

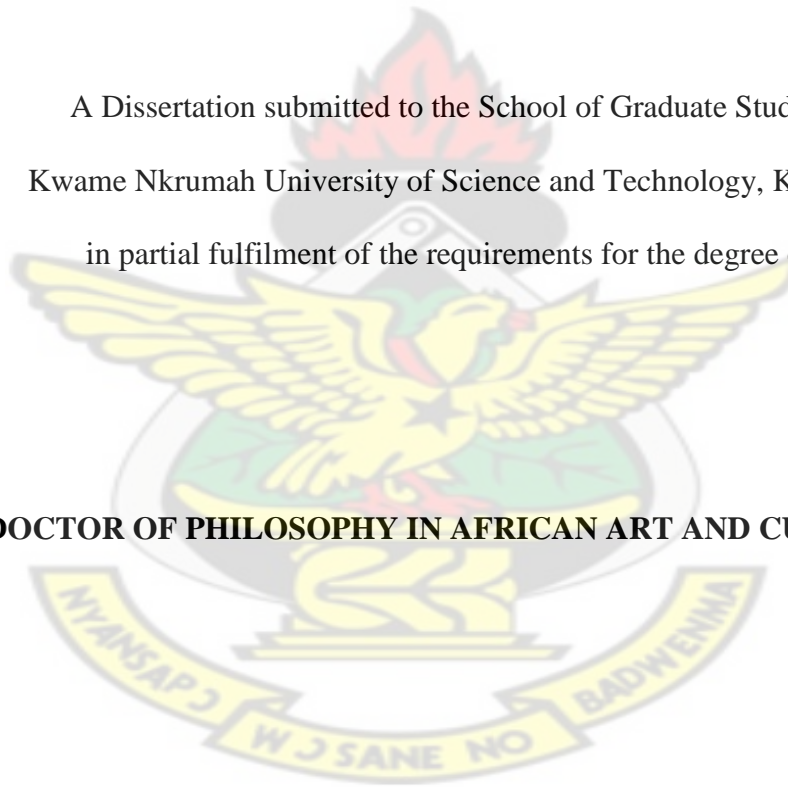
**EFFECTS OF CONTEMPORARY PENAL SYSTEM ON THE GHANAIAN  
CULTURE**

**by**

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**DOCTOR OF PHILOSOPHY IN AFRICAN ART AND CULTURE**



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## DECLARATION

I hereby declare that this submission is my own work towards the PhD degree and that to the best of my knowledge, it contains no material previously published by another person nor material which has been accepted for the award of any other degree of the university, except where due acknowledgement has been made in the text.

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## DEDICATION

I dedicate this work to my late brother Osafohene Kwame Mensah, who did not live long enough to see me complete my University Education having taken care of my education to that level; my beloved wife Mrs. Joyce Ackom Gyeedu Amma and the children Ato, Kofi, Yaw, Abeeku and Maame Esi Ankowaa Ackom Gyeedu for their support.

# KNUST



## **ABSTRACT**

Ghanaians have a unique culture that cuts across the entire various ethnic groups. Every ethnic group has its own traditional laws. However, due to the acculturation as a result of the coming of the Europeans, the Ghanaian Contemporary Penal System have side-lined the traditional penal system. The main objectives of the study were to identify the Ghanaian penal systems and assess their strengths and weaknesses; examine whether or not the contemporary penal system has influenced the Ghanaian culture and finally, to explore aspects of the traditional penal system which could be incorporated into the contemporary penal system. The descriptive survey of qualitative approach was used. The design was adopted mainly to explore the culture of people, identify, describe and analyse both penal systems through questionnaire, interviews and observations. The findings revealed the following strengths in the traditional penal system: promotion of reconciliation and restoration of social harmony, operation of inescapable Justice System, flexible rules of evidence and procedure, ensures quick trial process and lastly involves low cost and is easily accessible. The weaknesses of the traditional penal system are: non-custodial sentences; undefined sentencing policies; room for excesses and abuses, and human rights violation; in some cases it offers unfair judgment; no legal representation during trial. Again, the research findings revealed some strengths of contemporary penal system to include: ensuring the isolation of criminals from the larger society; convicts have rights of appeal against sentence; suspects have access to legal representation during trial; a well-structured system; offers opportunity for prisoners to undergo reformation and rehabilitation. Furthermore, the research revealed some weaknesses in the contemporary system that: it causes delay in hearing; there is public perception of bribery and corruption; perception of unfair court judgements. The

study discovered that the contemporary penal system has to a large extent influenced the Ghanaian culture negatively and positively. The negative influences of the Contemporary Penal System on the Ghanaian Culture are that: it has side-lined the authority of traditional ruler-ship; imprisonment has adverse repercussion on the convicts and family; weakens the chance of persons appointed to key positions in the society and affects the chances of culprits travelling, marriage, employment. Ability to redress wrongs; access to right of appeal are examples of positive influences on the Ghanaian Culture. The study concluded that the contemporary penal system has indeed influenced Ghanaian culture, negatively and positively, and some vital aspects of the traditional penal system could be incorporated into the contemporary penal system to ensure a more effective national development with regards to the judiciary system. The study recommended that; the Judicial Council should endeavour to adopt the strengths of the traditional penal system to compensate for the weaknesses of the contemporary penal system; the National Commission of Civic Education should educate members of the Ghanaian community on the rights of individuals, penal systems vis-à-vis Ghanaian cultural practices and vital elements such as swearing of oaths with the local artefacts, decorating court rooms with traditional symbols should be incorporated into the contemporary penal system.

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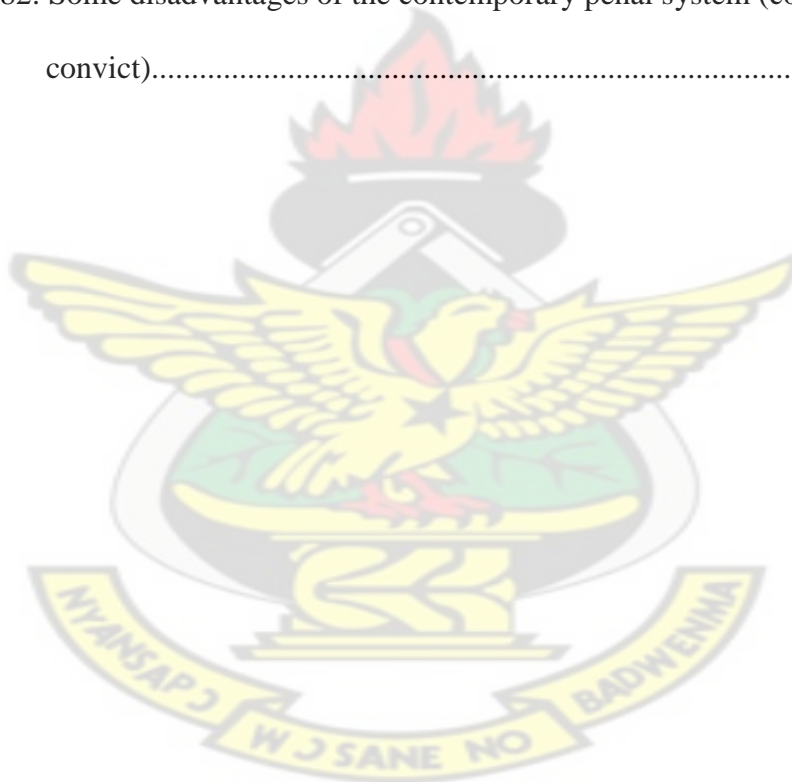
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## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.1 Background to the Study**

The Ghanaian Culture has to a large extent, been acculturated by foreign culture. This has resulted in a drastic change in the administration of justice. The European penal system has superseded the traditional ones. Punishments accorded to the breaking of traditional laws included banishment, fine, compensation, slavery and death. However, per the contemporary penal system, imprisonment involving capital punishment, life imprisonment, short sentences, long sentences and fines are the sources of punishments given to offenders of the laws in Ghana. Unfortunately, the societal attitude towards a prisoner especially an ex-convict has greater repercussions on the victim and the family. It is against this background that the researcher has taken keen interest to research into the extent to which the current penal system has influenced the Ghanaian culture.

Culture is constant yet always changing in that certain aspects of its elements, but others such as language and law, persist without major alteration for long periods of time. However, gradually and subtly, they are undergoing continuous metamorphosis. Agyeman (1993), remarks that one of the first anthropological and sociological definitions of culture given by E.B. Tylor as far back as 1871 summarizes the nature of culture. According to Tylor, culture is “that complex whole which includes knowledge, belief, art, moral, law, custom and any other capabilities and habits acquired by man as a member of society.”

In a local perspective however, culture is the way of life of a group of people. These include their language, clothing, food, festival, naming ceremony, marriage, funeral,

music and dance among others. Schaefer and Lamm (1998) write extensively on culture. They defined culture as the totality of learned, socially transmitted behaviour. It includes ideas, values, customs and artefacts (as well as sailboats, comic books and birth control devices). Their work covered culture and society, development of culture and elements of culture, cultural integration, cultural variation, culture and the dominant ideology, social policy and culture.

The above definitions of culture feature essential elements like: art, customs, language, values, and beliefs among others. These truly reflect the fact that culture is the way of life of a group of people.

Cultural change can take place in at least three ways;

- New practices may be invented within culture itself.
- Practices may be borrowed from other cultures as in the case of the American education adopting the Montessori Method.
- Modification of existing practices may be to meet fresh circumstances.

Artists like teachers are the official transmitters of the cultural heritage. They are also unconscious reflectors of cultural conflicts. Having experienced and internalized the conflicts of culture, teachers, especially art teachers, tend to pass them on to their students.

### 1.1.1 Characteristics of Culture

According to Saritha (1998), culture has a lot of characteristics and some of these are:

- **Culture is shared.** People in the same society share common behaviour and ways of thinking. Saritha again posits that patterns of learned behaviour and the results of behaviour are possessed not by one or a few person, but usually



by a large proportion. Thus, many millions of persons share such behaviour patterns as Christianity, beliefs, values, norms and even language. Persons may share some part of a culture unequally. For example, the American way of Christianity.

To some persons, Christianity is the all-important, predominating idea of life. To others it is less preoccupying/important and still to others, it is only of marginal significance. Sometimes the people share different aspects of culture. For example, among the Christians, belief in divine punishment may be acknowledged by most of the denominations. However, the mode of inflicting the punishment may vary. The point of discussion is not that culture or any part of it is shared identically, but that it is shared by the members of society to a sufficient extent.

- **Culture is learned.** While people biologically inherit many physical traits and behavioural instincts, culture is socially inherited. A person learns culture from people in a society. Saritha (1993) argues that not all behaviour is learned, but most of it is learned; combing one's hair, standing in line, telling jokes, criticizing the President and going to the movie, all constitute behaviours which are learned. Sometimes the terms conscious learning and unconscious learning are used to distinguish learning. For example, the ways in which a small child learns to handle a tyrannical father or a rejecting mother often affect the ways in which that child, ten or fifteen years later, handles relationships with other people.



- **Culture is adaptive.** With culture, people can flexibly and quickly adjust to changes in the world around them. This means that people of the society easily pick up other forms of culture and yet maintain their identity. A typical example is the Biblical character, Joseph, (Genesis 39:20), who maintained his religious identity and yet adapted to the prison environment.

### **1.1.2 How Culture is Transmitted**

According to Acerbi and Parisi (2006), Culture is transmitted through three forms and these are through:

- Education from parents
- Apprenticeship for special skills
- Community sponsored education

#### **1.1.2.1 Education from Parents**

In the olden days, people learnt their culture through others. This was done through oral traditions told by the elderly to the young ones. Most young people had their first education from their parents. Today, culture is first transmitted in homes or from parents and guardians.

#### **1.1.2.2 Apprenticeship for Special Skills**

When people are sent to learn special skills from professionals e.g. to be traditional priest, blacksmithing, sewing etc, consciously or unconsciously, culture is transmitted to them.

#### **1.1.2.3 Community Sponsored Education**

In the olden days, the community would fix specific periods where the youth of the town would be brought together for a community sponsored training. For example, a

linguist or a knowledgeable elderly person in the society would be appointed to teach and direct the youth about their cultural practices. This exposed the youth to the totality of the state's cultural practices and this gave the elders the assurance that they had trained the children to take up the mantle of state administration in their absence. This way of transmitting the cultural practices to the youth has crumbled due to school education and these are done in schools.

### **1.2 Statement of the Problem**

The societal attitudes towards a prisoner especially ex-convict have greater repercussion on the victim and the family. Ex-convicts are still perceived as criminals and are therefore not well accepted by the society after they have been discharged from prison custody. This attitude 'stigmatization' is a great source of worry not only to the ex-convict but also to the entire family. Ghanaians and for that matter Akans have a unique culture of punishing wrong doers for breaking the laws of the land. The traditional practice of punishing offenders is not compromised in the Akan culture since it goes a long way to project their identity as an ethnic group (Osei, 2004).

The introduction of the contemporary penal system has had a great impact (negatively) on the Ghanaian culture as a whole. These negative impacts include; limiting the powers and authority of the traditional rulers, incarcerating deviants who are convicted into prison custody for having broken the laws of the country. Also, the imprisonment weakens the chances of persons who wish to take up key positions in the society. These include; kingship, marriage, travelling, employment, among others. It is against this background that the researcher has taken keen interest to research into the extent to which the contemporary penal system has influenced the Ghanaian culture with special reference to the Akan culture with the view to examine the extent

to which some elements of the traditional system could be incorporated into the contemporary penal system.

### **1.3 Objectives of the Study**

The objectives of the study are to:

1. Identify Ghanaian traditional and contemporary penal systems and assess their strengths and weaknesses.
2. Examine whether or not the contemporary penal system has influenced Ghanaian culture.
3. Explore aspects of the traditional penal system which could be incorporated into the contemporary penal system.

### **1.4 Research Questions**

1. What are the strengths and weaknesses of the traditional and contemporary penal systems?
2. How has the contemporary penal system influenced the Ghanaian culture?
3. Which aspects of the traditional penal system could be incorporated into the contemporary penal system?

### **1.5 Delimitation**

The research covered the effects of the contemporary penal systems on the Ghanaian Culture with a focus on the Ashanti, Eastern, Greater Accra and Central regions of Ghana.

It also explores how some elements of the traditional penal system could be fused into the modern penal system.

## 1.6 Limitation

The major limitation was that most of the addresses of the ex-convicts indicated on their penal records at the prisons were wrong. Those whose addresses were correct, the family members were afraid and therefore not willing to allow them (ex-convicts) to take part in the research. The researcher therefore added recidivists in prison custody to the few discharged convicts interviewed.

## 1.7 Definition of Terms

**Acculturation:** It is the exchange of cultural features that results when group of individuals having different culture come into continuous first hand contact.

**Contemporary:** Of the present time or modern.

**Contemporary Penal System:** Is the modern way of punishing offenders for violation of laws by court of competent jurisdiction.

**Convict:** A person or an offender who has been lawfully committed into prison custody by a court of competent jurisdiction.

**Crime wave:** A situation in which there is a sudden increase in the number of crimes committed.

**Criminal Justice System:** Is the system of practices and institution of governments' directive at upholding social control, deterring and mitigating crime, or

sanctioning those who violate laws with criminal penalties and rehabilitation efforts.

**Culture:** Tylor (1871) defines culture as “that complex whole which includes knowledge belief, art, moral, law, custom and any other capabilities and habits acquired by man as a member of society.”

**Ex-convict:** A prisoner who has been released from prison custody after serving his/her term(s) of imprisonment.

**Ghanaian Culture:** Aspects (art, values, norms, beliefs, language, ethics etc.) of the Ghanaian life style which reflects the totality of behaviour.

**Imprisonment:** Imprisonment or incarceration is putting someone in prison or jail as lawful punishment.

**Penal:** Pertaining to, or involving punishment, as for crimes or offences. From Poena – Greek, poine “punishment.”

**Prison:** A prison also known as penitentiary, correctional facility, gaol or jail is a gazetted place in which individuals are physically confined or interned by court of competent jurisdiction (and usually deprived of a range of personal freedoms).

**Punishment:** Refers to penalties that are inflicted by the power of the state, that is, the authority of law after a court has found the defendant guilty of a crime.

**Recidivist:** An ex-convict who after his or her discharge from prison custody, commits another crime and again convicted into prison custody.

**Tradition:** A way of thinking, behaving, or doing something that has been used by the people in a particular group, family, society, or passing down of element of a culture from generation to generation. Traditions are longstanding customs and practices e.g. cultural practices that are preserved.

**Traditional Penal System:** Longstanding customs and cultural practices relating to, or involving punishment, for violation of laws or rules. It is the Chief, the *Abusuapanin* or his accredited representative and his court who decide the fate of the culprit.

### 1.8 Importance of the Study

The study will help to:

1. Improve service delivery of the Criminal Justice System.
2. Control criminal tendencies.
3. Provide reference materials for further research in the field of administration, culture, criminology, penology, sociology, etc.



## **1.9 Organization of the Study**

Chapter One of the study covered the overview of the study where the following areas were highlighted; background to the study, statement of the problem, objectives of the study, research questions, importance of the study, delimitations, limitations and definitions of some useful terms for the study. Chapter Two of this study reviews related literature in order to observe and examine what other scholars have or have not considered concerning the topic. Chapter Three primarily describes the research methodology that was used to gather and analyse the data. It includes the study area, study design, study population, choice of sampling method, data collection methods, data processing and data analysis techniques. Chapter four contains analysis and interpretation of data that were gathered from the field. The respondents were categorised into three A, B and C representing traditional leaders, officials of Criminal Justice System and prisoners (convicts and ex-convicts) respectively.

Chapter Five discusses the results from the analysis and the interpretation of the data primarily on the objectives of the research namely; the strengths and weaknesses of the contemporary and traditional penal systems, the effects of the contemporary penal system on Ghanaian culture; and a discussion on whether some elements of the traditional penal system could be incorporated into the contemporary one. Chapter Six is the final part of the study. It is divided into three sections. These are the summary of findings, conclusions of the study and the recommendations made by the researcher to improve upon the penal systems of Ghana.



## **CHAPTER TWO**

### **REVIEW OF RELATED LITERATURE**

#### **2.1 Overview**

This section deals with the review of works done by other researchers that is related to penal systems in Ghana and other parts of the world. The review of related literature focuses mainly on the history of penal systems in Ghana, penal codes, theories of punishments and philosophies of punishments and types of sanctions.

The penal system refers to a system of punishments that relate to different crimes. A typical example is the prison which is a place of confinement for persons punished or sentenced to the penalty of dispossession of liberty. Punishments may also involve the imposition of something undesirable or unpleasant on a person or group of people who have breached a set of rules by someone who is in authority, who has the right to pass out the punishment (Kleining, 1972). Similarly, it may entail the removal of something desirable or pleasant.

It is important to note that the penal system is part of a larger entity known as the criminal justice system. The components of the criminal justice systems are all the institutions that respond officially to the commission of offences: notably the police, prosecution authorities, defence counsel, judiciary, probation, institutional corrections, parole and courts (Seymour, Gaboury & Edmunds, 2000). To examine the penal system independent of the larger criminal justice system is often misleading. The point where an offender is sentenced by a court is the moment when the offender enters the penal system (Cavadino & Dignan, 2007).

The penal system is basically a social control agency aimed at these three distinct purposes: rehabilitation, protection and punishment. So the prisons in particular exist to rehabilitate the criminal, protect society from the criminal and punish the criminal (Bottoms, 1995). Commonly, people share the opinion that the penal system is to perform more of a rehabilitation function hence the name correctional institutions given to prisons and other like institutions. A similar tone was emphasized by the “the Policy Green Paper” published in early 2008. In relation to prisons, it stated: “prisons should reduce crime rate in three ways: by incapacitating offenders, by punishing and thereby deterring others who would commit crimes and by rehabilitating offenders”.

### **2.1.1 Conceptual Study**

### **2.1.2 History of Penal Systems in Ghana**

Before the advent of the British, Ghanaians were governed by traditional laws including traditional penal laws which pursued to maintain social equilibrium, stability and to ensure communal solidarity and social relations among the peoples and citizens of the country. Imprisonment was not indigenous to the Gold Coast nationals. Objectives of the traditional penal system were not aimed at dissuasion or the reintegration of offenders; individuals found guilty were sentenced to paying compensation to victims and also made to atone for their misdeeds by performing the requisite animal sacrifice and this led to equity and communal peace and survival.

However, the British made it compulsory upon Ghana’s traditional society’s criminal laws and penal systems to keep the multitude in check rather than to keep and preserve the social equilibrium of the people (Aba-Afari, 2011). The creation of the Gold Coast as the Colony of the British in 1874 saw the gradual improvement and reorganization in the legal and the penal systems as compared to the penal laws

developed by the Council of British Merchants in the period from 1828 to 1842 which was used to abuse and alienate the Gold Coasters.

Nevertheless, the application of traditional laws in dealing with criminal activities has diminished drastically. In 1961, the Criminal Law which is constitutional and based on a criminal code has been administered in the courts. This has its root in British common law, the doctrines of equity and general status which were in force in 1874 in Britain.

Ghana's current criminal justice policy that focuses much more on the punitive approach to punishment has come to undermine the traditional concept of punishment and rehabilitation. The rehabilitative elements that prepare the offender to have developed appropriate social skills, which can promote their re-integration into their families and communities, have not been effective. Therefore, offenders do not acquire requisite skills to empower them to contribute to their communities and national development programmes and initiatives (Lawson, 2011).

### **2.1.3 Penal Codes**

Penal code can be defined as a body of laws relating to crime and its punishment (Harper, 2005). In Ghana, the criminal jurisdiction is controlled by the Criminal code (Act 29) of 1960. This legal document defines what constitutes a crime in Ghana as well as prescribed the requisite punishment for such crimes. Two of the three categories of offences cited in the Criminal Code concern offences against the individual (Act 29). The third category includes a series of offences against public order, health and morality, and the security of the state as well as piracy, perjury, rioting, vagrancy, and cruelty to animals (Aba-Afari, 2011).

Several offences reflect Ghana's traditional laws, including drumming with the intent to provoke disorder, cocoa smuggling, and settlement of private disputes by methods of traditional ordeal. A crime however is defined by Swanson et al. (1996) as the commission of an act prohibited or the omission of an act required by the penal code of an organized state. There can be no crime unless there is an advance notice of the above behaviour prohibited or required. Bartol and Bartol (2005) also define crime as any behaviour or an act in violation of the law for which there exist penalties upon conviction and therefore, criminal behaviour is the kind of behaviour in violation of a criminal code or law. In addition, Attafuah (2008) p.3, suggests simply that “crime is behaviour which the law will punish”.

All nations of the world have coded laws identifying certain behaviours or conducts as criminal. These laws serve as the standard for which individuals within that state conduct and monitor their lives. Those individuals who conform appropriately to such prescribed standards are said to be law abiding therefore, good citizens because their daily activities do not breach the law. However, citizens who lead lives without proper regard to the laws prohibiting such conducts, therefore, breaking the laws are said to be law breakers, unpatriotic; and when such persons are arraigned and convicted by the law courts of the land to the various punishments suitable to the offence committed they are then called criminals. To a large extent, prohibition of conduct is relative, as cultural differences play a paramount role in determining what conduct is acceptable in a community depending upon the premium placed on certain characteristics within the community.

What might be acceptable in one region would be a prohibited act in another where punishment will be awarded. However, some of the first coded laws can be traced to

the Israelites who were theocratic and were given written laws through Moses their leader (Exodus chapter 20). Section 1 of the Criminal Code of Ghana Act 29 of 1960, defined crime as “any act punishable by death or imprisonment or fine”. Mensah-Bonsu (2001) argued that, the issue of what constitutes a crime is a problematic one and besides, this definition is particularly not a healthy one since the individual has to determine in advance as to whether his/her action is criminal or not.

To this, the researcher agrees because traditional law allows a man to take more than one wife however, Section 262 of the Criminal code Act 29 of 1960, forbids anyone to take more than one wife and defaulters may be committed to prison. Nonetheless, ignorance of the law is said to be no defence. However, other jurisdiction where Islamic Faith is the predominant religion, the Sharia law is practiced. Sharia is a system of laws based on the Quran (the religious text for Islam), Hadith (sayings of the Prophet Muhammad) Sunnah, Ijma, and Qiyas; it is the Islamic religious law as interpreted by various sectors of Islam. The term Sharia means “way” or “path to water source” and it is the legal framework within which the public aspects of life are regulated for those living in a legal system based on Muslim principle (UNAMID, 2010).

#### **2.1.4 Theories of Punishment**

Crime is an intentional act or omission in violation of criminal law (statutory and case law), committed without defence or justification and sanctioned by the state as a felony or misdemeanor (Skibell, 2003). Skibell further maintained that crime is an act defined by law. Unless the element specified by criminal law are present and proved beyond reasonable doubt, a person should not be convicted of a crime. In criminal



law, punishment refers to penalties that are inflicted by the power of the state, that is, the authority of law after a court has found the defendant guilty of a crime.

Since time immemorial, there was crime and with crime came the need to punish criminals. How criminals were punished and the methods behind the punishment changed throughout the times. Standards of punishment moved from banishment and fines to torture and "blood feuds" (Siegel & Senna, 2005). A more organized system of punishment came forth with the formation of Common Law, which was brought over to the United States from England. With the development of a system, there was a move away from physical punishment toward more acceptable methods like those used in Ghana today.

Today there are many things the criminal justice system aims to do by imposing punishments and sentences. The goals of punishment have moved from satisfying the victim thus, 'let the punishment fit the crime' in early days, to more of a broader scale. There are theories on how punishment and sentencing may serve to reduce crime as a whole. "Throughout history, four philosophies or purposes have been used to justify punishment: incapacitation, retribution, deterrence and rehabilitation" (Reid, 2011). Theories of punishment can be divided into two general philosophies: utilitarian and retributive. The utilitarian theory of punishment seeks to punish offenders to discourage, or "deter", future wrongdoing. The retributive theory on other hand seeks to punish offenders because they deserve to be punished.

Under the utilitarian philosophy, laws should be used to maximize the happiness of society. Crime and punishment are inconsistent with happiness hence they should be kept to a minimum. The Utilitarian understands that a crime-free society does not exist, but they endeavour to inflict only as much punishment as is required to prevent

future crimes. *The utilitarian theory* is “consequentiality” in nature. It recognizes that punishment has consequences for both the offender and society and holds that the total good produced by the punishment should exceed the total evil (Aba-Afari, 2011). In other words, punishment should not be unlimited. One illustration of consequentiality in punishment is the release of a prison inmate suffering from a debilitating illness. If the prisoner's death is imminent, society is not served by his continued confinement because he is no longer capable of committing crimes.

Under the utilitarian philosophy, laws that specify punishment for criminal conduct should be designed to deter future criminal conduct. Deterrence operates on a specific and a general level. General deterrence means that the punishment should prevent other people from committing criminal acts. The punishment serves as an example to the rest of society, and it puts others on notice that criminal behaviour will be punished.

On the other hand, specific deterrence means that the punishment should prevent the same person from committing crimes. Specific deterrence works in two ways. First, an offender may be put in jail or prison to physically prevent him from committing another crime for a specified period. Second, this incapacitation is designed to be so unpleasant that it will discourage the offender from repeating his criminal behaviour (Aba-Afari, 2011).

*Rehabilitation* is another utilitarian rationale for punishment. The goal of rehabilitation is to prevent future crime by giving offenders the ability to succeed within the confines of the law. Rehabilitative measures for criminal offenders usually include treatment for afflictions such as mental illness, chemical dependency, and chronic violent behaviour. Rehabilitation also includes the use of educational



programmes that give offenders the knowledge and requisite employable skills needed to compete in the open job market.

The counterpart to the utilitarian theory of punishment is the retributive theory. Under this theory, offenders are punished for criminal behaviour because they deserve punishment. Criminal behaviour upsets the peaceful balance of society, and punishment helps to restore the balance.

The retributive theory focuses on the crime itself as the reason for imposing punishment. Where the utilitarian theory looks forward by basing punishment on social benefits, the retributive theory looks backward at the transgression as the basis for punishment. According to the retributivists, human beings have free will and are capable of making rational decisions. An offender who is insane or otherwise incompetent should not be punished. However, a person who makes a conscious choice to upset the balance of society should be punished. There are different moral bases for retribution. To many retributivists, punishment is justified as a form of vengeance: wrongdoers should be forced to suffer because they have forced others to suffer. This ancient principle was expressed succinctly in the Old Testament of the Judeo-Christian Bible: “When a man causes a disfigurement in his neighbour. It shall be done to him, fracture for fracture, eye for eye, tooth for tooth”.

To other theorists, retribution against a wrongdoer is justified to protect the legitimate rights of both society and the offender. Society shows its respect for the free will of the wrongdoer through punishment. Punishment shows respect to the wrongdoer because it allows an offender to pay the debt to society and then return to society, theoretically free of guilt and stigma.

A third major rationale for punishment is denunciation. Under the denunciation theory, punishment should be an expression of societal condemnation. The denunciation theory is a hybrid of Utilitarianism and Retribution. It is utilitarian because the prospect of being publicly denounced serves as a deterrent. Denunciation is likewise retributive because it promotes the idea that offenders deserve to be punished.

The U.S. conception of punishment is a combination of the utilitarian, retributive, and denunciation theories. The most widely accepted rationale for punishment in the United States is retribution. If convicted, the sentence a defendant receives is always, at least in part, a form of retribution. A sentence may, however, combine utilitarian ideals with retribution. For example, a defendant sentenced to prison for several years is sent there to quench the public's thirst for vengeance. At the same time, educational programs inside the prison reflect the utilitarian goal of rehabilitation. The US legal system shows its adherence to utilitarian ideals in the creation of systems such as pre-trial diversion programs, probation, and parole. These systems seek to limit punishment to the extent necessary to protect society.

The utilitarian philosophy is also reflected in the assignment of different punishments for different crimes and in the notion that the amount of punishment a convicted criminal receives should be in proportion to the harm caused by the crime. For example, murder calls for imprisonment or even the death penalty. A simple assault and battery with no serious injuries is usually punished with a short jail sentence or probation and a fine. Judges generally have the discretion to fashion punishment according to the needs of both society and the defendant. This is an expression of utilitarian tenets. However, judicial discretion in sentencing is limited. In some cases

statutes require judges to impose mandatory minimum prison sentences as punishment, and these laws stand as a monument to the retributive theory.

### **2.1.5 Philosophies of Punishment**

In every society there are social control mechanisms to ensure that people behave according to the norms of that society. Those who comply with these norms are awarded and the other hand, the deviants are sanctioned in the form of punishment. Punishments therefore serve numerous social-control purposes, but it is usually justified on the bases of retribution, incapacitation, deterrence, rehabilitation, and/or restoration. The specific principles that underlie these dominant philosophies for punishment are as stated by Meithe and Lu (2004) discussed below.

#### **2.1.5.1 Retribution**

One of the oldest and most basic justifications for punishment involves the principles of revenge and retribution. This equation of punishment with the gravity of the offence is embedded in the Judeo-Christian tradition in the Mosaic laws of the Old Testament that emphasize the idea of “an eye for an eye.” (Exodus 21:24). Neither constrained by questions of offender culpability nor directed at preventing future wrongdoing, have offenders under a retributive philosophy simply got what they deserve.

Punishment is justified on its own grounds, a general principle that has remained popular throughout Western history in both law and widespread public beliefs about how justice should be dispensed in democratic societies.

The classical retributive principle of “let the punishment fit the crime” was the primary basis for criminal sentencing practices in much of Western Europe in the

nineteenth century. This principle of punishment was subsequently modified in neoclassical thought to recognize that some offenders who commit similar offences may be less blameworthy or culpable due to factors outside of their control (e.g., diminished capacity, mental disease or defect, immaturity). Under this revised retributive theory of just deserts, punishment should fit primarily the moral gravity of the crime and, to a lesser extent, the characteristics of the offender.

A current example of retributive principles being used as the basis for punishment involves mandatory sentencing policies and sentencing guidelines systems in the United States. Mandatory sentences dictate uniform sanctions for persons who commit particular types of offences (e.g., enhanced penalties for crimes committed with firearms), whereas determinate sentencing guidelines prescribe specific punishments based on the severity of the criminal offense and the extensiveness of the offender's prior criminal record. Consistent with a retributive philosophy, punishment under these sentencing systems focuses primarily on the seriousness and characteristics of the criminal act rather than the offender.

Although retribution is often linked to criminal sanctions, it is equally applicable to other types of legal sanctions and informal sanctions. For example, civil litigation that is based on the principle of strict liability is similar to retributive philosophy in that compensatory and punitive damages focus on the gravity of the prohibited act rather than characteristics of the offender. Lethal and nonlethal sanctions that derive from blood feuds between rival families, range wars in agrarian communities, terrorist attacks on civilian and government targets, and acts of "street justice" by vigilante groups and other extrajudicial bodies are often fuelled by the twin motives of revenge and retribution.

Retribution as a penal philosophy has been criticized on several fronts when it is actually applied in practice. First, strict retributive sanctions based solely on the nature of the offense (e.g., mandatory sentences for drug trafficking, the use of firearms in the commission of crimes) are often criticized as being overly rigid, especially in societies that recognize degrees of individual culpability and blameworthiness.

Second, the principle of *lex talionis* (i.e., the “eye for an eye” dictum that punishment should correspond in degree and kind to the offence) has limited applicability. For example, how do you sanction in kind acts of drunkenness, drug abuse, and adultery, prostitution, and/or traffic violations like speeding?

Third, the assumption of proportionality of punishments (i.e., that punishment should be commensurate or proportional to the moral gravity of the offense) is untenable in most pluralistic societies because there is often widespread public disagreement on the severity of particular offences. Under these conditions, a retributive sentencing system that espouses proportional sanctions would be based on the erroneous assumption that there is public consensus in the rankings of the moral gravity of particular types of crime.

#### **2.1.5.2 Incapacitation**

Incapacitation is another philosophy of punishment (Meither & Lu, 2004). They maintained that a primary utilitarian purpose for punishment involves various actions designed to decrease the physical capacity of a person to commit criminal or deviant acts. This principle of incapacitation focuses on the elimination of individuals’ opportunity for crime and deviance through different types of physical restraints on their actions. The conditions of confinement may be so deplorable that they reduce the



offender's subsequent desire to engage in misconduct, but such a deterrent effect is not a necessary component of incapacitation in its pure and earliest form. In other words, a night in the "drunk tank," confinement in the prisons, military stockade or guard room, or the "grounding" of a wayward adolescent are often considered useful incapacitated strategies even when these practices do not lead to subsequent reform in one's behaviour. A plethora of devices, techniques, and structures have been used throughout history as means for incapacitation. The early ethnic group practices of banishment to the wilderness, the English system of "transportation" of convicts to other colonies in the seventeenth and eighteenth centuries, the exile of citizens in ancient Greek society, and political exile in more modern times are examples of incapacitated sanctions because they involve the physical removal of persons from their former communities, thereby restricting their physical opportunity for misconduct in the original setting.

The stocks and pillory in English history and Colonial America were devices used for both public ridicule and incapacitation. Other types of incapacitating hardware are as diverse as electronic shackles for monitoring offenders in open spaces, Breathalysers that prevent drunk drivers from starting their cars, "kiddie harnesses" to restrict the movement of young children in public places, and chastity belts for limiting sexual promiscuity.

The function of incapacitation may also be served by other types of legal and extra-legal restrictions on one's behaviour. Other legal forms of incapacitation involving civil or administrative decrees include court-ordered injunctions, federal boycotts and restraint-of-trade agreements, restraining orders in domestic violence cases, cease-and-desist orders, revocations of licenses, foreclosures, and the passage of



certification requirements to perform particular tasks (e.g., college degree requirements for teaching, passing medical board and bar exams for practicing medicine or law). Many of these actions are economic sanctions in that they carry financial consequences for those involved, but these civil and administrative rules can also be seen as incapacitated in that they place physical restrictions on one's possible actions (Miethe & Lu, 2004).

The most widely known type of incapacitation involves some form of incarceration, or what others have termed "penal bondage". Aside their incapacitative effect on restricting immediate criminal opportunities, penal bondage of criminals, vagrants, debtors, social misfits, and other disadvantaged groups across time periods and geographical contexts has often included a component of forced labour (e.g., public works projects, forced servitude in military campaigns) as a condition of confinement. Physical structures for incapacitation may have different purposes or functions besides the physical restraint of the body. These places of confinement are described across time and space in context-specific terms like dungeons, towers, workhouses, gulags, jails, prisons, labour camps, "readjustment" centres, correctional or treatment facilities, cottages, sanatoriums, and mental institutions.

The specific language used for descriptive purposes also signifies their functions beyond physical incapacitation. During the last half century, several new forms of incapacitation have emerged. For example, shock incarceration programs involve short-term incarceration of juvenile offenders to show them the pains of imprisonment and scare them into a future life of conformity. Work release programs and placement in halfway houses are temporary incapacitation programs designed to maintain community ties and ease the adjustment from prison to conventional life. Another

variant of incapacitation, intensive-supervision probation (ISP), leaves adjudicated criminals in their community but under the watchful eye of probation officers or other legal authorities.

The recent model of selective incapacitation in the United States is designed to target criminal offenders thought to have the greatest probability of repeat offending and place greater restraints on the nature and conditions of confinement for these “high-risk” offenders. Although a research suggests that a small pool of people commits the predominant share of violent and property crime, efforts to successfully predict these high-risk offenders suffer from numerous ethical and practical problems, including high rates of both “false positives” (i.e., falsely labelling someone as a high-risk offender) and “false negatives” (i.e., releasing high-risk offenders because they were erroneously characterized as low-risk).

Contrary to early historical patterns of incapacitation that emphasized the reduction of the physical opportunity for crime and deviance, modern versions of this philosophy are more “forward-looking” in terms of focusing on the utility of punishments for changing offenders’ criminal motivations once they are no longer physically restrained from committing deviance. In this way, incapacitation is united with other utilitarian philosophies for punishment. Different types of incapacitative sanctions may serve as the initial framework for establishing successful programs of deterrence and rehabilitation.

#### **2.1.5.3 Deterrence**

The doctrine of deterrence asks a fundamental question about the relationship between sanctions and human behaviour: Are legal and extra-legal sanctions effective in reducing deviance and achieving conformity? Punishment is said to have a

deterrent effect when the fear or actual imposition of punishment leads to conformity. Punishment is given to people to prevent them from committing an offence; deterring previous offenders from re-offending and preventing those who may be contemplating an offence they have not committed from actually committing it (McAnany, 2010). The deterrent value of punishments is directly linked to the characteristics of those punishments. Specifically, punishments have the greatest potential for deterring misconduct when they are severe, certain, and swift in their application.

Punishments are also widely assumed to be most effective for instrumental conduct (i.e., deliberate actions directed at the achievement of some explicit goal) and for potential offenders who have low commitment to deviance as a livelihood (e.g., the person is not a professional criminal). Deterrence is based on a rational conception of human behaviour in which individuals freely choose between alternative courses of action to maximize pleasure and minimize pain.

From this classical perspective on crime and punishment, criminal solutions to problems become an unattractive option when the costs of this conduct exceed its expected benefit. Swift, certain, and severe sanctions are costs that are assumed to impede the likelihood of engaging in deviant behaviour. From a deterrence standpoint, any type of punishment (e.g., monetary, informal, incapacitative, corporal) has a potential deterrent effect as long as it is perceived as a severe, certain, and swift sanction. The research literature on the effectiveness of criminal punishments (McAnany, 2010), outlines the four major types of deterrence, which include the following:

- Specific deterrence involves the effectiveness of punishment on that particular individual's future behaviour. Recidivism rates (e.g., rates of repeat offending

among prior offenders) are often used to measure the specific deterrent value of punishments.

- General deterrence asks whether the punishment of particular offenders deters other people from committing deviance. A comparison of crime rates over time or across jurisdictions is typically used to ascertain the general deterrent value of punishment.
- Marginal deterrence focuses on the relative effectiveness of different types of punishments as either general or specific deterrents. For example, if recidivism rates for drunk drivers are higher for those who receive monetary fines than those who received jail time, jail time would be rated higher in its marginal deterrent value as a specific deterrent for drunk driving. Similarly, debates about capital punishment often focus on the marginal deterrent value of life imprisonment compared to the death penalty as a general deterrent for murder.
- Partial deterrence refers to situations in which the threat of sanction has some deterrent value even when the sanction threats do not lead to law abiding behaviour. For example, if a thief picked or “lifted” someone’s wallet rather than robbing him/her at gunpoint (because the thief was fearful of the more serious penalty for committing an armed robbery), the thief would be treated as a “successful” case of partial deterrence. Similarly, tougher fines for speeding passed in a jurisdiction would serve as a partial deterrent under these two conditions: (1) the average motorist under the new law exceeded the speed limit by 5 miles an hour and (2) the average motorist under the old law exceeded the speed limit by 10 miles an hour. The average motorist is still exceeding the speed limit but he or she nonetheless is driving slower.

When the philosophy of deterrence is used in the context of penal reform, it is often as a justification for increasing the severity of sanctions, particularly in Western developed countries. Legislative responses to terrorist attacks, drug trafficking, child abductions, and violent crimes on school property have been directed primarily at increasing the severity and/or duration of punishments (e.g., being a drug “kingpin” and participation in lethal terrorist attacks are now capital crimes under U.S. federal law). Although these greater punitive measures may serve to pacify widespread public demands to “get tough” on crime, the specific and general deterrent effect of such efforts is probably limited without attention to the other necessary conditions for effective deterrence (i.e., high certainty and high celerity of punishments).

Empirical efforts to assess the effectiveness of deterrence are limited by several basic factors. First, persons may abide by laws or desist in deviant behaviour for a variety of reasons other than the looming threat or fear of legal sanctions. Some of these non-deterrence constraints on behaviour include one’s moral/ethical principles, religious beliefs, physical inability to commit the deviant act, and lack of opportunity.

Second, neither swift nor certain punishment exists in most legal systems in the contemporary world. The majority of criminal offences are typically unknown to the legal authorities and, even among the known offences, only a small proportion result in an arrest and conviction. The typical criminal penalty and civil suits are often imposed or resolved months, if not years, after the initial violation.

Third, the severity of punishment actually received by offenders is often far less than mandated by law, due to the operation of such factors as plea bargaining, charge reductions, jury nullifications, executive clemency and pardons, and “good time” provisions. Under these conditions, it is unsurprising that the deterrent effect of



criminal and civil sanctions has not been clearly demonstrated across a variety of contexts.

#### **2.1.5.4 Rehabilitation**

Although it may seem contradictory or at least somewhat odd to assert that we punish for the treatment and reform of offenders, this basic principle underlies the rehabilitation purpose of punishment. The ultimate goal of rehabilitation is to restore a convicted offender to a constructive place in society through some combination of treatment, education, and training.

The salience of rehabilitation as a punishment philosophy is indicated by the contemporary jargon of “correctional facilities,” “reformatories,” and “therapeutic community” now used to describe jails, prisons, and other institutions of incapacitation. The link between places of incapacitation and reform is established throughout much of written history. The earliest forms of penal confinement in dungeons, towers, caves, and other dark and dreary places were largely incapacitative in their primary function, but some degree of moral and spiritual enlightenment was expected of those condemned to long periods of solitary confinement. This idea of restraint to reform is evident within the context of religious penance in Judeo-Christian practices in Western Europe and the British colonies in North America and elsewhere. It is also manifested in U.S. history in the early development of reformatories and penitentiaries (Meithe & Lu, 2004).

These large-scale incarceration structures punished misguided youth and criminals by isolating them so they could reflect on their deviant actions, repent, and subsequently reform their behaviour. Confinement and reflection for spiritual reform are also of central importance in the religious principles found in Hinduism and Buddhism. In



contrast to retribution that emphasizes uniform punishments based on the gravity of the misconduct, rehabilitation focuses on the particular characteristics of individual offenders that require treatment and intervention.

This individualized treatment approach is logically consistent with indeterminate sentencing structures that give judges enormous discretion to tailor punishments for the greatest good to the individual offender and provide parole boards with equally high discretion to release or retain offenders for future treatment. Through the application of current theories of human behaviour and the latest therapeutic techniques for behavioural modification, rehabilitation experienced growing acceptance in many countries throughout much of the twentieth century.

Even though “correctional” institutions continue to espouse the benefits of rehabilitation and specific treatment programs (e.g., drug treatment, anger management, job training), support for rehabilitation in the United States was dealt a major blow in the mid-1970s with publication of a report that concluded that rehabilitation efforts had no appreciable effect on recidivism. National fiscal restraints, declines in correctional budgets for program development, high public outcry for more severe and longer prison sentences, and a growing crime-control political ideology that focuses on suppression of criminal behaviour rather than its early prevention are current conditions in Western societies that are largely antithetical to the ideas of treatment and rehabilitation (Meithe & Lu, 2004).

#### **2.1.5.5 Restoration**

One of the most recent goals of punishment derives from the principles of restoration. As an alternative to other punishment philosophies (e.g., retribution, incapacitation, rehabilitation), restorative justice fundamentally challenges our way of thinking about

crime and justice. The global victims' rights movement is a relatively new phenomenon, but, the general roots of restorative justice can be traced back to the early legal systems of Western Europe, ancient Hebrew justice, and pre-colonial African societies. Restorative justice literally involves the process of returning to their previous condition all parties involved in or affected by the original misconduct, including victims, offenders, the community, and even possibly the government (Miethe & Lu, 2004).

Under this punishment philosophy, the offender takes full responsibility for the wrongdoing and initiates restitution to the victim. The victim and offender are brought together to develop a mutually beneficial program that helps the victim in the recovery process and provides the offender a means of reducing their risks of re-offending. The theory of Restorative Justice (Braithwaite, 2002), is based on the principles of restorative justice. Offenders take personal responsibility for their actions and condemnation is focused on the deviant act, rather than the offender, and its impact on the victim and the community. Both the offender and the community need to be reintegrated as a result of the harm caused by the criminal behaviour. Community mediation groups, neighbourhood councils, local support groups, and victim-offender conferences are the primary means of achieving these restorative efforts.

The principles of restorative justice have been applied to the study of both criminal and civil sanctions. For example, the institutionalized practice of "written apology" and "letter of forgiveness" in the Japanese criminal justice system is designed to express remorse and make restitution. By accepting the apology, the victim forgives

the offender. In all cases of restorative justice, the goal is to restore both the individual parties and their community's sense of wholeness.

#### **2.1.6 Traditional Penal Systems in Ghana**

Prior to colonialism, indigenous legal arrangement and penal practices existed. Though the traditional legal system exhibited some level of fairness and dynamism, there were certain excesses and abuses. The right to fair trial, for example has long been firmly established in the legal system of many traditional African societies including Ghana. The right means that no one can be punished without proof of wrong doing. This of course requires a thorough examination of accusations or charges. At the lineage level, respected members of the lineage are summoned to try cases that are to examine the evidence and announce a verdict. Membership of this trial body is not permanent. The head of this trial body is the lineage head. Trial at the level of the community or state is the task of the chief's council whose membership was according to established custom, drawn from the heads of the lineages and is, thus, permanent. In performing its task of judging cases, the council served as court (Gyekye, 1996).

According to the Sibanda and Moyana (1999), the Ashanti Confederacy or the *Asanteman* was a Guinea region sovereign state of the Ethnic Akan people of Ashanti, Brong Ahafo, Central, Eastern Region and Western Region currently South Ghana. *Ashanti* are of Akan origin and they were a powerful, militaristic and highly disciplined society of West Africa. Their military power which resulted from good military strategy and an early adoption of European firearms created an empire which stretched from central and present day Benin and Ivory Coast.

Osei (2004) also confirmed that, the Ashanti state was a theocracy state. A theocratic state invokes religious, rather than secular-legal postulates. What the modern day views as crimes, the Ashanti view as sins. In Prehistoric Ashanti, if a chief or king failed to punish crimes which disrespect the ancestors and consequently affect the community, he invokes the anger of the ancestors and is therefore in danger of impeachment. The punishment of such crimes (sins) is death, but this was seldom imposed. A common prehistoric punishment was banishment. The king, among the native Ashanti of Ghana exacts all capital cases. In a murder trial, intent of the victim must be established. If the murder was accidentally committed, the murderer pays compensation to the lineage of the deceased. In a case of cursing the king a valid defence was drunkenness.

Capital crimes included the following: incest, intercourse with a menstruating woman, rape of a married woman, adultery with any of the wives of the king, assaults or insults of a chief or the court of the king. Cursing the king was also considered an unspeakable act punishable by death. One who invokes another to commit such an act is punished by paying a heavy indemnity. Those who practiced sorcery and witchcraft received death by strangling, burning or drowning, but not by decapitation because it was believed that the blood of such people must not be shed.

Families and lineages were allowed to settle disputes, but the king's court was the sentencing court as it was believed that only the king could order any death penalty. Litigants were allowed to orate comprehensively before the elders and the king's court. The litigants could be cross examined by the elders present. Ancestor veneration established the Ashanti moral system, and it provided the principal foundation for governmental sanctions.

Trokosi is a traditional religious or penal practice among the Ewes in Ghana. It is also practiced in Togo and Benin. It required parents to offer their virgin daughters to a traditional shrine to atone for the sins of their ancestors. The criminal code (Amendment) Act 1998, known as the Trokosi law were enacted to protect victims from this prehistoric practice, yet the practice still persists. As a result, some women and children in Ghana are not fully enjoying their constitutionally guaranteed human rights. A Trokosi is a young girl enslaved under the Trokosi system. It has its prehistoric root from the south-eastern part of Ghana where young virgin girls, typically from eight to fifteen years of age, are sent to traditional shrines to live and atone for the crimes of their family members (Vormawor, 2007).

The features of this practice include the confinement of victims. In this case, a priest can keep a Trokosi slave for more than ten years, but depending on the crime or the severity of it, the girl could be kept for her entire life. The slave is kept within the confines of the shrine and is released at will by the traditional priest in charge. Even after her release, the priest may demand her return because she is a lifelong slave of the gods. If a slave dies in captivity the family members of the Trokosi slave may replace her. In case of serious offences such as homicide the family of the slave may be required to send generation after generation of virgin girls to the shrine as punishment. Children born to the Trokosi slaves also become automatic slaves to the gods. Such children are referred to as *Trokosiviwo*. In case of the death of the priest in charge of the shrine, his successor inherits all the slaves in the shrine as well as their children.



Another feature of Trokosi system worth noting is rape and defilement of the victims. The Trokosi slaves are also known as the “wives of the gods”, this implies that the slaves perform sexual functions. Usually the priest does take responsibility of the children he had with the Trokosi slaves (Nirit, 2001). Trokosi practicing societies have the strong believe that when they accept a Trokosi slave back to the society, it will bring misfortune or bad luck to them. As a result, they stigmatize the victims and reject them. Due to that even if Trokosi slaves manage to escape back to the society where they came from, they were not accepted by their families and on top of it all, they were victimized by their societies and returned to the shrines.

The traditional Ga societies also had their penal practices which dated back to pre-colonial times. The Ga territories were originally the plain between the sea and the chain of hills some ten miles inland. Some of these hills were Okaikwei, Adzangote and Lanma. The Ga land was also bounded on the west by the Densu and on the east by the Tsemu Lagoon. The formation of Ga towns occurred on piecemeal basis. Ga traditions maintained that the ancestors of the Gas arrived in separated groups from the east and occupied the hills on the northern boundary of the plain. The Gas moved again at different times and founded the towns of Accra, Osu, Labadi, Teshi, Nungua, Tema and Kpong. The Judicial system of the Ga communities was headed by the Chief *Wulomɔ* or high priest who presided over a council of lesser priests to investigate a matter brought before them and inflicts punishment on guilty party. This council possessed the power of life and death over those under their jurisdiction (Agbodeka, 1971).



From oral traditions as well as from archaeological evidences and findings, it has been discovered that the Mole-Dagbane states of Mamprusi, Dagomba, Gonja as well as the Mossi states of Yatenga and Wagadugu were among the earliest kingdoms to emerge in Northern Ghana being well established by the close of the sixteenth century. The Mossi and Gonja rulers came to speak the languages of the people they dominated. Although the rulers themselves were not initially Muslims, they either brought with them or welcomed Muslims as scribes and medicine men. As a result of their presence, Islam substantially influenced the North- the states of Gonja, Mamprusi and the southernmost outposts of the Mossi kingdoms (Fage, 1964).

According to an article written by Ghana Districts (2006), the political system of the Mole Dangbane states is an interesting blend. The descendants of the invaders occupy the skins as the political heads (e.g. Nayiri among the Mamprusi, Ya Na among the Dagomba), the original inhabitants retain some influence through the Tendana - owners of the land, in the spiritual affairs. The Tendana has charge of the state cult and also ceremonially enskins the Chiefs. The Paramount Chief is the political head of the state-Nayiri among Mamprusi, Ya Na among the Dagombas. He possesses political and judicial powers and is assisted in the administration of the state by the Council of State of Elders who meets periodically to deliberate on issues of great importance.

The sub-chiefs are next, and they are believed to be the descendants of the founding fathers. They take charge of the administration of the provinces and are often consulted on important issues. For effective governance, the Mole-Dagbani states were divided into defined units or districts. With the introduction of Islam, the royal dynasties were converted and Islamic political positions such as Qadi - magistrate,

and Iman - spiritual head, were incorporated into the political structure. To effectively administer social justice, the sub-chiefs exercise judicial powers in their provinces. However, the Ya Na's court has the power to hear appeals from the lower courts i.e. the courts of the sub-chiefs.

### **2.1.7 Contemporary Penal Systems in Ghana**

The Criminal Justice System (CJS) is overseen by the Home Office, the Ministry of Justice and the Attorney General's Office. Its aim is to cut crime, protect the public and bring offenders to justice. It covers the functions of the police, prosecution, courts and judiciary, prisons, youth justice services and probation. It involves the prevention and detection of crime, bringing criminals to justice, and carrying out the orders of the court, such as collecting fines, providing rehabilitation, supervising community orders and providing custodial sentences (HMIC, 2012).

The Ghanaian Contemporary Penal System was derived largely from the British Judicial forms. The court's jurisdiction covers all civil and criminal matters. Ghanaian courts like the British Courts do not use grand juries, but, in accordance with constitutionally guaranteed fundamental rights, defendants charged with a criminal offense are entitled to a trial by jury (Article, 19 of 1992 Constitution of Ghana). The Republican Constitution provides for a Supreme Court and a High Court, which are the Superior Courts of Ghana. The judicial power is conferred on these "Superior Courts" and on such inferior courts as may be provided for by law (Act. 41).

The composition of the Superior Courts from the highest to the lowest is as follows: The Supreme Court of Ghana, the Court of Appeal, the High Court of Justice and the ten Regional Tribunals with one for each of the ten regions of Ghana. The inferior courts include the Circuit Courts, the Magistrate Courts and Special Court such as the

Juvenile Courts (Act.123). The Ghana Traditional Courts on the other hand deals with matters relating to chieftaincy. It is composed of the Judicial Committees of the National House of Chiefs, the Regional House of Chiefs and the traditional courts.

Traditionally, Ghanaians did not have organized penal system like the prisons until the mid-nineteenth century. By 1850, some rough and severe prisons were established by the British Council of Merchants. These prisons were held in forts such as the Cape Coast Castle. Four of these prisons held in their custody 129 inmates who worked in the road gangs. Subsequently, a prison ordinance was formulated in 1860 which outlined regulations for the welfare and safekeeping of prisoners. Other ordinances which were later developed dealt with the nature of the colony's prison regime, penal labour and a minimum diet. The British Colonial Administration took over the country's prisons and engaged Europeans to work as guards in the early 1900s. However, after the Second World War Ghana gradually took over the positions of the then colonial officers and by 1962 the whole prisons Administration was completely taken over by Ghanaians (Aba - Afari, 2011).

According to the Ghana Justice and Rule of law, a discussion paper, 2007:

*“Ghana’s justice system has seen many encouraging developments since the restoration of Civilian Rule 15 years ago, especially since the installation of the current administration in 2001. The usual problems threatening its effectiveness: among others are poor coordination among the different actors in the sector; long delays in hearing cases; a lack of legal aid to help the poor to access justice; overcrowded prisons; and critical allegations of corruption among the police, as well as court staff, including judges and magistrates. However, there have been many interesting and useful*

*initiatives to improve justice system performance, ranging from an increasingly merit based system for appointment of judges, to a rapid expansion of legal aid, and to procedures to reduce delays and promote out-of-court settlements in the higher courts. Both civil society organizations and constitutionally mandated oversight institutions have played an important role in promoting these reforms”.*

Concerning the needed reforms in contemporary penal systems, Lawson (2013) also asserted that, the urgent need for a rethink of the criminal justice system in Ghana can no longer remain either on the drawing board or continue to be just talk show, given the extreme consequences of the current sentencing policy which has failed to go beyond the fines and custodial disposals or thresholds. According to him, several factors account for the high rate of overcrowding in our prison estates. The most significant of all of it is the fact that our sentencing courts have not been provided with many means of alternatives to imprisonment with the exception of the Juvenile Justice delivery system.

Instances of imposing fines on offenders are rendered meaningless, due to non-compliance on the side of the offenders who mostly do not have the financial capacity to respond positively to the court order. The only available option to the court in such cases is custodial sentence. He suggested that to deal with such problems, there should be a paradigm shift initiative that should inform our penal policy. Our contemporary penal policy should be directed towards acknowledging and promoting alternatives to custody. Policy initiatives and programmes of intervention must reflect the United Nation Standard Minimum Rules for Non-Custodial Measures (Tokyo

Rules,1990) and Penal Reform International Conference's objectives which was adopted at its' conference held, (1996); Kampala, Uganda.

Moreover, the Ghana Business News on August, 2009 made a publication of the then Minister of Interior Hon. Cletus Avoka. The minister was addressing a durbar of workers of institutions under the ministry to climax his two day tour of the Volta region, Ho. In his address the minister said, "The time was ripe for a complete revision of the country's penal system to ensure effective modern correctional trends". According to him, it was of no use to send people whose infractions were only misdemeanours to crammed prisons to mingle with hardened criminals when they could do community service as punishment. The minister challenged metropolitan, municipal and district assemblies to come out with correctional modules to meet the exigencies of the time. He wondered why someone could be jailed for six-months for stealing a fowl and be fed and clothed by government while someone who embezzles huge sums of public money would only be reprimanded and given time to refund the amount.

## **2.2 Empirical Study**

### **2.2.1 Effects of Traditional Penal System on the Behaviour of the Youth**

Ghana attained its current name in 1957 when it ceased to be a British Dependency. As a result of 207 years of British domination, from the British Royal African Company administration (1750-1842) to Britain's direct control of the territory (1843-1957), the English legal system permeated every aspect of the social, political, and economic life of the Ghanaian people. Between 1843 and 1925, a British governor and an all-European executive and legislative council made laws for the people of Ghana. During this period, all the laws of Ghana were based on the English legal



system and English normative standards (Ellis, 1971; Goldschmidt, 1981; Kaplan et al., 1971, Nelson, & Whiteker, 1971).

In 1853, an ordinance created courts to handle criminal and civil issues. In 1892, a criminal code was introduced in Ghana. The Criminal Code had originally been drafted in 1877, and was based on the English criminal code and common law tradition (Ellis, 1971; Kaplan et al., 1971; Daniels, 1964; Rubin & Murray, 1964). When Gold Coast became the independent state of Ghana on March 6, 1957, the Independence Constitution created a National Assembly to act as the main law-making body for Ghana. The National Assembly replaced the colonial legislative assembly.

For a bill to become law in Ghana, it is first introduced to the National Assembly. After the bill has passed three readings on the floor of the National Assembly, it is submitted to the President for his approval. For a bill to become an Act of Parliament, and therefore the law of Ghana, the President's approval is required. The President of Ghana also has a right to veto a bill. Over the years, the Ghana Independence Parliament has amended the colonial laws to suit the norms, beliefs, and standards of the Ghanaian people. These changes have included the revocation of English laws that were in opposition to the values of the Ghanaian people.

For traditional Ghanaians, community is much more than simply a social grouping of people bound together by reasons of natural origin and/or deep common interests and values. It is both a society as well as a unity of the visible and invisible worlds; the world of the physically living on the one hand, and the world of the ancestors, divinities and souls of children yet to be born to individual kin-groups. In a wider sense, African traditional community comprehends the totality of the world of African



experience including the physical environment, as well as all spirit beings acknowledged by a given group.

The area of morality is yet another relevant avenue through which traditional Africans try to form people and reinforce in them the important idea and value of harmonious community-living. Every social group evolves its distinct ethical code. Every society has its norms of acceptable behaviour, taboos and prohibitions. Many traditional African groups have in addition, motivational features and incentives through which compliance to the norms of approved behaviour and social ideals are encouraged. There are equally rituals of purification, as well as punitive measures that try to deter and curb the tendency to deviate. Prior to the advent of British imperial rule, traditional law, which sought to maintain social equilibrium and to ensure communal solidarity, governed social relations among Ghana's peoples. Among the Talensi ethnic group of the northern Ghana, for example, homicide was viewed as a transgression against the earth, one's ancestors, and the victim's lineage.

Deterrence from crime or rehabilitation of an offender was not the objective of the legal system. Among the Asante, the same concern with social equilibrium and communal solidarity prevailed. Serious crimes such as murder, unintentional homicide, suicide, sexual offences, treason, cowardice in war, witchcraft, and crimes against the chief were termed as *Omanakiywadi*; offences that threatened the mystical communication between the community, one's ancestors and also the Asante gods. The authorities punished such behaviour with a sentence of death. *Efise*, or minor crimes, did not rupture this relationship; hence, an offender could repay his debt to society with a ritual impact or compensation.

### **2.2.2 Strengths and Weaknesses of Traditional Penal System**

The British imposed upon Ghana's traditional society's criminal laws and penal systems designed to keep the multitude in order rather than to preserve the equilibrium between man and traditional gods. The development of penal laws, however, was uneven. From 1828 to 1842, a council of merchant exercised criminal jurisdiction in and around British forts on the coast. The council often abused the power, thereby alienating many Ghanaians. After creating the colony of the Gold Coast in 1874, the British gradually reformed and improved the legal and the penal systems. After more than a century of legal evolution, the application of traditional law administered by the court system has been stator and based on a criminal code. This code is founded on British common law, doctrines of equity, and the general statutes which were in force in Britain in 1874, as amended by subsequent Ghanaian ordinances (Gavadino & Dignan, 2007).

Besides wars and gang raids, almost every traditional penal system was exploited to obtain slaves. The customary court of traditional rulers devised proceedings that eventually enslaved debtors, delinquents, those who infringed social rules like taboos, and other such minor offenders. Twelve domestic servants became domestic slaves and were later sold to European and Arab slave traders. Shrines which originally served as citadels for reformed criminals, war prisoners and permanently indebted poor people, shrines which served as reformatories, institutions for assimilating and integrating foreigners, turned into underground slave markets. Novices under initiation ended up in slave ships.

### 2.3 The Increasing Crime Rate in Ghana

Crime rate is still on the increase in spite of the various terms of imprisonment imposed on the offenders of the law. According to Dadzie (2010) Swito contends that imprisonment for criminals has three or four possible, sometimes overlapping goals: (a) punishment; (b) rehabilitation (c) prevention (keeping the perpetrators off the streets) and (d) revenge; and these are to deter others from committing similar offences yet, ever since the inception and introduction of imprisonment from the biblical perspective, crime continues to exist and keeps increasing. Currently, there are worse crimes being committed by individuals who are supposed to have been deterred with the introduction of imprisonment by the contemporary penal system. This means that the retribution theory has only limited crime rate and not eradicate it entirely.

Sociologists are of the view that instead of focusing much attention on punishment, attention should rather be focused on reformation and rehabilitation. Reformation is the way of changing the behavioural attitudes in order to lead a better life. There are many ways through which reformation could be executed. It could be done through religious activities, counselling, and referral to clinical psychologists, psycho-analysts and medical officers. The Prisoners, according to the contemporary penal system, are to go through diagnostic processes to know their challenges in order to treat them accordingly and issues that are set to arise after the diagnostic processes may include; psychological, emotional, spiritual and physical challenges (Sutherland & Cressey, 1955).

After the prisoners have been reformed, they are to be rehabilitated. Rehabilitation is the process of equipping the inmates with requisite employable skills so as to become useful citizens in the society after their release from prison. In most cases, when someone commits a crime it is between the state and the offender while the victim is not restored.

The offender goes against the law because he is not heard. That is, the offenders have peculiar challenges that have to be heard and addressed but many a time left unattended to. This buttress to the penologists' assertion that all criminals are sick and they must be treated as such.

In the early ages, in different societies, there were few alternatives to the punitive reaction. The trend during the last century has been towards a social reaction in which the criminal is treated rather than being punished. Criminal behaviour is modified and controlled by means of reformation and rehabilitation. It is believed that imprisonment does not present itself as a proper method of dealing with criminals. Criminals are to be treated physically as sick people, as in every respect they are actually sick (Sutherland & Cressey, 1955).

## **CHAPTER THREE**

### **METHODOLOGY**

#### **3.1 Overview**

This chapter primarily describes the research methodology that was used to gather and analyse the data. It includes the study area, research design, population of the study, choice of sampling method, data collection instruments, data processing, data analysis techniques, pre-testing, reliability and validity of instruments. The methodology chapter was based on Sarantakos (1994) philosophy which states that there is no such thing as a right or wrong research method; rather all methods are potentially useful, relevant and effective.

#### **3.2 Study Area**

The study was conducted in the Ashanti, Central, Greater Accra and Eastern regions of Ghana for validation. The prisons where the research was conducted are Kumasi Central Prison, Kumasi Female Prison, Nsawam Medium Security Prison (Male and Female), Koforidua Local Prison, Ankaful Maximum Prison and Ankaful Main Camp Prison. Other places of research were Appeal Court – Kumasi, High Court 1 – Kumasi, Circuit Court – Accra, High Court – Cape Coast, and Appeal Court – Cape Coast. The traditional institutions covered by the research were the Central Regional House of Chiefs, Agona *Nyakrom* Traditional Council and the *Ninfahene* Palace. .

#### **3.3 Research Design**

The descriptive survey of qualitative research methodology was used for the study. The term ‘survey’ refers to a research methodology designed where data are collected from a specific population, or a sample from that population, and typically utilizes a questionnaire or an interview as the survey instrument (Robson, 1993). Based on the



above prescription, data were obtained from the various Prisons in the country, Police Service, Judicial Service, the Traditional Council and Prisoners (convicts/ex-convicts).

Data were then obtained using structured interviews and in some cases unstructured interviews where both open-ended and close-ended questions helped the researcher to elicit the required data. Furthermore, observation as a research instrument under descriptive research approach was adopted to identify the elements in the trial processes of the traditional and contemporary systems and also assessed their strengths and weaknesses.

The descriptive survey design was adopted mainly to explore the culture of people and explain the relationship between the variables, that is, the traditional and contemporary penal systems.

### **3.4 Population of the Study**

A population in the context of research is a group of individuals, persons, objects, or items from which samples are taken for measurement (Mugo, 1986). Due to the heterogeneous nature of the population for the study and the large number of the personnel of the criminal justice system, the traditional leaders as well as the large numbers of prisoners (convicts/ex-convicts) there was the need to categorize the population for easy analysis. The population of the study was 600 made up of 200 for each category mentioned above.

#### **3.4.1 Target population**

The target population for the study included traditional leaders (116), officials of the Criminal Justice System (Police, Judiciary, Prisons (116), and Prisoners (convicts/ex-convicts, 116). The total target population therefore, was 348. The choice of study



population though stratified, were purposively selected because these three categories of respondents will bring out practical, factual and the in-depth information needed to make good generalizations in the study.

#### **3.4.2 Accessible population**

Potter (1999) asserts that in conducting a descriptive or qualitative study of this nature, it is important to project the size of the population that is both eligible to participate and accessible to the researcher. This estimate of the eligible, accessible population is one basis for judging the feasibility of a proposed study, and it also serves to establish a demographic framework for the analysis.

Again, resource restrictions such as budget constraints, geographical location and time contribute to the need for a limited research population, that is, the accessible population. The researcher realising the fact that it was not practical to obtain data from all the personnel in the criminal justice system, all the traditional leaders in the study areas, and prisoners, it was then necessary to work on an accessible population as a subset of the target group. Consequently, the accessible population for the study were 346 respondents made up of 116 traditional leaders, 116 officials of the criminal justice system and 114 convicts and ex-convicts.

#### **3.5 Sample Selection and Sample Size**

Kerlinger (1986) defines sampling as taking any portion of a target population or universe as a representative of that population or universe. The stratified random sampling and purposive sampling methods were used to select the respondents for the study. A staff list was obtained from the Human Resource Departments of the Police, Courts and Prisons in the study area.

Consequently, stratified random sampling was adopted for the selection of the officials of the Criminal Justice System; purposive sampling method was used for the selection of traditional rulers and judges in the various regions and random sampling for the selection of prisoners (convicts/ ex-convicts). As a result, out of a total 348 respondents who were sampled, 346 respondents were accessed accounting for a response rate of 99.42% (Table3.2).

### **3.5.1 Calculation of Sample Size**

Calculation of the sample size was based on Krejcie and Morgan (1970) formula as cited by Kenpro (2012), which explained that, there are various formulas for calculating the required sample size. This is either based upon whether the data collected is to be (categorical) qualitative or quantitative in nature (e.g. is to estimate a proportion or a mean). These formulas require knowledge of the variance or proportion in the population and a determination as to the maximum desirable error, as well as the acceptable Type I error risk (e.g., confidence level), that is, 95% Confidence Level and Margin of Error at 3.5% or 0.035.

It is worthy to state that, it is possible to use one of them to construct a table that suggests the optimal sample size – given a population size, a specific margin of error, and a desired confidence interval. This can help researchers avoid the formulas altogether. However, to enable other users to understand the computation of sample size for this research, the researcher adopted the formula type to present the results of one set of these calculations. It could be used to determine the appropriate sample size for almost any study.

Krejcie and Morgan (1970) formula as cited by Kenpro, (2012) for determining sample size is indicated below:

$$n = \frac{X^2 * N * P * (1-P)}{(ME^2 * (N-1)) + (X^2 * P * (1-P))}$$

Where :

n = sample size

$X^2$  = Chi – square for the specified confidence level at 1 degree of freedom

N = Population Size

P = population proportion (.50 in this table)

ME = desired Margin of Error (expressed as a proportion)

OR

$$n = \frac{X^2 NP (1-P)}{d^2 (N-1) + X^2 P (1-P)}$$

n = Representative sample size

$X^2$  = the table value of chi-square for 1 degree of freedom at the desired confidence

level 1.962 = (3.841)

N = the population size

P = the population proportion (assumed to be 0.5 since this would provide the representative sample size).

d (Margin of Error) = the degree of accuracy expressed as a proportion.

Substituting data below into the required sample size formula, (n) is computed as:

$$n = \frac{X^2 NP (1-P)}{d^2 (N-1) + X^2 P (1-P)}$$

Where P = 0.5, N=600, X = 1.96,  $X^2 = 3.8416$ , d=0.035

$$n = \frac{1.96^2 \{600 \times 0.5\} (1-0.5)}{0.035^2 (600-1) + \{1.96^2 \times 0.5(1-0.5)\}}$$

$$n = \frac{3.8416(300)(0.5)}{0.00123(599) + \{0.73677 + 3.8416(0.5)(0.5)\}} = 0.9614$$

$$n = \frac{576.24}{0.73677+0.9614}$$

$$n = \frac{576.24}{1.69817}$$

n = 340, (is representative sample size).

The sample size of 340 is therefore required at the analysis stage

### 3.5.2 Analysis of Sample Size for Each Category

**Table 3.1 Table showing the Analysis of the sample size for each category**

Group of Respondents (a)	Population Target (b)	Population Proportion (c*)	Proportion & Sampled Size (d)	Sampled Size of each category (e)
Traditional Leaders	200	0.333	0.333 x 348	116
CJS Officials	200	0.333	0.333 x 348	116
Prisoners	200	0.333	0.333 x 348	116
Total	600	1	–	348

c\*=population target of each category expressed over the target group of 600 (b).

### 3.6 Data Collection Instrument

The survey instruments used to elicit data for the study included questionnaire and interview schedule. Questionnaire is a method in which question/items derived from research questions are written and distributed to solicit the views of the respondents. The questionnaire designed for the research were categorised into three. The first category was that of the traditional leaders, followed by that of the Officials of the Criminal Justice System made up of the staff of the Judiciary Service, Police and the Prisons and lastly that of the convicts and ex-convicts.

Interview schedule denotes sitting down with respondents and asking them predetermined questions (Galegher, Sproull & Kiesler, 1998). Interview schedule was used for respondents who could not read and respond to the questions and had to be assisted while those who could read and write were handed the questionnaire. The interview schedule and questionnaire consisted of closed-ended and open-ended

questions. This was to allow respondents to share their experience and make meaningful contributions towards the study.

The close-ended items mainly sought for the respondents' views on effects of contemporary penal system over the traditional system. It was meant to give the respondents time to provide the appropriate answers to the questions. The close-ended questions also aimed at minimizing the rate of some respondents' failure to respond to some of the questions as a result of time constraints. It allowed respondents to express themselves openly and freely on the various issues. The open-ended questions included responses that required 'Yes' or 'No' responses but these were followed by further explanations.

### **3.7 Primary and Secondary Data**

Leedy and Ormrod (2005) noted that data is said to be primary if it is collected first hand by an inquirer for a determinable purpose whereas secondary data refers to data that has been selected by an inquirer who is not one of the original data creators for a purpose that may be different from that of the original purpose.

Primary data were collected through questionnaire, structured and unstructured interviews. Access was made easy because of the researcher's position as a Director of Ghana Prisons Service. This enabled him to contact most officials in higher positions of the Criminal Justice System, Chiefs and other outfits to seek their approval to collect the data needed. Even though some of the facilities were sensitive in nature, the researcher's approach to the respondents was cordial. It was believed that the respondents would not have opened up so readily to a stranger in respect to certain sensitive, security questions and observations.



The secondary data were also collected from documented sources including reports, theses, journals and internet, standing orders of the Ghana Prisons Service, the constitution of Ghana, prison regulations, criminal codes and books on culture.

### 3.8. Data Processing

After data were collected, they were reviewed for consistency. A coding manual was constructed for the translation of responses in the questionnaire and structured interviews into numbers to facilitate analysis.

### 3.9 Data Analysis Techniques

The data analysis consisted of coding. It was created for the purposes of analysis of primary data. Frequency Tables were used for the presentation of the respondents' information and responses.

**Table 3.2: The response rate of respondents**

<b>Respondents</b>	<b>Sample size</b>	<b>Total respondents</b>	<b>Response rate (%)</b>
Traditional Leaders	116	116	100
Officials of Criminal Justice System	116	116	100
Prisoners	116	114	98.28
Total	348	346	99.42



The compositions of the total number of 116 traditional leaders are as follows: 1 respondent from the national house of chiefs and 1 paramount chief; 11 chiefs; 54 heads of families and 15 queen mothers; 34 sub-chiefs and other traditional leaders (elders, spokesmen).

The officials of the Criminal Justice System also comprised 1 Supreme Court Judge, 1 Appeal Court Judge, 2 High Court Judges, 2 Circuit Court Judges, 4 State Attorneys, 5 Registrars of Court, and 15 other Judicial Staff, 36 Police Officers and 50 Prison Officers.

In all, total number of prisoners were 116 out of which 114 (20 females and 94 males) were respondents.

### **3.10 Pre-Testing of the Instruments**

The interview questions and the questionnaire were critically assessed by academic experts including lecturers, a prison officer and a lawyer. During the process, the items were scrutinized for ambiguous words and questions, relevance of questions and sensitive information. A hard copy was pre-tried with few respondents of all the categories in the target population with 20 prisoners, 10 prison officers, 2 chiefs, 2 lecturers and 2 court officials.

There were a number of reasons for the pre-testing. These included making sure whether the questions clearly relate to the objectives of the study or not, finding out whether the items were made up of good mixture of questions such as probing, direct, multiple choices, open and close ended questions. There was the need to determine the relevance of the questions to the respondents. Pre-testing again, was done to detect whether the language used was clear, comprehensible and to remove all ambiguous words and modify some of the items where necessary in for improvement.

The researcher established the face validity of the instruments. This was achieved by making sure that the items measured what the instrument was designed for. The researcher thus ensured that items were clearly understood by the respondents so as to prevent ambiguity during the data collection in the main survey. Consequently, the researcher had an opportunity to have an idea and deal with problems which were likely to be encountered in the course of the study and, the approximate time needed by the interviewer and the interviewees to complete the main interview to be established.

### **3.11 Reliability of Instruments**

In order to approximate the reliability of the instruments, which meant the ideal situation of consistency and the quality of the instruments to produce the same results when employed under the same conditions, the research process was carefully described. Data sources, both primary and secondary, have been listed. The data collection instruments and processes have been explained. In addition to these, interview schedules for the study have also been provided.

### **3.12 Validity of Instruments**

Efforts were made to ensure that the instruments were valid, meaning that the instruments had the capacity to measure what it was intended for. There are two sides to the aspect of validity. For this research, internal validity was ensured in several ways.

The first attempt at ensuring internal validity was done by constructing a design that would avoid as many errors as possible. For example, the study objectives were clearly stated and the categories of data were made easy to identify.

Secondly, the respondents selected for the field work, were made up of those who were experienced and knowledgeable in their areas of specialty, they had the experience and were able to provide the needed information expected of them. The researcher was always in touch with the experienced respondents and most of the envisaged problems were dealt with at the pre-testing stage so that the results of the study could not be affected.

The third measure of ensuring validity was the fact that the pre-testing was undertaken twice, with all the comments of the authorities incorporated into the final revised instruments.

The fourth attempt at ensuring the internal validity was by making sure that the items used did measure the content they are intended to measure and were based on the objectives of the study. Internal validity was again ensured through consistently checking the data collected against the stated objectives of the study.

External validity is concerned with the fact that the results of the study can be generalized to a wider context beyond the immediate case studied. An attempt was made to cover the cultures of some ethnic groups in Ghana. The findings have also been examined and comparisons made in the light of the existing literature.

### **3.13 Confidentiality**

The researcher provided a cover letter to the respondents and assured them that their answers will remain confidential and only a group summary will be reported. The purpose and expected outcome of the study were explained to the respondents by the researcher before giving the questionnaire to them.

The questionnaire included such information explaining the background and reasons for seeking such information. It was anticipated that this sort of engagement with the respondents would encourage them to give genuine and precise responses. The respondents from each organization, who were randomly selected, were provided with the survey and allowed to complete it at their own free time within a week. The researcher then went round to collect the questionnaire after the one week period had elapsed.

Zikmund (2003) asserts that, questionnaire are a simple yet effective research tool. Questionnaires are cost effective and they reduce distortions in data resulting from any 'interviewer biases' introduced during the interview process. Since the research aimed to discover deeply held personal attitudes and beliefs, some of which may be sensitive in nature, the anonymous nature of the questionnaire allowed respondents to express their inner beliefs, attitudes, and perceptions freely.

The questionnaires were pre-tried before being administered. This was done to make room for comments and suggestions about the length of the instrument, instructions, specific items and the preparation of a cover letter. Blumberg, Cooper and Schindler (2005) assert that a researcher should do a pilot study of data gathering tools before proceeding with the research. A pilot test helps in identifying problems in research methodology and data gathering techniques. A pilot study was conducted among respondents from the target population to evaluate the survey questionnaire for eligibility, ambiguity, contextual meaning, legal and cultural accuracy of its content.

In all, 348 copies of the questionnaire were administered. In the case of respondents who could not read and write, the questionnaire were read to them and their responses were put down in their respective columns. However, those who could read and write

were allowed to answer on their own. The questionnaire again was also administered to experience Judges/Magistrates, State Attorneys, Lawyers, Social Workers (After Care Agents), Police Officers, Prison Officers, Prisoners (convicts and ex-convicts). The researcher distributed the questionnaire himself and collected them within a specified time. In all, 230 copies of completed questionnaire out of 348 distributed were obtained and 116 respondents consisting of some prisoners and some traditional leaders were interviewed. Two respondents from prisoners' category specifically, ex-convicts declined to respond to the questionnaire.



## CHAPTER FOUR

### DATA ANALYSIS AND INTERPRETATION

#### 4.1 Overview

This chapter contains analysis and interpretation of data that were gathered from the field. As indicated in Chapter Three, the respondents were categorised into three A, B and C –Traditional Leaders, Officials of Criminal Justice System and Prisoners (convicts and ex-convicts) respectively. The respondents from category A and B were 116 each and Category C respondents were 114. The issues discussed here include background information of the respondents, the strengths and weaknesses of the traditional penal system and contemporary penal system, the effects of the contemporary penal system on the Ghanaian culture as well as the vital aspects of the traditional penal system which could be incorporated into the contemporary system.

#### 4.2 Traditional Leaders

##### 4.2.1 Background Information of Respondents

On the gender distribution of respondents it was observed that most of the respondents are males 77.59% while 22.41% are females as seen in Table 4.1.

**Table 4.1: Sex of respondents**

Sex	Frequency	Percent (%)
Male	90	77.59
Female	26	22.41
<b>Total</b>	<b>116</b>	<b>100.00</b>

**Source: Field survey, 2014**



The age of respondents as shown in Table 4.2 ranges from 26 to over 50 years. It could further be seen in Table 4.2 that age above 50 years topped this list with 43.1 % of respondents. This is followed by 40-50 years that formed 28.4%, 36-40 years formed 24.1%, 26-30 years formed 2.6% whilst age 31-35 years formed 1.7%.

**Table 4.2: Age of respondents**

Age	Frequency	Percent (%)
26-30 years	3	2.6
31-35 years	2	1.7
36-40 years	28	24.1
40-50 years	33	28.4
Above 50 years	50	43.1
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.3, 62.1% of the respondents are Asantes, 19.0% of the respondents are from other ethnic groups (Dagati, Northerners, Guan, Akyem and Asante Akyem, Nzema, Huasa, Chama and Gonja), and 12.1% of the respondents are Fantes while 6.9% of the respondents are Ewes.

**Table 4.3: Ethnic groups of respondents**

Ethnic	Frequency	Percent (%)
Fante	14	12.1
Ashanti	72	62.1
Ewe	8	6.9
Others	22	19.0
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

It can be seen in Table 4.4 that majority of the respondents had secondary education. Those who had secondary education formed 58.62%. This was followed by those with tertiary education 25%, primary and JHS education 8.62% and no formal education 7.76%.

**Table 4.4: Level of education**

<b>Educational level</b>	<b>Frequency</b>	<b>Percent (%)</b>
No formal education	9	7.76
Primary/JHS	10	8.62
Secondary/ SHS	68	58.62
Tertiary	29	25.00
<b>Total</b>	<b>116</b>	<b>100.00</b>

**Source: Field survey, 2014**

Respondents were asked in Table 4.5 what they know about the traditional penal system in Ghana. 25.9% of respondents said it was a system where people who default the rules of the land are made to do manual work or banished from the communities. It is the system whereby traditional rulers punish people according to the laws of their lands accounted for 21.6%. It is made up of juvenile/borstal, female and male who are offenders of the law are incarcerated for rehabilitation also had 21.6% of respondents saying this. Again, 15.5% responded by saying it is punishment accorded to certain offences after the trial of the offender presided over by the traditional rulers. Another similar view was shared by 10.3% as when traditional rulers impose punishments on offenders or those who break the laws of the community. The last of the responses, it is a system made up of sub-chiefs, queens and elders who sit on cases within their jurisdictions and give judgement stood at 5.2%.

**Table 4.5: Knowledge about the Traditional Penal System in Ghana**

<b>Knowledge about the traditional penal system</b>	<b>Frequency</b>	<b>Percent (%)</b>
It is the system whereby Traditional rulers punish people according to the laws of their lands	25	21.6
It is where people who fault are to do manual work or even banished from the communities	30	25.9
It is punishment accorded to certain offences after the trial of the offender presided over by the traditional rulers	18	15.5
It is a system made up of sub-chiefs, queens and elders who sit on cases within their jurisdictions and give judgement	6	5.2
It is made up of Juvenile/Borstal, Female and Male who are offenders of the law are incarcerated for rehabilitation	25	21.6
A system where the traditional rulers impose punishments on offenders or those who break the laws of the community	12	10.3
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.6 shows some of the traditional offences listed by respondents. From Table 4.4, some of the traditional offences listed by respondents are detailed. Also included are the respective percentages. Stealing 6%; murder 18.9%, rape and incest 14.7%, fighting and having sex with animals 18.1%; Adultery and fornication 12.9%, going to farm on festival days 14.7%, disrespecting elders 12.9% and the least of the traditional offences listed was not attending communal labour by 1.7% of the respondents.

**Table 4.6: List of Traditional Offences**

<b>Traditional Offences</b>	<b>Frequency</b>	<b>Percent (%)</b>
Disrespecting Elders	15	12.9
Not attending communal labour	2	1.7
Murder	22	18.9
Adultery and fornication cases	15	12.9
Rape and incest	17	14.7
Fighting and having sex with animals	21	18.1
Going to farm on festival days	17	14.7
Stealing	7	6.0
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.7 shows the punishments accorded the offences from the perspective of the respondents and their corresponding percentages in responses. Banishment was listed by 25% of respondents; compensation to the victims, the affected families or communities 21.55% of respondents mentioning it; fines was also listed by 27.59% of respondents, while compulsory communal labour was stated by 17.24% respondents and lastly, 8.62% respondents listed imprisonment.

**Table 4.7: Punishments accorded to the offences**

<b>Punishments accorded to the offences</b>	<b>Frequency</b>	<b>Percent (%)</b>
Imprisonment	10	8.62
Fines of any amount	32	27.59
Banishment	29	25.00
Compulsory communal labour	20	17.24
Compensation to the victims, the affected families or communities	25	21.55
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.8 shows the social effects of the traditional penal system on the life of a convict. These effects include ostracise and shame to the family of the convict was listed by 25.86% of the respondents; lack of respect had 22.41% respondents mentioning it; it affects moral life represented 14.66% per responses; further, relationships with friends, spouses and others are affected gained 12.07% of the responses; emotional or psychological problems 13.79% in responses provided; loneliness was listed by 7.76% and lastly, people look down on them and therefore they do not often attend social gathering came from 3.45% of the respondents.

**Table 4.8: Social effects of the traditional penal system on the life of convict/ex-convict**

<b>Social effect of the traditional penal system on the life of convict/ex-convict</b>	<b>Frequency</b>	<b>Percent (%)</b>
People look down on them and therefore they do not often attend social gathering	4	3.45
Lack of respect	26	22.41
It affects moral life	17	14.66
Relationship with friends, spouses etc. are affected	14	12.07
Emotional or psychological problems(Stigmatization)	16	13.79
Ostracise and shame to the family of the convict	30	25.86
Loneliness	9	7.76
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.9 shows the political effect of the traditional penal system on the life of the convict/ex-convict. To begin with, 52.59% of the respondents stated that, convict cannot hold any political position; another 19.83% responded they cannot be chiefs; yet again, 15.52% stated the effect of not to be allowed to work in public sector and lastly, the inability to lead any organised political group was mentioned by 12.06% of the respondents.



**Table 4.9: Political effects of the traditional penal system on the life of convict/ex-convict**

<b>Political effect of the traditional penal system on the life of convict/ex-convict</b>	<b>Frequency</b>	<b>Percent (%)</b>
They cannot hold political position	61	52.59
Such people are not allowed to work in public Sector	8	15.52
Cannot be a Chief	23	19.83
Cannot lead any organised political group	14	12.06
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.10, the religious effect of the traditional penal system on the life of convict/ex-convict are: 15.52% responded that people know the consequences after committing any crime so they vow not to commit further crime, in other words they tend to repent from sinful act. Again, 13.79% of the respondents cited that though they can be pastors, they will not be trusted as a religious figure; the effect of building their spiritual life and tend to know God better had 40.52% in responses provided and the remainder 30.17%, cited trust and hope in God being enhanced.

**Table 4.10: Religious effects of the traditional penal system on the life of convict/ex-convict**

<b>Religious Effect of the traditional penal system on the life of convict/ex-convict</b>	<b>Frequency</b>	<b>Percent (%)</b>
Builds our spiritual life and tend to know God better	47	40.52
People repent from their sinful act	18	15.52
Will not be trusted as a religious figure	16	13.79
Trust and hope in God enhanced	35	30.17
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Respondents gave reasons for preventing an offender from holding a key position in the society in Table 4.11. One of the main reasons is shared by 37.1% of respondents was that they will lead the people astray in the community. Another reason is that such persons may not abide by rules and regulations had the backing of 31.9% respondents. Other reasons professed are that; they cannot set good record for the people to emulate by 15.5% respondents, people holding key positions in the society must be role models and offenders are not role models by 9.5% respondents and they do not have leadership qualities or good character to lead by 6.0%.

**Table 4.11: Reason(s) for preventing an ex-convict/convict from holding a key position in the society**

Reason for preventing an ex-convict/convict from holding a key position in the society	Frequency	Percent (%)
People holding key position in the society are role models and offenders are not	11	9.5
They would not set good record for the people to emulate	18	15.5
Would lead the people astray	43	37.1
Would not abide by rules and regulations	37	31.9
They lack leadership qualities or good character	7	6.0
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.12 shows responses to some of the offences that cannot be handled by the traditional leaders in modern times. They are murder, rape and defilement 43.1% being the highest, followed by armed robbery with 19.0% of the respondents affirming it; 17.2% of the respondents also cited bribery and corruption, political cases was mentioned by 11.2% and lastly, the least of respondents, 9.5% stated narcotic cases.

**Table 4.12: Some offences that cannot be handled by the traditional leaders in modern times**

Offences that cannot be handled by the traditional leaders in modern times	Frequency	Percent (%)
Armed robbery	22	19.0
Narcotics	11	9.5
Bribery and Corruption	20	17.2
Political cases	13	11.2
Murder /Rape/Defilement	50	43.1
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.13 shows responses some to the advantages of the traditional penal system on the Ghanaian culture. Among the respondents 3.45% stated discipline, peaceful living and respectfulness; being reconciliatory restores social harmony and promotes unity and culture came from 22.41%; again, simple complain mechanism and less costly came from 25.86%, quick trial gained 26.72%; ensures collective responsibility and gives the traditional rulers more power also had 3.4% stating it. Furthermore, the system being non-corruptible was posted by 3.45% respondents; fear of supernatural powers, ancestors, and traditional deities in award of sanctions also scored 9.48 % per responses; preserve equilibrium between man and traditional gods recorded the least in responses with 1.72% and lastly, being fair and dynamic had 3.45% respondents mentioning it.

**Table 4.13: Some advantages of the traditional penal system on the Ghanaian culture**

<b>Advantages of the traditional penal system on the Ghanaian culture</b>	<b>Frequency</b>	<b>Percent (%)</b>
Fairness and dynamism	4	3.45
Preserve equilibrium between man and the traditional gods	2	1.72
Reconciliatory, restores social harmony and promotes unity and culture	26	22.41
Simple complain mechanism and less costly	30	25.86
Quick trial	31	26.72
Discipline, peaceful and respectfulness	4	3.45
Fear of supernatural powers, ancestors, and traditional deities in award of sanctions	11	9.48
Non-corruptible	4	3.45
<b>Total</b>	<b>116</b>	<b>100.0</b>

Source: Field survey, 2014

Table 4.14 shows the disadvantages of the traditional penal system. The responses include traditional rulers can give unfair judgement and are dictators by 21.6% respondents; also 20.7% responded saying people lose their lives because of minor offences; again, 11.2% respondents said it brings about biases and that, people could be punished out of proportion i.e. some of the punishments are severe; serious interruptions in adjudicating cases since there is no formal procedure governing their proceedings ; no obligations for offenders to undergo rehabilitation programmes; people do not have the chance to appeal against conviction, adjudication may be autocratic and offenders have no legal representation and some sub-chiefs do not having power to try all forms of cases was cited as a disadvantage by 10.3%. Lastly,

5.2% respondents cited instances of false accusation since there is no mechanism for investigations as another disadvantage.

**Table 4.14: Some disadvantages of the traditional penal system**

<b>Disadvantages of the traditional penal system</b>	<b>Frequency</b>	<b>Percent (%)</b>
The traditional rulers can give unfair judgement as they are dictators- (' <i>Opanin nni fo</i> ') tradition and offenders have no legal representatives.	25	21.6
People lose their lives because of minor offence	24	20.7
It brings about biases and people could be punished out of proportion, i.e. some of the punishments are severe	13	11.2
Some of the sub-chiefs do not have power to try all forms of cases	12	10.3
Serious interruptions in adjudicating cases since there is no formal procedure governing their proceedings	12	10.3
No obligations for offenders rehabilitation programmes	12	10.3
One can falsely be accused since there is no mechanism for investigations	6	5.2
No chance to appeal against conviction, adjudication may be autocratic and offenders have no legal representation	12	10.3
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.15 shows the list of advantages of the contemporary penal system on the Ghanaian culture as stated by respondents and its respective response rates. They are discipline, and helps citizens to be law abiding 28.45%; prevention of crime 15.52%; ensures peace and peaceful living 14.66%; protects and respects the rights of people 25.86%; ensures sustainable development 9.5%;, change in crime detection 3.45% and lastly, a change from brutal system to a humane system 6.03%.



**Table 4.15: Some advantages of the contemporary penal system on the Ghanaian culture**

<b>Advantages of the contemporary penal system on the Ghanaian culture</b>	<b>Frequency</b>	<b>Percent (%)</b>
It ensures sustainable development	7	6.03
Ensures peace and peaceful living	17	14.66
Ensures discipline, order and helps citizens to be law abiding	33	28.45
Protects and respects the rights of people	30	25.86
Prevents crime	18	15.52
A change from a heavy and brutal system to a lesser and a more humane system	7	6.03
Detection of crime has changed	4	3.45
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.16 shows the disadvantages of the contemporary penal system as reported by respondent. 24.1% of the respondents said that the courts do not judge based on truth but the law. So if you do not argue your case well in court you will end up losing your case. Again, 20.8% of the respondents stated that the penal system is always bureaucratic, cumbersome trial procedures and long delay of trial process. 13.8% of the respondents maintained that the system is corrupt and sometimes gives unfair judgement. Some of the cases do not demand high or long sentence but they give and government has to feed them for so many years causing financial loss to the state 6.7%. The contemporary penal system is too harsh with some judgements, give long

sentences and have limited sentencing policy 15.51%. The contemporary penal system cannot reform anyone 11.2%. Offenders can easily have their way if they get good lawyers to defend them in court notwithstanding the commissioning of the offence 14.66%.

**Table 4.16: Some disadvantages of the contemporary penal system**

<b>Disadvantages of the contemporary penal system</b>	<b>Frequency</b>	<b>Percent (%)</b>
They do not judge based on the truth but on the technicalities of the law.	20	17.24
This type of penal system cannot reform anyone	13	11.2
Long sentences cause financial lost to the state	8	6.7
The penal system is always bureaucratic, cumbersome trial procedures and long delay of trial process	24	20.8
The system is too harsh, give long sentences and have limited sentencing policy	18	15.51
Offenders can easily have their way if they get good lawyers to defend them in court notwithstanding the commissioning of the offence	17	14.66
The system is corrupt and sometimes gives unfair judgement	16	13.8
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.17, 79.31% of the respondents said the contemporary penal system has helped in the improvement of the behavioural attitudes of Ghanaians whiles the rest 20.69% said it has not improved the behavioural attitudes of Ghanaians.

**Table 4.17 Contemporary penal system and its' effect on the behaviour of  
Ghanaians**

<b>Contemporary penal system and the improvement of the behavioural attitudes of Ghanaians</b>	<b>Frequency</b>	<b>Percent (%)</b>
Yes	92	79.31
No	24	20.69
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.18 shows the improvements that can occur in the behavioural attitudes of Ghanaians. 40.2% of the respondents stated that the contemporary penal system provides education on the rights of people, 27.2% said the system provides rehabilitation programmes and requisite skills to the offenders to be self-employed after their discharge, long period of incarceration and sentencing policy deter people from stealing and committing other crimes had 19.6%, introduction of formal education in prisons scored 6.5%, and moral and religious education gained 6.5%.

**Table 4.18: Reasons for the improvement of behaviour of Ghanaians**

<b>Reason for Improvements of behaviour/attitude of Ghanaians</b>	<b>Frequency</b>	<b>Percent (%)</b>
Long period of incarceration and sentencing policy deters people from stealing and committing other crimes	18	19.6
Education on their rights of people	37	40.2
Provision of rehabilitation programmes and requisite skills to convicts to be self-employed after their discharge	25	27.2
Moral and religious education	6	6.5
Introduction of formal education in prisons	6	6.5
<b>Total</b>	<b>92</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.19 illustrates some of the things that have not helped in the improvement of the behavioural attitudes of Ghanaians. The youth have been given too much right and therefore do not regard or respect the elderly had 50.0% in responses. The second item, partiality in the handling and dealing with some cases effectively in the court; consequently people do not trust the courts and often take law into their own hands and misbehave also received 50.0% of the responses.

**Table 4.19: Reasons for the decline in the criminal behaviour of Ghanaians**

Things that have not helped in the improvement of the behavioural attitudes of Ghanaians	Frequency	Percent (%)
The youth have been given too much right and therefore do not regard or respect the elderly	12	50.0
Partiality in the handling and dealing with some cases effectively in court and mistrust in court system	12	50.0
<b>Total</b>	<b>24</b>	<b>100.0</b>

**Source: Field survey, 2014**

Respondents were asked if they prefer the traditional penal system to the contemporary system. In Table 4.20, 50.00% of respondents said they do not prefer the traditional penal system to the contemporary system while 48.3% said they prefer the traditional penal system to the contemporary system and 1.7% of them could not make a choice.

**Table 4.20: Preference for traditional penal system over the contemporary penal system**

<b>Preference for traditional penal system over the contemporary penal system</b>	<b>Frequency</b>	<b>Percent (%)</b>
Yes	56	48.3
No	58	50.0
Neutral	2	1.7
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.21 shows the reasons why respondents prefer the traditional penal system to the contemporary system. To begin with, 35.71% of the respondents said the traditional penal system is not expensive, has fast trial process and fast in passing judgement. Again, 17.86% respondents preferred the traditional penal system because it is based on customary laws and it helps people to know how to respect our elders. Furthermore, 21.43% of respondents again, prefer same since the traditional aspect had flexible rule of evidence and procedure. Respondents accounting for 8.93% equally preferred the traditional system as judges give fair judgement. Finally, the remaining 16.33% of the respondents have a preference for the traditional penal system because it controls and minimises criminal's behaviour of people in the communities.

**Table 4.21: Reasons for the preference for the traditional penal system**

Reasons why respondents prefer the traditional penal system to the contemporary system	Frequency	Percent (%)
The traditional penal system is not expensive, fast trial process and fast in passing judgement	20	35.71
Flexible rules of evidence and procedure	12	21.43
Based on customary laws and it helps people to know how to respect our elders	10	17.86
Traditional system judges give fair judgement	5	8.93
It controls and minimises criminal behaviour in the communities.	9	16.13
<b>Total</b>	<b>56</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.22, presents respondents responses for reasons why they do not prefer the traditional penal system to the contemporary system. 44.8% of the respondents said they do not prefer the traditional penal system because of the brutal and inhumane system (trial by ordeal); 31.1% also gave the reason that the incorporation of traditional deities as component of trial process in award of sanctions is not the best, another reason, there is no professional legal representation for offenders had 13.8% in response rate and records of offenders not being confidential had 10.3% of respondents choosing it.



**Table 4.22: Reasons for not preferring the traditional penal system**

Preference for traditional penal system to the contemporary system	Frequency	Percent (%)
Records of offenders are not confidential	6	10.3
Brutal and inhumane system(trial by ordeal)	26	44.8
No professional legal representation for offenders	8	13.8
Incorporation of traditional deities as component of trial process and in award of sanctions is not the best.	18	31.1
<b>Total</b>	<b>58</b>	<b>100</b>

**Source: Field survey, 2014**

In table 4.23, respondents responses to if there have been any changes in the traditional penal system in Ghana is presented. 83.6% of them said there have been changes in the penal system in Ghana and the rest 16.4% said there have not been any changes in the penal system in Ghana.

**Table 4.23: Some changes in the traditional penal system in Ghana**

Changes in the penal system in Ghana	Frequency	Percent (%)
Yes	104	89.6
No	12	10.4
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.24 illustrates some of the changes observed in the penal system in Ghana. The introduction of court and prisons gained a response rate of 28.8%, banishment as punishment been abolished and emphasis now on reformation and rehabilitation received 30.8% as a response rate, 17.3% of the respondents saw criminal cases no more handled by the traditional authorities but the law courts as a change, the system been corrupted by the influence of the affluent in the society thus the poor are always

the one's guilty had 11.5% going in for it and traditional rulers not having much power now accounted for 11.5% of the responses.

**Table 4.24: Changes observed in the traditional penal system**

Changes observed in the penal system	Frequency	Percent (%)
The traditional rulers do not have much power now	12	11.5
The introduction of court and prisons	30	28.8
Banishment as punishment has been abolished and emphasis is now on reformation and rehabilitation	32	30.8
The system has been corrupted by the influence of the affluent in the society thus the poor are always the one's guilty	12	11.5
Criminal cases are no more handled by the traditional authorities but the law courts	18	17.3
<b>Total</b>	<b>104.00</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.25 presents results of “no” change observed in the traditional penal system. 50% of the respondents said nothing has changed in the penal system and the rest said the old traditional way of the penal system continues to exist.

**Table 4.25: No change observed in the traditional penal system**

Observations for existence of the old penal system	Frequency	Percent (%)
Nothing has changed in the penal system	6	50.0
The old traditional way of the penal system continues to exist	6	50.0
<b>Total</b>	<b>12</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.26, 82.69% of the respondents said they think these changes have effect on the Ghanaian culture and 17.31% of them responded these changes have no effect on the Ghanaian culture.

**Table 4.26: Enquiry of effects of the changes on the Ghanaian culture**

Effect of the changes on Ghanaian culture	Frequency	Percent (%)
Yes	86	82.69
No	18	17.31
<b>Total</b>	<b>104</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.27 illustrates some of the effects of the changes of the penal system on the Ghanaian culture. People do not abide by the traditional rules and taboos but rather abide by the constitution had 30.2% of respondents going for it; the chiefs or traditional rulers are not respected as it used to be accounted for 20.9% of responses; 7.00% of respondents believed psychological consequences of prison and overcrowding has brought about in the change on Ghanaian culture; respect and protection for fundamental human rights of the people improved also had 14.0% by way of response; reducing the fear that people have at first with the elderly gained 7.0% in response and side-lining and taken away the authority and power from chiefs and elders as an effect received 20.9% in response.

**Table 4.27: Some specific effects on the Ghanaian culture**

Reasons of the effects of changes on the Ghanaian culture	Frequency	Percent (%)
People do not abide by the traditional rules and taboos but rather abide by the constitution	26	30.2
The Chiefs or traditional rulers are not respected as it used to be	18	20.9
Respect and protection for fundamental human rights of the people improved	12	14.0
Psychological consequences of prison and overcrowding	6	7.0
It has reduced the fear that people have at first with the elderly	6	7.0
It has side-lined and taken away the authority and power from chiefs and elders	18	20.9
<b>Total</b>	<b>86</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.28 presents results on reasons for no specific effect of change on the Ghanaian culture. 66.7% of the respondents said they think the traditional court system is in place and they adjudicate on cases every day and 33.3% of sighed with the change in punishment has no effect on Ghanaian culture.

**Table 4.28: Reasons for no specific effect of change on the Ghanaian culture**

Reasons for no effect of the changes on the Ghanaian culture	Frequency	Percent (%)
The traditional court system is in place and they adjudicate on cases everyday	12	66.7
A change in punishment has no effect on culture	6	33.3
<b>Total</b>	<b>18</b>	<b>100.0</b>

**Source: Field survey, 2014**

The Table 4.29 shows results of what caused the changes in the penal systems in Ghana. 25% of respondents went in for education; 28.85% for western world penal system; and 30.77% for legislation and lastly, 15.38% chose human behaviour as a cause for the changes in the Ghanaian penal systems.

**Table 4.29: Causes of the changes in the penal systems of Ghana**

<b>Causes of changes in the penal systems in Ghana</b>	<b>Frequency</b>	<b>Percent (%)</b>
Human behaviour	16	15.38
Western world penal system	30	28.85
Education	26	25.0
Legislation	32	30.77
<b>Total</b>	<b>104</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.30, all the respondents said that the contemporary penal systems are beneficial to the Ghanaians.

**Table 4.30: Enquiry of benefits of the contemporary penal systems to the Ghanaians**

<b>Benefits of contemporary penal system to Ghanaians</b>	<b>Frequency</b>	<b>Percent (%)</b>
Yes	104	100.0

**Source: Field survey, 2014**

Table 4.31 illustrates how the changes in the penal system have been beneficial. 23.1% of respondents believed it has done away with practices of human sacrifices and other wicked punishment due to the modern constitution. Also, protecting human rights of the people had 23.1% in response; it has reduced the work of the chiefs when

it comes to administering sanctions to culprits gained 24.0% of the responses; the new penal system allows culprits to be confined in a building called prison had 11.5% as response rate and it given respect to the elders and chiefs within their respective towns and cities had 5.8% of respondents affirming it.

**Table 4.31: Some specific benefits of the contemporary penal systems to Ghanaians**

Practices that make contemporary penal systems beneficial to Ghanaians	Frequency	Percent (%)
No more practices of human sacrifices and other wicked punishment due to the modern constitution	24	23.1
Protects human rights of people	24	23.1
It has reduced the work of the chiefs when it comes to administering sanctions to culprit	25	24.0
The new penal system allows culprits to be confined in a building called prison	12	11.5
It gives respect to the elders and chiefs within their respective towns and cities	6	5.8
It has changed some of our culture which were believed to be bad and abnormal (e.g.), Trokosi	13	12.5
<b>Total</b>	<b>104</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.32, 82.7% of the respondents said the contemporary penal systems have effects on the Ghanaian culture while 17.3% of them believed the contemporary penal systems have no effect on the Ghanaian culture.



**Table 4.32 Enquiry of effects of the contemporary penal systems on the Ghanaian culture**

Effects of Contemporary penal systems on the Ghanaian culture	Frequency	Percent (%)
Yes	86	82.7
No	18	17.3
<b>Total</b>	<b>104</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.33 displays the effects observed by respondents. Some of the effects responded to include the powers of the chiefs are deflated had 34.88% by way of response rate; the culture united Ghanaians through their rulers and Chiefs but now Ghanaians are not united had 22.1% of respondents affirming it; most cases are no more settled in the palace but in court and the traditional rulers are side-lined gained 13.95% in response rate; it has brought about peaceful coexistence among Ghanaians accounted for 15.12% of responses and it has shaped and corrected some cultural practices had 13.95% of respondents going for it.

**Table 4.33: Some effects observed**

Some effects observed	Frequency	Percent (%)
Culture united Ghanaians through their rulers and chiefs but now the Ghanaians are not united	19	22.1
Most cases are no more settled in the palace but in court and the traditional rulers are side-lined	12	13.95
The powers of the chiefs are deflated	30	34.88
It has brought about peaceful coexistence among the Ghanaians	13	15.12
It has shaped and corrected some cultural practices	12	13.95
<b>Total</b>	<b>86</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.34, 84.5% of the respondents said the changes in the penal systems in Ghana caused changes in the behaviour of the people and 15.5% of them responded the changes in the penal systems in Ghana have not caused changes in the behaviour of the people.

**Table 4.34: Enquiry of effects of the penal systems on the behaviour of Ghanaians**

<b>Responses</b>	<b>Frequency</b>	<b>Percent (%)</b>
Yes	98	84.5
No	18	15.5
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.35 illustrates some of the changes the respondents observed in the behaviour of the people. 31.6% of respondents observed change in behaviour through as there is respect for fundamental human rights of the people due to legal representation; people now have respect for the law gained 25.5% of the responses; indecent dressing and conduct by the youth scored 12.2% of the responses; the traditional penal system was harsh and therefore made people fear to break the law received 12.2% as a response rate; when people commit crime and defend themselves well in court they can be set free had 12.2% of respondents going for it and lastly, reduction in crime had 6.1% of the respondents backing it.

**Table 4.35: Behavioural changes observed under contemporary penal system**

Responses	Frequency	Percent (%)
Indecent dressing and conduct by the youth	12	12.2
The traditional penal system was harsh and therefore made people fear to break the law i.e. criminal activities were controlled	12	12.2
People now have respect for the law	25	25.5
There is respect for fundamental human rights of the people due to legal representation	31	31.6
People do not fear committing crime and if they commit the crime and defend themselves well in court they can be set free	12	12.2
Reduction in crime	6	6.1
<b>Total</b>	<b>98</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.36, all the respondents said there should be improvement in the current penal system in Ghana.

**Table 4.36: Opinions for improvement in the contemporary penal system**

Response	Frequency	Percent (%)
Yes	116	100.0

**Source: Field survey, 2014**

Table 4.37 shows responses to what changes that should be done to improve the contemporary penal systems in Ghana. 25.86% of the respondents said cases should not be delayed in court, and rather trial processes should be fast tracked; 26.72% of them said non-custodial sentences could help; 6.89% said convicts of narcotics cases could be made to pay fines instead of being imprisoned; 11.21% of the respondents said that the government should build more prisons, 10.34% of them said there should be education, rehabilitation and training for culprits; 15.52% of them also suggested

issues should be dealt with accordingly irrespective of one's socio-economic status in society; and 3.4% of them put forward that capital punishment should be discouraged.

**Table 4.37: Some specifics changes to improve the contemporary penal system in Ghana**

<b>Responses</b>	<b>Frequency</b>	<b>Percent (%)</b>
Cases should not be delayed in court, they should fast track trial process	30	25.86
Convicts of narcotics cases could be made to pay fines instead of being in prison	8	6.89
Building of more prisons	13	11.21
Some of the cases should not result into imprisonment, non-custodial sentences could help	31	26.72
Education, Rehabilitation and training	12	10.34
Issues should be dealt with accordingly irrespective of one's socio-economic status in society	18	15.52
Capital punishment should be discouraged	4	3.4
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.38, some suitable penal systems that should be taken into consideration about the culture of Ghanaians are presented. 17.2% of the respondents emphasised payment of fines to the government and compensation to the victims; 18.97% said there should be compulsory communal services and undertakings by the offenders to be of good behaviour, 12.07% suggested chiefs should be allowed to operate under the control of the constitution and empowered to imprison culprits; 15.52% said accused persons be made to swear an oath on the traditional gods; 13.79%, said the law should give traditional rulers power to reconcile offenders, victims and the affected families or communities; and lastly, 22.41% of the respondents maintained

that the traditional deities should be recognised as a component of trial process and in award of sanctions.

**Table4.38: Suggested penal systems based on Ghanaian culture**

<b>Responses</b>	<b>Frequency</b>	<b>Percent (%)</b>
Compulsory communal services and undertakings by the offender to be of good behaviour	22	18.97
Chiefs should be allowed to operate under the control of the constitution and empowered to imprison culprits	14	12.07
Swearing oath by traditional gods	18	15.52
The law should give the traditional leaders power to reconcile offenders, victims and the affected families or communities	16	13.79
Incorporation of traditional deities as component of trial process and in award of sanctions	26	22.41
Payment of fines to the government and compensation to the victims	20	17.24
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.39, 84.48% of the respondents recommended that aspects of the Ghanaian traditional penal system be fused into the contemporary system while 15.52% were opposed to aspects of the Ghanaian traditional penal system be fused into the contemporary system.

**Table 4.39: Opinion for the incorporation of traditional penal system into the contemporary penal system**

Responses	Frequency	Percent (%)
Yes	98	84.48
No	18	15.52
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.40 indicates respondents' views of some of the aspects of the Ghanaian traditional penal system that could be incorporated in the contemporary penal system. Some of the aspects suggested are: fines, compensation and communal labour by 32.65% of the respondents, chiefs should be given the mandate to trial and punish people who commit minor offences within their jurisdiction by 18.37% of the respondents and people should be made to swear by gods and shrines and even streams as done in the traditional penal system 12.24%, and courts should recognise the traditional deities and ancestral gods during trial and in award of sanctions 36.73%.

**Table 4.40: Some specific aspects that could be incorporated into the contemporary penal system**

Response	Frequency	Percent (%)
Fines, compensation and communal labour	32	32.65
The chiefs should be given the mandate to trial and punish people who commit minor offences within their jurisdiction	18	18.37
People should be made to swear by gods and shrines and even streams as in the traditional penal system	12	12.24
Courts should recognise the traditional deities and ancestral gods during trial and in award of sanctions.	36	36.73
<b>Total</b>	<b>98</b>	<b>100.0</b>

**Source: Field survey, 2014**



From Table 4.41, 50% of the respondents disagreed that some aspect of the traditional penal system should be incorporated into the contemporary penal system because the Ghanaian penal system has enshrine too much authority to the chiefs in the kingdom and therefore they take certain decisions that are not healthy for their communities. The system has no checks and balances resulting in abuses and cruel treatment of offenders. Again, 22.22% said that most chiefs lack the basic knowledge of rights of people especially, the rights of offenders. The remaining 27.28% of the respondents said that it will be dangerous to incorporate primitive conduct and behaviour into the 21<sup>st</sup> century penal system.

**Table4.41: Some reasons for not suggesting the incorporating of the traditional system into contemporary penal system**

Response	Frequency	Percent (%)
The Ghanaian traditional penal system has enshrine too much authority to the chiefs without check and balances resulting in abuses and cruel treatment of offenders	9	50.00
Most chiefs lack the basic knowledge of the rights of people especially the rights of offenders	4	22.22
Dangerous to incorporate primitive conduct and behaviour of the chiefs in the 21 <sup>st</sup> century penal system	5	27.78
<b>Total</b>	<b>18</b>	<b>100</b>

**Source: Field survey, 2014**

### 4.3 Officials of the Criminal Justice System

#### 4.3.1 Background Information of Respondents

On the gender distribution of respondents it was observed that most of the respondents are males 75.86% while 24.14% are females as seen in Table 4.42.

**Table 4.42: Sex of respondents**

Sex	Frequency	Percent (%)
Male	88	75.86
Female	28	24.14
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

The age of respondents as shown in Table 4.43 ranges from 26 to over 50 years. It can further be seen in Table 4.43 that majority of the respondents fell within the age bracket of 40-50 years. This is followed by 36-40 years that formed 26.7%, 31-35 years formed 19.8%, above 50 years formed 15.5% whilst age 26-30 years formed 10.3%.

**Table 4.43: Age of respondents**

Age	Frequency	Percent (%)
26-30 years	12	10.3
31-35 years	23	19.8
36-40 years	31	26.7
40-50 years	32	27.6
Above 50 years	18	15.5
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.44, 35.3% of the respondents are from other ethnic groups like Gonja, Dagati, Akyem and Nzema, 21.6% of the respondents are Asantes, 15.5% of the

respondents are Ewes, 15.5% of the respondents are Fantes, 6.9% of the respondents are Gas while 5.2% of the respondents are Dagombas.

**Table 4.44: Ethnic groups of respondents**

<b>Ethnic groups</b>	<b>Frequency</b>	<b>Percent (%)</b>
Ga	8	6.9
Fante	18	15.5
Ashanti	25	21.6
Ewe	18	15.5
Dagomba	6	5.2
Others	41	35.3
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

It can be seen in Table 4.45 that majority of the respondents have tertiary education. None of the respondents had below Secondary/SHS education. Those who have tertiary education formed 81.03% and Secondary/SHS education formed 18.97% respectively.

**Table 4.45: Level of Education**

<b>Level of education</b>	<b>Frequency</b>	<b>Percent (%)</b>
Secondary/ SHS	22	18.97
Tertiary	94	81.03
<b>Total</b>	<b>116</b>	<b>100.00</b>

**Source: Field survey, 2014**

Table 4.46 shows that 83.6% of the respondents demonstrated knowledge of the local instrument (Ghanaian law) binding ex-convicts from holding public position in the society and the rest of them 16.4% lacked knowledge of it.

**Table 4.46: Enquiry on the existence of local instrument binding ex-convicts from holding public position**

Responses	Frequency	Percent (%)
Yes	97	83.6
No	19	16.4
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.47, 34.02% of the respondents said they know there is a law but could not quote it. 24.74% stated the law as the 1992 Constitution of Ghana. Others, 16.50% stated Article 94 (2) (c) of the 1992 constitution. Further responses included, Ex-Convicts are not to hold public office until after 10 years from the last date of their sentence 12.37%, Article 93 of the 1992 constitution of Ghana, Section 2(c) 4.12% and Section 298(1) (a) of Act 30 8.25%.

**Table 4.47: Law binding ex-convicts for holding public position**

Law binding ex-convicts for holding public position	Frequency	Percent (%)
1992 Constitution of Ghana	24	24.74
I cannot quote the law	33	34.02
Ex-Convicts are not to hold public office until after 10 years from the last date of their sentence	12	12.37
Article 93 of the 1992 constitution of Ghana, Section 2(c)	4	4.12
Article 94 (2) (c) of the 1992 constitution	16	16.50
Section 298(1)(a) of Act 30	8	8.25
<b>Total</b>	<b>97</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.48 shows that 72.4% of the respondents said they have records of public figures barred from contesting for a position due to their criminal records and 27.6% had no such records.

**Table 4.48: Records of some public figures who cannot contest for a position due to criminal records**

Responses	Frequency	Percent (%)
Yes	84	72.4
No	32	27.6
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.49 shows the responses to whether there have been any changes in the penal system in Ghana. Again, 83.6% of the respondents said “yes” there have been changes in the penal system in Ghana but the rest 16.42% said there have not been any changes in the penal system in Ghana.

**Table 4.49: Enquiry on the changes in the penal system of Ghana**

Responses	Frequency	Percent (%)
Yes	97	83.6
No	19	16.4
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.50 illustrates some of the changes observed by respondents in the penal system of Ghana. They are the introduction of court and prisons 23.71%; reduction in punishment by hanging and emphasis on reformation and rehabilitation came from 32.99% of respondents; 18.56% also noticed criminal cases are no more handled by the traditional authorities but the law courts as a change. Furthermore, corruption of

the system through the influence of the affluent in the society thus the poor are always the one's guilty stood at 12.37% in responses; and lastly, traditional rulers not having much power was equally noticed as a change by 12.37% of respondents.

**Table 4.50: Some specific changes observed in the penal system of Ghana**

<b>Some specific changes observed in the penal system of Ghana</b>	<b>Frequency</b>	<b>Percent (%)</b>
The traditional rulers do not have much power now	12	12.37
The introduction of court and prisons	23	23.71
The punishment by hanging is minimised and emphasis is now on reformation and rehabilitation	32	32.99
The system has been corrupted by the influence of the affluent in the society thus the poor are always the one's guilty	12	12.37
Criminal cases are no more handled by the traditional authorities but the law courts	18	18.56
<b>Total</b>	<b>97</b>	<b>100</b>

**Source: Field survey, 2014**

Table 4.51 shows responses of respondents who said there have not been any changes in the penal system in Ghana. 68.42%; of them said nothing has changed in the penal system, the sentencing policy is limited to fines and custodial and 31.58%; of them believed said the old traditional way of the penal system continue to exist.

**Table 4.51: Contrary observations**

<b>Changes observed</b>	<b>Frequency</b>	<b>Percent (%)</b>
Sentencing policy limited to fines and custodial	13	68.42
The old traditional way of the penal system continue to exist	6	31.58
<b>Total</b>	<b>19</b>	<b>100.0</b>

**Source: Field survey, 2014**



Table 4.52 shows parts of the traditional penal system the respondents thought have controlled the behaviour of most Ghanaians. Some of these are taboos and sanctions stated by 11.21% of the respondents; chieftaincy institution and inheritance system was also mentioned by 10.34% of the respondents; our culture, the law and society's perception on criminal issues accounted for 8.62% of the responses; perception of spiritual powers, ancestors and traditional deities in award of sanctions came from 24.14%. In addition, respondents gave more responses such as being highest, death and banishment sentence 5.17%; fines 4.31%; pacification 3.45%; sanction of offenders 13.80%; it has shaped social behaviour (shaving, clothing) also had 5.17 %. Changes in Trokosi system and confinement of alleged witches equally had 5.17%; parading and hooting of offenders in public 8.62% and adjudication committees who oversee to adjudicate criminal matters and punish wrong doers 3.45% are other observed changes by respondents.



**Table 4.52: Aspects of the traditional penal system that have controlled the behaviour of most Ghanaians**

Aspects of the traditional penal system that have Controlled the behaviour of most Ghanaians	Frequency	Percent (%)
Chieftaincy Institution and inheritance system	12	10.34
Sanction of offenders	16	13.80
Fines	5	4.31
Death and banishment	6	5.17
It has shaped social behaviour (shaving, clothing)	6	5.17
Taboos and sanctions	13	11.21
Our Parading and hooting of offenders in public culture, the law and society's perception on criminal issues	10	8.62
The Trokosi system and confinement of alleged witches	6	5.17
Adjudication committees which oversee to adjudicate criminal matters and punish wrong doers	4	3.45
Pacification	4	3.45
Perception of spiritual powers ancestors, traditional deities in award of sanctions (e.g. <i>antoo</i> gods, etc.)	28	24.14
<b>Total</b>	<b>116</b>	<b>100</b>

**Source: Field survey, 2014**

From Table 4.53, 84.5% of the respondents agreed that the contemporary penal system has side lined the powers of the traditional rulers and 15.5% of them did not agree that the contemporary penal system has side-lined the powers of the traditional rulers.

**Table 4.53: Opinion on the side-line of the powers of the traditional rulers by the contemporary system**

<b>Responses</b>	<b>Frequency</b>	<b>Percent (%)</b>
Yes	98	84.5
No	18	15.5
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.54, the respondents mentioned some of the things that have side-lined the powers of the traditional rulers. Their reasons and the percentages are; the laws establishing our traditional councils has reduced the powers of chiefs - Article 125 of the 1992 Constitution, sections (1), (2) and (5) weakened the chiefs' powers, 36.74%; the courts interference in the appointment of chiefs 8.16%. Our traditional rulers cannot sit on cases already in court 25.51%; rape, defilement and other criminal cases being taken to court 13.27%; and the traditional rulers do not give fair and legal representation of cases 10.20%.

**Table 4.54: Some specific examples of side-lining traditional authorities**

Some Specific Examples of Side-lining Traditional Authorities	Frequency	Percent (%)
Courts interfere in the appointment of chiefs	8	8.16
Our traditional rulers cannot sit on cases in court	25	25.51
The traditional rulers do not give fair and legal representation	10	10.20
Traditional rulers are not regarded	6	6.12
Rape, defilements and other criminal cases are taken to court	13	13.27
The laws establishing our traditional councils reduced the powers of chiefs for example Article 125 of the 1992 constitution, sections (1), (2) and (5) weakened chiefs powers	36	36.74
<b>Total</b>	<b>98</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.55 shows, some respondents do not agree that the contemporary penal system has side-lined the powers of the traditional rulers. 27.8% of the respondents said traditional rulers are still recognised as chiefs. 55.6% of them mentioned traditional rulers continue to sit on civil cases and 16.6% of them maintained they still arbitrate squabbles and disputes.

**Table 4.55: Contrary observations on the side-line of the traditional leaders**

Examples	Frequency	Percent (%)
They are recognised as chiefs	5	27.8
They continue to sit on civil cases	10	55.6
They arbitrate squabbles, disputes	3	16.6
<b>Total</b>	<b>18</b>	<b>100</b>

**Source: Field survey, 2014**

Table 4.56 shows that 56.9% of the respondents said that the contemporary penal system has not improved the behaviour of Ghanaians especially the youth while 43.1% believed it has improved the behaviour of Ghanaians especially the youth.

**Table 4.56: Opinions on the effect of the contemporary penal system on the behaviour of Ghanaians especially the youth**

Responses	Frequency	Percent (%)
Yes	50	43.1
No	66	56.9
Total	116	100.0

**Source: Field survey, 2014**

From Table 4.57, some of the examples given by respondents and percentages of respondents on the contemporary penal system that have improved the behaviour of Ghanaians especially the youth are given. These include; fines and high custodial sentences being slapped on criminals of late have deterred most of the youth from committing crime 28.0%; fear of incarceration and poor prison conditions 20.0%, sensitization of human rights 12.0%, e.g. law on child labour and female genital mutilation, perception and stigmatization of ex-convicts/convicts by the society 32% and the least is 8% of people from royal families guard against imprisonment-they conduct themselves well so as to avoid imprisonment.

**Table 4.57: Some specific reasons**

Responses	Frequency	Percent (%)
Fines and custodial sentences	14	28
Fear of incarceration, poor and harsh prison conditions	10	20
Sensitisation of human rights laws (law on child labour, female genital mutilation etc.)	6	12
People who come from royal families guard against imprisonment - they conduct themselves well so as to avoid imprisonment	4	8
Perception and stigmatization of convicts/ex-convicts by the society	16	32
<b>Total</b>	<b>50</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.58 shows the reasons why respondents believe the contemporary penal system has not improved the behaviour of Ghanaians especially the youth. Some of the reasons and percentages of respondents established are; crime is now on the increase 30.3%, the enforcement of human rights has done harm than good – misconducts on the increase 22.7%, some people are not afraid of fines and custodial sentences 18.2%, cases well-argued and defended in court can set the accused free 16.7% and increase in immorality 12.1%.



**Table 4.58: Contrary reasons why the contemporary penal system has not improved the behaviour of Ghanaians especially the youth**

Examples	Frequency	Percent (%)
Crime is now on the increase	20	30.3
The enforcement of human rights has done harm than good—misconducts on the increase (Lesbianism and Gayism)	15	22.7
Increase in immorality	8	12.1
Cases well-argued and defended in court can set the accused free	11	16.7
Some people are not afraid of fines and Custodial sentences.	12	18.2
<b>Total</b>	<b>66</b>	<b>100</b>

**Source: Field survey, 2014**

From Table 4.59, 83.62% of the respondents said there are advantages in the traditional penal system while 16.38% of the respondents maintained there are no advantages in the traditional penal system.

**Table 4.59: Enquiry on the advantages of the traditional penal system**

Responses	Frequency	Percent (%)
Yes	97	83.62
No	19	16.38
<b>Total</b>	<b>116</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.60 shows some of the advantages in the traditional penal system as provided by the respondents. 8.25% noted instance justice, transparency, speedy trials; 21.65% reported low cost and easy accessibility; 13.40% stated that the system made people to be obedient, respect elders and use of customary laws in adjudication of cases; the pacification and fines reasons constitute 8.25%; of the respondents; reconciliation

motives bring people together 8.25%; victims of the Trokosi system are used as farms hands 6.19%; promotes good conduct among the people in the community 6.1%. Furthermore, 10.30% of the respondents said powers of chiefs were enhanced and were able to enforce and maintained rules and regulations in their communities. Furthermore, 5.15% of the respondents responded there were limited prison terms and therefore there was no overcrowding in the country's prisons. In addition, 8.25%; state that the traditional penal system recognises the supernatural powers in the trial process and in the award of sanctions, and lastly 4.12%; of the respondents maintained that the traditional penal system is not corruptible.

**Table 4.60: Specific advantages of the traditional penal system**

Some specific advantages of the traditional penal system	Frequency	Percent (%)
Obedience, Respect to Elders and adoption of customary laws in adjudication of cases	13	13.40
Instant justice, transparency, speedy trials	8	8.25
Low cost and accessibility	21	21.65
It enhances the powers of chiefs and make them easier to enforce and maintain rules and regulations in their communities	10	10.30
Victims of the Trokosi system are used as farms hands	6	6.19
Recognition of supernatural powers in award of sanctions	8	8.25
It promotes good conduct amongst people in the community	6	6.19
The penal system is not corruptible	4	4.12
The pacification and fines	8	8.25
The reconciliation motives bring people together	8	8.25
Limited prison terms and no overcrowding in prisons	5	5.15
<b>Total</b>	<b>97</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.61 shows some of the disadvantages of the traditional penal system provided by the respondents. They are: fine art elements and public naming and shaming (shaving and hooting) constitute 47.37%; of the respondents. Trial by ordeal is brutal, inhumane and abuse of fundamental human rights constitutes 15.79% of the respondents. Other responses and percentages are: recognition of their religious practises are treacherous 21.05%; no professional legal representation for the offender during trial 10.5%; and chiefs sometimes demand drinks and sheep from a law breaker and set him/her free 5.26%.

**Table 4.61: Some disadvantages of the traditional penal system**

<b>Some disadvantages of the traditional penal system</b>	<b>Frequency</b>	<b>Percent (%)</b>
Chiefs sometimes demand drinks and sheep from a law breaker and set him/her free	1	5.26
Trial by ordeal is brutal, inhumane and abuse of fundamental human right	3	15.79
Fine art elements and public naming and shaming(shaving, hooting and clothing)	9	47.37
Recognition of their religious practises are treacherous	4	21.05
No professional legal representation of the offender during trial	2	10.5
<b>Total</b>	<b>19</b>	<b>100</b>

**Source: Field survey, 2014**

Table 4.62 shows the responses of advantages of the traditional penal system that could be incorporated into the contemporary penal system. The responses and their percentages are fines, pacification, retractions and community services 20.62%, cases at the law court should be fast tracked to save time and resources and must be accessible 18.56%, payment of fines and compensation 9.7%, arbitration, mediation transparency and speedy trial 12.37% and reformation and reconciliation of offenders

and victims 10.8%; adoption of customary/local laws in the adjudication of cases 16.49%; and lastly, 12.37% of the respondents said if the Trokosi system and alleged witches practice are refined they can be incorporated.

**Table 4.62: Suggestions from the judiciary on the incorporation of the traditional penal system into the contemporary penal system**

<b>Suggestions from the judiciary on the incorporation of the traditional penal system into the contemporary one</b>	<b>Frequency</b>	<b>Percent (%)</b>
Adoption of customary/local laws in the adjudication of cases	16	16.49
Payment of fines and compensation	9	9.7
Reformatory and reconciliation of offenders and victims	10	10.8
Quick trial process, low cost of justice, and the accessibility	18	18.56
If the Trokosi system and alleged witches are refined they can be incorporated	12	12.37
Fines, pacification, retractions and community services	20	20.62
Arbitration, mediation, transparency and speedy trial	12	12.37
<b>Total</b>	<b>97</b>	<b>100.0</b>

**Source: Field survey, 2014**

## 4.4 Convicts/Ex-Convicts

### 4.4.1 Background Information of Respondents

Table 4.63 shows the sex of respondents out of which 82.46% is males and 17.54% females respectively.

**Table 4.63: Sex of respondents**

Sex	Frequency	Percent (%)
Male	94	82.46
Female	20	17.54
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.64, majority of the respondents 26.32% fell within the age bracket of 31-35 years; 22.80%; fell within 26-30 years; 21.05%; fell within 36-40 years; 12.28%; of them fell within the age bracket of 19-25 years; 10.53%; fell within 40-50 years and 7.02%; fell above 50 years.

**Table 4.64: Age of respondents**

Age	Frequency	Percent (%)
19-25 years	14	12.28
26-30 years	26	22.80
31-35 years	30	26.32
36-40 years	24	21.05
40-50 years	12	10.53
Above 50 years	8	7.02
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.65 shows the ethnic groups of respondents. Most of the respondents are Asantes representing 31.58%. 22.80% of the respondents are from other ethnics groups; 17.54%; of them are from the Fante and Ewe ethnic groups 14.04; 12.28%; are from the Ga ethnic groups; and 1.76%; from the Dagomba ethnic.

**Table 4.65: Ethnic groups of respondents**

<b>Ethnic</b>	<b>Frequency</b>	<b>Percent (%)</b>
Ga	14	12.28
Fante	20	17.54
Ashanti	36	31.58
Ewe	16	14.04
Dangomba	2	1.76
Others	26	22.80
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Data on respondents' educational level is presented in Table 4.66. 33.33% of the respondents have Primary/JHS education; 26.32% of the respondents have Tertiary education; 24.56% of them have Secondary/SHS education; 10.53% of them have Polytechnic education; and 5.26% of them have no formal education.

**Table 4.66: Level of education**

<b>Level of education</b>	<b>Frequency</b>	<b>Percent (%)</b>
No formal education	6	5.26
Primary/JHS	38	33.33
Secondary/ SHS	28	24.56
Polytechnic	12	10.53
Tertiary	30	26.32
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**



From Table 4.67, the respondents were asked about their offences. 24.56%; of the respondents said they were committed to prison for stealing, 15.79%; of the respondents said they were charged with the offence of defilement/rape. Again respondents charged with armed robbery constituted 15.79%; those charged with conspiracy to commit crime, attempted robbery and robbery 14.04%; fraud 7.02%. Respondents with narcotics offences were 14.04%, those charged with assault offence was 3.50%; and conspiracy to commit murder and murder 1.76%. Furthermore, 3.50%; of the respondents were charged with traffic offences. The most frequent offences are stealing, defilement/rape, robbery and narcotics.

**Table 4.67: Respondent's offence(s)**

<b>Offence</b>	<b>Frequency</b>	<b>Percent (%)</b>
Defilement/Rape	18	15.79
Conspiracy to commit crime, attempted robbery and robbery	16	14.04
Armed Robbery	18	15.79
Conspiracy to commit murder and murder	2	1.76
Assault	4	3.50
Stealing	28	24.56
Narcotics	16	14.04
Fraud	8	7.02
Traffic offence	4	3.50
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.68 details the length of sentence of respondents. The highest number of years being served is 154 years and the minimum is 2 years. 15.79% of the respondents are

serving 7years which is the highest. This is followed by 14.04% of respondents serving 10 years and 12.28% serving 5 years.

**Table 4.68: Length of sentence of respondents**

<b>Years</b>	<b>Frequency</b>	<b>Percent (%)</b>
2	4	3.50
3	2	1.75
5	14	12.28
6	2	1.75
7	18	15.79
8	4	3.50
10	16	14.04
12	2	1.75
15	14	12.28
17	2	1.75
19	2	1.75
20	2	1.75
25	6	5.26
28	2	1.75
30	4	3.50
35	2	1.75
36	2	1.75
44	2	1.75
45	4	3.50
50	2	1.75
70	4	3.50
74	2	1.75
154	2	1.75
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.69, 59.65% of the respondents said they do not come from royal families while the rest 40.35% said they come from royal families.

**Table 4.69: Enquiry of respondent's royal status**

<b>Response</b>	<b>Frequency</b>	<b>Percent (%)</b>
Yes	46	40.35
No	68	59.65
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.70 indicate the royal families of the respondents namely Aduana, Adwendadzi, Twidan or Bretuo, Asona and Anona to mention a few of the respondents' royal family background.

**Table 4.70: Specific royal family names**

<b>Royal family</b>	<b>Frequency</b>	<b>Percent (%)</b>
Yes, Aduana family	10	21.74
Yes, Nii Amugi family	4	8.70
Yes, Adwendadzi family	2	4.35
Yes, Royal Bosom- Pra family	2	4.35
Yes, Twidan or Bretuo family	2	4.35
Yes, Anona family	2	4.35
Yes, Asona family	4	8.70
Yes, Amanfrom royal family	2	4.35
Yes, Pedi the II	2	4.35
Yes, Amu-Sika	2	4.35
Yes, Nyinkur-kidjon	2	4.35
Tsatu's family	2	4.35
Alhaji Dendey Family	2	4.35
Yes, Ekuona family	2	4.35
Nandom Puffieu Chief Palace	2	4.35
Diko Pim royal family	4	8.70
<b>Total</b>	<b>46</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.71 represents respondents' responses to whether they likely to become chiefs after being discharged. 36.84% of them responded in the affirmative and the rest, 63.16% said they are not likely to become chiefs after discharge.

**Table 4.71: Enquiry of respondent's royal status after discharge**

Response	Frequency	Percent (%)
Yes	42	36.84
No	72	63.16
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.72 gives the results of responses to why respondents could not ascend to kingship after being discharged. Reasons and percentages of responses are as follows; 55.56% of the respondents said they are not from royal families, 13.89% said a discharged prisoner is still seen as a criminal by the society as well as the family and will not be allowed to become chief; 16.66% of them also mentioned they prefer to become pastors than chiefs. Again, another 13.89% of the respondents said an ex-convict is not allowed to ascend the throne in their families even when they have turned on a new leaf.

**Table 4.72: Reasons for change in royal status**

Reasons	Frequency	Percent (%)
An ex-convict is still seen as a criminal and would not be allowed to become chief	10	13.89
Prefer to become pastors than chiefs	12	16.66
Not from a royal family	40	55.56
An ex-convict is not allowed to ascend the throne in my family even if he has turned a new leaf	10	13.89
<b>Total</b>	<b>72</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.73, 71.9% of the respondents are not learning any trade while 20.1% of the respondents said they are learning a trade whilst behind bars.

**Table 4.73: Enquiry of respondent's vocational skill development in prison**

<b>Response</b>	<b>Frequency</b>	<b>Percent (%)</b>
Yes	32	20.1
No	82	71.9
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

From Table 4.74, 84.21% of the respondents answered in the affirmative when asked if they want to establish their own venture after serving their terms of incarceration. The remainder, 15.79% said no, they would not establish their own business after they were discharged.

**Table 4.74: Enquiry on the future occupation of respondents**

<b>Responses</b>	<b>Frequency</b>	<b>Percent (%)</b>
Yes	96	84.21
No	18	15.79
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.75 details respondent's responses to if they would like to be employed in the government or public sector after they were discharged. 68.42% of the respondents said they would not like to be employed into the government or public sector after been discharged with the remainder 31.58% saying they would like to be employed into the government or public sector after been discharged.

**Table 4.75: Respondent's job preference (Government or Private) after discharge**

Responses	Frequency	Percent (%)
Yes	36	31.58
No	78	68.42
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.76 indicates the work the respondents want to do after they have been discharged from prison custody. Responses and respective percentages included; establish private own business 15.38%; enter into farming 10.26% and enrolling in a Bible school to be trained as a pastor 22.81%; become a driver 5.13%; and continuance of their education 2.56%. Others were to become prison educators and human rights advocates 12.82% and again, 5.13% said they will establish schools. Lastly, 2.56% opted to enter into the following ventures; yam business, singing, teaching, sale of provisions and mechanic.

**Table 4.76: Specific job preference of respondent's after discharge**

Responses	Frequency	Percent (%)
To establish a company to feed myself and the family	2	2.56
Enrol in a bible school to be trained as a pastor	26	22.81
Farming	8	10.26
Driver	4	5.13
To continue my education	2	2.56
Sell provisions	2	2.56
own a business	12	15.38
Teacher	2	2.56
Artist and singer	2	2.56
Mechanic	2	2.56
Yam business	2	2.56
Prison and human right advocate and Educator	10	12.82
To establish a school	4	5.13
<b>Total</b>	<b>78</b>	<b>100.0</b>

**Source: Field survey, 2014**



From Table 4.77, all respondents said they have learnt lesson from being in the prison.

**Table 4.77: Enquiry of lesson learnt by the respondent's from being in prison**

<b>Responses</b>	<b>Frequency</b>	<b>Percent (%)</b>
Yes	114	100.0

**Source: Field survey, 2014**

Table 4.78 shows the advice prisoners would give to friends outside prison, especially the law breakers based on the lessons learnt from their incarceration. 28.08%; of the respondents said they would advise them to be careful not to break the law because to be in prison is not easy, 17.54%; would advise to be careful in their endeavours because when they are caught the law will deal with them. Again, 14.04%; advised people to refrain from criminal activities because people rot in jail for committing crime. Another 14.04%; said hard work is the key to success and 12.28%; of the respondents encouraged people to adhere to advice and not to rush for things. In addition, 7.02%; said that education is the key to success, and 3.50%; said prison is not a place to be because your freedom is taken away from you.

**Table 4.78: Advice by the respondent to the general public**

Advice by the respondents to the general public	Frequency	Percent (%)
They should be careful in their endeavours because when they are caught the law will deal with them	20	17.54
Refraining from criminal activities because people rot in jail for committing crime	16	14.04
Be careful not to break the law because to be in prison is not easy	32	28.08
They should take advice from their elders	4	3.50
Prison is not a place to be because your freedom is been taken away from you.	4	3.50
Hard work is the key to success	14	12.28
Adhere to advise and not to rush for things	16	14.04
Education is the key to success	8	7.02
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.79 illustrates responses given when respondents were asked what they like about the traditional penal system. 17.54% of them said they like the how elders settle disputes or handle criminal cases thus, they are always fair in handling issues. 14.04% of respondents said it helps us live a morally upright life. Again 12.28% of the respondents said justice prevails in the traditional penal system, and a larger percentage - 21.05% maintained that in the traditional penal system when one commits a crime, elders of the palace will sit on the case and correct you and not to put you in jail. 5.26% of the respondents argued that accusers of minor criminal acts are fined and amount used for town or community development and improvement. Again, 10.53% said the system brought families together and another 10.53% were of the view that panel elders critically investigate cases before giving judgements.

According to 7.02% of the respondents, the traditional penal system trains people to know the traditional rules and recognises traditional gods during trial. This they explained that it put fear into the offenders to be truthful during trial. 1.75% of the respondents said the panel members are not technical and therefore trial procedures are so simple, fast, and less costly.

**Table 4.79: Respondent's interest in the traditional penal system**

<b>The respondents' interest in the traditional penal system</b>	<b>Frequency</b>	<b>Percent (%)</b>
They critically investigate cases before giving judgements	12	10.53
The way elders settle disputes or handle criminal cases; they are always fair in handling issues.	20	17.54
When you commit a crime elders of the palace will sit on the case and correct you but not to put you in jail	24	21.05
Accusers of minor criminal acts are fined and amount used for the town or community development and improvement	6	5.26
Justice prevails	14	12.28
It trains people to know the traditional rules and recognises traditional deities during trial	8	7.02
It helps us live a morally upright life.	16	14.04
It brings families together	12	10.53
They are not technical	2	1.75
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.80, indicates the aspects of traditional penal system that respondents wish to be incorporated into the contemporary penal system. As is evident from the table, 33.33% of the respondents stated that non-custodial and arbitration system of the traditional should be adopted, again, 19.30% of the respondents also stated that during trial, taking of oath of Oracles should be incorporated. Furthermore, 10.53% of the respondents advocate that, thorough investigations must be carried out before drawing

conclusions and pronouncing judgement. In addition, 8.77% want corporal punishment and banishment from the community to be incorporated and while 5.26% were of the opinion that courts should use traditional and customary laws. Again, 7.02% maintained that justice should prevail no matter the status of the people involved. Yet again, Chiefs should form part of the contemporary penal system, issuance of warnings to law breakers, adopting non-custodial sentence and imposing reasonable fines on offenders accounted for 5.26% in responses respectively. A lesser percentage 1.75 simply wants the truth to be spoken and not the law.

**Table 4.80: Suggestions by the respondents of aspects of the traditional penal system to be incorporated into the contemporary penal system**

<b>Suggestions by the respondents of the aspects of the Traditional penal system to be incorporated into the Contemporary penal system</b>	<b>Frequency</b>	<b>Percent (%)</b>
Taking of oath of Oracles should be incorporated	22	19.30
Fair hearings and trials	4	3.50
To give reasonable fines to those who commit crimes	6	5.26
Thorough investigations must be carried out before drawing conclusion	12	10.53
Traditional/customary laws	6	5.26
Chiefs should be incorporated into the contemporary panel system	6	5.26
The truth should be spoken and not the law	2	1.75
Non-Custodial and arbitration system	38	33.33
Justice should prevail no matter the status of the people involved	8	7.01
Corporal punishment and banishment from the community	10	8.77
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.81 shows the respondents' views about the advantages of the contemporary penal system. The respondents' reasons and the percentages are mentioned as follows; it is good to punish law breakers so that people would be law abiding in the society 21.05%;, making room for appeal against sentence given came in with 8.77%;, it provides the nation money and brings peace, 7.02%;, it puts fear in the youth to abstain from crime 22.80%;, it prevents rape and allows girls to reach maturity age, 3.50%; it corrects people and help them live Godly life, 3.50%, records of prisoners are kept confidential 17.54%; and it is a well-structured system and some of the cases cannot be resolved by the Chiefs 10.53%.

**Table 4.81: Some advantages of the contemporary penal system (convict/ex-convict)**

<b>Some advantages of the contemporary penal system (convicts/ex-convicts)</b>	<b>Frequency</b>	<b>Percent (%)</b>
It is a well-structured system and some of the cases cannot be resolved by the Chiefs	12	10.53
It punishes law breakers so that they would be law abiding in the society	24	21.05
It provides the nation money and brings peace	8	7.02
It promotes morality especially the rights of passage	4	3.50
It puts fear in the youth to abstain from crime	26	22.80
It prevents rape which allows girls to reach maturity age	4	3.50
It settles dispute among people	2	1.75
It makes room for appeal against sentence given	10	8.77
It corrects people and helps them live Godly life	4	3.50
Records of prisoners are kept confidential	20	17.54
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**

Table 4.82 shows the disadvantages of the contemporary penal system provided by respondents. Responses accounting for 19.30% share the view that the courts do not



adjudicate based on truth but the law thus, one need to argue case well or end up losing. Again, 22.80% state the disadvantage of unfair judgement. Another 22.80% are of the view that some of the lesser cases receive higher sentence and thereby increasing government expenditure on feeding inmates. Adding to this, 14.04% believe long sentences causes financial loss to the state. Lastly, 3.50% are of the view that contemporary penal system is too harsh with some judgements while 5.26% share the view that contemporary penal system cannot reform people.

**Table 4.82: Some disadvantages of the contemporary penal system (convict/ex-convict)**

Disadvantages of the contemporary penal system	Frequency	Percent (%)
Some of the cases do not demand high sentence but they give and government has to feed them for so many years	26	22.80
They don't adjudicate based on the truth but the law therefore, one need to argue case well or end up losing. Thus, fair hearing and trials not allowed	22	19.30
It put people in prison and does not bring peace. It will affect the country's finances	6	5.26
It reduces the betterment of the nation because of the resources government spends on prisoners	8	7.02
This system cannot reform anyone	6	5.26
Long sentences that causes financial lost to the state	16	14.04
Some parts of the panel system should be taken out	8	7.02
It is too harsh and cheats the males	4	3.50
The system is always bureaucratic	14	12.28
It is not easy to educate the public about the system	2	1.75
<b>Total</b>	<b>114</b>	<b>100.0</b>

**Source: Field survey, 2014**



## CHAPTER FIVE

### DISCUSSION OF RESULTS

#### 5.1 Overview

This chapter discusses the objectives of the research namely, to identify and assess the strengths and weaknesses of the traditional penal system and the contemporary penal system, to examine whether or not the contemporary penal system has influenced Ghanaian culture and explore aspects of the traditional penal system which could be incorporated into the contemporary penal system. The discussion of the results from the analysis and the interpretation of the data captured in Chapter Four is the focus of this chapter.

As indicated in Chapter, Three, this research made use of the qualitative approach in the analysis of the data. With these in mind, questionnaire and interview guides were used as data collection instruments in addition to observation. In the section A of the questionnaire, the researcher gathered facts from the traditional leaders. The Section B was used to gather data from the officials of the Criminal Justice System; Courts (Judges, Registrars, Clerks, Lawyers, State Attorneys), Prison and Police officers. Finally, Section C was used to tap information from prisoners (convicts/ex-convicts).

From the above mentioned categories, Section A covered respondents' facts about the penal systems, types of traditional offences and the punishments accorded them and the effects of the contemporary penal system on the Ghanaian culture. It also asked about the offences that cannot be handled by the traditional authorities in recent times.

In Section B, respondents stated aspects of the traditional instrument that binds ex-convicts from holding public offices. Again, the researcher also ascertained whether or not the contemporary penal system has improved the behaviour of Ghanaians.

The Section C touched on inmates' experiences on imprisonment. This included the sentencing policies of both the traditional and contemporary penal systems. It ascertained the respondents' impression about prison, the advantages and disadvantages of the traditional and contemporary penal systems and the elements of the traditional penal system that should be incorporated into the contemporary penal system. This section again sought information from the convicts about what they intended to do after release from prison and to find out whether or not imprisonment has thwarted their ambitions.

## **5.2 Penal Systems**

Religion is the keystone of the whole traditional legal structure. The customary court of traditional rulers devised proceedings that eventually enslaved debtors, delinquents, those who infringed social rules like, taboos, and other such minor offenders. The findings of the study indicated that in the early ages, domestic servants became domestic slaves and were later sold to European and Arab slave traders. Shrines originally served as citadels for reformed criminals, war prisoners and permanently indebted poor people. These shrines which also served as reformatories, institutions for assimilating and integrating foreigners, turned into underground slave markets. Novices under initiation ended up in slave ships.

Ghana's justice system has seen many encouraging developments since the restoration of civilian rule in January 7<sup>th</sup> 1993. The usual problems that threatened its effectiveness among others are; poor coordination among the different actors in the sector; long delays in hearing cases; lack of legal aid to help the poor to access justice; overcrowding in prisons; and critical allegations of corruption among the police, as well as court staff, including judges and magistrates.

However, there have been many interesting and useful initiatives to improve the justice system performance, ranging from an increasingly merit based system for appointment of judges, to a rapid expansion of legal aid, and then to procedures to reduce delays and promote out-of-court settlements in the higher courts. Both civil society organisations and constitutionally mandated oversight institutions have played an important role in promoting these reforms.

Ghana has ratified many of the major international treaties relating to the promotion of human rights and the rule of law, and its record in this regard has improved since the return of democracy in 1993. The strength and weaknesses of the contemporary penal system have been discussed in this chapter.

#### **5.2.1 Punishment under the Traditional Penal System**

Ghanaian traditional leaders adopt disciplinary measures for the citizens who violate the laws of the land. These disciplinary measures are embodied in the traditional penal system. Some examples of punishment meted out to persons who commit crime under the traditional penal system are summarized below:

#### **5.2.2 Banishment**

Banishment is a punishment under the traditional penal system which is imposed on an offender usually by a community. The offender is forced to remain outside of that community until otherwise. It is also known as exile or deportation. It must be noted that this form of punishment by the traditional penal system is not common in Ghana in recent times.

### **5.2.3 Fine and Animal Sacrifice**

It is a sum of money that must be paid as punishment for breaking a law or rule. The amount of a fine can be determined case by case. It is worthy to state that in some cases the fine is not based on monetary terms but in a form of animal sacrifice.

### **5.2.4 Slavery**

Slavery, bondage, servitude refer to involuntary subjection to another or others. Slavery emphasizes the idea of complete ownership and control by a master, servitude is compulsory service, often such as is required by a legal penalty, penal servitude.

### **5.2.5 Hooting**

It is a cry out or shouts, especially in disapproval or derision. It is a public expression of disapproval of an unacceptable behaviour within a community. In the traditional penal system, an offender sometimes as part of the punishment, is publicly hooted at to deter him/her from committing future offence.

### **5.2.6 Some contemporary forms of punishment**

Ghanaian contemporary penal system also adopts disciplinary measures for the citizens who violate the laws. These disciplinary measures are embodied in the 1992 Constitution, the penal codes, and the Criminal Act 29 (1960), among others. Some examples of punishment meted out to persons who commit crimes under the contemporary penal system are summarized below.

Incarceration is a form of punishment that entails confinement into prison custody by a court of competent jurisdiction. Offenders punished under the contemporary penal system of punishment can either have short or long sentences, life imprisonment or condemned to death by either hanging or firing squad. Furthermore, under the contemporary penal system suspects of a crime being investigated are confined into

remand custody pending completion of investigation. Following investigations, indicted persons are put on trial to determine guilt or otherwise. Lastly, fines and compensation usually in monetary terms, bond of good behaviour etc., are also forms of punishment implemented under contemporary penal system.

### **5.3 Strengths of the Traditional Penal System**

#### **5.3.1 Non-Corruptible**

The traditional penal system has a lot of strengths based on findings from this research and one laid down by Abochie (1997). In comparison, with the contemporary penal system where the police are perceived corrupt, this is not much seen in the traditional justice system.

Again, with the traditional system, there is little one can do to prevent the punishment from taking place. Moreover, the traditional system has built within itself checks and balances on corruption. Anyone who tries to manipulate judgments or the judicial system faces the wrath of their ancestors and deities, sometimes with instant death. There is the existence of a simple complaint mechanism in the traditional penal system that is less costly and due to the fear of supernatural powers and the powers of the deities there was fairness and dynamism in the passing of a non-corruptible verdict under the traditional penal system.

#### **5.3.2 Inescapable Justice System**

The traditional penal system is believed to be a system where offenders cannot escape punishment. As mentioned earlier the keystone of the traditional penal system is religion and it is believed that, "the gods are all seeing; they need no witnesses and no imperfect trials, once you are guilty you are guilty" (Abochie, 1997). It is practically impossible for any person to commit a crime and escape. In comparison, a person who



commits any crime can easily escape the contemporary penal system by evading arrest to countries or cities with no extradition where arresting them will be almost impossible; yet in the traditional penal system where offenders are made to swear under an oath to gods and deities, even if an offender escapes, the punishment from the gods is alleged to take its course no matter where the individual might be (whether in a country with or without extradition).

### **5.3.3 Promotion of Unity and Maintenance of Culture of Social Harmony**

The traditional penal system promotes unity and culture. The aim is to maintain social harmony and inter personal relations among family members, friends and neighbours and also maintain a peaceful living. It ensures discipline, reconciliatory, collective responsibilities and gives the traditional rulers more powers and promotes good conduct among the people in the community.

In addition to the aforementioned point, with the traditional penal system, decisions are based on agreed compromises between the parties with the approval of the two families and the community. The victim and the accused persons are usually brought together by the adjudicating team by way of shaking hands and embraces. They therefore see themselves as friends and not enemies. This enhances reconciliation and restoration of social harmony between the offender and the victim, the offender's family and the victim's family and any other party affected by the conduct of the accused. The adjudicating team in the traditional penal system is always persistent in reconciliation and the restoration of social harmony which in the long run promotes unity.



#### **5.3.4 No Incarceration**

The traditional penal system does not usually incarcerate offenders. It rather encourages non-custodial sentence. The system has no problems like congestion in the prisons, escapes, breeding of hardened criminals as characterized by the contemporary penal system. It therefore lessens the burden of the traditional rulers such as feeding, clothing, health, court attendance and other issues of prisoners including grant of amnesty and presidential pardon associated with the contemporary penal system.

#### **5.3.5 Quick Trial Process**

In the traditional setup, before cases are adjudicated libation is made to invoke the spirits and the deities to come and umpire the case and as a result the verdicts are usually accepted thereby lessening the length of time spent on the case. In view of this, the system hardly adjourns cases. Thus, the system provides fast trial process and gives fast judgments by ensuring transparency and these judgments come at a low cost. Aside the quick trial process associated with the traditional penal system there was the preserved equilibrium between men, the gods and the ancestors.

#### **5.3.6 Flexible Rules of Evidence and Procedure**

Added to the above is the fact that there is flexible rule of evidence and simplified procedure under the traditional system. Traditional or customary norms are considered during trial and judgement. The trial panel is selected from the community depending upon their social status and the victims express their complaints as they deem necessary. They may not necessarily present their cases in coherent or relevant manner. The local language used in the various traditional setups helps the people to understand the traditional laws better. Religion is the keystone of the traditional penal

system and therefore one is aware that by giving false evidence the ancestors and deities could punish him/her severely.

## **5.4 Weaknesses of Traditional Penal System**

### **5.4.1 Non-Custodial Sentences**

The study revealed that the traditional penal system encourages non-custodial sentences that allow criminals to live within communities and continue their criminal activities, e.g. rape, defilement and stealing. As a result there is a threat to the safety of the public since the criminals are not confined. The objective of confinement is to deter others from committing similar offences and the offender from committing another offence(s). Since offenders who are convicted in the traditional penal system are not confined, there is the high tendency of other members of the society committing offences since their freedom is not restricted.

### **5.4.2 Undefined Sentencing Policies**

Sentencing policies differ from one community to another unlike the contemporary penal system where laid down legal processes and procedures are followed. The judges are restrained on the award of sentence of any offence because the sentencing policy of the contemporary penal system has minimum and maximum terms that are not practicable under traditional penal system. Some of the traditional leaders interviewed maintained that there is no well-defined sentencing policy for them to follow in giving judgements when one is convicted of an offence. For example, a person convicted of an offence may be fined one ram and some bottles of schnapps.

On the other hand, an offence of the same magnitude might attract a higher sentence. This is because the trial panel for the two cases would be different. As there are no

rules and no formal procedure governing the proceedings of the traditional penal systems, there are serious interruptions during trial.

#### **5.4.3 Excesses and Abuses and Human Rights Violation**

According to Gyekye (1996), in the olden days (17<sup>th</sup> century) most indigenous Africans punished offenders of crimes by enslaving them. This confirms the findings from the study that there were human rights abuses of offenders during and after trial. For example, debtors or their children were made to serve their creditors until the debts were defrayed without any payment for the work done. In the contemporary system, such a person will become a prisoner. Again, in the early ages, debtors were usually branded by their masters for easy identification. Sick slaves were forced to work for long hours and refusal to do so will result in starvation by their masters.

There were human rights abuses involved in some of the cultural practices among the traditional penal system. The offenders were made to suffer especially those who violated the traditional practises such as witchcraft, *Trokosi*, puberty rites, among others. Ladies who became pregnant without going through the puberty rites were given special haircuts, attires and were banished from their towns or villages. There were instances where law-breakers were stripped naked and caned in public to deter others from committing similar offences. Other offenders and their children were enslaved. All these practises amount to torture, inhuman treatment and degradation in the context of the contemporary penal system.

Furthermore, human rights are mostly abused in the traditional courts. These include lack of counsel, swearing of an oath in a traditional way irrespective of an individual's religious background, forcing defaulters and their children to serve their debtors, and the banishment of some lawbreakers from the village or town. In the

contemporary penal system however, human rights are protected. A breach of human rights is liable to a court suit

#### **5.4.4 Fear of Supernatural Powers**

Offenders usually have much trust in the traditional penal system because they believe traditional rulers are the representatives of the ancestors and deities. As such, if one disobeys a traditional ruler, you are likely to receive an instant severe punishment from the ancestors and deities. From Table 4.41, 27.78% respondents argued that practicing such system based on supernatural powers in 21<sup>st</sup> century is primitive, barbaric and disadvantageous to development.

#### **5.4.5 Unfair Judgement**

Some of the respondents felt that although fairness and dynamism exists in the traditional penal system there is some form of unfair judgment as individuals are not given a chance for lawyers to represent them or to appeal against conviction. Some individuals tend to lose their lives because of minor offences and there is some form of bias as offenders are sometimes punished “out of proportion” (severely). According to information derived from traditional leaders in Table 4.14, adjudication of cases may be autocratic because of the ‘*Opanin nni fɔ*’ tradition which implies that an elderly cannot lose a case with a young person. In addition, the offenders have no legal representatives.

#### **5.4.6 Some Sub-Chiefs Inability to Try All Cases**

Members of the adjudication team in the traditional penal system mostly do not have any legal background. Again certain cases are handled by the paramount chief (*Omanhene*). As a result of this, sub-chiefs do not have the power to try all cases that are brought before them. Judgments passed on to minor cases may be the same for

major offences as there are no laid down rules concerning crimes and their alternating punishments.

### **5.5 Strengths of the Contemporary Penal System**

The research revealed some advantages of the contemporary penal system which are also the positive effects of the contemporary penal system on the Ghanaian culture. These are discussed below:

#### **5.5.1 Isolation of Criminals from Larger Society**

The Contemporary Penal System allows thorough investigations to be conducted. The longer period used to adjudicate cases gave the judges the opportunity to come out with good judgments. The system isolates criminals from the larger society and commits them into prison custody to ensure public safety and the protection of life and property.

#### **5.5.2 Access of Appeal against Sentence and Legal Representation during Trial**

It was evident from the research that the contemporary penal system has put in place mechanisms where dissatisfied persons can seek redress up to the Supreme Court. This is absent in the traditional penal system. Again, in the contemporary penal system, accused persons are constitutionally allowed to take lawyers of their choice to defend them. It makes room for appeal against sentence.

#### **5.5.3 Well-Structured System**

The contemporary system is well-structured and helps citizens to be law abiding. From the study findings, it was evident that sanctions from courts deter offenders from committing further crime and the potential criminals from committing crime. It also recognizes, protects and respects the rights of people as the contemporary penal



system derives its source of power from the Constitution of Republic of Ghana. In support of the above statement, Article 125 (1) of the 1992 constitution states that, “Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary, which shall be independent and subject to this constitution”.

Again, the constitution mandates the judiciary to exercise the judicial power of Ghana and the jurisdiction on all civil and criminal matters, including matters relating to the constitution and neither the President nor Parliament shall have or be given final judicial power.(1992 Constitution: Articles 125(3) and 125(5).

#### **5.5.4 Prevention of Crime**

The contemporary penal system has the tendency of putting fear into individuals in the society to prevent them from committing crimes. Once in a while, the public is educated on the sentences that come along with certain crimes; this has a way of warning off wrong doers as it alerts them on the consequences of some crimes. The warning is done mainly by the help of the media that is, using television programs, radio interviews and documentaries.

Also, the contemporary penal system ensures discipline and order and by protecting the human rights of people it makes members of the society law abiding such that people know and understand the law and are conversant with correctional implementations that are put in place to promote a peaceful society.

#### **5.5.5 Rehabilitation**

Offenders in the contemporary penal system are sometimes taken through rehabilitation programmes. These happen at the prisons or after the convicts are discharged from prison custody. The rehabilitation programmes are to study and



monitor the psychological and physical effects the stay in the prison has had on the convict. Rehabilitation in the contemporary penal system is sometimes done to correct the negative attitude and the negative thinking of the convict that made him commit the crime or make him prone to commit a crime after his or her release from prison custody.

## **5.6 Weaknesses of the Contemporary Penal System**

Notwithstanding, the advantages of the contemporary penal system and its positive effects on the Ghanaian culture, the respondents stated some weaknesses in the system and the associated negative effects on the Ghanaian culture. These shortfalls are stated below:

### **5.6.1 Long Delay in Hearing**

The Contemporary Penal System is characterized by the delay in prosecuting offenders at the courts. This according to respondents was due to transfer of judges, police investigators and the complex nature of some cases. It was evident from the research findings that some suspects remanded in prison custody by courts of competent jurisdiction remained in custody for many years because of cumbersome trial process. Some respondents stated that investigations under the contemporary penal system took years and retards progress.

### **5.6.2 Perception of Bribery and Corruption against Staff of the Criminal Justice System**

The findings revealed that the Contemporary penal system is characterized by heavy legal fees by the legal practitioners, the demand on suspects by the police and the staff of the judiciary. This is mainly due to the inadequate government subventions, logistics and insufficient motivation for such agencies. In view of this, the greedy

ones have taken undue advantage to 'cheat' the (poor) suspects. Suspects are now being charged exorbitant amounts of money by lawyers to defend and even file appeals for them. It is also alleged that some police officers ask the relatives of the suspects to pay for their transportation to and from courts. This has therefore resulted in alleged bribery and corruption in contemporary penal system in Ghana.

Furthermore, debates persist that there is unfair justice and therefore most people have lost confidence in the police service and the judiciary hence, individuals take the law into their own hands and give instant justice to suspected criminals.

#### **5.6.3 Poor Co-ordination within the Agents of Criminal Justice System**

It was evident from the responses that the police were unable to send remanded prisoners to court regularly as a result of investigators needing more time to finish investigations or prosecutors and judges being transferred without communicating to the other parties in the Criminal Justice System. Vehicles and fuel needed to transport suspects and trial prisoners to court are sometimes not readily available due to lack of funds. Co-ordination within the staff of the agents of the Criminal Justice System is very poor.

#### **5.6.4 Bad Perception of Court Judgments**

Some respondents maintained that the court does not judge based on truth but the law thus if one does not argue his or her case well in court, one will end up losing the case. The contemporary penal system sometimes gives harsh, unfair judgment and provides negative justice. Again some argued that certain cases (*ceteris paribus*) do not demand high sentence yet high sentences are handed out and the government has to spend money on offenders during trial and their confinement.

### **5.6.5 Side-line Traditional Authorities**

Article 125 of the 1992 constitution does not allow the traditional authorities to take any legal action against any offenders. This implies that the contemporary penal system has side-lined the traditional authorities from punishing offenders as it were in the olden days. The leaders' power has been side-lined by the 1992 Constitution as the judicial power of Ghana has been vested in the Judiciary. Accordingly, it is stated in the constitution that "neither the President nor the Parliament or any organ or agency of the President or Parliament shall have or be given final judicial power" ((Article 125 (3), 1992 Constitution). Again, Article 125(5) states "The Judiciary shall have jurisdiction in all matters civil and criminal, including matters relating to this constitution and such other jurisdiction as Parliament may, by law confer on it". The Chief Justice is the head of the Judiciary and shall be responsible for the administration and supervision of the judiciary (and not traditional leaders - own emphasis).

### **5.6.6 Limited Sentencing Policy of the Judiciary**

The sentencing policy of the contemporary penal system has failed to go beyond the fines and custodial sentence. The sentencing courts have not been provided with many means of alternatives to imprisonment. The respondents stated that in most cases the offenders lack financial ability to honour the fines imposed on them by the courts. The only available option to the court in such cases therefore is custodial sentence. The consequences are crowded prisons and associated challenges including financial burden on the government, the families of the offenders in prison and the society at large. The respondents maintained that imprisonment was a waste of time and human resources. Able body-men and women are 'warehoused' in prison custody because of limited sentencing policy options.

### **5.6.7 Stigmatization**

Generally, prisoners (convicts) and ex-convicts are regarded as criminals, and they are labelled as 'jail men/jail women' even after their discharge from prison custody. The contemporary penal system has brought the concept of imprisonment and imprisonment affects any relationships the convicts have with other individuals and the outside world. Again, convicts and ex-convicts are discriminated against when it comes to issues like marriage, travelling, employment and appointment of key positions-kingship etc. and this is against their citizens' right of freedom, association and movement among other human rights. According to Table 4.71 and Table 4.72, 63.16% of the respondents who fell within the category of convicts and ex-convicts thought they were not likely to become chiefs after discharge. Furthermore, 55.56% of the 63.16% are not from a royal family, the rest who were from royal families stated that an ex-convict is still seen as a criminal and there was no way they were going to be allowed to become chiefs. Ex-convicts are not allowed to ascend the throne in their respective families even if the person has turned over a new leaf. Others stated they would prefer to be pastors than become chiefs as when they are pastors they will be able to use their experiences to advice people, especially the youth against vices.

### **5.6.8 Human Rights Abuses**

Inalienable human and natural personal rights acquired by an individual by being a citizen such as the right to hold public office, rights to equality, freedom, marriage etc. are abused under the contemporary penal system when an individual is imprisoned.

#### **5.6.9 Bribery and Corruption**

Bribery and corruption is not obvious in the traditional courts. The contemporary penal system is alleged to be highly associated with bribery and corruption. The court officials are alleged to charge their clients exorbitant amounts of money in order to defend them and even file appeals for them. It is also alleged that the police ask the relatives of the suspects to pay for their transportation to and from the courthouses. Due to this, fair judgments are not passed for crimes committed by certain people of influence in society as they have the means to pay their way out of punishments.

#### **5.6.10. Difficult to Understand**

With the rise of different laws, sanctions and forms of punishments, the contemporary penal system proves to be a system that is difficult to understand. This is because the known punishments associated to crimes keep changing and new laws regarding “new crimes” keep arising hence it makes it difficult to educate the general public on laws regarding particular crimes.

#### **5.6.11 Harsh Conditions**

Generally, conditions in Ghanaian prisons and correctional facilities are not the best as there is the infringement of the rights of the prisoners. Though the contemporary penal system vouches for the respect of human rights, in the prisons, there is the exact opposite as the prisoners experience harsh conditions with respect to overcrowding, insufficient food, inadequate medical supplies, clothing and sometimes physical abuse from prison officers and fellow inmates.

#### **5.6.12 Financial Loss to the Country**

In the traditional penal system, offenders of certain particular crimes are made to pay fines to compensate the families of those affected. However, in the contemporary



system, offences that may require a fine are usually sentenced to prison terms. For such prisoners, in addition to the already crowded conditions, the nation has to fund their accommodation and feeding which in the long run causes financial loss to the country where there should have been gain. From Table 4.67, cases such as fraud and traffic offences where there are 8 and 4 respondents respectively should have been made to pay a reasonable fine to the government yet they were committed to prison terms.

## **5.7 The Effects of Contemporary Penal System on Ghanaian Culture**

The contemporary penal system has a number of effects on the Ghanaian culture as revealed by the research. The effects are discussed as follows:

### **5.7.1 Negative Effect of Contemporary Penal System on Ghanaian Culture**

According to information gathered from the respondents, Tables 4.26 and 4.27 indicate that, there have been some changes in the contemporary penal system which had an effect on the Ghanaian culture. Most of these effects turn out to be negative such that currently, people do not abide by traditional rules and taboos but rather abide by the constitution. Chiefs and traditional rulers are not respected as they used to be as their authority in several cases has been side-lined. The introduction of prisons has brought about psychological effects on the convicts and ex-convicts. Some of these points are further discussed below.

#### **5.7.1.1 Side-lining the Authority of Traditional Ruler-Ship**

The Article 88 of the 1992 Constitution of Ghana does not give the legal rights to the traditional authorities to punish any offender. This law has actually side-lined the chiefs and their elders thereby weakening the “Social Control” as well as the solidarity members of a community show to one another. The traditional ruler-ship of



authorities are said to be side-lined because certain trivial matters that used to be handled and settled by the traditional leaders are now being sorted out by the courts. These include murder, rape and defilement, political cases, issues of bribery and corruption, armed robbery, just to mention a few. There is no longer the spirit of each brother's keeper but rather disrespect for authority and law-breaking especially among the Ghanaian youth.

In the solving of land disputes, according to the traditional penal system, the Chief and his elders slaughter sheep and pour libation to the gods and ancestors for peaceful settlement and re-union between the two parties involved in a land dispute. The traditional leaders are very important in settling land disputes in Ghana. This is because they are the custodians of the land and they are well versed in customs and traditions associated with lands. The contemporary penal system has however taken over land cases. The result is that parties rather prefer submitting their land related cases to the courts rather than the chief. Some people have been committed into prison custody because of land disputes and most land disputes are kept at court for years creating factions and disunity in those areas. The effect is that the culture of peaceful co-existence of groups, neighbours and family members are marred or disturbed.

Similarly, another area where Ghanaian culture is usually portrayed is the institution of chieftaincy. Sometimes chieftaincy disputes erupt as a result of the wrong person being chosen to be a chief when a stool becomes vacant. Again chieftaincy disputes can crop up when two gates from the same family fight over a vacant stool. In the traditional penal system, the traditional leaders are able to settle all cases relating to chieftaincy. Complex cases above the Divisional chiefs are referred to the Paramount

chiefs. With the contemporary penal system, the traditional rulers can no longer settle complex cases relating to chieftaincy. Most chieftaincy disputes are referred to courts and the judgments that are passed in some cases change the occupant of a stool.

According to 84.5% of members of the criminal justice system interviewed (as seen in Table 4.53 and Table 4.54), the contemporary penal system has side-lined the powers of traditional rulers' interference of the courts in the appointment of chiefs and also by not allowing traditional rulers to preside over cases in court. Now rape, defilement and other criminal cases that used to be presided over by the chiefs are now being settled in the courts. Laws such as Article 125 of the 1992 constitution, sections (1), (2) and (5) have all weakened the ruling and adjudicating powers of chiefs. The negative effect is that the custom and the traditionally laid down chieftaincy succession plans are thrown overboard leading to ethnic, family and chieftaincy conflicts which also affect cultural development.

#### **5.7.1.2 Disregard for Human Rights**

Culturally, Ghanaians respect the rights of individuals and treat people humanely. The negative treatment rendered onto offenders in prison make them hardened criminals instead of corrected fellows and this affects their conduct in the society after discharge from prison. Offenders' non-court attendance to ensure speedy trial amounts in the violation and abuse of their human rights under the Contemporary Penal system.

It was revealed from the research that a large number- constituting about one-third of the country's prisons population are remands. During the interview most of them remarked that *"the police maltreat us when we are arrested; they don't take us to*

*court; the police have abandoned us, courts and police have violated and abused our human rights”.*

### **5.7.1.3 Imprisonment and Its Implications on the Convicts**

The study supports the idea of the United Nations Office on Drugs and Crime (UNODC, 2011) that there is the need for Prison Reform and Alternatives to Imprisonment because of the implications associated with imprisonment. Some of the implications on the way of life of convicts, family members and the community at large are discussed below.

The Ghanaian culture frowns on imprisonment as it has a negative effect on the offender, the family and even the community. For instance, an ex-convict cannot become a chief. A chief will be de-stooled if he is convicted to a prison term. In some communities, ex-convicts are seen as social outcasts and are not allowed to play any key role or position in their communities; this is because people who hold key positions in the community are seen as role models which evidently an ex-convict is not. This is also due to the fact that with their criminal records they do not set a good record for the people and are alleged to lead people astray as they may or may not be abiding by rules and regulations for their lack of good character (refer to Table 4.11).

According to Table 4.46 and Table 4.47 which bear data gathered from members of the criminal justice system, there are local laws that prevent ex-convicts from holding any public positions in the society. These can be seen in the 1992 constitution in Article 93 section (2), Article 94 section (2c) and section 298 (1) (a) of Act 30. Some of the respondents also stated plainly that ex-convicts are not to hold any public office until after 10 years from the last date of their sentence. Majority of the respondents, (72.4%) from the criminal justice system supported this claim by stating that there are

even records of some public figures that have been declined to contest for a position due to criminal records they had.

Consequently, inalienable human and natural personal rights acquired by an individual by being a citizen such as the right to hold public office, rights to equality, freedom, marriage etc. are lost under the contemporary penal system when an individual is imprisoned. Furthermore, the culture of socialization, the re-integration of ex-convicts in the society is adversely affected and weakened.

Most of the law breakers in the contemporary penal system are prosecuted at the court and sentenced to prison terms. The traditional justice system is based on the principles of repairing the harm through realization; restitution, apology, reconciliation and acceptance.

#### **5.7.1.3.1 Imprisonment and Poverty**

Imprisonment affects convicts and especially families living in poverty. When an income generating member of the family that, is a breadwinner, is imprisoned, the rest of the members of the family suffer as they must adjust to this loss of income. The impact is severe in communities where the state does not provide financial assistance to the indigenes. Thus, the family experiences financial losses as due to the imprisonment of its breadwinner. The family's expenditure increases as a result of the new expenses that must be met-such as the cost of a lawyer, food for the imprisoned person, transport to prison for visits etc.

From Table 4.47, an ex-convict, (often) has no prospects for employment. Generally, ex-convicts are subject to socio-economic exclusion and are thus are vulnerable to an endless cycle of poverty, marginalisation, criminality and imprisonment. Thus,

imprisonment contributes directly to the impoverishment of the convict/ex-convict, of his family (with a significant cross-generational effect); of society by creating future victims and finally, reducing future potential economic performance.

#### **5.7.1.3.2 Imprisonment and Negative Social Impact**

Imprisonment disrupts family structure and therefore affects relationships between spouses, parents, children and friends as well as reshaping the family and community across generations. From Table 4.8, a total of 41.38% of the respondents indicated that people look down on them and therefore they do not often attend social gatherings. Again, 13.79 % of the respondents said that they have emotional and psychological problems as the result of societal attitude, stigmatisation syndrome towards convicts and ex-convicts. This weakens social cohesion since the maintenance of such cohesion is based on long-term relationships. In effect, imprisonment produces a deep social transformation in families and communities.

#### **5.7.1.3.3 The Cost of Imprisonment**

The cost of imprisonment includes the actual funds spent on the upkeep of each prisoner and other indirect costs, such as the social, economic and medical related costs. These indirect costs are difficult to measure but, are immense and long-term. From Table 4.82, 14.4% of the respondents said that imprisonment is a waste of resources and causes financial loss to the state.

#### **5.7.1.4 Death and Funeral Rites**

In the traditional penal system, when one dies, he or she is given a befitting burial and funeral by the family. The practice is such that irrespective of where the death occurs the corpse is usually handled by the families to prepare the body and pay their last



respect after which the body is sent to the cemetery for burial with ease without any condition.

In the contemporary penal system, the family of a deceased, in the case of the prisoner, the prison authority has to obtain a burial permit and in some instances death certificate before the burial depending on the circumstances surrounding the death. For instance, when one dies an accidental or sudden death, died as a result of an ailment, or brought in dead (died en route to a hospital) twenty four (24) hours before sending the person to the hospital, a coroner is required. This simply means that the Criminal Investigation Department (CID) of the Police must carry out an investigation to ascertain the cause of death of such a person. A court order is given for an autopsy to be conducted by a doctor before the corpse can be buried.

The traditional way of burying the dead without permit is no longer allowed by the contemporary law. If this is not done and a case is reported to the police the law will deal with the affected family. Coroners, autopsy and the keeping of dead bodies in mortuary, in practice, were not a part of the Ghanaian culture. The cost of keeping dead bodies in mortuary during investigation burdens and increases the woes of the families of the deceased.

#### **5.7.1.5 Non-Adherence of Cultural Practices**

An appeal court adjudicates cases from the high court. Sometimes offenders file an appeal to the court to plead for reduction of sentences. Others file appeals when they are not satisfied or convinced with the judgment passed by the high court.

First degree felony offences such as murder, narcotics related cases, defilement, rape and armed robbery are referred to the high court for judgment. Cases can go as far as



the Supreme Court which is the highest court in a country. In all cases of the contemporary system, lawyers are present to defend their clients; legal aids are also available to defend those who cannot afford to take lawyers whereas the traditional penal system is different. In the traditional penal system, the chief is the magistrate or judge. Cases can go beyond the divisional chief to the paramount chief. The jury in the traditional penal system consists of the chief and his elders and no lawyers are allowed to defend the offenders but rather, witnesses are called to defend or for clarification and confirmation of facts.

It could be noted that the chief and his elders were accorded the greatest respect and had the authority to settle disputes traditionally in ways that bring about peace and harmony. In almost all cases submitted to the chief for settlement, the complainant and the accused are made to reconcile before leaving the palace. If the case involves a curse, the gods are pacified to avert the curse. The rights of appeal for our traditional leaders have been undermined and the cultural norms also have been ignored. Non adherences of cultural practices such as pouring of libation, pacification of traditional gods are assumed to be, among others, the cause of disasters and calamities occurring in our communities and the country as a whole.

#### **5.7.1.6 Marriage Rites**

The contemporary penal system is characterized by marriage regulations that are not found in traditional systems. These include marriage by ordinance which involved signing of the marriage contract in the court; a complete deviation because the traditional marriage system.

The tradition system of marriage has seen a tremendous change. Marriage system such as betrothal has now been over shadowed by weddings, which usually involves

the couple signing marriage certificates in the courts. Ordinance by Court and Customary Marriage are very separate and distinct entities.

### **5.7.2 Positive Effects of the Contemporary Penal System on the Ghanaian Culture**

In the traditional leaders' category from Table 4.23, 104 out of 116 of the respondents representing 89.6% indicated that the contemporary penal system had an effect on Ghanaian culture and is also beneficial to the Ghanaian culture. Below are some of the positive effects of the contemporary penal system on the Ghanaian culture.

#### **5.7.2.1 Ability to Redress Wrongs and Access to Right of Appeal**

Usually, offenders who are sent to prisons under the contemporary penal system have the opportunity to file appeals for their cases to be reconsidered and re-adjudicated. Even then, one could be released from prison for hard work and good conduct. Again, convicts are mostly discharged on amnesty or presidential pardon on good behaviour when the psychological abilities of the individual is tested through questions and answers and through therapy to determine whether or not the offender has shown any sign of sympathy or remorse for the crime committed.

#### **5.7.2.2 Enhancing Rule of Law**

Based on their experiences in prison, the convicts who were interviewed were given the opportunity to advice their fellow friends (Table 4.78). The convicts advised their friends that, they should be careful not to break any law (s) because the prison life is not an easy life. They further stated that they should be careful in all their endeavours because once they were caught the law was going to deal with them. They should also adhere to advice, not rush for things in life and refrain from all criminal activities. They should respect the law as there are sanctions and punishments that go with

offences committed. In effect, the contemporary penal system enhances respect and the rule of law in the nation.

### **5.7.2.3 Incarceration**

The Contemporary Penal System allows thorough investigations to be conducted. The system isolates criminals from the larger society and commits them into prison custody to ensure public safety and the protection of life and property. Due to the confinement of criminals into prison custody in the contemporary penal system, unacceptable values and norms are not spread among members of the society.

## **5.8 Elements of the Traditional and Contemporary Penal Systems**

### **5.8.1 Elements of the Traditional Penal System**

#### **5.8.1.1 Penal Structure**

The traditional penal structure has been described in page, 150. It is different from the penal structure of the contemporary penal system.

#### **5.8.1.2 Complain Mechanism**

The affected victim complains to an elderly person in his or her family; in most cases the *Abusuapanyin* or Queen Mother about the incident of infractions of the traditional law or norms, for example, assaults, insulting behaviour, theft etc. The *Abusuapanyin* or Queen Mother through the *Abusua Kyeame* (linguist) informs the accused through the elders or parents of the accused. The victim's family then sets a trial panel for the adjudication of the case headed by the *Abusuapanyin* or his representative.

#### **5.8.1.3 Evidence/Fact (*Adanseɛ*)**

The traditional penal system establishes evidence(s) through the following means;

- a) Calling of witnesses to testify in cases

- b) Invitation of the traditional priest. The priest is to be present to prepare a concoction for the accused person(s) to drink to prove their innocence or guilt of the matter.
- c) Another form of proving innocence or guilt is by swearing an oath by the gods and deities or dipping ones hand in a boiling liquid.

The traditional penal system also believes in sorcery, witchcraft, necromancy, curses, wrath from the ancestors and gods as additional evidences in establishing the facts.

#### **5.8.1.4 Trial Process (*Asemdie*)**

In the traditional penal system, the traditional authorities go through a number of processes involving witnesses, cross-examination and determination of verdict. “The accusation is followed by admission of guilt, a plea of extenuating circumstances, a plea for mercy, exhortation to change, promise to change and then forgiveness” (Warren,1973:48). Judgments passed in the traditional penal system are believed to have religious sanctions because they are considered to be decisions of the ancestors and or punishments from the gods. The judge is “thus placed largely beyond risk of opprobrium, which is just a decision but one displeasing to a certain and possibly powerful faction might have occasioned” (Rattray,1929:289) . The jury takes shorter time to pass their verdicts; this is because the accused persons always fear that the ancestors and the gods will kill them if they tell lies after swearing an oath to speak the truth before the chief and his elders. As a result, the verdicts are usually accepted thereby lessening the length of time spent on the case.

#### 5.8.1.5 Jury (*Abedwafoɔ*)

The jury in the traditional penal system is composed of the chief and his elders mainly; the linguist, queen mother, the clan head and at least seven elders. As stated earlier in the traditional penal structure, the traditional jury is made up of the chief and his elders but on some occasions, the queen mother, the clan head and at least seven elders.



A

B

**Figure 5.1: The jury in the traditional sitting (A: Northern Ghana; B: Southern Ghana)**

#### 5.8.1.6 Counsel (*ntemugyinani*)

In the traditional penal system, there is no defence counsel present during trial except witnesses. Though there is no attributed defence counsel in the traditional penal system, there are some people who stand in for offenders during trial in the traditional penal system. Such people could be influential people in the society or the head of the family of an accused person. These people are usually present to prove the innocence of the offender.



#### **5.8.1.7 Verdict (*Atemuo*)**

In the traditional penal system, it is very difficult to influence judgment with money. This is because the chief and his elders make libation to evoke the spirits, the lesser gods and the ancestors and on some occasions they also take an oath and swear on their lives to be as transparent in the passing out of the verdict as possible hence there is the strong belief that should they give false judgments, the gods will punish them severely for their actions.

#### **5.8.1.8 Punishment (*Asotwe*)**

Punishment is given to an offender in order to correct the negative behaviour of the offender and to also deter the offender and other people in the society from committing similar or other offences. Punishments that are handed out in the traditional penal system come in varying ranges. One could be made to serve at a shrine for a period of time or made to work without any reward also for a period of time. According to the findings of the study, in the early ages, there were severe punishments that were handed over some as severe as human sacrifices to deter members of the society from committing any crimes.

#### **5.8.1.9 Reconciliation (*Nkabom/Nsie sie*)**

The parties can easily be reconciled in the traditional penal system as emphasis is laid on unity rather than disunity. There is the idea of friendship that must remain among members of the society and this friendship is bonded between the complainant and the accused persons as they are made to shake hands or embrace each other after the case has been settled by the adjudicating team. They are therefore made to see themselves as friends and not enemies. Though this may not always lead to friendship, there is the



inception of the idea by the adjudicating team as it is almost a requirement for members of the society to be at peace with each other.

In the case of the contemporary penal system, the parties usually see themselves as litigants or enemies since the cases sometimes end up in imprisonment for the accused persons if they are found guilty.

## **5.8.2 Elements of the Contemporary Penal System**

### **5.8.2.1 Penal Structure**

The contemporary penal system has five types of courts namely the Supreme Court, Appeal Court, High Court, Circuit Court and District Magistrate Court.

The District Magistrate Court is the lowest of all the courts and can only take care of minor offences. The District Magistrate Court cannot give sentences above five years.

The Circuit Court is one that has a higher standard than the District Magistrate Court. This is in relation to the number of judges present in these courts. The Supreme Court has seven (7) judges whilst the Appeal Court has five (5) judges. The High Court has three (3) judges whilst the District Magistrate and Circuit Courts have only one (1) judge.

### **5.8.2.2 Complain Mechanism**

In the contemporary penal system, there is the complaint mechanism where the complainant visits the police station with a case. At the police station, the complainant is made to write a police report with the details of the issue he or she is complaining. The offender is then visited by the police and taken to the police station for questioning and filing of a police report, also with his or her side of the story of the issue in question. The police then take time to investigate the matter. During the

investigation period, the offender is cautioned not to leave the city of his residence or the country of residence until a decision has been made. If after the investigation there is evidence substantiating the commission of the offence, then an arrest is made and the case is sent to court for trial.

#### **5.8.2.3 Arrest and Investigation**

In the contemporary penal system when an offender is arrested after substantial evidence has been adduced of the commission of the offence, he or she is taken to court for the trial process to begin and sometimes during the trial process; depending upon the nature of the offence the court could remand the suspect to police or prison custody. During the remand period the case remains open as further investigations are made to gather more evidence for and against the offender by both parties of the counsel. This period is very important as the freedom of the offender depends on it. After the court trial, if the accused is found guilty the trial judge will pronounce judgment which could be either fine or prison sentences or both and in some cases compensation to the affected victims.

#### **5.8.2.4 Counsel**

Persons who have been charged with an offence, arrested or detained have a constitutional right to a counsel. In the contemporary penal system, there are counsellors at law or counsel who are commissioned by both the complainant and the accused persons to defend them.

A counsel is a person who gives advice and deals with various issues, particularly in legal matters. This title (counsel) interchanges with the title of lawyer. Defence counsel would mostly appear in court after accused persons have been charged with offence(s). He protects the right of accused persons to remain silent and not

incriminate them, the right to a fair trial. The defence counsel is professionally bound to advance all arguments ethically permitted on behalf of the accused in order to protect the accused persons from wrongful conviction. Where accused persons are convicted the counsel is to ensure that, the penalty is proportionate to the gravity of the offence and to the degree of culpability of the accused.

#### **5.8.2.5 Evidence/ fact**

The contemporary penal system does not believe in or make use of supernatural powers as evidences in courts in establishing facts as is used in the traditional penal system. Evidences such as killing a person through a curse, bewitching and reviewing of a criminal secret through sorcery or necromancy is never accepted in the contemporary penal system. The only form of oath swearing allowed in the contemporary penal system is by the Holy Bible or the Holy Qur'an after which evidence is laid before the judge and jury to decide whether or not the offender is guilty.

#### **5.8.2.6 Dress Code**

There is a particular dress code for counsel in the contemporary penal system and this is usually made up of suits, shoes, ties, gowns and wigs for the judges. The suits, shoes and ties for the lawyers, court clerk and the State Attorney which is a strictly western way of dressing to the court room.



**Figure 5.2: The Contemporary penal system ceremonial dress code**



**Figure 5.3: The ordinary (working) dress code for judges/lawyers in the contemporary penal system**



**Figure 5.4: The Supreme Court House in Accra, Ghana**



**Figure 5.5: A gavel used by a judge in the contemporary court room**



#### **5.8.2.7 Trial process**

The trial process depends mainly on members of the jury. Mostly, the trial process in the contemporary penal system takes longer as the jury takes a long time in reaching a verdict with the cases being adjourned for lack of evidence and lack of witnesses. This sometimes takes a year or more as they feel the need to gather enough evidence and witnesses before passing an appropriate verdict.

#### **5.8.2.8 Jury**

Unlike the traditional penal system where members of the jury are made up of the chief, the queen mother, the clan head and the elders, in the contemporary penal system, the jury consists of any person from public institutions with no legal background with ages ranging from 25-60. The personnel from the security services are not eligible to be members of the jury.

#### **5.8.2.9 Verdict**

In the contemporary penal system, in spite of the maxim that the law has respect for all persons and the fact that no one is above the law, this is sometimes overlooked. The rich and some personalities could influence the judgment for the verdict to go in their favour because of perceived bribery and corruption in the criminal justice system.

#### **5.8.2.10 Sentence**

The contemporary penal system and the traditional penal system award punishment to lawbreakers. However, the punishment given by the contemporary penal system is much more severe than punishment passed out in the traditional penal system. For instance, offenders are sent to prison in the contemporary penal system for life, condemned to death and long sentences.

## **5.9 Incorporation of Some Elements of the Traditional Penal System into the Contemporary Penal System**

The contemporary penal system seems to have helped in the improvement of behavioural attitudes of Ghanaians. Of all the traditional leaders interviewed, 79.13% of them indicated that the contemporary penal system had helped in the improvement of the behaviour of Ghanaians while the remaining 20.69% pleaded the contrary (Table 4.17).

The primary objective of the contemporary penal system is to reduce crime rate. Many of the Ghanaian youth who formed the working age group have been incarcerated. The objectives of putting offenders behind bars are not achieved due to a number of challenges faced by the criminal Justice System in Ghana.

Prisons are rather seen as the warehouse of human beings. The offenders who are to be reformed and rehabilitated are rather being hardened due to poor classification-inability of the prison authority to categorise the offenders appropriately in prisons, congestion, inadequate logistics and funding.

The respondents who maintained that the contemporary penal system have not improve the behaviour of Ghanaians gave reasons among others as; prisoners are rampantly recidivates in the Ghanaian Prisons, crime wave and crime rate are on the ascendancy and the country's prisons are overcrowded. These are the true indications that contemporary penal system have not been able to eradicate crime completely and has not changed the behaviour of the Ghanaian but rather increased the crime wave and crime rate.



On the other, the respondents who argued that the contemporary penal system have improved the Ghanaian behaviour gave reasons such as, due to the long period of incarceration and sentencing policy of the contemporary penal system, people are deterred from stealing and committing other offences. The contemporary penal system provides help by educating people on human rights and also provides a rehabilitation programme and the requisite skills to convicts and ex-convicts to be self-employed after their discharge from prison. In addition to rehabilitation and training programmes, the inmates are introduced to formal education such that those who did not have the opportunity to complete their basic education, junior high and senior high education could do so (Table 4.18).

Though the contemporary penal system has provided some good benefits to the attitude of Ghanaians towards the law, some aspects of the system seem not to have helped in the improvement of the behavioural attitudes of Ghanaians. Some of which are that the youth have been given too much rights therefore they do not regard the elderly anymore; there is also clear mistrust of Ghanaians towards the current court systems as they show partiality in the effective handling of some cases (Table 4.19).

Furthermore, there were some members of the criminal justice system who said that the contemporary penal system has not quite improved the general behaviour of Ghanaians, especially the youth. Those members of the criminal justice system who thought it had not quite improved behaviour were of a greater percentage as they were represented by 56.9% of the total members interviewed (Table 4.56 and Table 4.58). The remaining 43.1% who thought the contemporary penal system had improved behaviour stated among others that:

- The perception and stigmatization of convicts and ex-convicts by the society deters people from committing crimes as they would not want to be perceived as convicts or ex-convicts.
- The heavy fine that convicts are made to pay also deters people from committing crime.
- Also the custodial sentences, the fear of incarceration and the poor prison conditions have deterred the people from committing crime.

Thus the above, are some reasons to prove that the contemporary penal system has made a difference towards improving the behaviour of Ghanaians especially the youth towards the law.

The reasons stated by the members of the criminal justice system who thought the contemporary penal system had not improved the behaviour of Ghanaians stated the following reasons:

- Crime is now on the increase as the enforcement of human rights has done more harm than good.
- With the advent of lawyers in contemporary law, well-argued and well-defended cases in court could set the accused person free (notwithstanding the offence committed).
- Some offenders are not afraid to pay fines and serving custodial sentences.
- Increase in immorality and immoral acts such as lesbianism and gay practices.

In order to provide validity of the information acquired during the study, the members of the criminal justice system were asked about some advantages of the traditional penal system. The total number of people interviewed in the criminal justice system, (83.62%) of the respondents thought the traditional penal system had a great

advantage in improving the life of Ghanaians (Table 4.59 and Table 4.60). According to the respondents, they thought that:

- The traditional penal system comes at a low cost and is easily accessible.
- The system helps people to be obedient and respect elders with the adoption of customary laws in the adjudication of cases.
- The recognition of supernatural powers in the award of sanctions also provides transparency and speedy trials.
- The traditional penal system enhances the power of chiefs and makes it easier for them to enforce and maintain rules and regulations in their communities. This makes the penal system incorruptible.
- It promotes good conduct amongst people in the community as the reconciliation motives of the adjudication committee brings the people together.

As indicated in Table 4.20 and Table 4.21, the respondents that preferred the traditional penal system to the contemporary penal system, gave the following reasons for their preferences. The traditional penal system is inexpensive; there is a fast trial process as they are quick to pass judgments. Flexible rules of evidence and procedure exists in the traditional penal system and they are based on customary laws and these laws help people to know their culture and they also promoted the concept of respect for elders in the community. The traditional penal system also has a way of minimizing criminal behaviour and giving fair judgment.

In an attempt to find out the best aspects of the traditional penal system that could be incorporated into the contemporary penal system, the views of the traditional leaders and members of the criminal justice system prove to be important as first of all the

traditional leaders are more conversant with the traditional penal systems and they know which aspects could be beneficial to the development and growth of the nation. And the members of the criminal justice system know the shortcomings of the contemporary penal system and can prove which aspects of the system needs refinement.

In Table 4.39 and Table 4.40, 84.48% of the traditional leaders interviewed agreed that certain aspects of the traditional penal system could be fused into the contemporary penal system though 15.52% of them disagreed to this. Of the traditional leaders who agreed to the fact, the following aspects were recommended:

- The courts should recognize the traditional deities and ancestral gods during trial and in the awarding of sanctions.
- Fines, compensations and community service should be given to offenders where need be.
- Chiefs should be given the mandate to try and punish people who commit minor offences within their jurisdiction.
- Offenders, witnesses, the counsel and judges in the contemporary penal system should be made to swear by gods, shrines and even streams as is practiced in the traditional penal system.

As stated earlier, the views of the members of the criminal justice system is also needed in knowing the right aspects of the traditional penal system to incorporate into the contemporary penal system. Though working with the laws of the contemporary penal system, some members of the criminal justice system thought that there have been countless aspects of the traditional penal system that has controlled the behaviour of Ghanaians some of which include:

- The introduction of the fear of the gods, the ancestors and traditional deities in the award of sanctions.
- The quick trial process.
- The introduction of arbitration, mediation and transparency.
- The low cost and easy accessibility of justice.
- The adoption of customary (local) laws in the adjudication of cases.
- The payment of reasonable fines, retractions and community service.
- The chieftaincy institution and inheritance system.
- Death and banishments.
- Parading and hooting of offenders in public
- A more refined Trokosi system
- The appropriate way of dealing with alleged witches.
- The introduction of pacification and adjudication committees that punish wrong doers accordingly.
- The reformatory and reconciliation of offenders and victims.

According to the convicts and ex-convicts (Table 4.80), the following aspects of the traditional penal system could be incorporated into the contemporary penal system:

- The swearing of oath by oracles and deities.
- The thorough investigation done by the adjudication team of the traditional penal system.
- The adoption of customary laws which go a long way to educate the people about the laws according to their culture.

Based on the demands of the traditional leaders, the officials of the criminal justice system, the convicts and ex-convicts, the following aspects of the traditional penal system are suggested to be incorporated into the contemporary penal system.



### **5.9.1 Traditional trial process and its flexible rules of evidence**

From the analysis of the data gathered for the study, it is evident that in the contemporary penal system, the main emphasis is laid on the technicalities, that is, the trial process, appropriate terms and remarks and strict sequences involved. In the contemporary penal system after thorough investigation, one is indicted of an offence, the suspect is asked to open his or her defence through a legal representative (lawyer) who might tell the story appropriately based on the law after which witnesses are called upon and they are cross examined. In most cases this results in the distortion of facts since the lawyers were not present at the commission of the offence, hence the researcher suggests that the victims should be allowed to narrate their own stories in their own language as in the case of the traditional penal system. This would rather prevent distortion of facts and ensure a quick trial process. In this regard there is the guarantee that the truth comes out early enough for judgement.

### **5.9.2 Communal labour/Community Service as part of sentence to offenders where need be as practiced by the traditional setup**

The crime wave and crime rate are on the increase in spite of stiffer punishment accorded to criminals especially those who commit major or serious offences (Ghana Prisons Service Annual Report, 2012). Imprisonment in modern times have not eradicated or limited crime. The more you imprisoned criminals, the hardened they become especially without proper reformation, rehabilitation and classification. Prisons in Ghana are now mere warehouses for criminals. Therefore it would be advisable to adopt some aspects of punishment by the traditional penal system. These include community services, and restitution.



Traditionally, when one commits an offence and is found guilty, since there is no custodial sentencing, he or she is sentenced to a fine and communal labour or in some cases both which is usually reasonable for the offender to honour. However, in the contemporary system, the fines are usually huge amounts of money which is difficult for the offenders to pay hence they end up in prison custody which results in overcrowding in the prisons.

It is therefore suggested that the traditional practice of reasonable fines and communal labour be incorporated into the contemporary penal system of punishment. This will go a long way to enhance community development and sanitation and help sustain the governments' monthly sanitation programme.

### **5.9.3 Chiefs should be given the mandate to trial and punish people who commit minor offences within their jurisdiction**

In the traditional system chiefs as the custodians of the land, are respected by the members of the community. Therefore they have the mandate to trial and punish offenders of minor civil cases. On the other hand in the contemporary penal system, the constitution empowers the judiciary to trial all manner of cases, be it civil or criminal. Article 125(5) states "The Judiciary shall have jurisdiction in all matters civil and criminal, including matters relating to this constitution and such other jurisdiction as Parliament may, by law confer on it".

As a result, minor cases which hitherto could have been handled by the traditional leaders are being handled by courts. The effect is that the courts are overburdened which leads to frequent adjournment of cases and delay in trials.

The study therefore suggests that the contemporary penal system should blend the authorities of the traditional leaders by allowing them to trial cases of minor civil nature. This will help expedite court trial and also reposition the chiefs as authorities of the land.

#### **5.9.4 Swearing of Oaths**

To strengthen the swearing of oaths at court using the Holy Bible for the Christians and the Quran for the Muslims, the traditionalists should also use the state sword (Akofena) to swear the Oath. The Oath swearing in the traditional setting where the ancestors and the deities are evoked should be enforced on those who claimed to be traditionalists at courts since the Muslims and the Christians use Koran and the Bible respectively.

#### **5.9.5 Symbols in Court Rooms**

Again to portray the Ghanaian culture, the Ghanaian artefacts and symbols should dominate in the court rooms in Ghana. The symbols should include the Adinkra symbols such as 'Bite no one' (*obi nka obi*) 'Except God' (*Gye Nyame*) among others. This is because these symbols embody a lot of moral lessons which could help educate the deviants who find themselves in the court room. The Ghanaian artefacts such as the state sword (*Akofena*) should be used for swearing oath by the traditionalists at court.

The Kente clothes should be used to decorate the court rooms where necessary to portray the rich culture of the Ghanaians. Furthermore, the Adinkra symbols could be used to decorate the court rooms in the form of paintings and wall hangings.

### **5.9.6 Access to Justice**

The contemporary penal system is characterized by high cost and uneasy access to Justice. This is not the case of the traditional penal system. There are alleged bribery and corruption and high cost of filing an appeal.

It would therefore be appropriate to reconsider the elements that make the traditional penal system moderately cheap and easy access to justice and incorporate it into the contemporary penal system.

Government should make it a policy to make access to justice very easy and moderate to the poor or the down-trodden. The judges should be fair and firm in passing judgment.

### **5.9.7 Improvement in Reconciliation**

The traditional penal system gives room to (the Ghanaian culture of) reconciliation. The complainant and the accused person are brought together by the *abadwafo* (Jury) just to reconcile and bury their differences.

In the contemporary penal system, reconciliation is not encouraged after given the verdict, the accused and the complainant in most cases become enemies.

The contemporary penal system should and emulate this good aspect of reconciliation from the traditional penal system to promote unity in the communities.

## **CHAPTER SIX**

### **SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

#### **6.1 Overview**

This chapter is the final part of the study. It is divided into three sections. These are; the summary of findings, conclusions of the study and the recommendations made by the researcher to improve the penal systems in Ghana.

#### **6.2 Summary of Findings**

For satisfactory research to be realized, this study has conducted a review of literature related to the objectives of this study. Topics reviewed include History of Penal Systems in Ghana, Penal Codes, Theories of Punishment, Philosophies of Punishment, Traditional Penal Systems in Ghana and many others.

In line with the objective to assess the strengths and weaknesses of the traditional and contemporary penal systems, the study revealed that the strengths of the contemporary penal system based on the fact that in the end, criminals and law breakers are isolated from the larger society to prevent them from committing more of such crimes and also to protect the communities from their misdeeds. The study also discussed the fact that in the contemporary system, victims have access to appeal against sentence especially if they feel they have not been fairly dealt with. Also, as strength, it was realised that the contemporary penal system has a well-structured system which derives its power from the constitution of the Republic of Ghana.

Despite the strengths found with the contemporary system, a number of weaknesses were observed with the system as well. For example, the study revealed that in the contemporary penal system, there is, in most cases, long delay in the hearing process

which is usually due to the long protocols to be observed before trial. Again, one weakness noticed is the perception of bribery and corruption which has been always associated with the judicial system. This doesn't make the system trustworthy especially to the ordinary citizens in the country.

Again, the study revealed that the contemporary penal system has, to a large extent, side-lined the authority of the traditional institutions such as chieftaincy. For example, traditional and customary issues such as chieftaincy disputes, land litigations, marital issues like, divorce are now settled at court. Even minor offences such as petty stealing, assault, among others travel beyond the chief's palace. The contemporary penal system has thus side-lined the powers of the traditional rulers.

Another weakness which the researcher found with the contemporary penal system is the issue of stigmatisation especially of ex-convicts. As discussed in Chapter Four, most of the ex-convicts find it very difficult to reintegrate into the community again after they have served their sentence.

On the other hand, the study revealed that the traditional penal system had strengths which could be incorporated into the contemporary penal system for a more effective judicial system. It was observed that the traditional penal system is non-corruptible because it is surrounded by beliefs and the fear of metaphysical consequences.

Also the study revealed that the traditional system promotes quick trial process and does not incarcerate culprits. Its weaknesses are that in the traditional penal system the sentencing policies are undefined and in some cases, unfair judgments. The study further revealed that there are excesses and abuses of human rights violation.

In addition, the study also revealed that, though not documented, the traditional penal system has the following elements: penal structure, evidence of facts is required, there is a trial process, they give verdict and subsequently punishment is given. There is usually a call and arrangements for reconciliation.

On the effects of the contemporary penal on the Ghanaian culture, the study revealed that there are both negative and positive effects of the contemporary penal system on the Ghanaian culture. Some of the negative effects are:

- Side-lined authority of the traditional leadership
- Disregard for human rights
- Stigmatisation of the convict, the family and even the community.
- The denial of key positions and leadership roles in the community.
- Non adherence of cultural practices

On the other hand, the contemporary penal system has the following positive effects on the Ghanaian culture:

- Access to right of appeal.
- It enhances respect for the rule of law.
- Incarceration which restricts the spread of unacceptable values and norms.

The study therefore suggests that certain practicable aspects of the traditional elements be incorporated in the contemporary ones for the promotion of National development.

The study further revealed that, some elements of the traditional penal system could be incorporated into the contemporary penal system. These elements include:

- Traditional trial process and its flexible rules of evidence



- Communal labour/community service as part of the sentence should be given to offenders where need be as practiced by the traditional setup.
- Chiefs should be given the mandate to trial and punish people who commit minor offences within their jurisdiction
- The use of traditional Symbols in Court Rooms
- Improvement in Reconciliation efforts
- Swearing of Oaths by the traditional believers

### **6.3 Conclusions**

The research looked at studying the effects of contemporary penal system on the Ghanaian culture. From the findings of this study, it could be concluded that both the traditional and the contemporary penal systems have strengths and weaknesses.

The contemporary penal system obviously has some strength which makes it cherished by today's generation. Such strengths include isolating criminals from the larger societies, access to appeal against sentence and a well-structured as well as laid-down structure.

At the same time, it could be concluded that the contemporary penal system has some weaknesses which could be compensated for by incorporating the strengths of the traditional penal system into the contemporary penal system.

Furthermore, from the study, the contemporary penal system has indeed influenced Ghanaian culture, negatively and positively.

Negatively, the contemporary penal system has affected the Ghanaian culture in the following areas: side-lining the Authority of Traditional Ruler-Ship, disregard for human rights, stigmatisation of the convict, the denial of key positions and leadership roles in the community and non-adherence of cultural practices.

In addition, it was concluded that, the contemporary penal system has the following positive effects on the Ghanaian culture:

- Access to right of appeal.
- Enhancing respect for the rule of law.
- Restrictions in the spread of unacceptable values and norms due to imprisonment

Finally, it could be concluded that incorporating some vital aspects of the traditional penal system (as discussed in Chapter Five) into the contemporary penal system would help ensure a more effective national development with regards to the judiciary system.

#### **6.4 Recommendations**

Generally, the study recommends that the judiciary arm of government should infuse the reliable aspects of the traditional penal system into the contemporary penal system as follows:

1. That the traditional trial process and its flexible rules of evidence should be incorporated by the Judiciary Council into the contemporary penal system.
2. Judicial sentencing policy should be reviewed and expanded by the Judicial Council of Ghana to include alternatives to imprisonment such as communal labour/ community service where need be as practiced by the traditional set up to avoid the negative effects of imprisonment.
3. That the Chief Justice should allow chiefs to have the mandate to trial and punish people who commit minor offences within their jurisdiction.

4. The traditional Symbols such *obinka obi* (bite no one) *Gye Nyame* (Except God) and others which embodies discipline and respect for law and other members of the society should be displayed in courtrooms by court officials for moral lessons.
5. To strengthen the swearing of oaths at court using the Holy Bible for the Christians and the Qur'an for the Muslims, the Judiciary Council should allow the traditionalists to use the State Sword (*Akofena*) to swear oath at court rooms.
6. That the culture of reconciliation, eminent in the Ghanaian society be adopted by the Judiciary Council to improve upon the current structure of reconciliation.
7. The National Commission of Civic Education (N.C.C.E) should educate members of the Ghanaian community on the rights of individuals, penal systems vis-à-vis Ghanaian cultural practices and how they could positively influence the total life of people.
8. It is also recommended that the Judiciary Council put good structures in place to incorporate the two penal systems into effective use. In this regard, the Legislature, the Judiciary, the National House of Chiefs and other stakeholders should develop and provide the Traditional Authorities with a common guideline to be called "Ghana Traditional Penal System Guidelines". This is to ensure uniformity of handling similar cases, fairness, prohibit them from ordering physical coercive punishments and stop them from handling serious criminal cases (1<sup>st</sup> degree felony)-murder, rape, treason to mention but a few.

These suggestions when given the necessary attention would go a long way to improve the current penal systems in Ghana.

### **6.5 Suggestion for Future Research**

A further research is suggested on how to develop a guideline for Ghana's Traditional Penal System.



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## APPENDIX

### QUESTIONNAIRE

The Department of General Art Studies

PhD African Art and Culture

#### TOPIC: EFFECTS OF THE CONTEMPORARY PENAL SYSTEM ON THE GHANAIAAN CULTURE

The information required from this questionnaire is for research purpose only and will be kept as confidential as possible.

##### Section A: Traditional Leaders

##### Demographics

Please select by ticking only one from the options given to every question.

##### Sex

Male [ ] Female [ ]

##### Age

- a. 26 - 30 years
- b. 31 - 35 years
- c. 36 - 40 years
- d. 40 – 50 years
- e. Above 50 years

##### Ethnic

Fante

Ashanti

Ewe

Others, please specify .....

**Level of Education**

No formal education

Primary/JHS

Secondary / SHS

Tertiary

**Occupation**

Self Employed

Government Worker

Private Worker

Unemployed

**Part Two:**

---

1. What do you know about the traditional penal system in Ghana?

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.....

2. List of traditional offences.

.....

.....

.....

3. What are the punishments accorded to the offences?

.....

.....

.....

4. What social effect has the traditional penal system on the life of convict/ex-convict?

.....

.....

.....

5. What effect has the traditional penal system on the life of the convict/ex-convict politically?

.....

.....

.....

6. What effects has the traditional penal system on the religion of convict/ex-convict?

.....

.....

.....

7. What is the reason for preventing an ex-convict/convict from holding a key position in the society?

.....

.....

.....

8. Mention some offences that cannot be handled by the traditional leaders in modern times.

.....

.....

.....

9. State advantages of the traditional penal system on the Ghanaian culture.

.....

.....

.....

10. List advantages of the contemporary penal system on the Ghanaian culture.

.....

.....

.....

11. In your own view can the contemporary penal system help in the improvement of the behavioural attitudes of Ghanaians?

- a. Yes
- b. No

12. If yes, what are some of the improvements that can occur?

.....

.....

.....

13. If no, what are some of the things that have not helped in the improvement of the behavioural attitudes of Ghanaians?

.....

.....

.....

14. Do you prefer the traditional penal system to the contemporary system?

- a. Yes
- b. No



15. Give reasons why you prefer the traditional penal system to the contemporary system.

.....

.....

.....

16. If no, state reasons why you do not subscribe to the traditional penal system?

.....

.....

.....

17. What are the advantages of the traditional penal system?

.....

.....

.....

18. What are the disadvantages of traditional penal systems?

.....

.....

.....

19. Have there been any changes in the penal system in Ghana?

a. yes

b. no

20. If yes, what are some of the changes you have observed?

.....

.....

.....

21. If no, what are your observations?

.....

.....

.....

22. Do you think these changes have any effect on Ghanaian culture?

a. yes

b. no

23. If yes, what are some of the effects?

.....

.....

.....

24. If no, state the reasons.

.....

.....

.....

25. What caused the changes in the penal systems in Ghana?

a. Human behaviour/character

b. Western world

c. Computer age

d. Education

e. Legislation

f. Others

26. Are the contemporary penal systems beneficial to Ghanaians?

a. Yes

b. No

27. If yes, how is it beneficial?

.....

.....

.....

28. If no, how is it not beneficial?

.....

.....

.....

29. Have the changes in the penal systems in Ghana caused any changes in the behaviour of Ghanaians?

a. Yes

b. No

30. If yes, what are some of the changes you have observed on the behaviour of the people?

.....

.....

.....

31. Do you think there should be improvement in the contemporary penal system in Ghana?

a. Yes

b. No

32. What are some of the changes that should be done to improve the contemporary penal systems in Ghana?

.....

.....

33. Suggest some suitable penal systems that should be taken into consideration in the culture of Ghanaians.

.....

.....

.....

34. Do you recommend that aspects of the traditional penal system be fused into the contemporary ones?

- a. Yes
- b. No

35. If yes, indicate aspects that could be incorporated.

.....

.....

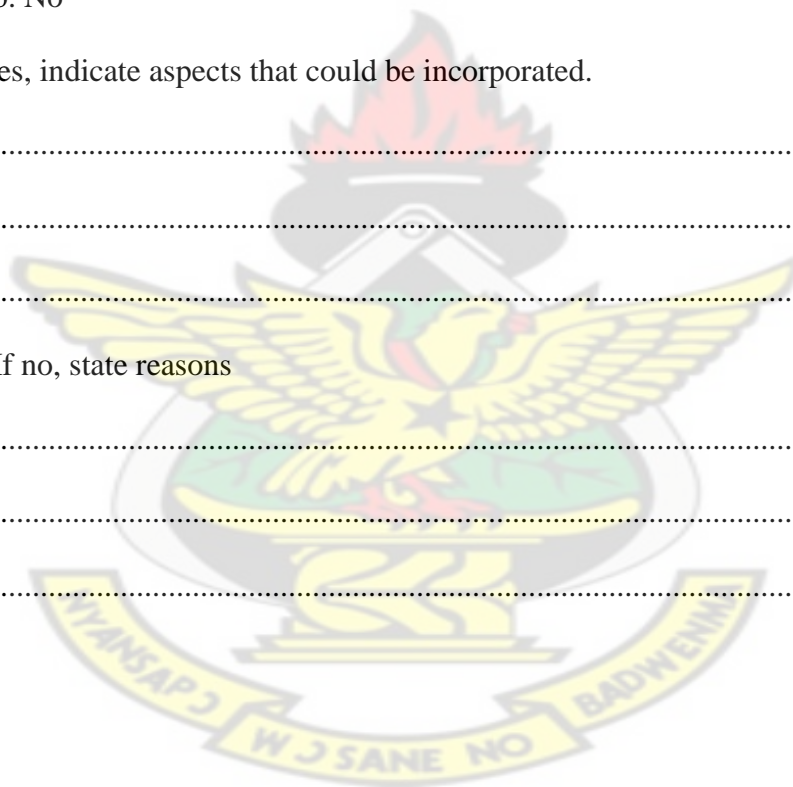
.....

36. If no, state reasons

.....

.....

.....



## **Section B**

### **Officials of Criminal Justice System**

#### **Demographics**

Please select by ticking only one from the options given to every question.

##### **Sex**

Male [ ]    Female [ ]

##### **Age**

- a. 26 - 30 years
- b. 31 - 35 years
- c. 36 - 40 years
- d. 40 – 50 years
- e. Above 50 years

##### **Ethnic**

Ga

Fante

Ashanti

Ewe

Dangomba

Others, please specify .....

##### **Level of Education**

Secondary / SHS

Tertiary

KNUST



**Part Two:**

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1. Are there any local instruments (Ghanaian laws) binding ex-convicts from holding public position in the society?

a. Yes

b. No

2. If yes, state the law.

.....

.....

3. Do you have any records of any public figure who has been declined to contest for a position due to his/her criminal records?

a. Yes

b. No

4. Have there been any changes in the penal system in Ghana?

a. Yes

b. No

5. If yes, what are some of the changes you have observed?

.....

.....

6. If no, what are your observations?

.....

.....

7. Which part of the traditional penal system do you think has controlled the behaviour of most Ghanaians?

.....

.....



8. Do you agree that the contemporary penal system has side lined the powers of the traditional rulers?

a. Yes

b. No

9. If yes, give an example.

.....

.....

10. If no, state your reasons.

.....

.....

11 Has the contemporary penal system improved the behaviour of Ghanaians (especially the youth)?

a. Yes

b. No

12 If yes, give example.

.....

.....

13. If no, state reasons.

.....

.....

14. Are there any advantages in the traditional penal system?

a. Yes

b. No

15. If yes, please state them.

.....

.....

16. If no, mention some of the shortcomings associated with the traditional penal system

.....

.....

17. Can aspects of traditional penal system be fused into the contemporary one?

a. Yes

b. No

18. If yes, which aspect could be incorporated into the contemporary penal system?

.....

.....

19. If no, state why it is not practicable to incorporate aspect of traditional penal system into the contemporary one?

.....

.....

20. Mention some of the advantages of the contemporary penal system on Ghanaian culture.

.....

.....

21.State disadvantages (if any) of the contemporary penal system on Ghanaian culture

.....

.....

## Section C

### Prisoners: Convicts/Ex-convicts.

#### Demographics

Please select by ticking only one from the options given to every question.

##### Sex

Male [ ]    Female [ ]

##### Age

19 - 25 years

26 – 30 years

31 - 35 years

36 - 40 years

40 – 50 years

Above 50 years

##### Ethnic

Ga

Fante

Ashanti

Ewe

Dangomba

Others, please specify .....

##### Level of Education

No formal education

Primary/JHS

Secondary / SHS

Polytechnic

KNUST



Tertiary

**Part Two:**

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1. What is your offence?

.....

.....

2. How many years are you serving?

.....

.....

3. Do you come from any royal family? If yes, mention the family.

.....

.....

4. Are you likely to become a chief after discharge?

a. Yes

b. No

5. Provide reasons for your answer.

.....

.....

6. Are you learning a vocation/trade in prison?

a. Yes

b. No

7. Do you want to establish your own business after discharge?

a. Yes

b. No

8. Would you like to be employed in the government or public sector after discharge?

a. Yes

b. No

9. If your answer is none of the above, state exactly what you want to do after discharge.

.....  
.....

10. Have you learnt any lesson from being in the prison?

a. Yes

b. No

11. What advice do you have for your friends who are outside prison, especially the law-breakers?

.....  
.....

12. What do you like about the traditional laws?

.....  
.....

13. What aspect of the traditional law would you wish to be incorporated into the contemporary penal system?

.....  
.....

14. Give advantages of the contemporary penal system.

.....  
.....

15. Give disadvantages of the contemporary penal system.

.....

.....

KNUST

