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**Juvenile Justice in Sierra Leone: A Qualitative Study of
Criminal and Customary Law**

2021

Pauline Veronica O'Dwyer

This thesis is submitted in partial fulfilment of the Doctor of
Philosophy's requirements at Birkbeck, University of London.

Declaration

I, Pauline Veronica O'Dwyer make this declaration that the work presented in this thesis is entirely my own except where referenced in the text and bibliography. The copyright of this thesis rests with the author. Quotation from it is allowed, provided acknowledgement is made.

Acknowledgements

It has been a privilege to be supervised by someone who is considerate, witty and possesses vast knowledge in so many disciplines; this goes to my supervisor, Professor Karen Wells, who took me under her wings on the epic journey of completing the thesis. In addition, acknowledgement goes to my second supervisor Professor Bill Bowring, for his support. Finally, I am also grateful to Pa Momo Fofanah, my pupil (former) master at Edrina Chambers, Sierra Leone, for his insights and unstinted support. Special thanks go to all participants of this study especially, the staff at the Ministry of Gender, Youth and Children Affairs in Sierra Leone, in particular, the permanent secretary (former) Mr Foh, the staff at the Remand home in Freetown, Mr Rogers, Principal (retired), at the Approved school and Justice Bah (Sierra Leone Judiciary).

Many thanks to my two beautiful children, Shakeela and Amilcar Brown. To Amilcar, who had accompanied me to Sierra Leone as part of the study, where he endured mosquito bites, bouts of malaria and missed his creature comforts as well as close friends in the U.K. To Shakeela, for having to endure the lonely days of my absence, motherly love, as well as having to deal with important issues and holding the fort in my absence.

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Abstract

This thesis explores and accounts for the gap between the architecture of the law and its actual practice in Sierra Leone's juvenile justice system, under its criminal and customary law systems. The research is a qualitative study of Sierra Leone's justice systems, legal training and juvenile justice practice. The fieldwork was conducted in Freetown and Lunsar from June 2012 to June 2017. The data was analysed using grounded theory. The thesis identifies that both customary and criminal legal systems limit access to justice for children. While there is an explicit juvenile justice system in Sierra Leone that forms part of the criminal law, its practice is arbitrary and often informal.

In customary law, this research shows that most relevant professionals regard customary law concerning child offenders as only applying to adults. However, in rural areas, paramount chiefs and sub-section chiefs do in practice adjudicate on juvenile justice.

The analysis of the data for this thesis shows that a child's culpability also hinges on what I refer to as 'social culpability'. This concept captures the importance of social networks and social capital in the practice of juvenile justice. These include a child offender's status, especially their socio-economic position; the locality where the offence was committed; the patron and client relationships they are embedded in; the strength of their family ties; and how others perceive the child's character. These are characteristics that are interwoven within the social culpability concept. A child offender who lacks such social networks and social capital is rendered socially culpable, and it is this, more than their actual legal offence, that shapes their encounter with the law. Therefore, however robust the legal framework of juvenile justice in Sierra Leone is, the practice is weak, and children have to leverage various other systems to secure justice or liberty.

Dedication

I dedicate this thesis to Sierra Leone's children in conflict with the law; my father, Francis Dominic O'Dwyer and my late mother, Yamaila Sillah. If she were here with us, she would have been profoundly proud of me, not least my two lovely children Shakeela Brown and Amilcar Brown.

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List of Abbreviations, Rules and Policies

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
Beijing Rules	UN Standard Minimum Rules for the Administration of Juvenile Justice
CEDAW	Committee on the Elimination of Discrimination against Women
CoE	Council of Europe
CRHR 2018	Country Report on Human Rights (2018)
DDR	Disarmament, Demobilisation and Reintegration
DCI	Defence for Children International
DCI-SL	Defence for Children International – Sierra Leone
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FGM	Female Genital Mutilation
FSU	Family Support Unit
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights, 1976
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1976
LOAC	The Law of Armed Conflict
MACR	Minimum age for criminal responsibility
MSWGCA	Ministry of Social Welfare, Gender and Children’s Affairs
NCC	National Children’s Commission (of Sierra Leone)
NCJS	National Child Justice Strategy
NCP	The National Children’s Policy, 2006
NGOs	Non-Governmental Organisations
OPAC	The Optional Protocol to the Convention on the Rights of the child on the involvement of children in armed conflict
OPE3 2010	The Third Optional Protocol to the International Convention on the Right of the Child
PC	Paramount Chief
PHC 2015	Sierra Leone Population and Housing Census, 2015
SCSL	Special Court for Sierra Leone
SLP	Sierra Leone Police

SLLS	Sierra Leone Law School
TRC	Truth and Reconciliation Commission of Sierra Leone
UDHR	Universal Declaration of Human Rights
UN	The United Nations
UNCRC	The United Nations Convention on the Rights of the Child
UN Committee	United Nations Committee on the Rights of the Child
UNICEF	United Nations Children's Fund
UNIPSIL	United Nations Integrated Peacebuilding Office in Sierra Leone

CHAPTER ONE

INTRODUCTION AND SCOPE OF THE STUDY

1.1. Introduction

Although children's legal rights are embedded in national and international law, it is less understood how these rights are shaped in practice, particularly in countries in the Global South. This research contributes to that knowledge through a qualitative study of juvenile justice in Sierra Leone. The research examines how the process of justice for juveniles and its practices are being adjudicated through criminal and customary law, together with how international law has been incorporated into Sierra Leone's juvenile law since the war in 2002.

This chapter starts with Sierra Leone's background and discusses its population size, origins of its legal system, political history and human development ranking. This is followed by an account of youth and the civil war, which illustrates how the discourse of children's rights was one of the tools used by international human rights partners to rebuild the country after the devastation of the 1991 civil war. The topic of youth and war further illustrates the types of criminal concepts that shape the criminal justice system in Sierra Leone. That discussion is then followed by the research's objective, which is subdivided into the research's purpose and rationale alongside chapters that summarise the thesis. In conclusion, I set out the main arguments of the thesis about the juvenile justice system in Sierra Leone, that is, although the juvenile justice system in the country is codified, it is unsystematic, arbitrary, and challenging for children in conflict with the law and the decision-makers advocating juvenile justice. While the legal framework is good, the practice is weak, and the operation of juvenile justice is entirely dependent on who you know and how others perceive the child's character.

1.1.1. Background of Sierra Leone

Sierra Leone was a former British West African colony from 1787 to 1961 (Enria, 2018). It is a small country of 71,740 km² (27 699 sq. miles), more or less the same size as Scotland (Harris, 2014). Sierra Leone is one of the smallest countries on Africa's West Coast (Jha, 2014). Administratively, Sierra Leone is organised into 16 districts and divided into four regions: Western province, Northern province, Southern province, and Eastern

province (Sierra Leone Population and Housing Census, 2015 - PHC 2015 - in Statistics Sierra Leone 2016).

In Sierra Leone, there are 18 ethnic/tribal groups with 190 chiefdoms¹, each with its own traditions which generate variations in customary law from chiefdom to chiefdom. Although districts and chiefdoms have two distinct names in this study, they mean the same thing as regions (Alemika et al., 2009; Brooke, 1953; Fanthorpe and Maconachie, 2010). The largest ethnic groups are Temnes (35%) and Mendes (31%) (World Population Review, 2019). Creoles/Krios account for only 1% of the population (United Kingdom: Home Office, Country of Origin Information Key Documents: Sierra Leone, 14 January 2010), but Krio is the lingua franca of the country and is spoken by 97% of Sierra Leoneans (Camara, 2020).

Sierra Leone has a population of over seven million, of which about three-fifths (59.0%) live in the rural areas, and two-fifths (41.0%) live in the urban areas (PHC, 2015). The PHC (2015) shows that about 41% of the population is under 15 years old; persons aged 0-9 years constitute nearly 29%, and persons aged 10 to 19 years are considered as adolescents and constitute 24.4% of the total national population (Forson and Yalancy, 2017).

Sierra Leone's operation of formal law can be traced to British colonial rule over the whole of Sierra Leone from 1896 to 1961 (Brooke, 1953; Cartwright, 1978; Fanthorpe, 1998, 2001, 2006). In 1895, British colonial rulers divided the country into two: the western area (colony) and the hinterlands, also known as the protectorate or rural area (Acemoglu et al., 2014; Albrecht, 2017). The latter consists of the north, south and eastern parts of the country. However, since 1884 commissioners had been appointed by the British authorities to travel to the protectorate based on mutual consent and voluntary compliance with the indigenous people. A police body was set up to provide services in the protectorate in 1890 (Brooke, 1953). In contemporary Sierra Leone, the Inspector-General of police is appointed by the head of state (s157 of 1991 Constitution of Sierra Leone).

The British applied a two-tiered governance system. The first was the general law often called the formal system (Maru, 2006), which now includes the Constitution and laws of Parliament and British common law. The other legal system is the informal system:

¹before 2017, there were 149 chiefdoms

customary or traditional law (the terms are used interchangeably). Both laws operate concurrently (Corradi, 2010). Under the British colonial government, there was a sharp political divide between the western area and the protectorate. An elected local government governed the western area with the British Governor representing the monarchy. While the rest of the country was governed by indirect rule – traditional leaders called paramount chiefs were appointed by the state (British) to collect revenues, maintain law and order, and resolve local disputes (Srivastava and Larizza, 2011).

Bangura and Ganji (2009) say the law in Sierra Leone comprises commitments to maintaining cultural practices and norms in a particular region and British legal institutions' legacy. The customary law provides a means of mediating social and economic conflicts between the tribes. However, during the colonial period, both the general and traditional law systems were opened to discrimination and abuse from British officials. Colonialism in Sierra Leone created societal divisions between the different ethnic groups or tribes and competition for chieftaincy lineages (Acemoglu et al., 2014). The British applied 'divide-and-rule policies' in their colonies (Ray, 2018:367) as a strategy to secure local stability by devising rules to recognise leading families who were permitted to be put forward as candidates for paramount chiefs in each chiefdom (Albrecht, 2017). However, such policies were prone to 'inter-communal violence' (Ray, 2018:367), as shown in the divide between rural and non-rural in Sierra Leone. The exclusive right for chiefs to rule in Sierra Leone's rural areas (Acemoglu et al., 2014) is a colonial heritage that has, for example, restricted youths from holding positions of power. This exclusion was one feature that accounted for youth involvement in the 1991 civil war (Enria, 2018; Fanthorpe and Maconachie, 2010; Richards, 1996).

Sierra Leone's dual legal systems (formal and informal) were also documented in Brooke's report in 1952. The British colonial government appointed Brooke to investigate the informal system, which is made up of the native court system in the protectorate and natives.

Brooke (1953) based his report on visits to Makeni, Kambia, Port Loko and Lunsar towns in the northern region, Bo in the southern region and Kenema in the eastern region. Bangura and Ganji (2009) posit that judicial governance of the formal and informal systems in a post-colonial state as Sierra Leone offers a practical way to allow regions to resolve disputes amongst themselves and be regulated by a higher authority. For example,

customary law is governed by statutory provisions and decisions of paramount chiefs and members of local communities.

Since independence in 1961, Sierra Leone has had a long period of stable government dominated by two main parties: The Sierra Leone People's Party (SLPP) and the All People's Congress (APC) (Cartwright, 1978). The long period of stability was briefly interrupted by military coups, including Brigadier David Lansana's coup in 1967. Within 48 hours of Lansana's coup, Colonel Andrew T. Juxon-Smith overthrew Lansana, formed the National Reformation Council (NRC) and ruled until 1968 (Cartwright, 1978). The APC governed from 1968 to 1992 when another coup by the National Provisional Ruling Council (NPRC) overthrew the APC. The NPRC ruled from 1992 to 1996. The SLPP won the election of 1996 but the government was deposed by the Armed Forces Revolutionary Council (AFRC) in 1997. However, the SLPP government was reinstated in 1998 and won the elections of 2002 (Keen, 2005). There were elections in 2007, which the APC won. APC won again in 2012. The SLPP won the most recent elections on 4 April 2018 with Julius Maada Bio, a former military head of state of the NPRC government.

Sierra Leone ranks low in the Human Development Index – 182 out of 189 countries in 2019 (Human Development Report, 2020). Sierra Leone benefited from humanitarian aid during and after the civil war (see chapter 2). For example, the European Union's intervention plan, including the United Nations with the British military's collaboration allocated €11 million to help end the civil war (Albrecht, 2010; Chege, 2002), in which Sierra Leonean youths were active participants.

1.1.2. Youth and Sierra Leone's Civil War

During the Sierra Leone civil war (March 1991 to January 2002), 50,000 people were killed, and about one million of the population were displaced (Human Rights Watch, 1999). Children were particularly affected as about 6,845 were recruited to fight as child combatants (Becker, 2004). In a country where over 41 per cent of the population were under 15 years, this figure may seem relatively small, but because of children's extreme violence towards citizens, Sierra Leone's civil war became synonymous with child soldiers (Denov 2010; Hoffman, 2003).

In the post-conflict settlement, children's rights and juvenile justice gained increased attention from policymakers, development partners, and non-government organisations (Millar, 2011; Shepler, 2005). Such recognition was marked by the

enactment of legislation and the development of child justice specific policies. For example, the Child Rights Act, 2007 was enacted along with three acts addressing gender inequality and violence: The Domestic Violence Act, 2007; the Devolution of Estates Act 2007; and the Registration of Customary Marriage and Divorce Act 2007 (all aimed at furthering justice for women). Further, the National Child Justice Strategy for Sierra Leone (2006) was developed to strengthen the justice system. This was an attempt by juvenile justice policymakers to bring domestic legislation in line with international legal standards (Albrecht, 2010).

This study's fieldwork, Rachel Harvey's study (2000) for Defence for Children International (DCI), and Ashley Audet's study for DCI in 2010 have highlighted that children in conflict with the law in Sierra Leone continue to face inconsistencies between state policies and procedures and the implementation of the law in practice. For instance, studies conducted by Defence for Children-Sierra Leone (DCI-SL) in 2012, 2015, and 2016 provide statistics concerning DCI-SL's socio-legal support to children in conflict with the law. In 2012, DCI-SL removed 300 children from prisons, remand homes, and police cells and reintegrated them into the community. In 2015, DCI-SL provided socio-legal support to 1,553 child offenders. Eighty-one per cent were diverted away from pre-trial detention; 95% of the cases were closed due to acquittal, discharge or release. In 2016, DCI-SL provided socio-legal support to 785 child offenders. Of these children, 675 escaped pre-trial detention, and 98% were acquitted or discharged.

The Sierra Leone Truth and Reconciliation Commission (2004:343) stated that the youths constituted 45% of Sierra Leone's population of 4.5 million in 2003 (Sierra Leone National Youth Policy, 30 June 2003).² Youths are defined in Sierra Leone's National Youth Policy as people between the ages of 15 and 35 years (Sierra Leone's National Youth Policy, 30 June 2003:3).³ In 2014, it was stated in the National Youth Programme - 2014-18 that the youth population of 15 to 35-year-olds was 1.7 million or 35% of the estimated population, and that 42% of the Sierra Leonean population was under 15 years. Therefore, over 75% of the country's population was less than 35 years old.

It was recorded, amongst other things, that the government of Sierra Leone was failing the youths in tertiary education and that most youths are unable to provide for

² in National Youth Programme 2014-18

³ in National Youth Programme 2014-18

themselves (National Youth Programme, 2014-2018). Extending the age of youths to 35 years may result in side-lining youths in the political process as they are assumed to be too young or inexperienced to be involved in governance. This is particularly so in Sierra Leone, where youths are often considered troublemakers and are marginalised in decision-making processes, especially politics (Gberie, 2005; Shepler, 2005; Truth and Reconciliation Commission (TRC), 2004). Louisa Enria's (2015, 2018) study of youths in Freetown shows how their participation in political unrest reduces their employment opportunities.

The significantly high youth population in Sierra Leone has been cited as a youth crisis and a characteristic contributing to past conflicts, the civil war and the possibility of a future civil conflict (Keen, 2005). For example, due to the high unemployment of urban youths, they are often marginalised, excluded and criminalised by state policymakers (Enria, 2012). In the past, they are thought to have 'swelled the ranks of the rebel forces' (Enria, 2012:51) and posed a security risk (Enria, 2015). The youths have been used as a vehicle for changing the political landscape. Politicians exploit them (Enria, 2012), as seen in their role in the 1969-1970 elections in intimidating the opposition party, the SLPP. The 1970s onwards show that youths at some point served as the only opposition to the one-party state of the APC. Still, they were also used by politicians to influence the 'outcome of elections and combating anti-government demonstrations' (TRC, 2004:343). Therefore, it is not surprising that former President Ernest Koroma held on to the role of 'Chairman and leader for life' in the APC because his party's youth wing elected him in 2017. However, youth also played a key role in post-war reconstruction (Fanthorpe and Maconachie, 2010).

In Sierra Leone's post-war reconstruction (see chapter 2), youth justice took the form of the Disarmament, Demobilisation and Reintegration (DDR) programme. This involved both adult and child soldiers that fought in the civil war (Archibald and Richards, 2002; Coulter, 2005, 2008, 2009). The DDR also focused on communities and individuals affected by the war in addressing the breakdown of social, economic and physical infrastructure. Roads, hospitals, schools, and commercial enterprises were all destroyed during the war. Further, communities were disintegrated with livelihoods destroyed, and the economy stagnated. The signing of the Lomé peace accord in 1999 (between the Government of Sierra Leone and the Revolutionary United Front - RUF) and the DDR's

programme-launching enabled a pathway for a ceasefire in Sierra Leone's war (Mazurana and Carlson, 2004). This helped to end one of the most brutal civil wars of the twentieth century.

Following the end of the war, the Ministry of Social Welfare Gender and Children's Affairs (MSWGCA) set up the National Children's Policy, 2006 (NCP 2006). The NCP 2006 was an overarching framework for stakeholders to promote the principle of the child's best interests to achieve the survival, development, participation, and protection for every child within Sierra Leone (African Union (AU), 2017). The gains from the NCP 2006 culminated in the Child Rights Act 2007 (CRA 2007) to further address all matters affecting children in Sierra Leone. The CRA (2007) did not define youth but defined a young person under section 2 as a person aged between 18 years and 25 years. The CRA (2007) requires that all government officials charged with protecting children should protect them from abuse. It has been recognised that the CRA (2007) codified several necessary measures such as dual prevention and the response mandate at the community level regarding child welfare communities. Also, age assessment guidelines concerning children in contact with the law were set up in 2009 (Zombo, 2015; CRC/c/SLE/3-5). One of the key concerns in setting up the guidelines was that young people should not continue to face the criminal justice system without the means of correctly determining their age, such as birth certificates. However, despite all of these improvements, such as the child protection policy and legal framework, youth justice did not significantly improve. It has been made worse by poverty, which remains a significant problem in providing infrastructure and implementing policies facing children in Sierra Leone.

1.2 The Objective of the Research

1.2.1 Research Purpose

The purpose of this research is to understand how the process of justice for young persons is being adjudicated through the criminal and customary law systems in Sierra Leone. This study compares the two systems, the meaning of being a juvenile and their administration in these legal systems, the intersection between law and welfare, and whether juvenile justice has continued to collapse post-war.

1.2.2. Aim of the thesis

There has been little research on juvenile justice in Sierra Leone. This subject has been researched mainly with reference to child soldiers who were both perpetrators and victims during the war. However, recently, Defence for Children International-Sierra Leone (DCI-SL) has started to gather some data relating to children during and after the war concerning juvenile justice in the country. There is a gap in the comparison between customary and criminal law with juvenile justice, supported by Rachel Harvey's report of Defence for Children International (DCI) 2000. Harvey's report states that crimes and misdemeanours perpetrated by juveniles do not reach the court but are dealt with between the parties or by customary law. DCI (2000) noted that juvenile justice collapsed during the war and in the immediate post-war period. However, that report is now two decades old. Therefore, this study attempts to address several gaps in the existing research - firstly, in contributing to the qualitative data and the intersection between childhood studies and socio-legal studies; secondly, in addressing whether post-war recovery succeeded in improving juvenile justice and theorising juvenile justice practice in Sierra Leone.

After the civil war ended in 2002, several countries were involved in Sierra Leone's post-war reconstruction. For example, Britain contributed \$120 million towards Sierra Leone's security institutions and the justice system (Chege, 2002). There was an emphasis on rehabilitation programmes due to the youths' position as perpetrators and victims (Peters and Richards, 1998). Despite eleven years of post-war reconstruction, the judiciary was classed in 2013 as the most corrupt institution in Sierra Leone (Transparency International, 2013).

Many academic studies (Archibald and Richards, 2002; Coulter, 2005; Shepler, 2012, 2015) have revealed the atrocities caused by children during the Sierra Leone civil war. As a trained lawyer (solicitor) in the UK and a national of Sierra Leone, I was interested in how children were treated under the juvenile justice system. In particular, I wanted to know if the rule of law had been upheld in the aftermath of the country's civil war and whether the Child Rights Act 2007 (CRA, 2007) has effectively addressed issues of juvenile justice in the country. The study aims, amongst other things, to evaluate the influence of international law (such as the UNCRC) on the CRA 2007, especially about a juvenile's criminal culpability and the adjudication of juvenile justice.

We already know that juvenile justice in Sierra Leone involves in principle a formal justice criminal system practised alongside a customary uncodified system. We do not know how juvenile justice is practised in Sierra Leone in customary and criminal law, particularly the separation or the overlap of the law concerning juvenile justice. This study shows that in practice, both legal systems are arbitrary and chaotic. Further, this research's findings show that marginalised youth who lack strong networks find it difficult to access justice and education and work.

1.2.3. Structure of the thesis

Following this introduction are the literature review and methodology chapters (chapters 2 and 3). In the subsequent chapters, the thesis aims to investigate the impact of international law on juvenile justice (chapter 4), the architecture of juvenile justice in criminal law (chapter 5), the practice of juvenile justice in criminal law (chapter 6) and the relationship between juvenile justice and customary law (chapter 7). In the final chapter, I set out my conclusions. This research has found that critical to whether the courts determine if a child was culpable for their actions was a whole range of extra-judicial assessments about their social networks, disposition, and mode of dress that I call 'social culpability'. Critical to whether children would be released from the juvenile justice system when they commit an offence is the adjudicator's (social worker, police officer, magistrate/judge) perception of the child's character as a 'good' child or a 'bad' child. It might mean not being perceived as a bad child, regardless of their criminal actions, if they come from a good family, they had good connections, or were pitied. Under customary law, there are no (practical) legal provisions relating to juvenile justice. This research shows that most relevant professionals regard customary law as only applying to adults but that chiefs deal with juvenile justice in practice.

Chapter four is about international law and juvenile justice which shows that the early origins of international law concerning Africa can be found in the attempt to justify colonialism by allied powers in 1884-1885 at the Conference of Berlin. The latter is also known as the 'Scramble for Africa,' which was the high point of the partitioning of Africa by major European powers and the USA (Fourie, 2015). The origin of juvenile justice is marked by the Progressive era in the USA (1890-1920), establishing a separate juvenile justice system in Illinois in 1899 (Platt, 1977; Platt, 2009).

In 1924, Eglantyne Jebb's first Declaration of the Rights of the Child was adopted by the League of Nations (Marshall, 1999). The 1959 Declaration expanded the rights of children. It provided the foundations of two principles of human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the Economic, Social and Cultural Rights (ESCR). These covenants are classed as hard law and are binding on member states. The ICCPR provides important provisions and seeks to protect the due process of juveniles. Further legal provisions relating to children in conflict with the law at international level have culminated in provisions such as the Beijing Rules, Havana Rules and Riyadh Guidelines and the United Nations Convention on the Rights of the Child 1989 (UNCRC). The UNCRC and the three sets of provisions (Beijing rules, Havana Rules and Riyadh Guidelines) provide guidelines including processes in the treatment of juveniles in both institutional and non-institutional matters relating to their investigation, prosecution, adjudication, disposition, and rehabilitation at international level. The Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines 1997) also extends rights to children in conflict with the law internationally.

At the regional level, the African Charter on the Rights and Welfare of the Child (ACRWC) is the primary instrument supporting African children's rights. The chapter (chapter 4) shows that international law has been instrumental in widening children's rights globally, which have not been implemented in many national contexts. There is the recognition of Sierra Leone's Government's (GoSL) compliance with most international laws, such as its ratification of international treaties and its adoption of relevant policies concerning children. Chapter 4 also shows that the UNCRC and the ACRWC were domesticated into Sierra Leone law through the Child Rights Act 2007. However, I would argue that only certain aspects of these two were incorporated into Sierra Leone law. The primary law addressing juvenile justice is still the British colonial law, the Children and Young Persons Act, 1945, known as Cap 44, used in the investigation, prosecution, adjudication, disposition, and rehabilitation of children in conflict with the law. The international framework regulating juvenile justice under the UNCRC has not been incorporated into Sierra Leone's law. Hence, for this reason, although the CRA 2007 is a recent law, it does not explicitly address juvenile administration even though the law applies to children generally.

Chapter five shows how Sierra Leone's general principles of criminal law are shared with English law owing to its colonial heritage. Sierra Leone has been practising a common law system as in England since 1st January 1880. The difference in the legal system between Sierra Leone and England is that Sierra Leone's Constitution is the primary law of the land. To help ascertain whether children are guilty of a criminal offence is an underpinning of general criminal law principles. The harm principle, for example, is considered a fundamental ethic in maintaining moral neutrality in adjudicating whether a moral wrong is also a legal wrong and ensuring the state serves its citizens' interests rather than its own interests. The principles of criminal law require that to be answerable for an offence, the individual must be found to have acted and done so with full understanding. In other words, the act could have been done intentionally, recklessly or negligently, and in so doing, he or she has caused a morally wrong outcome.

The issue of moral culpability/responsibility hinges on the individual's rationality and autonomy (Soares, 2003). If the individual controls their bodily actions, they are autonomous: they have the free will to act even if it is not entirely free. For example, if someone is insane, they will have a defence, as they would be held not to have had the free will to have committed the offence due to their insanity. Michael Moore (1985) refers to insanity, infancy, and intoxication as status excuses as they concern the accused's general status and not his state of mind when the offence was committed. The concept of an individual's rationality and autonomy is relevant to the parameters of juvenile justice. For example, a child in conflict with the law can be considered to be irrational in a similar way to a person who pleads insanity as a defence. However, the age of criminal culpability for children is not applied universally since each country sets out what age they consider a child to be criminally culpable.

The practice of criminal law and juvenile justice is the focus of chapter six. It is divided into four sections: constructions of a child; corruption; networks; funding; and other factors. The chapter outlines the idea that social construction plays an essential role in Sierra Leone's juvenile justice system. It shows how perceptions of whether a child's innately good character or not shapes the outcome for that child when he/she is in contact with the law. In this study, perceptions of whether child offenders in Sierra Leone are culpable or not depend on whether they are perceived as good or bad children. In other words, and as this study reveals, a good child is considered incapable of committing an

offence and, conversely, a bad/evil child is deemed incapable of innocence or redemption. A child perceived as a bad child will be seen as irredeemable and accountable for their actions.

The civil war in 1991 has helped to re-emphasise the notions that there are good and bad children in Sierra Leone. Where a child is seen as a good child despite having been alleged to have committed an offence, the child can be let off lightly as opposed to where a child is seen as a bad child. A child's culpability is also linked to whether the child is poor or has good networks such as patrons and family support when he/she is charged with an offence. The findings show that there are corrupt practices by officers handling juvenile matters. For example, there are inconsistencies in the treatment of juveniles from their first contact with the law through to investigation, especially where a child lacks good networks, funding, and legal representation. It should be recognised that resolving matters informally is not necessarily a bad or corrupt practice. On the contrary, it is a practice that the courts encourage for the parties to settle disputes amicably and that the court should be the last resort.

Additionally, juveniles' multiple adjournments and prolonged stay at Remand centres/homes hinder their administration from being tried expediently, which is a requirement of international law. There are juvenile cases sent to prison due to a lack of means in ascertaining their correct age. Facilities available at the Remand homes and the Approved School are inadequate. Children released have no rehabilitation programmes or state institutions to go to, especially those that have been rejected by their families and communities. Therefore, this study's findings show there are two types of culpability concerning child offenders and their administration in the juvenile justice system in Sierra Leone. The first is criminal culpability, and the other is social culpability. Criminal culpability concerns legal rules associated with the administration of juvenile justice. The CRA 2007 stipulates 14 years as the age of criminal culpability, but this study shows that ten years is also used to determine a child's age for criminal culpability.

In contrast, social culpability arises for those children with weak social networks and, consequently, very limited or no social capital. Knowledge about children's social networks is closely linked to moral judgments about the child and, specifically, whether they are perceived to be good or bad. Social capital concerns resources, such as financial support but also social support that a child can access through these networks.

Chapter seven on customary law and juvenile justice in Sierra Leone shows that the customary court structure consists of two local levels viz., the first local level and second local level. The first level shows that paramount chiefs are represented at the District and Town Councils and are also members of ward committees. It shows that paramount chiefs can hear cases directly or through their representative members. The second level consists of the local courts headed by court chairmen and appointed by the Chief Justice through the recommendation of a paramount chief and others in a committee. Customary law officers oversee the local courts and report to the Chief Justice. Appeals of a local court can be heard by the magistrates' court and could follow up with the Supreme Court.

The CRA 2007 makes further provisions for conciliatory processes to settle minor disputes concerning child offenders. But these are not as effective as they are yet to be implemented. Therefore, the customary formal processes are those that are provided for in legislation and other legal documents. By contrast, the informal customary system consists of laws and customs that are unwritten. Nevertheless, what is clear from the written and unwritten rules is that there is no juvenile justice in Sierra Leone's customary law, and customary law varies from region to region.

The practice of customary law and juvenile justice in Sierra Leone is divided into themes of construction of customary practices, secret society, social status of a child and patrimonialism. The theme of customary practices and secret societies are linked. Cases of criminality that occur in secret societies are hardly reported. Alterman et al. (2002), Fanthorpe (2007) and Kane et al. (2005) confirmed this point that some matters are 'handled by solidarity groups called secret societies' (Corradi 2010:81).

The themes regarding a child's social status and patrimonialism are linked to financial capacity and networks. Social status is essential where a juvenile lacks a patron or is poor; children caught up in such a situation are more likely to end up at a Remand centre/home or even the state prison (Pademba Road). In customary practice, juvenile cases can be adjudicated by a paramount chief or their aides; the community can settle disputes between the parties; further, victims have an option to refer cases to the police even in a customary setting. The findings show that customary law limits access to justice for most of the population living in rural communities but more so for juveniles in rural settings where it is not very clear whether they should be tried customarily or through criminal law. In Sierra Leone, there appears to be an overlap in the law between customary and criminal

law. For example, CRA 2007 allows for a conciliatory approach in settling disputes. This is also provided for in criminal law. Also, both regulatory systems under customary and criminal law are hierarchical and confusing to the judiciary and the state. This shows a complex system with the interference of politics in the administration of justice. Furthermore, even though there are no (practical) legal provisions relating to juvenile justice (under customary law), the findings of this empirical research show that most relevant professionals regard customary law as only applying to adults when in practice chiefs deal with juvenile justice.

1.3. Conclusion

This study shows that Sierra Leone's criminal law does not adequately protect or promote the rights of juveniles. The flaws, amongst other things, include a lack of age verification, adequate legal representation, resources and incoherent administrative and judicial processes in the legislation, and the competing nature of other laws such as the Constitution and the colonial Cap 44 law. Arguably, there are no customary provisions for juvenile justice. Moreover, although Cap 44 and CRA 2007 provide an essential foundation for the juvenile justice system in Sierra Leone, continuing legislative reforms, resources and consistent state guidelines are needed to bring domestic legislation into full compliance with international legal standards. The analysis shows that the juvenile justice system in Sierra Leone, although codified in practice, is unsystematic, arbitrary and challenging for children in conflict with the law and even to decision-makers advocating juvenile justice. While there is a legal framework, the practice is poor, and the operation of juvenile justice is entirely dependent on who you know and whether or not the child is perceived to be socially culpable.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This study contributes to the growing field of research that focuses on the experiences of children and youth in Africa. It contributes to new knowledge about childhood and Africa as well as new knowledge about children's experiences in post-conflict Sierra Leone (Abdullah and Rashid, 2004; Bledsoe, 1992, 1990; Coulter, 2008; Enria, 2018; Hoechner, 2014; Mckay and Mazurana 2004; Millar, 2012; Richards, 1996; Shepler, 2005; Zolkoski and Bullock, 2012).

There is very little academic research or grey literature on juvenile justice in Sierra Leone. To the best of my knowledge, the only research explicitly dealing with the juvenile justice system is that done by Defence for Children International (DCI) and Defence for Children International – Sierra Leone (DCI –SL) (DCI, 2000, 2010; DCI-SL, 2012, 2014, 2015, 2016). There is some research on the Truth and Reconciliation Commission and the Special Court for Sierra Leone (Frulli, 2000; Jalloh, 2010; Kelsall, 2009; Millar, 2012; Shaw, 2007), which addressed the specific situation of children and youth after the war (Enria, 2018). However, none of that research discusses how the post-conflict legal systems have impacted the administration of juvenile justice in criminal and customary law in Sierra Leone.

The broader literature on juvenile justice focuses on a wide range of issues. These include the legal status of juveniles: age of maturity, gender, poverty, legal representation, the courts and juveniles, family structure concerning decisions on points of detention and disposition and a state's conformity with the UN Committee on the Rights of the Child (Putnam and Kirkpatrick, 2005). Also, criminal concepts such as retributive and rehabilitative justice mechanisms are fundamental in the administration of juveniles. A detailed discussion of this wide range of issues can be found in the main sections of this study as they are linked to the practice of juvenile justice.

In addition, some may argue that an effective juvenile justice system uses rehabilitation and reintegration methods for the administration of juvenile offenders. These methods should be the primary goal of a juvenile justice system, such as the practice in Northern Ireland (Muncie, 2011). Others, such as Lynch (2010), argue for a particular rehabilitation method, such as the restorative justice method for child offenders. This

focuses on steering the juvenile away from the formal criminal justice system through reconciliation and forgiveness between the victim and the offender, to repair the harm caused by an offence (Gade, 2013; Lynch, 2010; Wells, 2021).

South Africa's post-apartheid Truth and Reconciliation Commission (TRC) used restorative justice to heal relationships at the end of the apartheid era (Skelton, 2002, 2004). This took the form of perpetrators asking for forgiveness from their victims (Gade, 2013). Apartheid perpetrators made confessions in exchange for amnesty and forgiveness (Payne, 2004). South Africa's TRC has been influenced by the democratisation of Chile and Argentina (Williams et al., 2012) and post-Chile's *Convivencia* conflict justice approach. Chile's *Convivencia* has influenced a growing trend to adopt restorative youth justice policies. New Zealand is probably the most well-known. At the same time, Sierra Leone's own TRC was also based on restorative justice principles through public statements made by witnesses and victims of violence during the war, including children and youth (Millar, 2012, 2011). However, restorative justice has played a minimal role in the post-conflict juvenile justice system.

The impetus of the UNCRC emphasises two principles: the best interests of the child and their developing maturity. These require member states to ensure that the child's rights are fully safeguarded in a juvenile justice system. However, the informal nature of restorative justice does not guarantee that these requirements are met (Lynch, 2010). Indeed, Nessa Lynch (2010) argues that restorative justice is at odds with international standards of the child rights model because of the tensions between the formal court-based criminal justice system and the practice-led manifestation of restorative justice.

While Lynch is concerned that restorative justice might deny children the rights of due process, in Europe and the USA, there is an increasing concern about the retributive turn in juvenile justice. For example, Hamilton et al. (2016) argue that retributive measures associated with offender accountability instead of traditional principles of juvenile protection (Muncie, 2008; Pruin, 2011) have been applied by most European jurisdictions and the USA with youth offenders. England is one example of a Western country that has practised retributive justice since the 1990s by 'responsibilising' young offenders and their parents (Hamilton et al., 2016:227), through the issuing of penalty notices, for instance, to parents for non-school attendance and truancy of children (s23 of the Anti-Social Behaviour Act 2003). In principle, Sierra Leone (GoSL) has steered away from both

restorative and retributive approaches (although retributive in practice) but in practice does little to protect the welfare of children in juvenile justice.

This literature review is divided into seven sections starting with defining social capital and its relevance to the concept of social culpability. Section two is about how the dispensation of the law affects its population. Section three is about how post-conflict studies have helped to shape the de/criminalisation of child offenders. The discussion will start with the mechanisms applied for post-conflict institution building, including case studies in which such mechanisms have been applied. Section four is a continuation of the discussion on post-conflict peacebuilding mechanisms in Sierra Leone. This is followed by discussing how war has shaped post-conflict understandings of children's legal culpability within the contexts of Disarmament, Demobilization and Reintegration (DDR). Section five discusses child soldiers' culpability under international law and the Special Court for Sierra Leone. Section six is about youth and childhood studies and how categories of concern about childhood emerge mainly in the context of International Non-Government Organisations (INGOs) to help advance the notions of the intersection between childhood studies and socio-legal studies. Section seven focuses on a summary of DCI and DCI-SL reports on the juvenile justice system in Sierra Leone.

2.1 Social Capital and Social Culpability

The concept of social culpability that this thesis develops to theorise how children are managed or governed in the juvenile justice system in Sierra Leone is grounded in the literature on social capital (Bourdieu, 1986; Coleman, 1988; Putnam, 1995). Social culpability can be understood as a kind of reversal of social capital or the effects of the absence of social capital and the resources that flow through social networks. Coleman and Putnam see social capital as the resources that flow through social networks (Tzanakis, 2013; Scott and Carrington, 2011). In this study, I take social networks to be an indicator of what we might loosely call 'social standing' that protects children from social culpability. In this sense, social networks could be said to be a concept that, together with social capital, builds a theory of social culpability.

There are critical debates about whether the social networks theoretical framework is a theory or a method. Part of the debate is whether the concept of network analysis is merely a cluster of techniques for analysing the structure of social relationships or whether it constitutes a broader conceptual framework: theoretical orientation or even philosophy

of life (Mische, 2011). Network thinking started to gain momentum in the 1930s as a distinct approach to social structure. Lloyd Warner and Elton Mayo (Scott, 2011) analysed the social structures of social groups as networks of communities in American cities and towns. Barnes' (1954 in Scott, 2011:22) study proposed ideas of a 'network of relations' reinforced by Elizabeth Bott's fieldwork in London on 'kinship networks' (Bott, 1955 in Scott, 2011:22). This work impressed Mitchell (Mitchell, 1969a in Scott, 2011), whose work counts as one of the 'earliest systematic summaries of a formal social network methodology' (Scott, 2011:22). Other American researchers such as Edward Laumann (1966), Harrison White (1963 in Scott, 2011) also developed a formal methodology using social network analysis.

White's move to Harvard University developed the concept further with a 'dynamic group of associates' to explore network methods (see the discussion in Mullins, 1973 in Scott, 2011:22). Harvard became the hub for the development of network analysis since the 1970s' attracting Harvard alumni and scholars of social network theory such as Emirbayer and Goodwin (Emirbayer and Goodwin, 1994).

The notable developments of social network analysis came about in North America in the late 1970s. Outside of North America, work on the methodology of social network analysis has established the strength of weak ties (Burt, 1982), developed the concept and significance of centrality (Freeman et al., 1989) and elaborated the formal quantitative modelling of social networks (Wasserman and Faust, 1994). Barry Wellman (1979) believes that network analysis goes beyond methodology to inform a new theoretical paradigm for understanding culture (Scott, 2011). Mische (2011) states that linking culture and networks construes networks as carriers or pipelines of social influence regarding attitudes, ideas, and innovations. Network relations also serve as conduits of transmission or influence from one node to the other. However, the nodes and ties have an independent existence of the cultural object, attitude or practice that travels across them.

Networks have been a central theme in the understanding of social capital, for example, Bourdieu defines social capital as:

the aggregate of the actual or potential resources which are linked to possession of durable network of more or less institutionalized relationships of mutual acquaintance and recognition – or in other words, to membership in a group (Bourdieu, 1986 in Richardson, 1986:21 emphasis added).

Similarly, and despite their ideological differences, Robert Putnam (1995, p.67) defines social capital as “features of social organization, such as networks, norms, and social trust, that facilitate coordination and cooperation for mutual benefit.” (in Carpiano, 2006:166). Putnam (1998) also put forward another definition of social capital as: the norms and networks of civil society that lubricate cooperative action among both citizens and their institutions. Without adequate supplies of social capital—that is, without civic engagement, healthy community institutions, norms of mutual reciprocity, and trust—social institutions falter (see Carpiano, 2006:167).

Coleman (1988) defines social capital as a social structure that “facilitates certain actions of actors whether persons or corporate actors-within the structure” (Coleman 1988 see Tzanakis 2013:4) and that social capital ‘requires an element of embeddedness in social structure’ (Tzanakis 2013:4).

Pierre Bourdieu’s concept of social capital was developed during the 1970s and early 1980s. This relates to ‘theoretical ideas on class’: the membership in a group (Siisiäinen, 2000:2). For example, the transfer of power in diverse and subtle ways (Siisiäinen, 2000).

Social capital emphasises conflicts and power function. For instance, social relations increase the ability of an actor to advance their interest. There are three dimensions of capital: ‘economic, cultural and social capital’ (Siisiäinen, 2000:11), ‘each with its own relationship to class’ (Siisiäinen, 2000:2). These forms of capital are one of the theoretical sociological cornerstones of Bourdieu’s work and the core factors that define an actor’s position (Siisiäinen, 2000). Economic capital includes economic possessions that would increase an actor’s capacities (Siisiäinen, 2000). Cultural capital can exist in three forms: embodied, objectified and institutionalised, for example, in the inscriptions of cultural institutions such as certificates, diplomas and examinations (see Bourdieu 1977, 1979; Bourdieu & Passeron 1977 in Siisiäinen, 2000).

Embodied cultural capital is closely connected to Bourdieu’s development of the concept of the habitus.

The habitus is a set of dispositions, reflexes and forms of behavior people acquire through acting in society. It reflects the different positions people have in society, for example, whether they are brought up in a middle-class environment or in a working-class suburb. It is part of how society produces itself. But there is also change. Conflict is built into society. People can find that their expectations and ways of living are suddenly out of step with the new social position they find themselves in. Then the question of social agency and political intervention becomes very important (Bourdieu 2000, p.19: in Siisiäinen, 2000:10).

In Bourdieu's conception of social capital, there are two components: a resource connected with group members and social networks. The social relations arising from the involvement of the membership in such groups can improve the actors' social position in various domains such as voluntary associations: trade unions, political parties, secret societies, which are all embodiments of social capital (Siisiäinen, 2000). Social capital as a resource can be utilised individually or collectively as a group.

Putnam's definition of social capital concerns collective values and societal integration. It can be categorised into three components: moral obligations and norms, social values ('especially trust') and social networks (which deal with voluntary associations) (Siisiäinen, 2000:2). Carpiano believes that Putnam's categorisation of social networks is its use as an umbrella term that includes a wide range of social processes related to social links and attachments (Carpiano, 2006).

Coleman is of the view that an increase in social capital increases its growth. Coleman's formulation of social capital is situated between two theoretical traditions. The first is a functionalist view (this is about how society fit together, in other words, the perception of human activity as a result of social structure) of social action, conditioned by social structure. The second is the 'rational theory' of utility maximisation (Tzanakis, 2013:4). This is where actors can maximise their goals through the actions they choose (Tzanakis, 2013). Under the latter, social capital is shown as productive for instrumental purposes, and the rational theory is a notion that Coleman has adopted from Granovetter (1985 in Tzanakis, 2013). However, it can also be seen in Bourdieu's concept of social space as defined by actors' positions. Like Bourdieu, Coleman sees social capital as essentially residing in the social structure of relationships among people. This dimension

sets it apart from both financial and human capital. Unlike Bourdieu, though, Coleman sees social capital as a bonding mechanism that adds to social structure integration; for Coleman, social structure predates the agent who can use embedded social capital as a resource. Coleman has been criticised for failing to distinguish between resources and network members ability to obtain such resources (Portes, 1998; Quibria, 2003 in Tzanakis, 2013).

Foley and Edwards (1999, p.146 in Tzanakis, 2013:5) 'argued that social capital is context-dependent and therefore context-specific. Since context conditions the use value and liquidity of social capital, every attempt to fix social capital into an integrative function' is severely limited in scope in Coleman's formulation. This has been precisely stressed because 'social capital is context-dependent, social resources are neither equitable nor evenly distributed', a point on which Coleman remains 'conspicuously silent' (Tzanakis, 2013:5).

Shucksmith (2000, p.8) also disagrees that social capital is a collective good because of its inherent inequality. This is because 'assets are accessed and appropriated differentially by those who already have social and cultural capital' (cited in Tzanakis, 2013:5).

Foley and Edwards, and Shucksmith's (in Tzanakis, 2013) argument of social capital is akin to the idea of social culpability, which includes both social networks and social capital: financial support. In this sense, the concept of social network is context-dependent. For example, in a child offender's context, social resources and networks in this group of children (mostly vulnerable and marginalised) are not fairly and equally distributed. However, they can still benefit from social networks and social capital regardless of their contribution, whether as members of a group or not.

This thesis's concept of social culpability relates to social capital and social networks to conceptualise what happens in the absence of capital and networks. I show that when children are in trouble with the law, they will mitigate its effects or escape its reach altogether if they have social capital and/or social networks. For example, where a child has committed an offence, they need adults to speak on their behalf as this will help remove the child's legal culpability. Conversely, in the absence of social capital and social networks, the child is socially culpable, and this compound or even produces their legal culpability.

2.2 Ethnographies of the practice of justice - engagement with courtroom

Courtroom ethnographies of the practice of justice describe the functions of the legal system. Compared to other developing countries, the practice of justice highlights similar experiences to those faced in Sierra Leone's state practices and their impact on people's daily life.

Bierschenk (2008) looks at bureaucratic practices, particularly corruption, culture and professional practices of Benin's public servants in its legal system in 2000. He found that problems include extreme overloading of the legal system directly linked to under-resourcing at multiple levels; thus, 'professional legal actors and their clients develop collusive relief strategies' (Bierschenk, 2008:5), especially informalisation and privatisation. While these two strategies are also used in Western systems, the key difference is the spontaneous and extra or non-institutional character of the Beninese practices compared to French or German practice. As Bierschenk notes, the key characteristic 'of Benin's legal system is the degree to which justice is administered outside the courts' (Bierschenk, 2008:105). This includes matters never coming within the scope of the legal system in the first place (informalisation) and blocks in the system, which means that prisoners on remand languish in detention for many years. The laws are 'archaic and impenetrable' and 'increasingly less suited to local situations and conditions' (Bierschenk, 2008:114). The response of privatisation 'of conflict resolution occurs in two forms, i.e. the keeping of conflict resolution outside the legal system (what we might call avoidance strategies), and spontaneous internal privatisation, which is generally referred to as corruption' (Bierschenk, 2008:123). Many, perhaps the majority, of justiciable conflicts never reach the legal system in Benin because the parties to the conflict avoid it, 'each other mutually and are, in turn, reinforced by corruption' (Bierschenk, 2008:103).

Corruption is one of many informal practices that penetrate the formal system of public bureaucracy in African states. These informal practices then tend to become embedded in formal ones. Bierschenk (2008) maintains that even though corruption is endemic, it does not affect the legal system homogeneously and with the same intensity, nor does it replace 'normal' forms of functioning; the system still gets to function. A key finding for Bierschenk, and one echoed by this study, is the high 'degree of unpredictability' in the system 'for legal professionals and their clients alike' (Bierschenk, 2008:119).

While Bierschenk's argument that most grievances are not dealt with by the legal system, Berti and Tarabout (2018) say that the contribution of judicial cases and legal documents improve our understanding of how courts shape society's social, economic, religious or political issues. The operation of the law also provides a space for interactions and decisions in various social and political life, family relationships, relationships between citizens and their state, criminality, environmental protection, natural resource management, religious practices or human rights relations. The law provides a good view of how social issues evolve and how they are shaped by court cases. The study of law helps us to see how social issues impact people's lives every day. It also helps to highlight issues of widespread corruption, poor facilities, and how the court usually stands as the main if not the 'only hope for many to redress their grievances' (Berti and Tarabout, 2018).

In addition, courtroom ethnographies of the practice of juvenile justice have contributed to understanding the intersection between the law and social issues that shape children in conflict with the law. For example, Carla Barrett's (2012) ethnography about court experiences of juveniles and their families within the Hispanic community charged with first or second-degree robbery took place in the Manhattan Youth Part (sic). This specialised criminal court is set aside for youths prosecuted as adults in the New York Criminal Court System. Barrett (2012) highlights the contradiction of youth's social status as juveniles and their legal status as adults in a criminal courtroom. In particular, Barrett investigated the impact of transfers concerning juveniles' social and legal circumstances (Barrett, 2012). She found that judges still tried and convicted juveniles in criminal courts. A high percentage of convictions of youths were related to completing the Alternative to Incarceration programme (ATI). The ATI enables a youth to be classed as a Youth Offender (YO) YO + 5. If not, there is the requirement to serve in a residential programme for a specific period to enable eligibility as a YO + 5. However, the ATIs are not always successful paths to earning the status of a YO+5 since failure to meet the requirements means they will have to be sentenced as juvenile offenders. Barrett shows, in the USA, a juvenile's behaviour in court ultimately determines how they are tried and convicted despite the formal rules. In this sense, the concept of social culpability, developed in this thesis, has a broader application beyond Sierra Leone or even postcolonial African states.

Nicholas Jaoul's (2015) ethnography of judicial practices in 2010 concerning power dynamics within a legal setting in India shows the provisions relating to protecting

a minority class such as the Dalits against discrimination through the enactment of law, proved ineffective. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (POA Act) was enacted in 1989. The law aims to address 'institutional blindness or insensitivity to caste'. This requires a 'high level of precision in the designation of untouchability practices' (Jaoul 2015:172). "Untouchability" concerns "tradition" against an 'ongoing secular process of development by the state' (Jaoul 2015:172).

Jaoul shows a combined absence of political will and problems associated with the implementation of the law. The strict punitive measures mean defendants are willing to use illegal strategies, for example, "marshalling witnesses, intimidating or suborning prosecution witnesses, and all those familiar tricks" (Jaoul 2015:172). Even the judges are hesitant to severely punish perpetrators of upper caste who claim they were "merely following" their social and religious customs (Jaoul 2015:172). The judges are not free from subtle caste prejudices. Some cases have been ongoing for eleven years, such as the assault of a Dalit man. There is the perception of lawyers and court employees being bribed, resentment for judges amongst lawyers, 'who alleged that their [judges] so-called "corruption" was the greatest hindrance to their work'. (Jaoul, 2015:192).

Therefore, despite the formal protection of the law, the Dalits lack social capital (and economic and cultural capital) and cannot secure their legal rights through the courts. In short, the architecture of the law, as this and other studies show, is insufficient for ensuring that people who lack social capital and social networks, who are, in short, socially culpable, are treated fairly by the law whether they are victims (as in Jaoul's research) or defendants. This is similarly shown in my research concerning juveniles' and their administration in Sierra Leone.

2.3 The legacies of war for post conflict reconstruction and liberal peacebuilding.

2.3.1 Approaches to peacebuilding

The current approaches to peacebuilding rely on a dominant narrative that constructs a particular state model, the liberal state, as the condition for sustainable peace (Autesserre, 2017). The liberal model sees African states as they ought to be rather than as how they are. There is no one model of peacebuilding (Autesserre, 2017) and the cause of conflict is not about weak state institutions or the absence of liberal democracy. Still, conflict at a social level (local level) needs to be resolved at a social level (Autesserre,

2017, 2009). As Burton says, 'if social conditions are the problem, then conflict resolution and prevention would be possible by removing the sources of conflict: institutions and social norms would be adjusted to the needs of persons' (1998:1). Therefore, how children are criminalised and decriminalised by international actors should also reflect the local level.

Most of the dominant ideas and discourses in conflict resolution have their origins in European political philosophy (Olinisakin and Muteru, 2014). Since the end of the Cold War, there have been many international peace interventions (Autesserre, 2017). Boutros-Ghali's (1992: para 21) report, *An Agenda for peace*, defines peacebuilding as "an action to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict" (Enria, 2018:6). The types of political institutions and processes that make up a peacebuilding process include state-building, justice and reconciliation and democracy (Call 2008:183-86; United Nations Security Council 2001, para.10-20 cited in Autesserre, 2017:115). Foreign interveners can support peace initiatives and can weaken factors that continue the war process. The interveners include donors, diplomats, peacekeepers, and foreign staff of international and non-governmental organisations (Autesserre, 2017). The interveners' efforts to end wars produce results such as helping host nation authorities and populations end widespread violence, re-establish security, promote economic development and organise democratic elections. International peacebuilding processes have had relative success in several countries, including 'Cambodia, Liberia, Mozambique, Sierra Leone and Timor-Leste' (Autesserre, 2017:115).

In post-war countries, a lack of development is seen as a reason for intervention and attempts for industrialisation and marketisation (Mac Ginty, 2013). Development plays a pivotal part in the peacebuilding discourse, often aiming at the radical restructuring of the state and society (Enria, 2018), specifically in the realm of conflict prevention, since conflicts retard the processes involved in development (Murshed, 2002). Reconstruction involves normative assumptions about the preferable direction of economic governance that has promoted marketisation, liberalisation of trade and a minimalist regulatory role for the state (Paris, 2002 in Enria 2018). The liberal peacebuilding paradigm intervention is one such example (see below). In Bosnia-Herzegovina, it has helped reinstate social and economic class systems. However, it has undermined democracy and increased downward social mobility, particularly without the consent of the ones it claims to represent, such as

the failure to recognise local cultural and traditional norms in the peacebuilding process (Richmond et al., 2011). Liberal peace has also been condemned for its neo-colonial tendencies and its detrimental impact (its failure to transform, for example, post-war African states) on economies and societies emerging from war (Englebert, and Tull, 2008; Roitman, 2004).

2.3.2 State failure in Africa

The extent to which state failure is broadly an African phenomenon can be overstated; an example is shown in the discussion of the ethnography of the practice of justice above. However, it is also the case that state failure is prevalent in Africa. At the end of 2005, 82 per cent of the UN peacekeepers worldwide, more than 51,000 were deployed in Africa. State failure has severe repercussions in the region; when one country fails, it drags another into the theatre of conflict. In 1998, the involvement of seven surrounding countries led to the collapse of the Democratic Republic of the Congo (DRC) (Englebert and Tull, 2008). The state decay in Ivory Coast was partly induced by Liberia and Sierra Leone's civil wars (Englebert and Tull, 2008). There was cross-border violence between Chad, the Central African Republic and Sudan. In 2007, Somalia dragged Ethiopia into conflict. The situation of conflicts in Africa has worsened due to the increasing proportion of worldwide oil exports, which Africa now accounts for (Obi, 2006); although no straightforward line can be drawn between state formations and natural resources and the so-called 'resource curse' in Africa (Obi, 2010). The latter has more to do with the character of the state than the existence of extractive resources. There are also concerns about terrorist activities in Liberia, the Sahel, Sierra Leone, and Somalia (Obi, 2006). In Sierra Leone, youths have continued to be marginalised, the economy has continued to stagnate, and the mismanagement of the economy still remains (Enria, 2018). Similarly, in 2005, Sudanese elites of both north and South Sudan reached a peace agreement. However, the rebellion that started in the Eastern part of Darfur continued to undermine the country's peace process to the brink of collapse (Englebert and Tull, 2008).

Another country that did not entirely transform from violence is Burundi. After decades of ethnopolitical violence, the first popular elections were held in 1993. In 2003, a global ceasefire agreement was signed by the warring factions. The post-transition election was short-lived because of an inflexible culture: the tactics to neutralise the opposition were replicated and intensified in the 2010 and 2015 elections. The rights of the

opposition were violated, and there was an injunction against free campaigning. Protests and conflicts in neighbouring cities in Burkina Faso, and the demonstrations in Kinshasa in Congo affected Burundi's transition to peace. Somaliland was the only noteworthy example of a successful state that applied bottom-up effort (local level) due to the lack of international involvement (Autesserre, 2017). Combining these factors with the state's continued repressive measures points out that Burundi has not transformed despite the strides gained in the technical success and the transition achieved (Bouka and Wolters, 2016). Therefore, there are concerns that state failure will have a wide-ranging consequence in the future (Englebert and Tull, 2008).

The collapse in peacebuilding-negotiated agreements is reflected in countries where civil wars ended with such negotiations. More than half relapsed back into war within a few years due to a failure in negotiated peace agreements at the implementation stage. For peace agreements to be successful, there should be a significant third-party involvement. However, 70 per cent of peacebuilding mediations involving international partners still fail to build durable peace. Autesserre argues that this is because international actors often fail to address the local causes of violence (Autesserre, 2009). In Sierra Leone, the peace resolution failed a couple of times despite a series of cease-fires between GoSL and the Revolutionary United Front and the deployment of 13,000 peacekeepers to the United Nations Mission in Sierra Leone (UNAMSIL). However, peace prevailed eventually by the reinstatement of President Kabba through the intervention of the British government. International human rights actors also brought about the Child Rights Act 2007 (CRA, 2007). This Act aims to mirror the UNCRC but lacks the principles of articles 37 and 40 which mainly deal with juvenile justice. However, the CRA, 2007 should be recognised to include its best interests' principle, which applies to all children.

It should be noted that there are positive outcomes of peacekeeping by foreign interveners, as posited by Richmond (2011), who believes that it offers 'emancipatory potentials. Peacekeeping deployment, however, does not reduce violence at the subnational level as peacekeepers neither 'promote local security nor help restore local authority' (Mvukiyehe and Samii, 2010 in Autesserre, 2017:118). Programmes applied in communities such as the disarmament, demobilization and reintegration (DDR) programme often fail to reach many intended targets. (Autesserre, 2017; Coulter, 2009, 2008, 2005). Peace efforts in Uganda had escalated the severity of human rights violations

(Autesserre, 2017 cited Branch, 2011). In Malawi and Tajikistan, democracy had been hampered (Autesserre, 2017 cited Englund, 2006; Heathershaw, 2009), whilst in Bosnia, Congo, Liberia and Sierra Leone, gender disparities in sexual abuse were amplified (Autesserre, 2017 cited Simm, 2013).

Nevertheless, international funding mechanisms can destroy local capacities and projects (authors interview, Gallo and Vanholder 2015; Pinnington, 2014 in Autesserre, 2017). Although international resources are vital in supporting local conflict resolution efforts but, 'badly informed assistance can do more harm than good' (Branch, 2011; Englund 2006; Gallo and Vanholder, 2015; Heathershaw, 2009; Martin, 2014 in Autesserre, 2017:125). There is a lack of a 'ground-up' approach to juvenile justice by peacebuilders, as in Sierra Leone, since international principles of juvenile justice were used to decide that child soldiers should not be culpable for their actions rather than looking at what locals wanted.

2.3.3 Assumptions of peacebuilding effort

Assumptions play a critical role in the way most peacebuilding efforts operate, such as using them as shared ways of working and thinking, common practices, habits, and narratives deployed by peacebuilders on the ground (Autesserre, 2017).

The principle of why assumptions become dominant can be drawn from the literature on frames, habits and narratives (Autesserre, 2017 cited Bakke, 2014; Hopf, 2010; Keck and Sikkink, 1998). Specific ideas become more effective at influencing action because they latch on to pre-existing assumptions. An assumption can 'achieve and maintain prominence even when it generates negative impacts' (Autesserre, 2017:121). Two instances where shortcuts like assumptions or habits become an indispensable concern are "cognitive overload", 'having to think about more than one task at once and instances of "severe time constraints". The latter concerns situations where 'people lack the time necessary for conscious deliberation' (Hopf, 2010:542-43 and 547 in Autesserre, 2017).

Further, international peacebuilders believe that locals in conflict areas lack the knowledge, skills, qualities and resources needed to resolve their problems; that local people are 'deficient in education, capacity and personal qualities' (Autesserre, 2017:124). In addition, the assumption prevails that foreign interveners have what local people need to resolve their conflicts.

Liberal and neo-liberal conceptualisations of peacebuilding and state-building include the term 'local' but rarely embrace its spirit. In the local turn, society appears to be in keeping with the idea of “good enough” governance and security, whereby international actors justify the partial abandonment of universal goals and rights under cover of apparently 'resilient communities' (Mac Ginty and Richard, 2013:780).

Many scholars 'have pointed out that local and hybrid institutions are weak or dysfunctional, corrupt or neopatrimonial' (Mac Ginty and Richard, 2013:765). Mac Ginty and Richard (2013) define local as a range of locally 'based agencies present with a conflict and post-conflict environment' (p769). The local level is described as the 'individual, the family, the clan, the district, the province, and the ethnic group when it is not a national-level one' (Autesserre, 2017:116). This is because wars can only end when the conflicting parties resolve their differences and when citizens strive to maintain and build lasting solutions to the conflict. In Sierra Leone, local concepts of justice were incorporated into the CRA, 2007 concerning the setting up of Committees to deal with juveniles, paving the way for policies dealing with juveniles: Child Justice Strategy 2014-2018. However, it must be noted that these have proved ineffective, as shown in chapter 7.

Therefore, three flawed assumptions underpin international efforts to rebuild failed states in Africa. The first is that Western state institutions can be successfully transferred to the continent. The second is that the diagnosis of failure is shared among donors and Africans. The third is that international actors can rebuild African states (Autesserre, 2017). These flaws point to the limits of what donors can realistically achieve in the failed states of Africa. The external efforts at state-building and repairing institutions succeeded in reforming children's rights but not in ways that meant Sierra Leone could escape from the informalisation and privatisation discussed in the Benin ethnography (Bierschenk, 2008). Further, that local institutions and local ideas about juvenile justice, although not formally incorporated into the system, continue, in practice, to shape how juveniles get treated.

2.4 Post Conflict Conceptualisation of Children's Legal Culpability through Disarmament, Demobilisation and Reintegration (DDR) Programmes in Sierra Leone.

2.4.1 Peacebuilding and reconstruction in Sierra Leone

Liberal peacebuilding is defined as a matrix of measures aimed at building liberal market democracies (Newman et al., 2009 in Enria 2018) and reforming institutions of states. This includes the holding of elections, reinforcement of the rule of law and economic reconstruction (Richmond et al. 2011).

The legacy of the Sierra Leonean state's reconstruction took several forms, including the increase in economic opportunities and the nature of the political space. In Sierra Leone, the liberal peacebuilding model starts with establishing democratic forms of governance (referred to as democratisation and political space reform). Establishing 'effective democratic processes were central to the peacebuilding project' due to decades of autocratic and corrupt rule, identified as factors contributing to the war (Enria, 2018:66). Moreover, the international consensus is that 'democracy reinforces economic growth and political stability' (Cubitt, 2011c in Enria:2018:66). Sierra Leone took procedural forms of democratic reforms in post-war through the holding of multi-party elections (Enria, 2018).

Sierra Leone has had four post-war elections, 2002, 2007, 2012, 2018. The 2012 elections heralded the 'wind-down of the United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL)'s operations, signalling a transition from "post-conflict" to "development" (Datzberger et al., 2014 in Enria, 2018:66). The re-establishment of political competition was seen in the 2018 elections, in which there was a proliferation of parties. The nature of the democratic space even ten years (now 19 years since 2002) after the end of the civil war remains a concern despite the significance of the electoral process; therefore, equating elections to democratisation is precarious. Cubitt (2011b in Enria, 2018) said the democratisation in Sierra Leone had been a "shallow exercise" because of the lack of attention by state builders to look into all other accountability mechanisms such as parliament on its checks on executive power (Enria, 2018:67). There was an emphasis based on civil society engagement, as reformers' main aim relied on civil society's rebirth after years of repressive rule and donor-driven priorities were focused on the early post-war years (Conteh, 2017; Kandeh, 2008 in Enria, 2018). Sierra Leone has a large number of civil society organisations. However, their sheer numbers do not guarantee civil

societies' ability to hold the government accountable or their ability to express young people's voices (Enria, 2018). Donors' preferences and implementation models have been questioned by the Civil Society Organisations (CSOs) themselves. For instance, the elite's ability to represent the marginalised is questionable because of their closeness to the government and the benefits from international aid (Enria, 2018). The pluralisation of civil society in post-war Sierra Leone 'has not yielded a landscape conducive to challenging governance practices', other than it helps to strengthen the point by some commentators view of Sierra Leonean civil society as a "subsystem of state politics..." (Enria, 2018:67). Gender remains a significant factor. Women have little access to a political voice, such as participation at all levels of political life that remains limited.

Sierra Leone is widely held as an example of a state with successful security sector reform (SSR) (Horn et al. 2006). There was a low operational base of two institutions: the police and the military. There had been a reform of the police in 1998 before post-conflict reconstruction. It is believed that essential capacity and public trust were restored in the politicised and weakened police and military institutions that had lost credibility and the confidence of the Sierra Leone people (Horn et al. 2006). The UK has been extensively involved in state reconstruction and restoration and emphasising security sector reforms. This is based on the premise that 'a professional and accountable security apparatus' should be the pre-condition for a stable state and security development (Horn et al., 2006:109). Security sector reforms (SSR) were considered successful for the military, police, and judiciary (enactment of the Child Rights Act, 2007). However, the success of the SSR had mainly focussed on 'analysing what was done' but less focussed on 'how it was done', such that practical challenges presented by the reforms were not in accordance with the policy-makers design (Horn et al. 2006:109). Because despite the SSR's success, there remains a disconnection in which policy advice was conceptualised and implemented. There is the question of 'how to manage the complex process of comprehensive reform' when there is a lack of basic tools, policies and procedures (Horn et al. 2006:110) to do the job. Sustaining the newly formed structures of the police and military presents a problem for a developing country like Sierra Leone that relies on donor funding for such projects to be sustainable.

Economic reconstruction and the reshaping of labour markets is the second component of liberal peacebuilding applied by Sierra Leone's state builders. The

liberalisation of the post-war economy, such as integrating a robust private sector, is considered fundamental to economic recovery.

The reconstruction is similar to structural adjustment loans (SALs) applied to support economic reforms by the international financial institutions (IFIs), namely the World Bank (WB) and the international monetary fund (IMF). Cubitt (2011b) notes that, ‘the difference in the contemporary international consensus on economic adjustment lies in the emphasis on the rhetoric of national ownership as well as the recognition of a need for restructuring with "human face"’ (see Cornia et al. 1987 in Enria, 2018:70). Up until 2014, economic recovery in Sierra Leone appeared to be successful. There was a return of multinationals such as in the mining sector, which increased trade, a single-digit inflation rate, and an increase in food supplies that improved the fiscal position (IMF 2014; Zayid, 2014 in Enria, 2018). Despite the economic recovery, Sierra Leone was 183 out of 187 (Human Development Index in 2013) on the Human Development Index with multidimensional poverty at 72.7 per cent, which indicates ‘the benefits of growth’ were not trickling down (UNDP, 2014 in Enria, 2018:70). In addition, only ‘10 per cent’ of the people are engaged in waged or salaried employment, although most of the population are economically active (Statistics Sierra Leone and World Bank 2015 in Enria, 2018:71).

Enria's (2018) study shows that the processes of the reconstruction of the labour market and political opportunity structures for Sierra Leone's youth are intertwined, and that the reconstruction hangs in the balance between continuity and change. Labour market policies and legislation relating to employment show no active policies matching young people to jobs. This problem is evident in the reintegration packages offered during the DDR, ‘officially completed in 2004, with 51,122 ex-combatants registered’ (Enria, 2018:72). The DDR programmes ranged from apprenticeships to formal education, agriculture, and (rarely) job placements. Some combatants 'were given a one-off payment' (Enria 2018:73); there was a gender bias, and training had become insufficient and essentially detached (see section 2.5.2 for a further discussion on DDR). Despite improvements in the investment climate and the gradual re-emergence of multinational companies after the war in Sierra Leone and the privatisation of parastatals, youth absorption by the private sector has remained low. A lack of expansion of private businesses and the sector's ability and willingness to employ young people was the result.

This was compounded by the attraction to invest in a post-war country emerging from a long period of political instability (UNDP 2013 in Enria 2018).

The National Youth Commission was established in 2010 and the Ministry of Youth Affairs in 2013 (Ministry of Youth Affairs 2014); despite this, there is still marginalisation of youths. There are limited consultations from youths from poor backgrounds and challenges of meaningful inclusion. The decentralisation process in 2004 was intended to bring governance closer to the people, but power 'continues to be Freetown-centric in practice' (Enria, 2018:68). There is a potential disconnect between formal and informal institutions in how the government was run, particularly the prominence of elite networks in the determination of politics and the functioning of the economy. Ethnic divide is still present in Sierra Leone and evident in ethnic networks that are put into action to garner electoral support. In trying to address the causes of war, the reforms have changed the face of political institutions. Elections opened up spaces for decentralisation along with highlighting the persistence of informal networks, ethnic mobilisation, and the continued marginalisation of women and youth, especially from impoverished backgrounds. The focus on governance structures based on globalised models left open the question of 'what happens beneath those surfaces and how "rebuilt" institutions interact with dynamics on the ground' (Enria, 2018:70). The Sierra Leone global legal reform model includes the reform of child rights legislation (CRA, 2007). But beneath those surfaces, local practices are what shape juvenile justice; in reality, dynamics on the ground do not so much interact with these global models as they run alongside them and are embedded in local ideas about social culpability, which is connected to social networks and social capital.

2.4.2 Disarmament Demobilisation Reintegration (DDR) in Sierra Leone

The most important aspect of the DDR for children in Sierra Leone is that it paved way for enacting the CRA, 2007. This legislation is a highly significant development in Sierra Leone's jurisprudence in highlighting and providing rights for children, although not necessarily so for children in the juvenile justice system, as we shall see in the substantive chapters. Its key provision is the "best interests of the child" principle under section 3 CRA 2007, which should be a primary consideration in a decision or action concerning a child. This, therefore, by extension, should be applied to the administration of juvenile offenders. Further, the DDR's programme relating to child soldiers, and the

parameters of the Truth and Reconciliation Commission (Schabas, 2004), is inextricably linked to their conceptualisation under international law and specifically the UNCRC of under-18s as ‘children’. The DDR’s framing within trauma research about children’s extended exposure to conflict resulting in post-traumatic stress disorder, has helped strengthen the argument of non-culpability of child soldiers amongst local communities and why they should be accepted by and reintegrated into the communities they once destroyed (Seymour, 2017).

The DDR programmes and the determination of the legal culpability of a child soldier in Sierra Leone were central to understanding how the war brought the international community to Sierra Leone as part of Sierra Leone’s reconstruction and involvement in a variety of peace and development programmes (Coulter, 2005; MacKenzie, 2009; McKay and Mazurana 2004).

Chris Coulter (2005:3 citing McKay and Mazurana 2004:98) says that the aim of the DDR in Sierra Leone was threefold. Firstly, it was to collect, register and destroy all conventional weapons. Secondly, it aimed to demobilise (release, retire) 45,000 combatants and thirdly, it aimed to reintegrate ex-combatants into society as civilians. Megan MacKenzie (2009) and Theresa Betancourt et al. (2008) point out that in Sierra Leone, the DDR applied to both adults and children. Where ex-combatants were enrolled in the DDR programmes, they were given monetary and material assistance as well as some vocational or literacy training. In Sierra Leone’s DDR programmes, only 6.5 per cent of all registered adults were women, and 7.4 per cent of all child soldiers were girls, despite estimates of the number of female fighters being up to 30 per cent (Mazurana and Carlson, 2004).

Chris Coulter’s (2005) view of the DDR was that “from the outset, there was some recognition that women and child soldiers made up a significant portion of the forces” (p.3). Although, in theory, “the DDR process was designed to include them... the programme was [only] effective in reaching out to [adult] male combatants, ultimately women and children were underserved” (Coulter, 2005:3). This meant that most children, both boys and girls but especially so for girls, failed to get the benefits of the DDR programmes in Sierra Leone through ineffective interpretation and implementation (Coulter, 2005). Child soldiers from other African countries such as Angola were also

‘discriminated against or excluded from the disarmament demobilization and reintegration’ programmes concerning resettlement after the war (Cole and Chipaca, 2014:64).

Cole and Chipaca state that, 'a significant consequence of the war was the migration of large numbers of rural youth into urban areas in search of employment', which impacted social infrastructure, particularly school and housing (2014:64). However, Chris Coulter's study in Sierra Leone also contends that war for women and girls can be emancipatory. This is because war "destroys the patriarchal structures of society that confine and degrade women" (Coulter, 2005:2), which is the other side of a breakdown in morals, traditions, customs, and community. She found that women and girls' role in war is therefore paradoxical. It targets women, and at the same time, it opens up spaces of influence in politics, social and economic life. Similarly, McKay and Mazurana (2004) claimed that some women in the civil war experienced a sense of freedom and achieved positions of power that would otherwise not have been possible. Carrying arms gave them status, control and self-confidence and a sense of belonging. However, apart from the girls and wives of commanders, other girls and women were subjected to abuse from men. This is because of their low status as women or girls and military hierarchy (McKay and Mazurana, 2004).

In Sierra Leone, despite women and girls having committed serious offences of humanitarian law, they were not included in the peacebuilding discussions that framed DDR (Coulter, 2005, 2008). This is because strategies used by young women to manoeuvre in war-torn communities are ill-researched since the focus is on the sexual violation and other events that show their vulnerabilities and not their strengths (Coulter, 2005, 2009).

It is not to deny women's experience of sexual violence and their vulnerabilities in war but also to be aggressors in war. In Mansaray's (2000) study, she found women also to be violent and active participants in the civil war in Sierra Leone. However, she acknowledges that some women were forced to become aggressors due to their circumstances. Mansaray (2000) says that the hidden truth is that women are often also violent.

The relevance of highlighting the issues of girls being left out of DDR programmes is to re-emphasise the point that crime is mainly associated with boys or men instead of women or girls (Coulter, 2008; McKay, 2005). Arguably, the failure to recognise women or girls as perpetrators is a missed opportunity to address that problem. Notwithstanding,

Coulter et al. (2008) shows that statistically, men were still overwhelmingly the perpetrators of violence. Nevertheless, although men and women were victims, focusing on women only as victims, conceals their full range as political and social actors (El Jack, 2003f in Coulter et al., 2008).

There is some ambivalence about how to understand women and girls' violence within a frame that sees women as peaceful and men as violent, which compounds the problem of treating all children (under 18s, girls and boys) who had been part of the armed forces as violent. The International Non-Government Organisations (INGOs) view was that minors were innocent victims, even while still evidentially perpetrators (Sharrock, 2011). Nevertheless, the DDR process provided fundamental elements of Sierra Leone's transition to post-conflict recovery. These consisted of programmes on civic education about child soldiers' vulnerability (Shepler and Williams, 2017) and what many Sierra Leoneans viewed as a mistaken belief that children or minors should not be held accountable for their crimes in the context of civil war.

2.5 War and Culpability of Child Soldiers and International Law - Sierra Leone.

A central issue in juvenile justice is the problem of culpability and its relationship to innocence in the sense of lacking the capacity to be guilty. This trope of childhood innocence was hotly debated in Sierra Leone after the war with the tension between the devastation wrought by children during the war and their post-war rehabilitation as innocent victims being resolved in the legal architecture but, arguably, not in communities.

Child soldiers are generally framed as innocent children subjugated by violent adults. As a UNICEF report states, the problem of child soldiers is “Adult Wars, Child Soldiers,” and linking the problem to the worst forms of sexual abuse, such as sex trafficking or child pornography (UNICEF, 2002). The UNICEF’s (2007) Paris Principles (principles and guidelines on children associated with armed forces or armed) stipulate that under accepted principles of humanitarian law, even where children may have been responsible for committing terrible war crimes, they are still regarded as victims of war. Silva (2008) shows that the need to offer umbrella protection to child soldiers had dominated humanitarian, human rights and legal discourses. Advocates supporting a ban on child soldiers focus on absolving them of any wrongdoing before attaining 18. However, emerging international legal consensus somewhat tempers this to impose criminal penalties upon the recruiters of child soldiers under age 15 (Jalloh, 2011).

David Rosen (2010) states that the culpability for child soldiers' actions is framed as their recruiters' responsibility for two reasons: The first is allocating culpability to the recruiters, and the second is absolving the child soldier from any legal agency. The question then remains 'as to the appropriateness of completely relieving children of all culpability as virtually no system of criminal or juvenile justice in the world takes such a radical position' (Rosen, 2010:50). This was a dilemma that was confronted by the decision-makers at the Special Court for Sierra Leone (SCSL). The criminal concepts of *actus reus* and *mens rea*, as elaborated in Chapter 4, determine a person's criminal culpability. However, for children, if they are at a certain age, they will not be culpable in the law. In most countries, the median age for culpability is less than 14 years. Therefore, it is contrary to the rules of punitive justice for child soldiers who committed violent crimes against their communities to be considered not culpable for their crimes (Millar, 2012; Nortje, 2017). For example, local communities do not perceive some of these categories of children as vulnerable (Nortje, 2017) but rather as irredeemable. This is also relevant to the distribution of resources they can access, as we shall see in the next section.

Through the studies of Susan Shepler (2005, 2015) in Sierra Leone, and other commentators' arguments below about the vulnerability of childhood and resilience, the outcome of the DDR programmes would suggest that the law views the children that were able to enrol on the DDR programmes as being both vulnerable and resilient. There is an argument of vulnerability because children in the war are particularly prone to other adversities that cause them additional trauma and stress (Pynoos, Steinberg, and Piacentini, 1999), such as homelessness, malnutrition, parental loss and community violence. In particular, child soldiers should be forgiven for the wrongs they caused as they were particularly exposed to family violence and trauma, which is a core feature of post-traumatic stress disorder (Catani et al., 2009). There is an argument for resilience because the rhetoric of the education of human rights and its legitimisation through the provision of resources by the West, such as international NGOs, gives these Sierra Leonean vulnerable children (former child soldiers) some legitimacy and transfer of power. This is because such children must be recognised as human beings with rights. However, adults in settings such as Sierra Leone find it difficult to accept such propositions since they consider a child's place to be at the bottom of the social hierarchy (Shepler, 2005).

2.6 INGOS and Categories of Childhood Vulnerability in Africa

2.6.1 Youth, Childhood Studies and Welfare Justice Mechanisms

In this thesis shaped by the disciplinary norms of Childhood Studies, the child's agency and the importance of attending to children's experiences and understanding the relationship between the child and other generations and of children as a generational cohort themselves is centred. Thus, for example, there is a wide-ranging discussion about vulnerability, resilience and agency, which has taken up so much of scholars' attention, especially in Childhood Studies and, differently so, in Legal Studies. The concept of childhood as a social construction and competing 'global' and 'local' discourses about how it is socially constructed (about what children's vulnerabilities and capacities are) is used to explain the contradictory architecture of juvenile justice in law and practice. For example, in the DDR programmes, it was the international rather than the local assessment of children's vulnerabilities that determined the legal culpability of a child offender/child soldier. Similarly, these assessments, or frames, to use Autesserre's analysis, were incorporated into the reform of child rights law. However, in practice, local conceptions of children's vulnerability, ideas about who can be a 'good' or 'bad' child and assessments of social as much as, if not more than, legal culpability determined the actual dispensation of juvenile justice.

Thoko Kaime (2009) points out that children's rights and welfare in the African Charter must be perceived and characterised in the context of African children, virtues of African cultural heritage, historical background, and values of African civilisation, while at the same time maintaining a unified idea about what an African childhood is or should be. Sierra Leone shares a similar view about African childhood with other African states that a child belongs to the community.

The concept of restorative justice discussed by Ann Skelton (2002) about the application of Ubuntu (speaks of the essence of being human, that humanity is caught up and inextricably bound up by others also means forgiveness) to the law, utilises customary ways as alternative dispute resolution schemes for dealing with juvenile matters. This could be considered another way, besides the African Charter of incorporating local practices into the architecture of the law, for example, reconciliation methods.

Similarly, the principle of social unity is part of a much broader process of post-conflict reconciliation. Reconciliation is understood as a 'multidimensional project

comprising justice or retribution, restitution, (whether reconstitutive, rehabilitative or symbolic), truth-telling, commemoration and other memory-related performances, as well as unity or nation building' (Purdeková, 2015:5).

Reconciliation and rehabilitative methods were also applied in Sierra Leone's post-conflict reconstruction, with a particular thrust of holding recruiters of child soldiers accountable for atrocities caused by child soldiers. Rwanda is an example of a post-conflict country where unity building has proved a challenging task. This is due to the 'so-called violently "divided societies"' where perpetrators and victims of violence live in close proximity, and where people struggle to re-imagine and reconstruct their political and moral community' (Purdeková, 2015:5).

Wide ranging resources have been spent on transitional justice, such as the reconciliation activities in Rwanda. The Gacaca courts which lay claims to local connections is an illustrative example. Thousands of local Gacaca courts have tried millions of accused. Transitional justice concerns the investigation of how 'societies struggle with a history of injustice in the context of regime transition' (Purdeková, 2015:13). Thus, it has narrowly been constructed as a legal discipline that has largely remained abstract from its political context. Rwanda, for example, has varying methods of reconciliation activities – the Gacaca, ingando, itorero, abunzi, ubusabane, to name but a few. These are invariably presented as traditional and categorised as close to the people – both conceptually and physically. However, the traditional label and frameworks of transitional justice through which these activities operate are often 'fundamentally depoliticizing, obscuring how these spaces double as platforms of control, governance and symbolic production of power' (Purdeková, 2015:14).

Restorative justice as a system for adjudicating conflict and victimhood is prevalent in customary law. In Sierra Leone's juvenile justice system, restorative justice is widely used to settle disputes in the local setting and is also prescribed under the Child Rights Act 2007 - see chapter 7.

2.6.2 Categories of Childhood Vulnerability by INGOs in Africa

International Non-Governmental Organisations (INGOs) flooded Sierra Leone after the war and tried to shape how people socially and legally identify vulnerability in childhood. For this thesis, the most crucial issue here is that various categories of vulnerable children were produced in this upsurge of INGO activity, amongst others, child

soldiers and street children. However, the child in conflict with the law did not emerge as a demarcated category of person in the same way. Through efforts of INGOs, after the war, the law concerning children, principally the CRA 2007 was enacted to mirror the UNCRC. It is fair to say that children in conflict with the law, neither in developing countries nor in developed countries, do not attract the kind of sympathy that these other categories (like the street child, orphan, the girl child, the child soldier, amongst other vulnerable categories) attract. It is noteworthy that some Western states, the U.K., in particular, have been criticised by the Committee of the UNCRC for its treatment of young people in its juvenile justice system (Arnall and Fox, 2016). Arguably, it is much more difficult to organise child criminals into a coherent group since they are charged with offences ranging from minor infractions to the most serious crimes.

Humanitarian aid is a vital resource employed in protecting vulnerable children in underdeveloped countries with weak states (Barrientos and Hulme, 2009). The question of which children or groups of children (e.g. AIDS orphans, child labourers, child soldiers, and sexually exploited children) are defined as vulnerable or resilient is critical to understanding patterns of aid distribution (Peek, 2008). It is also critical to the understanding of which children are considered to be culpable for their actions. For example, whether they are subject to the law, and those seen as 'innocent' in the sense of not being culpable and therefore subject to social services or, more frequently, simply left alone. In Sierra Leone, INGOs (and their local offices) identify the vulnerable, such as those who fought in the war. For example, child soldiers who were thought to be susceptible to being re-recruited (Mazurana and Carlson, 2004) and child soldiers who were viewed as immanently vulnerable in the context of requiring aid distribution.

Aid programmes for former child-soldiers in Sierra Leone included enrolment in schools which were invariably linked to DDR programmes (Solomon and Ginifer, 2008). This was partly to enable such children to take on a new identity as pupils. Assignment of a new identity was aimed at protecting child soldiers as victims of the war and pitched against claims and perceptions that former child soldiers should be held responsible for their actions (Shepler, 2004, 2005). This was achieved through sensitisation campaigns done in schools with ex-combatant students encouraged to talk about their experiences and for locals alike to recognise that these children should not be penalised for the harm they had caused their communities during the war (Shepler and Williams, 2017).

International Non-Governmental Organisations' (INGO) constructions of vulnerability and how these translate into who does and who does not get access to interventions, resources and support have been addressed in the research of Cheney (2010) and Kendal (2010) in Uganda and Malawi and Mozambique respectively, and by Claudia Seymour (2017) in the Democratic Republic of the Congo (DRC). They have also been addressed by Susan Shepler (2005), Danny Hoffman (2011), Archibald and Richards (2002) and Enria (2012, 2018), specifically about Sierra Leone. Luisa Enria's (2012) study in Sierra Leone has particularly shown that the United Nations Peacebuilding Architecture (PBA) programme did not benefit unemployed youths in Freetown and questioned its neutrality. The PBA was set up to rebuild war-torn states in the developing world. However, in 2007, as part of Sierra Leone's recovery and peacebuilding, the UN included Sierra Leone on the PBA's agenda. Youth unemployment was portrayed as a threat that required the Government of Sierra Leone (GoSL) to take the lead in creating jobs for its 'dangerous' youths and formed essential building blocks in the PBA's state reconstruction policy. In 2009, the PBA realigned its policy with the Sierra Leone: Poverty reduction strategy paper – PRSP (2008), making the policy state-centric. Enria (2012) holds that the relationship between young people and the formal and informal state structures and youth marginalisation questions the peacebuilding approach and its operationalisation. The communities referred to as 'Belgium and Sweissy' (in Enria's study), for example, share a condition of long-term unemployment. Policymakers criminalise such youths. Although they should benefit from peacebuilding policy or programmes such as the PBA, they were instead framed as a security risk. When youths were asked in that study why employment schemes funded by PBA did not reach them, they responded that it had to do with their lack of "connections" (Enria, 2012:52). Based on the social networks created on the streets, these communities create their own modes of governance and organisations as they perceive the justice system as a 'prerogative of the rich' (Enria, 2012:52). Luisa Enria recognises the inability of youths in such communities to support themselves, which means they remain boys and not considered as adults.

Cheney (2010) and Kendal (2010) agree with one another's critique that some aid agencies (NGOs or INGOs) frame categories of African children as objects of policy concern, for example, through defining, applying and operationalising vulnerability (Cheney, 2010) in ways that divert resources from other equally vulnerable groups of

children. In particular, Cheney (2012), in her study of HIV-orphaned children in Uganda, found them to be suffering from psychological trauma and worse off than children affected by war. This is because they were rarely consulted about who to live with after losing a caregiver since these children would have to live with the loss of their parents and worry about whether they could be HIV-positive.

Nancy Kendall's ethnographic work in Malawi and Mozambique (2009, 2010) concerns frameworks used for defining and categorising childhood vulnerability in Southern Africa that informs government and international development support for vulnerable children and how to turn to an alternative analysis of childhood vulnerability.

Cheney (2010) said that in Uganda, the category of the construction of vulnerability was misplaced. She says that the term 'vulnerable children' is used in a problematic and contradictory way to describe children as objects requiring international intervention. The word vulnerability is defined and enacted in a manner that causes an adverse effect on the lives of African children that it aims to protect. This is because as there are many interpretations of children's vulnerability, INGOs use this to sponsor projects that fit with their aims and objectives (Shepler, 2005) and fail to address other vital projects that deal with childhood vulnerabilities as children in conflict with the law.

Therefore, due to the variance of children's vulnerabilities, most INGOs do not have a particular method in considering the strengths and weaknesses of alternative approaches to defining the concepts of vulnerability and childhood. For example, where vulnerable children survive on their own, Cheney (2010) and Kendal (2010) posit that state and international programmes do not support such children due to the deep concern that children should not be trusted on their own and require protection from adults. This is shown in Cheney's work in Uganda, where she says that the methods in which vulnerability is defined and enacted in development programmes affect the lives of African children, in the context of their access to education, culpability as child soldiers and, to an extent, their survival. Children would only be seen as vulnerable if they fit a particular category determined by the international system, such as being a child soldier or having a parent who died of aids-related conditions.

What Cheney (2010) seems to highlight is that if all poor children are recognised as vulnerable and in need of services, there is a question as to why these special categories of vulnerable children have been produced (such as orphans, war-displaced, street

children), given that all these children at any rate are vulnerable and in need of services. Local communities do not, however, perceive some of these categories (war displaced, street children, children involved in crime) of children as vulnerable but irredeemable, violent, dangerous, risky, and so on. The exception is that orphans in Sierra Leone are seen as a vulnerable group (Gale, 2008). The reason for this is that they lack the person(s) who would make social connections for them: the main guarantor to their links with other community members and the support of a patron.

Nancy Kendall (2010) and Cheney (2010) have commented on the trend for international development organisations, governments, and some communities in Africa towards officially categorising and expanding the number of children as "vulnerable" (Kendall, 2010:26). As a result of expanding the meaning of the category of vulnerability, Kendall says resources associated with the term also change the category. For example, where food aid was previously used to target the "poorest of the poor", this was now directed to "the most vulnerable to poverty" (Mealli, et al., 2004 in Kendall, 2010:26).

To further explain the different forms of vulnerabilities for children, Kendall's study in Malawi and Mozambique (2009 and 2010) shows that respondents broadly identify two types of vulnerabilities that encompass 'structural vulnerability' and 'individual choice vulnerability' (2010:33). The characteristics of structural vulnerability include deep poverty and survival insecurity. A structural vulnerability was linked to being extremely poor with food and shelter-insecurities affected by 'disease, famine, loss of land and other such events, but their defining characteristic was deepest poverty and survival in security' (Kendall 2010:33). Other people who were also extremely poor but had not experienced these events were seen to suffer from what Kendall paraphrased as individual choice vulnerability. This included choices such as dropping out of school, drinking heavily, doing drugs, having sex outside of marriage, desertion by husband, leading to deep poverty even when 'able-bodied' (Kendall, 2010:33). Kendall means that the community saw being very poor as a choice since if someone was non-disabled, they should work their way out of deep poverty.

Although both structural and individual choice vulnerabilities interacted in different ways in both communities in Kendall's study, in general, girls were deemed more vulnerable if their decisions violated behavioural expectations regardless of whether structural vulnerabilities impacted them.

In cases like these, children who, for example, do sex work were deemed by the community as not deserving of 'aid, even if they were also identified as vulnerable' (Kendal 2010:33) because they are seen as irredeemable and perhaps it is pointless to help them. Children who did sex work would be re-classified in local paradigms as adults because sex is an adult activity. In contrast to local views, children doing sex work will be more deserving of aid by international standards since the frame of international law and policy is that children cannot consent to sex (Drobac and Hulvershorn, 2014) or their own abuse and therefore cannot be said to have made a 'choice' in doing 'sex work'.

Nancy Kendall (2010) posits that when international constructs of vulnerability are linked to individual characteristics, they are assessed by international rights frameworks regarding the individual's resilience to cope without aid. Therefore, individual resilience was measured in terms of individual processes and outcomes were viewed as favourable when they matched international rights framework such as staying in school. This contrasts with her respondents' views of resilience in terms of communal social relations, expectations and obligations. The factors needed to determine who needs support most to survive and thrive were different in the community from those incorporated into international frameworks.

Kendal's findings suggested that the community consider daily life and social relations instead of what is required under international frameworks when determining who is vulnerable or worth supporting. So, for a child who stays in school no matter the hardship, international discourses concerning childhood and resilience 'moralise' such a child. However, some children, even though they are vulnerable because their type of vulnerability does not fit certain social norms like children involved in crime, are not considered vulnerable.

Juncos and Joseph (2020) say the notion of resilience enables international actors to evade responsibility and acknowledge that local actors have agency and should have ownership. There is no clear definition of resilience. According to the European Union (EU), resilience "is the ability of an individual, a household, a community, a country or a region to withstand, to adapt, and to quickly recover from stresses and shocks" (EC 2012:5 cited by Juncos and Joseph, 2020:290).

Panter-Brick and Eggerman (2012) reinforced the point about resilience by arguing that it should be seen 'as an interactional process between individuals and their

environments, rather than the mere presence or absence of fixed individual-level attributes' (p.369). Ungar (2011a) says that resilience should be positioned "as one of process and resource provision" (as cited by Panter-Brick and Eggerman 2012: 370), taking into consideration issues such as poverty and community factors. Kendal's (2010) findings show that where a child stops school to support their family or siblings, that child will be seen by an NGO as vulnerable. However, the community are more likely to see this behaviour more as resilient than vulnerable.

International frameworks do not adequately address the gendered nature of childhood. As Kendall (2010) said, international frameworks of childhood vulnerabilities are built on liberal democratic models of gender parity for adults (Kendal 2010). This, therefore, fails to understand the gendered assumptions underlying constructions of childhood for girls, of innocence, deservedness, protection, social roles, and life opportunities (Atkinson- Sheppard, 2017; Aufseeser, 2017; Cohen, 2013).

In Kendall's 2010 study, a girl participant said her means of gaining access to money was sleeping with older men, which was judged negatively by her community. Kendall found that most survival strategies identified by community respondents 'as being available to girls and women were tied to sex and viewed as morally corrupt, while boys and men [the 'clients'] were not' (Kendal, 2010:34).

In Sierra Leone, previous categories of vulnerability involved support programmes such as school feeding programmes. These changed to child soldiers, then recently to court representation of children at the Remand homes and the Approved School by local NGOs such as DCI-SL, Timap for justice, Legal Watch (also see UNODC, 2014). DCI-SL is also currently focusing on issues surrounding the 'girl child', for example, child trafficking (DCL-SL, 22 May 2018) and teenage pregnancy. From this, INGO support is provided according to what the organisations consider a pressing need for funding, unlike what the community wants. Fanthorpe makes a similar point about the decentralisation of rural governance in Sierra Leone when he says: 'donors often demand clear-cut recommendations from researchers and consultants as opposed to reflections on local complexity' (2005:45).

In contrast to the INGO discourse of innocent categories of children, children embedded in actual social structures may be incorporated into networks of support in other more culturally resonant ways. This is not to suggest that they are necessarily more

protective than the INGO mechanisms. The overlapping webs of patron-client networks in Sierra Leone, for example, can also be seen to be operating in the relationship of child soldiers to their 'captors' or 'patrons'. Another patron and (juvenile) client relationship is shown in the commission of petty offences involving the "sisies" and the "bras" (patrons) and juveniles (clients), as shown in Malcomson and Bradford's (2018) study of street children in Sierra Leone. Further, in Sierra Leone, politicians exploited the country's resources in return for favours from individuals (Abdullah, 2002; Gberie, 2009), and targeted cohorts such as students, the unemployed and the "rarray" boys, "dreg mandem" also referred to as the "lumpens", for the exploitation of elections (Enria 2012, 2018).

Just like with other vulnerabilities listed above, children lacking in modern education are classed as vulnerable. INGOs have used education as one of the defining features of a modern childhood (Crivello et al., 2008). Hoechner (2014) and Ensor (2012) argued that education is mainly taken to mean formal schooling (in Western/secular schools) for the accumulation of knowledge relevant for subsequent work.

The relevance of education to juvenile justice in this study relates to the notion that the international community views children in school as on the path to redemption. Redemption can mean recognising a community of interest between international and national (international law and state), in response to community building or for the community good (Villalpando, 2010).

In Sierra Leone, there is a very long-standing connection between education and access to state power. This tradition of academic education has survived since the early 19th century. She is home to the oldest Western-style university (Fourah Bay College)⁴ on the continent, founded in 1827 (Paracka, 2005), despite the long history of formal education in other parts of the world.

In Sierra Leone, in the early 1990s, two-thirds of its population were illiterate (Banya, 1993). The importance of education in pre-war Sierra Leone (Richards, 1996) is that there were high expectations that education would yield jobs giving youths' access to political power or at least to government jobs. When it became apparent that there were no jobs in the government or the private sector, those 'educated' youths joined the not so

⁴FBC is referred to as the Athens of Africa because of its strong focus within its curriculum such as Greek and Latin with an "unparalleled success of its graduates at home and abroad" (Paracka) (Paracka, 2005:5). FBC constructed as a socio-cultural microcosm consisting of political, racial, religious and social tensions which characterised the colonial and post-colonial era in West Africa (Paracka, 2005).

educated youths called 'lumpens' as their expectations of a better life were emptied, and prompted some of the youths to join the civil war in Sierra Leone.

2.6.3 The figure of the Street Child

Given the limited research on children in contact with the law and how research follows categories of vulnerability, it is useful to connect the experiences of street children to those of juvenile justice. This is because street children are more likely to be child offenders than other children as they are often marginalised and excluded by other members of society. Two issues stand out here: firstly, street children often lack the kinds of familial networks that can protect them from contact with the law or get them released speedily when they come into contact with the police. Secondly, survival on the street often involves status offences and criminal offences (especially loitering, theft and violence). Also, we know that street children are usually picked up by the police (Malcomson and Bradford, 2018) and experience violence from them.

The "street child" is associated with acts of mischief, thievery or defiance (Kopoka 2000; Panter-Brick, 2002 cited by Wagner et al. 2012). Living on the street teaches street children to be mostly fearless, crafty, and resilient while exposing them to risks. Street children exercise considerable agency in harsh and unpredictable environments (Panter-Brick, 1998). The almajirai children in Nigeria are such examples. These boys, who are also referred to as madrassas (Hoechner, 2014), traditional Qur'anic students, have limited access to secular or 'modern' education (Hoechner, 2014). They earn their livelihood in the rural areas by collecting food and firewood or work as farmhands. In urban areas, older students engage in domestic chores such as washing clothes, carrying loads, or being involved in petty trading or handicrafts.

Nonetheless, not all almajirai are necessarily from poor backgrounds (Hoechner, 2014). Hoechner (2014) says these children are fully aware of negative opinions about them by their community. They are frequently insulted, chased away and physically assaulted while begging. They are denied even the minimum respect as human beings by locals who perceive their begging in the streets as deviant and immoral because they interact with others of low virtue like prostitutes, drug addicts, and gamblers. They are perceived as 'foot soldiers for violence' and associated with radicalisation and militancy on the Niger-Nigeria border with Boko Haram, a militancy sect of Mohammed Yusuf, a Taliban. Boko Haram means "Western education is a sin" (de Montclos, 2014:3). Alkali

(2009) (cited by Hoechner in de Montclos, 2014:64) says the almajirai end up as 'juvenile delinquents' due to harsh living conditions. Just as Sierra Leone lumpens, Amzart (2008:7 cited by Hoechner in de Montclos, 2014:70) states the almajirai are said to "experience lumpenhood with no substance of childhood".

It is clear from Hoechner's interpretation of local NGOs' perception that almajirai were not seen as vulnerable and therefore did not want to get involved with them. Contrary to what is said about them, Hoechner pointed out that the almajirai were not considered within the prevailing ideals of childhood and youth. This is because they are not regarded as part of the nuclear families and formal education. Since they are growing up outside appropriate adult care and control, they are not considered needing care and protection like other children. In particular, the ideals of formal education and the nuclear family have 'become enshrined in international children's rights legislation and have influenced social policy doctrines' (Hoechner, 2014:69 in de Montclos), and almajirai do not conform to such ideals.

Philip Kilbride's (2010) ethnographic study undertaken in Nairobi of street children found limited perspectives in which street children are victims and therefore psychologically vulnerable, despite their shared experience of social marginality with other vulnerable children. Kilbride's says that the concepts of the street child and vulnerable child in current use are master labels used to hide children's agency. Philip Kilbride (2010) showed that some girls on the streets were more vulnerable than others since some were more at risk for their safety or livelihood, or well-being than others.

Philip Kilbride (2010) argues that the portrayal of children as vulnerable and incompetent, and relatively powerless in society is deeply problematic. The category of a vulnerable child should not cover all children on the streets as these children have different experiences of difficulties. For example, for boys, life on the street is not as harsh as for some girls who had to engage in survival sex to live. Boys will carry loads, shine shoes and the like. These children also reproduce themselves as they grow to be members of the working poor (Kilbride, 2010). Therefore, the label 'vulnerable child' can be applied to some children in those environments. However, there is evidence that others have agency and resilience masked by the label vulnerable, although with a marginalised childhood.

Malcomson and Bradford's (2018) study of street children in Sierra Leone shows that definitions of street children were challenging and changing. They said early

definitions focused on street children as a social problem and were classed as dysfunctional, pathological and psychologically broken down. Geographers introduced time and space as key dimensions of children's interaction in urban settings (Young and Barrett, 2001; Beazley, 2003, cited by Malcomson and Bradford, 2018). The new childhood studies acknowledge children's agency which has impacted the conceptions of street children (Mizen and Ofofu-Kusi, 2013). Malcomson and Bradford (2018) found that many children migrated to Freetown from the rural areas due to 'chronic rural vulnerabilities' (Malcomson and Bradford, 2018:334). Also, poor governance, increasing poverty, a decade of brutal civil war and 'the 2014 Ebola crisis have left a deep imprint of fearfulness on the country' (Malcomson and Bradford, 2018:334).

A national survey of street children conducted by Street Child (2012, cited in Malcomson and Bradford, 2018) in Freetown showed that there were estimated to be 24,615 street children who lived and worked in the streets of Freetown. Less than six per cent of these children (1356) were estimated to be sleeping rough, and these children lived in fear (Malcomson and Bradford, 2018).

Groups of street children are often targeted and exploited and represent a source of systemic social danger particularly 'outside of ritual practices of control' (Douglas, 2006 in Malcomson and Bradford, 2018:335). Malcomson and Bradford state that, their resilience is shown by how they managed and survived their circumstances. When these children first arrived on the streets of Freetown, they showed characteristics of panic and shame. Panic set in because of the realisation that survival was their responsibility and shame as they were not respected. This created a dependency on "bras and sissies" (street patrons) for work and social interactions. The "bras and sissies" send them out to steal or use them for hired labour. Girls were employed in mobile street businesses or to sell water, coconut, firewood, soft drinks and cassava. They also scavenge and sell scrap metal and plastic jerry cans (Malcomson and Bradford, 2018).

Malcomson and Bradford's (2018) study found boys' fears related to being beaten up by thieves and armed robbers, stabbed and sometimes killed and mostly threatened. There were also con artists or fraudsters who would also trick them out of their money. Girls were often bullied, beaten up and sexually abused in their early hideout days. The fear extended to fighting, smoking, drug use and police harassment for children and girls as young as nine years as street children in Freetown.

Most significantly, girls who engage in sex work fear contracting HIV (human immunodeficiency virus) or other STIs (sexually transmitted infections), unwanted pregnancy and fistula. Still, offering sex work enables them to be relatively secure and provides them with economic stability. However, the nature of this type of work generates fear, as stated in Malcomson and Bradford's (2018) study where it is shown that sex work customers were more fearsome than the "sisses". The narratives of street children in Freetown show that sexual violence and abuse has become normalised in street children (Hlavka, 2014:338 in Malcomson and Bradford, 2018).

There are contradictions between the various aspects of street children's experiences in urban space. Due to street children's creative agency and freedom of mobility, they can enhance their social interaction, labour and health by negotiating their engagement between spaces (Van Blerk and Ansell, 2006). Resilience is often talked about as a kind of converse of vulnerability. For example, street children are often vulnerable, but they say they are resilient (Kendall, 2010). In this sense, resilience is understood as the continued ability to express agency in otherwise highly constrained circumstances.

It is stated that street children's decision-making in adversity depends on the perceived benefit, either personal or collective, of exercising 'tactical agency', which is often from a position of weakness (Honwana, 2006). Street children's resilience is shown by how they aspire to 'generate meaningful lives for themselves in often volatile and precarious circumstances that shape their experiences and everyday strategies' (Malcomson and Bradford, 2018:341).

In most street children's experiences and those of other vulnerable children, the police are brutal. Children in contact with the law are often beaten up, chased, imprisoned unlawfully with money taken from them, or are even abused sexually. Police brutality is shown in studies of Cheney (2010), Kilbride (2010), and Malcomson and Bradford (2018). Other plights of juveniles in Sierra Leone are documented in the work of Defence for Children International.

2.7 Reports of Defence for Children International (DCI) and Defence for Children International – Sierra Leone (DCI-SL)

Studies relating to the juvenile justice system in Sierra Leone conducted by Rachael Harvey (2000) and Ashley Audet (2010) of Defence for Children International (DCI) and

other studies conducted by Defence for Children International-Sierra Leone (DCI-SL, 2010 to 2016) show a plethora of reasons why there is no real juvenile justice in Sierra Leone even while the legal architecture is evident. These studies show that the magistrates' court is the main court that presides on juvenile matters. The key statutory provision dealing with child offenders is the Children and Young Peoples Act 1945, Cap 44. There is also the Child Rights Act 2007, but this is ineffective in addressing juvenile justice issues. DCI and DCI-SL studies showed that Sierra Leonean juveniles in contact with the law lacked support structures for implementing children's rights. There are inconsistencies in the treatment of juveniles from their first encounter with the law to the investigation of judicial proceedings across regions. For example, juveniles are often detained for simple offences such as theft (or larceny). There is difficulty determining children's ages and criminal responsibilities for offences committed by children in conflict with the law compound these issues. This includes the lack of attention to safeguarding issues that lead to children being held at the state prison if charged with an adult for a capital offence, such as treason or homicide offences. Also, the lack of legal representation leads to multiple adjournments and sometimes imprisonment or referred to the Remand home. There are no specific juvenile courts to deal with juvenile matters. Government officials, such as the police, probation officers and magistrates, are not adequately equipped with dealing with juvenile matters. Facilities at the Remand homes and the Approved School whilst juveniles are waiting for their cases to be heard are inadequate. There are no rehabilitation programmes or institutions for children to go to when released from these institutions, especially for those rejected by their families and communities. Other flaws include a lack of protection for juveniles and the risk of reoffending.

2.8 Conclusion

The literature reviewed in this chapter has located social culpability, the core concept developed in the study, concerning the extensive sociological research on social capital and social networks. Furthermore, it has positioned the state (for example the courts) and post-conflict reconstruction attempts to reform juvenile justice in the research and how the gap between people's daily life and the formal architecture of state power is negotiated. This is critical for this thesis because the gap is vast between juvenile justice as imagined by the builders of the liberal peace and state elites and as the general population

imagines it. The end of the civil war involves the question of how to deal with the culpability of child soldiers, and this theme continues; I want to emphasise that this has continued to haunt Sierra Leone's juvenile justice system. Post-conflict reconstruction and liberal peacebuilding mechanisms have shaped the way children are criminalised, and the mechanisms applied for post-conflict institution building, such as the DDR programmes and economic reforms. The determination of culpability for the under 18s for their actions is a question that begins with the Special Court for Sierra Leone and the production of 'acceptable' categories of vulnerability in childhood. The debate about the vulnerable child's category is instrumental in understanding how the international context of vulnerability in childhood gets played out in local spaces to promote peace between victims and perpetrators. Programmes including civic education have emphasised child soldiers' vulnerability and insisted that they should not be held accountable for their crimes below 15 years old. Those over 15 years old were to confess their crimes and go for rehabilitation at Sierra Leone's TRC. Interestingly, children were not culpable for their actions during the war, but post-conflict, they are culpable for the same or similar crimes, as detailed in chapters five and six. However, it is worth noting that children's culpability during the war and post-war is also attributed to the perceptions of their community.

The material on how the distribution of resources by international and state actors contributes to defining vulnerability and resilience for African and Sierra Leonean children shows that when international actors or state actors, including NGOs and local people, define people's vulnerability, this is a discursive struggle over the distribution of resources. There are many other ways that children are affected by vulnerabilities that do not get international non-government organisations' attention, for example, children in contact with the law, which is not generally discursively constructed as a vulnerability.

Therefore, vulnerability and resilience issues have been framed in the socio-cultural, political and economic context of aid distribution and its support for specific kinds of human rights and justice in which children in contact with the law do not seem to rank very highly. Sometimes, these children in conflict with the law considered culpable are also considered to be redeemable for various reasons. Therefore, they can be rehabilitated. Sometimes, those considered to be culpable are considered irredeemable and are therefore, imprisoned and liable to life sentences for convictions of rape or murder (as shown in the main chapters).

This thesis contributes to the wide-ranging discussion about vulnerability, resilience and agency, which has taken up so much of the attention of scholars, especially in Childhood Studies and, differently so, in Legal Studies. It shows that in thinking about the relationship between children and juvenile justice, there is a distinction to be made between innocence about the impossibility of a child's culpability and innocence concerning the socio-cultural, often classed and gendered, in the construction of who is a 'good child' and who is a 'bad child'. Age is one demarcator of that, the law is another, but social networks and social capital, which are taken to be proxies for a child's character, are the key demarcators of innocence or guilt. Good character is read off or attached to things like family ties, community ties and space, and financial resources. Therefore, a child who does not have the financial resources to defend themselves will be penalised or will be passed over until such time that they can attach themselves to someone who can speak for their character, or they can be reconfigured as belonging to another category of vulnerability that has an INGO support.

Juvenile justice is simultaneously a welfare system and a criminal justice system. The frames of these two systems are often in tension, if not a direct contradiction. The thesis aims to address how children are treated in the juvenile justice system in Sierra Leone in principle and practice and explains or accounts for the gap in the law's architecture and the law's actual practice. The thesis forms a distinct contribution to the field of juvenile justice and Childhood Studies in developing the concept of social culpability. In brief, this concept describes and explains how the gap between principle and practice shows that a child offender who lacks resources such as strong social networks and the social capital that flows through networks are rendered 'socially culpable'.

This study further contributes to the scholarship on African law in developing and sharpening our understanding of how juvenile justice gets dispensed in Africa and the limitations of customary law as a basis for developing restorative justice for the juvenile.

A Map of Sierra Leone



Figure 1: Location of data collection - Freetown and Lunsar

(File:SierraLeoneOMC.png)

CHAPTER THREE

METHODOLOGY

3.1. Introduction

In this thesis, I show that how children are managed in the juvenile justice system is shaped by age and significantly by status, financial resources, access to patrons, geography, and others' perceptions of the child's character. A key point emerging from the literature review that shaped the research questions for this thesis, is the perception of vulnerability and culpability. In many African countries, the literature review shows that how children are considered culpable depends on how other actors (adjudicators, community or individuals) perceive and attribute vulnerability, resilience, and agency. Further, children can be what I will call 'socially culpable' when they are not legally culpable. The key example is child soldiers whom the Special Court for Sierra Leone (SCSL) ruled were not culpable for their criminal actions. These children were over 15 years; the SCSL and Truth and Reconciliation Commission (TRC) ruled that they were not legally culpable whether they were willing participants in the civil war or not (Wells, 2017, 2021). This is because they are understood to have been manipulated by unscrupulous army officers and warlords (Jalloh, 2012; Rosen, 2010). Therefore, child soldiers should be perceived as a vulnerable group (forcibly recruited into war) despite the destruction they caused to families, cities and communities (Sierra Leone Truth and Reconciliation, 2004). However, the community (Sierra Leoneans) and their victims perceive child soldiers as socially culpable.

The literature review also indicates that if children's circumstances show them to fit a particular category, they become an object of concern in the international community (child soldiers, so-called AIDS Orphans, commercially sexually exploited, a street child). These children will be seen as vulnerable and redeemable. Both of these categories (the resilient and vulnerable child) of children need aid and are capable of benefiting from it. If not, they are seen as either irredeemable or, in social policy terms, not relevant. Even in circumstances where children are seen as fitting into a particular category of vulnerability in local settings, if a vulnerability does not fit the category an NGO is targeting at a given time, such children would not be eligible for resources (Cheney, 2010; Kilbride, 2010; Shepler, 2004). Therefore, 'group vulnerability' is one way in which children get resources

and support when they are without family support. However, 'child criminals' are outside of child rights actors' usual focus because they cannot be easily gathered under a collective noun. Neither are they a category that engages public sympathy.

Similarly, the findings of the literature review show that children are generally vulnerable. However, there are times when they perform specific forms of vulnerability to gain assistance. It has also been shown that NGOs target them (children) to meet their organisational goals (Cheney, 2010; Shepler, 2005; Shepler and William, 2017). Therefore, it is arguable that all actors (NGOs, vulnerable groups and state actors) frame their definitions of vulnerability and resilience for African/Sierra Leonean children to organise the distribution of resources.

The literature review also shows that there is very little academic research or grey literature on juvenile justice in Sierra Leone. Moreover, none of the research to date discusses how the post-conflict legal systems have impacted the administration of juvenile justice in Sierra Leone.

Therefore, the main research question addressed in this research is: how is juvenile justice practised in criminal and customary law in Sierra Leone? This question is then divided into four subsidiary questions:

- a: What is criminal/customary law concerning child offenders, and how is it practised in Sierra Leone?
- b: When can a complainant decide whether to use the criminal or customary legal system when in contact with a juvenile?
- c: What are the outcomes of juvenile cases under criminal/customary law, and how are children treated when in contact with the law under both legal systems?
- d: How has international law shaped the juvenile justice system in Sierra Leone?

This chapter describes the methods adopted in this research to answer the above questions.

3.2 Sampling of Research Sites

The study was conducted in Freetown and Lunsar. The research included site visits to the high court, magistrates' courts, local court, paramount chief sessions, local chief sessions, Remand homes/centre, and the Approved School. I know the researched regions well. I was raised in Lunsar and Freetown, and I have had regular contacts in these regions for over 30 years since I moved to the UK. As a result, I am fluent in the local languages (Temne and Krio/Creole). I did part of my elementary schooling in Lunsar and followed up in Freetown, where I did high school. Freetown is the capital city (Sankoh et al., 2013) and an important site for the study. It houses the judiciary and legal institutions' main organs, including the courts (Maru, 2006). It also plays host to every 'tribe' with no particular tribe in the majority, and Krio is spoken as a lingua franca. Lunsar is a provincial town in the Port Loko District in the Northern part of Sierra Leone. The leading ethnic group and language in this District are the Temnes (also referred to as Themnes) (Gamble, 1963).

Lunsar lies 75 miles (120 kilometres) north-east of Freetown and 20 miles from the district capital of Port Loko (both the capital and the district are called Port Loko). Lunsar is the largest town in the Port Loko District, with 615,376 people (2015 Population census; San Ramona et al., 2013). Lunsar's original name was 'Ro Sar', meaning the place of stones. This name Lunsar evolved during the colonial era. Lunsar is rich in iron ore deposits, which have been mined since 1929 and forms part of the Marampa mining towns (Hauser, 2014). Iron ore is set in stone which forms a vast mountain (Gamble, 1963). Lunsar is also the national trade centre of the Marampa Masimera Chiefdom for rice and palm oil kernels and houses many institutions, including government health centres. Marampa has a total resident population of 59,323 people, while Masimera has 40,843 people according to the 2015 Population census. Lunsar has several schools, including the catholic schools of Our Lady of Guadalupe and St Murialdo Secondary School. Lunsar is the location of a prominent catholic hospital, St John of God Catholic Hospital-Mabesseneh, and the Baptist Eye Hospital. 'The Baptist Eye Hospital is one of four eye clinics' that serve 'an area of approximately 32,000 km' endemic to onchocerciasis or river blindness (Runday et al. 1996:956).

Mining activities have significantly influenced Lunsar's economic growth. Iron ore is an integral part of Sierra Leone's gross domestic product (GDP). The mining companies

that operated in Lunsar were Shandong Iron and Steel Group, which replaced African Minerals. At the same time, London Mining was taken over by Timis Mining Corp SL Ltd, which SL Mining Ltd later replaced (Mieth, 2018). In July 2019, the SLPP government cancelled SL Mining Ltd.'s licence (SL Mining Ltd v Sierra Leone ICC, 2019). This further exacerbated the unemployment rate of Sierra Leoneans, especially youth unemployment. The impact of the Ebola epidemic in 2014 also contributed to the high unemployment of youths in the country. However, in May 2021, the US-based Gerald Group, which owned SL Mining Ltd, signed a new Memorandum of Understanding with the GoSL under a new name, Marampa mines, to commence mining operations in June 2021 (Umaru Fofana, 2021).

Lunsar is governed by a paramount chief (Acemoglu et al. 2014): Paramount Chief Bai Koblo Queen Kabia II. Lunsar practises customary law as well as civil and criminal law. It is also highly influenced by Poro and Bondo secret societies (Gamble, 1963). These societies can influence traditional practices relating to the administration of juvenile offences since they are also spaces used to resolve disputes (Fanthorpe, 2006). There is a criminal justice system in Lunsar town that deals with children in contact with the law. This justice system comprises both magistrates' courts and customary informal courts, and local courts. However, juvenile justice is managed by these courts arbitrarily and informally. There are no strict rules or guidelines on how a complainant can initiate criminal proceedings. However, the magistrates' court should initially preside over all matters, especially for serious criminal matters concerning preliminary investigations. The informal manner of handling matters concerning children in conflict with the law allows the parties to settle disputes. It also gives the parties discretion to refer cases to the paramount chief, aides (sub-chiefs) or the police. The characteristics, demography, location, and how juvenile justice is practised in this part of Sierra Leone make Lunsar an appropriate site for investigating juvenile justice concerning criminal and customary law.

3.3 Sampling of Research Participants

The study involved interviews with 58 research participants selected through snowballing (Atkinson and Flint, 2001) until qualitative saturation was reached. The samples were collected in Lunsar and Freetown from professionals, juveniles and other locals. I interviewed children in contact with the law (12), paramount chiefs (6), local people in rural areas (5), and a range of legal officials, including the police, wardens, social workers, lawyers, magistrates, paralegals and government officers (35).

3.4 Participant Observation

The central method of the research was participatory observation. I chose this method during training at the law school in Freetown as part of an observation of the law on how this is taught and practised to understand the justice system in Sierra Leone. This immersion in Sierra Leone's legal culture was crucial in understanding the gap between law and its practice.

I wrote field notes from participatory observations. I compared observations of juvenile detention against juvenile legal cases to understand the connections between young people's experiences when they encounter the law and the legal culture of juvenile justice, specifically, the interpretation of procedures, actions, and how the rule of law in Sierra Leone is implemented.

Therefore, my immersion in the field consisted of participant observations, training at the law school, interviews, attending court hearings: police stations, customary courts, Remand home (Kingtom) and the Approved School, together with an analytical engagement with the law.

3.4.1 The law training

This study's professional participants consisted of lawyers, police officers, magistrates, court officials, paramount chiefs, local chiefs, and other government officers such as Family Support Unit officers, Social workers, Remand staff and probation officers. Some of these professionals occupy powerful positions as they are involved in the administration and adjudication of juveniles in Sierra Leone. However, in this study, it was initially challenging to access some professional participants because of their status and the fact that they are often too busy to conduct interviews. However, most importantly, it

is possible to identify them easily from the description of their roles since there are very few professionals at senior levels in Sierra Leone. Some of these professionals are generally mindful of giving interviews, fearful that what they say might harm them or the people or organisations they represent. Therefore, they are often reluctant to give interviews. It is arguable that in situations such as these, such participants might not give candid interviews and might say things representing their organisations or institutions in a good light. However, in this study, during my interviews with one of the magistrates and some other participants (see chapters six and seven), their responses to the interview questions represented a bias favouring their institutions and expressing personal interests instead of issues concerning juvenile justice. Despite this limitation, the additional information they provided also enriched the data. However, the former Assistant Director of Public Prosecutions (now a Court of Appeal judge) was supportive and candid. He assisted with gaining access to other networks and accessing legal information for this research. Generally, accessing such a professional would have been difficult. However, as I was part of his 'elite' profession (law) (and network) and his interest in developing jurisprudence, it made it easy to gain access and interview him for this study.

I wanted to get close to the above privileged group to understand the practices and processes that shape them and how they in turn, shape what underpins their thinking when advocating juvenile cases and the culture in which they operate. I decided to attend the Sierra Leone Law School (SLLS) to build a genuine rapport in a more natural setting with lawyers as they formed part of the participatory research. Additionally, I attended the SLLS to learn more about these aspiring barristers who, if they become part of the legal system, are likely to influence juvenile justice significantly. Therefore, attending the SLLS was a way of deepening my understanding of the context for the exercise of juvenile justice, in essence, to provide a rite of passage to get close to the professional participants and get a different insider perspective on the legal practice.

The first part of the training to become a practising barrister after qualifying in England and Wales as a solicitor is to attend the SLLS for nine months. This entailed having to study eleven subjects. The core law subjects included contract, tort, criminal, equity and trust, civil procedure, criminal procedure, professional ethics and practice, legal drafting and evidence. There was an option to choose two out of four other subjects: domestic relations, wills and probate, shipping law and international criminal law. I chose

domestic relations and wills and probate because both modules contain family law contents, including some aspects of children's rights, although not particularly juvenile justice. It is not uncommon that juvenile justice is not a part of SLLS's modules or curriculum, although a criminal law lecture was dedicated to the topic. Just as in the West, for example, in England, juvenile justice is not a module studied at Law School. In England, representation for juvenile justice is under the category of Family and Youth Justice. Representation of youth offenders is dealt with by the Youth Offending Team of each local authority. Also, specialist law firms deal with youth crime in England.

The second aspect of the barrister training consisted of a one-year pupillage upon completing the Bar Final exams. Out of about 95 students, 80 of these were law graduates from the Fourah Bay College in Sierra Leone. Most of these students would have had a first degree from Fourah Bay College before studying law at the same college totalling eight years of tertiary education. Before admission at the SLLS, most students were from impoverished backgrounds. Their school fees were funded by sponsors (patrons) such as family members, friends, or politicians. However, some also worked as professionals in key government departments and were able to fund their studies. A few among them acquired state scholarships because of their associations as active political party members or their relation to politicians (for example, members of the youth league and or part of an executive member of a diaspora wing of their political party). Further, 15 students (out of 95 students) were from abroad. These were Sierra Leonean nationals with British and USA citizenships (originally from Sierra Leone) and some were Cameroonians.

English-speaking Cameroonians attend the SLLS because Sierra Leone shares a similar legal system: the British common law system. As a legacy of its colonial history, Cameroon has a French and English dual legal system (Laird et al., 2010). The Legal Practitioner's Act 2000 of Sierra Leone does not bar Cameroonians from practising law in Sierra Leone. However, there were cases during my attendance at SLLS in which some were prevented from practice. Nonetheless, recently, the Sierra Leone General Legal Council admitted some Cameroonians to practise as Barristers in Sierra Leone.

No doubt, my colleagues at the SLLS were aspiring individuals that were on the path to becoming part of the "noble, elite" profession. In Sierra Leone, as elsewhere, barristers are generally held in high esteem even though some might be perceived as having joined the profession to become famous and enrich themselves instead of promoting the

rule of law and justice. For a handful of my colleagues at the SLLS, their main goal for reading law appeared to be to attain prestige, money and fame. The same set also had little or no interest in justice for juveniles, and there was the belief that by becoming practising barristers, their money worries would be fewer or non-existent. This notion was reinforced from cases of practising barristers who, within a few years of graduating from the SLLS, could afford to buy things like jeeps, build beautiful houses. For some of these men, the possibility of having multiple beautiful girlfriends (this is not just a culture practised by barristers but by most men of affluence). However, and perhaps unsurprisingly, if my observations are correct, some barristers are perceived as corrupt.

My observations and interviews of these barristers in the making included understanding the legal culture that shapes aspiring lawyers' practice of juvenile justice. I noted that those (some) that should represent and defend the rights of juveniles or other citizens were outweighed by the ethos of making money and living the good life. There is a plausible explanation for the lack of interest in juvenile justice. The juvenile population are generally poor and lack the financial capacity to pay for legal representation (DCI-SL, 2010 by Audet), notwithstanding the recent setting up of Sierra Leone's Legal Aid Board in 2012. Children in conflict with the law in Sierra Leone are mostly unrepresented as they cannot pay the legal fees and therefore end up in prisons or Remand homes.

Mainly, juveniles are represented by NGOs due to inadequate government resources to represent the poor. The lecture at the SLLS dedicated to juvenile justice was conducted by Pa Momo Fofanah, a barrister and the leading authority in the country on the subject and a human rights lawyer. He was instrumental in drafting the Child Rights Act 2007 (CRA 2007) but was critical of the government's failure to adopt certain aspects of his recommendations. For example, the CRA 2007 has failed to address the significant flaws contained in the Children and Young Persons Act 1945 including the unnecessary detention of children in contact with the law. The CRA 2007, amongst its other flaws, does not provide the right to free legal representation.

The right to legal counsel is fundamental to all those accused of committing an offence. This right is particularly crucial for juveniles due to their unique vulnerabilities when they are in conflict with the law. This right is enshrined under international law (UNCRC, Article 40 (2) (b) ii); ACRWC, Article 17(2) (iii) and ICCPR Article, 14(3) (d)). A further flaw concerns the denial of bail regarding young persons when apprehended and

failure to be brought immediately to the court when charged with an offence. In Sierra Leone, legislative guarantees are absent to have matters determined expediently for juveniles, such as when they are arrested. For example, many children at the Remand homes, which are pre-trial detention centres, detain children accused of criminal offences for long periods, thus depriving them of their liberty. There is also inconsistency in the way juveniles are treated across judicial districts by the legal system with deprivation of their liberty (Prison Watch Sierra Leone, 2013).

My immersion at the SLLS also provided me with valuable contacts and a sense of camaraderie. I was elected as the Vice President of the SLLS (a position of esteem). I experienced that students bonded despite the fiercely competitive attitude that seemed to exist among them. Most, if not all, took their studies very seriously and attended classes regularly from 9 a.m. to 4.30 p.m. Monday to Friday. Initially, when the classes started, the students would arrive early in the morning and gather before the SLLS's gates; once these opened, students would rush to the class to get seats, especially the seats in the front rows. This was to enable students to hear what the lecturers were saying due to lack of microphones. The lecturers had to use chalk to write on the boards, and even this was in short supply. However, the practice of trying to secure seats on a 'first grab' basis ceased once students settled in, and everyone was able to establish their seating positions. There were study groups organised amongst students, but everyone seemed to get along with one another in general.

My Sierra Leone Law School experience provided me with what I call a professional family, comradeship, and part of being in "the system". This is buttressed by the academic knowledge and understanding of Sierra Leone's legal system and the opportunity to be taught by high-calibre law lecturers who included Supreme Court judges and accomplished barristers (some of whom were educated at institutions such as Harvard University and the University of Oxford). My training also gave me an insider's knowledge of how the system works and increased access to the courts and its processes. It provided further insights into the judicial system and confidence in my observations.

Given all the challenges, I found that it was essential to study at the Sierra Leone Law School to understand Sierra Leone's legal system. Although this is like Britain's adversarial and common law system, Sierra Leone's content and style was different in law (except for key principles of law) and procedures. Also, I felt that the data collected at

SLLS would be enriched through the participatory method and understanding of the legal culture of Sierra Leone. Further, the events that led to the re-sit of the Bar final exams in 2014 highlighted other issues that are not within this study's remit. Circumstantially relevant to it include the practices of corruption generally, underhand behaviour by colleagues, backbiting, a chaotic and arbitrary legal system that seems to be out of touch with modern-day (such as the English legal system) legal practice. Nonetheless, despite these weaknesses, I am proud to be part of the profession as a barrister in Sierra Leone.

3.4.2 The Remand Home/Centres and Approved School

The field notes in this study recorded the conditions in which juveniles were held in custody at a Remand home, Approved School, police stations, general and customary courts, and assessed how the administration of juvenile cases unfolded under both systems. I also took notes of the treatment of juveniles and their surroundings, how they shared cells with adult prisoners and how the institutions were accommodative of juvenile proceedings concerning the layout of locations and appropriateness when dealing with juvenile offences.

My observations on arriving at the Kingtom Remand home in Freetown took the form of noticing with surprise the very relaxed atmosphere. Even though officials such as social workers and guards were aware of my meeting, I noticed some of the children were out in the compound playing and laughing. When the boys arrived to meet me, they appeared relaxed, despite wearing handcuffs. They appeared to have taken a bath and spotted newly shaved haircuts. They appeared very eager and happy to speak to me.

One of the juvenile participants was a girl charged with murder. She appeared to be also very relaxed and well-presented. She had a vest on and a wrap-around her waist (a traditional attire called lapa); her hair was neatly braided by another girl she shared a cell with. I noticed that the children were excited to see me. One of the boys said they spoke to people (such as representatives from NGOs, government officials, amongst other persons) all the time and that I was not the first person to come and see them wanting to conduct interviews. The children showed me their arts and crafts, letting me know that the items were for sale to raise money to buy toiletries and other items while at the Kingtom Remand home. A detailed explanation of my Remand Home and Approved school observations are in chapters six and seven. Fieldnotes at these study sites also helped capture the

environments in which justice is conducted concerning the custody of juveniles by the state.

The observations during site visits enriched the data about participants' attitudes. For instance, I gained first-hand experience handling and interpreting the data with a reflective account of the study. Notes were recorded in notebooks and sometimes at the back of other documents. Some of these were typed. There were about 40 pages of typed notes. Diagrams were made to illustrate the court layouts at the Remand home and the Approved School. I also observed accused juveniles' interactions with one another and their jailers/guards and noted these. Additionally, I visited their dormitories or cells and made notes of these.

3.4.3 The Criminal Courts and Customary Courts

I chose an observational role to witness, listen and assess participants' accounts of how the criminal and customary legal systems unfolded in a natural setting. I made notes of what questions were put to juveniles in contact with the law, the responses to those questions and the outcome of cases. My observations included noting lawyers' demeanour, the language used in court and interactions between lawyers during court proceedings.

For both customary and criminal law systems my observations involved assessing how lawyers, magistrates, court clerks and paramount chiefs applied the law to influence justice in court and decision-making processes. For example, I assessed whether approaches taken to advocate cases was influenced by restitutive or restorative justice (for more details on these concepts, see chapters four and five).

During my attendances at the magistrates' court and the high court of Sierra Leone as a researcher and pupil barrister in 2013-15, some lawyers argued their cases more aggressively or persuasively to produce successful outcomes. Both defence and prosecution lawyers applied this style of advocacy. Therefore, it was essential to note whether such a style of advocacy was adopted in the prosecution or defence of juvenile matters to help early intervention and prevent child offenders from entering the criminal justice system.

My observation of sites included assessing the makeup of the sites by taking notes of who oversaw the proceedings and sitting arrangements at court. For example, during my attendance at the courts (magistrate and high courts), including traditional or native court sessions, the observations were centred on key things. For example, I wanted to find out

about the key person/s presiding over the proceedings, how their decisions influence the outcome of cases, what language was spoken at the proceedings, how matters were recorded, and the rapport between legal representatives and their clients. I also distinguished between the practices, including similarities, differences, and gaps of both the customary and criminal legal systems of juvenile justice in Sierra Leone and whether such practices were in accordance with the provisions of juvenile rights under international law. A detailed discussion of my observations of the magistrates' court and the customary courts are in chapters six and seven.

3.5. Accessing Juvenile Participants and interviews

The interviews in this research included semi-structured interviews with the following: young people that had been in contact with the criminal legal system; adult complainants (local people) affected by juvenile crime; police officers; paramount chiefs; paralegals of NGOs (local), and other Government Officials including social workers and Remand home officials/guards; Approved School guards/jailers; officers from parastatal institutions; court clerks; barristers and magistrates. My interviews focused on questions about juveniles and their relationships in Sierra Leone's criminal law and customary/traditional law alongside international law and the current state of juvenile justice after the war in 2002. The same interview questions were asked of the participants concerning customary law.

My initial access to the Remand home and Approved School was gained by the recommendation of a high-profile government official that recommended me to senior officers at the Ministry of Social Welfare, Gender and Children Affairs (MSWGCA). Following this, I was provided with the necessary documents by senior officials who allowed me to visit and interview participants and to observe the relevant sites. My legal training at the SLLS provided the networks to meet with some of the high-profile government officials. I was, for instance, referred to the permanent secretary of Internal Affairs through an SLLS colleague, who made recommendations to the permanent secretary at the MSWGCA to conduct the study. Officials at the MSWGCA provided the consent letters to carry out the study at the Remand home and the Approved School (both in Freetown). I also used the same consent letters to interview other participants at police stations in Freetown and Lunsar.

I obtained information and accessed other juvenile participants through snowballing. Interviews were conducted in various places, such as at a residence in Freetown and at a street location where juveniles usually 'hang' out. A further discussion of these participants is in chapters five, six and seven.

The juvenile participants in this study were charged and tried for a range of offences, including theft, assault, sexual offences including rape, and homicide. Their age ranges from 10 to 17 years (from the date of charge of offences). The juvenile participants' predominant offences were for rape and murder, followed by theft, burglary and grievous bodily harm and arson. Out of the twelve juvenile participants, four were charged with rape, four with murder (homicide offences), two with theft, one with burglary, and one with assault and arson. However, I noted that offences recorded against other juveniles at the Approved school (although I did not interview those juvenile offenders) included: unlawful possession of cannabis; robbery with aggravation; larceny of a cattle (the theft of a duck), burglary, conspiracy (no other notes were recorded against these offences), economic crime (stealing from parent/s); wounding with intent; carrying an offensive weapon and malicious damage.

When I conducted the interviews at the Remand home in March 2015 there were 21 juveniles in custody, 18 boys and three girls. I was not given any information about the percentage of the types of offences the juvenile population at the Remand home were charged with. However, the guards and social workers said most of the juveniles at the Remand home were held for murder and rape charges. The interviews I conducted and the log sheet (records of juvenile details in custody) also revealed the same. The situation was also similar at the Approved school, where I was told that of the 24 cases (March 2015), nine concerned sexual penetration offences, even though none was charged for murder. Although I interviewed seven juveniles at the Remand centre, I was only allowed to interview two juveniles at the Approved School. Of the other three juveniles that I interviewed (who were not under incarceration), two were in Freetown and the other in Lunsar.

From the three juvenile participants who were not in custody, one of them (a participant from Freetown) had just finished serving a prison sentence for theft. There was one released from a police station for assault and arson, and the other concerned an interview of a juvenile on bail at the magistrates' court in Lunsar. The country's

documented findings on Human Rights Practices in Sierra Leone (Sierra Leone 2018 Human Rights Report) and interviews and conversations with participants from my study showed that children charged with petty offences such as theft also ended up at state prisons. This helps to highlight the point that those who enter the state prisons for an offence such as petty theft might not have patrons, legal representation, or they lack social capital and cannot get a release from custody.

I could not interview juveniles at the customary courts because the proceedings I attended did not involve minors or children in conflict with the law in these courts. However, the interviews that I conducted with juveniles concerning customary law provided some insights into their understanding of customary law regarding offences that were alleged to have been committed in the rural areas.

3.5.1 Accessing Local People interview

The local people that I interviewed included victims of crime, parents or guardians of those detained or charged, and Poro and Bondo secret society members. Among the latter participants, I accessed one participant of the Poro society away from the designated research locations of Freetown and Lunsar at a village called Six Mile, which is about 20 miles from Freetown. This is because he was the only person willing to talk to me about the Poro society apart from a Sierra Leone Law School colleague who was also a member.

Conversely, in my interviews with members from the Poro and Bondo societies, I found it challenging to represent what took place in those settings accurately, in particular, how cultural practice and thinking play a central role in juveniles' culpability and treatment in those settings concerning both customary and criminal law.

The interviews were primarily held in Krio and Temne for the non-professional participants and translated into English.

3.5.2 Accessing legal/other professionals/non-professional participants - interviews

The interviews conducted with barristers and magistrates outline how these legal practitioners uphold the rule of law and the outcome of legally represented cases. For example, I represented a participant on adjournment on charges of rape at the High Court in Freetown. The participant required legal representation and other social networks such as financial capital to defend his case. My intervention helped him to prove his case and

led to a discharge. Another example is a juvenile participant's vivid account of his experience at the state prison concerning the living conditions of inmates. He stated that children were held there for minor offences such as theft and assault. He attributed this to a lack of legal representation, assistance, and someone to stand as surety (for bail applications) or speak on their behalf. It is important to note that although children should not be officially held in state prisons, it became apparent that they are. The issue of children held in state prisons was a finding of the study and also has been documented in studies by DCI (Harvey) 2000; DCI-SL (Audet) 2010; DCI-SL, 2012, 2015, 2016; Prison Watch, 2013; and MSWGCA, 2013). The state prisons in Sierra Leone separate men and women offenders or those that are awaiting trial. I did not visit these prisons as I could not gain access from those in charge of administration. The main state prison at Pademba road is classed as a maximum high-security prison, and researchers are usually denied access. It would appear that access is denied in order to limit reports about the appalling conditions of inmates.

In 2014, I interviewed a local court clerk in Lunsar and interviewed lawyers and magistrates in their chambers between 2014-2015. Interviews with other officers, such as social workers, took place at the MSWGCA offices and the Remand home (Freetown). Interviews that I had with "jailers" or guards were at the Remand home and the Approved School in March 2015, with my last in the series of interviews conducted in 2017 with a juvenile participant.

The reporting of offences is complainant-led in Sierra Leone. This is because, where a complainant is aggrieved, they can choose to report either to the police, paramount chief or use other forms of dispute resolution modes such as a family or community mediation. Further, for customary law, it was interesting to hear local people's encounters with juvenile offences during initiations of the Poro or Bondo secret society ceremonies, as discussed further in section 3.8.

The interviews of police officers, paralegals, governmental officials, and social workers were targeted at understanding the application of the law and the processes applied in the administration of juvenile justice. In addition, these interviews were aimed at determining the types of offences reported to the police. These included cases that were resolved otherwise with the preference for reporting offences and the reasons for doing so. Further, I wanted to investigate how these officials treated juveniles and compare the

treatment of adult and child offenders; likewise, the types of offences for which juveniles were said to be held in custody. Finally, it was also necessary to establish whether there were differences in the outcome of juveniles where funding was available to defend cases or where parents or close relatives or patrons provided support to child offenders.

Where juveniles are guilty of an offence, the courts have the power to send them to the Approved School. However, the legal literature was not clear on how long a juvenile should be held at a Remand home (if waiting for a trial or to be charged with an offence) or the Approved School. It also did not show the temporary length of period for which juveniles should be detained at the said institutions. Nonetheless, most juveniles end up being held in prison for many years without parole. The data concerning juveniles' lengthy stay in custody and circumstances that give rise to judges or policymakers' decisions under criminal law is dealt with in the substantive chapters.

I held the interviews in Temne and Krio languages and translated the notes into English. Most interviews with professionals such as lawyers and magistrates were held in English.

3.5.3 Accessing paramount chiefs – interviews

Of the five paramount chief participants that I interviewed, three were from the Southern part and two from the Northern part of Sierra Leone. I also interviewed a section chief in the north (see chapter seven). I interviewed two of the paramount chiefs from the South at the Houses of Parliament in Freetown along with a senior government official, where I made an attempt to search for the minutes of the Child Rights Act 2007 taken in 2012. Upon arrival at the Houses of Parliament, I was warmly greeted by the Clerk of Parliament, who said he was my father's friend. The Clerk introduced me to other participants. The interviews at the Houses of Parliament lasted between an hour and forty minutes for each participant. My interview of the third paramount chief from the Southern part of Sierra Leone was conducted at the residences of a prominent politician who was unsuccessful for the Sierra Leone People's Party (SLPP) presidential flag bearers bid in 2012. This interview lasted two hours. The fourth paramount chief that I interviewed in 2012 and 2015 was from the northern part of the country. The interviews with him lasted about one and a half hours on each occasion. The fifth paramount chief that I interviewed was the paramount chief of Makeni, whom I met at a government function held in Freetown

in 2012. The initial interview with him lasted about forty minutes and had to be rescheduled for a later date at his residence in Makeni. On the day of the scheduled interview, I was told he was out of town. Therefore, the second leg of the interview with him did not go as planned.

In the Northern part of Sierra Leone in Lunsar, I observed the arbitration of customary cases, and I interviewed a lead ('capri') section chief for two hours. In my interviews with customary administrators such as chiefs and other legal personnel, accounts of juvenile justice and its impact on customary law were documented. These accounts show that serious offences such as murder and rape are also dealt with under customary law. For an offence such as rape, the customary practice is usually to marry the pregnant girl to her rapist and impose a fine on him or his parents. Fines paid by parents or guardians usually resolve other minor offences such as theft and assault. Therefore, most matters concerning rape, especially in rural areas, are resolved between the parties (namely: the victim, perpetrator, parents, family members or community).

The interviews lasted between forty minutes and two hours, depending on the participant. At the end of this process, I had 120 pages of typed transcripts, field notes, and participatory observations.

3.6 Newspaper Articles

The documentary evidence reviewed for the purpose of this study included articles from Sierra Leone's local newspapers, including Awoko, Cocorioko, Concord times, Guardian (Sierra Leone), Standard-Times and The African Report. These papers consisted of up-to-date or everyday accounts of legal cases that include juvenile offences in Sierra Leone. During this fieldwork, no law reports were available concerning juvenile justice in the country. Therefore, I read newspapers and watched television regularly for updates about the subject. Whenever a story relating to my research questions was reported, I made do with notes and newspaper cuttings focusing on or relating to my topic.

3.6.1 Statute and Policy Documents

Desk review in this study included journals, newspaper articles (see 3.6) and the screening of statutes and policy documents relating to customary and criminal law around the administration of juveniles.

The key policy documents that focussed on the criminal law and juvenile justice that I reviewed were: A Compilation of The Juvenile Laws of Sierra Leone and The Sierra Leone Government Justice Sector - Draft National Child Justice Strategy for Sierra Leone 2013-2017. The complete version of the latter is The Child Justice Strategy 2014 -2018. This is the practice guidance concerning children in conflict with the law in Sierra Leone. I initially got the draft document from the Chief Justice's office as part of this research and later from one of the court officials. I also obtained Defence for Children International – Sierra Leone (DCI- SL) Annual Report (2014) from a leading practising lawyer in Sierra Leone. These documents were only made available to me through the contacts that I built with high-profile officials and government workers during the course of my interviews in August 2014 and March 2015. However, these documents, including other reports of DCI-SL, later became available online.

The principal legislation concerning children and juvenile justice at a national level in Sierra Leone that I reviewed were: The Child Rights Act 2007; Children and Young Persons Act (31 December 1945); - Cap 44 of the Laws of Sierra Leone; Sexual Offences Act 2012; Education Act 2004; Protection of Women and Girls - 23 April 1927 – (Cap 30); Prevention of Cruelty to Children Act – CAP 31; Corporal Punishment 17 September 1953 – (Cap 4); The Sierra Leone Constitution 1991, Criminal Law Act 1961 and The Criminal Procedures Acts, 1965.

The main articles and statutes that focus on juvenile customary law practice in Sierra Leone that I reviewed for this research were: The Local Courts Act 2012; The Chieftaincy Act 2009; The Sierra Leone Constitution 1991, Adoption Act 2009 and the Child Rights Act of 2007. I perused these acts concerning the law and its administration of juvenile justice.

3.7 Time Table

This research was conducted in the period between June 2012 to June 2017. My shortest visit during this period was six weeks, and the longest was six months. Therefore, I was in Sierra Leone in this period for a total of 22 months to conduct the whole study.

3.8 Challenges

The data that I collected did not fully reflect crimes such as theft, assault, grievous bodily harm (wounding with intent) or murder committed by juveniles in secret society initiation ceremonies. It has been reported in the literature that members of secret societies sometimes cause severe injuries leading to the deaths of initiates in extreme cases. Participants of this study confirmed this. When I asked about the role of children and crime during these ceremonies, it was confirmed that there were instances in which criminal offences such as grievous bodily harm, amongst other offences, were committed in the bush as part of initiation ceremonies. However, these offences are rarely reported to the police. During my female circumcision, just before I turned 18, my step mum and father had arranged for the ceremony (Female Genital mutilation -FGM) without informing me. I was forcefully initiated and assaulted during the process and nearly bled to death. However, my stepmother arranged for her grandmother to treat me traditionally, which stopped the bleeding. She was very experienced and cared for me post-circumcision. I was also given painkillers to control the pain when my father intervened. Unfortunately, no one was prosecuted for the assaults and the injury that I sustained. I have suffered intermittent chest pains as a result, amongst other health conditions beyond the scope of this study. Participants are generally reluctant to give further details about such offences. The participants in this study, for instance, said it was taboo to speak against practices concerning these societies. This explains the reason why they are called secret societies in the first place and rationalises the saying that "what happens in the bush stays in the bush".

The secret societies often involve masquerades, and as Mariane Ferme (2001) posits, the masquerade is part of the Sierra Leonean culture in which violence is hidden. The participants' failure to comment on accounts of criminal activities of children during initiations of secret society ceremonies was, therefore, a challenge for this study.

Other challenges in this research involved having to research Freetown and Lunsar during the Ebola crisis. These areas reported increased cases of Ebola infections between 2014 and 2015. For example, Hellingner and Noymer (2015) reported that the number of Ebola virus disease (EVD) related deaths 'in 2014 ranged from 2,928 to 10,372 in Liberia, from 4,468 to 15,824 in Sierra Leone, and from 1,739 to 5,548 in Guinea' (p.255). In comparison, Luisa Enria (2018) states that at the annual official declaration of the end of

the Ebola outbreak on 7 November 2016, it was reported that between 2014 and 2015, Sierra Leone was officially recorded to have had 3,956 deaths with a total of 14,124 cases.

During the early period of the Ebola, I was in the U.K. and in Sierra Leone at its peak in 2015. Despite the high risks associated with travelling to West Africa during that period, it provided me with an opportunity to enrich the data for this study since most of the key professional participants were available to conduct interviews due to a travel ban imposed on government officials by the GoSL.

Environmental conditions proved challenging in attending the Sierra Leone Law School. Amongst many challenges, I found that hygiene was inadequate. For example, there was no running water in most private and residential buildings and living costs were expensive. Everyday living conditions that are considered 'basic' (but fundamental to human well-being) in the West, such as good food, transport, good health facilities, electricity and internet access, are a challenge for many Sierra Leoneans. My then 13-year-old son, who accompanied me to Sierra Leone for this study, had found the whole experience daunting, and among the things that he had complained about included missing his friends in London immensely. He also fell ill with malaria several times. The poor and costly internet access, compounded by intense heat and having to wait for public transport (that is often overloaded and uncomfortable) to school, meant he always complained about wanting to return to the U.K.

3.8.1 Insider/reflexivity

I had the advantage of being deeply familiar with the Sierra Leonean people and their culture in conducting this study. I am a native raised in the region. My father doubled as a personnel manager and an accountant for an international German road construction company in Sierra Leone called Wahmann ABU (from 1968 to mid-1985). His position meant that he employed many people throughout the country, consisting mainly of locals from his hometown of Lunsar and farmlands on his 100-acre agricultural land. He was also a successful businessman and an elder in the community's decision-making process in Lunsar.

My father was also very influential in politics. Although he was himself not a politician, he had funded political campaigns for national development and helped influence policy implementation through his politician friends and provided funding (school fees amongst other gestures) for those less fortunate, such as youths in Lunsar. His

father, Francis George O'Dwyer, went to Sierra Leone in 1933 and was a white District Commissioner (for Port Loko) of the British Crown. A Cambridge graduate, his career in Sierra Leone was cut short when he fell ill and became blind and had to return to the U.K. in January 1946 at 36 years, where he was then retrained as a Chartered physiotherapist.

After my father's birth in 1945, he lived with his mother and other relatives until he was taken to the Catholic missionary due to District Commissioner, DC Malcolm's recommendation to be cared for, initially by the 'Holy Ghost father', Fr McDonald in Lunsar. Fr McDonald then left him in the care of the local headteacher Peter Tambi when he left Sierra Leone. Following the handing-over note of Fr McDonald regarding my father's care to Fr Paul Zanon (whom I was named after as Pauline) of the Xaverian Missionary of Blessed Memory, Fr Paul looked after my father as his son from age seven until his secondary school education. Thus, Francis Dominic O'Dwyer became the first pupil on 3 January 1958 (school No 001) to be registered at a prestigious Roman Catholic secondary school in Northern Sierra Leone called St Francis Secondary School, Makeni. He did very well and was a star pupil throughout his time at the school, where he became fluent in Latin. My father's brilliance at school was attributed to Father Paul, who spoke Latin to him at home and gave him extra lessons to meet Western-style education standards. Father Paul also provided him with the networks that got him top positions in his employment career.

My father was considered influential by his countrymen. However, he felt that he had an obligation to help those less fortunate than him since he was like an orphan who got where he was in life because of the benevolent acts of other people supporting the Catholic Church. He was a philanthropic man whose notable philanthropic gestures included paying hospital bills and school fees for strangers and providing free meals on a daily basis for people, including his workers and strangers. It should be noted that these philanthropic acts are not just a personal attribute of my father. It is culturally normative that people of influence and even those less influential people should support others less fortunate. This act of benevolence is shown in one of my case studies (a trader who helped a juvenile to secure bail and informally fostered him) and also through the literature concerning the distribution of resources with vulnerable children.

The vulnerability of children and the distribution of resources is a central theme in the literature review. In my reflections on conducting this study, I realised a kind of

vulnerability confronting those marginalised when trying to access quality education (tertiary education) and gaining access to privileged persons or jobs. In my reflection at the SLLS, my participatory observations revealed an account of the difficulty in gaining access to quality education and why some of my law school colleagues entered the legal profession. The culture is also apparent in the system of patronage, which is discussed in the main chapters. If someone lacks good or strong networks and resources, they are handicapped in a way when it comes to accessing decent jobs and other resources irrespective of their educational achievements. I observed that women, in particular, were more vulnerable because of the way they are perceived in Sierra Leonean society. Due to the patriarchal structures in Sierra Leone, women are often seen as less important compared to their male counterparts, and for some to acquire certain positions or jobs, or access resources, they are compromised through sexual harassment. It is a similar case for schoolgirls. For example, it has been reported by the UNCRC committee 2015 (CRC/C/SLE/35) that teachers abuse their positions by engaging in sexual activities with their pupils or students in exchange for grades. After gathering the research data, I spoke to one of the participants about the same issue concerning how children's vulnerability affects their chances of gaining resources, and he gave me an example of how some teachers award grades in education. He said this: 'the attitude about students in Sierra Leone involves 'buying' and 'selling', what this means is that boys will pay money to get good grades, girls will have to compromise (selling) themselves (often sexually) to gain grades'.

Further, the legal profession, in particular, is very male-dominated and being a woman in those spaces can generally be challenging, as already cited. In my experience, I found the lecturers at the law school to be professional, and my professional participants, including the paramount chiefs both in Lunsar and Freetown and other participants, behaved respectfully towards me, and were also polite and helpful. I could attribute this experience partly because there was clarity in what I wanted, and I was privileged to meet influential people who knew me or my family background. Through these contacts, the word went around that I was 'English' (meaning that I behaved like a Westerner). In the context of what I have described, it is sometimes better to be seen as an outsider, such as a Westerner, in order to be treated with dignity.

Besides, my financial independence created a basis for confidence to engage at a level with high ranking professionals. In terms of my interactions with the paramount chiefs in this study, the paramount chiefs from the North knew my dad very well, especially the paramount from Lunsar. I am an indigene of Lunsar, and I also grew up and returned there often. My father is substantially prominent in Lunsar, and many people know our family. However, I was easily noticed as possessing Westernised mannerisms in my disposition and wearing western looks. I overcame these challenges because I speak two main local languages fluently. My understanding of the cultural norms assisted my interaction with the participants and helped them express themselves more freely. This is a crucial researcher's biography of some of the biases researchers face if they are not locally connected to their research sites.

Therefore, the fact that I am from Sierra Leone and speak Krio and Temne fluently in a manner that most anthropologists do not, add to the rigour and depth of this data. This is something a non-native anthropologist will struggle with. Most Europeans who research African countries do not speak the language fluently. My data was enriched because of this ability to overcome language barriers.

I was able to immerse myself in the culture; attuning to the language gave me access to stories and information to encapsulate in the data's entirety. During my interviews at the Remand home, I heard conversations relating to the research to strengthen the data. For example, I heard one of the boys who said in Krio that he hoped my attendance would help him out of the Remand home. When it was his turn to interview him, I addressed the issue by letting him know that my help is limited to contacting the relevant NGOs that could assist him (which I did). Again, while interviewing, I heard someone interrogating one of the professional participants in Krio about the purpose of my attendance and how they would need to be careful with what they said to me. I made it known that the research was for my doctoral studies, although what they say might be read by a wider audience.

As a native speaker of one of the leading indigenous languages, I cut across two groups of students at the SLLS (Creoles and natives). I was seen as one of them on both sides and got along pretty much with everyone.

3.9 Ethical Issues

3.9.1 Risk Assessment and Data Protection

I applied for ethics clearance from the ethics committee at Birkbeck to undertake this research. As a result, the research was approved to include interviewing professionals, the public, and minors. Therefore, I was given clearance to interview both minors (between 12 – 18-year-olds) and adults.

I had formal written consent from the Ministry of Social Welfare, Gender and Children Affairs (MSWGCA) to conduct interviews at the Remand home and Approved School. The same letter permitted me to interview participants (FSU officers and police officers) at police stations in Freetown and Lunsar. Consent was sought from both juveniles and the state officers at the remand centres and Approved School since they held parental responsibility for incarcerated children. Given that the children were not free to leave the prison or remand centre, this raised issues about ensuring that they were freely consenting to participate in the research and understood its aim and processes. Hence, I obtained their informed consent, and in addition, I was careful to maintain an informal, friendly disposition with the children and the youth I spoke with.

During the research contact, I was mindful of attending to the children's disposition; I routinely assessed for myself if they appeared relaxed and open and attentive to changes in their demeanour that might indicate that they were no longer happy to participate in the interview. All the juveniles who consented to participate in the research were happy to talk about their circumstances. They spoke candidly about their living conditions and treatment by the guards and prisoners.

Before the interview, I distributed the consent forms with accompanying letters, set out information about the proposed study, and gave the university's contact details and the contact details of my supervisor. The consent form and information sheet were read out in Krio, which all participants understood. However, I did not record the interviews. I felt recording could give the impression of a formal, even official, interview that they could think had some bearing on their cases or, simply, that would make them less likely to speak openly about their experiences. So instead, I took notes, and I checked the accuracy of these with the children before concluding our discussion.

All nine young participants, seven from the Remand Home (Kingdom) and two from the Approved School, signed the consent forms before the face-to-face interviews.

The questions consisted of semi-structured interviews concerning the children's experiences of the juvenile justice systems in criminal and customary law. The questions were open-ended, providing them with the scope to speak freely about their experiences in their own words.

The interviews took place at private offices at the Remand home and the Approved School (the principal's office); each participant was interviewed individually without a staff member present. The children appeared relaxed and gave their narratives without appearing to be under duress from the Remand home and Approved School staff. The length of the interviews varied from forty minutes to one hour. I emphasised that they did not have to continue with the research if they did not want to. The children were encouraged to report any sensitive issues, especially incidents involving violence. They were informed that their names and details would be changed and that information provided by them was required for research purposes and that a wider audience could read their stories. Information about the children's age, the offence, and their home region was corroborated with their custody log sheets at both sites.

There was no distress associated with any of the juvenile participants that I interviewed except for one, who wanted me to urge the Prosecution Service to allocate a date he should appear in court. To avoid the impression that I would be able to move their case forward, I made it clear that the research was for doctoral purposes. I informed him of agencies or persons that might be of help, such as DCI-SL and Prison Watch. I contacted a DCI-SL officer and an official at the Law Officer's Department to ask if they could follow up on his case. I avoided any attachment to the children, making it clear that I would not return to the centres after my visits.

Before starting face-to-face semi-structured interviews for the high-profile participants, I pointed out that, although their details would be anonymised, there was a chance of being identified through their positions, especially the magistrates, paramount chiefs and other key officials. These participants were not many in their profession in Sierra Leone and could easily be identified.

Ethical issues of physical and emotional safety were addressed by attending court hearings during the daytime and not letting any participants know my whereabouts. In addition, I had safe residences to stay in both in Lunsar and Freetown. Further, I initially thought about recruiting local lawyers to conduct some of the research. However, due to

the high risk of the Ebola virus infection during the study, I conducted the research alone. Also, I refrained from instructing local lawyers or paralegals from researching on my behalf. It would have been costly, and I was also mindful of the possible compromise to the data quality if the research were conducted by someone else.

The information that was told in strict confidence and the data concerning practices of corruption about specific individuals in legal institutions did not form part of this research, although it was collected.

3.9.2 Securing Data of Participants

The data mainly consisted of detailed notes of interviews. To secure the data's anonymity, I gave each interviewee a code and kept the list of codes and linked names in a separate file from the interview notes.

3.10 Data Analysis

The general approach to data analysis was to code the textual data collected during the research. This corpus of data consisted of field notes of observations, transcripts of all interviews with the participants, and relevant legal documents. These were set in a table and organised by sub-themes, overarching themes and trends of answers related to the various research questions in this research study. The data analysis was done using both inductive and deductive codes. Open codes were organised into themes until an axial point or key or final occurrence (Corbin and Strauss, 1990).

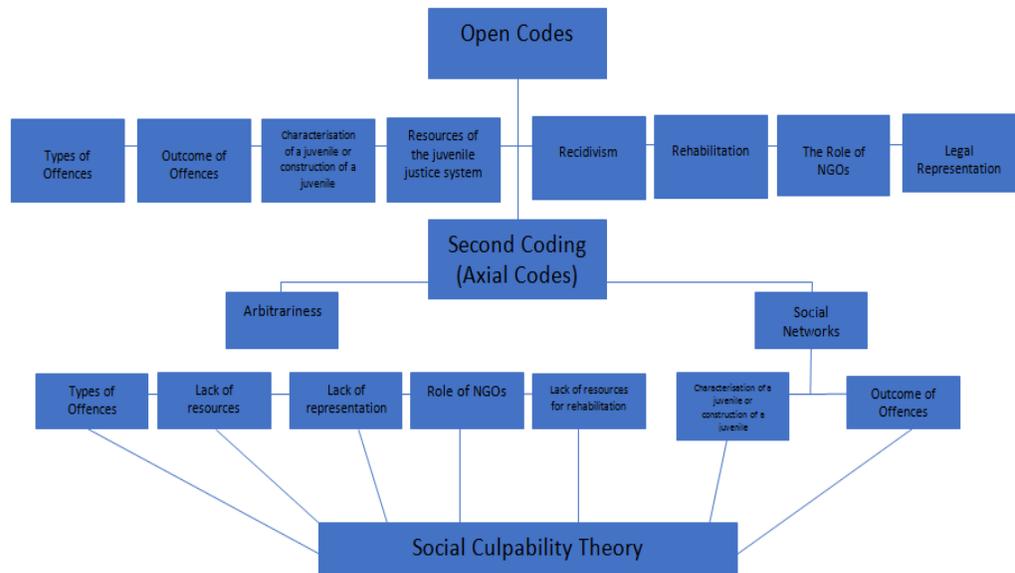


Figure 2: Coding of the Research

As the diagram indicates, I moved from open coding to axial coding and theoretical coding. This was achieved by manually going through the data, comparing differences, similarities, and conceptually analysing the data. The process was repeated, and the codes were assessed in relation to one another. The open coding data codes were: types of offences; the outcome of offences; characterisation of a juvenile or construction of a juvenile; resources of the juvenile justice system; recidivism; rehabilitation; the role of NGOs and legal representation. I then went through the material again to check for additional identified instances in the data that could be attached to these codes. These codes were then grouped to form categories and subcategories. These were then combined into two axial codes: arbitrariness and social networks.

The axial code of arbitrariness is derived from the open codes: lack of resources, lack of representation, lack of resources for rehabilitation, and NGOs' role. While the axial code concerning social networks is derived from the open codes, outcome of offences and the meaning of a juvenile or construction of a juvenile. I continued with the process of interpreting and linking the data to the two axial categories and their subcategories which then culminated in the development of the idea of social culpability. This theory explains how children are caught up in and stay in the legal system in Sierra Leone. The administration of juvenile justice in Sierra Leone depends on neither legal transgression

itself nor legal codes. It depends on whether the child has sufficient social networks and social capital to establish that they are not socially culpable and cannot be legally culpable.

To briefly indicate how the open codes relate to the social theory, this study considers the following three vignettes:

A magistrate explains that the determinant of a juvenile crime depends on the type of crime, where the offence is being committed and the victim involved. She illustrated an offence of rape which, if committed by a child in a rural setting, is often resolved by the perpetrator's parents marrying their son to the victim. If the perpetrator's family has strong financial resources and networks, these factors could help manipulate the justice process and influence the outcome of a case. So, an offence such as rape that the police and the courts should investigate could end up being settled by a chief or the community, or family members, which means the perpetrator has got away with their crime.

Another example concerned a boy alleged to have committed murder but who was not found culpable due to his age. He got away because he was legally represented by an NGO that argued successfully that he was a child under the age of majority as stipulated under the Child Rights Act 2007. However, the boy had to continue to stay at the Remand home because he had nowhere to go even after his release.

Another boy was accused of theft. He was imprisoned at the state prison as he did not have the funds, legal representation, or social networks to secure his release.

The first example showed how a child's social networks and financial capacity could prevent them from entering the criminal legal system and the impact of cultural norms and customary law on Sierra Leone's legal system. In the second example above, the boy's case showed that regardless of the serious nature of the offence of murder that he was alleged to have committed because he had legal representation (by an NGO), he could claim his status and rights as a child. Therefore, he is considered not to be criminally culpable because of his age. However, a lack of resources and family networks means that he had nowhere to go even after being released from custody (Kingtom Remand home). Nonetheless, as the same child was perceived by the guards at the Remand home to be a good child and well-behaved and attracting some pity, the boy was allowed to continue to stay within the compound of the Remand home. Therefore, the lack of rehabilitation programmes for children released from detention highlights the lack of resources in the administration of juveniles in Sierra Leone, leading to arbitrary outcomes even when the

law is effectively applied. The boy in the third example lacked representation, resources, and social networks; therefore, he was characterised as an adult and found criminally culpable. Despite committing a less serious offence, the outcome for such an offence was that he ended up at the state prison at Pademba Road in Freetown.

The above examples (along with other examples in the study) demonstrate how open coding, followed by axial coding, led to the theory of social culpability. This means that how children are caught up in and stay in the legal justice system in Sierra Leone depends on their social culpability. This also shows that the type of offence committed is not the main determinant of whether or not child offenders stay in the legal system.

A third axial category emerged from the coding: rehabilitation and redemption. This axial code sits between arbitrariness and social networks, which can problematise the concept of social culpability. This is because, although under the concept of social culpability, the data shows that juveniles that get entrapped in the juvenile justice system do not have the social networks to keep them out of the system. Nevertheless, most of the children in this study seemed to have committed grave offences. This raises a further question of circumstances where child offenders are treated as redeemable (the principle underpinning juvenile justice systems) and can be rehabilitated. Where do they fit within the concept of social culpability? To answer this question, one needs to consider whether the child who can be redeemed or rehabilitated is the child with better networks or has some other characteristics that come into play here. For example, the second vignette above shows that because the guards perceived boy two as a good/reformed child, he was allowed to stay at the Remand home despite the seriousness of the alleged offence and despite the fact that the guards had no obligation or duty to continue to keep him.

Another example is an extract in chapter six that shows that if the guards at the Approved School (detention centre) consider a child to be a good child while in detention, they are given special privileges. The child offender can even get to hang out with the guards, for instance, and get the opportunity to help prepare meals. The preparation of meals is some sort of elevated status for child offenders while in detention at the Approved School because they are given a chance to get more food and the freedom to be out of their cells. Further, when a child offender has served their sentence at the Approved School and has nowhere to go, but because he was perceived as a good child, one of the wardens may offer to support him start a small business and the opportunity to stay at his residence until

he finds his footing. In essence, these children have proved themselves to be 'good'. So, a scale of rehabilitation operates almost at a different level to the existing legal system and gives a child some agency in the middle of the legal structure, eroding or mediating to some extent the full theoretical purchase of social culpability. It may be that child offenders can redeem themselves from the lack of social culpability by showing themselves to be helpful, polite, and respectful even in the setting of a reformed school or detention centre or jail.

3.11 Conclusion

The analysis of the qualitative data collected for this thesis shows that the juvenile justice system in Sierra Leone is in practice unsystematic, arbitrary and challenging for children in conflict with the law and even to the decision-makers advocating juvenile justice. The data consisted of field notes of about 22 months of qualitative fieldwork, desk reviews of legal documents and newspaper reports, and transcripts from interviews with 58 participants. Grounded theory was used to analyse the data by thematic, inductive and deductive analysis. This was applied using a two-staged open and axial coding process and culminated in the theory of social culpability. This theory essentially claims that assessing the character of the child as a good or bad child and therefore culpable or not hinges on whether the child is poor or has good networks such as patrons and family support when they are charged with an offence.

CHAPTER FOUR

THE DOMESTICATION OF INTERNATIONAL LAW

4.1 Introduction

The chapter will discuss the Berlin Conference of 1884-1885 to help understand how international law (including international human rights and humanitarian law) has impacted Sierra Leone and its juvenile justice system over the *longue durée*. This will be followed by discussing the first juvenile laws and sources of international law and juvenile justice (including international human rights law and humanitarian law). The discussion about the origins of international law and youth justice in Africa will be next. It will then take us to the section on the application of human rights, humanitarian law and juvenile justice in Sierra Leone, followed by the Government of Sierra Leone's compliance with human rights standards and the practice of juvenile justice. The conclusion will highlight the importance of international law in Sierra Leone, alongside its weaknesses.

It is imperative first to define what is international law. International law consists of laws governing relations between sovereign states (Roberts and Sivakumaran, 2018). The function of international law is to safeguard the relationship between states; for example, 'international peace, security and justice' (Tomuschat, 1999:23).

Article 38 of the International Court of Justice Statute stipulates that sources of international law include treaties, customary international law, and the general principles of law. Judicial decisions and teachings of publicists are subsidiary legal aspects of international law. International law includes human rights law and humanitarian law.

Human rights are framed by values or principles that apply to every person, including 'legal rights that entail entitlements and freedoms' (Bantekas and Oette, 2016:5). The human rights discourse has two primary schools of thought: universalists and cultural relativists. Universalists argue that human rights apply to everyone, everywhere and at any time. Cultural relativists question the validity and scope of the application of human rights law. The globalisation of human rights means the notion of human rights will remain 'charged and will be used for differing if not contradictory ends' (Bantekas and Oette 2016:5) by universalists and cultural relativists alike.

It should be noted that although human rights law should apply to all people equally, not every claim to human rights is transformed into a recognised right. However,

a legally recognised right can also exclude other rights-bearing categories if narrowly defined (Bantekas and Oette, 2016). The state's duty for example to safeguard the community will take precedence over an individual's right to respect private and family life. International humanitarian law, also known as the law of armed conflict, applies rules to mitigate human suffering caused by armed conflict (Kurtzer, 2019).

This chapter will conclude that international law has been instrumental in awarding rights to children globally, but that these have not been implemented in many national contexts. Sierra Leone complies with international law by the Government of Sierra Leone's ratification of international treaties and its adoption of relevant policies concerning children; regrettably, there has been little development in the law's administration for children in conflict with the law. The law in this area for juvenile justice is archaic, inadequate, and piecemeal, but domestication of international law explains two points that need to be made. This is because juvenile justice, as it exists in Sierra Leone, has largely come about through the domestication of international and regional law. It has not emerged out of the social fabric of the Sierra Leonean society.

Consequently, juvenile justice is poorly implemented because of a lack of resources and the lack of resonance with the principles of justice developed within the Sierra Leonean society. This is not a cultural relativist argument. It is not that I disagree with these principles but rather that insufficient attention has been paid to how to embed them in society on the one hand and how to incorporate Sierra Leone conceptions of justice into them on the other. The British colonial government's creation of the customary courts was an attempt to recognise that legal principles already existed in Sierra Leone before their arrival. For example, Ghana and Nigeria also use a customary legal system just like in Sierra Leone. The British colonial authorities recognised these existing "native tribunals", although they were later replaced by "native courts" (Woodman in Allott and Woodman, 1985:144) arbitral bodies which were responsible for resolving customary disputes. Even though these customary courts were separate from those of the state in their use of restorative or reconciliatory principles, the British had no cause to abandon them but many reasons to keep them. Please see chapter seven concerning how using a principle such as restorative justice will enhance juvenile justice adjudication in customary law.

4.2 The Berlin Conference of 1884-1885 and International Law.

The General Act of the Berlin Conference can be said to signal the early origins of human rights law in the European occupation of Africa. The justification for colonial expansion at a point when the imperial acquisition was no longer its own legitimisation⁵, was the necessity of suppressing the Arab slave trade in Africa and extending free trade to the Congo. Hence, the General Act included references to the welfare of native populations (Article.6) which obliged all signatories to ‘watch over the preservation of the native tribes and to care for the improvement of conditions regarding their moral and material well-being’.

The partitioning of Africa by major European powers and the USA at the 1884-1885 Conference of Berlin was the high point of the 'Scramble for Africa' (Fourie, 2015). The countries that attended the conference included the USA, Britain, France, Germany, Portugal, Netherlands, Italy, Spain, Austria, Russia, Italy, Denmark, Sweden, Norway and Turkey (Rosenberg, 2004); Belgium was not represented as a state. However, Belgian King Leopold II was present at the conference to advance his proposals for control over the Congo (Bass, 2010). The General Act of the Berlin Conference (1885) (General Act) was drawn up on 26 February 1885 and ratified by all member countries present at the Conference. However, the USA 'reserved the right to decline to accept the conclusions of the Conference' (Department of State Diplomatic Instructions 1801-1906 - National Archives, Washington, 1965 cited in Craven, 2015:32).

The General Act's treaties concern occupation on the one hand and protection on the other hand (Gavin and Betley 1973). It partitioned Africa to solve the conflict between European powers over control of African territory and a mixture of economic, industrial, strategic, cultural and domestic reasons (Fourie, 2015).

Some commentators are dismissive of the Conference of Berlin's legal significance as an international landmark. Sybil Crowe (1942), as well as Pakenham (1991), are of the view that the conference's significance has been exaggerated (as Craven, 2015 cited). This is because the General Act's provisions only applied to West Africa's coast, which had already been seized. For example, Pakenham (1991) said, "it was Berlin that precipitated the Scramble" (see Craven, 2015:34) rather than the conference precipitating the scramble.

⁵the USA was, ironically, anti-imperialist and Britain was a free trade power

It is a point echoed by others that the partitioning of Africa had started in 1880 (Mackenzie, 1983), which extended to 1912 (Pakenham, 1991) and even to 1914 (Fourie, 2015). Therefore, the early origins of international law as they relate to Africa can be found in the attempt to justify colonialism by allied powers. In particular, the provisions concerning natives who were not to be treated as inferior to Europeans contained in Article 6 were invoked by Britain. The British protested against King Leopold II's brutal excesses and eventually ended his rule in the Congo (Brooke-Smith, 1987; Reader 1998; Twaddle, 1992). This arguably signalled early signs of international human rights principles similar to those sought by other oppressed people, culminating in Africa's decolonisation efforts.

4.3 The Origins of Juvenile Justice

The Progressive-era in the USA (1890-1920) was the starting point for establishing a separate or distinct juvenile justice system (Platt, 2008). The rationale for establishing a separate juvenile justice system lies in fundamental differences in children's and adults' physical, mental and emotional needs and capacities. Therefore, a different juvenile justice system is intended to address children's unique needs and treat them differently from adults when they are in conflict with the law. The so-called 'child-savers' actions led to creating the first Juvenile Court in Illinois in 1899 (Platt, 1977; Platt, 2009). The Illinois Juvenile Court Act 1899 (IJC Act 1899) contains provisions for creating a separate juvenile court for children. This empowers judges to deal with broad-ranging issues concerning children's behaviour and welfare and introduces the concept of 'parens patriae': the state as the country's father (Shepherd, 1999:14). This notion has its roots in medieval England Chancery courts which established the authority that the King is the father of the country, especially for those who, for various reasons, are unable to look after themselves, just as children. (Nanda, 2012). Critics of the IJC Act 1899 postulate that the IJC Act, 1899 created a category of juvenile crime called 'status offences' that affected urban youths who mainly were poor (Platt, 2008). However, despite the separation of courts (between children and adults), it was unclear how juvenile matters should be processed or how they should be treated from the adult system (Scott and Steinberg, 2008).

The Cook County Illinois Court's ideology concerning a separate court for children and retributive justice spread rapidly across forty-three states of the United States, with juvenile courts in all jurisdictions by 1925 (Muncie, 2005). Retributive policies concern punitive justice, which appears to have informed many (but not all) Western jurisdictions

since the 1970s (Muncie, 2011). However, these have resulted in a backlash against liberal policies of the 1960s in America. Compared to Europe, the American juvenile justice system has undergone dramatic changes that view young offenders as a product of immaturity to one that holds them to the same criminal standards as adults (Scott and Steinberg, 2008). The re Gault's case, a US landmark case in 1967, extended procedural rights of due process and the right to an attorney for juveniles.

Similarly, in Europe, there have been separate systems of justice for children and young people, which have been beset by the differential in implementation of welfare and justice agendas. These include punitive (restitutive) and correctional interventions (restorative and rehabilitative justice approaches) (Muncie, 2005). So also, is the Neo-liberal 'responsibilising' mentality, which means the protection historically afforded to children was dissolving (Muncie, 2008).

John Muncie asserts a resurgence in authoritarian policies of juvenile justice (Muncie, 2011) by the 1980s. Although, during this period, prison rates were skyrocketing, exacerbated by the continued rise in national crime in the 1990s, 'politicians competed to demonstrate they were tough on crime' (Scott and Steinberg, 2008:6). Moreover, with governments' obsession with reducing national budget deficits such as reducing welfare expenditure, the near-universal international commitment to always act in the child's best interests (Muncie, 2011) has been negatively impacted. For instance, according to the extent of compliance with the UNCRC, the UK ranked as one of the most punitive in Western Europe in juvenile incarceration rates. Respectively, England and Wales, Scotland and Northern Ireland appear as 2nd, 6th, and 7th in the table of 'estimated number of juveniles in penal custody: USA and Western Europe' for incarceration rates under the 18 years population in Europe (Muncie, 2008:116).

The concept of 'social culpability' also resonates with the otherwise contradictory findings of other research that shows Sierra Leoneans support retributive justice over rehabilitative justice although willing to 'forgive and forget' the actions of former combatants after the war (Mitton, 2015). For example, several research studies showed a widespread feeling that child soldiers should be held culpable for their actions during the civil war (Abdullah, 2002; Gberie, 2005, 2009; Hoffman, 2006; Kelsall, 2009, amongst others) but were also willing to forgive. Kieran Mitton shows that the apparent capacity of Sierra Leoneans to 'forgive and forget', or at the very least 'to accept former combatants

back into their communities without seeking redress was a 'notable feature of the post-war years' (2015:1).

Rosalind Shaw's study in Sierra Leone in 2007 shows that even over five years after the war ended, both combatants and civilians were living side by side. Rosalind Shaw (2007) argued that the reason for such cohesion lies in Sierra Leone's traditions and techniques of dealing with the past through the approach of 'directed forgetting'. The practice of 'directed forgetting' is where the population consciously forgoes a potentially destabilising focus on past wrongs – and by extension, demands vengeance or retributive justice for a higher purpose. This means focusing on the immediate, practical welfare needs, which may appear at times to conflict with the demands for justice, truth-telling and reflection on the past (Mitton, 2015). Stovel (2008) and Shepler (2005) expanded on this point when they found that living in coexistence between ex-combatants and non-combatants does not mean the Sierra Leone people felt sincere reconciliation. For example, local people wanted to restore what they lost in the war, such as infrastructure.

However, the Special Court for Sierra Leone's (SCSL) application of a rehabilitative approach was perceived as a Western concept made by a Western institution (Shepler, 2005, 2016). This is because the SCSL was perceived as serving international communities' aims without considering the Sierra Leonean people's needs (Mitton, 2015). Arguably, social needs rank first in the determination of individual needs. For instance, The Government of Sierra Leone and other people within Sierra Leone were of the view that 'all those indicted should be dealt with by judicial process, irrespective of age at the time of alleged offences' (Morss, 2004:221). Additionally, Sierra Leoneans often (and this study shows) perceive children in contact with the law to be 'bad pickin dem' (naughty, wicked children) that should be socially culpable for their actions. The concept of social culpability of children has been explored in Chapter three and further, in Chapters six and seven.

The summary report of Sierra Leone's delegation to the CRC showed that criminal responsibility was set at age ten (CRC/C/SR.594, 13 January 2000: para 3-5). The thinking behind this was that children of that age should distinguish the difference between lies and truth. This relates to the concept of mischievous discretion, which is linked to the *doli incapax* principle. This study found *doli incapax* is still a principle applied in Sierra Leone regardless of the enactment of s70 CRA 2007, which sets the age of criminal culpability at

14 years. One participant magistrate (Magistrate-B) confirmed that the ten-year age application to find children responsible for their criminal actions is not unusual. However, Magistrate-D in this study stated that magistrates apply the age of 14 years for criminal culpability very strictly. He said:

to be held criminally liable, the person must be aged 14 years and below 18 – they will be tried as a juvenile if the offence was committed alone. If 14 and below 18 years and the offence were committed with an adult, they would be tried together with the adult offender. If found guilty, the adult offender will be sentenced by the magistrate and the juvenile will be sent to the Juvenile court for sentencing. However, if the magistrates' court is constituted, that is having two justices of the peace; a juvenile can be tried in the magistrates' court. The law is clear that we should not try children less than 14 years, I do not know why the other magistrate said otherwise.

Ten years old as the age for criminal culpability is not uncommon in other jurisdictions such as England and Wales (under the Crime and Disorder Act 1998) and Northern Ireland (Muncie, 2011). In some jurisdictions, there is the rebuttable presumption that children of this age group cannot form a guilty mind and are protected by statutes, while in other jurisdictions remain a matter of common law (Goldson, 2013). The age of criminal responsibility varies across Europe, ranging from 12 to 18 years. For example, the Netherlands-12 years; France and Poland-13 years; Belgium, for most offences and Luxembourg is 18 years; Austria, Bulgaria, Germany, and Spain -14 years; the Czech Republic, Denmark, Finland, Norway, and Sweden is 15 years and Portugal 16 years. The average minimum age of criminal responsibility in Europe is 14 years (Goldson, 2013). For more details concerning a child offender's age in Sierra Leone, see chapter six. In neighbouring Guinea, it's 10 years. [Code Penal, Article 64], for Liberia, it's 16 [Penal Code, Section 4.1]. Whilst in the Gambia, it's 12 [Children's Act 2005, s209] (Child Rights International Network).

4.4 International Human Rights Law and Juveniles

In 1922, Save the Children's founder Eglantyne Jebb started to promote the concept of an international declaration of the child's rights and drafted this as the declaration of

Geneva (van Bueren, 1998). The League of Nations⁶ adopted Jebb's Declaration in 1924. American President Woodrow Wilson was the leading proponent for the League of Nations, which Western states formed to adopt mechanisms for permanent peace after World War 1 (Evans, 2018). The League of Nations' Declaration in 1924, was also referred to as the Declaration of Geneva (van Bueren, 1998). This declaration, for the first time, accorded specific rights to children and was centred on five welfare principles for children including: their spiritual and material needs; welfare for all including delinquents and orphans; the child must rank first in instances of relief of distress; the child must earn a livelihood but should not be exploited, and the child must be trained to know his talents are devoted to the service of fellow men. It is clear from the aim of this declaration that it lacks the characteristics of subsequent rights-bearing instruments and focuses on welfare rather than the classic freedoms and civil liberties of the human rights discourse.

The 1924 declaration is not legally binding on member states, but Verhellen (2000) referred to it as having a moral obligation. The United Nations General Assembly on 10 December 1948 adopted the Universal Declaration of Human Rights-UDHR (UN General Assembly, 1948). This consisted of 30 articles relating to individual rights and became the first statement to be endorsed by UN member states regarding human rights. Eleanor Roosevelt was the first Chair of the UN Commission on human rights to oversee its drafting. She states that the UDHR is neither a treaty nor an international agreement and does not purport to be a legal obligation statement (Whiteman, 1963). The UDHR is a soft law that is a non-binding instrument applied for international relations by states and international organisations (Boyle, 2018).

Some of the provisions of the UDHR are the bases for the development of international human rights. For example, Article 38 (1) (c) of the Statute of ICJ. This concerns general principles of law recognised by 'civilised nations'. In other words, the UDHR has become a customary international law of human rights (Hannum, 1995). Other provisions of UDHR that became customary international law include freedom from genocide, slavery and torture. The Universal Declaration of Human Rights also provided foundations for two principles of human rights treaties, the International Covenant on Civil and Political Rights and the Economic, Social and Cultural Rights. These covenants are

⁶established by the covenant set out in the Versailles Treaty of 1919

classed as hard law and are binding (see below). Soft laws are non-legal instruments but have a high-level of political impact (Shaw, 2017).

The UDHR is an example of soft law that can become binding through its provisions being incorporated into other laws, as shown in Article 38 of the Statute of ICJ. However, it is also not necessarily easy to answer 'whether an agreement is a binding treaty' (Boyle, 2018:122). The test is one of substance and intention since the label attached to an instrument is not decisive. For example, an agreement involving a state and another entity (state) may be binding even if it is not a treaty (Boyle, 2018). Boyle (2018) postulates that a soft law can become hard law where it begins to interact with binding instruments; it can alter its non-binding characteristics. The UN law-making body in human rights has followed a pattern of being the first, to adopt a declaration (soft law) then negotiate this into a treaty (binding law on member states) as shown in UDHR.

Another leading human rights organisation is the Council of Europe (CoE), founded on 5 May 1949 with 47-member states. The CoE is an official UN observer body and deals with complaints about breaches of the European Convention on Human Rights, referred to as the European Court of Human Rights (ECtHR). The European Convention on Human Rights (ECHR) guarantees a right to a fair trial to everyone in a criminal matter. Specifically, it extends this right to juveniles under Article 6 of the European Convention on Human Rights (ECHR). The European Convention on Human Rights (formerly known as the Convention for the Protection of Human Rights and Fundamental Freedoms) was signed in Rome, 4 November 1950 and entered into force on 3 September 1953. This is the first international instrument to give effect and binding authority to certain rights stated under UDHR (Bantekas and Oette, 2016). The ECtHR was created with the Council of Europe's help and is a regional human rights judicial body located in Strasbourg and France. It started its operations in 1959 with a focus to address violations of the European Convention on Human Rights. However, the ECtHR decisions cannot overrule or annul national laws (Hollingsworth, 2016).

If the ECtHR finds a member state to be in breach of the rights and guarantees as contained in ECHR, a finding of a violation of international law will be made; such a decision would be binding on the country concerned because of the obligation to comply with ECHR law. The main criticism of the ECHR concerning juvenile justice is that its general rights treaties and substantive contents are not tailored to children's interests

(Hollingsworth, 2016). Notwithstanding, Art 6 (1) of the ECHR concerns the right to a fair trial and explicitly refers to juveniles. Despite the weakness in child-specific mechanisms, the ECHR has been used to secure systematic changes and remedies for individual children when used in litigation as an interpretative aid for the ECHR (Hollingsworth, 2016). Nonetheless, this is not a sufficient alternative since, at times, the judiciary applies norms of the ECHR superficially. The lack of a clear normative basis can limit the scope of litigation rights (Hollingsworth, 2016). For example, in *V and T v United Kingdom* [1999] 30 EHRR 121, [1999], the ECtHR rejected the claim that 'Article 3' of ECHR would constitute degrading and inhumane treatment of two ten-year-old boys if found criminally liable for murder. At the time of the ruling, international law only requires that the minimum age for criminal responsibility (MACR) is to be set by member states (as also under Art.40 (3) (a) CRC). This should not be set too low, bearing in mind the child's emotional, mental and intellectual maturity (as required by Beijing Rule 4.1). Since that ruling, the UNCRC Committee in 2007 stated, it would be internationally unacceptable for a member state to set their MACR below 12 years.

An expanded version of the 1924 Declaration by the League of Nations was adopted and replaced by the United Nations Declaration of the Rights of the Child, 1959 (1959 Declaration). The term "best interests of the child" was coined by the 1959 Declaration (van Bueren, 1998). Even though this declaration has no specific provision relating to child offenders, it applies to all children. The 1959 Declaration extended the rights of children. It removed the right to employment of a child and replaced this with an entitlement to free compulsory elementary education. The rights are as follows: a right to equality regardless of race, religion or origin; special protection concerning mental, social and physical development; name and nationality; adequate nutrition, housing, health and medical services; special education and treatment where a child is physically or mentally handicapped; understanding and love by parents and society; recreational activities and free education; children to be among the first to receive relief in all circumstances; protection against all forms of neglect, cruelty and exploitation, and to be brought up in a spirit of understanding, tolerance, friendship among people and universal brotherhood.

The International Covenant on Civil and Political Rights 1976 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1976 (ICESCR) came into force on 23 March 1976 in accordance with Article 49 (Charter of the United Nations-

Chapter VII- Action concerning threats to peace and breaches of peace). The ICCPR (art. 14.4) provides helpful provisions seeking to protect the due process of juveniles. For example, this procedure entails that juveniles' age and a 'desirability of promoting their rehabilitation' should be considered (Article 14 (4)). Whiles' Article 13 (2) of ICESCR provides that education should be compulsory and free to all primary school children. Further, Article 15 of ICESCR recognises the right for citizens to take part in cultural life. In particular, the latter requirement has been re-inforced in other conventions as well as domestic laws of member states such as the UNCRC (Article 30: the right to enjoy his or her culture), the African Charter (Article 12: the right to participate freely in cultural affairs) and Sierra Leone's Child Rights Act 2007 (s44; to use cultural standards to foster a child's development). By May 2000, forty-three African states had ratified the ICCPR and ICESCR. Sierra Leone ratified both conventions by accession: the ICESCR in 1992 and the ICCPR in 1996.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was entered into force on 20 June 1987. Its Article 2 states: 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'. This instrument has a bearing on juvenile justice and specifically for child offenders that are held in custody. However, Sierra Leone is not a party to this Convention, but its provisions have been replicated in other international law treaties, including the UNCRC and ACRWC.

The discretion available to policymakers and officials regarding many international instruments has significantly influenced the developments in law, policy, practice, and juvenile justice procedures, which appears to be contingent on various national, regional and local conditions (Muncie, 2011). As a result, comparative youth justice research has been dominant in two traditions; nomothetic and idiographic. The Nomothetic model concerns those that seek universality and similarities across jurisdictions. The idiographic model concerns those that seek 'uniqueness and differences between jurisdictions' (Hughes and Edwards, 2005; see Muncie, 2011:41). The idiographic tradition contends that divergence remains more in evidence than convergence in that the 'parameters of policy implementation and practice' are defined by distinctive political economies or cultural contexts (Muncie, 2011:41). This is because the shape and direction of reforms are far from been informed internationally (Muncie, 2011).

However, the effectiveness of youth justice systems worldwide can be measured against international standards through state compliance with human rights obligations (Kilkelly, 2008), particularly by the concluding observations of the UN Committee on the Rights of the Child. For example, in 1985, the United Nations adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (UN General Assembly, 1985), which describes a juvenile as a child or an offender alleged to have committed an offence or found to have committed one. In addition, the rules concern child offenders welfare and treatment, such as the provision for separate and specialist juvenile justice systems (Goldson and Muncie, 2012). Rule 1.4 in particular provides that:

Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles (United Nations General Assembly, 1985).

On 20 November 1989, the United Nations Convention on the Rights of the Child (UNCRC) was adopted by the UN General Assembly unanimously and was entered into force on 2 September 1990. The UNCRC provides a baseline for the various guidelines such as Beijing Rules, Havana Rules and the Riyadh guidelines (see below). The UNCRC took ten years in the making and then elaborated articles 37 and 40, as shown below.

Unlike the soft norms such as the Beijing Rules (as described above) and other instruments (as described below), The United Nations Convention on the Rights of the Child 1989 (UNCRC) is a treaty legally binding on all member state parties (Vaghri et al. 2011). The UN Committee on the Rights of the Child (CRC Committee) is the treaty body created by the UNCRC and is responsible for monitoring and compliance of the UNCRC by member states. However, its monitoring capacities and enforceability of the UNCRC are weak, mainly because it is binding against member states and not against individuals (such as citizens of member states). Besides, enforcement of the UNCRC is difficult due to its provisions being left loose to enable state parties' discretion in implementation. This point will be elaborated below in Sierra Leone's compliance with the UNCRC and its administration of juveniles.

The UNCRC has 56 articles that are indivisible and carry the same importance. The benchmark of the articles consists of four key provisions. These include "best interests of

the child" (Art 3), non-discrimination (Art 2), right to life survival and development (Art 6) and the right to be heard (Art 12). The leading articles under the UNCRC addressing juvenile justice are Article 37 and Article 40.

Article 37 prohibits cruel, inhumane and degrading treatment and punishment. In particular, it forbids the death penalty and life imprisonment without parole. In addition, it stipulates that detention should only be used as a last resort, and if applied, it should only be used for the shortest possible time. Article 40 sets out the procedural rights for minors. These supersede the fair trial rights and includes the desirability of reintegration, diversion and non-custodial responses; the requirement to set a minimum age for criminal responsibility (MACR); protection of privacy; and the child's right to be supported by his or her parents and by legal or other assistance.

Other substantive rights of the UNCRC that extend to child offenders include: rights to education, access to health care, parental contact, and its associated guidelines apply to all jurisdictions for the establishment of child-centred policies and practice when dealing with children in conflict with the law that are under 18 years old. The guidelines aim to set global standards for children in conflict with the law. Notably, that children's well-being is to be a paramount consideration, the age of criminality is to be based on the majority of the child, socio-education rather than punitive measures, extra-judicial solutions, the deprivation of liberty to be the last resort, and safeguards should be alternatives to custody (Whyte, 2014)

Similarly, on 14 December 1990, the United Nations adopted the Protection of Juveniles Deprived of their Liberty and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (UN General Assembly, 1990). The guidelines concern diversionary and non-punitive imperatives. The Riyadh Guidelines para. 2 states that: 'the successful prevention of juvenile delinquency requires efforts on the entire society to ensure the harmonious development of adolescents'. Paragraph 5 states that: 'formal agencies of social control should only be utilised as means of last resort', while para. 54 states that: 'no child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or any other institutions' (United Nations General Assembly, 199a). The Riyadh Guidelines incorporated the UDHR, ICCPR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international instruments to protect the rights and well-being of

young persons. Rule 1 of The Riyadh Guidelines states that imprisonment should be used as a last resort. This focuses on juveniles under arrest or awaiting trial and specifies what facilities should be made available to juveniles when in custody. The rule also seeks to uphold juveniles' rights and safety, alongside promoting their well-being when deprived of their liberty. Riyadh Guidelines rules operate as soft law (not binding) and default rules meaning that the guidelines can be overridden by other legally capable agreements (such as treaties or customary international rules that are binding) (Joutsen, 2015).

The United Nations Assembly adopted the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana rules) in 1990. The Havana rules core principles state that the deprivation of liberty is to be applied as a last resort. Moreover, that where applicable, detention should only apply for a minimum period. If children are deprived of their liberty, they should benefit from the principles, safeguards, and procedures provided by international human rights standards, treaties, rules, and conventions (United Nations General Assembly, 1990b).

Other associated guidelines include the United Nations Standard Minimum Rules for Non-Custodial Measures, also known as The Tokyo Rules (United Nations General Assembly, 1990c). These again require imprisonment to be the last resort. These guidelines were adopted by the General Assembly and came into force on 14 December 1990. The Tokyo Rules 1990 require 5-year reporting starting from 1994. It is noteworthy that r1.3 of the Tokyo rules states that the rules shall be implemented considering each country's political, economic, social and cultural conditions and 'the aims and objectives of its criminal justice system'.

The Vienna Guidelines, 1997 (United Nations General Assembly, 1997) came into force on 21 July 1997. These relate to the administration of juvenile justice and the need to strengthen international cooperation and technical assistance in juvenile justice in the form of guidelines for action relating to children in the criminal justice system (United Nations Economic and Social Council Resolution 1997/30).

Neither the United Nations (UN) nor the Council of Europe (CoE) provides a suitable vehicle for securing the rights of children in conflict with the law. The UN has detailed comprehensive and child-specific standards through the UNCRC but a weak enforcement mechanism historically, notwithstanding the supplementary guidelines (Hollingsworth, 2016). To address this weakness, the UN developed an individual

complaint mechanism system in 2014 called the Third Optional Protocol - OPE3 2010. In comparison, the CoE published the European Rules on Juvenile Offenders subject to Sanctions and Measures (CM/Rec 2008 11E) (Council of Europe, 2009) together with the Child-friendly justice guidelines [CJ-S-CH (2010) 3 E].

The most recent international guidance regarding criminal law is the Doha Declaration passed by acclamation in April 2015 (United Nations Office on Drugs and Crime, 2015). Although this declaration does not explicitly relate to child offenders, it generally concerns crime prevention and criminal justice. The Doha Declaration's primary goals include: upholding the rule of law and preventing crime at the domestic and international levels; ensuring criminal justice systems are effective, fair, humane and accountable; providing access to justice for all; building effective, accountable, impartial and inclusive instruments at all levels; and upholding the principles of human dignity, universal observance and respect for all human rights and fundamental freedoms.

Therefore, the UNCRC is supplemented by a range of instruments (guidelines) such as the Beijing Rules, Havana Rules, Riyadh Guidelines, the Tokyo Rules, Vienna Guidelines and Doha Declaration as described above in the administration of juveniles. However, these supplementary instruments are classed as 'standards and norms', which are part of soft law and are not legally binding on states. However, they work collectively to provide frameworks and guidelines for the treatment of juveniles in both institutional and non-institutional matters relating to the investigation, prosecution, adjudication and disposition of juveniles, amongst other provisions. Standards of juvenile justice are raised through persuasive force. For example, they aid in interpreting the UNCRC and other legally binding instruments through advocacy and campaigning (Hollingsworth, 2016).

Further, the adoption of OP3 to the UNCRC provides aid for interpretation by domestic and regional courts. The OP3 helps address institutional gaps by providing a child-specific complaint mechanism encompassing values, norms, and human rights principles. This prompts awareness and compliance of child rights obligations by member states, such as the requirement to review domestic human rights law and practices in line with international standards alongside assisting with the UN Committee's development in jurisprudence (Hollingsworth, 2016). However, OP3 has been criticised for failing to include a collective complaint process (Grover, 2015 as cited by Hollingsworth, 2016) and being insufficiently child-friendly with little to differentiate it from other human rights

treaties (Egan, 2014). In particular, complaints can only be made against states that have ratified the protocol (Article 1 (3)). Neither the UK nor Sierra Leone has ratified OP3. Notwithstanding, its usefulness will be indirect because of its contribution to the UN Committee's jurisprudence which domestic and intra-national courts may draw on.

4.5 International Humanitarian Law and Juveniles

The Law of Armed Conflict (LOAC) is referred to as humanitarian law and consists of provisions protecting human rights. Human rights and humanitarian goals 'have become common elements' concerning war since the Geneva Conventions of 1949 (Solis, 2016:23-24). The Geneva Convention of 1949 (IV–protection of civilians) and the Additional Protocols of 1977 govern humanitarian law (LOAC). These deal with international rules that attempt to "mitigate the human suffering caused by war" (Kalshoven and Zegveld, 2001 cited by Solis, 2016:24). Humanitarian law is the umbrella term for the two bodies of law: international humanitarian law (IHL) and international human rights law, aiming to humanise armed conflict (Solis, 2016).

The Geneva Convention of 1949 is domesticated in Sierra Leone under Article 3 of the Special Court for Sierra Leone (SCSL). This empowered the SCSL to prosecute persons who had committed serious human rights war violations. In addition, its protocols played a crucial role in the decisions of the SCSL concerning child soldiers. The Geneva Convention of 1949 also played a pivotal role in the enactment of the Additional Protocols of the UNCRC. Similarly, the Geneva Conventions Act, 2012 of Sierra Leone, was enacted in the aftermath of the civil conflict to uphold its obligations under the Geneva Convention of 1949 and its additional protocols.

Children's rights under 1977, Protocols I and II of the Geneva Convention of 1949 define two categories of conflicts and two types of ages concerning child soldiers. Before 1977, there was no reference made to the required age of a soldier. Protocol I is about wars between sovereign states. Protocol II concerns national conflicts, such as civil wars, rebellions and insurgencies and prosecution relating to children between 15 and 18 years old, depending on the type of conflict involved.

The 1977 Protocol I of the Geneva Convention of 1949 says that state parties to an international conflict should take all 'feasible measures' for children below 15 years not to participate in direct hostilities and refrain from recruiting them into the armed forces. These measures state that: 'in recruiting among those persons who have attained the age of fifteen

years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are older' (United Nations 1977a: Article 77 (2)). Although the 1977 Protocol I of the Geneva Convention of 1949 prohibits under 15-year-olds from direct hostilities, the vague wording of 'feasible measures' provides a loophole for the prohibition to be evaded. Furthermore, Rosen (2007:301), Druba (2002) and others state that the 1977 Protocol I of the Geneva Convention of 1949 allows for 'voluntary enrolment' of children below age 15 and therefore does not protect children, whether below 15 years or over, from indirect participation into the war (Druba, 2002).

Article 4 (3) (c) of the 1977 Protocol II of the Geneva Convention of 1949 prohibits the recruitment of children under 15 years and their direct and indirect participation in war (Frulli 2000). The article further stipulates that children shall neither be recruited in the armed forces nor groups nor be allowed to participate in hostilities (Bantekas and Oette, 2016). However, it does not define the terms direct and indirect participation (Druba, 2002). Therefore, the lack of protection for children between 15 and 18-year olds from armed conflict is a shortfall in children's protection under both protocols.

It is worrying that children between 15 to 18 years in the armed forces are subject to the same military legal standards as their adult counterparts concerning punishment and discipline (Brett, 2002). Therefore, children's age in armed forces recruitment remains an unresolved topic.

Similarly, The UNCRC protects child soldiers under article 38 (3), and the same protection is provided under Article 77 (2) of the 1977 Protocol I of the Geneva Convention of 1949. Additional protection for children in armed conflict is also provided under the Optional Protocol to the Convention on the Rights of the child on children's involvement in armed conflict (OPAC). This was adopted by the General Assembly resolution (ARES/54/263) on 25 May 2000. It came into force on 12 February 2002 (UN General Assembly, 2000).

The wording under Art.1 of the OPAC states that 'States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities'. This suggests that although direct participation of children under 18 in war is prohibited, but not so for indirect participation. OPAC also allows for the voluntary enlistment of under 18 years old into government forces but not for rebel groups. In particular, Article 3 of OPAC stipulates that voluntary

recruitment should be over 15 years; sovereign states can recruit child soldiers, but rebel groups are barred from doing the same.

During the same year as the entry into force of the UNCRC's optional protocol OPAC, the International Criminal Court (ICC) came into force in 2002. On 17 July 1998, the Rome Statute of the International Court ("the Rome Statute") establishing the International Criminal Court (ICC) was adopted in Rome. It came into entry on 1 July 2002 (UN General Assembly, 1998). The Rome Statute tried to establish a universal age prohibiting the recruitment of child soldiers. Accordingly, it universally prohibits an armed force or group from conscripting or enlisting children under 15 years old or using them to participate in hostilities actively and establishes the violation of these prohibitions as a war crime (International Criminal Court 1998, Article 8 (2) (b) (xxvi) and (e) (vii)).

Conversely, the ILO Convention 182 (1999) is a treaty that prohibits eliminating the worst forms of child labour but applies to ILO member states only, of which Sierra Leone has been a member since 1961. The ILO prohibits the worst forms of child labour, such as recruiting child soldiers below 18 years. The ILO also prohibits direct participation in hostilities but only prohibits dangerous work for indirect participation. Further, the ILO allows for children's voluntary enlistment under 18 years into an armed conflict (Druba 2002). In line with Sierra Leone's post-conflict international obligations, the age to be recruited into the armed forces was raised to 18 years under s28 CRA 2007, which amended the Armed Forces Act, 1961 (No.34 of 1961). Also, UN Resolution 2143 (S/RES/2143 (2014) followed on with adopting resolutions condemning child recruitment in armed conflicts.

To all intents and purposes, after the UN adopted the 1959 Declaration on the Rights of the Child, in 1979, African states adopted the same declaration as a "need to take all appropriate measures to promote and protect the rights and welfare of the African child" (Centre for Human Rights Pretoria, 2016:52) by enacting a Charter for African children. However, others view such a Charter as partly developed in response to a perception that the UNCRC is unduly shaped by Western constructions of childhood (Onuora-Oguno et al., 2017). The following section concerns the origins of international human rights law and juvenile justice in Africa. The section mainly deals with the reason for creating the African Charter on the Rights and Welfare of the Child (1990) as the Human Rights Charter

for Children in the African region. The UN, therefore, led the way for the development of international instruments on the rights of the child.

4.6 International Law and Youth Justice in Africa

The UN system monitors human rights in African countries, its regional instruments by the African Union (AU) and its predecessor, the Organisation of African Unity (OAU) (Heyns and Killander as cited by Shelton, 2013). According to Kufuor (2010), the African human rights system is made up of three interlocking laws. The first consists of specific charters of human rights, which includes protocols, declarations and decisions of human rights tribunals, including OAU/AU decisions. The second consists of treaties, especially sub-regional economic integration treaties, which do not primarily address the protection and promotion of human rights of tribunals and courts established under these treaties. The third includes developments within the domestic jurisdiction, such as the national courts concerning developments emanating from the regional level.

The African Human Rights system has its origins in the first Pan African Congress. Prominent leading political leaders, including Nelson Mandela, Nnamdi Azikiwe, Carlos Rómulo, Kwame Nkrumah, and Ferhat Abbas, demanded that the so-called "Atlantic Charter of August 1941" principles be put into practice by colonialists (Eckel, 2010:114). Their activism played a key role in the inception of the human rights programme in Africa (Ibhawoh, 2014) by using the Atlantic Charter's provision of self-determination as the mantra for anti-colonialism, despite its non-explicit principle of human rights. Azikiwe was a US-trained writer who became Nigeria's first President (Eckel, 2010). Nkrumah also had an American education and became the first President of Ghana and the first sub-Saharan country to gain independence on 6 March 1957 (Gaines, 2006).

The African Human Rights Charter and Human Rights Court can be traced to the International Commission of Jurists' conference in 1961 in Lagos, Nigeria. This was where a resolution entitled the 'Law of Lagos' was passed. The 'possibility of adopting an African Convention on Human and Peoples' Rights and creating a court of appropriate jurisdiction was also discussed (Viljoen, 2012:411). Another Conference of Tokyo and Lagos followed this in 1962, giving birth to the Organisation of African Unity (OAU) in 1963.

Disappointingly for proponents of an African Human Rights instrument, there were no human rights framework or human rights mechanisms contained in the OAU's provisions. In September 1979, the UN convened a conference involving OAU member

states in Monrovia. Due to NGOs' pressure to address African leaders' appalling human rights abuses, state members agreed to be subjected to international obligations. A resolution was passed to establish a regional commission on human rights with particular reference to Africa (Udombana, 2000). In the year after the Monrovia conference, twenty African experts presided by judge Kéba M'baye met in Dakar, Senegal, to begin the drafting of the African Charter (Udombana, 2000).

The African Charter is also called the Banjul Charter after the capital of The Gambia. The Banjul Charter was adopted by the OAU Assembly in Nairobi on 28 June 1981 and came into force on 21 October 1986 (OAU, 1981). Membership of The African Charter (the Charter) is made up of only African state members. Articles 1-26 of the African Charter enshrine the following: the rights to life; integrity; human dignity; liberty; security; non-discrimination; fair trial; freedom of conscience, religion, association, assembly, and movement; rights to property; fair wages; health; education; family life; a healthy environment; and economic social and cultural development. The African Charter provided for the establishment of an African Commission to promote, protect and interpret the Charter's rights.

The African Charter was created when human rights, primarily civil and political rights, were viewed by some politicians as a 'Western construct with limited applicability (Hetherington, 1978). It was the consensus among post-colonial African leaders that civil and political rights would compromise economic development and the main goal was to eliminate colonialism in Africa (Elvy, 2012).

Jack Donnelly (1986) argued that African governments were coerced into adopting the African Human Rights system due to a lack of regional hegemonic power and copying the Americans who had set up the American Human Rights System. However, others argue that African leaders created the African Charter not to avoid the West's authoritarian political systems but to construct more liberal democratic systems (Elvy, 2013) and to enable them to seek and survive challenges to their rule.

The African Charter marked the beginning of the regional development of human rights, norms and institutions in Africa. It was indicative of OAU's departure from 'its rigid adherence to the concept of state sovereignty' (Kufuor, 2010:16). It signalled that state sovereignty appeals would not limit the promotion and protection of human rights in Africa.

Kufuor's (2010) critique of the African Charter is that it purports to cover all three generations of rights and its applicability to everyone. However, the centralisation of human rights protection under one document has been broken up into several human rights instruments and has caused a fragmentation of the African Charter. For example, the African Charter on the Rights and Welfare of the Child, the African Charter for Popular Participation in Development and Transformation and OAU's Grand Bay Declaration and Plan of Action, and The African Charter on Elections, Democracy and Governance. Kufuor claims there is also fragmentation at the sub-regional level. For instance, regional integration treaties were created to liberalise economic activities and new regionalism treaties, alongside the establishment of courts and tribunals concerning the interpretation of treaty provisions and human rights cases.

Another criticism of Kufuor and others about the African Charter is that the African Charter is the 'primary document of the system' (2010:2). It contains claw-back clauses that are state-centric with weak provisions on the concept of states' duty due to its failure to create conditions necessary for the African Commission on Human and People's Rights (the African Commission) to function effectively. Therefore, many practitioners and activists do not hold the African Charter as an effective human rights instrument. Academics and certain events had led to calls about the reassessment of its effectiveness as an instrument for protecting human rights. Kufuor (2010) cites plausible reasons for a reassessment's timeliness, including the fall of authoritarian regimes that have been replaced by liberal systems and current authoritarian regimes being forced to uphold legislation that protects fundamental human rights. The latter point is evidenced in recent actions holding individual leaders accountable for human rights violations in Africa, for example, the prosecution of Charles Taylor, former Liberian president. Similarly, the Truth and Reconciliation and Restoration Commission (TRRC) in The Gambia in 2018 was also intended to aid with the prosecution of former President Yahya Jammeh's regime for human rights violations.

Sierra Leone signed the African Charter on 27 August 1981 and ratified it on 21 September 1983. Of importance to juveniles is the African Charter's Article 18 (3), the only article that mentions children explicitly. It states that: 'The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions'.

The African Charter's article 18 does not mention juvenile justice specifically. However, it does mention the right to legal defence under article 7, specifically, the right to due process, the presumption of innocence until proven guilty by a competent court or tribunal, as well as the right to a defence and the right to be heard by an impartial court. Therefore, in principle, article 7 should also apply to children. However, unfortunately, juvenile justice often expressly excludes legal defence because of the principle that children should be diverted from the legal system.

4.7 The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (ACRWC) and the UNCRC are the only international and regional human rights treaties covering the whole spectrum of civil, political, economic, social and cultural rights for children. The difference between these two is identified in the preamble of the ACRWC, which states that the UNCRC has failed to consider Africa's socio-cultural and economic relations, hence adopting the ACRWC by the AU. Therefore, Africa's regional legislation concerning children is the African Charter on the Rights and Welfare of the Child (ACRWC). The OAU adopted this in 1990 but only came into force on November 29, 1999 (Chirwa, 2002). The legislation sets out rights and defines universal principles and norms in relation to the status of children.

The ACRWC's Article 17 (1) sets out explicit provisions concerning the administration of juvenile justice, particularly children accused or found guilty of conflict with the law. The article requires state parties to ensure they have special treatment consistent with the child's sense of dignity, worth, and respect for others' human rights and fundamental freedoms. It also obliges state parties to ensure that no child in detention or imprisonment or deprived of their liberty should be subjected to torture, inhuman or degrading treatment or punishment. Further, the provisions require that where children are detained or imprisoned, they should be separated from adults. Finally, the child should be deemed innocent until found guilty; be informed of the charge they are accused of in a language that they understand and should be afforded legal and other assistance in the preparation of their case. The case should be determined by an impartial tribunal and should have a right of appeal to a higher tribunal. If a child defendant is found guilty, there shall be a reformation method, reintegration into his or her family and social rehabilitation. State

parties should set a minimum age at which the child is to be presumed not to have the capacity to infringe the penal law.

Critics such as Gose (2002) state that ACRWC's Art. 17 should include the addition that treatment should be applied with humanity and respect for a person's inherent dignity as shown under the UNCRC Convention articles 37 (c) and 40 (1). The latter articles contain provisions for arrest, detention with imprisonment to be the last resort. The difference between the ACRWC and the UNCRC is that the UNCRC provides more protection for children in conflict with the law than the ACRWC.

4.8 Application of Human Rights and Humanitarian Law and Juvenile Justice in Sierra Leone

International law and Non-Government Organisations (NGOs) involved in disarmament demobilisation and reintegration (DDR) played a significant role in how certain kinds of international legal recognition were applied in Sierra Leone. For example, its influence on peacebuilding and transitional justice, such as juvenile justice, has helped shape the national legal view of youth liability in war. This got played out in order to promote peace between victims and perpetrators. Programmes included civic education that emphasised child soldiers' vulnerabilities and the view that they, therefore, should not be held accountable for their crimes if under 15 at the time the offences were committed.

A large part of this discussion is covered in the literature review, such as determining under-18s' culpability. This has been looked at in the context of the war and decisions of the Special Court for Sierra Leone (SCSL), including the Truth and Reconciliation Commission's (TRC) reports and notions of childhood vulnerability. The SCSL, for example, absolved former child soldiers from criminal responsibility due to their vulnerability as children and holding their recruiters accountable. Also, the Sierra Leone Truth and Reconciliation Commission (TRC) established by the Lomé Peace Accord (that was signed on 7 July 1999) shows that this Commission was set up to allow those directly affected by the war to participate in the peace process. The TRC is part of the restorative justice principle that has been conducted in some Latin American countries (including Chile, El Salvador, Haiti and Guatemala) and South Africa, where similar atrocities were experienced (Kelsall, 2005; Millar, 2011). The restorative justice principles include closed hearings held to cater to the victims' needs and to promote 'social harmony and reconciliation' (TRC 2004:231 cited in Millar, 2011). The SCSL had a hybrid character,

with both domestic and international crimes being included in its Statute. Likewise, the Truth and Reconciliation process was put in place alongside the criminal justice procedure. The aim of the TRC was not initially designed to co-exist with a unique criminal prosecution system. The duality of the TRC only emerged when the SCSL was established on 10 March 2004 (Morss, 2004). The amalgamation of the prosecution with a Truth and Reconciliation procedure showed the hybrid nature of Sierra Leone's legal process at the time. Most peculiarly, the form of accountability of perpetrators employed by the TRC contrasts with criminal accountability in that perpetrators and victims were treated as equals and perpetrators were seen as analogous to victims; this was particularly the case for juvenile offenders (Morss, 2004). The UN Secretary-General Kofi Annan's criterion of 'the greatest responsibility' for war crimes provided personal accountability for offences committed under the SCSL Statute and did not necessarily exclude under-eighteens. The Secretary-General proposed a juvenile chamber for those under eighteen at the time of trial at the SCSL. However, this suggestion was rejected by the Security Council (Amann in Morss, 2004 -UN Doc A/54/L84 (16 May 2000)). It was stated that the purpose of the TRC and the SCSL was identical. The SCSL was to prosecute only a few defendants who 'bear the greatest responsibility' while the TRC was to prosecute 'everybody else' (Morss, 2004:223). The TRC was to deal with allegations less serious than those of the SCSL. The Prosecutor for the Special Court for Sierra Leone was required to use the TRC's measures, where appropriate and available. The SCSL had no jurisdiction over a person under 15 at the time of the alleged criminal conduct under Article 7 of SCSL, which states juvenile offenders were those aged between fifteen and eighteen years at the time of the crime.

Iliac Bantekas and Susan Nash (2007) pointed out that by adopting the ICC Statute in 1998, the SCSL decided that the recruitment of child soldiers was a war crime under customary international law. This is primarily because of the near-universal ratification of the UNCRC and national laws criminalising child recruitment (Special Court for Sierra Leone - Prosecutor v Norman: Case No.2004-14-AR72(E): paras 34 and 53).

Further, Article 4 of SCSL confirms that although the prohibition to child recruitment during the war had acquired customary international status, it was not clear at the time to what extent it was recognised as a war crime entailing individual criminal responsibility.

However, Art 8 (2)(b) (xxvi) of the ICC Statute⁷ and Art 4 (c) of the SCSL Statute have identical interpretations the terms, ‘conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities’ as constituting a war crime.

Julie McBride (2014) explained that the international justice institutions of the SCSL and ICC had addressed the challenges of who should be held criminally liable for the new law's prohibition on the recruitment and deployment of child soldiers. McBride (2014) stated that to establish a war crime from a human rights perspective, its prosecution at the SCSL and the ICC should involve identifying fundamental principles, such as the terms 'actus reus' and 'mens rea'. The actus reus is the commission of the criminal act, and the mens rea is referred to as the guilty mind, which concerns the intention to have committed the criminal act. Both (actus reus and mens rea) of these concepts are elaborated further in chapter five.

The Rome Statute provides three main types of war crime offences which include conscripting or enlisting or using children under the age of 15 years as soldiers (as stated under Art 8 (2)(b) (xxvi) of the ICC Statute⁸). Where there is a breach of the latter, a defence cannot be raised regarding the method of recruitment. Further, a defence cannot be made out that the child volunteered for the recruitment. The slight difference between the ICC and the SCSL in interpreting the terms is that the SCSL held that conscription represents an ‘aggravated form of enlistment’ (Prosecutor v Moinina Fofana and Allieu Kondewa (The CDF Case). At the same time, the ICC ruled that this might be relevant during sentencing. However, it is yet to be demonstrated as a factor in proving liability or in the mitigation of sentencing (see the case of Thomas Dyilo Lubanga, 10 July 2012). The wording 'using to participate actively' concerns the use of child soldiers. This has been a grey area to establish liability since Article 77 (2) of the Additional Protocol 1 first used the wording, 'direct part in hostilities' and created two distinctions between two different types of participation: direct and indirect. These distinctions highlight flaws, including the

⁷which states: war crimes mean: ‘other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities’

⁸element 3, “The perpetrator conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively hostilities”

failure for children to be protected equally from dangerous and non-traditional combat roles. It is also a flaw that was not addressed by the CRC's Article 38. The Rome Statute remedied the problem of direct and indirect participation by invoking the word "'active" as the benchmark for prohibited participation' (McBride, 2014: viii).

What constitutes 'active' has been defined by a list of acts that fall within the scope of the prohibition. The construction of 'active' has faced criticism by the Special Representative on Children in Armed Conflict and academics like Julie McBride. They advocate for a case by case basis of what constitutes 'active' (McBride, 2014). The case of Prosecutor v Thomas Lubanga Dyilo is the first to establish whether the tasks undertaken by a child in a given conflict could give rise to active participation. Active participation involves discussing the concepts of mens rea.

Establishing the concept of mens rea involves two key questions: what are the mens rea requirements, and whether there is a provision for negligence. The framework of the international human rights and the humanitarian treaty is not framed in terms of crime and does not refer to the mental requirement because it aims to prohibit the recruitment of children (McBride, 2014). The Rome Statute attempted to create elements for the term 'war crime', but this only created more confusion. For example, Art 30 (1) of ICC provides 'unless otherwise provided', perpetrators will be liable if they committed a crime with both 'intent' and 'knowledge'.

The ICC statute's additional elements of crimes document (elements of crimes document) concerning children's recruitment shows four elements of a crime. These elements consist of the mental state (mens rea); conduct (guilty or criminal conduct); concurrence (concerns the apparent need to prove both actus reus and mens rea occurred simultaneously to commit the offence but does not apply to strict liability offences which do not need the intention to be proved - see chapter five below); and causation (linked to the defendant's conduct and its link to the offence which is then linked to the intention of the defendant). The 'elements of crimes document' further stipulates that a perpetrator will be deemed to know or should have known that the child or children were aged less than 15 years old (Art.8 (2) (b) (xxvi) – elements -3), and such stipulation creates two competing mens rea. In particular, the wording 'should have known' allows for negligence liability, and the SCSL took the same approach as the ICC, which incorporated both elements: intention and knowledge. This entails the reasonable person's standard, whether the

accused had 'reasonable cause' to believe or suspect that the child concerned was under the age of 15 years. The ICC Pre-Trial Chamber ruled that both standards are necessary:

that intent and knowledge of Article 30 is applicable to the existence of an armed conflict and the nexus between the act charged and the armed conflict (The Prosecutor v Thomas Lubanga Dyilo -ICC-01/04-01 106 29 January 2007) and the negligence liability may arise in relation to confirming the ages of the child recruits (McBride, 2014: iv).

A further obligation was placed on child soldier recruiters through the provisions of 'negligent liability' along with the doctrine of 'dolus directus' of the second degree, which was incorporated in the Rome Statute's provisions of mens rea by ICC (McBride, 2014). The doctrine of dolus directus concerns an event where an accused does not intend to recruit a child as a child soldier but acts in the knowledge that it may occur (McBride, 2014). In Sierra Leone, the SCSL failed to apply the same standard in the CDF case, and although there was evidence of knowledge, there was none for intent, and as such, the SCSL cannot prosecute an accused of recruiting child soldiers. For example, Moinina Fofana (see Mc Bride, 2014) was not guilty for recruiting child soldiers as he was shown to have knowledge. However, the prosecution failed to demonstrate that he had the intent that children were being recruited under his command. On the other hand, the ICC 'attributes liability to those that have knowledge of such unlawful recruitment policies' (Mc Bride, 2014:169).

Another reason for the failure of the indictment under the Statute of Sierra Leone is that it 'included reasonably foreseeable crimes which had the result of blurring the concepts of jus ad bellum and jus in bello, as well as preventing the defence team from understanding the material elements of the charges against them' (Mc Bride, 2014:204). The SCSL's defective indictments made way for convictions based on command responsibility and individual criminal responsibility, while the ICC applied the Lubanga case's co-perpetration approach (Mc Bride, 2014).

The SCSL's approach showed clear evidence of a command role necessary to establish command responsibility. Child recruitment charges will require that the perpetrator knew or ought to have known that he or his subordinates were recruiting child soldiers, and he had failed to take measures to prevent that from happening. Nevertheless, Thomas Lubanga was found guilty of recruiting child soldiers by the ICC based on co-

perpetration as contained in the Elements of Crimes' negligence provisions (Article 30, ICC Statute). These provisions concern liability for the perpetrator, for knowingly or being ought to have known that supporting child recruitment policies and although not in a direct command role over those who implement such recruitment policies would result in being found liable (McBride, 2014).

There are complexities associated with the principles of *actus reus* and *mens rea* in establishing criminal liability and the spirit of developing international human rights and humanitarian law. It is not surprising that the SCSL contended that the criminalisation of child recruitment into war for the under 15s' should be settled by international law. The focus remains on raising the standard to include all children below 18 years (Bantekas and Nash, 2007). When the SCSL was set up, it aimed to try international law violations by those bearing the greatest burden, including children. This was proposed by the United Nations Security Council UN Secretary-General Kofi Annan, who recommended a Juvenile Chamber of the Special Court to try persons including those as young as 15 years (Amann, 2001).

However, David Crane, the Prosecutor of the SCSL, was reported to announce that no children or juveniles would face prosecution at the SCSL (Morss 2004). David Crane did not define a juvenile. As we shall see below from our discussion of when a child can become culpable under the CRA 2007, a juvenile means someone whom the law can apprehend: that is, one in contact or conflict with the law and is a minor regardless of if they have been charged with an offence. Therefore, it is clear that all 14 to 18-year olds, regardless of whether they have been charged with an offence, are regarded as juveniles in Sierra Leone (CRA 2007 s70). A simplistic way of putting the actions by the SCSL is that it followed the stipulation of the Rome Statute (Art 26 of ICC 1998) not to prosecute persons under 18 years. In essence, the recruitment of all persons above 15 years is an international offence under customary law. However, the question of the articulation of truth and reconciliation processes with criminal justice processes in dealing with juvenile offenders remains unresolved (Morss, 2004).

Liberian President Charles Taylor's landmark case shows that even people at the highest level of power can be held accountable for human rights violations. Critics of the SCSL say that despite its concurrent jurisdiction over the adjudication of both national and international crimes (Jalloh, 2010; Rosen, 2007; Romero, 2004; Schabas, 2004), the SCSL

has primacy over the national courts of Sierra Leone (Jalloh, 2010). This stipulation is contrary to Sierra Leone's Constitution of 1991, which contains an entrenched clause and stipulates that no judicial authority should be higher than the Sierra Leone Supreme Court. Where there is an entrenched clause, a referendum is needed before legislation can be passed to amend that part of the Constitution. Therefore, the action by the SCSL was arguably tantamount to an abuse of process and power as it conflicted with the Constitution.

Additionally, as indicated above, those to be indicted under SCSL Article.1 (a) were persons who 'bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leone law' (S.C. Res.1315 2002). There was a problem with this phrase (United Nations Security Council- S/2000/915) as it indicates that only a few might be responsible when there are others who could also be held culpable. For clarity, the UN Secretary-General warned that the term persons bearing the 'greatest responsibility does not limit the SCSL's jurisdiction to indict only political and military leaders but was intended as a prosecutorial strategy instead of as an element of the crime. However, in Sierra Leone, the opposite happened.

Child soldiers were absolved from liability for their crimes. Regardless, many Western states treat violent juveniles as adult criminals (see the Bulger case in Britain, which concerned killing a two-year-old boy by two ten-year-olds who were held to be culpable). The mandate stipulating that the Prosecutor had the ultimate decision on whether to bring charges against juveniles or send them to the TRC is under SCSL Art. 15(5). The alternative to referring juveniles to reconciliation mechanisms was through the recommendation of the UN Secretary-General Annan, but this should be made only to the extent of their (reconciliation mechanisms) availability. Therefore, it is arguable that David Crane relied on SCSL Art 15 (5), hence the reason for his failure to prosecute persons less than 18 years and refer them instead to the Truth and Reconciliation Commission (TRC).

Gearoid Millar's (2010) study of conflict resolution of the TRC between victims and perpetrators in Sierra Leone showed that most local people expected other than just victims giving accounts of what had happened to them. People wanted to reconstruct the things they had lost, such as national infrastructure, loss of livelihood, and the lost tools of their livelihood, amongst other things. Expectations of the TRC by local interpretations showed that the interpretation of international law was classed as a Western perspective (Onuora-Oguno et al., 2017; Shaw, 2007; Shepler, 2005). For example, one of the local

interpretations of the TRC's process in Sierra Leone was viewed as a project of memory, for cleansing and healing, referred to as local efforts to create "cool hat" (a cool and settled heart) (Shaw 2007:184). Millar cited Rosaline Shaw's research as a critique of the TRC's approach to the local method of 'social ... forgiveness' [forgetting], central to establishing re-integration and healing (2012:720). A further criticism for those that set up the SCSL and the TRC was that both had limited resources. In particular, by 2010, the total cost for the SCSL project was \$212 million compared to 'much higher (billion dollars plus) expenditures of the ICTY [International Criminal Tribunal for the former Yugoslavia] and ICTR [International Criminal Tribunal for Rwanda]' (Jalloh, 2011:448). It appears that rehabilitative measures sufficed as punishment, and the SCSL expended more attention in prosecuting the most culpable parties, in this case: adults.

Truth and Reconciliation Commissions (TRC) are perceived to provide healing and justice in post-war situations (Cheney, 2012). These were first established in Latin American countries of Argentina, Chile, and Guatemala TRCs' to address domestic responses to human rights violations. For example, as part of negotiated settlements in transitional regimes due to ineffective and lack of independent judiciary. However, some academics, such as Gearoid Millar (2011), are critical that TRC principles are Western theories that may not be applicable in many local cultural settings. For example, following the case of South Africa, truth-seeking (associated with TRC) has mostly been replaced with 'truth-telling (Millar, 2011:180). This is a new form of restorative justice provided by performances of truth-telling, which are 'theorized to catalyze psychological or socio-emotional healing' (Nadler and Schnabel, 2008 in Millar, 2011:180). However, David Crane (cited in Millar, 2011:517) said that in times of peacebuilding, what seems to be key, as many Western studies cited, is that 'justice is perceived' to have been done even if it does not lead to a successful prosecution.

It is interesting to note how children were not culpable for their actions during the war, but yet post-conflict, they are culpable for the same or similar crimes, as shown below. This is partly to do with the requirements for criminal liability. Chapters five and six show that the age of criminal culpability in Sierra Leone is set at 10 or 14 years depending on the presiding juvenile officer, although CRA 2007 states that it is 14 years. Notably, the status of children has not changed much in terms of the perceptions held by their community. Although there is a slight change in the law, as already stated, it would be fair

to say this, and other factors such as lack of financial capacity and strong networks would render a child culpable if faced with the law even in a pre-war scenario.

One way in which international law has been applied in Sierra Leone's juvenile justice system is through the setting up of the Special Court for Sierra Leone and its decisions on child soldiers. In particular, the UNCRC's provisions have been a base for the enactment of the CRA 2007. The SCSL and TRC are practical mechanisms in balancing justice within national law and international law, such as using the best interests of the child principle in relation to dealing with actions, experiences and criminal responsibility of juvenile soldiers (child soldiers).

The SCSL's decision not to prosecute juvenile offenders but to ensure that they are referred to the TRC (Jalloh, 2010) could be attributed to compliance with international standards of rehabilitation and reintegration, required for the administration of juveniles. As with the TRC's objectives, these were intended to establish a factual historical account for the causes of the war, which also helped to create a climate that fostered an interchange between victims and perpetrators. The work of the TRC is pivotal in giving a voice to war-related experiences of juveniles, recommendations to address victims' needs and the flaws of the juvenile justice system, alongside social reintegration of perpetrators and victims (Millar, 2012). The primary focus of the TRC is highlighted in its attempt to address the tensions between victims and perpetrators, especially juvenile perpetrators of the war, through the process of healing by using the concepts of truth, reconciliation and rehabilitation. Such a method assists in keeping the focus on applying international human rights principles, including the child's best interests, treating the alleged or recognised child offender with dignity and a sense of respect and worth; together with ensuring a balance in addressing the interests of victims and perpetrators as examined in the next chapter.

4.9 Compliance of the Sierra Leone State Party with Human Rights standards and Juvenile Justice

This study and other studies (including MSWGCA and DCI-SL studies) by DCI and DCI-SL (2000, 2010, 2012, 2014, 2015, 2016) have shown that the GoSL has not fulfilled its international obligations concerning the treatment of juveniles. These obligations include the right to dignity and respect, detention to be the last resort, and the duty on states to act in children's best interests. However, some strides in compliance have been made in accordance with the duty for initial and periodic reporting by the Government

of Sierra Leone (GoSL) as required by the UNCRC (article 45:6) and ACRWC (Article 43). In addition, the GoSL has shown compliance through its ratification and enactment of laws and the adoption of policies in the area of child rights generally. Furthermore, the Government of Sierra Leone (GoSL) has to some extent, domesticated the UNCRC through the enactment of the CRA 2007. This domestication contains aspects of the ACRWC. The GoSL also signed and ratified the optional protocols to the UNCRC on the sale of children, child prostitution and child pornography and the optional protocol to the involvement of children in armed conflict. Both were ratified on 17 September 2001 and 15 May 2002, respectively. However, the GoSL is not a signatory to the third optional protocol to the UNCRC on communication procedure (ohchr.org).

The CRA 2007 harmonised its statutes to bring the age of a child to 18 years without reservations. In addition, the criminal responsibility age increased to 14 years, meaning that a juvenile could be apprehended by the law aged 14 to 18 years. Other policies to address the problem of youth are shown in the core objectives of the GoSL's Poverty Reduction Strategy Paper-II (2008-2012), also known as the Agenda for Change or PRSP II. These aim to ensure sustainable human development through the provision of improved social services, amongst other things. Furthermore, to address the gap in the current law of Sierra Leone and international law relating to juvenile justice, the GoSL set up The National Child Justice Strategy of 2006. This was coordinated between the GoSL and NGOs, who drafted reforms relating to juveniles and the juvenile system. However, despite the gains made in compliance by GoSL, the Family Courts have still not been set up as stipulated by CRA 2007.

Further, the courts only have the mandate to deal with civil cases. This means juveniles cannot be given the special protection or treatment as accorded under the UNCRC and its accompanying instruments concerning the provision of a 'special court' to deal with all matters concerning their legal administration. This research shows that currently, in Sierra Leone, the magistrates' court is used to prosecute juveniles. There is, however, a 'juvenile court' in Freetown, located in two areas (one at Pademba Road and the other at Cline Town).

The 'juvenile court' also sits as a magistrates' court, sometimes without justices of the peace, contrary to sections 2 and 4 of CAP 44 (please see chapter six regarding a recent development).

Of concern is s3 of Cap 44's wording: 'if practicable' concerns matters to be tried in another building or room from ordinary court settings. If interpreted in the provision of services, it then allows magistrates' courts to hear juvenile cases without needing to be heard in different buildings or with justices of the peace. No doubt, a loose interpretation risks dispensation with formalities and would contravene s2 of Cap 44, especially where there is a lack of financial capacity or lack of infrastructure.

The GoSL admitted in their report to the CRC Committee (Country Report -United Nations Convention on the Rights of the Child -CRC/C/SLE/3-5 2015) that there is a lack of essential safeguards and the need to protect children's interests across the country. In particular, there is an increase in the number of children facing formal hearings and those that face criminal convictions. In the same report, the GoSL cited DCI-SL 2010:17 reports of 2007 and 2009; these showed that children facing formal hearings in the major towns across the country had increased from 3,678 to 5,309. Also, in the same report, the MSWGCA's (2010) findings showed 376 boys and 52 girls were at the Remand home in 2010 (this study also shows girls are less likely to be imprisoned than boys). In 2011, there were 580 boys and 39 girls at this institution, as cited by the same report (Country Report -CRC/C/SLE/3-5 2015). The GoSL also concedes to the slow pace and sometimes the lack of formal judicial hearings in some parts of the country where the required panel for functional juvenile hearings are unavailable. The GoSL also accepted limited rehabilitation programmes at the Approved School and Remand homes in the country. In such institutions, the detention of children in such institutions is a breach of UNCRC's articles 37 and 40, article 39⁹, and article 17 of ACRWC.

The Ministry of Social Welfare Gender and Children Affairs (MSWGCA) is the government department that deals with children's affairs in Sierra Leone. Similarly, in the GoSL's report to the CRC Committee (2015), the MSWGCA acknowledged that the protection of witnesses and victims of crime is paramount to operationalise the administration of child justice fully and comprehensively, especially in cases of sexual offences. The Sexual Offences Act 2012 provides free medical treatment and police assistance to victims and witnesses. However, there was no clear plan for its

⁹although this article concerns the rehabilitation of child victims that are neglected, abused, exploited, tortured or are victims of war in need of health, dignity and self-respect, the same provisions should be applied to juveniles using the best interest principle.

implementation in Sierra Leone during this study. The GoSL admits to the CRC Committee (Country Report -CRC/C/SLE/3-5 2015) that it lacks capacity and constraints in training personnel and updating the relevant legal reforms, such as the enactment of Administration of Juvenile Justice Act. The failure to enact the Administration of Juvenile Justice Act shows the GoSL's inability to address flaws in the current law governing juveniles. Given the requirement under Article 43¹⁰ of the UNCRC for member states to work together¹¹ with other institutions such as Non-Government Organisations (NGOs), in Sierra Leone, the GoSL is working with the Child Rights Coalition Sierra Leone (CRC-SL) in compliance with the requirements. The input of the CRC-SL, amongst other things, includes providing shadow reports to both institutions of the UNCRC and ACRWC (CRC-SL 2015). The CRC-SL filed its most recent shadow report to the UNCRC in November 2015.

The CRC-SL acknowledges the enactment of legislation, notably the CRA 2007 and the National Youth Commission Act 2000. Along with this, it recognises the adoption of state policies such as the National Child Justice Strategy, Agenda for Prosperity, the Age Verification Guidelines and Free Health Care Policy, which in one way or another contribute to the implementation of protection, survival, participation and development rights for children. These policies, therefore, if properly implemented, would enable the government to comply with key standards of the UNCRC. However, the CRC-SL also recognises there is an inadequate implementation of juvenile laws. The CRA 2007 is grounded in a rights-based approach (Zombo, 2015). Despite this guarantee, the CRA 2007 lacks provisions on procedures. The law's application is slow as it requires costly structures such as the creation of family courts, child panels and child welfare committees at chiefdom and village levels. However, it has been noted that child welfare committees are established by NGOs but usually provide short-term support.

In compliance with the UNCRC, the GoSL established the National Children's Commission (NCC) in 2014. Although a Commissioner has been appointed and some staff recruited, this only functions in Freetown. Also, a Parliamentary Human Rights Committee

¹⁰to ensure children's rights are protected.

¹¹ concerning the monitoring of the UNCRC.

was established by the GoSL to pave the way for the passage of laws and the ratification of human rights instruments.

The NCC has been shown to be a weak institution in monitoring child rights issues due to the lack of funding by GoSL (Zombo, 2015). CRC-SL notes that the GoSL has established the National Human Rights Commission (NHRC) to monitor and provide redress for widespread human rights abuses, including child rights issues in Sierra Leone. However, it has been observed that despite the NHRC's comprehensive report (Human Right Commission of Sierra Leone, 2015), it has not provided any independent monitoring reports on the situation concerning child rights. Nonetheless, the report highlighted conditions that affect juveniles, such as the lack of rehabilitation and reintegration of inmates and recommended that the state provide such services. The same report also highlighted the appalling conditions of prisons, such as lack of water, medical facilities, bedding, recreational facilities, overcrowding, and the denial of bail for minor offences.

Similarly, the Sierra Leone 2018 Human Rights Report (SL2018, HRR) conducted by the GoSL's Department of Justice (entitled Sierra Leone 2018 Human Rights Report – Department of Justice) is also comprehensive on the general practice of human rights, yet has only commented on a few issues involving juveniles such as the brutality of the police. It cited the case of a 15-year-old boy killed by police at a peaceful student demonstration in Bo. The report showed juveniles being held in prison; offenders older than 18 years were sent to the Approved School, while children under 18 years were sent to the state prison. The report highlighted other issues such as: overcrowding of prisons; offenders spending three to five years in incarceration before their cases are called or formally charged; lack of adequate access to food and education of juvenile detainees; juveniles sometimes being unable to attend court hearings due to lack of transportation and limited access to legal representation. The SL2018 HRR also reported that the Legal Aid Board estimated that only 10 to 15 per cent of inmates received legal representation [but did not state whether legal representation was free and who received representation] (SL2018, HRR). Notably, there was no specific mention of the lack of adequate legal procedure in the administration of juvenile justice by GoSL.

By far to this study, the CRC-SL's (2015) criticism of GoSL concerns the lack of development of laws governing juvenile justice in the country. Notwithstanding, the CRA 2007 made some amendments to Cap 44 concerning harmonising a child's age as 18 years.

There is also an increase in the age of criminal culpability from 10 to 14 years; Cap 44 remains the primary law in the administration of juveniles in Sierra Leone. Cap 44 is the 'substantive law' (which defines rights, responsibilities and punishment) relating to juvenile justice. However, it lacks procedural rules on arrest, investigation, child offenders' removal and rehabilitation. The criticisms of CRC-SL include the contravention of the UNCRC and ACRWC articles by the GoSL.

This research found there to be a lack of facilities to accommodate juveniles after their release from either the Remand home or Approved School in circumstances where they lack accommodation or a family that would accommodate them. This research and other studies, such as the study conducted by SL2018, HRR, found that many juveniles committing petty crimes still end up in prison, including the state prison (Pademba Road prison, also known as the male correctional centre). Therefore, it is arguable that if those juveniles had secure networks and finances, they would be released or get an early release from detention, as detailed below in Chapters six and seven. Don Bosco Children's Home is the leading home that offers juveniles accommodation after their release from incarceration. Where children are not fostered or offered accommodation, they end up in the street. It is not thus surprising that there is a high percentage of street children (see reports ACWCRC 2017 p.124), and a large population of street children are often repeat offenders. Since the GoSL has not set up residential homes, there is a breach of section 109 of CRA 2007, which stipulates establishing a residential home for children by the GoSL.

The CRC-SL (2015) notes that the country's reporting record did not match the enthusiasm with which the GoSL ratified the UNCRC. For example, GoSL failed to submit its report of 1996 until 2003; the second periodic report was submitted in 2005 instead of 2006 when the third report was due.

However, to make up for the late reporting, GoSL consolidated its third, fourth and fifth reports and submitted these in 2013 (CRC Report to UN Committee- 22 June 2017). It is evident, therefore, that Sierra Leone has a history of violations of the UNCRC principles. The GoSL has not fully complied with or met the deadline for its implementation. A failure to report promptly to the UNCRC Committee constitutes a violation of an international obligation (Viljoen, 2012). However, the UNCRC Committee has not taken any action against the GoSL for its non/partial compliance with the UNCRC. The same also relates to the ACERWC. It is arguable, amongst other things, that non/partial compliance of the

GoSL is due to the lack of enforcement mechanisms by the UNCRC Committee and the ACERWC Committee against member states.

The CRC-SL (2015) confirmed the GoSL's failure to uphold the rights of children in conflict with the law. The UNCRC Committee reported that 86 % of children at the juvenile court in Freetown were detained at the Remand homes. The problem was further exacerbated in the provinces (rural areas) where there are no functioning Remand homes and no special juvenile courts. Also, out of the then 14 (16 since July 2017) districts in Sierra Leone, twelve had no separate detention centres. Both the Police and the Prison services have limited alternative measures when dealing with children in conflict with the law. Therefore, children are usually detained together with adults. CRC-SL (2015) commented that other areas of non-improvement by GoSL's administration of juvenile justice included the lack of medical treatment, accessible examination and lack of compensation for child victims of sexual violence.

Together with others (DFI-SL, 2010), this study shows other Remand homes in Sierra Leone other than the Freetown Remand home. There are four Remand homes in the country: in Freetown, Makeni, Bo and Kenema. However, the most functioning of the four is the Freetown Kingtom Remand home, which also does not meet international requirements, as this study has found, due to its lack of critical infrastructure and welfare facilities.

This study also found that all children held in police custody shared cells with adults in deplorable conditions. This is a breach of international human rights law. The UNCRC Committee's statement recommends that state parties be put under a duty to ensure that 'conditions in detention facilities are not contrary to the child's development' (UN Committee on the Rights of the Child-CRC/c/SLE/CO/2:20 June 2008: para 77 (d)).

The UNCRC Committee's observations on its combined third, fourth and fifth periodic reports of Sierra Leone show how the Ebola virus disease caused the country tremendous hardship (UN Committee on the Rights of the Child, 2016). This obstructed the implementation of the rights enshrined in the Convention. The UNCRC Committee recommended that the GoSL should ensure criminal proceedings are systematically brought against the perpetrators of violence against children; to eliminate impunity and raise awareness among families and community leaders about the negative consequences of the culture of impunity. The low rate concerning the reporting of sexual abuse and

exploitation is mainly attributed to the reluctance of families and the general public's failure to report such cases, compounded by parents accepting payment instead of reporting cases that are of grave concern. Specifically, concerning the Administration of juvenile justice, paragraph 30 of the report states that the Committee reiterates its previous concluding observations, which recommend that the State party bring its juvenile justice system fully under the Convention and other relevant standards of articles 37 and 40 UNCR¹². In particular, the Committee urges full implementation of the National Child Justice Strategy (2013-17) to integrate child justice issues in the justice sector and promote diversion and alternatives to detention. In addition, the Age Assessment Guidelines should be operationalised. The government must ensure that all relevant stakeholders working with children receive training, and copies of the guidelines and Family courts should be established across the country.

As part of the findings made by this study, age assessment remains problematic (due to lack of documentation such as birth certificates - also see SL2018, HRR). For example, children as young as ten years are held in custody due to a lack of implementation of age guidelines and age Assessment referrals. In addition, it is a widespread practice for juvenile administrators in this study to use physical attributes to determine a child's age. The problem with birth certificates is an issue that is also documented in CRHR's 2018 report. It is also common for birth certificates to be falsified or birth information imputed wrongly.

The UNCRC Committee¹³ in 2017 concluded that the GoSL should ensure that pre-trial detention was be used as a last resort and that this should not exceed more than six months. Furthermore, detention should be reviewed regularly to end its practice. It was further stated that adults and children should not be detained together and that detention conditions should comply with international standards, including access to education and health services. It was also recommended that the GoSL should ensure that independent legal aid was made available to children in conflict with the law at an early stage of the criminal proceedings and throughout the legal proceedings.

¹²see UN Committee on the Rights of the Child (CRC), 2008: para 78

¹³ see CRC, COUNTRYREP, 3 October 2017

This study shows in Chapter six that child offenders are held for exceedingly long periods while awaiting trial. The factors range from lack of legal representation and vehicles for transporting juveniles to hearings being in short supply to lack of facilities such as infrastructure, logistics, and weak or lack of age determination. Other reasons include the findings of social culpability and lack of finance which impeded juveniles' access to justice. Although legal aid is in operation, this does not apply to the whole country and still appears to be in its infancy. The latter is also documented in CRHR's report (2018).

Comparably, the African Committee of Experts on the Rights and Welfare of the Child's (ACERWC) recent concluding recommendations in response to the initial Report of the GoSL considered at the 30th session (December 2017) made nine key recommendations. These are similar to the UNCRC Committee's recommendations discussed already. The ACERWC in paragraph 29 said the following; (a) that the CRA 2007 makes provision for the establishment of a Family Court which is to be constituted by a magistrate supported by four other members with expertise in the area of children's rights; (b) that the State Party should allocate adequate resources for the establishment of the Family Courts and Child Panels and to ensure adequate staffing at Police stations with FSUs' and social workers; (c) to provide training to police officers on child protection; there should be training of personnel in the justice sector concerning Age Assessment Guidelines of 2010; (d) to implement the Legal Aid Act and ensure children exercise their right to legal representation; (e) to establish guidelines for non-custodial sentencing for children in conflict with the law; (f) imprisonment of children should be a last resort and where children are imprisoned with adults, they should be kept separate from adults; (g) to provide educational, psychosocial and support recreational activities for children kept in Remand homes and at the Approved school awaiting trial; (h) the National Child Justice Strategy is to be updated and guidelines should be established concerning the procedures for magistrate and high courts hearings in matters involving children (African Union, 2017).

Conclusion

Transitional justice mechanisms and peacebuilding by the international community in Sierra Leone after the civil war were characterised by various international legal instruments, many of which have been incorporated into Sierra Leone's law. At an international level, juvenile offenders are protected under the provisions of the UNCRC

(which incorporates other human rights declarations and treaties). These provisions provide the bases for other provisions concerning juvenile justice systems, including, for example, the rules contained under the Beijing, Havana and Riyadh guidelines, the Tokyo and Vienna guidelines and the Doha Declaration. The protection involves the provision of guidelines at both institutional and non-institutional levels relating to the investigation, prosecution, adjudication, disposition, and rehabilitation for the administration of juveniles. However, although the UNCRC presents as a suitable vehicle for securing children's rights in conflict with the law as detailed, comprehensive and child-specific, it has weak enforcement mechanisms. Furthermore, its OPE 2010 requirements to strengthen enforcement have not been adopted by Sierra Leone. At the regional level, the African Charter on the Rights and Welfare of the Child (ACRWC) provides similar rights for children in contact with the law, just as the UNCRC. However, like the UNCRC, ACRWC suffers from weak enforcement mechanisms at the regional level in relation to breaches of children's rights and especially in the enforcement of the best interests of the child's principle.

There have, however, been transformative developments in the implementation of international human rights and humanitarian instruments in Sierra Leone. For example, the GoSL's compliance with its international obligations concerning children's rights is shown in its domestication of the UNCRC and the ACRWC by the enactment of the CRA 2007 (but this lacks the inclusion of UNCRC's juvenile justice articles). Likewise, compliance has been shown in the creation of the National Youth Commission Act 2009, Human Rights Commission Act (2004), Parliamentary Human Rights Committee, and ratification of other various international instruments such as OPAC and ILO.

The failings in administering the juvenile justice system in Sierra Leone highlighted by the Committee (ACRWC) and the UNCRC Committee are similar to those found in this study. These can be seen in several areas. Noteworthy is the lack of family courts, the need for the training of personnel in critical areas of the law, the lack of uniform practices regarding age assessment procedures for magistrates and the high courts, the lack of educational provision and psychosocial support while in custody with an update on the child justice strategy and detention as a last resort. A similar flaw in the administration of juveniles was commented upon by the coalition of civil society organisations, the CRC-SL. The criticisms show that the state party has not sufficiently addressed previous

recommendations proffered by the UNCRC Committee in 2008. The concluding observations of the second periodic report (UNCRC, 2008), together with the periodic reports submitted in 2015, showed that data was unavailable and inadequate in most areas covered by the UNCRC.

It is still the case that Cap 44 remains the primary law governing the administration of children in conflict with the law, with some additions and amendments contained in the Child Rights Act 2007 together with the National Child Justice Strategy for Sierra Leone. Cap 44 predates the UNCRC and falls short of the expectations of articles 37 and 40 of UNCRC and its associated international instruments. The GoSL has also continuously fallen short of the ACERWC recommendations concerning juvenile justice, without any sanctions from both the UNCRC and ACERWC, which gives the appearance of GoSL doing things with impunity.

It is clear from the recommendations of the ACERWC and the reports of the UNCRC's Committee that Cap 44 has multiple flaws, both substantive and procedural. The substantive flaws, for instance, concern criminal law offences and punishment of child offenders. The latter includes criminal investigation and punishment provisions, such as the lack of adequate procedural regulations for arrest, investigation, legal representation, pre-trial detention, diversion and informal resolution provisions. In addition, Cap 44 contains provisions for only 'custodial rehabilitation' at the Approved School concerning reformation and rehabilitation. These provisions entail that juveniles are to be referred to serve their prison sentences at the Approved School due to a criminal conviction. The Approved School is far from being a reformed School. Instead, it serves as a prison on the one hand as juveniles are not permitted to leave the Approved School as they wish, and on the other as an institution that is not effective due to a lack of functional rehabilitation and social integration facilities.

Despite there being a significant shift in national law and practice due to the domestication of various international laws through the various instruments ratified and adopted by the GoSL, there seems to be little development in the area of juvenile justice in Sierra Leone as chapters five and six will demonstrate. However, it is also essential to recognise the gains made by international human rights law and juvenile justice in Sierra Leone. The work of NGOs concerning the drafting, promotion and monitoring of international law violations has contributed to the development of the law concerning

children in conflict with the law in Sierra Leone. NGOs influence is pronounced in their attempt to raise the awareness of the plights of juveniles under the domestic law and contribution to the enacting of the Child Rights Act 2007. This act contains explicit provisions on substantive law. For example, the age of criminal culpability of child offenders is 14 years old. As a child is defined as a person under 18 years, it brings this age in conformity with various domestic legislation concerning children. The CRA also contains the provision to act in the best interests of a child.

Therefore, bringing restorative justice principles to bear on the administration of juvenile justice would help address some of the current systemic flaws that render a child offender socially culpable. Although it could be argued that the criminal law concerning juvenile justice is inadequate due to the flaws in cap 44, using the best interest principle [endeavours] enshrined in the UNCRC and replicated in CRA 2007 provides an opportunity for the rights of juveniles to be advanced more robustly. There is, however, also the issue of the costs associated with administering a good juvenile justice system. Culture and legal implications also play a part in juvenile administration. It should be recognised that there is a conflict between the premise of ensuring the child offender's rights to due process of the law and the welfare approach determined by the best interests' principle under international law.

CHAPTER FIVE

CRIMINAL LAW AND JUVENILE JUSTICE IN SIERRA LEONE

5.1. Introduction

This chapter will describe the operation of juvenile justice in Sierra Leone. It will describe the juridical structures in place, sources of juvenile justice, legal policy, and legislative flaws, and focus on explaining juvenile justice principles in Sierra Leone. Finally, it will describe how juvenile justice is practised and analyse the gap between the law and its practice.

The general principles of law in Sierra Leone are shared with the English legal system, which practices the common law system. As a colony of Britain, Sierra Leone has been practising the common law since 1st January 1880. The Supreme Court of Sierra Leone's Ordinance 1881 (No. 9 of 1881) stipulates, among other things, that 'the statutes of general application which were in force in England on 1st January 1880 should be in force in the Colony'. After the country's independence in 1961, the common law automatically formed part of the general law of Sierra Leone, as shown in s74 of the Local Courts (Amendment) Act, 1965 of Sierra Leone. The only difference between the two legal systems is that Sierra Leone has a written Constitution, which is the prime law of the land. Similarly, the US has also influenced Sierra Leone's legal evolution in the area of juvenile justice, hence, its historical significance in 1899 (Illinois Juvenile Court Act 1899) as the originating point for a separate justice system for young people in conflict with the law, as discussed in chapter four.

Early children's rights in Sierra Leone can be linked to the registration of births. This is now regarded as an essential or necessary part of securing children's rights. The British colonial government in Sierra Leone made the compulsory registration of births and deaths law in 1913. Registration was only applicable to all children born in the western area¹⁴ but optional for those born in the protectorate¹⁵ (Birth and Death Registration Ordinance, No.13 of 1913 - Cap. 92). Failure to register a birth or death was subject to a

¹⁴ referred to as the colony, which was divided into districts as Freetown, Kissy, Congo Town, Murray town and Wilberforce - Birth and Death Registration Ordinance No.13 of 1913 – Cap 92

¹⁵Cap 92 s41 refers to those who.... 'would have been required to inform the Registrar'. It does not say who but it is clear that it is referring to non-natives born in the protectorate such as Europeans, Lebanese

fine and or imprisonment. Due to its statutory nature, the offence was only tried in the general or English courts. It is unlikely that Cap 92 was borne in the spirit of children's rights but rather to control and manage the population.

I now begin by outlining some fundamental concepts of criminal law that are generally used to help ascertain when children are guilty. This is followed by a discussion of where children's cases are heard within the criminal justice framework in Sierra Leone. I will then develop my discourse to highlight criminal law and juvenile justice developments in Sierra Leone. This discussion will take me to evaluate the leading legal provisions covered by the national law, focusing on the plights of children in conflict with the law. The chapter will conclude that there are many criminal laws regulating or governing children in conflict with the law. These include the Criminal Procedure Acts, 1965 (CPA 1965), the Sexual Offences Act, 2012 (SOA 2012 as amended) and the Child Rights Act, 2007 (CRA 2007). The latter updates the Children and Young Persons Act 1945 (Cap 44). The series of legislation dealing with juvenile justice makes legislation in this area of law disjointed and piecemeal. Nonetheless, if the patchwork of laws, including international human rights law (to which Sierra Leone has ratified) as discussed in the last chapter concerning juvenile justice, is applied fully, it would considerably strengthen protection for children in conflict with the law in Sierra Leone.

5.2. When are Children Guilty?

The criminal law's principal aim is to criminalise what the state considers harmful, offensive or immoral conduct. Immoral actions criminalised by the state are considered wrong in themselves (Wilson, 2002). Whilst not all immoral acts are considered criminal, some might be deemed necessary for a child's moral and physical development. For example, rules in a family environment could guide a child's moral and social development but are not always legal prohibitions. Rules against 'lying, deceit and bad language and at a broader level, against rowdy, untidy or disruptive behaviour' for example, abound as part of the rules existing at the family level (Wilson, 2002:17). Some rules concerning a child's 'physical interest' may include; 'curfews', rules against the use of violence and 'weapons' (Wilson, 2002:17). The harm principle is considered a fundamental ethic in maintaining moral neutrality in adjudicating whether a moral wrong is also a legal wrong and ensuring that 'the state serves the interests of the citizenry rather than its own interests' (Raz 1986 in Wilson, 2002:19).

Not all harms are criminal acts. Joel Feinberg posits that harm refers to ‘the set back of personal interests and to the violation of individual rights’ (cited in Kyd et al. 2017:21). This can also entail causing serious harm to others, which involves an action ‘so intense that it would be felt by an “average” or “reasonable” person, and that the offence is caused by witnessing the offensive conduct which is not avoidable’ (Kyd et al 2017:21-22). Effective enforcement mechanisms such as sanctions can be the only way to prevent wrongdoing and compelling compliance against violations. (Kyd et al., 2017). In this light, a criminal sanction serves as a form of punishment and deterrence and reformation. The two leading schools of thought for punishing those who commit criminal offences are the retributivists and the consequentialists (also referred to as the utilitarian theorists of punishment).

Principles of criminal law require that to be answerable to an offence, the individual must be found to have done three things: first, they must have acted; second, they must have done so with full understanding, that is, they must have the required guilty mind or *mens rea*.¹⁶ In other words, the act could have been done intentionally, recklessly, or negligently. This is where the state of mind is brought about deliberately, even if not intended. For example, where an individual causes harm and it is adjudged that he should have foreseen the harm but did nothing to prevent it, nevertheless, he would tend to be judged as doing so intentionally (Hindriks and Knobe, 2010). Third, the person’s action has caused a morally wrong outcome (Kelsall, 2009).

Lord Devlin posits that 'morals and religion are inextricably joined' (Ashworth and Horder, 2009:36) and that immoral behaviour should be punished if this threatens the common morality of society's cohesion. This is because the deviation from common morality can affect society injuriously. Devlin defines immorality according to the strength of feelings of ordinary people. For example, specific behaviour that 'evokes feelings of intolerance, indignation, and disgust among ordinary members of society, that is sufficient indication that the behaviour threatens' society's common morality (Ashworth and Horder, 2009:35). Behaviour should only be criminalised if it causes harm to society. Critics of Devlin believe that there should be a defensible definition of morality, not one based on 'mere' feelings. There could be a common morality on crucial issues such as force, fear and

¹⁶also see Chapter four regarding culpability of child soldiers.

fraud, but there is a divergence on sexual matters. Devlin's opponents tend to link the principle of harm by Mill with Kantian ethics. John Stuart Mill postulates that immorality is not a sufficient reason for criminalising behaviour (Ashworth and Horder, 2009). Kantian ethics suggest that the law should respect the autonomy of everyone. This means treating each person as an individual who is allowed to pursue their conception 'of the good life subject only to the minimum number of constraints necessary to secure the same freedom to other individuals' (Ashworth and Horder, 2009:36). The issue of moral culpability hinges on the individual's rationality and autonomy, meaning that the individual has acted for a reason or based their reason on 'valid practical syllogisms, no matter how bizarre the premises' (Moore, 1985 cited in Kelsall, 2009:9). An individual's actions are deemed as autonomous, meaning the person has the free will to act whether or not entirely free to do so, except if he or she claims diminished responsibility or insanity. Autonomy is traditionally understood as the claim that involves individuals making decisions for themselves unless they involve harming others (Herring, 2014).

The idea that an individual should be left to make decisions for their own life is referred to as personal autonomy; that is, people having control, to some extent over their own destiny, "...fashioning it through successive decisions throughout their lives" (Herring, 2014:1). Such an understanding of autonomy is central to a "liberal conception of the self" (Herring, 2014:1); an example is the concept of self-determination, discussed elsewhere regarding states. In England and Wales, diminished responsibility provides mitigation of punishment where the accused pleads mental abnormality but not insanity under s2 of the Homicide Act 1957. This section has now been amended by s.52 of the Coroners and Justice Act 2009. The defence for diminished responsibility only provides a partial defence and solely for the offence of murder due to lunacy or insanity.

Just as in England, the defence¹⁷ for lunacy is largely the same in Sierra Leone.¹⁸ Lunacy refers to a person or group of people and the state of being mad such as insanity.¹⁹ Insanity relates to the loss of rational autonomy which is a mental illness. The rational

¹⁷This is covered by section 2 of the Trial of Lunatics Act 1883 (UK). A jury can find a person not guilty because they are insane by confirmation of at least two doctors' reports. The accused could be detained for life at a mental institution unless released by confirmation of the Home Secretary.

¹⁸see s73 Criminal Procedure Acts, 1965, Laws of Sierra Leone states where a person is found to be insane when the act was committed, the court shall make a finding of insanity, the minister may order such person to be confined at a mental hospital, prison or another suitable place.

¹⁹<https://www.yourdictionary.com/lunacy> - accessed 16 July 2020.

autonomous concept is linked to the idea of free will and choice. This concept concerns where the individual has sufficient free will to make meaningful choices. The defendant should be able to function within the normal range of mental and physical capabilities because, if they are mentally disordered, they may fall outside the 'assumed standards of mental capacity and rationality', making it unreasonable to hold them liable for their behaviour (Horder, 2016:157). Similarly, the general presumption for sane adults is that individuals can choose their behaviour, and any actions flowing from their practice are considered to have been made freely (Horder, 2016).

The concept of an individual's rationality and autonomy is relevant to the parameters of juvenile justice. This is because a child in contact with the law is considered irrational in a similar way to a person who pleads insanity as a defence. Therefore, from a criminal perspective, the offender's age is very relevant, requiring different approaches. Historically under the common law in England, the presumption of *doli incapax* (literally 'incapable of evil', being innocent of sin as suggested in biblical terms and moral awareness – see below for further explanation) applies to children under 14 years old. In law, it requires the prosecution to establish that the child knew their behaviour was seriously wrong and not merely mischievous before committing the offence. The common law principle of the *doli incapax* principle was abolished by s34 of the Crime and Disorder Act 1998 (CDA 1998). The key criticisms were that the principle was outdated, and it is better to treat rather than convict child offenders. The reason being is, if such children are not subjected to a process of judgment, they might fail to realise their wrong behaviour (Horder, 2016).

The standard requirement of what is expected of a youth justice system requires establishing a minimum age for criminal responsibility as required by the Beijing rules, r.4.1. This stipulates that for legal systems to recognise the concept of criminal liability for juveniles, the child's emotional, mental and intellectual maturity may assist in not fixing a criminal age that is too low. If the child is below the minimum age for applying the youth justice system rules, they should not be considered criminally accountable. In England and Wales, a strict reading of s.34 CDA 1998 shows that although the *doli incapax* presumption was abolished, its application about whether a child understood the harm they had caused as seriously wrong was still applied to children between the ages of ten and fourteen.

However, in *R. v. JTB* [2009] UKHL 20, it was ruled that s34 CDA 1998 abolished both the *doli incapax* presumption and the defence of *doli incapax* entirely for children aged ten and over in the UK. Therefore, the age of criminal culpability in England and Wales is ten years (Ashworth and Horder, 2013). Where a child in conflict with the law is below the age of 10 years, the requirement of capacity and freedom to make free choices should not apply to them (Constantinescu, 2011). Thus, age is a determinative feature to establish whether a child offender is criminally culpable by the court and others responsible for the administration of juvenile justice. I will refer to them as adjudicators and administrators interchangeably.

A child's moral development makes it difficult to establish when they are considered to be under the age of criminal culpability. Aspects of moral development of children concern whether their cognitive abilities have sufficiently developed in the areas of self-control, such as the susceptibility to peer pressure at a given age. It would be unfair to demand the same criminal standards of adults from children since childhood and adolescence are periods in which moral reasoning and self-control should be learned. It is a period in which children are still developing. Criminal liability should not be imposed on 'those who are not morally culpable' as espoused by legal moralists (Duff, 2010 in Kyd et al., 2017:14). Loevinger's (1976) theory of psychosocial development shows that misbehaviour and delinquency are characteristics - risk factors prevalent in early levels of a child's development (Ezinga et al., 2007). Ezinga et al.'s (2007) study show 'that the developmental level in which adolescents find themselves has implications for their behaviour. It is also possible that psychosocial development contributes to misbehaviour and delinquency' (p354).

Elliot (2011) cites Jeremy Horder as stating that the lack of a developed moral character of children, justifies the existence of defence for a child, since a very young child can be:

quite capable of engaging in intentionally harmful conduct, they do not have developed moral characters to which such conduct can be related. It is the possession of such a character that makes possible the formation of an action upon an intelligent conception of the good (in) life, and hence makes it possible to subject one's (potential) conduct to critical moral evaluation, and shape it in the light of that evaluation (p.295).

However, the problem with the *doli incapax* principle and what contributed to its abolition is that:

the *doli incapax* defence failed to respond directly to the need for a child to have intellectual capacity in order for criminal liability to be imposed. It focused instead on a very subjective side-issue which was difficult to assess: the moral awareness of the child (Elliot, 2011:295).

The fundamental issue surrounding young offenders is how fit are they to stand trial at a young age? This question was addressed by the European Court of Human Rights (ECHR) in the case of *V and T v the United Kingdom* [1999] 30 EHRR 121, where it was held under Article 3 of ECHR, that the trial process to which the '11-year-olds' [10 years old at the time of the offence] were subjected to did not amount to inhumane and degrading treatment. However, the trial violated article 6 of ECHR 'in its failure to ensure that the boys understood the proceedings and had the opportunity to participate, and in the failure to reduce feelings of intimidation and inhibition' (Ashworth and Horder, 2013:158; Ashworth and Horder, 2009:140) associated with the trial. Hence, the issues go to the point of a juvenile's understanding of the criminal justice system and their moral judgment.

Age assessment for children's criminal culpability has been an annoying issue in Sierra Leone. This is because where there is a lack of records, it is difficult to assess the correct age of the child and whether they are culpable in law. For example, there is an inadequate method to register births in Sierra Leone (Country Report of Human Rights 2018-SL2018, HRR), making it difficult to determine a child's age. This research found that the police or juvenile administrators often look at physical features to determine a child's age, such as the jaws, facial and pubic hair, amongst other characteristics. Other examination methods include following age assessment guidelines and the referral to a physician for an age assessment. Most children in conflict with the law are not at school (it is often difficult to record children's ages if they are not at school), including those in custody; they are mostly truants or street children. In particular, most children in conflict with the law in Sierra Leone may lack an understanding of the legal process, which is convoluted and often includes cultural practices to assess a child. The latter includes social constructions of a child, such as employment (employee) or still living at home (might still be considered a child even if an adult), amongst other constructions.

The other customary practice mainly applied in Sierra Leone is that children should not speak to adults in their defence (Bledsoe, 1990), making it difficult to ascertain their age from their own accounts.

Moreover, the non-culpability of children involved in crime regardless of age is weighed against the criminal justice system's core concept: the power to punish offenders, also known as the principle of retribution. Retribution is also associated with the Kantian principle, which posits that criminal offenders are moral agents deserving of punishment (Kyd et al., 2017). Kant claims that an individual 'by virtue of her capacity for rationality, is an ethical being whose autonomy is entitled to respect and who, likewise, is obligated to respect the autonomy of other ethical beings' (Kuklin, 2018:246). The failure to apply rationality warrants retribution and makes retribution ethical. The trend to 'get tough' on juvenile policies has made the retributive principle more pronounced in recent times (Kyd et al., 2017) and informed by many Western jurisdictions since the 1970s (Muncie, 2011). If rationality is derived from Kantian principles, it presupposes that the juvenile is a rational being who can behave ethically.

The concept of retributive justice is similar to the concept of just deserts. A juvenile may be perceived to receive their 'just deserts' when punished for the offence they had committed. The concept of just deserts is based on the premise that 'he who harms must be harmed in return', that is, 'the harmer gets his "just deserts"' (Kyd et al., 2017:42). This is because such perpetrators are accorded respect as autonomous and responsible human beings who have chosen to commit a crime and must, therefore, suffer the consequences of their decisions (Kyd et al., 2017). However, it is also argued by others, such as Kyd et al. (2017), that retributive theories do not provide any alternatives regarding either specific sentences or a range of penalties that equals the just desert of the offenders. Hence, rehabilitation proponents espouse the view that juvenile justice should aim to assist juveniles in becoming better citizens instead of punishing them.

The Humanitarian theorists, in contrast, state that the concept of a desert is the only connecting link between punishment and justice (Kyd et al., 2017). These critics of the 'just desert' principle say there is no sense in 'just deterrence' or a 'just cure'; what is required is deterrence and not whether it is just but whether it would serve as deterrence. The humanitarian theorists want the principle of justice abolished and substituted for mercy, which entails being kind to the perpetrator to enable them to realise their actions are

'abominable cruelties' (Kyd et al., 2017:43). Chapter four shows that international humanitarian law and human rights law provisions are often silent in the elements of criminal principles of intent and action (but these were tested in the case of child soldiers' recruiters, as explained in Chapter four) concerning juvenile offenders. Arguably, the provisions implicitly adopt a humanitarian rather than a retributive stance to young offenders. The point about the application of retributive justice was nicely put by a participant of this study at the Approved School when he said:

the advantages of a criminal system are that it prosecutes offenders so that law and order will be maintained. If not, children in conflict with the law will continue committing the same offences or even more serious ones, and the law should serve as a deterrent.

The same participant said, 'it is children that become adults, they are the future, and if we want a better future, we need to reduce crime through our children as we want good leaders and citizens to help our economy'. This participant viewed retributive justice as a more effective route for reducing crime than rehabilitative justice.

Another penal principle applied to or associated with child offenders concerns the status offence doctrine, also known as situational liability. As such, these are offences where no conduct is required, 'the crime is committed when a certain state of affairs exists or the defendant is in a certain condition or is of particular status' (Kyd et al., 2017:118). However, where the defendant had no control over their status, then status offences will be unjustifiable. Nevertheless, if it was through their fault (the child defendant) that they got into that status or situation, they should be liable (Kyd et al., 2017). For example, in children's cases, status offences concern a separate judicial category of persons who commit acts that would not be classed as criminal acts if committed by adults. These acts include truancy and runaways (Zhang et al., 2007). Some academics and lawyers consider that status offences deny juveniles the right to due process. American attorneys in California and the California Youth Authority vigorously advocated for removing 'status offences' from the court's jurisdiction when involving juveniles. Their efforts were reflected in the American cases of *Kent vs. U.S.* (1966) and *in re Gault* (1967), which are 'landmark cases' for due process protection of young people (Joe 1995:44). Under

international human rights law, the commentary on rule 3 (a) of the Beijing rules 1985 further extends protection to cover the rights of juveniles charged with status offences.

In Sierra Leone, the Children and Young Persons Act 1945 (Cap 44), s2 defines a young person as between ages fourteen and under seventeen, and a child is a person under fourteen years. The Child Rights Act 2007 (CRA 2007) s2 defines a child as someone under 18 years and states under s70 of CRA 2007 that a child is not criminally culpable before the age of 14 years. It would appear that the age of criminal culpability by both CRA 2007 and Cap 44 is 14 years. In particular, it is worth noting that the age for criminal responsibility or culpability is not stated by Cap 44. Cap 44, s7 states that 'when a child or young person is brought before a juvenile court for any offence other than homicide, the case shall be finally disposed of in such court'. Where a child is charged with homicide (simply put, it is the killing of one person by another), they are tried as an adult. This does not say the age a child in conflict with the law becomes criminally culpable. This research shows that the standard practice is to treat children as young as ten years old culpable for their criminal actions under the common law, that is, judge's law (discretion of a judge). Where a judge applies this discretion, the presumption of 'exercise of mischievous discretion' can be applied. This concerns a judge's discretion to decide matters as they see fit unless there is a stipulation under the law that stops them from doing so.

Therefore, the research shows in Sierra Leone that some magistrates, amongst other considerations, apply the common law concept of *doli incapax* to assess whether the alleged offenders (juveniles) are guilty or not of their criminal actions. For example, in this research, a magistrate participant (A) stated that amongst other considerations in deciding whether children in conflict with the law are culpable, age is a critical determinative factor. She said that she was prepared to release a child held at the Remand home on a charge for murder [she failed to give effect to s7 of Cap 44, which states offences of homicide should not be disposed of at a juvenile court. Therefore, the magistrate is not empowered under Cap 44 to dispose of homicide cases. Such cases are complex and should be disposed of at the high court] because the child lacked culpability as they were ten years old at the time of the offence. Magistrate-A said other considerations considered, especially during sentencing, are that the child should know right from wrong, alongside the notions of being evil or innocent. In another case, Magistrate -B said that children as young as ten could be held criminally culpable. Cap 44 does not set out the age of criminal liability for the courts

to apply, even though CRA 2007, s70 sets the age of criminal culpability from 14 years. Therefore, determining a child's age in conflict with the law is crucial to enable adjudicators to assess whether to divert child offenders away from the legal justice system or for rehabilitation purposes. However, rehabilitation programmes by the GoSL are not provided for by the GoSL.

5.3. Where are children's cases heard?

The criminal law in Sierra Leone is derived from two principal sources: customary and general/substantive criminal law. Substantive criminal law is found in statutes inherited from English criminal law and statutes of Sierra Leone (Potter and Thompson, 1997). This means that, to some extent, the criminal law is codified, although not entirely. It is worth pointing out that in trying to understand what is meant by juvenile justice in Sierra Leone, it is crucial to understand the legal framework and the processes that bind juveniles in this country.

A Juvenile Justice system is defined by the Council of Europe (2003) as:

the formal component of a wider approach for tackling youth crime. In addition to the youth court, it encompasses official bodies or agencies such as the police, the prosecution service, the legal profession, the probation service and penal institutions. It works closely with related agencies such as health, education, social and welfare services, and non-government bodies, such as victim and witness support (Pruin, 2011:1539).

It is also crucial that a juvenile justice system is impartial (Olbourne, 2003). Under international human rights law, the UNCRC fully enshrines juvenile justice principles (CRC/C/GC/24). Sierra Leone's incorporation of the UNCRC into domestic law under the CRA, 2007 obliges direct applicability of international rules concerning juvenile administration in the country, such as special treatment for juveniles and the best interest principle.

In line with the UNCRC principles of juvenile justice, although also predating their codification, Cap 44 provides a special court in every district to deal with juvenile offenders (Cap 44 (s4)). In addition, Cap 44, s5 stipulates a right for a juvenile to be released when apprehended (with certain exceptions). Thus, in bail applications, a formal agreement

either by the accused or his parents or guardian or another responsible person could be entered with the custody officer to ensure a child offender is released. Yet, despite these impartiality provisions under international and domestic law, children in conflict with Sierra Leone's law are tried every day by the juvenile justice system without proper procedures to protect and rehabilitate them, as we shall see in the following chapter. The juvenile justice system in Sierra Leone consists of the Sierra Leonean government and its institutions such as the courts, police, remand homes and correction centres (Approved School/prisons). The government departments responsible for dealing with juvenile justice are; The Ministry of Social Welfare, Gender and Children Affairs (MSWGCA) and the Ministry of Justice. The former deals with children's issues generally, and the United Nations Children's Fund (UNICEF) works as a lead partner with the Ministry of Justice (Alemika et al., 2009).²⁰

The Chief Justice controls the appointment of court officials and magistrates in the juvenile courts. The Attorney General (AG) heads the Ministry of Justice and is also the government Minister of Justice. The fusion of these two roles is not entirely unusual (for example, just as in the Gambia and Canada, where the roles are combined). However, it does cause potential conflicts of interest between partisan politics and the rule of law.

The Sierra Leone courts consist of a two-tier hierarchy comprising a superior court and an inferior court of judicature. The superior courts include the high court, the court of appeal and the supreme court. These courts are also known as the three arms of judicature (Alemika et al., 2009; Corradi, 2010). The supreme court is the appellate jurisdiction in civil and criminal matters, adjudicates constitutional matters, reviews court of appeal's decisions, supervises lower court divisions and acts as a reference point for interpreting court rules and procedures. The court of appeal has the power to listen and overturn appellate decisions of the high court concerning all civil and criminal matters. The high court has jurisdiction to hear all civil and criminal matters. It reviews decisions of the magistrates' courts, including decisions at the district appeal court (consisting of a magistrates' court with two experts in customary law sitting in an appellate capacity, that is, reviewing decisions from local or customary courts - Potter and Thompson, 1997). The magistrates' court is the lowest adjudicatory body in the general law courts' hierarchy and

²⁰which governs the country's criminal justice system.

has the power to listen and try minor criminal and civil cases. The local or customary courts belong to the inferior court system.

5.3.1. Juvenile Courts

The magistrates' courts are the main judicial organs that deal with matters concerning juvenile justice in Sierra Leone, according to s2 of Cap 44, although the court must act in accordance with the provisions of s3 (1) (2) of Cap 44.

Section 3 (1) provides that:

a magistrate's court when hearing charges against children or Young persons shall; if practicable, unless the child or young Person is charged jointly with any other person not being a child or young person, sit in a different building or room from that in which the ordinary sittings of the court are held, or on different times from those at which the ordinary sittings are held.

Whilst s3 (2) states that if during magistrates' court proceedings, it is found that the accused is under 17 years, the magistrate will continue with the proceedings. However, it also states that, 'but nothing herein shall be deemed to make it necessary for such court to adjourn the case to comply with the provisions of this section, and a court so sitting shall be a juvenile court for this Act'. This section could contradict s3 (1) regarding where juvenile matters should be held (see below for further details).

There is also a further requirement for the juvenile court's composition under Cap 44, s4, which states that: 'a juvenile court may subject to the directions of the Chief Justice, be held by a magistrate having jurisdiction therein and two or more Justices of the Peace'. Interestingly, there is a specific juvenile court (but one that also sits as a magistrates' court) that forms part of the inferior courts and only sits in the capital city, Freetown (there are two of these courts in Freetown). The court was set up in 2014, 69 years after the enactment of Cap 44 in 1945. Where matters cannot be sent to the special juvenile court, the magistrates' court is transformed into a juvenile court by the presence of two justices of the peace (JPs) as required under s4, Cap 44. There is a lack of procedural rules to guide JPs in their role. Justices of the Peace (generally senior civil servants or important community members such as the clergy or elders) are not legally trained. They do not have jurisdiction to sentence anyone for more than one year. This means that the more serious cases are to be transferred to the high court because the juvenile court should

not deal with such cases, for example, murder (s7, Cap 44). Even so, a magistrates' court can hold preliminary investigations for such matters (this will be elaborated further down).

Further, Alemika et al. (2009) found that JPs levy sentences over one-year periods against trivial offences such as theft and assault. I noted in this study that there were no justices of the peace in two juvenile matters that I attended in Freetown and Lunsar, and neither did the magistrates' courts sit in a different building from which the ordinary sittings are ought to be held as required by Cap 44. Nonetheless, when I attended a child custody matter at the juvenile Court in Pademba Road in January 2020, in which I was representing the Defendant, I noticed that the magistrate sat with two justices of the peace. One of the magistrate participants told me that there are always two justices of the peace present when juveniles above 14 years but under 18 years are charged with an offence at the magistrates' court [the implication being that under 14-year-olds are never charged].

In Sierra Leone, when the accused is initially presented at a magistrates' court, issues concerning assessing the seriousness of the offence, the age of culpability and whether they are charged alone are determined (as required under s3, Cap 44). This exercise is carried out before the accused is either sent to the juvenile court or a constituted juvenile court, or the high court for trial. Where this applies, there is no need for justices of the peace to be present or the need for a case to hold at a special court (juvenile court). This is perhaps why magistrates mostly sit alone when initially adjudicating on juvenile matters in Sierra Leone. However, it is also important to note the lack of magistrates and judges in Sierra Leone (Jackson, 2011; Sierra Leone 2018 Human Rights Report-Department of Justice (SL 2018, HRR). As a result, magistrates' courts often preside over serious matters that should be dealt with by the high court, as this study has shown. In a previous study by Rachel Harvey in 2000, she claims that in Sierra Leone, there is a non-designation of juvenile cases in the rural areas, meaning that cases are sent to the wrong courts.

Nevertheless, if the magistrates' courts are the domain of juvenile cases and the first court of instance, how can juvenile cases not be designated to the magistrates' court? Perhaps Harvey (2000) seems to mean that there are no designated juvenile courts in the rural areas instead of non-designated juvenile cases. The juvenile court was only established as recent as 2014 in Freetown (as stated already), long after Harvey's study in 2000.

Harvey (2000) also failed to mention that the high court sits at different periods in the year in different rural districts, and when the court travels to different locations, it is referred to as a circuit court. The circuit court judges are part of the high court judges that sit in rural areas from time to time. This study found a lack of information generally for laypersons and even for practising lawyers regarding the dates the court sits. It is also the case that the magistrates' courts in rural areas deal with serious offences when such cases should be referred to the high court, which predominantly sits in Freetown. However, magistrates' courts can sit on matters concerning serious offences to conduct a preliminary investigation or determine whether there is sufficient evidence for referral of cases to the high court. The problem for rural juvenile offenders whose cases are assigned to the high court in Freetown is that these children often do not have relatives or secure support networks to assist them financially in Freetown, for example, assistance with welfare and or meeting the costs for court proceedings. Lack of resources and support networks means most child offenders end up for long periods at the detention centres, the Approved School and even state prison (Pademba Road is the central state prison also called the male correctional centre). Long delays in court proceedings can also be attributed to the high court's high volume of cases and lack of funding to provide alternative holding centres (detention centres), which further exacerbates the problem. In this study, I was informed by a participant that there were juveniles held at the Approved School who have been sentenced by magistrates from other rural areas of Sierra Leone. This is contrary to the rule that child offenders should be sent to the juvenile court, which sits in Freetown. However, as stated, where there are two JPs with a magistrate, a magistrates' court can be converted to a juvenile court, although it is unclear whether JPs are present in all decisions concerning juveniles that are sent to the Approved School.

Other problems associated with juvenile justice administration in Sierra Leone include the lack of guidelines and special rules of how juvenile cases are dealt with at the high court. For example, s7 of Cap 44 state that, 'when a child or young person is brought before a juvenile court for any offence other than homicide, the case shall be finally disposed of in such court'.

Where child offenders are sent to the high court, the Criminal Procedure Acts, 1965 (CPA 1965), applies to adults and children. In essence, child offenders in such circumstances will be tried as adults. Child offenders are tried harshly at the magistrates'

court because of the limited number of specialist courts available in dealing with children's matters, lack of trained judiciary and lack of infrastructure such as transportation, including poor working conditions of court personnel, amongst other things.

For example, during my interview of juveniles at the magistrates' court in Lunsar, I interviewed a young boy who had spent 11 months in detention at the Remand centre (this place was a prison) in Port Loko, even though he had only been charged with a relatively minor offence of larceny (theft of about £10). Magistrate-B stated that the boy's matter had been delayed because he was waiting for an age assessment to be carried out to transfer the case to the high court in Freetown. However, it was unclear why the matter needed to be transferred to the high court if the offence was relatively minor. My interview with a social worker elaborated that an offender should be sent to the juvenile court in Freetown if it is established that the offender is a child. However, since this case concerns a relatively minor offence, it should not be unusual for a magistrate to use their discretion and try the matter with two JPs. Again, the lack of JPs to try such matters would render a delay in the adjudication of child offences and a stay for extended periods at a Remand or correctional centre. In particular, the lack of clarity and the discretion open to magistrates to try juvenile matters is an example of the arbitrary nature of how juvenile cases are adjudicated in Sierra Leone.

It should be noted that the law cannot provide for all circumstances of a case; hence judges, including magistrates and other adjudicators, are given the discretion to try matters in such instances. Maurice Rosenberg (1971) states that there are two types of discretion, primary and secondary. Primary discretion concerns an adjudicator's choice to decide a matter freely. Secondary discretion, however, is restraint by hierarchy, such as a lower court's decision can be overturned by a higher court, for example, an appellate court.

I met another participant at the Remand home in Freetown. He had been charged with a more serious offence of robbery and to attend the high court (this case should be tried at the juvenile court or a constituted juvenile court; however, the juvenile could have been charged to attend the high court because he was charged jointly with an adult). He said he had been waiting for nearly two years for a trial date.

The first case highlighted above shows that magistrates' courts, including the juvenile court and the high court, are overloaded and clogged up with cases. They lack adequate personnel, infrastructure and are governed by complex rules and processes. It also

shows that despite the magistrates' court's inferior nature, all criminal cases start there. Therefore, there is a tendency for a magistrates' court to hear and try serious (complex) cases with the potential of overuse of judicial and JPs' powers. The examples also show that juveniles are detained for longer periods than necessary before their cases are tried. This could be attributed to many things such as multiple adjournments, delay by state prosecutors to charge matters or fix dates for trials, lack of witnesses or logistics that could include transportation of inmates to and from court. The lack of adequate age/medical assessments, infrastructure and lack of funding in the administration of juveniles means juvenile cases are not expedited and could impact a child's development, education, and rehabilitation when in contact with the law.

5.3.2. Adjudicators of Juvenile Justice in Sierra Leone.

This study shows that reporting of a crime is victim-led, giving complainants the choice of where they want their matters to be settled. A participant in this study said:

Offences of rape by children or against children in rural settings are often resolved by asking for the pregnant girl's hand in marriage. If it is a boy that committed the rape, his parents will marry on his behalf but does not mean they will live together as husband and wife. However, if it is an adult that commits the offence, he can marry the child, and where a child bears a child, they are no longer seen as children.

Therefore, the above is an example of how matters can be resolved without going to court; this topic is discussed further in chapter seven. Victims of a crime have the discretion to report matters as they choose. The main power to prosecute cases is derived from the Sierra Leone Constitution of 1991 and under the Criminal Procedure Acts, 1965 (CPA 1965). Under section 66 (1) of the Constitution of 1991, the Office of the Director of Public Prosecution (DPP) is responsible for prosecuting all violations of Sierra Leone laws. Where a Director of Prosecutions (DPP) wishes to institute criminal proceedings, this can be done in any court under the powers vested in s46 (1) of CPA 1965. The DPP also has the power to dispose of any case; under s46 (2) of the CPA 1965. All powers are vested in the DPP in exclusivity to any other person or authority. The contradictory element to this is, Cap 44 states that all matters concerning children in contact with the law should be tried by the juvenile court, except when the juvenile is charged jointly with an adult and in

homicide cases. Further, the DPP is subject to the general or particular direction of the Attorney-General and Minister of Justice (AG/MoJ) under section 64 (b) of the Constitution of 1991. The anomaly is that even though the AG or the DPP can dismiss a case, the case can still be prosecuted at another time and on the same facts.

It is not only the DPP or AG/MoJ that can prosecute matters; private prosecutions can also be conducted through a qualified barrister in Sierra Leone. The Sierra Leone Police attached to the DPP's Prosecution Department can also prosecute matters. Further, the Ministry of Justice also trains lawyers (referred to as state counsels) to prosecute criminal and civil cases. Where matters are initially reported to the police, police officers should assess whether the accused is criminally culpable or not and can consult with the DPP's office on whether to charge the matter to court. As we shall see below, criminal culpability is sometimes challenging for the police, who are not all trained in juvenile matters regarding law and practice; there is also a short supply of trained state prosecutors and magistrates. Nonetheless, other officers designated to deal with juvenile matters are the family support officers.

5.3.3. The Family Support Unit in Sierra Leone

Towards the end of the civil war in Sierra Leone in 1999, there was a significant increase in offences including rape, abduction, child cruelty and assault within and outside home settings. As a step towards addressing such issues, the Domestic Violence Unit (DVU) was set up in 1999 (Geneva Centre for the Democratic Control of Armed Forces, 2009). However, rape cases are still rampant in Sierra Leone, as stated by President Bio in his television address at AYV television on 18 January 2019. Bio said that Sierra Leone ranks as the country with the highest rape cases in the region of West Africa. Children as young as five years old are being raped often by people who know them, such as in Kadija Saccoh's case. The case concerned a five-year-old whose father I represented in the custody matter in January 2020; litigation was yet to conclude when the five-year-old was strangled and murdered as a result of an alleged rape. The accused were Mariam Sajor Barrie and Ibrahim Bah, an aunt and [alleged] brother of the deceased. They were both charged with murder and first appeared in Court on 28 July 2020 (Awoko, 29 July 2020) but acquitted and discharged on 19 March 2021. Kadija's case raised the issue again to the fore about sexual violence against women and girls in the country (Focus 24/7 news - 8 April 2021).

In February 2001, the DVU was transformed into the Family Support Unit (FSU). This unit was under the auspices of the Criminal Investigations Department (CID), the Headquarters of the Police Department in Sierra Leone. The FSU's mandate also includes addressing issues of child abuse, including sexual abuse and domestic violence (Centre of Accountability and the Rule of Law - CARL 2015 – fsu report pdf.cdr-carl-sl). In 2004, the Ministry of Women Gender and Children Affairs (MSWGCA) collaborated with the FSU to investigate abuse cases. In 2007, the FSU was separated from the CID and became a distinct Sierra Leone Police unit (Centre of Accountability and the Rule of Law - CARL 2015 – fsu report pdf.cdr-carl-sl).

The enactment of the Child Rights Act 2007 (CRA 2007) has broadened the mandate of the FSU. The mandate includes power in dealing with all offences concerning children, monitoring all police stations, preparing children's social background reports, and assisting with the preparation of juvenile matters, including providing verbal and informal pre-sentencing input. Further, support by FSU officers includes the reporting of children that are not represented or supported by family members. Such support helps to address child offenders' issues and limits custodial sentencing, particularly for those without parental support. However, many police stations in Sierra Leone lack an FSU unit. The FSU personnel comprises the SLP and social workers/probation officers from MSWGCA (Centre of Accountability and the Rule of Law - CARL 2015 – fsu report pdf.cdr-carl-sl).

Defence for Children International-Sierra Leone's (2010) (DCI-SL) study showed that only three out of eight interviewed at FSUs had a social worker in the western area. In Bo and Makeni towns, there was one social worker to staff the two cities. During my visits to police stations in Freetown and Lunsar in this study, in 2013, 2014 and 2015, I interviewed only two FSU officers: one at the police station in Freetown and the other in Lunsar. I was surprised to find an FSU officer in Lunsar because it is a rural area, and I visited without notice. During my attendances at these police stations, I learned that many social workers and FSU officers at the main Central Police station and the Criminal Investigation Department (CID) in Freetown. I was unable to visit these units due to the Ebola restrictions. Cases concerning children generally are also reported to the MSWGCA.

5.3.4. The Ministry of Women Gender and Children Affairs.

The FSU works in collaboration with probation officers and social workers at the MSWGCA. Of note, probation officers' duties are provided under law, as shown under

s20, Cap 44²¹, and s65, CRA 2007²²; these include providing support and assistance to children in conflict with the law.

The probation officers' role also entails attending all juvenile court proceedings, providing guidance and support to children. However, probation officers are limited in their ability to perform their functions effectively. The limitation can be attributed to staff shortages, limited financial resources and lack of specific guidance and training (DFI-SL 2014), and limited capacity in logistics such as travelling outside of the district headquarter towns to carry out investigations in the local community.

In my interviews with social workers at MSWGCA and the Remand home in Freetown, I gathered that the role of social workers was synonymous with probation officers. However, I learned that only one probation officer was responsible for assisting children who required court representation. Therefore, I met with the said probation officer, who initially declined to participate in this study. He cited a heavy workload, constraints in public funding, staff shortage and suggested that I contact the Approved school and the Remand homes for participants. Nonetheless, I was able to interview him for this study at a much later date through the recommendation by an elite professional who was also a participant in this study.

5.3.5. Correctional Centre (Approved School) and Remand Homes.

The Approved School is the correctional centre in Sierra Leone. Under Part V, s31 of Cap 44, it is classed as a government institution. This centre should provide rehabilitation and maintenance for children who are in conflict with the law as required by Cap 44, s29. Despite the name correction centre, according to the notion of deprivation of liberty as set out under the Beijing rules - r17.1.c, children held at the Approved School are considered to be at a detention centre (prison) instead of a correctional centre because they have no liberty to leave such institution on their own accord (Prison Watch, 2013). During this research, I was informed by one of the officers at the Approved School that the children (inmates) hardly had visitors and were not allowed to leave the compounds of the building except for medical or legal reasons. Further, the conditions at the Approved School generally 'are deplorable and at times, are a health hazard' (Prison Watch, 2013:7).

²¹ associated with the treatment of young offenders

²² concerning duties of a probation officer and social welfare officer

It is reported by the Child Justice Strategy (2014) that Defence for Children International-Sierra Leone and Prison Watch provide children with free access to education and vocational skills training as well as support in formal schooling at both the Approved School and Remand home. In addition, two participants in this study said NGOs donate to Remand homes and Approved School items such as mattresses and blankets, amongst other things.

Other holding institutions for children in conflict with the law are the Remand homes/centres (the words home/centres are used synonymously). The deplorable conditions (Prison Watch, 2013) in which children are kept are shown in chapter six, which gives a more detailed account of these conditions at the Kingtom Remand home and the Approved School in Freetown.

5.4. Development of Criminal Law and Juvenile Justice in Sierra Leone.

5.4.1. Sexual offences against Juveniles and Juveniles involved in sexual offences

The Prevention of Cruelty to Children Act 1926; Cap 31 was enacted on 24 December 1926. Section 6 makes it a criminal offence to abuse girls under 13 years, and perpetrators are liable to 15 years imprisonment if they breach the Act. If the child victim is between 13 to 14 years, liability for imprisonment if sexually assaulted is a period not exceeding two years with or without hard labour (s7, Cap 31). This seems to give the impression that a child over 14 years can be abused sexually without any redress under Cap 31.

Section 13 of Cap 31 states that any person who encourages the seduction or prostitution or unlawful carnal knowledge of a child shall be guilty of a misdemeanour and liable to imprisonment for two years. Cap 31 provides a defence under s9A. This states that where a marriage has been formally concluded, a husband cannot be guilty of an offence of sexual intercourse or indecent assault 'if he believes her' to be his wife [victim] and has reasonable cause for that belief. The defence under Cap 31 under section 15 (3) also provides that if a person is charged with an offence under the Act, they must prove that they reasonably believe the girl [victim] was over the specified age.

Under England's Sexual Offences Act, 2003 (SOA), it is stated under s5 (1), 'a person commits an offence if— (a) he intentionally penetrates the vagina, anus or mouth of another person with his penis, and (b) the other person is under 13'. The person will be

liable to life imprisonment on conviction on indictment under s2 of SOA. In England, the sexual intercourse of a child under 13 is a strict liability offence that does not require consent. The prosecution would have to prove only two things, first, intentional sexual activity and second, the age of the complainant at the date of the sexual offences. Offences of strict liability are compatible with Article 6.2 ECHR – R v G [2008] UKHL 37, [2009].

Similarly, the Protection of Women and Girls Act (Cap 30) was enacted on 23 April 1927. Under Cap 30, section 2 states, where a person tries to procure any girl or woman not being a common prostitute or known for immoral character under 21 years old and has sex either with consent or without consent, he shall be guilty of an offence. The Act does not say who a common prostitute is and seems to imply that if a girl is a prostitute, she loses her entitlement to protection under the law and is no longer regarded as a child.

Cap 30's protection does not cover girls or women that are prostitutes or known to have 'immoral' behaviour and does not define what constitutes immoral behaviour. Further, there could only be a breach of Cap 30, where there is vaginal penetration. Therefore, other forms of sexual assaults are not considered under this Act. Also, the requirement that victims should go to the supreme court for redress under both Cap 30 and 31, no doubt, constitutes an unnecessary burden in terms of costs, time and energy for the victims.

In an attempt to amend the flaws of Cap 30 and Cap 31, the Sexual Offences Act 2012 as amended (SOA 12) was enacted on 23 August 2012. SOA 12 replaced Cap 31's sections, 6, 7, 8, 9, 10, 11, and 13, as they concerned two categories of children: those under 13 and those over 14 years old. SOA 12 protects both boys and girls who are under eighteen years of age. This shows that rape can be perpetrated against both genders, and SOA 12 is not confined to penetration but also includes touching, including kissing. Protection is also extended to prostitutes and those known for 'immoral' behaviour. Sex with a minor is a criminal offence under s19 of SOA 12, and the only defence is if a person has reasonable grounds to believe the person was at least 18 years old and had taken steps to find out that the child is over 18 years. However, SOA 12 does not define what constitutes reasonable grounds and which steps are needed to be taken to fulfil the criteria that a child (victim) is believed to be over 18 years. Hence, this is a loophole in the legislation. The SOA 12 also includes under section 28 an obligation for the police to aid and protect victims alongside the entitlement to free medical treatment and special procedural protection during court processes. However, the SOA 12 has problems with

implementation, especially in providing medical facilities and other flaws in defence, including issues of financial constraints.

The relevance of the commission of sexual offences to our analysis of juvenile justice is its link with violence against the person, which constitutes a criminal offence. Further, sexual offences are serious offences and where a child offender commits or is charged with sexual offences, they will be treated the same as an adult under the Sexual Offences Act 2012. This does not consider the age of a juvenile offender (unless under 12 years).

If charged under SOA 12, an alleged child offender is usually held in detention (Police and Remand) for extended periods for several reasons. It could include waiting to be charged, or an age assessment to be conducted, or a referral to the high court. In this study, sexual offences ranked high, similar to murder, amongst the offences charged against the juvenile participants.

Since the enactment of SOA in 2012, there has been an increase in the prosecution rate of sexual offences as reported by participants of the study amongst other sources. Nonetheless, there is no evidence to link the enactment of SOA and the detention of juveniles in Sierra Leone. As with most Sierra Leone crimes, as this study shows, sexual offences are settled by negotiations between the parties (see chapters three, six and seven for more details). This may mean that those held at detention centres charged with such offences are there because of other contributory factors, such as lacking of strong family ties. President Bio's statement about the general non-reporting of sexual offences was heightened on 7 February 2019 in the Kono district. He said that most sexual offences went unreported and promised a revision of the Sexual Offences Act 2012 to punish perpetrators of sexual violence with a charge of aggravated assault, which could mean facing life imprisonment if found guilty. President Bio officially declared a national emergency on rape and sexual violence as a significant step towards addressing rape and all forms of sexual violence in Sierra Leone (State House Media and Communications Unit, 2019). Bio's declaration led to the Sexual Offences (Amendment) Act 2019 (SOA 2019) Compulsory Sentencing Guidelines [No.8, 2019]. The SOA 2019 amends SOA 2012 by increasing the maximum penalty for rape from 15 years to life imprisonment with an additional new offence for aggravated sexual assault.

Further, s7 of SOA 2019 provides amendment of s42 of SOA 2012 by the insertion of section 42A (SOA 2019):

2) Notwithstanding the provisions in section 7 of Children and Young Persons Act (Cap 44) for cases of sexual penetration and rape a child and young person shall be tried in the High Court.

Section 2 of the Sentencing Guidelines for Sexual Penetration Cases stipulates that a child offender is between 12-17 years, a young person offender is between 18-23 years and above. Under its section 3, it states that: notwithstanding the provisions in Section 24 (1) (2) of the Children and Young Persons Act (Cap 44)²³ and section 70 of the Child Rights Act²⁴ a ‘child who engages in an act of rape on another person, sexual penetration on another child, or in any act of aggravated Sexual Assault will be guilty of an offence and liable for conviction as per the Act and these guidelines’.

5.4.2. Specific Laws Governing the Treatment of Juvenile Laws in Sierra Leone.

The Constitution is the primary source of Sierra Leone's law and the highest law in Sierra Leone. Section 170 of Sierra Leone's 1991 Constitution states that laws comprising the 1991 Constitution include requirements made by or under Parliament, authorised by the 1991 Constitution. The provisions include powers conferred upon persons by the 1991 Constitution to make orders, rules, regulations and other statutory instruments, existing law, and common law. This section of the Constitution allows for both existing written and unwritten laws before and after the Constitution. For example, Cap 44 would be an existing law concerning child offenders, and new laws would include the Child Rights Act 2007 and Sexual Offences Act 2012.

The juvenile criminal law in Sierra Leone is enshrined in Cap 44, as stated elsewhere. This law was a colonial law adopted by Britain. The background shows similarly that the Children and Young Persons Act 1933 deals with juvenile justice in England. The Children and Young Persons Act 1969 is currently the law dealing with juvenile justice in England. Cap 44 forms part of the pre-1960 ordinances adopted and compiled in several volumes of Sierra Leone's laws, 1960. Cap 44 applies to persons below

²³ Not to be sentenced to imprisonment except if the act lacks the authority to do so by another act.

²⁴ The minimum age of criminal responsibility is 14 years.

the age of 17. It provides for two categories of children; those under 14 years and those from 14 to 17 years referred to as young persons.

The Child Rights Act 2007 (CRA 2007) amended Cap 44 concerning the definition of a child as someone below 18 years. Part 1, section 2 of the CRA 2007 adopted specific international instruments contained in its preamble. These consist of some of the UNCRC provisions with its two optional protocols and the African Charter on the Rights and Welfare of the Child 2002 (ACRWC). The CRA 2007 was enacted into domestic law to be compatible with the UNCRC. The CRA 2007 sections are divided into themes of prohibition of early marriages; conscription of children into armed forces; right to a name and nationality; free and compulsory education; protection against domestic violence and child trafficking; structures and systems for the protection of children at village and chiefdom levels and protection against harmful traditional practices affecting children.

The Coalition for Sierra Leone (CRC-SL, 2015) (is the committee of NGOs in Sierra Leone) states that the CRA 2007 and Cap 44 does not only predate the UNCRC 'but falls far short of the expectations of article 40 of the UNCRC and the Committee's General Comments No.10' [these are the standards set by the Committee to implement juvenile justice] (Zombo, 2015:14). The CRC-SL, 2015 stipulates that children in conflict with the law should be treated with respect and fairly. Their rights are to be respected, with the requirement to set a minimum age of criminal responsibility and provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings. The CRC-SL (2015) further states that Cap 44 lacks provisions for procedures of powers of arrest, investigation and non-determinative pre-trial detention. Also, rehabilitation is only provided as a custodial provision at an institution that lacks 'functional rehabilitation and social integration programmes' (Zombo, 2015:14). This, therefore, breaches Article 37 of the UNCRC (see chapter four). International rules also demand that where children are arrested, they should receive special treatment to determine the criminal age of culpability, to divert them at a young age from entering the juvenile justice system.

As mentioned above, to determine a juvenile's criminal responsibility, a child's age is a determining factor that requires records to do so, and these are often difficult to access. In Sierra Leone, there are guidelines on informal methods of evidence for age assessment, which include statements from parents/guardians or other witnesses, probative questions using historical events and educational background as indicators to measure a child's

approximate age. However, there are also provisions for age assessment referrals to a doctor when determining a child's age. The ethical concern relating to the invasiveness of medical assessments is that the guidelines are arbitrarily followed. This was a concern for advocates of the National Child Justice Strategy for Sierra Leone (2006) when setting up the age assessment guidelines. In this study, all magistrates reported that they refer to age assessment guidelines and refer children for medical assessments (although one of the magistrates was inconsistent). The study finds that there were children at the Remand home in Kingtom waiting for age assessments to be carried out. The lack of implementation of the age assessment guidelines by GoSL was also reported in the African Committee of Experts' findings on the Rights and Welfare of the Child (ACERWC) report in 2017.

This research shows that many children in Sierra Leone do not have any official means of verifying their age, such as birth certificates. Therefore, it is not surprising that the lack of age verification is attributed to a high number of unregistered children. The latter has thrown some doubts on the statistics of Sierra Leone's children population and the actual figures of children who took part in the civil war. It is also the case that there are no exact numbers of children in incarceration since children held at the state prisons (or correction centres) are usually not amongst the statistics of children in custody.

Where child offenders are arrested, there are no adequate safeguards. The CPA 65 concerns the procedure to be applied when criminal acts are committed in Sierra Leone. However, s210 CPA 65 states that 'children and young persons' accused of criminal offences shall be apprehended and tried by provisions of the Children and Young Person Act' (Cap 44). The latter's inadequacy is that Part II of Cap 44 sets out some form of procedures, but these do not outline guidelines for arrest, detention and treatment of children in conflict with the law. Hence, the Criminal Procedure Acts 1965 (CPA 65) provisions are applied as a consequence. But, these also contain flaws that include a lack of special investigation or court proceeding provisions concerning the protection of children in conflict with the law, including adults in civil and criminal proceedings. Further, s92 of CPA 65 stipulates that trials in the magistrates' court shall be conducted summarily and subject to conditions of CPA 65. Conversely, and to the extent that procedural protection is provided to children in conflict with the law (under Cap 44) in instances concerning bail applications for the purpose of preventing children from being

imprisoned with adults, implementation of the law is weak and financial, personnel and infrastructural constraints impede its administration.

Other flaws of the juvenile justice system in Sierra Leone include the lack of privacy for children in conflict with the law during criminal investigations. Cap 44 s 3 (5) recognises the right to privacy to include the accused relatives, court personnel, advocates, or others directly involved in a case have the court's permission to attend hearings. Regardless of the requirement under s3 (5) of Cap 44, the common practice in Freetown in matters concerning juveniles has historically been heard in Court No 7, which is a centrally busy section of the courthouse (DCI-SL (2010)). During this study, juvenile cases were held at the main Court building at Siaka Stevens Street in Freetown. However, the court recently (in 2019) moved to Pademba Road Court No 7, which is a few doors away from the central prison: Pademba Road Prison. Another magistrates' court hearing juvenile cases at Ross Road in Freetown has no private rooms for juveniles.

Defence for Children International-Sierra Leone (2010) reported that during eight visits to Court No 7, the public was never asked to leave the courtroom, and members of the public were never told to wait outside for their matters to be called. In this study, I did not see any designated interview rooms allocated to children in conflict with the law or even for the accused adults while in court. I made the same observations at police station interviews and magistrates' courts, where such matters were opened to be viewed by others who are not parties to the proceedings. Nonetheless, it must be recognised that where a child attends a magistrates' court for the first time, their matter will be held in open court. This could be for several reasons: to establish the child's age, whether pleading guilty or innocent, age guidelines, age assessment, to constitute a juvenile court or for juveniles to be tried with an adult if charged jointly.

Hearing cases at an open court in Sierra Leone is provided for under s93 of CPA 65, which states that the room the court sits to hear and determine matters shall be an open public court. This means that the public will have access to proceedings that do not concern them, except if the matter is exclusive to be tried by the supreme court or if the magistrate conducts the matter under a preliminary investigation. Then, the proceedings will be exclusive to the parties (s108, CPA 65). If the magistrate thinks fit, a preliminary investigation can be conducted, and where such an investigation is conducted under s109 of CPA 65, it should not be held in an open court. In this study and my attendance at court

proceedings in Freetown, I have sat in cases held in chambers (offices of the judges). These usually include just the parties to the matter, and cases held in this nature are at the judges' or magistrate's discretion. However, there is a stigma attached to matters held in open court. The accused are perceived as guilty before the outcome of the case. Open court matters can also be intimidating for the parties, especially children.

In Sierra Leone, child offenders face unfair court processes every day; as cited above and peculiar as it may seem, there is no legal obligation to notify parents if children are apprehended while in police custody. This non-requirement is a point also commented on by DFI-SL (2010). The UNCRC (Articles 9 (3)) and ACRWC (article 19 (4)) requires state parties to notify parents or guardians without delay following the apprehension of a child by the state. This point is re-affirmed in Beijing rule 10, which requires parents or guardians to be immediately notified of such apprehensions. Nevertheless, neither Cap 44 nor CRA 2007 specifies any due process rights for such children at the point of arrest. As a result, the SLP has no legal obligation to notify parents when their children are apprehended. NGOs such as Timap (Krio: stand up) for Justice, DCI-SL, Prison Watch, amongst others, have instead taken the role of tracing and informing parents when children are in conflict with the law.

However, ironically Cap 44, s23 states that where a child or young person is found guilty of an offence and a fine is imposed, their parents or guardians must make the payments. Informing parents or guardians from the outset of their children's apprehension when in contact with the law will aid early intervention, prevention from entry into the criminal justice system, in the determination of a child's age and during bail applications. In addition, suppose there is a notice requirement in the Act to notify parents when their children are in custody; this could help address the lack of funding and personnel in child offenders' administration.

Other challenges for children in conflict with the law in Sierra Leone include inaccurate information provided by children, insufficient personnel, reduced mobility and logistics, and lack of parental responsibility. This study highlights the case of a boy whose mother attended a police station to stand as surety in a bail application concerning an alleged theft offence. The parent could steer the child away from the juvenile system by settling the matter with the alleged victim. Also, where legal representation is available, or there is someone to stand as a guarantor in bail applications, child offenders are usually

granted bail. This means such child offenders are less likely to be in custody or enter the criminal justice system. The right to legal counsel and free representation to the accused is fundamental to all those charged with committing an offence and especially crucial for juveniles due to their unique vulnerabilities such as age compared to adults. This right is enshrined under the UNCRC (Article 40 (2) (b) ii); ACRWC 12(2) (c) (iii)); the International Covenant on Civil and Political Rights – (ICCPR Article 14(3) (d)) and also, under Beijing Rules 15.1. These provisions afford juveniles the fundamental right to a fair trial and the right to have an advocate present in a courtroom during trials. However, there is no provision under Sierra Leone's laws for the right to free legal representation.

The Government of Sierra Leone has attempted to address the lack of legal representation for people who could not afford representation by enacting the Legal Aid Act 2012. Legal aid was initially a pilot donor-funded scheme in Freetown. Legal aid lawyers are assigned to the juvenile court to provide free legal representation to any child or anyone who could not afford to instruct a lawyer. Legal aid operates as part of the Ministry of Justice (but claims to be independent of the Ministry of Justice) and employs paralegals and counsels' to routinely visit police cells, prisons and Remand centres to provide legal advice. However, this study found from interviews with lawyers that although the Legal Aid Act 2012 (see Chapter 6 for more details) has been enacted and is now permanent, it is yet to fulfil its mandate since it does not apply to the whole of the country.

The lack of legal representation will undoubtedly render a child in conflict with the law liable to incarceration, especially where there are no sureties when making bail applications. This is because where a young person is apprehended and cannot immediately be brought before a court as stipulated under section 25, Cap 44, the child should be handed over to the care of a fit person or institution that could provide an undertaking to care for that child (see s25(c) Cap 44). Further, Cap 44, s5 requires the officer in charge to release the alleged offender by making a formal agreement either with the accused, his parents or guardian, or another responsible person. However, bail may be denied on the following grounds under s5 (a), (b) (c), Cap 44, for example, where a suspect is accused of a homicide or any other offence punishable with imprisonment for more than seven years. It may also be denied if it is in the accused's best interest to remove him/her from associating with any undesirable person. Circumstances of denial also include if the officer has reasons to

believe that the release of such a person would defeat the ends of justice. The latter criterion no doubt provides an avenue for the legal process to be abused by corrupt officials.

It is clear from s5 of Cap 44 that bail applications can be made on behalf of juveniles, but this allows the police with broad discretion in deciding when bail should be granted (Cap 44, s5 (c)). A police respondent in this study provided information about the common practice that is usually applied in the granting of bail to juveniles. He states that the practice involves the minimum requirement for parents or guardians to grant bail, notwithstanding that a juvenile can ask for bail in their own right. He further stated that the police would accept bail applications from NGO officers and human rights activists on behalf of juveniles in police detention. Nonetheless, the precondition's ramification to have a parent or guardian for granting bail is that children whose parents cannot be located or are not notified of their child's arrest and compounded by a lack of funding would result in children ending up in pre-trial detention and police custody.

Further, even where bail is granted, it is challenging to accommodate these children after their custody release. This is due to a lack of infrastructure, such as care facilities (please see below). There are other alternatives to prevent imprisonment, delay in the trial, and appeal issues, such as dispatching child offenders to a district or their district of origin at the government's expense (see s25 (b) Cap 44). In addition, a child in conflict with the law should not be under the supervision of a probation officer for more than three years (s20 Cap 44). It is noteworthy that the said provisions are provided within the law (Cap 44). However, financial constraints mean that juveniles cannot claim such rights, and equally, victims are left wanting justice. For example, the study showed no transport being provided to take juveniles from the Remand centre (Kingtom) for court hearings regardless of whether children are released or discharged by the courts or police.

Also, there is a lack of state care facilities, as stated above, which provides a very poor diversion for child offenders away from entering the criminal justice system and contributes to such children becoming repeat offenders. Besides, although children could be abused at home, they are most likely to be abused and maltreated while in foster care, despite the long-standing history of foster care in Sierra Leone.

In the absence of adequate facilities, matters are not determined quickly. Prison Watch reported that 'pre-trial and Remand detainees spent an average of three to five years in pre-trial detention before the courts examined their cases or filed formal charges against

them' (SL2018, HRR). In extreme cases, an accused's wait in custody could be as long as 16 years (SL2018, HRR 2018:7). In this study, delay in bringing cases to trial was reported by all participants. Further, the lack of prosecution witnesses also contributes to the delay in cases. Extensive adjournments often lead to continued detentions, which could be classed as unlawful imprisonment or deprivation of liberty.

According to the international rules that provide for the protection of juveniles deprived of their liberty, such as the Havana Rules resolution 45/113 of 14 December 1990, it is stated under II: 11 (b) that:

The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at their will, by order of any judicial, administrative or other public authority.

Unnecessary detention can be prevented where background information is obtained about a juvenile. This enables a decision about the best way to deal with a child offender if found guilty of an offence (see s16, Cap 44 and adjudication principles and disposition provisions under Beijing rules, r17). International Beijing Rules provide for the welfare of a juvenile offender. Under the rules, any actions taken against a juvenile offender should be proportionate to the circumstances and gravity of the offence and the circumstances and needs of the juvenile and society (r5, commentary 5 of Beijing rules). Similarly, detention should be used as a last resort and for the shortest possible period (r13 of Beijing rules). Besides, protection must be provided for juveniles that are under arrest or awaiting trial, as shown in Havana rule III: 17, which states that '...detention before trial shall be avoided to the extent possible and limited to exceptional circumstances'.

Conversely, although s24 (1) of Cap 44 also states that no child shall be sentenced to imprisonment, there are cases in which children can be imprisoned. For example, 24, (3), Cap 44 stipulates that, where a young person is sentenced to prison, he shall not be allowed to associate with adult prisoners so far as circumstances permit. Despite this legal stipulation, juveniles are frequently locked up with adult offenders at the adult detention centre, the state prison such as Pademba Road, Freetown, which houses adult criminals who commit serious criminal offences. This study found that one juvenile participant was detained at the Pademba Road prison. It is no surprise, therefore, that children are held with

adult inmates. However, section 24(3), Cap 44, clearly infers that in some cases (because of the wording, so far as practicable), juveniles and adult prisoners/inmates can share cells in custody.

This study's juvenile participants at the Kingtom Remand home were detained for an average of six months to two years. This does not negate the fact that there are or might be juveniles that would have been held much longer at the same Remand home. At the Approved School, a participant told me their longest-serving prisoner was a boy convicted for malicious damage for ten years. He could have been released if he had paid a Le8,000 000- eight million Leones fine (eight hundred pounds). He was sent to the Approved School in July 2014, and upon speaking to a participant in May 2020 at the Approved School, the boy was still serving his sentence. A participant also informed me that because there are insufficient facilities for the administration of children in conflict with the law, there are times juveniles are sent to the state prison instead of the Remand home or Approved School. The same participant stated that they (probation officers and social workers) often rely on prison wardens to help care for the children due to the acute shortage of personnel. Nevertheless, he is concerned that most prison wardens lack training in the administration of juveniles and often treat the children harshly; for example, they handcuff and restrict their movements excessively while in custody.

Also, it is reported in the Country Reports on Human Rights Practices (2018) (SL2018, HRR:4) that '15 juveniles between the ages of 14 to 17 were held in rural prisons' and one was held at the Freetown state prison (Pademba Road prison). The same report said that juveniles were often detained with adults, especially while waiting to be transferred to juvenile facilities. Offenders older than 18 years were sent to the Approved school. In comparison, those younger than 18 years were sent to prison. Concerning pre-trial detentions, due to a severe shortage of legal professionals, 'as of August 2016, only 48 per cent of the 4,434 persons held in prisons and detention centres were convicted'; 16 per cent of persons were on remand, and 36 per cent on trial (CRHR 2018:7).

Therefore, it is not surprising that children at the Remand home (a pre-trial detention centre) in Freetown were held for more extended periods. The delay in the juvenile process is depriving a child of his or her liberty. It was clear from this study that all participants interviewed at this centre were waiting for extended periods for their cases to be heard. One participant at the Freetown Remand home, in particular, pleaded with me

to request a trial date on his behalf from the authorities (Ministry of Justice at the DPP's office) because he had waited for over eighteen months for his case to be tried.

Concerning the sentencing of child offenders, Cap 44, as with European juvenile justice practices, provides discretion for juvenile courts to make alternative sentencing orders such as foster care provisions. For example, there are foster care provisions in 'all European countries' youth welfare or family law systems (Păroşanu et al. 2014:160). In Sierra Leone, there are also foster care provisions contained in the CRA 2007, but statistics are lacking regarding implementation.

Further, the discretion contained under Cap 44 about empowering the court to make alternative sentencing orders shows that the GoSL complies in theory with Western standards in that regard. However, in Sierra Leone, alternative sentencing orders are often linked with conditions that can result in a custodial outcome for juveniles, such as the new sentencing guidelines of 2019, as discussed above. For example, CPA 1965 does not give any particular guidelines for children (save under s210 of CPA 65, which states that Cap 44 should be followed by a child or young person charged with an offence). Further, most bail conditions request a land document title (conveyance) and money to pay fines with an adult to stand as a surety to grant bail. Sierra Leone lacks a proper care system. Even when children are released from prisons or pre-trial centres (Approved school or Remand home), they often have nowhere to go and continue to stay at the Approved School and Remand home (see chapters six and seven for more details). After their release from custody, the only alternative facility for juveniles, if they cannot go back to their family, is the Don Bosco Home, an NGO. It is also the case that where children are charged with an offence, even if they are released without charge, their families and communities often reject them, and they often end up in the streets. The lack of care facilities inhibits rehabilitation and development and the proper upbringing of a child, no doubt. The UNCRC Committee (2000) cited delays and lack of resources as core problems that affect the national judicial processes concerning children in conflict with the law in Sierra Leone; this is a problem that is still evident, as this study shows.

In addition to the statutory provisions of Cap 44, the CRA 2007 and other related Acts together form the Sierra Leone Government National Justice Strategy 2014-18 (NJS 2014 to 2018) policy. The latter is a framework that was initially set up in 2006 to deal with justice efficiently for every child at risk or in contact with the criminal justice system.

However, in 2012, those responsible for implementing the NJS 2014-2018 admitted that there were challenges for its implementation. The challenges created the need for an extension of NJS (2014 to 2018). The NJS 2014 to 2018 aims to build on the legal (CRA 2007) policy and framework of children, specifically on juvenile specialism policies, to protect children involved in the criminal justice system as offenders, victims and witnesses. However, the plights of children in conflict with the law are still deplorable despite this initiative. Also, see chapter seven for a further discussion on NJS (2014-2018).

5.5.Conclusion

This chapter shows that the primary law dealing with juveniles in Sierra Leone is the Children and Young Persons Act, 1945 (Cap. 44 laws of Sierra Leone). In spite of the complementary laws concerning the protection of children in conflict with the law, the legal provisions are conflicting and are not entirely adequate. The CRA 2007 was supposed to have replaced Cap 44 as it is a domesticated [should be] version of the UNCRC and contains some aspects of ACRWC. However, the CRA 2007 lacks specificity in dealing with juvenile justice. The NJS 2014 to 2018 is a policy guide that provides recommendations for the implementation of laws concerning juvenile justice, but it is not clear how this has been applied. Therefore, it does not address the loopholes or deficiencies of Cap 44 or CRA 2007. There are also other laws such as the Constitution of 1991, SOA 12 and SOA, 19 and CPA 65 that complement Cap 44 but are not effective in the administration of juveniles.

The flaws of the juvenile justice system in Sierra Leone are numerous. For example, the minimum age of a child's legal culpability is considered an essential foundation for a juvenile justice system. However, there is confusion in the two minimum ages of ten and 14 years. Regardless of the legal age of criminal culpability being set at fourteen years by CRA 2007, the ten-year common law age still applies. This study and others reveal that inconsistencies in judicial proceedings across the regions are rife in the treatment of juveniles from the first contact of the law to the investigation process. The flaws include lack of adequate procedural rules, safeguarding measures, care facilities, and the government officials' lack of training such as the police, probation officers, magistrates, or officials' failure to put their knowledge into action when dealing with juveniles. The lack of adequate legal representation leads to multiple adjournments and sometimes

imprisonment of child offenders who are referred to the Remand homes or Approved School. In addition, lengthy detention sentences and the lack of funding and specific juvenile courts have exacerbated the plights of child offenders. The lack of adequate facilities at the Remand homes and the Approved School further affects child offenders' well-being and development.

There are no rehabilitation programmes or state institutions for them to go to when child offenders are released. This problem is further aggravated when their families and communities reject them. Therefore, due to lack of resources in the administration of juveniles, inconsistency in the law, and the lack of social networks and financial capital, such factors increase the recidivism of child offenders in Sierra Leone.

CHAPTER SIX

THE PRACTICE OF CRIMINAL LAW AND JUVENILE JUSTICE IN SIERRA LEONE.

6.1. Introduction

This chapter describes the practice of criminal law and juvenile justice in Sierra Leone. The section will draw upon my field notes, participatory observations, interviews and site visits. The chapter has been divided into four sections. The first section sets out the social construction of children in conflict with the law and the justice system in Sierra Leone. The second section is on corruption; the third is on networks; and lastly, section four: other factors. The chapter will conclude that there are criminal laws (although with outdated juvenile legislation) in Sierra Leone that should address children's rights in conflict with the law to a certain extent. However, the difference between the law and its practice is enormous. This is because the criminal law practice concerning the conviction of a child in contact with the law can also be based on moral (including social factors) and welfare factors. This study shows that where children in the juvenile justice system are poor or are perceived as bad children, lack legal representation with weak social networks and ties, they will be found socially culpable. Such children's treatment and punishment under the law differs considerably from others in similar circumstances but more so for those in rural areas.

Often, juveniles accused of rape and murder find it challenging to be accepted by their communities and close families and cannot return home at the end of their prison terms, as in this study's juvenile participants. More often than not, in circumstances where juveniles are convicted of rape and murder offences, this can lead to further offences being committed (Krinsky, 2010). As a result, some end up in the adult justice system and become fully immersed in criminal networks.

6.2. How Perceptions of Whether a Child is of Innately Good Character, or Not, Shape Outcomes for Children in Contact with the Law

The social constructions of children play a vital role in Sierra Leone in the way they are perceived as good/innocent or bad/evil. Specifically, children who commit serious offences such as rape and murder, no doubt, are also seen as bad/demonic/evil children generally in other jurisdictions (R Venables and Thompson) v Home Secretary [1997]

UKHL 25). Where children do not fit within the Western perception of being innocent and vulnerable, they are often perceived as 'demonic, discontented and disorderly. They are often feared and punished as a consequence' (Honwana and De Boeck, 2005 in Atkinson-Sheppard, 2017:2) as in the case of children involved in violence, war and organised crime (Atkinson-Sheppard 2017). The notion of good and evil was exacerbated by the accounts of the atrocities committed by children during the Sierra Leone civil war in which child soldiers were stigmatised generally as 'evil', regardless of whether they were active participants or not in those atrocities (Abdullah and Rashid, 2004).

The literature review shows that the binary of evil/demonic and romantic children so familiar from Childhood Studies in the West (Kehily, 2004, 2008) is, perhaps surprisingly, very evident in Sierra Leone. Concerning the law, these concepts can be translated as the responsibility (children are deemed as agents responsible for their actions) (Atkinson-Sheppard, 2017) to do things (Kendall, 2010), which is similar to the concept of autonomy, or being innocent or vulnerable and therefore needing protection (Cheney, 2010). In this study, perceptions of whether a child in conflict with the law in Sierra Leone is culpable or not depend on whether they are perceived as a good or bad child. In other words, and as this study has revealed, a good child is considered incapable of committing an offence and, conversely, an evil child is deemed incapable of innocence or redemption.

The Sierra Leonean perception of good and bad children is no exception as elsewhere. Hence, when a child does something wrong, those who advocate for the child not to be punished harshly, will say 'no bush nor dae for trow way bad pickin' (no bush to throw away a bad child as pointed by Stovel, 2008). This phrase was part of the transitional language used for reconciliation between victims and child soldiers in Sierra Leone, as discussed already. After the end of the civil conflict in January 2002, children were more perceived as capable of being bad (Abdullah and Rashid, 2004). Children were feared by adults and were reported to be cruel and hard-hearted (Abdullah and Rashid, 1999) because of their role in the civil conflict's atrocities. Children and youth represented 75% of Sierra Leone's population (during the war period) and were widely involved in the war. Most of the children that took part in the civil conflict were poor and had previously been involved in petty crimes. Abdullah (2002), amongst others, referred to juveniles in the conflict as 'lumpens'. Richard (1996) classed lumpens as the excluded educated youths (Archibald and Richards, 2002), struggling for livelihood and living by their wits. However, the excluded

educated youth were made up of students expelled from Fourah Bay College University in 1977 due to their opposition to the corrupt practices of the All People's Congress government (Zack-Williams, 2010).

If poverty was a key reason a child got involved in the civil war, it has arguably continued to serve as a connector to those children in conflict with the law. This study shows that juveniles of poorer economic backgrounds are treated the worst by the juvenile justice system. Similarly, the periodic report (2002-2014) of the Government of Sierra Leone (GoSL) concerning the African Charter on the Rights and Welfare of the Child confirmed some of the factors that fuelled the 1991 civil war to be high poverty levels, inequality and low standard of living of Sierra Leoneans, notably children.

It is widely accepted in Sierra Leone that a child's discipline, which can sometimes involve violence, for example, hitting children, is an act that can be carried out by the parents and adults, including strangers (Bledsoe, 1990). Further, it is believed that it is the whole community's responsibility to discipline a child (Smart, 1983). It is also recognised that the severity of such activities has somewhat reduced in recent times as a result of human rights awareness, such as its sensitisation by NGOs and the prohibitions contained in CRA 2007. For example, one of my participants, who is a senior officer at the Approved School, when asked how the law protects children, said: 'a child belongs to the community... it is the responsibility of that community and every person to have a responsibility to that child'. This point about a child's relationship with their community resonates with the discipline referred to by ACRWC Article 20 (1) (c). This stipulates that domestic discipline should be administered with humanity and respect for the inherent dignity of the child. A flaw in the stipulations is that it is not clear what is an 'inherent dignified' method to discipline a child. At face value, it appears that parents or guardians can punish a child in any manner they choose. Bledsoe's (1990) study in Sierra Leone found that for children to 'advance', they 'must work and study hard, endure beatings and suffer sickness to mould their characters and earn knowledge' (1990:71).

Some parents see abuse as a form of discipline required to prepare a child for the future [such as how to get on in life] (Bledsoe, 1990). Although Bledsoe's study is now thirty years old, the view that children need to be disciplined and the struggle to learn character is still widely accepted in Sierra Leone. In this study, a local NGO participant

said, 'pickin na for chisel he rough edges' meaning; you have to discipline a child to become a good person [one that behaves appropriately].

However, in Bledsoe's research, it is also worth noting that mothers amongst the Mende tribe in Sierra Leone would wrap, feed and cuddle their young babies but treat their older children more severely (Bledsoe, 1990).

The perception of the child as belonging to the community is echoed strongly by the participants of this study. For example, when I asked Magistrate-A, when could a complainant decide whether to use the criminal or customary system concerning a juvenile offence, the response was this:

determination of a juvenile crime depends on the crime being committed, the community in which it was committed and the victims involved. That is if the victim's family is poor, as poverty is not respected, where a certain matter is taken to the chiefs, it is possible that this could not be treated seriously due to the victim's status or the crime being committed and so on.

Further, it depends on how the community views that particular crime. For example, if a community thinks sexual penetration is not an offence, then the matter will not be taken seriously unless the issue goes to the police. However, the police are highly corrupt, and can manipulate things and will say things like "we do not see a case". [If it is a poor victim, a wealthy offender will be in a position to bribe the police].

Also, where the perpetrator is well off their parents might try to manipulate things and get the matter discharged. I have a case of a boy who sexually penetrated a 14-year-old girl. The [perpetrator's] child's parent is very influential, a very top politician at the Ministry of Social Welfare Gender and Children Affairs called and asked me to drop charges. The perpetrators will involve influential people, even the Attorney General, Members of Parliament, and others to help with their cases. I do not back down. I do what I have to do, and that is, seeing that justice be done. The matter involving the rich perpetrator kid has been going on since December 2014, and the child is on Remand. He is 16 years old. The file keeps [going] missing for no apparent reason. If all the evidence shows that he sexually

penetrated that girl, then he will end up at the Approved School despite his wealthy status.

The provisions of Cap 44, s28, states that a juvenile court can send a child or a young person to the Approved School if a parent or guardian reports that they cannot control their child. This section has now been repealed by s61 of CRA 2007.

Notwithstanding, during this study, an officer at the Approved school said there was a boy in custody at the Approved School because he committed the offence of 'economic abuse', which concerns theft [a criminal offence] from a parent. The participant said the child who stole from his parents at 'Mile 91' (a town in the Northern province) was 14 years old. The parents brought charges against him as a form of discipline, and he was convicted for two years [imprisonment] and sent to the Approved School. Another participant said a 16-year-old girl was reported for indiscipline at the magistrates' court in Freetown by her parents and was also sent to the Approved School, where she stayed and sat her mid secondary school exams.

Girls are rarely committed at the Approved School. Although there were separate buildings for boys and girls, there were no girls present during my visit. An Approved School officer told me the Approved School was not a place for girls to stay in but that most of the offences committed by girls who were held at the Approved School consisted of fighting, loitering and lack of discipline.

Twelve juveniles directly participated in this study with criminal offences they were accused of committing, including theft, burglary, assault, sexual crimes, rape, and homicide. As stated above, rape and or sexual offences and murder formed most of the offences. The high incidence of rape offences being the cause of juvenile detention was a point made by Magistrate - A. She said, 'every day, I have such cases of this nature; in fact, I have victims as young as two years old [who have] been penetrated by other children'.

This research found that critical to whether courts determine if a child was culpable for their actions was a whole range of extra-judicial assessments about their social networks, disposition, and mode of dress in what I call social culpability. Central to whether children would be released from the juvenile justice system when they commit an offence is the adjudicator's (the social worker, the police officer, magistrate/judge) perception of the child's character, whether they are 'good' or 'bad' child. This might mean not being perceived as a bad child, regardless of their criminal actions, if they come from

a good family with good connections or are literate or pitied. The issue of connections (networks) fits within a more general theme in Sierra Leone's society. For example, the lack of good family connections is a major cause of 'insecurity, vulnerability and poverty among women' (McFerson, 2012:49).

In Sierra Leone, a child would be more than likely to be discharged of a criminal responsibility/liability or treated more leniently if they showed that they are "good pickin" (a well-behaved child). It helps mitigate their case after committing a criminal act, assuming they have a good character recommendation. In such circumstances, there is a general understanding based on moral grounds that such a child should be perceived as someone who is not fully aware of the consequences of their actions (vulnerable child lacking rationality).

Conversely, where a juvenile is described as a bad pickin [child] /borbor [boy] /titi [girl], this shows the child has been perceived as irredeemable. Comparably, where a child is described as big pickin/borbor/titi (older child/boy/girl), the juvenile is likely to be deemed culpable or treated more harshly for his/her actions. The child is treated harshly not to reform them but to punish them and frighten them into behaving out of fear. The extent to which children in conflict with the law are classified as 'threats' and ascribed with 'undeserving' status is a point made in 'crisis' discourses described by Goldson (2011:112) and with the "widespread belief that children and young people are in some way turning feral" (Goldson, 2011:112). Such children are not perceived as potential victims or vulnerable or needing adult care (Goldson, 2011). In Sierra Leone, this study found that where a child commits an offence and exhibits scholarly characteristics, including reading their books and are obedient and respectful to elders, do not get into trouble generally, that child would be treated more leniently. This is because they would be perceived as vulnerable and could be redeemable.

In my interview with Magistrate-A, when I asked who would she describe as a good pickin or bad pickin concerning children in conflict with the law; she said:

this is where someone gives testimony and when doing so, the child's relative or witness says for example, in a murder trial involving a 15-year-old boy who murders a 21-year-old in Freetown. The father "says I told my child to put the knife down" and if the child fails to put the knife down even

after been told by the father and the child goes ahead to kill someone, I will see this child as a bad child. However, what if on the other hand, the parent says, “me pickin nor tan so, every day he dae study [my child is not like that, he studies every day], ar tell am for put the nef don, en he do so, but de man cam rush pan am, na that cause the accident” [I told him to put the knife down, and he did, but the victim attacked him, that led to the accident] this will show that this particular child is generally a well-behaved child and had no intention to kill. I will see this as a good child; I will weigh that [the father’s testimony] heavily in my judgment.

Magistrate-A's account of the above, including her previous statement, shows that different factors could contribute to a juvenile offender's legal culpability. Such factors include the influence of legal arguments such as the criminal principles of actus reus and mens rea and moral arguments of the notions of a good and bad child. In addition, the way communities resolve offences and influence issues in society is sometimes through politicians interfering with the legal process and through links to networks.

The local expectations and perceptions for dealing with criminals in Sierra Leone support more of a retributive than of a restorative (rehabilitative) system. These local perceptions were demonstrated and articulated when transitional justice and peacebuilding mechanisms were implemented after mass violence linked to the civil conflict (Lambourne, 2009). Rosalind Shaw's (2007) study in Sierra Leone found that the truth-telling exercise was used as a mechanism for people to accept the past entirely, help them form a basis for justice as a way to facilitate healing and the rebuilding of the nation. Rather than talk about what had happened to them (victims) in the war, locals, for instance, wanted to 'forget' about what the perpetrators did to them. However, this does not mean they (victims) wanted an erasure of personal memories, but as a containment to enable them to recover from the wrongs caused in order to avoid retaliation and instead focus on rebuilding their lives to make up for the things they had lost. Therefore, the 'acts of forgetting in Sierra Leone' were dependent on how they (victims and population as a whole) would rebuild their lives (Shaw, 2007:194).

A proponent of retributive justice would say the focus of this concept was to allocate punishment for the commission of an offence. They will argue that the issue relating to the assessment of whether someone has contravened the criminal law should be

based on legal reasons, not merely proscriptions and perceptions. This is because, under criminal law, the elements of a crime must be established. These include the "actus reus" and "mens rea". The former represents the element associated with the action of the crime, the latter concerns the intentions of the perpetrator for committing the offence at the time of the offence. Put simply, in a murder case, there should be a dead body (the killing of the person would be the action of the crime). It must be shown that the defendant or the accused (the person that is alleged to have committed the offence) intended (which includes recklessness) to kill their victim. However, this stipulation should not apply to children below a certain age of reasoning or maturity, also known as the age of criminal culpability.

The age of criminal culpability varies from country to country (see chapter four, along with discussing the SCSL and ICC's application of actus reus and mens rea). It has been argued within the child rights discourse that child offenders should not be exposed to the full weight of the law (Goldson, 2013) but instead be rehabilitated or diverted into the welfare system.

In the following sections, I show how corruption, networks, and rehabilitation methods shape juvenile justice practice in Sierra Leone. First, I offer some vignettes from my field notes that illustrate how each of these factors shape children's outcomes in contact with the law.

In this first case, the juvenile in question, whom I will call Boy-1, was assisted by a stranger, a local trader (RK), who paid for his bail at court and pleaded for his case to be discharged. The background to this case is that the local trader had attended the magistrates' court in Lunsar to sell her merchandise, including slippers, clothing, earrings, soap and other similar items. She had felt sympathy for the boy because he was young and had no one to help him.

When I asked RK how she had come in contact with Boy-1, she said:

I was approached by a boy who was about 14 years old, maybe less, outside the court who begged me money to buy food. He said that he had been at the prison in Port Loko for over a year accused of stealing petrol that is worth about £20.00 (GBP). He seems like a good child. He should not have been in prison for that length of time. He told me both of his parents were dead and has no one to care for him or even visit him while in prison. I took pity on him as I am aware of criminal cases where children have been

wrongly accused. Even though I have been a victim of juvenile crime, but in my case, I was able to settle the matter without going to court. I was able to bail him as I had enough money on me to pay his bail fees. The complainant was agreeable to withdraw the case from court and I spoke to the court clerk that I would stand as a sortie.... the matter was dismissed and I will take the boy home to stay with me, I will put him in school or teach him to trade.

This first case of the local trader has relevance in examining issues surrounding the treatment of children in custody, including their welfare, custodial sentences for minor offences, the behaviour of a child, the court clerk's role, the position of the community and rehabilitation. The trader's involvement, in this case, has no relevance with issues of law but on the moral judgment of doing a good deed. RK's actions are undoubtedly heroic and quite surprising in that child offenders are often perceived as bad children and not worthy of any redemption. RK was a local trader, and although relatively poor, her actions to have helped Boy-1 are pretty remarkable. The issues mentioned will be delineated upon below while we move on to the second case.

The second juvenile case concerns an 11-year-old girl. The offence she was alleged to have committed was murder. When I met her, she was still at the Remand home while waiting for trial. The background to the offence shows that it was committed in the northern rural area. The matter was initially taken to the paramount chief, who referred the case to the police. The alleged juvenile's social background was that she was born in a rural area; she had lost her father before being charged with the offence and lost her mother and other siblings to the Ebola outbreak while at the Remand home in Freetown in 2014. She had one surviving sibling. She was attending school and was in class four (Year 4 in the U.K) when the incident she was alleged to have committed occurred.

The girl was represented by a Non-Governmental Organisation (NGO), as reported to me by social workers at the Remand home. The same social workers also told me that the girl was recognised to be under the criminal culpability age during her appearance at the magistrates' court. Therefore, it appears that she would

be released, but although she would love to go back to her home town, reports from where she came from revealed that no one from her community wanted her back. However, she was unaware of that information.

The issues raised in this girl's case above appear to be unusual—the reason being the allegation of murder by a girl. Most juvenile offences (apart from child soldiers involving girls) involving girls concern swearing, fighting, wounding, loitering, indiscipline, amongst other minor offences stated by participants of this study. In addition, the child (accused of murder) told me that she was also a cutter. It was surprising to hear of a female cutter of 11 years old since this is a role taken up by much older women.

The social workers' account of how families of children offenders, parents and relatives are contacted before their release from custody shows the GoSL's attempts to address the issue of tracing families, although NGOs and DCI-SL have predominantly undertaken this role.

After I met with the girl participant at the Remand home above, I interviewed Magistrate - A, who was presiding over her matter purely by coincidence. I asked Magistrate-A what the practice of criminal law and juvenile justice entailed.

She said:

I have been discharging many cases.... I have a case in front of me in which it was alleged a girl killed a baby boy by drowning him in a bucket of water. There was no mens rea even though there was actus reus. She is below 14 years old. If the child is underage, she cannot be tried... the girl is from the provinces.

Magistrate-A's statement reflects what the social worker at the Remand home said about the girl (mentioned above) being released owing to her lacking criminal culpability as a result of her age. What appears to be a problem after the girl is released is where she would go since her family and community do not look forward to her return due to the alleged offence. It is, thus, highly likely she would end up in the streets, or doing menial jobs or perhaps given refuge at Don Bosco Fambul home (see below for further details).

When I asked how the age assessment was being conducted? The same magistrate stated:

I send them to the police doctor to be conducted. With the girl I mentioned, a certificate will be given soon, and if this corresponds to the age limitation, then I will have to discharge the child [the girl (suspect)].

Magistrate-A's action in dealing with children in conflict with the law was proactive. She appeared to be keen on applying principle of non-culpability of children where they have not attained the age of criminal maturity (less than 14 under CRA) instead of Cap 44, which gives a magistrate the discretion to apply a much lower age. Her stance was that children should not be found guilty if below the age of reasoning and are keen to highlight corruption issues. Magistrate-A was the leading magistrate dealing with juvenile matters in Freetown²⁵ and had been newly appointed at the time of this research. During this study, Magistrate-A was sitting at Court No 8 at the main Law Court Building in Freetown.

A concern raised by the actions of Magistrate-A is if she finds child offenders non-culpable purely due to their age, how can the state ensure that such children would be rehabilitated, and what about the issue of redress for their victims? This study found that rehabilitation programmes are not available for children in conflict with the law and raises the possibility of repeat offenders (as stated again) and the perception of injustice for the victims.

In Sierra Leone, the age of a juvenile is not always recorded due to poor birth registration. On most occasions, it is recorded on police charge sheets. A child's age should be determined before a trial can proceed as required by s18 (1) of Cap 44. This provision states that 'when a person is brought before any court otherwise than to give evidence, and it appears to the court that he is a child or young person the court shall, having made such inquiry as it considers necessary, record a finding as to the age of such person'. Another magistrate (Magistrate-C) in this study confirmed that the 'child's age is usually taken from

²⁵at the time of the study

the police charge sheet' [it is not clear why the stipulations under s18, Cap 44 are not followed]. Thus, if there is no legal representation or the magistrate is not proactive in questioning a juvenile offender's age, they will be dealt with as an adult offender. The power of a magistrate's discretion is reinforced by s18 (2) of Cap 44. This states that, 'the age found by the court to be the age of the person brought before it shall, for this Act, be deemed to be the true age of that person'. However, any subsequent proof concerning age shall invalidate this statement because the provision is open to the judge's discretion to either refer the matter to an upper court or retain the case.

This study found that age assessment has been a problematic issue for juvenile offenders, the police and the court. The problem is predominantly due to a lack of resources, including an insufficient number of medical practitioners designated to carry out medical assessments alongside assessing children in conflict with the law. There are age assessment guidelines drawn up by MSWGCA that are supposed to be followed by those tasked with dealing with juvenile offenders. However, there are no statistics or evidence of how juvenile administrators apply the age assessment guidelines. It is not clear whether those in charge are aware of such guidelines in any event, and if so, whether they are reluctant to apply them.

However, some repeat juvenile offenders are aware of the age assessment guidelines and the arguments surrounding responsibility. They would usually plead they are minors to be exempted from culpability. For example, Magistrate-D strengthens the point when he said:

Age Assessment of juveniles has been problematic when dealing with children in conflict with the law because the guidelines are open to discretion, since it is clear from physical features of some of these juveniles that they are no longer children but plead as such and sometimes supported by police records or by birth certificates (some of which are false).

Further, during my interview with a Family Support Unit (FSU) officer in Freetown, I asked her what methods were used to assess the ages of children in conflict with the law, she said:

you look at them, raise their armpits, look for hair growth, voice change in boys, and look at their teeth, for girls; whether they have started seeing their menstrual periods and so on.

The implication of the above discretionary approach (which could also be an age assessment guideline) for age assessment by assessors is that children suffering from malnutrition might look under-age. Those who appear mature could have their ages inflated or reduced intentionally or unintentionally by juvenile assessors (FSU and the Police). The impact of this reflects upon the treatment of individuals during an investigation. This is because once charged to court; there should be a difference in the procedure applied to children vis a vis adults'. Although there is a failure to distinguish between offenders and accused individuals, the court's standard practice refers to the accused person at trial as an 'offender' (Fofanah, 2004). It appears that the word 'offender' in its purest form demonstrates implied guilt on the person charged with an offence. When referred to as offenders, children are often poorly treated and stigmatised. For example, the lack of court procedures requiring enforcement officers to ensure so far as practicable that detained children are separated from adults as required by s6 of Cap 44 is not followed (Fofanah, 2004). In this study, I have applied the terms 'child offenders'; 'children involved in crime'; a 'child in contact with the law'; 'juveniles' to refer to children in conflict with the law. It is not to reinforce their stereotyping but to encompass all children that come in conflict with the law, whether guilty or not.

The third case in this study concerns an interview that I conducted at the Approved School. It is worth stating that no guards or social workers were present during the meeting, and the juveniles spoke freely about their experiences. The minor in question was 17 at the date of the interview. He was convicted of burglary. I will refer to him as Boy 2.

Boy 2's social background showed that he was from the rural area in the southern part of Sierra Leone called Bo. He said his mother had died and that his father was a dispenser, but that he had abandoned him for his stepmother. Hence, his grandfather brought him up from an early age, but the grandfather had died in 2014. When I asked him how he had ended up at the Approved School, he explained that:

After the death of my grandfather, my friend persuaded me to go to Freetown and find work. My friend and I were both selling gallons of water for a woman at Le10.000 (£1.00) a rubber, which contains five gallons. I sell about Le 200.000 (£20) a day from which I was paid Le10.000 daily (£1.00). My belongings were stored with the rubbers and I would sleep wherever possible; on market stalls or at the house my friend sleeps. There was a break-in at the store one night for which I was arrested and charged for the theft of rubbers, wheelbarrow totalling about Le 1, 000 000 (£100) because I had the keys to the store. I believe the owner's brother had carried out the robbery because he was jealous that I was placed in charge of the business.

Boy 2 said he was taken to the police station, and the treatment at the police station nearly killed him. He said:

I was 15 years old when I was arrested and locked up at the police station. I met grown-up men at the cell who told me to take off my clothes and I was raped. Before that, I was also attacked by other inmates who slapped me and asked for candle money. I gave them Le 10.000 (£1.00).

He continued:

On my first day at the police cells, I felt ill, as the inmates had taken my clothing, I had no clothing on. The police did nothing...my friend was the only person that came to see me at the cells. There were two cells, one for men and another for women. I had no medicine from the police; it was my friend who brought medicine and other things for me... I was then charged to court.

When I asked what his experience was at court, he said:

I was treated harshly by the court. On the first day at Court No, 1, Magistrate Pa Shillon was away; he did not attend. I was taken to the Remand home. I was initially attacked by the boys but was left alone when they realised I was unwell. However, at the Remand home, I was given some cough medication by the officer in charge, but no doctor came to see me.

He went on further to say:

I was at Remand for seven days. After the 15th of May 2014, Pa Shillon sentenced me to 18 months for stealing water gallons and a wheel-barrow. Before, the sentence, the court clerk advised me to plead guilty so that the magistrate would release me instead of sentencing me to prison [Approved School]. I pleaded guilty as advised by the court clerk. I was sentenced to 18 months to the Approved School. The magistrate asked for my relatives, but I have none in Freetown. I had no legal representation and was placed in a court cell on the 23rd of May 2014; then I was sent to the Approved School. No one has ever visited me here, even my only friend. Maybe, he does not know my whereabouts because I know he would have come to see me. I have never committed a criminal offence in my life... I was made captain, a head boy while here at the Approved School.

When I asked why he had been made captain or given that position, his answer was:

because I behave myself. My role as a head boy includes disciplining other inmates, meaning; telling them what to do. For example, if they fight, I report them to the officers. I diffuse fights by talking, counselling other inmates. I also nominate which of the boys can be chosen to help with the preparation of meals.

The nomination of boys to help with food preparation is a task that represents a significant role and one that equivalates to status within the inmate population. The person (child offender) that helps prepare meals gets a more substantial portion and gets the opportunity to be out in the compound with the adults (officers). He is perceived as well-behaved. He is let out in the yard to help with chores, which include gardening, ensuring everything is done as he is told, and having the opportunity to play a game called “draf” with the guards. This game is also known as board game draughts, consisting of a wooden draughts board of 36 figural counters and squares divided by marked lines and dyed to

create a chequerboard effect.²⁶ This form of hanging out with the guys is similar to giving little treats such as sweets to a child that has done well.

When I asked what he intends to do after his release, Boy-2 said:

I want to learn how to drive so that I can go back to my home town of Bo with a skill. The officers and the Principal told me that if I continue to comport myself well, I would be allowed to stay within the compounds of the Approved School until I learn a job like driving.

Narratives of how inmates are treated, including of juveniles being beaten up by other inmates asking for candle money while at police stations, were described by all juvenile participants locked up at police stations. It would seem that this was the culture for new inmates. The police seemed to be aware of this culture but turn a blind eye to it. When I interviewed police officers about the culture, their responses were vague. One of them said, 'it is a different world out here'. Another said, 'I am not aware of it', while another commented that, 'if we catch anyone doing that, they will be dealt with accordingly'.

Boy-2's case has highlighted conditions at the Approved School, the role of court officers, and how that can shape the outcome of cases. The lack of legal representation is one such condition. Where juveniles are seen to be engaging with authorities (Remand officers/wardens), they are given privileges such as the head boy titles. They can even be recommended for an early release.

Boy-2's circumstances, however, showed that he had nowhere to go after his release. Moreover, it highlights that there are no rehabilitation programmes by the GoSL for such children. Interestingly, despite the officers' lack of resources at the Approved School, they promised to allow Boy-2 to stay in the compound grounds (at the Approved School) after his release. Arguably, officers' support for inmates on their release was similar to rehabilitation if such promises materialised - for example, being given opportunities for upskilling, including learning to drive a vehicle and becoming an entrepreneur.

I asked a participant at the Approved School what the process of releasing a child from the Approved School ordinarily entailed. I was informed that where a child was well-

²⁶sierra leoneheritage.org – accessed 16 July 2020.

behaved and a relative came forward, the Approved School would recommend him/her to the MSWGCA for an early release on the grounds of good behaviour. The child would then be released subject to supervision by a member of staff from the Approved School.

Boy-2's case bears a resemblance to 'Boy-3', whom I saw in the grounds of the Remand home (Freetown: Kingtom) helping out with chores, including cleaning and cooking for other inmates and officers. Boy-3 had been charged with murder. His offence was committed in the rural area, but he was sent to the Remand home in Freetown. Following his release by Magistrate-A, who found him not to be criminally culpable due to his age (less than 14 years), he was allowed to stay within the Remand home as he had nowhere to go. However, Boy-3 could not return to his family in the village as no one wanted him there any longer. Notwithstanding, the Remand guards had allowed him to stay in the compound grounds on account of his good behaviour while they were looking for a new home for him.

I found all four magistrates in this study to be aware of the age of criminal responsibility. However, one, Magistrate-B in particular had distinguished this as:

there are two ages in which a child will be deemed culpable; ages 10 and 14. There is discretion under Cap 44 (s.18) for a magistrate to determine the age of the child. Under CRA 2007, this states that 14 years is the age of criminal responsibility. What is established in both acts is that a juvenile is below the age of 18 years. We refer to them as offenders and accused, and we use Cap 44 to prosecute or defend matters concerning juveniles.

However, under Cap 44 (section 2), a child means a person under the age of 14, and a young person is from age 14 years upwards and under 17. Further, Cap 44 does not state what the age of criminal culpability is. Similarly, Defence for Children International-Sierra Leone (DCI-SL), in their study in 2010 of three magistrates, found all to be aware of the age of criminal responsibility for juveniles, including a profound lack of knowledge or disregard for the age of criminal culpability and its implications. Two cases mentioned in DCI-SL's (2010) report about the juvenile court-involved underage children that are discharged to MSWGCA only at the point of judgment. One of the cases involved proceedings that lasted for 209 days, and the other involved 23 adjournments that were made before the magistrate's verdict. DFI-SL's (2010) study also shows a significant gap

between reported practices and police behaviour when conducting investigation and authorising pre-trial detention of child offenders. In Freetown, for example, between eighty-eight and eighty-nine per cent of juveniles at the Remand home and Approved School, respectively, had been detained with adults while at a police station. Prolonged delays in custody and detention of children with adults at police stations was a finding also made in this study.

When I asked Magistrate-B about what is meant by juvenile justice in Sierra Leone? He said:

This relates to all criminal matters concerning children; for example, sexual offences, murder, and assault amongst other offences. However, if a juvenile is charged jointly with an adult, we prosecute the juvenile as an adult. If charged alone, we remit the matter to the juvenile court, which is in Freetown. If jointly charged with an adult, I proceed under the Criminal Procedure Acts, 1960, and the child will be treated as an adult.

When I asked the same magistrate about residency arrangements for juveniles pending the conclusion of age assessments in rural areas, he had this to say:

The child can be bailed, and if not, the child will be sent to a Remand home. The nearest Remand centre in Lunsar is in Port Loko. There are no Remand homes for children in the provinces. The Remand home in Port Loko is a state correctional centre [prison] that houses both adults and children, it used to be called a prison until the name changed to Remand.

The underlying change of name from prisons to correctional centres is unclear. However, it raises questions since there are no reformation or rehabilitation programmes at the prisons that merit the conversion or a name change. It is also not conclusive whether this act by the GoSL can be referred to as a corrupt practice.

6.3. Corruption

The fact is well-established that Sierra Leone's government officials are corrupt (Gberie, 2009; Abraham, 2004, 2009; Dugal, 2009). Transparency International, a Berlin-based Organisation, ranked countries according to the perception of experts and business people about the level of a country's public sector corruption and those entrusted with the

power to account for the delivery of public services. Transparency International defines corruption as “the abuse of entrusted power for private gain”²⁷. A study carried out by Marie Chêne of Transparency International in 2010²⁸ shows that corruption permeates almost every sector of Sierra Leone’s public life. This shows that the judiciary and law enforcement agencies are of particular concern. It shows political institutions to be corrupt, followed by the police, the judiciary and public officials. Like the police, court officials are also bribery-prone. The bench, in particular, stands to be the most corrupt institution in the country. The studies of Boy 2 shows corrupt practices by court clerks, including the payment of bribes and the issuing of misleading advice to induce payment of bribes.

Corruption by court officials was apparent, as confirmed by Magistrate-A's statement above that court files go missing for no apparent reason. It contributes significantly to repeat adjournment of cases that mostly leave parties with no choice but to settle matters between themselves or, worse, for the accused to continue to stay in custody for extended periods.

I experienced a similar situation in missing court files during my training period when my pupil master and I visited the high court's main court administrative room. Each time we attended the court, we had to check the progress of our Chamber's cases, for instance, to establish whether other parties had been informed about official court orders (such as orders from judges or Master of the Court). There was an incident where one of our files had gone missing. My pupil master and I initially checked with the Master of the Court (an administrative officer of the court) whether our case had been issued (entails filing details of the case at court). The Master said that he had sent the file to the main administrative file room at the high court in order to progress the case. It would appear that the court clerk who was dealing with the case had some personal interest because when we asked for the file, he said it was missing. My pupil master told him firmly that he should release the file. He told the court clerk that he had the file and that he should produce the file immediately. The file appeared 'miraculously' not long after this, although it could also mean it had been misplaced. Finally, however, my pupil master turned to me and said: 'This is what we have to deal with all the time; files go missing for no apparent reasons'.

²⁷ <https://www.transparency.org/en/what-is-corruption>

²⁸ <https://www.transparency.org/country/SLE-2018>

Another set of juvenile administrators that deal with juvenile files are the police. It is a well-established fact that the juveniles' first encounter with officers of the justice system are the police. However, the police are notorious for taking bribes in Sierra Leone. This study shows how minors were beaten up and ordered to pay money to older inmates in prison. This in itself is not bribery. However, the fact remains that the police are aware of this practice and did nothing about it. Therefore, an inference can be drawn that they might benefit from such practices or are just complacent (because there is nothing in it for them). Magistrate-A's account of corruption within the police and other studies (Albrecht, 2010) adds to police corruption.

6.4. Conditions of holding facilities and lack of resources

My interview of a juvenile's (Boy-4) account of his experience with the legal system is as follows: Boy-4 gave his background as the eldest of eleven siblings. He was born in Daru village in the Kailahun District (southern part of Sierra Leone). He was 17 years old when I interviewed him. He said his previous involvement with the law concerned beating people up if they annoyed him but that he was not a thief. He would do menial jobs like fetching water for people and be paid to break stones for building construction purposes, besides managing a bike hiring business.

He said he was accused of the theft of Le 2,000 000 (about £200.00) by a man he had assisted with house chores. He had been branded as a thief, beaten up by a mob before being taken by force to a police station. However, when the police at Lumley Police station (Freetown) asked for witnesses, the complainant was unable to produce any against him. He believed the complainant's son had stolen the money.

Boy-4 described his experience at Lumley Police station, Freetown (August 2014), which included being asked for mosquito coil and candle money by inmates. He said he was locked up with adults charged with serious offences, including rape and murder. There were 12 people in his cell, and he was the 13th person. He described awful sanitation conditions, including there being no toilets, urinating in a pipe, using a plastic bucket as a toilet, and sometimes emptying this through the cell window due to the stench. He said that inmates slapped him while he arrived at the police cell, where he was held for one day. However, he appeared at Court No 4 the next day. He said that before leaving the police cells, the inmates raised Le25.000 (£2.50) between themselves and gave him the money to

buy food. They also paid for other items that he had while in prison. The other inmates also advised him not to plead guilty.

Boy-4 said that when he appeared in court, he was sent to Pademba Road (state prison) by Magistrate-S on 1st February 2015. He said the magistrate spoke in English while the court clerk interpreted in Krio. The complainant had produced a false witness. The prosecution also produced an expensive phone that was said to have been found on him at the time of the alleged theft. The magistrate had not ascertained his age and had, therefore, adjourned the matter to 15th February 2015. [This confirms that magistrates consider the charge sheet regarding a defendant's age, although it is not certain whether the charge sheet was used].

When taken to the state prison, Boy-4 was told by a prison officer "welcome to tight corner" (a place where there is no room to manoeuvre). He was searched and asked to declare his money by the prison wardens. He said he refused to hand over his money as he knew it would not be returned.

Boy-4 said this of the state prison:

I remembered twelve accused persons from the court, I was amongst the youngest. We were met with someone called the red band. He was the fiercest. All the inmates were told red band would search us. I was spared from the beatings and maltreatment for the first time in custody [shows he is a repeat offender] because of an inmate that knew me. The other inmates were stripped naked by red band. The sanitation of prison was far worse than the police cells; we had to toilet in a plastic rubber that had no cover, the food was terrible, and every other condition was worse... There were 375 people in one cell block. I know this because the prison officer counted the number of inmates, one at a time loudly. When inmates' names were called, they queued to one side at the end of the count; I heard the number 375.

Inmates were packed like sardines. We lie in rows, a row up and a row down. Where the rows are full, and some inmates could not fit into rows, one person will open their legs widely, and the next person will sit on that person's widely opened legs, and the process will be repeated. Others who

could not fit in this process will have to stand. I had to be in a position of sitting down in one spot until morning. The smell was awful. The place stank so much that I got used to the scent. After all the inmates had lined up to sleep, the red band runs on the rows of bodies from one row to the other. The cells were filled with bed bugs and other insects. When the bugs stung the body, it leaves a rash. The bugs are called “karagba”. At about 5-6 p.m., rice was brought to the cells when I asked for sauce, the red band slapped my face and said: “why are you asking for sauce, where do you think you are”? I could not eat the rice, so I gave it to the “Kenkaley”, a person who has lost so much weight and looks like he has got a tail.

Before we left for the court in the morning, the officers will shout out our names and also say “court poo go na dor”; meaning take the poo outside. When we attended court while waiting for our cases to be heard, I will start “bolla bolla”, (this is a form of begging people for money) to people who attended for their hearings or went to accompany other people. I will raise about Le 20.000 (£2, 00) each time I was at court. Sometimes people will buy me food. So, I looked forward to going to court, and I always share my food with other inmates.

Boy 4 said that he had no legal representation in court and was sentenced to one year and four months at the state prison for theft. He explained:

I was taken to the Wilberforce block that had 785 people. This block is divided into apartments; one apartment has about 40 cells. One cell should be for one inmate, but this had about 50 people with no bed but a dirty blanket. Between 6-7 months I was in prison, I started having rashes.

It was challenging to corroborate what Boy-4 said as I was not permitted to attend the state prison. However, I noted he had given a vivid account of what had happened. This is evidenced by his eagerness to tell his story about the injustices he had suffered, even though he was aware that I had nothing to offer him. In order to ensure the accuracy of his accounts, I continued to probe and asked questions such as I said I was unsure how he had

arrived at the numbers, that these did not add up because 50/785 should be about 16 people to a cell (if there are 40 cells). He said some cells had no one in them as they were in a dilapidated state. I asked whether he knew of rape incidents while in prison. He said there was a 60-year-old inmate who was convicted of malicious damage, stabbing, robbery, manslaughter and murder and raping boys in prison. Boy-4 further said with an unhappy face that no one, including family members, had visited him while in prison. When I asked Boy-4 whether there were boys under 18 years old in prison, he answered that there were boys much younger than him in the same cell, who might be about 16 years old. However, on his last day, about two weeks before my interview with him, he said a prison officer called Mr Bull was kind to him. He gave him some clean clothes, money and counselled him before he left prison [it is not clear whether Mr Bull was acting on behalf of the GoSL, NGOs, or his kindness was just a gesture of goodwill].

Boy-4's case raises many issues. These include the lack of legal representation, which places child offenders at a high risk of entering the juvenile justice system. Other issues include the inadequacies of the police not following due processes, magistrates not conducting proper age assessments of juvenile offenders (although it must be recognised following from an interview with one of the magistrates that the age on the charge sheet is what they take into consideration unless a question is raised about this), incarceration of juveniles for minor offences, especially where there is a lack of evidence, correctional (prison) officers taking money from inmates unlawfully and treating prisoners harshly as well as the deplorable living conditions in prison.

Harsh prison conditions and people incarcerated for minor offences and minors in prisons are corroborated in other studies by SL2018, HRR. For example, a previous study conducted by Jefferson (2014) of Sierra Leone's prisons shows 13 active prisons in Sierra Leone. These had 2,500 inmates, where 'less than one-third are convicted, and the vast majority are male' (p.50). Freetown has the largest prison capacity with the Pademba Road (built to house 324 inmates), which houses about 1000 prisoners.

On 7 July 2020, briefings from the Sierra Leone Correctional Service reported an incidence of 29 April 2020²⁹ (SLCS, 2020) at Pademba Road prison. It was stated that the incident involved 31 fatalities. Twelve inmates had died from gunshot wounds, with 16

²⁹ <https://slcs.sl/2020/07/08/briefings-from-the-sierra-leone-correctional-service-on-the-incidence-of-29th-april-2020/>

inmates alleged to have lost their lives from 'blunt force', two of illness. One correction officer died while a further 32 correction officers had sustained injuries. Andrew Jefferson's point that the prison was built to house 324 inmates was corroborated. It was stated in the same briefing reported on 29 April 2020 that the prison now houses 'all categories of inmates, especially high risk'. It had 1,300 inmates [but failed to categorise which are children], and there was a 400% overcrowding, with a staff shortage of 40% below capacity (SLCS, 2020).

From the excerpt of Boy-4 above, it is interesting to note how some correctional officers would seem to build a rapport and bond with inmates. Boy-4 described how one of the correctional officers had counselled him and given him money when he was about to be released from prison. This gesture is evident in Boy-3's case (a former inmate who was allowed to continue his stay at the Remand home).

He was treated kindly by the warden officers even after his release. Similarly, the same kindness was shown in the case of Boy-2. He was made a head-boy at the Approved School as described above. In addition, he was promised help with the prospect of upskilling (learning to drive) and a bike purchase by the Approved School's head to enable him to start his own business. While this may be classed as a form of simple rehabilitation, the generosity that was shown towards offenders hardly implies that inmates are well treated by their jailers all the time.

While prisoners can be said to be generally horrible to new inmates, inmates create an atmosphere of camaraderie after a while. For example, Boy-4's story is insightful of how inmates collect money amongst themselves to help one another and defray expenses for prison (Pademba Road). This circumstance draws light to the understanding of such inmates' mindsets about their perceptions of the criminal justice system in Sierra Leone. They assessed that Boy-4 had no chance of being released from court due to his lack of networks, money or legal representation and would end up at the state prison with no help from the state.

The above cases highlight a damning account of the treatment of children in conflict with the law in Sierra Leone. Generally impoverished and male (mainly poorly treated because they are boys), they lack support from families. Not having strong links of support and networks or representation deprive child offenders of justice. The cases mentioned show juveniles ending up in state prisons for petty offences. This practice is

possible where children lack representation or a patron to help with financial support. In effect rendering them socially culpable. The cases highlight the GoSL's overwhelming failure to provide adequate infrastructure and other resources necessary for a juvenile criminal system's proper functioning. This point is given weight by Wade (2014) (among others: DCI-SL), who shows in his pictures the lack of buildings to house suspects in police custody in rural Makeni (in northern Sierra Leone) to be nothing short of shanty houses.

In 2014, DCI-SL and the Ministry of Social Welfare, Gender and Children Services (MSWGCA) conducted a report and elaborated on the judicial system's lack of resources. Both highlighted a plethora of failures involving institutional constraints, lack of care by parents/guardians in children's welfare, absence of support for their children when in contact with the law; weak complaints structure; lack of principal witnesses and court officers during proceedings. They noted that primary witnesses stayed away or irregularly attended court sittings and, even when subpoenaed (compelled), to do so by the court. Rachel Harvey's (2000) previous study corroborate these accounts in confirming that parents of child offenders do not always turn up in court.

Arguably, the thinking behind most parents' absences in juvenile proceedings is due to financial reasons and the notion that children need to be taught a lesson (Bledsoe, 1990), especially the bad ones or those that are in conflict with the law. The impact is that the lack of parental support prevents child offenders in custody from securing an early release from the justice system. Besides, parents lack of support breaches the provisions of UNCRC A. 40 (2) (b) (iii), which require parents to support their children when in conflict with the law.

UNICEF and MSWGCA piloted (DCI-SL, 2014) a "bail home" model in Kenema and Makeni in which children released on bail were placed with foster families. However, there were difficulties finding families who would take them for fear of the children escaping and breaching their bail terms. The same study also shows that children in contact with the law had no adults who were willing to act as sureties when held in custody pending trial. UNICEF suggested that alternative homes should house children instead of Remand centres. Unfortunately, the state has no provisions for housing child offenders after their release. This task is left to be taken up by benevolent people or organisations such as NGOs. For example, "Don Bosco Fambul" is an NGO that provides an alternative home and supervision for street children amongst its other roles (<https://donboscofambul.org/>).

Another significant lapse of the GoSL is its lack of infrastructure or adequate infrastructure to deal with juvenile justice. For example, s3 (1) of CAP 44 specifies that a child in contact with the law must be tried alone unless charged with an adult. DFI-SL (2010) states that no police stations or FSUs have detention facilities explicitly designed for juveniles, which is also a finding of this study. For those children in contact with the law whose parents have the financial means to settle their matters, they escape the harsh legal system. In contrast, others are left to languish at Remand homes, the Approved School or the state prison for lack of trial dates or inadequate legal proceedings (DCI-SL 2014).

In light of the above, corruption is reported at even the highest level of the justice system in Sierra Leone. However, the concept of corruption should be treated with nuance since informal practices of dealing with justice do not necessarily mean that the practices are corrupt (see Boy-5 in the next section). Nevertheless, the added lack of equalities and resources in the administration of the justice system impacts juveniles, such as free legal representation, which is detailed in the next section.

6.5. Networks - Legal Representation and Funding

Juveniles must be represented when in conflict with the law in the interest of justice. Legal representation is imperative to enable witnesses not to be frightened or feel intimidated during court proceedings, for example, during cross-examination. Further, legal representation allows both parties, the accused and the complainant, to clearly put forward their case to the court. Thus, it reduces miscarriages of justice as well as wrongful imprisonment. Some scholars have argued that oral arguments by legal representatives can influence the outcome of a case as it helps to focus the minds of justices when presenting possibilities for fresh perspectives on a case (Johnson et al. 2006), specifically in an adversary legal system³⁰ such as Sierra Leone. In this study, I observed an effective oral legal presentation style in a juvenile's case at the high court in Freetown (see below).

DCI-SL and MSWGCA (2014) reported that juveniles are less protected when they cannot afford or access free legal advice. There is a provision under international law emphasising this point under ICCPR (1966) A14 (3) (d). This states that juveniles have the right to be tried in their presence, defend themselves in person or be defended through legal

³⁰adversary is defined as one's opponent in a contest, conflict or dispute. Each party in a case takes opposing positions to argue their case (Oxford Dictionary).

assistance of their choosing and being informed. If they do not have legal assistance, they should have legal assistance assigned to them, in any case where the interests of justice so require, and without payment where they do not have sufficient means to pay.

In Sierra Leone, as Sandefu et al. (2012), Fofanah (2004), DCI-SL (2010, 2014) and others state, due to the shortage of legal representatives, most juveniles end up at the Remand homes, Approved School or the state prison. The child offender is supposed to be told of their appeal rights (s41 Cap 44) if found guilty as charged. However, they are not generally told of their rights to appeal to the high court or the supreme court or receive free legal representation as required by international law. The practice of not providing free legal representation to juveniles is contrary to UNCRC A40 (2) (b) (v) and ICCPR A14 (5).

The right to free [somewhat] legal representation by Sierra Leone's government only came about recently by the enactment of the Legal Aid Act 2012 (LAC 2012). However, LAC 2012 is regulated by the Legal Aid Board, which was only launched on 8 September 2016. In effect, free (to some extent- please see below) legal aid was not provided until after September 2016. DFID has been responsible for setting up legal aid services as part of the Ministry of Justice's campaign, called "Scaling up Access to Justice Leaving No One Behind" (British High Commission Freetown and DFID Sierra Leone, 2016). Sierra Leone's Legal Aid Board should be an independent, not-for-profit establishment that collaborates with the Attorney General and Ministry of Justice Office. Britain's support for Legal Aid in Sierra Leone, which is somewhat ironic given the drastic reduction in legal aid in the U.K. (Stein, 2001), is part of DFID's contribution to the U.N.'s Safety, Security and Access to Justice Programme (Poate et al., 2008).

In Sierra Leone, legal aid representation applies to criminal and civil cases and should fund a case in its entirety (s9 LAC 2012). The LAC 2012 does not stipulate an award limit for funding cases, and eligibility is based on a means test and not a merit test. In England and Wales, eligibility is based on both a means and merits test, and most (civil) cases are excluded under legal aid. However, as with the U.K., the statutory charge applies. For example, where a legally aided person is successful in recovering money from their case, legal aid costs will be recovered by the Legal Services Commission. In Sierra Leone, 90 per cent, and in the U.K., 100 per cent of the costs could be recovered. In essence, there is no free legal aid if the recipient is to pay back their legal aid costs.

In Sierra Leone, complaints about legal aid funding are initially to be reported to the Executive Director. If a complaint is not satisfactorily handled, the matter can be reported to the Board Chairman of Legal Aid.

This research shows that Sierra Leone's legal aid system should be accessible to anyone earning below a monthly salary of Le 500.000 (about £50 - Minimum-Wage.org), which is also the minimum wage in Sierra Leone. The research shows that the current flaws of the legal aid system in Sierra Leone have started to be marred by corruption. A participant of this study in 2017, Boy-5, reported that money was taken from him by (state) lawyers involved in his matter. Although he received legal aid, his case was not concluded due to lack of representation, which can imply corruption but can also be evidence of a shortage of legal personnel.

Boy-5's case concerns a street child that I enrolled at a Freetown secondary school. I paid his tuition and maintenance for two years when he was 17 years old. In 2017, I bumped into him at the High Court in Freetown whilst on another matter. He told me he was accused wrongly of rape of a minor and was on bail but that almost Le 30.000.000 (£3,000) had been spent securing his bail.

He said this:

Just as a way to survive, I helped a friend run his small shop, the pote [concerns the sale of alcohol, cigarettes, drugs including marijuana]. On this particular night at about 9.30 pm, a child in the neighbourhood, about 11 years old came crying at the pote that her mother threatened to beat her up for playing late in the street and not to return home as a punishment for staying out late. She was pleading for someone to speak on her behalf. I knew both the child and her mother well as I was providing them with domestic help. I reassured the girl to stop crying and that I would speak to her. I told her to sit and wait in the next-door room until I finish work. I later found the girl had been sleeping on the bed when an hour later, her mother attended the pote, accompanied by a policeman and the child's uncle, without any questions slapped and beat me up. I was accused of harbouring and molesting a minor. I was taken to Hill Station Police [Freetown] where I was interrogated, locked up and later charged with rape of the child.

I was locked up at Pademba Road for eight months before I was given bail. My father's brother secured my bail though.

With the help of legal aid representation, he still had to "waka the case"; meaning, doing whatever possible to win the case [which involves bribing relevant legal personnel or informal means of parties agreeing to resolve the matter].

Boy 5 said:

There have been repeated adjournments; the court clerk has been demanding money from my uncle and me and threatened that I would be jailed if I do not cooperate with him. I have to drop out of school and now work full time doing masonry work to pay back my uncle and continue to "waka the case". My lawyer had stopped attending court; I do not know why.

I thought of assisting Boy-5 through legal representation, as I was qualified to do so, having trained as a barrister and solicitor in Sierra Leone, which had formed part of this study. However, before offering to represent him on a pro bono basis, I explained the nature of my study. I asked if he would be willing to have any representation that I make on his behalf documented as part of this study. I made it clear that he had no obligation to participate in the study (as I was willing to provide him with free legal representation in any event). I said my intervention as a legal representative would not guarantee an acquittal. He consented in writing to taking part in the study and for me to represent him.

Further inquiries on the matter suggested where the alleged offence took place; the alleged victim's mother took her to several women in the area, including "sowes" [female cutters], to inspect whether the child was still a virgin. Unfortunately, I have no details to substantiate the outcome or the facts. However, it is common practice in Sierra Leone for girls to be taken to older women to examine them physically whether they are still virgins.

On the return date of Boy-5's adjournment, I attended the High Court and made submissions to the judge dealing with the case that I would like my name to be recorded on the court records. Among the submissions that I made on behalf of my client, I mentioned that I was unsure why the legal representatives, including the Claimant's, had failed to attend recent court hearings. Accordingly, I sought the judge's permission to read the court file to defend the case. The judge acknowledged my submissions and adjourned

the matter for another date. After the hearing, I used my contacts at the Director of Public Prosecutions Office (DPP) and made a complaint on behalf of Boy-5. A senior officer at the DPP's office told me that he had noticed a pattern in some lawyers collecting money to represent legal aid cases and not following up with the cases. He referred me to the Legal Aid Department, where I met with the legal representative dealing with the matter. She provided helpful insights into the case but failed to explain why the matter had never progressed.

My intervention led to re-allocating the case to another legal personnel at the Legal Aid Board (LAB). I was reassured that a legal representative would accompany Boy-5 at his next court hearing. However, neither LAB representatives nor the Prosecution attended the returned hearing. I made submissions for the case to be struck out for lack of evidence, absence of medical evidence linking Boy-5 to the offence, and the Claimants' lack of witnesses and failure [want of Prosecution] to attend. The judge adjourned the hearing again to allow the Prosecution to put forward evidence for the final time. I took permission from the judge for a leave of absence for the next court hearing as I had to return to the U.K. I pleaded with him to make good his promise to strike out the case if the Prosecution failed to prove its case. Boy-5 attended court alone and the judge struck out the case for lack of evidence.

Boy-5's case demonstrates, as with other cases in this study, the impact of being represented and having strong networks. In addition, it highlights other factors that affect legal decisions. Following representation, in this case, the judge acted fairly and judiciously, but the corruption of court officials, such as the court clerks, had prevented an earlier resolution or outcome. The benefits of legal representation in providing access to justice cannot be understated, as stipulated under the principle of fair trial in the rules of equity and international human rights law (see chapter four). Where there is a lack of legal representation, justice could be denied to the people who need it most. Therefore, it is not surprising that most accused juveniles spend a long time at Remand homes or even prisons, while victims cannot follow through with their cases due to lack of legal representation, amongst other factors. Poverty and lack of funding, therefore, remains one of the significant problems impeding access to justice in Sierra Leone (Dale, 2008), especially children in conflict with the law who are often from poor and marginalised backgrounds.

It is still the case that NGOs represent a majority of juvenile cases in Sierra Leone. This was a point documented by DCI-SL (2014) that NGOs provided approximately 80 per cent of legal representations for children in conflict with the law. However, paralegals and NGOs' can apply for funding to represent litigants or victims under the LAC 2012.

6.6. Other Factors – Rehabilitation and Reintegration Support.

Under the criminal law procedure rules in Sierra Leone, before a child offender is sent to the Remand home or Approved School, they must first be charged with an offence. If bail is sought but not granted, the child offender will then be sent to the Remand home to await trial. It must be noted that generally, bail is not given for offences such as murder; hence a child offender will be held at the Remand home if charged with such an offence until they are convicted or released by the court. If convicted, they will be sent to the Approved School, where they will serve their sentence. However, they should not continue to live at the Approved School after they reach 18. If a child offender's sentence continues after age 18, they can be transferred to the state prison. However, the SL2018 HRR has helped in documenting just how juveniles are sent directly to state prisons without going through the process described. It could be due either to the incompetence of administrators or a difficulty in determining the age of a child. Other factors include lack of patrons to stand as surety in cases concerning bail and lack of state resources in the administration of juvenile justice. However, in this study, a social worker said a child's behaviour while in custody is key in assessing their release from custody.

The stated aim of the juvenile justice system in Sierra Leone reflects British law and practice due to colonialism. This is to reform and transform juvenile delinquents into functioning members of society by giving them skill-based training programmes such as carpentry, tailoring, masonry, and education equivalent to formal primary School education (Harvey, 2000). The Government of Sierra Leone's Child Justice Strategy 2014-18 (CJS 2014-18) states its purpose: to 'develop an efficient and accountable child justice system centred on prevention, rehabilitation, and reintegration' (p21). The CJS 2014-18's aims are in line with the primary goal of what is expected of a juvenile justice system, which is to rehabilitate and reintegrate juvenile offenders. This is in accordance with Article 40 (1) UNCRC (to be treated with dignity and worth and to consider the child's age and the desirability of promoting the child's reintegration) and in accordance with rules 24 and 25 (1) of the Beijing Rules (which provides for the rehabilitation of the juveniles).

This study found that there were inadequate programmes in all three institutions at the Freetown Remand home, Approved School, and police cells to reform and transform child offenders into functioning members. The lack of rehabilitation programmes, including adequate facilities, has resulted in limited and meaningful rehabilitation and reintegration for juveniles in Sierra Leone. There are no discharge packages for children released from the Approved School and the Remand home, and neither has a definitive structure of returning children to their communities. Where juveniles are released, they are largely left to fend for themselves. With no education or vocational skills and given their isolation from their families, many find themselves living with friends or in the streets of Freetown.

Where juveniles are guilty of an offence, the courts have the power to send them to the Approved School. However, it is not clear how long a juvenile should be held at the Approved School, despite the requirement under Cap 44 (s.35). This states that children should not be sent to the Approved School for more than two years and should not be detained after they are 18 years old. Magistrate-A stated that child offenders should not be held at the Approved School for more than five years, but there is no stipulation about such requirements under Cap 44.

When I asked, what is the range of sentencing for serious offences, Magistrate-A said:

convictions vary, and if convicted, the children are sent to the Approved school, which is a prison for children. The sentences vary, four years, some five years, depending on the age of the victim. If, for example, the victim is a 17-year-old girl and there is a two years old child concerning the same offence which has been committed against them, the punishment will be different; since the 17 years old is nearly an adult, the impact of the crime will not be as grave compared to a 2-year-old. ...the Remand homes should only house juveniles for a temporary period; however, they end up being held for many years without parole.

Magistrate-A's response above concerns the redress for victims of crime by juvenile perpetrators. Nevertheless, she pointed out the inconsistency in the sentencing procedure regarding juveniles that are sent to the Approved School.

6.6.1. Approved School

During my visit to the Approved school in Freetown in March 2015, I observed that guards' sitting areas were structured to allow surveillance of the dormitories. I noted two children carrying food in a wheelbarrow from the kitchen towards the compound's main building. The guard noticed my surprise and explained that those who behaved themselves were given privileges to help with the cooking and other chores and given little treats. I also noticed a separate building, which housed girls, but there were no girl inmates during my visit.

There was a building containing a workshop with barely any work tools or furniture in it. I saw a dwelling that forms part of the workshop. On my visit, women were sitting casually, and a dog lay nearby. I noticed women cooking outside on a pot on top of three stones [usually called fire stones]. Life seemed normal at the Approved School, and the atmosphere was very tranquil compared to the hustle and bustle outside the school's gates. However, the Approved School does not seem like an ordinary school as it had one classroom and lacked basic furniture. To be precise, it is a prison. I noticed that the children slept on slabs made from concrete (see Figure 3). However, some children had to share slabs because some of the slabs were broken in places and not enough to fit them individually. The children kept their possessions in their dormitories. A view of the Approved School's corridor leading to the dormitory and the dormitory is shown in Figures 3 and 4, while the Approved School classroom is shown in Figure 5 below.



Figure 3: Approved School – dormitory corridor



Figure 4: Approved School dormitory.

When I interviewed one of the two teachers about the lack of facilities at the Approved School, he said:

the school has not benefited from qualified teachers and standardised curriculum used in public schools [government schools] supported by the Ministry of Education. The Approved School is not able to employ qualified vocational trainers or accredited ones. The only classroom lacks basic facilities (Figure 5).



Figure 5: Approved School classroom.

Just as the Approved School, I observed similar deplorable circumstances at a Remand home.

6.6.2. *Remand homes*

There should be four Remand homes in Sierra Leone situated in Freetown, Makeni, Bo, and Kenema. I visited the Remand home at Kingtom in Freetown. My interview with a participant, Magistrate-D, confirmed that there are now only two [functioning] Remand homes, Freetown and Bo Remand homes. In this study, the Remand home staff in Freetown were generally helpful and cooperative with their interviews, and each meeting lasted between 40 minutes to an hour. The children appeared to be in the age range of between

12 to 17 years old. One of the senior officers told me there were 22 inmates during my visit; nineteen boys and three girls. Two of the girls were charged with murder: one was accused of drowning a baby in a bucket, the other of killing her boyfriend. The third female inmate was detained for assaulting a police officer.



Figure 6: Kingtom Remand home – corridor of the dormitories.

At the Kingtom Remand home, I was allowed to visit the dormitories. I was told that I should be accompanied by a staff member (warden or social workers) as the children could get violent. I was also advised to keep valuables and leave my mobile phone and handbag for safekeeping with the guards to prevent theft from the children whom the guards described as brilliant thieves. I observed that some of the slabs on which the children slept contained foam mattresses. There was no electricity in the cells. When I made enquiries about this, I was told that it was not safe to have electricity in the dormitories due to suicide attempts by some children in the past. Instead, light is usually lit through a torch on the walls by the guards when needed. There are four dormitories (cells) that should house about ten inmates in each. The females had their cell, which contained three girls. The children were not adequately spaced out, although only three dormitories were occupied. There is a room that is kept for solitary confinement, but there was no child in

solitary confinement at the time of my visit. There is a rudimentary classroom with chairs and a blackboard. The toilets were filthy and did not have running water.

The children's (juvenile) block had gates and a veranda where they could see others and likewise be seen. The children were given access to walking freely in that area of the corridor, but the main gates leading to the compound were locked and staffed by guards (wardens). In every aspect, these so-called dormitories looked like cells or prisons (Figure 7).



Figure 7: Kingtom Remand Home – a dormitory

Figure 7 is one of the main dormitories housing the children at the Kingtom Remand home. This dormitory had little space between the slabs for the children to manoeuvre, and some slabs lacked foam mattresses and mosquito nets. The third building at the Remand home was opposite the dormitories, which had a table and chairs in its corridor where the guards could sit to carry out surveillance on the children. The building consists of another office, which the officers had appeared to have converted into a dwelling. I was not allowed to access that area of the building. There was an outside kitchen operated by the staff and two boys (those the guards considered well-behaved). The boys had privileges such as walking freely in the compound and helping with domestic chores. I will reiterate here that the cooking chore is vital to the juveniles. It represented status and recognition that they were well-behaved and allowed them to associate with the guards and to have more food rations.

The difference between the Remand home and the Approved School is that the Remand home is a holding centre while the Approved school is a correctional centre (prison). Despite this description, I observed very little differences between them. Both institutions are like prisons, although at the Remand home, the children seemed happier. My interviews with the guards at both institutions showed that they were not well paid, and the institutions lacked basic facilities and funding. I was told by the staff at both institutions that there had been no visits from psychiatrists, psychologists or doctors, and health visitors for a long time. The children were hardly visited by anyone except NGO representatives. Surprisingly, the children appeared healthy, upbeat, and friendly and keen to see me during my visit, particularly at the Remand home.

6.7. Conclusion

This study's findings show two types of culpability concerning child offenders and their administration in the juvenile justice system in Sierra Leone. The first is criminal culpability, and the other is social culpability. Criminal culpability concerns legal rules associated with the administration of juvenile justice. In contrast, social culpability arises for children with weak social networks. Consequently, knowledge about children's social networks is closely linked to moral judgments for those with very limited or no social links. This concerns the child and, specifically, whether they are perceived to be good or bad. Social capital concerns resources, such as financial support and social support that a child can access through these networks.

This chapter has shown significant gaps in the legal framework for children in conflict with the law due to the legal framework's lack of coherence. The legal provisions are piecemeal and deal with different kinds of abuse depending on the nature of the offence.

The practice of criminal law has shown that there are different ages in which a child can be criminally culpable. The study shows that 14 years was the age used to assess juvenile participants' criminal culpability in this study. However, a participating magistrate stated why children as young as ten years old are culpable because Cap 44 is the primary legislation dealing with children in contact with the law and offers the magistrate such discretion.

The type of offence and where it is committed is a factor for child offenders entering the justice system. This study shows that those child offenders are convicted and sent to

the Approved School from Western and rural areas. In particular, child offenders that are sent to the Approved School from rural areas are mainly held for minor offences, which included, in this study, theft of a duck and a church ornament.

However, most children at both the Approved School and the Kingtom Remand home were charged with serious offences such as rape. In addition, murder and rape offences ranked the highest in the offences the children were charged with. In contrast, some children are committed to the state prison for petty offences like theft, as Boy-4 in this case study.

Nevertheless, a child offender can be diverted from the justice system early on in their journey to becoming a good person in life. This is because juvenile administrators have the power under Cap 44 to prosecute or dismiss cases. For example, the police, who are generally the first point of contact in the justice system, have the mandate to do so.

Although Sierra Leone does not practise restorative justice, if a police officer is corrupt, a juvenile perpetrator with good networks and finance can easily influence the outcome of a case. In those instances, the police can use tactics such as recommending mediation, delay the matter, or show a lack of evidence to justify imprisonment if the case gets to court. Such practices would appear like a diversion of a child offender from the criminal justice system but equally could be considered corrupt and arbitrary. The case study of Boy-2 and Boy- 5 showed corrupt practices by court clerks, amongst others, concerning payment of bribes and giving wrong advice to induce payment of bribes, leading to repeated adjournments. Lack of legal representation makes it more likely for a child to be in the juvenile justice system than being diverted from it.

An example is Boy-4, who, amongst others, was sent to the state prison for a minor offence of theft. In comparison, the children charged with murder at the Kingtom Remand home were not found legally culpable due to successful legal representations about their age of majority. There is no doubt that a child offender is likely to end up in the juvenile justice system for lack of resources, including legal representation, or because of the absence of someone to talk on their behalf or provide them with financial assistance or rehabilitation.

The word "practicable" in Cap 44 and the lack of the word 'proportionality' allows a magistrate broader discretion to deal with a juvenile matter when sentencing or dismissing a case. A judge can be persuaded by arguments that a particular juvenile

offender is generally a good child. However, establishing whether a child is good or bad depends on several factors: their social status, mannerisms, the area in which the offence was committed, and the perception of the adjudicator and the community. Therefore, the construct of a good pickin or bad pickin is significant in administering a child offender.

In this study, perceptions of whether a child in conflict with the law in Sierra Leone is culpable or not depend on whether they are perceived as a good or bad child. With a good character recommendation, they could be discharged of a criminal responsibility/liability or treated more leniently. In other words, and as this study shows, a good child is considered incapable of committing an offence and conversely, an evil child is deemed incapable of innocence or redemption. The term "proportionality" is a new term coined in human rights law and post-dates the 1945 Cap 44.

It could be argued that in the administration of juveniles, judges and administrators of juveniles' decisions can factor in proportionality by utilising the 'best interests' of the child's principle contained in UNCRC and domesticated in CRA 2007. However, judges and magistrates must be practical when deciding cases concerning child offenders since the lack of rehabilitative programmes could challenge their best endeavours. Other factors play a determinative role in the adjudication of juvenile justice. Poverty and lack of funding, therefore, remains one of the significant problems facing access to justice in Sierra Leone (Bowd, 2009); as shown in the above case studies, all child offenders were from poor and marginalised backgrounds. It is not to ignore that most child offenders in this study committed serious offences of rape and murder. It is suggested that they would be less likely to be charged and even less likely to be found guilty if they did not lack social networks and social capital.

This study found that a child is caught up and stays in the legal system principally due to what I call their 'social culpability'. The principle relates to their social networks and social capital, which plays a critical role in a child's moral standing. Therefore, where a child has strong social networks, such as a patron or a legal representative (by NGO/s or otherwise to advocate on their behalf), together with social capital like financial resources or where a child has been socially constructed as a good child, this could lead to the child not being held socially culpable, and therefore also not legally culpable for their offence.

This study shows that despite the lack of formal rehabilitation programmes if a child is perceived to have been behaving well and considered as developing into a good

child, they will be seen as redeemable. This is shown in the case study of Boy-3. He was allowed to stay at the Remand home as he had nowhere to go. This shows that Boy-3 had redeemed himself despite the lack of good social networks or social capital. Likewise, if the participant's promise at the Approved school to assist Boy-2 to set up his own business after his release from custody materialises, this would be another example of a child that is seen to be redeemable. Boy-1 was also seen to be redeemable by a total stranger who pitied him. This study also found that regardless of the crime committed by a child offender, if they are perceived to be well-behaved, with the help of a relative to care for them, the Approved School's recommendations could be made to the MSWGCA for their early release with supervision.

This study further found inadequate programming to be subsisting at all three institutions (the Remand centre, approved school, and police cells), resulting in limited meaningful rehabilitation of children in conflict with the law in Sierra Leone. This study found there to be no discharge packages for children released from the Approved School and the Remand home/s and no means of transporting children back to their communities (especially those that should be reunited with the communities). Where juveniles are released, they are largely left to fend for themselves. With no access to education or vocational skills and with their families isolated from them, many find themselves living with friends or in the streets of Freetown.

It is clear from the piecemeal legislation that, to some extent, it is useful. However, the practice is weak and arbitrary and is compounded by a lack of resources making enforcement of the law and rehabilitation in juvenile justice challenging in Sierra Leone.

CHAPTER SEVEN

CUSTOMARY LAW AND JUVENILE JUSTICE IN SIERRA LEONE

7.1. Introduction

This chapter sets out the extent to which customary law is involved in the dispensation of juvenile justice in Sierra Leone. It starts with the statutory definition of customary law, followed by a description of the impact of Sierra Leone's patrilineal and patriarchal society and other discriminatory practices towards women and children in the administration of customary laws. The chapter then considers the administration of customary law provisions in Sierra Leone during the colonial period and its subsequent incorporation into post-colonial governance. This is to explain the structures that help to shape legal decisions in customary law. That discussion is sub-divided into two: the formal and informal aspects of customary law followed by a review of the statutory provisions that govern the administration of children under customary law. The chapter will move on to the debate on the regulation of paramount chiefs. It will then conclude with the findings of this study that although there is no prescribed law relating to juveniles under customary law, there is some overlap in both legal systems and how paramount chiefs deal with juvenile matters. The criminal law 'derives from two key sources: customary law and the general law' (Gary Potter and Bankole Thompson, 1997:145). Therefore, it is not surprising that juvenile justice is intertwined with these systems where child offenders could be socially culpable for lacking social networks and financial capital, as this study shows.

Section 2 of the Local Courts Act (1963) and section 76 of the Courts Act (1965) indicate that customary law can apply in the absence of statutory law or where there is incomplete statutory law in so far as it is not incompatible with the rules of justice, equity, and good conscience. Further, customary law is defined by s1 of the Local Courts Act 2011³¹ as:

...any rule other than a rule of general law, having the force of law in any Chiefdom of the provinces whereby rights and correlative duties are acquired or imposed in conformity with natural justice and equity and not incompatible, either directly or indirectly, with any enactment applying to

³¹Amended by the Local Courts (Amendment) Act, 2014.

the provinces, and includes any amendment of customary law made in accordance with the provisions of any enactment.

Section 170 of Sierra Leone's 1991 Constitution provides the legal structure of the laws of Sierra Leone and tries to define the rules of customary law, its sources, application and administrators. By s170 (4), the existing law includes any rules under s170 (1)³² that are written and unwritten laws of Sierra Leone 'as they existed immediately before the date of the coming into force of this Constitution'. Customary law means 'rules of law which by custom are applicable to particular communities in Sierra Leone' (170 (3)). Therefore, in Sierra Leone, different communities have different customs. Consequently, there is no definition of customary law beyond it being what applies to custom.

Most importantly, the stipulation by the 1991 Constitution that both written and unwritten laws apply to customary law empowers chiefs to exercise their discretion to make laws where there are no written customs or law. Further, lawgivers in a community include elders, parents and relatives who can have a say in the law or decisions concerning their community. In this sense, lawgivers apply to everyone except for children. The following section will discuss the impact of the 'patrilineal and patriarchal society' (McFerson, 2012:49) of Sierra Leone in the dispensation of juvenile justice under customary law.

7.2.Children's Link with Customary Law in Sierra Leone

Customarily, the male, especially the father, oversees family affairs in Sierra Leone, and this section highlights children's link with customary law in Sierra Leone. It demonstrates how children (and women) in Sierra Leone's patrilineal and patriarchal society 'belong' to their father, showing how women and children are socially constructed and treated under customary law. In addition, the section shows the importance of customary law in improving access to justice (Corradi, 2010). It is worth pointing out from the outset that there is no such thing as juvenile justice under customary law. However, some general laws govern the administration of children under customary law in Sierra Leone. The formal law concerns statutory provisions and government policies, and the

³² a. this Constitution; b. laws made by or under the authority of Parliament as established by this Constitution; c. any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred in that behalf by this Constitution or any other law; d. the existing law; and e. the common law.

informal law involves the unwritten rules and practices of customary law. Sierra Leone is an impoverished nation where most women are poor, and those in the rural areas are the poorest.

The marginalisation of Sierra Leonean women is prevalent in rural Sierra Leone. This is due to discriminatory practices, high illiteracy, the lack of skills, strong lineage, and strong social networks. These factors play an essential role in women's subordination. Therefore, Sierra Leonean women, as with their children, are discriminated against and marginalised socially, economically and politically in the administration of customary laws (McFerson, 2012). For example, 'upon marriage women reside in their husband's locale; the children "belong" to him; and the wife's status and treatment depend on the marriage contract' (McFerson, 2012:49).

Women are traditionally seen as their husband's chattel, and whatever properties they own belong to their husbands absolutely (Smart, 1983).³³ Smart (1983) claims that the perception is that the wife is there to strengthen the financial position of her husband; for example, before the colonial era, a man's personal effects, including his wife, are his property. Agriculture was the primary activity in the rural provinces in Sierra Leone, and a woman would work for her husband (whom the land belonged to) without pay. Smart (1983) says this position changed slightly, allowing a woman to earn and become somewhat independent during Sierra Leone's colonial period in the 1800s. Whatever she earned became the man's property. However, she would be granted personal use and enjoyment over specific property such as her crops, utensils, or personal effects brought into the household or given to her by her husband. Still, at the end of the marriage, any property must be returned to the husband.

Similarly, Corradi (2010) believes that the excluded groups of Sierra Leoneans in terms of human rights (civil and political rights and social and economic rights) are women, children, 'youth' and 'strangers'. Corradi (2010) cites Manning's (2008b:2) definition of the term "stranger" to refer 'to a migrant from another region of the country, whereas "youth" is not necessarily defined by age, but rather socially as a person who is unmarried, landless and without economic and political power' (Corradi, 2010:84). Corradi (2010)

³³Professor Joko Smart is a lecturer at the Law School in Sierra Leone. He was a former Supreme Court Judge and established the Law Faculty at Fourah Bay College; he was also a former Anti-Corruption Commissioner in Sierra Leone.

further says the discrimination of the excluded group, being women and children, is reflected in all layers of the administration of justice in Sierra Leone. However, it varies in degree and applies both to the general law (state law) and the customary law (traditional law), including the rules of adoption, marriage, divorce, burial and property. For example, women are expected to be subservient towards their husbands. Their husband's kin could inherit them upon the death of the husband. Women face unlawful imprisonment, lack of respect for their physical integrity, disrespect for their property rights, including forced eviction from their homes and land; women also suffer from high levels of domestic and sexual violence (Corradi, 2010). Children, too, like their mothers, are the property of their fathers in Sierra Leone.

7.2.1. The 2007 Gendered laws and the impacts on inheritance and adoption in Sierra Leone

If women have a low status in Sierra Leone, children's status is even lower. This is even more the case for children who are charged with criminal offences. The enactments of legislation such as the Domestic and Violence Act, 2007; the Devolution of Estates Act, 2007 and the Registration of Customary Marriage and Divorce Act, 2007 (referred to as gendered legislations of 2007) together with the Child Rights Act, 2007 have marginally improved the social status of both women and children. An NGO called Irish Working Group on Gender-Based Violence (2018, June) provides an essential feature for enacting the Domestic and Violence Act 2007, which is to dispel the dominant social belief that

unless there is clear evidence of broken bones and/ or wounding with bleeding, the blanket response to survivors of Intimate Partner Violence (IPV) is to automatically divert them out of the criminal justice system and into Alternative Dispute Resolution (ADR)/ mediation/ conciliation.

The Devolution of Estates Act, 2007 amends the customary law to give both husband and wife the right to inherit property from each other and allows male and female children equal inheritance rights. The Registration of Customary Marriage and Divorce Act, 2007 enables a spouse or her children (whether through customary marriage or out of wedlock) to claim inheritance. The Child Rights Act, 2007 amended children's status

regarding adoption and fostering. The status of a person in Sierra Leone is pivotal in assessing their social culpability when it comes to the dispensation of justice.

Discrimination against women and girls has continued despite the so-called gendered Acts of 2007 mainly because the Constitution, which takes precedence over any other law (Kamara, 2008 in Corradi, 2010), encourages discrimination against women and children under s27 (4) (d) of the 1991 Constitution. Specifically, the law regarding adoption, marriage, divorce, burial, devolution of property on death or other interests of personal rights for women and children under customary law is precarious as women cannot fully enjoy their rights under the gendered acts. This was a criticism highlighted in the report of the CRC Committee 2015 – CRC/C/SLE/3-5.

In this study, paramount chiefs show that although they are aware of the child rights discourse, they are unclear about how or are unwilling to take this into account when applying the law due to cultural norms. Because of the perceived notion of women and children in Sierra Leone, Professor Smart, a professional participant of this study, also said, “...women and children are seen as chattel, the property of the husband or father under customary law”. Negative perceptions help to foster marginalisation of this group of people because a community’s acceptance of such a perception becomes a binding obligation under customary law since customary law’s validity is based on the community’s acceptance of it as a binding obligation (UN Committee Against Torture (CAT), 2013).

Islamic law is also practised in Sierra Leone. Although it is a distinct type of customary law as it concerns Muslims, it is generally linked to the customary law or traditional marriages³⁴ and issues of legitimacy of children and rights of inheritance.

Smart (1983) says that a child born during the subsistence of a customary marriage is classed as a legitimate child. It matters not whether the husband was impotent or another man fathered the child. Nevertheless, if the new husband is a member of the deceased husband's family, the child belongs to the deceased's family. Suppose the woman remarries and there are no relations of the deceased husband to care for the child; in that case the child becomes the new husband's legitimate child, even though they are not biologically related. However, if a child was conceived during the first marriage but born after a divorce,

³⁴this is a form of marriage conducted predominantly by Muslims - see below for further details in 7.3.2, the link between Islamic law and a child's legitimacy.

he or she will not be considered legitimate. If the child is born out of wedlock, he or she becomes illegitimate (as shown under the Adoption Act, 1989). The child can be legitimated if the parents subsequently marry or the father acknowledges the child through the payment of compensation. However, paternity can only be complete when the natural father assumes some parental responsibility for the child (such as paying towards the child's upkeep, education, making regular contacts amongst other things). Smart (1983) argues that legitimising children is a custom applied in all customary laws in Sierra Leone.

Children born out of wedlock or classed as illegitimate in Sierra Leone are classified as "basta pickin". This is a derogatory term used as a curse to demean and belittle people, especially children who mostly lack respect in the Sierra Leonean culture. The aforementioned is significant to this study because a child offender whose father does not acknowledge paternity and whose mother is poor (with no strong social links or networks) will likely have weak social networks and social capital. Therefore, such a child is more likely to end up in the juvenile justice system.

7.2.2. Adoption and fostering in Sierra Leone

As very little is known about juvenile reformation and adoption under customary law in Sierra Leone, the law regarding adoption and fostering provides a further understanding of a child offender's rehabilitation. Lisk (1992) says that the Adoption Act 1989 was enacted to give formal legal status to adoptive parents, especially juvenile children. The term juvenile in s1 of the Adoption Act 1989 means "a person who is under the age of seventeen years". The Act fails to state that a juvenile means a child in contact with the law (the Child Rights Act 2007 states a child is a person below 18 years).

Lisk (1992) views that customary law has a status of semi-transferring of legal rights during adoption. This means the natural parents still retain their children's legal status during adoption arrangements, and adoptive parents have no succession of parental rights (Smart, 1983). Therefore, the Adoption Act was created to fill this lacuna. However, despite the CRA 2007, the Adoption Act 1989 still applies with a few amendments. For example, under s106 of CRA 2007, a foster parent must be twenty-one years old with proven integrity. The CRA 2007 does not define who is of high moral character or proven integrity. But section 108 of CRA 2007 confirms that a foster parent wishing to adopt should be at least thirty years old. The fostered child should have resided with their new family for a continuous period of six months before the adoption application.

Chapters five and six of this study show how difficult it is for juveniles who have committed serious offences to return to their families. Therefore, as Lisk (1992) argues, it is inconceivable that the Adoption Act (AA 1989) was enacted to address the adoption of juveniles. Moreover, even if the Adoption Act was intended to make it easier for juveniles (that is, children that are in conflict with the law) to be adopted, it is doubtful that a child offender would be adopted so easily regardless of the Sierra Leonean saying that; 'no bush nor dae for trow way bad pickin' [there is no bad bush to throw away a bad child in - Stovel, 2008], as people are mindful of adopting child offenders because they are classed as bad children.

The fostering of children is a very prevalent practice in Sierra Leonean society. Smart (1983) postulates that under customary law, amongst the tribal people, where a child is given to another tribe for fostering, this is a gesture of friendliness. This practice dates back to when the borders opened between the colony (western area) and the protectorate (rural area), and it was a common practice for people to send their children to be brought up by the Creoles (Smart, 1983).³⁵ This was also a method by which many tribal children gained a Western education. It is still current practice for children to be brought up by a person of higher status³⁶ (Bledsoe, 1990), which creates patron and client relationships. The wards or guardians would often name the children after their own family name, but this does not amount to an adoption. Most fostered children can end up as 'good' children, meaning that they can make something out of themselves (Bledsoe, 1990), particularly away from the juvenile justice system.

7.3. The Administration of Customary Law in Sierra Leone

Since the colonial period, the western area has accommodated mainstream legal institutions and governance structures (Fanthorpe 1998, 2001, 2006), thereby affecting the rural population who would have to travel to the western area to access such services. The difference in the customary and general law also created a non-unified judicial treatment between Sierra Leone's population. This division is especially concerning for child offenders. Children may find themselves dealt with under customary law in the rural areas

³⁵Creoles are free slaves of the colonial period that settled in Freetown which was the British protectorate and modern-day capital city (Banton, 2018).

³⁶including financial, political or religious person such as an imam or a pastor.

for acts that are not illegal and which would not be considered an offence in the western area. For example, drinking from a forbidden river, speaking up, disobedience, to name but a few (as shown in this study), could be offences in the protectorate.

There is a debate that customary courts decisions are made without reference to the law. Therefore, local by-laws are often seen as tyrannical, and as a result, they are often a failure of village administration. Hence, its structures are dubbed as kangaroo courts (Parry-Williams, 1993). Despite these limitations, others would argue that customary courts perform a form of restorative justice by settling disputes to maintain social cohesion and create stronger ties within the community (Støvring, 2012).

The power of paramount chiefs to act as political brokers under customary law is reinforced in three legislations: The Tribal Authorities Ordinance 1938, the Chieftain Treasuries Act 1938 and the Tribal Authorities (Amendment) Act 1964. Alternative legislation that governs chiefs' power under customary law includes the 1991 Constitution of Sierra Leone, the Local Government Act 2004, and the Chieftaincy Act 2009.

Chiefs have been influential in politics. The elections of 1957 won by the Sierra Leone People's Party (SLPP) were testing grounds for decolonisation. Independence itself was achieved formally in Sierra Leone in 1961 (Ferme, 2003). Chiefs became an integral part of the postcolonial political formation, 'while remaining the primary gatekeepers to the localities over which they ruled' (Albrecht, 2017:165) through their role in politics. Most chiefs got into state politics in 1961. For example, many SLPP³⁷ members consisted of a mix of "chiefs and educated protectorate Africans" (Hayward and Dumbuya, 1984:64 in Albrecht, 2017), such as Sir Milton Margai, the first Prime Minister of Sierra Leone. By 1967 when the All Peoples' Congress (APC) won the elections, members of leading houses constituted a majority of parliamentary members; for example, seventy-five per cent of Kono district parliamentarians claimed chieftaincy lineages (Reno, 1995 in Albrecht, 2017). However, most of the chiefs relied on members of the tribal authorities to vote for them in elections (Maru, 2006).

President Siaka Stevens abolition of local councils (also known as district councils) in 1972 moved responsibilities from local councils to central government (Fanthorpe et al. 2006). This removal of local councils in 1972 meant that traditional leaders were no longer

³⁷who assumed political power after independence in 1961.

accountable to any other authority other than the state when it came to administering rural justice and tax collection (Acemoglu et al., 2014). As a result, Sierra Leone's government's strategy has been referred to as "a divide and rule" strategy (Robinson, 2010; Acemoglu, Robinson, and Verdier, 2004 in Srivastava and Larizza, 2011:143). This means the government created a division between the people and their chiefs to enable total control of both.³⁸ The union between the chiefs and government encouraged corrupt practices in the disenfranchisement of the rural population on political matters and highlighted the abuse of power by chiefs (Albrecht, 2017; Fanthorpe et al. 2006; Richards, 1996).

Local councils were reinstated in 2004 by the Local Government Act 2004. This paved the way for another form of decentralisation by the state. There have been misconceptions that the local council is the 'highest political authority in the locality', having both legislative and executive powers (Manning, 2009:13). Some counsellors have been holding themselves out to be the 'highest political authority' (Jackson, 2006:107). The National Decentralization Policy of 2010 (in Fanthorpe, et al., 2011) has, however, refuted the point by stating that although local councils are the highest development and service-delivering authority in their locality, they are not the 'highest political authority' (Fanthorpe et al., 2011:62). A more precise explanation of the role of paramount chiefs and local councils is shown in the aims of the creation of local councils. It has been reported widely and repeatedly by human rights academics and practitioners that the repressive nature of the paramount chiefs and their lack of structure had contributed to the Sierra Leone civil war (Richards, 1996; Jackson, 2006).

Post-conflict reconstruction has attracted pressure from both internal and external forces for the government of Sierra Leone to share power more inclusively (such as reinstating the local councils) as a way of addressing some of the perceived causes of the conflict (Truth and Reconciliation Commission 2004; Hanlon, 2005 and Kieh, 2005 in Srivastava and Larizza, 2011). Therefore, local councils were set up (by the Local Government Act 2004) to curb the excesses wielded by the chiefs in the sphere of tax collection. The local councils have the power to claim and regulate taxes collected by chiefdoms. A paramount chief is also a local council member but only as an *ex officio* (meaning: only as a member because of their role as a paramount chief).

³⁸divide and rule is also a legacy of British role.

Consequently, under the Local Government Act 2004, chiefs' powers to raise local taxes and receive central government funding have been further reduced by the local council powers. The creation of local councils shows that there are three distinct political groups within local government: politicians, chiefs and district administrators (Jackson, 2006). The potential significant conflict posed by the Local Government Act 2004 concerns the failure to distinguish the 'role of chiefs and councils in key areas, including development funding, ward committees and chiefdom committees, local taxes, and the nature of responsibility about land and natural resources' (Jackson, 2006:104). Each geographic constituency in Sierra Leone is known as a ward³⁹ and is represented by councillors elected every four years. However, the Local Government Act 2004 stipulates that chiefdoms are responsible for tax collection, and local councils can disburse monies directly to chiefdoms concerning development purposes (Jackson, 2006).

Despite the reinstatement of local councils, chiefs remain influential in politics. The hybrid nature of chiefs is demonstrated in their representation as members of parliament and advisers through the National Council of Paramount Chiefs (Albrecht, 2017), on which, amongst other things, the government relied on them to supply information necessary for the compilation of the electoral register (Fanthorpe, 1998). The Local Government Act 2004 was followed by the enactment of the Local Courts Act 2011. The significance of the Local Courts Act 2011 includes its stipulation that the governance (supervisory function) of local courts by the Ministry of Local Government was to be transferred to the Chief Justice Department. Others posit that the function of the LCA'S 2011 was to limit corruption and the perception that local court officials lack integrity and independence from the ruling party (United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL, 2011). However, the influence of human rights and its incompatibility with certain customary judgements, such as the non-recognition of women's rights, was one of the key factors in this decision (enact the LCA 2011). The gendered legislations of 2007 discussed above is another example of the influence of human rights law in Sierra Leone.

³⁹Western Area Rural District – 'a new entity representing the rural and peri-urban locales of the capital district (Western Area) (Fanthorpe et al., 2011:10)'

The Local Courts Act 2011 (LCA, 2011) empowers the Chief Justice to consult with the Judicial and Legal Service Commission (who are advised by the Local Court Service Committee) regarding appointment, transfer, promotion, and suspension or dismissal of any local court official, including local court chairpersons. The Local Court Service Committee consists of a paramount chief representing the council of chiefs in a particular province and a District Council representative who (should be) is experienced in local courts' administration.

The explanation above shows that customary law concerns the rural area and native people. The institutions involve local courts, paramount chiefs, local councils, district councils and informal settings such as community gatherings. Other legal institutions concerning customary law include the police and the prison services, headed by the Ministry of Internal Affairs, and Local Government and Community Development. The headquarters of these institutions are in Freetown, the capital city but have branches in other cities. Power-sharing in customary law and local government is very confusing; hence, the Local Courts Act 2011 strengthens the local courts' position in dispensing justice. It is worth noting that the legal structure of customary law concerning its personnel, alongside structures for its operation, is all provided for under the 1991 Constitution of Sierra Leone, described as part of the customary formal system and or structure.

7.3.1. The Customary Formal System

The customary legal system is made up of laws found in statutes and other policies intertwined with the informal system discussed below. The customary legal system is also articulated in the formal legal institutions through a chain of authorities that culminate in the Minister of Justice/Attorney General's Office (MoJ/AG). However, the MOJ/AG has no power to adjudicate customary matters.

The MoJ/AG, amongst its many functions, is responsible for the provision of policies and legal matters, and its role overlaps with those of the Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA) concerning juvenile justice. MSWGCA is the central government department responsible for matters concerning children, including juveniles. Section 141 of the 1991 Constitution of Sierra Leone provides for the appointment of judicial and legal officers. For example, the Law Officers' Department includes the Solicitor-General, who heads the Department. The Department is divided into two divisions: The General Administrative and Professional Divisions. The

General Administrative division comprises the technical, clerical, and support staff. The professional division is sub-divided into five departments; Public Prosecutions, Civil and Commercial, Parliamentary Affairs, Customary Law, and Constitutional International Law. Of importance to this section are the divisions of Public Prosecutions and Customary Law Departments. The Public Prosecutions office prosecutes all criminal matters, including juvenile matters. The Customary Law Department is administered by customary law officers responsible for supervising, reviewing judgments and training local courts' personnel. The latter are appointed by the Judicial and Legal Service Commission (JLSC). The JLSC advises the chief justice. It also takes advice from the Local Court Service Committee whose membership consists of a paramount chief.

7.3.2. *The Customary Informal System.*

Having considered Islamic and customary law above, the discussion here will build on the link between Islamic law and a child's legitimacy. Islamic law is an integral part of customary law. Sierra Leone's population comprises around two-thirds (60 per cent) of Muslims, thirty per cent Christians, while ten per cent are made up of animists (Archibald and Richard, 2002). There is a peaceful coexistence of the different religions in family and community life in this country. The interaction of Islamic law with paramount chiefs' rights to govern their regions is negotiable as Sierra Leone does not operate Sharia law (Archibald and Richard, 2002). The relationship between customary and Islamic law is modelled on the relationship between the two, as Anderson's (1959) discussion of the topic posits. Anderson says that customary law had been influenced and interpreted in certain areas by the laws of Islam. The amalgam of customary law includes aspects of Islamic precepts that could be weaker or stronger in a certain region depending on the native ruler (Anderson, 1959). During British rule, specific ordinances provided for the scope of Islamic law to be applied, such as the Marriage of Mohammedans Ordinance 1905. However, this only applies to the colony of Freetown and not the protectorate; this law still operates in Sierra Leone.⁴⁰ There is also the Civil Marriage Act, Cap 97 of 1910, as amended and the Christian Marriage Act 1907, Cap 95 and the Matrimonial Causes Act of 1960 as amended. The latter governs the issues of the validity of a marriage under the general law.

⁴⁰Mohammedan Marriage Act 1905- Cap 96 as amended governs Islamic marriages: responsible for registration of such marriages and divorces and Muslims are permitted to marry up to four wives under this law.

In 2007, the Registration of Customary Marriages and Divorce Act 2007 stipulates that customary marriages conducted in both the rural areas and Freetown can be registered and have legal effect. This is a significant step in giving legitimacy to children born in rural areas with respect to inheritance, as discussed in section 7.2.1. Christianity also plays a significant role in the adjudication of cases since pastors, along with Imams, are involved in local governance and justice [particularly] in the rural areas (Manning, 2009). In addition, people of faith, including Imams and pastors can intervene in the juvenile justice system and stand as patrons and sureties for child offenders.

As with the classification of religious marriages, informal and formal marriages in Sierra Leone, there is also a divide between the cultures. Some are classed as non-indigenous while others are classed as indigenous-traditional. The former concern the Creoles and the latter the natives. The role of culture between the Creoles and other indigenous people⁴¹ in Sierra Leone also influences informal customary law. Smart (1983) states that Creoles still have their culture, which reflect Western and traditional customs. Creole customary law 'is of no legal import, though its moral and social relevance is felt everywhere in the community' (Smart, 1983:18). This is because although Creoles are a minority group, the predominant language spoken by Sierra Leoneans is Krio.⁴² However, it is difficult to define what Creole customs are, but by definition, they are a mixture of Western and traditional customs sedimented over time.

Most importantly, Creoles have customary law even though this is not as distinct as that of other tribes or ethnic groups such as the Mendes, Temnes, Limbas and others. Most peculiarly, Creoles are not answerable to customary law but can use it against the natives (Smart, 1983). Creoles were not considered natives during the colonial period, just like the Europeans who were not answerable to the native courts. This position has not changed. Michalopoulos and Papaioannou (2015) cited Mamdani (1996), who echoed similar reasoning when they said that the colonisers established a dual legal system, with customary law applying to the African affairs and European law applying to the transactions of the settlers mainly in the capital and the main ports.

Customary law is defined by most participants of this study as the recognised, tacitly agreed practices and rules of the tribes. While one might argue that this must

⁴¹indigenous- traditional.

⁴²Krio is a type of Creole language that is influence by English and some West African languages.

necessarily involve rules concerning juveniles and children's behaviour, some participants explicitly noted that customary law has 'no specific provisions relating to children...' This is because 'children are not meant to be heard on any issues and [are] hardly noticed' (research participant at Approved School). Children belong to their lineage or family, and therefore, the elders are directly responsible for them.

There has been a paucity of research about children in conflict with the law concerning Sierra Leone's customary law. Child Frontiers (2010) also echoes this point about little information regarding the processes and procedures followed by chiefs and local courts in matters that affect children. They said: 'there are major concerns over the quality of customary practices, particularly for women and children, and in many cases, the traditional and informal methods of customary law fail to meet the standards of the national constitution and the international human rights treaties to which the nation is committed' (25-26).

This study findings show that children in rural areas are discriminated against and not treated equally compared to their counterparts in the cities. This is contrary to the provision of s27 of the 1991 Constitution against discrimination. The study's findings echo those of the UN Committee on the Rights of the Child, Concluding Observations on the combined third to fifth periodic reports of Sierra Leone (UNCRC, 2016). These state that juveniles from the rural areas were more likely to end up in the criminal justice system because of the lack of customary juvenile law, inefficient court processes and paucity of secure social networks. However, this study shows that juvenile matters are dealt with under customary law.

The interviews conducted in this study show some of the informal aspects of customary law and its practice regarding the concept of social culpability. What constitutes a "wrong" or an offence under customary law is not provided for under Sierra Leone's statutory law. In this study, a professional participant at the Approved school describes a customary offence as:

involving loitering; a child is expected to be home at night, reading their books and getting ready for school, if a child misbehaves by insulting a person older than them, that child will be reprimanded with a slap or a beating them up with few lashes - nothing to cause wounding - or the child will be warned firmly and certain liberties taken away, such as isolation.

There are no set of rules in customary law to guide the dispensation of law. The settling of disputes in this way increases the co-existence within the community. If this is lacking, the community will fall apart. As a community comes together to solve disputes, it engages and interacts with each other. It brings understanding, unity and tranquillity to resolve problems in that manner... There are no customary provisions for children and under the formal provisions, children do not benefit from them directly. The rules and regulations concerning the upbringing of children concern everybody. A child belongs to the community.

Another participant added:

if a child causes damage to property, that is a public offence. The community can reprimand that child with lashes and warnings and [the child] would be told of the importance of their crime in contrast to the matter taken to the police where it would be charged to court and levy sanctions, but not if it is customary law. The child's family will be asked to pay fines or replace in money value the damage the child has caused... The comparison between criminal law and customary law is that, a range of offences are prescribed in the manner to which they should be settled from fines and so on under criminal law. The customary law does not have set rules like criminal law... The list of examples of offences under customary law are varied and include; loitering, criminal damage, fighting, disobedience, witchcraft, and violence. The practice of customary justice includes settling a mixed range of offences either within the community or can be referred to the police.

During the commission of an offence, the status of a child struck a chord in this research. Of the twelve child participants that I interviewed, eleven were from impoverished backgrounds. Potter and Thompson (1997) emphasised that being poor in the justice system impacts the defendant's treatment. Their findings show two interpretations of Sierra Leone's law - one rule for 'the poor and one for the rich' (1997:143). From the statements cited above, it is clear from the respondents that customary law combines cultural practices with normative ethical positions and reframes them as 'the law'.

This was a point reiterated by Potter and Thompson (1997). They said that were a moral or social code required that one must help families and friends when in a position of power or public office; there was a practice that demonstrated the clash of tradition and modernisation. This is because such practice is classed as corrupt in modern political theory but not in cultural terms. Potter and Thompson (1997) further state that 'corruption is a by-product of modernisation that often blurs the distinction between the official roles of public officers and those of their personal interests' (p141).

Just as if individuals from a community or service providers do not provide daily emotional, physical, and psychological care for a child, they would not be considered as family (Child Frontiers, 2010). An NGO participant defines customary law as relating:

to the traditions of the community, guided by beliefs and traditions. For example, traditions treat children in a demeaning manner when children come into contact with the law. Even worse when they have not done anything legally wrong but thinks that the community constructs to be wrong. Customary law also concerns the ability for communities to settle their differences... The way cases such as rape and unwanted pregnancies are dealt with under the customary law could leave a victim with no redress despite the Sexual Offences Act 2012 [SOA 2012] as amended SOA 2012. For example, if a boy rapes another child or an adult does the same, the girl's parents would demand that their daughter should be married [to the rapist]. In a boy's case, his parents will marry on his behalf. This does not mean they will live as husband and wife, but due to tradition and for the sake of the unborn child not to be called a bastard, the child's mother should be married and this is a practice that is applied in almost every culture in Sierra Leone.

In this study, the NGO participant said he had witnessed in the Gbonkolenken chiefdom, which is by the Gola Forest in the Tonkolili district in 2008, a group of people dancing with a boy stripped naked singing after him. According to villagers, the boy's crime was bedwetting. But, he said, 'imagine if the boy commits a real crime like stealing a goat or causing an injury to someone, how severely he would have been dealt with under the customary law'. He also said that human rights principles embedded in the CRA 2007 aid

children in post-conflict Sierra Leone. The awareness of its provisions had changed how children are treated in terms of discipline; they are treated with more leniency than they used to be.

The informal customary law system has shown that a child in a rural setting has no rights. The type of offence a child can commit does not have to be legal but can constitute naughty behaviour. The outcome (punishment) of some of the alleged offences can include food deprivation or beatings (corporal punishment). In instances where a serious offence such as rape by a child is committed, as stated by the participant above, the parents or guardians will have to take responsibility for their child's action. The arbitrariness of dealing with alleged child offenders could impact resources that could pose a challenge for low-income families who might not afford the cost to settle disputes. The lack of resources can lead to matters ending up in the legal system and render child perpetrators legally culpable for their actions. On the other hand, where a serious offence committed by a child is resolved through the payment of fines, it means the child would not be legally culpable and diverted from the criminal justice system and opens room for rehabilitation, however, such a practice questions how the payment of fines alone could rehabilitate a child.

An interview with a senior probation officer at the Approved school in this study explains customary law to be:

...varied, laws set by the people themselves to guide them, promote peace and tranquillity between the communities. These are unwritten although they have tried to put this in writing; these laws are oral laws that pass from people to people, from one generation to the other.

The CRA 2007 also regulates the community's importance and its role in customary law. For example, section 41 (1) (2) states that a child should be educated and take pride in their culture and national identity and be allowed to learn at least one indigenous language at the primary school level. However, this does not state whether the child should be allowed to learn a language in addition to their indigenous language. It can only be argued that since Krio is predominantly spoken by most of the population, as stated above, the spirit of the Act is for children to speak an indigenous language, in addition to Krio. Also, s42 CRA 2007 allows for extended family members to give guidance and advice to a child.

Further, under s43 CRA 2007, a non-relative can discipline a child if they think the action guides and directs them in their best interest, such as discipline. However, the Act is open to abuse since the term "best interests" could be construed subjectively, meaning the Act of discipline against a child who is said to have committed a wrong could be purely based on the moral conviction of the disciplinarian. Also, s43 CRA 2007 does not define what is meant by "appropriate direction and guidance". Therefore, it is not uncommon for a stranger to spank, hit or punish a child under the guise of doing so in their best interest.

When I asked about how customary rules applied to children in conflict with the law generally, a participant at the Approved School said:

there are no customary provisions for children...children are not meant to benefit from these directly. The rules and regulations concerning the upbringing of children concern everybody. A child belongs to the community. It is the responsibility of that community and every person to have a responsibility to that child. For example, if Mr A's child is seen doing something wrong, Mr B can intervene and discipline that child. The child belongs to the community and does not only belong to the individual, such as the parent. Whatever the child does will be a matter taken up by the community, except if the matter is serious; then the entire community can come together and agree for the matter to be taken to the police.

From the response given above, if a child does something wrong, the participant did not clarify what discipline entailed, and neither defined what a very 'serious matter' meant. What is apparent is that, under customary law, a stranger (this includes someone who is not known to the child's parent/s) can take part in disciplining a child as part of the child's upbringing, which is linked to the notion of guiding the child. This is a point elaborated further under s44 of CRA 2007.

Section 44 CRA 2007states:

(1) The guidance of the child from parents, relatives and service providers shall include the use of tradition and cultural standards to foster the development of a sense of responsibility in the child, subject to his evolving capacities.

(2) The sense of responsibility referred to in this section shall be directed towards the child's current and future welfare, the respect of parents and elders, and the welfare of others, his family, society, his country, and humanity in general.

Therefore, under s44 of CRA 2007, the child must respect elders and is subject to the community's traditions and cultural standards. Section 45 of CRA 2007 goes further to specify the role of the child in their community as:

Subject to age and ability and evolving capacities, every child shall contribute towards family cohesion, respect parents and other people, exhibit diligence towards studies and work, and strengthen the positive cultural values of his community.

It would appear that the legislation has tried to minimise the risk of abuse under the guise of cultural values by the provision of section 46 of CRA 2007, with its stipulations against early marriages and child betrothals. Due to the community's critical role under customary law concerning children's upbringing, it is not surprising that Part IV of CRA 2007 contains a provision that includes the setting up of local welfare committees. Section 47 states: '(1) every head of a village assisted by a social welfare officer shall cause to be elected at a bare gathering in his village members of a village child welfare committee'.

The meaning of bare gathering under s2 of CRA 2007 means: 'a traditional forum or gathering presided over by a traditional or community leader, open to all members of the community, including children but does not include a court'. The involvement of children in such community gatherings is an essential step in taking children's views into account, especially, dealing with matters that concern them.

It would appear that the GoSL's attempt to deal with the administration of children in conflict with law under customary law was through the formation of child panels. However, this was to be headed by paramount chiefs with a social welfare officer and an officer of MSWGCA. The thrust is to help 'coordinate and advance the enjoyment of the rights of the child in the chieftdom' (s50 (1) of the CRA 2007).

Section 75 of the CRA 2007 goes on to clarify the functions of a child panel. This states that:

- 1) A Child Panel shall seek to facilitate reconciliation between the child and any person offended by the action of the child.
- 2) A child appearing before a Child Panel shall be cautioned as to the implications of his action and that similar behaviour may subject him to the juvenile justice system.
- 3) A Child Panel may decide to impose a community guidance order on a child with the consent of the parties concerned in the matter.
- 4) A community guidance order means placing the child under the guidance and supervision of a person of good standing in the local community for a period not exceeding six months for purposes of his reform.
- 5) A Child Panel may in the course of mediation propose an apology, restitution to the offended person or service by the child to the offended person.

Further, under section 76 CRA 2007: 'subject to section 77, there shall be a Family Court which shall exercise the jurisdiction conferred under this Act'. The functions of the Family Court under Section 78 are thus described in the following terms:

A Family Court shall have jurisdiction in matters concerning parentage, custody, access and maintenance of children and shall exercise such other powers as are conferred on it by this Act or under any other enactment.

The mode set out in s75 of the CRA 2007 above is reconciliatory and rehabilitative. The function is restorative in principle. It is not surprising, therefore, why the CRA 2007 attempts to mirror the UNCRC. The CRA 2007 was set up following the civil war by proponents advocating for reconciliation and rehabilitation of ex-child combatants. However, there are no Family Courts in Sierra Leone as stipulated under the CRA 2007.

The CRA 2007's attempt was to amend or bridge the gap between other Acts concerning children's protection by substituting the age limitations for 18 years. For example, the CRA 2007 substituted 18 years instead of 21 under s2 of the Protection of

Women and Girls Act, Cap. 30. Also, 18 years replaced 16 that was previously under the Prevention of Cruelty to Children Act, Cap. 31, and age 17 was further substituted for 18 years under s2 of the Children and Young Persons Act, Cap. 44.

The power of child panels to impose a community guidance order with the parties' consent under s75(3) CRA 2007 clarifies that child panels are mediatory structures between child offenders and offended persons, as confirmed under s75 (5) above under the customary law. In addition, the restorative nature of child panels shares similarities with the general practice in customary law, which involves elders and parties coming together to mediate between the parties, such as between child offenders and victims.

Restorative justice provides a platform for offenders and those offended to reconcile within their community by engaging in discussions involving confessions and exploring reasons for offenders' actions, including pleading for forgiveness (Nkansah, 2011). Such a process aims to hold the offender accountable for the truth and other forms of accountability. The purpose is to aid reconciliation between the victims and the perpetrators (Berewa, 2001). This is an attempt to provide redress for victims in a manner that the conventional criminal justice system would not provide (Zehr, 1998).

Conversely, there is an indication under s75 (2) of the CRA 2007 that a child who appears before a child panel should be cautioned for their behaviour. Yet, they can also be subjected to the juvenile system. This section fails to specify what sort of behaviour (concerning a child) a child panel can preside over. Nonetheless, there is some guidance under s52 (1) of CRA 2007 that the child's welfare committee shall have no jurisdiction over cases such as murder, treason, rape, defilement, indecent assault or any other sexual offence. Cases of felonies relating to serious damage to property, injury to the person, and other serious crimes that may from time to time be specified in the Gazette by the Minister responsible for justice should be referred to the police with the prospect of prosecution.

Therefore, it is evident from the provisions of the CRA 2007 that even if the child panels are set up, the Act does not explicitly address the administration of children involved in serious offences. Despite the indication of reconciliation (between a child offender and a victim) contained under s75 above, the Act is not clear about how this could be achieved. For example, the Act is silent on the type of offences (apart from the serious offences stated in s52 (1)) that criminal behaviour committed by a child warrants their appearance in front of a child panel. One attempt at how juveniles are treated when confronted with the law is

shown in this case study. When I asked a section chief whether he presided over juvenile matters, he had this to say:

we do not hear cases concerning juveniles, we do not hear any cases concerning children, it is for the police and Family Support Unit officers, except if it is to do with the “secret societies”, or witchcraft.

When I asked what the secret societies cases were, he said:

we seldom have reports of abuse or wounding because what is done in those secret sessions stays there, their members will know what to do, but they do not report these to the police as it would be a betrayal of their traditions.

When I asked an FSU participant, what constituted witchcraft and secret society offences, this was what she said:

wounding or violence, ... witchcraft concerns the consumption of other human beings through a spiritual form. Witchcraft is mostly associated with children as being the witches or being used as witches and they are normally punished for that.

I observed customary law in practice in Lunsar between 2012 and 2015 in three different settings, such as at a traditional court setting, a paramount chief’s residence and at the local court. I will start with the paramount chief setting, which consisted of a round-like hut called the ‘barray’. The paramount chief and his section chiefs sat in the middle, and the parties in dispute sat opposite ends. This session was attended by other people who were not a party to the proceedings. Because I stood at the back, I struggled to see the parties. Nevertheless, there were many people present. The disputes concerned land, and it became apparent that there were indeed no disputes concerning children.

Similarly, I attended a traditional court session held in the open veranda of a house while people were going about their daily business.⁴³ Children played about joyfully and chattered noisily at the other end of the corridor. Passers-by saw the goings-on, but not what was said during these proceedings. This court consisted of a chairman, the Regent

⁴³such as walking and talking with the movements of cars and vehicles passing by.

chief assisted by four other sub-chiefs. Amongst them was a person referred to as the lawyer or the so-called 'Capri' (not legally trained) by dint of his knowledge of the traditions and customs. I was told the section chiefs represented the paramount chief who cannot be in all places at once. The setting was informal in contrast with the ambience, which was formal. The regent chief spoke sternly. On the other hand, people were highly attentive and conducted themselves as they would at a magistrates' or high court. I had to cover my hair to watch the proceedings at the back and did not require consent to attend.

The proceedings started with a method that allowed the Regent chief to ask what the complaint was about. The complainant stated his case to the chiefs, who answered and asked questions in the local language (Temne). It was not clear who the other party (defendant) to the proceedings was. The fact that no other persons were asked questions during the proceedings suggested that they were mere spectators like me, or it could mean that the other party was not asked to speak hence their silence or was not present. However, this should not give the impression that opposing parties to proceedings are not asked to speak in such proceedings. Nevertheless, I observed that everyone sat quietly. I noticed this quiet demeanour at the magistrates' and the high courts when the courts are in session, but more so when a magistrate or judge is speaking.

On the other hand, I observed that the atmosphere at the local court was tense but quiet compared to the ambience in the magistrates' and the traditional courts. The people who attended the court seemed poor, uneducated, and were locals from the area. Women covered their hair, and there was silence during the proceedings. The court was presided over by a local court chairman and one assessor. The assessor assisted the chairman in the decision-making process. On each side of this main courtroom were two rooms served by each chairman. The parties sat on benches facing the chairman and the assessor. The public gallery was made up of lay members of the public seated on a row of benches facing the chairman. There were rows by the side of the court in which the chieftom police was seated. The chieftom police announced the arrival of the chairman prior to the proceedings commencing. This custom also applies to the magistrates' courts and the higher courts. The proceedings were again conducted in Temne. Witnesses gave oral testimonies during the proceedings, but nothing was written down. However, upon talking to the clerk of one of the chairmen, I noticed that details of cases were recorded in an exercise book called a 'way book', which contained entries such as the names of the parties, the type of matters

and the outcome of the matters. Unfortunately, I was not allowed to look through the way book thoroughly. I had therefore been unable to ascertain whether it contained juvenile cases.

The traditional or native court deals with the administration of child offenders or alleged offenders. In the traditional court setting, in particular, the section chief gave an account of the disobedience of a child who would take her clothes off in public; spoke in a manner that no one understood and behaved as if she had lost her mind. This was because she was prevented from entering the ‘Yanka’ without her parents’ consent. He said he strongly believes matters of Sowe and “Yanka” (Sowe bush) [imaginary bush] are demonic and are supernatural as they involve all sorts of things, even witchcraft. The Yanka was at Magbenthy, a village in Marampa chiefdom. So, when the Council of Chiefs in their locality consulted the oracle, they were told that the child should not be disturbed and that they should do what the “Gods” wanted. So, they had to let the girl continue to stay in the bush. In contrast, the same section chief gave another example of a case in which he threatened a ‘Sowe’ (female cutter) with police action for violations of human rights (withholding education) because a girl was initiated into the Bondo society without the father’s consent.

I interviewed a member of the Poro society (Temne chiefdom) who confirmed that children participate in secret society ceremonies (because they are members of these societies), which sometimes involve violence against other persons, non-initiates or during initiations. However, he cannot give any more details since it is a taboo to speak against secret societies, and since anyone who does would risk a curse against themselves and their family as what is done “in the secret bush, stays in the secret bush”.

Therefore, it is arguable that things regarded as custom and what a chief considers to be custom, such as matters of secret societies, or violence committed by anyone in these societies, are dealt with by customary law. This shows that the customary system can be linked with animistic beliefs and supernatural connections such as the belief in ancestral spirits, ‘devils’, and ‘portions’ that can cause harm or bring wealth (Ferme, 2001; Albrecht, 2017). However, cases of serious bodily harm committed in secret societies can also be reported to the police, such as those involving murder, which are generally a challenge to prosecute. The problem in the prosecution of such cases is mainly attributed to the lack of

witnesses coming forward. Witnesses are reluctant to give evidence against their fellow secret society members.

Besides the immersion of customary law into legislation, customary by-laws are set by paramount chiefs who are the custodians of such laws. Therefore, as traditional leaders, paramount chiefs play a formal role in Sierra Leone's governance structures. Moreover, it is vital to get their views to form part of the national law on juvenile justice (including child rights) and customary law. However, as shown below, the chiefs' responses in this study suggested that other things are a priority to them—for example, the issues of poverty as opposed to juvenile issues. In response to my questions, I noted that some of the chiefs were stringing together words circulating in government and NGO discourse about child rights. For example, when I asked the question, what is customary law and juvenile justice, a paramount chief participant in the northern part of the country said:

...the restoration of human rights and I am the custodian of the land]
...gearing towards the right of the child, causes of children ... poverty, orphanages, war, social impact, pornographic, a child who has already been abused below the age of 18; there is imprisonment for six months under Cap 122... the institution that collects street children and facilitates...

Although what the chief said appears to be incoherent, his response shows his awareness of phrases about child rights that circulate in general government and NGO discourses. The chief said further:

the paramount chief rules with the sub-chiefs... imams in mosques, the priest in churches and sensitises the issues of children and their rights... works in partnership with the police but also keeps an eye on the police for proper implementation of the law, policy and criminal acts. Matters of children concern theft, impregnation of children by other children, witchcraft. Where the family cannot pay, I give them land to farm. I also refer matters to the police.

When I asked another paramount chief, who was from the southern part of the country what the role of customary law concerning juvenile justice was, he said:

I have an awareness of the Child Rights Act 2007. There are different levels of poverty. In my chiefdom, there are no minerals and low agriculture. No one makes four bushels (bags 50 kg) a year. A child is one who is less than 18 years old. School is free, that is primary school, but schooling is difficult because parents pay Le 25,000 (£2.50) to go to high school [free education for government schools: both primary and secondary schools under President Madaa Bio's government since 2018]. I think children's rights are a volume of poverty; illiteracy is a problem.

In this case, the paramount chief appears to be simply repeating the discourse of child rights in a somewhat formulaic way instead of answering the questions about juvenile justice. Instead, it appears he was more interested in highlighting the constraints of children concerning their welfare.

It is worth noting that although all the paramount chiefs interviewed were educated (for example, one of the paramount chiefs from southern Sierra Leone was a medical doctor), they had failed to answer the questions I posed to them, as shown from the quotes above. These responses indicate that priorities that affect a chief and their community are other than juvenile justice issues. For example, a researcher's interests and priorities can rank differently from those they are researching about to their research participants. In this research, the chiefs' responses concerned other issues they wanted to tackle and might have carried more weight with them in terms of interests. Therefore, I felt I was not getting a straight answer to my questions, not because the chiefs lacked knowledge about juveniles and how they are treated under customary law. Instead, they responded to other issues that appeared to be more particularly important to their community.

The quote above that "child rights are a volume of poverty" was not explained further by the participant (chief). However, it would appear from the conversations that the human rights discourse interferes with rural people's needs, cultural beliefs or practices. This follows the point from the last paragraph about how interests might weigh differently between the human rights discourse and communities that it targets for impact. At the same time, another chief's response was geared more towards resources needed to fight poverty in his chiefdom than issues concerning the administration of justices for juveniles.

In this study concerning a possible conflict between cultural norms and the human rights discourse in Sierra Leone, culturally, children are expected to behave themselves.

Where they fail to behave or meet those expectations, or where there is no one to intervene on their behalf when they are in contact with the law, they can be held to be socially culpable for their actions. In essence, a child is constructed by their community to be a good child if obedient, stays away from trouble, is in school, reads his/her books and does not involve with the wrong peers. These are not unique attributes, as they are expected from young people in other societies.

A child in England is below 18 years, although criminal culpability is from ten years. Under customary law in Sierra Leone, there is no set age for criminal culpability; however, where a child gives birth, they are no longer considered a child. For boys, if they are the breadwinners, they are not considered to be children, but if they continue to be in their parents' home and are being looked after by them (even if 40 years old, especially men), they will not be considered as an adult (legal: due to age). Corradi (2010) strengthens the point that age is socially defined.

The concept of social culpability could be deduced again from the response of a senior officer at MSWGCA, who confirmed the view that children's rights and juvenile justice are seen as irrelevant to the exercise of customary law as a result of the way children are perceived.

He said:

a customary system is an informal legal system operated by traditional or customary leaders at community levels such as paramount chiefs and administered by customary courts. Therefore, customary practices in relation to the treatment of children consist of no specific provisions relating to children... as children are not meant to be heard on any issues and [are] hardly noticed and should do as they are told.

The MSWGCA officer's accounts above show that moral judgments are the practices used to determine justice for child offenders under customary law. These further illustrate that child offenders' contraventions are settled through the payments of fines, agreements with the parties, beatings (corporal punishment) or complaints to the police. These practices are akin to the concept of social culpability. In particular, it is the lack of resources and or social networks that contributes to the outcome of a child offender's offences, irrespective of whether they end up in the juvenile justice system or not.

However, as the next section (sub) illustrates, there is no set definition for customary practices.

Customary practices (definition)

There is no statutory definition of what constitutes customary practices in Sierra Leone. The practice of customary law in Sierra Leone is provided for under unwritten and written rules (Maru, 2006). For details about written rules, please see 7.3.1 and 7.4. The unwritten rules are rules that concern practices and customs of different tribes in Sierra Leone, presided over by paramount chiefs or their aides called chiefs (Albrecht, 2017). In this study, participants define a customary practice as an informal practice of laws by a community in a rural setting, which are unwritten. The traditional/customary legal system is operated by administrators (those that preside or are in charge of the law) of customary practice as described by the law.

The definitions of customary law by the participants above illustrate that customary law and practices vary and are set by the community. The outcomes of customary practices can be dealt with by the payment of fines at customary law and by criminal law but depend on the complainant and the type of offence. Further, customary complaints concerning juveniles are generally not reported to the police unless the victim or the community chooses to. In customary settings, most of the population are poor, and the police are the last resort through to whom complaints are reported. Mostly in rural settings, it is considered easily accessible and comparatively less expensive to consult a paramount chief or elders and the community than to report matters to the police. This practice of customary justice ties in with respect for the paramount chief and is mainly accessible to poor people in Sierra Leone and many developing world regions, particularly in sub-Saharan Africa, where 80% of this practice is predominately used as a form of dispute resolution (Corradi, 2010).

An MSWGCA officer quoted above insists that adjudicating juvenile justice is outside the remit of customary law. Therefore, although paramount chiefs in this study seem to have a rudimentary understanding of child rights, they play an important role in determining what happens to children when they transgress legal or community norms. Paramount chiefs are empowered in their communities to administer traditional law, and their power is also derived from statutes. Paramount chiefs are national parliament members and advisers by virtue of their membership of the National Council of Paramount

Chiefs. At the chiefdom level, the chiefdom police work for the chiefs and local courts, as stated by one of the paramount chiefs. Also, under the Local Government Act 2004, a paramount chief's power predominately lies in their legal mandate to uphold the laws of the land as custodians of trust for their chiefdoms. For example, chiefs' power to distribute land means that they represent the most important source of income generation of their community.

Similarly, chiefs also deal with offences in their localities as they have the mandate under the general law to make by-laws and prevent offences in their communities. This means that chiefs have the mandate to deal with juvenile offences, especially as there are no child panels (even though prescribed under CRA 2007). It is also not clear whether welfare committees by the government have been set up; where this is not the case, it is left to the discretion of paramount chiefs or their aides (sub-chiefs) to make decisions concerning children in conflict with the law as they see fit.

7.4. Local Levels of Resolving Cases under Customary Law.

There are two local levels where customary law cases are determined. At the first level, paramount chiefs are represented at the District and Town Councils and are ward committee members (Albrecht, 2017). They can hear cases directly or through their representative members. These members can direct matters to a paramount chief for a final decision if necessary. At the local level, the local courts are headed by a court chairman who is assisted by four court members appointed by the paramount chief to hear cases. A legal practitioner has no audience at the local court unless acting solely on their own behalf (s19 Local Courts Act 2011).

Nevertheless, proceedings in the local court are not independent of the judiciary. The Local Courts Act 2011 states that the MoJ/AG does not have the mandate to deal with local court proceedings. However, under s2 of the Local Courts Act 2011 (LC 2011), the MoJ/AG (is responsible for judicial affairs) can determine whether to appoint members that consist of a local court. Further, under s52 LCA 2011, a customary law officer's functions include advising the local court on the law, its organisation, research, and assisting with personnel training. Similarly, under s34 of the LCA 2011, a customary law officer may transfer a matter to another local court and the district appeals court.

Under s35 of LCA 2011, a customary law officer can review cases concerning miscarriage of justice where there is an error in the law. Under s36 of the Local Courts

Act 2011, a customary officer can set aside a conviction, sentence, make a judgment or order of the court in civil and criminal cases. The powers of the Chief justice strengthen the judiciary's position. This for example can be seen in the power to appoint local court chairmen (who preside over local courts proceedings). In addition, section 52 (d) of the Local Courts Act 2011 states that the Chief justice may from time to time confer upon a customary law officer other functions as required by the Act.

This study shows that customary justice providers are involved in dealing with cases of juvenile offenders. Given that juvenile justice is not prescribed under customary law in Sierra Leone, it is left to the discretion of customary law providers to adjudicate disputes concerning juvenile offenders. It is therefore imperative that the restorative system needs to be developed and operationalised. The Chief Justice could utilise the Local Courts Act 2011 to improve the law and monitor the judicial process concerning juvenile justice in customary law. For example, s15 of the Local Courts Act 2011 provides that a customary law officer (who is also under the Chief Justice direction) can transfer a matter to the local court. Also, the local court can hear and determine all civil and criminal cases arising within its locality, including juvenile cases. Suppose a decision is appealed at the local court, in that case, the magistrates' court will have jurisdiction to hear the matter through the local district appeals court's structure, which reviews initial appeals from local courts. The case can escalate to the high court's local appeals division, the court of appeal and the supreme court. The latter shows that the general law encompassing the judiciary should only get involved in local court decisions at appeal stages. However, the reality is that the customary law officer is responsible for overseeing the local courts and reports to the Ministry of Justice. This shows that the judiciary gets involved early on in customary proceedings before such cases get to the appeal stages.

Regardless of the mechanisms of resolving customary law disputes, there are many other informal institutions through which justice is sought at community levels (Wade, 2014). These include ad hoc processes run by elders and secret societies (The Poro and Bondo secret societies – as also noted in this study) (Albrecht, 2017) in local languages, which are informal and less costly than the general law processes. These informal mechanisms are thought to be used by most Sierra Leonean people who believe them to be cheaper and/or more akin to their way of life (Acemoglu et al., 2014).

Despite the influence of paramount chiefs and their associates (sub-chiefs, including traditional leaders) at the local level, it has been noted that they are not integrated into national policies involving children. The Government's Child Justice Framework called the Child Justice Strategy 2014-2018 (CJS 2014-18) is one example. The framework addresses explicitly issues dealing with children in conflict with the law. The failure to incorporate traditional leaders' decisions was a missed opportunity to help strengthen jurisprudence in this area of law. As has already been stated in previous chapters, the principal aim of the CJS 2014-18 was to enable an agreed justice system with broader national implications. The CJS 2014-18 included a concrete set of activities that can be summarised by four aims, firstly, to adequately identify and prevent abuse of children alongside limiting the scope to prevent children from getting in contact with the justice system. Secondly, it is to introduce interventions preventing children from facing the formal criminal justice system. Thirdly, it is to adhere to international requirements with fair and speedy trials. Lastly, to enhance human resources' capacity and strengthen judicial structures and processes for Sierra Leonean children. These guidelines are necessary for the National Child Justice System's incremental reform in line with the government's broader justice sector reform. Nevertheless, these failed to address juvenile justice issues under the customary system and its link with traditional leaders, including paramount chiefs.

Albrecht (2010) says that the failure to consider children's issues under the informal system symbolises the GoSL's marginalisation of chiefs and customary law. This is because there is a heavy reliance placed on protecting children under the formal system besides the exclusion of chiefs in the drafting of CJS 2014-18. Albrecht can be agreed with on this point, and my interviews with the paramount chiefs above showed extensive reliance on the discourse of rights for children. However, when I probed further on what is meant by customary law and its practices, nearly all paramount chiefs stated that customary law concerns traditions that their ancestors had applied in the past, which is an old tradition for settling disputes. For example, if a child commits an offence under customary law, the parents will be held accountable and can be penalised through the payment of fines. It appears that this method of settling disputes is no different from the general law under Cap 44 of s23, where a court has the power to order a parent to pay fines and where a child or young person has been found guilty of an offence (for less serious

offences). The difference (under the criminal law) includes an option for the magistrate to order a fine, imprisonment or both. In contrast, alternative ways (informal/customary) of resolving disputes through traditional practices include the community or the parties settling disputes between themselves, including paying fines. Further, the community or the chief can choose to settle a more serious offence without the need to report the matter to the general law to borrow the response of Magistrate-A in the case of rape in this study.

Albrecht's (2010) point about the marginalisation of chiefs by the Justice Sector Development Programme (JSDP) mirrors Clare Castilleja's (2009) argument that after the war, the UK Department for International Development (DFID) in 2015 set up the JSDP. DFID is the most influential donor in Sierra Leone, working within the justice sector. The JSDP was set up and managed by the British Council but worked with other partners such as the Justice Sector Coordination Office at the Ministry of Justice. This aims to develop an effective and accountable justice section. It also aims to deliver safe, secure and access to justice for the Sierra Leonean people alongside essential infrastructure and capacity building within the justice sector.

In this study, almost all professionals stated that practices of traditions of different tribes govern customary law. I want to stress that practices and values in this study mean the same thing. Although the practice of customary law varies in every region, the practices are broadly common among all ethnic groups in Sierra Leone (Smart, 1983), such as in the resolution of disputes amongst elders in a village setting to the payment of fines and holding parents accountable for a child's conduct. To explore Albrecht's point about the paramount chiefs' lack of power, we will now turn to the topic of their regulation.

7.5.Regulation of Paramount Chiefs.

A paramount chief's power to make by-laws is contained under s16 of the tribal authorities 1938 – Cap 61 Laws of Sierra Leone. However, the Local Government Act 2004 has curtailed the powers of paramount chiefs even further by re-introducing councillors, as stated already. Just as chiefdom councils, local councils have the power to raise revenue by local taxes, property rates, and licences. Further, the Local Courts Act 2011 (LCA, 2011) was enacted to limit the paramount chiefs' power even more. For example, local courts have jurisdiction over all customary law offences, including cases

between paramount chiefs and chieftom councils concerning land disputes. Also, s14 (3) (b) LCA 2011 states that:

subject to subsection (4), to hear and determine all civil cases governed by the general law where the claim, debt, duty or matter in dispute does not exceed one million Leones, whether on balance of account or otherwise, or in claims for recovery of possession, where the annual rental value of the property does not exceed three million Leones and the term of the lease does not exceed five years.

Section 14 (4) states: 'notwithstanding subsection (3), the Court shall have no jurisdiction in any action founded upon libel, slander, false imprisonment, malicious prosecution, seduction or breach of promise of marriage'.

Albrecht (2010) believes that international actors have limited efforts to engage chiefs in reform initiatives because international actors do not thoroughly understand chiefs' roles. He said, while the international actors accept the importance of including chiefs in justice programmes, the donors, including their consultants, have difficulties designing appropriate programmes targeting chiefs. Chiefs are political in their own right. However, as Albrecht (2010) intimated, international actors failed to realise that chiefs are constitutionally obliged to serve the government of the day, making it challenging for them to find an appropriate balance between the support of state institutions and the chiefs.

Albrecht (2010) expanded on the marginalisation of chiefs by raising issues of state sovereignty. For example, he said that NGOs agreed that chiefs could play a vital role as leaders on a local level in Sierra Leone. However, if donor support is channelled directly through the chiefs, this will mean bypassing the central and internationally recognised government.

In relation to the dispensation of the law, this research and other studies show that although paramount chiefs do not directly sit as court chairmen, they still have the power to decide such cases because most cases get to them first before going to the local court chairmen. Further, although the Chief Justice appoints local court chairmen, this is done through the Commission's advice, known as the Judicial and Legal Service. The Commission gets their recommendations from the Local Courts Service Committee, of which paramount chiefs are members. Therefore, chiefs can influence the administration of customary courts since, under the general rule of law, they make up the local courts'

service committees responsible for the appointment, transfer, promotion and dismissal of officers of local courts (s7 (1) LCA 2011).

Just as other persons, chiefs have the independence to refer matters to the police or the formal courts as prescribed by legislation. It is apparent from this research and other studies (Albrecht 2010) that the powers of paramount chiefs have been curtailed by law. However, there are no written rules for paramount chiefs to deal with such issues (s2 of the Local Courts Act, 1963), such as in the administration of juvenile justice. Harvey (2000) commented on this point that chiefs deal with juvenile matters. Additionally, Sawyer (2008) elaborated on chiefs' official role that they are central to Sierra Leone's governance and emphasised that: '...it is the chief that regulates the state's official and not the other way around' (p7). Sawyer (2008) continues that by saying customary authority is still highly regarded in post-conflict Sierra Leone. Because chiefs' act as a significant barrier against bureaucratic abuse of power, chieftom authority has continued to have considerable support in rural areas. Specifically, section chiefs and headmen are particularly pivotal to settling minor disputes, especially in the rural areas where contact between villagers and chiefs is most pertinent.

It has now been established that the role of a paramount chief in the rural area is of significant importance. Formal laws and traditional laws guide them alongside implementing new rules. Arguably, the failure to include paramount chiefs as part of CJS 2014-18 policies was a missed opportunity to strengthen juvenile justice in the rural area, as Albrecht has pointed out (2010). Notwithstanding, the CJS 2014-2018 are only guidelines, and there is nothing to suggest that they are even implemented. Providing that the rules are applied would help develop juvenile jurisprudence. Many commentators agree that children contributed to the devastating atrocities in Sierra Leone (Shepler, 2005; Richards, 1996; Sawyer, 2008). Therefore, due to the non-existence of a juvenile system in customary law, engaging with the chiefs to build a juvenile customary justice system in the aftermath of the war in 2002 would have equally served a vital contribution not only to the administration of juveniles in Sierra Leone customary law but the development of human right programmes in sub-Saharan Africa.

This study, alongside others, show how culture plays a big part in Sierra Leone and highlights the informal ways of resolving disputes. The problem with this is that proportionality becomes a key factor when dispensing with the law. For example, Parry-

Williamson (1993) states that there should be proportionality in the dispensation of a penalty. The gravity of the crime should match the offence and be juxtaposed with 'compensation, restitution or fines as the way to redress grievances and restore harmony amongst conflicting parties' (p62). However, Sierra Leone is a developing country with a disproportionately poor and young population where specific systems such as patrilineality (is about kinship relating to the father – see 7.2) and patrimonialism thrive. Richards (1996), amongst others, describes patrimonialism as the redistribution of national resources for personal favour. In particular, the operation of law in Sierra Leone has different facets, as discussed. These tend to operate depending on the offender, their social status, and the offence's seriousness. Undoubtedly, the less privileged child offenders would be at a greater risk of being treated harshly by the justice system. This is because children rank low in status but more so under customary law. In rural areas, since the population is mostly poor and lacks set rules of governance, child offenders are more prone to being treated arbitrarily and unjustly.

7.6.Conclusion

The patrilineal and patriarchal systems of customary law show that neither women nor their children (especially girls) are held in high esteem in Sierra Leone. They often mostly rely on the goodwill of the community, good patrons and or strong family links to assist them when in conflict with the law. Where children are in conflict with the customary law as in criminal law, their lack of resources produces an arbitrary outcome which could mean a child offender ending up in the criminal justice system, not only because of the offences they may have committed but because they lack the resources, such as someone to talk on their behalf, strong social networks, or financial capacity to keep them away from the juvenile justice system.

Of the gap in our knowledge of juvenile justice, I highlighted that customary law and its practices about juvenile justice consist of a formal and non-formal aspect. However, neither shows any provisions, particularly the informal customary law relating to juvenile justice. Therefore, in this study, customary law and juvenile justice have been divided into formal and informal law. The formal character is a codification of statutes and state policies decided by the local courts. Unwritten rules, on the other hand, govern the informal system. An example of the formal and informal methods of adjudicating juvenile justice under

customary law is shown when settling disputes. Section s75 (2) and (5) CRA 2007 emphasised the creation of child panels, which have still not been created.

Furthermore, although the CRA 2007 mentions reconciliation and levies cautions for a child's behaviour when in contact with the law, it fails to specify what sort of behaviour would require caution. However, it states that serious offences such as murder and rape should be sent to the police to prosecute. Therefore, and although s75 of CRA 2007 allows for a conciliatory approach to settling disputes concerning juveniles, it also promotes retributive justice. The word "juvenile" is used to caution against the implications of juveniles being subjected to the justice system. This shows that the adjudication of juveniles under customary law is left in the hands of a few with no written rules for guidance and is open to abuse. For example, the age of a juvenile under customary law is socially constructed.

The customary law system's imbrications with state law pose a doubt from academics like Albrecht (2017, 2010) concerning the powers that paramount chiefs hold when subjected to state control when the state can also depose them. However, paramount chiefs are influential because they can make laws without written provisions, settle disputes, levy fines and act as the custodians of customary law.

This study, therefore, shows that there are no juvenile provisions in customary law and that the empirical evidence throughout this research shows that professionals in charge of juveniles in conflict with the law regard customary law as only applicable to adults. However, despite this belief, in practice in rural areas, paramount chiefs deal with juvenile justice as they have the power to dispense with justice. What is evident from this chapter is that the lack of resources, including rehabilitation, programmes on fostering, and strong social networks, could render a child socially culpable. This means that child offenders can be held culpable for their actions and could end up in the juvenile justice system. Therefore, it is essential that due to the nature in which disputes, including those codified and those not codified by law, are adjudicated in customary law, a restorative form of justice will better serve child offenders. This is to assist in reconciliation, a core principle of customary law, and rehabilitation which is a core principle of juvenile justice.

CONCLUSION

This study critically considers children's social construction through a qualitative study of juvenile justice's criminal and customary law in Sierra Leone. It shows how ideas about children and, significantly, their relationship to other social actors shape legal decisions, the application of criminal responsibility, and the (im)possibility of redemption or rehabilitation. The social construction of childhood plays a vital role in Sierra Leone's legal system in the way children are perceived as good/innocent or bad/evil. In other words, and as this study has revealed, a good child is considered incapable of committing an offence and, conversely, an evil child is deemed incapable of innocence or redemption. Children who commit serious offences such as rape and murder are no doubt also seen as bad or demonic/evil. The accounts of children's atrocities exacerbated the notion of good and evil children during the Sierra Leone civil war (Abdullah and Rashid, 2004). However, juvenile offenders of poorer economic backgrounds are treated the worst by the juvenile justice system (UN periodic report 2002-2014 of the Government of Sierra Leone – see African Union (AU) December 2017).

To theorise the unequal dispensation of the law for juveniles, this thesis offers the concept of social culpability. This concept also contributes to social network theory by capturing the effects of the absence of social networks and social capital for individuals in their contact with state institutions. Of course, social capital theory recognises the importance of networks in shaping people's lives and their access to resources. Indeed, social network theory conceptualises the resources that flow through networks as 'social capital' (Tzanakis, 2013; Scott and Carrington, 2011), and in doing so, recognises the protective character of social networks. While Bourdieu (1986) is interested in how these networks and capital reproduce inequality, Putnam (1995) is enthused over how networks facilitate community action and civic engagement and Coleman (1988) over how they build human capital, with all agreeing that (social) networks generate (social) capital.

The concept of this thesis, social culpability, explains what happens in the absence of social networks and social capital. In relation to juvenile justice in Sierra Leone, I have shown how children without social networks (that cannot generate social capital) are held to be socially culpable when they come into contact with the law and compound or even produce their legal culpability. The concept of social culpability, although used in this thesis to explain the operation of juvenile justice in Sierra Leone, can therefore be broadly

applied to other situations or contexts in which people with weak social networks and low social capital are held to be socially culpable when they come into contact with state institutions.

In principle, the primary aim of a juvenile justice system is to reform and transform juvenile offenders (Article 40 (1) UNCRC; rule 24 and 25 (1) Beijing Rules; CJS 20114-18) into functioning members of society through rehabilitation and reintegration mechanisms. This can be achieved by providing skills, training programmes, and counselling sessions and dealing with recidivism. To fully achieve this aim requires the separation of the administration of justice between juvenile offenders and adult offenders. Juvenile offenders are then divided into two groups to determine their culpability in law. The first group is less responsible for their actions based on their maturity level of judgment. The second group (below the age of majority/culpability) is more likely to be receptive and responsive to treatment, thereby rendering them more likely to benefit from rehabilitation (Scott and Grisso, 1997 in Gruber and Yurgelun-Todd, 2005). My research shows that beyond this binary of being younger or older than the legal age of culpability, in Sierra Leone, judgements about a child's character are read off of their social networks and render them more or less 'socially culpable'.

The administration of juvenile justice is a complex area of law that relies heavily on interconnected regulatory agencies for the delivery of its services. Multiple agencies regulate accused child offenders on even the most seemingly simple decisions that should not render a child offender in custody. The regulatory agencies in Sierra Leone include the police, the government ministry responsible for children's affairs, the probation service, the Remand guards and the court personnel. In a country where the legal system includes both the general the customary law, juvenile justice administration becomes ever more precarious. The uncodified nature of the customary law makes it difficult for juveniles to benefit from standard juvenile justice provisions, as this study shows. Therefore, juvenile justice in Sierra Leone, as with the rest of Sierra Leone's legal system, is governed by a formal criminal system and a very loosely codified customary system, even though the prevailing belief among regulatory agencies is that customary law does not deal with juveniles.

This thesis examined both systems to understand the theory (law, rules and regulations) and practice (processes) of juvenile justice and the degree of separation or

overlap between the two legal systems. To address these points, the literature review focusing on the vulnerability of juvenile offenders is key to understanding how the distribution of resources by international and state actors, including NGOs and local people, contributes to defining people's vulnerability and resilience for African children who are caught at the intersection of local and global flows and processes, usually following INGO interventions. There is a discursive struggle over the distribution of resources since there are many ways that children are affected by vulnerabilities that do not get international non-government organisations' attention. For example, children in contact with the law are not discursively constructed as vulnerable. Therefore, they do not seem to rank very highly in distributing resources, which then affects their rehabilitation and reintegration.

The literature review shows that the mechanisms applied for post-conflict institution building, such as the DDR programmes and economic reforms, help shape how children are viewed as culpable by who and for what actions. The research shows significant gaps in the juvenile justice systems, including the lack of coherence in the legal framework, which in practice is unsystematic, arbitrary and challenging for children in conflict with the law and even to the decision-makers advocating juvenile justice. The legal provisions are piecemeal and do not adequately address the administration of juveniles. This study found, amongst other things, that there were insufficient programmes (rehabilitation and reintegration) at the Remand home in Freetown, Approved School and police cells to reform and transform child offenders as functioning members of society. This has resulted in limited or non-existent meaningful rehabilitation and reintegration of children in conflict with Sierra Leone law.

Notwithstanding, there have been transformative developments in implementing international human rights and humanitarian instruments in Sierra Leone. The intervention of INGOs in Sierra Leone during the war and post-war opened up new spaces for the development of the law on juvenile justice. For instance, this included the opportunity to address post-conflict reconstruction through the human rights discourse, such as the decriminalisation of juveniles and the distribution of aid to an affected vulnerable population like child soldiers. Although international humanitarian law considered the age for a child soldier's culpability to be fifteen years old, the SCSL had, on the other hand,

exonerated child soldiers from culpability but found their recruiters culpable contrary to local perception.

How international human rights law has helped shape the juvenile justice system in Sierra Leone is shown in the incorporation of the elements of the UNCRC into domestic law concerning state policies for children. It has also reinforced the awareness of the plight of children under Sierra Leone's administrative justice system, made possible by the enactment of the Child Rights Act 2007 (CRA 2007). This Act contains explicit provisions on substantive law. For example, the age of criminal culpability of child offenders is 14 years old, and a child is defined as a person under 18 years. This brings this age in line with domestic legislation concerning children except under customary law, where the age of a juvenile is not defined but socially constructed.

The CRA 2007 also contains some aspects of the ACRWC. The enactment of other state laws by the GoSL resulting from international human rights law intervention also includes policies and legislation, for example, the Child Justice Strategy for Sierra Leone 2014-2018 and the gendered Acts, 2007, which in one way or the other contribute to the implementation protection, survival, participation and development rights for children in Sierra Leone.

The CRA 2007, however, lacks specificity in dealing with juvenile justice despite its guarantee of rights. Nevertheless, its strong points include enacting provisions concerning the child's best interests as a primary consideration, raising the age of criminal culpability to 14 years and the provision to enact a specialist juvenile court (family court). In addition, it reiterates the current position that a juvenile court should consist of a magistrate and two or more justices of the peace. Assessing the child's best interest is crucial for the court to obtain information about a child's background and circumstances. This is to help determine the child's disposition in the child's best interest during the sentencing of ages 14-18 years.

Despite these improvements to the administration of juvenile justice, the application of the law is weak. There is a lack of criminal procedures concerning how long a child can be detained, including pre-trial cases. There is no provision that detention should be used as a last resort, and there is a lack of implementation of formal diversion mechanisms.

The CRA 2007's requirement to provide structures such as the family courts, including setting up child panels and welfare committees to help interface with the criminal law and the customary law in the administration of juvenile offenders, has not been achievable primarily due to lack of funds. In particular, the CRA 2007 has failed to clarify the full range of criminal offences that the child panels should deal with. In essence, the CRA 2007 has failed to incorporate the provisions under the UNCRC articles 37 and 40. These deal with the administration of a child when in contact with the law. It could be argued that despite the inadequacies of Cap 44, using the best endeavour principle (acting in the best interest of the child) enshrined in the UNCRC and replicated in CRA 2007 provides an opportunity for the rights of juveniles to be advanced more robustly in Sierra Leone.

The outcome for juvenile offences shows that Sierra Leone does not practise a restorative justice model. However, how cases are decided under the customary system appears to be conciliatory but arbitrary. This is because even though parties to a dispute can come together to resolve a matter without involving the criminal system, the practice is different from region to region in Sierra Leone and frequently involves the ill-treatment of children. The bedrock of a juvenile justice system includes rehabilitation programmes. These are lacking in the current juvenile system in Sierra Leone. However, in contrast with SCSL's rehabilitative approach and international human rights requirements of a juvenile justice system under the UNCRC and UN guidelines (Beijing, Havana and Riyadh rules). Sierra Leone's criminal justice system is restitutive when dispensing with justice and in congruence with the cultural perception of disciplining a child when in conflict with the law. Such as the requirement for children to be punished for wrong-doing. Children are treated harshly not to reform them but to punish and frighten them into behaving better. Most of my respondents in this study believe that once a child does something not child-like (such as engaging in sexual activity, involving in serious offences such as murder and rape), they should no longer get treated like a child. Nevertheless, the position can change if the child is seen as redeemable (could be perceived as a rehabilitative method) or has the necessary resources, as shown under the concept of social culpability.

The failures of the juvenile justice system in Sierra Leone are not only because of a cultural norm of punishment for wrongdoing, (even especially) for children. Majority of the child offenders in this study held at the Remand home and Approved School were

accused of serious offences of murder and rape. Yet, despite being held for long periods with little prospect of being educated or rehabilitated, they got off more lightly than those held under the state prison's harsh conditions. This is because the grave nature of their offences usually attracts NGOs' attention, which provide them with, among other things, legal representation to raise the argument that they are minors and should be treated as such under the law. Ironically, most children who commit less serious offences end up at the state prison because of a lack of legal representation and resources or someone to help speak on their behalf.

The data in this study shows that most juveniles get caught up in the juvenile justice system because they lack strong social networks to keep them out of trouble. However, the data also shows that where a child offender is perceived to have shown remorse or is pitied, or where those in charge of their judicial administration take the view that the child is generally good (i.e. going to School, reading their books, being obedient to elders, disciplined) they are likely to be discharged of their criminal culpability. This then leads to the idea that a child who can be redeemable can also be rehabilitated in that such a child is worthy of being given another chance to reform their life.

In instances where child offenders have served their sentences and are released, there are no rehabilitation programmes or state institutions for them to attend. This problem is further aggravated where their families and communities have rejected them. In this study, a participant (boy) had to continue to stay at the Remand home because he had nowhere to go even after his release.

What is evident from this thesis is that where a child offender lacks resources such as strong social networks, this could render them socially culpable. For example, in this study, the criminal law's arbitrary nature shows that juveniles could be imprisoned at the state prison for minor offences like theft if they lacked the funds, legal representation, or social networks to secure their release. On the other hand, a juvenile alleged to have committed murder was not found culpable as he was under the age of majority stipulated in CRA 2007. The case was successful because the child was legally represented.

Notwithstanding, Cap 44 stipulates that if a child is charged with murder or charged with an adult offender, they will not be dealt with by the juvenile court. Therefore, they are in essence, treated like an adult. This study shows that a magistrate (participant) released a child from culpability even though the child was charged for murder on the grounds that

he was under the age of criminal culpability. The magistrate's action is contrary to Cap 44 since this stipulates that homicide matters should be referred to the high court. The likely explanation for the magistrate's action in 2014 is that NGO funds set up the special juvenile court in 2014.

Further, the intervention of international law concerning rehabilitation after the war is reflected in Mag-A's decision to acquit juveniles charged with murder if below the age of majority. Unfortunately, there are no other structures set up to undertake programmes concerning the rehabilitation of juveniles after their release. The lack of funds is another example of the way juveniles are treated and the arbitrary nature in which justice is dispensed within Sierra Leone.

The study shows that the determinant of a juvenile offence depends on the type of crime, where the offence is being committed, the victim involved, and the route of redress the complainant desires. The reporting of an offence is complainant led. It is also the case that the types of offence a child offender commits are not the sole determinant factors that would render them liable to go to prison. Rape is, for example, an offence that should be investigated by the police and adjudicated by the courts. Such an offence is, however, sometimes settled by a chief or the community or family members. This means the perpetrator has got away with their crime, especially if the offence is committed in a rural area where customary law is predominantly practised. The study shows that there are no juvenile provisions in customary law. The empirical evidence throughout this research has shown that professionals in charge of juveniles in conflict with the law regard customary law as only applying to adults. However, despite that belief by those professionals, paramount chiefs deal with juvenile justice in practice in rural areas. They can dispense with justice where there is no written law and can dispense with justice where there are written rules. This is because, most times, legal cases are reported to them first; they are the primary sources of justice in rural areas.

An enhanced role for customary law in juvenile justice adjudication could be developed using restorative justice principles. This is to hold the offender accountable for the truth and other forms of accountability for reconciliation between the victims and the perpetrators (Berewa, 2001 in Apori-Nkansah 2011) and address the lack of funds to set up rehabilitation structures. Customary justice providers play a central role in Sierra Leone's pluralistic legal system. Providing customary justice providers with legal training

and funding for juvenile offenders' adjudication would enable early reconciliation between victims and offenders. This will also provide rehabilitation and reduce the recidivism of child offenders.

Age 14 was the age used to assess juvenile participants' culpability in this study. This is the age set for criminal liability under CRA 2007. However, a participant magistrate stated that children as young as ten years old are culpable when in conflict with the law. This is because Cap 44, the primary legislation dealing with juveniles, offers magistrates the discretion to determine a child's age. However, it creates confusion in applying the age of criminal culpability at 10 or 14 years old. Regardless of this flaw in the dispensation of justice for juveniles, the criminal law empowers the police and magistrates to discharge children in conflict with the law at an early stage of criminal proceedings by applying the best interest principle in CRA 2007. Further, this study and other studies show that there are still inconsistencies in the treatment of juveniles from the first contact of the law to investigation in judicial proceedings across regions in the country. These flaws include a lack of sufficient procedural rules, safeguarding measures, care facilities, and lack of training of government officials in dealing with juveniles. Officials such as the police, probation officers, magistrates, or professionals' have also demonstrated acute failure to put their knowledge into action.

The lack of adequate legal representation leads to multiple adjournments and sometimes imprisonment of juveniles. This study also shows that where a charging sheet, for example, states that a child is 14 years and they are not, the magistrate has no discretion to dispute the age on the recorded age. Nonetheless, a legal representative can raise objections for the magistrate to order a medical age assessment which could also be non-conclusive due to how the reports are conducted. However, it should be stressed that where representation is lacking, the accused child offender is likely to enter the formal criminal system. This is so since a magistrate can discharge or convict an offender according to the evidence, including submissions made before the court.

In practice, the administration of juvenile justice in Sierra Leone depends neither on legal transgression nor legal codes. Instead, it depends on whether the child has sufficient social networks and social capital to establish that they are not socially culpable and cannot be legally culpable. Traditional law plays a big part in the dispensation of justice in Sierra Leone. Moreover, the social fabric is made of a patrimonial, patriarchal and

patrilineal society. For a country where there is a limited redistribution of wealth, a child in conflict with the law relies on a patrons' goodwill and/or strong family links to assist them when in conflict with the law. Therefore, it is essential that due to the nature in which disputes, including those codified and non-codified by law, are adjudicated in customary law, a restorative form of justice will better serve child offenders. The underlying reason is to develop the reconciliation practice of settling disputes since it is a core principle of customary law and rehabilitation, a core principle of juvenile justice.

This thesis contributes to the wide-ranging discussion about vulnerability, resilience and agency, which have taken up so much scholarly attention, especially in Childhood Studies and Legal Studies. It shows that in thinking about the relationship between children and juvenile justice, there is a distinction to be made between innocence as in not guilty and innocence in the sense of not possessing sufficient knowledge to be capable of being guilty. This impossibility of a child's culpability in law rests on claims about brain development and risk assessment but is fundamentally a socio-cultural framing, usually classed and gendered. Age is one determinant of innocence (younger children are more likely to be considered innocent in both senses), the law is another (the legal age of culpability), but social networks and social capital which are taken to be proxies for a child's character are the critical demarcators of innocence or guilt. Good character is read off or attached to family ties, community ties and space, and financial resources. Therefore, a child who does not have the financial resources to defend himself or (less often) herself will be penalised or passed over until such time that he or she can attach himself or herself to someone who can speak for his/her character.

In short, while the legal framework (theory) of juvenile justice in Sierra Leone is in situ and meets some of the international guidelines for juvenile justice, the practice is deplorable, and justice is entirely dependent upon who the child knows and how others perceive the child's character.

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