

THE COURT AND POLICE PROTECTION OF THE RIGHTS AND WELFARE OF JUVENILE OFFENDERS DURING ARREST, DETENTION AND TRIAL IN GHANA

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ABSTRACT: *This study sought to explore and describe the practice of juvenile justice administration in Ghana within the context of the spirit and goals of the United Nations Conventions on the Rights of the Child (UNCRC), together with other international instruments and principles on the protection and promotion of the rights of youth offenders. It thus aimed at identifying the gap that exists between stated principles and actual practice, and also sensitizes and mobilize the Ghanaian public and government on the need for humane treatment of young offenders in the country. In Ghana, governments have demonstrated the political will in the protection of rights and welfare of its children by being the first country to ratify the United Nations Conventions on the Rights of the Child. Besides, Ghana's Constitution and other status and regulations of the country protect the rights and welfare of juvenile offenders. Thus, since the 1990s, after the country had returned to constitutional and democratic rule, various mechanisms have been put in place to ensure the promotion and maintenance of basic human rights, especially the right of children in the spirit of the UNCRC. There are, however, circumstances that compromise the enjoyment of these rights and welfare of juvenile offenders in the country. The goal of the study was achieved by carrying out a research in one of the Ghana's Borstal Institute and Osu Remand Home in Accra, the capital city of Ghana. The study was guided by this research question - How do the court and police protect the rights and welfare of juvenile offenders during arrest, detention and trial in Ghana? Data on the above were collected by employing structured questionnaire, face-to-face in-depth interviews and focus group discussions among a sample size of eighty-four (84). Findings of the study indicated that apart from the detention of juvenile offenders in the same holding cell with adults, and for more than 48 hours, they also face punitive treatments in the hands of the police and the custodial officers during detention and custody. It was also revealed that majority of juvenile offenders were also denied legal representation during trial. On the basis of the findings, this study recommended the need for a holistic approach in fulfilling the contents of all the treaties Ghana has ratified in connection with the protection of the rights and welfare of its juvenile offenders in its juvenile justice administration.*

KEYWORDS: Arrest, Child Rights, Child Welfare, Court, Detention, Juvenile Justice, Juvenile Offenders, Police, Trial

INTRODUCTION

Child and youth delinquency is, all acknowledged, a significant and long-standing problem in all parts of the world and in all levels of society. Previous research has indicated that youth violence and crime in both rural and urban areas has become more prevalent as a result of lack of incomes and opportunities, frustration, (particularly for youth), social inequality, social exclusion, and lack of institutional and social control (Juvenile Delinquency World Youth Report, 2003).

Nonetheless, juvenile justice has been categorized worldwide as an integral part of the development process. At the international level, this growing concern and recognition by the international community, including the United Nations is demonstrated in various ways. For instance, through the effort of the United Nations, the United Nations Convention on the Rights of the Child (UNCRC) came into force in 1990. As at June 2004, it had been signed by all 191 member states; and has since been adopted by governments as a framework of additional protection for the well-being of, and proper recognition on the special needs and universality of children as human beings (Brown, 2005). The ratification of the UNCRC by states, implies a commitment to the general principles underpinning it, together with specific articles concerning juvenile justice (Brown, 2005). Consequently, it has become imperative for the development of an effective and comprehensive framework to assist in the protection, and maintenance of juvenile and young offenders in every state within the context of these principles.

Differences exist in the prevention and protection of child delinquents or youth offenders vary throughout the world. These variations are as a result of different socio-economic circumstances and the different provisions that states make for the protection of welfare and rights of their young offenders (Penal Reform International, 2003). Thus, although it is important that youth offenders are provided with the best protective environment that leads to full realization of their healthy and satisfying lifestyles (Lawson, 2008), unfortunately, corrective institutions set up to reform them become nothing, but places of punishment, incapacitation and deprivation in especially developing countries (Penal Reform International, 2003). These developments make the principal aim of the UNCRC to go with the prevention of wrongdoing of children and youth within the context of their welfare and best interests devoid of retributive punishment debatable.

The above observations are confirmed by studies on juvenile justice administration in some African countries (Anderson & Stavrou, 2000; Alemika & Chukwuma, 2001; Maganga, 2005). These studies revealed high incidence of poor hygiene, lack of meaningful education and vocational training, physical and verbal abuse, denial and violation of inmates' rights by officials in charge. Consequently, Alemika and Chukwuma, (2001) opine that the juvenile justice institutions [in Africa] have failed to fulfill the goals for which they were established. Thus, in spite of the almost universal ratification of the UNCRC, and similar treaties that aim at the protection and promotion of the best interests and welfare of children and young persons, juvenile offenders continue to be confronted with daily challenges that compromise the enjoyment of their rights.

In the context of Ghana, although the issue of youth delinquency has become one of the major problems the country is facing with since its current socio-economic, cultural and political transition, concerns are being raised about the youth crime prevention mechanism in relation to the welfare of its youth offenders (Lawson, 2008). A study into the juvenile justice system needs to be carried out in order to identify the barriers to the protection of the welfare and rights of the youth offenders and to address the discrepancies in practice and shortfalls in their services.

This study intends therefore, to critically explore Ghana's juvenile justice system within the context of the UNCRC and other contemporary international standards such as the United Nations Standard Minimum Rules for the Treatment of Offenders; the United Nations Minimum Rules for the Administration of Justice (Beijing Rules); the United Nations

Guidelines for the Prevention Juvenile Delinquency (the Riyadh Guidelines); African Charter on the Rights and Welfare of the Child (ACRWC); and other international legislations.

This has become necessary because of the call for the need of comprehensive improvement in the delivery of services and the protection of the rights and welfare of youth offenders. A research is, therefore, needed into this area in order to enhance the weak body of information and data, and to highlight the life situations of juvenile offender inmates and generate proposals for enhancing their welfare and rights. It is against this background that this study sought to explore the juvenile justice administration system in the country in order to provide scholarly information that can serve as a whistle-blower on the situation. It is also to sensitize and mobilize the Ghanaian public and government on the need for humane treatment of young offenders in the country. This study was underpinned by this question: How do the court and police protect the rights and welfare of juvenile offenders during arrest, detention and trial in Ghana?

LITERATURE REVIEW ON LEGAL AND INSTITUTIONAL FRAMEWORKS OF JUVENILE JUSTICE

The aim of this section is to situate this study on the implementation of criminal proceedings against juvenile offenders within the welfare theoretical model of juvenile justice in the framework of international instruments and national legislations. The model of juvenile justice and the underlying debates employed for dealing with both young offenders and juveniles are particularly important in shaping the understanding and interpretation of the practice and philosophy of juvenile justice administration in Ghana.

It suffice to note that the welfare model theory which is exactly the opposite of the justice model follows a determinist explanation, which argues that crime is an indicator of dysfunctional behaviour due to individual pathology, family breakdown, economic or social disadvantages or community disruption. Consequently, the advocates of the model argue that young offenders should not be held responsible for their criminal act, and that such acts should be addressed through an assessment and treatment plan which has rehabilitation as its main objective. To the advocates of welfare model, the focus of juvenile justice should be on the offender rather than on the offence, and on the welfare of the young person rather than on his or her punishment or accountability for an offence (Bala & Bromwich, 2002). Their proposition is based on the fact that young offenders are not responsible for their behaviour, hence act without individual guilt. Since they are not personally guilty, but a victim of society or undesirable upbringing and environment. The advocates of the welfare model favour an integrative reaction system for children and juveniles who come into contact with the criminal justice process.

According to the welfare advocates, the best treatment for criminal behaviour should be seen as individual casework, family therapy, group and community work leading to rehabilitation of the young offender (Doolan, 1988). Hence, interventions should be judged on their effectiveness in meeting the individual best interest and welfare needs of the young offenders, rather than their deeds (Muncie, 2004). In addition, the model maintains that intervention and treatment do not have harmful effects and that the earlier the treatment, the more effective the results (Doolan, 1988). In sum, the welfare model of juvenile justice seeks among other things to address criminality among young persons through assessment and treatment with focus on rehabilitation as its primary goal, rather than retributive or punitive punishment.

The philosophy that juvenile justice institutions should act in the ‘best interest of the child’ emerged in the nineteenth century through humanitarian impulses (Muncie, 1999). This philosophy is later backed by several international legal instruments such as Conventions, Charters and Principles, Rules and Guidelines that regulate the promotion and treatment of juvenile offenders in general, and especially those in custodial institutions (Alemika and Chukuwa, 2001). There is therefore the need to outline and analyse these international instruments that pertain to juvenile justice administration and juvenile offenders’ rights which Ghana has signed or ratified.

The philosophy and treatment of juvenile offenders under the UNCRC is very clear. In its preamble, the United Nations Declaration of the Rights of the Child, adopted by the General Assembly on the 20th of November, 1989, stated that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.” This statement influences the philosophy of juvenile justice administration on the basis that children are vulnerable group and as such deserve special protection.

Consequently, the provisions of Article 3 of the UNCRC require a commitment to determining issues in the best interests of the child. The Article in this direction states that, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Concerning juvenile offenders in particular, the provisions in Articles 37 and 40 of the UNCRC deal directly concerning their treatment by the government and its juvenile justice agencies. In this regard, Article 37 (a & b) directs state parties to ensure that:

- a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age; and
- b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. 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.

In addition, Article 40 (1) of UNCRC sets out the principles that should guide the treatment of young offenders by emphasizing on their treatment taking into consideration their reintegration and assumption of construction role in society. Concerning the trial of juvenile offenders under the UNCRC, Article 40 (2) of the UNCRC extends the observance of the rule of law or due process rights to the trial and treatment of juveniles find in conflict with the law. This Article, therefore, provides that: (a) No child shall be alleged as, be accuse of, or recognised as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed.

Article 40 (4) also provides provisions for the disposition and treatment programmes for juvenile offenders adjudicated to have infringed the law. The subsection of the above article thus provides that: A variety of dispositions such as care, guidance and suspension orders, counseling probation, foster care, education and vocational training programmes and other institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate to both their circumstances and the offence. The basic philosophy of the provisions contained in the Convention, is to promote the juvenile offenders’

reintegration to enable them assume a constructive role in society rather than inflicting or executing retribution and vengeance.

Despite its comprehensiveness, however, the UNCRC has been criticized for its inability to offer guidance on the meaning and the interpretation of the ‘best interest of the child’, which forms the basis of the child welfare discourse. James and James (2008:13), for instance, contend that the Article 3 (which contains the best interest principle) “weakens its potential impact by allowing concern for the ‘best interests of the child’ to be set alongside other possibly competing considerations.”¹ Their contention is based on the fact that issues in relation to public safety and social or crime-control within the context of Article 3 of the UNCRC, may be taken as determining decisions concerning children, over and above their best interests, when considering offending by young people.

Notwithstanding the above obvious shortcoming, the UNCRC remains the focus of international pressure from many directions for the empowerment of juvenile offenders, providing a baseline that can be used as leverage by a wide range of campaigning groups, non-governmental organizations, and international agencies in working with and for young offenders. There are other international legal frameworks that give support to UNCRC on the issues of administration of juvenile justice. These are the African Charter on the Administration of Juvenile Justice; The United Nations Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules); and the United Nations Guidelines for the Prevention of Juvenile Justice (The Riyadh Guidelines).

The African Charter of the Child was adopted by the Organisation of African Union (now African Union) in 1990 and entered into force in 1999. The Charter was concluded and adopted in line with the UNCRC. With regard to the ‘best interest principle’, Article (IV) of the Charter provides that in all actions concerning the child undertaken by any person or authority, the best interests of the child should be the primary consideration.

Also, the Beijing Rules which were adopted by the General Assembly (UNO) Resolution 40/33 of 29th November, 1985 contains thirty (30) broad Rules. Among them, Rule 5 (1) directs the administration of juvenile justice system as follows: The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that reaction to juvenile offenders shall always be in proportion to the circumstances of both the offender and offence.

Furthermore, the Riyadh Guidelines was adopted and proclaimed by UN General Assembly resolution 45/112 of 14th December, 1990. The Guidelines provide a balance between juvenile justice administration and juvenile delinquency prevention. To that effect, Guideline 5 states that, the need for and importance of progressive delinquency prevention policies and systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others.

It further cautions against the predominant opinion of experts labelling a young person as “deviant”, “delinquent” or “pre-delinquent”, which often contributes to the development of a consistent pattern of undesirable behaviour by young persons. On the premise of this, it is stressed by some researchers on the administration of juvenile justice that criminalization of children does not only lead to criminal career, but also alienate them from society, creates

¹ The most striking aspect of it all is the fact that it allows children’s best interests to be understood within the context of their ‘protection’. This situation opens the ‘best interest principle’ to different interpretations.

problems of self-esteem and encourages them to mix with other adult offenders. As a result, become impediments on the way to returning them to education or future employment (Alemika & Chukwuma, 2001).

The entire legal and institutional frameworks above are important to the Ghanaian society. This is because where the current juvenile justice administration is currently noted for its violation of juvenile offenders' rights in detention centres, low age of criminal responsibility as well as inadequacy of existing alternative measures to imprisonment (Juvenile Justice Report, 2005). The framework also demonstrates how crucial it is for State parties to adopt all necessary measures to ensure full compliance of their national law and practice in line with the UNCRC and other UN Standards and Guidelines in their juvenile justice administration. As a consequence, the Government of Ghana is responsible, under international law to bring its domestic laws in practice into conformity with the obligation to protect the welfare of youth offenders within its jurisdiction.

The legal framework of juvenile justice administration in Ghana is of paramount importance in this research. The aim is to find out the extent to which the above international juvenile justice laws and standards are incorporated in Ghana's efforts to protecting the right and welfare of juvenile offenders.

There are issues of paramount importance that can be drawn from juvenile justice and the 1992 Constitution of the Republic of Ghana. The 1992 Constitution of the Republic of Ghana entrenches a number of fundamental rights and freedoms of the people of Ghana. These include the right to life, protection of personal liberty, fair trial and equality before the law. In general, the Constitution of the Republic of Ghana, which is the foundation of all other acts of the country, guarantees rights concerning the treatment of offenders in accordance to the United Nations Rules and Guidelines as well as the Charter and Conventions on human rights. On issues pertaining to arrest, restriction or detainment, Article 14 of the Ghanaian Constitution stipulates that the offender has the right to be informed immediately in a language that he or she understands of the reasons for his or her arrest, restriction or detention, and also of his or her right to a lawyer of his or her choice. In addition, Article 15 (2) states that, no person shall whether or not, he is arrested, restricted or detained, be subjected to: (a) torture or other cruel, inhuman or degrading treatment or punishment; and (b) any other condition that detracts or is likely to detract from his dignity and worth as a human being. Furthermore, Article 19 (2) states that person charged with a criminal offence should be informed immediately in a language that he or she understands, and in detail of the nature of the offence charged.

The Constitution also provides guarantees for the full range of civil and political rights as well as substantial protection for economic, social and cultural rights. Among the notably, strong protections are those provided for the rights of the child. The constitution requires parliament to enact legislations to give effect to this provision.

The Juvenile Justice Act of 2003 (Act 653) seeks among other things to protect the rights and welfare of juveniles, ensure an appropriate and individual response to juvenile offenders and to judge and treat them in a manner different from adults. As a result, Section 1 of the Act defines a young person as "a person under eighteen years who is in conflict with the law." In ensuring the welfare of the juvenile offender, Section 2 enshrines the paramount principle by providing that the best interest of a juvenile shall be: (a) paramount in any matter concerned with the juvenile; and (b) the primary consideration by a court, institution or other body in any matter concerned with a juvenile. These provisions are in line with Article 3 of the UNCRC

which requires a commitment to determining issues in the best interests of a child, which have assumed the status of a general principle underpinning all other provisions of the Convention (James & James, 2008).

Concerning arrest of a juvenile, Section 13 (1) of the Juvenile Justice Act of 2003 provides that a juvenile under arrest should not be questioned or interviewed by the police officer in relation to alleged offence unless a parent, guardian, lawyer or close relative is present at the interview. Section 11 (1) stipulates further that the parent, a guardian or a close relative of the juvenile should be informed by the police of the arrest of the juvenile, as soon as possible. But where the police are unable to inform any of the above mentioned people, subsection 2 provides for the police to inform the probation officer for the district. Unfortunately, this is not the case in practice. There are reports of a routinely failure on the part of the police to notify probation officers or families of juvenile offenders under arrest and on time (CHRAJ, 2003 & 2004; Juvenile Justice Report, 2005). Such information is often obtained by the parent or guardian of the juvenile offender only by chance (Ofori & Paradis, 2006).

Furthermore, there is the need to acknowledge the essence of recognizance and detention of juvenile offenders in the administration of justice. Section 14 (1) of the Juvenile Justice Act 2003, provides for the release of a juvenile by the police on the basis of self-recognisance or a recognisance entered into either by parent, guardian, close relative or other responsible person, unless the offence committed by the juvenile stand accused is a serious one and thus necessitated the removal from other association. The subsection 2 stipulates further that the police should seek an order from the juvenile court to place the juvenile in a remand home or any safe place designated by the Department of Social Welfare of the District Assembly in case the juvenile is not released on recognisance. But in a situation where the juvenile is not released within 48 hours under section 14 (3) and, therefore becomes necessary for him or her to be detained at the police station, Article 15 of the act enjoins the police to detain the juvenile in a part of a police station which is separated from the area where adults are detained. Officer in charge is to make sure that the conditions of detention is consistent with human dignity of the young offender.

During the detention or whilst being transported to a remand home, subsection 3 of the Article 15 restricted the juvenile from associating himself or herself with any other person apart from a relative, lawyer or a public officer. The aim here is to prevent the young offender from being contaminated by adult criminals (Alemika & Chukwuma, 2001). Yet there are reports of young offenders being housed with adult offenders, where they are subjected to abuse and maltreatment from adult inmates, rather than to appropriate correctional facilities (CHRAJ, 2003 and 2004; Ofori & Paradis, 2006).

In addition, in accordance with the Section 26 of the AU Charter, the subsections 4 and 5 of the Juvenile Act 2003 provide for special care for female juvenile under detention or being transported to a remand home or place of safety. In this regard, subsection 5 states that: "Male juvenile shall be held separately from female juveniles". And while under detention at the police station, the juvenile offender has the right under the subsection 6 of Article 15, to: adequate food; medical treatment if required; reasonable visits from parents, guardian, lawyer or close relative; and any other conditions reasonably required for the welfare of juvenile.

More so, the juvenile court sitting and the correctional centres under Act 653 are contemporary issues that need urgent solution in the administration of justice. The Juvenile Justice Act of 2003 Section 16 (1) provides for separate court for juvenile in different building or room and

on different day from those of other courts. In order to further protect the privacy of the juvenile offender and also to protect him or her from the effect of stigmatization that may result from public trial, Section 16 (2) stipulates that no person should be present at any sitting of a juvenile court, except members and officers of the court, parties to the case before the court, their lawyer and witnesses, and other persons directly concerned in the case.

In addition, Section 20 (1 & 2) stipulates that all allegations in charge sheet should be translated into a language that the accused juvenile understand, and he or she should be called upon to indicate to the court whether or not he or she admits the offence on the charge sheet. Aside from that the charge sheet must be examined by the juvenile, the lawyer of the juvenile, parent, guardian, close relative or probation officer at any stage of the proceedings (subsection 3).

Furthermore, Section 22 provides that at the commencement of proceedings in court, the juvenile should be informed in a language he or she understands on the following: the right to remain silent; the right to have parent, guardian, close relative or probation officer present at the proceedings; the right to legal representation and; the right to Legal aid. Concerning trial period, Section 33 provides for trial of juvenile offenders within six months from the date of arrest, failing of which the accused is to be discharged unconditionally. However, although this legal provision is in place, delays have become a routine reality or in practice in the judicial process in Ghana thereby denying fair trial in many cases (Juvenile Justice Report, 2005). In this case, the basic principle for the trial of juvenile offender is supposed to aim at encouraging a reformative character rather than punitive approach.

The evidence from the analysis suggests that in theory, Ghana has largely demonstrated or incorporated into local laws the provisions of the UNCRC and other international instruments and standards in its juvenile justice administration. This suggests that Ghana is not lacking international agreements on its juvenile justice administration. But in practice, the gap or dichotomy between international obligations and national action and between law and practices remain wide. It is therefore the fervent believe that, the genuineness of the ratification and signatory will customarily depend on effective implementation. This raises legitimate questions about Ghana's commitment to these agreements. These red lights therefore makes this study necessary at this point in time to afford Ghana and the international community the opportunity to determine the situation of juvenile offenders in the country and to further assess progress made, and to identify strategies and resources needed for improvement.

METHODOLOGY

This study is mostly qualitative; however, quantitative instrument like questionnaires was also used. In this case, mixed methods were employed to generate the primary data. The secondary data involved an evaluation of literature such as textbooks, journals, articles, reports and internet materials dealing with juvenile justice. Qualitatively, in-depth interviews and focus group discussions (fgd) were employed in the data collection. Quantitatively, questionnaires were also employed to strengthen the use of the mixed method which allows for cross-checking of information provided by respondents for their truth and validity to manifest.

The sampled population was made up of eighty-four respondents. It included juvenile offender inmates, juvenile offender inmates, prison officers, police officers, department of social welfare, and probation officers. Distribution of sampled population is shown in Table 1. All the inmate respondents were randomly selected from a list of names provided by the

officials. The key informants were, however, selected purposively. Their selection was based on the fact that they hold a stake in the administration of juvenile justice in the country; and therefore, possesses valuable sources of much needed information concerning practical experiences in the arena of Ghana's juvenile justice system. The sampled respondents are as follows:

Table 1: Distribution of sampled population

Population	Sample size
Juvenile Offender Inmates, Osu Remand Home	22
Juvenile Offender Inmates, Ghana Borstal Institute	48
Prison Officers	4
Police Officers	5
Department of Social Welfare	2
Probation Officers	3
Total	84

The juvenile respondents are basically the main focus of this research. This is because, it is their life situation and experiences during arrest, detention and trial that are investigated to ascertain whether the practice of juvenile justice in Ghana is in line with the UN principles and guidelines.

Experiences and views of professional knowledge of officers from the Prison, Police, Social Welfare Department and the Remand Home were also sought on the services and general condition of juvenile offenders during arrest, detention and trial.

The primary data generation occurred in two phases. There were different interview schedules for the different categories of interviewees. The first phase of the data collection was based on information collected using structured interview schedule to gather information on 70 juvenile offender respondents. Information was sought on issues such as socio-demographic characteristics, types of crime committed and treatment experiences. All these were aimed at finding out whether their rights, welfare and best interests are protected during arrest, detention and trial.

The second phase, which is the more qualitative aspect of the data collection, was obtained in two stages. The first stage involved an in-depth interviewing of fifteen (15) juvenile inmates. The in-depth interviews were conducted in a form of informational conversation. Thus, even though information has been collected on all the issues in this phase using structured questionnaire, the use of in-depth interview again was very crucial because it allows for follow-up questions for further clarification, whilst at the same time focusing on questions formulated in the interview guide. An in-depth interview schedule was also employed to gather data from other sampled key informants on their perspectives and knowledge of juvenile justice administration.

The final stage of data collection at the second phase is fgd conducted on two groups of juvenile offender inmates, one each from the Remand Home and the Borstal Institute. They were randomly selected from respondents already interviewed. The advantage of using fgd is that a lot of information can be obtained more quickly than individual interviews. The fgd provided an atmosphere for the juvenile inmates to shed more light on the responses obtained through

the structured questionnaire, which was deemed restrictive and thus prevent appropriate explanation in group.

The qualitative data obtained through focus group discussion and semi-structured in-depth interviews were analysed using content analysis by looking for meanings, themes, patterns, contrasts and connections. The intention was to bring out the frequency of similar statements that had emerged from different interviews to develop a sense of commonalities and diversities that existed and make a conclusive point in support of the quantitative data.

Basic statistical analyses like frequency distributions, cross tabulation, charts and percentages were employed to describe the quantitative data. An attempt was also made to interpret people's opinions and views as much as possible, and in some cases verbatim reports of the research subjects' own words were given to show originality. There was also content analysis of the secondary data obtained from written documents such as policy documents and other report materials. This was intended to establish a relationship between these documents and the subjective experiences and perceptions of respondents. Consequently, the quantitative and qualitative analyses reinforced each other in the study.

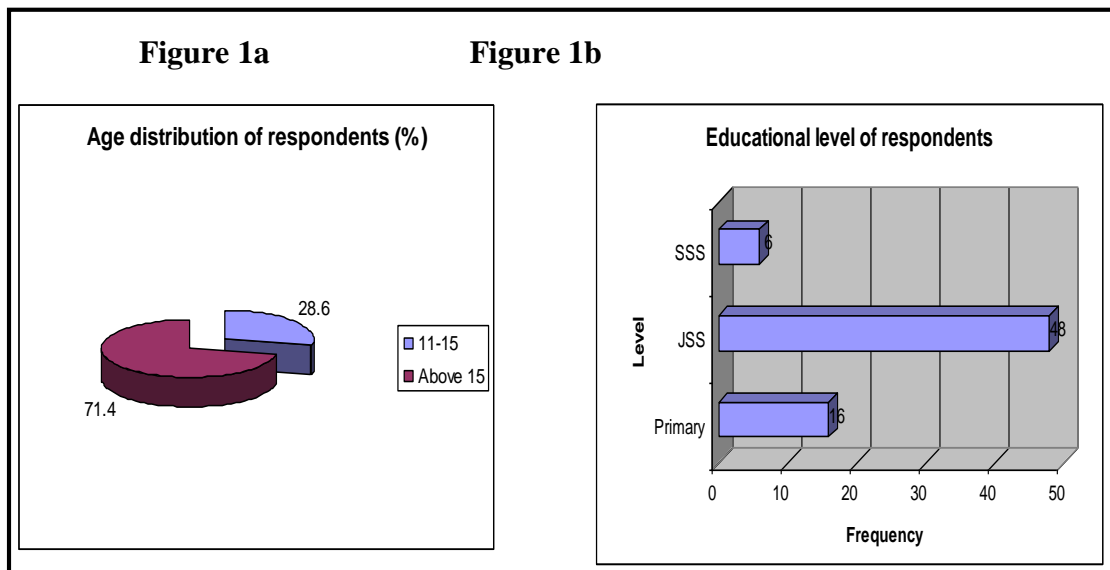
Ethically, information received from participants and other records that were collected from the various officials in charge of the juvenile justice system were treated confidentially and nobody's name was assigned to statements or views on issues in this study. Even where names were used, these were pseudonyms. All the interview schedules with the juvenile inmates, including the FGD were conducted without the presence of the justice administration. In particular, the juvenile inmate participants' anonymity and confidentiality were assured by not reporting back any information elicited from them to the justice administrative officers in charge.

FINDINGS AND DISCUSSIONS

This section presents the results and discussion of the commonalities and diversities of administration of juvenile justice. It was discussed from the perspectives of the court and police protection of the rights and welfare of juvenile offenders during arrest, detention and trial in Ghana.

This subsection presents the background characteristics of the juvenile respondents. Based on the fact that consistent data is necessary for proper analysis. This study focuses on 70 juvenile offender inmates who were able to state their ages correctly during the data collection. Fifteen female (21.4%) and 55 male (78.6%) respondents were interviewed. Their ages ranged between 11 to 17 years (Fig. 1a). Using a four-year age range, it could be observed that more than half of the respondents (71.4%) at the time of the interview were 15 years and above. As noted in the earlier chapter, juvenile is legally defined as any child under the age of eighteen (18).

However, data gathered for this study cannot firmly confirm the assertion from the criminological literature that juvenile delinquency peaks between the ages of sixteen and eighteen. This is because some of the respondents might have committed the crime a year or more before the interview was conducted. With regard to educational level, 48 (68.6%) of the respondents have either completed Junior Secondary School (JSS) or were at that level. Six (6) of them were at the Senior Secondary School (SSS) level and 16, at the Primary level (Fig. 1b).



Source: Fieldwork report, 2016/17

Researchers have observed a high correlation between poverty and juvenile delinquency in especially urban areas. Whilst other researchers have also concluded that the underlying causes and personality factors that are associated with juvenile delinquent activities are: homes with ruptured family ties, family without male father figure and from single-headed households (Anderson & Stavrou, 2000). An indication of the type of family background and the nature of occupation of the respondents' parents (Table 2) indicated that 54.3% of the respondents came from large family background of four or more siblings, and 50% and 21.4% of them were from broken (parents divorced) and polygamous homes respectively. It is also not surprising to note that more than half of the respondents' parents did not seem to be in any gainful employment.

Approximately, 55% of the respondents' fathers engaged in unskilled and semi-skilled jobs and 50% of their mothers were in unskilled employment. Thus, based on this finding, it could be argued that majority of juvenile inmates come from economically, morally and emotionally unstable families and broken homes. These findings thus confirmed Carroll, Fuhrer and Wilcox (1994)'s assertions above.

Table 2: Family background of respondents and type of crime committed

Background information	Frequency	Percentage (%)
Family Size		
None	2	2.9
One	3	4.3
Two	19	27.1
Three	8	11.4
Four and above	38	54.3
Marital status of parents		
Married (monogamous)	13	18.6
Married (polygamous)	15	21.4
Separated	2	2.9
Divorced	35	50.0
Mother deceased	2	2.9
Father deceased	2	2.9
Both parents deceased	1	1.4
Occupation of father		
Unskilled self-employed (petty trading, farming etc.)	22	31.4
Semi-skilled self-employed (mechanic, driver etc.)	17	24.3
Junior employee in government or company	8	11.4
Intermediate employee in government or company	10	14.3
Professional	9	12.9
Other	5	7.1
Occupation of mother		
Housewife	5	7.1
Unskilled self-employed (petty trading, farming etc.)	50	71.4
Junior employee in government or company	3	4.3
Intermediate employee in government or company	2	2.9
Professional	8	11.4
Other	0	0.0
Types of Crime		
Property (theft, fraud, robbery, burglary)	48	68.6
Personal (assault, fighting, rape, etc)	15	21.4
Moral and status offence (beyond parental control)	7	10.0
Total	70	100

Source: Fieldwork report, 2016/17

This sub-unit explored the types of crime committed by the juveniles. The most common crime committed among the respondents was property crime, involving fraud, robbery and burglary. Over two thirds (68.6%) of the interviewed respondents involved in this crime, whilst 21.4% and 10% respectively involved in personal (assault, fighting, rape etc.) and moral status offences, i.e. those beyond parental control (Table 2). Cross tabulation between the types of crime committed and the family background of the respondents indicated that majority of the inmate respondents who involved in property crime came from either poor or poor and large

family backgrounds, or broken homes. These findings vindicated the Beijing Rules, which require that before imposing a sentence on a juvenile, the background and circumstances in which the juvenile is living and the conditions under which the crime has been committed must be properly investigated. Again, it also confirmed the position of the adherents of the welfare model of juvenile justice in chapter two that crime is an indicator of dysfunctional behaviour due to individual pathology, family breakdown, economic or social disadvantages or community disruption (Bala & Bromwich, 2002). The next section presents the findings on the conditions and treatments of these juvenile offenders during arrest and detention by the police.

This subdivision explored the conditions and treatments during arrest and detention of juveniles by the police. It is contended that across most modern societies, retributive punishment has always occupied a crucial place in the routine control of youth offenders in detention (Muncie, 2002). A similar sentiment was echoed in studies on justice system in Nigeria where it is pointed out that the Nigerian Policemen and women more often than not, exhibit brutality on both adult and juvenile offenders under detention (Rotimi, 1993 cited in Alemika & Chukwuma, 2001).

In order to establish if threats and abuses or brutality of juvenile offenders by the police is the common phenomenon in Ghana, the respondents were asked whether they were physically, psychologically or verbally abused during their arrest and detention. Table 3 elaborates on the condition and treatments of the juvenile offenders during arrest and detention by the police. Of the seventy respondents, more than half of them (54%) indicated that they were physically abused, 45.7% indicating they were abused verbally by the police. Besides, the study also established cases of psychological abuses of the respondents (31.4% & 50% respectively) by the police through the threat of denial of food and the threat of long detention in police cells.

The majority (90 %) of the respondents from the Borstal institute intimated during the in-depth interview that they were beaten with belts during arrest and detention by police officers to confess their crime. The issue of police brutality against juvenile offenders was reiterated and vividly described during the focus group discussions by a 16 year old respondent, Kofi, at the Remand Home as follows:

...when I was arrested and sent to the police station, I didn't want to confess first, so the policewoman cut the tip of my finger with blade and put it in a class of water with salt and pepper to force me into telling them the truth...it was very painful.

Indeed the goal of the police is to control crime in the society. However, using punitive measures in doing so especially to juveniles implies ignorance in the administration of juvenile justice. A lot of awareness is needed in order to counter the punitive treatments of juvenile by the police. Awareness can also result in revised policing practices on handling juvenile offenders.

Table 3: Treatment and experiences of juvenile offenders during arrest and detention

Treatment and Experiences	Frequency		Percentage	
	Yes	No	Yes	No
Verbal Abuse	32	38	45.7	54.3
Physical Abuse	38	32	54.3	45.7
Threat of denial of food	22	48	31.4	68.6
Threaten with long detention in cell	35	35	50.0	50.0
Provision of adequate materials for sleeping	9	61	12.9	87.1
Provision of adequate facilities for personal hygiene	18	52	25.7	74.3
Mixed with adults in cell	52	18	74.3	25.7
Access to parents/guardians and friends	48	22	68.6	31.4
Opportunity for self-defence	40	30	57.1	42.9
Explanation of offence during time of arrest	44	26	62.9	37.1
Force to confess crime	38	32	57.3	42.7
Admitted to bail prior to trial	17	53	24.3	75.3
Total	70		100	

Source: Fieldwork report, 2016/17

Concerning conditions on facilities and services, a substantial proportion (87%) of the respondents reported that they did not have adequate materials for sleeping whilst more than two thirds (74.3%) also indicated that, they were not provided with adequate personal hygiene facilities (see Table 3). Although a little more than two thirds (68.6%) of the respondents indicated that they had access to parents/guardians during detention, the more striking issue, however, is that majority of them (74.3%) alleged that they were placed in the same holding cell with adults (see Table 3). It also surfaced during one of the focus group discussions that the young offenders were often forced by their adult mates in the holding cell to do odd jobs such as cleaning toilets and plates. Failure or refusal to abide by any order from the adult inmates in the holding cell, according to the respondents, normally attracted a severe beating from their adult counterparts. Muncie (2002) points out that there is always ample evidence to confirm that punitiveness is frequently expressed through the practices of institutional containment of juvenile offenders. These findings call for the need to ensure that relevant procedural safeguards as represented by the principle of proportionality and separation of young offenders from adult in-mates are strictly observed when dealing with young offenders.

This subsection explored the number of hours spent in the holding cell before transferred to remand home. According to the Juvenile Justice Act of 2003, (Act 653) of Ghana, and in accordance with the international principles of treating juveniles, in a situation where a juvenile offender is not released on recognizance, the Police Officer in charge is required to seek an order from a Juvenile Court to place the juvenile in a Remand Home or any place of safety designated by the Social Welfare Department of a District Assembly. This order is supposed to be made by the Juvenile Court within forty-eight hours after the arrest of the juvenile. However, a large number (71.4%) of juvenile respondents indicated that they were detained for more than 48 hours in the holding cell before they were transferred to the Remand Home (see Table 4).

The respondents in the focus group discussions were melancholy in their remarks concerning their treatment, saying that *'we were unnecessarily left at the mercy of the police to deter us from further crime through torture'*. The above revelation confirmed the Juvenile Justice Report (2005:40) that the police in Ghana are not keen on sending juveniles to Remand Homes

because they often blame the judiciary and the probation officers for being lenient to juvenile offenders any time they were brought before them. The findings prompted an investigation among the police with regard to their knowledge about the international principles in relation to the treatment of juvenile offenders in the next section.

Table 4: Number of hours spent in holding cell after arrest

Number of hours	Frequency	Percentage
0 – 12 hours	1	1.4
13 – 24 hours	9	12.8
25 – 48 hours	10	14.2
49 – 60 hours	18	25.7
61 – 84 hours and above	32	42.7
Total	70	100

Source: Fieldwork report, 2016/17

This segment explored the level of awareness among the Ghanaian Police in terms of national and international principles of juvenile justice administration. In ascertaining the level of awareness among the police about how to handle juvenile offenders, this study established that the police officers' knowledge about the existing policies, guidelines and rules on handling juvenile offenders was limited and sketchy. Some of the officers were unaware of the international principles that guide juvenile justice administration. Five police officers including two senior and three junior ranked were interviewed. The two senior officers noted that they had knowledge on the Beijing Rules, the UNCRC and the UN Guidelines, but could not elaborate the details. The remaining two junior officers had no opinion about both principles. The three junior officer respondents also lacked concrete knowledge about the Ghana Juvenile Justice Act.

This part explored the perception of the police on the rights of juvenile offenders. According to international guidelines for juvenile justice administration, juveniles in conflict with the law have a right to be treated in every case with respect and where applicable, the use of force must be reasonable in the circumstances. Of the five officers interviewed, the two senior officers believed that the juvenile offenders had not benefited from their rights during their detention, whilst the remaining felt they had benefited. The two senior officers were, however, very quick to link the abuses of the rights of juvenile offenders to lack of adequate facilities and the non-existent refresher causes for the police staff. They suggested the need for government to provide adequate fund and logistics such as vehicles, physical infrastructure and establish special holding cells for juvenile in every police station to help enhance the promotion of the rights and welfare of juvenile offenders in the country.

This subdivision explored the treatment of juvenile offenders: views from social welfare officers. According to all the three officials interviewed, the mishandling of juvenile offenders in the country were not limited to the police only, but extended to the general society as well. All the officers cited retribution and justice as the main motive. One of the respondents cited evidence to prove that the society approves even excessive justice approach in handling juvenile offenders. This he did by opening a page of a Ghanaian Daily Graphic where it was reported with pictures about how a sixteen year old boy was lynched in one of the suburbs in Accra for allegedly stealing mobile phone. There is therefore, the need for research on how the Ghanaian societies condemns the abuses of juvenile offenders' rights, and educate them on the need to protect and promote the welfare of juveniles in conflict with the law in the country.

These findings on the treatment of juveniles under detention do not only contradict and violate the Juvenile Justice Act of Ghana, but also the UNCRC (Articles 37 & 40), the UN Guidelines and Rules concerning juvenile justice administration. These instruments required that, children are separated from adults in prison and other detention facilities and be treated with dignity. It also indicates the failure on the part of successive governments of Ghana to ensure the promotion and the establishment of measures for dealing with juveniles in conflict with the law without resorting to cruelty, torture and any inhuman treatment.

Thus, whilst the description of the above circumstances of juvenile offenders might reflect the general inhumane attitude towards criminals by the police, their inevitable objective to control crime in the society, the failure of the government to provide enough logistics and to establish adequate special holding cells for juvenile offenders, implies that it either lacks full commitment to the promotion of the welfare, rights and the best interests of juvenile offenders or indirectly in support of the punitive attitude towards their treatment. The police are not supposed to be harsh on juvenile offenders through physical or verbal abuse. In order to treat the juveniles properly, the police officers who deal with juveniles frequently must be properly instructed and trained. The findings also imply the need for increased awareness about the rights and welfare of juvenile offenders in the Ghanaian society.

This subdivision explored treatment of juvenile offenders at the remand home. Remand homes provide residential facilities for juveniles whose cases are pending in courts. They are required to provide services such as counselling, psycho-social support and recreation. Qualitative information suggests that majority of juvenile offenders perceived the conditions and treatments at the Remand Home as better, albeit less than 2% of them complained of abuses and threats of beating and denial of food from the probation officers. The complaint of the abuses and threats was confirmed by one of the probation officers by stating that they do sometimes subject the stubborn inmates, whose behaviours pose threat of injury to their colleagues and themselves to threat of beating to serve as deterrent to their colleagues; but denied any threat of denial of food.

However, it should be noted that although this approach seems to be in line with the international standards of juvenile justice administration, it is only applicable when all other means of control have been exhausted. Nonetheless, it became more apparent during the focus group discussions that juvenile offenders in the Remand Home receive treatment in accordance with laid down rules, and thus enhances the promotion of their welfare than in the police holding cell. Commenting on their general treatment, a 15 year old female offender, Rosemary, had this to say:

“...unlike the police station, over here (Remand Home), we are treated like human beings, and not like animals.”

This finding contradicts Alemika and Chukwuma (2001)’s assertion and findings, based on Nigeria’s situation, that maltreatment of juvenile suspects and offenders are not limited only to the police but extended to Remand Homes as well.

This subunit of the study explored the court and the trial experiences of juvenile offenders. It presents the results and discussion of interviews conducted concerning the treatment of the juvenile inmates during their trial. Article 15 of the Beijing Rule states that all proceedings related to the treatment of juvenile must be conducive to his or her best interest, and should be conducted in an atmosphere of understanding. This should allow the juvenile to participate fully and to express her/himself freely. Majority of the respondents expressed strong feeling

that they were not fairly treated during their trial. When the respondents were asked whether the court explained their offence at the time of trial, more than half (56.2%) of them responded negatively. On a more serious note, although at least, 52.2% claimed their parents/guardian were present during their trial, 72.9% of the respondents reported that they were not represented by a lawyer, whilst 54.2% stated that they were denied enough opportunity to defend themselves (see Table 5). A further probe into the trial experience in the in-depth interviews and focus groups discussions indicated that a large of the respondents did not understand the detailed outcome of their trial. They therefore perceived their sentence as either too long or harsh, albeit admitted their crime.

Table 5: Experiences of juvenile offenders during trial

Statements	Frequency		Percentage	
	Yes	No	Yes	No
Explained offences by the court at the time trial	27	21	56.2	43.8
Represented by a lawyer during trial	13	35	27.1	72.9
Parents/guardian in court during trial	22	26	45.8	52.2
Adequate opportunity for self-defence during trial	22	26	45.8	54.2
Tried in open court	2	46	4.2	95.8
Total	48		100	

Source: Fieldwork report, 2016/17

Although this study did not investigate the respondents' sentenced periods based on their respective offences, perhaps the absence of their legal representative coupled with an inadequate opportunity to defend them during trial might have affected the outcome of their sentences. Interestingly, these findings contradict the Juvenile Justice Report (2005)'s description of the trial of juvenile offenders by Juvenile Courts in the country that: "...charges are read to them and/or interpreted in the relevant local language and legal representation (including legal aid) and cross examination of witnesses are allowed" (p. 45). These findings concur with previous researches elsewhere. A study on juvenile justice in Tanzania for instance, had found out that juveniles in conflict with the law were at times tried and sentenced in wholesale without any legal representation (Anderson & Stavrou, 2000). Article 37 (b) of the UNCRC establishes that every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance to challenge the legality of the deprivation of his/her liberty before a court or other competent independent and impartial authority. Thus, although the sample of this study cannot guarantee a fair representative of juvenile offenders within the institute, there is still the need for exclusive further research on this issue for confirmation and appropriate action.

Both the UNCRC and the Beijing Rules required the respect to juveniles' right to privacy at all stages of criminal proceedings in order to avoid harm being caused to them through publicity or by process of labelling and stigmatisation. Only 2 (4.2%) out of the 48 respondents reported that they were not tried in private court, but in open court (see Table 5). It should, however, be noted that although this information seems encouraging and very remarkable, it could also be argued based on the previous findings that, this might not only to ensure the rights of the juveniles, but to hide under this cover to deny them their rights. Knowing very well that trying them in an open court without their representative might attract public outcry or criticism from human/child rights activists.

These findings implied that there existed many hurdles to the realization of rights of juvenile offenders during their trial. There is the need for government to ensure that the international standards concerning deprivation of liberty that were incorporated into the national law are respected in practice as a way to prevent the occurrences of such violence against juvenile offenders in particular.

CONCLUSIONS AND RECOMMENDATIONS

There is ample evidence that the rights and the welfare of juvenile offenders in Ghana are not protected by the various service providers within the juvenile justice administration. The juvenile offenders experience comprehensive abusive treatments from the police during arrest and detention.

Inadequate political will and resources have adversely affected the level and quality of logistics for effective juvenile justice administration by all service providers, including the Prison, Police and the Social Welfare Department. There were, also evidences of inadequate knowledge of the laws and principles that guide the treatment of juvenile offenders by some of the service providers such as the police.

Juvenile offenders continue to be confronted with daily challenges that compromise the enjoyment of their rights as a result of shortfalls in their treatments and nature of facilities in the detention. Thus, whilst the environment and the officials in juvenile justice system are supposed to be more of welfare focused by taking into consideration the best interests of the juvenile offenders, the situation is rather punitive in nature.

There is an acute shortage of facilities to enhance the welfare of juvenile offenders in the police detention centres and various institutions for the care of juvenile offenders. Lack of special holding cells in police stations compelled the police to place juvenile offenders in the same holding cell with adults.

It was established that the juvenile offenders suffer punitive and abusive treatments from the police and custodial officials. These treatments ranged from, long detention, corporal punishment and other inhumane treatments by the police officers to force the juveniles into confessing their crime. The findings on the trial of juvenile were not different. Majority of juvenile offenders were tried by the court without legal representations, and with no opportunity for self - defence.

The findings suggest that the Juvenile Justice Administration in Ghana fall short of the welfare and interests of the juvenile offenders, and as a consequence failed to follow the guidelines and rules of the international principles and standards of juvenile justice administration. These shortfalls arose from the governments' lack of political will, capacity and infrastructure to implement them.

In the light of the above conclusions, there is therefore the need for the government to support appropriate training for the police on how to handle juvenile offenders in accordance with the international principles of juvenile justice. There is therefore the need to prohibit the use of brutal force during arrest and detention of juvenile offenders by the police through the prosecution of any staff that commits any act of torture against them. Thus, the government needs to establish training and regular refresher programmes for all the law enforcement

agencies that are involved in handling juvenile offenders. The training needs to reflect the emphasis on the respect to the legal status of juveniles by promoting their well-being.

Also, the Government needs to consider seriously, the judiciary as a key element in implementing various treaties and conventions it acceded to in the administration of juvenile justice. It has been reported already that Juvenile Courts lack logistical support to Panel Members and the magistrates in the country (Juvenile Justice Report, 2005). This situation could partly account for the unfair trial of juvenile offenders as shown in this study. Therefore, the support of the Judicial Service needs to be considered as indispensable in any effort towards the promotion of the rights and welfare of juvenile offenders. In this connection, the Government needs to ensure effective logistic support and payment of reasonable allowances to Panel Members and Magistrates to motivate them to expedite delivery of justice on juvenile issues. Apart from that training of magistrates in handling juvenile cases, and on the rights of the child should also be intensified.

In addition, the government needs to consider alternatives to institutionalization of detention of juvenile offenders in the administration of juvenile justice. Decisions on the alternatives must be made in the interests of the juvenile offender, taking into consideration the thoughts and views of juvenile themselves by understanding the individual juvenile's situation from their own perspective. Thus, the substitution of detention in the law with diversion measures such as mediation, victim compensation, community service, offender-victim reconciliation, fostering, adoption, among others, needs to be encouraged.

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