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CRIMINAL LAW BLOG GHANA



Quarterly Newsletter

RETHINKING PUNISHMENT IN GHANA

Sentencing and Non-custodial Justice

A compilation of selected articles from Criminal Law Blog Ghana exploring sentencing, punishment, and alternatives to imprisonment.



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Editorial Note

Welcome to the first issue of Criminal Law Blog Ghana's quarterly newsletter. Each issue will bring together selected articles around a shared theme, offering readers a convenient way to explore important questions in Ghana's criminal justice system.

This inaugural issue, **Rethinking Punishment in Ghana**, considers what punishment should achieve and how our laws and institutions can better balance accountability, public safety, rehabilitation, and reintegration. The four articles move from the theories underpinning punishment to practical questions about community service, broader non-custodial measures and the treatment of young offenders.

Together, these contributions invite us to look beyond the severity of a sentence and consider its purpose, design, and consequences. They also highlight how meaningful reform depends on clear laws, effective institutions, and thoughtful implementation.

My thanks go to the contributors whose work enriches this issue, and to our readers for engaging with the blog. I hope this compilation encourages informed discussion about the future of punishment in Ghana.

Selasi Kuwornu

Founder and Editor

Criminal Law Blog Ghana

Theories of Punishment and their Place in Ghana's Criminal Justice System

By: Her Worship Georgette Carmel Lutterodt, Esq., Her Worship Anastacia Yaa Agyeiwaa Karimu, Esq. and Her Worship Dromo Afarley Djarbeng, Esq.

Introduction

Punishment has always occupied a central place in every criminal justice system. It is the means by which society responds to criminal conduct, condemns unlawful behaviour, protects the public, and seeks to preserve law and order. Yet punishment is not an end in itself. Behind every sentence imposed by a court lies a philosophy that seeks to justify why the offender should be punished and what society hopes to achieve through that punishment. Legal scholars have developed several theories to explain the purpose of punishment. While each theory differs in its justification, modern criminal justice systems rarely rely on one theory exclusively. Instead, they adopt a combination of approaches aimed at balancing justice for victims, accountability for offenders, public protection, and the rehabilitation of those who offend. Ghana's criminal justice system is no exception. Although traditionally rooted in retribution and deterrence, recent legislative reforms demonstrate an increasing recognition that punishment must also reform offenders, repair harm caused by crime, and reduce recidivism.

What is Punishment?

Traditionally, punishment has been defined as the intentional infliction of pain or suffering by the State upon a

person who has breached the criminal law. Modern criminal jurisprudence, however, views punishment more broadly as society's formal expression of disapproval of criminal conduct through sanctions prescribed by law. The English jurist Sir William Blackstone famously described crime as a "public wrong"—an offence committed not merely against an individual victim but against society as a whole. Scottish philosopher Antony Duff expands this idea by arguing that crimes are wrongs that properly concern the public because they violate the standards upon which civil society depends. British legal philosopher H.L.A. Hart identified several characteristics of punishment. It must involve an unpleasant consequence, be imposed for a breach of legal rules, be directed at an actual or supposed offender, be intentionally administered by persons other than the offender, and be imposed by lawful authority. Ultimately, the principal objective of punishment is not merely to inflict suffering but to preserve social order and, where possible, transform lawbreakers into law-abiding citizens.

The Major Theories of Punishment

1. Retribution (The Just Deserts Theory)

The retributive theory is perhaps the oldest justification for punishment. It is

founded on the principle that offenders deserve punishment because they freely chose to violate the law. The emphasis is not revenge but justice. The punishment imposed must be proportionate to the seriousness of the offence and the offender's moral culpability. Retribution seeks to restore the moral balance disrupted by crime. Society condemns criminal conduct by ensuring that offenders receive the punishment they deserve. This theory promotes accountability and fairness by insisting that punishment corresponds with the gravity of the offence. However, it has been criticised because punishment alone rarely addresses the underlying causes of criminal behaviour. It cannot undo the harm caused by crime, nor does it necessarily reduce future offending. As Mahatma Gandhi famously observed, "An eye for an eye makes the whole world blind."

2. Deterrence Theory

Deterrence is a forward-looking theory that seeks to prevent future crime through fear of punishment. Rather than focusing on what offenders deserve, it concentrates on discouraging criminal behaviour. Deterrence operates in two forms.

- a. **General deterrence** aims to discourage members of society from committing crimes by demonstrating the consequences of offending through public prosecutions and significant penalties.
- b. **Specific deterrence** seeks to discourage the individual offender from committing future offences by ensuring that the punishment experienced is sufficiently unpleasant.

The strength of deterrence lies in its ability to prevent crime before it occurs. However, its effectiveness is limited where offenders act impulsively, under emotional distress, because of addiction, or due to mental illness. It also assumes that individuals always make rational choices after weighing the costs and benefits of crime, an assumption that often does not reflect reality.

3. Incapacitation (Preventive Theory)

The preventive or incapacitation theory seeks to protect society by removing offenders from the community through imprisonment, preventive detention, or, in exceptional jurisdictions, capital punishment. The theory is straightforward: offenders cannot commit crimes against society while they are physically prevented from doing so. Its greatest strength lies in the immediate protection it offers the public. However, incapacitation alone does little to change the offender's behaviour. Once released, many offenders resume criminal activities if the underlying causes of their conduct remain unaddressed.

4. Rehabilitation (Reformative Theory)

The reformative theory views criminal behaviour as a product of biological, psychological, economic, or social factors rather than simply individual moral failure. Rather than asking whether an offender deserves punishment, the reformative approach asks whether the offender can be transformed into a responsible citizen. This philosophy promotes education, vocational training, counselling, substance abuse treatment, mental health interventions, and skills acquisition programmes. Increasingly, it also favours non-custodial sanctions such

as probation, community service, mediation, restitution, and electronic monitoring. Research from several jurisdictions has shown that offenders subjected to properly supervised community-based sanctions generally reoffend less frequently than those who serve custodial sentences. Imprisonment often results in loss of employment, family breakdown, social stigma, and exposure to hardened criminals, factors that may actually increase recidivism rather than reduce it. The principal criticism of the reformatory theory is that it may overemphasise societal responsibility while diminishing personal accountability.

5. Restorative Justice

Restorative justice shifts attention from punishment to repairing the harm caused by crime. Instead of asking only what punishment an offender deserves, restorative justice asks how victims can be healed, how offenders can accept responsibility, and how communities affected by crime can be restored. This is achieved through mediation, restitution, compensation, apologies, victim-offender dialogue, and increasingly, community service. Restorative justice promotes reconciliation, accountability, and victim satisfaction. However, it is generally unsuitable for serious violent offences and depends heavily upon the willingness of all participants to engage in the process.

Punishment Must Be Justified

Punishment should never be imposed simply because a crime has been committed. It is justified only where it serves a legitimate social purpose.

Generally, punishment is warranted where:

- it prevents future criminal conduct;
- there is no less restrictive measure capable of achieving the same objective; and
- the harm caused by punishment does not exceed the harm that would result if the offence remained unpunished.

These principles reflect the modern understanding that criminal law should always represent society's last resort rather than its first response.

The Ghanaian Position

Ghana's criminal justice system reflects a blend of these competing theories.

1992 Constitution

The Constitution contains provisions that mirror different philosophies of punishment. Article 19(6) prohibits the imposition of penalties more severe than those applicable when the offence was committed. This reflects the retributive principle of proportionality while ensuring fairness. Article 13 protects the right to life but permits deprivation pursuant to a lawful sentence of a competent court, illustrating both deterrence and incapacitation. Article 15(2) prohibits torture and cruel, inhuman, or degrading punishment. This constitutional safeguard recognises that even offenders retain their dignity and reflects the reformatory philosophy.

Criminal Offences Act, 1960 (Act 29)

Act 29 is predominantly retributive and deterrent. However, rehabilitation is

reflected because courts retain discretion in sentencing for many offences. It classifies offences into felonies, misdemeanours, and other categories carrying penalties ranging from fines to life imprisonment. This grading reflects both proportionality and deterrence.

Narcotics Control Commission Act, 2020 (Act 1019)

Perhaps the clearest legislative embrace of rehabilitation appears in the Narcotics Control Commission Act. Section 22 establishes a Substance Use Rehabilitation Fund to facilitate the treatment and rehabilitation of persons suffering from substance use disorders. The Act also grants courts discretion, in appropriate cases, to impose fines rather than imprisonment for certain narcotics offences. Nevertheless, Parliament maintains a firm deterrent stance by prescribing life imprisonment for repeat offenders under section 50.

Juvenile Justice Act, 2003 (Act 653)

Places rehabilitation at the centre of the juvenile justice system by emphasising diversion, education, counselling, vocational training, probation and reintegration rather than imprisonment. Alternative measures include probation, counselling, family conferences, supervision and community-based correction.

Courts Act 1993 (Act 459)

Promotes restorative justice. Section 73 allows courts to encourage settlement and reconciliation in certain misdemeanours that are not aggravated in degree.

Criminal and Other Offences (Procedure) Act, 1960 (Act 30)

Although primarily procedural, several provisions support rehabilitation. Sections 296–297 confer sentencing discretion on courts, allowing judges to consider mitigating factors before imposing punishment. Courts may suspend sentences in appropriate circumstances. Compensation and restitution may be ordered.

Recent Developments

Recent reforms reveal a gradual movement away from an exclusively punitive criminal justice model.

Criminal and Other Offences (Procedure) (Amendment) Act, 2022 (Act 1079)

The introduction of plea bargaining under the Act allows the greater use of victim-offender mediation, encouraging offenders to accept responsibility and facilitating early resolution of cases.

The Community Service Act, 2025 (Act 1120)

The enactment of the Community Service Act demonstrates Ghana's growing acceptance of rehabilitative and restorative justice principles. This introduces community service as a non-custodial sentence for eligible offenders, enabling them to remain within their communities while performing unpaid work for the public benefit instead of serving short custodial sentences. This reduces prison overcrowding and encourages reintegration rather than social exclusion.

These reforms acknowledge that imprisonment is not always the most effective response to criminal behaviour, particularly where offenders pose little threat to public safety and can instead make meaningful reparations to society.

Finding the Right Balance

No single theory of punishment provides all the answers. Retribution ensures accountability. Deterrence seeks to prevent future offending. Incapacitation protects society from dangerous offenders. Rehabilitation transforms offenders into productive citizens. Restorative justice repairs harm suffered by victims and communities. An effective criminal justice system must therefore strike a careful balance among these objectives.

Modern criminological research increasingly suggests that excessively punitive sanctions do not necessarily produce safer societies. While imprisonment remains indispensable for violent and dangerous offenders, non-custodial sanctions, including probation, community service, restitution, and treatment programmes, often achieve lower rates of recidivism for appropriate offenders.

Conclusion

The evolution of Ghana's criminal justice system reflects an important shift in thinking. Punishment is no longer viewed solely as society's means of exacting retribution. Increasingly, it is understood as a mechanism for protecting the public, promoting accountability, rehabilitating offenders, repairing harm, and ultimately reducing crime.

The challenge for lawmakers, judges, prosecutors, defence counsel, and policymakers is therefore not whether offenders should be punished, but how punishment can best serve the broader interests of justice.

As Ghana continues to reform its criminal justice system through initiatives such as plea bargaining, restorative justice, rehabilitation programmes, and community service, the focus must remain on achieving sentences that are not merely severe but fair, effective, proportionate, and capable of making society safer.

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The Community Service Bill, 2026: Learning from Experience, Avoiding Excess

By: Her Worship Georgette Carmel Lutterodt, Esq., Her Worship Anastacia Yaa Agyeiwaa Karimu, Esq. and Her Worship Dromo Afarley Djarbeng, Esq.

Introduction

Ghana's criminal justice system is undergoing a necessary and long-overdue shift. The *Community Service Bill, 2026*, currently before Parliament, reflects a growing consensus—one that has been echoed in prior discussions and scholarship—that imprisonment should not be the default response to all offending. Particularly for non-violent and low-risk offenders, custodial sentences often produce outcomes that are both socially and economically counterproductive. This position is not novel. Previous analyses on community service sentencing have consistently highlighted its core advantages: reducing prison overcrowding, lowering the cost of incarceration, promoting offender rehabilitation, and ensuring that justice produces tangible benefits for society. The Bill, in many respects, seeks to translate these principles into a formal legislative framework.

Argument

At present, Ghana's prisons remain burdened by overcrowding and the high cost of maintaining inmates—many of whom pose little threat to public safety. Short-term custodial sentences, especially for minor offences, frequently disrupt employment, fracture family structures, and increase the likelihood of reoffending. In contrast, community service

sentencing allows offenders to remain within society under structured supervision, contributing positively through labour such as sanitation work, environmental maintenance, and other public services. This approach aligns punishment with productivity, accountability, and reintegration. Importantly, Ghana would not be venturing into uncharted territory. Comparable jurisdictions have implemented community service sentencing with measurable success.

In the United Kingdom, community orders have become a central feature of sentencing for non-violent offences. Courts routinely impose unpaid work requirements, often ranging from 40 to 300 hours, alongside rehabilitation programmes. Studies have shown that such measures reduce reoffending rates when compared to short custodial sentences, particularly because offenders maintain community ties and access to support systems. Similarly, in other jurisdictions such as Tanzania and Kenya, community-based sanctions are widely used as alternatives to imprisonment. These sentences are carefully structured, combining supervision, restitution, and community work. The respective Acts underscore the importance of tailoring sanctions to both the offence and the offender, with a strong emphasis on

reintegration rather than mere punishment.

These comparative experiences reinforce a central point made in earlier writings: community service sentencing is not a lenient alternative, but a smarter one. It holds offenders accountable in a visible and constructive manner while addressing the systemic inefficiencies associated with incarceration.

The Community Service Bill, 2026, builds on these insights. Its provision for a Rehabilitation Fund is especially commendable, as it recognizes that punishment alone is insufficient without pathways for reintegration. Supporting offenders in acquiring skills, accessing counselling, and rebuilding their lives is essential to breaking cycles of recidivism. Yet, while the philosophical and comparative foundations of the Bill are sound, its structural design raises legitimate concerns.

A significant issue lies in the proposed creation of a National Community Service Secretariat, supported by regional and district committees. While decentralization is important, the scale of this administrative framework risks undermining the very efficiency the Bill seeks to achieve. Ghana already has institutions—particularly within the prison and probation systems—that could be adapted to oversee community service sentencing without the need for an entirely new bureaucracy.

The extensive provisions—spanning three sections—dedicated to the establishment, governance, and remuneration of the secretariat and its managing board appear excessive. At a time when government continues to

express concern over the public wage bill, the creation of new administrative bodies may not represent the most prudent use of limited resources. Funds would be better directed toward training probation officers, equipping supervisory personnel, and developing the logistical infrastructure necessary for effective implementation. Furthermore, the multi-layered structure of national, regional, and district bodies risks creating unnecessary bureaucracy. District committees, by virtue of their proximity to local communities, are best positioned to carry out the day-to-day implementation of community service programmes. They can engage directly with offenders, liaise with community stakeholders, and monitor compliance. Regional oversight may serve a useful coordinating role, but the establishment of fully-fledged regional boards may add little value while increasing administrative costs and delays.

Another critical concern is the allocation of authority to issue sentencing guidelines. The Bill grants this power to the Minister for the Interior, including the authority to regulate the imposition, review, and variation of community service orders. This approach raises important constitutional questions. Sentencing is fundamentally a Judicial function, and such guidelines would more appropriately fall within the purview of the Chief Justice, ideally in consultation with the Rules of Court Committee. At the very least, meaningful collaboration between the executive and the Judiciary is essential to ensure that such guidelines carry the necessary legal force and respect institutional boundaries.

Substantively, the Bill's scope is also limited. By restricting its application to

misdemeanours under Section 40, it excludes a significant number of offences under the Criminal Offences Act, 1960 (Act 29). This limitation may significantly reduce its impact on prison decongestion. Additionally, the Bill does not address existing ambiguities in sentencing under sections 296 and 297 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), leaving unresolved questions about the interplay between fines and custodial sentences.

There are also drafting inefficiencies. Section 41, for instance, restates well-established principles regarding the mode of trial—principles that are already embedded in Ghana’s criminal law framework and increasingly incorporated directly into offence-creating provisions. Such redundancies detract from the clarity and precision expected of modern legislation.

Finally, the absence of clear timelines for establishing the proposed secretariat and committees presents a practical risk. Without defined implementation deadlines, the operationalization of the

Bill may be delayed, thereby postponing the very reforms it seeks to introduce.

Conclusion

The Community Service Bill, 2026 represents a progressive and necessary reform—one that aligns with both prior scholarship and international best practice. The case for community service sentencing has already been made: it is cost-effective, rehabilitative, and socially beneficial. Other jurisdictions have demonstrated their viability, and Ghana stands to gain significantly from its adoption. However, for the Bill to succeed, its structure must reflect the same efficiency and pragmatism that underpin its philosophy. A leaner administrative framework, greater reliance on existing institutions, expanded scope, and stronger judicial oversight would ensure that the promise of community service sentencing is fully realized. Only then can Ghana achieve a criminal justice system that is not only punitive, but purposeful.

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Beyond Community Service: Ghana's Need for a Comprehensive Non-Custodial Sentencing Framework

By: Tracy Abena Serwaa Frimpong

Abstract

Ghana's criminal justice framework has long been characterised by imprisonments even for misdemeanours and minor offences. But recently, the Parliament of Ghana has taken a major step through the passage of the Community Service Bill 2026 to introduce community service as an alternative to imprisonment for minor offences. However, community service represents a single aspect of a comprehensive non-custodial sentencing system required by the United Nations. The country's sentencing framework remains relatively limited in scope when compared with international standards and best practices. Many prisons around the world are plagued with overcrowding in prison management systems. Currently, there are over 11.7 million imprisoned persons worldwide.^[i] Prisons in 118 countries including Ghana have exceeded their occupancy limits, with 11 national prison systems experiencing levels exceeding 200% of their designed capacities.^[ii] This paper explores the various non-custodial sentencing alternatives apart from community service which have been under-utilised in Ghana's criminal system and how Ghana can maximise the broader framework of non-custodial sentence measures to comply with international standards.

I. Introduction

According to the World Prison Population List, the prison population rate per 100,000 of the 34.51 million Ghanaian population stands at 41 as at August 2025 while Pre-trial detainees or remand prisoners constitute 11.4 percent of the prison population in Ghana.^[iii] Ghana's prison occupancy level stands at 137.7 percent ranking 75th in the world for exceeding its occupancy limit.^[iv] Over 11.5 million people worldwide have been imprisoned for minor and nonviolent offences while over 3 million are remand prisoners.^[v]

Despite these numbers, non-custodial sentences are under-utilised for minor offences without sufficient consideration of the importunate overcrowding issues and limited funds available for prison welfare. This problem necessitated the passage of the Community Service Bill 2026 by the Parliament of Ghana. However, there are broader alternatives to be considered aside community service to reduce prison overcrowding, promote rehabilitation, restorative justice, social integration, reduce recidivism and comply with international standards and best practices.

Prior to the Community Service Bill 2026, non-custodial sentences under the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)^[vi] included fines, payment of compensation, liability to police supervision^[vii] and recognisance

with or without sureties, for keeping the peace and to be of good behaviour.^[viii] These sentences proved inadequate as the Act^[ix] provides for prison sentences between 6 months and 3 years for misdemeanours, putting more minor offenders at risk of imprisonment at the taxpayer's expense and recidivism. Although the introduction of Community Service would reduce prison overcrowding, the introduction of Community Corrections in Ghana is necessary to improve our criminal justice system.

II. Community Service Versus Community Corrections

Community Service is one aspect of Community Corrections. According to Ghana's new Community Service Bill 2026, it means unpaid public work performed by a convicted person within a community for the benefit of that community for a period of not more than six months for which the court would have sentenced the convicted person and expressed in hours of service including (a) any physical work that promotes afforestation, land reclamation and any other form of environmental conservation; (b) general cleaning of a street, a park, a gutter or any other public space; (c) maintenance work in a public school, a public hospital or any other institution that provides a public service or an amenity; (d) construction and maintenance of a public property; (e) rendering a specialist or professional service in a community and for the benefit of the community; and (f) any manual work that the court may approve in consultation with a probation officer.^[x]

Community Corrections on the other hand consists of broader alternatives to

imprisonment. It is a court-imposed system for offenders to serve all or part of their sentences outside of prison. ^[xi] The role of the community corrections system is to enforce the orders of the court which mandate the release of an individual into the community at either the pretrial stage, after trial but before sentencing, after sentencing or after imprisonment. ^[xii] It comprises a broad range of non-custodial alternatives including *diversion, probation, parole, community service, day treatment and residential treatment* through which offenders are supervised within the community rather than in prison.^[xiii] These measures are designed to reduce reoffending, protect the public, attend to the needs of victims and support offender rehabilitation and reintegration.

Diversion

Diversion is a process whereby an individual, at some stage, is routed away from continuing in the formal justice process. Diversion is an action that would effectively keep a person in the community and, in some cases, out of the criminal justice system altogether.^[xiv] It involves diverting a person away from the criminal justice system when the cause of the offence is identified. For example, a person arrested for trespass may be diverted to a shelter or housing program when the cause of the trespass was to find a place to sleep^[xv] or a drug user may be diverted to a drug treatment program. A person may be diverted to mental health treatment, rehabilitation activities, alcohol treatment and alcohol abstinence and monitoring programmes.

Probation

Probation is a form of a suspended sentence, in that, prison sentence of the convicted individual is suspended, for the privilege of serving conditions of supervision in the community.^[xvi] Probation is practiced in countries like the USA. It involves conditions imposed by the court for the supervision and rehabilitation of offenders. Conditions may include regular reporting to probation officers, participation in treatment programs, drug testing, avoiding contact with known offenders and fulfilling financial obligations such as restitution or fines. The duration and intensity of probation depend on the nature of the offence and the individual's circumstances. Individuals on probation are supervised by a probation officer who enforces compliance of the conditions through monitoring, drug testing, home visits and arrests where necessary. They also play a major supportive role^[xvii] in the rehabilitation process, like assisting offenders with education, employment, treatment programs and offering general support for reintegration. ^[xviii]

Parole

Parole refers to the conditional release of criminal offenders from prison to serve the outstanding part of their prison term in the community. Prisoners may be discharged to parole by a parole board decision (discretionary release/discretionary parole), according to provisions of a statute (mandatory release/mandatory parole), through other forms of post-custody conditional supervision, or as the result of a sentence to a term of supervised release.^[xix] Parole exposes prisoners to the outside world, making reintegration easier. During this time, they are supported with counselling,

housing and employment opportunities. Parole also serves as an opportunity to assess behavioural change and supervise the prisoner in a free environment.

III. The Community Service Bill: A Major Development

The Community Service Bill, 2026 is a shift from incarceration as a main form of punishment in Ghana. However, there are several non-custodial sentencing types available in other jurisdictions which remain untapped by Ghanaian penal policy and laws. Our laws must be expanded to incorporate broader measures to reduce prison crowding and improve prison conditions.

IV. International Standards as a Guide to Non-Custodial Sentencing in Ghana

International laws and standards advocate for the increased use of non-custodial punishment since they address the root causes of criminal behaviour, thereby creating a safer environment for the rest of the country's population. Such international protocols include the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), United Nations Rules for the Treatment of Women Prisoners (Bangkok Rules).

Alternative Sentencing; The United Nations Standard Minimum Rules for Non-Custodial Sentencing Measures (Tokyo Rules) 1990

The Tokyo Rules^[xx] provide that non-custodial measures must be prescribed by law and applied based on clear criteria, including the nature of the offence, the

offender's background, sentencing goals, and the rights of victims^[xxii]. Judicial or competent authorities must exercise discretion with full accountability and in accordance with the rule of law. Where such measures are applied before or instead of trial, the offender's consent is required. Offenders have the right to request a review of such decisions and to make complaints about how the measures affect their rights. Mechanisms must be in place to address human rights violations, and at no point should these measures involve harmful practices or infringe upon the offender's dignity. Importantly, the implementation of non-custodial measures must not impose restrictions beyond those authorised by the original decision. Non-custodial punishments comprise a range of measures. The UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) provides various sentencing options which judicial authorities should consider in sentencing convicts.^[xxiii] These include:

- a. Verbal sanctions, such as admonition, reprimand and warning.*
- b. Conditional discharge; where an offender is released on condition that he must avoid reoffending.*
- c. Status penalties; these deny an individual of certain rights in the community.*
- d. Economic sanctions and monetary penalties, such as fines and day-fines.*
- e. Confiscation or an expropriation order; where the government confiscates or officially takes away property rights or proceeds from crime to be converted to public use.*

f. Restitution to the victim or a compensation order; where the offender returns to the victim what he or she lost because of the offence or makes payment to a state-run compensation scheme.

g. Suspended or deferred sentence; where a sentence of imprisonment is pronounced but its implementation is suspended pending compliance with conditions set by the court.

h. Probation and judicial supervision; to provide information to the court and to monitor and supervise the offender's behaviour in the community, while assisting them with problems they may face.

i. A community service order; requiring released offenders to do unpaid work for a certain number of hours or perform specific tasks for the community.

j. Referral to an attendance centre; that offers, for example, rehabilitation treatment programmes for drug users, counselling services or therapeutic interventions to address offending behaviour.

k. House arrest; where the offender's movement is restricted to his or her home.

l. Any other mode of non-institutional treatment. This may, for example, include electronic monitoring.

j. Medical including (alcohol and drugs) or psychiatric treatment with or without probation. ^[xxiii]

The Tokyo Rules do not limit the courts to only one disposition. Judges at their discretion may make use of more than one non-custodial measure to achieve favourable outcomes on the rehabilitation

of the offender while ensuring deterrence.

Pretrial Detention

There are currently over three million people globally who are in penal institutions as pre-trial/remand detainees.^[xxiv] In Ghana, the pretrial/remand population rate per 100,000 of the national population is 5.^[xxv] This means that out of every 100,000 people in Ghana, 5 of them have been detained pending trial. While presumed innocent until proven guilty^[xxvi] by a court of competent jurisdiction, pretrial detainees are often held in worse conditions than convicted offenders and sometimes for long years, which contribute to overcrowding in prisons.^[xxvii] The Commentary on the Tokyo Rules^[xxviii] places a huge emphasis on the restricted use of pretrial detention. As much as possible, alternative measures to imprisonment should be considered during pretrial, and pretrial detention should be the last resort. Rule 6.2 of the Tokyo Rules (1990) provides that “alternatives to pretrial detention shall be employed at as early a stage as possible.”^[xxix]

Gender Responsive Non-Custodial Measures; the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) 2010

Gender responsive approaches identify the underlying causes that lead women to the criminal justice system and create an environment that responds to the realities of their lives while addressing the underlying issues. These approaches

address cultural and social factors such as poverty, race, class, and gender.^[xxx]

Rule 57 of the Bangkok Rules^[xxxi] provide that gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States’ legal systems, taking account of the history of victimisation of many women offenders and their caretaking responsibilities^[xxxii]. Most women offenders pose lower risks to public security and safety and majority of offences by women are because of deprivation, domestic violence, sexual abuse, discrimination and other social disadvantages.^[xxxiii] Utilising non-custodial measures to keep women, especially mothers out of prison are necessary to prevent institutionalisation and future incarceration of their children. Diversion to mental health programmes, drug/alcohol addiction treatment, counselling for trauma from abuse and sexual exploitation would address the needs of women offenders than imprisonment would,^[xxxiv] reducing the risk of exposure to criminal company in prison.

The Bangkok Rules promote diversionary measures and pretrial and sentencing alternatives for women where possible^[xxxv] and for non-separation from their families without considering their backgrounds and family ties.^[xxxvi]

Non-custodial means of protection such as shelters managed by independent bodies, non-governmental organisations or other community services, shall be used where a woman needs protection.^[xxxvii] Such temporary protection measures, including custody, shall be applied with the consent of the woman.^[xxxviii]

The rules mandate the allocation of appropriate resources for the creation of alternative crime response strategies for women offenders. These strategies must combine non-custodial measures with interventions which can address the most common problems that lead to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and for women-only services.^[xxxix]

Courts are encouraged to consider mitigating factors such as lack of criminal history, relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds.^[xli] Gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be made available and enhanced, for crime prevention, diversion, and alternative sentencing purposes.^[xlii]

V. Conclusion

Community orders should be intended to address the causes of criminal behaviour to reduce the likelihood of reoffending ^[xliii] and should not be seen only as punishment in the form of labour. The community service period prescribed by Ghana's Community Service Bill does not go beyond 6 months which raises questions about what happens to the offender after completion of community service. Are they entitled to mental health services and counselling, education or

vocational skills training if they have none? Are they diverted into programmes that address the causes of their criminal behaviour? Although community service is a non-custodial measure, the focus is not on the offender but on reducing government costs related to prison management and overcrowding concerns. Leveraging the broader framework of non-custodial measures provided by international guidelines have the tendency to work on the offender's rehabilitation. Diverting offenders of minor offences to rehabilitation treatment programmes for drug users, counselling services or therapeutic interventions address offending behaviour. In the year ending June 2019, 90% of sentences in England and Wales were non-custodial.^[xliv] Non-custodial sentences have proven to reduce reoffending^[xlv] and this indicates that it is possible to address crimes by utilising the various types of non-custodial measures with less offenders facing incarceration.

VI. Recommendations

1. A broader legal framework that makes provision for the alternative sentencing approaches provided for by international protocols such as the United Nations Standard Minimum Rules for Non-Custodial Sentencing Measures (Tokyo Rules) 1990 and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) 2010 is needed to reduce prison overcrowding drastically and promote offender rehabilitation

2. Police and prosecutors have a significant part to play in the use of diversion strategies. They are at the forefront of the criminal justice system

since they encounter offenders before the courts. They should have the discretion to issue a caution or to fine, or to refer individuals to an intervention pathway rather than to prosecute them, especially for minor offences. Police discretion in respect of diversion must be applied on a

lawful, transparent and principled basis. Police officers need clear guidance on when they can issue warnings and take no further action, when they can divert offenders to interventions or treatment programmes and when they must refer offences to prosecutors.^[xlv]

Endnotes

- [i] Rope O and Sa-ardyen P Dr, “Global Prison Trends 2026” (Penal Reform, May 2026) <<https://cdn.penalreform.org/wp-content/uploads/2026/05/PRI-Global-Prison-Trends-2026.pdf>>; accessed July 27, 2026
- [ii] *ibid*
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The Rehabilitation of Young Offenders Under Ghana's Juvenile Justice System: A Grey Area in the Law

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Introduction

The Juvenile Justice Act, 2003 (Act 653) was enacted to establish a juvenile justice system designed to protect the rights of juveniles, provide an appropriate and individualised response to juvenile offending, and make provision for the treatment of young offenders. The underlying philosophy of the legislation is therefore not purely punitive. It seeks, among other things, to protect young persons in conflict with the law and facilitate their rehabilitation and reintegration into society.

However, a careful examination of the statutory definitions and the judicial interpretation of those provisions reveal a significant difficulty in the treatment of persons between eighteen and twenty-one years. The law appears, at first sight, to contemplate the rehabilitation of young offenders within the juvenile justice framework. Yet, in practice, the protection afforded to this age group depends largely upon the nature of the offence committed and, more particularly, whether the applicable sentencing provision gives the court an option of imposing a fine. This creates what may appropriately be described as a grey area in Ghana's juvenile justice system.

Who is a Juvenile and who is a Young Offender?

Act 653 principally identifies two categories of persons for whom the juvenile justice system was created: juveniles and young offenders. A juvenile is a person under eighteen years who is in conflict with the law. A young offender, on the other hand, is a young person who has been convicted of an offence for which the court has power to impose imprisonment for one month or more with the option of a fine.

The Act, however, also introduces a third category, namely a young person. A young person is a person who has attained eighteen years but is below twenty-one years. Thus, a person between eighteen and twenty-one years may fall within the statutory description of a young person, but that does not necessarily mean that he or she qualifies as a young offender for purposes of the rehabilitative provisions of Act 653.

The distinction appears technical, but it has profound consequences for sentencing. The important question is therefore not merely how old is the offender? The more important question is what offence has the offender been convicted of and what sentencing options does the law provide for that offence?

The Supreme Court Clarifies the Position

This question came before the Supreme Court in the case of *Abu Mohammed v The Republic*, Criminal Appeal No.

J3/03/2023, judgment delivered on 17 April 2024. In a unanimous decision, the Supreme Court clarified that a person between eighteen and twenty-one years does not become a “young offender” merely by virtue of his or her age. Rather, the person becomes a young offender only where he or she is convicted of an offence for which the court has statutory power to impose a sentence of one month or more with the option of a fine.

The Supreme Court stated, in substance, that a person aged eighteen but below twenty-one is a young person, and that such a person becomes a young offender only when convicted of an offence for which the sentencing regime provides the option of a fine. Where the offence does not carry a fine option, the person remains a young person and does not become a young offender. The decision is significant because it establishes that the status of a young offender under Act 653 is determined not simply by age, but by a combination of age and the sentencing regime applicable to the offence.

Consequently, three relevant categories emerge under the juvenile justice framework:

1. Juveniles – persons below eighteen years in conflict with the law;
2. Young offenders – persons aged eighteen to below twenty-one who are convicted of offences carrying a custodial sentence with an option of a fine; and
3. Young persons – persons aged eighteen to below twenty-one who

commit offences which do not carry a fine option. persons aged eighteen to below twenty-one.

The Consequence for Serious Offences

The difficulty becomes particularly apparent where a person between eighteen and twenty-one commits a serious offence for which the law does not provide an option of a fine. In such circumstances, although the offender is still very young, the statutory definition prevents that person from being treated as a “young offender” under Act 653. The consequence is that the rehabilitative mechanisms associated with the juvenile justice system may not be available to that offender merely because the offence falls outside the statutory definition of a young offender.

This creates a rather curious situation. Two persons may both be nineteen years old and may have very similar personal circumstances, levels of maturity and prospects for rehabilitation. Yet, depending upon the offence of which they are convicted, one may fall within the rehabilitative framework of Act 653 while the other may be dealt with under the ordinary adult criminal justice regime. The distinction is therefore based substantially upon *the sentencing structure of the offence rather than the developmental age of the offender*.

The Case of Nelson Makafui Fiakpui v The Republic

The practical consequences of this distinction can also be seen in *Nelson Makafui Fiakpui v The Republic*, Criminal Appeal No. H2/01/2022, judgment

delivered on 11 March 2022. The appellant was nineteen years old at the time of the offence. He was a trader who, together with two accomplices, attempted to rob the complainant of his motorbike. The group was armed with a knife and a gun and threatened the complainant. The complainant's phone and GH¢50.00 were taken before the offenders fled after gunshots were heard. The Circuit Court convicted the appellant of robbery and sentenced him to twenty years' imprisonment with hard labour. On appeal to the High Court, the appellant sought, among other things, the application of the Juvenile Justice Act on account of his age. Although the High Court reduced the sentence to fifteen years, it declined to apply the rehabilitative provisions of Act 653.

The matter subsequently went to the Court of Appeal. The appellant argued that the fifteen-year sentence was harsh and excessive, particularly having regard to his status as a young offender. The Court of Appeal dismissed the appeal. The reason is instructive. Robbery, in the circumstances relevant to the case, did not carry an option of a fine. Consequently, the appellant could not be characterised as a "young offender" within the meaning of Act 653 and was therefore subject to the ordinary provisions applicable to adult offenders. The case demonstrates the practical impact of the statutory definition: *being nineteen years old does not, by itself, guarantee the protections or rehabilitative treatment contemplated under Act 653.*

The Rehabilitation Question

The philosophy underlying juvenile justice is that young offenders should, where appropriate, be given an

opportunity to reform rather than being exposed unnecessarily to the full weight of the adult penal system. This philosophy recognises that young persons are still developing in terms of maturity, judgment and decision-making. Rehabilitation, education, counselling, vocational training and reintegration may therefore produce better long-term outcomes than lengthy incarceration.

Act 653 contains mechanisms reflecting this rehabilitative philosophy, including the use of remand homes and detention centres and other measures directed towards the rehabilitation of young offenders. The Act, for example, makes provision for the temporary detention of juveniles or young persons in remand homes and contains provisions concerning detention at a centre. Yet the statutory definition of "young offender" means that access to these mechanisms may depend upon the availability of a fine option for the offence.

This raises an important policy question: *Should the availability of rehabilitation for a person aged eighteen to twenty years depend upon whether the offence committed carries a fine option?* If the principal justification for special treatment is the age and developmental stage of the offender, it may appear difficult to justify a system under which a nineteen-year-old convicted of one offence receives the benefit of a rehabilitative regime while another nineteen-year-old convicted of a more serious offence is automatically excluded from that classification.

A Legislative Anomaly

The difficulty is further demonstrated by the internal language of Act 653 itself. The

Act contains provisions which refer to a “juvenile or young person” at one point and then proceed to use the expression “juvenile or young offender” in subsequent subsections. This creates uncertainty as to whether the provisions were intended to apply to all persons aged eighteen to twenty years or only to those who satisfy the narrower definition of “young offender.” The difficulty becomes more pronounced when the provisions of the Act are considered alongside section 19(4), which provides that where it appears to the juvenile court that a person brought before it has attained eighteen years, that person is, for purposes of the Act, deemed not to be a juvenile and becomes subject to the Criminal and Other Offences (Procedure) Act, 1960 (Act 30).

The result is an apparent tension within the statutory framework. On the one hand, Act 653 expressly refers to young persons and makes provisions concerning them. On the other hand, the statutory structure and the decision in *Abu Mohammed v The Republic* suggest that a young person who does not satisfy the definition of a young offender does not enjoy the same status under the juvenile justice system. This raises the broader question whether young persons between eighteen and twenty-one can properly be said to form part of the juvenile justice system at all.

Should Youth be a Mitigating Consideration?

The present statutory position does not mean that the age of an offender between eighteen and twenty-one is entirely irrelevant to sentencing. A court retains judicial discretion in sentencing and may take relevant personal circumstances into

account where the law permits. However, this is materially different from having a statutory rehabilitative regime specifically designed for young offenders. The distinction matters because a general sentencing discretion does not necessarily provide the same protection as a specialised system based on rehabilitation, education, vocational development, counselling and reintegration.

The issue, therefore, is not whether young persons who commit serious offences should be exempted from punishment. Rather, it is whether *punishment and rehabilitation should be mutually exclusive*. A young person who commits a serious offence may require punishment, public protection and accountability. At the same time, the offender may also require education, psychological support, vocational training and structured rehabilitation. The objective should be to ensure that the sentence serves not only the immediate purpose of punishment but also the longer-term objective of preventing reoffending.

The Need for Legislative Review

The present statutory framework creates an age-based anomaly that deserves legislative attention. If the policy objective is to rehabilitate young persons who are still within the eighteen-to-twenty-one age bracket, then the law should provide a clearer and more coherent basis for determining when special treatment applies.

The present approach makes the sentencing provision attached to the offence decisive. This may produce the unintended result that the more serious the offence, the less access the young

offender has to the specialised rehabilitative framework. That may be understandable from a purely punitive perspective. However, from the perspective of modern penal policy, the seriousness of the offence should not necessarily extinguish the rehabilitative potential of the offender.

A reformed framework could, for example, permit courts to consider the offender's age, maturity, previous record, circumstances of the offence, prospects of rehabilitation and the protection of society, while still imposing proportionate punishment for serious offences. Such an approach would avoid treating youth as either a complete defence or as an irrelevant circumstance.

Conclusion

The Juvenile Justice Act, 2003 (Act 653) represents an important shift from a purely punitive approach towards rehabilitation and the protection of young persons in conflict with the law. However, the distinction between a juvenile, a young offender and a young person, particularly following the Supreme Court's decision in *Abu Mohammed v The Republic*, has exposed a significant gap in the statutory framework.

The position is now clear that a person aged eighteen to below twenty-one is not automatically a "young offender." The person must also have been convicted of an offence for which the court has power to impose imprisonment for one month or more with the option of a fine. The practical consequence is that a nineteen-year-old convicted of an offence carrying a fine option may fall within the rehabilitative framework of Act 653, while another nineteen-year-old convicted of a

serious offence carrying no fine option may be treated under the ordinary adult criminal justice regime. This presents a difficult question for Ghana's penal policy: should the rehabilitative treatment of a young person depend upon the availability of a fine option for the offence committed?

The answer requires a careful balance between accountability, proportionality, public safety and the recognition that young offenders have significant potential for reform. The challenge for the legislature and the courts is therefore not simply to determine how severely young offenders should be punished, but how Ghana's criminal justice system can ensure that even where punishment is necessary, rehabilitation is not lost. The ultimate objective of criminal justice should be not merely to punish the offender for what he has done, but, where possible, to transform the offender into a person who will not return to crime. That is the promise of rehabilitation. It is also the unfinished task of Ghana's juvenile justice system.

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