EXAMINING CULTURAL BARRIERS AND THE JUSTIFICATION FOR THE NON-CUSTODIAL SENTENCE BILL'S IMPLEMENTATION IN GHANA

A Research Paper presented by:

FIDELIA KONADU OWUSU

(GHANA)

In partial fulfilment of the requirements for obtaining the degree of

MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

MA Major (SJP)

Members of Examining Committee:

Dr. Jeff Handmaker

Prof. Dr. Karin Arts

The Hague, The Netherlands

December 2024

Disclaimer:

This document represents part of the author's study programme while at the International Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

Inquiries:

International Institute of Social Studies
P.O. Box 29776
2502 LT The Hague
The Netherlands

t: +31 70 426 0460
e: info@iss.nl
w: www.iss.nl
fb: http://www.facebook.com/iss.nl
twitter: @issnl

Location:

Kortenaerkade 12
2518 AX The Hague
The Netherlands

Acknowledgement

The journey of this research has not been entirely smooth given the fact that this is my first experience working strictly with secondary data for a study. However, I must be honest I had a great team who have supported me through this journey and are worth mentioning. First, I would like to appreciate my brother Henry Frempong Owusu (Phd), who financially supported my study and without whom this dissertation would not have been fulfilled. Now to my supervisor Dr. Jeff Handmaker whose meticulous guidance on the work and continuous counselling brought me this far. You took me by the hand from start till finish and your words of encouragement were timely and appreciated as they always came when I needed them the most. Thank you for believing in me even when I had doubts about what I was doing. To my Second Reader, Prof. Dr. Karin Arts, your rich inputs into this work can never be unnoticed as you always brought me back on the right path when I was digressing. To my pal, Ebenezer Tuah, your support is greatly appreciated and finally, to my family who have been my greatest support system all this while, thank you all for being there.

Contents

Acknowledgement iii

List of Tables vi

List of Figures vii

List of Maps vii

List of Appendix vii

Abstract viii

Relevance to Development Studies and Social Justice ix

Keywords x

CHAPTER ONE 1

INTRODUCTION TO THE RESEARCH 1

1.1 Introduction 1

1.2 Background to Proposed Study 3

Table 1: Statistics of Prison Inmates as of June 2024 5

1.3 Justification and Relevance of the research 5

1.4 Research Objectives and Questions 7

1.4.1 Objective(s) 7

1.4.2 Research Question(s) 7

1.5 Chapter Outline 8

Figure 1. Research Structure 8

CHAPTER TWO 9

APPROACH TO THE RESEARCH 9

2.1 Introduction 9

2.2 Legal consciousness 9

2.3 Comparing scholars on Legal Culture 10

2.4 Right-Based Approach (RBA) and Legal Frameworks 12

2.4.1 Introduction 12

2.4. 2 International Legal Framework 13

2.4.3 African Charter on Human and Peoples Rights, 1981 14
2.4.4 1992 Constitution of Ghana 14
2.4.5 Summary 15
2.5 Chapter Summary 15
CHAPTER THREE 16
GHANA'S CRIMINAL SYSTEM AND NON-CUSTODIAL SENTENCE EFFORTS. 16
3.1 Introduction 16
3.2 Criminal Justice System- Ghana 16
Figure 2: Transformation of Ghana's legal system from pre-independence, post-independence and present. 18
3.3. Efforts by stakeholders (State Agencies, the Media, NGO's and CSO's) 19
3.4 The Presidency 20
3.5 Summary 21
CHAPTER FOUR 22
METHODOLOGY AND DESIGNS OF DATA GATHERING 22
4.1 Introduction 22
4.2 Study Area 22
Map 1: Map of West Africa and Ghana 23
4.3 Who are the Target Population 23
Map 2: Map of Ghana showing the 47 prison establishments. 24
Table 2: Regional Distribution of Prison Establishments across the country 25
4.4 Study Design 26
4.5. Data Collection and Analysis 26
4.6 Ethical Considerations and Limitations 27
4.7 My Positionality and Reflexivity 29
CHAPTER FIVE: FINDINGS AND ANALYSIS 31

IMPRISONMENT VERSE HUMAN RIGHTS 31
5.1 Introduction 31
5.2 Right Violation by Overcrowded Prisons and Long Detention Periods 31
5.3 Access to Right to Healthcare and Proper Sanitation in Prisons . 32
5.4. Summary of Arguments 34
CHAPTER SIX 35
IMPEDIMENTS TO IMPLEMENTING NON-CUSTODIAL SENTENCE IN GHANA 35
6.1 Introduction 35
6.2 Traditional and cultural beliefs. 35
6.3 Lack of Knowledge 37
6.4 Limited Resources to Execute Constitutional Mandate by Implementing Agencies 38
6.5 Complex Legislative Process. 39
6.6 Political Unillingness and External Factors to Non-Custodial Sentence 40
6.7 Summary of Arguments 43
CHAPTER SEVEN 44
SUMMARY OF FINDINGS AND RECOMMENDATION 44
7.1 Summary of Findings 44
7.2 Recommendations 45
REFERENCES 48

List of Tables

Table 1 Statistics of Prison Inmates as at June 2024

Table 2 Regional Distribution of Prison Establishments across the country

List of Figures

Figure 1 Research Structure

Figure 2 Transformation of Ghana's legal system from pre-independence, post-independence and present.

List of Maps

Map 1 Map of West Africa and Ghana

Map 2 Map of Ghana showing the 47 prison establishments.

List of Appendix

Appendix 1 International legal framework

Appendix 2 Legal framework; Ghana

List of Acronyms

CHRAJ	Commission on Human Rights and Administrative Justice
CHRI	Commonwealth Human Rights Initiative
CRC	Convention on the Right of the Child
GPS	Ghana Prison's Service
GSS	Ghana Statistical Service
HURDS	Human Rights Development Foundation
JFAP	Justice For All Programme
NCCE	National Commission on Civic Education
NCS	Non-Custodial Sentence
NCSB	Non-Custodial Sentence Bill
NDC	National Democratic Convention
NGO	Non-Governmental Organisation
NPP	New Patriotic Party

OAU/AU	Organisation of African Union/ African Union
POS	Perfector of Sentiments Foundation
RBA	Right Based Approach
RJ	Restorative Justice
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAT	United Nations Convention Against Torture

Abstract

Ghana has been ranked as one of the most peaceful countries in Africa, and this comes as many factors including its legal system of seeking justice for everyone. Punishments have long existed before the colonial era and these punishments are embedded in Ghana's legal systems. Presently, the ultimate outcome for petty offense is imprisonment which violate some Fundamental Human Rights of offenders while contravening both international conventions like UDHR and national laws like the 1992 constitution. Despite efforts of some Ghanaians and government initiatives to introduce the Non-custodial sentence, it still remains unattainable and there is a continual over reliance on incarceration which continues to violates human rights like dignity, food accommodation or shelter, just to mention a few. In all of this, the gap identified is that, most researches focus on the need to implement a Non-Custodial Sentence due to the overcrowded nature of the prisons. However, these researches tend to overlook how the overreliance of imprisonment and the lack of this legislation (Non-custodial Sentence) continually abuse the human right of inmates. Thus, through a qualitative method, the research answered the "why, how and what" questions using secondary data by reviewing literatures from various scholars and articles, journals, reports and documentaries. The research sought to explore how the

non-existence of a NCS violates prisoners basic rights through incarceration. It further studies cultural factors that hinders the implementation of the non-custodial sentence. Through the lenses of Legal frameworks such as Legal Culture, Legal Consciousness and a Right Based-Approach, the research also sought answers to the above questions. After intensive review of related literatures and analysing data, it was found that Ghana's over-reliance on imprisonment violate basic rights like dignity, food, accommodation, access to sanitation and health care, fair trial and liberty of the prisoner. Traditional and cultural beliefs, lack of knowledge on NCS, institutional constraint and the complex legislative procedure among others were also impediments to Ghana's non-custodial sentence.

Relevance to Development Studies and Social Justice

A society without rules and regulations is completely chaotic, hence, laws exist to bring sanity to society. However, those who go contrary to societal rules are punished to deter others from repeating same and bring order and sanity to society again. Yet, punishments should correspond to the offence committed in order not to bring indescribable pain, harm or further bring enmity between offender and victim. The situation in Ghana is quite unique as laws rely more on imprisonment rather than alternative punishments. Hence, this study academically adds to already existing data on development studies and the need to implement an alternative punishment system for minor offences in Ghana.

This is relevant because findings supported the fact that Ghana's prisons are in a deplorable state and this is based on the country's reliance on imprisonment. This over dependency of imprisonment further violates the human rights of prisoners and the lack of legislation compounds this issue as every minor offender ends up in prison. In view of the above, this research proposes a more restorative approach by adopting the Non-custodial sentence with a Right Based Approach in order to comply with international standards

of upholding the right of the prisoners. In the field of development and social justice perspective, this research can serve as a backing document to push for a reformation of Ghana's laws by passing the already existing NCSB into a law to help ease congestions in the prisons, reduce human rights abuses and improve prison conditions. It can also serve as a basis for future studies on the development of a RBA to imprisonment.

Keywords

Criminal justice, Alternative punishment, Incarceration, Non-custodial sentence, Rehabilitation, Ghana, cultural barriers.

CHAPTER ONE

INTRODUCTION TO THE RESEARCH

1.1 Introduction

Ghana's legal system lacks a legal framework which allows for Non-Custodial Sentence (NCS) that seeks to promote human rights and decongest the prisons across the country. NCS is the process of imposing punishments to minor offences like "theft, drink driving, and non-grievous assault" in ways besides imprisonment. It can be in the form of parole, community service, compulsory unpaid work, paying a fine or compensation etc (Addey 2021). This has raised concerns of why there is no comprehensive legal framework that safeguard offenders as there has been calls particularly from Civil Society Organisations (CSO's) for the implementation of such law (Asamoah, 2022). To buttress this, in 2018, Perfector of Sentiments Foundation (POS) drafted the Non-Custodial Sentence Bill (NCSB) which promoted a "community service order, probation order, supervision order (parole), drug testing and treatment order", for the subsequent passage at Ghana's parliament (POS Foundation, 2023, no page) which was never passed into law.

This lack of a legislature has seen many people end up in prison for very minor offences for instance, Emmanuel Afanu, twenty years of age and a resident of Mepom, near Asamankese in the Eastern Region of Ghana on April 8, 2022, together with his friend (whom I will call Mensah) robbed their victim, Michael Sackyi. The two, while riding a motorbike assaulted and wounded the victim with a pair of scissors before snatching his Iphone 7 plus worth GH₵2,500.00 equivalent to $165.84. Mensah absconded and Emmaneul was subsequently arrested, prosecuted and sentenced to a fifteen-year prison term signifying the full sentence for the use of a weapon in committing robbery (Siaw, 2022). Emmanuel's punishment was in accordance with section 149 of Ghana's Criminal Offences Act, 1960, Act 29 which imposes a sentence of not less than fifteen years imprisonment on anyone who commits robbery with an offensive weapon (Criminal Offences Act, 1960, Act 29).

Another instance is twenty-one-year-old, Richard Atta who was lured by his friend into snatching a woman's handbag on the street when he expressed his lack of money to the latter. Unfortunately, he was caught by an angry mob who almost lynched him to death before being handed over to the police for investigation and further prosecution. He was arraigned before

court where the judge imposed a fine of three hundred and sixty Ghana cedis (GH₵360.00), equivalent to $63.00 in 2021 or face a jail term of one year imprisonment. Since he could not pay the fine, he had to face a one-year jail term and was abandoned in prison by his family and served eight months until Commonwealth Human Rights Initiative (CHRI), an NGO came to his aid to pay the fine (Agbagba, 2021).

These are two narrations among thousands of individuals who have found themselves in the walls of Ghana's prisons with similar stories of long prison sentences for relatively minor offences. However, according to Addey, the basis for the imprisonment could be attributed to their inability to pay the fines imposed on them, especially for minor offenders (Addey, 2021). Though Section 294 of the Criminal and other offences (Procedure) Act, 1960, (Act 30) provide substitutes in the form of fines, compensations and liability to police supervision; however, there is no explicit provision of an alternative sentence and one ends up in prison if he/she is unable to pay such fines bestowed on them by court, just like the story of Richard Atta (Agbagba, 2021).

The lack of a proper legislation is magnified with inhumane treatment meted to inmates, in the form of poor food, lack of beddings, lack of proper medical care and sanitation amongst others (Amnesty International, 2012). Non-governmental Organisations (NGOs) like POS Foundation, Crime Check Foundation, Human Rights Development Foundation (HURDS Foundation) and Ghana's human rights institution, the Commission on Human rights and Administrative Justice (CHRAJ), have long advocated for the passage of an independent law that would promote communal sentencing to ease the congestions in Ghana's prisons (Yire, 2023). These occurrences have ultimately led to overcrowding Ghana's prisons and the lack of proper facilities to house inmate is also worrying. (Amnesty International, 2012). With about four thousand, four hundred and ninety-five (4,495) inmates across the country as have been confirmed by the Ghana Prisons Services (GPS), official website in June 2024 (Ghana Prisons Service, 2024). The Nsawam prison for instance was designed to house a maximum of ten people in a cell; however, due to overcrowding and congestion, it currently houses forty to fifty inmates per cell (Mensah and Gyamfua Akuoko, 2023).

In all of this, the question that keeps lingering is: why has there not been a proper legislation in place to provide for NCS for adults? Regardless of this, there is a law on community service pertaining to juveniles, Article 37 (b) of the Convention on the Rights of

the Child (CRC) which Ghana was the first signatory of, requires member states to apply the use of imprisonment for juvenile in conformity with law and as the last resort as well (Art. 37 (b) Convention on the Rights of the Child, 1989). In conformity to this, Ghana in 2003 developed the Juvenile Justice Act, 2003, Act 653 whereby Section 46 of the Act indicates that a juvenile offender earns a sentence of a minimum of three months and a maximum of three years for serious offenses. The Act focuses on separating young offenders from adults through rehabilitation and restitution. The main focus of the Act is to give young offenders a skill or basic education while they serve their sentence at the correction centre (Juvenile Justice Act, 2003, Act 653).

To highlight the gravity of the problem, Francis Xavier Sosu, the Member of Parliament (MP) representing Madina in December 2023 also introduced another bill to Parliament to amend the Criminal and Other Offences (Procedure) Act, 1960 (Act 30). The bill calls for the introduction of community service and a Bond of Good Behaviour in the form of "cleaning up public spaces, participating in environmental projects, working in community centres, assisting with social services or engaging in other activities that benefit the community" rather than the typical jail sentences and penalties for infractions of a minor kind (Arthur, 2024). The purpose of revising Act 30 was therefore aimed to reduce the overcrowded nature of Ghana's prisons and efficiently decrease the disproportionate number of prisoners receiving jail sentences. In cases where the offence is not clearly defined by law, the new bill seeks to replace the current jail punishments and penalties for minor offences, also known as misdemeanours, with community work and a promise of good behaviour (ibid). However, both bills are yet to receive any favourable outcome from parliament.

1.2 Background to Proposed Study

The system of isolating and banishing people who go contrary to norms, customs, traditions, rules, and regulations from the rest of society has existed since pre-colonial period. As Appiahene-Gyamfi (2009) has argued, the idea of imprisonment began during the colonial era where violators of rules during the period were detained in dungeons and cells built into the castles of the British rulers. Appiahene-Gyamfi went on to show how a section of an agreement from the 1844 bond, which was signed between some Fante chiefs and the British to seek protection against the Ashanti's, indicated that, the chiefs would give England all their authority, including the ability to administer justice, in exchange for the protection of their

kingdom (Appiahene-Gyamfi, 2009). Thus, they relinquished their authority to administer justice to the British entirely.

As at June 10, 2024, Ghana's forty four adult prisons across the country held a capacity of fourteen thousand seven hundred and sixty (14,760) inmates, while the approved capacity is ten thousand two hundred and sixty five (10,265). A total of one thousand one hundred and fifty-three (1,153) inmates signifying 7.81% are still on remand awaiting trial. This is an indication that the prisons are overcrowded with a total population of four thousand four hundred and ninety five (4,495) inmates signifying 43.79% almost twice the required capacity. (See table 1) (Ghana Prisons Service, 2024, no page). To help improve overcrowding in the prisons, the Church of Pentecost, Ghana, between 2021 and 2022 built and donated a prison house and a 320 capacity "skill acquisition reform centre" to Ejura and Nsawam respectively, to the GPS to complement the already existing state-owned ones. Though the church plans to fund two more facilities at Damango and Obuasi, it is sill not enough to house all prisoners as there is still limited space to house offenders (BBC Pidgin News, 2021; City Newsroom, 2022).

The prolonged litigation system of the judicial service leaves a lot of offenders in remand prisons for years with others never having the opportunity for their cases to be heard. Consequently, due to the lack of proper facilities, some juveniles also find themselves in the senior prisons. This was affirmed by Bosomprah who did a study on Ghana's prison, stating that there were 254 male juveniles detained in senior prisons across the country as at April 2023. This practice may end up creating hardened criminals out of these juveniles as they are forced to adopt survival skills in the prisons (Bosomprah, 2023). The lack of a substantial working document for non custodial sentence for adults coupled with the cycle of majority of offenders getting imprisoned leading to overcrowded prisons also has grave repercussions on the lives of inmates, violating their basic human rights like right to food, accommodation and dignity. According to a report on Ghana's prison condition by Amnesty International, many of the country's prisons perpetuate human rights abuses in the form of right to shelter, proper food, access to healthcare and humane conditions due to the fact that there is poor nutrition and lack of medical attention (Amnesty International, 2012).

These abuses go contrary to Article 5 of the Universal Declaration of Human Rights (UDHR) states that "no person shall be subjected to torture or cruel, inhumane or degrading treatment or punishment" (UDHR, 1948). This is an indication that even prisoners who are

often considered a threat to society are to be treated with respect. Article 15 (1) of Ghana's 1992 Constitution further upholds the dignity of all persons as sacred while 15(2) goes on to state that no person shall, "whether or not he is arrested, restricted or retained, be subjected to (a) torture or other cruel, inhuman or degrading treatment or punishment" (The Constitution of Ghana, 1992). In respect of the above, and the Ghana Prison's Mission statement, Ghana's prison conditions detract from the dignity and worth of the inmates it inhabits which is a direct contradiction of Article 15 (2)(b) of the 1992 Constitution which states that "…any other condition that detracts or is likely to detract from his dignity and worth as a human being" (The Constitution of Ghana, 1992).

Table 1: Statistics of Prison Inmates as of June 2024

S/N	Category	Male	Female	Total
1.	Convict Prisoners	13,001	167	13,168
2.	Remand Prisoners	1,130	23	1,153
3.	Trial Prisoners	424	15	439
4.	**Total Prison Population**	**14,555**	**205**	**14,760**
5.	Authorized Prison Population			**10,265**
6.	Prisoners Overcrowded			**4,495**

Source: (Ghana Prisons Service, 2024)

1.3 Justification and Relevance of the research

According to the Kampala Declaration on prison conditions in Africa and Plan of Action, mediation can be utilized for petty offences without a necessary recourse to the court. However, it is prudent to take into consideration the financial strength of the victim or his or her close relatives. Community service and non-custodial course of action should be applied, considering successful customary or alternatives to traditional incarceration. The Kampala Declaration emphasises that incarceration should only be used for grave offences where there is the need for public protection (Penal Reform International, 1996).

In contrast, Ofori-Dua et al. and Hosser et al. are of the view that, relying on the deterrent theory as a form of punishment which involves imprisonment, is more effective in ensuring offenders do not re-offend. Though Hosser et al. focuses on juveniles, their work has a direct correlation to that of the former (Ofori-Dua et al, 2015; Hosser et al, 2007). A further

study conducted by Ofori-Dua et al. found most of their respondents asserting that recourse to imprisonment is much more effective since community service is less deterrent in nature (Ofori-Dua et al, 2015)

The Scottish Executive Social Research (SESR), in another research further corroborated the study by Ofori-Dua et al and indicated that community services should be meted out to minor offences or misdemeanours which include but not limited to, minor driving and traffic offences, minor fraud and assault. They suggest that community service should be imposed on first-time offenders, pregnant women, nursing mothers, and those with contagious diseases (Scottish Executive Social Research, 2007)

From the above, alternative punishments are preferred to decongest prisons, punish offenders for their crime and at the same time give them restitution, these studies reviewed focus on the short-term impacts, neglecting the long-term social, economic, and psychological outcomes for inmates and communities. There is also a need to explore how out of prisons and alternative punishments can be effectively integrated with Ghana's traditional and customary justice systems and how this affects the varied groups like aged, sick persons, juveniles, pregnant and breastfeeding mothers, male and female inmates differently. This gap provides a basis for further research.

Again, this research seeks to unearth reasons for the delay in Ghana's parliament passing the non-custodial Bill proposed by POS Foundation or the recent addition by Francis Sosu. Findings from this study can further inform policy makers of the need to look at restorative justice which focuses on rehabilitation through reconciliation with victims and the community at large and its feasibility. Available data on related study on the topic focuses on general violations of human rights in prisons however, these studies are not directly linked to the overly use of imprisonments and how that affects the human rights of both inmates and offenders of the law. As such, my research will further look at this gap and delve deeper to identify the human right violations that are associated with the overly use of imprisonment. Finally, the research will promote economic development for both the state and offenders as findings will help prove that alternative sentences ease financial burden on the state while empowering the offenders if they are put to community services that help them learn a trade. This in effect helps improve the community at large and bring harmony in the society (Halm, 2020), hence, the relevance of this study.

1.4 Research Objectives and Questions

1.4.1 Objective(s)

The research's objective is to investigate (1) why the NCS are important to address human rights violations in the prison system and (2) whether there are cultural barriers obstructing Ghana's government in approving the draft bill on community sentence into law when everything points to the fact that Ghana's legal system needs a reform.

1.4.2 Research Question(s)

The main research question for the study is:

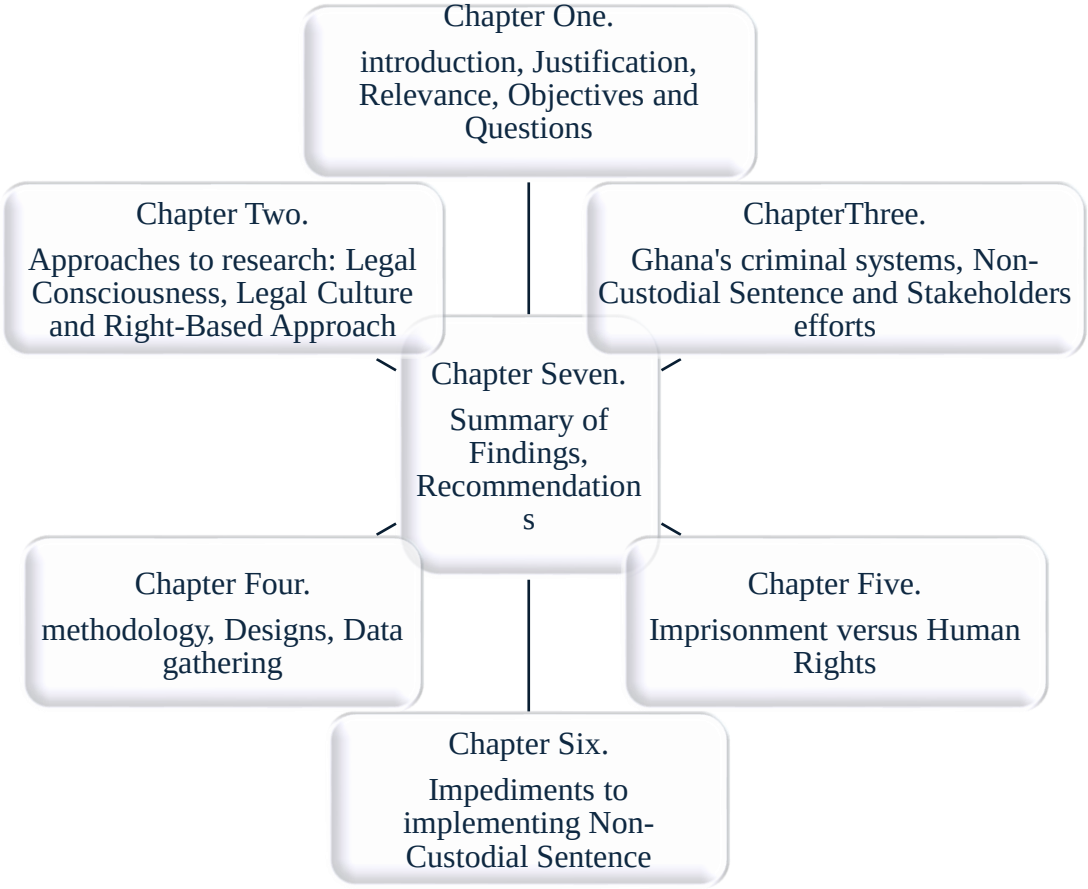
- Why is a Community Sentence Bill for adult offenders important and how have internal and external legal cultural obstacles impeded its implementation?

The following sub-questions are addressed in the course of the research.

- How has this delay in implementing the NCSB violated the human rights of offenders (external legal culture) and on what basis might this be reconsidered (right-based approach - RBA)?
- Why has there been a limited willingness to legislate for NCS in Ghana (internal legal culture)?
- How have Ghanaian laws and regulations shaped the use of custodial sentences (legal consciousness)?

1.5 Chapter Outline

Figure 1. Research Structure



Source: Author's own illustration

The next chapter details three theoretical approaches on which this research is built on for a better understanding of the study.

CHAPTER TWO

APPROACH TO THE RESEARCH

2.1 Introduction

This chapter adopts a three-prong theoretical approach to better understand the study using legal consciousness, legal culture and right based approaches to explore criminal justice in Ghana. It expounds on the understanding of implementing agencies and the ordinary Ghanaian citizen on NCS in their daily lives against a framework of international and local laws that aim to protect the basic rights of the prisoner.

2.2 Legal consciousness

With the growing interest in the impact, use and compliance of laws in the lives of individuals, it is viable to analyse one's understanding of how written laws are applicable in their daily lives (Hertogh, 2004). In order to overcome the cultural obstacles preventing the NCS from being implemented in Ghana, it is imperative to comprehend and incorporate diverse viewpoints on legal consciousness. The study of Legal consciousness became more prominent in the mid 1980's and has gained popularity over the past decades (Mansbridge and Macedo, 2019). The concept has been defined by various scholars from different perspectives. According to Ewick and Silbey, people's engagement with the law that echoes a significant institutional, social and cultural factor, comprise of their legal consciousness (Ewick and Silbey, 1998).

The cultural dominance and maintenance of greater influence over others through a hegemonic process rooted in legal norms into our everyday habits, makes legal consciousness natural and unavoidable (Ibid). However, Mansbridge and Macedo share a similar idea with Hertogh that the concept refers to the ways in which people encounter, understand and act in relation to law (Hertogh, 2004; Mansbridge and Macedo, 2019, p. 336). Hertogh further shares Ehrlich's ideology of "living law" which gives a comprehensive and nuanced understanding of the daily lives of Europeans on how they encounter and understand laws (Hertogh, 2004). Thus, legal consciousness means more than just legal awareness or one's evaluation of knowledge or ignorance of the law (Mansbridge and Macedo, 2019, p. 336). This resonates well with my research topic given that the application of the NCS depends largely on Ghanaians perceptions, understanding and interaction with the law.

Scholars like Halliday have also argued that legal consciousness is more diverse and has evolved even though Silbey suggested in her 2005 study "After Legal Consciousness" where she proposed the study had shifted from its original cause of hegemonic power of law.

Halliday further argues that the theory has been versatile and proposes four approaches: critical, interpretive, comparative culture and law-in-Action Approaches (Halliday, 2019)

The Critical Approach explores individuals internalisation of legal norms; the Interpretive Approach focuses on personal understandings of the law. The study of legal culture across various cultural contexts, is the Comparative Cultural Approach and finally the Law-in Action examines how laws are enforced or interpreted by officials of legal institutions (Halliday, 2019). With the exception of the comparative cultural approach, the remaining three concepts are applied in the analysis of the research.

2.3 Comparing scholars on Legal Culture

It is also important to understand the concept legal culture from various scholars in application of law to the individual. Legal culture research sheds light on the circumstances behind any legal change, whether it is mandated or occurs naturally. In this section I will be reviewing the works of Friedman, Michaels, and Selby on their ideology on legal culture.

One of the scholars who has extensively written on legal culture is Lawrence Friedman, in his book "Legal Culture and Social Development" which he examines how legal culture manipulates and reflects a society's larger social and developmental tendencies. This entails being aware of the background of punishment, the public's level of confidence in the judicial system, and the general consensus that rehabilitation is preferable to reprisal (Friedman, 1969).

To him, attitudes, convictions, and customs of a society around its legal system, forms the legal culture of that community. People's views, application, and compliance with law is highly guided by their legal culture, thus, individuals tend to comply more with laws and engage in legal or formal law procedures where there is a high level of trust in the legal system and vice versa. He further highlights the importance of legal culture in understanding social change as it actively influence or restricts social growth (Friedman, 2021). Therefore, if legal reforms do not conform to the core of legal culture, it will be impossible to implement them especially when those laws are imposed externally.

Again, Friedman studies the relation between legal culture and how a society's values are shaped in the legal profession. He explains that the legal culture of a society defines how the public and legal professionals perceive laws and how it influences the behaviour of lawyers and judges towards the application of laws. He stresses how the legal system is instrumental in

shaping legal culture and advocates for reforms, changing the general perception of justice (Friedman, 2021).

Similarly, Michaels believes that though there is no single definition, it can also mean a society's values, principles and perceptions about the operations of its legal system.
According to Michaels, the legal culture of a society is an "extended understanding of law", also known as "the living law" (Eugen Ehrlich, 1922) or "law in action" (Roscoe Pound, 1959). To him laws are shaped by one's culture, likewise culture is also shaped by law (Michaels, 2021). Thus, the application of legal culture should be looked at, in the broader sense of a group and not just an individual. This way, a society's response to laws are greatly influenced by its deep rooted norms, beliefs and legal practices rather than just the substance of the laws. Hence, legal culture consist of peoples behaviour towards laws, their believe in legal institutions and the customs surrounding the application and interpretation of the law (Michaels, 2021). Micheals ideology is built on Friedman's opinions and though his work is mostly based on European thoughts, his ideology of what legal culture is, can be applicable anywhere.

Merry views the legal culture of a society from the anthropological view point in her work "what is legal culture; an Anthropological Perspective", she explores the relationship between law and cultural norms and practices. According to her, legal culture can never be seen as a uniform or static collection of customs or perspectives but as a socially and historically condition influenced by a variety of cultural reasons, such as adaptation, resistance and the impact of dominant powers (Merry, 2010).

She speaks about four dimensions of legal culture that should be wholistically looked at. The first dimension she spoke about was the "practice of legal institutions" and this refers to the "norms and practices of legal institutions", specifically the courts, and judicial offices. She reinforced Friedman's concept of internal legal culture as the application of laws in a society influenced by cultural norms and practices within legal organizations and the legal profession. The second dimension was on the public's approach towards the use of law. This is characterized by the level at which the public imagine how the legal system operate and perceives the law as appropriate to governance of the society. Again, Friedman refers to this view as external legal culture, she adds (Merry, 2010).

The third is what she termed as legal mobilisation which focuses on the drive for individuals or groups to term their issues as "legal" and bring them before the law or a quasi-

judiciary forum for assistance and redress (Ibid). I will not be focusing much on this as it is of less relevance to the study. The last dimension is legal consciousness where she explains how individuals experience the law, why people will resort to the use of laws and whether they have a good or bad experience (Ibid). One's experience with the law will determine their level of trust and a good experience with the law will give the individual a decent perception of the law as compared to one who did not receive the needed assistance.

She further elaborates that legal systems are frequently used as both instruments of power and tools for upholding order, which can at the same time cause disagreements especially when imported from one cultural context to another, what she calls "transplanted legal mechanisms" (Merry, 2010). These imported legal standards, most often than not fail to blend with local cultures, which eventually lead to resistance or adapting to local values. Reflecting on this, there is the lack of Ghanaian scholars on both legal culture and legal consciousness which makes the application in the Ghanaian context quite challenging.

2.4 Right-Based Approach (RBA) and Legal Frameworks

2.4.1 Introduction

In adopting a Right Based Approach (RBA), it is important to safeguard the rights of all by respecting and upholding the fundamental rights. This includes the incorporation of human rights ideas into law enforcement, prisons and rehabilitation of prisoners (ENNHRI, n.d.). States respect rights if they do not interfere with its enjoyment hence, member states need to safeguard its citizens from human rights violations and commit to ensuring that human rights are enjoyed without interferences (United Nations, 2024). RBA means adhering to the principles of the dignity of the person, rule of law, fair trial, non-discrimination and equality right to life, personal security and finally ensuring accountability by state agencies (GSDRC, 2015). Nonetheless, states need to put in measures to ensure promotion, protection, and enjoyment of basic rights for instance right to life, education, health, food and shelter (ISHR, 2024).

Thus, my RBA to this research is founded on Restorative Justice (RJ) which recognises the desires of victims, offenders and the community at large. A RJ approach is where victims and perpetrators alike through communication are allowed to participate in the healing of the harm caused and identify a beneficial way ahead (Restorative Justice Council, 2016). Contrary to punitive measures, Restorative Justice seeks to promote victims' improvement, the active

contribution of the community and social reintegration of the perpetrator (University of Wisconsin Law School, 2023). Aside curbing crime, members of the community also play a vital role in assisting both victims and offenders. The basis for RJ is placed on the human dignity, sympathy and respect (United Nations Sustainable Development Group, 2022).

2.4. 2 International Legal Framework

The UDHR firmly upholds the dignity of all as seen in its preamble and Article 1 which states that all "human beings are born free and equal in dignity and rights". Article 5 further prohibits torture or cruel, inhuman or degrading treatment or punishment which was expounded in the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment also known as the United Nations Convention Against Torture (UNCAT), 1984 and further repeated in Rule 43 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners-The Nelson Mandela Rules, (2015). (United Nations, 2016; UDHR, 1948; UNCAT, 1984)

The UNCAT strives to prohibit acts of torture and any other cruel, inhuman or humiliating punishments or treatment anywhere in the world (UNCAT, 1984). Thus, my focus here will be on the second part which prohibits cruel, inhuman or humiliating punishments or treatment. Specifically, Article 2, which encourages State Parties to ensure "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". Additionally, Article 16 encourages State Party to "prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture…" (UNCAT, 1984). Since Ghana is a signatory to this convention, the onus lies on the government to ensure that no individual experiences any form of cruel, inhuman or humiliating punishments or treatment in the country, be it physically or mentally. Given this, it is the sole responsibility of the government of Ghana to ensure availability of resources, working legal institutions and procedural conditions for its citizens especially in the prisons.

The Nelson Mandela Rules (2015) extensively enlists how convicted persons ought to be treated based on international human rights documents and guidelines. It emphasises among others the need to treat prisoners with respect and value their human dignity. It goes further to advocate for proper access to essential medical services for inmates equivalent to that of the general public (Rule number 24). The same rule continues to urge states to focus on rehabilitation and reintegration of offenders into society after their release by providing

education, employment and recreation both in and out of prisons. The state should therefore make adequate provisions to safeguarding prisoners and staff as well, from all kinds of violence. It further highlights the need for non-discrimination among prisoners on the basis of "race, colour, gender, language, religion, political opinion, national or social origin, property, birthplace, or any other status" and rather encourage equal treatment for all (United Nations, 2016).

2.4.3 African Charter on Human and Peoples Rights, 1981

The African Charter on Human and Peoples Rights also known as the "Banjul Charter" was adopted in 1980 by the African Union (AU) formerly known as the Organisation of African Unity (OAU), to ensure the advancement and defence of fundamental freedoms and human rights across the African continent.

This charter from Articles 1 to 26 outlines the duties of state parties in ensuring its mandate is upheld. Amongst other things, the former encourages legal protection and equality before the law. It emphasises on the need for state parties to ensure respect for the dignity of all. Article 7 promotes the right to be heard, as offenders, are entitled to have their cases heard in the law courts, which includes the ability to challenge infractions, self-defence, to be presumed innocent unless proven guilty and a speedy trial by an unbiased court. Article 24 further appeals to state parties to guarantee its citizens live in a satisfactory environment that is beneficial to their advancement. The right to acquire proper education, encourage a cultural community life by enhancing traditional values and morals is also guaranteed in Article 17 (African Union, 2019). All these rights extensively apply to prisoners even though certain rights may have been withheld according to law as such state parties, have an obligation to ensure a safe and conducive environment for the prisons as well.

2.4.4 1992 Constitution of Ghana

Ghana's Constitution 1992, has dedicated the whole of Chapter five (Articles 12 to 33) to the promotion and protection of basic rights of the Ghanaian. Taking precedent from both international and regional laws, the Ghanaian constitution is not limited to this, promotes the right to life, respect for dignity, privacy, freedom of movement, right to work and receive equal pay, and educational rights. However, it further prohibits slavery and forced labour, and discrimination of any kind. Here, emphasis will be placed on Article 15, which fosters the respect for human dignity. Article 15(1) (a) states that no person shall be subjected to "torture or any other cruel, inhuman or degrading treatment or punishment", whether he be "arrested,

restricted or detained". Article 15(1)(b) continues by disallowing "...any other condition that detracts or is likely to detract from his dignity and worth as a human being" (The Constitution of Ghana, 1992). This provision is further echoed in Section 2 of the Ghana Prisons Service Act, 1972 (NRCD 46). In a sharp contrast, Section 44 of the same Act encourages the use of corporal punishment of a maximum of fifteen strokes of canes (light canes) for a male prisoner who is found guilty of a rebellion or inciteful rebellion, or engaging in a crude violence to other inmates or prison officers (Ghana Legal, n.d.). The amount of energy applied in executing these canes was not quantified, as such officers who implement this law will use their discretion to decide what constitute light canning. This leaves a lot of questions on one's mind whether the rights of the prisoners are intended to be protected by these laws or abused.

2.4.5 Summary

Drawing from all these international and regional laws, mean protecting the rights of citizens by law and in the event of an offence, both victims and offenders should equally be protected as well. Thus, irrespective of the prisoner's status, their human rights should be universal; it applies to all human beings, inalienable; no one can give or take away from a person, indivisible; they are all equally important and interdependent; they complement each other (European Commission, 2021). Using human rights as the foundation in protecting the rights of prisoners helped in establishing how persisted imprisonment has violated the basic rights of prisoners.

2.5 Chapter Summary

Creating a right based education (RBA) while ensuring that these rights are protected and enforced by the legal system and implementing agencies (legal culture) will lead to an easy access to justice and the rule of law will be upheld increasing trust in the legal system (legal consciousness). These three approaches are very helpful to my research in getting real life answers to the research questions and meeting set objectives.

This leads to the next chapter with focus on Ghana's criminal system background and steps taken by various actors to see the implementation of the NCS.

CHAPTER THREE

GHANA'S CRIMINAL SYSTEM AND NON-CUSTODIAL SENTENCE EFFORTS.

3.1 Introduction

Chapter three gives an overview of Ghana's criminal justice system, its evolution which has the understanding on how laws transitioned from pre-colonial days to modern-day Ghana. The basis which gave rise to institute prisons from the traditional justice system reveals that since the introduction of the criminal justice there has not been a massive improvement to ensure human rights are protected. However, many actors from different backgrounds including NGOs, the media, current and past heads of states and government institutions have given the essentiality to introduce NCS.

3.2 Criminal Justice System- Ghana

The use of imprisonment as punishment which is part of criminal justice system and authorized by the international human rights law insists on complying with due procedure which is in conformity with law and prohibits the abuse of human rights (United Nations, 2024). In recent years, alternative sentencing is gradually gaining recognition in Africa as a viable form of punishment. Traditionally, during the colonial and post-colonial era, imprisonment was the predominant form of sentencing in Ghana, for instance, the Criminal Offenses Act, often prescribes imprisonment as a punishment, even for misdemeanours (Criminal Offenses Act, 1960, Act 26). However, there is a growing awareness and acceptance of alternative forms of sentencing that can offer a more appropriate and effective response to certain offences which will also improve a RBA.

Ghana's penal laws in the past were similar to the Justinian and Hammurabi codes, which inclined ruthless punishments such as exile, amputation and at worst, death (buried alive) (Aidoo, 2022). Conventionally, any offence committed was seen as against "the gods, the living, dead and generation yet unborn", as such, steps need to be taken to appease all these categories of person when one commits an offence (Appiahene-Gyamfi, 1995). These forms of punishments though very harsh did not encourage long term imprisonment where offenders would have languished in prisons under inhumane conditions. This emphasises the basic principles of Ghana's traditional justice system as more preventive and less restorative, (Boakye et.al., 2022: 202) echoing a legal culture which prohibited a RBA. Criminal offences are categorised into misdemeanours and felony based on the Criminal Offences Act, 1960, (Act

29). A misdemeanour is a type of criminal conduct that is less severe; for instance, fighting in public, petty theft, assault, trespassing, possession of drugs, prostitution and gambling. Penalties prescribed for misdemeanour violations include probation, modest fines, and brief prison sentences often lasting not more than three years (Brako and Asah-Asante, 2015: 104; Article 296, Act 30).

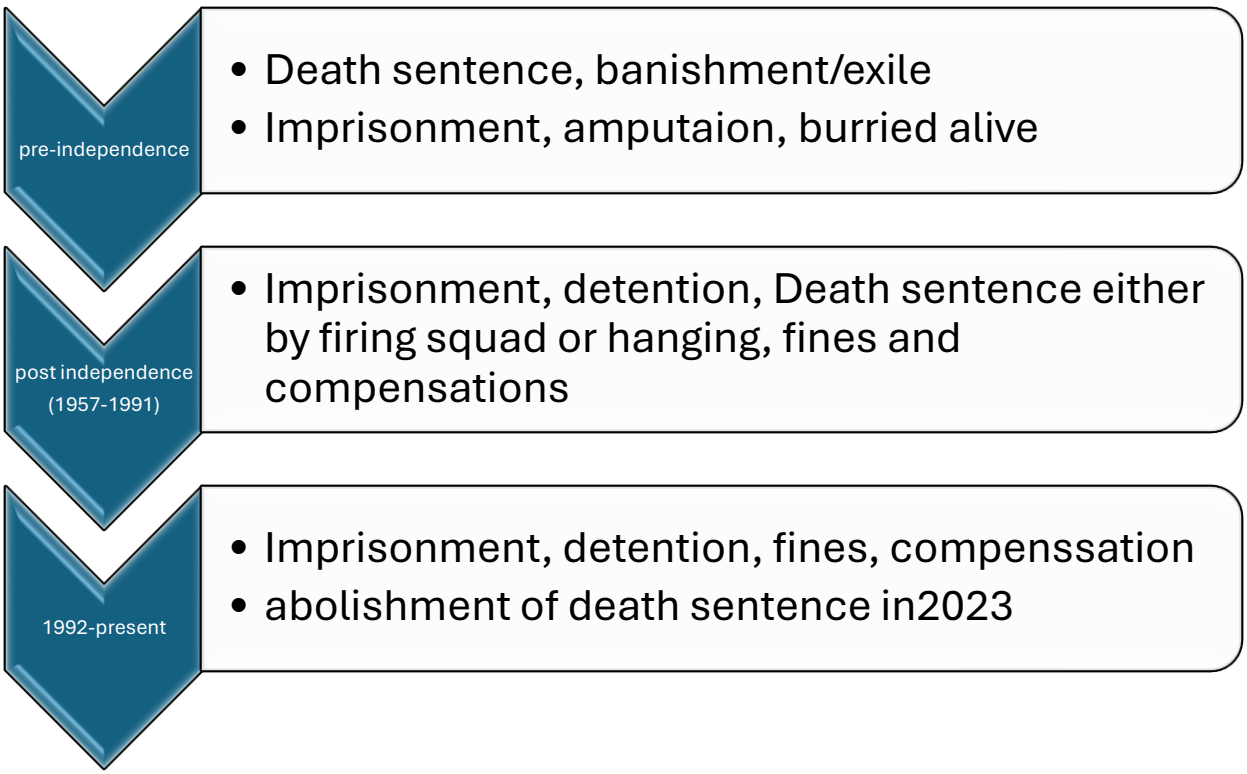
Conversely, a felony is the most serious crime that carries a sentence longer than a year jail term and depending on the gravity of offence, one could be sentenced for life; in very extreme circumstances, it may even carry the death penalty (Ibid). Death penalties were prescribed on high degree offences such as murder and treason and it could be through hanging or execution even though these punishments infringed on the rights of the offenders. Over the years, individuals convicted for murder were still sentenced to death though there had not been any executions since 1993 (Amnesty International, 2024). A private wrong, such as a contract breach against an individual or property, is referred to as a civil disputes and such proceedings have no criminal penalties, in contrast to criminal violations. Tenancy disputes, divorce, custody of children, debt, inheritance, bankruptcy, and breach of contract are some examples of civil cases (Brako and Asah-Asante, 2015: 104). This however depicts the legal culture of the Ghanaian laws indicating the legal norms and customs that categorise a civic or criminal offense and the accompanying sanctions for each. In the right direction, Ghana in August 2023, eventually abolished the death penalty system from its laws after decades of campaign for its abolishment (Parliamentarians of Global Action, 2024)

Consequently, the idea of punishments has changed drastically since 1990 after the United Nations adoption of the United Nations Standard Minimum Rules for Non-Custodial Measures also known as the "Tokyo Rule". The Tokyo Rule offers a set of fundamental guidelines to support the use of non-custodial penalties and procedures, giving minimal protection for those in need of alternative incarceration (OHCHR, 1990). Many countries have adopted the Tokyo Rule as a means of seeking justice for misdemeanour offenders, by introducing Community Service Orders in the form of cautions, loss of properties, compensation of victims, parole and probations however, Ghana is yet to implement a substantive law on this provision giving a RBA (Aidoo, 2022).

In Ghana, Judges exert a lot of authority when it comes to imposing sentences on offenders. Except for heinous offences which call for life imprisonment or death sentences, the

laws permit judges to institute a fine, jail term or both depending on the gravity of offence and should be in accordance with the law (Nyavor, 2022). Similar discretionary power could be given to judges in handling misdemeanour offences instead of the limited provisions in Act 30, 1960. (Nyevor, 2022). This goes to suggest how our lawmakers; here judges and parliamentarians can engage the laws for a change showing their legal consciousness of the functioning of these laws (Friedman, 2021)

Figure 2: Transformation of Ghana's legal system from pre- independence, post-independence and present.



Sources: Author's own illustration based on Criminal Offences and Procedure Act, 1960 (Act 30); Amnesty International 2024.

Though there has been changes over the various phases of Ghana's history, much needs to be improved to achieve a more right based friendly society while considering the legal culture and legal consciousness of the Ghanaian and lawmakers.

3.3. Efforts by stakeholders (State Agencies, the Media, NGO's and CSO's)

In recent years, talks of seeking alternatives for imprisonment have become rife with reports from CHRAJ's occasional State of Human Rights Monitoring which focuses on violations of human rights abuses on topical issues like education, health, prisons, witches camp, police cells, prayer camps, school feeding programmes etc. (CHRAJ, 2013). This monitoring has over the years highlighted the appalling state of Ghana's prisons and CHRAJ has since advocated for the need to overhaul the prison system by introducing a NCS law (Yire, 2023), while focusing on inmate's fundamental right which is an RBA.

Through the government's initiative, the "Justice for All Program" (JFAP), was introduced in 2007 under his leadership, Hon. Joe Ghartey, the then Attorney General and Minister of Justice. It was a collaborative effort with government and other stakeholders like Judicial Service of Ghana, Office of the Attorney-General, Ghana Police Service, CHRAJ and GPS with POS Foundation (an NGO) facilitating the project. The sole aim of this project was decongesting Ghana's prisons and providing access to justice for those on remand awaiting trial. Using the RBA which focused on the basic right of the prisoner, (not limiting it to right to food, shelter, health, clothing and the right to life) the project decongested the prisons by organizing in prison-courts to adjudicate on backlogged cases especially for those on remand (Modern Ghana, 2018; POS Foundation, 2023). A former Attorney General and Minister of Justice, Mr. Martin Amidu, also in 2011 while talking about the ministry's achievement spoke of his initiative on RJ alternatives which expected the new sentencing procedures to be introduced, while revising Ghana's prisons degrees. (Mensah, 2011).

Independent actors through research and not for profit organizations have created awareness of the bad state of the prisons with respect to its overcrowding nature and why the need for alternative forms of punishment. The media on the other hand has been creating awareness on the need to adapt alternative forms of punishment by publishing all kinds of articles, news and documentaries on issues pertaining to NCS, as the CSO's cannot push this agenda without the media projecting their message. Certain television programs like "A time with the Prisoner" on United Television and documentaries, like "Locked and Forgotten" (Joy News, 2015), and "Left to Rot" (Joy News, 2016) both by Seth Kwame Boateng, raised a lot of awareness about the poor conditions in Ghanaian prisons and the need for reforms and alternative forms of punishments (Crime Check Foundation 2022, Joy News, 2015 and 2016).

These documentaries from Seth Kwame Boateng, also exposed the dreadful conditions in the prisons across the country brought a lot of criticism on negligence from the state and public outcry for reforms and the need to improve the prisons across the nation. Following this, the GPS through the initiative of the incumbent president at the time (2015), H.E. John Dramani Mahama saw the commencement of the "Project Efiase" a ten-year strategic development plan project which was to solicit for funds for expanding existing prisons and building new ones (Project Efiase, n.d.) Similar programmes by Crime Check TV. Gh. can also be found on the organisation's social media handles educating the public through lived experiences to help curb crimes (Crime Check Foundation, 2022).

The situation was further highlighted when a Ghanaian celebrity popularly called Akuapem Polo known in private life as Rosemond Alade Brown, was sentenced to 90 days in prison, for taking nude pictures with her son and posted them on her social media handles to mark the birthday of her son. This sparked public discussions and calls for community sentencing and other alternatives that might better suit minor offenses (Ghana Web, 2021). This further heightens the legal consciousness of the Ghanaian on the application of laws in their daily lives.

3.4 The Presidency

Ghana's fourth Republic which was ushered in 1992 has over the years, observed some initiatives by predecessors and current governments in state affairs to see the implementation of non-custodial sentencing giving its varied effects. According to Addey, the Ghana Law Reform Commission in July 2006, under the then President John Agyekum Kuffour made some informed recommendations for the introduction of "community sentences, suspended sentences, conditional discharge, compensation orders and curfew orders" for non-serious offences. Further in 2011, under the late President, John Evans Atta Mills, the Constitutional Reform Committee was established to seek opinions of Ghanaians in reforming the 1992 constitution and the Committee further made recommendations for the decongestion of Ghana's prisons. (Addey, 2021). During ex-president John Dramani Mahama's tenure, there were initiatives to expand on the remand prisons to ease congestion; the Project Efiase, but these efforts are yet to see completion after he left office in 2016. (GNA, 2023). Dr. Mahamudu Bawumia, the current Vice President and flagbearer of the incumbent ruling party (National Patriotic Party -NPP), in 2017 pledged his support for the need to employ alternatives for

custodial sentences. (Addey, 2021). In June 2023, some CSO's (Crime Check Foundation, Amnesty International, POS Foundation and Legal Resource Centre) sought for assistance from former President John Dramani Mahama to add his backing to the promotion of the passage of the Non-Custodial Sentencing Bill into a law. (GNA, 2023).

3.5 Summary

Despite all these efforts by the varied parties, the NCS is yet to see the day light since the bill was proposed in 2018. Ghana is still yet to see the implementation of this change in its legal system and bring about RJ it seeks to achieve to ease congested prisons while promoting the rights of prisoners. What has become of these advocates, are they for nothing? One would ask.

This further leads to the next chapter, which looks at the methodology of the study in chapter four where I detail the process and methods for data collection and analysis.

CHAPTER FOUR

METHODOLOGY AND DESIGNS OF DATA GATHERING

4.1 Introduction

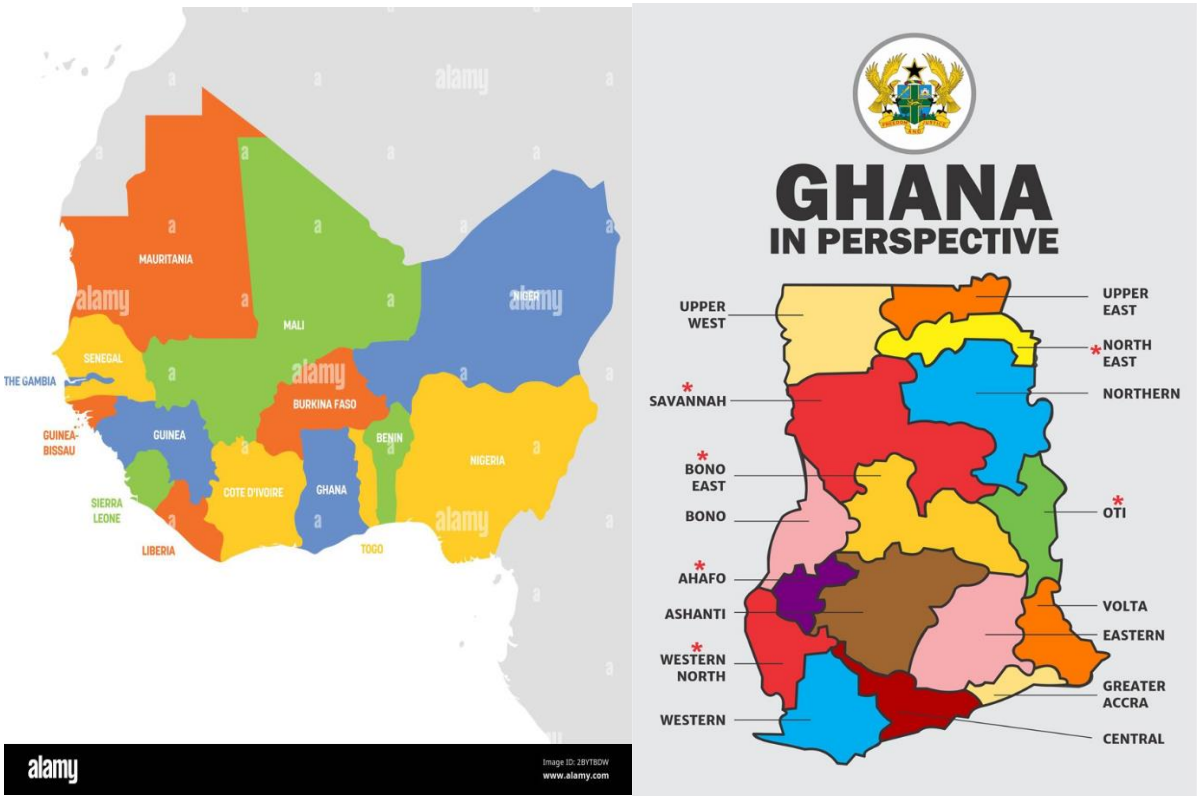
Chapter four takes a thorough look at the research methodology and designs of data gathering and analyses. Expounding on themes like the study design, targeted population, study area, methods of collecting data and analysis, the researcher's positionality, reflexivity, limitations and finally ethical considerations associated with the research.

4.2 Study Area

As a Ghanaian who has lived all my life in Ghana and having firsthand information on the country's socio-legal issues, it was easier to identify most problems associated with Ghana's prisons, hence, to target Ghana for this research. The target population for the research's study focused on the Republic of Ghana, a Sub-Saharan African state located in the West of the continent. Briefly, Ghana shares borders with Togo to the east, Burkina Faso to the North, Coat d'Ivoire to the west and to the south is the Gulf of Guinea (Atlantic Ocean) (Fage and Davies, 2019). It is usually referred to as the gateway to Africa as it was the first African country to have gained independence from colonial rule. According to the 2021 census conducted by Ghana Statistical Service (GSS), Ghana's population stood at 30,792,608 with 15,182,459 (49.3%) representing males and 15,610,149 (50.7%) being females (Ghana Statistical Service, 2021, p. 35). 13.7 million Ghanaians are considered adults aged between 25 and above according to a study conducted in 2023 by Sasu (Sasu, 2023).

Ghana's original ten regions were subdivided into sixteen to enhance effective administration through a referendum by the President, Nana Addo-Dankwa Akuffo-Addo in 2018 (Ministry of Foreign Affairs and Regional Integration, 2024). See Map 1 for illustration. As such it has six main ethnic groups which are subdivided into more than sixty sub-groups with about seventy-five languages spoken: Akan being the largest. It is rich in its varied culture and traditions from all these groups and this diversity brings a unique blend to the country (Boateng and Davies, 2019). This cultural blend is an advantage to delve into the legal culture and the legal consciousness of Ghanaians.

Map 1: Map of West Africa and Ghana



Sources: (Alamy Limited, 2024: Ministry of Foreign Affairs and Regional Integration, 2024)

4.3 Who are the Target Population

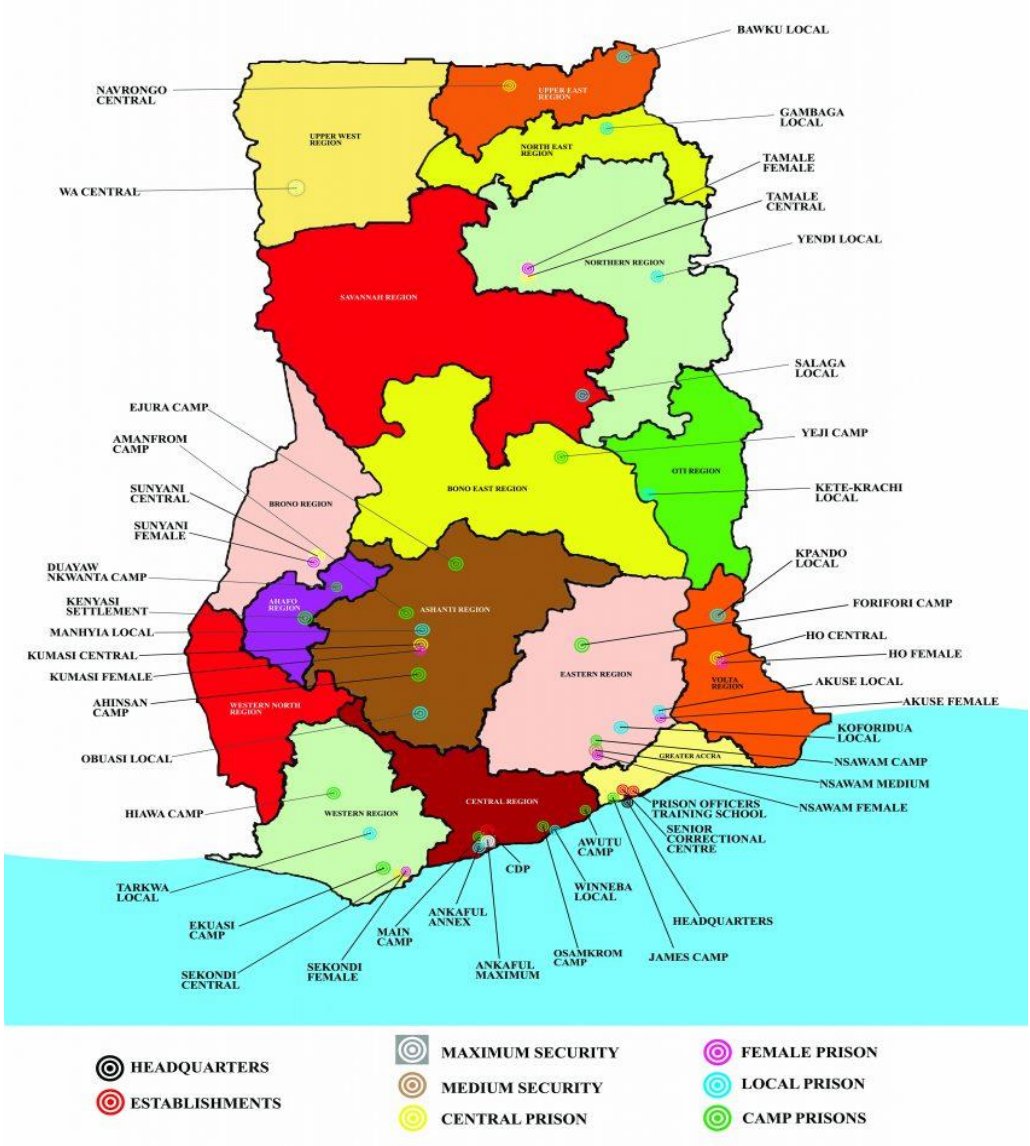
While Ghana's parliament can be commended for taking lead in implementing the Juvenile Justice Act, 2003, Act 653, same cannot be said about adult prisoners. This necessitated the need to focus on adult prisoners, as the target population for this research. Accordingly, the research focused on Ghana's justice system while accentuating on its adult prisoners and the fact that there are no alternatives to imprisonment.

The researcher's choice of adult prisoners stems from the horrendous situations at the adult prisons across the country as conditions in all the prisons are awful compared to the juvenile detention camps (Amnesty International, 2012). The situation of human right abuses because of poor conditions in the prisons coupled with overcrowding and its associated problems are less prevalent among the juvenile centres due to the low numbers of inmates

occupying it (Acheampong et al., 2022). This is not to say that these detention centres are not faced with challenges and should be overlooked.

See map 3 below of Ghana with the regional prison establishments.

Map 2: Map of Ghana showing the 47 prison establishments.



Source: Ghana Prisons Service, 2024

Table 2: Regional Distribution of Prison Establishments across the country

Region	*Number of prisons*	*No. of Male Prisons*	*No. of Female Prisons*
Greater	3		
Eastern	7	2	2
Western	5	2	1
Central	7	2	
Western North	0		
Oti	1		
Ashanti	7	1	1
Volta	3	1	1
Bono East	1		
Savana	1		
Brong	2	1	1
Upper East	2	1	
Upper West	1	1	
Northern	3	1	1
Northeast	1		
Ahafo	2		

Source: (Ghana Prisons Service, 2024)

Breakdowns

- Maximum Prisons Service -1
- Medium Security Prison -1
- Central Prisons -8
- Local Prisons -24
- Camp and Settlement Farms -10
- Prison Head Quarters -1
- Senior Correctional Centre -1
- Prison Officers Training School -1

  Note: out this, there are 7 female prisons

Under Construction

Remand Prison -1

Camp Prison -3

Source: (Ministry of Interior, 2024)

4.4 Study Design

The research design of any research is based on the methods and procedures of collecting data and analysing them (Ranganathan and Aggarwal, 2018). According to McCombes, a research design helps seek answers to your research questions and this must incorporate the research objectives, the approach; data gathering techniques and analysis which must align to the research objectives (McCombes, 2021).

This research relied on the explanatory and exploratory method through the review of academic writings, reports, journal and articles that sought to answer the research question of why Ghana has still not passed the NCSB though associated problems of the prisons are so evident. According to George and Merkus, the exploratory investigation triggers an incident especially when there is little research on the said topic as it helps improve knowledge while making predictions for improvement in the future. It is often referred to as a "cause and effect" approach unearthing issues that has not usually been studied especially existing tendencies (George and Merkus, 2021). Every literature used for this study was carefully chosen because of the direct relation it had with the study. Though not everything online is credible or authentic, that is not to say there are not equally good written materials online. Multiple sources of data were used and though not all could be verified as credible, I made sure I used data from credible institutions as much as possible. In some cases, I had to resort to what was readily available as getting data on certain topical issues about Ghana was barely available. Consequently, some academic literature and journals from some Ghanaian scholars like Appiahene-Gyamfi, Halm, Boakye, Kwasitsu, Parimah and Addey were frequently seen to have been referenced in other written works of different authors hence this made these scholars a more reliable source.

Further, data from credible international institutions like the UN, Amnesty International, UNHCR, TRT Africa and BBC were also used. Ghanaian websites such as Joynews, GhanaWeb, GT online, Ghana News Agency were used to buttress local news. Government institutions such as Ghana Statistical Service, Prison service, Ministry of interior, Ministry of Foreign Affairs, Ghana Parliament, Ghana legal service also served as a good source for gathering data for the work. This was again triangulated by getting more similar information source to help authenticate information gathered.

4.5. Data Collection and Analysis

The research relied solely on secondary data collection through reviews of online media reportage, international, regional and national laws aligned to the topic, academic literature,

journals, documentaries, literature (books), reports from government institutions, NGOs and international organisations. The use of secondary sources became the best choice after taking into consideration the limited time for the study as well as it being cost effective. As information used had already been gathered by the original writers, it is less expensive if the researcher had to go to field to gather data from scratch. However, same can serve as a disadvantage as the researcher has no control over available data. In some instances, certain biases may not be recorded, and this could be incorporated if there are no means of verifying them (University College London, 2022).

The research adopted the qualitative data method in analysing data for the research. Data for analysis was gathered with the view of answering the research questions as such, data gathered was grouped into themes in line with the research questions for easy access and analysis in order not to deviate from the main objective. These themes were guided by the research question while relying on the research theories, legal culture, legal consciousness and the RBA. Yet again, the themes were informed by building on the previous chapters, which focused on varied views in ensuring that the NCSB comes into existence irrespective of any challenges.

Since the research did not involve field work at any stage, data collected was reviewed through the desk review approach. International laws like the UNDHR, the Tokyo Rule, the Nelson Mandela Rule, CRC, and from Africa, the African Charter on Human and People's Rights were used in analysing data which give a comprehensive understanding of the universality of human rights. National laws like the 1992 Constitution, criminal offences Act 1960, (Act 29) and Criminal and other offences (Procedure) Act, 1960 (Act 30) all aided in building an in-depth understanding of the study. Findings were gathered from various sources and articles as stated above, to enrich the work.

4.6 Ethical Considerations and Limitations

The research went through a series of changes right from the choice of topic to the final work. The original idea intended to make a comparison analysis between Ghana which is yet to implement the NCS and Uganda which has implemented community service since 2003. Given the limited time at hand, this had to be later narrowed down to the current topic as the former needed more time and finance to be able to complete it. This affected the research questions and objectives, and all had to be narrowly skewed towards achieving a desired result to suit the current topic since it started from a broad spectrum.

The initial plan of get primary data from the field through interviews and focused group discussion, had to be changed as well due to the sensitive nature of some targeted respondents like the prisoners. Eventually, the researcher resorted to the use of secondary data alone for the study as time was of essence and there was also the need to consider limited financing given how expensive it is to fly back to Ghana to collect data. However, available data online also aided in twisting/shaping the research into getting the required findings.

The research faced some constraints during the work which some were predicted, and others were encountered during the study. As my first time using only secondary data for research, I found it really challenging as to what would qualify as a good and a bad source of data. Verification of the authenticity of the document was also challenging for me as not everything you see online is credible. As such, a lot of efforts were put into gathering data from varied sources for comparisons and verification purposes.

However, many difficulties were encountered in relation to getting the needed documents written on Ghana's legal framework as it is not so much embedded in our culture. Again, getting information online was not always readily available though most could be downloaded and accessed online, others had to be requested from the writers to gain access to the documents. There were a few instances where some journals, books and articles required the researcher purchasing them, hence such documents were abandoned in the end and other related ones were used. This caused a bit of delay in gathering data throughout the research. Data was limited online, especially information from Hansard concerning Ghana's Parliament on their initiatives towards the enactment of the NCSB into a law was completely unavailable. Available data was also challenged by outdated and incomplete information making it difficult to get the required data for the research. The use of secondary data constrained the work from divergent data and information as the non-inclusion of individual experiences and expectations of Ghanaians legal consciousness on the NCSB will have given the research a rich finding.

It is worth noting that the researcher had prior knowledge to the topic under research which is an advantage however, same can serve as a disadvantage when passion and emotions are allowed to take over the work. Unintended biases were expected to occur by skewing the research to suit the researchers desired results. This was avoided as much as possible by desisting from being pre-judgemental and biased in order not to tilt data to my favour.

For the research to gain acknowledgement, it is obligatory to consider ethical issues from inception of the topic to implementation of the work. (Sultana, 2007, p.375) as such this research would not be complete without taking ethics into consideration. Since the research was strictly based on secondary data, all sources of information were duly referenced to avoid plagiarism of any sort. In a few instances, the researcher used fictional names in the narrations as the real names of those individuals were not given in the original stories online.

4.7 My Positionality and Reflexivity

Born in Akwatia, a diamond mining community in the Eastern Region of Ghana, both of my parents were health workers and so I grew up in an environment among health practitioners. My childhood experience of growing up among health workers shaped my passion for nursing and this unique upbringing gave me a deep understanding and appreciation for the medical field, as well as a firsthand glimpse into the daily lives of healthcare professionals. After completing St. Rose's Senior High School, also in Akwatia, I applied for nursing at both Koforidua Nurses and Midwifery Training School and the University of Ghana. Though I gained admission to both, I received the university admission first and was unfortunately offered sociology instead, which I reluctantly pursued. After my first degree, I served a year as a Teaching Assistant in Development Studies at the Presbyterian University College but never really used the skills acquired. I appreciated the experience and enjoyed it but was not too intrigued by it to pursue the field of teaching any further.

Growing up, I had a strong resentment for convicted persons since sometimes, some were sent to the hospital for treatment and always felt everyone deserved to be kept in prisons away from everyone else. It was my strongest believe that people with rational behaviours were not capable of committing such heinous crimes. I held this opinion until 2008, when I joined Ghana's Commission on Human Rights and Administrative Justice (CHRAJ), in the Western Region, a quasi-judicial institution. As an Investigator, I had the opportunity to redress issues of violations of human rights through mediation and as such interacted with various vulnerable and less privileged individuals in the society who have been accused of one offence or the other.

It was through the practical and much experience gained on this job that gave me a new lens of viewing convicted prisoners. Personal contacts with prisoners and police detainees, during occasional State of Human Rights Monitoring exposed the weak nature of our judicial system and the injustice meted out to the less privileged. It was at this point I realised that, not

everyone languishing in prison deserves to be there. The vast population of prison inmates may have been incarcerated for wrong reasons, some have never had the opportunity for their cases to be heard, others because of abject poverty while the rich paid their way out. From personal encounters, some rich offenders easily pay their way out and blame some innocent poor person who has no one to defend them.

This heightened my interest and I started wondering why Ghana's prisons are so overpopulated and have conditions that amounted to violations of most of the basic rights of the prisoners like health, education, food and clothing. To add to this, the legal system had limited provisions on alternative punishments for persons who violated the laws aside from incarceration and fines. Thus, my interest in exploring Ghana's hold up on implementing the NCS.

CHAPTER FIVE: FINDINGS AND ANALYSIS

IMPRISONMENT VERSE HUMAN RIGHTS

5.1 Introduction

For a society to achieve order, there must be some regulations of behaviours, acceptable ones and unacceptable one. These behaviours cannot be left in vacuum as what is acceptable cannot be generalised, hence, the need to incorporate laws in society for coexistence and order. Laws generally shape and further helps protect the rights of individuals in society (Iqbal, 2023). Therefore, in order to maintain this societal order, persons who go contrary to these regulations be it norms, beliefs, traditions and customs or legislature face the consequences of their actions. At worst, such a person is alienated from society either by banishment, kept away from society (imprisonment) or killed to deter others from repeating or serve as an example to those who may have similar intentions (Appiahene-Gyamfi, 1995).

In as much as crime cannot be done away with, continually relying on imprisonment does not only affect the offender but his immediate family and sometimes the society at large. (Ofori-Dua et al., 2015). Putting the bread winner in prison means leaving the rest of the family hungry (United Nations Office on Drugs and Crime, 2023). The ensuing discussion in this chapter will look at how the overly use of imprisonment has violated some basic rights of inmates in Ghana.

5.2 Right Violation by Overcrowded Prisons and Long Detention Periods

In this section, I argue that the long detention periods and the overcrowded prisons violate the prisoners dignity, right to liberty, fair trial, and proper access to accommodation or housing as enshrined in the UDHR, the African Charter on Human and Peoples Right, 1981and the 1992 constitution of Ghana.

As stated in the first Article of the UDHR, “human beings are born free and equal in dignity and rights...” and this is further elaborated in Article 15 (2) (b) of the 1992 Constitution, which forbids the treatment of any person in a manner which undermines the “dignity and worth as a human being” whether he is “arrested, restricted or detained”. (UDHR 1984, Constitution of Ghana, 1992). Unfortunately, the current conditions in Ghana’s prisons do not conform to these standards. The over populated nature and lack of proper infrastructure in the prisons contravene Article 25 of the UDHR which promote the enjoyment of a living standard which includes food, clothing, housing, medical attention and other social services for themselves and their

families (UDHR, 1948). About fourteen thousand seven hundred and sixty (14,760) inmates in Ghana's prisons across the country, have to share facilities like bedding, health facility, skill learning, and recreation meant for ten thousand two hundred and sixty-five (10,265), one can imagine the unwholesome conditions in which these inmates live, within the walls of the prisons (TRT Afrika, 2023). The lack of major changes to the prison system, whether to laws, court sentencing procedures, or context-relevant research and evidence-based solutions, further exacerbates the issue. (Boakye et. al., 2022, p. 213).

Consequently, Article 3 of the UDHR, also ensures that "everyone has the right to life, liberty and security or person". Here, emphasis will be placed on the liberty of detainees where they are protected from arbitrary detention. Thus, pre-trial detainees are entitled to appear before a judge for trial or be released on bail within a reasonable period (Human Rights Education Project, 2024). In the same vein, Article 14 (4) of Ghana's constitution states that in the event of an arrest or detention, such a person should be tried within a reasonable time. It goes on to state that, in the absence of such trial, the detainee shall be released unconditionally or upon reasonable conditions to re-appear before court later (Constitution of Ghana, 1992). Difficulty in having access to legal aid lawyers adds to the long detention periods. This has denied a lot of detainees from getting bails from either police cells or their cases being heard in a law court. To add to this, there are no separate housing for remand and convicted prisoners (Awolugutu, 2024), as such their long stay in the prisons ultimately means inadequate beddings and clothing for inmates which violates their right to proper accommodation and housing (Amnesty International, 2021).

The sad reality is that, some individuals have been on remand in Ghana's prisons for as long as 9 years and more without their cases been heard (Awolugutu, 2024). Often times, police prosecutors hail themselves with excuses such as officers have been transfered to a new region, gone on annual leave, retirement/resignation or case docket cannot be found, as causes for such delays (GhanaWeb, 2024). This long stay on remand goes contrary to the provisions of Article 3 of UDHR and Article 14 of the 1992 Constitution which further deny them the right to a fair trial as also expounded in Article 7 of the African Charter on Human and Peoples Right, 1981.

5.3 Access to Right to Healthcare and Proper Sanitation in Prisons

On the issue of accessing the right to healthcare and a conducive hygienic environment, this section argues that, the conditions in the prisons prevents inmates from enjoying these basic rights. Drawing again on Article 25 of the UDHR which guarantees everyone to have "the right

to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social service...” (UDHR, 1948), as a state party, Ghana is required to ensure these provisions are made available for prisoners. However, the state has reneged on this responsibility as sanitation and access to proper health care across Ghana’s prison is not in the best state.

Similarly, Rule 24 of the Mandela Rule also promotes adequate medical care for inmates (Rule number 24, Mandela Rule, 2015). Section 35 of the Ghana Prisons Act, 1972 (NRCD 46) also encourage provision of wholesome, quality, nourishing food, clothing, soap, bedding and access to toilet and bathrooms. Ofori re-echoes this fact that inmates are required to have quality and sufficient food on a regular basis while in prison (Ofori, 2020 p. 107). In a sharp contrast, government’s allocated money of one Ghana Cedi, eighty pesewas (GH₵1.80p) equivalent to 0.11 USD, is woefully inadequate to provide adequate and healthy food required for inmates (TRT Afrika, 2023). The substandard food also lacks add-ons like fruits and vegetables, hence some inmates have had to rely on the benevolence of individuals and other organisations whiles others count on family and friends who rarely visit for support (Amnesty International, 2021; U.S Department of State, 2024).

Access to proper medical care is also not readily available. According to Ofori in his 2020 study titled “the inhumane treatment of people in jail centres: Rethinking the duty to protect the health and dignity of prisoners in Ghana”, pregnant women as well as nursing mothers do not get prenatal or anti-natal care and breastfeeding mothers are kept together with their babies in the same cells. In the same study, he exposes how the prisons lack adequate health care even though there persist a variation of diseases from simple diseases like malaria, skin diseases, to chronic ones like tuberculosis and HIV/Aids (Ofori, 2020).

In a similar article by GhanaWeb, as at 2019, there were only two medical doctors in charge of all the 46 prisons across the country with a few health professionals to assist in giving medical care to prisoners For access to mental health for prisoners, the least said the better. There is non in existence in any of Ghana’s prisons (GhanaWeb, 2019). Poor and inadequate sanitation conditions forces inmates to que for hours for their turns to access both toilets and bathrooms. Those who cannot handle these ordeals resort to the use of polythene to ease themselves and dispose them off later. For bathing, inmates hardly shower since constant flow of water is also a major problem in the prisons. According to Ofori, Ghana’s prions are infested

with mosquitoes and cockroaches highlighting the very unhygienic condition (Ofori, 2020 p. 107). This is a clear breach of Article 25 of the UDHR, the Mandela Rule 24 and Ghana's constitution.

5.4. Summary of Arguments

The incessant use of imprisonment as prescribed by Ghanaian legislature has created a cycle where human right are constantly violated. This cycle needs to be broken by amending the laws which will automatically uphold rights of prisoners, improve the prison conditions while reducing recidivism. According to Appiahene-Gyamfi, the use of imprisonment which aims at deterring future offenders and a form of restraint on society, has gravely failed in reducing recidivism in the country but rather, the reverse is true (Appiahene-Gyamfi, 1995, p. 23). This assertion was further elaborated by Handmaker in his study on the "legal and socioeconomic difficulties associated with the introduction of community service order in South Africa". He asserts that the excessive use of imprisonment does not protect society neither is the criminal deterred after going through such punishment (Handmaker, 1994, p.2). This is an indication for the need to move away from the use of imprisonment as the ultimate means of punishment.

CHAPTER SIX

IMPEDIMENTS TO IMPLEMENTING NON-CUSTODIAL SENTENCE IN GHANA

6.1 Introduction

This chapter discusses factors that have hindered Ghana over the years in implementing the NCS. Calls from both state agencies, CSOs and government's commitment to improving conditions of prisons in Ghana points to the fact that there is a need to institute alternatives for imprisonment, however, these calls have not materialised over the years. Consequently, the following factors have been found to be impeding Ghana's willingness to pass the NCSB into law.

6.2 Traditional and cultural beliefs.

The idea that every wrong should be punished is a common ideology in Ghana where parents and family members believe punishment is a core aspect of training children to be responsible adults. This is extended in our basic and second cycle schools, where punishments are associated with minor mistakes to grievous ones like lateness, not scoring good grades, disrespect to authorities etc. The forms of punishment ranges from caning, hitting, kneeling on uncomfortable objects, weeding, squatting and sometimes slapping (Unicef Ghana, 2018). This believe of associating punishing with every wrong doing, makes it very difficult for the Ghanaian to accept change easily (Twum-Danso Imoh, 2012). According to Danvers and Schley, some parents are of the view that once they gave birth to the children they have the right to do anything with them. This perception of justice has gone a long way to make some believe that, allowing the children go through such punishments make them well behaved as compared to children from other countries which have abolished child punishments. (Danvers and Schley, 2021). Hence, the preference of restorative approaches to punitive measures especially for victims of crimes and their families will not be easily accepted. In this section, I argued that, based on Ghanaian's beliefs in avenging every offence, it becomes difficult to accept change be it policy, law or new lifestyle.

This ideology has transcended to the larger community where members have an expectation to see perpetrators being punished severely for their crimes. Society tends to reject an individual the moment they are arrested for an offence, therefore, such an individual finds it difficult integrating into society after being incarcerated (Aaporekuu, 2022). This notion of

individuals incorporating punishment as a way of justice for social order aligns with Halliday's critical approach of legal consciousness where individuals internalise legal norms (Halliday, 2019), hence the preference of punishments over RJ by parents, educational institutions and the society at large . Consequently, the use of NCS is seen as a lenient tool for offenders to get away with their crimes for this reason, the preference for imprisonment.

Certainly, this is a clear misconstruction for most Ghanaians on how criminals should be treated especially in recent years where Ghanaian youths resorted to the practice of mob justice (Ghana Web, 2019). These individuals did not see the need to engage the law to seek justice but, the traditional idea of despising crime and the offender of crime, reveals the Ghanaian's legal culture which is so embedded in them. This form of resistance is in line with Friedman's ideology of legal culture as Ghanaians will perceive the NCS as an inadequate way of punishing offenders given their perspective of retributive justice. (Friedman, 1969)

In a recent study conducted by Parimah et al., on the "preferences of Ghanaian offenders, victims judiciary and community members on community service for misdemeanours in Accra", in 2017, it was established that victims of offences and community members had unfavourable attitudes towards community sentence as compared to offenders and judges. The reason being that, victims and the community at large held a perception that community service only favoured offenders and not victims. This study according to Parimah et.al. is in conformity with studies from Roberts, 2002, Roberts and Stalans, 2004 (Parimah et al., 2017).

Additionally, in 2020, Halm also conducted an academic research on the use of "non-custodial sentence as an alternative to imprisonment in Ghana". The study concluded that 57.1% of the total respondent of 407 were of the view that they would not accept persons who were sentenced to the community to engage in any reformative activity. This further shows the unwilling nature of society to integrate with persons who offend the law with its associated shame and discrimination, but will rather prefer to see them being punished sternly; through imprisoned (Halm, 2020). This form of mindset conforms to the "living law" where the Ghanaian wants to see a visible retaliatory punishment for offenders (Hertogh 2004; Michaels, 2021). This entrenched social norms makes it difficult for the acceptance and implementation of a new policy. This however serves as a guide to my next point which is the lack the proper knowledge and understanding on the non custodial sentencing law.

6.3 Lack of Knowledge

Conventionally, the Ghanaian, places less importance is given to the prisoners with comments like “I will rather feed vultures than support prisoners” (Siaw, 2021). This is the legal conciousness of most Ghanaians on how they understand prisons and as a typical behaviour, the Ghanaian will give credence to animals instead of their fellow human beings. In this section it is argued that since retributive justice is engrained in individuals and given priority in the Ghanaian culture, it shapes the country’s prevalent attitudes towards law and punishment. Hence, there is no interest in knowing about alternative punishments. This is revealed in a research conducted on the extensive knowledge on NCS in Ghana by Addey in 2021, which revealed that only 20% of Ghanaians had knowledge of such a law, indicating the need to educate Ghanaians on the bill (Addey, 2021). To add to this, since NCS is promoted by international human right organisations, its implementation will be considered as an imposition of a foreign policy that conflicts with the traditional practice of wrong and punishment. This resonates with Friedman, Michaels and Merry as they warn on the imposition of externally derived legal cultures. This will intensify the resistance in implementing the NCS (Friedman 1969, 2021; Michaels, 2011; Merry, 2010).

Additionally, the use of archaic legal words or language and terminologies in Ghanaian laws and court proceedings makes it difficult for the Ghanaian to comprehend basic laws governing the nation. Some of these words are of Latin and French descent, most of which are not familiar to the layperson. This language Bisilki referred to as “Legalese” where some other basic simple English words mean completely different in the legal profession (Bisilki, 2018). Further, since Ghana has adopted English as the official language, all newspapers are published in English and this prevents the vast majority who are unable to read, to get the needed knowledge to understand what they are being educated about. (Fosu, 2016). In Ghanaian rural communities, electricity and internet is not easily accessible, coupled with illiteracy rate and unavailable equipment’s, (Boateng, 2012; Adomako, Quansah and Mensah, 2022), accessing information and knowledge on issues of non-custodial sentencing is a problem. According to a press release by GSS in 2022, about 8 million Ghanaians are illiterate (Ghana Statistical Service, 2022).

This lack of public awareness on the benefits of NCS is not limited to just the illiterate citizens but some educated individuals also exhibit resistance to new policies. In recent times, government institutions and NGOs that educate the public on their basic rights and other civic

duties encounter resistance from communities, educational institution heads and some individuals who feel these advocacies are of foreign origins being imposed on Ghanaians and contribute to the youth straying from their traditional morals. Hence, the lack of knowledge by these educated individuals prevent the embrace of new ideologies or laws. Due to the illiteracy level and language barrier (use of English), most Ghanaians cannot decipher from right or wrong in the face of law. Like the saying goes, "ignorance of the law is no excuse" individuals only act on what they think is right without knowing what the laws actually entails. This further portrays the lack of legal consciousness of the Ghanaian on certain basic laws protecting their rights, reflecting on Halliday's interpretive approach of individuals understanding of the law (Halliday, 2019). This is why more education on the NCS will be a key factor since that will be more embedded in community practices. How can there be an effective education when state institutions mandated for this are poorly resourced?

6.4 Limited Resources to Execute Constitutional Mandate by Implementing Agencies

The 1992 Constitution has mandated CHRAJ to educate the public on basic human rights through lectures, publications and symposia (Section 218, (g) Constitution of Ghana, 1992) and this section is repeated in Section 7(g) of the Commission on Human Rights and Administrative Justice Act, 1993, (Act 456). Other national institutions like the National Commission on Civic Education (NCCE), Social Welfare Department equally have a mandate to educate the public. Institutions like the Police, Prisons, Judicial Service, Attorney General's Office, and Legal Aid Commission also work to protect citizens by ensuring there is peace, justice and order in society. However, all these institution are woefully resourced by the state be it infrastructure, staffing, logistics, salary and poor conditions of service (Dadzie, 2016, p. 57 and Nabila, 2022, p.3). To emphasis on this, Martin Amidu, former Attorney General, indicated that the ministry was faced with challenges such as delay and insufficient financial provision, insufficient staffing and the difficulty of being able to recruit legal practitioners to pursue cases at the Legal Aid Commission coupled with outmoded Legal Aid Scheme (Mensah, 2011). This lack of resources hinders the effectiveness of these institutions in executing their mandate of impacting knowledge or justice delivery to the ordinary Ghanaian who is less privileged in terms of formal education.

The main argument here is that, the lack of resources to effectively carry out constitutional mandates is also a factor impeding the implementation of NCS. For the Ghanaian to have a positive experience of the law and gain trust in the legal system, after gaining

knowledge on NCS and shifting from traditional norms, it is important that these implementing agencies are fully resourced to execute their constitutional mandate. Drawing on Friedman, a positive experience of the law, alienates any form of scepticism and encourage trust in the judicial system (Friedman, 2021). For the effective implementation of the NCS, the government should set aside money to institutions like social welfare department, GPS, Police Service, Judiciary, CHRAJ, NCCE, Legal Aid Commission, Attorney General's Department who will facilitate the execution of the NCS from the arrest of the offender till the sentence term is due. Kwasitsu, corroborates this assertion in his thesis, and acknowledges that Ghana's unwillingness to give priority to the required legal changes and to allocate the necessary funds to get them off the ground, is a significant barrier to the recommended reforms in the prison system. He further asserts that Providing alternative methods comes with an additional expense that the criminal justice budget does not appear to be able to handle, even though prison is obviously more expensive than these alternative sentences would be (Kwasitsu , 2019).

6.5 Complex Legislative Process.

Ghana's legislative process involves multiple steps and procedures which causes a lot of delays in converting a bill to a legislative instrument. Here I argue that the complexity of the process is another huge hindrance to the implementation of the NCS. As such this process should be re-examined to ease the stress associated with the passage of laws.

The legislative process in Ghana, as described in Article 106(1) of the 1992 Constitution, mandates presidential ratification for Parliament to exercise its legislative authority. Bills can be introduced by either a private Member of Parliament or a Minister of State, but they must include an explanatory memo detailing the policy, guiding principles, current legislative shortcomings, suggested remedies, and the rationale for the bill. Furthermore, the bill must be published in the Ghana Gazette at least fourteen days before its presentation to Parliament, making the Gazette a vital resource for accessing proposed laws in Ghana. To become law, a bill must pass through several stages. Initially, it undergoes a first reading and it is then sent to a parliamentary committee assigned for this purpose, which reviews feedback from interested parties and the public before reporting back to the entire house (Parliament). The house debates the committee's report on the bill, and its explanatory note, allowing for possible amendments. Following this, the bill goes through a second reading focused on committee findings and a third reading marked by a formal motion without further discussion (Article 106, 1992 Constitution of Ghana).

Once Parliament completes its deliberations, the bill is presented to the President, who has seven days to decide whether to support or reject it. If the President rejects the bill, they must provide the Speaker of Parliament with reasons and any suggested amendments within fourteen days. Alternatively, the President may refer the bill to the Council of State for further review and discussion, as required by Article 90 of the Ghana Constitution. Where the council of state decides to inculcate comments or modifications, the bill shall be communicated to the President within fifteen days (Article 90 (5) 1992 Constitution of Ghana). Parliament then reconsiders the legislation in light of the President's or Council of State's comments. A two-thirds majority vote in Parliament is required to override a presidential veto and enact the bill into law. Even by this, the bill has to be assented to, by the President within thirty days (Article 106, 1992 Constitution of Ghana). Interestingly despite all the show of support by the government, the NCSB which was drafted in 2018 is still locked up at the Attorney-Generals/Ministry of Justice office failing to proceed to parliament for further considerations (Yire, 2023). This echoes the "law in action" approach which Michaels and Harlliday illustrated which depicts how laws function against written laws (laws in books) (Michaels, 2021; Halliday, 2019). Looking at the process, it will take a lifetime to see the bill come to life as a law, since it is yet to be presented to parliament according to a report by Yire (2023), the draft bill by POS Foundation had been sent to the chief justice for assessment where it was later sent to the Attorney-Generals/Ministry of Justice and will finally be sent to the Interior Ministry to be sent to Parliament (Yire, 2023).

Therefore, the question still remains; why is the NCSB still rotting on the shelves of parliament? Is it because it was initiated by a CSO and not the government? If so what about the one presented by Francis Sosu, what has become of it? The push for alternative forms of imprisonment is crucial because building more prisons will not solve the problem if alternative measures are not implemented. However, it is important to note that these alternatives should come with stringent, deterrent punishments. Without this, efforts to decongest prisons might lead to higher crime rates and repeat offenses, as alternative punishments could be perceived as less severe (Shekarau et. al., 2022).

6.6 Political Unillingness and External Factors to Non-Custodial Sentence

It is my argument in this section that, the lack of implementing the NCS is also attributed to external factors considering Ghana's perception of justice. Factors such as the lack of political will by the state, heavy reliance on foreign aids and dependence on British common laws keep

delaying the implementation of the NCS. Therefore, conscious efforts need to be made to move away from these practices otherwise the desire to implement the NCS will continue to be a dream.

Ghana's over reliance on domesticating international laws has seen its ratification and signage of most international agreements relating to the promotion and protecting of human rights and justice. However, the actual application of such laws depends largely on the political will of the leaders by prioritising it and putting in a lot of resources to ensure its realisation. In as much as the international community advocate for alternatives for punitive sentences to ease congestions and uphold human rights, Ghana's prison's reality is contradictory and is yet to see the day light. This goes to prove that Ghana is still lagging in terms of applying the RBA in its prisons as it continues to uphold punitive measures instead of relying on RJ.

Past presidents in the fourth republic have shown little political will in implementing the NCSB as the best past presidents have offered, is making promises as already mentioned in chapter 3 to gain sympathy votes from Ghanaians. In 2017, President Nana Addo Dankwa Akufo-Addo promised to make Accra the cleanest city in Africa, (GTonline, 2024), it would have been a great achievement on his part to have gone through with the implementation of the NCSB and caused such persons to clean the cities of the country since the bill was introduced during his turner of office. Unfortunately, this promise has not achieved much even in 2024 just like many other promises made by previous governments (GTonline, 2024), Ultimately they are just promises to win votes and eventually forgotten when they gain power.

Due to the two main dominant political parties in Ghana, (National Democratic Convention- NDC and New Patriotic Party -NPP) most issues are politicised as each party tries to ply on the woes of the country at the time to their advantage (Atta Mills, 2018). Successive governments pride themselves as being successful than preceding ones when they are able implement a new policy. To them, these are "gifts" to the citizenry while it is their constitutional mandates. For instance the introduction of the Single Spine Salary Structure in January 2010, by the NDC which came to resolve all discrepancies in government sector employment where employees in the same job category received same salary (Atta Mills, 2018). Similarly, the NPP in 2017, introduced the free Senior High School education policy for second cycle students who did not have to pay any fees upon admission to school (Ministry of Education, 2020). Both

governments pride themselves with these policies and ride on them for votes, so why not the NCS? Applying

Again, Ghana's economic battles with debt, unemployment and high rate inflation coupled with over dependence on foreign aid like IMF and World Bank also serve as a huge setback in the implementing the NCS. These Bretton Woods Institutions also give preferences to projects they want to see implemented in beneficiary countries such as education, infrastructure, health, and the likes. For instance in 2015, while former President John Dramani Mahama was in power, he sought a $940m assistance from the IMF who put as a condition "17% petroleum tax is imposed, a freeze on hiring public sector workers and an end to costly energy subsidies". (BBC News, 2015). Without international support, it will be difficult to meet the country's desire to prioritize the NCS. Further, these conditionalities also put less preference on the implementation of the NCS by the government. Ghana needs to develop without this dependency as the President, Nana Addo Dankwa Akufo-Addo intimated for a "Ghana beyond Aid" to be realised (inter.reseaux, 2020).

Another external factor inhibiting Ghana's implementation is its deep root in the British Common Law and even though it gained independence in 1957, its current judicial system has a lot of similarities to the latter (Brako and Asah-Asante, 2015, 103). This colonial inheritance has entrenched the legal system towards a more punitive means rather than restorative. This is reflected in the way every offender ends up in prisons even for very petty offences like stealing, and the likes. The provisions in Section 297 which imposes fines is flawed by the fact that offenders eventually end up in prisons should they fail to comply. By this, they are expected to remain in prison until the time they are able to pay the fine. Section 297(4) further explains that such offenders have to serve this term in addition to any other prison term imposed on them and in a case of a felony, the maximum is three years while for other cases, a term not more than one year (Criminal and other offences Procedure) Act, 1960, (Act 30)). Ghana's struggle with colonial legacy and the inspiration of the British common law continuously cause a strife between the traditional way of punitive punishment and the acceptance of NCS which has a more human face to it. As indicated by Merry, the transplanted legal mechanism is a hinderance to NCS (Merry, 2010) as seen in Parimah et. al study on the public's preference of custodial sentence to NCS (Parimah et al 2017). Without proper amendment to Ghana's legal frameworks basing it on the RBA, many people will continue to be convicted for petty crimes increasing

the woes of our prisons. This over reliance on imprisonment has affected the fundamental human rights of the prisoners in diverse ways either physically, emotionally or mentally.

6.7 Summary of Arguments

Ghana's reluctance in implementing the NCSB is ascribed by multifaceted factors however, NCS, can provide a workable answer to the over populated jails and enhance rehabilitation efforts with the right investment in resources, public education, and legal professional training. Overcoming cultural barriers, and fast tracking the legal process by making it a priority and advancing the reform of Ghana's criminal justice system would require the backing of the government, civil society and government agencies. Eventually, a change to NCS will advance the human rights of prisoners when there is a limited number of inmates and an improved prison conditions.

CHAPTER SEVEN

SUMMARY OF FINDINGS AND RECOMMENDATION

7.1 Summary of Findings

In answering sub-question one of the research; "how has the delay in implementing the NCSB violated the human rights of offenders (external legal culture) and on what basis might this be reconsidered (right-based approach - RBA)"; The findings revealed that the delay in implementing the NCS continues to encourage the use of imprisonment which has violated the basic rights of the prisoners. These rights in no specific order include the right to dignity of the prisoner given the inhumane conditions they live under. Remand prisoners' right to liberty is also restrained when they are detained without trial for longer years. Again, prisoners have lost their right to proper food, bedding and accommodation due to overcrowding. The right to access health care and sanitation by the prisoners is also violated as the prisons do not have proper health facilities and medical professionals to attend to their health needs. All these violations contravene the UDHR 1948, Mandela Rule 2015, African Charter on Human and Peoples Right, 1981, and Chapter 5 of Ghana's constitution dedicated to human rights and the Ghana Prisons Act, 1972 (NRCD 46). In order to mitigate the situation, a RBA is ideal where the fundamental rights of prisoners is considered paramount in every dealings relating to them. To achieve this, Ghana can adopt the Tokyo rules and incorporate them into a law; Non-custodial Sentence Act.

The second question is "why has there been a limited willingness to legislate for NCS in Ghana (internal legal culture)"? Some findings include Ghana's reliance on foreign aids due to its economic instability coupled with political unwillingness. These donor institutions always have their preference of policies they want implemented and NCS is not one of them. To add to this, Ghana's political leadership has always prioritised winning votes over everything else thus, past governments are keen on implementing policies that are geared towards wining votes for the next elections. To compound this, Ghana's inherited colonial legacy and deep-roots in British common law has been a huge limitation to the implementation of NCS as making amendments to the constitution is not an easy task. Additionally, legislative process in passing a law is also complicated and can take years for a simple bill to be passed into a law, for instance, the Right to Information Act, 2019 was drafted in 1999 and took twenty years before it was eventually passed in 2019 (AfricaNews, 2019).

Finally, the research sought to answer the question; “how have Ghanaian laws and regulations shaped the use of custodial sentences (legal consciousness)”? The 1992 Constitution of Ghana is the supreme law governing the country and it is out of this, other laws are made. The Criminal Offences Act, 1960, Act 29 and Criminal Offense and Procedure Act, 1960, Act 30 respectively, outlines laws relating to criminal offences and the procedure for offence, mode of trial, arrest and its associated punishments. In both cases, all offenses are accompanied by punishments depending on the gravity of the offence and this is summarized in Section 294 of Act 30, which includes death, imprisonment, fines, detention, compensation and liability to police supervision. Consequently, inability to pay for a fine or compensation will in the end, send the offender to prison. This is how the laws have shaped the use of incarceration or custodial sentences in the Ghanaian society by over relying on its use given the fact that judges have also been given the power of discretion to impose punishments given the degree of the offence. For instance the punishment for robbery with an offensive weapon is not less than fifteen years imprisonment (Section 149 of Criminal Offences Act, 1960, Act 29). Hence the judge has the discretion to give less or equivalent to the fifteen years. Without proper amendments to these laws, many more people will end up in Ghana’s prisons.

From the aforementioned, it is without doubt that a community sentence law is very important for Ghana to attain the needed legal reformation it seeks, to improve the rights of prisoners, decongest the prisons and encourage reformative justice. However, the prevailing legal culture in Ghana strongly supports imprisonment as the main type of punishment. It is necessary to change these cultural attitudes and beliefs in order to acknowledge the validity and effectiveness of alternative sentencing so as to properly execute the Non-Custodial Sentence Bill.

7.2 Recommendations

In order to improve the criminal justice system, ease prison congestion and improve the rights of prisoners, it is recommended that alternative ways of punishing adult offenders while correcting their wrongs and reintegrating them into society be considered. This can be achieved when the government prioritises the passage of the NCSB into a law by extensively investing resources in the form of finance, and upgrading implementing agencies with equipment to be able to function effectively in its implementation.

Implementing NCS in Ghana for adult offenders, in the form of community service orders, probation orders, parole (supervision orders) drug testing and treatment orders,

compulsory unpaid work, fines and compensations, cleaning public spaces, working in community service and assisting in social service (Arthur, 2024, Addey 2021, POS Foundation, 2023; Ismail, 2024), can help reduce overcrowding in the prisons, improve health issues at the prisons, reduce human rights violations amongst inmates and officials as well as improve financial cost on the prisons and reduce recidivism especially for young individuals.

In as much as non-custodial sentence has been proven to be appropriate for the reformation of Ghana's prison system, it is also imperative to consider certain factors when implementing this law such as its accompanied challenges and likely setbacks if passed into laws. Consequently, ques could be taken from countries with long standing success of implementation of the NCS to avoid reoccurrence of similar errors. First time offenders and smaller groups among prisoners like pregnant women and nursing mothers, disabled, aged, sick and mentally sick persons should be prioritised when considering the passage of the law.

It is also recommended that implementing agencies should be given the needed education and training on NCS and its execution. Other stakeholders like the media, government agencies (Police, Judicial Service, CHRAJ, Legal Aid Commission, Attorney General's Department and GPS), parliament, and NGO's as well as the community should effectively collaborate effectively for the successful implementation of the NCSB when it is finally passed into law.

Similarly, extensive education on the bill should be made across the country to improve people's knowledge and acceptance of the NCS before and after passing into law. This will make its execution very easy as people will be willing to embrace the law and not see it as a foreign policy imposed on them.

Appendix 1

International Legal Framework

- The African Charter on Human and Peoples' Rights, (Banjul Charter) 1981
- Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) 2016
- The Kampala Declaration on Prison Conditions in Africa, 1996
- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1948
- Universal Declaration of Human Rights, 1948
- UN convention on the Right of the Child, 1989
- United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rule), 1990

Appendix 2

Legal Framework: Ghana

- The 1992 Constitution of Ghana
- Criminal Code of Ghana, 1960 (Act 29)
- Criminal Offenses and Procedure Act, 1960 (Act 30)
- Juvenile Justice Act, 2003 (Act 653)
- Children's Act, 1998 (Act 560)
- Ghana Prisons Service Act, 1972 (NRCD 46)
- The Commission on Human Rights and Administrative Justice (CHRAJ) Act, 1993, (Act 456)

REFERENCES

Aaporekuu, J. (2022). *Role of Correctional Services in the Rehabilitation and Reintegration of Offenders: Ghana in Perspective Role of Correctional Services in the Rehabilitation and Reintegration of Offenders: Ghana in Perspective*.

Acheampong, M., Odoom, D.A., Asare, S. and Aklasu, E. (2022). Properties of Juvenile Rehabilitation Centres in Ghana. *OALib*, 09(10), pp.1–17. doi:https://doi.org/10.4236/oalib.1109322.

Addey, M. (2021). *A CALL FOR THE IMPLEMENTATION OF NON CUSTODIAL SENTENCING LAW INTO OUR LEGAL SYSTEM*. [online] Available at: https://www.researchgate.net/publication/354063849_TITLE_A_CALL_FOR_THE_IMPLEMENTATION_OF_NON_CUSTODIAL_SENTENCING_LAW_INTO_OUR_LEGAL_SYSTEM.

Admin, A. (2024). *Statistics – Ghana Prisons Service*. [online] Ghana Prisons Service . Available at: https://ghanaprisons.gov.gh/about-us/statistics.cits.

Adomako, E.K., Quansah, C. and Mensah, R.O. (2022). Assessing the Challenges of Information, Communication and Technology Education in the Rural Communities of Ghana: A Case of Sekyere South District. *Mediterranean Journal of Social Sciences*, 13(4), p.49. doi:https://doi.org/10.36941/mjss-2022-0031

African Union (2019). *African Charter on Human and Peoples' Rights | African Union*. [online] Au.int. Available at: https://au.int/en/treaties/african-charter-human-and-peoples-rights.

AfricaNews (2019). *Ghana parliament passes Right To Information law after long delays*. [online] Africanews. Available at: https://www.africanews.com/2019/03/27/ghana-parliament-passes-right-to-information-law-after-long-delays/.

Agbagba, M. (2021). *The 21-year-old imprisoned because he was unable to pay ¢360 fine - MyJoyOnline*. [online] MyJoyOnline. Available at: https://www.myjoyonline.com/the-21-year-old-imprisoned-because-he-was-unable-to-pay-%c2%a2360-fine/ [Accessed 22 Jun. 2024].

Aidoo, M. (2022). *Bridging the Gap Between Laws and Implementation: A Case Study of*

Female Prisons in Ghana - ProQuest. [online] www.proquest.com. Available at: https://www.proquest.com/openview/cf7c472f9bbcf6c51921489c0581b02d/1?pq-origsite=gscholar&cbl=18750&diss=y [Accessed 30 Jul. 2023].

Alamy Limited (2024). *West Africa Region. Map of countries in western Africa. Vector illustration.* [online] Alamy.com. Available at: https://www.alamy.com/west-africa-region-map-of-countries-in-western-africa-vector-illustration-image361338933.html [Accessed 24 Oct. 2024].

Amnesty International (2021). *GHANA Human rights shortcomings in law and in practice Amnesty International Submission to the UN Universal Periodic Review, October - November 2012*. Amnesty International.

Amnesty International (2012). *Prisoners are bottom of the Pile' the humAn RIghts oF InmAtes In ghAnA*. [online] Available at: https://www.amnesty.org/en/wp-content/uploads/2021/06/afr280022012en.pdf [Accessed 10 Jun. 2024].

Appiahene-Gyamfi, J. (1995). Alternatives to imprisonment in Ghana : a focus on Ghana's criminal justice system. *Simon Fraser University*, [online] (0-612-06585-5). Available at: https://summit.sfu.ca/_flysystem/fedora/sfu_migrate/6650/b17416905.pdf [Accessed 19 Oct. 2024].

Arthur, A. (2024). *Xavier Sosu introduces bill to get petty crimes sentences replaced with community service*. [online] Citinewsroom - Comprehensive News in Ghana. Available at: https://citinewsroom.com/2024/01/xavier-sosu-introduces-bill-to-get-petty-crimes-sentences-replaced-with-community-service/#google_vignette [Accessed 22 Jun. 2024].

Asamoah, A. (2022). *Expedite Community Service Sentencing Bill – CSOs charge gov't*. [online] The Ghana Report. Available at: https://www.theghanareport.com/expedite-community-service-sentencing-bill-csos-charge-govt/#google_vignette [Accessed 27 Oct. 2024].

Atta Mills, C. (2018). *Politics, policy, and implementation: The 'Ghanaian Paradox'*. [online] Brookings. Available at: https://www.brookings.edu/articles/politics-policy-and-implementation-the-ghanaian-paradox/.

Awolugutu, A. (2024). *Decongesting Ghana's Prisons: Addressing The Alarming Issue Of Overcrowding*. [online] GhanaWeb. Available at: https://www.ghanaweb.com/GhanaHomePage/features/Decongesting-Ghana-s-Prisons-Addressing-The-Alarming-Issue-Of-Overcrowding-1955952.

BBC News (2015). Ghana secures $1bn IMF loan in bid to revive economy. *BBC News*. [online] 26 Feb. Available at: https://www.bbc.com/news/business-31652406

BBC News Pidgin (2021). Church wey donate Ejura prison to Ghana dey build three more. *BBC News Pidgin*. [online] 16 May. Available at: https://www.bbc.com/pidgin/world-57126096.

Bisilki, I. (2018). *The Use of Legal English (Legalese) in Ghanaian Law Courts*. [online] *Research Gate* . Research Gate . Available at: https://www.researchgate.net/publication/328199295_The_Use_of_Legal_English_Legalese_in_Ghanaian_Law_Courts [Accessed 18 Aug. 2024].

Boakye, K.E., Akoensi, T.D. and Baffour, F.D. (2022). Rehabilitation in Ghana: Assessing Prison Conditions and Effectiveness of Interventions for Incarcerated Adults. pp.201–218. doi:https://doi.org/10.1007/978-3-031-14375-5_12.

Boateng, M. (2012). *THE ROLE OF INFORMATION AND COMMUNICATION TECHNOLOGIES IN GHANA'S RURAL DEVELOPMENT*. [online] *Research Gate* . Available at: https://www.researchgate.net/publication/280049030_THE_ROLE_OF_INFORMATION_AND_COMMUNICATION_TECHNOLOGIES_IN_GHANA'S_RURAL_DEVELOPMENT [Accessed 19 Aug. 2024].

Boateng, E.A. and Davies, O. (2019). Ghana - Soils. In: *Encyclopædia Britannica*. [online] Available at: https://www.britannica.com/place/Ghana/Soils.

Bosomprah, E. (2023). *Juvenile offenders in Ghana aren't prepared for rejoining society - how the system is failing them*. [online] The Conversation. Available at: https://theconversation.com/juvenile-offenders-in-ghana-arent-prepared-for-rejoining-society-how-the-system-is-failing-them-203253.

Brako, I. and Asah-Asante, K. (2015). *Understanding Political Institutions*.

CHRAJ (2013). *2013 STATE OF THE HUMAN RIGHTS REPORT ACKNOWLEDGEMENT*. [online] Available at: https://chraj.gov.gh/wp-content/uploads/2018/08/2013-SOHR-REPORT.pdf [Accessed 14 Jul. 2024].

CHRAJ (2018). *ACTS OF GHANA FOURTH REPUBLIC COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE ACT, 1993 (ACT 456) ARRANGEMENT OF SECTIONS Section PART I-ESTABLISHMENT OF COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE*. [online] Available at: https://chraj.gov.gh/wp-content/uploads/2018/09/ACT-456.pdf [Accessed 27 Aug. 2024].

City News Room (2022). *Church of Pentecost builds Prison Reformation Centre at Nsawam*. [online] Citinewsroom - Comprehensive News in Ghana. Available at: https://citinewsroom.com/2022/10/church-of-pentecost-builds-prison-reformation-centre-at-nsawam/ [Accessed 25 Jun. 2024].

Crime Check Foundation (2022). *Crime Check Foundation – Crime Check Foundation to be the foremost crime prevention advocacy and philanthropic organization in Africa with the sole aim of serving humanity without discrimination.* [online] https://crimecheckfoundation.org/en/. Available at: https://crimecheckfoundation.org/en/.

Dadzie, C. (2016). *THE ROLE OF THE COMMISSION OF HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE IN THE PROMOTION OF GOOD GOVERNANCE IN GHANA*. [online] Available at: https://ir.ucc.edu.gh/xmlui/bitstream/handle/123456789/3099/CHRIS%20DADZIE.pdf?sequence=1&isAllowed=y [Accessed 10 Sep. 2024].

Danvers, K. and Schley, D. (2021). *BETTER DISCIPLINE FOR GHANA'S CHILDREN A Comparative Thematic Analysis of Attitudes to and Experience of Corporal Punishment in Ghana to Inform Advocacy on Ending Violence Against Children*. [online] Available at: https://challengingheights.org/site/img/2021-09-03-120741Better-Discipline-for-Ghanas-Children.pdf [Accessed 18 Jul. 2024].

ENNHRI (n.d.). *Human Rights-Based Approach*. [online] ENNHRI. Available at: https://ennhri.org/about-nhris/human-rights-based-approach/#:~:text=Principles.

Ewick, P. and Silbey, S.S. (1998). *The Common Place of Law: Stories from Everyday Life*. [online] *University of Chicago Press*. Chicago, IL: University of Chicago Press. Available at: https://press.uchicago.edu/ucp/books/book/chicago/C/bo3615912.html.

European Commission (2021). *The Human Rights Based Approach (HRBA) - EXACT External Wiki - EN - EC Public Wiki*. [online] wikis.ec.europa.eu. Available at: https://wikis.ec.europa.eu/pages/viewpage.action?pageId=50108948

Fage, J.D. and Davies, O. (2019). Ghana | Culture, History, & People. In: *Encyclopædia Britannica*. [online] Available at: https://www.britannica.com/place/Ghana.

Fosu, M. (2016). A Linguistic Description of the Language of Ghanaian Newspapers: Implications for the Readability, Comprehensibility and Information Function of the Ghanaian Press. *Ghana Journal of Linguistics*, 5(1), p.1. doi:https://doi.org/10.4314/gjl.v5i1.62.

Friedman, Lawrence M. (1969) 'Legal Culture and Social Development', Law and Society Review 4(1): 29-44.

Friedman, L.M. (2021). *Legal Culture And The Legal Profession*. Routledge.

George, T. and Merkus, J. (2021). *A guide to explanatory research*. [online] Scribbr. Available at: https://www.scribbr.com/methodology/explanatory-research/.

Ghana (1992). *Constitution of the Republic of Ghana.* Accra: Tema Press Of Ghana Publishing Corporation.

Ghana (1998). *Ghana: Act No. 560 of 1998, Children's Act*. [online] Refworld. Available at: https://www.refworld.org/legal/legislation/natlegbod/1998/en/20922 [Accessed 20 Mar. 2024].

Ghana Legal (n.d.). *Prisons Service Act - GhanaLegal - Legal Portal for Ghana*. [online] ghanalegal.com. Available at: https://ghanalegal.com/laws_subdomain/acts/id/385/prisons-service-act/ [Accessed 8 Jul. 2024].

Ghana Prisons Service (2024). *Locations of Prisons in Ghana* . [online] https://ghanaprisons.gov.gh/projects/location-of-prisons-in-ghana.cits. Available at: https://ghanaprisons.gov.gh/projects/location-of-prisons-in-ghana.cits.

Ghana Statistical Service, 2021 P.A.H.C.-G.S.S. importance of (2021). *2021 Population and Housing Census*. [online] census2021.statsghana.gov.gh. Available at: https://census2021.statsghana.gov.gh/presspage.php?readmorenews=MTQ1MTUyODEyMC43MDc1&Press-Release-on-Provisional-Results.

Ghana Statistical Service (2022). *About 8 million persons in Ghana are illiterate*. [online] Ghana Statistical Service. Available at: https://www.statsghana.gov.gh/gssmain/fileUpload/pressrelease/World%20Literacy%20Day%20Press%20Release%20from%20GSS.pdf.

GhanaWeb (2019). *Two medical doctors cater for over 15,000 prison inmates*. [online] GhanaWeb. Available at: https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Two-medical-doctors-cater-for-over-15-000-prison-inmates-798217 [Accessed 1 Nov. 2024].

Ghana Web (2019). *Life after Major Mahama: 20 reported cases of 'mob justice' in 2019*. [online] GhanaWeb. Available at: https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Life-after-Major-Mahama-20-reported-cases-of-mob-justice-in-2019-780825#google_vignette [Accessed 16 Sep. 2024].

Ghana Web (2021). *Social media reacts to Akuapem Poloo's 90-day jail term*. [online] GhanaWeb. Available at:https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Social-media-reacts-to-Akuapem-Poloo-s-90-day-jail-term-1234516.

GNA (2023). *CSOs hold talks with Former President Mahama on prison conditions improvement | News Ghana*. [online] https://newsghana.com.gh/. Available at: https://newsghana.com.gh/csos-hold-talks-with-former-president-mahama-on-prison-conditions-improvement/ [Accessed 18 Jul. 2024].

GSDRC (2015). *Rights-based approaches - GSDRC*. [online] GSDRC. Available at: https://gsdrc.org/topic-guides/human-rights/rights-based-approaches/.

GTonline (2024). *ACCRA BECOMING THE CLEANEST CITY; FACING THE STARK*

REALITY OR INDISTINCT MIRAGE. [online] Ghanaian Times. Available at: https://ghanaiantimes.com.gh/accra-becoming-the-cleanest-city-facing-the-stark-reality-or-indistinct-mirage/ [Accessed 14 Sep. 2024].

Halliday, S. (2019). After Hegemony: The Varieties of Legal Consciousness Research. *Social & Legal Studies*, 28(6), pp.859–878. doi:https://doi.org/10.1177/0964663919869739.

Halm , E. (2020). *Non-Custodial Sentence as an Alternative to Imprisonment in Ghana*. [Academic] pp.1–142. Available at: https://ir.ucc.edu.gh/xmlui/bitstream/handle/123456789/6875/HALM%2C%202020.pdf?sequence=1&isAllowed=y.

Handmaker, J. (1994). *LEGAL AND SOCIOECONOMIC DIFFICULTIES ASSOCIATED WITH THE INTRODUCTION OF COMMUNITY SERVICE ORDERS IN SOUTHERN AFRICA (With special reference to Transkei)*. [online] Available at: https://repub.eur.nl/pub/20900/Handmaker_LLMthesis-edited%202.pdf [Accessed 20 Oct. 2024].

Hertogh, M. (2004). A 'European' Conception of Legal Consciousness: Rediscovering Eugen Ehrlich. *Journal of Law and Society*, 31(4), pp.457–481. doi:https://doi.org/10.1111/j.1467-6478.2004.00299.x.

Hosser, D., Windzio, M. and Greve, W. (2007). Guilt and Shame as Predictors of Recidivism. *Criminal Justice and Behavior*, [online] 35(1), pp.138–152. doi:https://doi.org/10.1177/0093854807309224.

Human Rights Education Project (2024). *The Right to Liberty*. [online] Icelandic Human Rights Centre. Available at: https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-liberty.

Inter-reseaux (2020). *Outlook for Ghana Beyond Aid*. [online] Inter-réseaux. Available at: https://www.inter-reseaux.org/publication/n78-ghana-an-agricultural-exception-in-west-africa/outlook-for-ghana-beyond-aid/.

Ismail, N. (2024). *Why overcrowded prisons are more dangerous than releasing prisoners early*. [online] The Conversation. Available at: https://theconversation.com/why-

overcrowded-prisons-are-more-dangerous-than-releasing-prisoners-early-234589 [Accessed 15 Sep. 2024].

Iqbal, S. (2023). *Why Law Is Important: Understanding the Pillar of Societal Order*. [online] Medium. Available at: https://medium.com/@si5716490/why-law-is-important-understanding-the-pillar-of-societal-order-8527d79f2a3f.

ISHR (2024). *Who Protects Human Rights?* [online] ISHR. Available at: https://ishr.ch/about-human-rights/who-protects-human-rights/.

JoyNews (2016). *Left to rot - Hotline Documentary (27-6-16)*. [online] YouTube. Available at: https://www.youtube.com/watch?v=9_V11EiwlMY [Accessed 7 Jul. 2024].

JoyNews (2016b). *Locked and Forgotten*. [online] YouTube. Available at: https://www.youtube.com/watch?v=eyFvSXC2x8I.

Kwasitsu, N. (2019). *Sentencing Persons Convicted Of Minor Offences In Ghana: Reducing Judicial Over-Reliance On Imprisonment*.

Mansbridge, J. and Macedo, S. (2019). Annual Review of Law and Social Science Populism and Democratic Theory. *Annual Review of Law and Social Science*. [online] doi:https://doi.org/10.1146/annurev-lawsocsci-101518-.

McCombes, S. (2021). *How to create a research design*. [online] Scribbr. Available at: https://www.scribbr.com/methodology/research-design/.

Mensah, M. (2011). *Law Reform Commission Makes Major Recommendations - For New Laws, Amendments To Existing Ones*. [online] Modern Ghana. Available at: https://www.modernghana.com/news/348159/law-reform-commission-makes-major-recommendations-for-new.html#google_vignette.

Mensah, R.O. and Gyamfua Akuoko, S. (2023). Triggers to repeated criminal behaviour in Ghana: An analysis of the Nsawam prison through a case study approach. *Cogent Arts & Humanities*, 10(2). doi:https://doi.org/10.1080/23311983.2023.2268394.

Merry, S.E., 2010. What is legal culture-an anthropological perspective. *J. Comp. L.*, *5*, p.40.

Michaels, R. (2011). *Legal Culture*. [online] Research Gate . Available at: https://www.researchgate.net/publication/294445084_Legal_Culture [Accessed 16 Oct. 2024].

Ministry of Education (2020). *Free SHS Policy - Ministry of Education Ghana*. [online] https://moe.gov.gh/index.php/free-shs-policy/. Available at: https://moe.gov.gh/index.php/free-shs-policy/.

Ministry of Foreign Affairs and Regional Integration (2024). *Regions – Ministry Of Foreign Affairs and Regional Integration*. [online] Ministry of Foreign Affairs and Regional Integration. Available at: https://mfa.gov.gh/index.php/about-ghana/regions/.

Ministry of Interior (n.d.). *ACTS OF GHANA FIRST REPUBLIC CRIMINAL PROCEDURE CODE, 1960 (ACT 30) ARRANGEMENT OF SECTIONS Section PART I-GENERAL PROVISIONS Procedure 1. Procedure for offences*. [online] Available at: https://www.mint.gov.gh/wp-content/uploads/2017/06/Criminal_Procedure_Code_1960-1.pdf.

Ministry of Interior (2024). *MEDIUM TERM EXPENDITURE FRAMEWORK (MTEF) FOR MINISTRY OF THE INTERIOR PROGRAMME BASED BUDGET ESTIMATES FOR 2024*. [online] Available at: https://mofep.gov.gh/sites/default/files/pbb-estimates/2024/2024-PBB-MoI_.pdf [Accessed 11 Oct. 2024].

Modern Ghana (2018). *The Success Story of the 'Justice for All' programme*. [online] Modern Ghana. Available at: https://www.modernghana.com/news/894999/the-success-story-of-the-justice-for-all-programme.html.

Nabila, D. (2022). *Policy Brief Access to Justice and Legal Aid in Ghana; Exploring the Role of Legal Aid Commission*. [online] Available at: https://lrcghana.org/storage/2022/09/LRC_Policy-Brief_Access-to-Justice-and-Legal-Aid-in-Ghana-Exploring-the-Role....pdf [Accessed 10 Sep. 2024].

Nyavor, G. (2022). *No more jail for petty crimes: People who commit minor offences to clean streets*. [online] Yen.com.gh - Ghana news. Available at: https://yen.com.gh/ghana/210047-non-custodial-sentencing-ghanas-bold-move-towards-community-service-for-minor-offences-explained/ [Accessed 7 Jul. 2024].

Ofori, F.N.K. (2020). The Inhumane Treatment of People in Jail Centers: Rethinking the Duty to Protect the Health and Dignity of Prisoners in Ghana. *Journal of Law, Policy and Globalization*, 94(2224-3259). doi:https://doi.org/10.7176/jlpg/94-21.

Ofori-Dua, K., Akuoko, K.O. and Kanwetuu, V. de P. (2015). Unanticipated Consequences of Imprisonment on Families of Prison Inmates of Kumasi Central Prison of Ghana. *International Journal of Social Science Studies*, 3(3). oi:https://doi.org/10.11114/ijsss.v3i3.786.

OHCHR (1990). *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*. [online] Available at: https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf.

Parimah, F., Osafo, J., Nyarko, K. and Anakwah, N. (2017). Community service for misdemeanours in Accra: Preferences of offenders, victims, judiciary, and community members. *Journal of Psychology in Africa*, 27(5), pp.455–457. doi:https://doi.org/10.1080/14330237.2017.1375205.

Parliamentarians of Global Action (2024). *Ghana and the Death Penalty*. [online] Parliamentarians for Global Action - Mobilizing Legislators as Champions for Human Rights, Democracy and a Sustainable World. Available at: https://www.pgaction.org/ilhr/adp/gha.html.

Penal Reform International (1996). *Kampala Declaration on Prison Conditions in Africa*. [online] Penal Reform International. Available at: https://www.penalreform.org/resource/kampala-declaration-prison-conditions-africa/.

POS Foundation (2023). *Non- Custodial Sentencing Policy*. [online] POS Foundation. Available at: https://posfoundation.org/law-and-policy-reforms/non-custodial-sentencing-policy/.

Project Efiase (n.d.). *PROJECT EFIASE*. [online] PROJECT EFIASE. Available at: https://efiaseproject.wordpress.com/.

Ranganathan, P. and Aggarwal, R. (2018). Study designs: Part 1 - an Overview and Classification. *Perspectives in Clinical Research*, [online] 9(4), pp.184–186.

doi:https://doi.org/10.4103%2Fpicr.PICR_124_18.

Restorative Justice Council (2016). *What is restorative justice? | Restorative Justice Council*. [online] Restorativejustice.org.uk. Available at: https://restorativejustice.org.uk/what-restorative-justice.

Sasu, D.D. (2023). *Ghana: population aged 25-64 years 2010-2023 | Statista*. [online] Statista. Available at: https://www.statista.com/statistics/1184131/population-aged-25-to-64-years-in-ghana/#:~:text=Dec%2015%2C%202023%20Ghanaians%20aged%2025-64%20years%20reached [Accessed 7 Aug. 2024].

Scottish Executive Social Research (2007). *NRS Web Continuity Service*. [online] webarchive.nrscotland.gov.uk. Available at: https://webarchive.nrscotland.gov.uk/3000/https://www.gov.scot/resource/doc/203436/0054193.pdf [Accessed 19 May 2024].

Shekarau, R., Vianney, A. and Tucker, B. (2022). The Evolution of the Prison System in Ghana, 1841-2007. *The Journal of Zaria Historical Research (ZAHIR)*, 6(1).

Siaw, R. (2021). *Prison Outreach & Anti-Recidivism Program*. [online] Voiicecommunity.org. Available at: https://voiicecommunity.org/prison-outreach-anti-recidivism-program/ [Accessed 8 Aug. 2024].

Siaw, E.K. (2022). *Man sentenced to 15-years imprisonment for stealing mobile phone - MyJoyOnline*. [online] www.myjoyonline.com. Available at: https://www.myjoyonline.com/man-sentenced-to-15-years-imprisonment-for-stealing-mobile-phone/ [Accessed 22 Jun. 2024].

TRT Afrika (2023). *Ghana to increase inmates' feeding funds - TRT Afrika*. [online] Ghana to increase inmates' feeding funds. Available at: https://trtafrika.com/africa/ghana-to-increase-inmates-feeding-funds-13951179 [Accessed 23 Jun. 2024].

Twum-Danso Imoh, A. (2012). 'This Is How We Do It Here': The Persistence of the Physical Punishment of Children in Ghana in the Face of Globalizing Ideals. *Palgrave Macmillan UK eBooks*, pp.121–142. doi:https://doi.org/10.1057/9781137283344_7.

UNHCR (n.d.). *Ghana: Act No. 29 of 1960, Criminal Offences Act*. [online] Refworld. Available at: https://www.refworld.org/legal/legislation/natlegbod/1960/en/17193.

UNHCR (2003). *Ghana: Act No. 653 of 2003, Juvenile Justice Act*. Refworld. Available at: https://www.refworld.org/legal/legislation/natlegbod/2003/en/20824 [Accessed 25 Jun. 2024].

United Nations (2024). *OHCHR | International Human Rights Law*. [online] OHCHR. Available at: https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law.

United Nations (1989). *Convention on the rights of the child*. OHCHR. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

United Nations (1948). *Universal Declaration of Human Rights*. United Nations. Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights.

United Nations Sustainable Development Group (2022). *Human rights-based approach*. [online] unsdg.un.org. Available at: https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach.

United Nations Office on Drugs and Crime (2023). *Prison Reform and Alternatives to Imprisonment*. [online] Unodc.org. Available at: https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html.

United Nations (2016). United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). *International Legal Materials*, [online] 55(6), pp.1180–1205. doi:https://doi.org/10.1017/s0020782900030898.

University of Wisconsin Law School (2023). *About restorative justice | University of Wisconsin Law School*. [online] law.wisc.edu. Available at: https://law.wisc.edu/fjr/rjp/justice.html#:~:text=Restorative%20justice%20seeks%20to%20examine

U.S Department of State (2024). *Ghana - United States Department of State*. [online] United States Department of State. Available at: https://www.state.gov/reports/2023-country-reports-

on-human-rights-practices/ghana/.

Yire, I. (2023). *CHRAJ advocates for non-custodial sentencing*. [online] https://chraj.gov.gh/news/chraj-advocates-for-non-custodial-sentencing/. Available at: https://chraj.gov.gh/news/chraj-advocates-for-non-custodial-sentencing/.