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The Expanding Access to Justice Program in Somalia
EAJ Research Scholars Series

No.4
October 2020

ASSESSING THE PROGRESSIVITY OF THE JUVENILE JUSTICE SYSTEM IN SOMALIA

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Nairobi, October 2020

Abstract

The age of criminal responsibility under Article 59 of Somalia's Penal Code is 14 years. However, the Code contains no provisions guiding the handling of children in correctional facilities or special measures for children in detention. Juveniles aged 15 to 18 are liable for any criminal act they commit if they have the capacity of "understanding as well as volition." Studies have shown that the implementation of this law has been regressive for minors.

The aim of this study was to assess the progressivity of the juvenile justice system in Somalia. Its specific objectives included the following:

- To examine the mechanisms used by members of the criminal justice sector to determine the age of minors
- To understand the process of criminal liability for minors in Somalia
- To establish whether the juvenile justice system in Somalia is proportionate.

The study adopted a cross-sectional descriptive research design and 174 staff members were selected from different sections of the justice sector. A sample of 174 staff members was selected. The study was based in the Banadir Region, which has 17 districts and is the most populous region of Somalia. A total of 134 questionnaires were returned, constituting a response rate of 77.6%. A pilot study was done to test the validity and reliability of the study tools. Data was analyzed using both qualitative (thematic analysis) and quantitative (descriptive and inferential analyses) techniques.

The study found that age determination mechanisms are haphazard in the criminal justice sector in Somalia. Mostly, the age of children in conflict with the law is determined arbitrarily by qualified staff through mere observation of physical appearance without standardized reference to clear criteria. The study also revealed that Somalia has a poorly coordinated criminal liability determination process for juveniles.

Based on these findings, the study concluded that the juvenile justice system in Somalia is not proportionate. Many ineffective diversionary measures are implemented in cases involving minor crimes, the severity of juvenile cases is often determined out of line with the principle of proportionality and authorities often fail to produce CICL before a competent juvenile court within 48 hours of their arrest.

The study concluded that age determination mechanisms are the key driver of the progressivity of the juvenile justice system. Based on these findings, the study recommends that the Federal Government of Somalia as well as federal member state governments enhance age determination mechanisms in the criminal justice sector with proper birth registration systems. Furthermore, all stakeholders in the criminal justice sector should also be required to establish functional, operational and comprehensive juvenile justice laws across all states. These laws should be clear on the protocols to be followed in determining the ages of children in order to promote progress.

Key words: Progressivity, Juvenile Justice System, Age Determination Mechanisms, Criminal Liability Determination Process, Somalia.

Table of Contents

Disclaimer	.2
Contact	.2
Abstract	.3
List of Tables	.6
List of Figures	.7
Abbreviations	.8
Operational Definition of Terms	.9
CHAPTER ONE: INTRODUCTION	.10
1.1 Background	.10
1.1.1 Understanding the criminal justice system	.11
1.1.2 Historical perspective and current justice system in Somalia	.12
1.1.3 Overview of the juvenile justice system in Somalia	.13
1.2 Problem statement	.14
1.3 Objectives of the study	.14
1.4 Specific Objectives	.15
1.5 Justification of the study	.15
1.6 Scope of the study	.15
CHAPTER TWO: LITERATURE REVIEW	.16
2.1 Introduction	.16
2.2 Theoretical framework	.16
2.2.1 Proportionality theory	.16
2.2.2 Utilitarian theories of punishment	.17
2.3 Empirical literature	.17
2.4 Summary of the literature	.20
2.5 Research gaps	.21
2.6 Conceptual framework	.21
CHAPTER THREE: RESEARCH METHODOLOGY	.22
3.1 Introduction	.22
3.2 Research design	.22
3.3 Population targeting	.22
3.4 Sampling design and size	.23
3.4.1 Sampling design	.23
3.4.2 Sample size	.23
3.5 Data collection	.24
3.6 Application of research instruments	.24

3.6.1 Piloting of research instruments . . . . .	.24
3.6.2 Validity of research instruments . . . . .	.24
3.6.3 Reliability of research instruments . . . . .	.25
3.7 Data analysis and presentation . . . . .	.25
3.8 Legal and ethical considerations . . . . .	.26
CHAPTER FOUR: DATA ANALYSIS AND FINDINGS . . . . .	.27
4.1 Introduction . . . . .	.27
4.2 Response rate . . . . .	.27
4.3 Demographic information . . . . .	.27
4.3.1 Age . . . . .	.27
4.3.2 Gender . . . . .	.28
4.3.3 Education level . . . . .	.28
4.3.4 Professional experience . . . . .	.29
4.4 Descriptive analysis . . . . .	.29
4.4.1 Age determination mechanisms (ADM) in the criminal justice sector . . . . .	.29
4.4.2 Criminal Liability Determination Processes (CLDP) for Juveniles in Somalia . . . . .	.32
4.4.3 Progressivity of the juvenile justice system in Somalia . . . . .	.34
4.5 Inferential analysis . . . . .	.35
4.5.1 Correlation analysis . . . . .	.35
4.5.2 Multiple linear regression analysis . . . . .	.36
CHAPTER FIVE: SUMMARY, DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS . . . . .	.38
5.1 Introduction . . . . .	.38
5.2 Summary of the findings . . . . .	.38
5.3 Discussion . . . . .	.38
5.3.1 Age determination mechanisms used by members of the criminal justice sector . . . . .	.38
5.3.2 Criminal liability determination processes for juveniles . . . . .	.39
5.3.2 Progressivity of the JJS and Key Drivers . . . . .	.39
5.4 Conclusions . . . . .	.39
5.5 Recommendations . . . . .	.40
5.6 Areas for further study . . . . .	.41
REFERENCES . . . . .	.42
APPENDICES . . . . .	.49
APPENDIX 1: SURVEY QUESTIONNAIRE . . . . .	.49

List of Tables

Table 3.1: Population of the Study . . . . .	.22
Table 3.2: Sampled Population . . . . .	.23
Table 3.3: Scale Reliability Test . . . . .	.25
Table 4.1: Response Rate . . . . .	.27
Table 4.2: Age distribution . . . . .	.27
Table 4.3: Distribution by Gender . . . . .	.28
Table 4.4: Distribution by Education Level. . . . .	.28
Table 4.5: Experience . . . . .	.29
Table 4.6: Number of CICL who went for Trial. . . . .	.30
Table 4.7: Mechanism for Age Determination . . . . .	.31
Table 4.8: Determination Process of Criminal Liability . . . . .	.33
Table 4.9: Progressivity of Juvenile Justice System (PJJS). . . . .	.34
Table 4.10: Pearson's Correlations Matrix. . . . .	.35
Table 4.11: Model Summary . . . . .	.36
Table 4.12: Analysis of Variance (ANOVAa). . . . .	.36
Table 4.13: Coefficients ^a. . . . .	.37

List of Figures

Figure 2.1: Conceptual framework . . . . .	.21
Figure 4.1: Age of children in conflict with the law. . . . .	.29
Figure 4.2: Age determination mechanisms for CICIL in Somalia. . . . .	.30
Figure 4.3: Common Crimes by CICL . . . . .	.30
Figure 4.4: Period of detention for CICL before being produced in court . . . . .	.32
Figure 4.5: Common problems encountered by CICL. . . . .	.32

Abbreviations

SADM	Age determination mechanism
CICL	Child(ren) in conflict with the law
CLDP	Criminal liability determination process
DMC	Disproportionate minority contact
FGS	Federal Government of Somalia
FMS	Federal Member State
IDLO	International Development Law Organization
JJL	Juvenile justice law
JJRI	Juvenile Justice Reform and Reinvestment Initiative
JJS	Juvenile justice system
JJSIP	Juvenile Justice Systems Improvement Project
SDG	Sustainable Development Goal
SPLP	Standardized Program Evaluation Protocol
SPSS	Statistical Package for Social Sciences
UN	United Nations
UNICEF	The United Nations Children's Fund

Operational Definition of Terms

Child: According to Somalia's Constitution, a child is any person below the age of 18 years, also herein referred to as a juvenile.

Children's court: A court legally established to hear and determine case involving children.

Criminal justice system: A structure involving the police, courts and correctional facilities under which management of the criminal justice legal process is undertaken.

Disproportionate minority contact: Frequency of contact with the justice system by members of a specific minority group or groups that vary considerably from that of the majority group.

Justice: A state in which equals are treated equally and un-equals unequally in proportion to their equality or inequality.

Juvenile diversion: The practice of diverting minors from formal criminal proceedings to social services that are non-custodial and thus essential to minor-friendly justice.

Juvenile justice system: A system that manages cases concerning juvenile or minor offenders.

Progressivity of justice system: Extent of equity within a justice system, with proportionate outcomes at respective stages of criminal justice.

Rebuttable presumption of incapacity: A legal requirement that courts presume that an individual is not capable of committing a crime, until evidence is introduced in court to disprove this assumption.

Rule of law: A code of governance whereby all individuals, organisations and public or private entities, including the state itself, are expected to be accountable to laws that are promulgated publicly. These laws are equally applied and adjudicated, independently and in tandem with global human rights norms and standards.

CHAPTER ONE: INTRODUCTION

1.1 Background

Providing access to justice is a fundamental state function that is deeply interlinked with social development and economic growth. (Gros & Alcidi, 2015). Effective justice provision necessitates strong performance by high-quality justice institutions throughout the entire judicial process. However, donor support for access to justice has been low in most developing countries, and it has currently declined by 40 percent globally from 67 percent in 2002 (Manuel & Manuel, 2018). On the other hand, in 2015 the international community agreed for the first time on joint targets for justice, embedded within the indicators for Sustainable Development Goal (SDG) 16, which include supporting the rule of law at the national and global levels as well as guaranteeing equal access to justice for all by 2030 (Ahrens, Fischer & Gómez, 2019; United Nations, 2020).

Upholding the rule of law requires measures to enhance adherence to the principles of the supremacy of the law, equality before the law and respective accountability (Stein, 2019; United Nations, 2020). Further, Ehm (2010) asserts the following principles as important: equality in the use of the law; a separation of powers; legal certainty; avoidance of arbitrariness; and procedural and legal transparency.

Globally, poor people identify access to justice as one of their main concerns (The Law & Development Partnership, 2015). Denial of access to justice disempowers people as well as societies from demanding their rights and protecting themselves from injustice (Manuel & Manuel, 2018). Boone (2019) estimates that four billion people globally are “robbed of the opportunity to improve their lives and get out of poverty, since they are left out from the rule of law.” A legal needs study of seven low income countries (World Justice Project, 2018) offers an additional warning of the scale of the problem, establishing that on average 35% of these countries’ populations experience difficulty in litigation of civil cases every year. This challenge may or may not include engagement with the justice system (Boone, 2019).

Provision of justice for all includes the scaling up of services to provide legal aid to crime victims and individuals involved in disagreements and conflicts (Ahrens, Fischer & Gómez, 2019). It also involves the improvement of coordination across the justice sector. Focusing on guidance and support programmes can help individuals to know their rights and how to claim them, but without initiatives to improve justice institutions’ service delivery and ability to guarantee those rights, there will be little practical impact on access to justice (United Nations, 2020). On the other hand, focusing solely on institutional reform without improving people’s understanding of and access to justice systems may similarly fail to achieve the SDG 16 agenda (Whaites, 2016). Delivering on both aspects, though essential, poses great challenges.

It can be a perplexing task to analyse criminal justice systems and sub-systems in post-conflict states, which comprise both state and non-state institutions (Whaites, 2016; Singh, 2019). Justice and security institutions can be interlinked or may occasionally overlap, preventing a neat and distinct classification (Luckham, 2017). Criminal justice institutions frequently have their own political agendas or may compete amongst themselves for power and resources. According to De Waal

(2017), post-conflict criminal justice institutions in developing countries including Somalia are mostly deprived of resources, capacity and basic infrastructure. They suffer from insufficient personnel, as many fled the country during the conflict, while others may be implicated in human rights violations or corruption and thus considered unfit for service in the criminal justice system.

1.1.1 Understanding the criminal justice system

Criminal justice systems are made up of interdependent components including the police, courts and prisons (Neubauer & Fradella, 2018). Some consider legislative institutions an additional component of criminal justice systems, because all legitimate criminal justice activity originates from the law (Joyce, 2016). If criminal justice processes are unfair, this is often associated with shortcomings in the criminal law frameworks that undergird them.

According to Peak and Madensen-Herold (2019), the constituent parts of a justice system achieve public safety goals in different ways. Police enforce the law, maintain order and offer services to defend members of the community. Courts determine whether suspects are guilty of criminal behaviour and establish whether they need to be punished (Brown, Murphy & Maxwell, 2018). Prosecutors represent the state in criminal trials and judges oversee court processes, such as sentencing offenders (Joyce, 2016; Neubauer & Fradella, 2018). Corrections personnel oversee and undertake counselling to convicted offenders to prevent and shield society from future crimes (Brown, Murphy & Maxwell, 2018).

The primary objective of the criminal justice system is to decrease or eradicate crime. This objective is realized via reactive channels such as responding to calls for service, making arrests, procuring criminal convictions and overseeing the implementation of punishments ordered by courts (Lum & Nagin, 2017; Neubauer & Fradella, 2018). It is also realized through proactive means such as eradicating circumstances that lead to criminality (Fennelly, 2020). Reducing crime via reactive means, also referred to as 'crime control,' encompasses most criminal justice activity (Neubauer & Fradella, 2018). This type of crime elimination is stressed far less in some developing countries than in developed countries such as the United States (Tulumello, 2018).

The secondary objective of the criminal justice system is to provide justice (Joyce, 2016; Tulumello, 2018). The main function of justice, as argued by Sensoy and DiAngelo (2017), is to hold the guilty responsible for the trouble they cause. (Joyce, 2016). Tulumello (2018) has referred to this type of justice as 'corrective.' In addition, according to Sensoy and DiAngelo (2017), justice requires the assumption that all persons will be treated equally. Justice is absent when any group is left out or singled out for differential treatment by the law (Sensoy and DiAngelo, 2017; Tulumello, 2018) in what is called a retrogressive justice system. Joyce (2016) has termed this form of justice as 'procedural justice' or 'justice as a process.'

Since criminal law normally does not describe some actions as crimes (and naturally not as grave offences), little criminal justice system activity is devoted to these actions (Fennelly, 2020). For instance, only about one percent of police officers in the United States as opposed to five percent in China are tasked with investigating corporate offences (Palmer, 2017; Palmer, 2017; Pontell, Ghazi Tehrani & Burton, 2019).

Taylor, Chauhan and Fondacaro (2012) observe that some criminal justice systems, such as Jamaica's, are retributive in nature, meaning that their fundamental focus is to reprimand criminals for offending society as quickly and severely as possible. This type of justice has its origins in choice theory, which postulates that criminals make mindful choices to commit crimes and as a result they should be given equal punishment for the offences they commit (Siegel, 2006).

1.1.2 Historical perspective and current justice system in Somalia

The total population of Somalia is estimated to be 15.89 million (World Population Review, 2019). The country has been described as a 'demographic outlier' due to its remarkably high population growth rate, fertility, infant mortality and maternal mortality (Speidel, 2018). Demographic trends in Somalia display few significant regional disparities (UNICEF, 2016). The country is currently striving to build up its justice institutions and enhance the rule of law, but crime rates remain high (International Development Law Organization, 2018).

Somalia's 1961 Constitution established the Supreme Court as the Republic's highest juridical organ, with ultimate authority over all civil, penal and administrative matters, as well as the rights instituted in the Constitution and state laws (Leeson, 2007; Mancuso, 2019). When the Supreme Revolutionary Council (SRC) usurped all judicial, executive and legislative powers in October 1969, it suspended the Supreme Court (Leeson, 2007). However, the court resumed its functions in December 1969, and the rest of the judicial system was left much as before. A new National Security Court was empowered to rule on cases involving individuals accused of attempting to challenge the independence, unity and security of the state. Furthermore, the 1979 Constitution established a Constitutional Court to determine the constitutionality of laws (Leeson, 2007). It also empowered the Higher Judicial Council, chaired by the president and comprising high-ranking SRC members, to select, promote and discipline members of the judiciary.

According to Rajabi-Ardeshiri (2009), Islamic Shariah law is the only law that states children's rights *vis a vis* their parents. However, this is often ignored in Somalia and parents are allowed by government officials to flagrantly violate children's rights, for instance by arbitrarily demanding detention for their children. Children in Somalia are largely ignorant of any avenues by which they can vent their frustration and pain.

In recent years, the Federal Government of Somalia (FGS) has escalated the fight against insurgent groups and made efforts to improve the capacity of the justice system to tackle complex offences (Crouch, 2018). New prisons and court buildings have been constructed, and the bulk of extremist violence cases have been shifted from military courts into civilian criminal courts. Technical as well as advisory support is needed to process these cases within a new court system and ensure that judicial capacity is in line with global standards (Crouch, 2018; Clarke, 2018).

In Somalia, alternative justice mechanisms continue to be the main providers of justice services due to the absence of formal justice institutions in much of the country (International Development Law Organization, 2019). However, these channels can be biased, especially against women, the indigent, minority clans and juveniles.

The 2012 provisional federal constitution made the state liable for the rehabilitation and skills training of inmates so that they can be released as productive members of their communities (Constitution of the Federal Government of Somalia, 2012). The current prison system, however, is entirely punitive, not rehabilitative. Most prisons in Somalia are overcrowded and aging. Beckford, Joly and Khosrokhavar (2016) report that in these old buildings, inmates encounter poor sanitation and a restricted supply of water and other fundamentals. Educational and vocational opportunities in correctional facilities are extremely limited.

1.1.3 Overview of the juvenile justice system in Somalia

Juvenile courts exist in Somalia (International Development Law Organization, 2019), normally in the same courthouses and sharing the same personnel as adult courts. The same can be said of juvenile prisons, which are usually adjoined to and share staff with adult correctional institutions.

In theory police, judges, prison officials and other criminal justice personnel should treat younger offenders differently than older offenders (Underwood & Washington, 2016). In reality, police officers in Somalia tasked with enforcing the law make no distinction between adult and juvenile offenders with regard to arrest and detention procedures (Emerson, 2017).

Correctional facility commanders, police officers, prosecutors and judges have all reported a sudden rise in juvenile crime over the past five to ten years (UNICEF, 2018), with an apparent intensification in the seriousness of offences. In Somalia's justice system, there is much room for improvement in the handling of juvenile offenses, policing, courts, and corrections (UNICEF, 2018). Many child offenders have experienced abuse and neglect in their own homes, leaving them vulnerable to influences that bring them into conflict with the law (Hirsch, 2018). When they encounter the judicial system, these children, who are victims in their own right, are faced with harsh conditions that expose them to further abuse (UNICEF, 2016). In Somalia, the criminal justice system functions mainly to arrest, detain and convict. There are few juvenile justice courts and few judges are trained on working with young people. The 1970 Juvenile Justice Act is the only specific provision within the Somali legislative framework that deals with the treatment, administration and detention of juvenile criminal offenders. While justice officials have proposed the creation of juvenile units within courts, at present only ad hoc accommodations have been made for children by individual judges. Furthermore, there is little effective legal aid available in Somalia and few defence lawyers (Clarke, 2018). There is also no effective or consistent mechanism for criminal justice personnel (especially judges) to determine the age of a young offender (UNICEF, 2018). There is no universal system for birth registration and determination of age is often done by non-qualified professionals. This exposes minors to numerous protection risks and miscarriages of justice. Existing programs in juvenile detention centers intended to aid with continuing education, substance abuse prevention, mental health care, and preparing the offender to re-enter society are inconsistently implemented (UNICEF, 2016).

1.2 Problem statement

Somalia is among the poorest African countries (FGS National Development Plan 2017-2019). Somali children under 18, who make up over half of the population (UNICEF, 2018), are among the most vulnerable children globally.

Somalia's current legal framework concerning Children in Conflict with the Law (CICL) is incomplete (Mancuso, 2019). For instance, there is no official birth registration system (Central Intelligence Agency, 2018), so children are not able to prove their age in order to access protections under the law, and are often mistakenly charged with criminal offences as adults (UNICEF, 2018). Somalia's continued violations of existing juvenile legal protections regarding arrest and detention weakens the people's trust in the judicial system (Clarke, 2018). Minors convicted of offences are incarcerated in congested prisons and housed in cells alongside adults, many of whom have committed violent crimes (Clarke, 2018; Becker, 2020). In addition, there have been cases of minor's illegally arrested, charged and convicted based on false confessions extracted by aggressive interrogations (Becker, 2020).

A recently conducted survey on juvenile offenders in Somalia found that many of them come from broken families (Abdi, 2019) where they have been neglected, abused and exploited. An earlier study by Hassan (2012) indicated that street children who commit petty offences form the largest demographic in conflict with the law in Somalia, yet they do not always receive appropriate legal representation. The Somali government ratified the Convention on the Rights of the Child in 2015, which provided crucial policy and legislative guidelines on juvenile rights including the development of juvenile justice laws. However, these have never been adequately implemented. Instead, there is widespread use of customary law and the 1963 Penal Code in cases concerning children (UNICEF, 2018). Especially in rural areas, traditional justice systems are widely engaged, which favour compensation over punishment and clan unity over individual rights. International studies on juvenile justice systems (JJS) are available that focus on girls (Ehrmann, Hyland & Puzzanchera, 2019), CICL (Puzzanchera & Robson, 2014), the role of schools in sustaining JJS inequality (Hirschfield, 2018) and racial and ethnic disparities in justice (Moore & Padavic, 2010; Evangelist, Ryan, et al, 2017; Campbell, Barnes, et al., 2018). Most of these studies were conducted in developed economies that enjoy peace and tranquillity, as opposed to Somalia which is plagued with conflict.

Despite many studies examining racial and ethnic disparities within JJS that result in juvenile justice system inequality, little has been done to assess the progressivity of JJS in developing countries like Somalia with undeveloped judicial systems. Empirical evidence has been inconsistent with regard to progressivity in judgement and disposition.

1.3 Objectives of the study

The main goal of this study was to assess the progressivity of the JJS in Somalia.

1.4 Specific Objectives

Specific objectives of this study included the following:

1. Assess mechanisms that are consistently used by members of the criminal justice sector concerning the determination of the age of individuals
2. Examine the determination processes of criminal liability for minors in Somalia
3. Establish the progressivity of the juvenile justice system and its drivers in Somalia
4. iv. Provide substantial suggestions on ways to enhance the juvenile justice system in Somalia.

1.5 Justification of the study

Juvenile crime is a reality that every society faces. Criminal justice for juveniles has conventionally been regarded as an autonomous matter. Each nation determines on its own what behaviours to regard as criminal and how to respond to juvenile crime (UNICEF, 2016; 2018), including the development of Juvenile Justice Systems (JJS). According to Singh (2019), juvenile justice law permits for the diversion of minors who have criminal potential far from the adult criminal justice system. Most minors do not need to end up behind bars, but most do in Somalia as diversion is not widely applied.

This study's findings seek to enable policy-makers and justice sector practitioners to understand aspects of the criminal justice system regarding juveniles. This may enhance commitment to the abolition of unjustified inequalities in the criminal justice system regarding age. These findings will also contribute to existing literature on JJS in post-conflict countries.

1.6 Scope of the study

This study is specifically limited to assessing mechanisms consistently used by members of Somalia's criminal justice sector to determine the age of young offenders and implement criminal liability processes for minors. It seeks to assess the progressivity of the JJS and its drivers in Somalia.

The study engaged members of and stakeholders in Somali's justice sector, particularly in the Banadir region. The sampled population was distributed as follows: the Judicial Service Commission (5), the Constitutional Court (7), federal-level courts (59), Federal Member State-level courts (86), the Human Rights Commission (8) and the Somali Law Society (9).

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter summarizes standing theories and past studies on the juvenile justice system, and highlights empirical gaps in the existing literature.

2.2 Theoretical framework

Rising numbers of minors have been accused of serious offences across the world, which has led to growing global concern around procedural consequences within the framework of the law as well as criminal justice (Ahrens, Fischer & Gómez, 2019). Equity in juvenile justice system is associated with the proportionate outcomes at respective stages of criminal justice in what we refer to as progressivity of juvenile justice system in this study. Failure to attain that we say the criminal system is regressive. Progressivity in juvenile justice system is geared towards eliminating unfairness in administrative of justice. The concept of progressivity is deep rooted in the allocation of economic resources in the society but it has been applied in the health sector and recently in the justice sector with the advent of proportionality theory. Crime prevention and elimination is linked to several main theories of proportionality and punishment, as discussed below.

2.2.1 Proportionality theory

Proportionality theory was developed in the 18th century by Cesare Beccaria (1738-1794) who laid the fundamentals of current criminal law and punishment in Western societies. Beccaria took a forward-looking viewpoint on punishment, arguing that its overarching purpose is to prevent crime (Crossley, 1976). It has been argued that the amount of punishment should not be extreme and that it has to be in proportion to the damage caused by the crime (Beirne, 1993). According to Frase (2012), proportionality is linked to desert theory, which is considered the modern form of retributive penalty. The core concept is that the punishment structure has to reflect an association between the seriousness of an offence and the severity of its punishment. The theory applies a highly rationalist and mathematical technique to punishment, suggesting that the penalty for an offence should be somewhat higher than the benefits a potential offender would stand to gain from the crime (Frase, 2012; Daly, 2012). With such punishments in place, potential offenders evaluate the costs as well as the benefits of crime, and thus sensible individuals are discouraged from committing offences (Beirne, 1993; Daly, 2012).

For example, shoplifting is a minor crime compared to robbery, and so a lower penalty should be preferred; five years in prison would be a disproportionate punishment for this crime. According to Zedner (1994), a proportionate penalty implies that an offence must be reprimanded and that a sentence (representing punishment or sanction) has to indicate the degree of culpability attached to the crime. The objective is to institute punishment for an offence that happened in the past, and therefore the theory takes a backward approach to punishment (Crossley, 1976; Frase, 2012).

2.2.2 Utilitarian theories of punishment

Crime prevention is linked with utilitarian theories of deterrence, rehabilitation, and incapacitation. These theories were proposed by several utilitarian scholars including Lyons (1974) on deterrence, Sohlberg and Mateer (1989) on rehabilitation and Kan (1996) on incapacitation (defending a society by removing a criminal).

According to Bagaric (1999), utilitarian theory seeks to penalize offenders to deter or discourage future crimes. According to Daly (2012), utilitarian theories focus on preventing future crime by reforming criminals or shielding society, and therefore they present a forward-looking approach to retribution. Individual deterrence is meant to discourage or prevent an offender from committing an offence in the future (Piquero, Paternoster, Pogarsky & Loughran, 2011). General deterrence dissuades or discourages crime among members of the wider society (Quackenbush, 2010), while rehabilitation aims to alter the attitudes or behavior of existing criminals to deter them from committing further crimes in the future (Sohlberg & Mateer, 1989; Robinson & Crow, 2009). Incapacitation is geared toward protecting members of a society from particular criminals who may pose a danger to their welfare and safety (Stahlkopf, Males & Macallair, 2010).

2.3 Empirical literature

The equation of age with a specific level of development, knowledge, ability, cognitive understanding or emotional development is not supported in developmental research (Greene & Hogan, 2005; Hill, 2005). Urbas (2000) conducted a study in Australia to determine the lowest age of criminal accountability. His findings revealed that the minimum age of criminal liability is ten, but a rebuttable presumption of incapacity¹ should be applied to minors aged between ten and fourteen. In Canada, a study by Wenke (2014) indicated that juveniles below twelve years old cannot be sentenced for a criminal offence, which contradicted existing rules wherein Canadian minors aged between seven and fourteen years could be held criminally accountable. Many South American states have set higher minimum ages, including Brazil where children under the age of eighteen are not deemed criminally responsible (O'Boyle, 2014). In Ireland, Veale (2006) established that the age of criminal liability is guided by common law as well as a prior assumption that children under the age of seven do not have the capability to commit a crime. According to Pillay and Willows (2015), most nations either do not have or have abolished a rebuttable prior assumption of incapacity.

In the United Kingdom, the age of criminal responsibility (ACR) is devolved to the constituent country jurisdictions (Brown & Charles, 2019). In England, Wales and Northern Ireland the ACR is 10 years. In Scotland it is 8 years but a bill has been introduced to raise it to 12 years. Children below the ACR cannot be arrested or charged, while those above are presumed to be sufficiently mature to stand trial and be held accountable as adults. According to Brown and Charles (2019) this has attracted criticism globally by policy makers and youth justice practitioners since ACR is too low.

Brown and Charles (2019), who suggested that there is a need for reform in the least age of criminal responsibility, bearing in mind that a holistic approach

¹ "Rebuttable presumption of incapacity" refers to a legal requirement that courts presume that an individual is not capable of committing a crime, until evidence is introduced in court to disprove this assumption.

focused on diversion, the provision of rights and suitable interventions can create positive and even transformative outcomes for juveniles in the justice system. Other studies such as Wurtele (2009) and Harris, Levenson, Lobanov-Rostovsky and Walfield (2018) have asserted that age determination in the justice sector is one of the main impediments in the implementation of juvenile justice legislation. According to Harris, Levenson et al., (2018) it is hard to establish whether a criminal suspect is a child in a country where millions of people lack birth certificates or other records.

According to Valerio (2012) who examined how to promote developmental outcomes for CICL in the Philippines, most children and youth across the country were at risk of becoming street children or victims of armed conflict. Such children are likely to be exposed to hazardous working conditions, sexually abused, abandoned, rejected or subjected to commercial sexual exploitation. These findings are further supported in a study by Castro and Hernandez (2019), who developed a predictive model for assessing CICL and children at risk in the Philippines.

Sharma (2010) analysed of the legal framework for CICL in India. Sharma revealed that increases in juvenile crimes may be attributed to the inclusion of boys aged 16 to 18 years in the definition of "children." Sharma established that high and more and more children in the 16 to 18 category were likely to come in conflict with the law. This was further supported by Bateman (2012) in his study examining the age of criminal responsibility in England and Wales. It was concluded that the minimum age of criminal responsibility in England and Wales remains 10 years. Pillay and Willows (2015) conducted a study to explore the criminal liability of children in South Africa, where the minimum age of criminal capacity is set at seven with a rebuttable presumption of incapacity for juveniles between the ages of seven and fourteen. The study examined controversies and challenges to the idea of criminal responsibility, with a focus on mental health experts tasked with undertaking developmental examinations to provide courts with proof of criminal capacity. In their findings they asserted that CICL are immature, not likely to have sufficient impulse control, highly susceptible to emotionally-driven behavior and highly prone to having their personal judgment weakened by influence from peers or others. According to Lamb and Sim (2013), cognitive and conative constituents of capability are elements that normally mature and become more refined with age.

Veale (2006), in examining the criminal responsibility of former child soldiers, observed that young persons are targeted for trafficking, sexual manipulation and enrolment as child soldiers, among other abuses. The study concluded that minors are especially vulnerable within armed conflict-affected environments such as the Darfur, Nepal, Colombia and the Philippines. In a related study, juvenile justice mechanisms in Nigeria employ shaming, which is linked to social-relational challenges as it is not just the offender who is shamed but the entire extended family and clan (Kral, 2019). According to Zoli, Bassiouni and Khan (2017) community solutions in Nigeria also imply that some form of Sharia Law in which minor's rights under international conventions may not be respected. Strong arguments have been made for amalgamating local and international practice, given that international juvenile justice has made crucial developments in devising procedures to defend juveniles' rights within justice processes (Decker & Marteaché, 2017).

In the American JJS, the rights accorded to juveniles and the sanctions they face differ significantly from state to state. Welch (2020) conducted a study exploring differences in the mechanisms by which juvenile offenders across the American JJS are handled and convicted as well as the impacts of sentencing on them. The study also assessed alternatives to sentencing and their effectiveness. It found that these disparities contribute to varying impacts of detainment and incarceration on juveniles and different rates of repetition of offences among states. The findings implied that some class of juveniles experienced harsher punishment which led to insignificant influence on likelihood of repeating a crime. The study concluded that the way in which juveniles are detained and sentenced plays a crucial role in their potential for rehabilitation.

Ehrmann, Hyland and Puzanchera (2019) examined girls in the American JJS, based on three nationwide data collections, concentrating on the entire process from arrest through to incarceration. They analyzed trends in case handling, along with features of the young women studied and their offences. They found that detention of juvenile girls fell 53 percent between 2006 and 2015, reaching its lowest level in thirty years. Delinquency cases and petitioned status offense cases involving girls also fell to their lowest levels since the early 1990s, declining by 43 percent and 44 percent respectively between 2006 and 2016. Since 2006, the percentage of females among those involved in arrests, minor cases, petitioned status offense cases and youth in placement has remained comparatively constant. Robbery, simple assault and disorganized behavior accounted for 50 percent of arrests and 56 percent of delinquency cases involving females in 2015. Truancy crimes accounted for 55 percent of petitioned status offense cases involving females. The study concluded that delinquency cases involving females were more likely to be petitioned or arbitrated, or to result in out-of-home placements, than cases involving males.

Lipsey, Conly, Chapman and Bilchik (2017) did a systematic review of the literature to investigate the implementation of evidence-based decision-making platforms in a study exploring improvement in the JJS. They drew examples and lessons from the experiences of jurisdictions involved in two demonstration programs, namely the Juvenile Justice Systems Improvement Project (JJSIP) and the Juvenile Justice Reform and Reinvestment Initiative (JJRRI). Their findings revealed that successful implementation of an evidence-based platform requires a battery of systems supports, including strong leadership, workforce development, data collection and analysis, partnership, communication, cooperation, and ongoing attention to quality assurance.

Campbell, Barnes, Mandalari, Onifade, Campbell, Anderson and Davidson (2018) conducted an exploration of ethnic disparities in program referral at disposition at Midwestern, United States of America (USA). They examined disproportionate minority contact² in the JJS when the role of ethnicity in an understudied dispositional decision was established. Their research on program referral and its corresponding outcomes was based on a sample of minor offenders. The study used case management inventories to establish, first, if ethnicity projected program referral when accounting for risk assessment and, secondly, if program referral predicted re-offense. They found that ethnicity projected program referral

² "Disproportionate minority contact" refers to the frequency of contact with the justice system by members of a specific minority group or groups that varies considerably from that of the majority group.

and program referral predicted re-offense. The same conclusions were arrived at in a study conducted by Moore & Padavic (2010).

A study conducted by Hirschfield (2018) on the role of schools in sustaining JJS inequality in USA revealed that black students who disrupt school rules are more likely to be subjected to out-of-school suspensions, which increase the likelihood that they will be arrested, accused of delinquency, imprisoned, formally processed and institutionalized for probation abuses. For instance, mainly black school districts showed a higher propensity than mainly white districts to discipline students by suspending them. Black students were generally adversely impacted, even when individual districts applied suspensions equitably within their own schools.

Kuperminc et al. (2018) examined the effectiveness of group mentoring initiatives in San Francisco in bettering developmental outcomes for youth at risk for involvement in the JJS. The study identified students at high risk of dropping out of school and associated with problems including juvenile offending. It found evidence that group mentoring participation led to positive effects on several resilience assets and a decline in academic risk factors. It highlighted the crucial influence of positive relationships with mentors as well as a favorable group climate in contributing to positive outcomes. These outcomes were linked with smaller group sizes while other group characteristics such as the gender and ethnic diversity of mentees was found to be less significant.

Black and male youths are over-represented at every phase of the JJS. Evangelist, Ryan, et al. (2017) examined disparities in adjudication within the JJS, focusing on a large urban county in the Midwest, USA. Their research examined the effect of racial, gender and age biases on the likelihood that official judgements use administrative information. This study built upon earlier work examining the joint influences of race, gender and age on formal adjudication. The results showed that being black, male, and in the middle of a juvenile court's age jurisdiction were linked with a rise in the chances of getting a formal settlement, after controlling for previous referrals and the type and harshness of the underlying crimes. These findings were supported by the findings of Leiber and Fox (2005), who established that race affects juvenile justice decision-making. The extent of racial and gender disproportionality varied across age but was uniformly enormous for the least serious crimes. These studies established juvenile offenders as being especially at risk of disproportionate handling.

2.4 Summary of the literature

The reviewed studies, crime prevention theories and logical arguments enhance understanding of how justice is actually done, including how the discretionary decision-making of professional groups, organizations and individuals is guided by laws and rules. The literature indicates that on an international level there is significant variation in the minimum age of criminal liability. Furthermore, agencies within criminal justice systems are often loosely linked and poorly coordinated. Several studies have demonstrated that within the JJS, children from minority or poor backgrounds receive harsher dispositional sanctions than their counterparts among majority and better-off children. The same is true of those accused or detained for different levels of crimes. For example, in the US ethnic minority youth have historically been disproportionately sanctioned compared to White youth (Moore & Padavic, 2010; Campbell et al., 2018). It is evident that the JJS is plagued with racial and ethnic discrepancies, which may be the consequence of what has

become known as disproportionate minority contact (DMC). Studies have also presented demographic and socioeconomic disparities as a key contributor to the how justice is served to both adults and juveniles in developed and developing countries.

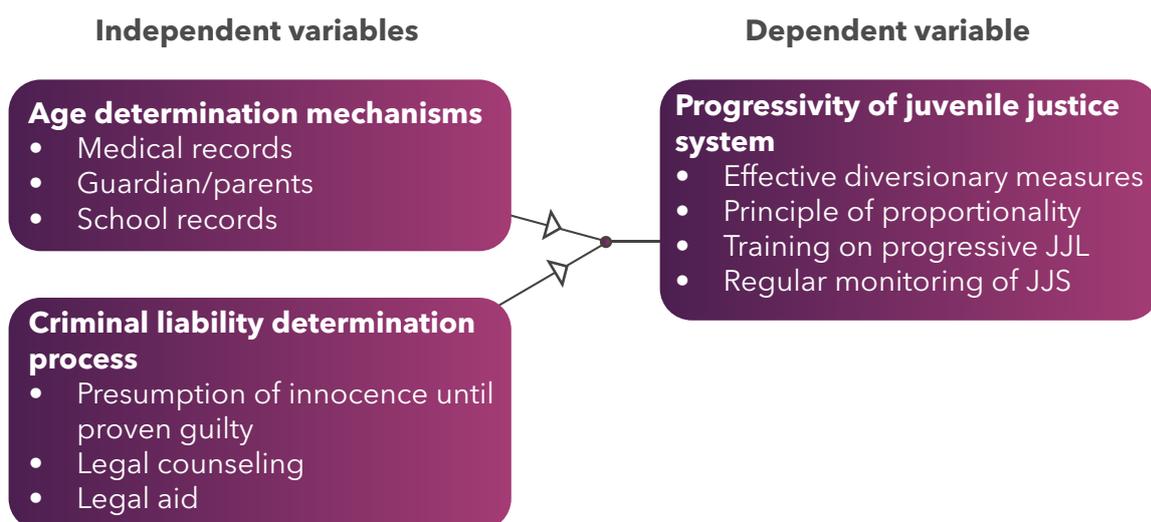
2.5 Research gaps

This literature review revealed that criminal accountability for minors is a disputed issue, both globally and nationally. In legal terms, the main issue is whether minors may be held responsible for criminal actions, which involves a consideration of their capability of forming the necessary intent or even when under duress. There is no global unanimity with regard to the age of criminal liability (Veale, 2006). Some literature, including Moore and Padavic (2010), exhibits mixed findings, and empirical evidence has been inconsistent with regard to DMC in adjudication and disposition (Leiber, et al., 2011; Evangelist, Ryan, et al. 2017). Some studies from developed countries like the United States (Ehrmann, Hyland & Puzanchera, 2019; Welch, 2020) have focused on disproportionate justice along racial lines (Evangelist, Ryan, et al. 2017). Studies have also focused on how to sustain (Hirschfield, 2018) or implement (Lipsey, Conly, et al., 2017) the JJS. However, no studies were found that focus on JJS and their drivers within the criminal justice systems of post-conflict countries like Somalia.

2.6 Conceptual framework

Mugenda (2014) defined “conceptual framework” as a framework determining a relationship between two variables (dependent and independent). This study’s conceptual framework, drawn from the reviewed literature, sets the independent variable as age determination mechanisms and criminal liability determination processes while the dependent variable is the progressivity of the JJS.

Figure 2.1: Conceptual framework



CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

This chapter presents different procedures used in achieving study objectives, including research design, population targeting, sample design, data collection, application of research instruments and data analysis.

3.2 Research design

This research employed a cross sectional and descriptive research design, which was used to determine links between the variables under study (Atmowardoyo, 2018). The study aimed to gather both qualitative and quantitative data on the progressivity of the JJS without manipulating the study's variables or participants.

3.3 Population targeting

A population is defined as the complete set of cases from which a sample is obtained (Saunders & Lewis, 2012). The target population of this study comprised 309 senior-level personnel working in Somalia's justice sector. The study was based in the Banadir region, which has 17 districts and is considered Somalia's most populous region. It includes Mogadishu, the capital city of the Federal Government of Somalia (FGS), where the headquarters of the Human Rights Commission and the Somali Law Society are located, both key stakeholders in the judicial system. The distribution of the population is indicated in table 3.1.

Table 3.1: Study population

Affiliation of respondents	Number of respondents	Percent (%)
Judicial Service Commission	9	3
Constitutional Court	12	4
Federal-level courts	105	34
Federal Member State-level courts	152	49
Human Rights Commission	15	5
Somali Law Society	16	5
Total	309	100

Source: Republic of Somalia (2020)

3.4 Sampling design and size

3.4.1 Sampling design

Stratified and simple random sampling techniques were used in this study. The unit of analysis comprised stakeholders in the judicial sector (including courts, the law society and related commissions) while the unit of observation comprised staff working in those institutions. Strata was based on cadres and respondents were proportionately selected, providing them all with a near-equal chance (Ndede, 2015). According to Trochim (2000), stratified sampling is a method of sampling that involves the division of a population into smaller sub-groups. This process is ideal because no element is left out and the technique is collectively exhaustive. The use of simple random sampling reduces sampling error (Mugenda & Mugenda, 2008).

3.4.2 Sample size

To determine the sample size of participants in this study, the research employed Yamane's (1967) formula for a finite population. According to the formula, the sample size is given by:

$$n = \frac{N}{1 + N(e^2)} ; \text{where } n = \text{sample size}$$

$N = \text{population size}$
 $e = \text{margin of error (0.05)}$

$$n = \frac{309}{1 + 309(0.05^2)} ; \text{therefore, } n = 174.33$$

Using this formula, the study sample was given as approximately 174 members of the judicial sector, as shown in Table 3.2. In distributing the sample across six cadres, the researcher applied the proportionate allocation technique (Ndede, 2015).

Table 3.2: Sampled population

Cadre	Population	Sample
Judicial Service Commission	9	5
Constitutional Court	12	7
Federal-level courts	105	59
Federal Member State-level courts	152	86
Human Rights Commission	15	8
Somali Law Society	16	9
Total	309	174

Source: Researcher (2020)

3.5 Data collection

The study employed primary data, which is information gathered for a study specifically where inadequate suitable secondary data is available (Saunders & Lewis, 2012). Primary data in this case was collected by administering questionnaires to respondents who were considered based on the sampling to have obtained qualitative and quantitative data. Blaikie & Priest (2019) described "questionnaire" as a broad term involving all data-gathering methods in which each person is requested to reply to particular questions in a predetermined order through structured interviews.

3.6 Application of research instruments

This study used a questionnaire to collect primary data. The questionnaire was developed using variables identified to realize the study objective. Questionnaires are beneficial and useful in collecting information that is distinctive to individuals, while upholding respondents' privacy (responses can be confidential or anonymous). They are easy to administer and easy to analyze once data is obtained (Mugenda & Mugenda, 2008).

The responses to the questionnaires were designed on a 5- point scale of measurement (1 = to no extent, 2 = to small extent, 3 = to some extent, 4 = to moderate extent and 5 = to a great extent). The questionnaire had open and closed-ended questions, grouped into two sections with four parts each. The first section of Part A contained questions to gather personal data from the respondents, while the second section contained questions based on the study objectives split into parts. Part B focused on assessing the mechanisms used by the JJS in determining the age of CICL. Part C sought to evaluate the determination process of juvenile criminal liability in Somalia, while Part D examined the progressivity of the JJS and its drivers.

3.6.1 Piloting of research instruments

A pilot study is undertaken when a study instrument is administered to a small number of people with an objective of pre-testing the questions (Maxfield & Babbie, 2014). According to Kothari (2004), a pilot test is the imitation of the main study and it elucidates any challenges or problems that exist regarding the questionnaire and sampling methods. According to Gall, Borg and Gall (2006) the overall number of participants needed to pilot research instruments is between 10 and 15% of the sample population. Based on this standard, the study conducted a pilot test that administered questionnaires to about 10 percent of the sample (18 respondents in total), randomly selected from among court staff in Somaliland.

3.6.2 Validity of research instruments

Validity refers to the degree to which a tool accurately measures what it intends to measure. It is a measure of how appropriately the instrument forecasts the aftermath of another measure (Bryman & Bell, 2013). It frames questions based on research objectives and dispels ambiguity. The questionnaire employed in this study was validated with experts in the justice sector.

3.6.3 Reliability of research instruments

Reliability refers to the degree to which a tool produces consistent outcomes (Bryman, 2003). This research used Cronbach's alpha, one of the most common methods for checking internal consistency and reliability. According to Bryman (2003) a Cronbach's alpha coefficient of 0.7 or above is considered to be applicable and thus instrument is considered to be reliable. Based on the feedback obtained from the pilot test (see table 3.3), the questionnaire was not adjusted and was thus applied to the entire sample.

Table 3.3: Scale reliability test

Variable	Average inter-item covariance	Number of items in the scale	Scale reliability coefficient
Age determination mechanisms	.4338624	7	0.7257
Criminal liability determination processes	.4017544	6	0.7169
Progressivity of juvenile justice system	.367284	9	0.7681

Source: Primary Data (2020)

The test revealed that all three constructs had a Cronbach's alpha coefficient of between 0.72 and 0.77. This implied that the tool was reliable.

3.7 Data analysis and presentation

Data analysis aims at presenting and explaining information collected from participants. This study produced both qualitative and quantitative data to explicate age determination mechanisms, criminal liability determination processes and the progressivity of the JJS in Somalia. Once completed questionnaires were received they were coded and edited for comprehensiveness as well as consistency. The study used Statistical Package for Social Sciences (SPSS) version 22.0. Findings were analyzed, presented and discussed according to the objectives of the study. Analysis of the qualitative data required reading a large number of transcripts looking for similarities or differences, and consequently finding themes and developing categories.

Descriptive statistics including percentages, frequencies, means and standard deviations were used in the analysis of quantitative data. Furthermore, the study conducted inferential analysis via the use of correlation and regression analysis. A composite index was computed using ratings done on a Likert scale. The study conducted a Pearson's correlation analysis to determine the strength of the relationship among the variables under study. Multiple regression analysis was

conducted to establish drivers of the progressivity of the JJS. The empirical model was expressed as follows:

$$y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \mu$$

Where: Y=progressivity of the JJS; X1=age determination mechanisms; X2=criminal liability determination processes (CLDP); β_0 = constant; β_1 and β_2 are coefficients; and μ is the error term.

3.8 Legal and ethical considerations

Legal and ethical issues are a crucial factor for contemporary research, research subjects and researchers (Yip, Han & Sng, 2016). According to Kapp (2006) ethics is a branch of philosophy that deals with human conduct and guides standards of individual behavior as well as relationships among individuals. Ethics is a system of values involving the degree to which people's actions follow professional, cultural, social and legal obligations within a study field (Polit & Hungler, 2000). In this study, researchers sought to uphold ethics by asking permission from respondents and giving them assurances that the data collected was specifically for the purpose of academic research.

CHAPTER FOUR: DATA ANALYSIS AND FINDINGS

4.1 Introduction

Juvenile delinquency and criminal behaviour by young people is a reality every society faces. This chapter presents and analyzes the results of data collected to establish the progressivity of the JJS in Somalia, including tables and figures.

4.2 Response rate

The researcher administered 174 questionnaires, out of which 135 were fully filled and returned, a response rate of 77.59%, as shown in Table 4.1. This exceeds the minimum value of 50% that Sekaran (2003) prescribes as a significant response rate for statistical analysis.

Table 4.1: Response rate

	Frequency	Rate (%)
Usable returned questionnaires	135	77.59
Not usable or not returned	39	22.41
Total	174	100.00

4.3 Demographic information

To enable more specific analyses, the questionnaires collected demographic information from the sampled population in terms of characteristics such as age, gender, educational qualifications and professional experience. This demographic data aided the study in contextualizing findings and formulating appropriate recommendations.

4.3.1 Age

Data gathered on the age of respondents, as shown in Table 4.2, helped the researcher ascertain concentrations of respondents for valid conclusions.

Table 4.2: Distribution of respondents by age

Age bracket	Frequency	Percent
18-30	38	28.4
31-40	48	35.8
41-50	41	30.6
51 & above	7	5.2
Total	134	100.0

The distribution above is highly concentrated on respondents between the ages of 18 and 50 years. This may be the result of the Federal Government of Somalia's (FGS) adoption of new policies to bring younger people into public service. This is in line with the spirit of the current FGS constitution.

4.3.2 Gender

The questionnaire also collected data to enable a gender-based distribution, as shown in Table 4.3.

Table 4.3: Distribution of respondents by gender

		Frequency	Percent
Valid	Male	108	80.6
	Female	26	19.4
	Total	134	100.0

The above distribution shows that the judiciary system in Somalia is still male-dominated, even more so than neighboring countries like Kenya. For example, The Supreme Court of Kenya has five male judges and two female, while at the Judicial Service Commission, four of the 11 members are women (International Development Law Organization, 2020). The IDLO report further indicated that there are 97 female resident magistrates against 47 men. For senior resident magistrates, the ratio of female to male is equal at seventy six. Somalia still has not ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the FGS has not passed a gender policy or any legislation to combat gender-based discrimination, which is reflected by the lopsided gender ratio in its public workforce.

4.3.3 Education level

The questionnaire collected data on the education level of sampled respondents, as indicated in Table 4.4.

Table 4.4: Distribution of respondents by education level

		Frequency	Percent
Valid	Certificate	3	2.2
	Diploma	1	.7
	Degree	91	67.9
	Masters/PhD	39	29.1
	Total	134	100.0

Over three-quarters of respondents had received a university education, as a result of post-conflict Somalia's establishment of several institutions of higher learning, mostly private institutions scattered across states. Despite this presumption, it can be argued as well that a better portion of the respondents, a large proportion of respondents received university and/or graduate level education at institutions outside Somalia given the age distribution of the sample.

4.3.4 Professional experience

The study sought to determine respondents' length of service in their current departments, in order to determine their experience working in the justice system, as shown in Table 4.5.

Table 4.5: Distribution of respondents by Professional Experience

	Frequency	Percent
Below 5	56	41.8
5-10	58	43.3
10-15	18	13.4
Above 15	2	1.5
Total	134	100.0

The above distribution shows that over 80 percent of respondents had served in their departments for less than ten years. This relatively low level of experience is largely explained by Somalia's expansion of its judicial system and establishment of more courts at the federal and state level in the wake of the ratification of a new constitution in 2012, which attracted large numbers of young, educated personnel.

4.4 Descriptive analysis

This study performed descriptive analysis to obtain central tendencies determining the progressivity of the JJS in Somalia.

4.4.1 Age determination mechanisms (ADM) in the criminal justice sector

The study assessed the age of most children in conflict with the law. As shown in Figure 4.1., the rate of illegal behavior by children rises sharply from age 14 to 17, with lower levels seen in those aged 11 to 13. This could be linked to the involvement of adolescents in terrorism, petty crimes and other criminal activity.

Figure 4.1: Age of children in conflict with the law

This study explored the methods used by authorities to determine the age of CICL in Somalia. As shown in Figure 4.2, respondents indicated that such judgements are most often reached via assessments of physical appearance, followed by the use of medical reports. Information gathered from witnesses, neighbors or parents is also used to determine children's ages.

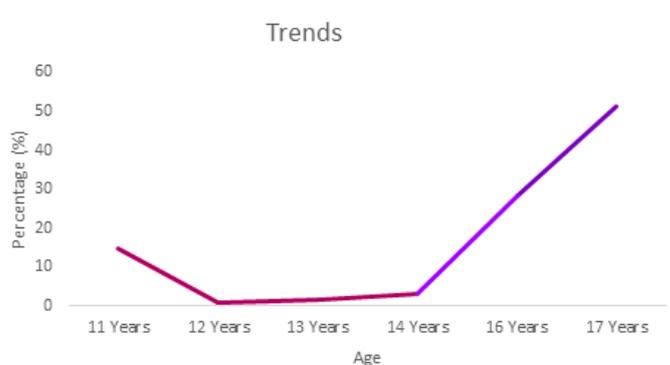
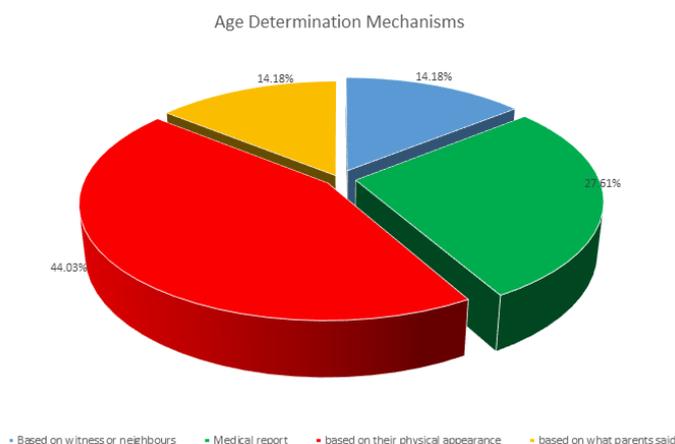
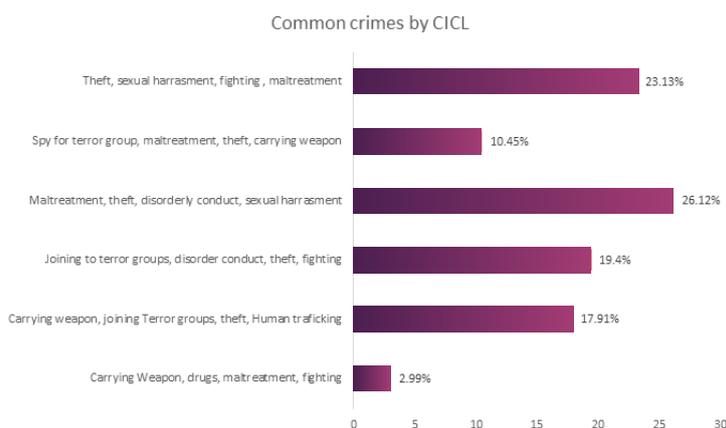


Figure 4.2: Age determination mechanisms for CICIL in Somalia



The study also examined the most common crimes for which CICIL are arrested or detained, as shown in figure 4.3. These included maltreatment (assault), theft, disorderly conduct, sexual harassment, fighting, weapons possession and drug use. The results indicate that maltreatment, sexual harassment and participation in terror groups were common across all categories of CICIL.

Figure 4.3: Common Crimes by CICIL



The study also explored the rate of children going to trial in the previous year, as shown in Table 4.6.

The questionnaire also gauged respondents' views on a series of statements about

Table 4.6: Number of CICIL who went to trial in the previous year

Numbers	Freq.	Percent
Not sure	7	6.86
Below 100	1	0.98
100-199	38	37.25
200-299	54	52.94
300-399	2	1.96
Total	102	100.00

mechanisms for age determination by members of juvenile justice departments in Somalia. The responses were rated on a Likert scale³, as presented in table 4.7

Table 4.7: Respondents' agreement with statements on age determination mechanisms (on a scale of 1 to 5)

Statement	Mean response	Standard Deviation	Skewedness	Kurtosis
The birth registration system in Somalia is haphazard	3.51	1.218	-1.073	.104
Determination of age is often made by qualified professionals	3.46	1.272	-.844	-.366
Determination of age is arbitrary and discretionary with no standardized reference to clear criteria	3.28	1.312	-.708	-.728
All CICL are asked their age at some point in their arrest and detention	1.92	.910	1.198	1.492
When children are held accountable for their actions, age is first determined to find alternatives to detention	2.13	.972	1.024	.956
The best interests of the child are taken into consideration in addition to their age when making judicial decisions	3.33	1.279	-.836	-.545
Age determination is made by friends and relatives of the CICL	2.86	1.388	.018	-1.257
Average score	2.93	1.193		

N= 134

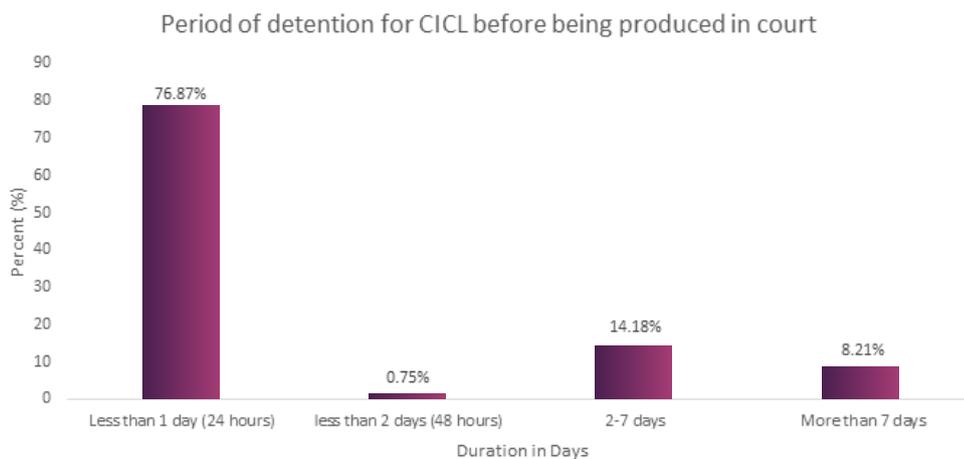
3 The Likert Scale registers respondents' intensity of agreement with responses on a range from 1 to 5 with values representing the following: 1 = to no extent, 2 = to small extent, 3 = to some extent, 4 = to moderate extent and 5 = to a great extent.

The response with the highest mean agreement (3.51 out of 5) was “The birth registration system in Somalia is haphazard.” Conversely, the statement with the lowest mean agreement (1.92) was “All CICL are asked their age at some point in their arrest and detention.”

4.4.2 Criminal Liability Determination Processes (CLDP) for Juveniles in Somalia

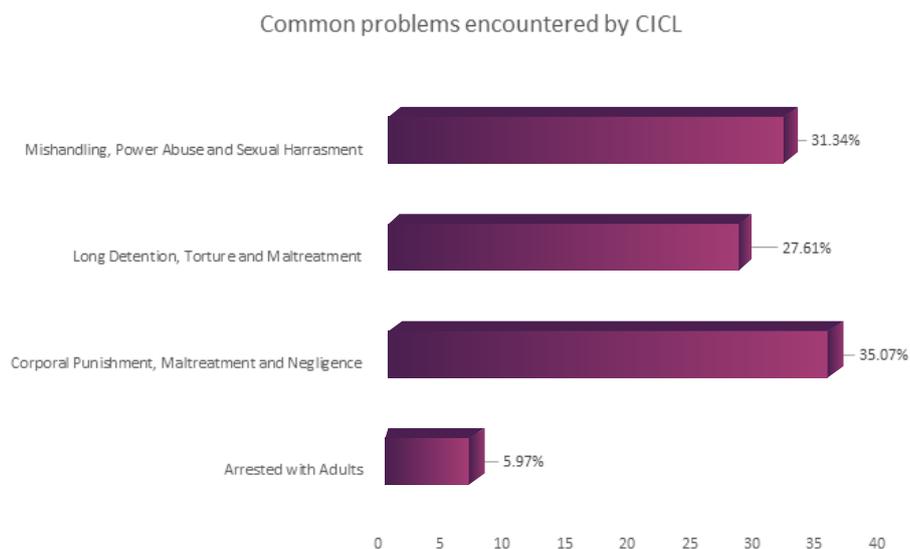
The study explored the average number of days CICL are detained before seeing a judge. As shown in Figure 4.4, respondents indicated that most CICL (77%) are detained for less than 24 hours before being produced in court.

Figure 4.4: Period of detention for CICL before being produced in court



The study also explored the biggest problems CICL encounter in Somalia, as shown in figure 4.5. These include corporal punishment, maltreatment, negligence, mishandling, abuse of power and sexual harassment.

Figure 4.5: Common problems encountered by CICL



The study sought to establish the process of determining criminal liability for juveniles in Somalia. For this purpose, respondents were asked to rate their agreement with a series of statements based on the Likert scale, as presented in table 4.8.

Table 4.8: Respondents' agreement with statements on the determination process of criminal liability (on a scale of 1 to 5)

Statement	Mean response	Standard Deviation	Skewedness	Kurtosis
Accused children are presumed innocent until proven guilty in a final manner by a juvenile court of law	1.81	1.022	1.257	.973
CICL are informed about the process that they will undergo	2.06	1.081	.822	-.031
CICL receive legal counseling or have a lawyer at some point during their arrest	3.19	1.265	-.463	-.783
Judges are provided with a copy of the JIL	1.82	1.047	1.285	.917
Parent(s)/ guardian(s) are able to participate without any challenges during their children's court proceedings	3.49	1.308	-.792	-.471
Children's lawyers consult with parent(s) or guardian(s) regarding the case	3.51	1.347	-.762	-.571
Average score	2.65	1.178		

N= 134

The statement with the highest mean agreement (3.51) was "Children's lawyers consult with parent(s) or guardian(s) regarding the case." On the other hand, the statement with the lowest mean agreement (1.81) was "Accused children are presumed innocent until proven guilty in a final manner by a juvenile court of law."

4.4.3 Progressivity of the juvenile justice system in Somalia

Respondents were also asked to evaluate their agreement with a series of statements regarding the progressivity of the JJS in Somalia based on the Likert scale, as shown in table 4.9.

Table 4.9: Respondents' agreement with statement on the progressivity of the JJS in Somalia

Statement	Mean response	Standard Deviation	Skewedness	Kurtosis
Effective diversionary measures are implemented in cases involving minor crimes.	1.85	.922	1.238	1.470
The severity of juvenile cases is determined in line with the principle of proportionality.	1.99	.992	.952	.358
CICL are produced before a competent juvenile court within 48 hours of their arrest.	2.10	1.025	.951	.330
Children are separated from adults when they are detained in prisons/ police stations.	2.39	1.481	.757	-.891
All laws are reviewed to ensure that children are provided with the right to a fair trial, legal assistance and all required rights provided for in national and international legislation, during pre-trial, trial and post-trial settings.	1.93	.523	.553	3.527
Children are not spending more time in detention than required by legislation, and thus the court progressively reviews cases.	2.04	.949	.928	.347
Children have the right to challenge the legality of the deprivation of their liberty before the court.	1.78	.947	1.111	.535
All judges have training in children's rights and the proportionality of the JJS hence conformity in the application of the law by judges.	1.96	.821	.993	1.387
Regular monitoring is conducted of the juvenile justice system, so as to ensure that administrative processes are in line with relevant legal provisions for children from poor backgrounds.	2.87	1.325	-.281	-1.394
Average score	2.10	0.998		

N= 134

The study findings indicated the highest mean score (2.87) was associated with the statement “Regular monitoring is conducted of the juvenile justice system, so as to ensure that administrative processes are in line with relevant legal provisions for children from poor backgrounds.” On the other hand, the lowest mean agreement (1.78) was with the statement “Children have the right to challenge the legality of the deprivation of their liberty before the court.”

4.5 Inferential analysis

4.5.1 Correlation analysis

This study conducted correlation analysis of the latent variables and obtained correlation coefficients to aid in assessing the influence of all study variables on age determination as well as criminal liability mechanisms and processes, and ultimately the progressivity of the JJS. The correlation coefficient (r) measured the strength and direction of the relationship between study variables. The study employed a Pearson’s correlation matrix, with results presented in table 4.10. The results show that all constructs had some positive association within

Table 4.10: Pearson’s correlation matrix

		Progressivity	Age determination mechanisms	Criminal liability determination processes
Progressivity	Pearson Correlation	1	.345**	.287**
	Sig. (2-tailed)		.000	.001
	N	134	134	134
Age determination mechanisms	Pearson Correlation	.345**	1	.602**
	Sig. (2-tailed)	.000		.000
	N	134	134	134
Criminal liability determination processes	Pearson Correlation	.287**	.602**	1
	Sig. (2-tailed)	.001	.000	
	N	134	134	134
** . Correlation is significant at the 0.01 level (2-tailed).				

their respective pairs. Progressivity had a positive and agreed to some extent significant correlation with age determination mechanisms ($r=0.345$, $p<.05$) and a weakly significant correlation with criminal liability determination processes ($r=0.287$, $p<.05$). On the other hand, the relationship between age determination mechanisms and criminal liability determination processes ($r=0.602$, $p<.05$) was strong, positive and significant.

4.5.2 Multiple linear regression analysis

This study also conducted a regression analysis to establish the contribution of age determination mechanisms (ADM), and criminal liability determination processes (CLDP) to the progressivity of the JJS in Somalia. To establish the statistical significance of the study variables, a researcher conducted multiple regression analysis at a 95% confidence interval, using SPSS V 22.0 to code, enter and compute the measurements of the regressions.

This sub-section thus presents the findings of the multiple linear regression analysis in terms of model summary, analysis of variance (ANOVA) and the coefficient table, as shown in table 4.11.

Table 4.11: Model summary

Model	R	R square	Adjusted R square	Standard error of the estimate
1	.359a	.129	.116	.393622

a. Predictors: (Constant), CLDP, ADM

This model implies that the explanatory variables, namely ADMs and CLDPs, explain 12.9 percent of variation in the progressivity of the JJS, while the other proportion may be accounted for by factors not considered in this model. The study further tested the overall significance of the model using the ANOVA technique, as shown tabulated in Table 4.12.

Table 4.12: Analysis of variance (ANOVAa)

Model		Sum of squares	Df	Mean square	F	Sig.
1	Regression	3.008	2	1.504	9.709	.000 ^b
	Residual	20.297	131	.155		
	Total	23.305	133			

a. Dependent variable: progressivity of JJS

b. Predictors: (constant), CLDPs, ADMs.359a

From the ANOVA statistics, the study established that the progressivity regression model was significant at the 5% level ($p < .05$), which indicates that the data is ideal for making a conclusion based on the population parameters, specifically that ADMs and CLDPs jointly explain the progressivity of the JJS.

The study used the coefficient table to determine the contribution of ADMs and CLDPs on progressivity of the JJS in Somalia, as shown in table 4.13.

Table 4.13: Coefficients^a

Model		Unstandardized coefficients		Standardized coefficients	t	Sig.
		B	Standard error	beta		
1	(Constant)	1.424	.159		8.930	.000
	Age Determination Mechanisms	.159	.060	.270	2.645	.009
	Criminal Liability Determination Process	.080	.066	.125	1.222	.224

a. Dependent variable: Progressivity of juvenile justice system

Using regression analysis, this study examined the effect in terms of magnitude, significance and direction. Holding all factors constant, the progressivity of juvenile justice system still increases by 1.424, a significant rise at the $p < .05$ level. The study found that ADMs had a positive and significant influence ($\beta = .270$, $p < .05$) on the progressivity of JJS. This implies that ADMs led to a 0.27 increase in the progressivity of the JJS, holding other factors constant.

The study further found that CLDPs had a positive and non-significant influence ($\beta = .125$, $p > .05$) on the progressivity of the JJS (PJJS). CLDPs led to a 0.125 increase in the progressivity of the JJS, holding other factors constant.

The final estimated model is as shown below:

$$PJJS = 1.424 + 0.27ADM$$

CHAPTER FIVE: SUMMARY, DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter presents summarized findings, discussions, and conclusions based on the study findings, and provides recommendations and areas for further study.

5.2 Summary of the findings

The aim of this study was to assess the progressivity of the JJS in Somalia. In order to do so, it identified mechanisms that are consistently used by members of the criminal justice sector to determine the age of CICL as well as determination processes for the criminal liability of minors.

In terms of the demographic distribution of the sample population, most respondents were aged between 18 and 50, and four times as many males as females were surveyed. Most respondents had a degree level of education (university training). Most respondents' terms of service in their current institutions were 10 or fewer years in duration, with the largest proportion ranging from 5 to 10 years.

Asked about age determination mechanisms for CICL, respondents indicated that these were affected by the haphazard birth registration system in Somalia. Although most respondents concurred to some extent that age determination is made by qualified professionals, they also acknowledged that age determination mechanisms are arbitrary and discretionary, with no standardized reference to clear criteria.

Most respondents agreed to some extent that children's lawyers consult with parents or guardians regarding children's cases and that parents or guardians are able to participate without any challenge in children's court proceedings. Finally, the study assessed the proportionality of the JJS in Somalia and its key drivers. The study employed descriptive analysis and rated constructs. It revealed to some extent that regular monitoring of the JJS is being conducted to ensure that administrative processes are in line with relevant legal provisions for children hailing from poor backgrounds.

Cumulatively, the analysis indicated that the JJS in Somalia was regressive rather than progressive. Regression analysis to explore the key drivers of progressivity in the JJS in Somalia indicated that only age determination mechanisms have a significant and positive effect, while criminal liability determination processes have a positive but insignificant effect.

5.3 Discussion

5.3.1 Age determination mechanisms used by members of the criminal justice sector

The study found that children aged between 14 and 17 were more likely to be in conflict with the law than those aged between 11 and 13. It also found that assessment of physical appearance is the method most frequently used to

determine the age of CICL. Research showed that children most often arrested or detained because of maltreatment (assault), theft, disorderly conduct or sexual harassment. From the overall mean score, most respondents to some extent concurred with the ADM construct, implying that they were not sure on standard ADMs employed by members of the justice sector in Somalia.

5.3.2 Criminal liability determination processes for juveniles

The study sought to explain the criminal liability determination processes for juveniles in Somalia. Over 70 percent of respondents indicated that CICL are usually detained for a period of less than 24 hours before being produced in a court, while about 23 percent indicated that CICL are detained for more than two days before being produced in court. The study also found that corporal punishment, maltreatment and negligence were among the main challenges encountered by CICL. From the overall mean score, it can be concluded that most respondents concurred to a little extent that the criminal liability determination process for juveniles in Somalia is well coordinated.

5.3.2 Progressivity of the JJS and Key Drivers

Based on the literature review and the federal constitution of Somalia (2012), the study established a set of questions aimed at determining the progressivity of the JJS. The overall mean score indicated that most respondents agree that the juvenile justice system in Somalia is not proportionate. Inferential statistics (correlation and regression analyses) were employed to determine the key drivers of progressivity in Somalia. The study found that ADMs had a significant and positive correlation with the progressivity of the JJS whereas the results from multiple linear regression model indicated that ADMs led to a significant rise of 0.27 in the progressivity of the JJS, holding other factors constant.

This study also sought to establish how criminal liability determination processes influence the progressivity of the JJS in Somalia. Correlation analysis revealed that CLDPs are significantly and positively correlated with the progressivity of the JJS. However, further regression analysis revealed that this correlation was not statistically significant. CLDPs led to an insignificant rise in the progressivity of the JJS by 0.125, holding other factors constant. This may be linked to the absence of a coherent sanctioning framework, which has led to the increasing dominance of a punitive model of dispositional decision-making in Somalia's juvenile courts.

5.4 Conclusions

This study was conducted with the understanding that most criminal justice systems in post-conflict countries are regressive. Despite the existence of international conventions, age determination mechanisms and criminal liability determination processes vary across countries.

This study makes the following conclusions based on its findings:

1. Age determination mechanisms are haphazard and poorly coordinated in Somalia's criminal justice sector. The age of most CICL is arbitrarily determined through mere observance of physical appearance by unqualified professionals, with no standardized reference to clear criteria. CICL themselves are not routinely asked to state their age.

2. A considerable proportion of CICL are detained for more than two days before being produced in court, while others are never taken to court at all. Accused children are often not presumed innocent until proven guilty by a juvenile court of law. Furthermore, CICL are not well-informed about the processes that they undergo, and many don't receive legal counsel at any point during their arrest and detention. Most importantly, parents and guardians are only able to participate with many challenges in their children's court proceedings, while children's lawyers often lack the chance to consult with parents or guardians regarding their children's cases.
3. The JJS in Somalia is generally regressive. Ineffective diversionary measures are implemented in cases involving minor crimes, the severity of juvenile cases is often not determined in line with the principle of proportionality and CICL are often not produced before a competent juvenile court within 48 hours of arrest. The regressivity of the JJS is exacerbated by its failure to separate children from adults during detention in prisons and police stations or to engage in anything beyond ad-hoc monitoring to ensure that administrative processes are in line with relevant legal provisions for children hailing from poor backgrounds.
4. The key driver of progressivity in Somalia's JJS is age determination mechanisms, a statistically significant driver that requires policy interventions.

5.5 Recommendations

From the above conclusions, this study recommends the following to ensure the progressivity of the JJS in Somalia:

1. The Federal Government of Somalia (FGS) in collaboration with federal member state (FMS) governments must enhance age determination mechanisms in the criminal justice sector. The FGS and FMSs need to enhance proper birth registration systems, employ more qualified professionals to determine the age of CICL and establish separate acts to supplement available mechanisms that guarantee the accurate establishment of CICL's age at an early point in the process of arrest and detention.
2. All stakeholders in the criminal justice system must ensure that juvenile justice laws are passed and implemented across all states. At present, only Somaliland has such a law. This will enhance criminal liability determination processes for juveniles in a properly coordinated manner. Juvenile justice laws should be clear on protocols to be followed in determining the ages of CICL. Additionally, the FGS and FMS governments should reform their penal, civil and criminal procedure codes to enhance access to justice and the rule of law for juveniles and the general public.
3. The FGS should empower the state governments to set up juvenile justice boards (JJBs) to provide various dispositional alternatives, such as releasing CICL after due advice and reprimand; treating CICL as well as their families; placing CICL under the management of their parents or guardians; imposing fines; sending CICL for community service; ordering group counselling; or referring CICL to special homes.

4. The FGS and FMS governments must collaborate to enhance effective diversionary measures in cases involving minor crimes, ensure that the severity of juvenile cases is determined in line with the principle of proportionality and produce CICL before a competent juvenile court within 48 hours of their arrest.

5.6 Areas for further study

This paper mainly concentrated on analyzing the progressivity of the JJS in Somalia, using a descriptive research design that collected primary data from stakeholders in the justice sector, mainly in the Banadir region. Similar studies should be supported to assess the progressivity of the juvenile justice system at the state level across Somalia for the purpose of comparison, using appropriate research designs incorporating both primary and secondary data.

Other factors as identified in the literature are likely to contribute to the progressivity of the justice system, including political climate, religion, culture, economic development and external influences. Further studies should explore the contribution of these factors to the progressivity of the JJS in Somalia.

Future research could also take a longitudinal approach to analyzing the progressivity of the JJS across different religious and ethnic groups including minorities, or individuals in different sectors, as compared to developed countries.

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APPENDICES

APPENDIX 1: SURVEY QUESTIONNAIRE

Kindly respond to the following questions to your level best. This information will be treated in total confidence. You can tick where alternatives are provided.

Department.....

Designation

Part A: Demographic Information

1. What is your age bracket?

18 -30 [] 31-40 []

41-50 [] 51 and above []

2. Gender? Male [] Female []

3. What is your Level of Training?

Certificate [] Diploma [] Degree [] Masters/PhD []

5. How long have you been working in this department?

Below 5 years [] 5-10 years []

10-15 years [] Over 15 years []

This study is conducted with the sole purpose of establishing the progressivity of the juvenile justice system in Somalia. Apart from demographic information, the questionnaire is organized into three parts (B, C and D) according to its objectives. Part B: Age determination mechanisms used by members (judges) in juvenile justice departments

1. What are the ages (in years) of the children currently in this facility?
2. How is (1) the above determined?
3. How many of them (in numbers) have gone to trial?
4. List four common crimes that CICL are needed/detained for.
5. Describe the procedures used when detaining children.

Rate the following statements based on decisions by the members of juvenile justice departments. The Likert-scale is used, ranging from: 1 = to no extent, 2 = to small extent, 3 = to some extent, 4 = to moderate extent and 5 = to a great extent.

Statements	1	2	3	4	5
1. The birth registration system in Somalia is haphazard					
2. Determination of age is often made by qualified professionals					
3. Determination of age is arbitrary and discretionary with no standardized reference to clear criteria					
4. All children in conflict the law are asked their age at some point in their arrest and detention					
5. In holding children accountable for their actions, age is determined from medical records for alternatives to detention					
6. The best interests of the child in addition to age are taken into consideration when making judicial decisions					
7. Age determination is made by friends and relatives of the CICL					

Part C: Evaluating determination processes of criminal liability for juveniles in Somalia

1. Can you explain how most children in your locality get into conflict with the law?
2. On average, how many days are children detained for before seeing a judge?
3. What are the biggest problems CICL encounter in Somalia?

To evaluate the determination process of criminal liability for juveniles in Somalia, rate the following statements with regard to CICL. The Likert scale is used, ranging from: 1 = to no extent, 2 = to small extent, 3 = to some extent, 4 = to moderate extent and 5 = to a great extent.

Statements	1	2	3	4	5
1. Accused children are presumed innocent until proven guilty in a final manner by a juvenile court of law					
2. CICL are informed about the processes that they will undergo					
3. CICL receive legal counseling or have a lawyer at some point during their arrest					
4. Judges are provided with a copy of the JJL					
5. Parents or guardians are able to participate without any challenges in children's court proceedings					
6. Children's lawyers consult with parents or guardians regarding children's cases					

Part D: Progressivity of Juvenile Justice System in Somalia

Rate the following statements regarding the juvenile criminal justice system. The Likert scale is used, ranging from: 1 = to no extent, 2 = to small extent, 3 = to some extent, 4 = to moderate extent and 5 = to a great extent.

Statements	1	2	3	4	5
1. Effective diversionary measures are implemented in cases involving minor crimes					
2. The severity of juvenile cases is determined in line with the principle of proportionality					
3. CICL are produced before a competent juvenile court within 48 hours of arrest					
4. Children are separated from adults when detained in prisons or police stations.					
5. All laws are reviewed to ensure that children are provided with the right to a fair trial, legal assistance and all required rights provided for in national and international legislation during pre-trial, trial and post-trial settings					
6. Children do not spend more time in detention than required in the legislation, and thus the court progressively reviews cases					
7. Children have the right to challenge the legality of their deprivation liberty before the court					
8. All judges have training in children's rights and the proportionality of the JJL hence conformity in the application of the law by judges.					
9. Regular monitoring of the juvenile justice system is conducted, so as to ensure that administrative processes are in line with relevant legal provisions for children hailing from poor backgrounds					

Thank you for your time.

End

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No.4
October 2020

ASSESSING THE PROGRESSIVITY OF THE JUVENILE JUSTICE SYSTEM IN SOMALIA

Wafaa Hassan



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