

Ghana's Child Panels: effective child protection and juvenile justice system or superfluous creation?

Abstract

In accordance with the United Nations' requirements for dealing with juvenile offenders, Ghana's Children Act 1998 mandated local authorities to establish child panels to mediate minor offences committed by children. However, to date there has not been any research that has examined the functioning and effectiveness of the child panels. This research examined the operationalisation and effectiveness of child panels in Ghana. The study involved the use of semi-structured interviews and focus group discussions with panel members of four local authorities. Findings showed that the child panels are not functioning effectively in Ghana. The relevance of the child panels has been questioned since it was found to be duplicating the roles of some other child welfare agencies. This paper discusses the challenges impeding the effectiveness of the child panels and outlines recommendations to improve their effectiveness.

Keywords: children panel, child protection, Ghana juvenile justice, juvenile delinquency, youth justice,

Introduction

Children in conflict with the law are one of the most vulnerable groups in society. Accordingly, international norms require that juvenile offenders are treated differently to adult offenders. For example, in 1985 the United Nations established Standard Minimum Rules for the Administration of Juvenile Justice; section 11 of the Rules make provision for diverting juvenile offenders from court by stating that "consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial" (UN, 1985:7). In addition, the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa (2002) requires African governments to "promote specific juvenile justice laws and systematic use of alternatives to imprisonment to deal with young offenders" (Section 5f).

Ghana has responded to these requirements and has created a specific Juvenile Justice Act with outlined alternatives to imprisonment. Section 25 of Ghana's Juvenile Justice Act 2003 makes provisions for diverting juvenile offenders away from the formal criminal justice system. The Ghana Children's Act 1998 also supports the principle of diversion by requiring all local authorities (call district assemblies in Ghana) to establish Child Panels in their district to mediate criminal and civil matters concerning children. Under the Ghana child rights regulations 2002, the Police are required to refer all minor offences to the Child Panels for settlement. However, neither the Juvenile Justice Act 2003, the Children's Act 1998 nor the Child rights regulations 2002 outlined any guidance for the operations of Child Panels. Child Panels are expected to have 7 members consisting of the chairperson of the Social Services Sub-Committee of a District Assembly; a member of a women's organization; a representative of the traditional council; the district social worker; a member of the Justice and Security Sub-Committee of the District Assembly; and two other citizens of high moral standard and proven integrity from the community. Once appointed members of the child panel are to serve for 4 years.

UNICEF (2011) reported that only 70 districts out of a possible 216 have established child panels, which was attributed to the complexity in establishing the child panels. Research into the empanelling, and functioning of child panels in the country is however lacking. In the only comprehensive report on child protection systems in Ghana, UNICEF (2011) recommended a review of the functioning of child panels to re-assess whether they are feasible mechanisms for the informal resolution of children's cases. Several years after that recommendation, no such review has been undertaken. Against this background this study is a response to that

recommendation and it sought to assess the operations and effectiveness of Child Panels in Ghana.

Literature and Theoretical Framework

For decades Governments have been concerned with juvenile offences and how to intervene. Interventions have often centred on either a welfare or justice philosophy. This paper would only summarise the welfare versus justice debate. For detailed discussion of the debate see Asquith (2002) and Muncie (2004). In the welfare philosophy, intervention is aimed at meeting the needs of young offenders instead of punishing them for their wrong deeds (Muncie, 2004). Under this approach, youth crime is believed to result from family dysfunction, poverty and other psycho-social problems. Therefore intervention was formulated by social workers, psychologists, and youth workers to help young offenders deal with these problems. These professionals were charged with exploring ways to support and rehabilitate the offending children.

The welfare philosophy has been criticised for its lack of due process and the indeterminate length that young people can be supervised for until 'rehabilitation' was deemed complete (Bala and Bromwich 2002; Muncie, 2004). On the other hand, the justice philosophy is focused on holding offenders accountable for their crime and punished accordingly irrespective of age. In this approach, children are believed to possess the capacity to distinguish between right and wrong, and can therefore be legitimately punished for crimes committed. Advocates of the justice philosophy argue that crimes must be proportionately punished to serve as deterrence to others. However, the justice philosophy is criticised for its ineffectiveness in reducing recidivism. It is argued that the justice approach has no effect on adolescents' subsequent behaviour but at worst rather have a deleterious effect on future

behaviour (Rutherford, 1992:34). It is further argued contact with the criminal justice system has the potential to taint some children and increase their likelihood to reoffend (McAra and McVie, 2007; Petrosino et al., 2010).

Restorative justice paradigm emerged due to the perceived ineffectiveness of both welfare and justice approaches to dealing with youth crime. Restorative justice is an approach that directly involves the offenders, victims, and communities to address the needs of victims and reintegrate offenders (Morris, 2002). According to the Prison Fellowship International (2000:1) “restorative justice is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future”. This approach includes victim-offender mediation, restitution and community reparation services, and is viewed as an approach that enables agencies to address children’s welfare issues while holding them accountable for their criminal actions (Muncie, 2004). Nonetheless, restorative justice is also criticised for its failure to reduce re-offending, and confusion due to the diverse processes that have been labelled as restorative justice (Morris, 2002). Others have also criticised it for the coercion that is exerted on offenders, public shaming and degradation (Crawford and Newburn, 2003; Muncie, 2006).

It has been acknowledged that a narrow welfare, justice and restorative debate is unhelpful (Muncie and Hughes 2002; Muncie 2004; Waterhouse and McGhee, 2005), since youth justice has evolved over the years into a complex process that draws on a combination of theoretical frameworks including “welfare, justice, retribution, rehabilitation, treatment, punishment, prevention and diversion” (Muncie 2004:266). Some of these philosophies appear dominant in UK youth justice. For example, it is argued that England youth justice prioritises ‘risk’ while Northern

Ireland advocates 'restoration', Wales is underpinned by 'rights' while Scotland is 'welfare' (Muncie, 2011; McVie, 2011). According to McAlister and Carr (2014:2) "UK youth justice systems enact multiple, contradictory and competing discourses".

In practice, irrespective of the underlining philosophy, Jehle et al. (2008) argue that there are three models for dealing with juvenile offenders namely: diversion, milder sentence, and special criminal treatment. (1) Diversion: this is where the offender is not subjected to criminal proceedings but instead referred to other agencies to deal with offenders who commit non-serious offences. Serious offences such as rape and murder face criminal prosecution. (2) Milder Sentence: in this practise juvenile offenders face criminal prosecution in adult courts but are given milder sentences than would have been had the offence been committed by an adult. (3) Special criminal treatment: the juvenile offender faces criminal proceedings but separate from adult courts. This entails special youth courts with special sanctions that are different to sanctions imposed on adult offenders.

The Child panel as diversion model

As noted earlier, the United Nations' Standard Minimum Rules for the Administration of Juvenile Justice requires that wherever possible young offenders are diverted from formal trial. The child panel (as called Ghana) and the children's hearing (in Scotland) are mechanisms for diverting children who commit crimes away from court processes.

The children's panel and the hearing system is a non-adversarial support system designed to protect children while simultaneously addressing their delinquent behaviour. This reflects the welfare approach to youth justice. The panel deals with young offenders up to 16 years in Scotland and 18 years in Ghana. The hearing,

termed as 'welfare tribunal' (Muncie, 2011) involves lay members, the young offender's parents or guardian, a social worker and the child. The Scottish system has been extensively studied for over 40 years and advocated as a model to reform youth justice in the UK (Bruce, 1975; Clark 1977; Hallett, 2000; Waterhouse and McGhee, 2002; Robertson, 2014). However, the child panel in Ghana has not received any academic attention since its creation in 1998. In a study on juvenile justice in Ghana, Hoffman and Baergg (2011:13) noted that "there was not enough time to fully study the Child Panels. Further research is needed to find out details on how the panels are functioning". This paper fills this gap to sheds light on the establishment, operationalisation, and effectiveness of Ghana's child panels.

Aims of the study

Against the above background, the study sought to examine the conditions and some of the challenges of child panels in Ghana. The questions that guided the study are:

1. How does the child panel function: empanelling/tenure, remuneration and retention, and procedures of the panel?
2. How effective is the child panel in mediating children's cases: timeframe for settling cases, achievements and difficulties encountered?

Methodology and methods

For this study a 'single case study' was employed. Yin (2009) proposes that case study can be 'single or multiple' and he outlines five rationales for selecting a single case study design: (1) when the case is critical - to enable a researcher test a well-formulated theory i.e. a single case can be used to test whether the theory's

propositions are correct; (2) when the case is revelatory – to enable the researcher study a previously inaccessible phenomenon to reveal useful information; (3) longitudinal case – studying the same case at two or more different points in time; (4) representative or typical case – a single case can be used if it is representative of many cases, with the view that lessons learned can be informative of all the other cases; and (5) when the case represents an extreme or unique case.

The decision to undertake a single case study for this research can be located in the ‘revelatory’ and ‘representative’ rationale since it was a pilot study. As noted, child panels have not been researched in Ghana. It was anticipated that the study could reveal useful information about the functioning of the selected child panel, and this useful information could be shared with other districts that are in the process of establishing their child panels.

The district chosen for the study had 10 panel members although the law required 7 members. The panel chair justified this violation by explaining that three social workers from the district were co-opted onto the panel in view of their expertise in dealing with children and young people. All 10 members of the panel were individually interviewed, and one group discussion also took place to discuss the achievements and challenges of the child panel. The 10 panel members were 7 females and 3 males, aged between 25 and 53. For the group discussion, unstructured interview technique was used as it is an extremely useful method for developing an understanding of settings or experiences that have not yet been fully understood or appreciated (Cohen and Crabtree, 2006). The group discussion was a post individual interview happenstance, when the researcher visited the office of the District Director of Social Welfare and met 5 panel members. The researcher made notes during these conversations. For comparison three other district social workers

were telephone interviewed about the operationalisation of child panels in their districts. The study received ethical approval and all participants gave written consent.

Interviews were conducted in English, and the researcher personally transcribed all the interviews. Transcripts were then coded using the grounded theory approach. (For a practical guide to the grounded theory approach to data analysis, see Charmaz, 2006). Miles and Huberman (1994) outline two methods of creating codes: inductive coding or grounded theory approach (Glaser and Strauss, 1967) i.e. codes generation after fieldwork; and the provisional start list approach, where the researcher creates provisional codes prior to fieldwork. 13 individual interview transcripts (i.e. 10 panel members and 3 telephone interviews with other social workers) and one fieldnote of the group discussion were coded using computer assisted software, ATLAS ti. Illustrative quotations were then selected and used in discussing the findings of the study.

Findings of the study

The findings of the study have been categorised into administrative, structural, financial and development challenges.

Administrative challenges: local level political influence

The study found too much political influence in the selection of child panel members. This has led to confusion and contradiction in the composition of the child panels. As noted earlier the Children Act 1998 established the child panels and mandated the Minister responsible for Social Welfare to appoint the 7 members. However, with increased decentralisation the district social welfare service has been re-assigned

from the Ministry of Social Welfare to the District Assemblies under the Ministry of Local Government and Rural Development. Accordingly, the Child Rights Regulation 2002 mandated the Minister for Local Government and Rural Development to appoint members of the child panels, upon receiving nominations from the district assemblies.

Politics at the local level has affected the calibre and competence of the nominees and people appointed to the child panels. The district assembly concept has 70% directly elected through universal adult suffrage and 30% government appointed. This was to ensure that professionals could be appointed to fill positions that the assemblies may be struggling with in order to help improve governance at the local level. However, in practice the 30% government appointees have been the exclusive reserve of non-professional political party activists, who get such appointments as their reward for campaigning for the party to win elections. The legal framework for the child panel requires that it is chaired by the chair of the district assembly's social service sub-committee and the district social worker acts as the secretary to the panel. The study found that the chair of the assembly's social service sub-committee had no interest in the child panel and had never attended any panel meeting. In an interview with him on the operations of the child panel, he noted that "I am not a social welfare officer so I have left the social welfare officers to do their thing, because they have been trained to deal with children's cases". This trend was noted in other 3 districts where the district assembly had no representation on the child panels, which is against the dictates of the Children Act 1998 and the Child Rights Regulations 2002. Consequently, oversight of the operations of the child panels by the district assembly is lacking. The Government of Ghana has acknowledged the

constraints under the law in the composition and mode of appointment of Panel members (Government of Ghana, 2015).

Financial challenges: remunerating panel members

Another reason why the district assemblies appear uninterested in setting up and running child panels is financial. The Child Rights Regulations 2002 requires the district assemblies to pay members of the child panels allowance at the same rate as that of assembly members, in 2016 this was set at GH¢60 (equivalent to £12) per sitting. The child panel is supposed to meet at least once every three months but may decide to meet as often as necessary. The child panel under study sits every two weeks therefore the district assembly would have to pay GH¢120 (equivalent to £24) per month to each of the 7 members (total of GH¢840, approximately £168). The district assemblies with their meagre budgetary allocation do not consider the child panel to be worthy of funding and have been reluctant to pay the allowances of the child panel members. This has resulted in a situation whereby members of the child panel gradually withdraw their services, leading to the collapse of the panel, as shared by two interviewees:

“I live about 10km to the district office. Every time I take taxi to meetings and I have attended several meetings but I have not been paid my allowance. How can I continue to use my own money to work for the assembly”? (interview with current panel member)

“We had a number of people interested when we started. Meetings were always full but after about 5 months the number began to reduce. Sometimes we have just 2 people attending meetings. You call members to meeting and they will ask if the allowance is ready. I believe the non-payment of the allowances led to the collapse of this child panel”. (telephone interview with social worker)

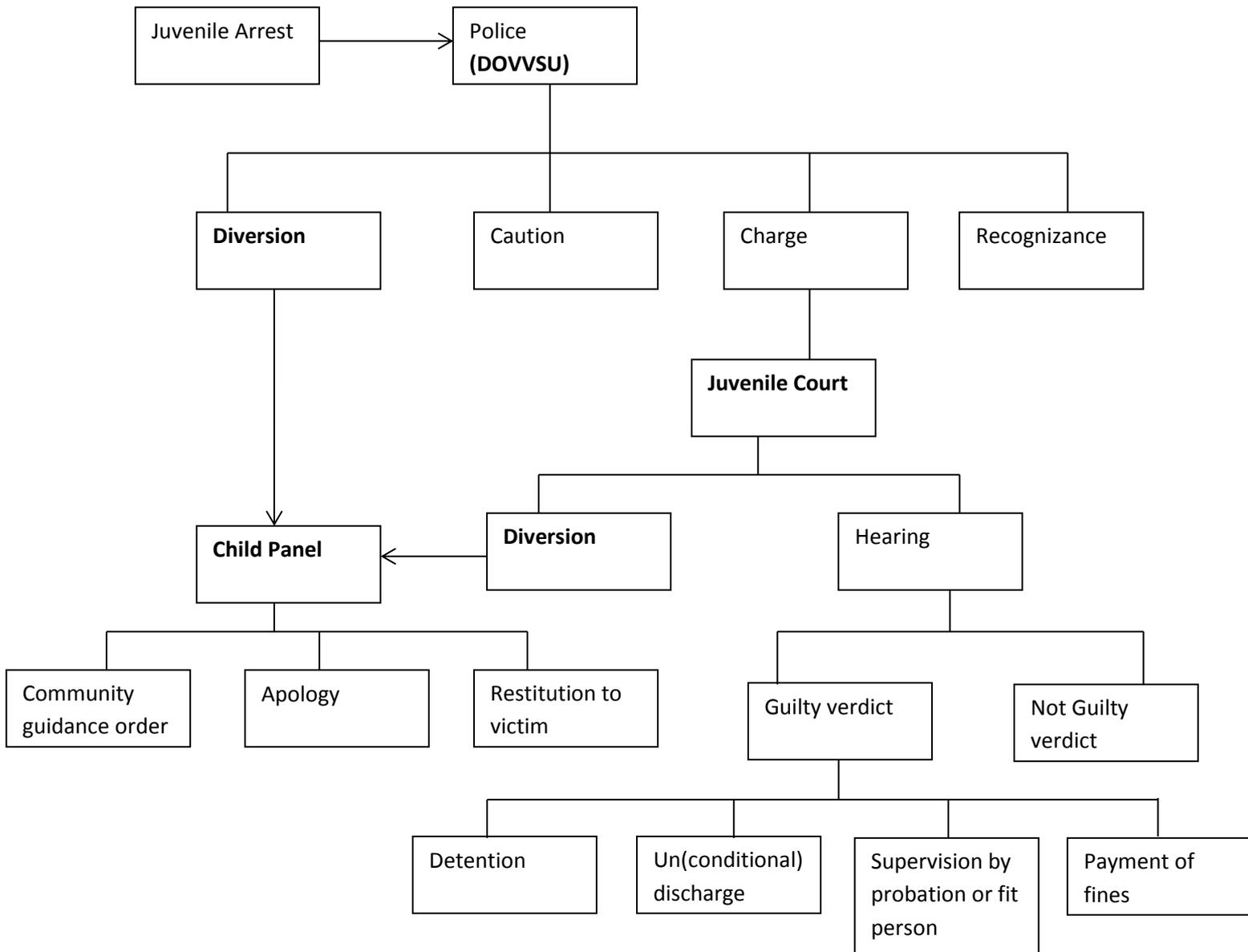
Furthermore, the requirement that as a minimum the panel should meet once every three months affects the effectiveness of the panel. Although, the panel is mandated to increase the number of times that it meets, due to financial constraints the panel is unable to do that. The panel's inability to meet more frequently resulted in a high number of cases waiting to be settled; drift sets in and a number of cases remain open but never settled. According to the district social worker, this leads people to become disillusioned with the panel and cease their involvement.

Structural challenges: duplicating roles

The study also found that there is duplication of roles and competition between the child panels and other services involved in child protection, in particular the Domestic Violence and Victim Support Unit (DOVVSU) of the Ghana Police Service, the Juvenile Court, and the Family Tribunal. The Juvenile Court has original jurisdiction in all matters affecting children who have been involved in crime, and as part of its services may divert minor offence cases to the child panels. In districts where there are no child panels the juvenile court deals with all cases, therefore the district assembly does not see the need to set up a body that would duplicate the juvenile court.

The Domestic Violence and Victim Support Unit (DOVVSU) is a specialized unit within the Ghana Police Service established in 1998 to address cases of abuse and violence against women and children, and to handle juvenile offences. It is mandated to prosecute where necessary and may divert minor cases to the child panels. The figure below displays the interdependence between DOVVSU, The Juvenile Court and The Child Panels.

Figure 1: overview of juvenile justice system in Ghana, highlighting the interdependence between the child panel, DOVVSU and the juvenile court.



From figure 1, although DOVVSU is supposed to refer cases to the child panel, it was reported that they are increasingly settling such cases as well as getting involved in other civil matters. Hoffman and Baergg (2011) have also noted that child panels do not receive adequate referrals from DOVVSU and the Juvenile Court. The District Director of Social Welfare at the district under study noted the competition and duplication between DOVVSU and the child panel in respect of civil matters, stating that:

“DOVVSU is supposed to investigate and prosecute criminal cases but they have increasingly been involved in handling civil matters such as paternity, maintenance, child custody and access cases. They are competing with us and some people prefer to report their cases to DOVVSU because they believe as the Police, DOVVSU can arrest people who violate their instructions. DOVVSU hardly makes referral to us, although they are supposed to”.

Related to the above, is the supposed competition between the child panels and the family tribunals that have original jurisdiction under the Children Act 1998 for matters concerning parentage, custody, access and maintenance of children, yet child panels may also mediate in any civil matter concerned with the rights of the child and parental duties. However, it has been noted that very few cases are referred to the child panels with the bulk of child maintenance cases being handled by DOVVSU, and the Family Tribunal (Government of Ghana, 2015). According to an interviewee, people perceive the child panel as lacking the power to enforce its decisions/agreements, unlike the family tribunal, and may reject the decision made by the child panel. Also, due to the perceived powerlessness of the child panel some people refuse to honour invitations to appear before the panel. It was reported that in instances where one party rejects the decision of the child panel or refuse to appear

before it, the only option that the panel has is to advise the affected party to proceed to the Family Tribunal.

On the process for settling cases, the study found that the child panel operates in a similar manner to that of the Juvenile Court, which is made up of three members including the magistrate, social worker and a third person. In practice, the social worker who sits on the Juvenile court is also the secretary to the child panel. The child panel has therefore adopted similar process to the juvenile court by requiring social workers to provide it with a social enquiry report [akin to pre-sentence report] that would help the panel in its deliberations. The offender, parent(s) or guardian and the victim(s) are invited to appear before the panel. There is no definite timeframe to respond to referrals and to settle cases. The request to produce social enquiry report has led to some social workers engaging in unethical practice, as captured below:

“When we have to complete social enquiry report, we have to travel to investigate but who pays? We don’t have the means so sometimes we ask the family to fund the report. If families fund the report we can’t write a negative report against them so we compromise and write positive report. We are supposed to truthfully advocate and protect vulnerable people but without resources there is a limit on what we can do”. (interview with co-opted panel member who is also a social worker)

The lack of resources and impediments to effective and ethical social work practice in Ghana is well documented (see Laird, 2002; Laird, 2008; Laird 2011; Agbitor, 2012). Bortei-Doku Aryeetey et al. (2012) have attributed the perennial underfunding of social work services to the low priority accorded to social work by the Government of Ghana.

Development challenges: training of panel members

It was also reported that many panel members do not take active interest because they are not professionals who work with children regularly therefore do not know what to do. In addition, they are not provided any training on what is expected of them in their role as child panel members. The only social worker on the panel who could offer professional advice has rather been made secretary to the panel recording proceedings instead of actively taking part in proceedings and advising the panel. An interviewee lamented about this noting:

“The panel itself, how competent are we? We are not social workers so I don’t know how fairly we handle the issues presented before us. We need training and professional advice but the only social worker we have is the panel secretary who does not take part in discussions. Some of us tried to have this changed so that the social worker becomes the chair and professional adviser. But some people also argued that we couldn’t change it without a change in the law”. (interview with current panel member)

In view of the acknowledgement of the non-availability of childcare experts on the panel, it has become necessary for the panel understudy to co-opt social workers unto the panel. This accounts for the reason why the panel understudy had 10 members instead of 7 as stipulated by the legislative framework.

Discussion and Conclusion

The above discussions highlight that the operationalisation of the child panel in Ghana is fraught with many challenges that bring into question the propriety of its creation. It seems the remit of the panel is too broad and therefore veering into other institutions role. For example, the panel as a quasi-judicial body is charged with mediating both civil matters and minor criminal offences such as petty theft and threatening offences. However, other institutions such as the family tribunal, also established by the same law that established the Child Panel (i.e. Children Act 1998)

confers jurisdiction to the family tribunal on civil matters affecting children e.g. parentage, maintenance, custody and contact.

Also, the juvenile court has jurisdiction in both minor and serious offences committed by children. This means that both the child panel and juvenile court are mandated to deal with minor offences, but appearance before the child panel is voluntary as the panel does not have the power of compulsion. These indicate that the child panels are rivalling other institutions that have more power to enforce their decisions. It was noted earlier that this lack of power has resulted in some families refusing to honour invitations or accepting decisions made by the panel. It has also been established that in practice very few cases are actually referred to the child panels (Government of Ghana, 2015) and this was partly attributed to the perceived powerlessness of the child panels. The juvenile court has power to sentence convicted juveniles to both institutional and non-institutional settings for the purposes of rehabilitation and training. Institutional settings include industrial schools, remand homes and probation homes while non-institutional include supervision by probation officer or other fit person, and payment of fines. On the other hand, options available to the child panels are apology to the victim, community guidance order, and restitution to the victim. It can be observed that the sanctions available to the child panel reflect the restorative justice approach, while that of the juvenile court is mainly framed by the justice philosophy. (See earlier discussion on literature and theoretical framework).

An amendment to the remit and composition of the child panel may eliminate the role duplication. This amendment is necessary in view of the fact that the family tribunal already deals with civil matters while the juvenile court deals with criminal matters affecting children. Therefore, the establishment of child panels to deal with civil and

minor offences is a superfluous creation. A similar conclusion was reached by Ame et al. (2014) who described the child panels as 'stillborn'. It is therefore not surprising that many local authorities do not see the need to establish and finance child panels, while some of the established ones are not functioning effectively as expected. Ame (2017) in an overview of the juvenile justice system in Ghana concluded that "very few child panels have actually been established, and of those, very few are functioning as envisioned by the law makers" (p.21). To strengthen the child panels and eliminate the duplication of roles, it would be necessary to amend the Juvenile Justice Act 2003 to focus the juvenile courts on dealing with only serious offences, while the child panel deals with minor offences. It would also be worth delimiting the child panels' role in civil matters and allow the family tribunal and the department of social welfare to focus on these. Similarly, the Domestic Violence and Victim Support Unit (DOVVSU) of the Police service must focus on its core mandate of investigation and cease getting involved in settling civil matters concerning children.

The appointment of local level politicians unto the child panel should cease. For child panels to be an effective juvenile justice diversion strategy, there is the need to depoliticise it and make it a truly community led voluntary system whereby people voluntarily apply to serve on the panel, with no expectation of remuneration. This would ensure that only people committed to serving the best interest of children would volunteer, and are provided with training opportunities to discharge the mandate given to them. In the justice for children policy, the Government of Ghana (2015) acknowledged that the child panels need reformation in view of the constraints under the law in terms of the composition and mode of appointment of Panel members, as well as their lack of resources. It is hoped that this paper has shed light on some areas of the child panels that need reformation.

Limitation of the Study

The study involved mainly one district and telephone interviews with social workers from three other districts out of about 70 districts in 2011 that were found to have established the child panel. It is however worth noting that some of the established ones have collapsed, due to some of the challenges discussed in this paper. Therefore, at present the exact number of panels in existence is unknown. While generalising from a single case study has limitations, it is accurate to state that some, if not majority, of child panels in Ghana are not functioning effectively (see also Hoffman and Baergg, 2011; Ame et al.; Government of Ghana, 2015; Ame, 2017). It is however possible that there could be a child panel that is functioning effectively as envisioned by the law; a comprehensive study of child panels would enable lesson-learning from such a panel.

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