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Law Beyond the State: The Makings of Justice in Urban Sierra Leone

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PhD International Development
University of Edinburgh
2021
To my grandma, the strongest woman I have ever known.
Abstract

This study reckons with the puzzle of a justice mechanism that has not only resisted the hostility of state authorities but has thrived and proliferated. To come to terms with the phenomenon of neighbourhood courts or *barrays* in Freetown, the capital of Sierra Leone, I situate my study within its specific postcolonial and post-conflict context, to shed light on ways in which ordinary people understand and engage with the law and (extra)legal processes through and beyond the state. Post-colonial Sierra Leone divides the country into two legal, territorial, and juridical realities – the Western Area (formerly the Colony) where the capital, Freetown, is located, and the Provinces (formerly the Protectorate), comprising most of rural Sierra Leone. Statutory law dictates chieftaincy and customary courts in the Provinces, while expressly prohibits the same in Freetown.

Notwithstanding, *barrays* or unofficial courts not only persist in Freetown, despite the statutory prohibition, there is also demand for their services. This raises important questions at the heart of my thesis about *what, why, where barrays are*; the social, economic, and political networks that support them; when and *how* they came to exist in this urban part of Sierra Leone; and *why* people gravitate towards them. To engage with these questions, *barrays* are studied in their own social contexts and on their own terms, examining their causal significance and connections to different social and legal systems in Sierra Leone.

In so doing, this study examines the role of law and (extra)legal processes in both Sierra Leone’s colonial and post-colonial continuities and disjunctures, and in its post-conflict state (re)construction and legal framework, to understand not just how state power is exercised or perceived, but also in the ways law and legal processes manifest in the daily lives of citizens and become locally (re)produced ideas of ‘justice’. By using a people-centred approach, my study of *barrays*, official courts and similar state bodies like the police, will show what looking at individual trajectories can tell us about the development of legal systems, as well as attitudes towards both the state, and institutions that provide justice. Such a people-centric approach informs an overarching
argument that emphasises how these institutions, often depicted as separate and distinct, are interlinked and reliant on one another to enact a complex system of law in Sierra Leone.
Lay Summary

This project looks at how and why dispute settlement forums or customary courts, referred to as “barrays” exist in Freetown, Sierra Leone’s capital city, an area where such courts are, in theory, prohibited. Sierra Leone’s legal system divides the country into two – the Provinces and the Western Area, where Freetown is located – a legacy of its colonial past. While chiefs and customary courts operate in the Provinces alongside state courts, they are not allowed in Western Area. However, barrays have continued to hear cases despite this prohibition. This study, therefore, assesses what the Freetown “barrays” are, and why they persist as an integral part of the socio-economic and legal system of Sierra Leone. It explores the impact of migration (forced and economic) to Freetown, especially following the civil war (1991-2002), on the development of the legal system. It examines why Freetown’s urban population is motivated to engage these “illegal” courts and what this means, both for our understanding of how people experience law in their daily lives, including how they conceive of justice, and how they view the exercise of state power.
Declaration

I declare that this thesis has been composed solely by myself and that it has not been submitted, in whole or in part, in any previous application for a degree or professional qualification. Except where it states otherwise by reference or acknowledgment, the work presented is entirely my own.

Simeon Michael Kumal Koroma

Signed:

Date:
Acknowledgements

This PhD journey has been long, lonely at times, and arduous, counting the complications brought by the outbreak of Covid-19 and its attendant restrictions. Many wonderful people and institutions helped me along the way, and I am deeply grateful to all of them. I thank the Leverhulme Trust “Perfect Storm” Interdisciplinary Doctoral Training Scholarship, for their generous financial assistance, without which this PhD research would not have been possible.

To the chiefs, clerks, messengers, and litigants of the barrays, thank you. Special thanks to Chief Ya Alimamy Gbonkolenken Thoronka N'Maka, Chief Alhaji Bundu, Chairman Alimamy J.B. Kamara, and Chief Ya Alimamy Sesay N'Yarroh for taking me in, and for sharing your knowledge, time, and space. Thank you to members of the Sierra Leone Police, Judiciary, legal profession, Timap for Justice, for the interviews and documents, and for sharing with me your lived experiences of the barrays. To my fantastic assistants, Abdul Rahman Sankoh and Foday Issa Kamara, thank you. And to Eugene Gbondo and Sulaiman Kamara, for your support during fieldwork.

I am indebted to my supervisors: Gerhard Anders, George Karekwaivanane and Jose Martin Munoz, for their guidance, inspiration and understanding throughout my PhD journey. You were always available when I needed to talk about my research and PhD life. Thank you! To my PhD buddy, Clayton Boeyink, thanks for the support and encouragement. It’s been a long road, but we’ve seen it through. A huge thanks to Laura Martin, a dear friend, who has been there since the beginning. Thank you for your guidance and suggestions. Thanks to Lucy Atim, Sayra van den Berg, and Ellie Frazier for being sounding boards and for providing comments and suggestions.

The biggest thanks of course go to my family. To my favourite girls in the world: my lovely wife, Agnes and our gorgeous daughters, Samantha and Shaylene, thank you! You have been there for me through the highs and lows. You have made big sacrifices and I can’t thank you enough. I am incredibly lucky to travel life’s journey with you. I love you! Finally, to my mother, Mrs Hannah Koroma, for your unwavering support
and love. To Uncle Tony, for always being there; to my brothers, Edward and Joe, and
my mother-in-law, Mrs Kumba Kanu, for your constant encouragement. I am grateful.
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<td>African Charter on Human and People’s Rights</td>
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<td>APC</td>
<td>All Peoples’ Congress</td>
</tr>
<tr>
<td>APPC</td>
<td>Area Police Partnership Committee</td>
</tr>
<tr>
<td>CAD</td>
<td>Customary Appeals Division</td>
</tr>
<tr>
<td>CCSSP</td>
<td>Commonwealth Community Safety and Security Project</td>
</tr>
<tr>
<td>CPPC</td>
<td>Chiefdom Police Partnership Committee</td>
</tr>
<tr>
<td>CRD</td>
<td>Community Relations Department</td>
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<tr>
<td>DAD</td>
<td>District Appeals Division</td>
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<tr>
<td>DfID</td>
<td>Department for International Development</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>FCO</td>
<td>Foreign and Commonwealth Office</td>
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<td>FGD</td>
<td>Focus Group Discussion</td>
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<td>FSU</td>
<td>Family Support Unit</td>
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<td>IG</td>
<td>Inspector General of Police</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>LAD</td>
<td>Local Appeals Division</td>
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<td>LE</td>
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<td>LPPB</td>
<td>Local Police Partnerships Board</td>
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<td>MoD</td>
<td>Ministry of Defence</td>
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<td>NRC</td>
<td>National Reformation Council</td>
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<td>NPRC</td>
<td>National Provisional Ruling Council</td>
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<td>OC</td>
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<td>SFCBs</td>
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Introduction

This study reckons with the puzzle of a justice mechanism that has not only resisted the hostility of state authorities but has thrived and proliferated. To come to terms with the phenomenon of neighbourhood courts or *barrays*\(^1\) in Freetown, the capital of Sierra Leone, an area where such courts are statutorily prohibited, I situate my study within its specific postcolonial and post-conflict context. I argue that these courts are an essential part of the legal system in present-day Sierra Leone and that my work has broader implications about the development of context-specific legal institutions and the limitations of rule of law reforms.

Consider the case of someone I came across over the course of my work as a lawyer for Timap for Justice\(^2\), a paralegal organisation I co-founded in 2003 to address the shortcomings of the official state court system and to provide alternative methods to advance access to justice in Sierra Leone. Her name is Digba, and she lived in the Kissy area of Freetown. She owned a stall at the local market where she was also an active member of the Female Traders Association. I met Digba in 2013, when she visited the Freetown office of *Timap for Justice*, seeking the organisation’s intervention in a dispute she had with fellow traders. It transpired that two weeks earlier, Digba had been summoned before a *barray* – the neighbourhood court system run by traditional chiefs who, like *Timap for Justice*, address the justice needs of people not well-served by legal professionals and the official legal system – to respond to an accusation of ‘*pass-word for bring palaver*’ (gossip to instigate conflict). After a week of proceedings, the *barray* had decided against Digba which, *inter alia*, had required her to apologise to, and seek the complainant’s forgiveness. Back at *Timap*, Digba was complaining

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\(^1\) *Barray* is a designated multi-purpose structure, usually with a half-way-built wall (which also serves as seating accommodation) and open to the roof, used to hold family, community, and ceremonial events, such as adjudication of disputes.

\(^2\) Also pronounced *Tinap*, *Timap* is a Krio word meaning “stand up”. *Timap* has been recognised by independent institutions including the World Bank (Dale, 2009); the International Crisis Group (International Crisis Group, 2006), and the UN Commission on Legal Empowerment for developing an innovative, effective methodology that provides justice services in Sierra Leone (*see also*, Maru, 2006). In 2012, its model became the basis for the promulgation of the Legal Aid Act, which officially recognised paralegals as justice service providers.
about damage to her stall and a toxic work environment at the market that was preventing her from returning to sell smoked fish and vegetables.

Timap's staff were community-based paralegals – villagers and community members – rather than lawyers. They employed mediation, advocacy, education, and community organising to assist citizens to address a wide range of justice problems, including intra-community breaches of rights, as well as disputes between people and their authorities. In severe and intractable cases, Timap lawyers (such as myself) would employ litigation and high-level advocacy to address injustices that the paralegals could not handle on their own (Koroma, 2008; 2012).

That morning, when Digba arrived to make her report, I recalled passing rows of clients in the waiting area as I walked into the office. Most of their cases would not escalate beyond the paralegals, so that by early afternoon, many of them would have left. Dissatisfied with the advice given by the paralegals who had suggested that she should report the damage of her stall to the police, Digba had refused to leave the office. When I agreed to meet with her, she explained how a rumour was started by her neighbour, with whom she had a quarrel, that she (Digba) had been telling other market women that the chairlady of the Association was using the association’s funds to boost her business. Digba had insisted that she had heard the rumour herself, but that she had not started it. A bitter feud had ensued, resulting in the chairlady instituting the aforementioned action at the barray. For her part, Digba had unsuccessfully countersued in the same court for the partial destruction of her stall allegedly by the chairlady and her supporters. Losing both cases, with substantial financial consequences, in addition to the ignominy of having to publicly apologise to the chairlady, Digba was also facing the threat of multiple suits by the women she had accused of destroying her stall. She appeared visibly drained. How might Timap be of assistance to you? I asked. She looked at me straight in the eye and said the three words which I will return to several times in this introduction and the rest of the thesis: ar want justice (I want justice). What might justice mean to Digba in this instance? What instruments, institutions and processes can she engage and why?
Digba’s story is not exceptional. Yet, it remains memorable as the inspiration for my PhD research because of the context, the backstory, the players, and institutions involved, and the questions it raised. For a start, Digba’s case and experience – like the hundreds more I encountered during fieldwork – were taking place in a different legal dimension. A dimension that was the product of post-colonial and post-conflict circumstances, in which the law, its meaning(s) and implications across time and space, continue to be central not just to how state power is exercised or perceived, but also in the ways law and legal processes manifest in the daily lives of citizens and become locally (re)produced ideas of ‘justice’. On the one hand, the post-colonial system is reflective of a bifurcated colonial legal system that divides the country into two legal territorial and juridical realities – the Western Area (formerly the Colony) where the capital, Freetown, is located, and the Provinces (formerly the Protectorate), comprising most of rural Sierra Leone. Statutory law dictates chieftaincy and customary courts in the provinces, while expressly prohibiting the existence and operation of non-state courts in the Western Area. On the other hand, the state (re)building process after the end of the civil war in 2002, did not prioritise customary law, even though it was of more relevance to much of the population. Instead, the post-conflict state adopted the much criticised ‘rule of law’ orthodoxy: a top-down, state-centred development model, which emphasised law reforms, effective judiciaries, and state institutions, often on the assumption of economic and developmental benefits (Golub, 2003, p.3; see also, Sandefur & Siddiqi, 2013; (Sriram, 2010). In particular, this approach was implemented within the wider Security Sector Reform (SSR) programme, which reinforced the connections between law, justice and security (Abrahamsen, 2016, pp.285-289). In so doing, not only did the post-conflict reform agenda assume supremacy of formal3 justice institutions such as the judiciary, police, and the legal profession, it also failed to countenance the presence, much less the role, of non-state forums such as barrays in supporting the legal needs of citizens.

Yet, as Digba’s case demonstrates, barrays are both present and active in the Western Area, including Freetown, despite the statutory prohibition, and that there is a demand for their services, despite their exclusion in the post-colonial and post-conflict legal

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3 In this thesis, the term ‘formal’ is used interchangeable with ‘official’.
reform processes. This raises important questions at the heart of my thesis about what, why, where barrays are; the social, economic, and political networks that support them; when and how they came to exist in this urban part of Sierra Leone; and why people like Digba gravitate towards them. To engage with these questions, barrays are studied in their own social contexts and on their own terms, despite contestations about their legal identity, examining their causal significance and connections to different social and legal systems in Sierra Leone. This thesis examines the following research questions:

1. How do local barrays operate and what is their relationship to the state?
2. Why do individuals engage with barrays?
3. What can studying local barrays tell us about how justice is understood more broadly in Sierra Leone, both in theory and in practice?

These questions are situated within a wider discourse of law and how legal systems operate in specific socio-cultural contexts, an area that has attracted considerable interest in the anthropology of law (Nader, 1997; Abel, 1973; Bohannan, 1968; Comaroff & Roberts, 1981; Roberts & Palmer, 2005; Evens & Handelman, 2006).

Since Sir Henry Maine’s Ancient Law (1917), scholars like Radcliffe-Brown (1933) have posited an evolutionary theory of law emphasising a linear development of legal systems from primitive to the advanced. Others have found useful his framework of analysis of change from pre-industrialised to complex society (Gluckman, 1967; Moore, 1978), which has been employed to formulate models that establish parallel Western legal concepts with those of other societies (Llewellyn & Hoebel, 1941; Hoebel, 2009; Gluckman, 1967). In contrast to Maine’s Ancient Law, Bronislaw Malinowski’s Crime and Custom in Savage Society (1926), conveyed his anti-evolutionist stance, which is disinterested in speculative reconstructions. Instead, Malinowski advocated for understanding the processes of law and dispute settlement, through the (present) workings of societies. The above studies have become foundational in the study of law in society, including the utility of rules versus processes (Gulliver, 1969; Roberts, 1979; Comaroff & Roberts, 1981).
Based on fourteen months of fieldwork in the Western Area and two decades of experience in the formal legal and customary justice sectors in Sierra Leone, this thesis examines the role of law and (extra)legal processes in both Sierra Leone’s colonial and post-colonial continuities and disjunctures, and in its post-conflict state (re)construction and legal framework. To do this, the thesis will be anchored in four related issues: customary law and the development of *barrays*; legal pluralism; legal systems in post-conflict settings; and rural-urban dimensions of law. I hope that through the examination of these issues, this study will shed light on ways in which ordinary people like *Digba* understand and engage with the law and (extra)legal processes through and beyond the state. I aim to interrogate the imagined divide between state and society relations, to contribute to the understanding and analysis of legal systems, as they operate within specific contexts. By examining *barrays*, this thesis focuses on law as a magnifying lens to examine Freetown society and change over time, and how people connect to different systems within society. The remainder of this introduction will examine the four central themes of the thesis in more detail. It will then summarise my contribution before examining the methodology and ethics. The introduction will conclude with an outline of the chapters.

**Customary Law and the development of *Barrays***

The 1991 Constitution of Sierra Leone creates a five-tier hierarchy of laws, at the bottom of which is the ‘common law’ which incorporates “… the rules of customary law including those determined by the Superior Court of Judicature”.\(^4\) It further describes customary law “as the rules of law which by custom are applicable to particular communities in Sierra Leone.”\(^5\) While both provisions and definition of customary law are not well developed— they do not elaborate on the meaning of ‘rules of law which by custom are applicable’ or ‘rules of customary law’ – they do suggest determination by the official courts as one way for such rules to be considered as customary law. The implication is that custom-based rules of law (however these are defined) that are


recognised as such in communities in Sierra Leone also qualify as customary law, without validation from the state-sanctioned courts.

This generous reading of the constitution is tempered by specific legislation on the subject, the Local Courts Act, 2011, which repealed and replaced the 1963 legislation with the same name. It defines customary law as:

any rule of law 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 the provinces, and includes any amendment of customary law made in accordance with the provisions of any enactment.\(^6\)

The 2011 definition of customary law is significant in at least two respects: first, it limits the practice and application of customary law only to chiefdoms of the provinces, thereby statutorily excluding Freetown and the Western Area generally (Joko-Smart, 1970), the site of my study. The basis for this geographic exclusion is steeped in colonial rationale, when two territories – the Protectorate and Colony – existed, with customary law permissible in the former but not in the latter. In fact, this definition is a verbatim exposition of the colonial legislation, the Native Courts Ordinance, which provided for the administration of justice in the Protectorate.\(^7\) The second significance of this definition are the conditions customary law must fulfil to qualify as such (Joko-Smart, 1983). While this is discussed further in the next section, these restrictions do not only confirm the official position of customary law as subservient vis-à-vis the other types of laws of Sierra Leone, but also seem to suggest that the substantive characterisation of customary law rests in legal principles determined by official courts and legislations. The inference drawn from this definition is that customary law cannot exist in the Western Area, even if it also has ‘communities’ to which ‘rules of law are by custom applicable’. In this section (and throughout the thesis), my study of barrays in Freetown and the Western Area will demonstrate the incongruity of this position,

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\(^7\) s.5, The Native Courts Ordinance [1933], Cap.8 of the Laws of Sierra Leone 1960.
contributing answers to the questions about what customary law is, how it is determined and who (or what) has the authority to make that decision.

In this section, I set out to discuss the meaning and scope of customary law, its historical and contemporary configurations, its implications in Sierra Leone and how these questions about the content, character and influences of customary law have been the subject of sustained scholarly attention over many decades. There is broad agreement that before the start of colonialism on the continent, there existed some form of normative order or system, with which different African communities were governed (Letuka & Armstrong, 1996, p.208; Starr & Collier, 1989, pp. 8-9). There is further consensus that colonialism introduced dominant legal systems (implemented by colonial powers), which interacted with the prevailing pre-contact or pre-colonial normative systems. However, the central question has remained the range of the interaction as well as the extent to which contemporary African customary law is an altered version of its pre-colonial character, which was affected by socio-economic or political transformations during colonialism.

To unpack this question, it is essential to understand the depiction of customary law and its institutions such as chieftaincy, during colonial rule and the post-Independence era. One of the best-known African jurists, Elias (1956, pp. 25-36), for instance, identified four main groups for whom African customary law was a major ideological subject during colonialism: missionaries, colonial administrators, jurists, and social anthropologists (see also Anyango, 2013, p. 19). Each of these groups not only attempted to define what constituted customary law but also to shape scholarly understandings of what it is and what it does. In Sierra Leone, for example, missionaries, like the Church Missionary Society, worked with the colonial administration’s Liberated African Department to convert and civilise Africans – code words for encouraging the abandonment of African values (and by extension customary law) in favour of a new Europeanised way of life (Wyse, 1989, pp. 4-5; Cole, 2013, p.3; Spitzer, 1974).
For the colonial administrators, there was a different challenge: African customary law had to be understood and circumscribed, so that it could be incorporated into an encompassing legal system. In this process, scholars like Chanock (1985), Snyder (1981) and Moore (1986) have argued that customary law which emerged during and after colonialism was substantially different from its pre-colonial version. Chanock’s seminal work on the development of customary law in colonial Malawi and Zambia, for instance, historicised the concurrent emergence of judicial apparatuses and the changing modes of social control, impacting relations between men and women. He argued that customary law only evolved in the nineteenth century in response to several factors, including social unrest, caused by a British colonial policy of direct judicial control, in which it had flexible engagement with traditional leaders and their courts (except for the Lozi khotla). The result of direct control of courts was a string of progressive rulings in favour of women. This weakened traditional authority. However, according to Chanock, with a weakened traditional authority, increasing migration and emerging market conditions, there was real threat of social unrest. When traditional courts were eventually allowed to operate alongside colonial courts, the cases whose decisions formed the basis of customary law, were heavily influenced by personal and socio-economic factors. In a bid to understand local customs through adjudication of cases, judicial interpretation was often based on testimonies of older men who had substantial interests in the adjudged cases or were fearful of losing power, to the exclusion of groups such as women and youths (see also (Chanock, 1982, pp. 56-57). What developed was a rigid form of customary law, unrecognisable from its pre-colonial form. In fact, Chanock noted elsewhere that what was regarded as customary law was “born in and shaped by the colonial period” (1978, p. 80).

Both Moore and Snyder in their studies of the Chagga people of Northern Tanzania and Banjal Diola of Casamance in Senegal make similar points about changes in customary law in the nineteenth century, because of colonial interaction and changes in the market economy, lifestyle, and migration. For Snyder (1981), customary law developed through court cases when new claims of land ownership and usage emerged, following the profound changes in the local political economy, with cheap imports decimating local production upon which social and economic life was centred,
as well as adverse colonial taxation policies. Like Snyder, Moore’s (1986) work showed the development of customary law through the historical examination of the position of chiefs and localised lineages, following German and British colonialism, and substantial adjustments to farming practices, commodification of land, local government, and wage labour. Moore engaged with specific cases to highlight the changing use (and meaning) of customary law. In one instance, a Chagga lineage was shown to exercise flexibility in adjudging a dispute, taking into consideration a combination of (historical) notions of land claims, lineage rights and the social or cultural structures, as well as (prevailing) economic and political adjustments, such as imposition of local government, Western education, and commodification of land. Customary law in this instance, was flexible and relatable to its members. In the second instance, Moore showed how increased interaction during British colonialism led to the creation of local and primary courts, which were not interested in historical basis of claims but only considered the immediate causes of action. This led to the development of a customary law that was both rigid and flexible.

For these authors (Moore and Chanock especially), the introduction of ‘Indirect Rule’ – an administrative structure that utilised local leadership (chiefs) in such capacities as would maintain the colonial administration’s overall control – was a turning point in the development of customary law in British colonial Africa (see also, Mamdani, 1996, p.7). Often presented as a cost-saving ingenuity that made “colonial rule work with only a ‘thin white line’ of European administrators” (Shadle, 1999, p. 411), indirect rule heralded the shift towards a rigid version of customary law. In fact, implementing indirect rule instigated two consequences for customary law that outlasted colonialism. First, the institutionalisation and, in some cases, expansion of chieftaincy. In many African countries, including Sierra Leone, a colonial administration offensive saw many territories shrunk to form unequal chiefdoms, in a bid to reward loyal chiefs and punish recalcitrant ones. New ruling families were created and subjects’ powers of checking despotism were removed, thus making chiefs rulers for life (Abraham, 1978, pp.303-311; Mamdani, 1996, pp.37-61; Chanock, 1982, p.59; Ubink, 2008, p. 7). As a result, chiefs or traditional leaders’ political and judicial authority to determine and apply customary law became enshrined in the colonial governance infrastructure, which was
The second consequence indirect rule created for customary law, was the introduction of legal pluralism (or at least state law pluralism) – discussed in detail in the next section – which created the possibility of more than one normative order operating within the same legal framework. Customary law was in many instances subordinated (if recognised at all) to colonial state law, through processes of judicial interpretation and legislative codification. As Chanock, Moore and Snyder all noted above, a rigid form of customary law was therefore created which was legally comprehensible for the sake of legal certainty and judicial precedents, but inflexible and unrelatable to ordinary citizens in villages and communities.

The cumulative effect on contemporary customary law, according to some scholars, is its bifurcation into two versions. The first, referred to as “official customary law” (Diala, 2017, p. 145) or “lawyer’s customary law” (Woodman, 1988, p. 181), is the result of the already mentioned rigid interpretations based on Western legal principles and manipulation by chiefs and elders, with substantial interests in the cases (Chanock, 1982, pp. 56-57; 1985; see also Snyder, 1981). Described by Diala as “the product of colonial and post-colonial efforts to pigeon-hole customary law into Western systems of law” (p.145), official customary law seeks legal certainty through codification, case law and academic (anthropological) studies (see also Zenker & Hoehne, 2018, p. 2). Perhaps, a clearer (but by no means uncontroversial) definition is the one provided by Letuka & Armstrong (1996, p. 208), who define official customary law as:

the customary law which is recognised by the state [and] applied in the state court system. This version of ‘customary law’ is a product of the social economic transformation of African societies and the political motivations of those who control it.”

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8 The Constitution (s.72(1)) provides as follows: “The institution of Chieftaincy as established by customary law and usage and its non-abolition by legislation is hereby guaranteed and preserved.”
The key element of the above definitions is the link between this type of customary law and both state recognition and application through the state court system. Its rigidity, born out of the colonial period, and reinforced in post-colonial legal systems, is based on the need for legal certainty, especially within the lens of legal pluralism. It is in this sense, that the definition of customary law in Sierra Leone, discussed in the beginning, can be understood. The result, according to these authors, is a customary law unrecognisable by the local communities where it is practised, so that a second version has been identified as a counter response to codification, official recognition, and judicial inference.⁹

Referred to as ‘living customary law’ (Claassens & Budlender, 2014, p. 79; Himonga, 2011, p.11), this version is said to include the dynamic and adaptable aspects of customary law that have evolved to meet the changing needs of communities. One of the famous proponents of ‘living law’, Eugen Ehrlich (1936, p. 493), offered “folk law,” and “law in action” to describe values of practice that amounted to law, shaped by socio-economic changes and everyday relations. Foregrounded in the notion that the state does not hold a monopoly over making laws, Ehrlick suggested that law was present in the norms and practices that a particular society considered appropriate and desirable, absent official (legislative and judicial) validity, but instead reliant on a community of relations so created (see also Moore, 1978, p. 220).

In Africa, the concept of a living customary law has gained traction, both because of the widening gap between official customary law and everyday practices in communities, as well as a growing body of jurisprudence especially in South[ern] Africa. Himonga (2011, p. 35) describes the concept of living customary law as “the unwritten practices observed, and invested with binding authority by the people whose customary law is under consideration.” Diala (2017, p. 152) adds that “this type of customary law has been used to describe norms that regulate the daily lives of people in communities, often in ways incomprehensible to outsiders.” The idea is to distinguish

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⁹ For Starr & Collier (1989, pp. 8-9), the distinction is between official customary law – “the outcome of historical struggles between native elites and their colonial or postcolonial overlords” – and “indigenous law”, defined as the construction of precontact native law by an anthropologist”. Obarrio (2010, p. 28), on the other hand, divides customary law into statutory customary law and pre-colonial traditional justice.
a type of customary law which is flexible, ‘unofficial’ (as not recognised by the state) and practised in communities with little or no regard to outside perception.

Perhaps, one of the earliest scholars to broach the idea of a living customary law was Hamnett who, in his *Chieftaincy and Legitimacy* (1975), argued against the reliance on court judgments, codification and academic texts, to understand customary law. He noted that:

> Customary law emerges from what people do, or – more accurately – from what people believe they ought to do, rather than from what a class of legal specialists consider they should do or believe… . [T]he ultimate test is not, ‘what does this judge say?’ but rather ‘what do the participants in the law regard as the rights and duties that apply to them?’ (1975, p.10 cited in Biala, 2017, p. 152).

While this does not remove questions about what (living) customary law is or how participants determine what and how rights and duties apply to them, at its roots, there is desire to recognise everyday norms and conduct as customary law, irrespective of state or official court recognition.

Recent jurisprudence, especially from the Constitutional Court of South Africa, has made significant contribution on the development of living customary law literature in that part of Africa (Claassens & Budlender 2013, p.79; Diala, 2017; Himonga & Bosch, 2000, p. 320; Letuka & Armstrong, 1996). For instance, in a landmark judgment of the Constitutional Court of South Africa, deciding on an appeal in a dispute about headship, management and recognition of a Traditional Community and its customary leadership, Justice Skweyiya stated inter alia:

> …the true nature of customary law is as a living body of law, active and dynamic, with an inherent capacity to evolve in keeping with the changing lives of the people whom it governs.”

Whether there are merits in the classification of, or particular distinction between,

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official and living customary law, is a different matter altogether, especially if both require (based on the above definitions, excepting Hamnett) some form of official court or legislative validation. For example, Letuka & Armstrong (1996, p. 208) above, include socio-political and economic transformations and political incentives as motivations for ‘official customary law’. These are the same elements – the ability to evolve and keep up with the changing lives of those it governs – that also epitomise living customary law, according to Justice Skweyiya in the Pilane case above. Indeed, there is criticism of this (lack of) distinction and of the definition of living customary law from scholars such as Biala, (2017), for example, because of the absence of rigorous conceptual engagement with the term ‘living customary law’. But Zenke & Hoehne (2018, p.2) note, a distinction is nevertheless important, even if it is established within what they describe as the “‘jurispathic’ nature of state recognition”. They argue that by the very coercive nature of law creation (jurisgenesis), when the state recognises one version of customary law, it simultaneously destroys the other, so that through state recognition, for instance, the living customary law transforms into the next form of official customary law (p.4; see also Ubink, 2008; 2011; Bennett, 2008). For others, any distinction is superfluous if it does not account for the heterogenous nature of the customary, especially in its relations with the state, and with different local and sub-national entities, in carving out normative and juridical spaces (see Obarrio, 2014, pp. 110-114).

From the discussion above, it is clear that defining customary law in Africa evokes strong reactions, not only because of its well-documented history, but also of its (perceived) place in the lives of many Africans. For this reason, there is a need to distinguish its different configurations based on closeness and interaction with the state or state law. Whether it is considered to be rigid, compliant with official legislation and not repugnant to natural justice as in the Sierra Leone 2011 legislation, or active, dynamic, and with an inherent capacity to change, as per Justice Skweyiya, the meaning of customary will continue to evolve. What is clear is that customary law cannot (only) emerge from legislation and courts, but also from the determination of those who participate in it, within an ever-changing socio-economic and political
context. This context is not always the result of internal interactions, as where chiefs or (older) men manipulate customary law (Chanock, 1982, pp.56-57; 1985).

It also involves external interfaces with state law and institutions, urbanisation, and religion (Biala, 2017, p.154). It is in this context that my examination of *barrays* in Freetown, sheds new light both on the contemporary practice and application of customary law, as well as on the outside influences – official law, the police, urban migration, money, and religion – that define it. This study’s detailed examination of *barrays*, the kinds of cases and procedures they undertake, their connection to different systems, and how state officials in their quotidian duties interact with them, will extend our understanding of customary law and institutions, especially in an urban area such as Freetown, where they ought not to exist.

**Legal Pluralism in Sierra Leone**

The examination of African customary law above is situated within the broader discourse of legal pluralism – loosely referring to the co-existence of multiple normative systems within the state. In Africa, legal pluralism has its origins in colonialism, when policies such as indirect rule necessitated the interaction of two or more legal orderings, which typically allowed for colonial state law to operate alongside (or rather above) customary law (see for e.g., Van Niekerk, 2001, p. 350; Griffiths, 1986; Merry, 1988; Woodman, 1996; von Benda-Beckmann, 2002). In practice, this meant that an individual’s actions could become subject to more than one system of laws. But like changes in the meaning and development of customary law – an integral component of African legal pluralism – what constitute(d) legal pluralism continue to be contested. My aim is not to rehearse these contestations. Rather, it is to show how these debates foster an understanding of *barrays*, within the context of Sierra Leone’s legal system, the advantages they provide, the limitations that characterise their subsistence, and how they influence both the choice of forum and conceptualisation of justice for litigants.
The debates about legal pluralism have largely examined the meaning of ‘law’ and its connections to the state, so that ‘systems’ are marked down both because of their lack of correlation to, or recognition by the state, and because of the absence of normative equivalence to state (recognised) law. This has often been referred to as ‘legal centralism’ – the idea that law is derived only from the state, applicable without exception to everyone, and administered through and defined explicitly by and as part of state institutions (Griffiths, 1986, p.3; Niekerk, 2001, pp. 349-350; Roberts, 1998, p.96; Griffiths, 1998). Legal centralism is grounded in the notion, propounded by jurists such as Hoebel (1954), that law or legal norm is distinguished by the application of legitimate force or threat thereof – the monopoly of which only the state is said to possess – as a way of distinguishing law from other norms or rules. Griffiths (1986, pp. 2-3) for example, has argued for the rejection of this “ideology of legal centralism,” because of its limited positivist focus on state law and institutions such as courts, police, lawyers, and prisons, to grasp fully the existence of other normative orders.

In the context of Africa, where legal pluralism broadly developed as a direct consequence of colonialism, the ideology of legal centralism meant that (a version of) indigenous customary law, which operated alongside colonial state laws, was recognised as part of the laws of the state. As discussed under the previous section, this recognition was often dependent on aligning customary law with the values or principles of colonial state law, determined through official courts or administrative action (Niekerk, 2001, p.350; Griffiths, 1986; Merry, 1988; Woodman, 1996). For instance, to be acceptable, customary law must conform with natural justice and equity and be compatible with colonial legislations and court decisions (common law). These conditions, dubbed the ‘repugnancy clause’, outlived colonialism and became the legal framework of state pluralism in many post-colonial African countries (Bennett, 1981, pp. 82-86). In Sierra Leone, the earlier definition of customary law contains the requirement for “conformity with natural justice and equity and not incompatible, either directly or indirectly, with any enactment”.11 The legal effect is self-explanatory – that for any customary law or norm purporting to have the strength of law, validation is

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required by the state or state courts, giving birth to what I have already discussed as the ‘official customary law’.

The consequence of this thinking is an understanding of legal pluralism that includes only the state-recognised legal orders, often consisting of state law (legislations and common law) and ‘validated’ customary law, in what has been described as the “dual-systems theory” (Niekerk, 2001, pp. 350-351; see also, Griffiths, 1998, p. 133; Woodman, 1988, p. 36). In this sense, legal pluralism is limited to the nature of, and relationship between, these two official normative orders, a positivist view of law and the role of the state in creating it. Hooker (1975) advocated that legal pluralism in colonial Africa produced a bifurcated legal system, with a dominant state law operating alongside (above) a subordinate customary law that is recognised as such by the state and applied through the (state-recognised) courts (p. 4). An analogy in Sierra Leone, are the local courts in the provinces which, according to legislation, apply customary law under the repugnancy test conditions described above, and are subservient to state law.12

However, this state-centred view of legal pluralism – also known as “state law pluralism” (Niekerk, 2001, p.351), ‘weak legal pluralism’ (Griffiths, 1986, p.3) has been criticised for being too narrow and failing to capture, for instance, the existence of unofficial laws (see also Griffiths, 1998, pp. 133-137). These are laws not directly created by the state, nor applied uniformly through state institutions, or validated through the repugnancy test. Instead, they are applicable in communities, through institutions unrecognised or sanctioned by the state. The acknowledgement of unofficial laws and institutions, popularised by scholars such as von Benda-Beckmann (2002), Woodman (1996) and Merry (1988), shifted the discussion about legal pluralism away from the positivist explication of law to an empirical understanding of different processes within society, studied on their own terms. In this sense, legal pluralism is not confined to state centralism or the idea that because the state has a

12 In fact, a key change in the 2011 Local Courts Act, is the official incorporation of all local courts into the Judiciary of Sierra Leone, with appointments, dismissals and tenure of key staff, mirroring that of official state judges.
monopoly of legitimate use of force (Weber, 1954, p. 15), normative orders ought to be so linked to achieve validity. Instead, there is a deliberate adoption of an empirical approach that explicitly allows for the existence of non-state law and institutions, such as barrays. This is often referred to as ‘strong legal pluralism’ or ‘deep legal pluralism’ (Woodman, 1996, pp.156-159; von Benda-Beckmann, 2002). This portrayal of legal pluralism has not been without criticism. Scholars like Tamanaha (2000, p. 298), Roberts, (1998, p. 96), and even Moore (1986, pp. 869-870) for instance, have raised concerns about the looseness of the use of the term ‘law’, as well as the extent to which empirical findings of ‘unofficial law’ in communities are stretched, especially when the line is extended to an infinite classification.

While the difference between positivist and empirical approaches to legal pluralism have provided unhelpful binary terminologies, it has also contributed to the evolution of legal pluralism discourse, creating a confluence of research of Global South and Global North settings. What began largely as a question to be researched in colonial and post-colonial surroundings, has become a useful paradigm for a much broader range of settings such as Western socio-legal contexts. Sally Engel Merry is perhaps one of the best-known proponents of transforming legal pluralism discourse from anthropology’s insistence with ‘primitive’ law within the context of colonialism, into the workings of law in different societies, including Western countries with strong legal systems (1988, p.869).

In her classical piece, Merry not only provides a framework for identifying and studying the incidence of legal pluralism in different settings, including western democratic societies, she also summarises the important periods of the debates of the 1970s and 1980s, leading to this development. Starting with the characterisation of other legal fields (outside state recognition) as semi-autonomous, Merry discusses the discovery that other forms of orderings could be studied not just in terms of their connection to, or dependence on the state, but also in ways that are separate from it (p.873). She credits this line of argument to Kidder (1979) and Moore (1973), for example, who contend that the relationship between normative orders, especially between official state law and the rest, was more complex, so that although other orderings are
dependent on the state, they still possess some (partial) autonomy. Merry then describes the second shift in the debate as the studying, not only of the relationship between the official and other legal systems, but in ways in which the influence on each other was working in both ways. Crediting Fitzpatrick (1984), the significance of this shift is the recognition of the symbiotic connection between official and unofficial legal orderings, one that emphasises the impact the latter (indigenous normative order) can have on the official legal system. Finally, Merry describes the last shift that introduces the broad definition of what constitutes a legal system, to encompass many different orderings, so that the categorisation it creates can also be found in Western societies.

While acknowledging that there may be some difficulty in identifying non-state normative orders in the Global North than in the Global South, Merry, nonetheless, argues that this is the consequence of an attachment to ‘legal centralism’ – the positivist focus on state law and its legal institutions, which Griffiths (1986, p.2) has urged pluralists to reject. As an alternative, Merry advocates for the study of societies beyond the limited scope of state law and its institutions such as official courts, lawyers, and prisons. Instead, the focus should be on “forms of social regulation that draw on the symbols of the law, to a greater or lesser extent, but that operate in its shadows, its parking lots, and even down the street in mediation offices” (1988, p.874). Wilson (2001) agrees with the non-legal centralist approach by arguing that the realms of state law on the one hand, and social norms on the other, are not separate. Instead, adopting a more synthetic view, Wilson posits that both forms do not only emerge in response to each other, but they are also in constant negotiation, competition, cooperation, and transformation (pp. 124-126).

The significance of the above discussion to this project is two-fold: first, it contextualises my study of barrays within Sierra Leone’s socio-legal framework, exemplifying a fluid understanding of law, state-law and law-society continuum, and the subsistence of plural legal orderings with varied (non) relationships to the official legal order. This is demonstrated in the characterisation of barrays throughout the thesis, as autonomous forms of social regulation that draw on the symbols of law and operate in its shadows, but also in relationship with state law and institutions such as
courts and the police. Second, it implicates the connections between, and engagement with, different normative orders from the point of view of plaintiffs, participants, and state representatives. As I mentioned previously, the practical implication of legal pluralism on citizens is that it means their actions have implications for more than one system of laws, the determination of which, is based on corresponding disputing mechanisms. In the same way, in practice, legal pluralism also offers the possibility of choice of forum, where claimants decide which system of laws to engage with or forums to take their disputes to.

Also known as forum shopping, it has come to mean the conscious decision of parties to choose one forum or the other to institute or defend proceedings. Keebet von Benda-Beckmann (1981), an early pioneer of the conceptualisation of forum shopping involving multiple normative orders, describes it as “disputants [having] a choice between different institutions and […] basing their choice on what they hope the outcome of the dispute will be, however vague or ill-founded their expectations may be” (p.117). Similarly, Algero (1999) defines the concept as “the act of seeking the most advantageous venue in which to try a case” (p. 79). Implicit in these definitions is the idea that forum shopping is a considered tactical decision taken by a party to choose one court (instead of another available court) to gain an advantage over or increase the chances of winning against another. While the term is widely used in other disciplines such as private international law (see for e.g., Weinberg, 1991; Juenger, 1994; Maloy, 2005; Whytock, 2011)\(^\text{13}\), this study is more concerned with cases where different courts within the same nation have overlapping jurisdictions. Keebet von Benda-Beckmann (1981), for example, illustrates forum shopping in Minangkabau, West Sumatra, providing an authoritative depiction of options and how these are contested by parties and institutions alike, as they engage with, and shift between jurisdictional and procedural battlegrounds. She explains that Indonesia has a plural legal system – a product of its colonial history – based on ‘customary’ or *adat*, Islamic and state (relic of colonial-era) laws and institutions, with each of these categories

\(^{13}\) In many jurisdictions, this negative connotation of forum shopping is reflected in judgments, with judges increasingly applying *forum non conveniens* decisions to discourage forum shopping. See for example, Juenger (1994); Maloy (2005); Whytock (2011).
containing additional competing, complementary and overlapping dispute settlement forums (pp. 140-141). It transpires, therefore, that Minangkabau litigants have multiple layers of choices which, as she explains, often complement, crisscross, or even contradict each other, while retaining the alternative of engaging state courts, either as part of, or to end, forum shopping at the village level (p.142).

In this thesis, the examination of forum shopping within the outlines of legal pluralism takes on added significance, considering that the state law rejects the jurisdiction of one of the judicial institutions that litigants may resort to – the *barrays* of the Western Area of Sierra Leone. The fact that *barrays* even exist in the capital city and its environs – the epicentre of state law, with its courts, lawyers, police, and prisons – is even more significant. Much access to justice literature maintains that the absence or distance of judicial institutions like courts and legal professionals like lawyers play a key role in denying legal remedy to poor people (Mcquoid-Mason, 2013; Alterman, *et al.*, 2002; Dale, 2008; Sandefur & Siddiqi, 2013). But, as the next section demonstrates, this assumption, together with what is often considered to constitute the state and its respective institutions, is not always warranted, especially in a post-colonial, post-conflict country like Sierra Leone.

**Legal Systems in Post-Conflict Settings**

By 2002, Sierra Leone had begun the disarmament programme – part of the post-conflict reconstruction agenda that also included justice reforms – bringing an end to the eleven-year civil war that had ravaged the country and caused untold deaths and suffering. This study is part of a broader effort to understand and analyse Sierra Leonean society after a brutal war, epitomised by amputations, child soldiers, sexual violence, and crimes against humanity (Ferme, 2018; Mitton, 2016; Shaw, 2007), even becoming the legend of Hollywood movies such as “Blood Diamonds” (Leavitt & Mitchell, 2006). It also meant that Sierra Leone was at certain points considered a ‘failed’ or ‘fragile’ state following the systematic dismantlement of state institutions (Abrahamson, 2016, p. 281; Albrecht & Jackson, 2010). The fact that between the start
of the war in 1991 to its official conclusion in 2002, five heads of state, including three military regimes, had ruled the small West African nation, was seen as evidence of this fragility.

The fallout from the war had given rise to transitional justice and state-(re)building processes, affecting important aspects of Sierra Leonian life, especially in the field of law and justice. An immediate consequence of the end of the war was the creation of two transitional justice institutions: The Special Court for Sierra Leone (Special Court) and the Truth and Reconciliation Commission (TRC). The former was a hybrid (national-international) tribunal established in pursuance of Security Council Resolution 1315 (2000), and it sought to prosecute those who bore the “greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law” during the conflict. Despite its hybrid nature, none of the 23 indictees of the Special Court, was indicted under Sierra Leone law (Tejan-Cole, 2009; Kamara, 2009). Whether this was a reflection on the state of justice in Sierra Leone or not, it is not surprising that the Special Court has dominated much of the scholarship on Sierra Leone in recent years (see for e.g., Kelsall, 2009; Jalloh, 2013), and reflects the feeling of distance between formal institutions, both national and international from the needs of people in Sierra Leone (Anders, 2012). Similarly, the TRC was set up to record abuses and violations of human rights and humanitarian law, as well as “address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.” In its final report, the TRC cited the maladministration of justice and mistrust between citizens and their government among the root causes of the civil war. It had noted how lack of access to justice, absence of judicial independence and corruption within state institutions, together with the collusion of traditional authorities, had led to mistrust of the national justice system and, by extension the state (Truth and Reconciliation Commission, 2004, pp. 27; 90).

14 Article 1(1) Schedule, Special Court Agreement, 2002 (Ratification) Act [No.9 of 2002].
15 S 6(1) The Truth and Reconciliation Commission Act [No.4 of 2000].
While both these institutions are outside the scope of my study, their mention here is to foreground important questions about the state (and state of justice) in post-conflict Sierra Leone, the position of law and state institutions responsible for providing justice services, security, and governance in the pre- and post-war period. There was a direct link between the failures of political and legal institutions and the disintegration of the Sierra Leone state (Conteh-Morgan & Dixon-Fyle, 1999; Alie, 2006), so that post-conflict reconstruction was geared towards a combination of security and justice reforms. The key programme for this effort was the Security Sector Reform (SSR), which put the state at the centre of its processes (Abrahamsen, 2016; Albrecht & Jackson, 2010; Ebo, 2006). As Rita Abrahamsen’s (2016) detailed genealogy of SSR programmes show, the concept of a state in exclusive charge of its security, through the military, police, and intelligence forces, overseen by institutions like the parliament and judiciary, has been the focus of post-conflict reforms (p. 285). This, she contends, has given rise to binary labels such as ‘state’ and ‘non-state’ actors, public and private, to distinguish not only the exceptionality of state responsibility towards security and justice, but also to exclude actors outside the state, who may already be providing these services (pp. 287-288; see also Baker, 2005). In recent years, however, she records a loosening of this state-centred approach, adopting instead a method in which the state becomes the “hub of a network of justice and security providers” (p. 288, citing OECD, 2007, p. 11). Abrahamsen describes this method as the state relinquishing sole control of security and justice services, allowing other actors (including so-called non-state actors) to play a role as partners, with the caveat that the state remains at the centre, directing and regulating networks of services.

Reflecting a model of “network governance” (p. 289), the new ‘networked state’ raises the question about what statehood really means, especially for former colonies in Africa. According to Abrahamsen, SSR programmes portray states in Weberian terms, as a “fixed set of institutions”, devoid of historical perspective, including state-building in post-colonial Africa, and operating within well-defined boundaries of the public and private (p. 289). As a result, the emphasis of SSR is to reform the key security and justice institutions in a bid to transform states from ‘weak’ or ‘fragile’ to strong, using pre-determined metrics, which will consider the prominence of ‘non-state’ actors, for
instance, as a sign of weakness or fragility. The aim of the transformation is to create institutions and bureaucracies that mirror Western donor countries.

Yet, as Abrahamsen argues, what constitutes the state is in constant formation, aided by a plethora of (f)actors including the ‘hybrid’ non-state, so that “the state itself is an effect of a wider range of dispersed forms of power, where various hybrid actors can be seen to help produce and enact the state in the eyes of many of its inhabitants, making the state more real and tangible in everyday practices” (p. 290). Abrahamsen draws on the earlier work of scholars who have supported the view that the post-colonial state is in a process of constant formation, instead of the “ahistorical ideal type with strict public/private boundaries, a predetermined material form and a set of core institutions and functions” (p. 290). Hansen & Stepputat (2001), for instance, refer to this as the “ambiguities of the state”, which is in constant construction, of several “languages of stateness”, and “their localized meanings, genealogies, and trajectories as they appear couched in mythologies of power” (p.5). In this sense, they share Ralph Miliband’s view that the state cannot mean one tangible thing, but several interacting institutions, people, structures, practices, all producing or following some tenet (Miliband, 1973). Or as Kirsch & Gratz (2010) put it, the state is “ontologically elusive” (p.2) so that as it undergoes processes of constant reconfiguration, what results becomes hard to generalise in transcedental or empirical terms.

This duality in the meaning of ‘stateness’ is given additional currency by Schlichte & Migdal (2005), who insist on the distinction between the “image of the state” – the tangible, institutional and territorial characteristics, on the one hand – and the “practices of the state” – the varying actions of persons connected to it, on the other (pp.14-15). Bierschenk & Olivier de Sardan (2014) describe this duality as “a tension between the homogenising idea of the state” which may impact different groups within a nation, and the “heterogenous state practices” (p.14). It is in this construction that public/private dichotomy fades and the scholarship on ‘street-level bureaucrats’, exploring the mundane practices of, and responses to state-building by public servants (as representatives of the state) and citizens alike comes to life to better understand how states actually work (when they often do not seem to work).
Meanwhile, the SSR programme in Sierra Leone, spearheaded by the United Kingdom, was generally said to be a model of success (Ebo, 2006, p. 482; Albrecht & Jackson, 2010, p.4; Krogstad, 2017), based on the completion of key milestones on the SSR measuring scale. These included, state control of national security, withdrawal of UN Peacekeeping force (United Nations Mission in Sierra Leone –UNAMSIL), completion of the Disarmament, Demobilisation, and Reintegration (DDR) programme and, most importantly, the conduct of general elections without foreign (military) assistance in 2007. For the SSR efforts, these successes were key indicators that the transformation of the national security apparatus, and the functioning of justice and governance institutions, through trainings and the introduction of state bureaucracy, was complete. However, in line with the rule of law orthodoxy of the time, there were top-down, state centred reforms. By concentrating on reform of state justice institutions such as courts, police, prosecutors, and prisons in post-conflict Sierra Leone, there was a purposeful expectation that this would enable citizen compliance with laws, as well as restore faith in the legal and judicial processes.

While these efforts may have had some impact, they have also exposed the chasm between state-centred reforms and the justice needs of ordinary citizens. Much of rule of law and legal empowerment literature’s criticism of the institutionalist approach is on the basis that it fails to countenance the plight of poor and vulnerable people, those these reforms are meant to benefit, but who are being left behind and alienated. Carothers, for instance, wonders whether, instead of focusing on building institutions, these reform programmes should “try to intervene in ways that would affect how citizens understand, use, and value law” (Carothers, p. 8). He argues that while these programmes assume that improving state institutions such as the police and courts will lead to compliance with the law, the evidence does not bear out this assumption. Instead, research suggests that compliance is linked to whether citizens perceive the laws to be fair and legitimate.

Furthermore, for scholars like Golub, who have pushed the legal empowerment argument, the maintenance of top-down state institutional reform efforts alienates poor
and vulnerable citizens, as law becomes a barrier (instead of a bridge) for the attainment of justice (Golub, 2003, p.6). The inevitable gaps in justice delivery which are thus created – accessibility, affordability, timeliness (Isser, et al, 2011, p.3) – give rise to at least two possibilities. First, the emergence of civil society organisations like Timap for Justice in Sierra Leone, who seek not only to fill these cracks, but also build bottom-up grassroots empowerment efforts that often challenge the institutions and bureaucracies created by state-centred reform processes (Maru, 2006, pp. 440-443). Second, this approach has led to the development (or prominence) of other non-state alternative approaches, including customary courts (Isser, et al., 2009; Penal Reform International, 2000) and alternative dispute resolution (ADR) forums (Roberts & Palmer, 2005), which attempt to address the needs of people who are often not well-served by official legal and justice institutions. And it is in this discussion about law, legal reforms, justice, alternative forums of justice, that the study of barrays gains traction. Indeed, the relevance of the above discussion for my project lies in the connection between law and the quest for, or perception of, ‘justice’, as well as the view that justice cannot be disassociated from its historical, sociolegal contexts (Woodman, 1996; Goodale & Clarke, 2010; Johnson & Karekwaivanane, 2018). To understand the centrality of law in all these processes, my study of the barrays can also be conceptualised as a pursuit of (alternative) justice. Scholars have recognised that the “search for justice is a fundamental part of human trajectory” (Nader, 2002, p. 14; Merry & Milner, 1995). Institutions like the barrays are important elements of such a trajectory that should not be ignored. Their existence supports Christian Lund’s (2016) argument of a dynamic space of multiple institutions, some of which lack statutory endorsement, engaged in a constant process of negotiations with the governed, in which recognition and authority become mutually constitutive.

In Sierra Leone, the continuity of post-colonial political and legal divisions into the Western Area and the Provinces meant that two separate legal systems have developed within the same country, creating gaps for those sections of the population crossing between them. The damage (physical and relational) caused by the civil war (1991-2002), and the ‘successful’ SSR programme that followed, continues to shape the justice landscape. I argue that the barrays of the Western Area are both a reaction
to these post-colonial (dis)continuities and post-conflict state-building processes, where the law failed to fulfil the aspirations for justice for people like Digba. Another important thread to follow during these two periods, is the incidence of migration and urbanisation on the barrays in the capital of Freetown. In the next section, I shall examine the rural/urban linkages in the context of a bifurcated legal system, as well as the role of migration from the provinces to the capital city in the development of the present-day legal system.

**Rural-Urban Connections of Barays:**

Mamdani has argued that colonial rule created a bifurcated state – organised differently in urban and rural areas. In urban areas, a small portion of the indigenous society was assimilated in a process that included “the appropriation of land, destruction of communal autonomy, and the defeat and dispersal of tribal populations” (Mamdani, 1996, p. 7). The effect, according to Mamdani, was the creation in these urban areas, of “the language of civil society and civil rights” (p. 9), producing “rights-bearing colons” (p. 19). Conversely, in rural areas, Mamdani described how indirect rule empowered the (re)constitution of traditional authority, including the creation of new ones, through Native Administration, thereby transforming chiefs into brokers between the colonial administration and their subjects. Unlike the urban areas, this created a “rural power of community and culture” (p.19), transforming previously excluded or uninvolved natives into the realm of state-enforced customary legal order. Of special relevance, is Mamdani’s description of “urban-based natives”, who were “[n]either subject to custom [n]or exalted as rights-bearing citizens, they languish in a juridical limbo” (ibid).

A criticism of Mamdani’s (1996) thesis *Citizen and Subject: Contemporary Africa and Legacy of Late Colonialism*, is how his generalisations of the ‘bifurcated state’ fails to countenance local convolutions, including urban-rural linkages. While this description of urban-based natives has some resonance in the colonial policies of the Western Area (former colony) of Sierra Leone, especially the option for native immigrants to opt
out of the *Tribal Administration* (Koroma & Boyienk, forthcoming), they still occupied a well-defined legal status. In fact, there is more nuance in the ‘rural’ and ‘urban-based’ native than the characterisation of Mamdani, who defines this category as “mainly middle- and working-class persons” (p.19). In this section, I discuss the particularities of urban migration and the process of urbanisation in Freetown and show how the rural-urban linkages have contributed, not only to the development of legal systems, but also to the rule of law. I consider two main periods (not as isolated, single moments, but as continuous and ever evolving trajectories), consisting of two of the most disorderly in Sierra Leone’s history – colonisation (including the annexation of territory) and civil war. I argue that these two ruptures and the resultant migration to Freetown (the Colony) also offered the opportunity for hybridised integration of two normative orders (formal - legislative and common laws, and customary law – official and unofficial) to produce the *barray* system. Further, the role of traditional authority, especially chiefs, is appraised, bucking a trend of loss of authority, and fading relevance.

As alluded to above, one immediate consequence of the civil war, as was the colonial policy of two juridical territories, was urban migration especially to the Western Area (where Freetown is located) in search of improved security, prospects for employment, better sanitation, health, and housing. This in turn created its own problems, as social services were overrun, and wide-ranging security and justice problems emerged, leading to various (post)colonial migrant containment policies, including hostile laws, and forced removals from the cities, which were designed to be bastions of legal purity and civilisation. Chiefs and their *barrays* first emerged during colonialism and, since the surge in Freetown population during and after the civil war, *barrays* and the chiefs that run them have become ubiquitous. As I detail in this thesis, the chiefs (and their *barrays*) are different from the decentralised despots described by Mamdani, as are their *barrays*, and that they are operating in an urban area such as Freetown instead of the provinces of Sierra Leone.

The phenomenon of urban chiefs performing judicial services is not new. The historical literature on urban chiefs and their courts is situated within the larger discourse of
African urbanisation and the factors that structure social relations in colonial and early post-colonial African cities. Writers such as Gluckman (1945), Mayer (1961), and Gutkind (1966) offered ground-breaking analyses of African urbanisation. Their studies brought attention in varying degrees to the extent of social change in emerging cities across Africa, the dynamics of the transformation of the population of these cities, and their connections with tribal societies. In terms of terminology, Epstein’s (1967) appraisal distinguished between urbanisation, the “process of movement and change; [whose] essence is that it creates the possibility of discontinuity with some pre-existing set of conditions”, from “urbanism…the way of life in the towns themselves” (1967, p. 276). He drew inspiration from Max Gluckman’s work on urban studies, in which he suggested that to fully understand the urban phenomenon, urban studies must be seen through the lenses of towns and cities rather than in comparison to rural, tribal, village settings (Gluckman, 1945). However, Epstein’s point of departure was two-fold: Gluckman’s readiness to treat all towns and cities alike, without noting the variations in different social systems; and his failure to recognise that urbanisation was a process that needed to happen in stages. Epstein has in turn been criticised both for his emphasis on discontinuity between urban and rural, and for presenting a theory that entirely heaped social change on factors intrinsic (and not extrinsic) to city life (Epstein, 1967). The literature on West Africa, for example, demonstrated that this discontinuity was much more nuanced than in the Copperbelt region that was the focus of Epstein’s work. Banton (1957) and Fyfe & Jones (1968), for instance, writing about immigrants in West African cities, including Freetown, noted the strong connections with their tribal, rural backgrounds, how that informed their interaction and aided their integration into urban life. More importantly, there remained a role for the ‘tribe’, which ensured no total break between their rural past and urban future (Banton, 1957).

Outside the expansive considerations of urbanisation (and urbanism), this historic literature sheds light on the role of law in aiding or constraining immigrants as they transitioned from life in rural villages to cities. The scholarship noted that as the new urban Africans settled in the cities, they reconstructed legal systems akin to their local origins, including ‘chieftaincy’, with the necessary adaptations required for life in the city. Their status as migrants or ‘strangers’ fostered social and economic cooperation
and integration, which also required leadership that offered social support and judicial functions; the kind the colonial administrative and legal structures were not providing in the cities (see also Banton, 1957). In Sierra Leone, this gap was filled by the *barrays* and the presiding chiefs. More recent literature continues the theme of urban – rural connections (Geschiere & Gugler, 1998; Wilson, 2001). Geschiere & Gugler’s influential introduction discusses the involvement of, and varied forms of engagement between, urban migrants and their home villages. Accounting for recent changes such as modernity, democracy, and structural adjustment, Geschiere & Gugler examine emerging trends on urban-rural links, the shifting character of villages, and how relationships (both among urbanites and between urbanites and their kin in the villages) are changing (pp. 310-315).

Richard Wilson’s (2001) discussion of township courts, as part of a legally plural context in South Africa, provides a more recent scholarship on the urban-rural dynamics of law. Characterised as “relational discontinuities” (p.156), Wilson discusses the chasm between the state-led reconciliation efforts of the Truth and Reconciliation Commission on the one hand and calls for retributive ‘justice’ from forums such as township courts on the other, pinning it to “disjunctures between formal and informal justice” (ibid). Contrasting the structures and local court systems in both Sharpeville and Boipatong townships, Wilson explains how township justice emerge from the interstices of state fragility and contested authority (p.160), in some ways like the *barrays*. These townships are sprawling urban areas (mostly in the fringes of big cities), which have historically been occupied by non-White South Africans. Following the end of the Second World War, cities across South Africa witnessed high urban migration of South Africans from rural areas in search of jobs, security, and prosperity (Seekings & Nattrass, 2008, p.63). These townships became symbols of neglect and resistance, especially during the Apartheid years, so that institutions like local courts and vigilante groups that emerged, according to Wilson, were in response to “organisational disjunctures” of state justice institutions, as well as the state’s inability to gain full monopoly over adjudication or violence (p.157).
What the above points to is the connection between urban migration and the creation of legal systems, often in response to events such as colonialism, apartheid, and civil war, leading to contested authority and legitimacy. The result is the emergence of forums, like the *barray system*, which draw on social norms or adapt different normative orders to fit a particular socio-legal context like the townships of South Africa, or the Western Area of Sierra Leone. This in turn provides an adjudicatory avenue for people like Digba who, for various reasons examined in this thesis, cannot engage with the official legal processes, including magistrates’ courts.

**Contribution to Scholarship**

The existing literature on non-state and customary law forums such as *barrays* advance two somewhat opposing views: on the one hand, these forums are applauded for providing quick remedial justice (Obarrio, 2011; Isser, 2011; Merry & Milner, 1995; Nader, 1995). On the other hand, they are criticised as serving elite interests (Deng, 2011, p. 316; Yngvesson & Hennessey, 1975; Sandefur & Siddiqi, 2013). In Sierra Leone, where both access to justice and the dismantling of traditional authority motivated recent armed conflict (Truth and Reconciliation Commission, 2004), it is especially important to understand the role of these *barrays*, from the perspective of users of these forums. Do these institutions increase access to justice, or entrench elite interests? My close study of these courts, their participants, and their evolution over time will offer insights into the social consequences of legal institutions in a post-conflict state. The thesis’ analysis of contemporary *barrays* will enhance our understanding of the place of legal institutions within emerging urban landscapes.

Few studies have covered questions about why forums such as *barrays* exist in urban areas, where state law and processes dominate (Tieleman & Ultermark, 2019). Often, non-state or customary law is presented as a rural occurrence overseen by chiefs and traditional institutions, while state law is equated with urban areas, where state authority is projected (Lubkemann et al., 2011; Isser, 2011). In Sierra Leone, this division is enshrined in law and reflected in national justice strategies like the Sierra
Leone Judiciary Strategic Plan (2016-2021) and the Justice Sector Reform Strategy and Investment Plan III (2015-2018). Yet, as we witness population movements into Freetown from other parts of Sierra Leone, we see an increase in the number of barrays. This is especially true during the civil war, when many more people fled to the relative safety of the capital city and surrounding communities, resulting in an exponential growth of the population of the Western Area, where Freetown is located (Spencer, 2016). For instance, according to studies, between 1985 and 2001, the population of Freetown grew 217% (Dale, 2008, p. 13). The demography of many African cities such as Freetown continues to change due to political, social, and economic conditions that result in migration from rural areas to the city. Given this rapid urbanisation in Africa, it is important to understand how and why legal systems evolve to aid or constrain the legal needs of (new) city dwellers, and the role of law in this process and in maintaining cohesion. Furthermore, while many of the studies recognise that legal ‘space’ is not limited to territory (von Benda-Beckmann, von Benda-Beckmann, & Griffiths, 2009), and discuss the “transnationalisation of law across national boundaries… [involving] migrants taking their law to the new country of domicile” (Griffiths, 2011, p. 178), this study will examine the effect of internal migration on the development of unofficial (customary) courts, how they operate and what this means for the legitimacy of law more broadly.

Closely related to the above, is the place of chiefs in the specific contexts. In Sierra Leone, chiefs were implicated in the civil war both as instruments of oppression and injustice, especially against youths, as well as being complicit in the excesses and corruption of, and benefiting from, a central patrimonial state (Richards, 1996; Fanthorpe, 2001; Truth and Reconciliation Commission, 2004). In fact, traditional authorities were specifically targeted by aggrieved young fighters, leading to extrajudicial killings and destruction of properties (Richards, 1996). Although such discussions of chiefs focused on the provinces (and not Freetown), by the end of the war, there was growing pressure to reform the chieftaincy system, including chiefs’ role as adjudicators of disputes. Legislative instruments followed such as the Local Government Act 2004, the Chieftaincy Act 2008, and the Local Courts Act 2011, all of which in varying degrees, chipped away the pre-war authority of chiefs. Despite this,
there appears to be an expansion of chiefs and their courts in Freetown. This thesis will contribute to the understanding of why we see the emergence of chiefs and their courts in cities. This will contribute to recent scholarship on the relationship between the (re)emergence of chiefship and the nature of the modern state (Oomen, 2008; Comaroff & Comaroff, 2018; Tieleman & Uitermark, 2019).

Unlike studies of non-state forums that examine them as self-contained entities, this thesis pays explicit attention to how barrays' interactions and relations with other institutions makes them what they are. It offers fresh insight by tracking people through barrays and other institutions, including state agencies and formal courts. If the formal legal system in a country is slow, expensive, or regressive (as is often the case in Sierra Leone), then citizens may prefer non-formal legal institutions (Varvaloucas, Koroma, Turay, & Siddiqi, 2012; Sandefur & Siddiqi, 2013). Freetown provides an opportunity to study the parallel operations of the non-state and formal courts and, thus, offer insights into why citizens choose one or the other forum, what types of cases are heard in the different courts, and relations of parties across these systems. Understanding why local barrays have been established requires understanding how the formal system is failing or succeeding to meet citizens’ needs.

Finally, studies on judicial institutions in Africa are replete with their deficiencies in providing justice. In the case of the state courts, lack of independence, poor training, corruption, delays, distance, and archaic procedures that impede access to justice for a sizable part of the population, including the poor and vulnerable (Hoenig, 2018; Sandefur & Siddiqi, 2013). In the case of the latter, references have been made to its arbitrariness, male domination, lack of due process, and excessive fines (see e.g., Baker, 2005; Harper, 2011). Few of these studies have focused on the perspectives of litigants or people who engage (with) these courts in different capacities (exceptions include Rubbers & Gallez, 2012). By using a people-centred approach, my study of barrays, official courts and similar state bodies like the police, will show what looking at individual trajectories can tell us about the development of legal systems, as well as attitudes towards both the state, and institutions that provide justice. In other words, this study will focus on people and their cases before official and unofficial institutions,
as opposed to studying the institutions *per se*, to examine law and perceptions of justice. Such a people-centric approach informs an overarching argument that emphasises how these institutions, often depicted as separate and distinct, are interlinked and reliant on one another to enact a complex system of law in Sierra Leone.
Methodology

Introduction

To have a rounded view of society through the eyes of participants, this study will adopt an expansive version of the “disputes-focussed approach” in which cases form the basis for understanding the workings of the law, the disputing process, legal institutions, and social conflict (Trubek, 1980, p. 728). I will incorporate the approach advocated by Nader (2002), in her study of the Mexican Rincon Zapotec. She explained how her focus expanded to social relations, how this in turn led her to the courts and vice versa; and into the cosmos of the everyday mundane and esteemed existence of the community. She describes this method as “extended case approach” which combines “participant observation, […] census data, […] archival documents – anything (quantitative or qualitative) that [she] could get [her] hands on – in order to produce … a holistic ethnography” (pp. 26-27). Starr & Goodale (2002) agree that ethnographic methods are “useful tools for accessing the complex ways in which law, decision-making, and legal regulations are embedded in wider social processes” (2002, p. 2). Similarly, Obarrio (2011) posits that, studies of traditional institutions or justice in contemporary Africa must be informed by archival research, court records, oral history, and detailed ethnographic fieldwork. Research of this kind will ably “historicise genealogies of customary law, local authority structures, traditional conflict resolution, tracing their pre-colonial origins, and colonial and post-colonial transformations” (p.41).

Therefore, this thesis utilises a combination of ethnographic methods, in-depth interviews, focus group discussions (FGDs), and documents analysis aimed at empirical and historical understanding of law and dispute processes, focusing on people’s experiences, within the context of post-colonial, post conflict Western Area of Sierra Leone.
Research Design

This thesis is based primarily on fourteen months of fieldwork, from June 2017 to September 2018. I also draw on twenty years of experience, working on access to justice programmes, such as Timap for Justice, and practising law in the courts of Sierra Leone, where I straddled both state and customary institutions. Going back to this relatively familiar surrounding for my PhD research, brought a distinct positionality, with its own set of possibilities and constraints. Many of these are already the subject of ample scholarship (see e.g., Narayan, 1993, Peirano, 1998).

The connections I built because of my prior work were useful in setting up interview meetings with formal authorities like government officials, judges, magistrates, and lawyers. The same was true for access to members-only libraries at the law school, judiciary, and Law Officers’ Department, as well as case records. Even more so, speaking the local languages prevalent in the Western Area and thus not needing interpreters, was a huge advantage with the barrays. Not only did this encourage confidence with research subjects, but it also allowed me to capture details and nuances that would be lost in translation. Freetown as the centre of power, has a large concentration of schools and other educational institutions, as well as opportunities for employment. As a result, the percentage of people literate in English (which remains the only official language in Sierra Leone) is higher than the rest of the country. However, migration to the city for a range of reasons in recent years means that the number of people who cannot speak English is increasing. Krio, on the other hand, the unofficial lingua franca, is understood and widely spoken not just in Freetown but in the rest of the country. It is a form of pidgin, with versions of it also spoken in other parts of West and Central Africa (Wyse, 1989). It is the main language of the barrays, interspersed with the language of the parties. Where litigants, witnesses and the barray chief are all from the same ethnic group, then the case will be held in that group’s language, such as Temne, Mende, Limba, Loko, Fula, Susu and so on.

At the same time, conducting research even in familiar circumstances brought its challenges. The phenomenon of barrays in the Western Area was out of character with
anything I had learned or engaged with in the past, rendering redundant most of the advantages mentioned above. I had to gain access into the ‘system of barray administration’. I learnt later – and this became one of the earliest discussions with my supervisors – that being a lawyer was a liability at the barrays because, as I discuss in the thesis (Chapter One), the relationship between lawyers and barray officials can best be described as frosty and distrustful.

Figure 3: Map of the Western Urban and Rural Districts showing research sites. Source: Statistics SL

Earlier in December 2016, while on a brief holiday in Freetown, I was able to secure meetings with three chiefs in the Kissy area of Freetown, on the recommendation of former Timap clients and with the help of paralegals. In that pre-research meeting, I explained my role as a PhD student and explored the possibility of granting me access to their barrays to witness cases, interview officials, and examine any documentation.
relating to those cases. I told them they did not need to make the decision immediately and they did not. Nonetheless, I gathered during the meeting that there were many more barrays within short proximity of each other than I anticipated. I started working on a list of barrays and contact information of chiefs. With the help of six paralegals, we identified 268 barrays between 16 and 21 December starting from Calaba Town and ending at Mountain Cut communities of eastern Freetown: and Adonkia in the west to Circular Road communities.

This list was not exhaustive even for the areas covered, but it provided options for research sites. When I returned to Freetown for fieldwork in June 2017, my first task was to choose my sites – the barrays that will be the focus of my observation. My initial plan was to choose two barrays, observe sittings, interview officials, litigants, witnesses, and relatives, track a small number of cases back in the community and to formal and other institutions, and follow any other lines of inquiry that might emerge. I eventually decided on four barrays, firstly, because of the access I negotiated with the chiefs and, secondly, because of their proximity to a formal court or police station.

I did engage two assistants who were superb in helping me with transcription – a few of the interviews with barray officials were tape recorded – compilation of court documents, and tracing. Together, we spent at least one day a week in each of the four barrays. As there were many days or times of the day when cases were not heard – sitting times were a choice of the parties and not the barrays – I extended my work to additional barrays, the details of which I describe below.

Finally, one significant incident that occurred during my fieldwork was the mudslide disaster that hit parts of Freetown in 2017 (that I discuss further in Chapter Two). There were several barrays in the communities of Kamayama, Kaningo and Regent that I was observing as part of the additional list. The work of the barrays was disrupted because of the massive devastation, which claimed thousands of lives in the matter of a few hours, many of whom remain unaccounted for. Amid this tragedy, ongoing cases were discontinued as litigants and witnesses remained lost or disinterested; the focus
of these communities shifted to surviving, finding new homes, searching for the dead, and registering with aid agencies.

Now, I will describe the methods in detail.

**Participant Observation**

The mainstay of my methods was participant observation noted by Bernard (2011) as "getting close to people and making them feel comfortable enough with your presence so that you can observe and record information about their lives" (p. 256). I have already noted the value of this method to observe judicial proceedings (Nader, 2002; Starr & Goodale, 2002). My fieldwork was multi-sited both in terms of the number of barrays studied, and the observations of other dispute resolution forums, including formal courts and police stations navigated by research participants. The value of the multi-sited approach for “quite literally following connections, associations, and putative relationships” (Marcus, 1995, p. 97) is well established. The four barrays observed at least once a week for fourteen months were in the Calaba Town, Cline Town, Mountain Cut and Kissy neighbourhoods, chosen mainly because of the presence of other institutions such as magistrates’ courts and police stations. This will aid both in examining the relationship between barrays and state institutions operating in short proximity and understanding why (and how) litigants engage one or the other, or both. As these barrays had days without cases and, to expand access to documents and court processes, I observed proceedings in an additional 69 barrays, ranging between three and eleven visits. The map above (Map 3) shows all the fourteen communities dotted red, with barrays I visited during my study. These include the four main sites, which are represented on the map (Map 4) below.

During this time, I observed 267 cases in part or fully in the 73 different barrays located in the Western Area. My observation focused on how cases were admitted, heard, concluded, and referred or are taken to other entities. I observed proceedings, including the repertoire of rules or norms in use, symbolisms of space, time, sitting
arrangement, demeanour of participants, and the rituals and paraphernalia of *barrays*. In addition, I witnessed the dynamics between the chiefs and other officials of the *barrays*, litigants, and their interaction with entities such as the Sierra Leone Police, formal Magistrates Courts, and municipal authorities. Out of the 267 cases, I observed 148 from commencement to conclusion. I have used these for my analysis throughout the thesis. Some of the cases were heard at night and almost all *barray* spaces were the sitting rooms, extended verandas, or other private places in homes of chiefs.

![Figure 4: Map of the Western Area showing four main research sites. Source: Statistics SL](image)

Securing this level of access took about six weeks of persistence and vetting. While it was relatively easy to get one-off admissions, it was much harder to have *barray* chiefs commit to a longer stay. The first *barray* was the key, after that I got a recommendation from that chief to the next, and so on, until I became a ‘member’ of the *barrays*. Being
a ‘member, my responsibility was to pack the benches and chairs before court dates, as I would come in early most days. This also meant I had an open invitation for breakfast, lunch, late lunch which I learnt not to refuse even if I was not hungry. So, it also became my ‘function’ to bring a bundle of water sachets to the courts. I would buy them overnight and cool them in the refrigerator at home. The chiefs and clerks would drink it as did I, and it would often be mentioned jokingly about the chiefs wishing there were cases everyday so they would enjoy ‘packet wata’. The pack with twenty 250-millilitre sachets each cost about £0.20. I also received invitations to attend important functions, which enhanced my understanding of the workings of barrays and their connections with formal and customary institutions. For instance, I was invited to the official appointment ceremony of the Temne Tribal Headman by the President of Sierra Leone (pictured below), as well as the coronation of three section chiefs or “Alimamies” by the Tribal Headman, the latter ceremony described briefly in Chapter One.

Figure 5: Temne Tribal Headman with President of Sierra Leone during inauguration. Credit: Sankoh, 2017.
As part of the ‘family’, I also participated in sad moments such as funeral contributions and attendance, flood relief, and counselling. Some of the specific interventions are presented in individual chapters throughout the thesis.

As part of barray observation, twenty cases (20 litigants) were traced, seeking to understand whether and how their court actions influenced or are influenced by, and the place these occupy within, their socio-cultural networks (Evens & Handelman, 2006). I did not track both opposing parties in every case but chose to follow ten complainants in the first set of ten cases and 10 defendants in the next set. I made this decision as a trust-building measure and, due to the short duration of barray trials, the tracing occurred after the judgment of the barrays. Following cases led to interactions with the police, municipal authorities, formal courts, legal practitioners, religious leaders, area headmen, landlords, and non-governmental organisations.

**Interviews**

My effort to track the longer trajectory of disputes and litigants meant that in-depth interviews were an important part of my methodology. Unlike access to barrays, interviews were relatively easier to organise, based on my prior work and connections, as I explained above. I conducted 40 semi-structured interviews with unofficial, customary, and formal authorities, as well as with private practitioners (in addition to the many unstructured conversations that were part of my participant observation). Semi-structured interviews were chosen because of their controlled flexibility, and because of the high-level positions of the respondents (Hughes & Sharrock, 2007; Bernard, 2011). Guiding questions framed around specific themes such as complementarity, recognition, legal decision-making, and court structure were developed and presented. I adopted a conversational approach for each interview, eliciting “depth, detail, vividness, richness, and nuance” by probing and following up on answers given (Rubin & Rubin, 2011, p. 124). My knowledge of law and the justice system, together with background readings I had done in preparation of fieldwork stood me in good stead. Using interview guides, my conversations lasted between 1-2 hours and were mostly held where the respondents resided or worked.
Thus, while observation gave me insights into the social relations of disputants, their motivations for using local courts, and the place of disputes within the process of social life (Gluckman, 1961; Handelman, 2006), it did not provide information from the perspective of political (central and local), legal and judicial officials. This was where in-depth interviews with these authorities became instrumental. Key individuals within institutions that would shed light into Sierra Leone’s legal and policy positions on *barrays* in the Western Area were selected. All semi-structured interviews were conducted in English or Krio in mutually agreed venues, bearing in mind the ease and convenience of interviewees. The interview guides were divided into categories and included in the Appendix.

**Focus Group Discussions**

Although this was not part of my initial research design, I eventually held eight focus group discussions with the police, *barray* chiefs and clerks, and (former) litigants. The opportunity for a focus group discussion presented itself for the first time, when I found *Alimamies* attending a function together at the home of the Limba Tribal Headman in August 2017. After introductions, which included a short presentation of my research, a few of the chiefs agreed to individual interviews. While I was trying to get their contacts and preferred dates, one chief suggested I could talk to them at once if I was prepared. Nine of them attended and I found the format useful as it provided more breadth. In total, 68 people participated in eight different focus group discussions. A summary of the interview guide is also included in the Appendix.

**Documents and Archives**

Interviews and participant observation provided valuable data on the present and, in many cases, insights into the future directions of *barrays*. However, both methods were inappropriate in answering questions about the history and development of *barrays* in the Western Area, including Freetown. Therefore, I have engaged documents, long
confirmed as an important toolkit in qualitative research (Bryman, 2004; Esterberg, 2002). Bowen (2009) for instance, argues that documents provide a great chance to collect background, historical information. As Bowen noted, one of the key strengths of documents is the ability to bear “witness to past events,” and to provide “historical insight” (2009, p. 29) into specific lines of inquiry, making documents as a method best suited for “tracking change and development over time” (Bowen, 2009, p. 30). Data was gathered from two types of documents and from two broad sources: historical and contemporary documents from formal institutions – libraries, state courts, personal collections, newspaper articles – and documentation from barrays.

I reviewed documents from 38 barrays in the Western Area. These included summonses, statements (from witnesses and parties), judgements, court notices, inter-court correspondences and communications with external parties such as the Sierra Leone Police, Freetown City Council, legal practitioners, and Paramount Chiefs. My review of documents covered the period of my research, as well as cases going back several years. For example, in the four barrays, which were my main sites, I analysed documents of cases reported from 2013 – 2016, totalling more than 4,000 cases. I also examined legislations, including colonial ordinances, government policies and police Standard Operating Procedures. In addition, I looked at the Daily Mail Newspaper Publications from 1961 to 1975. I already had memberships to the main libraries in Freetown and access was much easier, even if the facilities like photocopying, were not always available.

**Ethics**

The research was approved through the University of Edinburgh’s ethics procedures - Overseas Travel and Field Work Risk Assessment. The nature of my research and my background required a fine balance between embracing the benefits of being local – language, connections, access – and staying sufficiently perceptive as a researcher. I drew inspiration from studies of Narayan (1993) and Peirano (1998). In the process of gaining access to the barrays, I ensured that informed consent was obtained from
chiefs, other barray staff, litigants and their relatives, and everyone else I engaged with, at the beginning and continuously throughout my fieldwork, and equally providing ample information about my project.

Conducting research in my home country, in an area where I had worked previously, requires a remark on my positionality. I began fieldwork as a lawyer, trained in a particular way of thinking about legal systems and institutions, especially in Sierra Leone. This kind of training would instil a certain bias towards the ‘other’ – anything else that would not conform to dominant views among the legal profession. These views would come out clearly in this study through interviews with lawyers and judges. At the same time, my work with Timap for Justice was often a direct challenge to this type of thinking and, instead, advocates for engaging state and non-state institutions in the pursuit of access to justice for ordinary citizens. When I began fieldwork, it was with an open mind, juggling dual identities depending on whether I was observing barrays, or interviewing supreme court justices. This was not always an easy position, from practical considerations such as change of clothes (judges expected me to appear before them in a suit, while casual attire was appropriate in barrays), to decisions about whether to intervene in barray cases.

Nevertheless, although I was not different from other barray attendants if I minded my appearance, for instance, I was still conscious of my relative advantage as a lawyer – part of a small, privileged group in Sierra Leone – even if I did not consider myself so. This was particularly true during litigant tracing when I shadowed disputants and spent time in their homes or places of trade, witnessing first-hand, everyday socio-economic challenges they navigated, trying to make ends meet. Straddling this world and that of top judges, lawyers, police officers, government, and municipal authorities, was like living in two Freetowns. As mutually unnerving (and perhaps, even unacceptable) as these two ‘worlds’ were, they served as a counterweight to each other, reminding me of why this study is important.

I already noted that barrays are not officially part of the constituent components of Sierra Leone’s legal pluralism, meaning that large swathes of formal justice officials
consider them to be ‘illegal’. There were real threats of arrest and prosecution at the
time of my fieldwork as there were also areas of collaboration with institutions like the
police and municipal council, culminating in a very confused situation that was in flux
(discussed in Chapter One). As a result, I have anonymised most of the courts and
officials, using generic titles such as Ya Alimamy (for female chiefs) and Pa Alimamy
(for their male counterparts), and neighbourhood names like Calaba Town, Wellington,
Kissy, Lumley, Waterloo, Aberdeen and so on. Where specific names of chiefs and
barray officials have been used, it is because they have insisted on this. Many made
the point that if government wanted to, it could get them anytime because their
identities were not a secret. Therefore, they would want their names mentioned so that
‘the authorities’ would be reminded of their good work in maintaining harmony in the
community. This is an example of the diverse personal motivations of participants that
took part in my study, despite the repeated insistence of the purpose of the research
on my part.

In the same way, for the semi-structured interviews, I followed the School of Social and
Political Science ethics guidelines, with consent forms, research objectives and the
rights of interviewees duly presented and explained. Very early on, I encountered the
challenge of consent forms; many of my informants were uncomfortable with them.
They introduced a level of formality which affected the quality of data I was receiving.
After discussions with my supervisors, we agreed to seek verbal consent instead and
to use forms selectively. This changed the outlook completely, from very formal, spoon-
fed answers to frank conversations about the judiciary and the Ministry of Justice, for
instance. Thus, for the in-depth interviews, unless where they specifically requested or
agreed, all informants have been anonymised. Also, for the use of documents, such
as correspondence and court documentation, I sought the consent of the institutions
and individuals involved. Where consent was not granted, like in the case of
magistrates’ courts records, they have not been used in the thesis. Furthermore, I
sought to obtain, to the extent possible, consent for photographs, texts, audio, visual,
and other materials I gathered during my fieldwork.
Outline of the Chapters

Chapter One provides background information on Sierra Leone and a discussion of *barrays*. It is divided into two: the first part examines the country’s history, including the key colonial and post-colonial political, social, and economic events that have foregrounded the development of a plural legal system in two separate regions of Sierra Leone, as well as created the necessary conditions for other parallel or alternative dispute resolution schemes to blossom. As a separate chapter from the Introduction, it offers context and the basis to appreciate the subsequent chapters and the importance of this study. The second part contains a detailed discussion of *barrays*, their structure, including the appointment and functions of officials such as chiefs and clerks that run them. It describes what *barrays* are from the perspectives of *barray* officials, litigants, witnesses, and other community members, as well as external entities such as representatives of government, judicial officials, traditional authorities in the Provinces, and private legal practitioners. In doing so, it traces the (post)colonial and post-conflict development of *barrays* and the different arrangements that underpin them.

Chapter Two examines the jurisdiction of the *barrays* – their authority to hear and determine cases. It assesses the categories of cases *barrays* admit (or refuse) for adjudication and, in the process, becomes a useful measure to analyse the socio-economic relations of disputing parties and the wider urban population of Freetown and the Western Area. The chapter showcases the innovative measures employed by *barrays* to carve out jurisdiction in the first place, and their relationship with state courts in justice service delivery in the Western Area. This chapter further discusses abuses and excesses, the constant negotiations of power, authority, and legitimacy between the *barrays* and different elements of society – litigants, their relations, wider community members, the state apparatuses – and how scrutiny through litigation remains a potent source of accountability.

Chapter Three focuses on the procedures and processes of *barrays* – how they carry out their functions, including the adjudication of disputes. It argues that procedural
innovations and adaptations in the management of cases, are key to attracting the urban population of the Western Area towards barrays. The chapter provides a description and analysis of barray procedures. It examines the different ways authority, recognition and legitimacy are actively negotiated between barray officials and litigants through procedures such as securing attendance of parties, acceptance of decisions and accountability through appeals.

Chapter Four examines the role of money in structuring the barray system, and in shaping litigants’ conception of justice. It explores the centrality of money to the mechanism of justice representing on the one hand, a form of exchange – as in a social contract – which embodies not only paying a fee for a service but also buying into a system of justice. On the other hand, an examination of financial transactions provides a lens for comprehensively understanding the dynamics of the barray system, including the socio-economic relations of parties, how and why different actors pay money, and whether and how it shapes both the system and the object of justice. The chapter discusses three main points: first, it describes the financial structure of the barrays apropos the transactional relationships with different parties, and how this has transformed the barrays into a broker. It explains when and how payments are made, for what purposes, and if and how these sums are distributed to leverage authority, recognition, and legitimacy. Second, it assesses how both the certainty of payment and clarity of purpose construct a link between risk and ‘transparency’, which enhances the authority and legitimacy of the barray system. Third, it examines the barrays as both a marketplace where competition and forum shopping are rife, and an enclosed game, where participation may depend on the opt-in of one party.

Chapter Five examines the specific relationship between the barrays and the Sierra Leone Police (SLP), the main institution tasked with the preservation of law and order and visible representative of the state, and the barrays. It explores the practical and existential considerations that have provided the need for both entities to forge a complementary, even if uneasy relationship. It examines further, how, in their quotidian practices, the police in the Western Area of Sierra Leone aid or constrain the workings of the barrays and, in turn, shape public perceptions of the role of the state in their
everyday lives. By analysing such (dis)connections, this chapter demonstrates how policies and state bureaucracies (often inspired by international development concepts and domestic legislations) are translated and/or appropriated by state agents, such as the police, and citizens alike, as they interface in shared networks and common spaces.

The Conclusion will proceed with a discussion about how these institutions – official state institutions and *barrays* – which are often discussed as distinct and separate, all interlink and rely on one another to enact a complex system of law in Sierra Leone.
Chapter One: Urban Chiefs and their Barrays in the Western Area of Sierra Leone

Introduction

A group of women sang praises to the wisdom of the Temne Tribal Headman of the Western Area, King Alhaji Hassan Bangura, as they gracefully danced in circles to the sound of traditional instruments, wearing colourful lapa\textsuperscript{16} and gowns, and adorning distinct hat-shaped head ties. These were no ordinary women; they belonged to the special class of female chiefs, who play key roles in induction and other chiefly rituals.\textsuperscript{17}

\textsuperscript{16} A popular dress for women, lapa is a cloth tied around the waist as a skirt.
\textsuperscript{17} Known as ‘Bom Warrah’, ‘Bom Poro’, ‘Bom Kapr’ and ‘Bom Posseh’, these female chiefs are spouses of the Tribal Headman or chiefs, who may also sit courts.
On this day, they were formally presenting Mr Bundu as candidate to be crowned alimamy\(^{18}\). He would soon commence the mandatory induction period known as kantha\(^{19}\) where he would take part in secret rites. After the initiation ceremony, he would be known as Chief Alimamy Bundu, joining an estimated 200 other alimamies, representing the Temne tribe in the Western Area of Sierra Leone. The raison d’être of his new office would include the establishment of a ‘barray’ or customary forum for the adjudication of disputes. There are 15 other Tribal Headmen in the Western Area, with an analogous system of chiefs and, significantly, with dispute resolution responsibilities, raising the total number of barrays to more than six hundred.\(^{20}\)

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\(^{18}\) An “Alimamy” is a senior chief below the rank of the Tribal Headman.  
\(^{19}\) ‘Kantha’ literally means ‘to close’ in Temne, and traditionally refers to an enclosure (in a sacred bush), where chiefs undergo rites of passage before they are crowned.  
\(^{20}\) The total number of barrays is unascertainable because of the fluidity of appointments and dissolutions, and the absence of detailed records. My estimate of 617 is conservative and based on a compilation of lists provided by Tribal Headmen or their secretaries, interviews, and manual mappings.
But who are these chiefs and what are their *barrays*? How are they situated within Sierra Leone’s bifurcated legal system? What are the political conditions that underpin their development? How do they motivate or constrain dispute settlement in the Western Area? And what roles do they play in the security, political and socio-economic makeup of Sierra Leone’s capital city and its environs?

To consider these and similar questions throughout the thesis, this chapter provides a historical and contextual framework of Sierra Leone that underpins the origins and persistence of urban chiefs and their dispute settlement forums. It seeks to offer both a background on the formation, and an insight to the contemporary characterisation, of *barrays*. The chapter will be divided into four parts: first, a description of the development of Sierra Leone’s dual legal system and the political conditions that allowed for it. It examines how two separate territories – the Protectorate (now called the Provinces) and the Colony (now called the Western Area) were (are) governed by two parallel legal regimes, spurred by political considerations with wide-ranging social, economic, and legal implications. Some of these implications – migration, belonging, customary law, and the creation of bespoke legal and policy regimes – are examined as they relate to the establishment and operations of *barrays*.

The second part will examine the creation of a system of ‘Tribal Administration’ in the Western Area, as a specific example of a bespoke legal and policy regime, and its development towards legal (in)capacity to exercise judicial jurisdiction. This will highlight both the historical and contemporary links between the ‘Tribal Administration’ and *barrays*, an important component in understanding the impact of political and legal bifurcation, discussed in the previous section, on *barray* origins. Third, the chapter will examine especially the road to political unification pre- and post-independence, including the role of institutions, such as the Freetown City Council, to highlight the opposition to non-English law in Freetown (former Colony). It will show how the opposition of *barrays* has not only persisted through modern institutions like the Bar Association and Judiciary but has also influenced the contemporary perception and trajectory of *barrays*. Fourth, the chapter will end with an examination of the contemporary understanding of *barrays* in the light of (or notwithstanding) the historical
and legal background discussed above, drawing on the perspectives of officials (state and non-state), litigants, and community members. This will shed light on barrays’ contemporary character and function as “chiefs’ courts” in an urban setting such as Freetown. In so doing, it will show how barrays are involved in constant negotiations of recognition, authority, and legitimacy within their communities, and with external entities, as they continue to define their work and place in Sierra Leone’s political and legal systems – important themes examined throughout the thesis.

**Background to Sierra Leone’s Legal Dualism**

Sierra Leone’s political and legal history is intertwined; it chronicles a bifurcated territorial development spanning from pre-colonial to present times. While the area now known as Sierra Leone was occupied by different peoples with varying degrees of political, social, and economic organisation, it was the moment in 1787, after it became a settlement for freed slaves that led to a chain of events accounting for the country’s modern (legal) history (Kup, 1961; Fyfe, 1962). Beginning in May 1787, four categories of former slaves were resettled in Sierra Leone: the ‘Black Poor’ from England; ‘the loyalists’ from Nova Scotia (former slaves who supported the British in the American War of Independence); ‘the Maroons’ from Nova Scotia (ex-slaves who mutinied against their white masters in Jamaica); and ‘liberated Africans’ or ‘Recaptives’ seized from slave ships bound for the New World and set free by the Court of Vice-Admiralty in Sierra Leone (Porter, 1966; Peterson, 1969).

By 1808\(^{21}\), when the British Empire formally declared Sierra Leone a Crown Colony, the first in West Africa, its territory had extended beyond the patch of land it acquired to include villages of autochthonous communities such as the Temne and Sherbro along the coast and peninsula (Fyfe, 1962). However, this was still significantly smaller, less than ten percent of present-day Sierra Leone. The area outside the Colony – the

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\(^{21}\) Between 1787 and 1807, the colony was governed by Royal Charter by the Sierra Leone Company, formerly the Society for the Relief of the Black Poor in England. Following discontent and open revolt by the settlers, growing costs of maintaining the colony and withdrawal of imperial grant, and tensions with the local population, the company was forced to surrender its corporate status and the British Crown took over the reins on 1 January 1808. (See also, Fyfe, 1962; Peterson, 1969).
size of Ireland – was occupied by indigenous groups and ruled by kings and queens who waged wars over territories and resources (Abraham, 1978). Slavery was still active despite its international abolition, but the colonial administration was less concerned about the practice than the threat to trade routes which the inter-tribal conflicts posed, and its economic impact on the new Colony (Alie, 2006; Fyfe, 1962). Following the Berlin Conference 1884-5, which formally legitimised the partition of African nations among major European powers of the time, there was a big push to regularise the territory of Sierra Leone outside the Colony. After several Anglo-French and Anglo-Liberian Agreements were signed, the boundaries between Sierra Leone and Guinea to the north, and Sierra Leone and Liberia to the south were resolved.  

In 1896, based on an Order-in-Council passed in the British Parliament, the Colonial Administration was authorised to exercise control over the territories adjacent to the Colony. The Protectorate Ordinance of 1896 was passed giving rise to the formal annexation of the whole of present-day Sierra Leone. The specifics of this arrangement have been detailed elsewhere, especially its unilateral nature and the opposition from local rulers (Hargreaves, 1956; Caulker, 1976; Fyfe, 1962). Ironically, by unifying the two territories under one central colonial rulership, the Colony, consisting of Freetown and areas along the peninsula and coast on the one hand, and the Protectorate, encompassing the rest of the country governed by local rulers on the other hand, became even more separated by two distinct legal infrastructures.

The task for implementing the architecture of this new administrative arrangement fell on the shoulders of a career soldier, Colonel Frederick Cardew, who arrived in Sierra Leone as the Crown’s representative in 1894. Following his tours of the Protectorate, Cardew recognised very early on the economic and political dimensions of his challenges. With no expectations of Imperial direct financial support – support by the British Crown through grants had waned – Cardew’s administration would have to

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22 Anglo-French Convention of 28 June 1882; Anglo-French Arrangement of 10 August 1889; Anglo-French Agreement of 21 January 1895; Notes Exchanges of 6 July 1911; and on the south by the Anglo-Liberian boundary line delimited under the provisions of the Anglo-Liberian Conventions 11 November 1885, and 21 January 1911. See also First Schedule, Sierra Leone Independence Act, 1961.

23 Ordinance No. 20 of 1896.
generate income internally to fund his many projects. These included the expansion of the Frontier Police, construction of the railway, roads, bridges, and ferries to improve trade and communication between the Colony and the Protectorate (Hargreaves, 1956). More importantly, having witnessed the petty slave trading, tribal wars, and customary practices like polygamy, during his tours, Cardew considered it his moral mission to extend the *Pax Britannica* to the people of the Protectorate (Hargreaves, 1956; Peterson, 1969; Kup, 1975). His formula to get the requisite funds was to introduce a hut tax and impose tariffs on imported goods such as tobacco, liquor, gunpowder and firearms (more on this later).

His economic plans were interwoven with a political strategy. In his address to the Legislative Council in 1896, Cardew stated that “jurisdiction of the Protectorate should be continued as far as possible through the Chiefs, and its administration kept as far as possible distinct from that of the Colony” (Hargreaves, 1956, p. 62). This was, perhaps, the earliest conception of Indirect Rule, decades before it was popularised by Lord Lugard in Nigeria. An administrative structure was fashioned that utilised local leadership in such capacities as would maintain the colonial administration’s overall control. The Protectorate was divided into five districts; a figure that had risen to twelve on the eve of Independence in 1961, and sixteen since 2018. A District Commissioner – white and mostly inexperienced – was appointed in each district, with wide-ranging authority on political and judicial matters. Local kings and queens, renamed Paramount Chiefs, retained political power, subject to the Crown’s agents, the District Commissioners. Paramount Chieftaincy was institutionalised and their territories re-designated chiefdoms (Fyfe, 1962; Abraham, 1978).

Meanwhile, in the Colony, every attempt was made to employ direct rule. It was governed as a British dependency, with the Colonial Office in England responsible for its administration. Appointed by the Colonial Office, a Governor and Council of five to seven members (known together as Governor’s Council) which, from 1808-1863, was made up entirely of Europeans, directly ran the Colony (Porter, 1966; Jones, 1988).

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24 See discussion of frontier police in Chapter Five.
The Governor's Council had absolute political and judicial authority over the Colony. Following calls for local political representation, a constitutional change was made in 1863. The Governor's Council was divided into two bodies, the Executive and Legislative Councils. The former was made up of all the previous officials of the Governor's Council such as the Governor, Chief Justice, Colonial Secretary, Queen's Advocate, and Officer Commanding Troops. The latter, the Legislative Council also comprised the Governor, all the officials of the Executive Council listed above and, crucially, two unofficial (non-European) persons appointed from the population (Jones, 1988). This was hardly progress, but it marked the first time an African, in the person of John Ezzidio, was appointed to the Legislative Council. No further changes in national representation occurred until 1924 (Wyse, 1989; Cartwright, 1970).

Parallel Legal Systems

As in the political divisions between the two territories, two parallel legal systems were created, one each for the Colony and Protectorate, during the colonial era. The Protectorate Ordinance of 1896, which annexed the Protectorate, also carved a judicial structure keen to maintain the jurisdiction of local authorities to adjudicate disputes but under conditions that would ensure overall control by the colonial administration. The Ordinance created in each district three courts, namely: The Court of Native Chiefs, made up of all Paramount Chiefs’ courts operating per local customs and traditions and in existence at the time of the Ordinance. These courts were presided over by Paramount Chiefs and their advisers. They enjoyed exclusive jurisdiction over customary matters, as well as minor civil and criminal cases arising between their subjects. The second was the Court of District Commissioners and Native Chiefs. Unlike the chiefs’ courts, this was a court of record and had greater jurisdiction not only on substantive matters but also on the parties before it. Crucially, this combined court was guided not by customary law but by English law in force in the Colony. Finally, the Court of the District Commissioner was exclusively presided by the District Commissioner, a European, who was also the administrative or political head in the
district. It had a wider jurisdiction to try criminal and civil cases and, like the previous court, applied English laws as in the Colony.26

The impact of the above arrangement on the development of the customary legal system has already been alluded to. Through this, colonial administrators had designed control mechanisms which, in many instances, influenced the (re)interpretation of customary law. Although there were new legislations and several amendments to provide for the administration of justice in the Protectorate, they continued to be divided along substantive jurisdictional lines, granting local chiefs jurisdiction over petty cases and more Colony-linked formal courts providing supervisory and appellate functions.27

The Colony of Sierra Leone, meanwhile, was governed exclusively in accordance with the English legal system. Laws passed at Westminster in London became applicable automatically and the judicial structure was modelled in like manner. The Supreme Court of Sierra Leone Ordinance 1881, for instance, enabled the direct relevance of English law by declaring that “[t]he statutes of general application which were in force in England on the first day of January 1880” would apply in the Colony28. The colonial courts’ structure included the following: the Court of Royal Commission, responsible for offences committed in the high seas; the Vice Admiralty Court, which tried slave traders and confiscated their vessels; the Governor and Council constituting a Court of Appeal; A Country Quarter Sessions or Gaol Delivery; the Mayor’s Court; Court of Recorder of Freetown, dealing with civil cases; and the Police Court of Freetown, responsible for all criminal matters (George, 2014). Although changes were made during more than one hundred and fifty years of colonial rule in Sierra Leone, such as the introduction of a leaner legal structure that included magistrates, supreme and appeals courts, the basic architecture as described above remained the same at Independence.

26 Protectorate Ordinance [No. 20 of 1896].
27 See for instance, the Supreme Court Ordinance, No. 39 of 1932 (amendment); and the Protectorate Jurisdiction Ordinance No. 40 of 1932.
28 Ordinance No. 9 of 1881, s.12. This provision subsists to this day: s.74 of the Courts Act [No.31] 1965.
Non-English (or Customary) Law in the Colony (Western Area)

The motivation for the strict division of the legal system across geographical lines (Colony versus Protectorate) during colonial rule has never been clear. By this time, the Colony comprised four main groups. The first group comprised the mainly white administrators, military officials, missionaries, and traders who were involved in the direct running of the Colony of Sierra Leone. The second group, statutorily referred to as ‘natives’\(^{29}\), were made up of immigrants from the Protectorate as well as remnants of the original population. Many natives had arrived in the Colony to embrace job opportunities, flee from wars and slavery, and participate in trade. They occupied the lowest echelon of Freetown society: they were the labourers, wood cutters, and domestic servants. They had no official role in the political organisation of the Colony. However, this changed over time, so that on the eve of Independence, natives had occupied some of the most important political, social, and economic positions in Sierra Leone (Harrell-Bond, Howard, & Skinner, 1978) (more on this later). They formed cooperatives that combined socio-economic functions such as entertainment, thrifts and savings, and bereavement benefits. These associations maintained strong authority over their members and, over time, became the conduit for both social and economic integration of the immigrant population in Freetown life (Banton, 1957; Bangura, 2018).

The third group consisted of the Creoles or Krio\(^{30}\). Descendants of former slaves and, although they were not racially different, the Creoles considered themselves superior to the natives (Wyse, 1989; Spitzer, 1974). They occupied all junior and mid-level positions in the colonial administration not already filled by Europeans. They were also major beneficiaries of educational opportunities provided by the administration and Christian missionaries (Fyfe, 1960; Cole, 2006). The Creoles opposed the application of any form of non-English law in the Colony, especially customary law practised by

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\(^{29}\) The use of this term in Sierra Leone is to distinguish between persons with roots from the Provinces, and those who are descendants of settlers and former slaves, also known as the Creoles or Krio. It is used in this thesis, with reflection.

\(^{30}\) For a discussion of the use of either ‘Krio’ or ‘Creole’, see Wyse (1989) pp.6-7. In this thesis, both terms are used interchangeably to describe descendants of settlers/freed slaves in Sierra Leone, with ‘Krio’ also referring to the language.
*natives* in the Protectorate (Banton, 1956; Harrell-Bond, Howard, & Skinner, 1978). They had described inhabitants of the Protectorate in less complimentary terms, mostly in a strong disapproving way, using similar language as white colonialists about indigenous Africans (Banton, 1956). The antagonism was not entirely one-sided. The *natives* had long detested the Creoles, whom they saw as agents of colonialism (Banton, 1956; Wyse, 1989). Sometimes acting as intermediary, the Creoles became the face of everything repulsive about the colonial administration’s dealings with *natives* in the Protectorate. Things came to a head in the armed struggle against taxation policies of colonial rule beginning in 1898, dubbed the Hut Tax War, during which the Creoles were particularly targeted and many of them were killed (Hargreaves, 1956; Alie, 2006).

The fourth group consisted of the ‘Recaptives’ or ‘Liberated Africans’, rescued from slave ships and freed in Freetown, as part of the anti-slavery patrols in the Atlantic Ocean. They traced their routes from inland Sierra Leone to several West, Central and Southern African countries, with the most dominant groups being the Yoruba, Igbo, Congo, Asante, Efik and Hausa (Porter, 1966; Wyse, 1989; Cole, 2006). As Porter noted: “[t]hey represented as about as heterogeneous an assemblage in language, custom and belief as can be imagined” (p. 11). Under the tutelage of the colonial administration’s Liberated Africa Department, the ‘Recaptives’ were exposed to a combination of government-funded integration programmes through the parish system, overseen by the Church Missionary Society. The aim was to both convert ‘Recaptives’ to Christianity and make them “civilised enough” to interact with the early settlers (Wyse, 1989; Spitzer, 1974; Cohen, 1981). While this programme was successful, a good number of this group was Muslim. In later years, this Muslim group of “Recaptives” became known as Aku (Cole, 2013; Spencer, 2016).

**The Development of Administration by “Tribal” Authority**

This diversity of the inhabitants of the Colony was not matched by the legal options
provided by the colonial administration, questioning the wisdom of the insistence on English law as the only legal currency. The English-based courts could not provide legal solutions to many of the disputes brought by natives such as adultery and witchcraft, as these were not recognised as valid causes of action (Banton, 1956; Harrell-Bond, 1975). The failure of the colonial administration to provide a system of political and legal integration to accommodate the natives in the Colony proved to be a disservice to the socio-juridical reality. The numbers of natives in the Colony continued to grow as were their associations. In time, they formed themselves into tribal units and reproduced, in varying degrees, that cultural identity, including the appointment among their tribesmen of chiefs or headmen whose functions were like chiefs in the Protectorate. These ‘chiefs’ provided, inter alia, security in the form of job opportunities, ‘protection’ in a new city, and all the anchorage associated with chieftaincy, such as the settlement of disputes (Harrell-Bond, Howard, & Skinner, 1978).

Thus, the colonial administration was presented with a serious dilemma aptly summarised by Christopher Fyfe:

> If they recognised the headmen's unauthorised jurisdictions [to try cases], they implicitly accepted the humiliating existence of 'no-go areas’ outside the authority of the colony's legal and administrative system. If they prohibited them, the colonial governments would have had to provide alternative forms of local government that they lacked the means to introduce or enforce (1980, p. 441).

As neither of these options was particularly appealing, the colonial administration settled for an uneasy compromise; they recognised the self-constituted headmen of all the tribes represented in Freetown, but without endorsing their legal authority to adjudicate.31 This decision was not without qualification; while the government required tribal chiefs’ support in dealing with migrants, including assisting the police (see for example, Chapter Five), it had to do so without necessarily endorsing these chiefs’

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31 Present day Sierra Leone has 18 tribes. By 1905, there were only 8 tribal headmen in Freetown.
legal authority to adjudicate. Therefore, the Tribal Authority Ordinance 1905\textsuperscript{32} introduced a regulatory framework that utilised the de facto authority they already enjoyed and changed the nomenclature of chiefs to ‘Tribal Rulers’. Entitled an *Ordinance to Promote a System of Administration by Tribal Authority among the Tribes Settled in Freetown and in other places within the Colony*, it conferred on the new *tribal rulers*, wide powers to control the flow of immigration to the colony, provide information on government regulations and notices to members of their tribes, arrest malefactors, and help to raise tax, among others.

At the same time, however, it acknowledged two important factors: first, even though it recognised a single *tribal* head for each ethnic group in the colony, it also accepted the existence of other chiefs of the same *tribe* performing similar roles.\textsuperscript{33} Second, the ordinance allowed for the limited practice of judicial functions by headmen, despite opposition from the Corporation of Freetown or Freetown City Council (discussed further below). This limited jurisdiction, realised through promulgation of rules by individual *tribal rulers* in pursuance of the 1905 Ordinance,\textsuperscript{34} allowed for the adjudication of disputes outside the specific limitations of the ordinance.\textsuperscript{35} This is significant because it marked the first and only time that *tribal rulers* have been granted the authority to adjudicate. The areas outside these limitations for which *tribal rulers* promulgated rules included debts, property offences like pawning, family, and customary marriage cases.

There were further amendments in 1908 and 1924 which also included additional powers relating to manual labour\textsuperscript{36} and vagrancy.\textsuperscript{37} At the same time, the 1905 Ordinance as amended, contained an important provision which stipulated a path for *natives* governed by the Ordinance and associated Regulations to opt out and become

\textsuperscript{32} The Tribal Administration (Freetown) Ordinance, 1905 [No.19 of 1905]. The following year, the Tribal Administration Extension Ordinance 1906 [No. 27 of 1906] extended the provisions of the 1905 Ordinance to places outside Freetown.

\textsuperscript{33} Section 2(1)

\textsuperscript{34} See for example, the Tribal Administration (Freetown) (Foulah) Rules, 1924 and Tribal Administration (Freetown) (Serrakull, Bambara, and Wasoloo) Rules, 1924.

\textsuperscript{35} Sections 12 and 13, the Tribal Administration (Freetown) Ordinance, 1905 [No.19 of 1905].

\textsuperscript{36} Manual Labour Ordinance No. 16 of 1908

\textsuperscript{37} Vagrancy Ordinance No. 17 of 1908
‘non-native’. This was done through an application to the police magistrate, showing ownership of property or contribution to education as evidence of social mobility from a native to a non-native.38

Between 1905 and 1932, the architecture of tribal rulers remained the same until an inquiry39 was set up to investigate complaints that included abuse of adjudicatory authority such as excessive fines, corruption, and inhumane sentences (like beatings and chaining) of defendants before their courts. The commission’s recommendations were sharp and sweeping; they represented the single-most comprehensive assault on the institution of headmen in colonial times. At the centre was the jurisdiction of the courts of tribal rulers – the authority to adjudicate cases. A new ordinance was enacted. The Tribal Administration (Colony) Ordinance40 which came into effect in 1933, cemented the role of the ‘tribal rulers’ as representatives of their tribesmen to the colonial government, with expectations for tax collection and assistance of the police. While it added tasks like the registration of births and deaths,41 it was what it purported to take away that would become the defining feature of this and future legislative instruments, when studying the jurisdiction of barrays. Apart from changing the nomenclature from Tribal Rulers (thought to represent a more powerful, assertive title) to Tribal Headmen to emphasise their subordinate status, section 12 of the new Ordinance stated:

No Tribal Headman shall exercise any jurisdiction, civil or criminal, of any nature whatsoever in respect of the members of his tribe and any Tribal Headman who acts in contravention of this section shall be liable to a fine not exceeding one hundred pounds, or to imprisonment, with or without hard labour, for a period not exceeding twelve months, or to both such fine and imprisonment.

Whereas in the previous ordinances the power to adjudicate only confirmed and institutionalised a practice the headmen were already engaged in; this new ordinance’s

38 Section 4 The Tribal Administration (Freetown) Ordinance, 1905 [No.19 of 1905].
39 Commission of Inquiry, 1932.
40 No. 48 of 1932
41 Section 5(e)
prohibition of arguably their core function is worthy of further comment. It will be recalled that the decision to institutionalise headship in the colony was not unanimous; there was forceful opposition from the Freetown City Council who, even with the power to veto appointments, still had misgivings of headmen and their barrays. To understand these misgivings, it is important to briefly mention the Creole connection to the Freetown City Council.

Earlier, in 1893, just three years before the declaration of a Protectorate, Freetown was created a municipality, the first in British West Africa and two years later, a Creole, Sir Samuel Lewis became its first elected mayor. This City Council became the bastion of Creole life and was considered by many as preparatory ground for national politics, as many of its members went on to serve in the Legislative Council (Porter, 1966; Wyse, 1987). Given the limited political space accorded the Creoles – many of whom were well-educated at this time – the Freetown City Council became a question of pride. This was the first attempt at decentralisation in the Colony. However, as many writers have postulated, the Freetown City Council project was always meant to fail. It never possessed real powers, and the colonial administration maintained such a stranglehold on its operations that it did not take much for the Creole-led Council to be blamed for everything from the riots and strike actions of 1919 and 1926, to financial misappropriation\(^{42}\) (Wyse, 1987). Following the report of a Commission of Enquiry, the Council was dissolved in 1926 and, in its place, an interim body was set up, which was later replaced by a government-appointed, all-European Municipal Board. It was not until 1948, that the Freetown City Council was reinstated with African elected membership, but by then the damage to the experiment that was the Freetown City Council, and the role of the Creoles was already done. Wyse summarised it well:

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\text{Indeed, once the City Council had been dissolved the Krio really had no power base or institution they could call their own. And when the council was reorganised in 1948 it was so constituted that it was not possible or even desirable in the context of recent development, for it to be an exclusive Krio or even a Krio}
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\(^{42}\) The two-time elected Mayor Cornelius May was sentenced to 9 months’ imprisonment, and the Town Clerk and Treasurer were found guilty of several misdemeanours.
dominated institution. The apprenticeship came to an abrupt end (Wyse, 1987, pp. 433-434).

For the administration of *tribal* authority in Freetown (former Colony), the opposition from the City Council and Creoles did not disappear. In fact, there was another flashpoint culminating in yet another Commission of Inquiry Report in 1955, which sought to further undermine headmen. However, the commission’s recommendations were not implemented, mostly because of political tensions between two major configurations – the Creole and Protectorate elites – for the right to lead a unified Sierra Leone.

**Road to Political Unification**

The recent development referred to by Wyse was the increase in the number of *natives* demanding political participation. By this time, only the two unofficial nominees from the Colony, mostly Creole businessmen, played any direct role in governance. In 1924, the colonial government conceded to the demands of the Protectorate by introducing ‘representation by selection’ in the constitutional change of that year. The 1924 Constitution enlarged the membership of the Legislative Council to twenty-two, of which twelve members were officials including the Governor, retaining the colonial government’s majority. Of the remaining ten, eight were appointed positions namely, three Paramount Chiefs representing the three Provinces of the Protectorate that existed at the time, two European merchants, and two Africans (Creole) in the Colony. The three elected positions were all for the Colony and were occupied by notable Creoles, who were members of the Pan-West African party the National Congress of British West Africa (Cartwright, 1970; Jones, 1988; Wyse, 1989).

As imperfect as this was, it marked the beginning of the end of the policy of two separate political systems under one country. Calls for greater representation and autonomy grew louder in the Protectorate and Colony. In 1946, two events occurred that would change the political landscape of Sierra Leone. In the Protectorate, District Councils were created as devolved authorities beyond Paramount Chiefs, and a
Protectorate Assembly (a mini-Parliament) was established to accommodate Paramount Chiefs, Native Authorities, and some educated elites from the Protectorate (Wyse, 1989). The Protectorate Assembly became a sounding board, as matters deliberated upon were then presented for discussion in the Legislative Council (Cartwright, 1970).

The two experiments were hailed a success so that the following year, in 1947, a new constitution was suggested which, inter alia, delivered an unofficial (African) majority in the Legislative Council for the first time. But this was not welcomed especially by the Creole population. Cartwright succinctly summarised the position:

As long as all Africans were confined to minor advisory roles in the government of Sierra Leone, it did not matter much that the Creoles had more representation in the Legislative Council than the Protectorate people, or that the Protectorate’s representatives were all chiefs. But once it became clear that more power was to be handed over to Africans, the question of which Sierra Leoneans would take places on the decision-making bodies aroused considerable concern (1970, p. 43).

The crux of the problem was two-fold, and it exposed the division between the Colony and Protectorate. The first was the distribution of the new thirty-member Legislative Council. The Colony wanted seven seats despite its size. Eventually, it was agreed that the Protectorate would get fourteen seats (one for each of the twelve districts and two from the Protectorate Assembly) and the Colony seven (directly elected), with seven officials including the Governor, and a further two seats for his appointees from the business community. There would be an African majority only if the Protectorate and Colony could work together, but it also meant that they could, for the first time, appoint four members from the Legislative Council to represent them in the Executive Council (Cartwright, 1970; Harris, 2013).

The second disagreement was even more protracted. The Creoles had opposed the appointment of Paramount Chiefs to the Legislative Council by the Governor and, as a way of limiting this, they suggested a literacy-in-English condition to membership of the Council, knowing fully well that only a handful of Paramount Chiefs were educated. For some time, this suggestion was favourable to the educated elites of the
Protectorate, who were shut out of national politics by the chiefs and colonial government at this point. However, realising that this was a ploy by the Creole to prove that the Protectorate was ill-prepared for representative politics, the Protectorate Elites and Paramount Chiefs banded together in opposing the illiteracy provision. It was removed (Cartwright, 1970; Stevens, 1984).

At the heart of this crisis was a battle for supremacy between two distinct territories of Sierra Leone, who recognised that the political unification formula was a zero-sum game. The Creoles fervently believed that after many years of close relationship with the colonial administration as apprentices, they were sufficiently placed and ready to assume the mantle of leadership. Some even considered it a betrayal of trust and confidence for the ill-prepared, uncivilised, uneducated masses who lived in the Protectorate to be given any measure of equivalency. The Protectorate people were simply not ready to be given such an important responsibility (Porter, 1966; Stevens, 1984; Wyse, 1990). Following years of bitter disagreements and name-calling between the Creoles of the Colony, led by firebrands like H.C. Bankole-Bright, and the Protectorate led by Milton Margai and some vocal Paramount Chiefs, elections were held in 1951 under new arrangements. A party from the Protectorate – the Sierra Leone Peoples Party (SLPP), led by Milton Margai – won the majority, defeating a coalition of Creole parties under the umbrella of the National Council of the Colony of Sierra Leone, led by Bankole-Bright (Cartwright, 1970; Wyse, 1990; Harris, 2013).

This only increased the rancour and, after attempts at reconciliation failed, the political divide between the mainstream Creole class and the Protectorate representatives increased. The last constitutional change before Independence occurred in 1956\textsuperscript{43}, just before the elections of the following year. The Legislative Council was abolished and replaced by a Legislative Assembly of 57 members. There was provision for four ex-officio members and two other members nominated by the Governor from special (business) interests. The rest were elected seats, with the Colony representation increased from seven to 14. The biggest changes happened in the Protectorate.

\textsuperscript{43} The Beresford-Stooke Constitution, named after the Governor of the same name, came into force in 1956.
Twelve seats were reserved for Paramount Chiefs, representing each of the twelve districts. Similarly, twenty-four seats went to the twelve District Councils, with each having two representatives, and one seat went to Bo urban area. The elections of 1957 were the first direct election by the Protectorate to the national assembly, although this right was already enjoyed in the Colony (Cartwright, 1970; Stevens, 1984; Harris, 2013).

Amidst the turbulent period of tribal rivalries, suppression of dissenting voices, including imprisonment of opposition figures, the SLPP-led Assembly successfully negotiated Sierra Leone’s Independence from Britain on the 27th of April 1961. Milton Margai became the first Prime Minister of Independent Sierra Leone, in a Westminster Parliamentary system. Without need for clairvoyance, it was evident that the simmering political turmoil on the eve of Independence would boil over in the next decades of Sierra Leone’s political history, with significant effect on development of the legal system. The Creoles did lose the political battle to run Independent Sierra Leone, but they became resourceful leaders in various fields such as law, medicine, and religion. For the tribal administration in Freetown, by the time Sierra Leone gained independence in 1961, the position of the jurisdiction of headmen, their sub chiefs, as well as their barrays was the same as during colonial rule. Chiefs could assist the government in a range of areas such as tax collection and collaboration with the police, but they did not have the authority to adjudicate.

**Barrays: Post-Independence to present-day Sierra Leone**

At Independence on the 27th of April 1961, political unity between the Colony and the Protectorate was complete, even though there were palpable tensions between different segments of society (Cartwright, 1970; Harris, 2013). The political unity, however, was only apparent in the national institution – Legislative Assembly – as both territories maintained different devolved administrative set-up. In the Colony (renamed Western Area), subjects were involved in the election of representatives to the Legislative Assembly as well as to the Freetown City Council, headed by a mayor and
councillors. In the Protectorate (renamed Provinces), there were three Provinces (Eastern, Northern and Southern), 12 districts and 147 chiefdoms. A Provincial Secretary and District Officer were appointed to each Province and District respectively. The chiefdoms were ruled by the Paramount Chiefs. The roles of the District Councils continued as during colonialism.

It was another six years after Independence, two civilian governments and two military coups before there were changes in the administration of ‘tribal authority’ in Freetown (and the Western Area). Before that, in 1963, the most significant change to Sierra Leone’s legal dualism was introduced by the Local Courts Act. Only applicable in the Provinces, this Act abolished for the first time the jurisdiction of Paramount Chiefs to hear and determine disputes. Not only did it replace “Chiefs Courts” presided by Paramount Chiefs with “local courts” headed by presidents (renamed chairmen); it further criminalised the exercise of judicial authority by chiefs. This radical shift (just two years after independence) and the ramifications of the arrangement in the Provinces is outside the scope of this study, beyond an important reference point for the next episode of headmen jurisdiction in the Western Area.

The year was 1967 and the new military junta – the National Reformation Council or NRC – had just assumed power. Riding on the mantra of national cohesion and buoyed by civil servants seizing an opportunity to fulfil a long-held objective to abolish the institution of ‘tribal administration’ in the Western Area (Harrell-Bond, Howard, & Skinner, 1978, p. 244), the Courts Act (Amendment) Decree, 1967 was promulgated. Among other provisions, it specifically abolished headmen and the system of tribal administration throughout the Western Area, marking the only time in Sierra Leone’s history that this was done. Acknowledging the presence of disputes non-justiciable before English-type courts in the Western Area – cases formerly adjudicated by chiefs and headmen and routinely brought before the new local courts in the provinces – the

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44 The Local Government Amendment Act 2018, increased Provinces from 3 to 4, the districts from 12 to 16 (including new Western Urban and Western Rural Districts), while the chiefdoms were increased from 149 to 190. See Figure 2.


46 (N.R.C. Decree No.56 of 1967)
decree expanded the jurisdiction of magistrates’ courts. Section 7A (1) stated:

In addition to any Criminal or Civil Jurisdiction conferred upon them by this or any other enactment Magistrates’ Courts sitting in the Western Area shall have jurisdiction in all matters contained in section 13 of the Local Courts Act [1963].

This provision essentially transferred the ‘jurisdiction’ of barrays to magistrates’ courts, rendering chiefs’ adjudicatory authority redundant. The 1933 Ordinance had already removed headmen’s judicial power, although there were complaints (documented in the 1955 Commission) that barrays were still operating illegally. If there was any ambiguity in the actions of the state, this was made unequivocal by the 1967 Decree. Its effect was chilling; chiefs and headmen were disbanded, their stipends cancelled, and many went underground.

However, before magistrates’ courts were able to exercise the jurisdiction to hear and determine customary law cases in the Western Area, the NRC was overthrown, and the civilian government of Siaka Stevens’ All Peoples’ Congress (APC) was reinstated in 1968. Yet, headmen remained banned, and it was not until 1975 that an official position was published. The Tribal Administration (Western Area) (Amendment) Act, 1975 reinstated the functions of headmen. In addition to confirming that they would continue to assist the police, support in the collection of taxes, and resume liaison between their communities and government on local and national matters; it also restored the authority to sit courts. The law stated that headmen could “adjudicate in any dispute arising out of customary marriages or any laws governing such marriages.” While the jurisdiction appeared to be limited only to customary law marriages and related matters, barrays of headmen and chiefs had officially regained the authority to hear and determine disputes lost in 1932.

47 Section 13, Local Courts Act 1963 dealt with jurisdiction – the kinds of cases local courts had authority to adjudicate, including customary law, that are non-justiciable before formal courts. http://www.sierra-leone.org/Laws/1963-20.pdf [Accessed 24th July 2020].
48 For the political processes in different government departments between 1967 and 1975, see (Harrell-Bond, Howard, & Skinner, 1978, pp. 267-286)
49 Section 1, The Tribal Administration (Western Area) (Amendment) Act, 1975 [Act No. 12 of 1975].
Curiously, though, the 1975 Act only repealed and replaced section 10 of the 1933 Ordinance (which required headmen to assist the police and Justices of the Peace), and not section 12 which prohibited adjudication. In effect, by reinstating the authority to decide cases without first repealing the earlier ordinance that abolished it, the legal position of headmen and chiefs’ adjudicatory power became ambiguous. On the one hand, headmen could now sit on cases related to customary marriages; on the other hand, they could be fined and/or imprisoned for up to twelve months for doing just that. The legal quagmire required explication, and this was attempted through further legislative action.

The Tribal Administration (Western Area) (Amendment) (No. 2) Act, 1975 was enacted to clarify the confusion created by the two legislations explained above. It expanded headmen’s authority to include the “registration of customary marriages and divorce amongst members of the tribe”. More importantly, it amended the infamous section 12 (which prohibited headmen and chiefs from exercising civil or criminal jurisdiction) by adding the proviso: “Provided that the Tribal Headman shall not be so liable in the exercise of any of his functions or duties under section 10 of the Act.” In essence, the intention of the proviso was to exculpate headmen and chiefs who presided over cases, as adjudication had been made part of their repertoire in an expanded section 10, by the first 1975 legislation. However, there was still another twist after consultations with the Chief Justice.

This led to the promulgation of yet another amendment, the Tribal Administration (Western Area) (Amendment) Act, 1976. This Act provided that the word “adjudicate” contained in the first 1975 legislation that reintroduced adjudication be substituted with the word “investigate.” This latest amendment returned the adjudicatory authority of headmen to its post 1933 (and pre-Independence) position, where they were expected

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50 [Act No. 17 of 1975]
51 Section 1, Tribal Administration (Western Area) (Amendment) (No. 2) Act, 1975 [Act No. 17 of 1975]
52 Section 2 (b), Tribal Administration (Western Area) (Amendment) (No. 2) Act, 1975 [Act No. 17 of 1975]
54 [Act No. 9 of 1976]
55 Section 1, Tribal Administration (Western Area) (Amendment) Act, 1976 [Act No. 9 of 1976].
to support government but deprived of an existential function – adjudication. Even though other peripheral legislations were enacted, the question of the adjudicatory authority of *barrays* has remained the same today as in 1976. They lack jurisdiction according to law to hear and determine disputes of any kind. Two examples of these ‘peripheral’ legislations are worthy of a brief note here as they relate to customary marriages and adjudication of local courts.

In the Western Area, Christian, Civil, and Mohammedan Marriages have been recognised since the early days of colonial rule. Customary marriages, however, were considered an anathema to the way of life of the colony and this situation persisted even after Independence. Thus, although there was a recognition that customary marriages were prevalent in the Western Area – evident by the provision that headmen could adjudicate cases arising out of them, as well as register customary marriages, under the two amendments of 1975 – it was not until 2009 that such marriages were legally recognised. The Registration of Customary Marriage and Divorce Act, *inter alia*, raised the status of customary marriages to the other three types already recognised: namely Christian, Civil and Mohammedan Marriages. Crucially, however, the 2009 Act made no provision for, or countenance the power of headmen to register such marriages or divorces as noted in the Tribal Administration (Western Area) (Amendment) (No. 2) Act, 1975. Instead, this power was granted to the two local councils (i.e., the Freetown City Council and the Western Rural Council) constituting the local government in the Western Area. Further, even though the 2009 Act created three offences namely, applying to a local council to register a customary marriage or divorce knowing that it has not been lawfully contracted or dissolved in the first place; making false entry on the register of marriages and divorces; and doing so with intent to defraud or alter an entry; it did not address substantive disputes.

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56 Christian Marriage Ordinance 1907 as amended [Cap. 95 of the Laws of Sierra Leone 1960]
57 Civil Marriage Ordinance 1910 as amended [Cap. 97 of the Laws of Sierra Leone 1960]
58 Mohammedan Marriage Ordinance 1905 as amended [Cap. 96 of the Laws of Sierra Leone 1960]
59 Act No. 1 of 2009
61 Section 19; the punishment for any of these offences is a fine of one million leones (approx £100) and/or up to one-year imprisonment.
Similarly, when the first post-civil war legal reforms of customary law took place in 2011, there was expectation that they would settle the question of customary courts once and for all. As noted in the Introduction, the civil war had redrawn Sierra Leone’s socio-economic and political character. There were now more people (that would have qualified as *natives*) in the Western Area than ever before, and this has coincided with an exponential increase in the number of *barrays*. However, when the Local Courts Act, 2011\(^{62}\) was passed, it did not only exclude headmen and chiefs in the Western Area, but it was also specifically purposed to apply only in the Provinces. This seemed like a missed opportunity to engage with the ever-growing presence and influence of *barrays*. As I have detailed above: continuity in postcolonial times of a bifurcated legal system; hostility towards customary institutions in Western area with few, brief exceptions; legislative swings and contradictions/ambiguities in contrast with continued relevance of chiefly authority in the Western area; have all pointed to a failure to countenance forums with reach and relevance in this urban area of Sierra Leone.

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The next section examines the perspectives of actors of these forums – chiefs, clerks, litigants, relatives, community members – and officials in public service and the private sector, as they attempt to fill the void created by the absence of formal institutional and legal recognition (and definition) of barrays.

Contemporary Definitions of the Western Area Barrays

To understand what the barrays are, it is perhaps important to begin with the views of justice and legal professionals, succinctly put by a Justice of the Supreme Court as follows:

[Barrays are] kangaroo customary courts springing up everywhere in the Western Area. They command some respect even from people who ought to know better. They issue summonses and fines, and there are stories that they even make arrests, with the help of the police. Of course, all this is illegal; in recent years they have become emboldened, and for now, nobody seems to be doing anything to stop them.63

That legal professionals define barrays as ‘kangaroo customary courts’, unlawfully exercising judicial functions notwithstanding the statutory prohibitions in effect in the Western Area is hardly surprising. For a start, legal professionals’ knowledge of the law makes them more likely to not only notice deviance and breaches of legislative provisions as outlined earlier, but also object to any perceived unlawfulness. More importantly, as barrays operate within the same territorial space as official (magistrates’ and high) courts where lawyers practise and as I describe in the next chapter that barrays regularly deal with cases that are also justiciable before these formal courts, the scope for a clash between legal practitioners and barrays increases. Often, members of the legal profession challenge the perceived exercise of ‘unlawful’ judicial functions by barrays in the course of ‘protecting’ their clients. As a result, their definition of Western Area barrays is so shaped that they are perceived as “unlawful,

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63 Personal interview with the Hon. Justice Nicholas C. Browne-Marke JSC, in his chambers in Freetown, 29 August 2017.
fake, courts [whose] main purpose [is] fleecing ordinary citizens." Thus, in the contested legal space that is the Western Area, lawyers’ clients can also be *barray* litigants (most likely ‘defendants’ summonsed to appear before the *barrays*). The subsequent chapters do examine how litigants navigate *barray* and formal courts, in search of favourable outcomes to their disputes. For lawyers acting on behalf of their clients, the *barrays* are seen as anything but a court having responsibility to resolve disputes. For instance, responding to an invitation to their client by the *barray* of King Hassan Bangura, the law firm, Manly-Spain & Co. Solicitors, wrote a letter to the *barray* as follows:

> ...your “Barray” has no Jurisdiction to hear matters relating [to] and concerning Public Order Offences in the Western Area of the Republic of Sierra Leone which is the exclusive responsibility of the Magistrates Court of Sierra Leone. In light of the foregoing, we will appreciate if no further correspondence from your “barray” reaches our client.

Likewise, Bah & Co. Solicitors, another law firm, writing on behalf of their clients, who were defending an ongoing suit, sent a similarly worded letter to the Dove Cut *barray* of Chief Ya Alimamy Bangura Conteh:

> ...We intend bringing to your notice that our clients do not intend to continue the aforesaid complaint in your ‘barray’ on the grounds of illegality. In view of the above, we are instructed to demand that you advise the said [complainant] to pursue her purported matter in the court of law.

In addition to being dismissive of *barrays*, most legal professionals reject the idea that *barrays* (should) have a valid judicial role in the Western Area, despite the presence of disputes not justiciable before the official courts. This opposition to *barrays* (and by extension non-English law in the Western Area) has a familiar vibe. It echoes the opposition made by the Creole-dominated Freetown City Council in the colonial era, or post-Independence civil servants and judicial officials, fearful that customary courts would taint the ‘purity’ of the legal system in the (former) Colony or Western Area (Harrell-Bond, Howard, & Skinner, 1978).

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64 Personal interview with the S. Kamara Esq in Freetown, 4 March 2018.
65 Letter addressed to the Temne Tribal Headman and dated 27 November 2017.
66 Letter addressed to Chief Ya Alimamy Bangura Conteh, female section chief, Dove Cut, Freetown and dated 4 December 2017.
The fact that the efforts to eradicate *barrays* during colonialism and the first few decades post-Independence failed has not apparently dented the legal profession’s hostility in present-day Sierra Leone to these judicial forums. This is all the more puzzling for two reasons. First, the present aversion to *barrays* is perpetuated by a legal profession, whose membership is mostly made up of lawyers with origins from the Provinces. Second, this rejection of *barrays*’ judicial role (or consideration thereof) is within a changed context (described in the Introduction), which includes most of the population of the Western Area coming from the Provinces, as well as an increase both in the number of *barrays* and in disputes inadmissible in formal courts. As a result, the official non-countenance of *barrays* appears to be no longer a philosophical issue about the feeling of distinctness between people from the Provinces and those in the capital. It does not seem to be about separate territories, or different types of administrations. Some of the opposition to *barrays* especially by lawyers, may be linked to economics and power – the role of money in the workings of the *barrays* is examined in Chapter Four – but continuing to exclude *barrays* from judicial functions needs further explaining.

Perhaps, one explanation is the long and proud history of the legal profession in Sierra Leone which is intertwined with Creole life and society. As I mentioned earlier, the legal profession, like the Freetown City Council, has been the reserve of the Creoles, owing to special education schemes introduced, and the presence of learning institutions, in the Colony during colonialism. In fact, by the 1870s, there were already Creoles who had qualified as barristers in the inns of court in England, including Christian Cole, the first black graduate of Oxford University and first black barrister in English courts (Liddell, 2017); and Sir Samuel Lewis, the first African to be knighted. The latter also became mayor of Freetown City Council (Hargreaves, 1958). Until 1990, when the Sierra Leone Law School welcomed its first graduates, all Sierra Leonean lawyers were trained in the United Kingdom. The influence of Creoles in shaping the training and practice of law in Sierra Leone requires further inquiry, which is outside the scope of this work. While the numerical advantage has vanished following the increased number of lawyers with roots from the Provinces, the legal profession remains steeped in
idealised Creole life. Opposition by the legal profession to customary law in Freetown or the presence of *barrays*, for instance, has remained unchanged, employing similar arguments of preserving the purity of law, as they were more than two hundred years ago.

Meanwhile, despite the unflattering comments from judicial and legal practitioners, the *barrays* continue to proliferate the Western Area, bearing meaning to those who utilise the services they render. Mouctarr Kamara, a 72-year-old retired magistrates’ court clerk, explained, as I interviewed him at his home in Newton, in the Western Rural District:

> I have lived in Freetown since 1962 except for periods when my job [as clerk] carried me to different districts. These *barrays* are now found everywhere. Opposite my house there is a chief; just back of her place, there is another chief; and three houses down from this one there is yet another chief. They all have courts, and this is only on this street. There are many more in this area, not to talk about Waterloo, or down at the [former refugee] Camp. When I lived in Calaba Town, there were even more courts. If you come back after one month, there will be more *barrays* here.\(^{67}\)

Mouctarr recalled a dispute he had with his neighbours in 2013, when a small fire his neighbours started on the land crossed over and decimated his cassava garden. He was distraught. With the help of his son who lived overseas, Mouctarr had built a five-bedroom house in the quiet community of Newton, twenty-eight miles to the centre of Freetown. Kept away from the noise of the main Freetown-Masiaka Highway – the only route from the capital to the rest of the country – Mouctarr helped himself with some gardening on the piece of land by his house. In addition to the cassava, he planted potato, okra, pepper, mango, and orange. He also raised chicken and rabbit in a pen, just at the back of the house. As we ate some of the mangoes, Mouctarr Kamara told me about his first case before the *barrays* following the destruction of his cassava garden. I was keen to discover Mouctarr’s perception of the *barrays*. After all, he had been a clerk in magistrates’ courts for 37 years not just in the Western Area but also in the Provinces. So, why would he choose not to utilise the services of an institution

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\(^{67}\) Personal interview with Mouctarr Kamara, former Magistrate Court Clerk at Newton, 19 December 2017, and 4 March 2018.
he had been part of professionally for almost four decades? And what did he think
about the *barrays*? He described the *barrays* as follows:

> They are a kind of traditional court and are very useful. They accept
cases there that you cannot bring to the magistrates’ courts. You do
not feel out of place […] you are given ample time to make your case.
You will spend money, but you know if you have a case, you will get
it back and more…. I just wish there was some collaboration with the
magistrates’ courts. 68

Other litigants at the *barrays* share similar sentiments. Ya Hawa, sued her son-in-law
for ‘disrespecting’ her after he accused his wife (Ya Hawa’s daughter) of not knowing
how to cook; implying that she was not brought up properly. 69 She described the
*barrays* as

> …upholder of traditional values. It is where you come to remind
people that we just did not fall from the sky like rain. We have an
origin where respect for elders, of our customs and traditions mean
everything, without which we are nothing. 70

Unlike the retired clerk of the magistrate court, Ya Hawa, is invoking customs and
values whose origin lies elsewhere.

Litigants often define the *barrays* in comparative terms to the magistrates’ courts.
Babysee, for example, was litigant and witness at the Ross Road Magistrates’ Court
as well as the nearby *barray* of Chief Ya Alimamy Gbonkolenken Thoronka N'Maka at
Cline Town. For her, the *barrays* are different because:

> they seek to bring the [disputing] parties together. The chief knows
that the parties are members of the same family or neighbours or
friends before the dispute, and that for the sake of the community,
they will need to remain as such even after the dispute. 71

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68 *Ibid*
69 Case code: SMKK-MFD-009
70 Personal Interview with Ya Hawa Bangura, businesswoman and litigant at the Kissy Dockyard Barray
on 3 April 2018
71 Personal interview with Baby Sesay, trader, at Cline Town on the 11 May 2018.
Additional litigants’ descriptions of *barrays* continue to feature comparisons (and contrasts) with the official magistrates’ courts, such as the speed or turnaround of dispute settlement time, nature, process, and outcome of proceedings (examined in Chapters Two and Three). Still others define *barrays* in terms of the integrity of the process. Mouctarr Kamara summed it well:

> People take pride in winning cases at the *barray*, not only because of the financial rewards but because everyone in the community believes that that you won. The scrutiny is open for all to see; the trial will take place in a short period of time when the matter is fresh in everyone’s mind; and people have faith in the truthfulness of the testimony because of all the *charms* used in the *barrays.*

As we shall see later in Chapter Three the procedures and processes of the *barrays* provide insights into the motivations of the urban population of the Western Area to bring their cases before these courts, thereby perpetuating the persistence of *barrays* as an important dispute resolution mechanism. It is therefore not surprising that the way *barrays* work are at the forefront of how they are perceived by litigants that engage them. But what about the officials who run these *barrays*? How do they define them?

Mr Alimamy J.B. Kamara, Chairman of the local court *barray* at Pamaronko, Calaba Town in Eastern Freetown, described the *barrays* as “community courts to deal with customary matters and petty cases which are not necessary to go the magistrates court or the police.” A self-assured man in his early fifties, Mr Kamara has been in this role since 2010, overseen by Chief Ya Alimamy Fofanah, a female chief almost ten years younger. He likened his role and the *barray* as:

> …listening to two friends or family members arguing about who gets to sweep the compound or clean the communal bathroom. You know them, they know you and all of you are familiar with the subject in dispute. You know that the decision of the *barray* is not the end but only an important juncture in all our lives. If I am wrong as chairman, then apart from appealing against me, I will feel shame when I go to the mosque for prayers or go to the *ataya* base (local

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72 Personal interview with Mouctarr Kamara, former Magistrate Court Clerk Freetown, 19 December 2017, and 4 March 2018.

73 Personal interview with Alimamy J.B. Kamara, Chief Ya Alimamy Sheriff Fofanah Local Court Barray Chairman, in the barray on 26 July, 4 December 2017; and 8 February 2018.
coffee shop). Even my wife will be unhappy with me because other women will look at her scornfully.\(^{74}\)

But the *barrays* are also defined in terms of their wider role in maintaining law and order (examined in detail in Chapter Five). Chief Pa Alimamy Daramy of the Kissy Dockyard *Barray* described *barrays* as “contributing to harmony in the community by providing a place where people can vent their anger instead of taking the law into their own hands.”\(^{75}\) To the officials who run these *barrays*, their dispute resolution role is not only critical to providing an avenue for settling disputes which may, otherwise, remain unresolved, it further promotes peace, harmony, and security in the communities. The success of *barrays* in attracting relationships with external entities, such as the police (discussed in Chapter Five) may illustrate the correctness of this description.

Western Area *barrays* have also been linked with the Provinces, given the historical connections through migration discussed in the first section of this chapter and in the Introduction. While there are no formal agreements, *barrays* cooperate with customary institutions in the Provinces such as (paramount) chiefs and local courts (see Chapter Five). Yet, the link with the Provinces does not necessarily endear Western Area *barrays* to traditional authorities in the Provinces. For instance, the Honourable Paramount Chief Bai Shebora Kasangha II, of Bombali Shebora Chiefdom in Northern Sierra Leone, who also served as a Member of Parliament, described the *barray* chiefs in the Western Area as imitators. P.C Kasangha II worried that the proliferation of chieftaincy without the necessary customary trappings of ruling houses and processes, was trivialising the important traditional institution of chieftaincy.\(^{76}\) At the same time, he sympathised with the role of *barrays*, which he likened to *barrays* in the Provinces, providing informal dispute settlement (albeit without legal authorisation) alongside the official local (customary) courts.

\(^{74}\) *Ibid*

\(^{75}\) Interview with Pa Alimamy Daramy, former clerk to the late Temne Tribal Headman in Freetown on the 7 of August 2018.

\(^{76}\) Personal interview with Hon. Paramount Chief Bai Shebora Kasangha II of Bombali Shebora Chiefdom in Makeni on the 30 August 2017 and 4 March 2018.
The analogy to *barrays* in the Provinces requires further illumination. Unlike local courts, the *barrays* in the Provinces are also not recognised as legal arbiter of disputes, just like their counterparts with the same name in the Western Area. They are set up and presided over by sub chiefs, appointed by Paramount Chiefs to administer sections, towns, or villages in chiefdoms. Typically, each of the 190 chiefdoms in Sierra Leone is divided into sections headed by section chiefs. Each section in turn is subdivided into towns or villages, with each having a town or village chief. In some chiefdoms, the town is further divided into small areas, with an area chief or headman at its helm. These chiefs are answerable to the Paramount Chief who has the authority to depose them. Their roles include assistance in the collection of taxes, supporting the Paramount Chief in assisting the local or central government and, most importantly, maintaining order through the settlement of disputes. In this role, they each have *barrays*, whose hierarchy tallies with the rank of the chief. As already noted, this judicial structure is outside the purview of the official legal system, which is represented in each chiefdom by an official local court.

To understand the definition of, and attitude towards *barrays* in the Western Area, it is important to highlight the anomaly of why there are parallel customary court structures in the Provinces, where there is already a provision for ‘customary’ or local courts. On the one hand, this question speaks to the debate on legal pluralism – in which the officially recognised legal system is seen as too far removed from the social dynamics that spawned the alternative legal system (Chanock, 1985). On the other hand, it may be the case, as suggested by Deeney (2014), for instance, that modern Sierra Leone has not properly dealt with the historical judicial role of chiefs, shaped during colonialism. As a result, there appears to be a combination of ignorance and reluctance to confront new realities like legislative changes and attitudes of the population which, in turn, has created a chasm between “formal rules and practice” (p. 116).

The parallel structures of the ‘official’ customary courts (that is local courts) and ‘unofficial’ customary courts (that is *barrays*) in the Provinces date back to the pre-1963 legal regime in Sierra Leone. As I alluded to in the historical background, the

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77 A chiefdom is the smallest political and administrative unit of Sierra Leone.
Native Courts Ordinance (as amended) was the main instrument for providing justice services in the Provinces during colonial rule. It provided for the Courts of the Native Chiefs, to be presided over by Paramount Chiefs, with the jurisdiction “…to administer justice in accordance with native law and custom…”  

Importantly, chiefs combined their political and judicial authority, and this became the symbol of chieftaincy power. There is no evidence that at this period, sub chiefs were not adjudicating outside the official structures of the Courts of the Native Chiefs. However, even if they were, the hierarchy of chieftaincy would have meant that a natural appeals process would have maintained, and a form of *stare decisis* would have applied. Paramount Chiefs have been known to take adverse action, such as demoting or deposing sub-chiefs for insubordination (Abraham, 1978; Acemoglu, Reed, & Robinson, 2014). However, in 1963, with the passing of the Local Courts Act, the judicial role of chiefs was abruptly curtailed, without the necessary dissemination or enforcement (Denney, 2014). Central government was willing to make the legislative changes but without the tenacity to implement when needed, hoping, perhaps, that the legal instrument would influence attitudes. More than five decades later and even more legislations, chiefs in the Provinces continue to adjudicate either out of ignorance of, or indifference to the legal changes, and these customary forums continue to hold sway for the majority of Sierra Leoneans.

In this sense, P.C Bai Shebora Kasangha II’s comparison of *barrays* in the Provinces and Western Area has significant traction. Both are considered outside the prevailing legal order but continue to attract the local population, despite their precarious legal status. In the Provinces, these courts are run by chiefs who hail from ruling houses. While this is not necessary in the Western Area, where chieftaincy (outside headmen) has never been institutionalised, there is evidence that in more recent times, the practice of “buying the cap” has developed among major ethnic groups such as the Temne, Limba, Loko and Susu. The practice occurs when, upon the death of a chief in the Western Area, a direct relative claims succession as of right by declaring to the

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78 Native Courts Ordinance, s.5.
79 Chieftaincy Act, 2009; Local Courts Act, 2011
80 This is not always necessary for sub-chiefs if the candidate has support from their village, town, or section.
Tribal Headman the retention of the “cap” – the symbol of chieftaincy. While this may be seen as the beginnings of the creation of ‘ruling houses’ in the Western Area, it is only one of several methods to become chief. The roles played by the Paramount Chiefs in the Provinces and the Tribal Headmen in the Western Area, in the appointment and supervision of sub chiefs is similar. However, as discussed in Chapter Three, the relationships in the Western Area are more fluid and the hierarchy of chiefs non-linear.

Conclusion

In this chapter, I have sought to provide the contextual framework upon which urban chiefs and their barrays is based, through the historical and legal backgrounds that highlight the development of barrays as dispute settlement forums in Sierra Leone’s capital city and its environs. Starting with the history of Sierra Leone, the chapter described the development of dual legal and political systems and opportunities in the former Colony and Protectorate, and how different court structures were created in both territories. It examined how increased migration to the Colony influenced the formation of headmen – established former immigrants themselves, with influence and power to accommodate, protect and settle (new) immigrants in the Western Area. The chapter chronicled the historical events leading to the recognition, disbanding, and reinstatement of headmen through legal speech in the form of legislative and other instruments, with the effect that subject-matter and/or total exclusions were imposed on barrays to define or limit the kinds of cases they could adjudicate, if at all.

The chapter has also shown, through the contemporary perceptions of legal professionals, barray litigants and officials, as well as views from traditional authorities, that barrays have continued to exercise the authority to adjudicate disputes regardless. Thus, even before headmen were recognised in 1905; or when their judicial authority was revoked following the 1932 Commission of Inquiry Report and 1933 Ordinance ban; or when the institution was disbanded by the NRC and its brief reinstatement in

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81 The other methods are nomination by the community and direct appointment by the Tribal Headman.
1975 before adjudication became illegal again in 1976; *barrays* have not ceased to hear and determine cases.

Further, this chapter has revealed that despite the numerous political and legal changes in the Western Area, legal reforms which will recognise the needs of a large portion of the population have not been prioritised. The colonial arguments for maintaining a strict separation between the Colony and the Protectorate no longer hold sway; nor is the position held by some in the legal profession that acceding to any form of customary law would adulterate the Western Area, any more tenable. The refusal to recognise and/or create courts (outside the English-based system) in the Western Area, has left a gap for the urban migrant population. It is in this context that this chapter has demonstrated the importance of understanding whether and how *barrays* continue to adjudicate in this new dispensation of official hostility.

Thus, as Chief Alimamy Bundu is officially crowned by King Alhaji Hassan Bangura, amid cheer and pomp, he joins a league of *barray* chiefs undisturbed by the fine details of the law prohibiting the use of judicial powers in Freetown and its environs. In the next chapter, I examine the types of cases *barrays* adjudicate, despite the above historical and contemporary background or official prohibition, to examine the application of jurisdiction, that is, the legal language – legislative, judicial, and other instruments – employed in relation to the *barrays*. 
Chapter Two: Jurisdiction of the *Barrays*

**Introduction**

At the local court *barray* in Kissy, Eastern Freetown, “Mr Abdul” sued “Mamusu”, his estranged wife of more than a year, for causing his erectile dysfunction. In his testimony, Mr Abdul told the *barray* that his erectile problems began the month Mamusu left the home, after a domestic dispute, about a year ago. At the time, he had informed Mamusu that he was taking a second wife and she (Mamusu) had threatened him that she would make him “incapable of sleeping with another woman”. At the *barray*, Mamusu denied the charge and asked the chiefs to provide a room so that she could prove her innocence. The *barray* obliged. Moments later, as both parties returned to the *barray*, Mr Abdul confirmed to the chiefs that he was “a man again”. However, the very next day, Mr Abdul came back and reported that he could not “function” with his (second) wife at home. This time, he added that Mamusu had told him that she was pregnant for another man, but that her parents would not accept any (new) marriage proposals because they considered her to still be married to Mr Abdul. Mamusu had promised, according to Mr Abdul, that if he accepted her back and owned up to the pregnancy, she would “mend” him. Mamusu rejected this.

Why would Mr Abdul litigate this dispute at the *barray*? What other kinds of disputes may (not) be brought to the *barrays* and how do they implicate other (official) dispute settlement forums? What is the impact on inter-personal and inter-group relations in the multiplex society that is the Western Area of Sierra Leone?

These questions are explored in this chapter, through the examination of jurisdiction at the *barrays*, the authority to process and determine the kinds of disputes to admit or reject for adjudication, despite (specific and general) legislative provisions establishing territorial, subject-matter and identity qualifications in force in the Western Area (former Colony). It considers jurisdiction in the *barrays* as consisting of a dual focus: first, its meaning and effect *vis-à-vis* prohibitive statutory provisions, judicial interpretations, and policy stipulations. Second, *because* of (or despite) the above, the meaning of
jurisdiction in how barrays mirror, share, transcend and create authority by responding to local and evolving needs, norms, and practices. This chapter draws from the extensive historical description of barray formation in the previous chapter (Chapter One), which summarised different periods that represented important junctures in the institutionalisation of headmen (and by extension barrays) and their jurisdiction.

Jurisdiction, especially in the study of law, legal institutions, and state sovereignty, has attracted substantial scholarship. Etymologically, jurisdiction derives from the Latin words: *juris* (or *ius*) meaning law, and *dictio* (or the verb *dicere*) meaning speech or to speak (Benveniste, 1973 p. 392 cited in Richland, 2013 p. 212; Dorsett & McVeigh, 2007 p. 3). As law’s speech, what constitutes jurisdiction has come to apply in many different situations, from judicial authority and governmental power to legal and territorial boundaries. Ford, (1999) explains that jurisdiction is both territorial – marked by defined space and governed by formal institutions – and a discourse – “a way of speaking and understanding the social world” (p.85). Dorsett & McVeigh (2007) describe jurisdiction as pertaining to the presence of law and the authority to speak on its behalf. They claim that jurisdiction “encompasses the authorisation and ordering of law as such as well as determinations of authority within a legal regime” (p.3). Richland (2013) summarises jurisdiction to include “the scope of a legal institution's power vis-à-vis other institutions in the system to which it belongs”; or in the case of international law or federalist political constellations, “[the scope of a legal institution’s power] between one state’s legal system and another” (p.212).

From the above, two separate denotations of jurisdiction may be identified. First, territorial jurisdiction – a reference to a physical space or cartography such as a (map of a) nation-state, including subnational or local government, with the authority to enforce its laws on the population and their activities within those boundaries (Richland, 2013; see also Ford, 1999). Ford, particularly, discusses the concept of ‘territorial jurisdictions’ to reflect the connection between formality or formal authority and its sovereignty over a defined space. He describes territorial jurisdiction as “the rigidly mapped territories within which formally defined legal powers are exercised by formally organized governmental institutions” (p.843). This meaning of jurisdiction is,
perhaps, popular in its use by sovereign, national and subnational powers to claim exclusive authority over a territory, its people or events occurring therein.

The second denotation of jurisdiction concerns the kinds of cases that can be brought under law; that is, cases a court of law may or may not be permitted to hear and determine (Richland, 2013, p. 212). Although its origins in Anglo-American law are influenced by the federal system of government in the United States, with power distributed among different states, and between states and the federal government; it is its longer history in British law that resonates with this chapter. The history and development of British common law, for instance, has been characterised as the history of jurisdiction (Holdsworth, 1922-1972, cited by Dorsett & McVeigh, 2007 p. 4), when common law courts were only one of several that could adjudge. With other adjudicating bodies such as the courts of equity (which apply equitable principles), ecclesiastical courts (which apply church and canon law), merchant courts (which apply laws based on sale of goods), and admiralty courts (which apply Law of the Sea civil laws), it was necessary to designate exclusive jurisdictions. In other words, different kinds of disputes had to be decided by a specific court to the exclusion of all others, making the determination of which type of court has authority – jurisdiction – important, not only to demarcate institutional boundaries but also in the type of remedies sought (Coke, 1644; Hale, 1971 as cited by Richland, 2013, p.212).

Thus, while this chapter engages with the territorial component of jurisdiction – what spatial boundaries are occupied by barrays and their ‘authority’ over people and events – it is the subject-matter jurisdiction – the authority of legal institutions (not) to hear certain cases, that will dominate the analysis. As a former British Colony, the Western Area (and indeed the rest) of Sierra Leone’s present notion of jurisdiction derives from its colonial past. It has been argued in the previous chapter that the deliberate policies of the colonial administration to keep the Colony and Protectorate separate, with different political and legal structures (in line with the British understanding of jurisdiction), laid the foundation for the establishment of the barrays of the Western Area. In other words, the arrangement involving a legal ordering that prioritised British common law, equity, and imperial statutes was mainly about jurisdiction. So too was
the policy that carved out ‘territories’ and defined what populations might be affected by what law.

Therefore, this chapter will examine how jurisdiction obtains at barrays in the present. It will assess how, within (or despite) “law’s speech” depicted in legislative instruments analysed in the previous chapter, the territorial and subject-matter jurisdiction of barrays operate in practice (de facto jurisdiction). The chapter will be divided into two. With the aid of case studies, the first section will analyse jurisdiction by discussing two broad types of disputes brought to the barrays: a) cases of single justiciability, that is, cases that can only be brought before the barrays; and b) cases of dual justiciability, that is, cases that may also be instituted in the official courts. For forums that are officially banned from hearing and determining disputes, barrays' adjudication of disputes reinforces the disconnect between official (written) law’s speech and practical implementation, a theme continued throughout the thesis.

In the second section, I will describe cases in which the barrays have surrendered jurisdiction. This category involves cases once admitted by barrays which, because of their relationship with external institutions such as the police – discussed in detail in Chapter Five – are now no longer adjudicated. This change is reflected in this section as part of the nimbleness of barray procedures and processes (detailed in Chapter Three) that have contributed to barray success, but also as part of a particular representation of jurisdiction. Through these sections, this chapter will explore the different ways jurisdiction manifests in the barrays, both in the determination of justiciability (subject-matter jurisdiction) and territoriality, as well as in examining whether and what category of cases are considered (in)admissible by the barrays. Further, by examining different types of disputes, this chapter informs our understanding of jurisdiction in how barrays, their litigation processes, and the wider socio-legal environment interact. At the same time, through analysis of the barrays’ jurisprudence, including the importance of adjudicating cases such as Mr Abdul’s complaint of erectile dysfunction, this chapter provides a lens to explore the networks and boundaries – legal, political, cultural, socio-economic – that facilitate the production and reproduction of law.
Part A: Cases Admitted at the Barrays of the Western Area

This section examines jurisdiction at the barrays through the kinds of disputes – single and dual justiciable cases – that are admitted for adjudication. This is significant, not least for the fact that such cases exist in the first place, and that they are litigated at the barrays, considering the legal limitations discussed in the previous chapter. This section will suggest further that the existence of single-justiciable cases, for example, confirms a demand for a kind of dispute settlement or processing. The kind not satisfied by official courts, which declare such cases invalid causes of action; a failure that has created a void which is being filled by the barrays. Equally, in cases of dual justiciability, important threads are set off such as forum shopping, the role of money, and the choice of procedure that are prominent in the subsequent chapters.

This section is sub-divided into two – admissible cases of single justiciability and admissible cases of dual justiciability – to showcase the broad swathe of disputes adjudicated by the barrays. In law, the defining factor in subject-matter jurisdiction is a deliberate characterisation of separate and distinct causes of action – the separate types of disputes which a particular court may (not) have authority to hear and determine. This may be because of expertise where courts have specific jurisdiction to the exclusion of others (Coke, 1644; Hale, 1971 as cited by Richland, 2013, p.212); or geographic location as the division of courts in the (former) Colony and (former) Protectorate in Sierra Leone, as shown in Figure 6. In both instances, the ‘separateness’ of the disputes is determined by laws or judgments so that different types of cases can be classified into categories – criminal, constitutional, contract, tort, administrative – with bespoke procedures and legal remedies prevalent in the (official) courts.

Such classifications occasioned by rules or judgments, which allow for the predetermination of disputes is absent at the barrays. In other words, barrays do not have the kinds of distinct, dominant categories common in formal litigation that define offences and claims, or determine where they can be competently adjudicated, or even
the kinds of legal remedies available. This is not to suggest that there is no distinction substantively and procedurally in admitted cases at the barrays. As this section will show – and as I argue about distinct procedures in Chapter Three or definite payments for different types of infractions in Chapter Four – subject-matter jurisdiction does obtain at barrays, but in ways that are different from the conventional understanding of case classification.

Instead, the categorisation of cases at the barrays is loose as many cases and case types overlap; it epitomises part of the ongoing negotiations that define the relationship between litigants and barrays. For instance, at the barrays, punchy one-word classifiers such as “trespass” or “assault” to define case types (and indeed competent courts with jurisdiction to try them) are often replaced by descriptors like “entering the compound of complainant” and “sweeping dirt onto the foot of the complainant” respectively. Thus, although categorising cases at the barrays is much more nuanced, it is still possible to observe procedural variances in how different cases are handled. In Chapter Three, for example, some of these nuances and differences are examined fully to show distinctive procedures applied to the way different cases are commenced and continued, depending on their nature and whether they are (un)contested. Also, as discussed in Chapter Four, the types of disputes will determine what parties pay into the barrays, so that a fine or kassi for example, will only apply to a so-called public order complaint such as abusive language, and not to a commercial case such as debt. However, even these differences are often muddled where a complaint involves multiple components, as we shall see in the two sub sections below.

To understand the disputes brought before barrays, and for purposes of analysis, I have categorised them based on the following process and approach. I recorded separately the case types of each of the 267 cases I observed (as contained in the documents from barrays), before grouping them into categories based on similarity of

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82 Case code: SMKK-POO-086
83 Case code: SMKK-POO-008
84 A traditional on-the-spot fine imposed for using obscene language or conduct in public. It can be levied by any adult witnessing the transgression and its payment is communally enforced. It is used by the barrays in ‘public order cases’ (see for example, Chapter Two).
complaints. After that, I added case types from summonses and other documents from 38 barrays. In 34 of these barrays, I reviewed cases (pending and completed) in 2017, while in 4 barrays, I examined all cases from 2013 – 2017. The total number of cases studied for this purpose is 4,157. As with similar exercises, not every case fitted the abstract categories I created. I included these among a list of cases, including those that were already classed, that I showed to chiefs and clerks both in individual interviews and in focus group discussions. After several iterations, we arrived at the (loose) categorisation that is being used throughout the thesis. Thus, as stated in the beginning, this categorisation is relevant only for the specific analysis of (non) justiciable cases at the barrays and not as a definitive grouping of the case docket of barrays.

Finally, the sheer numbers of cases mean that it will be overbearing to describe and analyse examples of every category or sub-category of disputes adjudicated at the barrays. Therefore, I will only use a few illustrative examples.

**Admissible cases of single justiciability**

These cases challenge the official position of the Western Area’s (formerly the Colony’s) legal singularity, in which only official law is applied in the English-modelled courts. As I have mentioned in the previous chapter (and depicted in Figure 6), this contrasts with the rest of the country where these (official) courts operate in parallel with customary (local) courts. As a result, in the Western Area, there are many disputes (and disputants) of a persuasion that the official courts lack both the competency to deal with and the appetite to accommodate. For instance, in the case of erectile dysfunction, presented in the Introduction, Mr Abdul’s only recourse was the barrays, as the complaint against his erstwhile wife would otherwise have been considered inadmissible before the magistrates’ courts.

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85 I admit that some of the groupings (or even the idea of grouping cases) may be influenced by my formal legal training. However, through the participation of baray chiefs and clerks, my hope is that their input would have played an even bigger role, considering that many of the cases are foreign to formal litigation.
While these disputes of single justiciability may be too numerous to quantify, they can generally be divided into three broad categories: disputes arising from customary marriage, including co-wife relationships and family disputes; cases relating to witchcraft or the supernatural; and dereliction of duty by barray officials.

a) Customary Marriage and Family Cases

As we have seen from the legislative history described in Chapter One, cases relating to customary marriage have represented the only category of cases headmen have been allowed to adjudge or “investigate”. Thus, there seems to have been some recognition that as customary marriage cases are unintelligible to the official laws and courts in the Western Area, an avenue such as headmen’s barrays should be permitted to adjudicate them. Although, barrays’ authority to decide cases was eventually revoked by the 1976 legislation, this section, nonetheless, examines the contemporary litigation of customary and family disputes at the barrays, and how they (re)define their jurisdiction.

Apart from occupying the largest category of admitted cases, customary marriage and family disputes pose an interesting challenge for barrays, which requires a conciliatory approach, while employing broad inquiry parameters that extend into extrinsic events unconnected with matters before the courts. Chief Ya Alimamy Thoronka N’Maka of the Racecourse Barray, Cline Town, describes these cases and the balancing act of resolving them as ‘sol en peppeh’ (salt and pepper), an allusion to two key ingredients in typical Sierra Leonean dishes. She explains that every chief (like every cook) must know the quantity (complex perspectives and matching skills) required, recognising that too much salt or pepper will spoil the soup (case). This allegory is demonstrated in the following examples of customary marriage and family cases observed at barrays in the Western Area.

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86 Since 2009, cases relating to customary marriages and divorces could (in principle) be brought before the magistrates’ courts, even though the Act is silent on adjudication of substantive matters.
87 Tribal Administration (Western Area) (Amendment) Act, 1976 [Act No. 9 of 1976].
88 Personal interview with Chief Ya Alimamy Thoronka N’Maka, Freetown, 11 March, and 3 August 2018.
At her Racecourse local court barray, Chief Ya Alimamy received a complaint from “Sullay”, who reported his wife for “neglecting [her] marital responsibilities by refusing to have sex with [him]”. In her defence, the wife explained as follows:

I have been married to Sullay for five years and have two children with him. During this entire period, he has only made empty promises. He has refused to set up a small shop for me like Mr Sesay [our neighbour] did for his wife of only six months. He does not clothe me or the children. Lately, even providing chop money (money to cook/eat) is a problem; everything is expensive in the market. He spends his money with other women and when he comes home, he demands sex. He threatens to beat me in front of my children. I cannot have sexual intercourse on an empty stomach, with a violent man.  

Because the wife has raised several issues, including marriage promises, the quantum of the chop money, taking care of the children, and domestic violence, Ya Alimamy was now required to deal with all of them before reaching a decision. In this sense, the barray would treat these new issues as relevant and admissible – a form of rebuttal and defence – as part of Ya Alimamy’s sol en peppeh process.  

Marital cases before the local court barrays are not limited to issues that have already occurred between parties. They may also include cases to forestall future conduct or extract good behaviour from a spouse. In these cases, the complainants take the extraordinary step of inviting the barrays to fix the behaviour of their respective spouses, a role that is mostly reserved for in-laws or other family members. It also demonstrates accessibility and the level of rapport, so that a complainant can dictate the extent and degree of the barrays’ intervention. For example, Mariatu, a petty trader, took her husband to the local court barray for “keeping bad company”. She explained that:

In June [2017], my husband was arrested during a police raid on suspicion of street gambling and smoking cannabis. My husband does not smoke or drink but likes to hang out with friends who do. I spent all the money in

89 Case code: SMKK-MFD-005  
90 The report from the wife could form a valid claim in the official courts. However, apart from the well-documented challenges of reporting abuse, barrays regularly deal with domestic violence cases.
my small business to get him out of the police station. Now, as I am struggling to make ends meet, he has started going out with those same friends again. I want the chiefs to warn him to stop hanging out with bad company, and to put him on notice that I won’t be able to support him should he get himself arrested again.\textsuperscript{91}

Another feature of the \textit{barrays} is their admission of cases in which (at least one of) the parties may have only an indirect involvement or interest in the matter complained of. In marital disputes, this sub-category contains cases brought by relatives, even though the disputes are between spouses or persons in similar relationships. While the family of spouses will typically stay out of marital disputes, some demonstrate a willingness to get involved and institute action in the \textit{barrays}, where insulting words are used in their presence. Additionally, cases can be heard in the \textit{barray} even if the complainant was absent during the actual incident.

If these marital disputes portray the power struggle between husband and wife, and their wider relations, a sub-category of marital disputes, I will describe as trilateral marriage relations, magnifies this dynamic even further. This category comprises cases involving co-wives. For instance, at the local court \textit{barray} in Kissy, “Ya Fatu”, the elder wife of “Pa Alimu”, took out a summons against “Marie”, the younger wife for “abusive language and public molestation.” In her statement before the \textit{barray}, Ya Fatu explained that the defendant (the younger wife) had been very rude to her and encouraged her children to be likewise. She further accused their husband of complicity in Marie’s conduct towards her. In her response, Marie denied the accusation. She countered that Ya Fatu was jealous, and that she (Ya Fatu) would change her attitude towards the defendant (Marie) whenever it was the defendant’s turn to sleep with their husband. The husband spends three days with each wife weekly.\textsuperscript{92}

In these trilateral marriage disputes, the local court \textit{barrays} do not limit adjudication to the specific charge(s) before them; instead, they will inquire into any issues, and make

\textsuperscript{91} Case code: SMKK-MFD-006
\textsuperscript{92} Case code: SMKK-POO-002
ancillary orders, extrinsic to the matters they consider. As the husband testified as a witness in the case between his two wives, it became an inspection of his inability to ‘control his home’. One of the chiefs questioned the witness (husband) as follows:

**Chief:** Are you a Muslim or Christian?
**Husband:** I am a Muslim
**Chief:** Do you know that according to the Holy Quran, it is imperative for a man to treat his wives equally?
**Husband:** Yes.
**Chief:** You are now supporting the new wife because she is younger and makes you feel young at night?
**Husband:** That is not true.
**Chief:** And yet you are before us today to testify in a case between your wives? Are you not ashamed of yourself?
**Husband:** It is not my wish… I have tried to talk to both without success.
**Chief:** You are a weak man. You are giving men a bad name. If you cannot take care of business inside your home, we will take care of it for you in public, and your pocket will suffer.

![Figure 9: Alusine Street, Calaba Town Baray. Credit: Koroma, 2017.](image)
Another common case type in this category involves cases of extramarital relationships. One such case – the chief imam of the local mosque (defendant) accused by the deputy imam (complainant) of sleeping with his wife – is analysed in detail in the next chapter. It will seem that extramarital affairs are broadly defined in the barrays to include any unwarranted and impermissible interaction with a spouse. When Thoronka sued Tucker at the Wellington barray, he did not allege that Tucker was sleeping with his wife. Instead, he complained that Tucker gave his wife clothes to launder as well as asked her to cook for him. Chief Ya Alimamy noted in her ruling that:

...in our custom, cooking and laundering are two intimate chores carried out by the wife. To ask someone’s wife to wash your clothes or cook for you is a serious interference to the marriage... it is equal to seducing the complainant’s wife.\(^93\)

In these cases where husbands sue other men for having (or attempting to have) adulterous relationships with their wives, the barrays hand down relatively harsh sanctions. A man is convicted on the testimony of the wife, no matter the presence of evidence to the contrary. Chief Ya Alimamy explained to me that the repercussions for a wife in an extramarital relationship were enormous. She could lose her marriage and jeopardise the welfare of her children; or be ostracised by her family and community. “So why would a wife invite any of this on herself by falsely bringing or supporting a claim in my court?” She asked.\(^94\)

The examples above have showed different kinds of disputes relating to customary marriages and family relations. By bringing them to the barrays, they add to the diversity of the subject-matter jurisdiction of barrays. More importantly, many of these cases could only have been brought before the barrays, as they remained unrecognisable legal claims under formal law. the next two subsections continue this theme of single justiciable cases in the Western Area.

\(^93\) Case code: SMKK-MFD-013
\(^94\) Personal interview with Chief Ya Alimamy Thoronka N'Maka, Freetown on the 11 March and 3 August 2018.
b) Witchcraft Cases

Much has been written about witchcraft or the supernatural, its manifestation and effects in the everyday lives of Sierra Leoneans (Shaw, 1997; Ferme, 2001; van de Grijspaarde, Voors, Bulte, & Richards, 2013). While this may be regarded as a retrograde step that conflicts with Africa’s modernity drive, it has been extolled for exactly the opposite reasons – providing both an introspection with, and a lens to explore modernity in African societies (for a discussion of both perspectives, see Comaroff & Comaroff, 1993). In this section, the focus on witchcraft is limited to the legal arena – an examination of its manifestation in accusations and contestations in cases at the barrays.

Unlike other African countries such as Cameroon and South Africa, Sierra Leone’s judicial approach to cases relating to witchcraft or the supernatural is muted, indirect and indiscernible. For instance, in Geschiere’s (2006) excellent account of state intervention in Cameroon and South Africa, he explores the tensions and complications implicating the use of state law (and the state generally) to confront the question of witchcraft. He discusses how the rising fear of witchcraft – considered a form of ‘disorder’ – is challenging attitudes within the judicial system. Examining the call for intervention of the state as well as legalisation, Geschiere exemplifies the paradox of the twin approach of “prosecution and collaboration” (p. 220), in which courts invoke the expertise of the nganga and inyanga (experts in magic or traditional healers) in Cameroon and South Africa respectively, to assist in identifying witches. Building on the earlier work with Fisiy (Fisiy & Geschiere, 1990), the turnaround of the fortunes of the nganga, for example, could not be more dramatic. Persecuted not long ago for practising witchcraft, they were now the biggest beneficiaries of the inclusion of witchcraft in judicial practice and for the increasing involvement of the state.

In Sierra Leone, despite a similar anxiety, the post-independence state has expressed no appetite to either intervene in the form of legislation or for witchcraft cases to come
under the jurisdiction of the formal courts. Harrell-Bond, Howard, and Skinner (1978), Shaw (1997), and van de Grijspaarde, Voors, Bulte, & Richards (2013) for example have all explored the place of witchcraft and magic in Sierra Leonean societies to explicate representations of anxieties, explanations for different phenomena and evil. Harrell-Bond, Howard, and Skinner (1978), for instance, reporting on cases in the headmen’s courts, explain how “in Sierra Leone as in other parts of the world [natural occurrences like death, sickness, impotency and barrenness] are often understood to be the result of interpersonal malevolence” (p.228).

Yet, the Sierra Leone state was not always inactive in this area; in the early days of colonialism, witchcraft and the anxiety around its practice attracted legislative action (Banton, 1957). As early as 1905, the colonial government enacted the Fangay Ordinance to “provide for the punishment of persons practising fangay in the Colony and Protectorate of Sierra Leone.”95 The extent of the anxiety, even of the colonial government, is displayed in this legislation. It defines a “person practising fangay” as:

any person who uses or pretends to use any occult means or pretends to possess any supernatural power or knowledge or is in possession of any instrument of fangay and who acts in any of the ways aforesaid, with intent to effect any fraudulent or unlawful purpose, or for gain or for the purpose of frightening any person.96

The “instrument of Fangay” is referred to in the legislation as:

anything used or intended to be used by a person for any of the purposes [to effect any fraudulent or unlawful purpose, or for gain or for the purpose of frightening any person] and pretended by such person to be possessed of any occult or supernatural power.97

While interviewees will talk freely about the fangay — described by Chief Ya Alimamy Fofana as an instrument of death or “witchgun” — very few testify to have actually seen it. Those who have, describe different objects, with the only common features being its use and consequence. For example, Chief Ya Alimamy Fofana told me that a hired

95 The Fangay Ordinance 1905 [No.5 of 1905], Cap 36 of the Laws of Sierra Leone, 1960.
96 Section 2.
97 ibid
sorcerer brought it to her court a few years back but he was “disarmed” by the chief’s own “sorcerer bodyguards”. Some of the language is evocative of the legacy of the civil war in Sierra Leone and its connections with the expansion and functioning of barrays in the Western Area. Ya Alimamy described the witchgun as a small goat horn wrapped in banana leaves, with cowrie shells tied with a black thread around the broad base of the horn. In the horn, there were dried pawpaw seeds (apparently the bullets), and a small incision made at the tip of the horn.98 Another chief at Mountain Cut, who was also involved in a witchcraft case, described the fangay as several feathers tied together with a black thread and wrapped in banana leaves and sesame seeds. In this case, it was left hanging in the passageway to the communal outside bathroom.99

Whatever the description of the fangay, it represents a fearsome device that is believed to be used to cause death. As a deterrent, the Ordinance, which is still in force today, imposes a fine not exceeding fifty pounds or “imprisonment, with or without hard labour, for a period not exceeding twelve months.”100 While the paramount purpose of this legislation is to punish persons who possess or use, are suspected of possessing and using, an instrument of witchcraft, it does not remove the belief either in the practice or anxiety about its consequences. And the fact that the fangay is said to be just one of the many articles and practices of witchcraft, which are believed to pervade everyday life, it is doubtful what the effectiveness of a single legislation would be.

Employing legislation to confront the issue of witchcraft is not new. Gerschiere (2006) explains, for example, that the South African government had to enact legislation that widened the definition of witches. Following the report of the Commission of Inquiry into Witchcraft Violence and Ritual Murders in the Northern Province of the Republic of South Africa (Ralushai Commission) (Ralushai, et al., 1996), a key recommendation was for a change in the law to ensure the prosecution of the inyanga – central characters to the lynching of ‘so-called’ witches. It also called for the arraignment of anyone “who does any act which creates a reasonable suspicion that he is engaged in

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98 Personal interview with Chief Ya Alimamy Fofana, Freetown on the 17 April 2018.
100 Section 3.
the practice of witchcraft” (Geschiere, 2006, p. 219 citing Ralushai, et al., 1996, p. 55). Although there was evidence that witchcraft lynchings reduced significantly following the recommendation, this has been attributed to the restoration of traditional chiefs (Gerschiere, 2006).

Whereas the Fangay Ordinance is still in the law books, post-independent Sierra Leone has shunned the issue of witchcraft, relegating it to the realms of customary law. Therefore, the official position in Sierra Leone seems to be that allegations of witchcraft will not form a valid cause of action before the state courts, although such cases may be taken to the local courts if the parties reside in the Provinces. In this sense, witchcraft decisions are left out of the purview of formal law and the full force of the state. Perhaps the reluctance to intervene through legislation or judicial sanction in Sierra Leone is a response to the difficulties expressed by Gerschiere (2006) about the paradox of state intervention. Owing to the nature of witchcraft, there is the danger that it will become a “legalisation of everyday life” (p. 221), so that legislating against the fear of witches covering every aspect of daily life, risks reinforcing instead of eradicating those same fears. Yet, it is doubtful whether the absence of legislative action or juridical involvement of formal courts reduces the fear of witchcraft. A case in point is the presence of this fear among the inhabitants of the Western Area who, in the absence of such state involvement, turn to the *barrays*, as shown in the following three examples.

I) At a *barray* in Kissy, Chief Ya Alimamy had not received any new cases for several weeks. She believed that this must be the work of witchcraft. As she put it, “na witchman nor more go look you ping en poil usie you dae eat” (only a witch will look you straight in the eye and destroy your livelihood). She hired the *ariogbo* (a team of two or more fully masked ‘witch hunters’) to cleanse her court. The *ariogbo* determined, after performing rituals around several houses in the neighbourhood, that eight individuals were responsible for casting a spell, which prevented new complaints from coming to the *barray*. The accused were five men and three females, one of whom was

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101 To date, there are no known studies examining witchcraft cases in local courts in the Provinces.
Chief Ya Alimamy’s 12-year-old daughter. Chief Ya Alimamy brought an action against all eight individuals at the Mountain Cut barray for practising witchcraft.\textsuperscript{102}

II) At the Ashobi Corner barray, “Abibatu” sued “Isha”, both of whom were co-wives of Mr Sawaneh, for bewitching her twenty-one-month-old baby by “eating his feet”. According to the complainant, the defendant, had remarked during an argument that her (complainant’s) son (who was seven months old at the time) would continue to creep permanently. Fourteen months later, her child had not walked, even though her previous two children did so before their first birthdays. She (complainant) believed that the defendant had “eaten her child’s feet” through witchcraft. Therefore, she wanted the local court barray to “help her beg” the defendant to “spit out [her] child’s feet”.\textsuperscript{103}

III) Finally, at the Hastings local court barray, a father, “Mr Sankoh”, sued the defendant, “Pa Alhassan” for causing his son’s illness. The complainant explained that three days earlier, he had a dream in which his neighbour, Pa Alhassan, transformed into a cat and attacked his son. That he chased the cat and, just as he was about to hit it, it changed into the defendant again. In the morning, according to the complainant, his child developed a fever and had not improved since, despite the medical assistance he had received from the local clinic. The defendant rejected the accusation before the local court barray.\textsuperscript{104}

These examples show how diverse witchcraft cases are and the breadth of action sought by the complainants. More importantly, as part of single-justiciable cases admitted at barrays, witchcraft cases showcase the jurisdiction of barrays. While the procedures of witchcraft cases will follow other disputes at the barrays – this is

\textsuperscript{102} Case code: SMKK-WC-005
\textsuperscript{103} Case code: SMKK-WC-003
\textsuperscript{104} Case code: SMKK-WC-002
described in detail in the next chapter – their alleged propensity to ruin lives attracts two additional conditions. To discourage fictitious and malicious claims, the barrays heap heavy fines on both the accuser and accused until the allegation is proven or there is a ‘confession’. The second condition relates to ‘proof’. Similar to the trial roles of the nganga and inyanga in providing evidence of witchcraft in the accounts of Geschiere (2006) and Fisiy & Geschiere (1990), a range of individuals perform a similar role in the Western Area. The most common is the morayman (a traditional healer), also known as merisin-man, who is invited by the barrays to detect witches through specific rituals and curses. Another group are the ariogbo, the masked witch finders – who, although they ‘discover’ witches in elaborate ceremonies, do not expose their identities and, therefore, do not serve as expert witnesses at barrays. Without the masks and regalia, they are said to be ordinary and deprived of the transformative visions and powers of the ariogbo.105 As we shall see in ‘defamation’ suits later, many defendants bring pre-emptory action against their accusers simultaneously or in anticipation of an accusation of witchcraft. Such cases may also be brought before the official courts as defamation claims,106 a phenomenon documented by Geschiere (2006) in South African courts.

c) Abuse of authority

The final type of admitted cases that can only be heard at the barrays is abuse of authority by barray officials. Like witchcraft and (extra)marital disputes, cases of abuse of authority are unusual (albeit in a different way). They involve suits against chiefs and their officials for alleged misconduct or malpractice in the course of adjudication. In other words, this case type challenges the usual immunity that exists in the formal legal system in which judges, for example, are exempt from any legal action on account of their conduct in cases.107 The following two examples demonstrate this point.

105 Personal interview with Chief Ya Alimamy Thoronka N'Maka, Freetown, 11 March, and 3 August 2018.
106 See for example, section 18, Courts Act (No.31) 1965.
107 See for example, section 120 (9) Sierra Leone Constitution 1991 [Act No. 6 of 1991].
I) Fatmata and Baromie, complainant and defendant in a tenancy dispute jointly brought action against Chief Pa Alimamy at the Kissy local court barray for “failing to carry out his duties as chief”. It transpired that following the completion of testimonies in the first case a month earlier, Chief Pa Alimamy had refused to give judgment. The parties believed that his refusal was not unconnected with the possible misappropriation of the litigation costs deposited by each party prior to commencement of trial. At the second local court barray where he was sued, Chief Pa Alimamy appeared as defendant and pleaded “guilty” to the charge of failing to execute his chiefly duties. He was fined one hundred and fifty thousand Leones (approx. £15)\(^{108}\) and ordered to deliver a judgment (and award the winning party accordingly) on the original case within three days.\(^{109}\)

II) In another case at the Portee barray, Chief Ya Alimamy was sued for using abusive language in her court. According to “Mr Bangura”, the complainant, whose wife appeared before the chief as defendant in a case of debt, the chief used obscene language when she was addressing his wife. Appearing as defendant before her colleague chief, Ya Alimamy admitted to calling the complainant’s wife “owe monger” (a person who never repays debts). She was reprimanded by the presiding chief, Pa Alimamy, who reminded her of her duty to show respect so that she would also be respected by the community. Chief Ya Alimamy was subsequently fined two hundred thousand Leones (approx. £20) and asked to refund the complainant’s expenses of eighty thousand Leones (approx. £8).\(^{110}\)

These suits serve as an accountability mechanism for barray officials, as litigants are empowered to challenge misconduct. But why don’t barray chiefs shield themselves from litigation connected with conduct in the course of their functions? Why do barray chiefs respect summonses from colleague chiefs of equal jurisdiction? I put these

\(^{108}\) This was the exchange at the time of fieldwork.
\(^{109}\) Case code: SMKK-AA-001
\(^{110}\) Case code: SMKK-POO-053
questions to all 129 chiefs and barray staff I interviewed. Their responses to these important questions, also discussed in Chapter Four, could be summarised into two broad groups. First, a collective responsibility to protect and maintain the barray system, including submitting themselves to its processes. Ya Alimamy NThonkla, a female chief in the Kissy part of Freetown, summed it perfectly when she said *you wae get you debul na you for fraid am fos* (the owner of the “devil” or masquerade associated with secret societies, must first fear it, if they want others to follow). Therefore, chiefs’ submission to the authority of other barrays is a conscious effort to sacrifice personal protection for the survival of the whole (barray) system. Leading by example, the chiefs insist that by having no immunity from legal action, they boost not only the perception of barrays as open, inclusive, and equal, but also make it difficult for defendants and witnesses to ignore barray summonses. An unintended consequence of this voluntary action is the perception of transparency of barrays discussed in Chapter Four, which in turn contributes to the popularity of barrays in the Western Area.

Second, and relatedly, chiefs’ submission to the authority of other barrays of equal jurisdiction points to a collective sense of duty to discharge the functions of chiefship in the Western Area. A kind of ‘code for adjudication’ (discussed in the Introduction), so that where one chief falters, it becomes the responsibility of the other chiefs to ‘remind’ them, by subjecting the defaulters to the discomfort of litigation. While the chiefs were keen to emphasise that this was not meant to be punishment, it was clear that subjecting chiefs whose conduct fell below the acceptable standards was also a way to weed bad apples and absolve barray chieftaincy. Chief Ya Alimamy Thoronka N’Maka, for instance, explained it as follows:

_Ar komeh ki songbloh_ (no one is born perfect). We all strive to be our best by doing our best. […] But as human beings, we often fail to try. And as a chief, you cease to represent yourself and your family; you now represent all of us, including those who have gone before us and those who are yet to come. So, we cannot allow one rotten fish head to give us a bad name.¹¹¹

¹¹¹ Chief Ya Alimamy Thoronka N’Maka, as part of Focus Group Discussion in Freetown 26 August 2017.
The chiefs are acutely aware that their relationship with communities is a tenuous social contract: they must keep their part of the bargain to preserve the system, even if this means forgoing judicial immunity.

The consequence of bringing cases against chiefs for conduct related to disputes before them is that it dispels any sense of invincibility and exposes chiefs to litigation for behaviour outside of their court functions. Chiefs carry significant power and influence in their communities. At the barray at Mayenkineh, Chief Ya Alimamy was sued for failure to pay a debt of five hundred thousand leones (approx. £ 50). The complainant, Tenneh, told the court that Chief Ya Alimamy went to her shop a month earlier, and took building materials totalling six hundred thousand leones (approx. £60). She only deposited an initial amount of one hundred thousand leones (approx. £10); since then, Chief Ya Alimamy had neglected to pay the remaining amount despite several demands from the complainant. The chief did not contest the charge and was ordered to pay the full amount in one week.\(^\text{112}^\)

As noted earlier, this category of cases qualifies as cases of single justiciability like witchcraft and (extra)marital cases because they are unique to barrays. For instance, in the formal system, one cannot sue a judge directly for alleged misconduct in the course of his functions. In that sense, this category is unique to only barrays. However, the final debt example may also be justiciable before the formal courts. Its inclusion here is to highlight both the effect of lifting the invincibility cloak on powerful people like chiefs, and to emphasise the malleability of the categorisation. As we will see in the next part of this chapter, cases of dual justiciability can be presented in different versions depending on the forum, that is, whether the complaint is taken to the barrays or official courts.

\(^{112}\) Case code: SMKK-CPT-036
Admissible cases of dual justiciability

Unlike the previous subsection, this category of cases may be adjudicated in both official courts and the *barrays*. They are divided into three: abusive language and defamation cases; threatening remarks cases; and commercial (contractual) cases. Together with the types of cases discussed in the previous sections, this category typifies the everyday conflicts pervading domestic, neighbourly, and communal relations among the population of the Western Area. As I have already stated (and as we shall see in the examples below), the categorisation is loose, meaning that cases overlap, producing a confluence of factual details and legal effects.

**a) Abusive language and Defamation Cases**

A full local court *barray* at Kissy called its first case on Sunday morning. It was between two neighbours, “Sirah” and “Mattie”. Sirah, the complainant in this matter, alleged that when she was returning from early morning prayers at the nearby mosque, Mattie, the defendant, deliberately swept dirt onto her feet and dress. Mattie denied this and contended that she did not see the complainant as her eyes were fixed on the dusty floor. In the ensuing argument about cleanliness, Sirah alleged that Mattie said, “look underneath you” meant as reference to her vagina. *Barrays* consider any allusion to female sexual body parts as profanity, which always attracts fines.113

Cases of “abusive language” in *barrays* do not always contain accusations of the use of expletives. For instance, at a *barray* in Waterloo, the complainant sued “Mamie” for calling her a “gborka” (an uninitiated person) and for promising to join her into the *bondo* or female secret society. Fatu (complainant) was already a member and Mamie (defendant) was aware of this, thus making the reference extremely offensive. Presiding on the case, Ya Alimamy explained, that by using this term in public, the defendant was inferring that the complainant was not “properly initiated”. She declared

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113 Case code: SMKK-POO-008
that this was vulgar and unacceptable not just to the complainant but to her (the chief), and all members of the *bondo* society.\(^\text{114}\)

Some of the cases referred to by the *barrays* as abusive language cases might more appropriately fall under defamation. Yet, this is further evidence that these cases should be understood in their own terms, as the *barray* typology of cases does operate on a different framework. In one instance, an abusive language case took on a more sinister outlook, with substantial financial repercussions. At the local court *barray* at Kissy Old Road, “Mammy Zainabu” explained that until a month ago, she ran a popular cookery place, where she sold local dishes such as cassava leaves, potato leaves, *crain crain*, beans, and groundnut soup. On a normal day, she would cook a bag of rice (50 kilograms) and make daily returns of more than one million Leones (£100). Then one day, the defendant, “Abib”, started spreading rumours that Mammy Zainabu was cooking dog meat (inedible in Sierra Leone) in her dishes. After that people stopped coming to her cookery shop and her business collapsed. She continued: “now even to come outside I am ashamed; everyone just looks at me like feaces”.\(^\text{115}\)

Cases involving abusive language and defamation represent some of the most widespread instances of the *barrays’* exercise of public order enforcement functions. When a tussle began between two women for access to the public tap in Cline Town, nobody would have predicted how bad the situation developed just few minutes later. Each of the women was supported by relatives and friends, who then started hurling abuses and throwing articles at each other. A tenant of the nearby compound tried to intervene by imposing a *kassi* — the traditional on-the-spot fine for using obscene words in public – on eleven people. A *kassi* which may be imposed by any member of the public, is meant to calm a fracas, and deter further continuation of the insulting behaviour. Once the amount of the *kassi* is pronounced, the parties are bound to pay, and the person levying the *kassi* can claim it from the *barray* if it remains unpaid. In this instance, not only was the *kassi* ignored, but the parties also continued with their

\(^{114}\) Case code: SMKK-POO-135

\(^{115}\) Personal interview with “Mammy Zainabu” in Kissy on 28 October 2017; Case code: SMKK-POO-061
foul language, until they were invited to the local court *barray*. To demonstrate the court’s intolerance for this kind of behaviour, all eleven defendants were ordered to pay the *kassi* levied by the tenant, before the matter continued.\(^{116}\)

The reach of the *barrays* in matters of public order extends even to domestic relations. The courts have been asked to intervene against family members to maintain the social fabric of communities. Pa Alpha was the landlord of a large compound at Kissy Road. According to his statement at the Bombay Street *barray*, Abdulai (the defendant, who happened to be his son) would not stop insulting other residents of the compound, and that his (Pa Alpha’s) attempts to stop him through the issue of *kassi*, were ineffective. After the tenants at the compound threatened not to respect any *kassi* if they defaulted, Pa Alpha brought the matter to the *barray*. He was determined to maintain the social cohesion in his compound, even if it meant litigating against his son.\(^{117}\)

**b) Threatening Remarks**

As part of the ‘public order offences’, threatening remarks cases reveal yet another sphere of the depth of the jurisdiction of *barrays*. These cases are divided into two subcategories: threats of physical harm to, and threats from the supernatural against, the complainants or persons associated with them. Together with the previous subcategory of ‘abusive language, cases, the former reveals the blurry lines in the *barrays*’ relationship with institutions such as the Sierra Leone Police, while the latter shares an affinity with witchcraft cases discussed earlier. Two examples below illustrate cases of physical threatening remarks.

I) In a case before the *barray* at Old Wharf, the defendant, “Issa Ballay”, threatened the complainant, “James Sandy”, that he would stab him and run away to an unknown destination. It was further alleged by the complainant that the defendant had boasted that during the civil war, he killed many

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\(^{116}\) Case code: SMKK-POO-019  
\(^{117}\) Case code: SMKK-POO-045
people before he relocated to Freetown. The case had earlier been reported to the Wellington Police Post in the Kissy area of Freetown, from where it was referred to the local court *barray*. ¹¹₈

II) In the second example, a mother entered the local court *barray*, with her son to report a case of “threatening remarks”. A certain man named Santigie, had threatened to stab her son at night in retaliation for identifying him as part of a group arrested recently by the police for “gang activity”. Chief Pa Alimamy asked his messenger to invite Santigie to the *barray*. Not too long after, the messenger returned and reported that Santigie had refused to come to the *barray*. Upon hearing this, a visibly irritated chief then picked up his mobile phone and in Krio said:

OC [Officer in Charge], this is Chief Pa Alimamy. I want you to send a team of strong officers to arrest one man, Santigie, who has refused to answer to my call. He was one of the gang members you detained last week.

The chief asked the mother to sit down with her son on one of the long benches, while the interposed case was recalled. About an hour later, a female police officer entered the *barray* accompanied by two men. She went straight to the chief, while the men stood halfway from the entrance and table. After a brief conversation with the chief and clerk, the policewoman asked the two men to take a seat and she left. The chief invited the two men forward. They introduced themselves as the father and uncle of Santigie, who refused to respond to the chief’s call. They added that he had been detained at the Kissy Police Station until the matter before the court *barray* was resolved. ¹¹₉ The relationship between the *barrays* and the Sierra Leone Police is examined in more detail in Chapter Five.

The second sub-category of cases of threatening remarks is related to the supernatural. It should be noted that as witchcraft cases are non-justiciable before the official courts, cases of this nature are charged under “threatening remarks” contrary

¹¹₈ Case code: SMKK-POO-066
¹¹₉ Case code: SMKK-POO-067
to the Public Order Act.\textsuperscript{120} The practice of ‘converting’ witchcraft cases into justiciable claims in official courts is widespread according to the magistrate at the Ross Road Court, who noted that witchcraft accusation in some form underlay a substantial portion of offences charged under the 1965 Act.\textsuperscript{121} Below are two examples under this sub-category:

I) “Ticdankay” came to the local court \textit{barray} at Mountain Court, to report a case of “threatening remarks.” The complaint was that the defendant, “Kadia,” had stated during an argument, that she would hire the services of a \textit{merecine-man} (sorcerer) to kill the plaintiff and her three children within two weeks. In pursuance of this threat, the defendant allegedly took the following articles to the \textit{merecine-man}: a black rooster, black thread, four needles, four yards of white satin, and a pint of palm oil. The complainant brought her three children to the \textit{barray} and wanted their “lives to be handed over” to the defendant, which would make her (the defendant) responsible for their health and wellbeing.\textsuperscript{122}

II) In a similar case, “Umu” sued “Pa Alhaji Kobola”, for threatening to cast a spell of barrenness on her. According to her statement at the local court \textit{barray} in Wellington, she contracted the defendant, Pa Alhaji, a renowned herbalist, and sorcerer, after a thief broke into her apartment in a crowded compound and stole jewellery. The defendant (Pa Alhaji) asked her to give the sum of three hundred thousand Leones (approx. £30) to purchase special items for a ritual to “catch the thief”. She paid the money. On the appointed time, she visited Pa Alhaji to learn the identity of the thief. At this point, Pa Alhaji claimed that he had discovered the thief but that if she provided additional items for a second ceremony or the sum of two hundred thousand Leones (approx. £20), he would make the thief confess publicly. The person the Pa Alhaji (defendant) identified as ‘thief’ was the son of the

\textsuperscript{120} Section 3, Public Order Act, 1965 [Act No. 46 of 1965].
\textsuperscript{121} Interview with a magistrate in Freetown, 11 July 2018.
\textsuperscript{122} Case code: SMKK-WC-006
complainant’s neighbour, Ya Marie, with whom she had a strained relationship. The lure of witnessing Ya Marie’s public humiliation in the compound after her son’s confession, was too much for the complainant to ignore. She gave Pa Alhaji the two hundred thousand Leones for the second ceremony. Three weeks later, there was no confession and no public mortification. She then went back to inquire from Pa Alhaji why his charm had not worked. It was at this point that the defendant threatened to make her childless.\textsuperscript{123} The defendant did not contest the accusation, even though he stated he did not have any intention of carrying out the threat. He was ordered to refund the complainant’s expenses and fined by the \textit{barray}.

As I explained earlier, not only is the categorisation loose, but cases of dual justiciability may also be presented in different forms depending on the forum. For instance, all the examples of threatening language may also be brought to the magistrates’ or high courts in the Western Area under the provisions of the Public Order Act, 1965\textsuperscript{124} and Courts Act, 1965 respectively.

c) Commercial and other Transactional Cases

The final category of cases that both \textit{barrays} and the official courts are competent to deal with involves cases of commercial, contractual, and other transactions, such as debts and breaches of contracts. Below are some examples:

i) Tamaranah Traders Union operated a thrift and loan scheme for its 100-plus members. The funds were generated from monthly subscriptions and joint communal projects, such as proceeds from the union’s two fishing boats. According to their rules, union members were entitled to loans not greater than their annual contributions. However, if they wanted more, they would

\textsuperscript{123} Case code: SMKK-POO-068
\textsuperscript{124} Section 3(ii) for example, states “Any person who makes use of any threatening, abusive, insulting, obscene or profane language, or says or sings any insulting or offensive song or ballad, or makes a noise to the annoyance of any person in any place…” shall be liable if convicted to a fine and/or imprisonment of not more than 3 months.
require the recommendation of an executive member. In a ten-month period, the chairlady and her deputy had recommended seventeen members for loans of seventeen million Leones (approx. £1,700). These loans remained unpaid. Both the chairlady and deputy were sued by other members of the union for “bad recommendation” and repayment of the loans at the Tombo local court *barray*.

II) Similarly, in another case, a group of traders at the Bombay Street Market, entered an *osusu* arrangement. The *osusu* was a savings scheme, in which each member contributed an equal amount periodically to be collected by the *osusu* master, and the aggregate paid to one person in a pre-determined rotational basis, until everyone was paid. In this case, “Isatu” (the *osusu* master), sued “Pa Brima” at the Bombay Street court *barray*, for failing to pay his weekly *osusu* contribution. According to the complainant, Isatu, there were 30 people in the scheme. Every Friday, she would collect one hundred thousand leones (approx. £10) from each of them and pay the total of three million Leones (approx. £300) to one person. The order of payment had been decided by ballot in the first week of the *osusu*. The scheme was now in its twenty-first week. Pa Brima, the defendant, received his three million Leones in the eighth week. Now, he was refusing to pay his one hundred thousand Leones commitment, thereby reducing the total amount of the present beneficiary of the *osusu*.

The local court *barray*’s jurisdictional breadth of cases also extends to individual transactions, as shown in the following two examples:

I) “Mariama” sued “Fatmata” at the local court *barray* in Wellington for failing to return her cooking pot. It happened that Fatmata (the defendant) borrowed her neighbour, Fatmata’s pot to cook during the “pull na doh” (naming ceremony) of her niece. After the occasion, the defendant explained

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125 Case code: SMKK-CPT-037
126 Case code: SMKK-CPT-001; this case is analysed further in Chapter Four.
that the cooking pot was stolen. She told the court that since then she had
done everything to track down the thief or discover the whereabouts of the
pot. The complainant refused to accept this. She wanted her pot that cooked
“two dozen and six cups of rice” or one with a similar cooking capacity.\textsuperscript{127}

\textbf{II)}

In another example, at the Mountain Cut court \textit{barray}, “Dora”, a trader at the
Dove Court Market, took out a summons against a colleague trader,
“Rugiatu”, for recovery of the sum of two million five hundred thousand
Leones (approx. £250). In her statement, the complainant Dora, explained
that a week earlier, the defendant, Rugiatu, had informed her that she was
travelling to Kamakwie, (a town in Northern Sierra Leone) to buy
commodities for her store. The complainant explained that it was the practice
among traders at the Dove Court Market, that if one of them was travelling
to the Provinces for the purpose of buying goods, the others would ask the
travelling trader to buy goods for them too. In this present instance, the
complainant testified in court that she gave the defendant two million five
hundred thousand Leones (approx. £250) to buy 25 bags of dried pepper. A
few days later, the defendant returned with goods she had bought for herself
but not with the complainant’s pepper. Instead, she claimed the money was
stolen. The complainant did not believe her story; in fact, she alleged that
the defendant had taken her money to buy additional commodities for
herself. She was now claiming not just the refund of the two million five
hundred thousand leones, but an additional one hundred thousand Leones
(approx. £10) on each bag, which she estimated was the profit she would
have made. She even claimed to have customers already waiting for the 25
bags of dried pepper and that two of them would be her witnesses in the
case. In the official courts, a case like this may contain the elements of
offences under the Larceny Act, 1916.\textsuperscript{128}

\textsuperscript{127} Case code: SMKK-CPT-069.
\textsuperscript{128} Cap 214, Laws of Sierra Leone 1960
Commercial and transactional cases have a particular appeal at the *barrays*. As we shall see in the subsequent chapters, bespoke procedures, and specific costing arrangements, make the *barrays* an attractive venue. So far, we have discussed the jurisdiction of the *barrays* through the types of cases they administer. In the final section, we shall examine the categories of cases that are considered inadmissible by the *barrays* and are therefore not adjudicated.

Part B: Cases Not Admitted at the *Barrays* of the Western Area

It is not difficult to compile a list of cases that *barrays* do not adjudicate when you talk to chiefs and clerks. What is surprising is the consistency of the list across *barrays*, considering the ever-changing, flexible characteristic of *barray* processes. Even more so, there is evidence that this list of inadmissible cases is not sacrosanct; only a few years ago, the *barrays* had competency to hear and determine some of the present barred case types on the list. Based on *barray* historical records, interviews, including focus group discussions, this section will provide a list of cases presently inadmissible at the *barrays*. Where applicable, it will also indicate when the changes occurred and, most importantly, the driving force for the said changes. For the purposes of analysis, this category may be divided into three: serious offences against persons and property, sexual offences, and land cases.

**Serious offences against persons and property**

Perhaps the oldest of the inadmissible cases at *barrays*, this category of cases include the following: any cases of homicide (that is, murder, manslaughter, or infanticide); cases of wounding, and cases of damage to property including arson. According to several chiefs, *barrays* not only lack the jurisdiction to try these cases, but it will also be a dangerous and unhelpful intrusion into the ‘space of government’. Called different names such as “government case”, “police case”, “government trouble”, this category (serious offences against persons and property), has been actively avoided by
barrays.\textsuperscript{129} Asked why these cases were shunned, *barray* chiefs could not pinpoint a specific legal reason beyond the fact that the seriousness of these cases necessitated the exclusive handling by the official criminal justice institutions. There is a historical reference for this. Sections 12 and 13 of the 1905 Ordinance which ushered in tribal administration in the Western Area stated:

> No Tribal Ruler shall adjudicate upon a serious crime as defined in the succeeding section of this Ordinance. For the purposes of this Ordinance, serious crime shall mean murder, rape, robbery with violence, inflicting grievous bodily harm, and such other offences, as may from time to time be determined by the Governor to be serious crime.

Although the adjudicatory powers of *barrays* were subsequently removed as noted in the previous chapter (eliminating the necessity of the above provisions), it is likely there is a connection between the above provisions and the present admissibility restrictions containing serious offences at the *barrays*.

This is not to say that these cases have not been reported to the *barrays*. On the contrary, based on their proximity to and rapport with local communities, *barrays* are often the first point of contact for any report of a crime, dispute, or other event. It is in this vein that the following two examples are presented.

I) At the Four Mile community, close to Waterloo, the local court *barray* received a report of a body discovered near a palm tree farm. The deceased was a palm wine tapper. According to information, farmers had reported to the *barray* chief the illegal tapping of palm wine from the palm trees on their farms. As most of the farmers in this area were from the Temne ethnic group and members of the *Poro\textsuperscript{130}*) (male secret society among the Temne and Mende of Sierra Leone), they had decided to install a charm, called *poro pinkineh* at different entrances of the farms. The *poro pinkineh* is made up of a pole or stick dug into the ground, with a bunch of short-length straws or

\textsuperscript{129} Interviews and Focus Group Discussions with chiefs from July 2017 to September 2018 in the Western Area.

\textsuperscript{130} For more on the *Poro*, including its order-making functions, see Albrecht (2016). For *Poro* generally, including its structure, see also Fulton (1972).
leaves tied to the apex. It is usually placed near fruit trees or farms to deny access to anyone, particularly non-members of the poro secret society. To be able to harvest the produce, the poro pinkineh must be taken down first, mostly by the same Poro member who installed it or by some other member with his permission. The Limba, who are predominantly involved in palm wine tapping, are not members of the Poro; they have their analogous secret society known as the “Gbangu”. According to the report, the deceased was found in the middle of the farm with his tapping instruments beside him. Suspecting he might have been killed, the barray chief immediately called the police and informed them of the matter.131

II) In another case at the Wellington Market local court barray, a stabbing incident was reported to Chief Pa Alimamy Kargbo Fnthagbo. Two boys from feuding families got into a fight and one of them stabbed the other in the neck. The chief immediately referred the mother of the stabbed child to the Calaba Town Police Station for further action. As I explain in Chapter Three, although this case was eventually referred to the barray to deal with the underlying issues of the dispute, the immediate reaction to the case of wounding was referral to the police. While cases of serious offences against persons and property have a long history of immediate referral to the police, the same cannot be said for the next two categories: sexual offences and land cases.132

Sexual Offences

Like serious offences against persons and property above, sexual offences such as rape have long been beyond the jurisdiction of barrays, perhaps, based on the same historical origins. Unlike those offences however, sexual offences are more varied, having undergone recent legislative (re)definition. Until recently, many barrays were

131 Responses, Focus Group Discussion (FGD), Freetown 11 October 2017.
132 Case code: SMKK-POO-091
openly dealing with cases that will qualify today as sexual offences. For the purposes of a historical link, these offences may be divided into two: sexual violence especially against children, and other forms of gender-based violence. Without personal admission, many chiefs claimed to know of (other) barrays that were involved in settling cases of sexual assaults against children in communities.\textsuperscript{133} The turning point apparently happened to be a series of meetings between barray chiefs and the Sierra Leone Police at the start of 2008.

A year earlier, Sierra Leone had passed a set of landmark legislations, referred to collectively as the ‘Gender Acts’; namely Domestic Violence Act, Devolution of Estates Act, Registration of Customary Marriage and Divorce Act\textsuperscript{134}, and Child Rights Act. These legislations provided an added impetus to the Sierra Leone Police’s Family Support Unit (FSU), which had been engaged, together with civil society organisations, in outreach sessions around the country, including the Western Area of Sierra Leone.\textsuperscript{135} Although barrays were at this point complying with the directive to refer all cases of sexual assault to the police – albeit not fully – it was not until 2012, when non-reporting began to attract legal consequences that real changes were seen.\textsuperscript{136} That was the year the Sexual Offences Act was passed, signalling the first specific legislation on sexual offences in Sierra Leone.\textsuperscript{137} With the new law criminalising previously unpunished actions, including raising minimum and maximum prison terms, sexual offences have firmly metamorphosed to “police case”, or “government trouble”.

The police played a central role in this transformation and part of this is explored further in Chapter Five.

\textsuperscript{133} Focus Group Discussion in Freetown 26 August 2017.
\textsuperscript{134} The Registration of Customary Marriage and Divorce Act was re-enacted in 2009, following an alleged administrative mix-up in 2007.
\textsuperscript{135} Personal interview with Inspector Kargbo of the Sierra Leone Police, Freetown, 26 May 2018.
\textsuperscript{136} Ibid.
\textsuperscript{137} Before now, sexual offences were covered by the common law and various provisions scattered in colonial legislations such as the Protection of Women and Girls Ordinance 1927, Cap 30; the Prevention of Cruelty to Children Ordinance 1926, Cap 31; and section 48 of the Offences Against the Person Act 1861. An amendment (Sexual Offences (Amendment) Act 2019 has since been passed criminalising, \textit{inter alia}, settling disputes and increasing sentences to life imprisonment. See also: Martin & Koroma, (2020) \url{https://africanarguments.org/2020/01/15/sierra-leone-declared-a-state-of-emergency-over-sexual-violence/} [last accessed 24 January 2020].
I did not witness any cases of sexual offences in the *barrays*. However, at the Pamaronko *barray*, I was informed of a case of sexual assault against a child that was reported to the *barray* and immediately referred to the Calaba Town Police Station. Records at the police confirmed this, as was the case with similar records of FSUs at different locations, including the Kissy, Waterloo, and Lumley Police Stations, all confirming referrals from *barrays*.

My observations of other offences of gender-based violence involving adults, such as wife beatings, emotional and economic violence between spouses, painted a more nuanced picture. While the protocol to the *barrays* is to refer all such cases to the police, this has not always been automatic, if it happens at all. The position may be summarised as follows: *barrays* will report to the police any cases of sexual assault and physical violence. For example, when “Saio’s” wife ran to the Grafton local court *barray* with a bloodied, partially torn top, following a fight with her husband, not only did Chief Pa Alimamy not hesitate to refer her to the police; he made sure that the matter was properly reported by calling the police officer-in-charge, as well as asking the messenger in his *barray* to accompany her.\(^{138}\)

But where the complaint involves (underlying) grievances about marital sex for example, then even if physical violence is threatened or actuated, the *barrays* tend to exercise competency. Some cases will originate and terminate at the *barrays* without reference to the police or other institution, such as the early case of Sullay’s wife, who was reported for refusing to have sex with her husband. Although she informed the *barray* that Sullay was, among other things, threatening violence towards her, this case was not referred to the police. Instead, it was dealt with as part of Chief Ya Alimamy’s *sol en peppeh* process.

Conversely, there have been few examples of police referrals to the *barrays* of cases that may contain components of gender-based violence. For instance, the Kissy Police Station referred a case to the Brima Lane local court *barray*. According to the statements of the couple, the wife made an original complaint of battery to the police.

\(^{138}\) Case code: SMKK-POO-190
after the husband slapped her repeatedly. It transpired that the husband had returned home one evening and discovered his wife had not kept any food for him (even though she had prepared food for herself and their two children). It was the wife’s reaction to the husband reducing the amount of money he was giving for their upkeep. At the police station, following his assault on his wife, the husband had explained that he reduced the daily allowance of Le 50,000 (approx. £5) because his wife had moved out of their matrimonial room. The wife’s response had been that she suspected him of infidelity, that she did not want to be infected and had suggested that he submitted to a sexually transmitted disease/infection test. It was this final demand that caused the fighting. The husband was reprimanded by the FSU before the matter was referred to the barray chief, who had asked to mediate between the couple.  

Sexual and gender-based violence cases provide a concrete way of tracking demonstrable changes in the way barrays operate. At the same time, they have offered an interesting insight into the relationship between the barrays and external institutions such as the police, a recurring theme in the rest of the thesis.

**Land cases**

As the final category of cases not admitted by the barrays, land – or properly title to land – cases are the newest addition to the list of excluded cases. Until recently, many barrays were actively dealing with contestations of ownership and possession of land in the Western Area. It should be recalled that determining title to land in the Provinces, for instance, falls under the exclusive jurisdiction of customary courts, known as local courts, with (paramount) chiefs playing a key role as the custodians of land. In this role, Provincial chiefs validate conveyances and leases, serve as expert witnesses in land title disputes and, are generally central to the customary land tenure system, which covers all land in Sierra Leone, save the Western Area or former Colony (Renner-Thomas, 2010). It is no surprise, therefore, that barray chiefs have been active

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130 Case code: SMKK-POO-126
140 Section 15, Local Courts Act (No.10) 2011.
in this sphere, even though they lack the equivalent approbation as custodians of land in the Western Area. Still, it is barray chiefs’ interactions with yet another government body that their dealings with land cases at barrays will be examined.

By the time I began fieldwork in July 2017, barrays were no longer admitting land disputes; instead, all such cases were referred to the Task Force against Land Grabbing (hereafter task force) led by the Sierra Leone Police. Set up by the Government of Sierra Leone in 2013, to address land disputes, following violent clashes (often with deadly consequences), the land-grabbing task force is a multi-sectoral body for preventing conflict, investigating claims, and facilitating the speedy settlement of land cases.\textsuperscript{141} Together with the police, other members of the task force include the Judiciary; the Ministry of Lands Environment and Country Planning, the Environmental Protection Agency, and the Sierra Leone Roads Authority. The scope of the land-grabbing task force is broad enough to encompass most disputes relating to land – title, possession, and even contracting. The potential for conflict and violence compels the intervention of the police. The land grabbing task force admits that “[…] land disputes could result to offences such as murder, assault, loss of property, and so on…”\textsuperscript{142} so that police intervention is necessary as a preventive measure. However, sometimes even the most valiant efforts of an institution like the Task Force against Land Grabbing will not be enough to prevent disasters or the loss of life.

For instance, in the introduction, I have already mentioned the profound changes to the Western Area occasioned by the civil war, including an increase in the population, a surge in crime, and the proliferation of barrays. These changes have also caused a strain not only on public services such as transportation, education, and health, but also the availability of housing and land. During fieldwork, for instance, flash floods and a devastating mudslide ravaged the Freetown neighbourhoods of Regent, Kaningo, Pentagon and Kamayama, killing more than one thousand people and displacing more than six thousand (World Health Organisation, 2017). These were

\textsuperscript{141} Written responses from the Task Force against Land Grabbing at the Lumley Police Station, Freetown received on the 19 May 2020.
\textsuperscript{142} ibid
communities I observed barrays at work and interviewed chiefs and litigants; where the greatest tragedy remains the unaccounted number of persons buried in the debris. Human actions – poor city planning, illegal construction in ‘at risk’ areas, encroachment into hills and deforestation causing slope degradation – have been partially blamed for this disaster, as Freetown struggles with its population increase (Lahai & Lahai Jr, 2019).

It is in this context that the land grabbing unit operates; a context where claims and counterclaims, coupled with unscrupulous middlemen and ghost sales, have made land cases one of the main threats to peace and security, especially in the Western Area. Yet, the land-grabbing task force, composed of formal institutions of government, must rely on referrals from, and the cooperation of the public. And it is in this circumstance that barray chiefs are well-placed, not only because of their position as the first point of call for many disputes in the community, but also because of their relationship with the police, who are fronting the land-grabbing taskforce. According to the police, an average of seventy cases are referred monthly from different communities in the Western Area. Below, I will describe two cases referred by barray chiefs to the land-grabbing taskforce at the Ross Road and Lumley Police Stations.

I) At the Kamayama barray, Chief Kabba explained the circumstances of a case he referred to the land-grabbing taskforce at the Lumley Police Station. It transpired that a dispute arose between two parties both claiming ownership of a piece of land. One of the parties had already constructed a panbody (makeshift structure with corrugated sheet) for her caretaker who was residing on the property. The second party entered the property with a group of men to demolish the panbody and take over possession. The caretaker, a local of Kamayama, called in friends and a standoff ensued,

143 Written responses from the Task Force against Land Grabbing at the Lumley and Ross Road Police Stations, Freetown 19 May 2020, and 20 May 2020, respectively. There are notable land cases resulting in major disturbances and fatalities in other parts of Sierra Leone. See for example, Phoenix, Kroff, & Eggen(2019): https://www.fian.be/IMG/pdf/fian_b_report_landgrab_in_sl_malen_2019_full.pdf [Accessed on 7 July 2020).
144 Written response from the Task Force against Land Grabbing at the Ross Road Police Station, Freetown 19 May 2020, and 20 May 2020, respectively.
with both parties brandishing sticks and cutlasses. Chief Kabba was notified, and he sent his clerk to invite both parties to his barray. At the same time, he phoned the police at Lumley, who arrived with two pick-up vehicles and ushered the parties to the Lumley Police Station.\textsuperscript{145}

II) At Pa Alimamy Forna’s barray at Grafton, a woman (“Sallay”) reported the following case: a month earlier, her friend (the defendant) had informed her that his family was selling a piece of land at Jui. Sallay then relayed this message to her sister in the United States who was looking at building a family house in Sierra Leone. The sister transferred Le 35 million (approx. £3,500) to Sallay, who in turn paid the amount to the defendant to purchase the land. Before a conveyance was executed, Sallay visited the land with a surveyor, but they were chased out by someone also claiming to be the owner. According to the defendant, the land had been in their family for as long as anyone could remember, and he even had title deeds. However, the present occupier also claimed to have “papers”. As a result, Pa Alimamy advised Sallay and the ‘defendant’ to report the matter to the police at Calaba Town, who subsequently referred the case to the land-grabbing unit at Ross Road Police Station.\textsuperscript{146}

**Conclusion**

In this chapter, I have explored the operation of jurisdiction at the barrays, by examining the types of cases that are admitted or rejected for adjudication. From the starting point that barrays have no statutory authority to hear and determine cases, this chapter has provided an in-depth appraisal of the disputing process outside official courts. It began by distinguishing the two main categories of cases: cases of single and dual justiciability, and their sub-divisions of admissible and inadmissible. These revealed

\textsuperscript{145} Personal interview with Chief Kabba in Freetown, 13 April 2018.

\textsuperscript{146} Personal interview with Chief Pa Alimamy Forna at Hastings on 19 August 2017.
the many ways *barrays* created and defined jurisdiction, as well as developed external networks, such as the police, through the decision of what cases they accepted or rejected. In presenting the cases that were both admitted and rejected by *barrays*, this chapter revealed the *barrays’* consistency, authority, and legitimacy. The examples of cases which only *barrays* had competency – witchcraft, (extra)marital and family disputes, and abuse of authority – illuminated the *barrays’* place in the legal configuration of the Western Area. The flow of cases demonstrated a need that was being met by the *barrays*, creating a web of genuine relationships between disputants wanting to litigate, *barrays* offering to adjudicate, and third parties, such as *ariogbos*, relatives, influencing or interested in the outcomes.

Similarly, the docket of the *barrays* included cases for which the official courts could exercise jurisdiction, such as public order offences and civil or transactional claims. While this category confirmed the spread of the *barrays’* jurisprudence, it also shed light on the different networks and connections of the disputing process at the *barrays*. It showed, for example, how collective action worked through the *kassi* or deterrent fine that could be pronounced by anyone who witnessed abusive conduct, and how this became included in the *barray* dispute process.

Throughout this chapter, the strong communal participation and judicial flexibility were confirmed as defining features of *barrays*. In the same way, the relationship between litigants and the *barrays* was particularly demonstrated; many complainants invited *barrays* to fix the behaviour of their spouses, as in the examples of the husband keeping bad company. This showed not only accessibility and rapport, but also of *barray* procedures that allowed litigants to dictate the extent and degree of the *barrays’* intervention, examined in detail in the next chapter.

Alongside this flexibility, this chapter has showed the important recognition by *barrays* of the limits of their jurisdiction. The *barrays* did not admit for adjudication every matter that was reported to them. The cases they refused – serious offences against persons and property, sexual offences, and title to land cases – were all referred to the Sierra Leone Police, introducing the outlines of a significant relationship, explored in the
subsequent chapters. Yet this chapter also noted the precarious position of chiefs who, to protect and preserve the whole *barray* system, had to forgo immunity from litigation for their judicial conduct.

By studying the different categories of cases at the *barrays*, and how they influence (or are influenced) by socio-legal and economic networks in the Western Area, this chapter has shed light, not only on the jurisdiction of *barrays apropos* other dispute settlement forums, but it has also contributed to a fuller picture of dispute processing in the Western Area.
Chapter Three: Procedures and Processes at the *Barrays*

**Introduction**

In the previous chapter, I discussed the jurisdiction of the *barrays* – the kinds of disputes admitted or rejected for settlement. It revealed the *barrays*’ bifurcated jurisdictional outlook namely, admitting cases that could also be brought before official courts on the one hand, and cases deemed inadmissible before the official courts and that could only be heard by the *barrays*, on the other. Furthermore, that chapter provided a map of the socio-economic and legal relations of the inhabitants of this urban part of Sierra Leone. But why are disputants drawn towards the *barray* system despite its lack of official recognition? Put differently, what attracts litigants to *barrays* despite the presence of officially recognised (formal) courts? This chapter examines one determinant factor – *barray* procedures and processes. It demonstrates how and why the procedural framework developed by *barrays* is a gravitational force that pulls disputants towards its forums despite any lack of official mandate. From the perspective of litigants, chiefs, and community members, this chapter argues that relevance and adaptability of *barray* procedures influence how justice is conceptualised. At the same time, it explicates the *barrays*’ suitability to settling everyday disputes in a multiplex, interconnected environment that is the Western Area. Thus, procedures defining how a case is brought, maintained, discharged, or settled, affect not only whether a forum’s decisions and processes are considered just, but also whether they are fit for purpose.

That, procedures are important in how justice is viewed or experienced is not new, so that scholars have recognised ‘procedural justice’ as distinct from other types of justice such as distributive, restorative, and retributive (see for example, Bobocel & Gosse, 2015; Vermunt & Steensma, 2016). The implication created, therefore, is that whether litigants are content with the outcome of a decision before an adjudicating forum, will depend on their judgement of its procedures. According to Vermunt & Steensma, “[s]atisfaction of people in situations where outcomes (tasks, money, goods, social
outcomes, etc.) are allocated is heavily influenced by the procedures used in the situation” (p. 219).

Tracing the history of procedural justice from the pioneering works of Rawls, (1972) and Thibaut & Walker (1975), Vermunt & Steensma maintain the centrality of procedures both in the acceptance of outcomes by litigants and in the stability of society. They draw inspiration from scholars like Thibaut & Walker, who proffer the instrumentality of procedures as key to how individuals conceptualise their experience of a justice forum. In other words, “the better a procedure serves your interests, the more fair it is perceived to be” (Vermunt & Steensma, 2016, p. 220). Foregrounded in legal-psychological studies, Thibaut & Walker (1975), for instance, explain that the key element for the elevated status of procedures is control – the desire of people, especially litigants to exert power over the process to feel comfortable, in charge, or more likely to accept the outcome. In this seminal work, they employ procedural justice as a centrepiece to determine which of the two systems – adversarial and inquisitorial – serve the objects of justice better. Focusing on the role of a third party as decision-maker or judge, and their relationship with the disputants, Thibaut & Walker, through a series of controlled experiments, show *inter alia*, that litigants will nominally prefer the adversarial system and, more importantly, consider the process just if they can exert control of procedures (1975, pp. 78-80). Thus, they distinguish between two kinds of control: decision control – control relating to the judgments or actual court decisions; and process control - referring to control of the conduct of the process, including how evidence is presented. The implication, therefore, is that the less litigants can exercise decision control – there is a resignation or acceptance of the role of the third-party judge – the more they desire to contest process control. So, if disputants or litigants cannot exercise control of the procedures through participation and perceived fair treatment, the dispute resolution process will be considered unjust.

Beyond the scholarship of law and psychology above, the importance of procedures has also been central in the discourse of human rights and judicial proceedings, especially the rights of litigants and defendants in civil and criminal trials. It has come to symbolise the way a justice system is visualised and experienced. Based on
international instruments\textsuperscript{147}, procedural guarantees have become fundamental principles upon which fair trials are judged in state courts and international tribunals. In domestic practice, these are guaranteed in national bills of rights and constitutions\textsuperscript{148}. These procedural guarantees include the presumption of innocence, reasonable length of proceedings, right to be informed of charges, right to be heard and to prepare defence, right against self-incrimination, right to legal aid and access to a lawyer (see also Epstein, 2002; Mattar, 2014; Fontanelli & Busco, 2016).

Yet, procedures do not always cohere with client or victim satisfaction, especially where they are synonymous with more bureaucracy or formality. In socio-legal scholarship, the presence or kind of procedures in a judicial process often defines the nature of the justice forum. In the literature on popular justice, for example, the unpretentiousness of procedures, \textit{inter alia}, constructs the image of ‘informal justice’ – an alternative or opposition to formal courts within state law (Abel, 1982a; in relation to popular justice, see also, Merry & Milner, 1995; Fitzpatrick, 1995; Merry, 1995). While most scholars seem to conclude that genuine popular justice is a “practical impossibility” (Merry & Milner, 1995, p. 1), a “basic temporality” (Merry, 1995, p. 31) or “a mythology accommodating a conflict” (Fitzpatrick, 1995, p. 453), there is agreement that simplified procedures, among others, distinguish popular justice forums (such as the San Francisco Community Boards - SFCBs) from state courts. As popular justice forums, the SFCBs were discernible from the state courts in California, by the simpler, straightforward procedures which made them more accessible to much of the population of the Bay Area. The recognition that (complex) procedures could become an impediment to whether and how justice forums are engaged, has been used to


\textsuperscript{148}In Sierra Leone, these are contained in Chapter III, The Constitution of Sierra Leone, 1991.
justify alternative dispute resolution (Abel, 1982b; Merry & Milner, 1995; de Sousa Santos, 1984; Roberts & Palmer, 2005).

Thus, this chapter contributes to, and in some ways, also challenges the narrative that people will prefer dispute settlement forums that are not formalistic (with complex procedures and documentation) or reduce the direct participation of the disputing parties. The idea that the formality that defines litigation procedures in the official formal courts can become central to alternative, popular justice forums such as barrays is not new (see for example, de Sousa Santos, 1977; Merry & Milner, 1995). De Sousa Santos, for instance, writing about the challenges of class domination for the oppressed and their difficult relationship with the official legal system in the fictitious squatter settlement of Pasargada, in Rio de Janeiro, recognises the role of forms and procedures in the dispute process. He admits that even though “forms and procedures have been used to distinguish formal from informal dispute processing contexts and to measure formalism” (p. 26), their use is not uncommon even in societies like Pasargada. Describing these as “folk systems of legal formalism” De Sousa Santos concedes that these forms and procedures are “often derived from the official system and then modified in order to fit the needs of the group” (pp. 26-27). As we shall see in the subsequent sections of this chapter, the use of documentation and record-keeping at the barrays provides an important marker, not just in challenging conventional understandings of customary courts, but also of defining barrays’ relationship with official courts and other state institutions.

Therefore, using several case studies, this chapter will be divided into three parts: the first section will assess the determination of locus standi for litigants at the barrays. It will discuss how the different rules of competence to bring or defend an action at the barrays are adapted to respond to different types of cases and circumstances. In so doing, this section will demonstrate how standing determines specific aspects of barray procedures. Following from this, the second section will explore the different modes of initiating and maintaining an action, and how different types of disputes define the procedures and processes of barrays. Adopting Nader (1969) who, after analysing five different case studies among the Mexican Zapotec people, argues that while a
procedural thread runs through all five cases, the essential elements of what specific procedures courts use are determined by both the kinds of disputants and the types of cases (pp. 84-86). Thus, while a general commonality may subsist, the nature of cases and the category of claimants will determine what specific procedures are required. The final section (which will intersperse with the preceding section) will assess the barrays’ substantial use of documentation in its litigation process. It will showcase and analyse the level of record-keeping and organisation in the barrays.

Parties before the barrays (Who can sue and be sued?)

Gender, married litigants

The rules about who can sue and be sued dominate many a legal system, not only because of the financial and other legal ramifications associated with participation in litigation, but also how that system is perceived. While the right to secure a remedy for a legal wrong is as old as law itself, there are several situations in which a wronged person may not be able to institute an action, except through another. The most common is legal incapacity – rules that render certain categories of persons such as children or persons of unsound mind unable to sue or be sued directly because of their status. Not too long ago, married women were also considered not to have the capacity to sue or be sued without their husbands’ consent in many Western legal systems, including in England (Holcombe, 1983). Some of these limitations, including women’s proprietary rights have also been common in Africa under customary law (see for e.g., Bennett, 1991; Chinwe & Kate, 2016). These exemptions or limitations have been referred to in law as locus standi in judicio – the competence or legal capacity of both plaintiff and defendant to appear before the law (see generally, Beck, 1983). For example, in the customary courts in the Provinces of Sierra Leone, while the law allows women to be plaintiffs or defendants, it is common for cases by and against women to

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149 In Sierra Leone, these rules are governed by statutes such as the Children and Young Persons Act, Cap 44, Laws of Sierra Leone, 1960; and the High Court Rules, 2007.
co-opt husbands and parents, or for proceedings to be delayed if they are omitted. It is important, therefore, to determine who can bring or defend a dispute before a *barray*, and how this shapes its procedures.

In the first place, *barrays* admit disputes from a wide range of litigants; both women and men can equally bring and defend cases, and marital status is not a bar to proceedings. In a case at the Alusine Street local court *barray*, for instance, “Kadiatu” accused “Fatmata” of having an affair with her husband, “Ibrahim”. Fatmata contested the charge on the basis that the complainant was factually wrong when she described Ibrahim as her husband. She contended that Kadiatu was only a *tap to me* (cohabiting partner). Chief Ya Alimamy Sesay, in her ruling, not only rejected Fatmata’s contention, but she also noted it must be proven in the trial and could not be used to prevent the case from being heard.

In the same way, married men and women can sue their spouses, relatives, or members of the public without any restrictions or prior approval required. For example, at the Congo Water (Wellington) *barray*, “Fatu” brought an action against her husband, “Abu”, with whom she has two daughters aged two and four years old. Fatu also has a seven-year-old son from a previous relationship, who lives with his father, “Ibrahim”. She stayed in regular contact with Ibrahim and their son. Her current husband did not like this contact at all. In the present action, Fatu sued her husband, Abu, for ‘*wife beating and pass-mark* [excessive] *jealousy*’. In her statement against her husband, Fatu insisted that she had her “rights” not to be beaten and to be protected from an over jealous husband. A few days later, in an interview, she was bewildered that I had inquired whether she spoke to anyone before the action: “I don’t need anyone to give me permission; *dis no to upline* (this is not upcountry, a common reference to the Provinces).”

Reference to *upline* is significant for two reasons: first, many practitioners have

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150 Personal interview with Simeon Allieu Esq (former Customary Law Officer) in Freetown on 13 June 2018.
151 Case code: SMKK-MFD-089.
152 Case code: SMKK-POO-051
lamented the lack of reporting of domestic violence cases by women (including married women) in rural Sierra Leone, citing family pressures and dependence on the abusers as deterrents. Second (and perhaps more significantly), unlike the practice in customary courts in the Provinces, no prior consent is required before married women sue or are sued in the *barrays* of the Western Area. In this respect, the *barrays* appear to be progressively refreshing.

This open-minded outlook from the *barrays*, however, is not without challenge. Opposing litigants have from time to time raised objections challenging the legal standing of married women, to bring and defend cases. At the Kissy *barray* (Approved School area), “Mr Kargbo”, the defendant in a case of ‘abusive language and public molestation’, brought by “N’Mah”, questioned whether the complainant could bring an action without her husband’s permission. N’Mah (complainant) alleged that “Mr Kamara” referred to her as the “*local mattress*”, a vulgar term implying that she was a prostitute. The presiding judge, Chief Pa Alimamy, rejected Mr Kamara’s challenge and ordered that the case be continued. In an interview the following day, Chief Pa Alimamy told me that his court viewed such challenges as a ploy by defendants to divert the course of justice.

This challenge does not always come from other litigants. Husbands have been known to object to *barrays* entertaining suits against their wives without first contacting them. In the case of “Mr Thullah” v. “Isatu Bakarr”, the husband of the defendant challenged the validity of the summons against his wife on the grounds that as a married woman, she should not have been summoned before the court without notice to her husband. Isatu was accused of using abusive language against Mr Thullah’s wife. The husband stated that he was basing his challenge on customary law, and he gave examples of similar cases tried at the local court in Koya (Port Loko District in the Provinces), where

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153 Personal interview with human rights advocate, Aminata Kanu in Makeni, on the 15 October 2017.
155 Case code: SMKK-POO-151; Interview with Chief Alimamy Kapen, Freetown, 16 November 2017.
he hailed from. Responding, Chief Ya Alimamy Gbonkolenken Thoronka N'Maka detailed the position of the barray as follows:

Mister, you are right to say that under customary law, if a married woman is sued, the husband must be notified or even be sued as a party. Do you know why our people insist on this provision? It is because if the husband is not involved how will you secure the costs of your litigation? The husband owns the money, and he is the one who will have to pay; so, he needs to know. But here in Freetown, the situation is different... We women work hand in hand with our husbands to take care of the home, by doing petty trading and other jobs... My court will accept any case against a married woman without notifying the husband. It is the duty of the wife to inform her husband before coming to my court.\textsuperscript{156}

This challenge of the legal standing of married women has also been used by married women themselves to avoid proceedings at the barrays. In these instances, the barrays have embraced a nuanced approach. For instance, when “Mabinty” was sued for failing to pay a debt of Le 750,000 (approx.£75), she told the barray official who served on her the summons that she would not honour the invitation until her husband arrived from work. Upon receiving the message from the process server, Chief Ya Alimamy told the complainant that she had two options: either to sue the husband as co-defendant, in which case the complainant would increase her chances of a speedy hearing; or be prepared to put up with these excuses from the defendant. “A married woman can be sued but she cannot be dragged to the barray if she expresses a desire to wait for her husband”, she summed.\textsuperscript{157}

As I will discuss later in this chapter, adaptation of different procedures dictates a certain flexibility which showcases the practical functioning of barrays. Thus, the barrays have demonstrated through these examples that notice to the spouse of the complainant or defendant may not be used to avoid litigation, the onus of notice rests on the litigant spouse. Marital status does not affect one’s legal standing. This is particularly true where the married woman has already submitted to the barray’s jurisdiction on her own volition. However, where this objection is raised by the married

\textsuperscript{156} Case code: SMKK-MFD-081
\textsuperscript{157} Case code: SMKK-CPT-098
woman, the *barrays* seem to give her time to “inform” her husband. Even then, she would still be required to defend the action before the court directly or with her husband. This shift from a customary practice prevalent in areas of Sierra Leone where litigants from the *barrays* originate from, exemplifies the adaptability of these urban courts and their responsiveness to cosmopolitan lifestyle.

**Children**

Cases involving children highlight the *barrays’* adoption and adaptation of normative and procedural rules within Sierra Leone’s pluralist legal framework. From Common Law principles grounded in Sierra Leone’s formal legal system, to customary law practices prevalent in the Provinces of Sierra Leone, *barrays* embrace flexible, relevant procedures in their treatment of complaints by and against children in the Western Area. To start with, *barrays* define a ‘child’ loosely, increasingly borrowing from the national statutory definition, which sets the upper age limit of 18 years. Yet, in admitting cases for adjudication, the *barrays* have also employed non-age specific criteria as indications of childhood. These include still living with one’s parents, being unmarried, and school-going.

Other aspects of the administration of cases relating to children emphasise the adaptation and adoption of formal and non-formal legal principles. In the formal legal system, there is a distinction between criminal and civil cases involving children, and whether children are perpetrators or victims. More importantly, there is the determination whether children can represent themselves, either as claimants or defendants. The general rule seems to be that child claimants cannot sue or be sued directly but must be represented by a ‘next friend’ or guardian *ad litem*. Similarly, in criminal cases, a parent or guardian of a child found guilty may be compelled, where the punishment warrants it, to pay court fines on behalf of their children or wards.

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158 s.2 of the Child Rights Act, 2007 defines a child as a person below the age of 18.
160 s.23, Children and Young Persons Act, Cap 44, Laws of Sierra Leone 1960.
Separate rules also exist in relation to testimony and evidence, as well as punishment of child offenders, such as non-imprisonment and non-application of the death penalty.\textsuperscript{161}

The \textit{barrays} assume a more pragmatic perspective to children’s cases, allowing room for child complainants, while holding child defendants jointly accountable with their parents or guardians. As Chief Pa Alimamy Sesay of Mountain Cut \textit{Barray} noted, \textit{barrays} admit complaints from and against children “as long as they can talk.”\textsuperscript{162} In a case at his \textit{barray}, a 14-year-old girl made a complaint against “Iye” for failing to pay her the sum of Le80,000 (approx.£8). The child (“Tay”) explained to the court that she sold school items such as school bags, lunch bowls, writing pads (a small allocation by her mother, who owns a stall in a popular trading street in Eastern Freetown), to augment her school support. Tay stated that the defendant, Iye, had taken some of her items on credit but that she had refused to pay her. The chief allowed the case, without reference to Tay’s mother, and invited Iye, who admitted to owing the child. She was ordered to pay the entire amount within 2 days which she did.\textsuperscript{163}

Similarly, “Battu” 17, approached Ya Alimamy of the Alusine Street \textit{barray} with a complaint against “Foday”. According to Battu, she went to Foday’s shop to buy phone credits; at which point, he seized her purse and removed her hair band, telling her she must go into his room to collect them. Battu told the chief she was too scared to report the matter to her parents because they would blame her for “approaching” (asking to be dated by) men. Foday, in his twenties, ran a confectionary shop adjoining a two-bedroom flat, just a few houses from Battu’s home. He was married. Chief Ya Alimamy invited Foday who, after several questions, admitted to snatching Battu’s purse but not the hair band. He told the chief that he was only joking. Ya Alimamy then invited Battu’s parents, Foday’s wife, and the local imam to her \textit{barray}, where she narrated Battu’s complaint and Foday’s admission. Foday promised never to contact Battu. The chief

\textsuperscript{161} s. 24 Children and Young Persons Act, Cap 44, for non-imprisonment of children unless in exceptional circumstances; and s.216 Criminal Procedures Act, 1965 on the death penalty not to be imposed on children. However, see Martin & Koroma (2020) on the effects of Sexual Offences (Amendment) Act 2019 on children.
\textsuperscript{162} Personal interview with Chief Pa Alimamy Sesay, Freetown 5 September 2017.
\textsuperscript{163} Case code: SMKK-CPT-034.
asked Battu to report any future incidents and warned Foday that she would personally take the case to the police station on Battu’s behalf. As we shall see in the second section (Mode of beginning a case), the practice of allowing children as direct complainants is even more revolutionary, when considered within the rules of costs for initiating or defending suits at the barrays.

Children have also been brought as defendants before the barrays, who have sought to enjoin their parents or guardians to the action. At the Peacock Farm barray, “Isha” took out a summons against “Fanta”, her husband “Lamin”, and their two children aged 14 and 16. Isha alleged that the children joined their parents in insulting her. Chief Ya Alimamy requested that all the defendants be brought before the court. She then sought confirmation that Fanta and her husband were the children’s parents. After that she asked the children to leave because the participation of their parents in the present proceeding was sufficient.

In another case, “Mrs Conteh” reported 17-year-old “Joseph”, the son of her neighbour, for “closing his room door with [her] daughter inside”. According to her statement at the barray, Mrs Conteh came home from work earlier than usual and found her daughter, also 17, in Joseph’s room. Chief Pa Alimamy directed the clerk to prepare “an invitation” for Joseph’s parents and asked Mrs Conteh to sit down and wait. About 30 minutes later, a woman walked in, greeted the chief, and introduced herself as Joseph’s mother. She explained that the father travelled to the provinces and was not expected until the weekend. This was Tuesday. Chief Pa Alimamy then asked Mrs Conteh to narrate her complaint to the barray. Even before she finished speaking, Joseph’s mother fell on her knees and touched Mrs Conteh’s feet, pleading on behalf of her son. The chief then said he had a few questions before deciding whether to join in ‘begging’ Mrs Conteh. He inquired whether there was any suspicion of sexual activity to which Mrs Conteh responded in the negative. Mrs Conteh further explained that even though her daughter told her she only entered the room briefly to pick up a phone charger, she wanted to make sure the incident did not repeat. The chief then

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164 Case code: SMKK-MFD-103
165 Case code: SMKK-POO-167
admonished Joseph’s mother to warn her son, noting that had there been any indication of sexual activity, he would have referred the matter to the police station, where her son would be charged to court.\textsuperscript{166}

While local court \textit{barrays} will make parents and guardians defendants for the infractions of their children, this attitude seems to be tested in one case type – witchcraft. In the case of Ya Alimamy (in Chapter Two), the female section chief, who sued eight people for casting a spell on her \textit{barray} that prevented new cases, one of the defendants was her 12-year-old daughter. At the local court \textit{barray} at Mountain Cut, not only was the 12-year-old co-defendant asked to testify (narrate to the court whether and why she told the \textit{ariogbo} (or witchfinder) that the other seven co-defendants were practising witchcraft), she was equally fined Le 500,000 (approx. £50) like the other defendants. However, the court demanded that the money be paid by her mother - the complainant.\textsuperscript{167}

In a similar case at the Mabela \textit{barray}, “Bilkisu” summoned three neighbours, including a 13-year-old boy, for bewitching her daughter. According to her statement, Bilkisu told the court \textit{barray} her daughter developed high fever suddenly two nights earlier and had been having convulsions. She explained further that on the first day of her daughter’s illness, the 13-year-old child defendant contacted her to say that her daughter’s illness was not ordinary; that he was the one that was sent by the other two neighbours, including his grandmother, to bewitch Bilkisu’s daughter. Instead of dismissing the 13-year-old co-defendant and asking his parents to stand in his place, the court proceeded by asking him to confirm or deny the allegation.\textsuperscript{168}

Children’s involvement in cases at local court barrays extends further than their role as direct litigants; children have also been invited as witnesses. However, in these instances, children have been dismissed as competent witnesses and the \textit{barrays} have insisted on replacements. Two examples illustrate this point and demonstrate the

\textsuperscript{166} Case code: SMKK-MFD-068
\textsuperscript{167} Case code: SMKK-WC-005; pp. 112, 192.
\textsuperscript{168} Case code: SMKK-WC-059
reasoning of the barrays. First, in an “abusive language” case between two neighbours at a Waterloo barray, one of the complainant’s three witnesses was her 14-year-old son. Chief Pa Alimamy dismissed the child witness and asked the complainant to either find a replacement or rely on the remaining two witnesses.169 Secondly, in another case of “threatening remarks by native means” at the Mountain Cut barray, a key witness for both the defendant and the complainant was a 16-year-old girl in the same compound, who allegedly witnessed the confrontation between the disputing parties from the beginning. Again, the barray rejected her involvement.170

According to barray chiefs, the reason for excluding child witnesses is because the oath cannot be administered on children.171 Thus, in these cases, the barrays have determined that children’s testimonies, no matter how valuable, cannot be relied upon because, as we shall see in the section on Oath-taking, their inability to subscribe to the oath incapacitates their testimony credentials. The administering of oath process – who is it administered to, how and why – holds a significant sway in the trial procedures of the barrays.

While this reasoning seems to be applied across barrays in the Western Area whenever children are named as witnesses, it stands contrary to what obtains in the formal courts, where witness testimony of children is not rejected outright. Under the relevance and admissibility rules of the law of evidence, a child may proffer sworn or unsworn testimony if they can understand the importance of telling the truth (Cross & Tapper, 1990).

Persons with mental disability

Like with children’s cases above, cases involving persons with mental illness have received special treatment from the barrays. Unlike children’s cases, however, those regarding persons with mental disability have been brought only in representative

169 Case code: SMKK-POO-114
170 Case code: SMKK-WC-036
171 Responses as part of a Focus Group Discussion in Freetown 26 August 2017.
capacities. The two examples below show how *barrays* handle such cases. The mother of a mentally ill man started this action at the *barray* at Kola Tree, against three defendants, whom she accused of teasing her son because of his condition. She wanted the court *barray* to absolve her of any future “damage” caused by her son to any of the defendants or their properties. Chief Pa Alimamy warned the defendants to desist from any action that would provoke the complainant’s son to breach the peace. He further claimed that if anything unfortunate should happen his court would hold neither the sick son nor the mother responsible.\(^{172}\)

In the second case, “Kaletu” brought an action against “Morlai” and “Benson”, two co-tenants with whom she was sharing a compound, at the Calaba Town *barray*. She claimed that both men were trying to lure her mentally ill elder sister into having sex with them. In their defence, both defendants vehemently denied the allegation. They responded that they only offered her food because she told them she was hungry. The defendants were ordered to apologise to the complainant and to commit that they would cease from carrying out any acts that would give the impression that they were taking advantage of the complainant’s sister.\(^{173}\)

**Third party litigants**

The concept of ‘third party action’ as employed by the *barrays* illustrates a deeper adaptation of procedures beyond that showed in the last two categories of litigants – children and the mentally disabled. It goes beyond modifying admissibility rules, such as (in)capacity to bring, defend or testify in cases. Third party actions in *barrays* challenge the conventional understanding of *locus standi* – where a person can only be permitted to sue if they can demonstrate that there is sufficient connection between them, and the harm complained of (Beck, 1983). In the common law tradition (upon which the Sierra Leone legal system is based), there are specific rules based on statutes or practice that regulate who can bring a case before the courts. The general principle seems to be that a party should establish that they have suffered or will suffer

\(^{172}\) Case code: SMKK-POO-095  
\(^{173}\) Case code: SMKK-MFD-035
harm because of the defendant’s actions. This should be distinguished from the right to bring cases on behalf of others (who are neither children nor mentally disabled), without need for their consent. In other words, a third party (without any proof of direct harm or connection to the complaint) is allowed to bring an action in the *barrays* against a defendant for an alleged infraction against a person, without seeking the permission of that other person. Conversely, a person may be sued as defendant even if they have played no role in the harm complained of. While this may present legal quagmires, at the *barrays*, it seems to fall under established kinship logics, where a member is entitled to uphold the group’s ‘reputation’. The three cases below illustrate third party action.

First, when “Brima” approached the Mountain Cut *barray* to sue his estranged wife, “Ballay”, for circumcising their one-month-old son, without his knowledge, he also added as defendants, Ballay’s parents, her elder brother, and the “sababū” (the marriage maker and guarantor). There was no evidence that any of these people knew about or participated in the action complained of. However, Brima claimed that by their mere relationship to Ballay, together with their expected guidance role under customary law, they all equally shared responsibility for this infraction. There was no objection from the other defendants about their inclusion as parties. The local court *barray* accepted Brima’s argument and fined each defendant Le 300,000 (approx. £30).

In the other example, “Ya Kolloneh” sued “Mr Gibril” for ‘failing to marry [her] daughter after having two children with her, and for not recognising [her] as his mother-in-law’. Mr Gibril did not challenge the complainant’s standing; instead, together with his relatives, he appealed to the court *barray* to withdraw the matter and settle it at home. The court, after consulting with the complainant, acquiesced to his request.

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174 This is like the common law concept of vicarious liability, whereby one person may be held accountable for the actions of another because of a particular relationship between them such as employer-employee. See for e.g., Gray, 2018, pp. 99-102.

175 Case code: SMKK-MFD-155

176 Case code: SMKK-MFD-008.
In the third example, “Musu” brought a case against her sister-in-law, “Kadie” at the Pamaronko local court *barray*, Calaba Town. It transpired that during a quarrel between husband and wife, Kadie (wife) allegedly used insulting words against her mother-in-law (also Musu’s mother), who was not present at the time. At the *barray*, Kadie did not deny the accusation; instead, she contended that she was only returning the favour, as “Morlai” had initially insulted her own mother. The *barray* did not question whether Musu could bring an action against Kadie, even though the conduct complained of was not directed towards the complainant.\textsuperscript{177}

As this section shows, the *barrays* adopt a wide range of rules and procedures to enlarge the pool of admissible cases and the standing of litigants. As we shall see in the next section, this decision has profound consequences not only on how cases progress, but also the financial implications on the parties. Accepting such a broad swathe of litigants, often with specific needs, the *barrays* have crafted detailed and, perhaps even, bespoke procedures to accommodate the diversity of complaints.

**Mode of beginning a case at the local court *barray***

As depicted on the diagram below, cases before *barrays* typically commence in one of three ways: *barray*-initiated summary action, complaint in person and referrals.

**Barray-initiated summary action**

This involves infractions that take place in the presence or hearing of *barray* officials either during *barray* proceedings or outside. The *barrays* will act immediately against the offender, without the need for preparation or service of any notice such as summons or ‘invitation’. The infractions under this category may be divided into two: breaching ‘published’ rules or codes and falling short of acceptable conduct.

\textsuperscript{177} Case code: SMKK-POO-007.
In all the *barrays* I visited, there was either a noticeboard (sometimes an imprint on the wall) listing various “offences” and their corresponding penalties, or a list read by the clerk or chairman before the start of proceedings every sitting day. By their very nature, cases under this category are spontaneous and verily attract on-the-spot fines or reprimand.

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**Figure 10:** Flowchart of *barray* disputing process. Source: Koroma, 2018.
At the Kissy barray, Chief Pa Alimamy Wusu Kamara Kapen was addressing the litigants in a case of abusive language when “Papay” entered the barray and made his way to a bench in the back row. The barray was quiet save for the intermittent revving of motorbike engines, taxiing commuters in this hillside neighbourhood of Eastern Freetown. Papay had a hat on to shield him from the punishing rays of the sun – the heat at this time of year hovers in the upper twenties and lower thirties Celsius. Amidst the shifting of bodies to accommodate the new member on the bench, the chief
beckoned onto Papay to come forward. Startled, he looked backwards and sideways, unsure whether the chief was referring to him, he got up and inquired by pointing to himself. The clerk leapt to the occasion, like an impatient runner finally getting the go-ahead, and yelled, “yes, it’s you!” Papay walked gingerly forward, clutching a folded black plastic bag. As he approached the table where the chief was sitting, the clerk, who was at this point standing in front of the table, asked Papay: “Don’t you know you should not wear a hat in this court?” As if in quick reflex motion, Papay removed the hat and revealed a clean-shaven head, on which he slowly rubbed his palm from front to back. He tried to say something, but the clerk cut in with: “Are you challenging the chief?” Papay responded: “No sir”. The clerk then explained that he had committed an offence and must pay the sum of Le 10,000 (approx. £1). Papay protested: “I didn’t know sir”; to which the clerk replied, “so you are still challenging the chief?”

At this point, there was muttering in the court, with some of those present at the barray whispering words of advice to Papay. He then told the clerk that he was sorry. A visibly satisfied clerk declared that only the chief could waive or reduce the fine; his duty was to enforce the rules of the court barray. The chief beckoned on Papay to come close to him. He asked him his name, why he was in court and whether this was his first visit. Papay gave his name, explained that he came with a complaint of abusive language against a neighbour, and that this was his first visit to the barray. The chief then explained that he would have waived the entire fine, had Papay not tried to defend himself first. The fine was reduced to Le 5,000 (approx. 50p). After paying, Papay was asked to sit at the front and wait until the ongoing case was concluded before taking his statement.\footnote{178 Case code: SMKK-POO-093.}

Meanwhile, at the Racecourse local court barray, “Salamatu” had accompanied her sister, who was the defendant in a case that morning. The clerk had warned all those present to switch off their phones or risk being fined Le 10,000 (approx. £1). Salamatu took her phone from her small purse and pressed the power button. The phone emitted a loud ‘switching-off’ tone that it stunned everyone, including the chief. She yelled out
for the owner of the phone to come forward. Salamatu did. She explained that she was trying to switch it off and stretched out her hand with the phone in it to make her point. The chief asked her to sit on a bench just by her immediate right. Salamatu complied. The clerk then explained that she had been ‘detained’ until she paid the fine. Reluctantly, Salamatu took the money from her purse and handed it to the clerk, who then asked her to return to her seat.179 The summary nature of the proceedings of these cases means they can almost seamlessly interpose ongoing cases, as if dealing with a minor disturbance.

These barray-initiated summary cases also extend to actions not expressly prohibited on notice boards or lists, but which are determined to fall below the standards of acceptable behaviour. “Mr Ibrahim” accompanied his wife who was a defendant in a case of abusive language to the Pamaronko local court barray. She had been accused of calling the complainant names, including “nasty woman”. After the case was adjourned to the next day for the parties to fulfil their financial commitments, and both parties had left the court barray, Mr Ibrahim was heard arguing with the husband of the complainant. He stated that the present case did not bother him or his wife but had only shown how unserious the complainant and her husband were. When pushed by the husband to explain his statement, Mr Ibrahim noted that they had come to a “cheap chief” instead of taking their case somewhere serious. This was overheard by the court police, who informed the clerk and the chief. Mr Ibrahim was immediately invited to the court and fined Le 50,000 (approx. £5) for his remark. He protested, and the chief increased the amount to Le 100,000 (approx. £10). He was ordered to sit on a bench at the front of the court barray as ‘detention’ until the amount was paid. His wife, the defendant in the earlier case, pleaded with the chief and she was allowed to “bail” him Le 20,000 (approx. £2), with the promise to bring the fine of Le 100,000 (approx. £10) the next day.180

Similarly, barray-initiated summary offences cover cases of “contempt”, defined by the barrays to include cases where their authority is challenged, such as refusing to attend

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179 Case code: SMKK-POO-186.
180 Case code: SMKK-POO-080.
to a summons, or participate in proceedings. Like the other examples above, liability for these offences seems to be strict, without any need for proof of intent, like offences of strict liability under common law. At the same time, this category of cases exposes the tension between barrays and litigants and represents moments where assertiveness of authority by the barrays meets dissent by litigants. As the only cases in the barrays where service of, and notice to the other party are not required, barray-initiated summary cases challenge the state of constant negotiation that permeates the modus operandi of barrays.

Figure 12: "Contempt" charge against a defendant. Source: Mountain Cut Barray, 2017.
As we shall see in subsequent chapters, this adds to the complexity of how barrays navigate authority, legitimacy, and recognition.

**Complaint in person**

Comprising the vast majority of how cases are begun at the barrays, complaint in person involves the complainant (person making a complaint) explaining to the clerk, chairman or chief, personally, his or her grievance. Based on the complaint, the court barray decides which method – summons or report – may be used. The barrays exhibit a certain flexibility in their determination of which method applies to a particular case. This flexibility is aided by the consideration of who brings the case, what the case is about, and when and where the infraction takes place. This determination is important to the parties and how the case may proceed, as the method of initiating an action is tied not only to the procedure that may be used by the barray, but also the financial implications. Summons for instance, is the only method which requires the disputing parties to pay fees for lodging or responding to a complaint. The two methods are discussed below:

**Summons or Complaint Paper**

Summons at the barrays carry a similar meaning as a writ (in civil proceedings), or an indictment or information (in criminal proceedings). Also known as “complaint paper or form”, it consists of a document requiring the person named on it to appear before the local court barray at a stipulated time, to respond to the allegations summarised in the document. While in formal courts such as magistrates and high courts, there are different documents depending on whether the complaint is civil or criminal, or whether it is brought at the magistrate or high court, local court barrays use the same document for all cases requiring summonses.

Key features of a summons used by local court barrays are as follows:
i) Details of the barray (name of chief, name of court, address, and phone number(s)).

ii) Unique case number (this is not applicable in some local court barrays).

iii) Date of the summons.

iv) Details (name, address, and phone number) of person making the complaint – also known as “complainant”.

v) Details (name, address, and phone number) of person against whom a complaint is made – also known as “defendant(s)”.

vi) “Charges” or nature of complaint (summary of the complaint).

vii) Date and time required for the defendant(s) to come to the local court barray.

viii) Court fees already paid by the complainant, which the defendant is required to match when they come to the court to respond to the summons.

Summonses may be issued for any case type by the clerk or chairman on the instructions of the chief of the barray, after hearing a complaint. Where the court decides that a summons is not warranted, it will automatically convert the case into a report, which will result instead in a written or an oral invitation to the other party to attend the barray. In the case of Kadiatu and Fatmata earlier, where the defendant’s contention was that she could not have committed adultery since the complainant was a “tap to me” (cohabiting partner and not wife), the local court barray determined that the complaint merited a summons, falling under the ‘contested’ category of disputes.\footnote{Case code: SMKK-MFD-089.}

Once a determination is made by the barrays that the case should proceed by summons, then the complainants would be asked to provide details of the defendants, as well as, pay the requisite fees (see Chapter Four) in order to escalate the complaint to the next stages of litigation.
Treating a case as a report (instead of a summons) is the default mode in many of the cases before the barrays, due to its no-cost nature, and the often-close relationship between complainant and defendant. It applies when one party brings a grievance against another party but declines to commit to a trial. In this instance, the local court
barray will ask the court server to ‘invite’ the other party either by delivering a letter or orally. An invitation of this nature will contain the following:

i) Details of the local court barray (name of chief, name of court, address, and phone number(s)), if written. If it is oral, only the name of the chief, barray and address is necessary.

ii) Name and address of person making the report.

iii) Name and address of person against whom the complaint is made.

iv) Nature of complaint (summary of the complaint).

v) Invitation to come to the local court barray immediately or within a short time.

vi) A bora or token (any amount usually Le 5,000 – Le 50,000 (approx. £0.50 – £5)\(^{182}\)

vii) Emphasis that this is not a summons but only a report.

The decision to employ the report method, instead of summons, will depend on three circumstances: the legal standing of either party, relationship between disputing parties, and the preference of the person making the complaint. For instance, in the case the 15-year-old child (“Tay”), who sued the neighbour (Iye) for failing to pay her the sum of Le 80,000 (approx.£8) for school items, the chief decided that this was a “report” and orally invited Iye, the defendant to the barray.\(^{183}\) Also, in the case of “Battu”, the 16-year-old who was scared to describe to her parents the unwarranted advances of Foday, the married man and shop owner, the local court barray determined that this was a “report” and not a summons.\(^{184}\) Various chiefs have stated that the financial burden imposed by the summons process was inappropriate in certain cases, particularly those involving children. The method of report, therefore, allows the parties to initiate an action (in the case of the complainant) and respond to an allegation through invitation (for the defendant) without first making payments to the court.

\(^{182}\) This fee may be waived by the barrays. Where the bora is paid, the invited party is required to match it, and it is non-refundable whatever the outcome.

\(^{183}\) Case code: SMKK-CPT-034.

\(^{184}\) Case code: SMKK-MFD-103.
This exemption of summons fees extends beyond cases relating to children. In marital disputes, for instance, the court barrays have deemed cases between husband and wife as a report, without the need for summons fees. In the case of Fatu, who sued her husband Abu for physically abusing her because he was unhappy that she was still speaking with her ex-boyfriend, with whom she had a son, the Congo Water local court barray decided that this was a report and not a summons.\textsuperscript{185} However, as already noted in the examples for summonses, the determination of a case as a “report” does not extend to other relations such as in-laws, co-wives, or extramarital partners. The Pamaronko barray permitted Musu to bring her action against her sister-in-law, Kadie

\textsuperscript{185} Case code: SMKK-POO-051.
by summons, after she accused Kadie of cussing their mother, during an argument between husband and wife.\textsuperscript{186}

The \textit{barrays'} decision to begin a case by “report” is not cast in stone. Where after the ‘invitation’, the party invited challenges the allegation, or an attempted mediation fails, then the \textit{barrays} will direct the party who first makes the report to take out a summons (by paying the required fees). The other party will be served, and the matter will continue as summons (contested). This will also be the case where a party (whether making a complaint or against whom a complaint is made) insists, after being told of the consequences of a full trial, to convert a report to a summons by paying the requisite fees.

It is important to note the significance of ‘report’ as a mode for instituting a claim at \textit{barrays}. First and foremost, it offers a potentially cost-free opportunity to the parties to resolve their dispute almost immediately or in a very short time. More importantly, it demonstrates a sense that the \textit{barrays} mind the affordability of their services, the importance of catering for different situations and remaining relevant. As Chief Ya Alimamy explained to me: “Our first duty is to settle disputes whether people have money or not. Any chief who turns people away because they don’t have money is not a [real or true] chief.”\textsuperscript{187}

\textbf{Referrals}

The third mode of initiating action at the local court \textit{barrays} – referrals – relates to cases that are brought to other forums in the first instance, and then transferred to the \textit{barrays} for adjudication. Referrals may be internal (transferred from another \textit{barray} with equal or inferior jurisdiction) or external (transferred from a formal institution such as the Sierra Leone Police). Referred cases are treated as “reports” automatically. Like “reports”, they may only be converted to summons, if mediation fails and the parties

\textsuperscript{186} Case code: SMKK-POO-007.
\textsuperscript{187} Personal interview with Chief Ya Alimamy Gbonkolenken Thoronka N'Maka in Freetown, 6 September 2017.
challenge each other to a trial. For example, at the *barray* at Cline Town, Chief Ya Alimamy Gbonkolenken Thoronka N'Maka received a complaint from sub-chief Ya Mankapr Gbonkonlenken, that the defendant in a case before her sub court *barray* had refused to attend to her summons. She was accompanied by the complainant in that matter. The local court *barray* issued an ‘invitation’ to defendant which was served by the police officer working with the *barray*.

In another case at the Wellington Market *barray*, a stabbing incident from two neighbouring families ignited a long running dispute. The stabbing case was reported to the Calaba Town Police Station, where a medical examination was ordered, and statements obtained. In the meantime, the boy accused of stabbing disappeared so that the police could not charge the matter to the magistrate court immediately. In the ensuing days, the feuding families continued to trade insults and accusations of witchcraft. The party with the injured boy went back to the police station and reported the recent fracas. The police invited both parties and referred them to Chief Pa Alimamy Kargbo Fnthagbo’s *barray*. The *barray*, upon receiving the parties (who were accompanied by a police officer), treated the case as a “report”.

**Service of Court Processes**

With both forms of initiating action above (complaint in person and referrals), service of either the summons or invitation is done by a court appointed messenger or designated police officer.¹⁸⁸ In the cases in which I witnessed service, the servers approached the defendants courteously, explained their purpose, and provided details of the court. In three instances (with police servers), the police went on to explain the content of the invitation and summons to the persons served. Only in two situations did I experience brief animosity between the servers and the served. Yet, in both situations (one with a police server and the other with a messenger), the servers calmly explained their role, and encouraged the defendants to raise any issues with the *barrays*. In interviews with the police servers, they narrated incidents where defendants had

¹⁸⁸ The relationship between *barrays* and the police is discussed in detail in Chapter Five.
outrightly refused to be served any documents and how they would just drop the summons or invitation in front of the party and leave. They insisted that they would never return with a summons document or invitation, except where the party was absent and there was nobody to leave it with at the time. Service of barray processes highlights the fact that barray authority is not always automatically accepted and must be actively negotiated from time to time.

Following service of the summons or invitation, the defendant(s) or invited person(s) will attend the court barray alone or accompanied to respond to the complaint. How a case proceeds after the first appearance at the barray, depends on whether defendants or invited persons accept or contest the allegation. For example, when an invited person in a ‘report’ or ‘referral’ case decides not to contest the charge, the case will not proceed to trial and the barrays will make the necessary orders. These may include a reprimand for the defaulting party (as in the case of the married shop owner, Abu, who made advances at Battu, 16) or restitution (as in the case of Iye, who refused to pay the child, Tay, after taking school items). In both instances, neither party is required to pay any fees to the barray to institute or maintain the action, or in consequence of the barray’s final decision in the matter.

However, where the person invited by the local court barray in connection with a report or referral contests the allegations and challenges their accuser to a trial, then the local court barray will not pursue any mediation. Instead, it will direct the aggrieved party who made the report in the first place, to convert the action (from report or referral) to a summons, by paying the summons fees.189 A summons will then be served on the person contesting the original allegation(s).

Pre-trial and Trial Processes

Where the original complaint is ab initio determined to be begun by summons, or where it is converted from a report or referral as above, the process is distinguishable by its

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189 Chapter Four discusses fees and financial transactions payable at the barrays.
financial implications. When a defendant attends the barray to respond to a summons, the barray will require that defendant to pay a fee to match the exact amount already paid by the complainant when instituting the action. This is known as ‘return summons’. It is demanded even before the defendant is allowed to make a statement to contest or admit to the charges.

However, even a return summons does not guarantee a trial; it will depend on whether the defendant admits or contests the charges, after paying the matching fees. In the circumstances where the respondent of a summons or invitation contests the charges, a trial will ensue, setting in motion additional procedures, which require extra payments and the participation of others, such as witnesses. Using an example of one of the major cases I witnessed, the full spectacle of the dispute settlement process, as well as trial procedures at the barrays are showcased. The facts of the case are as follows:¹⁹⁰

At a jam-packed barray at Mountain Cut, the imam of a local mosque, was responding to a summons taken out by his deputy, who claimed that the imam attempted to sleep with his wife. After matching the complainant’s summons fee of Le 65,000 (approx. £6.50) and categorically denying the allegation, the imam (defendant) challenged the deputy imam (complainant) to a trial to prove his innocence. This case was momentous for the Mountain Cut neighbourhood of Eastern Freetown. For many, the allegation was scandalous, not just because the chief imam already had three wives, but because of the spiritual and community leadership roles he also performed. The case was presided by Chief Pa Alimamy Sesay, assisted by the clerk (or secretary as he preferred to be called) of the court, Mr Bundu. The Mountain Cut Barray is a multi-purpose space, no wider than 10 feet and about thirty feet long, hosting two courts (which are literally) back-to-back of each other. It also serves as extra room for the adjacent makeshift cinema, which shows international football matches via satellite television on giant screens.

¹⁹⁰ Case code: SMKK-MFD-011.
After ascertaining that they had each paid the summons fee of Le 65,000 (approx. £6.50), the chief turned to the complainant (deputy) and asked him if he knew the defendant, and whether he could confirm that he had indeed accused the man standing as defendant on the charges contained in the summons. He nodded and answered “yes, chief” to both questions. Chief Pa Alimamy then faced the defendant (imam) and requested him to confirm that he was disputing the charges brought by the complainant. The imam, in a shaky voice said something in Arabic, but the chief cut him and asked him to provide a direct response to the question. At this point, the defendant answered “yes, chief”.

The chief explained the next steps:

Now that you have both confirmed your stance, this court will investigate the matter and find out who is not saying the truth. But before we do that, we must demonstrate both the seriousness of the case and this court. [Complainant], if at the end of this case, it is proven that you have brought the defendant here on a false allegation, in front of all these people, what will you do for him? You know you will have to appease him, right?

Figure 15: Mountain Cut Barray in action. Credit: Koroma, 2018.
After a brief pause, the complainant said, “I will beg him with Le 500,000” (I will pay compensation or reputational damages of Le 500,000) (approx. £50). There was some murmuring in the court, with several people sitting next to me openly discussing the amount. The clerk eventually intervened with a bang on the table. I learnt from interviews with several chiefs later, that the highest amount allowed as “bets” or “appeasing fee” in the local court barrays was Le 500,000 while the least was Le 100,000.

Continuing, Chief Pa Alimamy turned to the defendant and said:

[Defendant]: you have heard the amount the complainant has committed to appease you with, should this court prove that his allegation is untrue. But if it turns out to be true, and that indeed you slept with the complainant’s wife, and yet have come here to challenge him instead of doing what is necessary to pacify him, what will you do for him?

Almost immediately, the defendant responded that he would match the complainant’s amount and “beg him” with Le 500,000. Both parties were asked to deposit these sums to the court, which they did.

Placing of bets or appeasing fees is a critical part of the trial procedures at the barrays. Cases will not proceed without its payment; it is the first concrete demonstration of the parties’ resolve to pursue litigation, beyond summons and return summons. While the disputants voluntarily suggest the amount of the bet or appeasing fee, how much a party proposes can also become a barometer for barray officials to measure how that party perceives the court or the case before it. A paltry amount may appear to the chief and other officials as a sign that a party has no faith in their case. An example is the “tap to me” case between Kadiatu and Fatmata cited earlier.191 Having been accused of an affair with the complainant’s husband, the defendant justified her actions by refusing to recognise the marriage and insisting that the complainant was only a cohabiting partner (“tap to me”). When Chief Ya Alimamy asked complainant Kadiatu how much she would give to the defendant, Fatmata, should the court find that her

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191 Case code: SMKK-MFD-089.
allegation was untrue, she replied that she would “beg” the defendant with the sum of Le 400,000 (approx. £40). When it was the turn of the defendant, she informed the chief that she would appease the complainant with the sum of Le30,000 (approx. £3). An angry Chief Ya Alimamy inquired whether the defendant thought her court barray was a playground. She went further to ask: “What is thirty thousand leones? You come to my court having been accused of sleeping with someone else’s husband and you want to offer her thirty thousand leones?” Chief Ya Alimamy was in no doubt that by offering to pay such a small amount, the defendant had no case and was only attempting to cut her losses.

Back to our case between the imam and deputy imam. After they had both deposited to the local court barray their respective bets of Le 500,000 (approx. £50), the chief, Pa Alimamy explained that barray officials were not paid by government; yet their contribution to the peace and development of the nation was immense. Therefore, as compensation for their time, he wanted each party to suggest how much they would be willing to give to the barray as ‘sitting fees’. The complainant suggested Le 100,000. Even before he was asked, the defendant agreed to pay the same amount. This was handed over to the clerk who placed it, as with the “bets” in a black plastic bag on his side of the table.

Chief Pa Alimamy continued that sleeping with someone’s wife was a serious offence that could cause harm to society. He said:

> There are stories of men killing others for sleeping with their wives; or decapitating their penises. People spend a fortune to get a wife. If you want yours, then go find money and marry a wife. When a man marries his wife, it is not to share with others. We will not encourage that kind of behaviour here because it will breed enmity. So, this court will levy a fine of Le 250,000 (approx. £25) to the defaulting party, either of carrying out the alleged act, or of falsely accusing the other.

Both parties were required to deposit this amount to the barray. At this point, the defendant begged the chief to allow him to bring the fine the next day. The chief consulted with the complainant, who also informed the chief he did not have that
amount but promised to bring it the next day. Agreeing to their requests, Chief Pa Alimamy asked both parties to supply the names of their witnesses. The complainant gave the name of his wife, the same woman with whom the defendant was accused of having an affair. The defendant notified the court that he had no witnesses but would rely on the complainant’s witness. The chief asked whether the woman was in court; she was identified. He then told the parties to return to the barray the next day for the trial.

Witnesses are an integral part of the trial process. Barray decisions are often based wholly on witness testimonies. Although each party is free to call as many witnesses as possible in support of their case, it is rare that the total number of individual witnesses will exceed three. There is a set fee levied for each witness to testify on behalf of a litigant, creating two (un)intended consequences at the barrays. First, for the barrays, it is an effective method for restricting the number of witnesses to the most relevant few; in turn, having a knock-on effect in the turnaround time for cases. Secondly, for litigants, it pushes them to select only the witness(es) that will contribute the most to the success of their case, even if this means, both parties relying on the same person(s). This fee which ranges from Le 15,000 to Le 75,000 (approx. £1.50 – £7.50), is given to the witnesses at the end of their testimony. While it is meant to cover their transportation and compensation for their time, barrays typically refer to this fee as “kasankay” (burial garment), demonstrating the continuing pressure on witnesses to be truthful even after performing their function at the barray. Ya Alimamy Gbonkolenken N’Maka explained that by receiving the money, the witness was accepting the consequences of a “death sentence”, especially if they had made a false statement on oath at the barray.¹⁹²

The following day, the complainant (deputy imam) came to court with his wife, the only witness in the case. The defendant (imam) was accompanied by his eldest wife. The court barray was full. Earlier, both parties had deposited the “fine” of Le 250,000 (approx. £25) with the clerk, who called the parties to the front bench of the barray.

¹⁹² Personal interview with Chief Ya Alimamy Gbonkolenken Thoronka N’Maka in Freetown, 6 September 2017.
Asked whether the clerk had taken their statements, both parties answered in the negative. The chief then suggested to the clerk that he should write their statements as they narrated their stories in open court.

The *barrays* maintain a compendium of court documents such as summonses, statements, notes of proceedings and judgments. The documents are written in English, even though all the proceedings are done mainly in *krio* (Sierra Leone’s *lingua franca*) or in the indigenous languages of the chiefs and parties. When statements are recorded from litigants by the clerk or chairman, it is done either in-camera, before the actual trial begins, or during the trial as part of an examination-in-chief. Whichever method is preferred by the court *barray*, the statement will be read in open court during the trial, and the maker – either complainant or defendant – will be required to append their signature by way of right thumbprint, to validate their statement. This procedure of validating statements mimics formal court proceedings, especially in criminal litigation.\(^{193}\) With regards to witness statements, however, they are always required to be made in open court, in full view and hearing of the parties and court officials. Nevertheless, the requirement for validation by right thumb-printing remains the same.

Statements are written in an exercise book or ledger, properly marked for the case. Where exercise books are used, there will be two: one each for the complainant and defendant, and their respective supporting witnesses. Statements are written in English invariably using direct quotes from local languages such as *krio*, *Temne*, *Mende*, *Limba*, and *Loko*. When they are read over, there is translation from English to the local language the statement was taken. The clarity of the statement and structural or grammatical accuracy would depend on the level of education of the statement taker. Statements are kept by the court indefinitely. They remain in card boxes in the chief’s house and can be accessed with the permission of the chief. Completed cases are archived the same way in ledgers and notebooks stored in card boxes.

\(^{193}\) See for e.g., Sierra Leone Criminal Procedures Act, 1965.
The deputy imam, as complainant, was the first to give his testimony to the *barray*, restating his accusation that his boss, the defendant, had slept with his wife. His statement was marked by sporadic interruptions from the clerk, who wanted to write every word. At the end of the statement, the chief inquired of the defendant whether he had any questions for the complainant. The imam responded that he had only one question: did the complainant see him having sexual intercourse with his (the complainant’s) wife? The complainant responded in the negative. The chief interjected with a question of his own: “When you say you did not see this man with your wife, why are you now accusing him?” The complainant calmly replied, “my wife told me”. After his testimony, the chief instructed the clerk to read the complainant’s statement and answers to the questions in open court and, after his confirmation that the statement was accurate, the complainant was asked to append his thumbprint, at the bottom margin of each page. This process was repeated for the defendant. At the end of his testimony, the complainant, deputy imam, was asked to cross-examine the defendant but opted not to do so. The imam validated his testimony by thumb-printing the recorded statement.

Then it was the turn of the witness. Chief Pa Alimamy asked the clerk to administer the “oath” to the only witness – the wife of the complainant – before she could testify in the case.

**Oath-taking Process**

The oath-taking process highlights a critical aspect of the procedural adaptation of *barrays*. It typifies both the hybridity and improvisation of *barrays*, incorporating as necessary, known procedures from formal courts, while retaining an authentic flair that resonates with the belief systems of its clients. In English Common Law (as in other jurisdictions), taking an oath during judicial proceedings is perhaps as old as the proceedings themselves (White, 1903). Simply, it is a method for securing a guarantee of truth. Sierra Leone’s plural legal system makes provisions for three possibilities, according to the Oaths and Affirmations Ordinance 1930 (which amended the Official...
Oaths Ordinance, 1923). First, a subscribed Christian or Muslim oath on the Bible or Quran. Second, an affirmation for non-Christian or non-Muslim witnesses. Third, the sasa or traditional form of oath-taking, in recognition of Sierra Leone’s legal pluralism.

The sasa is unlike oaths based on Christianity and Islam, or on Affirmation, which require a standard text and, in the case of the former, holding the Bible and Quran respectively and placing them on foreheads or kissing them. Instead, it embodies an assortment of symbols, ceremonies and enchantments that are both not readily available, and require a ‘specialist’ to prepare and apply. While all three forms are applicable throughout Sierra Leone, the official courts rarely employ the sasa or traditional form of oath-taking. As in other jurisdictions, lying under oath or perjury is punishable. In Sierra Leone, it is imprisonment for 3-6 months under the Perjury Ordinance of 1913 (amending the Perjury Ordinance of 1898).

The rarity of sasa oath-taking is not because of a lack of demand; rather it may be attributed to two factors. Firstly, there is lack of appetite in the judicial leadership to make space for the mechanics necessary for the sasa, such as engaging a ‘spiritual’ third person who will administer the oath, as well as the costs, time and trouble to put together his or her accoutrements. Secondly, the influence of Christianity and Islam has meant that the vast majority of litigants profess belief in one of them, so that the sasa now fades into disuse in the formal courts. This is so despite many of these litigants still believing in the ‘power’ of the sasa.

Like in other aspects, the barrays have cobbled together swathes of procedures and processes from official courts, including oaths in judicial procedures, and have adapted them to fit the needs, aspirations, and desires of Freetown’s urban population. Recognising the growing religious (Christian and Muslim) sentiments on the one hand, and inclination to cling on to customary beliefs like the sasa on the other, the barrays

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194 See Oaths and Affirmations Ordinance 1930.
195 The last known proceeding, in which the sasa (also known as “gbom sweh”) was administered to a witness in any court in Freetown occurred in 1987. Interview with the Master & Registrar, Freetown 5 October 2017.
196 Personal interview with the Hon. Justice Nicholas C. Browne-Marke JSC, in his chambers in Freetown, 29 August 2017.
allow both religious and traditional oaths to be administered successively (instead of alternatively). Our present dispute between the imam and his deputy exemplifies this adaptability. At the barray, Chief Pa Alimamy invited the witness to come forward. The process continued as follows:

Chief: Are you a Muslim or Christian?  
Witness: Muslim  
Chief: Please place your right hand on the Quran and repeat after me.  
Chief (with Witness repeating): I swear that the evidence I shall give in this court will be only what I saw, heard, or witnessed, and nothing else. And if I have come to deceive the barray, may the power of the Holy Quran attack me.  
Clerk: Hold the Quran with both hands and touch your forehead with it.  
Witness: Okay sir.  
Clerk: In our barray, we believe in God and in the Bible and Quran, but we have seen people swear to them and still lie, without any immediate consequences. For this reason, we insist on our traditional way of taking an oath, by invoking the spirits of our ancestors in this barray.

The clerk emptied on the table the contents of a black plastic bag, draped in a red and white satin. The unwrapped parcel revealed a small calabash containing several cowrie shells, assorted brightly coloured beads, a goat horn, and cow tail. There were gasps in the barray as the clerk moved around displaying the contents of the calabash. As he returned the calabash safely on the table, next to where the witness was standing, he took out a sachet of water from a bundle under the table and, together with kola nut, handed it to the witness. He asked the witness to bite the kola nut, then hold the calabash with her right hand, the water with her left and to repeat as follows:

Clerk (with Witness repeating):

I “Isatu” am here to testify in the case between “Pa Jimoh” and my husband. If I say the truth, let this water and kola nut grant me good health and long life. But if I am here to please one person by saying what did not happen, may this water and kola nut, together with the power of the sasa, become my damnation. As the water and kola nut travel through my body, may they deposit unimaginable illness that no doctor or herbalist can cure. May the air I breathe which is mixed with the sasa cause every part of my body to swell up and may it cause my family and loved ones to run away from me as if I am a living corpse.
The barray was eerily quiet during this entire process. The graphic detailing of the consequences of lying had a profound chilling effect even on non-witnesses that it added to the solemnity of the occasion. It became clearer why barrays do not admit as witnesses, certain categories of persons such as children and pregnant women. In a case of defamation at a barray in Adonkia, for instance, the chief refused to ‘swear in’ the defendant’s witness because she was with child. The chief explained that the power of the sasa was such that it would harm an innocent child should her mother decide to lie in this case.\footnote{Case code: SMKK-POO-123.}
Sasa oath-taking is idiosyncratic to each barray. Their fearsomeness has resulted in attempts by potential witnesses not to subscribe to it. At the Wellington Local Court Barray, for example, the defendant’s witness, a local pastor, objected to being sworn by traditional means, because he complained that it was against his religious beliefs. The supplemental oath process in this court involved a deliberately tattered, brownish sac, which is worn by the witness (as shown in the photo above). The torn nature of the bag, is believed to bring upon the oath taker incurable illness, beginning with swollen feet and eventual paralysis. The barray conferred with both complainant and defendant, who must agree on the mode of the oath. In this case, while the defendant argued that the bible was sufficient, the complainant insisted on the additional, traditional method. Because there was no consensus, the court had to decide, even if by compromise. It decided that the witness would swear by the bible, and water and kola nut, but not wear the sac. Explaining his decision, Chief Ya Alimamy noted that nobody should have an objection to drinking water or eating kola nut, because it was both traditional and a “normal way of life”. The complainant and defendant accepted the decision, and the witness was sworn accordingly.198

In our imam case above, after the oath had been administered to the witness – the wife of the complainant – she was asked for her testimony. She confirmed that several months back, when her husband travelled, the imam had come to their house a few times to check on her. She explained that during one of those visits, he attempted to sleep with her. Upon her husband’s return, she narrated the incident which led to the court action.

Chief Pa Alimamy turned to the defendant and inquired whether he had any questions for the witness. The imam, whose head was bowed throughout the witness’ testimony, stated to the court that “Allah will judge between this woman and me, but I have no questions for her”. The chief retorted, “Allah is for all of us. We will be judged by our deeds in this life”, to which the clerk responded “Inshallah!”. With no questions, the chief thanked the witness, instructed the clerk to give her the transportation fee (which was deposited by both parties during the initial stage of the proceedings), and asked

198 Case code SMKK-POO-148
her to thumbprint her witness statement before taking her seat. He adjourned to the following Sunday and promised to deliver his judgment on the matter between the imam as defendant, and his deputy as the complainant. This was Monday.

**Judgment**

The procedure between final adjournment and the pronouncement of judgment is invisible to the public. It involves discussions between the chief (or chairman) and clerk about the testimonies already recorded from the parties and their witnesses. In focus group discussions with chiefs, who all have established *barrays* in the Western Area, they explained that in the conference with clerks, the presiding chiefs (or chairmen) would note the differing versions presented by the complainant and defendant in the matter, without attaching any particular significance to their veracity. Instead, they would consider how the parties’ statements compared with the testimonies of the witnesses, paying particular attention to any corroborations or contradictions. Witness statements are the single-most important barometer *barray* officials employ to arrive at decisions. It is for this reason that intricate procedures, such as the administration of the oath, accompany the participation of witnesses.

On the Sunday, the court was expectedly full of worshippers and neighbours alike, intrigued by this most unusual case, involving two of their revered leaders. As expectant as everyone was to hear the verdict of the court, there was an air of inevitability among the keen followers of this case. Haja Sallay, one of the elders at the mosque, where both parties to this action belonged captured the mood at the *barray* when she remarked: “This case is as unnecessary as it is disgraceful. It should not have gone this far. Now, this will spoil the reputation of our mosque in the community.”

The clerk called the case and invited both parties to come forward. He opened his ledger and started reading the ‘judgment’ of the court *barray*. It was a long statement, eleven pages altogether. It included the verbatim statements of the parties and witness, punctuated by the occasional rhetoric question to the parties to confirm their
testimony. Then he concluded by declaring that the court had found against the defendant. There was a vocal response from the crowd that had gathered at the barray that Sunday morning, more out of repugnance than surprise. The defendant was expressionless, while the complainant struggled to hide a broad smile. The chief declared that if there was no ‘appeal’ from the defendant within 14 days, the barray will return the costs of the complainant while with distributing between the barray and the winner (complainant) the payments of the defendant.199

After he left the court barray, a dejected imam, told me in an interview, that he felt the barray was prejudiced against him from the beginning of the matter. He cited a close ‘relationship’ between the clerk of the court and the complainant, whom he said was karamokor (Arabic/Koranic teacher) to the clerk’s 14-year-old daughter. He insisted that his refusal to cross-examine the witness was in response to what he perceived as the barray’s bias, and not because he could not think about questions. He confirmed that he was going to ‘appeal’ against the decision to another local court barray.

Figure 17: Written verdict of a barray. Source: Kissy barray, 2017.

199 See next chapter for a detailed description and distribution of payments at the barrays.
Appeals

The term ‘appeal’ is used loosely with reference to proceedings at the barrays. It describes two distinct processes – vertical and horizontal – employed by litigants unhappy with barray judgments. The first (the vertical appeals process), is a straightforward petition to a higher authority, the Tribal Headman, who is the nominal head of all barray chiefs of his tribe in the Western Area. Although such appeals are rare – of the 267 completed cases I observed, only four went to the Tribal Headmen on appeal – they represent a real check on the conduct of local court barrays. Often, chiefs and chairmen show off publicly how few appeals have resulted from their decisions, as a demonstrable sign of the faith and satisfaction litigants have in the way they dispense ‘justice’. In one instance, a section chief was suspended by the Tribal Headman, following several successful appeals from his local court barray decisions.200

Vertical Appeals

Vertical appeals – like traditional appeals – begin when a party, unhappy with a decision of a local court barray, petitions the Tribal Headman, by depositing a bora or token of respect, on an average Le 50,000 (approx. £5). Immediately, the Tribal Headman directs his clerk to write a letter informing the barray chief concerned about the appeal, with instructions to appear before the Tribal Headman at a stipulated time (usually within forty-eight hours), together with all the documents relating to the case. The letter is written on the official letterhead of the Tribal Headman and carries his signature and stamp. The letter will further require the chief not only to stay ‘execution’ of the judgment of the local court barray pending the determination of the appeal, but to bring to the Tribal Headman all the monies paid by the parties. Upon receipt of the letter, the local court barray chief will act accordingly and attend the Tribal Headman’s barray as instructed, with all documents and costs relating to the case. In this instance, the chief is considered for all intents and purposes the respondent, as appeals are brought specifically against the local court barray chiefs for deciding cases in a

200 Interview with Limba Tribal Headman at his home in Kissy, Freetown on the 20 August 2017.
particular way. For this reason, the winning parties from the original lawsuits typically attend only as witnesses.

The composition of the appeals panel depends on the ethnic character of the parties in the original case. If both parties are of the same tribe, then the Tribal Headman of their tribe will preside, together with any number of senior chiefs he appoints for that purpose. However, if the parties are from different tribal groupings, the Tribal Headman who receives the appeal is under obligation to invite a second Tribal Headman representing the tribe of the other party. Both Tribal Headmen will then elect a third Tribal Headman from a different tribe and all three of them will co-preside. They will be assisted by the clerk and process servers of the host court barray. Chief Matthew Young, Tribal Headman for the Mende ethnic group and secretary of the Western Area Tribal Headmen Association, explained that this procedure for the composition of the appeals panel was developed as part of an agreement reached by Tribal Headmen representing all ethnic groups in the Western Area. The agreement further allows for inter-tribal dispute settlement, so that neither the tribe of the court barray chief nor that of the parties impedes adjudication.201

Appeals before Tribal Headmen are a combination of judicial review where the documents relating to the appealed case are examined, and retrial, in which fresh evidence may be provided. While witnesses are typically not allowed to testify during the appeal process, the panel may inquire into any matter – even if extrinsic to the original case. More importantly, appeals in this sense are processual in nature; they are based on a contended infringement of the procedures and processes of barray adjudication, such as the failure of witnesses to sign their statements, or refusal to admit a party’s witness. The appeals panel will decide after reviewing the documents of the lower court barray and, where necessary, after hearing from the appealing parties. Where they find in favour of the chief, the panel will confirm the judgment of the local court barray and this will terminate any future litigation. Conversely, where

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201 Interview with Chief Matthew Young, Mende Tribal Headman in Freetown, 19 October 2018; see also Chapter Four for further discussion of inter-barray cooperation, which creates de facto practices that make barrays appear more predictable and systematic.
the appellant is successful, the panel will overturn the decision of the local court barray and return any costs paid to that court to the new winner – the appellant. Vertical appeals are not common. During fieldwork, I only witnessed one such appeal at the barray of King Alhaji Hassan Bangura, Temne Tribal Headman.

**Horizontal Appeals**

As I stated earlier, appeals are not always lineal, from a lower court barray to the Tribal Headman. In fact, most cases where litigants rejected the decision of local court barrays and indicated their willingness to ‘appeal’, as in the case of the imam, they would end up in a horizontal process bearing the same name. This is a misnomer, as what is called ‘appeal’ in this sense involves a retrial of the case (at the instance of the disgruntled party) before another barray of equal jurisdiction. It is more frequently used by litigants – 83 cases of the 267 observed went down this route. The process consists of the displeased litigant instituting a fresh action against the successful litigant before another barray, paying afresh all fees and charges associated with a new matter. Unlike a normal appeals process, there is no exchange of documents between the two barrays.

Thus, the defining distinction between a vertical (to the Tribal Headman) and horizontal (to another chief of equal jurisdiction) appeals process is the stay of execution. So, while in the former, the original barray is ordered to suspend the payment of any fees to the successful litigant, this is not the case in the latter. Therefore, if an unhappy litigant intends to ‘appeal’ by instituting a fresh action at another barray, it will not stop the first barray from paying the judgment costs to the successful litigant. In addition, evidence of previous litigation history on the same or similar facts is instructive but not essential. The new barray is not bound to countenance the evidence adduced in the first barray.

So, when the imam decided to bring a fresh case (through the horizontal ‘appeals’ process) against his deputy, he understood clearly that he would not only lose all the
fees he had paid at the first court *barray*, but that he would also have to disclose to the new local court *barray* at Wellington the fact that he had lost a similar case. Regardless, a determined imam (now as complainant) took out summons against his deputy and his wife (now both defendants) for “defamation of character”. He alleged that the defendants falsely accused him, with the sole purpose of denigrating his reputation. He paid Le 45,000 (approx. £4.50) as summons fee to initiate proceedings. When the defendants arrived at the second *barray*, upon invitation by the process server, they were asked by the chief, Ya Alimamy, to state whether they wished to contest the complainant. They both explained that they had received judgment from another *barray* on the same dispute and would challenge the complainant’s version of events. They matched the summons fee of Le 45,000 each. As this was considered a new case, the parties were required to place bets or appeasing fees, which they set at Le 400,000 (approx. £40) each, plus a fine of Le 100,000 and a *bora* or compensation for the chief’s time of Le 100,000.

After depositing the total sum of Le 645,000 (approx. £64.50) each, Chief Ya Alimamy then asked the complainant and defendants about their witnesses. The complainant told the *barray* he did not have a witness, while the defendants explained that one of them served as witness in the previous matter, which was why she had been added in this present case. Chief Ya Alimamy informed the complainant that the case would not proceed in her court if he did not have witnesses. Furthermore, without witnesses, she could not ask for the file from the chief of the first case, because there would be nothing to consider. She concluded that the parties should return the next day and, if the complainant still had no witnesses, she would discontinue the matter. The imam was anxious at the pending collapse of his case as he conferred with his eldest wife who was by his side all this time.

The following day, with still no witnesses, the chief explained that the complainant had wasted the court’s time. Therefore, he would forfeit his summons fee, the fine, and the *bora*, totalling Le 245,000, but his betting fee of Le 400,000 was returned. The defendants, on the other hand, received their full costs.
The decision not to proceed with a case because of the lack of witnesses is the default position of *barrays* in most cases and, certainly, for (extra)marital disputes. However, I also witnessed seven cases that were admitted for adjudication even though both litigants stated that they did not have witnesses. Four of the cases related to debts and the other three were contract for services. In these instances, the parties were treated as fit and proper witnesses, upon whom the oath could be administered. The judgments of the *barrays* in all these cases were based on the statements of the parties and, particularly, the cross-examination from the chiefs. These examples remain the only observed occasions when litigants’ testimony is preceded by oath.

**Conclusion**

This chapter has described the procedures and processes of *barrays* in the Western Area, mostly adopted from formal and official customary courts, and adapted by the *barrays* to fit the particularities of this urban part of Sierra Leone. Thus, procedures and processes akin to other forums such as magistrates’ courts, local courts in the Provinces, and the police, have undergone a marked adaptation, to promote the panache and purpose of local court *barrays*.

I began the chapter with a discussion about the importance of procedures – as opposed to substantive law – in determining not only how people consider a dispute settlement process as just, but also how they conceive of justice. By being the tangible exposition of a trial or other judicial process, procedures also implicate other aspects of dispute settlement forums such as accessibility, participation, and costs. But as observed elsewhere (see for e.g., Nader, 1969), procedures in forums such as *barrays* are dependent on both the type of cases and the kinds of disputants. In other words, depending on the characteristics of the disputants and the nature of the disputes, certain substantive elements of (*barray*) procedures will vary. For example, the specific procedures for a ‘disputed summons’ differ from a ‘report’ case. Yet, there are constant features of procedures that permeate through all cases and *barrays*. For this
reason, this chapter has described in detail the importance of standing (*locus standi*) and the different ways of maintaining a dispute, to analyse the procedures of dispute settlement in *barrays* that cut through different categories of cases.

Furthermore, the chapter has sought to shed light, as well as challenge the narrative that forums such as *barrays* are popular because of the lack of formality and complex procedures. I have discussed the literature on popular justice and alternative dispute resolution, for instance, to highlight some of the criticisms of formal litigation processes. Court procedures have been said to become synonymous with bureaucracy; they are seen as instruments of oppression and discrimination, creating opportunities for elite capture (see for e.g., Abel, 1982b; De Sousa Santos, 1977). As a result, ‘alternatives’ such as the SFCBs, or other ‘popular justice’ forums have grown in popularity among the rural masses and urban poor, because of the lack of formal procedures and documentation (Merry & Milner, 1995).

It is in this sense that I have discussed the *barrays’* adoption of the formality of legal documentation and record-keeping. From summonses to written statements, and from the performance of oath-taking to thumbprinting, the chapter has detailed the documentation and adaptation of formal court processes. This is even more remarkable for a community dispute settlement forum, such as the *barray*, many of whose headships – chiefs – are illiterate in English, as are its clientele. Throughout this chapter, I have sought to establish the importance of adapting procedures and performances to build the authority, recognition, and legitimacy of the *barrays*. At the same time, this chapter has emphasised the hybridity and eclecticism of the *barrays*, a thread that runs through the entire thesis and is continued in the next chapter.
Chapter Four
The Justice Marketplace: Following the money at the Barrays

Introduction

Figure 18: Sierra Leone currency. Source: Alamy stock, 2021.

This chapter examines the materiality of money in the workings of the barrays and how it helps to explain their success. It explores the impact not only in structuring the barray system and shaping relations both within barrays and between barrays and other institutions; but also, the role of money in reinforcing the legitimacy of, and attracting litigants to, barrays. In particular, by funding barrays' continued existence; by enabling the collaboration of parties (for example police and witnesses) on whom barrays' effectiveness relies; and by other forums (barrays or chief courts outside of Freetown) or the police accepting the barrays' money and implicitly acknowledging their legitimacy; this chapter argues that how money features in cases at barrays not only explains the attraction of litigants, but also demonstrates how justice is understood and (re)produced in practice.
The literature on the role of money in similar courts elsewhere in Africa is sparse.\textsuperscript{202} While social scientists have studied unofficial courts in urban areas, it is revealing that they have neglected money and the way it features in the workings of these courts. de Sousa Santos (2006), for instance, extensively discusses the formation and operations of the “heterogenous state” – that is, “multiple microstates existing inside the same state…[and] characterised by uncontrolled coexistence of starkly different political cultures…” (p. 44). The disjuncture so created, according to de Sousa Santos, gives rise to differing legal orderings, in complex, often contradictory formations, so that as they interact and influence each other, they lose their individual autonomy. And it is in this environment, that new formations emerge that he describes as legal hybrids. Discussing in particular, two such legal hybrids in the community courts (successors of the popular courts) and traditional authorities, de Sousa Santos describes the establishments of these dispute resolution forums which draw from different political transformations and legal cultures. Yet, this important in-depth empirical study which provides details about the workings of community courts, for instance, including court procedures, venues, constitution, documentation and language, fails to examine the role of money.

Similarly, in Burman & Scharf’s (1990) discussion of informal courts in the townships of Cape Town, money or its role does not feature centrally as one of the reasons why people resorted to street committees and people’s courts. Even where money is mentioned in these forums, such as where payment is required to compensate for damaged property, the discussion is only peripheral (pp. 710-711). It is in this vein that this chapter contributes to knowledge of how money features in cases at unofficial dispute forums, and how it helps to explain their appeal, as well as how litigants before these forums conceptualise justice.

The chapter is divided into two parts: the first section describes the financial structure of the *barrays apropos* the transactional relationships with different parties, and how this transforms the *barrays* into a broker. It explains who pays into *barrays*, when and

\textsuperscript{202} See Harrell-Bond, (1975) as an example of the few works that engage with money in cases at informal or unofficial courts. See also, Harrell-Bond, Howard, & Skinner, (1978).
how payments are made or received, and for what purposes. In so doing, this section presents payments to and by the *barrays* as clear and institutionalised. The second section examines how transactional relationships described above explain the success of the *barrays* in three ways. First, it analyses the role of money in maintaining the *barray* system, such as enabling *barrays* to establish internal and external connections. Through this, it provides a lens for understanding how the *barrays* work, including relations with litigants, co-*barrays*, and external actors. Secondly, it examines how money is used to showcase transparency and participation, through certainty and predictability of financial outcome. Finally, it analyses litigants’ attraction to *barrays*, drawing on comparisons with magistrates’ courts to examine the materiality of money, being not simply about expense (monetary cost) but also about minimising costs associated with delays and uncertainty, and maximizing reputation enhancing benefits.

Using empirical analyses, these sections will therefore, refute the assumptions of much access to justice literature that unofficial and non-formal forums are more attractive because they are invariably cheaper and that expense is a decisive consideration for this choice (see for e.g., Isser, et al., 2009; Sandefur & Siddiqi, 2013). Furthermore, it will challenge the assumption in rational choice approaches to dispute resolution, which tend to downplay the uncertainty and complexity (and thus overestimate calculability) of legal disputes. Instead, the chapter argues specifically that monetary transactions – quantum, regularity, certainty, gains and losses of payments – drive tactical choices of action, equally (or even more than) rational choice of strategy, institutions, and jurisdictions.

**Financial Structure of the *Barrays***

The *barray* occupies an important place in the socio-legal and economic lives of the inhabitants of this urban part of Sierra Leone. At its heart is a well-defined and coherent financial structure (as shown in the diagram), albeit with an ununiformed payment schedule. Thus, while different *barrays* may charge dissimilar fees, there is consistency in both the rules and purposes of payments. As I described in Chapter
Three, cases before the barrays typically commence in one of three ways: barray-initiated summary action, complaint-in-person, and referrals. However, it is only in the ‘summons’ method – one of two types of complaint-in-person (‘report’ being the other) – that the complainant is required to pay fees to the barray, to initiate litigation. Summons fees vary from barray to barray, ranging from Le 35,000 (approx. £3.50) to Le 75,000 (approx. £7.50), and disaggregated into at least three separate costs, namely, ‘complaint’ fee, ‘bora’, and ‘service’ or ‘police transportation’ fee.203

A ‘complaint fee’ represents the amount an aggrieved person pays to register their grievance. Bora is a Temne word for a traditional token, in cash or kind, presented to a chief or respectable person, as a greeting or introduction to seek their attention. Like the complaint fee, the bora is retained by the barray as a ‘professional service’ fee, for

203 These costs may be given different names in other barrays, but they essentially serve the same purpose. Examples of other names used are ‘Chief Report, Service, and Police Transport’ fees; ‘Complaint, Bora, Services, and Bench’ fees; and ‘complaint, bora, services, and transportation’ fees.
accepting the complaint and preparing the summons. Finally, the ‘service or police transportation fee’ is the amount set aside for facilitating communication and contact with the other party (defendant).

This component of the summons fee (‘service or police transportation fee’) is deducted as soon as the summons is paid and given to a process server (usually a member of the Sierra Leone Police or a barray-appointed messenger) to facilitate service of the summons to the other party (defendant). Often, ‘transportation’ fee does not require paying an actual fare; the defendants will be within a few minutes’ walk from the barrays. That the service fee is handed over to the process server immediately and in the presence of the complainant – often, complainants are directed to subtract the service fee and pay to the server directly – is significant for two reasons. First, the direct payment incentivises the server, resulting both in the instantaneous delivery of summonses, and in enhancing the reputation of the barray as an efficient system. Aggrieved parties are gratified not only because they do not have to wait long to know whether or when their disputes will be adjudicated, but the immediacy of the action also conveys an understanding of the complainant’s urgency for a resolution. Second, by directly paying the process server, the barrays demonstrate a kind of transparency, which also incorporates participation and familiarity discussed in detail later in the chapter.

The barrays operate on a prepaid, equal payment system, where each party to the dispute contributes an equal amount which is deposited with the adjudicating barray before the start of the trial. When a defendant is served or informed about the complaint, they are required to match the summons fee paid by the complainant as an indication of their readiness to challenge the matter in a trial. Through payment of the ‘return summons’ or matching summons fees, the defendant is granted standing for the pretrial stage, where rules are set, including the costs of the litigation process. The payments may be divided into two categories: procedural – costs associated with

204 Personal interviews with Ya Hawa Bangura, businesswoman and litigant at the Kissy Dockyard Barray on 3 April 2018; Baby Sesay, trader, at Cline Town on the 11 May 2018; and Amadu Conteh, small shop owner, Wellington on 6 March 2018.
facilitating the case such as, chiefs’ sitting fees and witness costs; and substantive – fees relating to the outcome, that is success or failure in the matter under consideration. The former (that is, procedural fees) comprise payments to the barrays for adjudging the case and these payments are not refundable regardless of outcome. In addition, the parties will pay for each witness they call to testify, even if they both rely on the same persons. The latter (substantive fees) deal with two sets of payments that represent a form of security: a pre-imposed fine or kassi paid by each party for the infraction complained of, and a bet or appeasing fee that will be won by the successful party. The significance of the bet or appeasing fee as part of the payment structure in barrays is analysed further in this chapter.

As they each pay fifty percent of the litigation costs, parties can and do negotiate how much they pay in, until a consensus is reached. This process of negotiations, which may take days, imbibe a sense of participation in, and ownership of the process. The barray officials (mostly chiefs, chairmen and clerks) play the roles of both co-negotiator – bargaining with the parties about how much to pay, and mediator – ensuring that the two parties reach an agreement on all payments, without which there will be no trial. Thus, while it is less so for a ‘counter-summons’, all other payments must have the expressed agreement of both parties, and these amounts must be paid to the barray before the case proceeds to trial. The negotiations provide a confirmation of the process so that when parties eventually pay before the trial commences, their decisions are informed and consensual. Save for payments to the process server and witnesses who testify during the trial, the rest of the distribution of funds will take place after the determination of the case.\(^{205}\)

At the conclusion of the matter, regardless of other orders of the barray such as public apology, the real consequence is that one party will lose their entire deposit, which is then distributed between the winning party and the barray. Thus, as the diagram above shows, the losing party will forfeit the summons or ‘return-summons’ fees paid to initiate

\(^{205}\) The other exception is bora paid to other chiefs to facilitate the trial. The barrays will either distribute the money immediately after judgment if the losing party indicates s/he will not appeal against the decision or wait after 14 days and if there is no notice of appeal to the Tribal Headman. See also Chapter Three for a description of the “Appeals” procedure at barrays.
or respond to the action, the pre-imposed fine or *kassi* and, more significantly the betting fees. Conversely, the winning party will receive their full fees paid to initiate or respond to the action, the pre-imposed fine or *kassi* and, crucially, both betting fees. The *barray* will retain the loser’s fees to initiate or respond to the action less transportation fees, sitting fees from both parties, and the pre-imposed fine or *kassi* of the losing party. The arrangements above describing how and what money is won, lost, and retained by litigants and *barrays*, depict an organised, predictable system of justice, whose implications are analysed in the subsequent sections. More importantly, by detailing monetary transactions in *barray* cases, this section has contributed to knowledge of how money features in unofficial, non-state courts like *barrays*.

**Toward institutional recognition and legitimacy**

By retaining about thirty percent of the total deposits of the parties, *barrays* have created an effective business model, outside the purview of the state. This powerful untold story is complemented further by the fact that the winning party can claim not just their expenditure, but also a minimum profit of an additional twenty percent. This, I argue, provides a potent incentive for would-be litigants, on top of the other benefits that this neighbourhood court system offers. In this sense (and as dictated by rational choice), the possibility of financial gain or profit, incentivises litigants to choose the *barrays* as courts of preferred destination.

At the same time, for the *barrays*, the money from adjudicating cases delivers several possibilities. Perhaps, most significant, payments to and by the *barrays* constitute a dual focus. They represent on the one hand, a form of exchange – as in a social contract – which embodies not only paying a fee to (or in the case of the police and external chiefs, accepting a fee from) the *barrays* for a service, but also buying into a system of justice. This, in turn, implicates our understanding of institutional recognition and legitimacy. On the other hand, an examination of the inflow and outflow of money from adjudication at the *barrays* provides a lens for comprehensively understanding the dynamics and connections of the *barray* system. This includes an examination of
the significance of different payments such as bets, transportation fees and bora, to promote transparency, predictability of financial outcome, and community participation, which all contribute to the popularity of the barrays. In the following three subsections, these possibilities are further examined.

**Maintaining existence and creating connections**

In the first place, money through cases, funds both the continued existence of barrays as well as their operations. Barray chiefs and officials will often say openly that they are not employed or paid by the government; it is their fulltime job. The money barrays receive not only covers their daily sustenance but helps them recruit staff such as clerks, police, and process servers – a group of trusted lieutenants, each prepared to play their role to keep the money flowing. A barray that cannot maintain staff – much like any other institution – will cease to exist. In effect, the money barrays receive helps them build institutions and relationships, which in turn, enhances their effectiveness and attracts more cases and more money. In a country like Sierra Leone, a regular stream of income as provided by the barrays, becomes not only a lifeline, but something that must be protected at all costs.

The case of Ya Alimamy, the female section chief (discussed in Chapter Two), who sued eight individuals, including her twelve-year-old daughter for bewitching her court, is illustrative of the importance of remaining in the barray business. In that case, Ya Alimamy was convinced, after her court had gone for weeks without receiving any new cases, that it was the work of sinister forces. The sudden blockage of the cashflow must have created financial shock to her barray and threatened its very survival. Hiring the ariogbo (witchfinders) to find the culpable parties could be described as a sign of desperation, topped only by the accusatory inclusion of her twelve-year-old daughter. That she was prepared to take this drastic step demonstrated the high stakes involved.

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206 There are a few examples of chiefs and other officials who run businesses on the side, for example, as traders. In some barrays, the clerks are also fulltime student relatives of the chiefs, who carry out barray functions during in the evenings and weekends.

207 Case code: SMKK-WC-005; see also pp.112, 148.
in preserving an economic enterprise as much as her livelihood. In this case, the issue of money belied the optics of a chief accusing members of her community, including her young daughter of witchcraft. It also amplified the simmering undercurrents which revealed the double-edged nature of money in the operations of *barrays*. I learnt, for example, after the case was discontinued because the key witness, the *ariogbo*, refused to attend the proceedings, that Chief Ya Alimamy had a fractious relationship with her community after delivering several dodgy decisions. As a result, disputants collectively agreed to take their cases to other chiefs and by so doing, deprived Ya Alimamy of this important source of income.\(^{208}\)

Thus, with the benefits of receiving money from litigants, come the demands of *barrays* for efficient, effective, communally acceptable forms of justice, the failure of which will result in abandonment. Weaponizing money in this way to secure accountability and influence the constant negotiations of authority, recognition, and legitimacy, lends credence to the dynamism and success of *barrays*, a theme that runs through the rest of the thesis.

The second possibility money provides the *barrays* is the ability to build strategic networks and relationships that enhance their reach and effectiveness. While some of these networks are internal to the system, others are external to it, including cooperation with state functionaries such as local government councils and the police (discussed in the next chapter). Internally, the financial administration of individual *barrays* remains the exclusive responsibility of the chiefs or their appointees; there is no known backdoor payment to senior chiefs like the Tribal Headmen.\(^{209}\) Nevertheless, chiefs across tribal assemblages and geographical locations cooperate through several loose networks to preserve the *barray* system, by way of referrals, requests for information, and outsourcing of specific services. Often, this cooperation requires, as

\(^{208}\) Personal interviews with Salamatu Dumbuya, neighbour and former litigant on the 4 April 2018; Eshaka Kargbo neighbour and former client on the 4 April 2018; Alpha Kamara former *barray* clerk on the 4 April 2018; and Ya Duroh Bangura, defendant, and neighbour on the 5 April 2018.

\(^{209}\) Occasionally, chiefs have admitted to buying ‘gifts’ for the Tribal Headman, as a way of ‘being remembered’, but this is not part of a regular obligation. Indeed, there were many chiefs who had not spoken or visited their Tribal Headman for more than a year.
shown in Chapter Two, submission to each other’s jurisdiction and the antecedent financial and other consequences that follow.

The usefulness of cooperation is understandable – there are more than six hundred barrays\(^{210}\) in this urban area of about one 1.7 million people – and with seeming ease of access and fluidity of population movements, only some sense of collaboration can safeguard the whole system. Besides, there are no restrictions – tribal or geographical – about where to institute or defend an action at the barrays.\(^{211}\) Enter the realm of invisible alliances, fudges, and dialectic interactions, conjoined by barray money. As Mr Alimamy Kamara, chairman at the Pamaronko Court Barray explained, litigants recognise the difficulties of maintaining relationships across barrays, and all too often attempt to exploit them, so that barrays would need to find a way to collaborate across neighbourhoods and tribal boundaries in the Western Area.

When you get a case and one or both parties are from a [distant] neighbourhood, you cannot just ask them to come to your barray. How do you find where they live? How will you know who you are inviting? So, I will prepare the summons [indicating the details of the party to be served as well as the charges], put it in an envelope together with a bora, and address it to the chief [of the barray] in the area. The bora is to show respect; to inform the chief that one of her subjects has been summoned to my court. The chief will go all out to make sure the person attends to my call.\(^{212}\)

Using money in this way is significant for two reasons: first, it aids in unlocking an otherwise difficult problem of unhelpful jurisdictional rivalry by offering the other chief a share of the proceeds that they would have gained, only now for doing nothing more than facilitating attendance. Second, and perhaps unintendedly, construct and strengthen the network of barrays and their grip on present and prospective litigants.

\(^{210}\) By contrast, there are only 12 magistrates’ courts covering the same area as of August 2020 (written communication with the Sierra Leone Judiciary, 3 June – 18 August 2020.

\(^{211}\) See Chapter Three. A party may appeal to the Tribal Headman of their tribe (vertical appeals) or institute a rival action in another barray of their choice (horizontal ‘appeals’) should they disagree with the original decision.

\(^{212}\) Personal interview with Mr Alimamy J.B. Kamara, Chief Ya Alimamy Sheriff Fofanah Local Court Barray Chairman, at Calaba Town, Freetown on 26 July 2017
If the role of money in creating and strengthening internal networks is openly discussed, the connections to external relationships are often guarded. That money plays a part in shaping these relationships is undeniable, even if the extent is contested. For a start, without money there will probably be no barrays to engage with. Furthermore, it is evident that through the ‘service or police transportation fee’, often paid to the Sierra Leone Police personnel, the barrays succeed in involving this important branch of the state in their processes. As I explore in Chapter Five, the barrays’ relationship with the police bears enormous benefits, not only in enforcing the attendance of defendants, but also in projecting the recognition and legitimacy of barrays. It is perhaps, on the latter point that the importance of money at barrays requires emphasis. By accepting fees for services or bora as token of respect from the barrays, these external collaborators – chiefs, local courts in the Provinces, and the police – implicitly acknowledge the legitimacy of barrays.

Thus, through an intricate and structured financial system, the barrays have enhanced their standing, created a structure of payments that serves claimants and defendants alike, leveraged internal and external relationships, ensured their relevance, and continued existence, and reinforced their legitimacy through strategic partnerships and financial awards. But how does this compare with magistrates’ courts in the Western Area?

**Predictability, transparency, and participation: routes to Barray success**

The barray is expensive but not expensive. They [the chiefs] tell you how much you will spend. If you cannot meet that you will tell them. But after you pay, and the case begins you know you won’t have to pay anything again. So, you will prepare well before you begin a case, even if you must borrow money.

- Barray Litigant

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213 Personal interview with Mamanie Sesay, litigant at Pamanonko barray, Freetown on the 13 October 2017.
This section provides an analysis of the payment system, including the importance of bets, and how these arrangements help explain barrays’ success. A fundamental feature of the financial organisation of barrays is its well-defined payment structure. As noted in the first section, the purposes of various fees are expressly stated and parties to a dispute participate, through negotiations, before agreeing to different sets of payments. This certainty of payments, expressed by Mamanie above, sets barrays apart from the official magistrates’ courts. In the administration of justice, it is not uncommon for courts to establish payment schedules – costs of initiating action, fines, and perhaps damages – even if judges will retain some discretion especially where a range of options exists. What is rare is where the outcome is not only predicted but its consequential award, in this sense money, is then deposited by both parties even before the start of the trial – a peculiar rendition of the ‘security for costs’ procedure. In certain civil cases in common law jurisdictions, the procedure of security for costs is employed where one party (Party A) is unsure whether the other party (Party B) can and will pay any costs awarded against that party. In this case, Party A will apply to court to compel Party B to deposit some amount or asset as security, so that should there be an adverse judgment, the security may be used to satisfy costs.\footnote{See for example, Order 26, Sierra Leone High Court Rules, 2007.}

While the rationale of the concept – to ensure that a party can comply with an adverse financial award – is comparable, there are marked differences between security for costs and the barray arrangement. The distinctions are threefold: first, the requirement to pay into court is not incidental. In other words, it is not based on an application by one party, or the possibility that the other party may not be able to pay should there be an adverse order; it is central to the proceedings and, therefore, requires both parties (and not just one) to pay into the barray. Second, security for costs (in the high court) refers to only a portion of the financial value of the case – direct legal expenses such as solicitor’s fees. It will not cover award for damages, for instance. Lastly, before an order for security for costs is made, the judge must be satisfied \textit{inter alia}, that the party making the application has a reasonable prospect of winning. None of these are
applicable at the *barrays*, nor are they the reasons why parties are required to deposit money.

Instead, a clue about the purpose of these payments is provided by how they are referred to both by *barray* officials and the litigants who make them. Fines or *kassi*, for instance, are meant to be a communally punitive measure in which the absolved party will get a refund, while the culpable party will forfeit their fees, not to the opponent but to the chief (or *barray*) on behalf of the community. Because of this, only specific cases at the barrays will require a fine to be deposited, such as are deemed to breach public order and decency.\textsuperscript{215} Witness fees provide another example of the specificity of payments into court. Although they are meant to support witnesses’ transportation and compensate for their time, witness fees serve another important role. By insisting that litigants deposit witness fees before the trial, barrays assume a brokerage function and transform witnesses’ role from testifying on behalf of one party to becoming agents of the barrays. This is exemplified in the elaborate oath-taking procedure for witnesses described in Chapter Three. Here, the witness fee is morbidly referred to as *kasankay*, the shroud (or money to buy the shroud), to remind witnesses about the consequences of giving false testimony. Another payment into the barray before trial is the ‘sitting or adjudicating fee’ as compensation to the *barrays* for enrolling their expertise.

Perhaps, the payment into court that cements the practice is the bet. As noted above and shown in Figure 14, the betting fee embodies the main financial ‘prize’ of litigating at the *barrays*. Not only is it the highest individual payment, but the betting fee also represents the challenge between the parties; the trophy to be won or lost. Of all payments, the bet is the only one that involves a zero-sum game, where the losses of one disputant are the direct and exact gains of the other. It is both a deterrent as it is an incentive. Litigants have highlighted the betting system as a key attraction to *barrays*. As in all bets (and indeed with the other payments) there are risks, only in this case, these risks are known and created within an environment of unusual transparency. And it is even more remarkable that this is the desideratum, the most essential element of *barray* litigation.

\textsuperscript{215} See ‘Public Order Offences’ in Chapter Two.
The disaggregation of fees into specific components provides a justification to litigants. From the onset, the parties know how much (and for what) they spend so that the decision to proceed with litigation is made, knowing what the consequences of a successful or failed action will mean financially. Like Mamanie, certainty and predictability compel proper planning so that the decision whether to institute or defend an action at the barray becomes a considered one. A party may always choose not to litigate; indeed, there are other avenues within the barray system (as noted in Chapter Three) that will not require such financial burdens. Therefore, by these known risks and payment destinations, barrays are creating transparency in an opaque socio-legal environment, obviating the need for a war of attrition where parties are endlessly paying, until the one who outbids wins. Even as a social exchange, the barrays are uncommon, in that the known risks operate for both parties, so that it incentivises participation in the system even with the prospect of losing.

To understand fully the uniqueness of the financial system of the barrays, the participation and transparency, the innovative methods to attract, retain and distribute money, such as bets – all of which contribute to their success; there is need to contextualise the administration of justice within the Western Area.

**Barrays versus Magistrates’ Courts: the optics and stark choices**

**Magistrates’ Courts**

As discussed previously, unlike other parts of Sierra Leone, litigation in the Western Area commences at magistrates’ courts – the official courts of first instance (see Figure 6). Most complaints in the official legal system are initiated at magistrates’ courts before they progress to higher courts either on appeal, reference, or full trial. In terms of payments, in criminal cases, commencement fees will depend on whether prosecution
is public or private. Like in other common law jurisdictions, there are principally two ways of initiating criminal action: public and private prosecutions. The former is led by police investigation and, depending on the prosecuting body – in England it is the Crown Prosecution Service and Sierra Leone the Law Officers’ Department – the matter is then charged to court. Public prosecutions are free with no fees on the complainant; the case is brought on behalf of the state, with the complainant serving only as a witness. The state will therefore provide a prosecutor (usually a police officer), who will present the matter on behalf of the complainant and represent them throughout the proceedings at the magistrates’ courts.

Private prosecutions, on the other hand, provide a different set of circumstances. These are cases brought by aggrieved citizens, whose complaints have been deemed meritless or less likely to result in successful conviction, so that the police and/or supervisory authorities have exercised their prosecutorial discretion against proceeding. Or cases where the aggrieved parties have not bothered to make any such complaints. To initiate private prosecutions, the complainant is required *inter alia* to file an information or charge sheet, in proper form and pay the sum of Le 10,000 (approx. £1).

Similarly, for civil cases, where magistrates’ courts have jurisdiction over all matters where the “claim, debt, duty or matter in dispute does not exceed five million Leones [approx. £500] in value whether on balance of account or otherwise” the filing fee is Le 10,000 (approx. £1). A case will commence in the high court (the court immediately above the magistrate court, with appellate and supervisory functions), if the matters concern “libel, slander, false imprisonment, malicious prosecution, seduction or breach of promise of marriage” or exceed five million leones (approx. £500). Unlike the more than six hundred barrays, there are only twelve magistrates’ courts for the Western Area’s 1.7 million residents. Based on these payments, on the face of it,

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216 Rare procedures such as ex-officio proceedings, require minimal participation of magistrates’ courts, as are special tribunals such as courts martial (for military trials) and commissions of inquiry. See also the Courts Act, 1965, Courts (Amendment) Act, 2006 and Criminal Procedure Act 1965.

217 Courts (Amendment) Act 2006

218 *ibid*

219 Written response (email) from the Judiciary of Sierra Leone, 18 August 2020
complainants who take their cases to the barrays pay considerably more to initiate a suit than they would at the magistrates’ courts, but this is only half of the story. As in other jurisdictions, there are many ‘hidden’ costs associated with litigation in the formal courts of Sierra Leone. These are both expenses (direct and indirect) and non-financial costs, including lack of influence in the process and delays. Some of the criticisms of magistrates’ courts – delays, uncertainty, and lack of participation – are linked to the inflexible archaic procedures of the formal courts and the socio-legal context mentioned in the Introduction. Unlike the barrays, there is rigid distinction between criminal (and between public and private prosecutions) and civil cases. While there is the possibility to receive compensation in criminal cases, for instance, this is either limited or insufficient. Take the two provisions below typifying the official legal position in Sierra Leone:

When any person is convicted of an offence and the facts constituting the offence amount also to a tort against the person or property of the prosecutor, the Court before which such person is convicted may, on the application of the prosecutor [complainant] and after taking any such further evidence as it deems necessary, order the person convicted to pay the prosecutor such sum as appears to the Court to be reasonable compensation (not exceeding in the case of a summary conviction one thousand Leones [approx. £0.10] in addition to or in lieu of any other punishment.\(^{220}\)

Where it appears to the Court that a charge is malicious, frivolous or vexatious, the Court may order the prosecutor to pay all or any specified part of the expenses of the prosecution or of the defence.\(^{221}\)

Thus, the knowledge that you will not recover your expenses (much less make a gain), is exacerbated by the uncertainty of the process. The safety of the betting system is inoperative in magistrates’ courts. Furthermore, the product of Sierra Leone’s adversarial system, in which a complainant is only a witness, limits participation and influence. Moreover, the socio-legal context – including fewer magistrates courts outpaced by cases – will mean that there is likely to be case backlog and logjam in the formal system.

\(^{220}\) S.54(1) Criminal Procedure Act 1965
\(^{221}\) S.56 Criminal Procedure Act, 1965
To suggest that the financial structure of the magistrates’ courts and indeed the formal legal system is opaque is incorrect; indeed, official fees are consistent across courts and routinely published for different processes, such as summonses, writs, motions, petitions, and judgments. However, even these are entwined in procedures that are complex for the ordinary litigant, and that are jealously guarded by justice professionals – judges, magistrates, lawyers, and clerks – with no desire to be agentive social citizens. As the gatekeepers, these justice professionals are content to provide a service rather than foster active citizens. In fact, to many litigants in the magistrates’ courts, justice professionals complicate their experience and make the official legal system opaque and inaccessible.222

In Sierra Leone, this is complicated further by the public and private dimensions of justice services in the formal legal system. Magistrates’ courts clerks, for instance, as part of the salaried staff of the judiciary and providing public functions such as managing cases in court, also privately, within their official spaces, offer services toaffording persons who wish to institute private summonses and civil suits. Even though this may raise several ethical conundrums, it may well be perfectly legal. This does not assuage the confusion it causes potential litigants, who reportedly pay between Le 50,000 and Le 500,000 (approx. £5 – £50) for clerks’ ‘assistance’ in preparing private summonses or plaint notes (the filing fees for both is only approx. £1).223

Once the trial starts at magistrates’ courts, what litigants spend will depend on a lot of circumstances such as, the involvement of lawyers, the length of trial, and the number of witnesses required. None of this is within the control of the parties; indeed, an analysis of 1,241 cases in the magistrates’ courts found that on an average, the processing time for cases was 62.08 days from the first hearing to judgment, while an average of 80.04 days from filing to judgment.224 Thus, litigants who choose the magistrates courts are faced with costs which neither shape the outcome, nor

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222 Focus Group Discussions with former litigants in Freetown, 17 April 2018.

223 Interview with “Hassan Brima” (not real name), Magistrate Court Clerk in Freetown, 23 May 2018.

224 Baseline Report to the Recovery and Justice Project, Timap for Justice Archives 2017. Some of the magistrates’ courts analysed in this report are outside the Western Area.
determine when that time will be. Even if it is not suggested that the payments are tainted, litigating in the magistrates’ courts represents unpredictable financial expenses, which contrasts sharply with the practice at barrays.

Therefore, monetary expense is not as calculable as rational choice advocates may like to suggest. While the payment of initiating a dispute in the official courts may be much less than instituting action in the barrays, the overall costs are difficult to anticipate. The direct and indirect expenses – hiring a lawyer, transportation to multiple court sittings, sponsoring witness attendance – are incalculable. In addition, there are other costs such as delay, uncertainty, lack of participation which, even though can less translate into expenses, weigh heavily on litigants. As we will see in the next subsection, these other factors influencing choices have little to do with money.

Two case studies

To understand the significance of the incalculability of monetary expenses and how it relates to the attraction of litigants to barrays, it is important to contemplate the different ways money features in barray cases. This consists of an examination, not simply in terms of direct expenses, but more so in minimizing costs associated with delays and uncertainty and maximizing reputation enhancing benefits. Based on the types of cases they adjudicate, barrays and magistrates’ courts ought to be socially constructed as part of society’s multifaceted cultural system and networks (Rosen, 2006). It is in these intricate relationships or construction which litigants must navigate that barrays are most adept. And it is where the importance of other incalculable costs such as the value of participation, of engaging with a communal effort, and the impact on lived experiences during and beyond litigation, are fostered. The description and analyses of the two cases below illustrate this point:

Case 1: At the Pamanonko Barray, “Mamanie” brought an action against “M’ma”, her neighbour in a crowded compound at Calaba Town in Eastern Freetown. Following a quarrel, M’ma had claimed in front of Mamanie’s
husband and other neighbours that she (Mamanie) was having an extramarital affair. Mamanie sued M’ma at the barray and paid the summons fee of Le 40,000 (approx. £40). After receiving service of the summons, M’ma (defendant) went to the barray and admitted to the charge. She explained that she did not know of any relationships the complainant had outside her marriage, and that she had only made the accusation to hurt the complainant. She was fined Le 50,000 (approx. £5) and ordered to apologise to both the complainant and her husband, which she did.\textsuperscript{225}

**Case 2:** In the Bombay Street Market osusu case (discussed in Chapter Two), a savings scheme involving 30 traders, in which members contributed the sum of Le 100,000 (approx. £10) weekly and the aggregate paid to one person in a pre-determined rotational basis, “Isatu” (the osusu master), sued “Pa Brima” after he defaulted on his weekly osusu contribution. She paid Le 65,000 (approx. £6.50) of her own money to initiate proceedings at the Bombay Street barray.\textsuperscript{226}

These two cases – as are many more – are justiciable in both barrays and magistrates’ courts. So, why would Mamanie and Isatu choose the barrays even though they cost more to initiate their respective actions?

That money is not the key factor, prohibitive or otherwise, that determines whether an individual can and does seek remedies for infractions of rights, is not new. Keebet von Benda-Beckmann (1981;1984) argues that litigants will “base their choice on what they hope the outcome of the dispute will be, however vague or ill-founded their expectations may be” (1984, p. 37), instead of immediate monetary considerations. In this sense, neither the expenses of instituting action nor the possibility of winning or losing is prohibitive. The case studies above demonstrate that even for litigation – arguably the costliest component of dispute resolution – the amount a litigant may

\textsuperscript{225} Case code: SMKK-POO-143.

\textsuperscript{226} Case code: SMKK-CPT-001; see also pp.124,205.
spend is not a barrier to initiating a claim. Other ‘costs’ beyond direct expense become plausible; the desire to maintain or maximise reputation enhancing benefits is a case in point. Mamanie wanted to redeem her reputation first and foremost and was adamant that she was prepared to “put [her] entire business capital into this case”.227 She explained:

M’ma said all these things about me in the hearing of many people in the compound. Those same people were now expecting my response. [But why choose the barray?] At the barray, they can all come (I can get them to come) and see for themselves. There is no secret…. When she apologised to me and my husband, I didn’t need to explain that to anyone else (there was no ambiguity in her action). The matter is now settled. I have forgiven her, and we are all at peace once more in the compound.228

Mamanie’s description of localised conflicts requiring not only localised solutions but also solutions with local participation, is crucial to understanding the broader concept of costs, being not simply about monetary costs (expenses) but also about maintaining or elevating one’s standing in society. The significance of the validation of her action by the outcome – proving her fidelity to her husband, quashing gossip in the compound, gaining neighbours’ respect for her magnanimity towards Mma who will remain in her debt – will become unspoken subtexts shaping future relationships and controlling the narrative. Similar to what Mariane Ferme described as “deferred meanings” (Ferme, 2001, p. 7), the narratives and meanings, interwoven as part of everyday sociality, will be understood without the need for further inquiry; they will become subjects of quiet conversations, of glances and gestures. More importantly, for the incalculable cost of maintaining or elevating her reputation, Mamani’s choice of the barrays reveals the further role money plays in barray cases.

Likewise, when Isatu (osusu master) decided to commence proceedings against Pa Brima, she had no hesitation to spend Le 65,000 (approx. £6.50), even though this would have real life consequences on her and her family. Isatu lived in the Wellington Area of Freetown (a ten-mile commute to her Bombay Street trading spot) with her

227 Personal interview with Mamanie Sesay, litigant at Pamaronko Barray, at Calaba Town on the 13 October 2017.
228 ibid
husband and two children aged 9 and 7. Her husband, a truck driver, lost his job a few months back. He invested most of his severance pay into Isatu’s business – plastic containers such as buckets, bowls, dishes, and shoes – so that she would support the family. Isatu did not finish secondary school but has high hopes for her daughter 9, and son, 7. She wanted the daughter to be a lawyer – “she is very argumentative” – she told me; and the son to be a doctor so that he could take care of her when she was old. Isatu was very respected among her fellow traders. She explained that she organised the *osusu* as a mini bank, so that upon receiving the bulk amount (Le 3m or approx. £300), she would diversify her business with food items, and buy a television set so that her children would stop going to the neighbouring house to watch movies. Now, she was making less than Le50,000 (approx. £5) profit daily, and that food at home, as well as school commitments for the children meant she had to dip into her capital. She feared that if this continued, she might not have a business to run in less than a year. The *osusu* was an escape from this eventuality.

Isatu had a lot to lose when Pa Brima’s refusal to pay his weekly contribution threatened the success of the *osusu* scheme. It is worth understanding why she was prepared to spend Le 65,000 (approx. £6.50), an amount she could hardly afford without cutting down on food or necessities for her children, just to initiate an action at Ya Alimamy Manso’s *barray*. As noted in the preceding sections, the summons fee represents a small portion of the overall costs of litigation at the barrays. Isatu could easily spend ten times this amount to secure a hearing. She explained that as *osusu* master, she was responsible for setting up the scheme: fixing the amount and regularity of payments (whether daily, weekly, and so on), and deciding on the membership (how many and, more importantly who). She insisted that people would only join an *osusu* if they trusted the *osusu* master, to guarantee continued payment by all members, including those who would have received their contributions. For Isatu, the trust, respect, and confidence which she enjoyed at her workplace were on the line. The protection of her status in society overrode any immediate or future considerations of financial loss. She had to be seen to be doing something drastic.\(^{229}\) Pa Brima did not contest the complaint;

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\(^{229}\) Personal interview with Isatu Mansaray, litigant and trader, at Bombay Street on the 29 March 2018.
he paid up his contribution, in addition to refunding Isatu’s summons fee and paying a fine to the barray.

In both cases, the outcome not only validated the decision of Isatu and Mamanie to spend more money at the barrays, but it also won the approval of the osusu members and neighbours respectively, thereby preserving their reputation in their communities. Thus, contrary to rational choice advocates, these examples demonstrate that monetary expenses are not as calculable, and that there are other factors influencing choices that may less directly translate into expenses such as delays, lack of participation, and maximising reputation enhancement benefits.

Conclusion

This chapter has examined how money features in cases at the barrays, how it has created a viable system of dispute settlement, contributed to the popularity of barrays, and in how justice is understood by participants at the barrays. It has described the multi-dimensional benefits of money beginning with its perpetuation of barray existence. Barrays have been able to fund their existence, provide a steady revenue stream and employ staff to meet the demand for their services. Crucially, money at the barrays has enabled the possibilities of inter-barray and external collaborations, such as with the police and witnesses, on whom their effectiveness relies. In addition to limiting the incidence of inter-barray competition and the unravelling of this neighbourhood system of justice, money has allowed for inter-barray cooperation. While such cooperation may also be necessitated by the mutual desire to maintain the barray system, money has provided an additional incentive, with a share in the proceeds.

More important is the implication of money on the legitimacy of barrays. The chapter has revealed that as the barrays have used money to create external relationships with the police, witnesses, and chiefs in the Provinces, so too have the consequences on recognition and legitimacy shown. By accepting money from the barrays, police,
witnesses and other chiefs implicitly acknowledge their legitimacy, and this strengthens the *barray* system and make it attractive to litigants.

Furthermore, by examining how money features in *barray* cases, this chapter refutes the assumptions that unofficial forums such as *barrays* are more attractive to litigants because they are comparatively cheaper, and that expense is the decisive factor for litigants. This chapter has shown that litigants spend a lot more to initiate proceedings at *barrays* than in official magistrates’ courts, and that expense is not the decisive influence. Thus, monetary expense has been shown to be less calculable than rational choice advocates suggest, as there are other costs that are difficult to anticipate such as delays, uncertainty, participation, that may less directly translate into expenses. In this sense, this chapter has analysed litigants’ attraction to *barrays*, by examining the materiality of money, being not simply about direct expenses but also about minimising costs associated with delays and uncertainty, and maximising reputation enhancing benefits.

This chapter’s description of the intricate financial arrangements of *barrays* has shed light on our understanding of the operations, inter-connectedness, and relationships of *barrays*. Even more so, it has cast a shadow on rational choice approaches to dispute resolution, which tend to ignore or downplay the uncertainty and complexity (and thus overestimate calculability) of legal disputes and legal work. By adopting a kind of game theory in which the gains and losses of litigants are distributed to maximise benefits, effectiveness, transparency, and participation, *barrays* have somehow figured out a way to construct a system that eliminates a lot of material externalities that magistrates’ courts in the Western Area have. This in turn has had a knock-on effect not only in maintaining the *barrays* and attracting litigants, but more so in forming collaborations, such as with the police, that both contribute to their effectiveness and enhance their legitimacy.
Chapter Five

Introduction

In the previous chapters, I have detailed the workings of the barrays, including the utilisation of mechanisms such as money and socio-economic relationships. I have also described how the benefits offered by barrays, for example, the direct and immediate payment for services like delivering court processes, incentivise cooperation and performance at levels unmatched by other forums. In this chapter, I will examine one such cooperation in the relationship between the Sierra Leone Police (SLP) – the main state institution tasked with the preservation of law and order – and the barrays of the Western Area, considered unlawful under the Sierra Leone legal system. I will explore the practical and existential considerations that have provided the necessary impetus for both parties to forge a complementary, even if, uneasy relationship. I will contend that this partnership offers on the one hand, a life support to a (once) failing and mistrusted institution in the SLP and, on the other hand, a gateway towards legitimacy and official recognition for the barrays.

Therefore, this chapter will assess not only the relationship between the SLP and the barrays and how it manifests in the everyday lives of citizens as they navigate state and non-state actors in the Western Area, but also the complication of labels such as ‘official-unofficial’, ‘formal-informal’, ‘recognised-unrecognised’. Particularly, this chapter contributes to the scholarship of public police bureaucracy in Africa. It examines how, in their quotidian practices, the police in the Western Area of Sierra Leone – embodying the “state as a fount of juridical legitimacy” (Beek, Göpfert, Owen, & Steinberg, 2017, p. 6) – aid or constrain the workings of the barrays and, in turn, shape public perceptions of the role of the state in their everyday lives. By synthesising state and society (dis)connections, this chapter demonstrates how policies and state bureaucracies (often inspired by international development concepts and domestic
legislations) are translated and/or appropriated by state agents, such as the police, and citizens alike, as they interface in shared networks and common spaces.

There is ample scholarship on how bureaucracies work in Africa and the specific way public servants carry out their functions (Bierschenk & Olivier de Sardan, 2014; Anders, 2010; Bernstein & Mertz, 2011). “Street level bureaucrats” (Lipsky, 1980, p.3), “bureaucrats in uniform” (Blundo & Glasman, 2013, p.1), “interface bureaucrats” (Bierschenk & Olivier de Sardan, 2014, p. 23), and “front-line government workers” (Maynard-Moody & Musheno, 2003, p. 4)\(^{230}\) are just some terms used in these studies to reflect the anxieties of the dual positionality of public employees, as they mediate the everyday functioning of the state. Lipsky (1980), for instance, examines the manifold relationships and considerations involved in street-level decision-making by public servants, as they implement state policies. Referring to public defenders, health workers, teachers, judges, and police officers, Lipsky’s ‘street-level bureaucrats’ straddle the undefined space between their official role and everyday interaction with the public.

Examining the police, not only as symbols of the state’s monopoly of legitimate violence, but also in the many ways the state is manifested, recent ethnographic studies concentrate on how the police interact with the public daily as they carry out their functions (see for example, Fassin, 2017; Beek, Göpfert, Owen, & Steinberg, 2017). In Africa, the study of police bureaucracy suggests an important shift, a ‘renaissance’ of sorts, no longer about the absences of the state or horrors of police (in)action, but one that refocuses on the visibility and banality of the everydayness of the police (Beek, Göpfert, Owen, & Steinberg, 2017). Thus, the different dimensions of police work – security, peacebuilding, dispute settlement, reporting, (anti)corruption – are examined, as they affect (and are affected by) the public in daily interactions, including the use of discretion.

\(^{230}\) Although their case studies are non-African, Maynard-Moody and Musheno follow the theme of how street-level government employees go about their work, both as “state-agent[s]” – those that “apply the state’s laws, rules, and procedures to the cases they handle”, and “citizen-agent[s]” – those who make “judgments…about the identities and moral character of the people [they] encounter[] and [their] assessment of how these people react during encounters” (p. 9).
The phenomenon of police discretion, how and when it is used, has been the subject of considerable studies (see for example, Goldstein, 1960; Brown, 1981; Center, 1984; Livingston, 1997; Valverde, 2003; Mastrofski, 2004; Göpfert, 2016a). Valverde (2003), for instance, discusses discretion in her examination of the history of pub lic licencing reforms and police powers in England. She observes the creation of ‘lists’ as part of police powers, or as she describes them “knowledges”, in which licencing becomes a tool, a kind of “legal technology” to govern disorder remotely and without suspicion, even in liberal societies (p.144). How this legal technology is selectively applied highlights the discretionary powers of the police.

Similarly, Göpfert, (2016a) explores the different ways in which the gendarmes of Niger “under-enforce” the law, that is, fail to take the full action required, in an exercise of investigative or prosecutorial discretion in order to implement the “gyara” (p. 447). A Hausa term meaning to “repair” the law, gyara constrains gendarmes to either downgrade complaints or turn a blind eye altogether. In doing so, they exercise discretion by not referring infractions for prosecution or lengthy detention periods – an expense in time and resources neither of which serves the purpose of maintaining peace between disputing parties, or their coexistence in the community. These studies are predicated on a wider scholarship around bureaucracy as a distinguishing feature of statehood and of the discordance in the conceptualisation of state-ness, including its dual character231 (Migdal, 2001; Hansen & Stepputat, 2001; Kirsch & Grätz, 2010).

Blundo & Glasman (2013) make a similar point as they explore the tensions of the ‘right distance’ both between ‘bureaucrats in uniform’ and the public, and between ‘bureaucrats in uniform’ and their institutions. Examining the predilections and pressures associated with each choice of distance, the authors concede that it is a matter of preference, with some favouring “a direct relationship to citizens [with] face-to-face interaction” (p. 6); while others insist in distance “in order to be more neutral

231 Compare Chabal & Daloz (1999), for instance, in the course of advancing their “political instrumentalization of disorder” (p. xviii) thesis, define statehood in terms of effective institutions crafted in properly functioning bureaucracies à la Weber.
and closer to the letter of the law and to implement official procedures” (ibid). Thus, I read Blundo and Glasman as explaining the relative importance of distance which, for some, is vital to stress autonomy and the ability to exercise discretion, while for others, a close relationship with the public is integral to the performance of their functions. But, what if the luxury of choosing between autonomy and, therefore, the ability to exercise discretion on the one hand, and integration to aid functionality, on the other hand, is absent? In other words, what if, like frontline police personnel, there is only a false choice of distance, and that the dual contrasting identities compel the need to exercise discretion?

It is in this construction that this chapter considers how the Sierra Leone Police – the ‘bureaucrats in uniform’ in this instance – engage with the duality of their positions and the tensions both of distance and the exercise of discretion, as they interact with the public. The chapter will be divided into three sections: first, I shall discuss what institutional framework underpins this relationship. Here, I shall assess the basis of the SLP’s ‘community policing’ strategy in the Western Area – a post-war construct by the international community’s Security Sector Reform (SSR) initiative– and how it has moulded the SLP’s engagement (distance) with Western Area residents. This section will highlight the ambiguities and contradictions of the SLP’s position apropos distance with the public. The second part will foreground the partnership between the SLP and barrays in the Western Area in historical and contemporary terms, by exploring why the relationship materialised in the first place. This section will trace the development of the ‘partnership’ in the changing outlook of distance, both among the different cadre of police, and especially between the police as a state organ, and the policed – the rest of society relying on the services of the state.

Finally, I shall examine how this relationship between the SLP and the barrays operates, the ways in which it is portrayed in practice, and whether and how it is used by either party in the performance of their respective functions. This section will show how the official policy of ‘local needs policing’, the variant of ‘community policing’ implemented in Sierra Leone revives or challenges the demarcation between state (police) and society. In so doing, it will demonstrate the development of autonomy and
unmediated discretion in the work of frontline police officers, resulting from the uncertainty and incongruity of their duality, and tensions of adopting the right distance with their institution as well as the public. Much like Lipsky (1980) observed, the ambivalent (and often) contradictory relationship between street-level bureaucrats and their superiors in offices, led to these public officials exercising unmediated discretion in their dealings with members of the public, to the extent not only of implementing but creating state policy.

Relying on cases observed in both police stations and barrays, as well as interviews of officials and litigants, this chapter examines not only how frontline police officers exercise discretion in their application or translation of legislations and policies – thus, blurring the lines between what is official and unofficial, recognised and unrecognised, or even legal and illegal – but also how they actually create (new) policy.

**Community Policing: The Role of Barray Chiefs**

The cooperation between the SLP and barrays in the Western Area may have been steeped in history (see Chapter One), but the present iteration is grounded in a more recent phenomenon. Towards the twilight of the 11-year civil war (1991-2002), an ambitious Security Services Reform (SSR) programme spearheaded by the United Kingdom, was introduced as part of the peacebuilding and state (re)building process in Sierra Leone (Abrahamsen, 2016; Albrecht, 2010; Albrecht, Garber, Gibson, & Thomas, 2014; Denney, 2014; Krogstad, 2017). A major beneficiary of this initiative was the SLP through the Commonwealth Police Development Task Force, which later transformed into the Commonwealth Community Safety and Security Project (CCSSP). By this time, the SLP was a shadow of its former self; public confidence had all but disappeared, morale among servicemen was sapping, and the widespread depiction of the police as unprofessional epitomised the state of Sierra Leone by the

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232 Although the peacebuilding and state-building efforts in Sierra Leone involved many countries and international bodies, including the United Nations, the CCSSP was the brainchild of the United Kingdom and anchored within three Government Departments at the time: the Department for International Development (DfID), Foreign and Commonwealth Office (FCO), and Ministry of Defence (MoD).
late 1990s (Baker, 2005; Fakondo, 2010). Kadi Fakondo, for instance, the most senior female police officer in Sierra Leone at this time and an Assistant Inspector General of Police, with extensive insider knowledge, noted:

At the time the SLP was considered a spent force, with little or no logistical support to enhance its capability. Its methods of policing were very unprofessional and displayed blatant disregard for human rights; corruption was the order of the day. Morale and motivation among police personnel were very low“...the Sierra Leone Police (SLP) needed immediate reforming in order to regain both public confidence and international credibility (p. 167).

Fakondo was not the only serving police officer to paint a grim picture of the SLP during this period. Chris Charley, also an Assistant Inspector General of Police, joined the SLP in 1984 (together with Fakondo and 16 others) under the Cadet Officer Programme, a special drive to attract graduates into the SLP and dispel public perceptions of mediocrity. In a co-publication (Chris Charley & M'Cormack, 2011), he traced the malaise in the SLP to the politicisation of the Inspector General role after the one-party constitution of 1978.

[This]created imbalances in the political allegiance of the force, which had far-reaching effects on police recruitment procedures, management and administration of the force and promotion, which consequently lowered ethical standards and morale, contributed to a breakdown of discipline, and encouraged corruption (p. 10).

The state of affairs of the SLP was not lost on the political leadership which, as early as 1996, instituted the ‘Advisory Council on the Present and Future Challenges of the Sierra Leone Police Force’ (Chris Charley & M'Cormack, 2011). This was on the eve of a return to democratic governance, following four years of military rule. The Advisory Council was part of the preparatory work conducted under the auspices of the National Provisional Ruling Council (NPRC) military junta. Coincidentally, the person charged with the responsibility of heading this Advisory Council was Ahmad Tejan Kabba, who later became President of Sierra Leone (1996-2012) following elections later that year. The council made the following observations:

The image of the Sierra Leone Police has deteriorated in recent times from the figure of a friend and social helper to a villain who is both ineffective and corrupt. This image has
consequently adversely affected the relationship between the Police and the society. Poor people have been victims of this preoccupation of the Police. This state of affairs had led to further loss of confidence by the public in the Police Force resulting in the withdrawal of public co-operation without which police work can hardly be successful (NPRC, 1994).233

Not only was it unsurprising, therefore, that the SSR and similar initiatives were launched during the presidency of Tejan Kabba, it was even more poignant that the security sector, particularly the police, was prioritised. Considering the state of the SLP, the need for urgent institutional reforms, which would transform its inner workings, as well as demonstrate palpable, positive changes in its professional outlook, could not have come sooner. As part of this and, in order to rebuild public trust and confidence, a massive charm offensive was initiated, including the introduction of the Sierra Leone Policing Charter, with a pledge to “see a reborn Sierra Leone Police”,234 In response to the Charter, the SLP produced a Mission Statement which defined its duty, values, priorities and aims.235 The Mission Statement promised “to respond to local needs […] value our own people […] and involve all in developing our priorities”. The new SLP would aim “to win public confidence by offering reliable, caring and accountable police service… By working together we can truly become a ‘Force for Good’”.

The phrase ‘force for good’ has now become the flaunted new mantra of the SLP.

Thus, the Commonwealth Community Safety and Security Project (CCSSP), through which the courtship of public trust and institutional reforms would take hold, supported the SLP’s operational activities, especially capacity-building, so that it would become effective and responsive to its policing responsibilities. Among the top institutional reform initiatives, were the formation of a streamlined ranking system and the establishment of new police departments, with the latter introducing, inter alia, a

Community Relations Department (CRD). It is through the CRD that the SLP and the barrays of the Western Area have found common purpose. As the name implies, the Community Relations Department (CRD) was created as part of efforts to win back public trust and confidence in the police. It is emblematic of the wider concept of ‘community policing’, recognising that fighting crime and maintaining law and order are not exclusive functions of a police institution (see for example Baker, 2002; compare with Cooper-Knock and Owen, 2015). Likewise, it encourages the idea of local participation in planning, execution and decision-making processes relating to policing of communities.

While a precise definition of ‘community policing’ is elusive, it has come to represent a strategic form of policing that reflects local community needs. Popularised in the last few decades, community policing around the world has been used purposefully as a kind of “policing elixir that will resolve a range of social ills” (Brodgen & Nijhar, 2005, p. 3). Brodgen and Nijhar have provided a useful appraisal of the concept of community policing in different parts of the world, what it has meant and, more importantly, why it has been considered less successful in certain environments. They have cited the unreadiness to countenance the particularities of a given society, such as its specific socio-economic and political contexts, by imposing western models of policing that have proven both foreign and irrelevant.

In Sierra Leone, there was an additional consideration: the British-led reforms programme was mindful not to stoke flames of a colonial comeback, fearing that this could blow up locally or internationally (Krogstad, 2017). Cognisant of this drawback and the need to contextualise the intervention, community policing in Sierra Leone was conceptualised as ‘Local Needs Policing’ (LNP). The rationale is aptly enunciated by Adrian Horn, one of the architects of community policing in Sierra Leone. He described the uniqueness of the situation at the time, and the thinking behind the specific model of community policing.

Everybody who we met and talked to from outside Sierra Leone all had different experiences of policing and worked with different models. Often these were called ‘Community Policing,’ but there were as many
models and concepts of ‘Community Policing’ as there were people. What was needed was a model that encapsulated all the good things that were suitable to the needs of Sierra Leone – not a model from outside that may not work. We were also conscious that, despite Sierra Leone being a relatively small country, there were great variations in the style of policing required in particular areas and at different times...

(quoted in Albrecht & Jackson, 2009, p. 32).

Thus, he recognised that not only was a suitable model required with the capabilities to work in different parts of the country, but it also needed to adapt to changing circumstances and needs. To actualise this concept of LNP in Sierra Leone, ‘Local Policing Partnership Boards’ (LPPBs) have been created in police precincts or divisional areas. LPPBs consist of diverse, non-partisan groups of community stakeholders who act as a cushion between the community and the police, provide oversight and support to police activities and crime prevention, and assist in boosting police support in communities (Hanson-Alp, 2010, p. 207). To aid their operations, a constitution²³⁶ was crafted to define, as well as regulate the relationship between the SLP and the LPPBs, which are district-based.

At the heart of the LPPBs seem to be two main considerations: membership and function. Since inception, there has been a deliberate bid to include persons who represent all aspects of society, including (especially) factions that do not always get along. The membership therefore includes diverse categories of individuals in formal and informal employment, religious and traditional leaderships, representatives from civil society, traditional secret society, ‘mammy queens’ (female chiefs) and women’s groups, youths and persons with disability – as diverse as the community can be. There are also advisory roles for the police and lawyers.²³⁷ To accommodate these many groups, a second-level board referred to as Chiefdom/Area Police Partnership Committees (C/APPCs), is created along the same continuum of diversity.

Together, the LPPBs and C/APPCs carry out the following tasks:

2³⁶ The Sierra Leone Police Local Policing Partnership Board Constitution, 2011
2³⁷ ibid
1. Increase the level of information-gathering and sharing between the police and local communities.
2. Investigate and resolve minor disputes between community members.
3. Promote social discipline and acceptable norms and values.
4. Sensitise, educate and counsel community members.
5. Raise community concerns about police conditions of service.
6. Promote Human Rights and advocate against violence, child exploitation, trafficking, drug abuse and other offences in support of the SLP.
7. Strengthen interaction between the SLP and local communities.
8. Facilitate participation of communities in decision-making around security.\textsuperscript{238}

The extensive nature of these tasks, the broad memberships which tend to sacrifice substance over form, and the lack of definition of what success (or failure) would entail, have been the subject of some scrutiny (Albrecht, Garber, Gibson, & Thomas, 2014; Baker, 2005; Denney, 2014). While some of these criticisms have shed light on the workings of the LPPBs and C/APPCs, this section is meant to zoom into one such relationship with chiefs and their barrays in the Western Area. Here again, we see the influence of Sierra Leone’s legal and administrative bifurcation (described in Chapter One), in the SLP’s approach to local needs policing in the Western Area. For instance, while Paramount Chiefs (or their delegates) – firmly instituted within Sierra Leone’s legal architecture – are the natural occupiers of the slot for traditional chiefs in the LPPBs and C/APPCs, pragmatism takes precedence in the Western Area, where no analogous traditional authority exists\textsuperscript{239}. Instead of only relying on Tribal Headmen, the nominal heads of tribes whose position is becoming increasingly tenuous in a modern, metropolitan Freetown, the LPPBs, or their subcommittees, the C/APPCs, have gone for the unrecognised, but popular barray chiefs in the Western Area. The inclusion of these chiefs is significant, as it represents the first time that the state in the form of the SLP, has enrolled barray chiefs in the Western Area into such an important, formal

\textsuperscript{238} Handbook: Local Policing Partnership Boards, Sierra Leone Police, 2013.
\textsuperscript{239} Although Tribal Headmen exist in Freetown, their roles are not considered equivalent to chiefs in the Provinces, with defined geographical boundaries, and legal and social connections. \textit{See} also Chapter One.
role. For the chiefs of the *barrays*, this is a welcome opportunity to emerge from the shadows and be recognised by a mainstream state agency.

It is in this new reality that the relationship between the SLP and the *barrays* is significant. The creation of the “Local Needs Policing” is not crafted in law; it is a state (police) policy that favours pragmatism over legal purity. In this sense, the *barrays*, like the other members of the LPPBs and A/CPPCs, represent Abrahamsen’s “network governance” (2016, p. 289) in which the state relinquishes monopoly of security and justice services, allowing other actors (including so-called non-state actors) to play a role as partners, on the condition that the state remains at the centre, directing and regulating networks of services. By engaging *barray* chiefs – even as members of this scheme – the Local Needs Policing policy has broken ranks with the legal provisions around *barray* chiefs. Yet, the LNP may only have acknowledged an already existing collaboration between the SLP and *barray* chiefs. The next section will trace the historical and socio-legal development of policing and traditional authority in the Western Area. It will demonstrate why the present partnership through the LNP is momentous, and why the incorporation of local leaders such as *barray* chiefs in post-war security sector reform is exceptional within the context of institutional recognition and legitimacy.

**Relationship between the Police and Chiefs – a historical perspective**

The history of the cooperation between chiefs in the Western Area and the Police can be traced back to the early days of colonial rule in Sierra Leone. As I explained in Chapter One, there was evidence that as far back as the 1850s, organised groups had emerged in the colony (Western Area), with chiefs who performed a range of ‘police’ functions, including the arrests of malefactors and settlement of disputes (Banton, 1954; Harrell-Bond, Howard, & Skinner, 1978). Further, as I noted in Chapter One, the system of *tribal* rulership, outside the official infrastructure of the colonial government, had grown to such a stature that by the late 1890s, the colonial administration was compelled to provide some form of regulatory response. This compulsion arose mainly
because the sheer numbers of immigrants and the social and economic challenges they presented, became an existential question for the colony. It was already creating alarm among the residents of the colony who were worried about the surge of immigration from the Protectorate and its impacts on their lives. For example, an influential publication in 1896, The Weekly News, was quoted as follows:

Look at our city of Freetown to-day. It is quite as full of aboriginal ‘sweepings’[riff-raff] as the forest is full of trees. These do nothing else but eat and drink and gamble all day long; and when night comes, they ply, life in hand, a most dangerous trade.… ²⁴⁰ (quoted in Banton, 1954, p. 111)

It was the perfect storm: unchecked migration resulting in public order and health challenges, growing animosity from colony residents, and all the while, swelling the ranks of the unrecognised tribal system which continued to prosper in the shadows and threaten the legitimacy of the official colonial administration. A solution was required. The colonial government, realising that it lacked both the material and human resources, should it elect to either curb the number of immigrants to the colony or curtail the ensuing surge in crime rates and disorderly behaviour, opted to secure the assistance and involvement of the formerly unrecognised leaders of tribes settled in the colony. But there were two challenges: first, these tribal heads would need to be empowered enough to project authority over their members but in such a way as not to compromise the political and legal administration of the colony. Thus, although the colonial administration had to show that these leaders were subservient to colonial rule, it must be done in such a way that such a submissive position did not weaken the legitimacy and authority of these rulers before their kith and kin.

Second (and relatedly), the colonial government would need to keep the different elements of its administration and Freetown City Council onside, including the Superintendent of Police and Chief Justice (Jones, 1988; Wyse, 1989). Despite the misgivings held by some in the Governor’s Council and in the Creole-dominated City Council about involving tribal rulers in fighting crime or playing any part in the

administration of the colony, others were pragmatic. The Police Magistrate in the Colony, for example, when asked about the creation of a legislative instrument to represent a possible collaboration between tribal rulers and the police, thought such a regulatory framework would materially aid the City Corporation [as the Freetown City Council was called] towards maintaining the healthy condition of the town and improving the buildings usually occupied by the Native tribes [italics supplied]. It will also help to promote education among the natives and assist the police in the detection of crimes (cited in Banton, 1954, p.111).

Thus, even before a formal legislative mechanism was completed, tribal leaders were already carrying out some police functions. The most notable examples were the appointments of Thomas Peters (1885) and Jack Savage (1897), chiefs of one of the tribes residing in the Colony, the Kroo (also Kru), as Sergeants in the Police Force (Banton, 1954; Frost, 2019). In these specific instances, it was recognised that the police were struggling to wrestle with the spate of crimes, especially theft, in the Kroo Town area of the colony, partly because the Kroo refused to testify against their kinsmen or cooperate with the colonial administration of justice at all. The appointments were therefore a way to project not only a local face, but also to solicit direct local support and participation in solving crime in the Kroo Town area of the colony. Thus, by the time the Tribal Authority Ordinance was introduced in 1905, the functions of rulers had been formulated to include both a mechanism for direct collaboration with the police, as well as a vehicle for undertaking important police tasks such as effecting the arrests of members of their tribes. This was a significant enlargement of the authority and power of chiefs, no longer assumed but enshrined in legislation.

For the police, this was a big win. As represented by the opinion of the Police Magistrate quoted above, a formal collaboration with the chiefs greatly increased not only the reach of the police force in terms of where in the colony they could enforce their authority, it also meant they could do so in the knowledge that they had the acquiescence of the largely respected traditional rulers. Not that the police force was foreign – in fact, but for the small group of white expatriate officers in leadership roles,
the rank and file were locals – or inexperienced in dealing with local authorities and local populations (Thomas, 2012; Coker, 2016). Formed in 1808, when the British Government formally declared Sierra Leone a Crown Colony, the Sierra Leone Police (SLP) Force stands as one of the earliest police establishments on the continent. However, its development has been entangled with Sierra Leone's political history.

For a start, at its formation, the SLP Force was only meant to provide services to the Colony, where English-styled institutions such as magistrates’ courts, a municipal City Corporation (Council), and a majority ‘non-native’ population existed, with no regard to, or expectation of, interacting with tribal authorities. It may be understood in this context why there was scepticism at the suggestion that tribal rulers in the Colony could play any collaborative role with the police. Yet, there were more important considerations for the colonial administration that made any reservations miniscule to the perceived harm of not involving these chiefs in maintaining law and order.

Not that the SLP Force lacked experience in either working with tribal rulers or in policing communities outside the colony. In fact, when the 1905 Ordinance was passed, the SLP Force was just three years short of the centenary celebration of its establishment, at which time, it had engaged in multiple interactions with chiefs and their subjects in the Protectorate (now Provinces). As I stated in Chapter One, trade between the Colony and the adjacent territory (which was later annexed to form the Protectorate and complete the area of modern Sierra Leone) was key to the survival of the Colony. However, as the area was ruled by various chiefs who competed for resources and territories, it meant that the safe passage of persons and goods could not always be guaranteed. There were frequent trade disputes, including disagreements about measures of exchange and payments between traders from the Colony and their counterparts in the Protectorate, which added to the volatility of the situation (Abraham, 1978; Alie, 2006). To protect trade and the safety of British subjects in the Colony – who by this time had been determined to include all (descendants of) former slaves, including both the original settlers and the ‘Recaptives’ – and to address uprisings in the Koya and Sherbro regions, the Frontier Force was created (Abraham, 1978; Peterson, 1969). Drawn from the SLP Force with a
purposefully militant outlook, the Frontier Police Force became an armed paramilitary unit formed specifically for operations in the Protectorate. It participated in subsequent wars, including the Hut Tax War in 1898, on behalf of Colony authorities against chiefs in the Protectorate and became, for all intents and purposes, the enforcer – sometimes with lethal consequences – of colonial rule in the Protectorate (Abraham, 1978; Fyfe, 1962).

The notoriety of the Frontier Police in the Protectorate was in stark contrast to the civility of the SLP Force in the Colony, where policing was governed by English law. So, while a specific category of the SLP Force was interacting with traditional authorities, often with disdainful distinction, the Colony-based force was entering a new phase – the challenge of sharing functional police powers with Tribal Rulers. This was always going to be difficult to manage. The 1905 Ordinance laid the foundations for the formalisation of the relationship between Tribal Rulers and the police in the Western Area. It also allowed chiefs to play one of the most significant functions of policing – arrests. By two subsequent amendments in 1908, the ‘police powers’ of Tribal Rulers were further enhanced. They could now investigate members of their tribes in the Colony to ascertain their socio-economic situation, such as their means of subsistence, place of abode, chiefdoms of origin, and whether they were in employment (Harrell-Bond, Howard, & Skinner, 1978). This has remained the legal framework for the cooperation between the SLP and the tribal administration in the Western Area.

But just like the events that led to the initial recognition of tribal headships in 1905 – surge in immigrant population, rise in crime rates, sanitary concerns, unsafe housing, youth unemployment, political upheavals – chiefs in the Western Area are no less relevant today than they were more than a century ago. In fact, as I explained in Chapter One, the proliferation of barrays (and chiefs) coincided with the incidence of the civil war from 1991 to 2002. So that by the end of the conflict, the Western Area –

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241 Manual Labour Ordinance No. 16 of 1908; and the Vagrancy Ordinance No.17 of 1908. There were further amendments in 1924 and 1926 (Cap.217), which enlarged their policing powers to include investigation and fines.
which only witnessed any attacks for brief periods in 1998 and 1999 (Gberie & Front, 2005) – saw a significant increase in population (Renner-Thomas, 2010). Just as in pre-1905, the swelling numbers of Sierra Leoneans emigrating to the Western Area shepherded a correlative enhanced role of chiefs. While independent Sierra Leone no longer considers citizens from outside the Western Area strangers, or requires them to be registered, many of the challenges listed above remain and represent a new powerful reality.

For the police, who still have an undiminished responsibility to carry out their functions, such as fight crime, and protect lives and properties, the murky legal cloud hovering around barray chiefs is inconsequential if they can find avenues for collaboration. Further, the challenges of the Western Area – urban migration in search of improved security, prospects for employment, better sanitation, health and housing, and urban crime – have not only remained, but they have also been amplified by a civil war that shook the fabric of the state, requiring wide-ranging security sector reforms. In the next section, I shall discuss how these reforms manifest in practice, in the relationship between the SLP and barray chiefs, through the ‘local needs policing’. I will examine how the dual positionality of the police, together with a decision on the kind of distance required to achieve its statutory goals, overrides longstanding and subsisting legislations and leads to the creation of new policies.

The Sierra Leone Police and Barrays at work

The chiefs are our partners; they help us keep the community safe. They provide vital information that we then use to address a wide range of security issues in the community…. They help us to maintain peace and harmony in the community.

- Police Officer, Kissy Police Station

The relationship with the police has been formalised; we now work as one. I don’t have police officers assigned to my court, but we can access them when we need them. They [the police] ensure that people don’t disrespect us by refusing to attend the court barray when invited. They are the security [guardians] for our barrays and
they will detain anyone who disrupts our work... It all depends on how you as chief operate with them.

- **Section Chief, Kissy Barray**

I don't know what the relationship is between the chiefs and the police, but if you are summoned to the barrays and you refuse to go there, the police will arrest you. Sometimes, they [police] will even serve you the summons paper [from the barrays].

- **Former litigant, Kissy Barray**

The SLP’s Local Needs Policing” concept has a profound effect, not only on how frontline police officers perceive their relationship with their superiors (and the state), but also in the ways they interact with the public. The quotes above represent a broad depiction of different angles of this relationship. For a start, the police officers at the front of community policing, take their role as policewomen and policemen seriously; they are part of the SLP Force, with the discipline, ranking, and bureaucratic accoutrements involved. “We have to enforce the law and implement the directives of the police”, explains the Inspector at the Kissy Police Station. “We have our mandate in the Community Relations Department, which makes our work somehow different from our colleagues, but we are all police officers.”242 It is in the ways police officers in the CRD perceive themselves vis-à-vis the rest of the police force and the public with whom they work, that this section is concerned; it is in this space that the scope of their discretion to define, alter and create policy is revealed.

Chief Ya Alimamy is a member of the Area Policing Partnership Committee (APPC). The first time I visited her barray in Kissy, she was presiding over a case of ‘abusive language’. A tenant (Abu), who had refused to quit a one-bedroom flat, despite neglecting to pay rent for two successive months, was summonsed at the barray for abusing the landlady (Ya Haja).243 As an opening statement, Ya Alimamy addressed the defendant (Abu) as follows:

  Don’t you have any respect for elders? Weren’t you born by a woman for you to use such despicable words against another

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242 Interview with Police Inspector and head of the Community Relations Department, Kissy Police Station, Freetown, 3 August 2018.
243 Case code: SMKK-POO-098
woman old enough to be your mother? You think you are above the law? I want you to know that I have authority from government to maintain order and peaceful coexistence in this community. I am a member of the police board, and we discuss mischief-makers like yourselves in our meetings. I will make sure you are kept in an appropriate place [cell] until you learn how to behave. Nonsense!  

Appearing at first as an off-the-mark statement directed towards Abu, Ya Alimamy was undoubtedly also addressing attendees in the court *barray* that Sunday morning and, by extension, everyone else they would care to tell. She was invoking the power of the state and establishing a legally questionable link between her affiliation with the police and the state sanction of her authority. Would Ya Alimamy make use of this link to demonstrate her ‘state-approved’ authority? In other words, could she use her position to get Abu locked up by the police as she promised? This was the question that played on my mind as I left the court that day. Earlier that morning, I had asked her for an interview. With a smile, a far cry from the chief sternly addressing Abu in court, Ya Alimamy had given me an appointment for the next Sunday, after consulting with her clerk.

I did not have to wait too long to get the answer to my question. It came in another court in Kissy the following week. I was waiting to meet with Mr Conteh, clerk at another *barray* in Kissy, and enquire how I might secure the necessary permission to record and perhaps photocopy court documentation. The *barray* was in full session. Mr Conteh was reading over the statement of a witness when, suddenly, a woman burst in, and walked up straight to the chief. I later learnt she was the chief’s cousin. The *barray* was quiet at this time, as the witness testimony reading was not only for the benefit of the witness (to make any necessary corrections) but also to everyone in court, so that they might infer from the statements the eventual logic of the judgment. As the chief’s cousin walked up towards the front table where the chief was seated next to the clerk, he stopped the reading. Whatever the cousin said to the chief (she

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244 *Barray* observation: Alusine Street Court *Barray*, Calaba Town, 4 September 2017.
245 Clerks were always my first point of contact at *barrays*. They would help you reach the chief, gauge his or her willingness to give an interview, or provide access to court documents.
246 These readings are loud. I witnessed in some *barrays* corrections accepted from persons other than the actual witnesses who made the testimony. See also, Chapter Three.
was inaudible), it caused her to exclaim exasperatingly: “I won’t take it, no, I won’t take it. This has gone too far. You can’t cuss my aunt and go scot-free.” Turning to her clerk, she asked for her mobile phone and dialled a number. A few seconds later, she was speaking to someone on the phone:

An unruly couple abused my aunt again today. She’s an old woman and they are really stressing her. Please send police officers down there and arrest them.

Hanging up, she told her cousin to wait, so did the court proceedings at the barray. Soon after, a white police open-back Toyota Landcruiser, with at least four police officers in the truck, stopped at the front of the barray. After a brief conversation with the chief, they drove further south of the barray, taking the chief’s cousin with them. The court case at the barray continued with the clerk completing the reading of the witness testimony. The court barray adjourned for the day. Like me, other attendees that morning had their thoughts on the incident that just occurred, with some openly discussing it. One woman, who described herself as a neighbour, spoke about the obstreperousness of a young couple, whom she claimed shared a compound with the aunt. Another elderly woman commented on the good-natured character of the chief, pointing out that she must have been really hurt to take the drastic step of inviting the police. Surprisingly, nobody seemed to question the arbitrariness of inviting the police to make an arrest, apparently, without proper investigation. The principle of *audi alteram partem* – hear the other party – appeared irrelevant, at least in this case.

We were still talking when the police truck came back and just drove past the barray. There appeared to be some people sitting on the floor of the truck, flanked by police officers. They were later confirmed to be the couple accused of insulting the chief’s aunt. 247 This event, like the quotes at the beginning of this section, revealed the practical consequences of the cooperation between the barrays and the SLP. Through the police response, Ya Alimamy’s invocation of state sanction of her authority would be validated; she could demonstrate, for instance, not only that the barray’s work was known to the state, but that she could invoke the power of the state (the police) to arrest.

247 Interview with police officer, Kissy Police Station, 9 September 2017.
As a lawyer of more than 15 years of practice (at this time) and with experience in legal and judicial (including criminal justice) reform in Sierra Leone, I knew I was treading in a world far away from the limpidness of legal provisions and court procedures, from statute books and official policy documents – the bedrock of legal training and practice. I was beholding something else; and I felt a sense of trepidation but also privilege to be witnessing it. Earlier that month, while observing separate cases in the Calaba Town and Wellington neighbourhoods of eastern Freetown, two events heightened this feeling and provided further insight into the relationship between barray chiefs and the SLP.

I was interviewing the chairman of the Pamoronko Court barray, Mr Alimamy J.B. Kamara, when a small crowd of around a dozen young men and women approached the barray. They were loud and visibly agitated. Upon enquiry, they informed the chairman that following a raid on their area in the early hours of the morning, the police had arrested more than a dozen people suspected of “unlawful gathering”, “gambling” and similar public order offences. They wanted him to intervene. He turned to me and apologised that he would have to end the interview and go to the police. Many questions ran through my mind immediately, including why they came to him, and how he might be of assistance. I asked whether I could accompany him to the police station to which he agreed. Mr Kamara is a very assured man, in his early fifties, married with two children. Before assuming this role, he served as the ‘community contact person’, leading the Calaba Town neighbourhood’s interaction with government and international donor agencies during the flooding disaster in the area a few years back, and the recent Ebola crisis in 2015-2016. He has also led youth development programmes, such as the construction of an ataya base (local tea/coffee shop) and a building to show football on satellite television. He is very popular.

In the short distance between the barray and the (make-shift) Calaba Town Police Station, we were stopped four times by community members concerned about the arrests.
As we approached the station, ‘chairman’ (as he is fondly called) was greeted by everyone, including police officers going in and out of the converted container offices. His first stop was the office designated “Community Relations Department”. I was only a few feet behind him, with the rest of the crowd not too far back. He exchanged greetings with a police officer (not in uniform), who told him to go and talk to “de mammy”.\footnote{‘De mammy’ is used in reverence to a female important, or well-positioned person, and it literally means ‘the mother’. The male equivalent is “De Pa”.} He asked me to follow him while requesting the others to wait outside. We
entered a small office, the narrow corridor leading to which had a small table to the right and a chest of drawers to the left. A police officer was sitting at the desk shuffling through a stack of papers and driving licences. Greeting chairman, he motioned to the door “she is in”. The door was ajar, and we could hear voices inside as we approached. Chairman pushed the door and simultaneously said “knock, knock” as we both entered the office.

Behind the desk was a female Assistant Superintendent of Police – the head of the station. She told the two men she was meeting with, who at this point were standing at the back of three chairs, to wait for her outside. I was not introduced. Even before we were asked to sit – this was a busy office with constant movement of people in and out – the head of the police station remarked that she knew the chairman would come to advocate for his “children”. She explained that the police had been receiving complaints of theft and harassment from that area and suspected the arrested persons to be part of a gang causing trouble. Chairman explained that this was a surprise to him; he pleaded for their release and promised to investigate the matter and report back to her. Just like that, she agreed and gave the order for them to be released.

At another barray in the neighbouring Wellington community, I arrived in the morning for my interview appointment with Chief Ya Alimamy Sankoh Kafoirr. It had rained persistently overnight – not unusual for August in Freetown – so that there was a lot of rubbish on the streets, deposited by clogged gutters and poor refuse management. Side roads, like the one leading to the barray, were still wet and puddled. The barray was empty. The chief and her entourage had just left to visit a seaside area of the neighbourhood, I was told. It transpired that because of the heavy downpour, there had been some flooding in several homes close to the sea, causing substantial loss of property. I was directed to the area, where I met a large crowd, including the chief and clerk. About three houses (all makeshift, with corrugated zinc above elevated platforms, called “pan-body”) were still partially immersed in water, with household furniture and personal belongings displayed outside. The skies were still threatening; indeed, there could be rain anytime. The water levels had risen, and the immediate concern was for the improvised barriers surrounding the foundation of these houses
not to give way. It was at this point that a truck full of police, about twenty, arrived. They had come at the invitation of the chief. In less than ten minutes, they were at work, with the youths, building a wall of sandbags to protect the community from further flooding. The sight was probably the most harmonious example of police-civilian partnership I have ever witnessed.

This type of relationship between the police (through its LNP) on the one hand, and the barray chiefs and the public, on the other, is a far cry from what the perception of the SLP was not too long ago. This is not to say it is now all rosy; on the contrary, there are still big questions about police corruption, excessive use of force, and independence from political control. Yet, these two incidents exemplify the breadth of, and distance in the relationship both between street-level police officers and their superiors, and between the SLP and barrays. For the barrays, this partnership enlarges their authority, projects recognition by the state, and strengthens their legitimacy, not only as community leaders, but as judges. It further enhances the mediating credentials of barray chiefs by demonstrating the ability to negotiate on behalf of their communities, including those who conflict with the law, as well as invite assistance in a concrete way from the state.

This intermediary role of barray chiefs is not unique to Sierra Leone. Blundo (2006), examining how justice, customs and local tax services operate in Senegal, observes practices of “intermediation and administrative brokerage” (p.803) by a range of actors. These actors, some of whom are voluntary and informal like the chiefs, provide an access to public services by helping users to navigate the bureaucracy (even if they also become channels of corruption). In a similar way, Göpfert (2016b), examines the Nigerien gendamerie’s adaptation of surveillance, and its impacts not only on the security apparatus, but also the way it manifests in the relationship with different segments of society. To maintain internal security, the gendarmes have to ‘create eyes’ – forge a complex network of informants, including local chiefs, in a multifarious and dangerous environment, adopting opposing tactics such as violence and compassion, all the time defining the public’s perception of the state. This role is not unlike that
played by the court *barray* chairman, for example, who helps to negotiate the release of the youths in his community.

However, as we have seen in this and previous chapters, the role of *barray* chiefs is not one-dimensional, that is, only acting as intermediaries or brokers for their communities and helping them access the police (state). Instead, the participation of *barray* chiefs in the LNP and the willingness of the police to collaborate with them, speak to an even more important inverse role – providing the police (state) access to their communities. Borrowing the term from Blundo (2006), Göpfert (2016b) describes chiefs playing this dual role as both “administrative brokers” and “knowledge brokers” (pp.44-45). He explains the terms, while distinguishing his position from Blundo’s that as ‘administrative brokers’, chiefs intermediate on behalf of their subjects and carry out all the functions of facilitating access to the state. It is in this sense, that Blundo (2006) describes brokerage. However, when as ‘knowledge brokers’, chiefs are recognised for their familiarity not only of the local population but also of the terrain, both of which are valuable assets to bureaucrats (including any police force) for a variety of security and justice reasons. As Göpfert (2016b) noted, “[the chiefs’] knowledge of local citizens proved invaluable to colonial administrators a century ago, and it is still invaluable to gendarmes today” (p.48). And it is in the latter appreciation of the dual role of chiefs that we begin to understand the motivations of the SLP, in their partnership with *barray* chiefs in the Western Area of Sierra Leone.

Why are the SLP investing in this cooperation with *barray* chiefs and what is in it for them? Put differently, why will the SLP legitimise *barray* chiefs, despite the provisions of the law? The answer will depend on which level of the bureaucratic chain a reply is solicited and what aspects of police activities are under consideration. The higher the chain – the category of police superiors far removed from street-level police work – the more abstract the response; and the likelihood of deniability if the action falls below the official requirements of professional or legal conduct or does not conform to the expectations of the theoretical conceptualisation of “local needs policing”. For example, it was common for senior officials of the SLP I interviewed to extol the cooperation highlighted by the advocacy efforts of chairman (in negotiating the release of the
detained youths) and in the local disaster prevention drive by the police at Wellington.\textsuperscript{249} Equally, they would refuse to accept that collaboration with \textit{barray} chiefs extended to providing Chief Ya Alimamy the authority to request the arrest of anyone. For frontline police officers, our ‘bureaucrats in uniform’ however, there is circumspection and pragmatism. The cooperation with \textit{barray} chiefs runs deep; it is a necessity that requires on-the-spot decisions which, from time to time, may not be in line with the law, so long as they ensure the attainment of security, law, and order in the long term.

\begin{center}
\includegraphics[width=\textwidth]{letter_of_appreciation.png}
\end{center}

\textit{Figure 20: Letter of Appreciation from the Police. Source: Racecourse Barray, 2018.}

\textsuperscript{249} Interviews with Assistant Inspector General Kamara and Superintendent Cowan, 9 February 2018, and 14 and 17 October 2018, respectively, in Freetown.
In fact, one of the most striking images when I observed court proceedings at *barrays* in the Western Area, was the sight of SLP officers, in full uniform, working with (or perhaps ‘for’) the barrays. This phenomenon is not new. Harrell-Bond *et al* had observed that in the mid 1970s, when they conducted their research, police officers off-duty (and in plain clothes), were assisting chiefs’ courts to invite litigants (Harrell-Bond, Howard, & Skinner, 1978). Myn observations are even more dramatic: not only are police in uniform and on duty acting as process servers of the barrays; they are receiving compensation for this service. I recorded fifty-three occasions in which an SLP official (in uniform) either served a summons from or attended an errand for the *barray*.

*Figure 21*: Two SLP officers in a Kissy Local Court Barray. Credit: Koroma, 2017.
As I stated in Chapter Three, the barrays will collect, as part of the summons procedure, a ‘service or police transportation fee’. Intended to compel the attendance of the defendant, this amount is paid directly to the SLP (or other service provider) to cover for their time. Unsurprisingly, senior SLP officials disavow any such conduct and even deny its existence.

While the above examples have so far shown barray chiefs’ influence on the SLP, the relationship between the two, ushered in by the introduction of the LNP, has also impacted the barrays. As Göpfert (2016b) observed, there is a level of reciprocity in the relationship between chiefs and the police even if this is not stated or clear from the onset. The SLP have been able to wield its ‘soft power’ to an even bigger effect in the work of the chiefs and their barrays. The most notable area is in the jurisdiction of barrays, that is, the kinds of cases not admitted for adjudication, discussed fully in Chapter Two. Tracing these cases and interviewing the parties involved – barray officials, litigants, witnesses, relatives, and the police – I uncovered the results of years of meticulous ‘trainings’ and mentoring by the police. Through this, the police have been able to develop red lines, and provide ‘reward’ for compliance, including a system for referring and diverting cases between barrays and police stations. It did not happen in a day; on the contrary, it has involved tact, patience, inconvenience and, above all flexibility by both sides that the rigidity of formal legal and policy processes would not allow. Inspector Kanu captured it well when he said:

We use every opportunity to tell the chiefs what the law says about what they can and cannot do, but we do so in a way that works for them, for us and the community. If they receive cases [of homicide, or wounding, or rape for example] they send them to us. We give them feedback on the steps we take because they are the ones the parties will go to for information. Likewise, when people bring petty cases like abusive language or witchcraft cases, we refer them to the chiefs. [On the question of police officers assisting barrays] We give them ‘morale boosting’ because of the assistance they are giving to the police.\(^{250}\)

\(^{250}\) Interview with Police Inspector and head of the Community Relations Department, Kissy Police Station, Freetown, 3 August 2018.
The key objective of LNP, the variant of community policing implemented in Sierra Leone, following years of mistrust and a brutal civil war, is to transform the SLP into a ‘force for good’. To do this, the SLP have had to be, among other things, responsive to local needs, by offering reliable services and involving people in policing. As the police officer from Kissy remarked in the opening quote, the partnership with the barray chiefs has been a step in that direction. It has been critical in maintaining security, acquiring vital information, and resolving a wide range of security and justice challenges in the community. For ordinary people, the presence of the state has been even more visible and relatable through police involvement and cooperation with neighbourhood justice mechanisms such as barrays.

Conclusion

Throughout this chapter, I have sought to showcase the impacts of local needs policing (LNP) on the barrays, how it has influenced the relationship between the SLP and barray chiefs, and what it says about the (re)interpretation and creation of policies, as well as the perception of the state. Thus, I have explored the challenges of dual positionality of public servants like the SLP, especially in how they see and define themselves – (whether) as representatives of their units or professions and, therefore, the expectation to act in a particular way – while, at the same time, cultivate relationships with the recipients of the services they deliver. This tension, I have argued, of what distance they maintain between their superiors (and indeed the strict adherence to laws) on the one hand, and to the public (and a much lax and pragmatic view) on the other, shapes the daily interaction between the police and the public, as well as how the state is defined or perceived.

This chapter has demonstrated that institutions like the barrays, with important roles and widespread recognition by people cannot be ignored by the police. The barrays’ unique position in the socio-legal and economic fabric of communities in the Western Area of Sierra Leone, makes them an irresistible partner for a police force desperate to (re)establish a foothold in these same communities. This has historical precedence. In this chapter, I have traced the conditions and circumstances that led to the first
official collaboration between the SLP and traditional leaders in the former colony (now Western Area) of Sierra Leone. It was a partnership built out of necessity. I have argued that it was the position and role of tribal rulers at that time – anchorage and protection they offered to the growing ‘native’ population – and the need for the colonial administration to exercise control – curb immigration, deal with public order and health challenges – that compelled the collaboration. Although some of the reasons may have been altered, for example, preventing immigration is no longer pertinent, both the position of tribal authorities as community leaders and judges, as well as the need for the state (SLP) to provide law and order have remained relevant.

It is in this sense that the LNP has created an official platform for such a collaboration whose ramifications sometimes have dubious legal standing. Thus, while the concept of “local needs policing” is theoretically sound and legally defensible, its application by frontline police officers, with the specific mandate to close ranks with the public, has meant a certain level of discretion. If the broader outlines underpinning policing efforts in this part of Sierra Leone – reducing crime, securing participatory policing, winning back community confidence – are met, it is unlikely that a (mis)application, (re)interpretation, or even creation of new policy will turn heads. In other words, the fruitfulness of such collaboration for both the SLP and the barray chiefs, poses questions about the futility of labels and classifications. The pragmatism that has given rise to unprecedented security cooperation, collaboration, referrals, and diversions, because of this relationship, will continue to shape the ways both institutions provide services to the population of the Western Area. Borrowing from Göpfert, it is not the SLP’s (re)interpretation or (mis)application of the law in their relationship with the barrays that is deficient; instead, it is perhaps the law itself that requires ‘repairing’ (Göpfert, 2016a). Ultimately, initiatives like the LNP can only buttress the position of the barrays and raise questions about their exclusion from the Sierra Leone legal system.
Conclusion

The law, the state, and the customary

This thesis began with the puzzle of *barrays*, the neighbourhood, customary courts operating in Freetown, the capital of Sierra Leone, an area where such courts are statutorily prohibited, by investigating why *barrays* have flourished and proliferated despite the prohibition, but also why Freetown’s population is gravitating towards them. This study has been situated within the particularities of Sierra Leone’s post-colonial and post-conflict context, to understand the ways in which ordinary people engage with the law and its processes beyond (and through) the state by inquiring:

1. How do local *barrays* operate and what is their relationship to the state?
2. Why do individuals engage with *barrays*?
3. What can studying local *barrays* tell us about how justice is understood more broadly in Sierra Leone, both in theory and in practice?

To unravel the puzzle, this thesis has sought to study the centrality of law both to the exercise and perception of state power, and the ways (extra)legal processes manifest in the quotidian lives of citizens and become locally (re)produced ideas of justice. By studying *barrays* in their own social contexts, I have argued that they are an important part of Sierra Leone’s legal system, based on their character and function, as well as in *barrays*’ connections with other social spheres.

particularly, this study has challenged notions about legal dualism – that there is a distinct separation between state institutions like the official courts and police on the one hand, and non-state customary courts, such as *barrays*, on the other. Using a people-centred approach to examine the results of Sierra Leone’s division into two territorial, political, and juridical realities, as well as the role of law and (extra)legal processes in its post-conflict state (re)construction, this study has concluded that *barrays* and official state institutions, which are often discussed as distinct and separate, all interlink and rely on one another to enact a complex system of law in Sierra Leone.
Built on the centrality of law, the theme of legal bifurcation, especially the distinction between territories and peoples, and the corresponding allotment of governing institutions, statuses, and rights, was an essential feature of colonialism (Mamdani, 1996). Policies such as ‘indirect rule’ – an administrative structure that utilised local leadership in such capacities as would maintain the colonial administration’s overall control – and the recognition of customary law, for instance, have been shown to reinforce the role of law in the state. This has led to the recognition and, in some instances, the creation of chieftaincy for life, with political and judicial authority to apply and determine customary law (Abraham, 1978, pp.303-311; Mamdani, 1996, pp.37-61; Chanock, 1982, p.59; Ubink, 2008, p. 7). The result, according to scholars like Chanock, is the development of a customary law, codified, officially recognised, and applied through the state court system, whose rigidity is reinforced in post-colonial legal systems (1985; 1982). In contrast, other scholars have discussed the presence of a ‘living customary law’ that is dynamic, flexible and that regulates the daily lives of people in communities, outside codification, official recognition, and application through state courts (Zenker & Hoehne, 2018; Letuka & Armstrong, 1996).

Thus, whatever its configuration – defined by its closeness and interaction with the state or state law – customary law and its institutions have profound meaning to many Sierra Leoneans. For instance, not only has chieftaincy persisted, institutions like chiefs’ courts have been pivotal as forums for the resolution of disputes. Therefore, as I have argued, courts like barrays have shown that they do not have to emerge from legislation or direct official policy, but from the determination of those who run and participate in them, within an ever-changing socio-economic and political context. This context is not always the result of internal interactions, as where state law, through official courts mark up (or down) a customary rule, by way of the repugnancy clause (Bennett, 1981), or where as Zenker & Hoehne (2018, p.2) note, the “‘jurispathic’ nature of state recognition” means that one version of customary law (‘living’) transforms into the other (‘official’) after state recognition.

I have argued that this context also involved external interfaces, so that by examining
barrays in Freetown, this study has shed new light both on the contemporary practice and application of customary law, as well as on the outside influences – official law, the police, urban migration, money, and religion – that define it. This study’s detailed examination of barrays, the kinds of cases and procedures they undertake, their connection to other institutions, and how state officials in their quotidian duties interact with them, has enhanced our understanding of customary law and institutions, especially in an urban area such as Freetown, where they are not supposed to exist.

To understand the above, I have situated the discussion of customary law within the wider discourse of legal pluralism, to foster an understanding of barrays. I have mentioned how, in Africa especially, legal pluralism has its origins in colonialism, when policies such as indirect rule necessitated the interaction of two or more legal orderings, which typically allowed for colonial state law to operate alongside (or rather above) customary law (see for e.g., Van Niekerk, 2001, p. 350; Griffiths, 1986; Merry, 1988; Woodman, 1996; von Benda-Beckmann, 2002). The practical consequence was that an individual’s actions could become subject to more than one system of laws, and it is in this vein that I have also discussed forum shopping. I have described the relevance of debates on legal pluralism – largely based on the meaning of law and its connections to the state (state-centred view versus an empirical understanding of different processes within society) – to the position of barrays within the context of Sierra Leone’s legal system. This includes how they are defined by their character and function, and how they influence both the choice of forum and conceptualisation of justice for litigants.

This study’s engagement with the debates around legal pluralism has helped to contextualise barrays within Sierra Leone’s socio-legal framework, exemplifying a fluid understanding of law, the state, and the subsistence of plural legal orderings with varied (non) relationships to the official legal order. This has been demonstrated in the dual presentation of barrays throughout the thesis, as autonomous forms of social regulation that draw on the symbols of (official) law and operate in its shadows, but also in relationship with state law and institutions such as courts and the police. Ultimately, this presentation of barrays demonstrates the connections between, and
engagement with, different normative orders from the point of view of users, participants, and the state. This study has investigated the barrays’ connections to these different systems, from the point of view of litigants, but it has also highlighted how the meaning of ‘state-ness’ is far from straightforward, especially in a post-conflict context like Sierra Leone.

By the end of the civil war (1991-2002) in Sierra Leone, what was left of the state went through a reform process under programmes such as the Security Sector Reform (SSR). Some writers have insisted, following the state of Sierra Leone at the time, that the term “Reform” (as used in SSR) was a misnomer, as there was no ‘sector’ left after the war to reform, considering the systematic dismantling of state institutions. ‘Transformation’ was suggested as the apt description of state (re)construction efforts at that time (Albrecht & Jackson, 2010, p.10). I have noted the direct link between the failures of political and legal institutions and the disintegration of the Sierra Leone state (Abrahamsen, 2016; Conteh-Morgan & Dixon-Fyle, 1999; Alie, 2006), so that post-conflict reconstruction was geared towards a combination of security and justice reforms. As part of the package of reforms, a new ‘networked state’, reflecting Rita Abrahamsen’s “network governance” (2016, p. 289), was prioritised, in which the state relinquished sole control of security and justice services, allowing other actors (including so-called non-state actors) to play a role as partners, with the caveat that the state remained at the centre, directing, and regulating networks of services. It is in this configuration that I have discussed the policy of ‘local needs policing’ and the co-option of barrays into Local Police Partnership Boards and Area Police Partnership Boards (Chapter Five).

This study has argued that the state (re)building process after the end of the civil war in 2002, did not prioritise customary law, even though it was of more relevance to much of the population. Instead, it adopted a top-down, state-centred development model, which emphasised law reforms, effective judiciaries, and state institutions, often on the assumption of economic and developmental benefits (Golub, 2003, p.3; see also, Sandefur & Siddiqi, 2013; Sriram, 2010). I have argued that on the downside, such an approach failed to countenance the presence, much less the role, of non-state forums.
such as barrays in supporting the legal needs of citizens. This is particularly relevant when considered in the same breath as population and demographic changes in the Western Area, including Freetown.

An immediate consequence of the civil war was urban migration in search of improved security, prospects for employment, better sanitation, health, and housing, leading to an overrun of social services, and wide-ranging security and justice problems. While this study has explored the beginnings of “tribal administration” in the (former) Colony, including the inception of chiefs and their barrays, it has also established the link between the surge in Freetown population during and after the civil war and the proliferation of barrays and the chiefs that run them. What this points to is the connection between migration and the creation of legal systems (von Benda-Beckmann, von Benda-Beckmann, & Griffiths, 2009). In Sierra Leone, this study has linked urban migration to the emergence of barrays, which draw on different normative orders to fit the Western Area, including Freetown’s sociolegal context. By understanding how and why legal systems evolve to aid or constrain the legal needs of city dwellers, and the role of law in this process, this study has made an important contribution, given rapid urbanisation in cities such as Freetown.

What next for barrays?

The barrays in the Western Area have an uncertain future. As I have stated throughout the thesis, their ability to hear and determine cases has remained unaffected by the lack of legislative recognition. At the same time, the relationship with state apparatuses such as the police and municipal councils, has worked for barrays on account of the usefulness of their roles. The thesis has shown several examples of barray chiefs invoking arrest or service powers to compel attendance or compliance with procedures, demonstrating the importance of this relationship to the functioning of the barrays and community policing. This has led to chiefs like Matthew Young, Tribal Headman for the Mende ethnic group and secretary of the Western Area
Tribal Headmen Association to set his vision for this network of neighbourhood courts as follows:

...Government should allow chiefs to settle customary cases because we are better suited to handle them. If we cannot resolve them or people are unhappy with our decisions, then they can go to the magistrates’ courts.251

This is in line with the aspirations of people like Mouctarr, the former magistrate’ court clerk turned client at the barray, who also wanted some form of formal cooperation between barrays and official courts in the Western Area. What this study has shown is that there is already considerable collaboration – from direct contacts with magistrates’ courts and lawyers, to adapted procedures and processes – even if cooperation with the legal sector (lawyers, judges) remains a pipedream for now.

Throughout the thesis, I have argued that the immediate juridical bifurcation into the Western Area (formerly colony) and Provinces (formerly Protectorate) has had a marked impact on the development of context-specific legal institutions and represented a major obstacle for access to justice (even if the barrays themselves show that it has not been an absolute impediment). The policy to allow only state courts and formal legal processes in the Western Area, is deliberately geared towards limiting the application of customary law. This in turn has created two related effects: first, it has driven non-state, traditional justice to the fringes and limits the space for formal recognition or cooperation. Second, as a result, non-state justice processes in the Western Area have remained excluded from reform agendas such as the post-conflict state reconstruction and other access to justice interventions. More than anything, such policies fail to recognise the social changes on the ground and the changing demographic and ignore opportunities for improving access to justice in Sierra Leone.

The thesis began with the story of Digba, the trader who sought the intervention of Timap for Justice, a legal aid organisation I co-founded, in a dispute with her fellow

251 Interview with Chief Matthew Young, Mende Tribal Headman in Freetown, 19 October 2018.
traders, which had resulted in two adverse judgments from the Kissy barray. I have mentioned how this case inspired my PhD research two years later, because of the way it challenged my formal training in law and the several years of practice up to that point. For the case itself, while Timap was unable to affect the two judgments – Digba was not interested in an appeal – the paralegals succeeded in negotiating with the barray chiefs and complainants to withdraw the new cases from the court and mediate the dispute between Digba and her co-traders. Having won the bets at the barrays and following Timap’s intervention, the chairlady ‘accepted’ responsibility for the disunity among the members of the women traders’ association and, as a demonstration of her willingness to unite everyone, she agreed to mend Digba’s stall.

When I returned for fieldwork in June 2017, I visited the same market in Kissy. I met the chairlady and some of the other women from our 2014 encounter. She introduced me to her daughter who was now running her stall because, as she told me, she was getting “tired”. Unfortunately, Digba was no longer at the market. It was not clear whether this was related to the case in 2014. I was informed that Digba had left in 2016 after her husband fell ill and was taken upline (upcountry) for native treatment.

Digba’s story did inspire this study because of the profound questions it raised: when and how customary law (through the barrays) gained a foothold in the Western Area, why citizens like Digba prefer this system despite its uncertain and fluid legal status, how these cases are adjudicated, and how migratory circumstances can have substantial impacts on legal systems. Throughout this study, I have argued about the futility of binary labels. Through the study of barrays and the institutions that they engage with from a people-based perspective, this thesis has stressed the importance of moving beyond binary classification of forums and institutions as formal or informal, and official or unofficial. As the barrays demonstrate, at the core of their operations, forums and institutions interact and intersect, so that they become more than their individual characters.
Bibliography


Coker, E. (2016). Reflections on Sierra Leone by a Former Senior Police Officer. Iuniverse Inc.


Appendices

Appendix A: Barray Chiefs/Chairmen Interview Guide

1) Court structure:
   a. What is the full name of your court?
   b. How is the court constituted? (Who are the officials of the court?)
   c. How are they chosen?
   d. What are their roles?
   e. Who oversees this court? Do you report to anyone periodically about the activities in this court?
   f. Where does this court sit?
      (NB: Is this a designated area? E.g., veranda, barray, parlour?)

2) Geographical coverage:
   a. What is the geographical coverage of this court?
      i. How is the coverage set?
         ▪ Are they set by wards, constituencies, etc.?
   b. How close is the nearest other local court?
   c. How close are formal institutions such as the police, magistrate court, to local courts?

3) Procedure:
   a. Types of cases:
      i. What cases are brought to the local courts?
      ii. Can you give me an example?
         (what cases are not accepted at the local court?)
   b. How cases are initiated:
      i. How are cases begun in these courts?
      ii. What are the different ways of initiating action?
      iii. Are all cases begun by summons?
      iv. Does it depend on the type of case and how?
      v. How are the parties called? Explore if they are called defendants, complainants, etc.
   c. Who can sue and can be sued?
      i. Is there an age limit or other restriction?
      ii. Can a married man/woman sue and be sued?
      iii. Can an unmarried man/woman sue and be sued?
      iv. What about children, can they sue and be sued?
      v. What about the mentally challenged?
   d. Oath procedure:
i. Who takes the oath?
ii. When is the oath taken?
iii. Who gives the oath?
iv. When is the oath given?
v. Are any symbols used for the oath process?
vi. How is the oath administered?

e. Written statements:
   i. What kinds of statements are made and by whom?
   ii. Are statements taken from the complainants and defendants?
       ▪ Who takes them and when?
   iii. Are statements taken from witnesses?
       ▪ Who takes them and when?
   iv. Do parties sign the statements?
   v. Are statements read in court?

f. Language of the courts
   i. What language is used in the local court baray?
   ii. Is there ever a situation wherein both parties don’t speak the same
       language so that interpretation is necessary?
   iii. Is there a common language rule across local courts in the Western
       Area?

g. Costs:
   i. Please provide a breakdown of costs in court.
   ii. Does this depend on the type of case?
   iii. What would be the costs breakdown for abusive language for e.g.?

4) External Relationships:

Formal Courts:

a) What is the relationship between the local courts in the Western Area and
the Judiciary (Magistrates/ High Courts)?
b) Are there any formal referrals?
c) How do local court officials view the judiciary (Magistrates and High
Courts): do they help or undermine their work?
d) Are there examples of cases where disputants have used the magistrates
or high courts before, during or after their cases at the local courts?
   I. What has the reaction of local courts officials been to these kinds of
      cases?
   II. Have they liked it or been frustrated by it?

Police:

a) What is the relationship with the police?
b) Describe the cooperation between the two entities.
   a. Referrals
   b. Arrests, detention, etc.
Lawyers:
   c) Have lawyers been involved in any cases before local courts?
   d) How have local court officials viewed lawyers’ intervention in cases before local courts?
Appendix B: Tribal Headmen/Paramount Chiefs in the Provinces Interview Guide

1. **Appointment of chiefs: (Question for Tribal Headmen)**
   a) How are section chiefs appointed?
   b) Who is involved in the appointment of chiefs?

2. **Processes and rites involved in appointment: (Question for Tribal Headmen)**
   a) What processes (rites) are involved in appointment of chiefs?
   b) What titles do the chiefs use?
      I. Why the chiefs are using the same titles as the Themne for e.g. 'alimamy', 'santigie', 'bom warrah', 'posseh', etc.?

3. **Relationship between chiefs in the Western Area and chiefs in the provinces: (for both Tribal Headmen and Paramount Chiefs)**
   a) What is the relationship between the chiefs in the Western Area and chiefs in the provinces?

4. **Hierarchy of Chiefs:**
   a) What is the hierarchy of chiefs from the TH?
   b) What are their functions?
   c) How are they distributed geographically; or does this matter at all?
Appendix C: Formal authorities Interview Guide

1. Police:
   a) What is the relationship between the local courts in the Western Area and the Sierra Leone Police (Community Relations Department)?
      I. Is it formalised
      II. If not, please explain what the relationship is?
   b) How do barray chiefs work with/assist the police? What is the level of cooperation/collaboration between barrays and the police?
   c) How does the police support the work of the local court barrays?
      a. Are police assigned to local courts?
      b. Do police effect arrests or deliver processes for barrays?
   d) Do the barrays refer cases to the police? If yes, what types of cases?
   e) Do the police refer/divert cases to the barrays? If yes, what types?
   f) Anything else you want to add?

2. Judiciary
   a) Have you heard of the local court barrays and their chiefs in the Western Area?
   b) How will you describe the relationship (if any) between the barrays and the Judiciary?
   c) Have you had cases in your court that have been referred by chiefs, or that have emanated from the barrays? If yes, can you please describe the process, as well as the kinds of disputes? What has been your impression of the barrays and their chiefs?
   d) Have you handled cases in your court that you thought should have been adjudicated outside the official legal system?
   e) Do you support the official recognition of barrays? If yes, how do you think this can be done? If no, why not?
   g) Do you see any comparisons between local courts in the Provinces and barrays? If yes, can you give examples?

3. Lawyers:
   a) What do you know about the local court barrays in the Western Area of Freetown?
   b) Have you had any contact or experience with them? If yes, please share.
   c) How do you view the work of barrays? Is it helpful?
   d) Are you aware of the work of the local courts in the Provinces? Have you litigated any cases before the DAC?
   e) Do you support the official recognition of barrays? If yes, how do you think this can be done? If no, why not?
   f) Do you see any comparisons between local courts in the Provinces and barrays? If yes, can you give examples?
4. **Freetown City Council:**

   a) Are there any registration requirements for local courts?
   b) Are there any obligations such as taxes, etc.?
   c) Are local courts required to provide any information to the city council? If yes, how often is this information required?
   d) What is the relationship (if any) between the FCC and *barrays*? (mention letter from FCC asking *barray* chiefs to help collect local taxes).

5. **Local Government:**

   a) Is the local government involved in the appointment or designation of the local courts?
   b) Is there a direct involvement of the Ministry in the appointment or designation of chiefs? If yes, how is this done?
   c) Is there any form of reporting to the Ministry by these courts? If so, how often is this reporting done?
   d) What is the relationship between Tribal Headmen (and their chiefs) and Village Heads voted for in the Western Area and supervised by your Ministry?
Appendix D: Follow-up Interview Questions

Barrays

a) Appeals process to the Tribal Headman:
   a. How is this initiated (for e.g., does the appellant pay an ‘appeals’ fee and how much)?
   b. What other fees are paid by the appellant to the Tribal Headman’s barray (the breakdown)?
   c. Who is invited as respondent (is it the chief/chairman of the original court only, or does it also include the winning party)?
   d. Who covers their costs (of transportation)?
   e. Does the respondent (chief/chairman in the original court and/or the winning party) pay any costs to the Tribal Headman’s barray in relation to the appeal?
   f. If the appeal is successful or unsuccessful, what are the financial consequences of the parties?

b) Witnesses:
   a. Is it correct that without witnesses a case cannot proceed at the local court barray?
   b. What happens to a case in which the parties have deposited their bets, bora, and other fees, but have no witnesses? What portions of their money would be returned to them and what amounts would the court barray keep?

Inquire about any union of Tribal Headmen in the Western Area.
   c. In particular is that the reason why different tribes can now be summoned to each other’s court and by extension sub chiefs?
   d. What else is agreed?
   e. Is there a document confirming this relationship? (I understand Chief Young is the secretary of this union/association).

c) Procedure:
   a. Are witnesses/litigants asked out during the testimony of others at any point?
   b. If witnesses are paid as they testify, is the winner refunded his/her witness fees? If yes, from what funds are they taken since the loser would’ve also spent on witnesses and so that money is no longer with the barrays?
   c. Are prayers or any sort of chants made before, during or at the end of proceedings?
   d. Oath-taking: why do you describe it as“double bomb”?

   d) Inquire about the Western Area Female Chiefs Organisation (WAFCO)

Judiciary:

Data questions:
   - Total number of judges and magistrates in the Western Area and nationally?
   - Total number of magistrates’ courts in the Western Area and nationally, including JP Courts?
- When were these increased? In 2002, for e.g., what were the figures? Most helpful will be data on incremental rise in numbers.
- Ballpark: how many cases were initiated/completed in the magistrates’ courts and nationally in 2015/2016/2017/2018?
  o Can these cases be disaggregated: criminal (public and private), civil; types; gender of complainants/plaintiffs, defendants/accused, applicants, respondents?
  o Do we know how many of these are DAC cases?

Procedure:
- Oath: When did oath-taking in magistrates’ courts cease to use ‘sasa’? If there is a request to use ‘sasa’, will magistrates’ courts comply? Any experience of such request?
- Has this practice (of excluding ‘sasa’) been influenced by religion rather than legal or policy considerations?
- Some have argued that this may have affected the quality of testimonies; do you think there is any truth in that, given the number of users who may have ties with traditional beliefs?
- What will you consider as the top 3 barriers in our present procedural rules at the magistrates’ courts that challenge their effectiveness and make them less attractive?
  o Probe more on length of trials; inadequate compensation; unfamiliar processes (language, fees, bureaucracy, etc.).
  o If possible, divide into criminal and civil.

Existence:
- What is your view about the non-existence of local courts in the Western Area? Do you think this makes sense in modern Sierra Leone, where perhaps the majority of the population have links to the provinces and consider customary law as their personal law?
- Incorporating arguments about the derivation of legitimacy – does it require a legal or other framework, or does it come from acknowledgement and use – and considering the resilience of customary courts in the Western Area, can you think about any situations where they might play a useful role?
  o What are your misgivings? What are the dangers of formal recognition, if any?
  o Will these be cured if they were co-opted?
  o Could they assist with backlog or act as both a referral and diversion apparatus?

Local Government:
- What is the ministry’s work with village heads in the Western Area?
  o Why was the position created? How are they different from councillors?
- Are you aware of chiefs sitting courts in the Western Area and playing some of the roles of village heads?
- In your supervisory role, please share anything you have heard by way of collaboration or even confrontation between village heads, councillors, and chiefs?

Freetown City Council:
- Does the council utilise chiefs in any way, such as in the collection of taxes, cleaning, or other City Council activities?
  o If yes, what is the policy and legal framework, if any?

Police Prosecutors:

(Public Prosecution Questions)
- How long have you been a prosecutor?
- How many cases (roughly) have you prosecuted?
- What are the most common cases?
- Have you had any cases in which lawyers have joined you in prosecution?
- Can you explain what your overall impression of lawyers associating with prosecution is?
- Does the fact that complainants bring in lawyers to associate with you affect the way you handle the case?
- Do you think it is necessary to have lawyers associate with you considering that you oversee prosecution?
Appendix E: Focus Group Discussions Guide

Focus Group Discussion with Chiefs
- How do you distinguish different types of cases at the barrays?
- What kinds of cases do you accept at the barrays? Why?
- What kinds of cases do you not accept at the barrays? Why not?
- Please give me examples of cases that you do not deal with?
- What is your relationship with external parties such as the Police, Freetown City Council, Judiciary, Lawyers, and Local Government?

Procedures
- Can you describe for me the litigation process at the barrays?
- Why do chiefs surrender to each other’s jurisdiction?

Focus Group Discussion with litigants
- Have you ever had a case at the barray or magistrates’ court? If yes, which court?
- Have you participated in any case recently (in the last six months) and in what capacity? (complainant, defendant, witness, surety)
- What was your experience at the barray?
- What was your experience at the magistrates’ court?
- Can you describe what you liked at the barrays/magistrates court and what you did not like?

Focus Group Discussion with Police
- What is your relationship with the barrays?
- When did it start?
- Follow up question on local needs policing
  - What is the role of chiefs in local needs policing?
  - What kind of support do chiefs provide to the police in local needs policing?
  - What kind of support does the police provide the chiefs to keep them engaged in local needs policing?
  - What other forms of cooperation or collaboration take place between the chiefs and the barrays?
Appendix E: Consent Form

Consent Form

Research Project: Unusual Courts and Urban Spaces: An Examination of the Local Courts in Freetown, Sierra Leone.

Interviewee (Optional):

Date:

Please tick the boxes

1. I have read and understood the information on the project information sheet.

2. My participation in this research is completely voluntary and I understand the intent and purpose of this research.

3. I have been given the opportunity to ask questions about the project.

4. I agree to take part in this project.

5. I understand that my words may be quoted in publications, reports, web pages, and other research outputs.

6. I understand that my identity will be kept confidential unless I expressly request otherwise.

7. I understand that I have the right to withdraw from this research at any time.

____________________ ______________________
Signature of Researcher    Signature of Participant
Appendix F: Information Form

Information Form

About this research:
I am a doctoral researcher at the University of Edinburgh, examining the intersections of multiple legal spaces within Sierra Leone’s pluralist legal framework. In particular, I am interested in how and why “local courts” have developed in an urban area, such as Freetown, outside the statutory provisions of the legal system, and whether and how they define and contest legal legitimacy in Sierra Leone. The study will seek to understand how these courts operate, the social, economic and political networks that underlie them and why people are motivated to use them, despite their lack of statutory recognition.

This research will take 12 months, during which I intend to conduct interviews and carry out participatory observation in and around Freetown.

Why I am contacting you:
For this project to be successful I need to interview/‘shadow’ research participants with knowledge and experience in the development of the legal system in Western Area; and/or have interacted with, or impacted by, the Freetown “local courts”.

All personal information collected as part of this study, including direct quotations, will be anonymised in my PhD thesis and publications, unless the participants request otherwise.

Further Information and Concerns about this Research
For further information about this project, please contact:
Dr. Gerhard Anders (Principal Supervisor)
School of Social and Political Studies
University of Edinburgh
Chrystal Macmillan Building
15a George Square Edinburgh EH8 9LD
United Kingdom

If you are worried about this research, or if you are concerned about how it is being conducted, you can contact:
The Chair, School of Social and Political Science Ethics Committee
University of Edinburgh
Chrystal Macmillan Building, 15a George Square, Edinburgh EH8 9LD
United Kingdom
(or email at ethics@ssps.ed.ac.uk).
Appendix G: Overseas Travel and Field Work Risk Assessment form

PALUBA Agata

From: HUNTER Lindsay
Sent: 21 June 2017 11:26
To: PALUBA Agata
Subject: FW: Simeon Koroma has made a submission using the Overseas Travel and Field Work Risk Assessment form (ID: #233456)

Can you process this one please.

Thanks,
Lindsay
--

Lindsay Hunter
PG Research Administrative Secretary
Graduate School of Social and Political Science
University of Edinburgh
Chrysal Macmillan Building
15a George Square
Edinburgh EH8 9LD
0131 651 1587

From: MITTRA James
Sent: 21 June 2017 11:25
To: HUNTER Lindsay <L.Hunter@ed.ac.uk>
Subject: Re: Simeon Koroma has made a submission using the Overseas Travel and Field Work Risk Assessment form (ID: #233456)

Happy to approve this,

Best wishes,

James

On 20 Jun 2017, at 22:56, GRADSCCHOOL sps <spss00@exseed.ed.ac.uk> wrote:

Hello,

Simeon Koroma has made a submission using the Overseas Travel and Field Work Risk Assessment form.

Please find a summary below.

Thank you.

1. Your details and general risk assessment
Your name Simeon Koroma
Your email address s1667685@sms.ed.ac.uk
Position: PhD Student
Your PhD supervisor: ganders@exseed.ed.ac.uk
Name of supervisor: Gerhard Anders
Subject group or support unit: International Development
Matriculation or Staff Number: S1667685
Passport number: ER044211
Are you a new or expectant mother?: No
Purpose of travel: PhD research

<table>
<thead>
<tr>
<th>Please list cities and countries to be visited, including dates of travel</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 July 2017: Freetown, Sierra Leone</td>
</tr>
<tr>
<td>31 July 2018: Freetown, Sierra Leone</td>
</tr>
</tbody>
</table>

"If you travel outside the Freetown peninsula, try to complete your travel during the hours of daylight, inform your employers of your whereabouts and make sure they have copies of your itinerary. Terrorist attacks in Sierra Leone can’t be ruled out. Attacks could be indiscriminate. You should be vigilant, especially in places visited by foreigners. See Terrorism If you’re abroad and you need emergency help from the UK government, contact the nearest British embassy, consulate or high commission. Take out comprehensive travel and medical insurance before you travel and make sure your insurance specifically includes medical repatriation." I am a Sierra Leonean national with substantial experience living and travelling around Sierra Leone. I will take the usual caution and heed security and other advice.

Will you be making repeat visits?: Yes
Please provide details: From July 2017 to July 2018, I will be carrying out fieldwork in Sierra Leone. However, this will be punctuated by travel to the UK for additional research, including archival work.

2. Personal safety
In regard to the country and area(s) where you are to travel/work in, please state any specific risks relating to personal safety

<table>
<thead>
<tr>
<th>Task to be undertaken (e.g. excessive schedule, accommodation security problems, competent drivers available for terrain type, suitable vehicles available, compatibility of equipment with electricity supply and safety standards, etc.)</th>
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</thead>
<tbody>
<tr>
<td>Low to no risk: I am a Sierra Leonean national, who has lived and studied in Sierra Leone before now.</td>
</tr>
<tr>
<td>low to no risk: I am a Sierra Leonean national, who has lived and studied in Sierra Leone before now.</td>
</tr>
</tbody>
</table>

3. Health
Prior to travel you should discuss both general and specific health risks with the Occupational Health Unit or your GP. Have you done so or, if not, will you do so?

<table>
<thead>
<tr>
<th>In regard to the country and area(s) where you are to travel/work in are there any specific health risks?</th>
</tr>
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<tr>
<td>No, I have not done so yet, but will do so prior to travel</td>
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<tr>
<th>Are there any issues with availability of medical aid, including first aid (e.g. remote</th>
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<tr>
<td>No</td>
</tr>
</tbody>
</table>

No
Are there other potential risks not covered above that you think need to be addressed?

No

4. Travel insurance

University travel insurance declaration:

I confirm that I will obtain travel insurance from the University before I travel

5. Emergencies

Do you have your emergency contact details (e.g. overseas phone number)?

Yes

You must leave your emergency contact details (e.g. overseas phone number) with your home School Administrator, Supervisor and your family.

Mobile telephone number for use while abroad, including international code

+23279961000

International roaming is/will be activated

16A Lightfoot Boston Road Off Wilkinson Road Freetown Sierra Leone

Gerhard Anders
Supervisor
01316513178

I confirm that I have done so or will address this before departure

Address at which you will be based, if known

16A Lightfoot Boston Road Off Wilkinson Road Freetown Sierra Leone

Name of UK emergency contact

Gerhard Anders

Relationship to you (e.g. mother, friend)

Supervisor

Telephone number(s)

01316513178

International roaming

Yes

Is the above contact available at all times?

Yes

What contingency plans have you in place in case of interruption to your travel stay, accommodation or business plan (e.g. knowledge or access to flight schedules, sufficient funds for flight)?

I will have a return flight to the UK and sufficient funds to handle any unforeseen situations.

6. Fieldwork

Are you conducting fieldwork as part of your trip?

Yes

Please state all the fieldwork sites you will be visiting, with dates

- July 2017 - July 2018: Freetown, Sierra Leone

Do you need an official permit to carry out your research/activity?

No

My project seeks to understand the emergence and development of dispute resolution forums, referred to as “local courts” in Freetown, Sierra Leone’s capital city, outside the statutory provisions of the legal system. I am particularly interested in how and why these forums have become an attractive proposition to Freetown’s urban population despite and/or in addition to other mechanisms such as formal courts and police stations. My study will utilise a combination of ethnographic methods, official interviews and documents analysis.

Please provide a brief description of the fieldwork

Will you be based within an organisation when conducting fieldwork?

No

Will you have an onsite supervisor?

No