

Doing Time: Young People and the Rhetoric of Juvenile Justice in Ghana

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Abstract

In this chapter, we review the juvenile justice system in Ghana and how it responds to young people in conflict with the law. There is a dearth of theoretical and empirical research on juvenile justice in Ghana and Africa more generally. Yet these contexts provide useful sites for exploration of fundamental issues about juvenile justice. Among such issues are the impact of colonial history and neoliberal policy transfers on treatment of young people caught up in the justice system. The chapter provides a background to youth justice and the conditions of incarcerated young people in Ghana. We argue that colonial history and neoliberal youth justice policy transfers have dislocated the traditional system of justice. This dislocation has, in turn, created tensions and contradictions in juvenile justice administration in Ghana and Africa. Although in theory Ghana's juvenile justice system appears to conform to many of the international standards and expectations, in practice the system undermines

the rights of children and young people in conflict with the law. We conclude with suggestions about ways to address some of the challenges confronting juvenile justice administration in Ghana.

Introduction

As with colonisation, globalisation has had a significant impact on virtually all aspects of life in Ghana and Africa more broadly (Meagher, 2003; Opoku, 2010; Yaro, 2013). Although increased interconnectedness and integration have brought several advantages (Giddens, 1990; Muncie, 2005), the neoliberal globalisation that encourages resource exploitation and trade imbalances has resulted in weak economies, high levels of illiteracy, unemployment and poverty in Africa (Meagher, 2003; Opoku, 2010; Yaro, 2013). Furthermore, colonial rule and globalisation have encouraged the transfer of neoliberal penal policies from western countries and global institutions to the global south (Sloth-Nielsen, 2001; Wacquant, 2001; Muncie, 2005; Goldson and Muncie, 2015; Ame, 2018). Thus, the effect of neoliberal penalty, specifically western conception of justice, is seen in the punishment of young people involved with the juvenile system in Ghana and many countries in Africa (Sloth-Nielsen, 2001; Mensa-Bonsu, 2017; Odongo, 2017; Ame, 2018). And yet, as Muncie (2005, p. 47) observed, little attention has “been given to the extent to which legal globalization itself is a concept driven by western notions of ‘civilized’ human rights” and how this, in practice, may undermine the rights and treatment of young people in conflict with the law.

This chapter examines the juvenile justice system in Ghana and its treatment of young people in custody. The chapter begins with a brief background context to Ghana. This is followed by an overview of the juvenile justice system in Ghana beginning with the colonial period. Contemporary juvenile justice processes are then outlined focusing on the legal

regime underpinning juvenile justice, arrest, investigation and detention conditions of young people caught up in the justice system. At each of these stages, we highlight the tensions and contradictions in juvenile justice administration in Ghana, with a particular emphasis on the treatment of incarcerated young people. We note that although the current system of juvenile justice in Ghana emphasises a welfare and rights-based approach to young people in conflict with the law that purports to prioritise their best interests, in reality the system appears to be based on an amalgam of welfare, justice, crime control and diversion paradigms. We contend that the tensions and contradictions in the philosophy and administration of juvenile justice in Ghana undermine the rights and treatment of young people in custody. These tensions and contradictions are, in part, a consequence of the cultural dislocation caused by the imposition or uncritical adoption of colonial and neoliberal policies. Such uncritical policy transfers have engendered underdevelopment, increased poverty and hindered the state's ability to protect and provide for the majority of its citizens, especially the young and most vulnerable who come into contact with the justice system. We conclude with reflections on how the juvenile justice system can improve its treatment of young people in conflict with the law.

Our focus in this chapter is on young persons from age 12 to 21. This focus is consistent with the legal definition of young people in Ghana. The Juvenile Justice Act of Ghana (Act 653) makes a distinction between a “juvenile” and a “young person” with a “juvenile” defined as a person under 18 years in conflict with the law, and a “young person” referring to persons between ages 18 and 21. Also, it is important to note from the outset that, in many ways, our analysis is constrained by the lack of research and the paucity of official data on young people in the juvenile justice system in Ghana.

Children in Context

The family in Ghana is recognized as an important safety net for children. The family is responsible for instilling discipline by teaching social roles and standards, exercising social control, protection, socialization, policing, care, and ensuring a seamless transition to adulthood (Arthur, 1996; Nukunya, 2003). Brown (1996, p. 21) defines family in Ghana as typically “male-headed units of extended families consisting of one or several wives and their children and often extended with unmarried or elderly relatives.” Heterosexual marriage is a near universal institution in Ghana to realize a family and offers couples with a status of adulthood, ancestral linkages, economic and social-support resources and completeness of life (Oppong and Abu, 1987; Aryee, 1997; Annor, 2014; Akoensi, 2017). Children are further valued in Ghanaian society as they provide economic, spiritual and psychological worth for parents (Nukunya, 2003; Teye, 2013). In old age, children are even more important as they serve as a permanent source of social security as responsibilities for the care of the elderly are traditionally entrusted in the offspring (Nukunya, 2003; Teye, 2013). This is more so in a context where formal welfare support structures are “either absent or ineffective” (Boakye, 2020, p. 9). Large family sizes are thus desired and achieved in families. Ghana’s total fertility rate (TFR), despite declining from 6.4 children per woman in 1988, to 4.4 in 2003, is still relatively high at 4.3 in 2008 and corresponds to the average household size of 4.4 (Demographic and Household Surveys, 2015). The inability of marriages to bring forth children poses serious challenges for the sustainability of such marriages and fulfilment for the couples, especially married women who are the subject of societal opprobrium and are often reported to experience psychological distress and depression due to infertility (Alhassan et al., 2014; Donkor et al., 2017).

Recently, female participation in the labour force has increased in both the formal and informal sectors of Ghana’s economy. Whilst females represent 53.8 per cent of the

employed population, males represent 46.2 per cent. This is in addition to women's supposed traditional roles in the home, which involve childcare and undertaking household chores such as cooking and cleaning, have barely changed despite increasing male participation in household chores (Ghana Statistical Service, 2015; 2016). Despite these changing labour force dynamics (women's domination amongst employed adults and increasingly female-headed households) and the emphasis on marriage and procreation in Ghana as the dominant familial structure, a stringent economic outlook underpinned by stagnant wages, high cost of living and high levels of youth unemployment, families and children have become more vulnerable to exploitation, abuse and antisocial behaviour (Weinberg, 1965; Arthur, 1996; Boakye, 2013; 2020; Oduro, 2012). For example, 21 percent of children and adolescents (5-17 years) are working in hazardous conditions beyond household chores and economic activities; 19 per cent of adolescent girls are married before 18 years (an adolescent birth rate of 75 per 1,000 adolescent girls 15-19 years, with the poor and those living in rural areas at greater risk of child bearing); and only a handful - 40 per cent of the adolescent population (15-19 years) -are enrolled in secondary school education in Ghana (Ghana Statistical Service, 2018). Official figures from the Commission on Human Rights and Administrative Justice (CHRAJ) shows a significant number of petitions from mothers seeking resolutions to human rights violations concerning their children (CHRAJ, 2013). Among the major concerns are failure of fathers to provide maintenance allowance, unlawful custody, denial of paternity and deprivation of education (CHRAJ, 2013; also see Laird, 2011). The consequences of these exposures to vulnerabilities are most evident in the metropolis, and especially among "street children" (i.e., homeless children and children sent to by their parents to hawk on the street) in the form of interpersonal violence and sexual victimisation (Boakye, 2013; 2020; Oduro, 2012).

Juvenile Justice System: A Brief History

Prior to colonial rule, Ghana (formerly known as the Gold Coast) had its own traditional justice system which had deterrence and restoration as its core principles. In this system, there was no distinction between young persons and adults on the basis of chronological age in justice administration (Ame, 2018). Offences were thought to disrupt individual and group harmony and ancestral spirits. The teaching of moral codes and standards, and the exercise of social control through conformity was the bedrock of crime control and the responsibility of the extended family (Abotchie, 1992; Nukunya, 2003).

A young person's delinquency (e.g. petty theft) was typically dealt with in the family through adjudications led by the family head. When the delinquent act is more serious and transcends the family (e.g. sexual offence, murder, manslaughter, etc.), such issues are brought before the Chief of the town or village and his elders for adjudication. Appropriate sanctions are imposed on the young person after careful deliberations to establish the facts of the case and its seriousness. What must be emphasised, however, is that the entire family, clan and lineage of the young person bears the brunt of such punishment which often was aimed at restoring the social harmony that existed prior to the commission of the offence and pacifying the ancestral spirits. In traditional justice administration, Sarbah (1968, p. 30) observes in the *Fanti National Constitution* that:

Fines are paid for accidental homicide; such as carelessly wounding a person taking part in a chase. A person found guilty of criminal intercourse with a married woman is liable to pay to the injured husband a fine... In case of theft, the guilty offender is made to restore to the owner the stolen article or its value and to his ruler he pays a fine.

Crime and punishment are thus a collective responsibility and ensured communal harmony. Formal justice institutions such as detention centres and welfare structures such as orphanages are not indigenous to Ghana. The same traditional justice set up had handled

issues of child welfare in everyday- and crises- times including child custody and child maintenance following divorce, kinship fostering and adoption following the demise or unavailability of parent(s) among others (Goody, 1982; Oppong, 1973; Ansah-koi, 2006; Nachinab, Donkor and Naab, 2018). The entire community including the extended family network and other community network of benefactors ensured the welfare and provided guardianship of at-risk children which personified the saying that “it takes a village to raise a child” (Abdullah, Cudjoe and Manful, 2018, p. 450). The “obligations of communities, sympathy, altruism, or religious beliefs” are the core values that ensures and sustains continuity of care for young persons in the community in Ghana (Ansah-Koi, 2006, p. 558).

Like many countries in Africa (see Clifford, 1974; Sloth-Nielsen, 2001; Fourchard, 2006; Odongo, 2017), Ghana’s current juvenile justice system is a vestige of colonial rule (Arthur, 1991; Mensa-Bonsu, 2017; Ame, 2018). In many ways, the colonial experience has also been part of the reason for the disconnect between theory and practice of juvenile justice in Ghana, especially the condition and treatment of incarcerated young people. The first juvenile detention facility in Ghana was established in 1928 by the Salvation Army (Ame, 2018). Prior to this period, the criminal code in Ghana operated by the British did not make a legal distinction between adults and children or young people, nor did the code distinguish between young people in conflict with the law and the those in need of care and protection (Mensa-Bonsu, 2017; Ame, 2018). Young people caught up in the justice system therefore received similar treatment as adults.

Several important pieces of legislation were passed between 1944 and 1946 in an effort to formally establish a juvenile justice system in Ghana. Important among these were the Court (Amendment) Ordinance (1944) which began the separation of the juvenile and adult justice system, and the Industrial Schools and Institutions Ordinance (1945), which mandated the establishment of juvenile detention facilities and regulated the conduct of staff

and training at these facilities (see de Graft-Johnson, 1963; Ame, 2018). These efforts were a direct response to increasing urbanisation and its attendant consequences including a high rate of urban unemployment and neglected children (Weinberg, 1965; Mensa-Bonsu 2017). According to Mensa-Bonsu (2017, p. 5) the combined effect of urbanisation in the early period of the 20th century and the second world war was that “[A]s people abandoned their traditional homes and family support for life in urban areas, children in need of care grew in such numbers that the establishment of institutions of juvenile justice to deal with the problem became necessary.” These detention facilities were a direct replica of the Industrial Schools and Borstal Institutions in Britain, and ordinances that reflects the English Children’s Act of 1908. The emphasis was therefore on custody and custodial institutions to address a problem caused by decades of economic exploitation and exacerbated by the second world war which created a paternal void due to many young men fighting in the war alongside British forces in other colonies such as Burma (Arthur, 1991; Mensa-Bonsu, 2017; Ame, 2018). For example, records from the Swedru Junior Correctional Centre (JCC) show evidence of the welfare paternalism principle that governed the running of these detention facilities for young people. As Figure 1 shows, very high numbers of young people were detained in the correctional facility during the period of colonial rule from 1947 to the early years of independence in 1957. The figures began to drop precipitously from the 1960s to present. The records show that the majority of children in these facilities were there for minor theft, but mostly because they were viewed as children in moral danger, and hence in need of care and protection.

Juvenile Justice Reform in Ghana

Ghana’s juvenile justice system remained largely unchanged even after independence from Britain in 1957 until the 1990s. These reforms were driven by the United Nations and

international obligations, endorsed by the Ghanaian government, which required enactment of domestic laws to be consistent with its international commitments. For example, Ghana was the first country in the world to ratify the United Nation Convention on the Rights of the Child (UNCRC) on February 5, 1990 (UNTC, 2020). Ghana also played a key role in the enactment of the Organisation of Africa Union (OAU), now Africa Union (AU), Charter on the Rights and Duties of the African Child. Importantly, the country has adapted international standards and guidelines on the detention and treatment of young people in conflict with the law, including the UN Standard Minimum Rules for the Administration of Juvenile Justice (United Nations, 1985, the Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberties (United Nations, 1990) and the UN Guidelines for the Prevention of Delinquency (United Nations, 1990, the Riyadh Guidelines).

As a consequence of these international commitments, Ghana made successive legislative changes on juvenile justice and imprisonment. The first is the amendment to provisions of the Criminal Offences Act, 1960 (Act 29) that increased the age of criminal responsibility to 12 years from 7 years (based on the British common law standard); the enactment of the Children's Act 560, of 1998, which increased the upper limit of childhood from 17 to 18 years, and the Juvenile Justice Act, 2003 (Act 563, hereafter, JJA), which replaced the provisions in the Criminal Procedure Code, 1960 (Act 30), and introduced separate legal regimes for children at risk of offending from those who have actually committed crimes, as well as the introduction of institutions (e.g. probation services) for dealing with children in conflict with the law. The Criminal Code (Amendment) Act, 1998 (Act 554), also raised the age of sexual consent from 14 years to 16 years. The Human Trafficking Act, 2005 (Act 694) prohibits and punishes the trafficking of people including children whilst making provision for their rescue, rehabilitation and reintegration. The Domestic Violence Act, 2007 (Act 732) also penalizes violence against spouses and children

(see Child Frontiers, 2011; UNICEF, 2016 for further analysis of legal framework for children rights in Ghana).

With the enactment of these laws, the language of juvenile justice shifted from purely welfare paternalism to a rights-based approach that emphasised the “best interests” of the child (Mensa-Bonsu, 2017, p.7). The best interests of the child, a rather vague and complicated concept (see e.g. Morris and Gelsthorpe, 2006, p. 32), was interpreted broadly in the JJA to mean various things including an emphasis on diversion and use of detention as a last resort, minimum and maximum term limit of 3 to 36 months depending on the age of the child and the seriousness of the offence, and adoption of western-style restorative justice practices, in particular victim-offender mediation.

This rights-based approach that appears to underpin the JJA demands heavy financial commitments for the stated objectives to be realised. We contend that the financial and policy commitment required for these goals to be realised has not been forthcoming and progress realised thus far has been mainly attributable to sponsorship from civil society groups in Ghana, especially the UNICEF Ghana office that has collaborated with the Ghana Police Service, Judicial Service of Ghana, Ministry of Gender and Children’s Affairs, Department of Social Welfare to conduct research and build the capacity of various statutory stakeholders to achieve their goals under the JJA. As such, there is a major gap between the JJA provisions and what happens in practice. The vulnerability of young people is arguably further exacerbated when they come into contact with the formal juvenile justice system. In the ensuing sections, we outline various provisions of the JJA for arrest, prosecution and sentencing of children in conflict with the law and the extent to which these provisions are being met by statutory organizations such as the Ghana Police Service, Judicial Service of Ghana, Department of Social Welfare and the Ghana Prisons Service.

Arrest, investigations and diversions

As in all jurisdictions, the police are likely young people's first contact with the criminal justice system in Ghana. The police have the mandate to effect a juvenile arrest with or without a warrant. The magistrate of a juvenile court must issue such a warrant. Conditions under which a police officer can arrest a juvenile without a warrant include a crime being committed in the presence of the officer; the possession of implements for further crime commission; and obstructing an officer from performing his/her duties and finally if the young person escapes lawful custody. Following arrest, the police can either formally caution a young person with conditions or informally caution the young person if the alleged crime is not serious and thus divert the juvenile from the formal criminal justice system. When cautions are not used, youth can be held in custody for not more than 48 hours and should be released on bail unless substantial danger is posed to himself or herself or the community (s.21). The condition for bail should be determined in such a way that it is not harsh and excessive and takes the young person's circumstances into account. Young people must also be held in detention conditions separate from adults and must have the right to food, medical treatment, and reasonable visits from parents/guardians and a lawyer.

Evidence from a research collaboration between the Ghana Police Service, the International Bureau for Children's Rights, and UNICEF Ghana office involving interviews with police officers (n=65), visits to police training schools and informal chats with 165 police officers and 1,002 police recruits, focus group discussions with 39 children in conflict with the law and other institutions and stakeholders involved with justice delivery in Ghana concerning children reveals a divergence between legal and policy aspirations and implementation of these standards in practice (Ghana Police Service, 2016). Findings show that police rarely exercise the use of caution when young people are arrested (Ghana Police Service, 2016). In addition, there is also the lack of designated holding cells for young people

resulting in the police taking arrested youth to their homes, seating them at the police back office, handcuffing them to a chair in the station or holding them with adults in cells are the norm (Ghana Police Service, 2016). The general lack of police training on the contents of the JJA is arguably a major barrier to child-friendly policing. Although specialised police units, such as the Domestic Violence and Victim Support Unit (hereafter, DOVVSU), and Anti-Human Trafficking Unit (AHTU), are knowledgeable about the JJA and other child protection policies, the lack of logistics and facilities hinder implementation. For instance, there is a lack of budgetary allocation for the feeding and medical expenses of young people in detention, and police officers have had to provide for the welfare needs of juveniles in detention from their personal resource (Ghana Police Service, 2016). Although it is commonly understood that young people who are apprehended must be processed by DOVVSU police personnel, because the Unit has no presence especially at rural district police stations around the country, that means young people tend to be processed similarly as adults.

During investigations, reports have noted that police dealings with children in conflict with the law fall short of legal requirements:

Police investigators are neither trained in, nor provided with special procedures for, handling children in conflict with the law. Consequently, some are unaware of the child's right to family accompaniment (or lawyer or probation officer if family/guardians are unavailable). Interviews with police officers revealed only few of them advised children of their right to legal counsel (Ghana Police Service, 2016, p. 14).

Indeed, a prior survey conducted in 588 adult police cells and 318 adult prison cells found 10,488 young people held in adult police cells across the country between 1993 and 2003 (Department of Social Welfare, 2005). This contravenes provisions of the JJA, UNCRC

(Article 3 and 40), the Beijing Rules (Rule 13) and Article 17 and 18 of the UN Rules for the Protection of Juveniles Deprived of their Liberties.

The Children's Act (1998) emphasises and requires the establishment of child panels in all the district assemblies in Ghana. Child panels are local groups established to facilitate the diversion process for children involving victim-offender mediation in civil and minor criminal issues. Child panels, as currently constituted, do not appear to reflect the traditional justice setup; that is a more decentralised system where the locals are allowed to select members from the family unit and elders of the communities in consultation with the chiefs and queen mothers. Instead, child panels comprised seven members appointed by the Minister from relevant stakeholders in the local community: representative from a women's organisation, a representative from the traditional council, a district social worker, a member of the Justice and Security Subcommittee of the District Assembly, two persons from the community with high moral standing and the Chairperson of the Social Services Subcommittee of the District Assembly, who chairs the panel. This means child panels often involve unconnected persons drawn from artificial boundary demarcation systems that districts represent, which often weakens their effectiveness.

The role of the child panel is reflected in section 24 (4) of JJA (2003) which states that a Social Enquiry Report (SER) may make a recommendation that a matter before a juvenile court be referred to a child panel in respect of a minor offence. The JJA emphasizes the principles of restorative justice involving accountability for crimes committed, reconciliation, restoration, preventing stigmatization, restitution between offender and victim (s. 25).

In an assessment of the child panels in Ghana, Adu-Gyamfi (2019) identified a number of challenges affecting their operations. Through semi-structured interviews with stakeholders, he identified administrative challenges involving excessive political influence

affecting the competence and calibre of panel members; structural issues involving the duplication of roles of the DOVVSU of the Ghana Police Service, the Juvenile Court and Family Tribunal; financial constraints related to the lack of funds to remunerate panel members by the various district assemblies; and development challenges involving mainly incompetent members without requisite training in child welfare issues as undermining the effectiveness of child panels in Ghana. Consequently, the few child panels established by some district assemblies never really took off (Mensa-Bonsu, 2017).

The Child Frontiers (2011) report, an analysis of child protection systems in Ghana, showed that only a handful of district assemblies have established child panels mainly because of difficulties associated in establishing them. In their survey, only 70 districts out of a possible 216 have established child panels. These functional child panels are also replete with a variety of challenges. Ame (2017), in an overview of the juvenile justice system in Ghana, concluded that “very few child panels have actually been established, and of those, very few are functioning as envisioned by the law makers” (p. 21).

On account of the above challenges, it is not surprising that the Government of Ghana (2015) acknowledge that child panel system needs reform in view of the constraints under the law in the composition and mode of appointment of panel members, as well as their lack of resources. It is also not surprising that the majority of young people in detention are serving time for less serious offences (see Table 1 and 2; also Boakye, 2013). The Ghana police service, however, has been known to also divert young people from the formal criminal justice system when it can, although there is no consistency or guidance for police departments to utilize their discretion in diverting young people who engage in minor offences. In a survey of juvenile justice in Ghana, the Department of Social Welfare (2005) found that the majority of youth were cautioned and discharged from police stations were mostly for cases of petty theft, minor assault and family squabbles.

Court appearance and prosecution/defence

The juvenile court is the only court with the right to try criminal cases involving young people. However, when a young person is on trial with an adult as a co-defendant, or charged with an offence that attracts the death penalty for an adult (e.g. first degree murder), or a juvenile court is not constituted in the area where the crime was committed, the young person's case will be held in an adult court although the young person has to be remitted to the juvenile court for sentence (s.17). Young people also have a right to a lawyer and free legal aid, although these are often unavailable and young people are generally unaware of this statutory provision (Osei, 2013).

The juvenile court is composed of a panel of three members: the presiding magistrate of a district court, and two lay panel members one of whom must be a social welfare officer (Judicial Service of Ghana, 2018). Juvenile courts are held in private with only parties to the case, their lawyers, witnesses and persons invited by the courts allowed to be present. Proceedings of the juvenile court are not open to the media and anonymity is granted to those making an appearance before the court. The setting of the juvenile court is informal and police officers are not permitted to appear in juvenile courts in their police uniforms. The JJA requires that in order to facilitate the work of the juvenile court, in every case a social enquiry report must be prepared for each young person by a probation officer (social worker) after investigations into the family, school and young person's living conditions. The SER is to help the court understand the young person's background and the antecedents of their offence and also to make recommendations as to the appropriate disposition order.

The JJA requires that Court hearings of juveniles be conducted within six months. Within this period, disposal avenues available to the juvenile court include: conditional or unconditional discharge; release on probation; commit to the care of a relative or fit person;

commit to a correctional centre; order payment of fine or damages or costs and finally, order parent, guardian or close relative of the offender to give security for the good behaviour of the young person. However, if a case travels beyond the mandatory six months period, the court is supposed to release the young person unconditionally and they will no longer be held liable for the offence.

The duration of detention should this be used is detailed in the JJA: three months for a person under 16 years old; six months for person at 16 years or above but below 18 years old; 24 months for a person of 18 years old or above and a maximum sentence of three years for serious offence: murder, rape, indecent assault involving unlawful harm, robbery with aggravated circumstance, drug offences and offences related to firearms. However, conditions on the ground paint a different picture.

Probation officers are few and under resourced. There are 175 probation officers and 138 social welfare officers sitting as child panel members throughout Ghana (Judicial Service of Ghana, 2018). Probation officers sometimes have to bear their own transport costs, and families of children have been noted to contribute - this makes room for corruption and potential abuse of office. Despite the centralization of SERs to the juvenile court, probation officers lack computers to assist with their work and have been reported to hand over handwritten notes to judges who are unable to decipher their handwriting (Ghana Police Service, 2016). Cases of conflict of interest have also been reported against probation officers who sit on the juvenile court panel and at the same time, authors of the SER for the same juvenile. This phenomenon is pervasive in districts with only one welfare officer (Judicial Service of Ghana, 2018). Magistrates have bemoaned the quality of some SERs, the impartiality of probation officers and lack of research on factors that explains young people's offending behaviour and effective rehabilitation programmes for young people (Boakye, 2013; Judicial Service of Ghana, 2018).

Ghana lacks designated and dedicated juvenile courts. Out of the 185 district courts in Ghana, only three are designated as family and juvenile courts and these are all located in Accra, the capital of Ghana (Judicial Service of Ghana, 2018). Thus, all the other district courts run juvenile courts on a temporary basis with the risk of revealing young people's identity to the public and the media who often report such cases with their names or images (Judicial Service of Ghana, 2018). The existing juvenile courts are also known to sit irregularly, resulting in long delays beyond the mandatory six-month trial period and the attendant long stay of young persons in remand detention centres sometimes for seven months (Ayete-Nyampong, 2017a). Irregular sitting of juvenile courts and frequent adjournments is caused by lack of panel members, low motivation and poor remuneration (Department of Social Welfare 2005). The majority of young people appear in court without legal counsel (Hoffman and Baeg, 2011; Judicial Service of Ghana, 2018). With no "duty counsel" system attached to juvenile courts, legal aid lawyers hardly appear in juvenile courts (Judicial Service of Ghana, 2018).

Detention conditions

Young people who are convicted in the juvenile court are to be committed to institutions for a period as a last resort when all forms of disposal have been considered. Currently, there are five institutions officially available for the committal of young people and all these facilities were inherited from the colonial period (and these facilities continue to be used for the same purpose of incarceration of young people). These are the Junior Correctional Centre in Swedru for boys for those aged 14-16 years; Pong Tamale Industrial School for those aged between 14-17 years; the Senior Correctional Centre (SCC, formerly the Borstal Institute) in Accra for young persons aged 17-21 years; the Junior Correctional Centre in Sekondi for boys between the ages of 12-14 years, and the Junior Correctional

Centre in Accra for girls, which is the only detention facility for young females in Ghana. The Junior Correctional Centre for girls also doubles as a senior correctional centre for girls, remand centre for girls, a shelter for abused children and a vocational school for girls. The remand facility for boys is also located within the same premises as the correctional centre for girls. The close proximity of these facilities and the mixing of children with different needs in these facilities raise serious concerns about effective management and being responsive to the specific needs of these different groups (see Bosiakoh and Andoh, 2010). Besides the general lack of funding for these centres, security at the facility is porous, with just a day and night security officer, insufficient staffing and a virtual absence of skills training for young people of the remand homes because the young people are kept in the remand facilities on a temporary basis (Hoffmann and Baerg, 2011).

Young persons in custody: some issues and concerns

The Department of Social Welfare (2005) observed several issues associated with institutionalization as the least effective method of rehabilitation. These include the enduring stigmatization and rejection of young people by society, the learning of institutional culture, negative influences by their peers in institutional setting, and the disruption of the education for the children. Also, the evidence shows that the majority of young people committed to detention facilities are first time offenders (see Table 1 and 2). Although the lack of a proper police recording system raises doubt about the accuracy of this evidence (e.g., young people have been known to give false information including date of birth and names upon arrest, see Ayete-Nyampong, 2017a), the disproportionate number of first time offenders in custody contradicts provisions of the JJA and raises concerns about the punitive attitudes of judges.

An even more insidious problem is revealed in previous research which confirmed that 2164 young people were held in adult prisons in Ghana between 1993 and 2003

(Department of Social Welfare, 2005). This high figure is both a consequence of the old paternalistic regime that abolished the juvenile courts (Mensa-Bonsu, 2006, p. 7) and the tendency for police officers to ask children to inflate their age in order to be processed as adult offenders (Mensa-Bonsu, 2017, p. 12). Influencing young persons to inflate their age allowed the police to avoid the safeguard requirements for children contained in the JJA including prohibition to hold children in adult police cells, requirements to be handled by officer of the same gender and to inform a parent or guardian of the young person as soon as arrest is made. A police officer cannot question or interview a young person without the presence of a parent, guardian or lawyer and an officer must be familiar with the special court processes and requirements for young people which is often a challenge because of lack of training. The poor but improving birth registration rate in Ghana (currently at 71 per cent) partly accounts for this situation as many children are without birth certificates or other reliable ways of determining their age (Ghana Statistical Service, 2018). Although this problem of sending young people to adult prisons appear to have been addressed with the coming into effect of the JJA, there is no evidence to suggest that this is indeed the case.

Infrastructural provisions and conditions of detainment

While the JJA emphasises the best interests of the child and the importance of rehabilitation, in practice the condition of these correctional facilities hardly meets these requirements. First there is the poor physical condition of the facilities. As all the detention facilities in Ghana were inherited from British colonial rule and virtually neglected by successive governments, the physical structures are weak and in a deplorable condition (Ayete-Nyampong, 2017a). Of the five juvenile detention facilities remaining, only three are effectively in use. These are the Boys' Junior Correctional Centre in Swedru, the Girls' Junior Correctional Centre in Accra, and the Boys' Senior Correctional Centre in Accra.

Tables 1 and 2 show the number of young people detained in the two junior correctional facilities over the last five years (2015-2019), and Figure 1 shows similar data for the Senior Correctional Centre from 2014-2019. Even with the considerable decline in the number of young people detained in these facilities compared with the colonial period, the general neglect means several buildings within the facilities are rendered unusable. Although it is difficult to obtain accurate data on the number of young people who escape from detention, there has been reports of frequent escape of young people from detention facilities in the country (Graphic, 2015; Ghanaweb, 2016; Ayete-Nyampong, 2017b).

Virtually all the detention centers for young people are located in the regional capitals of Ghana. This affects police's mobility in transporting young people between juvenile courts and places of detention. It is no surprise that most young people are kept in police custody for the sake of convenience rather than designated juvenile detention centres (see Department of Social Welfare, 2005). On one of its inspections of police cells in the Central Region of Ghana, Commission for Human Rights and Administrative Justice discovered that three young people had been held for five months in two police stations although the court had directed that the young people be sent to a juvenile detention facility (Ghana News Agency, 2005). This was in clear contravention of the welfare and best interests principle underpinning the JJA and other legislative instruments (e.g. Article 28(3) of the 1992 constitution that prohibits damage to the mental wellbeing of children).

Education and rehabilitation of young persons

In order to facilitate reform and rehabilitation at these institutions, young people are encouraged to learn a trade including carpentry, tailoring, basket weaving, masonry and dressmaking among others. There also appears to be a gender gap in the quality of these vocational provisions. Young people at the SCC for boys are trained to sit the National

Vocational Training Institute (NVTI) qualifications, providing them with better job prospects and further educational qualifications at various polytechnic institutions. However, vocational provisions for girls incarcerated at the JCC are not certified (Ayete-Nyampong, 2017a).

As another example of gender disparities, the SCC has an additional education school block for Junior High School which follows the national curriculum and syllabus and thus facilitates the education of young people, as well as an information communication and technology (ICT) centre to equip the young people with computer literacy. However, educational facilities are lacking in the only JCC for girls. Girls who were participating in formal education prior to their detention have their educational aspirations truncated (Osei, 2013).

Despite the provision of vocational education, just a handful of young people in both JCC and SCC are enrolled due to different sentences. In a survey of 66 young people at the SCC and 10 young people at the detention facility for girls, Osei (2013) found that whilst 46 per cent of the total sample were enrolled in a vocation, 40 per cent were yet to be enrolled, 8 per cent were not eligible and 6 per cent had expressed no desire to learn a vocation. The sentencing regime (maximum sentence of three years) negatively impact on the young person's education and career aspiration. Ayete-Nyampong (2017b) also observed a general lack of interest in formal education by young people of the SCC. Whilst some young people showed little interest in formal classes and had to be coaxed to attend, others slept during lessons by placing their heads on the desk. These results are consistent with the evidence from previous studies which showed that young people who end up in detention are more likely compared with those in school to exhibit negative attitudes to school, admit having academic problems and have histories of truancy (Boakye, 2013). Such observed relationship has implications for the reintegration of young people into the society after detention. For example, the relationship underscores the importance of working with young people to

identify their needs, interests and potential and adopting a collaborative approach to address them rather than the top down approach that fails to reflect their underlying needs and interests.

Spotlight on the senior correctional centre (SCC)

When a young person is sentenced to the SCC, a valid detention order, the SER prepared for the court, police removal form (that details the young person's possessions on arrest), and a medical report that confirms the young person's age and general health condition must be presented to enable the young person to undergo admission formalities. The JJA further prescribes that the juvenile court satisfied itself via consultation with the detention centre to ensure that adequate space and facilities are available to address the needs of the young person. However, it appears these provisions are not adequately observed. For example, as Figure 3 shows, the number of young people in custody at the Senior Correctional Centre more than doubled from 114 in 2014 to 260 in 2019. Children of different ages (12-21) who should be separated are sometimes held together in large dormitories. This practice violates the international principle, contained in the UN Convention on the Rights of the Child, of holding young children separately from older children and young adults (see Figure 3). The SCC relies on a largely ineffective age classification system to hold young people in their care (12-15 and 16-20 expected to be held together in the same dormitory) instead of considering other more robust criteria such as the type of offence and length of sentence (Ghana Police Service, 2016).

The SCC is severely underfunded by the state. For example, the government feeding allocation for incarcerated people is 1.80 Ghana cedis per day (equivalent to 27 pence or 33 dollar cents) and about 95 per cent of people incarcerated in the SCC have complained about the quality of their meals (Osei, 2013). Thus, the quality of nourishment is in doubt given the

pittance of government's allocation. The SCC is thus heavily reliant on donations from religious, civil society and other benevolent organizations for its survival and sustenance. This might also affect the health of young people incarcerated in the centre given that there is no physician stationed at the SCC. Again, this is a clear violation of the young people's fundamental rights and key provisions of the UN standard minimum rules for the administration of juvenile justice.

The SCC also lacks an effective monitoring system to assist secondary school students who attend classes beyond the confines of the institution. The centre relies on the daily goodwill of students to return to the facility after classes at nearby high schools and a technical training college. The various workshops for trade training in carpentry, tailoring, auto-mechanics, and masonry among others at the SCC all lack materials and equipment to facilitate learning and the rehabilitation of the young people. Also, being the only senior correctional centre for boys in the country, there is enormous pressure on the limited facilities available (Adzewodah, 2019).

The SCC regime is tightly controlled in a disciplined military-like manner similar to adult open camp prisons. Mendez (2014, p. 12) - the UN special rapporteur – “clinically documented traumatic physical injuries on seven juvenile inmates, resulting from a severe caning incident that had taken place within the 48 hours prior to the visit of his team” as a disciplinary measure against inmates by prison officials. At the instigation of the Special Rapporteur to the Director-General of the Ghana Prisons Service, a formal enquiry and disciplinary proceedings initiated against three prison officers, with the main perpetrator a Chief Officer, were dismissed from the prison service for violating agreed procedures against corporal punishment and torture of incarcerated people.

A recent riot involving incarcerated people in the SCC chasing officers out of the centre and subsequently resulting in the escape of 14 incarcerated young persons and the

recapturing of nine escaped youth raises curiosity about the extent to which individuals experience the weight of the SCC regime (Ghanaian Times, 2015; Ghana Prisons Service, 2015). On the heavy- light continuum where “heavy” regimes are experienced as oppressive, confrontational and intimidating, and “light” regimes characterised by an atmosphere of relaxation, approachability and cooperativeness of prison staff (Crewe, Liebling and Hulley, 2014), it appears that the punitive or ‘heavy’ prison regime at the SCC might have contributed to the riot (Ayete-Nyampong, 2013; Osei, 2013; Mendez, 2014). The response to the riot also appears very heavy-handed and a violation of the rights of the young people with supposedly difficult ones sent to the neighbouring James Camp prison – a facility for holding adult men (Ghanaian Times, 2015; also see Cox and Egozy, 2017).

Release and reintegration of offenders

The juvenile courts can release a young person on probation. The function of the probation officer is mainly to supervise the young person to comply with the conditions of the probation order including visiting the home, school and workplace of the offender who, for example, might be undergoing trade training (Department of Social Welfare, 2005).

Support services that facilitate reintegration of children in conflict with the law with their family and community are lacking and, where the law exists, they are rarely used. For instance, the law makes provisions for early release and empowers officers-in-charge of correctional facilities to supervise this arrangement and prepare a report on the young person. However, due to the lack of awareness and resources and understaffing, such measures are rarely used (Ghana Police Service, 2016). Also, although convicted young people in detention and due for release are entitled to home visits in order to prepare them, their families and the community at large for reintegration, this happens irregularly. The Ghana Police Service (2016, p. 21) observes "children are discharged without any preparation,

psychological or otherwise, potentially making them more likely to reoffend.”. In fact, very little research exists in Ghana on factors that contribute to young people’s risk of offending and evidence about effectiveness of rehabilitation programmes for young people (see Boakye, 2013; 2020).

Another major challenge is the stigmatizing effect of institutionalization. For example, it has been noted that parents of young people usually fail to turn up to collect their wards on release dates (Ayete-Nyampong, 2013). Some of the reasons suggested for such parental failure are shame and stigma that is associated with the offence and custody (personal communication, April 2019). The SCC sometimes hold sessions with some family members prior to the release of the young person in order to facilitate family reunion and reintegration (Ayete-Nyampong, 2013; Adzewodah, 2019). Section 37 (1) of the JJA also demands that the young person, probation officer or close relative applies to the juvenile court where the young person was sentenced to expunge the conviction or order. This provision is part of the effort to give the young person a fresh start at life and facilitate their reintegration into society. However, the provision limits expunging of criminal records to low level offences but not serious offences which raises questions about the effectiveness of this provision. Also, with the lack of family involvement with less than 50 per cent of young people receiving family visits during incarceration (Osei, 2013), the extent to which families will know and take advantage of this provision and support reintegration is doubtful.

Conclusion

The question of how to respond to young people in conflict with the law is a particularly difficult one. It requires a delicate balance between protecting the rights of the young person and ensuring public safety (Morris and Gelsthorpe, 2006; Mensa-Bonsu, 2017). This complexity is further exacerbated in the case of Ghana and Africa where a “bifurcated”

justice system has emerged. As shown in this chapter, on the one hand is a “formal” juvenile justice system, a consequence of colonial history and neoliberal globalisation, and on the other is an “informal” traditional juvenile justice system that is emasculated but not completely eliminated. This bifurcated juvenile justice system exists because of the imposition of a foreign justice system and penal policies that either ignore or undermine the traditional structures and institutions for responding to crime and delivery justice (Busia, 1968; Abotchie, 1997; Ame, 2018). The challenges confronting the juvenile justice system in Ghana and Africa can, therefore, be understood, in part, against this backdrop. Although in theory the current juvenile justice system of Ghana is consistent with provisions of international requirements on how to treat young people in conflict with the law, in practice the country struggles to fulfil many of these provisions. From the outlook Ghana’s juvenile justice system appears to balance welfare paternalism with a rights-based approach that emphasise the best interests of the child. In reality, the justice system struggles to define precisely what constitutes the child’s best interests (see also Kelly, 1997; Morris and Gelsthorpe, 2006). Even, where some clarity exists, like in many postcolonial jurisdictions (e.g., Sloth-Nielsen, 2001; Fourchard, 2006; Cox, 2012), the system has been unable to protect the rights of young people. This is especially the case for young people in custody.

Thus, the progressive juvenile justice legal framework that consolidates provisions contained in international conventions simply does not correspond with implementation in arrest, investigations, prosecution and sentencing and the detention conditions and reintegration of children in conflict with the law. Like many African countries, the current juvenile justice system in Ghana lack clarity on its underlying philosophy on how to treat young people. The system is blighted with several challenges which makes it not particularly child-friendly despite the rhetoric and political gestures (Sloth-Nielsen, 2001; Mensa-Bonsu, 2017; Odongo, 2017). Police corruption, lack of training on JJA provisions for criminal

justice stakeholders, lack of specialist training for police officers, judicial staff especially magistrates and prison officers to adequately address the needs of young people caught up in the justice system constrains the realization of the JJA provisions. These realities make children and young people a doubly vulnerable population in Ghana when they come into conflict with the law.

To address the challenges confronting the juvenile justice system in Ghana it is tempting to assume that investment in the existing juvenile justice system in terms of infrastructural upgrade, improved conditions of service and intervention programmes is all that is required. Such important steps may help improve the experiences of young people in the justice system. However, we contend that a more fundamental issue that requires attention is a critical re-examination of the very foundation of the juvenile justice system in Ghana and the penal philosophy that underpins it. Research is urgently needed in Ghana and Africa more generally on the conception of the child (e.g., Twum-Danso Imoh, 2019), traditional notions of punishment (e.g., Arthur, 1991; Abotchie, 1997) and on the question of what factors explain young people's offending and effective ways to respond (Boakye, 2013; 2020). It is important to adopt a youth justice approach that begins with the local; that is, an approach that first recognise, interrogate and adapt the positives from the traditional justice system (Abotchie, 1997; Twum-Danso Imoh, 2019). The lessons from a critical analysis of the local context and system of justice could help inform the global discourse about youth justice and best practices (see Cox, 2012; Abrams, Jordan and Montero, 2018). This approach would be a useful way to address some of the tensions and contradictions that characterise the juvenile justice system and how it treats especially young people in custody in Ghana and Africa generally.

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Tables and Figures

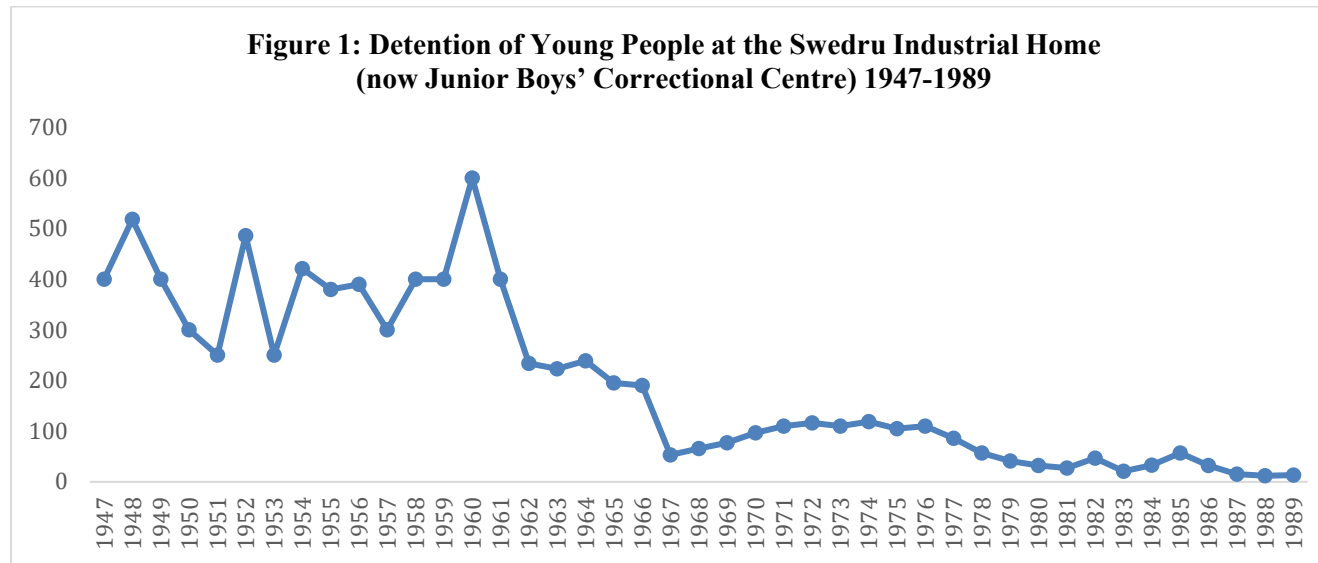


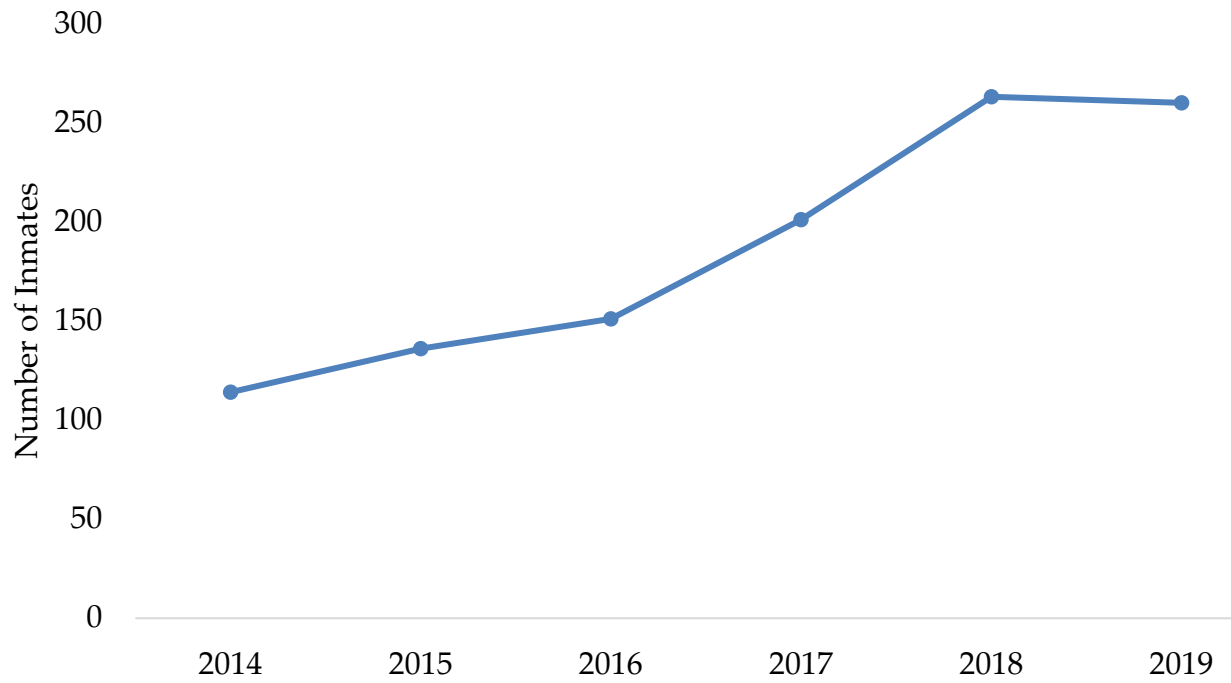
Table 1: Swedru Boys' Junior Correctional Centre, Central Region 2015-2019

Correctional facility/year	Total number of juveniles in detention	Number of juveniles aged 12-14	Number of Juveniles aged 15-17	Number sentenced for minor crimes	Number sentenced for serious crime	Number of first-time offenders	Length of Sentence/Months
2019	20	10	10	12	8	11	3-36
2018	29	18	11	17	12	21	3-36
2017	22	10	12	15	7	10	3-36
2016	14	6	8	7	7	12	3-36
2015	30	16	14	19	11	14	3-36

Table 2: Accra Girls Junior Correctional Centre, Greater Accra 2015-2019

Correctional facility/year	Total number of juveniles in detention	Number of juveniles aged 12-14	Number of Juveniles aged 15-17	Number sentenced for minor crimes	Number sentenced for serious crime	Number of first-time offenders	Length of Sentence/Months
2019	9	3	6	7	2	8	3-36
2018	14	1	14	14	1	10	3-36
2017	15	6	9	10	5	13	3-36
2016	15	4	11	14	1	13	3-36
2015	16	7	9	12	4	14	3-36

**Figure 2: Young People in Senior Correctional Centre
2014-2019**



**Figure 3: Age Distribution of Young People in Senior Correctional Centre
2014-2019**

