

Ghana's Juvenile Justice System: Assessment of Selected Formal Juvenile Justice Institutions and Agencies

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Abstract

This paper assesses the state of selected formal institutions and agencies within Ghana's juvenile justice system and is part of a larger study that assessed Child Panels in the country. The study utilized qualitative research methods involving observation and semi-structured interviews. Field work covered a total of 16 districts in four regions of Ghana and a total of 115 respondents were interviewed. The findings expose the abject sordid state of the institutions and agencies which reduces them to a state of gross inefficiency and under-utilization. This paper highlights the fact that despite numerous studies that have identified similar challenges, no action has been taken to address them. It argues that scholars should now move beyond assessing the efficiency of the system to a focus on exploring how the system can realistically be transformed in light of the numerous challenges facing it and the socio-political realities in which it operates. It is also a call to the responsible public authorities to take action to address the challenges. The findings also show that non-governmental organizations (NGOs) play a significant role that complements the work of the formal juvenile justice system.

Key words: youth justice, juvenile justice institutions and agencies, Ghana, cultural interference in the justice system, non-governmental organizations

Introduction¹

Recent attempts by the Ghana government, supported by the United Nations Children's Fund (UNICEF), to reform Ghana's child protection system in order to strengthen and make it more effective and sustainable generated several studies that sought to assess the existing system. One such study was an assessment of Child Panels (CPs). The primary objective of that study was to critically evaluate the relevance, effectiveness, efficiency, and sustainability of child panels (Ame et al., 2020, 2014). The secondary objective was to assess the state of the formal juvenile justice institutions, namely the police, remand institutions, the courts, and correctional institutions. This secondary objective explored whether the formal institutions of the juvenile justice system were in a state to effectively achieve their respective mandates. A related issue was to identify the challenges and constraints that confront these institutions and to make recommendations on the type of policy that could address them. It is this secondary objective that constitutes the focus

of this paper. Utilizing the theoretical frame of governmentality as postulated by Michel Foucault (1979, 1997, 1980, 2008), the paper discusses only the state of the juvenile justice institutions and agencies in the system that the authors encountered in their study of Child Panels, which are described below.

Several child-related legislations adopted by the colonial administration in the 1940s together created a separate juvenile justice system for the first time in the history of Ghana with the juvenile court as its fulcrum (Riby-Williams 1954, Ame 2018). Together, the legislations created a Department of Social Welfare and a Probation Office, and gave the juvenile court jurisdiction over all juvenile cases while operating on the principles and purposes of a welfare model with the objective of rehabilitation (Ame 2017, 2018; Mensa-Bonsu 1990-92, 2006, 2017).² Probation officers, who were usually trained social workers, and juvenile court judges were the key personnel within the system. Probation officers were the case workers who, in their Social Enquiry Reports, diagnosed pathology, made recommendations to the juvenile court on the type of treatment for delinquents, executed probation orders, and also provided treatment at correctional centres, with the purpose of rehabilitating offenders. In addition to the juvenile court, the other key institutions within the system were the “treatment” institutions, the Remand Homes, the Industrial Schools, and the Borstal Institute (Ame 2017, 2018; Mensa-Bonsu 1990-92, 2006, 2017).

In actual practice, the “treatment” institutions were more of custodial institutions because, as pointed out by scholars (e.g. Ame 2017, 2018; Ayete-Nyampong 2011, 2013, 2014; Dako-Gyeke, Adam, and Mills, 2020), the institutions and agencies within the system lacked both financial and personnel resources that would enable effective treatment to occur. As a result, the juvenile courts sent many juveniles who appeared before them to “treatment” institutions that were mainly warehouses where convicted juveniles were kept, rather than treatment centres. This is not surprising because within the global democracy project, as Foucault (2008, 1979) contended, the total scope of governmentality has transcended the institutional apparatuses of the State in such ways that the State itself is experiencing the mobile effects of a regime of multiple governmentalities. While the colonial legislations that created the juvenile court and probation system was replaced in the immediate post-independence period with the Criminal Procedure Code 1960, the juvenile justice model remained the same – a welfare model on paper, but in practice a justice model, as most of the juveniles appearing before the courts were sentenced to serve time at “treatment” institutions that had neither the personnel nor the equipment to offer effective treatment, and many of the juveniles appearing before the courts did not have any legal representation (Ame, 2019; Judicial Service of Ghana, 2018; Department of Social Welfare and UNICEF, 2005; Mensa-Bonsu, 1995, 2006, 2017).

It was only after the passage of the Juvenile Justice Act 2003, the current juvenile justice law, that substantive changes emerged (Ame, 2017). The innovations the Act introduced into the system changed it to a modified justice model with the retention of key elements of the welfare approach. The key innovations were alternative measures to be implemented by child panels using principles and mechanisms of restorative justice (Ame, 2010, 2017; Ame et al. 2020) and the infusion of children's rights at every stage in the system in accordance with the standards and principles of the Convention on the Rights of the Child (1989) for juvenile justice systems globally (Ame, 2011).

These are the key institutions and agencies within Ghana's juvenile justice system:

- (i) The Domestic Violence and Victim Support Unit (DOVVSU): this is an agency within the Ghana Police Service that is responsible for all types of cases involving children. Such cases include criminal offences, status offences, and family and child maintenance cases. DOVVSU is, thus, the Ghana Police Services' specialized unit on children's issues. DOVVSU units do not, however, exist in all regions and districts of the country. The general Ghana Police Service assumes responsibility for children's cases in places without DOVVSU. Wherever DOVVSU units do not exist, interviewees were drawn from the district offices of the Ghana Police Service.
- (ii) The Department of Social Welfare (DSW): The DSW is in charge of all juvenile detention institutions including Remand Homes and Junior Correctional Centres (formerly Industrial Schools) in the country.
- (iii) Municipal/Metropolitan/District Assemblies (MMDAs) are mandated by the Juvenile Justice Act of 2003 and the Children's Act of 1998 to establish and manage child panels, which were to devise alternative measures for dealing with less serious juvenile crime. MMDAs are created by and report to the Ministry of Local Government and Rural Development (MLGRD).
- (iv) The Judicial Service of Ghana is responsible for all Juvenile Courts (criminal cases) and Family Tribunals (maintenance and custody cases). In districts that do not have Juvenile Courts and Family Tribunals, District Courts assume responsibility for all juvenile cases.
- (v) The Senior Correctional Centre (SCC) is the institution where all juveniles, 16 years and above, who are convicted of committing serious crimes are sent. The SCC at Mamobi-Accra is the only such centre in the country and is run by the Prisons Service of Ghana, which is responsible for all adult prisons in the country. The Prison Service is under the authority of the Ministry of Interior.

- (vi) The Ministry of Gender, Children, and Social Protection (MoGCSP) is responsible for children and women related issues in Ghana. The Department for Children is a branch of this ministry.
- (vii) Commission on Human Rights and Administrative Justice (CHRAJ) is Ghana's national human rights institution; and,
- (viii) Legal Aid, which is mandated to provide pro-bono legal assistance to Ghanaians.

Overall, Ghana's juvenile justice system looks good on paper. In practice, however, the child panels, the abundant rights that the new Act accords children who are in conflict with the law, or the preceding institutions and agencies with high sounding mandates have not been implemented successfully (Ame, 2011, 2017; Hoffmann & Baerg, 2011; Gagnon, 2005; Ame et al, 2020; Mensa-Bonsu, 2006, 2017).

In fact, a lack of resources to implement juvenile justice policies and programs that look sound on paper is a problem with Ghana's juvenile justice system that dates back to its inception in the late 1940s. The first hint of a lack of adequate human resources to staff the probation machinery was given in the very first academic account of the system by James Riby-Williams in 1954. He intimated that of the first seven African officers recruited for the Department of Social Welfare (DSW), only three eventually stayed with the Department (Riby-Williams, 1954, p.6). All subsequent studies listed a lack of qualified staff, such as police officers who are knowledgeable on the relevant juvenile laws; inappropriate police cells for juveniles on remand; inadequate number of juvenile court judges and panel members; lack of legal representation; shortage of probation officers, social workers, professional counsellors and other required experts. Other problems include inadequate training facilities, tools and staff; lack of therapeutic services at the Remand Homes, Industrial Schools (now Junior Correctional Centres), and Borstal Institute (now Senior Correction Centre); absence of institutions for female delinquents; lack of parental commitment; and inmates' lack of interest in the training being offered (Tooth, 1956; Clifford, 1963; Mensa-Bonsu, 1990-92, 1995). Each of these scholars bemoaned the state of overall inadequate funding to run the juvenile justice system.

Of the few existing contemporary works on the subject (e.g. Ame, 2011, 2017; Ame et al. 2020; Ayete-Nyampong, 2011, 2013, 2014; Boakye, 2013; Gagnon, 2005; Hoffmann & Baerg, 2011; Mensa-Bonsu, 2006, 2017; Child Frontiers, 2011; Judicial Service of Ghana, 2018; Dako-Gyeke et al., 2020), the most comprehensive assessment of Ghana's juvenile justice system to date has been provided by the Department of Social Welfare and UNICEF Ghana (2005). It has become the benchmark assessment of the system because of its comprehensiveness. Nevertheless, the overlap between its findings and

those of previous and subsequent studies is profound: the same old challenges of a lack of regular sittings of juvenile courts due to the unavailability of magistrates, panel members and poor compensation; absence of diversion; shortage of qualified staff and logistics for effective performance of duties by institutions and agencies; the deplorable state of physical facilities that hinder the attainment of objectives; inefficient record keeping by institutions and agencies or unavailable data; and very little collaboration and information sharing among key institutions and agencies within the system (pp. xii-xiii, 59-61).

Another relevant issue that stands out in the literature is the impact of cultural norms, attitudes, and perceptions about the effectiveness of formal agencies within the justice system. Cultural attitudes can either hinder or enhance the work of the formal justice institutions and agencies. In Ghana, Boakye (2009a, 2009b) has argued that three cultural factors – patriarchal nuances, rape myth acceptance, and collective shame – contribute to the non-disclosure of certain types of crimes in Ghana including sexual abuse. Other scholars have argued that certain significant factors influence the decision making processes of victims in terms of whether or not to cooperate with law enforcement agencies prosecuting a case. For example, Kaiser, O’Neal and Spohn (2016, p. 22) have determined that “suspect dangerousness/offence seriousness, costs of cooperation, and likelihood of conviction influence a victim’s decision to cooperate.” This study will also explore how cultural interference impacts the work of the juvenile justice system in Ghana.

This paper is further evidence that even as the first quarter of the 21st century draws to a close, the challenges and problems identified within the juvenile justice system of Ghana in the mid-twentieth century when it was first created, still persist. Little has changed about Ghana’s juvenile justice system. Therefore, the paper calls for a change in research direction, and for action to be taken by the relevant authorities to address the challenges facing the system. It is argued that we must embrace the admonishing by Foucault (2008, 1979) to pay attention to “disciplinary power” that is applied to individual bodies by techniques of normalizing sanctions, surveillance, and a panoptic organization of punitive institutions that meticulously control the general population, life, and human beings. This is because governmentality as applied within the context of this paper must be understood in the broad sense of techniques and procedures for directing human behaviour.

Research Methods

The study utilized qualitative research methods of observation and semi-structured interviews. A purposive sampling method was employed and was targeted at the stakeholders and agencies within the child protection system generally and in the

juvenile justice system described in the preceding section. After stakeholder meetings with representatives of the institutions and agencies described above were held in Accra, the national capital, the team randomly selected four regions (Greater Accra, Western, Ashanti, and Northern regions) for field work.

We interviewed staff of the following agencies and institutions (as described above) with relevant knowledge about the issues related to the objectives of the study in the four regions: (i) the Domestic Violence and Victim Support Unit (DOVVSU); (ii) the Ghana Police Service regional and district offices which do not have DOVVSU units; (iii) the Department of Social Welfare (DSW); (iv) Remand Homes and Junior Correctional Centres (formerly Industrial Schools) in the country; (v) Municipal/Metropolitan/District Assemblies (MMDAs); (vi) the Ministry of Local Government and Rural Development (MLGRD); (vii) Magistrates and Registrars of Juvenile Courts, Family Tribunals, and District Courts; (viii) The Ministry of Gender, Children, and Social Protection (MoGCSP); (ix) the Department for Children; (x) the Commission on Human Rights and Administrative Justice (CHRAJ); and, (xi) Legal Aid.

In addition, we also interviewed staff of two NGOs that we encountered during the period of our interviews in the regions: Defence for Children International (DCI) Ghana, Kumasi, Ashanti Region and Campaign for Female Education (CAMFED) in Tamale, Northern Region. The two NGOs were selected because they were the only ones whose work focused on children in conflict with the law in their respective regions.

Letters were sent to the regional and district offices of each of these institutions ahead of our arrival in the field. Semi-structured interview questions were administered in-person to officers selected by the institutions. The interviews lasted about an hour and were conducted at their offices. Overall, a total of 115 respondents were interviewed. To address the objectives of this paper, interviewees were asked about the state of the institutions or agencies and their role within the overall juvenile justice system. The authors collected a substantial amount of data on the state of these institutions and agencies. The findings of the study are featured in this paper.

Theoretical Framework

This paper is anchored within the theoretical framework of Michel Foucault's concept of governmentality. Foucault was interested in power and social change, how power operates in modern societies, and how institutions through compliance with social norms come to produce obedient citizens, not under the threat of corporal punishment but simply as a result of their behaviour being constantly molded to ensure the full institutionalization and internalization of the dominant norms, beliefs, and values of their societies. This epitome of punishment, the institutionalization of norms or "discipline," as Foucault called them, was based on Jeremy Bentham's idea of the Panopticon, which as a mode of control seeks to render instances of "deviance" utterly visible.

It is within this sphere of the Panopticon that Foucault turned his attention to “governmentality,” a concept that embraces the array of socio-political arrangements, past and present, and within which individuals and groups of people have not simply been dominated as subjects but have also been able in some measure to govern, create and recreate themselves in the process. The problem of “government,” Foucault (1979) argues, does not refer only to the government of the State, but also the government of souls and conduct and the government of oneself and as a regulatory or conducting power. Governmentality, as Foucault contended, signifies problems of self-control, guidance for the family and children, directing of the soul, and so forth, i.e., the “conduct of conduct” and the “governing of self” to “governing others”. This is all the more important because governmentality is a rubric that is central to conceptions of power, knowledge, and dominance within social organizations as a system that not only controls the actions and behaviour of an individual but also allows that individual to control the possible actions and behaviour of others (Foucault, 1980).

In *Society Must Be Defended* (1977), Foucault wrote about the features of “disciplinary power”; he indicated that this type of power is applied to individual bodies by techniques of normalizing sanctions, surveillance, and a panoptic organization of punitive institutions that meticulously controls the general population, life, and human beings. Simply put, Foucault posits that governmentality should be “understood in the broad sense of techniques and procedures for directing human behaviour” (1977, p. 82). Foucault therefore used governmentality as a concept to emphasize the importance of a government of subjects oriented to a calculated administration of lives (Foucault, 1980). In fact, Foucault has admonished that power produces knowledge and that power and knowledge are coterminous in that they directly imply one another. For that matter, Foucault contended that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations. These “power-knowledge relations” are to be analyzed on the basis of the subject who knows and the objects to be known, and the modalities of knowledge must be regarded as so many effects of these fundamental implications of power-knowledge and their historical transformations. As such, within the global democracy project, the total scope of governmentality has transcended the institutional apparatuses of the State in such ways that the State itself is experiencing the mobile effects of a regime of multiple governmentalities (Foucault, 2008). Foucault’s concept of governmentality will be applied to the juvenile justice system of Ghana to demonstrate how the system, set up to rehabilitate juvenile offenders, has inadvertently become a system of power and dominance that controls the actions and behavior of stakeholders in the system such as the juveniles processed through it but which at the same time permits the juveniles and other stakeholders to control the actions of others in the system.

Findings

The findings from our interviews and observations on the state of juvenile justice institutions and agencies within Ghana's juvenile justice system include institutional constraints and lack of logistical support, dilapidated remand homes and cells, under-utilized juvenile courts and family tribunals, non-functioning juvenile courts and family tribunals, and the interference of local cultural perceptions and traditional authorities with the work of the formal juvenile justice institutions. These are presented in this section of the paper.

Institutional Constraints and Lack of Logistical Support

Our data indicate that cases involving children were mainly referred to the Department of Social Welfare (DSW), the Commission on Human Rights and Administrative Justice (CHRAJ), the Police, DOVVSU, and Legal Aid. A major problem is that not all these child protection and formal justice institutions are located in every district. For example, the Legal Aid Scheme in the Greater Accra and Western Regions has offices only in the capital cities of Accra and Sekondi-Takoradi, respectively. CHRAJ has only 10 district offices out of a total of 23 districts in the Western Region at the time of this study. Of a total of 28 districts in the Northern Region, CHRAJ is only represented in 12. Information gathered indicates that only the DSW has an office in every district in the country and so they end up receiving the bulk of child related cases.

Criminal cases, however, tend to be more often referred to the Police and DOVVSU, who would then lay charges at the Juvenile Court or Family Tribunal if there are grounds to do so and depending on the nature of the case. But DOVVSU, unlike the regular police, does not have offices in every district, nor do Juvenile Courts and Family Tribunals. For example, even though there is a District Court in Shama, Western Region, it sits neither as a Juvenile Court nor a Family Tribunal. Children's cases are therefore referred through the supervising High Court Judge to other courts in the Region. This may take several days to accomplish.

Overall, our data indicate that the proximity of complainants to an institution determines their decision to report a case to that particular child protection institution. The mandate of the institutions and agencies within the juvenile justice system to address juvenile justice cases is therefore fragmented among several parallel institutions, with each addressing just a small proportion of cases, mainly based on the physical location of the institutions and agencies in the community.

A police officer expressed concern about how the inadequate number of relevant institutions in the districts and communities creates problems for them when they make arrests by noting that, "[t]he number of children arrested are many but since there is no

place to keep them, the Police are forced to release them and prosecute only serious cases and you know that cases are also withdrawn for settlement at home.” Another police officer pointed out that “[c]hild offenders are usually granted bail to go with their parents, even though in some cases they are not supposed to do so. But because we have no place to keep them, we do just that” (DOVVSU Officer, Kumasi, September 18, 2013).

There is also the problem of lack of trained professionals who work at the few existing institutions. A Social Welfare officer stated that there are only three (3) probation officers in Kumasi, Ashanti Region, and this is woefully inadequate, hence, he concluded the statement saying, “... we are therefore unable to effectively monitor child delinquents.” He stated further that Kumasi has only three (3) police stations with juvenile cells (Tafo Pankrono, Suntreso, and Asokwa). “It is bad because if the Police do not find a place to put child offenders, they will have to release them to the public who can lynch them. In cases where children are witnesses, they could be influenced if the Police do not find a place to keep them” (Regional Social Welfare Officer, Kumasi, September 3, 2013).

A magistrate also shared similar views:

The juvenile justice system is problematic and requires a lot of improvement. There are no remand homes and no cells for juveniles, and yet certain cases are unbailable requiring that juveniles be remanded. This is really problematic for all of us and we are compelled to bend the rules in order to resolve such situations (Magistrate, South Sekyere District, Agona, September 11, 2013).

In addition to the inadequate number of remand homes for juveniles, a lack of trained professionals for the agencies, and the inhabitable conditions of the few existing units, a District Police Commander brought to the fore other challenges such as feeding and transportation in response to a question about where children are kept when arrested. He stated that:

Juveniles are usually put behind the counter, but they abscond easily. Most courts have fixed days for juveniles, for instance if it is a Friday and a juvenile is arrested much earlier, you have to keep the juvenile till Friday and where do you keep them? How do you feed them? Even escorting them to remand homes is problematic, there are not enough remand homes and the few that are functioning are not fit for human habitation. Besides, the police do not have any means to transport children from one facility to the other (District Commander, Ghana Police Service, Sekyere South District, Agona, September 11, 2013).

A Coordinator of DOVVSU lamented about some of the victim-related problems they face when arrests are made in criminal cases and victims have to be cared for as follows:

Who cares for the victims when the accused is arrested? Often medical bills have to be paid whether victims have health insurance or not; there are very few shelters or homes to take the victims. Our officers end up paying the medical bills and for the transportation of victims to the hospital and for the accused to go to court out of their own [officers'] pocket. Lack of resources is the saddest aspect of this work. It is a sacrificial job. We pay for victim needs out of our own pockets (Coordinator, DOVVSU, Tema, August 28, 2013).

The Coordinator stated further that even though DOVVSU focuses on victims, it is woefully under resourced. One of their biggest challenges, according to her, concerns the payment of medical bills by victims of sexual and physical abuse. She noted that “a simple slap [physical assault] attracts a medical cost of 100 Ghana cedis [approximately USD 18] and without a medical certificate, victims cannot go to court.”

The preceding excerpts illustrate some of the concerns of the police, magistrates, and social welfare officers about the fact that the facilities to detain child suspects and children in conflict with the law are woefully inadequate, and that existing ones, due to lack of logistical support, are not fit for human habitation. There are virtually no juvenile cells in the Ashanti and Western Regions. The Northern Region has only two juvenile cells, one at Sakasaka and another at Lamashegu. The Remand Home in Kumasi serves the Ashanti, Central and sometimes other regions, and the Boys Remand Home in Tamale, along with the Junior Correctional Centre (JCC) in Pong-Tamale, serves the five Northern Regions. Generally, correctional centres for juvenile and young offenders in Ghana are woefully inadequate. Ghana has only one senior correctional centre for young male offenders (managed by the Ghana Prisons Service) and only one JCC (managed by the Department of Social Welfare) for female juvenile offenders. Female juvenile offenders are particularly disadvantaged because the only senior correctional centre serves only male juveniles in conflict with the law. The implication is that the majority of females may end up in adult prisons or spend a longer time in police detention.

The above observations by interviewees confirm the findings of previous researchers. Mensa-Bonsu (2006, 2017) has observed that pre-trial remand is a huge problem in Ghana with arrested male juveniles being kept in the same police cells as adults and female juveniles being kept at “counter-back.”³ Our interviewees’ statements about the problem of feeding, medical bills, and transportation when juveniles are on remand further confirm similar findings by Mensa-Bonsu (2006, 2017). Acute lack of personnel and logistics at all levels in the juvenile justice system as stated by our interviewees are findings that have been confirmed by several other researchers (e.g. Department of Social Welfare and UNICEF Ghana, 2005; Gagnon, 2005; Hoffmann & Baerg 2011-; Dako-Gyeke et al., 2020). As Hoffman and Baerg (2011) and Gagnon (2005) have noted in their respective studies, these institutional constraints render the institutions

and agencies within the system inefficient. We argue further that the inefficiency of the system is one of the reasons for the low patronage of these institutions and agencies, which is discussed in the next sub-sections.

Dilapidated Structures and Appalling Conditions

In addition to drawing attention to the inadequate number of juvenile justice institutions, the interviewees noted that the existing buildings were dilapidated and not fit for human habitation. The Boys Remand Home in Tamale was not even functioning at the time of this study because of this situation. A former Warden who served at the Boys Remand Home from 2006 until 2012 when it ceased operation described the appalling conditions at the Home during his tenure:

The Home stopped functioning because its physical structure was no longer safe. It was run-down and inmates could easily abscond because security was not up to standard. The home cannot function again unless the building undergoes massive renovation (Former Warden, Boys Remand Home Tamale, September 3, 2013).

During a tour of the Home, we observed the worn-down single structure with a large open room which served as a dormitory, one toilet and bath for the inmates at one end of the building, and a modest apartment at the other end, which served as the residence of the Warden. The absence of any security structure such as a fence wall at this Remand Home typifies the porous security situation at these institutions discussed by Mensa-Bonsu (2006, 2017).

The statement of a Deputy Director at the headquarters of DSW sums up the impact of the dilapidated structures on the juveniles: “Remand homes are run down and thereby abusive by themselves. By the time that children make an appearance in court, they are already hardened criminals and rehabilitating such hardened criminal becomes very difficult” (Deputy Director, DSW, Accra, August 27, 2013). Neither are the facilities in these dilapidated structures anything to write home about. The DSW regional office in Tamale, housed in a dilapidated structure very much like the Head Office building in Accra, boasts of only two vehicles and a computer, which were all donated by NGOs. Up to the time of our interview with the Regional Director in September, they had not yet received their subvention for the year 2013. Interviewees argued that considering the run-down state of remand homes, these ramshackle structures called remand homes are tantamount to a crime as well as a sentence imposed on juveniles even before their appearance in court. This is what Foucault presents us in his classic work *Discipline and Punish* (1979) regarding the role of judgment in juvenile settings, where a whole micro-penality of time, of activity, of behaviour, of speech, of the body, and of sexuality result in a state in which one was always punishing and punishable.

Under-Utilized Juvenile Courts and Family Tribunals

Our data show highly under-utilized juvenile courts and family tribunals. Information received in the field indicates that cases handled by the juvenile courts vary from zero (in Walewale and Agona Nkwanta in 2011) to as many as 51 at the Ministries Juvenile Court in Accra the capital city in 2012. In light of this situation, it should not come as a surprise at all that the remand homes in the districts studied are either not functioning or are highly underutilized. The data established a *prima facie* case of very low criminal activity among juveniles. For example, the District Social Welfare Office in Tamale reports of only three children in conflict with the law in 2011, nine in 2012, and nine in 2013, while the Boys Remand Home in Tamale had only five inmates instead of a maximum of 20 from 2006-2012 and, at the time of this study, had no inmate because it had been shut down. The Pong-Tamale Junior Correctional Centre (formerly Tamale Boys Industrial School), which at its peak period from 1960-1970 had more than 100 inmates, had only one (1) each year from 2009-2011 and did not yet have an inmate at the time of this study (September 5, 2013)⁴. The Agona Nkwanta District Court tends to receive about four juvenile cases per year (even though it did not receive any case in 2011). However, these numbers do not provide a complete picture of the real situation. The Police and Magistrates have testified that a lot of cases come to the police stations and courts but are quickly settled informally due to a lack of juvenile detention facilities, as discussed earlier. Even those that end up in court are settled before conviction or sentencing and are labelled as having been withdrawn for informal settlement at home or at the chief's palace, as will be discussed below. Unfortunately, proper records are not kept of these settlements.

Non-functioning Juvenile Courts and Family Tribunals

Both the juvenile court and family tribunal are made up of a panel of three comprising a magistrate, a social welfare officer, and a lay person who must be sworn in before the High Court in the Region before being allowed to start work (Judicial Service of Ghana, 2018). Many Juvenile Courts and Family Tribunals we encountered in the field were not functioning because they could not constitute a complete panel, or a member of the panel had not yet been sworn-in. A Social Welfare Officer decried how this requirement has adversely affected the functioning of the juvenile court:

I have written to the Regional Director of Social Welfare and the Judicial Service, but I have still not been sworn in... Someone has to come from Kumasi to do some of my duties because I have not yet been sworn in. Juvenile cases, therefore, have to be sent to the Family Tribunal at Mampong, which has an officer coming from Kumasi to sit on the panel (Social Welfare Officer, Sekyere South District, Agona, September 9, 2013).

The Registrar of the District Court in Agona confirmed the Social Welfare Officer's statement. Similarly, the Social Welfare Officer of the Bosumtwe district (Kuntunase) narrated how the Juvenile Court and the Family Tribunal are not functioning because she had not been sworn in by the Judiciary since she was posted to the district: "I have applied to the Chief Justice/Judicial Service to swear me in but all to no avail. I do not know why I have still not been sworn in. As a result, the Probation Panel of the Juvenile Court has not been empaneled because I have to be part of the Panel," (Social Welfare Officer, Bosumtwe, Ashanti Region, September 6, 2013).

The situation was not too different in the Ahafo Ano South district. According to the registrar, the Family Tribunal does not sit, even though the Social Welfare Officer had been sworn in but not the lay member of the panel. "I have written letters upon letters to the Judicial Service, but nothing has been heard from them" (Registrar, Ahafo Ano South, September 10, 2013). The scenario described here fits into the broader Foucauldian theoretical analysis utilized in this paper, the concept of governmentality. As conceptualized within this sphere of panopticism, governmentality embraces the array of socio-political arrangements, past and present, and within which individuals and groups of people have not simply been dominated as subjects but have also been able in some measure to govern, create and recreate themselves in the process. It is clear that the problem of government does not refer only to the government of the State, but also the government of souls and conduct and the government of oneself and serves as a regulatory or conducting power (Foucault, 1979). The whole juvenile system in Ghana is fraught with problems which could rightly be termed the problem of governmentality.

Local/Cultural Perceptions and Interference from Traditional Authorities

Our data also suggest that a major hindrance to the proper functioning of state child protection agencies in Ghanaian communities relates to cultural attitudes, perceptions, practices, and interference from traditional leaders. Local perceptions impinge very strongly on whether one should resort to state institutions, judicial and quasi-judicial bodies, or the available local alternatives for the resolution of cases. According to interviewees, communities make frequent references to expressions such as "we are one people," "Someone's child is every one's child," and other similar statements which are partly used as justification by local communities not to file complaints at all or when they do, to withdraw them afterwards. Such cultural attitudes and perceptions, which led to interference from traditional and opinion leaders in the community, were unanimously expressed by all the key actors interviewed, especially in the Northern and Ashanti regions. However, the data points to less interference in cases on the grounds of cultural beliefs in the metropolitan areas in the Greater-Accra and Western Regions.

A respondent in the Northern Region explained the role of cultural beliefs in deciding to report cases to state juvenile justice institutions:

There is a general belief that it is wrong to report your people to outsiders and definitely not to a state agency. The term “*kabonsi*” is used to refer to “southerners” in particular and outsiders in general. So, when something happens, the accused party would approach the victim’s side and ask for a settlement out of the formal system. Often, even if the case has already been reported to any of the agencies within the justice system, a request would be made for the case to be withdrawn and settled at home or at the traditional ruler’s court. Sometimes, the accused even use intimidation to compel complainants to withdraw cases by labelling them as traitors for reporting a case to a state agency. For many in the local communities, the law is whatever the chief says (Regional Coordinator, DOVVSU, Tamale, September 3, 2013).

However, most of our interviewees were of the view that these community perceptions are flawed and hinder the work of child protection institutions in the communities.

Another key concern was serious interference from opinion leaders in the community such as traditional authorities, politicians, and religious leaders. When child offenders are arrested, the support of these influential people is usually sought to withdraw complaints for home settlement. One District Chief Executive (DCE) remarked that, “...these opinion leaders beg and use their influence to seek forgiveness for that person. They, therefore, cause victims and their families to withdraw cases reported to the Police station to be settled at home” (DCE, Ahafo Ano South, September 5, 2013). Such actions, according to a police officer, can be detrimental to the child. The officer cited a defilement case involving a 13-year-old who bled for three days and yet the parents begged that the case be settled at home. The police officer however pursued it further in court, but the parents refused to respond to the court summons. The officer stated: “We managed to grant bail to the perpetrator, but I know the case would soon be discarded for want of prosecution” (District Police Commander, Mankranso, September 10, 2013).

A regional coordinator of DOVVSU narrated a case involving sodomy (which is a crime in Ghana) that was reported to the unit:

...after charges were laid, the accused took refuge in the overlord’s [chief’s] palace. Representatives were sent from the overlord’s palace asking for the case to be transferred to his palace for resolution. The police could not go to the chief’s palace to arrest the accused because that would have generated a lot of unnecessary negative media attention. So that was the end of the case. (Regional Coordinator, DOVVSU, Tamale, September 3, 2013).

A passive form of interference is when parents refuse to cooperate with state institutions when their children are arrested. A social welfare officer observed that: “A lot of children

are arrested, but because parents do not want to be associated with child delinquents, some parents abandon them and so the Police are forced to release them” (Regional Social Welfare Officer, Kumasi, September 3, 2013). According to Ayete-Nyampong (2013, 2014), the majority of juvenile offenders in police detention and correctional homes seldom receive visits from their families. From the point of arrest and even prior to arrest, families have very little association with such children and youngsters. The majority of children and youngsters in correctional centers have reportedly suffered rejection from their parents and families from very young ages. However, some juvenile and young offenders in correctional centres also deliberately do not want any association with their families. Mensa-Bonsu (1990-92, 1995) and Dako-Gyeke et al. (2020) have reported similar findings.

Whereas the police sometimes reject the requests for withdrawal or non-prosecution of cases, withdrawal of such cases may rather augur well for the family of the victim as shared by a Commissioner of Police at the Police headquarters:

Parents of victims of defilement stand to benefit more from withdrawing the case from court than prosecuting it. This is because when the offender is sent to court and jailed, the victim gets nothing in terms of treatment or compensation from the state or the offender. However, if the parents of the victim withdraw the case and negotiate with the offender, they will get treatment for the [juvenile] and also compensation. (Police Commissioner, Accra, October 3, 2013)

A Coordinator of DOVVSU who shared similar sentiments argued that lack of care for victims of crime may be one reason why many children do not report cases in which the accused is a family member. She states, “if you arrest the parents, who will provide for the victim and the rest of the family? The government must make provision for the victims of such cases” (Coordinator, DOVVSU, Tema, August 28, 2013). Some interviewees, however, pointed out that in most cases, the interest of the victim is not the prime motivation for withdrawing a case and that the views of children are rarely sought or respected. Most communities strive to avoid being associated with criminality and so cases are withdrawn with the aim of preserving the honor of the family and community.

In sum, by regarding themselves as one people who must act as a corporate unit, and by defining state institutions and agencies as outsiders, local communities consider it a betrayal when a member goes outside the community structure of authority to file complaints with state institutions such as the Police or Department of Social Welfare. Such actions do not only smack of betrayal but are also regarded as a disgrace, as washing one’s dirty clothes in public. This way, local beliefs and respect for the position and authority of the local chief and opinion leaders trumps conformity to the rules and regulations of state institutions and agencies. Law enforcement agencies do not dare make arrests at a chief’s palace nor defy a chief’s orders or request for cases to be withdrawn from the

state justice system for fear of a backlash from community members, which can quickly be taken up by the media. A consequence is that victims' rights are sacrificed on the altar of community cohesion. Such attitudes, perceptions, and cultural norms discussed in this section align with Boakye's (2009a, 2009b) and Kaiser, O'Neal and Spohn's (2016) contentions that cultural factors and practices such as collective shame, patriarchal nuances and leaders' views, and the costs of cooperation contribute to non-disclosure of certain types of crimes and are significant issues that determine victims' decisions whether to cooperate with law enforcement agencies prosecuting a case.

The overall impact of this situation has been that patronage of all the child protection agencies, especially juvenile justice agencies, in the districts studied has been very low. No juvenile case was referred to the District Magistrate Court at Agona Nkwanta in the year 2011. The Walewale District Court (West Mamprusi District) has had only one (1) juvenile case since 2011. Even the juvenile courts in the much bigger city of Tamale receive an average of only one (1) case referral per month, and there are some months when no case is reported at all. The under-utilization of the formal child protection and juvenile justice institutions has made it possible for a few child-advocacy NGOs to establish a foothold in some districts. These developments fit neatly into the theoretical lens of governmentality because they exemplify Foucault's conceptions of power, knowledge, and dominance within social organizations as a system that not only controls the actions and behaviour of an individual but also allows that individual to control the possible actions and behaviour of others (Foucault, 1979).

The Role of NGOs in Child Protection

NGOs involved in child protection related work have proved vital to the juvenile justice system. Within the first decade of the establishment of Ghana's juvenile justice system, Riby-Williams (1954) identified the secondary role of civil society groups in addressing child welfare needs as one of the key problems encountered by the then new Department of Social Welfare that administered the juvenile justice system. According to him, their secondary role led to overreliance on central government planning and the resulting problem of "viewing local needs through the eyes of the central government" (p. 13). Fifty years later, Gagnon (2005, p. 44) expressed concern about NGOs taking over some of the roles of an important institution such as the Department of Social Work, "which should be the first one to provide quality, standardized services for children" (p. 35).

What should be the proper role of NGOs within Ghana's juvenile justice system?

The little this study chanced upon⁵ was that in the Northern Region, respondents narrated the story of a fertile ground for the work of NGOs as a result of the non-functioning, under-resourced, under-utilized, dilapidated nature of state institutions, or even, in some cases, their absence. In the Greater-Accra Region, the District Social Worker in

Dangme East pointed out that because of the situation of under-resourced state agencies, presumably better-resourced “NGOs come from outside the district, do whatever they want, and go without contacting representatives of state agencies” (Interview, Ada-Foah, 30 August 2013). According to him, they are not accountable to anybody in the district.⁶

Our study indicates that NGOs play a significant role in the child protection system including providing support to the juvenile justice system of the country. Given the situation of state institutions and agencies, as discussed above, NGOs step in to fill the gap. They address the needs of children whose cases fall through the cracks in the formal state system. For example, Defence for Children International (DCI) Ghana, in the Ashanti Region, has established community child protection committees called Local Advisory Committees (LACs), comprising assembly members, unit committee members and opinion leaders, teachers, and religious representatives, that visit police stations and remand homes to provide counseling and support lawyers in collaboration with Legal Aid to provide *pro bono* services for children in conflict with the law. This role bridges the gap between the formal and the informal sectors in the administration of juvenile justice in the region. Furthermore, NGOs mostly utilize alternative measures in addressing juvenile crime. Campaign for Female Education (CAMFED), based in Tamale in the Northern Region, utilizes education as a tool (e.g. paying school fees, providing school uniforms, and feeding) to keep children in school and prevent them from engaging in criminal and deviant behavior. Their child protection activities such as anti-child trafficking programs are important in curbing crime generally, saving victims, and preventing potential victims from victimization.

A major problem with NGOs, however, is that, being voluntary and independent organizations, they are not accountable to the communities where they operate, but only to their members and boards (Glasius & Lettinga, 2016). Their goals are often parochial, because they are defined by foreign donors on whom they depend for funding from abroad and who do not always fully understand the intricacies and dynamics of the local cultural environment that defines, and which should determine, how child protection could be done effectively. As the current study did not set out specifically to assess the role of NGOs and little else is found in the literature on it, there is need for in-depth studies to determine the actual role NGOs play in Ghana’s juvenile justice system.

Discussion and Conclusions

The institutions and agencies within Ghana’s juvenile justice system are highly encumbered and saddled with several constraints and challenges. The physical structures of the remand homes and post-trial custodial institutions, and even the offices of the Department of Social Welfare, are in an extremely poor state. They are dilapidated because there has been hardly any maintenance and renovation works in decades. There is an

acute lack of human resources and logistical supplies that seriously hampers staff from carrying out their mandate efficiently. Moreover, the formal agencies and institutions in Ghana's juvenile justice system are handicapped in the face of persistent interference in their work from traditional, religious, and opinion leaders in the communities who present cultural and religious reasons for which reported cases should be withdrawn and addressed outside the formal system. The cumulative effects of all these challenges and constraints is that these institutions and agencies are highly inefficient, under-utilized, and totally non-functioning in some cases.

Unfortunately, many of the findings of this study are not new. Some of these challenges have plagued the formal juvenile justice system in Ghana and its administration since its inception in the mid-1940s. Starting with Riby-Williams' (1954) assessment, and through Tooth's (1956) analysis, to Clifford's work in 1963, the first wave of literature on the administration of the then newly introduced formal juvenile justice system in the country has documented the problem of lack of both human and material resources for a successful implementation of the system. The findings of the second wave of scholarship in the 1990s have all re-stated the findings of the first wave on the lack of material, financial, and human resources, and the almost non-existent juvenile justice information system for effectively dealing with children in conflict with the law (Clifford 1965; Mensa-Bonsu, 1990-92, 1993-1995, 1995).

The beginning of the twenty-first century marks the start of the third wave of scholarship on the system. The studies – among them, Department of Social Welfare & UNICEF (2005), Gagnon (2005), Ame (2011, 2017, 2019), Ame et al. (2014, 2020), Ayete-Nyampong (2011, 2013, 2014), Child Frontiers (2011), Hoffman & Baerg (2011), and Mensa-Bonsu (2006, 2017), Judicial Service of Ghana (2018), and Dako-Gyeke et al. (2020) – have all re-stated the challenges discussed in this paper. They clearly show that little has changed in terms of the challenges confronting Ghana's juvenile justice system. Thus, it is reasonable to argue that either no action has been taken to seriously address these challenges that date back to the inception of the contemporary juvenile justice system in the country, or that the actions taken to address the challenges have not been effective to date.

The findings of this paper confirm that even as the first quarter of the twenty-first century draws to a close, not much has been done to make the administration of the juvenile justice system in the country more effective. Hence, this paper is also a call for addressing the challenges facing the system. We argue that scholars should now move beyond the assessment of the efficiency of the institutions and agencies within the system to a focus on exploring how the challenges could be addressed in order to transform the system into a reliable, effective, and sustainable one. For as Foucault (1979) reminded us, disciplinary power must establish relationships of constraint between individuals rather than relationships of contractual obligation.

The preceding discussions lead us to a couple of conclusions. First, the challenges faced by the formal institutions and agencies within the juvenile justice system, which have made them inefficient and highly under-utilized, should not be ignored. This is especially pertinent, considering that Ghanaians prefer to take cases involving their juveniles to their families, elders, chiefs, religious and other opinion leaders for resolution due to cultural beliefs. It would seem prudent to suggest that any reform of the current juvenile justice system in Ghana should seriously take into consideration incorporating possible roles for informal agencies and institutions such as families, faith-based organizations, and community opinion leaders. Evidently, these entities already play a role outside the formal settings and therefore, defining a formal role for them may augur well in producing a more effective system, one that is grounded within its cultural environment. Although this might have its own challenges, a key element of a sustainable juvenile justice system is having a set of institutions that the people willingly patronize, among other things (Ame, 2019). This means that we have to understand the power dynamics at work within these institutions and their settings. As Foucault put it, "power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate, and which constitute their own organization" (1990, p. 92).

Second, if well-resourced and utilized properly, NGOs can play both a preventative and complementary role within the juvenile justice system itself. However, this also raises the question as to how NGOs, which are often specific-issue driven, usually led by highly opinionated moral entrepreneurs who are not accountable to anyone else (Glasius & Lettinga, 2016), can work effectively within a public service such as the juvenile justice system.

Subsequent projects will address the recommendations associated with these findings and conclusions.

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Endnotes

- 1 This is an updated version of a report put together as part of a contract between UNICEF Ghana, the Ministry of Local Government and Rural Development, Ghana and the authors. The opinions expressed in this paper are the views of the authors and do not necessarily reflect the policies or views of UNICEF or the Government of Ghana. The authors wish to express gratitude to UNICEF Ghana for funding the research on which this paper was based and for granting us permission to publish the findings of the research. The authors are, however, fully responsible for any shortcomings or weaknesses in this paper.
- 2 It must be stated upfront that the literature on juvenile justice in Ghana is generally thin with only a few scholars contributing the bulk of what is available. Those scholars are heavily cited in this paper.
- 3 A space behind the reception area at police stations in Ghana where accused offenders are first detained before being processed for police cells or remand homes in the case of juveniles. See Mensa-Bonsu (2006, pp. 47-48, 2017, pp. 16-17) for further description of “counter-back”.
- 4 A Ghana News Agency news item of June 28, 2017 (<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Tamale-vocational-school-enrolls-4-students-in-10-years-553403>) confirms the trend of under-utilization at the Pong-Tamale Junior Correctional Centre. The Centre, formerly called the Tamale Boys Industrial School, is also known as Tamale Vocational School due to a desire to attract non-convicted juveniles from the community to enroll for vocational training. According to the news item, Mr. John Ziemah, the Senior Superintendent of the Pong-Tamale Vocational School expressed concern about the lack of interest among students to gain admission into the school. He stated that for over ten years now, only four students had applied and gained admission and that the “situation is not encouraging and it’s difficult to run the administration of the school effectively”. Essentially, both convicted juvenile offenders and others from the community are not utilizing the facilities of the school.
- 5 Juvenile Justice related NGOs encountered during our fieldwork were Defence for Children International (DCI) Ghana, in the Ashanti Region, Campaign for Female Education (CAMFED), Tamale, Northern Region, and Advocates and Trainers for Children and Women’s Advancement and Rights (ATCWAR) in the Western Region.
- 6 He mentioned the Parent and Child Foundation as one of the NGOs that operates in the District.