



JUDICIAL SERVICE
OF GHANA

CHILDREN BEFORE THE COURTS IN GHANA:

TOWARDS CHILD-FRIENDLY JUSTICE





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2018

Children before the Courts in Ghana:
A Move Towards Child-Friendly Justice



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Foreword



In recent years, there has been increasing focus on setting up effective mechanisms for strengthening the child protection system in Ghana. The actors involved include the justice delivery sector, of which the Judicial Service is a critical actor.

The child protection actors reaffirm the importance of addressing the protection needs of the most vulnerable groups, including children who come into contact with law as offenders, victims, witnesses or children whose parents are before the courts for varying reasons that affect them in one way or the other.

The existence of institutions that protect children is a guarantee for quality service provision. One of the key objectives of the judicial service is to provide protection services for children which eliminate further victimisation based on systems that inform and ensure quality services and drive a reform agenda.

The purpose of the research into the courts' services was to identify factors that enhance or inhibit efficient and effective delivery of justice for children (as offenders, victims, witnesses) in criminal and civil proceedings and generate recommendations for advancing prevention and responses to juvenile offences and improve protection of child victims and witnesses in criminal justice proceedings.

By this research, we affirm our commitment to the right of all children to be protected from all forms of violence, abuse, neglect, exploitation and violence, as set out in the United Nations Convention of the Rights of the Child (UNCRC).

I am very pleased that UNICEF has supported this research, which reflects the current practices by professionals in handling children who come into contact with the courts. The recommendations provide a framework for driving reforms in the courts in ways that deepen a child friendly system.

I am convinced that we have taken the right step towards strengthening the justice system and making it more accessible for all and sundry.

Her Ladyship Justice Sophia A.B Akuffo

Chief Justice of the Republic of Ghana

Preface

As Nelson Mandela said, “there can be no keener revelation of a society’s soul than the way in which it treats its children”. The way children are treated by national legal, social welfare, justice systems and security institutions is integral to the achievement of rule of law and its related aims. Adequate access to justice for children is also an important strategy for protecting the rights of vulnerable groups, and thus for fighting poverty and achieving the Sustainable Development Goals.

The goal of a justice for children approach is to ensure that children, defined by the Convention on the Rights of the Child as all persons under the age of eighteen, are better served and protected by justice systems, including the security and social welfare sectors. It specifically aims at ensuring full application of international norms and standards for all children who come into contact with justice and related systems as victims, witnesses and alleged offenders, or when they need care, custody or protection.

Since ratifying the Convention on the Rights of the Child in 1990, Ghana has made steady progress in promoting respect for the fundamental human rights of every child. This research speaks to the commitment of the Ghana Judicial Service to protect the rights of children and better understand the challenges that inhibit their access to justice before the courts. The ability of children to obtain redress for violations of their rights can be a challenging and bewildering experience. It is therefore imperative that the entire justice system finds new ways to engage with them in a child friendly manner, to prevent secondary victimization. One of the key recommendations is to put in place a more child-sensitive environment for children who appear in court, particularly child victims of abuse.

As highlighted in the Guidance Note of the Secretary General on Justice for Children (2008), the following principles should guide


all justice for children interventions, from policy development to direct work with children: 1) Ensuring that the best interests of the child is given primary consideration; 2) Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination; 3) Advancing the right of the child to express his or her views freely and to be heard; 4) Protecting every child from abuse, exploitation and violence; 5) Treating every child with dignity and compassion; 6) Respecting legal guarantees and safeguards in all processes; 7) Preventing conflict with the law as a crucial element of any juvenile justice policy; 8) Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time, and promoting alternatives to detention such as diversion and restorative justice; and 9) Mainstreaming children’s issues in all rule of law efforts.

There is no task more important than building a world in which all our children can grow up in a safe and protective environment, to realize their full potential. UNICEF will continue to work with the Judicial Service and all key actors in Ghana to support the implementation of the research recommendations, within the broader agenda of system strengthening and improving access to justice for all children.

Anne-Claire Dufay

UNICEF Representative in Ghana

Acknowledgements



This study is a result of the collaboration between the Judicial Reforms and Projects Directorate (JRPD) of the Judicial Service of Ghana and UNICEF Ghana with support from the Government of Canada. We also acknowledge the valuable contributions received from other key stakeholders.

Many judges and magistrates willingly shared their experiences and granted permissions to researchers to observe Court proceedings. The Court Registrars and staff provided information, data, and arranged other meetings with relevant authorities. Other stakeholders interviewed included Government officials, officers and Directors at the Ministries of Interior, Prison Service, Senior Correctional Centre (SCC) and some juveniles in the SCC.

The Directors and officers of the Department of Social Welfare, Police Prosecutors and officers and the Directors of the Legal Aid Scheme provided valuable inputs on practical issues in the juvenile justice and the court systems. The JRPD and UNICEF provided information, background documents, logistical arrangements and facilitated meetings with stakeholders.

This study relied on several research publications, findings, investigations and opinions of earlier researchers and professionals on the subject matter. Extensive reference was made to both the print and electronic research on justice for children in order to gather information. While reference is made to the direct quotes, in other instances the study either paraphrased and/or relied on their reasoning in one way or the other. In all such instances, the sources of information are acknowledged.

Due to the sensitivities of the information gathered, the study refrained from quoting persons interviewed as a source of information. However, persons interviewed are given as an annexure to the study.

Acronyms and Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
ADR	Alternative Dispute Resolution
AG	Attorney General
AWLA	African Women Lawyers Association
CID	Criminal Investigations Department
CHILD	A person below age 18 years
CHRAJ	Commission on Human Rights and Administrative Justice
CRC	Convention on the Rights of the Child
DOVVSU	Domestic Violence and Victim's Support Unit
DSW	Department of Social Welfare
FIDA	International Federation of Women Lawyers, Ghana
JRPD	Judicial Reforms and Projects Directorate
JTI	Judicial Training Institute
JCC	Junior Correctional Centre
LAS	Legal Aid Scheme
NPA	National Plan of Action
GBA	Ghana Bar Association
GBV	Gender-Based Violence
SCC	Senior Correctional Centre
SER	Social Enquiry Report
TOR	Terms of Reference
UN	United Nations
UNICEF	United Nations Children's Fund

Definitions

Child	Pursuant to Ghana Children's Act 1998 (Act 560) and the CRC, means a person below 18 years of age.
Child in conflict with the law	Children alleged as, accused of, recognized as having committed a crime or other contravention/infringement of the law.
Child victims / witnesses	Children who are victims of crime or witnesses to crime, regardless of their role in the offence or in the prosecution of the alleged offender.
Customary Law	The rules of law which by custom are applicable to particular communities in Ghana.
Child-friendly justice	A justice system which guarantees the respect and the effective implementation of all children's rights at the highest attainable level, giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child to participate in and to understand the proceedings, respecting the private and family life and upholding the integrity and dignity of the child.
Justice for children	Justice for children takes a broader approach than the traditional focus on juvenile justice and encompasses all aspects of the criminal, civil, and administrative justice system, including customary, religious and alternative dispute resolution mechanisms. It covers all proceedings affecting children, including: children alleged as, accused of, recognized as having infringed the penal law; child victims and witnesses; and children coming into contact with the justice system for other reasons, regarding their care, custody or protection.
Juvenile	A person under the age of eighteen years infringed/contravened the law.

1

INTRODUCTION

Every day, throughout the world, children come before the courts for a variety of reasons: as victims or witnesses of a crime who have an important testimony to give; because they are accused of committing a crime; and as subjects of proceedings relating to custody, guardianship, maintenance or adoption.

In most countries, the justice system has been designed primarily for adults, and the formality of procedures can be intimidating for children and prevent their full and effective participation in the system. Children face the same obstacles that adults face in accessing the courts. Obstacles include lack of legal awareness and high cost of legal proceedings, as well as other legal and social obstacles due to their status as children. Most children lack adequate levels of knowledge, education, maturity and experience in dealing with public officials to articulate their needs and claim their rights. When children do participate in judicial proceedings, they are often confused and intimidated by the formal court procedures and unable to effectively express themselves. These obstacles are compounded for vulnerable children such as children with disabilities, children from a disadvantaged or poor family background, and children without parental care.

Globally, there is now growing recognition that for children to be better served and protected by the justice system, modifications must be made to standard court proceedings to make them more **“child-friendly.”** When children come before the courts as victims, witnesses, accused, complainants, and children in need of protection, it is fundamental that they are met with a judicial system that understands and respects their rights and unique vulnerability. In particular, magistrates and judges stand on the frontline of children’s rights and can make a genuine difference for children on a daily basis by adapting their practices to be more child-friendly. A child-friendly justice system is one that:

- Treats children with dignity, respect, care and fairness;
- Is accessible, understandable and reliable;

- Facilitates children’s meaningful participation by adapting the court setting and procedures to be more sensitive to the child’s age, maturity and special needs;
- Listens to children, takes their views seriously and makes sure that the interests of those who cannot express themselves (such as babies) are also protected;
- Adjusts its pace to children, ensuring a speedy resolution of issues and avoidance of delays;
- Ensures that all decisions are guided by the best interest of the child, having regard to the child’s individual circumstances and needs.¹

Through this study, the Judicial Service of Ghana, together with UNICEF, seeks to recognize that Courts can be a powerful tool to positively shape children’s lives.

“Child-friendly justice” refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level, giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”

**Council of Europe Guidelines on
Child-Friendly Justice.**

¹ UN General Assembly Resolution, Human Rights Council A/HRC/25/L.10 on Rights of the Child: Access to Justice for Children (2014); Council of Europe Guidelines on Child-Friendly Justice (2010), CM/Del/Dec (2010)1098/10.2abc.

1.1 Objectives of the Research

This study was commissioned by the Judicial Service of Ghana and UNICEF as part of their shared commitment to accelerating justice reforms for children before the Ghanaian courts. The main objective of the study is to strengthen evidence based on children's experience before the courts and to identify gaps and challenges in ensuring that children have access to child-friendly justice. Specifically, the study aimed to:

- Conduct a gap analysis of the current strengths and weakness for handling children before the courts vis-a-vis international standards and best practices. In particular, the study aimed at getting a better understanding of the factors that support or inhibit children's equitable access to justice, establishing how the specialized courts (Juvenile Courts, Family Courts, and Gender-Based Violence Courts) are functioning in practice, the challenges and reasons for delays in delivery of justice, and resources required for optimal performance.

"This chamber room is for a High Court Judge, so this is not bad, there is even a fan in the room, which works at times. And this is a new court premises. Even here the parties have to sit close to each other, claustrophobic, the juveniles have no chair and are compelled to stand throughout the hearing. The victims and juveniles and their parents are on touching distance on the same couch, much against those special measures entitled to child victims, witnesses and juveniles."

Juvenile Court Magistrate

- Provide recommendations for reforms to strengthen the court process of handling cases involving children.

The study covered all relevant judicial proceedings, including those related to children alleged as, accused of, or recognized as having infringed the penal law, child victims/witnesses in criminal proceedings, and children coming before the courts in disputes relating to their care, custody or protection.

1.2 Methodology

This study was conducted by a team consisting of an international child justice specialist and a senior national Attorney-at-Law practising before the Courts in Ghana.

At the commencement of the study, an inception report, with detailed methodology, was prepared and approved by the Judicial Council of Ghana. The study was undertaken using a mix of methods, including:

- **Desk Review:** desk research and analysis of available literature was undertaken, including:
 - Laws and policies (legislation, draft Bills, regulations, national policies/action plans, SOPs and other guidance documents);
 - Research, evaluations and report (published and non-published) on the Ghana justice system;
 - Review of sample files on children in contact with the law from courts, prosecutors, police and Child Panels;
 - Request for data from key institutions, including the Judicial Service; the Department of Social Welfare; Legal Aid Scheme; the Police Service (DOVVSU); the Prison Service; the Ghana Bar Association; the Ministry of Justice and Attorney General.

- **Primary Research:** The primary data was collected from key informants using a variety of qualitative methods including:
 - ⦿ Semi-structured interviews with representatives from government departments, Courts, Police, correctional centres, UN, I/ NGOs and development partners in the selected communities in Ghana;
 - ⦿ Group Discussions with children in conflict with the law, victims and witnesses, parents, child protection workers and child protection committee members in each of the selected communities;
 - ⦿ Observation of court proceedings involving children;
 - ⦿ Email questionnaires and/or Telephone/ skype interviews

Primary research was conducted in selected regions and districts, designed to provide a reasonably representative snapshot of children's experiences before the courts in Ghana. The selected regions are purposive due to the high prevalence rates of on-going cases involving children in the regions. The regions suggested by the Judicial Service were:

1. Western Region - Sekondi-Takoradi Twin City and Wassa Akropong
2. Ashanti Region – Kumasi and Ejisu
3. Volta Region – Ho and Kpandu
4. Greater Accra Region – Accra
5. Northern Region – Tamale
6. Upper East Region – Bolgatanga

The Judicial Service facilitated the primary research by sending official communications to registrars, judges and magistrates requesting their corporation in the study. UNICEF Child Protection Section made prior contacts with the other **key** informants seeking their participation in the interviews. However, the research team experienced a number of challenges and limitations:

- ⦿ Access to comprehensive statistics on children before the courts was difficult due to the lack of standardised data recording and readily available statistics at both the district and national levels;
- ⦿ Interviews with some key informants were challenging due to their heavy schedules and limited time available for in-depth discussions; and
- ⦿ Given the information required, the time allocated for the study was not adequate and much more time would have been preferred in order to produce an exhaustive or comprehensive work.

2

OVERVIEW OF THE GHANA CHILD JUSTICE SYSTEM

Ghana has a pluralist legal system combining British common law and customary law. Pursuant to the 1992 Constitution, the laws of Ghana are comprised of the Constitution; enactments of Parliament; orders, rules and regulations; and the common law, which includes customary law. The independence of the judiciary from the executive and legislative branches of government is constitutionally entrenched. The constitution also guarantees all persons equality before the law and the freedom to enforce their rights in a court of law.

2.1 Legal and Policy Framework for Child Justice

Ghana was the first country in the world to ratify the Convention on the Rights of the Child (CRC). It has also ratified most major international instruments relating to child protection, including the African Charter on the Rights and Welfare of the Child, ILO Convention No. 182 on the Worst Forms of Child Labour, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

The 1992 Constitution requires the State to be guided by these international human rights instruments in discharging its obligations. In addition, Article 28 of the Constitution is dedicated to children's rights and states that Parliament shall enact laws necessary to ensure children's right to measures of special care and assistance, and to protection from physical and moral hazards, from engaging in work that constitutes a threat to health, education or development, and from torture or other cruel inhumane or degrading punishment.

Children's access to justice is guided by a variety of laws:²

- The **Children Act, 1998** (Act 560) as amended by Act 937 guarantees children's rights in accordance with the CRC and reinforces that the best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child. The Act outlines principles and procedures for dealing with children in need of care and protection, fostering and adoption, and for addressing disputes with respect to parentage, child custody, access and maintenance.

- The **Juvenile Justice Act, 2003** (Act 653) regulates the handling of children in conflict with the law. It outlines special procedures for the arrest, investigation, trial and sentencing of children.
- The **Criminal Offences Act, 1960** (Act 29) penalises all forms of violence against children, including child-specific offences relating to: causing harm to child at birth; exposing child to harm and negligently causing harm; kidnapping, abduction, child stealing and abandonment of an infant; and rape, defilement, carnal knowledge, indecent assault and child prostitution. Subsequent amendments strengthened provisions relating to sexual exploitation of children³ and female genital mutilation⁴.
- The **Criminal and Other Offences Act, 1960** (Act 30) outlines detailed procedures for the arrest and trial of adults charged with an offence, including procedures for the examination and cross-examination of witnesses that apply equally to children and adults.
- The **Courts Act, 1993** (Act 459): sets out the structure of the court system in Ghana and defines the respective scope of jurisdiction for the various levels within the court structure.
- The **Persons with Disability Act, 2006 (Act 715)** requires Courts to take into consideration the condition of a person with a disability and provide appropriate facilities.
- The **Alternative Dispute Resolution Act, 2010 (Act 798)** regulates the process of mediating settlements in civil and minor criminal disputes.
- The **Human Trafficking Act, 2005 (Act 694)** penalizes trafficking in persons and makes provision for the rescue, rehabilitation and reintegration of victims.

² For a comprehensive analysis of the legislative provisions applicable to children protection in Ghana, see: UNICEF (2016), *Creating an Ideal Legal Framework for Child Protection in Ghana: Legal Analysis Report*.

³ Criminal Offences Amendment Act, 2012 (Act 849)

⁴ Criminal Offences Act (Amendment) Act, 2007 (Act 741)

- The **Domestic Violence Act, 2007 (Act 732)** defines and prohibits domestic violence (including violence against children), authorizes the court to issue protection orders, and includes special protections for victims during court proceedings.

Child protection and children's access to justice are also guided by customary law. At the community level, chiefs continue to play a dominant role in maintaining law and order and resolving disputes. The Ghanaian customary law has not been codified but is recognised under the Constitution as a source of law. Some Chiefs have reportedly issued local by-laws on issues that impact on families and children, including community rules relating to child protection, child labour and Female Genital Mutilation.

Ghana has also developed several policies and plans of actions relating to children, some of which have a relevance to children coming before the courts, including the Child and Family Welfare Policy (2014), the Justice for Children Policy (2015), and the National Plan of Action on Human Trafficking (2017-2021).

2.2 Hierarchy and Structure of the Courts

The judiciary of Ghana is comprised of the Superior Courts of Judicature (Supreme Court of Ghana, Court of Appeal, High Court of Justice and Regional Tribunals), which are established by the 1992 Constitution, and the lower courts (Circuit Courts and District Courts, including the Juvenile Courts and Family Tribunal), established by Acts of Parliament. The hierarchy and jurisdiction of the courts is as follows:

- The **Supreme Court of Ghana**, comprised of the Chief Justice and not less than nine justices, has supervisory jurisdiction over all courts in the country and is the final appellate body. There are currently 13 justices of the Supreme Court, excluding the Chief Justice.⁵

- The **Court of Appeal** serves as the appellate court for the High Courts and Regional Tribunals, unless otherwise provided by law. It consists of the Chief Justice and not less than 10 other Justices of the Superior Court as the Chief Justice may request to sit in the Court of Appeal, with any three Justices required to duly constitute the Court.⁶ Currently, there are twenty-seven Justices of the Court of Appeal.⁷

- The **High Court of Justice** sits with a single judge and at times with jurors or assessors. Judges of the High Court must be persons of high moral character and proven integrity with at least ten years' standing as a lawyer. The High Court has original jurisdiction in all civil and criminal matters, unless otherwise stated in the Constitution, and has supervisory jurisdiction over all lower courts.⁸ Pursuant to the Courts Act, 1993, it also has the power to hear and determine applications relating to guardianship, custody, access and maintenance of children.⁹ The High Court also serves as the appellate body for criminal judgments of the Circuit Courts and all appeals (civil and criminal) from the District Courts, the Juvenile Courts and the Family Tribunals. There are currently 103 High Courts across the country¹⁰ and 108 Justices of the High Court.¹¹ The High Court has established specialized divisions, including the Fast Track Court, Criminal Court, Divorce and Matrimonial and Labour Court, which would most frequently deal with cases that involve children, as well as the Land Court, Probate and Administration Court, Commercial Court, and Financial and Economic Crimes Court.

- The **Circuit Courts** sit with a single Circuit Judge, who must be of high moral character and proven integrity, and have at least five years standing as a lawyer. The Circuit Courts have jurisdiction in all criminal matters other

5 <https://judicial.gov.gh>, accessed 24 May, 2017

6 *Ibid.*, Articles 136 – 138

7 <https://judicial.gov.gh>, accessed 24 May, 2017

8 Constitution, Articles 139–141

9 Courts Act, 1993 (Act 459), s. 18

10 Data received from Judicial Service

11 <https://judicial.gov.gh>, accessed 24 May, 2017

than treason, offences triable on indictment, and offences punishable by death. They also have jurisdiction over certain civil actions, including appointment of guardians for children and making orders for the custody of children.¹² Currently, there are sixty-four (64) Circuit Court Judges.¹³ In Accra, Kumasi, Tema, Koforidua and Sunyani, the Circuit Court has established specialized **Gender Based Violence Courts** to hear cases relating to family and sexual violence.

- The **District Courts**, presided over by a Magistrate, make up the largest number of courts in the country and handle the largest number of cases. To qualify for appointment as a Magistrate, a person must be of high moral character and proven integrity and be either a lawyer, or a person with judicial or legal knowledge. The jurisdiction of District Courts in criminal cases is limited to summary offences punishable by a fine not exceeding 500 penalty units or imprisonment for a term not exceeding two years, or both. They also deal with some civil matters, including divorce and other matrimonial causes and paternity and custody of children.¹⁴ There are currently 185 District Courts throughout the country¹⁵ and 175 Magistrates.¹⁶ The District Court also two specialist courts dealing with children's cases, the **Juvenile Court**,¹⁷ which hears cases involving children in conflict with the law, and the **Family Tribunal**,¹⁸ which deals with disputes relating to parentage, custody, access, maintenance and care and protection of children (discussed further below).

Pursuant to Article 148 of the Constitution, the Chief Justice, acting on the advice of the Judicial Council, has the power to appoint persons to hold or to act in a judicial office. To promote effective training of judges, magistrates and court staff, the Judicial

Service of Ghana has established a Judicial Training Institute (JTI). The JTI develops and delivers training programmes for members of the Judicial Service, including orientation/induction training for newly-appointed or promoted judges and magistrates, as well as continuing judicial education programmes to keep sitting judges and magistrates abreast with emerging issues and new developments in the law, society and best practices.

In addition to the Judicial Service, there are also a number of other agencies involved in the administration of justice for children:

- The **Attorney General** has the Constitutional duty to initiate and conduct criminal prosecutions. The Director of Public Prosecutions and attorneys attached to the Prosecutions Division of the Ministry of Justice and Attorney General's Department directly prosecute serious criminal cases before the High Court (including crimes committed against children), and advise and supervise police prosecutors in less serious criminal cases.
- The Ministry of Justice also operates a **Legal Aid Scheme** which, pursuant to the Legal Aid Act, 1997 (Act 542) provides legal services to the indigent. It undertakes public legal education, provides legal advice and assists clients to resolve disputes without litigation, and provides legal representation in both criminal and civil matters to those who qualify.
- The **Ghana Police Service** investigates all crimes and also conducts prosecutions in cases before the District Courts and Circuit Courts, where required with advice and direction from the Attorney General's Office. It has established a **Domestic Violence and Victim's Support Unit** (DOVVSU), with specialist officers to handle children's cases.
- The **Department of Social Welfare** under the Ministry of Gender, Children and Social Protection has social welfare officers and probation officers who sit as panel members on the Family Tribunals and Juvenile Courts,

¹² Courts Act, 1993 (Act 459), sections 40–44.

¹³ <https://judicial.gov.gh>, accessed 24 May, 2017

¹⁴ Courts Act, 1993 (Act 459), sections 46–51

¹⁵ Data received from Judicial Service

¹⁶ <https://judicial.gov.gh>, accessed 24 May, 2017

¹⁷ Juvenile Justice Act, 1993, s. 17; Courts Act, 1993 (Act 459), s. 49.

¹⁸ Children's Act, 1998, section 33

and also produce social enquiry reports for the courts. There are currently 175 probation officers throughout the country, and 138 social welfare officers sitting as panel members.¹⁹

- The **Commission on Human and Administrative Justice (CHRAJ)** investigates complaints of fundamental rights violations, corruption, abuse of power, and unfair treatment. It handles many complaints involving children's rights, including maintenance, neglect, abuse, abandonment, labour, paternity, forced marriage, custody, intestate benefits, refusal of medical treatment, and inhuman and degrading treatment.
- The **Ghana Bar Association** is a professional association of all legal practitioners (barristers and solicitors) in Ghana.

2.3 Court Data Collection and Statistics

The Judicial Service is in the process of strengthening the systematic collection and analysis of data to better inform policy development and planning. At the national level, the Judicial Service regularly receives, analyses and publishes data on the number of civil and criminal cases newly filed, pending and completed in courts at all levels. This information is currently disaggregated by region /district and level of court (Supreme Court, Court of Appeal, Circuit Courts and District Courts) and published in the Judicial Service's Annual Reports.

However, there is no separation of data from the specialized courts dealing with children's cases (Juvenile Court, Family Tribunal and Gender-Based Violence Courts), and no disaggregation of data on the basis of the age or gender of the parties, at either the district or national level. The Judicial Service is in the process of designing a new monitoring and evaluation and database system. The system will allow data to be more systematically transmitted from all district courts to the regional level, where it will be collated by Regional M&E Officers and transmitted to national headquarters for validation and analysis.²⁰

The Judicial Service is also rolling out an integrated Electronic Case Management System (ECMS) to improve the efficiency of court administration. The system is being initially deployed at the Law Courts Complex in Accra, and will be gradually expanded to all High Courts. However, Circuit and District Courts (including the Juvenile Court, Family Tribunal and Gender-based Violence Courts) continue to use a manual case management system.

¹⁹ Data received from the Ministry

²⁰ Judicial Service Annual Report 2015/2016

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3

Children in the Criminal Justice System in Ghana

Court proceedings can have an important educative impact on children in conflict with the law, helping them to understand why their actions were wrong, encouraging them to feel truly remorseful for what they did, and motivating them to improve their behaviour in the future.

However, having to appear in court charged with an offence can be a frightening experience for anyone, especially a child. The standard criminal court environment and procedures have generally been designed for adult defendants, and the formality and intimidation of typical court proceedings is intended to reinforce the seriousness of the proceedings and the authority of the court. For children, however, the formal setting and use of harsh or complicated language often prohibits them from being able to participate effectively in the trial, and also contributes to their sense of stigma. For children to be able to participate effectively in the court proceedings, the ordinary trial process must be adapted to create an atmosphere of understanding, and to take into account the child's age, maturity, development (intellectual and emotional) and disability (if any). Courts can have a much stronger educative impact if the child and family are able to fully understand the proceedings and are encouraged to participate in them.

For these reasons, the UN Convention on the Rights of the Child (Article 40) and the African Charter on the Rights and Welfare of the Child (Article 17) require States parties to establish special laws, procedures, authorities, and institutions specifically applicable to all children in conflict with the law. The international standards²¹ provide detailed guidance on court proceedings for children in conflict with the law, and in particular emphasise that:

- Throughout the proceedings, children have the right to be accompanied and supported by a parent, guardian or other legal representative;²²
- Children also have the right to be represented by a lawyer and to apply for free legal service, if available in the country;²³
- Pre-trial detention must be used only as a measure of last resort, and for the shortest appropriate period.²⁴ All efforts should be made to impose alternative measures, such as close supervision, placement with a family, or in an educational or home setting;²⁵
- A child who is detained should be formally charged and be brought before the court not later than 30 days after his/her pre-trial detention takes effect, and a final decision should be made in the case within six months;²⁶
- Children alleged or accused of a crime or offence have the right to have the matter determined without delay by a competent, independent and impartial authority in a fair hearing.²⁷ Governments should establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, governments should ensure the appointment of specialized judges for dealing with children's cases;²⁸
- Court proceedings should be conducted in a manner conducive to the best interest of the child and in an atmosphere of understanding, which allows the child to participate fully and to express him or herself freely;²⁹
- In determining what sentence to impose on a child, the best interest of the child must be a primary consideration. All children must be dealt with in a manner that is appropriate to their well-being and proportionate both to their circumstances and to the offence.³⁰ This has been interpreted to mean that, when dealing with child offenders, the traditional objectives of criminal justice, such as deterrence and retribution, must give way to rehabilitation and restorative justice objectives;³¹
- Deprivation of liberty should be used only as a measure of last resort, and for the shortest appropriate period.³² Deprivation of liberty shall be imposed only after careful consideration of all other options, and must be used only in cases where the child has committed a serious act involving violence against another person, or if the child persists in committing other serious crimes and there is no other appropriate response,³³ and
- To ensure that deprivation of liberty is used only as a measure of last resort, a variety of non-custodial options should be available.³⁴ The court should be given broad flexibility and discretion in choosing the most appropriate penalty in each case. A social inquiry report should be prepared so that the court has a full picture of the child's background, circumstances and the conditions under which the offence was committed.³⁵

21 UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); the UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs); the UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules); and UN Committee on the Rights of the Child, General Comment No. 10 on Child Rights in Juvenile Justice.

22 CRC Art 40.2(b)(iii); ACRWC, Article 17.2 (III); Beijing Rules, Art 15.

23 Beijing Rules 15.1

24 Article 37 (b).

25 Beijing Rules Article 13.2; JDLs, Art17.

26 UN Committee on the Rights of the Child, General Comment No. 10, para 28(b).

27 CRC Article 40.2(b)(iii); ACRWC, Article 17.2 (iv)

28 UN Committee on the Rights of the Child, General Comment No. 10, para 31.

29 Beijing Rules. Art. 14.2

30 CRC, Article 3 and 40.3 (b).

31 UN Committee on the Rights of the Child, General Comment No. 10, paras 10 and 25.

32 CRC, Article 37(b).

33 Beijing Rules, Article 17.1(c).

34 CRC, Article 40.4; Beijing Rules, Art 18.1

35 Beijing Rules Art 18.1, 16; UN Committee General Comment No. 10, para 25.

3.1 Jurisdiction and Composition of the Juvenile Courts

Ghana's Juvenile Justice Act, 2003 and the Justice for Children Policy highlight the importance of establishing a separate and distinct juvenile justice system that promotes specialisation in the handling of children, is aimed primarily at restorative, rehabilitative and re-integrative justice, and ensures that deprivation of liberty is used only as a last resort.

Central to this specialised approach for juveniles is the Juvenile Court. The Juvenile Justice Act, 2003 states that the Juvenile Court has exclusive jurisdiction over all children in conflict with the law, other than children co-accused with an adult and children charged with an offence punishable by death (such as treason, murder).³⁶ In such cases, the child is tried by the regular criminal court with summary jurisdiction over the offence, but if convicted the case is remitted to the Juvenile Court for sentencing.³⁷

The Courts Act, 1993 states that the Chief Justice may designate any District Court as a Juvenile Court, and that it is to be composed of a panel of three members: the presiding Magistrate of the District Court and two lay panel members, one of whom must be a social welfare officer. Lay panel members are appointed by the Chief Justice on the recommendation of the Director of Social Welfare and must be 25 years of age or older,³⁸ of high moral character and proven integrity, and are entitled to an allowance and benefits as determined by the Judicial Council.³⁹ When the Judicial Service is notified of a vacancy for panel members, the Judicial Service writes to the respective District Administrators to forward applications from interested applicants (including their name, application letter and CV). The applicants are then vetted by Judicial Service, in consultation with the Department of Social Welfare. The Chief Justice signs a letter

of appointment, specifying the Court and the location, which is sent through the Regional Judicial Service to the panel member. Panel members are generally assembled and sworn in batches before the High Court of the Region.

Apart from the general requirements for appointment to office, there are no special criteria, qualifications or training requirements for being appointed as a Juvenile Court Magistrate or lay panel member. Stakeholders advised that lay panel members are generally an older respected member of the community, primarily welfare officers, teachers, religious leaders, retired civil servants, or an official who is close to the retiring age and released from active service. In some instances, the same panel members sit for several years, thus allowing them to build up their knowledge and expertise. However, there is no standard, certificate-based training programme that Juvenile Court Magistrates and panel members must complete as a condition of their appointment. Many of the Juvenile Court Magistrates and panel members interviewed as part of this study had receive no or minimal training on juvenile justice.

Prosecutions in the Juvenile Court are conducted by police prosecutors. There are currently no specially trained prosecutors for handling cases of children in conflict with the law, and no practice direction guiding police prosecutors in how they should deal with juvenile cases.

Neither the Juvenile Justice Act nor the Courts Act provide guidance on the functions of the Juvenile Court lay panel members. They reportedly provide technical advice to the Magistrate on social welfare aspects of the case, ask questions, give advice to the child and parents and help reduce the formality of the proceedings. Both Acts are also silent on whether decisions of the Juvenile Court are made by the presiding Magistrate on the advice of the panel members, or on the basis of majority vote. There appears to be confusion on this point, with some of the Juvenile Court Magistrates and panel

³⁶ Juvenile Justice Act, s. 17

³⁷ *Ibid.*, s. 18

³⁸ Juvenile Justice Act, 2003, s. 49

³⁹ Constitution, Article 152

members indicating that the panel members' role is advisory only and the Magistrate ultimately decides, and others indicating that decisions must be made by majority vote of all panel members. Juvenile Court magistrates were generally of the view that having lay members as part of the Juvenile Court is helpful and effective, however some felt that lay members were not adequately trained in their role.

The panel system is reportedly not functioning effectively and efficiently in all districts, and the transition between retiring panel members and newly appointed ones is not always smooth, resulting in lapses of time during which the court does not sit.⁴⁰ Although there are 185 District Courts throughout the country, the Department of Social Welfare advises that it has only 138 welfare officers appointed as Juvenile Court panel members, suggesting that Juvenile Courts have not been duly constituted in all districts. A number of practical challenges to implementing the Juvenile Court panel system were raised by stakeholders, including:

- Delays in appointment or swearing in of panel members due to communications breakdowns between the Districts, Department of Social Welfare and Judicial Services, and a misunderstanding about the appointment process;
- Irregular or delayed payment of allowances for lay panel members, contributing to low motivation and morale;
- The standard allowances (26 cedis per sitting for transport and travel and 30 cedis per year for clothing) is not sufficient to cover actual costs;
- In districts with limited human resources, there is a potential conflict of interest where the same social welfare officer both sits as a member of the Court panel and prepares the social enquiry report;⁴¹

- Identifying qualified, competent and committed community members to act as panel members is challenging since most employed people are not able to commit to attend Juvenile Court sessions on a regular basis during normal working hours;
- The non-appointment or absence of panel members contributes to delays and adjournments in some districts, since the Juvenile Court cannot sit if not properly constituted.

In order to overcome these challenges, the Justice for Children Policy recommends revising the Juvenile Court model and reducing administrative costs by merging the Juvenile Court and Family Tribunal into one Family Court, presided over by a specially trained Magistrate. Social welfare officers would continue to provide guidance and advice through social enquiry reports, but would not sit on the adjudication panel. These changes would require amendments to both the Juvenile Justice Act and the Courts Act.

3.2 Juvenile Court Environment

The Juvenile Justice Act, 2003 requires the Juvenile Court to sit either in a different building or room, or on a different day, from sitting of other courts (s. 16 (1)). This ensures some degree of separation from adult court proceedings, even in the absence of a full-time, specialist court. Ghana does not currently have fully separate, specialised courtrooms for the Juvenile Court. Instead, the regular District Court is convened as a Juvenile Court on a set day or days of the week.

Stakeholders advised that in most cases, juvenile matters are heard in the Magistrate's chambers, rather than the formal courtroom. This is intended to reduce formality and put the child at ease. The conditions in these chambers varies across the country; some have air conditioners and fans, but some lack a fan or sufficient ventilation. The size of the chamber also varies, but most tend to be quite small and do not have sufficient chairs to accommodate all of the participants in Juvenile

40 Justice for Children Policy 2014, at p.18

41 Nana Araba Apt and Betty Akuffo-Amoabeng, Department of Social Welfare Institutional Assessment, Ministry of Manpower, Youth and Employment, 2007.

Court cases. Juvenile proceedings commonly involve at least six to eight people (the three-person panel of the Juvenile court, the prosecutor, the juvenile and his/per parent(s), and sometimes a defence lawyer, the victim and the victim's parent(s)). In the proceedings observed by the research team, the Magistrate's chambers were quite cramped, with parties sitting very close to one another. This has the potential to cause significant discomfort to victims/witnesses, particularly if the witness is also a child.

In some cases, Juvenile Court proceedings are held in the courtroom. In such cases, it is not common practice to modify the courtroom environment or seating arrangements.

3.3 Case Management Practices

There was no available data on the number of children in conflict with the law coming before the courts, or the types of offences commonly committed. Some indication of the volume of cases before the Juvenile Court can be drawn from data from the Department of Social Welfare on the number of social enquiry reports (SERs) prepared, as these are required for all juveniles convicted by the Court. In 2014, the DSW submitted 406 SERs, whilst in 2015 this number increased to 966. This suggests that the number of juvenile offenders being charged to court has increased, but still relatively low as compared to DOVVSU's statistics on reported defilement cases

Each District Court has a Registrar who is responsible for the administration of the court and is in charge of the operations of the registry. The court staff also include clerks, secretaries/recorders, bailiff, and cashier. District Court proceedings are initiated when a summons or charge sheet is filed with the court (generally by the police). There is no filing fee in criminal matters. The Registrar stamps the documents to confirm receipt, allocates a case file number, and assigns the case to a court, where it is recorded in the Court Record Book. There is no separate register for Juvenile Court cases. However, all juvenile cases are labelled as such in

the Court Record Book. All court dates and details with respect to the progress of a case are recorded in the Court Record Book, as well as on the jacket of the case file. The District Courts currently use a manual recording system, as they have yet to be computerized.

The Juvenile Court generally sits once per week, on a designated day, and all juvenile cases are scheduled on that day. In areas where a Juvenile Court has not been designated, the District Court Magistrate may deal with children in conflict with the law in respect of bail applications only, and must then refer the child to the nearest Juvenile Court. This raises a number of challenges:

- The process of transferring the file from one court to another tends to add to delays;
- The victim and witnesses are inconvenienced due to the distance they need to travel for the court proceedings. This sometimes results in non-attendance of essential witnesses;
- Transport issues are also a challenge for police and probation officers/social welfare officers who produce the social enquiry report.
- Juveniles on remand must be moved to a remand home closer to the court where the case will be heard, causing additional cost and inconvenience.

Pursuant to the Juvenile Justice Act, 2003, all cases of children in conflict with the law must be completed within six months from the date of the child's first appearance before the Juvenile Court (s.33), and any adjournment must be for not more than seven days. Stakeholders who were interviewed as part of this study advised that it is standard practice for cases to be adjourned for no more than seven days as required by law, however in some cases this does not happen. Stakeholders advised that on average, juveniles appear in court between four and six times from first appearance through to final judgment, and in some cases as often as 10 or 12 times. One juvenile who was interviewed as part of this study appeared in court 23 times.

Most juvenile cases are completed within the six-month time-frame, however, there have been instances of cases delayed for much longer. For one juvenile interviewed as part of this study, court proceedings took 18 months. There is no uniform practice of expediting cases where a juvenile is on remand. Stakeholders cited a number of common factors contributing to adjournments and delays in Juvenile Court proceedings, including:

- Lack of quorum for the Juvenile Court panel, due to panel members being unavailable, or not appointed or sworn;
- Defence counsel or prosecutor not ready to proceed;
- Juveniles not appearing before the court, either because they failed to attend or due to lack of police vehicles to transport juveniles on remand;
- Delays in providing defence counsel with copies of police statements and other evidence;
- Controversy over the child's age and the lengthy process of obtaining documentary or medical proof of the child's age;
- Juvenile's parent or guardian not attending;
- Delays in preparation of the social enquiry report (SER);
- Absence of witnesses, sometimes due to travel distance and costs associated with attendance or challenges in issuing summons to witnesses;
- When the magistrates are transferred or are on holidays, a new or relieving judge has to start the trial **de novo**;
- Most courts do not have backup power, and in the event of a power outage court proceedings must be halted and cases adjourned; and
- Due to heavy caseloads and the time-consuming process of recording proceedings by hand, courts are sometimes unable to complete all cases assigned for that day.

Stakeholders noted that court staff, police and probation officers often work in challenging circumstances and face a number of resource constraints, including: lack of stationery and

equipment; lack of vehicles or funding for transport and other entitlements needed to conduct enquiries and serve court documents; frequent transfer of staff, staff shortages, and delays in appointments; and lack of automated systems to improve efficiency.

3.4 Age Determination

Accurate age determination is essential to ensuring that children in conflict with the law benefit from the special protections they are entitled to under the Juvenile Justice Act, 2003. In line with international standards, the Criminal Act establishes twelve as the age of criminal responsibility (s. 26). In addition, all children under the age of 18 who are in conflict with the law must be dealt with in accordance with the Juvenile Justice Act, 2003, with the exception of children who have been charged jointly with an adult and children charged with an offence punishable by death (s. 17). However, the Juvenile Justice Act, 2003 does not state clearly whether the child's age, for the purposes of the jurisdiction of the Juvenile Court, is to be determined at the time of the alleged offence or at the time s/he appears before the court.

"Bail is often granted unconditionally to parents who show up failing which the juvenile is kept with the police or sent on remand to Agona Swedru which is several miles away and with cost implications for the police and DSW. Denial of the right to liberty to those children without parental care amounts to discrimination of their right to equal protection of the law. There is need for vocational and transit centres for street children and effective family tracing and re-unification system. The use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society".

Juvenile Court Magistrate

The Juvenile Justice Act, 2003 requires the Court to make inquiries and verify the age of child based on a birth certificate or baptismal certificate, or in the absence of these documents, a certificate signed by a medical officer (s. 19). Of concerns is the lack of clear guidance under the law for age determination at the arrest or investigation stage, or a clear statutory requirement that children claiming to be under the age of 18 be treated as such pending age verification by the courts. Police reportedly often make age determinations based on the person's physical appearance alone, which can be highly inaccurate. There have also been reports of police deliberately inflating a child's age to avoid the requirements of the Juvenile Justice Act, 2003. Where a child's age is in dispute, s/he can end up detained as an adult pending the determination by the court. An error in the recording of a child's age at the investigation stage can also result in a juvenile case being filed with the wrong court, denying the child his/her rights under the Juvenile Justice Act, 2003 and placing the onus on the child and his/her parents to know and assert their right to have the matter tried by the Juvenile Court.

Age determination also poses significant challenges for the Court. The rate of birth registration in Ghana has been improving in recent years and is currently at approximately 70 percent.⁴² However, many children coming before the Courts still lack birth certificates, baptismal certificates or other reliable documentary proof of age. In particular, children born in rural areas or outside of medical facilities, children from poorer families who cannot afford the cost of a birth certificate, children whose parents are deceased, and children who are migrants, on the streets or have run away from home often lack documentary proof of their age. For children who have been registered at birth, the process of obtaining a certificate from the birth and death registry is reportedly time-consuming, requiring a minimum of two weeks.

Stakeholders advised that the Juvenile Courts consider a broad range of documents to verify a child's age where a birth certificate is lacking,

including certificates of baptism, weighing card, school records or school admission date/registration, and NHIS records. However, prosecutors advised that approximately half of juveniles who claim to be under the age of 18 are not able to produce documentary proof of their age. In some cases, reliance is placed on testimony or statutory declarations from the juvenile's parents or family members using life events, local knowledge, or historical events at the period of the child's birth. In cases where there is doubt about the child's age, the Court commonly request a medical examination. However, stakeholders raised a number of challenges with this practice:

- Medical opinions should be based on bone age assessment (using x-ray of the hand and wrist) or dental x-rays. However, in some cases medical certificates are issued based on just a general physical examination of the child's outward appearance. Due the different rates at which adolescents develop, physical examinations can be highly inaccurate;
- In many parts of the country, there is a lack of x-ray facilities, government dental clinics and other medical laboratories to conduct reliable assessments of a child's age;
- Concerns have been raised about the skills and qualifications of doctors to conduct accurate age assessments based on medical best practice;
- The limited availability of doctors can contribute to significant delays; and
- In some cases, fees ranging from GH¢250 to GH¢500 must be paid before a medical report is released. This can be beyond the means of many juveniles and/or their parents.

The Juvenile Justice Bench Book does not provide further guidance to Magistrates on the difficult task of age determination. It notes that "under no circumstances shall a Juvenile Court try offences committed by a person who has attained the age of eighteen," and "where it appears to the Juvenile Court that a person brought before it has attained

42 UNICEF (2016) State of the World's Children Report

the age of eighteen, the court must decline to hear the matter.” This is contrary to International standards and best practices, which state that all children who are under the age of 18 **at the time of the alleged offence** are entitled to juvenile justice protections, regardless of whether they have attained the age of 18 by the time they appear before the court.⁴³

3.5 Bail Hearings

The Juvenile Justice Act, 2003 includes a number of provisions designed to reduce pre-trial detention of children. If a child is not released by the police, s/he must be brought before Court within 48 hours (s. 14, 20 and 93). The Juvenile Justice Act creates a presumption in favour of bail for children, stating that the court must, unless there is a serious danger to the child or the community, release the child on bail (s. 21 (1)). A Juvenile Court may also refuse to grant bail if it is satisfied that the child may not appear to stand trial, may interfere with any witness, evidence or hamper police investigations, or may commit a further offence when on bail (s. 21(5)). Bail may be granted on the juvenile’s own undertaking or with sureties from the parents, guardian, close relative of the juvenile or a responsible person. (Section 21 (3)). As a condition of bail, the child may be required to give a security or accept specified conditions, but the amount of bail must be fixed “with due regard to the circumstances of the case and shall not be excessive or harsh” (s. 21(2) – (4)). If a child is not released on bail, the Juvenile Court may make an order committing the child to the care of a parent, guardian, relative or other fit person, or remand the child to a remand home (s. 23).

Stakeholders interviewed as part of this study advised that, in the majority of instances, children arrested for an offence are presented to the Court within 48 hours of the arrest as required by law. No statistics were available on the percentage of children detained pending trial. However,

stakeholders advised that the Courts generally release children on bail into the custody of their parents, unless the child is charged with a grave offence (e.g. defilement and other sexual offences, murder, armed robbery), or there are serious concerns that the child will commit additional offences or not appear for trial (e.g. where the child was released on bail, fails to appear in court, and is re-arrested).

Apart from the general provisions of the law, Juvenile Courts are not given additional guidance or training on special principles and approaches to making decisions about bail in juvenile cases. When asked what factors were most important in making decisions about juvenile bail, the Juvenile Court Magistrates interviewed as part of this study gave most weight to the seriousness of the offence, the juvenile’s age, history of previous offences (if any), public safety, and the likelihood that the juvenile will abscond, interfere with the investigation or commit further offences. Less emphasis was placed on the juvenile’s background and family circumstances, the parents’ ability to pay bail, disruption to the child’s education, and the principle of deprivation of liberty as a last resort.

A key challenge raised by stakeholders was dealing with children without appropriate parental support. In some cases, bail is denied, or if granted the child is not able to satisfy the conditions of bail because:

- The child is homeless or his/her parents or other suitable guardian cannot be located;
- The parents refuse to appear to secure the child’s bail because they do not want to be stigmatized by their child’s actions, or want the child to be punished for his/her disobedience;
- The parents are unable to afford the bail amount; and
- The parents refuse to pay the bail amount.

⁴³ Beijing Rules, Article; UN Committee on the Rights of the Child General Comment No. 10 on Children’s Rights in the Administration of Juvenile Justice.

There is no requirement that the bail amount be fixed having regard to the parent/guardians' ability to pay. The bail amount reportedly ranges from between 1,000 to 5,000 cedis and is determined primarily by the nature and seriousness of the offence, rather than the parent's economic situation and ability to pay bail. There is also no structured process for family tracing at the earliest stages of the criminal justice process. Where an appropriate parent or other surety cannot be identified, children are at risk of being remanded into custody in police cells or remand homes, often for very minor offences. For example, the research team interviewed one boy who had been on remand for a month on a charge of petty stealing.

The Juvenile Justice Act, 2003 includes strict provisions to limit the duration of remand, requiring that a remand warrant be for a maximum period of seven days, that a remand warrant cannot be renewed without the appearance of the child at the hearing, and that the total period of remand must not exceed three months, or six months in the case of offences punishable by death (s. 23 (4) and (5)). However, some police applications to extend the period of remand were found to have gone beyond one week to almost three weeks (14-21 days). There appears to be no uniform practice of expediting or giving priority to cases where the juvenile is on remand, with some court registrars advising that they do, and others stating that they do not.

"Children are not defended by lawyers. Even if you inform them of their rights, a distant relative will come and advise them against it, as they are expensive, so most juveniles do not have legal counsel"

A social welfare officer

3.6 Access to Legal Representation

The Juvenile Justice Act, 2003 reinforces children's right to access legal advice from the point of arrest (s.11). The court is required to advise children of their right to legal representation and legal aid (s. 22 d). However, beyond the requirement to explain this right to the child, there is no obligation on the court to appoint a lawyer for children where this is deemed necessary to ensure his/her full and fair defence. The Courts Act, 1993 authorises the court to assign a legal aid lawyer (paid out of the Consolidated Fund) to any party where the court is of the opinion that "it is desirable in the interest of justice that the party should have legal aid and that he is financially unable to obtain the services of a lawyer" (s. 114i). However, this authority applies only to the Supreme Court, Court of Appeal, High Courts, Regional Tribunals, and Circuit Courts, not the District and Juvenile Court.

Pursuant to the Legal Aid Scheme Act, 1997 (Act 542), the Ministry of Justice operates a national Legal Aid Scheme to provide free legal representation to people charged with an offence who meet the financial threshold. The scheme operates from ten offices in all the Regional capitals and 19 district offices. At present, the scheme has 21 full-time lawyers, however they face a number of funding and logistical challenges. No specific provision is made to ensure that children have access to legal aid, as a priority, and children are not exempt from the means test as recommended by international standards.⁴⁴ There is no "duty counsel" system within the Juvenile Courts, and Legal aid lawyers rarely appear before the Juvenile Courts.

In addition to the State Funded LAS there are a number of NGOs that provide pro bono legal representation, including HelpLaw Ghana, FIDA-Ghana, Legal Resources Centre (LRC), WiLDAF-Ghana, Centre for Public Interest Law (CEPIL), and the sociolegal centre by DCIGhana. However, these organisations have limited geographical reach, and also struggle to meet the public demand for legal

⁴⁴ UN Principles and Guidelines on Access to Legal Aid in Criminal Justice, Article 41.

assistance. There are no State-funded or private legal aid organizations specializing in legal aid for children, and the Bar Association Code of Ethics does not address the special ethical considerations involved in representing children.

There are no national statistics available on the percentage of children in conflict with the law who are represented by a lawyer. Stakeholders advised that the vast majority of children who come before the Juvenile Court are unrepresented. Of the 14 juveniles interviewed as part of this study, 11 (78.6 percent) did not have a lawyer to represent them in court. Of those who were represented, none had met with their lawyer before the trial date, and in one case the lawyer failed to attend court on the day the child was sentenced.

A number of challenges were cited in guaranteeing children their right to legal representation, including:

- The limited number of legal aid lawyers and shortage of funding for the legal aid scheme;
- Children who are in custody and without parental support have no one to attend the legal aid office to submit an application on their behalf;
- The means test for legal aid excludes children whose parents earn more than the minimum wage;
- High cost of legal fees, and the inability of juveniles' parents to pay;
- Limited number of private lawyers to adequately represent litigants before the courts;
- Few lawyers specialise in children's law and there is low interest in handling such cases. Most lawyers reportedly do not like representing juveniles because the fees are inadequate and generally not commensurate with other areas of the legal practice;
- Children and parents' lack of awareness of the right to legal aid, and of the importance of having legal representation;

In some of the Juvenile Court cases encountered by the research team, children pled guilty and

were sentenced by the Juvenile Court without the assistance of either a lawyer or a parent/guardian. This has significant implications for the administration of justice. Children, because of their limited education and maturity, are not able to fully defend and protect their rights. Legal representation is essential to ensuring that children are able to present their best defence; do not plead guilty in circumstances where they have a valid legal defence, and are able to challenge evidence put forward by the prosecutor and the probation officer in support of both conviction and sentence. Early intervention by a legal aid lawyer can also help facilitate family tracing and identification of an appropriate family member to take custody of the child pending trial, thus reducing the number of children held on remand.

3.7 Child-Friendly Trial Procedures

The Juvenile Justice Act, 2003 includes limited provisions on child-friendly court procedures within the Juvenile Court. The Act states that Juvenile Court proceedings should be informal (s. 16(3)) and closed to the public (s. 16 (2)). However, the law does not provide guidance on how to conduct proceedings in a more child-sensitive manner or to encourage active participation of the child. There are no court rules on the functioning of the Juvenile Court, and the Juvenile Justice Bench Book does not provide any additional guidance on practical measures the court can take to make the proceedings more child-friendly and to encourage children's constructive participation.

As noted above, Juvenile Court proceedings are conducted either in the District Court courtroom or in the Magistrate's chambers. While waiting for their case to be called into chambers, the juveniles and other parties to the proceedings generally sit waiting in the courtroom and are not kept in police cells. Children who are on remand are generally not handcuffed in transit, however this rule is not uniformly applied.

At the beginning of the proceedings and prior to taking the plea, the statement of the offence and

the particulars of the charge sheet are read by the prosecutor in English, which is the official language of the Court. The charge is then translated and explained by either an interpreter, the court clerk, or a member of the Juvenile Court Panel, in a language understood by the child. The Juvenile Courts reportedly avoid legal jargon wherever possible, use simple language, and provide explanations where needed to ensure that the child understands. However, concerns have been raised about the quality of some court interpreters, some of whom are not professionally trained, provide inaccurate or misleading translations, or do not have sufficient understanding of local dialects to interpret effectively.

Stakeholders highlighted a number of measures taken by the Court to make Juvenile Court proceedings more child-friendly than the standard criminal court proceedings, including:

- Magistrates, prosecutors and other court officers do not wear uniforms;
- Proceedings are held in chambers and media is not allowed to be present;
- If proceedings are held in the courtroom, the juvenile is not required to stand in the dock;
- The language and atmosphere are friendly and informal, and legal jargon is discouraged;
- The child is protected from intimidation and bullying by lawyers;
- Proceedings are taken at the pace of the child; and
- Parents are encouraged to attend court with their children, though sometimes they do not.

However, common best practices recommended by the international standards and used in other common-law countries are not commonly or consistently used in all Juvenile Court proceedings. The interviews with key stakeholders (including juveniles) and court observation by the research team highlighted a number of challenges or inconsistencies in Juvenile Court practices:

- Juveniles are generally required to stand throughout the trial;
- Juveniles are sometimes transported to and from court together with adults;
- Juveniles are sometimes handcuffed in transit. One juvenile interviewed as part of this study reported being handcuffed to the judge's door;
- Of the 14 juveniles interviewed for this study, most had appeared in chambers, but five appeared in open court with a large number of people present;
- When proceedings are conducted in the courtroom, no steps are taken to create a more child-friendly and conducive environment, such as by re-arranging the furniture so that all parties (including the panel members) are on the same level;
- The tone of the court is sometimes scolding or intimidating;
- The court does not consistently ensure child-friendly language and explanations. Some juveniles were not able to fully understand the questions put to them due to the use of big words, because questions were asked in a confusing way, or due to poor translation;
- Juveniles generally do not actively participate in the proceedings and are not always given enough time to state their case or tell their side of the story;
- Most juveniles indicated that they felt scared during the court proceedings because of the strange and unfamiliar environment, threats and prior abuse from the police, lack of a parent or support person, fear of being sentenced for a long time, and the angry tone of the court officers;

Social Enquiry Reports are read out during the proceedings, but not provided to the juvenile and his/her parents in advance so that they can review and (if necessary) contest the contents;

“Police says don’t waste our time, be cooperative for the courts to give a lenient sentence.”

A Juvenile Offender

- The verdict is not consistently explained to children, using simple language; and
- Although juveniles have the right to appeal to the High Court, this is reportedly rarely exercised, and juveniles are not routinely informed of their right to appeal at the time of judgment.

The vast majority of children (80 to 90 percent) appearing before the Juvenile Court plead guilty. In some cases, this is reportedly motivated by pressure or advice from the police or probation officer, who encourage the child to plead guilty in order to get a more lenient sentence. Most children plead guilty without the benefit of legal representation, which raises concerns as to whether they fully understand the legal ramifications of their plea, or the availability of potential legal defences.

“About 80-90% of juveniles plead guilty to the offence due to pressure from the police, perhaps due to lack of facilities to remand them. The courts should not easily accept their self-incrimination and not deny them the protection of the law. The explanation given by the juveniles must alert the courts to their vulnerabilities or if there is a deliberate intention to plead guilty or not, so that the fundamental basic rights enshrined under the Constitution Article 12-14, and the equality will be ensured.”

Regional Director, Legal Aid Scheme

3.8 Sentencing Principles and Practices

Where a child enters a plea of guilty or is found guilty after trial, the Juvenile Court must request a Social Enquiry Report (SER) from the probation officer/welfare officer. To ensure fairness and impartiality, the probation officer who prepares the SER should not be the same person who sits on the Juvenile Court panel. However in some jurisdictions this is not possible since there is only one welfare officer in the district.

Stakeholders advised that the common practice is to adjourn for one or two weeks for the report to be prepared; in cases where the juvenile is on remand the SER is expedited. The Department of Social Welfare advises that its officers prepared 406 SERs in 2014, and 966 in 2015. Probation officers advised that two weeks is generally not sufficient to

“The SER is a recommendation and not binding on the sentence. The courts as agents of the law cannot bend the sentence as per the offence. The report can only mitigate the sentence. The Court is unaware of the details on the child’s home and background. Why did he commit the crime - is he hungry, has he no guidance, no counselling, no parental control, single family, what are the push factors to commit such an offence? Thereby the SER is to plead with the court on behalf of the juvenile to mitigate the sentence. It can help the judge identify the most appropriate sanctions and rehabilitative services for each juvenile. If the court is furnished with a poorly drafted SER it could undermine the decision of the court due to lack of evidence in the SER. There are instances where the SER contains inappropriate recommendations such as in a case of a minor theft by a child the SER had recommended placing him into a correctional centre for 3 years even though a less expensive, more beneficial, and more appropriate alternatives are available.”

Juvenile Court Magistrate

prepare a thorough report and they would prefer a minimum of one month. They cited a number of challenges in preparing the reports, including: difficulties in locating children's parents or relatives when the child is on remand, gives the wrong address, or is not cooperative and deliberately gives false information; difficulty in getting the necessary background information from parents who are not cooperative or who have neglected or abandoned their child; and the need to travel several times to the child's place of residence (often at their own expense) to interview and gather information from family members, friends, neighbours, schools, etc.

The Juvenile Justice Act, 2003 states that the SER must include information on the child's background and circumstances, the conditions under which the offence was committed, and recommendations for sentence [s. 24 (3)]. The Department of Social Welfare has developed a standard format for SER that include information under the following headings: Court; Location; Name of juvenile; Sex; Age; Hometown; Residence; Religion; School; Family relations; Siblings; Offence; Source of information; Offence analysis; Background of juvenile offender; Home condition; School report; Risk of future offending; Observation /finding; Conclusion plan; and Recommendation. However, the quality of SERs reportedly varied, and some Magistrates and lay panel members raised concerns that the reports were not impartial, did not provide in-depth information about the factors influencing their behaviour and what rehabilitative services were needed, and sometimes included recommendations that were not appropriate.

Whilst the SER is an important tool in the sentencing process, care must be taken to ensure that they do not contribute to unnecessary delays, particularly where the juvenile is on remand. Consideration could be given to other strategies for improving the efficiency of the SER process, e.g. by dispensing with the SER in minor cases where a custodial order is not being considered, initiating the process of family tracing and family contact earlier in the process, introducing standardized tools for

background and risk assessment, reducing the number of people interviewed as part of the SER development, and allowing reports to be compiled based on information gathered via telephone and without a home visit, where a home visit is not feasible. In addition, as recommended above, shifting away from a panel system for the Juvenile Court would free up the time of welfare officers so that they can focus more human resources on the preparation of SERs and the supervision of children on probation. It would also alleviate conflict of interest difficulties which prevent the same welfare officer from preparing a SER and sitting on the court panel in the adjudication of the child.

Under the Juvenile Justice Act, 2003 a variety of non-custodial and custodial options are available for children found guilty by the court (s.29):

- Conditional or unconditional discharge;
- Discharge with an undertaking;
- Release on probation for between six and 18 months under the supervision of a probation officer;
- Committal to the care of a relative or other fit person;⁴⁵
- Order to pay fine, damages or costs;
- Order the child's parent, guardian or relative to pay a fine, damages or costs;
- Order the child's parent, guardian or close relative to give security for the good behaviour of the child;
- Order the child to be detained in a correctional centre for up to three months if the child is under the age of 16, up to six months for a child who is 16 years of age but not older than 18 years, or up to three years if the child committed a serious offence (defined as murder, rape, defilement, indecent assault; robbery with aggravated circumstances, drug offences; and offences related to firearms) (s. 46); and

⁴⁵ A "fit person" is defined as a person of full age who is of high moral character and integrity and sound mind capable of looking after a child and who has been registered by a probation officer or Social Welfare officer as being able to provide a caring home for a child (s. 60)

- Deal with the case “in any other lawful manner the court considers just”. However, section 32 explicitly prohibits a sentence of imprisonment or the death sentence.

The Juvenile Justice Act, 2003 does not include a statement of guiding principles or criteria for the court to consider in sentencing a child. Section 2 of the Act requires that the best interest of the child shall be the primary consideration by a Juvenile Court, institution or any other body in a matter concerned with a juvenile. The Juvenile Justice Bench Book provides the following guidance:

“The considerations for assessing what is in the best interest of the juvenile are not reflected in any legislation. It is however important to note that the objective of the juvenile justice system is to fashion out specific provisions which are appropriate to the needs of juveniles. The measures which are in the best interest of the juvenile offender must be guided by the principles of reformation, education and the proper growth of the juvenile into adulthood and not punishment or deterrence. Additionally all interventions resorted to must be proportional to the seriousness of the offence committed by the juvenile.”

When asked what factors were most important in making decisions about what sentence to impose on a juvenile, almost all of the Juvenile Court Magistrates and panel members advised that the best interest of the child was a “very important” consideration. Lay panel members on the other hand, were less likely to rate this as very important. However, the other factors cited as most important suggest that the Juvenile Court panels do not fully understand or apply the concept of the best interest of the child in accordance with international standards. In deciding on sentence, the factors most frequently cited as the most important were the seriousness of the offence, public safety, the juvenile’s age, the juvenile’s background and circumstances, and the recommendations of the probation officer.

However, less importance was given to the principle of deprivation of liberty as a last resort, the attitude and views of the juvenile, and views of the juvenile’s parent or guardian. In addition, while most panel members were of the view that deprivation of liberty should be used only in cases where the juvenile committed a serious crime involving violence, some felt that it is best to be “tough” on first time juvenile offenders so that they will not re-offend. Most believed that imposing fines on parents for their child’s behaviour helps improve parental responsibility and prevents recidivism.

The Juvenile Justice Act, 2003 restricts detention in a correctional centre to cases where the child is convicted of an offence for which the court has power to impose a sentence of detention or imprisonment for one month or more without the option of a fine (s. 43). However, there is no explicit requirement that deprivation of liberty be used only as a last resort and for the shortest appropriate period.

There was no data available on the sentencing practices of the Juvenile Court or on the percentage of juveniles receiving custodial sentences. The Department of Social Welfare advises that in 2014, 406 SERs were submitted to the court and 80 juveniles were placed on probation. If the number of SERs requested is indicative of the number of children convicted by the Juvenile Court, this means that in 2014, less than 20 percent of the 406 convicted juveniles received a probation order.

The most recent statistics available from the Ghana Prison Service show that there were 117 juveniles in the Senior Correctional Centre in 2013 and 185 in 2014.⁴⁶ The Prison Service Annual Report 2013 notes that 45 juveniles were admitted in 2013, 15 of whom were between the ages of 12 and 15, and 30 between the ages of 16 and 18. All 117 juveniles in the JCC in that year were first-time offenders, and the vast majority had committed property-related offences (33 stealing, 12 unlawful entry, 1 robbery, three causing damage, 5 conspiracy, one

⁴⁶ Ghana Prison Service Annual Report 2013; Ghana Prison Service Website statistics at: <http://www.ghanaprison.gov.gh/statistics.html>, accessed 10 June 2017

fraud, two indecent assault, 12 defilement and five “other”). This suggests that custodial orders are not being used only for children who have committed serious offences involving violence, or in cases of recidivism, as required by the CRC and Ghana’s Justice for Children Policy.

The principles of proportionality and deprivation of liberty for the shortest appropriate period also do not appear to be fully respected in sentencing children. The duration of custodial sentences imposed on juveniles is often quite long, commonly for the maximum available under the Juvenile Justice Act and not in keeping with the gravity of the offence committed. Two juveniles interviewed as part of this study, for example, received orders of three years in a Senior Correctional Centre for petty theft. Although section 46 of the Juvenile Justice Act, 2003 states that the period of custody in a JCC or SCC “**shall not exceed**” either three months (for children under 16), six months (for children 16-18) or three years (for serious offences), the Juvenile Justice Bench Book states that “the duration of every detention order **shall be**” for three months, six months or three years. This effectively converts a statutory maximum period of custody to a mandatory set term.

Pursuant to section 38 of the Act, the Juvenile Court has been given broad discretion to vary or revoke an order imposed on the child, including extending any order until the child turns 18, or determining some shorter period if the court is of the opinion that this is in the best interest of the child. In addition, the Court has also been given wide discretion to extend a child’s period of detention in a JCC or SCC for up to one year, on the recommendation from the Minister for Social Welfare or Interior that it is in the best interests of the child to do so (s. 47). However, no data was available on the frequency with which these provisions are used in practice.

3.9 Records and Privacy

The Juvenile Justice Act, 2003 recognises the importance of protecting juveniles’ privacy and preventing stigmatization, which may impact negatively on their future. The Act makes it an offence to release any information that may lead to the identification of a juvenile in the course of arrest, investigation and trial (s. 3). Members of the media are not permitted to observe Juvenile Court proceedings. However, there have been reports of juvenile cases being published in the media using the names and/or images of juvenile offenders.

All records in relation to Juvenile Court matters are maintained by the Court Registrar. Access to these records is permitted only by written application. The Juvenile Justice Act also makes provision for juveniles to have their records expunged so that they are not burdened by a criminal record into adulthood. A juvenile offender, probation officer or close relative of the juvenile may apply to the Juvenile Court which imposed the sentence or order to have the record expunged (s. 37). However, expungement is not permitted for serious offence such as murder, rape, defilement, indecent assault involving unlawful harm, robbery with aggravated circumstances, drug offences and offences relating to firearms (s. 37(3)). No information was available on how many juveniles avail themselves of this right, and it does not appear that they are routinely informed of it at the time of sentencing.

Key Findings and Recommendations

SUMMARY OF KEY FINDINGS

Ghana has made significant progress in establishing a separate Juvenile Court system to ensure that children's cases are dealt with separately from adult criminal matters. However, the degree of specialisations within these courts remains limited. Whilst designation of separate courts is an important first step, ensuring a genuine, specialised approach also requires the training of court officers (Magistrates, Panel Members, prosecutors, court clerks) and fundamental changes to the standard adversarial trial procedures. Whilst some court officers have received training on juvenile justice, this has tended to be ad hoc and focused primarily on knowledge transfer, rather than building the attitudes and skills needed to ensure a child-friendly approach. There is no standard, certificate-based training programme that must be completed to qualify for appointment to the Juvenile Court, and no special qualifications or selection criteria (apart from the standard qualifications for office).

Some steps are being taken by the Juvenile Courts to make proceedings more child-friendly. However, special measures are not consistently applied in all cases, and there are no detailed Juvenile Court Rules or practice directive to guide magistrates in their obligation to conduct proceedings in an informal manner. Holding Juvenile Court proceedings in chambers is well-intentioned, but given the cramped nature of the space this is not always a conducive environment for either the juvenile accused or the victim/witness. It may be preferable to re-arrange furniture and seating within the courtroom so that all parties are seated on the same level, so that the juvenile is not required to stand, and so that child victims/witnesses are not in such close proximity to the accused.

Whilst the intention of the Juvenile Court panel system is laudable, the requirement to have a quorum of three members has been difficult to implement in practice, and at times actually works to juveniles' disadvantage by increasing delays. In addition, requiring welfare officers to both sit on the panel, as well as prepare the SER, strains limited social welfare resources and potentially presents a conflict of interest. Consideration should be given to the most feasible and appropriate model for the Juvenile Court and Family Tribunal composition, and how best to ensure social welfare input into the process in a more effective and efficient way. Delays and inconvenience for all parties could also be reduced by granting the regular District Court authority to hear juvenile cases (but applying special Juvenile Court procedures) where a Juvenile Court has not been designated and/or the Juvenile Court Magistrate is absent, rather than transferring cases out of the district.

Active engagement of the juvenile's parents or other responsible family members from the earliest stages of the proceedings also remains a challenge. More structured mechanisms are needed for tracing and constructive engagement of parents to ensure that children are not held on remand unnecessarily, and that they have a supportive adult to assist them with plea and trial. The lack of a duty counsel system attached to the Juvenile Courts means that most juveniles are unrepresented.

Available information on bail and sentencing practices also suggests that deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period as required by the CRC. Magistrates have not been provided detailed guidance on making best interest determinations, or on the special factors and

criteria to consider in making decisions about bail and the sentencing of juveniles. As with adults, the bail amount for juveniles is set based on the nature and seriousness of the offence, rather than being tailored to the parents' ability to pay, resulting in some children languishing on remand because their parents cannot afford to pay for their release. At the sentencing stage, custodial orders are often for lengthy, set periods that are not proportionate to the offence, and many children in both the JCC and SCC have committed relatively minor, property-related offences. The number of children deprived of liberty could be reduced by refining the sentencing provisions of the Juvenile Justice Act, 2003 to better conform with international standards, providing more guidance to Magistrates on the application of sentencing principles, and improving the quality of Social Enquiry Reports so that Courts have better information about the child's background and circumstances and the non-custodial options available to support their rehabilitation and reintegration.

RECOMMENDATIONS

- As recommended by the Justice for Children Policy, combine the Juvenile Court and Family Tribunal into one district-level Family and Juvenile Court, presided over by a single, specially trained Magistrate. Ensure welfare officers participate in the proceedings and advise the Court through high-quality SERs and/or oral submissions, but not to sit as a panel member.
- Develop criteria for the appointment of Family and Juvenile Court Magistrates to ensure those appointed to the courts have appropriate background, characteristics and experience to deal with children's cases in a child-friendly manner.
- Grant the regular District Courts authority to hear juvenile cases where a Juvenile Court has not been designated and/or the Juvenile Court Magistrate is absent, but require them to comply with the Juvenile Justice Act and all special procedural rules for juveniles.
- Develop detailed Juvenile Court Rules and/or a practice direction to provide Magistrates more detailed guidance on:
 - ⦿ Age determination, including a requirement that the benefit of the doubt be given to the child;
 - ⦿ Strict management of adjournments to reduce delays and minimise the number of times juveniles must appear in court;
 - ⦿ Prohibition on handcuffing juveniles in transit;
 - ⦿ Principles and criteria to take into account in deciding on bail for juveniles, with emphasis on deprivation of liberty as a last resort, setting the bail amount having regard to the ability of parents or guardians to pay; revisiting the issue of bail on each subsequent appearance and modifying conditions, as necessary, to ensure that children granted bail are not languishing on remand because of inability to satisfy conditions of release;
 - ⦿ Measures for creating a more child-sensitive physical environment for conducting Juvenile Court proceedings;
 - ⦿ Measures for conducting proceedings in an informal manner and maximising the active participation of juveniles and their parents / guardians;
 - ⦿ Requirement to ensure that all juveniles have legal representation, or at minimum have a parent or other appropriate adult to assist them at trial;
 - ⦿ Principles and criteria to take into account when sentencing juveniles, with emphasis on: deprivation of liberty only in cases involving crimes of violence, or for juveniles who persist in committing other serious cases; and custodial sentences proportionate to the offence; and
 - ⦿ Requirement to provide a simple explanation of the judgment to the juvenile at the end of the proceedings, as well as an explanation of his/her right to appeal.
- Judicial Training Institute to develop a

comprehensive, certificate-based training programme for Family and Juvenile Court Magistrates (based on the new rules/practice direction) addressing the knowledge, attitudes and skills needed to handle juvenile cases in a fair, effective and child-sensitive manner. To reduce costs, consideration could be given to delivering the training through self-directed learning and/or e-learning courses.

- Make successful completion of the specialised JTI training course a pre-requisite for appointment as a Family and Juvenile Court Magistrate.
- Designate specialist police prosecutors to handle Family and Juvenile Court cases and develop a similar mandatory training programme for them.
- Enhance Family and Juvenile Court case management practices by recording juvenile cases in a separate Family and Juvenile Court Record Book, giving priority to juvenile cases over adult offenders, and assigning a different coloured file jacket for juvenile cases so that they can be easily identified and managed separately.
- The frequency of sittings of the Family and Juvenile Court should be regularly assessed and adjusted, as necessary, to align with the volume of cases and ensure that delays are kept to a minimal (where necessary adding half-day sittings).
- Advocate with the Legal Aid Scheme to introduce a duty counsel system at the Family and Juvenile Courts, with a lawyer attending all court sessions to provide advice and representation to juveniles appearing without a lawyer.
- Department of Social Welfare to review and update the standard format for SERs, in consultation with Magistrates, and provide enhanced training to probation officers/welfare officers on conducting the necessary enquiries more effectively and efficiently. Where feasible, family conferences could be convened as part of the SER process to develop more restorative recommendations and actively engage the child's family and community leaders in the process.
- Introduce new data recording forms for the Family and Juvenile Court to ensure that all courts are collecting standardised statistics on the number of cases before the courts, including the percentage of children released on remand and the sentences imposed, disaggregated by the age, gender and type of offence. National data on criminal cases before the Family and Juvenile Court should be regularly collated and analysed by the Headquarters of the Judicial Service, and separately reported in the Judicial Service Annual Reports.

4

Child Victims and Witnesses in Criminal Proceedings

The successful prosecution of people who commit crimes against children often depends on the child's ability to access justice and to provide effective testimony in court.

However, children who have been victims or witnesses of crime are particularly vulnerable, and having to participate in criminal proceedings can add to their distress and discomfort. For child victims and witnesses to be able to access justice and participate effectively in the process, a country's standard court procedures must be modified to be more sensitive and responsive to their needs. This is essential both to protect children from hardship and secondary victimisation, and also to maximise the quality of their evidence.

The **UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime** emphasise that every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age.⁴⁷ However, in order for their right to participate to be meaningful, children require special support and assistance. This should include:

- Accompaniment by a parent or other support person at all stages of the criminal justice process, including whilst testifying in court;⁴⁸
- Assistance from a specialist child victim/witness support person (e.g. social worker or trained volunteer) commencing at the initial report of the crime and continuing throughout the proceedings;⁴⁹

⁴⁷ Article 18.

⁴⁸ UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Article 25.

⁴⁹ Ibid, Article. 24

- Physical examinations undertaken with sensitivity, in the least intrusive manner possible, and by a person of the same gender as the child. Medical examinations for the purposes of evidence collection should be undertaken only in necessary cases, and conducted by a doctor specially trained in recognizing the signs and symptoms of child abuse;⁵⁰
- Measures to prevent children from coming into contact with the perpetrator at all stages of the criminal justice process;⁵¹
- Proceedings involving child victims and witnesses are given priority and completed as quickly as possible.⁵²
- Child-sensitive interviews, should be conducted by trained professionals who proceed in a respectful and thorough manner.⁵³ Children should not be questioned more often than necessary, and the length of the interview/testimony session should be adapted to the child's age and attention span;⁵⁴
- Use of alternatives to in-court testimony, such as video or audio-recording or pre-trial hearings in camera.⁵⁵
- Special measures for children who do have to give testimony in court, including pre-trial familiarisation, closed court proceedings, appointment of an intermediary, questioning out of sight of the alleged perpetrator using screens or closed-circuit television, and prohibition against direct cross-examination by the perpetrator;⁵⁶
- Elimination of common-law corroboration rules that discriminate against children and victims of sexual offences;⁵⁷
- Ensuring protection of children's privacy and

protecting children from undue exposure to the public, including by excluding the public and the media from the courtroom during the child's testimony.⁵⁸

- Special measures to guarantee the safety of child victims and witnesses, and to protect them from further harm, threats or retaliation. This should include: avoiding direct contact between child victims and witnesses and the alleged perpetrators at any point in the justice process; using restraining orders or setting special "no contact" bail conditions; imposing pre-trial detention or house arrest on the perpetrator; safeguarding the victim's name, address and school from disclosure; and wherever necessary, giving child victims and witnesses protection by the police or other relevant agencies.⁵⁹

4.1 Court Jurisdiction and Specialisation

In Ghana, as in most countries, jurisdiction over cases involving a child victim or witness depends on the seriousness of the offence and the age of the perpetrator:

- For summary offences punishable by a fine of up to two years imprisonment, the matter is heard in the **District Court**;
- For offences other than treason, offences triable on indictment, and offences punishable by death, the matter is heard by the **Circuit Courts** (e.g. incest, rape, defilement and indecent assault, human trafficking, offences under the Domestic Violence Act, 1997, Act 732).
- For offences triable on indictment and offences punishable by death (e.g. murder, manslaughter, rape, possession of weapons), the matter is heard in the **High Court**. High Court trials are heard by a judge sitting with a seven-member jury. A preliminary hearing is held in the District Court and a Magistrate decides whether to commit the accused to trial before the High

50 UNODC Model Law on Justice in Matters Involving Child Victims and Witnesses of Crime, Art. 14.

51 *Ibid.*, Article 31

52 UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Article 30.

53 *Ibid.*, Article 13.

54 UN Committee on the Rights of the Child General Comment No. 12, para 24; UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Article 31.

55 *Ibid.*, Article 59.

56 *Ibid.*, Article 31.

57 *Ibid.*, Article 18;

58 UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Article 28.

59 *Ibid.*, Article 33–34.

Court. A summary of the victims/witnesses' statements are presented at the preliminary hearing but they are not required to testify.

- If the alleged offender is also a child, the matter will be heard by the **Juvenile Court**, unless there is an adult co-accused or the offence is punishable by death.

Both the Domestic Violence Act, 2007 (s.18) and the Human Trafficking Act, 2005, Act 694 (s. 37) make provision for the Court to refer a case to the Family Tribunal to make an order in relation to the care and custody of a child where the Court believes the child is in need for special protection. However, there is no similar provision in relation to child victims of other types of offences (e.g. defilement or rape).

The majority of criminal cases dealing with sensitive crimes such as sexual violence are tried by the Circuit Courts. In Accra, Kumasi, Tema, and Takoradi, the Circuit Court has a specialised **Gender Based Violence Court** which deals with all cases relating to defilement, incest, indecent assault, and offences under the Domestic Violence Act. The Judicial Service is in the process of expanding the GBV court to Koforidua and Sunyani and there are plans to roll them out to most regional capitals.

There is no standardized training course that Judges appointed to the GBV Courts must undergo, and some of them interviewed as part of this study were relatively inexperienced (less than three years on the Bench). Most had not received specialized training on handling cases involving child victims/witnesses. For those who had received some training, it was through a local NGO or regional event, rather than from the Judicial Service/JTI. The training covered child rights, national laws and international standards relating to justice for children, and child-friendly court procedures, but not child development and skills for questioning children. GBV judges interviewed as part of this study were generally of the view that judges do not have adequate skills and training to effectively handle criminal cases involving child victims/witnesses.

Prosecutions before the Circuit Court and GBV Court are conducted by police prosecutors, rather than the Attorney General's Office. Concerns were raised by some stakeholders that police prosecutors sometimes lack sufficient legal expertise to prosecute child sexual offences effectively, particularly in cases where a defence lawyer is involved. Shortcomings in the investigation and lack of skills or experience on the part of the prosecutor were cited as some of the main factors for child victim cases failing to result in conviction. There is currently no standard, specialised training for police prosecutors appearing in the GBV Courts, though some have received training from development partners.

4.2 Case Management Practices

There was no data available on the number of cases involving child victims/witnesses that come before the courts each year. The Judicial Service advised that registrars have been asked to report monthly on the number of GBV cases appearing before the court and the actions taken. However due to logistical challenges this data is not being provided systematically and in accordance with the required format.

Both Court Registrars and Judges interviewed as part of this study advised that cases involving a child victim are generally given priority to ensure that the matter is completed as quickly as possible. However, there is no standard system for flagging cases involving a child victim/witness (e.g. through colour-coding or a stamp on case file jackets) to ensure that children's cases are easily identifiable, and no standard practice with respect to managing the number and duration of adjournments. Stakeholders advised that child victims/witnesses are generally required to attend court between one and five times per trial. The parent of one child victim interviewed as part of this study indicated that her child had to attend court 13 times. In some cases, the police assist with the transport of child victims/witnesses, but there does not appear to be a uniform practice of paying witnesses an allowance to cover costs of transport.

Cases before the Circuit Court are generally completed, on average, within four to eight months. Whilst efforts are made to finalise cases as soon as possible, some trials involving a child victim have taken a year (and sometimes up to two years) to complete. Stakeholders cited a number of common factors contributing to adjournments and delays, including:

- Delays in obtaining comments, directions or instructions from the Attorney General's Office to the police prosecutors;
- Delays in obtaining medical reports, or the inability of parents to pay the cost of medical reports;
- Defence counsel not ready to proceed, and delays in providing defence counsel with copies of police statements and other evidence;
- Parents of the child victim receive compensation from the perpetrator and thereafter fail to attend court;
- Non-attendance of the victim or other witnesses, sometimes due to travel distance and costs associated with attendance, or because the witness opted not to attend out of frustration over repeated adjournments;
- Accused absconds or fails to appear;
- Long cross-examination by defence counsel;
- Cases had to be retried because the original trial judge went on leave;
- Due to heavy caseloads and time-consuming process of recording proceedings by hand, courts are sometimes unable to complete all cases assigned for that day.

Prolonged delays are particularly problematic in child victim/witness cases, since children's memories tend to fade more quickly than an adult. In addition, having to come to court and recount a traumatic event months or years after the fact can undermine children's recovery and undo any emotional and psychological healing the child had achieved in the preceding months.

4.3 Victim/Witness Support and Pre-trial Preparation

Globally, there is growing recognition of the importance of having a structured Victim/Witness Support Service (often located at the courts and managed by the Ministry of Justice or Public Prosecutor) to act as liaison between the justice agencies and victims, to ensure that children and their families are provided regular updates on the progress of the case, and to prepare children for the court experience (including pre-trial visit to familiarise them with the courtroom environment). Effective victim/witness support services have been shown to reduce trauma and secondary victimisation, increase victims' cooperation and attendance at trial, and improve the quality of children's testimony.⁶⁰

Ghana does not yet have a Victim/Witness Support Service, however the Justice for Children Policy calls for one to be established. Some pre-trial preparation is reportedly provided to child victims/witnesses by DOVVSU staff, but there are no social workers or victim support volunteers attached to the courts or prosecutor's office, and no comprehensive victim/witness support programme for children appearing before all levels of court. Children and their parents are notified of the Court date, but are not routinely kept up-to-date about the progress of the case or given a contact person that they can call.

There is also no structured mechanism to ensure that all child victims/witnesses receive simple explanation of the trial process and their role in it, and are prepared for their court experience through role plays and visits to the court. Police prosecutors advised that they sometimes have a pre-trial meeting with their witnesses to explain the trial process and review their evidence, usually held within 48 hours prior to the trial date. In some cases, this includes providing advice and counselling to the child and parents to build their confidence.

⁶⁰ Avail Consulting (2004), No Witness, No Justice Pilot Evaluation, England and Wales Crown Prosecution Service and ACPD; Turley, C. and Tompkins, C. (2012) Early Learning from Victim Support's Homicide Service, Ministry of Justice Research Series 2/12. London: Ministry of Justice; Bradford, B. (2011) Voice, neutrality and respect: Use of victim support services, procedural fairness and confidence in the criminal justice system. *Criminology and Criminal Justice*, 11(4), 1–22.

However, pre-trial meeting with the prosecutor are not consistently held in all cases, and in any event is not an adequate substitute for comprehensive victim/witness preparation, carried out by a social worker or trained volunteer. One police prosecutor noted that they are not adequately trained in handling pre-trial conferences with children, and since prosecutors are generally men, victims of sexual violence do not feel comfortable speaking with them. Parents interviewed as part of this study highlighted fear of not knowing what to expect and not knowing the people in court as factors contributing to their child's worry and distress.

In some cases, particularly those before the GBV court, child victims/witnesses are taken to see the courtroom before they have to testify so that they are familiarized with the environment and less intimidated on the day of trial. However, this is not a common or standard practice across all courts, and pre-trial court visits are not routinely available to all children.

The lack of consistent victim/witness support services contributes to child victims/witnesses and their parents withdrawing cooperation from the criminal justice process. One of the main reasons cited for withdrawals or acquittals in child victim/witness cases was that children either fail to attend court to testify, or the child/parents request to have the matter withdrawn. Several factors were cited as contributing to victim/witnesses withdrawing their cooperation, including:

- Settlement out of court, generally for financial compensation;
- Child and/or the child's family is threatened;
- Pressure from the accused, extended family or community, particularly where the perpetrator is a family member, neighbour or friend;

"It is sometimes very challenging for children to attend court for the avoidance of the stigma and peer ridicule. Especially if they are school going children...There were a number of cases where child complainants had consistently failed to attend court... That is why they negotiate it out of court – they pay compensation and end it there. Majority of family matters and incest cases, where father defiling the girl etc. don't come to courts and cover it and the child suffers."

DOVVSU officer

- Concerns about public exposure and stigma;
- Long delays in the court process and frequent adjournments, leading to frustration with the process;
- Inability of parents to afford to pay for medical reports;
- High cost associated with attending court;
- Long distance the child is required to travel to court;
- Lack of legal knowledge and support; and
- Missed school and/or work due to frequent court attendance.

The experience from other countries suggests that consistent Victim/Witness Support Services can help reduce the need for compelled testimony by building trust and continuous communication with the child and family, and identifying and addressing any concerns early on so that the family remains cooperative.

4.4 Age Determination and Children's Competence to Testify

In line with international standards, children under Ghanaian law are presumed to be competent witnesses and there is no age restriction on a child's ability to testify. Section 59 of the Evidence Act, 1975 (NRCD 323) states that children are competent "unless incapable of expressing themselves or incapable of understanding the duty to tell the truth". The Courts Act, 1993 also allows the Court to take a person's evidence without requiring the oath if the witness "by reason of immature age or want of religious belief" ought not in the opinion of the court to be admitted to give evidence on oath. In such cases, the child witness' evidence is treated in the same way as if it was given under oath (s.62). Stakeholders advised that very young children who do not understand the relevance of swearing an oath are generally permitted to give evidence upon affirming that they will tell the truth.

The Evidence Act does not specifically address the requirement for corroboration of children's evidence, but does state that "unless otherwise provided by this or any other enactment, corroboration of admitted evidence is not necessary to sustain any finding of fact or any verdict" (s. 7(3)). Some crimes, such as procurement under the Criminal Offences Act, 1960 (Act 29), specifically state that a person cannot be convicted on the evidence of one witness, unless the witness is corroborated in some material particular by other evidence (s.107 (2)). In practice, cases of defilement and other sexual offences against children rarely proceed to trial unless there is medical or other corroborating evidence.

Accurate age determination is often a challenge in cases involving child victims due to lack of birth registration or other documentary proof of age. This is of particular concern in cases such as defilement, where the elements of the offence require proof that the child was below a stipulated age at the time of the offence. As with children in conflict with the law, the Courts rely on available

documentary evidence (birth certificate, baptismal certificate, school or medical records), statements from family members, or where necessary a medical examination. Age determination can reportedly add to delays, particularly where the child or parents are deliberately misleading about the child's age to protect the perpetrator, or to avoid defilement charges in cases of consensual sex where the child was under the age of 16.

4.5 Medical and other Supporting Evidence

In most cases involving sexual or other forms of abuse against children, medical evidence is the main supporting or corroborating evidence relied upon by the prosecution to support the child's evidence. Under the Domestic Violence Act, 1997, the police are required to assist victims to obtain medical treatment, where necessary, by issuing a medical form to the victim and sending the victim to a medical facility. A victim of domestic violence who is assisted by the police to obtain medical treatment is entitled to free medical treatment from the State (s. 8). However, this provision applies only to acts of violence committed within the context of a domestic relationship, and the Act does not state explicitly that the victim is entitled to a medical **report** free of charge.

Stakeholders advised that, in most cases involving a child victim of a sexual offence or other forms of violence, the parents are given a medical form and advised to attend a public or government hospital for examination and then return the form to the investigating officer. Where necessary, DOVVSU officers will transport and accompany the child to the hospital for the medical examination. However, a number of challenges were cited in securing quality, forensic medical evidence for the courts:

- In some cases, the offence against the child is not immediately discovered or reported. By the time the incident comes to the attention of the police, vital physical evidence may be lost (e.g. sperm samples, body fluids) or visible injuries healed;

- The process of undergoing a forensic medical examination can add to the child's trauma and distress, particularly if the examination is conducted by a doctor who has not been trained in child-sensitive methods;
- Some parents cannot afford the cost of the doctor's fees for examination, treatment, endorsement of the medical report and testimony before Courts when summoned. Stakeholders advised that doctors' fees range between GH¢250 and GH¢500. Medical reports are sometimes not handed over to victims who are unable to pay;
- There are a limited number of specialist medical professionals who have been trained in conducting high-quality and child-sensitive forensic medical examinations; and
- In some cases, concerns have been raised about the quality and reliability of the medical reports, which are sometimes rejected by Court.

Delays in obtaining medical reports, or parents' inability to pay for medical reports, were cited by many stakeholders as factors contributing to trial delays and/or withdrawal of charges.

4.6 Child-friendly Courtroom Environment and Procedures

Ghana has yet to develop special criminal court rules governing the taking of testimony from children, and neither the Courts Act, 1993 (Act 459) nor the Criminal and Other Offences Act, 1960 (Act 30) address special measures for taking testimony from children. There are no specific provisions in the law for using video-taped statements of children's evidence, allowing children to give evidence out of the accused's sight by using closed circuit television or a screen, using testimonial aids such as dolls or diagrams, imposing limits on the nature and duration of examination and cross-examination, use of intermediaries, and restrictions on direct cross-examination by the accused. The Criminal and Other Offences Act allows the court to commission the evidence of a witness (s. 124) and to take the evidence of a witness before trial (s.

200), but only on grounds of unreasonable delay, inconvenience, or the witness' unavailability for trial, and not more generally to spare children the need to testify in court.

The specialized Gender Based Violence Courts have reportedly taken steps to create a more child-sensitive and conducive environment for child victims/witnesses to give testimony. In Accra, the new modern court complex includes a children's holding room, where children appearing before the courts in both civil and criminal matters can wait in private with their family members. The court complex also has a video conference room to facilitate video conferencing. However, other criminal courts lack specialized facilities. The GBV court in Accra and Kumasi have private waiting rooms where child victims/witness and their parents can wait until their case is called, but not in Tema or Takoradi. Children can reportedly wait for up to three hours, outside or in the hallway, before they are called to testify.

The GBV Court Judges and police prosecutors interviewed as part of this study highlighted a number of measures taken to create a more conducive environment for child victims/witnesses to testify, including:

- The child waits in the child-friendly room with play materials (Accra and Kumasi only);
- Court officers and prosecution do not wear uniforms;
- The child's testimony is heard in chambers or in camera;
- Parents of children are allowed to be present to support them;
- The child is warmly welcomed and made to feel comfortable and the court uses friendly language and tone;
- The court explains to the child the reason why she/he is in court and what is expected of him/her at the trial;
- The child is first interviewed about school and church activities to relax them before the testimony is taken;

- Child victims sit, rather than stand, when giving evidence;
- No technical language or bullying is allowed;
- The court language is interpreted in the local language for the child's understanding. However it was noted that some interpreters are not adequately trained in interpreting evidence in sexual offences cases;
- Court clerks and officers show empathy and the court exercises patience with the child.

However, these measures are not consistently used in all cases involving child victims/witnesses before the GBV Courts and by other criminal courts. Common best practices recommended by the international standards and used in other common-law countries are not commonly or consistently used in all child victim/witness cases, including:

- The use of pre-recorded video-taped statements in place of **viva voce** evidence;
- Having a victim/witness supporter or court staff greet the child upon arrival at the courthouse, and protecting the child from contact with the accused and his/her family by escorting them directly to a private waiting room;
- Accompaniment by a welfare officer or other trained victim support person;
- Scheduling the time for children's testimony to reduce wait-time at the courthouse, and wherever possible having children testify in the morning when they are most alert and their attention is most focused;
- Re-arranging courtroom furniture to be more child-friendly and so that all parties are on the same level;
- Having a parent, guardian or other support person sit directly next to the child while s/he testifies;
- Having the child testify from behind a screen or curtain that blocks his/her view of the accused, or using CCTV/ video-link technology;

- Frequent recesses during the child's testimony, particularly where the child shows signs of distress or that their attention is waning;
- Using diagrams or other testimonial aids so that the child does not have to point directly at his/her sensitive body parts while testifying;
- Prohibiting direct cross-examination by the accused, and instead having the accused's questions put to the child by the judge/magistrate or a trained intermediary;
- Strict control over examination and cross-examination of the child to prevent abusive, intimidating or confusing questions.

Currently, the most common step taken by the courts to reduce intimidation is to hear the child victim's testimony in chambers. However, as noted above, most chambers are quite small, and proceedings typically involve at least six to eight people (judge, court staff, prosecutor, investigator, accused and his/her lawyer, child and parents). As a result, seating can be quite cramped and the child is required to sit in very close proximity to the accused, which can be very distressing. Whilst the aim of reducing the formality of the surroundings is laudable, it would likely be less distressing to child victims to take their testimony in the courtroom, but with the use of screens and appropriate modifications to the seating arrangements to reduce contact with (and intimidation by) the accused.

The examination and cross-examination of children is generally conducted in accordance with standard trial procedures. Stakeholders interviewed as part of this study were generally of the view that parties make an effort to modify their questions, having regard to the child's age and level of development. However in some cases questions are asked in a confusing way or using language that the child does not understand, and children are sometimes subjected to overly long cross-examination. In cases related to sexual offences, the language used

in court to describe sexual activities is sometimes difficult for children, and some are uncomfortable or hesitant to use words they have been taught are “vulgar” or culturally inappropriate in describing what happened to them.

Stakeholders identified having to see the accused and testifying with the accused present as the most difficult aspect of the trial process for child victims/witnesses. In the absence of a screen or other protective measures, child victims/witnesses may be further traumatised, or intimidated into silence, when faced with the prospect of having to recount what happened to them in front of the person who harmed them. In one of the trials observed by the research team, the child victim was visibly upset by the presence of the accused, and went quiet and had difficulty answering questions after looking at him.

In most cases, the child’s distress is further exacerbated when an unrepresented accused is permitted to cross-examine the child him/herself. In one of the trials observed by the research team, the accused’s questions were directed at the judge and thereafter the judge asked the victim in a friendly and supportive mode. However, this practice is not uniformly used in all child sexual offences cases, and stakeholders advised that in most cases child victims are cross-examined directly by the alleged perpetrator. In sensitive cases such as sexual offences, requiring an already traumatised child to answer questions posed by the person who allegedly abused him/her is particularly distressing and can contribute to secondary victimisation.

The GBV Court judges and prosecutors interviewed as part of this study were generally of the view that most child victims/witnesses do not feel confident and comfortable to express themselves at trial, that criminal trial proceedings have not been sufficiently adapted to prevent undue trauma or distress to children, and that child victims/witness

do not receive an appropriate amount of pre-trial information and assistance. The rate of conviction in cases of crimes against children is reportedly quite low, particularly in relation to sexual offences. The GBV judges interviewed as part of this study advised that 50 per cent or more of the child victim cases they presided over resulted in conviction. However, national statistics⁶¹ show a much lower conviction rate across all courts:

- In 2015, out of the 1,291 sexual and gender-based violence cases sent to court, only 139 (**10.8 per cent**) resulted in conviction.
- In 2014, 160 of the 1,547 cases (**10.3 per cent**) ended in conviction.⁶²
- In 2013, **7.4 per cent** of the 3,000 cases resulted in conviction,⁶³

The Justice for Children’s Policy acknowledges that children who have been victims or witnesses of a crime are highly vulnerable and in need of special protection and support. It notes that special measures are needed at all stages of the investigation and trial process to ensure that children are able to participate effectively in the proceedings and are protected from secondary victimisation. The Policy calls for a number of modifications to existing criminal court practices, including: using alternatives to **viva voce** testimony such as video recorded testimony; re-arranging the physical layout of the courtroom; allowing children to testify from behind a screen or through closed circuit television; closing the courtroom to the public when the child is testifying; preventing perpetrators from cross-examining a child directly; and introducing a victim/witness supporter scheme.

61 These figures relate to all GBV cases, involving both adult and child victims. No data was available specific to cases involving child victims.

62 <http://3news.com/gender-based-violence-conviction-rate-unacceptable-victoria-natsu/>

63 <http://graphic.com.gh/news/general-news/41728-gender-ministry-discusses-ending-gender-based-violence.html>

4.7 Access to Legal Representation

Child victims and their families generally have limited access to legal representation to help them defend and protect the child's rights in the criminal proceedings and to assist with claims for compensation. Legal representation under the national Legal Aid Scheme is available only to persons charged with an offence. In some cases, child victims may be represented pro bono by an NGO lawyer. However, the majority of child victims/witnesses in criminal matters are unrepresented.

Judges interviewed as part of this study advised that in most cases, child victims/witnesses do not have an independent lawyer to represent their rights and interests in the case.

4.8 Protection of Privacy and Safety

The Criminal and Other Offences Act, 1960 does not address the issue of victims' privacy or restrictions on publication of a child's identity. The Children's Act, 1998 provides a comprehensive prohibition on publishing the identity of any child involved in Family Tribunal proceedings, but there is no similar protection for child victims/witnesses in criminal proceedings, other than in relation to domestic violence offences (Domestic Violence Act, 2007, s. 25) and trafficking offences (Human Trafficking Act, 2005, s. 38).

As a general rule, court proceedings are open to the public. The Courts Act, 1993 (165) allows courts to conduct closed court proceedings "in the interests of public morality, public safety or public order" including where necessary "in the interests of the welfare of persons under the age of majority or the protection of the private lives of persons concerned in the proceedings," (s 102) but this is discretionary. Stakeholders advised that in all criminal cases involving a child victim, proceedings are held either in chambers or in camera. However, judgements are pronounced publically, and there is no standard practice of suppressing the names of child victims/witness by, for example, referring to a child only by initials in the oral and written court judgement.

There are also limited special provisions with respect to protection of the safety of child victims and witnesses. Under the general provisions of the Criminal and Other Offences Act with respect to bail, the court can refuse bail if satisfied that the defendant may interfere with a witness or commit another crime (s. 96), but there is no specific provision for imposing no-contact requirements or other measures to protect the victim as part of a bail order or recognisance. The standard form for a recognisance (Form 1) includes conditions with respect to attending court and keeping the peace, but no prohibition on contact with victims/ witnesses. GBV Court Judges who were interviewed as part of this study advised that in some, but not all, cases the safety of the child is a primary factor in deciding whether to grant bail to the accused. However, it is not common for the court to prohibit contact with the child and his/her family as a condition of bail.

The Domestic Violence Act, 2007 makes provision for Protection Orders and Interim Protection Orders (sections 12-22). Where there is a need for special protection for a child, the Court may refer matters concerned with the temporary custody of a child in a situation of domestic violence to a Family Tribunal (s. 18). However, these protections are only available to children who are victims of violence in a domestic context.

4.9 Victim Compensation

Pursuant to the Criminal and Other Offences Act, 1960 (Act 30), an accused person who is convicted of a felony or a misdemeanour may be ordered by the court to pay compensation to the person injured by his/her offence, either in addition to or as substitute for any other penalty. The court must specify the amount to be paid, up to 10 million cedis for an offence on summary conviction (s.148). The Human Trafficking Act, 2005 (s.19) similarly authorises the court to order a person convicted of trafficking to pay compensation to the victim in addition to any other punishment. However, stakeholders interviewed as part of this study advised that awards of compensation are not common, and Judges indicated that they had ordered compensation in no or only a few child victim cases they had dealt with. Even where a compensation order is made, the perpetrator often lacks the means to pay.

“The victims go away without anything. Even the hospital bills are not paid properly or not paid at all in most instances. Sometimes the child has to go to two hospitals and undergo serious medical treatment. Other children loose school days and some other children are relocated to another region/ neighbouring country. They have no money to go to psychologist and the government doesn't provide the victims medical treatment or any other facilities. Its' not a fair justice system for them.”

Social Welfare Officer

Under Ghanaian law, victims of crime may also initiate civil proceedings to claim compensation for damages. However, this can be a complex and expensive process and generally requires a lawyer.

To address these shortcomings, the Human Trafficking Act calls for the creation of a Human Trafficking fund (s. 20 – 22). The Domestic Violence Act, 2007 (s. 29- 31) makes similar provision for the creation of Victims of Domestic Violence Support Fund. Both funds are to be used to provide basic material support for victims, and to support their rescue, rehabilitation and reintegration. However, they are limited to victims of offences under those specific pieces of legislation.

Key Findings and Recommendations

SUMMARY OF KEY FINDINGS

The Judicial Service has demonstrated its commitment to promoting a more specialized approach to dealing with sensitive child victim cases through the creation of the Gender-based Violence Courts. However, as with the Juvenile Courts, Judges and Prosecutors attached to these Courts lack the in-depth, specialised training needed to handle child victim/witness cases in an effective and child-sensitive manner.

The specialized courts have reportedly helped increase understanding and awareness of sexual violence and have reduced court delays, however the court environment and procedures have not been sufficiently modified to take children's special needs into account. Whilst the Gender Based Violence Courts take some steps to create a more conducive environment and to modify the language and tone of questioning, Ghana is yet to adopt the standard special measures used to facilitate children's testimony in many other common law countries. Some of these special measures (e.g. use of video-recorded evidence, testimony via live-link) would require investment in specialized equipment, but other measures could be introduced at relatively low cost (e.g. screens to block the child's view of the accused, re-arranging the courtroom furniture, use of diagrams and dolls, support person sitting next to the child, etc.). These special measures are best entrenched in legislation, but many countries have initially introduced them through Court directions or rules, relying on the Court's broad discretion to control its procedures.

The practice of taking the testimony of child victims/witnesses in chambers, whilst intended to put the child at ease, is likely to contribute to the

child's anxiety and reduce the quality of his/her evidence. Given the small size of most chambers, child victims/witnesses end up sitting in very close proximity to the accused, which is highly distressing. Equally concerning is that most child victims are cross-examined directly by the alleged perpetrator. Allowing child victims to be questioned directly by the person who harmed them, particularly in trials relating to sexual offences, is likely to contribute to their trauma.

Delays, lack of witness preparation, and lack of consistent use of child-sensitive court procedures all undermine the quality of children's testimony and prevent them from giving their best evidence. As a result, the rate of conviction in child victim cases is reportedly quite low, particularly in relation to sexual offences. A key challenge to ensuring access to justice for the child victim/witness is the number of parents who withdraw their complaint or refuse to attend trial to testify. This impacts not just on the individual child, but also undermines society's ability to bring perpetrators to justice and to send a strong, deterrent message to the community that violence against children will not be tolerated. A number of factors were cited as contributing to this, including threats or pressure from the perpetrator, parents choosing to settle out-of-court in exchange for compensation, long delays and frequent adjournments, the costs associated with attending court and obtaining needed medical reports, and lack of pre-trial victim support and information. The introduction of Victim/Witness Support Services, combined with readily available funds to cover victim medical and transport costs and to pay compensation, could help overcome these challenges.

RECOMMENDATIONS

Develop Court Rules and/or a practice direction on handling cases involving child victims/witnesses to provide Judges and Magistrates more detailed guidance on:

- Strict management of adjournments to reduce delays and minimise the number of times child victims/witnesses must appear in court;
 - Importance of taking the child's safety into account when making decisions about bail, and imposing no-contact provisions in appropriate cases;
 - Scheduling the day and time when a child's testimony will be taken to reduce wait-time, and setting aside an office or other room in the courthouse where child victim/witnesses and their parents can wait in private;
 - Measures for creating a more child-sensitive physical environment for the examination-in-chief and cross-examination of a child victim/witness;
 - Effective techniques for questioning child victims/witnesses and the importance of strictly controlling examination-in-chief and cross-examination to ensure that all questions are asked in a sensitive and age-appropriate manner, and that an unrepresented accused is not permitted to directly cross-examine a child victim;
 - Assessing the evidence of child victims/witnesses in accordance with their age and level of development; and
 - Compensation orders for child victims.
- Judicial Training Institute to develop a comprehensive, certificate-based training programme for Judges and Magistrates on handling cases involving child victims/witness (based on the new Court Rules / practice direction), with particular attention to sensitive cases such as sexual offences and domestic violence. The training should address knowledge, attitudes and skills needed to handle child victim/witness cases, including an understanding of child development and communication, special measures to facilitate children's testimony, and skills for effectively questioning children.
 - Make successful completion of the specialised JTI training course a pre-requisite for appointment to the Gender Based Violence Courts, and progressively roll it out to other High Court, Circuit Court and District Court Judges and Magistrates who routinely hear cases involving child victims/witnesses. To reduce costs, consideration could be given to delivering the training through self-directed learning and/or e-learning courses.
 - Develop criteria for appointment of Judges to the Gender-based Violence Courts to ensure those appointed to the courts have appropriate background, characteristics and experience to deal with children's cases effectively and in a child-friendly manner.
 - Develop a similar mandatory training programme for prosecutors, and designate specialised Prosecutors to conduct prosecutions of child victim cases in both the Circuit Courts and High Courts.
 - Ministry of Health to develop detailed guidelines and training for doctors on conducting high-quality and child-sensitive forensic medical examinations, and on the preparation of reports for the court (in consultation with Judges and Magistrates). Issue an instruction clarifying that medical reports are to be prepared free-of-charge for all child victims of crime.
 - Ministry of Justice and the Attorney General and the Judicial Service to collaborate on the design of Victim/Witness Support Services, attached to either the Prosecutor's office or the Courts.
 - Design and implement a pilot child-friendly court at one or more of the GBV Courts to test best practice measures for facilitating child victim/witness testimony used in other common law countries, including:

- Pre-recording commissioned evidence of child victim/witnesses, in appropriate cases, so that the child's evidence is captured whilst it is still fresh and the child does not need to testify at trial;
 - Court-based Victim/Witness Supporter to provide pre-trial preparation sessions, to arrange pre-trial visits to the courtroom to familiarise the child with the court's environment and accompany the child on the day of trial;
 - Re-arrangement of the courtroom furniture and seating to create a more child-friendly environment;
 - The use of live-link equipment (where feasible), or low-cost screens or curtains to block the child's view of the accused when s/he is testifying;
 - Trained intermediaries to assist with the examination-in-chief and cross-examination of children;
 - Having a parent or other adult supporter sitting next to the child while s/he testifies; and
 - Use of diagrams or dolls to facilitate the child's testimony and so that s/he does not need to point to private body parts.
- Enhance case management practices and reduce delays in handling child victim's/witness cases by expediting the trials and assigning a different coloured file jacket so that they can be easily identified.
 - Explore options for consolidating and expanding the victim compensation funds under the Domestic Violence Act and Human Trafficking Act to make compensation more widely available for all victims of crimes, with priority given to children.
 - Improve data recording practices to ensure that criminal courts at all levels (District Courts, Circuit Courts and High Courts) are collecting standardised statistics on the number of cases before the court involving a child victim and the outcomes of their case, disaggregated by age, gender and type of offence. National data on completion and conviction rates should be regularly monitored and analysed to inform policy development and improvement in court practices.

5

CIVIL AND FAMILY COURT PROCEEDINGS IMPACTING ON CHILDREN

Family and other civil courts deal with a variety of cases that impact on the rights and interests of children, including disputes between parents relating to custody, access and maintenance of children; proceedings relating to adoption or guardianship; applications for a care and protection order; and disputes relating to property or inheritance.

Often, the court's decision has significant consequences for children's day-to-day lives - where they will live and go to school, their relationship with parents, siblings and other family members - and their long-term care and development. Civil court judges and magistrates therefore play an important role in ensuring that children's rights are safeguarded and protected in these disputes, and that their best interests are respected.

The CRC and international standards highlight a number of special protections for children who are parties to, or affected by, civil court proceedings:

- In all actions undertaken by the courts, the best interests of the child shall be a primary consideration. This means that what is best for the child must guide the entire judicial process, and where the interests of the child conflict with that of other parties to the civil proceedings, a larger weight must be attached to what is best for the child.⁶⁴

⁶⁴ UN Committee on the Rights of the Child, General Comment No. 14, para 29, 39.

- As bearers of rights, children must have recourse to the courts to effectively assert their rights or act upon rights violations.⁶⁵ Courts must take steps to remove any possible barriers to children's access to justice, such as the cost of the proceedings or the lack of legal counsel.⁶⁶
- Children who are capable of forming their own views must be provided the opportunity to be heard in any judicial and administrative proceedings that affect them, either directly or through a representative.⁶⁷ This right to be heard applies both to civil cases where the child is a direct party to the proceedings, as well as cases initiated by others which affect the child, such as adoption or disputes relating to children's care or custody.⁶⁸
- Because of their limited maturity and capacity, children should be supported and assisted by a parent, guardian or other legal representative. Children also have the right to their own lawyer, in their own name, in civil proceedings where there is, or could be, a conflict of interest between the child and his/her parents.⁶⁹
- In order to exercise their right to participate and express their views, children must be given information about their rights, the case they are involved, the options available to them, and the possible consequences of those options. This information must be provided in a manner adapted to their age, maturity and circumstances, and conveyed in a language they understand.⁷⁰
- Courts must provide an environment that encourages and enables children to express themselves, for example by consulting the child in private or indirectly through other persons or bodies (e.g. welfare officer), ensuring appropriately trained staff, and modifying the design of court rooms, clothing of judges and lawyers.⁷¹
- Both parents have joint responsibility for the upbringing and development of their children, regardless of whether they are living separately or apart, or whether they are or were ever married.⁷²
- A child who is separated from one or both parents is entitled to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. Where there is a dispute between parents about child custody and access, shared parental responsibilities is generally in the child's best interest. Parental responsibilities should not automatically be given to either parent based simply on factors such as the child's age or gender.⁷³
- The rules of court should allow for a system of prioritizing cases that impact on children, particularly when irreversible consequences could arise if no immediate action is taken. Courts should also take all necessary steps to facilitate the execution of judicial decisions affecting children without delay.⁷⁴

65 UN Committee on the Rights of the Child, General Comment 5 (2003) on General Measures of Implementation of the CRC, CRC/GC/2003/5.

66 UN General Assembly Resolution A/HRC/25/L.10, Rights of the Child: Access to Justice for Children (2014), para 13; Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, para 35.

67 CRC, Article 12.

68 UN Committee on the Rights of the Child, General Comment No. 12.

69 UN General Assembly Resolution A/HRC/25/L.10 on Rights of the Child: Access to Justice for Children, para 11; Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, para 37-40; UN Guidelines and Principles on Access to Legal Aid, Art 53.

70 UN General Assembly Resolution A/HRC/25/L.10 on Rights of the Child: Access to Justice for Children, Art 7; European Convention on the Exercise of Children's Rights, Art 5-6.

71 UN General Assembly Resolution A/HRC/25/L.10 on Rights of the Child: Access to Justice for Children, Art 7; General Comment No. 12, paras 33 – 36; Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice.

72 CRC, Article 18.

73 CRC Article 9; UN Committee on the Rights of the Child, General Comment No. 14

74 Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, para 49-53, 76.

5.1 Jurisdiction, composition and establishment of the Family Tribunals

In Ghana, the Family Tribunal has been established as a specialised District Court for dealing with civil cases relating to children. Pursuant to the Children's Act, 1998, the Family Tribunal has jurisdiction over matters concerning: parentage; child custody, access, and maintenance; supervision and care orders for children in need of protection; adoption order (current jurisdiction with the High Court and the Circuit Court); and fostering.⁷⁵ The Courts Act, 1993 clarifies that the District Court also has jurisdiction to hear and determine any actions arising under the Children's Act, and shall for that purpose exercise all of the powers conferred on the Family Tribunal (s. 50).

As with the Juvenile Court, the Family Tribunal is composed of a Panel consisting of the Magistrate and not less than two and not more than four other members, one of whom must be a social welfare officer. The process for appointment is the same as for the Juvenile Court panel members, and similar concerns were raised about delays in appointment of new panel members, sporadic payment of fees, and sitting allowances being insufficient to cover actual costs for travel and transport. The Family Tribunal panels were functioning in all districts visited as part of this study except for one in Ashanti region, where the lay panel members had not been appointed.

"The sitting allowance of 30 cedis a day is inadequate sometimes to even pay for our T&T to court on some occasions. Thereafter you will be left with nothing in your pocket for your upkeep. This explains why the Courts are unable to attract panel members from the community except retired social workers who consider the job as service to the nation."

A lay panel member

Apart from the general requirements for appointment to office, there are no special criteria, qualifications or training requirements for being appointed as a Family Tribunal Magistrate or lay panel member. In most (though not all) districts, the Family Tribunal panel members are the same as the Juvenile Court panel. Most of the Family Tribunal Magistrates and Panel Members interviewed as part of this study had no or limited specialised training, and there is no standard, certificate-based training programme that Magistrates and lay panel members must complete as a condition of their appointment. Magistrates interviewed as part of this study were generally of the view that having lay members as part of the Family Tribunal is helpful and effective, but some noted that lay members are not adequately trained in their role. Most stakeholders interviewed recommended that additional training was needed for both Magistrates and lay panel members.

Stakeholders advised that the role of lay panel members is primarily to provide advice to the Magistrate on social welfare aspects of the case, to ask questions of the child and other parties, to give guidance and advice to the parents, and to provide simplified explanations of the proceedings. The Family Tribunal Bench Book states that the decisions of the Family Tribunal are by a majority decision, and where the Magistrate is in the minority or has a dissenting opinion the other panel members will write the majority decision. However, as with the Juvenile Courts, there appears to be

⁷⁵ Children's Act 1998 (Act 560), s. 35

confusion in practice regarding the role of panel members. Most of the Family Tribunal Magistrates and lay panel members interviewed as part of this study stated that decisions were made by majority vote, but a substantial number stated that panel members performed an advisory role only and the Magistrate ultimately decides.

In addition to the Family Tribunal, the High Court also has inherent jurisdiction to appoint a guardian for a child, to make orders concerning the custody, access and maintenance of a child, to intervene where a guardian has acted or is likely to act prejudicially to the welfare of a child, and to give directions for the control and administration of the estate of a child.⁷⁶ The Circuit Court similarly has concurrent jurisdiction over appointment of guardians for children, making orders for the custody of children, and adoption. No data was readily available on how many civil cases relating to the care and custody of children that are handled by the High Court and Circuit Courts. During the study, however, data was available at the tribunal.

5.2 Case Management and ADR

There is no data readily available on the number of civil cases involving children that come before the courts. Stakeholders advised that the Family Tribunal has a relatively high caseload in most districts, consisting largely of cases relating to maintenance and custody of children. Orders for care and protection of children appear to be less common; the Department of Social Welfare advises that in 2015 only 28 children were subject to a care and protection order.

As with the Juvenile Court, the Family Tribunal is not a full-time separate court but rather sits on a specified day (or days) of the week to hear children's cases. Most Family Tribunals sit one day per week, though some, such as the Family Tribunal in Accra, sit daily. In some jurisdictions where caseloads are not too heavy, the Juvenile Court and Family Tribunal sit on the same day, with the same panel members serving for both.

Applications in relation to Family Tribunal are instituted by filling out and filing the appropriate standard form with the Court Registrar in the district where the applicant or the child lives, and paying a filing fee. The registrar then opens a docket, assigns a registration number for the suit, and records it in the Court Record Book. The registrar then causes the process to be served on the opposing party by the bailiff. The Family Tribunal has a separate register for managing its cases. As noted above, the District Courts currently use a manual recording system, as they have yet to be computerized.

The filing fee for Family Tribunal matters varies depending on the type of claim (e.g. 95 cedis for child custody and access cases, and 75 cedis for maintenance cases). There is no standard practice of waiving fees in children's cases where the parent cannot afford to pay, however the Registrars interviewed as part of this study noted that this can be done where the applicant is represented by the legal aid scheme, or at the discretion of the Chief Justice. Stakeholders advised that the main barriers to or challenges that parents and children face in accessing the Family Tribunals were:

- Cost of the filing fees;
- Cost of lawyer's fees;
- High cost of DNA testing in paternity cases;
- Distance to the court; and
- Lack of legal knowledge.

In recent years, civil courts at all levels have promoted mediation or alternative dispute resolution (ADR) as an alternative to litigation. Parties are encouraged to resolve disputes through mediation, rather than filing applications with the courts, by accessing ADR services. Where an application has been filed with the courts, the parties are generally given the option of settling the matter through ADR prior to setting a hearing date before the Family Tribunal. If both parties consent, the matter is referred to the ADR Unit which attempts to mediate a settlement. If the mediation is successful, the conditions of the settlement are outlined in a "terms of agreement"

⁷⁶ Courts Act, 1993, s.18

that is submitted to the Court and adopted as a Consent Order. A number of organisations, including the ADR Unit operated by the legal aid scheme and CHRAJ, mediate disputes relating to child custody, access and maintenance. However, there does not appear to be any specially trained and designated specialist to mediate in these sensitive cases, and it is not clear if children's views are taken into account in the mediation process.

Stakeholders advised that Family Tribunal cases are generally completed within six months, but some disputes relating to child custody or maintenance can take more than a year before there is a final resolution. There does not appear to be a standard practice in all courts of giving priority to cases that impact on children. A number of factors were cited as contributing to adjournments and delays:

- High caseloads and infrequent sittings of the Family Tribunal;
- Lack of quorum or non-constitution of the Panel, (absence of Judge or Panel Members, or panel members not appointed / sworn);
- Delays in preparing social enquiry reports;
- Plaintiff or defendant not ready to proceed;
- Absence of parties or counsel;
- Witnesses fail to appear;
- Challenges in serving documents (summons for witnesses, for default hearing, claims, court processes, statements of claim, execution orders etc.) to parties and other witnesses, including shortage of bailiffs, difficulties in locating residential address, and serving individuals outside the court's jurisdiction;
- Parties to the case must pay a fee to cover transport costs for the bailiff for document service for the transport for the bailiff, which is an added burden for poorer litigants;
- Refusal of defendants to cooperate with the courts.

5.3 Children's Right to be Heard and to Participate in Family Tribunal Proceedings

The Children's Act states that the procedures of the Family Tribunal are informal, by enquiry and not as adversarial as in the regular courts (Section 37). The Family Tribunal must also sit in camera, with only the parties and other interested persons permitted by the Court (s. 36). The Adoption Rules further require that proceedings with respect to adoptions should be held in camera (s. 22). However, there are no detailed court rules or practice directions to guide the Family Tribunal in conducting proceedings in an informal and child-sensitive manner, and on how to elicit the views of children in civil disputes that impact on them. The Family Tribunal Bench Book provides some guidance, but is not sufficiently detailed. It states:

- In Family Tribunal proceedings the magistrate may be pro-active and not re-active as in formal proceedings which are adversarial in nature.
- The magistrate should ensure that the court interpreters are sensitive to the needs of the child and report what they say verbatim. The interpreter must avoid the temptation to make sense of the child's statements.
- Where a child has a disability, the court should be made aware of the exact nature and extent of the disability for it to make appropriate directions and arrangements to minimise discomfort or embarrassment for the child.
- In cases involving a child or child witnesses, the evidence is heard promptly in order not to traumatise the child.
- In whatever capacity children come before the courts, special measures and processes need to be adopted to ensure that they are treated fairly, their rights are respected, their views heard and their confidence in the judicial process maintained.

- The Panel should ensure that lawyers do not attempt over-rigorous cross examination and that they use language that is free of jargon and appropriate to the age of the child.
- The questions should be unambiguous and the child should be given full opportunity to answer. If a child does not understand a question, the child may be tempted to give the answer that the child thinks the questioner wants, rather than the true answer. The child may also be afraid to disagree with a powerful adult figure. Judicial vigilance is always necessary.
- Questions are asked using friendly and simple language, and using informal approaches to ask and explain questions;
- The session is usually very short, and in the form of an inquiry or information gathering;
- Panel members use appeal and reasoning to get parents to respect their statutory obligations; and
- Some courts have waiting rooms for children and their parents. However in most courts the litigants stand in the court corridors or passageways, sometimes for hours, waiting for their case to be called.

However, contrary to the best interest principle, the Bench Book states “the need to limit the distress experienced by a child must not overcome the necessity of giving a party a proper opportunity to challenge the evidence of the child.”

The Children’s Act states that children have the right to give an account and express an opinion at Family Tribunal proceedings (s. 38). However, stakeholders advised that in most Family Tribunal cases, the presence of the child is not required and the child is not brought before the court. Unless one of the parties chooses to call a child as a witness in a contested matter, the Court often does hear directly from the child. In cases where children are called before the Court (either as a witness of either party or at the request of the court), stakeholders highlighted a number of practices used to make the proceedings more child-sensitive:

- Children’s cases are called early;
- In some cases, the child is interviewed by the panel members in chambers, rather than the courtroom;
- In some cases, the child is interviewed in the absence of the parents;
- The Court explains the nature of the dispute to the child in simple language;
- The interview begins with rapport building, asking the child questions about age, school, clan, favourite food, etc. to put them at ease;
- These practices are not used consistently in all cases, and in some instances children have been interviewed in open court, with their parents present and without the courtroom closed to the public. It is also not common practice for children’s views to be elicited and taken into account in all cases. Most Magistrates interviewed as part of this study were of the view that children are not mature enough to express their opinion in relation to disputes about their care or custody until they are at least 10 years old.
- For children’s right to participate in civil disputes that impact on them to be meaningful, Courts must have standard mechanisms in place to ensure that the views of all children capable of expressing an opinion are elicited and presented to the court, in a manner appropriate to the child’s age. The Family Tribunal does not appear to be applying a number of best practices recommended by the international standards, including:
- Having an independent person (such as a welfare officer) explain the nature of the dispute to the child in simple language, and allowing the child to choose how they wish to participate in the court proceedings and make their opinions known;
- Ensuring that the views of all children old enough to express themselves are independently elicited and presented to the court, either through direct questioning of the child by

the Court, or having the child interviewed by a welfare officer in a more comfortable and familiar setting;

- Taking steps to ensure that children are able to express their views free of undue influence from a parent or caregiver, by, for example ensuring that children are always interviewed without parents present;
- Where children do testify in court, re-arranging the courtroom set-up or furniture to be more child-sensitive, with all parties sitting on the same level;
- Providing private waiting areas for children who are appearing before the court or who accompany their parent/caregiver; and
- Ensuring that children are provided simple explanations of the Court's decision, and the reasons for it.

5.4 Guardian ad litem / Legal Representative for Children

Disputes relating to family, inheritance and other civil matters often involve a conflict between the rights and interests of the child, and the interests of their parent(s) or other family members. For children to have access to justice, measures need to be in place to ensure that they are able to access advice and complaints mechanisms in their own right, and where necessary have an independent representative appointed to protect their interests in the civil proceedings.

Under Section 38 of the Children's Act, children have the right to legal representation in Family Tribunal proceedings. However, it does not appear common for children to have a lawyer appointed, in their own right. As discussed above, the Legal Aid Scheme provides free legal representation in relation to child custody, access and maintenance disputes. However, the number and reach of legal aid lawyers is limited. In most cases, lawyers are hired to represent the interests of the parent(s) (as parties to the proceedings) and it is not common for a lawyer to be appointed to independently

represent the rights and interests of a child affected by a civil dispute. There also does not appear to be a mechanism for appointing a guardian ad litem or other independent legal representative to represent the interests of a child in any family, estate or other civil proceedings before the Family Tribunal where the interests of the child conflict with that of a parent or other adult party.

5.5 Best interest determinations

The Children's Act, 1993 requires that the best interests of the child be the primary consideration in any decision-making, including disputes relating to parentage, custody, access, guardianship, paternity and adoption of children. In order to assist the court in making best interest determinations, the Children's Act (s. 50) states that a Family Tribunal may request a probation officer or social welfare officer to prepare a social enquiry report on the child's background and family circumstances. Stakeholders advised that the Family Tribunal commonly requests an SER in cases relating to child custody, access, adoption, care and protection and sometimes in maintenance cases. Depending on the jurisdiction, SERs generally take between one and four weeks to prepare, but can be expedited in urgent cases. Most Magistrates and lay panel members interviewed as part of this study were of the view that SERs generally provide a comprehensive, high quality and professional assessment of the child's background and family circumstances. However, some concerns were raised including:

- Preparing comprehensive SERs within the timeframes given by the Court can be challenging;
- Lack of direction from the Court on the contents required for SERs, and as a result the contents are often at the subjective discretion of the probation officer;
- In highly contested custody cases, there is potential for the parties to influence the Probation officers in order to compromise the objectivity of the SER.

In terms of making decisions about the care, custody and maintenance of children, most of the Magistrates and lay panel members interviewed as part of this study emphasized that the best interest of the child is the most important consideration, and that where the rights and interests of a child conflict with that of his/her parents or other parties in the proceedings, what is best for the child should be given priority. Although Magistrates have not been provided detailed guidance on making best interest determinations, all appeared to take into account a broad range of child-centred factors in deciding what was best for the child, with most importance given to: quality of parenting; the child's right to maintain contact with both parents; the health, safety and protection of the child; the importance of keeping siblings together; emotional ties between the child and family members; the home life and living conditions of the parents; and the importance of stability in the child's life. Less weight seems to be given to the opinion of the child, and the child's language and culture.

The old presumption that young children should always stay with their mother following a divorce is reportedly no longer applied, and the general standard used today is that custody must be awarded based on the best interests of the child, with preference joint physical custody or generous

visitation with the non-custodial parent so that the child can maintain a meaningful relationship with both parents. Similarly, in maintenance cases, the Family Tribunal reportedly takes into account a variety of factors in deciding what level of maintenance should be ordered in the interest of the child, including each parents' income and ability to pay, the financial needs of the child, the amount of support needed to maintain a child's existing standard of living, the needs of other dependents. However, the principle that children should be separate from their parents only in necessary cases, where problems cannot be resolved with appropriate counselling and support, does not appear to be applied in practice. Most Magistrates were of the view that a custody order should be made removing a child from the care of his/her parents in all cases where there is an allegation of abuse or neglect.

Key Findings and Recommendations

SUMMARY OF KEY POINTS

Ghana has made significant progress in establishing a Family Tribunal system to ensure that cases relating to care, custody, maintenance, guardianship and adoption of children are dealt with through a less adversarial process, and that decisions are grounded in the best interest of the child. However, as with the Juvenile Courts, most panel members have received limited specialised training, and challenges in ensuring the efficient functioning of the panel system at times contribute to court delays. Access to the courts can be a challenge for parents with limited means due to the costs associated with court filing fees, travel to and from courts, and lawyers' fees. Alternative dispute resolution services are increasingly available throughout the country, but there are no designated specialist to handle sensitive disputes relating to the care and custody of children.

Some steps are being taken by the Family Tribunals to make proceedings more child-friendly. However, special measures are not consistently applied in all cases, and there are no detailed Family Court Rules or practice directive to guide magistrates in their obligation to conduct proceedings in an informal manner and to ensure that all children are given an opportunity to express their views.

In practice, children's right under the Children's Act to participate and express their views in Family Tribunal proceedings is not been fully implemented. Children rarely participate in civil court proceedings, and there is no standard practice of ensuring that their views are elicited and communicated to the court. The court has not introduced standardized mechanisms to ensure that all children impacted by disputes relating to care, custody, guardianship and adoption have their rights and options explained to them in simple language, are given

a choice as to how they want to participate in the Court proceedings, and are assisted to express their views to the court (either directly or indirectly) free from influence or intimidation. The general perception seems to be that because they are not "parties" to the proceedings, children's attendance is not necessary, and that younger children are incapable of forming valid opinions. However, decisions of the Family Tribunal can have a fundamental impact on the daily lives of children, and their views, even if not determinative, should be sought and given due weight.

RECOMMENDATIONS

- As recommended by the Justice for Children Policy, combine the Juvenile Court and Family Tribunal into one district-level Family and Juvenile Court, presided over by a single, specially trained Magistrate. Require welfare officers to participate in the proceedings and advise the Court through high-quality SERs and/or oral submissions, but not to sit as a panel member.
- Develop criteria for appointment of Family and Juvenile Court Magistrates to ensure those appointed to the courts have appropriate background, characteristics and experience to deal with children's cases in a child-friendly manner.
- Develop detailed Family Court Rules and/or a practice direction to provide Magistrates more detailed guidance on:
 - ⦿ Strict management of adjournments to reduce delays and prevent prolonging disputes about the care, custody and protection of children;
 - ⦿ The importance of ensuring that all children capable of expressing themselves are given the opportunity to express their views to the Court, either directly or indirectly;

- ⦿ Factors to consider in deciding whether children should be heard directly by the Court or have their views elicited through other means (e.g. by directing the welfare officer to interview the child);
- ⦿ Measures for creating a more child-sensitive physical environment for children who appear in Court;
- ⦿ Techniques for questioning children in a sensitive and age-appropriate manner;
- ⦿ Appointment of a lawyer, guardian ad litem or other independent legal representative to represent the interests of the child in cases that are highly acrimonious, or where there is a conflict between the interests of the child and the interests of his/her parent(s);
- ⦿ Principles and criteria to take into account in making best interest determinations;
- ⦿ Importance of explaining the judgement and the reasons for it to the child (or directly a welfare officer to explain the ruling).
- Judicial Training Institute to develop a comprehensive, certificate-based training programme for Family and Juvenile Court Magistrates (based on the new rules/practice direction) addressing knowledge, attitudes and skills needed to handle civil cases that impact on children in a fair, effective and child-sensitive manner.
- Make successful completion of the specialised JTI training course a pre-requisite for appointment as a Family and Juvenile Court Magistrate. To reduce costs, consideration could be given to delivering the training through self-directed learning and/or e-learning courses.
- Regularly monitor the frequency of Family and Juvenile Court sittings in all districts and adjust as necessary to meet demand and prevent backlogs.
- Introduce a standard practice of waiving filing fees in cases relating to the care, custody, access and maintenance of children.
- Judicial Service to collaborate with the Department of Social Welfare to ensure that welfare officers guide and support children impacted by Family Tribunal proceedings before and during the Court proceedings, including meeting with the child independently to explain the dispute and elicit the child's preference for how s/he wishes to participate in the court proceedings; ensuring that children understand their rights and are assisted to form an independent opinion; and in cases where the child is not appearing in court, eliciting the child's views and conveying them to the Family Tribunal.
- Judicial Service to work with ADR partners to develop guidelines for mediating in disputes that impact on children, and encourage the designation of specialist mediators annexed to the Family and Juvenile Court to handle these cases.
- Introduce new data recording forms for the Family and Juvenile Court to ensure that all courts are collecting standardised statistics on the number of civil cases that impact on children, disaggregated by age, gender and type of case. National data on civil cases before the Family and Juvenile Court should be regularly collated and analysed by Headquarters, and separately reported in the Judicial Service Annual Reports.

6

CONCLUSIONS AND RECOMMENDATIONS

Ghana has made significant progress in establishing separate courts for handling cases involving all categories of children (children in conflict with the law, child victims/witness, and children who are the subjects of family disputes).

The research team met with many dedicated Judges, Magistrates, lay panel members, prosecutors and other court staff working to make court proceedings more child-friendly for children seeking justice. However, whilst designation of separate courts is an important first step, ensuring a genuine, specialised approach will require more investment in training of court officers (Magistrates, Panel Members, prosecutors, court clerks) and to make fundamental changes to the standard adversarial trial procedures. The following actions are recommended to enhance children's access to justice and improve the child-friendliness of criminal and civil courts:

Improve the effectiveness and efficiency of the specialized court:

- Combine the Juvenile Court and Family Tribunal into one district-level Family and Juvenile Court, presided over by a single, specially trained Magistrate. Require welfare officers to participate in the proceedings and advise the Court through high-quality SERs and/or oral submissions, but not to sit as a panel member.
- Grant the regular District Courts authority to hear children's cases where a Family and Juvenile Court has not been designated and/or the Family Magistrate is absent, but require them to comply with all special procedural rules for children.
- Introduce a separate court register for Family and Juvenile Court cases to separately manage and track cases relating to children and ensure that they are

given priority in court scheduling.

- Regularly monitor the frequency of Family and Juvenile Court sittings in all districts and adjust as necessary to meet demand and prevent backlogs.
- Issue of policy statement requiring that criminal cases involving child victims be given priority in all courts, and introduce a colour-coding system so that child victim cases can be readily identified.
- Introduce a standard practice of waiving filing fees in cases relating to the care, custody, access and maintenance of children.
- Judicial Service to work with ADR partners to develop guidelines for mediating in civil disputes that impact on children, and encourage the designation of specialist mediators annexed to the Family and Juvenile Court to handle children's cases.
- Department of Social Welfare to review and update the standard format for SERs, (for both juvenile offender and care, custody and protection cases) in consultation with Magistrates, and provide enhanced training to probation officers / welfare officers on conducting the necessary enquiries more effectively and efficiently.
- Ministry of Health to develop detailed guidelines and training for doctors on conducting high-quality and child-sensitive forensic medical examinations of child victims, and on the preparation of reports for the court (in consultation with Judges and Magistrates). Issue an instruction clarifying that medical reports are to be prepared free-of-charge for all child victims of crime

Strengthen specialization and child-friendly procedures within the Courts:

- Introducing guidance on the qualifications, experience and characteristics required to be appointed to the new Family and Juvenile Court and the GBV Court.
- Developing a set of Court Rules and/or Practice Directions to provide Judges and Magistrates with more detailed guidance on handling cases involving children in conflict with the law, child victims/witnesses, and civil cases that impact on children.
- Judicial Training Institute to develop a comprehensive training programme on justice for children covering knowledge, attitudes and skills needed to conduct effective and child-sensitive court proceedings. Make completion of relevant modules of the course a pre-requisite for appointment to the Family and Juvenile Court and to the GBV Court.
- Ministry of Justice and the Attorney General to develop mandatory training programmes for police prosecutors in the Juvenile Court, and designate and train specialised prosecutors to conduct prosecutions of child victim cases in both the Circuit Courts and High Courts.
- Design and implement a pilot child-friendly court at one or more of the GBV Courts to test best practice measures for facilitating child victim/witness testimony used in other common law countries, and gradually expand.

Ensure children before the Courts are provided appropriate assistance:

- The Judicial Service and Ministry of Justice and the Attorney General collaborate on the design of Victim/Witness Support Services, attached to either the prosecutor's office or the courts.
- Improve access to legal aid for children by introducing a "duty counsel" system for the Family and Juvenile Court.
- Ensure that a lawyer, guardian ad litem, or other independent legal representative is appointed to represent the interests of children in civil cases that are highly acrimonious, or where there is a conflict between the interests of the child and the interests of his/her parent(s);
- Judicial Service to collaborate with the Department of Social Welfare to ensure that welfare officers guide and support children impacted by Family Tribunal proceedings before and during the court proceedings, and assist them to form and express their views.

Strengthen data collection to better inform policy and planning:

- Introduce new data recording forms for the Family and Juvenile Court to ensure that all courts are collecting standardised statistics on the number of cases before the courts, disaggregated by age, gender and type of case/offence. National data on Family and Juvenile Court cases should be regularly collated and analysed by Headquarters, and separately reported in the Judicial Service Annual Reports.
- Improve data recording practices to ensure that criminal courts at all levels (District Courts, Circuit Courts and High Courts) are collecting standardised statistics on the number of cases before the court involving a child victim and the outcomes of the case, disaggregated by age, gender and type of offence. National data on completion and conviction rates should be regularly analysed to inform policy development and improvement in court practices.

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Children before the Courts in Ghana:
A Move Towards Child-Friendly Justice

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