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# JUSTICE FOR CHILDREN POLICY

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unicef



# JUSTICE FOR CHILDREN POLICY

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# Foreword

In Ghana, the situation of children involved in the Criminal Justice System remains a real concern to all especially being the first country to ratify the Convention of the Rights of the Child. From the enactment of Juvenile Justice Act, (Act 658) through researches to support to Institutions working to protect children, there is the need to work assiduously towards improving the condition of children who come into contact with the law, or at risk to and work towards improving the work of different Institutions within the Child Justice System.

Through consultations with Advisory Committee and meetings with experts working in the justice sector, the need was recognised for enhancing capacity in modern approaches for working with Child offenders, Victims and Witnesses based on the international standards and practices.

The Ministry of Gender, Children and Social Protection as well as Institutions within the Justice System has to grapple with emerging challenges of ensuring that the rights of children are protected and adhered to in the midst of limited facilities, inadequate systems and structures and lack of trained personnel to apply modern approaches in handling vulnerable children.

Faced with these challenges, the Ministry is encouraged that the Justice for Children Policy provides the framework for developing Standard Operating Procedures , Protocols and Guidelines that seeks to protect children who are involved in the Criminal Justice System as offenders, Victims and Witnesses and promotes the monitoring and evaluation of all key institutions involved in this process.

It is hoped that developing prevention mechanisms at institutional and community levels will not only reduce abuse and delinquency but will help communities initiate systems to protect their own children.

The contents of this Policy emerges from the extensive contributions of Advisory Committee members as well as different stakeholders and experts involved in extensive consultations using participatory approaches with children, community leaders, Child justice practitioners and stakeholders across the country

This is indeed a Policy which is in line with the Convention on the Rights with aspirations towards a system that is strengthened to protect all children who come into contact with the law either as offenders, Victims and Witnesses.

We congratulate the Advisory Committee, and encourage all partners to collaborate effectively to protect our children and create an environment that prevents children from coming into contact with the law and promotes child friendly responses to all children in need of care and protection.

The Ministry is particularly grateful to UNICEF for their invaluable support.



**Hon Nana Oye Lithur**

Minister, Gender, Children and Social Protection

# Acronyms

<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>ADR</b>	Alternative Dispute Resolution
<b>CBO</b>	Community Based Organisation
<b>CFWP</b>	Child and Family Welfare Policy
<b>CHRAJ</b>	Commission for Human Rights and Administrative Justice
<b>CRC</b>	Convention on the Rights of the Child
<b>CSO</b>	Civil Society Organisation
<b>DNA</b>	Deoxyribonucleic Acid
<b>DOC</b>	Department of Children
<b>DSD</b>	Department of Social Development Ī
<b>DOVVSU</b>	Domestic Violence and Victim Support Unit
<b>DSW</b>	Department of Social Welfare (now known as Department of Social Development)
<b>GBV</b>	Gender Based Violence
<b>GES</b>	Ghana Education Service
<b>JCC</b>	Junior Correctional Centre
<b>LEAP</b>	Livelihood Empowerment Against Poverty
<b>MDAs</b>	Ministries, Departments and Agencies
<b>MMDA</b>	Metropolitan Municipal and District Assembly
<b>MoGCSP</b>	Ministry of Gender, Children and Social Protection
<b>MoLGRD</b>	Ministry of Local Government and Rural Development
<b>NGO</b>	Non-Governmental Organisation
<b>NHIS</b>	National Health Insurance Scheme
<b>PNDCL</b>	<b>Provisional National Defence Council Law</b>
<b>RSIM</b>	Research Statistics and Information Management
<b>SCC</b>	Senior Correctional Centre
<b>SER</b>	Social Enquiry Report
<b>SOP</b>	Standard Operating Procedure

# Definitions And Concepts

**Child:** A child is defined in line with the United Nations Convention on the Rights of the Child (CRC), the 1992 Constitution of the Republic of Ghana (Article 28) and section one of the Children's Act 1998 (Act 560), as a person below the age of 18 years. However, where a child is in a correctional institution that child may receive continued protection up to 21 years.

**Chief:** A Chief is defined, pursuant to Article 277 of the 1992 Constitution of the Republic of Ghana, to mean "a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage" and who has been registered as a Chief in accordance with the Chieftaincy Act, 2008 (Act 759).

**Community** is a social unit of any size that shares common values including traditional, religious and cultural among others, or a social unit whose members reside in a specific locality, and may have common social/administrative/cultural/traditional and/or religious values.

**Community Justice** refers to traditional, customary, family, religious and other informal mechanisms used to resolve minor disputes at the community level without overt legal implications or connotation.

**Diversion** as per section 60 of the Juvenile Justice Act, 2003 (Act 653) "means the referral of cases of children alleged to have committed offences away from the criminal justice system with or without conditions". It is a process which seeks to avoid a first or early contact with the criminal justice system by directing children away from the formal justice system and prosecution, towards community intervention and appropriate services.

**Family** as defined in the Child and Family Welfare Policy is a group of people related by blood, marriage, law (in the case of adoption) and common identity as well as lineage and clan.

**Formal Justice** refers to the State-run system for addressing legal issues, including the hierarchy of courts, law enforcement agencies, social welfare, legal aid, correctional services, Commission on Human Rights and Administrative Justice (CHRAJ), and the Attorney General's Department.

**Justice for Children System** refers to the system proposed in this policy for addressing legal issues affecting children and encompasses community justice interventions, as well as formal justice interventions by law enforcement agencies, juvenile courts, family tribunals, social welfare, legal aid, correctional services, CHRAJ, and the Attorney General's Department.

**Juvenile** in accordance with the Juvenile Justice Act, 2003 (Act 653), "means a person who is under the age of eighteen years who is in conflict with the law."

**Minor Offence** "includes offences such as petty theft, petty assault and threatening" (Juvenile Justice Act, 2003 (Act 653).

**Probation** is the release of an offender from detention, subject to a period of good behaviour under supervision.

**Probation Officer** is an officer from the Department of Social Development (DSD) trained and appointed to investigate and report on and supervise the conduct of committed offenders on probation.

**Serious Offence** “includes offences such as robbery, rape, defilement and murder” (Juvenile Justice Act, 2003 (Act 653).

**Social Worker** is a person who has acquired the requisite academic qualification and training and is engaged in practise based social work.

**Social Welfare Officer** is a social worker working with the DSD under the Ministry of Gender, Children and Social Protection (MoGCSP) or a social welfare and community development officer/ social development officer working under the Ministry of Local Government and Rural Development (MoLGRD). A process is in place to change the name of district level officers to “social development officers”.

# 01 Introduction: Policy Development Rationale & Process

Internationally, different approaches to promoting children's access to justice and addressing offending behaviour have evolved over time and are rooted in particular traditions and social, political and cultural contexts. It is recognised that a justice for children system should reflect the values, expectations, aspirations and capacities of local families, communities, civil society and state actors.

One of the recommendations from the 2010 mapping of the child protection system in Ghana was to reconceptualise the justice for children system, based on a recognised need to close the gap between the formal and community ways of dealing with justice for children issues and thus build a united system that is a more relevant, sustainable and 'fit' for Ghana. It acknowledged that this will be done through a policy, which is a deliberate system of principles to guide decisions and to achieve rational outcomes that will achieve a sustainable justice for children system for children in Ghana.

In 2010, the Government of Ghana and its partners recognised the need to review the existing measures in place for child protection in Ghana, which addressed child and family welfare and justice for children, in order to come up with a more comprehensive justice for children system fit for Ghana. An initial mapping and analysis of the national child protection system in place was undertaken.<sup>1</sup> Among the findings included the disconnect between law and practice, the wide gap between the legal provisions in place and community approaches to dealing with justice for children issues, and whether the structures and approaches in the formal system are in fact relevant, feasible and appropriate to the Ghanaian context and culture.

In 2012, the Government of Ghana and its partners commenced the process of reform by establishing an Advisory Committee to guide the process of developing a national justice for children policy that would reflect national priorities and aspirations, resonate with both service providers and users, and be owned and supported by communities and decision-makers alike, thus ensuring that the system is 'congruent'. This process has been closely linked to the development of the Child and Family Welfare Policy (CFWP), in order to ensure complementarity and congruence between the two policies.

The method adopted for developing the policy involved a circular process of consultations with a range of coalitions. Numerous studies and reports as well as a baseline study and multiple meetings with the Advisory Committee members became the basis on which to reframe and redefine an appropriate justice for children system.

The policy is divided into nine sections. After this introduction, Section two gives the background to the policy summarising findings from relevant studies, identifying and analysing the legal framework as well as the formal and community justice system in place. Section three presents the policy framework including the rationale, policy goal and objectives. Section four sets out the Guiding Principles of the policy. Section five begins the process of describing the new Justice for Children System by describing its key features. Section six outlines and sets out the strategies for achieving the policy objectives. Section seven gives an overview of the institutional arrangements for ensuring the implementation of the policy. Section eight indicates the need for a monitoring and evaluation system to be set out in the action plan to be developed for the policy, and Section nine looks at the funding mechanism.

<sup>1</sup> Government of Ghana and UNICEF (2011) Report of the Mapping and Analysis of Ghana's Child Protection System, Child Frontiers, Plan International and Child Research and Resource Centre, Accra

## 2.1 Overview of the Situation of Children and the Justice System

Ghanaian children have historically grown up in closely connected extended family networks, with strong cultural traditions governing their birth, socialisation and upbringing. In many communities, particularly in rural areas, members of the wider extended family are expected to participate in the upbringing of children.<sup>2</sup> Although the extended family network remains intact in much of the country, poverty, rapid rural–urban migration patterns and family breakdown have presented challenges, at times resulting in the break-up of extended family support networks and undermining the commitment to care for children by lineage groups.<sup>3</sup> This in turn has led to an increasing demand for access to justice to address issues of child custody, maintenance and paternity, acts of violence as well as crimes against children, and children in conflict with the law.

The lack of comprehensive, national data on children in the justice system makes it difficult to assess the full nature and scope of these issues. A mapping of community perceptions of child protection issues conducted in 2010 highlighted that young people forming gangs, becoming involved in criminal activity and displaying unacceptable behaviour were problems in both rural and urban areas. Theft was identified as the most common offence committed by children, and fighting, alcohol/drug use and sexual offences were also frequently highlighted as concerns.<sup>4</sup>

With respect to **children in conflict with the law**, available data from the courts suggests that a relatively low number of children are being formally processed through the formal justice system, particularly in the Northern Regions. A recent review of data from approximately one third of Juvenile Courts showed 120 juvenile cases in 2011, 151 in 2012, and 173 in the first half of 2013.<sup>5</sup> Court data from 2003 to 2004<sup>6</sup> showed that approximately 245 juvenile cases were newly filed within the year across all regions, with only four cases in the Northern Region, two in Upper East and three in Upper West. The highest concentration of juvenile cases was in Greater Accra (69), followed by Brong Ahafo (51).

Data from the Department of Social Welfare – (DSW) now known as the Department of Social Development (DSD) - indicates that between 2005 and 2010, 1,409 persons under 18 years were placed on probation programmes for special rehabilitation.<sup>7</sup>

An analysis of available court data between 2011 and 2013 concluded that stealing was the most common type of offence committed by children (representing 50.7% of cases reviewed), followed by assault / causing harm (17.9%) and rape and defilement (12.4%).<sup>8</sup> The majority of offenders (87%) brought before the juvenile courts between 2011 and 2013 were boys, and most are between the ages of 16 and 18 years.

2 Twum-Danso, A., (2012) *From Central to Marginal? Changing Perceptions of Kinship Fosterage in Ghana*, *Journal of Family History*, Sage Publications.

3 UNICEF and Ministry of Employment and Social Welfare (2009), *Social Protection for Children: Opportunities and challenges in Ghana*, UNICEF, Accra.

4 Government of Ghana and UNICEF, (2011)

5 Government of Ghana and UNICEF, (2014), *Assessment of Child Panels and Analysis of Some Key Indicators of Ghana's Juvenile Justice System*, Ame, R., Ayete-Nyampong, L. and Gakpleazi. Data from the courts is based on questionnaires returned by 39% of magistrates and 36% of Court Registrars.

6 Judicial Service and CIDA, (2005), *Report on Access to Justice by Women and Children*, Gagnon, L., and Atsuvia, F.

7 DSW's response to Comment No.H3 of the Republic of Ghana's Initial, First and Second Consolidated Report to the African Committee of Experts on the Rights and Welfare of the Child (2005-2013).

8 Government of Ghana and UNICEF, (2014). Data is incomplete due to low rate of returns (39% of magistrates and 36% of Court Registrars). A significant number of cases (27.4%) were categorised as simply "other", and the data appears to have mixed indecent assault and common assault cases under "assault / causing harm"

This is generally consistent with results of an analysis of District Court records from three regional capitals (Accra, Ho and Tamale) between 2002 and 2003.<sup>9</sup> That study found that stealing accounted for 33% of the crimes committed by juveniles, and defilement accounted for 17%. Ninety percent of offenders were boys. Institutional placement and probation were the common sentences pronounced against juveniles. The average time to conclude a case was almost five months, with 81% of cases adjourned at least once, and an average of six adjournments overall.<sup>10</sup>

There has yet to be comprehensive research on the underlying factors contributing to juvenile offending. A mapping of community perceptions of child protection issues conducted in 2010 identified a number of factors perceived to be contributing to juvenile offending, including poverty, negative influences from violent films and pornography, peer pressure, parental neglect and failure to provide for their children's basic needs, and drug and alcohol use.<sup>11</sup> Similarly, community research undertaken in 2013 identified the following factors that were perceived to be contributing to juvenile offending: 1) bad upbringing (41.4% of responses), including not enough discipline, no good role models, violence, abuse or neglect, little or no education, lack of religious or spiritual guidance, parents addicted to drugs or alcohol; 2) bad influences (26%), including influence of gangs, to impress peers, bad influence of media, forced or pressured by adults or older children, child is under the influence of drugs or alcohol; 3) economic reasons (20.7%), including the need for money or items, no options for advancement in community; 4) personal character (5.0%), including personality issues, attention seeking, failure to understand right and wrong; and 5) risk-taking and making mistakes (2.2%), including the fact that risk taking and making mistakes are a normal part of growing up.<sup>12</sup>

**Conflicts over custody, maintenance and paternity of children** also seem to be of growing concern, and consumes a significant percentage of the time and resources of all formal justice agencies. Disputes relating to child maintenance constitute the bulk of children's cases dealt with by social workers (from DSD and community development officers), CHRAJ, Domestic Violence Victim Support Unit (DOVVSU) and the Family Tribunal. In 2013, DOVVSU dealt with over 6,000 cases of non-maintenance. Court data from October 2003 to June 2004 showed that over 6,400 cases involving children had been newly filed with the Family Tribunal across all regions. The number of cases pending at the end of the year (including newly filed cases and cases pending from the previous year) was over 7,000. A detailed analysis of 2,243 Family Tribunal cases in five District Court Registries (Community Centre, La, Jamestown, Ho and Tamale) found that the majority of cases (57%) related to maintenance, 11% custody, 10% naming, 9% paternity, 3% access, and 10% other issues.<sup>13</sup>

**Violence, abuse, exploitation, and neglect of children** are also an issue of growing concern. The number of cases officially reported to the DOVVSU of the Ghana Police Service has increased significantly from 1,128 in 2002 to more than 2,157 in 2013.<sup>14</sup> This included over 1,200 cases of defilement. It is not clear if this increase is due to increased incidents of abuse, or increased rates of reporting. Surveys suggest that the actual prevalence of violence is significantly higher than formally reported.<sup>15</sup> A 2009 study conducted in selected schools found that 14 per cent of school children surveyed had been sexually abused, with 53 per cent of sexual abuse occurring in school and 47 per cent happening at home.<sup>16</sup>

9 Judicial Service and CIDA, (2005).

10 Ibid.

11 Government of Ghana and UNICEF, (2011).

12 Government of Ghana and UNICEF, (2014) National Child Protection Study: Quantitative and qualitative research towards the strengthening of child protection in Ghana.

13 Ibid.

14 Data from DOVVSU. This includes cases of defilement, indecent assault, causing harm, incest, trafficking, abandonment, unlawful removal, stealing/adduction, exploitive labour and forced marriage etc. but not non-maintenance.

15 A survey conducted in 1999 found that 20 per cent of women and girls across all regions of Ghana had their first sexual intercourse forced upon them (including 17 per cent of girls aged 10–14 and 64 per cent of girls aged 15–18). The majority of cases of sexual violence went unreported due to stigma and feelings of shame, advice to be tolerant or the view that little or no action would be taken: Appiah, D. and Cusak, K., Violence against Women and Children in Ghana, Gender Studies and Human Rights Documentation Centre, Accra, (1999).

16 CRRECENT, Report on Child Sex Abuse in Schools, PLAN Ghana, Accra, 2009.

Sixty seven percent of students indicated that sexual comments take place in their school, and 49 percent of students reported sexual touching in their school. Nineteen percent of students indicated that rape or defilement occurred in their schools. This is higher than the figures reported in a 2009 study by Plan Ghana (15 percent) and a 2002 study by the Centre for Development Studies of the University of Cape Coast (11 percent). Sixty one percent of students had not been told who to report cases of GBV to. Even though 63 percent of teachers indicated that there was a reporting procedure in place, none of the procedures described were documented.<sup>17</sup>

## 2.2 Legal Framework

Ghana was the first country to ratify the United Nations Convention on the Rights of the Child (CRC) and has ratified a number of international instruments relating to child protection<sup>18</sup> including the African Charter on the Rights and Welfare of the Child (ACRWC). Article 28 of the 1992 Constitution of the Republic of Ghana also sets out key tenets of the rights of the child and calls for the enactment of legislation to promote the rights of children.

These international commitments and constitutional provisions have been reflected in two key national laws - the Children's Act, 1998 (Act 560) and the Juvenile Justice Act, 2003 (Act 653), which establish the foundation for the national child protection system and govern children's access to justice. In addition, a variety of other national instruments govern children's legal rights and access to justice.<sup>19</sup>

- **Children's Act, 1998 (Act 560)**<sup>20</sup> gives district-level Family Tribunals jurisdiction to make orders with respect to care and protection (supervision orders and care orders), adoption, parentage, custody, access and maintenance of children. The Family Tribunal is constituted by a panel consisting of the District Court magistrate and two other members, one of whom must be a social welfare officer. The Children's Act also calls for the creation of Child Panels to mediate civil and minor criminal cases involving children.
- **Juvenile Justice Act, 2003 (Act 653)**<sup>21</sup> provides the legal foundation for a separate and distinct approach for handling children in conflict with the law based on the welfare approach. The Act states explicitly that juvenile matters must be dealt with in a manner that is different from an adult, and that the best interests of the child are paramount. Jurisdiction for dealing with children in conflict with the law lies with specialised Juvenile Courts, which are composed of a District Court magistrate and two other people, one of whom must be a social welfare officer. The Act outlines special procedural protections for children from the point of arrest through trial and sentencing. A range of custodial and non-custodial sentencing options are available, and provision is made for the establishment of specialised Junior Correctional Centres (JCCs) and Senior Correctional Centres (SCCs) for children. The Juvenile Justice Act also promotes the diversion of children away from the formal criminal justice system.

17 Human Rights Advocacy Center (2014). Report on Gender Based Violence in Ghanaian Schools

18 This includes the ILO Convention 182 on the Worst Forms of Child Labour, but not the Optional Protocols to the CRC or the Trafficking Protocol

19 This includes: Criminal Offences Act, 1960 (Act 29); Criminal and Other Offences Procedure Code, 1960 (Act 30); Human Trafficking Act, 2005 (Act 694); Domestic Violence Act, 1997 (Act 732); Legal Aid Scheme Act, 1997 (Act 542); Alternative Dispute Resolution Act, 2010 (Act 798); Intestate Succession Act, 1985 (PNDCL 111); Wills Act, 1971 (Act 367); Matrimonial Causes Act, 1971 (Act 367), Courts Act, 1993 (Act 459), Evidence Act, 1975 (NRCD 323); Head of Family Accountability Act, 1985 (P.N.D.C.L. 114) among others and customary law.

20 Hereinafter Children's Act.

21 Hereinafter Juvenile Justice Act.

Some of the other relevant laws cover the following justice for children issues:

- The **Criminal Offences Act, 1960 (Act 29)** has provisions prohibiting various crimes against children including child abandonment, defilement, and indecent assault among other crimes.
- There are currently no special provisions under the **Criminal and Other Offences Procedure Act, 1960 (Act 30)** or other laws to protect and facilitate the testimony of child victims and witnesses participating in criminal proceedings.<sup>22</sup>
- The **Intestate Succession Act, 1985 (PNDCL 111)** was enacted to guarantee a substantial part of an intestate's property for surviving spouses and children. It guarantees at least one house and household chattel for them to give them shelter as well as a share of the residue of properties. It makes it an offence to deprive surviving spouses and children their share of the deceased property. Furthermore it makes special provision for children of school going age by ensuring that funds are set aside for their education.
- The **Courts Act, 1993 (Act 459)** which deals with the jurisdiction of the courts has no provision dealing with child victims. Section 49(1) however, allows the Chief Justice to designate a District Court as a Juvenile Court to be composed of a Magistrate and two other persons one of whom should be a social worker and the other a person of not less than 25 years, both of whom shall be appointed by the Chief Justice on the recommendations of the Director of Social Welfare. The Juvenile Court has the power to hear both civil and criminal matters affecting children. Furthermore section 50 confers on District Courts the power to exercise the power conferred on Family Tribunals under the Children's Act.
- The **Human Trafficking Act, 2005 (Act 694)** was enacted for the prevention, reduction and punishment of human trafficking, for the rehabilitation and reintegration of trafficked persons and for related purposes. It indicates that where children are trafficked, the consent of the child, parent or guardians of the child cannot be used as a defence in prosecution under the Act.
- The **Matrimonial Causes Act, 1971 (Act 367)** was enacted to regulate matrimonial causes including divorce and ancillary matters like child custody and maintenance arising from the dissolution of a marriage. Provision is made for orders for the custody of children, access or visitation rights for the non-custodial parent and maintenance. Due to its focus on Christian and other civil marriages,<sup>23</sup> the majority of Ghanaians who are married under customary law, hardly use it even though provision is made for such marriages to be dissolved in court and orders made with regard to children.
- **Registration of Births and Deaths Act, 1965 (Act 301)** sets up the Births and Deaths Registry, which has the mandate to register all births and deaths in Ghana. The Act makes the registration of births and deaths compulsory in all regions of the country, however not all births and deaths are registered. In order to make registration facilities accessible to a larger section of the population, the Births and Deaths Registry has offices in the regions, districts and several communities.
- **Persons with Disability Act, 2006 (Act 715)** deals generally with persons with disability and establishes a national council to deal with their issues. It prohibits discrimination and makes it an obligation for parents and guardians of children with disabilities to take them to school. It calls for free education for children with disabilities and the creation of special schools for them as well as the provision of special facilities for them in schools.

<sup>22</sup> The Human Trafficking Act includes some child-friendly procedures at the complaint and investigation stage, but only for children who are victims of trafficking, and not other crimes such as rape or defilement.

<sup>23</sup> See Marriages Act, 1884-1985.

- **Domestic Violence Act, 2007 (Act 732)** deals with domestic violence and the categories of persons covered include children. It covers physical, psychological, sexual, and economic violence among others and provides both criminal and civil remedies for victims including compensation.

In addition to these existing laws, there are some policies in place with an impact on justice for children even though none of them focuses singularly on the issue of justice for children.<sup>24</sup>

## 2.3 The Formal Justice System

The Children's Act and the Juvenile Justice Act are premised on the establishment of a variety of specialised agencies and institutions to promote children's access to justice. Significant progress has been made in putting these key institutions in place though some challenges remain.

**Ministry of Gender, Children and Social Protection:** The DSD which is under this Ministry is responsible for the provision of several services for children under the Children's Act.

- **Department of Social Development** - The Children's Act, makes the DSW (now the DSD) primarily responsible for the provision of various services for children including: provision of care and protection for children, operation of the Family Tribunal, adoption, fosterage and institutionalised care. The Department operates two active remand homes in Osu (Greater Accra), and Swedru (Central). In the absence of remand homes children who cannot be released to their parents are kept in police cells or adult prisons. Records of the DSW indicate that between 2005 and 2010, a total number of 1,748 children were reported to have been held in pre-trial detention in police stations around the country.<sup>25</sup> The Department also operates three JCCs for boys<sup>26</sup> in Agona-Swedru (Central), Sekondi (Western), and Tamale (Northern), and one for girls Osu (Greater Accra).<sup>27</sup> Concerns have been raised about the quality of educational, vocational training and rehabilitation programmes available to children in these centres, and the limited human and financial resources available for both the remand homes and JCCs.

**Ministry of Interior:** The Ghana Police Service and Prison Service that provide various justice for children related services among others fall under this Ministry.

- **Ghana Police Service** - Children in conflict with the law are reported to the Police Service. The Service has set up the DOVVSU which has offices in all regional capitals and in over 100 districts. It has a mandate to deal with crimes committed in the domestic setting against children and adults, but does not have the mandate to deal with children in conflict with the law. As a result children in conflict with the law are handled by the regular police.<sup>28</sup> The Ghana Police Service has also established a specialised Anti-Human Trafficking Unit which deals with trafficking of both adults and children. Consequently some have called for a specialised unit dealing with issues relating to children in conflict with the law.

Concerns have been raised about lack of proper handling of children in conflict with the law and inadequacies in the age determination process. Police often experience difficulty in locating

24 Some of the national policies in place with an impact on justice for children include: Gender and Children Policy (2004); National Disability Policy (2000); Early Childhood Care and Development Policy (2004); Growth and Poverty Reduction Strategy II (2006-2009); Ghana Shared Growth and Development Agenda II (2013 - 2017) among others.

25 Data from the Department of Social Welfare, Government of Ghana Report to African Committee of Experts on the Rights and Welfare of the Child (2005-2013) page 85.

26 Some of the JCCs including those in the Western and Northern Regions are not functioning.

27 Those in the Western Region and Northern Regions are not functional.

28 Ghana Government and UNICEF, (2011)

children's families because children are unwilling to provide information or families are not supportive. Although the law allows for police diversion through informal and formal cautions, in practice these provisions are not being used effectively. Proper care of children in police custody is also a challenge, and officers are often compelled, due to lack of alternatives, to keep children in adult cells. Resources to provide for their basic needs (including food and medical examination) are inadequate.

- **Prison Service** - There is one SCC in Accra being operated by the Prison Service. The Annual Report of the Ghana Prison Service for 2010 to 2014 indicates that between 2010 and 2014, 399 males were detained at their Centre.<sup>29</sup> Stealing and defilement were the main offences committed by most of the detainees. Due to a shortage of human and financial resources, the scope and quality of education, vocational training and rehabilitation programmes available in the SCC are also limited. There are also problems associated with children who are unlawfully detained in adult prisons.
- **Other agencies under this Ministry includes:** the Ghana Immigration Service that is responsible for immigrants including children; the Ghana Refugee Board that is responsible for refugees including their children. They all have challenges in providing services particularly to children.

**Judicial Service:** Under the Courts Act, the Chief Justice may designate a District Court as a Juvenile Court. Family Tribunals are established under the Children's Act. These specialised courts sit as a panel composed of the Magistrate of the District Court presiding and persons appointed by the Chief Justice on the recommendations of the Director of Social Welfare. One of the panel members has to be a social welfare officer. However, the panel system is not functioning effectively and efficiently in all districts. Some of these specialised courts have not been functional since the required panels have not been constituted as required by law. 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. Family Tribunal and Juvenile Court proceedings are sometimes delayed due to the limited sittings of the Court or the absence of panel members on the assigned day for sitting.<sup>30</sup> The proper functioning of the Juvenile Court and Family Tribunal is also hampered by lack of specialised training and transfer of personnel.

Adequate support is not being provided by District Assemblies in establishing buildings for District Courts as prescribed by law and this has resulted in limited number of courts.

In Accra, Kumasi and Tema, specialised GBV Courts have been established to handle criminal cases involving violence against women and children. In other parts of the country, child victim cases are heard by the regular criminal courts. Judges have been encouraged to hear sensitive cases *in camera*, but the general practice is to require children to testify in open court.<sup>31</sup> Some pre-trial preparation is provided to child victims/witnesses by DOVVSU staff, but there are no social workers attached to criminal courts and no comprehensive victim/witness support programme. Police and prosecutors often experience difficulty in getting victims to attend court, sometimes due to coercion or out-of-court settlement between the victim's family and the offender.

**Ministry of Local Government and Rural Development (MoLGRD):** The Metropolitan Municipal and District Assemblies (MMDAs) and Births and Deaths Registry are under this Ministry and play various roles which impact justice for children.

29 Annual Report for the Ghana Prison Service, 2010 to 2014.

30 Nzedom, H., (2010) An Assessment of the Administration of Justice for Children in Ghana; Gagnon, L. and Atsuvia, F., (2005).

31 Ministry of Women and Children's Affairs (2007) Child Trafficking, Sexual Exploitation and Pornography: Ghana's report

- **MMDAs** – These come under the Ministry which is responsible for providing policy directions. Each MMDA houses the decentralised District Assemblies and are expected to have Child Panels and Community Development Departments.
  - » **Child Panels** - These are expected to be set up by each of the existing 216 MMDAs. However a recent study revealed that only a few Child Panels have been officially registered in the study areas, and the few that have been formally constituted have had very few cases referred to them.<sup>32</sup> Concerns have been raised about the constraints under the law in terms of the composition and mode of appointment of Panel members, as well as their lack of resources.
  - » **Social Development Departments** - Approximately 127 social welfare and community development officers have been designated and trained as probation officers throughout the country. They are responsible for preparing Social Enquiry Reports (SERs) for the courts, and also supervising children who have been placed on probation. Where there are no specially designated probation officers, Social Welfare Officers perform this function. However, not every district has the full complement of such officers necessary for carrying out its mandate. Many districts have only one professional social worker, and in some districts, programme heads are responsible for two districts that are geographically expansive.<sup>33</sup>

Community based programmes and support services for diversion and rehabilitation of children in conflict with the law are also quite limited. A variety of factors have been identified as contributing to juvenile offending, including poverty, drug and alcohol addiction, peer pressure, parental neglect, inadequate parental supervision, and poor parent/adolescent relationships. However, there is a dearth of programmes and services that could help children and families to address these issues. Probation officers, who play a vital role in preparing SERs for the courts and providing supervision and support to children on probation, are hampered under staffing and lack of resources. A shortage of staff and transportation makes it difficult for them to conduct the detailed assessment necessary to prepare comprehensive SERs, and to undertake regular home visits to children under their supervision.<sup>34</sup> The time and resources required to meet court requirements leaves probation officers with limited capacity for interaction with children and families. As a result, district probation officers are significantly constrained in terms of the types of support they are able to provide, and the frequency and intensity of their contact with children and their families. A 2007 Institutional Assessment found that the almost permanent attachment of departmental personnel to the Juvenile Courts and Family Tribunals could be reviewed to improve on optimal utilisation of available human resources, and recommended that Civil Society Organisations (CSOs) with trained personnel be encouraged to take up this function.<sup>35</sup> There is also the need for the State to train more social workers.

Social Welfare and Community Development Officers are also responsible for Children with disabilities. They are expected to ensure that they have adequate facilities to address their needs.

- **Local Government Service:** This is the body established by the Local Government Service Act, 2003 (Act 650) to be responsible for staff working within the local government at various MMDAs. Social Development Officers who work at the district level form part of the group of workers they are responsible for.

32 Government of Ghana and UNICEF, (2014)

33 Government of Ghana, (2011)

34 Nzedom, H., 2010.

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

- **Births and Deaths Registry:** This Registry is responsible for registering all children who are born in the country. In reality many children born in rural areas outside hospitals are not registered at birth and are therefore not captured by the system and monitored. This creates problems for age determination of children in conflict with the law and challenges in processing such children.

**Ministry of Justice and Attorney General's Department:** This Ministry has under it the Attorney General's Department and Legal Aid Scheme that have a role to play within the existing justice for children system.

- **Attorney General's Department** – This Department is responsible for criminal prosecutions and by Executive Instrument has mandated the police to prosecute crimes of certain categories. Currently this Department does not have any specially designated or trained prosecutors to handle cases involving children.
- **Legal Aid Scheme** – The Scheme is administered by a Board and has offices in all 10 regions and 19 district offices to provide legal aid for the poor and the vulnerable. However, their capacity and reach is quite limited. As a result, many children do not have access to legal assistance. Even though they do not have enough lawyers to provide services, they have no formal system in place to train and use paralegals to help them address this shortage but informally use trained Alternative Dispute Resolution (ADR) practitioners to help resolve cases.

**Ministry of Health:** In Accra, specialised services are available for child victims through the specialised units for abused children at the Korle-bu Teaching Hospital and the Police Hospital. A standard police medical form has been developed for use by police, health authorities and courts in rape and defilement cases. Medical care is available free of charge for some services for victims covered by the National Health Insurance Scheme (NHIS), and for victims of domestic violence.<sup>36</sup> However, the cost of medical reports required by the courts must be paid by the victim, and is often beyond their means. With respect to children in conflict with the law, a medical check-up should be conducted before committal; however this is not routinely done by the police.

**Commission on Human Rights and Administrative Justice:** CHRAJ which is an independent constitutional body has offices in all 10 regionals and an office in 100 districts and helps resolve disputes relating to children's rights.

**Conclusion** The 2011 mapping of the child protection system found that the distribution of these specialised justice for children institutions is uneven, and most services are urban-centred with limited reach outside of district capitals. Child maintenance cases make up the bulk of cases handled by key justice for children institutions (including DOVVSU, DSW, CHRAJ and the Family Tribunal), leaving limited time and resources to develop proactive services to address other justice for children issues.<sup>37</sup>

<sup>36</sup> Domestic Violence Act, 2007 (Act 732).

<sup>37</sup> Government of Ghana and UNICEF, (2011).

## 2.4 Community Processes for Justice for Children

Community justice processes play an important role in resolving minor conflicts and disputes relating to children. Throughout the country, minor cases of child maltreatment, custody and maintenance disputes, and juvenile offending are often handled informally at the family level or through interventions of Traditional Authorities including Chiefs, Queenmothers, religious leaders, family heads or Assembly members. General reluctance to report children's cases to government authorities exist in some communities within certain regions in Ghana.<sup>38</sup>

The key institutions at the community level addresses justice for children issues at their levels and also have challenges.

**Traditional Authorities:** These consist of Chiefs, including their female counterparts who are known by various names within different Traditional Areas but are usually referred to as Queenmothers, together with their Principal Elders. The Chieftaincy institution is a traditional institution which exists in various communities or Traditional Areas in Ghana, with Chiefs being the leaders of these institutions. They have hierarchies, with the Paramount Chief of a Traditional Area being the most senior Chief and the head of the Traditional Council. Chiefs are the custodians of custom and can promote customs which will promote justice for children. Traditional Authorities use mediation and arbitration to settle disputes referred to them by their subjects. They are respected in their communities and cases of justice for children are sometimes referred to them to resolve. They are however not able to enforce some of their decisions and some of their means of resolution of disputes can be problematic. Furthermore, not all of them are permanently resident in their Traditional Areas but they always ensure that their representatives are available to handle matters in their absence.

**Leaders of faith based organisations:** Within the highly religious Ghanaian society, leaders from Christian, Moslem and other faiths also play a key role in resolving disputes within their communities. Justice for children issues are sometimes referred to them to resolve. Whilst some come out with constructive ways of resolving such disputes including providing shelter and guidance for children in need, others worsen problems by attributing spiritual causes and adopting spiritual solutions which sometimes leads to the violation of the rights of children.

**Family Heads:** Within extended families in Ghana, there are family heads that play a role with regard to the resolution of justice for children issues. However since children usually belong to two families there is sometimes lack of consensus as to the best approach to address issues relating to children who have caused problems or are going wayward.

**Civil Society Organisations:** A number of CSOs or Community Based Organisations (CBOs) exist at the community level. They assist members of the communities in which they work by providing various services relating to child justice.

A variety of reasons have been documented<sup>39</sup> for communities preferring community resolution over the formal justice system, including:

- Barriers relating to distance and cost in accessing the formal system;
- The informal system is better understood, and the formal system is foreign and intimidating to children;

<sup>38</sup> Government of Ghana; Baseline Survey of the Justice Sector of Ghana (2012), Ministry of Justice & Attorney General's Department and UNDP.

<sup>39</sup> Some of these are from a report by Government of Ghana, Ministry of Justice and UNDP, (2012).

- More trust in the authority and integrity of Traditional Authorities (Chiefs and Queenmothers) in some communities;
- Traditional ways of solving problems preferred because it fosters peace within the community;
- Strong sense of community unity and reluctance to report to government authorities;
- Concern that spending time in police cells and correctional centres makes child offenders even worse;
- Prevents stigmatisation of the juvenile which may occur through contact with the formal criminal justice system;
- Resolutions by the Chief perceived as a strong deterrent both to the juvenile and other children in the community.

Informal resolutions tend to be restorative in nature, with a focus on reconciliation and restoring harmony in the family and community. Resolutions often include compensation to the victim(s), and warnings and advice to the juvenile offender and his/her and parents to prevent re-offending, and monitoring of the child. However, concerns have been raised that the best interests of child victims is not given sufficient consideration, and that the response to juvenile offenders sometimes involves very harsh corporal punishment.<sup>40</sup>

Consultations with Chiefs and community members also highlighted a number of challenges faced by traditional dispute resolution systems, such as the lack of formal powers to summon people, eroding respect for traditional authority, lack of specialist capacity to handle cases involving children, and lack of documentation and monitoring the process. In some communities, Chiefs and Queenmothers have moved to urban centres and do not live in their home communities full-time which limits their capacity to resolve disputes.

## 2.5 Overall System Challenges

Through the Children's Act and Juvenile Justice Act, Ghana has established a relatively comprehensive legal framework for justice for children. However, there is a disconnect between law and practice, and between law and community approaches to dealing with justice for children issues. The limited functioning of key institutions designed to promote children's access to justice raises fundamental questions about knowledge of the laws and processes; whether these structures and approaches are in fact relevant, feasible and appropriate to the Ghanaian context and culture.

The design of the juvenile justice system, limitation of access, delays, affordability, lack of confidentiality and perceived lack of trust in the formal system have been heavily influenced by British models, with an emphasis on specialised courts, professionalised probation services, and institution based rehabilitation. However, available information suggests that a relatively small percentage of children's cases are being processed through the formal justice system, and that there is a marked community preference to resolve cases informally at the community level through more restorative approaches.

Opportunities could be explored to promote stronger linkages between the formal system and community practices, and to more proactively engaging family elders, religious leaders, Chiefs and community members to support monitoring, rehabilitation and reintegration of juvenile offenders.

Family and community trust in the formal justice system as a means of resolving sexual abuse and other crimes against children also appears to be quite low and there are challenges processing such cases as a result of family interference.

<sup>40</sup> Government of Ghana and UNICEF, (2014)

There are inadequate shelters to accommodate child victims of crimes and lack of access to facilities and appropriate information. Some parents exhibit uncooperative attitudes because of cost implications for child offenders, victims and witnesses. There are also some conceptual difficulties in determining who a child is with regards to cultural and legal definitions and this is further exacerbated by some parents who do not register their children at birth.

The current age of criminal responsibility, which is 12 years is problematic and needs to be reviewed upwards as recommended by the United National Committee on the Rights of the Child.

There are also inadequate resources to run institutions mandated to handle issues involving children. Furthermore sometimes there is external interference with the justice system. In addition, facilities for the resolution of disputes have not made any provision for children with disabilities and they have additional challenges in accessing such institutions or using facilities. Nor do correctional centres have special facilities for them.

International experience suggests that strengthening child-friendly procedures at all stages of the justice process not only increases the rate of successful prosecution, but also makes children and families more willing to report violations and cooperate through the process.

### 3.1 Policy Statement and Rationale

This Policy seeks to establish a well-structured and coordinated Justice for Children system that promotes the wellbeing of children, prevents violence exploitation and abuse, protects children from harm and promotes justice for children.

The Policy is concerned with all children in contact with the justice system – as victims of crime, witnesses, alleged offenders and offenders, and other cases involving children.<sup>41</sup> The Policy addresses both criminal and civil cases involving children.

The Policy statement is guided by internationally recognised principles, existing laws as well as values, beliefs and practices specific to the country, especially those provided in the CFWP, to ensure the Justice System is ‘fit’ for the Ghanaian context.

The rationale for this Policy is to provide guidance to the reform of justice for children programmes and activities in order to establish a coherent system.

The Policy is applicable to each relevant sector and is expected to provide guidance for legislation, strategic plans, actions plans and intervention-specific standards and protocols concerning justice for children.

### 3.2 Policy Goal and Objectives

The overall goal of this Policy is to improve access to justice for children in line with acceptable standards, values and beliefs of the formal and community justice system.

It aims to promote greater cooperation between the formal and the community justice systems to work together as a cohesive national system that ensures access to justice for all children. The policy has also been designed to maximise and utilise existing resources and capacities with a clear intent of identifying viable and sustainable solutions for an effective justice for children system

The objectives of the policy are to:

1. Prevent juvenile offending.
2. Strengthen programmes for rehabilitation and social reintegration.
3. Strengthen formal and community justice systems and link them up to enhance access to justice and protection for children in conflict with the law.
4. Protect child witnesses and victims of crimes.
5. Provide protection for children involved in family and other civil proceedings.
6. Guide the reform of laws, policies and procedures to improve access to justice for children and develop guidelines for handling cases relating to children at all level.
7. Ensure the provision of financial and human resources for implementation of the policy.

<sup>41</sup> Other cases involves child custody and maintenance issues following a divorce, estate matters relating to children, adoption cases among others.

## 4.1 Principles Guiding Policy Implementation

The Policy aims to comply with national laws and international laws and instruments while recognising positive customary beliefs, values and practices in Ghana.

The guiding principles underpinning the policy are as follows:

### 4.1.1 Non-discrimination

No child shall be treated differently or discriminated against on the grounds of race, gender, sex, ethnicity, religion, disability, health status, custom, rural or urban background, status of his/her parents/legal guardians, birth or any other status, status as a refugee, socio-economic status or his or her geographic location.

The Policy provisions are not only applicable to every child but also to the family as well, and all efforts should be made to ensure the equitable distribution of support and services across the nation.

### 4.1.2 Best interests of the child

In line with Article 28 of the Constitution and section two of the Children's Act, the best interests of the child are paramount in all issues affecting children.

With respect to child custody, maintenance, adoption as well as a child in contact with the law, the best interests of the child should be a primary consideration by a court, person, an institution, or any other body in a matter concerned with a child. When dealing with children in conflict with the law, the best interests of that child must be balanced with the interests of the victim and the need for community harmony and safety.

### 4.1.3 Right to protection of dignity and privacy of children

The administration of the Justice for Children Policy must be guided by the principle of protecting the child's right to dignity and privacy and must be reflected in all actions within the formal justice for children system as well as the community justice for children system.

### 4.1.4 Confidentiality

Confidentiality is paramount at all stages in all actions relating to children.

### 4.1.5 Right to be heard/participation

The Policy recognises children as actors in their own development and protection. The principle of participation involves children's right to freedom of expression in matters affecting their social, economic, religious, cultural and political life and in any judicial proceedings affecting them and with due regard to their evolving capacity, age and maturity. Engaging these rights from infancy helps children bring about the realisation of all their rights and prepares them for an active role in society.

### 4.1.6 Right to fair trial

Children have a right to fair trial within the formal and community justice for children systems and the rules of natural justice must apply. Children must also be given the resources to enable them to defend themselves effectively in any forum they are taken to for a hearing on matters relating to them.

#### 4.1.7 Right to legal protection

Children have the right to special legal protection as well as opportunities and facilities by law and other means for healthy and normal physical, mental, moral, spiritual and social development in conditions of freedom and dignity. Children shall be protected against neglect, cruelty and exploitation, trafficking, labour and discrimination.

#### 4.1.8 Legal representation

Children shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child either directly, or through a representative or appropriate body, in a manner consistent with procedural rules of law.

#### 4.1.9 Social Services related support

In all actions concerning children whether undertaken by public or private social welfare institutions, court of law, administrative authorities or legislative bodies, social support services to children shall be of primary consideration.

### 4.2 Approaches Guiding Policy Implementation

#### 4.2.1 Participation of the family

The policy recognises the importance of the family and the community in preventing and responding to justice for children issues.

The 1992 Constitution identifies the family as the central unit of society and the core institution for raising children. Parents and other family members have an essential role to play in protecting children from harm, instilling a sense of identity, discipline and respect, and for making amends within the community for children's wrongdoings while holding them accountable for their actions. When children are involved in the justice system, their parents or other family members should be fully engaged at all stages of the process.

Working with both children and their families is also fundamental to addressing juvenile offending. Family challenges are often the source of children's offending behaviour, so measures for responding to juvenile offenders should involve and aim to strengthen the family. Extended family members, religious leaders, Chiefs, Queenmothers and other community leaders are often best placed to provide this support to the child and his or her parents as indicated in the CFWP.

#### 4.2.2 Specialised approach to children

Children in contact with the law are entitled to special protection and support at all stages of the process. Children experience the justice system differently from adults, and responding appropriately to their needs requires specialised skills and approaches.

Justice for children reform initiatives aim to promote greater specialisation in the handling of children in both the formal and community justice systems. Greater expertise in handling children's cases will be promoted through the development of detailed guidelines and by providing specialised training for all actors in both the formal and community justice systems.

### **4.2.3 Promotion of community justice and alternative dispute resolution**

Community justice processes and ADR mechanisms are often the most effective and efficient means of ensuring children's access to justice and use of these alternatives will be encouraged in appropriate cases.

Justice for Children reforms will be aimed at strengthening and supporting ADR and community justice mechanisms to provide effective and appropriate responses that are child-friendly, relevant and acceptable.

### **4.2.4 Partnership approach**

The policy recognises the shared responsibility of national government, local authorities, families and communities in dealing with justice for children issues. The proposed justice for children system is founded on the principle of partnership between the family, community and government - Ministries, Departments and Agencies (MDAs)), based on mutual trust aimed at guaranteeing children's access to justice. In particular, improved collaboration with and active involvement of families, community groups, Non-Governmental Organisations (NGOs), faith based organisations, Chiefs, Queenmothers, children and other community leaders is of paramount importance.

### **4.2.5 Accountability, rehabilitation and reconciliation**

In dealing with children in conflict with the law, the justice for children system is primarily aimed at restorative, rehabilitative and re-integrative justice. Children in conflict with the law should be held accountable for their behaviour and encouraged to make amends for their actions with due regard to their maturity and age. However, the response must be appropriate, proportionate, and corrective and aimed at reconciliation and social rehabilitation, rather than punishment. This is best achieved by providing children and their families the support they need to identify and resolve the problems that led to the child's offending behaviour, and supporting them to make better decisions in the future.

### **4.2.6 Deprivation of liberty as a last resort**

Children in conflict with the law should only be subjected to deprivation of liberty, at all stages of the criminal justice system as a measure of last resort. In principle, placement in a remand home, JCC or SCC should be used only for children who have committed serious offences involving violence, or in cases of recidivism. Custodial placements are sometimes necessary if a juvenile offender poses a threat to society. However, removing children from their family and community adds to their sense of isolation and stigmatisation. To the extent possible, emphasis will be placed on strengthening community based responses that engage the family and community in providing supervision, guidance and rehabilitative support with the help of social workers.

### 5.1 Key Features of the Justice for Children System

A comprehensive approach to justice for children reform requires both the formal and community justice system to respond to civil and criminal cases involving children.

The system should deal with the justice needs of all children, including children in conflict with the law, child victims and witnesses in criminal matters, and children involved in family and other civil proceedings.

Recognising that many disputes relating to children are dealt with outside the formal justice system, including conflicts about child custody, guardianship and inheritance, and minor offences committed by and against children, the justice for children system considers and builds on these processes. Although traditional mechanisms are changing and evolving, community justice and other ADR processes often provide the most accessible, culturally relevant and socially accepted mechanism for settling disputes and restoring community harmony. Families and communities also play an important role in providing guidance, supervision and rehabilitative support to children.

In line with the Child and Family Welfare Policy, emphasis will be placed on supporting and strengthening existing community justice for children structures so that they can provide effective and appropriate responses to the needs of children. Rather than creating new parallel mechanisms for diversion and ADR, justice for children reforms will focus on reinforcing and supporting the role that family elders, traditional authorities, religious leaders, and child protection committees currently play in mediating disputes and supporting children and families experiencing difficulties.

The DSD and Department of Community Development should work to strengthen these community structures, and their role in the justice for children system will be enhanced by:

- Clear articulation of jurisdiction in relation to children in conflict with the law, child victims, and family and civil disputes;
- Establishing a system of referral to and from the formal justice system;
- Promoting documentation of processes, clarity and certainty of procedures within the community justice system;
- Building capacity for Chiefs, Queenmothers and other stakeholders to improve the handling of children's cases;
- Developing appropriate guidelines to guide in the resolution of disputes involving children within the community justice system;
- Reforming the Child Panel system to allow the community justice for children system to operate at the community level;
- Operators of the community justice for children system will partner with Community Child Protection Committees/Units and actors from the formal justice for children system to address justice for children issues at the community level and submit data through district and regional networks to the national level;
- Monitoring of community justice processes by probation officers and social welfare officers and engaging in dialogue with community leaders to improve on handling cases involving children.

Where problems cannot be resolved at the community level, or are too serious to be resolved through community processes, children and their families should have access to the formal justice system that has been adapted to meet their needs. The formal justice for children system will promote the involvement of family and community members in supporting children's rehabilitation and reintegration to the extent possible. Synergies and linkages between the formal and community justice systems will be strengthened by more clearly delineating the boundaries of the two systems, and strengthening mechanisms for referrals between them.

Mechanisms will also be developed to improve coordination and collaboration between key stakeholders within the formal and community justice systems, both locally and nationally. At the national level, the Inter-agency Juvenile Justice Committee will be expanded, strengthened and reinvigorated to improve policy-level coordination. At the regional and district levels, the Community Child Protection Committees/Units that exist at the community level will provide data from their community in periodic reports to District Child Protection offices. The District Child Protection Offices which will be located at the office of the district social development officer will collate data from various communities on justice for children cases and issues and remit same to the Regional Office. The Regional Office will in turn collate data and information from the District Offices to prepare regional reports and remit same to the National Office. At the local level, Court User Forums<sup>42</sup> will be encouraged and used to promote regular discussion of justice for children related cases.

Identification and reporting of crimes against children will be enhanced through continuous dialogue and engagement with the community, strengthening mechanisms for referral, and empowering children to speak out or report through third parties and providing them with legal assistance when needed.

The Strategies below provide guidance on the development of appropriate response service (formal and community justice) in relation to the main categories of children involved in the justice system.

<sup>42</sup> There are a number to court user forums which consists of representatives of clients of a specialised court or issue who meet periodically with representatives of the Judicial Service to discuss issues of concern.

A variety of strategies shall be adopted to achieve the objectives of the Justice for Children Policy.

## 6.1 Outline of Strategies

### Objective 1: Prevent juvenile offending

The strategies for achieving this objective are:

- 1.1 Strengthen families and develop interventions to prevent juvenile offending.

### Objective 2: Promote formal and community justice systems to enhance access to justice for children in conflict with the law

The strategies for achieving this objective are:

- 2.1 Strengthen the formal justice system and make it more child-friendly during arrest, investigation, pre-trial, trial, and committal;
- 2.2 Ensure legal assistance for children;
- 2.3 Ensure greater efficiency in the process of prosecution and trial;
- 2.4 Reform the Child Panels;
- 2.5 Promote the use of community justice mechanisms and diversion at the community level;
- 2.6 Establish an effective response and referral system between the community justice for children system and the formal system.

### Objective 3: Strengthen programmes for rehabilitation, social reintegration and resettlement

The strategies for achieving this objective are:

- 3.1 Strengthen social reintegration and resettlement of children to address juvenile delinquency<sup>43</sup> and social needs of the child;
- 3.2 Increase the number of probation officers and enhance the professionalism of the justice for children delivery system.

### Objective 4: Protect children as witnesses and victims of crimes

The strategies for achieving this objective are:

- 4.1 Encourage family and community involvement;
- 4.2 Provide victim/witness support services;
- 4.3 Ensure the protection of the child's dignity, safety and privacy in the entire trial process;
- 4.4 Provide compensation for child victims;
- 4.5 Provide free services for child victims (e.g. medical, counselling, legal etc.).

<sup>43</sup> This is sometimes referred to as children with criminogenic tendencies in some jurisdictions.

### **Objective 5: Promote access to justice for children involved in family and other civil proceedings**

**The strategies for achieving this objective are:**

- 5.1 Support community justice systems in dealing with civil cases;
- 5.2 Adopt a new approach for dealing with child maintenance cases;
- 5.3 Ensure legal and other representation for children;
- 5.4 Reform of Family Court and enforcement of orders.

### **Objective 6: Guide the reform of laws, policies and procedures to improve access to justice for children and develop guidelines on the handling of cases within the formal and community justice systems**

**The strategies for achieving this objective are:**

- 6.1 Promote legal and Policy Reform.

### **Objective 7: Ensure the provision of financial and human resources for implementation of the policy**

**The strategies for achieving this objective are:**

- 7.1 Undertake analysis of and advocacy for adequate financial, technical and human resources required for an effective justice for children system

## **6.2 Description of Strategies**

### **Objective 1: Prevent juvenile offending**

#### **Strategy 1.1: Strengthen families and develop interventions to prevent juvenile offending**

The justice for children system will emphasise the development of proactive, preventive measures, rather than simply reacting to crimes or conflicts after they have occurred. Measures will be taken to reduce children's vulnerability to victimisation (violence, abuse, deprivation among others), to minimise family disputes relating to children, and to curb juvenile delinquency.

In line with the CFWP, prevention services will be grounded in a family strengthening approach aimed at addressing the social factors that have the potential to put children at risk or bring them into conflict with the law. This will include:

- Promoting family harmony and reducing family conflicts;
- Supporting good parenting skills and increased parents' understanding of child development;
- Supporting the successful socialisation of all children and fostering a sense of belonging to the family, school and community;
- Strengthening children's ability to protect themselves;
- Providing support and assistance to children and families who are particularly vulnerable or at risk.

Prevention work will be governed primarily by the CFWP, which calls for regular contact and dialogue between social workers/community development workers, children, families and communities to strengthen their capacity and functionality.

The policy recognises the capacity of the school system to identify at-risk children and to collaborate with existing institutions to address their needs. This role, if well played, can minimise dropout rates which is one of the critical triggers of juvenile delinquency and crime.

Families have a responsibility to promote the wellbeing of all of their members, especially children, and to find solutions when conflicts or behavioural problems occur. Parents and other family members have an essential role to play in protecting children from harm, instilling a sense of identity, discipline and respect, and for making amends within the community for children's wrongdoings.

Families may be the source of some problems, but they also generally have resources available and are willing to address their problems. Family heads are responsible for resolving matters relating to children at the family level. They are also responsible for seeking help and support within the community when in need of an external adjudicator to help resolve a family dispute, or when facing difficulties dealing with children's behaviour problems at their level.

## **Objective 2: Promote formal and community justice systems to enhance access to justice for children in conflict with the law**

Whilst children should be held accountable for their actions, Special measures are needed at all stages of the process to ensure that children are treated in a sensitive and respectful manner, with due regard for their age and legal status as a child. Regardless of whether the matter is resolved through the formal or community justice systems, the primary aim should be social rehabilitation and reconciliation, rather than simply punishment.

### **Strategy 2.1: Strengthen the formal justice system and make it more child-friendly during arrest, investigation, pre-trial, trial, and committal**

Children in conflict with the law will be treated in a caring, protective and sensitive manner throughout the criminal justice system. Their best interests will be taken into account considering their personal circumstances, age, sex, disability, and level of maturity in accordance with rules and procedures of relevant institutions for handling children in conflict/contact with the law. Child-friendly policing shall be integrated into the Police Service and all officers will receive training on handling child rights related cases and in promoting diversion. To the extent possible, cases involving children will be handled by officers with training in handling children and if possible by officers in charge of Child Protection Desks which will be created in all police stations. Data on child related cases will be captured for analysis periodically.

Probation officers or a social welfare officer will also be notified as soon as possible after the arrest of a child so that they can begin the process of preparing SERs and assist with family tracing and age assessment. Diversion measures should also be considered at this point.

Accountability conferences or family group conference or victim offender mediation will be held at which the alleged child offender together with parents/guardians, the victim, police officers and a social worker will discuss the matter with the child who will be encouraged to consider his/her involvement and to accept responsibility for his/her actions. The consequences for the offence will also be explained and if the child admits responsibility for the offence, to apologise to the victim and to make amends where possible. Guidelines will be developed to facilitate this process. All procedural arrangements and mechanisms must be handled in a manner that promote fair trial for the child with corresponding data and record keeping in easily retrievable formats. Institutions and individuals working in the system must apply child-friendly methods in the execution of their duties by strictly adhering to Standard Operating

Procedures (SOPs) in place. These institutions include the Police Service, Social Welfare, the Judicial Service, Prison Service (correctional centres) and community level structures with responsibility for justice for children delivery. At the individual level are the police officer, the social worker, the probation officer, the lawyer, the judge, child victim, child witnesses, parents etc.

The processes will diligently pursue family tracing and placement with a fit person where families cannot be traced immediately; accurate age assessment and determination through all appropriate means, using medical examination as the last resort; private interviews with children in a child-friendly environment devoid of distress, coercion, harsh and coercive interrogation techniques and that will take place in the presence of a parent, a lawyer or other appropriate adult of the child's choice; and upholding minimal use of pre-trial detention. As much as possible interviewing periods will be minimised so as not to unduly interfere with their education. Unless the child poses a serious danger to the community, the child should be released at the earliest opportunity and those held in police custody granted bail.

For effective implementation of this policy, institutions and individuals in justice for children delivery (formal and community justice systems), and others handling ancillary services (e.g. Birth and Death Registry) will be capacitated and supported with the necessary logistics to facilitate operations and procedures in a professional and expeditious manner.

### **Strategy 2.2: Ensure legal assistance for children**

Children in conflict with the law are generally not able to properly defend themselves and protect their rights. Children will therefore be given special priority with respect to access to legal aid and support through the court process.

The Legal Aid Scheme will improve children's access to legal aid, including attaching a legal aid lawyer to the Juvenile Court and having a directory of lawyers with specialisation on justice for children who are willing to provide free or highly subsidised services to whom such cases could be referred to for legal advice.

Paralegals will be trained, certified by relevant authorities and deployed to assist with the out of court settlement of cases and the handling of court cases.

### **Strategy 2.3: Ensure greater efficiency in the process of prosecution and trial**

The current Juvenile Court model will be revised to eliminate the delays and other challenges associated with the panel system, and to merge the Juvenile Court and Family Tribunal into one Family Court. This will reduce administrative costs, and also reinforce the fact that juvenile offending is primarily a family matter and the child offender may be a victim as well. The Family Court will be presided over by a single magistrate who has received specialised training with the assistance from assessors. Department of Social Officers/probation officers will continue to attend sittings of the Family Court and provide guidance and advice through social enquiry reports, but will not sit on the adjudication panel.

Measures will also be put in place to ensure that children's cases can be tracked and scheduled separately from adult criminal matters and given due priority, particularly where the child is on remand. This will include automation of the Family Court; colour-coding of files involving children; monitoring the frequency of Family Court sittings and adjusting as necessary to meet demand and prevent backlogs. Unnecessary delays will be reduced by proactively managing the number and duration of adjournments and by dealing with straightforward guilty pleas at first hearing wherever possible.

Proceedings involving children in conflict with the law will be conducted as informally as possible, having regard to children's due process rights. The court will aim to create an atmosphere of understanding, where children and their parents feel confident to actively participate. Magistrates will ensure that the charges are explained to the child in simple language that (s)he can understand, and frequent explanations will be provided throughout the proceedings.

At first appearance, the Court will consider whether diversion is appropriate, and if so, refer the case to ADR. Children who assert their innocence will be entitled to a free and fair trial, and to be assisted throughout by their parent/guardians and defence counsel.

Well written SERs will be prepared by the probation officer to provide a detailed assessment of the child's family background and circumstances. Where feasible, probation officers (or magistrates) will convene a family conference to engage the child's extended family, religious leader, Chief, Queenmothers and other community elders in recommending an appropriate disposition.

Family Court sentencing practices will emphasise community based responses rather than custodial orders for minor offences. A child who offends will be kept in the community where possible, unless there is a need to ensure the safety of the child and protection of the public. Placement in a JCC or SCC will generally be reserved for serious child offenders and those who pose the greatest threat to society, such as children who have committed a violent offence, or have been involved in persistent serious offending. Guidance will be provided to magistrates and judges so that they exercise their discretion in accordance with the welfare principle. Court clerks and other staff of the Judicial Service will be trained on justice for children issues to enable them to help improve the existing system.

#### **Strategy 2.4: Reform the Child Panels**

The Child Panels that are expected to be established at the community level within districts under the Children's Act will give way for the community justice system to operate at the community level using resources available at that level. The district social welfare and community development officers/social development officers will monitor the work of the community justice for children actors and link them with Community Child Protection Committees/Units for support.

The Child Panels expected to be set up by the District Assembly will only be available at the District Assembly offices as a referral mediation forum for those dissatisfied by decisions made by community justice for children actors, who do not want to go to court directly. Courts may also refer cases for mediation to this forum.

#### **Strategy 2.5: Promote the use of community justice mechanisms and diversion at the community level**

Minor offences are best resolved informally at the community level, through a community justice process, or through some other form of diversion. These more informal responses require the child to make amends for the harm caused, but without the stigma and negative consequences associated with a formal court order.

Appropriate use of diversion will also free up resources of the formal justice system to deal with more serious offending, and ensure that high-risk juveniles who have greater and more complex needs receive the most intensive support.

The community provides a child's identity, contributes to their socialisation, acts as a support system for the family, and helps mediate solutions to family disputes or offending behaviour that cannot be resolved within the family.

The capacity of key community actors in the justice for children system that includes Traditional Authorities, religious leaders, family heads, other opinion leaders and community based organisations, will be sensitised on child rights as well as child development issues to equip them to help with the resolution of justice for children cases. It will also equip them to document cases handled by them and to make appropriate referrals for serious cases.

Guidelines and manuals will be developed for the operation of such community systems to ensure that minimum standards are observed.

The justice for children system will maximise opportunities for minor offences committed by children to be resolved outside the formal system by:

- Encouraging the use of community justice processes to resolve minor offences such as theft, minor assault, threatening, unlawful damage, disorderly conduct, etc.;
- Promoting greater use of police discretion to issue informal and formal cautions, and to divert cases back for community resolution, particularly for first-time offenders who commit minor offences;
- Guiding prosecutors and the court in exercising their discretion to divert children charged with minor offences to specific community leaders or the Child Panels to resolve the matter through ADR at the earliest possible opportunity and to report back on the outcome.

Community justice and other diversionary resolutions will be aimed at:

- Encouraging the child to be accountable for harm caused;
- Promoting an individual response to the child's behaviour which is appropriate and proportionate to the circumstances of the offence;
- Restoring community harmony, repairing the harm done, and promoting reconciliation between the child and the person or community affected by his/her actions.

Community justice and other diversionary measures will be used only where the child freely admits to the offence and agrees to the resolution. Children who assert their innocence are entitled to a full and fair trial within the formal justice system.

### **Strategy 2.6: Establish an effective response and referral system between the community justice for children system and the formal system**

Protocols will be developed to guide the actors of the community justice system in the handling of justice for children cases including triggers which will require cases to be referred to the formal system. In the same manner laws and guidelines for the formal justice system will have provisions indicating when a justice for children case should be diverted to the community justice system for hearing.

### **Objective 3: Strengthen programmes for rehabilitation, social reintegration and resettlement**

#### **Strategy 3.1 Strengthen social reintegration and resettlement of children to address juvenile delinquency and social needs of the child**

Institutions (correctional centres) where juveniles have been committed and communities will be supported to apply targeted interventions in supervising and managing the offending or antisocial behaviour of offenders by holistically addressing their specific criminogenic and social needs. This is achievable through direct offence-focused therapeutic, cognitive behaviour modification work with offenders within the scope of case management in correctional centres, community supervision programmes or group work. Formal education and modern vocational skills development with the necessary entrepreneurial exposure will be provided while consolidating structured partnerships and agreements with corporate entities, faith based organisations and NGOs.

When children are involved in the justice system (formal and community), family members should be fully engaged in the process. Parents and other family members are responsible for supporting and assisting their child throughout the justice process, contributing to decision-making, and providing appropriate guidance and support to help children address their offending behaviours.

Children play an active role in shaping their lives and promoting their own wellbeing and that of their families. They also have a responsibility to contribute positively to the development of their communities. Children will be encouraged to take responsibility for their actions, to make amends for the harm that they caused, and to recognise and address the problems that were contributing to their offending behaviour.

The District Assembly Social Welfare and Community Development Departments are responsible for overseeing community based services to support children's social reintegration. District probation officers and social welfare officers will work closely with local communities in order to increase community involvement in children's rehabilitation and reintegration, and to improve the quality of supervision and support services available to children and their families. Emphasis will be placed on drawing on the strengths of existing family and community support networks to help address offending behaviours and promote the child's reintegration.

When a child is placed on probation or released from detention, the district probation officer will carry out an initial assessment, in conjunction with the child, the family, community leaders, and relevant members of civil society. An agreed plan will be developed, delegating supervision and delivery of rehabilitation and reintegration services to the family, community leaders and/or other locally based or CSOs, as appropriate. The Social Welfare and Community Development Department retains responsibility for follow-up, monitoring and oversight to ensure that the plan is implemented.

More social reintegration programmes within the informal system will be designed and safe homes within communities will be identified for placement of children needing social reintegration. Programmes will be developed with faith based organisations and NGOs to enable children benefit from programmes at the community level.

Furthermore, more efficient programmes for social reintegration within the formal justice system will be developed. Programmes and services for children in the JCCs and SCCs will also be strengthened. In particular, children will be allowed to continue their formal education and provided access to vocational and other skills training. The centres will encourage an open door approach, allowing children to access education and vocational training opportunities in the community. Guidelines will be provided on assessing safety risks, and barriers to a more open approach (such as the liability of staff for absconders) will be reviewed and addressed.

In addition children in detention should be given access to visits and means of communication with family members. A complaint procedure will be available at the detention centre to enable them to lodge complaints about maltreatment.

### **Strategy 3.2: Increase the number of probation officers and enhance the professionalism of the justice for children delivery system**

The number of social workers who have been trained as probation workers will be increased to ensure that adequate numbers are available to monitor children who have been diverted from the criminal justice system and referred to their communities for corrective measures.

The policy recommends the institutionalisation of a licensing regime to ensure that institutions and individuals who work on justice for children delivery have the requisite professional knowhow to deliver services in a manner that will be in the best interests of the child. Professionalism should also be promoted at the institutional level.

The policy acknowledges the high professional requirements in conformity with standards and procedures when working with children, and the inherent institutional and individual accountability and responsibility for the child's safety and protection and safeguarding of dignity, which are very necessary to provide the courts in operationalising the various non-custodial and diversionary community orders.

### **Objective 4: Protect children as witnesses and victims of crimes**

Children who have been victims or witnesses of a crime, particularly one involving violence, abuse and exploitation are highly vulnerable and in need of special protection and support. 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.

#### **Strategy 4.1 Encourage family and community involvement**

Families and communities have an important role to play in promoting children's wellbeing and supporting children and families who are experiencing difficulties. However serious crimes against children, particularly crimes involving physical and sexual violence, are beyond the capacity of the community justice system and should always be reported to the police or social welfare authorities for formal redress as provided in the CFWP.

Identification and reporting of crimes against children will be enhanced through continuous dialogue and engagement with the community strengthening mechanisms for referral and empowering children to speak out or report through third parties.

### Strategy 4.2 Provide victim/witness support services

The establishment of multidisciplinary teams involving law enforcement agencies, medical staff, psychological support, social and community workers will be encouraged to address child abuse and support child victims. In particular, child victims and witnesses will be supported by a social worker or some other trained victim/witness support person throughout their participation in the justice process. Children who understand what is expected of them, have been familiarised with the trial process ahead of time, and have a support person accompanying them are generally able to provide better testimony, are more likely to be cooperative throughout the process and are less likely to suffer secondary victimisation.

The protection of child witnesses will be further strengthened by legislation.

Through collaboration between district social workers and NGOs, victim/witness supporters will be appointed to provide support services to all child victims and witnesses, including: accompanying the child during all investigative and trial proceedings; providing the child and family with simple explanations of the legal process and their role in it; keeping the child and parents updated about the progress of the case; advising justice agencies about the child's wellbeing and any special measures that may be required to assist him or her to testify; providing pre-trial familiarisation sessions (court visit, role plays, etc.); and providing a de-briefing session at the end of the proceedings to explain the judgment.

In addition to this support and accompaniment during the justice process, child victims may also need counselling, temporary shelter, and other services to promote their recovery. These services are governed by the CFWP.

### Strategy 4.3 Ensure protection of the child's dignity, safety and privacy in the entire trial process

Child victims and witnesses will be treated in a caring and sensitive manner throughout the investigation, taking into account their personal circumstances, age, gender, disability (if any) and level of maturity. To the extent possible, criminal cases involving child victims and witnesses will be managed by trained police child protection desk officers. Children will also be accompanied by a victim/witness supporter or other supportive adult during all interviews and other investigative procedures.

Interviews of children will be conducted in a private, child-friendly environment designed to put the child at ease and prevent distractions. Special interview protocols will promote techniques that minimise distress to children while maximising the quality of the statements received from them. The number of interviews will be kept to a minimum, and the duration of questioning adapted to reflect the child's age and attention span. Measures will be taken to reduce contact between the child and the perpetrator during the investigation, including using alternatives to in-person identification (such as photo line-ups).

Physical and forensic medical examinations will be undertaken where necessary in the best interests of the child. All examinations must be conducted in a child-sensitive manner. Medical care, forensic medical examinations and medical certificates will be available free of charge to all child victims.

All child victim cases reported to the police must be referred to the Social Welfare and Community Development Department for appropriate follow-up in accordance with the CFWP, including arrangement of appropriate temporary safe shelter.

Cases involving child victims and witnesses will be given priority so that they can be heard and completed by specially trained judges/magistrates in designated courts as quickly as possible. Emphasis will be placed on reducing unnecessary delays by proactively managing the number and duration of adjournments. Colour-coded dockets will be used so that cases involving children can be easily identified and prioritised by investigators, prosecutors and the courts.

Measures will be taken to facilitate children's testimony and reduce distress to the child, including:

- Using alternatives to *viva voce* testimony, such as video recorded testimony, so that the child does not need to attend the trial in person;
- Appropriate notification system so children only attend court when necessary;
- Ensuring that the child is accompanied by a victim/witness supporter;
- 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;
- Arranging separate waiting area for children and their parents;
- Allowing for frequent recesses, taking into account the child's age and attention span;
- Requiring that children be questioned in language appropriate to their age and level of understanding. Aggressive questioning or techniques designed to confuse witnesses will be prohibited, and the nature of questioning strictly controlled by the judge;
- Perpetrators will not be permitted to cross-examine a child directly. All questions must be asked by defence counsel or directed through the judge.

Child victims and witness must be able to access justice without fear of public exposure, stigma and retaliation. Measures will be taken at all stages of the proceedings to ensure that children's privacy is respected, and to protect them from intimidation, retaliation and further harm.

The justice agencies will work collaboratively with The National Media Commission to promote responsible reporting of criminal cases involving children. Restrictions on publishing information that might identify a child will be strictly enforced.

In line with the CFWP, social workers will ensure that appropriate safe care is available for child victims who have been separated from their parents (e.g. victims of trafficking) or who cannot for their own safety be allowed to remain in their usual home. Preference should be given to placement of the child within his or her family or community, rather than shelter or residential care. A pool of pre-determined and appropriate persons should be established in all communities, rural and urban, by the Social Welfare and Community Development Department social workers, in collaboration with chiefs and elders.

Wherever possible, measures will be taken to remove the perpetrator from the home, rather than requiring the child to leave. Police, prosecutors and judges will take into account the best interests of the child and the need to ensure his or her safety when making recommendations or decisions about custody, bail and remand of a perpetrator. Special consideration will be given to children in the implementation of the proposed Witness Protection Programme. This will be part of the reform proposed in strategy 4.4 below.

#### **Strategy 4.4 Provide compensation to child victims**

There is the need to reform existing laws including the Criminal and Other Offences Procedure Act, 1960 (Act 30) for compensation to be provided for child victims of crimes.

Within the Witness Protection Law being drafted by the Attorney General's Department, which will make provision for victim/witness compensation, provision will be made for children so that when they are victims of crime they can also apply for compensation for any harm/injury they have suffered. A Child Victim/Witness Compensation Fund will be created within the proposed law for the State to support the needs and restoration of child victims and witnesses.

#### **Strategy 4.5 Provide free services for child victims (e.g. medical, counselling, legal etc.)**

The child as a victim must be exempted from any form of cost that will impede the justice process and thus affect fair trial of cases involving children. In view of this, provision will be made for free medical services under the NHIS, since this is vital and in addition money from the Child Victim/Witness Compensation Fund will be utilised in the delivery of justice in fulfilment of the best interests of the child.

The State on its part, must systematically take steps to ensure that a portion of the Child Victim/Witness Compensation Fund to be set up under 4.4, shall by law provide support for child victims/witnesses in the course a of trial. The aim of the fund shall be to support the needs and restoration of the child as a victim and or a witness.

### **Objective 5: Promote access to justice for children involved in family and other civil proceedings**

Children also need access to justice to resolve disputes or provide binding decisions with respect to family matters such as custody, maintenance, paternity, care and protection, fostering and adoption, property rights at death and to enforce and protect their rights in relation to inheritance and other civil matters.

#### **Strategy 5.1 Support community justice systems dealing with civil cases**

The community justice system provides a more immediate and accessible way for children and their families to resolve disputes related to child custody, maintenance, paternity and inheritance. Where appropriate, consensus based decision-making will be encouraged through existing community justice mechanisms, grounded in a collaborative process involving families and communities.

Capacity building support will be provided to sensitise Chiefs, Queenmothers and religious leaders on the best interests principle and to ensure that decisions relating to children are made with full understanding of their entitlements under the law (particularly in relation to inheritance matters). Their best interests will be promoted at all times and they shall have a right to be heard at all forums. Social workers will monitor and review family and civil disputes resolved by the community justice system and engage in continuous dialogue with community leaders to improve how children's cases are resolved, documented and enforced. Options will be explored to improve enforcement of community justice and other mediated resolutions by allowing them to be registered with the court.

The use of ADR mechanisms such as court-annexed ADR and mediation by CHRAJ, the Police Service, Legal Aid Scheme and social workers under the ADR Act will also be encouraged as an alternative to formal court proceedings.

As noted in the CFWP, most cases involving care and protection of children will also be resolved by negotiated, consensus based solutions through a collaborative process involving social workers, families and communities, respecting and reinforcing community mechanisms. Court orders will be sought only where solutions cannot be agreed through consensus based process, or in emergency situations where a child's immediate safety is at risk and coercive interventions are needed to sanction removal of the child.

### **Strategy 5.2 Adopt a new approach for dealing with child maintenance cases**

The current approach to dealing with child maintenance, grounded in litigation and relying on informal mediation and adversarial court proceedings has significant shortcomings. Disputes relating to child maintenance make up the bulk of cases handled by key justice for children institutions (including DOVVSU, DSW, CHRAJ and the Family Tribunal), leaving limited time and resources to develop proactive services to address other justice for children issues. Mediated resolutions are difficult to enforce and seeking an order from the Family Tribunal can be costly and time consuming.

A Child Support Unit within the MoGCSP will be created to manage collection and payment of child maintenance primarily through administrative processes. This approach will lessen the burden on the custodial parent/caregiver and remove difficulties with payment of filing fees and other costs associated with court action. The Child Support Unit will also be linked with the Livelihood Empowerment Against Poverty (LEAP) Programme to assist extremely poor caregivers and parents.

### **Strategy 5.3 Ensure legal and other representation 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 within various institutions in their own right, and where necessary have an independent representative appointed to protect their interests in the proceedings.

Measures will be taken to improve children's access to legal assistance in family and civil proceedings, including:

- Introducing more child-friendly mechanisms through which children can approach CHRAJ directly for advice or to file a complaint in their own right;
- Requiring that a guardian *ad litem*, as provided for in the Courts Act, be appointed to represent the interests of the child in any family, estate or other civil proceedings where the interests of the child conflict with that of a parent or other adult party. Expanding legal services to children through the Legal Aid Board and the introduction of paralegal services through the use of certified paralegals, licenced by the General Legal Council.

### Strategy 5.4 Reform of Family Court and enforcement of orders

As discussed above, the current Family Tribunal model will be revised to eliminate the delays and other challenges associated with the panel system. Instead, the Family Court will be presided over by a single magistrate, who has received specialised training. Social workers will continue to attend sittings of the Family Court and provide guidance and advice through SERs, but will not sit on the adjudication panel. There is an urgent need for the Family Tribunal to be merged with the Juvenile Court to create a Family Court which will handle all child related cases.

Measures will also be taken to reduce costs and other barriers that make it difficult for children and families to access the civil courts. This will include introducing a means test for waiving of court filing fees by the Judicial Service in collaboration with the DSD and providing State funding to cover the cost of DNA (deoxyribonucleic acid) testing relating to paternity.

Measures will also be taken to reduce delays and ensure that family and civil disputes involving children are given priority and resolved as quickly as possible. This will include automation of the Family Court, closely monitoring the frequency of Family Court sittings and adjusting as necessary to meet demand and prevent backlogs. With regard to files relating to children in other courts colour-coding of files involving children will be done and priority given to such cases. This includes criminal and other civil matters.

Courts will also take steps to ensure that children are able to participate fully in the proceedings and to express their views in any decisions that affect them. To this end, courts will, to the extent possible, adopt informal processes. Special efforts will also be made to consult the child in person in a manner appropriate to the child's age and understanding, if necessary privately. For younger children, children's views may be elicited through a social worker or guardian *ad litem*.

A key challenge in securing access to justice for children in family and other civil proceedings is ensuring that orders from the court are fully enforced. Measures will be taken to improve the enforcement of orders by:

- Shifting the burden of proof of means to the person disputing the means to pay;
- Strengthening the system for attachment of income and property;
- Speeding up the enforcement and execution of court orders relating to children;
- Making more creative use of innovative and in-kind maintenance orders;<sup>44</sup>
- Empowering the DSD to enforce maintenance orders;
- Calling on the police to assist with enforcement of orders;
- Ensuring that within the Judicial Service a high level permanent Committee is set up to review child related cases for appropriate recommendations for strengthening the judicial system for these cases.

<sup>44</sup> Some courts in rural communities make orders for food crops to be given by the non-custodial parent to the one with custody of the children during harvest since there are difficulties in paying with money.

## **Objective 6: Guide the reform of laws, policies and procedures to improve access to justice for children and to develop necessary guidelines**

### **Strategy 6.1 Legal and Policy Reform**

The Policy requires the legal framework to be reformed for successful implementation.

Amendments to the Juvenile Justice Act 2003, the Children's Act 1998, the Criminal Offences Act, the Criminal and Other Offences Procedure Act, the Courts Act as well as their regulations and other related laws will be required. Where necessary additional legislation will be enacted to strengthen the justice for children system. Existing action plans, policies and guidelines on specific justice for children issues will need to be reviewed and amended in light of the provisions of this Policy.

The MoGCSP will lead the legal and policy reform process in partnership with relevant ministries including the Ministry of the Interior, the Ministry of Justice, and Attorney General's Department, MoLGRD the Judicial Service among others.

## **Objective 7: Ensure the provision of financial and human resources for implementation of the policy**

**Strategy 7.1 Undertake analysis of and advocacy for adequate financial, technical and human resources required for an effective justice for children system** The Government shall make resources available for the implementation of the Policy.

A costed operational plan will be accompanying the Policy roll-out, identifying budgets, timelines and roles and responsibilities for programmes and activities.

The justice for children system outlined in the Policy creates a cost-effective and efficient system in that it is drawing on locally available resources and capacities of community structures as a way to ensure sustainability and greater efficiencies.

Government funded services will not replace community actions, but complement them. Efforts will be made to ensure the appropriateness and sustainability of community initiatives. With regard to human resources there will be the need to build the capacity of staff of various service providers to improve service provision.

Budget analysis and public expenditure reviews in the area of justice for children will be undertaken.

Public sector workers will advocate for adequate financial, technical and human resources to be made available for the Justice for Children System before Parliament, the Ministry of Finance and other venues for the allocation of funds to support public activities.

## 7.1 Introduction

The implementation of the Justice for Children Policy requires a well-defined institutional framework to translate the goals and objectives into actual programmes at national, regional, district and community levels. It requires political leadership and commitment to sustain and support the reform of the Justice for Children System.

Key line MDAs) have been identified as critical to successfully reform the justice for children system and are therefore expected to incorporate the strategies outlined in this Policy into their core business.

Generally, the MDAs should:

- Plan for and allocate resources for the implementation of strategies outlined in this Policy;
- Orient its staff at different levels on the content of the Policy.

## 7.2 Role of Key MDAs and Other Public Institutions

The Government of Ghana has the responsibility to implement the Justice for Children Policy with contributions from the Ministry of the Interior, Ministry of Justice, Judicial Service, MoGCSP, MoLGRD, Ministry of Health, and CHRAJ.

A National Child Protection Committee, chaired by the MoGCSP will be established to oversee the implementation of this Policy as well as the CFWP. It will include representatives from all the institutions mentioned in the two policies as well as other related programmes.

It will have two main sub-committees one of which will be the Justice for Children Coordinating Committee. This will be made up of the transformed and expanded Inter-agency Juvenile Justice Committee, which is chaired by the Department of Social Protection that meets quarterly. Membership is expected to include the following:

- MoGCSP – DSD, DOC;
- Ministry of Interior – Police Service, Prison Service;
- Ministry of Justice and Attorney General’s Department
- Legal Aid Board,
- Ministry of Health;
- Ministry of Chieftaincy and Traditional Affairs;
- Ministry of Finance;
- Ministry of Education.
- Judicial Service;
- CHRAJ;
- Civil society.

At the **Regional level** a regional Child Protection Committee will be established at the offices of the regional Department of Children (DOC) to track data in districts within the region and to see to the implementation of the Justice for Children Policy. It will comprise regional representatives of the national coordinating mechanism.

At the **District level** District Child Protection Committees will be established under the coordination of the district office of DOC. They will monitor the work of Community Child Protection Committees/ Units that will be expected to send data and information from their district on justice for children. Representatives of various Community Child Protection Committees/Units will meet periodically to review data collected and the progress of the implementation of the Justice for Children Policy within their district.

At the **Community level**, existing Community Child Protection Committees/Units will monitor justice for children issues within their communities and submit reports to the district offices. Communities that do not have such committees/units will be encouraged to establish one. The community justice for children actors will be advised to be part of the Committees to enable them to obtain support from such groups and to be monitored by them.

### 7.2.1 Ministry of Gender, Children and Social Protection

MoGCSP has the overall responsibility for providing policy direction, proposing law reform and providing child and family welfare services, including probation services for children in conflict with the law and the operation of remand homes and JCCs.

The Ministry's two departments with a specific mandate for justice for children are DOC and DSD.

#### Department of Social Development

DSD will have the responsibility to:

- Ensure effective management of national level services for justice for children, including the remand homes and JCCs;
- Supervise and give oversight to service delivery at the regional and district levels;
- Promote the quality of service provision and compliance with national policies and strategies;
- Strengthen the capacity of the officers of the Social Welfare and Community Development Departments;
- Adapt services and contribute to policy development on the basis of information generated through service delivery;
- Negotiate and advocate agreements with CSOs providing justice for children services;
- Provide more remand homes and rehabilitate existing remand homes and correctional centres;
- Strengthening community justice and other ADR mechanisms to reduce reliance on court based interventions.

DSD should provide strong leadership on the quality and accessibility of prevention, probation and other justice for children services available to families and communities, and promotes convergence between these services and broader child and family welfare initiatives.

Most service delivery for children in the justice system is decentralised and carried out at the district level by the Community Development Department. This will include:

- Capacity building for probation officers and social workers to improve the quality of services;
- Issuing guidelines and tools for probation officers and social workers to guide their work with children in the justice process.

DSD in the implementation of its responsibilities will work with MoLGRD in order to provide coherent, viable and effective support and guidance to District Assemblies and the Social Welfare and Community Development Department.

**Child Support Unit:** A Child Support Unit will be established with the responsibility to administratively assist custodial parents to obtain maintenance or child support from non-custodial parents and in this respect will see to the following:

- Receive applications from custodial parents on the need for child support;
- Demand and follow-up on non-custodial parents to pay child support to the Unit for collection by custodial parents;
- On behalf of applicants, file cases in court against parents not contributing to the welfare of their children.

### **The Department of Children**

DOC has the responsibility to:

- Collect data on justice for children from all relevant ministries and agencies;
- Analyse data and information on children in the justice system;
- Develop the research agenda on justice for children and implement it in partnership with others;
- Contribute to policy development;
- Advocate in relation to children's access to justice;
- Facilitate reporting on the CRC and ACRWC by the MoGCSP;
- Coordinate interventions and programmes on justice for children to ensure effectiveness and consistency;
- Undertake continuous research into issues relating to justice for children;
- Undertake sensitisation on child rights for Traditional Authorities and other key partners.

DOC is responsible for aggregating and analysing data and information on children in the justice for children system.

DOC will have the lead responsibility for the development of the national Research Statistics and Information Management (RSIM) Directorate agenda on justice for children. DOC, in collaboration with the RSIM Directorate, will ensure that research is carried out directly, or through strategic partnerships with academic and research institutions. Evidence generated will be used effectively.

### **7.2.2 Ministry of the Interior**

Within their existing mandates, the Ghana Police Service and Ghana Prison Service play a key role in facilitating children's access to justice, ensuring that the system is adapted to be more child-friendly, and safeguarding children's rights and interests throughout the process. The Ghana Immigration Service and Ghana Refugee Board also play a role with regard to trafficked children as well as child refugees.

In particular, the Ministry and its agencies should be responsible for establishing specialised services, procedures and approaches for handling cases involving children. This includes:

- Establishing special units or designating specialists to handle all cases involving children and as a temporary measure directing all cases relating to children in conflict with the law to DOVVSU;
- Building the capacity of their staff and officers (Police, prosecutors, and corrections officials) through quality in-service training, and by incorporating justice for children modules into any induction training programmes;
- Collaborating to improve information sharing and case management practices to ensure that children's cases are dealt with expeditiously and diversion encouraged;

- Strengthening the collection of disaggregated data relating to children in the justice system and share with, MoGCSP and other relevant stakeholders without breaching confidentiality;
- Establish child-friendly spaces in police stations;
- Providing temporary shelters to which child victims could be referred to in each region.

### 7.2.3 Ministry of Justice and Attorney General's Department

Within their existing mandates, the Attorney General's Department and Legal Aid Scheme, are responsible for facilitating children's access to justice, ensuring that the system is adapted to be more child-friendly, and safeguarding children's rights and interests throughout the process. In particular, justice agencies are responsible for establishing specialised services, procedures and approaches for handling cases involving children. This includes:

- Establishing special units or designating specialists to handle all cases involving children;
- Developing detailed SOPs, guidance and practice directions;
- Building the capacity of their staff and officers (prosecutors, lawyers and staff) through quality in-service training, and by incorporating justice for children modules into any induction training programmes;
- Strengthening referral mechanisms with community justice and other ADR mechanisms to reduce reliance on court based interventions;
- Collaborating to improve information sharing and case management practices to ensure that children's cases are dealt with expeditiously, including through the introduction of a colour-coded docket system, prioritising children's cases, and proactively managing adjournments to reduce unnecessary delays;
- Strengthening data management within the collection of data relating to children in the justice system, ensuring that all data is disaggregated by age and gender, and that information is routinely collected from all districts/regions, consolidated at the central level, and shared with MoGCSP for aggregation and analysis.

### 7.2.4 Ministry of Local Government and Rural Development

MoLGRD will contribute to the realisation of the Justice for Children Policy in collaboration and coordination with the MoGCSP. Specifically, the guidance and support of the District Assemblies is critical to ensure adequate planning, budgeting and resource allocation for service delivery. The Births and Deaths Registry is responsible for registering children at birth and all deaths.

Within each MMDA, the Social Welfare and Community Development Department is responsible for providing prevention and response services for children including:

- Supporting and monitoring of the community mediation and reconciliation processes;
- Providing prevention services aimed at strengthening families and communities;
- Engaging with communities on family-related challenges, child maltreatment and behaviour challenges;

- Identifying community members to mentor and provide assistance to children at risk and children in conflict with the law and their families;
- Assisting Police with age determinations and family tracing and linking children to the Birth and Death Registry to obtain birth certificates where possible;
- Preparing timely, high-quality SERs;
- Supervising and supporting children on probation;
- Collecting and analysing data generated through service provision and share with regional level;
- Providing infrastructure for more District Courts;
- Facilitating the reform of the Child Panels.

### 7.2.5 Ministry of Health

The Ministry of Health in collaboration with relevant agencies (the Ghana Police Service, Ghana Prison Service, and DSD) is responsible for ensuring that child victims and children in conflict with the law receive high-quality medical care. The Ministry of Health will reduce barriers to children's access to medical care by:

- Establishing protocols and procedures for handling cases of victims of abuse, including sexual abuse and build capacity amongst medical staff to follow such protocols;
- Extending NHIS to cases involving child physical and sexual abuse;
- Providing medical examinations for the purpose of age determination and for forensic evidence free of charge;
- Subsidising DNA testing for the purposes of paternity (using means testing);
- Replicating the Child Abuse/Protection Unit at the Korle-Bu Teaching Hospital in other regional/district hospitals.

### 7.2.6 Ministry of Chieftaincy and Traditional Affairs

The Ministry is responsible for policy on issues relating to chieftaincy and traditional affairs. It also collaborates with the National House of Chiefs that has responsibility for ascertaining customary law, including those on children, and calling for the removal of inimical ones that are harmful. They will play a role in the development of the customary justice for children system by:

- Setting out positive traditional standards on child protection for Traditional Authorities;
- Ensuring the removal of practices that do not promote the rights of the child;
- Training of Traditional Authorities on child rights and development, ADR and other child related issues.

### 7.2.7 Ministry of Education

This Ministry is responsible for education at the primary, secondary and tertiary levels. It has under it the Ghana Education Service (GES) which is responsible for curriculum for schools and the employment and placement of teachers. The GES has responsibility for the following:

- Ensure that the curriculum for children include information on their rights;
- Ensure that the curriculum of teacher training colleges includes information on child rights and justice for children issues;
- Ensure that schools undertake, identify and investigate children in need and link them with DSD;
- Ensure that child offenders who have served their terms are integrated back into schools and to support probation programmes;
- Have a system by which criminal issues relating to children are referred to the police;
- Reports from schools are to have a home to school component (assisting with school readiness and the transition from home to school);
- Include spiritual and moral development in the school curriculum;
- The Counselling Unit should integrate child protection issues in its programmes and be able to make referrals to other agencies where necessary;
- Corporal punishment should be banned as a means of correcting children in schools.

### 7.2.8 Ministry of Finance

The Ministry is responsible for release of funds based on approved budgets for various state institutions. They will play a key role in ensuring that adequate budgetary allocations are made available by relevant MDAs for justice for children for all sectors responsible for promoting justice for children.

### 7.2.9 Judicial Service

The Judicial Service is responsible for the administration of justice. The Judicial Service will ensure that designated courts are child-friendly, and safeguards children's rights and interests throughout the process. Special procedures and approaches would be developed for handling cases of children in contact with the law as offenders, witnesses and victims by:

- Reviewing relevant legislation so that it is aligned to this Policy including requesting the Rules of Court Committee to review appropriate laws to merge the Family Tribunals and Juvenile Courts into a Family Court;
- Ensuring that more Family Tribunals/Courts are established throughout the country;
- Developing a colour-coding system for cases relating to children in all courts;
- Establishing detailed SOPs, guidance and practice directions;
- Building the capacities of their staff and officers (magistrates, judges, court staff) through training at the Judicial Training Institute;
- Strengthening referral mechanisms with the view to promoting ADR mechanisms in relation to child related cases;

- Collaborating with relevant agencies to improve information sharing and case management practices. Strengthening the collection of data relating to children in the justice system, ensuring that all data is disaggregated by age and gender, and that information is routinely collected from all districts/regions, consolidated at the central level, and shared with MoGCSP for aggregation and analysis;
- Participating in the regional and district Child Protection Committees and Networks. Establish high level committee to deal with child related cases (subcommittee of Judicial Council);
- Appoint and train more judges/magistrates on child rights and justice for children issues.

### 7.2.10 Parliament

Parliament is responsible for facilitating the making and amendment of laws that will promote the Justice for Children Policy. The relevant Committee of Parliament including the Gender and Children Committee will play a key role in ensuring that appropriate laws are amended and passed to facilitate the justice for children system.

### 7.2.11 Commission for Human Rights and Administrative Justice

As an independent human rights commission, CHRAJ has an important role to play in facilitating children's access to justice and providing a mechanism through which conflicts relating to children can be raised and resolved. It is primarily responsible for:

- Investigating complaints of fundamental rights violations, corruption, abuse of power, and unfair treatment relating to children;
- Providing access to justice in child rights issues, including custody, maintenance, paternity, child trafficking, early and forced marriages and inheritance;
- Sensitisation and monitoring of the promotion and fulfilment of the rights of children.

CHRAJ currently provides a valuable service to children and families, and is actively involved in mediating family disputes that impact on children. It will be encouraged to strengthen its services to children by establishing a unit on child protection, expanding outreach to children and young people, developing more child-friendly complaints mechanisms, and providing independent monitoring of the treatment of children in the justice system.

## 7.3 Civil Society Organisations

CSOs which may be professional groupings or NGOs will be encouraged to facilitate children's access to justice and safeguarding children's rights and interests throughout the process. The Ghana Bar Association which is the professional grouping for lawyers, Traditional Councils and other NGOs providing various services for children will establish special procedures and approaches for handling cases involving children including:

- Building the capacity of their members, staff and officers through quality in-service training, and by incorporating justice for children modules into any induction training programmes;
- Strengthening community justice and other ADR mechanisms to reduce reliance on court based interventions;

- Strengthening the collection of data relating to children in the justice system, ensuring that all data is disaggregated by age and gender, and that information is routinely collected from all districts/regions, consolidated at the central level, and shared with MoGCSP for aggregation and analysis;
- Participating in district-level Court User Forums to facilitate regular stakeholder discussion of justice for children issues.

CSOs have an important role in the justice for children system. They contribute to community capacity-building initiatives, advocacy initiatives, the mobilising of resources and the provision of services for children and their families. They also assist in linking children up with the formal system.

These organisations should operate in conjunction and in collaboration with other justice for children actors and work within the policy framework. While maintaining their independence as CSOs, they must also act responsibly and contribute to fulfilling the commitments of the policy, adopting its strategic direction and approaches.

All civil society organisations with focus on justice for children must be registered with the relevant authorities at the national and local levels and operate as partners within the policy framework. Their work should be monitored.

## 7.4 Community Justice System

The key community actors in the justice for children system are Traditional Authorities (Chiefs, Queenmothers and their elders), religious leaders, family heads, other opinion leaders as well as child focused CSOs and CBOs. These are valuable community resources which are needed to address justice for children related issues in the community.

**Traditional Authorities:** As leaders of their communities they will play key roles within the community justice for children system and will be expected to do the following:

- Setting standards for the community (rules, norms and values) on justice for children guided by national laws and guidelines;
- Identifying customary laws that are inimical to the rights of the child and work with their Traditional Councils to modify them;
- Hear and resolve justice for children related cases under the community justice system and refer cases that cannot be resolved to the formal justice system;
- Promote the enactment of laws that will enable traditional authorities to effectively handle justice for children cases.

**Faith based groups** will be responsible for the following:

- Settle justice for children disputes referred to them and refer serious cases to the formal system;
- Avoid imputing spiritual connotations to cases relating to children and subjecting them to harmful treatment as a result;
- Educate congregants on child rights.

**Other community leaders** will be responsible for the following:

- Facilitating community dialogue and debate on issues relating to children;
- Establishing and promoting preventive measures'
- Resolving family disputes and minor offences committed by children, and referring serious cases to the officials within the formal system. Documenting community justice processes;
- Mobilising community support to provide temporary care, supervision and guidance to children subject to non-custodial dispositions and to facilitate the reintegration of those returning to the community.

They will be required to work in accordance with the rules of natural justice and give children the right to be heard and guidelines to be developed for them.

Preventative measures should be undertaken in accordance with the CFWP by families and the community.

Monitoring and evaluation shall be an essential policy strategy in the implementation of the Justice for Children Policy. Results frameworks on each policy objective detailing impact, outcomes, outputs and key actions shall be developed to facilitate annual policy review.

The Monitoring and Evaluation strategy shall be developed to fit the implementation cycle of the Strategic Implementation Plan. The operational Monitoring and Evaluation strategy shall involve:

- Quarterly/monthly updates (from all institutions or organisations identified and playing specific roles) including the collection of data;
- Six monthly monitoring and Quality Assurance visits from the MoGCSP;
- Annual Performance Reviews and Learning Sessions including:
  - » Annual policy review;
  - » Annual institutional Capacity Assessment.

# 09 Funding Mechanisms

The Government of Ghana will be responsible for providing funds to ensure the implementation of the Policy









