

# 'OTHER INHUMANE ACTS': FORCED MARRIAGE, GIRL SOLDIERS AND THE SPECIAL COURT FOR SIERRA LEONE

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## ABSTRACT

The decade-long civil war in Sierra Leone gained international notoriety for the widespread use of child soldiers, and the sexual abuse and 'forced' marriage of girl soldiers. For the first time in international legal history, 'forced marriage' is being prosecuted as a 'crime against humanity' in Sierra Leone's post-conflict 'Special Court'. This represents an important step in advancing the human rights of girls, and follows a growing trend in international criminal prosecution of gender offences. Notwithstanding the significance of this indictment, international law is no panacea for the deeper inequalities and vulnerabilities that girls experience in peacetime and in wartime. This article advocates a specific focus on girls, who are often 'disappeared' under discourses of children and women. Moreover, using recommendations from Sierra Leone's Truth and Reconciliation Commission, this article attempts to point to social and economic inequalities that must be addressed alongside criminal prosecution of gendered crimes against humanity.

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## KEY WORDS

child soldiers; forced marriage; gender rights; girls; post-conflict justice;  
Sierra Leone

I did not want to go; I was forced to go. They killed a lot of women who refused to go with them . . . When they capture young girls, you belong to the soldier who captured you. I was 'married' to him. ('Isatu', aged 15 at the time of her abduction; Amnesty International, 2000b)

## INTRODUCTION

ON 6 MAY 2004, the Trial Chamber of the Special Court for Sierra Leone (<http://www.sc-sl.org>) issued a landmark decision allowing the prosecution of 'forced marriage' as a crime against humanity. This follows a growing trend in international legal measures that address gender-specific human rights abuses. Sierra Leone's decade-long civil war gained international notoriety for the widespread use of child soldiers by all parties to the conflict, rampant sexual violence, and the practice of 'forced marriages', which typically involved an adult male combatant taking a captured girl soldier as his 'wife'. Sixty per cent of girls involved with fighting forces in Sierra Leone acted as 'wives' (McKay and Mazurana, 2004: 92). While the practice has euphemistically been termed 'forced marriage', many scholars and non-governmental organizations (NGOs) point out that it is, more accurately, sexual and domestic slavery (see for example, Amnesty International [hereafter, AI], 2000a; Alfredson, 2001: 5). The practice, moreover, is not unique to the conflict in Sierra Leone. The preponderance of forced marriage in armed conflicts around the world makes the Decision<sup>1</sup> of the Trial Chamber timely and pertinent to the present human rights situation for girls.

In this article, I will advance two arguments. First, I advocate a distinct analytic focus on girls: girls should not be subsumed under the category 'women' or 'children', but require specific attention. Although empirical research is required, it appears that most of the 'wives' in Sierra Leone's war were girls, not women (McKay and Mazurana, 2004: 93). Many reports by NGOs and in the academic literature conflate women and girls. While women and girls share experiences of gender oppression, girls are uniquely positioned as *not only* a marginalized gender, *but also* a marginalized age group. Girls, furthermore, are often subsumed under discourses of children; however, 'children' have historically and continue to be conflated with 'boys' in talk and in practice.

The second argument that I will advance is that although the Special Court for Sierra Leone is at the forefront of recognizing the human rights of women and girls, and while international law plays an instrumental role in identifying, affirming and advocating the rights of girls, international law is not a silver bullet to alleviate the structural barriers, constraints and challenges that entrench girls' vulnerability in peacetime and wartime. Despite the marginalization of girls and their unique vulnerabilities, I will also argue that girls cannot be seen as mere victims of armed conflict. Girls, in international discourse, are rendered both invisible, in relation to their unique needs, but are simultaneously rendered too visible as super-victims, representing a feminized global South desperate for help from the (masculine) North (Burman, 1994; Buss, 2000). Instead of focusing on girls' victimization, I contend that girls' considerable agency must be recognized and enabled in responses to post-conflict recovery in Sierra Leone.

THE WAR IN SIERRA LEONE

Rebel incursions across the eastern border of Sierra Leone on 23 March 1991 sparked a decade-long civil war between the insurrectionary Revolutionary United Front (RUF) and government forces, which was to exact the most terrible toll on the rural civilian population. Backed by Charles Taylor's National Patriotic Front of Liberia (NPFL) and bolstered by Burkinabe mercenaries, the stated intention of the RUF was to overthrow the patrimonial kleptocracy of Joseph Momoh's All People's Congress (APC), the long-ruling party of post-colonial Sierra Leone (Richards, 1996/2002: xviii, 4–5). A coup of junior officers in 1992, motivated by the state's failure to pay soldiers, resulted in the creation of the National Provisional Ruling Council (NPRC). While there were nascent hopes for a quick end to the conflict under NPRC leadership, Sierra Leone's army was hampered by decades of demoralization and decline in skill and professionalism under the APC. Moreover, officers often sold rice rations for their own enrichment rather than feeding soldiers, which resulted in the phenomenon of 'sobels'; that is, soldiers posing as rebels by night in order to loot civilians (Richards, 1996/2002: 9–14; Hirsch, 2001: 36).

Beginning in 1993, the RUF was taking more daring steps in their politics of terror, taking international hostages and capturing important industrial sites (Hirsch, 2001: 36–8). With the RUF at the doorstep of the capital, Freetown, the NPRC called in the controversial South African security firm, Executive Outcomes. Despite its sordid history with apartheid assassinations and questionable relationship with mineral extraction companies, Executive Outcomes was an important factor in eventually forcing the RUF to the negotiating table for peace talks. The departure of Executive Outcomes in 1997, moreover, proved fatally to prolong the war (pp. 38–40). The year 1996 saw the transition from the NPRC to an elected civilian government, not without considerable costs to ordinary Sierra Leoneans. The RUF, in a bid to prevent elections, began a campaign of amputating the hands and arms of civilians actually and symbolically to prevent them from voting. So widespread was this campaign of amputations that *Médecins sans Frontières* reportedly 'carried out thirty operations in one week on people who had double amputations, severed arms, or faces slashed with machete blows' (p. 44).

Nonetheless, the elected civilian administration of President Ahmad Tejan Kabbah's Sierra Leone People's Party (SLPP) came to power in 1996, ushering in a period of government reliance on Civil Defence Forces (CDF), derived from traditional hunting societies known as Kamajors in the South and as Tamaboros in the North. Shortly after finalizing the doomed *Abidjan Peace Agreement* in November that year, a May 1997 coup sent Kabbah into exile, partly in response to the army's dissatisfaction with the state's new reliance on CDFs. The military junta, the Armed Forces Revolutionary Council (AFRC), which ousted Kabbah, was soon to join forces with the RUF in a bid to end the conflict (Hirsch, 2001: 51–9; Richards, 2002: 261). By 1998, Nigerian ECOMOG forces (Economic Community of West

African States [ECOWAS's Ceasefire Monitoring Group]) had ousted the junta and restored Kabbah to power. At the same time, the RUF resumed its bush campaign. The 1999 *Lomé Peace Agreement* was followed by more fighting; however, the presence of UN ground forces and a series of tentative ceasefires led finally to the close of the war in January 2002 (Richards, 2002: 261–2).

#### RESPONDING TO WAR CRIMES AND CRIMES AGAINST HUMANITY

All armed parties to the conflict perpetrated heinous atrocities for which this war has become notorious. For example, Amnesty International (2000b) reports that in the 1999 invasion of Freetown, countless women and girls were raped, 2000 civilians were killed, and at least 500 people had limbs amputated (p. 10). Thousands of children were recruited as fighters into different armed groups, many of whom were forced to 'marry' their captors, and commit heinous crimes. Houses and villages were routinely looted and torched and significant portions of the population were displaced. In the aftermath of this war characterized by many atrocities, both the Sierra Leonean government and the international community have engaged in innovative approaches to post-conflict justice. This is in no small part due to the controversial terms of the *Lomé Peace Agreement*, which conferred a blanket amnesty on combatants and a 'free and absolute' pardon for Foday Sankoh, the leader of the RUF (Article IX). The two chief forms of post-conflict justice are the Truth and Reconciliation Commission (TRC) and the Special Court. I will discuss the TRC<sup>2</sup> later in this article.

Despite its provision in *Lomé*, the United Nations declared that it did not recognize the blanket amnesty vis-à-vis crimes against humanity (O'Flaherty, 2004: 34). The Special Court, therefore, was established in 2002 as a hybrid domestic-international court to try those 'who bear the greatest responsibility' (*Special Court Agreement*, Article 1 (1)) for the atrocities of the war. This has resulted in indictments against 11 leaders of armed groups in the conflict, in addition to Charles Taylor, former President of Liberia who was taken into custody of the Court on 29 March 2006. The Amended Consolidated Indictments against Taylor and the leadership of all three armed groups variously include murder, looting, burning, abduction, forced labour, the use of child soldiers, sexual slavery, rape, outrages on personal dignity and, for the first time in international legal history, forced marriage.<sup>3</sup> I turn now briefly to a discussion of child soldiers to establish the context of the girl soldiers who experienced forced marriage.

#### THE USE OF GIRLS AND BOYS AS SOLDIERS

Among the chief atrocities committed during the conflict in Sierra Leone was the widespread recruitment and deployment of child soldiers. According to

Amnesty International (2000b) figures, over 5000 children fought as combatants in Sierra Leone, and an additional 5000 were involved as child soldiers in non-combatant roles in the RUF alone (p. 1). The definitions of 'child' and 'child soldier' are subject to considerable debate. Sociologists of childhood now commonly contend that childhood is a socially constructed category, which is both historically and culturally contingent (see Jenks, 1996; James et al., 1998). While definitions of childhood and adulthood vary considerably cross-culturally, the quickly and almost universally ratified United Nations *Convention on the Rights of the Child* (1989) defines 'the child' as 'every human being below the age of 18 years unless, under the law applicable to the child, the majority is attained earlier' (Article 1). Inconsistency in the *Convention* reveals the contestation over the definition of 'child'. Specifically, despite defining 'the child' as anyone aged below 18 years, the *Convention* only forbids the use of children under the age of 15 in active combat, permitting the compulsory or voluntary recruitment of children between 15 and 18 years (Article 38). The *Rome Statute* to establish the International Criminal Court (ICC), while naming the recruitment of children a war crime, similarly sets the minimum recruitment age at 15 rather than 18 (Machel, 2001: 21). *Additional Protocol II* to the *Geneva Conventions*, also, forbids only the use of children below the age of 15 (Article 4(3)(c)).

However, the *Optional Protocol* to the CRC (2002), to which fewer nations are signatories, requires that 'all feasible measures' be taken to ensure that no person under the age of 18 is recruited or engages in active combat (Articles 1 and 4). For the purposes of this article, I use the United Nations Children's Fund (UNICEF) definition provided in the *Cape Town Principles*, which – like the *Optional Protocol* – defines a child soldier as 'any person under 18 years of age who is part of any kind of regular or irregular armed force *in any capacity*' (UNICEF, 1997: 8, emphasis added). This capacious definition includes not only those children involved with carrying arms, but who act in a variety of 'support' capacities or who are recruited for the purpose of forced marriage, or to render sexual services.

Child soldiers are often recruited forcibly through abductions or press-ganging. Children who are already very vulnerable, such as refugee and street children are particularly at risk of recruitment, although, in some conflicts, children have been rounded up from schools and marketplaces. Many children 'voluntarily' join fighting forces. The volitional nature of this choice, however, is considerably constrained: like children in other conflicts, many children in Sierra Leone's war joined armed groups because they saw association with a group as a source of regular meals and access to medical supplies. Others joined fighting forces as source of protection for themselves or protection for their families from harassment (McCallin, 1998: 62–6; Machel, 2001: 8–12). Some children may join to avenge wrongs perpetrated against their communities or family members (Allsebrook and Swift, 1989: 174). Children may also join fighting forces because of existing masculinistic cultures that valorize militarism (McCallin, 1998: 66). Paul Richards (1996/2002) contends that child soldiers in Sierra Leone were rational actors who made calculated

decisions to join in response to their disenchantment with the corrupt patrimonialism that characterized Sierra Leonean government since Independence. Child soldiers are '[n]either dupes nor victims' but make rational choices to join armed groups, for example to secure food or to exact revenge: 'they fight with open eyes' (Peters and Richards, 1998b: 109).

Once children become involved in fighting forces, they are subject to various atrocities. In Sierra Leone, as in other conflicts such as those in Uganda and Mozambique, new recruits were often forced to commit heinous acts against their own families and communities in order to harden the children and to bind children to the armed group (Furley, 1995: 33; Thompson, 1999: 193; Maxted, 2003: 63). In addition to being forced to commit atrocities, children are often forced to take drugs to make them feel fearless; they are required to perform onerous and dangerous duties, such as carrying heavy loads and sweeping for mines, and are also often subject to beatings (Machel, 2001: 12–14).

There are an estimated 300,000 children participating in armed conflicts around the world today. The use of under-age combatants, however, is not a new phenomenon: children were actively involved in the Crusades (especially, the ill-fated 'Children's Crusade'). Children accompanied Napoleon's armies, and child drummers led American soldiers into battle in the Revolutionary War (Furley, 1995: 29; Wessells, 2002: 238). Children fought both for the Nazis and in underground movements against them in the Second World War (Maher, 1989: 302), and the UK army engaged under-age combatants in the first Gulf War (Furley, 1995: 29). Although largely silent in the historical record, girls have played an important role in historical conflict: in 1429, a very young Jeanne D'Arc led an army to victory in expelling the English; girls were known to accompany French revolutionary soldiers, and stories survive of girls fighting in the First World War and in the Mexican Revolution (Mazurana et al., 2002: 101–2).

Despite the historical use of children in war, low-intensity<sup>4</sup> conflicts in the post-Cold War era have seen a drastic increase in the use of child soldiers. The use of child soldiers in historical conflicts has been limited by the small size of children in relation to the heaviness of weapons. Today, the proliferation of inexpensive, small arms, which are light enough to be carried by children as young as 10 years old, has led to a coextensive proliferation of children in war (Peters and Richards, 1998a: 183; Machel, 2001: 7; Maxted, 2003: 60). Armed groups also see children as desirable recruits because they are agile and presumed to be fearless, obedient, brutal and fierce (Furley, 1995: 39; Maxted, 2003: 60). Moreover, the use of children is also a powerful tool to terrorize adult civilian populations: for example, child soldiers in Sierra Leone were sometimes thought not to have yet developed a sense of sympathy or mercy (Boyden, 1994: 260; Maxted, 2003: 61).

Despite the focus on children as active combatants, the definition of 'child soldier' also includes children who do not carry arms. Child soldiers are often used to perform a variety of tasks including acting as cooks, messengers, porters, and spies. Children are deployed in extremely dangerous tasks, such

as laying or sweeping for mines, and suicide missions. In addition, child soldiers, particularly girl soldiers, are used to perform sexual services (McCallin, 1998: 67–9; Machel, 2001: 12–13; Maxted, 2003: 62). Simplistic representations of boys always carrying AK-47s and of girls as exclusively sexual victims obfuscate the range of children's experiences. Scholars who have worked with former girl soldiers in Sierra Leone show that girls, in fact, did engage in active combat. At the same time, a small number of boy soldiers were sexually abused, although the incidence is likely under-reported. In rare instances when girls outnumbered boys, boys have reported being abused by girls (Alfredson, 2001; McKay and Mazurana, 2004: 58).

While I want to avoid caricaturing girls as exclusively sexual victims, the pervasiveness of their experience with sexual violence and the fact that the Special Court is responding to this violence, invite special attention to the issue. It is overwhelmingly the experience of girl soldiers to be sexually violated; in Sierra Leone, reports suggest that *almost all* girls who were abducted were raped (McKay and Mazurana, 2004: 58). By 2000, UNICEF reported that 75 per cent of abducted girls were subject to sexual violence, while other reports suggested that as many as 90 per cent were sexually abused (AI, 2000a: 2).

#### FOCUS ON GIRLS

A chief shortcoming of the growing body of academic literature on child soldiers is the paucity of discussion on girls. Scholarship on child soldiers overwhelmingly reflects the experiences of boys; typically, girls are treated as an addendum, mentioned only peripherally in a few sentences or in a paragraph. Much academic scholarship subsumes girls under the category of 'children', while simultaneously conflating 'children's' experience with the experience of 'boys' (McKay and Mazurana, 2004: 18). There is a critical dearth of consideration of girls, despite the large number of girls who are involved with fighting forces. Between 1990 and 2003, girls were members of fighting forces in 55 countries, and participated in armed conflict in 38 countries (p. 21). In recent African conflicts, girls comprise 30 to 40 per cent of all child combatants (Mazurana et al., 2002: 105). In Sierra Leone, between 1992 and 1996, children were thought to constitute 80 per cent of the RUF camp complement, while girls themselves constituted 30 per cent of RUF forces (p. 107).

#### *GIRLS' DIFFERENCES*

Notwithstanding the many experiences that girls and boys share as soldiers, there is an urgent necessity to pay particular attention to girls. In addition to performing many of the duties that boy soldiers do, girls perform additional duties. Specifically, during the war, girl soldiers not only fought, mined for

diamonds and fulfilled other duties for armed groups, such as spying – as boys did – but also cooked, cleaned and performed sexual services. Moreover, the experience is onerous, physically and socially, in unique ways for girls. For example, girls must manage menses. Many girls' menses cease while they are soldiers. Girls for whom menstruation continues must guard against infection, and struggle to maintain cleanliness and privacy as the exposure of menstruation can be a source of severe distress and embarrassment within an armed group (Mazurana et al., 2002: 114).

Girl soldiers also require particular attention because of their physical and social experience in relation to pregnancy, birthing and child rearing. Unequipped with parenting skills, and without pre- and post-natal care, girls sometimes induce abortions on their own, reject their babies, and in some cases, commit infanticide. When they are reunited with their families, girls who have been sexually assaulted and their children are often rejected (Mazurana et al., 2002: 115). Moreover, girls who have been subject to sexual violence are additionally subject to stigma and mockery for having been 'used'. Indeed, in post-conflict reintegration in Sierra Leone 'in many cases it is easier for a boy to be accepted after amputating the hands of villagers than it is for a girl to be accepted after being the victim of rape' (McKay and Mazurana, 2004: 37, internal quote marks omitted).

Physically, girl soldiers can sustain serious harm from childbearing, sometimes suffering gynecological problems because of infections or complications in the birthing process. In Sierra Leone, girls involved with the RUF were subject to particularly dangerous practices: one technique to initiate childbirth involved jumping on a girl's pregnant belly; at other times, pregnant girls had their legs bound in order to postpone birth. Even after childbirth, girls often do not have time to recover, having to return immediately to military duties, at times carrying their babies into battle with them (Alfredson, 2001: 2, 5; Mazurana et al., 2002: 114–15).

Because of their experiences with forced domestic and sexual labour, and their experiences with menses, pregnancy, child-birthing and -rearing, girls require particular attention and cannot have their experiences subsumed under the experiences of boys under the ostensibly gender-neutral discourse of 'children'. Indeed, 'the prototypical child of policy is male, and it is the feminine gender that is supplementary' (Burman, 1994: 242). Despite girls' and boys' many shared experiences, there is a specificity to girls' experience to which scholars must be attentive. Furthermore, girls' experiences must also be distinguished from the experiences of women. Women and girls share experiences with gender oppression, but girls' experiences are also shaped by their young age. While being vigilant not to impose western conceptions of girlhood and womanhood onto a non-western context, scholars must also be cognizant of not eliding the experiences of women and girls. I am not interested in producing a hierarchy of victimization or oppression but the particularity of girls' vulnerability must be considered. Qualitative research suggests that the 'wives' to all parties of the Sierra Leonean conflict were not *typically* adult women; rather, 'wives' were *typically* girls: 'most commanders'



"wives" ranged in age from 9 to 19' (McKay and Mazurana, 2004: 93). A possible explanation for this phenomenon is that children generally are more vulnerable to abduction and press-ganging (or even voluntary recruitment) than are adults.

Girls' experiences need to be recognized as different from women's in a variety of ways. In some cases, girls may be more vulnerable to sexual assault than women because of common fears of HIV/AIDS. If male perpetrators fear contracting HIV/AIDS or other STDs, they may seek out ever-younger girls with the belief that younger girls are less likely to be infected (McCallin, 1998: 68; Machel, 2001: 55; UNICEF, 2005: 55). Findings of the TRC suggest that female children were specifically targeted for rape and sexual slavery, with 25 per cent of all cases of rape brought before the Commission involving girls 13 years and younger, and 25 per cent of all cases of sexual slavery heard by the Commission involving girls 12 years and younger (TRC Report, Volume 2, Chapter 2, p. 35, para. 89).<sup>5</sup> The *State of the World's Children Report* indicates that 'girls are *primary targets* for abduction in armed conflict with the objective of forcing them to become warriors or sexual and domestic partners' (UNICEF, 2005: 52, emphasis added). Moreover, girls may experience reproductive ill health as a result of childbearing at a young age; however, socio-economic factors, such as access to good healthcare, appear be stronger determinants of reproductive (ill) health than early childbearing *per se* (Bunting, 2005). Even after conflicts end, girls continue to be peculiarly vulnerable: specifically, the presence of peacekeeping troops correlates with dramatic increases in child prostitution, and many officials responsible for demobilized children, such as social workers, exploit the children they are intended to protect by entering them into what Richard Wilson (2001: 21) terms 'an entire fuck economy'. Finally, girls may not have the emotional or social resources to draw upon that women may have developed in order to cope with the ordeals that they face (Machel, 2001: 55).

Girls are a largely neglected group, who are 'disappeared' or invisibilized under the categories of 'children' or 'women'. Girls' needs and experiences, therefore, are not given adequate attention. Disarmament, demobilization and reintegration (DDR) programmes largely ignore the needs of girls. In Mozambique, for example, the DDR package given to demobilized girls included men's clothing (Machel, 2001: 17). In Sierra Leone, the 'cash for weapons' programme disadvantaged girls who did not possess their own weapons, whose commanders confiscated their weapons, or who did not serve in a capacity involving arms. Programmes are also not adequately sensitive to girls' experience with sexual violence, their needs as mothers, or their relationships to their captor-'husbands' and their home communities (see McCallin, 1998; Machel, 2001; McKay and Mazurana, 2004). DDR programmes routinely underestimate the number of girls involved with fighting forces, and often do not see women and girls as 'real soldiers', preferring to focus on male soldiers (UNICEF, 2005: 53).

In order to avoid rendering girls invisible under the homogenizing categories of 'women' or 'children', girls' needs require particular attention.

However, researchers must be equally vigilant to avoid reifying girls as penultimate victims. In emergencies or disasters in the global South, the northern media and NGOs deploy imagery of helpless and innocent children suffering, who must be saved. But, it is *girls* who are imaged as ‘the quintessential victims’ (Burman, 1994: 242). The objectified girl-victim becomes ‘the “poster child” of Third World “Otherness”’ in a paternalistic, Orientalist dyad with the ‘civilized’ North (Buss, 2000: 287).

#### *PAYING ATTENTION TO GIRLS*

Scholars like McKay and Mazurana (2004), and Denov and Maclure (forthcoming, a, forthcoming, b) are decentering discussion of child soldiers by focusing on girls. These scholars blast the popular representation that girls’ exclusive roles in armed conflict are as sexual slaves. Instead, they point to the many tasks in which girls are engaged. In Sierra Leone, girls, like boy soldiers, acted as messengers, porters and spies. They trained and served as armed combatants, burned homes, looted, and killed. In addition to these diverse roles, their work reflected a gendered division of labour, that is, girls collected food, cooked, and cleaned; girls were also used by men and boys for sexual services. Enloe’s (2000, cited in Mazurana et al., 2002) conception of the militarization of women and their work can be usefully applied to girl soldiers’ labour, specifically, the exploitation of girls’ domestic labour was fundamental to the continuation of fighting as it sustained the armed group (Mazurana et al., 2002: 109).

Denov and Maclure (forthcoming, a, forthcoming, b) are instructive in drawing attention to the agency of girls in fighting forces. Contrary to the predominant discourses in the media and in NGOs, girls were not merely passive victims, but active agents. Disrupting the stereotype of the ‘damsel in distress’, Denov and Maclure’s research with former girl soldiers reveal that girls often felt empowered through their experiences fighting, bearing arms and killing. Although girls continued to be the least powerful members within their own fighting force, they felt empowered relative to civilians. However, Denov and Maclure’s research also found that girls actively resisted the culture of violence surrounding them. Acts of resistance included intentionally failing to kill targets in combat, developing bonds of solidarity with one another, planning escapes from their abductors, and resisting sexual violence by feigning menstruation.

#### GIRLS, SEXUAL VIOLENCE AND FORCED ‘MARRIAGE’

During armed conflict, girls and women are vulnerable to sexual violence in armed groups and as civilians. In Sierra Leone, all parties to the conflict raped civilian women and girls, often sadistically or in gangs. Amnesty International (2000a) reports that, in Sierra Leone, a ‘14-year-old girl was stabbed

in the vagina with a knife because she had refused to have sex with the rebel combatant who abducted her. Another woman had small pieces of burning firewood inserted into her vagina. One 16-year-old girl was so badly injured after repeated rape that, following her escape, she required a hysterectomy' (p. 2). As a response to the widespread use of rape in the conflict, there are four counts relating to sexual violence in the consolidated indictments at the Special Court. The indictments at the Special Court follow a growing trend in recent years of prosecuting human rights crimes against women, specifically in relation to sexual violence.

The international legal community is taking important steps in advancing the rights of women. The historical record shows that rape and other sexual violences pervade war: in the Second World War, one American missionary and witness writes of Nanking: 'never have I heard or read of such brutality. Rape! Rape! Rape! We estimate at least 1000 cases a night, and many by day. In case of resistance . . . there is a bayonet stab or a bullet' (Brownmiller, 1975: 58). Japanese soldiers used 'comfort women' throughout the Second World War (Machel, 2001: 61); in Vietnam, sexual violence perpetrated by American soldiers 'was, in the words of one Vietnam veteran, "pretty SOP" – standard operating procedure' (Brownmiller, 1975: 107).

Although there was widespread sexual violence perpetrated during the First World War, the Nuremburg Charter does not specify rape as a crime against humanity (McHenry, 2002: 1277). However, the *Geneva Convention* (1949) provides for protection for women against sexual violence in Article 27, stating that '[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault'. Rape might also be prosecuted under 1984 *Torture Convention* (Machel, 2001: 61). Despite the pervasiveness of sexual violence in war, no cases of sexual violence were prosecuted in any international tribunal prior to the late 1990s. In 1998, the International Criminal Tribunal for Rwanda (ICTR) set a precedent by ruling that rape is an act of genocide (*Prosecutor v Jean-Paul Akayesu* (1998)). In 2001, the International Criminal Tribunal for the Former Yugoslavia (ICTY) was the first international court to rule that rape and sexual enslavement are crimes against humanity (*Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (2001)).

The indictments relating to sexual violence against various accused in the Special Court for Sierra Leone follow the ICTR and ICTY in prosecuting such acts as crimes against humanity. In addition to these precedents set in international criminal courts, the international legal community is involved in other measures to address the problem of sexual violence in warfare: the International Labour Organization (ILO) in 1996 condemned the Japanese use of 'comfort women' as sexual slavery, which is therefore a violation of the ILO's *Forced Labour Convention* (1930). This was followed four years later by the Women's International War Crimes Tribunal on the Japanese military's use of sexual slaves. Although this Tribunal did not carry the force of law, it holds considerable symbolic value in recognizing the human rights of women. Significantly, the International Criminal Court (ICC) also

acknowledges various forms of sexual violence as crimes against humanity and as war crimes (Machel, 2001: 64); specifically, under Article 7(g) of the Rome Statute, the ICC will prosecute 'rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity'.

*AGE AND GENDER: THE DIFFERENCE DIFFERENCES MAKE*

Instruments like the *Geneva Convention* (1949) Article 27 explicitly protect women from sexual crimes while failing to extend the same – or any other – explicit protection to girls. Unfortunately, the dearth of protection for girls does not translate into a corresponding absence of crimes against girls, and subsuming girls under the category 'women' for shelter from sexual crimes against humanity obfuscates any differences that may emerge from the youthfulness of girl victims. Not only are girls disappeared under women in laws of war (humanitarian law), girls also disappear under 'the child' in human rights provisions like those in the *Convention on the Rights of the Child* (CRC). For instance, Article 34's provision against the sexual exploitation of 'the child' says nothing of the staggering incidence of sexual exploitation of girl children during and after war, including by peacekeeping forces in post-conflict situations (see for example, Wilson, 2001). The 'equality/difference' debate (see, for example, Fraser (1997) for an overview of the development of this debate) that has for decades haunted feminist legal theory can be usefully extended to the difference between girls and boys. The opaque term 'the child' obscures the lived differences between boys and girls. If the international legal community is serious about girls' substantive equality to boys, special protections must be extended to remedy girls' particular victimizations. The paucity of protections specifically naming girls renders them and their experiences invisible. Encouragingly, however, the international legal community's increasing commitment to prosecuting gender-specific crimes inches us closer to making girls visible *as girls* and not as women or as children.

The landmark ICTY Decision, *Kunarac* (2001), gestures towards the difference age makes. Specifically, aggravating factors in the decision against all three Serbian men convicted of largely sexual crimes against humanity, included the youthful age of the victims. Zoran Vukovic and Dragoljub Kunarac's victims included girls as young as 15 and 16 years of age, while Radomir Kovac's victims ranged from 'the very young age' of approximately 12 years to the 'relatively youthful age' of approximately 20 years. The ICTR's *Prosecutor v Jean-Paul Akayesu* (1998) also draws a discursive distinction between women and girls in the text of the decision by naming both women *and* girls as victims of sexual violence. The discursive distinction between women and girls as victims of the same sexual crimes validates women's and girls' differences while reflecting their shared experiences. Finally, the forced marriage indictment at the Special Court of Sierra Leone extends not only the prosecution of gender-based crimes, but advances a

recognition of the difference age makes. That is, forced marriage in Sierra Leone's lengthy war, was a crime perpetrated overwhelmingly against girls.

#### GIRL SOLDIERS AS 'BUSH-WIVES'

Just as in Rwanda, the Former Yugoslavia and earlier conflicts of the 20th century, the Sierra Leonean conflict involved widespread sexual violence against women and girls in the *civilian population*. However, the conflict in Sierra Leone, like other post-Cold War regional conflicts also involves sexual violence against women and girls in the *military population*; that is, sexual violence was perpetrated against female members *within* a given fighting force.

Girls recruited into fighting forces experience sexual violence in various ways. Although Denov and Maclure (forthcoming, a) discuss one instance of sexual violence against girls involving an older female perpetrator, the overwhelming majority of sexual violence is heterosexual violence perpetrated by boys and men. In Sierra Leone, girls experienced gang rapes, sexual torture as well as serial rapes by different individual boys or men (McKay and Mazurana, 2004: 58). Girls were also either taken or given to men or boys as 'wives' in 'bush marriages' or 'AK-47 marriages', as they are sometimes called (Denov and Maclure, forthcoming, b). 'Wives' were sometimes given as rewards to boys or men for good fighting. Qualitative research suggests that being a 'wife' had some limited 'benefits'. Becoming a 'wife' typically shielded a girl from sexual violence by men or boys other than her 'husband'. Moreover, 'wives' would often have a more stable source of food as they would have access to their 'husbands' leftovers. The 'wives' of commanders also exercised considerable power in camps (see McKay and Mazurana, 2004: 93–5).

Notwithstanding these relative 'benefits', girls who acted as 'wives' were subject to ongoing sexual violence from their 'husbands'. Moreover, the euphemism 'forced marriage' occludes the experience of sexual and domestic slavery. Between 1990 and 2003, girls in 20 different conflicts in different regions of the world were forced to provide sexual services within their fighting force (McKay and Mazurana, 2004: 26). Although the sexual violence girls experience inside a fighting force is not always 'forced marriage', the indictment in the Special Court on 'forced marriage' sets an important and urgent precedent in combating the violence girls experience from members of their own armed groups.

#### OTHER INHUMANE ACTS: FORCED MARRIAGE AND THE SPECIAL COURT

The Trial Chamber of the Special Court of Sierra Leone issued a landmark decision giving leave to the Prosecution to amend<sup>6</sup> the indictments against six accused: Issa Sesay, Morris Kallon and Augustine Gbao, three leaders of the rebel Revolutionary United Front (RUF) and Alex Tamba Brima, Brima

Bazzy Kamara and Santigie Borbor Kanu of the former junta Armed Forces Revolutionary Council (AFRC).<sup>7</sup> The amendment enters a new count of 'Crimes Against Humanity – Other Inhumane Acts (Forced Marriage)'. This amendment, which allows the prosecution of 'forced marriage' is the first indictment of its kind, and follows the trend in international justice, specifically focused on a gender-based crime. The indictment of 'forced marriage' is a significant precedent for various reasons: first, it addresses the prevalent 'bush-wife phenomenon' (Decision, 2004: 12 [38]) in many conflicts around the world, thus condemning this common practice as a crime against humanity. Second, it develops the trend towards focusing on gender-specific crimes against humanity and war crimes. Third, it is the first prosecution of a gender-specific crime against humanity that is perpetrated *within* an armed group. Finally, because forced marriage is overwhelmingly perpetrated against girls, the prosecution of this crime addresses the specific experience of girls in war.

The Prosecution entered the request to amend the consolidated indictments against the RUF and AFRC leadership in February 2004. The Defence for the various accused objected to the amendment on two grounds:

1. 'Forced marriage' does not constitute a crime against humanity; and,
2. Allowing the amendment would result in a procedural injustice for the accused by delaying the trial and hampering the ability of the accused to formulate a defence (Decision, 2004: 4).

The Prosecution submitted that the amendments would better reflect the culpability of the accused persons, that they were brought in a timely fashion, and that the amendment would not infringe the rights of the accused to a fair trial. The Prosecution, further, submitted that the new count of 'other inhumane acts (forced marriage)' will not require further disclosure as it involves the same factual allegations as other counts relating to forced labour and sexual violence, namely original Counts Six through Eight in both the RUF and AFRC consolidated indictments relating to rape, sexual slavery and outrages against personal dignity. The new count of 'other inhumane acts (forced marriage)' appears as new Count Eight. The amended RUF and AFRC consolidated indictments, therefore, includes the following sexual and gender-related offences:

- Count 6: Rape, a *crime against humanity*, punishable under Article 2.g of the Statute (of the Special Court of Sierra Leone, hereafter, 'Statute');
- Count 7: Sexual slavery and any other form of sexual violence, a *crime against humanity*, punishable under Article 2.g of the Statute;
- Count 8: Other inhumane act, a *crime against humanity*, punishable under Article 2.i of the Statute;
- Count 9: Outrages upon personal dignity, a *violation of Article 3 common to the Geneva Conventions and of additional Protocol ii*, punishable under Article 3.e of the Statute.

In their deliberations, the key question for the judges was one of timing; that is, whether the application for amendment had been brought at such a time as to 'prejudice the rights of the Defence to a fair and expeditious trial' and whether the application for amendment was 'made in the overall interest of justice rather than its having the effect of giving an undue advantage to the prosecution' (Decision, 2004: 13). The majority of judges<sup>8</sup> found that as a sexual and gender offence, the new count was a 'kindred' offence to those that already existed in the consolidated indictments. As such, the factual allegations that form the bases of the new count were long ago disclosed to the Defence. Moreover, the judges found that the amendment was brought in a timely fashion.

The procedural details around which the Prosecutor and Defence parried and which shaped the decisions of the judges are less important for the purposes of considering the human rights of girls than the substantive mandate of the Special Court, which was manifest in the decision to allow the amendment. In other words, the Decision issued by the Judges on the amendment, although largely technical, reveals the commitment of the Special Court to recognizing and guaranteeing the rights of women and girls. The Statute of the Special Court specifies in Article 15.4 that

[g]iven the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice.

In the decision to allow the addition of 'forced marriage' to the indictment, the Judges noted that

[t]hese provisions underscore the necessity for international criminal justice to highlight the high profile nature of the emerging domain of gender offences with a view to bringing the alleged perpetrators to justice. In light of the above, it is expected, and we hold the view that the Prosecutor at the helm of the investigation process, should exercise vigilance, diligence and attention, bring before justice for trial, all those accused of having committed gender and other categories of offences within the competence of the Court ... (p. 11)

Moreover, the Judges found that

[i]n this Motion [to amend the indictment] ... the Prosecution, during the investigations that preceded the initial appearances of the accused persons, properly addressed their minds to gender offences and the necessity to gather the required evidence to have their perpetrators prosecuted. (p. 14)

Therefore, both the Statute and this decision to allow the amendment of the consolidated indictment indicate the commitment of the Special Court to prosecuting gender offences and offences against children. More importantly, however, contrary to the Defence objection that 'forced marriage' does not

constitute a crime against humanity, the Judges' decision to allow the count of 'crime against humanity – other inhumane acts (forced marriage)' recognizes forced marriage *as* a crime against humanity. This Decision, therefore, sets a precedent in international criminal justice.

### SOLUTIONS DEEPER THAN CRIMINAL TRIAL

While the decision to allow the amendment to the indictments represents an important move by the international community to condemn the forcible marriage of girls, the international community cannot rely exclusively on the force of law to bring an end to this practice. Certainly, criminal trials bear considerable symbolic value in condemning acts, demonstrating intolerance or moral repugnance for acts committed. As such, the decision to allow the prosecution of forced marriage sends an important moral message that the international community condemns the violation of the rights of girls and women in this way. However, criminal trials may have little value as a deterrent (see for example, Drumbl, 2000: 1253).

As some scholars have argued, in the fog of war, many perpetrators of human rights crimes do not think about the possibility of criminal trial. Using criminal sanction as a deterrent presupposes instrumentalist actors who will 'rationally' choose to commit crime or not, while weighing the threat of sanction. As Dianne Martin (1998) has argued in another context, 'a theory of rational choice is largely irrelevant to acts motivated by non-rational impulses' (quoted in Drumbl, 2000: 1254). Notwithstanding Richards's (1996/2002; Peters and Richards, 1998a, 1998b) (persuasive) assertion that child soldiers in Sierra Leone made rational choices to *join* fighting forces, pandemic levels of sexual violence cannot be easily accommodated in a rational choice model, where perpetrators – who do not intend to lose the war – calculate the cost of criminal prosecution while raping a girl or woman in isolated bush. (In any case, such a calculus is rendered moot by amnesty provisions in failed peace accords like those in Sierra Leone.) Despite assertions of some criminologists that actors knowingly choose to commit crimes (for example, Braithwaite, 1989), actors involved in mass violence may not perceive their acts 'as a legal or even moral wrong' (Drumbl, 2000: 1254). Therefore, if the international community is serious about stopping the widespread sexual exploitation of girls in war, legal instruments must be twinned with improvements in the social and economic lives of girls in war-torn and war-vulnerable areas of the world. Girls' particular vulnerability in wartime is not unrelated to their particular vulnerability in peacetime. Two examples illustrate the overlap between girls' peacetime and wartime vulnerability that needs to be rectified:

1. *Violence and patriarchy*: some feminists argue that the division between peacetime and wartime violence against women and girls is false (see Viseur-Sellers, 1999). They argue that women's experience of wartime violence is an extension of the violence we experience in our everyday lives. The experience of violence for women and girls is tied to patriarchal



ideologies and practices. That girls who have been raped are rejected by their families or communities, and are stigmatized for having been 'used', revictimizes the victim. Moreover, it demonstrates a devaluation of girls and women, and a constructed equation between a girl's worth and her sexuality. Girls' and women's experience with violence in war should not be explained away as *exceptional*, and the prosecution of gender offences in courts is no guarantor of women and girls' physical and sexual safety in or out of war. Indeed, it was not only the leaders of the armed groups who engaged in sexual violence; rather, sexual violence was perpetrated by perhaps thousands of different men and boys.

2. *Social and economic poverty*: both in peacetime and in wartime, girls and women are economically and socially vulnerable. Although empirical data are not available on the number of girls who join fighting forces 'voluntarily', the poverty of girls during wartime may result in many girls opting to join fighting forces. Girls, like boy soldiers, often join armed groups to secure a source of food, medicine, and protection. However, involvement with a fighting force, as Alfredson (2001) demonstrates, is strongly correlated with the risk of sexual victimization for girls in particular.

During peacetime, girls are also socially and economically vulnerable. According to the *State of the World's Children Report* (UNICEF, 2005: 115), Sierra Leone has among the highest under-five mortality rates globally and has among the lowest Gross National Incomes per Capita (GNI) in the world. Within this most impoverished country, girls are particularly disadvantaged. Almost four years after the end of the war in Sierra Leone, girls are still the least educated sector of the population. In 1990, before the war, only 14 per cent of women were literate, while 40 per cent of men were literate. In 2000, the ratio of literate women to men has barely improved, with 23 per cent of women and 51 per cent of men literate. Although at the primary-school level, the percentage difference between girls' and boys' attendance is not terribly significant (43 per cent of boys and 39 per cent of girls), at the secondary-school level, girls fall behind boys considerably, with one-third of boys attending secondary schools and only one-fifth of girls attending (p. 134). Using education and literacy as sample indicators of wellbeing demonstrates that girls are much less well off than boys in Sierra Leone. Given that Sierra Leone is the world's poorest country (Harvey, 2000: 1), these indicators suggest that girls in Sierra Leone are among the least well off people *in the world*. While Sierra Leone struggles with 3000 orphans and displaced children (Harman, 2004: 22), and is left with 1736 schools destroyed during the war (Maxted, 2003: 56), the international community is not doing enough to remedy the dire situation of children in Sierra Leone: in 1999, each child in Sierra Leone received the equivalent of less than US\$20 dollars in international resources for humanitarian relief, while each child in Kosovo received the equivalent of US\$216 (Machel, 2001: 6).

In order to combat girls' vulnerability as victims in times of war, the international community must combat girls' vulnerability in times of peace, by remedying the deep disadvantages that girls experience vis-à-vis violence,

patriarchy and social and economic marginalization. The Decision of the Special Court to allow the prosecution of the crime of 'forced marriage' is an important symbolic and legal gesture towards recognizing and advancing the rights of women and girls. However, legal precedents in international courts are not enough to combat girls' specific marginalization and victimization. Taking a cue from Denov and Maclure's research on girls' resistance in fighting forces, international, state and non-governmental initiatives must maximize girls' inventiveness, resourceful and capacity for empowerment as agents in the improvement in their own conditions. Focusing on providing girls with opportunities, training and schooling programmes and involving girls in evaluating and directing these programmes make the most of girls' resilience and innovation (McKay and Mazurana, 2004: 51).

### CONCLUSION

The Recommendations of the Truth and Reconciliation Commission (TRC), which were submitted to the Government of Sierra Leone in October 2004, point towards important paths to remedying women's and girls' marginalization. The TRC in Sierra Leone is unique insofar as its enabling Statute requires that the government 'faithfully and timeously implement the recommendations of the report' (TRC Report, Volume 2, Chapter 3).<sup>9</sup> A sampling of the recommendations by the Commission is instructive in identifying work that needs to be done to remedy the conditions that render women and girls so vulnerable in war and peace. The Commission recommends that:

- the President, as the Head of State, acknowledge the suffering experienced by women and girls during the conflict, and offer an unequivocal apology on behalf of the current and preceding governments for the failure of successive governments to protect women and girls (para. 317);
- the government take necessary steps to eradicate the structural gender inequalities that persist in Sierra Leone in law and customary practice, which currently entrench the marginalization of women and girls. Further, the government must engage in actively changing the attitude towards women and girls by instituting educational programmes to combat beliefs and norms that lead to gender oppression (paras 318–21);
- the government change laws pertaining to domestic violence as the current laws do little to protect women and girls (para. 328);
- the community must make special efforts to accept women and girls who have been subject to sexual violence during the war, and should protect these victims and any children they bear from attacks (para. 325);
- the government must make changes to laws pertaining to sexual violence. The current laws and procedures discriminate against women and girls, and lead to a 'culture of impunity' (paras 330–4);
- the government should launch a campaign against customary practices vis-à-vis sex with or rape of a minor. Under customary law, there is no requirement of consent by a minor for sex; and, in instances of rape, the

parents/guardians typically settle the dispute through monetary compensation or by compelling the victim to marry her perpetrator. This practice should be stopped (paras 335–8);

- the government should repeal all laws that discriminate against women and girls, and should abolish all customary practices that discriminate against women and girls (paras 341–6);
- the government should ensure that at least 30 per cent of all candidates for political parties should be women, and that women should constitute at least 30 per cent of cabinet positions to remedy women's historical exclusion from political power (paras 349, 351);
- special efforts must be made to ensure women's and girls' access to education and skills training (paras 353–6).

The Decision of the Special Court to allow the prosecution of the 'forced marriage' is part of an important trend in international criminal courts in recognizing and advancing the rights of women and girls in war. The 'forced marriage' indictment is additionally important, in Sierra Leone, in pursuing a crime that is overwhelmingly not only gender specific, but also age specific. The *Decision* is significant for identifying 'forced marriage' as a 'crime against humanity' and sets an important precedent in the face of the dozens of regional conflicts in the world in which girls are used as 'wives'. The force of this precedent, however, is not enough to eradicate this form of sexual and domestic slavery. Deeper social, economic and political changes must occur to render women and girls less vulnerable in times of peace and in times of war. While it remains to be seen whether TRC Recommendations will be implemented, as a transitional justice mechanism, the TRC can be uniquely instrumental in accomplishing what international law and the prosecution of crimes against girls cannot accomplish, that is, if TRC Recommendations are, indeed, implemented, the TRC provides direction on how to tackle the social and structural disadvantage that girls face *as girls* in 'peace' that render them so vulnerable in war. Thus, the TRC Recommendations are an important starting point for advancing the rights of women and girls in *practice*, not only in criminal court *precedent*.

## NOTES

I wish to thank Myriam Denov (University of Ottawa) for generously advancing me copies of two forthcoming articles, which she authored with Richard Maclure. Denov and Maclure's ideas were instrumental in helping me to develop a perspective onto girls' experiences and capacities.

1. *Decision on Prosecution Request for Leave to Amend the Indictment* [hereafter 'the Decision'], SCSL-2004-15-PT-5971-5992.
2. The *Lomé Agreement* provided for the TRC; this was later affirmed in the *Abuja Agreement* that brought a final end to the war (O'Flaherty, 2004: 36–7). The TRC was established by the *Truth and Reconciliation Act* in the beginning of 2000. The TRC was established because:

Sierra Leoneans had a need to express and acknowledge suffering, a need to relate their stories and experiences, a need to know who was behind the atrocities, a need to explain and contextualize decisions and conduct, a need to reconcile with former enemies, a need to begin personal and national healing and a need to build accountability in order to address impunity. (TRC, 2004a: 1)

3. Indictments against the RUF's Foday Sankoh and Sam Bockerie were withdrawn on 8 December 2003 following their deaths. Although Charles Taylor was indicted in absentia on 7 March 2003, he was harboured by Nigeria until his extradition in spring 2006 (<http://www.sc-sl.org>).
4. 'Low-intensity wars' refer to conflicts (usually internal to a country) 'which focus on the political, economic, social and psychological disruption of a country', in contrast to 'conventional wars', which were 'global [inter-state] yet focused on military objectives' (Goldson, 1996: 816).
5. These statistics in the TRC Findings refer to 'children' not girls specifically; however, elsewhere the TRC reports that all cases of sexual violence brought before the Commission were perpetrated against females exclusively (TRC Report, Volume 2, Chapter 2, p. 35, para. 88).
6. The application for amendments included other amendments, which did not bear substantial consequences for the accused and did not invoke any particular objection. These other amendments were changes to spelling, noting the death of one of the accused (the leader of the RUF, Foday Sankoh), and an extension of the relevant time period.
7. A similar amendment was refused by the Trial Chamber in which the Civil Defence Force leadership is being tried.
8. Presiding Judge Bankole Thompson dissented, asserting that the Prosecutor knew of the evidence several months in advance, and failed to exercise due diligence and sensitivity to the accused by not having brought the request for an amendment earlier. Moreover, he argued that the additional count would introduce delays in the trial (Dissenting Opinion of Judge Bankole Thompson, Presiding Judge of the Trial Chamber on Prosecution's Motion for Leave to Amend Indictment Against Accused Issa Hassan Sesay, Morris Kallon and Augustine Gbao, 2004: 6).
9. The Commission has three 'tiers' or recommendations: 'Imperative' Recommendations are those recommendations that must be implemented 'faithfully and timeously', which generally relate to 'rights and values', and which will be monitored 'closely and regularly'. 'Work Towards' Recommendations are those that the government should implement within a reasonable timeframe and which will be monitored on an ongoing basis. 'Seriously Consider' Recommendations are those which the government should take in to serious consideration, but which the Government is under no explicit obligation to fulfill. These may be subject to occasional monitoring (TRC Report, Volume 2, Chapter 3, pp. 119–21). Most recommendations I have included are 'Imperative'.

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