of the RDA: Where (a) a person requires another person to comply with a term, condition or requirement which is not reasonable having regard to the circumstances of the case; and (b) the other person does not or cannot comply with the term, condition or requirement; and (c) the requirement to comply has the purpose or

implement the *Northern Territory Emergency Response Act* in the Northern Territory. The ‘legality’ (or breach⁸⁸⁹) of such parliamentary procedure denied any protection afforded by the *Racial Discrimination Act* to Aboriginal Peoples in the Northern Territory who were subjected to the imposition of the *Northern Territory Emergency Response Act*.

In 2011, four years after the implementation of the Northern Territory Intervention, the Australian Human Rights Commission expressed five ongoing concerns regarding the ‘special measures’:

Although, since the 2010 Welfare Reform Act,⁸⁹⁰ the Government has repealed the sections under the [Northern Territory Emergency Response] legislation that deemed the entire [Northern Territory Emergency Response] legislation to be a ‘special measure’, the Commission continues to be concerned about the characterisation of the measures as a ‘special measure’ under the [Racial Discrimination Act] for 5 key reasons: 1) the measures intentionally discriminate on the basis of race and were formulated without the appropriate participation and acceptance of Indigenous Peoples; 2) they were developed without an appropriate evidence base to show that the measures were required and likely to be effective; 3) simply stating that the measures are ‘special measures’ in an objects clause, rather than substantively redesigning the measures, does not satisfy the criteria necessary for a measure to be a ‘special measure’ - but may reduce the ability of the measures to be challenged under the [Racial Discrimination Act] because courts are required to interpret legislation consistently with its stated purpose; 4) there are inadequate mechanisms for monitoring and evaluating the previous and redesigned measures to ensure that they are working effectively and to determine whether their objectives have been met; and 5) the characterisation of five-year leases as a ‘special measure’ is inconsistent with the [Racial Discrimination Act].⁸⁹¹

Members of the Aboriginal communities in *Intervention: Stories from the Inside* (2007) exemplify the Australian Human Rights Commission’s concerns.⁸⁹² One said, ‘ask Jenny

effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life; the act of requiring such compliance is to be treated, for the purposes of this Part, as an act involving a distinction based on, or an act done by reason of, the other person’s race, colour, descent or national or ethnic origin.

⁸⁸⁸ Part II, Section 10: If, by reason of, or of a provision of, a law of the Commonwealth or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin. (2) A reference in subsection (1) to a right includes a reference to a right of a kind referred to in Article 5 of the Convention. (3) Where a law contains a provision that: (a) authorizes property owned by an Aboriginal or a Torres Strait Islander to be managed by another person without the consent of the Aboriginal or Torres Strait Islander; or (b) prevents or restricts an Aboriginal or a Torres Strait Islander from terminating the management by another person of property owned by the Aboriginal or Torres Strait Islander; not being a provision that applies to persons generally without regard to their race, colour or national or ethnic origin, that provision shall be deemed to be a provision in relation to which subsection (1) applies and a reference in that subsection to a right includes a reference to a right of a person to manage property owned by the person.

⁸⁸⁹ Australian Human Rights Commission, ‘The Suspension and Reinstatement of the RDA and Special Measures in the NTER’ (Government Report, Australian Human Rights Commission, 2011) 24, 6 <https://www.humanrights.gov.au/sites/default/files/content/racial_discrimination/publications/rda-nter/NTERandRDAPublication12%20December2011.pdf>.

⁸⁹⁰ Schedule 1 of the *Welfare Reform and Reinstatement of Racial Discrimination Act 2010* (Cth) basically repealed the laws limited anti-discrimination laws provided in the *Northern Territory National Emergency Response Act 2007*.

⁸⁹¹ Australian Human Rights Commission, ‘The Suspension and Reinstatement of the RDA and Special Measures in the NTER’, above n 889, 4.

⁸⁹² Tangentyere Research and Vincent Lamberti, *Intervention: Stories From the Inside* (Ronin Films, 2007).

Macklin to send someone to my house to explain what pornography is because my son has never heard the word before'.⁸⁹³

Mary Spiers-William (criminal lawyer): There is no data. There is no means of tracking alcohol purchase. Personally, I have seen people drinking excessively on highways before they get back into town, which makes it more dangerous... The [Northern Territory Emergency Response] legislation allowed police to engage intrusively in a lawful way because this was a special act under the *Racial Discrimination Act*.⁸⁹⁴

Anhelke Namatjira's Camp (Frank Curtis): The [Northern Territory] intervention created more workload than the police can take. More people are going to jail; they will find a way to buy alcohol. They need to talk to the right people. They should have consulted before coming up with the law. We could have been working together.⁸⁹⁵

By 2012, the Northern Territory Intervention mutated into the *Stronger Future Legislation*,⁸⁹⁶ which extends the project another 10 years and creates a new set of challenges.⁸⁹⁷

The harmful effects of the Northern Territory Intervention have not gone unnoticed. Stop the Northern Territory Intervention⁸⁹⁸ and a petition signed by 43 464 supporters in 2012 are two few resistance⁸⁹⁹ advocacies that brought attention to 'a policy that has attracted United Nations condemnation for its racial discrimination against Aboriginal Peoples and their cultures'.⁹⁰⁰ Ultimately, the Northern Territory Intervention exemplifies the continuation of paternalistic, state-sponsored policies that undermine Aboriginal human rights and further disenfranchise Aboriginal Peoples and disrupt Aboriginal families through police action and incarceration. The resulting intergenerational trauma caused by state violence, reinforced by the structural violence of stigmatisation and stereotypes of Aboriginal communities, are all social determinants of the health of Aboriginal Peoples. These negative health impacts affect Aboriginal women and children directly when their family's incomes are stolen, lands are removed, or family members are incarcerated. Indirectly, women and children are further affected when the disenfranchisement of the men in their communities predisposes them to substance abuse and acts of interpersonal violence, such as intimate partner abuse. However, these patterns are not confined to Australia; many parallels can be drawn when considering the plight of Indigenous children and women in Liberia.

⁸⁹³ Ibid.

⁸⁹⁴ Ibid.

⁸⁹⁵ Ibid.

⁸⁹⁶ The Stronger Futures in the Northern Territory Act 2012 aims to build stronger futures for Aboriginal people in the Northern Territory and for related purposes. From tackling alcohol abuse (Part 2) to land reform (Part 3) and food securities (Part 4) the Government of Australia is committed to using the law to control Aboriginal people.

⁸⁹⁷ Nerida Currey, 'Barb Shaw Speaks on Stronger Futures Legislation'.

⁸⁹⁸ Stop the NT Intervention, "Stronger Futures Legislation" (2012), available at: <<http://stoptheintervention.org/facts/stronger-futures-legislation>>.

⁸⁹⁹ Staff Reporter, *Stronger Futures Laws Condemned after Passing Senate* (28 June 2012) ABC News <<http://www.abc.net.au/news/2012-06-29/stronger-futures-laws-rushed-through-senate/4100288>>.

⁹⁰⁰ Stand for Free, *Australian Government: Stop 'Stronger Futures' and Support Aboriginal Self-Determination in the NT* (2012) Change.org <<https://www.change.org/p/australian-government-stop-stronger-futures-and-support-aboriginal-self-determination-in-the-nt>>.

3.3 Liberia

As with convict history in Australia, a decolonisation perspective requires investigating the link between colonial violence against Indigenous Peoples in Liberia and the colonist's own slave history. The trans-Atlantic slave trade had a profound impact across Africa, the Americas and the Caribbean with a direct effect on Native Peoples in Liberia. Centuries of experience being shot, beaten, lynched,⁹⁰¹ raped and forcibly separated from one's parents and children⁹⁰² suggest why African American settlers perpetrated similar violent behavioural patterns against Indigenous Peoples in Liberia.

Many afflictions befall Indigenous Peoples. Some are horrendously evil, whilst others are integrated into the habits of everyday life. The trans-Atlantic slave trade was one horrendous evil that inflicted centuries-long trauma, pain and suffering on Native Peoples of Africa. According to the trans-Atlantic slave trade database, between 1 500 and 1 800, more Africans than Europeans arrived in the Americas, whilst recent research suggests that between 12 and 20 million Africans were transported as human cargo by Europeans and European colonists to the New World.⁹⁰³ Between 1600 and 1850, approximately 4.5 million enslaved Africans went to Brazil, 10 times as many as went to North America and more than the total number of Africans transported to the Caribbean and North America combined.⁹⁰⁴ It is estimated that 100 million Africans lost their lives as a result of the maritime slave trades. Notwithstanding, roughly 10 million survived the dreaded Middle Passage.⁹⁰⁵ As this illicit business rose in the 1840s, enslaved Native Peoples in Africa were transported disproportionately on ships made and registered in the United States and flying the United States' flag.⁹⁰⁶

The perception is that Indigenous Peoples in Africa, Europe and the Americas inflicted violence on Native Peoples in Africa during the slave trade. It is argued that Indigenous Peoples in Africa contributed to the slave trade,⁹⁰⁷ as chiefs and local West Africans conspired with Europeans to ship Native Peoples in Africa as articles of commerce (e.g., firearms, beads, and salt);⁹⁰⁸ across the Americas.⁹⁰⁹ Although they resisted with all their might,⁹¹⁰ Native children and women were forcibly removed from their homelands,⁹¹¹ subjected to domestic servitude,⁹¹² sexually abused by their masters, and seen as lowlifes who were nonetheless exotic enough to

⁹⁰¹ Guannu, above n 100, 12.

⁹⁰² Staff Reporter, 'Archaeologists Find Graves Containing Bodies of 5 000 Slaves on Remote Island: Africans Died in Custody of Royal Navy in 1800s, after Being Seized from Ships of Slave Traders, and Were Buried on St. Helena' *The Guardian* (London, UK), 8 March 2012 <http://www.theguardian.com/world/2012/mar/08/slave>.

⁹⁰³ Horne, above n 35, 2.

⁹⁰⁴ Ibid.

⁹⁰⁵ Henry Louis Gates Jr., *Slavery Secret: 'Africans Sold Other Africans into Slavery'* (PBS, 2010) <https://www.youtube.com/watch?v=TtRaG_bokds>.

⁹⁰⁶ Horne, above n 35, 3.

⁹⁰⁷ Gates Jr., above n 906.

⁹⁰⁸ Basil Davidson, *The African Slave Trade* (Little, Brown, A revised and expanded, 1980) 242.

⁹⁰⁹ Ibid 40.

⁹¹⁰ Levitt, above n 105, 132. According to Levitt (2005), when Indigenous Kru and Grebo tried resisted assimilation, acculturation and subjugation by the African American settlers, President Joseph J. Cheeseman, ordered gunboat *Gorronammah* ('an African word signifying a new defence') built in Liverpool, to bombard Setra Kru, and all Kru boats unloading illegal cargo in 1894.

⁹¹¹ Sawyer, *The Emergence of Autocracy in Liberia*, above n 61, 61.

⁹¹² Kathleen E Sheldon, *Historical Dictionary of Women in Sub-Saharan Africa* (Scarecrow Press, 2005) 229–231.

become sexual objects for wealthy Europeans.⁹¹³ Whilst undergoing this abuse, stripped of every ounce of human dignity, Native Peoples in Africa ‘became the creators of the wealth that made the flowering of capitalism possible in the nineteenth century’.⁹¹⁴ It was not until some 400 years later that Indigenous Peoples in Africa ‘escaped slavery, reunited with a lost fatherland, and established an imperial future [in Liberia]’.⁹¹⁵

As in Australia, the onset of Liberia’s colonisation, riddled with frontier violence, racism, discrimination and land dispossession, uniquely predisposed Indigenous girls and women to systematic violence.⁹¹⁶ When analysing violence against Indigenous women, it is important to understand that irrespective of income, age, or education, generally, females are more susceptible to physical, sexual, psychological and economic violence than males. Elijah Johnson’s utterance in the above quotation regarding ‘whipping’ fellow Indigenous Africans upon arrival in Liberia bears witness to settler-colonists’ mindset and intention to inflict violence upon Indigenous Peoples even before landing on their shores of the West African Coast.

Settler-colonists used military force, exile, and coercion (e.g., direct physical force; deportation and forced marriage)⁹¹⁷ to secure compliance from Native Peoples in Africa⁹¹⁸ Former President Arthur Barclay affirmed the use of direct physical force in his inaugural speech (1904) when he said that, ‘the militia, largely lower-class Americo-Liberians and tribal people ... was tending to become a greater danger to the loyal citizen and his property, which it ought to protect’.⁹¹⁹ The aim here was to sever inter-Indigenous contact⁹²⁰ in response to Indigenous Peoples’ resistance to government authority, as the Liberian State tried to establish full control over Native Peoples in Africa and their land. Eventually, Indigenous Peoples in Liberia lived with the dilemma of both acceptance and rejection alongside the settler-colonists’ culture, which is deemed as superior to theirs to this day.⁹²¹

The European Christianising project aided slave-trade and colonisation, as discussed in chapter 2; but Christians struggled to access the interior of Africa.⁹²² For Liberia, this Christianising project took hold with the arrival of Black African colonist-settlers in 1822. Some of the progeny resulting from the rape of Indigenous slave girls and women by white slave owners settled in Liberia to become the elite mixed-race founding settler-colonists who

⁹¹³ Davidson, above n 909, 79. According to Davidson, ‘in 1701 the value of British exports of cotton goods and yarns stood at little more than 23,000, yet in 1800 the total was nearly 51/2 millions. Industrialism was born, and it was the West Africa trade in all its ramifications that helped to preside over the event’.

⁹¹⁴ Frazier, above n 432, 9–13.

⁹¹⁵ Kazanjian, above n 90, 54.

⁹¹⁶ United Nations, ‘The World’s Women 2015: Trends and Statistics’, above n 630, 139.

⁹¹⁷ Anonymous, *Liberia from 1930 to 1944: The Kru Campaign* (2016) Liberia

<<http://personal.denison.edu/~waite/liberia/history/30-44.htm>>. The circumstances of ‘deportation’ surfaced in the case of Chief Juan Nimley, removed from his Native Sasstown home and imprisoned in Gbanga to curb his military activities against the settler government.

⁹¹⁸ Liebenow, above n 55, 43.

⁹¹⁹ *Ibid* 54.

⁹²⁰ *Ibid* 55.

⁹²¹ *Ibid* 26–27.

⁹²² Davidson, above n 909, 23; Guannu, above n 100, 11.

monopolised political power⁹²³ and offered citizenship to alien Negroes (e.g., the Congoes).⁹²⁴ In an effort to be accepted as citizens (a right that was denied)⁹²⁵ and to minimise tensions, Native Peoples in Liberia struggled to assimilate with settlers-colonists. At the same time, settler-colonists' desire to extend their dominance over the 'heathen savages' systematically dispossessed Native Peoples of their land.

At the core of assimilation, tensions were land tenure issues between settler-colonists and Native Peoples in Liberia, which led to violent conflicts both at the frontier and during their political regime. J Gus Liebenow provides some insights regarding dispossession of Native Peoples' land in Liberia to further illuminate the 'oppressed becomes the oppressors' view:

[The land tenure issue] was compounded by the subsequent failure of the settlers or the American Colonization Society to pay even the low prices agreed upon; by the seizure of land for alleged insults against the colonists or for non-payment of debts; and by constant disputes over land boundaries. The land question was subsequently complicated by the policies and practices in the use of native labor on the farms of Liberian settlers. The outrageous wage differentials, the lack of amenities, the unregulated power of farmers to 'fine' their employees and the abuses of the apprenticeship system under which young natives were assigned to Americo-Liberian families until they came of age created a situation in Africa not unlike the very one against which the repatriated Americo-Liberians had rebelled in America...⁹²⁶

Liebenow's observation not only affirms that the oppressed became the oppressors but it also attests to how, as humans, we are prone to the long-term effects of psychological and physical abuse. Such intergenerational trauma has destroyed Native Peoples' ability to thrive, recuperate and succeed in the face of ongoing injustice, discrimination and neglect. Notwithstanding, a

⁹²³ Cooper, *The House at Sugar Beach*, above n 168, 6, 7, 10, 11 13, 15, 18, 19, 29, 30, 31, 36, 39, 41, 4–49, 52–56, 65–66, 75, 79–80, 84; Jerry Gbardy, *Painful Journey: A Story of Escape and Survival* (Friesen Press, 2014) 2; Personal from Samson Ceasar, 'Liberian Letters: Samson Ceasar to Henry F. Westfall 1834 June 2', 2 June 1834 <<http://search.lib.virginia.edu/catalog/uva-lib:501740>>; Azikiwe, above n 301, 38; Shick, above n 170, 61. Cooper's memoir is littered with the resented phrase 'country people/children' over 60 times. It appears the resentment stems from the very notion of African chiefs selling their own into slavery, towards the rape of her mother and the execution of her uncle Cecil Dennis by former President Samuel Doe's soldiers. Gbardy's autobiographical piece opens with an interesting historical account of how his father, who served the Liberian Armed Forces (formerly the Liberia Frontier Force) and his cousins 'escaped the porter system in the hinterland in which Indigenous men were forced to carry Americo-Liberian government officials in hammocks to villages and towns with no motor roads'. The lack of infrastructure in the hinterland was highlighted by 28-year old Sampson Caesar, an emancipated slave from Virginia who arrived on Jupiter 1 January 1834. Barely six months after his arrival, he writes to a friend, 'I must say that I am afraid that our Country never will improve as it ort until the people in the United States keep their slaves that they have raised like as dumb as horses at home and send those here who will be A help to improve the Country as for Virginia as far as my knowledge extends I think She has sent out the most Stupid Set of people in the place whilst they have them their the cow hide is hardly ever off of their backs and when they come here they feel So free that they walk about from morning till evening without doing one Stroke of work by those means they become to Suffer people in the United States ort to have more regard for Liberia than to Send Such people here Some think that everything grows by in this Country without labour but they are mistaken...'. Sampson's observation is interestingly real today, as Liberia tops the fourth poorest country globally.

⁹²⁴ Dunn and Holsoe, above n 104, 45. Dunn and Holsoe describe the Congo-re-captives (or Congoes) individuals who were captured by the American government navy ships flying the American flag. Most of these people were *en route* from Africa to the New World as slaves. One of the reasons why the United States government was willing to assume some of the financial expenses for the creation of Liberia was to find a secure haven at which to land the recaptured slaves. From the very beginning of the colony such individuals were brought to Liberia. The earliest group was settled at Thompson Town on the upper part of Cape Mesurado. A second important settlement was formed in 1824 at New Georgia on Stockton Creek. The largest contingent came in 1860, when over 4 000 people landed. Since nearly all of these individuals came from the Congo River area, hence their name. Congo Settlements were formed along the coastal region of Liberia from Robertsport to Harper. In recent years, the term 'Congo' has come to refer to anyone, particularly in the rural communities who is of settler/Congo descent.

⁹²⁵ Liebenow, above n 55, 27.

⁹²⁶ *Ibid* 25.

glimmer of hope lurks regarding a recent land rights policy in Liberia. A policy report released on 21 May 2013 by the Land Commission of Liberia affirms that, not only has there never been a clearly defined land rights policy in Liberia, but also, transfers of public land in the past substantiated poor 'land governance, corruption, political patronage and discriminatory treatment' against Native Peoples in Liberia.⁹²⁷ Historically, Customary Land ownership in Liberia is not recognised as private land and duly protected because it is not deeded, and hence is deemed public.⁹²⁸ Therefore, the Liberian government can get away with dispossessing Native Peoples in Liberia of land they have survived on for centuries. The current land dispossession challenge in Liberia centres on various government concessions to large multinational extraction industries.

3.3.1 Extraction from Indigenous Lands: the case of Firestone, Bong Mines, and LAMCO

Extractive industries in Liberia exemplify one means whereby the law can inflict systematic violence against Native Peoples. Liberian settlers' objective in forming colonies was to 'provide a home for the dispersed and oppressed children of Africa, [in efforts] to regenerate and enlighten this benighted continent, [it was decided that] none but persons of colour shall be admitted to citizenship in this Republic'.⁹²⁹ First and foremost, settler-colonists did not recognise Native Peoples in Africa (section 15, Article V, 1847 *Constitution*) as the original inhabitants of the land since they were not recognised as citizens of Liberia until 1904. Settler-colonists' claim to have purchased land from the Native Peoples in Africa through a fair deal (section 14, Article V, 1847 *Constitution*) is not substantiated by the numerous occurrences of frontier violence, which indicate that the land contracts were controversial at best.⁹³⁰

Since Native Peoples in Africa were dispossessed of their lands pursuant to section 14, Article V, of the 1847 *Constitution*, extraction industries such as Firestone, Bong Mines and Liberian-American Mining Company's ownership of Native lands in Liberia is questionable.

⁹²⁷ Land Commission, 'Land Rights Policy' (Government Policy, Land Reform Commission, 21 May 2013) 26, 5, 9 <http://www.sdiliberia.org/sites/default/files/publications/Liberia's%20Land%20Rights%20Policy%202013_0.pdf>.

⁹²⁸ *Ibid* 6, 18.

⁹²⁹ Article V, Section 13 is amended in the most recently revised *Constitution of Liberia* 1986, though the racist component still remains (see Chapter IV, Article 27 (a) and (b)). It reads, (a) [a]ll persons who, on the coming into force of this Constitution were lawfully citizens of Liberia shall continue to be Liberian citizens; (b) [i]n order to preserve, foster and maintain the positive Liberian culture, values and character, only persons who are Negroes or of Negro descent shall qualify by birth or by naturalisation to be citizens of Liberia. (Also see s13, Article V of the *Liberian Constitution* 1847)

⁹³⁰ Jackie Sayegh, 'Support for Dual Citizenship in Liberia' (Annual Meeting at the Union of Liberian Association in the Americas - Wisconsin Branch Annual Conference, Madison, WI, 29 August 2013) <<https://ulaalib.org/content/dr-jackie-sayegh-supports-dual-citizenship-liberia-0>>. Sayegh profoundly expressed African American settlers in Liberia conscious efforts to deny Indigenous Peoples any constitutional right, in spite of their implied efforts: 'The Liberian Commonwealth Constitution of 1839 limited the privileges of citizenship to all coloured persons of the United States and its territories. The 1847 Constitution distinguished between the rights of citizens and Indigenous persons. As a result, the Indigenous Peoples were considered subjects, but not citizens, of Liberia. Hence, they were denied all the privileges that citizenship affords including land ownership, free movement within country, a say in the governing of the country, and the right to vote. This bond between the state and the individual was not granted to the Indigenous Liberians until 1904 (57 years after independence) and it was not until 1946 (99 years after independence) that Indigenous Liberians obtained the right to vote and participate in elections'.

Melvin Johnson explains the state of land ownership in Native Liberia prior to settler-colonists arrival. According to Johnson, ‘land can never be the possession of any individual ... [i]n tribal societies, the land is neither sold nor bought. Land apportioning to individuals is by family needs (e.g., construction of a home or establishing a farm)’.⁹³¹ However, settler-colonists use their imported Anglo-American law and policy to steal and sell Native lands to foreigners for the extraction of natural resources and environmental exploitation. A case in point is that of Firestone Rubber Plantation.

In 1926, Harvey Samuel Firestone, an American businessman from Ohio sought to break Britain’s monopoly over global rubber export.⁹³² Capitalising on Liberia’s economic debt crises, he lent \$5 million to the government of President Charles D B King (1920-1930) in exchange for one million acres of pristine virgin forestland at the cost of six cents per acre for a concession period of 99 years (1926-2025). As the largest rubber plantation in the world, Liberia’s Firestone Rubber Plantation exports of unprocessed rubber is worth a little less than \$200 million a year,⁹³³ accounting for 99 569 tonnes in 2002.⁹³⁴ Following the establishment of the rubber industry in Liberia was the period of the *Open Door Policy*,⁹³⁵ at which time former President Tubman (1944-1971) led and sustained foreign investment concessions on Native Peoples’ land. The Liberian Mining Company, Bong and the Liberian-American Mining Company were three prominent beneficiaries of Tubman’s *Open Door Policy*.

The Liberian Mining Company concession agreement was concluded a year after President Tubman’s inauguration in 1945.⁹³⁶ Between 1951 and 1977, the Liberian government received \$84 million (excluding rental) of the \$540 million worth of iron ore that the Liberian Mining Concession had shipped out of Liberia. By 1977, the ore deposits at Bomi Hills had been depleted and Liberia’s oldest ore mining company closed its doors.⁹³⁷ What the Liberian Mining Company contributed to the development of rural Bomi and what the Liberian Government did with the revenue it received from the extraction of Bomi’s ore are major questions of concern.⁹³⁸ The Bong Mining Company concession (now run by China Union) covers a 115 square km area between Bong Mine (Bong County) and Freeport (Montserrado County). The Bong Mining Company enjoys a 70-year-old agreement signed in 1958 between

⁹³¹ Melvin J Mason, *Land and Language: Issues in Liberian Development* (Brentwood Christian Press, 2005) 10–11.

⁹³² Benjamin S Lawson, ‘A 1930s African-American View of Liberia: George S Schuyler’ (1995) XX(2) *Liberian Studies Journal* 247.

⁹³³ Staff Reporter, ‘Liberia Suspends Exports of Unprocessed Rubber’ *Reuters* (Monrovia, Liberia), 19 April 2013 <<http://www.reuters.com/article/2013/04/19/liberia-rubber-idUSL5N0D62RV20130419>>.

⁹³⁴ UN Mission in Liberia, ‘Human Rights in Liberia’s Rubber Plantations: Tapping into the Future’ (UN Mission in Liberia, 2006) 88, 20 <<http://www.refworld.org/docid/473dade10.html>>.

⁹³⁵ Fred PM van der Kraaij, *The Open Door Policy of Liberia: An Economic History of Modern Liberia* (Im Selbstverlag des Museums, 1983).

⁹³⁶ Augustus M Bailey, *Pieces of the Mind: My Experiences and Memories of Liberia* (Xlibris, 2013) 18.

⁹³⁷ Fred PM van der Kraaij, *Iron Ore: The Start of Operations of Liberia’s First Iron Ore Mine* (2015) Liberia: Past and Present <<http://www.liberiapastandpresent.org/ODP/IronOre/IronOreC.htm>>.

⁹³⁸ *Ibid.* Interestingly, the UN Human Development Index (2014) ranks Liberia at a 175 of 187 countries. Enough for development and growth in Liberia after many years of natural resources extraction (*see*, <http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components>).

the Liberian Government and Delimco (a group of German and Italian investors).⁹³⁹ In 1955, although the concession agreement with the Liberian-American Minerals Company included the provision of social services for the local rural community,⁹⁴⁰ Bong County has little to show by way of development. Now operated by Arcelor Mittal⁹⁴¹ (after the dissolution of Bethlehem Steel in 2001), the Liberian-American Mining Company operated for 26 years (1963-1989) and produced a total of 230 million metric tonnes of ores.⁹⁴²

Native Peoples in Liberia lament the continuous oppression and injustice they received from the settler-colonist government.⁹⁴³ Benjamin Lawson captures Native Peoples' experience of subjugation by settler-colonists writing that, '[a]n allegedly corrupt and exploitative Americo-Liberian minority.... [still] have not led to the creation of a truly better or "modern" state'.⁹⁴⁴ Back in 1966, even Swedish citizens at home questioned the validity of the Liberian-American Mining Company's claim regarding social service development in rural Liberia: '[w]hat is Granges Company doing in Liberia? Does LAMCO develop Liberia or exploit it⁹⁴⁵ – apart from human rights abuses and war crime allegations?'⁹⁴⁶ In recent years, the extension of Firestone's concession to 2041⁹⁴⁷ and the initiation of Sime Darby's 63-year concession by President Sirleaf's government are also seen as a neo-liberal/neo-capitalist shift in the

⁹³⁹ Bailey, above n 937, 19.

⁹⁴⁰ Ibid 21; Mohammad Latifi, *Multinational Companies and Host Partnership in Rural Development - A Network Perspective on the Lamco Case* (PhD Thesis, Department of Business Studies, Uppsala University, 2004) 103–104 <<http://www.diva-portal.org/smash/get/diva2:165468/FULLTEXT01.pdf>>.

⁹⁴¹ Kay, above n 313. According to Kira Kay, PBS Special Correspondent, Arcelor Mittal, the world's largest steel company, started work in Liberia since 2007 with the aim of exporting 15 million tons of ore a year by 2015. Liberia received an up-front payment of \$15 million to this effect.

⁹⁴² International Business Publications, 'Liberia: Export-Import, Trade and Business Directory' (Private Document, International Business Publications, 2011) 294, 50–51.

⁹⁴³ Staff Reporter, 'Arcelor Mittal Attack Is Attack on Liberia's Economy, Sirleaf Says' *Front Page Africa* (Monrovia, Liberia), 11 July 2014 <<http://www.frontpageafricaonline.com/index.php/politic/2266-arcelormittal-attack-is-attack-on-liberia-s-economy-sirleaf-says>>; Mae Azango, 'Taking More, Giving Less - Nimba Decry Arcelor Mittal's Operation' *Front Page Africa* (Monrovia Liberia), 2014

<<http://www.frontpageafricaonline.com/index.php/business-tech/280-ta...-more-giving-less-nimba-citizens-decry-arcelor-mittal-s-operations>>; UN Mission in Liberia, above n 934, 32–55; International Labour Right Forum, *Stop Firestone Coalition Celebrates Victory as Liberian Supreme Court Decision Approves Union Election on Firestone Plantation* (21 December 2007) Press Release <<http://www.laborrights.org/releases/stop-firestone-coalition-celebrates-victory-liberian-supreme-court-decision-approves-union>>; William Rosenau et al, 'Corporations and Counterinsurgency' (Private Report, RAND National Defense Research Institute, 2009) 57, 17–24

<http://www.rand.org/content/dam/rand/pubs/occasional_papers/2009/RAND_OP259.pdf>; T Christian Miller, Jonathan Jones and ProPublica, *Firestone and the Warlord: The Untold Story of Firestone, Charles Taylor and the Tragedy of Liberia* (PBS Frontline, 2014); Patrice Taddonio, *How We Uncovered Firestone's Deal with Charles Taylor – Firestone and the Warlord* (18 November 2014) FRONTLINE <<http://www.pbs.org/wgbh/pages/frontline/inside-frontline/how-we-uncovered-firestones-deal-with-charles-taylor/>>; William Baue, *Alien Tort Claims Act Lawsuit Alleges Slavery and Child Labour on Liberian Plantation* (30 December 2005) Social Funds Sustainable Investment News 47–69

<<http://www.socialfunds.com/news/article.cgi/1897.html>>; Rodney Sieh, 'Firestone Mirred in Slave Labour Charges in Liberia' *All Africa* (Monrovia, Liberia), 21 November 2005 <<http://www.laborrights.org/in-the-news/firestone-mirred-slave-labor-charges-liberia>>; Lief, above n 59; Church, above n 59; Wayne C Taylor, *The Firestone Operations in Liberia* (National Planning Association, 1956); Niels Hahn, 'The Experience of Land Grab in Liberia' in *Handbook of land and water grabs in Africa: foreign direct investment and food and water security* (Routledge, 2012) 512.

⁹⁴⁴ Lawson, above n 933.

⁹⁴⁵ Latifi, above n 941, 106.

⁹⁴⁶ Staff Reporter, 'Arcelor Mittal Attack Is Attack on Liberia's Economy, Sirleaf Says', above n 943; Azango, 'Taking More, Giving Less - Nimba Decry Arcelor Mittal's Operation', above n 943.

⁹⁴⁷ See, *An Act Ratifying the Amended and Restated Concession of Agreement Between the Republic of Liberia and Firestone Liberia Inc.* 2008 and *An Act Ratifying the Amended and Restated Concession of Agreement Between the Republic of Liberia and Sime Darby Plantation (Liberia) Inc.* 2009.

sophistication of the rubber and oil palm ‘plantation slavery’ industry.⁹⁴⁸ State-sponsored expansion of extraction industries in Liberia continues to disrupt Native Peoples’ ways of life. The Christianising mission in Liberia has also left lasting detrimental effects on Indigenous children and women.

3.3.2 *Exploitation of Children*

Although the Australian state forcibly removed children from their homes to be educated in mission schools, Liberia’s exploitation of children manifests as structural violence. As discussed in chapter 2, the Christianising mission to Liberia also brought Western education. Social and economic pressure on Native Peoples in Africa to move toward the mission schools along the coast, adopt biblical names, and assimilate into the settler-colonist communities was significant. A pull factor in this dynamic was that female settler-colonists, although also discriminated against by male immigrants, masterminded ‘adoption’ of ‘country’ and ‘outside’⁹⁴⁹ wards in hopes of civilising them.⁹⁵⁰ However, this civilising effort was not particularly altruistic, as it usually involved domestic servitude and accompanying abuses.

⁹⁴⁸ Sam Zota, Jr., ‘At Sime Darby Plantation: Workers Drink from Creeks, Dwell in Makeshift Structures’ <<http://amazingliberia.blogspot.com.au/2011/07/at-sime-darby-plantation-workers-drink.html>>; Richard Valdmanis, ‘Exclusive: Resource Deals Audit Overshadows Liberia Anti-Graft Push’ *Reuters* (Dakar), 1 May 2013 <<http://www.reuters.com/article/2013/05/01/us-liberia-resources-idUSBRE9400QY20130501>>; Staff Writer, ‘Green Advocates Wants EPA Revoke Sime Darby’s Permit’ *Public Agenda News* (Monrovia, Liberia), 2013 <http://www.publicagendaneews.com/index.php?option=com_content&view=article&id=3191:green-advocates-wants-epa-revoke-sime-darbys-permit-&catid=1:latest-news&Itemid=2>; Green Advocates and Forest Peoples Programme, above n 228.

⁹⁴⁹ Moran, above n 163, 59–60. Note that, ‘country children’ were perceived as ‘full-blooded’ Indigenous Liberians. ‘Outside’ children, on the other hand, are issues resulting from coupling between elite emigrant married men and their ‘country-mistresses’. Some ‘outside’ children were issues of teenage girls serving as a ‘house girl’ in the homes of the upper-class Emigrants. As with the Plantation mentality, ‘outside children’ of repatriated men by their ‘country mistresses’ were, over time, merged into official family histories, augmenting the supposedly endogamous group without challenging the myth of ‘pure’ settler descent.

⁹⁵⁰ Cooper, *The House at Sugar Beach*, above n 168, 29, 64–65.; Cooper, above n 168; Wendy Kann, ‘Homecoming: A Journalist Returns to Africa to Find Her “Country Sister.”’ *Washington Post* (Washington, DC), 31 August 2008 <http://www.washingtonpost.com/wp/>; Brown, above n 50, 87; Anita L Wills, *Pieces of the Quilt: The Mosaic of an African American Family* (Booksurge, 2009) 51–54; Azikiwe, above n 301, 76–77; Shick, above n 170, 46–48; Marie Tyler-McGraw, *Martha Ann Ricks: Domestic Patriot* (1 May 2008) Virginia Emigrants to Liberia, Virginia Centre for Digital History, University of Virginia <<http://www.vcdh.virginia.edu/liberia/index.php?page=Stories§ion=Martha%20Ricks>>. In the *House on Sugar* book, a seemingly insensitive narrative of exploitation and subjugation in Liberia; Helene Cooper arrogantly boast of her family (violently) dispossessing Indigenous Liberians of their land and amassing inter-generational wealth. Cooper’s American ancestor, Anita Wills – great-grand daughter of Elijah Johnson’s daughter, Sarah Johnson – accounts for the other lives Elijah Johnson left behind in the United States in her book, *Pieces of the Quilt*. According to Wills, Sarah was ‘left’ in the Chester County Poor House at the age of nine years along with her brother (Elijah Johnson Jr., 8 years) whilst Johnson journey to the Western coast of Africa as an agent of the American Colonisation Society. There is no record on who left Johnson’s children at the poor house as Elijah Johnson, a Negro was listed as father, but no mention of their mother was made. For whatever reason, the situation of an apparent abandonment of his children invokes the thought of why an American war veteran, a Methodist minister who is so highly esteemed in Liberia would do such a thing. In the book, *Power and Press Freedom in Liberia, 1830-1970*, it states that, ‘As a child Hillary (Johnson), saw little of his father, who spent much of his time away as a Methodist Minister, to the Gola and Kpelle [Indigenous groups]’. As a product of slavery, trauma and abuse, it appears Johnson was a mixed-race brain-washed colonist charged with delivery of the Christianising and civilising projects even at the cost of neglecting his own. In spite of the aforementioned, a curious mind might be tempted to ponder Judge Stewart’s view, as narrated by Azikiwe – ‘Judge Stewart has been bold enough to challenge the conscience of these settlers and their descendants: “[t]he former American slave treated the African freeman as if he had no rights which were worthy of respect!” The African was defrauded, beaten with stripes, made to feel like an inferior being, excluded from churches and schools, given back-seats at camp meetings, and made to enter homes of the emigrants by the back-door’. Nevertheless, let’s not lose sight of the tremendous courage, endurance and resilience of former female slave emigrants to Liberia. For example, Martha Ann Ricks, born a slave in Tennessee, emigrated to Clay Ashland, Liberia and became ‘an

This adoption of Native Peoples in Liberia is not a legal process as is practiced in most traditional African settings, where the family structure is extended to both blood and non-blood relations.⁹⁵¹ Often, these young ones were coercively (sometimes with the approval of their parents) taken from their ‘bush’ or ‘illiterate’ families and forced into domestic servitude by the *quee*⁹⁵² people in the capital cities. If they managed to survive the strain of their daily chores, which sometimes started as early as 2:00 a.m.,⁹⁵³ then they could imagine the possibility of acquiring education to escape further risks of abuse and neglect. This pattern of exploiting at-risk children, especially Native ones from the interior of the country, is still alive and well in the present day. Native children, who are either displaced as a result of the civil war or economically displaced from rural areas, are seen working the streets of Monrovia on a daily basis. Some are street hawkers, navigating vehicles in heavy traffic to sell petty goods, whilst others are engaged in transactional sex in exchange for money to buy food, pay rent, or tend to family needs.⁹⁵⁴ Fuelled by the civil conflict between Native Peoples in Liberia and settler-colonists,⁹⁵⁵ coupled with incessant greed for power and wealth,⁹⁵⁶ children’s propensity to perpetrate violence is on the rise. Scarred by being ex-combatants, many Native children and adolescents in Liberia are mentally ill and traumatised with no possibility of receiving care in the face of harsh social and economic conditions.⁹⁵⁷ One story of a young Native girl adopted from her Indigenous lands only to be abused by her foster parents is that of Angel Mardea Togba.

Angel Togba (affectionately known as Little Angel), a 13-year-old student at Christ the King Catholic School hailed from the Kpelle Language Group in Central Liberia. She lived with her foster parents, Hans Capehart Williams and Mardia P Williams on the Old Road, Sinkor, a suburb of Monrovia. According to Supreme Court Chief Justice Korkpor (*see Williams v RL*

Industrious farm woman who raised turkeys, ducks, and sheep, she won a prize for her stockings, made of Liberian cotton silk, at an 1858 agricultural fair’. She spent over 25 years designing a cotton quilt, which she had the opportunity to present to Queen Victoria of England in 1892.

⁹⁵¹ Ekanem Okon, ‘Towards Defining the “right to a Family” for the African Child’ 12(2) *African Human Rights Law Journal* 373, 379.

⁹⁵² Moran, above n 163, 4–5; Wreh, above n 166, 130. *Quee* is another parlance for ‘civilise’ in perceptual Liberian connotation. Civilized women lose prestige by engaging in the ‘wrong’ types of work, such as subsistence farming or marketing. In unison, Wreh affirms Moran’s description of Liberian lame view of what a civilised person is. In Wreh’s own words, to be civilized, one ‘must wear coat and tie, top hat, and tail coat for ceremonial occasions, be able to converse in English, attend church on Sunday regularly, be monogamous, and so forth’.

⁹⁵³ The researcher’s mother (Mama), though she was born unto a father of enslaved heritage (her mother was an Indigenous Liberia of the Gio Language group) was sent to live with the *quee* people in Millsburg so that she can acquire education. She did acquire some education (up to high school certification), but as she narrates, the journey was an extremely tough one.

⁹⁵⁴ During a fieldwork visit to Liberia in 2010, disguising as clubbers, the author, supported by the UNMIL Gender Unit, visiting several nightclubs in Liberia to observe activities of under-aged children. Three things were quite obvious during these observations at the clubs in Sinkor, Fiahma, on Gurley street, and Broad street: 1) no ID cards were required for entry so children appearing to be under 18 years of year were everywhere; 2) the presence of white expatriate men were relatively vivid; and 3) men ‘engaging’ (dancing, kissing or in intimate closeness) with teenagers seem much older (perhaps 50 years and above).

⁹⁵⁵ For example, settler-colonists against the *Krahns* and *Mandingos* symbolises the root of the inter-ethnic war.

⁹⁵⁶ Noah Berlatsky and Frank Chalk, *Liberia* (Greenhaven, 2014) 41, 72. For example, the illicit diamond, rubber and timber trades.

⁹⁵⁷ Christina PC Borba et al, ‘A Mental Health Needs Assessment of Children and Adolescents in Post-Conflict Liberia: Results from a Quantitative Key-Informant Survey’ (2016) 9(1) *International Journal of Culture and Mental Health* 56, 56.

[2014]), on 30 November 2007 at approximately 7:00 PM, Little Angel was found hanging by a rope in the bathroom of the Old Road residence. Medical examination, autopsy and police investigation show that Little Angel was sexually assaulted before succumbing to death by asphyxiation. Subject to the above findings, on 12 February 2008 the accused foster parents were arrested and charged with the crime of murder on 22 August 2008. The First Judicial Circuit Court, Criminal Assizes sentenced the accused to death by hanging on 19 March 2010.⁹⁵⁸ After spending almost seven years in prison and filing several appeals,⁹⁵⁹ the Williamses were released from detention. The lower court's conviction was reversed by the Supreme Court of Liberia on 15 August 2014, which found that the trial court verdict was contrary to the weight of the evidence. What is troubling about the Little Angel story is that to this date, no one is held responsible for her death. How is it possible in a country with an extremely low suicide rate that a thirteen-year-old will be raped and killed; yet eight years later, the legal system cannot hold anyone responsible for her death? Who is responsible for the rape and death of Angel Mardea Togba?⁹⁶⁰ Another example of how elite members of Liberian society avoid the full prosecution of Liberian law is that of David Waines.

The case of David Waines, the Head of Equip, a Canadian faith-based human rights organisation,⁹⁶¹ highlights not only the injustice of rape against Native girls in Liberia but also that this form of sexual violence is not committed only by Indigenous men. On 13 November 2013, Waines was arrested on charges of statutory rape of a 13-year-old Native girl⁹⁶² contrary to section 14.70(1) (b) of the *Rape Law*, 2006.⁹⁶³ Allegedly, in the process of attempting to abort the pregnancy, a nurse on duty filed an incident report with the local police subject to section 4(4.4) of the *Liberia Children's Law* 2011.⁹⁶⁴ Section 4(a) (i) and 4(b) of the *Rape Law* provides that Waines could have served a maximum life sentence if convicted of statutory rape. However, as is told in the recent documentary, *Saving David Waines*,⁹⁶⁵ he has returned to Canada without trial, mainly based on medical grounds and a religious petition.⁹⁶⁶ Meanwhile, according to

⁹⁵⁸ TLC Africa, 'Justice for Angel: Hans Williams and Mardea Paykue, Sentence to Death by Hanging' *The Liberian Connection* (Monrovia, Liberia), 10 March 2014 http://www.tlcafrica.com/news_justice_for_angel_3_10.htm.

⁹⁵⁹ George J Borteh, 'Angel Togba's Mother Pushes Supreme Court to Act' *All Africa* (Monrovia), 21 May 2013 <<http://allafrica.com/stories/201305220776.html>>.

⁹⁶⁰ On 15 November 2015, the ECOWAS Court of Justice dismissed the Williamses case stating that the Republic of Liberia did not violate their human rights under any International Human Rights Instruments (*see* Williams v Republic of Liberia 2015 ECW/CCJ/JUD/25/15).

⁹⁶¹ Laurel Gregory, 'Equip Liberia' *Global News* (Vancouver, BC), 28 May 2012 <<http://globalnews.ca/news/249834/blog-equip-liberia/>>.

⁹⁶² Staff Writer, 'Statutory Rape: Equip-Liberia Country Director Arrested' *Microscope News* (Monrovia, Liberia), 2013 <<http://microscopeliberia.com/news.html>>.

⁹⁶³ Section 14.70(1) of the *Act to Amend the New Penal Code Chapter 14 Sections 14.70 and 14.71 and to Provide for Gang Rape* (otherwise known as the Rape Law) states, a person who has sexual intercourse with another person (male or female) has committed rape if: (1) (b) the victim is less than eighteen years old provided the actor is eighteen years of age or older.

⁹⁶⁴ Section 4(4.4) states, any service provided, parent and community or town member shall report sexual and other forms of abuse to the police.

⁹⁶⁵ Canadian Broadcasting Corporation, 'Saving David Waines', *The Fifth Estate*, 5 February 2015 <<http://www.cbc.ca/fifth/episodes/2014-2015/saving-david-waines>>.

⁹⁶⁶ Kent Corbin, *Petitioning President of the Republic of Liberia President Ellen Johnson Sirleaf to Liberate David Waines* (2014) Change.Org <<https://www.change.org/p/president-ellen-johnson-sirleaf-liberate-david-waines#petition-letter>>.

media reports, the teenage survivor and her baby remain in rural Liberia with no recourse, justice or fairness. Waines claims that the baby could pass for a Negro child, asserting that he is being framed by the Liberian authority.⁹⁶⁷ Even if DNA testing absolves Waines of being the father of the child, it is worth considering that a failed paternity test provides no proof against the accusation of repeated rape committed against the minor.⁹⁶⁸ Waines returned to Canada without trial predicated on his identity as a white man with power and authority enough to exonerate him of such hideous allegations without a trial. Unfortunately, the legal system often fails to protect or secure justice for Native girls who survive rape in Liberia.

In Liberia, compromising justice for survivors of rape is often the handiwork of law enforcement agencies, the very legal entities charged with protecting girls and women from violence. In the last decade, women's non-profit organisations⁹⁶⁹ in Liberia are helping to shape police perceptions with reporting and prosecuting rape cases. Despite the improvement, Peace Medie laments that '[r]eferring a rape case to court is no guarantee that it will be prosecuted, but it is a necessary step for victims to get justice...getting cases to court is an uphill battle for survivors of rape in Liberia...'⁹⁷⁰ One example that shows the intersection of structural violence and the ineffectiveness of state institutions is the story of Bibiana Satu Abu.

The detailed information regarding the case of Bibiana Abu, an 18-year-old young woman hailing from the Mandingo Language Group, is unavailable apart from a personal email exchange between the researcher and the Sexual and Gender-Based Crimes Unit in August 2010.⁹⁷¹ Limited information gleaned about the story is disturbing, suggesting the extent to which systematic violence against girls and women in Liberia is condoned and politicised. Justice for survivors of sexual violence is blatantly perverted by a male-dominant society (as discussed in chapter 2) and is encumbered by complex intersections of gender, class, status and ethnicity. Jina Moore, a correspondent for the Christian Science Monitor, observes,

[Special] Court E had all the marks of innovation -- an in-camera room so that the victim could testify without having to physically sit before her rapist, a jury and the members of the public admitted to the courtroom (which isn't open; access is controlled by the judge) and a Sexual and Gender-Based Crimes Unit of the justice department, assigned to prosecute the cases but also to give support services to victims and their families... Court E is hosting its most famous accused, Caesar Freeman...the senior-level civil servant, who works at the Government Services Agency, has been indicted for rape, gang rape and kidnapping. ... The victim allegedly asked Freeman for a ride, and he had an unidentified friend allegedly took her to three different places and asked her for sex; she refused each time. Freeman denies the charges; his family alleges they are politically-motivated fabrications. ... Freeman tried to get bail, even though gang rape is not aailable offense in Liberia... He demanded a speedy trial after being held for about three weeks - in a country where people spend months and months in jail

⁹⁶⁷ Rodney Sieh, "'I Was Framed': Canadian Accused of Rape in Liberian Pins Hope on DNA' *Front Page Africa* (Monrovia, Liberia), 25 June 2014 <<http://www.frontpageafricaonline.com/index.php/news/2057-i-was-framed-canadian-accused-of-rape-in-liberian-pins-hope-on-dna>>.

⁹⁶⁸ Staff Writer, 'Statutory Rape: Equip-Liberia Country Director Arrested', above n 963.

⁹⁶⁹ Dara Kay Cohen and Amelia Hoover Green, 'Duelling Incentives: Sexual Violence in Liberia and the Politics of Human Rights Advocacy' (2012) 49(3) *Journal of Peace Research* 445.

⁹⁷⁰ Peace A Medie, 'Fighting Gender-Based Violence: The Women's Movement and the Enforcement of Rape Law in Liberia' (2013) 112(448) *African Affairs* 377.

⁹⁷¹ Tenneh Seah, 'Survivor's Assistant', 20 August 2010.

before seeing the inside of a courtroom...that set off a debate in the press, and among Liberia's lawyers, about whether the 'rape law' is unconstitutional. ... Some lawyers have since spoken out against the rape law. ... Meanwhile, [sources say] the victim has been intimidated and witnesses threatened. At least one local media outlet, meanwhile, named the victim... The case also sparked another notable news moment: blaming the victim. 'The law on rape should also take account of our young ladies and women who entice men into immorality and sin...' ⁹⁷²

All efforts to access The Daily Observer's op-ed 'Blaming the victim' amongst other things ⁹⁷³ were to no avail. Nevertheless, The National Chronicle newspaper, in violation of all criminal justice rules against tampering with evidence, launched a series of investigations into the Caesar Freeman rape case. Coincidentally, all those interviewed during The National Chronicle newspaper's investigation were males:

Since the story of the Caesar Freeman's rape case hit the newsstand, the National Chronicle has been investigating the circumstances that led to the alleged gang raped of Bibiana Abu on October 21, 2009, at Caldwell Road. Freeman being a former basketball player of T-Cons in the [Liberian Basketball Federation] National league, played small forward in the early 80s. ... Freeman was six feet one inch tall, but was [a] very quiet and respectful lad... Our investigation took the National Chronicle Newspaper to Point Four on many occasions, different days, around the hours of 9:30-10:30 p.m., the time stated by Miss Abu in her testimony, but on each and every occasion the highest one was able to drive due to traffic jam, causing a go-slow at all times of our visit, was between 20-30 kilo meters per hour. ... So, the claim and probability that Freeman took up speed is too far from possibility. The victim in our investigation may not be telling the truth. Miss Abu, from our investigation ... alleged gang rape was committed, totals about five hours (from 9:50 p. m. to 2:30 a m). Was Freeman that desperate to detain a lady for five hours just to have about ten minutes of fun? (...) Contrary to the victim's statement, it is almost impossible for a six-footer, 270 pounds to have sex in the back of a Toyota Four Runner due to the height and the space of the vehicle. According to an expert in the sale of vehicles...it is too far from the truth, especially when the person is not willing to go along. Interestingly, when the paper interviewed a medical doctor at the John F Kennedy Hospital who begged for anonymity, he said unless the lady is in the habit of having anus sex where the muscle is relaxed for penetration, it will be almost impossible, giving one's ability to manoeuvre one's body in such a tight space for penetration. The doctor said like the vagina, it is almost impossible without calm and willingness on the part on the victim for one to be de-virgin unless one is completely incapacitated, which still poses serious challenge because the penis must be up-right, and both the penis and anus must be properly lubricated to achieve such task. "Well anything is possible, but in my expert opinion that seems too far-fetched". ⁹⁷⁴

Concerns with dominant males in political positions wielding power and with media tampering of evidence in the Freeman rape trial inform Emmanuel Saffa Abdulai's evaluation of

⁹⁷² Jina Moore, 'Liberia's "Rape Court": Progress for Women and Girls Delayed?' *Christian Science Monitor* (Kigali, Rwanda), 10 October 2010 <<http://www.csmonitor.com/World/Africa/Africa-Monitor/2010/1010/Liberia-s-Rape-Court-Progress-for-women-and-girls-delayed>>.

⁹⁷³ Julius Kanubah, *Rape Suspect's Family Raises Concern* (7 September 2010) Operation We Care for Liberia <<https://owcl.wordpress.com/2010/09/07/rape-suspects-family-raises-concern/>>; Staff Reporter, 'Caldwell Residents Want Speedy Trial in Freeman's Rape Case' *The Analyst* (Monrovia, Liberia), 4 June 2010 <<http://allafrica.com/stories/201006040191.html>>. In the All Africa (2010) short newspaper article, the residents of Caldwell, District #11 Montserrado County appealed to the Liberian Government conduct a speedy trial of one of their friends, Mr. Caesar Freeman who has been detained, for quite a whilst now (approximately seven months). In line with Moore's (2010) piece, Caesar's family call-out for his 'speedy trial' is not only unnecessary but also unrealistic.

⁹⁷⁴ Staff Reporter, 'A Bloody Lie! - As Caesar Freeman Victim Vanishes in Tin Air: Freeman Lingers behind Bars, Victim Runs Free' *National Chronicle* (Monrovia, Liberia), 28 July 2010 1.

the Sexual and Gender-Based Violence Crimes Unit.⁹⁷⁵ In the 51-page report, Abdulai affirms that the arrest and detention of Freeman (Director of Fleet of the General Services Agency) by the Sexual and Gender-Based Violence Crimes Unit caused political rancour amongst Liberia's elites (*see* Figure 2.1 above). Especially, those in law enforcement who sought an opportunity to revisit Liberia's rape law.⁹⁷⁶ According to Abdulai (2010):

The [Sexual and Gender-Based Violence Crimes Unit] had initially operated freely and cordially with the police force without any problem, but since the Caesar Freeman case was indicted, the police force has cut ties with the [Crimes Unit] ... because the accused is well placed in society and has many friends in the police, instructions from above, ordered the police not to cooperate with the [Crimes Unit], on the processing of the [Freeman] case ... the over-politicization of certain trials, in the short lifespan of the [Sexual and Gender-Based Violence Crimes Unit] and the Criminal Court 'E', has only reinforced the mistrust in Government legal institutions. The Caesar Freeman case is notorious for having a split of support among the powers-that-be. The media is biased against the victim, the [Liberian National Police] has taken sides and the elites of the governing class have shifted more to left against the court and fair play. This display of partisan divide reinforced the pre-war Liberia where the state colluded with rogue elites to violate the rights of people and destroy the country.⁹⁷⁷

Five months after the indictment, Freeman was eventually tried by the First Judicial Circuit, Criminal Court Assizes 'E' (a special court established in 2008 to fast-track cases of sexual violence in Liberia).⁹⁷⁸ It is clear that, in a society such as Liberia where the wheels of justice for survivors of violence turn very slowly (also *see* the Olivia Zinnah story),⁹⁷⁹ one must be mindful of ethics and safeguarding victims' rights to privacy and confidentiality. Article 6(d) of the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Powers* 1985 urges States to take measures that would minimise inconvenience to and protect the privacy of crime victims. Contrary to this provision, the Freeman case is an example of intimidation and retaliation against Abu and her family. Unfortunately, there is not enough information regarding the outcome of this case to conduct a critical assessment. Freeman's case raises issues of perverting justice, contaminating evidence, and assuming guilt on the part of the survivor. Until Bibiana's story is adequately revealed, one can only wonder why the justice system tends to protect the powerful. One nation-wide example of powerful people in Liberian politics avoiding prosecution for crimes against Native Peoples in Liberia is a result of the Liberian civil war.

⁹⁷⁵ As noted earlier, the SGBV Crimes Unit is an entity of the Ministry of Justice with the sole purpose of prosecuting perpetrators of gender and sexual-based violence, especially rape in Liberia (also *see* Abdulai 2010 p. 2).

⁹⁷⁶ Emmanuel Saffa Abdulai, 'Strengthening of Prosecution of SGBV Offences Through Support to the Sexual and Gender Based Crimes Unit (SGBV CU)' (Government Report, United Nations Populations Fund (UNFPA) and Government of Liberia, November 2010) 51, 13 <<http://mdtf.undp.org/document/download/6383>>.

⁹⁷⁷ *Ibid* 23, 35.

⁹⁷⁸ Staff Reporter, 'Over Five Months in Jail on Rape Claims, a Govt. Official Appears for Trial' *All Africa* (Monrovia, Liberia), 28 September 2010 <<http://allafrica.com/stories/201010041090.html>>.

⁹⁷⁹ Gboko Stewart, 'Desperate Times Call for Unorthodox Measures: Unchecked Rape Crisis Could Barren Liberian Women' *Front Page Africa* (Monrovia, Liberia), 29 November 2013 <<http://www.frontpageafricaonline.com/old/oped-editorial/lettercom...ox-measures-unchecked-rape-crisis-could-barren-liberian-women.html>>; Jessica Vale, *Small Small Thing: The Olivia Zinnah Story* (Independent, 2012) <<http://www.jessicavale.com>>.

3.3.3 War Crimes and Impunity

During Liberia's civil war, armed groups engaged in widespread sexual violence that went severely unreported.⁹⁸⁰ Civilians made up 90 percent of the estimated 200 000 killed in Liberia's war.⁹⁸¹ A study carried out by the Centre for Abused Women and Girls reports that women and girls between the ages 10 and 36 years accounted for 80 percent of sexual abuse between 1990 and 1993.⁹⁸² In many cases, rape was committed against older women by young men. A violation of a cultural norm where deep respect is paid to older women in society, wherein a 'son' rapes his 'mother', exacerbated the inherent trauma associated with the civil war. Rape and other forms of violence were carried out by rebel forces and the Liberian armed forces. A particularly stark example of state-sponsored violence based on cultural divisions during the war is the Lutheran Church Massacre.

Civilians, mostly Native girls and women belonging to the Gio and Mano Language Groups, sought safety in Monrovia from massive rebel attacks in north-eastern Liberia at the inception of the civil war in 1989. The St Peter's Lutheran Church, located on 14th Street in Monrovia, provided a make-shift accommodation for some 2 000 internally displaced persons who were fleeing the rebel attacks in Nimba county. During the Truth and Reconciliation Council's commemoration program, two survivors of the St Peter's Lutheran Church massacre recounted their stories.⁹⁸³ On 29 July 1990, some 30 soldiers of the Armed Forces of Liberia stormed the Lutheran Church to terrify, rape, and slay approximately 200-300 persons.⁹⁸⁴ Survivors said the soldiers were from the Krahn Language Group of former President Doe. Some believed that the soldiers were ordered by the late President Doe to massacre the internally displaced Gio and Mano Peoples because they were supporters of the rebel group that started the civil war in Liberia. To date, it seems all that has remained of the St Peter's Lutheran Church massacres (apart from the Truth and Reconciliation Council's and St Peter's Lutheran Church's⁹⁸⁵ commemorative gesture) is trauma and pain etched on the memories of those who survived the mayhem. Despite 14 years of brutality and fatality, including the St Peter's Lutheran Church massacre, war crimes charges in Liberia have yet to be brought.

⁹⁸⁰ Elizabeth Jean wood, 'Conflict-Related Sexual Violence and the Policy Implications of Recent Research' [2015] (894) *International Review of the Red Cross* 1, 3.

⁹⁸¹ Association of Female Lawyers in Liberia, 'Hundreds of Victims Silently Grieving' in Meredith Turshen and Clotilde Twagiramariya (eds), *What Women Do in Wartime: Gender and Conflict in Africa* (Zed Books Ltd, 1998) 128, 130.

⁹⁸² *Ibid* 131.

⁹⁸³ Reuters, 'Liberian Troops Accused of Massacre in Church' *The New York Times* (Monrovia, Liberia), 31 July 1990 <<http://www.nytimes.com/1990/07/31/world/liberia-troops-accused-of-massacre-in-church.html>>; Times Wire Services, 'Hundreds Die in Massacre by Liberian Troops: Civil War - as Many as 600 Refugees Are Killed in a Church, Survivors Say the Soldiers Were President Doe's' *Los Angeles Times* (Monrovia, Liberia), 31 July 1990 <http://articles.latimes.com/1990-07-31/news/mn-1189_1_civil-war>; Gbardy, above n 924, 69.

⁹⁸⁴ Truth and Reconciliation Commission of Liberia, *Lutheran Church Massacre Victim: 'My Body Was Covered with Blood and Human Brain'* (2009) Press Release <http://trcofliberia.org/press_releases/129>.

⁹⁸⁵ Tecee Boley, 'Walking Dead - Liberia's Lutheran Church Massacre Victims Still Carry Bullets, Scars' *All Africa* (Monrovia, Liberia), 31 July 2013 <<http://allafrica.com/stories/201307310769.html>>.

3.3.4 *The Truth and Reconciliation Commission of Liberia*

The government made some progress in implementing the recommendations the Truth and Reconciliation Commission has made since 2009. In June, the government released a plan for promoting national peacebuilding and reconciliation, and in October launched the National Palava Hut Program, envisioned to foster reconciliation through community and grassroots dialogue. The plan advocates for reparations but ignores the commission's call for prosecutions of those responsible for war crimes committed during Liberia's two armed conflicts, for which there has still been no accountability.⁹⁸⁶

To date, Australia has not set up any Truth and Reconciliation Commission to deal with the historical injustices done to Aboriginal Peoples in Australia. In contrast, Liberia established its Truth and Reconciliation Commission⁹⁸⁷ in response to over a century of subjugation of Native Peoples in Liberia, which culminated in a 14-year civil war. Article IV of the *Truth and Reconciliation Act 2005* mandates the Truth and Reconciliation Commission to address the persistent occurrence of systematic gender violence and ingrained ethnic conflicts. To achieve its objective, the Truth and Reconciliation Commission deliberated over a period of three and a half years, collecting some 22 000 written statements and 500 live public testimonies from across Liberia and in the United States⁹⁸⁸. In its two-volume report, the Truth and Reconciliation Commission submitted 18 summary findings to the Government of Liberia in 2008. Five of the findings summarise the origin, perpetrators, survivors and possible redress to historical violence in Liberia:⁹⁸⁹

1. The conflict in Liberia has its origin in the history and founding of the modern Liberian State.
2. All factions engaged in the armed conflict, violated, degraded, abused and denigrated, committed sexual and gender-based violence against women including rape, sexual slavery, forced marriages, and other dehumanizing forms of violence.
3. Both individual and community reparation is a duty and obligation of the state, to promote justice and genuine reconciliation.
4. Lack of human rights culture and education, deprivation and over a century of state suppression and insensitivity, and wealth accumulation by a privileged few created a debased conscience for massive rights violations during the conflict thus engendering a culture of violence as a means to an end, with an entrenched culture of impunity.
5. External State Actors in Africa, North America and Europe, participated, supported, aided, abetted, conspired and instigated violence, war and regime change against constituted authorities in Liberia and against the people of Liberia for political, economic and foreign policy advantages or gains.

Against this backdrop of the Truth and Reconciliation Commission findings, several

⁹⁸⁶ Human Rights Watch, 'Liberia: Country Summary' (NGO Report, Human Rights Watch, 2014) 5, 2 <http://www.hrw.org/sites/default/files/related_material/liberia_3.pdf>.

⁹⁸⁷ The *Truth and Reconciliation Commission Act of Liberia 2005* establish the Truth and Reconciliation Commission (TRC) of Liberia was enacted by the National Transitional Legislative Assembly on 12 May 2005. Part of the Preamble of the TRC Act reads, 'Whereas the nation, since its independence, has been confronted with challenges and socio-economic and political conflicts, which polarized the nation and culminated into the violence of the late 70's leading to the military coup in 1980; and [w]hereas the violence during the 1980s created even greater violence and armed conflict during the 1990s, decimating and displacing much of the population, internally and externally, ravaging the economy, polarizing the population further and thereby necessitating an intervention by the international community to restore peace and security to Liberia...'

⁹⁸⁸ Truth and Reconciliation Commission of Liberia, 'Truth and Reconciliation Report', above n 52, v–vi.

⁹⁸⁹ *Ibid* 6–7.

recommendations were made. The sheer breadth of the Truth and Reconciliation Commission's recommendation exemplifies the severity of abuses needing attention.⁹⁹⁰ All those responsible for committing 'war crimes and egregious violations against the generality of the population' are included in the recommendation lists as perpetrators.⁹⁹¹ Many accused of war crimes have yet to be prosecuted. For example, the former President of Liberia and a Nobel Peace Prize laureate, Ellen Johnson Sirleaf;⁹⁹² current Supreme Court of Liberia Associate Justice Kabinneh Ja'neh;⁹⁹³ and Weade Kobbah-Wureh, current Chairperson and Professor of Mass Communications Department, University of Liberia,⁹⁹⁴ have all been accused of inciting war and violence in Liberia.

Considering her alleged war crime accusation, the Human Rights Watch reprimands President Sirleaf for making very little progress in implementing the Truth and Reconciliation recommendations. Some local Liberian human rights advocates criticise the establishment of the National Independent Human Rights Commission and the Palava Hut as a dysfunctional façade that shields alleged war-criminals in Liberia. The election of individuals such as Prince Y Johnson, current senior senator of Nimba Country and former leader of the Independent National Patriotic Front of Liberia continues to distort and pervert the justice system for Native girls and women survivors of violence during Liberia's civil war. But for the International Criminal Court's Special Court for Sierra Leone and the United States' legal system, Charles Taylor (former president of Liberia)⁹⁹⁵ and his son, Chucky Taylor,⁹⁹⁶ would not be serving 50 and 97-years sentences for war crimes committed in Sierra Leone and Liberia, respectively. Tom Woewiyu, the former senior member of Charles Taylor's rebel group, is charged for lying on his United States Application for Naturalisation by failing to disclose affiliation with the

⁹⁹⁰ Ibid 268.

⁹⁹¹ Ibid 270.

⁹⁹² Bendu Koryon, 'Ellen Johnson-Sirleaf: Presidential Aspirant or War Criminal' [2005] *TLC Africa* <http://www.tlcafrica.com/politics_ejs2.htm>; Nicholas Kristof, 'Ellen Johnson Sirleaf and War Crimes?!' *New York Times* (Monrovia, Liberia), 3 July 2009 <http://kristof.blogs.nytimes.com/2009/07/03/ellen-johnson-sirleaf-and-war-crimes/?_r=0>; Glenna Gordon, 'In Liberia, Sirleaf's Past Sullies Her Clean Image' *Time* (Monrovia, Liberia), 3 July 2009 <<http://content.time.com/time/world/article/0,8599,1908635,00.html>>; Bernard Gbayee Goah, 'Is President Ellen Johnson-Sirleaf of Liberia Immune from Prosecution, or Not?' *Front Page Africa* (Monrovia, Liberia), 18 October 2013 <<http://www.frontpageafricaonline.com/old/op-ed-editorial/lettercomments/7273-is-president-ellen-johnson-sirleaf-of-liberia-immune-from-prosecution-or-not.pdf>>; Staff Reporter, 'Profile: Ellen Johnson-Sirleaf' *Al Jazeera* (Monrovia, Liberia), 7 October 2011 <<http://www.aljazeera.com/news/africa/2011/10/201110794610186521.html>>; James Sirleaf, 'Ellen Johnson Sirleaf Unconsciously Supported Charles Taylor' *The Perspective* (Atlanta, GA), 8 September 2014 <<http://www.theperspective.org/2014/0908201404.php>>.

⁹⁹³ J Aloysius Toe, *Liberia: Elections, Justice, Corruption and the Role of the International Community* (24 February 2011) National Endowment for Democracy <<http://www.ned.org/liberia-elections-justice-corruption-and-the-role-of-the-international-community>>.

⁹⁹⁴ Staff Reporter, "'War Crimes List' - Cultures of Impunity Unlikely to Continue' *All Africa* (Monrovia, Liberia), 5 March 2015 <<http://allafrica.com/stories/201503051419.html>>.

⁹⁹⁵ Waugh, above n 93; Cheron Jalloh and Alhagi Marong, 'Ending Impunity: The Case for War Crimes Trials in Liberia' (2005) 1 *African Journal of Legal Studies* 53; Wayne Jordash and Penelope Van Tuyl, 'Failure to Carry the Burden of Proof: How Joint Criminal Enterprise Lost Its Way at the Special Court for Sierra Leone' (2010) 8 *Journal of International Criminal Justice* 591; Valerie Oosterveld, 'Gender and the Charles Taylor Case at the Special Court for Sierra Leone' (2012) 19(1) *William & Mary Journal of Women and the Law* 7. Also see, *The Prosecutor of the Special Court v Charles Ghankay Taylor* [2012] SCSL and the Residual Special Court for Sierra Leone at <<http://www.rscsl.org/Taylor.html>>.

⁹⁹⁶ Staff Reporter, *Florida Teen, War Criminal: The Life of an 'American Warlord'* (4 April 2015) Author Interviews <<http://www.npr.org/2015/04/04/396384872/florida-teen-war-criminal-the-life-of-an-american-warlord>>.

National Patriotic Front of Liberia, ‘a violent political group’.⁹⁹⁷ Arguably, the Truth and Reconciliation Commission’s provision to grant immunity from prosecution or tort actions⁹⁹⁸ to all persons who testified about past crimes enables a culture of impunity in Liberia. Thus, alleged war criminals, including Johnson Sirleaf, Johnson, Ellen Johnson Sirleaf and Ja’neh, are able to flaunt and display violence publicly with little or no remorse.⁹⁹⁹ Justice, redress and reparations for systematic violence against girls and women must start with one basic principle: full implementation of every recommendation made by the Truth and Reconciliation Commission. However, as Indigenous women in rural Liberia wait for restorative justice for the violence they survived during the civil war, they are still subject to structural violence perpetrated by patriarchal traditional systems.

3.3.5 *Forced Marriage and Polygyny*

Inability to harmonise both Anglo-American-Liberian law and Liberian Customary law poses serious challenges to addressing cultural and structural violence especially where there is inconsistency regarding the age of marriage, payment of dowry, and enforcement of Native women rights to inherit property or take custody of their minor children when there are multiple wives. Whilst, Article 2, Chapter 1 of the *Liberian Constitution* 1986 states that the Constitution is the supreme and fundamental law of the country, in reality, Liberian Customary Laws are still practiced in Native traditions.

Cultural, structural and interpersonal factors are important determinants of coercive practices of marriage (e.g., dowry), associated with systematic violence against Indigenous girls and women.¹⁰⁰⁰ In Liberian traditional or customary marriage, a dowry is the payment of money and breaking of kola nut, perceived as a permit for a man to treat a woman as his chattel. The

⁹⁹⁷ Staff Writer, ‘America Ready for Liberians Accused of War Crimes?’ *Heritage* (Monrovia, Liberia), 29 July 2014 <<http://allafrica.com/stories/201407291149.html>>; Alphonso W Nyenuh, ‘The War Crimes Case against Tom Woewiyu - Why the US Must Prosecute’ *Front Page Africa* (Monrovia, Liberia), 13 June 2014 <<http://www.frontpageafricaonline.com/index.php/op-ed/commentaries-features/1938-the-war-crimes-case-against-tom-woewiyu-why-the-u-s-must-prosecute>>; Staff Reporter, ‘Woewiyu Pleads Not Guilty - Judge Denies Him Bail in Fraud Case’ *Front Page Africa* (Monrovia, Liberia), 19 May 2014 <<http://allafrica.com/stories/201405201200.html>>; Tewroh-Wehtoe Sungbeh, ‘Woewiyu’s Arrest by US Officials Confirms Our Inability to Pursue Our Own War Criminals’ *The Liberian Dialogue* (Atlanta, GA), 15 May 2014 <<http://theliberiandialogue.org/2014/05/15/woewiyus-arrest-by-us-officials-confirms-our-inability-to-pursue-our-own-war-criminals/>>; The US District Court, Pennsylvania, *Indictment of Jucontee Thomas Woewiyu*, Court Indictment, 30 January 2014.

⁹⁹⁸ Article VIII, section 30 of the TRC Act 92005) states that, ‘[t]he TRC shall grant immunity to all persons or groups of persons, organizations or institutions from prosecution or tort actions on account of statements made or evidence given before the TRC in advancement of the public interest objective inherent in the functions and objects of the TRC and pursuant to the successful execution of its mandate, and which therefore, shall not be used in any court of law against the person making the statement’.

⁹⁹⁹ Daniel Howden, ‘Warlord to Kingmaker: An Audience with Prince Johnson’ *The Independent* (London, UK), 15 October 2011 <http://www.independent.co.uk/news/world/africa/warlord>; Christian Purefoy, ‘Former Liberian Warlord “finds God,” Seeks Presidency’ *CNN* (Monrovia, Liberia), 5 August 2010 <<http://www.cnn.com/2010/WORLD/africa/08/05/johnson.liberia.religion/>>; Wade CL Williams, ‘As War Crimes Prosecution Debate Heats up; Prince Johnson Threatens Trouble If’ *Front Page Africa* (Monrovia, Liberia), 25 May 2012 <<http://www.frontpageafricaonline.com/old/news/general-news/3231-as-war-crimes-prosecution-debate-heats-up-prince-johnson-threatens-trouble-if-.html>>. Also see the TRC video testimonies of Prince Johnson available at <http://trcofliberia.org/videos/1201>.

¹⁰⁰⁰ Manjula O’Connor, ‘Dowry-Related Domestic Violence and Complex -Post-Traumatic Stress Disorder: A Case Report’ [2017] *Australasian Psychiatry* 1, 1.

Liberian Rules and Regulations Governing Hinterland 2000, which forms part of Liberian Customary Laws, provides for the payment of dowry in traditional marriage. Legal dowry is \$40 (Article 55(i)) for a girl 15 years and older (Article 55 (g)) and \$48 dollars for a virgin girl (Article 55(p)). A payment of \$100 is refunded upon dissolution of a marriage to a civilised man (Article 55(c)) or a Native man wherein it is the woman's fault (Article 55(c)). Subject to the *Liberian Rules and Regulations Governing Hinterland*, only children in a dissolved traditional marriage are entitled to inherit from the father (Article 55(c)). However, the *Act to Govern the Devolution of Estates and Establish Rights of Inheritance for Spouses of Both Statutory and Customary Marriages* 2003 passed in 1998 (hereafter the *Equal Rights of the Customary Marriage Law of 1998*) prohibits the recovery of dowry (section 2.2, Chapter 2), entitles a customary wife to one-third of her husband's property immediately upon marriage (section 2.3, Chapter 2), and unlawful for females under the age of 16 to be given in customary marriage to a man (section 2.9). Here is a perfect example of a conflict of laws between Anglo-American-Liberian law and Liberian Customary Law.

In a male-dominant society, the very act and process of establishing the idea of marriage are encumbered with inequality, injustice, abuse, discrimination and violence against women. Usually, the colonial state or the Traditional Council authorises and regulates the process of marriage in Liberia. As noted above in the *Liberian Rules and Regulations Governing Hinterland* and in the *Equal Rights of the Customary Marriage Law of 1998*, the State or Traditional Council's involvement in customary marriage can inflict systematic gender violence on Indigenous girls and women. For example, the marriage amongst the Kpelle people in Liberia is patrilineal. According to Caroline Bledsoe, dissatisfied men are compensated with rights over people, property and labour based on traditional rules:

a man or his lineage may demand the return of bride-wealth if a woman wants to divorce her husband...rules ensure that a woman and her children remain the property of the lineage that paid bride-wealth, even if the husband dies. Though seldom practiced, the Kpelle levirate legally transfers a widow to one of her husband's brothers or other male lineage mates as his wife. A widow may be transferred to one of her husband's sons by another marriage, usually if she is the same age or younger, though many of my informants regarded this dubiously, calling it a marriage between a man and his 'mother'. Conversely, the surrogate allows a widower to claim another woman from his dead wife's lineage.¹⁰⁰¹

Section 3.4, Chapter 3 of the *Equal Rights of the Customary Marriage Law of 1998* makes it unlawful to compel a widow to marry her deceased husband's kin. Notwithstanding, as indicated earlier, even though there is a conflict between the Anglo-American-Liberian law and Liberian Customary law, all things being equal, a uniform application and implementation of settler-colonist law should prevent or at least minimise such cultural/structural violence against Native women in Liberia.

¹⁰⁰¹ Caroline H Bledsoe, *Women and Marriage in Kpelle Society* (Stanford University Press, 1980) 82–83.

Under the *Liberian Rules and Regulations Governing Hinterland* and the *Equal Rights of the Customary* 2000, a lawful marriage is where a settler-colonist court allows a husband or his lineage to claim an adultery fee from his wife's lover. Such a fee can then be reinvested into payments for more wives for himself or his dependents.¹⁰⁰² Although under such traditional marriage law is not an alternative for ensuring justice or helping to advance Native girls and women rights politically, it is an additional avenue for boys and men to legally justify their right to own, control and abuse Native girls and women as chattels. Wulah's explanation of the different reasons why women and men file for a divorce rather than choosing the reverse (i.e., claiming an adultery fine) marks the injustice associated with divorce:

Most common grounds for husbands doing so [i.e., pursuing divorce] are desertion; waywardness; persistent, flagrant unfaithfulness; wilful stubbornness; carelessness and negligence in the household; incompatibility; continued 'bewitching' of the husband; and barrenness. A wife may demand to be released from her husband for continued and brutal abuse, impotence, and nonfulfillment of marital duties ... all children born to a woman during the time she has been the wife of a man belong to him.¹⁰⁰³

The perception is that a man's wealth is partly embodied by his children and wives. Children are also seen as the 'future old-age pension for the elders, as they will take care of their parents when they grow old.'¹⁰⁰⁴ Wulah offers another perspective that justifies male dominance and control over women whilst at the same time professing that women have agency and ability to consent to abuse.¹⁰⁰⁵ He states,

[f]idelity is nowhere to be found in most marriages. A woman may be 'loan' for a time by her husband; however, no woman will consent to being simply handed over to another man without her consent. ... Amongst some tribes, if a man comes to town and wants a woman if he intends to stay for a long period, he will ask the husband to allow him to have his wife, promising to be the husband's servant and helping during this time, provided she is not his favourite wife.¹⁰⁰⁶

It is humiliating enough for a wife to have her husband agree to let a stranger have sexual intercourse with her. But to say, that she wilfully consents to share her body with anyone who seeks permission from her husband to do so is an outright violation. Andrea Powell describes that violation as dehumanising and 'intrinsically destructive to women's anatomy.'¹⁰⁰⁷ Sadly, promising women to men without their consent is also the reality for girls in Native Language Groups in Liberia.

Although customary and Anglo-American law prohibits the marriage of children younger than 18 years, girls are often promised to men, sometimes even before they are even

¹⁰⁰² Article 55(m), *Liberian Rules and Regulations Governing Hinterland* and the *Equal Rights of the Customary* 2000 (revised).

¹⁰⁰³ Wulah, above n 169, 189.

¹⁰⁰⁴ Waris Dirie and Cathleen Miller, *Desert Flower: The Extraordinary Journey of a Desert Nomad* (HarperCollins, 2011) 30.

¹⁰⁰⁵ Sheldon, above n 913, 48. Sheldon suggests that even in colonial era across Africa 'women were as disadvantage as "customary" laws were established based on male testimony that gave men, especially elite men, advantages over women in issues of marriage and divorce'.

¹⁰⁰⁶ Wulah, above n 169, 186.

¹⁰⁰⁷ Andrea Powell, 'Problematizing Polygyny in the Historical Novels of Chinua Achebe: The Role of the Western Feminist Scholar' (2008) 39(1) *Research in African Literatures* 166, 166.

born. Article 16(2) of the *Convention on the Elimination of All Forms of Discrimination against Women* 1979; Article 21(2) of the *African Charter on the Rights and Welfare of the Child* 1990; and section 4, Article VI of the *Act to Establish the Children's Law of Liberia* 2011 provide that marrying or betrothing any person under the age of 18 is prohibited. However, there are situations in which, after a man learns that he has impregnated a young female, he may say to the young woman, 'if what you are going to bear is a girl, I will take her to be my wife. If it is a boy, I will be his uncle.'¹⁰⁰⁸ With the parents' consent, a binding ceremony is performed as a symbol of sealing the contract. Thus, even before her birth, a young girl is already betrothed, sealing her destiny for life. In other cases, the birth of a girl is perceived as a sign of 'fruitfulness', which triggers a higher bride price or dowry.¹⁰⁰⁹ In many Language Groups, children belong only to the father or paternal grandfather, who is the authorised recipient of her dowry, if the child is a girl. It may also be the case that the girl could become only one of several of the man's wives.

Polygyny, a practice wherein a man has more than one wife, is relatively widespread amongst Native Peoples in Liberia.¹⁰¹⁰ Kathleen Sheldon reasons that girls and women who are socially and mentally indoctrinated into believing that being one of many wives is beneficial could opt for polygyny.¹⁰¹¹ Feminist researchers suggest that in the absence of patriarchy, male chauvinism and misogyny, young girls do not choose a polygynous relationship. In fact, some argue that polygyny dehumanises women in many ways. However, although the voice of Indigenous women who denigrate such marital arrangements must not be objectified or silenced, it is only fair to note that others see the practice as beneficial to girls and women. Although polygyny increases overall family size, it tends to reduce the number of children each wife may bear because of the reduced chance that she will have sexual intercourse or because of observance of other traditional practices (e.g., abstinence from sex after having a baby).¹⁰¹² In Liberia, polygyny is also tied to religion. Research conducted by Konia Kollehlon found that polygyny is lowest amongst Catholics and more prevalent amongst Muslims, who tend to marry women of slightly younger age.¹⁰¹³

3.3.6 Female Genital Cutting

This research prefers the phrase 'female genital cutting' over 'female genital mutilation', which seems to reflect denigration for a tradition. Female genital cutting is more representative of the

¹⁰⁰⁸ Wulah, above n 169, 187.

¹⁰⁰⁹ Sheldon, above n 913, 37. Dowry or bride price is preferred over bride wealth because not only has Wulah (2005) infer its cultural significance as a mechanism for building men's wealth and validity their complete dominance over women but also that the literal essence of collecting money and other material possessions in exchange for women (rather than men) mean exactly that – women are being sold.

¹⁰¹⁰ Sonjia David, 'Health Expenditure and Household Budgets in Rural Liberia' (1993) 3(1) *Health Transition Review* 57, 61, 579–600.

¹⁰¹¹ Sheldon, above n 913, 201.

¹⁰¹² Konia T Kollehlon, 'Religious Affiliation and Fertility in Liberia' (1994) 26(04) *Journal of Biosocial Science* 493, 499.

¹⁰¹³ *Ibid.*

type of procedure in Liberia. ‘Female genital removal’, ‘female surgery’, and ‘female circumcision’ are a few other contentious phrases used to describe the procedure of ‘a destructive operation, during which the female genitals are partly or entirely severed or injured with the goal of inhibiting a woman’s sexual feelings’.¹⁰¹⁴ Though the origin of the procedure is unclear, contrary to public perception, it is not a practice based on religion. Elizabeth Boyle submits that as recently as the 1950s, female genital cutting was performed on white women in Western countries to treat nymphomania.¹⁰¹⁵ Historically, the term ‘female circumcision’ has been used to compare the procedure to that of male circumcision. However, Rebecca Cook and Bernard Dickens argue that female genital cutting ‘bears no relationship to male circumcision’,¹⁰¹⁶ which has a possible health benefit and a relatively low risk of harm.¹⁰¹⁷

There are many types of female genital cutting, performed by various cultures. Cook and Dickens describe four types of female genital cutting. They are 1) clitoridectomy, 2) excision, 3) infibulation and 4) unclassified procedures. Clitoridectomy involves partial or entire removal of the clitoris. Excision is the removal of the clitoris and the labia minora. Infibulation is the severing of the clitoris, the labia minora and sometimes the labia majora. The final stage of infibulation includes stitching or sealing together the vagina with a small opening left for the flow of urine and menstrual blood. Unclassified procedures encompass the following:

- a) pricking, piercing or stretching of the clitoris and/or the labia;
- b) Cauterisation (i.e., burning of the clitoris and surrounding tissues);
- c) Scraping of the vaginal orifice; and
- d) Introduction of herbs or corrosive materials to cause bleeding or narrowing/tightening of the vagina.¹⁰¹⁸

Although there is no evidence to support which kind of procedure is common in Liberia, many dispute the existence of types b and c. The age at which these procedures are performed also varies.

In many Indigenous cultures, puberty rites validate the psychological adulthood of young women in preparation for marriage.¹⁰¹⁹ Usually, female genital cutting is performed before puberty, often on girls between the age of four and eight years,¹⁰²⁰ although in Liberia puberty rites in the Sande School for girls take place between the ages of 10 and 13 years. Recently, according to Waris Dirie’s Desert Flower Foundation, genital cutting is increasingly carried out

¹⁰¹⁴ World Health Organisation, *WHO: Female Genital Mutilation* (2014) Female Genital Mutilation <<http://www.who.int/mediacentre/factsheets/fs241/en/>>.

¹⁰¹⁵ Elizabeth Heger Boyle, *Female Genital Cutting: Cultural Conflict in the Global Community* (Johns Hopkins University Press, 2005) 24.

¹⁰¹⁶ World Health Organisation, above n 1015.

¹⁰¹⁷ Rebecca Cook, *Reproductive Health and Human Rights : Integrating Medicine, Ethics, and Law* (Clarendon Press, 2003) 262.

¹⁰¹⁸ *Ibid* 264.

¹⁰¹⁹ Linda Pressly, ‘Saving Girls from the “Cutting Season”’ *BBC News* (Dar es Salaam, Tanzania), 1 April 2015 <http://www.bbc.com/news/magazine>.

¹⁰²⁰ Caine, above n 555, 39.

on nurslings who are only a couple of days, weeks or months old.¹⁰²¹ In Liberia, female circumcision or female genital cutting¹⁰²² is practiced only in the North-western parts of the country. It marks the full initiation of young girls into the traditional institution and emphasises rigid enforcement of ‘chastity’,¹⁰²³ ‘purification’ or ‘cleansing’.¹⁰²⁴ The procedure is performed as part of a traditional ceremonial initiation of girls and young women, as a rite of passage¹⁰²⁵ into the traditional institutions known as the *Sande* (secret) society.¹⁰²⁶ Caine states that the emphasis of the *Vai* people’s *Sande* society is on the chastity¹⁰²⁷ of a young bride before her marriage.¹⁰²⁸ A more reliable source of data on the occurrence of female genital cutting in Liberia is that of the Department of Health Survey.¹⁰²⁹ Of the 7 092 women who said they have heard about the *Sande*

¹⁰²¹ Waris Dirie, ‘What Is FGM? - Desert Flower Foundation’ <<http://www.desertflowerfoundation.org/en/what-is-fgm/>>; Dirie and Miller, above n 1005, 2; Sheldon, above n 913, 61. Waris Dirie, the author of *Desert Flower* (2011), is a Somali nomad of the Galkayo People who experienced female genital circumcision at the tender age of 5; escaped an arranged marriage to an older man at the tender age of 13 and survive several rapes, child molestation and violence. An international model, Waris later resigned from modelling to establish the Desert Flower Foundation. She served as the UN Special Ambassador from 1997-2003.

¹⁰²² Sheldon, above n 913, 80. Female Genital Mutilation is a term coined by Western feminist who claim that the procedure mutilates young girls’ bodies thereby promotion the notion that Africans are barbaric. Thus, this research prefers Female Genital Cutting or Female Genital Surgery so as to elicit constructive open discussion on the issue.

¹⁰²³ Wulah, above n 169, 185. According to Wulah, sexual indulgence by the initiates in the bush school was one of two offences punishable by death. For girls in the *Sande* School teachings are focused on husbands and babies, yet intercourse is thought of as completely forbidden.

¹⁰²⁴ Boyle, above n 1016, 24.

¹⁰²⁵ Caine, above n 555, 8; Sheldon, above n 913, 218–219. Caine distinguishes the role of the traditional school in the lives of men to that of women. Whilst a boy is pruned into adulthood where he must learn to work to support his family and discharge other kinship duties; ‘...women, the adult one trained in domestic activities, mother-craft, the art of graceful carriage, and tribal history. A girl must know the rules of morality and how to respect her body as a ‘temple’ of a husband. She must learn to listen to those who know better, the elders’.

¹⁰²⁶ Government of Liberia, ‘Study on Operations of *Sande* School’ (Government Report, Ministry of Children, Gender and Social Development, April 2011) 3; Bledsoe, above n 590; Dunn and Holsoe, above n 104, 140, 153. According to Ministry of Gender, Children and Social Protection - The *Sande* Society is a women’s institution that initiates girls into womanhood, confers fertility, instils notions of morality and maintains an interest in the well-being of its members throughout their lives. As part of its practice, initiation rite into womanhood may include FGC and forced marriage. The *Sande* School is conducted in north-eastern Liberia amongst the Kpelle, Bassa, Vai, Dan (Gio), Mano, Dei, Lorma, Mandingo, Mende, Kissi, Gbandi, and Gola language groups. The School sessions may last up to three years. The main spirit of the society is represented by a helmet-masked figure which presents as significant social events. The male counterpart of the *Sande* institution is the *Poro* Society.

¹⁰²⁷ Wulah, above n 169, 184–185.

¹⁰²⁸ Caine, above n 555, 70. Caine writes, ‘[t]raining for moral character development constitutes a cardinal point in *Sande* instruction. Under this general rubric virginity and marital fidelity are the most important. Instruction takes the form of reciting certain moral imperatives to the pupils and linking the violation of these to supernatural punishment, such as barrenness, sudden illness, or death. For example, a girl must obey her husband or lose “heave”; if she committed adultery before or during pregnancy, she must make a confession to her husband or delivery will be so difficult that she might die in labor. She cannot love two brothers without exposing herself to the anger of the ancestors. But a more practical means of teaching morals lies in tying a girl’s success or failure as wife to conformity with the rules. An example of the psycho-economic aspects of morality will make clear how the *Sande* stress on premarital and marital chastity is made to carry conviction to the pupil. Before marriage the parents of a bride must receive and amount [~\$300] from the prospective husband. This payment does not constitute a purchase of wife, as anthropologists have taken the pains to point out, and she does not become a mere chattel. On the contrary, it serves to stabilize the union, to validate the social paternity of children. But bride-wealth has another significance which provides some insight into why parents insists on the payment of it. It confers prestige upon the receiver and prestige is one of the few blessings the *Vai* pray for. The very fact that very little of the amount is kept by the parents themselves suggest that economic incentives are secondary in the demand for bride-wealth. But whether this amount will be paid at all, or the maximum realized, depends on whether the girl is chaste. A woman who on the night of her nuptial turns out to be unchaste is a disgrace to her family, for she has belied the implied pledge of her parents that she was a virgin’.

¹⁰²⁹ UN Children’s Fund, ‘Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change’ (UN Report, United Nations Children’s Fund, 2009) 194, 2–3, 26. According to this report, 125 million girls worldwide have been subjected to the ‘blade’. However, after a closer look, the statistics appear to be wrongly presented, at least for Liberia. An email to UNICEF on 9 March 2015 explains that, ‘I’m writing to express a concern that your data presented on page 2-3 and 26 about Liberia’s FGC’s statistics (66 per cent and 44 per cent) is perceptually wrong. The DHS does not say that 66 per cent or 46 per cent of all women in Liberia have

society in Liberia, 66 percent were members who had experienced female genital cutting, i.e., assuming that being a member of the *Sande* society is proxy for genital cutting.¹⁰³⁰ A baseline study by the Open Society Initiative for West Africa (2013) reveals that, of the 352 women participants, 59.7 percent were members of the *Sande* society.¹⁰³¹

The practice of female genital cutting amongst Native Peoples in Liberia is secretive, controversial and tenuous. As such, it is challenging to find documented cases of the practice in Liberia. Therefore, discussion on the topic will be presented through the experiences of women from other countries in Africa. It must be noted that some scholars support the ritual as a tradition to be upheld.¹⁰³² Ahmadu argues that '[w]estern feminist sisters insist on denying us this critical aspect of becoming a woman in accordance with our unique and powerful cultural heritage.'¹⁰³³ Shweder opines that '[w]esterners conveniently ignore the fact that they produce their own kinds of genital mutilation in the form of the vaginal rejuvenation of women and circumcision for boys'.¹⁰³⁴ In contrast to Ahmadu and Shweder's arguments are Waris Dirie's and Nawal El Saadawi's lived experiences. Thirteen-year-old Dirie, a Somali nomad, ran away from home to escape marriage after having endured female genital cutting at age three. Dirie later became an internationally famed supermodel, the UNFPA Special Ambassador for the Elimination of Female Genital Cutting (1997) and the African Union Peace Ambassador (2010).¹⁰³⁵ El Saadawi, a renowned Egyptian feminist, whom this researcher regards as the 'Mother of Islamic Feminism', was circumcised at the tender age of six and escaped an arranged marriage at 10 years, but later went on to qualify as a medical doctor and became the Director of Public Health in Egypt.¹⁰³⁶ Dirie and El Saadawi's stories are examples of African women rising from the effects of harmful cultural practices imposed by male-dominated society towards their independence and freedom. The experiences of Dirie and Saadawi as young

undergone FGC. In fact, what the DHS tries to present very clearly is an inference or an assumption that if membership to the Sande Society (NOT Bush Society) implies a female had underwent genital cutting, then 66 per cent of the 7 092 women that were asked in the survey experienced the procedure. LISGIS' National Housing and Population Census (2008) estimates Liberia's population at 3.5 million, 50 per cent of which were females. The manner in which you've presented your statistics seriously neglect to take into consideration that the entire south-eastern part of Liberia does not practice FGC. And, that the DHS is solely limited to an infinitesimal percentage (0.2 per cent) of the entire population - yet with a caveat. Moreover, it appears to me that you've jumbled statistics from various countries without standardising the statistics. You CANNOT compare raw statistics like so. Otherwise, you risk unintentionally sending out the wrong (and definitely troubling) impression that 66 per cent of all Liberia women have undergone FGC.

¹⁰³⁰ Liberia Institute of Statistics and Geo-Information Services et al, 'Liberia Demographic Health Survey 2007' (Liberia Institute of Statistics and Geo-Information Services, June 2008) 410, 241 <<http://www.measuredhs.com/pubs/pdf/FR201/FR201.pdf>>.

¹⁰³¹ Women Solidarity, 'Baseline Study Report: On the Knowledge, Perceptions and Attitudes of the Practice of Female Genital Mutilation in Six Districts in Nimba, Bong and Margibi County/Liberia' (Private Report, Open Society Initiative of West Africa (OSIWA), 25 April 2013) 32, 1.

¹⁰³² Richard Shweder and Fuambai S Ahmadu, 'Disputing the Myth of the Sexual Dysfunction of Circumcised Women: An Interview with Fuambai S. Ahmadu' (2009) 25(6) *Anthropology Today* 14; Bettina Shell-Duncan and Ylva Hernlund, *Female 'Circumcision' in Africa: Culture, Controversy, and Change* (Lynne Rienner Publishers, 2000) 183–312.

¹⁰³³ John Tierney, 'A New Debate on Female Circumcision' *TierneyLab* (New York, NY), 30 November 2007 <<https://tierneylab.blogs.nytimes.com/2007/11/30/a-new-debate-on-female-circumcision/?hp>>.

¹⁰³⁴ Jessica Jessica, *African Doctor: Is Female Circumcision so Awful?* (30 November 2007) Jezebel <<http://jezebel.com/328601/african-doctor-is-female-circumcision-so-awful>>.

¹⁰³⁵ Dirie and Miller, above n 1005.

¹⁰³⁶ Nawāl Sa' dāwī, *A Daughter of Isis: The Autobiography of Nawal El Saadawi* (Zed Books, 1999) 12–13; Nawāl Sa' dāwī, *The Nawal El Saadawi Reader* (Zed Books, 1997) 2–3.

children who were submitted to the practice against their will raise the question of children's right to consent to such a life-changing procedure, which has a relatively high health risk.

The debate around accepting polygamy and female genital cutting as long-standing tradition is unsubstantiated by international, national and domestic law. Article 2 (f) of the *Convention on the Elimination of All Forms of Discrimination Against Women* 1979 and Article 5 of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* 2003 considers polygamy and female genital cutting as harmful customs and traditional practices against girls and women. Domestically, though, Liberia is one of only three countries in West Africa yet to ban female genital cutting.¹⁰³⁷ Notwithstanding, outgoing President Ellen Johnson Sirleaf gave the *Domestic Violence Bill* that abolishes female genital cutting, a bill which has suffered many setbacks from the Liberian Legislature, an Executive Order on 19 January 2018.¹⁰³⁸

3.4 Summary

This chapter reviews the literature on systematic violence against Indigenous girls and women in a broad sense. The chapter also moves away from limiting the analysis of Indigenous girls and women's experience of violence to sexual, domestic, family and intimate partner abuse towards mapping the complex interactions of three intertwining levels of systematic violence.¹⁰³⁹ Building on strategies, resistance and movements by Indigenous girls and women advocates, the chapter covers the manifestation of systematic violence against Indigenous girls and women in diverse root causes, forms, and sources drawing unique institutional/state, structural/cultural and interpersonal/community case examples. Through the review, a web of intersecting factors constituting systematic gender violence emerged. Gender violence occurs at the interpersonal/community, structural/cultural, and state/institutional levels, is inflicted institutionally, psychologically, and sexually¹⁰⁴⁰ and occurs in workplaces, churches, schools and the community at large.¹⁰⁴¹ However, Indigenous girls and women are not victims but survivors, despite the overwhelming traumatic experiences they have endured as a result of colonial legacies of systematic violence perpetrated against them.

¹⁰³⁷ Cholo Brooks, 'The Purge of Female Genital Mutilation In Liberia, Family Urges Victim to "Conform to Cultural Practice of FGM or Encounter Death"' <<http://gnnliberia.com/2017/01/09/purge-female-genital-mutilation-liberia-family-urges-victim-conform-cultural-practice-fgm-encounter-death/>>; Mary Wandia, 'Liberia Needs to Muster the Courage to Ban FGM' *The Guardian* (Monrovia, Liberia), 27 April 2016 <<http://www.theguardian.com/global-development/2016/apr/27/liberia-courage-to-ban-fgm-ellen-johnson-sirleaf>>.

¹⁰³⁸ Mae Azango, 'Outgoing President Sirleaf Abolishes Female Genital Mutilation, Signs Domestic Violence Bill' *FrontPageAfricaonline.com* (Monrovia, Liberia), 22 January 2018 <<https://frontpageafricaonline.com/index.php/news/6691-outgoing-president-sirleaf-abolishes-female-genital-mutilation-signs-domestic-violence-bill>>.

¹⁰³⁹ INCITE! (ed), *Colour of Violence: The INCITE! Anthology* (Duke University Press, 2016) backcover.

¹⁰⁴⁰ Bettie Johnson, '49 Year-Old Alleged Rapist Indicted on Multiple Charges' *Front Page Africa* (Monrovia, Liberia), 9 March 2015 <<http://frontpageafricaonline.com/index.php/news/4679-49-year-old-alleged-rapist-indicted-on-multiple-charges>>; Comfort M Johnson, 'Judge Sentences Man to 25 Years for Killing His Girlfriend' *Liberian News Agency* (Monrovia, Liberia), 9 March 2015 <<http://www.liberiannewsagency.org/pagesnews.php?nid=4178>>; Martine B Powell, 'Investigating and Reporting Child Sexual Abuse: Review and Recommendations for Clinical Practice' (1991) 26(2) *Australian Psychologist* 77.

¹⁰⁴¹ Johanna Bond, 'Violence against Women' in *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania* (Carolina Academic Press, 2005) 75, 75.

Although Indigenous girls and women's contribution to history tends to be ignored, supporting evidence shows that they have always resisted foreign dominance, exhibited strong leadership skills, and propagated the maintenance of peace, especially where men have failed. One such woman is Truganini, a negotiator, diplomat and guerrilla fighter, who is considered 'one of the foremost Tasmanian Aboriginal leaders of the 1800s'.¹⁰⁴² Also, Liberia's first female paramount Chief, Nye Suakoko, who used her 'excellent diplomatic skills' to resolve violent conflicts between her Native Peoples in Liberia and settler-colonists, is laudable.¹⁰⁴³ Bissell reaffirms the voices of the 57th Session of the UN Commission on the Status of Women, noting 'we need data so that we can end impunity, we need to report acts of violence and we need to hold the people who commit violence against children [and women] accountable...'¹⁰⁴⁴ In spite of their bravery, resistance and leadership abilities, Indigenous women's strengths and resilience do not come without challenges, especially when it comes to conducting research on systematic violence against them. One challenge is their exclusion from the historical narrative.

In colonial history, whilst men are often adorned in glory and splendour, with the specific characterisation of leadership, rulership, and authority, children and women are relegated to collectives (e.g., 'native girls' or 'country women'). Sometimes tokenistic references to Indigenous women are made without much context or substance.¹⁰⁴⁵ In many instances, Indigenous women are sexualised with disparaging images¹⁰⁴⁶ of their half-naked bodies as nameless servants, or cultural exhibits unequally placed amongst their male counterparts.¹⁰⁴⁷ For example, Professor Amos Sawyer dedicates an entire sub-section of chapter 3 of *The Emergence of Autocracy in Liberia* to the *Poro* (male) society,¹⁰⁴⁸ with nine pages of references, but none to the *Sande* (female)¹⁰⁴⁹ society.¹⁰⁵⁰ Of the hundreds of historical resources

¹⁰⁴² Beers, above n 564; Department of the Prime Minister and Cabinet, *Aboriginal Women* (5 March 2010) Women in Colonial Times <<http://www.australia.gov.au/about-australia/australian-story/women-in-colonial-times>>.

¹⁰⁴³ Filomina Chioma Steady, *Women and Leadership in West Africa: Mothering the Nation and Humanizing the State* (Palgrave Macmillan, 1st ed, 2011) 108–109, 128; Selma Lomax, 'Rural Boost - EJS Dedicates Chief Suakoko Centre for Women' *All Africa* (Monrovia, Liberia), 11 June 2014 <<http://allafrica.com/stories/201406110497.html>>.

¹⁰⁴⁴ Bissell, above n 637.

¹⁰⁴⁵ Bonwick, above n 730, 26.

¹⁰⁴⁶ Reynolds, *Dispossession*, above n 177, 25, 51, 112, 124.

¹⁰⁴⁷ Dunn, *Liberia*, above n 103, 13; Karnga, above n 171, 6; Caine, above n 555, 55.

¹⁰⁴⁸ The teaching in the *Poro* society covers everything from drumming to bird-driving on the farm. Apart from stringently segregating men and women's role, the Institution appears to not only foster some form of discrimination against women but also authorise men to decide what role women should play in the social structure and order (*see* Caine (1959) at 42). The Vai male society is called *Beli*. One of the teachings here is the 'death and resurrection' theory whereby persons not member of the society is forbidden to enter the Institution without making known their presence through loud sounds. Male non-members guilty of trespassing will be seized and initiated forcibly and that of females banished or killed (*see* Caine (1959) at 39). Another instance amongst the Vai is a woman may properly leave her husband without refunding the bride-wealth if he fails to rotate amongst co-wives in proper order. She can also quit the conjugal relationship if he beats her unnecessarily or excessively (*see* Caine (1959) at 46). The implication here being that he is allowed to beat her but just not 'unnecessarily' or 'excessively'. In the *Beli* society, a 'man's wife (or womankind in general as a matter of fact) is so physically weak and simple-minded that she deserves the pity of strong and sophisticated man. Thus, to refer to another man as one's wife is to say he is ignorant – a gross insult'.

¹⁰⁴⁹ Brown, above n 50, 61–85. According to Brown, the *Sande* and *Poro* societies date back to the 17th century. As secret societies, the Institutions promised death as punishment for betrayal for revealing the oath of secrecy taken after full initiation. Settler emigrants referred to the Institution as 'devil-bush' for the lack of understanding and respect on their part, perceiving that its main goal was to subjugate women. Whilst there is no age limit for enrolling into the Institution, boys entered between the ages of 7-10 (because that is when they are more 'tractable') and girls, between the ages of 4-12 years.

examined in this research, mainly written by males, a substantial majority failed to document Indigenous women's role in the formation and building of their nations. This continuous exclusion of Indigenous women from history, a form of systematic violence that is seamless with structural and cultural norms, fails to recognise any contribution they have made to nation building and development. Furthermore, the absence of violence against women in the historical narrative is not only the work of colonist-settlers.

Persistent violence against Indigenous women enacted by Indigenous men is often not spoken about in Indigenous communities. Australia's renowned writer and playwright, Louis Nowra expresses profound respect for Aboriginal culture but with a troubling concern. Lamenting the grim reality of violence against Aboriginal women by Aboriginal men, Nowra narrates his experience reading of the anal rape of a 13-year-old girl 'promised' to an Aboriginal elder and observing mutilated girls and women in the Alice Springs Hospital. Nowra expresses frustration that no male had written about this problem, although a few brave women had. He reasons that since physical and community violence against women is also an Aboriginal man's problem, society must deal with the issue immediately.¹⁰⁵¹ However, as discussed above, many intersecting factors contribute to the totality of systematic violence against women and girls, including systematic violence against Indigenous men.

Intersectionality theory affirms that the systematic violence Indigenous girls and women face is exacerbated by their dual identities: being both female and Indigenous. First, being Indigenous subjects Indigenous girls and women to differentiated treatment within the family, community and state. Second, being Indigenous predisposes Indigenous girls and women to various forms of human rights abuses, particularly because of their culture, which attached them to the land as First Peoples.¹⁰⁵² Such differential treatment may be a result of colonial history, discrimination, racism, sexism, and social status, amongst other components. Impacts and consequences of systematic violence against Indigenous Peoples come as a direct or indirect cause of historical factors such as convict transportation to Australia, the trans-Atlantic slave trade, massacres, and the civil war in Liberia. The impact of systematic gender violence goes beyond physical injuries to include stress-related illness including mental and emotional trauma.¹⁰⁵³ The psychological pain and suffering resulting from forced adoption, forced marriage or intimate partner abuse, has a lasting inter-generational impact, accentuated by denial of (or insufficient) access to essential social services. Yet amidst such ongoing hurt, settler-colonists manage to stereotype Indigenous Peoples as lazy, drinkers, inferior and not as

¹⁰⁵⁰ Sawyer, *The Emergence of Autocracy in Liberia*, above n 61, 47, 49–51, 55, 68, 199, 235, 298.

¹⁰⁵¹ Louis Nowra, *Bad Dreaming: Aboriginal Men's Violence Against Women and Children* (Pluto Press, 2007) abstract.

¹⁰⁵² Soyata Maiga, 'Gender and Indigenous Peoples' Rights' in Korir Sing'Oei and Ridwan Laher (eds), *Indigenous People in Africa: Contestations, Empowerment and Group Rights* (Africa Institute of South Africa, 2014) 64, 64.

¹⁰⁵³ Anders, above n 527, 4.

intelligent as white people.¹⁰⁵⁴ This stigmatisation then inhibits Indigenous Peoples' access to justice through the Anglo-American or Anglo-Australian legal system.

Law and policy are beginning to address Indigenous girls and women's disproportionate vulnerability to systematic violence. Although still marginal to the state's political process, Diana Bell argues that within the context of law and policy on self-determination (for example), that Indigenous women may raise an agenda on equal rights and justice for systematic violence against them.¹⁰⁵⁵ However, Bell contests that the self-determination movements of Indigenous Peoples in Australia still tend to privilege race over gender.¹⁰⁵⁶ In Liberia, the legal system is also still attempting to address the disparity between Indigenous Peoples and settler-colonists.

Violence against Indigenous girls and women has its origin in the constitutional choices made at critical historical periods in Liberia.¹⁰⁵⁷ For almost two centuries (1821-2015), the Liberian State has been marred by violence, which resulted in the dominant rule of settler-colonists and presidential autocracy. The rule of William V S Tubman (1944-71) was the longest and that of Samuel Doe (1980-1989)¹⁰⁵⁸ was a dictatorship that began with a bloody coup d'état that collapsed into a senseless civil war. Today, Liberia is still grappling with impunity, corruption and ongoing challenges with implementing effective law and policy to protect girl and women against violence. Whilst most countries in Africa have enshrined some form of gender equality in their constitution, 'Liberia is one low-income country without this provision'.¹⁰⁵⁹ The establishment of a Constitutional Review Committee in 2012 by the Government of Liberia aims to review the effectiveness of the *Liberian Constitution* 1986 in addressing issues of social justice, equality, and the importance of Indigenous tradition, *inter alia*, in Liberia. Some 10 000 Liberians from the 73 constituencies in all 15 counties and the Diaspora, including traditional leaders and women's groups participated in these public consultations. The 52 308 suggestions produced by the Constitutional Review Commission in its final report presented to then President Ellen Johnson Sirleaf on 18 August 2015, have yet to be followed.¹⁰⁶⁰ Therefore, in Liberia, as in Australia, the struggle to recognise Indigenous women's contribution to both the nation-building process and the sustenance of a cohesive societal structure continues. Finally, the historical exclusion of Indigenous women during nation-building, the foreign and patriarchal origins of Anglo-American-Liberian and Anglo-Australian law, cultural stereotypes infiltrating legal proceedings, and direct-state sponsored

¹⁰⁵⁴ 'First Contact', 2014.

¹⁰⁵⁵ Diane Bell, 'Representing Aboriginal Women: Who Speaks for Whom?' in Oliver Mendelsohn and Upendra Baxi (eds), *The Rights of Subordinate Peoples* (Oxford University Press, 1996) 221, 226.

¹⁰⁵⁶ *Ibid.*

¹⁰⁵⁷ Sawyer, *Beyond Plunder*, above n 101, 20.

¹⁰⁵⁸ Lawyers Committee for Human Rights, 'First Steps: Building the Justice System in Liberia' (Public Report, Lawyers Committee for Human Rights, December 1991) 3-9, 23-26.

¹⁰⁵⁹ Mary Hallward-Driemeier and Tazeen Hasan, *Empowering Women: Legal Rights and Economic Opportunities in Africa* (International Bank of Reconstruction and Development / The World Bank, 2013) 47.

¹⁰⁶⁰ Ekuru Aukot, Augusta Pshorr and Sam Zota, *Constitution Review Committee Presents Final Report to President Sirleaf* (18 August 2015) UNDP in Liberia <<http://www.undp.org/content/liberia/en/home/presscenter/articles/2015/08/18/constitution-review-committee-presents-final-report-to-president-sirleaf.html>>.

violence against Indigenous women, lead to an examination of whether the foundational legal axiom ‘the rule of law’ is effective in Indigenous women’s search for restorative justice.

CHAPTER 4: THE RULE OF LAW

Before 1967 Aboriginal and Torres Strait Islander peoples were denied citizenship. We were not free, for example, to travel between imposed State borders nor within States, no matter where the borders of our country lay — and we were not entitled to an Australian passport although many of us had already fought and died overseas in two World Wars. We had to have permission to marry and we were not even counted in the census of the people of this nation country. In fact, for more than a century of non-Indigenous presence in our country, our humanity was actively denied — in many places the births of our children were recorded on livestock records.¹⁰⁶¹

Power must be exercised according to the rule of law; the majority cannot abuse the rights of the minority.¹⁰⁶²

4.0 Introduction and Background

In the last two decades of the twentieth century, the ‘rule of law’ has been one of the most common formulas in law and governance employed by Western political and legal thinkers.¹⁰⁶³

The ‘rule of law’, though typical of Anglo-Saxon culture, is nonetheless used everywhere, including in Indigenous societies across the world.¹⁰⁶⁴ In fact, every continuous human enterprise or activity, whether individual or collective, is assumed to be rule-governed in some sense. Without this feature of rule-governance, individual and social behaviour will most likely lapse into randomness and radical contingency.¹⁰⁶⁵ The expression ‘the rule of law’ is also popular in scholarly literature, political journals and international development work, especially in recent times. The international community, including the United Nations Development Program, World Bank and donor countries, uses ‘good governance’ and ‘rule of law’ principles as conditions for foreign aid, democracy, human rights promotion and sustainable development, especially when focusing on developing nations affected by the crisis.¹⁰⁶⁶

A good government or ideal regime of governance is defined by rule-governance, that is, as a ‘government of laws and not of men’.¹⁰⁶⁷ This doctrine aligns with central premises and hierarchical postulates that are endemic to so-called Western civilisation. That is, the rule of reasoning is a ‘universal principle’ that prioritises the law over arbitrary will, discretion or authority exerted by a single person.¹⁰⁶⁸ Depending on the interests at stake, the concept of ‘rule of law’ invokes a number of ideals. For example, the rule of law opposes individual freedom

¹⁰⁶¹ Dodson, ‘Citizenship in Australia: An Indigenous Perspective (A Call for Structured and Comprehensive Representation of Indigenous People in Australia’s Constitution’, above n 368.

¹⁰⁶² Staff Reporter, ‘Triggs Marks 800 Years of Magna Carta at ANU Event’ *ANU News* (Canberra, ACT), 16 June 2015 <<http://www.anu.edu.au/news/all-news/triggs-marks-800-years-of-magna-carta-at-anu-event>>.

¹⁰⁶³ Danilo Zolo, ‘The Rule of Law: A Critical Reappraisal’ in Pietro Costa and Danilo Zolo (eds), *The Rule of Law, History, Theory and Criticism* (Springer, 2007) 3, 3.

¹⁰⁶⁴ Pietro Costa, ‘The Rule of Law: A Historical Introduction’ in Pietro Costa and Danilo Zolo (eds), *The Rule of Law, History, Theory and Criticism* (Springer, 2007) 73, 73.

¹⁰⁶⁵ Fred Dallmayr, ‘Hermeneutics and the Rule of Law’ in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (eds), *Deconstruction and the Possibility of Justice* (Taylor and Francis, 2016) 283, 283.

¹⁰⁶⁶ United Nations Development Programme, ‘Global Programme on Strengthening the Rule of Law and the Human Rights for Sustaining Peace and Fostering Development: 2016 Annual Report’ (UN Report, United Nations Development Programme, 2017) 148, 2–3; Attorney-General’s Department, *Rule of Law* (2017) Australian Government <<https://www.ag.gov.au/About/Pages/Ruleoflaw.aspx>>.

¹⁰⁶⁷ Dallmayr, above n 1066, 284.

¹⁰⁶⁸ *Ibid.*

and totalitarian rule yet supports the importance of individual rights or individual autonomy against bureaucratic intrusiveness.¹⁰⁶⁹ But who makes the law as a rule? Most certainly it is men, and overwhelmingly, white men in positions of power, authority and control over Indigenous Peoples. It is against this backdrop that this research assesses the rule of law as the constitutional basis for Liberia's and Australia's democracies as it imposes differential treatment on Indigenous girls and women.

This chapter examines how the same document (the constitution) can accord rights to all under the equality principle but somehow manage to exclude Indigenous Peoples from the 'all'. In analysing equal treatment under the law, the chapter questions whether there is an inherent contradiction with the concept of the rule of law or whether the principle is an illusion created by men in power with authority. Therefore, the basis for which such fundamental law legitimises discrimination against Indigenous girls and women is appraised and critiqued.

4.0.1 Historical and Conceptual Philosophy of the Rule of Law

The principle of the rule of law implies that individual rights and freedom must be protected by law, independently of the will of the ruler or the arbitrary power of public authorities.¹⁰⁷⁰ Lon Fuller states that governance is based on the simple fact that we should have some kind of general rules, however fair or unfair.¹⁰⁷¹ Many legal scholars trace the origins of the phrase 'the rule of law' to the Code of Hammurabi.¹⁰⁷² Even though Plato¹⁰⁷³ and Aristotle¹⁰⁷⁴ created exemplary models for legal authority that were consistent with the rule of law, Brian Tamanaha warns that the Greeks' thought was nearly lost to the West for half a millennium during the Dark Ages.¹⁰⁷⁵ However, in medieval times, the Magna Carta¹⁰⁷⁶ was used to restrain nobles, based on Aristotle's belief that laws based on the rule of law should be sovereign.¹⁰⁷⁷ From a Western perspective, A V Dicey re-coined the conceptual meaning of the phrase in *An Introduction to the Study of the Law of the Constitution*.¹⁰⁷⁸ Dicey, in contrast to Ronald Dworkin,¹⁰⁷⁹ also envisioned the idea of the rule of law as distinct to England. He reasoned that

¹⁰⁶⁹ Costa, above n 1065, 73.

¹⁰⁷⁰ Magdalena Sepúlveda et al, *Human Rights Reference Handbook* (University of Peace, 3rd Revised, 2004) 32.

¹⁰⁷¹ Lon L Fuller, *The morality of law* (1969) 46–47.

¹⁰⁷² Lillian Goldman Law Library, Yale Law School, *The Code of Hammurabi* (2008) The Avalon Project: Documents in Law, History and Diplomacy <http://avalon.law.yale.edu/subject_menus/hammenu.asp> at 17 November 2014.

¹⁰⁷³ Glenn R Morrow, 'Plato and the Rule of Law' (1941) 50(2) *The Philosophical Review* 105.

¹⁰⁷⁴ Steve Wexler & A Irvine, 'Aristotle and the rule of law' (2006) 23(1) *Polis: The Journal of the Society for Greek Political Thought* 116–138; UN, *UN Rule of Law Website* (2013) United Nations Rule of Law <<http://www.unrol.org>> at 5 April 2013; Antonin Scalia, 'The Rule of Law as a law of rules' (1989) 56(4) *The University of Chicago Law Review* 1175–1188.

¹⁰⁷⁵ Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004) 7.

¹⁰⁷⁶ *Ibid* 25.

¹⁰⁷⁷ Lenn Evan Goodman and Robert B Talisse, *Aristotle's Politics Today* (State University of New York Press, 2008) 63.

¹⁰⁷⁸ Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (London, 1889) 21.

¹⁰⁷⁹ Trevor RS Allan, 'Dworkin and Dicey: The Rule of Law as Integrity (Reviews)' (1988) 8(2) *Oxford Journal of Legal Studies* 266.

[i]n England, no man can be made to suffer punishment or to pay damages for any conduct not definitely forbidden by law; every man's legal rights or liabilities are almost invariably determined by the ordinary Courts of the realm and each man's individual rights are far less the result of our constitution than the basis on which that constitution is founded.¹⁰⁸⁰

4.0.2 *Characteristics and Constituents of the Rule of Law*

*In a recent complaint, the AHRC found that four Aboriginal men with intellectual and cognitive disabilities had been held for many years in a maximum-security prison in the Northern Territory. ... Sadly, such detention disproportionately impacts Aboriginal and Torres Strait Islanders; a problem exacerbated by the Northern Territory's 'paperless arrest' powers introduced late last year permitting detention for four hours without being brought to a court for offences that do not in some cases, attract the sanction of imprisonment. Such detentions have dramatically increased the rate of detention of Aboriginal Australians and deaths in custody continue, as recently as last week, 25 years after the Royal Commission Report into Deaths in Custody.*¹⁰⁸¹

Testing the validity and legitimacy of the rule of law is an ongoing struggle for Aboriginal Peoples, as noted by Gillian Triggs, President of the Australian Human Rights Commission, in her Alice Tay Lecture on law and human rights commemorating 800 years of the Magna Carta, as quoted above. Lawyers and laypersons alike use the phrase 'rule of law' as politico-legal jargon. However, there is not a clear consensus on what this expression actually means. Richard Dworkin suggests two conceptual frameworks of the rule of law. They are 1) the 'rule-book' theory, which purports that the power of the state 'should never be exercised against individual citizens except in accordance with rules explicitly set out in a public rule book available to all'; and 2) the conception of the right, which 'assumes that citizens have moral rights and duties with respect to one another, and political rights against the state as a whole'.¹⁰⁸² The rule-book concept is a narrower view with less focus on the content of the rules but more emphasis on following them, whereas the rights approach recognises citizens' moral rights and duties with respect to one another and political rights against the state. Dworkin prefers the rights concept because it more closely aligns with the rule of law and substantive justice¹⁰⁸³ (that is, the recommendation that, 'equal basic rights be assigned to all persons').¹⁰⁸⁴

The efficacy of the rule of law in promoting justice depends largely on adopting the conception of the right. Dworkin, Fallon and Rawls draw a distinction between written rules on the one hand and practical application of rights, procedures and morals on the other, and emphasise on how these ideas inherently conflict with justice and fairness. Trevor R S Allan expands on how Dworkin's theory of integrity of the law is tied to its content and imposes an

¹⁰⁸⁰ Dicey, above n 1079, 21.

¹⁰⁸¹ Gillian Triggs, 'Gillian Triggs on Magna Carta: Alice Tay Lecture in Law and Human Rights - in Full' *The Guardian* (Canberra, ACT), 15 June 2015 <<http://www.theguardian.com/australia-news/2015/jun/15/australia-and-the-magna-carta-how-the-coalition-and-labor-agree-on-laws-that-violate-our-freedoms>>.

¹⁰⁸² Ronald M Dworkin and British Academy, *Political Judges and the Rule of Law* (British Academy, 1980) vol 23, 261–262.

¹⁰⁸³ *Ibid* 263–264.

¹⁰⁸⁴ John Rawls, *A Theory of Justice* (Belknap Press, Original, 2005) 77.

obligation of obedience,¹⁰⁸⁵ and Tamanaha discusses the rule of law as a situation in which governments must act through laws. In its extreme form, a government that conducts its affairs solely according to rules runs the risk of disintegrating the substantive legal formality or abrogating its legal responsibility.¹⁰⁸⁶ As Joseph Raz clearly illustrates,

A non-democratic legal system, based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and racial persecution may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened Western democracies. ... It will be an immeasurably worse legal system, but it will excel in one respect: in its conformity to the rule of law.¹⁰⁸⁷

The validity of Raz's view regarding potential fallacies of the rule of law (that is, strict obedience to the rule of law even when it violates human rights) turns the concept into a meaningless slogan. Raz believes that the illusory ideals of the rule of law have captured the imagination of humans as long as the existence of Western democracies:

The function of the legislature in a free society under the Rule of Law is to create and maintain the conditions that will uphold the dignity of man [Indigenous girl or woman] as an individual. This dignity requires not only the recognition of his [her] civil and political rights but also the establishment of the social, economic, education and cultural conditions which are essential to the full development of his [her] personality.¹⁰⁸⁸

Joseph Raz asserts that since the rule of law is just one of the virtues of a legal system, it should not be 'confused with democracy, justice, equality (before the law or otherwise), human rights, respect for persons or for dignity of man.'¹⁰⁸⁹

Judges and legislatures affect the creation and implementation of the rule of law by adopting the rule-book or the rights concept. According to Raz, it matters not only that outlining rights in constitutions give authority to the courts to interpret those rights in dispensing fairness and justice, but also that the kinds of rights protected are paramount to the development of individual citizens, which includes Indigenous Peoples. The rule-book concept in Australia and in Liberia supports conventional views about the role of political judges that are similar to views held by their colonial masters. The legislature uses words to enact rules, which direct judges in forming semantic theories. Thus, each judge, in good faith, tries to follow the ideals of the rule of law to discover the intention and the meaning provided in the rule-book.¹⁰⁹⁰ The rights concept, on the other hand, insists that judges consider the moral rights of the parties involved¹⁰⁹¹ in adjudicating hard cases. However, these judges are still people with biases and their own

¹⁰⁸⁵ Trevor RS Allan, 'Law, Justice and Integrity: The Paradox of Wicked Laws' (2009) 29(4) *Oxford Journal of Legal Studies* 705.

¹⁰⁸⁶ Tamanaha, above n 1076, 93.

¹⁰⁸⁷ Raz, above n 111, 209.

¹⁰⁸⁸ *Ibid.*

¹⁰⁸⁹ *Ibid.*

¹⁰⁹⁰ Dworkin and British Academy, above n 1083, 264–265.

¹⁰⁹¹ *Ibid* 267–268.

moral conceptions. Therefore, who they are and who places them in a position of authority directly influences their moral considerations.

Citizens' participation in government is a key factor affecting the rule of law. The power of individual citizens, including Indigenous Peoples, in democracies such as Liberia and Australia, who elect legislators but not judges, tends to threaten the very nature of justice and fairness as the crux of the rule of law.¹⁰⁹² Richard Fallon identifies the disconnect concerning citizens' ability to elect legislators but not judges as a difference between 'the rule of law' and 'the rule of man'.¹⁰⁹³ Rawls seems wary of what characterises 'true democracy' if it actually exists. For instance, regardless of whether having a constitution reflects the existence of 'true democracy', Rawls's reasoning transcends the mere packaging of a constitution with the inclusion of a bill of rights.¹⁰⁹⁴ Rawls argues that the political public must play an educational role to ensure citizens' understanding of basic rights and liberties through interpretation of rights (by judges) as articulated in and consistent with the constitution. This argument presupposes that equality of political power in constitutional democracies is embedded in genuine political decisions taken by the legislature and interpreted in courts, as well as in equal participation of all citizens. Therefore, assuming the rights concept, there must be some characteristics of the rule of law that define the law's relationship to the rights of a politically and legally active citizenry.

In response to Raz, Tom Bingham identifies eight clusters of principles that define what the political ideal of the rule of law means:

- *Accessibility of the law*: If we are liable to prosecution, fine, or imprisonment in breach of the law, then we must be cognizant of how to avoid penalty. Having full knowledge of the law authenticates the rule of law principle.¹⁰⁹⁵
- *Law, not discretion*: Though the court or tribunal does not make every decision affecting the rights or liabilities of citizens (implying that some legal authority is discretionary), the rule of law requires that no discretion should be unconstrained so as to be potentially arbitrary.¹⁰⁹⁶
- *Equality before the law*: The law should be unquestionable because the laws of the land should apply equally to all, except to the extent that objective differences justify differentiation.¹⁰⁹⁷
- *The exercise of power*: Judges have authority in reviewing the lawfulness of actions or decisions taken by public and private administrators and individuals.¹⁰⁹⁸

¹⁰⁹² Ibid 280.

¹⁰⁹³ Richard H Fallon Jr., "'The Rule of Law' as a Concept in Constitutional Discourse" (1997) 97(1) *Columbia Law Review* 1.

¹⁰⁹⁴ John Rawls, *Justice as Fairness: A Restatement* (Harvard University Press, 2001) 145–146.

¹⁰⁹⁵ Bingham, above n 116, 37.

¹⁰⁹⁶ Ibid 50, 54; Bureau of Democracy Human Rights and Labour, 'Liberia: 2013 Human Rights Reports' (International Report, United States Department of State, 27 February 2014) 27, 1–2 <<https://www.state.gov/documents/organization/220339.pdf>>. Although the US Department of State report suggests 'no reports that the [Liberian] government or its agents committed arbitrary or unlawful killings', there is a cited example of police arbitrary brutality against civilians: '...while a citizen was waiting to use an air pump at a service station, uniformed Liberia National Police (LNP) officers ordered him to move. The officers, directed by top-ranking LNP officer Gbor Phil Tougbay (assistant director of police for administration and professional standards) in a police vehicle, assaulted and beat him, removed his car battery, tore his clothes, handcuffed him to the back of the police pickup truck, threw him into the truck bed, and jailed him overnight. The same assistant inspector general of police was also involved in abusing a lower-ranked officer during the year and remained under investigation for both incidents. Also, during the year an inspector at a local police station reportedly raped a woman who was visiting someone being held for questioning. This case was being prosecuted, and a trial date was set'.

¹⁰⁹⁷ Bingham, above n 116, 55.

¹⁰⁹⁸ *Ibid* 61.

- *Human rights*: The concept of human rights is not universally codified in law because states as power-holders decide which rights to protect by law and what sanctions to impose for breach. Notwithstanding, the law must make some effort to protect fundamental human rights adequately.¹⁰⁹⁹
- *Dispute resolution*: This principle speaks to the accessibility and affordability of legal aid. As the legal maxim states, ‘justice delayed is justice denied’. Thus, legal redress must be provided to resolve disputes expeditiously and without prohibitive cost.¹¹⁰⁰
- *A Fair Trial*: A trial is not fair if the legal procedure favours one party over another. A trial can only be fair if it is (a) recognised as fairness on both sides; and (b) accepted that fairness is an evolving concept, rather than being frozen in time.¹¹⁰¹
- *The Rule of Law in the International Legal Order*: The rule of law requires compliance by the State with its obligation in international law as in national law. Note a distinction between monism and dualism regarding the impact of international law on domestic law.¹¹⁰²

Bingham’s eight characteristic ideals of the rule of law are not without critique, as is discussed below. However, one of the fundamental principles of the rule of law, justice and fairness is that like cases are decided alike (that is, binding precedents),¹¹⁰³ which speaks to Bingham’s ‘law, not discretion’, ‘the exercise of power’, and ‘fair trial’. The questions of whether judges should stick to decisions previously taken in court and the kinds of reasoning employed in deciding cases are central to the rule of law. Judges are expected to be fair, independent, impartial and non-arbitrary in treating everyone equally before the law. But we can question whether judges’ decisions are legal,¹¹⁰⁴ political¹¹⁰⁵ or free from any influence that might ‘tilt the scale of justice’¹¹⁰⁶. Even principles of precedence that are intended to strengthen the rule of law can add biases that undermine it.

Stare decisis is a legal principle adopted to reduce arbitrariness of the law by establishing precedence, but it may also counteract the rule of law in some situations. In Latin, the phrase *stare decisis et non quieta movere* means ‘to stand by decisions and not to disturb settled matters’.¹¹⁰⁷ By so doing, the law ensures constancy, predictability and generality in treating like cases alike.¹¹⁰⁸ In essence, the driving force of the rule of law’s justification for

¹⁰⁹⁹ *Ibid* 66, 68.

¹¹⁰⁰ *Ibid* 85, 87.

¹¹⁰¹ *Ibid* 90.

¹¹⁰² Jordan J Paust, ‘Basic forms of international law and monist, dualist, and realist perspectives’ in Marko Novkovic (ed) *Basic Concepts of Public International Law - Monism and Dualism* (2013) 244–265, 245–247. Paust distinguishes monism from dualism in international law: monism assumes one system of human law whereby international law (including *jus cogens*) is universal in its reach to all actors both horizontally and vertically and that inconsistent domestic authorizations or law provide no excuse with respect to violations of customary international law. Dualism views all forms of international law as entirely separate from domestic legal processes and that international law merely operates at an international level in a community of independent states. If international law must operate domestically then it has to be implemented or transformed by some formal conduct of domestic political entity (e.g., legislation).

¹¹⁰³ James Penner, *The Law of Trusts* (Oxford University Press, 9th ed, 2014) 4.

¹¹⁰⁴ Neil Duxbury, *The Authority of Precedent: Two Problems* (Faculty of Law, University of Toronto, 2005) <<http://www.mcgill.ca/files/legal-theory-workshop/Neil-Duxbury-McGill-paper.pdf>>.

¹¹⁰⁵ Dworkin and British Academy, above n 1083, 259. Dworkin affirms, ‘[o]f course the decisions that judges make must be political in one sense’ since in fact, the decision judges make are somehow approved by one political group as in MPs dual roles influenced by both the executive and legislative branches.

¹¹⁰⁶ *The Australian Judiciary* (Cambridge University Press, 2nd ed, 2013) 5–7.

¹¹⁰⁷ Paul M Perell, ‘State Decisis and Techniques of Legal Reasoning and Legal Argument’ (1987) 3(2) *Legal Research Update* 1.

¹¹⁰⁸ Jeremy Waldron, ‘Stare Decisis and the Rule of Law: A Layered Approach’ (2011) 11(75) *Public Law and Legal Theory Research Paper Series* 1.

binding decisions is the reasoning behind the principle of *stare decisis*.¹¹⁰⁹ In a hierarchical legal structure,¹¹¹⁰ a higher court within the same jurisdiction usually acts as a binding authority on a lower court within the same jurisdiction. That is, when the same issue arises again in court, a lower court should follow the precedent established by the higher court.¹¹¹¹ These precedence theories of legal doctrine tend to necessitate consistency in the processing of legal decisions, serving both practical and educational purposes in law.¹¹¹² However, there is an irony about the *stare decisis* doctrine when a court chooses to stand by a precedent notwithstanding suspicions about its correctness, or worse, its wrongness. Indeed, courts laud *stare decisis* as possessing ‘fundamental importance to the rule of law, promoting the even-handed, predictable, and consistent development of legal principles, and contributing to the actual and perceived integrity of the judicial process’.¹¹¹³ Yet *stare decisis* has a remarkable tendency to incite disagreements that contradict the very principles it is supposed to foster, wherein the court’s treatment of the *stare decisis* doctrine may yield unusually scathing dissents. Such wrongful decisions reveal that the application of the doctrine is driven by outcome preferences and that ‘power, not reason, is the currency of the court’s decision-making’.¹¹¹⁴ Troubling though they may be, these charges are hardly surprising,¹¹¹⁵ especially with respect to some of the case examples highlighted in Chapter 3. Courts have cautioned repeatedly that *stare decisis* is a ‘principle of policy as opposed to an inexorable command’.¹¹¹⁶ A legal principle claiming to be both consistent and adaptable only raises brows regarding its legitimacy and authority. Furthermore, factors that inform the *stare decisis* inquiry are lengthy and uncertain, supposedly befitting a doctrine whose core is a fluctuating ‘series of prudential and pragmatic considerations’.¹¹¹⁷

From the literature, it is clear that a legal system conforming to the rule of law must embody several key characteristics to be effective in delivering justice; but those characteristics are not always satisfied for Indigenous women. The rule of law must be grounded in human rights, not merely an arbitrary set of rules. However, human rights are not always guaranteed to Indigenous Peoples by the state’s constitution or other legal instruments. Legislators must consider human rights when drafting laws, and judges must reinforce that conceptualization by considering the rights of the people when passing judgement. However, stigmas and stereotypes often prevent legislators from upholding human rights and judges from ruling without bias. Citizens must also be effectively engaged in the political process. Yet Indigenous Peoples in Liberia and Australia have been systematically excluded from the political process since the

¹¹⁰⁹ Arthur Goodhart L, ‘Determining the Ratio Decidendi of a Case’ (1930) 40(2) *Yale Law Journal* 161.

¹¹¹⁰ Gary Slapper, *The English Legal System* (Routledge, 11th ed, 2010) 112.

¹¹¹¹ Neil Duxbury, *The Nature and Authority of Precedent* (Cambridge University Press, 2008) 30; Hannah Berryman, *Explaining the Advantages and Disadvantages of the Doctrine of Stare Decisis*, Strode’s College Essay Competition Paper, 2014 <<http://www.peterjepson.com/law/SL1-Berryman.pdf>>.

¹¹¹² Niklas Luhmann, Klaus A Ziegert and Fatima Kastner, *Law as a Social System* (Oxford University Press, 1st ed, 2008) 8.

¹¹¹³ Randy J Kozel, ‘State Decisis as Judicial Doctrine’ (2010) 67 *Washington and Lee Law Review* 411, 412.

¹¹¹⁴ *Ibid* 413.

¹¹¹⁵ *Ibid*.

¹¹¹⁶ *Ibid* 414.

¹¹¹⁷ *Ibid*.

founding of these nations. Also, concepts intended to set precedence have the potential to carry forward discriminatory laws or judgements, thereby contributing to intergenerational state violence. Therefore, this chapter assesses the political and legal development of Liberia and Australia in an effort to identify and critique major factors that affect the efficacy of the rule of law as it is applied to Indigenous women.

4.0.3 Creating the Nation without Its Citizens: The Birth of State Violence

The first fleet of 11 ships carrying convicts from Portsmouth, England, arrived at Botany Bay in 1788 with no legal text except for instructions that were given to Captain Phillip at the ‘will and pleasure of the King’ to disembark 600 male and 180 female convicts on Aboriginal country.¹¹¹⁸ White Australian settlers’ claim of *terra nullius*¹¹¹⁹ under international law justified the dispossession of Aboriginal Peoples’ land and the consequential refusal to recognise First Peoples in the nation-building process. According to Reynolds, Australia became British by ‘the assertion of sovereignty on four occasions, in 1788, 1824, 1829 and 1879’.¹¹²⁰ Reynolds confirms that ‘when the British arrived in Australia in 1788 they knew nothing about Aboriginal customs or law’. Evidence for Reynolds’s assertion is found in a quotation he provides from Marine captain Watkin Tench in 1789: ‘Whether any law exists among them for the punishment of offences committed against society ... I will not positively affirm ... It would be trespassing on the reader’s indulgence were I to impose on him an account of any civil regulations, or ordinances, which may possibly exist among this people. I declare to him, that I know not of any’.¹¹²¹ It is with such ignorance and disregard for Indigenous Customary Laws that the Commonwealth of Australia (formerly six independent British colonies, which later morphed into six federal states and two territories) was birthed on 1 January 1901 by virtue of a British Act of Parliament, the *Commonwealth of Australia Constitution Act* 1901.

Ignorance of the exclusion of Aboriginal Peoples from the drafting of the *Australian Constitution* persists to this day. Honourable Stephen Parry, President of the Senate; Honourable George Brandis, Attorney-General; and Bronwyn Bishop, Speaker of the House of Representatives, are the three signees to the introductory comments made in *Australian*

¹¹¹⁸ See original transcript of Governor Phillip’s Instructions 25 April 1787 at <http://foundingdocs.gov.au/resources/transcripts/nsw2_doc_1787.pdf>

¹¹¹⁹ Reynolds, *Dispossession*, above n 177, 67.

¹¹²⁰ Reynolds, *Aboriginal Sovereignty*, above n 221, 86. On 24 January 1778, the First Fleet of 11 ships led by HMS Sirius arrived at Botany Bay with more than 1483 women, children and men; including 759 convicts (192 women and 586 men). In 1824, Britain transplanted English Common Law to Australia through the establishment of the first Chief Justice of the Supreme Court Francis Forbes (5 March); the first Supreme Court of Tasmania by Letters Patent (7 May); the Supreme Court of New South Ways by Letters Patent (17 May); and the first-sitting of the Legislative Council of New South Wales (25 August). Sir James Stirling (the first Governor of Western Australia) lands at the mouth of the Swan River to establish present day Perth. On 2 May 1829, Sir Howe Fremantle hoisted the Union Jack on the south head of the Swan River, thereby ‘formally’ claiming New Holland (Western Australia) for Britain. Murray Island was unclaimed until 1879 when Britain annexed it to Queensland (noteworthy, *Mabo* overturned the ‘fiction’ of *terra nullius*). NB: Letter Patents is a legal instrument published by written order from the Queen, literally granting complete monopoly and right to an office. In this case, the Monarch in England, granting power and authority of these legal institutions over Aboriginal Australians without permission, consultation, negotiation or treaty agreement.

¹¹²¹ *Ibid* 60–85.

Constitution (Pocket Edition) 2014. The introductory comment of the Pocket Edition of the *Australian Constitution* states that ‘[i]n reality, however, the Constitution is a document which was conceived by Australians, drafted by Australians and approved by Australians’¹¹²² and therefore ‘reflects the pragmatic, no-nonsense attitude which we like to think is among the most attractive features of the Australian character’.¹¹²³ However, the fact that 49 white men¹¹²⁴ crafted the *Australian Constitution* clearly indicates the exclusion of Aboriginal Peoples from the formation of settler-colonist Australia. Further, the use of the phrase ‘Australian character’ in the introductory comment of the Pocket Edition of the *Australian Constitution* questions whether Aboriginal Peoples form part of this national personality, which is dominated by white settler-colonists by virtue of section 25. In fact, Mick Dodson’s view is that ‘at present, the Constitution is far from Indigenous friendly as it does not affirm that Indigenous Peoples are equal’¹¹²⁵ to white Australian settler-colonists (*see* s25 and s51(xxvi) of the Australian Constitution).¹¹²⁶ Refusal to acknowledge Aboriginal Peoples as the original custodians of the land also signals the ‘legal birth’ of a carefully constructed state and of institutional violence against Aboriginal Peoples.

Aboriginal Peoples could have benefited from a general statement of human rights in the Australian constitution, but the drafters consciously excluded it. Unlike its Westminster contemporaries (Britain, Canada and New Zealand), the *Australian Constitution*, which attempted to borrow from that of the United States, rejected clauses such as ‘legal rights’, ‘civil and political rights’, and ‘an equal protection clause’. Whilst these clauses form the cornerstone of a constitutional bill of rights in the above ‘colonies’, the original drafters of the *Australian Constitution* saw the clauses ‘as having the potential to restrict colonial laws that limited the employment of Asian workers’.¹¹²⁷ Therefore, unlike the *Liberian Constitution* 1986 (Article 11(c)), the *Australian Constitution* 1902 does not guarantee equal protection of the law for all.

¹¹²² Commonwealth of Australia, *Australia’s Constitution Paper Edition: With Overview and Notes by the Australian Government Solicitor* (Parliamentary Education Office and the Australian Government Solicitor, 10th ed, 2014) ix.

¹¹²³ *Ibid* vii.

¹¹²⁴ Byrnes, above n 583, 24; Behrendt, above n 568, 257. Andrew Inglis Clark, Attorney General, Tasmania, selected member of a drafting sub-committee prepared a preliminary draft proposal for the Australian constitution after the 1890 Australasian Federation Conference held in Melbourne 6-14 February 1890. Also *see* <http://www.aph.gov.au/About_Parliament/Senate/Research_and_Education/Records_of_the_Australasian_Federal_Conventions_of_the_1890s>

¹¹²⁵ Dodson, ‘Constitutional Recognition of Indigenous Australians’, above n 368.

¹¹²⁶ Section 25: Provisions as to races disqualified from voting states: For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted. Supporting the RECOGNISE campaign, informed by the Expert Panel Report on Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution (January 2012), Mick Dodson reiterated the goal of an upcoming referendum that would remove ss25 and 51(xxvi) whilst inserting a new section 51A (to recognise Aboriginal and Torres Strait Islander peoples and to preserve the Australian Government’s ability to pass laws for the benefit of Aboriginal and Torres Strait Islander peoples); a new section 116A (banning racial discrimination by government); and a new section 127A (recognising Aboriginal and Torres Strait Islander languages were this country’s first tongues, whilst confirming that English is Australia’s national language). *See* <<http://www.recognise.org.au>>.

¹¹²⁷ Byrnes, above n 583, 25–26.

To be clear, the phrase ‘the rule of law’ cannot be found anywhere in the *Australian Constitution*;¹¹²⁸ however, section 5 states:

This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen’s ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

In other words, section 5 of the *Australian Constitution* (and s10 (3) of the *Racial Discrimination Act 1975*)¹¹²⁹ provide that everyone is subject to the rules of the *Australian Constitution*, including the Commonwealth Parliament, with an exception of the Queen’s Ship of War. Section 5 of the *Australian Constitution* could be broadly extended to include equal protection for all, as is boldly stated on the Attorney-General website.¹¹³⁰ However, since the *Australian Constitution* does not recognise Aboriginal Australians as the original owners of the land with autonomous and sovereign power, efforts to guarantee Aboriginal Peoples in Australia individual rights continue to be responded to with apathy, neglect and violence on the part of settler-colonists.

Since settler-colonists in Australia believed that Indigenous Peoples would die out, they could not imagine a future in which Aborigines would play a role in a nation-building project.¹¹³¹ The *Constitution* of Australia serves as an example in which rule-governing legislation intentionally neglected Aboriginal Peoples. Section 127 of the *Australian Constitution* (titled ‘Aborigines not to be counted in reckoning populations’) substantiated the non-existence of Aboriginal Peoples in Australia until repealed by the *Constitutional Alteration (Aboriginals) 1967*. The *Expert Panel on Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution 2012* reasons that the purpose of section 127 was to prevent Queensland and Western Australia from using their large Aboriginal population to gain seats in the Commonwealth Parliament.¹¹³² Notwithstanding, the *Australian Constitution* failed to define the term ‘Aboriginal Natives’ in section 127. Following an opinion obtained from the attorney general, the first Commonwealth statistician confined the expression to ‘full-bloods’ Aboriginal Peoples, thereby excluding Torres Strait Islanders from section 127.¹¹³³ Josiah Symon, a prominent member of the Australian Federation Convention, made known his disapproval and

¹¹²⁸ A last alteration made to the Australian Constitution was 1 October 2010.

¹¹²⁹ Section 10(3) of the Racial Discrimination Act 1975 confers rights to equality before the law by virtue of section 5 of the *International Convention on the Elimination of All forms of Racial Discrimination* (CERD) 1969. Of particular interest is Article 5(a) of CERD, which states in prohibition and elimination of racial discrimination, States must ensure ‘the right to equal treatment before the tribunals and all other organs administering justice’ of all citizens.

¹¹³⁰ Attorney-General’s Department, above n 1067.

¹¹³¹ Elizabeth M Muller, *Absorption and Assimilation: Australia’s Aboriginal Policies in the 19th and 20th Centuries* (Bachelor Honours of Arts (Honours) Thesis, Boston College, 2011) 38–39 <<https://dlib.bc.edu/islandora/object/bc-ir:102082/datastream/PDF/view>>.

¹¹³² Patrick L Dodson et al, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*. (Dept. of Families, Housing, Community Services & Indigenous Affairs, 2012) 14.

¹¹³³ *Ibid* 21.

concerns: ‘It is monstrous to put a brand on these people once you admit them. It is degrading to us and to our citizenship to do such a thing. If we say they are to be admitted amongst us, we ought not to degrade them by putting on them the brand of inferiority’.¹¹³⁴

Aboriginal Peoples in Australia continue to resist systematic violence against them by advocating for the repeal of discriminatory laws. A case in point is the landmark 1967 referendum. The 1967 Federal Referendum¹¹³⁵ repealed s127 of the *Australian Constitution*, which was worded: ‘In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.’¹¹³⁶ The 1967 Referendum also amended section 51 (xxvi) *Australian Constitution*, which referred to ‘the people of any race, *other than the aboriginal race in any State*, for whom it is deemed necessary to make special laws.’ The words ‘*other than the aboriginal race in any State*’ were deleted after the victory of the 1967 Referendum. This historic moment is sometimes perceived as ‘evidence that Australians recognise Aborigines are part of the nation’.¹¹³⁷

The exclusion of Indigenous Peoples in Australia from the framing of the nation’s *Constitution* continued a pattern of marginalisation and systematic discrimination, the consequences of which endure today, along with questions about the principle of the rule of law.¹¹³⁸ In a country that takes pride in its liberal and democratic traditions, it is surprising for many to learn that the birth of the Australian nation was attended to by racially discriminatory sentiment and continues to contain racially discriminatory provisions in its *Constitution*.¹¹³⁹ Indigenous Peoples’ struggle for recognition in Australia reflects racial and discriminatory attitudes expressed in the opening quotation at the beginning of chapter 4. The quotation is an extract taken from a speech made by Professor Michael Dodson at the Culture and Citizenship Conference in 1996. The main point here is not only that nearly two decades after the conference, Dodson’s tireless efforts with the RECOGNISE campaign persist with the aim of securing constitutional acknowledgment of Indigenous Peoples as the First Peoples of Australia;¹¹⁴⁰ but also that concerns about the legitimacy of constitutional provisions which exclude Indigenous Peoples from power-sharing in Australia shows a deeply flawed legal system that still promotes an idea of Aboriginal Peoples’ inferiority. Unfortunately, similar flaws also stem from the colonial origins of Liberia.

The legal foundation of Liberia also excluded Indigenous Peoples. In 1821, when the American Colonization Society began resettling African American settler-colonists on the western shores of Africa, the first agent, Samuel A Crozer, was given only special instructions

¹¹³⁴ Ibid 17.

¹¹³⁵ Attwood, above n 17, 54–64.

¹¹³⁶ The *Commonwealth of Australia Constitution Act 1900* (Cth) s.127 (*repealed*).

¹¹³⁷ Russell McGregor, *Indifferent Inclusion: Aboriginal People and the Australian Nation* (Aboriginal Studies Press, 2011) 158.

¹¹³⁸ Dodson et al, above n 1133, 19.

¹¹³⁹ Ibid 18.

¹¹⁴⁰ RECOGNISE is a people’s movement to recognise Aboriginal and Torres Strait Islander peoples in the Australian Constitution.

regarding the allotment of Indigenous lands.¹¹⁴¹ The Board of Managers of the American Colonization Society drafted the first *Constitution for the Government of the African Settlement* 1820.¹¹⁴² The 1820 *Constitution* provided that the United States' common law would be applied to the people and would be in force in the colony of Liberia. Rules of evidence and judicial proceedings were to be accorded using the laws of the United States.¹¹⁴³ The *Constitution of the Commonwealth* 1839 later superseded the 1820 *Constitution*. Karnga and Cassell (respectively) attest to the fact that the original *Constitution of Liberia* was significantly modelled after that of the United States:

The Constitution [of Liberia] that had just been adopted, having been framed and worked by the gifted American law authority, Simon Greenleaf, in America, was not evolved out of conditions [of] Liberia. Evidently the Republican leaders had not had time to study the deleterious effect which would result to an already poor community like theirs from the biennial upheavals of general elections toward the running of which the state coffers had to contribute.¹¹⁴⁴

In 1839 the parent society and its chief auxiliaries agreed to combine administration of the several colonies, except for the Maryland Society... The result was the Commonwealth of Liberia. The eminent jurist Simon Greenleaf was chosen to draft the necessary new law... The new executive was to be called 'the President of Liberia and Governors of the other Colonies.' Judicial power was to be vested in a Supreme Court and such other courts as the legislature might establish. In substance, the constitution laid the foundation for the future republic.¹¹⁴⁵

Similar to what happened in Australia, 12 African American settler-colonists signed the Liberian Declaration of Independence and Constitution 1847, granting a legal license to encroach upon Indigenous Peoples' land and transplant foreign norms without consultation. The Liberian *Declaration of Independence*,¹¹⁴⁶ a historical epic¹¹⁴⁷ drafted by 12 men who were former slaves, stated:

While announcing to the nations of the world the new position which the people of this Republic have felt themselves called upon to assume, courtesy to their opinion seems to demand a brief accompanying statement of the causes which induced them, first to expatriate themselves from the land of their nativity and to form settlements on this barbarous coast, and now to organize their government by the assumption of a sovereign and independent character. Therefore, we respectfully ask their attention to

¹¹⁴¹ Huberich, above n 53, 145; Campbell, above n 189, 35–58. Note the exception of the Maryland Colonisation Society that migrated immigrants to Cape Palmas based on legal texts created prior to arrival on the African coast.

¹¹⁴² Huberich, above n 53, 145.

¹¹⁴³ *Ibid* 154.

¹¹⁴⁴ Karnga, above n 171, xiv.

¹¹⁴⁵ Cassell, above n 53, 115; Hanatu Kabbah, 'A Guide to the Liberian Legal System and Legal Research' 7 <<http://www.nyulawglobal.org/globalex/Liberia1.htm>>.

¹¹⁴⁶ Cassell, above n 53, 137. The signers of Liberia Declaration of Independence were twelve Afro-American settler men – Samuel Benedict, Elijah Johnson, Hilary Teage, Beverly R. Wilson, J. R. Gripon and John Naustehlau Lewis for Montserrado County; John Day, Anthony W. Gardiner, Amos Herring, and Ephraim Titler for Grand Bassa County; and Jacob Prout and Richard E. Murray for Sinoe County.

¹¹⁴⁷ Azikiwe, above n 301, 63. Consider Azikiwe's perspective on Liberia's Declaration of Independence: 'This Declaration of Independence is an historical epic and a literary masterpiece. It is a matchless document in the records of African political institutions. It is destined to arouse the lethargy of millions of Africans, at home and abroad, to a realization of the political destiny of the black man in the history of the world. Unfortunately, this document failed to give the Liberian indigenes the praise due to them for not only accommodating the immigrants, but also assimilating and amalgamating with them. It failed to recognize the political acumen and the social and material cultures of the African tribes, which inhabit these regions. This little oversight, due probably to Christian zealotry, might have averted the ever-persistent bugaboo of the aboriginal problem.'

the following facts: We recognize in all men certain inalienable rights; among these is life, liberty, and the right to acquire, possess, enjoy, and defend property. ... We, the people of the Republic of Liberia, were originally inhabitants of the United States of North America... Under the auspices of the American Colonization Society, we established ourselves here, on land, acquired by purchase from the lords of the soil.

After the *Declaration of Independence*, elite Black settler-colonists drafted the first *Liberian Constitution*. Dr. Simon Greenleaf,¹¹⁴⁸ though contested,¹¹⁴⁹ also contributed to the original drafting of the *Constitution* 1847 of the Colony of Liberia. Upper-class patriotic white Americans belonging to the American Colonization Society and the elite Black settler-colonists, looking upon Native Peoples in Liberia with disdain, modelled the 1847 *Constitution* after that of the United States of America. According to Carl Patrick Burrowes, the 1847 *Constitution* reflected a fusion of black nationalism, Protestant Christianity and republicanism, which formed constituent elements of a Liberian ideology that came to be crystallized between 1822 (colonist-settlers' arrival) and 1847 (*Declaration of Independence* from the American Colonization Society).¹¹⁵⁰ Unfortunately, as in Australia, this founding legal document did not adequately account for the inclusion of Indigenous Peoples.

Even with a stronger commitment to human rights than that of Australia, the *Liberian Constitution* 1947 fell short of extending those rights to Native Africans. In contrast to the *Australian Constitution*, the *Liberian Constitution* has a Bill of Rights embedded in Chapter III: Fundamental Rights. However, even though the Commonwealth of Liberia and subsequently the Republic of Liberia's *Constitution* 1947 (Section 13th) granted citizenship to 'none but Negroes or persons of Negro descent', Native Peoples in Liberia were excluded as 'dispersed and oppressed children of Africa'. Native Peoples in Liberia were not afforded citizenship until 1904 and were only granted the right to vote in 1946. The *Liberian Constitution* 1847 remained in force until a military coup d'état occurred in 1980, at which time the Constitution was suspended; it was revised in 1986.¹¹⁵¹

Article 11 (c) of the *Liberian Constitution* provides for equality before the law but falls short of recognising the rights of Indigenous Peoples in Liberia. In 1984 a second chance to include Native Peoples in the *Liberian Constitution* arose at the drafting of a completely new constitution. In his article, *The Making of the 1984 Liberian Constitution: The Major Issues and Dynamic Forces*, 1987 Amos Sawyer, a renowned political scientist and former Interim

¹¹⁴⁸ Dunn and Holsoe, above n 104, 47. Note Dunn & Holsoe's caveat – '[w]hile it has been conventional wisdom among students of Liberian history that Professor Greenleaf wrote the constitution of 1847, recent scholarship indicates Greenleaf's unfamiliarity with nineteenth-century Liberian settler society as reflected in the five constitutional articles. In addition, it was assumed that neither Greenleaf nor the ACS, controlled as it was by Euro-Americans, could have been responsible for sections 12 and 13 of Article V, which restricted the ownership of property and citizenship rights in Liberia to blacks. The ACE appeared to have desired the exact opposite. Likewise, Professor Greenleaf could hardly have been credited with sections 10 and 11 regarding women's rights, when in 1840, he had argued against such rights.'

¹¹⁴⁹ Brown, 'Simon Greenleaf and the Liberian Constitution of 1847', above n 53, 51.

¹¹⁵⁰ Carl Patrick Burrowes, 'Textual Sources of the 1847 Liberian Constitution' (1998) 23(1) *Liberian Studies Journal* 1, 1.

¹¹⁵¹ Leon Dash, 'Liberian Revolt Preserves Old Structure' *Washington Post* (Washington, DC), 29 December 1980 <<https://www.washingtonpost.com/archive/politics/1980/12/29/liberian-revolt-preserves-old-structure/aaeb2874-07bd-4ecd-8f4e-fb5a58f442e8/>>.

President of Liberia, provides little evidence to show purposive efforts to engage Native Peoples in the national constitution revision process. References to Native Peoples are subtle and limited,¹¹⁵² which certainly cast doubts on equal treatment under the law (Article 11(a)).¹¹⁵³ Mention made of Native Peoples' contribution during the drafting of the 1986 *Constitution* refers to 'rural Liberia's links between citizenship and land ownership'¹¹⁵⁴ and 'observation of economic self-reliance and increased self-help capacity in the rural population'.¹¹⁵⁵ The *Liberian Constitution* 1986 also fails to acknowledge Native Peoples as the original owners of the land. The original *Declaration of Independence* 1847 took for granted that when the settler-colonists arrived at Cape Mesurado,¹¹⁵⁶ the lands they acquired were not 'purchased' respectfully by fair deal and negotiations.¹¹⁵⁷ It took 167 years for rural communities to gain recognition of ownership of their lands. A new *Land Rights Act* 2014 established the legal basis for recognition of customary land rights.¹¹⁵⁸ However, land rights are not the only rights that were granted settler-colonists but denied Native Africans.

Decolonisation concepts apply in layers to the legal founding of Liberia and to settler-colonists' attitudes toward Native Africans. Despite being 'debarred by law from all the rights and privileges of men'¹¹⁵⁹ in the United States of America, settler-colonists somehow did not see the African shores as a place where their ancestors once lived. Their references to the African coast as 'barbaric', whilst at the same time an 'asylum' or 'promised land', reflects a confused

¹¹⁵² *Liberia Constitution* 1986, Article 5: preserving, protecting and promoting Liberian culture, to ensure traditional values are compatible with public policy and in Article 23: enacting statutes to regulation customary marriages as it pertains devolution of estate.

¹¹⁵³ *Liberian Constitution* 1986, Article 11: a) All persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty, of pursuing and maintaining the security of the person and of acquiring, possessing and protecting property, subject to such qualifications as provided for in this Constitution.

¹¹⁵⁴ Amos Sawyer, 'The Making of the 1984 Liberian Constitution: Major Issues and Dynamic Forces' (1987) 12(1) *Liberian Studies Journal* 1, 11.

¹¹⁵⁵ *Ibid* 15.

¹¹⁵⁶ Dunn and Holsoe, above n 104, xiii and 1. Present day Liberia grew out of Cape Mesurado as a cluster of settlements ceded in 1821 by Eli Ayres and Robert Stockton, agents of the ACS.

¹¹⁵⁷ Wulah, above n 169, 34–50, 54–70, 79–98, 123–143; Hannah Abeodu Bowen Jones, *The Struggle for Political and Cultural Unification in Liberia, 1847-1930* (PhD Thesis, Northwestern University, 1962) 69–86; Shick, above n 170, 92–101; Sawyer, *The Emergence of Autocracy in Liberia*, above n 61, 125–139; Levitt, above n 105, 31, 57, 62, 70, 77, 94, 99, 102, 129, 132, 147, 152, 164, 169, 181, 194, 206; Shick, above n 170, 91–101. Referencing Nnamdi Azikiwe's *Liberia in World Politics*, Bowen (1962) writes, '[i]t was generally believed by Western powers that treaties and agreements with African chieftains were never clearly defined in international law. These powers maintained that such treaties were not legal obligations since primitive peoples were thought to be wholly without any sense of understanding and capacity for self-government, which would make them the proper subjects of legal rights and duties. The foreigners, as such, could not be held accountable for any lawless deeds to the same extent as if they were committed upon civilized peoples'. Amos Sawyer writes: 'From its inception, Liberia faced a double dilemma. The creation of a Western settler state required the support of the Western powers in imposing settler authority in the area; however, in warding off imperialist claims, the Liberian state needed the support of the [I]ndigenous communities... In order to establish control over the western area near the Gallinas, the Liberian government engaged in three types of activities. It concluded treaties of trade and friendship with [I]ndigenous leaders; undertook armed campaigns of pacification; and established the settlement of Robertsport near the Gallinas... During the early years of the settlements, the initial cause of instability in this area [Monrovia] was the efforts of the settlers to acquire territory, gain control of the coastal terminus of this trade, and ensure a more accommodative and secured environment'. Notable among the land dispute hostilities were: conflict with the Gola people in the 1840's; the Sinoe war of 1855; Grebo Wars of 1857, 1875, 1887-1893, and 1896. Dunn and Tarr (1988) confirm that, US Navy Captain Robert Field Stockton's 'brandishing of a pistol at the head of King Peter seems a clear indication of the duress under which Cape Mesurado was ceded' under the 'Ducor Contract'.

¹¹⁵⁸ Sirleaf, above n 208, 22.

¹¹⁵⁹ *The Liberian Declaration of Independence* 1847.

identity¹¹⁶⁰ that remains to this day. Because they had been denied the right to vote in the United States, the right to vote became an ‘inalienable’ inheritance of settler-colonist men. However, perpetuating the same patriarchal system they had experienced in the United States, Native Peoples and settler-colonist women were forced to struggle for the same right. Finally, the *Constitutional Referendum* on 3 May 1955 granted all women in the hinterland the right to vote and be elected to Legislature. Having been excluded from the drafting of the United States’ constitution, Liberian settler-colonists now excluded Native Africans.

The exclusion of Indigenous People and women from the legal founding of the nation calls into question the validity of the legal system with respect to the rule of law. Dworkin asks how the constitution can uphold the integrity of the rule of law when

the framers of the original constitution were remarkably unrepresentative of the people as a whole. They were not chosen in any way sanctioned by prior national law, and a majority of the population, including [Indigenous] women, slaves, and the poor, was excluded from the process that selected them and ratified the constitution.¹¹⁶¹

Thus, the concepts of equality and fairness seem unsuitable to explain why people should be governed by a document created by officials who were arbitrarily chosen long ago, especially when the constitution permits racial segregation.¹¹⁶² As a result, both Liberia and Australia seem burdened with systems of government that are irrelevant to Indigenous Peoples, primarily because they have constitutions that were written by unrepresentative bodies who were blind to the historical and social conditions of Indigenous Peoples. Today, especially in post-conflict countries such as Liberia, the nation-building process continues to rely on imported Western concepts.

Wealthy Western nations import legal systems based on the rule of law into post-conflict countries as part of reconstruction efforts. According to Costa Pietro and Danilo Zolo, contemporary discontent with centralised power, the crisis of the welfare state,¹¹⁶³ extraordinary proliferation of rights, and the exhaustion of alternatives to Western democracies have all given new life to the notion of rule of law.¹¹⁶⁴ Rosa Ehrenreich Brooks argues that dominant Western society believes that the rule of law is central to a stable and modern democratic society.¹¹⁶⁵ The challenge of establishing the rule of law, especially in developing and post-conflict societies such as Liberia, is complex and multifaceted. The desirability of such projects is usually

¹¹⁶⁰ *above n 247, 6*. Fanon (2008) concedes, ‘[w]hite civilization and European culture have forced an existential deviation on the Negro. I shall demonstrate elsewhere that what is often called the black soul is a white man’s artefact’.

¹¹⁶¹ Ronald Dworkin, *Law’s Empire* (Belknap Press, 1986) 364.

¹¹⁶² *Ibid* 364–365.

¹¹⁶³ The Editors of Encyclopaedia Britannica, ‘Welfare State’ <<https://www.britannica.com/topic/welfare-state>>. The welfare state is a concept of government in which the state or a well-established network of social institutions plays a key role in the protection and promotion of the economic and social well-being of citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term may cover a variety of forms of economic and social organization.

¹¹⁶⁴ Costa, *above n 1065*, 73.

¹¹⁶⁵ Rosa Ehrenreich Brooks, ‘The New Imperialism: Violence, Norms, and the “rule of Law”’ (2003) 101(7) *Michigan Law Review* 2275, 2278.

assumed, as reflected in reports of Justice Anthony Kennedy's remarks at Stanford University's 2009 Commencement, which included the observation that 'more than half the world's population lives outside the law, and ... the new graduate should work to spread American principles of justice, especially in places that resist them.' The imperialistic tone of the latter injunction is deeply problematic for the rule of law enterprise, however, as attempts to import foreign (usually Western) legal concepts and structures can be a bitter reminder of the colonial history of many of these societies.¹¹⁶⁶ Accordingly, in any project undertaken to promote the rule of law abroad, rhetoric like that attributed to Justice Kennedy must be studiously avoided, whilst those involved must carefully accommodate local cultural and political sensitivities.

Contemporary efforts to reform the rule of law in Indigenous communities are mostly funded and disseminated by Western nations and international organisations, including the World Bank and UNDP.¹¹⁶⁷ Demonstrating compliance with the rule of law tends to be a prerequisite for investment in post-war countries, such as Liberia, by financial institutions like the World Bank and International Monetary Fund. The difficult truth is that some aspects of Indigenous Customary Laws are simply incompatible with basic principles of Anglo-American or Anglo-Australian law to be able to enjoy official recognition, only if it does not conflict with settler-colonist law.¹¹⁶⁸ In instances where the Supreme Court of Liberia (for example) overrules Indigenous Customary Laws to guarantee compliance with constitutional protection, indicates a remarkable resemblance of the rule of law to colonialism without any tolerance for (critical) legal pluralism. As a result, the imposition of Western ideals concerning the rule of law tends to fuel ongoing clashes between formal state power and Indigenous justice.

International efforts to promote the rule of law in Liberia, for instance, are fundamentally based on false expectations about the relationship between law, order and violence, because such assumptions cannot be justified.¹¹⁶⁹ The *Handbook for Civil Society Partners* published in 2008 by the Carter Centre presents a case in point. The Carter Centre Handbook aims to promote community education regarding and awareness of the rule of law in Liberia. In explaining the illegality of *Sassywood*¹¹⁷⁰ or trial by ordeal, the Handbook asserts that Article 73 of the *Rules and Regulations Governing the Hinterland* 1942 and the Supreme Court of Liberia in a 1916 case outlaw the practice.¹¹⁷¹ The Handbook continues in Liberian parlance: 'when there is a big problem like rape or murder, the community people should get the consent

¹¹⁶⁶ David Pimentel, 'Legal Pluralism in Post-Colonial Africa: Linking Statutory and Customary Adjudication in Mozambique' (2011) 14(1) *Yale Human Rights and Development Journal* 1, 2–3.

¹¹⁶⁷ *Ibid* 6.

¹¹⁶⁸ David Pimentel, 'Can Indigenous Justice Survive?: Legal Pluralism and the Rule of Law' (2010) 32(2) *Harvard International Review* 32, 34.

¹¹⁶⁹ Brooks, above n 290, 2301.

¹¹⁷⁰ Sassywood is a trial by ordeal where a hot cutlass, hand in oil, drinking Sassywood tree bark or other plant materials may be used to solicit confession or 'truth telling'.

¹¹⁷¹ The Carter Centre and The Ministry of Justice, *Handbook for Civil Society Partners: Community Education and Awareness Program on the Rule of Law* (The Carter Centre, 2008) 20

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of the victim to call the police.’¹¹⁷² Interestingly, the population this handbook targets, Native Peoples in rural Liberia, are mostly illiterate and often have little or no contact with government agencies, including law enforcement, court personnel or public administrators. As the law, in and of itself, has no inherent ability to reduce violence or suffering, it may appear that at least some of the time, people prefer violence and suffering to peace and prosperity,¹¹⁷³ which explains why Western society’s efforts to transplant the legal axiom emphasises reducing violence. Unfortunately, unlike most African states that recently gained independence from colonial rule in the 1960s, Liberia has done little to resuscitate and reinvigorate its Indigenous Customary Laws and Institutions with respect and integrity.

Liberia adopts a constitution that gives only a weak nod to Native customs, whilst at the same time establishing a Western-style (Anglo-American) triumvirate. Requiring the Republic to preserve, protect and promote Liberian culture to ensure the adoption of compatible traditional values (Article 5 (b) of the *Liberian Constitution* 1986) is counterintuitive. Article 5 (b) both expresses disapproval of colonial influence and rejects Indigenous Customary Laws. Liberia’s Anglo-American-style government exemplifies the dominance of colonial priorities associated with the principles of human rights and maintenance of the rule of law. As noted above, the challenge of promoting settler-colonists’ ‘one law’ comes not with expressing the need for mutual respect, but in finding ways to permit Indigenous Customary Laws to function simultaneously with the same respect and integrity as states’ law.

4.1 Indigenous Customary Laws Internationally, Regionally and Nationally

The source of any law, whether international, national or Indigenous, are the customs, traditions and cultures of peoples, which may be based on religion, social norms and beliefs held by individuals in the community. Wulah submits that ‘from the day one is born to the time of death and even burial, the [traditional] law by which we are governed tells us what to do.’¹¹⁷⁴ There is a ritual, initiation and ceremony performed at every milestone in life, including birth, naming a newborn, a first haircut, puberty, marriage and death; which are tribal laws and customs that are known and recognised locally.¹¹⁷⁵ According to Sharman Stone, Captain James Cook’s reflection on ‘Aboriginal Australians’ peaceful relationship with the environment...’¹¹⁷⁶ indicates their ability to maintain law and order. Ronald and Catherine Berndt suggest that within any given unit of Aboriginal Australian culture, ‘certain rules and standards are acknowledged, certain patterns of behaviour considered right, as against others which are wrong. Informal as well as formal sanctions are likely to greet any obvious deviation from those patterns’.¹¹⁷⁷

¹¹⁷² Ibid 21.

¹¹⁷³ Costa, above n 1065, 73.

¹¹⁷⁴ Wulah, above n 169, 145.

¹¹⁷⁵ Ibid.

¹¹⁷⁶ Stone, above n 178, 13.

¹¹⁷⁷ Ronald M Berndt and Catherine H Berndt, *The World of the First Australians: Aboriginal Traditional Life Past and Present* (Aboriginal Studies Press, 5th ed, 1996) 338.

Indigenous Customary Laws have been used to maintain social harmony, justice, and fairness for as long as Indigenous cultures in Australia and Liberia have existed and continue to be used thus. In Australia, Indigenous Customary Laws pre-dated colonial Anglo-legal principles. Diane Bell implies that Indigenous Customary Laws, ‘which operated in a moral universe where people are rigorously socialised into beliefs and practices, are not accidental but self-regulating and unchanging.’¹¹⁷⁸ Rather than being inferior to Western common law system and ‘unchanging’, Calma points out, Indigenous Customary Laws are not frozen in the past but are a ‘living changing system that reflects its times ... [by providing] structure and order in Indigenous communities’.¹¹⁷⁹ The ‘changing’ and ‘self-regulating’ characteristics of Indigenous Customary Laws sustain their propagation above and beyond the limits of settler-colonists’ foreign law. Although histories in Indigenous cultures tend to be oral living culture and documentation of legal philosophy and jurisprudence is rare, the argument that Indigenous Customary Laws is oral and hence does not exist is baseless.

As with Western legal systems, not all aspects of Indigenous systems of justice conform to the rule of law. Indigenous systems of justice also promote traditional values. However, like Western-dominant legal systems, some traditional values may be discriminatory, showing little respect for principles of gender equality, child protection or religious rights. In the specific case of Liberia, a country emerging from the devastation of mass violence, some argue that Indigenous Customary Law challenges and ‘obstructs the goals of stability and the rule of law.’¹¹⁸⁰ One example of Customary Laws in Liberia that does not conform to rule of law principles is a tradition of trial by ordeal.

Trial by ordeal in Native communities in Liberia is one example of Customary Laws that do not conform to rule of law concepts including a fair trial, human rights and arbitrariness of judgement. Prior to 2000, Article 73 of the *Liberian Rules Governing the Hinterland* 1949 permitted trial by ordeal (or Sassywood). Jallah (2007) explains that trial by ordeal

is an unscientific method, according to western standards, where a person accused of the commission of a crime or other offense is subjected to physical examination by either ingesting a substance or by placing a hot cutlass or machete on the legs of all persons suspected of having committed the crime to determine the guilty or innocence of the accused. The belief is that the person who committed the crime would be burned in the case of use of the machete or severely ill or even die in the case of the ingestion of the substance and the innocent would go unharmed. This method of trial, although declared illegal by the Supreme Court, is still being practiced in certain areas of Liberia. The problem with ensuring the total abolition of this practice is the lack of capacity of the Executive Branch to enforce the Supreme Court Decisions.¹¹⁸¹

¹¹⁷⁸ Diane Bell, ‘What Is Law [and What Is Not]?’ (Seminar at the SA Law Society Seminar, Adelaide, SA, 2006).

¹¹⁷⁹ Tom Calma, ‘The Integration of Customary Law into the Australian Legal System’ (Speech at the National Indigenous Legal Conference, Sydney, NSW, 2006).

¹¹⁸⁰ Deborah Isser (ed), *Customary Justice and the Rule of Law in War-Torn Societies* (United States Institute of Peace Press, 2011) xi.

¹¹⁸¹ David Jallah, ‘Notes, Presentation by Professor and Dean of the Louis Arthur Grimes School of Law, University of Liberia’ in *Conference Learning from Each Other - Enriching the Law School Curriculum in an Interrelated World* (Kenneth Wang School of Law, 2007) 4, 3 <<http://www.ialsnet.org/meetings/enriching/JallahDavid.pdf>>.

Article 73 of the *Liberia Rules and Regulations Governing the Hinterland* 2000 (revised) prohibits trial by ordeal in cases where potions or concoctions ingested internally endanger a person's life. However, ordeals of a minor nature which do not endanger the lives of individuals shall be allowed. As indicated by Jallah, the absence of settler-colonist courts and legal systems in Native Liberia makes the enforcement of the *Liberia Rules and Regulations Governing the Hinterland* 2000 (revised) regarding permission of minor ordeal and prohibition of dangerous ordeal challenging. The unintended consequences resulting from Indigenous Customary Laws' arbitrary system of ascertaining the truth about crimes committed is inimical to the principles of the rule of law. It is for this reason and others that Indigenous Customary Laws can benefit from reform and renewal.

However, in the absence of settler-colonists' legal institutions, Indigenous Customary Laws play a crucial role in filling the social needs of the community and in providing alternative justice mechanisms for survivors of crime. From the management of the land; to performing rituals on birth, marriage, and deaths; to conducting rites of passage; to conserving sacred sites; to resolve disputes — and all that lie in between and beyond human existence — Indigenous Customary Laws 'represent a common denominator of shared values and practices'.¹¹⁸² Accordingly, limits and prohibitions should be selectively applied, rather than categorising Indigenous Customary Laws as mere oral tradition and thereby suggesting that only written settler-colonist law is viable. Such a perspective is not only offensive but also misguided. Moreover, forcing Indigenous Customary Laws into written form does serious systematic violence, as doing so reduces its flexibility, vitality, and responsiveness to community needs and external forces.¹¹⁸³ In a worst-case scenario, producing a written code or "ascertainment" of customary law will deprive community members of the ownership and control of their own law.'¹¹⁸⁴

Accordingly, Customary Indigenous Laws have proven to be a double-edged sword. On the one hand, they provide critically important access to dispute resolution for Indigenous Peoples who have little or no access to the settler-colonists' court systems due to distance, costs, language barrier, cultural misunderstanding, lack of training, and limited access to basic resources.¹¹⁸⁵ However, in spite of their daily customary practice, Indigenous communities find that their systems of traditional justice are under continual attack and are regularly misconstrued by settler-colonists. To be exact, some practices that are related to gender inequity and harmful traditions that adversely affect girls and women are supported culturally, institutionally and individually by Indigenous Customary Laws. Harmful traditional practices, such as trial by ordeal, corporal punishment, female genital cutting and child marriages, all make getting access

¹¹⁸² Leon Shaskolsky Sheleff, *The Future of Tradition: Customary Law, Common Law, and Legal Pluralism* (F. Cass, 2000) 1.

¹¹⁸³ Pimentel, above n 1169, 36.

¹¹⁸⁴ Ibid.

¹¹⁸⁵ Laura A Young and Abraham Korir Sing'Oei, 'Access to Justice for Indigenous Peoples in Africa' in *Indigenous Peoples' Access To Justice, Including Truth And Reconciliation Processes* (Academic Commons, Columbia University, 2014) 89, 94–95 <<https://academiccommons.columbia.edu/catalog/ac:184797>>.

to justice extremely difficult for Indigenous girls and women. Although some efforts have been made on the part of settler-colonists governments to ban some of these practices, such prohibitions are often put forward without providing viable and culturally valid alternatives for Indigenous Peoples.¹¹⁸⁶ Furthermore, challenges related to accessing and establishing the formal court systems in Indigenous communities make implementation and enforcement of settler-colonist law impossible.

In Liberia, a primary reason these challenges exist is that Indigenous Peoples are poorly studied. The few studies that focus on Indigenous Peoples in Liberia are outdated, inaccessible, conducted by non-Liberians or not focused on Indigenous Customary Laws.¹¹⁸⁷ If such studies are about Indigenous Customary Laws, then they tend to contain information that is haphazard, derogatory, stereotypical, distorted or inaccurate.¹¹⁸⁸ Additionally, Liberia's colonial legacy and corresponding struggles for political independence across Africa created unique barriers to engaging respectfully with Native Peoples in Liberia. Hence the persistent lack of high-quality data and legal cases to evidence Native Peoples' access to justice in Liberia. Throughout this research and especially in chapters 3 and 8, case examples are highlighted and discussed to illustrate diverse ways in which Native Peoples in Liberia are discriminated against and deliberately denied access to justice.

The treatment of Indigenous girls and women in customary justice systems, which hinge on access to justice, is often analysed with little understanding of the diversity and nuance within traditional systems regarding their loci of power for females in Indigenous cultures.¹¹⁸⁹ Whilst the dangers of patriarchy and inequality are very real obstacles to accessing justice, the potential to effectively exploit customary systems for the benefits of Indigenous girls and women has often been underestimated.¹¹⁹⁰ Despite the fact that there are instances where access to justice is challenged and sometimes lacking for girls and women (for example, *R v GJ* 2005),¹¹⁹¹ in Australia, an Indigenous person who commits a crime suffers double punishment, being punished by both the settler-colonist legal system and the Aboriginal customary system.¹¹⁹²

As Australian settler colonists began prosecuting *inter se* crimes, the jurisdiction of Indigenous Customary Laws and Anglo-Australian law began to intersect. In Australia, Chief Justice Forbes reasoned that 'to interfere with the savage tribes, whose countries we have taken possession ... the laws that are imported have reference only to the subjects of the parent state; I am not aware that those laws were ever applied to the transactions taking place between the

¹¹⁸⁶ Ibid 96.

¹¹⁸⁷ Moore, above n 555; Bledsoe, above n 1002; Moran, above n 163; Wulah, above n 169; Government of Liberia, 'Study on Operations of Sande School', above n 1027; Korvah, above n 548.

¹¹⁸⁸ The Carter Centre, *Liberia Access to Justice Project Partnerships* (4 October 2013) The Carter Centre: Waking Peace. Fighting Disease. Building Hope <http://www.cartercenter.org/news/features/p/access_to_information/liberia-mama-tumeh.html>.

¹¹⁸⁹ Young and Sing'Oei, above n 1186, 96.

¹¹⁹⁰ Ibid.

¹¹⁹¹ In *R v GJ* Unreported, Supreme Court of the Northern Territory (Yarralin) SCC 20418849, Martin CJ, 11 August 2005: A 55-year-old Aboriginal male Elder pleaded guilty to having sexual intercourse with a 14-year-old girl child, contending that he was entitled to because she was his promised wife.

¹¹⁹² Law Reform Commission of Western Australia, above n 142, 81.

original Natives themselves'.¹¹⁹³ However, as settler-colonists came in regular contact with Indigenous Peoples, the pressure to exert legal control over them became real. Initially, response to *inter se* crimes arose from complaints made by settler-colonists about increased street violence amongst groups of Aboriginal Peoples.¹¹⁹⁴ Culturally, settler-colonists' perception of crimes committed by Aboriginal People became known as 'the Aboriginal problem'.¹¹⁹⁵ Douglas and Finnane argue that discussion of solving 'the Aboriginal problem' provides evidence of an unsettled 'legal business' between settler-colonists and Aboriginal Peoples.¹¹⁹⁶ The 'Aboriginal problem' intensified when '*inter se*'¹¹⁹⁷ offences had initially arisen out of complaints by settlers of increased street violence in Perth amongst groups of Aborigines'.¹¹⁹⁸ Douglas and Finnane also suggest that 'changing attitudes towards violence against women in the cultures from which the settlers came may well have played their part in the Settler's intervention'¹¹⁹⁹ to prosecute *inter se* offences of Aboriginal people. The 'test' came as the prosecution of *Helia*, the first criminal trial of an Aboriginal person of Swan River, originating in an intervention by settlers who witnessed his armed and fatal assault of [an Aboriginal] woman [Yatoobung], an action that demanded response in a (British) culture that was itself undergoing a reconstruction of its precepts about gender and cruelty and physical punishment'.¹²⁰⁰ However, asserting the supremacy of Anglo-Australian law on Aboriginal People met with some resistance.

In *R v Murrell and Bummaree* 1836, the case that declared Aboriginal Peoples as British subjects of settler-colonist law, Jack Tango Murrell resisted the assertion that Aboriginal People were subject to the laws of Britain:

And now the said Jack Congo Murrell in his own proper person comes and having heard the Information aforesaid read, and protesting that he is not guilty of the premises charged in the said Information or any part thereof, for plea, nevertheless saith that he ought not to be compelled to answer to the said Information; because, he saith that the said Territory of New South Wales before and until the occupation thereof by his late Majesty King George the third, was inhabited by tribes of native blacks, who were regulated and governed by usages and customs of their own from time immemorial, practised and recognised amongst them, and not by the laws of statutes of Great Britain, and that ever since the occupation of the said Territory as aforesaid, the said tribes have continued to be, and still are regulated and governed by such usages and customs as aforesaid, — and not by the laws and statutes of Great Britain. And the said Jack Congo Murrell further saith that he is a native Black belonging to one of such tribes aforesaid, and that he is not now, nor at any time heretofore was a subject of the King of Great Britain and Ireland, nor was nor is subject to any of the laws or statutes of the Kingdom of Great Britain and Ireland. And the said Jack Congo Murrell further saith that the said Jabbingee in the said information named, and with the wilful murder of whom the said Jack Congo Murrell is and by the said information charged, was at the time of such supposed murder a native Black belonging to one of such Tribes as aforesaid, and was not then nor at any time theretofore a subject of the King of Great Britain and Ireland;

¹¹⁹³ *R. v. Ballard or Barrett* [1829] NSWSupC 26.

¹¹⁹⁴ Hunter, above n 175, 1.

¹¹⁹⁵ Ibid.

¹¹⁹⁶ Douglas, above n 479, 13.

¹¹⁹⁷ Reynolds, *Aboriginal Sovereignty*, above n 221, 61–62.

¹¹⁹⁸ Hunter, above n 175.

¹¹⁹⁹ Douglas, above n 479, 28.

¹²⁰⁰ Ibid 27–34.

nor at any time was subject to any of the laws or statutes of the Kingdom of Great Britain and Ireland, or under the protection of the same.¹²⁰¹

In an honest, albeit distorted, attempt to apply the rule of law, the Attorney General of New South Wales responded:

In this case, the prisoner was charged with murder in a populous part of the King's territory; it was laid in the information to have been committed within the jurisdiction of the Court. The reply to this had been, that the prisoner was not amenable to the British laws, but his principle could not be admitted, the laws of Great Britain did not recognise any independent power to exist in a British territory, but what was recognised by law. This country was merely held by occupation, not by conquest, nor was it ceded; and where lands were so taken possession of, the King was bound to protect by his kingly power all parties living in it, or who came to visit it; was it to be supposed that breaches of the peace, and murders, were to be committed within the jurisdiction of the Court, and yet that the Court should have no controlling power? The law would be bound to protect every person who came to this colony, and to it they would be amenable. He, the Attorney General, stood there to protect the whites from the blacks, and the blacks from the whites; the colour made no difference to him. If the man could not be tried, their Honours would be sitting there to say they had no jurisdiction over a case of murder committed within the jurisdiction of the Court.¹²⁰²

Early colonial judicial decisions that denied the recognition of Indigenous laws also portended formal equality between Indigenous and non-Indigenous Peoples in the Anglo-Australian justice system. The same legal institutions that anticipated equality of Indigenous Peoples and settler-colonists sympathised with, legitimised and authorised the murdering of Aboriginal Australians.¹²⁰³ Since the colonisation, Indigenous Peoples have experienced levels of criminalisation disproportionate to non-Indigenous Peoples. As explained in chapter 3, the relatively high incarceration rate of Indigenous Peoples is explained, in part, by the negative judicial portrayals of Indigenous offenders.¹²⁰⁴ Efforts to reconcile Indigenous Customary Laws and Anglo Law in Australia and Liberia continue, as Indigenous Peoples work for recognition and accommodation of their ways of being, knowing and doing justice.

Recognising and accommodating Indigenous Customary Laws requires respect for its ability to evolve and recognition that Western precepts of human rights may be best protected if a (critical) legal pluralism regime allows traditional customs and institutions to survive.¹²⁰⁵ Persistence of Indigenous Customary Laws depends on resistance from importation, transplantation and imposition of settler-colonist law. Indigenous Customary Laws can and will continue to evolve, not through vague legislative amendments the way Western law has changed, but instead through influence from both inside and outside Indigenous communities. Such flexibility and openness should be embraced, not frowned upon if critical legal pluralism

¹²⁰¹ *R v Murrell and Bummaree* (1836) 1 Legge 72; [1836] NSWSupC 35.

¹²⁰² Forbes C.J., Dowling and Burton JJ, 19 February 1836 in *Sydney Gazette*, 23 February 1836[3] available at <http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1836/r_v_murrell_and_bummaree/>

¹²⁰³ Stone, above n 178, 27.

¹²⁰⁴ Thalia Anthony, *Indigenous People, Crime and Punishment* (Routledge, 2013) 55–56.

¹²⁰⁵ Pimentel, above n 1167, 10.

is a vital option.¹²⁰⁶ The challenge facing legal institutions is to create a pluralistic legal framework that accommodates Indigenous Customary Laws.

4.2 Legal Pluralism and the Rule of Law

Legal pluralism is defined as a situation wherein two or more different legal systems exist and operate in a single political unit or geographical locale. Legal pluralism is a practical reality, most notably in Indigenous Liberia and Australia. Critical legal pluralism is the knowledge that maintains and creates realities whilst ‘challenging the traditional social-scientific legal pluralism of reified cultures and communities’.¹²⁰⁷ The critical legal pluralist ‘imagines legal subjects as law “inventing” and not merely “law abiding”’.¹²⁰⁸ Employing critical legal pluralism, this dissertation cultivates deep listening through the voices of research participants to reflect on how the law affects Indigenous Peoples’ lives and how the interpretation of legal documents is often shaped by the interpreter’s view. Unlike Australia, the *Liberian Constitution* 1986 (Article 5 (b))¹²⁰⁹ vaguely reserves a role for Native Liberian culture, which recognises the inevitability of legal pluralism. However, the same *Liberian Constitution* (1986) deems void, of no legal effect and unconstitutional ‘[a]ny laws, treaties, statutes, decrees, customs and regulations found to be inconsistent’ (Article 2, *Liberian Constitution* 1986), which is why Liberia has yet to find a functional and effective way of implementing legal pluralism or harmonising relationships between Indigenous Customary Laws and settler-colonist legal systems. This balancing act is a condition David Pimentel observes in British colonial regimes, where Indigenous Customary Law ‘functions only as long as it did not run afoul of now-notorious ‘repugnancy clauses’, which assumed the superiority of British legal and cultural norms and invalidated any indigenous law repugnant to those values.’¹²¹⁰

Pimentel asserts that it is necessary to recognise and preserve the virtues inherent in Indigenous legal systems, which are historically undervalued as ‘primitive’ and are still under attack by those who see them as threats to the protection of human rights whilst imposing foreign models of governance and justice on Indigenous communities.¹²¹¹ Pimentel sees nothing wrong or new with legal pluralism, as it has always proved easier to govern a conquered people according to their own laws.¹²¹² To counteract the historical devaluation of traditional culture of colonised states, Pimentel suggests a compelling reason to embrace and pursue legal pluralism: that is, to preserve and respect Indigenous Customary Laws. Rather than perceiving them as a meaningful way of appreciating Indigenous cultures, colonial regimes have used legal pluralism

¹²⁰⁶ Pimentel, above n 272, 36.

¹²⁰⁷ Martha-Marie Kleinhans and Roderick A Macdonald, ‘What Is a Critical Legal Pluralism?’ (1997) 12(02) *Canadian Journal of Law and Society* 25, 26.

¹²⁰⁸ *Ibid.*

¹²⁰⁹ Article 5 (b) of the *Liberian Constitution* 1986 states the Republic shall preserve, protect and promote positive Liberian culture, ensuring that traditional values which are compatible with public policy and national progress are adopted and developed as an integral part of the growing needs of the Liberian society.

¹²¹⁰ Pimentel, above n 1169, 33.

¹²¹¹ Pimentel, above n 1167, 3, 6.

¹²¹² *Ibid* 4.

to foster and exploit political disadvantage by forcing settler-colonists' legal institutions to persist under their rule (of law).¹²¹³

Indigenous Customary Laws persist and maintain their separateness and customary justice.¹²¹⁴ Notwithstanding the supposedly fair and just settler-colonist legal system, jurisdictional tensions are inevitable. Colonisation and its corresponding imposition of Anglo-American and English Common Laws on Indigenous Peoples have consistently been marked by conflict.¹²¹⁵ However, The Australian Law Reform Commission confirms that 'despite the lack of detailed knowledge in certain areas, there are many indications that Aboriginal Customary Laws and traditions continue as a real controlling force in the lives of many Aborigines.'¹²¹⁶ Since the subjection of Aboriginal Peoples, whether in Australia or Liberia, does not extinguish Indigenous laws and customs, the question of concern here is whether the formal legal system can recognise Indigenous Customary Laws and exist alongside them. Crawford and the Law Reform Commission of Australia identify a common argument against legislative recognition of Indigenous Customary Laws. The issue is that recognition of Aboriginal Customary Laws would in some way be discriminatory or unequal or would violate the principle that all Australians (or Liberians) are, and should be, subject to 'one law'.¹²¹⁷

By acknowledging different treatment on the basis of Aboriginality [race], recognition of Indigenous Customary Laws may seem to violate the principle of equality and non-discrimination.¹²¹⁸ In international law, the principle of equality is expressed in a number of instruments, including the *Universal Declaration of Human Rights* 1948, the *Convention on the Elimination of Racial Discrimination* 1965, and the *International Covenant and Civil and Political Rights* 1966. In *Ngatayi v The Queen* 1980, Justice Murphy opines that '[t]he existence of two systems of law side by side, the prevailing one and Aboriginal Customary Laws, with their very different attitudes to guilt and responsibility, creates serious problems and the question of how far our laws should apply to aboriginals and how far their law should be allowed to apply to them is controversial.'¹²¹⁹ However, an International Court of Justice case, *the South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)* 1966, shows otherwise. In the *South West African Cases*, Judge Tanaka held that 'the alleged norm of non-differentiation as between individuals within a State on the bases of membership of a race, class or group could not be transferred by way of analogy to international relationship, otherwise it

¹²¹³ Ibid 7.

¹²¹⁴ Pimentel, above n 1169, 33.

¹²¹⁵ Huberich, above n 53, 475–477.

¹²¹⁶ Australian Law Reform Commission, 'Recognition of Aboriginal Customary Laws (ALRC Report 31)' (Government Report 31, Australian Law Reform Commission, 12 June 1986) 737, 38 <<http://www.alrc.gov.au/publications/report-31>>.

¹²¹⁷ Crawford, above n 141, 193; Australian Law Reform Commission, 'Recognition of Aboriginal Customary Laws (ALRC Report 31)', above n 26, 128.

¹²¹⁸ Law Reform Commission of Western Australia, above n 142, 7.

¹²¹⁹ *Ngatayi v The Queen* (1980) HCA 18, 147 CLR 1, 14.

would mean that all nations are to be treated equally despite the difference of race, colour, etc., a conclusion which is absurd'.¹²²⁰

Critical legal pluralism is a mechanism states can use to combat discrimination against Indigenous Peoples. Australia's obligations under the *Convention on the Elimination of Racial Discrimination* 1965, which was domesticated into the *Racial Discrimination Act* 1975 (Cth.) and other international and domestic instruments listed above, prohibit discrimination on grounds of race, colour, nationality or ethnic origin. The Law Reform Commission of Australia agrees that Australia's international and national obligations do not preclude taking reasonable and special measures to distinguish particular groups and to respond in a proportionate way to the special characteristics of Aboriginal Peoples.¹²²¹ Thus, 'special measures for the recognition of Aboriginal Customary Laws will not be racially discriminatory, or will not involve a denial of equality before the law or of equal protection' provided such measures are reasonable responses to the special needs of Aboriginal Peoples affected, are generally accepted and do not deprive individual Aborigines of basic human rights or access to justice.¹²²² Therefore, when dispensing justice, there are some cases involving Indigenous Peoples where concrete conditions of inequality require nation-states to take affirmative action that appears to be discriminatory in favour of a minority group so that genuine and substantive equality can actually be achieved.¹²²³

Perhaps one of the most persuasive arguments supporting differential treatment for Aboriginal Peoples by recognition of certain customary laws and practices is found in Indigenous Peoples' unique status as the First Peoples of Australia.¹²²⁴ Aboriginal Peoples' prior possession of Australia and the existence of their complex systems of laws, traditions and customs were deciding factors in the High Court's recognition of Native Title in *Mabo v Queensland [No.2]* 1982. Therefore, Indigenous Peoples, as First Peoples and members of a distinct Indigenous culture, have the right to practice and maintain a legal system necessary to allow their culture to survive and flourish.¹²²⁵ However, tensions still exist between Anglo and Indigenous Customary Laws in Australia.

Assimilation policies in Australia eclipsed the separate legal and administrative apparatuses for colonist-settlers and Aboriginal Peoples established under various legislations. Because Indigenous Peoples no longer occupied exclusive legal zones since the mid-20th century, settler-colonists' laws governed and released them from institutions to the peripheries of towns, especially those full-bloods who would not conform to a single white Australia. The law and legal system, in the form of discriminatory Aboriginal Acts, normalised the settler-

¹²²⁰ *South-West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa); Second Phase*, International Court of Justice, [18 July 1966] 434 at 296.

¹²²¹ Australian Law Reform Commission, 'Recognition of Aboriginal Customary Laws (ALRC Report 31)', above n 26, 158.

¹²²² *Ibid* 165.

¹²²³ Law Reform Commission of Western Australia, above n 142, 7.

¹²²⁴ *Ibid* 10.

¹²²⁵ *Ibid* 11.

colonist regime of control over Indigenous Peoples.¹²²⁶ For instance, the Northern Territory Chief Protector of Aborigines, redesignated as the Director of Welfare, became the guardian of all Indigenous wards.¹²²⁷ Liberia also struggles to find respectful and constructive ways to integrate Indigenous Customary Laws into a pluralistic legal system.

The Liberian legal system makes a greater effort to accommodate legal pluralism. The Republic of Liberia has a dual legal system based on an Anglo-American Common Law and on Indigenous Customary Laws. Liberia's Indigenous Customary Laws, complex and far older than the settlers-colonists' law, is based on unwritten customary practices of Native Peoples. In the early 1800s, when the Tribal Chiefs in Liberia were first brought into the folds of Anglo-American-Liberian law, they were given jurisdiction only over 'domestic disputes, especially matrimonial cases' emanating from Indigenous Customary laws.¹²²⁸ Five District Commissioners regulated by the three branches of government safeguarded the rights of Paramount Chiefs, granting Indigenous Peoples in Liberia the right to make complaints to the Secretary of the Interior.¹²²⁹ *Davis v Republic of Liberia* [1862]¹²³⁰ decided that Native Liberians are bona fide subjects of the State.¹²³¹ In *Ditchfield v Dossen et al* [1907],¹²³² the court ruled that 'the organic and statutory laws of Liberia, in legal matters put every man on equal footing in securing to himself the rights that are guaranteed to him ... by the law [and] international treaties...'¹²³³ *Gofah et al v Peter* [1905]¹²³⁴ decided that, '[I]ndigenous customs were to be respected and taken into consideration when a judicial interpretation was necessary.'¹²³⁵ No doubt the sources of Liberian law today include aspects of Indigenous Customary Laws.¹²³⁶ However, settler-colonists law is still considered superior.

Anglo-American Law in Liberia still supersedes Customary Laws. In spite of the above jurisprudence, Chapter VII, Article 65 of the *Liberian Constitution* 1986 states that '[t]he courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature.' Chapter I, Article 2 of the *Liberian Constitution* 1986 affirms the supremacy of the Constitution over Indigenous Customary Laws: [t]his Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic. Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. These exclusions set the stage for continued conflict within the pluralistic system.

¹²²⁶ Anthony, above n 1204, 36.

¹²²⁷ *Ibid* 40.

¹²²⁸ Fraenkel, above n 39, 94.

¹²²⁹ Azikiwe, above n 301, 79; Huberich, above n 53, 1107.

¹²³⁰ *Davis v RL* [1862] LRSC 2; 1 LLR 17 (1862).

¹²³¹ Azikiwe, above n 301, 79.

¹²³² *Ditchfield v Dossen et al* [1907] LRSC 1; 1 LLR 492 (1907).

¹²³³ Azikiwe, above n 301, 80.

¹²³⁴ *Gofa et al v Peter* [1905] LRSC 5; 1 LLR 458 (1905).

¹²³⁵ Azikiwe, above n 301, 80.

¹²³⁶ Kabbah, above n 1145, 5; Fraenkel, above n 39, 70–109. The Federal State of

Regardless of Indigenous Customary Laws' crucial role, conflicts and clashes between it and settler-colonists' rule of law system are inevitable. For example, before the *Equal Rights of the Customary Marriage Law of 1998* was approved in 2003, customary marriages in Liberia were not legally recognised by the Liberian State.¹²³⁷ Therefore, widows in customary marriages were denied Dower Rights to their dead husband's property (*see* chapter 3). David Jallah, former Dean of the University of Liberia's Louise Arthur Grimes School of Law, confirms that the age of consent under customary marriage was 12 years whilst in the urban areas the age of consent was 16 years.¹²³⁸ Pursuant to section 16.15 of the Liberian *Children's Act* 2011, it is felonious to subject a person under 18 years to marry. However, in practice, an unborn girl child can still be betrothed to a man or his son¹²³⁹ (*see* chapter 3).

Further research is required to understand the extent of the conflict between Indigenous Customary Laws and Anglo-American Law in Liberia. There is very little empirical research to support the operation of Liberia's dual legal systems to establish the extent to which settler-colonist law accommodates traditional practices.¹²⁴⁰ According to Huberich, Liberia started off with a clear (but informal) understanding that there existed two legal systems: 1) statutory and common law and 2) traditional laws and customs.¹²⁴¹ The variability of the traditional legal systems of many language groups made it difficult to apply only Anglo-American Liberian law. Insofar as Indigenous Customary Laws did not violate the *Constitution* of Liberia or expressed provisions of statutory law, it was applied in common law courts. For example, in *New York Krp eh v Harding* 1936,¹²⁴² Justice Grimes opines that the common law includes customs and unwritten law, which includes Indigenous Customary Laws in the specific context of Liberia:

The court desires, first of all, to observe that going back to Blackstone's Commentaries, the first written authority form which has sprung the common law of most, if not all, English speaking countries, he states that the *lex non scripta*, or unwritten law 'includes not only general customs, or the common law properly so called; but also, the particular laws that are by custom observed only in certain courts and jurisdictions.'¹²⁴³

However, *Ballah Karman v John L. Morris, Secretary of the Interior and Major John H. Anderson, Commanding the Liberian Frontier Force* 1920¹²⁴⁴ affirms the constitutional supremacy and subjection of Indigenous Customary Laws to Liberia's common law jurisdiction. In these cases, local chiefs of the Todee and Ding of the Gola Country were held responsible for theft committed in the settlement of White Plains by Indigenous men.¹²⁴⁵ Under international law,

¹²³⁷ Jallah, above n 1181, 4.

¹²³⁸ *Ibid* 3–4.

¹²³⁹ Mae Azango, 'Liberia: Married at 13 - Young Girls Forced Into Adulthood in Liberia' *FrontPageAfrica* (Monrovia, Liberia), 7 November 2014 <<http://allafrica.com/stories/201411071717.html>>.

¹²⁴⁰ Stephen C Lubkemann, Deborah H Isser and Philip AZ Banks, 'Unintended Consequences: Constraint of Customary Justice in Post-Conflict Liberia' in Deborah H Isser (ed), *Customary Justice and the Rule of Law in War-Torn Societies* (United States Institute of Peace Press, 2011) 193.

¹²⁴¹ Huberich, above n 53, 1231.

¹²⁴² *New York Krp eh v Harding* 1936 (unpublished but printed opinions) 107.

¹²⁴³ Huberich, above n 53, 1198.

¹²⁴⁴ *Ballah Karman v John L. Morris, Secretary of the Interior and Major John H. Anderson, Commanding the Liberian Frontier Force* 1920 (Judgment Book, p247, Unpublished).

¹²⁴⁵ Huberich, above n 53, 1207.

the conquest of land can confer sovereignty.¹²⁴⁶ However, sovereignty does not confer upon Liberian settler-colonists the absolute right to land and property when in fact Indigenous lands were dispossessed and allocated as government land (or Crown land in British colonies such as Australia¹²⁴⁷). Although Chief Justice Joseph J Dossen ruled otherwise in *Ballad*, the Attorney-General argued that since Indigenous Peoples in Liberia had not given their consent to settler-colonist law, the government had no jurisdiction over Indigenous Peoples and their land in Liberia.¹²⁴⁸

The clash between Indigenous customs and Anglo-American-Liberian law also creates significant access to justice challenges for Indigenous Peoples in Liberia.¹²⁴⁹ Daily, Indigenous Peoples are compelled to interact with formal or state legal systems for various reasons, for instance, because of land and natural resource disputes, disputes with corporate bodies, and criminal prosecution.¹²⁵⁰ Ongoing attempts to contain dynamic, adaptive Indigenous Customary Law systems within the legal reasoning of the formal settler-colonist system have proven impossible, sometimes resulting in an arbitrary and unpredictable legal system.¹²⁵¹ Indigenous Peoples in Liberia face two major challenges when it comes to accessing justice: 1) recognition of Indigenousness as a valid and distinct identifier for communities with unique histories and relationships to their lands; and 2) loss of the meaning of Indigenousness because of a mistaken notion that all black Africans are Indigenous to Africa.¹²⁵²

As stated above, constitutionally in Liberia, legislatures and courts preference Anglo-American-Liberian jurisprudence over that of Indigenous Customary Laws' jurisprudence even though there is no doubt of the existence of a dual legal system.¹²⁵³ Yet there is a belief that Liberian Indigenous Customary Laws are non-existent or even dead, which demonstrates a level of passivity in research based on the wealth of Indigenous traditional knowledge. The assumption that Liberia's court system is based on Western common law, administers justice in the best way possible and makes law relevant to the socio-economic and political demands of Native Peoples today is problematic.¹²⁵⁴ Anglo-American-Liberian law has failed to provide redress for injustice caused by colonial violence against Native Peoples in Liberia, and alleged

¹²⁴⁶ Asmi Wood, 'Constitutional Reform 2013: What Are We Trying to Achieve?' (2012) 37(3) *Alternative Law Journal* 156. Also see, *Island of Palmas Case (or Miangas), United States v Netherlands*, Award, (1928) II RIAA 829, ICGJ 392 (PCA 1928), 4th April 1928, Permanent Court of Arbitration [PCA].

¹²⁴⁷ In *R v Bonjon* [1841] NSWSupC 92 (16 September 1841), Willis J quotes Charles Clark's *A Summary of Colonial Law* (1834), as stated by Mr Redmond Barry, who represented Bonjon '[c]olonies...are acquired by conquest; by cession under treaty; or by occupancy. By occupancy where an uninhabited country is discovered by British subjects and is upon such discovery adopted or recognised by the British Crown as part of its possessions. In case a colony be acquired by occupancy, (he adds) the law of England then in being, is immediately and *ipso facto* in force in the new settlement....New South Wales and Van Diemen's Land, were acquired by *discovery* or *simple occupation*. New South Wales was not however *unoccupied*, as we have seen, at the time it was taken possession of by the colonists, for "a body of the aborigines appeared on the shore, armed with spears, which they threw down as soon as they found the strangers had no *hostile intention*". This being the case, it does not appear there was any *conquest*, and it is admitted there has hitherto been no *cession* under *treaty*'.

¹²⁴⁸ Huberich, above n 53, 1210–1221.

¹²⁴⁹ Young and Sing'Oei, above n 1186, 97.

¹²⁵⁰ *Ibid.*

¹²⁵¹ *Ibid.*

¹²⁵² *Ibid* 90–91.

¹²⁵³ Lubkemann, Isser and Banks, above n 1240, 199.

¹²⁵⁴ Peter Onyango, *African Customary Law: An Introduction* (LawAfrica Publishing (K) Ltd, 2013) 4.

perpetrators of war crimes against Indigenous girls and women have yet to be brought to court despite the existence of carefully written laws and legislative acts. Written laws also lack the power to make people observe and respect them.¹²⁵⁵ Therefore, Indigenous Peoples in Liberia and Australia benefit by incorporating norms that contribute effectively to the changing nature of Indigenous Customary Laws.¹²⁵⁶ The revival of Indigenous Customary Laws as a legal discourse is alive and active in Indigenous communities, posing serious challenges to Western-dominant juridical orders.¹²⁵⁷ Thus, being challenged with remedying Indigenous gender justice that adheres to an equal justice framework is not an excuse to prevent intervention¹²⁵⁸ but rather a call to action for establishing legal approaches that are pluralistic, decolonising, intersectional, critical-race focused, feministic and informed by social determinants of health principles.

4.2.1 Accommodating Indigenous Customary Laws: Colonial and Indigenous Courts

Evidence in this research shows that since colonisation began, criminalising Indigenous Peoples has been the excuse for imposing discriminatory laws, coercive policies and unfair treatment on Indigenous Peoples. As certain aspects of Indigenous Customary Laws are incorporated in settler-colonist law in both Liberia (Tribal Chief Courts) and Australia (for example, Sentencing Circle Courts), there are situations that make Indigenous Peoples subjected and entitled to the protection of the states' formal legal system.¹²⁵⁹ It is this unique duality of Indigenous Customary Laws that creates the need to assess the efficacy of the rule of law in the sense of how Aboriginal lore, customs and practices are accommodated in settler-colonist law. To this end, in considering any attempts to accommodate Indigenous Customary Laws in Australian and Liberian formal legal systems, keep in mind that settler-colonist laws take precedence over Indigenous Customary Laws. With time, the establishment of the colonial legislature and courts helped legalise systematic violence against Indigenous Peoples.

Australia was established in May 1788, as the first penal settlement, when a fleet of English ships sailed for Botany Bay carrying over a thousand convicts, officers and staff.¹²⁶⁰ It took 48 years (1788–1836) after the arrival of Captain Cook for white colonists to subject Indigenous Peoples in Australia to British common law by establishing their first Supreme Court in New South Wales. The codification of British rule in Australia provided a legal dimension to colonisation under both written statute and judge-made law.¹²⁶¹ Heather Douglas and Mark Finnane argue that 'in that moment, Australian law was British law', leaving 'the modern complex known as Indigenous customary laws' with little recognition or formal

¹²⁵⁵ Ibid 5.

¹²⁵⁶ Calma, above n 1179; Lubkemann, Isser and Banks, above n 1240, 212.

¹²⁵⁷ Onyango, above n 1254, 5.

¹²⁵⁸ Thomas Kleven, 'The Supreme Court, Race, and the Class Struggle' (1981) 9(3) *Hofstra Law Review* 795.

¹²⁵⁹ Douglas, above n 479, 36.

¹²⁶⁰ Stone, above n 178, 17.

¹²⁶¹ Cahir and Clark, above n 787; Douglas, above n 479, 125.

substance.¹²⁶² The New South Wales Supreme Court formalised and imposed its exclusive criminal jurisdiction over Indigenous offenders, paving the way for the normalisation of colonial punitive authority over Indigenous Peoples.¹²⁶³ The progression of control over Indigenous Peoples is enshrined in Chapter III, section 73 (iii) of *the Australian Constitution* 1901, which states that ‘the judgments of the High Court in all such cases shall be final and conclusive’. Douglas and Finnane acknowledge that prior reasons for the imposition of British law on Aboriginal ‘subjects’ resulted in decades of violent conflict between settler-colonists and Aboriginal Peoples in Australia.

Punishment for crimes meant that the repression and restraint of Indigenous persons were not an abuse of power, but rather justifications for the use of power. In the penal colony of Australia, ‘conflicts between Aboriginal people and settlers ... often ended in summary execution or mass murder rather than in arrest and prosecution.’¹²⁶⁴ Settler-colonists continuously inflicted violent punishment on Indigenous Peoples for alleged crimes of trespassing or cattle killing. Indigenous Peoples’ resistance to criminal punishment, land appropriation or cultural assimilation drew even harsher penalties, some of which resulted in mass murders and genocide. For example, the infamous Black Line in Van Diemen’s Land instigated by Governor George Arthur in 1830 set out to remove insurgent Tasmanian Aboriginal nations from their homelands to a designated reserve on the Tasman Peninsula.¹²⁶⁵ Courts made an example of those who resisted colonisation by handing down corporal punishment (e.g., whipping) or ordering public executions of Indigenous Peoples. As administrative and penal institutions detained Indigenous People, instruction and labour became the means of transforming Indigenous lives.¹²⁶⁶ Lawmakers believed Indigenous Peoples could learn only through might and hence inserted special provisions into criminal laws to permit such sentencing options exclusively for them.¹²⁶⁷ However, Australian courts’ asserting jurisdiction over Aboriginal Peoples came with unexpected opportunities.

The prospect of a judge exerting complete jurisdiction over Aboriginal ‘subjects’ and land increased the possibility for Aboriginal Peoples in Australia to be treated as equal under the law. For example, in 1837, Lord Glenelg’s Directive from the Colonial Office in London asserted that colonial authorities should take steps to protect Indigenous Peoples of the Empire by holding inquests.¹²⁶⁸ The following year, Governor George Gipps of the colony of New South Wales issued a declaration to protect Aborigines.¹²⁶⁹ He also introduced an act to make Aboriginal Peoples ‘competent witnesses’ in courts, but it did little to provide Aboriginal Peoples equal status as British subjects. Instead, Aborigines giving evidence in court was

¹²⁶² Douglas, above n 479, 35.

¹²⁶³ Anthony, above n 1204, 36.

¹²⁶⁴ Weatherburn, above n 689, 25.

¹²⁶⁵ Lyndall Ryan, ‘The Black Line in Van Diemen’s Land (Tasmania), 1830’ (2013) 37(1) *Journal of Australian Studies* 1.

¹²⁶⁶ Anthony, above n 1204, 31.

¹²⁶⁷ *Ibid.*

¹²⁶⁸ Douglas, above n 479, 51.

¹²⁶⁹ *Ibid.*

likened to ‘the chattering of orang-outang’ in 1844.¹²⁷⁰ Ultimately, these efforts still fell short of providing equity in Australia’s judicial system.

With the decline of violent punishment of Indigenous Peoples over the last 50 years, settler-colonist sentencing courts have provided some leniency for Indigenous offenders,¹²⁷¹ but Aboriginal Peoples are still overrepresented in the court system. Section 16A of the *Crimes Act* 1914 (Cth.) outlines the general conditions the settler-colonists courts must consider when sentencing an individual. These relevant matters include:

- a) the nature and circumstances of the offence;
- b) other offences (if any) that are required or permitted to be taken into account;
- c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character — that course of conduct;
- d) the personal circumstances of any victim of the offence; and
- d) any injury, loss or damage resulting from the offence.

However, in 1980, after the consolidation of legal jurisdiction in Australia, violence was the main reason for Aboriginal Peoples’ presence in settler-colonist courts.¹²⁷² In 2017, a report by the Australian Law Reform Commission stated that Aboriginal and Torres Strait Islander female offenders are the fastest growing prison cohort in Australia, increasing at a rate which significantly exceeds the growth rate of other offenders, including Aboriginal and Torres Strait Islander male offenders.¹²⁷³ Australia is beginning to adopt more pluralistic judicial methods to address this inequity.

The statutory framework of settler-colonist law used for prosecuting and sentencing Aboriginal offenders still does not address the root causes of systematic violence. In Aboriginal Australia, similar to a *Palava Hut*¹²⁷⁴ in Native Liberia, disputes and grievances are usually resolved in formal meetings facilitated by elders (mostly elder men) in a sort of ‘embryonic court’. The establishment of traditional courts and specific sentencing options commensurate with Aboriginal Australians’ unique historical backgrounds are two mechanisms consistent with the combined characteristics of the rule of law regarding access to justice and equality before the law. Modifications to the formal court system were aimed at providing a more culturally sensitive space to help minimise Aboriginal Peoples’ mistrust of and dissatisfaction with the formal judicial system.¹²⁷⁵ It is against this backdrop that the first Aboriginal Sentencing Courts were established in June 1999. Aboriginal Circle Sentencing Courts are an attempt to incorporate Indigenous Customary Laws within the Anglo-Australian legal system but only after an Aboriginal person has been tried in the common law system.¹²⁷⁶ The Aboriginal Nunga

¹²⁷⁰ Ibid 57–58.

¹²⁷¹ Anthony, above n 1204, Preface.

¹²⁷² Douglas, above n 479, 55.

¹²⁷³ Australian Law Reform Commission, ‘Incarceration Rates of Aboriginal and Torres Strait Islander Peoples’, above n 520, 161.

¹²⁷⁴ Wulah, above n 169, 152.

¹²⁷⁵ John Tomaino, ‘Aboriginal (Nunga) Courts’ 1–2 <http://www.ocsar.sa.gov.au/docs/information_bulletins/ib39.pdf>.

¹²⁷⁶ Elena Marchetti and Kathleen Daly, ‘Indigenous Courts and Justice Practices in Australia’ (2004) 277 *Trends & Issues in Crime and Criminal Justice* 1; Shane Madden, ‘The Circle Court in the ACT - An Overview and Its Future’

Courts are presided over by a Magistrate assisted by an Aboriginal Elder and Respected Persons, a system which was established as a pilot in South Australia. The purpose of the Nunga Courts is to provide ‘an opportunity for Aboriginal court users to have their voice heard in a culturally appropriate manner. Family members and support persons are encouraged to attend and speak directly to the court.’¹²⁷⁷ By 2009, a total of 51 such sentencing courts had taken place across Australia.¹²⁷⁸ In spite of efforts made on the part of the Australian government to reform the adverse impact of the criminal procedure on Aboriginal Australians,¹²⁷⁹ challenges remain. A major roadblock facing the Circle Sentencing Courts is the increase in the number of such community courts, which makes even more apparent the ongoing failure of the judicial system to take Aboriginal Peoples’ cultural background and rehabilitation needs into account when sentencing.¹²⁸⁰ Similar challenges and solutions exist in Liberia’s judiciary.

Liberia has implemented a combination of statutory and Tribal Courts to accommodate the pluralistic nature of Liberia’s legal system. Chapter 1, Article 3 of the *Liberian Constitution* 1986 and the *African Charter on Human and People’s Rights* 1981 provide for Liberia’s judiciary. In broad terms, three levels of courts make up the Judiciary: 1) Justice of Peace and Magistrate Courts, 2) the Circuit Court and other specialised courts, and 3) a five-judge Supreme Court.¹²⁸¹ Judicial power is characterised by a ‘unified judicial system’ reified in the Supreme Court and its subordinate courts, which are the circuit, debt, probate, magistrate and other specialised courts.¹²⁸² Notably, judicial power excludes that of the Tribal Courts, whose exclusive jurisdiction over tribal persons in tribal matters is laid out in the *Local Government Laws Constituting Title 20 of the Liberian Code of Laws Revised* 2011. The traditional courts (bound by customary and unwritten laws in domestic disputes, land disputes and petty crimes) are presided over by Indigenous chiefs operating alongside the Anglo-American Liberian legal system. However, traditional courts cannot rule on issues that are governed by statutory law. Their decisions may be reviewed by the statutory court system or appealed to a hierarchy of

(Government, ACT Magistrate Court, 1 September 2007) 28

<<http://www.ajja.org.au/Ind%20Courts%20Conf%2007/Papers/Madden.pdf>>.

¹²⁷⁷ See the Aboriginal Sentencing Courts and Conferences in South Australia, available at <<http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/Pages/Aboriginal-Sentencing-Courts-and-Conferences.aspx>>

¹²⁷⁸ Elena Marchetti, ‘Indigenous Sentencing Courts’ (2009) 5 *Indigenous Justice Clearinghouse Research Briefs* 1. ¹²⁷⁹ Weatherburn, above n 689, 25–29.

¹²⁸⁰ The Australasian Institute of Judicial Administration, *Indigenous Issues and Indigenous Sentencing Courts* (11 November 2014) Australasian Therapeutic Jurisprudence Clearinghouse

<<http://www.ajja.org.au/index.php/research/australasian-therapeutic-jurisprudence-clearinghouse/indigenous-issues-and-indigenous-sentencing-courts>>. Also see *Bugmy v The Queen* (2013), where the appellant, an Aboriginal man who has been exposed to alcohol and violence including watching his father stab his mother 15 times led him to frequent contact with the criminal justice system between the ages of 12 and 29 as reiterated by Judge Lerve noted Mr Lawrence’s submission that the appellant is ‘an Aboriginal man who grew up in a violent, chaotic and dysfunctional environment’ and that ‘*Fernando* type considerations’ applied.

Hoeben JA said that consideration of the appellant’s background of social deprivation remained a matter of relevance, which could properly be taken into account in sentencing. However, any reduction on this account would be ‘modest’.

¹²⁸¹ Lawyers Committee for Human Rights, above n 1058, 18.

¹²⁸² Judiciary Branch of Liberia, *Judiciary Law - Title 17 - Liberian Code of Laws (Revised)* (Ministry of Commerce and, 1972) 2 <<http://www.moci.gov.lr/doc/Judiciary%20Law%201.pdf>>.

chiefs, the Ministry of Internal Affairs and, in some cases, the President.¹²⁸³ Therefore, Indigenous Peoples in Liberia are still beholden to the Western legal system in Liberia and all of its biases.

When Indigenous People in Australia and Liberia interact with the settler-colonist court system, they still face significant racial bias.¹²⁸⁴ As discussed in chapter 3, systemic issues of concern affecting the dispensation of justice for Indigenous Peoples by the settler-colonist legal system include racism and discrimination, whether implicit, explicit or unconscious. Ambiguous and difficult to compile, claims of pervasive, unconscious racism and discrimination in the court system are branded as ‘microaggressions’, which are devalued as egregious defamation and irresponsible aura.¹²⁸⁵ Peggy Cooper Davis finds claims of racism and discrimination are well founded and should be examined and understood.¹²⁸⁶ Angela Harris warns that unconscious racism,¹²⁸⁷ though arguably less offensive than purposeful discrimination, is no less harmful¹²⁸⁸ and is more perilous in many ways because it is often unrecognisable to both the survivor and the perpetrator.¹²⁸⁹ By emphasising blame rather than injury, restoration and rehabilitation, settler-colonist courts tend to satisfy the psychological needs of the uninjured party whilst leaving survivors without relief.¹²⁹⁰ Legal pluralism and racial discrimination affect Indigenous women by virtue of their Indigeneity. Moreover, gender bias is also present in the legal systems of Liberia and Australia. Therefore, it is also important to examine how patriarchy in the legal system affects Indigenous women by virtue of their gender.

4.3 Male-Dominant Traditional, Political and Legal Establishments

Traditional and Anglo legal systems spring from patriarchal societies and, as a result, are dominated by males. Traditional Law tends to respect ‘old wise men’, who are respected as elders with accumulated knowledge and experience, as well as guardians or protectors of law, peace and order. Children, young adults and women¹²⁹¹ are expected to accept and conform to the dictates of cultural norms without question, which is a form of subjugation.¹²⁹² The affairs of a local unit are under the jurisdiction of a small council of old men, qualified by seniority and distinction, who have their discussions in secret conclave.¹²⁹³ Whenever there is a breach of sacred law, Indigenous ritual leaders decide on appropriate punishment during their secret

¹²⁸³ Lawyers Committee for Human Rights, above n 1058, 18.

¹²⁸⁴ Berndt and Berndt, above n 1177, 347.

¹²⁸⁵ Peggy C Davis, ‘Law as Microaggression’ (1989) 98 *Yale Law Journal* 1559, 1559, 1565.

¹²⁸⁶ *Ibid* 1560.

¹²⁸⁷ Charles R Lawrence III, ‘The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism’ (1987) 39(2) *Stanford Law Review* 317, 327. Professor Charles Lawrence defines unconscious racism as the ideas, attitudes, and beliefs developed in American historical and cultural heritage that cause Americans unconsciously to ‘attach significance to an individual’s race and [which] induce negative feelings and opinions about non-whites’.

¹²⁸⁸ Angela J Davis, ‘Prosecution and Race: The Power and Privilege of Discretion’ in Susan D Carle (ed), *Lawyers’ Ethics and the Pursuit of Social Justice: A Critical Reader* (New York University Press, 2005) 245, 253.

¹²⁸⁹ *Ibid*.

¹²⁹⁰ *Ibid*.

¹²⁹¹ Basedow, above n 601, 224.

¹²⁹² Berndt and Berndt, above n 1177, 338.

¹²⁹³ Basedow, above n 601, 225.

meetings.¹²⁹⁴ The practice of the tribal council¹²⁹⁵ or town or paramount chief¹²⁹⁶ (a hereditary position similar to the hereditary peerage system of the male-dominant House of Lords) is the single physical authority for maintaining social order.¹²⁹⁷ As the head of a monocratic system in Indigenous Liberia, the king or chief is sovereign, though he is subject to the traditional council and abides by tribal sanctions and customs.¹²⁹⁸ However, patriarchy is not only a characteristic of Indigenous Customary Law.

Liberia and Australia maintain legal systems that are male dominant, paternalistic and patriarchal whilst professing to be equal and just. Liberia and Australia inherited legal systems from the governments of the United States and England, which sustained the colonial *status quo* by effecting discriminatory law and policy that excluded Indigenous women from participating in political and social states of affairs (*see* Table 4.1 below). For example, it took England 900 years to gain its first white woman judge in the House of Lords, Dame Brenda Hale.¹²⁹⁹ Native American women have yet to be represented in the United States Congress.¹³⁰⁰ It is fair to note that Australia has continued to reform its legal system since colonisation.

Reforms in Australia have reduced male dominance, but rights for Aboriginal women lag behind. Australia is hailed as one of Western society's most progressive democracies. It is the second country in the world to grant (white) women the right to vote, having done so with the *Commonwealth Franchise Act* 1902. Although South Australia and Western Australia granted women the right to vote in 1895 and 1899 respectively, Aboriginal Peoples as a group were not granted the right to vote in federal elections until 1962 via amendments to the *Commonwealth Electoral Act* 1918. Further hampering advancement, the *Australian Constitution* 'has no Bill of Rights, which prevents a legislature from passing laws that infringe upon basic human rights, such as freedom of speech'.¹³⁰¹ Passing laws that ensure equal rights for Indigenous women is made more difficult by their underrepresentation in the political system.

¹²⁹⁴ Berndt and Berndt, above n 1177, 343.

¹²⁹⁵ Ibid 348, 350.

¹²⁹⁶ Dunn and Holsoe, above n 104, 38. Dunn and Holsoe describe a Liberian Chief as one who derives power from traditional customs, inheritance, and mutual consent. Once power was conferred, the Chief was at liberty to exercise wide discretion in matters related to the protection and preservation of life, liberty and property of his people. If the Chief was found to be tyrannical, authoritarian, or despotic, power may be lost. Upon exhibition of good character, generosity, and charisma, chieftaincy was increased. When the modern Liberian state was set-up, it coexisted with that of the Indigenous political systems. In 1904, the Liberian state altered the traditional chieftaincy and created a single structure under a central authority. Paramount, town and village chiefs represented 'native' authority below state appointed district commissioners. A second reform took place in the 1920's that divided the Hinterland into three provinces, subdivided into districts, which were subdivided into clans. This then subjected the nomination of paramount chief to council of clan chiefs, who were in turn selected based on presidential appointment.

¹²⁹⁷ Wulah, above n 169, 145.

¹²⁹⁸ Azikiwe, above n 301, 24.

¹²⁹⁹ House of Lords Information Office, 'History of the House of Laws' 1 <<http://www.lordspublications.parliament.uk/pdf/H-076.pdf>>.

¹³⁰⁰ Adrian Jawort, *Denise Juneau: First American Indian Congresswoman?* (6 November 2015) Indian Country Today Media Network.com <<http://indiancountrytodaymedianetwork.com/2015/11/06/denise-juneau-first-american-indian-congresswoman-162341>>.

¹³⁰¹ *See* page xx of the Pocket Edition of Australia's Constitution (2014).

The *Australian Constitution* established the Commonwealth of Australia, a Federal Government, founded in Montesquieu's *tripartite system*,¹³⁰² known as the *separation of powers*. The Federal Government of Australia comprises three branches: executive, judiciary and the legislature (Parliament). The executive is the administrative arm, made up of government employees responsible for operating and upholding the law. Under the Federal system in Australia, powers are shared between the States and the central government. Generally, the specific areas of legislative power, also called 'heads of power' given to the Commonwealth government, are taxation, defence, foreign affairs, and postal and telecommunications services. The States, on the other hand, retain legislative power over other matters and elements that exist within their borders, including police, hospitals, education and public transport.¹³⁰³ The judiciary is particularly critical for protecting Aboriginal rights, as described above.

The judiciary is responsible for interpreting all of Australia's laws by way of making judgments about the law but lacks equal participation by women. The High Court of Australia is the highest court in the country and has had 12 Chief Justices and 42 justices since its establishment in 1903 up to 2015. Of the 54 justices ever appointed to the High Court of Australia, 50 (93 percent) were white men and four (7 percent) were white women. The first female justice in Australia, Honourable Mary Gaudron, was appointed by former Prime Minister Hawke on 6 February 1987. Eighteen years later,¹³⁰⁴ over a period of four years (2005–09), three female justices were added. Former High Court Justice Michael Kirby shared his thoughts about the court after Justice Gaudron retired 10 years before mandatory retirement, stating that The High Court was now a more 'blokey place'.¹³⁰⁵ Twenty-eight percent (303) of all judges (1 052) in Australia in 2014 were female. A list of female judges and magistrates in Australia compiled by the Australian Institute of Judicial Administration (12 March 2014) shows that 86 (28 percent) of the 226 judges and magistrates across Australia were females (also *see* Appendix V).¹³⁰⁶ Of the 30 female judges and magistrates across Australia, only three (Sue Gordon, Pat O'Shane and Rosa Falla) were widely identified as Indigenous Peoples in Australia.

Women are also underrepresented in the Australian legislature, including in the position of Prime Minister. The role of the Parliament, which comprises the legislature, is to make and amend the law. By convention, the Prime Minister is a member of the House of Representatives and also a Member of Parliament. Since the establishment of the constitutional monarchy in

¹³⁰² Charles de Secondat Baron de Montesquieu, *The Spirit of Laws: The Complete Works* (T Evans, 1777) vol 1, 234–236.

¹³⁰³ See the Government of Australia website available at <<http://www.australia.gov.au>>.

¹³⁰⁴ From 1987 to 2005 when the second female justice, Susan Crennan, was appointed by former Prime Minister John Howard

¹³⁰⁵ Hon Justice Michael Kirby, 'Women in Law - Doldrums or Progress?' (Public Lecture at the Women Lawyers of Western Australia, Perth, Western Australia, 22 October 2003) <http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_22oct.html>.

¹³⁰⁶ See AIJA at <<http://www.aija.org.au/JudgesMagistrates2014.pdf>>

1901, there have been 28 prime ministers,¹³⁰⁷ all of whom were white males, except for one female, Julia Gillard. Even farther from being Indigenous, seven (25 percent) of the 28 Prime Ministers, including Julia Gillard, was born in the United Kingdom. Former Prime Minister Chris Watson was born in Chile. The underrepresentation of women in the role of Prime Minister is representative of their underrepresentation in the legislature as a whole.

Table 4.1: List of Aboriginal Women Members of Parliament in Australia

#	Member	Party	Parliament	Constituency	Indigeneity	Term	Notes
1	Pat O'Shane		NSW	Aboriginal Affairs	Yalangi	1981-1986	First Aboriginal person to become a permanent head of a ministry in Australia, first Aboriginal to earn a law degree, and the first Aboriginal barrister
1	Carol Anne Martin	ALP	WA	Kimberley	Noongar	10 Feb 01 – 9 Mar 13	First Indigenous woman to be elected to an Australian parliament
2	Marion Scrymgour	ALP	NT	Arafura	Tiwi	18 Aug 01 – 6 Aug 12	First Indigenous woman to become a Minister
3	Kathryn Hay	ALP	TAS	Bass	Noongar	20 Jul 02 – 18 Mar 06	Former Miss Australia
4	Linda Burney	ALP	NSW	Canterbury	Wiradjuri	22 Mar 03 -	
5	Alison Anderson	ALP	NT	MacDonnell/ Namatjira	Arrente	18 Jun 05 -	
6	Malarndirri McCarthy	ALP	NT	Arnhem	Yanyuwa	18 Jun 05 – 6 Aug 12	
7	Larisa Lee	CLP	NT	Arnhem	Jawoyn	25 Aug 12 -	
8	Bess Price	CLP	NT	Stuart	Arrente	25 Aug 12 -	
9	Josie Farrer	ALP	WA	Kimberley	Kija	9 Mar 13 -	
10	Nova Peris	ALP	CTH	Senator for NT	Gija, Yawuru, Iwatja	7 Sep 13 -	First Indigenous woman elected to Federal Parliament
11	Jacqui Lambie	PUP	CTH	Senator for TAS	Plangermaireene	1 Jul 14 -	
12	Leanne Enoch	ALP	QLD	Algerger	Nunukul – Nughi	31 Jan 2015 -	

Legend: ALP = Australian Labour Party, CLP = Country Liberal Party, IND = Independent, PUP = Palmer United Party
Source: <http://www.aph.gov.au>; <http://www.aec.gov.au/indigenous/milestones.htm>

The Australian Parliament consists of two Houses (the House of Representatives and the Senate) and the Queen, represented in Australia by the Governor-General. In 2014, the 150 members of the House of Representatives each represented an electorate. Of these, 110 (73 percent) were males (1 percent of whom are of Aboriginal descent)¹³⁰⁸ and 40 (27 percent) were white females. The 76 members of the Senate were evenly distributed amongst the six states, with each having 12 senators. Northern Territory and the Australian Capital Territory have two senators each. Of the 76 Senators, 29 (38 percent) were women, with Nova Peris of the Gija, Yawuru, and Iwatja heritage becoming the first Indigenous woman to be elected in 2013. Marion Scrymgour, a Tiwi woman, was the first Indigenous woman government minister. Since 15 August 1971, when Neville Bonner became the first Indigenous politician to enter the

¹³⁰⁷ See the National Archives of Australia, Australia's Prime Ministers at <http://primeministers.naa.gov.au/primeministers/>.

¹³⁰⁸ Kenneth George Wyatt is the first and only Aboriginal House of Representative Member of Parliament in the Federal Government of Australia. He represents the Hasluck electoral division in Western Australia for the Liberal Party. He is a Noongar, Yamatji and Wongi of Indian, English and Irish descent (*see* http://www.aph.gov.au/Senators_and_Members/Parliamentarian?MPID=M3A).

Australian Senate, there have been 32 Indigenous members of the 10 Australian Legislatures. Of these, 17 were elected to the Northern Territory Legislative Assembly, five to the Australian Federal Parliament, four to the Western Australia Parliament, three to the Queensland Parliament and one each to Tasmania, New South Wales and the Australian Capital Territory. Of the 32 Aboriginal members represented in the Australia Legislature between 1971 and 2014, 12 were Aboriginal women. These 12 women constitute 6 percent of the total number of members, compared to the 27 percent representation of white women in the Federal Parliament (see Table 4.1). Unfortunately, women are similarly underrepresented in the Liberian political system.

Liberia inherited a flawed political and legal system from the United States. Before the arrival of settler-colonists, political institutions in Native Liberia emphasised chieftaincy rule over family, clan, kingdom and confederacy. For example, in the 15th century, the Kru Confederacy of Liberia, founded by the Abron (a subgroup of the Akan Language Group of West Africa) was described as ‘well organised’ socially, legally and politically.¹³⁰⁹ However, after 1822, the establishment of Liberia’s political structure was heavily influenced by its colonial and slave master, the United States, represented by the ACS. The republican form of government, adopted by both the United States and Liberia, has vestiges of the Westminster System, particularly regarding the organisation and legislative ability of both the Senate and the House of Representatives. Chapters V, VI and VII of the *Liberian Constitution* 1986 distribute powers amongst legislative, executive and judicial branches of the government. However, the independence of the three branches of government is not a straightforward separation of powers in terms of the ideal of modern democracies. The extent to which the branches of government fuse and interfere with each other’s authority is elusive in some regards and can be paralysing in others. For example, in the republican form of government, it is assumed that no one is above the law. However, in Liberia (and Australia), presidential privileges and immunities allow the Head of State to pardon prisoners,¹³¹⁰ enforce executive orders¹³¹¹ and exempt themselves from war-crime prosecutions whilst in power.¹³¹²

¹³⁰⁹ Azikiwe, above n 301, 23.

¹³¹⁰ Executive Mansion of Liberia, ‘President Sirleaf Grants Executive Clemency to 32 Inmates in Prison across the Country’ *Executive Mansion News* (Monrovia, Liberia), 23 December 2014 http://www.emansion.gov.lr/2press.php?news_id=3166.

¹³¹¹ James Butty, ‘Backlash over Liberian President’s Executive Order’ *Voice of America* (Monrovia, Liberia), 8 December 2014 <<http://www.voanews.com/content/backlash-over-liberian-presidents-executive-order/2549911.html>>.

¹³¹² Truth and Reconciliation Commission of Liberia, *Truth and Reconciliation Report* (2008) 271–272; FPA Staff Reporter, ‘War Crimes Lists’, *Front Page Africa*, 5 March 2015, at <http://www.frontpageafricaonline.com/index.php/news/4664-war-crimes-list-culture-of-impunity-unlikely-to-continue>; Staff Reporter, ‘As Liberia govt seeks clarification from U.S. on visa revocations, Kabinah J’aneh, Eugene Nagbe, and Geraldine Doe-Sheriff prevented from entering the USA’, *Hints News Network*, 24 July 2014, at <http://hintsnewsnetwork.com/?p=3646>; Staff Reporter, ‘Sirleaf starts to form government, some appointments spark protest’, *IRIN News*, 14 February 2006, at <http://www.irinnews.org/report/58143/liberia-sirleaf-starts-to-form-government-some-appointments-spark-protest>; US Immigration and Customs Enforcement, *Liberian human rights violator removed from US* (2012) News Releases - ICE Newsroom <<http://www.ice.gov/news/releases/liberian-human-rights-violator-removed-us>> at 6 March 2015; FPA Staff Reporter, ‘Woewiyu pleads not guilty - Judge denies him bail in fraud case’, *Front Page Africa*, 19 May 2014, at <http://allafrica.com/stories/201405201200.html>; Tewroh-Wehtoe Sungbeh, ‘Woewiyu’s arrest by US officials confirms our inability to pursue our own war criminals’, *The*

The republican model was further degraded by the rise of a single-party political system in Liberia. The *Liberian Constitution* 1820, 1839 and 1847 were silent on the matter of political parties. Historically, two major political parties were formed along racial or pigmentation lines in Liberia after its independence in 1847. The Republican Party, made up of African American settler-colonists with mixed African and European ancestries, disappeared after the death of the first President, Roberts, in 1876. Modelled after the United States Whig Party, the Liberian True Whig Party was founded on Western expansionism ideology that arose in 1869 in Clay-Ashland (a settler-colonist colonial settlement). Daniel Webster, Henry Clay (co-founder of the United States Whig Party), and Abraham Lincoln, all members of the United States Whig Party, also happened to be founding members of the ACS. The Liberian True Whig Party, composed of dark-skinned elite settler-colonists, began its century-long reign from 1878 to 1980 with the election of former President Anthony William Gardiner.¹³¹³ The existence of a one-party state has been criticised as the main root cause of Liberia's political and legal travesty,¹³¹⁴ and particularly its exclusion of and discrimination against Indigenous Peoples in Liberia.¹³¹⁵

As with Australia, many Liberian heads of state were not born in the country and most were not Indigenous Peoples. Liberia has had a total of 29 presidents (27 males and two females) along with six interim leaders. The first 12 Liberian presidents were all born in the United States. The remaining 17 were born in Liberia, but only two were of Indigenous descent (Samuel Doe and Moses Blah). The longest serving was President Tubman, who ruled for 27 years (1944–71). Of the three female heads of state in Liberia, Ellen Johnson Sirleaf is the first and only one democratically elected, not just in Liberia but in all of Africa (*see* Appendix VI for more details). Also, as in Australia, women are also underrepresented in the other branches of government.

Liberian Dialogue, 15 May 2014, at <http://theliberiandialogue.org/2014/05/15/woewiyu-arrest-by-us-officials-confirms-our-inability-to-pursue-our-own-war-crime-criminals/>; Alphonso W. Nyenuh, 'The war crimes case against Tom Woewiyu - Why the US must prosecute', *Front Page Africa*, 13 June 2014, at <http://www.frontpageafricaonline.com/index.php/op-ed/commentaries-features/1938-the-war-crimes-case-against-tom-woewiyu-why-the-u-s-must-prosecute>; The US District Court, Pennsylvania, 'Indictment of Jucontee Thomas Woewiyu' (2014); Anonymous, 'America ready for Liberians accused of war crimes?', *Heritage*, 29 July 2014, at Online. Page 268 of the *Truth and Reconciliation Commission Report 2009* lists eight leaders of warring factions in Liberia, including Charles G. Taylor who is currently serving 50 years sentence in Den Haag for war crimes and crimes against humanity committed in Sierra Leone (not Liberia); George Boley, former Minister of Education and Minister of State and Presidential affairs who was deported from the US under the *Child Soldiers Accountability Act 2008*; and Prince Y. Johnson, former Commanding General of the Armed Forces of Liberia, now Senior Senator (elected) of Nimba County. Pages 271-272 of the TRC (2009) list 50 persons including President Ellen Johnson Sirleaf, Associate Supreme Court Justice, Kabinah Ja'neh, and Tom Woewui, former Defense Minister of Charles Taylor's government who is undergoing trial in the US for fraud.

¹³¹³ Harold D Nelson, *Liberia: A Country Study* (Headquarters, Department of the Army, 3rd ed, 1985) <http://www.globalsecurity.org/military/library/report/1985/liberia_1_truewhigascend.htm>.

¹³¹⁴ above n 1096, 12–14. The US State Department Human Rights Report asserts that the Liberian law does not provide criminal penalties for official corruption, even when so blatantly displayed by legal authorities: '[j]udges were susceptible to bribes to award damages in civil cases. Judges sometimes requested bribes to try cases, release detainees from prison, or find defendants not guilty in criminal cases. Defense attorneys and prosecutors sometimes suggested defendants pay bribes to secure favorable rulings from or to appease judges, prosecutors, jurors, and police officers. The Ministry of Justice continued its calls to reform the jury system'.

¹³¹⁵ William Q Harmon, 'TWP Warned against Political Dominance, Exclusion' *The Daily Observer* (Monrovia, Liberia), 9 July 2015.

Women are not equally represented in the Liberian legislature. The Liberian Legislature comprises the Senate and the House of Representatives, elected for nine- and six-year terms, respectively.¹³¹⁶ Of the 30 senators in the 53rd Legislature of Liberia, only three (10 percent) were females, two (7 percent) of whom come from an Indigenous background. Of the 64 members of the House of Representatives of the 53rd Legislature of Liberia, seven (11 percent) were females, of which four (6 percent) are believed to come from an Indigenous background. However, regardless of their underrepresentation, women in Liberia have made significant contributions.

Liberian women have made noteworthy contributions to national and international politics throughout the 20th century. The *Liberian Constitution* 1847 was also silent on women's election to political offices, which have been held mostly by males. Also, Liberian women (including Indigenous women and men) only acquired the right to vote on 7 May 1946, almost 100 years after Liberia's founding.¹³¹⁷ However, evidence of Native Liberian women's participation in political leadership dates back to 1892, when Queen Famata Bendu Sandemani of Vai country ruled the Gawula district of Cape Mount.¹³¹⁸ Angie Brooks-Randolph (1928–2007), who is of settler-colonist heritage, was the first female minister (Attorney-General, 1953–58) and the first female Associate Justice of the Sixth Judicial Circuit Court (1977–80) in Liberia. She was also the first female president of the 24th Session of the UN General Assembly and the second woman from any nation to head the UN General Assembly (1969–70).¹³¹⁹ Ruth Perry served as interim president (and the first woman Head of State in Africa) from November 1996 to August 1998.¹³²⁰ Nyorblee Karngar-Lawrence is the first Indigenous Female Senator of Grand Bassa County. Also, despite the relatively low percentage of Liberian women's participation in politics, 35 percent of Liberia's cabinet members were female during President Johnson-Sirleaf's leadership.

Identifying Liberian politicians as strictly Indigenous is challenging given the generations of structural violence that robbed Liberians of their Indigenous roots. As indicated in chapter 2 and 3 above, historically, the Christianising project plucked Indigenous children from their traditional locales and put them into settler-colonist enclaves for the purpose of 'civilising' them. Through this process, many took on English names and adopted an 'American' way of living. The process of acquiring a new 'Americanised' identity resulted in the loss of Native Liberians' Indigenous roots. Furthermore, partly due to the social stigma associated with being a Native Liberian, many shied away from identifying as an Indigenous person for fear of experiencing discrimination. In some cases, having an English surname, such as Johnson or Henries, means that a person is of settler-colonist heritage. An illustration in point is that of the

¹³¹⁶ Article 46 of the *Liberian Constitution* states that, 'all Senators shall be elected to serve a term of nine years', and Article 48 states that: '[t]he House of Representatives shall be composed of members elected for a term of six years'.

¹³¹⁷ Rosemarie Skaine, *Women Political Leaders in Africa* (McFarland and Co, 2008) 120–122.

¹³¹⁸ Dunn and Holsoe, above n 104, 153; Sheldon, above n 913, 219.

¹³¹⁹ Jennifer S Uglow, Frances Hinton and Maggy Hendry (eds), *The Northeastern Dictionary of Women's Biography* (Northeastern University Press, 3rd ed, 1999) 91; Sheldon, above n 912, xxii, 38; Dunn and Holsoe, above n 104, 30.

¹³²⁰ Sheldon, above n 913, 96.

current president of Liberia, Ellen Johnson-Sirleaf, who has a mixed-race (part German) mother and an Indigenous father of the Gola Language Group from Bomi County. When her father was ‘sent to the city’ (or informally adopted) to be raised by the McGrity family, his first name, ‘Karnley’, was Westernised to ‘Carney’ and his last name changed to ‘Johnson’. His longstanding association with the settler-colonist Liberians filtered down to his daughter Ellen, who later reaped benefits from being identified with former slave immigrant settlers. Until the publication of her memoir, wherein she reveals her Indigenous identity, many Liberians misidentified President Johnson-Sirleaf as descending from the elite settler-colonists.¹³²¹

Table 4.2: Numbers, percentages and sex of Indigenous representatives in Liberia and Australia

Description	AUSTRALIA				LIBERIA			
	#	Males (%)	Females (%)	Aboriginal Female	#	Males (%)	Females (%)	Indigenous Females
Representatives	150	110 (73)	40 (27)	0 (0)	30	27 (90)	3 (10)	2 (7)
Senate	76	48 (63)	28 (37)	1 (1)	64	57 (89)	7 (11)	4 (3)
Cab-Ministers	19	16 (84)	3 (16)	0 (0)	19	15 (79)	4 (21)	0 (0)
High Court / Supreme Court Justices	7	4 (57)	7 (43)	0	5	3 (80)	2 (40)	1 (20)
TOTAL	252	178 (71)	78 (31)	2 (0.8)	118	103 (87)	16 (14)	7 (6)

Sources: <http://www.aph.gov.au> and <http://legislature.gov.lr> and legislature.gov.lr (now-defunct website).

The underrepresentation of women in the Liberian and Australian political systems is in direct conflict with the rule of law. Unequal representation in the legislative, executive and judicial branches of government represents unequal access to the process of drafting, executing and interpreting laws. Also, it demonstrates unequal legal and political participation by Indigenous women, whereas the rule of law requires that Indigenous women participate equally. Male-dominance also limits the ability of women to develop a legal system that guarantees their human rights, which is critical for a rights-based conception of the rule of law. Given the challenges facing women in their States’ governments, it is clear why international legal instruments are necessary.

4.4 Summary

There are many relevant international legal instruments that promise to uphold the rule of law. The rule of law in this research is a rights-based concept that implies equality before the law. Equality before the law is a basic human right as stipulated by the *Universal Declaration of Human Rights* 1948, the *International Convention on the Elimination of Racial Discrimination* 1965, the *International Covenant on Civil and Political Rights* 1966, the *International Covenant on Economic, Social and Cultural Rights* 1966, the *African Charter on Human and Peoples’*

¹³²¹ Ellen Johnson-Sirleaf, *This Child Will Be Great: Memoir of a Remarkable Life by Africa’s First Woman President* (Harper, 2009) 11–12.

Rights 2005, the *Racial Discrimination Act* 1975 (Cth.) and the *Liberian Constitution* 1986. These instruments guarantee equal protection and treatment for everyone and in all aspects of the judicial system. However, the literature has shown that the very same law that can be used to protect Indigenous Peoples can also discriminate against them.¹³²² This phenomenon demonstrates a ‘double-edged nature of the law’ or the torsional lever of the law. The metaphor suggests that, depending on which authority anchors the fulcrum, the law can be twisted to protect or abuse rights. Notwithstanding, in many instances, positive law has proven capable of safeguarding the rights of Indigenous Peoples in Liberia and Australia. It is for this reason that this research applies international law instruments where national statutes and domestic law have failed to address systematic violence against Indigenous girls and women. Appendix VII provides a list of relevant international law instruments drawn on in this research to invoke equal protection and treatment of Indigenous girls and women who have suffered systematic violence in Liberia and Australia.

There is no single way to define justice and therefore no single theory of justice that satisfies requirements for easy access, whether one is Indigenous or not.¹³²³ Generally, theories of justice, including questions and concerns about allocation of goods, personal opportunities, access to decision-making processes, fundamental respect amongst people, and basic structures of society, tend to focus on the broader aspect of distributive justice.¹³²⁴ Notwithstanding, justice in the ‘real’ world is a constant process of compromise with the realities of inequity and unfairness, a process that speaks to the challenges of accessing justice that is common to Indigenous Peoples in both Liberia and Australia. Access to justice for Indigenous Peoples in post-war Liberia and Australia encompasses the need to recognise them as individuals with rights to claim their Indigenous identity. Whilst formal legal frameworks tend to undermine and dilute Indigenous collective rights, Indigenous Customary Laws’ systems of dispute resolution, community governance, family law and land management are still dominant in the lives of most rural communities.

Because settler-colonists in Liberia and Australia needed a legal system that would protect their interest in the economic exploitation of the colony, Indigenous Customary Laws were accepted only to the extent that Western-imposed rule of law principles was not compromised. Nevertheless, the implementation of (critical) legal pluralism is possible under careful consideration — that is, a conscious reflection on how Western-dominant principles of the rule of law and human rights should be applied to Indigenous colonised bodies.¹³²⁵ The rule of law does not necessarily need to be at odds with Indigenous Customary Laws because in

¹³²² Garth Nettheim, International Commission of Jurists (1952-) and University of New South Wales (eds), *Aborigines Human Rights and the Law* (Australia and New Zealand Book Co, 1974) 15, 23, and 30.

¹³²³ Karen Lebacqz, *Six Theories of Justice: Perspectives from Philosophical and Theological Ethics* (Augsburg Publishing House, 1986) 9.

¹³²⁴ *Ibid* 10.

¹³²⁵ Pimentel, above n 1169, 34.

many cases, preservation of traditional and indigenous justice systems may be the best means of establishing and preserving the rule of law.¹³²⁶

Although Indigenous Customary Laws issue from social practices, in settler-colonist societies such as Liberia and Australia, Indigenous Customary Laws are perceived as inferior to legislation and judicial decisions.¹³²⁷ The reason for the neglect of and disregard for Indigenous Customary Laws is that settler-colonist states endorse legislation and precedence as the primary sources of law and not unwritten customs couched in oral history and ritualised activity.¹³²⁸ Irrespective of settler-colonists' perception, Indigenous Customary Laws are an expansive legal system with unique ideas of justice for controlling behaviours, ideas that are central features of Indigenous culture and society.

Although the analytical, critical, and evaluative applications of the rule of law tend to be matters that are properly dealt with by philosophers, jurists, politicians and courts of law,¹³²⁹ Dallmayr contends that courts and lawyers cannot maintain lawfulness or the rule of law in a society rent by deep ethnic, economic or other fissures or where there is a widespread sense of corruption, unfairness and inequity.¹³³⁰ Dallmayr suggests that only by remedying or healing these crevices through concrete engagement (or a struggle for recognition, as in the case of Indigenous Peoples) will it be possible to restore the common reasonableness of the law which is the nourishment of legal rule-governance.¹³³¹ Therefore, the function of ascertaining the meaning of the constitution of a state, which is regarded as the fundamental law, as well as of the meaning of acts and statutes made by the legislative body, belongs to the judges and courts who are considered interpreters of the law.¹³³²

Although it took a relatively long time to achieve, the rights of Indigenous Peoples are protected and enshrined in several international law instruments.¹³³³ Affirming that 'Indigenous Peoples have the right to self-determination' (article 3, United Nations Declaration on the Rights of Indigenous Peoples), Anaya argues that 'increased sensitivity to the oppression of indigenous peoples and the resulting international response have been brought about by a burgeoning worldwide social movement in which indigenous peoples themselves are the principal protagonists'.¹³³⁴ Such promising social movements involve Indigenous Women Advocates, such as Irene Watson, who are fighting for justice and equality regarding the

¹³²⁶ Ibid.

¹³²⁷ James AR Nafziger, Robert K Paterson and Alison Dundes Renteln, *Cultural Law: International, Comparative, and Indigenous* (Cambridge University Press, 2010) 166–167.

¹³²⁸ Ibid 168.

¹³²⁹ Costa, above n 1065, 73.

¹³³⁰ Dallmayr, above n 1066, 301.

¹³³¹ Ibid 302.

¹³³² Ibid 289.

¹³³³ Joshua Castellino and Niamh Walsh (eds), *International Law and Indigenous Peoples* (M. Nijhoff Publishers, 2005) xvii; S James Anaya, *Indigenous Peoples in International Law* (Oxford University Press, 2nd ed, 2004) 49–55; Patrick Thornberry, *Indigenous Peoples and Human Rights* (Manchester University Press, 2002) 116–241.

¹³³⁴ Anaya, above n 115, 2; Anaya, above n 1333, 56–57.

intersection of Aboriginal women's laws and 'their intersection with Anglo-Australian laws and contemporary patterns of violence'¹³³⁵ (see chapter 8).

Finally, consider Rosalind Kidd's thought-provoking argument about the legal system inherited by colonial Australians, premised on the supremacy of the Crown:

The former colonies of Canada, Australia and the United States inherited their law from Britain (even after the Revolution, United States courts 'did little to disturb' their inherited legal system). They inherited a legal doctrine premised on the supposed impossibility of the Crown committing an illegal act. This derived from the maxim that 'the King can do no wrong', an immunity that endured in common law as, over time, the King's officer became the public officer. A citizen could only sue the government if the government gave permission. In mid-nineteenth-century England, the doctrine had been practically abandoned with permission to sue routinely granted. But in the colonies such action was deemed interference in government powers.¹³³⁶

This chapter argues that the principles of the rule of law do not offer an appropriate mechanism for Indigenous Peoples to receive fair treatment or access equal justice as survivors of systematic violence. Kidd's quotation above is a good example of the arbitrary nature of the law when it is tilted toward the protection of the powerful elite and their cronies. Winning recognition and acceptance of Indigenous Customary Laws as a respectable and valid legal system is a continuous struggle for Indigenous Peoples. Embracing critical legal pluralism, a great leap towards constitutional recognition in both Liberia and Australia could guarantee equal protection under the law. Whilst openness to critical legal pluralism is a viable alternative, the onus is on Indigenous Peoples to persistently resist the imposition of settler-colonist law on Indigenous communities, especially where such rule of law amounts to differential treatment. It is hoped that in the absence of domestic legal protection for Indigenous Peoples, international law will suffice to buffer Indigenous Customary Laws.

¹³³⁵ Irene Watson, 'Aboriginal Women's Laws and Lives: How Might We Keep Growing the Law?' in Elliott Johnston, Martin Hinton and Daryle Rigney (eds), *Indigenous Australians and the Law* (Routledge-Cavendish, 2nd ed, 2008) 15, 16.

¹³³⁶ Kidd, above n 841, 28.

CHAPTER 5: RESEARCHER'S POSITIONALITY AND REFLEXIVITY

[A]dvocacy efforts become a contentious undertaking where advocacy activities appear to aim to bolster popularity and recognition of the advocates at the expense of the people that advocacy activities are meant to serve. Advocates must be mindful of the adverse outcomes that may result from their advocacy efforts. Although they may have benign intentions, advocates are no less obliged to critically reflect on their work. Advocates who make an effort to reflect on their work through a critical ethical lens can limit the potential for similar 'invisible violence' to occur as a result of their advocacy efforts.¹³³⁷

5.0 Introduction

Too often in my relatively short lifespan, I have wondered why people say, 'It's the law, I'm just doing my job' or 'No one is above the law', or 'Ignorance of the law is no excuse.' Really? What law are they talking about? Is it the same law that still fails to prosecute the boys and men who violently abused innocent civilian children and women¹³³⁸ during the armed conflict in Liberia, even a decade after the war is over? Is it the same law that allowed Western Australia's *Adoption of Children Act* 1896 to steal some 210 000 to 250 000 Aboriginal and Torres Strait Islander children from their families between 1940 and 2012?¹³³⁹ Should 'saying sorry'¹³⁴⁰ or 'divulging bestiality to the Truth and Reconciliation Commission'¹³⁴¹ atone for such hideous crimes against humanity? Is it then safe to assume that Western democracies' rhetoric about the 'rule of law' is a façade?¹³⁴² Or am I being too cynical?

My entire research is based on cynicism about fairness and justice when it comes to applying the principle of the rule of law. This dissertation consists of an honest attempt to subject this complex concept to a close examination, as it pertains to dispensing justice to Indigenous girl and women survivors of systematic violence in Australia and post-war Liberia. The rule of law is widely researched, discussed and glorified as the foundation of the common-law system. It is hailed as the fortress upon which constitutional democracies build legitimacy. Nevertheless, its effectiveness in restoring justice for Indigenous survivors of systematic violence has been spotty at best. From the outset of the research proposal to typing the very last

¹³³⁷ Shafik Dharamsi et al, 'Saving Africa: A Critical Study of Advocacy and Outreach Initiatives by University Students' (2013) 3(1) *Journal of Global Citizenship & Equity Education* 53.

¹³³⁸ Truth and Reconciliation Commission of Liberia, 'Truth and Reconciliation Report', above n 52, 44. TRC Findings show that about 70 per cent of all sexual based violations reported were against women and girls.

¹³³⁹ The Senate - Community Affairs Reference Committee, 'Commonwealth Contribution to Former Forced Adoption Policies and Practices' (Government Report, February 2012) 337, 8.

¹³⁴⁰ Australian Broadcasting Corporation, above n 489; Australian Broadcasting Corporation, above n 86; *ibid*; Johnson, above n 755; 'Sorry? Nothing's Changed!' *Uncle Bob Randall on the National Apology - Part 1 of 2* (The Juice Media, 2009) <http://www.youtube.com/watch?v=GK6n1UGPeBc&feature=youtuve_gdata_player>.

¹³⁴¹ Sungbeh, above n 997; The US District Court, Pennsylvania, *Indictment of Jucontee Thomas Woewiyu*, Court Indictment, 30 January 2014; Truth and Reconciliation Commission of Liberia, above n 52; Jerome Verdier, Prince Johnson: Contemporary History of the Conflict" Institutional and Thematic Inquiry Hearing 2014 ("Prince Johnson: Contemporary History of the Conflict" Institutional and Thematic Inquiry Hearing").

¹³⁴² In Liberia, Ellen Johnson Sirleaf, president of Liberia; Prince Yormie Johnson, Senator for Nimba County; and Liberia's Ambassador Extraordinary and Plenipotentiary, and Commany Wesseh, Liberia Permanent Representative to the United Nations have all been accused of war crimes and crimes against humanity in Liberia.

sentence, I have been challenged to produce a logical, coherent critical analysis that could provoke law and policymakers to seriously rethink moral and legal justice for all women. I have also been constantly challenged to reflect on my experiences as a survivor of violence and war on one hand, and a Western-educated Liberian with identity concerns on the other. How do I capitalise on my new-found Indigenous identity to help raise the voices of marginalised girls and women, so that they can take ownership in creating and producing knowledge and the stories of their lives? This question led to persistent internal and external discordance, which in turn resulted in many sleepless nights of reflection.

Past personal trauma and re-traumatisation through the research process inform the goals and methodological underpinnings of this research. For a survivor of war and gender violence, listening to countless testimonies of vulnerability, exploitation and abuse gives rise to anger and rage. It also triggers personal memories of traumatic experiences from years ago with associated feelings of injustice. However, my aim is not to destroy or hurt, but to seek justice, equality and fairness. In this way, I consciously opt to make public my private experience as a survivor of abuse struggling to locate her Indigenous roots, using the doctoral dissertation as a platform that, by its nature and design, strives to be critical and objective. Because my personal experience drives my passion in the field but also threatens the perception of objectivity, it is important to draw on methodologies that lend validity to the research and dissertation.

Two theories help bridge the gap between the subjectivity of personal experience and the objectivity of an academic inquiry. Survivor narrative and a phenomenologically focused theory fit comfortably with identity politics, to which critical race theory is also connected.¹³⁴³ Phenomenological inquiry leads to a focus on private individual actors, including survivors and perpetrators, rather than to only the structural sources of systematic violence.¹³⁴⁴ The phenomenological version of critical legal theory supports a critique of the public-private distinction. Also, generally, people experience themselves as isolated individuals with private complaints that they could not, without substantial assistance, turn into public ones.¹³⁴⁵ However, with validity reinforced by phenomenology, survivor narrative adds agency by acknowledging the healing and knowledge-generating power of recounting survivor experiences.

I reveal my private individual experience only to the extent that deep reflection and institutional support affords me the confidence, audacity and trust to do so in a fashion that restricts my biases and improves research outcomes. Trust I have built with community members over the years gives me the confidence to share my own experiences and to provide a platform for their narratives. Also, working with three outstanding supervisors and mentors of colour allows me to trust that my perspectives will be understood and valued. Finally, I find confidence in academia's ability to embrace novelty without necessarily aligning with Western hegemonies of 'how Ph.D. research should be done'. Such freedom of inquiry has enabled me

¹³⁴³ Tushnet, above n 252, 87.

¹³⁴⁴ Ibid 85.

¹³⁴⁵ Ibid 84.

to explore innovative ideas and to reflect on personal influences affecting this dissertation.¹³⁴⁶ However, as a survivor of gender violence, I find that approaching the subject from within the academy places me in a dual role.

Situating me as an Indigenous survivor of gender violence and an academic advocate, the research design hybridises me into the insider-outsider researcher role. This role poses personal challenges, ethical questions and obstacles to objectivity. However, reflecting on the insider-outsider role fuels my resolve to articulate my personal biases, assumptions and challenges in designing this research. It also offers me an opportunity to navigate to a mental space of acceptance, legitimacy and validity throughout the data collection phase, a space difficult to claim when it bridges the physical trauma of one's painful past and the mental distress resulting from not knowing one's identity. Therefore, an examination of the inside-outside role is important to understand its impact on the research.

The goal of this chapter is to articulate the subjectivity my experiences bring to this research. The purpose is to aid readers in taking a scholarly exploration with me as I traverse the public/private, critical/sensitive, qualitative/quantitative and academic/pragmatic aspects of this work. It is worth noting that the essence of this work is not to elevate or condemn any one research approach or country over another but to illustrate the novelty, validity and richness of conducting such sensitive research with passion and purpose. In an attempt to promote a deeper understanding of this kind of work, I intend to unpack my thoughts and lived experiences and to incorporate them into the research process. Before discussing the two lines of personal reflection emerging from the research thought process, I will first consider a conceptual underpinning of survivor discourse as it relates to the insider-outsider viewpoint of feminist legal theory. A duality of thought which promotes my motivation for this chapter is grounded in 1) my efforts to transcend the scars left as a result of Liberia's civil war; and 2) my ongoing experience of transforming my Indigenous identity.

5.1 Survivor Discourse

Indigenous narratives have been sustaining Indigenous Peoples for centuries, regardless of the traumatising and coercive impacts of European and African American colonisation in Australia and Liberia, respectively. As discussed above, colonisation intended to disrupt Indigenous knowledge systems, yet elements of Indigenous epistemology, cosmology, culture and lived experiences persist in diverse ways. Advancing the idea of decolonisation, Taiaiake Alfred asserts that the larger process of regeneration, as with the process of decolonisation, begins with the self — a 'reconstruction of traditional communities' based on original narratives of Indigenous Peoples. Taiaiake, agreeing with Paul Keal, argues that institutional approaches (including conventional research methods and design) do not lead to decolonisation or self-

¹³⁴⁶ Shafik Dharamsi, *Discursive Constructions of Social Responsibility* (PhD Thesis, University of British Columbia, 2003) 90 <<https://circle.ubc.ca/handle/2429/15940>>.

determination but rather embed Indigenous Peoples in colonial institutions.¹³⁴⁷ Linda Tuhiwai Smith supports the insertion of Indigenous knowledge when developing and implementing conventional research projects in Indigenous communities. Collectively, the thoughts and words of Indigenous Peoples represent a foundation of knowledge where, through survivor storytelling narratives, they can seek guidance and support in their efforts to decolonise their minds and communities.¹³⁴⁸ Ethnographic research is one small method Indigenous feminist researchers can use to explore the power of storytelling as a tool for knowledge creation and production. The social skills used to perform ethnographic research attach us to real human beings in deep ways. Using reflective practice, informed by standpoint epistemology, Indigenous feminist researchers are able to make privileged data visible, identify historical forces at work and potentially affect the creative role of subjectivity, as survivors seeking to understand ours and others' experiences.¹³⁴⁹ However, a challenge to the infusion of power between researcher and participants in the reflective and dialogic techniques employed in this research is the way intimacy between researchers and informants can mask objectification of the research.¹³⁵⁰

This research challenges my integrity, my story and the very purpose of examining such a delicate topic. Indigenous feminist dilemmas in ethnographic fieldwork of this sort are as much ethical and personal as academic and political. Reflecting on the goals of my fieldwork, I am forced to question the legitimacy of my identity and my ability to conduct the research. The core of this dilemma revolves around the power dynamic between irreconcilable contradictions in my position as a survivor of abuse. Being born in Liberia (an insider) but lacking confidence in identifying as a *bona fide* Indigenous Liberian (an outsider) coupled with being a survivor of abuse (an insider) yet having the opportunity to leave Liberia to acquire higher education (an outsider) stirs up conflicted feelings but also yields a position of power. It leaves me asking: am I a valid member of the population being studied (Indigenous women survivors of systematic gender violence)?¹³⁵¹ Therefore, the power dynamics of carrying out research are confronted and treated throughout the fieldwork and post-fieldwork process, creating an identity crisis and enabling re-traumatising encounters. The first dimension of power difference (that is, the researcher-participant phase) is unavoidable when studying marginalized populations.¹³⁵² The second dimension of power (that is, the self-reflection phase) is especially pertinent to an insider-outsider viewpoint.

Identifying challenges associated with insider–outsider research and using strategies to mitigate them, I strive to effectively use an insider position in conjunction with a storytelling

¹³⁴⁷ Taiaiake Alfred and Jeff Corntassel, 'Being Indigenous: Resurgences against Contemporary Colonialism' (2005) 40(4) *Government and Opposition* 597, 611–612.

¹³⁴⁸ Lloyd L Lee, 'The Fundamental Laws: Codification for Decolonization?' (2013) 2(2) *Indigeneity, Education and Society* 117, 118.

¹³⁴⁹ Nancy A Naples, *Feminism and Method: Ethnography, Discourse Analysis, and Activist Research* (Routledge, 2003) 37–38.

¹³⁵⁰ *Ibid* 40.

¹³⁵¹ Sonya Corbin Dwyer and Jennifer L Buckle, 'The Space between: On Being an Insider-Outsider in Qualitative Research' (2009) 8(1) *International Journal of Qualitative Methods* 54, 1.

¹³⁵² Diane L Wolf (ed), *Feminist Dilemmas in Fieldwork* (Westview Press, 1996) 2.

research design to raise the profile and prioritise gender justice interventions for Indigenous women.¹³⁵³ The use of an insider approach is beneficial to research study design because it helps with recruitment and rapport, enabling collaboration, and generating stories rich in content. Using an intersectional approach, Couture, Zaidi, and Maticka-Tyndale explore the fluidity of a researcher's multiple insider–outsider identities which can significantly shape interactions between the researcher and her participants.¹³⁵⁴ Couture, Zaidi, and Maticka-Tyndale found that possessing multiple intersecting identities (for example, Liberian female survivor of war and abuse who is struggling to locate her Indigenous roots) has the potential to increase the comfort of research participants discussing sensitive issues, such as violence against Indigenous women.¹³⁵⁵ However, the outsider position must also be confronted.

The reflexivity and positionality of a researcher must be engaged to overcome some of the challenges of the outsider perspective. One key challenge imposed by an outsider perspective is the presumed superiority or authority of the researcher. Rather than dwelling on the 'weak reading of reflexivity',¹³⁵⁶ this research engages with 'strong reflexivity' to disrupt the authority of the researcher over the participants in the field.¹³⁵⁷ To this end, making the personal political and moving Indigenous women from the margins toward the centre strengthens my insider-outsider approach. Because I am an insider-outsider, my positions in the research are not static, but rather fluid and malleable. My varied connections to the community are never expressed definitively but are ever-shifting across permeable locations in general terms. My position is also negotiated and renegotiated with participants and the community on a persistent basis throughout the data collection period.¹³⁵⁸ This constant process is undergone in an attempt to overcome biases against research participants and assumed power hierarchies. However, the dialogic and reflexive process also reveals an inadequacy in the distinction between outsider and insider.

We all start from different standpoints, which means there are numerous dimensions on which we can relate to members of various communities. In the context of this study, my positionality in this research helps shape the manner in which I enter the 'field' as an Indigenous academic advocate and how I relate to different participants within a particular group.¹³⁵⁹ Recognizing the shifting nature of outsider and insider positions does not negate the significance of situated knowledge for generating more relevant knowledge. Therefore, my experience as a survivor of war and abuse who recently connected to my Indigenous roots

¹³⁵³ Stacy Blythe et al, 'The Challenges of Being an Insider in Storytelling Research' (2013) 21(1) *Nurse Researcher* 8, 8.

¹³⁵⁴ Amanda L Couture, Arshia Zaidi and Eleanor Maticka-Tyndale, 'Reflexive Accounts: An Intersectional Approach to Exploring the Fluidity of Insider/Outsider Status and the Researcher's Impact on Culturally Sensitive Post-Positivist Qualitative Research' (2012) 8(1) *Qualitative Sociology Review* 86, 86.

¹³⁵⁵ *Ibid.*

¹³⁵⁶ Naples, above n 1349, 41.

¹³⁵⁷ *Ibid* 42.

¹³⁵⁸ *Ibid* 49.

¹³⁵⁹ Nancy A Naples and Emily Clark, 'Feminist Participatory Research and Empowerment: Going Public as Survivors of Childhood Sexual Abuse' in Heidi Gottfried (ed), *Feminism and Social Change: Bridging Theory and Practice* (University of Illinois Press, 1996) 160, 177.

provides me a unique vantage point from which to view the experiences of other survivors with identity concerns and the basis for fostering an honest and open dialogue. Notwithstanding, sharing my account does not guarantee mutual understanding on a wide variety of relevant issues.¹³⁶⁰ Through the dialogic process, some disparities between my own and participants' experiences are identified and reconciled. Yet others remained unresolved. This phenomenon is not an isolated case. Nancy Naples, Emily Clark and Heidi Gottfried confirm that many oppressed groups have successfully defied negative constructions through insider and outsider storytelling narratives, and in the process, created powerful social movements.¹³⁶¹ Going public with my survivor story is a key component of my success as an Indigenous Liberian woman, demonstrating a mutually reinforcing relationship between feminist theorizing, activism and resistance. My experience also highlights the ongoing challenge of maintaining egalitarian and participatory research strategies through the collective consensus of decolonisation and traditional research approaches. Accordingly, my commitment to explicate systematic violence against Indigenous women within the intersections of gender, race, class and social status, and lived experience as a survivor influence my diverse perspectives, which are exemplified by the adoption of a multi-theoretical framework.¹³⁶²

Approaching survivor discourse through the lens of intersectionality is a natural outcome of my lived experience and is also supported by the literature. Naples argues that contemporary analyses of survivor discourse have yet to explore intersectionality as the multiple sites through which survivors of abuse come to identify as survivors and interpret their experiences.¹³⁶³ Naples offers a materialist feminist analysis of survivor discourse that attends to the discourse and institutional practices that shape who may speak and who is heard and offers the potential to challenge the depoliticisation and reprivatisation of survivor discourse.¹³⁶⁴ Naples argues that giving greater attention to the material context in which survivors 'come to voice', go public with their experiences of abuse, or engage with each other in defining the meaning of these experiences in their lives, might better address two of the main problems faced within contemporary survivor politics.¹³⁶⁵ First, how to determine when and where certain strategies offer more effective challenges than others; and second, how to remain sensitive to the myriad ways class, race and gender differentially affect survivors' experiences.¹³⁶⁶ Materialist feminist scholars argue for an intersectional approach and resist abstracting gender from other dimensions of social identity. But the dynamics of gender, race, class and social status are

¹³⁶⁰ Ibid 178.

¹³⁶¹ Ibid 179.

¹³⁶² Naples, above n 1349, 52.

¹³⁶³ Ibid 164; Nancy A Naples, 'Deconstructing and Locating Survivor Discourse: Dynamics of Narrative, Empowerment, and Resistance for Survivors of Childhood Sexual Abuse' (2003) 28(4) *Signs: Journal of Women in Culture and Society* 1151, 1154.

¹³⁶⁴ Naples, above n 1363, 1152.

¹³⁶⁵ Ibid.

¹³⁶⁶ Ibid.

embedded in the diverse contexts through which survivor discourse is generated and challenged.¹³⁶⁷

Unfortunately, one persistent challenge to the legitimacy of survivor discourse comes from the very people charged with dispensing justice. Survivor discourse is often positioned in contrast to expert discourse, which is legitimised through a distinction between different forms of knowledge production, one that derives from personal experience and emotional pain versus one grounded in more systematic, and presumably objective, truth claims.¹³⁶⁸ Given the extent to which Indigenous girls and women are abused by men in society, the experience of abuse is a common occurrence that becomes generalized and laden with social stigmas, myths and misunderstandings that remain unchallenged in law enforcement and legal settings, leaving the actual experiences of survivors unrecognized or even dismissed as false. But valuing the standpoint of Indigenous women means believing their description of abusive experiences and treating them as credible representatives of their own experiences. Empowerment as a form of healing can include a confrontation with perpetrators through legal action or as a public declaration. This dissertation is both an opportunity to validate survivor discourse as related by Indigenous women advocates and supported by academic research and to act as my own empowering and healing public declaration.

5.2 Feminism and Empirical Method

Although this is an empirical study, it is important to consider the limits and biases inherent in an empirical inquiry. The theory of knowledge known as empiricism and the scientific paradigm of positivism assume that research is akin to measuring. However, despite the stringent precautions demanded by the scientific methodology in taking account of overt variables, limitations may persist where submerged cultural considerations have been overlooked because they are not always readily identifiable or acknowledged by researchers.¹³⁶⁹ The challenge for understanding the social world is developing operational definitions of phenomena which are reliable and valid. Tuhiwai-Smith argues that Western research draws from an ‘archive’ of knowledge and systems, rules and values which stretch beyond the boundaries of Western science to the system now referred to as the West.¹³⁷⁰ Cultural archives do not embody a unitary system of knowledge but should be conceived of as containing multiple traditions, if knowledge and ways of knowing are valued.¹³⁷¹ Within a Western paradigm, dissent is manageable because that dissent also implicitly conforms to these rules. However, to include Indigenous traditions, knowledge and values it is important to step outside of Western paradigms. For instance, though Western feminism provides a radical challenge to conventional knowledge, it has itself been

¹³⁶⁷ Ibid.

¹³⁶⁸ Ibid 160.

¹³⁶⁹ Graham Smith, *The Issue of Research and Maori* (Research Unit for Maori Education, University of Auckland, 1992) 7 <<http://link.kotui.org.nz/portal/The-Issue-of-research-and-Maori-ed-Research/yCmTljGvddc/>>.

¹³⁷⁰ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (University of Otago Press, 2nd ed, 2012) 44.

¹³⁷¹ Ibid.

challenged by African women for conforming to fundamentally Western European worldviews, value systems and attitudes. Nevertheless, Smith laments that differences between Western and Indigenous/African beliefs are still considered shocking, abhorrent and barbaric, and therefore are prime targets of missionary and civilising projects.¹³⁷² Many such oppressive beliefs held by settler-colonists are embedded in Indigenous languages and stories and are etched in the memories of Indigenous Peoples.¹³⁷³ Therefore, the question must be asked: are Western research methodologies capable of taking full account of Indigenous cultural perspectives?¹³⁷⁴

The first step toward reaching Indigenous women's perspectives is adopting feminist research principles. If research is about satisfying one's need to know by extending boundaries of existing knowledge through a process of systematic inquiry, then this dissertation is certainly research. In feminist research, gender operates as a basic organising principle which profoundly shapes and mediates the concrete conditions of women's lives. Through the questions that feminism poses and the absences it locates, feminism argues for the centrality of gender in shaping our consciousness, skills and institutions, and in distributing power and privilege.¹³⁷⁵ When our lived experience of theorising is fundamentally linked to processes of self-recovery and collective liberation, then no gap exists between theory and practice.¹³⁷⁶ For African and Australian Indigenous women, within the production of the theory lies the hope for our liberation and the possibility of naming all our pain and making all our hurt go away.¹³⁷⁷ Creating feminist theory and advocacy that address the pain and trauma we experience helps reduce the challenge of building a mass-based feminist resistance struggle, thereby removing the chasm between feminist theory and feminist practice.¹³⁷⁸

Feminist theory, itself, is multifaceted and open to the inclusion of various theories and methods, based on the researcher's epistemological stance. Responding to concerns about whether there should be a distinctive feminist method of inquiry, whether it takes the shape of direct interaction with perpetrators of violence, going public with one's story or taking legal action, Sandra Harding differentiates the relationship between three things: *epistemology* – a theory of knowledge; *methodology* – a theory and analysis of applying general structure to scientific disciplines; and *method* – a technique for gathering evidence.¹³⁷⁹ Whilst Catherine MacKinnon suggests that raising consciousness is the major feminist technique of analysis, structure, method, and theory of social change,¹³⁸⁰ Harding debunks the common but sexist practices of disciplines that pigeonhole methods into general categories of concrete research

¹³⁷² Ibid 45.

¹³⁷³ Ibid.

¹³⁷⁴ Smith, above n 1369, 8.

¹³⁷⁵ Heidi Gottfried (ed), *Feminism and Social Change: Bridging Theory and Practice* (University of Illinois Press, 1996) 1.

¹³⁷⁶ Ibid 2.

¹³⁷⁷ bell hooks, 'Theory as Liberatory Practice' (1991) 4(1) *Yale Journal of Law and Feminism* 1, 12.

¹³⁷⁸ Ibid.

¹³⁷⁹ Sandra Harding, 'The Method Question' (1987) 2(3) *Hypatia* 19, 23–25.

¹³⁸⁰ Catharine A MacKinnon, 'Feminism, Marxism, Method, and the State: An Agenda for Theory' (1982) 7(3) *Signs* 515, 519.

practices.¹³⁸¹ According to Harding, in doing research, feminists discover gender and its consequences, value women's experiences as a scientific resource, and embrace a robust gender-sensitive reflexivity practice.¹³⁸² Also, Naples argues that the specific methods employed by feminists are significantly shaped by their epistemological stance, which is indicative of the multi-theoretical framework on which this research thrives.¹³⁸³ Irrespective of the approach and specificity, feminist inquiry simultaneously challenges norms and contributes power to feminist research. This dissertation combines the power of a multi-theoretical, empirical feminist inquiry with the healing powers of survivor 'speak-outs'.

The principal tactic adopted by Indigenous feminist survivors has been to encourage and make possible survivors' disclosure of traumas, whether in private or public contexts. This strategic practice of breaking the silence is virtually ubiquitous, wherein survivor pronouncements are called 'speak-outs'. Speaking out educates society at large about this dimension of systematic gender violence, to reposition the problem from the individual psyche to the social, political and economic spheres, where it rightfully belongs. Alcoff and Gray argue that survivor 'speak-outs' are transgressive in that they challenge conventional arrangements and presume objects antithetical to the dominant discourse.¹³⁸⁴ To preclude disempowering survivors who speak, Alcoff and Gray suggest that, before speaking out, one must look at where the incitement to speak originates and what relations of power and domination may exist between those who incite and those who are asked to speak and to whom disclosure is directed.¹³⁸⁵ This Ph.D. also endeavours to empower survivors, including the author, to act constructively on their own behalf and thus make the transition from passive to active survivor.¹³⁸⁶

My dissertation is my 'speak-out' moment. For this dissertation, without a doubt, the origin of the need to speak stems from trauma, anger, pain, suffering and revenge, as clearly articulated by bell hooks. In discussing *Theory As Liberatory Practice*, hooks discloses that she came to Black feminist theory because 'I was hurting, the pain within me was so intense that I could not go on living. I came to theory desperate, wanting to comprehend, to grasp what was happening around and within me. Most importantly, I wanted to make the hurt go away. I saw in theory then a location for healing'.¹³⁸⁷ I replace hooks' 'theory' with 'my dissertation' in agreeing that it hurts, stings and bruises my ego, self-esteem, identity and every aspect of me to write about systematic violence against Indigenous women. The challenge has always oscillated between the moral impetus of engineering social change and the conscious awareness of exposing my vulnerability. Ultimately, the result feels more like liberation than suppression,

¹³⁸¹ Harding, above n 1379, 22.

¹³⁸² Ibid 29–31.

¹³⁸³ Naples, above n 1349, 3.

¹³⁸⁴ Linda Alcoff and Laura Gray, 'Survivor Discourse: Transgression or Recuperation?' (1993) 18(2) *Signs: Journal of Women in Culture and Society* 260, 267–268.

¹³⁸⁵ Ibid 284.

¹³⁸⁶ Ibid 261–262.

¹³⁸⁷ hooks, 'Theory as Liberatory Practice', above n 1377, 1.

self-fulfilment than underachievement, and resistance than subjugation to patriarchy and racism. Albeit restrictive, the writing space and location of the dissertation offers an opportunity to combine the clout and influence of objective empirical studies with the healing power of emotional ‘speak-out’. Obviously, this ‘speak-out’ is directed towards the public in general but is precisely relevant to dispensers of gender justice striving for the ideal of equality for all.

5.2.1 Transcending the Scars of War

Growing up as one of eight children of a single mother meant I faced many challenges in life, but it never stopped me from dreaming big. I believe the biggest dream was rejecting poverty. In spite of a tough upbringing, I never imagined experiencing violent conflict, being internally displaced, becoming a refugee or immigrating alone to Canada. Apart from the first 14 years of life, I was self-bred. I survived those tragic years on my own through education! Mama always said education was the equaliser. To break this generational chain of poverty, she said, ‘don’t follow boys but stick your head in the books’. Education was the single factor that enabled me to transcend every appalling experience that could have relegated me to a life of poverty or abuse. This admonition from my mother was the impetus for this Ph.D.

It is my belief that hard work should not only reap bountiful positive rewards, but it should also propel the achiever upwards. With a positive attitude, this research journey of a thousand miles began with one step: when my passion for gender justice became a search for Professors Dodson, Dunn and Dharamsi as supervisors. At this juncture, there are no final products or limits to the outcome of the research journey but a continuous process of commitment and sacrifice in advocating against systematic violence against Indigenous girls and women. In fact, this dissertation is a point of departure and the beginning of a life-long journey for gender justice.

5.2.2 Indigenous Identity Transformed

Before leaving Liberia in 1992, I had little connection to my ethnic and familial roots. I knew that my mother hailed from Maryland County (because of her African American settlers’ ancestral background) and that my father was an Indigenous man from Lofa County. My father’s absence made it difficult to learn any more of his heritage. My being born and raised in Monrovia complicated the search for my identity, since Monrovia is diverse inhabitants from across the country. African American settlers’ mission to ‘civilise and Christianise heathens’ translated into the view that speaking one’s ethnic language was uncouth. To spare me the ‘shame’ of speaking my mother’s native tongue, my mother chose not to teach me any Indigenous Liberian language. By the time I became old enough to search for my own roots, I had been displaced by war.

As a refugee in Ghana for nine years, I observed Ghanaians displaying pride for their traditions and culture, which brought a new sense of self and a yearning to learn of my heritage.

I embraced an opportunity to learn Twi (the most popular Ghanaian language) and repositioned myself as a proud African. By the time I left Ghana for Canada in 2001, I confidently shared a piece of Ghanaian heritage, which added meaning to my sense of self. In Vancouver, I submerged again into feelings of low self-esteem and invisibility, this time caused by racial discrimination. Reading about pan-Africanism and what it means to be a Black African woman in Canada caused a reawakening. I took pride and honour in learning about other African histories, cultures and peoples. My identity was transformed, and I began identifying as an Indigenous Liberian. However, the evolution of my Indigenous identity required a search for acceptance.

I questioned the validity and legitimacy of going into Indigenous Liberia to extract information from the community for this dissertation. But I also adopted a humble spirit and a willingness to submit to and learn from my elders. I imagined that a complex interdisciplinary research design reflective of the challenges associated with gender violence might offer me an opportunity to locate my identity, physically and spiritually. Indeed, it did. After spending two months collecting data in Australia, I embarked on a seven-month journey to Indigenous Liberia. The inclusion of Maryland, Lofa, Nimba, and Montserrado counties as target areas were deliberate. The insider-outsider approach helped me connect to the spiritual roots of my ancestors in Gbenelou (my mother's village) and Suwomai (my father's village). It was an overwhelming experience, yet it brought internal peace as if a raging storm had been calmed. At long last, my identity as an Indigenous person was realized.

5.3 Summary

I was asked by an elder in Maryland, 'Do you really want to know about your heritage?' I responded, 'Yes.' Then I asked why he posed the question. He said, 'I want to be sure you understand the innate problems associated with finding your roots.' For him, the struggle lies in having full knowledge of an ancestral connection to people who are accused of perpetrating violence against Indigenous Liberians. He could not have been more accurate. At the beginning of this chapter, I discussed the validity and legitimacy of doing this work. Many a time I felt 'I do not belong here' or 'No one will talk to me — I'm not Indigenous enough.' I thought being a war survivor could only partially afford me the voice of a real insider-outsider. Fortunately, I was wrong. Both in Australia and in Liberia, I was wholeheartedly welcomed into Indigenous communities. I was supported and encouraged to continue this work. Indigenous women advocates embraced me. They trusted me with their experiences, wisdom and knowledge. In spite of the acceptance I received from Indigenous communities in both Liberia and Australia, I still struggle with my newfound identity. I still do not know enough about my Indigenous ancestral roots. Notwithstanding, whose responsibility is it to define my identity or legitimise my claim to conduct research on such a sensitive topic in Indigenous communities?

There is nothing worse than acquiring a world-class education that builds confidence and self-esteem, whilst still being reduced to an object of abuse. What is the value of earning a law degree, when a man can still force himself on me whilst I am in the process of asking him, ‘What do you think of violence against women in Liberia?’ And, if that man represents the judiciary in Liberia, how can I respond? Shut down the research? Ask myself, ‘What am I doing here? Why did I focus on this topic? What should I do?’ As a survivor of abuse and an Indigenous Liberian academic advocate, I resolved to design and conduct a complex research study on systematic violence grounded in a multi-theory approach. To that end, a reflection that discloses my personal story of survivor discourse not only frees my mind of the inherent biases I am conflicted with internally but most importantly, opens a public space in which to ‘speak-out’ in the academy.

CHAPTER 6: METHODOLOGY AND DESIGN

*Many authors have compared and contrasted between qualitative and quantitative research methods. ... The debate over the legitimacy of qualitative versus quantitative research is ongoing and seemingly endless. ... The distinction is not just about counting things against not counting them. Qualitative researchers can and do count things. Rather the distinction lies in the deep philosophical foundations underlying the methods or technique in the 'doing' of research ... and I agree, that the researcher needs to understand that the different types of research methods originate from different theoretical frameworks within the social sciences and humanities.*¹³⁸⁸

6.0 Introduction

The rigour, robustness and credibility of findings and conclusions heavily depend on the quality of the research process, which includes its design, data collection, management and analysis. In essence, this chapter outlines the procedure used to obtain, analyse, interpret and conclude the research findings. The chapter begins with the philosophical paradigms that dictate an interdisciplinary¹³⁸⁹ and complex study that straddles conformity¹³⁹⁰ and resistance.¹³⁹¹ A desire to migrate Indigenous girls' and women's issues of violence from the margins of social consciousness towards the edges of Western centrality redefines the scope of this mixed method¹³⁹² research design. Such a complex system approach, that is, a combination of empirical, statistical and textual data as a nexus between systematic gender violence and the rule of law, is novel but required by the subject matter. Borrowing Yilo's view as asserted by Anders,¹³⁹³ 'systematic due diligence' (vis-à-vis complex system design) must be grounded in the understanding that systematic gender violence cannot be adequately addressed unless seen as intersecting constituents of gender, critical race, and class.¹³⁹⁴ Having established those conceptual and theoretical underpinnings of the study in chapter 1, I follow here with a discussion of the methodological design and framework.

To gather the necessary data, this study adopts a sociological approach, which includes both qualitative and quantitative, or mixed research, methods.¹³⁹⁵ Mixed method design is descriptive in nature and is particularly useful in assessing the impact of the law in action.

¹³⁸⁸ Dharamsi, above n 1346, 53–55.

¹³⁸⁹ Robert Post, 'Debating Disciplinarity' (2009) 35(Summer) *Critical Inquiry* 749.

¹³⁹⁰ James Chandler, 'Introduction: Doctrines, Disciplines, Discourses, Departments' (2009) 35(4) *Critical Inquiry* 729.

¹³⁹¹ Smith, *Decolonizing Methodologies*, above n 1370.

¹³⁹² Jennifer C Greene, 'Is Mixed Methods Social Inquiry a Distinctive Methodology?' (2008) 2(1) *Journal of Mixed Methods Research* 7.

¹³⁹³ Anders, above n 527, 15.

¹³⁹⁴ Kimberlé Crenshaw, 'Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 140 *The University of Chicago Legal Forum* 139; Crenshaw, *Critical Race Theory*, above n 245; Kimberlé Crenshaw, 'Race, Gender, and Sexual Harassment' (1992) 65 *California Law Review* 1467; Carastathis, above n 244.

¹³⁹⁵ Jennifer C Greene, 'Toward a Methodology of Mixed Methods Social Inquiry' (2006) 13(1) *Research in the Schools* 93; *Sage Handbook of Mixed Methods in Social and Behavioural Research* (SAGE Publications, 2nd ed, 2010); R Burke Johnson and Anthony J Onwuegbuzie, 'Mixed Methods Research: A Research Paradigm Whose Time Has Come' (2004) 33(7) *Educational Researcher* 14; John W Creswell and Vicki L Plano Clark, *Designing and Conducting Mixed Methods Research* (SAGE Publications, 2nd ed, 2011).

Additionally, a sociological method provides empirical knowledge¹³⁹⁶ of how the law and other social factors intersect to affect the lives of Indigenous female survivors of systematic violence. The mixed method design is also supported by a variety of data sources.

The research uses a wide range of data sources to triangulate key issues pertaining to violence against Indigenous girls and women and the rule of law. Indigenous Women Advocates selected in this study responded to a semi-structured interview questionnaire. Service providers completed an online survey in Australia and a paper survey in Liberia. To corroborate field data, triangulate diverse data sources,¹³⁹⁷ and enhance rigour and robustness, secondary data on socio-economic status, social services, court cases and crime statistics were collected from various public institutions in both Liberia and Australia. The results of the interviews were assessed using NVIVO software. Values of both the online survey and secondary data were computed using simple statistics, that is, weighted means, percentages, inferences and associations, using SPSS and Excel. Also, relevant publications are cited to support findings gathered in the research.

This chapter describes the challenges of conducting high-quality research on gender violence to produce results that will inform evidence-based law and policy reform.¹³⁹⁸ Qualitative and quantitative components of the research are highlighted. The sampling technique that was used to select and recruit participants is described, and the sources of data are explained. Finally, ethical considerations pertaining to risk-benefit analysis and challenges of gathering research data on an extremely sensitive topic are discussed.

6.1 Theoretical Framework

In this study, four conceptual models were employed in a triangulation strategy:¹³⁹⁹ community-based participation, phenomenology, Indigenous decolonizing methods and feminist legal theory. According to Hacker (2013), community-based participatory research is designed to ensure and establish structures for participation by communities affected by the issue being studied to improve the outcome of social change.¹⁴⁰⁰ In essence, community-based participation is about community members having an equal partnership in the research idea, design and process for the purpose of promoting empowerment, respect, reciprocity, autonomy and spiritual integrity.¹⁴⁰¹ The adoption of community-based participatory research exercises an

¹³⁹⁶ Jennifer C Greene, *Mixed Methods in Social Inquiry* (Jossey-Bass, 1st ed, 2007); Greene, 'Is Mixed Methods Social Inquiry a Distinctive Methodology?', above n 1392; David Gray, *Doing Research in the Real World* (SAGE, 2nd ed, 2009).

¹³⁹⁷ Janice M Morse, 'Principles of Mixed Methods and Multimethod Research Designs' in Abbas Tashakkori and Charles Teddlie (eds), *Handbook of Mixed Methods in Social and Behavioural Research* (Sage, 2nd ed, 2003) 189, 190. According to Morse, a research that combines and compares the results of several study methods has the propensity to guarantee rigour, originality and comprehensive design – a process described as triangulation.

¹³⁹⁸ Mary Ellsbert and Lori Heise, *Researching Violence Against Women: A Practical Guide for Researchers and Activists* (World Health Organization, PATH, 2005) 27.

¹³⁹⁹ Morse, above n 1397, 190.

¹⁴⁰⁰ Karen Hacker, *Community-Based Participatory Research* (SAGE, 2013) 1–2.

¹⁴⁰¹ National Health and Medical Research Council, *Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research* (Commonwealth of Australia, 2003) 7–20; Meera Viswanathan et al,

opportunity for educating and raising the consciousness of participants and including local and Indigenous knowledge, particularly of poor rural women, based on a process of mutual learning, reflection and analysis. As a form of qualitative research, community-based participatory research seeks to understand and change the world through the eyes of participants without necessarily endorsing the proving or disproving of hypotheses, but with a flexible plan attempting to explore a phenomenon or a community problem. The crux of community-based participatory research is the empowerment of disempowered groups and the search for a practical methodology to decentralise, disrupt and resist Western conventions, and to promote diversity and sustainability through community participation.¹⁴⁰² From the inception to the completion of the project, several individuals in both academic and non-academic communities provided valuable feedback that shaped the direction of the research for the better.

Feminist legal theory dovetails with community-based participatory research to improve results. Too often, attempts to bridge theory and practice are made at the level of theory rather than of practice. Feminists argue for a methodology designed to break the false separation between the subject of research and the research.¹⁴⁰³ The objectification of research subjects limits our understanding of the social construction of meaning and experience and the process by which the ‘relations of ruling’ organise consciousness and daily life.¹⁴⁰⁴ Community-based participatory researchers enter ‘the field’ in a variety of ways, with each entry influencing relationships in the community.¹⁴⁰⁵ Whilst some feminists search for community-based sites through which they might assist in the political agendas defined by community members, others access ‘the field’ as participants who are personally affected by the issue that is the focus of this research.¹⁴⁰⁶ Since most personal and community-based problems are politically constituted, activists in the course of struggling against institutionalized relations of ruling inevitably discover the value of social science research to support social justice efforts.¹⁴⁰⁷ Although the journey of bridging theory with practice may not always be linear, the process illustrates the value of Indigenous African women call for feminist theory and self-reflective dialogue to enhance community-based participatory research.

A key feminist legal theory technique employed in this research is known as ‘asking the woman question’. According to Katherine Bartlett, if women’s perspectives in the law are not understood, their claims to legal discourse will not be perceived as legitimate. As a question becomes a method when it is asked regularly, so is the concept of ‘asking the woman question’. The woman question is a rhetorical phraseology used in the feminist legal method to explore

‘Community-Based Participatory Research: Assessing the Evidence.’ (Volume 99, Agency for Healthcare Research and Quality, 2004) 296, 3–4.

¹⁴⁰² Gillian Creese and Wendy Frisby, *Feminist Community Research: Case Studies and Methodologies* (University of British Columbia Press, 2012) 41 <http://www.ubcpress.ca/search/title_book.asp?BookID=299173502>.

¹⁴⁰³ Naples and Clark, above n 1359, 160–162.

¹⁴⁰⁴ *Ibid.*

¹⁴⁰⁵ *Ibid.*

¹⁴⁰⁶ *Ibid.*

¹⁴⁰⁷ *Ibid.*

gender implications of a social practice of rule. In this research, Bartlett's¹⁴⁰⁸ 'asking the woman question'¹⁴⁰⁹ employs the assumption that some features of the law are neutral and male-focused. Asking Indigenous Women Advocates the 'woman question' exposes those masculine features, how they operate, and how they might be corrected.¹⁴¹⁰ The use of 'womanism'¹⁴¹¹ in place of 'feminism' by Black feminists demands greater attention to African women's unique role as mothers and leaders in the struggle to regain, reconstruct and create cultural integrity that espouses the ancient Ma'atic principles of reciprocity.¹⁴¹² In feminism or womanism, carefully 'asking the woman question' challenges patriarchy and paternalism and yields inclusive outcomes. In the end, women are given more latitude to theorise, contribute, participate, direct and question the law and to seek justice. However, a comprehensive feminist legal theory incorporates more than simply 'asking the woman question'.

Adopting feminist legal theory also offers mechanisms to expose bias in the judicial process, critique legal precedent, and reclaim laws written by and for men. Mary Jane Mossman offers three principles of legal methods that validate the feminist theory. According to Mossman, feminist legal theory:

- 1) characterises women's issues with respect to inconsistencies between appropriate legal methods declared by judges and their actual decision-making processes which tend to both mask and legitimate women's personal views about women's proper sphere;
- 2) uses precedents¹⁴¹³ in common law tradition (for instance, women's incompetence to be admitted to the legal profession or public life participation, justified by common law precedents where women were denied property rights); and
- 3) interprets statutes and parliament's intent in the construction of legal statutes awash with the word 'men', inferring that the drafter's intention was to exclude women from statutory rights.¹⁴¹⁴

A feminist legal method is incorporated into the study to highlight Indigenous Women Advocates' journey of consciousness-raising, giving them a platform to 'discuss and understand their experiences from their viewpoint'.¹⁴¹⁵ In this regard, not only can the principle of consciousness-raising be conveniently situated within certain realms of community-based

¹⁴⁰⁸ Katharine T Bartlett, 'Feminist Legal Methods' (1990) 103(4) *Harvard Law Review* 829.

¹⁴⁰⁹ Katherine Bartlett argues, "[i]n law, asking the woman question remains examining how the law fails to take into account the experiences and values that seem more typical of women than of men, for whatever reason, or how existing legal standards and concepts might disadvantage women. The question assumes that some features of the law may be not only non-neutral in a general sense, but also 'male' in a specific sense. The purpose of the woman question is to expose those features and how they operate, and to suggest how they might be corrected.

¹⁴¹⁰ Bartlett, above n 1408.

¹⁴¹¹ Clenora Hudson-Weems, *Africana Womanism: Reclaiming Ourselves* (Bedford Publishers, 2004); Nah Dove, 'African Womanism: An Afrocentric Theory' (1998) 28(5) *Journal of Black Studies* 515. According to Dove (1998), 'womanism is a concept that brings to the forefront the role of African mothers as leaders in the struggle to regain, reconstruct, and create a cultural integrity that espouses the ancient Maatic principles of reciprocity, balance, harmony, justice, truth, righteousness, order, and so forth. In that sense, I believe voicing Maat may be a term that will further develop Afrocentric theory'.

¹⁴¹² Collins, above n 65; Amina Mama, *The Hidden Struggle: Statutory and Voluntary Sector Responses to Violence Against Black Women in the Home* (Whiting and Birch Ltd, 1996); Dove, above n 1411; Hudson-Weems, above n 1411. Otherwise known as 'voicing Maat', the Ma'atic principles of reciprocity is the foundation of Afrikan womanist theory that exist when power relations between feminine and masculine are right.

¹⁴¹³ Until the enforcement of the Equal Rights of the Customary Marriage Law 1998, Indigenous widow in customary marriages were not allowed to inherit property after the death of their husband.

¹⁴¹⁴ Mossman, above n 246.

¹⁴¹⁵ Shulamit Reinharz, *Feminist Methods in Social Research* (Oxford University Press, 1992) 220.

participatory research and ‘asking the woman questions’, but it also neatly accommodates the aspect of phenomenology whereby a *sui generis* experience of a single Indigenous woman is as worthy as that of thousands of other women.

Phenomenology is a philosophical method of qualitative research inquiry that centres on and values the meaning of individual common lived experiences.¹⁴¹⁶ Rather than isolating a single experience, phenomenology aims to create a universal composite description applied to all (Indigenous women).¹⁴¹⁷ Unlike quantitative data that generates more numbers (that is, ‘how many?’), the phenomenological method asks ‘how’, ‘why’, and ‘what’ kinds of social factors influence violence against Indigenous girls and women in Liberia and Australia. Instead of enforcing a researcher’s authority over potential participants, phenomenology emphasises the importance of what philosophical motivations and social actions drive Indigenous women’s existence.¹⁴¹⁸ Stan Lester describes phenomenology as an inquiry that is based on conscious experiences so as to identify and elucidate the unique perspectives of actors in a specific situation.¹⁴¹⁹ In this regard, through the conducting of interviews with Indigenous Women Advocates, not only is that individual’s subjective interpretation of her experiences not taken for granted, but a participant’s conscious understanding of their journeys is considered unique. Phenomenological methods also strive to eliminate oppressive research practices.

Both community-based participation and phenomenology embrace the idea of an anti-oppressive research style.¹⁴²⁰ Anti-oppressive or resistant research mandates a sensitising strategy¹⁴²¹ that is grounded in Indigenous,¹⁴²² decolonising¹⁴²³ and feminist legal methodologies.¹⁴²⁴ Margaret Kovach suggests that Indigenous methodologies are the infusion of the Indigenous knowledge system and research frameworks informed by the distinctiveness of cultural epistemologies that can transform and disrupt the nature of the Western academy based

¹⁴¹⁶ Husserl Edmund, ‘Pure Phenomenology, Its Method, and Its Field of Investigation’ in *The Phenomenology Reader* (Routledge, 2002) 624.

¹⁴¹⁷ John W Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (SAGE Publications, 3rd ed, 2013) 57–59; Edmund, above n 1416, 124–128; Steinar Kvale, *Interviews: An Introduction to Qualitative Research Interviewing* (Sage Publications, 1996) 52–54; Carol Grbich, *Qualitative Research in Health: An Introduction* (Sage, 1999) 167–170; Analise Poropat, ‘Understanding Women’s Rape Experiences and Fears’ in *Proceedings of a Conference held 27-29 October 1992* (Australian Institute of Criminology, 1993) 115 <http://aic.gov.au/media_library/publications/proceedings/20/propata.pdf>.

¹⁴¹⁸ Stan Lester, *An Introduction to Phenomenological Research*, Academic paper, 1999 9 <www.sld.demon.co.uk/resmethy.pdf>.

¹⁴¹⁹ Stan Lester, *An Introduction to Phenomenological Research*, Academic paper, 1999.

¹⁴²⁰ Potts and Brown, self-identified as social workers using research methods toward social justice goals, acknowledge the dynamism of anti-oppressive theory. In their view, the concept is an extension of Marxist, feminist, and most predominantly critical theory – conveniently situated in the idea that knowledge is socially constructed (see, Karen Potts and Leslie Brown, ‘Becoming an Anti-Oppressive Research’ in Leslie Brown and Susan Strega (eds), *Research as Resistance: Critical, Indigenous and Anti-Oppressive Approaches* (Canadian Scholars’ Press, 2005) 268, 259.

¹⁴²¹ Morse, above n 1397, 190. Sensitizing strategy is one or more strategies of the major modes of data collection that supplements either qualitative or quantitative in nature.

¹⁴²² Karen Martin and Booran Mirraboopa, ‘Ways of Knowing, Being and Doing: A Theoretical Framework and Methods for Indigenous and Indigenist Re-search’ (2003) 27(76) *Journal of Australian Studies* 203.

¹⁴²³ Smith, *Decolonizing Methodologies*, above n 1370, 5.

¹⁴²⁴ Mossman, above n 246.

on colonial history.¹⁴²⁵ The utility and acceptance of Indigenous decolonising methodologies are constrained by inadequacies of homogenous conventional models in which ‘[Indigenous] women have been studied as objects for centuries, just as slaves, barbarians and workers.’¹⁴²⁶ Linda Tuhiwai Smith critiques the term ‘research’ as the ‘dirtiest’ word ‘inextricably linked to European imperialism and colonialism.’¹⁴²⁷ Smith adds that persistent arrogance of Western researchers’ intellectual assumption that they ‘know all that is possible to know of us [Indigenous Peoples]’¹⁴²⁸ is a continuous threat to an emancipatory model.¹⁴²⁹ Leslie Brown and Susan Strega suggest that the challenge posed by Western research convention requires an ability to think against dominant knowledge that is grounded in the diverse ways of knowing termed Indigenous knowledges.

Avoiding oppressive research is particularly important in colonised communities. Imperialism and colonialism frame the Indigenous experience. It is part of Indigenous stories and their version of modernity. Writing and researching experiences under imperialism and its more specific expression of colonialism has become a significant project of the Indigenous world.¹⁴³⁰ The concepts of imperialism and colonialism are crucial in terms of their interconnection to economic expansion, to the subjugation of ‘others’ and as a discursive field of knowledge and methodology.¹⁴³¹ Whilst imperialism is often thought of as a system which draws everything back into the centre, it was also a system which distributed materials and ideas outwards, discovering, extracting, appropriating and distributing Indigenous knowledge in the process.¹⁴³² This process became organised and systemic and informed disciplines of knowledge and ‘regimes of truth’.¹⁴³³ It is through these disciplines that the Indigenous world has been represented to the West and researched as fragments to be taken, catalogued, studied and stored.¹⁴³⁴ One such discipline is the legal field itself.

Particular care is taken in the research to honour Indigenous ways of knowing, being and doing justice. As an academic activist, advocating for Indigenous women’s rights for well over three decades, Rosalva Aída Hernández Castillo confronts epistemological and political tension resulting from consistent maintenance of critical perspective of positive law whilst simultaneously supporting political struggles for Indigenous recognition.¹⁴³⁵ Castillo contends that law and rights are not ends in and of themselves for Indigenous women but rather are

¹⁴²⁵ Margaret Kovach, *Indigenous Methodologies: Characteristics, Conversations and Contexts* (University of Toronto Press, 2009) 12–15

<<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=682652>>.

¹⁴²⁶ Jill McCalla Vickers, ‘Memoirs of an Ontological Exile: The Methodological Rebellions of Feminist Research’ in Geraldine Finn and Angela Rose Miles (eds), *Feminism in Canada* (Black Rose Books, 1982) 57, 32.

¹⁴²⁷ Smith, *Decolonizing Methodologies*, above n 1370, xi.

¹⁴²⁸ *Ibid* 1.

¹⁴²⁹ *Ibid* 177.

¹⁴³⁰ *Ibid* 20.

¹⁴³¹ *Ibid* 22.

¹⁴³² *Ibid* 61.

¹⁴³³ *Ibid*.

¹⁴³⁴ *Ibid*.

¹⁴³⁵ Rosalva Aída Hernández Castillo, *Multiple Injustices: Indigenous Women, Law, and Political Struggle in Latin America* (The University of Arizona Press, 2016) 33.

another language into which their demands for justice and a dignified life are translated.¹⁴³⁶ Thus, systematic analysis of the possibilities and limitations of communitarian justice for Indigenous women is crucial for considering alternative spaces to transform, understand, reconstruct and acknowledge the multiple sites of Indigenous Customary Laws and Indigenous justice systems.¹⁴³⁷ Of course, Indigenous Customary Laws and justice systems are only a subset of more holistic Indigenous knowledge.

Being a Native Liberian promoting Indigenous knowledge within a Western academy requires adopting a resistance research approach. Resistance research involves Indigenous scholars creating meaning about their world, producing knowledge and expressing various ways of being. Gloria Emeagwali and George Sefa-Dei¹⁴³⁸ offer an expansion of Indigenous knowledge to include an accumulation of intellectual values not confined to the material sphere but interconnected with the spiritual realm.¹⁴³⁹ It is through such epistemological and ontological paradigms that this study seeks to validate Indigenous Peoples' stories of systematic violence in Liberia and Australia and to transcend an objectified 'field' of study to a more 'intimate, human and self-defined space'.¹⁴⁴⁰ This act of cultivating Indigenous knowledge whilst refusing to conform to traditional research paradigms is what Indigenous scholars, critical race theorists, and feminist legal experts such as Brown and Strega describe as resistance or socially just research.¹⁴⁴¹

This framework of study methods creates an interdisciplinary approach that incorporates theoretical, practical and personal experiences. The overarching objective is not to draw inferences based on sample size and statistical significance, not to show direct causal relationships or neatly compare Indigenous girl's and women's experiences in Liberia and Australia. Rather, this research inductively formulates general theories from the field study, textual analysis, and secondary data and draws on established theory to interpret empirical and normative observations. The study makes conscious effort to bridge the researcher-participant gap entrenched in dominant Western research traditions.

6.2 Complex System Design

6.2.1 Qualitative Data Collection

The qualitative aspect of this research is threefold: a) textual analysis of selected case studies, case law and public/national document; b) semi-structured interviews with Indigenous Women Advocates; and c) informal email exchange with male colleagues and acquaintances.

¹⁴³⁶ Ibid 34.

¹⁴³⁷ Ibid 123.

¹⁴³⁸ Emeagwali and Sefa Dei, above n 554.

¹⁴³⁹ Ibid 1.

¹⁴⁴⁰ Smith, *Decolonizing Methodologies*, above n 1370, 127.

¹⁴⁴¹ Leslie Brown and Susan Strega, *Research as Resistance: Critical, Indigenous and Anti-Oppressive Approaches* (Canadian Scholars' Press, 2005) 2–4.

6.2.1.1 Textual analysis of selected case studies, case law and public/national documents

To minimise risks associated with conducting interviews with Indigenous Women Advocates and reduce other forms of bias associated with under-reporting, self-reporting and over-reporting, the study analyses the cases of the following women: Angel Mardea Togba,¹⁴⁴² Bibiana Abu,¹⁴⁴³ Joy Janaka Wiradjuri Williams,¹⁴⁴⁴ and Andrea Pickett.¹⁴⁴⁵ Key reports such as those of the Truth and Reconciliation Commission of Liberia¹⁴⁴⁶ and the Stolen Generation,¹⁴⁴⁷ amongst others,¹⁴⁴⁸ are also considered to establish histories of systematic violence against Indigenous Peoples.¹⁴⁴⁹

6.2.1.2 Semi-Structured Interviews of Indigenous Women Advocates

A two-page semi-structured interview instrument (see Appendix I) was designed, piloted and validated by selected community members before the fieldwork study commenced. A semi-structured interview is a qualitative method of inquiry that combines open-ended questions with opportunities for the interviewer to explore further responses.¹⁴⁵⁰ Each interview session lasted 1–1.5 hours. Conversations took place in public (for example, in a government office and coffee shops) or in private (for example, at home) to ensure privacy, confidentiality and safety. A total of 29 Indigenous Women Advocates participated. A semi-structured interview allows the researcher to build interpersonal relationships with participants, especially important

¹⁴⁴² Potts and Brown, above n 1420. Thirteen-year-old Angel Mardea Togba was allegedly murdered by her foster parents in 2007. For 7 years, the Supreme Court of Liberia has been unable to pass final judgment regarding the alleged murder, although the defendants remain in jail. (See George J. Borteh, 'Liberia: Angel Togba's mother pushes Supreme Court to Act' (21 May 2013).

¹⁴⁴³ On 21 October 2009, Bibiana Abu, a Caldwell resident in Greater Monrovia area, reported that Caesar Freeman (a high ranking public servant in Liberia) and others, had allegedly gang raped her after she requested and accepted a free lift home. Lack of corporation from the police, according to SGBV Crimes Unit Evaluation Report (2010) resulted in stalling of the prosecution process. (See, 'A bloody lie! Freeman lingers behind bars, victim runs free', The National Chronicle (28 July 2010) at 1, 6. Abdulai, above n 977, 9.

¹⁴⁴⁴ Joy Janaka Wiradjuri Williams, member of the Aboriginal Stolen Generations, spent ten years in court suing the Australia's State Government for negligence. Having lost the case, in addition to two separate appeals, Joy was found dead several years later after suffering from abuse, anger, violence, and mental illness. (See, Read, above n 754, book cover.

¹⁴⁴⁵ Angela Louise Pickett, an Aboriginal woman from Western Australia, was finally murdered on 12 January 2009, by her husband, Kenneth Pickett. She enduring several years of domestic violence, Andre lodge several complaints but received after little or no support from local police, women's shelter and the court systems, even though she had correctly predicted her imminent death from her violent husband (see, McDermott, above n 832.

¹⁴⁴⁶ Truth and Reconciliation Commission of Liberia, 'Truth and Reconciliation Report', above n 52.

¹⁴⁴⁷ Carmel Bird, *The Stolen Children: Their Stories; Including Extracts from the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Random House Australia, 1998).

¹⁴⁴⁸ Plotzki, above n 59; Lief, above n 59; Government of Australia, above n 354; Bird, above n 1447; Australian Human Rights Commission, 'Social Justice Report 2007', above n 882, 3; Dodson, 'Royal Commission into Aboriginal Deaths in Custody: National Report Volumes 1-4', above n 22; National Library of Australia, above n 761; Azango, 'Taking More, Giving Less - Nimba Decry Arcelor Mittal's Operation', above n 943; Staff Writer, 'Green Advocates Wants EPA Revoke Sime Darby's Permit', above n 948; Green Advocates and Forest Peoples Programme, above n 228; Northern Territory. Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Wild and Anderson, above n 23; Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Social Justice and Native Title Report 2014' (Government Report 5, Australian Human Rights Commission, 2014) 148 <<https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-0>>.

¹⁴⁴⁹ Reynolds, above n 495.

¹⁴⁵⁰ Kvale, above n 1417, 124–129.

considering the sensitivity of gender violence. One-on-one interviews also offer a chance to follow up, clarify and elaborate on interesting comments and findings. To ensure accuracy, attentiveness and organic rapport building, interviews were digitally recorded with participants' consent. In a few cases where participants did not consent to be recorded, notes were taken with participants' permission. Recording interviews assisted with the iterative process of refining questions, strategies and methods as the interview process continued.¹⁴⁵¹ Audio filing affords an opportunity to reflect upon each interview in real time after completion with the aim of reassessing the relationship between the research question and responses. Reflection enhances the validity, reliability and consistency of the interview process whilst reducing variables that introduce bias.¹⁴⁵² In Australia, conducting phone and Skype interviews reduced cost. In Liberia, almost all interviews, except one, took place in person. Even though in-person interviews have some advantages, adopting a phenomenological paradigm supports each response irrespective of the method used to obtain it.

6.2.1.3 Informal Email Responses from Male Friends, Colleagues and Acquaintances

On 29 October 2015, 27 males (15 Africans and 12 North Americans) were sent informal email requests. The email asked, 'Would you speak out about violence against women? How? When? Where?' By the deadline (6 November 2015), 22 responses were returned. See chapter 8 for further discussion and analysis and Appendix XI for summary responses.

6.2.2 Quantitative Data Collection

The quantitative portion of this research is two-fold: a) a collection of secondary data, and b) an electronic and paper survey of health service providers.

6.2.2.1 Secondary Data Collection

Secondary data on socio-economic status (for example, health); crime (for example, imprisonment), and burden/risk factors of disease (for example, alcohol use) collected from major institutions helps to corroborate, triangulate diverse data sources, and enhance robustness. These institutions included the Australian Bureau of Statistics, the Longitudinal Study of Indigenous Children and the Australian Institute of Criminology in Australia; and the Liberian Institute of Statistical and Geo-Information Services, the Ministry of Gender, Children and Social Protection; and the Sexual and Gender-based Violence Crimes Unit in Liberia. Persistent attempts to acquire specific legal and crime statistics on Aboriginal and Torres Strait Islander girls and women from the courts, law enforcement units and the Australian Institute for Health and Wellness were met with challenges resulting from concerns about privacy and

¹⁴⁵¹ Steinar Kvale and Svend Brinkmann, *InterViews: Learning the Craft of Qualitative Research Interviewing* (Sage Publications, 2nd ed, 2009) 178.

¹⁴⁵² William Lawrence Neuman, *Basics of social research: qualitative and quantitative approaches* (2nd ed. 2007) 167–193.

confidentiality, claims of having no such data, or outright refusal. In Liberia, the challenges were different. Due to the lack of a public electrical grid, technology, and data storage tools, access to data was scant, especially in rural communities. If staff were competent enough to collect and keep data, the sense was that it was not meant for public use but only for the individual who collected it. Sometimes, public institutions requested non-accountable (no-receipt) fees in exchange for data resources. Overall, it appears that public institutions, given the above challenges, struggle to maintain and store the hard evidence needed for academic research.

6.2.2.2 Survey

A survey was designed, piloted and conducted with service providers (male and female) in Liberia and Australia (see Appendix II). In Liberia, a paper survey, appropriate given the lack of access to electricity and computer technology, yielded 77 responses over a seven-month period. In Australia, an electronic version produced 154 responses over six weeks. Eligibility criteria were used to eliminate unusable responses. Service providers eligible to participate including prison staff, police officers, researchers, counsellors, teachers, healthcare practitioners, lawyers, judges and government officials. The electronic version of the survey was administered using Lime Survey, hosted by the University of British Columbia, where the researcher held an adjunct teaching position. Privacy and storage concerns drove the preference for Lime Survey over services such as SurveyMonkey, with the former stored at the University of British Columbia and the latter in the United States.

6.3 Participant Sampling, Selection and Recruitment

6.3.1 *Sampling Method and Techniques*

Purposive sampling is the selection of participants, based on the knowledge of the target population. Even though this method of sampling is inherently biased, thereby raising issues of reliability and competence of informant participants, using a non-representative sample selection is crucial for this kind of research given its sensitive nature. To address possible confounds associated with gathering perceptual information from informants and participants, the researcher made a concerted effort to document observed biases.¹⁴⁵³ Furthermore, data collected were not interpreted and applied beyond the limited sample population, although the research design considers the diverse nature of the target groups. The interview and survey participants represented varied backgrounds, contexts and locales: rural versus urban, school versus work, academic versus advocate and medical versus legal. A snowball and referral

¹⁴⁵³ Steven J Coombs and Ian D Smith, 'The Hawthorne Effect: Is It a Help or a Hindrance in Social Science Research?' (2003) 6(1) *Change: Transformations in Education* 97. The Hawthorne Effect, a well-documented phenomenon in social science research, is an observed changed behavioural pattern of human participants in research simply because they are aware of being studied. Whilst the process is assumed to be one of the toughest built-in biases to get rid of, Steven & Smith suggest that the Hawthorne effect has the ability to validate the use of participatory action research from within any social setting.

system was the main sampling technique used to identify and connect with participants. Invitation letters sent to community members asked potential participants to refer to others. Ultimately, the contact lists of potential participants obtained via networking totalled 2 588 individuals and groups.

6.3.2 *Sample Size and Numbers*

Initially, the study anticipated having 400–500 respondents for the survey and 50–60 participants for the interview. However, lack of funding for travel to selected areas, coupled with limited access to electricity and computer technology in Liberia, affected response rates for both the survey and the interview (see Appendix III). By the end of the fieldwork, a total of 231 survey responses were received; 29 in-depth interviews with Indigenous Women Advocates were carried out; and 22 informal email exchanges with male colleagues were conducted. By way of secondary data, historical and statistical analyses were performed on 127 708 convicts to Australia; 14 996 former slaves to Liberia; 2 701 sexual and gender violence cases reported to the Ministry of Gender, Children and Social Protection in Liberia; seven case files from the Sexual and Gender-based Crimes Unit in Liberia; and 1 200 interview entries from the Longitudinal Study of Indigenous Children in Australia. See chapter 7 for a breakdown of the results and findings obtained.

6.3.3 *Target Groups*

The two target groups in the survey and interview research are:

1. Service Providers (Public & Private): individuals who currently work on the issues of gender violence and the law and the legal system concerning Indigenous girls and women in Liberia and Australia. They include volunteers, researchers, community leaders, religious leaders, healthcare practitioners, counsellors, teachers, lawyers, judges, police officers, prison staffs and non-governmental organisations workers.
2. Indigenous Women Advocates: adult women who identify as Indigenous Peoples in Liberia or Australia. They work in one or more of the following areas: civil service, humanitarian services, counselling, pastoral ministry, teaching, legal institutions, law enforcement institutions, health, research, higher education, community service, and traditional or tribal systems.

6.3.4 *Recruitment: Participants, Volunteering and Training*

General eligibility criteria for participating in the survey and the interviews were set at a) 18 years and above; b) resident of Australia or Liberia; and c) work in areas of gender violence and law. As informal conversations and observations characterised the daily conduct of the research in both Australia and Liberia, local community members, students and acquaintances were constantly encouraged to partner with and contribute to the research process.

6.4 *Data Analysis*

Simple descriptive univariate statistics are used to analyse quantitative and demographic data collected from both secondary sources and the survey. Percentages and weighted averages show

summary statistics using SPSS and Excel. For the qualitative portion of the study, interviews were conducted in simple English (sometimes Liberian English) with literate adults. Each interview was transcribed verbatim, coded, and assessed thematically using word processing and NVIVO software. A crosscheck of tentatively identified key themes and categories was run against data collected and subsequently refined in an iterative process. That is, after the interview documents were imported and explored, they were coded and queried in a reflective manner. The iterative process continued during the final coding whilst comparing the interview text with the written descriptors. In instances where data did not fit existing themes, categories were refined to accommodate novel ideas. Responses to open-ended questions were analysed using general themes induced from the data collected, which serve to identify commonalities within the respondents' experiences. An iterative process based on reflection on audio files, diary entries, field notes, informal observation, follow-up questions and feedback from community members helped triangulate all data collected.

6.5 Ethical Considerations

The study requires ethical approval since it requires interviewing human participants regarding gender violence against Indigenous girls and women. The Australian National University's Human Research Ethics Committee and the University of Liberia's Institutional Review Board granted ethical approval to conduct the study in Australia and Liberia.

CHAPTER 7: FINDINGS AND RESULTS

7.0 Introduction

Chapter 6 discussed the method and design used to collect the research data. This chapter presents the findings and results obtained. This chapter unfolds into two major sections: quantitative and qualitative data sets. The quantitative portion submits statistical findings gathered from historical, contemporary and fieldwork material on systematic gender violence. Responses from open-ended questions in both the interviews and the surveys are highlighted in the qualitative section. Two fundamental goals drove the collection and subsequent analysis of the data collected in chapter 8. The first is to triangulate varied research sources in corroborating the prevalence of systematic gender violence against Indigenous Peoples in Australia and Liberia. The second is to validate Indigenous Women Advocates' perspectives on equality and justice in the legal system. The comprehensive data sets showcased in this chapter underpin the holistic, complex and diverse materials used to inform the critical analysis of the topic.

7.1 Quantitative Data Set

7.1.1 Historical Secondary Data

- Historical Roots of Intergenerational Violence and Trauma: Convicts and Slave Emigrants

To fully comprehend the prevalence of systematic violence, a contextual background of the colonial history of Indigenous Peoples' experiences in Australia and post-war Liberia is crucial. Liberia's unique history of hosting African American former slaves exemplifies a situation where the oppressed becomes the oppressor. Likewise, Australia's convict transportation saga arouses similar curiosity in efforts to understand why a people once denigrated (convicts) commit such acts of violence against another (Indigenous Peoples in Australia). Both the trans-Atlantic slave trade and the transportation of convicts to Australia offer interpretative and analytical lenses through which a genuine effort is made to comprehend the complex interconnections between groups of people who once oppressed later become the oppressors. Without justifying the repressive behaviours of former slaves and convicts toward Indigenous Peoples in Australia and Liberia, scholars do well to embrace empathy and to explore philosophical and practical space in light of the indeterminacy of the human condition.

The trans-Atlantic slave trade spanned approximately 374 years, from 1574 to 1875,¹⁴⁵⁴ although 'trading and raiding in the interior for resale elsewhere in equatorial Africa lasted at least until about 1911'.¹⁴⁵⁵ A total of 34 087 voyages took about 12 521 337 women, men and

¹⁴⁵⁴ David Eltis and Martin Halbert, *Voyages: Summary Statistics* (2013) The Trans-Atlantic Slave Trade Database <<http://www.slavevoyages.org>>.

¹⁴⁵⁵ Jan Vansina, 'Upstarts and Newcomers in Equatorial Africa (C1815-1875)' in Philip Curtin et al (eds), *African History: From Earliest Times to Independence* (Longman Pearson, 1995) 376, 379.

children from across Africa to Europe, the Caribbean and the Americas.¹⁴⁵⁶ At least 2 million deaths occurred during the trans-Atlantic slave trade.¹⁴⁵⁷ A one-hundred-year period (1725 to 1825) marks the ‘high-water mark of the slave trade, as Europeans sent more than 7.2 million people to forced labour, disease, and death in the new world’.¹⁴⁵⁸ Of the estimated 12.5 million slaves taken from Africa,¹⁴⁵⁹ despite their revolt and resistance,¹⁴⁶⁰ more than 361 424 chained Africans disembarked in mainland North America.¹⁴⁶¹ One cannot overemphasise the resulting intergenerational impact of the mayhem on Indigenous Peoples in Africa.¹⁴⁶² William Hardy observes that:

[t]he possible negative consequences of the trade were not only economic. Politically, as African rulers organised the capture of slaves, traditions were created of brutal and arbitrary intervention by the powerful in people’s lives. Meanwhile, as rival African rulers competed over the control of slave-capture and trading, wars could result. On both counts, the Atlantic trade badly affected the political landscape of Africa and set disturbing precedents for the future [of Africa].¹⁴⁶³

In Liberia, the ‘future’ spoken of by Hardy was placed in the hands of some 14 996 slaves who were emancipated, purchased, or recaptured by the British Royal Navy between 1807 and 1866,¹⁴⁶⁴ hoping to redefine their destiny alongside Indigenous Peoples in Africa upon arrival on the West African shores.

In Australia, the First Fleet consisting of 11 vessels,¹⁴⁶⁵ was the largest single contingent of ships to sail into the Pacific Ocean. Its purpose was to establish a convict settlement on the

¹⁴⁵⁶ Eltis and Halbert, above n 1454.

¹⁴⁵⁷ Ibid.

¹⁴⁵⁸ Andrew Kahn and Jamelle Bouie, ‘The Atlantic Slave Trade in Two Minutes’ [2015] *Slate* <http://www.slate.com/articles/life/the_history_of_american_slavery/2015/06/animated_interactive_of_the_history_of_the_atlantic_slave_trade.html>.

¹⁴⁵⁹ Babacar M’baye, ‘The Economic, Political, and Social Impact of the Atlantic Slave Trade on Africa’ (2006) 11(6) *The European Legacy* 607.

¹⁴⁶⁰ Lorenzo T Greene, ‘Mutiny on the Slave Ships’ (1944) 5(4) *Phylon* 346.

¹⁴⁶¹ Kahn and Bouie, above n 1458; Eltis and Halbert, above n 1454.

¹⁴⁶² Michaela Alfred-Kamara, Elizabeth Khawajkie and David Mason, *Impact on Africa, Caribbean, Americas and Europe* (2015) Breaking the Silence: Learning About the Trans-Atlantic Slave Trade

<<http://old.antislavery.org/breakingthesilence/main/07/index.shtml>>. ‘Quilimane, on the coast of modern Mozambique, is now the greatest mart for slaves on the east coast... The riches of Quilimane consisted, in a trifling degree, of gold and silver, but principally of grain, which was produced in such quantities to supply Mozambique. But the introduction of the slave trade stopped the pursuits of industry and changed those places where peace and agriculture had reigned into a seat of war and bloodshed. Contending tribes are now constantly striving to obtain mutual conflict prisoners as slaves for sale to the Portuguese, who excite these wars and fatten on the blood and wretchedness they produce. The slave trade has been a blight on its prosperity; for at present Quilimane and Portuguese possessions in the whole colony of the Rios de Senna do not supply themselves with sufficient corn for their own consumption.’ Captain WFW Owen, British Naval Officer, 1820s.

¹⁴⁶³ William Hardy, *Riches & Misery: The Consequences Of The Atlantic Slave Trade* (25 February 2014) OpenLearn <<http://www.open.edu/openlearn/history-the-arts/history/riches-misery-the-consequences-the-atlantic-slave-trade>>.

¹⁴⁶⁴ Tom W Shick, *Emigrants to Liberia, 1820-1843; An Alphabetical Listing* (Department of Anthropology, University of Delaware, 1971); Brown, above n 543; Amos Jones Beyan, *African American Settlements in West Africa: John Brown Russwurm and the American Civilizing Efforts* (Palgrave Macmillan, 1st ed, 2005); Murdza Jr., above n 544; Debra Lynn Newman, *The Emergence of Liberian Women in the Nineteenth Century* (PhD Thesis, Howard University, 1985) 390 <http://books.google.com.au/books/about/The_Emergence_of_Liberian_Women_in_the_N.html?id=pd22pwAACA&redir_esc=y>; Burleigh Holder, ‘A History of Crozierville’ (1970) 3(1) *Liberian Studies Journal* 21.

¹⁴⁶⁵ Torres, above n 364. Oscar, Chief Executive Officer of Marninwarntikura Fitzroy Women’s Resource Centre and a proud Bunuba woman (same language group as colonial resistant and rebellious warrior Jandamarra) from the remote town of Fitzroy Crossing, captures the birth of state/institutional violence against Aboriginal Australians: ‘...both British and Australian museum collections, has conjured a range of contradictory emotions for Indigenous Peoples across Australia - joy and wonderment at our remarkable living cultural heritage, and pain, outrage and

east coast of Australia. The First Fleet sailed from England on 13 May 1787 and arrived at Botany Bay eight months later, on 18 January 1788. Governor Phillip rejected Botany Bay, choosing Port Jackson to the north instead as the site of the new colony. The First Fleet finally arrived at Port Jackson on 26 January 1788. The number of convicts transported in the First Fleet is unclear. However, it is estimated that between 750 and 780 convicts and around 550 crew, soldiers and family members were on board.¹⁴⁶⁶ The Second Fleet arrived in Sydney Cove in 1790; it consisted of six ships, four transport ships, and two store ships. Three of the transport ships carried mostly male convicts and the other transport ship, *The Lady Juliana*, carried only women. *The Lady Juliana* was the first all-female transport ship. The female population of Sydney more than doubled when *Juliana* arrived. Reports confirm that the maltreatment of convicts on all the ships wherein they received poor food rations and sickness was on the rise throughout the journey. Of the approximately 1 250 male convicts transported by the Second Fleet, over 25 percent died *en route* to New South Wales (in comparison to just 2.8 percent deaths of those on the First Fleet). Many convicts also died within a year of reaching Sydney.¹⁴⁶⁷ Almost half of the convicts who arrived in Sydney required immediate hospitalisation and about 80 died within three weeks of arrival.¹⁴⁶⁸ The exact number of convicts sent to Australia is unclear. However, it is estimated that between 160 000 and 164 000 convicts were transported

resentment emanating from the colonial wars, never fully acknowledged by the Australian state. Wars that saw countless violent deaths causing profound cultural and societal loss and intergenerational grief. I know these emotions first-hand, I have been a part of this exhaustive and meaningful journey every step of the way.... This cultural wealth is the strange and wonderful repercussions of Britain's Empire, greedy to consume the worlds of others. Still, in colonisation's hunger to extract wealth the lands of others were dominated. In too many instances colonisation has driven conflict and destruction, it has forced societies just like mine to the brink of eradication. Whether this was the intention or not, it is the truth of what happened. My Bunuba ancestors were not engulfed by the tidal wave of first British settlement, instead we felt the violent wash of frontier wars in the late 19th century. When I was standing on the Thames embankments yesterday I imagined the ports with ships preparing to journey for Australia. Their maiden voyage, the genesis of my future identity. When I would no longer be wholly Bunuba, or collectively Aboriginal but also an Australian. My heritage was tied to yours the day ships set sail with a cargo of chained human-beings. Between 1788 and 1870 160 000 English and Irish men, women and children were transported to an Island prison. No other society in the history of humanity has forcibly transported so many of its own subjects to a distant colony. I've learnt in the last few days that these people, our shared national ancestors, probably came from where I'm staying now, from the squalid overcrowded streets of an 18th century Covent Garden and Holborn. Just like rapidly growing urban centres today, London's population boom and the by-product were poverty. Inequality is dangerous. It breeds fear and anger between the materially prosperous and powerful and the poor and marginalised. The result – the first displaced populations of Australia were condemned for the crimes of the impoverished, fighting for survival. When this population was released from the shackles of the crown, I imagine they advanced with trepidation and determination to conquer and prosper. They pronounced Australia Terra Nullius, so they could own what had always been denied - land. To them we were the flora and fauna, ripe for domination.... By the time the unrelenting flow of settlers hit our countries in the far north, the continent was well on its way to being federated the Australian nation –state in 1901. The entire Aboriginal population had almost been reduced to a 10th of its size, while the new settlers swelled to a population of three million. Still, when white people set foot on the rocky crevassed limestone ranges of Bunuba country, Australia was yet to be formally named as a nation. It remained six British colonies under the lawmaking power of the British parliament, sitting in Westminster, just down the road.'

¹⁴⁶⁶ See, the State Library of New South Wales, "Convicts: Bound for Australia" (18 May 2015), available at: <<http://guides.sl.nsw.gov.au/content.php?pid=400401&sid=3291413>>.

¹⁴⁶⁷ See, Flynn, M (2001), *The Second Fleet: Britain's grim convict armada of 1790*, Library of Australian History, Sydney (available at: <<http://guides.sl.nsw.gov.au/content.php?pid=400401&sid=3291414>>.

¹⁴⁶⁸ *ibid*

to Australia.¹⁴⁶⁹ The most reliable online data reports records of 130 536 convicts, transported on some 825 voyages between 1787 and 1867.¹⁴⁷⁰

Whilst there are online data, several books and archival records documenting convicts transported to Australia between 1788 and 1868, none were available that showed the complete literacy of convicts over the 80-year period.¹⁴⁷¹ The most comprehensive records on former slaves returned to Liberia was obtained from hard copies of the roll of emigrants compiled by Shick (1971),¹⁴⁷² Murdza (1975),¹⁴⁷³ and Brown (1980).¹⁴⁷⁴ Challenges associated with gleaned statistical information from the above material centred on the lack of searchable online data which made an in-depth analysis of the 14 996 former slaves a painstaking process. Hundreds of pages listing males, females, state of origin, education, occupation, and settlement in Liberia were counted manually. Therefore, caution must be applied when making generalisations and inferences from the data analysis (*see* Appendix IX).¹⁴⁷⁵

The essence of compiling historical statistics on Liberia's former slave and Australia's convict record is deeply rooted in the persistence of systematic violence and the resulting traumatic impact on Indigenous Peoples as colonised bodies of these two countries. Both convicts and former slaves were dehumanised, rejected and forced to separate from their families and loved ones, yet denied access to education and skilled employment (*see* Appendix IX). For example, the youngest convict transported to Australia was only 11 years old.¹⁴⁷⁶ According to the 1871 Census (during the height of convict transportation), 27 percent of Australians could not read or write. Similarly, former slaves to Liberia endured over three centuries of enslavement, racism, and discrimination as chattels. Only about 15 percent of the former slaves to Liberia could read or write; nine percent were farmers (mostly cotton growers), and six percent were carpenters (*see* Appendix IX). Yet, many convicts and former slaves and their descendants rose to later become law and policymakers who directed the legal and political development of both Australia and Liberia.

¹⁴⁶⁹ Steve Thomas, *Convicts Records of Australia* (2018) Convict Records <<https://convictrecords.com.au>>; Government of Australia, above n 354.

¹⁴⁷⁰ Thomas, above n 1469.

¹⁴⁷¹ Email correspondence with ANU library and the National Library of Australia between 5 and 18 May 2015 reveal the lack of complete data on Australian convict literacy. Both institutions were very helpful in researching diverse resources over a period of two weeks but could only find fragmented resources. To this end, serious care needs to be taken when reading the Australian portion of Appendix IX as the information collected is fragmented and incoherent.

¹⁴⁷² Shick, above n 1464.

¹⁴⁷³ Murdza Jr., above n 544.

¹⁴⁷⁴ Brown, above n 543.

¹⁴⁷⁵ Apart from human errors, in some cases, sex was not indicated, thus an educated guess had to be made using the names of emigrants. In other cases, ages were not stated making it difficult to decide whether an emigrant was an infant, child or adult. Along with the challenge of distinguishing an adult from a child/infant is the educational level (i.e., an infant is unable to read or write but there is no accurate way of the age of the unknowns). This implies the percentage of unknown may include infants and young children who are not school ready.

¹⁴⁷⁶ Mary Wade History Association, above n 665; Rachel Roth, *Making Women Pay: The Hidden Costs of Fetal Rights* (Cornell University Press, 2000) <http://www.amazon.com/Making-Women-Pay-Hidden-Rights/dp/0801436079/ref=sr_1_7_title_1_bar?s=books&ie=UTF8&qid=1361921359&sr=1-7&keywords=the+hidden+gender+of+law>.

7.1.2 Contemporary Secondary Statistics

- Royal Commission into Aboriginal Deaths in Custody

In a ‘knee-jerk’¹⁴⁷⁷ response to public outcry about reports of Aboriginal deaths in custody, former Prime Minister Bob Hawke announced the formation of the Royal Commission into Aboriginal Deaths in Custody (hereafter the Royal Commission) pursuant to the *Commission of Inquiry (Deaths in Custody) Act 1987*. Over a period of four years, the Royal Commission investigated the causes of deaths of Aboriginal Peoples held in State and Territory gaols. Of the 99 deaths the Royal Commission examined between 1987 and 1991, 11 were females between the ages of 14 and 59. The most frequent offences committed by females who died in State and Territory custody were drunkenness, breaking and entry, and other public-order crimes. Nearly twice (n=63) as many deaths occurred in police care as in prison custody (n=33), the latter included three in juvenile detention centres. Aboriginal deaths in custody were highest in Western Australia (n=32) and Queensland (n=27). There were no deaths in custody recorded in the Australian Capital Territory. Thirty-seven deaths were due to diseases and other natural causes, 30 were caused by hanging, and 12 by head injury (*see Appendix X*). A total of 339 recommendations were made, ‘mainly concerned with procedures for persons in custody, liaison with Aboriginal groups, police education and improved accessibility to information’.¹⁴⁷⁸

The Australian Institute of Criminology’s 22-year National Deaths in Custody Program was established in 1992 in response to the Royal Commission’s concerns regarding scarcity of reliable statistics on Indigenous contact with the criminal justice system.¹⁴⁷⁹ Of the total prison population, (30 775) documented by the Australian Institute of Criminology, 27 percent (8 430) were Indigenous Peoples in Australia. A total of 2 325 deaths (96 percent males and four percent females) occurred in prison and police custody between 1 January 1980 and 30 June 2011 (450 Indigenous deaths; 19 percent).¹⁴⁸⁰ Over this time period, approximately 470 (six percent) members of the 8 430 Indigenous prison population died in custody compared with 1 993 (nine percent) of the 22 345 non-Indigenous Australian prison population.¹⁴⁸¹ Although the Australian Institute of Criminology findings corroborate the Royal Commission’s conclusion that Aboriginal deaths were not any different from non-Aboriginal deaths in custody, the quality of care and response provided for Aboriginal women who died in custody is of particular interest to this study.

¹⁴⁷⁷ Jonathan Swan, ‘Wooten warns of unrealistic hopes for finding closure’, *The Sydney Morning Herald*, 14 November 2012, at <http://www.smh.com.au/federal-politics/political-opinion/wootten-warns-of-unrealistic-hopes-for-finding-closure-20121113-29aj2.html>.

¹⁴⁷⁸ National Archives of Australia, *Royal Commission into Aboriginal Deaths in Custody - Fact Sheet 112* (2015) Government <<http://www.naa.gov.au/collection/fact-sheets/fs112.aspx>>.

¹⁴⁷⁹ Matthew Lyneham and Andy Chan, ‘Deaths in Custody in Australia to 30 June 2011’ (Monitoring Reports 20, Australian Institute of Criminology, 2013) 222, 6 <<http://www.aic.gov.au/publications/current%20series/mr/1-20/20.html>>.

¹⁴⁸⁰ *Ibid* Abstract.

¹⁴⁸¹ Ashleigh Baker and Tracy Cussen, ‘Deaths in Custody in Australia: National Deaths in Custody Program 2011-12 and 2012-13’ (Monitoring Reports 26, Australian Institute of Criminology, 2015) 76, x-xi <<http://aic.gov.au/publications/current%20series/mr/21-40/mr26.html>>; Lyneham and Chan, above n 1479, xv.

- Sexual and Gender-based Violence Crimes Unit

The Sexual and Gender-Based Violence Crimes Unit (hereafter the Crimes Unit) was initially established as a pilot project in Monrovia (2009-11) by the United Nations Populations Fund, the United Nations Development Program and the Government of Liberia to prosecute perpetrators of gender and sexual-based violence, particularly rape, in Liberia.¹⁴⁸² During fieldwork in Liberia, accessing information at many public institutions was challenging. As discussed above, the lack of a public electrical grid and other infrastructural problems made obtaining any electronic data nearly impossible. Even more challenging, formal requests made to review cases already tried at Criminal Court ‘E’ were consistently denied. A judge said during an in-person interview that, ‘Special Court “E” case law is not available for public use.’ Fortunately, shortly before departing Liberia, assistance from the Attorney General’s Office helped expedite the process of retrieving information from the Crimes Unit. The Crimes Unit reports that Criminal Court ‘E’ received and documented 169 cases between July 2011 and January 2014 and prosecuted 35. Of these, 24 defendants were convicted and sentenced, 10 were acquitted, and one verdict was hung. At the time of compiling this information (28 March 2014), one pre-trial screening was ongoing. The Attorney-General’s Office granted access to the 34 State-prosecuted case files. Given the time limitation placed on reviewing each voluminous file at restricted times between 10:00 am and 5:00 pm, only seven record files were scrutinised (*see* Table 7.1).

- Stolen Generation

The *Bringing Them Home Report* 1997 resulted from an inquiry by the Human Rights and Equal Opportunity Commission into the removal of Aboriginal and Torres Strait Islander children from their families. The report confirms that ‘[i]t is not possible to state with any precision how many children were forcibly removed...’ due to loss of documentation or failure to record children’s Aboriginality.¹⁴⁸³ The Human Rights and Equal Opportunity Commission concluded that between 1 in 3 and 2 in 10 Indigenous children were forcibly removed from their families and communities from around 1910 until 1970.¹⁴⁸⁴ Researching AusLII and other relevant journal articles (e.g., those authored by Chris Cunneen,¹⁴⁸⁵ Peter Read,¹⁴⁸⁶ Randall Kune,¹⁴⁸⁷ and Christine Forster),¹⁴⁸⁸ this study identifies seven Stolen Generation Cases in Australia, of which only one has been compensated (*see* Table 7.2).

¹⁴⁸² Abdulai, above n 977, 1.

¹⁴⁸³ Commonwealth of Australia, ‘Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families’, above n 761, 30.

¹⁴⁸⁴ *Ibid* 31.

¹⁴⁸⁵ Chris Cunneen and Julia Grix, ‘The Limitations of Litigation in Stolen Generations Cases’ (2004) 15 *An AIATSIS Research Discussion Paper* 1.

¹⁴⁸⁶ Peter Read, ‘The Stolen Generations, the Historian and the Court Room’ (2002) 26 *Aboriginal History* 51.

¹⁴⁸⁷ Randall Kune, ‘The Stolen Generations in Court: Explaining the Lack of Widespread Success Litigation by Members of the Stolen Generations’ (2011) 30(1) *University of Tasmania Law Review* 32.

- Ministry of Gender, Children and Social Protection Database

The Ministry of Gender, Children and Social Protection’s (hereafter the Ministry of Gender) Research Unit provided invaluable assistance during fieldwork data collection in Liberia (2013-

Perpetrator's Relationship to Survivor

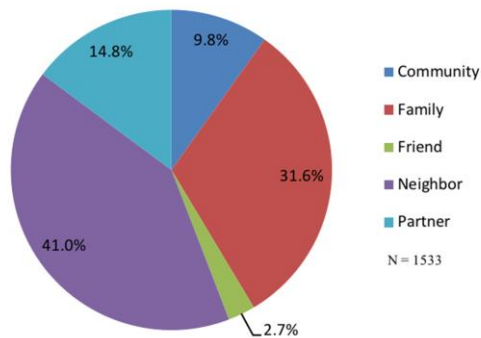


Figure 7.1: Relationship of perpetrator to survivor of sexual and domestic violence

Ministry of Gender’s Research Unit allowed a review of five years (2009-13) worth of data collected on gender violence across Liberia. Over a two-month period, a total of 12 000 cases reported to the Ministry of Gender were photographed with an iPad and a digital camera.¹⁴⁸⁹ Once again hundreds of hours were spent imaging, converting and cleaning up the digital files obtained from the Ministry of Gender. Due to time limitations, only the 2 701 cases reported in

14). As noted above, Liberia lacks access to public grid electricity; generators power most government ministries, or electricity is rationed or provided *ad hoc* by the Liberia Electricity Corporation. Regardless of the source, power is shut down by 5:00 pm daily, making it difficult to work longer hours. With permission from the Assistant Minister and the Gender-Based Violence Coordinator,

2013 were organised and assessed.

Case First Reported To...

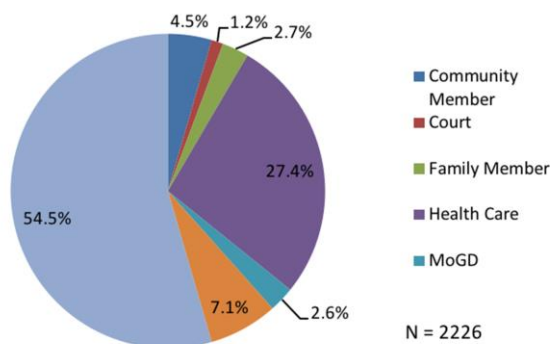


Figure 7.2: Institutions where cases of sexual and domestic assault are first reported

Table 7.3 shows more gaps in reporting as one moves further into the legal processes of a reported case. For example, the sex of the perpetrator is reported in 100 percent of the cases, compared with 30 percent reporting on the results of the court hearing. Overall, 414 (15 percent) of cases received an assignment to legal counsel. Of

¹⁴⁸⁸ Christine Forster, ‘The Stolen Generation and the Victims Compensation Tribunal: The “writing in” of Aboriginality to “Write out” a Right to Compensatory Redress for Sexual Assault’ (2002) 25(1) *University of New South Wales Law Journal* 185.

¹⁴⁸⁹ All variables in each report for the year 2013 (some up to 15 pages long) were cleaned up to ensure consistency before entering into a spreadsheet (e.g., LGH was changed to Liberian Government Hospital, and Bassa to Grand Bassa county). Individual case reports were then cleaned up for consistencies whilst adding more analysable columns. For example, time of day was broken down to day and night, days were grouped into months, and offenses were categorised collectively – say child beating grouped under child abuse and neglect). Further, some locations had to be checked and verified and grouped by county and districts using LISGIS Census data (*see*, <http://www.lisgis.net>) and then National Elections Commission political divisions (*see*, <http://www.necliberia.org>).

these only 250 (nine percent) were specified as having provided actual legal counsel to the survivors in question.

Table 7.4 shows that rape had the highest incidence of all sexual assaults recorded, making up 62 percent of 2 198 cases. Of these, 96 percent were male perpetrators (*see* Table 7.5), and most were neighbours (41 percent) or family members (31 percent) (also *see* Figure 7.1). Figure 7.2 shows that whilst the court is not the first point of contact for reporting sexual and domestic assault cases, the hospitals comprised 55 percent of the 2 226 cases recorded. Survivors of sexual assaults were mostly females (96 percent) ranging from the ages of 0 to 60+ years of age, with girls between the ages 10 and 15 being the most affected (*see* Figure 7.3). A total of 579 cases documented the number of days that survivors spent in safe houses (provided the option was available to them). Of these, only 167 (28 percent) of the cases documented survivors spending one or more days in a safe house. Some 1 019 cases sent to court were recorded on the reporting form. Of these, only 546 (54 percent) were documented as having actually gone to court or planning to go to court. Regarding the outcome of trials that actually made it to court, 45 (four percent) of the cases recorded that the perpetrator was found ‘guilty’ (n=42) or sent to ‘prison’ (n=3).

Notably, the Ministry of Gender’s paper reports is not perfect. For example, up to 84 percent of entries are missing. There are inconsistencies in the usage and processing of variables from different agencies. However, the data are the best available to establish base rate information on the incidence and prevalence of sexual violence in Liberia, tracking the entire life-cycle of a case file across health/medical, law enforcement, and the judiciary systems. Unfortunately, months of communication (ordinary and electronic mails and physical visits) with the Australian Institute of Criminology and government institutions including state police departments in the Australian Capital Territory, Western Australia, Northern Territory and Queensland proved futile with regards to similar data collection. Either the response indicated that ‘there is no data of that sort’ collected in Australia, ‘statistical information is available on our website’, or ‘we do not have access to or the authority to release data, we only coordinate requests for research’.¹⁴⁹⁰

- The Longitudinal Study of Indigenous Children

The Longitudinal Study of Indigenous Children (hereafter the Longitudinal Study), also called Footprints in Time, is an initiative of the Australian Government. Conducted by the Department of Social Services under the guidance of the Footprints in Time Steering Committee and chaired by Professor Mick Dodson, the Longitudinal Study includes two groups of Aboriginal and Torres Strait Islander children. One group (B cohort) was aged 6-18 months and the other (K cohort) 3½ - 5 years when the study began in 2008. The Longitudinal Study releases its findings in waves. A total of eight waves have been produced so far, with data collection for the most

¹⁴⁹⁰ Personal email exchange with the Western Australia Police Department on 7 July 2014.

recent cohort starting in February 2015. The Longitudinal study does not collect direct data on violence against Aboriginal and Torres Strait Islander children in Australia. Nevertheless, this study extracted data from wave 1 (base rate information),¹⁴⁹¹ wave 2 (stolen generation), wave 3 (homelessness and racism) and wave 7 (bullying) because these are the strongest indicators relating to systematic violence against Aboriginal children in Australia. Footprints in Time interviewers have successfully contacted and interviewed over 1 200 of the original families in subsequent waves. New families were added in wave 2 and have shown similarly strong commitment. The Longitudinal Study data must be interpreted with a caveat, as it is not a probability sample, but rather secondary data collected from volunteer families selected from 11 original sites. To this end, Maggie Walters asserts that the Longitudinal Study data cannot be readily compared with that of non-Indigenous children. However, dichotomous comparisons of this type are not required to give substance and meaning to the data. Rather, ‘what [the Longitudinal Study of Indigenous Children] cumulative data are revealing is a compelling, previously hidden portrait of how Aboriginal and Torres Strait Islanders can “be” family and “do” raising children’ (see Table 7.6).¹⁴⁹²

7.1.3 Empirical Study

- Paper/Online Survey

In Liberia, service providers in the health, education and legal areas of both private and public institutions were surveyed using a paper questionnaire. After sending out 1 200 electronic mails, posting notices at various ministries, schools, hospitals, and using word-of-mouth to promote the survey, a total of 78 responses were received. Initially, an assumption was made that respondents might not have been able to complete the survey due to their inability to comprehend high-level information or for logistical reasons (e.g., no available stationery). In instances where respondents could not complete the survey on their own, assistance was provided. Midway into the fieldwork, 90-minute survey interview meetings were conducted, at which time responses to survey questions were recorded by the researcher. The respondent interview ran for a period of six months in Liberia. Respondents were concentrated in four professional areas pertinent to providing services for survivors of systematic gender violence. They were: 1) legal, law enforcement and human rights, 2) education, literacy and skills building, 3) community and grass-roots advocacy, and 4) administration, coordination,

¹⁴⁹¹ In wave 1, over 1 680 interviews were conducted with the children’s parents or primary care-providers (usually the mothers) and over 265 interviews were conducted with fathers or other significant care providers. Subsequent waves experienced strong support from these initial interviewees (see, Department of Social Services, ‘Footprints in Time – The Longitudinal Study of Indigenous Children (LSIC)’ (20 July 2015), available at: <<https://www.dss.gov.au/about-the-department/publications-articles/research-publications/longitudinal-data-initiatives/footprints-in-time-the-longitudinal-study-of-indigenous-children-lsic>>.

¹⁴⁹² Fiona Skelton et al, ‘Footprints in Time: The Longitudinal Study of Indigenous Children Up and Running’ (Government 95, Australian Institute of Family Studies, 2014) 11, 37 <<https://aifs.gov.au/sites/default/files/fm95d.pdf>>.

monitoring and evaluation. Other professional areas in which survey respondents worked included mental health, psychosocial support, medical care and prison care.

In Australia, which has much easier access to the internet and electronic resources, 2 500 emails went out in a similar fashion. Over a period of six weeks, 154 survey participants responded (*see* Table 7.7). The top three professions of survey respondents in Australia were: 1) law and legal service, 2) crises and victim support, and 3) physical and mental health. Other respondents reported that they worked in domestic violence, homelessness and housing, volunteer and advocacy, law enforcement, corrections, and research.

Table 7.8 shows service providers' responses to four key survey questions. When asked whether the law is helpful in their work on violence against Indigenous women, 21 per cent of service providers said 'yes' (compared with 14 percent who said 'no') in Australia and 53 percent said, 'yes' (compared with 17 percent who said 'no') in Liberia. However, when asked whether they perceive the Australian legal system as 'just' toward Indigenous girls and women, 26 percent of service providers said 'yes' compared with eight percent who responded 'no'. In Liberia, 44 percent of service providers perceived the legal system to be 'just' toward Indigenous girls and women who have suffered gender violence, whilst 26 percent did not. Twenty-seven percent of survey participants in Australia and 74 percent in Liberia agreed that the customary law and the local community (34 percent in Australia and 91 percent in Liberia) have a crucial role to play in addressing systematic violence against Indigenous girls and women.

- **Semi-Structured Interview**

A similar snowballing method that was used to recruit service providers was applied in identifying Indigenous Women Advocates to participate in the research interview. Of the 61 and 27 Indigenous Women Advocates contacted in Liberia and Australia, 21 and 7, respectively, agreed to participate in the interview (*see* Tables 7.11). Due to financial constraints, five out of seven of the Australian interviewees were conducted in the Australian Capital Territory. With one exception, Indigenous Women Advocates in Australia were Ph.D. recipients or candidates. Only one interviewee did not identify with a 'mob' (i.e., an Aboriginal Language Group in Australia).¹⁴⁹³ Ages of interview participants ranged from 54 to 60 years. One participant was not comfortable revealing her age.

More than three times as many Indigenous Women Advocates in Liberia participated in the interviews as in Australia (*see* Table 7.10). Ninety-five percent of all participants in Liberia were interviewed in person across four counties. Given the breadth of geographical locations covered in Liberia, educational levels of participants varied more widely than in Australia (*see* Table 7.9), although a relatively high number of participants in Liberia (71 percent) were

¹⁴⁹³ Mob is an Aboriginal English word for family, kin, or group of people (*see*: http://www.ipswich.qld.gov.au/__data/assets/pdf_file/0008/10043/appropriate_indigenous_terminology.pdf).

followed by an open-ended format that prompted respondents to provide reasons for and examples of why they perceived the law as '(un)helpful' or '(un)just'. Table 7.11 below shows responses contrary to those shown in Table 7.8, which partly explains why survey respondents hesitated to give full responses to some of the open-ended questions. A relatively high percentage of respondents did not return a 'yes' or 'no' answer to whether the law or legal system is 'helpful' or 'just' (*see* the 'Blank' columns in Table 7.8 for clarification).

For questions 1 and 2 in Table 7.11, survey participants provided more reasons why they think the law is 'unhelpful' in addressing violence against Indigenous girls and women. To be clear, 87 survey responses in Liberia and 52 in Australia provided reasons why the law was 'unhelpful' compared with 47 in Liberia and 45 in Australia that provided reasons why the law is 'helpful'. Survey participants tended to associate 'helpfulness' (*see* questions 1 and 2 in Table 7.11) of the law with perceptions of 'justice' (*see* questions 3 and 4 in Table 7.11) in the legal system. Survey participants provided more reasons for why they think the legal system is 'unjust' (136 responses in Liberia and 60 in Australia) when addressing violence against Indigenous girls and women than for why the legal system is 'just' (35 responses in Liberia and nine in Australia). Whilst service providers acknowledged the significant role played by the legal system (44 responses in Liberia and 66 in Australia), Indigenous Customary Laws (125 responses in Liberia and 53 in Australia), and the community (69 responses in Liberia and 80 in Australia), 24 respondents commented that the traditional system in Liberia has little or no role to play in protecting Indigenous girls and women against violence.

Respondents indicated that Indigenous Customary Law in Australia is complicated and complex; hence, it is hard to clearly articulate its role in addressing violence against Indigenous girls and women. The survey is replete with comments provided by survey participants regarding the challenges (76 responses in Liberia and 40 in Australia) and recommendations on how to improve the law and change attitudes (164 responses in Liberia and 151 in Australia). That being said, recurring themes that ran through responses to the above question emphasised the need for high-quality education, dialogue, awareness, and advocacy to assist in the prevention of violence against Indigenous girls and women.

- Indigenous Women Advocates' Responses to Interview Questions

Nodes gathered from all 15 coded interviews with Indigenous Women Advocates revealed interesting parallels between Australia and Liberia in the prevalence of systematic gender violence. Though Indigenous Women Advocates from these two countries differ culturally, historically, and contextually, they expressed similar concerns regarding the pervasive, ingrained and persistent nature of violence inflicted on Indigenous girls and women. They also lamented the serious challenges faced when addressing the issue of systematic gender violence. Indigenous Women Advocates in Australia, partly due to their high academic level, were more cognisant of the interconnections between the three levels of systematic gender violence

(institutional/state, structural/cultural and community/interpersonal). Such awareness is exemplified by *Alison's* quote under 'religious abuse' in Table 7.12 and stands in contrast to survey participants in both countries (e.g., *Sia's* quote under 'Female Genital Cutting' in Table 7.12), who tended to reduce gender violence to the community or interpersonal violence.

Indigenous Women Advocates in both countries responded to issues of patriarchy and settlers' control of the legal system responsible for propagating systematic gender violence against Indigenous girls and women (e.g., *Sia's* and *Jaky's* quotes under 'Female Lawyers/Police Officers' in Table 7.12). Indigenous Women Advocates also highlighted the need to address the occurrence of violence against boys and men (e.g., *Sia's* and *Dallas's* quotes under 'Violence against Men' in Table 7.12). Like the survey participants, Indigenous Women Advocates cited numerous challenges associated with dispensing justice for Indigenous girl and women survivors of systematic gender violence. Indigenous Women Advocates repeatedly emphasised the importance of males championing the cause of violence against girls and women (e.g., *Abigail's* and *Jaky's* quotes under 'challenges' in Table 7.12). Education, awareness and attitudinal changes (e.g., *Yaa's* and *K's* quotes in Table 7.12) were front and centre in Indigenous Women Advocates' recommendations. *Lara* focused on the education of the judiciary:

There needs to be better training of the judiciary in dealing with Aboriginal issues. There needs to be better programs in dealing with underlying issues - particularly in literacy. There needs to be better pathways to provide support. There absolutely needs to be investment in the services for victims in taking a holistic approach - not just the service but where they can go to be safe; but also, in long-term care, as in employment and counselling. That's the kind of a broader holistic approach that people need to be able to get their lives back together. [*Lara*, Australia]

Amelia suggested incorporating violence against girls and women issues in curricula designed for health sciences students at the university level:

At the Ministry of Health and Social Welfare, what we've done and continue to do is to train our health professionals how to manage survivors when they are raped. We've conducted the training for a couple of years now. What we've been trying to push for is to make this training part of the curriculum for all health training institutes in the country. So that once you enrol at say, the Tubman National Institute of Medical Arts [University of Liberia's Nursing School], in your studies, you'll learn how to manage rape cases. After graduation, when you're assigned to a health facility, you'll only do in-service rather than receiving on-the-job training. [*Amelia*, Liberia]

- Informal Email Responses from Male Friends, Colleagues and Acquaintances

My perspective in researching violence against Indigenous girls and women was informed by my experience as a female survivor of personal and systematic violence. Although soliciting male input was not initially part of this research, upon re-reading survey and interview participants' suggestions for including male voices in the gender justice agenda, I decided to seek input from a select few male colleagues, friends and acquaintances. In all, the 22 responses received from male participants *via* electronic mail exchange affirmed that most men at least intend to speak out against gender violence subject to certain conditions around safety. Overall,

male colleague responses about speaking out expressed concerns regarding the context, localities or type of gender violence. For example:

In male conversations, I have been fortunate to be surrounded by mostly caring and respectful men in my life. However, when some people are maturing, they may try out misogynistic or objectifying language to try and fit into social groups. There have been a couple instances where I have called out a peer within a group of friends/colleagues, to hold them accountable and demonstrate that objectifying or denigrating women is not acceptable behaviour in my social groups. *Respondent #2*

It is a little difficult to answer your question because the many contexts in which I can imagine speaking out about violence against women are not easy to delineate. *Respondent #6*

I would speak out about violence against women, but only in a comfortable context. *Respondent #18*

The where is oftentimes the key element. If I am at work or attending a public meeting, yes and not only because I believe it is wrong but additionally the societal norm in my circles views violence against women as a particularly loathsome act. *Respondent #5*

Interestingly, male colleague respondents did not mention the law or legal system as an instrument of systematic gender violence or as a tool for addressing violence against girls and women. *See* chapter 8 for further discussion and analysis and Appendix XI for more responses from male colleagues.

7.3 Summary

The findings and results in this chapter achieved the three research objectives stated in chapter 1. Drawing on historical, secondary data, surveys and interviews to examine systematic gender violence, data collected in the chapter substantiate the basis for critical analysis of the efficacy of the rule of law in restoring justice to Indigenous girl and women survivors of systematic violence. Intergenerational trauma caused by the Trans-Atlantic Slave Trade on African American settlers and convict transportation on White Australian settler-colonists partly explain the persistence of systematic violence inflicted on Indigenous girls and women in these countries. Incident reports from various institutions in Australia and Liberia show that males closely related to Indigenous survivors of gender violence disproportionately perpetrate violence against them. Courts and criminal data highlight difficulties in using the law or legal system as a viable mechanism for restoring justice to Indigenous girls and women survivors of systematic gender violence. Responses from survey participants suggest a need for change in males' attitudes towards girls and women to effectively address systematic gender violence. Interview results show that even though Indigenous Women Advocates are resilient survivors of systematic gender violence, male leadership in preventing such violence is paramount. *Ad hoc* responses from a select few male colleagues *via* email reaffirms that the law or legal system is not a primary avenue for restoring justice to girls and women survivors of systematic gender violence.

Table 7.1: Select cases prosecuted by the Sexual and Gender-Based Violence Crimes Unit 2009-2011

Case Name	Location	Referral	Incident Report Date	Date of Incident	Medical Report	Date of Arrest	Offense	Age of Victim	Sex of Victim	Age of Accused	Sex of Accused	First Court presence	Verdict
<i>RL v Prince Ameka of Monrovia</i>	Capitol Bye Pass	Metro 1 Police Station	14 Sep 2011	03 Sep 2011	15 Sep 2011	17 Sep 2011	statutory rape	13	female	27	Male	14 Sep 2011	Guilty (plea bargain)
<i>RL v Tutugirl Flomo</i>	Paynesville	Zone 5 Police Station	29 Apr 2011				Corruption of minor			27	Female	28 Sep 2011	Guilty (no detention, no ruling from the judge and no sentence since 2012)
<i>RL (MOJ) v James Marfalon</i>	Beer Village	Jacob Town WACPS	20 Feb 2011	18 Feb 2011	21 Feb 2011	22 Feb 2011	Statutory Rape	10	Female	20	Male	30 Aug 2011	Guilty (in prison)
<i>RL v Lewis Lecco</i>	Dwan Town	Police Station	17 Jan 2010	14 Jan 2010	17 Jan 2010	11 Mar 2010	Statutory rape	5	Female	36	Male	9 Mar 2012	Acquitted (Bench trial without jury)
<i>RL v Elinam Prah</i>	Parker Paint	Hotline	30 Jun 2009	01 Dec 2008	02 Jul 2009	30 Jun 2009	Statutory rape	5	Female	43	Male	02 July 2009	Acquitted
<i>RL v Joseph Gardea</i>	Gardnersville	Chicken Soup Factory	09 Dec 2009	01 Oct 2009	9 Dec 2009	23 Mar 2010	Statutory rape	11	Female	44	Male	24 Dec 2009	Guilty (Life imprisonment) *
<i>RL v Prince Mayango</i>	Caldwell	WACPS Zone 7	25 Apr 2009	25 Apr 2009	25 Apr 2009	25 Apr 2009	Statutory rape	14	Female	47	Male	16 Jun 2009	Guilty (tried twice, first trial life sentence, second trial 5 years)

* Information from the death certificate of Deontee Gardea, the victim in *RL v Joseph Gardea* 2009, indicates that she died on 10 December 2009. Cause of death was peritonitis, due to the acute abdomen (bowel perforation).

Table 7.2: Select Stolen Generation Cases in Australia

#	Case	Year	Court	Issue/Claim	Decision/Held	Comments
1	<i>Joy Williams v The Minister, Aboriginal Land Rights Act 1983 & Anor</i>	1999	New South Wales Supreme Court	Damages for negligence, breach of fiduciary duty, breach of statutory duty and trespass as a result of wrongful removal, causing physical and mental illness.	There was no duty of care, breach of duty, trespass or relevant causation established. Action in negligence failed.	First case by an Indigenous person in Australia claiming remedy for losses suffered due to forced removal.
2	<i>Kruger v Commonwealth</i> ('Stolen Generation Case')	1997	High Court of Australia	Challenge the constitutional validity of the <i>Aboriginals Ordinance</i> 1918 (NT) which provided that the Chief Protector of Aboriginals had extensive powers. Authority includes 1) the discretion to undertake care, custody and control of any 'aboriginal or half-caste' (s 6(1)) and 2) remove any 'aboriginal or half-caste' to any 'reserve' or 'aboriginal institution. The plaintiffs argued that breach of their implied constitutional rights gave rise to damage recovery from the Commonwealth.	The High Court of Australia held that the Ordinance was not 'contrary to an implied constitutional right to freedom.' Although the Ordinance targets one racial group, it was not an example of legislation designed to be punitive towards that racial group. The Court further held that the power to order involuntary detention is not 'necessarily judicial power, whether or not subject to exceptions...' The court rejected the plaintiffs' freedom of movement argument for invalidation of the Ordinance.	The plaintiffs include eight inhabitants of the Northern Territory removed from their families between 1925 and 1944 under the <i>Aboriginal Ordinance</i> 1918 and a mother whose child had been taken away under the same law.
3	<i>Johnson v Department of Community Services & Others</i>	1999	New South Wales Supreme Court	The plaintiff, removed from the care and custody of his family and parents since he was 4 and placed into the care of the Minister for Youth and Community Services by order of the Children's Court at Wilcannia, pursuant to the Child Welfare Act 1939. He claims damages for negligence, breach of statutory duty and breach of fiduciary duty. The plaintiff further applied for an extension of within which proceedings could commence subject to the <i>Limitation Act</i> 1969.	Extension of limitation period declined.	Decision reserved for appeal like <i>Williams</i> (1994).
4	<i>Cubillo & Gunner v The Commonwealth</i>	2000	Federal Court of Australia	Lorna Cubillo was taken away at age eight from Phillip Creek Settlement and Peter Gunner and removed at aged seven from Utopia Station. She claims that their removal and detention caused them pain and suffering, loss of enjoyment of life and loss of cultural heritage. They also alleged that the Commonwealth was legally responsible for the wrongs done to them and was liable to compensate them for damages.	Primary judge dismissal of claims held as he did not err in rejecting the appellants' false imprisonment claims. The primary judge correctly held that there was no basis for the appellants' claims founded on an alleged breach of fiduciary duties said to be owed by the Commonwealth to the appellants.	
5	Valerie Wenberg Linow	2002	New South Wales Victims Compensation Tribunal	The plaintiff, taken from her mother at the age of two and placed in the Bombaderry Children's Home; claimed compensation based on sexual assaults endured after being placed with a family at age 16, as a domestic worker by the Aboriginal Welfare Board in 1958	The plaintiff claim accepted on the balance of probabilities. However, the applicant experienced a series of indecent and sexual assaults by the alleged offender. The Assessor denied the plaintiff's claim based on dissatisfaction 'on the balance of probabilities that the injury resulted from the sexual assaults.'	
6	<i>State of South Australia v Lampard-Trevorrow</i>	2010	Supreme Court of South Australia [Full Court]	The plaintiff, an Aboriginal child, was fostered without the consent of his parents after having been admitted to hospital in late 1957. Appeal against the award of damages by a trial Judge in respect of injuries caused by the fostering (s 10 of the <i>Aboriginals Act</i> 1934 (SA)) provided that the Aboriginals Protection Board (APB) be 'the legal guardian of every Aboriginal child.' Does s10 give the APB the power to foster an Aboriginal child without the consent of the child's parents?	Under to s22 of the Acts Interpretation Act 1915 (SA) in explicating the ambiguity of 'legal guardian,' the Supreme Court held that s 10 did not give the APB the power to foster an Aboriginal child without the consent of the child's parents.	The Supreme Court of Australia upheld a 750 000 award to the late Bruce Trevorrow in 2011.
7	<i>Collard v The State of Western Australia</i> [No 4]	2013	The Supreme Court of Western Australia in Civil	Sometime between 1958 and 1961, the children (Ellen, Donald, William, Glenys, Eva, Wesley, Beverly, Darryl and Bonnie) of Don and Sylvia, were removed, subject to the Children's Court at Brookton, and committed to the care of the Child Welfare Department. The plaintiffs claimed that the State was subject to fiduciary duties to them during the wardship because it was the guardian of the children. The plaintiffs brought this action seeking a declaration that the State breached its duties to them, and equitable compensation or damages, including exemplary damages and aggravated damages, for the injuries, loss and damage they claim to have suffered as a result of the alleged breach by the State of its duties to them.	Plaintiff actions dismissed.	The first case of its kind in Western Australia. The State sought an order that the plaintiffs pay its costs of the action.

Table 7.3: Incidence of Sexual Assault and Other Violent Crimes Submitted to the Ministry of Gender in 2013

2013 Total Cases = 2701	Recorded	% of Total	Missing	% of Total	Unknown	% of Total	Known	% of Total
IncCounty	2701	100%	0	0%	0	0%	2701	100%
PerpNumber	2701	100%	0	0%	27	1%	2674	99%
PerpSex	2700	100%	1	0%	18	1%	2682	99%
IncReportDate	2698	100%	3	0%	0	0%	2698	100%
SurvSex	2696	100%	5	0%	0	0%	2696	100%
IncType	2692	100%	9	0%	13	0%	2679	99%
SurvAge	2689	100%	12	0%	3	0%	2686	99%
CaseFirstReportedTo	2677	99%	24	1%	0	0%	2677	99%
IncTown	2665	99%	36	1%	2	0%	2663	99%
IncDate	2593	96%	108	4%	161	6%	2432	90%
IncTimeOfDay	2584	96%	117	4%	77	3%	2507	93%
PerpRelationship	2538	94%	163	6%	134	5%	2404	89%
PerpAge	2476	92%	225	8%	119	5%	2357	87%
SurvivorReferralCode	2278	84%	423	16%	0	0%	2278	84%
MedicalFormProvided	2058	76%	643	24%	0	0%	2058	76%
TypeOfMedCareProvided	1919	71%	782	29%	0	0%	1919	71%
SurvHasDisability	1442	53%	1259	47%	0	0%	1442	53%
PerpOccupation	1340	50%	1361	50%	158	12%	1182	44%
PerpArrested	1320	49%	1381	51%	7	1%	1313	49%
IncDistrict	1243	46%	1458	54%	0	0%	1243	46%
CaseHealthCareProvider	1242	46%	1459	54%	0	0%	1242	46%
CasePoliceStation	1203	45%	1498	55%	1	0%	1202	45%
CaseSentToCourt	1164	43%	1537	57%	0	0%	1164	43%
CasePshychosocial	1010	37%	1691	63%	0	0%	1010	37%
PrevReported	990	37%	1711	63%	0	0%	990	37%
ResultOfHearing	820	30%	1881	70%	24	3%	796	29%
SurvNumDependents	721	27%	1980	73%	1	0%	720	27%
DaysInSafeHouse	659	24%	2042	76%	21	3%	638	24%
CaseLegal	488	18%	2213	82%	0	0%	488	18%
CaseSafeHouse	453	17%	2248	83%	0	0%	453	17%
CaseEmpowerment	438	16%	2263	84%	0	0%	438	16%

Note: Total numbers recorded in May included incidences occurring in December 2012 but were reported sometime in 2013.

Table 7.4: Characteristics of Gender Violence Reported to Ministry of Gender in 2013

Indicator	Number	Percentage
Incident Type		
Community Violence	13	0.6%
Domestic Violence	513	23.3%
Emotional Abuse	5	0.2%
Neglect	71	3.2%
Rape	1378	62.7%
Sexual Exploitation and Abuse	199	9.1%
Trafficking	19	0.9%
Total	2198	100.0%
Case First Reported To		
Community Member	100	4.5%
Court	27	1.2%
Family Member	61	2.7%
Health Care	609	27.4%
Ministry of Gender	58	2.6%
Non-Governmental Organisation	158	7.1%
Police	1213	54.5%
Total	2226	100.0%
Perpetrator Age		
1-18	220	25.3%
19-25	148	17.0%
26-35	219	25.1%
36-45	199	22.8%
46-55	65	7.5%
55+	20	2.3%
Total	871	100.0%
Perpetrator Adult/Minor		
Adult	1540	77.6%
Minor	444	22.4%
Total	1984	100.0%
Perpetrator Sex		
Male	2166	96.4%
Female	75	3.3%
Both	5	0.2%
Total	2246	100.0%
Perpetrator's Relationship to Survivor		
Community	151	9.8%
Family	484	31.6%
Friend	42	2.7%
Neighbour	629	41.0%
Partner	227	14.8%
Total	1533	100.0%
Survivor Age		
0-5	179	8.0%
5-10	340	15.2%
10-15	719	32.2%
15-20	410	18.4%
20-25	181	8.1%
25-30	156	7.0%
30-35	115	5.2%
35-40	73	3.3%
40-45	28	1.3%
45-50	15	0.7%
50-55	7	0.3%
55-60	2	0.1%
>60	5	0.2%
Total	2230	100.0%
Survivor Adult/Minor		
Adult	671	30.0%
Minor	1567	70.0%
Total	2238	100.0%
Survivor Sex		
Female	2155	96.3%
Male	83	3.7%

Total	2238	100.0%
Survivor Received Medical Care		
Yes	1406	87.9%
No	194	12.1%
Total	1600	100.0%
Survivor Received Legal Aid		
Yes	250	60.4%
No	164	39.6%
Total	414	100.0%
Survivor Received Empowerment Services		
Yes	193	51.5%
No	182	48.5%
Total	375	100.0%
Days In Safe House		
1+	167	28.8%
None	412	71.2%
Total	579	100.0%
Case Sent to Court		
Yes	546	53.6%
No	473	46.4%
Total	1019	100.0%

Table 7.5: Age-Sex Contingency Table

		Survivors						Grand Total
		Female			Male			
Perpetrators		Adult	Minor	Total	Adult	Minor	Total	
Male		549	1297	1846	14	46	60	1906
	Adult	547	884	1431	14	31	45	1476
	Minor	2	413	415		15	15	430
Female		8	39	47	7	12	19	66
	Adult	8	27	35	7	12	19	54
	Minor		12	12				12
Grand Total		557	1336	1893	21	58	79	1972

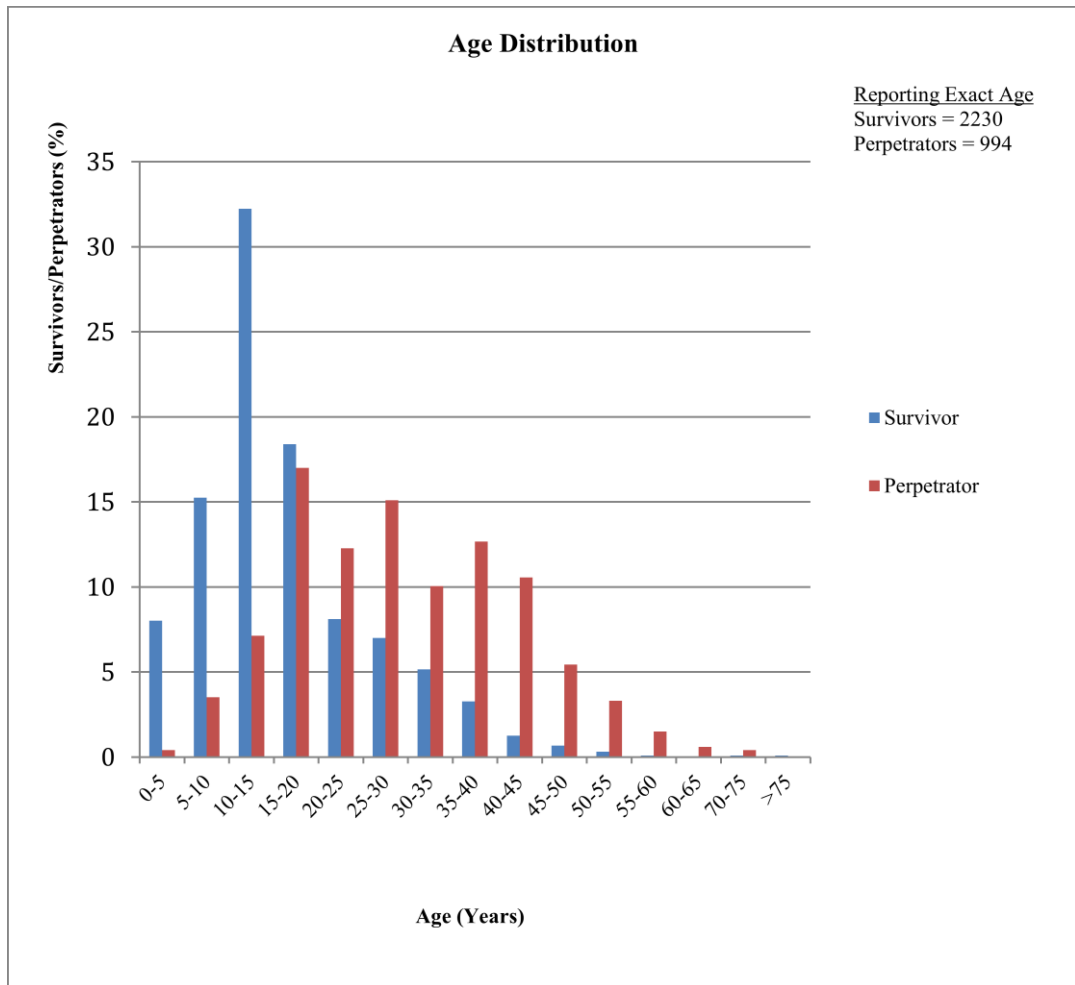


Figure 7.4: Age distribution of survivors and perpetrators of sexual and domestic violence

Table 7.6: Longitudinal Study of Indigenous Children Respondents' Experiences of Adoption, Homelessness, Racism and Bullying

Wave 1: Base Rates (2008)		Wave 2: Stolen Generation (2009)	
	N = 1 687		N = 1 436
Age (Months)	# (%)	Description	# (%)
0-5	15 (0.8)	Primary parents*	1 000
6-18	677 (40.1)	Not prepared to answer the questions	425 (42.5)
19-30	272 (16.1)	Didn't answer	98 (9.8)
31-41	37 (2.2)		
42-54	497 (29.5)	Of the 1 000 respondent...	# (%)
+ 55	189 (11.2)	Yes, self or relative taken	520 (52)
Missing	1	No relative taken	350 (35)
Total	1 687 (99.9)		
		Don't know	120 (12)
Gender	# (%)	Other	10 (1)
Female	860 (51.0)		
Male	827 (49.0)	Which primary carer's relatives were taken away?	# (%)
Total	1 687 (100)	Self	26 (3.6)
		Partner	10 (1.4)
Region	# (%)	Own children	4 (0.6)
Major cities	439 (26.0)	Mother	81 (11.1)
Inner regional	428 (25.4)	Father	53 (7.2)
Outer regional	227 (13.5)	Siblings	24 (3.3)
Remote	256 (15.2)	Grandparents (mother/father)	277 (37.9)
Very remote	337 (20.0)	Great-grandparents	72 (9.8)
Total	1 687 (100)	Aunts, uncles, cousins, nieces, nephews, and other family members	185 (25.3)
		Total	732** (100)
Wave 3: Homelessness and Racism (2012)	N=1 404	Wave 5: Bullying (2015)	N = 1 258
No experience of homelessness in 5 years before interview	1 279 (91.1)	Study child was bullied at school+	# (%)
		Preschool (A)	728 (-)
		Preschool (NA)	135 (-)
		Pre-Year 1 (A)	812 (19.9)
		Pre-Year 1 (NA)	181 (27.7)
		Year 1 (A)	548 (24.8)
		Year 1 (NA)	100 (31.6)
		Year 2 (A)	430 (32.1)
		Year 2 (NA)	75 (35.7)
		Year 3 (A)	191 (29.3)
		Year 3 (NA)	28 (48.1)
Experienced homelessness in 5 years before interview	70 (5.0)	Study child bullied at school for being Indigenous+	# (%)
		Preschool (A)	
		Preschool (NA)	728 (4.6)
		Pre-Year 1 (A)	135 (4.6)
		Pre-Year 1 (NA)	812 (9.4)
		Year 1 (A)	181 (9.3)
		Year 1 (NA)	548 (7.8)
		Year 2 (A)	100 (12.1)
		Year 2 (NA)	430 (8.7)
		Year 3 (A)	75 (20.7)
		Year 3 (NA)	191 (-)
Not stated	55 (3.9)		28 (-)
		Total	3 228

N.B.: Region: Based on an indicator of the level of relative isolation (LORI) as developed in the Western Australian Aboriginal Child Health Survey. LORI is an extension of the 18-point ARIA (Accessibility/Remoteness Index of Australia) called ARIA++.

* Primary parents, mostly mothers, asked if they are willing to answer questions about Stolen Generations

** Total is higher than the total of primary carers responding as more than one category of relative may have been affected.

+ A = attended every day; NA = not attended every day

Table 7.7: Summary of Survey Responses

Australia			Liberia		
	#	%		#	%
Total	154	100	Total	77	100.00
Sex			Sex		
Transgender	1	0.65	Transgender	0	0.00
Male	10	6.49	Male	66	84.62
Female	42	27.27	Female	12	15.38
Other	1	0.65	Other	0	0.00
No answer	0	0	No answer	0	0.00
Not completed	100	64.94	Not completed	0	0.00
Age range (years)			Age range (years)		
18-25	2	1.3	18-25	1	1.28
26-35	8	5.19	26-35	25	32.05
36-45	12	7.79	36-45	30	38.46
46-55	16	10.39	46-55	16	20.51
55+	16	10.39	55+	5	6.41
Other	0	0	Other	0	0.00
No answer	0	0	No answer	1	1.28
Not completed	100	64.94	Not completed	0	0.00
Religious affiliation			Religious affiliation		
Christian	20	12.99	Christian	72	92.31
Muslim	0	0	Muslim	1	1.28
Aboriginal/Indigenous Religion	9	5.84	Aboriginal/Indigenous Religion	0	0.00
Other	25	16.23	Other	2	2.56
No answer	0	0	No answer	2	2.56
Not completed	100	64.94	Not completed	0	0.00
Profession			Profession		
Lawyer	5	3.25	Lawyer	9	11.54
Judge	0	0	Judge	3	3.85
Law enforcement officer	2	1.3	Law enforcement officer	5	6.41
Community leader/head	3	1.95	Community leader/head	4	5.13
Researcher	4	2.6	Researcher	7	8.97
Prison staff	4	2.6	Prison staff	1	1.28
Healthcare provider	7	4.55	Healthcare provider	16	20.51
Counsellor	5	3.25	Counsellor	5	6.41
Teacher Advocate	5	3.25	Teacher Advocate	9	11.54
Traditional elder	1	0.65	Traditional elder	1	1.28
Religious leader	0	0	Religious leader	0	0.00
Other	17	11.04	Other	17	21.79
No answer	0	0	No answer	1	1.28
Not completed	101	65.58	Not completed	0	0.00
Length of work experience (Years)			Length of work experience (Years)		
0-5 years	9	5.84	0-5 years	39	50.00
6-10 years	11	7.14	6-10 years	26	33.33
11-20 years	19	12.34	11-20 years	9	11.54
20+ years	14	9.09	20+ years	4	5.13
No answer	0	0	No answer	0	0.00
Not completed	101	65.58	Not completed	0	0.00

Area of work			Area of work		
Area of work	#	%	Area of work		
Health and Wellness	12	7.79	Health and Wellness	27	34.62
Education	8	5.19	Education	22	28.21
Native Title/Land Claims	0	0	Native Title/Land Claims	1	1.28
Legal/Paralegal	13	8.44	Legal/Paralegal	19	24.36
Policy	1	0.65	Policy	1	1.28
Employment	2	1.3	Employment	0	0.00
Arts and Culture	0	0	Arts and Culture	0	0.00
R&D	3	1.95	R&D	3	3.85
Housing	1	0.65	Housing	0	0.00
Other	13	8.44	Other	4	5.13
No answer	0	0	No answer	1	1.28
Not completed	101	65.58	Not completed	0	0.00
Location			Location		
ACT	11	7.14	Nimba	20	25.64
NSW	10	6.49	Monsterrado	24	30.77
NT	6	3.90	Maryland	18	23.08
WA	12	7.79	Lofa	10	12.82
VIC	2	1.30	Grand Gedeh	5	6.41
SA	2	1.30	No answer	0	0.00
QLD	5	3.25	Not completed	0	0.00
No answer	0	0.00			
Not completed	106	68.83			

Table 7.8: Responses to Survey Questions on Whether the Law is Helpful or Just?

Question	Australia				Liberia			
	Yes (%)	No (%)	Blank (%)	Total	Yes (%)	No (%)	Blank (%)	Total (%)
Is the law helpful in the specific work that you do on violence against Aboriginal girls and women?	32 (21)	22 (14)	100 (65)	154 (100)	41 (53)	13 (17)	24 (31)	78 (100)
Is the legal system just toward Aboriginal girls and women?	13 (8)	40 (26)	101 (66)	154 (100)	34 (44)	20 (26)	24 (31)	78 (100)
Does customary law have a role to play in addressing violence against Indigenous girls and women?	42 (27)	12 (8)	100 (65)	154 (100)	58 (74)	16 (21)	4 (5)	78 (100)
Does the local community have a role to play in addressing violence against Indigenous girls and women?	53 (34)	1 (1)	100 (65)	154 (100)	71 (91)	0 (0)	7 (9)	78 (100)

N.B.: The columns with "Blank" headings indicate numbers and percentages of service providers who provided no responses.

Table 7.9: Aboriginal Women Advocates Interviewed in Australia

#	Mode	DOB	Location	Relationship	Highest Education	Indigenous Group	Religion	Employment Status
1	In person	1953	ACT	Married	Year 4	Aboriginal Wiradjuri	Christian	Full-time
2	Paper	1957	ACT	Married	Ph.D. (c)	Cadigal	Latter Day Saints	Full-time
3	In person	1960	ACT	Single	Ph.D. (c)	Aboriginal Bundalung	Free Spirit Dimension	Full-time
4	Phone	1960	NSW	Married	Ph.D.	Eualeyai / Kamillaroi	Catholic	Full-time
5	In person	1958	ACT	Single	Ph.D. (c)	Wakka, Wulli	Aboriginal Spirituality	Full-time
6	In person	1960	ACT	Married	Ph.D.	Ngarigu-Snowy Mts	Church of England	Full-Time
7	Phone	1958	NT	De Facto	Ph.D.	No Mob	No Religion	Unemployed

Table 7.10: Indigenous Women Advocates Interviewed in Liberia

#	Mode	DOB	Location	Relationship	Highest Education	Indigenous Group	Religion	Employment Status
1	In person	--	Nimb	Married	Elementary	Gio	Catholic	Part-time/Vol
2	In person	1965	Nimb	Married	College	Gio	Christian	Full-time
3	On phone	1968	Lofa	Married	University	Kissi	Catholic	Full-time
4	In person	1966	Lofa	Abandoned	Adult Literacy	Lorma	Christian	Self-employed/Vol
5	In person	1967	Mont	Legally single	Masters	Kru	Catholic	Full-time
6	In person	1976	Mary	Single	High Sch	Grebo	Christian	Full-time
7	In person	1978	Mary	Single	University	Grebo	Christian	Full-time
8	In person	1956	Mont	Married	University	Vai	Christian	Full-time
9	In person	1963	Mont	Married	University	Kru	Christian	Full-time
10	In person	1947	Mont	Married	Masters	Gbandi	Christian	Full-time
11	In person	1975	Mont	Single	Masters	Kpelle	Christian / Traditionalist	Full-time
12	In person	1978	Mont	Single	Lawyer	Gola, Grebo Krahn & A-L	Christian	Full-time
13	In Person	1974	Mont	Married	Masters	Lorma	Christian	Full-time
14	In person	?	Mont	Single	Adult Literacy	Kissi	Christian	Full-time
15	In person	1962	Mont	Single	University	Lorma	Christian	Full-time
16	In person	1959	Mont	Married	Master of Law	Mandingo	Christian	Full-time
17	In person	1971	Mont	Married	University	Gola	Christian	Full-time
18	In person	1970	Mont	Married	Masters	Gola	Christian	Self-employed
19	In person	1968	Mont	Single	Law Graduate	Vai & Grebo	Christian	Full-time
20	In person	1979	Mont	Married	Law Graduate	Grebo	Christian	Full-time
21	In-person	1948	Mary	Divorce	College	Grebo	LDS	Part-time

Key: Vol = Volunteers, A-L = Americo-Liberia; LDS = Church of Jesus Christ of Latter Day Saints

Table 7.11: Sample Responses from Service Providers

LIBERIA	AUSTRALIA
<p>1. Why is the law helpful? (47)</p> <ul style="list-style-type: none"> • Accessible and effective with protection and punishment (22) <p>‘Rape is a non-bailable crime in Liberia. Several have gone to jail, and so that tells that a legal system is doing everything to protect girls and women.’</p> <ul style="list-style-type: none"> • The law or legal system has improved (10) <p>‘Personally, it is still difficult but there are efforts to make it better for women because our president is a woman. In the past, women always had to fight for their rights, property etc. Now there is awareness around. Women are now knowledgeable about their rights. For now, we are better. It's getting somewhere.’</p> <ul style="list-style-type: none"> • Supportive and receptive (5) <p>‘The magistrates here are quite receptive to our concerns.’</p> <ul style="list-style-type: none"> • Public education and awareness (4) <p>‘The government has done lots of education on the rape law.’</p> <ul style="list-style-type: none"> • Enhanced reporting (4) <p>‘Even though we lack forensic labs for providing hard evidence, more people are reporting such crime, and the perpetrators are not being punished.’</p>	<p>1. Why is the law helpful? (45)</p> <ul style="list-style-type: none"> • Restraining and protection orders (12) <p>‘It has kept women and children safe by providing AVO's on the offender or goal terms if necessary.’</p> <ul style="list-style-type: none"> • Reliance on and support from the law in pursuit of justice (7) <p>‘The courts provide specific DV [domestic violence] court officers for women attending court.’</p> <ul style="list-style-type: none"> • Enables assertiveness, boldness, and independence (6) <p>‘It enables Aboriginal women to make a statement to their partners and the community that enough is enough.’</p> <ul style="list-style-type: none"> • Brings awareness to domestic violence (4) <p>‘It has meant that women are equipped with information that may assist.’</p> <ul style="list-style-type: none"> • Appropriate sentencing (3) <p>‘The courts are very sympathetic to the plight of girls and women who experience gender violence and this is often reflected in the sentencing of the perpetrator.’</p>
<p>2. Why is the law unhelpful? (87)</p> <ul style="list-style-type: none"> • Poor implementation, ineffective and inaccessible (31) <p>‘The problem is with the judges. When we send cases to court, it will delay until the person is freed. Sometimes the rape suspects are usually freed. You can't keep suspect for six months or one year. When someone commits a crime, he's supposed to be punished. So, it is not right.’</p> <ul style="list-style-type: none"> • The legal system is corrupt, exploitative and abusive (19) <p>‘Sometimes the willingness of the relatives compromising the cases because they are implicated. If there is a law to prevent case compromising, it would be good. In Liberia, if you don't have money you may not get legal redress.’</p> <ul style="list-style-type: none"> • Conflict with traditional system and social norms (11) <p>‘The Rape Law 2005 says any child under the age of 18 is statutory rape. But we have a customary law in the rural area, which says 16 years and above are able to marry. There is a need to harmonise the two laws. The rape law supersedes all the customary law so you're still liable.’</p> <ul style="list-style-type: none"> • The law is unfair (to boys and men) (7) <p>‘New Rape Law is too severe and incoherent with Indigenous cultures thereby deterring SGBV survivors and their families from prosecution.’</p>	<p>2. Why is the law unhelpful? (52)</p> <ul style="list-style-type: none"> • It is generally unhelpful regardless of Aboriginality (7) <p>‘Girl 3 was beaten every day, kept a prisoner in her home after school hours, younger brother made to report her every move. Sexually assaulted by father from age 12. Police and DCP refused to get involved, as she was now 16.’</p> <ul style="list-style-type: none"> • Negative attitude in society (6) <p>‘Pick up any newspaper and the images of women perpetuate the myths, this is then translated to attitudes in court.’</p> <ul style="list-style-type: none"> • Protective orders are not efficient (4) <p>‘Restraining Orders have been useless.’</p> <ul style="list-style-type: none"> • The court process is difficult (3) <p>‘The court processes are brutal.’</p> <ul style="list-style-type: none"> • Women are often blamed and shamed (3) <p>‘Victims of sexual violence are still subjected to ill-informed stereotype myths that the victim is somehow to blame for being raped.’</p>
<p>3. Why is the law just? (35)</p> <ul style="list-style-type: none"> • Justice is served based on fairness, hard evidence and due process (17) <p>‘The law of this country does not distinguish between Aborigines and those from settler culture. It is very difficult now to identify Aborigines because they are in the majority. The history of this country notes that serious discrimination has been put upon the Aborigines. So, the law has taken everyone into consideration.’</p> <ul style="list-style-type: none"> • Improvement with the legal system (8) <p>‘The law is concentrated in GBV [gender-based violence]. There's been no law on GBV for a very long time until President Sirleaf took power. We are only now having penal/criminal law proceedings on GBV. We are now talking about redress for GBV. When that law is enacted, some redress will be given to ensure that GBV survivors are socially taken care of.’</p> <ul style="list-style-type: none"> • Adequate punishment and retribution (5) <p>‘For example, in the interior setting. The advocacy for a girl in Liberia is very strong with the new rape law, which is weighty. Rape is a capital offence in this country with a female president.’</p> <ul style="list-style-type: none"> • Expectation and trust in the legal system (3) <p>‘In the legal system, whenever a girl is offended there should be action taken towards the person who committed the act. Arresting the person and investigating why he had to do that is the expectation of the legal system.’</p> <ul style="list-style-type: none"> • Effective mechanisms are put in place (2) <p>‘The system has a Women and Children Protection Service in the Liberian National Police to specifically deal with SGBV cases.’</p>	<p>3. Why is the law just? (9)</p> <ul style="list-style-type: none"> • Justice is served to all (4) <p>‘It is my experience that offenders are remanded based on circumstances rather than race.’</p> <ul style="list-style-type: none"> • Perpetrators are punished (2) <p>‘Offenders have been remanded in custody to prevent further violence.’</p> <ul style="list-style-type: none"> • Equal protection under the law (2) <p>‘In the eyes of the law, Aboriginal girls and women experiencing gender violence are treated equally with all other girls and women.’</p> <ul style="list-style-type: none"> • Reduction in violence against women (1) <p>‘There is continued minimization of the violence against Indigenous children and women.’</p>

<p>4. Why is the law unjust? (136)</p> <ul style="list-style-type: none"> Inefficient, poor implementation, lack of competence and accountability (33) <p>'Indigenous women are not adequately protected by the Liberian legal system. Yes, there are laws that may be used to protect the women but poor implementation and corruption in the judicial system is a barrier.'</p> <ul style="list-style-type: none"> Underfunded, understaff and lack of logistics (20) <p>'From our observation, the WACPs are not capacitated. They usually don't have a motorbike or any vehicle for that matter. If they do, then there's no fuel. There's no presence of the legal system in the rural communities. It would help a lot if they were present.'</p> <ul style="list-style-type: none"> Corruption and bribery (19) <p>'I summoned two magistrate judges because they received bribes. One beat a woman – I filed a complaint, and the other was for rape but was illegally released because they claimed there was not enough evidence. The judge had no right to do that and so he was fined. The police officer was disrobed for corrupting a rape case in Ganta. Another was a policewoman - the first female commander. She sent officers to put up unauthorised checkpoints for the purpose of collecting money from pempem [commercial bike drivers] boys. We filed a complaint and she was transferred.'</p> <ul style="list-style-type: none"> Compromise and social pressure (15) <p>'There's a problem with the legal system. Most often cases are not reported to the police because it's been handled in the family way. Even if they try to report, they are pressured and suppressed to handle it at the traditional level through mediation.'</p> <ul style="list-style-type: none"> Lack of effective protection for children (14) <p>'The interest of the child is not taken seriously. How can a 51-year old rape a 6-year old? We have the cases where a 14-year old is said to be dating a 40-year old man. I see it to be very ugly. There's no protection.'</p>	<p>4. Why is the law unjust? (60)</p> <ul style="list-style-type: none"> Discrimination and racism (9) <p>'Systemic racism often prevents women from accessing legal systems or getting a high-quality service.'</p> <ul style="list-style-type: none"> Unfair to all women (9) <p>'I don't think the law is just in relation to any girls and women including Aboriginal girls and women.'</p> <ul style="list-style-type: none"> <i>Ad hoc</i> protection, not comprehensive and focused (7) <p>'Whilst the legislation and some specific champions of change in the legal response to Aboriginal girls and women who experience violence have produced opportunities for better protection and stronger outcomes, this is not a universal response and the outcomes for Aboriginal girls and women can still be characterised as <i>ad hoc</i> and chancy.'</p> <ul style="list-style-type: none"> Failure of the law to connect to past trauma (3) <p>'It also fails to take into account and make the connection between the past experiences and trauma at the hands of the state against Aboriginal people. Hence the over-representation [of Aboriginal people] in the criminal and out-of-homecare system.'</p> <ul style="list-style-type: none"> Ill-equipped and unsuited (2) <p>'The legal system isn't well placed to consider alternative responses to those available in the traditional criminal justice system. For example, Aboriginal women may be more likely to want to engage in conferencing, mediation or restorative justice dispute-resolution models that better reflect traditional ways of managing the use of violence in aboriginal communities.'</p>
<p>5. What is the role of the Liberian Legal System? (44)</p> <p>Equal protection for Indigenous children and women (12)</p> <p>'The role of the Liberian legal system in protecting Indigenous girls and women who have experienced gender violence is a) equal opportunity; b) equal rights, equal protection and security.'</p> <p>Advance women as legal professionals (9)</p> <p>'More female lawyers should be employed to fast-track gender violence cases. Most of the perpetrators are males so maybe that is impacting on the outcome of the case.'</p> <p>Validate and enforce legislation (6)</p> <p>'More need to be done for new and effective laws including unconditionally executing existing laws.'</p> <p>Educate and create awareness about the law (5)</p> <p>'More education is needed to improve the laws to protect Liberian women.'</p> <p>Dispense justice in a timely fashion (5)</p> <p>'Cases need to be very punctual and justifiable [or justiciable].'</p>	<p>5. What is the role of the Australian legal system? (66)</p> <ul style="list-style-type: none"> Think outside the box (18) <p>'However, increasingly I think the law should be challenged to consider more creative, alternative criminal justice responses that are proven to be effective in reducing recidivism and making persons who use violence accountable to their communities or elders.'</p> <ul style="list-style-type: none"> Protect equally and respond quickly (10) <p>'Treat complaints seriously, address inequities, set standards and make appropriate rulings.'</p> <ul style="list-style-type: none"> Protect women and children from violence (8) <p>'Australian legal system must support and protect Aboriginal women and children as it does for all citizens. Violence against the weak and vulnerable is not acceptable in any form- If the law doesn't protect people who will?'</p> <ul style="list-style-type: none"> Educate and bring awareness (6) <p>'The law must do more to educate the perpetrators of domestic violence and provide safe places for girls and women to reside when confronted with a violent situation.'</p> <ul style="list-style-type: none"> Treat breaches and reoffending more seriously (2) <p>'More scope to ensure reoffending is treated severely.'</p>
<p>6. What is the role of the traditional/Indigenous Customary Laws? (125)</p> <ul style="list-style-type: none"> No or little role (24) <p>'The traditional system does not regard women's rights. We'll see that a 16-year old will be given to a 40-year old in marriage. If she refused, she'd be forced to marry him. If we look at female genital mutilation, they force women to cut them, then they say, it's our culture and tradition. They need more sensitisation and awareness.'</p> <ul style="list-style-type: none"> Advocate, educate and create awareness on Indigenous women's rights (20) <p>'Traditional leaders must be involved in the adjudication of violence against Indigenous girls and women cases.'</p> <ul style="list-style-type: none"> Be reconciled with the Anglo-American law in Liberia (15) <p>'Indigenous law rules in most communities outside Montserrado county. There has to be dialogue with Indigenous leaders as to how these issues need to be dealt with in a manner that is acceptable to the state and the community to provide consistency.'</p> <ul style="list-style-type: none"> Prosecute and punish perpetrators (13) <p>'The Indigenous law should impose fines for violation of GBV but they have limited law on GBV because they feel women and children are the property of men.'</p> <ul style="list-style-type: none"> Do not compromise violence against women <p>'Cases should not remain between family members. It should be reported to the police and the police should also make sure to send these cases to court.'</p>	<p>6. What is the role of the Aboriginal customary law? (53)</p> <ul style="list-style-type: none"> Complicated and complex, difficult to say (13) <p>'If Aboriginal customary law had mechanisms in place to deal with violence against women, then it is appropriate to look at these mechanisms and see if they are appropriate to draw on in helping Aboriginal people deal with the issue of family violence in their communities. It probably depends on whether perpetrators respect Aboriginal customary law and what if the perpetrator is a white fella?'</p> <ul style="list-style-type: none"> Accord women and children equal standing in the justice system (7) <p>'It is not for me to say what I think the role of customary law has, but to ensure that women don't experience a lesser form of justice on account of it.'</p> <ul style="list-style-type: none"> Be reconciled with Anglo-Australian law (5) <p>'For aboriginal people who still practice much of their customary law e.g., remote communities need to have both laws considered. Currently, white man law happens then customary happens as well. Whatever works to hold the perpetrators of the violence accountable?'</p> <ul style="list-style-type: none"> An alternative to court prosecution (4) <p>'An alternative to prosecution in the courts for offenders. Instructions/chastisement from elders may be more effective than punishment <i>via</i> the legal system.'</p> <ul style="list-style-type: none"> Depends on perpetrators respect for customary law (4) <p>'It is important that the role of Elders in the delivery of traditional lore be seen as an important part of the way in which violence is addressed when women and children have been violated. The most important aspect here is not only the support that Elders can give but most importantly the integrity of the information given about cultural lore is critical in order to prevent any misuse to justify an act of violence by a perpetrator.'</p>

<p>7. What is the role of the local community (e.g., home, school, church, mosque, etc.)? (69)</p> <ul style="list-style-type: none"> Promote education and awareness (27) <p>‘The local community firstly has to be aware of issues which violate Indigenous women rights and engage relevant actors for swift actions. Make people aware of the long-term effect especially the adverse effect on women and children.’</p> <ul style="list-style-type: none"> Protection and support (20) <p>‘The local community has the greatest role. They have the responsibility to watch the government and the legal system. They have to be willing to assess the law.’</p> <ul style="list-style-type: none"> Report violence and abuse (10) <p>‘They should report SGBV cases to police even where the victim is not a relation. Currently, the local community has served as a “hindrance” as they have actively helped to “settle” SGBV cases out of court.’</p> <ul style="list-style-type: none"> Develop social cohesion through respect for human rights (6) <p>‘To develop a culture of understanding respecting and practicing human rights.’</p> <ul style="list-style-type: none"> Promote girls and women advancement (4) <p>‘Men must take the lead in recognising the rights and dignity of women. When men acknowledge that women deserve respect, violence would become a thing of the past.’</p>	<p>7. What is the role of the local community (e.g., home, school, church, etc.)? (80)</p> <ul style="list-style-type: none"> Reporting and speaking out against violence (23) <p>‘The local community should be addressing violence against all members of the community, including and not limited to Aboriginal women and children. Things such as White Ribbon Day need to further reach out to vulnerable groups and communities.’</p> <ul style="list-style-type: none"> Offer practical support (13) <p>‘Offering practical support e.g., food, transport, alternative accommodation where someone is experiencing violence.’</p> <ul style="list-style-type: none"> Better social service e.g., education, housing, security, etc., (12) <p>‘Having safe houses within town camps and remote communities that operate 24/7.’</p> <ul style="list-style-type: none"> Educating and knowledge sharing (11) <p>‘Understanding the First Australians (Aboriginals) history. A Whole understanding of our history and ongoing issues. Education having a responsibility too, as in providing the correct history and having an understanding of family violence, as some children are labelled as ‘naughty’ and things may be happening for this child at home.’</p> <ul style="list-style-type: none"> Men in the community should be advocates (6) <p>‘Family violence is a community problem, not a family problem. In the Limestone Coast region of South Australia, the Violence Against Women Collaboration have produced several ads for TV with local men from sport, education, pubs, police and aboriginal sectors advocating against women and children.’</p>
<p>8. Challenges with addressing violence against Indigenous girls and women (76)</p> <ul style="list-style-type: none"> Implementing evidence-based intervention (12) <p>‘How do you give back to the community? What impact do these researches have on the community?’</p> <ul style="list-style-type: none"> Taming and blaming girls and women (10) <p>‘Why can’t we allow women to fight rather than giving them 30 percent of political seats? Pretty soon we might have the situation of violence against men, i.e., if we keep on that direction. The drawback is that we are creating many options for women and leaving the men out.’</p> <ul style="list-style-type: none"> What are the root causes and factors of violence against women? (8) <p>‘What is the mental chemistry behind the evolution of all this wicked act of violence against women in the name of tradition and culture? Does it have historical commonalities across all culture? Does it have a spiritual or legal bearing?’</p> <ul style="list-style-type: none"> High-quality education needed (5) <p>‘Is the government paying teachers well so that they can teach qualified students who are competent and able to dispense their responsibilities well?’</p> <ul style="list-style-type: none"> Cultural class, conflict and confusion (4) <p>‘How possible is it to reconcile the age of 18 with that of 14 years. Around the world, 18 years is the age of consent. I didn’t think it is a good idea for a girl to get married at the age of 14. To reconcile is to modify the tradition in order to get in with the rest of the world.’</p>	<p>8. Challenges with addressing violence against Aboriginal girls and women (40)</p> <ul style="list-style-type: none"> The definition of violence against Aboriginal women is too narrow (10) <p>‘I think the topic of gender violence against Aboriginal women and children has often been reduced to ‘domestic and family violence’ whereas your definition is clearly much broader including state violence, institutional violence, structural violence as well as ‘private’ abuse. I think your approach is much more realistic and relevant than approaches which mainly or only focus on domestic and family violence. I don’t know what questions come after this one in your survey, but you haven’t put emphasis on how Aboriginal women and young people and Aboriginal people generally are able to address these issues - i.e. what power are they accorded, what resources are within the control of Aboriginal people, what policy control do Aboriginal people have, to what extent are Aboriginal people listened to or negotiated with - all of which are major problems as I’ve indicated in my responses to some of the previous questions.’</p> <ul style="list-style-type: none"> Leaving violent relationships is not an option in remote communities (4) <p>‘Leaving a violent relationship is not an option if the woman is from a remote community, it may mean leaving her country.’</p> <ul style="list-style-type: none"> Educating young men (4) <p>‘Please look at educating our young men and women; sexual health; addiction; general health issues and most importantly, having a safe place to run too until better deals can be in place for their safety.’</p> <ul style="list-style-type: none"> Doing cultural or gender-specific education (3) <p>‘Cultural specific traditions need to be educated to the wider community with special liaison agencies.’</p> <ul style="list-style-type: none"> The interplay of class, privilege and race (2) <p>‘How does class and privilege in Australia impact on Aboriginal women and children in regard to violence? What part does racism play?’</p>
<p>9. Recommendations on how to improve the law and change attitudes (164)</p> <ul style="list-style-type: none"> Education, dialogue, awareness, and advocacy (31) <p>‘We do change attitudes in home, community and workplace toward gender violence against Indigenous girls and women at school, by media, by sensitizing the girls and women about the gender violence against them.’</p> <ul style="list-style-type: none"> Gender equality – equal opportunity (28) <p>‘Equal job opportunity. If you have the same job but get less pay because you’re a woman, it’s an injustice. The distribution of resources is always unequal to women. I want to see women and men as equal partners. An example is seeing my mom bringing food home, but my dad never did the same. Women are more givers.’</p> <ul style="list-style-type: none"> Girls and women advancement (22) <p>‘Involving girls/women in decision making (equal rights); premature minds of women as house-keeper should be erased; girls and women seeing themselves as dependent in the home should be erased by educating them and empowering them.’</p> <ul style="list-style-type: none"> Love, peace and harmony (11) <p>‘Living in a world where there’s no violence. Then homes will be happy, the relationship between women and men will be cordial, and Liberia will boom.’</p> <ul style="list-style-type: none"> Leading by examples – role models (8) <p>‘By leading by examples, demonstrating restraints, self-respect, and integrity, promoting punitive measures against perpetrators and ensuring that victims receive adequate care and support.’</p>	<p>9. Recommendations on how to improve the law and change attitudes (151)</p> <ul style="list-style-type: none"> Through education and awareness (51) <p>‘Be inclusive of all parties, include perpetrator in resolving violence issues, educate them on taking responsibility for their actions, DO NOT accept violence as a norm.’</p> <ul style="list-style-type: none"> More males, elders, and leaders should voice out the unacceptability of violence (27) <p>‘Men taking responsibility and action for themselves. More men, elders and leaders taking a stand about the issue of violence against Aboriginal women and children.’</p> <ul style="list-style-type: none"> Through better legal process and social programs (23) <p>‘One law for all is how it needs to be. Having more women and children refugees also establishing time out a location for our males; and the sober up centre has a very low number regarding ATSI males.’</p> <ul style="list-style-type: none"> Educating law enforcement officers (17) <p>‘Ensuring those officers with responsibility for enforcing the law understand what violence is and implement the legal measures available appropriately.’</p> <ul style="list-style-type: none"> Instilling proper behaviour, starting from home (11) <p>‘Bad attitudes often start in the home and that needs to change.’</p>

Table 7.12: Select Quotes Reflecting Thematic Representation of Indigenous Women Advocates¹⁴⁹⁵

LIBERIA	AUSTRALIA
<p>Institutional and State Violence</p> <ul style="list-style-type: none"> • Mental Health <p>‘I hear that people are saying rather than giving the convicted person life imprisonment, he should be given 10 or 5 years. Life imprisonment, they claim, is killing a person and taking away their life. But, when you’ve committed rape, you’ve killed a person and you’ve traumatised them. If it is a deadly rape where the survivor ends up dying or where the perpetrator destroys the survivor’s reproductive organs, then that’s killing somebody. This is more traumatising and deadly than a convicted criminal being just being in jail.’ [Klade]</p> <ul style="list-style-type: none"> • Police, Court and Prison Support <p>‘I think it was some time last year [2013] that we introduced the collection of forensic evidence. It is now being piloted at the James N Davis Jr Memorial Hospital in Neezo, here in Montserrado. Once we pilot that and we see that it is working with the necessary trained staff, we will think about spreading the services across the county. Very soon, forensic evidence will be a part of the examination and evidence collected to prosecute cases in court.’ [Amelia]</p> <ul style="list-style-type: none"> • Alternative Dispute Resolution <p>‘Some of the cases we mediate are about persistent non-support, child support, domestic violence, land disputes, and many more. Cases that we are unable to mediate include aggravated assault, rape, and murder. For these cases, we simply make a referral to the LNP. However, we still follow-up on those cases because most of our people are not educated or informed about the criminal justice system.’ [Tracy]</p> <ul style="list-style-type: none"> • Safe-Homes and Transitional Houses <p>‘The safe-home is managed by the Ministry of Gender. It has four rooms including a recreation centre. The UNFPA that was sponsoring the administration of it has also closed their activity for the services. There’s only one safe-home for all of Nimba and it is based in Sanniquellie. Since the circuit court is here, dealing with all the cases, it is natural for the safe-home to be located here too.’ [Yaa]</p> <ul style="list-style-type: none"> • Homelessness <p>‘As I speak with you, if we were in Pleebo, say at 8:30 pm, I’d say let’s take a tour. You’ll find many children sleeping in the street. In the morning, they will go to the Cold Bowl Shop and wash dishes in exchange for leftover food eaten by patrons. At night, they sleep on the market tables in the open market area. Sometimes the police will arrest them and take them to the police station. But where do they keep them? Sometimes, the police will call the Ministry of Gender. Having spoken with the kids, we find out that some of the children are taken from the village by family members with the intention of bringing them to the city to give them an education. Only to later find out that these children are later used as slaves.’ [Abigail]</p> <ul style="list-style-type: none"> • High Illiteracy Rate <p>‘Yes, we work with Indigenous women. First of all, when you take the statistics and look at literate and illiterate, you’ll find that 61 percent of Liberian women is illiterate. Some will say 85 percent. But I can tell you that technology is advancing so lots more women are going to school. However, 61 percent are illiterate and very deeply into tradition. You can’t root out this factor in working with the only specific type of people.’ [Yaa]</p> <ul style="list-style-type: none"> • Law/Legal Service <p>‘But for the rule of law, we say we are governed by the rule of law, but no one obeys the law in Liberia. Sometimes the victim will say ‘I leave the outcome to God’, meaning that they are helpless in seeking a fair solution through the law.’ [Sia]</p> <ul style="list-style-type: none"> • Reporting Violence <p>‘Sometimes people report rape cases willingly. But most people are not comfortable reporting because of the way our system stigmatise survivors. For instance, when a rape case is being processed in the hospital, rather than conducting examination privately, everyone ends up knowing the survivor is and what she’s presenting for. There is no privacy in the health centre. The same can be said for the courthouse. According to the law, rape cases should be held in camera. But it is not in Maryland. Regardless, we encourage them, against the trauma, pain, and humiliation, to continue with the trial because they do not know the effect the rape could have on them in the future.’ [Tracy]</p>	<p>Institutional and State Violence</p> <ul style="list-style-type: none"> • Royal Commission into Responses to Child <p>‘But what I don’t agree with is a lot of people saying that the Royal Commission was about making sure that Aboriginal people don’t spend that much time in custody. Therefore, when they commit an offence no matter what they are, we should take that into account and look for lesser alternatives. The Royal Commission said the overall representation that it was concerned about were offences of minor nature. So, things like being locked up for being drunk in public etc. They never said that there should not be a harsh penalty for the horrendous crime.’ [Lara]</p> <ul style="list-style-type: none"> • Royal Commission into Aboriginal Deaths in Custody <p>‘I have had a difficult time partly because of the physical and sexual abuse. The sexual abuse I experienced was very extreme... I contacted the Royal Commission, the Attorney General and the Victims of Crime. The Royal Commission told me when they came here if I were willing to testify against that institutional abuse, and I said, “yes” I would. The next thing I heard was that they were here. I called and said to them, I meant to be testifying. And they said ahhhh we have budget cut by Tony Abbott. I then got told that my testimony wasn’t in their parameter. When I asked why they said it was because the abuse happened in a government institution and not like the church or the scouts or something else where the government wouldn’t be responsible for compensation.’ [S]</p> <ul style="list-style-type: none"> • Aboriginal Children in Care <p>‘Often the children that are taken away are in non-Aboriginal foster-care. Now a stolen generation is shielded under the guise of family services that our kids get taken away. And you know because it is on such a well-organized credible health service that also have territorial responsibility as the ACT affiliates, e.g., the NT.’ [Sally]</p> <ul style="list-style-type: none"> • Homelessness and Refuges <p>‘There is no Aboriginal hostel. That’s it. A lot of problems is homelessness and couch surfing or living rough or living at the tent embassy, etc. It’s hard to work with people. I mean, how can people have a job? And how damaged is the job if they haven’t got good health. Health underpins all of those things.’ [Sally]</p> <ul style="list-style-type: none"> • Police, Court and Prison Support <p>‘One of the hardest groups I ever had to train around domestic violence in the Aboriginal community is the NSW Police Service. I did a training workshop at the Goldburn Police Academy. They are the worst group I ever had to deal with. They just did not get it, did not understand. Their culture of overt racism towards Aboriginal people was terrible. I think in the justice system, there’s so much more that needs to be done, - so much more training, education and understanding.’ [Alison]</p> <ul style="list-style-type: none"> • Law/Legal Service <p>‘Legal aid is being defunded. The government also do not fund women’s refuges, and they do not fund legal services for women. There’s always less available for poorer women, particularly. Sometimes if you’re wealthy you can access such service privately but if you’re a working-class woman or a stay home mom; that is not an option for you. It is a policy decision by the government to not fund those services. I think that there are fewer programs to support women around now for women than they were ten years ago. I think it has gone backward.’ [Lara]</p> <ul style="list-style-type: none"> • Reporting Violence <p>‘Yes, I think there has been an increase in reporting violence against Aboriginal women. In fact, I know that because the response system has really improved. So, there is certainly greater reporting. The challenge is though when women report, they don’t get the best response. A lot of people probably wouldn’t agree, but that’s my view and perception from over 20 years’ experience.’ [Dallas]</p> <ul style="list-style-type: none"> • Stolen Generation <p>‘In Queensland, even though I was sexually abused at school, it was by a white person. I saw more violence in the white community than I ever saw in the Aboriginal community. Of course, people would yell at each other. Some would say, ‘get out of the house’, but there wasn’t the kind of violence that was in the next generation of Aboriginal children. In my mother generation, people were very Catholic or Christian, they sent their kids to school and they tidy up their house or they got taken away. They were frightened. So, they did what they were supposed to do. They were assimilated. But the next generation, like my cousins’, were more traumatised.’ [Alison]</p> <ul style="list-style-type: none"> • Aboriginal Reserves and Stations <p>‘Violence is always there. We were violently forced into reserves, missions; we were locked away. We had to have passes to come and go. If people wanted to come and visit us, they had to have passes. It was so systematised and institutionalised that there’s nobody who haven’t some experience of the violence of government policies and physical violence that was used to implement those policies.’ [Jaky]</p>
<p>Structural/Cultural Violence</p> <ul style="list-style-type: none"> • Violent Patterns <p>‘In the office, domestic violence cases are mostly reported. Even now as we speak, there is a case of domestic violence where the victim had a miscarriage. On two separate occasions, her husband beat her during pregnancy. She was discharged from the hospital yesterday after treatment. Because the victim is my friend, our director stepped in to monitor the situation from an objective standpoint. Together we offered to educate the husband about violence against his wife. We were in the process of investigating this case when we got a call from the hospital letting us know that the victim was bleeding. After an ultrasound, the doctor found at that the child was not alive. She was 6 months pregnant. The doctor had to find another means to get the baby out.’ [Tracy]</p> <ul style="list-style-type: none"> • Wife Beating <p>‘We have a lot of women coming here to complain about their husband beating them too. When they come to tell me, I try to encourage them to focus on</p>	<p>Structural/Cultural Violence</p> <ul style="list-style-type: none"> • Violent Patterns <p>‘You know there’s certain time of the year that things get really explosive and that’s around Christmas time and around Easter time. I don’t know whether it is because people drink more around that time or people are getting depressed because they don’t have the money to buy presents and all that sort of things. And then, you often see a lot of blow ups and... I always say to my staff, just be mindful that Christmas is on its way.’ [Sally]</p> <ul style="list-style-type: none"> • Breaking the Cycle of Violence <p>‘I just had a very strong determination to not have my child grow up with the same effects going on to the next generation. I’m not going to let this happen. That’s why I got sober and clean. It took a year and a half, but when I did, I knew from that point on that my daughter would have a different story. As a result, she’s a better person.’ [Alison]</p> <ul style="list-style-type: none"> • Single Mothering/Parenting

¹⁴⁹⁵ NB: The names used are pseudonyms chosen by Indigenous Women Advocates before the interview commenced.

getting skill to help themselves. Because, if you are not able to feed your children, what is the use of going up and down to court?' [Damawa]

- Single Mothering/Parenting

'The men are leaving the women because the men do not like to work hard. When the men realise their responsibility, i.e., he has five children and wondering how he would feed them and provide their basic need; then he later decided to leave and find a woman who does not have those kinds of responsibilities. That's how they are abandoning their women around here every day.' [Damawa]

- Customary/Traditional Laws

'When we have conflicts of law and tradition, the first thing we do is to call a meeting where a committee will be set up to discuss the issue. The committee then sets up a meeting with the parties involved. We also have partners dealing with psychosocial counselling. During the psychosocial counselling, the parties will be told the implications of compromising a case by solving it the 'traditional way.' If you wish, you take the legal side, if you will, then follow your tradition. The implication is presented to you, the consequences of what has happened to you will also be told to you. And you can now decide.' [Yaa]

- Female Genital Cutting

'The traditional is very strong in Lofa especially when it comes to child marriages and female genital cutting. So, even if you want to change it, it is not easy. For example, there is a conflict between the rule of law and the customary law in Liberia when it comes to the age of consent for marriage. In the traditional practice, they say 15 years is the age of marriage. The law on the books says 18. So, how are we supposed to change this? There is a problem, but we can't do anything about it. That's the problem that we are facing.' [Sia]

- Forced Marriage

'They should bring all the heads of the *Sande* and *Poro* Institutions together and educate them about the rule of law. The rule of law should not deny that there is no culture. But there is a law that protects everyone. So, it is important for the traditional leaders to understand this law and apply it to their practices. A 15-year old cannot marry because she is still a child. The culture is that when a woman is pregnant, a man will show up with a dowry stating that if it's a girl child, then she will be my wife. So right from the womb the girl's fate is seal.' [Sia]

- Land and Property Ownership

'In customary marriages, if I am married to a man and he dies, I will be passed on to his brother. If I refuse, then I will lose the property that both of us have worked for together and accumulate. The husband family will take the kids away, kick me out of the house, and deny me of any marital rights. The Female Lawyers have been looking at some of these issues. Now, the Inheritance law also protects women's rights to ownership of marital property after the marriage has been dissolved or the husband has died.' [Klade]

- Taming Girls and Women

'Sometimes, if a woman says I want to make suggestion about what will happen in our home, the man would silence her. If she insists, there will be problem at the end of the day, which will result into violence. Other men feel they have power and control over women's lives. They will love [having intimate relationship] to these women, have children by them, and neglect and abandon the children. Many women are experiencing persistent non-support because men will intentionally have children with these women, leave them without support making her to suffer as a single parent. There are women who are beaten severely by their husbands who end up in the hospital with 10-15 stitches. If the women are lucky, these husbands will be arrested and taken to the police station. But the men will end up inciting fear and violence so much so that the women feel pressured to compromise with the police.' [Abigail]

Interpersonal/Community Violence

- Violence Against Women

My clients are girls, mostly girls who have been raped or have experienced sexual violence. The youngest is about 9 months to one year old and the oldest, at most, will be 15 years. Few are 16 years old. When it comes to domestic violence, abandonment and persistent non-support, then our clients are mostly 20 years of age and above. Usually, they are married to someone who is using their power to abuse them because they've paid dowry for the woman. These men feel they have right over the woman. If the woman is supposed to put food on the table, and the food is not there, the men use their power to beat them up. Sometimes women get killed in the process.' [Yaa]

- Violence Against Men

'Sometimes women do abuse men. There was a case where a woman beat her husband. The man took the case to the police. Rather than launching an investigation into his complaints, the police started to laugh at the man. They mocked the man by saying, 'you're lazy that's why the woman beat on you.' So, for that reason men don't lay complain.' [Sia]

- Prostitution and Human Trafficking

'There's also trafficking, where they take the children and sell them for cheap labour or sex. It is practice here, though not often but once in a while I come across those kinds of cases, especially in border counties such as Nimba, Cape Mount, Maryland and in Monrovia too. Even in a year if one or two cases appear, it means that it is happening.' [Yaa]

- Intergenerational Trauma

'I had the opportunity to educate women and community members about the rights of women. We educate women about the effects of domestic violence and sexual assault so that tomorrow they can reduce the impact on them. When I say domestic violence, I mean men beating on their wives, which also affect their children and the family as a whole. If the children witness their father beating on their mother in the home, they tend to copy that behaviour. So, we tell community members about the negative effect of such behaviour on the children.' [Tracy]

- Domestic violence

'My clients are mostly girls and women. They report wife-beating, family abandonment and rape. But the most cases that we receive in Lofa are women/children abandonment. Men who have children with the women, and

'But what I know is true as an Aboriginal woman is that a lot of Aboriginal women end up raising children on their own. A lot of the time the men are very absent. Or just drop off out of the scene. I think a lot of Aboriginal men just lost their roles, basically, and got really lost, leaving women to be the stronger force.' [S]

- Aboriginal/Indigenous Law

'We still practice our laws, just that they are not recognised in the legal system. The Circle Sentencing is like that. But the problem is, you've got to be guilty before you can go through that process. So, what's that all about?' [Jaky]

- Mental Health

'We had a lot of psychological violence in our marriage for the last three years. I would go to the women's refuge and try to explain what was going. No one could say that I was suffering from psychological violence. The fact that he never hit me, no one could help me. Because he hadn't assaulted me, no one could say, I could stay here. But here I was, going home to someone who was psychologically violent. I realise it was the PTSD and, also the issue of control. By the time I had the child, I said, he's going to control me and make sure that I don't leave with this child.' [Alison]

- Denial and Shame

'We did a report and presented it to the first Aboriginal women's conference in NSW. Quite a few women got up and started the backlashing, - complete denial. They are really traumatised by what has happened to them, but at the same time, very afraid to have it spoken about in public. It was affecting their kids in school and all that. After we gave the talk, a bunch of older Aboriginal women came up and said, 'thank God someone is talking about this. This is what happened to us and we've never been able to talk about it'. There are so many Aboriginal women and Aboriginal people who are carrying these terrible stories inside themselves; full of the anxiety, dissociation disorders and trauma that comes from having those stories inside you and not being able to share them.' [Alison]

- Protecting Aboriginals from themselves

'One young girl she just keeps having babies and every time she has a babe it gets taken by Child Protection. But she just wants one to keep. You know like, we are talking...we do the implants and all, but she would go somewhere else and have it taken out. Next thing we know she's pregnant again. It's a really really sad thing you know. Here in Canberra, there are 600 children in Care and 300 are Aboriginal.' [Sally]

- Adult Children of Violence and Abuse

'So, I started to say that we needed to deal with the generational adult children who were growing up in violence and then becoming violent. Then, abusing their children, - their children will grow up with the same thing.' [Alison]

- Religious Abuse

'Generational sexual violence is pervasive in the Aboriginal community because of forced Christianity and violence associated with forcing Aboriginal people to live on missions. Christianity was very fundamentalist. So, right down into the generations we were working with Aboriginal men who had been subjected to generational sexual violence by their uncles or whatever. Men who were on the verge of committing sexual violence against their own children started to have flashbacks of sexual abuse by their own relatives. The whole thing goes hand in hand - the drinking, the generational abuse as children, not growing up properly emotionally and developing as a normal person into a functional human being. Rather an Aboriginal child was compelled to grow up as an adult child or having a small damaged child inside their adult person.' [Alison]

- Sleeping Language

'For many Aboriginal Peoples, it is a shame to think that we can't speak our language. This gives a sense of great deep personal sorrow that knowing the loss of what it is to have all that knowledge taken away from you in many ways. So much knowledge and cultural practices are embedded in language. When you speak a language, you take on the persona of that language.' [Jaky]

Interpersonal/Community Violence

- Violence Against Women

'I dealt with a case in the past. It was four young kids, who were related to each other. They were brought up with their mother. They had one foster sister, who wasn't biologically related. This girl talked to me about a sexual abuse was happening in their household. The entire family went to the police. The abuse was their uncle. This man got off because they said the girl was sort of changing her story. She was very traumatised, this poor girl. The uncle had abused her mother, and he had abused her as well.' [Alison]

- Violence Against Men

'I also see and read cases where there is intergenerational violence and it doesn't make me happy. I'm reading about young men who fathers were dealt with as offenders. But I'm not surprised by that at all, why would I be? Why would the child of a man who had committed extreme violence against his wife for more than 12 years, not be violent? Why would he turn out any different? [Giggle] I mean I'm not laughing really. Some people say well, if all these good things have happened then the violence should stop. Oh no, we're just starting to get response to it right.' [Dallas]

- Child Abuse

'When my daughter went to school a few years ago when she was in kindergarten, she was asking her teacher if she could go to *genuah*, which is a word saying to go to the bathroom in our language. Her teacher made her sit until she would say it in English. So, she peed in her pants. She's 12 now, so this was only about 5 or 6 years ago.' [Jaky]

- Intergenerational Trauma

'When I started to talk about intergenerational trauma, alcohol abuse, family violence and recovery, I started to get huge response from Aboriginal men (who were maybe in the middle of abusing their partners or children) - but Aboriginal women and men in general. You know people like Charlie Perkins, Michael Mansell and Mick Dodson will encourage you to talk about this kind of stuff. But other men, who were doing it to their women/children and didn't want it to come out, didn't want me to talk about it. People would sit at the back of the room with newspaper in front of their faces. Or send me messages saying, 'you're a fucking slut'. I'd get this terrible feedback from people, just random feedback, saying, 'how dare you talk about this?' [Alison]

- Domestic violence

<p>then they end up abandoning them. Even this rape we are talking about all too strong is the family abandonment because here you have a woman being abandoned by her husband. She has no means of support her children. At the end of the day, she will put peanuts and water on the child's head to go and sell. Whilst the child is selling, some guy may appear from nowhere claiming he wants to buy peanuts or oranges. The innocent child, not knowing the intention of this buyer who is calling out to buy what she's selling, will end up being raped by this man. Later we'll discover that our teenage daughters are being impregnated by these rapists.' [Sia]</p> <ul style="list-style-type: none"> • Rape <p>'Some of the women were so traumatised that they found it difficult to talk about their experience. I remember interviewing a lady I met in Nimba. She said, 'I need to tell you this since you are a woman like myself. I need some help right now. I am smelling'. I don't even know the number of men who had sex with me. They started to finger me day and night when I was as young as 12 years. One time she was asleep when a Commando asked that she be brought in. He brutally raped her that night. When he was done, she could hardly walk so he called other girls that he's been sleeping with to take care of her. They picked herbs added it to hot water for her to sit over it and heal the wound. She said you think this would make them stop? They did not stop. Once I started feeling better, he resumed. Since then I have lost all sense of moral responsibility. I don't care anymore; I sleep with any man recklessly. But not only that, I know that I have a problem, something is wrong with me. I later linked her with the MSF-Spain who treated her. They told her that the damage to her reproductive organ is so serious that she wouldn't be able to bear children.' [Klade]</p> <ul style="list-style-type: none"> • Murder <p>'Most of the perpetrators are family members or close friends to the survivor. We heard of a case in one of the counties where a 60-year old man raped his sister's baby (I mean his niece) of 24 months old baby to death. He escaped and so could not face prosecution. Now, the men are saying that the rape law punishment is too harsh, but in the case of this baby, the accuser has committed a felony and it is also a first-degree murder.' [Klade]</p>	<p>'I had a situation with a middle-class non-Aboriginal woman who you wouldn't think will end up in a domestic violent relationship, but she did. She had moved into her husband's house only recently. He threw a glass table at her in front of her kids. He had given her a broken nose and all that. She had to do a surgery; she had to go to hospital... She rang me up sometime and said, how do I get some support? I don't know where to go.' [Alison]</p> <ul style="list-style-type: none"> • Rape <p>'I went away to boarding school and got abused by a priest. When I came home, I was completely in my own world. At the time, my parents were going through a difficult period in their marriage. So, I started to see a kind of emotional violence in their marriage. I had to get away from my family.' [Alison]</p> <ul style="list-style-type: none"> • Murder <p>'In 2003, got asked to do some work in Tasmania. At the time, there was no law in Tasmania around domestic violence. It wasn't criminal to domestically abuse a woman. The police couldn't really do anything. The month before I had actually got there, this man went home and shot his wife. He'd already been asked to their home. But on this day, the wife decided to return home to pick up some clothes. In the process of doing so, she notified the police to watch out for her. While the police were coming after her to make sure she was safe, he outran the police and shot her in the house.' [Alison]</p> <ul style="list-style-type: none"> • Neglect <p>'Even 10 years ago or even longer, maybe probably 20 years ago, it was all about the parents. My own experience was like Aboriginal versus non-Aboriginal. They try to give my grandkids back to their non-Aboriginal mother who was an alcoholic, drug-user who was very neglectful of the children, and my son like, maybe because he was an Aboriginal – it changed where it was all about the kid.' [Sally]</p>
<p>Challenges</p> <ul style="list-style-type: none"> • Access to Service <p>'County-wise, our service is not really accessible to people who are far away. Sometimes the victim has no means of even contacting us even if they wanted to get here on their own because there may not be Cellcom or Lonestar services. This can sometimes lead to compromising of rape cases without reaching for our services. So, it is still a challenge.' [Yaa]</p> <ul style="list-style-type: none"> • Justice through the Legal System <p>'It is already known in Liberia or maybe across Africa, that justice for women is justice denied. If there is a land dispute between a woman and her husband for equal share of the property, you will hear the men saying, 'these women are taking on the white people way of life.' But mind you, it is these same men that will move to Europe or America and adapt to the white man's way of life. So, what's the issue here? The issue is that the systems are not working. We need to train people properly to deal with violence against girls and women. Consider that there are 8 cases on the docket but only one is being prosecuted say for a whole year. It just doesn't serve as a deterrent. Sometimes people linger in jail for 8 months. At the end of the day, the UN and Human Rights Groups will say, you have violated the man's rights, so the prisoners should be released. Then he goes to another community and commits the same act of violence.' [Klade]</p> <ul style="list-style-type: none"> • Female Lawyers/Police Officers <p>'The accessibility of our services is challenged by the fact that we don't have female lawyers for our women clients. The lawyers we have here in Lofa are all males. The county attorney who is the prosecutor is a male. But the Judge is a female. We really need a female lawyer to prosecute our SGBV cases.' [Sia]</p> <ul style="list-style-type: none"> • Males Championing the Cause of Violence against Girls and Women <p>'I think the only way forward is for good men to be advocate and speak on behalf of women. Those men who are refusing to understand, when they listen to a woman's voice, they go crazy, saying that 'their women are following people who want to spoil their relationship'. They are destroying tradition. Tradition has been here ever since. We've been living with it and so no one can change it'. So maybe if men are adding their voices, i.e., men talking to men, we believe that the violence and negative stereotypes men hold against women, which lead to on-going violence, will reduce. Good men can pose as role models. They could announce to other men, 'you see, my wife is not a slave to me. I don't beat on my wife. I discuss everything about our home with my wife. My wife is working and I'm working too. We come home and take care of our children together.' [Abigail]</p> <ul style="list-style-type: none"> • Advance Girls/Women <p>'Like before, how many women we had in our security apparatus? Now we set a benchmark in our Poverty Reduction Strategy goal, that at least all security institution should have 30% female officer. The Bureau of Immigration has reached and passed that benchmark. The police are still dragging on. The military is still saying, it is a no-go area for women. But I know gradually, it will take hold. The other day, I saw a female officer driving a massive articulator truck. I started clapping. I even took her picture out of excitement – go girl, go girl. Everything for women is hard. Job stereotypes – a woman can only become a nurse, receptionist, etc. But now you have girls going into science, engineering and law. It may be slow, but they say, he that endureth to the end shall be saved.' [Klade]</p> <ul style="list-style-type: none"> • Self-empowerment <p>'Then again, all the prosecutors are mostly men. You will hear them say, you're a man who wants to bring your fellow man down for him to be put in jail for ten years? Remember he's the only breadwinner for his family. But everybody is a breadwinner now. Women are breadwinners. There are some households headed by women, so why must women be treated like this?' [Amelia]</p> <ul style="list-style-type: none"> • Corruption and Bribery <p>'Travel on the highway, you'll see government vehicles transporting goats, chicken, charcoal, cassava leaves and food produce as it they are commercial transport. Sometimes, they go on the highway and set their own roadblock.</p>	<p>Challenges</p> <ul style="list-style-type: none"> • Access to Service <p>'The legal services were seen largely not to be representing Indigenous women because Indigenous women were the victims of male violence. It's only in the last 14-15 years, or even before then, probably about 1994-95, there was specialised domestic violence – family violence legal services set-up. There were just a few State-based ones and then there was Indigenous ones set up around early 2000 (I can't exactly recall when). The Indigenous one was set up in recognition of and dedicated to support Indigenous women only, not only with violence but also with law matters as well.' [Dallas]</p> <ul style="list-style-type: none"> • Justice through the Legal System <p>'I think the system is inherently problematic for Aboriginal people, both offenders and victims, but particularly for victims (particularly women and children). The reason why that is the case (complex but...), is that it's not that easy to access legal services. A lot of people don't know their rights. They sit in the most vulnerable parts of the community, with the least resources, the least knowledge, and the least information they've been given. You have to be able to access the law to be able to make it work for you. But that's the first thing, the access to justice issue for Aboriginal people is a huge trap. That is the first way that the law doesn't fulfil its role. The second is the amount of bias within the system. In the research work I do with Aboriginal offenders, we see Aboriginal women (and men) as victims of crimes. There was this murder case that I worked on where three Aboriginal kids were killed by a white man. Even the police now say if the accused had not been white, he wouldn't have gotten away with it. There is so much that reinforces the idea that Aboriginal people (women and children) are worth much less than their white counterparts.' [Lara]</p> <ul style="list-style-type: none"> • Female Lawyers/Police Officers <p>'Our legal system is very male-centred. It is male dominated. You know most judges, most magistrates, most senior legal counsel are still men? So, how can women deal with that? Particularly, back to when traditional practices were still very much alive and kicking, women still prefer to talk to other women about women's business. So, with a male-dominated legal system, there is no place for an Aboriginal woman's point of view in our legal system. And I mean, an Aboriginal woman point of view that is not cast or couched in a male point of view. I'll make that statement. I would think that through your research you'd probably be getting a sense of that. I doubt through all your interviews, we are like most women in the world. Women are gagged through one-way or the other, by male dominance.' [Jaky]</p> <ul style="list-style-type: none"> • Males Championing the Cause of VAW&G <p>'I think violence is still happening behind closed doors across the country. You can't pick it to say that it [violence] would happen to a particular kind of person. But certainly, I'd say lower social-economic group and minority that it is more common. I think it is partly driven by men having to lash out because they feel powerless themselves, as well. Which I think men have to take the responsibility to heal themselves and make pledges to treat women properly, and family properly. I think there's been a bit of a movement worldwide of people trying to do that. Even that young woman who they nearly killed and so bright and intelligent – spoke at the UN [Malala]. She's got her father supporting her.' [S]</p> <ul style="list-style-type: none"> • Advance Girls/Women <p>'White Australian law is all about retribution and punishment, crime and punishment and isolation. It's not about the community wellbeing or healing practices. As soon as you start saying that then people go like 'oh that's a bit of a touchy feeling'. In my experience, women are not particularly about touchy feeling. Women are pretty summary, feisty, good thinking, and clear thinking. Most of our lives (as women) we spend time working to modify and shape the behaviour of other people because we raise the children. Yet, nobody listens to what we've got to say. Even books about child's rights are written by men. A woman's voice in our legal system is absent. And, an Aboriginal woman's voice is pretty much absent.' [Jaky]</p> <ul style="list-style-type: none"> • Self-empowerment <p>'Now I think it is harder for people to oppress us. But there's a whole lot of</p>

<p>They do this publicly without shame. There is no law and order in the country, starting for the heads. If there were stiff justice and I violate the law, I'll be obliged to obey and follow my punishment. But seeing that I can easily bribe the police to get away with my crimes, I'll not be afraid to commit such crime. Even my little niece knows that the police take bribery.' [Klade]</p> <ul style="list-style-type: none"> • Collaboration and Partnership <p>'You have to work with Indigenous women who have no knowledge of academic learning. You have to bring them on board with those who are educated. Then you'll see that they do have some wisdom in them that needs to be passed onto younger generation who are coming up. Even though the younger generation may seem more educated, they may go to school and acquire degrees, but they need the traditional women wisdom. So, we work with Indigenous women to help make them part of the movement.' [Yaa]</p>	<p>other way to oppress and suppress us, like all these crazy dialogues in the media, people like Andrew Bolt, – what right has he got to comment on me and my people or anyone. But that's OK. It' is OK for him to talk about Aboriginal people in those sort of terms – the way he talks about us. But it's not OK, you know? Society still allows it to happen.' [Jaky]</p> <ul style="list-style-type: none"> • Corruption and Bribery <p>'I think that...you know, people think that those kinds of people [men who abuse women] you can pick them out. But the truth is that people who act in those ways, often – and I have experienced this when I worked as a youth worker where we had a separate book, like a black book. In that book there was doctors' names, ambulance drivers' names, anaesthetist names, of perpetrators; that we weren't able to get through court. There were judges, lawyers, people who were in positions where they appear in public as good upstanding citizens and professionals and caring about the welfare of others, especially children; they were actually the ones in paedophile rings - not just acting on their own. In that town, particularly, where you had a black-book of certain powerful people (I won't name who they are), but they were powerful people in that town, who were abusing the young women and going home to their family as if everything was normal.' [S]</p>
<p>Recommendations and Attitudinal Changes</p> <p>'Now we should not lose hope. It takes a long process. This is the way of our people for a very long time. They grew up in this system. So, for an outsider to change this system it takes time. It requires more awareness, more sensitisation and more training and empowerment. Because if you just talk, say you tell the Indigenous Zoe that there should be no Sande activity, what would you provide as a replacement? This is the will of the people. This is how they generate income. If you then take away this income, what do you put in there? These are things that are lacking in the whole strategy for addressing GBV in Liberia. If you want them to leave this practice, can you now design strategies, empower them and build capacity where they would leave that behind? In strategizing, you have to start by building a centre side-by-side with the Sande House to carry out skills training for illiterate women. So that after Sande School, they can come out with a set of skills that can be used for income generation.' [Yaa]</p> <p>'I will start with myself. My daughter is a grown girl. But she was not going to school. She used to just go around doing nothing. One day I said to myself, I'm working at the college, wouldn't it be good for my children to benefit? I walked to her and told her, stop wasting time with your friends. Tell them that you want to go to school. I am illiterate, but I don't want you and your friends to be illiterate. I am a hardworking person, but I don't know book. I told her, 'I want you to go to school and learn something'. At the time, she was in 7th grade. She listened and now she's taken her school seriously.' [Martha]</p> <p>'We really need to pray to God. Or we can say when a man does something like that [violate a woman terribly], then he should be killed on the spot!' [Damawa]</p> <p>'The traditional people need more education; the survivors need financial assistance to encourage them in pursuing prosecution route.' [Abigail]</p> <p>'At the MoHSW, what we've done and continue to do is to train our health professionals how to manage survivors when they are raped. We've conducted the training for a couple of years now. What we've been trying to push for is to make this training part of the curriculum for all health training institute in the country. So that once you enrol at say, the Tubman National Institute of Medical Arts [University of Liberia's Nursing School], in your studies, you'll learn how to manage rape cases. After graduation, when you're assigned to a health facility, you'll only do in-service rather than receiving on-the-job training.' [Amelia]</p> <p>'The whole system needs to be restructured, particular the justice and health system. For the health system, there needs to be training on forensics, re: vagina smear when there is a rape. The current situation here is the public health nurses who carry out these swaps for investigation. Within few months, you'll hear that they've got a new job with a private health organisation and have abandon that post. For us following up on such cases, we will visit the hospital on several occasions only to find that no one is there. Sometimes, the slides are kept for so long without medical examination that they become out-dated. There are several factors responsible for the inefficiency. Imagine our roads during the rainy season. If the evidence samples are too many, you run the risk of damaging them because there is no proper storage.' [Klade]</p> <p>'When it comes to domestic labour there is serious problem with women being overlooked. Women do most of the farming. They also carry heavy loads, do childcare, cooking, cleaning and more. At times, you will see a woman carrying this heavy load, with the child tied on her back, and a basket in her hand. But the man will walk freely ahead of her, swinging his hands. Women are always victimised in these rural communities because men believe that women are supposed to do X, Y, Z.' [Tracy]</p>	<p>Recommendations and Attitudinal Changes</p> <p>'Better education, decrease poverty, empower our men, so they don't do this, increase maternity services on country (evidence suggests that decreases family violence)' [K]</p> <p>'I would have a block of flats. Hostel. Where you have workers with them 24/7.' [Sally]</p> <p>'Ceremony is one of the ways that people can heal, definitely. Not for everyone but...reconnecting with culture, reconnecting with identity, all of those sorts of things.' [S]</p> <p>'I had an issue that the legal services also had a strong focus on doing criminal injury compensation claims. So, women would come and want to claim compensation for their injuries rather than the focus being on preventative and protective work for them. I think it is important that women have access to legal services and protection through the law. But that needs to go together with a suite of other services and support.' [Dallas]</p> <p>'There needs to be better training of the judiciary in dealing with Aboriginal issues. There needs to be better programs in dealing with underlining issues - particularly in literacy. There needs to be better pathways to provide support. There absolutely need to be investment in the services for victims in taking a holistic approach - not just the service but where they can go to be safe; but also, in long-term care, as in employment and counselling. That's the kind of a broader holistic approach that people need to be able to get their lives back together.' [Lara]</p> <p>'I think as part of society, parliament should provide funds for Aboriginal women to establish houses and safe refuges either in communities if people believe in community, or in cities or urban areas aside from non-Indigenous refuges.' [Alison]</p> <p>'I do think re-investing in people cultural practice and language is a key element in cultural practice. It is actually a very powerful healing mechanism. There's something magical about speaking one's own language. It is fundamental. It is a UN basic human right. If you want to disempower people, you make them speechless, really.' [Jaky]</p>

CHAPTER 8: DISCUSSION AND ANALYSIS

Actually, working in this area is quite challenging. Sometimes it has been easy to work with other women. You know, women have not been heard for a very long time. Their business has been put aside in the past. Now, for them to have the opportunity to speak out, participate, and be a part of everything that is happening in this county; they feel very proud about it. From the beginning, it wasn't that easy to get them on board because they fear refusal and resistance from their husbands. You would hear them say, "I can't join you because my husband will have problem with me". OR, "I should not be part of this women's program". But now they are beginning to understand that being a part the women's program [is a good idea] because they are seeing the impact of the women participation across the county. [Abigail, Liberia]

8.0 Introduction

This chapter is confined to a careful selection of subtopics that are representative of the major issues emerging from the empirical study and speak directly to objectives #2 and #3 of the dissertation: They are:

- 1) assessing the extent to which service providers working in the areas of gender violence against Indigenous females in Australia and Liberia perceive the law to be just (or unjust), using a survey instrument; and
- 2) examining the extent to which Indigenous Women Advocates working in the areas of violence against women perceive the law to be just (or unjust) against Indigenous girls and women in Australia and post-war Liberia using a semi-structured interview.

This research is grounded in 'asking the [Indigenous] woman [the law] question' to incorporate an Aboriginal legal feminist perspective. Demonstrably, this chapter honours and validates the voices of Indigenous Women Advocates informed by a phenomenological inquiry (*see* chapter 6). Thus, a significant portion of the chapter dwells on interview and survey responses from Indigenous Women Advocates (to a larger extent) and service providers (to a lesser extent), respectively. As input from Indigenous Women Advocates is critical for reforming the law and policy that impact the lives of Indigenous girls and women, it is imperative that the chapter achieve research objective #3. Notably, the majority of the survey participants were males who did not overtly identify as Indigenous (*see* Table 7.6). As expected, themes emerging from the empirical data and the literature review appear to align with the responses from interview and survey participants.

Given that Indigenous females are the survivors of systematic violence, they are in a unique position to identify challenges, issues and possible remedies that could result in effective comprehensive intervention programs. This chapter cites direct and indirect quotations by Indigenous Women Advocates and survey participants throughout to highlight and illustrate analytical views. All direct excerpts by Indigenous Women Advocates are cited using their pseudonyms (e.g., *Yaa* or *S*), followed by their country of origin (*Australia* or *Liberia*). However, in the case of responses from the questionnaire participants, 'a survey participant' or 'survey participants' is used to indicate who is speaking (singly or collectively), followed by the country of origin. 'Research participants' is used jointly for both survey and interview

participants. Unless otherwise stated in a direct quote, the study does not mention precise locality (e.g., Maryland or Northern Territory) to protect participants' privacy and identity. Since it would make for a cumbersome read, 'survey participant' or 'research participant' are not referenced in all cases.

The chapter opens with the many forms of violence Indigenous girls and women endure on a daily basis. Describing the types of violence most frequently identified by research participants, the subsection highlights some selected participants' quotes to articulate the impact and implications of systematic gender violence perpetrated against Indigenous girls and women. As mentioned above, violence against Indigenous girls and women does not happen in a vacuum. An essential question to ask is: Why does it occur in the first place and what are the root causes of such persistent violence? Research participants' candid responses offer deeper insights into society's beliefs and attitudes toward girls and women that predispose them to ongoing violence. These beliefs and attitudes are held mostly by men but also by some girls and women. Survivors exposed to ongoing violence, internalise self-destructive beliefs and harmful attitudes about themselves and about females in general. If preventing systematic gender violence is impossible, and if there are entrenched and harmful cultural beliefs at the root of violence, then this chapter assesses whether there are social services available to provide any relief or remedy for Indigenous girls and women survivors. The research findings show that violence is not only a legal issue. Therefore, incorporating public health's social determinants of health can marshal a comprehensive intervention mechanism, broadly and strategically. Finally, since this research pertains to applying the principles of the rule of law and justice to address systematic gender violence, access to the law and legal services is discussed in a separate subsection.

8.1 A Pervasive Culture of Violence (Nature, Type and Impact of Violence)

Historical evidence gathered in this research points to a pervasive culture of violence against Indigenous Peoples in Australia and Liberia. Whether through the trans-Atlantic slave trade or convict transportation to Australia, both forms of violence eventually bred inter-generational perpetrators (e.g., African American former slave elites in Liberia or white settler-colonists of English descent in Australia). Being the subjects of such systematic, protracted savagery has been the portion of Indigenous Peoples since colonisation. One survey participant laments, 'How will our people ever be able to heal from our elders' past mistreating is something that lives in all our hearts and families, and the hurt is very real and society just brushes it away'. Not many Indigenous women advocates are cognisant of the nuances and intricacies of systematic violence. Notwithstanding, *Alison* clearly understands the nature and impact of inter-generational violence (also *see* chapter 2):

Generational sexual violence is pervasive in the Aboriginal community because of forced Christianity and violence associated with forcing Aboriginal Peoples to live on

missions. Christianity was very fundamentalist. So, right down into the generations we were working with Aboriginal men who had been subjected to generational sexual violence by their uncles or whatever. Men who were on the verge of committing sexual violence against their own children started to have flashbacks of sexual abuse by their own relatives. The whole thing goes hand in hand – the drinking, the generational abuse as children, not growing up properly emotionally and developing as a normal person into a functional human being. Rather an Aboriginal child was compelled to grow up as an adult child or having a small damaged child inside their adult person. [*Alison, Australia*]

Alison recognises how collusion between institutions (such as the Church and the State), coupled with an individual's (such as a priest's) wilful desire to harm others can inflict trauma. A survey participant in Australia corroborates the myriad forms systematic violence can assume over a period of time. According to the participant, 'gender and family violence are very closely connected to the ongoing traumatic removal of children from their families, which is currently being discussed as "the next stolen generations." I think these are interesting connections that seriously deserve consideration.'

Tied to state and institutional orchestration of systematic violence are the invisibility of Aboriginal Peoples' experiences of colonialism, systemic racism, patriarchy, and land dispossession in Australia, which is why research participants often restrict violence against Indigenous women to sexual or physical violence:

The issues of colonisation, racism, and oppression have meant that Aboriginal women's experiences of patriarchy and gender inequality have been often made invisible. Aboriginal women are constantly put in an untenable position of having to choose between culture and gender. Any further work in this area must support women to find language and opportunities to have complex and nuanced conversations about their experiences of racism and misogyny. [*Survey Participant, Australia*]

'Since the invasion of the white man', a survey participant opines, Aboriginal women have been at greater risk of domestic violence and generational trauma, mainly due to the intersecting interplay of class, privilege and racism. Research participants point out that '[s]ystemic racism often prevents women from accessing the legal system or receiving high-quality service as remedies for systemic racism are focussed on male criminals in response to death in custody issues, but rarely supporting Aboriginal women to seek justice'. Thus, a lack of change in the conversation about 'colonisation, settlement, dispossession, and political power distribution has partly resulted in any possibility of providing reparations for historical injustices even as Aboriginal children and women continue to be marginalised', affirms a Survey Participant..

Despite the fact that violence against Indigenous girls and women encompasses a broad spectrum of systematic exploitation, it appears that the Australian government is reinventing violence and abuse. Survey participants elaborate on the Australian government's reinvention of systematic violence in the form of 'policy hardening' with particular regard to accessing housing and child protection services:

The policy "hardening" which impacts vulnerable and at-risk communities will only see increases in stress and violence within communities. For example, the "three strikes policy" in public housing in Western Australia is seeing Aboriginal Peoples being

evicted from homes. This example speaks volumes when one section of government can impact other service providers and increase service costs relating to police, health education and child protection. This is crazy stuff. I mean its 2014, where is the learning from past mistakes? [*Survey Participant, Australia*]

Child protection has a policy of applying for an order that places a child under 12 months in state care until they are 18 years old after that child has been in care for 12 months. But it takes mothers more than 12 months to deal with social issues that come from violence. [*Survey Participant, Australia*]

Government cutbacks in subsidised housing are primarily responsible for increasing the number of homeless people in New South Wales, says an Indigenous Woman Advocate. She further notes that ‘there’s a whole range of issues for women, especially when they’ve got children; yet they have nowhere to live with their kids, if they need to escape violent situations.’ *Lara* believes that policymakers in Australia design austerity measures with full cognition as ‘[i]t is a policy decision by government to not fund those services.’ *Lara*’s understanding is that cutbacks are made mostly because social service programs do not work. She fears that ‘there’s going to be less and less support for women, particularly to women’s refuges and Aboriginal legal service’ due to severe cutbacks by the Labour party. For *S*, the reality of the government defunding programs is agonising:

I have had a difficult time partly because of the extreme physical and sexual abuse I experienced as an adopted child. I spent seven months making statements to the Australian Federal Police and they assured me that my case would go to court, that my adopted brother would get a jail sentence. Just around the time my case was about to go to court, the government started the Royal Commission into Institutional Responses to Child Sexual Abuse. I contacted the Royal Commission, the Attorney General and the Victims of Crime. The Royal Commission told me when they came here, if I was willing to testify against that institutional abuse (because I ended up in an institution)? I said, “yes”. They said OK. The next thing I heard was that they were here. I called and said to them, I meant to be testifying. And they said, “ahhhh we have budget cut, because Tony Abbott cut the budget to pay out compensation.” Then I got told that my testimony wasn’t in their parameter because the abuse happened in a government institution and not like the church or the scouts where the government wouldn’t be responsible for compensation. So, here again, a whole lot of Aboriginal women (particularly) and men can’t get justice. I have had to come to terms with the fact that there is no justice. I don’t believe that there is any justice. [*S, Australia*]

Section (f) of the Letters of Patent regarding the Royal Commission into Institutional Responses to Child Sexual Abuse (hereafter the Royal Commission into Child Sexual Abuse) mandates that the commissioners focus their inquiry and recommendations on systemic issues, recognising that individual cases will inform their investigation. Since ‘they may need to make referrals to appropriate authorities in individual cases’, the Royal Commission into Child Sexual Abuse is limited in the scope of their inquiry. Interestingly, the Royal Commission into Child Sexual Abuse held formal public hearings on evidence about child sexual abuse within institutions. The inquiry does not focus on individual situations but instead on case studies of how organisations have responded to allegations and proven instances of child sexual abuse.¹⁴⁹⁶

¹⁴⁹⁶ Royal Commission into Institutional Responses to Child Sexual Abuse, *About Us, Redress, and Public Hearings* (2015) Government <<https://www.childabuseroyalcommission.gov.au>>.

The experience of Indigenous Women Advocates validates this dissertation's broader view of systematic violence as occurring at state/institutional, structural/cultural, and community/interpersonal levels. S's experience not only highlights the interwoven relationship between interpersonal,¹⁴⁹⁷ structural¹⁴⁹⁸ and state/institutional¹⁴⁹⁹ violence, but it also validates the unsuccessful outcomes of court cases regarding forced adoption, sexual abuse and discrimination against Aboriginal children in Australia (*see* chapter 7). Affirming the approach of this research to assessing systematic violence against Aboriginal girls and women, a survey participant sheds light on the causes of systematic violence:

I think the topic of gender violence against Aboriginal women and children has often been reduced to "domestic and family violence" whereas your definition is clearly much broader including state violence, institutional violence, structural violence as well as "private" abuse. I think your approach is much more realistic and relevant than approaches which mainly or only focus on domestic and family violence... The dominant paradigm in Australia is that governments and agencies will work preventatively etc., to address Aboriginal domestic and family violence, which is a continuation of external interventions and external controls as well as self-defeating. Prevention is political, and it is about power - what power is being accorded to Aboriginal women and young people to act for themselves in ways they determine, i.e., to allow them to build their capacity? [*Survey Participant, Australia*]

Whilst participants in Australia also cited domestic violence incidents, institutional/state violence is often referenced as gender violence (*see Lara's Alison's and S's quotes*). For example, although the Aboriginal and Torres Strait Islander Social Justice Commissioner submits that Aboriginal and Torres Strait Islander women are 45 times more likely than non-Indigenous women to be victims of domestic violence,¹⁵⁰⁰ survey and interview participants mention occurrences of institutional/state violence more often than interpersonal/community violence, which includes domestic violence. In contrast, in Liberia violence against women is still often viewed as interpersonal and private.

Aligning with the idea that violence against Indigenous girls and women is confined to the private domain, research participants in Liberia cited physical, domestic, and sexual assaults as leading forms of systematic violence. They also mention other types of violence such as human trafficking, child/forced labour, prostitution and persistent non-support as a direct result of males abandoning familial responsibilities. The types of domestic violence identified by survey participants in Liberia generally include rape, wife/child beating, and witchcraft:

Two cases in Ganta and Flompart - one shot a woman with gun and the other wasted [poured] acid on someone's face. This resulted in a familial conflict and now there is a clan dispute going on. [*Survey Participant, Liberia*]

¹⁴⁹⁷ That is sexual assault taking place in the home.

¹⁴⁹⁸ Meaning discrimination leading to injustice.

¹⁴⁹⁹ Precisely the cutbacks from the government resulting in the Royal Commission's refusal to include S's case.

¹⁵⁰⁰ Australian Human Rights Commission, 'Social Justice Report 2012: Aboriginal and Torres Strait Islander Social Justice Commissioner' (Government Report, Australian Human Rights Commission, 26 October 2012) 242, 27–28 <<http://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-report-11>>.

There was a specific case here where a convict beat his wife and killed her. [Survey Participant, Liberia]

For example, here is a man who always beat on his wife. That wasn't brought before me. But later it became clear that the man tied his wife foot [wife's feet] apart from each other and had sex with her. We have nowhere else to send such cases. [Survey Participant, Liberia]

We had one situation where a 16-year-old was raped by a 50-year-old, she bled so much after the rape incident that we had to airlift her to Monrovia with the help of Samaritan's Purse. She underwent surgery. [Survey Participant, Liberia]

A former rebel general raped a 12-year-old in a village and nothing was done about it. [Survey Participant, Liberia]

A former driver of mine raped a 14-year-old girl in the community. He wanted to escape but I fought to ensure that he was arrested and sent to central prison. I'm monitoring the case in Brewerville to make sure that it is transferred to Sexual and Gender-Based Violence Crimes Unit in Monrovia. [Survey Participant, Liberia]

Some men complained that their food wasn't ready on time or there has been mismanagement of the household funds, or the woman is not getting their laundry done on time. Some would ask questions, if the woman challenges them, then the men would get angry and beat her. Some were beaten because of extra-marital affairs or ex-boyfriend relationship. There were a few cases where the women were fighting the men because he was cheating or not providing food money for the house. [Survey Participant, Liberia]

Sexual violence, gender-based violence, and domestic violence where men beat on their women are common cases we get. Most cases of wife beating result when a woman asks the man for food money, or there is jealousy on the part of the man. I went to visit my friend and I was told by the husband that she didn't come home early enough, so he beat her. Sometimes, financial problems, phone communication, or if the woman refuses to eat with him. Anytime the man wants sex she should give it to him otherwise she would get beaten. The men don't come with the women to the hospital. But women tend to feel sorry for their abusers. So, they end up not bringing the case to court. It's very hard to have a woman beating on another woman here. [Survey Participant, Liberia]

Parents do beat on their children a lot too. In any case, excessive beating is violation of the law. Some come with broken bones, bruises, etc. because of stealing or refusing to fetch water. Sometimes the children don't want to go home. They range between the ages of 5 and 12 for domestic violence. For sexual and gender-based violence from as low as 2 to 13 years, children are raped all the time. [Survey Participant, Liberia]

Trafficking in persons (TIP) 'where they take children and sell them for cheap labour or sex is practiced in Liberia, especially in border counties', but is not common in Liberia, says Yaa. 'Even in a year if we see one or two cases [of trafficking in persons], then it means that it is happening' Yaa continues. Forced or child labour and sexual exploitation, including prostitution, go hand-in-hand with human trafficking in Liberia. According to the United States Department of Labor's *2014 Findings on the Worst Forms of Child Labour*, 16.6 per cent (136 340) of children between the ages of 5 and 14 work in Liberia, mainly in the mining (diamond) and agricultural (rubber) industries.¹⁵⁰¹ Apart from the mayhem against girls and women caused

¹⁵⁰¹ US Department of Labour, 'Findings on the Worst Forms of Child Labour: Liberia' (Government Report, United States Department of Labour, Bureau of International Labour Affairs, 2014) 7, 1 <<http://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/liberia.pdf>>.

by warlords during Liberia's 14-year bloodbath,¹⁵⁰² in post-war Liberia, the exploitation of young girls, including by United Nations workers and international expats, forces them into sex work.¹⁵⁰³ Sometimes, girls and women are even exploited by women and the very 'freedom fighters' who were supposed to protect them, as *Yaa* and *Klade* narrate (respectively):

There are cases of prostitution, mainly in the cities. Some are caused by men going around and collecting girls with the intention of sending them to school. But in the end, they become sex workers. Actually, those girls who are involved, it is not their will to be there, but someone has exposed them to it. They end up getting used to it because they get paid. They are usually paid indirectly at the end of the month by someone who collects their money. In Sanniquellie (2005), there was an established woman here. She went into the village, collected 15 girls, some between the ages of 15 and 17. The lady had contact with the hotel. When a guest arrives, and they need a girl, they contact her and then she sends a girl in exchange for money. When we were informed, we traced her, located her and then hire [engage] the police to arrest her. After she was arrested, we took the girls and put them into skills training programs. Some are now working independently. So, it happens. Forced prostitution of young women can be the source of income for some. [*Yaa*, Liberia]

My first job was to conduct interviews with women survivors of the civil war. We were documenting their stories and their experience through the peace-building network. Out of every 3 to 5 females that I spoke with at least one was raped and/or experienced some form of abuse. Some were forced to be sex slaves during the war by various warring factions. Most of the girls did it to survive, as they had to cook for the rebels. But they could not escape. They were trapped and threatened with fear and violence. For some, their husbands or fiancés were killed in the process of capturing them to become the Commando's wife. [*Klade*, Liberia]

Pursuant to sections 18.1-18.9 (*Offenses Against Public Morality*) of *Penal Law, Liberia Codes Revised*, 1976, prostitution, brothel ownership, and pimping are all criminalised in Liberia. On 5 July 2005, Liberia enacted its first human trafficking law. Although the prevalence of human trafficking is perceived to be low, the *Act to Ban Trafficking Within the Republic of Liberia* 2005 (Trafficking in Persons Act)¹⁵⁰⁴ reflects the occurrence of human trafficking in Liberia. Contravention of the *Trafficking in Persons Act* 2005 may result in a sentence of up to 12 years. However, 'To date, the government of Liberia has not convicted any Liberian trafficking offenders under Liberia's anti-trafficking law, despite the country's significant internal trafficking problem'.¹⁵⁰⁵ Even worse, prosecution of alleged war criminals who trafficked and enslaved girls and women during the 14-year civil war in Liberia is yet to happen. Another form of child exploitation exists in Liberia that has all the characteristics of trafficking but has not been labelled as such.

¹⁵⁰² Plan Liberia, *Daughters of War* (Plan Liberia, 2014) <<http://www.trust.org/item/20140609105720-me5ov/?source=fiTheWire>>.

¹⁵⁰³ UN Office of Internal Oversight Services, 'Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations' (UN Report General Assembly A/RES/61/26 B, Inspection and Evaluation Division, Office of Internal Oversight Services, 12 July 2015) 52, 22 <<https://oios.un.org/page/download2/id/13>>.

¹⁵⁰⁴ Section 2 of the *Act to Ban Trafficking Within the Republic of Liberia* 2005 states that: recruitment, transportation, transfer, harbouring or receipt of a person, by means of the threat or use of force or other means of coercion or by abduction, fraud, deception, abuse of power or of a position of vulnerability, or by giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation shall be a criminal offense within the Republic of Liberia.

¹⁵⁰⁵ 'Trafficking in Persons Report' (Government, Office of the Under Secretary for Civilian Security, US Department of State, July 2015) 382, 225 <<http://www.state.gov/documents/organization/245365.pdf>>.

An exploitative human trafficking practice begun by African American settler-colonists in Liberia persists to this day. However, the new *Trafficking in Persons Act 2005* does not include this form of abuse, probably due to its resemblance to acceptable cultural practices and generalised abject poverty seen in the country.¹⁵⁰⁶ *Abigail* explains the impact of this ‘disguised child-trafficking’ custom that is all too rampant in Liberia:

The cases we get on children are mostly for rape, abandonment and street children. As I speak with you, if we were in Pleebo, say at 8:30pm, I’d say let’s take a tour. You’ll find many children sleeping in the street. In the morning, they will go to the Cold Bowl Shop¹⁵⁰⁷ and wash dishes in exchange for leftover food eaten by patrons. At night, they sleep on the market tables in the open market area. Sometimes the police will arrest them and take them to the police station. But where do they keep them? Sometimes, the police will call Ministry of Gender. Having spoken with the kids, we find out that some of the children are taken from the village by family members with the intention of bringing them to the city to give them education. only to later find out that these children are used as slaves. In dealing with the situation, we try to connect with their biological parents by putting pressure on the caregiver. Sometimes we threaten the caregivers with police arrest and court case. Knowing this, they then open up to say, “this is my cousin child and I would like to return the child to his/her family.” Some of the kids are orphan so they have nowhere else to go. They don’t even have a safe home to go to. In this case, you’re left with no option but to talk to the same caretaker to take the child back. Seriously, it is not an easy problem. [*Abigail*, Liberia]

Amelia, on the other hand admits, ‘[w]e don’t think about how we overuse the children to do house chores so that they have no time to study. Then at the end of the year we expect them to pass. With that expectation, they are then obliged to engage in all sorts of stuff, including sex for grades’. Women are often incentivised to send their children to cities for the promise of support and education because the child’s father has abandoned the family.

Abandonment, neglect and persistent non-support of children and women are commonplace in Liberia as research participants have observed. Family laws protecting children and women are rare in Liberia. A little step forward came in 2005, when Liberia elected its first female president; a series of family law reforms was carried out to conform to international legal standards.¹⁵⁰⁸ Section 16.5 of the newly adopted *Domestic Relations Law 2011*, which revised the *Penal Law (Domestic Relations) 1973*, provides that,

[a] person commits a misdemeanour of the first degree if he persistently fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child or other dependent, as specified in section 5.4 of the Domestic Relations Law.

¹⁵⁰⁶ Article 1 (100) of the *Act to Ban Trafficking in Persons Within the Republic of Liberia 2005* defines ‘Trafficking In Persons’ as the recruitment, transportation, transfer, harbouring or receipt of a person by means of the threat or use of force or other means of coercion, or by abduction, fraud, deception, abuse of power or of a position of vulnerability, or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

¹⁵⁰⁷ A ‘cold bowl’ is usually hot meals cooked early in the morning without being heated all through the day until it’s all sold cold.

¹⁵⁰⁸ For example, since the election of President Ellen Johnson Sirleaf, Liberia has passed new laws to fulfil its obligation under the *Convention on the Elimination of all forms of Discrimination against Women 1979*, the *United Nations Convention on the Rights of the Child 1989* and *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa 2003* (see chapters 2 and 3 above).

Section 5.4 of the *Domestic Relations Law* 2011 designates jurisdiction and power to the Circuit Court, Magistrate's Courts, and Justice of Peace to compel support of dependents from caregivers who are negligent. Section 5.3 of the *Children's Law Act* 2011, having regard to *Penal Code* Section 16.5, also empowers the Ministry of Health to act as a mediator in child support cases concerning persistent non-support. Experts' consultation on the *Draft Domestic Violence Law in Liberia* (2013) categorises persistent non-support as a form of economic violence. *The Draft Domestic Violence Law* suggests that, *inter alia*

- 1) [non-persistent support] violators should be given a sentence of 6 months to 1 year;
- 2) any police officer compromising persistent non-support should be suspended for 9 months; and
- 3) fathers should be jailed for 7 months and damages paid in monetary value for abandoning a mother and child or children.¹⁵⁰⁹

Over and again, Indigenous research participants complained vehemently about the prevalence of persistent non-support of children directly resulting in a high number of mothers parenting children alone. Consider *Yaa's*, *Martha's* and *Damawa's* comments, respectively:

Besides rape and domestic violence, persistent non-support/child support is now a serious thing. You'll have men marrying women having kids with them and dumping them by the wayside to marry another person. They just don't care to support these women anymore. [*Yaa*, Liberia]

The boys will impregnate the woman and refuse to own up because he doesn't have the financial means. If you don't have money, why must you go and pregnant somebody child? The big belly needs to eat. She has to wear clothes, and all that. If they can sit down to think about it carefully, they can come out with ways to take care of the problem. But no, they don't think. After impregnating the girl, they end up saying, "that belly is not for me". So, the young girl will say, if he doesn't own up, I can't force him. I'll be by myself. When God help, I'll deliver and have my baby with me. [*Martha*, Liberia]

This man will come around and fool them into having sex. Once they are pregnant, he will then say, it's not his. The men are leaving the women because the men do not like to work hard. When the men realise their responsibility, i.e., he has five children and wondering how he would feed them and provide their basic need; then he later decides to leave and find a woman who does not have those kinds of responsibilities. That's how they are abandoning their women around here every day. [*Damawa*, Liberia]

Unfortunately, the exploitation of girls for work and the persistent non-support by fathers lead to a lack of education, which correlates to increased risk of sexual abuse. *Amelia* identifies a statistical link between girls' lack of education and their corresponding vulnerability to domestic and sexual abuse in Liberia (*see* chapter 2):

It is observed from the Ministry of Education statistics that more girls are enrolled between kindergarten to 6th grade. By 7th grade they start to drop out. In 12th grade, there's almost no girl present. I visited a particular county. There were only five girls in the senior high school. When I asked why, I was told they all have babies. So, for those of us with daughters who finish high school and college, we need to merry-make

¹⁵⁰⁹ Madhumita Sarkar and Timothy Paulus, 'County Consultation on Draft Domestic Violence Law - Issue Paper' (Public Report, Ministry of Gender and Development, UNFPA, Embassy of Sweden, October 2013) 53, 12–13 <<http://www.undp.org/content/dam/liberia/docs/docs/Domestic%20Violence%20Issue%20Paper.pdf>>.

because it looks like 10th-12th grades can be seen as college graduates for Liberian girls.
[Amelia, Liberia]

Amelia's suggestion of 'merry-making' when a girl completes high school is concerning, especially when the sex ratio of Liberia's 3.4 million people is 1:1 (see chapter 2), yet 52 per cent of women cannot read compared with 28 per cent of boys who are literate.¹⁵¹⁰ Sadly, at the time in their lives that Liberian girls should be receiving a junior high school education, they are at their highest risk of being raped.

Rape and domestic violence are two prevalent forms of community/interpersonal violence against Liberian girls. The most egregious examples of violence against Indigenous girls and women are shattering, e.g., a 60-year-old man raped his sister's 24-month old baby to death, (also see Tables 7.3 and Appendix X). This case and many more are yet another reason survey and interview participants in Liberia perceived rape, wife beating, physical violence, domestic abuse, and sexual assault as characteristic of systematic gender violence. Even with the relatively low rate of reporting, research participants disclosed that having 12 000 cases, mostly of rape and domestic violence, reported to the Ministry of Gender, Children and Social Protection over a five-year period (see Table 7.3) not only substantiates expressed concerns about taking the issue seriously but is also downright mind-boggling.

We have 817 cases involving children between the ages of 6 and 12. Some 1,005 cases were girls between the ages of 13 and 16 years. Only 300 of those cases involve women above the age of 18 years. Last year [2013], we had over 1 000 cases that put children between 1 and 10 years. One girl died, she was about 10 years old. Something concrete needs to be done here about this. [Survey Participant, Liberia]

In 2011, over 2700 cases of rape were reported in Liberia. Some 2 678 of those cases involve girls, 33 involve boys, and 305 cases were children between 0 and 5 years. Can you believe, even a four-month old baby was raped by a teacher? The teacher went scot-free. [Survey Participant, Liberia]

There are lots of case files, mostly from the police. Issues that come out include early marriage, forced marriage, and domestic violence (beating on women) etc. Others include allegations of witchcraft. At least 94 per cent of the files are child rape cases. Sometimes 65-70 cases [of domestic violence and rape are] reported a day. [Survey Participant, Liberia]

Actually, a major issue here is women and girls who are raped from 7-15 years. The teenage girls are the more affected. High incidence of women accused of witchcraft. Luckily, we have the sexual and Gender-based Violence Task-Force. For example, a 62-year-old woman was abused by the traditional leaders, her right to movement and health was denied. She was seriously ill when we rescued her. After that, we were able to save her using Liberia National Police. [Survey, Liberia]

My work as a public defender sees the majority of rape cases and gang rape. Other crimes coming to my desk are property theft, burglary ... Murder is very low. Defenders are always doing rape cases, conferences between couples, boyfriends and girlfriends disputes, etc. [Survey Participant, Liberia]

¹⁵¹⁰ Liberia Institute of Statistics and Geo-Information Services et al, above n 316, 38–39.

Note: The total number of women ages 15-49 is 9,239, includes ten cases for which information on literacy is missing; and the total number of men, ages, 15-49 is 4,118 includes eight cases for which information on literacy is missing.

The Indigenous women and girls was banned out of their rights. They were forced into marriages. Banned out of education because they said women should be house servant and not allowed to work in the public service area. [*Survey Participant, Liberia*]

In my current work, we deal with students and they have these issues of abuse by teachers and workmates. We recommend that they leave the institution in case of molesting and requesting sex for grades especially the doer of the abuse. We have had molesting and attempted rape for about 3-4 persons over the last year. We asked them [the perpetrators] to leave. [*Survey Participant, Liberia*]

Men are in the prison for various charges. Some are here for murder. There are 20 here for rape, theft of property, burglary, aggravated assault, debt, etc. [*Survey Participant, Liberia*]

People subscribe to witchcraft. There is no provision to punish juvenile sex offender. Another reform and the issue of juvenile sex offender, people do deliberate things because they know that they can't be punished by law. County attorney should be prioritising gender-based violence cases. Jury selection compromises cases because of corruption. People practicing the traditional culture can't be prosecuted easily. Corruption of minors, involves a 14-year-old who was raped. And, another case is about a 3- or 4-year-old girl who was raped but the traditional person can't be prosecuted. Yet there was another case about a 25-year-old caught in [a] rape claim but said that he was a 17-year-old. [*Survey Participant, Liberia*]

Interpersonal and community violence, including rape and domestic violence, are pervasive not only in Liberia.

Australian Aboriginal communities also face prevalent interpersonal and community violence. However, unlike survey participants in Liberia, those in Australia repeatedly mention alcohol and drug use as co-morbidity factors of domestic and sexual violence:

Also, the introduction of alcohol, drugs and Western ways may contribute to violence in Aboriginal families. Build the WHOLE family and the WHOLE community. No one person should be left out of the loop as this will contribute to the breakdown of the family nucleus. [*Survey Participant, Australia*]

Alcohol and drug use appeared to play a part in domestic violence when I worked at the New South Wales Aboriginal Legal Service. Substance abuse needs to be addressed. [*Survey Participant, Australia*]

Substance misuse and abuse has a significant connection to violence and is a critical part to be addressed to reduce violence towards Aboriginal women and children. [*Survey Participant, Australia*]

Alison's perspective on addiction (generally) and alcohol (specifically) points to a history based on religion and morality: '[i]t was unique to Australia that addiction wasn't a dirty word but rather a biological disease that people could recover. It was unusual for policy people too because, for them, it was all about the morality of drinking. It was very Christian for a man to be able to hold his drink and not hit his wife because with alcohol meant issues of rage, terror and grief stemmed from your family origin.' *Dallas* offers a pessimistic but realistic viewpoint. She adds that '[e]ven if we get all the response system right, and we're able to start changing men's attitude towards the use of violence, get control of access to alcohol, and a whole lot of things...we're still going to see violence occurring in a couple of generations'.

As in Liberia, sexual violence against Aboriginal girls and women persists mainly due to what Adams and Hunter describe as 'no-stranger danger' in Aboriginal communities in

Australia, as ‘perpetrators of child sexual assault are almost always known to the family, or are part of the family’.¹⁵¹¹ In Australia, both survey and interview participants rationalise that poor understanding of Aboriginal culture is partly responsible for the underreporting of interpersonal/community violence, in spite of its high occurrence. For example, pressures from extended family, not necessarily acknowledged by white Australian law, may contradict safety issues and subsequently complicate reporting of a seemingly high occurrence of child removal (‘the new stolen generation’) and domestic violence in Australia. A rigid legal system, with a ‘one-size-fits-all’ approach (*see S’s* concerns with the Royal commission into Institutional Responses to Child Sexual Abuse above), ‘does not take into account past experiences of traumatic cultural aspects, power difference in educational standards and psychological responses to the trauma’, critiques a survey participant in Australia. Such an approach risks harm to (and sometimes results in fatalities of) Aboriginal girls and women, mostly in remote areas, because, it is hard to obtain protection or restraining orders in such communities. However, even when these restraining orders are obtained, they are not always enough to protect women and girls.

An Aboriginal woman who is protected by an apprehended violence order¹⁵¹² and who must hand over her children to an ex-partner continues to be in a threatening situation in Indigenous communities. It is in such cases that research participants reasoned that police restraints are ‘useless’, ‘not able to keep women safe’, or ‘often insignificant because women and children find it difficult to escape violence’. Some research participants believe that police restraining orders are not always ‘ad hoc’ or ‘chancy’ as they ‘...can sometimes be helpful in protecting Aboriginal children and women’. Albeit, ‘whether they are helpful depends on the support women are able to access throughout the process, the individual response of police officers, and defendant compliance with the orders’, says another survey participant. For example, Aboriginal girls and women residing in remote communities often have difficulty notifying police of a breach or violation of a restraining order when they do not have a phone or when they live in an area with no phone coverage. Without safer alternatives, many women are forced to remain in abusing relationships, which exposes them to further state violence.

State policy and domestic abuse intersect at Aboriginal women in Australia, giving rise to a ‘new stolen generation’. Anecdotes abound concerning the ‘new stolen generation’, citing examples of a lack of representation in the legal system, lack of consultation, and readiness of the Australian Government Department of Social Services to quickly remove, or threaten to remove, children from Aboriginal women who are experiencing domestic violence. According to *Sally*,

¹⁵¹¹ Adams and Hunter, above n 365.

¹⁵¹² Restraining or protection orders are called differently across jurisdictions in Australia. Restraining orders are usually issued by the Magistrates Court or by police. In NSW it is called Apprehended Violence Orders (AVO), domestic violence order (DVO) in QLD, ACT and NT or violence restraining order (VRO) in Western Australia. Section 13 of the *Restraining Orders Act 1997* (WA) states that violence restraining order is an imposes restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent from committing an act of abuse against the person seeking to be protected.

there are about 600 children in foster care and about 300 are Aboriginal kids. I have two grandchildren in my care. They try to give my grandkids back to their non-Aboriginal mother who was an alcoholic drug-user who was very neglectful of the children. I put braces on my granddaughter's teeth. But I didn't realise that I had to ask family services if I could do it. I took my granddaughter out of a public school and put her into a private school and all hell breaks loose. I was supposed to tell them or talk to them before I moved her. You know, I think a lot of people are from England. Their system and the way they do things is a lot different from ours. Most Aboriginal children were brought up on missions. A lot of the younger generation are stolen generation people. That institutionalisation and intergenerational trauma just goes on and on. We are worried now about losing a couple of more kids if this cycle keeps happening. There's no Aboriginal childcare service here. There is no Aboriginal hostel. And, there's a lot of problem with homelessness, couch surfing or living rough at the Tent Embassy. [Sally, Australia]

Sally's agony over losing more Aboriginal children will linger, she says, until

all people working in jobs where they make decision about Aboriginal families have regular cultural appropriate classes, so they will hopefully understand our people and try to make our kids' future better with less Aboriginal Peoples in the court system and many less Aboriginal kids in family and child protection services¹⁵¹³ living away from their mobs... [Sally, Australia]

As a response to these concerns, on 5 January 2015, the Australian Capital Territory government appointed five cultural advisers to support Aboriginal and Torres Strait Islander children in care. Their role is to help 'articulate the needs of children and young people in care and would play a critical role in helping caseworkers to ensure their work and decision making is culturally respectful...by assisting with locating kin to support families and children in contact with the child protection system'.¹⁵¹⁴

8.2 Traditions, Culture and Customs

Throughout this research it is argued that violence against women is not confined to Aboriginal girls and women. Irrespective of one's identity, society in general is patriarchal and girls and women are disproportionately vulnerable to male dominance and systematic violence. The responses from research participants above affirm that in Indigenous customs, although violence against women occurs, there have always been remedies and redress for survivors of such violence.

When it comes to the issue of gender-based violence, rape, beating etc., the elders sit there and accept goats, cows or food in exchange for a woman's abuse. Rape and murders are not usually cases for traditional chiefs. These traditional practices are harmful when it comes to rape and murder of women. The tradition must be taken to task when criminal activity results. But they are not willing to assist and comply favourably with women. Before the war, children between the ages of 14 and 16 were given away in marriage. As young as age 8, children were put to work to earn money. I know of a case where a man took a house girl (15 years old) even though he was

¹⁵¹³ NSW Government's Department of Family and Community Services, available at <[http://NSW Government, Family & Community Services \(4 January 2015\) About Us](http://NSW Government, Family & Community Services (4 January 2015) About Us)> <https://www.facs.nsw.gov.au/about_us>.://www.facs.nsw.gov.au>.

¹⁵¹⁴ Natasha Boddy, 'Cultural Advisers Appointed to Support Aboriginal and Torres Strait Islander Children in Care' *Canberra Times* (Canberra, ACT), 5 January 2015 <<http://www.canberratimes.com.au/act-news/cultural-advisers-appointed-to-support-aboriginal-and-torres-strait-islander-children-in-care-20150104-12hnpj.html>>.

married. He sent his wife to Monrovia so that he could abuse the 15-year-old girl. There were four persons involved in the end. And they were all UN staff members. [*Survey Participant, Liberia*]

So, in our Traditional Laws, it is wrong to be violent towards women and children. Our laws are based on spiritual values. There is a punishment law called, 'little bit kill, big big kill'. If a man commits murder and rape, he's a 'big big kill' – it means he gets speared dead immediately because that's the punishment. It operated everywhere. There were paybacks for things that people did wrong. People lived that law and they were expected to live that law. If you run away, you got sunk or the bow pointed at you. 'Little bit kill' is for adultery and things like that. If you had a consensual sexual relationship with someone who's not in the right moiety group – that sort of thing. [*Alison, Australia*]

When a man cusses his wife, all women are called to apprehend him. It is one way to prevent violence against women. If you afflict injury, you will be summoned by the paramount chief, who will in turn fine you. Everything is in seven, whether it is oil, goat or rice. If you continue to inflict violence against women, they will banish you from the town. [*Abigail, Liberia*]

This question should be put to Aboriginal people (I am not Aboriginal - I hope there is going to be a question which asks me that). Customary law is a complicated issue - the issue of 'bullshit customary law' (*see* Audrey Bolger and others) is one of the complications. Additional, customary law is not static. Whether Aboriginal women and Aboriginal people are able to reach consensus about whether and how customary law should apply, which aspects, and in what circumstances, are all questions to be addressed. [*Survey Participant, Australia*]

As is true of all traditions around the world, not everything about Aboriginal cultures in post-war Liberia and Australia is as deplorable as settlers may have assumed.

Indigenous Women Advocates and some survey participants recognise the importance and usefulness of Indigenous cultures despite the existence of harmful traditional practices that subject women to continuous violence and abuse. Indigenous cultures in both countries are not homogenised, simplistic and inflexible but diverse and resilient having survived for millions of years (*see* chapter 2). For example, according to *Jaky*, Aboriginal language would have thrived much better today had it not been intercepted by white settler-colonists:

A lot of communities stop passing information to their children, so they would not be an easy target for white Australia. Disregarding their language made them seem somehow ready to assimilate. With that, our cultural practices were shut down, kept quiet, and went sort of underground... [but] language is the single greatest source of life. For many Aboriginal Peoples, it is a shame to think that we can't speak our language. This gives a sense of great deep personal sorrow that knowing the loss of what it is to have all that knowledge taken away from you in many ways. So much knowledge and cultural practices are embedded in language. There's a lot of evidence building up to show that Aboriginal students/kids who study their own language tend to have a better sense of engagement with schooling in general and that is across curricula. There's something magical about speaking one's own language. It is fundamental. It is a UN basic human right. If you want to disempower people, you make them speechless, really. [*Jaky, Australia*]

Sally also agrees that tampering with Aboriginal lore has caused personal denigration, trauma, and cultural dysfunction;

I think customary law more probably exist in remote places where there is more traditional lifestyle. But because of its dysfunction and desecration...I mean what we got was a lot of dysfunction, dislocation, anger, inter-generational trauma, and all of

those things that impact through colonisation. We always say, “white Australia has a black history”. I say, if Captain Cook would have landed in one of the other parts - no disrespect to the people in say Darwin – those fellows would look like us. We had assimilation and all of those things [Sally, Australia].

Notwithstanding the significance and diversity of Indigenous societies and some research participants’ comments frowning on violence against women, others still view the occurrence of violence as normal in Aboriginal cultures:

[i]n the Kimberley violence against women and girls is normal. Last week I saw a man kicking a woman in the head in the middle of the road. A crowd stood around and watched as he drunkenly swung his booted foot at her head. She was screaming out. Cars were driving past, and people were laughing. I think there is a belief that they are just drunk Aboriginals and they need to sort it out by themselves. The community needs to learn to respond. Violence is so normal it is terrifying. [Research Participant, Australia]

Irrespective of the perceived acceptance of the ‘natural occurrence’ of violence in Aboriginal cultures, harmful traditional practices that subjugate females exist in Indigenous cultures and need to be tackled head on.

Harmful traditional practices related by research participants are not just simple conjectures but are alarmingly real lived experiences for Indigenous girls and women. Attempts to collaborate and rethink approaches on addressing the issue of systematic violence defy simple solutions. Joan Kimm calls it a ‘fatal conjunction’ that though different in concept, both Anglo-Australian law and Indigenous Customary Laws have failed to prevent systematic gender violence against Indigenous girls and women. Kimm cautions that there are ‘no safe places’ for Aboriginal girls and women who experience violence. Even ‘kinship connections make escaping violence often difficult’, says a survey participant in Australia.

Domestic partner and other interpersonal and community violence exists within Aboriginal communities in Australia. Audrey Bolger,¹⁵¹⁵ Pam Greer,¹⁵¹⁶ Diane Bell,¹⁵¹⁷ Boni Robertson,¹⁵¹⁸ Paul Sutton,¹⁵¹⁹ and Joan Kimm¹⁵²⁰ (also *see* chapter 3) have all documented the gory details of *inter se* sexual violence inflicted upon Aboriginal girls and women in Australia. For example, Joan Kimm discloses:

The 1980 Northern Territory case of Ivan Imitja Panka illustrates the kind of death, which women can suffer in town camps. The circumstances were a fatal mixture of alleged male rights under Traditional Laws and alcohol. Panka pleaded guilty to manslaughter on the grounds that his wife had offered him provocation in Traditional Laws because she refused to cook him some meat: that is, he was relying on a husband’s traditional rights of chastisement. He ‘decided to punish her for being cheeky’. Both were very drunk. After punching and hitting her he ‘took a piece of rippled reinforcing steel and forced it into her vagina’.¹⁵²¹

¹⁵¹⁵ Audrey Bolger, ‘Wangkajunga Women: Stories from the Desert’ (1997) 11 *Aboriginal History* 102.

¹⁵¹⁶ Pam Greer, ‘Report to Domestic Violence Committee’ (1989) 13(4) *Aboriginal and Islander Health Worker* 14.

¹⁵¹⁷ Bell, ‘Speaking about Rape Is Everyone’s Business’, above n 814.

¹⁵¹⁸ Boni Robertson, ‘The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report’ (Queensland Department of Aboriginal and Torres Strait Islander Policy and Development, 2000) 328.

¹⁵¹⁹ Peter Sutton, *The Politics of Suffering: Indigenous Australia and the End of Liberal Consensus* (Melbourne University Pub, 2011).

¹⁵²⁰ Kimm, above n 789.

¹⁵²¹ *Ibid* 11–12.

Research participants mention myriad issues related to traditional practices and violence; nevertheless, for lack of space and time, only the following five themes will be considered (below).

8.2.1 *Violent Patterns: Domestic, Family and Intimate Partner Abuse*

The Australian Human Rights Commission reports that approximately one woman is killed by her current or former partner every week in Australia, often after a history of domestic and family violence.¹⁵²² The Liberia Institute of Statistics and Geo-Information Services reports that the proportion of women aged 15-49 years experiencing intimate partner physical or sexual violence at least once in their life time is 39 percent.¹⁵²³ Findings from this research document a pattern of interpersonal/community violence both in Liberia and in Australia (*see* chapters 3 and 7). In Australia, participants described this violent pattern regarding behavioural acculturation passed on from colonisation, and its resurfacing at certain times of the year, certainly fuelled by alcohol and drug abuse:

Roz Middleton Moz who had worked with Native communities in Canada, coined the term, “acculturation”. According to her, children of alcoholics have the same behaviour patterns as children of acculturation. If your country is colonised by a dominant culture, and you’re violently colonised, then over generations, the children begin to exhibit the same signs that children exhibit when they grow up. She said, when you look at this behavioural pattern, they are all the same. In Australia, not only did Aboriginal people have alcoholism, introduced drugs, introduced violent colonisation, attempted genocide on our communities, but then we had our adaptation to survive meant that our children grew up with certain behavioural patterns. It was that that really catapulted me into the whole research topic because she saw it in the Canadian native communities, and they were so like us. [*Alison, Australia*]

You know there’s certain times of the year that things get really explosive and that’s around Christmas time and around Easter time. I don’t know whether it is because people drink more around that time or people are getting depressed because they don’t have the money to buy presents and all that sort of things – a bit like John Howard, previous Prime Minister, years ago wouldn’t say sorry. And then, you often see a lot of blow-ups and ... I always say to my staff, just be mindful that Christmas is on its way. We see a lot more of that now. [*Sally, Australia*]

The Aboriginal and Torres Strait Islander Social Justice Commissioner describes family violence as involving any use of force, be it physical or non-physical, that is aimed at controlling another family or community member and that undermines that person’s well-being.¹⁵²⁴ Family violence can be directed towards an individual, family, community or a particular group, but it is not limited to physical forms of abuse. Family violence also includes cultural and spiritual abuse of both adults and children.¹⁵²⁵ There are interconnecting and trans-generational experiences of violence within Indigenous families and communities. The family unit of Aboriginal societies is extended, with many relatives and often whole communities

¹⁵²² AHRC Admin, *About Family and Domestic Violence* (25 September 2015) Australian Human Rights Commission <<https://www.humanrights.gov.au/our-work/family-and-domestic-violence/about-family-and-domestic-violence>>.

¹⁵²³ Liberia Institute of Statistics and Geo-Information Services et al, above n 1030, xxv.

¹⁵²⁴ Law Reform Commission of Western Australia, above n 142, 283.

¹⁵²⁵ *Ibid.*

sharing childrearing responsibilities with biological parents. The relevance of culture in the context of Aboriginal family violence is not so much about Indigenous Customary Laws as about the life circumstances of many Aboriginal victims.¹⁵²⁶ The United Nations *Convention on the Rights of the Child* 1989 ‘best interests of the child’ principle requires that in all actions concerning children, the child’s best interest is a primary consideration.¹⁵²⁷ However, the best interests of an Aboriginal child may be quite different to those of a non-Aboriginal child. The Law Reform Commission of Western Australia argues that the relative subjective application of ‘best interest of the child’ principle by administrative decision-makers, the court and criminal legal system must be informed by relevant cultural considerations.¹⁵²⁸

Australia is taking steps to understand family violence, but translating that understanding into policy has not resulted in effective legal frameworks to address the problem. An inquiry from 230 consultations into family violence by the Australian Law Reform Commission and the New South Wales Law Reform Commission (the Commission) reflects intense and ongoing concern regarding the pattern and public cost of family violence.¹⁵²⁹ Recognising that the Family Violence Inquiry concerns are only a narrow slice of the vast range of issues raised by family violence when women and children encounter the legal system, the Commission argues that fragmentation of the system has led to a fragmentation of practice.¹⁵³⁰ The Commission also notes that a key element of the challenge of family violence is that, neither the Commonwealth nor the States and Territories have exclusive legislative competence in family law. Moreover, the boundaries between the various parts of the system are not always clear, and jurisdictional intersections and overlaps are ‘an inevitable, but unintended, consequence’.¹⁵³¹ The Commission suggests that the legal framework applicable to patterns of family violence will improve when the following elements are present: a common interpretative framework based on core guiding principles, improved quality and use of evidence, and better interpretation or application of sexual assault laws.¹⁵³² Further efforts to measure family violence and understand its sources are underway.

Family violence has various intersecting causes, and officials are implementing new efforts to measure it. The Law Reform Commission of Western Australia examines the causes of Aboriginal family violence, which the Commission suggests is due to the breakdown of the community kinship systems and Indigenous Customary Laws, alcohol and drug abuse, the

¹⁵²⁶ Ibid 289.

¹⁵²⁷ Ibid 276.

¹⁵²⁸ Ibid 277.

¹⁵²⁹ Australian Law Reform Commission, ‘Family Violence - A National Legal Response’ (Government Report, Australian Law Reform Commission and the NSW Law Reform Commission, 2010) 2455, 10 <http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114_WholeReport.pdf>.

¹⁵³⁰ Australian Law Reform Commission and New South Wales Law Reform Commission, ‘Family Violence and Commonwealth Laws - Improving Legal Frameworks’ (Government Report ALRC Report 117, Australian Human Rights Commission, 2011) 581, 11–12 <http://www.alrc.gov.au/sites/default/files/pdfs/publications/whole_alrc_117.pdf>.

¹⁵³¹ Australian Law Reform Commission and New South Wales Law Reform Commission, ‘Family Violence - A National Legal Response: Summary Report’ (2010) 78, 12 <<http://www.alrc.gov.au/sites/default/files/pdfs/publications/Report%20Summary.pdf>>.

¹⁵³² Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1530, 16.

effects of institutionalisation, previous government removal policies, and entrenched poverty.¹⁵³³ The problem of overcrowding in many Aboriginal households also appears to be a significant factor contributing to problems of family or interpersonal violence.¹⁵³⁴ As family violence is a national emergency, on 17 May 2015 the Victoria Minister for the Prevention of Family Violence, Fiona Richardson, unveiled plans to develop a Family Violence Index. The Premier of Victoria, the Honourable Daniel Andrews, commissioned the Australia's National Research Organisation for Women's Safety (ANROWS) to define what measures, statistics and data should be included in the index.¹⁵³⁵ Richardson's report: *Measuring the Toll: The Family Violence Index 2014* states that, 'a family violence index would bring together data from across the fields of crime, justice, health, education and our community to create a single indicator of family violence'.¹⁵³⁶ The multidisciplinary approach used to define the *Family Violence Index* builds on and lends to the complex system model adopted in this dissertation to assess systematic violence against Indigenous women. Additionally, the Victoria government admonishes the Royal Commission into Family Violence (Victoria) to place the Family Violence Index alongside its final report. The goal of the Royal Commission into Family Violence, *inter alia*, was to identify the most effective ways to develop and refine systemic responses to violence, including in the legal system by police, corrections, child protection, legal and family violence support services.¹⁵³⁷

8.2.2 Female Genital Cutting: Girls' Education, Statutory Rape and Forced Marriage

Responses from research participants in Australia did not state that the practice of female genital cutting occurs in Aboriginal Australia, but it does occur in parts of Liberia. In Liberia, female genital cutting is closely tied to girls' chastity in preparing them for (early) marriage. In some Liberian language groups, a female will not be accepted into a marriage if she is not circumcised. Article 5(a) of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* 2003,¹⁵³⁸ Article 21(1) (a) and (b) of the *African Charter on the Rights and Welfare of the Child* 1990,¹⁵³⁹ and Article 24(3) and Article 32(1) of the *United*

¹⁵³³ Law Reform Commission of Western Australia, above n 142, 283.

¹⁵³⁴ *Ibid* 284.

¹⁵³⁵ Daniel Andrews, *World First Index To Measure Family Violence* (17 May 2015) Premier of Victoria <<http://www.premier.vic.gov.au/world-first-index-to-measure-family-violence/>>.

¹⁵³⁶ State of Victoria, 'Measuring the Toll: The Family Violence Index' (Government Policy, Ministry for the Prevention of Family Violence, 2015) 8, 5 <<https://www.viclabor.com.au/wp-content/uploads/2015/05/Family-Violence-Index.pdf>>.

¹⁵³⁷ State of Victoria, 'Royal Commission into Family Violence: Summary and Recommendations' (Parl Papers No 132, Victorian Government, March 2016) 1 <<http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>>.

¹⁵³⁸ Article 5(a) urges Prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them; by member states. 21(1) (a) and (b): 1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular: (a) those customs and practices prejudicial to the health or life of the child; and (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

¹⁵³⁹ Article

Nations Convention on the Rights of the Child 1989¹⁵⁴⁰ all prohibit harmful traditional practices against women and girls. At the time of writing this chapter in 2015, female genital cutting was not yet formally criminalised in Liberia. However, there was a common law prosecution on 8 July 2011,¹⁵⁴¹ in response to an incident where two Zoe women forcibly subjected Ruth Berry Peal to female genital cutting, which received a guilty verdict.¹⁵⁴² The Peal verdict, coupled with award-winning journalist Mae Azango's¹⁵⁴³ reporting on the issue and petition by local women's groups, was partly responsible for shutting down the *Sande Schools* and bringing an indefinite halt to issuing licenses to allow the practice across Liberia.¹⁵⁴⁴ In January 2018, prior to her leaving office, former President Ellen Johnson Sirleaf signed an executive order that put a one-year ban on female genital cutting¹⁵⁴⁵ (see chapter 3).

In Liberia, female genital cutting is part of a larger cultural practice of traditional schools that has other negative consequences for children. As discussed in chapter 3, female genital cutting is practiced only in the north-western parts of Liberia.¹⁵⁴⁶ *Abigail* confirms that the practice is not performed in the south-east, '[t]hey don't practice FGM as there are no female chiefs in Maryland'. In Liberia, research participants frequently expressed concerns about the traditional schools reinforcing the practices of cutting female genitalia, interrupting girls' education, committing statutory rape and forcing girls and young women into marriage. Young girls often attend traditional schools, where the idea is that the cutting of the clitoral hood quintessentially prepares them for marriage; this rite takes place around the same time school is in session. *Sia* retorts that in the northern part of Liberia where the practice of female genital cutting is relatively prevalent, '[t]he culture in Lofa no longer forces children to join their society bush'. However, a survey participant agrees that the practice does indeed interrupt girls' learning. He adds that,

¹⁵⁴⁰ 3. Article 24(3) States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children; and article 32(1) 1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

¹⁵⁴¹ Jerome W Toe, 'Zoes Convicted of Forced Initiation' *Daily Observer* (Monrovia, Liberia), 11 July 2011. According to Augustus Caine (1959) a 'Zo' is a term given to one who possesses, or is sophisticated in, some secret lore. Since this official has extra-human connections from which he can acquire information (*Dadewe* and the ancestral spirits are alleged to communicate with him), the title is appropriate. But since of all groups or individuals possessing secret knowledge *Dadewe* is regarded as the most powerful he is called *Dazo*, meaning Grand Zo or the Zo of Zos (see p33).

¹⁵⁴² Equality Now, 'Liberia: Enact a Law Banning FGM as a Matter of Urgency' <http://www.equalitynow.org/take_action/fgm_action372>.

¹⁵⁴³ Mae Azango, 'The Cost of FGM to Liberian Girls' *Front Page Africa* (Monrovia, Liberia), 2014 <<http://www.asafeworldforwomen.org/global-news/africa/liberia/2184-mae-azango-the-cost-of-fgm-to-liberian-girls.html>>.

¹⁵⁴⁴ Wade CL William, 'Sande Shutdown: Traditional Leaders and GOL Suspend Women's Secret Society' *Front Page Africa* (Monrovia, Liberia), 30 March 2012 <http://www.frontpageafricaonline.com/index.php?option=com_content&view=article&id=2852:grebo-bush-shutdown-traditional-leaders-gol-suspend-womens-secret-society&catid=42:politics&Itemid=109>.

¹⁵⁴⁵ Emma Batha, 'Liberia Bans Female Genital Mutilation - but Only for a Year' *Reuters* (Monrovia, Liberia), 25 January 2018 <<https://www.reuters.com/article/us-liberia-fgm-law/liberia-bans-female-genital-mutilation-but-only-for-a-year-idUSKBN1FE1N7>>.

¹⁵⁴⁶ Phyllis Chesler, 'New Study Shows Half of Liberian Girls, Women Undergo Female Genital Mutilation' *Breitbart* (Los Angeles, CA), 14 December 2014 <<http://www.breitbart.com/national-security/2014/12/11/new-study-showing-half-of-liberian-girls-women-undergo-fgm-not-a-surprise/>>.

the legal system is not clear in certain aspects of Indigenous women's lives. For example, in attending or participating in cultural ceremonies - female genital mutilation - customary law takes precedence here. Schoolchildren or girls will usually miss out on two to three months into the academic semester, which may result in them not being allowed in school for the year. [Survey Participant, Liberia]

Forced child marriage is another traditional practice reinforced by Liberia's traditional female institution. Indigenous Women Advocates in Liberia hesitated to give direct responses to questions about the *Sande* Institution. What was learned later in the study is that due to the oath of secrecy taken by members of the *Sande* School, some Indigenous Women Advocates are prohibited from speaking against or about the institutional practice. Some Indigenous Women Advocates in Liberia are members of the *Sande* Society. Thus, regardless of their advocacy work, their loyalty was bound to the *Sande* Institution. Therefore, there was limited disclosure of information about the institutional practice of female genital cutting in the *Sande* Society. Notwithstanding, *Sia* divulges:

The traditional is very strong in Lofa especially when it comes to child marriages and female genital mutilation. So, even if you want to change it, it is not easy because there is a conflict between the rule of law and the customary law in Liberia when it comes to the age of consent for marriage. In the traditional practice, they say 15 years is the age of marriage. The law on the books says 18. So, how are we supposed to change this? There is a problem, but we can't do anything about it. [*Sia*, Liberia]

According to Article 55(g) and (i) of the *Liberia Rules and Regulations Governing the Hinterland* 1942, it is unlawful to pay a dowry for a girl who has not attained the age of 15 years, and the proper dowry for a woman shall not exceed \$40 (*see* chapter 4). *Klade* confirms that even unborn girls are betrothed as guardians of the Indigenous Customary Laws in Liberia 'feel that the girl child withers away as she's married at about 12 years'. In fact, her dowry is paid when she's in her mother's womb, *Sia* says, explaining

[t]he culture is that when a woman is pregnant, a man will show up with a dowry stating that if it's a girl child, then she will be my wife. So right from the womb the girl's fate is sealed. When she's delivered, the man will continue to take care of the mother and the child until the child reaches 6 years of age at which time she would be given to the man. When she turns 15 years then she becomes his wife. Now is time to follow the rule of law in Liberia. We are not saying the tradition should be ignored but it is very important for the tradition to understand that there is a rule of law that protects everyone, and it has to obey this law. [*Sia*, Liberia]

Although the tradition varies across cultures in the 15 counties of Liberia, most rural communities follow the Indigenous Customary Laws pursuant to the *Liberia Rules and Regulations Governing the Hinterland* 1942, especially where Indigenous men dominate 'in a custom of reserving a girl for a man'.

Generally, traditional customs in Liberia are patrilineal. A survey participant affirms that in Liberia, 'the family of a husband is entitled to the wife's domestic and conjugal rights and all other assets, and products of the union'.¹⁵⁴⁷ Sections 2.1 and 2.2 of the *Act to Govern the*

¹⁵⁴⁷ Ayodeji Olukoju, *Culture and Customs of Liberia* (Greenwood Press, 2006) 91.

Devolution of Estates and Establish Rights of Inheritance for Spouses of Both Statutory and Customary Marriages 2003 (the *Inheritance Law* 2003) grants traditional marriages legal status, entitling the wife to one-third of her husband's personal or real property (see Chapter 3). According to Klade, '[i]n customary marriages [in Liberia], if I am married to a man and he dies, I will be passed on to his brother. If I refuse, then I will lose the property both of us have worked together to accumulate. The husband's family will take the kids away, kick me out of the house, and deny me any marital rights'. Although Klade's comment contradicts the statutory settler-colonist law, the *Rules and Regulations Governing the Hinterland* 1942, which upholds this practice is still in force in Native Liberia (see chapter 4). Furthermore, it is lawful for parents to choose their daughter's husband (section 2.1 of the *Inheritance Law*) in Native Liberia because 'marriage is never a simple contract in between the couple, rather, it is a bond between the couple and their respective in-laws and kinsfolk' argues Ayodeji Olukoju.¹⁵⁴⁸

8.2.3 *Child Bearing/Rearing and Abuse*

Some Indigenous Women Advocates, whilst respecting the role of Indigenous Customary Laws in gender relations, especially regarding grandmothers passing down traditional knowledge to granddaughters believe that certain aspects of Indigenous oral customs are not appropriate for raising children. Indigenous practices of childrearing, specifically, betrothing an unborn child, paying a dowry for a 15-year-old girl, offering livestock as a remedy for rape, or performing genital cutting on a 6-year-old are consistent with several forms of abuse. Such practices infringe international,¹⁵⁴⁹ regional¹⁵⁵⁰ and domestic law¹⁵⁵¹ regarding the age of consent. Dallas disapproves of such harmful childrearing practices:

Customary law is a place where the two genders complement each other. There is a place for women and men in customary law. Although I think it disadvantages women. I think it also needs to really be examined when we're talking about childrearing practices. Work I have done in the past, supported changes to Northern Territory legislation where customary law could not be used as a defence in the case of underage sex, i.e., an adult man having sex with an underage girl. [Dallas, Australia]

Some survey participants who did not identify as Aboriginal Persons, were hesitant to share their opinions about the role of customary lore in Aboriginal Australia, but readily disapproved of its inability to prevent violence against children and women. Other survey participants argued

¹⁵⁴⁸ *Ibid.*

¹⁵⁴⁹ Article 16(2) of the *Convention on the Elimination of All Forms of Discrimination Against Women* 1979 provides that, '[t]he betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory'.

¹⁵⁵⁰ Article 6(b) of the Protocol to the *African Charter on Human and Peoples' Rights on the Rights of Women in Africa* 2003 states that the minimum age of marriage of women shall be 18 years.

¹⁵⁵¹ Subsection 2.2 of *Liberia Penal Law (Domestic Relations)* 2011 provides that the marriageable age of consent for females and males is 18 and 21 years, respectively. Australia *Sex Discrimination Act* 1984 copies word-for-word, article 16(2) of *CEDAW* 1979. It states, '[t]he betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory'. The legal age of consent in Australia is 18 years (see, section 300.2(c) of the *Criminal Code Act* 1995, which states that, 'child means an individual who is under 18 years of age').

that, '[t]raditional laws and practices can negatively impact women's rights in a "modern" Australia'. The fact that 'women want the violence to stop but often want to remain with their abusive partners' is not compatible with healthy childrearing practices. Reinstating 'the role of Elders in the delivery of traditional lore can be seen as an important part of addressing violence against women and children ... as accurate information is given about cultural lore in order to prevent any misuse to justify an act of violence by a perpetrator, especially when most elders are males, or the perpetrator is a white fella', says a survey participant.

8.2.4 Taming Girls and Women

In Liberia, Indigenous women have the obligation of taking care of their male partners, or else they can face retribution. 'It is my own understanding that the law in Monrovia governs everyone. But when we look at the customary law, people interpret it differently. In our traditional setting, men believe that women have no rights. They cannot be heads of the home. It means that they are not really abiding by the rule of law in the traditional system', says *Sia*. Although there is a sense that at some time in the past traditional practices did not resort to resolving gender violence in 'the family way', it appears women themselves have acculturated to enabling male chastisement and rebuke. A younger Indigenous Woman Advocate describes Monrovia young girls' obsession with older married men:

Liberian women like married men, because they don't have control over the girls. If they [the men] try stupid jealousy the girl could threaten to blow [the] alarm [i.e., disclose the relationship to his wife]. So, they will succumb. Married men will do everything for the young girls. They can relax at the girl's house with not much problem. But for the young boys, they want to have too many girlfriends, they are too demanding, and they have roving eyes. Maybe in terms of dress code as an excuse for rape doesn't count since a 6-month-old baby dress code does not attract them. But we don't dress properly as young girls. Another thing is, men say women are weak, but they are weaker than us. If you took an oath in your marriage to commit to your wife, then whatever I do or wear should not attract you. [*Tomah*, Liberia]

Most male survey participants believe that girls and women are subjected to male dominance in Liberian society. The expression 'taming girls and women' describes this experience of patriarchy and paternalism in Liberia. *Tomah's* description of young girls' desire for older men suggests a level of denial of access to social services (e.g., education and employment), which subjects girls and women to the control of men. Notwithstanding males' propensity to subjugate girls and women by virtue of their higher socio-economic status in Liberia, not all research participants agree with the idea of condoning male abusive control and dominance over girls and women in Liberia. For example, a male social worker with a non-profit organisation cites a no-nonsense traditional system that prohibits violence against girls and women:

[w]hen a man beats a woman, he's charged with a goat that goes to the elder. In Karluway District, if you insult a woman you have to buy soap for all the women. Sometimes they put pepper water into the eyes of the abusive partner. There's no compromising or solving violent abuse in the family way. There was a case in Cavalla

where a 16-year-old boy raped an 11-year-old girl. The resolution was the perpetrator takes care of the child (i.e., provides food, medication) until she grows up. When she reaches childbearing age, if she can't have a child, they'll then force him to marry her, rather than let him go to prison – for fear of people saying, 'because of your daughter, my husband/son went to jail.' [*Survey Participant, Liberia*]

An issue of concern with the above survey participant's perspective is that retaliating with pepper water in the eyes of a perpetrator, asking him to buy soap for the survivor or compelling him to take care of her until she reaches child-bearing age is problematic. The trauma and lifelong suffering of violent abuse cannot be addressed with soap or pepper water. Moreover, subjecting an 11-year-old child to the care of a perpetrator and putting her life on hold until she reaches child-bearing age adds to the trauma for the survivor especially in a culture where women are blamed for being violated. However, there are still many people in Liberia who would sooner blame the girl than the perpetrator. A male pastor shares his thoughts, saying

[w]omen too should know their level in provoking or respecting their husbands. Also, the dress code is responsible for 75 per cent of the rape. The girls are dressing indecently, showing all their private parts. If women dress moderately they won't be abused. Loving [having a sexual relationship] out of the marital home is also another issue. Most of our girls are being sponsored by married men. If a girl is not 18 years old, it is statutory rape to sleep with a married man. Ninety-nine per cent of girls at Tubman University are sponsored by men. [*Survey Participant, Liberia*]

Having read and listened to numerous accounts of male participants' insensitive and pathetic blaming and justifications for inflicting violence on girls and women, Indigenous Women Advocates offered perspectives that tended to rise above the men's overall denigration of girls and women. An account by *Klade* provides another reason to heed the voices of Indigenous women in tackling systematic violence. Notice the technique *Klade* uses to neutralise what could have otherwise escalated into a violent attack:

Few months ago, we had an incident where a husband went to get his wife out of class. He said he went home and there was no food at home. He didn't marry his wife to go to school. So, after a hard day's work, when he gets home, he needs food. Since there was no food at home, he had to go to school to get his wife out of class. I stepped out of class with the lady to speak with her husband. Seeing that he was very annoyed, we reasoned that if the lady follows her husband alone he might beat her. So, we followed both of them. He was huffing and puffing along, but we followed quietly. As we walked along, we started to calm him down and soothe him with nice words. He started smiling. We said, "you see how handsome you look when you smile rather than having that mean face"? I said to him, "he's right that his wife is supposed to prepare food for him before coming to class. But he should also understand". I asked, "how many children do you have?" He said, "four". I asked again, "how old are they"? He said, "the first is 19 years, the second is 14, the third is 12 and the last one is 8". I asked, "how old he is"? He said, "55 years". I said, "God forbid something should happen to you and this woman has no means of supporting these children. Don't you think it is a good idea for her to get education"? I said, "she's in school, so you should be happy and give her a hug". He started to laugh, telling his wife that she should return to class and that he will wait for her after her classes. [*Klade, Liberia*]

8.2.5 Superiority of and Conflict with Settler-Colonist Law

When there is conflict between settler-colonist law and Indigenous Customary Laws, Anglo-Australian and Anglo-American Liberian law are supposed to prevail (*see* chapter 4). Research

participants recognised the contradictions and appealed for reconciling the two legal systems, despite having some reservations. *Jaky's* view on the relevance of Circle Sentencing in Australia illustrates this contradiction:

[w]e still practice our laws, just that they are not recognised in the legal system. The Circle Sentencing is like that. But the problem is, you've got to be guilty before you can go through that process. So, what's that all about? Instead of allowing us to deal with the situation first, we are brought in when the damage has already been done. To some extent, our customary practice is recognised, but you have to go through the Western business of being guilty and actually having a criminal charge/record before they can introduce Aboriginal customary law. [*Jaky*, Australia]

Yaa offers a direct method of dealing with the conflict between settler-colonist law and Indigenous Customary Laws as it pertains to rape cases in Liberia:

[w]hen we have conflicts of law and tradition, the first thing we do is to call a meeting where a committee will be set up to discuss the issue. The committee then sets up a meeting with the parties involved. We also have partners dealing with psychosocial counselling. During the psychosocial counselling, the parties will be told the implications of compromising a case by solving it the "traditional way". If you wish, you take the legal side, if you will, then follow your tradition. The implication is presented to you; the consequences of what has happened to you will also be told to you. And you can now decide. Besides that, we also contact the county attorney who is responsible for dealing with our cases to make sure all our cases are put on his file. If this case is one of those on his files, we notify him of the pending wish of the parties to solve the case the "traditional way". We then encourage the county attorney to put the case on the docket for prosecution. If it requires funding, then we generate the necessary amount needed to ensure that that case can be tackled. But like I said before, our partners are now closing down their activities, so we don't have available funding to deal with cases. [*Yaa*, Liberia]

Whilst *Yaa's* approach appears to be efficacious, it is not practiced in all jurisdictions.

In countries with huge disparities regarding access to social services, enforcing settler-colonist law in rural/remote communities is difficult. A research participant in Liberia affirms the challenges associated with implementing settler-colonist law in rural Liberia:

The law says if a man has sex with a girl under 18 years, it is statutory rape. But if you apply this to the interior, then you'll see thousands of rape cases because the girls are usually under 18-years when they get married. If you want to know who the child's father is and how many persons she's had sex with she could name 2-3 men who are probably underage. The girls love to [have relationships with] 2-3 men if they are able to provide food money for them. Girls are doing it for economic reasons. 1) They are poor, 2) lazy, 3) lack parental support, and 4) too materialistic, wanting clothes, shoes, etc. Girls dress to attract both men and women. In other Western countries, women compete with men. In Liberia, majority of the women are illiterate, they are lazy, they are too dependent on men. The Lofa women are highly prosperous. They can produce by themselves. So why do we have high single parent rate in Liberia? It is because the men cheat on the women. In Africa, men are mostly polygamous and in some cases it's OK because if the man is wealthy women are concerned about the property. It happened to Charles Taylor, he was polygamous, and his wife stayed in for the money. [*Survey Participant*, Liberia]

In Liberia, some progress has been made to reconcile Anglo-American Liberian law and Indigenous Customary Laws. First, Article 5(b) of the *Liberian Constitution* 1984 recognises Indigenous customs and tradition. In 2012, the House of Representatives enacted a law that

accords the *National Council of Chiefs and Elders of Liberia* autonomous and legal status.¹⁵⁵² In Australia, the House of Representatives set up the Indigenous Affairs unit under the Department of the Prime Minister and Cabinet.¹⁵⁵³ In spite of these modest moves forwards, a research participant in Liberia questions whether such a male-centred body will have the credibility to ‘amalgamate the Indigenous rule of law with that of the Republic of Liberia, in order to legitimise the new system’.

8.3 Access to Services: Housing, Health, Education and Employment

Several issues arose concerning Indigenous survivors of violence accessing social services. Research participants expressed concern over: 1) the obvious lack of services in remote communities; 2) inadequate provision of refuges and (safe) homes; and 3) abuse of grade-school girls. Chapter 2 establishes the deplorable lack of access to social services for Aboriginal Peoples, especially those residing in rural areas. The density of Indigenous Peoples in remote communities is relatively high compared with that in big urban cities in Liberia and Australia. At the same time, rural communities have gone for years without access to, for example, a counsellor, psychologist or sexual assault worker. Even when those services are available, in isolated communities, Indigenous survivors often worry about confidentiality and privacy when disclosing their experiences of violence or seeking care from support services. Schools and hospitals are few if not absent.¹⁵⁵⁴ ‘In the remote community, I am the only nurse. There are never enough services, but mostly women can access my service, but it is emergency and long-term housing which is hard for them to access’, says *K* in Australia. Employment and job facilities are rare, with ‘city-trained’ workers refusing deployment in these communities for obvious reasons: ‘there is nothing here, no electricity, no tap borne water...life here is boring’, says a survey participant in Liberia. Referring to the researcher, another United Nations human rights officer in Liberia commented that it is, ‘seldom that you see an attractive young woman show up at your office to conduct a research interview in this part of Liberia’. The few community social workers who are able to commit to working in remote communities, experience high levels of stress and burnout, partly because authorities throw them into these towns with no supervision or briefing.

Access to housing, including refuges in Australia and safe homes or shelters in Liberia surfaced as major concerns for Indigenous girl and women survivors of abuse. *Alison* outlines a brief history of government policy on access to care, observing:

¹⁵⁵² Ministry of Information, Culture and Tourism, *Welcoming The National Traditional Council As An Autonomous Body* (20 July 2012) Welcoming the National Traditional Council as an Autonomous Body <<http://www.micatliberia.com/index.php/media/new-liberia/opinions/editorials/744-welcoming-the-national-traditional-council-as-an-autonomous-body>>.

¹⁵⁵³ Griffiths, above n 495. Also see, Aboriginal Affairs under the Department of the Prime Minister and Cabinet, available at <<http://www.dpmc.gov.au/indigenous-affairs/about>>.

¹⁵⁵⁴ Adams and Hunter, above n 365.

I actually don't think services for Aboriginal women who have suffered violence are accessible. When the government first started to provide that kind of service, they funded the accommodation assistance program that set up refuges for women. The service delivery agreement at that time was that they had to look after 30 per cent non-Indigenous women, 30 per cent non-English speaking background women and 30 per cent Aboriginal women. There weren't any Aboriginal women-specific services. A lot of these mainstream services didn't understand the cultural differences. They had their own form of covert racism, which made it difficult for an Aboriginal woman or family to go to them. But eventually, in the late 80s Aboriginal Peoples began to establish medium term accommodation services so Aboriginal women could stay with the children in houses, and then later move to their own accommodation. [Alison, Australia]

Sally is frustrated with the ongoing lack of housing for Aboriginal People in the Australian Capital Territory. When asked what she would do to protect Aboriginal girls and woman against violence, she blurted, 'I would have a block of flats, a hostel, where you have workers with them 24/7'. In Liberia, Yaa emphasises the financial and logistical challenges associated with providing such care:

Our office location in Sanniquellie is accessible. It is easy to find us; but, there's still a challenge. The reason is that at the county level we are still lacking resources especially when it comes to logistics. Nimba being so big, you cannot sit here and look at someone in Tappita and agree that the office is accessible. How can they reach here? What do you do to get them here? In making sure that the issue is resolved, we have set up an endowment fund, though it is not in place this year. If someone was raped in Tappita and they need access to health service, we ask that the person be taken to the referral hospital. The cost of transporting and providing other health services needed by the survivor is fully covered by the endowment fund. We also have a safe home¹⁵⁵⁵ where the victim is taken for psychosocial counselling until they can agree to be relocated or go back to their community. [Yaa, Liberia]

In Liberia, research participants spoke of the issue of sex-for-grades as a way in which social services are exploited as mechanisms for gender violence. As *Amelia's* alluded to above, not only does girls' enrolment dwindle the higher the progress in grade school but their risk of being abused by male teachers, students and 'married men' increases. In the sex-for-grades situation, male teachers in public, private, secondary and university institutions¹⁵⁵⁶ abuse their positions of power by molesting and assaulting female students in exchange for a passing grade on exams, tests and quizzes. A grade school principal shares his view on the topic:

Here we have lots of these women who have been abused. In my current work, we deal with students who have issues of being abused by teachers and workmates. We recommend that they [the abuser] leave the institution in case of molesting and requesting sex for grades, especially the doer of the abuse. We have had molesting and attempted rape for about 3-4 girls over the last year. School authorities should ensure that girls are not sexually harassed or abused for grades and other favours by male teachers. [Survey Participant, Liberia]

¹⁵⁵⁵ US Department of State, above n 1505, 222–223. During fieldwork, the only functioning Safe House was in Buchanan, Grand Bassa County. The United States Department of States' *Trafficking in Person Report 2015* affirms that there are no government-run safe homes or shelters in Liberia. Non-governmental organisation run Safe Houses were located in Monrovia (3), Buchanan (1), and Sanniquellie (1).

¹⁵⁵⁶ Gloria T Tamba, 'MoE Vows to Stop "Sex for Grades" in Universities' *Daily Observer* (Monrovia, Liberia), 8 September 2015 <<http://www.liberianobserver.com/education/moe-vows-stop-sex-grades-universities>>.

The issue of abusing girls before granting them access to education is grim, considering the frequency of its occurrence. According to Diana Quick, 45 percent of boys and 27 percent of girls in secondary schools are between the ages of 20 and 24.¹⁵⁵⁷ The older girls are before starting school the greater their vulnerability to being harassed by male teachers or classmates (e.g., boys knocking their bums) and as a result there is a subsequent rise in dropout rates. Older girls also struggle to stay in school in the face of demands from their boyfriends and husbands that they stay home and perform their ‘womanly’ duties (*see Klade’s* comments above) such as cooking or taking a sick child to the hospital. The establishment of the *Indigenous Girls Academy*¹⁵⁵⁸ in Australia and of the Adult Literacy Program,¹⁵⁵⁹ in Liberia is a small measure of progress.

8.4 Access to Law and Justice

Access to justice is critical for addressing systematic violence against Indigenous girls and women in that it is integral to improving broader sustainable development goals, protecting rights, and promoting public health in Liberia and Australia. Article 22(2) of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 provides for full protection of Indigenous children and women against violence and discrimination.¹⁵⁶⁰ The Commission on the Status of Women emphasises that *ad hoc* international criminal tribunals recognise rape and other forms of sexual violence as war crimes. The Commission also stresses that gender violence should constitute genocide or torture and calls for ‘the inclusion of gender-related crimes and crimes of sexual violence’ in the *Rome Statute of the International Criminal Court* 1998.¹⁵⁶¹ According to the Open Foundation Society, violations of the human rights of socially excluded populations (e.g., Indigenous Peoples) can harm health and wellbeing.¹⁵⁶² In light of Australia’s and Liberia’s legal obligations regarding signing or ratifying international human rights laws (*see* chapter 4), the expectation is that the rule of law is capable of restoring justice to Indigenous girls and women survivors of systematic violence.

Systemic problems reduce Aboriginal girls’ and women’s access to justice in Australia. S says, ‘I had to come to terms with the fact that there is no justice, I don’t believe that there is any justice’. A survey participant in Australia expressed frustration when responding to the research question about whether the law is just, saying: ‘I hated answering this question. I am not sure that “just” is the right response. I think it tries to uphold justice, but there are many

¹⁵⁵⁷ Diana Quick, ‘Rebuilding Education from Scratch in Liberia’ (2005) 11(Supplement) *Forced Migration Review* 18.

¹⁵⁵⁸ Genine Unsworth, ‘Indigenous Girls Academy Kicking Goals’ *Australian Broadcasting Corporation* (South West, WA), 1 April 2010 <<http://www.abc.net.au/local/stories/2010/04/01/2862623.htm>>.

¹⁵⁵⁹ Jennifer Lazuta, ‘Liberia Literacy Program Targets Women’ *VOA* (Dakar, Senegal), 7 August 2013 <<http://www.voanews.com/content/liberia-literacy-program-reaches-women-in-mid-life/1725157.html>>.

¹⁵⁶⁰ Article 22(2) states, ‘States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.’

¹⁵⁶¹ Commission on the Status of Women, *Report on the fifty-seventh session Supplement 7*, UN ECOSOC, 57th sess., UN Doc E/CN.6/2013/11 (4-15 March 2013) 1.

¹⁵⁶² Open Society Foundation, ‘Justice Programs for Public Health: A Good Practice Guide’ (Private Report, Open Society Foundation, 2015) 138, 6.

systemic failures with protecting Aboriginal women and children. I do not think the law is “just” really on violence toward women and children generally’. Research respondents agreed that the law does not generally respond well to women who have been subjected to violence from men, in that there are so many negative outcomes that ‘I cannot think of one that ever gave justice to an Aboriginal woman as a victim of sexual violence’ (also *see* chapter 7). Some participants made an effort to point out that the law is not ‘fair to all women, not just aboriginal women’.

Women and girl survivors face further discrimination if they are children or suffer from mental illness. Halay Clark related to Dr Vivian Waller’s presentation on how legal limitations can thwart access to justice for survivors, particularly children and adult survivors of childhood sexual assault, and how recent reforms in Victoria have further eroded the rights of survivors to commence civil proceedings. Clark continues, ‘the laws of limitation [specifically in Victoria] fail to appreciate and accommodate the unique presentation of the psychiatric injuries commonly suffered as a consequence of sexual assault, particularly in the sexual assault of a child’.¹⁵⁶³ How can survivors of abuse with psychological trauma access justice when settler-colonist laws and services limit or refuse to include such provisions? *Sally* explains the relationship amongst Indigenous Australians with mental health illness, their inability to access care and denial of access to justice:

There is no facility for people with serious mental health needs. We’ve got 853 clients with diagnosed mental illness and 353 of them have got a co-morbidity. So, they are pretty fragile in the minds. Their moods can go from happy to very angry very quickly. Yet, a lot of them were getting banned from the Centrelink¹⁵⁶⁴ because they aren’t well. I know that Professor Dodson and Jill Guthrie and others are working on that justice reinvestment. If you put more resources into people to stay out, they’re more likely to stay out. But too many people are in prison now because they’ve got mental illness that could put them on probation parole. [*Sally*, Australia]

In spite of the situation described above, some survey participants in both Liberia and Australia suggest that there are instances where the law can be just and helpful to Indigenous survivors of systematic violence (*see*, chapters 3 and 7). However, Table 7.11 shows that the number of views expressing dissatisfaction with injustice far outweigh those perceiving the law to be just or helpful.

8.4.1 Systemic (Racial) Discrimination, Corruption and Bribery

If there is a systemic, institutional dimension to racial discrimination – as evidently there is towards Aboriginal and Torres Strait Islander people – one place to begin may be with Australia’s Constitution. As one Aboriginal and Torres Strait Islander advocate in Adelaide stated, Constitutional recognition of Aboriginal and Torres Strait Islander

¹⁵⁶³ Clark, above n 517.

¹⁵⁶⁴ The *Human Services Legislation Amendment Act 2011* integrated Medicare Australia and Centrelink into the Department of Human Services of the Commonwealth Government of Australia on 1 July 2011. Centrelink is responsible for developing service delivery policy and providing access to social, health and other payments and services.

*people would be an important step towards non-discrimination of Australia's first peoples and perhaps provide some explicit protections against racial discrimination.*¹⁵⁶⁵

Whereas in Liberia discrimination is based on classism and social status, in Australia¹⁵⁶⁶ systemic racism¹⁵⁶⁷ against Aboriginal Peoples exists, and a key feature of such racism is 'denialism'.¹⁵⁶⁸ A recent report by the Australian Human Rights Commission, assessing four decades of the *Racial Discrimination Act 1975*, identifies systemic and institutional racism to be at the heart of a nation-wide debate on the issue. According to the report, 'there was an agreement amongst Aboriginal and Torres Strait Islander participants in Perth, Darwin and Brisbane that systemic or institutional discrimination was the primary challenge in combating racism' as reflected in the alarming incarceration rates of Aboriginal Peoples who have little or no representation in Australia's judiciary.¹⁵⁶⁹ Findings from this research show that the court and law enforcement systems are characterised by double standards, abuse of power and exploitation of vulnerable groups. 'As a reflection of society, the law cannot work outside the context of societal racism, thus, it seems unreasonable to expect a legal response to operate outside of systemic racism towards Aboriginal Peoples', says a survey participant in Australia. Doubts and fears expressed about justice for Aboriginal girls and women stem from the perceived impossibility of dealing with major structural issues, such as 'systemic racism and lack of adequate political power to Aboriginal Peoples', a survey participant in Australia asserts. Research respondents express 'shock over continuing failures of governments and the Australian community to face the issues of colonisation and settlement and the injuries inflicted on Aboriginal women, children and people', which make access to justice impossible. Despite some efforts made by the public institutions to address violence against Indigenous girls and women,

there is still a cultural and social stigma that many Aboriginal women and girls are confronted with when appearing before the court. Particular pertinence here relates to the appearance of Aboriginal women in the Family Courts when their children have been taken away because of unsubstantiated allegations or when they have been charged with offences related to trying to protect their children against the interest and encouragement of older men with young Aboriginal girls. [*Survey Participant, Australia*]

In Liberia, the judicial system is compromised by corruption, rather than racial bias. According to the *Judicial Canon Twelve: Gifts and Favours of Liberian Penal*

¹⁵⁶⁵ Tim Soutphommasane, Ting Lim and Anna Nelson, 'Freedom from Discrimination: Report on the 40th Anniversary of the Racial Discrimination Act - National Consultation Report' (Government, Australian Human Rights Commission, 5 November 2015) 104, 73
<https://www.humanrights.gov.au/sites/default/files/document/publication/RDA40_report_2015_AHRC.pdf>.

¹⁵⁶⁶ Australia signed on to the International Convention on the Elimination of Racial Discrimination (ICERD) in 1966 and ratified it in 1975 with the passing of its *Racial Discrimination Act 1975*.

¹⁵⁶⁷ Joe Feagin, *Systemic Racism a Theory of Oppression* (Taylor and Francis, 2013) 2
<http://www.123library.org/book_details/?id=109951>. According to Feagin, systemic racism surpasses individual prejudice. It is a material, social and ideological reality, which encompasses a broad range of attitudes, emotions, habits, actions and institutions of whites, for example land dispossession and slavery.

¹⁵⁶⁸ Helen Szoke, *Racism exists in Australia – are we doing enough to address it?* (14 December 2012) Australian Human Rights Commission <<https://www.humanrights.gov.au/news/speeches/racism-exists-australia-are-we-doing-enough-address-it>>.

¹⁵⁶⁹ Soutphommasane, Lim and Nelson, above n 1565, 41.

Law 2011, a judge should not accept any presents or favours from litigants, or from lawyers practicing before him or her, or from others whose interests are likely to be submitted to him or her for judgment. However, Henry Karmo suggests that the crux of discrimination against Native Liberians lies with a corrupt judiciary system.¹⁵⁷⁰ According to the Liberian National Integrity Barometer Report and Transparency International, more than 75 per cent of police officers accept bribes.¹⁵⁷¹ Jerry Gbardy confirms research participants' accounts of gender violence cases being compromised by law enforcement officers' interference with or obstruction of the course of justice. Affirming that reform of Liberia's legal system is necessary, Gbardy argues that the 'Liberian way' of seeking redress is a fundamentally dysfunctional quick-fix approach that compromises the legal system. A rampant abuse of power by those in authority, the 'Liberian way' negates any legal path towards fair resolution. Such 'a process that has a wanton disregard for the rule of law [thus] encourages arbitrariness and perpetuates corruption'.¹⁵⁷² *Klade's* take on 'under-the-table justice' in Liberia is illustrative:

I shouldn't say incompetent because then I'll be condemning the lawyers that we have. We have some very good lawyers. But I think we should look at incentives. If lawyers are well paid, I'm sure the issue of under-the-table justice will be reduced if not eradicated. If lawyers are paid well, provided a car, house, and other amenities, they will not be so inclined to take bribes. The government Ministers are another one. Rather than parking government vehicles, they use them for personal transportation. Travelling on the highway, you'll see government vehicles transporting goats, chicken, charcoal, cassava leaves and food produce as if they are commercial transport. Sometimes, they go on the highway and set their own roadblock. They do this publicly without shame. There is no law and order in the country, starting from the heads. If there were stiff justice and I violate the law, I'll be obliged to obey and follow my punishment. But seeing that I can easily bribe the police to get away with my crimes, I'll not be afraid to commit such crime. Even my little niece knows that the police take bribery. [*Klade, Liberia*]

8.4.2 Law Enforcement, Courts and Legal Assistance

Many remote communities in Liberia and Australia do not have a government presence. There is either is no local court or, when a court exists, it may sit every fortnight or once per month. Even in some areas of the big cities such as Canberra, legal aid assistance is provided only once per week. Indigenous Peoples in remote communities have a long history of discrimination and racism. Discriminatory behaviour exhibited by law enforcement officers and the legal system makes it difficult for Aboriginal survivors of violence to trust the police. Research participants

¹⁵⁷⁰ Henry Karmo, "Most corrupt: National Integrity Barometer rates Liberia's judiciary with very low marks", *Front Page Afr* (20 December 2013) <http://www.frontpageafricaonline.com/old/news/general>; Henry Karmo, "Most corrupt-national integrity barometer rates Liberia's judiciary", *Front Page Afr* (20 December 2013) <http://www.frontpageafricaonline.com/index.php/news/161>. According to Karmo, of the 1,400 participants interviewed in 7 of 15 counties in Liberia, 38 per cent agreed and 6.8 per cent strongly agreed that they sometimes offer to pay court personnel extra money/gifts/favour for cases taken to court. On the other hand, 37 per cent and 15 per cent of respondents agreed and strongly agreed, respectively that they were often asked by judges or court personnel to pay extra money/gifts or do favour for cases taken to court.

¹⁵⁷¹ Deborah Hardoon and Finn Heinrich, 'Global Corruption Barometer' (Private Report, Transparency International, 2013) 48, 11 <<http://www.wingia.com/web/files/news/61/file/61.pdf>>.

¹⁵⁷² Gbardy, above n 924, 206–207.

disclose that, ‘many of our Aboriginal clients are concerned that engaging with the criminal justice system will result in them “losing control” of the situation and will just end up with their partner being locked up, or charged, which won’t actually help the family in the long run’. Indeed, it can be tough for an Aboriginal survivor of violence to approach the police when they cast racial or discriminatory slurs at her or refuse to show up at her doorstep because the situation is ‘another call from that house again’ or they do not believe her story. There are stories of fatalities of Indigenous girls and women in families with a history of violent offences that the police do not take seriously (*see* Andrea Pickett’s and Angel Togba’s stories in chapter 3).

As some communities do not have a police station, the nearest law enforcement facility may be two or more hours’ drive away. There may be a ‘doorbell’ that people can use to call officers of the law, but this is practically useless in an emergency situation, says a survey participant in Australia. If survivors of violence are lucky enough to get their cases heard in court, the challenge gets even worse as the cost and social impact associated with going to court is more deleterious for Indigenous survivors of systematic violence. According to Adams and Hunter, in criminal trials for family violence or sexual assault, victims sometimes find that the trial is just as bad as the actual attack. Their words get twisted by defence solicitors when they are giving evidence; they can easily get confused and intimidated by the system, and thus are frequently accused of lying or making up stories of violence to get compensation. When a survivor of violence makes an application for compensation, they encounter further difficulties. The Victims Compensation Tribunal can place too much emphasis on a victim’s failure to report the violence to the police. Such demand on the part of the Tribunal can make it tough for survivors to receive compensation when they are severely injured by violence but feel unable to report to police.¹⁵⁷³

Legal aid programs for Aboriginal Peoples do exist in Australia. The Aboriginal Legal Service, now a commonwealth government-funded program was first established in Redfern, New South Wales in 1971. The Aboriginal Legal Service has some offices across states and territories and provides representation and legal assistance to Aboriginal Peoples who lack financial means.¹⁵⁷⁴ Their priority is to represent defendants in criminal matters, although they play a significant role in policy, advocacy and law reform.¹⁵⁷⁵ However, they are severely underfunded (*see Lara’s* comments above). In Liberia, however, there is no established government-funded legal aid program.

In addition to a lack of legal aid, female underrepresentation in the legal profession also hinders women’s access to representation in the legal system in Liberia and Australia. Indigenous Women Advocates in both Australia and Liberia recognized a disparity in the

¹⁵⁷³ Adams and Hunter, above n 365.

¹⁵⁷⁴ *Ibid.*

¹⁵⁷⁵ *See* Jonathan Hunyor’s presentation on Aboriginal and Torres Strait Islander Legal Services and Access to Justice at the Commonwealth Regional Law Conference, Sydney, 21 April 2012, available at <<http://www.naaja.org.au/wp-content/uploads/2014/07/Aboriginal-and-Torres-Strait-Islander-Legal-Services-and-Access-to-Justice.docx>>.

representation of women in the legal profession. They also noted its detrimental impact on survivors' access to justice. They were asked, are there as many women as men in the legal profession?

No, AFELL [Association of Female Lawyers in Liberia] is in Monrovia. There are no female lawyers in Maryland. I strongly recommend that we have female lawyers in Maryland to help women with abuse and violence cases in court. Even at my level as an access to justice coordinator, I only give advice. I am not a lawyer. There are other areas in the access to justice process that having a female lawyer is crucial. [Abigail, Liberia]

Our legal system is very male-centred. It is male dominated. You know most judges, most magistrates, most senior legal counsel are still men? So, how can women deal with that? Particularly, back to when traditional practices were still very much alive and kicking, women still prefer to talk to other women about women's business. So, with a male-dominated legal system, there is no place for an Aboriginal woman's point of view in our legal system. And I mean an Aboriginal woman point of view that is not cast or couched in a male point of view. I'll make that statement. I would think that through your research you'd probably be getting a sense of that. I doubt through all your interviews, we are like most women in the world. Women are gagged through one way or the other, by male dominance. [Jaky, Australia]

In an effort to combat violence against women in Liberia, the Liberian government has established executive and judicial institutions. The *United States Department of State's Human Rights Report on Liberia 2013* states that there were 52 Women and Children Protection Services of the Liberian National Police, 21 of them outside Montserrado County.¹⁵⁷⁶ At the time of the report, one-third of the 210 Women and Children Protection Services officers assigned throughout the country were female. Additionally, the Sexual Pathways Referral program, a combined effort of the government and Non-Governmental Organisations, helps to improve access to medical, psychosocial, legal, and counselling assistance for survivors of abuse and violence. The report further discloses that the Women and Children Protection Services of the Liberian National Police stated that approximately 280 rape cases were reported to the unit. Of these, 83 were forwarded to Criminal Court Assizes 'E' (Sexual Offences)¹⁵⁷⁷ and 37 to Criminal Court Assizes 'C' (offences against Property, Narcotics and Hallucinogens), both of the First Judicial Circuit Court in Montserrado county.¹⁵⁷⁸ Four rape cases were actually prosecuted; one resulted in conviction, one acquittal, and two cases remained pending (*see* chapter 7).¹⁵⁷⁹ Notwithstanding the meagre progress made by Women and Children Protection Services, Sexual and Gender-Based Violence Crimes Unit and Criminal Court 'E', this research found that approximately 12 000 cases of sexual assaults were reported to the Ministry of Gender in the past five years, a number that dwarfs the 37 cases adjudicated by Criminal Court 'E'. Even

¹⁵⁷⁶ Bureau of Democracy Human Rights and Labour, above n 1096, 15–16.

¹⁵⁷⁷ Amendment of Title 17 of the Revised Code of Laws of Liberia, known as the Judiciary Law of 1972 added a new Chapter 25 established Criminal Court 'E' (also called Sexual Offenses Court) of the Criminal Assizes of the First Judicial Circuit (*Liberia Penal Law 2011*).

¹⁵⁷⁸ Bureau of Democracy Human Rights and Labour, above n 1096, 15. Criminal Court 'C' hears all criminal cases apart from those involving gender violence.

¹⁵⁷⁹ *Ibid* 15–16.

if the government of Liberia were successful in establishing Special Court ‘E’ in all 15 counties, access to forensic evidence for survivors of sexual abuse would be a major obstacle.

Gathering forensic evidence to support the prosecution of rape cases is not accomplished effectively in Liberia or Australia. However, in spite of the challenge in producing forensic evidence to support survivors of violence during trial, *Amelia* (Liberia) has hope:

I think it was some time last year [2013] that we introduced the collection of forensic evidence. It is now being piloted at the James N Davis Jr Memorial Hospital in Neezo, here in Montserrado County. Once we pilot that and we see that it is working with the necessary trained staff, we will think about spreading the services across the county. Very soon, forensic evidence will be a part of the examination and evidence collected to prosecute cases in court. [Amelia, Liberia]

From Amelia’s account, forensic evidence gathering does not exist in Liberia. Should the current pilot at the James N Davis Jr Memorial Hospital materialise, the hope is to extend services across Montserrado County first. Rural communities, where Indigenous girls and women survivors of violence are more prevalent and vulnerable, will probably not have access to forensic evidence in the near future. The situation is not any better in Australia, say Maureen Phillip *et al.*, who assert that ‘[a]ccess to forensic medical services for sexual assault victims post-assault is a pressing need throughout Australia, especially in rural and regional areas’.¹⁵⁸⁰

Having survived court trial, and if fortunate enough to see the perpetrator convicted, Indigenous girls and women next face achieving a feeling of fairness and justice, wherein adequate punishment is given to perpetrators. In the context of systematic gender violence against Indigenous girls and women, incarceration for wrongdoers is sometimes seen by research participants as a direct form of justice for interpersonal/community violence. The situation gets more complicated when it comes to state/institutional violence, where Aboriginal males, on the one hand, are over-represented in the prison system mostly for ‘trivial crimes’; yet on the other hand, states and institutions responsible for systematic violence against Indigenous girls and women have received little or no punishment. This is where most research participants express lack of confidence or hope for justice in a legal system controlled by settler-colonist law.

With the decline of corporal punishment and the death penalty for Indigenous Australians by the late 1960s, the ultimate and universal form of punishment was imprisonment. Chapters 1, 2, and 4 discusses Fanon’s decolonisation process as a violent one and offer an assessment of the link between incarceration, colonisation, marginalisation and other social ills. *Inter se* crimes that resulted in high imprisonment rates of Aborigines, starting with the establishment of the first Aboriginal prison for men in Rottneest Island, Western Australia, 1838,¹⁵⁸¹ has also been discussed in chapter 4. In *Discipline and Punish* (1979) Michel Foucault

¹⁵⁸⁰ Cameron Boyd, Interview with Maureen Phillips, Angela Williams and Karen Willis, ‘Forensic Medical Care for Sexual Assault Victim/Survivors in Australia’ (2008).

¹⁵⁸¹ Weatherburn, above n 688, 11–12; Sean O’Toole, *The History of Australian Corrections* (UNSW Press, 2006) 187. O’toole suggests that the initial plan for setting up a separate Indigenous offenders’ facility on Rottneest Island

regarded prisons as a reinvented discipline and a new technology of power exercised through the deprivation of liberty, which replaces public displays of torture and execution. He claims that imprisonment is not about deterrence but is simply part of the ‘general tactics of subjection’. The tactic of detention translates into gross over-representation of Indigenous Peoples in state prisons and police custody.¹⁵⁸² Overall, Aboriginal Peoples suffered the calamity of incarceration on government-run settlements, Christian-run missions, and settler-owned pastoral properties. In Australia, prior to the 1960s, the research literature reported no more than 20 instances of conscious acts of self-destruction amongst Aboriginal People.¹⁵⁸³ By 1980, the death of 21-year-old Eddie Murray in police custody at Wee Waa, New South Wales highlighted the self-harm of Aboriginal Peoples due to the effects of incarceration.¹⁵⁸⁴ Unfortunately, incarceration causes structural harm in addition to physical and mental harm.

Imprisonment further reduces Aboriginal Peoples’ access to justice and legal reforms. Angela Y Davis, an American political activist and scholar, calls ‘racist violence’ and mass incarceration of African-Americans in the United States a ‘prison industrial complex’, a coupling of capitalism and a structurally racist state.¹⁵⁸⁵ As restated by *Lara* (see chapter 7),¹⁵⁸⁶ Davis is not saying perpetrators of crimes should not be held accountable. However, there is no doubt that over-incarceration of Aboriginal people hinders their ability to vote and participate in the nation’s democratic process, a violation of the basic principles of the rule of law.¹⁵⁸⁷ In Liberia, incarceration of a person accused of sexual assault who has not yet gone to trial is even more complicated regarding deterrence, justice for survivors and violation of convicts’ fundamental rights, says *Klade*:

It is already known in Liberia, or maybe across Africa, that justice for women is justice denied. So, what’s the issue here? The issue is that the systems are not working. We need to train people properly to deal with violence against women and girls. Consider that there are eight cases on the docket but only one is being prosecuted for a whole year. It just doesn’t serve as a deterrent. Sometimes people linger in jail for eight months. At the end of the day, the UN and Human Rights Groups will say, “you have violated the man’s rights, so the prisoners should be released”. Then he goes to another community and commits the same act of violence. [*Klade*, Liberia]

Also, in Liberia, when convicted or accused perpetrators are released, an absence of technology and low computer literacy of service providers prevent law enforcement and service providers

(i.e., to allow Indigenous offenders greater freed) turned out to be a disaster since the 150-year-old special prison, where approximately 3700 Indigenous men and boys were imprisoned with 369 recorded deaths (mostly disease).

¹⁵⁸² Anthony, above n 1204, 49.

¹⁵⁸³ Colin Tatz, Oliver Mendelsohn and Upendra Baxi, ‘A Question of Rights and Wrongs’ in *The Rights of the Subordinated Peoples* (Oxford University Press, 1996) 159, 162.

¹⁵⁸⁴ *Ibid* 161.

¹⁵⁸⁵ Stuart Jeffries, ‘Angela Davis: “Unbroken Line of Police Violence in US Back to Slavery”’ *The Guardian* (London, UK), 14 December 2014 <http://www.theguardian.com/global/2014/dec/14/angela>.

¹⁵⁸⁶ ‘But what I don’t agree with is a lot of people saying that the Royal Commission was about making sure that Aboriginal people don’t spend that much time in custody. Therefore, when they commit an offence no matter what they are, we should take that into account and look for lesser alternatives. The Royal Commission said the overall representation that it was concerned about were offences of minor nature. So, things like being locked up for being drunk in public etc. They never said that there should not be harsh penalty for horrendous crime.’ [*Lara*, Australia]

¹⁵⁸⁷ Jeffries, above n 1585.

from tracking these individuals to other locales. A case in point is that of Daniel Hamilton, who killed his wife in Maryland but broke jail and ran away to another county.

8.5 Challenges and Opportunities

Given the context, the difficulties associated with addressing systematic violence against Indigenous children and women are innumerable. Aboriginal Peoples are the poorest group in Australian society and remain the sickest sector of Australian society, with appalling levels of ill-health for a ‘first world’ nation.¹⁵⁸⁸ Primarily, the empirical data from this research show that a primary challenge to overcome is the uncorroborated perceptions and beliefs that obscure the sources of systematic violence against Indigenous girls and women. For example:

Who are the perpetrators of violence against women?

I would think one of the most important tasks that is requiring urgent attention is the misnomer that all violence against Aboriginal women and children is at the hands of Aboriginal men when in fact a large percentage of our women have been violated by their non-Indigenous spouse or partner, which is very rarely identified, leaving many outside of the community believing that our men have a predisposition to violence and violence-related tendencies when this is not true. [Alison, Australia]

Is violence against Indigenous girls and women an acceptable and normal phenomenon in Aboriginal culture?

Violence in any form should be unacceptable regardless of the culture behind the perpetrators hands but it is equally important that this misnomer against all Aboriginal men be addressed accordingly because this is another critical aspect to address in terms of gender violence. [Lara, Australia]

Violence against women and girls is almost so “normalised” that the local community often dismisses the severity and impact of violence against their own women and girls. Although they don’t like the violence perpetrated, often many Aboriginal women have experienced and survived violence and love their men, so they aren’t always advocating for women/girls to lay charges against the perpetrator but just try and avoid the situation until the situation calms. This then doesn’t assist either the men or women in understanding and getting help for their issues as victims and perpetrators of violence. [Survey Participant, Australia]

Has reporting increased and subsequently resulted in redressing violence against Indigenous girls and women?

Most families are not willing to report rape since most of those accused of the act are family members. The other side of the problem is based on people’s perception. They do not report cases. People are afraid of the law. Even if it’s reported they don’t get legal redress because the perpetrator is not investigated properly. In between the police and the courts, there’s not good evidence. The law is unhelpful because the cases are not reported. For example, rape cases are sometimes taken up the “family way”, which means it can be resolved in secret between family members. [Survey Participant, Liberia]

Is violence against men increasing at an alarming rate?

¹⁵⁸⁸ Tatz, Mendelsohn and Baxi, above n 1583, 167.

Another issue is violence against men. On the contrary, some women are more energetic than their husbands. Some women abuse men too. I had a friend where his wife slaps on her husband. When we go out in the field we make it clear that women can also abuse men. We encourage men to come forward about any abuse they experience from women. But 'no', I'm yet to receive my first violence against men by women case. [*Survey Participant, Liberia*]

I see the international community see gender to mean only women's issues and women's rights. It is not so. We talk about gender we talk about both women and men. There are lots of disadvantages men and women alike face. Even in this court, men are also disadvantaged. In the court system people are prosecuted based on evidence. But when it comes to rape and property rights the law is in defence of women. Since we have a woman president to protect women by giving power to the women, under her presidency, rape became a non-bailable crime. Men are afraid; this is why the 30 per cent participation in government is stuck in the House of Representatives. Men see that as breaking into the traditional norm. [*Survey Participant, Liberia*]

Cases we experience include where women/younger girls were lying that a man gives a woman lift and he's accused for raping her. How do you confirm such a situation? Through interviews, if the woman said she's taken to the hotel, then they can prove which hotel. This happened to an American visitor. He had to bribe LD \$300 so that it wasn't publicised. The new rape law is being abused by lying. The law doesn't take time to investigate, and then due to the problem with the legal system, most men are incarcerated for a long time, sometimes months or even years. [*Survey Participant, Liberia*]

How can these unsubstantiated statements, offered mostly by male survey respondents be dispelled? First and foremost, the need for high-quality evidence-based research that will effectively reform law and policy in this area is paramount. Second, ameliorating law and policy will eventually change cultural norms and beliefs by valuing and prioritising the voices of (Indigenous) women. However, parallel to these challenges are countless opportunities for providing lasting remedies.

8.5.1 Indigenous Women Advocates' Motivation

Indigenous girls and women have always advocated for safeguarding their rights. Although ethical approval restricted this researcher from directly interviewing Indigenous girl and women survivors of violence (*see* chapter 6), coincidentally, most Indigenous Women Advocates who were interviewed happened to also be survivors of systematic violence. Thus, the legitimacy of Indigenous Women Advocates' contribution to legal reform solidifies their status as survivors and engineers of social change. Of interest to this research is the origin of Indigenous Women Advocates' motivation for continuing the work they do, in spite of the ongoing trauma they face. Herewith are select examples of the deep inner passion that propels Indigenous Women Advocates to tackle violence against women:

I just sort of fell into those roles. I think it is because I felt related to how off the rails young people could be if they didn't get cared for properly. Because that was my story, you know? I don't think I did it consciously, but I think that my own psyche, if you like, is looking for a homeostasis or a coming to some sort of balancing myself. And that I felt a lot of empathy, non-judgmental rapport with people who had gone through difficult things. I wasn't afraid of them. I wasn't shocked – shocked in the way that affected me to not hear. Also, people gravitated to me naturally. Well, because people

sense that in you that it's gonna be OK to tell this person the story. They're not going to freak out and think I'm weird or something. I come across as very strong especially when I was younger – very positive, very strong, very determined. All of that is because I developed really strong survivor skills, because I had to. [S, Australia]

You know I love my job, but it is very difficult to work in a cultural area because the people here have special needs. The cultural practices in Lofa are too strong that even if you want to go into some of those deep cultural places to make sure that the perpetrator [will] be punished for what they've done. At the end of the day the people will say that's family talk, so they will end up compromising their case. Eventually, the caseworker, who may be trying to address the abuse, will be at risk. So that's the challenge, but I love my job because I want to make sure that the people of Liberia be free from sexual and gender-based violence. [Sia, Liberia]

Well I grew up in an Indigenous family and in an Aboriginal community. I have seen issues around Aboriginal rights all my life - from the contact that community had with the police, the actual policing of Aboriginal people, through the treatment of Aboriginal women (partly, the removal of kids). I grew up with a very strong sense of social justice. By the time I was a teenager I wanted to be a lawyer because I wanted to change the way things were. It didn't quite turn up the way I had thought it would, but that's why I developed a relationship for the law. [Lara, Australia]

For myself, I appreciate what I have achieved. As I said earlier, I'm doing a master's in conflict transformation. With the little knowledge in gender and human rights, I think I have achieved a lot. Of course, there are challenges. I don't care what you do, but there is always room for improvement and revision. I really enjoy my work, especially interacting with people at the lower level. Although we don't do as much fieldwork as before, whenever I go in the women are happy to see me. [Klade, Liberia]

In the course of working with Indigenous Peoples, I witnessed, observed, or heard about a lot of interpersonal violence, which was not spoken about. There was a big silence around violence against Aboriginal women. What became more public was probably some of that institutional and state violence against Aboriginal people. But the focus was still on Aboriginal men and not Aboriginal women. Then an Aboriginal man was shot dead by a police officer in Katherine. I was brought into the judicial response to assist an Aboriginal defendant in getting bail. Increasingly, I became aware of the violence against Aboriginal women by their partners. But really what highlighted it for me was the absolute silence and that the victims were just so absent. They were totally invisible in the legal process and the police responses. [Dallas, Australia]

8.5.2 Males Championing the Cause

As an historian and an educator, I try to build awareness and consciousness-raising surrounding gender issues into my teaching activities at every opportunity. I try to show that violence against women - not only physical violence, but also emotional, symbolic and other forms of violence against women - is, unfortunately, a deeply ingrained feature of the human past across many different societies, cultures and time periods. Through my teaching, I endeavour to speak directly to students about the importance of confronting and taking a stand against these multiple forms of violence against women, and to understand that gender inequality and violence against women belong not just to the past, but to the present as well. [Respondent #19]

'Community' is not an easy concept, and many communities operate within external and internal constraints. An important part of a community response to systematic gender violence involves male engagement. Responses to the informal emails sent to colleagues (*see* chapter 7) show that males were guarded in speaking out about violence against women, specifying where, when and how they would feel ready to do so. For example, Respondent #18 said, 'yes, I would speak out, but only in a comfortable context i.e., in a small, private, familiar group setting'. In

particular, when girls and women play the ‘gender means only females’ card, men habitually withdraw and sometimes become defensive.¹⁵⁸⁹ Men and boys are afraid of the term ‘feminism’ because it appears to mean ‘women going against the patriarchal norm’.¹⁵⁹⁰ The fear males may have about feminism is validated when organisations such as the Commission on the Elimination of all Forms of Discrimination against Women¹⁵⁹¹ and United Nations Women¹⁵⁹² are run by predominantly women. At the same time, in a patriarchal world, girls and women are ever surrounded by male dominance, authority and abuse of power over them, which makes them feel justified in establishing a few all-women institutions. However, it is that male dominance that makes male allies so important.

Male allies in the fight for gender justice make significant contributions. Girls and women, as survivors of systematic gender violence, have always borne the brunt of tackling gender violence. However, they have not always done this alone (*see* more excerpts from informal email exchange with male colleagues in Appendix XI). Though bringing boys and men on board to prevent violence against women is not new, the concept of promoting and supporting males in taking a leadership role on the issue has not really crystallised. Many male advocates before us carry the torch as mentors and role models who are more than willing to champion the cause of reducing gender violence. By way of organisations, the White Ribbon¹⁵⁹³ in Australia and the Journalists Against Sexual and Gender Based Violence in Liberia raise the gender advocacy bar. Individually, Michael Flood¹⁵⁹⁴ and Alphonso Mouwon¹⁵⁹⁵ are only two examples. Still the challenge is great. Certainly, we need more (Aboriginal) boys and men to step up as sons, brothers, fathers and husbands to mentor and guide the next generation to address systematic violence against Aboriginal girls and women. Respondent #20 offers a thoughtful viewpoint in this regard:

I was raised singlehandedly by my mother; my entire makeup, the man I am who is now raising three boys, owe its roots to that mother of mine. May her soul rest in peace, for just as her presence in my life inspired me beyond words, her death passed me her torch. A torch that helps me find the light, kindness, softness and that power of emotion in every woman that crosses my path. If all men viewed and know women as I do,

¹⁵⁸⁹ Michael S Kimmel, ‘Who’s Afraid of Men Doing Feminism?’ in Tom Digby (ed), *Men doing feminism* (Routledge, 1998).

¹⁵⁹⁰ David French, *For Hillary Clinton, Feminism Means ‘Blame Men First,’ and to Disagree Is ‘Misogyny’* (2015) National Review <<http://www.nationalreview.com/article/430509/hillary-clintons-feminism-gender-gap-works-against-her>>.

¹⁵⁹¹ In 2007, the 23-member committee of CEDAW’s are all females except for one male, Mr Cornelis Flinterman (Netherlands), (see <<http://www.un.org/womenwatch/daw/cedaw/committee.htm>>).

¹⁵⁹² In 2014, Farhan Akhtar was the first male to be appointed as the UN Women Goodwill Ambassador to South Asia as part of its HeForShe campaign (see, <<http://www.unwomen.org/en/news/in-focus/engaging-men>> and <<http://www.heforshe.org>>).

¹⁵⁹³ White Ribbon engages men across Australia in the prevention of men's violence against women, through a national primary prevention campaign that currently focuses on awareness raising and attitudinal and behavioural change. Primarily campaigns and programs are run in workplaces and schools. According to a survey participant, ‘[o]ver 2200 men are White Ribbon Ambassadors, including more than 100 Aboriginal and Torres Strait Islander men. White Ribbon Ambassadors are formal representatives of White Ribbon and are responsible for driving the campaign in their communities’.

¹⁵⁹⁴ See, Michael Flood, (2015) XYonline, available at <<http://www.xyonline.net/category/authors/michael-flood>>

¹⁵⁹⁵ Alphonso Mouwon is a young man working with Tiyitien Health (renamed Last Mile Health) in Grand Gedeh, Liberia who responded to an invitation to participate in the research survey. He would later commit extra time and effort in recruiting more participants for the survey (see Last Mile Health available at <<http://lastmilehealth.org>>).

women would need no protection at all, as they are the fruit-bearers of life. If there is nothing else I have taught my three boys, they all know just too well the importance of their grandmother, and the knowledge of their grandmother has shaped their view of their own mother. I refer to it as protection from within. [Informal Email Exchange Respondent #20]

8.5.3 Reporting Violence

Sexual abuse and family violence are under-reported in all cultures and communities. However, the level of underreporting of violence by Aboriginal survivors may be more pronounced. Some of the reasons for the underreporting of family violence and sexual abuse by Aboriginal survivors include (but not limited to): distrust and fear of police, distrust and fear of the criminal system and other government agencies, lack of police presence, language and communication barriers, lack of knowledge about legal rights and legal services available, lack of appropriate support services for Aboriginal survivors, and cultural factors.¹⁵⁹⁶ Although research shows that sexual assault reporting to police has increased, sexual assault is the most under-reported of all interpersonal crimes. According to the Australian Bureau of Statistics, of the estimated 51 000 people 18 years and older who were survivors of sexual assault in 2013, only one-third reported the incident to police.¹⁵⁹⁷ Even when cases of sexual abuse are reported, further investigation by law enforcement agencies can stall and dwindle. A study commissioned by the Office of Women's Policy Department of Victorian Communities shows that police charges were brought in only 15 per cent of the 850 rape cases reported to Victoria Police over a three-year period. Of these, 46.4 percent resulted in 'no further police action', and when combined with withdrawn complaints (15.1 percent), a total of 61.5 percent of cases did not proceed beyond the investigation stage. If total cases are expanded to include those still in process, no charges were brought in 80.8 percent of cases.¹⁵⁹⁸ A high attrition rate is observed with cases of Aboriginal victims, survivors with a mental illness or psychiatric disability, and those influenced by alcohol or other drugs.¹⁵⁹⁹ Several factors may hinder reporting. *Yaa's* comments above point to the logistical, sociological and cultural factors that inhibit reporting, and therefore the figures suggested in Zoe Morrison's and Wendy Anders's research above probably underestimate the incidence of violence. Distrust of the police and justice system contributes to reduced reporting, prosecution and conviction of perpetrators in cases of gender violence.¹⁶⁰⁰ Thus, research participants suggest that survivors rarely report sexual crimes and that, when they do, those crimes are rarely prosecuted successfully, whereupon these tactics are not usually the immediate mechanism Indigenous girl and women survivors of violence undertake to address that violence.

¹⁵⁹⁶ Law Reform Commission of Western Australia, above n 142, 284–288.

¹⁵⁹⁷ Australian Bureau of Statistics, 'Bridging the Data Gaps for Family, Domestic and Sexual Violence, Australia', above n 819, 2.

¹⁵⁹⁸ Zoe Morrison, 'What Is the Outcome of Reporting Rape to the Police' (2008) 17 *Australian Centre for the Study of Sexual Assault Newsletter* 4, 4.

¹⁵⁹⁹ Morrison, above n 1598.

¹⁶⁰⁰ Australian Human Rights Commission, 'Social Justice Report 2012: Aboriginal and Torres Strait Islander Social Justice Commissioner', above n 1500, 27–28.

Information received from a private email exchange on 4 August 2014 with an Australian Capital Territory Office of Women's staff member reveals that Aboriginal girls and women are reluctant to report domestic violence in Australian Capital Territory because of

- 1) efficiency of the Aboriginal 'telegraph pole' in a small community;
- 2) fear of guilt, shame and rejection by family and community members;
- 3) distress about legal consequences of criminal behaviour or concerns that the perpetrator will get in trouble;
- 4) worry of revenge, thus increasing risks and threats from the perpetrators to the survivor and her extended family;
- 5) lack of cultural understanding of service providers including women's refuges, police officers, and court/legal assistants; and
- 6) lack of culturally appropriate responses in which service is focused on family, community healing and restoration.¹⁶⁰¹

Indigenous women and children are not the only ones who find reporting of abuse challenging.

Service providers also face challenges when deciding whether to report sexual abuse and family violence. Service providers, especially health workers, who see their major role as providing safety and support to survivors of violence, refrain from screening cases of violence for 'fear of offending the patient, powerlessness, loss of control and time pressures'.¹⁶⁰² Some agencies claim that their focus is on service delivery rather than on collecting data on reporting. Other causes of underreporting may be the inherently difficult task of identifying survivors as Indigenous or legally complex conflicts of confidentiality, as *Tracy* (Liberia) indicates:

There are a few cases where a person is raped, for example, but will tell us that they do not wish to get the police involved. This is the moment where we break confidentiality and contact the police to minimise risk and harm to the survivor. Even during mediation, when we sense threats from a conflicting party, at that moment, the person posing the threat is breaking confidentiality. There and then, we make referral to reduce any liability on our part. [*Tracy*, Liberia]

Section 4(4.4) of the Liberian *Children's Law* 2011 states that, '[a]ny service provider, parent and community or town member shall report sexual and other forms of abuse to the Police'. This provision does not seem to put an express duty on service providers (or anyone for that matter) regarding wrongful acts associated with not reporting abuse against children. The *Children's Law* is the first to protect Liberian children and it was passed only recently. The culture of jurisprudence in Liberia has not yet evolved to include a duty on parents, community members, traditional leaders, service providers, and individuals to report child abuse. In addition, there is widespread corruption and distrust of police, which some survey and interview respondents commented is not only problematic but makes reporting rape cases challenging.

8.5.4 Healing Through Restorative Justice

¹⁶⁰¹ Information retrieved from a private email exchange on 4 August 2014 with an ACT Office of Women staff member.

¹⁶⁰² Al-Yaman, above n 817, 18–19.

I witnessed a lot of ceremonies being used for healing. Ceremony is one of the ways that people can heal, definitely. Not for everyone but ... reconnecting with culture, reconnecting with identity, all of those sorts of things. And learning, especially with domestic violence, it's a very difficult topic and often very hard for the victim to extract themselves from it. As you know, the perpetrators are often very manipulative, even if they don't mean to be, they're armed well... [S, Australia]

I do think re-investing in people's cultural practice and language is a key element in cultural practice. It is actually a very powerful healing mechanism. I think it is redressing. I think the research we do here tends to redress those issues. [Jaky, Australia]

Empirically, the concept of justice is immanently holistic, with procedural, distributive, restorative, and social justice positively correlated. Restorative justice may be about creating spaces where the various imperfectly correlated faces of holistic justice might cohere.¹⁶⁰³ State institutions of justice, such as criminal courts, with deeply embedded traditions of narrowing the meaning of justice to proportional punishment are less fertile soil for holistic justice than civil society.¹⁶⁰⁴ Whilst restorative justice programs are relatively common, they mostly remain marginal programs operating in the shadow of the dominant punitive legal system.¹⁶⁰⁵ Compared with settler-colonists' legal system, restorative justice focuses more on problem solving or conflict resolution of any kind, which ultimately concerns less retribution and injustice.¹⁶⁰⁶ An injustice does not need to be a criminal harm, such as family neglect or state failure to provide basic security for its Indigenous citizens. Restorative justice is perceived as more procedurally fair than courtroom justice because it gives direct voice to stakeholders rather than having to channel communication through a lawyer.¹⁶⁰⁷ But restorative justice is more than procedural fairness in the courtroom and far exceeds the limits of procedural fairness and punishing offenders. Studies have shown that survivors and offenders seeking restorative justice are more likely to perceive their rights as respected, that they are not discriminated against, and that various other facets of their engagement with the procedural justice system beyond retribution arise.¹⁶⁰⁸

Restorative justice is in its early days of research and development as research falls behind theory and theory behind practice. Restorative justice program development aims to design justice innovations that apply this research to finding alternatives to regulatory institutions.¹⁶⁰⁹ In spite of growing attention on the utility of restorative justice in the criminal legal system in recent years, the concept still remains somewhat problematic to define, as numerous responses to criminal behaviour may fall under the so-called restorative umbrella.¹⁶¹⁰ The term has been used interchangeably with concepts such as community justice, transformative justice, peacemaking criminology, and relational justice. Although a universally

¹⁶⁰³ John Braithwaite, 'Doing Justice Intelligently in Civil Society' (2006) 62(2) *Journal of Social Issues* 393, 393.

¹⁶⁰⁴ *Ibid.*

¹⁶⁰⁵ *Ibid* 394.

¹⁶⁰⁶ *Ibid* 397.

¹⁶⁰⁷ *Ibid.*

¹⁶⁰⁸ *Ibid* 398.

¹⁶⁰⁹ *Ibid* 407.

¹⁶¹⁰ Jeff Latimer, Craig Dowden and Danielle Muise, 'The Effectiveness of Restorative Justice Practices: A Meta-Analysis' (2005) 85(2) *The Prison Journal* 127, 128.

accepted and concise definition of the term has yet to be established, Jeff Latimer, Craig Dowden and Danielle Muise suggest that Tony F. Marshall's definition reflects the main principles of restorative justice. According to Latimer, Dowden and Muise, '[r]estorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future'.¹⁶¹¹ According to the Justice Education Society, a 'restorative justice remedy is one that places emphasis on healing the trauma done by the offence and rehabilitating the offender to avoid future harms. Such processes are in line with traditional Aboriginal views of justice'.¹⁶¹² The fundamental premise of restorative justice is that crime is a violation of people and relationships rather than merely a violation of law.

Proponents of restorative justice claim that the mechanism is beneficial to survivors and offenders in that it emphasises the recovery of the survivor through redress, vindication, and healing, and encourages recompense by the offender through reparation, fair treatment, and rehabilitation.¹⁶¹³ In the process of coming together to restore relationships, the community is also provided with an opportunity to heal through the reintegration of survivors and offenders. Twenty-two unique studies that examined the effectiveness of 35 individual restorative justice programs generated 66 effect sizes.¹⁶¹⁴ In these studies, restorative justice was found to be more successful at achieving each of its four major goals compared with traditional non-restorative approaches.¹⁶¹⁵ In other words, based on the findings of the current meta-analysis, restorative justice programs are a more effective method of improving survivor and offender satisfaction, increasing offender compliance with restitution, and decreasing the recidivism of offenders when compared with more traditional criminal legal responses.¹⁶¹⁶

Recognising the conflicts of retributive justice settler-colonist criminal system, and the need for healing between survivors and offenders,¹⁶¹⁷ restorative justice is apt in bringing together survivors, offenders and others who may have an interest in a particular offence to collectively deal with resolving the impact of an offence holistically.¹⁶¹⁸ Unlike retributive justice, restorative justice sees crimes as a violation of people and relationships and creates an obligation to make things right where survivors, offenders and the community are searching for solutions to promote, repair, reconcile and reassure themselves.¹⁶¹⁹ The restorative justice

¹⁶¹¹ Ibid.

¹⁶¹² Justice Education Society, *Aboriginal Restorative Justice Remedies* (2016) Aboriginal Restorative Justice Remedies <<http://www.justiceeducation.ca/research/aboriginal-sentencing/restorative-justice>>.

¹⁶¹³ Latimer, Dowden and Muise, above n 1610, 129.

¹⁶¹⁴ Ibid 135.

¹⁶¹⁵ Ibid.

¹⁶¹⁶ Ibid 138.

¹⁶¹⁷ Zehr, above n 203, 232.

¹⁶¹⁸ Dennis Trewin, *Year Book Australia 2001* (Australian Bureau of Statistics, Centenary of Federation, 2005) 493

<http://books.googleusercontent.com/books/content?req=AKW5Qae2-u2OI4EJpVaHz5PhoQUuwmdmwrxqnTBcnNbgzkDFjnt0md53MBriIsuusGk1oPiKj3tups73Sot1KGfM3rq024HUe12RBFcuLqWhqBU4E1Cs9nM7q79JsN-xwTNrmMp7h9fSXynIN_Ym8MBSstP3m1ZKQRpqa1Sqr9sdhQM1XpH_3FqLTJu1To_e-uN6l-XwKjjmfUbphj4cmNsi5V8EBuxkM1OFPiafHasO3z9zL_p3ux9zFal30dfj4U4MRJlPnB1>.

¹⁶¹⁹ Zehr, above n 203, 110.

process is an inclusive one that involves all stakeholders' input when solving conflicts with the goal of providing restoration to the survivor and the offender. The conventional criminal legal system focuses on the offender whereas restorative justice invests in healing for all those who have been harmed by the offence, the survivors of systematic violence in this case. To this end, the role of public institutions and the state should be to maintain just order and peace at both national and community levels.

Restorative justice has deep roots in Indigenous¹⁶²⁰ practices. Some examples are *Ubuntu* in South Africa,¹⁶²¹ *Palava Hut* in Liberia,¹⁶²² and Circle Healings amongst the First Nations in Canada and Maoris in New Zealand,¹⁶²³ although contemporary programs started in 1974 in Ontario, Canada.¹⁶²⁴ At the core of an Aboriginal restorative process is 'a healing circle, which endeavours to develop a consensus on how to repair the harmful results of the offence'.¹⁶²⁵ The Aboriginal Health Project was established based on the idea that internal healing from historical and cumulative trauma caused by systematic violence and broader issues of poverty, inadequate housing and ill health reduces high levels of violence and potentially rehabilitates offenders. The Aboriginal Health Project, a kind of restorative justice process, was established in January 2006. A two-year project supported by state and federal funds, the Aboriginal Health Project provides healing services to Indigenous individuals and families affected by family and domestic/sexual violence. The goals of the Aboriginal Health Project are to, *inter alia*, promote group cohesion, value self-worth and ensure safety in efforts to reduce harm within families,¹⁶²⁶ characteristics Indigenous Women Advocates in this research have emphasised.

Accordingly, the solution for Aboriginal communities requires a 'whole community approach, encompassing the individual, the family and the community with government [support focusing on] healing rather than a punitive approach'.¹⁶²⁷ The Australian Capital Territory government has also enacted the *Crimes (Restorative Justice) Act 2004* to empower survivors of offences when making decisions about how to repair the harm done by those offences. Rather than imagining one single replacement for existing mechanisms, it is important to envision an array of possibilities that will require concurrent radical transformations. Indisputably, alternatives that fail to address racism, male dominance, class bias, and other

¹⁶²⁰ Zehr, above n 203; Daniel W Van Ness, *Restoring Justice: An Introduction to Restorative Justice* (LexisNexis: Anderson Pub, 4th ed, 2010) 8; Zehr, above n 205.

¹⁶²¹ O Oko Elechi, Sherill VC Morris and Edward J Schauer, 'Restoring Justice (Ubuntu): An African Perspective' (2010) 20(1) *International Criminal Justice Review* 73; Mechthild Nagel, 'Ubuntu and Indigenous Restorative Justice' 3 <<http://www.africaworkinggroup.org/>>; AM Anderson, 'Restorative Justice, the African Philosophy of Ubuntu and the Diversion of Criminal Prosecution' 9 <<https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=202433>>.

¹⁶²² Truth and Reconciliation Liberia, above n 208, 2.

¹⁶²³ Van Ness, above n 1620, 14.

¹⁶²⁴ Kate Gleeson, 'The Money Problem: Reparation and Restorative Justice in Catholic Church's toward Healing Program' (2015) 26(3) *Current Issues in Criminal Justice* 317.

¹⁶²⁵ Justice Education Society, above n 1612.

¹⁶²⁶ Deborah Cox, 'Aboriginal Healing Project' (2008) 17 *Australian Centre for the Study of Sexual Assault Newsletter* 18.

¹⁶²⁷ Information retrieved from a private email exchange on 4 August 2014 with an ACT Office of Women staff member.

structures of domination¹⁶²⁸ will hardly advance the goal of addressing systematic violence against Indigenous girls and women. As a result, contemporary justice measures still fail to deliver justice to survivors of state/institutional violence.

Restorative and punitive justice measures are not effectively applied to the perpetrators of state and institutional violence. When a violent perpetrator goes to jail, Aboriginal girls and women acknowledge a sense of justice as a small step taken to remedy systematic violence. However, problems with justice arise when some perpetrators of systematic violence are not prosecuted and punished. The Australian Capital Territory government acknowledges that high rates of violence against Indigenous girls and women result from ‘the impacts of colonisation, forced removal of children, disposition of lands and disruption of family and kinship ties’.¹⁶²⁹ But Australian Parliamentarians who enacted law that forcibly took Aboriginal children from their mothers have not been prosecuted or punished.¹⁶³⁰

8.6 Summary

In this chapter, research participants’ responses provide evidence for examining vital concerns emerging from the efficacy of settler-colonist law in restoring justice to Indigenous girls and women. The research findings affirm that systematic violence against Indigenous girls and women in post-war Liberia and Australia is a chronic social ill, rooted in colonisation, an inefficient male-centred legal system, corruption, systemic racism, lack of social services, negative cultural and social stereotypes held against females, mental health illness and substance abuse. Although the law offers hope in some areas, it is neither the first nor the only recourse Indigenous girls and women seek for justice, fairness and equality. In spite of the challenges, Indigenous girls and women persist in their resolve to do whatever is necessary to curb systematic gender violence, and they are not alone on their advocacy journey. Therefore, rather than being exclusive, vindictive and retributive, law and society could exploit a window of opportunity with Aboriginal healing through restorative justice tenets. There is also a chance to support and promote Indigenous males in championing the cause of preventing systematic gender violence. In this vein, the ‘need to be careful about constructing violence as a cultural rather than generic behaviour against vulnerable people’ is crucial, says a survey participant. Ultimately, listening to Aboriginal girls and women, such as *Jaky*, can promote a genuine healing process that is holistic, comprehensive and restorative in nature:

White Australian law is all about retribution and punishment, crime and punishment and isolation. It’s not about the community wellbeing or healing practices. As soon as you start saying that, then people go like “oh that’s a bit of a touchy feely”. In my experience, women are not particularly about “touchy feely”. Women are pretty summary, feisty, good thinking, and clear thinking. Most of our lives, as women, we spend time working to modify and shape the behaviour of other people because we

¹⁶²⁸ Angela Y Davis, *Are Prisons Obsolete?* (Seven Stories Press, 2003) 108.

¹⁶²⁹ Information retrieved from a private email exchange on 4 August 2014 with an ACT Office of Women staff member.

¹⁶³⁰ Gillard, above n 489.

raise the children. Yet, nobody listens to what we've got to say. Even books about child's rights are written by men. A woman's voice in our legal system is absent. And, an Aboriginal woman's voice is pretty much absent. [*Jaky*, Australia].

CHAPTER 9: CONCLUSION AND RECOMMENDATIONS

*Women are, in fact, so much degraded by mistaken notions of female excellence, that I do not mean to add a paradox when I assert, that this artificial weakness produces a propensity to tyrannize, and gives birth to cunning, the natural opponent of strength, which leads them to play off those contemptible infantile airs that undermine esteem even whilst they excite desire. ... Let men become more chaste and modest, and if women do not grow wiser in the same ratio, it will be clear that they have weaker understandings.*¹⁶³¹

9.0 Chapters Summaries

Chapter 1 introduces the global scourge of violence against women and poses the question: ‘is the rule of law an essential axiom for restoring justice to Indigenous girl and women survivors of systematic gender violence in Australia and Liberia?’ Violence against women is contextualised within colonised Australian and Liberian Indigenous communities for the purposes of this research. Also, terminology is defined and operationalised in an effort to constrain the scope of the research while avoiding further perpetration of structural violence through the use of derogatory terms. The complex system theoretical framework is introduced, which borrows concepts from intersectionality, critical race theory, feminist legal theory, decolonisation, and social determinants of health. After establishing the significance of the research and how findings will be communicated to the academy and Indigenous communities that participated in the research, the researcher discloses the personal challenges of performing this research as a war survivor and a survivor of gender violence. With this foundation established, a review of the relevant literature follows.

Chapter 2 lays the historical, social and cultural groundwork of past and contemporary discourse relating to violence against Indigenous girls and women in particular. The chapter views the literature through the lens of theories drawn from critical race, decolonisation, social determinants of health, and feminist theory to explicate the complex intersection of gender violence. The histories of politics and governance are explored, which introduce incidences of state-perpetrated systematic violence against Indigenous girls and women and highlights the continued lack of services in Indigenous communities. Histories of white supremacy, patriarchy and racism underscore intersecting sources of colonial violence that contribute in various ways to systematic violence against Indigenous girls and women. Further examining social determinants of the health of Indigenous Peoples, land dispossession and the intergenerational trauma of colonisation are established as situational sites of systematic violence against Indigenous Peoples. Additionally, harmful religious and traditional practices are discussed as other sources of gender violence and violence against Indigenous Peoples. In the face of such a violent history, the literature also shows that Indigenous women still struggle to achieve acceptable outcomes in health, education, housing and employment. Unfortunately, all these

¹⁶³¹ Wollstonecraft, above n 69, 11.

problems persist despite the global gains of feminism and the ascendancy of international human rights law, policy, and advocacy. Hence, the value of continued research using a complex system method is validated.

Chapter 3 investigates the literature specifically pertinent to violence against Indigenous girls and women. The chapter pointedly discusses systematic gender violence at three overlapping levels: institutional or State, structural or cultural and interpersonal or community violence. Case examples in Australia and Liberia exemplify the prevalence of gender violence occurring at these three levels. In Australia, State violence includes massacres, over incarceration of Aboriginal Peoples, genocidal miscegenation and eugenics programmes, land dispossession, stolen wages and forced adoption. These violent acts are shown to predispose Aboriginal women and children to further abuse in their communities even when put under the ‘protection’ of social services provided by the State. In Liberia, a history of colonisation led to land dispossession, child exploitation, and a bloody 14-year civil war that disproportionately harmed Liberian children and women. Even so, systems of class and patriarchy in the formal political and legal system foster a culture of impunity for the perpetrators of that violence. Meanwhile, patriarchal traditional systems also perpetrate systematic violence against Native women in Liberia through practices of female genital cutting, polygyny and forced marriage. However, in spite of the vulnerability to violence of Indigenous women, the chapter closes with a highlight of their strength and resilience in fighting for their cause. Given the prevalence and various sources of systematic violence against Indigenous girls and women, the next chapter dissects the rule of law and its efficacy in restoring justice to Indigenous survivors of gender violence.

Chapter 4 focuses on the concept of the ‘rule of law’ and how effectively it has been applied within settler-colonist and Indigenous legal systems in Australia and Liberia with respect to Indigenous girls and women. In Australia and Liberia, founding legal documents were authored without the input of Indigenous Peoples and by mostly males who questioned the civility or very humanity of Indigenous Peoples. As such, the rule of law as a constitutional basis for Liberia and Australia’s democracies is questioned. Therefore, the concept of ‘all are equal under the law’ is examined regarding the colonial imposition of settler-colonist law on Indigenous Peoples. Further analysis of the extent to which Indigenous Customary Laws speak to systematic violence is also considered. The existence of Indigenous Customary Laws alongside Anglo-American-Liberian and Anglo-Australian Law in Indigenous communities constitutes a pluralistic legal system. Whether that pluralism can coexist with the rule of law is also scrutinised. Unfortunately, in addition to the challenges of constitutional exclusion, subjugation of Indigenous Customary Laws, and conflicts between Anglo and Traditional Law, both the traditional and the Anglo-American-Liberian/Australian legal and political systems are shown to be patriarchal. Women and particularly Indigenous women are still underrepresented in Liberian and Australian political and legal spheres. However, in the absence of domestic law,

the chapter concludes that other international law instruments may help restore justice to Indigenous survivors of systematic gender violence.

Chapter 5 is a reflective piece acknowledging the researcher's experience and bias as a survivor of violence and a person in search of her Indigenous identity. Still struggling for acceptance and healing from past trauma, the researcher battles with the question, '[w]hose responsibility is it to define my identity or legitimise my claim to conduct research on such a sensitive topic in Indigenous communities?' Before the researcher enters the field, this chapter provides a space to contest the challenges of conducting research as both an insider and an outsider. As a woman, an Indigenous Liberian, and a gender violence survivor, I approach this chapter not only to establish the dissertation as an academic endeavour, but also as my 'speak-out' moment.

Chapter 6 outlines the research method and design. A complex system methodology that combines empirical, statistical and textual data as a nexus between systematic gender violence and the rule of law informs the approach. Additionally, the conceptual framework draws on community-based participatory methods, phenomenology, Indigenous decolonising and feminist legal theories to conduct a mixed methods research study. The outcome is a research that is based on a mixed method design. Qualitative data was collected by analysing selected case studies and case law, semi-structured interviews with Indigenous Women Advocates, and an informal email exchange with male colleagues and acquaintances. Quantitative data was gathered through secondary data on socio-economic status, crime, and other risk factors from various government institutions. Also, a survey was designed, piloted, and conducted with service providers in Liberia and Australia. The findings from these data collection efforts are reported in chapter 7.

Chapter 7 reports the findings and the results of the study. This chapter achieves the three research objectives. Historical secondary data, surveys and interviews are employed to examine the incidence and prevalence of systematic gender violence. The data substantiate whether or not the rule of law is efficacious in restoring justice to Indigenous girl and women survivors of systematic violence. Court and criminal data highlight difficulties in using the law as a tool for restorative justice. Responses from survey participants suggest that changes in men's attitudes towards women are necessary to address gender violence satisfactorily. Interview results show that even though Indigenous Women Advocates are resilient survivors of systematic gender violence who speak out clearly on the issue, male leadership is paramount in preventing violence against girls and women. *Ad hoc* responses from a select few men *via* email reaffirms that the law is not the primary avenue for restoring justice to female survivors of gender violence.

Chapter 8 analyses the major themes, concerns and issues emanating from research participant responses, with greater emphasis placed on Indigenous Women Advocate responses. Grounded in 'asking the Indigenous woman question', issues discussed here range from the

pervasive nature of gender violence against Indigenous girls and women, to culturally held myths and stereotypes that sustain persistent gender violence, to access to justice concerns in Indigenous communities, to challenges associated with addressing gender justice, and the application of a restorative justice paradigm. Research participants corroborate the pervasive nature of gender violence against Indigenous girls and women in Australia and Liberia at the state/institutional, structural/cultural and community/interpersonal levels. Whether gender violence stems from intergenerational trauma caused by racist or patriarchal colonial history or from harmful traditional practices, Indigenous Women Advocates and service providers recognise and address various aspects of it in their work. However, they also lament ineffective law and policy, hampered by racism, patriarchy, stigma, corruption, and underrepresentation of Indigenous women in the political and legal life of the nation. Ultimately, a lack of access to the legal system and social services continues to preclude justice for Indigenous girl and women survivors of systematic gender violence. However, several opportunities for positive change are highlighted by Indigenous Women Advocates, including engaging with Indigenous males to champion the cause of gender justice and incorporating the benefits of restorative justice programs. More Indigenous Women Advocates recommendations are discussed later in chapter 9.

Chapter 9 summarises the dissertation and emphasises research participants' recommendations for combating systematic gender violence against Indigenous girls and women. The research findings affirm that violence against Indigenous girls and women in post-war Liberia and Australia is a chronic social ill that is rooted in colonisation, an inefficient male-centred legal system, corruption, systemic racism, a lack of social services, negative cultural and social stereotypes held against females, mental health illness and alcohol abuse. Although the law offers some hope, it is not the only recourse in attempts to achieve justice, fairness and equality. In spite of grave challenges, Indigenous girls and women have persisted in their resolve to do whatever is possible to curb systematic gender violence. However, they are not alone in their advocacy. Thus, rather than being exclusive, vindictive and retributive, law and society could exploit a window of opportunity with Indigenous healing through restorative justice tenets. There is also a chance to support and promote Indigenous males to champion the cause of preventing systematic gender violence.

9.1 Dissertation Summary

Although the law is perceived as the panacea for justice, findings from this research show that the usefulness of the principles of the rule of law in achieving justice for Aboriginal girl and women survivors of violence is limited by challenges. As long as settler-colonist law continues to play 'catch-up' to Indigenous norms and issues, justice achieved by legal means will be elusive. The diverse contexts in which systematic gender violence against Indigenous children

and women in Liberia and Australia take place demand public responsibility,¹⁶³² with primary onus on the State. In spite of the fact that this research does not attempt to reach general conclusions based on the limited data collected, those who care about this issue would do well to consider several factors when interpreting the findings:

1. Conducting research on systematic violence against girls and women is challenging, ethically, historically, empirically, and personally.
2. Violence against women is not confined to Indigenous girls and women in Australia and Liberia. It is a universal problem irrespective of whether a country is advanced and Western or underdeveloped and resource-poor. In any context, the impact of violence against Indigenous girls and women is exacerbated by colonisation, patriarchy, systematic racism, and the intersections of race, gender, class, and social status (vis-à-vis the social determinants of health).
3. Violence against women is often perceived as interpersonal/community violence with a focus on sexual assault and domestic/family violence. This research shows that institutional/state and cultural/structural violence are also major spokes in the wheel of interpersonal/community violence.
4. The legal system is officially perceived as an indispensable mechanism for restoring justice to survivors of violence. Many also regard Indigenous Customary Laws as harmful and “useless” as it pertains to violent crimes. In actuality, neither the principle of the rule of law nor traditional customs is an effective mechanisms of justice for Indigenous girls and women survivors of systematic violence. Justice (or the lack thereof) usually depends on one’s gender, race, class, socio-economic status, ethnic identity, or political clout.

Space and time do not allow for individual representation of the numerous recommendations put forward by research participants. Five collective recommendations are presented below.

9.2 Recommendations

9.2.1 Further Research: Expansion of the Complex System Approach

The complex methodological design used in this study, which entails the triangulation of varied data sources grounded in a multi-theory conceptual framework, is apt for addressing inherent challenges associated with researching systematic violence against Indigenous girls and women. A combination of qualitative, quantitative, textual, and empirical information obtained from informal, physical, electronic, historical and observational sources made it possible to reach hard-to-access target populations and corroborate patchy records. In addition to the Commission on the Status of Women’s broad definition of violence against women discussed in chapter 1, Rashida Manjoo emphasises the importance to employing diverse research methods to assess violence against women at the Fifty-eighth Session of the Status of Women in New York on 11 March 2004:

for a State to ascertain what constitutes effective fulfilment of its obligations, it is imperative for States to create an assessment framework which includes two categories: individual due diligence which States owe to individual victims of violence; and systemic due diligence which requires States to create a functioning system to eliminate violence against women. This dual assessment will allow for a more comprehensive and in-depth assessment by a State of its actions or inactions to address violence against women. Furthermore, I argue that due diligence also requires States to hold accountable

¹⁶³² Raquel Aldunate, ‘Sexual assault: A public responsibility’ in *Proceedings of a Conference held 27-29 October 1992* (1993) vol. 20 166–170.

those [States, Institutions and Individuals] who fail to protect and prevent; as well as those who perpetrate violations of human rights of women.¹⁶³³

As complex system methodology helps unravel the intricacies of violence against women it is an important strategy for legitimising the voices of girls and women in reforming law, policy and attitudes.

9.2.2 International Collective against Violence

International organizations have identified violence against women as a critical problem to solve, but more work needs to be done. On paper, all major human rights treaties since 1945 recognise women's rights as equal to those of men before the law. However, it was not until the 1990s that violence against women became a pressing concern. The adoption of the *United Nations Declaration on the Elimination of Violence against Women* in 1993 brought the appointment of the first Rapporteur on Violence against Women. The following year saw the International Conference on Population and Development in Cairo, which pledged, 'Women's rights are human rights'.¹⁶³⁴ Then the Beijing World Conference in 1995 placed 'violence against women squarely on the women's rights agenda, identifying it as one of twelve priority areas of concern'.¹⁶³⁵ Twenty years have elapsed, yet the World Economic Forum estimates that it will take at least 79 years to achieve women's equality in the workplace, alone.¹⁶³⁶ However, it is also critical to consider violence against Indigenous women specifically.

This research illuminates commonalities between the experiences of violence against Indigenous women and girls in diverse economic and cultural settings, which suggests that common interventions and support mechanisms could be implemented. One survey respondent exclaimed, '[e]ven though Aboriginal women are more than five times more likely to experience DV [domestic violence] or family abuse than other women in Australia, ALL WOMEN IN AUSTRALIA AND THE WORLD EXPERIENCE GENDER VIOLENCE. It does not matter what race/nationality they may be'. Findings from this research corroborate the above statement. Even though the world is enamoured of dichotomous divisions such as 'poor versus rich', 'white versus black', 'advanced versus underdeveloped', 'Western versus the rest', 'Global North versus Global South', 'Christian versus unbelievers', and 'civilised versus primitive', the idea of exploring an issue (i.e., systematic gender violence against Indigenous girls and women) that Australia and post-war Liberia have in common is not intuitive. However, both countries were violently colonised by settlers, nation building did (and is still does) overtly exclude Indigenous or rural dwellers from politico-legal leadership, and ongoing systematic

¹⁶³³ Rashida Manjoo, *United Nations Human Rights Office of the High Commissioner* (11 March 2014) United Nations Human Rights

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14448&LangID=E>>.

¹⁶³⁴ See UNFPA website, "International Conference on Population and Development" available at <<http://www.unfpa.org/icpd>>.

¹⁶³⁵ Edwards, above n 641, 9.

¹⁶³⁶ Saadia Zahidi, *2015: The Year of Gender Equality in the Workplace, Maybe* (28 October 2015) 2015: The Year of Gender Equality in the Workplace, Maybe | World Economic Forum <<https://www.weforum.org/agenda/2014/10/2015-year-gender-equality-work-maybe/>>.

violence against Aboriginal Peoples in both countries is pervasive, dehumanising and destructive. Therefore, rather than inciting divisions based on racism, discrimination and economic wealth, leaders could attain greater benefit from identifying violence as a common issue, in efforts to address the scourge globally.

In both Liberia and Australia, programs and institutions exist that are designed to combat violence against Indigenous women, which could be shared across borders. For example, Australia does not have a Government ministry like Liberia's Ministry of Gender, Children and Social Protection, which is committed to children and women. However, there is a Family and Children's Services office within the Department of Social Services. Unlike in Liberia, where the National Traditional Council (consisting mostly of male chiefs) is given autonomous status in the House of Representatives of Liberia, the Australian government has created no such space for Aboriginal people. In contrast to Liberia, Australia has established more comprehensive public and legal institutions headed mostly by Indigenous men (e.g., The Royal Commissions) to investigate systematic violence against Aboriginal people. In regard to research, Liberia has struggled to establish high-quality public research institutions to support evidence-based reform and intervention. However, Australia is far ahead, with institutions such as Australia's National Research Organisation for Women's Safety, the Australian Institute of Aboriginal and Torres Strait Islander Studies, and the Longitudinal Study of Indigenous Children. However, despite Liberia's lack of public research institutions with a focus on Indigenous populations, the country has the Ministry of Gender, Children and Social Protection's national database on violence against girls and women. No such data set exists in Australia. Although Australia has more law and policy to protect children and women, Liberia has established novel institutions such as the Women and Children Protection Services of the Liberia National Police; the fast-track court (Special Court 'E') to try only gender violence cases; and the Sexual and Gender-Based Violence Crimes Unit to prosecute only sexual crimes against girls and women. However, institutions common to both countries exist, and these provide other opportunities.

Where both countries have some similar institutions, such as a National/Federal Human Rights Commission, best practices could be exchanged. For example, the Australian Human Rights Commission and Social Justice Commissions could be a model to assist Liberia with devising measures that could help make Liberia's Independent National Commission on Human Rights more independent and free of government's influence in implementing the goals of the Truth and Reconciliation Commission. Australia could also seek advice from Liberia in setting up a national Truth and Reconciliation Commission to investigate historical violence against Aboriginal Australians and an Indigenous Council in the House of Commons to participate in political leadership.

9.2.3 *The Law is Not the Only Answer*

The law and legal system are integral to protecting Indigenous girls and women against violence; but the law is not a panacea for curbing systematic violence against Indigenous girls and women. Research participants disagreed about whether the law and legal system are helpful in restoring justice to Indigenous girls and women survivors of systematic violence. In fact, a number of responses associate ‘legal justice’ with persistent patriarchy, corruption, racism, discrimination, high cost, and inaccessibility. *Lara* captured the essence of the law and the legal system’s need to acknowledge its role as a part of a whole social system of respectful collaborative effort:

I think as I work in the legal system it has made me realise that there are other fundamental things that were challenging that I would like to work on addressing. It has helped me get a framework for social justice. But I think I always see the law as a kind of tool for getting social justice. Probably the biggest thing I have learned along the way is that the law is not the only tool for social change. Changing laws (and within cases) is a very small way to make a difference. There are much more broader strategies that make the list as well. [*Lara*, Australia]

Why is the law a ‘very small way to make a difference’? What are the broader strategies *Lara* refers to? Do lawyers and lawmakers recognise and understand the very small difference law can actually make in the lives of women and girls who have suffered violence? Adequate examination of these questions is beyond the scope of this research. However, research participants express deep concerns about any assumption that the law is indispensable, objective or infallible. *Yaa* recognises the challenge faced by legal professionals in working toward those ideals:

Well, I can say, it can be done only if we are committed to what we say we want to do. For example, if you commit to being a lawyer, a counsellor at law, a judge, or an attorney, you took oath x, y, z, so I have to obey the rules strictly. Even though there may be challenges to sway me from obeying my oath, but I won’t because I am pursuing justice. If we are committed to ourselves, we can provide durable change to the legal system. But indeed, if you put yourself first, i.e., “what can I get out of this?” the outcome will be different. [*Yaa*, Liberia]

That said, the law is significant in keeping peace and social order, and it must be reformed if it is to properly address violence against Indigenous women and girls.

Radical reform of the Anglo-American Liberian and Anglo-Australian legal systems is dependent on willingness to incorporate and reconcile Aboriginal healing and restorative justice processes. For example, in Australia, Aboriginal healing circles could be applied throughout the criminal adjudication process instead of limiting offenders them only to circle sentencing. In Liberia, the Palava Hut Forum could engage Indigenous girls and women in a more meaningful way by giving them equal participation. Thankfully, reform programs are ongoing in both Australia and Liberia.

Progress is underway, both in Australia and in Liberia, to address systematic gender violence. For example, acknowledging violence against Indigenous girls and women as ‘one of

the gravest human rights challenges of our time’, Dame Quentin Bryce launched a \$3.5 million research program run by Australia’s National Research Organisation on Women’s Safety.¹⁶³⁷ Also, a model intervention program called Justice Reinvestment,¹⁶³⁸ ‘whereby taxpayer funds are reinvested into the community instead of being spent on imprisoning people for low-level criminal activity’,¹⁶³⁹ could be extrapolated to help prevent violence against Indigenous girls and women. With support from the United Nations Development Program, Liberia is embarking on a complete constitutional overhaul. A two-year national public consultative process with 73 constituents in all 15 counties and the Diaspora generated 52 308 suggestions.¹⁶⁴⁰ Of the top 25 suggestions selected, the following eight are relevant in preventing violence against girls and women:

- 1) Traditional people should own their land and be a party to any negotiation with investors or concessionaires on said lands
- 2) The Constitution should ensure women’s participation in governance and national affairs
- 3) The Constitution and all legal documents should carry the pronouns ‘he/she’
- 4) Age of marriage for girls should be at least 18 years
- 5) Women should have access to equal economic and social opportunities
- 6) The Constitution should guarantee inheritance rights for traditional women
- 7) People in prolonged co-habitation should enjoy marital rights and
- 8) Customary laws should be made constitutional

9.2.4 Educating Girls is a Necessity

The value of education to women and girls in preventing abuse and violence cannot be overemphasised. Many studies have shown a strong correlation between higher educational attainment and reduction in risk of violence for girls (*see* chapters 2 and 8). This fact is reiterated throughout the research, especially in responses from Indigenous Women Advocates. The key concern here is how the state, society and individuals collectively use formal and informal education as a forum to interrogate pervasive, engrained and entrenched roots of gender violence. Here are a select few examples of the recommendations put forward by research participants:

Students are the custodians of society. Teachers must teach those messages of violence against women. In the homes, parents should take the responsibility to get deeply involved with their children’s education otherwise international organisation will spend millions with no end results. [*Survey Participant, Liberia*]

Understanding the First Australians’ (Aboriginal Peoples’) history. A whole understanding of our history and ongoing issues is required to be taught in schools.

¹⁶³⁷ Staff Reporter, ‘\$3.5m Study into Violence against Women’ *The Australian* (Canberra, ACT), 31 October 2014 <<http://www.theaustralian.com.au/news/latest-news/m-study-into-violence-against-women/story-fn3dxiwe-1227108578765>>.

¹⁶³⁸ Staff Reporter, ‘Milestone for Justice Research’ *Cowra Guardian* (Cowra, NSW), 8 January 2016 <<http://readnow.isentia.com/Temp/84653/522241051.pdf>>.

¹⁶³⁹ Jill Guthrie, *Reducing Incarceration Using Justice Reinvestment: An Exploratory Case Study* (2016) National Centre for Indigenous Studies <<http://ncis.anu.edu.au/cowra/>>; Paul Simpson et al, ‘Views on Alternatives to Imprisonment: A Citizens Jury Approach’ (Private Document, Lowitja Institute, 2014) 48, 3 <<https://www.lowitja.org.au/lowitja-publishing/L031>>; Paul Simpson et al, ‘Assessing the Public’s Views on Prison and Prison Alternatives: Findings from Public Deliberation Research in Three Australia Cities’ (2015) 11(2) *Journal of Public Deliberation* 1.

¹⁶⁴⁰ Aukot, Pshorr and Zota, above n 1060.

Education having a responsibility too, as in providing the correct history and having understanding of family violence, as some children are labelled as “naughty” and things may be happening for this child at home. [*Survey Participant, Australia*]

The schools are critical in recognising an at-risk child. Supporting our kids in school and their families by not judging how they might be living. Give support when it is needed not when it's too late because Family and Children Services are involved. Include more education about what violence is in the curriculum. [*Jaky, Australia*].

The school moulds minds of people, especially in the vocational area. Most students end their education at the vocational level. We believe that we should teach them the right thing. They are going into the society to make a change. It's the expectation of the society that students should make positive change about their environment. Some go back to their village and others do not. Not everyone is successful in life. [*Tracy, Liberia*]

Firstly, in reducing gender-based violence, the school, which is the place of education and morals, can tell the students to behave well at home and in the society. The children can take this back to their parents too. The school can also have awareness and education program on violence against women. We are no longer living in the archaic age. So, if we are claiming to be civilised, then we should be ready to educate people about dealing with these issues. Educating students about their Constitutional rights, and teaching girls so that they can pass on the info to the community and homes. [*Klade, Liberia*]

9.2.5 Engaging Men and Boys

As survivors of violence, girls and women often bear the brunt of addressing its continuation. By the same token, this study shows that boys and men appear prepared to share the responsibility of speaking out against gender violence. Since reducing paternalism and patriarchy is at the core of feminist movements, a process to support and promote males in efforts to combat systematic violence against all girls and women would be a natural next step.

9.3 Conclusion

Is the rule of law an essential axiom for restoring justice to Indigenous girls and women survivors of systematic gender violence in Australia and Liberia? Unfortunately, the answer is currently ‘no’. The foreign legal systems imported by settler-colonists to Indigenous communities have not evolved to provide equal access to legal aid, equal standing before courts, or equal treatment by law enforcement. Also, in many situations the law has been, and continues to be, a mechanism used to inflict state/institutional violence upon Indigenous women and girls. The ways in which Indigenous women and girls are affected by the legal system, positively or negatively, depends on several factors, including the intersection of gender, race, sex, indigeneity, location, political affiliation, social class, socio-economic status, and political and legal representation. The complexity of these intersections means that there is also a need to continue examining the efficacy of the rule of law principle regarding access to justice for Indigenous girls and women survivors of gender violence using a complex systematic research method and design. That research should contribute to a global language in law and social justice that represents Indigenous women’s experiences, and rejects the idea that violence is a

normal behaviour occurring only in a particular culture or community. Researchers, legal professionals and policy-makers must emphasise developing strategies to educate girls and women while actively engaging boys and men in advocacy against violence against women, generally, and Indigenous women, particularly. Words of research participants provide an excellent conclusion: '[t]here is no one-size-fits-all approach...the response needs to be flexible, responsive and informed by the community's needs'.

APPENDICES

AI: Interview Questionnaire

Pseudonym:

ID: (leave blank)

PART I: GENERAL WORK EXPERIENCE WITH INDIGENOUS/ABORIGINAL GIRLS AND WOMEN

I would like to get a sense of your past work experience with Indigenous/Aboriginal girls and women in general.

How would you describe the work you do?

Have you ever worked with Indigenous/Aboriginal girls and women?

- In what capacity?
- For how long?
- Where was it?
- The nature of the work?

Looking back now, how would you assess your experience with that job? Was it a good or challenging?

PART II: SPECIFIC WORK EXPERIENCE WITH INDIGENOUS GIRLS AND WOMEN WHO HAVE EXPERIENCED GENDER VIOLENCE

Now I want to focus on your current work in relation to gender violence against Indigenous/Aboriginal girls and women.

Do you work with Indigenous/Aboriginal girls and women who have experienced gender violence?

Can you tell me more about the work that you do on gender violence against Indigenous/Aboriginal girls and women? For example,

- The kinds of clients you serve
- The types of violence reported
- The type of treatment, care or assistance provided
- Whether males are included?
- What is the nature of their visit?

PART III: ACCESS TO CARE AND SERVICES

Now I would like to explore the accessibility of services provided to your clients.

How accessible are the services provided to clients? Are clients able to reach care or assistance easily and quickly? Can you elaborate?

What locality are services provided in? Can anyone from anywhere access the service?

By what means are clients able to obtain services (phone, email, fax, referral etc.)?

Are there other services like yours around? How many?

If referrals are made for care, where do they come from? List as many sources (hospital, clinics, legal aid, police station, prison etc.,)

PART IV: ACCESS TO LEGAL SERVICE

You may not be familiar with the legal services provided. However, based on your interaction with your clients and the kinds of services you provide I would like to understand whether the legal system is involved in any way.

For the clients that present for care, are you in the position to suggest any form of legal assistance? Can you explain? If 'no' why not?

For the clients that present for care, are you able to predict whether they are interested in reporting the experience to the police? If 'yes', are you able to assist them with the process of filing a complaint? If 'no', are there other avenues of legal support that is provided?

PART V: JUSTICE AND THE ROLE OF [CUSTOMARY/TRADITIONAL] LAW AND THE COMMUNITY

This section explores your view on the role of the justice system and community in addressing gender violence against Indigenous/Aboriginal girls and women.

What is your understanding of the role of law in gender violence?

How does the law or legal system relate to the advocacy work that you do?

Are you aware of any particular law/policy that are used to protect Indigenous/Aboriginal girls/women? Can you name some?

How has the legal system impacted on Indigenous/Aboriginal girls/women who have experienced gender violence? Can you explain further?

What is the role of the legal system in restoring justice to Indigenous/Aboriginal girls and women who have experienced gender violence?

What is your understanding of Customary/Traditional Laws in Liberia/Australia?

What is the place do customary law have in restoring justice to Indigenous/Aboriginal girls and women who have experienced gender violence?

What do you think can be done legally to protect Indigenous/Aboriginal girls and women from violence?

What specific change(s) would you like to see in addressing gender violence against Indigenous/Aboriginal girls and women?

Any comments, suggestions or questions regarding the law or legal system or traditions as it relates gender violence against Indigenous/Aboriginal girls and women?

Is there any question you would have liked for me to ask?

Do you know someone you think might be interested in completing this survey? If yes, could you kindly pass on the information sheet to them to contact me if they are interested?

PART VI: BACKGROUND/DEMOGRAPH

We are almost done. Just before we close, can I ask you few basic demographic questions so that I get a good sense of the spread or mix of participants?

Which year were you born? What is your relationship status (married, single, common law, single, partner)? What is your highest level of education? You identify with any particular Indigenous group? Which one? You identify with any particular religion? Which one?

What is your current employment status?

Thank you very much for your time

If you know someone who might be interested in this research could you please pass on the information she

AII: Paper/Online Survey Questions

Date:

ID:

DEFINITIONS

By “**Indigenous**” I mean native Liberians who identify as the original inhabitants before the arrival of the freed-slaves from America.

The “**law**” includes criminal, civil, family, sentencing, dispute resolution, child protection and unreported cases.

By “**Just Law/Legal System**” I simply mean that both Indigenous and non-Indigenous Liberians are treated equally before and/or under the law.

“**Gender Violence**” includes state violence (e.g., forced adoption, land dispossession, forced wage, etc.); institutional violence (e.g., Industrial use of native lands e.g., Firestone, Bong Mines, LAMCO, Sime Darby Oil Palm project, environmental and mining affects, etc.); structural (e.g., political, economical, educational, health/medical, arrangements) and private abuse (e.g., domestic violence, physical, psychological, sexual, etc.).

By “**Service providers**” I mean individuals who currently work with/on the issues of gender violence and the law/legal system in relation to Indigenous women and girls in Liberia (e.g., advocates, volunteers, researchers, community leaders, religious leaders, healthcare practitioners, counselors, teachers, lawyers, judges, police officers, prison staffs, etc.).

By “**Customary/Traditional Indigenous Law**” I mean traditional or customary practices unique to Indigenous cultures and independent of Anglo-Liberian legal system.

By “**Local Community**” I mean school, work, residential, educational, health, legal context in which the issues and concerns of gender violence is discussed, presented and experienced.

This section contains background questions to determine which sections of this survey are relevant to your particular circumstances.

1. Are you 18 years old and above? Yes No
2. Are you living in Liberia/Australia? Yes No
3. Do you provide service(s) to Indigenous/Aboriginal girls/women on issues relating to gender violence and/or the legal system? Yes No

PART I: GENDER VIOLENCE AGAINST INDIGENOUS/ABORIGINAL GIRLS AND WOMEN

This section contains some questions about your work with Indigenous/Aboriginal girls and women in relation to gender violence.

4. Have you worked with Indigenous girls and women in Liberia/Australia who have experienced gender violence? Yes No

If “Yes” proceed to question 5

If “No” proceed to question 14

5. Can you briefly describe the nature of the specific work you do in relation to gender violence against Indigenous women and girls in Liberia/Australia?

Filter Question

6. Does the specific work you do in relations to gender violence against Indigenous girls and women involve any aspect of the Liberian/Australian legal system? Yes No *If “Yes” proceed to question 7 If “No” proceed to question 14*

7. Can you describe how this work is involved with the legal system?

Filter Question

8. In your view, has the law been helpful in the specific work that you do with Indigenous/Aboriginal girls and women who have? Yes No

If “Yes” proceed to question 9

If “No” proceed to question 10

9. Can you briefly describe with examples how the law has been helpful in the specific work that you do in relations to gender violence against Indigenous/Aboriginal girls and women? (*For privacy, please do NOT state any personal information.*)

10. Can you briefly offer some examples of how the law has been unhelpful in the specific work that you do in relation to gender violence against Indigenous/Aboriginal girls and women? (*For privacy, please do NOT state any personal information.*)

Filter Question

11. In your view, has the Liberia/Australia legal system been “just” towards Indigenous women and girls who have experienced gender violence? Yes No *If “Yes” proceed to question 12 If “No” proceed to question 13*

12. Why do you think the law has been “just” in relation to gender violence against Indigenous/Aboriginal girls and women? Give examples. (*For privacy, please do NOT state any personal information.*)

13. Why do you think the law has been unjust in relations to gender violence against Indigenous/Aboriginal girls and women? Give examples. (*For privacy, please do NOT state any personal information.*)

PART III: GENERAL VIEWS

This section contains some general questions about the Liberian legal system in relation to Indigenous women and girls in Liberia/Australia.

14. Can you briefly describe the nature of the work you do in relation to Indigenous girls and women in Liberia/Australia?

15. How do you see the role of the Liberian/Australian legal system in protecting Indigenous/Aboriginal girls and women who have experienced gender violence? Explain.

16. How would you improve the law in protecting Indigenous/Aboriginal children and women who have experienced gender violence in Liberia/Australia?

17. Do you think “customary (i.e., traditional) Indigenous/Aboriginal law” has a role to play in addressing gender violence against Indigenous/Aboriginal girls and women in Liberia/Australia? Yes No If “Yes” proceed to question 18 If “No” proceed to question 19

18. What is that role?

19. How would you improve the “customary/traditional Indigenous/Aboriginal” law in protecting Indigenous/Aboriginal children and women who have experienced gender violence in Liberia/Australia?

20. Do you think the “local community” has a role to play in addressing gender violence against Indigenous women/Aboriginal girls and women in Liberia/Australia? Yes No If “Yes” proceed to question 21 If “No” proceed to question 22

21. What is that role?

22. How do we change attitudes (e.g., in the home, school, church, community, workplace, etc.) toward gender violence against Indigenous/Aboriginal girls and women?

23. What changes would you like to see (e.g., in the home, school, church, community, workplace) in relation to gender violence against Indigenous/Aboriginal girls and women?

PART IV: COMMENTS AND DISTRIBUTION

24. Is there anything important that you want to tell me on the topic of gender violence and Indigenous/Aboriginal girls and women that may not have covered in the survey?

25. Is there a question you would have wanted me to ask about gender violence against Indigenous children and women in Liberia/Australia?

PART VI: SIMPLE DEMOGRAPHICS

Finally, this section asks some questions about you to make sure that a good cross-section of people has participated in this survey.

26. What is your sex? Transgender Male Female

27. What is your age range? 18 – 25 years 26 – 35 years 36 – 45 years 46 – 55 years 55+ years

28. What is your religious affiliation? Christian Muslim African Traditional Religion Other: _____

29. What institution, organization or community do you work with?

30. What is your institutional position or community role?

31. Where are you located? State/Territory/County: _____ City/Town/Community: -

32. How would you describe your profession or expertise?

- | | |
|--|--|
| <input type="checkbox"/> Lawyer | <input type="checkbox"/> Counselor |
| <input type="checkbox"/> Judge | <input type="checkbox"/> Teacher Advocate |
| <input type="checkbox"/> Law enforcement officer | <input type="checkbox"/> Traditional elder |
| <input type="checkbox"/> Community leader | <input type="checkbox"/> Community head |
| <input type="checkbox"/> Researcher | <input type="checkbox"/> Religious leader |
| <input type="checkbox"/> Prison staff | Other: _____ |
| <input type="checkbox"/> Healthcare provider | |

33. How long have you been working in this profession or area of expertise? 0-5 years 6-10 years 11-20 years 20+ years

34. In what capacity have you worked with Indigenous/Aboriginal peoples in Liberia/Australia (tick all that apply)

- Health and Wellness
- Education
- Land Claims
- Legal/Paralegal
- Policy
- Employment
- Arts and Culture
- Research and Development
- Housing
- Other: _____

THANK-YOU

If you know of someone who might be interested in completing this survey, could you please pass on the information sheet?

AIII: Summary of Research Models, Design, Question and Description

Design	Model/Theory	Description/ Strategy	~# Before Fieldwork	# After Fieldwork	Target Research Question
Qualitative	Community-based participatory research	Informal discussions and interviews with Indigenous women advocates	60	29	--To examine the extent to which Indigenous women advocates working in the areas of violence against women perceive the law as just or unjust against Indigenous
	Phenomenology	Indigenous women advocates	N/A	N/A	--To identify and assess the type, and severity of gender violence in Australia and Liberia
	Decolonising Indigenous Legal Feminism	Textual analysis of case studies, case law and reports			
Quantitative	Cross-section retrospective perspective of secondary data		N/A	N/A	--To identify and assess the type, severity, prevalence and incidence rates of gender violence in Australia and Liberia
	Cross-sectional retrospective perspective online survey	Statistical data analysis	400-500	231	--To assess the extent which service providers working in the areas of violence against women perceive the law as just or unjust against Indigenous women and girls

AIV: Historical Timeline (Liberia and Australia)

Australia	Date	Date	Liberia
Rock engravings in South Australia suggest evidence of land inhabitancy. Aboriginal society (now called Aboriginal and Torres Strait Islander) governed by customary laws handed down by their creative ancestral beings.	45,000 – 60,000 ya	2.8-5 million ya	The Afar, a part of East Africa Rift Valley, has produced plenty of hominins remains, including the first <i>Australopithecus afarensis</i> (nickname Lucy) pointing towards the fact that “Africa is the cradle of life”
Dutch explorers record the journeys of Macassan Trepangers (i.e., Indigenous traders from Indonesia) to northern Australia.	1451-1906	570-470 BC	Supposition that there was a definite but highly probable account of an actual landing on the Liberian Coast.
The Governor-General of the Dutch East Indies, Anthony Van Diemen, orders Abel Tasman to seek and map New Holland. Abel Tasman misses Australia but lands on the island and names it Van Diemen’s Land, a name which British settlers will use for 70 years before changing it to Tasmania.	1642	800-1100 AD	Rise of the great West African empires— Ghana, Mali, and Songhai
Scottish author John Callender publishes <i>Terra Australis Incognita</i> , and urges the British to explore the ‘unknown continent’. James Cook, a Yorkshire villager, apprentice grocer is appointed to command <i>HM Bark Endeavour</i> to observe the transit of Venus at Tahiti, and then to search for the ‘Great South Land’.	1768	1441	Start of European slave trading in Africa initiated by the capture of 12 Africans in Cabo Branco (modern Mauritania) by Portuguese captains Antão Gonçalves and Nuno Tristão. The captured Africans were taken to Portugal as slaves.
On 20 April 1770, Captain James Cook makes the first European sighting of eastern coast for Australia. On 29 April, the Endeavour enters Botany Bay. Cook wrote in his diary, ‘all they seem’d to want was us to be gone’. He then charts the Eastern coast all the way to the north tip of Cape York, claims it for England and calls it New South Wales.	1770	1562	Britain begins slave trade in Africa with increase in plantation development in Brazil. Other countries involve in trading of slaves in Africa included, Spain, North America, Holland, France, Sweden and Denmark.
On 3 March 1779, Joseph Banks, a botanist on Cook’s 1770 voyage, strongly suggest to an English Parliamentary Committee the founding a convict penal settlement at Botany Bay.	1779	1651	Cash Crop Plantations and the Slave Plantations established in America.
Britain announces in Parliament that the settlement shall be made at NSW, King George III declares a plan to transport convicts to Botany Bay to relieve the ‘crowded goals’. European settlement of Australia commenced. When colonising Australia, the British Government used the term <i>Terra Nullius</i> (meaning land of no-one) to justify the dispossession of Indigenous Peoples.	1786	1775-1783	The American Revolutionary War or the American War of Independence resulted from constitutional resistance of Americans to taxes imposed by the British parliament in the 1760s, which they claim were ‘taxation without representation’.
Arrival of the First Fleet at Botany Bay (then Sydney Cove) with 1480 on board including 742 (543 men and 189 women) convicts, under Governor Arthur Phillip. At the onset of British settlement in Australia, there were clashes between Aboriginal people and the settlers over the next 10 years in the Parramatta and Hawkesbury areas.	1788	1800	Gabriel Prosser’s rebellion enlisted more than 1 000 slaves and plotted the first large-scale slaves revolt in the United States. On the day of the revolt, the bridges leading to Richmond are destroyed in a flood, and Prosser is betrayed. The state militia attacks, and Prosser and 35 of his men are hanged.
Smallpox epidemic spreading down from the northern coast, wipes out about half of the Indigenous populations around the Sydney settlement area.	1789	1804	Creation of the Black Republic of Haiti, after slave uprising led by Toussant l’Ouverture between 1743 and 1803, where over 55 000 blacks’ waged guerrilla and frontal war against the British.
After a 12-year war, Pemylwuy, Eora resistant fighter is shot and killed by two settlers. His head is preserved and sent to Sir Joseph Banks in London by Governor King. King writes: ‘although a terrible pest to the colony, he was a brave and independent character’ Tedbury, Pemylwuy’s son, continues the resistance for the next eight years.	1802	1807	Britain banned the further conduct in British ships of slave trade that an earlier Britain had done so much to extend and profit from (Basil Davidson Black man’s burden.
In Van Diemen’s Land, bushrangers become more hostile, their rage exacerbates conflict between Aborigines and Whites.	1812-1819	1811	On 1 March 1811, Paul Cuffe, a wealthy Quaker businessman of Aquinnah Wampanoag and West African Ashanti descent, arrived in Sierra Leone to investigate the social and economic conditions of the region in support of colonising Africans as a viable option for resettling freed black slaves on the

			continent.
In an attempt to foster better understanding between whites and blacks, Governor Macquarie begins an annual meeting with Indigenous Australians and tribal heads, distributing gifts at Christmas time from Parramatta. Simultaneously, he opens a school for Aboriginal children at Parramatta called the "Native Institution".	1814	1816	Between 4 and 21 December, white upper-class males including, James Monroe, Bushrod Washington, Andrew Jackson, Francis Scott Key (author of the Star Spangled Banner), Elijah Caldwell (Clerk of the US Supreme Court), Robert Finley (a Presbyterian Minister and former president of the University of Georgia), Samuel Mills, and Daniel Webster and several others, met at Capitol Building/David hotel (respectively) in Washington D.C., with Henry Clay presiding over the meeting to found the American Colonisation Society or 'The Society of the Colonization of Free People of Color of America' - a solution to the problem of free blacks in America. Congress released \$100 000 in 1819 and by January 1820, the first ship; the Elizabeth sailed from New York to West Africa with three white ACS agents.
Macquarie decides the Indigenous are behaving ungratefully and hostile. He organizes a military drive to teach them a lesson.	1816	1819	On 3 March, the United States Congress passed an act authorising President James Monroe to return any recaptured Africans to that Continent.
First superior court of the Colony of New South Wales (Supreme Court of Civil Judicature) established by letters patent.	1823	1821	The American Colonization Society sent the first group of former slaves to Africa – 88 passengers, including three white agents along with Charles McCarthy, Governor of the Colony. Aided by John Kizzell, an influential African trader who had been to the United States, the crew docked on Sherbro Island, West Coast of Africa.
Martial law is declared in Bathurst, when several Europeans are killed by Aboriginal people and conflict with Aborigines is seen as a serious threat to white settlement.	1824	1822	A freed man, Denmark Vesay, who had won a lottery to purchase his emancipation, plans a massive slave rebellion involving thousands of slaves on surrounding plantations. Organized into cells, slaves started fire at night, and then kill the slave owners and their families. Vesey was later betrayed and hanged, but the cell structure prevented officials from identifying other leaders of the revolt. On 25 April, the survivors of Sherbro Island arrived at Cape Mesurado and began to build their settlement, which would later become Liberia. The Battle of Crown Hill ensued when the colony comes under attack from some 500 members of two indigenous groups. This is among the first in a series of armed clashes between the native population and the colonists in early Liberia, indicative of the conflict of intentions and culture that marked the early, uneasy relationship between the former slaves and Indigenous Liberians. Jehudi Ashmun becomes fourth Governor the colony of Liberia as an ACS agent and representative for the US.
British sovereignty extended to cover the whole of Australia – everyone born in Australia, including Aborigines and Torres Strait Islanders, became a British subject by birth. Captain Fremantle hoisted the Union Jack flag claiming New South Wales territory for Britain.	1829	1824	On 20 February, the American Colonization Society names the colony Liberia, for liberty, and the capital Monrovia, after U.S. president James Monroe.
Van Diemen's Land Black Line – failed attempt to head the remaining free Indigenous Tasmanian on Flinders Island without success. Later, the community is moved to Cape Barren Island. Truganini, probably the best known Tasmanian Aboriginal women of the colonial era, spent 20 years imprisoned, with other Aboriginal Tasmanians, on Flinders Island, and another 17 years in the Oyster Cove camp, south of Hobart. By the time she was 17 she had lost her mother, sister, uncle and would-be partner to violent incidents involving	1830	1831	Nat Turner plans a slave revolt in Southampton County, Virginia, the only effective, sustained slave rebellion in the history of the United States. Sixty whites are killed before Turner and his followers are captured and hanged.

sailors, sealers, soldiers and wood cutters. Despite witnessing the most horrific crimes against humanity, Truganini believed the only way to fight against white invaders was to learn their ways in order to gain empathy.			
In Western Australia, Governor Stirling leads 25 mounted police against the Aboriginal people. Conflicting records exist regarding the number of people killed during the Battle of Pinjarra. George Augustus Robinson travels around Van Diemen's Land persuading Aborigines to come into captivity, promising them a place where they could be fed and clothed, and live unmolested by the settlers.	1834	1833	Slavery Abolition Act: An Act of the Parliament of the United Kingdom Abolishing Slavery throughout the British Empire with exceptions to the Territories in the Possession of the East Indian Company, the Island of Ceylon and the Island of Saint Helena.
Governor Bourke of New South Wales introduces annual squatting license fees to regulate land use, and to try and stop squatters from killing Indigenous Australians.	1836	1836	On 1 January, Thomas Buchanan, cousin of James Buchanan, former President of the United States, arrives in Bassa Cove to serve as the second governor of Liberia. Isaac Wade Ross, Revolutionary war hero, died in Mississippi. His will stipulated that his slaves should be emancipated upon his death, but only if they agreed to go to Liberia. The 1st of almost 200 were finally set free in 1848.
British Select Committee examines the treatment of Indigenous Peoples in all British colonies and recommends that 'Protectors of Aborigines' be appointed in Australia.	1837	1838	All colonies but one join to create the Commonwealth of Liberia and adopt a constitution that limits citizenship to persons of colour. Yet the Commonwealth's first governor, appointed by the American Colonization Society, is white: Thomas Buchanan, cousin of U.S. President James Buchanan.
Myall Creek Massacre where, settlers' shoot 28 Aboriginal people, mostly women and children. 11 Europeans were charged with murder but are acquitted. A new trial is held, and seven men are charged with the murder of one Aboriginal child. They are found guilty and hanged.	10 Jun 1838	1847	Constitution drafted by Simon Greenleaf and modelled after that of the US. In July 1947 freed men of colour declared independence from the ACS. Joseph Jenkins Roberts, the Virginia (USA) born son of free black slaves becomes the first President of Liberia. During his presidency, the country's first university is established and smuggling of slaves, still an active trade, is suppressed.
First parliamentary elections in Australia (for New South Wales Legislative Council) were held. The right to vote was limited to men with a freehold valued at £200 or a householder paying rent of £20 per year.	1843	1857	On 18 March 1957, after signing an annexation treaty with the Republic of Liberia, the Colony of Maryland is annexed to become part of Liberia. The name Cape Palmas is used in general to cover the entire area of Maryland County.
The Australian colonies become self-governing – all adult (21 years) male British subjects were entitled to vote in South Australia from 1856, in Victoria from 1857, New South Wales from 1858, and Tasmania from 1896. This included Indigenous Peoples, but they were not encouraged to enrol. Queensland gained self-government in 1859 and Western Australia in 1890, but these colonies denied Indigenous Peoples the vote.	1850+	1860	Following various treaties, purchases, and battles with indigenous chiefs, by 1860 Liberia's boundaries are extended to include a 600-mile coastline. Chief Nye Suakoko, the first female Paramount Chief in Western Kpellehland, Liberia (now part of the Republic of Guinea) was a courageous and hospitable woman who believed in oneness. She rose among her male counterparts becoming an indelible diplomat and negotiator between her native people and settlers to Liberia.
<i>Queensland Elections Act</i> excluded all Indigenous Peoples from voting.	1885	1861-1865	The American Civil war. The American Colonization Society became inactive as African Americans gained their freedom. As such, there was no need for them to emigrate.
Western Australian law denied the vote to Indigenous Peoples.	1893	1862	The United States formally recognise Liberia as an Independent sovereign state.
All adult women in South Australia, including Indigenous women, won the right to vote.	1895	1904	Indigenous chiefs meet in the National Legislature for the first time on 7 December. Between 1822 and 1904, some 23 000 former slave emigrants from the US, Caribbean and around African settle in Liberia.
All adult women in South Australia granted the right to seek election in South Australia.	1899	1907	On 7 May 1907, the constitution is amended, changing the presidential term from two years to four.

Commonwealth Constitution became operative – section 41 was interpreted to deny the vote to all Indigenous Peoples, except those on state rolls.	1901	1926	Firestone Tire and Rubber Company created the world’s largest rubber plantation on land granted by the Liberian government. Firestone signed a 99-year concession agreement with the Liberian government purchasing a million acre of land at the cost of six cent per acre.
The first Commonwealth Parliament passed the <i>Commonwealth Franchise Act</i> of 1902, which was progressive for its time in granting the vote to both men and women. It did however; specifically exclude ' <i>any aboriginal native of Australia, Asia, Africa or the Islands of the Pacific, except New Zealand</i> ' from Commonwealth franchise unless already enrolled in a state. The Aboriginal franchise was further reduced in practice by admitting only those Aboriginal people already enrolled in a state in 1902.	1902	1930	League of Nation accused Liberia of slavery (forced labour) on Cocoa plantations in Spanish Colonial Equatorial Guinea.
In 1903, for the first time in the British Empire, Australian women were candidates for election to a national parliament. In all, four women were nominated – three for the Senate and one for the House of Representatives. Vida Goldstein ran for the Senate on three occasions – in 1903, 1910 and 1917. She was also a House of Representatives candidate in 1913 and 1914. However, she was never successful in her bids for election.	1903	1936	Forced-labor practices are abolished.
A bill was introduced into Queensland Parliament allowing non-Aboriginal women to vote.	1905	1945	Liberia is 1 of 50 founding members to sign the UN Charter, thus becoming a member of the UN. Suffrage extended to women through a constitutional amendment.
A leading suffragette, Edith Cowan, was the first woman to be elected to an Australian parliament when she won a seat in the Western Australian Legislative Assembly in 1921.	1921	1946	Suffrage extended to Indigenous Liberians by an “Act to regulate all Elections in the Republic of Liberia”.
Edith Cowan introduced and saw enacted the Women’s Legal Status Act, which enabled women to practice law - a major milestone in the achievement of women's rights.	1923	1951	Reformation party candidate Didwho Twe, an Indigenous Liberian, challenges WVS Tubman of the True Whig Party.
Regulations in the Northern Territory excluded Indigenous Peoples from voting. Officials had the power to decide who was Indigenous.	1922	1952	Tubman begins his second presidential term.
Irene Longman became Queensland’s first female parliamentarian in May 1929. Her career ran for only one year.	1929	1955	The constitution is amended to allow President Tubman to remain in office well beyond the two-term limit.
Professor AP Elkin, the Aborigines Friends Association, and others agitated for better conditions for Indigenous Peoples and their right to vote.	1940s +	1956	Tubman begins his third presidential term.
Nationality and Citizenship Act established that all Australian born people are citizens of Australia rather than British subjects.	1948	1959	Liberia hosts the Sanniquellie Summit to discuss the founding of the Organisation of African Unity (now AU) with President of Guinea, Sekou Toure and President of Ghana, Kwame Nkrumah.
The right to vote in federal elections was extended to Indigenous Peoples who had served in the armed forces or were enrolled to vote in state elections. Indigenous Peoples in Queensland, Western Australia, and the Northern Territory still could not vote in their own state/territory elections. Florence Cardell-Oliver, president of the Western Australian Nationalist Women's Movement, won the State seat of Subiaco in 1936. She was especially concerned about the health of children from low income families, thus the first woman in Australia to attain full cabinet rank when she became Minister for Health in October 1949. Her efforts created the school milk scheme, which ensured that generations of children received a daily quota of free milk.	1949	1960	Tubman begins his fourth presidential term. Ethiopia and Liberia initiate proceedings at the International Criminal Court regarding apartheid in South Africa.
First determination of a female basic wage, when the Commonwealth Arbitration Court set female wage at 75% of the male basic wage.	1950	1964	Tubman begins his fifth presidential term. County status extended to interior provinces (Indigenous Liberians) placing them administratively on equal political footing with the coastal counties (former slave settlements).
Under the <i>Northern Territory Welfare Ordinance</i> , almost all Indigenous Peoples in the	1957	1967	Liberia becomes member of the OAU.

Northern Territory were declared to be "wards of the state" and denied the vote.			
<i>Commonwealth Electoral Act</i> provided that Indigenous Peoples should have the right to enrol and vote at federal elections, including Northern Territory elections, but enrolment was not compulsory. Despite this amendment, it was illegal under Commonwealth legislation to encourage Indigenous Peoples to enroll to vote. Western Australia extended the State vote to Aboriginal people. Voter education for Aborigines began in the Northern Territory. One thousand three hundred and thirty-eight (1 338) Aborigines enrolled to vote in Northern Territory elections.	1962	1968	Tubman begins his sixth term.
Queensland allowed Aborigines to vote in State elections. Queensland was the last State to grant this right.	1965	1979	The Rice Riot – on 14 April 1979, hundreds of civilians protested the increase in the price of rice – Liberia’s staple food.
The bar on employment of married women in the Commonwealth Public Service was abolished in 1966. This restriction meant that married women could only be employed as temporary staff, restricting their promotion opportunities (only permanent staff could be in a supervisory position). Being a temporary employee also restricted the ability of married women to accumulate superannuation and meant that they were the first to be targeted for redundancies when significant downsizing of the Australian Public Service (APS) occurred in the early 1950s. The Boyer Committee first recommended the removal of the bar in 1958, although it took another eight years before these ideas came to fruition. The lifting of the bar marked not only the trigger for greater numbers of women working in the APS but also the evolution of the integration of women’s issues into public policy.	1966	1980	The Coup: on 12 April 1980, William R. Tolbert, President of Liberia alongside 27 other government officials assassinated by 16 enlisted men headed by Master Sergeant Samuel Doe (of the Indigenous Krahn language group). Thirteen top ranking ministers and members of the Tolbert family were also executed. On 13 April, a new revolutionary military government, the People’s Redemption Council (PRC), is formed with Doe as Commander-In-Chief.
A Referendum approved Commonwealth Constitutional change. Section 127 of the Constitution was struck out in its entirety. This amendment allowed Indigenous Peoples to be counted in the Commonwealth Census. Section 51 of the Constitution was amended to allow the Commonwealth to make special laws for Indigenous Peoples. Both Houses of the Parliament passed the proposed Act unanimously; consequently a 'No' case was not submitted. More than 90 per cent of Australians registered a YES vote with all six states voting in favour.	1967	1981	The African States members of the Organization of African Unity, meeting in Liberia, adopted a Charter on Human and People’s Rights. Article 5 specifically prohibited slavery. It became effective as of October 21, 1986.
Neville Bonner AO (1922–99) was the first Indigenous person to be appointed to Federal Parliament in Australia. Neville Bonner was born on Ukerbagh Island in the Tweed River in New South Wales. After many years of itinerant work, he stood unsuccessfully as a candidate for the half Senate election in 1970. In 1971 Neville Bonner was appointed by the Queensland Parliament to replace the Queensland Liberal Senator, Dame Annabel Rankin, who had retired from Federal Parliament. At the 1972 election he was returned as a Liberal Senator for Queensland. Senator Bonner continued to represent Queensland as a Liberal Senator until 1983. At the 1983 election he stood as an Independent candidate but was not re-elected. Bank of New South Wales grants loans to women without requiring a male guarantor	1971	1983	Former commanding General Thomas Quiwonkpa, of Indigenous Gio language group, is accused of leading a plot to overthrow the PRC government.
Late on Australia Day 1972, four young Aboriginal men erected a beach umbrella on the lawns outside Parliament House in Canberra and put up a sign, which read 'Aboriginal Embassy'. Over the following months, supporters of the embassy swelled to 2000. This political action was initiated and implemented by Aboriginal activists. The site became known as the Aboriginal Tent Embassy. It was a powerful symbol. The original owners of the land set up an “embassy” opposite the parliament, as if they were foreigners. This act showed compellingly the strength of their sense of alienation. They were landless.	1972	1985	Doe wins first presidential election.

First national elections for Indigenous Peoples to elect 41 members of the National Aboriginal Consultative committee. More than 27 000 Indigenous Peoples voted. Minimum voting age lowered from 21 to 18.	1973	1986	6 January 1986, General Samuel K. Doe was inaugurated the twenty-first and first Indigenous president of Liberia.
Hyacinth Tungutalum (Country Liberal Party), from Bathurst Island was elected to the Northern Territory Legislative Assembly, representing the electorate of Arafura. Eric Deeral (National Party), became the first Indigenous person to be elected to the Queensland Parliament representing the electorate of Cook. Courtesy Drusilla Modjeska, Australia's first women's refuge established, when Sydney feminists squatted in an unused house and set 'Elsie'.	1974	1989	24 December 1989, the National Patriotic Front of Liberia (NPFL) led by Charles Taylor begins an uprising against the government.
Family Law Act 1975 passed by the Federal Parliament brings in no fault divorce. The first sex discrimination Act in Australia was passed by the South Australian parliament in 1975. Elizabeth Evatt was the first Chief Judge of the Family Court and the first woman to win the Sydney University Medal in Law.	1975	1990	Economic Community of West African States (ECOWAS) sends peacekeeping force. Doe is executed by a splinter group of the NPFL, led by Prince Yormie Johnson on 9 September 1990.
Rape in marriage becomes illegal in South Australia – that is for the first time in the English-speaking world, rape in marriage became a criminal offence.	1976	1997	Charles Taylor wins the presidential election.
Neville Perkins (Australian Labour Party) was elected to the Northern Territory Legislative Assembly. He became the first Indigenous person to hold a shadow portfolio and was appointed deputy leader of the Northern Territory Australian Labour Party.	1977	2003	Started by Leymah Gbowee and Comfort M Freeman, the Women of Liberia mass Action for Peace organised thousands of local women for months, staging silent non-violent protests (including sex strike and threat of curse) in efforts to end the Liberian civil war. Nigerian peacekeepers arrived. Charles Taylor leaves Liberia for exile.
Australian Electoral Commission began the Aboriginal Electoral Education Program.	1979	2004	On 1 October 2004, the United Nations launched a massive voluntary repatriation program to return an estimated 340,000 Liberian refugees still scattered across West Africa.
Ernie Bridge (Australian Labour Party) became the first Indigenous member of the Parliament of Western Australian when he won the seat of Kimberley. He later became the first Indigenous person to hold a Ministerial office. Mobile polling first used in remote Northern Territory and Western Australia for state/territory election.	1980	2005	Ellen Johnson Sirleaf wins election becoming the first elected female president in Liberia and Africa.
Patricia O'Shane, becomes the first woman to head a government department when she was appointed permanent head of the New South Wales Ministry of Aboriginal Affairs in 1981.	1981	2006	Save the Children (UK) released report on 8 March 2006 stating that UN peacekeepers, aid workers and teachers are having sex with Liberian girls as young as 8 in return for money, food or favours, threatening efforts to rebuild a nation wrecked by war. Arcelor Mittal, the world's largest steel company, negotiated a deal with Liberia's government to restart operations at the mine in Nimba County with a new investment of \$1.5 billion. The company said it would create some 3,500 jobs. Liberia National Plan of Action for the Prevention and Management of Gender Violence in Liberia released.
Wesley Lanhupuy (Australian Labour Party), from central coastal Arnhem land was elected to the Northern Territory Legislative Assembly representing the electorate of Arnhem. Australia signed on to the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 1983.	1983	2007	In June, Taylor war crimes in Sierra Leone trial began in The Hague. The first all-female UN peacekeeping unit, made up of 103 women from India, arrived in Liberia to help the West African nation recover from 14 years of on-and-off civil war. Joshua Milton Blahyi (37), one of Liberia's most notorious rebel commanders, known as General Butt Naked for charging into battle wearing only boots, spoke of his role under Charles Taylor in the civil war. He confesses to the TRC of terrorizing the nation and responsible for 20,000 deaths. Blahyi now claims to

			be a born-again Christian and ordained pastor.
Mobile polling first used in remote Northern Territory and Western Australia for Commonwealth elections. Enrolment and voting in Commonwealth elections made compulsory for Indigenous Peoples. Sex Discrimination Act 1984 passed by the Federal Government. This made discrimination on the basis of gender, pregnancy and marital status illegal in Australia.	1984	2009	President Johnson-Sirleaf admits to the Truth and Reconciliation Commission that she mistakenly backed ex-President Taylor when he launched the 14-year civil war in 1989. The Liberian National Action Plan for the Implementation of UN Resolution 1325 (women, peace and security) released. Liberia becomes the first post-conflict country with a National Action Plan to implement Resolution 1325.
Janine Haines became the first woman leader of a political party in the Federal Parliament.	1986	2010	Fighting erupts between Christians and Muslims in Lofa County after the killing of a Christian student.
Stanley Tipiloura (Australian Labour Party), from Bathurst Island, was elected to the Northern Territory Legislative Assembly, representing the electorate of Arafura. The National Committee on Violence was established as the result of a joint agreement between the Prime Minister, the State Premiers and the Chief Minister of the Northern Territory at a meeting held in December 1987.	1987	2011	Leymah Gbowee, Liberian peace activist and Ellen Johnson Sirleaf, Liberian president, share the 2011 peace prize with Yemen's peace activist, Yemen's Tawakkul Karman. Gbowee led women to defy feared warlords and pushed men toward peace during Liberia's 14-year civil war.
The then Prime Minister, Bob Hawke, launched the first National Agenda for Women in 1988, based on the UN Nairobi Forward-Looking Strategies for the Advancement of Women. The National Agenda for Women named violence as a major issue.	1988	2012	President Johnson-Sirleaf wins second 6-year term election. Ex-president Taylor is found guilty of war crimes in Sierra Leone and sentenced to 50 years in jail. George Boley, a former rebel leader of the Liberia Peace Council, is deported to Liberia from the US over his role in the civil war in the 1990s.
In July 1989, the First International Indigenous Women's Conference was held in Adelaide. The conference was attended by delegates from all States and Territories of Australia and 16 other countries.	1989	2013	In January 2013, UN High Commission for Refugee invokes its cessation clause and closed-down the Buduburam Refugee Camp in Ghana, which hosted Liberian refugees. Some 155,000 Liberians return home.
ATSIC (Aboriginal and Torres Strait Islander Commission) created – elected regional councils and a board of commissioners made decisions on policy and funding. ATSIC elections were conducted by the Australian Electoral Commission. In a leadership change on 12 February 1990, Dr Carmen Lawrence made history by becoming Premier of Western Australia and Australia's first woman Premier.	1990	2014	On 6 August 2014, Liberia declares a state of emergency to combat the spread of the Ebola Virus Disease (EVD) outbreak. As at 9 May 2014, there were 10,666 total cases of Ebola and 4,806 deaths due to Ebola.
The High Court of Australia unanimously rejects the so-called common law 'marital rape immunity' in <i>R v L [1991] HCA 48</i> (which had previously been abolished by statute).	1991	2015	On 10 May 2015, the World Health Organisation (WHO) declared Liberia, Ebola-free. In July, two new cases of Ebola discovered.
Maurice Rioli (Australian Labour Party), from Melville Island was elected to the Northern Territory Legislative Assembly representing the electorate of Arafura. The development of a National Peak Body to represent women's domestic violence services across Australia, the Women's Emergency Services Network (WESNET), was supported and funded by the Commonwealth Labour Government. It was later renamed the Women's Services Network to reflect the increasing community education and community development domestic and family violence services were undertaking.	1992		
The AEC's Aboriginal Electoral Education Program became Aboriginal & Torres Strait Islander Electoral Information Service.	1993		
John Ah Kit (Australian Labor Party), from Darwin was elected to the Northern Territory Legislative Assembly representing the electorate of Arnhem. In 1995, the Office for the Status of Women published a follow up to its 1988 work, <i>Community Attitudes to Violence Against Women</i> . This important piece of research demonstrated that there was still a large proportion of the population who had unhelpful attitudes about violence against women.	1995		
Aboriginal & Torres Strait Islander Electoral Information Service was abolished due to	1996		

withdrawal of Commonwealth funds. Paul Harriss elected to the Legislative Council in Tasmania for the electorate for Huon.			
A Commonwealth program called Partnerships Against Domestic Violence (PADV) committed \$50 million dollars for research and resources over a six-year period to 2003.	1997		
Aden Ridgeway was the second Indigenous person elected to the Australian Federal Parliament. He was born in 1962 at Macksville, New South Wales. Aden Ridgeway took his seat in the Senate as an Australian Democrat for New South Wales on 1 July 1999 following his election at the October 3, 1998 federal election. His term expired on 30 June 2005.	1998		
The Hon Jackie Kelly MP became the first woman to give birth while serving as a Federal Government Minister.	2000		
Carol Martin (Australian Labour Party) became the first Indigenous women to be elected to a State Parliament when she won the seat of Kimberley in the Parliament of Western Australia. Matthew Bonson (Darwin), Elliot McAdam (Tennant Creek) and Marion Scrymgour (Melville Island), were elected to the Northern Territory Legislative Assembly representing the electorates of Millner, Barkly and Arafura respectively. They join John Ah Kit as members of the first Labour Government in the Northern Territory. Senator Natasha Stott Despoja was elected leader of the Australian Democrats and, at 32, became the youngest person of any party to hold such a position.	2001		
Kathryn Hay (Australian Labour Party) elected to the Tasmanian House of Assembly representing the electorate of Bass. Marion Scrymgour (Australian Labour Party) in the Northern Territory Assembly became the first female indigenous minister in any government in the history of Australia.	2002		
Linda Burney (Australian Labour Party) is the first Indigenous person elected to the New South Wales Parliament. She represents the electorate of Canterbury. Tasmania abolished provocation as a defence to murder. In 1998, the Model Criminal Code Officers Committee recommended that the defence of provocation be abolished and that the defence of excessive self-defence not be reintroduced. In 2003, Tasmania became the first state to abolish the defence of provocation. In 2005, Victoria also abolished provocation and made other reforms including clarifying the defence of self-defence to make it more available to battered women who kill, introducing legislative guidance on the relevance of family violence evidence in relation to a defence of self-defence, and reintroducing the partial defence of excessive self-defence.	2003		
Following the Northern Territory Legislative Assembly election, Barbara McCarthy (Territory Labour) was elected to represent the electorate of Arnhem, and Alison Anderson (Territory Labour) was elected to represent the electorate of Macdonnell. They join Matthew Bonson, Elliot McAdam and Marion Scrymgour in the Northern Territory Government. One fifth of the Northern Territory Legislative Assembly electorates are represented by Indigenous Australians. Legislation was enacted to dissolve the Aboriginal and Torres Strait Islander Commission and Regional Councils at the end of the 2005 financial year.	2005		
Ben Wyatt (Australian Labour Party) elected in a by-election to the Western Australian parliament for the electorate of Victoria Park. He was re-elected in 2008.	2006		
Julia Gillard becomes the first female Deputy Prime Minister of Australia.	2007		
Marion Scrymgour (Australian Labour Party) in the Northern Territory Assembly	2008		

<p>became the first female indigenous deputy chief minister. Quentin Bryce becomes the first female Governor General of Australia on 5 September 2008. In May 2008 the Prime Minister, the Hon. Kevin Rudd MP, and the Minister for the Status of Women, the Hon. Tanya Plibersek MP, announced the establishment of an eleven-member National Council to Reduce Violence against Women and their Children (the Council). They asked the Council to lead a public national conversation and produce a National Plan of Action to reduce the incidence and impact of domestic and family violence and sexual assault.</p>			
<p>Ken Wyatt (Liberal Party of Australia) was elected as the first Indigenous member of the House of Representatives, representing the electorate of Hasluck in Western Australia. The Hon. Julia Gillard, Member of Parliament, was sworn in as the 27th Prime Minister of Australia on 24 June 2010 and re-sworn in as Prime Minister on 14 September 2010 following the 2010 Federal Election. International Human Rights lawyer Megan Davis became the first Indigenous woman elected to a United Nations body. Ms Davis sits on the United Nations' Permanent Forum on Indigenous Issues, which advises on issues such as economic and social development, culture, health and human rights.</p>	2010		
<p>The Australian Government released the first ever National Plan to Reduce Violence Against Women. Lara Giddings became Tasmania's first female Premier. When Lara Giddings was elected to Parliament in 1996, she was the youngest person ever elected to Parliament. Penny Williams, The First Ambassador for Women and Girls appointed for the Office of the Ambassador for Women and Girls which was established in September 2011 to engage in international advocacy in support of Australian Government policies and programs.</p>	2011		
<p>Adam Giles (Country Liberal Party) was appointed the Northern Territory's Chief Minister in March 2013 becoming Australia's first Indigenous head of government. Nova Peris (Australian Labor Party) became the first Indigenous woman elected to the Australian Parliament and was sworn in as a Senator representing the Northern Territory on 12 November 2013.</p>	2013		
<p>Rosie Batty named Australian of the Year. Since 2013 she has been a champion for the prevention of domestic violence after losing her son Luke that year, becoming an inspirational leader who speaks candidly about her experience and the need for further action by Government.</p>			
<p>Sources: http://www.humanities.mcmaster.ca/africanhistory/studying_africa/ancient.html; http://www.blackpast.org/aah/american-colonization-society-1816-1964; http://personal.denison.edu/~waite/liberia/history/acs.htm; https://www.humanrights.gov.au/timeline-history-separation-aboriginal-and-torres-strait-islander-children-their-families-text#date-45000; http://www.pbs.org/independentlens/natturmer/slave_rebellions.html; http://www.australia.gov.au/about-australia/australian-story/austn-women-in-politics; http://timeline.awava.org.au/timeline; http://www.sbs.com.au/nitv/nitv-news/article/2015/03/06/indigenous-australian-women-still-fighting-discrimination; http://memory.loc.gov/ammem/gmdhtml/libhtml/liberia.html; http://www.pbs.org/wgbh/globalconnections/liberia/timeline/time2.html; http://www.aushistorytimeline.com; http://www.bbc.com/news/world-africa-13732188; Azikiwe (1934) pp. 46.; and Dunn & Holsoe (1985) pp xiii.</p>			

AV: Internal Deadly Conflicts Between Indigenous and Settlers

#	Liberia	Year	Australia	Year
1	Dei-British/Settler “Water Battle”	1822	Aborigines suffer an outbreak of smallpox	1789
2	Dei-Settler War	1822	Governor Arthur Phillip ordered two captains, two subalterns and 40 privates to bring in or kill six natives near Botany Bay in response to the spearing of John McEntire, Governor’s Phillip’s gamekeeper and convict who was suspected committing violent attacks on Aboriginal people.	1790
3	Dei-Gola-Settler War	1832	Risdon Cove Massacre	1804
4	Bassa-Settler War	1835	Appin Aboriginal Massacre	1816
5	Kru-Settler “Fish” War	1838	Bathurst Massacre	1824
6	Vai-Settler Battles	1839-40	Cape Grim Massacre	1828
7	Bassa-Government War	1851-52	The Black War	1828-32
8	Kru-Government War	1855	Convincing Ground Massacre of Gunditjmara	1833-1834
9	Grebo-Maryland War	1856-57	Pinjarra Battle/Massacre	1834
10	Gedebo Reunited Kingdom Revolution	1875-76	Waterloo Creek Massacre, Myall Creek Massacre and the War of Extirpation, Killing by the Broken River in Benalla	1838
11	Grebo-Government War	1893		
12	Kru-Government Battles	1909	Murrumbidgee Wiradjuri Wars	1830-1840
13	Grebo-Government War	1910	Rufus River Massacre	1841
14	Kru-Government Conflict	1912	Evans Head Massacre Nyngan Massacre/Goanna Headland Massacre	1842
15	Kru Confederacy-Government War	1915	Forest River Massacre	1926
16	Coup d’état of Tolbert Regime	1980	Coniston/ Yuendumu Massacre	1928
17	The Great War in Liberia	1989-97	Risdon Cove	1992
18	Great War between LURD & MODEL	1999-03		

Sources: Jeremy I. Levitt, *Evolution of Deadly Conflict in Liberia* (Durham: Carolina Academic Press, 2005) 6. James C. Docherty, *Historical Dictionary of Australia*, 3rd ed. (Lanham: The Rowman & Littlefield Publishing, 2007); D. Elwood Dunn & Svend E. Holsoe, *Historical Dictionary of Liberia* (Metuchen: The Scarecrow Press, 1985).

AVI: Sexes of Judges and Magistrates in Liberia and Australia

State/Territory	Judges / Magistrate	Female Judges	%	Counties	Judges / Magistrate	Female Judges	%
AUSTRALIA				LIBERIA			
Commonwealth				National			
High Court*	7	2		Supreme Court**	5	2	
Federal Court	47	11		First Judicial Circuit, Criminal Assizes A			
Family Court	27	11		Sub-total	5	2	40
Federal Circuit Court	61	22		Nimba County			
Sub-total	142	46	32.39	Circuit/Specialised Court	1	0	
				Magistrate Court	30	2	
ACT				Sub-total	31	2	6.45
Supreme Court/Court of Appeal	4	1		Maryland			
Magistrate	7	3		Circuit/Specialised Court	2	0	
Sub-total	11	4	36.36	Magistrate Court	15	0	
				Sub-total	17	0	0
New South Wales				Grand Gedeh			
Supreme Court/Court of Appeal	48	11		Circuit/Specialised Court	5	0	
Land & Environment	6	2		Magistrate Court	12	0	
District Court	66	16		Sub-total	17	0	0
Industrial Relations Committee	7	1		Sinoe			
Magistrate	134	56		Circuit/Specialised Court	6	0	
Sub-total	261	86	32.95	Magistrate Court	60	0	
				Sub-total	66	0	0

Northern Territory				Lofa			
Supreme Court	11	0		Circuit/Specialised Court	2	1	
Magistrate	10	4		Magistrate Court	19	0	
Sub-total	21	4	19.05	Sub-total	21	1	4.76
				Grand Cape Mount			
Queensland				Circuit/Specialised Court	2	1	
Supreme Court/Court of Appeal	28	7		Magistrate Court	11	0	
District Court	41	10		Sub-total	13	1	7.69
Magistrate	91	31		Grand Bassa			
Sub-total	160	48	30.00	Circuit/Specialised Court	1	0	
				Magistrate Court	17	1	
South Australia				Sub-total	18	1	5.56
Supreme Court/Court of Appeal	14	2		Bong			
District Court	24	5		Circuit/Specialised Court	3	0	
Magistrate	37	14		Magistrate Court	14	0	
Sub-total	75	21	28.00	Sub-total	17	0	0
				Montserrado			
Tasmania				Circuit/Specialised Court	17	4	
Supreme Court/Court of Appeal	7	2		Magistrate Court	26	1	
Magistrate Court	14	3		Sub-total	43	5	11.63
Sub-total	21	5	23.81	Margibi			
				Circuit/Specialised Court	2	1	
Victoria				Magistrate Court	9	2	
Supreme Court/Court of Appeal	49	10		Subtotal	11	3	27.27
District Court	69	26		Bomi			

Magistrate Court	143	53		Circuit/Specialised Court	2	0	
Sub-total	261	89	34.10	Magistrate Court	7	1	
				Sub-total	9	1	11.11
Western Australia				Gbarpolu			
Supreme Court/Court of Appeal	20	3		Circuit/Specialised Court	2	0	
District Court	29	7		Magistrate Court	11	0	
Magistrate Court	51	20		Sub-total	13	0	0
Sub-total	100	30	30.00	Rivercess			
Grand Total	1052	303	28.80	Circuit/Specialised Court	2	0	
				Magistrate Court	6	0	
				Sub-total	8	0	0
				Grand Kru			
				Circuit/Specialised Court	8	1	
				Magistrate Court	48	0	
				Sub-total	56	1	2.00
				River Gee			
				Circuit/Specialised Court	3	0	
				Magistrate Court	18	0	
				Sub-total	21	0	0
				Grand Total	365	17	4.66

* There have been 13 Chief Justices since the High Court of Australia was established in 1903, none have served as females.

** Since 1948, when the Liberian Supreme Court was established, of a total of 25 Chief Justices only two have served as females.

Sources: High Court of Australia, *About the Judges* <<http://www.hcourt.gov.au/justices/about-the-justices/>>; ACT Supreme Court Judges, *Current Judges and Associate Judge*

<<http://www.courts.act.gov.au/supreme/page/view/740/>>; Supreme Court of New South Wales, *Judicial Officer Contact Details*

<http://www.supremecourt.justice.nsw.gov.au/Pages/SCO2_contactus/judicialcontacts/judicialcontacts.aspx>; Supreme Court of Victoria, *Judicial Support Contacts*

<http://www.supremecourt.justice.nsw.gov.au/Pages/SCO2_contactus/judicialcontacts/judicialcontacts.aspx>; Supreme Court of Western Australia, *Judges* <<http://www.supremecourt.wa.gov.au/JJ/judges.aspx?uid=6308-1094-4408-1023>>; Queensland Courts, *Judges of the Supreme Court Contacts* <<http://www.courts.qld.gov.au/contact-us/judges-supreme-court/>>; Supreme Court of Tasmania, *Current Judges*

<http://www.supremecourt.tas.gov.au/about_us/judges/current_judges/>; Courts Administration Authority of South Australia, *Judicial Officers* <<http://www.courts.sa.gov.au/OurCourts/SupremeCourt/Pages/Judicial-Officers.aspx>>; Supreme Court of the Northern Territory, *Current Judges* <<http://www.supremecourt.nt.gov.au/about/judges/>>; Liberia Judiciary, *Chief Justices of Liberia from 1948 to present* <<http://judiciary.gov.lr>>.

NB: List of female and male judges and magistrates was obtained through personal contact from the Supreme Court of Liberia in 2015.

AVII: Presidents and Prime Ministers of Australia

#	Name	In Office	Birthplace	Name	In Office	Birthplace
1	Joseph Jenkins Roberts	1848-1856	Virginia, USA (First president, elected 6x)	Edmund Barton	1901-1903	Sydney, Australia to English parents
2	Stephen Allen Benson	1856-1864	Maryland, USA (elected 4x)	Alfred Deakin	1903-1904	Melbourne, Australia to English parents. 2 nd -term, 1905-1905 and 3 rd -term, 1909-1910 (the only prime minister to reject the "Right Honourable" title and membership of the Privy Council).
3	Daniel Bashiel Warner	1864-1868	Maryland, USA (elected 2x)	Chris Watson	1904	Probably born in Chile to a German father and a New Zealand mother.
4	James Spriggs Payne	1868-1870	Virginia, USA (2 nd Term 1876-1878)	George Reid	1904-1904	Johnstone, Renfrewshire, Scotland (federation father).
5	Edwin James Roye	1870-1871	Ohio, USA (first to be deposed by coup d'état)	Andrew Fisher	1908-1909	Crosshouse, Ayrshire, Scotland (Elected 2x: 1910-1913 and 1914-1915 and his wife, Margaret Fisher, led the Australian group in the British suffrage march in London, 1911).
6	James S. Smith	1871-1872	South Carolina, USA (Vice President)	Joseph Cook	1913-1914	Silverdale, Staffordshire, England.
7	Joseph Jenkins Roberts	1872-1876	See #1 above	William Morris Hughes	1915-1923	Pimlico, London, England (Longest serving prime minister (7 years) until 1956).
8	James Spriggs Payne	1876-1878	See #1 above	Stanley Melbourne Bruce	1923-1929	St. Kilda, Victoria, Melbourne to a Scottish father and an Irish mother (led first all Australian-born Cabinet).
9	Anthony William Gardiner	1878-1883	Virginia, USA (elected three times)	James Scullin	1929-1932	Trawalla, Victoria, Melbourne to Irish parents.
10	Alfred Francis Russell	1883-1884	Kentucky, USA (Vice President)	Joseph Lyons	1932-1939	Lyons, Tasmania to Irish parents.
11	Hilary Richard Wright Johnson	1884-1892	Liberia (Afro-American, elected 4x)	Earle Page	1939	Grafton, New South Wales to British parents (first prime minister to win three successive elections).
12	Joseph James Cheeseman	1892-1896	Edina, Grand Bassa County (Afro-American, elected 3x)	Robert Menzies	1939-1941	Jeparit, Victoria, Melbourne to Scottish father and a Cornish mother (longest serving prime minister, two terms of 18 years).
13	William David Coleman	1896-1900	Kentucky, USA (elected 2x)	Arthur Fadden	1941	Ingham, Queensland to Irish immigrant parents.
14	Garretson Wilmot Gibson	1900-1904	Maryland, USA	John Curtin	1941-1945	Creswick, Victoria, Melbourne to Irish immigrant parents.
15	Arthur Barclay	1904-1912	Bridgetown, Barbados	Francis Forde	1945	Mitchell, Queensland to Irish immigrant parents.
16	Daniel Edward Howard	1912-1920	Buchanan, Grand Bassa (elected 2x)	Ben Chifley	1945-1949	Bathurst, New South Wales to Irish immigrant parents.
17	Charles Dunbar Burgess King	1920-1930	Liberia (to Sierra Leonean parents, first president to serve a 4-year term)	Harold Holt	1966-1967	Stanmore, Sydney to English immigrant/Australian born parents.
18	Edwin James Barclay	1930-1944	Brewerville, Montserrat (served 8-year term)	John McEwen	1967-1968	Chiltern, Victoria, Melbourne to Irish parents.
19	William Vacanarat Shadrach Tubman	1944-1971	Harper, Maryland (elected 6x, longest serving)	John Gorton	1968-1971	Wellington, New Zealand to English immigrant parents.
20	William Richard Tolbert, Jr.	1971-1980	Bensonville, Montserrat (second to be deposed in a coup d'état)	William McMahon	1971-1972	Sydney, New South Wales of Irish descendant parentage.
21	Samuel Kanyon Doe	1980-1990	Tuzon, Grand Gedeh (Indigenous Krahn descend, third to be deposed by coup d'état)	Gough Whitlam	1972-1975	Kew, Melbourne of British descendant parentage.
22	Amos Sawyer	1990-1993	Sinoe County (Afro-American, interim)	Malcolm Fraser	1975-1983	Toorak, Victoria, Melbourne to Canadian immigrant father and a mother of Jewish descent.
23	Bismarck Kuyon	1993		Robert Hawke	1983-1991	Bordertown, South Australia.
24	Phillip Banks	1993-1994		Paul Keating	1991-1996	Bankstown, Sydney to Irish descendant parentage.
25	David Kpormakor	1994-1995		John Howard	1996-2007	Dulwich Hill, Sydney to parents of Irish, Scottish and Irish ancestors.
26	Wilton Sankawulo	1995-1996		Kevin Rudd	2007-2010	Nambour, Queensland to parents of English and Irish descent (2 nd term in 2013). Rudd is also a descendant of Mary Wade the youngest convict transported to New South Wales in 1789.
27	Ruth Perry	1996-1997	(First female Head of State)	Julia Gillard	2010-2013	First female Prime Minister born in Barry Wales to parents of English, Welsh and Irish descent.
28	Charles Ghankay Taylor	1997-2003	Liberia (Afro-American father and Indigenous Gola mother)	Tony Abbott	2013-	London, England to an Australian mother and an English father.
29	Moses Blah	2003	Toweh Town, Nimba County (second president of Indigenous Gio descend)			
30	Charles Gyude Bryant	2003-2006	Maryland (Afro-American descend)			
31	Ellen Johnson Sirleaf	2006-	Monrovia (Indigenous Gola father and mother of mixed German heritage, first elected female).			

NB: Both countries have had only one elected female president/prime minister). Note Ellen Johnson Sirleaf is the first female and 24th President democratically elected president of Liberia. Julia Gillard is also the first female Deputy Prime Minister and the first female Prime Minister of Australia.

Source: D. Elwood Dunn & Svend Holsoe, *Historical Dictionary of Liberia* (Scarecrow Press, 1985), William E Allen & D Elwood Dunn, 'Ellen Johnson Sirleaf is the 24th not 23rd President of Liberia: A new interpretative history' (2008) 33(1) *Liberian Studies Journal* 64–68; Australian Women Against Violence Alliance, *Australian women's timeline* (2015)

<<http://timeline.awava.org.au/timeline>>, National Archives of Australia, Australian Government, *Australia's Prime Ministers* <<http://primeministers.naa.gov.au/primeministers/>>; Fred Van der Kraaij, *Liberia: Past and Present of Africa's Oldest Republic*, The Presidents, <<http://www.liberiapastandpresent.org/Presidents.htm#22%20Presidents,%206%20Interim%20Presidents>>.

AVIII: List of Major Legal Instruments Used to Protect Women against Violence

Instrument	Adopted / Enforced	Liberia Signature	Liberia Ratification	Australia Signature	Australia Ratification
INTERNATIONAL					
Universal Declaration of Human Rights	10 Dec 1948	Founding Member		Founding Member	
International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965		05 Nov 1984 (Acceded)	12 Oct 1966	30 Sep 1975
International Covenant on Civil and Political Rights	16 Dec 1966	18 Apr 1967	22 Sep 2004	18 Dec 1972	10 Dec 1975
International Covenant on Economic, Social and Cultural Rights	16 Dec 1966	18 Apr 1967	22 Sep 2004	18 Dec 1972	13 Aug 1980
Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1979		17 Jul 1984 (Acceded)	17 Jul 1980	28 Jul 1983
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Preamble, supplementing the United Nations Convention against Transnational Organized Crime	15 Nov 2000		22 Sep 2004	11 Dec 2002	
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	02 Dec 1949	21 Mar 1950		Not signed	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984		22 Sep 2004 (acceded)	19 May 2009	08 Aug 1989
Convention on the Rights of the Child	20 Nov 1989	26 Apr 1990	04 Jun 1993	22 Aug 1990	17 Dec 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts	25 May 2000	22 Sep 2004		21 Oct 2001	31 Jan 2005
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	17 Jul 1999	02 Jun 2003		Not signed	
Convention concerning Forced or Compulsory Labour	28 Jun 1930		1 May 1931	02 Feb 1932	
Convention against Discrimination in Education	14 Dec 1960		17 May 1972		Ratified
Convention on the Prevention and Punishment of the Crime of Genocide	09 Dec 1948	11 Dec 1948	09 Jun 1950	11 Dec 1948	08 Jul 1949
Rome Statute of the International Criminal Court	17 Jul 1998	17 Jul 1998	22 Sep 2004	09 Dec 1998	01 Jul 2002
Declaration on the Rights of Indigenous Peoples	13 Sep 2007			03 Apr 2009	
Convention on the Rights of Persons with Disabilities	13 Dec 2006				
REGIONAL					
African [Banjul] Charter on Human and Peoples' Rights	27 Jun 1981	31 Jan 1983	04 Aug 1982		
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	13 Sep 2000	16 Dec 2003			
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	09 Jun 1998	09 Jun 1998			
African Charter on the Rights and Welfare of the Child	11 Jul 1990	14 May 1992			
ECOWAS Community Court	06 Jul 1991	Member			

NB: For Australia, only major national/federal acts are listed. State instruments will be referenced as and when appropriate.

AIX: Demographic Profile of Australian Convicts and Liberian Freed Slaves

Australia			Liberia		
Convict voyages 1787-1867	#	Ships	Slaves Repatriation 1820-1904	#	Ships
825 voyages	130,536	427	57 voyages	14,996	57
Gender	#	%	Gender		
Female	24,960 ¹⁶⁴¹	15	Female	6,527	42
Male	140,040	75	Male	8,382	56
			Infant	67	0.4
Age	Youngest	Oldest	Youngest	Oldest	
Range	11	82	0	-	
Nationality	#	%	Top 15 State of Origin		
British and Welsh	115,500	70	Virginia	3,522	23
Irish	39,600	24	Georgia	2,010	13
Scottish	8,250	5	North Carolina	1,821	12
Other (Canada, India, and NZ)	1650	1	South Carolina	1,217	8
			Kentucky	966	6
Port of Entry ¹⁶⁴²	#	Year	Tennessee	963	6
Botany Bay (NSW)	80,000	1788-68	Louisiana	872	6
Van Diemen's Land (TAS)			Maryland	513	3
Other	75,000	1803-53	Missouri	473	3
Norfolk Island (NSW)			Pennsylvania	354	2
Port Macquarie			New York	276	2
Moreton Bay (QLD)	700	1788-14,	Arkansas	265	2
		1825-53	Alabama	193	1
	1100	1821-28	Illinois	114	1
	2,121	1823-39	Washington DC	112	1
Literacy ¹⁶⁴³ (from 1871 Census)*	#	%	Education	#	%
Read and write	1,020,990	62.5	Read	948	6
Read Only	178,752	11.0	Write	396	3
Cannot read or write	434, 509	26.6	Read and Write	535	4
Total	1,634,251	100	Spell	248	2
			Good	61	0
			Very Good	6	0
			Illiterate	48	0
			Unknown	12,749	85
Top Ten Occupation*	#	%	Top Ten Occupation	#	%
Labourer	1,275	16.5	Farmer	1,348	9
Farm labourer	466	6.0	Carpenter	866	6
Farmer	220	2.9	Sawyer	142	1
Shoemaker	217	2.8	Shoemaker	80	1
Soldier	207	2.7	Blacksmith	79	1
Housemaid	200	2.6	School Teacher	65	0
Servant	190	2.5	Seamstress	65	0
Weaver	173	2.2	Bricklayer	35	0
Ploughman	162	2.1	Cooper	34	0
Soldier/Labourer	149	1.9	Barber	25	0
Top Ten Crime*	#	%	Top 10 Settlement		
Stealing	1,692	17.6	Monrovia	1,840	12
Larceny	9,386	9.8	Caldwell	1,255	8
Burglary	530	5.5	Brewerville	708	5
Sheep Stealing	407	4.2	Bexley	678	5
Highway Robbery	318	3.3	Arthington	451	3
Theft	311	3.2	Cape Palmas	348	2

¹⁶⁴¹ 'Passionate histories', above n ____.

¹⁶⁴² (See, <http://guides.sl.nsw.gov.au/content.php?pid=400401&sid=3291414>).

¹⁶⁴³ Richard H Steckel and Roderick Floud (eds), *Health and Welfare During Industrialization* (University of Chicago Press, 1997) 236–37; Stephen Nicholas (ed), *Convict Workers: Reinterpreting Australia's Past* (Cambridge University Press, Paperback version, 2007) 75–78, 91–94; Oxley, above n 674, 162, 253–254, 266–268; David Eltis, *Coerced and Free Migration: Global Perspectives* (Stanford University Press, 2002) 271; Eric Richards, 'An Australian Map of British and Irish Literacy in 1841' (1999) 53(3) *Population Studies* 345; Deborah Oxley, 'Living Standards of Women in Prefamine Ireland' (2004) 28(2) *Social Science History* 271; Malcolm D Prentis, *The Scots in Australia* (University of New South Wales Press, 2008) 53; Penglase, above n 371; Robin Haines and John McDonald, 'Skills, Origins and Literacy: A Comparison of the Bounty Immigrants into New South Wales in 1841, With the Convicts Resident in The Colony' (2002) 42(2) *Australian Economic History Review* 132; Bethia M Penglase, *Literacy in Colonial New South Wales 1788-1881* (PhD Thesis, University of New Castle, 1986).

Housebreaking	260	2.7	Liberia	326	2
House Breaking	217	2.3	Sinoe	315	2
Horse Theft	206	2.1	Cape Mount	254	2
Stealing money	191	2.0	Careysburg	218	1
			St. Pauls River	131	1
Migrants (1788-1840)	#	%	Status	#	%
Free Immigrants	79,278	30,699	Freeborn	1,833	12
Convicts			Freed	2,188	15
			Emancipated	5,894	39
			Purchased	197	1
			Unknown	4,884	32
TOTAL ¹⁶⁴⁴	~165,000 ¹⁶⁴⁵			~14,996 ¹⁶⁴⁶	

* Except indicated, all computation on Australian convicts are based on a total population of 127,901 (as at 1 June 2015) entered on the Convict Records. + With assistance from ANU Reference and the Australian National Library, to date, there no is available data on convict literacy between 1788-1868. Therefore, the 1871 Colonial Census includes the entire population of free and forced (convict) migrants to Australian, excluding Chinese and Aboriginal.

¹⁶⁴⁴ Shick, above n 1464; Brown, above n 543; Murdza Jr., above n 544; Frederick Ludwig Hoffman, *Race Traits and Tendencies of the American Negro* (MacMillan, 1896). Also see, <http://www.convictrecords.com.au>; <http://www.convictcentral.com>; <http://www.slq.qld.gov.au/resources/family-history/convicts>; <http://www.records.nsw.gov.au>; <http://guides.sl.nsw.gov.au/content.php?pid=400401&sid=3283052>; and <http://ada.edu.au/ada/home>

¹⁶⁴⁵ David T Hawkings, *Bound for Australia: A Guide to the Records of Transported Convicts and Early Settlers* (History Press, 2012) backcover.

¹⁶⁴⁶ Anjali Mitter Duva, *Liberia and the United States: A Complex Relationship* (2002) Global Connections: Liberia <<http://www.pbs.org/wgbh/globalconnections/liberia/essays/uspolicy/>>.

AX: Deceased Females Whose Deaths Were Within the Jurisdiction of the Royal Commission into Aboriginal Deaths in Custody¹⁶⁴⁷

Name	Age	State	Facility	Cause of Death	Brief Overview of Arrest Record
Faith Barnes	27	WA	Kalgoorlie Lockup	Head injury (severe)	Between 1974 and her death, she was arrested on forty occasions for being found drunk in a public place. In most instances these offences resulted in the imposition of a fine. However, it is also apparent from her prison record that on many occasions these fines were not paid, and she served a prison term in default of payment. Between 1980 and her death, she was imprisoned in the Menzies lockup on nine occasions, having failed to pay fines imposed on convictions for drunkenness.
Muriel Gwenda Catheryn Binks	38	QLD	Innisfail Watch-house	Natural cause (asthma)	<i>A drunk outside the Conservatorium trying to walk along the highway</i> - entry, Innisfail Police Occurrence Sheet, 4.00 pm to midnight shift, 22 February 1989.
Nita Blankett	40	WA	Bandyup Training Centre	Natural cause (asthma)	The deceased was an Aboriginal mother of five children. At the time of her death she was serving a sentence of six months, at Bandyup Training Centre, (Bandyup) for driving offences related to the consumption of alcohol.
Joyce Thelma Egan	58	SA	Mount Gambier Police Station	Drug overdose	Joyce was arrested outside her home by police at about 2.00pm on 5 August 1988 on a charge of indecent language. Joyce had earlier telephoned the Mount Gambier Police Station is requesting the police to attend at her home and arrest her. Before the arrival of the police, Joyce voluntarily ingested a large quantity of prescription drugs, namely, Mogadon, Serepax and Doxepin, and during the morning had consumed a substantial volume of liquor.
Christine Lesley-Ann Jones	22	WA	Midland Lockup	Hanging	On 22 January 1964, Christine was declared a neglected child and was committed to the care of the Child Welfare Department until 18 years of age with a recommendation that she be released to the custody of the Native Welfare Department and placed in a suitable foster home. Her death occurred within fifteen minutes of being locked up in a single cell at Midland Police Station on 18 October 1980.
Karen Lee O'Rourke	14	QLD	Birralee Children's Home	Burns from a fire deceased had lit to escape	Karen had arrived in Rockhampton from Sydney only six weeks before her death. Those six weeks were a traumatic period for Karen. She fought with her mother whom she had travelled to Rockhampton to see after a separation of some ten years. She was in three foster placements with senior members of the local Aboriginal community all of which failed for various reasons. She was enrolled in and attended grade 9 at Rockhampton High School but could not cope and later transferred to grade 8. In the middle of all this she was sexually assaulted by a man fourteen years her senior while another man held her down. Karen died as a result of burns to 100% of her body at Rockhampton Base Hospital on 11 February 1980. The burns sustained when trapped in a security room she set fire to at Birralee Children's Home earlier that same day resulted in Karen's death.
Deidre Abigail Short	30	QLD	Lockhart River Watch-house	Natural cause (coronary atherosclerosis)	Deidre was born into the Lockhart River Community in 1958, the third of eight children born to Fury and Ethel Short, both highly respected Aboriginal people. The family lived in impoverished circumstances and three of the children had to be either fostered or adopted out. When she was 14 years of age Deidre gave birth to a child whom she could not look after, so he too was adopted out. The extent of Deidre's education is unknown. Limited police records show minor conflicts with the law for some five years before her death. As with many other Aboriginal people on former reserves and missions, alcohol came to play a significant role in Deidre's life. On the night before her death Deidre was drinking at the canteen and started throwing beer cans at her boyfriend. As she was drunk, the police arrested her and took her to the watchhouse.
Barbara Ruth Tiers	37	QLD	Rockhampton Watch-house	Natural cause (haemorrhage resulting from advanced liver disease)	From the age of 20-years alcohol was a controlling factor in Barbara's life. Apart from periods of incarceration and hospitalisation Barbara Tiers was rarely sober. Gradually as a result of her alcoholism, her health seriously deteriorated. She became well-known to the Rockhampton police as an alcoholic. Since 1982 she had been arrested for drunkenness 76 times. She was, however, never convicted of any serious criminal offence. On the afternoon of 1 February 1989 Barbara Ruth Tiers was found dead on the floor of a police cell at the Rockhampton watchhouse. Barbara had been taken into custody by the police early that morning after being found, apparently severely intoxicated, on a footpath in Rockhampton.
Barbara Denise Yarrie	29	QLD	Brisbane City Watch-house	Natural cause (profound hypoglycaemia)	Barbara Yarrie, like her younger sister Fay, had for many years lived the life of an itinerant alcoholic, spending her days seeking out alcohol and drinking with friends and acquaintances. Between 1974 and 1986 she was arrested for drunkenness on at least 40 occasions and was taken to the watchhouse on many other occasions for alcohol related-offences. Police apprehended Barbara and charged her with being drunk in a public place early on the afternoon of 31 January 1986. She was taken to the Brisbane City watchhouse in a state of near unconsciousness, unable to walk, communicate or comprehend her environment. Placed in a cell where at some time during the afternoon she lapsed into unconsciousness.
Fay Lena Yarrie	27	QLD	Brisbane City Watch-house	Injuries sustained from assault by a fellow inmate	Fay was no stranger to the Brisbane City watchhouse. She had been arrested and detained for drunkenness on hundreds of occasions during her short life. Police apprehended Fay for drunkenness after being detained by an off-duty police officer outside a hotel in Brisbane's Fortitude Valley on the afternoon of 15 December 1988. She was taken to the Brisbane City watchhouse and eventually placed in a cell with two other Aboriginal women, one earlier observed behaving aggressively toward her fellow inmates. She died that evening in the hospital as a result of the injuries she sustained while in custody.
Ceduna	~30	SA	Ceduna Watch-house	Natural cause (cardiac arrhythmia)	A woman, whose name has been suppressed from publication, died in the cells of the police station at Ceduna on 18 February 1983. She was a chronic alcoholic with a life-long history of ill-health. Two days before her death, she was arrested on a warrant of commitment for unpaid fines totalling \$36.30. She was to have served two days in custody in default and was due for release on the day of her death.

¹⁶⁴⁷ Elena Marchetti, 'Victims or Offenders: Who Were the 11 Indigenous Female Prisoners Who Died in Custody and Were Investigated by the Australian Royal Commission into Aboriginal Deaths in Custody?' (2012) 19(1) *International Review of Victimology* 37; Elliott Johnston, 'Royal Commission into Aboriginal Deaths in Custody (v1-5)' (Government Report, Royal Commission into Aboriginal Deaths in Custody, 1991) 600.

AXI: Excerpts from Informal Emails to Male Colleagues

Yes. I would speak out about violence against women; but the how, when, and where of speaking out depend on the given situation and particularly on the intended audience for the “spoken” message. [Respondent #1]

In male conversations, I have been fortunate to be surrounded by mostly caring and respectful men in my life. However, when some people are maturing, they may try out misogynistic or objectifying language to try and fit into social groups. There have been a couple instances where I have called out a peer within a group of friends/colleagues, to hold them accountable and demonstrate that objectifying or denigrating women is not acceptable behaviour in my social groups. [Respondent #2]

The simple answer is “yes,” I would speak out about/against violence against women if/when I know it is taking place, or generally in advocating for policy and personal choices that support women's rights to live free from the threat of violence and discrimination. [Respondent #3]

My job as an educator affords me many opportunities to address equality issues, including those conflicts surrounding violence against women. [Respondent #4]

The where is often times the key element. If I am at work or attending a public meeting, yes and not only because I believe it is wrong but additionally the societal norm in my circle views violence against women as a particularly loathsome act. [Respondent #5]

It is a little difficult to answer your question because the many contexts in which I can imagine speaking out about violence against women are not easy to delineate. [Respondent #6]

Yes, I will. By actually engaging with others by taking concrete actions including educating, confronting, and/or reporting to the law enforcement agencies, anyone who I see committing such violence. [Respondent #8]

Yes, anytime anywhere, giving my unscientific opinion, since that this is not my area of scientific work. [Respondent #9]

I would speak about violence against women verbally or in writing as the situation demands or presents. [Respondent #10]

Yes. There are no circumstances where I would feel compelled to keep silent about the issue. [Respondent #11]

Education and enlightenment about who we are as people irrespective of gender or sexuality, society and our learning systems or worldviews have taught us conflicting things about dominance, alpha male, patriarchy and submission that is difficult to disentangle from violence in any form. On one hand, I am expected to control my home and use strong language and hand otherwise am seen gay or not manly enough, on the other - too much is seen as verbal or physical abuse. [Respondent #15]

Yes. I would definitely speak out about violence against woman. I feel like I do this tacitly by whom I vote for. [Respondent #16]

Yes. I would speak out against violence against women any time. [Respondent #17]

I would speak out about violence against women, but only in a comfortable context. [Respondent #18]

As an historian and an educator, I try to build awareness and consciousness-raising surrounding gender issues into my teaching activities at every opportunity. [Respondent #19]

I was raised singlehandedly by my mother, my entire makeup, the man I am who is now raising three boys, owe its roots to that mother of mine. May her soul rest in peace, for just as her presence in my life inspired me beyond words, her death passed me her torch. A torch that helps me find the light, kindness, softness and that power of emotion in every woman that crosses my path. If all men viewed and know women as I do, women would need no protection at all, as they are the fruit-bearers of life. If there is nothing else, I have thought my three boys, they all know just too well the importance of their grandmother, and the knowledge of their grandmother has shaped their view of their own mother, I refer to it as protection from within. [Respondent #20]

Yes. I will speak out against violence generally, and in particular violence against women, because it goes against my principle. [Respondent #12]

Yes, I will speak out about violence against women. The first and easy thing that I believe one can do is to live it in the day-to-day life. We are all surrounded by women (at home, work, etc.,) and need to refrain ourselves from being violent against them whatever situation we found ourselves in. [Respondent #23]

I will answer the question broadly and say that it is the responsibility of any person to act when they see violence being perpetrated against another person - be it a woman, child, or even a man. [Respondent #24]

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