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THE IMPACT OF INTERNATIONAL HUMAN RIGHTS INSTITUTIONS  
ON CIVIL SOCIETY GROUPS: A CASE STUDY OF THE SIERRA  
LEONE EXPERIENCE

Rhoda Mahawah Kargbo

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the requirements for the degree of

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### **Abstract**

This thesis is generally concerned with the ways in which International Human Rights Institutions (IHIs) influence the human rights campaigns of civil society groups (CSGs) within Sierra Leone. It attempts to tease out the more subtle ways, other than via securing direct state compliance, in which IHIs norms and processes can penetrate into the domestic sphere, and can therefore become quite useful to the work of the CSGs that seek to foster socio-legal change within those states. This thesis objective was achieved largely by analyzing the case study of the activities of the eight CSGs that operated in Sierra Leone from 1996 to 2004. The various human rights campaigns embarked on by these CSGs were examined in order to determine the nature and extent of the deployment and utility of IHIs norms and processes within such campaigns. This thesis basically adopts a constructivist approach to the issue of the effectiveness of IHIs. Nevertheless, an examination of the approaches adopted by the theoretical approaches that form part of the broad “rationalist” school to the issue of the effectiveness of IHIs forms a substantial part of the thesis, and sets the stage for the adoption in the thesis of constructivism as the preferred explanatory model. These rationalist theories are also examined to see whether they can provide a sufficient explanation for the kinds of influence observed in the case of the Sierra Leonean CSGs dealt with in the case study. The broad theoretical conclusion that is reached in the thesis is that because it pays much greater attention to the important role that norms, ideas, values and knowledge can play in assessing the effectiveness of IHIs, the broad constructivist approach (which includes quasi-constructivism) is much better suited to the task of explaining the domestic impact that IHIs can have within states. As the Sierra Leonean CSGs that have been studied have worked mostly with norms, ideas and knowledge, have not tended to function in the context of direct compliance with IHI dictates, and have tended not to stress or exert any appreciable measure of coercive power, constructivism (broadly defined) is certainly much better at explaining the impact that IHIs norms and processes have had on their work than the other competing, if sometimes complimentary, schools of thought on IHIs.

**This thesis is dedicated to my dearest parents,  
Alice Marian Kamara and Mohamed Sufian Kargbo.**

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# **CHAPTER ONE**

## **INTRODUCTION, CONCEPTUAL FRAMEWORK AND METHODOLOGY**

### **1.1 Introduction**

The overarching objective of this research and case study is to examine the extent of the influence that International Human Rights Institutions (IHIs),<sup>1</sup> have had on the human rights campaigns of Civil Society Groups (CSGs),<sup>2</sup> that operated in Sierra Leone from 1996-2004. The case study will attempt to show how IHIs have exerted influence on the work of these CSGs. In particular, the study will show why, when and how exactly such IHIs are able to contribute significantly to the attainment of the objectives of these groups. The limits of such a contribution will also be mapped.

A number of scholars of international relations and legal scholars have recently begun writing about the question of the capacity of IHIs to make a difference within the domestic sphere of states. Prior to these scholarly interventions, there had been more established debates, and which are ongoing, about the nature and utility of international norms and institutions more generally, including international law.

Through collecting, analyzing and commenting on the evidence that is available from Sierra Leone, my intention is to advance the arguments in this broad area somewhat, especially regarding the limited promise or utility of IHIs to the work of the CSGs that operate there. Thereafter, I will examine the theoretical and methodological positions

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<sup>1</sup> Hereinafter IHIs. See Definition of Key Concepts and List of Acronyms, in Appendix to Thesis.

<sup>2</sup> Hereinafter CSGs. See Definition of Key Concepts and List of Acronyms, in Appendix to Thesis.

already advanced by scholars to see which are best able to explain the case of Sierra Leone.

As part of this case study, I will be examining and assessing the role that human rights treaties such as the various United Nations and African *treaties* listed in Glossary I, have played, and can play in the human rights struggles that have been waged by CSGs in Sierra Leone. The case study will also attempt to understand and assess the role that international and African *monitoring bodies*, also listed in Glossary I, have played and can play in the domestic campaigns of these CSGs. Ultimately, the aim of the case study is to better understand the limited domestic promise of IHIs, and to understand better their limitations for Sierra Leone.

## **1.2. The Objective of the Research:**

The case study will seek to show that the limited influence exerted by IHIs on the human rights campaigns of CSGs in Sierra Leone came about not because CSGs were forced or cajoled into accepting or complying with IHIs and IHI norms. Rather, IHIs and IHI norms achieved some legitimacy in the eyes of members of these groups, who accepted them as representing internationally accepted standards for conduct in the human rights issue area.

## **1.3. Literature Review:**

As already noted, a number of scholars have recently questioned the capacity of IHIs to make a difference within the domestic sphere. However, this more recent debate actually derives from the more established and continuing debates about the nature and

utility of international norms and institutions more generally, including international law. If these debates have been central to the discipline of international relations, they have also been important for international lawyers and, most especially within more recent international legal scholarship, such as Michael Byers' recent edited volume, *The Role of Law in International Politics*,<sup>3</sup> and through international lawyers such as Jutta Brunne and Stephen Toope, all of whom have rekindled and widened this debate.<sup>4</sup>

These contributions of political scientists in international relations have been central, whether realists, liberals, or constructivists. Realists such as Mearsheimer and Waltz, liberals such as Keohane, Slaughter, and Moravcsik, and constructivists such as Ruggie, Haas, and Sikink, have all made significant contributions to the question of the capacity of international institutions more generally to affect domestic politics or domestic governance institutions in significant ways.

In the specific area of the issue with which this case study is concerned, i.e. the capacity of IHIs to exert influence within a state, Oona Hathaway has concluded that there is no positive correlation between a state's ratification of a human rights treaty and a good or better human rights record. In fact, she is of the view that there is a correlation between a state's ratification of such a treaty and a bad or worse human rights record. Hathaway used a quantitative methodology to analyze the records of over a hundred states in this regard. She acknowledged, however, a number of caveats, one of which is that quantitative surveys are often unable to capture trends and cases of influence, which are not always easily reduced to numbers.<sup>5</sup>

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<sup>3</sup> Byers, M., ed., *The Role of Law in International Politics* (New York: Oxford University Press, 2000).

<sup>4</sup> Brunne, J., and Toope, S., "International Law and Constructivism: Elements of an Interactional Theory of International Law," (2000) 39 *Columbia Journal of Transnational Law* 19.

<sup>5</sup> Hathaway, O.H., "Do Human Rights Treaties Make a Difference?" (2002) *Yale Law Journal* 1935.



On the other hand, Obiora Okafor has used a qualitative method to collect and analyze much more deeply and richly the more positive (if still limited) evidence that shows the value of IHIs, under certain conditions, in the domestic context of Nigeria. Okafor however has himself warned that conclusions drawn from this one case study cannot end the relevant debates.<sup>6</sup> Christof Heyns and Hans Viljoen have also reached similar conclusions based on a broader though less detailed survey of the impact of UN human rights treaties within diverse countries around the world.<sup>7</sup> Mutua's review essay<sup>8</sup> of Shand Watson's somewhat dismissive book on IHIs is much more supportive of Heyns and Viljoen and Okafor's work than of Hathaway's conclusions. In fact, it is clear that there is not yet a settled position on this crucial question, and the thrust of this proposed study is to make a contribution that both problematizes and advances this debate.

In particular, this case study has as one of its main objectives challenging the tendency in the existing literature to view the concept of "compliance" simply as "correspondence of behavior with legal rules", as Benedict Kingsbury put it. According to Kingsbury, this tendency is based on a theoretical view that law, (including international law) can properly be defined and understood as a body of rules. For these rules to be deemed "effective" there is the need for at least a reasonable degree of conformity between them and actual behavior. In this view then, widespread non-conformity with rules would call the existence of the particular law into question.<sup>9</sup>

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<sup>6</sup> Okafor, O.C., *The Domestic Promise of the African Human Rights System: International Institutions, Popular Forces and the Possibility of Correspondence* (forthcoming 2005).

<sup>7</sup> Heyns C., and Viljoen, F., "The Impact of the United Nations Human Rights Treaties on the Domestic Level," (2001) 23 *Human Rights Quarterly* 483.

<sup>8</sup> Mutua, M., "Book Review" (2001) 95 *American Journal of International Law* 255.

<sup>9</sup> Kingsbury, B., "The Concept of Compliance as a Function of Competing Conceptions of International Law" (1998) *Michigan Journal of International Law* 345.

Thus, the existing literature's stress on compliance or conformity with international institutions and IHI norms and goals as the key to their effectiveness, has failed to pay attention to other, more subtle ways in which these institutions can be useful to actors. The present case study adopting an essentially constructivist approach, tries to discern other ways in which international institutions (in particular IHIs), have been useful within Sierra Leone, without however exerting any direct coercion or pressure. The case study also avoids the tendency in the extant literature of focusing on the capacity of IHIs to make a difference on the international plane. Instead, in this case within Sierra Leone, it directs attention towards the capacity of IHIs to make a difference within the domestic sphere.

#### **1.4 The Significance Of the Research:**

As has been discussed in preceding sections, this case study can be an important one for those interested in learning about the evidence from around the world regarding the domestic impact of IHIs and the possibilities or impossibilities of such influence. Conventional international relations theory has tended to focus more on how much state compliance with IHIs (and international institutions more generally) has been achieved. Outside this "compliance radar" most traditional international relations scholars, and especially those writing in the rationalist tradition, are unwilling to ascribe much significance to IHIs. What is more, these traditional analyses have focused on states as the most relevant actors in international cooperation, and the role of non-state actors (such as CSGs discussed in this study) has been trivialized or not given sufficient attention in the literature until relatively recently. This change has gradually taken place

due to the work of some constructivist scholars like Margaret Keck and Kathryn Sikkink, who have begun to take into consideration the role non-state actors can play in promoting IHI effectiveness.

At this point, a brief look at both the historical background of Sierra Leone, and an examination of political, social or economic factors that may have affected the viability of deploying IHIs by CSGs within the country, will be embarked upon. The latter issue is dealt with in more detail in chapter four. Sierra Leone was under British Colonial rule until April 1961, when it was granted independence. The period under colonial rule was relatively peaceful, in terms of lack of conflict and civil strife. However, the policies of the Colonial government created a dual legal system that applied to the colony and the protectorate differently.<sup>10</sup>

The English common law was applied in the colony, whereas customary Sierra Leonean law applied in the protectorate. This dual system, as will be seen in chapter four of the thesis, is a factor that has affected the successful deployment of IHIs especially in the provinces, where the customary law applies. It has in particular, been a hindrance to harmonization of the domestic laws (customary laws especially), with international human rights laws and standards.<sup>11</sup>

The post-independence period preceding the civil war, and the ten years during which the war took place in Sierra Leone have been described as “the most shameful years of Sierra Leone’s history”.<sup>12</sup> This period was mainly characterized by twenty-four

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<sup>10</sup> The colony consisted of most of what is now the Western Area, and includes the capital Freetown. The protectorate consisted of what are now collectively known as the Provinces. There are three provinces in Sierra Leone: Northern, Southern and Eastern.

<sup>11</sup> See Chapter four, subsection 4.5 (b), “Negative Factors”.

<sup>12</sup> See: Final Report of the Sierra Leone Truth and Reconciliation Commission (TRC), chapter titled: “Military and Political History of the Conflict”, online:

years of mostly one-party rule by the All Peoples' Congress party (APC).<sup>13</sup> The eventual creation of a one-party state effectively neutralized any possible checks and balances on the exercise of executive power. Open debate and democratic activity were not welcome options.<sup>14</sup> It was amidst this corruption and decay of the Sierra Leonean society, that the civil war started in March of 1991. When the APC government was ousted in April 1992, by certain members of the Sierra Leone Army (SLA), the NPRC military junta under the chairmanship of Captain Valentine Strasser, took over the reins of power. The junta was notorious for extra-judicial executions. In December of 1992 for example, the junta executed 26 persons without due process of law and in flagrant violation of international human rights standards.<sup>15</sup> The junta also committed widespread torture on political detainees.<sup>16</sup>

The particular period covered by the case study includes the first democratic elections to be held in over three decades in Sierra Leone in 1996. The elections, which ended the NPRC military junta rule, were made possible to a large extent by a re-awakening of the decayed human rights institutions in Sierra Leone –the judiciary and civil society organizations. Civil society in particular, saw in the elections which brought the present Sierra Leone Peoples' Party government into power, a fresh start for the people of Sierra Leone. Under the leadership of Ahmed Tejan Kabbah, a former United Nations top diplomat, there were renewed hopes both locally and internationally that peace and dignity would be gradually restored to the people of Sierra Leone.

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<http://www.ictj.org/downloads/sl.trc.v2.3.recommendations.pdf>. This post-independence period started in April of 1961. The civil war was declared officially over in January of 2002.

<sup>13</sup> The APC ruled from 1968, until it was ousted in a military coup by members of the Sierra Leone Army (SLA) in 1992 that ushered in the National Provisional Ruling Council (NPRC).

<sup>14</sup> See also: TRC Report, chapter titled: "Military and Political History of the Conflict".

<sup>15</sup> The 26 persons, including the former Inspector General of the Sierra Leone Police, had been accused of plotting a failed coup against the junta.

<sup>16</sup> See: TRC Report, chapter titled: "Military and Political History of the Conflict".

The SLPP government because it came into power in the midst of the bloody civil war, had as its main pre-occupation, bringing an end to the conflict. The focus of the democratically-elected SLPP government was however soon disrupted by another military coup d'état in May of 1997. The coup, which brought the Armed Forces Revolutionary Council (AFRC) junta into power, was an unconstitutional seizure of power by several junior-ranking members of the SLA. Suffice it to say, the reign of lawlessness and violent suppression of opposition that characterized this period of what has been termed “an un-holy alliance” between the AFRC and the RUF,<sup>17</sup> is unprecedented in the history of Sierra Leone.<sup>18</sup>

The people of Sierra Leone were almost unanimous in their condemnation of the junta's reckless disregard for the constitution of Sierra Leone, and for human life. Civil society became a powerful force for the junta to reckon with. Members of CSGs, human rights and other activist organizations thus became regular targets of the AFRC junta and the RUF.<sup>19</sup> The majority of the population of the western area, including civil society and human rights activists fled the country and sought exile in neighboring countries. Collective international campaigns were launched by these groups against the AFRC junta and the RUF, while in exile. These campaigns sought to expose the widespread human rights abuses and violations committed by the junta and the RUF, and played a great part in the re-instatement of the SLPP government in February of 1998.

However, a lot of progress still needs to be made, in terms of improving respect for and promotion of human rights in Sierra Leone. The SLPP government continues to

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<sup>17</sup> The AFRC junta invited the RUF to join them in forming a government. The AFRC and RUF ruled from May 25<sup>th</sup> 1997 to February 12<sup>th</sup> 1998.

<sup>18</sup> See also: TRC Report, chapter titled: “Military and Political History of the Conflict”.

<sup>19</sup> These included the National Union of Sierra Leone Students, the Sierra Leone Association of Journalists, the Sierra Leone Bar Association, the Sierra Leone Labour Congress and the Sierra Leone Teachers Union.

violate and abuse the fundamental human rights of Sierra Leoneans. Politically motivated arbitrary arrests, detentions and prosecutions continue. The court-martial and execution of twenty-four soldiers of the SLA in 1998, is one such example of a violation of international human rights standards.<sup>20</sup> The SLPP government was also aware of extensive human rights violations and abuses carried out by the Civil Defense Forces (CDF), of which the then Deputy Minister of Defense was National Co-Coordinator.<sup>21</sup>

What is clear from the brief discussion of the historical antecedents to the civil war is that, these periods reflected an extraordinary failure of leadership on the part of many of those involved in government, public life and civil society. Many factors, both internal and external, have been blamed for causing the conflict in Sierra Leone. However, according to the report of the TRC, years of bad governance, endemic corruption, greed and the denial of basic human rights, contributed extensively to the deplorable conditions that made the conflict inevitable.<sup>22</sup> Instead of implementing positive and progressive policies, successive regimes perpetuated the ills and self-serving machinations left behind by their predecessors, and plundered the country's assets, including its mineral riches, at the expense of the common good.<sup>23</sup>

Amidst all this corruption and decay, governments were accountable to no one. This was especially so because the institutions that were supposed to stand up for and protect human rights, such as the courts and civil society, were thoroughly co-opted by the executive into the very same corrupt system. Political expression and dissent were not

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<sup>20</sup> See: TRC Report, "Primary Findings", and see Chapter four of thesis, section 4.3. (b), "International Litigation". According to the TRC Report, the SLPP government currently holds over 150 political prisoners in the central prison in Freetown, and the human rights of these prisoners are constantly being violated.

<sup>21</sup> The CDF was the government backed militia and one of the main warring factions during the civil war.

<sup>22</sup> See: TRC Report, "Primary Findings".

<sup>23</sup> See: TRC Report, "Primary Findings".

tolerated and consequently, democracy and the rule of law did not exist. Successive governments abused the death penalty to eliminate political opponents.<sup>24</sup>

The position of women, girls and children during the civil war, warrants special mention. Women and girls were constant targets for abuse during the brutal civil war in Sierra Leone. They were abducted, raped, forced into sexual slavery and often had to endure widespread acts of sexual violence. Many of them were tortured, mutilated and subjected to a host of other cruel and inhumane acts.<sup>25</sup> Children were singled out for some of the most brutal violations of human rights recorded in any conflict, in contravention of the CRC and its Optional Protocols. One of the main characteristics of the civil war was the strategy of forceful recruitment of children employed by most of the warring factions.<sup>26</sup> Children between the ages of 10 and 14 years were specifically targeted for these abuses –besides being forcefully recruited, they were also raped and sexually assaulted. These children were also drugged and forced, to commit unspeakable atrocities.<sup>27</sup>

This progressive worsening of the human rights situation in Sierra Leone over the last thirteen years especially, made the country become so notorious for human rights abuses that it attracted a lot of attention from the international human rights community, and from leading human rights monitoring groups. Some of these sought to work directly with local NGOs and CSGs on the issue of the persistent human rights violations in the

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<sup>24</sup> See: TRC Report, “Primary Findings”. For example, the NPRC military junta executed 26 persons in December 1992, the AFRC and RUF during their reign of terror carried out widespread extra-judicial executions, the SLPP government executed 24 members of the SLA and AFRC accused of treason, in 1998.

<sup>25</sup> See: TRC Report, Chapter titled, “Women and the Armed Conflict”.

<sup>26</sup> The rebel Revolutionary United Front (RUF) was particularly guilty of this strategy. The Sierra Leone Army (SLA), the Armed Forces Revolutionary Council (AFRC) and the pro-government militia known as the Civil Defence Forces (CDF) were also guilty of forcefully recruiting children to some extent. See TRC Report Chapter titled “Children and the Armed Conflict”, Chapter 4 Volume 3B.

<sup>27</sup> See: TRC Report and Chapter on “Children and the Armed Conflict”.

country. At a time when much of the world was almost losing faith in the situation in Sierra Leone, these CSGs chose to deploy IHIs in their human rights campaigns in the country.

The story of the war reveals how Sierra Leoneans were denied their humanity, and underscores the need for a human rights culture in Sierra Leone –one in which there is knowledge and recognition of the basic rights to which all human beings are entitled. The important role that CSGs can play in bringing about this all-important change, now that the war has been declared officially over cannot be overstated.<sup>28</sup> It is hoped that this case study will assist scholars in beginning to understand how, and the contexts within which IHIs are likely to be most valuable within the domestic sphere.

## **1.5. Research Methodology**

The research adopts an interdisciplinary methodology, combining legal and other social science techniques. The approach involves the use of primary as well as secondary sources, and relies on extensive fieldwork, including interviews with members of key CSGs in Sierra Leone. While the analysis employs quantitative evidence, most of it consists of qualitative research methods.

### ***1.5.A. Analyses:***

Some of the evidence required was collected from texts, treaties, case law, international and domestic reports and relevant published works by scholars (in the bibliography). This consisted specifically of

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<sup>28</sup> The civil war was declared officially over in January of 2002.



- (a) analysis of relevant governmental policies and domestic legislation;
- (b) analysis of annual activity reports, publications, brochures, handouts, and studies done by the relevant activist civil society groups;
- (c) analysis of the texts of various international human rights conventions; and
- (d) analysis of other relevant and related documents that have emanated from the international human rights system.

***1.5.B. Interviews:***

Some of the evidence was obtained through interviews with activists of relevant CSGs. The interviewees were selected by purposeful sampling, the aim being to get the views of activists who have worked the most within Sierra Leone with IHI resources. The choice of purposeful sampling methods over a random sampling was made because the latter method might not have yielded the desired results as not all of the CSGs in Sierra Leone can be deemed as truly 'activist' within either the international or African human rights systems, or both. Therefore, the key source of information was derived from the operations and records of the seven CSGs and the umbrella organization for human rights groups in Sierra Leone, listed in Glossary I, in the Appendix at the end of the thesis.

***1.5.C: International Human Rights Institutions:***

The IHIs that were the main focus of the case study included several international human rights treaties, conventions and monitoring bodies. Other relevant institutions were mentioned or included, as and when necessary. Certain domestic laws also featured to a considerable extent in the case study. These are all listed in Glossary I, in the Appendix to the thesis.

## **1.6 Outline of Thesis:**

The thesis is divided into five chapters, this chapter included. Chapters two and three lay down the theoretical framework on which the research and case study are based. These chapters deal with conventional conceptions on the effectiveness of international institutions more generally, and IHIs in particular. Chapter two specifically examines the general approach taken by international relations theories labeled “rationalist” to the issue of the effectiveness of international institutions and IHIs. In addition, the individual approaches adopted by the various rationalist theories dealt with (namely, realist, neorealist, neo-liberal and republican liberal theories) are examined. The basically “compliance-centric” approach to assessing the effectiveness of international institutions and IHIs adopted by these theorists in varying degrees is the main issue dealt with in this chapter.

Chapter three examines the approach adopted by the constructivist “school” in international relations theory. A comprehensive review of the traditional constructivist position on the issue of the effectiveness of international institutions and IHIs, and the additions to the extant theory made by the work of some constructivist scholars (labeled “quasi-constructivist”), are the focus of the chapter. The chapter brings out the different approaches taken by constructivists in assessing the effectiveness of international institutions and IHIs, and in particular their stress on the role that knowledge, ideas and norms, and in contrast to overt compliance, can play in this issue.

In Chapter four, the evidence of influence IHIs may have had on the human rights campaigns of CSGs in Sierra Leone, is examined. Adopting a constructivist perspective, the chapter focuses on the more subtle ways in which IHIs have been of importance to

these campaigns, ways that did not include forcing or cajoling CSGs to comply with their norms and goals. The human rights campaigns are divided into educational, litigation and law reform. Under human rights educational campaigns, the chapter seeks to bring out any influence IHIs may have had on the work of CSGs in Sierra Leone in this area. How IHIs have influenced these CSGs in domestic litigation in the courts in Sierra Leone and in international litigation, is the focus of the next section of the chapter. The influence of IHIs on the campaigns embarked on by CSGs in Sierra Leone, for reform of certain aspects of the domestic laws, is dealt with in the next section. This is followed by a brief look at factors (both positive and negative) that may have affected any such influence IHIs may have exerted on the various campaigns of CSGs in Sierra Leone.

The final concluding chapter of the thesis, and consistent with constructivist arguments, takes a more holistic approach to assessing the effectiveness of IHIs. While such an approach does not rule out the importance of compliance, it also considers the role that norms, ideas and knowledge, and non-state actors can play in enhancing IHI effectiveness.

## CHAPTER TWO

### RATIONALIST THEORIES ON THE EFFECTIVENESS OF INTERNATIONAL HUMAN RIGHTS INSTITUTIONS.

#### 2.1. Introduction

Existing theories on the effectiveness of international institutions generally, and of international human rights institutions (IHIs) in particular, tend to portray them as having little or no effect on international politics. The main reason for this is because they are understood as lacking enforcement powers. Various international relations scholars and numerous international lawyers tend to regard the issue from the same perspective. Theories on the effectiveness of international institutions and IHIs have been classified in different ways.<sup>1</sup> In analysing the issue, we will categorise these existing theories into two broad categories-the *rationalist* school and the *reflective or cognitive* school, a typology first used by Robert Keohane, in 1988.<sup>2</sup>

In this chapter, I examine the approaches traditionally labelled ‘rationalist’ whether realist, neorealist, neoliberal and republican liberal. In examining them, I will try to emphasise the main attributes shared by these theories that make them qualify as

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<sup>1</sup> Hasenclever, A., Mayer, P., and Rittberger, V., eds., *Theories of International Regimes* (Cambridge: Cambridge University Press, 1997) at 1, classified them as realist, neoliberal and cognitive, or power based, interest based and knowledge based; Okafor, O.C., *The Domestic Promise of the African Human Rights System: International Institutions, Popular Forces and the Possibility of Correspondence* (Forthcoming 2005) at 15, classified them as realist, neorealist, neoliberal, republican liberal, constructivist and quasi-constructivist.

<sup>2</sup> Keohane, R.O., “International Institutions: Two Approaches” (1988) 32 *International Studies Quarterly* 379.

‘rationalist’ approaches. Section 2.2 of this chapter also deals with the approaches adopted by each individual school to the issue of the effectiveness of IHIs.

In spite of the many differences among the individual schools, certain common trends can be easily discerned in the existing literature. These common trends are examined in Section 2.3. Among them is the fact that rationalist theories generally tend to adopt a positivist mode of analysis of the effectiveness of international institutions and IHIs. That is, they focus on states as the only actors in the international system (what has been labelled ‘state-centrism’) and place too much emphasis on the amount of compliance that an international institution or IHI can generate. In effect, what these scholars are saying is that the solution to IHI’s perceived ineffectiveness is improving enforcement of international law and international human rights standards.

The rationalistic approach to understanding the effectiveness of international institutions and IHIs has until recently, been predominant in the literature. There is little question that realist and neorealist theories are rationalistic.<sup>3</sup> To these two, are added the neoliberal and republican liberal schools in international relations theory. Rationalists generally utilize a transaction-cost argument. Hence, international institutions are outcomes of calculations of advantage made by states. A situation of scarcity, competition, and rationality on the part of actors is assumed. It is the potential gains to be realised from mutually beneficial agreements in international politics that give rise to specific international institutions.<sup>4</sup>

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<sup>3</sup> Keohane, R.O., *Ibid*, at 381.

<sup>4</sup> Keohane, R.O., *Ibid*, at 386.

Most Rationalists thus expect international institutions to emerge whenever the costs of maintaining them are relatively low, compared to the benefits to be derived from them.<sup>5</sup> In rationalist models, states are basically treated as atomistic actors, akin to economic actors maximizing utility. Interaction (including cooperation) does not affect their utility functions or identities. Actors are always fully aware of their interests and preference formation is a process that is prior and exogenous to interaction and cooperation. Preferences help to explain interaction, but not vice versa. The existence of an international society as emphasized by some knowledge based, cognitive or reflective theories of regimes is denied.<sup>6</sup>

One major criticism of most rationalist theories has been that they ignore, or do not ascribe *sufficient* importance to norms, ideas and knowledge. Yet these phenomena play a role in the production of the identities or self-understandings, and interests or preferences of states.<sup>7</sup> For rationalists, if norms matter, it is because they express the interest of the actors or the dominant hegemon.<sup>8</sup> As a result, even though each individual school ascribes some degree of importance to institutions, the degree to which every one of them does so varies.

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<sup>5</sup> Keohane, R.O., *Ibid* at 387.

<sup>6</sup> Hasenclever, A., Mayer, P., and Rittberger, V., *Theories of International Regimes*, *supra* note 1, at 25

<sup>7</sup> Okafor, O.C., *The Domestic Promise of the African Human Rights System* etc, *supra* note 1.

<sup>8</sup> Kratochwil, F., in Byers, M., ed., *The Role of Law in International Politics* (Oxford: Oxford University Press, 2000) at 54.

## **2.2. Theories in the Rationalist School.**

### **2.2.A. REALISM**

The Realist or Hobbesian tradition focuses on power relationships. For realists, regimes are little more than expressions of power of the dominant hegemon.<sup>9</sup> In spite of their internal differences, realists assume that:

- (1) states are the primary unitary actors in the international system, rationally pursuing their own interests as best as they can, and because of their capabilities and the constraints imposed by the power and interests of others. This is a double assumption here that -states are not only predominant, they act as coherent units;
- (2) state preferences are exogenous and fixed and
- (3) the structure of the international system is anarchic, such that states must constantly assume and prepare for the possibility of war. In this context, outcomes of state interactions are typically zero-sum and are thus determined by relative power -power being the currency of the international system.<sup>10</sup>

Compliance for realists is little more than a calculation of interests in light of the existing distribution of power.<sup>11</sup> The realist stress on power and security as indispensable in all political life arises from its individualistic rationalism, which emphasizes self-interest and the egoistic passions of human nature and an account of international relations that emphasizes the constraints imposed by international anarchy. International

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<sup>9</sup> Kratochwil, F., *Ibid.*

<sup>10</sup> Slaughter, A., "International Law in a World of Liberal States", (1995) 5 *European Journal of International Law* at 507.

<sup>11</sup> Kingsbury, B., "The Concept of Compliance as a Function of Competing Conceptions of International Law", (1998) 19 *Michigan Journal of International Law* at 351.

law and international institutions (including norms) are epiphenomenal in that they are clearly peripheral to world politics. They serve only an instrumental purpose and are likely to be enforced only by a hegemon.<sup>12</sup> International institutions in the realist view, do not affect the way states behave in international politics. If they do at all matter to states, it is ‘only on margins’.<sup>13</sup> Rather than morality directing foreign policy as argued by some cognitive schools, realists argue that considerations of the national interest should be primary.<sup>14</sup> They thus “characteristically reject norms as rationalizations for self-interest and deny them explanatory power”.<sup>15</sup>

#### 2.2.A.1. Realism and why states obey international institutions and IHIs:

Why then, if at all in the realist view, do states sometimes pay attention to these institutions? Because for realists, there is no international society (however anarchical), international cooperation is viewed (following the tradition of Hans Morgenthau, one of its key proponents) from the perspective of power-seeking and competing states.<sup>16</sup> Gains for one actor mean losses for another as actors in the international arena are *status maximizers*. Whatever the ultimate source of this behaviour, they evaluate their own performance in relation to the performance of others, striving to attain the highest possible rank in the hierarchy of members of the international community. States are too preoccupied with enhancing their own status and avoiding the danger of losing ground to other members of the group. They will not experience incentives to accept social

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<sup>12</sup> Slaughter, A., “International Law in a World of Liberal States”, *supra* note 10 at 507.

<sup>13</sup> Mearsheimer, J., “The False Promise of International Institutions”, (1994) 19 *International Security*, at 5.

<sup>14</sup> Donnelly, J., *International Human Rights*, (Boulder: Westview Press, 1993) at 33.

<sup>15</sup> Klotz, A., *Norms in International Relations: The Struggle Against Apartheid* (Ithaca: Cornell University Press, 1995) at 14.

<sup>16</sup> Bull, H., *The Anarchical Society: A Study in World Politics*, (New York: Columbia University Press, 1977), at vii.



contracts in which all members of the group comply with restrictive behavioural conventions in order to realize joint gains.<sup>17</sup>

Compliance with international law and institutions will only occur if a dominant country—a hegemon—exercises some degree of pressure on a country to comply, either through rewards for compliance or threatened sanctions for breach.<sup>18</sup> For realists,

*the distribution of power resources among actors strongly affects both the prospects for effective regimes (or IHIs) to emerge and persist in an issue-area and the nature of the regimes that result, especially as far as the distribution of the benefits from cooperation is concerned.*<sup>19</sup>

Because international regimes are created to promote the interests of particular actors, their maintenance is a function of the distribution of power and interests among states.<sup>20</sup> Effective international human rights regimes require a hegemonic group of great powers willing to coerce or induce recalcitrant states to accept, adjust to and comply with international human rights norms.<sup>21</sup> Thus, governments accept formal human rights enforcement regimes because they are compelled to do so by great powers who externalize their ideology.<sup>22</sup> Even John Gerrard Ruggie a theorist who generally stresses institutional and ideational factors, predicts that human rights regimes are likely to be

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<sup>17</sup> Young, O., “International Regimes: Toward a New Theory of Institutions”, (1986) 39 *World Politics* 104 at 118.

<sup>18</sup> Shelton, D., ed., *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System*, (New York: Oxford University Press, 2000) at 52.

<sup>19</sup> Hasenclever, A., Mayer, P., and Rittberger, V., eds., *Theories of International Regimes*, supra note 1, at 3 to 4.

<sup>20</sup> Krasner, S., “Sovereignty Regimes and Human Rights”, in Rittberger, V., ed., *Regime Theory and International Relations*, at 140.

<sup>21</sup> Moravcsik, A., “The Origins of Human Rights Regimes: Democratic Delegation in Post War Europe” (2000) 54 *International Organization* 217 at 221.

<sup>22</sup> Moravcsik, A., “Explaining the Emergence of Human Rights Regimes: Liberal Democracy and Political Uncertainty in Post-War Europe”, (Weatherhead Center for International Affairs Working Paper Series, Paper No. 98-17, 1998) at 7-8.

weaker than nuclear non-proliferation regimes, because they are of less concern to the core superpower security interests.<sup>23</sup> But as Keohane puts it, the major problem with the realist approach is that even though the dominance of a single great power can contribute to order in world politics, in particular circumstances, it is neither a necessary, nor a sufficient condition. In sum, for realists, ‘the regimes literature is naïve and misguided’.<sup>24</sup>

### **2.2.B. NEOREALISM**

Realism and neorealism both emphasize actors’ (states) demands for power and security and the dangers to their survival. Military force is for both versions of realism, the most important power resource in world politics. Whatever order exists in the endless ‘state of war’ of the international society, is as a result of states’ attempts to organize ever-shifting balances of power. The actors’ characteristics are assumed, rather than treated as variables. Any changes in outcomes occur not as a result of variations in these actors’ characteristics, but because of changes in the attributes of the system itself.<sup>25</sup> Neorealism even though it has its heritage in “classical realism”, claims to surpass it by offering a ‘truly scientific’ rendering of its subject matter.<sup>26</sup> This is the key difference between them. States must rely ultimately on their own resources and must strive to maintain their relative positions in the system, even at high economic cost.<sup>27</sup>

Neorealists also assume the motivation of actors. Both material interests and relative power have a fundamental role among states in creating and changing institutional

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<sup>23</sup> Ruggie, J.G., “Human Rights and the Future International Community” (1983) 112 *Daedalus* 93.

<sup>24</sup> Young, O., “International Regimes: Toward a New Theory of Institutions”, *supra* note 17 at 118.

<sup>25</sup> Keohane, R.O., “The Demand for International Regimes” (1982) *International Organization* 325, at 327.

<sup>26</sup> Ashley, R.K., “The Poverty of Neorealism” (1984) 38 *International Organization* 225 at 227.

<sup>27</sup> Keohane, R.O., and Nye, J., *Power and Interdependence*, (Glensview: Scott Foresman, 1989) at 247.

arrangements.<sup>28</sup> Norms reflect a hegemon's national interests or domestic values.<sup>29</sup> Through the extensive use of the analogy with microeconomic theory, Kenneth Waltz makes explicit for neorealists how an order is spontaneously formed from the self-interested acts and interactions of individual units, with each unit seeking its own good.<sup>30</sup> The result of a number of units simultaneously acting in their self-interests transcends their selfish motives and aims. The eventual result is that out of the mean ambition of its members, the greater good of society is produced.<sup>31</sup> International political systems are like economic markets in this regard. They are formed and maintained on a principle of individualist self-help that applies to the units. States seek to ensure their survival and will only entrust managerial powers to (an international institution) if it will further their interest and is able to protect them.<sup>32</sup>

#### *2.2.B.1. Neorealism and why states obey international institutions and IHIs:*

Centralized enforcement of rules in international institutions and regimes through hierarchical arrangements (like in domestic systems) is normally out of the question. In the international system, there is no police force to monitor or enforce compliance. If states are to comply with institution or regime rules, then for neorealists, they must do so on the basis of long-term self-interest.<sup>33</sup> Some say this is based on relationships of 'interdependence'. Relationships of interdependence often occur within, and may be affected by networks of rules, norms and procedures (institutions) that regularize

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<sup>28</sup> Klotz, A., *Norms in International Relations*, supra note 15 at 14.

<sup>29</sup> Klotz, A., *Ibid* at 22.

<sup>30</sup> Waltz, K., *A Theory of International Politics*, (New York: Random House, 1979) at 89

<sup>31</sup> Waltz, K., *Ibid*, at 90.

<sup>32</sup> Waltz, K., *Ibid*, at 112.

<sup>33</sup> Keohane and Nye, *Power and Interdependence*, supra note 27, at 276.

behaviour and control its effects.<sup>34</sup> Keohane and Nye use the term ‘complex interdependence’ or ‘international economic interdependence’. Because regimes are built on shared interests, they must enhance the goals of states in order to flourish.<sup>35</sup>

In sum, neorealist arguments incorporate the supply and demand approach borrowed from microeconomic theory to maintain that international institutions, including regimes can be understood as results of rational behaviour by the actors that create them. They are demanded in part because they facilitate the making of agreements, by providing information and reducing transaction costs in world politics. This is a form of rational-choice analysis: changes in the characteristics of the international system will alter the opportunity costs to actors of various courses of action, and will therefore lead to changes in behaviour.<sup>36</sup> Keohane clearly expresses this micro-economic analysis in the following passage:

*Traditional microeconomic supply and demand analysis, assumes a situation in which choices are made continuously over a period of time by actors for whom ‘exit’-refusal to purchase goods or services that are offered -is an ever-present option. Since no binding decisions can be made, it is possible to imagine a market for international regimes as one thinks of an economic market: on the basis of an analysis of relative prices and cost-benefit calculations, actors decide which regimes to ‘buy’. In general, we expect states to join (and comply with) those regimes in which they expect the benefits of membership to outweigh the costs.<sup>37</sup>*

International regimes are also demanded so as to prevent ‘market failures’ i.e. situations in which the outcomes of market-mediated interaction are suboptimal.<sup>38</sup> They reduce uncertainty and risk by linking discrete issues to one another and by improving the

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<sup>34</sup> Keohane and Nye, *Ibid*, at 34.

<sup>35</sup> Keohane and Nye, *Ibid*, at 275.

<sup>36</sup> Keohane, R.O., “The Demand for International Regimes”, *supra* note 25, at 329.

<sup>37</sup> Keohane, R.O., *Ibid*, at 331.

<sup>38</sup> Keohane, R.O., *Ibid* at 334-335.

quantity and quality of information available to participants.<sup>39</sup> Regimes facilitate agreements by providing rules, norms, principles, and procedures that help actors to overcome barriers to agreement identified by economic theories of market failure. They make it easier for actors to realize their interests collectively.<sup>40</sup>

Realism, sees power as the only consistently important fundamental cause of behaviour, making regimes perhaps real, but at best epiphenomenal. The modified structuralist approach of neorealism, allows it to move away from realism's extremism and to adopt an intermediate, though not a compromise situation. This is because neorealism still maintains an atomistic and utilitarian-like model of international politics. Keohane, Krasner and other neorealists still portray states as primitive, pre-theoretical entities, and depict international anarchy as the pure absence of order.

Neorealists simply relax the assumption that the primary concern of every state is its security against all other states and instead allow for mutual gains through cooperation among them.<sup>41</sup> For neorealists,

*International regimes exist only when states, in order to avoid the costs of uncoordinated national action, are able to agree (more or less explicitly) on norms or procedures to regulate their interactions.*<sup>42</sup>

At the end of the day, realism and neorealism being true to their 'rationalist' tendencies, both treat the identities and interests of actors as exogenously given and focus on how this behaviour generates outcomes.<sup>43</sup>

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<sup>39</sup> Keohane, R.O., Ibid at 346.

<sup>40</sup> Keohane, R.O., Ibid at 354.

<sup>41</sup> Behnke, A., "Ten Years After: The State of the Art of (International) Regime Theory" (1995) *Cooperation and Conflict* 179 at 187-188.

<sup>42</sup> Donnelly J., "International Human Rights: A Regime Analysis" (1986) 40 *International Organization* 599 at 601-602.

Rationalism offers a fundamentally behavioural conception of both process and institutions. The impact of institutions (if any), is to change behaviour-not identities and interests. In addition, as rationalists, they share generally similar assumptions about actors: states are the dominant actors in the system, and they define security in ‘self-interested’ terms. Self-interested utility maximizers do not comply with the provisions of prevailing institutions out of habit or any sense of obligation or propriety; they participate in regimes strictly as a means of maximizing net benefits for themselves and will feel no compunctions about violating institutional requirements whenever they conclude that it is possible to increase their net benefits by doing so.<sup>44</sup> Realists and neorealists may disagree about the extent to which states are motivated by relative versus absolute gains, but both groups take the self-interested state as the starting point for theory.<sup>45</sup>

The realist approach then, cannot offer an adequate explanation for the more subtle kinds of influence that IHIs exerted on the CSGs included in this case study, in the absence of a regional hegemon or group of powerful states. Since there is no such regional hegemon or group of powerful states to enforce IHI norms and principles, realism would have dismissed IHIs as largely inconsequential to the work of these CSGs in Sierra Leone. For example, the presence of a regional (African) hegemon or group of powerful states, cannot be said to have been largely responsible for the modest influence exerted by the African system of human rights, on the work of the CSGs. Neorealism because like realism it considers “power” as a very critical explanatory factor to be

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<sup>43</sup> Wendt, A., “Anarchy is What States Make of It: The Social Construction of Power Politics” (1992) 46 *International Organization* 391 at 391.

<sup>44</sup> Young, O., “International Regimes: Toward a New Theory of Institutions”, *supra* note 17, at 119.

<sup>45</sup> Wendt, A., “Anarchy is What States Make of It: The Social Construction of Power Politics”, *supra* note 43, at 392.

considered in assessing the effectiveness of IHIs, is neither better suited to begin to account for the influence, though modest, of relatively weak African IHIs, on the work of CSGs in Sierra Leone.

### ***2.2.C. NEOLIBERALISM***

Neoliberals or neoliberal institutionalists like realists, acknowledge coercive power under certain conditions, but present different arguments in defending the importance of international norms. They emphasise the role of international regimes in helping states to realize common interests.<sup>46</sup> Alternatively, focusing more on external incentives (like cost-benefit calculations) and less on coercion, and adopting a micro-economic analytical framework, neoliberals argue that norms (and other international institutions) are generated by actor interactions.<sup>47</sup> According to them, regimes help self-interested states coordinate their behaviour in order that collectively suboptimal outcomes may be avoided. If there are no benefits to states to be gained from cooperation, there will be no cooperation and the institutions that facilitate cooperation will not develop in the first place. Institutions are rooted in the realities of power and interest and they do not argue that they matter.<sup>48</sup> Because, however their theory is based on rational choice models, the amount of influence that they are prepared to attribute to international institutions and IHIs in international politics, is limited.<sup>49</sup> This is because they mostly, and in accordance with rationalist tendencies treat state preferences and identities as

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<sup>46</sup> Klotz, A., *Norms in International Relations*, supra note 15, at 14; see also, Sterling-Folker, J., "Competing Paradigms or Birds of a Feather? Constructivism and Neoliberal Institutionalism Compared" (2000) 44 *International Studies Quarterly* at 103.

<sup>47</sup> Klotz, A., *Norms in International Relations*, supra note 15, at 22.

<sup>48</sup> Keohane and Martin, "The Promise of Institutional Theory" (1995) 20 *International Security* 39 at 42.

<sup>49</sup> Hasenclever, A., Mayer, P., and Rittberger, V., eds., *Theories of International Regimes*, supra note 1, at 4.

exogenously given and thus as essentially unaffected by rule-governed practices or institutions.<sup>50</sup> Keohane's version of neoliberal institutionalism or 'contractualist theory of regimes' deliberately adopts realist assumptions (states are 'crucial actors' in world politics and the fact of international anarchy has important repercussions on their interactions and, in particular, on their ability to cooperate). From this he develops a theory, which is opposed to classical realism in that it attributes to international institutions a significant role in international politics.<sup>51</sup>

### *2.2.C.1. Similarities with realism:*

1. Both are rationalist and structuralist. They share the basic rationalist assumption that states maximize their exogenously derived (material) interests.<sup>52</sup>
2. For both realists and neoliberals, changes in great powers' interests change the dominant norms (after a certain lag time). For the latter, -who see norms deriving from actor interactions, norm change can also be explained as the result of changing structural incentives such as costs and benefits.<sup>53</sup>
3. They both regard states as unitary rational actors, whose behaviour and choices may be understood in terms of the array of incentives and choices available to them.<sup>54</sup> Like realism, neoliberal theory is utilitarian and rationalistic.<sup>55</sup>

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<sup>50</sup> Hasenclever et al eds., *Ibid*, at 4.

<sup>51</sup> Hasenclever et al eds., *Ibid*, at 28.

<sup>52</sup> Hasenclever et al eds., *Ibid*, at 14.

<sup>53</sup> Klotz, A., *Norms in International Relations*, *supra* note 15.

<sup>54</sup> Shelton, D., ed., *Commitment and Compliance*, *supra* note 18, at 52.

<sup>55</sup> Keohane and Martin, "The Promise of Institutional Theory", *supra* note 48, at 39.



### 2.2.C.2. Differences with realism:

1. Deliberately appropriating essential elements of the realist approach to world politics, neoliberals have challenged the rationality of orthodox realism's dismissal of international institutions, as irrelevant to world politics.<sup>56</sup>

2. Realists and neoliberals disagree over whether states are relative or absolute gain calculators and the conditions in which states will calculate relative or absolute advantage. The latter depict states as rational egotists who are concerned only with their own gains and losses. Realists, on the other hand, insist that the utility functions of states are (at least) partially interdependent such that the gains from mutual cooperation (relative gains) that a state's partners achieve may diminish considerably its utility and consequently, its willingness to cooperate in the first place.<sup>57</sup>

3. Another difference is that realists stress the importance of power for the formation, the (normative) content, and the impact of international regimes. Neoliberals, propose to analyze regimes as strictly interest-based phenomena. They readily concede that cooperation is affected by power relationships, but argue that constellations of interests (which are not readily reduced to configurations of power) and prevailing expectations, - and which in turn are strongly influenced by the presence and content of international institutions, -are at least important. The neoliberal institutionalist perspective stresses the *external costs* (emphasis mine) and benefits to states in particular institutional arrangements.<sup>58</sup>

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<sup>56</sup> Hasenclever et al eds. *Theories of International Regimes*, supra note 1, at 4.

<sup>57</sup> Hasenclever et al eds., Ibid at 26.

<sup>58</sup> Hasenclever et al eds., Ibid, at 22.

### 2.2.C.3. Neoliberal theories and why states obey international institutions and IHIs:

Neoliberal theory explains compliance primarily in terms of incentives. International institutions function like economic markets, and induce cooperation by altering the incentives that actors face.<sup>59</sup> Even though they adhere to the rationalist view of states as instrumentally rational and egoistic interest-maximizers, they go a step further and in this sense differ from realists in that for them, cooperation may occur in circumstances not foreseen by realism. They do unlike realists concede that some of this cooperation involves compliance with norms, including legal rules established within institutional settings, conditions, a realist theory will not subscribe to. For neoliberals,

*rules and institutions help stabilize expectations, reduce transaction costs of bargaining, raise the price of defection by lengthening the shadow of the future, increase the availability of information, provide or facilitate monitoring, settle disputes, increase audience costs of commitments etc. Under this theory of cooperation, rational pursuit of interests is the principal explanation of behaviour, but norms (including legal rules) alter the costs and incentives in the calculations of rational actors.<sup>60</sup>*

Rules and institutions have the further effect over time of shaping actor preferences, even though they may not exercise a direct influence on preferences that were formed previously. They may similarly alter actors' beliefs. But even so, neoliberal theories are unwilling to concede a normative effect for law beyond its impact on pursuit of interests (or preferences) and perhaps, its interest-shaping, or preference-shaping and belief-shaping effect.

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<sup>59</sup> Klotz, A., *Norms in International Relations*, supra note 15, at 25.

<sup>60</sup> Kingsbury, B., "The Concept of Compliance as a Function of Competing Conceptions of International Law" supra note 11, at 354.

Some scholars argue that neoliberal theory only holds interests constant in order to explain why cooperation is initially chosen, and actually allows cooperative interaction to affect identity when it comes to explain why cooperation is maintained.<sup>61</sup> Thus, State choices can be influenced by international institutions, which serve a therapeutic role in encouraging compliance and deterring non-compliance by eliminating barriers to self-interested compliance.<sup>62</sup> By monitoring and publication of state actions, the political will, and consequently State choices to comply may be affected.<sup>63</sup> In this view

*the principles and norms of regimes may be internalized by important groups and thus become part of the belief systems which filter information...and alters the way key participants in the state see cause and effect relationships.*

Long term participation in regimes will have ‘the potential to induce more than simple learning involving perpetual changes about strategic behaviour’.<sup>64</sup> Mearsheimer correctly asserts that neoliberal institutionalists treat states as rational egotists operating in a world in which agreements cannot be hierarchically enforced, and they only expect interstate cooperation to occur if states have significant common interests.<sup>65</sup> Institutions change the incentives for states to cheat; they also reduce transaction costs, link issues and provide focal points for cooperation.<sup>66</sup>

Keohane, consistently with his assumptions about actors’ motivations, makes use of various rational choice models (prisoner’s dilemma, theories of collective action, and theories of market failure). According to him, the main functions of regimes are that they

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<sup>61</sup> Sterling-Folker, J., “Competing Paradigms or Birds of a Feather? Constructivism and Neoliberal Institutionalism Compared”, supra note 46, at 111-112.

<sup>62</sup> Shelton, D. ed., *Commitment and Compliance*, supra note 18, at 53.

<sup>63</sup> Shelton, D. ed., *Ibid*, at 54-55

<sup>64</sup> Sterling-Folker, J., “Competing Paradigms or Birds of a Feather?...” supra note 46, at 112.

<sup>65</sup> Keohane and Martin, “The Promise of Institutional Theory” supra note 48 at 42.

<sup>66</sup> Keohane and Martin, *Ibid*, at 49.

facilitate cooperation by providing states with information or reducing their information costs. States are uncertain about their partners: can they be expected to keep their commitments, or would it be unwise to count on that? As a result, governments miss out opportunities of striking mutually beneficial bargains or withdraw from agreements already made.<sup>67</sup>

Some neoliberals also stress the reputational aspect of regimes. They maintain that regimes help to shape the reputation of their members, which raises the costs associated with non-compliance and consequently, makes cooperation more likely.<sup>68</sup>

Krasner sums up the neoliberal position in this passage:

International regimes...are a device for overcoming problems of market failure. The success or failure of regime-building can be explained by the extent to which regimes provide information, monitoring capabilities, or focal points that allow states to move to the Pareto frontier; everyone becomes better off at the same time; absolute rather than relative gains matter.<sup>69</sup>

Since a neoliberal would not expect IHIs to be effective, unless there is a critical mass of states actors that realize that an effective IHI would serve their best interests, it can hardly explain the kinds of influence IHIs exerted on the work of CSGs in this case study. As would be seen in chapter four, the CSGs involved in the case study did not deploy IHIs and IHI norms in their human rights campaigns, primarily because they considered it in their rational self-interest to do so.

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<sup>67</sup> Hasenclever et al eds., *Theories of International Regimes*, supra note 1, at 33-34.

<sup>68</sup> Hasenclever et al eds., *Ibid*, at 35.

<sup>69</sup> Krasner, S., "Sovereignty Regimes and Human Rights" supra note 20, at 139.

### ***2.2.D. REPUBLICAN LIBERALISM***

This is a theory that has roots in earlier liberal and “democratic peace” theories.<sup>70</sup> These ‘liberal’ theories proceed on different assumptions from realism, about the international system: assumptions about the identity of the primary actors in that system, the relationship of those actors to state institutions, and the primary determinants of state relations with one another.

While rationalist in methodology, liberal theories point to at least three issues bearing on compliance that are not captured by standard rationalist theories of inter-state cooperation. Most importantly, they provide a way into the very difficult problem for rationalists of fully explaining the behaviour of the state where the state is treated as a single “rational” actor. The first liberal assumption is that the primary actors in the international system are individuals and groups acting in domestic and transnational society. Actual behaviour may be more completely understood by disaggregating the state into its various relevant components.<sup>71</sup> Compliance thus involves conformity with different sets of norms made by and directed to different sets of actors, rather than the traditional model of interstate rules implemented by national measures.

Republican liberal theory (following in the footsteps of liberal international relations theory) makes a distinction among different types of states based on their domestic political structure and ideology. Liberal theory’s most distinctive aspect is that

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<sup>70</sup> Sullivan, D.S., “Effective International Dispute Settlement Mechanisms and the Necessary Condition of Liberal Democracy” (1993) 81 *The Georgetown Law Journal* 2369, at 2370.

<sup>71</sup> Kingsbury, B., “The Concept of Compliance as a Function of Competing Conceptions of International Law” *supra* note 11, at 356.

domestic regime-types are explicitly taken seriously in analyses of state behaviour.<sup>72</sup> The more adherence there is to democratic norms in the domestic setting, the more likely there is to be implementation of, and compliance with IHIs and IHI norms. Harold Jacobson and Edith Brown Weiss, for example, suggest that on balance, “democratic governments are more likely to...(comply) with international environmental accords than non-democratic governments”.<sup>73</sup> For liberal approaches therefore,

*The nature and intensity of state preferences, determined as the aggregation of the preferences of the individual and group actors represented in a particular state, will determine the outcome of state interactions. Thus where realists model patterns of strategic interaction based on fixed state preferences, liberals seek first to establish the nature and strength of those preferences.*<sup>74</sup>

In contrast to the uniform assumptions of state identity made by realists, three key assumptions in liberal accounts of state behaviour are (i) the scope and density of domestic and transnational society, and (ii) the importance of the structure of government institutions, and (iii) the mode and scope of popular representation. ‘Liberal’ states or those states with some form of representative democracy, a market economy based on private property rights, and constitutional protections of civil and political rights, are far less likely to go to war with one another than they are to go to war with non-liberal states, giving rise to what some scholars have termed the ‘liberal peace’.<sup>75</sup> D.S. Sullivan, clearly asserts that since World War II, what he calls ‘effective and far reaching dispute settlement mechanisms (DSMs) based on legal principles have only been established

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<sup>72</sup> Slaughter, A., “International Law in a World of Liberal States”, supra note 10, at 504.

<sup>73</sup> Slaughter, A., *ibid*, at 357; See also Jacobson, H.K., and Weiss, E.B., “Compliance with International Environmental Accords” (1995) 1 *Global Governance* 119 at 142.

<sup>74</sup> Slaughter, A., *ibid*, at 508.

<sup>75</sup> Slaughter, A., *ibid*, at 509.

between and among liberal democratic nation states (because they share common norms and basic values).<sup>76</sup>

The liberal school remains radically individualistic and rejects the idea of standard rationalist theories, that the units of a system are all alike due to systemic constraints. Rather constitutions matter, and it is the character of the liberal, constitutional state that accounts for the observance of norms on the international level. To this extent, they object to their 'neo-liberal' counterparts, because the latter argue on the basis of a modified structural realist perspective that does not accept central tenets of the liberal approach.<sup>77</sup> In the liberal view, governments delegate for a self-interested reason, namely to combat future domestic political uncertainty (domestic self interest). It is thus not the most powerful or persuasive democracies, but weakly/newly established democracies that favour enforceable rather than merely rhetorical human rights obligations, because such commitments help lock in democratic governance against non-democratic domestic opposition.

#### *2.2.D.1. Republican liberal theories and why states obey international institutions and IHIs:*

For (republican) liberals, states comply with international institutions and IHIs because

*institutions foster compliance with international norms not by altering the external incentives facing a unitary state (as neoliberal theories assert), but by altering the domestic incentives facing societal groups and*

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<sup>76</sup> Sullivan, D.S., "Effective International Dispute Settlement Mechanisms..." supra note 70, at 2370-2371.

<sup>77</sup> Kratochwil, F., in Byers, M., ed., *The Role of Law in International Politics* supra note 8, at 59.

*politicians thereby shifting the domestic coalitions that define state preferences.*<sup>78</sup>

In the liberal institutionalist view, therefore, international institutions are not simply means of overcoming Pareto-suboptimal collective action problems for the general good, but also means by which the winners of political conflict seek to lock in their preferred policies.<sup>79</sup> The effectiveness of international regimes depends more on domestic political processes and the salience of international norms within these domestic political processes. Punitive sanctions are no longer considered to be the major element in securing compliance and making regimes both effective and robust, as the problem of compliance is multifaceted.<sup>80</sup>

Republican liberal theory as principally espoused by Moravcsik, though taking into consideration the important role that could be played by both sub-state and non-state actors in fostering adherence to IHI norms, is nevertheless inadequate for explaining a case study such as this one. This is principally because it does not pay sufficient attention to the kinds of influence exerted by IHIs outside the compliance framework, which this case study seeks to bring out. The other more subtle ways in which IHIs and IHI norms can be deployed by non-state actors such as CSGs in their human rights campaigns within states, is not a core aspect of republican liberal theory. For republican liberals the European human rights system is 'highly effective' mainly because of the high level of compliance with its norms and goals.

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<sup>78</sup> Okafor, O.C., *supra* note 1, at 51.

<sup>79</sup> Moravcsik, A., "Explaining the Emergence of Human Rights Regimes: Liberal Democracy and Political Uncertainty in Post War Europe", *supra* note 22, at 16.

<sup>80</sup> Kratochwil, F., in Byers, M., ed., *supra* note 8 at 60.



## **2.3. Other Characteristics of Rationalist Theories.**

### ***2.3.A. Positivism: Law Is What Is And Not What Ought To Be.***

As rightly noted by Morgenthau, positivism remains a ‘determining influence’ in international law.<sup>81</sup> International law scholars have since the turn of the century, started with positivist assumptions, followed the positivist method, and a professed adherence to the principles of positivism. For standard rationalist regime theories, objective forces, existing independently of human knowledge and subjectivity, move actors in their social interaction.<sup>82</sup> Because they generally assume that states (or other relevant actors) are self-interested, goal-seeking actors whose choices are guided by instrumental rationality, they advance a positivist explanation of social interactions, which appears as ‘a timeless account of what rational individuals can be expected to do in certain conditions’. Thus, they are inclined to regard institutional arrangements as objectively influencing the behaviour of state actors by affecting their calculations of interest.

Norms and rules are likened to external causes of international conduct, the impact of which can be specified and tested by predicting state behaviour on their basis.<sup>83</sup> The criterion of validity of a legal rule, is, its incorporation into the written law of the state. The only valid rules of international law are those that are made by the judges or contained in valid international treaties.<sup>84</sup> This positivist separation of the law from the other normative spheres, like ethics and mores, excludes from the domain of international

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<sup>81</sup> Morgenthau, J., “Positivism Functionalism and International Law” (1940) 34 American Journal of International Law 260.at 263.

<sup>82</sup> Behnke, A., “Ten Years After: The State of the Art of Regime Theory” supra note 41, at 182.

<sup>83</sup> Hasenclever et al eds., *Theories of International Regimes*, supra note 1, at 162.

<sup>84</sup> Morgenthau, J., “Positivism Functionalism and International Law” supra note 81, at 265.

law all rules whose validity cannot be traced to the written documents of states.<sup>85</sup> But states are bound not only by rules of prudence or expediency but also by imperatives of morality and law.<sup>86</sup>

A rule of international law does not receive its validity from its enactment into an international treaty. There are rules of international law, which are valid, although not enacted in such legal instruments. Rationalist theories thus resist the attempt to integrate human consciousness or subjective meanings into the study of regimes, leaving open the possibility of meaning-oriented behaviouralist approaches. Other scholars (e.g. H.L.A. Hart) argue that while objective behaviour is a starting point for demonstrating rules, it alone is not sufficient.<sup>87</sup> Legal rules have an ‘internal aspect’ which entails patterned behaviour combined with an appropriate internal attitude among relevant actors involving criticism of oneself and of others for certain violations on the ground that a rule has been violated.<sup>88</sup> This element is essential to the understanding of norms shared by most international lawyers and ‘cognitive’ schools in international relations.<sup>89</sup>

Due to their positivist bent therefore, rationalist theories tend to ignore non-material explanations for IHI effectiveness. Thus because a positivist approach largely ignores the important role that could be played by norms, values, ideas and knowledge, such an approach cannot be successfully employed in the present case study. Indeed, a major and very central aspect of this case study, is a recognition of the role that norms,

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<sup>85</sup> Morgenthau, J., *ibid.*, at 272.

<sup>86</sup> Bull, H., *The Anarchical Society: A Study in World Politics* *supra* note 16 at 25.

<sup>87</sup> Hart, H.L.A., *The Concept of Law*, (Oxford: Clarendon Press, 1944).

<sup>88</sup> *Ibid.*

<sup>89</sup> Kingsbury, B., “The Concept of Compliance as a Function of Competing Conceptions of International Law”, *supra* note 11 at 354.

ideas, values and knowledge play in the domestic human rights campaigns of CSGs in Sierra Leone.

### ***2.3.B. State-As-Actor Assumptions***

A state-centric, sovereignty based conception of international order remains central in the field of international politics, especially human rights.<sup>90</sup> In conventional rationalist analysis of international politics, states are the units of the political system. They are the units whose interactions form the structure of international political systems.<sup>91</sup> Very little attention is paid to sub-state actors. Non-state actors like non-governmental organisations (NGOs), have only in recent years been given much attention even though their role in many areas is important and must be taken into account.

In the realist world for example, politics is continually characterized by active or potential conflict among states, with the use of force possible at any time. Each state attempts to defend its territory and interests from real or perceived threats and therefore, transnational or domestic actors either do not exist or are politically unimportant.<sup>92</sup> Neorealism is equally guilty of projecting a ‘state-centric’ ‘state-as-actor’ model of international politics. This is so, despite the fact that individual neorealists (like Waltz, Gilpin and Keohane) sometimes concede that this theoretical commitment to statism ‘involves a distortion of some sorts’.<sup>93</sup> Neoliberals also adopt state-centric perspectives in their analysis of international politics.

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<sup>90</sup> Donnelly, J., *International Human Rights*, supra note 14, at 137

<sup>91</sup> Waltz, K., *A Theory of International Politics*, supra note 30, at 95.

<sup>92</sup> Keohane and Nye, *Power and Interdependence*, supra note 27, at 24.

<sup>93</sup> Ashley, R., “The Poverty of Neorealism” supra note 26.

Hedley Bull made no bones about the fact that in talking about international society he was talking about a society of states. He resisted the notion of an international society made up of individuals, believing that developments in that direction (the Nuremberg and Tokyo war crimes tribunals and the Universal Declaration of Human Rights) added confusion to the international scene in that ‘there is no agreement as to the relative importance of these different kinds of legal and moral agents, or on any general scheme of rules that would relate them one to another’.<sup>94</sup>

However, this attitude is now outdated and is constantly being reappraised. The understanding that states are actually heterogeneous actors and that domestic politics has crucial influence on a state’s capability and willingness to undertake international commitments has been noted in recent years by international relations scholars.<sup>95</sup> The most powerful consequences of international human rights regimes, in fact, may be the way in which they enhance the capabilities of particular groups or individuals within states.<sup>96</sup> The non state-centric approach is particularly important for a case study such as this one, for which the primary focus is on the deployment of IHIs by non-state actors, specifically CSGs.

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<sup>94</sup> Bull, H., *The Anarchical Society: A Study in World Politics*, supra note 16 at 34.

<sup>95</sup> Benvenisti, E., in Byers, M., ed., *The Role of Law in International Politics*, supra note 8, at 110.

<sup>96</sup> Krasner, S., “Sovereignty Regimes and Human Rights” in Rittberger, V., ed. *Regime Theory and International Relations*, supra note 20, at 141.

### **2.3.C. Ensuring Compliance: The Only Solution For International Institutions And IHIs ?**

There are numerous theories as to why states obey international institutions and IHIs. Using the typology Harold Koh used, they include (i) classical coercion models (nations obey international rules because they are compelled to do so), (ii) Henkin's rationalist model (nations obey international rules because the benefits generally outweigh the costs), (iii) Chayes and Chayes' managerial model (nations obey not because they are threatened by sanction but because they are persuaded to comply by the dynamic created by the treaty regimes to which they belong e.g. because they fear loss of reputation, (iv) Franck's fairness model (nations obey because they are pulled toward compliance by considerations of legitimacy and distributive justice, e.g. they obey because the rules are fair and legitimate), (v) Koh's transnational legal process model (nations obey because of the complex process of domestic internalization of international legal norms).<sup>97</sup>

Amidst all of this, one can discern two trends in the literature subscribed to mainly by rationalist theories: a stress on the ability of institutions to either 'enforce' or 'persuade' compliance. Roger Fisher calls them 'first-order' and 'second-order' compliance.<sup>98</sup> Marks, refers to the two trends as 'soft and hard' enforcement. The former based on the consent of the accused state under the political pressure brought to bear on them by other state and non-state actors on the international scene, (and involves on-site-

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<sup>97</sup> Alford, P., "The Proliferation of International Courts and Tribunals: International Adjudication in Ascendance" (2000) ASIL Procs 160, at 16.

<sup>98</sup> Fisher, R., *Improving Compliance with International Law* (Charlottesville: University of Virginia Press, 1981) at 246.

visits, collection of information, receiving of complaints and communications, state reporting etc). The latter involves the use of coercive or enforcement measures pursuant to Chapter 7 of the Charter of the United Nations.<sup>99</sup>

The perceived lack of enforcement powers of the international system has led to international institutions, and IHIs being viewed as unsuccessful in achieving whatever goals have been set for them. Various scholars maintain that it is a well-known fact that international law (including international institutions) has not been at its strongest when it comes to implementation and enforcement. According to them, the overall effect of international sanctions and enforcement has so far been conspicuously ineffective. The performance of United Nations organs in supervising and controlling the actual performance of states in the human rights field (in particular) is less positive than the formulation of norms.

Peter Baehr criticizes the United Nations organs because they do not effectively punish or reward governments for non-compliance or compliance with human rights standards. Thus they have had difficulty securing a 'high level of compliance'.<sup>100</sup> Makau Mutua stresses on the need for international human rights institutions (especially the Human Rights Committee), to 'demarginalise enforcement'.<sup>101</sup> It is the view that the use

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<sup>99</sup> Weston, B.H., and Marks, S.P., eds., *The Future of International Human Rights: Commemorating the 50<sup>th</sup> Anniversary of the Universal Declaration of Human Rights* (Ardsley: New York Transnational, 1999).

<sup>100</sup> Baehr, P., *Human Rights: Universality in Practice* (New York: St. Martin's Press, 1999) at 70.

<sup>101</sup> Mutua, M., "Looking Past the Human rights Committee: An Argument for Demarginalising Enforcement" (1998) 4 Buffalo Human Rights Law Review 211.

of various informal punishments as well as rewards may induce states and other relevant actors to follow the rules.<sup>102</sup>

Since enforcement remains the “Achilles’ heel” of the human rights system, (in particular) according to the theories, there is a need to promote what Dinah Shelton calls ‘effective enforcement’. Even though international human rights institutions (IHIs) issue recommendations, and hear complaints of human rights abuses, they have been far less effective in developing remedies.<sup>103</sup> They are ‘not terribly strong’ institutions as Jack Donnelly puts it, due to their lack of enforcement powers.<sup>104</sup>

***(1) Coercion models:***

For those who subscribe to this approach, states obey international rules because they are compelled to do so. Dominated by realist theories, which minimize the importance of norms and institutions, these conventional analyses maintain the realist focus on coercive capabilities. In addition, by asserting that (economic) sanctions need to be comprehensive and mandatory, they perpetuate the realist belief that only the threat of overwhelming economic costs (comparable to the costs of war) will coerce the compliance of a target state. These analysts dismiss diplomatic sanctions as symbolic and superficial, thus reproducing the realist dismissal of legitimation effects stressed on by some cognitive schools.

Most scholars in the rationalist tradition tend to measure the performance of both international institutions and IHIs, by comparing them with the European system.

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<sup>102</sup> Rosas, A., “State Sovereignty and Human Rights: Toward a Global Constitutional Project” (1995) 43 *Political studies* 61, at 71.

<sup>103</sup> Stephens, B., Book Review *Remedies in International Human Rights Law*, by Shelton, D., (2001) 95 *American Journal of International Law* 257 at 257.

<sup>104</sup> Donnelly, J., *International Human Rights*, supra note 14, at 77.

According to Moravcsik, “compliance (in the European System of Human Rights) is so good that European Court of Human Rights judgements are as effective as those of any domestic court”.<sup>105</sup> Using the same yardstick, they maintain that international institutions such as the International Court of Justice (ICJ), have little to show with respect to the enforcement and protection of human rights.<sup>106</sup> Dinah Shelton argues that international human rights institutions (IHIs) should rely more heavily on national law principles to develop human rights remedies. According to her,

*International law is weak or lacking in two of the most common procedures existing in domestic legal systems to remedy and deter wrongdoing: criminal sanctions and civil remedies against the individual perpetrator.*<sup>107</sup>

Forcing states to comply with their international legal obligations can actually contribute to the rule of law in a way that will benefit everyone.<sup>108</sup>

One of the most radical subscribers to this approach is Shand Watson. He is very dismissive of the international human rights system’s claim to effectiveness. Basically for him, if anything like an international human rights regime exists, it is notable for its consistent lack of effective enforcement.<sup>109</sup> International law and international norms are inherently defective mechanisms for effective implementation of human rights, therefore international human rights institutions are doomed to fail.<sup>110</sup> What he calls intrusive

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<sup>105</sup> Moravcsik, A., “Explaining the Emergence of International Human Rights Regimes: Liberal Democracy and Political Uncertainty in Post War Europe” supra note 22 at 22.

<sup>106</sup> Henkin, L., and Hargrove, J.L., eds., *Human Rights: An Agenda for the Next Century*, (Washington D.C.: ASIL, 1994) 317, at 323.

<sup>107</sup> Shelton, D., *Remedies in International Human Rights Law* (New York: Oxford University Press, 1999)

<sup>108</sup> Stephens, B., Book Review, supra note 103 at 259.

<sup>109</sup> Watson, J. S., *Theory and Reality in the International Protection of Human Rights*, (New York: Transnational Publishers Inc, 1999) at 4.

<sup>110</sup> Watson, J.S., *ibid*, at 302.



economic or military sanctions must be resorted to in order to induce states to comply with new norms in a new area of international law.<sup>111</sup>

Even though they sometimes acknowledge that international courts are not the most important actors in the international human rights system, these scholars maintain that they can potentially make a significant contribution to its effective working.<sup>112</sup> According to Morgenthau (an extreme realist), a rule is valid when its violation is likely to be followed by a sanction against its violator.<sup>113</sup> Neoliberals, for whom the rational pursuit of interests is the principal explanation of behaviour, see compliance as a matter of consistency of behaviour with the rule as interpreted by its authoritative interpreters. Sanctions or other coercive measures seldom constitute the most important determinants of observed levels of compliance with institutionalised rights and rules. Decisions whether or not to comply are cost-benefit calculations.<sup>114</sup> Many neo-liberal theories can be classified under the second model. Also Republican liberals, because they consider domestic regime type as explanatory (i.e. democratic states are more likely to comply with and implement international norms), are not likely to follow this approach.<sup>115</sup>

## ***(2) Persuasion models:***

Those who prefer the persuasion models argue that international adjudication has not become an important force in international politics. States promote their interests primarily by ad hoc negotiation, influence, compromise or political accommodation. One

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<sup>111</sup> Watson, J.S., *ibid*, at 50.

<sup>112</sup> Henkin, L., and Hargrove, J.L., eds. *Human Rights: An Agenda for the Next Century*, *supra* note 106, at 339.

<sup>113</sup> Morgenthau, J., "Positivism Functionalism and International Law", *supra* note 81, at 276.

<sup>114</sup> Kingsbury, B., "The Concept of Compliance as a Function of Competing Conceptions of International Law", *supra* note 11, at 352.

<sup>115</sup> Okafor, O.C., *supra* note 1, at 33.

school of thought maintains that the greatest deficiency is that the international society lacks an executive authority with power to enforce the law. There is no police system whose pervasive presence might deter violation. Therefore, since states cannot be 'made to comply' per se, they will only do so when they deem it in their interest so to do. For them, 'international law...is voluntary and only hortatory, it must always yield to national interest'.<sup>116</sup> Recognizing that the 'enforcement' structure of international law is substantially different from that of domestic system, these other analysts stress on mutual accommodation, cooperation and reciprocity as the means of achieving compliance with international law and institutions.<sup>117</sup>

Richard Bilder, for example, maintains that approaching issues of the international normative order from the perspective of 'compliance' risks obscuring or distorting an understanding of how international norms help to structure international order and cooperation. Instead, "the primary emphasis and objective should be helping nations cooperate, rather than simply "making them behave".<sup>118</sup> Donnelly maintains, that the primary resources for regulation of state behaviour by international institutions are 'persuasion and influence' not 'edict and compulsion'. States in the absence of a power capable of compelling compliance participate in or increase their commitment to international regimes more or less voluntarily.<sup>119</sup> Inis Claude for his part puts it this way:

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<sup>116</sup> Henkin, L., *How Nations Behave: Law and Foreign Policy* (New York: Columbia University Press, 1979) at 24.

<sup>117</sup> Watson, J.S., "Legal Theory Efficacy and Validity in the Development of Human Rights Norms in International Law" (1979) *University of Illinois Law Forum* 609 at 619.

<sup>118</sup> Bilder, R., "Beyond Compliance: Helping Nations Cooperate", in Shelton, D., ed., *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System*, supra note 18, at 65

<sup>119</sup> Donnelly, J., "International Human Rights: A Regime Analysis" supra note 42, at 616.

*People are being governed at other times than when they cower before a policeman or languish in prison cells. Nations are being governed at other times than when they are being prohibited, restrained, and compelled.*<sup>120</sup>

Michael Byers assesses the individual petition and state reporting mechanisms of the United Nations Human Rights Committee. He tries to show how they have been successful in generating ‘non-coerced compliance’ with their respective norms and goals.<sup>121</sup> Chayes and Chayes reject the coercion models and propose a ‘managerial model’ in its stead.<sup>122</sup> This model supposes that states comply out of self-interest and respond to non-coercive tools such as reporting and monitoring. It proposes that,

*the existence of international bureaucracies created and driven by treaty regimes they supervise makes compliance possible and likely, helping resolve ambiguity or indeterminacy of norms, assisting regulatory targets to overcome deficits in capacity to comply through technical assistance, and otherwise inducing conforming behaviour. International institutions thus are a focal point for maximizing compliance and reducing the likelihood of defection.*<sup>123</sup>

While not asserting that direct compliance with IHI norms and goals is unimportant, this case study on the hand, pays more attention to the other, more subtle ways in which IHIs and IHI norms can be useful to the work of CSGs in Sierra Leone. As such, a compliance-centric approach that concentrates on the presence or absence of compliance, whether coercive or persuasive, as the sole

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<sup>120</sup> Claude, I.L., *Swords into Ploughshares: The Problems and Progress of International Organization* (New York: Random House, 1984) at 437.

<sup>121</sup> Byers, M., ed., *The Role of Law in International Politics*, supra note 8.

<sup>122</sup> Chayes, A., and Chayes, A.H., *The New Sovereignty: Compliance with International Regulator Agreements* (Cambridge, MA: Harvard University Press, 1995) at 2-3.

<sup>123</sup> Shelton, D., ed. *Commitment and Compliance*, supra note 18 at 1-2.

factor to be considered in assessing the effectiveness of IHIs, cannot adequately explain the kinds of influence observed by the case study.

## **2.4. Conclusion**

As a result of the characteristics mentioned above present in the rationalist approach to viewing the issue, these scholars generally see the perceived weakness or ineffectiveness of international institutions and IHIs as resulting from the way they are structured, their compositions and capacities.<sup>124</sup> The examples are rife in the literature. For example, Jack Donnelly, in his analysis of eight human rights regimes focuses on their institutional and textual nature a lot.<sup>125</sup> Brody focuses on structural, administrative, financial and other related problems of United Nations human rights institutions. Among the examples, he cited outdated institutions, and the crisis of resources.<sup>126</sup> Nowak gives a favourable assessment of the Human Rights Committee's work, but he measures its effectiveness based on the success or not of the procedures it uses to further human rights protections.<sup>127</sup>

According to Evans, procedural barriers seriously undermine the capacity of the international legal system to provide an effective framework for the protection of human rights. The contentious jurisdiction of the International Court of Justice (ICJ) has not

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<sup>124</sup> Okafor, O.C., *supra* note 1, at 47.

<sup>125</sup> Donnelly, J., "International Human Rights: A Regime Analysis", *supra* note 42, at 610.

<sup>126</sup> Henkin, L., and Hargrove, J.L., eds., *Human Rights: An Agenda for the Next Century*, *supra* note 106.

<sup>127</sup> Nowak, M., "The Effectiveness of the ICCPR: Stocktaking after the First Eleven Sessions of the UN Human Rights Committee" (1980) 1 Human Rights Law Journal 136.

been opened to individuals, or even to international institutions.<sup>128</sup> Baehr maintains that rather than abolishing the ‘woefully inadequate’ supervision mechanism of international laws, they should be improved.<sup>129</sup>

For Richard Bilder, the major human rights task facing the international system is that it has established a network of treaties and created monitoring bodies but the treaties are riddled with reservations and enforcement machinery does not work as it should.<sup>130</sup> He explores possibilities for the development of new international judicial mechanisms-in particular, international courts -to protect international human rights.<sup>131</sup> James Crawford cites delays in processing communications and reports, resource constraints, procedural issues, composition of committees, problems with recent or proposed reforms, as responsible for the international human rights system’s problems.<sup>132</sup>

What comes out of all of the above analyses is that both international institutions and IHIs, when viewed from the optic of the dominant major school in international relations theory, will inevitably be considered to have fallen far short of their duties. Scholars of the four rationalist models considered above, and even though they have made extensive contribution to the issue, fail to consider other ways in which these institutions affect state choices on the international scene. These characteristics that they share stand as obstacles in the way of a more comprehensive analysis of the issue.

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<sup>128</sup> Evans, T., *Human Rights Fifty Years On: A Reappraisal* (Manchester: Manchester University Press, 1998) at 119. See also Article 34, Statute of the International Court of Justice.

<sup>129</sup> Baehr, P., *Human Rights: Universality in Practice*, supra note 100, at 8.

<sup>130</sup> Bilder, R., “Beyond Compliance Helping Nations Cooperate”, in Henkin, L., and Hargrove, J.L., eds., supra note 106.

<sup>131</sup> Henkin, L., and Hargrove, J.L., eds. *Human Rights: An Agenda for the Next Century*, supra note 106 at 319.

<sup>132</sup> Crawford, J., “The UN Human Rights System: A System in Crisis?”, in Alston, P., and Crawford, J., eds., *The Future of United Nations Treaty Monitoring* (Cambridge: Cambridge University Press 2000).

Thus, even though rationalist schools have dominated the discipline for a very long time, they are inadequate. If then the aim is to get a fuller picture of the utility or effectiveness of these international institutions, the issue should not be viewed solely from their perspectives. In Chapter three, we will be examining another 'school' which has become dominant in relatively recent times-the 'constructivist or cognitive' approach, to see whether, if at all it presents a better alternative to the theories discussed in this chapter.

## CHAPTER THREE

### CONSTRUCTIVISM AND SCHOLARSHIP ON THE EFFECTIVENESS OF INTERNATIONAL HUMAN RIGHTS INSTITUTIONS.

#### 3.1. Introduction

In chapter two, rationalist approaches to the study of the effectiveness of IHIs, one of the major schools in international relations theory were looked at. In this third chapter, we will examine another theoretical school to see what approach scholars of that school adopt when dealing with the issue. The chapter will discuss the “*constructivist school*” in international relations theory. Constructivist theory in international relations has posed a constant challenge to rationalist interpretations of the effectiveness of IHIs. It has emerged as a dominant school in international relations theory, especially in terms of the approach adopted by its various scholars on the issue of measuring the effectiveness of IHIs. It is however part of a broad approach to international relations that is often referred to as the *reflectivist or cognitivist approach*.<sup>1</sup>

The aim of this chapter is to explain how some main concepts and issues in international relations theory are applied by constructivists, to the task of measuring the effectiveness of IHIs. Comparisons are made, in certain instances, to the rationalist approach. In this regard, the chapter is structured as follows: in Section 3.2 a brief discussion of cognitivist or reflectivist approaches in international relations theory is undertaken. This will set the stage for the discussion or examination of the central tenets

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<sup>1</sup> Keohane, R.O., “International Institutions: Two Approaches” (1988) 32 *International Studies Quarterly* 379, at 381.

of constructivist theory itself, and especially as it deals with the issue of the effectiveness of IHIs.

Section 3.3 begins the discussion of constructivist theory and essentially tries to give an idea of what constructivism is about. Section 3.3.A deals with the core assertions of constructivism which include their approach to concepts such as actors and structures, anarchy, identities and interests, power, social practices, and the state. Section 3.3.B is a discussion of the intersubjective social context -a major facet of constructivist theory. In this section the special significance of norms and collective meanings in the constructivist context is dealt with.

Section 3.4 then goes on to discuss the constructivist explanation of how norms do in fact cause a shift in interests and identities (of states). This aspect of the theory was absent in earlier constructivist accounts of international cooperation, a gap which has been filled by “quasi-constructivists” who developed the concept of “socialization”. The various models of socialization are dealt with in Sections 3.4.A.1, 2 and 3. The next Section 3.5 deals with constructivism and its approach to the effectiveness of IHIs. In particular, this section looks at the other ways in which constructivists “measure” the effectiveness of IHIs without necessarily relying on “compliance” with IHI norms and goals as the only paradigm to assess their effectiveness. The final section, 3.6 is the conclusion of the chapter.



## **3.2. Reflectivist or Cognitivist Approaches in International Relations**

### **Theory Generally.**

Despite their individual differences, the various scholars subscribing to reflectivist or cognitivist approaches to the study of international politics, stress ideas and knowledge as explanatory variables. They give central significance to the social construction of identities and meanings among actors in the international system. As far as they are concerned, rationalist theories of international politics share a common flaw—the rationalist tendency to treat states’ identities and interests as exogenously given in explanations of international phenomena such as international regimes. According to cognitivists, by

*black boxing the processes, (norms, ideas and knowledge) which produce the self-understandings of particular states (i.e. their identities) as well as the objectives, which they pursue in their foreign policy (i.e. their interests and preferences), a significant source of variation in international behaviour and outcomes is ignored and ipso facto trivialized.<sup>2</sup>*

For cognitivists, on the other hand, these processes cannot be “blackboxed” as their rationalist counterparts maintain. While acknowledging that norms, ideas and knowledge can sometimes play a role in facilitating international cooperation, for rationalists they are not crucial to that process. Alternatively, reflectivists or cognitivists *stress* the importance of norms and causal beliefs, which they say, shape these processes and consequently, can lead to changes in policy, (for example leading to compliance with international norms and institutions). Thus, they focus instead on the way the ‘distribution of knowledge’ constitutes the identities, and shapes the preferences as well

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<sup>2</sup> Hasenclever, A., Mayer, P., and Rittberger, V., *Theories of International Regimes* (Cambridge: Cambridge University Press, 1997) at 136.

as the perceived options of actors.<sup>3</sup> Cognitivists or reflectivists place great importance on the role of ideas, knowledge and norms in understanding and explaining not just the creation, but also the impact of international institutions.<sup>4</sup>

Hasenclever et al have classified the cognitivist school generally into what they call ‘*weak*’ and ‘*strong*’ cognitivists. The former they say, try to complement what is regarded as the *incomplete* nature of rationalist approaches to the study of international regimes. Adopting a more daring approach, strong cognitivists on the other hand, suggest that rationalist approaches be replaced almost entirely. Weak cognitivist approaches are seen as complementary to rationalist approaches (which take preferences and options as exogenously given), because of their focus “on the prevailing forms of reason by which actors identify their preferences, and the available choices (i.e. options) facing them”.<sup>5</sup>

Strong cognitivists on the other hand, suggest an alternative theory to traditional rationalist theory on international regimes and institutions. Knowledge, for them, cannot be conceptualized as a *mere intervening variable* between structural constraints on one hand, and behavioural outcomes on the other.<sup>6</sup> Rather cognitivism (in its strong sense) advocates a sociological turn in the study of international regimes, which argues that “knowledge not only affects states’ interests, but is also constitutive of their identities”.<sup>7</sup> Consequently, strong cognitivists emphasize the dependency of state identities and cognitions on international institutions and relate the formation and maintenance of particular international regimes to these pre-established identities.<sup>8</sup> For them, more

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<sup>3</sup> Hasenclever et al eds., *ibid*, at 136.

<sup>4</sup> Okafor, O.C., *The Domestic Promise of the African Human Rights System: International Institutions, Popular Forces and the Possibility of Correspondence* (Forthcoming 2005) at 22.

<sup>5</sup> Hasenclever et al. eds., *supra* note 2 at 137.

<sup>6</sup> Hasenclever et al. eds., *ibid*, at 138.

<sup>7</sup> Hasenclever et al. eds., *ibid*, at 139.

<sup>8</sup> Hasenclever et al eds., *ibid*, at 157.

attention should be paid to the intersubjective nature of international regimes: “(they) are more than mere incentive-manipulators affecting the utility calculations of rational actors”.<sup>9</sup> This intersubjective aspect of IHIs (including international human rights regimes) is dealt with further in Section 3.3.B

### **3.3. Constructivism:**

The school of international relations theory known as ‘constructivism’ has been classified among the reflectivist or cognitivist theories in international relations. Since its emergence on the scene, it has posed a constant challenge to the continuing dominance of rationalist mainstream theories- neorealism and neoliberal institutionalism in particular.<sup>10</sup> Because of its very strong roots in sociology, constructivism is sometimes referred to as social constructivism. A major difference between constructivism and rationalist theories is constructivism’s argument that *knowledge, or ideas and understandings and institutions* significantly affect international cooperation.<sup>11</sup> This contrasts with rationalist arguments that power and human nature preclude significant cooperation. Constructivist theory posits that state actors are social beings susceptible to processes of learning, reflection and socialization facilitated by normative influences.

In particular, constructivists assume that states do not search for new information each time a decision is demanded. Rather, they rely on ‘prior cognitive frames’ in order

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<sup>9</sup> Hasenclever et al eds., *ibid*, at 163. International regimes are defined here as “principled and shared understandings of desirable and acceptable forms of social behaviour”.

<sup>10</sup> Hopf, T., “The Promise of Constructivism in IR Theory” (1998) 23:1 *International Security* 171 at 171.

<sup>11</sup> Wendt, A., “Collective Identity Formation and the International State” (1994) 88 *American Political Science Review* 384, at 384.

to understand how national interests are likely to be affected by any particular decision.<sup>12</sup> Thus for constructivists generally, decisions to comply are based less on rational calculations of interest, (as mainstream rationalist theories assert) and more on understandings. As such, the issue of compliance with international law and institutions is

*A matter of applying socially generated convictions and understandings about how national interests are likely to be achieved in any particular policy domain. The most important source of state choices then, is 'collective understandings'.*<sup>13</sup>

### **3.3.A Core Assertions of the Constructivist Approach To International**

#### **Relations Theory:**

##### ***3.3.A.1 Actors and Structures:***

Constructivism argues that actors and structures are mutually constituted. For meaningful behaviour or action to occur in international politics there must be an *intersubjective social context*. Actors in international politics develop their relations with, and understandings of others through norms and practices. In the absence of norms, any exercise of power or any action would be meaningless. Identities and interests are partially defined by constitutive norms,<sup>14</sup> which define an identity by specifying the actions that will cause others to recognise that identity and respond to it appropriately. Structure<sup>15</sup> is meaningless without some intersubjective set of norms and practices.<sup>16</sup> Hopf, gives the example of United States military intervention in Vietnam to illustrate

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<sup>12</sup> Shelton, D., ed., *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (New York: Oxford University Press, 2000) at 62.

<sup>13</sup> Shelton, D., ed., *ibid*, at 62.

<sup>14</sup> Klotz, A., *Norms in International Relations: The Struggle Against Apartheid* (Ithaca: Cornell University Press, 1995) at 18.

<sup>15</sup> Hopf, T., *supra* note 10, at 172. Hopf uses the neorealist conceptualization of structure in international politics, as a set of relatively unchangeable constraints on the behaviour of states. It constitutes for realists anarchy and the distribution of power.

<sup>16</sup> Hopf, T., *ibid*, at 173.

this constructivist perspective. According to him, by engaging in military action in Vietnam, the United States “perpetuated the international intersubjective understanding of great powers as those states that use military powers against others”.<sup>17</sup> Through its actions, the United States “reproduced” both its “identity” of a great power and the structure that gave meaning to such actions.

### **3.3.A.2 Anarchy:**

Constructivists and rationalists disagree on the extent to which state action is influenced by “structure”, as opposed to “process” (interaction and learning) and institutions.<sup>18</sup> For constructivists, if rationalists hold that anarchy is structural, then actors employing constitutive rules and social practices must mutually constitute it. This leads to the implication that anarchy is indeterminate.<sup>19</sup> There is the possibility of anarchy having multiple meanings or understandings for different actors then, based on their own communities of intersubjective understandings and practices.<sup>20</sup> For example, self-help, (the neorealist inference) is a structurally determined behaviour of an actor only to the extent that a single particular understanding of anarchy prevails. If the implications of

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<sup>17</sup> Hopf, T., *ibid*, at 173.

<sup>18</sup> Wendt, A., “Anarchy is What States Make of it: The Social Construction of Power Politics” (1992) 46 *International Organization* at 391.

<sup>19</sup> Kenneth Waltz defines anarchy as a condition of possibility for or “permissive” cause of war (a neorealist definition). See: Waltz, K., *Man, the State, and War* (New York: Columbia University Press, 1959) at 232. See also Wendt, A., “Anarchy is What States Make of it...” *supra* note 18, at 392. Wendt quotes Waltz as saying that anarchies occur because there is nothing to prevent them. For neorealists, anarchies are “self-help” systems that lack both central authority and collective security. All states pursue similar goals within anarchy i.e. security independence. (See Hopf, T, *supra* note 10, at 174). In a state of anarchy because non-state actors are irrelevant, there can be no international political community: See Samhat, N.H., “Human Rights Regimes and the Emergence of International Political Community” (1999) 36 *International Politics* 503.

<sup>20</sup> For a constructivist critique of this fundamental structural pillar of mainstream IR theory see: Wendt, A., “Anarchy is What States Make of it...” *supra* note 18.

anarchy are not constant across all relationships and issue areas of international politics, then a continuum of anarchies is possible.<sup>21</sup>

### **3.3.A.3 Identities and interests:**

A key point to be made here is the meanings given to the concept of identity itself by constructivists. Identities are “relatively stable, role-specific understandings and expectations about self”.<sup>22</sup>

*Whereas constructivism treats identity as an empirical question to be theorized within a historical context, neorealism assumes that all units in global politics have only one meaningful identity, that of self-interested states. This neorealist assumption presumes to know a priori, just what is the self being identified. In other words, the state in international politics, across time and space, is assumed to have an eternal meaning. Constructivism instead assumes that the selves, or identities, of states are a variable; they likely depend on historical, cultural, political and social contexts.<sup>23</sup>*

For constructivists, identities perform three necessary functions in international politics: they tell you who you are, they tell others who you are, and they tell you who others are.

According to Ted Hopf:

*In telling you who you are identities strongly imply a particular set of interests or preferences with respect to choices of action in particular domains, and with respect to particular actors. The identity of a state implies its preferences and consequent actions. A state understands others according to the identity it attributes to them, while simultaneously reproducing its own identity through daily social practice. The crucial observation here is that the producer of the identity is not in control of what it ultimately means to others; the intersubjective structure is the final arbiter of meaning.<sup>24</sup>*

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<sup>21</sup> Hopf, T., supra note 10, at 174.

<sup>22</sup> Wendt, A., “Collective Identity Formation and the International State” supra note 11, at 397.

<sup>23</sup> Wendt, A., ibid at 176.

<sup>24</sup> Hopf, T., supra note 10, at 175.

State interests are part of the process of identity construction. This aspect is dealt with further under Section 3.4 below.

#### **3.3.A.4 The Concept of Power:**

Even though power is a critical theoretical element for both mainstream rationalist and constructivist approaches in international relations theory, their conceptualizations of power differ greatly. For neorealism and neoliberal institutionalism ‘material power’, whether military or economic or both, is assumed to be the single most important source of influence and authority in international politics.<sup>25</sup> A very important component of constructivism i.e. *discursive power* has no place in the rationalist literature.<sup>26</sup> Constructivism on the other hand, argues that both *material and discursive power* are necessary for any understanding of international politics. This discursive power involves the power of knowledge, ideas, culture, ideology and language.<sup>27</sup>

#### **3.3.A.5 Social Practices:**

The power of social practices lies in their capacity to reproduce the intersubjective meanings that constitute social structures and actors alike. A most important power of practice is its capacity to produce predictability and so, order. Social practices greatly reduce uncertainty among actors within a socially structured community, thereby increasing confidence that what action one takes will be followed by certain consequences and responses from others.<sup>28</sup>

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<sup>25</sup> Hopf, T., *ibid*, at 177.

<sup>26</sup> Hopf, T., *ibid*, at 177.

<sup>27</sup> Hopf, T., *ibid*, at 177.

<sup>28</sup> Hopf, T., *ibid*, at 178.

### **3.3A.6 *The State:***

Social constructivists have a different notion of the state. Relaxing many of the rationalist assumptions that inform neorealist and neoliberal institutionalist analysis, they assume that states are not monolithic. Instead their characteristics vary according to the extent to which the state is accountable to domestic society. For constructivists, states are not “substantively” or “procedurally” rational. Rather, they make decisions “subject to bounded rationality, the easiest choices are taken at any one point in time, and choices persist until new state action is galvanized by political crises”.<sup>29</sup>

### **3.3.B The Intersubjective Social Context – (Nature of Structures,**

#### **Identities and Interests):**

Constructivism posits that the key structures in the international system are intersubjective rather than material. State identities and interests are in some way constructed by these intersubjective structures, and are in fact endogenous rather than exogenous as rationalist theories maintain.<sup>30</sup> Ideational factors (norms, principled ideas and knowledge) have “constitutive” effects on the identity formation of states. Alexander Wendt distinguishes “corporate” from “social” (or “role”) identities of states. The former comprises “intrinsic, self-organizing qualities that constitute actor individuality”, or “social categories of states that share some characteristics”, for example: “European state”, “democratic state”. The latter are “sets of meanings that an actor attributes to itself

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<sup>29</sup> Shelton, D., ed., *Commitment and Compliance*, supra note 12, at 51.

<sup>30</sup> Kingsbury, B., “The Concept of Compliance as a Function of Competing Conceptions of International Law” (1998) *Michigan Journal of International Law* 345, at 358. Kingsbury refers here to Wendt’s proposal of a “constructivist pre-theory” in the article: “Collective Identity Formation...” at 384-385.



while taking the perspective of others”.<sup>31</sup> Both types of identities can contribute to how a state will relate to international norms and institutions. Identity formation is very central in constructivist theory because it precedes interest formation.

### **3.3B.1 Norms:**

Norms occupy a deeper and more significant place in the international system for constructivists than rationalists would allow.<sup>32</sup> The constructivist intersubjective elaboration of norms, and their complex role as the embodiment and constitution of social relations, excludes the types of linear causal relations between norms and behaviour that rationalists regard as the central topic for investigation. Norms are defined as “those expectations of appropriate behaviour, which are shared within international society or within a particular subsystem of international society by states.”<sup>33</sup>

Constructivist critics maintain that mainstream rationalist theories like neorealism and neoliberalism are fundamentally incapable of capturing the importance of norms, for two reasons. First, norms are a fundamental component of both the international system and actors’ definitions of their interests. They are not the products of interests. Second, because of their positivist epistemological and methodological assumptions, they are inherently incapable of capturing the crucial intersubjective aspect of norms which distinguishes them from other ideational variables such as ideas, beliefs or convictions, which can be individually held.<sup>34</sup> For constructivists, on the other hand norms should be analyzed as independent, and not solely intervening or dependent variables at the system level.

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<sup>31</sup> Wendt, A., “Collective Identity Formation and the International State” supra note 11, at 385.

<sup>32</sup> Kingsbury, B., “The Concept of Compliance...” supra note 30, at 358.

<sup>33</sup> Boekle, Rittberger, and Wagner, “Norms and Foreign Policy: Constructivist Foreign Policy Theory” University of Tübingen Centre for International Relations/Peace Conflict Studies TAP 34A (1999) at 13.

<sup>34</sup> Klotz, A., *Norms in International Relations*, supra note 14, at 15.

### **3.3.B.2 Social or Role Identities-Collective Meanings:**

People act towards others (including other actors), on the basis of the meanings that they have for them. States do act differently toward their enemies and act differently toward their friends. This is because they consider enemies to be a threat to them, whereas they do not consider their friends as such. It is *collective meanings* that constitute the structures, which organize our actions. Actors acquire identities by participating in such collective meanings.<sup>35</sup> Identities are the basis of interests. Actors do not have a ‘portfolio’ of interests that they carry around independent of social context; instead they define their interests in the process of defining situations.<sup>36</sup> As Audie Klotz put it,

*(t)hrough international and domestic decision-making processes, various avenues exist for norms, as embodied in individuals’ beliefs or embedded in social discourse, to influence the determination of national interests and political goals...through social interaction individual ideologies develop into shared, intersubjective, community conceptions of normality and deviance, which produce relatively consistent interpretations of the empirical world.<sup>37</sup>*

### **3.4. Norms and interest formation/shifting identities and interests:**

Given that a key aspect of the constructivist argument maintains that international actors are inherently socially constructed and that their identities and interests are partially defined by prevailing constitutive norms, which vary over time, the question then arises -exactly how do these systemic norms affect state interests? How do norms shape identities and produce a shift in interests, which ultimately causes actors to change

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<sup>35</sup> Wendt, A., “Anarchy is What States Make of it...” supra note 18, at 397.

<sup>36</sup> Wendt, A., *ibid*, at 398.

<sup>37</sup> Klotz, A., *Norms in International Relations*, supra note 14, at 32.

their behaviour? This was a major gap in earlier constructivist attempts to explain international cooperation.<sup>38</sup> A group of scholars within the constructivist school whom Okafor refers to as “quasi-constructivists” have attempted to shed light on this all important aspect of the constructivist argument.

In seeking to explain exactly how and under what conditions norms, ideas and knowledge can affect international politics, quasi-constructivists developed the concept of “socialization”. Socialization is the process by which principled ideas held by individuals become norms in the sense of collective understandings about appropriate behaviour, which then lead to changes in identities, interests, and ultimately behaviour.<sup>39</sup> Socialization can be defined as the “induction of new members...into the ways of behaviour that are preferred in a society”.

The goal of socialization is for actors to internalize norms, so that external pressure is no longer needed to ensure compliance.<sup>40</sup> Socialized actors follow the norm, because “it is the normal thing to do”. They do so whether or not they are convinced of its moral validity and appropriateness. Norms are then implemented independently from the moral consciousness of actors and are simply ‘taken for granted’ or ‘internalized’. This internalization is the final stage in the socialization process.<sup>41</sup>

Risse, Ropp and Sikkink for their part, all argue that this diffusion (socialization) of international norms in the human rights area crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who as they

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<sup>38</sup> Brunne, J., and Toope, S.J., “International Law and Constructivism: Elements of an Interactional Theory of International Law” (2000) 39 *Columbia Journal of Transnational Law* 19.

<sup>39</sup> Keohane, R.O., “International Institutions: Two Approaches” *supra* note 1, at 391.

<sup>40</sup> Risse, T., Ropp, S.C., and Sikkink, K., eds., *The Power of Human Rights: International Norms and Domestic Change* (United Kingdom: Cambridge University Press, 1999) at 11.

<sup>41</sup> Risse et al., *ibid*, at 17.

put it, manage to link up with international regimes, to alert Western public opinion and Western governments. International norms are internalized and implemented domestically by this process of socialization. Martha Finnemore and Kathryn Sikkink's "strategic social constructivism" involves a three-stage process. They refer to this process as "the norm life-cycle" which involves norm emergence, norm cascade and norm internalization.<sup>42</sup>

In general, though, two main models of socialization have been discerned in the literature: the "transnational state-centric model" or state-centric approach and the "transnational social networks model" or non-state-centric approach.<sup>43</sup> The former in accordance with traditional IR theory adopts the state as unitary actor assumption, and the latter approach extends the literature beyond the state to the transnational realm. A third model which is just beginning to emerge in the literature is the "domestic social incorporation model". This model examines the way in which international norms affect or have an impact upon the consciousness of domestic (as opposed to non-domestic) non-state and sub-state actors, who then utilize these norms within their domestic settings so as to bring about greater correspondence with international norms.

We will now look briefly at the three socialization models mentioned above.

#### **3.4.A SOCIALIZATION MODELS**

Socialization in constructivist theory has been defined as stated in Section 3.4 above as

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<sup>42</sup> Finnemore, M., and Sikkink, K., "International Norm Dynamics and Political Change" (1988) 52 *International Organization* 887, at 895.

<sup>43</sup> Schmitt, and Sikkink, "International Relations Theory and Human Rights" (in Risse, T., Ropp, S.C., and Sikkink, K., eds., *The Power of Human Rights*, supra note 40), at 16.

*the process by which principled ideas held by individuals become norms in the sense of collective understandings about appropriate behaviour which then lead to changes in identities, interests, and behaviour.*

Both socialization and internalization involve various stages or processes. Several scholars have attempted to map out these stages or processes, as they perceive them to occur. In Finnemore and Sikkink's, three-stage process, socialization starts with norm emergence. This takes place when 'persuadees' or norm leaders are persuaded by norm entrepreneurs or 'persuaders' to accept new norms. The second stage i.e. norm cascade, will occur when the persuadees (or norm leaders) now attempt to socialize other actors. Internalization, the last stage of the process is said to happen when norms acquire a 'taken for granted' quality, thus becoming widely accepted irrespective of their moral validity and appropriateness.<sup>44</sup>

For his part, Harold Koh has distinguished between different forms of internalization that can take place within the domestic setting.<sup>45</sup> He mentions social, political and legal internalization processes. For social internalization to occur "a norm acquires so much public legitimacy that there is widespread general obedience to it".<sup>46</sup> When "political elites (accept) an international norm and (adopt) it as a matter of government policy" political internalization is said to occur.<sup>47</sup> The third type involves "an international norm (being) incorporated into the domestic legal system through executive action, judicial interpretation, legislative action, or some combination of the three".<sup>48</sup>

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<sup>44</sup> Finnemore, M., and Sikkink, K., "International Norm Dynamics and Political Change" supra note 42.

<sup>45</sup> Koh, H., "Why Do Nations Obey International Law?" Review Essay of Chayes, A., and Chayes, A.H., *The New Sovereignty: Compliance with International Regulatory Arguments* and of Franck, T.M., *Fairness in International Law and Institutions*, (1997) 106 Yale Law Journal 2599 at 2656-2657.

<sup>46</sup> Koh, H., *ibid.*

<sup>47</sup> Koh, H., *ibid.*

<sup>48</sup> Koh, H., *ibid.*

All three socialization models posited by constructivists give central place to “communicative” processes as opposed to commanded compliance. In all of these processes there are the persuaders or “norm entrepreneurs” on the one hand, and “persuadees”, on the other hand. This is so even though the various models differ as to their details. The next 3 subsections of this chapter (3.4.A.1 to 3.4.A.3), examine the main features of all three socialization models.

*3.4.A.1: The Transnational State-Centric Socialization Model:*

Because this model is based on the conventional IR theory assumption that states are the principle actors on the international scene, it provides very little room for domestic politics or the various non-state actors. According to this model, they are irrelevant to international politics and have no impact whatsoever on the effectiveness of international norms and institutions. The persuaders in this model are the states that have already accepted international norms and institutions. Through inter state interaction and communication, shared expectations, norms, understandings, knowledge etc., are created and these in turn affect or shape actors’ (states) identities, interests and ultimately behaviour. States respond to these processes because they want to be identified as “norm compliant” or “legitimate”.<sup>49</sup>

*3.4.A.2: The Transnational Social Networks Socialization Model:*

This model takes the socialization theory one step further transnationally, by incorporating other actors outside the state into it. Even though this is an important

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<sup>49</sup> Boekle, Rittberger and Wagner, “Norms and Foreign policy...” supra note 33, at 9.

contribution made by “quasi-constructivists” to the constructivist literature, it will be realized that the model still focuses on non-state actors as they interact on the international as opposed to the domestic plane. It is well known that international politics now increasingly involves not only states as most rationalist theories assume, but many nonstate actors that interact with each other, with states, and with international organizations.<sup>50</sup> These interactions are structured in terms of transnational networks, and these networks are increasingly visible in international politics. Others are knowledge-based or epistemic communities -i.e. ‘transnational networks of policy professionals (scientists and experts) who share common values and causal understandings’ which underpin their efforts to influence policy. These networks of activists are distinguishable largely by the centrality of principled ideas or values in motivating their formation.<sup>51</sup>

Adherents of this model argue that focusing solely on state actors interacting on the international plane presents a truncated picture of the impact of international norms and institutions on states. Instead they bring into the picture domestic and international Non Governmental Organisations (NGOs), Transnational Advocacy Networks (TANs), Principled Issue Networks (PINs), as well as international organisations.<sup>52</sup> Kathryn Sikkink and Margaret Keck for example establish the importance of PINs and TANs for the diffusion of international norms in the human rights and environmental issue-areas.<sup>53</sup>

Other scholars like Peter Haas, maintain that epistemic communities are one principal mechanism by which such ideas are developed and disseminated. The members

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<sup>50</sup> Keck, M.E., and Sikkink, K., *Activists Beyond Borders* (Ithaca: Cornell University Press, 1998).

<sup>51</sup> Haas, P.M., “Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control” (1989) 43:3 *International Organization* 377. Shared principled beliefs or values are ideas that specify criteria for determining whether actions are right and wrong and whether outcomes are just or unjust: Keck, M.E., and Sikkink, K., *Activists Beyond Borders*, supra note 50.

<sup>52</sup> Risse, T., Ropp, S.C., and Sikkink, K., eds., *The Power of Human Rights*, supra note 40.

<sup>53</sup> Risse et al., *ibid.*

of epistemic communities often introduce national measures consistent with their beliefs, and utilize the enforcement mechanisms of the bureaucratic units in which they operate.<sup>54</sup> According to this view then, the level of compliance in any issue area will depend on the extent to which epistemic community members are able to acquire influential positions in national administrations and in international institutions.<sup>55</sup>

Audie Klotz attempts to demonstrate how the norm of global racial equality and sanctions were effectively used against South Africa by a transnational anti-apartheid coalition of governments, nongovernmental organizations and individuals. This position is clearly stated in the following passage from her book:

*By actively advocating a norm of racial equality and consequently altering the agendas of international organizations and the interest of states, the anti-apartheid movement successfully challenged South Africa's claim to defensive jurisdiction and the mainstream policy consensus that sanctions do not work.*<sup>56</sup>

Thus for Klotz domestic strengthening of a norm of for example racial equality might result from broader transnational processes of norm strengthening. Klotz, attempts to explain this relationship between norms and interests.<sup>57</sup> First, changes in actors' interests and identities as well as the emergence of new actors are likely to occur when a global constitutive norm emerges or is strengthened. Second, a regulative norm compatible with the strengthened constitutive norm is likely to be produced from this change in interests. These regulative norms can then influence policy choices through various processes like it happened in South Africa.

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<sup>54</sup> Haas, P.M., "Do Regimes Matter?..." supra note 51.

<sup>55</sup> Shelton, D., ed., *Commitment and Compliance...* supra note 12, at 52-53.

<sup>56</sup> Klotz, A., *Norms in International Relations* supra note 14, at 6.

<sup>57</sup> Klotz, A., *ibid*, at 26 and 27.



Another frequently cited example used to show the efficacy of these transnational networks has been the case of the student massacres that occurred in Mexico between 1968 and 1993. It has been argued that transnational advocacy networks (TANs) helped instigate and sustain change following the student massacres there.<sup>58</sup> Advocacy networks are significant transnationally and domestically. By building new links among actors in civil societies, states, and international organizations, the networks multiply the channels of access to the international system.<sup>59</sup> According to Hedley Bull,<sup>60</sup> if the networks are successful within states, it is “because they helped to shape a reformulation of...national interests...” a typically constructivist argument.

*Even though this model takes the theory one step further, there is still a gap in that it fails to demonstrate the actual impact that international norms can have on domestic politics and the conditions under which principled ideas and international norms affect domestic institutional change. Instead the model focuses on “transnational” not “domestic” socialization. More importance is given to interactions between liberal (Western) states, norm-violating states, domestic NGOs, TANs (including international NGOs) and International Organizations.<sup>61</sup>*

#### 3.4.A.3: *The Domestic Social Incorporation Socialization Model:*

This third and most recent model attempts to take the socialization theory even further than the second model and tries to fill important gaps left by the earlier models. A very important gap, which it tries to fill, is that it tries to bring in the domestic political and social arenas into the process of socialization. Because they focus on global processes of norm change, constructivists can avoid isolating domestic political processes

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<sup>58</sup> Haas, P.M., “Epistemic Communities and International Policy Coordination: Knowledge, Power and International Policy Coordination”, 46 *International Organization* (Special Issue Winter 1992) 1, at 9.

<sup>59</sup> Goldstein, J., and Keohane, R., eds., *Ideas and Foreign Policy: Beliefs, Institutions and Political Change* (Ithaca: Cornell University Press, 1993) at 1, and 8-9.

<sup>60</sup> Bull, H., *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977) at 119.

<sup>61</sup> Risse, T., Ropp, S.C., and Sikkink, K., *The Power of Human Rights etc.*, supra note 40, at 237.

from international or transnational influences, as is the case with a sovereign assumption and conventional levels of analysis. The activities of domestic non-state and sub state actors (including popular movements, civil society groups, and domestic NGOs) and international institutions are given central place in the domestic socialization process. Okafor places a lot of emphasis on this model. In particular according to him, this model shows that “institutions are of highest value to struggles for progressive social transformation when they are creatively deployed by, and imbricated in the domestic struggles waged within states by the local popular forces that operate in those states”.<sup>62</sup>

Risse, Ropp and Sikkink for their part, use a “five-phase spiral model” to understand the conditions under which socialization and internalization of international human rights regimes, principles, norms and rules take place within the domestic context and, thus, affect political transformation processes.<sup>63</sup> In particular, in an attempt to further elaborate the conditions under which principled ideas and international norms affect domestic institutional change, Risse, Ropp and Sikkink apply this model to a wide range of comparative studies.<sup>64</sup> Phase one of the model is what they call the initial state of repression on behalf of the state. During this stage, norm-violating states enact policies of oppression on the one hand. On the other hand, domestic human rights organizations attempt to document any human rights violations, and bring them to the attention of the international community. If phase one is successful, a transition to phase two takes place. This involves denial on the part of the state. In phase three, the norm-violating state makes some tactical concessions, leading to the fourth or prescriptive phase. During the latter phase, the norm-violating state is confronted with fully mobilized human rights

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<sup>62</sup> Okafor, O.C., *The Domestic Promise of the African Human Rights System etc*, supra note 4, at 1.

<sup>63</sup> Risse, T., Ropp, S.C., and Sikkink, K., *The Power of Human Rights etc*, supra note 40, at 3.

<sup>64</sup> Risse et al., *ibid*, at 4-5.

networks and an increasing internalization of human rights norms. This forces the norm-violating state to either liberalize its policies permanently, or accept some form of constitutional or governmental change. The final phase of the model then is behaviour consistent with the rule, which involves an institutionalization of human rights norms into actual state practice.<sup>65</sup>

Having outlined the main features of constructivist theories above, it becomes necessary to see how constructivists use these concepts to present their theories on the effectiveness of IHIs. As such the next section looks at the constructivist approach to measuring the effectiveness of IHIs.

### **3.5. Constructivism and the Effectiveness of International Institutions and IHIs**

As far as constructivists are concerned, international institutions (and IHIs) are very important in international politics. They do not dismiss them as largely irrelevant as some realist scholars have done, and ascribe greater importance to them especially in the international human rights area. According to constructivist theory international institutions (and IHIs) in the process of disseminating the norms, ideas and knowledge, which they construct, often fundamentally alter states and other actors' conceptions of rational action.<sup>66</sup>

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<sup>65</sup> Pace, G.F., "Human Rights from Paper to Practice: How Far Have We Come?", A Review of: *The Power of Human Rights: International Norms and Domestic Change*, (supra note 40), in (1999) Cambridge Studies in International Relations 66, at 308.

<sup>66</sup> Kratochwil, F., "Norms Versus Numbers: Multilateralism and the Rationalist and Reflexivist Approaches to Institutions: A Unilateral Plea for Communicative Rationality" in Ruggie, J.G., eds., *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (New York: Columbia University Press, 1993) at 471. See also: Risse, T., "Let's Argue! Communicative Action in World Politics" (2000) 54:1 International Organization 1, at 3-5. Risse talks about "normative rationality" and "rule-guided behavior". According to

What then makes international institutions and IHIs ‘effective’ in the constructivist? According to Okafor, constructivists expect to see “effective institutions where institutions have been successful at shaping the preferences, interests, and power of states and other institutional actors in ways that conduce to institutional goals”.<sup>67</sup> This statement can be said to represent to a large extent the constructivist argument, which differs most fundamentally from that of their realist (rationalist) counterparts. Constructivists hold that a critical characteristic of international political action is that it can be ‘*principled*’. It can be so when the altruistic and moral motives of actors have persuasive power in themselves. Transformations in actor identities can occur through the impact of ‘principled’ NGOs on domestic and transnational opinion.

Peter Haas’ study of the regime of the Mediterranean Action plan on Pollution Control is one example of a constructivist account of how norms, ideas, values and knowledge affect the constitution of the interests and identities of state actors.<sup>68</sup> The involvement of an epistemic community of scientists in the United Nations Environmental Program, and as part of national governments, led to state interests increasingly reflecting the environmental view of these scientists. Eventually, state behaviour reflected their views. Accordingly, a crucial motivating force behind international human rights regimes, for constructivists, is “transnational socialization”-or the “logic of appropriateness”.<sup>69</sup>

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him, rule-guided behavior differs from instrumentally rational behavior in that actors try to “do the right thing” rather than optimizing or maximizing their given preferences.

<sup>67</sup> Okafor, O.C., *The Domestic Promise of the African Human Rights System etc*, supra note 4, at 25.

<sup>68</sup> Haas, P.M., “Do Regimes Matter...” supra note 51, at 377.

<sup>69</sup> Okafor, O.C., *The Domestic Promise of the African Human Rights System etc*, supra note 4, at 53. See also Sikkink, K., “Human Rights, Principled Issue Networks and Sovereignty in Latin America” (1993) 47:3 *International Organization* 411.

From a constructivist perspective compliance with international norms and institutions does not depend solely or largely on sanctions or other coercive measures. Norms, ideas and knowledge play a very important role in the success of international institutions and IHIs.

Compliance is more likely if there *exists relevant widely shared beliefs about the operation of the issue to be controlled, and the degree to which actual rules promote valued ends.*<sup>70</sup>

Norms shared by states may thus precede the choice to comply. These shared understandings, are one of the most important sources of influence that help guide states in making decisions concerning complex and unfamiliar issues.<sup>71</sup> As Okafor puts it,

*Constructivist theory entails a broader view of compliance as flowing from the intersubjective production of meaning regarding appropriate behaviour, identities and interests, in an institutional atmosphere of interaction among relevant actors.*<sup>72</sup>

Because there is this widely-held view among constructivist scholars, (and some other kinds of international scholars) that in a decentralized legal system like the international system, reliance cannot be placed on the “coercive” power of law to render it effective, these scholars tend to subscribe to persuasion based models of compliance. Thus for some of them, the capacity of the legal system to otherwise command obedience through perceptions of its *legitimacy* is also crucial.<sup>73</sup> In other words, the effectiveness of the international legal system may be more appropriately assessed in light of the extent to which it reflects and promotes the aspirations and values of the international society, from which it emanates. According to Thomas Franck,

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<sup>70</sup> Shelton, D., ed., *supra* note 12, at 62.

<sup>71</sup> *Ibid*, at 62.

<sup>72</sup> Okafor, O.C., *supra* note 4, at 25.

<sup>73</sup> Ellis, J., “The Regime as a Locus of Legitimacy in International Law” (1997) 13 (Special Issue) *International Insights* 111.

*Legitimacy is a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles and right processes.*<sup>74</sup>

For his part, Thomas Risse has distinguished between rationalist and constructivist models. He refers to them as “the logic of consequentialism” and “the logic of appropriateness” respectively. According to Risse, constructivists emphasize a different rationality—that of the “logic of appropriateness”.<sup>75</sup> This entails in his view that actors follow rules, which associate particular identities to particular situations. Actors approach each individual situation “by assessing similarities between current identities and choice dilemmas and more general concepts of self and situations”. This “rule-guided behaviour” emphasises a different rationality: “actors try to do the right thing rather than maximizing or optimizing their given preferences”.<sup>76</sup>

Audie Klotz sums up the constructivist position succinctly in stating that:

*Having identified legitimation as a crucial component of both constraint and motivation, we can distinguish and analyze the constitutive, regulative, and procedural roles of norms beyond the simple, and insufficient, behavioural evidence of compliance... This focus on affirmation and legitimation—the intersection of language and practice—has prompted many interpretive theorists to argue for methodologies that identify norms not solely through behavioural outcomes but also through communicative processes. Focusing on communicative interactions shifts attention away from choices between structures or agents and toward the fundamentally shared or intersubjective nature of norms. By analyzing communication, we can identify norms nontautologically through both justifications and actions...since behaviour contrary to norm prescription does not necessarily invalidate the norm. Thus ‘intentionality’ and ‘acceptability,’ rather than mere behavioural compliance or deviance,*

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<sup>74</sup> Franck, T., *The Power of Legitimacy Among Nations* (New York: Oxford University Press, 1990), 24.

<sup>75</sup> Risse, T., “Let’s Argue! Communicative Action and International Relations” (2000) 54 *International Organization* 1 at 3.

<sup>76</sup> *Ibid.*, at 3 and 4.

*become central to our understanding the constraining effects of international identity and norms.*<sup>77</sup>

Thus Klotz talks about regulative norms influencing policy choices through processes of “inducement” and “legitimation” among other things.<sup>78</sup>

Arguing along the same lines, N. H. Samhat places emphasis on dialogue and communication. Regimes according to Samhat, institutionalize ethical principles of human rights, which “have implications for the role of non-state actors, specifically non-governmental organizations”.<sup>79</sup> For Henkin, states feel compelled to comply with agreed upon norms and rules, even when they have both incentives to break them and the capacity for doing so. He explains this with reference to a “sense of obligation”, which induces states to respect international agreements independently of positive or negative sanctions. Norms exert a compliance pull of their own: “their binding force is irreducible to the instrumental rationality of interacting actors”.<sup>80</sup>

Harold Koh’s ‘transnational legal process’ theory of why actors (states) obey international law also focuses on transnational processes of interaction involving not just states, but governmental and nongovernmental actors and domestic and international legal institutions. According to him,

*compliance with international rules is...explained... rather, by the process of internalisation of international legal norms into the internal value sets of domestic legal systems. This internalisation occurs through a complex process of repeated interaction, norm enunciation and interpretation, which occurs in such varied contexts as transnational public law litigation in domestic courts...and lobbying of legislatures by NGOs.*<sup>81</sup>

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<sup>77</sup> Klotz, A., *Norms In International Relations etc*, supra note 14, at 30.

<sup>78</sup> Klotz, A., *ibid*, at 26-27.

<sup>79</sup> Samhat, N.H., “Human Rights Regimes and the Emergence of International Political Community”, supra note 19, at 522.

<sup>80</sup> Henkin, L., *How Nations Behave: Law and Foreign Policy*, (New York: Praeger, 1968), at 36 and 42.

<sup>81</sup> Koh, H., supra note 45; See also Keohane, R.O., “International Relations and International Law: Two Optics” (1997) *Harvard International Law Journal* 487.

Koh makes this idea a central feature of his model. For him, the process of interaction and internalisation is constitutive:

*(e)ach instance of interaction and norm interpretation generates a legal rule which will guide future transnational interactions between the parties; future transactions will further internalize those norms; and eventually, repeated participation in the process will help reconstitute the interests and even the identities of the participants in the process, so that they can perceive compliance to be in their self-interest.<sup>82</sup>*

International lawyers have not been left out in the constructivist attack on conventional rationalist theories on the effectiveness of IHIs and international institutions. Marti Koskenniemi for example, challenges the law/power dichotomy by claiming that realist approaches to collective security fail “to see to what extent their determining concepts such as ‘interest,’ ‘power,’ or ‘security’ are themselves defined and operative within a normative context” of international legal discourse.<sup>83</sup> According to Slaughter, Tulumello and Wood:

*International lawyers are exploring the causal impact of international legal process on state behaviour, examining the constitutive role of normative discourse in international affairs, and asserting the explanatory relevance of domestic, transnational and transgovernmental actors, law and institutions. In each of these areas, they are reasserting the distinctive role of law and norms in explanations of international affairs.<sup>84</sup>*

The point to be made here is that for constructivist international scholars and international lawyers alike, understanding the issue of effectiveness of international

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<sup>82</sup> Koh, H., “Why Do Nations Obey International Law?”, supra note 45.

<sup>83</sup> Koskenniemi, M., “The Place of Law in Collective Security”, (1996) 17 Michigan Journal of International Law 455, at 464.

<sup>84</sup> Slaughter, A., et al., supra note 81, at 383.



norms and institutions requires an expansion of the concept of compliance beyond the use of sanctions and coercive measures.

It is evident from all of the above that the constructivist view of the effectiveness or utility of international institutions (including IHIs) differs fundamentally from that of their rationalist counterparts. However constructivists do not dismiss rationalist theories as altogether useless. They concede that under certain conditions, the positivist approaches of rationalist theories can offer some explanation for the dynamics of international cooperation. This may be the case when interpretations of actors' actions are unproblematic.<sup>85</sup> Similarly, when identities and cognitive structures are relatively stable, treating them as exogenously given makes little difference for the concrete analysis of some process or event.<sup>86</sup> But they maintain that the rationalist interpretation of the effectiveness of international institutions and IHIs is too simple and misses central dimensions of the operation of norms and rules in social interaction (the intersubjective aspect of norms). As Hasenclever et al put it:

*International institutions or regimes are more than mere incentive-manipulators affecting the utility calculations of rational actors. They comprise understandings shared by the members concerning the right conduct in circumscribed situations International regimes therefore can be conceptualized as 'principled and shared understandings of desirable and acceptable forms of social behaviour'. They embody shared social knowledge, and they have both a regulative and a constitutive dimension, i.e. they constitute practices rather than merely regulating behaviour.<sup>87</sup>*

The main reason for the difference in approach between constructivists and rationalists is that because the former take both the regulative and constitutive dimensions of IHIs into consideration, they do not assess their effectiveness in terms of overt

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<sup>85</sup> Kratochwil, F., and Ruggie, J.G., "International Organization: A State of the Art on an Art of the State" (1986) 40 *International Organization* 753.

<sup>86</sup> Wendt, A., "Anarchy is What States Make of It..." *supra* note 18, at 423.

<sup>87</sup> Hasenclever, A., et al eds., *Theories of International Regimes* *supra* note 2, at 163.

compliance alone. Many instances of deviant behaviour will not necessarily lead constructivists to conclude that the norm in question is no longer valid.<sup>88</sup> In such cases, norms involve a value reference that results in them being counterfactually valid and –for constructivists, -because a norm is occasionally violated does not mean that its existence must be called into question.<sup>89</sup>

Particularly in the issue area of human rights for constructivists, more focus should be placed on principled ideas that drive change and cooperation, and the role of norms and ideas in international life.<sup>90</sup> International policy does not simply reflect great powers' interests and goals. Normative constraint depends on how a deviant is perceived by other community members, and specifically on how others have interpreted its actions.<sup>91</sup> Sanctions and other coercive measures need not be employed in all circumstances in order for compliance with international norms and institutions to occur.

Constructivists emphasize the constraining effects of legitimation processes and identify norms through prevailing discourses. Norms in their view are embedded in social structures. Consequently, actors' definitions of their identities and interests depend on a variable social and historical context. Identity then, rather than operating primarily through actors' perceptions and beliefs, becomes part of the social structure that determines behavioural outcome.

Some rationalists on the other hand, concentrating on actors' choices, and building on economic models analyze norms as influences on strategic interactions in the pursuit of a given set of interests. They emphasize the calculation of (material) costs and

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<sup>88</sup> Hasenclever et al eds., *ibid*, at 164.

<sup>89</sup> Boekle, Rittberger and Wagner, "Norms and Foreign Policy..." *supra* note 33, at 5.

<sup>90</sup> Bull, H., *The Anarchical Society: A Study of Order in World Politics*, *supra* note 60, at 119.

<sup>91</sup> Klotz, A., *Norms in International Relations etc*, *supra* note 14, at 30.

benefits. Norms in this view function as ‘road maps’ that expedite the pursuit of interests and as ‘focal points’ that enhance coordination and resolve the indeterminacy of multiple-equilibria situations. Norms expedite communication and reduce the costs of interaction.<sup>92</sup>

In all of this the position that international institutions (including IHIs) occupy in constructivist theory, is that they embody the cognitive structures that hold international society and make possible meaningful action within it. Thus, IHIs and international institutions are not mere contingent problem-solving devices, which are put in place by self-interested states, as rationalists would hold. By contrast, “international institutions appear as necessary features of international politics because they are prerequisites for, rather than consequences of rational choices”.<sup>93</sup> As a result, constructivists perceive the robustness of international institutions to be considerably greater than rationalist theories generally suggest.

Ellis’ argument that the important concept of legitimacy, even though it may involve taking into consideration the fact that laws are in the actors’ interests, cannot be limited to such a conception is very instructive of the constructivist position. International regimes (and institutions) may enhance the legitimacy of rules of international law in ways that do not depend on their approaches and purposes being capable of furthering self-defined state interest.<sup>94</sup> In such a case, the rules that “develop” do not necessarily represent the interests of states, but may also reflect that of other actors. Most

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<sup>92</sup> See Chapter 2 of Thesis.

<sup>93</sup> Hasenclever et al, eds., *supra* note 2, at 138.

<sup>94</sup> Ellis J, “The Regime as a Locus of Legitimacy in International Law” *supra* note 73, at 119. In this view, regimes can be an “alternative locus of legitimacy” for international norms and international law, by acting as fora for debate, discussion, interaction etc. In the process interests are developed which do not necessarily reflect individual state interests.

importantly, international regimes act as fora for the interaction of not only states, but actors other than states (e.g. non-governmental and inter-governmental organizations) in discussions about international policy and law.<sup>95</sup> This is a very important aspect of the constructivist perspective especially for the present case study, which in chapter four, looks at IHI influence on the work of non-state actors (in this case Civil Society Groups).

For constructivists then, IHIs and international institutions cannot be reduced to mere problem solving devices. To do so amounts to overlooking that states as actors are themselves dependent on established normative frameworks.<sup>96</sup> As Alexander Wendt puts it, “institutions are fundamentally cognitive entities that do not exist apart from actors’ ideas about how the world works”.<sup>97</sup> It can thus be safely said due to their broader sociological approach to the issue, the constructivist optic ascribes to a greater extent much more importance to international norms and institutions. The constructivist theory itself though still has room for change especially as the theory still regards compliance with international institutions and IHIs (in one form or the other) as crucial to their overall effectiveness. As Okafor maintains “(commanding or cajoling) compliance in and of itself does not exhaust the totality of the ways in which international norms and institutions can matter fundamentally”.<sup>98</sup>

More attention also needs to be paid to the role of non-state and sub-state actors, in enhancing the legitimacy of international norms especially within the domestic sphere, a central theme of the present case study. As noted by Brunne and Toope,

*Some strains of constructivism continue to under value (while always acknowledging as relevant) the roles played by other (non state) actors*

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<sup>95</sup> Ellis, J., *ibid*, at 119.

<sup>96</sup> Hasenclever, A., et al eds., *Theories of International Regimes*, *supra* note 2, at 159-160.

<sup>97</sup> Wendt, A, “Anarchy is What States Make of it...” *supra* note 18, at 399.

<sup>98</sup> Okafor, O.C., *The Domestic Promise of the African Human Rights System etc*, *supra* note 4, at 17.

*such as intergovernmental organisations, corporations, and NGOs, in shaping world politics.*<sup>99</sup>

### **3.6. Conclusion**

Constructivist theory by putting more emphasis on social construction has given a more important role to international norms and institutions. Rationalist theories, due to their various attributes mentioned above are largely incapable of presenting a full picture of when compliance with international institutions (and IHIs) is possible. Also, in the words of Hedley Bull, realist approaches to the study of international relations cannot adequately explain why relatively weak non-state actors could affect the policies of other states, neither can they explain why states may be interested in the internal human rights practices of other states especially when doing so is not in their interest and affects their pursuit of other goals.<sup>100</sup>

Liberal versions of international relations theory because of their stress on state and non-state actors cooperating to realizing “joint gains” or to avoid “mutually undesirable outcomes” only when “they face problems they cannot resolve alone” are also incapable of offering a sufficient explanation of international cooperation.<sup>101</sup> For constructivists however,

*human rights practices are not easily modeled as such. Usually states can ignore the internal human rights practices of other states without incurring undesirable economic or security costs. In the issue of human rights it is primary principled ideas that drive change and cooperation. We cannot understand why countries respond to human rights pressures*

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<sup>99</sup> Bunne, J., and Toope, S.J., “International Law and Constructivism...” supra note 38, at 33.

<sup>100</sup> Bull, H., *The Anarchical Society* etc, supra note 60, at 119.

<sup>101</sup> Bull, H., *ibid*, at 119. These have been described as cooperation or coordination games with particular payoff structures.

*without taking into account the role of norms and ideas in international life.*<sup>102</sup>

In chapter four, the case study of seven leading Civil Society Groups (CSGs) in Sierra Leone will attempt to test rationalist and constructivist perspectives on IHIs against the evidence that was gathered on the relationship between IHIs and CSGs in Sierra Leone. In particular, the chapter will look at how the various CSGs included in the case study have made use of IHIs in their human rights campaigns within Sierra Leone. The study adopts an essentially constructivist perspective in trying to discern other more subtle ways in which IHIs have been useful within Sierra Leone without any direct coercion or pressure.

The focus is on how IHIs have featured in the human rights educational, law reform advocacy and litigation (both national and international) campaigns of the CSGs. The study does not necessarily provide evidence of how effective the use of IHIs by the various CSGs were. What the study seeks to bring out is that the CSGs considered IHIs to be useful to their human rights campaigns in circumstances where neither coercion nor interest maximization were involved. IHIs had achieved a certain “legitimacy” in the eyes of these CSGs such that using IHIs in their human rights campaigns was in most instances crucial.

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<sup>102</sup> Bull, H., *ibid*, at 119.

## **CHAPTER FOUR**

### **INTERNATIONAL HUMAN RIGHTS INSTITUTIONS THEORY AND THE MODEST INFLUENCE OF IHIs ON CIVIL SOCIETY GROUPS (CSGs) IN SIERRA LEONE**

#### **4.1. Introduction**

In the last two chapters of the thesis, two broad theoretical approaches to the utility of IHIs were discussed. To reiterate, the first is the rationalist school, most proponents of which view these institutions as generally “weak” or “ineffectual” because they lack adequate enforcement powers; and the second is the constructivist school, which stresses the role of ideas, knowledge and norms in understanding both the creation and utility of IHIs. Yet both theories are conventional to the extent that, to varying degrees, each has stressed the ability of these institutions to enforce or command compliance with the norms they seek to foster, as the way of assessing the social utility of these institutions. This has been so, despite the many differences in the theoretical approaches that these two schools have utilized.

Another similarity in the two theoretical approaches has been the tendency in each of them to measure the utility of IHIs using state actors as the reference. This tendency has been minimized to some extent by the recent work of some scholars of the constructivist school who have begun to encompass more adequately other non-state and sub-state actors in their assessment of the utility of IHIs. The inclusion of NGOs, Transnational Advocacy Networks (TANs), Epistemic Communities and Principled Issue

Networks (PINs) in the work of scholars such as Margaret Keck, Kathryn Sikkink and Peter Haas (to name a few)<sup>1</sup> is illustrative of the point being made.

The third tendency that is common to both theoretical approaches is their focus on the international plane as the site of IHI activity and effect. However, focusing almost exclusively on state or non-state actor interactions on the international plane, does not present a complete picture of the utility of IHIs in settings other than the international arena. In particular, it leads to a failure to demonstrate, the actual impact that IHIs can have within the domestic setting.

The Domestic Social Incorporation model of socialization discussed in chapter three<sup>2</sup> is an attempt to deepen existing (rationalist and constructivist) IHI theory by accounting adequately for IHI activity and effects within various domestic spheres. This model goes even further to explain the conditions under which international institutional knowledge, norms and ideas help bring about domestic institutional change.<sup>3</sup> In other words, they look at how IHIs have been useful to the work of domestic non-state and sub-state actors in the campaigns that these actors have often embarked on to produce significant domestic change. This shift from looking at the issue from the perspective of what IHIs can do for actors (a top down approach) to how they use IHIs in their human rights campaigns within domestic settings (a bottom up approach) is one that has opened

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<sup>1</sup> See Chapter three: section 3.4.A, on "Socialization". Keck, M.E., and Sikkink, K., *Activists Beyond Borders* (Ithaca: Cornell university Press, 1998); Haas, P.M., "Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control" (1989) 43:3 *International Organization* 377. See also Risse, T., Ropp, S.C., and Sikkink, K., *The Power of Human Rights: International Norms and Domestic Change* (United Kingdom: Cambridge University Press, 1999)

Kathryn Sikkink and Margaret Keck established the importance of PINs and TANs for the diffusion of international norms in the human rights and environmental issue areas; Peter Haas maintains that epistemic communities are the principal mechanisms by which such ideas are developed and disseminated.

<sup>2</sup> See: Chapter three, Section 3.4.A.3.

<sup>3</sup> Risse, T., et al., *The Power of Human Rights* etc, supra note 1



up a new dimension in the theory. Scholars in the constructivist school especially have recently begun to pay special attention to this focus on domestic socialization processes.<sup>4</sup>

In this chapter, the various theories and approaches discussed in chapters two and three will be tested to see to what extent each one of them (if any) offer an adequate explanation of the Sierra Leone case study offered in this thesis. CSGs have on some occasions enjoyed a measure of success in their human rights work in Sierra Leone. In their attempts to promote human rights, they have sometimes made significant use of IHIs. How has their deployment of IHIs (and IHI norms) influenced the nature and character of these campaigns?

With a view to arriving at answers to this question, I have divided this chapter into seven parts, this introduction included. Section 4.1 is the introduction. Section 4.2 looks at the limited but significant influence IHIs have had on the nature and character of the public educational programs of CSGs in Sierra Leone. Section 4.3 deals with the much more limited influence of IHIs on the litigation programs of CSGs in Sierra Leone. It is divided into two subsections: subsection (a) looks at the very limited IHI influence on domestic litigation (i.e. how CSGs have used IHIs in the domestic courts), and subsection (b) deals with the limited IHI influence on international litigation by these CSGs, ( i.e. their efforts to seek redress from international monitoring bodies). Section 4.4 examines the significant influence of IHIs on the law reform advocacy programs of these CSGs. How have they used IHIs to advocate for law reform in the country? In section 4.5, I look

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<sup>4</sup> Risse, T., Ropp, S.C., and Sikkink, K., eds. *The Power of Human Rights: International Norms and Domestic Change* (United Kingdom: Cambridge University Press, 1999) at page 3. They use a “five-phase spiral model” to try to understand the conditions under which socialization and internalization of IHIs take place within the domestic context and affect political transformation processes. See also Okafor, O.C., *The Domestic Promise of the African Human Rights System: International Institutions, Popular Forces and the Possibility of Correspondence* (forthcoming 2005 at 1.).

at factors that may have affected (and thus shaped) the influence of IHIs on the human rights campaigns these CSGs have undertaken in Sierra Leone. This section also subdivides into two sections dealing with positive and negative factors respectively. The final sections 4.6 and 4.7 respectively examine the implications of the evidence from Sierra Leone on IHI theory, and the conclusions to be drawn from it.

To be clear, the main thrust of this chapter (indeed, like the thesis), is not to produce an indication of the exact measure of the influence exerted by IHIs on the work of these CSGs in Sierra Leone. Rather, it is concerned with the more limited task of mapping, locating and analyzing the nature and character of the influence of such IHIs on these CSGs.

#### **4.2. The Modest Influence Of IHIs On The Public Educational Programs Of CSGs In Sierra Leone.**

CSGs in Sierra Leone have used IHIs as valuable resources in their attempts to influence public discourse and ideology and to sensitize the general public on what they see as the necessity for a shift toward the norms that IHIs and CSGs alike espouse and wish to foster. IHIs have begun to (and do increasingly) feature very prominently in the “education” campaigns of most of the CSGs included in this study. Amidst the sparseness of the evidence however, it appears that this is the main use to which IHIs are put by CSGs: i.e. the education of other sectors of society (be it school children or market women etc) on the significance or worth of the norms that IHIs seek to foster.

It is most times the case that, before such campaigns are embarked upon, little or nothing is known about specific IHI norms by the bulk of the local population. In such

cases, CSGs tend to do a lot of teaching to the local population on the rights contained in one or the other international treaty or convention, and the avenues available for redress in the case of violations.<sup>5</sup> This is a teaching strategy that allows them to cloak the norms they wish to foster in the garb of international and foreign acceptability, a strategy that often strengthens their hands (though not always).

#### ***4.2.A : The Campaign for Good Governance***

The Campaign for Good Governance (CGG), which is one of the most influential human rights NGOs in Sierra Leone, has as its main objective advocating good governance and the promotion of human rights. In this regard, it is a very good example of a CSG that uses IHIs rather extensively in its educational campaigns. Illustrative of this point is a “Handbook for Facilitators” that was produced by the organization.<sup>6</sup> The handbook is intended to assist women, who had been trained on gender issues by CGG,<sup>7</sup> replicate the training they had received in various other communities throughout the country. In other words, these women, -using the handbook as a guide, were to act as ‘facilitators’ armed with the knowledge they gained from their previous trainings to train other women (and in some cases also men) in other parts of the country.

A three-day “training of facilitators” workshop organized by the CGG, brought together about 20 women from various CSGs in the country. Twelve of the CSGs chosen each represented one of the 12 districts of Sierra Leone, while the other 8 were chosen

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<sup>5</sup> This is not to say that the local population does not have and speak its own language of human rights, but that they are relatively unfamiliar with this new international treaty language of human rights. See Mutua, M., “The Banjul Charter and the African Cultural Fingerprint”

<sup>6</sup> See Handbook for Facilitators: *Giving it the Gender Touch, Gender Mainstreaming-Gender Proofing and Audit of Systems* (Freetown: Campaign for Good Governance). A copy of the handbook is on file with researcher.

<sup>7</sup> Handbook *ibid*, FOREWORD.

from the Western Area which has the greater concentration of CSGs and includes the capital of Sierra Leone, Freetown. This was done to ensure that the facilitators would be dispersed all over the country.

To better illustrate the point being made, it is necessary to examine the contents of the handbook to see how and in what respects IHIs and IHI norms featured significantly in it. Chapter two of the handbook outlines the context within which any of the presentations should be made. It talks about presenting on the topic “From Women in Development (WID) to Gender and Development (GAD)”.<sup>8</sup> The WID approach which according to the handbook addresses “women’s rights and needs in separate development programmes” focused “on how women must change to fit into an essentially man-made world”. On the other hand, the GAD approach, which the handbook suggests should be used,

*seeks to integrate women’s needs into the wider picture. It calls for the different life courses of men and women to be considered at an early stage and emphasises the need to monitor the different impact of policies and programmes on women and men, girls and boys.*<sup>9</sup>

It is important to note at this point that even though the WID and GAD programs do not on their face involve the use of IHIs, yet both approaches are part of the framework of the Beijing Platform for Action (PFA), which was adopted in 1995.<sup>10</sup> This platform is a “soft” international human rights law instrument and as such is an IHI-like entity. The objective of the platform and its basis, rest on the provision of an agenda for women’s empowerment in conformity with the purposes and principles of the Charter of the United

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<sup>8</sup> Handbook *ibid* at page 2.

<sup>9</sup> Handbook *ibid* at page 7.

<sup>10</sup> See: Fourth World Conference on Women Declaration and Platform for Action: <http://www.un.org/womenwatch/daw/beijing/platform/plat.1.htm>.

Nations<sup>11</sup> and international law and norms. International law and norms in this particular context include the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>12</sup> International law and norms also include the fundamental principle of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, which recognizes that the human rights of women and girls are an inalienable, integral and indivisible part of universal human rights.<sup>13</sup>

The ultimate goal of the GAD approach then is to achieve gender equality in policy and planning processes<sup>14</sup> taking into consideration the respective needs and human rights of both men and women. Thus even though the GAD approach in and by itself does not involve the use of IHIs, it is contained in a document the Platform for Action, which even if not regarded as an IHI in the sense in which the term is used in this study, is widely considered as embodying international soft law. The GAD approach when used as the basis of the presentations ultimately required a reference to IHIs in the campaigns for women's equality in which it was used.

In chapter four of the Handbook, the topic for presentation is "Women, Assert Your Human Rights!". The whole presentation revolves around the question, (which facilitators are to ask at the beginning): "What are women's human rights?" The

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<sup>11</sup> Charter of the United Nations, 557 UNTS 143, adopted 26 June 1945, entered into force 24 October 1945, as amended by G.A. Res. 1991 (XVIII) 17 Dec. 1963, entered into force 31 Aug. 1965 (557 UNTS 143); 2101 of 20 Dec. 1965, entered into force 12 June 1968 (638 UNTS 308); and 2847 (XXVI) of 20 Dec. 1971, entered into force on 24 Sept. 1973 (892 UNTS 119). Hereinafter, the UN Charter.

<sup>12</sup> Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 December 1979, entered into force 3 September 1981, G.A. Res. 34/180, 34 UN GAOR, Supp. (No. 46), UN Doc. A/34/46, at 193 (1979). Hereinafter CEDAW.

<sup>13</sup> United Nations World Conference on Human Rights, Vienna Declaration and Programme of Action, 32 ILM 1661 (1993) adopted 25 June 1993. Hereinafter the Vienna Declaration.

<sup>14</sup> See: Handbook for Facilitators, supra note 6, at page 9. This is referred to as "mainstreaming a gender perspective in policy and planning processes."

facilitators are encouraged to elicit responses from participants' in order to gauge their understanding of the concept. The ultimate aim is to arrive at a working definition of women's human rights as understood by the particular group of participants the facilitator is dealing with.<sup>15</sup> The facilitator's main task here is that of educating participants on what rights are included or excluded in the definition of women's human rights.

Several international legal texts that enshrine women's human rights are thus deployed and cited in the Handbook. These include the Universal Declaration of Human Rights;<sup>16</sup> the International Covenant on Civil and Political Rights;<sup>17</sup> the International Covenant on Economic, Social and Cultural Rights;<sup>18</sup> the Geneva Conventions and the two Additional Protocols;<sup>19</sup> the Convention on the Elimination of all Forms of Discrimination Against Women and its Optional Protocol;<sup>20</sup> and the Beijing Declaration and Platform for Action.<sup>21</sup>

Specific provisions in these international instruments that define one or other women's rights are to be examined by the participants. For example, the facilitators are required to say that "the principle of equality of human rights for women has been enshrined in international law since the Universal Declaration on Human Rights, and also

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<sup>15</sup> See: Appendix Six of the handbook, *supra* note 6, that deals with how to present this particular topic.

<sup>16</sup> Universal Declaration of Human Rights, adopted 10 December 1948, G.A. Res. 217A (III), UN Doc. A/810, at 71 (1948). Hereinafter UDH.

<sup>17</sup> International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, entered into force 23 March 1976, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1966), 999 UNTS 171. Hereinafter ICCPR.

<sup>18</sup> International Covenant on Economic Social and Cultural Rights, adopted 16 Dec. 1966, entered into force 3 Jan. 1976, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1966), 993 UNTS 3. Hereinafter ICESCR.

<sup>19</sup> Especially the Geneva Convention Relative to the Protection of Civilian Persons in Times of War, 75 UNTS 287, adopted 12 Aug. 1948, entered into force 21 Oct. 1950; Protocols I and II Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts, and Non-International Armed Conflicts respectively, UN Doc. A/32/144, Annex I, 1125 UNTS no. 17512, and Annex II, 1125 UNTS no. 17513, both adopted 8 June 1977, and entered into force 7 Dec. 1978.

<sup>20</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, G.A. Res. 34/180, 34 UN GAOR, Supp. (No. 46), UN Doc. A/34/46, at 193 (1979). Hereinafter, Optional Protocol to CEDAW.

<sup>21</sup> *Supra* note 10.

that member states declared in the Charter of the United Nations that they believe in “the dignity and worth of the human person” and “in the equal rights of men and women”. The facilitators are also required to mention Article 18 of the Vienna Declaration and Platform for Action adopted in 1993 at the World Conference on Human Rights<sup>22</sup>, which states that the “human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights”.

Thus extensive deployment of various international human rights texts and norms is employed to further C.G.G.’s campaign on Gender Mainstreaming. At the end of the session, facilitators using the guidelines provided in Chapter 4 of the handbook should successfully have passed on the “women’s human rights” message to participants- by the end of the session, participants should know that they have the right to

*everything that enhances the life and dignity of women socially, economically, educationally...have the right to expect fair treatment, to say no...to have an opinion and have it recognized.*<sup>23</sup>

Again, the important point to note in all of this is that several IHIs serve a very valuable purpose to the facilitators in their efforts to pass on whatever human rights message they have to their various audiences. Indeed, a lot of reliance is placed on these international instruments and key provisions are quoted from them. The handbook refers to CEDAW in particular as the “central and most comprehensive instrument to promote and protect women’s human rights”. Reference is also made to the United Nations Declaration on the Elimination of Violence against Women<sup>24</sup> (especially as it defines

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<sup>22</sup> Supra note 13.

<sup>23</sup> See Handbook for facilitators; supra note 6, at page 17.

<sup>24</sup> Declaration on the Elimination of Violence Against Women, adopted 20 December 1993, G.G. Res. 48/104, UN Doc. A/48/29.

violence against women) and the mandate of the UN Special Rapporteur on Violence against Women.<sup>25</sup>

There is extensive reproduction of sections of the Beijing Declaration and PFA that deal with violence against women. This is particularly important in the Sierra Leone context especially as it talks about violence against women that derives essentially from cultural patterns e.g. the harmful effects of certain traditional or customary practices. Thus CGG used these IHIs to change the ideologies of participants who often take these cultural practices as “God-given” and therefore are reluctant to change or even modify them to any extent.

CGG in a bid to further its educational programmes in human rights issues also produces small handbooks on various international human rights conventions. The CEDAW and the CRC<sup>26</sup> in particular have been reproduced in these handbooks, which are usually distributed for use in various sectors of the society including schools, colleges, market places, and among the security forces (especially the police).<sup>27</sup> They are invariably illustrated, since Sierra Leone has an illiteracy rate of over 70 %, so that the message could reach across to even people who could not read.

The introductions to the recent handbooks on the CEDAW and the CRC both give a background on the need for special provisions relating to women’s and children’s rights. According to the introductions, the UDHR even though it provided protection, dignity and respect for all human beings, could not alone and by itself cover the special situations of

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<sup>25</sup> Appointed by the United Nations Human Rights Commission in March 1993.

<sup>26</sup> Convention on the Rights of the Child, adopted 20 Nov. 1989, entered into force 2 Sept. 1990, G.A. Res. 44/25, 44 UN GAOR, Supp. (No. 49), UN Doc. A/44/49, at 166 (1989). Hereinafter CRC.

<sup>27</sup> See: *A Handbook On The Convention On The Elimination of Discrimination Against Women* (Freetown: Campaign for Good Governance); *A Handbook on The Convention On The Rights of The Child* (Freetown: Campaign for Good Governance).



traditionally vulnerable groups like women and children. Hence the need arose for special conventions dealing with women's and children's issues. In the case of the CRC handbook, the introduction also contained a reference to ensuring that the children of Sierra Leone are part and parcel of the universal human rights struggle to provide children with their basic needs. A natural first step to achieving the goals of the conventions, according to CGG, is to ensure that people are aware of the existence and scope of these rights in the first place. This is the main objective of these handbooks.

What is more, various other leaflets produced by CGG document and deploy the rights that are contained in other international human rights instruments of general application. These include the right to education<sup>28</sup>, freedom of association<sup>29</sup>, the right not to be tortured and treated in a degrading and inhumane way<sup>30</sup>, not to be subjected to arbitrary arrest and detention<sup>31</sup> etc.

#### ***4.2.B : Amnesty International Sierra Leone Section***

Amnesty International (Sierra Leone Section), another very active CSG, has also been involved in promotional work with the CRC. A booklet containing provisions of the CRC was produced by AI (SL) for human rights education in schools. This booklet has also been used by various child protection agencies in the country, in their various child rights campaigns.<sup>32</sup> AI (SL) in November of 2003 started its "Violence Against Women" campaign in which the CEDAW features very prominently. Two trainers from each of the

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<sup>28</sup> See Handbills produced by CGG; See Article 13 ICESCR.

<sup>29</sup> See Article 21 UDHR, and Article 25 ICCPR.

<sup>30</sup> See Article 7 ICCPR

<sup>31</sup> See Article 9 ICCPR.

<sup>32</sup> See Interview with M.A.J. (campaign and development officer) AI (Sierra Leone Section). The transcript of the interview is on file with the researcher.

four regions of the country were selected and taught the basics about women's rights issues and related laws, especially the CEDAW.<sup>33</sup> These trainers after being so equipped were then sent back to their respective regions to carry out educational campaigns within their communities on violence against women. Suffice it to say that on the issue of violence against women, IHIs (the CEDAW in particular) have played no mean role in, and have largely formed the basis of the campaigns launched by CSGs in this area.

#### ***4.2.C : The Network Movement for Justice and Development***

The Network Movement for Justice and Development (NMJD) a CSG that focuses substantially on economic justice and human rights issues engages in a lot of human rights educational campaigns. Its human rights program has as its main objective the exposure of people, "especially the marginalized, non-literates and the wider civil society to the basic principles of human rights, (and) basic rights of individuals as enshrined in international and African conventions/treaties..."<sup>34</sup> To further this objective, NMJD undertakes human rights education through trainings, sensitization workshops, seminars, symposia and community outreach sessions on various IHIs and national documents like the Constitution of Sierra Leone<sup>35</sup>, the UDHR, the African Charter on Human and Peoples' Rights<sup>36</sup>, the CEDAW etc.

The NMJD has taken its human rights education campaign further by establishing human rights clubs in schools, vocational institutions and depressed communities. These clubs are meant to expose their members to international human rights conventions, (key

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<sup>33</sup> The Eastern, Southern and Northern Provinces and the Western Area.

<sup>34</sup> See: Brochure of NMJD (Freetown: NMJD)

<sup>35</sup> Act No. 6 of 1991.

<sup>36</sup> African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 Oct. 1986, O.A.U. Doc. CAB/LEG/67/3 Rev. 5. Hereinafter the African Charter.

IHIs), and to impress on them their relevance and importance to both individuals and to society. Similarly, the NMJD has a Gender Advocacy Program that deals specifically with women's human rights. This arm of the NMJD organizes gender-related training and sensitization workshops and seminars on women's rights issues using CEDAW (an IHI) as the reference. The workshops are "aimed at creating a gender sensitive society and addressing the gender imbalances at community, organizational and national levels".<sup>37</sup> The Gender Advocacy Program established Gender Promotion Movements (GPMs) or regional gender advocacy groups in the Southern and Eastern Provinces of the country. These GPMs (which make liberal use of IHI norms) have been very useful tools for furthering the women's rights educational campaigns.

The NMJD also includes IHIs in the human rights education and campaigning it undertakes through its quarterly publication "The Network".<sup>38</sup> Articles are written on various human rights issues including human rights awareness and human rights protection. In the December 2001 edition, the NMJD lauded the setting up of the Forum for the Rights of the Disabled (led by a 10 year old blind student) and the training of the members of the Forum on the provisions of various international human rights instruments. Members of the Forum were educated on the rights contained in the CRC, the UDH and other international conventions, IHIs that the NMJD touted to these actors as capable of making them better equipped for the task they have in hand (i.e. protecting the rights of the disabled).<sup>39</sup>

In another edition of "The Network", the NMJD deployed the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict in its campaign against the

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<sup>37</sup> Brochure of NMJD, *supra* note 34, at pages 3 and 4.

<sup>38</sup> See: *The Network* (Freetown: NMJD)

<sup>39</sup> See Article: "Disability Is Not Inability"; *The Network*: December 2001 page 9 (Freetown: NMJD)

use of child soldiers in any future conflicts in Sierra Leone.<sup>40</sup> In an article titled “War is Not for Children” NMJD calls on all citizens of Sierra Leone to play a role in ensuring that the use of child soldiers is stopped and on the government of Sierra Leone to implement the provisions of the Optional Protocol to the CRC. The editorial also called on all governments and armed groups worldwide to commit to implementing the provisions of the Optional Protocol to the CRC. NMJD advocated further for any child combatants to be demobilized and rehabilitated as required by the Protocol.

Given the large number of children in Sierra Leone who were involved in the civil war mostly as combatants, this campaign could not have been more appropriate for Sierra Leone. By the time the article was written, the government had ratified the Optional Protocol to the CRC but much of the public appeared to be ignorant of its existence and provisions. There thus arose the need for the public to be made aware of its provisions. This was important given the fact that most of the various military factions had by that time come to view child soldiering as “normal”. The use of key provisions of the Optional Protocol to the CRC in this campaign, more particularly the section that prohibits the conscription or forced recruitment of children under 18, and other sections dealing with the responsibilities of governments and armed groups,<sup>41</sup> was an important and useful strategy in combating this normalization of child soldiering with an existing and legitimate normative procedure against that practice.

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<sup>40</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, (citation). Hereinafter, the Optional protocol to the CRC. See Article: “War Is Not For Children”; *The Network*: February 2003 page 10 (Freetown: NMJD); the Optional Protocol was ratified by Sierra Leone on May 15<sup>th</sup> 2002.

<sup>41</sup> Articles 1, 2, 3 and 4.

In 1997, the NMJD compiled a report on human rights violations that were taking place in Sierra Leone contrary to international law.<sup>42</sup> This was an attempt to bring the atrocities that were taking place in the country then, to the notice of the African and wider international community. The country had just suffered a military coup and was at the time largely inaccessible to the outside world, as almost every other foreign person or institution had left the country by that time. The report condemned the violations of fundamental ethical and moral principles contained in international human rights instruments such as the UDH, the African Charter etc.<sup>43</sup> It described the situation in Sierra Leone at the time as a “state of terror against peaceful people” and urged the then ruling junta to abide by international conventions that had been ratified by Sierra Leone. Even though there is no concrete evidence that the condemnation played any part in altering the military junta’s outrageous human rights practices, yet IHIs did serve as a valuable resource to this CSG in its effort to call international attention to the crisis and perhaps find a peaceful solution to the conflict.

#### ***4.2.D : The Lawyers Centre for Legal Assistance***

The Lawyers Centre for Legal Assistance (LAWCLA) though only established in 2002, has made tremendous strides in bringing IHIs to the forefront of domestic human rights campaigns. The Centre’s Juvenile Justice and Advocacy Unit organizes workshops from time to time dealing with child rights and juvenile justice issues under the laws of Sierra Leone and the CRC. The aim of these workshops is to educate otherwise ignorant

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<sup>42</sup> See Report: *Sierra Leone: Terror Rules, May 25<sup>th</sup> ...When?*. On May 25<sup>th</sup> 1997 army officers had staged a coup, which ousted the first democratically elected president of Sierra Leone Ahmad Tejan Kabba. During their 9-month reign, the Constitution was suspended, laws were made by military decree and unspeakable human rights abuses were perpetrated on innocent civilians and opposition figures in the country.

<sup>43</sup> See: Introduction to Report, *ibid*.

sectors of the general public on the laws relating to the rights of children and juveniles and how these rights can be protected.

On September 22<sup>nd</sup> 2004, the theme of the one-day workshop held in Kenema Town in the Eastern province of Sierra Leone was the “Law and Practices Relating to the Treatment of Juvenile Offenders”. The groups targeted were the police and the print and electronic media. Discussions and presentations centred around the CRC with particular emphasis on its provisions that deal with the treatment of child offenders. LAWCLA reiterated that as Sierra Leone had ratified the CRC, the government had to do all in its power to ensure that it adhered to the provisions of the convention.<sup>44</sup>

LAWCLA also has a Gender Research and Advocacy Unit. This unit makes extensive use of provisions in international human rights instruments to campaign against harmful laws and practices affecting women. One such campaign has as its target the abolition of female genital mutilation or FGM in the country. People have turned to the Unit for help in several cases. In a particular case<sup>45</sup> a 16 year old girl reported to the unit that against her wish her mother intended to initiate her into the traditional female secret society part of the rites of which involve FGM. Her friends, most of them girl traders like herself, advised her to seek legal redress with LAWCLA. LAWCLA took up her case arguing quite forcefully that FGM violates the dictates of human rights provisions in various international instruments (like the CRC and the African Charter) as well as the laws of Sierra Leone.

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<sup>44</sup> See: Concord Times Newspaper (Freetown), 24<sup>th</sup> September 2004: “Lawcla Organizes One-Day Workshop” by Nimalty Kamara; online: <http://allafrica.com/stories/printable/200409240639.htm>.

<sup>45</sup> See: LAWCLA Eighteen Month Report: July 2001-December 2002, page 21 article titled “Threatened Female Genital Mutilation”.

In particular it argued that FGM was a violation of articles 13, 16, 19 and 37(a) of the CRC; articles 16 and 21 of the African Charter on the Rights and Welfare of the Child<sup>46</sup> and certain provisions of the Prevention of Cruelty to Children Act.<sup>47</sup> In the end though, LAWCLA was able to protect this particular girl by putting her in the care of a sympathetic Uncle. However, LAWCLA's overall approach to the FGM question remains largely tied to its educational campaigns for its abolishment as contrary to the dictates of several IHI norms.

#### ***4.2.E : The Council of Churches in Sierra Leone***

The Council of Churches in Sierra Leone (CCSL) has a Child Rights Violations Monitoring Network (CRIVMON) that handles child rights issues. The CRC is the backbone of CRIVMON'S campaigns in the country. CRIVMON distributes copies of the convention and the African Charter on the Rights and Welfare of the Child, to be used for human rights education in schools. These conventions are also distributed to "Welfare Committees" for use within the community as advocacy tools.<sup>48</sup> CRIVMON also established 11 Child Welfare Committees in various regions of the country. Each committee is trained on child rights, gross child rights violations, and the need for monitoring and reporting all child rights violations, using the CRC as a yardstick. The committees consist of local chiefs, religious leaders (both Christian and Muslim), teachers, market women, youth representatives, children and workers of NGOs.

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<sup>46</sup> African Charter on the Rights and Welfare of the Child, adopted July 1990, entered into force 29 Oct. 1999, OAU Doc. CAB/LEG/TSG/Rev. 1.

<sup>47</sup> CAP 31 of the Laws of Sierra Leone 1960, as amended.

<sup>48</sup> CRIVMON was set up 1998 as a result of the war, to document, report on and monitor gross violations of children's rights. These include amputations, killings, forced recruitment, child labour, sexual exploitation etc. The Welfare Committees set up in different communities serve as watchdogs in this regard. These committees also often sensitize their various communities on child rights provisions under both international and national law.

CRIVMON conducts workshops in different parts of the country on gross child rights violations. It also does campaigns in the media, and at least on one occasion printed various articles of the CRC on t-shirts, which it distributed in different communities. Posters are also printed showing various provisions of the CRC. The publishing of a bulletin, which deals with child rights issues generally in the country and specifically with the child rights programs CRIVMON embarks on, is also part of its programs. All of these activities assist CRIVMON in taking its child rights campaigns to the grassroots.

To celebrate the 13<sup>th</sup> anniversary of the signing of the CRC, on November 20<sup>th</sup> 2002, CRIVMON organized a march past through the streets of Freetown.<sup>49</sup> This was a perfect opportunity to sensitize the general public on child rights issues. The theme of the day's celebration was "Keeping the Promise: Time to Protect Children from Sexual Violence, Torture and Neglect". Participants in the celebration came from all sectors of society. School children came from the Western Area, and they were joined by members of the Family Support Unit (FSU) of the Sierra Leone Police, representatives from Child Welfare Committees, the Children's Forum Network, the Ministry of Social Welfare, Gender and Children's Affairs, the National Commission for War Affected Children (NACWAC) and other child protection agencies operating in the country. The marchers wore t-shirts and caps, and held banners all displaying various child rights provisions of the CRC. As part of the day's activities, school children performed a skit outlining and dramatizing the rights of the child, while identifying frequent abuses and violations suffered by children.

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<sup>49</sup> See: CRIVMON Bulletin, Vol. 1, December 2002 (Freetown: CCSL).



According to its coordinator, CRIVMON, stresses “community participation in child protection issues” as necessary for the achievement of the goals of the CRC. According to her

*the menace of child abuse and misuse is increasing everyday and the involvement of more stakeholders to curb these excesses is the only way out to fulfil the goals of the Convention on the Rights of the Child.*

These stakeholders should include local community leaders like chiefs, religious leaders, women’s groups (e.g. market women’s associations) and youth groups as this would make the campaign much more widespread.<sup>50</sup>

#### ***4.2.F : The Forum of Conscience and the National Coalition for the Promotion and Protection of the Rights of the Child***

During the early stages of the formation of the Special Court for Sierra Leone (SCSL), the Forum of Conscience (FOC), another very active local human rights NGO, used the provisions of the CRC to campaign against the inclusion of children between the ages of 15 to 18 years in the category of persons to be tried by the Court. According to a Press Release issued by the National Coalition for the Protection and Promotion of the Rights of the Child (NCPPRC) Sierra Leone, the attempt by the United Nations Security Council to do so was not in accordance with the provisions of the CRC.<sup>51</sup>

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<sup>50</sup> See Ibid, CRIVMON Bulletin.

<sup>51</sup> Especially Article 1, which defines a child as anyone under the age of 18 years; See also Press Release from the desk of the National Coalition for the Protection and Promotion of the Rights of the Child (NCPPRC); online: <http://www.essex.ac.uk/armedcon/Issues/text2000/soldiers/001.htm>. The Coalition consisted of three child welfare organizations working in Sierra Leone: Defence for Children International (DCI) Sierra Leone Section, Save the Woman Sierra Leone, “Pikin to Pikin” Sierra Leone and other human rights groups like the Forum of Conscience (FOC), the National Forum for Human Rights (NFHR) and the United Nations Children’s Fund (UNICEF).

The press release stated that due to their vulnerability and immaturity they could not be included in the definition of “persons bearing the greatest responsibility” for the war crimes, crimes against humanity and other serious offences that took place during the 10 year civil war in the country.<sup>52</sup> The press release recommended that these children should instead be disarmed, rehabilitated, reformed and reintegrated into society. Adopting this alternative will enhance rather than mar their future participation in society (which trying them will do), in accordance with their best interests and the goals of the CRC. Eventually the Special Court excluded these children from its jurisdiction. Surely, some (certainly not all) of the credit for this achievement must go to these groups. And the use of at least one IHI normative regime was central to their success.

#### ***4.2.G : CSG Coalitions***

Besides engaging in separate human rights campaigns, CSGs in Sierra Leone have sometimes teamed up in order to bolster their campaign for human rights awareness in the country. Three particular instances are worth noting. In June 1999 in conjunction with the United Nations High Commissioner for Human Rights, a human rights manifesto that declared and reaffirmed unwavering commitment to non-discriminatory promotion of all human rights for all Sierra Leonean’s was signed by all CSGs. In particular, the manifesto recognized that all the parties “understood that the rights of women (under the CEDAW in particular) must be understood, protected, promoted with complete commitment and consistency”.<sup>53</sup>

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<sup>52</sup> As defined in Article 1 of the Statute of the SCSL; online: <http://www.sierra-leone.org/specialcourtstatute.html>.

<sup>53</sup> The UN Human Rights Commissioner was on her first visit to Freetown, after the rebel invasion of January 1999. The signing of the manifesto was significant, as there was then the tendency for people (with

In response to the United Nations High Commissioner for Human Rights and CSGs lobbying and other pressures, the government pledged to give priority to the implementation of its obligations under the CEDAW. The rights of women and girls were central in all of this because of the thousands of women and girls who were forcefully conscripted by rebel groups and married to rebel commanders. Because of the stigma attached to them, these young girls and women now faced the real possibility of rejection from their communities and were largely regarded as having “collaborated” with the rebels. Human rights groups concerned about the human rights situation of these women, girls and other “rebel collaborators” saw the visit of the High Commissioner as a unique opportunity to address these issues. The manifesto thus bound the government (at least on paper) to ensure that the human rights of these vulnerable groups were protected.

The second instance was in November 2002, when CSGs and other local human rights organizations, teamed up with United Nations Agencies and women’s advocacy groups to pursue a 16-day campaign for the elimination of gender-based violence toward women.<sup>54</sup> The campaign, which was organized to commemorate the International Day of Human Rights, consisted of 16 days of activism against gender violence, an issue of extreme importance in Sierra Leone. This is because the decade or more of civil war saw women and children (especially girls) being the frequent targets of abductions and forced marriages, rape and other forms of mutilation. One of the major highlights of the campaign was a workshop held by the organizers to discuss how the CEDAW could be

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the implied consent of the authorities) to met out popular justice on so-called rebel collaborators. The parties to the Manifesto were the Government of Sierra Leone, the National Commission for Democracy and Human Rights, the National Forum for Human Rights (which is the umbrella organization for human rights NGOs and groups in the country), the UN High Commissioner for Human Rights, and the Special Representative of the UN Secretary General in Sierra Leone. See interview with JC of Forum of Conscience. The transcript of the interview is on file with the researcher.

<sup>54</sup> See: Sierra Leone Web News Archives, 30 November 2002; online: <http://www.sierra-leone.org/slnews1102.html>.

used to promote women's rights in Sierra Leone. Again, the deployment of the norms of a key IHI (CEDAW) was regarded by all the groups involved in this particular campaign as crucial to its success.

In a statement released in September, 2004, a coalition of domestic human rights groups working in Sierra Leone, the National Forum for Human Rights (NFHR) called for the protection of the civil rights of a police officer attached to the SCSL. In particular citing the right to a fair trial under the ICCPR, the NFHR called on both national and international organizations to ensure that standards for protection of the rights of accused persons were upheld in this case. The police officer had been charged with allegedly having sex with a minor in Freetown.<sup>55</sup>

Thus, IHIs have been very useful as resources in the hands of CSGs in Sierra Leone, as they seek to educate people about the norms that both IHIs and CSGs wish to disseminate and foster. The reference to and invocation of IHI norms is a key strategic move that provides a justificatory basis for CSGs human rights educational campaigns, that would otherwise have been lacking. This is so especially as in most cases, CSGs could not have relied on domestic laws to further these campaigns. As will be seen in Section 4.4 of this Chapter, much of the relevant domestic laws did not conform to internationally accepted standards and were themselves in much need of reform.

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<sup>55</sup> See Article "NFHR Calls For Maximum Evidence" by Joseph Kamanda, Concord Times Newspaper Freetown, September 10 2004. All the CSGs dealt with in this case study are members of the NFHR. The NFHR was concerned that due to the high level of publicity the case was getting from the media, there was likelihood that the accused would not be treated fairly. The accused officer has recently in January 2005, been acquitted of the rape charges.

### **4.3. The Limited Influence Of IHIs On The Litigation Programs Of CSGs In Sierra Leone.**

#### ***4.3.A: Domestic Litigation***

Overall, this researcher found very little evidence of IHIs being deployed by CSGs in Sierra Leone in arguments made before domestic judicial fora so as to influence the outcome of the relevant cases. But one concrete example of the deployment of this kind of strategy is the work of the Juvenile Justice and Advocacy Unit of LAWCLA. LAWCLA has three units that in principle could take up human rights cases before national and international courts and bodies. The Litigation Unit deals with human rights abuses and violations committed on male adults especially if their case does not fall under the Transitional and Economic Justice Unit. There are two other units dealing specifically with Gender Research and Advocacy and Juvenile Justice and Advocacy.

In March 2003, the Juvenile Justice and Advocacy Unit of LAWCLA, made an application to a Freetown magistrate asking that a 15 year old accused boy be transferred from an adult prison to a juvenile detention centre.<sup>56</sup> The bases of the application were provisions of the Children and Young Person's Act<sup>57</sup> and Article 37 (c) of the CRC.<sup>58</sup> According to counsel representing LAWCLA, the best interests of the child were not being taken into consideration by detaining him with adults. This was a violation of his rights under the local laws and international conventions. A juvenile detention centre was

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<sup>56</sup> The juvenile, Alusine Kamara is one of 17 persons charged with treason and treason-related offences in connection with what the authorities say was a plot to overthrow the Government of Sierra Leone.

<sup>57</sup> CAP 44 of the Laws of Sierra Leone 1960.

<sup>58</sup> Cap 44 of the Laws of Sierra Leone 1960 requires that defendants under the age of 18 be detained at a specified juvenile remand home in Freetown. The CRC section requires that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so".

the appropriate place as it catered specifically to the special needs of vulnerable child offenders like him.

Even though this case stands on its own as the only documented instance by this researcher of the deployment of IHI norms in domestic litigation, it does not mean that it is not significant. The case shows that IHIs are usefully though rarely deployed by CSGs in domestic litigation in Sierra Leone. In this particular case, deployment of IHI norms (as contained in the CRC), gave weight to counsel's argument before the domestic court. In Section 4.5, the factors responsible for this very limited deployment of IHIs by CSGs in the domestic courts in Sierra Leone are discussed under the sub-heading "Negative Factors".

#### ***4.3.B: International Litigation***

How have certain kinds of IHIs had an impact on the ability of CSGs to bring cases before the monitoring bodies that were set up to monitor the observance of international human rights treaties, laws and norms? Even though the evidence from Sierra Leone is quite sparse, it nevertheless points to the fact that these CSGs have at least on two major occasions resorted to seeking redress from these bodies in their human rights campaigns.

The CGG filed a Communication or a petition against the Republic of Libya<sup>59</sup> in August of 2002 at the African Commission on Human and Peoples' Rights. As it had already exhausted all local remedies in Sierra Leone, CGG thought that a reliance on appeals to the Government in this particular instance would not yield much result. The Communication was submitted by CGG on behalf of five Sierra Leonean refugees who

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<sup>59</sup> See: Communication Against The Republic of Libya (A Copy of the Communication is on file with the researcher). According to CGG human rights officers, since the communication was sent to the African Commission (which acknowledged its receipt) no further response has been received from the Commission.

had been residing in Libya. They were deported to Sierra Leone between October and November 2002 a period during which the Libyan government carried out a mass deportation of West African nationals from its territory. It was alleged in the communication, that their illegal deportation or expulsion from Libya, was preceded by acts of brutality that amounted to serious violations of their human rights.<sup>60</sup>

CGG had earlier on written a letter to the Minister of Justice of Libya bringing to his notice the alleged human rights abuses against the Sierra Leonean refugees.<sup>61</sup> The letter stated that the Libyan Government was under an obligation “to respect and act in accordance with international law” and especially in this case to ensure that the human rights of refugees living in Libya are respected. Libya was in violation of the provisions of international instruments it had ratified specifically the African Charter on Human and Peoples’ Rights, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa<sup>62</sup> and the Geneva Conventions.<sup>63</sup> The letter demanded an explanation from the Libyan Government within 30 days of its receipt.

When it became apparent that this explanation was not forthcoming, the CGG filed the present Communication to the African Commission. In it, the CGG alleges that the Republic of Libya violated Articles 2, 5, 6, 7(1) (a) and 12(4) and (5) of the African Charter. As already stated above, the basis of the Communication was that Libya had ratified the African Charter and was therefore bound by its provisions. In this regard the CGG also relied on the decision of the African Commission in *Legal Resources*

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<sup>60</sup> See Communication, *ibid*.

<sup>61</sup> See: Letter written by CGG addressed to The Honourable Minister of Justice of Libya, dated 7<sup>th</sup> June 2002. The copy of the letter is on file with the researcher.

<sup>62</sup>OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted 10 Sept. 1969, entered into force 20 June 1974, 1001 UNTS 45.

<sup>63</sup> *Supra*, note 19.

*Foundation v Zambia*<sup>64</sup> that a state party should comply with the provisions of the African Charter so long as it had ratified it. Several other decisions of the African Commission were also relied on to lend support to the case. Even though a decision has not yet been reached on the communication, this remains a very good example of how CSGs in Sierra Leone can campaign for the rights of ordinary Sierra Leoneans using the medium of IHIs. IHIs are used here both as a source of norms and a site of struggle.

The FOC can be easily labelled one of the most outspoken and leading human rights groups in the country. It therefore came as no surprise that the FOC was one of the two CSGs that have utilized international monitoring bodies to seek redress for alleged human rights violations. The FOC filed a communication with the African Commission on Human and Peoples' Rights in 1998.<sup>65</sup> The communication was filed against the Government of Sierra Leone on behalf of 24 army officers who were executed on 19<sup>th</sup> October 1998 in Freetown. These officers had allegedly played key roles in the coup that ousted the democratically elected government in 1997.

According to the communication, the trial of the officers by court martial "was flawed in law and in violation of Sierra Leone's obligations under the African Charter".<sup>66</sup> There was no right of appeal from court martial decisions at the time and this it was alleged was a breach of Article 7(1) of the African Charter, (the right to fair trial) and an arbitrary deprivation of the right to life under Article 4 of the same.

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<sup>64</sup> Communication 211/98.

<sup>65</sup> Communication 223/98 Forum Of Conscience/Sierra Leone. The communication alleges a breach of Articles 1, 4 and 7(1) (a) and 7(1) (d) of the African Charter.

<sup>66</sup> Paragraph 3 of Communication 223/98.



Upon receipt of the communication a delegation from the African Commission was sent on a promotional mission to Sierra Leone in February of 2000.<sup>67</sup> During this mission the subject of the communication was discussed with the then Attorney-General and other senior government officials.<sup>68</sup> The Attorney-General's explanation was that military regulations did not allow for the right of appeal.<sup>69</sup> The Commission found this explanation unsatisfactory and in its decision maintained that to the extent that they did not provide for the right to an appeal, the regulations were in breach of Article 7(1) (a) of the African Charter.<sup>70</sup> The Commission also held that there had been a violation of Article 4 of the African Charter.<sup>71</sup>

The director of the FOC personally (according to him) travelled to the African Commission headquarters in Banjul, The Gambia, before the executions were carried out, with the intention of getting the Commission to intervene and prevail on the government not to carry out the executions. Even though by the time the Commission reached its decision the officers had already been executed, it is still significant that the impugned Court Martial regulations were soon after amended in order to provide for a right of appeal, in conformity with the provisions of the African Charter.<sup>72</sup>

By deploying the relevant IHIs and IHI norms, and relying on the binding obligations created under the African Charter, both the CGG and the FOC were able to seek redress from the African Commission against the Libyan and Sierra Leonean

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<sup>67</sup> See Decision of African Commission on Communication 223/98, African Commission on Human and Peoples' rights, 14<sup>th</sup> Annual Activity Report: 2000-2001, paragraph 10 of decision.

<sup>68</sup> Ibid, paragraph 10.

<sup>69</sup> Ibid, paragraph 20.

<sup>70</sup> Ibid, paragraph 20.

<sup>71</sup> Ibid, paragraph 19.

<sup>72</sup> Ibid, paragraph 20. The right of appeal from a Court Martial decision was deleted from the Armed Forces Act of 1961, by the Royal Sierra Leone Military Forces Act. In 2000, the Armed Forces of the Republic of Sierra Leone (Amendment Act) reinstated the right of appeal from Courts Martial decisions.

Governments respectively. In both cases, the IHIs that were deployed, served not only as a source of norms, but also as a site of struggle –the struggle being for the protection of the human rights of the Sierra Leonean people. It is not crucial that the efforts of the CSGs were successful. Rather, what is important is that the deployment of IHIs was regarded as an important leverage through which to overcome domestic barriers and seek redress from the alleged human rights violations.

#### **4.4. The Modest Influence Of IHIs On The Law Reform Programs Of CSGs In Sierra Leone**

It is still the case that several international instruments that have been ratified by Sierra Leone have not been incorporated into the domestic laws. The Constitution of Sierra Leone<sup>73</sup> provides as follows:

*Provided that any Treaty, Agreement or Convention executed by or under the authority of the President which relates to any matter within the legislative competence of Parliament, or which in any way alters the law of Sierra Leone or imposes any charge on, or authorises any expenditure out of, the Consolidated Fund or any other fund of Sierra Leone and any declaration of war made by the President shall be subject to ratification by Parliament-*

*(i) by an enactment of Parliament; or*

*(ii) by a resolution supported by the votes of not less than one-half of the Members of Parliament.*

Because of this provision, Sierra Leone is a dualist state (in the sense of the monism-dualism divide in international law). Therefore unless and until the above section is complied with, any treaty, agreement or convention that is ratified by Sierra Leone will not be applicable before the domestic courts. This had led to frequent campaigns by

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<sup>73</sup> Act No. 6 of 1991; proviso to section 40.

CSGs (among other groups) in Sierra Leone for the domestic implementation of international human rights obligations, and the reform of local laws in accordance with these standards. CSGs in Sierra Leone when they have embarked on individual advocacy campaigns for law reform have deployed IHIs as the basis of these campaigns.

#### ***4.4.A : Amnesty International Sierra Leone Section***

For its own part, AI (SL) uses the Second Optional Protocol to the ICCPR on the Abolition of the Death Penalty extensively in its campaign to remove the death penalty from the laws of Sierra Leone. In this regard, AI (SL) has organized several workshops on the abolition of the death penalty. As recently as 4<sup>th</sup> August 2004, a one-day seminar was organized jointly by the Office of the Principal Defender of the SCSL, the Coalition for Justice and Accountability (COJA) an international human rights NGO, and AI (SL) on the abolition of the death penalty in Sierra Leone.<sup>74</sup> The seminar brought together CSGs and other human rights organizations so as to formulate campaign strategies to abolish the death penalty in the country.

AI (SL) has also used the Second Optional Protocol to the ICCPR on the Abolition of the Death Penalty in both its local and international campaigns to help persuade those who designed the SCSL, not to allow the Court to hand out the death penalty.<sup>75</sup> The Section also organized a workshop in November 2002, the aim of which was to establish a network of groups campaigning for the abolition of that penalty in Sierra Leone. Most of the presentations made during the workshop centred on the provisions of the Second

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<sup>74</sup> See: Standard Times Newspaper, 9<sup>th</sup> August 2004, "Abolition of Death Penalty Campaign Stepped Up" by Mohamed Konneh, online: <http://www.npwj.org/modules.php?name>.

<sup>75</sup> See: Interview with M.A.J., (Campaign and Development Officer) AI (Sierra Leone Section). (The transcript of the interview is on file with the researcher).

Optional Protocol to the ICCPR on the Abolition of the Death Penalty<sup>76</sup> that proscribe the death penalty and how these could be used to effect the campaign. The issue was always brought up by this network in the dialogue processes leading to the establishment of the SCSL. In the end, the campaign was successful and the Statute of the SCSL provides that the court can only hand down prison sentences.<sup>77</sup> The Network deserves a part of the credit for this, however small.

#### ***4.4.B : The Network Movement for Justice and Development***

A large part of the work of NMJD consists of advocating a rights-based approach to mining. Mining policies in the country according to NMJD should be based on international human rights standards, and it has lobbied for human rights provisions to be included in the proposed new mining policy for Sierra Leone.<sup>78</sup> NMJD also advocates for mainstreaming of economic, social and cultural rights as contained in the various international conventions (especially the ICESCR), in the government's development plans.

#### ***4.4.C : The Lawyers Centre for Legal Assistance***

LAWCLA has also advocated for the ratification and domestic implementation of international human rights instruments. In the Eighteen Month Report of LAWCLA,<sup>79</sup> there was an article on the Constitutional Violation of the Right to Life in Sierra Leone.

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<sup>76</sup> Second Optional Protocol to the ICCPR on the Abolition of the Death penalty, adopted 15 Dec. 1989, entered into force 11 July 1991, G.A. Res. 44/128. Hereinafter Second Optional Protocol to the ICCPR.

<sup>77</sup> Article 19, Special Court Statute: [www.sc-sl.org/scsl-statute.html](http://www.sc-sl.org/scsl-statute.html).

<sup>78</sup> See: Interview with A.B., National Coordinator of NMJD. (The transcript of the interview is on file with the researcher). The NMJD advocates for provisions from the CRC to be included, especially those that deal with children under 18 (i.e. child miners). The previous policy does not have such provisions.

<sup>79</sup> See: Eighteen Month Report of LAWCLA: July 2001-December 2002 at page 17; excerpts from an article by Melron Nicol Wilson and Lornard Taylor in LAWCLA News Vol. 2 Issue 2.

The article advocates for the total abolition of the death penalty in the domestic laws. According to LAWCLA, provisions of the laws of Sierra Leone that sanction capital punishment are inconsistent with the constitution of Sierra Leone.<sup>80</sup> They also violate international human rights laws like the UDH, which proscribe the death penalty, guarantee the right to life and security, and protect against inhumane and degrading treatments.

LAWCLA'S Juvenile Justice and Advocacy Unit has also been involved in advocating for reform of the laws relating to juvenile offenders in the country. The Unit organized a one-day workshop on 31<sup>st</sup> August 2004 in Freetown. The workshop involved other stakeholders involved in child right's issues in the country. The theme was "Law and Practices Relating to the Treatment of Juvenile Offenders and Victims of Human Rights Abuses in Sierra Leone". The laws that apply to such offenders (international conventions like the CRC and national laws) were examined. The purpose was to identify disparities between international and national laws. Suggestions were then made on reform of the national laws to fit international standards, and so that they will be in the best interest of the children.<sup>81</sup>

LAWCLA is also part of the country-wide campaign for the badly needed reform of the laws relating to women in Sierra Leone. This need was voiced out for example in an article titled "Discriminatory Laws Against Women in Sierra Leone: An Urgent Need For Law Reform".<sup>82</sup> The article advocates for a reform of the laws relating to women generally in the country. It basically states that there are certain provisions in the laws-the

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<sup>80</sup> Section 20 (1) Constitution of Sierra Leone (Act No. 6) of 1991 provides...

<sup>81</sup> See: Standard Times Newspaper, 31<sup>st</sup> August 2004: "LAWCLA Focuses on Juvenile Justice" by Theophilus S. Gbenda, online: <http://allafrica.com/stories/printable/200409010569.htm>.

<sup>82</sup> See Eighteen Month Report of LAWCLA: July 2001-December 2002 at page 22; excerpts from an article by Hanatu Kabbah in LAWCLA News Vol. 2 Issue 2.

Constitution of Sierra Leone<sup>83</sup>, the Citizenship Act 1973 and the Administration of Intestate Estates Act<sup>84</sup>, that discriminate against women contrary to the spirit and letter of international human rights instruments such as the UDH and the CEDAW.

These discriminatory provisions are buttressed by unwritten customary practices that are equally or even more discriminatory, but which are justified in the name of tradition. These laws and practices apply according to the article to over 80 % of women in Sierra Leone (most of whom live in the rural areas outside the capital Freetown). The customary practices are also part of the laws of Sierra Leone by virtue of Section 170 (2) and (3) of the Constitution.<sup>85</sup> LAWCLA reiterates the need in the article for the government to fulfill its obligations under the CEDAW especially. International instruments such as the CEDAW should be incorporated into the Laws of Sierra Leone so that reform of the law can take place to bring it in line with its provisions, thereby leading to a gradual elimination of discriminatory provisions in the domestic laws.

In all of these campaigns for reform of various domestic laws of Sierra Leone, LAWCLA deployed IHIs (like the UDH, CEDAW, and the CRC) and the norms these IHIs espouse, to strengthen their arguments for law reform. The IHIs deployed in the instances mentioned above, served as yardsticks to measure the extent to which the domestic laws were inconsistent with internationally accepted standards.

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<sup>83</sup> Act No. 6 of 1991; Section 27 (4) (d) and (e)-these sections provide for example that the prohibition against discriminatory laws in subsection 1, does not apply to laws governing adoption, divorce, marriage, burial, devolution of property on death, or other interests of personal law [sic].

<sup>84</sup> Cap 45 of the Laws of Sierra Leone 1960; and also the Prevention of Cruelty to Children Act (Cap 31) of the Laws of Sierra Leone 1960, which contains provisions that discriminate against the girl child.

<sup>85</sup> Act No. 6 of 1991. Section 170 (2) provides that “The common law of Sierra Leone shall comprise the rules of law generally known as the common law, the rules of law generally known as the doctrines of equity, and the rules of customary law...” Subsection 3 defines customary law as “the rules of law which by custom are applicable to particular communities in Sierra Leone”.

#### *4.4.D : The Women's Forum*

Women's Forum (WF), a leading women's organization, also makes wide use of international instruments in its campaigns to reform the domestic laws relating to women in Sierra Leone. According to R.M. of WF, provisions of international instruments like the CEDAW and the African Charter and its Additional Protocol on Women<sup>86</sup> are not being incorporated into domestic legislation. As a step towards achieving this goal, WF works closely with the United Nations Division for the Advancement of Women (DAW) in implementing the 12 critical areas of the Beijing Declaration and PfA<sup>87</sup> in the country.

The Platform as an agenda for action "seeks to promote and protect the full enjoyment of all human rights and the fundamental freedoms of all women throughout their life cycle".<sup>88</sup> Taking this campaign a step further, WF has been lobbying the Law Reform Commission for reform of the laws relating to women. Their efforts proved fruitful when in April of 2003, the LRC held a workshop on law reform of laws relating to women in Sierra Leone. WF as a participant CSG in this workshop impressed on the audience that any reform of the law must take into consideration relevant international instruments concerning the right of women.

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<sup>86</sup>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; Online: [www.achpr.org/english/info/women\\_en.html](http://www.achpr.org/english/info/women_en.html). See transcript of interview on file with the researcher.

<sup>87</sup> Supra note 10. The objective of the Beijing Declaration and Platform for Action which is in full conformity with the purposes and principles of the United Nations Charter and international law is the empowerment of women.

<sup>88</sup> See: Beijing Platform for Action (Mission Statement), supra note 10.

#### ***4.4.E : The Forum of Conscience and the National Coalition for the Promotion and Protection of the Rights of the Child***

As has been discussed above under section 4.2.F, FOC and other local human rights groups formed a coalition, which advocated for the promotion and protection of the rights of the child. A press release they issued condemning the attempt by the Security Council to include children between the ages of 15 and 18 among those to be tried by the then proposed SCSL, contrary to the spirit and letter of the CRC led to such children being excluded from the Court's jurisdiction. This is a very good example of laws or proposed laws amended to conform to international human rights standards, in this case the CRC.

FOC is also a part of the Commonwealth Human Rights Network, of which its Director was recently named leader. The Director again seized the opportunity at a press briefing announcing his appointment, to call on the government to ratify the Second Optional Protocol to the ICCPR on the Abolition of the Death Penalty, and to harmonize the national laws with it.<sup>89</sup> This goes to show that CSGs would not let pass by any opportunity to advocate respect for human rights and reform of local laws in accordance with international human rights standards.

IHI norms have thus played no mean role in the law reform advocacy campaigns embarked on by CSGs in Sierra Leone. In most of the instances discussed in this section, even though the relevant IHIs (mainly international human rights conventions) have been ratified by the government of Sierra Leone, the next important step of implementing these IHI norms domestically has not been taken. By deploying IHI norms, CSGs give justification to their law reform advocacy campaigns, one that has as its basis

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<sup>89</sup> See: Article "FOC Director Heads Commonwealth Human Rights Network" by Tanu Jalloh, Concord Times Newspaper, Freetown, September 17<sup>th</sup> 2004; online: <http://allafrica.com/stories/printable/200409170608.html>.



internationally accepted human rights standards by which Sierra Leone is otherwise bound.

#### **4.5. Factors That Have Affected The Influence Of IHIs On CSGs In Sierra Leone.**

Several factors may have been responsible for and shaped the character of the modest influence or the lack of influence IHIs have had on the human rights campaigns of CSGs in Sierra Leone. These factors are dealt with in two groups: “positive” factors and “negative” factors. The terms positive and negative factors as used here mean those factors that helped CSGs use IHIs well in their human rights campaigns, and those factors that have impeded this use respectively.

##### ***4.5.A : Positive Factors***

Certain factors have aided the use of IHIs by CSGs in their various human rights campaigns in Sierra Leone. This section deals with what I consider to be the two most important ones. These are training on and exposure of members of CSGs to IHIs; and the availability of funding for the activities of these CSGs.

##### ***4.5.A.1. Training on and familiarization with IHIs:***

CSGs in Sierra Leone have in recent times undergone widespread training in human rights issues. One of the reasons that was given by interviewees for the limited deployment of IHIs within Sierra Leone by CSGs was the lack of training and

sensitization of CSGs on IHIs and IHI norms.<sup>90</sup> Where such training sessions have been available, they have helped CSGs in Sierra Leone become better equipped to deploy IHIs and IHI norms in their various domestic human rights campaigns. International (especially African) human rights groups have been mainly responsible for facilitating the training of members of CSGs in Sierra Leone, in human rights issues. One example of such training sessions was that organized by Alliances for Africa (AFA) in partnership with the International Centre for Legal Protection of Human Rights (INTERIGHTS) and the Institute for Human Rights and Development in Banjul, the Gambia, on 1<sup>st</sup> to 8<sup>th</sup> March 2000.<sup>91</sup> Here was an opportunity to identify the network of which local groups and their norms are a part, and which are also global in scope and provenance.

One of the main aims of the training session was to “build the capacity of CSGs to better monitor, document and redress human rights violations in Sierra Leone”.<sup>92</sup> The participants were educated extensively on the provisions contained in regional human rights instruments like the African Charter on Human and Peoples’ Rights, and the African Charter on the Rights and Welfare of the Child,<sup>93</sup> and how to use the procedures and mechanisms they provide (especially under the African Charter) to seek redress from alleged human rights violations.<sup>94</sup>

The Human Rights Section of UNAMSIL, has also organized several of these training sessions for CSGs. The Section organized one such session in the form of a

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<sup>90</sup> See Interview with M.A.J. of Amnesty International (Sierra Leone Section). (The transcript of the interview is on file with the researcher.) This issue is dealt with in the next subsection under “Negative Factors”.

<sup>91</sup> See: Report of Training Workshop held in Banjul, the Gambia, 1-8 March 2000. The training session in which several CSGs from Sierra Leone participated, had as its theme “Protecting Human Rights under the African Charter on Human and Peoples’ Rights in Situations of Conflict: A Case Study of Sierra Leone”.

<sup>92</sup> See page 7 of report, *ibid*.

<sup>93</sup> *Supra*, note 46.

<sup>94</sup> See pages 8 and 36 of report, *supra* note 91.

seminar on October 17<sup>th</sup> 2002.<sup>95</sup> The seminar had as its theme “Advocating for Human Rights in Sierra Leone Using International and Regional Mechanisms”. At the end of seminar participants from the various CSGs were expected to be familiar with international and regional conventions, mechanisms and procedures for human rights advocacy, (especially the African Commission).

This and other training sessions that CSGs have participated in, explain in detail the mechanisms established both internationally and regionally for the protection of the human rights. This familiarization of CSGs in Sierra Leone with the instruments for protection of human rights at the national, regional and international levels has enhanced their capacity to deploy effectively IHIs in their domestic campaigns. As a result of such training sessions, CSGs in Sierra Leone have become better equipped to confront the challenges and responsibilities they face in seeking to improve respect for human rights.

#### *4.5.A.2. Increase in funding to CSGs to carry out human rights campaigns:*

There has been an increase in overall funding in recent years for the human rights campaigns of CSGs in Sierra Leone. Funding for the human rights programs of CSGs has come from various sources including United Nations agencies, (in particular the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the United Nations Children Fund (UNICEF), other human rights organizations and the British Department for International Development (DFID). LAWCLA is one such CSG that has

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<sup>95</sup> See: Press Release from United Nations Mission in Sierra Leone (UNAMSIL) titled “Acting Special Representative Opens Human Rights Seminar”; online: [www.un.org/Depts/dpko/unamsil/DB/17](http://www.un.org/Depts/dpko/unamsil/DB/17).

received a substantial funding increase for its human rights programs from the OHCHR and DFID in particular.<sup>96</sup>

The CGG, also for example, has received funding from DFID to sponsor its women's human right programs.<sup>97</sup> The National Endowment for Democracy<sup>98</sup> funded handbooks on the CRC and CEDAW produced by CGG for use in its human rights educational campaigns. But in as much as this increase in funding has aided CSGs in Sierra Leone to better deploy IHIs in their human rights campaigns, such funding remains inadequate and insufficient. Most of the interviewees mentioned this lack of funding as a major obstacle to the successful deployment of IHIs.<sup>99</sup> Much more financial assistance is needed, if CSGs are to effectively deploy IHIs in their campaigns in future.

#### **4.5.B: Negative Factors**

##### *4.5.B.1 Lack of publicity/awareness among CSGs:*

According to the interviewee of one group, the diplomatic channel works better than IHIs when it comes to protection and promotion of human rights at least vis-à-vis the executive branch of government.<sup>100</sup> According to the interviewee,

*the best mediums through which human rights instruments and campaigns can be promoted are the diplomatic missions. When certain ambassadors call the president regarding human rights violations, he reacts quickly.*

This is a suggestion that CSGs are generally ignorant of the utility of IHIs in their human rights campaigns. As far as international human rights monitoring bodies were

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<sup>96</sup> See: LAWCLA Eighteen Month Report, July 2001-December 2002, page 7.

<sup>97</sup> See: Handbook for Facilitators (Produced by CGG, Freetown), supra note 6, at pages i and iii.

<sup>98</sup> See: Handbooks on the CRC and CEDAW, (Produced by the CGG, Freetown), supra note 27.

<sup>99</sup> See: Human Rights Watch Report on Sierra Leone 2002; online: [www.hrw.org](http://www.hrw.org). See also interview with V.E. of the CGG. (The transcript of the interview is on file with the researcher).

<sup>100</sup> See: Interview with J.C. of Forum of Conscience. (The transcript of the interview is on file with the researcher).

concerned, at least two interviewees thought they were either too far removed from the realities on the ground, or too slow to yield results. This results in these international monitoring bodies being out of the reach of most ordinary Sierra Leoneans and CSG activists (if and when they want to seek redress from them).<sup>101</sup> Even though training sessions on IHIs and IHI norms are increasingly organized for CSGs and other human rights groups,<sup>102</sup> much more needs to be done in terms of exposing more CSGs to these norms.

Of the ten CSGs that were originally part of this study, three had never deployed IHIs in their human rights campaigns in Sierra Leone, nor had they had any interaction whatsoever with IHIs. It remains to be seen how these “human rights campaigns” are carried out without any IHI involvement whatsoever, given that so many of the local laws do not necessarily protect the human rights of Sierra Leoneans in several respects.

#### *4.5.B.2. Lack of domestication of international obligations:*

The negative effect of the lack of domestication of obligations under international human rights treaties and conventions, which the government has ratified, cannot be overstated. As was stated earlier on, because of the dualist system of the country, these obligations tend to have less effect domestically unless and until they are contained in implementing legislation passed in parliament. This is one of the factors responsible for the lack of counsel representing CSGs using these human rights provisions in arguments in domestic courts. Judges will not pay attention to these arguments if the provisions do not have the force of law within the domestic legal order of the country. The

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<sup>101</sup> The interviewee representing the CGG expressed frustration at the slow pace of the African Commission to consider the communication filed by the organization to it against the Libyan Government.

<sup>102</sup> See Section 4.5.A above, “Positive Factors”.

consolidation of national laws to meet international standards, will strengthen the human rights campaigns of CSGs even further and they will be better able to deploy international norms espoused by IHIs.

#### *4.5.B.3. High rate of illiteracy:*

The very high (English) illiteracy rate<sup>103</sup> in the country had also affected the use of IHIs by CSGs, although the latter are now developing strategies to combat this problem. For example the CGG and CRIVMON of the CCSL have both illustrated provisions of different human rights instruments. This has greatly helped to explain the provisions to people that cannot read.

#### *4.5.B.4. Cultural beliefs and practices:*

In some instances, cultural beliefs and practices have been barriers to the successful use of IHIs by CSGs to advocate law reform especially in the area of women's rights. This has already been discussed above. The issue has been how to change the prevalent thinking among people without giving the impression of disrespect for their cultures. One interviewee mentioned having encountered this problem when campaigning against female circumcision. According to the interviewee, the local chiefs argue that this practice is part of their tradition and a lot of people think that the idea of banning it means succumbing to western culture.<sup>104</sup> Since most of the IHIs (except the African ones) tend

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<sup>103</sup> Sierra Leone has an adult literacy rate of 36 % (See: UNDP Human Development Reports 2003); Adult literacy is defined in the Report as "The percentage of people ages 15 and above who can, with understanding, both read and write a short, simple statement related to their everyday life".

<sup>104</sup> See Interview, with V.E. of CGG, supra note 97.

to be viewed as “foreign” or “western” instruments, CSGs are often faced with promoting their human rights campaigns on the one hand, and not creating ill-will on the other.

All the factors discussed in this section have in varying degrees affected whatever influence, IHIs may have exerted on the work of CSGs in the country. What conclusions then can be drawn from all of the evidence that has been looked at?

#### **4.6. The Implications Of The Evidence From Sierra Leone For IHI Theory.**

In sections 4.2 to 4.5, I examined the evidence from Sierra Leone regarding the influence that IHIs have had on the work of CSGs and the factors that may have either in a positive or negative way affected this influence. It is now necessary to test this evidence against the various theories that have been discussed in Chapters two and three. It is evident from sections two to four of this chapter, that the influence IHIs have had on the work of CSGs in Sierra Leone has been quite modest. This does not however mean that the influence was insignificant. Which of the theories discussed above best explains this (admittedly modest) influence that IHIs have had on CSG work within Sierra Leone?

Rationalist theories discussed in chapter two do not on their own offer a satisfactory explanation of the achievement of this level of modest influence in Sierra Leone. Most rationalist theories, despite their individual differences, tend to view IHIs as weak and ineffectual. They do so mostly for the following reasons. The first reason is that IHIs tend to be compared with domestic (or regional) courts that have power to enforce their

judgements and rulings.<sup>105</sup> As a result, since IHIs generally do not have these similar “enforcement” capabilities possessed by domestic and regional courts, a rationalist interpretation of the effectiveness of IHIs, would tend not to consider them capable of making much of a difference.

Second, most rationalist theories on the utility of IHIs tend to regard states as the primary actors within the international system. For realists, for example, this is a double assumption -states are not only predominant, they also act as coherent units. This state-centric approach to the issue gives no place to any model of the dis-aggregated state, which this case study adopts in order to understand the impact IHIs (non-state to an extent) can have within a disaggregated state. Thus non-state and sub-state actors have little place in rationalist theories on the utility of IHIs. Another side to this state-centric bent is that traditional IR theory on the utility of IHIs analyzes the actions of state actors as they interact on the international scene. A rationalist interpretation thus pays little or no attention to the consequences of their actions *in the domestic context*

Third, because of their positivist stance, most rationalist theories separate the law (international law) from any other normative influences like ethics and mores and unwritten norms. Thus rationalists exclude from the definition of “international law” all rules that cannot be traced to the written documents of states.<sup>106</sup> The understanding of norms shared by most scholars in the constructivist school does not belong to the

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<sup>105</sup> Moravcsik, A., “Explaining the Emergence of International Human Rights Regimes: Liberal Democracy and Political Uncertainty in Post-War Europe” Weatherhead Center for International Affairs Working Paper Series, Paper No. 98-17, 1998, at page 22. Moravcsik praised the European Court of Human Rights for making its judgements as effective as those of a domestic court. See also Helfer, L.R., and Slaughter, A., “Toward A Theory of Effective Supranational Adjudication” (1997) 107 Yale Law Journal 273 at 345.

<sup>106</sup> Morgenthau, H.J., “Positivism, Functionalism and International Law” (1940) 34 American Journal of International Law 260 at 265.



rationalist school. Ideas, norms and knowledge, in the rationalist view, do not play any role in a shaping international politics, as constructivists would argue.

Fourth, there is the widespread stress on state compliance with the rules, decisions etc, of IHIs as the key to their effectiveness. This tendency is manifested mostly in the form of stressing on coercion or enforcement as the key to achieving compliance with IHI norms, rules and decisions. Alternatively, some other scholars in a bid to de-emphasize coercion stress on persuasion of actors as the best means to secure compliance with IHIs. In either case, the test for the effectiveness of IHIs is whether actors (states) comply with their norms and decisions.

This compliance-centric approach arises to some extent from the analogy with domestic and regional courts mentioned above. In the absence of a hegemonic group of great powers coercing or inducing CSGs to “comply” with IHIs, in the case of realist theory, there could be no explanation for the kind of modest influence IHIs have exerted on the human rights campaigns of these CSGs. Neorealists would argue that in the absence of long term self-interest, IHIs would make no difference to these CSGs. Neoliberals would maintain that for compliance with IHI norms and goals to occur, the CSGs must have been given incentives. Republican liberals would also not concede much influence on these CSGs to IHIs that seek to influence authoritarian or dictatorial states.<sup>107</sup>

As discussed in chapter three, it appears then that constructivism, is much better suited to the task of explaining the modest influence that IHIs exerted on the human rights campaigns of these CSGs within Sierra Leone. In contrast to most of their rationalist counterparts, this is mainly because constructivists look at the myriad other

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<sup>107</sup> See discussion of these rationalist theories in Chapter two.

ways in which IHIs have exerted influence within states (other than via being able to enforce or cajole the compliance of states with IHI norms, rules and goals). Because of their stress on the subtle influence that norms, ideas and knowledge can exert on the minds of actors, constructivists would argue that IHIs can exert influence within Sierra Leone, without necessarily looking or behaving like domestic courts and exerting enforcement powers. For them, even though compliance with IHIs can be used as a yardstick to measure their effectiveness, it is not always the most important factor to be considered.

Even when they talk about compliance, constructivists adopt a much broader notion of the concept.<sup>108</sup> Compliance with IHIs does not, for these constructivists, depend solely or largely on sanctions or other coercive measures as posited by rationalist theories. Compliance also includes “communicative processes” which take into consideration and consider as equally important the role that norms, ideas and knowledge play in the success of IHIs.

Also, the work of a section of the constructivist school, or the “quasi-constructivists” as Okafor refers to them, now takes into adequate consideration the crucial role, played by non-state actors on the domestic as opposed to the international scene.<sup>109</sup> Traditional international relations theory (traditional constructivism included) neglected the role of non-state actors in international politics. These quasi-constructivists such as Kathryn Sikkink and Martha Finnemore, have embraced the dis-aggregated state model quite adequately. Their work encompasses the activities of sub-state actors or local popular forces, and their role in domestic socialization processes using IHIs. This inclusion of

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<sup>108</sup> Okafor, O.C., *The Domestic Promise* etc, supra note 4, at 32.

<sup>109</sup> Okafor, O.C., *ibid.* Kathryn Sikkink and Martha Finnemore are examples of these “quasi-constructivists”.

non-state actors and the stress on the role norms, ideas and knowledge can play in the utility of IHIs make constructivist theory a better choice for explaining the results of this case study.

What comes out of the evidence is that the CSGs in Sierra Leone acted as effective vehicles through which the human rights message was brought to the people. If reliance was to be placed on the process of seeking state compliance *alone*, it is questionable whether it would have made a difference on the work of these CSGs to the extent that it would have produced the human rights activism and consciousness that is now gradually taking place in the domestic society. IHI norms and principles acquired legitimacy in the minds of the members of CSGs who in turn sought to implant these norms and principles in the thinking, culture and practices of the people (a largely constructivist explanation).

An optic that focused largely or even exclusively on seeking evidence of state compliance (as the indicator of IHI influence or effectiveness), would have most likely missed the evidence discussed in this chapter. Whatever modest influence IHIs exerted on CSGs in Sierra Leone during the period in review did not come about either because CSGs were coerced or forced into accepting IHI norms or decisions. It was largely due to an acceptance of the norms and principles of IHIs. This legitimacy did not arise because IHIs had the capacity to force CSGs to comply with their norms and principles.<sup>110</sup> CSGs used IHIs extensively in their human rights campaigns in the country because they came to accept these IHIs as being in accordance with generally accepted principles and right processes.

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<sup>110</sup> For the definition of legitimacy in the present context, See: Ellis, J., "The Regime as a Locus of Legitimacy in International Law" (1997) 13 (Special Issue) *International Insights* 111. Thomas Franck's definition is discussed here.

## **4.7. Conclusion**

A conventional view adopted by many theorists is that without being able to secure “compliance” with their norms, rules and goals IHIs are as good as worthless. This view cannot stand in the face of the evidence supplied by this case study. Even though the influence they exerted in this case without having to coerce or cajole CSGs is modest, it is, nevertheless, a pointer to many other important ways in which IHIs can and do exert influence within states, without necessarily having the character of domestic courts.

In this regard, the study contributes to the trend in the literature adopted by constructivist scholars to look outside the traditional “compliance radar” for alternate ways in which IHIs have exhibited some worth. Because of the horizontal nature of the international system, securing state compliance with IHI norms has generally not been easy to achieve. Scholars should therefore pay more attention to the role that CSGs can play within domestic settings in making IHIs successful. The re-shaping of the understandings of what is acceptable and appropriate that occurs when CSGs deploy IHIs as happened in the present case study, leads to IHIs exerting sometimes “subtle” but very significant influence within states. This is the soft power of IHIs that is best observed through a constructivist lens.

I therefore conclude that dissemination of IHI norms may occur within states without the direct coercion or even persuasive involvement of IHIs and that the constructivist account of IHI effectiveness needs to be given much more attention and place in the literature, especially as it does not really displace, only refine, the rationalist approach to IHI effectiveness.

## **CHAPTER FIVE**

### **CONCLUSION**

This thesis has been concerned with the debate between rationalists and constructivists about the conditions under which domestic actors respond best to IHI norms and goals. As was stated in the introduction to this case study –in the first chapter, one of its main objectives is to challenge the tendency in the existing literature to view “compliance” simply as “correspondence of behaviour with legal rules”. As discussed in chapter two, rationalists have maintained a “materialist” approach to assessing the effectiveness of IHIs. For instance, for realists in particular power and human nature preclude significant cooperation with IHI norms and goals. Constructivists on the other hand argue that knowledge and institutions make such cooperation possible. Adopting the much more holistic constructivist approach, the case study has attempted to demonstrate that IHI effectiveness cannot be measured solely in terms of overt compliance with their norms and goals.

Because they put so much emphasis on compliance as the key to IHI effectiveness, for conventional rationalist international relations theories, norms and institutions do not matter very much in shaping international cooperation. As John Ruggie puts it: “they are viewed as by-products of, if not epiphenomenal adjuncts to the relations of force or the relations of production”.<sup>1</sup> Nevertheless, as maintained by constructivists, and demonstrated by the present case study, to a significant extent normative constraints and

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<sup>1</sup> Ruggie, J.G., eds., *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (New York: Columbia University Press, 1993), at 5.

institutions do play important and often central roles in shaping international cooperation. The case study further demonstrates that outside the notion of “forced compliance” with IHI norms and goals, these institutions are actually useful to actors (in this case non-state actors).

The case study supports the notion that the effectiveness of IHIs does not depend solely on the degree to which their norms and goals are complied with. In particular, the relevant behaviour of actors cannot be modelled simply in terms of instrumentally rational maximization of preferences as posited by some rationalists. It does not support conventional rationalist accounts (that employ economic analyses) of how international law and institutions may affect actors’ choices. Instead, the case study supports the normative role of international human rights law and institutions as espoused by constructivist scholars. Human rights norms have a special status because they both prescribe rules for appropriate behaviour, and help define identities of “legitimate” states. Human rights norms have *constitutive* effects because good human rights performance is one crucial signal to others to identify a member of the community of “legitimate” states.

The constructivist approach which, while not dismissing compliance with international human rights norms and rules as necessary for their effectiveness, focuses instead on the social construction of actors as better suited to explain the Sierra Leone case dealt with here. The establishment of a “constructive dialogue” between non-state actors in CSGs on the one hand, and IHIs on the other, and the shift of focus to less adversarial techniques actually led to IHIs exerting significant albeit modest influence on the work of the CSGs in Sierra Leone.

What the case study sought to bring out was that the effectiveness of international norms and institutions (in particular IHIS) does not consist in their being “obeyed” by all actors to which they apply in every instance. Therefore, the focus should not be on how much widespread obedience there is to IHI norms and goals, the approach adopted by several international relations scholars and international lawyers, such as Brunne and Toope. Instead, attention needs to be paid on how IHIs and IHI norms become “socially effective” in that they are considered as factors in the calculations of actors, even when these actors choose to violate them. This social effectiveness as discussed by Bull in his book *The Anarchical Society* also depends on the *legitimization* of IHI norms in the eyes of both state and non-state actors.

*Rules are legitimized to the extent that members of the society accept them as valid, or embrace the values implied or presupposed by the rules. To the extent that the rules are legitimized they do not depend for their effectiveness on sanctions or enforcement.*<sup>2</sup>

Education or training of the relevant actors (a factor that had a very positive effect on the ability of CSGs in Sierra Leone to deploy IHIs in their human rights campaigns), and what Allan Rosas calls “a global culture” may assist actors to “internalize” human rights norms and foster rule-following values.<sup>3</sup> It remains a fact that in the area of international cooperation, international norms have so far been effectively developed and implemented primarily through consensual not authoritative or coercive processes. Due to the largely voluntaristic and “soft” nature of international law and norms, a

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<sup>2</sup> Bull, H., *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977) at 54.

<sup>3</sup> Rosas, A., “State Sovereignty and Human Rights: Toward a Global Constitutional Project” (1995) 43 *Political Studies* 61, at 73.

“compliance analysis” is insufficient as the sole paradigm for assessing their effectiveness. Such an analysis:

*fits more comfortably into a discussion of imposed norms than it does into the kinds of consensually reached norms with which the international normative system is primarily concerned.*<sup>4</sup>

In all of this, the implications of international norms for policy need to be better understood. International human rights norms constrain and provide motivation for state and non-state actors alike without “coercing” or “cajoling” compliance. More case studies such as the one embarked on here, need to be carried out in order to bring out the other more subtle ways in which IHIs can make a difference on the work of non-state actors. That having been said, IHIs and IHI norms continue to be of influence on the work of CSGs in Sierra Leone, and as the obstacles to such deployment are removed, IHIs are becoming more useful to human rights campaigns in Sierra Leone.

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<sup>4</sup> Bilder, R., “Beyond Compliance: Helping Nations Cooperate” in Shelton, D., ed., *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (New York: Oxford University Press, 2000) at 66.



## **APPENDIX**

### **GLOSSARY I: CSGS AND IHIS INCLUDED IN THE CASE STUDY**

#### **CIVIL SOCIETY GROUPS:**

- The Campaign for Good Governance
- The Forum of Conscience
- The Lawyers' Centre for Legal Assistance
- The Council of Churches in Sierra Leone
- The Women's' Forum
- The Network Movement for Justice and Development
- Amnesty International (Sierra Leone Section)
- The National Forum for Human Rights

#### **INTERNATIONAL HUMAN RIGHTS INSTITUTIONS:**

##### **Treaties and Conventions:**

- International Covenant on Civil and Political Rights (ICCPR)
- The First Optional Protocol to the International Covenant on Civil and Political Rights (First Optional Protocol to the ICCPR),
- The Second Optional Protocol to the International Covenant on Civil and Political Rights on the Abolition of the Death Penalty (Second Optional Protocol to the ICCPR),
- International Covenant on Economic Social and Cultural Rights (ICESCR)
- United Nations Convention on the Rights of the Child (CRC)
- The Optional Protocol to the United Nations Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
- United Nations Convention on the Elimination of Discrimination Against Women (CEDAW)

- The Optional Protocol to the United Nations Convention on the Elimination of Discrimination Against Women (Optional Protocol to CEDAW)
- United Nations Convention Against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (CAT)
- African Charter on Human and Peoples' Rights
- African Charter on the Rights and Welfare of the Child
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- The Universal Declaration of Human Rights (UDH)
- The United Nations Charter

**Monitoring Bodies:**

- United Nations Human Rights Committee
- United Nations Committee on Economic Social and Cultural Rights
- United Nations Committee on the Rights of the Child
- United Nations Committee on the Elimination of Discrimination Against Women
- United Nations Committee Against Torture
- United Nations Commission on Human Rights.
- African Commission on Human and Peoples' Rights.

**Domestic Legislation:**

- Constitution of Sierra Leone (Act No. 6) 1991
- Relevant Sierra Leone Legislation.

## GLOSSARY II

### DEFINITION OF KEY CONCEPTS AND LIST OF ACRONYMS

#### **DEFINITION OF KEY CONCEPTS:**

For the purposes of this case study, the following terms/concepts are used as defined:

1. International Human Rights Institutions: This term is used in the sense in which O. Okafor uses it in his manuscript, *The Domestic Promise of the African Human Rights System: International Institutions, Popular Forces and the Possibility of Correspondence*.<sup>1</sup> In that sense, it encompasses not only treaties and international courts but also international human rights regimes. It also encompasses the bodies and mechanisms that monitor adherence-by state as well as non-state actors-to regime norms and goals.
2. Regimes: I use this term as Stephen D. Krasner uses it.<sup>2</sup> According to Krasner: “Regimes can be defined as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations”. Levy et al also define regimes as<sup>3</sup> social institutions that influence the behavior of states and their subjects. They consist of informal and formalized principles and norms, as well as specific rules, procedures and programs. The term is explicitly broad and captures the unwritten understandings and relationships, as well as the formal legal agreements, that influence how states and individuals behave in any given issue area.

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<sup>1</sup> Forthcoming, 2005.

<sup>2</sup> “Structural Causes and Regime Consequence: Regimes as Intervening Variables”; in Krasner, ed., *International Regimes* (Ithaca: Cornell University Press, 1983).

<sup>3</sup> Levy, Marc A, Oran R and Zuran, M., “The Study of International Regimes” (1995) 1 *European Journal of International Relations* 267

3. Civil Society: This term is used in the same sense G. A Christenson<sup>4</sup> used it i.e. that part of society (including capital market systems and human rights movements) which is not the state and which holds ruling elites to account in their governance of the state. For Robert W. Cox<sup>5</sup>, “civil society is now usually understood to refer to the realm of autonomous group action distinct from both corporate power and the state...civil society has become the comprehensive term for various ways in which people express collective wills independently of (and often in opposition to) established power, both economic and political”. My use of the term civil society in this case study is inclusive of human rights NGOs, women’s groups and religious groups.

**LIST OF ACRONYMS:**

<b>AFA</b>	ALLIANCES FOR AFRICA
<b>AFRC</b>	ARMED FORCES REVOLUTIONARY COUNCIL
<b>AI (SL)</b>	AMNESTY INTERNATIONAL (SIERRA LEONE SECTION)
<b>APC</b>	ALL PEOPLES’ CONGRESS
<b>CCSL</b>	COUNCIL OF CHURCHES IN SIERRA LEONE
<b>CDF</b>	CIVIL DEFENCE FORCES
<b>CEDAW</b>	UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
<b>CGG</b>	CAMPAIGN FOR GOOD GOVERNANCE

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<sup>4</sup> Christenson, GA., “World Civil Society and the International Rule of Law” (1997) 19 Human Rights Quarterly 724

<sup>5</sup> Cox, R.W., “Civil Society at the Turn of the Millennium: Prospects for an Alternative World Order” (1999) 25 Review of International Studies 3

<b>COJA</b>	COALITION FOR JUSTICE AND ACCOUNTABILITY
<b>CRC</b>	UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD
<b>CRIVMON</b>	CHILD RIGHTS VIOLATIONS MONITORING NETWORK
<b>CSGS</b>	CIVIL SOCIETY GROUPS
<b>DAW</b>	UNITED NATIONS DIVISION FOR THE ADVANCEMENT OF WOMEN
<b>DFID</b>	BRITISH DEPARTMENT FOR INTERNATIONAL DEVELOPMENT
<b>FGM</b>	FEMALE GENITAL MUTILATION
<b>FOC</b>	FORUM OF CONSCIENCE
<b>FSU</b>	FAMILY SUPPORT UNIT
<b>GAD</b>	GENDER AND DEVELOPMENT
<b>GPMS</b>	GENDER PROMOTION MOVEMENTS
<b>ICCPR</b>	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
<b>ICESCR</b>	INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS
<b>IHRIS</b>	INTERNATIONAL HUMAN RIGHTS INSTITUTIONS
<b>INTERIGHTS</b>	INTERNATIONAL CENTRE FOR THE LEGAL PROTECTION OF HUMAN RIGHTS
<b>LAWCLA</b>	LAWYERS' CENTRE FOR LEGAL ASSISTANCE
<b>NACWAC</b>	NATIONAL COMMISSION FOR WAR AFFECTED CHILDREN
<b>NCPPRC</b>	NATIONAL COALITION FOR THE PROTECTION AND PROMOTION OF THE RIGHTS OF THE CHILD

<b>NFHR</b>	NATIONAL FORUM FOR HUMAN RIGHTS
<b>NGOS</b>	NON GOVERNMENTAL ORGANIZATIONS
<b>NMJD</b>	NETWORK MOVEMENT FOR JUSTICE AND DEVELOPMENT
<b>NPRC</b>	NATIONAL PROVISIONAL RULING COUNCIL
<b>OHCHR</b>	OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS
<b>PFA</b>	BEIJING PLATFORM FOR ACTION
<b>PINS</b>	PRINCIPLED ISSUE NETWORKS
<b>RUF</b>	REVOLUTIONARY UNITED FRONT
<b>SCSL</b>	SPECIAL COURT FOR SIERRA LEONE
<b>SLA</b>	SIERRA LEONE ARMY
<b>SLPP</b>	SIERRA LEONE PEOPLES' PARTY
<b>TANS</b>	TRANSNATIONAL ADVOCACY NETWORKS
<b>TRC</b>	TRUTH AND RECONCILIATION COMMISSION
<b>UDH</b>	UNIVERSAL DECLARATION OF HUMAN RIGHTS
<b>UNAMSIL</b>	UNITED NATIONS MISSION IN SIERRA LEONE
<b>UNICEF</b>	UNITED NATIONS CHILDRENS FUND
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