



COMMONWEALTH HUMAN RIGHTS INITIATIVE, AFRICA OFFICE

Juvenile Justice in Ghana

A Study to Assess the Status of Juvenile Justice in Ghana

By Stephanie Hoffmann and Corinne Baerg

2011



Commonwealth Human Rights Initiative

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Foreword

One of the programme areas that CHRI runs is access to justice, a key area in the practical realization of human rights. The Africa office is working towards achieving a higher level of access to justice for all persons. This includes monitoring the accessibility of justice in terms of the functionality of the justice system; its accessibility; and especially observance of the right to a fair trial. CHRI has also endeavored to ensure the availability of legal assistance to guarantee the right to fair trial, particularly to the less privileged- the indigent arrested and detained persons. Furthermore, under its human rights advocacy programme, CHRI monitors a government's compliance with its international human rights obligations contained in various international, regional and national human rights norms.

Children in conflict with the law or juveniles are one of the less privileged groups which we chose to study in order to assess the effectiveness of the juvenile justice system in Ghana; or rather how the justice system in Ghana works for juveniles. One of the major aims of the study was to assess Ghana's compliance, in law and in practice, with the relevant international and regional human rights instruments that it has ratified. In conducting the study we were much guided by a prior research or assessment done by the Department of Social Welfare (DSW) under the Ministry of Youth and Employment, in conjunction with UNICEF: *a report on the state of juvenile justice administration in Ghana (a decade assessment: 1993-2003)* published in 2005. Before CHRI could undertake any further initiatives and advocacy within the juvenile justice system, it was deemed appropriate to do a study on whether the recommendations of the DSW-UNICEF report had been implemented and also to ascertain the current state of affairs following the assessment report. As is revealed in the findings of our study, nothing much seems to have changed in the last 6 years and children in conflict with the law continue to be vulnerable to the deficiencies of the justice system in Ghana. The recommendations made in this report are not only meant for the key players within the juvenile justice system in Ghana, but they will also guide CHRI's advocacy efforts as well as areas in which further research can be undertaken in promoting the rights of children in conflict with the law.

Hopefully this report will provide useful information to all those passionate about promotion of the rights of children in conflict with the law; and all those working towards a better functioning justice system in Ghana and elsewhere.

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CHRI Africa Office



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The study was undertaken within a period of three months by two interns: Ms. Corinne Baerg and Ms. Stephanie Hoffmann. We extend our sincere thanks to them for the vigilance with which they conducted the study as well as their dedication and commitment in getting it done within the limited time. They conducted several interviews with key persons involved in the administration of juvenile justice and also spent time observing court proceedings in the juvenile court almost every week for about two months.

Special thanks also go to the various officials and individuals and the many organizations, government agencies and departments that are mentioned in the report. We thank them for their valuable time and the very useful information that they provided. We could not have put this report together without their much valued assistance.

Last, but not least, the contributions, in various forms, made by the staff of CHRI Africa office are much appreciated.



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PART 1: INTRODUCTION

Background to Juvenile Justice in Accra

Juvenile justice is an area in which there is currently little research being done in Ghana. It is, however, an area that international institutions have emphasized as an important component to development and enhancement of the rule of law.¹ It must be recognized as a separate entity within the criminal justice system, as both local and international norms mandate that juvenile offenders must be treated differently than adult offenders.

UNICEF, in conjunction with the Department of Social Welfare, completed a study on juvenile justice in Ghana. This research covered the period of 1993-2003. UNICEF is not currently completing more research on juvenile justice, and there is no evidence of research being completed by any Ministries or Departments of the Government of Ghana. As a result, this study was completed in order to identify current areas of concern within the system.

Scope of Study

This study was completed by two interns over a 3 month time period (September 2010 – November 2010). The study solely focused on the juvenile justice system in Accra. Evidently, the situation in Accra is not representative of the entire country, and further research must be done outside the city. However, researching the system in Accra did reveal problems that are likely prevalent across the country.

In order to conduct this study, we held meetings with various members of the juvenile justice system in Accra. We frequently conducted field visits to the Girl's Correctional Centre, Girl's Remand Home, and the Boy's Remand Home. We also observed Juvenile Court sessions every Thursday for a total of 8 times.

There is much more to be done in order to enhance advocacy for juvenile justice and this report will point out areas where further research is needed. However, these visits and meetings allowed for a more clear understanding of how the juvenile justice system works in Accra and provides a base for future research.

¹ See for example, United Nations Secretary General, "Guidance Note of the Secretary General: UN Approach to Justice for Children," September 2008. Accessed December 2010. <http://www.UNICEF.org/protection/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf> page 2.



PART 2: INTERNATIONAL NORMS AND JUVENILE JUSTICE ADMINISTRATION IN GHANA

This section will analyze international norms and rules for dealing with juvenile offenders, and how they compare with the current situation and the Juvenile Justice Act in Ghana. It is clear from this analysis that Ghana is not meeting many of the rules laid out by international institutions and must take steps to improve their adherence to these rules.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

Section 7.1 includes the basic rights of the juvenile: “Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.” Many of these basic rights are infringed upon in the juvenile justice system in Ghana. The juveniles rarely have a right to counsel or the right to the presence of a parent or guardian. There is little evidence that they are presumed innocent until proven guilty.

Section 10.1 also mentions that the juvenile’s parents or guardians should be immediately informed of the juvenile’s arrest. Even where this is possible, it is rarely completed by the police.

Furthermore, the Rules state that a judge should immediately consider release, and that institutionalization before trial should be the last resort (Section 10.2 and Section 13). In Accra, however, bail is rarely granted to accused juveniles and most are sent to the remand home. It is clear that this measure is not used as a last resort.

Though the Juvenile Justice Act does state that diversion from the criminal justice system should be used where possible, we have rarely noticed this in practice. Only one case that was observed over a period of 3 months was recommended for diversion. Section 11 of the Rules states that diversion should be the first consideration after a juvenile is arrested, depending on the crime and the circumstances of the juvenile. The juvenile justice system in Ghana does include the use of Child Panels, which would theoretically help with the diversion process, but the evidence has shown that these Panels are only used minimally.

The Rules also make it clear that there should be police officers who are trained in the prevention of juvenile crime and that special police units should be created in the larger cities (Section 12). This is not being done currently in Ghana, and the study has shown that most police officers do not know how to deal with juvenile offenders. They often refer the juveniles to DOVVSU, even though this is



not the main function of the DOVVSU stations. Ghana should specifically train police officers at each police station who are aware of the laws pertaining to juvenile arrests so that these rights can be upheld at each police station.

Cases should be heard without unnecessary delay, according to Section 20. The study has not shown that cases and trials are heard quickly, and there are always delays which extend the life of the case. Though the Juvenile Justice Act does mandate that cases be completed within 6 months, this is only sometimes happening in Accra. Cases frequently stretch beyond this process, which jeopardizes the juvenile's schooling and any benefits that may be achieved through the justice process. Judges at Juvenile Court should ensure that the case is not going beyond 6 months and inefficiencies which delay the process must be eliminated.

Finally, Section 30 of the Rules includes a provision for doing research in order to monitor and change the policy currently in place. There is no evidence that such research has been done. According to the Department of Social Welfare, the Ministry of Women and Children is in charge of juvenile justice policy, but there was no person at the Ministry that was responsible for juvenile justice. In addition, there is no effective mechanism for keeping statistics and data relating to juvenile justice, which is one of the first steps in order to do that research. UNICEF is currently completing a Juvenile Justice Policy, but this is on their own initiative, and not due to the prompting of the government. This lack of research and policy on juvenile justice is largely to blame for the inefficiencies of the system. The government should put priority on completing this research and creating a Juvenile Justice policy.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Though there are several rules in this document which are not followed in the Act or in practice, perhaps the most significant breach of rules occurs for juveniles under arrest or awaiting trial. Section 3, 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty states:

“Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.”

All of these rules are breached in Ghana. At Juvenile Court, we observed several cases where the onus was on the defense counsel to prove the witness and complainant wrong. Furthermore, detention before trial is rarely avoided. There were very few juveniles that were released on bail before their trial. While some of the reasons for this were beyond the court's control, there does seem to be reluctance on behalf of the court to allow bail. In addition, there is very little priority put



on achieving a short trial for the juveniles. As will be discussed in this report, juveniles would likely spend 1-3 years on remand without the help of the pro-bono lawyers. There seems to be no one within the government system who advocates for the juveniles in order to reduce the amount of time on remand. Finally, untried detainees are not separated from convicted juveniles as the Girl's Remand Home and Correctional Centre are located on the same premises and the girls co-habitate.

African Commission on Human and People's Rights: The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa

This declaration states that countries must “promote specific juvenile justice laws and systematic use of alternatives to imprisonment to deal with young offenders” (Section 5). Ghana has created a specific Juvenile Justice Act and has outlined alternatives to imprisonment in Section 29. The declaration also emphasizes the need for diversion in order to reduce the prison population. Though diversion is outlined in the Juvenile Justice Act, it is used very infrequently in Accra.

Convention on the Rights of the Child

Article 3 of the Convention maintains the welfare principle, which the Juvenile Justice Act also contains in Section 2. This is frequently referred to in Juvenile Court.

In Article 37b, the convention states that “the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. This has not been observed in Accra.

Article 40 contains the most information relevant to juvenile justice. Most of the rules laid out have been included in the Juvenile Justice Act. However, there is one notable exception: there is no section in the Juvenile Justice Act which maintains that a juvenile is innocent until proven guilty. There is also no explicit mention that a juvenile has the right to legal representation in the Juvenile Justice Act. Section 21 of the Constitution maintains that all persons have a right to a lawyer, but this is not clearly mentioned in the Juvenile Justice Act. Both of these aspects that are missing in the Juvenile Justice Act are vitally important to enhancing juvenile justice.

According to Article 37d, “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.” It is clear that the right to prompt legal representation is not maintained either in the Act or in the system itself. There have been no recorded cases of a lawyer meeting his client at the police station.



In Section 29 of the Juvenile Justice Act, methods of dealing with the juvenile are stated. While there are different options, including probation, fines, and institutionalization, these are not as broad as the options laid out in Article 40-3b. This article includes options such as: care, guidance and supervision orders; counseling; probation; foster care; and education and vocational training programmes. This lack of alternative rehabilitation options restricts the judge and panel members when making a decision about the juvenile. More options should be included in the Act and used in the process.

PART 3: JUVENILE JUSTICE LEGISLATION IN GHANA

Ghana does have legislation which specifically refers to the juvenile justice system. The following is an overview of this legislation.

Criminal Code

The Criminal Code references criminal offenders in general, but does not have a particular focus on juveniles. As a result, the Juvenile Justice Act was created to better reflect the different needs of young offenders.

Juvenile Justice Act

The Juvenile Justice Act was created in 2003. It outlines most aspects of the juvenile justice system in Ghana, and establishes the Junior and Senior Correctional Centres. There are many aspects of the Act which have gaps and there are certain areas which are not currently being followed by court and police officials.

Children's Act

The Children's Act does not specifically mention juvenile justice, but it ensures children's rights as a whole. The Welfare Principle confirms that best interest of the child is of highest importance in any situation. The Act specifically lays out the right to education, well-being, and social activity, and these rights must be upheld even within the criminal justice system. The Act also states that the juvenile may not be subjected to cruel or inhumane treatment or punishment.



PART 4: GOVERNMENTAL INSTITUTIONS FOR JUVENILE JUSTICE

Department of Social Welfare (DSW)

The Department of Social Welfare is statutorily mandated by the Children's Act to oversee the administration of juvenile justice and the protection of children in general. Mr. Lawrence Azam is the Director of Juvenile Justice Administration which is located within the Department. The social workers who work within juvenile justice are employees of DSW. The Department also manages the remand homes and Junior Correctional Centres.

Ministry of Women and Children

The Ministry of Women and Children is mandated to ensure the "survival, protection, and development of the child."² Though UNICEF mentioned that the Ministry of Women and Children were theoretically involved with the policy aspect of juvenile justice, there is no evidence that they have any staff within the Ministry that works on issues relating to juvenile justice. The Ministry is split into different departments, one for women and one for children. There was not enough time to follow up with the specific Department of Children. Even if there is no specific contact for juvenile justice administration, finding a contact in the Department would be valuable in future research.

Ministry of Interior

The Ministry of Interior is responsible for administering prison sentences for adults. They also run the Senior Correctional Centres across the country. These centres are mainly for "young offenders" between the ages of 18 and 21. However, juveniles under the age of 18 are sometimes sent to the Senior Correctional Centre if they commit a serious crime. For this study we did not spend any time researching Senior Correctional Centres.

Attorney General's Office

The Attorney General's Office is the main body for the prosecution of criminal acts for adults. If a juvenile under the age of 18 has committed a serious offence then the case will be referred from

² "Vision," Ministry of Women's & Children's Affairs, accessed November 2010 <<http://www.mowacghana.net/mandate.html>>



either the police station or Juvenile Court to the Attorney General's office. They will prosecute the case. Unfortunately we were unable to find a contact at this office and further research is needed into the process of trying juveniles in adult court.

Domestic Violence and Victim's Support Unit (DOVVSU)

This is a police unit which was originally started as the Women and Juvenile Unit (WAJU). It has now shifted its focus to domestic violence. However, we learned that juvenile justice cases are often referred to DOVVSU officials as these police officers are aware of the processes needed when a juvenile is arrested. A survey of DOVVSU officials and their experience with juveniles would be useful for further research.

PART 5: THE PROCESS

Arrest and Early Detention

When a juvenile is arrested, the first step for the police is to try to determine his or her age. If there is reason to believe that the accused is under the age of 18, then the accused must be dealt with differently than adult offenders.

The juvenile is not to be kept in the same cell as an adult offender and must be taken to a remand home within 48 hours. A "Remand Custody" order is written by the police and given to the social workers at the remand home. This remand warrant can only be valid for 48 hours. The juvenile must be brought to court within that time and a new warrant must be issued: a "Warrant on Commitment for Trial or on Remand or Adjournment". Contrary to the popular belief of police officers, the juvenile does not have to be brought to a specific Juvenile Court to get a remand warrant. They can go to any court.

The following outlines the situation as we have heard from our police contacts at the Domestic Violence and Victim Support Unit (DOVVSU) and the Dansoman police station. We did not do extensive research at police stations to monitor the youth being brought there.

Factual Situation

Amount of time spent at the police cells: The Juvenile Justice Act mandates that a juvenile can only stay at the police station for a maximum of 48 hours. After this, they must be charged



and brought to court. The results of this study showed that this rule is often not followed. According to our contact at DOVVSU, for police stations within the city limits, police officers are more likely to quickly bring the juvenile to the remand home within 48 hours. However, police officers outside the city centre, or those who are not familiar with the Juvenile Justice Act, may often bring the juvenile to court and to the remand home several days after their arrest. This period is sometimes as long as a month for some juveniles. This is purely anecdotal evidence and further quantitative research is required.

Lack of access to a lawyer and/or a guardian: There were no recorded cases of the pro-bono lawyers being called to the Dansoman police station and representing his client during investigation and interrogation. The lawyers are only called by the social workers once the juvenile arrives at the remand home. Also, the police are usually unable or unwilling to find the guardians of the juvenile while they are at police cells. This results in the juvenile being questioned without either a guardian or lawyer present.

Juveniles being placed with adult offenders: According to our contact, there were frequent cases where juveniles were held in the same cell or in the same area as adult offenders. There was one case recorded where the juvenile was kept separate and allowed to sleep behind the police counter so that he would remain separate from the adults. Both our contacts said that many of the police officers were well aware of the stipulations in the Juvenile Justice Act, knew that they could not easily accommodate juveniles due to these rules, and tried to send the juveniles to the remand home as quickly as possible.

Bail

According to the Juvenile Justice Act (Section 21), bail should be granted for juveniles as much as possible. Such bail requests can be made when the juvenile first attends Juvenile Court. If Juvenile Court denies their request, a juvenile or his guardian may apply to the High Court.

If bail is approved, a surety is often requested (though not required) of a parent or guardian to ensure that the juvenile will return to court. The amount of bail that is fixed must not be unreasonable, and would only be paid if the juvenile does not attend court.

Factual Situation

Reluctance of court to offer bail: Despite the fact that the Juvenile Justice Act is clear on the fact that bail should be granted to juveniles wherever possible, this study has not shown this to be the case. There was only one case which was granted bail during the entire observation period. The Juvenile Justice Act outlines two reasons for not granting bail: the risk of harm



posed by the juvenile to himself or to society; and the risk of the juvenile absconding after he is granted bail. There were very few cases that the judge was unwilling to grant bail due to the danger of the juvenile. Usually, the judge did not grant bail because she was concerned that the juvenile would not return to court. Especially in cases where the juvenile did not have a stable adult to ensure that they would return to court, they would not grant bail. As a result of this unwillingness and the risk of absconding due to a lack of familial support, only one juvenile was granted bail.

Inability to find relatives: Even if the court is willing to grant, it may be difficult for a youth to achieve because they do not have a relative that will take them in. This may be due to the fact that the relative is unwilling to advocate for the youth, or it may be because the police cannot find any relatives. This means that the court is skeptical of providing bail to juveniles who do not have a responsible adult caring for them while on bail. The inability to find relatives is often due to the family situation that the youth is coming from. Many youth had run away from home to live in the city. A few youth we observed had come from Togo. In addition, it is extremely difficult for the police officers to find the resources to travel to other regions of Ghana to search for relatives of the child.

Remand

If bail is not approved, the juvenile is sent to the nearest remand home or remanded to a responsible guardian. However, most of the juveniles that have been studied were not remanded to the home of a parent or guardian.

For the Accra region, the remand home is located in Osu for both female and male juveniles. The Girl's Remand Home and the Boy's Remand Home are managed by the Department of Social Welfare. Males and females are separated as is required by the Juvenile Justice Act (Section 23 – 7) but the two remand homes are located on the same compound along with the Girl's Correctional Centre and the Shelter for Abused Children.

The remand order can only be made for a maximum period of 7 days. After this time, the juvenile must be brought back to court and be present for the extension of the remand warrant. Usually a new date is stamped on the back of the original warrant by the relevant Juvenile Court. The entire stay at the remand home must be less than 3 months.

The police are usually the ones who escort the juvenile to court, but occasionally the social workers attend with the juvenile.



Factual Situation

Lengthy remand warrants: Even though the remand warrants are valid for a maximum of 7 days according to the Juvenile Justice Act, this study found that remand warrants are usually made for a longer period of at least 2 weeks. These remand warrants are stamped by the court, with or without the juvenile present, with the new date that the juvenile must be brought to court.

Lengthy remand stay: We have found that juveniles are frequently staying at the remand home for longer than the maximum stay (3 months for most offences and 6 months for serious offences). This remand stay, however, has been greatly reduced by the pro-bono lawyers, and the situation seems to be improving, at least in Accra.

Legal Representation

According to the Juvenile Justice Act, the juvenile has a right of access to legal advice (Section 11 – 1, Section 22). However, currently there is no structure in place by the DSW or any other government body to ensure that juveniles in conflict with the law are being represented by a lawyer.

There is a Legal Aid Scheme, but only approximately 5% of the cases they pursue are criminal cases, and very few of these criminal defendants are juveniles. In fact, the Legal Aid Scheme does not keep any separate records for juveniles nor do they have lawyers that specifically defend juveniles.

In Accra, there is fortunately a structure in place to ensure that juveniles are being represented. Two lawyers, Mr. Martin Kpebu and Mr. Michael Adjei have been providing free legal representation to juveniles at either of the Osu remand homes since 2008 under the name of the Juvenile Justice Project. Their filing fees are provided by UNICEF. They are able to represent most, if not all, of the juveniles that are remanded at the Osu facilities.

The pro-bono lawyers often meet with the juvenile at the remand home before the trial, and try to meet with the parent or guardian where possible. At court, they represent the juvenile before the judge.

One of the main goals of the Juvenile Justice Project was to reduce the amount of time that the juveniles were spending on remand. Before 2008, juveniles would often spend 1-3 years waiting for their case to be heard in court. Since the Project began, however, this amount of time has been greatly shortened, and the entire process does not often exceed the maximum 6 months.



Factual Situation

Lack of legal awareness: The juveniles are not aware of their legal rights. Most have not been told of their rights, including, but not limited to: the right to legal representation; that their case must be finished within 6 months; that they need to be brought to court every seven days; and that they are only allowed to be at the police station for 48 hours. One of the social workers at the Girl's Remand Home admitted that she does not give this information to the girls, as it will only cause them to disrupt the home. The lawyers, due to the limited time, do not discuss this information with their clients.

Legal representation is not supported by government: There is currently no structure in place by the government to provide juveniles with legal representation, and this is arguably the most important problems that we came across. There is no policy that governs how the right to legal representation will be upheld, and who will uphold it. As of yet, there is no one department responsible for providing legal representation. Also, the Juvenile Justice Act is vague on the requirements of legal representation and does not clearly outline the rights of the juvenile in this respect. The Legal Aid Scheme (governmental) and the Legal Resources Centre (an NGO) do not specifically work for juveniles. Speaking to Kofi Selasi Fumey, a Legal Officer with the Legal Aid Scheme, we learned that Legal Aid deals with very few criminal law cases (less than 10%). In addition, there are no separate statistics for how many youth they serve. If they do serve someone under the age of 18, these statistics are lumped into the 18-30 age category. According to Mr. Fumey's estimate, there are only a few cases per year dealing with juvenile criminal cases. The only legal representation that has been provided is due to the initiative of two lawyers and the willingness of UNICEF to support these lawyers.

Child Panels

Child Panels were mandated by the Children's Act of 1998 (Sections 27-32). Though they are supposed to handle cases of all types relating to juveniles, they have a specific mandate to assist in criminal matters.

Child Panels are supposed to exist in each district and they are supported financially by the District Assembly. They are not to have a judicial role, but can advise and mediate in situations where a juvenile is in conflict with the law. The Children's Act mandates that certain members of the community must be on the Child Panel. They are supposed to meet as often as necessary, but at least every 3 months.

The idea behind Child Panels in juvenile justice cases is that they provide the opportunity for the juvenile to be diverted from the criminal justice system before the juvenile goes to trial. The Child



Panel may advise the court on how to process the juvenile, and whether any reparations or apologies need to be made to the person who the juvenile affected. Especially in communities where a Juvenile Court is not easily available, the Child Panel can effectively rehabilitate the juvenile without sending them through the formal system.

There was not enough time to fully study the Child Panels. The only information we found was from probation officers at Juvenile Court. Further research is needed to find out quantitative details on how the panels are functioning.

Factual Situation

They are not receiving adequate funding: They are not consistently getting a budget to cover the administrative costs and filing fees for members of the Panel.

They are not receiving enough referrals: Child Panels are not receiving adequate referrals from DOVVSU, other police officers, and from Juvenile Court. These bodies are supposed to refer cases to the Child Panels. It is unclear why officials are unwilling or unable to report more cases. Even if the Child Panels do have enough funding to meet, they do not have the case load that is necessary for them to succeed.

Juvenile Court

While there is no structure for the Juvenile Court system in Ghana laid out by the Juvenile Justice Act, there are officially Juvenile Courts in most districts and in all 10 regions.

In Accra, Juvenile Court is located at the Old Ministries. There is a specific room used every Thursday for Juvenile Court, as the Juvenile Justice Act mandates that Juvenile Court be kept separate from other court proceedings.

The Juvenile Court room is informal, and does not look like a traditional court room. This is done to ensure that proceedings are kept informal while professional. The judge does not wear the traditional robe as she would in any adult court. As juvenile offenders must be treated differently by law, these are some of the ways that Juvenile Court is distinguished from any other adult court.

The same judge attends court each week and also runs several other courts around Accra. Proceedings start in the morning and end at midday, usually because the judge is due at Substantive Court later in the day.



At court, there are usually the following people present: the judge; two panel members; the court clerk; the court social worker; the translator; the defense counsel; the police prosecutor; the police investigator; any witnesses; the complainant; the guardian or parent of the juvenile; and the juvenile.

The panel members are present to provide advice to the judge, and to discuss the issue as a group. The judge is not bound by the opinion of either of the panel members, but takes their views into consideration.

Factual Situation

Lack of organization: Every time we attended court, there always seemed to be a problem regarding the organization of the morning. Sometimes there were dockets missing, the docket the court had would be the wrong one, the Social Enquiry Report could not be found, information was incorrect or missing from the file, the police report was illegible, or the prosecutor was not prepared to present their case. The judge had to record every piece of information herself, so the proceedings often had to be stopped so that she could get the notes recorded. All this information went into one book and the information was recorded by date. The implication of this is that there is no one place where all the information on a particular case is stored, so that the information can easily be found and analyzed. The court often wasted time trying to find information from a previous court date.

Scheduling difficulties: Juvenile Court only occurs on Thursdays, and the judge is usually only available in the morning. This means that many cases get adjourned simply because there is not time to complete the cases. Also, if court gets cancelled in one week, the juvenile must wait an entire other week to have their case heard.

Lack of judges trained for Juvenile Court: The study has shown that there is only one judge in Accra that can handle juvenile cases. UNICEF is willing to fund the training of more judges, but there seems to be an unwillingness by the government to make this a priority. Training another judge would eliminate some of the scheduling issues and allow for cases to be heard more quickly, thus reducing the overall trial time.

Juvenile Trial

As has been stated, Juvenile Court proceedings are usually kept informal. The complainant and accused will stand and the charge sheet will be read by the translator in a language that the accused can understand. A plea will be taken and recorded. If the accused pleads guilty, the judge will order the court social worker to prepare a Social Enquiry Report. This usually must be and can be done



within 2 weeks. The case is adjourned for two weeks, so that the court can wait for the sentencing recommendation of the social worker.

If the accused pleads not guilty, then a trial must begin. All applicable parties must be present for the trial to occur: the police prosecutor, the investigator, the complainant, any witnesses, and the accused and his lawyer. If any of these people are not present, the case will usually be adjourned until the following week.

During the trial, the judge and panel members listen to evidence provided by the police prosecutor and his or her witnesses. One of the witnesses will be the complainant. The prosecutor will begin questioning, and then the lawyer of the accused will cross-examine.

The judge discusses the matter openly with the prosecutor, defense counsel, and the two other panel members.

According to the Juvenile Justice Act, the entire case cannot go beyond 6 months.

Factual Situation

Adjournments: The most significant problem at Juvenile Court is the number of adjournments that occur each week. Very few of the cases proceeded or were completed during the 3 month study period. These adjournments happen for a variety of reasons: someone is not present; someone is not prepared to give evidence; the docket is disorganized or missing; the police file is inadequate; or the judge does not have enough time. The judge and the panel members noted that these adjournments were indeed a problem for justice. Not only does it delay the juvenile's processing time, it also decreases the chance that the complainant and/or witnesses will return to court the following week.

No-shows: This is a frequent problem at Juvenile Court. Witnesses and complainants may not show up because they believe the case is not moving forward quick enough. They file a complaint and think that justice will be swift, but they end up attending court every week for several months. There was one case in which the complainant had not attended court since his first appearance, 7 months earlier. The juvenile had attended each week and justice had been put on hold because the complainant was missing. In addition, police prosecutors and investigators are often busy with other matters, and do not put their priority on attending court. These frequent no-shows mean one more reason for an adjournment of the case. These adjournments add up, and may lead to the case being dismissed if it goes beyond the 6 month maximum.



Sentencing and Social Enquiry Report

Whether the offender is found guilty or pleads guilty, a Social Enquiry Report must be completed before sentencing. The Social Enquiry Report is created by the court social worker. The court social worker visits the home of the juvenile if possible and speaks to their parents or guardians. The social worker may also speak to teachers of the juvenile or any other adult that can give pertinent information on the juvenile.

The report shall include the past history of the juvenile, the current circumstances of the juvenile, the conditions under which the offense was made, and a recommendation to the court for sentencing. The report must be made known to the juvenile and his or her attorney.

In most cases, the court accepts the recommendations of the probation officer. Sometimes, though, the judge in charge of the juvenile court wishes to discuss the social enquiry report with the probation officer. The ultimate goal is to decide what is in the best interest in the rehabilitation of the juvenile. The judge may wish to give his or her own recommendations on the report, before the report is used at trial. Finally, in some cases, the judge may choose to reject the recommendations of the probation officer. If this happens, the judge must, by law, provide a written reason why the recommendations in the social enquiry report are not being followed.

There are maximum sentences at a correctional centre laid out by the Juvenile Justice Act, and these are always followed. These maximum sentences are 3 months for a juvenile under the age of 16; 6 months for juveniles between 16 and 17 years of age; 24 months for a younger offender over the age of 18; and 3 years for a serious offence.

If a juvenile has committed a serious offence then they may be sentenced to time at a Senior Correctional Centre even if they are 17 years of age or younger. These serious offences include: murder; rape; defilement; indecent assault involvement unlawful harm; robbery with aggravated circumstance; drug offences; and offences related to firearms.

Factual Situation

Lack of alternative sentences: Unlike in some other countries, there are no community service options for sentencing. Judges are forced to either commit the juvenile to probation or to a correctional centre. Neither of these options include retribution to the community or apologies to the victim. In short, there is no possibility for restorative justice. In Ghana, where community and family ties are very important, there should be a possibility of diverting the juvenile from the system in some circumstances and issuing other, more informal, sentences. This desire was also expressed by the judge and panel members at Juvenile Court. This could



be increased by better use of the Child Panels, which should continue to be funded by government as another means for dealing with juvenile offenders.

Correctional Centres and Remand Homes

Before the juvenile is tried or sentenced, they will often be sent to one of the remand homes in Osu. The Girl's Remand Home is located on the same compound as the Boy's Remand Home but still separated as required by the Juvenile Justice Act. The Girl's Junior Correctional Centre is also located in the same building as the Remand Home. That is, girls who have not been sentenced and those that have been sentenced live with each other despite their differing statuses.

Boys Remand Home:

The Osu Boys Remand and Probation Home was established by the British in 1946. It was the first remand home for juveniles, but now there are more in other regions. The boys are mostly brought from court but sometimes the police bring them. The remand home will accept boys all night long. Two staff members sleep at the compound. We visited the remand home 3 times, and there were between 11 and 17 boys at the home when we were there.

The warrant from court is called the "Warrant on Commitment for Trial or on Remand or Adjournment". This must be signed by the court. If the police have not taken the juvenile to court, they must bring with them a "Remand Custody" order. This should allow the juvenile to stay at the remand home for 48 hours while the police wait for the court. After this time, the Remand Home must receive the document from court to continue housing the juvenile. According to the Juvenile Justice Act, the "Warrant on Commitment for Trial or on Remand or Adjournment" can only be valid for 7 days, and the juvenile must be brought to court before this expires.

The social workers give mainly social education to the boys at the remand home, on topics such as health, HIV, environment, and drugs. Some volunteers come in to give lessons on these topics. The social workers give counselling themselves, but they also have the use of a clinical psychologist that comes to the compound once per week. There are 3 staff members, and they are all trained social workers. These social workers also counsel the boys along with the clinical psychologist who comes once a week.

Since the boys are usually staying at the remand home for less than 6 months (due to the work of the Juvenile Justice Project), the social workers cannot focus on skills training. They still try to create awareness and introduce them to a trade, but their time at the Remand Home is too short to actually teach them. Also, even if they wanted to start a program, there is no funding for skills training as the Department says there is little reason to focus on teaching the boys.



The Remand Home pays hospital bills, but if the parents are around, the social workers appeal to them for money. The Remand Home gets loans if necessary in order to pay for the needs of the children. The remand home encourages parents to visit and to bring supplementary clothing or food. Of course, many youth at the remand home do not know their parents or will not tell the social workers where their parents are.

The Department of Social Welfare is supposed to give funding every quarter, but the sum is often small and delayed, so the shelter cannot count on it. Mr. Amankwah, the social worker at the Remand Home, told us that there is a problem with funding as most NGOs are reluctant to fund these facilities, focusing on orphanages instead. Most of the UNICEF money is meant to be directed to the shelter which is on the premises, but Ms. Mensah, the Director at the compound, is sometimes able to use some money to help with the remand homes.

Girls Remand Home and Junior Girl's Correctional Centre:

The Girls Remand Home follows the same pattern as the Boys'. They are given basic education during their stay. When the Centre and Home were visited, there will currently only 9 girls living there between both facilities.

Family visits are unlimited, but a lot of family members do not visit for various reasons.

For those girls that are sentenced and living at the Junior Girl's Correctional Centre, education is more intense and the girls must learn a trade. They are taught different skills that they can turn into vocations, such as bead making, hairdressing, tailoring, and plumbing. The goal of the Correctional Centre is to give the girls enough skills that they can begin a different life once they are released.

Factual Situation

Infrastructure: The buildings at the compound were built in 1946, and very little has been updated since then. The remand home especially is in disrepair. There is not sufficient space to adequately house the juveniles.

Insufficient number of staff: There are only three social workers at the Boy's Remand Home, and another three at the Girl's Remand Home and Correctional Centre. This is insufficient due to the number of juveniles at the facility and the supervision required. The Acting Warden of the Boy's Remand Home reported that the boys require strict supervision due to their tendency to fight with each other and yet there are not enough staff to provide this. In addition, the social workers play every role at the remand homes and correctional centre – counselor, teacher, and supervisor. Ideally there would be other staff trained in these areas in order to take the work load off the social workers.



Lack of security: There is only one security guard at the compound and he must watch over all four facilities. He also only works at night. During the day, there is no one on duty to ensure that the juveniles stay within the facility. The gates are open and if the juveniles could easily leave the premises if the social worker is busy with another task. In fact, according to Mr. Amankwah, in 2009, 11 out of the 17 boys at the remand home walked out of the facility without anyone knowing, and the authorities were only able to re-arrest one of these boys.

Lack of sufficient skills training at the Boy's Remand Home: Since the remand home is viewed as a temporary location for the boys (for a maximum stay of 3 months), there is no funding given by the DSW towards training them with a useful skill. However, the study has shown that the boys often stay longer than the prescribed 3 months, and there is usually plenty of time for them to learn a skill. In addition, both the Acting Warden and Ms. Georgina Mensah, the Director of the entire facility, believed that the boys could benefit from minimal skills training even if they were staying for 3 months or less. The government is unwilling, however, to commit funding to this skills training.

Lack of funding: In general, the juvenile justice system suffers from a lack of funding. However, this is perhaps most acute and noticeable at the Osu compound. The compound greatly relies on its support from UNICEF and NGOs, and likely would not be able to function without this money. As has been stated, the infrastructure is in need of repair but there is no funding with which to do this.

Probation Committees

Probation Committees examine issues relating to court and probation. If there are any difficulties, they are the ones to address the problem. If the problem is one they cannot handle, they refer the matter to the appropriate agency for redress.

They were formed by the DSW at the regional level, even though ideally they should have been made at the district level. People in the committee include: the judge, district/juvenile court officer, court officer of DSW, someone from the prison service, and someone from the Department of Children, and other representatives from other applicable sectors. There are 10-15 members in each Committee.

They are funded by the DSW and UNICEF. No specific study was done on the Probation Committees. This is an excellent place for further research.



The Role of UNICEF

UNICEF provides much ongoing funding, particularly to the Department of Social Welfare. Many aspects of the juvenile justice system in Ghana would literally deteriorate without the help of UNICEF. They provide funding for the following programs and institutions:

- Child Panels
- Probation Committees
- Training for judges and social workers
- Filing fees for the Juvenile Justice Project
- Remand Homes and Correctional Centre at Osu

PART 6: OVERALL STRENGTHS

There are certain parts of the process where the study has shown strengths. These include:

A. Probation officers

The probation officers, also known as social workers, have been well-trained and respond to the needs of the juvenile. They are diligent in following up with juveniles on probation. According to court officials, they are able to finish the Social Enquiry Report within two weeks after doing an assessment of the juvenile's background and we found no evidence that they were late in producing this report. They have received commendations from the court workers as well as from UNICEF.

B. Social Enquiry Report

The Social Enquiry Report is a valuable tool for establishing the background and circumstances of the crime in order to best serve the juvenile. It takes into effect mitigating circumstances, which are particularly important in juvenile cases. The Social Enquiry Report was actually always completed in the cases we observed in court and this is an important step to upholding the rights of juveniles. The social workers, as discussed, do a thorough job in a relatively short amount of time.

C. UNICEF sponsorship of the Juvenile Justice Project

Since Mr. Kpebu and Mr. Adjei have begun to represent the juvenile offenders in Accra, they have cut the remand time from 3 years down to usually less than 6 months. This change has only come about



because UNICEF was able to support these lawyers with their filing fees. The lawyers ensure that the cases are: brought to court; dismissed if the case goes beyond 6 months; and continued despite the constant possibility of adjournments. They also advocate for reduced sentences and reduced fines that are within the parent's ability to pay. The lawyers insist that the Juvenile Justice Act be followed diligently by the court, and they know this Act better than most of the officers in Juvenile Court.

PART 7: OVERALL PROBLEMS

Problem: There is a lack of will on behalf of the government to improve the juvenile justice system

There seems to be no one in government who feels responsible for the inefficiencies or the successes of the juvenile justice system. Since the system is spread across many departments, there is a lack of will for one department to take charge of the situation. According to the Warden of the Boy's Remand Home, if he "had to rely on the government, the place would collapse". It seems as though if the system did collapse, there would be no person or department in government that was responsible for its demise. In general, the government of Ghana does not put a high priority on criminal justice. However, ensuring juvenile justice is an essential component of the development of the nation's children and must be given priority.

Recommendation: The government cannot continue to rely solely on the funding of these international institutions, and must work in conjunction with them to develop an improved system. There must be civil society involvement that encourages the government to seek a system which better reflects the country's commitment to children.

Problem: There are no juvenile police

When police officers arrest a juvenile, they are often unaware with the laws pertaining to juvenile arrest and as a result, they often break these rules. Juveniles are held with adults, they are not brought to court within 48 hours, and they are never offered bail by the police. There must be a police officer at each police that is trained on these rules, and who must be called when a juvenile is arrested.



Recommendation: The government should establish a training program for all police officers on the basics of a juvenile arrest. Furthermore, they should appoint one police officer at each police station as a specialist in juvenile offenders, so that this officer can be responsible for the juvenile when he or she is arrested.

Problem: There is general inefficiency

As with the criminal justice system as a whole in Ghana, the juvenile justice system in Ghana is very inefficient. Even though the Accra system has areas of strengths, this is not representative of the entire country. There need to be safeguards in place to ensure that the relevant parties attend court, that there are no scheduling difficulties, and that there are properly trained officers to assist with the arrest and the court process.

Recommendation: Further research is needed to identify all areas causing inefficiencies and develop strategies to mitigate these inefficiencies.

Problem: There are no publicly-funded legal aid projects which specifically include juvenile offenders

Though legal aid is a continuing problem for all accused offenders, it remains a particular problem for juveniles. Legal Aid Scheme, set up by the government, handles few criminal cases and almost no juvenile cases. The various NGOs involved in providing legal advice do not focus on representing juveniles in court. Even where some NGOs may be willing to do this, there is no information available to the juveniles on where they can access this legal representation. Since it is a right of a juvenile to have access to legal representation and legal aid, this information should be made available to them. Mr. Kpebu and Mr. Adjei, the pro-bono lawyers with the Juvenile Justice Project, do represent the juvenile offenders in court, but this service is only available in Accra, and it is only available because of the willingness of UNICEF, and not the government, to fund such a project.

Recommendation: The government must set up a legal aid project that is geared towards juvenile offenders. This could be incorporate into the Legal Aid Scheme, or it could be an independent project. There need to be juvenile lawyers working in all regions, and attending all Juvenile Court sessions.



Problem: There is currently no government policy on juvenile justice

Although the creation of a Juvenile Justice Act is a significant step forward in enhancing the juvenile justice system, it must be accompanied by a Juvenile Justice Policy. There are gaps in the Act and a policy would help to clarify these gaps and create solutions. There are many aspects of the juvenile justice system where there is no Department or Ministry assigned to ensure that this aspect is running smoothly. There are also no strategies on how each section of the Juvenile Justice Act can be completed, and how the system can be improved so that it does meet the expectations of the Act. UNICEF is currently working on such a policy, but this research and policy creation must also be done by the government itself.

Recommendation: The Department of Social Welfare or the Ministry of Women and Children should make a priority to create such a policy in conjunction with the work that UNICEF is doing. It has been 7 years since the last assessment (completed by UNICEF and the Department of Social Welfare), and there must be further research done in order to complete this policy.

Problem: Juvenile justice is starved for funding

Though the budget for juvenile justice is a topic which must be researched in further depth, we do know that there is very little funding being budgeted to the Department of Social Welfare, and that little of this money is used for juvenile justice. At every point in the process, besides the number of and training of social workers in Accra, there is a need for more funding to improve the situation. The infrastructure at the Osu compound is in disrepair and needs to be renovated. More judges need to be trained so that Juvenile Court can occur more often. Juvenile Courts in all regions need to be improved and court must be held regularly. Police officers need to be trained on specific juvenile justice laws. Child Panels and Probation Committees must hold meetings more regularly in order to be part of effective diversion, mediation, and rehabilitation strategies.

Recommendation: All of these aspects of juvenile justice administration could be improved if DSW and other ministries could devote more funding to the administration. Juvenile justice needs to be recognized as a priority and sufficient budget should be allocated to this administration. However, we do recognize that these departments are already struggling with their budgets and the more fundamental problem could be that the government needs to appropriate more funds to these ministries.



Problem: *There is a lack of focus on juvenile justice by one particular department and a lack of communication between the various Departments and Ministries involved in juvenile justice*

There is no one particular department which deals with the issue of juvenile justice. This may be due to the fact that no such agency is outlined in the Juvenile Justice Act, which is yet another reason for the lack of Juvenile Justice Policy. Largely this means that there is no accountability for juvenile justice, and as a result, many of the issues outlined in this report go unnoticed. Though there is technically a Director for Juvenile Justice Administration, he is finding it difficult to stay on top of the day-to-day working of the juvenile justice system since juvenile justice matters are scattered among various government departments, each falling under a different ministry.

Recommendation: There should be one Ministry or Department in charge of all aspects of juvenile justice administration. This could be either the Department of Social Welfare, as they already manage many parts of the administration, or a new Department of Youth could be created which would incorporate the DSW social workers.