

# **UNIVERSITY OF GHANA**

## **THE JUSTICE FOR ALL PROGRAMME, ITS IMPACT ON GHANA'S PRISONS SYSTEM: A CASE STUDY OF REMAND PRISONERS AT THE NSAWAM MEDIUM SECURITY PRISON**



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**THIS DISSERTATION IS SUBMITTED TO THE UNIVERSITY OF GHANA,  
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### DECLARATION

I hereby declare that except for acknowledged references this work is the result of my own research. It has not been presented anywhere either in part or in its entirety for the award of a degree.

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## DEDICATION

This work is dedicated to God Almighty, for His abundant grace on me throughout the period of my study at the University of Ghana, Legon.

I also dedicate this work to my beloved wife, Mrs. Johanna Muwuraba Akuamoah and my four children; Nana Anim, Papa Kofi, Owuraku and Afua Tipa for their encouragement.



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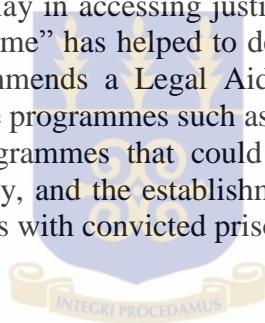
Finally, I am thankful to Superintendent Nathaniel Onyina of the Criminal Records Section of the Ghana Prisons Service Headquarters in Accra. Mrs Mensah Datsa, a Judge of the Cocoa Affairs Court, Mrs Melly Woode, Chief State Attorney at the Attorney General's Department, Mr. Alhassan Seini, Legal Aid Scheme for their assistance and encouragement.

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However, I stress that I am solely responsible for any short coming, whether marginal or substantial which may be found in this dissertation.

## ABSTRACT

This study broadly investigates the impact of the “Justice for All Programme” on Ghana’s prison system. Specifically, the study seeks to outline the causes of delay in access to Justice by remand prisoners, identifies the effect of the delay in access to Justice by remand Prisoners on the Prison Administration, examines the effect of delay in access to Justice by remand Prisoners, and assesses the effect of the “Justice for All Programme” on access to justice by remand Prisoners. The study is based on a review of literature on the subject studied, and qualitative research techniques. The data was collected through Key Informant Interviews, In-depth Interviews, and review of official records. The sample size for the study is twenty one (21) respondents. This means that the findings cannot be used for statistical analysis. This study found out that there are both physical (distances from courts) and structural (adjournments) delays in the justice administration, that the prison administration is saddled with a lot of problems such as overcrowding, poor sanitation, pressure on the budget of the prisons as a result of the delay in accessing justice. The study further found out that the “Justice for All Programme” has helped to decongest the prisons to some extent. The author therefore recommends a Legal Aid Policy that shall promote speedy access to justice, reformative programmes such as skills training for prisoners, a social protection and support programmes that could help for effective reintegration of remand prisoners into society, and the establishment of a remand home to avoid the mingling of remand prisoners with convicted prisoners.



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**LIST OF ACRONYMS**

ACHPR	Inter-American Commission on Human Rights, African Commission on Human and Peoples Rights
ACSA	African Corrections Services Association
CDD	Centre for Democratic Development
CHRAJ	Commission on Human Rights and Administrative Justice
CPS	Crown Prosecutor Service
CPT	Commission for the Prevention of Torture
HIV	Human Immunodeficiency Virus
ICPS	International Centre for Prison Studies
LRC	Legal Resources Centre
NCCE	National Commission for Civic Education
NGO	Non-Governmental Organization
NMSP	Nsawam Medium Security Prisons
NRCD	National Redemption Council
UN	United Nation
UNDP	United Nation Development Programme

## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.1 Background to the study**

The “Justice for All Programme” is an initiative of the Ministry of Justice and Attorney General’s Department, introduced in Ghana in 2007 to help promote access to justice and for speedy trial of cases of remand Prisoners (Short: CDD, 2012/ Legal Resource Centre Annual Report, 2010). The programme was also designed to reduce the congestion in Ghana’s prisons.

Challenges of access to justice in Ghana, has resulted in the rising numbers of remand cases in the prisons, this has necessitated the introduction of the “Justice for All Programme” (Short: CDD, 2012). More importantly access to justice is a human rights issue which requires urgent government attention in a democracy. (Short: CDD, 2012).

In view of the direct relationship between access to justice and prison population, the author will refer to access to justice to answer questions pertaining to Justice for All.

According to the criminal records section of the Ghana Prisons Service, as at May 2011, the remand prisoner population in the Country’s prison stood at 4,565, amounting to about 30% of the total prison population of 14,552.

Drawing from international human rights instruments, Ghana’s Fourth Republican Constitution, chapter 5 provides for fundamental human rights and freedoms and it is the longest chapter of the constitution that circumscribes a wide range of freedoms and citizenship entitlements. The fact that the chapter on human rights is the longest in the Constitution underscores the premium put on respect for human rights as

bedrock of Ghana's democracy. Data from the Criminal records section of the Ghana Prisons Service show a rising remand population in the Country's prisons. (Ghana Prisons Service Annual Report, 2008) There are also media reports of growing prison population in all prison facilities across the country. Many of these inmates have been wrongly imprisoned (Short: CDD, 2012).

The "Justice for All Programme" was initiated by the judiciary to reduce congestion in prison facilities across the country, by holding court sittings in the prisons to hear cases of remand prisoners who have been behind bars for 5 years or more (Judicial Service Annual Report, 2009). However since the inception of the programme the problem of remand prisoners continues to feature prominently in the media (Short: CDD, 2012). Little research however has been done to really unearth the actual causes of the problem and the factors militating against the progress of the "Justice for all Programme" (Legal Resources Centre Annual Report, 2010). This study is therefore designed to fill this gap.

As a result of a successful practice of constitutional governance, Ghana has been touted as a beacon of hope for democracy and good governance in Africa (Ibrahim Index of African Governance, 2012). Ghana has not only ratified several international conventions on human rights to which she is a signatory but also integrated them into the constitution which provides the legal framework upon which the justice system rests. Access to justice therefore is crucial if the fundamental human rights and freedoms provided under chapter five of the constitution would be seen to be relevant and effective. The high rate of remand prisoners in Ghana remains a potential threat to the stability of the enviable human rights record in the constitutional era (Commission on Human Rights and Administrative Justice Annual Report, 2009). The deprivation of personal liberty through imprisonment of persons who have not been proven guilty

is one of the biggest setbacks to Ghana's democratic credentials (Short: CDD, 2012). Keeping a person in custody when he/she is still presumed innocent should be of grave concern to the courts in particular and to the country at large. Approximately 26% of the over 13,500 prisoners in Ghana are currently on remand and have not been sentenced. (Annual Report of the Ghana Prisons Service, 2009). One of the serious offences a state can commit against her citizens is to deprive them of their liberty unjustifiably (Personal Interview). The challenge of growing numbers of remand prisoners makes it imperative for the players in the justice system to come up with innovations that will decongest the prisons (Personal Interview).

The basic reason for placing people on remand is to ensure that they will attend court as required by law to answer the charges proffered against them. Also there is the need to protect the integrity of the justice system and this has resulted into the practice of remanding accused persons in prison custody where it is deemed necessary to protect witnesses. Many jurisdictions including India also put accused persons on remand only to protect their safety, that of the public; and also to ensure that further offences are not committed by the accused persons, before the completion of the trial. (Legal Resource Centre Annual Report, 2010).

Ghana in its bid to eliminate the abuse of human rights unfortunately continues to keep suspects on remand for a long period which, in itself, is one of the infringements against the fundamental human rights of remand prisoners. Statistics from the Annual Report of the Ghana Prisons Service during the periods 2006, 2007, and 2008 showed that the average remand population in custody was 3,788, 4,211 and 4,285 respectively. This indicates the continuous increase of the remand population in the country's prisons. The percentage increase between 2006 and 2007 was 11.2% and that between 2007 and 2008 was 1.2%.

This steady growth is becoming alarming since the entire remand prison population now occupies more than half of the authorized prison capacity which is 7,875. To address this problem, the Attorney General and Minister of Justice in September 2007 launched the “Justice for All” initiative under which a special court sat at the defunct James Fort Prison in Accra and later at Nsawam Medium Security Prisons (NMSP).

The initiative was to accelerate the judicial process and ease the issue of remand prisoners, The regional commander of prisons service in charge of the Eastern region in his interaction with the former Commissioner of the Commission on Human Rights and Administrative Justice (CHRAJ) during a familiarization visit on 31<sup>st</sup> August, 2009 to Nsawam Medium Security Prison (NMSP) reported that the continuous swelling number of remand prisoners whose cases are either under investigation or waiting trial is of grave concern to the service. Currently four (4) out of eight (8) housing blocks at NMSP hold remands prisoners (Personal Interview).

Mingle reported in the ‘Ghanaian Times’<sup>1</sup> that five state institutions agreed to jointly undertake to work seriously to reduce by half, the number of remand prisoners languishing in the various prisons by July 2010. They were the judicial service, the police, the prisons service, the Attorney Generals Department and CHRAJ. The five bodies agreed to decongest the prisons of remand prisoners which stand at four thousand, five hundred and sixty-five (4,565) amounting to 30% of the total prison population of 14,552 in the country. The high rate of remand prisoners with some staying on remand for nearly ten years has continuously been a cause of concern due to the rampant overcrowding of the prisons (Short: CDD, 2012). The long stay in the prisons without any conviction has also been a worry since it violates the human rights of those concerned (Personal Interview).

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<sup>1</sup> The ‘Ghanaian Times’ is one of the daily newspapers in Ghana. Mingles filed the report in 2009

The number of people presently on remand and the length of time for which they have been remanded have caused a lot of concern to prison authorities in Ghana. The “Justice for All Programme” therefore was instituted to address the problem. However little research has been carried out in an attempt to understand the range of factors which account for the long stay of remand prisoners in Ghana prisons without trial and how it affects them (Legal Resources Centre Annual Report, 2010). The relevance or achievement of the programme must be established to be able to really appreciate its continuous existence.

## **1.2 Statement of the Problem**

Remand prisoners are inmates whose cases have not been determined by the law court. These persons simply have not been convicted and are therefore awaiting the courts to determine their fates by either acquittal or imprisonment, (Short: CDD, 2012). There are over 3,000 remand prisoners in Ghana languishing in very deplorable conditions many of whom are victims of inefficient investigative procedures of the police, (Short: CDD, 2012). The 1992 Constitution enjoins Ghanaians to uphold fundamental human rights and freedoms. The enjoyment of human rights is a basic entitlement of every citizen and therefore should not be taken away arbitrarily (Short: CDD, 2012). Short further asserts that the issue of Remand Prisoners in custody has assumed an alarming proportion such that Human Rights Activists, Civil Society Organizations, Non-Governmental Organisations (NGOs), the media, and members of the general public have all expressed serious concern about it. Frimpong reported in the ‘Daily Graphic’<sup>2</sup> that, the “**Justice for All**” programme initiated by the Attorney General’s Department was to help expedite justice on cases involving remand prisoners. Again, Naa reported in the Daily Graphic, that there was

a total of 50 longest serving remand prisoners made up of twenty-five (25) from NMSP and another twenty-two (22) from the Kumasi Central prison, with the longest being in the latter who has spent more than fifteen (15) years on remand. It is very unfortunate that the country's biggest prison NMSP which was built for convict prisoners has turned out to have more than 60% of its prisoners on remand.

The continuous detention of individuals who are awaiting trial is a matter of special concern to Stakeholders in the Justice sector. Their situation is quite different from those who have been convicted of an offence. They are yet to be convicted of the offences they are accused of. In Ghana article 19 (2) of the 4<sup>th</sup> republican constitution (1992) stipulates that an accused person is innocent until he or she is proven guilty or has admitted the guilt. In reality however many suspects are often held in restricted conditions which sometimes constitute an affront to human dignity. The Stakeholders in the criminal justice system and government have therefore been working to find solution to deal with the canker of delay in access to Justice by remand prisoners which has congested the prisons.

This study was therefore designed to examine the effect of delay in access to justice by remand prisoners, outline the causes and assess the "Justice for All Programmes" as an intervention put in place to address the problem and offer suggestions to remedy the situation. The author has been a Civic Educator for the past nineteen years and has had encounter with the Prisons Service and other institutions working in the criminal justice system in Ghana.

### **1.3 Research Questions**

In looking at the question of what is the “Justice for All Programme” and how far the programme has affected access to Justice by remand Prisoners, the study shall also take a look at what causes delay in access to justice by remand prisoners; what are the effects of delaying access to justice on remand prisoners; how does the delay in access to justice affect prison administration in Ghana?

### **1.4 Objective of the Study**

The broad objective of this study shall be to unravel the effectiveness of the “Justice for All Programme” introduced by the Attorney General’s Department to promote access to Justice. In doing so the study shall also identify and explain factors such as, the causes of delay in access to justice by remand prisoners the effect of the delay in access to Justice by remand Prisoners on the Prison Administration; the effect of delay in access to Justice by remand Prisoners and effect of the “Justice for All Programme” on access to justice by remand Prisoners.

### **1.5 Significance of the Study**

Little or no work has been done on the “Justice for All Programme” as an intervention to promote access to justice (Legal Resource Centre Annual report, 2010). It was therefore the hope of the author that this study will serve as a baseline upon which further studies will be done.

This study was conducted using the inmates of the NMSP as respondents to question items and interview, it is envisaged that the outcome would be helpful to the prisons service in her search for remedy for the problem of delay in access to justice in the

country's prisons which will go a long way to enhance the penal administration and the work of the stakeholders in the criminal justice system. The study will also draw attention of government to review its policies on imprisonment, especially in the cases of the remand prisoners.

### **1.6 Purpose of Study**

The purpose of this study is in partial fulfilment for the award of Master of Arts degree. Secondly it is to identify the impact of the "Justice for All Programme" on Remand Prisoners and how it affects human rights with the view to drawing the attention of the Stakeholders in the criminal justice system and government to it in order to inform decision making. It will focus on the assessment of the performance of the "Justice for All programme" as an effective intervention to promote access to justice.

The study was also meant to enable other stakeholders like Commission on Human Rights and Administrative Justice (CHRAJ), National Commission for Civic Education (NCCE), Non-Governmental Organisations (NGOs), the Media and Development Partners have insight into the issues of delay in access to justice and its effects on remand prisoners and the prison administration in the country. Furthermore it was to come out with some recommendations that could help curb the problem of the long stay of remand persons in prison.

### **1.7 Scope of the Study**

For the purpose of the study the author selected NMSP out of six (6) prison establishments in the Eastern region of Ghana. This was because of the high rate of

remand prisoners that the prison keeps, majority of the remand prisoners have spent more than three (3) years. The NMSP also serves as one of the selected Prisons where the “Justice for All Programme” held court sittings to hear cases of remand prisoners.

### **1.8 Limitations of the Study**

Access to relevant literature was a difficult task. Whereas the issue of “Justice for All” is an established Policy, literature on the policy is less available; therefore the researcher had to depend on the little existing material and to talk to people involved in the “Justice for All Programme”. Co-operation from respondents was therefore crucial, but some respondents either refused to talk to him or gave inaccurate information to questions that could help identify a solution to the problem.

Also, most public officials in high positions of trust have taken oath of secrecy and may not give out some vital information that will help to undertake better assessment of the “Justice for All Programme”. Language barrier in some cases was a real challenge during the interview with some non-literate respondents who could not speak English or a common local dialect.

### **1.9 Organisation of the Research**

The thesis is categorized into chapters. Chapter One: Covers the background to the study, statement of the problem, research questions, objectives of the study, significance of the study, purpose of the study, scope, of the study and limitations of the study. Chapter two deals with the concepts, theoretical framework and literature review for the study. Chapter three sheds more light on the “Justice for All

Programme”. Chapter four presents the research method of the study and analysis of the data collected. Chapter five contains findings conclusions and recommendation from the field and discussions of the findings and Conclusion.

## CHAPTER TWO

### CONCEPTS, THEORETICAL FRAMEWORK AND LITERATURE REVIEW

#### 2.0 Introduction

The “Justice for All Programme” is a policy to promote access to justice and help decongest the prisons of Ghana. This Chapter explores and discusses the theories and concepts employed to the study. That is, the lenses through which this study is viewed and analyzed. At the heart of this work is the issue of Justice. Therefore discussion of the theories and concepts employed in the study will begin with Justice. Concepts and theories on Human Rights and Remand Prisoners are expanded and discussed. Again literature on issues of remand prisoners and their rights have been reviewed to put the study in perspective and context.

#### 2.1 Concepts

##### 2.1.1 Justice

The concept of justice is one of the highly contested concepts in political theory which has been conceptualized and defined by different political thinkers ranging from ancient political thinkers such Plato and Aristotle to modern political writers e.g. John Rawls (Catherine Kellogg, 2005: 22, Andrew Haywood, 1994). Although Justice as a concept defies a clear cut definition (Catherine Kellogg: 2005), several definitions and meanings have been postulated, Contemporarily, the application of Justice has come to be referred to something “ideal” of perfection or goodness towards which we collectively work to achieve (ibid:23). Justice, in the words of a Roman Emperor Justinian means “giving each man his due”. While the concept is used in different spheres of life, it has come to be strongly linked to an idea of law. According to L. Johnson (2001:28) justice is concerned with the proper use of law as

an instrument of authority, and with the ways law is made, interpreted and administered. Presently justice has come to be associated with three ideas of norms: the rule of law, individual or group rights and equality (ibid). All these three norms are applicable to this paper. Thus Justice is conceptualized in this study as giving remand Prisoners their due.

### **2.1. 2 Human Rights**

Human rights are part of the rights which emanate out of the desire to place limits upon how people may be treated by others especially by those who wield power. The idea of human rights developed out of the natural rights theories. Human rights are rights to which people are entitled by virtue of being human. Human rights are in the sense that they belong to all human beings rather than to members of any particular nation, race, religion, gender or social class. In the literature, human rights are regarded as ‘fundamental’ rights because they are inalienable; “they cannot be traded or revoked” (Andrew Heywood, 1994:142), violations of the rights of remand prisoners abound not only in Ghana but in other jurisdictions as well.

Historically, a case of abuse of rights abounds all over the globe. The Bill of Right the foundation of respect for human rights in British society ensures respect for the legitimate freedoms and liberties of the British people. The United Nations Universal Declaration in its preamble recognises the inherent dignity, equality, and inalienability of rights of all members of the human family as the foundation of freedom, justice and peace in the world. In both classical and contemporary era, violation of rights including that of prisoners is topical in political and legal discourse.

### **2.1.3 Remand Prisoner**

A remand prisoner is defined as a person who has not been sentenced to imprisonment but is held in custody pending determination of guilt or innocence or determination of sentence after conviction (Casale & Plotnikoff, 1990). They are an important group as far as human rights are concerned.

Remand prisoners constitute a significant proportion of the prison population in Ghana. Yet the prison service is essentially designed to meet the needs of the sentenced rather than the remand prisoner (ibid). Hence, this particularly vulnerable group experiences some of the poorest regimes in the prison system including prolonged 'lock-up', little or no work or education opportunities, and generally poor regimes, Prison Reform Trust, (1997). Conditions in prison show that justice requires human dignity of those convicted and this must be in conformity with established international standards. Any person held in custody is entitled to a presumption of innocence and to treatment in accordance with the United Nations (UN) minimum standards Rules of detention which says that a person accused of a crime or an offence should not be kept in custody without trial for a period of more than forty eight hours (Short: CDD, 2012). According to the National Redemption Council Decree 46 (1972) the separate accommodation of remand prisoners and the minimization of restrictions on these prisoners are standards set by the UN. Remand prisoners are innocent until proven guilty, and the law does not consider their confinement as a punishment. In view of this, minimum restrictions are placed on remand prisoners to the extent that will not negatively affect prisoner's safety, good order, security and general Prison management.

## 2.2 Literature Review

### 2.2.1 The Theory of Liberalism

Overall the question of Justice is dealt with by the theory of liberalism. The research therefore is anchored, examined and analyzed on the theory of liberalism. Liberalism is the fundamental belief in a political ideal where individuals are free to pursue their own goals, in their own ways, provided they do not infringe on the equal liberty of others. As such it is primarily concerned with issues of human rights. Liberalism as a political and legal concept has been espoused by several political thinkers such as Thomas Hobbes (1651), John Locke (1689), Jean-Jacques Rousseau (1762) and Immanuel Kant (1797). Lock for instance argues that Liberals have typically maintained that humans are naturally in ‘a *State of perfect Freedom* to order their Actions...as they think fit...without asking leave, or depending on the Will of any other Man’. Liberals further argue that any liberty protecting government should not allow any agent including itself to arbitrarily have power over its citizens. The dominant connotation of liberalism is therefore its emphasis on freedom, not being subject to the arbitrary power of another. The issues relating to the condition of remand prisoners in Ghana squarely undermine the realm of liberal ideological perspectives which argues for respect for individual freedoms, even when such freedoms have to be curtailed by the state it should be done within the ambit of the law thus with justifiable reason.

Even recent liberal thinkers including Joel Feinberg, Stanley Benn, and John Rawls espouse freedom as normatively basic, so the onus of justification for any curtailment is on those who would limit freedom, especially through coercive means (Standford encyclopaedia of Philosophy). It follows from this that political authority and law must be justified, as they limit the liberty of citizens (ibid). Juxtaposing liberal

ideological propositions to the case of remand prisoners in Ghana, and the legal principle that presumes innocence of a suspect before proven guilty by a court of competent jurisdiction, the author argues that the topic being researched into has bearing on the liberal political and philosophical thoughts.

### **2.2.2 Existing literature on Remand Prisoners**

As earlier indicated, research on the “Justice for All Programme”, remand prisoners and their rights is still in its infancy (Legal Resource Centre Annual Report, 2010). The available sources on the subject tend to consist of country and human rights based organizational policy reports and these are mostly from the developed world. This being said, it would be inaccurate to infer that academic scholarship on remand prisoners is completely nonexistent. At least certain areas have received extensive examinations over the past decades.

The issue of remand prisoners and violations of their rights is not a recent phenomenon. As pointed out by scholars (Rusche & Kirchheimer 1968; Foucault 1977; Ignatieff 1978 and Stephen Pete) detention (i.e. keeping offenders in custody in order to determine their fate) and imprisonment existed in Africa centuries before the birth of the modern form of imprisonment where a suspect is tried to establish the person’s innocence or guilt before imprisonment. Long before modernity, slaves, and criminals were subjected to detention of one kind or another with all kinds of abuses. In fact James S. Read (1969), in his book opined that remanding people in custody was practiced in pre-colonial time though he added it was not a normal practice. In the kingdom of Ankole, offenders were detained in a form of ‘stocks’ usually awaiting their judgment and sometimes execution. However, Reads argues that “prisons were introduced only after the advent of British rule” (1969: 103). Thiermo Bah

corroborated this assertion of Read but pointed out that, detainees and prisoners were subjected to “physical cruelty and starvation”. Recalcitrant prisoners were tortured by being shut up in stifling hut, and exposed to smoke of hot peppers thrown onto fire (2003:74)

One of the areas that has been the focus of scholars and policy makers is the conditions under which prisoners as well as remand prisoners live, and the kind of treatment being meted out to them. In this light several bodies – international and regional have been set up to enforce the standards laid down by the UN and other regional bodies. These bodies include: European Committee for the prevention of Torture (CPT), the inter-American Commission on Human Rights, African Commission on Human and People’ Rights (ACHPR) and NGOs such as Penal Reforms International and the International Committee of the Red Cross. Their mandates include the examinations of prisons and places of detentions to find out whether countries are treating convicts and remandees according to the standards put forth.

The placing in custody of a person who is still presumed innocent (as in the case of remand prisoners) should be a major worry to a state especially when the numbers keep multiplying day in day out. The fundamental reasons for remanding individuals in custody in the view of David Bamford et.al are to ensure that remandees will attend court as required to answer the charges made against them. In addition, the need to protect the integrity of the justice system has resulted in the development of the practice of remanding accused persons in custody where it is deemed necessary to protect witnesses. Many jurisdictions also remand a person in custody on occasions when it is seen to be necessary to ensure the safety of the accused person. Furthermore, in the interest of public safety, many jurisdictions have authorized the

remanding of a person in custody if it is necessary to ensure that further offences are not committed before the completion of a trial, (2006:1 and Strange 2001). Apart from the above outlined factors justifying remand, there are other reasons which have been underscored by scholars. For instance Morgan (2001) argues that remanding individuals serve to provide them with “a taste of imprisonment”, yet presumed not to be part of the rationale for remands into custody.

In another vein, a study (Factors Affecting Remand in Custody: A Study of Bail Practices in Victoria, South Australia and Western) commissioned by the Australian Institute of Criminology Research and Public Policy Series (No. 23) reveals that “remanding” a person in custody has repercussions on the community. On the individual they stated that “Remand in custody increases the probability of social disruption.” It isolates a person from his or her social support network i.e. from family, friends and love ones especially when the remand location is far making it difficult for visits. Also Remand in custody interrupts the capacity of the individual to assume family and social responsibilities and leaves others to provide for any dependents, whether these are children, parents, or other intimates. At the same time, Remand in custody places the individual in institutional custody at a time of high vulnerability. This increases pressures upon the individual and the potential risk of self-harm of a physical or psychological. Remand cases affect the community severely: it firstly raises government budget in respect of housing, feeding and cost of transportation to fetch remandees to court. Secondly, the level of remand population affects the actual prison population which consequently puts pressure on prison facilities.

King (1971) explores the purposes for which remand strategies are utilized, the effects of competing goals on remand decision-makers, and how achievements of the goals of

custodial remand (and its alternatives) could be better measured. They posit that “Remand decision-makers are required to preserve the integrity and credibility of the justice system, to ensure the protection of the community and, at the same time, to take account of the best interests of defendants”. However it is undoubtedly true that remand prisoners have contributed to the increasing prisoner numbers across the world. The numbers of prisoners far outnumbered the prisons and most prisons especially those in Africa, house more prisoners (both remand and convicted prisoners) than they are supposed to accommodate ACHPR (2000c). To buttress this, the ACHPR report stated that in Zimbabwe, out of total prisoners of 16,000, 4,500 were on remand. While 80 per cent of the inmates at Bamako Central Prison in Mali were remand prisoners it was as high as 90 percent in other prisons. Also alluding to the fact majority of inmates are persons awaiting trial is the work of Clare Ballard (2011).

Another significant area that has been underscored in the literature is the issue of merging of remand Prisoners and convicted Prisoners. Edudzi Ofori and Chelsea Paradis in a research entitled “Prisoner’s Right in Ghana” found out that the rights of remand prisoners are violated. The facility intended to hold remand prisoners only, however with the overflow of prisoners in the system, also houses some convicted prisoners. Likewise “a medium security prison (Nsawam) that is not supposed to house remand prisoners does hold some” (ibid). They added that what is most unfortunate is that most of the prisons in Ghana are composed of inmates who are awaiting trial (remand prisoners) and this has tended to compound the overcrowding situations in detention and prison centers. Clare Ballard, (2011) in discussing two important constitutional provisions (i.e. the right to freedom and security of a person and the right to have one’s trial begin and conclude without unreasonable delay)

relating to remand prisons in South Africa observed that the excessive use of remand has two central issues: overcrowding and the lengthy duration of detention which many remandees are compelled to endure. Almost all detention centres and prisons in Africa are overcrowded according to a report published by the ACHPR (2005).

The issue of juvenile remandees has also received critical examinations especially in the developed world. A number of studies have found out that juveniles are among the groups of people who are susceptible to remand. Scholars such as Fiona Brookman & Harriet Pierpoint and Sanders & Young, (1994) have focused on how the young and the juveniles have been a subject of pre-trial detention vis-à-vis their rights. It has been observed that it is well known that young subjects are more vulnerable than adult suspects and once incarcerated have the propensity to giving information which may be “unreliable, misleading or self-incriminatory” Sanders & Young, (1994).

There have been attempts by researchers to track the patterns of persons under remand globally. The list of Remand cases in the assembled by Roy Walmesley of the International Centre for Prison studies, reports that 2.25 million people were held in prison while they await trial. In 6 out of 10 countries, the percentage of all prisoners who are awaiting trial is from 10-40 percent. Few years down the lane D. Barry in *The Socioeconomic Impact of Pre-trial Detention: A Global Campaign for Pre-trial Justice Report* (2011) opined that the global averages of remandees are approximately three million.

Indeed in a bid to find solutions to issue of remand and its attendant problems, researchers have established a correlation between police actions and judges or magistrates. A study by Armstrong (1977) and Daniel and Ward (1987. Pp. 326, 333-334) reported that there is evidence that a substantial proportion of those remanded in custody are held in custody because magistrates tend not to release accused who have

been refused bail by police when first apprehended, if the police are willing to grant bail to an accused, a magistrate is more likely not to remand the accused in custody.

Issues of bail and remand in custody have attracted the attention of a wide range of observers in the criminal justice system. It is only in recent years that there has been a collective effort to study and to reform the law. Most of the available literature came about as a result of efforts by governments to reform the law on bail. A complex legal situation has emerged as an outcome of the mix in common law and statutory provisions. The United States of America and the United Kingdom began significant bail law reform in the 1960s, leading to legislative amendments with the bail Reform Acts, 1966 and 1984 in the United States and to the Criminal Justice Act 1967 and the Bail Act, 1976 in England.

Australia, appear to have similar pattern, the state of the law of bail in the 1970s and 1980s, resulting in legal reforms. These reform processes were initiated in view of the public concerns about the unfair treatment of offenders by the existing bail process. Following, the wide spread reforms in the 1970's and the early 1980's, emerged another action by government investigations leading to a review of earlier reforms. These reform process influenced by concern at the increasing number of remand population over the last decade produced another credible stock of literature on remand custody process which has resulted in greater academic attention to the study of the process of bail.

However to address the perception that suspects commit offences while on bail, some efforts probably in response to political demands have been made, in this regard academic literature has significantly paid attention to the criteria for granting bail. Two other criteria are commonly used: the risk that the offender will interfere or disrupt the criminal justice process, (for example, intimidating witnesses or victims,

and destroying evidence) and the risk that the offender may commit other or further offences whilst on bail. The last of these criteria raises difficulty of reconciling the concept of preventive detention with the fundamental precepts of a given legal system.

Research has shown that there is a greater probability for a remandee to plead guilty. This raises the potential of an accused being convicted, Doherty and East (1985, p 262). Consequently, improvement of bail process has received greater attention in many jurisdictions. Apart from therefore mentioned legislation reforms, significant changes have covered the enhancement of the substance of available information to decision makers, to also enhance fairness in judgement.

Incidentally, academics have not paid much attention to the study of the bail process. Whereas government investigations have focused on procedures for bail, very little attention has been paid to the decision making process itself. There is an impression that decisions on remand cases are taken by judges: legal statutory rules governing remand decisions in magistrates are the decision makers.

However, the decision making is conducted in private by persons other than judges. This is because; the process of decision making is largely administrative. By these administrative processes, effective decisions are made outside the courts by professional participants, before court hearings take place; consequently, the role of the judge is to endorse recommendations in the majority cases (Hucklesby 1997 b).

Evidence for this is found in the empirical studies in three major ways:

- The small number of contested decisions in the judicial process.
- The brevity of the judicial bail application process.

- The high degree of probability that the judicial decisions merely confirm decisions already made about remand custody.

There is consistency by existing literature regarding the fact that the greater part of decisions pertaining to bail are taken on defendants who are already on bail by judicial officers. In South Australia, it was estimated that 90 percent of those arrested were granted police bail in 1998 (McAveney 1991 p. 74). Current studies on police arrests from the United Kingdom reveals that rates of police bail at various police stations change from 48 percent to 95 percent with an overall average of 72 percent of those charged after arrest being released on police bail (Phillips Brown, 1998 pp. 115-18).

Once a good number of suspects obtain police bail, there is very little proportion who will contest applications in court. When one is refused police bail, then, the only option left is to apply for court bail. But available literature has established that a great number of persons who are refused police bail do not succeed in getting a court bail.

Hucklesby observed that the prosecution did not oppose bail in 85 percent of cases and in the 15 percent where bail was opposed the defendants did not challenge the prosecution's position in almost half the cases. "This means that in only 9 percent of all cases observed was the outcome of the remand hearing contested in court" (Hucklesby, 1997, p. 271). These figures demonstrate a great rise in the proportion not contesting remand in custody discussed in the Cobben Trust research. This research shows that for almost 25 percent of remandees, conviction took place "without any discussion about bail having taken place in court" (King, 1971, p. 71). Virtually this is consistent with Zander's (1979) study of London Magistrate Courts

which revealed that bail was not objected to by prosecution in 75 percent of cases and with Doherty and East's (1985, p. 262) finding of 82 percent.

The latter study also established that there was only a contest between prosecution and defence on 15 percent of the hearings. The great number of defendants not opposing to being placed in remand has been the subject of some discussion. This finding was not accepted by the Vera Foundation in England in the mid-1980s emerging from a study into pilot bail information schemes. Across five English Courts, the percentage of defendants in custody not asking for bail at first appearance ranged from 51 percent to 70 percent (Brink and Stone, 1988).

Doherty and East (1985) analysed the duration of court process, where the outcome led to remand in custody and yet established that a very short time was given to the judicial process, 38 percent of cases disposed of in less than two minutes while 87 percent dealt with in ten minutes (Doherty and East, 1985 p. 262). The clear lesson emerging out of the brevity of the bail hearings is that bail decisions are not formed on what happened in court but what took place before the court hearings. The research demonstrates a consistency between judicial decisions on bail and the decisions of police with respect to police bail.

The study by Armstrong (1977) and Daniel and Ward (1987. Pp. 326, 333-334) reported that there is evidence that a substantial proportion of those remanded in custody are held in custody because magistrates tend not to release accused who have been refused bail by police when first apprehended, if the police are willing to grant bail to an accused, a magistrate is more likely not to remand the accused in custody.

Consistently a conclusion arrived at in studies conducted in the United Kingdom from the 1970s, has been that decisions by the police, play critical role in the court process

Doherty and East, (1985, p 255). Cobben Trust research concluded that “magistrates, particularly lay magistrates, still rely heavily on the police’s opinion as to whether or not bail ought to be given” King, (1971, p 45). Zander, (1979) found that police did not oppose bail in 75 percent of cases and that bail almost invariably followed. The cases where the outcome was contrary to the prosecution position were found to be where relatively minor crimes were involved. Doherty and East’s (1985) study found a strong relationship between police attitude and court outcomes. Regarding those who are granted bail by the police, the courts do not hesitate to grant them bail. For those who are kept in police custody, 71 percent were granted bail by their objection to bail; over 75 percent were remanded in custody.

According to Daniel Bamford, more recent work by Hucklesby (1994, 1996, 1997a, 1997b) and the Home Office (1974a, 1997b, 1997c, 1998) reflects a high level of consistency between police decision on bail, prosecution attitude, and judicial outcome. Furthermore “Hucklesby reported that “while the Crown Prosecutor Service (CPS) sought either conditional bail on remand in custody in 15 percent of the bail hearings, there was a “high concordance rate between CPS remand request and the magistrates’ remand decision with magistrates almost always agreeing with the CPS assessment” (Hucklesby, 1997a p134). It was revealed by Home office that defendants refused police bail; about one third was remanded in custody by the court. For those defendants granted police bail, the courts continued their bail status in 92 percent of cases. High consistency was also found between prosecution recommendation and bail outcome. If bail was recommended by the CPS, then 90 percent of those defendants obtained bail. If CPS sought a remand in custody then 76 percent of those defendants were remanded in custody (Morgan and Henderson, 1998 p 37)”.

The regular pattern is not strange, in view of the fact that prosecutors and magistrates use the same criteria to the same defendants. This finding however increases a suspicion that bail prior to court hearing, decisions are already made. “The judicial officer merely confirms those decisions. Some commentators have argued that court culture should play a crucial role in explaining variations in the use of bail. “Court culture” has been defined as a set of informal norms that are mediated through the working relationships of the various participants”.

“Courtroom Workgroup” is the character assigned by researchers to participants in the court process whose common goal is to get the work done. This is often done cooperatively and the “informal norms of work groups permit predictable routines to develop which reduce risk and uncertainty and provide for the efficient disposal of cases” Hucklesby (1997a pp. 130-131). It is the differences in local court cultures that are said to explain why some cases which seem objectively similar often have different results. Whilst used to investigate and explain other court phenomena, for example delays and sentencing disparities Rungay, (1995). It may be a useful tool in explaining some bail variations. Finally, counsels’ relationships in the remand process are clearly complementary and interactive. Both the prosecutor and the defence counsel are likely to adopt positions that are going to maintain the credibility with magistrates McConville *et al* (1994 p. 181) and Hucklesby, (1996 p 229). Yet magistrates reveal that their decisions are also influenced by the position taken by the parties appearing before them. If the parties agreed as to the appropriate outcome, then it appears to require exceptional reasons for the magistrate to challenge that position. It is this set of informal norms, influenced by the administrative and internal decision making processes, and the participants in the process, that appear to be the key to understanding the remand in custody process.

However, the decision to place a person in remand custody arises out of complex array of legal and social dynamics that differ from jurisdictions and over a period of time. It is not easy to segregate what precisely differ from what the causes changes in remand population and what factors are responsible for the rise and fall of remand population.

However earlier studies (Bamford, King and Sarre, 1999), established that variations in remand population are normally an outcome of one or several of the under listed factors:

- Variations in the number of suspects appearing before the courts, due to variations in crime rates, apprehensions or charging practices.
- Variations in the bail processes and policies that influence the chances of bail being granted or denied.
- Variations in the characteristics of suspects that raises the probability of being remanded in custody.
- Delay in court processes which affect the duration of remand in prison custody.

Studies in Australia on the nature of remand process are greatly relevant to the first category of explanations. An example is Fitzgerald's (2000) research revealed that the main reason for the increase in the New South Wales remand population between 1994 and 2000 was due to the increase in the accused population whose charges have high refusal potential.

In a similar situation, the average remand population in Ontario at any given time virtually doubled from 2,270 to 4,669. The implications of these trends to the remand population in Ontario provincial Prisons are 14,014 more admissions and 2,399 more

people on any day in 2004/05 than there were in 1991/92. Now 60 percent of the population in Ontario prisons (up from 31 percent fourteen years ago) is on remand—most of whom are untried and therefore under our system presumed innocent.

Research on future Remand custody and its alternatives in Belgium by An Raes and Sonja Snacksen (2004), examined court files, conducted participants observation of judges and interviewed stakeholders to determine the use of remand custody introduced in 1990 are failing to reduce the use and duration of remand custody.

On the basis of this analysis, recommendations on policy reforms to help reduced remand population were made. The analysis revealed that judges did not see the frequency of decisions to place suspects in remand a problem, nor did they believe it is advisable to reduce the number of individuals placed in remand. Judges traced the cause of it to the Ministry of Justice; judges were convinced that the Ministry had not done well by way of providing adequate prison capacity. The authors reject the policy of limiting judicial discretion in the imposition of remand, but rather recommend providing support for judges in imposing alternatives to remand custody. This might be done by having judicial assistants, possibly probation officers conduct efficient investigations of suspects and alternatives to remand that would ensure public safety. Two million two hundred and twenty five people were reported by US information centre for Prison studies to be in remand custody in the world.

In 6 out of 10 countries, the percentage of all prisoners who are awaiting trial is from 10-40 percent. The Prison Watch from Criminal Justice System in Sierra Leone – Issue Paper November 2008 compiled by Dr. Annie Barbara Chikwanha reports detail important deficiencies with respect to prolonged detention without charges,

overcrowding of cells, inadequate food, sanitation and medical facilities, the remand section remains the worst incarceration facility.

According to the aforementioned paper from the Prison Watch there are prisoners who have been on remand for more than three or four years all over the country. There is a major problem of access to justice in prison. For instance, of the 1,899 prisoners in the system at the end of September 2007, 698 were on remand and further 321 had trials pending remand prisoners, juveniles and women are held alongside convicted prisoners and in some prisons they are crowded into cells more than three times beyond capacity. Pre-trial detainees are also held with convicted prisoners, the length of remand and adjournment of cases in the country is reported as “excessive”.

According to the Australian Institute of Criminology’s monthly Australian Prison Trends Biles (1978-1988) comparative remand rates among the state from January 1978 to September 1988 show that the remand rate for Australia and most states has increased particularly over the past ten years. The Australian rate on 1<sup>st</sup> September 1988 was 11.5 percent compared with 10.0 percent on the same day in 1986, 8.0 in 1983 and 7.5 in 1978. South Australia has a higher rate of remand than the Australian average the respective figures being 11.4, 13.2, 9.8 and 10.4. New South Wales and the Northern Territory had the highest rate of remand in Australia as at 1<sup>st</sup> September 1988, being 17.7 and 27.5 respectively.

Of the 24,171 persons in custody in Australia as at June 2004, 19,231 had been sentenced and 4,935 had been remanded in custody awaiting trial or sentence (ABS, 2004b). The total number of prisoners in Australia has increased by around 20 percent since 1995, but remand numbers have jumped almost 150 percent over the same period.

The proportion of prisoners held in custody on remand in Australia (20.4%) is similar to rates in comparable countries such as England and Wales (16.9%), New Zealand (18.3%), the USA (20%), Canada (21.1%) and Germany (21.2%) (ICPS).

Just as convicted prisoners, remandees are predominantly male. Relatively remandees are young, however, studies have revealed that there is an increase in the average age of remand prisoners in Australia the rising age of remandees appears to overtake the average age of convicted prisoners. Data available from the UK show that, there is a greater likelihood that remandees are homeless, jobless or have a mental disorder (Morgan and Hendersly 1998). Also remand prisoners are likely to die in jail. . The death in custody rate of unsentenced prisoners, while trending slightly downwards remain consistently higher than the rate of deaths of sentenced prisoners compared with 1.2 deaths per 1,000 convicted prisoners Joudo and Veld (2005).

According to Vijula Arulanantham, prison Fellowship (PF) Sri Lanka Board chairperson when speaking on a programme dubbed “speaking for the Forgotten, the old” age, “children are to be seen and not heard”, was not supposed to apply to the justice system. Unfortunately, children can often become voiceless victims in an overburdened justice system that is lacking in resources. Vijula discovered this when he visited a juvenile remand home recently. The children here were not all offenders. Many were victims, street children abandoned or neglected.

In a project dubbed “Due Process for prisoners in Liberia” (A version of the “Justice for All Programme”), Prison Fellowship Liberia is participating in a case Flow Committee created by the national government to review the cases of prisoners being held without trial. Each week, the committee - consisting of representatives from the United Nations mission in Liberia, the Ministry of Justice and PF Liberia – reviews

cases to identify prisoners who have not been formally charged in court. The International Centre for Prison Studies (ICPS) – Kings College, London, published in January 2007 the seventh edition of the World Prison Population List that two and quarter million people are known to be held in pre-trial detention and other forms of remand imprisonment throughout the world. It is estimated that a further quarter of a million are so held in the countries on which such information is not available.

Details of the survey results provided in the following extract from the publication:

- The number of pre-trial/ remand prisoners in 194 countries.
- The percentage of pre-trial/ remand prisoners within each national prison population and,
- The pre-trial/ remand population rate (the number of pre-trial/ remand prisoners per 10,000 of the national population).

The Director of the ICPS, Rob Allen comments; “Pre-trial detention should be used sparingly yet remand prisoners are often held for excessively long periods in conditions that are worse than for sentenced prisoners. This new list should prompt policy makers in every country to consider what they can do to limit the size of their pre-trial population. Excessive use of such imprisonment does nothing to improve public safety. According to Rob Allen the total includes some 476,000 in the United States; 250,000 in India; 136,000 in Russia; 122,000 in Brazil; 57,000 in Pakistan; 52,000 in Turkey; 48,000 in Indonesia; 43,000 in Thailand; 33,000 in Ukraine and 32,000 in Argentina. It has been estimated that there are about 100,000 in China.

In majority of countries (59%) of the proportion of the total prison population who are in pre-trial/ remand imprisonment is between 10% and 40%. But in almost half of African countries, a majority of prison population is pre-trial/ remands prisoners. By

contrast, almost half in countries in Oceania have less than 10% of their populations in pre-trial/ remand imprisonment. The countries with the highest proportion of the total prison population in pre-trial/ remand imprisonment are; Liberia, where the prison administration reports that 97% are so held, Mali (89%), Haiti (84%), Andora (77%), Niger (76%), Bolivia (75%), Democratic Republic of Congo and India (both 70%), Bangladesh, Paraguay and Peru (all 68%).

In a majority of countries (60%), the pre-trial remand population rate is below 40% per 100,000 of the national population. However, the Americas 80% of countries exceed the level. Panama has the highest rate in the world, some 213 per 100,000, followed by Bahamas (198), Surinam (196), the United States (158), St. Kitts and Nevis (153), the United Arab Emirates (135), Guam (129), Anguilla (124), Uruguay (115), Barbados (114), Trinidad and Tobago (108), Guyana (106), Libya (105), Lebanon (104), Honduras (102), South Africa (101) and Belize (100). Prison statistics 2000 from National Crime records Bureau, Ministry of Home Affairs, Government of India indicated that there were too many remand prisoners awaiting trial in India as per the latest comprehensive statistics available on prisons in India. Reference to current existing statistical data on Indian prisons, there are 193,627 remand prisoners as compared to 63,975 convicted prisoners, , making 71.2% of the entire Indian prisons population.

In 2006, in respect of the treatment of suspects on remand, the council of Europe adopted recommendation of its ministers to member states, which provides comprehensive guidelines and safe guards.. Article 4 of the report recognises the fact that in view of the presumption of innocence and the presumption in favour of liberty, the remand in custody of persons suspected of an offence shall be the exception rather than the norm. It further points out that, under no circumstance shall it be a

compulsory requirement that accused persons be placed in remand custody. Also remand decisions on individual cases shall only be pronounced as an indispensable action but not for punitive reasons.

### **2.2.3 Conclusion**

The chapter presented the concepts and theories underpinning this research. This serves as the analytical framework for this paper. Also a literature review of the main subject under focus has been undertaken. The review examined some of the thematic areas which include reasons and the impact for remanding in custody, issues of Juvenile remand, conditions and treatment of remand Prisoners and statistics of remand Prisoners. The next chapter looks at the Policy of “Justice for All”.

## CHAPTER THREE

### THE POLICY OF JUSTICE FOR ALL

#### 3.0 Introduction

In this chapter the study takes a look at the idea of “Justice for All” as introduced by the Ministry of Justice and Attorney General’s Department aimed at speeding up justice delivery for remand prisoners who have been kept in custody for a long period of time (Short: CDD, 2012). Although Ghana’s Policy of “Justice for All” has been implemented, related literature is not fully developed. The Author therefore had to depend on individuals, involved in the programme who sometimes gave conflicting responses. The objective of the programme was largely to decongest the prisons in the country which are being over stretched due to high prison population. These large prisoner populations put more pressure on prison facilities such as food, water, electricity, and medicare (Short: CDD, 2012). The congestion further leads to spread of diseases like TB, HIV AIDS, and other communicable ailments (Ghana Prison Service Annual report, 2009). The main actors in this programme who are also major stakeholders in the justice delivery system in Ghana include the government of Ghana represented by the Ministry of Justice and Attorney General’s Department, the Judiciary, the Ghana Prisons Service, the Ghana Police Service, and Civil Society Organisations. Politically, the “Justice for All Programme” seeks to enhance the democratic credentials of Ghana as a country where civil liberties, respect for fundamental human rights, freedoms, and the rule of law are held in high esteem. (Judicial service Annual Report, 2008).

The programme was launched in Ghana in September, 2007 by the then Minister for Justice and Attorney General with special sittings at the defunct James Town Prison

and later the Nsawam Medium Security Prison (NMSP). The population of remand prisoners in custody is almost half of the entire prisoner population in the country, (Ghana Prisons Service Annual Report, 2008). This report reveals that out of the eight (8) housing blocks at the Nsawam Medium Security Prison four (4) are being occupied by remand prisoners. The “Justice for All Programme” is therefore part of efforts by stakeholders in justice administration to accelerate justice delivery for remand prisoners, the majority of whom are still kept in custody despite the fact that their remand warrants had expired (Short: CDD, 2012).

Keeping non-convicts in prisons without trial and the fact that a high remand prisoner population of 3,052 are still in custody without trial as at April 2012 is a blot on Ghana’s democratic credentials (Short: CDD, 2012). Furthermore, the system is a violation of Article 14 of the 1992 constitution, provisions of the African Charter on Human Rights, the United Nations Rules for Treatment of Prisoners and other relevant human rights treaties which have been ratified by Ghana, (Short: CDD, 2012). The high incidence of remand cases makes the “Justice for All Programme” still a relevant strategy that could facilitate access to justice for the high remand population in the country’s prisons.

The former Attorney General and Minister of justice on Tuesday 1<sup>st</sup> September 2009 during a radio programme on a local FM station (Peace FM)<sup>2</sup> revealed that nearly a thousand people have been wrongly imprisoned even though their warrants have expired. She was clearly repulsed and aggrieved at the plight of the people languishing in jail not knowing their fate. She added that since the inception of the programme approximately one hundred and fifty (150) persons on remand have been discharged out of the four thousand, two hundred and eighty-five (4,285) remand

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<sup>2</sup> The Attorney General during that time was Mrs. Betty Mould Iddrisu

prisoners in the country's prisons. Short has decried the conditions under which prisoners are kept in custody stating that prisons in Ghana are extremely overcrowded, and face unacceptable sanitation challenges. Short added it will be difficult to fight sodomy in Ghanaian prisons if male prisoners have to sleep very closely with their frontal parts touching each other. He further admonished stakeholders in the Justice delivery system to be more responsive to the situations of remand prisoners in the country, (Short: CDD, 2012).

### **3.1 Charter on Human Rights**

Although literature on the "Justice for All Programme" is not fully developed in Ghana, it cannot be discussed without reference to relevant materials on Human rights. Firstly the United Nations Universal Declaration of Human rights as the title implies has laid global foundation for respect for human rights by all nations of the world. Article II (1) of the declaration states "everyone charged with penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his/her defence. This underscores the fact that holding remand prisoners in jail is a violation of the rights of the detainees". The African Charter on Human and Peoples Rights contains provisions intended to safeguard the right of persons arrested for suspected offences. The African Commission on Human and Peoples Rights at its second Pan-African Conference on Prison and Penal reform in Africa was deeply concerned about prisons and prisoners including pre-trial prisoners on the continent. After exhaustive deliberations the conference recommended wide-ranging reforms to improve standards of prisons and treatment of Prisoners. The Ouagadougou Declaration and Plan of Action held

between 18<sup>th</sup> – 20<sup>th</sup> September 2001, on Accelerating Prisons and Penal Reforms in Africa sought inspiration from the United Nations Charter on the Basic Rights of prisoners and suggested the International Criminal Justice Community should consider developing a United Nations Charter of basic Rights for prisoners with a view to strengthening the rule of law in the treatment of offenders.

The Kampala Declaration on prison conditions in Africa in September 1996, involving 40 African countries in their meeting in Kampala, Uganda recommended “that judicial investigations and proceedings should ensure that prisoners are kept in remand detention for the shortest possible period avoiding, for example, continual remands in custody by the court, that there should be a system for regular review of the time detainees spend on remand”.

The situation of remand prisoners in Ghana is not quite different in terms of access to justice and separation from the convicted prisoners. There are cases of infringements of their rights which are against the essential principle under the United Nations standard minimum Rules for the Treatment of prisoners and Prisons Service Decree (NRCD 46) of 1972. The inspection of some of the prisons in Ghana conducted by the Commission on Human Rights and Administrative Justice (CHRAJ), in April-May, 2005 revealed that there was prolonged detention of remand prisoners without trial (CHRAJ Annual report, 2005).

In 2006 (22,209) prisoners were admitted into prison custody, (Ghana Prisons Service Annual Report, 2006). They comprised 13,399 remand and 8,810 convict prisoners. Most of these inmates were aged between 18 and 25 years. The foregoing figures give a cause for worry, especially when viewed against the fact that apart from their being in the reproductive age, many of them have talents that must not be wasted in prison.

The fact that there are young people being kept in custody without conviction undermines their human rights and delves a blow to the economic development of Ghana since these young people could have worked in the productive sectors of the country's economy.

In Ghana, evidence abounds of pre-trial suspects being held without trial in breach of the statutory requirements. (Short: CDD, 2012) confirmed what sometimes was held to be mere perception. Legal Resource Centre (LRC) interviewed about 700 inmates on remand in four selected prisons. About 68% of these had been on remand for at least one year while 3.5% had been on remand for over five years. The rest consisting 30% had been on remand for between one and five years. One respondent had been on remand for about 20 years without trial. They had been charged with offences such as stealing, robbery, narcotic related offences and murder. About 10% of the respondents had been granted bail but could not meet bail conditions. Most of this category was required to produce a deposit with the police, title deeds to some property as security bail. About 35% of the respondents were not granted bail because they were charged with offences for which the criminal code stipulates that bail should be denied.

The research reveals that close to 70% of the cases, the trial of respondents were delayed as a result of the inability or inaction of the police or prison officers to fetch inmates for court appearance or due to other lapses from the prosecution or the court related to improper records, unavailability of evidence, the absence of witnesses frequent adjournment and a litany of administrative bottlenecks. A team of lawyers from LRC after analysing files of the remand prisoners reached the conclusion that over 80% of them deserved to be on bail.

The high rate of remand prisoners with some staying on remand for between 1 and 16 years has continuously been a cause of worry to prison authorities due to the rampant overcrowding of the prisons. The long stay in the prisons without any conviction has also been a worry to stakeholders since it violates human rights of the remand prisoners (Short: CDD, 2012).

The five institutions supported by the United Nations Development programme (UNDP), and other stakeholders believe that halving the remand prisoner number by the end of the legal year would be a significant achievement in the national drive to reduce the waiting period of suspects on remand.

During the Annual Conference of all the Police Commanders in the country held at the Police Headquarters on 22<sup>nd</sup> July 2010, the Inspector General of Police stated ‘as an institution, we have been accused from all angles of a multiplicity of unprofessional practices including prolonged detention of suspects and habitual failure to produce these same persons before court and further asserted that the Police Service knew that it was professionally unethical to dump accused persons in remand custody without following the cases to their logical conclusions’.

This unwholesome practice, she explained is one of the reasons why our prisons are congested emphasizing that “this practice, which is a clear departure from our legal norms and values, must cease”. She added that the general public equally has an obligation to stop bringing their influence to bear on officials within the justice system, by using bail as an instrument of punishment for settling personal scores or exacting the payment of civil debts craftily camouflaged as criminal cases.

The real challenge, according to her, lies with the non-bail able offences such as robbery and murder as well as narcotics, rape and defilement cases, adding that even

with that bail will nonetheless be granted wherever it is demonstrated that there has been an unreasonable delay in the trial or where the facts presented upon arraignment do not support the offence with which the accused is charged. “Each one of us actively engaged in the administration of criminal justice has contributed to this anomalous situation. For this reason, the responsibility lies on us to collaboratively work to find a concrete solution to this problem which sadly does constitute a blot on our human rights record”, she indicated.

During the Annual Conference involving all the Prison Service Commanders in the country held at the Prisons Headquarters on 19<sup>th</sup> May 2010, the then Minister of Interior, Mr. Martin Amidu stated “the remand prisoner population is to be reduced by at least 50% by July 2010 as part of government’s effort to decongest the prisons”. Mr Amidu who made this known at the Conference said overcrowding in the prison had reached an alarming proportion with over 13,500 inmates crammed into prisons meant for 7,875 and remand prisoners formed 30% of the inmates which was worsening the overcrowding problem.

The African Corrections Services Association (ACSA) Second Biennial Conference held in Ghana, Accra from 13<sup>th</sup> -17<sup>th</sup> September 2010 in a communiqué issued after the five day meeting conceded that the increasing numbers of remand prisoners are caused by sluggish processing of remand cases by the judiciary. The next Chapter takes a look at the methodology used to carry out the research and analysis of the data collected.

## CHAPTER FOUR

### METHODOLOGY AND DATA ANALYSIS

#### 4.0 Introduction

This chapter discusses the methodology and analysis of the data collected. Firstly the author touches on the research design, the instruments for data collection, defines the population, the sampling procedures and the sampling size. This study made use of both primary and secondary sources of data. The data collected for the primary and secondary sources were thematically analysed.

#### 4.1 Research Design

The study is designed on qualitative method. The choice of qualitative technique is informed by the fact that access to justice is a social issue for that matter a relatively complex phenomenon which cannot be easily captured in quantitative terms. Kumepkor (2002) states that social data are basically qualitative in form and this usually presents difficulty to them being studied by scientific methods which usually use objective criteria. Quantitative research is weak in assigning reasons to the figures it provides. Figures alone cannot reveal the underlying factors of the problem. The Author therefore found it inadequate to depend on quantitative methodology for the study. Unlike quantitative research, qualitative usually emphasise words rather than quantifications in data collection and analysis. As a research strategy, qualitative methods are inductive, constructive, and interpretive. As far as this study is concerned, the qualitative methods of data gathering focused on interviews and observations

In gathering the primary data for this study, Key Informants from the five organizations involved in the Justice for All programme were interviewed. Purpose sampling procedure was used to select the five organisations because of their involvement in the Justice for All Programme. Only those who have technical capacity to be respondents were selected. Among them included 2 Judges, A Chief State Attorney from the Attorney General's Department, the Director of Legal Aid Scheme, Director Anti-Corruption, Commission on Human Rights and Administrative Justice CHRAJ, Director of Judicial Reforms at the Judicial Service and the head of Criminal Records at the Ghana Prisons Service headquarters.

#### **4.2 Data Collection**

The data for the study were obtained from both primary and secondary sources. The primary sources were unstructured interviews with key informants from the above-mentioned public institutions, prison officers, and remand prisoners from NMSP. The secondary data were from documentary sources in the forms of books, journal articles, as well as extracts from official records of the Nsawam Medium Security Prison.

The main instruments used to collect data were:

- Key Informants Interviews
- In depth Interviews
- Review of official records
- Electronic sources

The interviews with the key informants gave the author the opportunity to get information about access to justice in Ghana from people who have considerable experience in the justice delivery institutions in the country. The interview with the key informants and the case studies were unstructured, in this case a full scaled interview questionnaire was not used since it could limit the amount of information the respondents could give. Flexible interview schedules that outlined the points or ideas explored were used to guide the interview process. By using unstructured interview, the author took cues from the responses by the informants and asked follow up questions. The key informants for this study are 2 Judges, a Chief State Attorney from the Attorney General's Department, the Director of Legal Aid Scheme, Director Anti-Corruption, Commission on Human Rights and Administrative Justice CHRAJ, Director of Judicial Reforms at the Judicial Service and the head of Criminal Records at the Ghana Prisons Service headquarters.

The in-depth interview was applied during the interview with the remand prisoners. This interview technique used relatively few questions considered to be of greater relevance to access to justice in Ghana. The author used the remand prisoners as case studies therefore the in-depth interview gave the opportunity to pursue much detail intensively and extensively. The in-depth interview sessions helped the author to find out from the remand prisoners the reasons for their continuous stay in prison without conviction. This technique assisted the author to access information which the prisoner may not like to divulge publicly.

#### **4.3.0 Population**

The Research was conducted at the Nsawam Medium Security Prison (NMSP). The target population therefore consisted of all remand prisoners in the prison. The prison was purposively selected in view of its record of holding the highest number of remand prisoners in the region.

Also the five organizations from where the key informants were selected were covered because of their unique role in the “Justice for All Programme”.

#### **4.3.1 Sample Size**

The sample size for this study was twenty one (21) respondents. Seven (7) of them from the institutions mentioned above, ten (10) remand prisoners, and four (4) prison officers from the Nsawam Medium Security Prison (NMSP). The author used ten (10) prisoners as case studies for the research. The high number of remand prisoners at the NMSP was the reason why it was selected for the study.

#### **4.3.2 Sampling Procedure**

This study used the non-probability sampling technique. Kumekpor (2002) explains probability sampling as a technique in which the law of randomness or element of chance governs the process of choosing respondents, non-probability sampling on the other hand, is a technique that lacks randomness in selection. These two types of sampling techniques discussed above further have several variants. In this study the purposive and accidental types of non-probability techniques were used to select some

respondents. Specifically, the 2 Judges, A Chief State Attorney from the Attorney General's Department, the Director of Legal Aid Scheme, Director Anti-Corruption, Commission on Human Rights and Administration Justice CHRAJ, Director of Judicial Reforms at the Judicial Service and the Head of Criminal Records at the Ghana Prisons Service Headquarters, and the 4 prison officers were purposively selected for the key informant interview sessions. This was because they have certain characteristics that are not randomly distributed among the other elements in the sampling size.

The purposive and accidental types of non-probability sampling were adopted in selecting the remand prisoners for the in depth interviews. The accidental sampling is usually adopted to select elements who a researcher meets by chance, in this study some of the remand prisoners were selected through accidental sampling, and the rest of them were selected through purposive sampling.

#### **4.3.3 Socio-Demographic Data of Respondents**

Through the purposive sampling technique, respondents were taken from different age categories, occupational and educational background, and marital status. The ages of the ten respondents for the in-depth interview sessions ranged from ten respondents for the in-depth interview sessions ranged from twenty-six to forty-five years. Five out of the ten are married, four are single, one was divorced, and all of them are male remand prisoners. The remand prisoners were all self-employed with occupations in petty trading, farming, masonry, and driving; all of them had little formal education up to primary school level. Five out of the ten are alleged murderers, three of them were alleged armed robbers, and the remaining two were alleged narcotics dealers all

of them have been in prison for various periods of time. In Ghana, evidence abounds of pre-trial suspects being held without trial in breach of the statutory requirements. The three prison officers have been in the service for more than fifteen years each. They are superintendents, and inspectors in the service.

The ages of the nine key informants from the five institutions involved in justice delivery and the Ghana prisons service range from forty-five to fifty-nine years. They have university degrees and professional qualifications.

#### **4.4 Validation of Data**

The data collected, especially those from key informants was validated through call backs on other stakeholders in the criminal Justice system. Greater amount of data collected was confirmed. However there was few conflicting information, especially data pertaining to the number of beneficiaries of the “Justice for All programme”.

#### **4.5 Presentation of Results and Data Analysis**

The author analysed the qualitative data collected through the key informant, and in-depth interviews thematically. The secondary data collected from books, journal articles, and official records were used to back up the primary data.

The interviews have been analysed as presented in chapter four to reveal the general opinion of respondents and to find out answers to the specific questions the study seeks to answer. The data collected from the primary and secondary sources were thematically analysed and arranged according to the following themes:

1. Causes of delay in access to justice by remand prisoners
2. Effects of the delay in access to justice on prison administration
3. Effects of delay in access to justice on remand prisoners
4. Effects of the Justice for All Programme on remand Prisoners

In this section the author reveals results of the case studies in the form of in-depth and key informants' interviews that were extensively discussed in chapter three of this study. The study sampled twenty (20) respondents, Seven (7) of them from the Attorney General's Department, Legal Aid Scheme, Ghana Police Service, Commission on Human Rights and Administration Justice CHRAJ, Judicial Reforms Unit of the Judicial Service and, the Criminal Records unit at the Ghana Prisons Service Headquarters, a judge from the Cocoa Affairs court in Accra, and 3 prison officers from the NMSP were purposively selected for the key informant interview sessions. Ten (10) remand prisoners from the Nsawam Medium Security Prison (NMSP) were selected for the in-depth interviews. The author used ten (10) prisoners as case studies for the research. The prisoners who were all on remand had been charged with various offences including murder, robbery, and narcotics.

The in-depth and the key informants' interviews were approached using unstructured interview schedules. First a socio-demographic profile of the respondents is provided followed by a theme by theme description and analysis of information gathered from respondents.

#### **4.5.1 Causes of Delay in Access to Justice by Remand Prisoners**

The author sought to find out from all the respondents the causes of delay in accessing justice by remand prisoners. While eight (8) out of the eleven (11) key informants

identified the non-availability of a Remand Prison in Accra as major physical barrier to access to Justice, three (3) others thought of the lack of operational equipment like vehicles and personnel to convey Prisoners to court as the physical barrier. The eight (8) felt that the closure of the James Fort Prisons in Accra, which was a Remand Home for non-convicts, has really led to the transportation of remand Prisoners to Nsawam and elsewhere, which originally were not constructed to hold persons in remand custody and this presents a geographical distance as a physical barrier in accessing justice.

The three (3) other informants who were two Prison Officers and a Police Officer indicated that the constant breakdown of vehicles as a result of extreme pressure and inadequate budget to provide fuel for official vehicles makes it difficult to present suspects before the court when their court dates are due. Out of the eleven (11) informants, nine (9) thought the process for accessing justice in the criminal justice system are intimidating and unfriendly to Remand Prisoners. They see rigid legal regimes and unnecessary bureaucratic bottlenecks as structural barriers to accessing justice. They also think that lack of alternative sentencing is also a factor of delay.

All ten remand prisoners sampled for the in-depth interview said there were delays in access to justice in Ghana. The majority of them identified distances from courts to prisons and police cell as the physical causes of the delay. They explained that the courts are located far away from the NMSP therefore the prosecutors complained that they do not have vehicles to fetch them to court when their cases are due for hearing. Some of the respondents said that the court procedures are cumbersome with frequent adjournments these they identified as structurally causing delays in justice delivery. The lack of logistics such as vehicles, recording equipment by the police service were also said to be causing delays in justice dispensation. Individuals whom the majority

of the respondents identified as causing the delays were the CID officers, and court registrars. One of the remand prisoners said:

“The CID officer investigating my case travelled abroad on a peace keeping mission so whenever court is due there was nobody to take me there. The other officers will tell me that the one handling my case is not there so I must wait till he returns before I could be taken to court.

This is in spite of the fact that my warrant has expired”.

Some of the respondents said that because of the geographical distances from the prisons to the courts, sometimes by the time they reach the court premises they are told that their cases had been called already and because they could not reach the court at that time the case had been adjourned. They added that the miscommunication between the prison officers, the prosecutors, and the court registrars results in the delay in accessing justice. One of them explained that there are days he was taken to court and his case will not be called for hearing, and on days that he was not taken to court the court official call his case.

On the whole the study found out that there are both physical and structural delays to access to justice in Ghana. The physical delays are the result of the geographical distances from the prisons to the courts, while the structural delay results from the cumbersome court procedures such as rules that require a suspect to at all cost be represented by a lawyer in all criminal cases; also refusal of prison officers to fetch remand prisoners when they are due for court hearing was found to be a cause of the delay. This finding corroborate the research findings of the Legal Resource Centre cited in the literature review which revealed that the unavailability of police or prison officers to fetch suspects to court as a major cause of delay in justice delivery

#### **4.5.2. Effects of the Delay in Access to Justice on Prison Administration**

All eleven (11) key informants agreed that the delay in access to justice negatively affect Prison Administration. Four (4) of the key informants, the Prison Officers indicated the following as ways in which the delays affect Prison Administration:

1. Congestion in the cells, creating overcrowding in the accommodation of inmates.
2. Undue pressure on Prison facilities.
3. Increased risk in the work of Prison Officers.
4. Affects the budget of the police administration, especially the fuel bill, feeding, waste management and medical services.
5. The prisoner-prisoner officer ratio is also affected badly.

Five (5) key informants said there is overcrowding in the Prisons due to the delay in access to justice while the remaining two (2) informants, stated that, there is poor general services in the Prisons.

On the issue of the specific departments in the Prison Administration that are more affected, four (4) informants, mainly Prison Officers felt that the Prison reception is hard hit with numerous visitors, to see inmates, the four (4) also mentioned the following as the most affected departments by the delays:

1. The Criminal Records Office (CRO).
2. The Stores
3. The Infirmary
4. The Transport Section.

Six (6) others said the General Prison Administration is affected while one informant indicated that the kitchen and the sanitary sections are badly affected by the delays.

The above were largely corroborated by all the ten remand prisoners interviewed by the author who said that the delay in accessing justice has negative effects on prison administration. The majority of them stated that sanitation, congestion, and pressure on social amenities in the prisons are some of the consequences of the delay in accessing justice. Some of them added that because cases are not adjudicated promptly, the families of some remand prisoners become anxious about the welfare of the suspect they therefore pay frequent visits to the prisons and this leads to crowding at the reception of the prison. The toll of the congestion in the prison is much pronounced at the prison's clinic and infirmary, and stores, according to the respondents.

The study therefore found out that the delay in accessing justice adversely affects the prison administration because it puts pressure on prison facilities such as clinics, infirmary, and vehicles. Such delays also increase the risk in the work of the prison officers. Overcrowding was found out to be one the negative effects of the delay on prison administration. It further puts undue strain on the budget of the prisons especially on items such as fuel bills, medical supplies, and waste management.

#### **4.5.3. Effects of Delay in Access to Justice on Remand Prisoners**

The respondents all agree that the delay in justice delivery in Ghana has negative effect on them. All of them are still on remand in spite of the fact that their warrants have expired but have continued to languish in jail for periods ranging from eight months to three years after the expiration of their warrants.

All respondents said the delay leads to congestion in cells because the remand prisoners have to share the same space with many others on remand and the resultant effect is ill health ranging from skin infections, sexually transmitted infections to jaundice partly because of the delay in conclusively dealing with their cases. Other illnesses they mentioned were rashes, diarrhoea, dysentery, and tuberculosis. The respondents further said that there is so much psychological trauma and anxiety caused by the delay because of the uncertainty around their fate i.e. they do not know whether they will win their cases or not, the mental trauma causes some of them to adopt some anti-social coping mechanisms such as drunkenness, cocaine sniffing, and smoking. According to the respondents the effects as a result of the delay in dispensing justice is aggravated when the remand prisoner is in the company of others who have bad behaviours and therefore could influence their colleagues on remand. They asserted that some of them indulge in negative practices such as drug abuse, homosexuality, and gambling because they see others doing it.

On the effect of the delays in access to justice on the remand prisoner, five (5) of the key informants thought the human rights of the suspects are being abused. According to them, minor offences that keep suspects in prison custody beyond the maximum sentence for that offence, is a complete abuse of the fundamental human rights and freedoms of the accused person. Three (3) informants said, the Remand Prisoner is denied the right to benefit from any of the reformation schemes because they have not been convicted.

Two (2) key informants however said that there is a lot of emotional and psychological trauma on the remand prisoner, especially the real innocent ones. One (1) person also thought that there is negative health impact on the remand prisoner.

The informant stated that due to the overcrowding and insanitary nature of the prisons, there are lots of communicable diseases that affect the inmates.

The study found out that delay in accessing justice negatively affects remand prisoners because it leads to ill health, psychological trauma, anti-social practices such as drunkenness, doping, and homosexuality. Keeping remand prisoners after their warrants have expired is tantamount to violation of fundamental freedoms and rights.

#### **4.5.4. Effects of the Justice for All Programme on remand Prisoners**

All the eleven (11) informants were very much aware of the “Justice for All Programme”. In fact, this was no surprise at all as all of them were involved in the programme. They all had the same understanding of what the Justice for All Programme stands for. The eleven (11) explained that the “Justice for All Programme”, was established to help expedite action on cases of remand prisoners who have stayed in prison for long periods, to help decongest the prisons.

Interestingly, there were conflicting responses on the question of the number of beneficiaries since the inception of the programme. Four (4) informants said that about five hundred (500) had benefitted while three (3) put the figure at six hundred (600). Two (2) others indicated that seven hundred and fifty (750) have benefitted.

On the issue of whether the programme has helped decongest the prisons, four informants said, the “Justice for All Programme” has really helped to decongest the Prisons.

Three (3) informants also said the Justice for All Programme should not be spearheaded by the Attorney General's Department but should be a key job for CHRAJ and the Legal Aid Scheme. The three (3) felt that lack of legal representation for the Remand prisoners who are mostly from poor background is a major challenge. They felt that if most of them had obtained proper legal counsel, they would not have been remanded at all.

Five (5) others also pointed out that the decongestion has not had much effect because there is confusion in the whole criminal justice system; they think prosecution and legal representation of the remand prisoners must be a source of worry which is reversing the wheels of progress for the "Justice for All Programme".

All the ten remand prisoners except one said they had heard of the Justice for all Programmes. Some of them explained that the programme is introduced to expedite justice delivery; about three respondents said the programme is introduced to set remand prisoners free, the respondents however gave conflicting numbers on how many prisoners have benefitted from the "Justice for all Programme". All respondents agreed that the programme has helped in decongesting the prisons because some remand prisoners who were tried through the programme were acquitted and discharged. Two of the respondents said they were earmarked to appear before the court set up by the programme but were not tried because they were attending courts.

The field data therefore reveal that the "Justice for All Programme" has positive effect on remand prisoners because more than 48% of those who appeared before the courts implementing the programme were acquitted and discharged. This therefore contrasts the assertion by (Doherty and East 1985, p 262) that being on remand is associated with an increased likelihood of a plea of guilty, an increased likelihood of an accused

being convicted in response to a plea of not guilty, and an increased likelihood of a sentence of imprisonment.

The author further found out that the programme has raised the confidence of the remand prisoners in the country's justice system because those remand prisoner who said they are innocent thought they will be set free if they appear before the Justice for All courts. However there was some misconception about the programme among some of the respondents, they think that the "Justice for All Programme's" aim is to out rightly set remand prisoners free.

## CHAPTER FIVE

### SUMMARY, CONCLUSION AND RECOMMENDATIONS

#### 5.0 Introduction

This chapter revisits the overall aim of the research, that is, to investigate the impact of the “Justice for all Programme” on Ghana’s prison system using the Nsawam Medium Security Prison (NMSP) as a case study, and the specific objectives that were to:

1. Outline the causes of delay in access to Justice by remand prisoners
2. Identify the effect of the delay in access to Justice by remand Prisoners on the Prison Administration.
3. Examine the effect of delay in access to Justice by remand Prisoners.
4. Assess the effect of the Justice for All Programme on access to justice by remand Prisoners.

The chapter summarises the findings of this study and offers conclusions based on the findings. The final section of the chapter suggests recommendations based on the findings and conclusions.

#### 5.1. Summary of Major Findings and Conclusions

##### 5.1.1. Causes of delay in access to justice by remand prisoners

The research data suggests that both physical and structural barriers cause delays to access to justice in Ghana. The physical delays are the result of the geographical distances from the prisons to the courts, while the structural delay results from the

cumbersome court procedures such as rules that require a suspect to at all cost be represented by a lawyer in all criminal cases; also refusal of prison officers to fetch remand prisoners when they are due for court hearing was found to be a cause of the delay.

The author therefore concludes that there are both physical and structural delays in the justice administration, the physical delays are the result of the geographical distances from the prisons to the courts, while the structural delay results from the cumbersome court procedures such as rules that require a suspect to at all cost be represented by a lawyer in all criminal cases; also refusal of prison officers to fetch remand prisoners when they are due for court hearing was found to be a cause of the delay.

#### **5.1.2. Effects of the Delay in Access to Justice on Prison Administration**

The field data suggest negative consequences on the prison administration as a result of delay in dispensing justice in Ghana. The study found out that the delay in accessing justice adversely affects the prison administration because it puts pressure on prison facilities such as clinics, infirmary, and vehicles. Such delays also increase the risk in the work of the prison officers. Overcrowding was found out to be one of the negative effects of the delay on prison administration. It further puts undue strain on the budget of the prisons especially on items such as fuel bills, medical supplies, and waste management.

This study therefore concludes that the prison administration is saddled with a lot of problems such as overcrowding, poor sanitation, pressure on the budget of the prisons as a result of the delay in accessing justice.

### **5.1.3. Effects of Delay in Access to Justice on Remand Prisoners**

The empirical data suggests that remand prisoners are adversely affected by the delay in accessing justice. The study found out that the delay leads to ill health, psychological trauma, anti-social practices such as drunkenness, doping, and homosexuality. Keeping remand prisoners after their warrants have expired is tantamount to violation of fundamental freedoms and rights.

The study therefore concludes that the freedoms and rights of prisoners on remand are constantly trampled upon without recourse to law. Beyond that delaying their access to justice is a psychological torture on the remand prisoners.

### **5.1.4. Effects of the “Justice for All Programme” on remand Prisoners**

Field data assert that the “Justice for All Programme” has a positive impact on remand prisoners because it has helped some of them to secure acquittal. The data revealed that the programme has raised the confidence of the remand prisoners in the country’s justice system because those remand prisoners who said they were innocent thought they will be set free if they appear before the Justice for All courts. However there was some misconception about the programme among some of the respondents, they think that the “Justice for All” aim is to out rightly set remand prisoners free.

The study therefore concludes that the “Justice for All Programme” has helped to decongest the prisons to some extent because some of the remand prisoners who accessed justice through the programme were acquitted and discharged. The programme has therefore impacted positively on the lives of remand prisoners in particular and the Ghanaian justice delivery system in general. This brings some level of relief to the general prisons administration.

## 5.2 Recommendations

The following recommendations have been put forward based on the findings of the study:

- There is the need for a lot of social mobilization and awareness raising campaigns on the rights and responsibilities of Ghanaians to enable them act appropriately when they find themselves in the situation of being in remand custody. This will help remove the ignorance and the perception of the fate of suspects being in the hands of the Police.
- The Legal Aid Scheme must be made an Independent Institution such as CHRAJ to enable it offer better legal representation to Remand Prisoners and other suspects.
- A Public Defenders Office under the Legal Aid Scheme must be established to facilitate access to justice.
- The Legal Aid Scheme must be better resourced to deliver its mandate of defending the voiceless much more effectively.
- The “Justice for All Programme” must be coordinated not by government (Attorney General) but the Legal Aid Scheme. It should therefore be granted independence to coordinate the programme.
- The Attorney General must be made independent and fully responsible for prosecution.
- The Police should reduce its role in prosecution and concentrate on its core mandate of investigation and crime prevention to reduce the crime rate which will obviously affect the number of remand cases.

- The Remand Prisoner must also be given the opportunity to benefit from reformation programmes reserved for convict prisoners.
- There must also be a Legal Aid policy in the country to promote access to justice.
- The over protection of the turf of the key player in the justice delivery sector must stop for all the partners to deepen collaboration and build effective synergy.
- There is the need for a more effective Justice Sector reforms programme.
- There is also the need for effective reintegration programme for remand prisoners to promote social protection and support for remand prisoners on their release from custody to avoid reoccurrence of committing crime which brings them back on remand.
- Lay Prosecutors or Paralegals should be trained to support the prosecution mandate of the Attorney General's Department. This is because if there can be lay magistrates, then there can be lay prosecutors to support the Justice Delivery process.
- Government should also promote Alternate Dispute Resolution Mechanism to settle misdemeanours and also adopt initiatives that can prevent the incarceration of offenders.
- The Attorney General should create a platform where crime officers would be met on regular basis to iron out complaints and adopt mutual strategies to address the case of the remand prisoners.
- All persons, especially remand prisoners in their first court appearance should be granted bail except for offences under section 96(7) (a) of the Criminal Procedure Code.

- Persons remanded in Prison Custody but who are not brought for trial after six months should be granted bail if offences do not fall under the aforementioned in the criminal code.
- Judges who take part in “Justice for All Programmes” must be well motivated and given enough security when they sit in the Prisons.
- There must be intensive Advocacy by Civil Society for increased budgetary allocation for rights education and effective judicial reforms.
- Government must develop relevant policies to clarify roles for effective coordination among the justice delivery institutions.
- A remand home must be built in Accra to replace the defunct James Fort. This will remove the challenge of geographical distance as a barrier to access to justice by those on remand.
- The Prison Administration must be better resourced to cope with the management of remand cases.
- Government should expand existing Prison facilities and improve on the conditions of service for Prison officers as they face risky task of holding both convicted and non-convicts who may have the tendency to revolt.
- The Prisons Criminal Records Office must be computerized to reduce work pressure on officers.
- Work at the reception of the NMSP should also be made electronic to facilitate easy attendance to clients.
- The question of privatizing prisons may also be piloted to bring competition in the Justice delivery system.
- Government should also build more forensic laboratories to expedite action on the testing of exhibits.

- Video conferencing between prisons and courts can also be adopted on a pilot basis from the prisons where records of high remand population exists.
- Until the purpose of decongesting the Prisons is over, the “Justice for All Programme” should increase the number of sittings and extend the facility to other prisons.
- In spite of the fact that there is an overwhelming endorsement of the Justice for All Programme, it cannot continue forever, therefore the key causes of unnecessary remand cases must be removed to render the programme unnecessary.
- The infirmary (clinic) at the NMSP should be upgraded and resourced to be able to handle emergency cases.
- The social services sector, particularly the cells, toilet, water and other sanitation facilities at NMSP must receive special attention from government to reduce the transmission of communicable diseases among the inmates.
- Magistrates, prosecutors and the police should be given regular training in bail jurisprudence to enhance their sense of differentiating between cases where release of suspects on bail is not safe and where preference should be given to release some categories of accused persons on bail.

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## APPENDIX INTERVIEW SCHEDULE

The information being requested is purely for an academic research on the topic, The Justice for all programme: its impact on the prisons system in Ghana, the case of remand prisoners at the Nsawam Medium Security Prison (NMSP).

Please, fill in the spaces provided, and where answers have been provided, tick or underline the appropriate one.

### SECTION I: Background information on Respondents

1. Sex: (a) Male ( ) (b) Female ( )
2. Age: (a) 18 - 25 { } (b) 23 – 26 { }  
( c ) Above 33 { }
3. Nationality: .....
4. Employment: (a) Employed { } (b) Unemployed { }  
(c) Self –Employed { }
5. Marital Status: (a) Single { } (b) Married { }  
(c) Divorced { } (d) Widower { }

#### A. Causes of delay in access to justice by remand prisoners.

- 1) What are the physical causes of delay?
- 2) Are there structural causes of delay?
- 3) If yes, Name them:

.....  
.....  
.....

4) Are there individuals who you think cause the delay? Name them:

.....  
.....  
.....  
.....

5) Are there Institutions that cause the delay? Name them:

.....  
.....  
.....  
.....

6) When was the last time you attended court?

7) Has your warrant ever expired? What happened?

**B. Effect of the delay on Prison Administration.**

1) Does the delay in access to justice by remand prisoners affect prison administration?

2) If yes, in what ways?

3) Are there specific departments in Prison Administration that are more affected?

If yes, Name them:

.....  
.....  
.....

**C. Effect of delay on remand Prisoners**

1) Are you a remand Prisoner?

2) For how long have you been on remand?

3) Do you think there is a delay in accessing justice?

4) If yes, how does this delay affect you?

**D. Effect of the Justice for All Programme on remand Prisoners**

1) Have you heard of the Justice for All Programme?

2) If yes, what do you know about it?

- 3) How many Prisoners have benefitted from it?
- 4) Has the programme helped in decongesting the Prison?
- 5) What do you recommend should be done to improve upon the programme?