



Rethinking Juvenile Justice in Ghana
Proposing Practical Measures through a Child Rights
Based Approach

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List of Acronyms

ACPF	African Child Policy Forum
CRBA	Child Rights Based Approach
CBO	Community Based Organization
CRC	Convention on the Rights of the Child
CRC-GC	Committee on the rights of the Child-General Comment
GoG	Government of Ghana
JJA	Juvenile Justice Act
MACR	Minimum Age of Criminal Responsibility
NGO	Non- Governmental Organization
PRI	Penal Reform International
SC	Save the Children
SER	Social Enquiry Report
UNICEF	United Nations Children Fund
VAC	Violence against Children

Abstract

The CRC and other International instruments provide standards on the rights of the child to ensure special treatment of the juvenile to achieve rehabilitation and reintegration. These standards acknowledge children as bearers of certain universally agreed norms and serve as a solid theoretical basis for justifying issues concerning children. In accordance with the CRC, the aim of the juvenile justice system is to establish a separate system of treatments of juveniles from adults to ensure reintegration. Elements of criminal justice systems which include lengthy and punitive legal proceedings are to be avoided. Contrary to this, many juvenile justice systems subject children to the rigors of the criminal justice system which often does not take into consideration the child's age, vulnerability and right to special treatment. Ghana has shown commitment to protect the rights of juveniles by ratifying the CRC and other relevant international instruments related to juveniles. Ghana has however not met the standards of these instruments which provide for special treatment of the juvenile to ensure rehabilitation and reintegration. This paper addresses the issue of how Ghana can adopt a Child Rights Based Approach to juvenile justice with a particular focus on 'diversion'.

Relevance to Development Studies

Children are vulnerable by their very nature and therefore in need of special protection. Juveniles however are rendered more vulnerable when they come into contact with the law as formal justice systems are generally acknowledged to be detrimental to children's development. Juveniles may therefore require a system that offers protection to them by ensuring that their rights are implemented. The CRC establishes juveniles as bearers of rights which make up an important part of freedom, justice and peace in every country. Therefore juvenile justice is now seen as an integral part of the development of every country. This paper builds on a Child Rights Based Approach which establishes states obligations and the principle of 'the best interest of the child' which are important elements of development.

Keywords

Juvenile, Juvenile justice, diversion, Child rights, Child Rights Based Approach , Formal justice System

Chapter 1 **Background**

The CRC was adopted in 1989 and is the most ratified convention which focuses exclusively and comprehensively on protecting and promoting children's rights. It has brought about an evolution in the area of child justice by perceiving children as individual right holders and not only as victims and recipients of welfare (ACPF 2011: 2). It is the first international instrument which provides standards for a range of legal, civil, political, economic, social and cultural rights of children for a Child Rights Based Approach (CRBA) and contains elaborate provisions on juvenile justice (Ghimire 2008: 21). The CRC defines a child as; "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (Banning et al 2004: 34). It also defines children in 'conflict with the law' as; " persons below eighteen who are alleged as, accused of or recognized as having infringed the penal law"(Hamilton 2011: 3).

A range of non-binding international instruments have been established by the UN and other international bodies which recommend best practices cutting across all areas of juvenile justice from early intervention and diversion, fair trial, detention, rehabilitation and reintegration (Kilkelly 2008:188). These instruments include the UN Standard Minimum Rules for the Administration of juvenile justice (The Beijing Rules).

The African Charter on the Rights and welfare of the Child (ACRWC) is a regional framework for member states of the African Union which establishes appropriate measures to promote and protect the rights of the African Child. It emerged out of sentiments that the CRC was void of significant social-cultural and economic realities of African states and therefore emphasizes the need to consider the peculiar African context in issues relating to children's rights (Sloth-Nielson 2008: 23). The ACRWC was inspired by the trends of the UN system and adds to the existing standards of the CRC (Odala 2011: 154). Similar to the CRC, it also makes provisions for juvenile justice.

The CRC, Beijing rules and the ACRWC collectively define the treatment of juveniles and establish their rights. They call for a specialized child friendly

juvenile justice system that places the ‘best interest’ of the child at its centre of legislation, policy and practice while promoting the child’s sense of dignity and long lasting reintegration into society (International NGO Council on Violence Against Children 2013). They provide theoretical justification on issues related to juvenile justice and as such, juveniles are now legally entitled to special treatment with countries under the obligation to ensure that they grow, develop, thrive and reach their full potential. In fulfilment of this obligation, justice systems must be designed and administered to respect children’s rights (International NGO Council on Violence against Children 2013: 11).

Many countries after being parties to these instruments through ratification have drafted national legislations on juvenile justice which reflect international standards with the aim of protecting the rights of juveniles. Ghana after ratifying the CRC undertook a legal reform to domesticate standards of the CRC in its child laws. This led to the enactment of three major statutes to deal with children’s rights in Ghana. These statutes are the Children’s Act (560), the Criminal Code (Amendment) Act (554) and the Juvenile Justice Act (563). Such legal reform initiatives reflect the interest and the commitment on the part of governments to implement the CRC (ACPF 2011: 13). These laws require the establishment of a separate system of justice which treats juveniles differently from adults. This entails the establishment of juvenile courts, juvenile detention facilities and other specialized institutions for juveniles.

According to the JJA; “a juvenile is a person under eighteen years who is in conflict with the law”. This paper mostly uses the preferred term of the JJA “juvenile”. However, the term “child” may be used in some contexts of the paper. The relevant international standards of the CRC, the Beijing rules, the ACRWC as well as the national legal provisions of the JJA, the Children’s Act and the Criminal code will be discussed further in chapters two and three respectively.

1.2 Problem Statement

Even though positive legal reform initiatives have been undertaken, Ghana has not been able to fully implement the CRC in protecting the rights of the juvenile (Ame 2011b). The formal justice system does not adequately provide to

the special needs of juveniles. Institutions mandated to implement laws are faced with constraints such as inadequate juvenile courts, inadequate juvenile detention and correctional facilities, lack of logistics and lack of specially trained personnel. This has led to the rights of juveniles being compromised (GoG 2005).

A Child Rights Based Approach (CRBA) to juvenile justice in Ghana will entail the need to minimize the contact of juveniles with the criminal justice system through diversion. A child rights based juvenile justice system which promotes diversion will provide states with possibilities to respond to juveniles in an effective manner by serving the 'best interest' of the child and the society at large (United Nations Convention on the rights of the child 2007: 3). Diversion is important to avoid the negative consequences of inappropriate treatments and procedures in the formal justice systems (UNICEF 2009: 2) and has been established to be cost-effective. Although the Children's Act and the JJA give support for diversion, this is not practiced in the Juvenile Justice System of Ghana. The laws provide for a system of diversion through Child Panels but they do not operate. Detention has become a standard solution rather than a measure of last resort especially at the pre-trial stage. One reason for this is the unavailability of a variety of non-custodial measures to detention to divert juveniles (Hoffman and Baerg 2011: 16).

1.3 Research Objectives

1. To explore the contents and implications of a CRBA to juvenile justice in Ghana.
2. To explore how child panels as a means of 'diversion' could be made to function as an element of a CRBA.
3. To consider diversion in other countries and find out whether and how they could inform juvenile justice interventions in Ghana.

1.3.1 Research Questions

1. What are the contents and implications of a CRBA to juvenile justice in Ghana?
2. How can child panels as a means of ‘diversion’ be made to function as an element of a CRBA to juvenile justice in Ghana?
3. What are the diversion practices undertaken by other countries and how can they inform juvenile justice interventions in Ghana?

1.4 Methodology

This Research makes sole use of qualitative methods in collecting data. Qualitative research method was chosen because it is the most suitable for collecting and analysing personal information about people’s experiences. Qualitative methods give value to depth over quantity and dig into social complexities in order to truly explore and understand the interactions, processes and lived experiences of individuals. It entails strong engagement in reality being studied to gain intimate understanding of people, places and cultures (O’Leary 2014: 130). The main research methods used in collecting primary data were interviews and observation. After collecting data, it becomes necessary for the researcher to analyse and present it in a form that is understandable. The aim of this is to create new understandings by exploring and interpreting complex data (O’Leary 2014: 299). Analysis of research findings are therefore presented in Chapter four.

Secondary data sources for this research include; NGO reports, publications by UNICEF and the Government of Ghana, articles, journals and other documents. According to O’Leary (2014: 243), secondary data can be found in documents, databases and on the internet which the researcher simply gathers and analyses. It is data that exists irrespective of the researcher’s findings. The Convention on the rights of the child (CRC), the African Charter on the rights and welfare of the child (ACRWC), the Beijing Rules, the Juvenile Justice Act 2003 (JJA) and the Children’s Act are the main relevant international and national instruments analysed and used throughout this paper.

1.4.1 The Interview Process

While there were some available academic literature on the juvenile justice system of Ghana, it was envisaged that interviews would be useful in collecting primary data on the field. Interview as a method of data collection involves a researcher seeking open-ended answers to questions (O'Leary 2014:117). It was chosen to disclose issues concerning Juvenile Justice in Ghana from the point of view of those implementing theoretical ideas and laws on juvenile justice in their line of work. It was anticipated that interviews would give deep insight and details into how the system works on the ground and how stakeholders view and evaluate the system. Interviews were also chosen to reveal from the actors' point of view gaps within the juvenile justice system and how a Child rights based juvenile justice could be achieved. Interviews were in depth and unstructured because the researcher's aim was to probe into respondents answers and explore into areas with no prior knowledge. This allowed for the respondents to engage with the topic.

1.4.2 Selecting Interview Respondents

Respondents of the interviews were selected based on the fact that they worked in the juvenile justice system of Ghana and therefore possessed reasonable knowledge and experience in the field. These respondents were directly linked with the juvenile justice system and had a mandate in the protection of the rights of juveniles. Therefore the researcher believed they would provide information that would lead to a comprehensive, holistic and deepened insight into the juvenile justice system of Ghana. A hand-picked sampling technique was therefore used in selecting respondents. They were eight in number, consisting of ; two juvenile court judges, a police superintendent at the Domestic Violence Support Unit (DOVSU) of the Ghana Police service, two probation officers or welfare officers, a representative from an NGO (Youth Bridge Organization), the deputy director of juvenile justice at the Department of Social Welfare(DSW) and finally, a juvenile. Respondents were few because the researcher aimed at collecting information on the different experiences had by different professionals working in the juvenile justice system to give an in-depth analysis. Hence few cases were selected and studied intensively.

1.4.3 Contacting Respondents

Respondents were contacted with an introductory letter personally handed out by the researcher to their institutions of work from the 21st to 25th July in Accra. These institutions are the judicial service, the Juvenile Justice Unit of DSW and the Youth Bridge Foundation and the police service (DOVSU). The judicial service granted permission as well as provided a referral from the First Deputy Judicial Secretary, Mrs Juliana Amonoo-Neizer to interview the two judges. All respondents willingly agreed to the interviews and scheduled dates for the interviews to take place. To interview the juvenile, the researcher sought permission from the probation officer in charge of the juvenile at the premises of the Juvenile Court in Accra.

1.4.4 Interviews

Interviews took place in Accra between the 5th to the 25th of August. The researcher carried out a face to face interview at the respective work places of all the respondents. The juvenile was interviewed at the juvenile court. In considering the ethics of research, respondents were asked if they could be recorded at the commencement of each interview.

All interviews were expected to last for about thirty minutes but due to their in-depth and unstructured nature, some lasted for as long as an hour and half. The length of time spent on an interview varied and sometimes depended on respondent's time, experience, involvement and knowledge about the juvenile justice system of Ghana. For instance, the probation officers had more to say than other respondents because they had worked in the system for a relatively longer period of time and had gained much knowledge of the system. Interviews were very informal and carried out in a conversation form. This helped the researcher to develop rapport with the respondents. Through this, extra questions arose and there were opportunities for probing into answers derived from questions.

Respondents disclosed freely their personal experiences and professional ideas in a straight forward and critical manner. Respondents were very cooperative and in some case handed the researcher materials on literature that could help in the research. All respondents agreed to be cited by the researcher after permission was sought as part of the research ethics. Respondents also agreed to

be contacted in case of further information and clarification of responses. They asked to be given a copy of the final research paper because they had personal interest in the topic. Finally, telephone calls were made to thank the respondents for their contributions to the research. Tape recordings and notes were taken during interviews.

1.4.5 Observation

Additionally, an Observation exercise was undertaken by the researcher during juvenile court proceedings. Observation is “a systematic method of data collection that relies on a researcher’s ability to gather data through his or her senses” (O’Leary 2014: 230). This method was chosen to explore what actually happens in juvenile courts by observing the attitudes and actions of various actors of the juvenile court proceedings. The aim of this was to find out proceedings were child rights centred. Therefore the researcher looked out for factors such as communication with juveniles, legal assistance to juveniles and the level of participation of juveniles in proceedings.

The observation exercise took place after gaining permission personally from one of the juvenile court judges who was also interviewed (Judge Marian Affoh). It was undertaken on three consecutive Thursdays in August which were the 7th, 14th and 21st. This was because the juvenile courts only sat on Thursdays. A total of nine juvenile cases were observed. At each sitting, the judge, probation officers, lawyers, the police prosecutor and the parties involved in the case who were the juveniles accompanied by a parent or guardian and the victim of the crime were present. Notes were taken throughout the observation process.

1.4.6 Research Limitations

Collecting primary data for a research can be a very daunting task. However, if challenges can be overcome by the researcher, there can be great benefits. Data collected for the research are expressly generated for the researcher’s own purposes and this gives insights which could not have been gained through secondary data (O’Leary 2014: 202).

Respondents selected represent their professional group and it may be assumed to some extent that information given is on the behalf of the group.

However, the fact that specific individuals cannot represent the whole group is acknowledged. Therefore there is the need to avoid generalizations of views of respondents as that of all stakeholders of the juvenile justice system of Ghana. Rather, it should be seen as providing insights into personal opinions of stakeholders working currently in the juvenile justice system and respect given to these opinions as coming from professionals or experts.

Time constraints and prolonged bureaucratic processes did not allow for interactions with other equally important stakeholders of the system. For example, Officials of local government in charge of child panels and caretakers and juveniles at correctional centres were not interviewed. Instead, the research made do with informants and stakeholders indirectly linked with these institutions who were equally knowledgeable such as probation officers and judges.

Some interview respondents declined to be tape recorded and therefore the researcher had to struggle to take notes. This sometimes interfered with concentration during interviews. In some cases, respondents were asked to pause for some few minutes while the researcher took notes of relevant points. Taking of pictures was not allowed due to the sensitivity of the area of research. The system was under researched and as a result, statistical data and other relevant information needed were not readily available. The study made use of statistics that was available from past research through secondary data sources.

1.5 Structure of Paper

This paper is divided into six chapters. The first chapter gives an overall introduction to the paper, the problem statement, research objectives, research questions and the methodology used. The second chapter provides an introduction to the development of the concept of juvenile justice and the theoretical framework which includes theory on a CRBA, international standards of juvenile justice and literature on diversion. The third chapter is an introduction to juvenile justice in Ghana which includes legal instruments and institutions and the gaps within the system. The fourth chapter presents an analysis of the findings of the research. The fifth chapter provides an overview of diversion programs which have been undertaken by Ethiopia, Namibia and the Philip-

pines which can inform diversion practices in Ghana. The sixth chapter offers conclusions with recommendations on how Ghana can achieve a CRBA to juvenile justice.

Chapter 2 Introduction and Development of the Concept of Juvenile Justice

2.1. Introduction

A juvenile justice system consists of laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment, specifically applicable to children in conflict with the Law (DCI 2007: 57). “By nature, a juvenile justice system is complex, involving a variety of government bodies, agencies, departments, organizations and institutions, such as the police, prosecutors, lawyers, the judiciary, social welfare bodies, education bodies, probation services, detention facilities, after-care bodies and community-based non-governmental organizations” (Hamilton 2011: 11). It is a system that focuses on intervention at all stages of the formal justice process which include arrest, prosecution, judicial proceedings and sentencing with the aim of rehabilitating and reintegrating the juvenile. Juvenile Justice Systems differ among countries and these differences have been developed on the basis of different theories, objectives and principles (Hoffman and Baerg 2011: 1). International Institutions have established juvenile justice as important for the development of rule of law. It must be recognized as distinct from the criminal justice system as both international and national laws have given support to separate treatment of juveniles from adults (Hoffman and Baerg 2011:2).

Several shifts in policy approaches to juvenile justice have occurred since the nineteenth century. The Juvenile Justice system internationally has evolved from a welfare model, to a justice model and now shifting towards a restorative justice model. Early development of juvenile justice was predominantly based on philosophies of the welfare and justice theories. These theories were developed in the absence of children’s rights. Most juvenile justice systems of today have been particularly influenced by the welfare-justice model. However, in reality, no juvenile justice system exists exclusively as a welfare or justice model as described in theory. Elements of either could be found in systems that symbolize the “welfare “or “justice” model (Odhiambo 2005: 41).

2.2 Evolution of Juvenile Justice Systems

2.2.1 The Welfare Model

The origins of juvenile justice can be traced to the two most dominant models, the welfare model and the justice model. The welfare approach was initiated in the USA until the 1960's. Before the eighteenth century, no special status was accorded to children and the protection of juveniles by virtue of their age. Juveniles were subjected to the same procedures as adult with no separation from adults during imprisonment. The Parkhurst Act of 1838 established a separate system of justice to deal with children and young adults in the USA. This transformation developed to the extent that by the end of the nineteenth century, the first juvenile courts as well as other institutions to deal with juveniles were established. "Parens patriae" was the principle behind the welfare system and this meant "state control" implying that the state would act in the best interest of the child by promoting the child's welfare. As a result, many juveniles were removed from their families and put into state care for rehabilitation. An underlying principle of the welfare system was that young persons are more vulnerable and amenable to rehabilitation than adults. Therefore juvenile courts placed emphasis on treatment, supervision and control rather than punishment (Odala 2011: 51-52)

This model is referred to in some writings as the 'protection model' and became the basis for the establishment of juvenile courts in the United States and Western Europe. Courts therefore assumed an important role in protecting the child and the juvenile court judge was used by the state to carry out intervention measures in addressing juvenile crime (Odhiambo 2010: 21). With an ideal aim of treatment of the juvenile, juvenile court judges were assisted by social service personnel, clinicians and probation officers in search for the best treatment suited for a particular child's need. The welfare model considered juveniles as victims of their environment and circumstances and were therefore not regarded as rational agents. This view stemmed from the moral intellectual development theory which posits that, the younger the actor; the less probable their behaviour is to be informed by a sense of judgment between right and wrong.

The welfare model was criticized for being paternalistic, violating rights of individuals as well as having potential to discriminate. One of the specific criticisms was that, children were not accorded procedural safeguards such as legal representation and rules of evidence. Protectionist Policies as well as over reliance on the use of institutionalization often for indeterminate periods of time, led to a lot of criticism of welfare model. This led to the emergence of the justice model (Odala 2011: 552-553).

2.2.2 The Justice Model

The justice model emerged in the late 1970's and early 1980's. The underlying principle was punishment rather than the treatment of juveniles. The idea behind this model is that children are rational human beings and thus able to control their actions. The decision to offend or not to offend therefore lies with the child. If an individual decides to offend, he or she must be made accountable and appropriate sanctions given. The difference between this model and welfare model was that juveniles were not regarded as victims of circumstances (Odala 2011: 554).

This model focuses on accountability and punishment rather than welfare. It recognizes the legal rights of the juvenile and deals with those found guilty through punishments for specific offences based on defined sentences. The proper function of juvenile justice was therefore to assess the degree of culpability of the juvenile and administer punishment in accordance to the degree or seriousness of the crime committed. Unlike the welfare model, the juvenile was granted the right to due process and the decision on the appropriate treatment was not left to the discretion of a juvenile court judge or social worker. The powers of the state were therefore limited (Odala 2011: 554).

The justice approach involves two important precepts which are: the need to protect society against crime and the need to accord special treatment to the juvenile taking into consideration his or her personal circumstances. The justice model however seems to be more in favour of protecting society and therefore an emphasis on retribution. The best interest of the child is therefore not a primary consideration in this approach.

2.2.3 The Restorative Justice Model

The contemporary theory of restorative justice began from its roots in the mediation movements in the late 1970's, and was developed by American, British and European writers as a theory of justice in the last two decades of the twentieth century (Sloth-Nielson 2008: 130). Restorative justice has gained prominence in juvenile justice as an alternative approach which seeks to address the ills of the welfare-justice approach (Zehr 2004: 3). Thus questions of the effectiveness of earlier welfare-justice models have highlighted the importance of restorative justice. Although restorative justice may seem quite recent, emerging in the second half of the twentieth century, it is an old paradigm. This is because ideas and principles of restorative have been from indigenous justice systems around the world (Sloth-Nielsen 2013: 131).

Restorative Justice responds to crime and conflict focusing on reparation of harm and offers a broader framework that challenges the role of punishment and treatment as the primary currencies of intervention (Odala 2011: 517). According to Zehr (2004: 19), three basic principles underline restorative justice and this is based on old and traditional understandings of wrong doing. First, crime is a violation of people and interpersonal relationships. Secondly, violations create obligations. And finally, there is a central obligation to put right the wrongs done.

Restorative justice seeks to repair harm as much as possible by addressing the needs not only of the offender but the victim and the community at large. This entails tackling the root causes of crime and provides healing for all parties affected by the crime. It emphasizes offender accountability and responsibility. Offenders are made to understand the harm caused and the consequences of their behaviour and take accept the responsibility repairing the harm caused. Restorative justice promotes participation by involving all parties affected by the crime in the justice process. These parties are given a stake in the determination of a case by their involvement in deciding what justice requires (Zehr 2002: 23). Restorative Justice has been adopted in many Jurisdictions across the world including New Zealand, Australia and Canada. They practice restorative approaches such as “circles”, which is a way to work through, resolve and transform conflicts in general. Another approach used by these

countries is “Child Conferencing” which is a way to build and heal communities (Zehr 2002: 4).

Some scholars have asserted that there are similarities between restorative justice and justice as practiced by Africans through community courts and chief’s courts. The African understanding of justice is more restorative in the sense that, it not so much jeered towards punishment but towards restoration and reparation. In African traditional justice systems, social disputes are viewed as concerning the entire community and therefore the need for reconciliation and restoration of social harmony (Skelton 2008: 131).

2.3. Theoretical Framework

The practices and penal policies of the welfare and justice models have influenced Ghana’s approach to juvenile justice. Hence the JJA provides a balance between these two approaches. In tuning to features of welfare approach, the JJA makes space for probation officers to be part of the decision making process by conducting SERs. This places a focus on the needs of the offender rather than the offence in the final decisions of courts. Features of the JJA which reflect the justice approach are that; juveniles found guilty of crimes are accorded certain rights and punishment is given based on the degree and nature of crime. Therefore, the dispositions for treatment of juveniles include committals to correctional facilities (Osei 2013: 14). However, in practice, the juvenile justice system is more jeered towards a justice than a welfare approach. This is evident in practices where the offense of the juvenile is mostly considered in making decisions rather than welfare. This contributes to the increasing number of juveniles involved in custodial sentences in Ghana. According to Odhiambo (2010: 7), while appreciating that, the justice-welfare models have been the most influential throughout juvenile justice systems, laws and practices of juvenile justice devoid of the enforcement of Child rights have led to violations. A CRBA to juvenile justice is hence needed in Ghana to establish priority to protecting the rights of children.

A CRBA is a frame work that integrates the norms, standards and goals of child rights while formulating and implementing any plan or program relating to children (Ghimire 2008: 21). CRBAs recognize that children have special

needs and vulnerabilities and as such should be treated differently from adults. It is essential for this paper because its goals and standards are universally agreed and set out in the CRC. It also establishes the responsibilities of governments and other stakeholders and fosters their accountability. This serves as basis in claiming the rights of children (SC 2005: 22).

The CRC is an important instrument for a Child Rights Based Framework because it provides the main elements for any form of concrete action or intervention to take place with regards to children (Arts, K. and Popovski, V 2006: 10). The overall aim of the CRC is to ensure the ‘survival and development’ of the child with the three general principles of the ‘best interest of the child’, participation and non-discrimination forming the basis for all implementation measures concerning the child (Arts, K. and Popovski, V 2006: 10).

The CRC serves as a standard by which progress can be measured and results compared. “Importantly also, the CRC standards not only provide the framework for the rights-based analysis that allows states’ failings to be highlighted, but also comprise indicators of best practice as to how such shortcomings can be addressed”(Kilkelly 2008:191). Articles 37 and 40 are the main provisions relating to juvenile justice contained in the CRC.

Article 3 of the CRC requires that the “best interests of the child” should be a primary consideration in all decisions affecting the child. “All decisions” in the context of a juvenile justice system includes decisions from all stages which include; the child’s first contact with the police, judicial proceedings and sentencing (Hamilton 2011:25). In determining the child’s best interest, the decision-makers should consider a careful analysis and weigh all interests and circumstances to the particular case. The aim of the ‘best interests’ principle is to compel an examination into those interests and circumstances of the child in order to be given priority (Arts, K. and Popovski, V 2006: 10).

In a juvenile justice system, such considerations and circumstances may include; the child’s age, personality, family situation, nature of crime and the effect that a sentence is likely to have on the survival and development of the juvenile. Interests such as public safety and the rights of the defendant should also be taken into consideration (Hamilton 2011: 25).

Upholding the best interest principle in juvenile justice would also mean avoiding the traditional criminal justice aims of punishment and retribution for a rehabilitative and reformatory approach to dealing with juveniles (CRC GC: 5). The 'best interests' principle is important in protecting the rights of children to the extent that it is incorporated in other international legal instruments such as the ACRWC as well as national legislations such as Juvenile Justice Act (JJA) and the Children's Act of Ghana.

2.3.1 International Standards of Juvenile Justice

Introduction

The CRC and ACRWC establish states as the primary duty bearers in implementing children's rights. The state has the responsibility to create the legislation and policy framework and to provide resources so that children's rights can be realized (SC 2005: 18). This includes the establishment of a comprehensive juvenile justice policy as stated in the (CRC General Comment 2007:3). This section focuses on important elements of establishing a comprehensive juvenile justice policy from a CRBA to serve the 'best interest' of the child. The CRC, Beijing rules and the ACRWC establish such important elements which are highlighted in the next section.

2.3.2 Specialized Juvenile Justice Institutions

The CRC establishes in article 40(3) that states should promote the establishment of laws, procedures, authorities and institutions which specifically apply in dealing with children alleged as, accused of or recognized as having infringed the penal law. This provision requires that states establish specialized units within the police, judiciary, and prosecutors as well as specially trained defenders and other personnel who provide legal and other appropriate assistance to the child (CRC General Comment 2007: 24). Article 12 of the Beijing rules establishes the need to offer special training to the police in dealing with juveniles because the police are the first point of contact in a juvenile justice system and they need to act in an appropriate manner. The Beijing rule 22 reiterates the need for professional education and training of all personnel dealing with juveniles to ensure professionalism (United Nations 1985).

2.3.3 Reintegration and Rehabilitation

Article 40(1) of the CRC states that; state parties recognize the rights of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society". Similarly the ACRWC also states in article 17(3) that the aim of treatment of every juvenile shall be his or her reformation, reintegration and rehabilitation. The Beijing rules 24 establishes the need to provide juveniles at all stages of the juvenile justices system with necessary assistance such as educational training, vocational training and other helpful and practical assistance to promote rehabilitation and reintegration.

2.3.4 Juvenile Courts

According to article 37(d) of the CRC; "every juvenile shall have the right to prompt access to legal and other assistance and the rights to challenge the legality if deprived of liberty before a court or other competent and independent bodies with prompt decisions taken on such actions". The CRC (article 12, 16, 37 and 40(2)), the ACRWC article 17(2) and Beijing rule (7.1) provide basic procedural safeguards that guarantees that the juvenile receives fair treatment and expeditious trial. These include the presumption of innocence, the right to be heard, the right to legal and other appropriate assistance, the right to privacy, the right to appeal and the right to free interpretation.

2.3.5 Conditions for Arrest and Detention

The CRC article (37) and ACRWC article (17) establish basic principles for the conditions of arrest and detention of juveniles. Article 37(a) of the CRC prohibits the torture, cruel, inhumane or degrading treatment of a juvenile as well as capital punishment and life imprisonment of a juvenile. Article 37(b) prohibits the arbitrary arrest and detention of juvenile and further states that deprivation of liberty shall only be used as a measure of last resort and for the shortest appropriate period of time. Article 37(b) implies that, alternative measures of arrest and detention must be used at all stages of the juvenile justice procedure.

This principle aims to restrict institutionalization with regards to the quantity with reference to the term “last resort” and time with reference to the term “shortest period”(Sloth-Nielson 2008: 156). Article 37(c) of the CRC states that every child deprived of liberty shall be separated from adults and states the right of the juvenile to maintain contact with his or her family while deprived of liberty. The Beijing rule (10) provides that a juvenile’s parent must be informed within the shortest period of time upon arrest of the juvenile and further states in rule (10.3) that law enforcement agencies such as the police should deal with juveniles in a manner that respects the rights of the juvenile, promotes his or her wellbeing and avoid harm with regards to the circumstances of the case.

2.3.6 Minimum Age of Criminal Responsibility (MACR)

The CRC, the ACRWC and the Beijing rules mandate all states to set a “Minimum Age of Criminal Responsibility” (MACR) but does not provide a specific age in this regard. Below this age, a child cannot be held accountable for any crime he or she commits in a court of law. Rule 4 of the Beijing rules state that legal systems should not set the MACR too low whilst the emotional, mental and intellectual maturity are taken into considerations. The Committee on the rights of the child recommends age 12 as the minimum age and encourages states to set even higher ages (General Comment 2007:11).

1.8.7 Diversion

Diversion is a process where juveniles are channelled away from formal justice system through alternative procedures and programs. Article 40(3b) proposes measures of dealing with juveniles without resorting to judicial proceedings provided the rights of the child are taken into consideration. Article 11(1) of the Beijing rules states that consideration shall be given to dealing with juveniles without resorting to formal judicial proceedings. Rule 11(2) provides that all agencies which are mandated to deal with juveniles should be empowered to dispose cases at their discretion without resorting to judicial proceedings in accordance with the legal system.

In cases where juveniles go through judicial proceedings and are sentenced after a fair trial, the law must provide competent authorities with a wide range

of alternatives to institutional care and deprivation of liberty in fulfilment of article 37(b) of the CRC (CRC GC 2007: 20). Article 40(4) of the CRC and Beijing rule 18(1) serve as basis for the provision of a range of alternatives to institutional care and deprivation of liberty which include; guidance and supervision orders, vocational and educational training, counselling and community services. Although the ACRWC does not explicitly establish diversion, it recognizes that the special treatment of the child should entail the ideal of restoring the child to his or her family or society which is a significant African Value as well as a principle of Restorative Justice (ACPF 2011: 112). Diversion is further discussed in the next session.

2.4 Diversion as a CRBA

Formal justice systems are generally punitive in nature having potentially harsh consequences on the development of the juvenile. Due to the weaknesses of criminal justice procedures, juveniles are often better attended to by constructive responses outside the criminal justice system that promote rehabilitation and reintegration (VAC 2013:20). The CRC has made diversion a binding feature of juvenile justice systems and is now universally seen as an integral aspect of rehabilitative and re-integrative juvenile justice systems (Odhiambo 2010: 191). Diversion is an important element of a CRBA to juvenile justice which aims to avoid or reduce negative impacts while maximizing opportunities for positive input into children's development (UNICEF 2009: 2). It refers to "programs and practices which are employed for young people who have initial contact with the police, but are diverted from traditional juvenile justice processes before children's court adjudication" (Sloth-Nielson 2008 : 153).

In most juvenile justice systems in Africa, diversion is a relatively new concept. Past juvenile justice systems in African countries such as Ghana, Kenya and Uganda often relied on formal justice procedures rather than diversion. According to Sloth-Nielson (2008: 153) diversion is established by the CRC on the basis of article 40(3b). Ghana for instance has taken a step in diversion by making provisions in the Children's Act to establish child panels.

Diversion also requires developing alternative measures to deprivation of liberty which fulfils article 37(b) which discourages deprivation of liberty of

juveniles. Children who are deprived of their liberty are at a greater risk of violence in the criminal justice system (VAC 2013: 11) and ensuring their right to development and survival becomes particularly challenging.

Development in the broader sense of the CRC entails children been provided with the optimal conditions that will enable their full potential to be realized and access to all rights of childhood to which they are entitled. Deprivation of liberty has negative consequences for the child's harmonious development and seriously hampers his or her reintegration in society (CRC GC 2007). The rights of juveniles to protection from harm, education, healthcare and family life become at risk when they are deprived of liberty (Kilkelly 2008:191). Contrary to international standards, juveniles are detained with adults, live under unhealthy conditions in detention and incarceration, subjected to inhumane treatment, not provided with education and remain in pre-trial detention for long periods (Hamilton 2011:28).

The purpose of any intervention in the juvenile justice system aims at the child's reintegration and an assumption of a constructive role in society as provided by Article 40(1) of the CRC. Therefore in situations where the juvenile has to be deprived of liberty, it is required by the CRC to be on the basis of reintegration and an assumption of a constructive role in society. In order to achieve this, juveniles deprived of liberty should receive care, protection and all necessary assistance which includes educational, vocational, and social assistance for their development. Detention as well as correctional facilities should be equipped with resources to provide such assistance to juveniles (Hamilton 2011:99).

State parties to the CRC should adopt sentencing policies for juveniles that aim at reintegration. Sentencing policies that aim at punishment and deterrence on the other hand will not be able to achieve the aim of reintegration (Sloth-Nielson 2008: 159). The effect of such policies is detrimental in the sense that, upon release, children face problems in access to education, employment, accommodation and reintegration into their families and communities (Hamilton 2011: 33). In the absence of a sentencing policy, it is important that states incorporate laws that allow juvenile court judges to exercise discretion. This implies that, laws make provisions for new forms of non-custodial

sentences which include ‘community based sentences’ and ‘restorative justice sentences’. Countries like Namibia, Lesotho and South Africa have incorporated this into their laws. Secondly state laws must explicitly state the prohibition of the use of imprisonment or in some cases place limitations on its use. This provision is seen in the laws of Ghana, Kenya and Uganda. Thirdly, laws should place a restriction on the use of custodial sentences. If there is a need for custodial sentences, the laws should provide the duration and state that they should be served in facilities other than prisons (Sloth-Nielson 2008: 159).

Legal safe guards that ensure that the rights of juveniles are protected and respected in the process of diversion should be provided by legislations. In doing so, legislations should state that; diversion should only be undertaken when there is compelling evidence that the crime was committed by the child and when he or she has willingly accepted responsibility; the child must freely give his or her consent to diversion; no criminal records must be held against the child in any future legal proceedings after diversion and the child must be given the chance to seek legal and other appropriate assistance to gain adequate information and understanding on the diversion program offered and its appropriateness (Hamilton 2011: 54). A complaint mechanism should be put in place for juveniles who are subjects to diversion as well procedures for review and accountability. There should also be mechanisms for monitoring and evaluation of diversion in order to reduce the abuse of discretionary power to safeguard rights of juveniles undergoing diversion (Hamilton 2011: 54).

At every stage of decision making in the juvenile justice system, measures for diversion should be made available to the police, prosecutor or juvenile court. It should be a consideration wherever appropriate without limiting only to minor offences committed by the juvenile. There may be mitigating circumstances which make diversion more appropriate even for very serious offences. Therefore, there is the need to address every individual child’s case differently by taking into consideration the different circumstances of his or her case (Odhiambo 2010: 207).

Studies show that diversion is generally more cost effective than systems that rely on formal justice procedure in the sense that they are less costive to implement and run (UNICEF 2007: 3). Relatively, there is much cost associat-

ed in rendering justice in formal justice systems to both governments and the ordinary people. Formal justice systems require massive expansion in terms of facilities and personnel. For instance, to reduce distance and delays in accessing justice by the ordinary people, formal justice systems would require additional courts especially and the expansion of legal aid (PRI 2001: 6). Formal justice systems also require the construction of detention facilities and resources to operate. Diversion even becomes more important in situations where resources are scarce. In this case, communities can develop their own measures of diversion that promote the rights, develop and reintegrate children through restorative justice programs (VAC 2013: 23).

Restorative justice approaches are in line with diversion as they offer a means to dealing with the juveniles outside the formal justice system (VAC 2013: 23). They have also proven to be effective in rehabilitating juveniles. Evidence shows that, rights-based restorative justice programs when properly implemented reduce reoffending. A meta-analysis on the effect of restorative justice programs showed 70% reduction in the rate of offending (UNICEF 2009: 3). For instance, a community based mediation program undertaken in the Philippines proved to have benefits in reducing the number of juveniles in detention, reducing crime rates drastically, reducing re-offending and promoting re-integration by allowing children to return to school (UNICEF 2001).

Features of African traditional systems can be likened to Restorative Justice Principles and understandings in so many ways. It builds on the strengths of traditional justice systems to provide effective and appropriate systems which suit the local context (VAC 2013: 23). In traditional systems, the problem is viewed as that of the whole community; there is an emphasis on reconciliation and restoration of social harmony; rules of evidence and procedure are flexible; the process is voluntary and decisions based on agreement; decisions aim at reintegration of the offender and like cases are treated differently considering special the circumstances of each case (PRI 2001: 22).

The African traditional justice system is community- based; human centred and employs restorative and transformative principles in conflict resolution. It provides the opportunity for dialogue among the victim, the offender, their families, friends and the community at large (Sloth-Nielson 2008: 131).

In as much as restorative justice has proven to be effective in child justice systems, measures must be taken to protect the rights of juveniles. The rights of the juvenile should be protected in restorative justice programs to ensure it is child rights based. Therefore it would be proper to follow certain which will ensure reintegration while referring a child to a restorative justice program. A diversion program should; meet the needs of the individual child, promote the dignity and wellbeing of the child, be appropriate to the child's age and maturity, impact useful skills where possible, develop the self-esteem of the child , be less restrictive and not interfere with child's schooling. These programs can be run by the police, social services, youth services or the probation services as well as NGOs (Hamilton 2011: 59).

NGOs and civil society can play a very important role in the prevention of juvenile offending and in providing diversion programs such as community-based services, prevention and reintegration programs and facilities. The state must recognize this role and include it in legislation. NGOs should be encouraged to participate in the development and implementation of a State's comprehensive juvenile justice policy and the necessary resources to facilitate such involvement should be provided by the state (Hamilton 2011: 14).

Chapter 3 The Juvenile Justice System of Ghana

3.1. Historical Background to Juvenile Justice in Ghana

Juvenile justice in Ghana would be appreciated better within the context of judicial and historical developments. The Juvenile justice system of Ghana forms an integral part of the whole judicial structure of Ghana. The current juvenile justice system of Ghana has highly been influenced by the British colonial rule. However, prior to British colonial justice administration, the traditional system of justice existed. This was characterized by chiefs and selected elders who were of high moral character and integrity. The traditional justice system was characterized by restorative justice principles (Osafo Sampong n.d.:1).

The British colonial era brought about the inception of the formal justice system. Prior to the first legislation on juvenile justice, the only provision on juveniles was the 1936 ordinance which mandated judges and magistrates to commit children under 16 years of age to a training school if they were found guilty of crimes which were punishable by imprisonment if committed by adults (Osafo Sampong n.d.:1)

The first juvenile justice legislation was established in 1945. This saw the establishment of the Department of Social Welfare (DSW) in 1944-1945 which started to operate in 1946 after local officers had been recruited and trained by the British government. They were given the mandate of rehabilitating juveniles. Laws that guided the juvenile justice at that time were the Probation of Offenders Ordinance of 1944, the Industrial Schools and Institutions Ordinance of 1945, the Court (Amendment) Ordinance of 1944 and the Criminal Procedure Code Act (30) (Osafo Sampong n.d.:2).

The probation of Offenders Ordinance empowered all formal courts to make probation orders in juvenile cases taking into consideration the age, character, family background, health, nature of offence and all other circumstances under which the offence was committed. The Court Amendment Ordinance established a juvenile as a person under age sixteen. (Osafo Sampong n.d.: 2)

Industrial schools and Borstal Institutions were established for the detention of juveniles under the Industrial Schools and Institutions Ordinance. Juveniles who were detained in these institutions were to be provided with training. The Act also made provisions for establishing remand homes for temporary custody of juveniles (Osafo Sampong n.d.: 2).

The Criminal Code repealed all earlier laws and consolidated all that was contained in the previous ordinances. The age of the juvenile was raised from sixteen to seventeen years. Although the Criminal Code established that juveniles should be treated differently from adults, it did not provide adequately for this establishment (Osafo Sampong n.d.:3).

3.2 Institutions of Juvenile Justice Administration in Ghana

3.2.1 The Department of Social Welfare (DSW)

The DSW is specifically mandated by the Children's Act to provide overall protection for children which also includes juveniles. Section (39) of the JJA requires the DSW to establish Correctional Centres and Juvenile remand homes. Correctional centres provide housing for juveniles who are found guilty of crimes for the purpose of rehabilitation and reintegration. Remand homes serve as temporary facility for housing juveniles prior to trial or during the period when cases are still pending. DSW staffs serve as Probation Officers and social workers (Hoffmann and Baerg 2011: 8).

3.2.2 The Ministry Of Gender, Children and Social Protection

This ministry is mandated to ensure the survival, protection and development of the child. They formulate policies in relation to juvenile justice and coordinate the work of agencies that provide services and programs for children (DSW and UNICEF: 52).

3.2.3 The Domestic Violence and Victims Support Unit (DOVSU)

This department is a transformation of the juvenile Unit of the police service which was formally known as Women and Juvenile Unit (WAJU). Dovsu deals with the violations of women and children in domestic settings as well as investigates and prosecutes juvenile cases (Hoffmann and Baerg 2011: 8).

3.2.4 The Judicial Service

The formal justice system or court system of Ghana is run by the Judicial Service. These include the Supreme courts, Appeal courts and High courts and the Juvenile courts. Juvenile courts are established to adjudicate cases of juveniles and provide services to the juvenile such as legal aid and representation and treatment for rehabilitation and reintegration (CRRESCENT 2010:18),(DSW and UNICEF 2011:49).

3.2.5 The District Assembly

The children's Act Section (16) mandates the District Assemblies to liaise the activities of governmental agencies on matters concerning children defend the rights of children and protect children. Consequently, the District Assembly is mandated by the Children's Act to establish Child Panels and facilitate their operation in all districts. Further, the DSW of a District Assembly is mandated to investigate cases of violations of children's rights (CRRECENT 2010: 18).

3.3 National Legal Framework

3.31 Introduction

As mentioned earlier, Ghana enacted the Children's Act in 1998, the Criminal code (Amendment act 554) in 1998 and the JJA in 2003 following her ratification of the CRC in 1990. Currently, these laws serve as basis for juvenile justice administration in Ghana. The Children's Act is a consolidation of all civil issues and some criminal issues affecting children. The criminal code sets the age of criminal responsibility, sexual offences against children, and child neglect among other children's issues. The JJA is specially provides laws that protect the rights of juveniles and establishes the basis for juvenile justice administration. These instruments establish provisions that are in conformity with the CRC. These include the principle of the 'best interest', setting a MACR, conditions of arrest and detention and the establishment of specialized institutions for the administration of juvenile justice. These are discussed in the next section.

3.3.2 .The Welfare Principle

The guiding principle of the JJA and the Children’s Act is “welfare”. This relates to the principle of the ‘best interests’ of the child as stated by the CRC. Section (2) of the JJA explicitly states that the ‘best interest’ of a juvenile shall be (a) paramount in any matter concerned with the juvenile; and (b) the primary consideration by a juvenile court, institution or other body in any matter concerned with a juvenile. Similarly the children’s Act states under the welfare principle that ; (1) “the best interest of the child shall be paramount in any matter concerning a child” and (2) “the best interest of the child shall be the primary consideration by any court, person, institutions or other body in any matter concerned with a child”. This principle applies in all decisions taken with regards to arrest and detention, trial and sentencing.

3.3.3. MACR

Section 1 of the JJA defines a juvenile as; “a person under the age of 18 years who is in conflict with the law”. The Juvenile Justice Act does not set a lower a MACR however Section 4 of the Criminal Code (Amendment Act 554 of 1998) provides for it in and sets the MACR at 12 years.

3.3.4. Juvenile Courts

Section 1(2) of the JJA states that: “a juvenile shall be dealt with in a manner different from an adult except under special circumstances”. The Act provides for the establishment of separate juvenile court to provide exclusive jurisdiction to juvenile case. Section 16(1) provides that; the juvenile court shall sit either in a different building or room from that in which sittings of other courts are held.

3.3.5 Conditions of Arrest and Detention

The JJA guarantees the right to privacy of the juvenile during arrest, investigation or trial in section (3). Consequently, no information leading to the identification of a juvenile shall be made public. Article 4(3) of the JJA further states that arrest of the juvenile should be made with due regards to the dignity and wellbeing of the juvenile and therefore arrest should be made with a minimal level of force. Article 11 establishes that, the juvenile as well as his or her parents or guardian must be informed of the reasons for arrest within the shortest

possible time. Probation officers are mandated by Article (13) to look for parents or guardians of the juvenile in cases where they are absent. It further states that juveniles should be separated from adults as well as male juvenile separated from female juveniles while in detention.

Article (10) provides conditions for conducting a search on the juvenile. The search on a juvenile must be done with decency by a police officer or an adult of the same sex. If there is the need to search the private parts of a juvenile, only a medical officer is authorized to do so. Under section (14) Juveniles are entitled to bail within forty eight hours of arrest and can be released into the custody of parents, guardian or other responsible persons unless in situations of serious offences or where it is deemed necessary to remove the child from certain association. In situations where bail is not granted, the police with an order from the juvenile court shall place the juvenile in a remand home or a place of safety designated by the Department of Social welfare (DSW). Section 15(6) provides for the rights of juveniles under detention namely; (i) the right to adequate food (ii) the right to medical care if require (iii) the right to maintain contact with parents , guardians and lawyers and (iv) the right to all other conditions reasonably required for the welfare of the juvenile.

3.3.6. Rights during Trial

The JJA provides the rights during trial under Section (22) which are ;(i) the right to legal representation and the right to legal assistance (ii) the right to remain silent (iii) the right to have parents, guardian or probation officer present during legal proceedings and (iv) the right to free legal aid and the rights to interpretation. The court is mandated in Section (19) to determine the age of juveniles who appear before it in order to ensure that they are not above the age of eighteen. It further provides that in the absence of a birth certificate in determining the juvenile's age, medical assistance is required. Section (24) mandates the court to order the preparation of a Social Enquiry Report by a probation officer which shall be taken into consideration by the court in final judgment. The SER entails investigations into the background of the juvenile, present circumstances of the juvenile and the circumstances under which the offence was committed. Section (33) guarantees the juvenile the right to expe-

ditious hearing before the juvenile court and cases which are not completed within six months of the juvenile's first court appearance should be discharged.

3.3.7. Diversion

After the preparation of a SER there may be recommendations to the court for the child to be referred to a Child panel which is established under Section (27) of the children's Act. Child panels as stated under Section (28) shall have non-judicial functions to mediate in criminal and civil matters which concern a child. Under Section (29) of the Children's Act, a child panel should be composed of; the chairman of a social services sub-committee of the District Assembly, a representative from a women's organization, a representative of the traditional council, a District social worker, a member of the justice and security sub-committee of the District Assembly and two members of the child's community.

Article (26) states the purposes of diversion which includes; (i) encouraging accountability of harm caused (ii) promoting reintegration of the juvenile into family and community (iii) preventing stigmatization of the juvenile which may occur as a result of contact with the criminal justice system and (iv) promoting reconciliation between juvenile and the person as well as community against which the harm was caused. Therefore, the JJA's policy on diversion embraces the principles, practices and programs of restorative justice. The JJA assures all accused juveniles of equal access to diversion programs and prohibits any inhuman and degrading treatment as part of any of its practices and programs.

3.4. Gaps within the Juvenile Justice System of Ghana

Even though Ghana has established a comprehensive legal framework and established institutions to govern juvenile justice administration, there still exist gaps within the juvenile justice system.

There are inadequate juvenile facilities such as Correctional centres, remand homes and juvenile courts. Currently there are ten remand homes with only three functioning and four junior correctional centres across the country. Remand homes provide inadequately for juveniles due to budgetary con-

straints, lack of transportation and very few trained social workers. Most remand homes are situated in cities and are therefore not accessible to local communities. In communities where remand homes are unavailable, juveniles are often kept police cells and in some cases detained together with adults (GoG 2005: 40).

There are reports of remand homes and correctional centres being in very poor conditions due to deterioration over the years. These range from small and overcrowded cells with inadequate ventilation, absence of mattresses, bed sheets and mosquito nets (Osei 2013: 15). Correctional facilities lack training programs, recreational programs as well as provision of health services to help rehabilitate and reintegrate juveniles (GoG 2005: 43).

Juvenile courts are inadequate across the country. The distribution of juvenile courts are only limited to the districts and hence those living in remote areas cannot easily access them. Juvenile courts are over-burdened with case-loads and delays in the completion of juvenile cases. Juvenile courts do not sit regularly due to lack of panel members and magistrates, low motivation and poor remuneration. This also accounts for long duration of stay in remand homes (GoG 2005: 43-44).

According survey showed that a total number of 10,488 juveniles were held in police cells between 1993-2003. The number of juveniles who were handled by courts in the same period was 4223. The number of juveniles held in adult police cells in the same period was 2,164 (GoG 2005:39-46). Children are often also held in remand or pre-trial detention for long periods while awaiting trial (Hoffmann and Baerg 2011:11).

As of the year 2011, only 70 Child Panels had been created out of the 170 Districts in Ghana. Not all of these panels were functioning and because they were designed to operate at the district level, they were not easily available and accessible to people in communities outside district capitals (DSW and UNICEF 2011: 73). Child Panels that were functioning received very few referrals. In a research report on child panels in Ghana, it was observed that the child panel in Tema District had only received three cases in its first eight months of operation. The Accra Metropolitan District on the other hand had received none (DSW and UNICEF 2011: 73). Child panels do not receive ade-

quate budgetary support to cover administrative costs and filing fees for its members (Hoffmann and Baerg 2011:13). Some child panels in Ashanti Region which received donor support from an NGO (Save the Children) stopped functioning when donor support ended (DSW and UNICEF 2011: 73).

Very few sentencing options have been provided by the system. A variety of measures such as community service and life skills programs have not been established for use as non-custodial sentences (Hoffmann and Baerg 2011:16). The sentencing options which are mostly available to the juvenile courts are; probation, committals to correctional facilities and payment of fines (Ame 2011: 286).

Low trends in birth registration over the years have posed problems of proper identification, determining age of criminal responsibility and the type of treatment given to juveniles. In Ghana, there have been reports of the police inability to determine the correct age of juveniles. Wrong ages are presumed by police thereby placing children who are less than 18 years in adult domain for adult criminal procedure (Hoffman and Baerg 2011) (GoG 2005: 6).

The media has often published information leading to the identity of both juveniles and child victims. While cases are still under investigations, journalists in their reportage provide information that easily gives away the identity of juveniles and child victims (Ame 2011: 284).

There is inadequate legal aid and representation for juveniles even though the state is obliged by the JJA to provide such services free of charge especially for those who obviously cannot afford. The Legal Aid Board was set up to provide free legal services in Ghana. However it faces the problem of inadequate number of lawyers (Ame 2011: 285). In practice, the board pursues very few juvenile cases and does not have lawyers who specially trained lawyers to defend juveniles (Hoffmann and Baerg 2011: 12). Juveniles come into contact with the system are unaware of their entitlement to free legal aid. In some situations the Legal Aid Board is not accessible as the case of Volta region. The Legal Aid Board is only located in the regional capital Ho and therefore is not easily accessible to people in remote communities (Ame 2011: 285).

Chapter 4 Findings and Analysis of Research

The juvenile justice system is without a comprehensive juvenile justice policy. According to Judge Amoah, the Chief Justice has therefore set up a committee to undertake reform in all aspect of the juvenile justice system. As a consequence, the system however is in the process of drafting a new Juvenile Justice policy which will address major issues such as the establishment of child friendly courts, diversion and a policy on legal aid. This step is necessary because any attempt to create reforms in juvenile justice system must begin with a comprehensive policy which contains standards established by the CRC (General comment 10). Clear provisions should be made on MACR which is absent in the JJA, provisions for special training of police, lawyers, prosecutors, child psychologists, probation officers and all other personnel who deal with juveniles.

The system also lacked personnel such as psychologists, lawyers and police officers who were trained in handling children. On the basis of article 40(3) which provides for a separate system of justice, it is required that all institutions have specially trained personnel as well as special units within them. It places the obligation on states to make these available. The DSW for instance did not have a child psychology unit. However it was necessary for the state to establish one because during observation of judicial proceedings, the judge asked for juveniles and child victims to receive treatment from a psychologist. Love Grace a probation officer who was interviewed disclosed that most parents complained of not being able to afford such services on their own.

The police lacked special training in dealing with juveniles and child victims. According to the representative named Modupe of Youth Bridge Foundation, police did not follow the conditions and procedures of arrest and detention. Modupe further referred to a case where a juvenile was arrested by the police with handcuffs whiles sitting for an examination. Apart from this kind of arrest not applying to the standards of the Beijing rules in prohibiting the use of handcuffs, it also goes against the principle of the 'best interest' of the child.

Police assault against juveniles was attested to by a 17 year old juvenile Evans Boating, who was arrested by the police after being a victim of mob justice for alleged robbery. He claimed to have been verbally assaulted with wrongful accusations by the police while he was locked up in adult police cells. In Evans' response to the question of how he was treated by the police, his response was; "I was treated like an armed robber by the mob and I thought I would receive better treatment in the custody of the police but it was the same treatment". Such treatment did not enforce "the best interest" principle. The conditions of arrest and detention did not meet the standards of article 37(a) of the CRC which prohibits inhumane and degrading treatment against juveniles. He was also not separated from adults while in police custody which violates article 37(c). In this case the violation was committed by both the public and police during arrest. This treatment also goes against the principle of presumption of innocence until proven guilty as stated by article 40(2) of the CRC.

Lack of specially trained personnel caused actions against juveniles that were not in accordance with the 'best interest' principle in the juvenile justice system of Ghana. The aim of juvenile justice is to ensure reintegration of the juvenile as stated by article 40(1). This provision requires the police, judges, prosecutors and other personnel who deal with juveniles to be trained and knowledgeable in order to treat juveniles in a manner that will ensure their reintegration. This will promote professionalism and enable personnel to deal with juveniles with regards to their 'best interests' and avoid violations.

Due to the formal nature of proceedings, children could not freely express themselves and juveniles especially seemed timid and jittery in answering questions. In as much as juvenile courts proceedings are required to be as informal as possible, it was not the case during observations. An example of such procedure is swearing of oath which was undertaken by all children involved in the case. This limited the juveniles' rights to participation of the juveniles which is an important element to ensure the 'best interest' of the child.

The mandate of probation officers was difficult to fulfil due the unavailability of resources. They had to rely on their own resources to conduct social enquiry reports on several occasions. There were no vehicles available to transport probation officers to the homes of juveniles and this was more prob-

lematic with juveniles who came from regions outside the Greater Accra region whose homes could not be traced easily. When Love Grace was asked about what she thought was the reason for the lack of resources, she replied saying; “Juveniles are not a priority to government because if they thought of issues of juveniles as important, they would make resources available. It’s like this department has been abandoned by government. The system will continue to suffer ineffectiveness until the government recognizes it as a priority”. She made this statement also referring the researcher to how old and worn out the DSW building in which the interview was been conducted looked and added that after so many years no renovations had occurred. The government’s obligation of providing for all necessary resources to implement children’s rights in article (4) of the CRC has not been met. Social enquiry reports are important to determine the kind of treatment the juvenile would receive. Judges make their decisions based on it and hence an important element in determining the ‘best interest’ of the child.

There were many delays in juvenile cases with some pending for over a month because investigations were not completed. In some cases there were adjournments because investigations had not been completed or key witnesses were not available. This situation does not provide for the expeditious hearing of juvenile cases as stated as stated in article 37 of the CRC. Delay in cases has the tendency to expose the juvenile to further violations within the system

Investigations were either not fully conducted or lacked solid evidence. In cases where there was weak evidence against the juvenile, the case was dismissed. In the words of Judge Marian Affoh; “the law states that; the slightest benefit should inure to the benefit of the accused juvenile. As a result, juveniles go scot free with crimes they are actually guilty of without any form of treatment thereby leading to reoffending”. This does not serve the ‘best interest’ of the child because he or she does not receive treatment in order to become rehabilitated. Accountability and responsibility for offence is therefore not established. Victims are left unsatisfied with final decisions of the court to discharge juveniles. Restorative measures will therefore adequately address such issues by encouraging accountability for crimes committed by juveniles thereby satisfying the needs of both juveniles and victims.

The lack of mechanism to ensure that all children born acquire a birth certificate posed problems in the system. There was no means of verification and even though the JJA states that the services of a medical officer should be sought in determining the juvenile's age in the absence of a birth certificate, this was not practiced due to the costs involved. Various respondents mentioned cases where juveniles inflated their ages in order to receive expeditious hearing from adult courts. In observing judicial proceedings, there were doubts about the age of a juvenile who appeared in court. Suspicions were raised about him being above the age of eighteen and this was assumed by members of the panel based on his looks. However there was no way of verification because he did not possess a birth certificate. The inability of officials to determine the right age of a juvenile puts him or her at the risk of being treated in the adult criminal justice system. The juvenile is therefore not accorded treatment in line with his or her age if put in the adult criminal justice domain. This situation would not serve the 'best interest' of the child. It as well goes against article 40 of the CRC which states that the age of a juvenile should be considered in treatment.

The previous knowledge on lack of diversion of juveniles through child panels was confirmed by officials in the juvenile justice system. According to Modupe, much awareness has not been created about Child Panels. Some officials within the system were not aware that such an avenue is available to divert juveniles and therefore cases were hardly referred to child panels. The respondent further stated that there was a need for awareness creation about the rights of juveniles which includes the right to diversion. Concerns were raised by respondents that the running and management of child panels were expensive and there was therefore the need to find less expensive ways of running them. For example, panel members were expected to sit as often as possible and this meant payment of allowances. Due to inadequate resources, panel members did not receive enough motivation to meet and settle juvenile cases.

Child panels should be restructured within the community instead of operating at the District level. This would enforce restorative justice principles by bringing the community on board in dealing with juveniles and solving conflicts. In Ghanaian culture, acts of correcting a child and settling disputes are seen as a social responsibility by the community especially elders. Child panels

at the community level would foster restorative justice principles and would also ensure that panels are more accessible to the whole community.

According to Judge Amoah, diversion did not happen at the courts very often because there were other alternative sentences such as community services were not available. Courts only had to rely on the dispositions available which are committals to correctional centres, probation and payment of fines and these decisions largely depended on the nature of the crime committed and whether the parents or guardian of the juvenile was available. In her words she stated that; “the system copes with what is available and justice is delivered based on what you have available”. There is a need for making a variety of measures available to courts and other institutions in dealing with juveniles as provided by CRC article 40(4). This fulfils the right of the juvenile to be diverted from custodial sentencing thereby reducing the number of juveniles who are deprived of their liberty.

Concerns were raised among various respondents about the lack of awareness of the public on the rights of juveniles. According to Modupe, juveniles were widely perceived as criminals by the public and therefore received very little sympathy. As a result the rights of juveniles were not seen as important to development as other children’s’ issues. At the time of the research, her organization (Youth Bridge Foundation) had organized a campaign to create awareness on the rights of juveniles across the country.

Juveniles faced discriminatory attitudes from the public and even within the Juvenile justice system. This is evidenced from the local term used in referring to juvenile correctional centres by the public which is “Akwadaa bone sukuu” literally meaning ‘bad children’s’ school’. There is however the need for more awareness and sensitization on the rights of juveniles as it is important to the implementation of their rights. This is on the basis of article 42 of the CRC which mandates states to make the principles of the convention widely known. This would generate acceptance of children’s rights from the public.

Chapter 5 Diversion Programs undertaken by Ethiopia, Namibia and The Philippines

5.1. Community Based Correction Program

The Community Based Correction program (CBCP) of diversion takes a non-custodial approach emphasizing on an informal system of care, rehabilitation and reintegration of juveniles especially for first time offenders and petty offenders. They were established to divert juveniles from the criminal justice process into correction programs which challenge the offending behaviour of juveniles while allowing them to remain in the communities with their families. The program applies a holistic approach in developing the potential of juveniles to recover from crime through strengthening of the support structures around them. It aims at realizing the best interests of juveniles by; preventing potentially vulnerable children from involving in crime; keeping juveniles at home rather than institutions; avoiding trauma, labelling and stigma associated with formal justice processes and avoiding criminal records for juveniles; reducing the chances of future involvement in crimes through targeted individual rehabilitation and finally, increasing collaboration between the police and local communities in preventing crime for children.

The program is run by the Child Protection Unit (CPU) of Ethiopia in collaboration with the police but brings on board various actors to share in the program. These actors include NGO's, families, schools and communities. As a result enough resources are pulled together by these various actors to facilitate the effective running of the program. For instance NGO's provide funding for the hiring and training of counsellors and other social workers. Local communities provide facilities for the programs such as halls and open grounds, elders in the community participate in program as well as community volunteers. Volunteers are selected based on their ability to communicate with children and their potential to act as role models. Community volunteers assist children in learning. Training is given to these volunteers on children's rights. Families also participate in the programs to help in the process of correcting juveniles.

The CBCP covers the 10 sub cities of the capital Addis Ababa. Within each sub city, are the smallest administrative units known locally as Kebeles. These Kebeles have meeting halls where community members hold functions. The CBCP centres are located in these halls with a small office allocated to volunteers and a place to store materials for the project such as books, teaching aids and recreational materials. Counselling sessions and meetings with parents and juveniles are also held in these halls. The first point of contact for juveniles is the CPU's which are situated within the police stations. Cases of juveniles are usually reported to the CPU by police officers, parents, neighbours and members of the public. The parents of the juveniles are contacted while investigations on the case are carried out and a subsequent report provided by the police in charge of the CPU. The case of the juvenile is assessed and referred to the CBCP where necessary and they go through an organized procedure in the centres.

5.1.1 Program Description

A treatment plan is drawn after the juvenile has been referred to the centre. The treatment plan is a written agreement signed by the juvenile, parent or guardian and a community worker. The plan states and explains the nature of the activity that is to be undertaken by the child in partaking in the program. This promotes participation of children by instilling a sense of responsibility in children and involving them in decisions for their rehabilitation. Juveniles are engaged in organized daily schedules which take up to three hours per day. Programs in the centre are organized by volunteers and these include tutorial classes, literacy skills, recreational activities and counselling services. There is follow up on juveniles' behaviour by volunteers, community workers, police officers and counsellors. These actors engage in periodic visits at the centres and have discussions with juveniles on the crime committed and their responsibility towards their families and the community. Good behaviours are monitored, taken note of and rewarded. Special interests of juveniles and talents are identified and encouraged. For example playing football and playing musical instruments (Save the Children 2012).

5.1.2 Success of Program

The success of the program in Ethiopia has been attributed to the way in which it is implemented and the impacts on children. In terms of implementation, the “community based style” seemed to have worked in Ethiopia due to its correspondence to socio-cultural practices which involve arbitration and correction. Such practices are characterized by disputes settlements and reparation outside the formal administrative system. Secondly diversion has been accepted due to the efforts of the Child Protection Program by bringing on board duty bearers in multi-level advocacy. The CBCP has provided an alternative structure by replacing detention facilities which are often inadequate and reducing the high numbers of juvenile cases handled by the juvenile courts. The uses of CBCPs have proven to save resources especially spent by the police. The police spend a lot of money in processing juvenile cases for court and accompanying juveniles to court at every sitting. Resources used in such procedures have reduced significantly since juveniles are diverted through CBCP (Save the Children 2012).

In terms of impacts on juveniles, those who are enrolled in CBCPs have been reported to have had improvement in academics. Prior to their enrolment they were reported to have very low academic performance. They have encouraged formal education which forms part of the measures of the treatment plan for juveniles. Trained teachers and tutors have been hired within the program to assist juveniles in academic work. Juveniles who were not enrolled in schools before entering the program are prepared by teachers to be enrolled in schools after completion of the program. Funding of enrolment in schools is supported by the program (Save the Children 2012).

The participation of families has fostered good relationships between juveniles and their families and restored family values. Families recognize the contribution they make towards the rehabilitation of their children and have the confidence to guide the conduct of their children than before. Juveniles tend to gain more attention and value from their families and this has contributed to enhancing their self-esteem (Save the Children 2012).

5.2. Pre-Trial Community Service in Namibia

5.2.1. Program Description

This is a type of program in Namibia which diverts the juvenile from judicial proceedings and serves as an option to custodial sentences. This entails taking away the leisure time of juveniles by making them work in a non-profit organization or a government agency or department without any form of payment. The idea of free labour from the child is not to replace paid positions. These institutions serve as placement agencies for the juveniles and are located within the juvenile's community to avoid transport costs. They have the responsibility to give adequate supervision to the juvenile by designating a service supervisor solely in charge of the juvenile. The supervisor is expected to use a non-authoritarian but firm approach while commending the juvenile where due. The supervisor is mandated to return time forms when the juvenile completes service (Legal Assistance Centre 2002).

Some criteria that are followed in referring a juvenile to a community service include; the age of the juvenile should fall within the prescribed age limit for juveniles (MACR); the juvenile must accept responsibility to the crime committed and agree to undertake the community service; transportation arrangements should be convenient for the juvenile; personal preferences and interests of the child should be taken into consideration in the placement of the juvenile; the juvenile should not have any mental or physical condition which may act as a limitation to performing the service and finally, the juvenile should be aware of the nature of the service through a description. Community service should not interfere with the juvenile's education requiring that a proper time schedule be fixed for the service (Legal Assistance Center 2002).

The community service program is undertaken on a contract basis between the placement agency and the juvenile and the organization that made the referral. The contract should indicate; the number of hours the juvenile would work; the name of the placement agency; the date and time the service would begin and the terms and conditions of the service (Legal Assistance Center 2002).

5.3. Community Based Prevention and Diversion Program-Cebu City, Philippines.

The community based prevention and diversion program in Cebu City in the Philippines aims at preventing juvenile crimes and reintegrating juveniles who have already committed crimes. It comes in two folds in the form of victim-offender mediation for juveniles who have already committed a crime and a crime prevention program to prevent crimes and assist juveniles who have been diverted. The program brings together a number of actors and partners. The main actors are a non-profit organization which is an umbrella organization composed of; government organizations, community based organizations and academic and civil minded individuals who work together to achieve a common aim. The other actor is the Child Justice Committee (CJC) which was set up as a community based structure to settle, reconcile and mediate in cases involving juveniles. Partners include agencies such as local government officials, the police, the commission on human rights, UNICEF, NGO'S, the media and schools. All actors pull together resources in varied ways to implement the program. For instance, the non-profit organization contributes by providing psycho social interventions, counselling, formal education, and temporary shelter, provision of basic needs and formation of values. The CJC offers proper procedures in victim-offender mediation program as well as organizing prevention programs for children (UNICEF 2001).

5.3.1. Program Description (Victim-Offender Mediation Program and Crime Prevention Program)

After a case has been referred to the CJC by the police or the community, community volunteers assist in locating the juvenile's parents who are thereby informed about the crime and the diversion process. The mediation or settlement process takes place after the purpose of diversion has been explained to the offended party. After all parties to the case agree on a form of settlement, the juvenile is asked to present a written or an oral apology to the victim with explanations of why the crime was committed. Where settlement is reached, steps are recommended for further psycho-social interventions for the juvenile through a centre-based approach or a family based approach. The juvenile is

continually monitored by community volunteers of the program through periodic visits at home and school (UNICEF 2001).

In the crime prevention program the community is mobilized in order to identify volunteers and peer educators. A structure is established to provide training. With the coordination of the government and NGO's, the community assists in implementing the program. Such assistance include; training of out of school youth in skills like plumbing, automotive repair, carpentry and supporting low income families with micro loans to facilitate livelihood activities such as farming. School enrolment fees are also provided to as well as support is provided for families who cannot afford educational costs for their children (UNICEF 2001).

5.3.2. Impact

The program brought about varied impact in Cebu-City, Philippines. Firstly, there was a decrease in crime rates and juvenile recidivism. Cases reported in the previous year had reduced drastically within less than a year of implementing program. Secondly, the rate of detention institutionalization of juveniles reduced. Thirdly, the program increased interest in community volunteering as more community members joined in the program to assist. Lastly, there was an increased number in juveniles who returned to school because of the support they gained from the project (UNICEF 2001).

Chapter 6 Conclusion and Recommendations

6.1 Conclusion

The CRC and ACRWC establish the state as the main duty bearer of the rights of juveniles. Ghana as party to these instruments is therefore under the obligation to undertake all the necessary and appropriate legislative, administrative and other steps in the implementation of the rights of the juvenile. It is important therefore to establish a separate juvenile justice system which makes the rights of the juvenile a priority and serves the 'best interest of the child'.

Ghana undertook Legal reforms in 1992 which took place soon after ratification of the CRC and this led to promulgation of the Children's Act 1998 (560) and the JJA. These are the main instruments which provide for the protection of the rights of juveniles and provide for a distinct juvenile justice system by providing a MACR, conditions of arrest, the rights to fair trial and other elements. In as much as this step shows a commitment on the part of Ghana to implement the CRC, this has not happened. There still remain gaps between the laws and what is practiced in the juvenile justice system of Ghana. Even though the JJA and Children's Act give support for restorative measures to ensure that the rights of juveniles are protected, the juvenile justice system of Ghana is more punitive in nature.

In order to ensure that juveniles are treated without resorting to formal judicial proceedings, the Children's Act makes provision for the establishment of Child Panels. These panels however do not function and as a result juveniles go through formal judicial trial and incarceration. The CRC favours deprivation of liberty only as a measure of last resort. However juveniles continue to be deprived of their liberty in detention facilities; police cells and correctional facilities. The formal justice system however in many ways does not serve the 'best interest of the child' in dealing with the juvenile. Contrary to the CRC and Beijing rules, Officials such as police are not well trained in dealing with juveniles leading to violation of their right. Juveniles do not easily and readily have access to legal aid even though the JJA establishes free legal aid.

The CRC provides that juvenile cases should be given expeditious hearing. However, this is not the case due to delays in court trials due to adjournments

and partial investigations. There are inadequate number of remand homes and correctional centres and juvenile courts across the country. This contributes to the detention of juveniles in adult prisons especially in regions where remand homes and correctional facilities are unavailable. One major problem that exists is the absence of a comprehensive juvenile justice policy. A juvenile justice policy is recommended by the CRC General Comment 10 in achieving a Child rights Based approach to juvenile justice. Ghana has however recognized the need for a comprehensive policy and according to findings is in the process of drafting one.

A system which enforces diversion as part of a CRBA to juvenile justice in Ghana has been proposed in this paper. Diversion is supported by the CRC and other international instrument as well as the JJA. It is recommended as a way of promoting children's rights without resorting to formal justice procedures and custodial sentences. This is especially important for Ghana because of the constraints and inadequacies of the formal justice system which have caused violations of the rights of juveniles in Ghana.

6.2. Recommendation

In accordance with research findings and literature review on the juvenile justice system of Ghana certain recommendations are made by the researcher to ensure the effective implementation of children's rights.

Juvenile Justice Policy

The juvenile justice policy should contain provisions which aim at prevention of juvenile delinquency. It should also contain time limits for the period between committing the offence and the completion of police investigations as well as prosecution and adjudication of cases. There should be strict measures to ensure that these time limits are followed.

Diversion

A variety of community based programs should be put to in place as done by Ethiopia. The state should collaborate with NGO's and civil society in establishing such programs as well as strengthening the child panel. Child panels should be established at the community level to ensure accessibility and the

involvement of community. This can be seen from the community based programs undertaken by Ethiopia and Namibia in the previous chapter.

Specialized Training

The state should provide adequately trained professionals such as lawyers, psychologists and police officers to provide legal and other appropriate assistance. There should be frequent training of these personnel to be able to carry out their mandate effectively.

Awareness Creation

The state should conduct and promote educational campaigns to raise awareness on the need to protect the rights of juveniles. This could be done in conjunction with NGO's and the media. Children and in particular juveniles could be brought on board to partake in the awareness creation programs.

Research

Regular monitoring and evaluations should be conducted by the state on the practices of juvenile justice system. Data should be collected on relevant information with regards to juvenile justice administration such as the use of diversion and the effectiveness of diversion programs as well as the use and average duration of detention. This should also include data on juvenile offending trends. Independent academic institutions should be encouraged to partake in such research. This will enable states to target resources and develop as well as improve upon initiatives (Hamilton).

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