

**UPDATED REPORT - BASELINE SURVEY**

**ON**

**THE STATE OF HUMAN RIGHTS IN GHANA**

**TOWARDS THE PREPARATION OF A NATIONAL HUMAN RIGHTS**

**ACTION PLAN (NHRAP)**

**SUBMITTED TO**

**COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ)**

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## TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	i
TABLE OF CONTENTS.....	ii
LIST OF ABBREVIATIONS .....	ix
EXECUTIVE SUMMARY .....	1
0.1 INTRODUCTION .....	1
0.2 TERMS OF REFERENCE .....	1
0.3 METHODOLOGY .....	2
0.4 KEY FINDINGS AND OBSERVATIONS .....	3
0.4.1 Legal framework .....	3
0.4.2 General Compliance with international human rights obligations .....	3
0.4.3 The situation of vulnerable groups.....	5
0.4.3.1 Vulnerable groups defined .....	5
0.4.3.2 Public awareness of the rights of vulnerable groups .....	6
0.4.4 Persons in detention.....	6
0.4.4.1 General welfare of inmates .....	6
0.4.4.2 Death penalty .....	6
0.4.4.3 Prison conditions and related issues .....	7
0.4.4.4 Family visitation rights (demand for the realisation of conjugal rights).....	8
0.4.4.5 Violation of bodily integrity of inmates .....	8
0.4.4.6 Undue delay in trials .....	9
0.4.4.7 Babies in prison .....	9
0.4.4.8 Juveniles in adult prisons .....	9
0.4.4.9 Expired warrants .....	10
0.4.4.10 Lack of engagement by the Prisons Council and the Ministry of Interior .....	10
0.4.5 Good practices and improvements in prison conditions .....	10
0.4.4 The situation of Children and Juveniles .....	12
0.4.5 The aged .....	13

0.4.6	Persons with disabilities.....	14
0.4.7	Persons living with HIV/AIDS.....	15
0.4.8	Refugees and internally displaced persons.....	16
0.4.9	Migrant workers .....	17
0.4.10	Women.....	19
0.4.10.1	The basis of women’s rights .....	19
0.4.10.2	Experiences of women in Ghana .....	19
0.4.10.3	Efforts to combat discrimination against women in Ghana.....	20
0.4.11	Lesbians, Gays, Bisexuals, Transgendered persons and Intersex people (LGBTI) 21	
0.4.11.1	The gay rights controversy in Ghana.....	21
0.4.11.2	The 5 steps towards the realisation of gay rights.....	21
0.4.11.3	The domestic law and experiences of LGBTI persons .....	23
0.4.11.4	Educational content and LGBTI rights .....	23
0.4.11.5	Position of the Government of Ghana on LGBTI rights .....	23
0.4.5	Healthcare concerns .....	24
0.4.6	Institutional framework for human rights realization.....	24
0.4.6.1	Constitutional basis for institutions with human rights mandates .....	24
0.4.6.2	The Commission on Human Rights and Administrative Justice (CHRAJ) .....	25
0.4.6.3	Legal Aid Scheme .....	25
0.4.6.4	National Commission on Civic Education (NCCE) .....	26
0.4.6.5	Other institutions .....	26
0.4.6.6	The case for a coordinated machinery for human rights work .....	27
0.4.7	Human Rights education in Ghana .....	28
0.4.7.3	<i>Informal Human Rights Education in Ghana</i> .....	31
0.5	Challenges faced by Ghana in the realisation of human rights.....	32
0.6	SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS.....	35
	CHAPTER ONE.....	37
	INTRODUCTION TO THE HUMAN RIGHTS SITUATION IN GHANA .....	37
1.1	BACKGROUND .....	37

1.2 THE NEED FOR A HUMAN RIGHTS ACTION PLAN .....	37
1.3 SCOPE OF THIS BASELINE SURVEY.....	39
1.4 METHODOLOGY .....	39
1.5 LIMITATIONS OF THE ASSIGNMENT .....	44
CHAPTER TWO.....	45
HISTORICAL OVERVIEW OF HUMAN RIGHTS IN GHANA .....	45
2.1 INTRODUCTION .....	45
2.2 HUMAN RIGHTS IN THE PRE-COLONIAL PERIOD.....	45
2.3 HUMAN RIGHTS IN THE COLONIAL PERIOD UP TO INDEPENDENCE.....	45
2.4 POST INDEPENDENCE UP TO 1966 WHEN THE FIRST COUP D'ÉTAT OCCURRED IN GHANA.....	46
2.5 HUMAN RIGHTS IN THE POST NKRUMAH AND PRE 4TH REPUBLICAN CONSTITUTIONAL ERA .....	47
2.6 HUMAN RIGHTS UNDER THE 1992 CONSTITUTION .....	48
2.7 THE IMPORTANCE OF HUMAN RIGHTS TO GHANAIS.....	50
2.8 HOW GHANAIS FEEL ABOUT WHETHER THEIR HUMAN RIGHTS ARE BEING VIOLATED .....	50
CHAPTER THREE.....	52
NATIONAL LEGAL FRAMEWORK FOR THE REALIZATION OF HUMAN RIGHTS IN GHANA .....	52
3.1 INTRODUCTION .....	52
3.2 DOMESTIC LEGAL AND POLICY FRAMEWORK – SUBSTANTIVE AND PROCEDURAL.....	53
3.2.1 The 1992 Constitution .....	53
3.2.2 Human Rights issues arising out of the Review of the 1992 Constitution in 2009 ..	56
3.2.3 Children's Act, 1998 (Act 560).....	69
3.2.4 Juvenile Justice Act, 2003 (Act 653) .....	72
3.2.5 Persons with Disability Act, 2006 (Act 715) .....	74
3.2.6 Mental Health Act, 2012 (Act 846) .....	77
3.2.7 National Health Insurance Act, 2012 (Act 852) .....	78

3.2.8	Intestate Succession Law, 1985 (PNDC Law 111).....	80
3.2.9	Labour Act, 2003 (Act 651) .....	85
3.2.10	Human Trafficking Act, 2005 (Act 694).....	92
3.2.11	Domestic Violence Act, 2007 (Act 732).....	94
3.2.12	Whistleblowers' Act, 2006, (Act 720).....	96
3.2.13	Public Order Act, 1994 (Act 491).....	97
3.2.14	Criminal Code (Repeal of Criminal Libel and Seditious Laws – Amendment Act), 2001 .....	97
3.2.15	Right to Information Bill.....	101
3.2.16	Property Rights of Spouses Bill.....	101
3.2.17	The High Court Civil Procedure Rules (C.I. 47) .....	107
3.2.18	CHRAJ Rules of Procedure (C.I. 67).....	108
CHAPTER FOUR.....		110
GHANA'S OBLIGATIONS UNDER INTERNATIONAL LEGAL FRAMEWORK FOR HUMAN RIGHTS REALISATION .....		110
4.1	INTRODUCTION .....	110
4.2	UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) .....	111
4.3	THE NINE CORE HUMAN RIGHTS TREATIES .....	111
4.4	INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD).....	112
4.5	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) .. .....	112
4.6	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR) .....	113
4.7	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW).....	114
4.8	CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT) .....	115
4.9	CONVENTION ON THE RIGHTS OF THE CHILD (CRC).....	116
4.10	INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (ICMW)....	116

4.11 OTHER INSTRUMENTS .....	116
4.12 ILO INSTRUMENTS .....	117
4.13 OTHER SIGNIFICANT CONVENTIONS .....	117
4.14 SIGNIFICANT DECLARATIONS .....	117
4.15 SIGNIFICANT BASIC PRINCIPLES AND RULES.....	118
4.16 HUMANITARIAN LAW .....	118
4.17 AFRICAN UNION INSTRUMENTS.....	118
4.18 GHANA'S COMPLIANCE WITH REPORTING OBLIGATIONS FOR THE NINE CORE UN, AND AFRICAN UNION .....	120
CHAPTER FIVE.....	124
INSTITUTIONAL FRAMEWORK FOR HUMAN RIGHTS REALISATION IN GHANA .....	124
5.1 INTRODUCTION .....	124
5.2 THE JUDICIAL SYSTEM: THE COURTS AND THE JUDICIAL SERVICE .....	124
5.3 COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ) .....	129
5.4 LEGAL AID SCHEME, 1997 (ACT 542).....	134
5.5 ELECTORAL COMMISSION (EC) .....	135
5.6 NATIONAL COMMISSION ON CIVIC EDUCATION (NCCE) .....	136
5.7 MINISTRY FOR EMPLOYMENT AND LABOUR RELATIONS .....	139
5.8 MINISTRY OF GENDER, CHILDREN AND SOCIAL PROTECTION AND THE DEPARTMENT FOR CHILDREN (DOC) & AND THE DEPARTMENT OF SOCIAL WELFARE (DSW).....	139
5.9 MINISTRY OF JUSTICE AND ATTORNEY GENERAL'S DEPARTMENT .....	140
5.10 PARLIAMENT .....	141
5.11 NATIONAL COUNCIL ON PERSONS WITH DISABILITY .....	142
5.12 EFFECTIVENESS OF LOCAL GOVERNMENT MACHINERY .....	142
5.13 CONCLUSION .....	143
CHAPTER SIX.....	145
HUMAN RIGHTS EDUCATION AND AWARENESS .....	145

6.1 INTRODUCTION .....	145
6.2 FORMAL HUMAN RIGHTS EDUCATION IN GHANA.....	145
6.3 INFORMAL HUMAN RIGHTS EDUCATION IN GHANA.....	148
6.4 KNOWLEDGE OF INSTITUTIONS FOR REDRESS.....	152
6.5 WILLINGNESS TO ASSIST VICTIMS SEEK REDRESS FOR HUMAN RIGHTS ABUSES.....	153
6.6 RECOMMENDATIONS .....	156
CHAPTER SEVEN.....	157
THE SITUATION OF VULNERABLE GROUPS .....	157
7.1 INTRODUCTION .....	157
7.2 CHILDREN AND JUVENILES .....	157
7.3 THE AGED .....	161
7.4 PERSONS WITH DISABILITIES .....	162
7.5 PERSONS LIVING WITH HIV/AIDS.....	164
7.6 PERSONS IN DETENTION .....	166
7.7 REFUGEES AND INTERNALLY DISPLACED PERSONS .....	170
7.8 MIGRANT WORKERS .....	171
7.9 WOMEN.....	174
7.10 LESBIANS, GAYS, BISEXUALS, TRANSGENDERED AND INTERSEX (LGBTI) ... .....	179
7.10.1 The gay rights controversy in Ghana.....	179
7.10.2 The 5 steps towards the realisation of “gay rights” .....	180
7.10.3 Unlawfulness of criminalization of consensual same sex.....	181
7.10.4 The domestic law and experiences of LGBTI persons.....	181
7.10.5 Experiences from different parts of the world .....	181
7.10.6 Experiences of LGBTIs in Ghana .....	182
7.10.7 Position of the Government of Ghana on LGBTI rights .....	183
7.11 Views of Ghanaians on vulnerable groups - Do vulnerable groups have rights? .....	184
7.12 VIEWS OF VULNERABLE GROUPS ON CAPACITIES OF HUMAN RIGHTS INSTITUTIONS FOR THE REALISATION OF THEIR HUMAN RIGHTS .....	185



7.13 ACCESS TO JUSTICE.....	187
7.14 STATE OF SOME THEMATIC HUMAN RIGHTS.....	192
CHAPTER EIGHT .....	198
CHALLENGES AND CONSTRAINTS FACED BY GHANA IN MEETING ITS HUMAN RIGHTS OBLIGATIONS.....	198
8.1 INTRODUCTION .....	198
8.2 LACK OF RESOURCES.....	198
8.3 INADEQUATE INFORMATION MANAGEMENT SYSTEMS LEADING TO POOR RECORD KEEPING .....	199
8.4 TURF WARS BETWEEN VARIOUS GOVERNMENT AGENCIES.....	199
8.5 TRADITION, CULTURE AND RELIGION .....	200
8.6 CAPACITY GAPS .....	200
8.7 RECOMMENDATION .....	201
CHAPTER NINE .....	202
CONCLUSIONS AND RECOMMENDATIONS.....	202
9.1 CONCLUSIONS .....	202
9.2 RECOMMENDATIONS .....	205
REFERENCES AND SELECT BIBLIOGRAPHY .....	207
APPENDICES.....	209
Appendix 1 – Table of Signature and Ratification of Treaties.....	209
Appendix 2 - Questionnaire .....	213

## LIST OF ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples Rights
ARPS	Aborigines Rights Protection Society
CED	United Nations Convention on Enforced Disappearance
CEPIL	Centre for Public Interest Law
CHRAJ	Commission on Human Rights and Administrative Justice
CHRI	Commonwealth Human Rights Initiative
CRC	United Nations Convention on the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
CSA	Civil Servants Association
DOVVSU	Domestic Violence and Victims' Support Unit of the Ghana Police Service
DPSP	Directive Principles of State Policy
GAWU	General Agricultural Workers Union
GPRTU	Ghana Private Road Transport Union
GRB	Ghana Refugee Board
GRNA	Ghana Registered Nurses Association
GNAT	Ghana National Association of Teachers
HRAC	Human Rights Advocacy Centre
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JFAP	Justice for All Programme
JSC	Justice of the Supreme Court
JUSSAG	Judicial Services Association of Ghana
LEAP	Livelihood Empowerment for the Alleviation of Poverty
LRC	Legal Resources Centre

MDGs	Millennium Development Goals
NAB	National Accreditation Board
NCA	National Communication Authority
NCBWA	National Council of British West Africa
NFP	Not for Profit Organization
NHS	National Health Service
NHRAP	National Human Rights Action Plan
NLC	National Liberation Council
NMC	National Media Commission
NRC	National Redemption Council
OHCHR	UN Office of the High Commissioner for Human Rights
OP-CAT	Optional Protocol to the Convention Against Torture
OPs-CRC	Optional Protocols to the Convention on the Right of the Child
OP-CRC-AC	Optional Protocol to the Convention on the Right of the Child on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to the Convention on the Right of the Child on the sale of children, child prostitution and child pornography
PID	Persons in Detention
PWD	Persons with Disabilities
SCGLR	Supreme Court of Ghana Law Reports
SMC	Supreme Military Council
TEGLEU	Textile, Garments and Leather Workers' Union
TUC	Trades Union Congress
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UPR	Universal Periodic Review

WILDAF	Women in Law and Development in Africa
VG	Vulnerable Group

## EXECUTIVE SUMMARY

### 0.1 INTRODUCTION

- 0.1.1 Ghana recognizes that the realization of human rights for persons within its territory is an obligation under its domestic law. The realization of human rights is also an obligation to the international community under international law. The 1992 Constitution of Ghana and several other laws provide a legal regime for the realization of human rights in Ghana.
- 0.1.2 Ghana participated in the adoption of the Vienna Declaration and Programme of Action (VDPA) at the World Conference on Human Rights held in Vienna in June 1993.<sup>1</sup> In line with Ghana's obligations under the Declaration regarding National Human Rights Action Plans (NHRAPs), the Government, through the Commission on Human Rights and Administrative Justice (CHRAJ), seeks to develop the National Human Rights Action Plan to guide efforts to respect, protect and fulfill human rights in Ghana.<sup>2</sup> Ghana's desire to develop a NHRAP as the framework for a comprehensive response to human advancement is in line with international best practice for human rights realization.
- 0.1.3 A baseline study is an appropriate precursor for a NHRAP, if the NHRAP is to reflect contextually relevant actions. A baseline study also helps the appropriate stakeholders to have the right level of ownership of the NHRAP. The Commission on Human Rights and Administrative Justice (CHRAJ) is the lead agency for the group of state and non-state actors for the realization of human rights in Ghana. CHRAJ is therefore appropriately positioned to lead this process.

### 0.2 TERMS OF REFERENCE

- 0.2.1 By the terms of reference for this baseline survey, the Consultant was required to:
1. Examine the legal framework for promoting and protecting human rights. This should take into account incorporation of international human rights norms into domestic law as well as a survey of the status of ratification of major international human rights treaties;
  2. Examine the institutional framework for promoting and protecting human rights including the effectiveness of civil society organizations (CSOs)/NGOs, etc;
  3. Evaluate the state of human rights education and awareness;

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<sup>1</sup> The Vienna Declaration and Programme of Action "... recommended that each State considers the desirability of

<sup>2</sup> By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. This is mainly done through legislation guaranteeing specific rights or prohibiting certain actions. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. More information on the obligations to respect, protect and fulfill, is available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> (last visited on 20 October, 2015).

4. Identify the challenges and constraints faced by Ghana as a State Party to international human rights Treaties to meet its three levels of obligations to: respect, protect and fulfill human rights;
  5. Assess the situation of vulnerable groups based on the relevant social indicators. This assessment should identify and include groups in the society requiring special attention.
- 0.2.2 The above-mentioned tasks were to be undertaken taking into account strategies and mechanisms developed by stakeholders to ensure the observance of Economic, Social and Cultural Rights (ESCRs), measures to fight discrimination in enjoyment of ESCRs; and Civil and Political Rights.
- 0.2.3 An evaluation of the legal and administrative mechanisms for realizing the rights of women, children, persons with disabilities, persons living with HIV and AIDS, the aged, the mentally ill, refugees and asylum seekers, internally displaced peoples, migrant workers etc. was to be undertaken. The Consultant was required to make recommendations on the basis of the baseline survey for inclusion in a five-year NHRAP for Ghana.

### 0.3 METHODOLOGY

- 0.3.1 The Consultant relied on the following processes in this survey:
1. Preparatory discussions with CHRAJ;
  2. A desk study to review secondary data, and development of the list of key stakeholders to be targeted;
  3. Field data collection;
  4. Report drafting and debriefing of the CHRAJ;
  5. Submission and presentation of the draft report to CHRAJ for comments;
  6. Finalization of the report.
- 0.3.2 The consultant reviewed a wide range of secondary data including:
1. CHRAJ's State of Human Rights reports;
  2. Reports by the Public Education and Research Department of CHRAJ on its monitoring activities;
  3. Some of CHRAJ's thematic reports, e.g. Annual publications on Prison conditions;
  4. Case law that affects operations of CHRAJ, for instance, the Republic v. Fast Track High Court, Ex parte CHRAJ, Richard Anane,<sup>3</sup> Commission on Human Rights and Administrative Justice (No. 1) v Attorney-General,<sup>4</sup> Ghana Commercial Bank v CHRAJ<sup>5</sup> [2003-2004] SCGLR 91; Commission on Human Rights and Administrative Justice v Attorney-General CHRAJ v. Attorney-General and Baba Kamara (unreported) Suit No. J1/03/2010.

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<sup>3</sup> [2007-2008] SCGLR 213.

<sup>4</sup> [1998-99] SCGLR 871.

<sup>5</sup> [2003-2004] SCGLR 91.

5. CHRAJ reports on cases handled, particularly through its hearings and alternative dispute resolution e.g. mediation;
6. News reports related to human rights; and
7. Papers written on human rights.

## **0.4 KEY FINDINGS AND OBSERVATIONS**

### **0.4.1 Legal framework**

0.4.1.1 The 1992 Constitution and other national laws were promulgated to advance human rights in Ghana. Some of these laws existed before the coming into force of the 1992 Constitution.<sup>6</sup> Other laws were enacted in response to Constitutional demands. In 1998, the position of Statute Law Reform Commissioner was established within the Ministry of Justice to review existing legislation and recommend amendments that would bring all laws into conformity with constitutional provisions.

0.4.1.2 The human rights of persons in Ghana are not confined to the rights as directly protected by the Constitution and the list of sources of law provided above. The gamut of rights includes those considered to be inherent in a democracy as stipulated in article 33(5) of the Constitution. Article 33(5) provides that ... “the rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.”

0.4.1.3 In addition, Article 33 (1) of the 1992 Constitution provides that when a person alleges that his or her rights under the Constitution have been violated or is about to be violated, that person may apply to the High Court for redress. Order 67 of the High Court Civil (Procedure) Rules (CI 45) provides the procedure for invoking the jurisdiction of the High Court in an application for Human Rights redress.

### **0.4.2 General Compliance with international human rights obligations**

#### **0.4.2.1 Reporting obligations**

0.4.2.1.1 Ghana is committed to the nine core human rights treaties. These are:

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<sup>6</sup> Article 11 of the 1992 Constitution lists the sources of law in Ghana to include the 1992 Constitution, enactments made by or under the authority of Parliament, any Orders, Rules and Regulations made by any person or authority under a power conferred by the Constitution, the existing law, and the common law. In addition, the Government of Ghana is required by article 73 of the 1992 Constitution to conduct its international affairs in consonance with the accepted principles of public international law and diplomacy in a manner consistent with the national interest of Ghana. One of such accepted principles is “pacta sunt servanda”. This requires that States faithfully fulfill obligations they undertake to when they enter into agreements with other States and actors in the international arena.

1. Covenant on Civil and Political Rights
2. Covenant on Economic, Social and Cultural Rights
3. Convention against Torture, Inhumane and Degrading Treatment
4. Convention against Racial Discrimination
5. Convention on the Rights of the Child
6. Convention on the Rights of Migrant Workers and members of their families
7. Convention on the Elimination of all forms of Discrimination against Women
8. Convention on the Rights of Persons with Disabilities
9. Convention for the Protection of all persons from Enforced Disappearance

0.4.2.1.2 With the exception of the Convention for the Protection of all persons from enforced disappearance, Ghana has ratified all the nine core human rights treaties. Some of these Conventions have additional protocols which states parties are required to sign and ratify to give effect to the rights contained in the substantive Convention. These additional protocols are:

1. Optional protocol to the International Covenant on Civil and Political Rights
2. Second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty
3. Optional Protocol to the Convention against Torture, Inhuman and Degrading Treatment
4. Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women
5. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict
6. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, child prostitution and child pornography
7. Optional Protocol to the Convention on the Rights of the Child

0.4.2.1.3 Ghana is yet to ratify the Second optional protocol to the International Covenant on Civil and Political Rights, which aims at abolishing the death penalty;<sup>7</sup> the Optional Protocol to the Convention on the rights of the child on the sale of children prostitution and child pornography,<sup>8</sup> and the Optional Protocol to the Convention on the Rights of

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<sup>7</sup> In spite of the fact that Ghana is yet to ratify this Optional Protocol, the competence of the Human Rights Committee to accept and hear Communications on the death penalty is recognized by Ghana as a result of the ratification of the First Optional Protocol to the International Covenant on Civil and Political Rights on the 7th September 2000. See [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GHA&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GHA&Lang=EN). See also the decision of the Human Rights Committee in *Dexter Eddie Johnson v. Ghana* (Communication number 2177/2012 at the Human Rights Committee of the United Nations).

<sup>8</sup> Ghana signed this Optional Protocol on the 24<sup>th</sup> day of September, 2003. See [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GHA&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GHA&Lang=EN)



the Child on a communications procedure.<sup>9</sup> Further information on the state of ratification of international human rights laws instruments can be found in Appendix 1 to this Report.

0.4.2.1.4 Beyond ratification, observance and reporting on stated obligations is crucial. Consequently, it is also important that Ghana observes the human rights treaties and instruments to which it is a signatory, as well as international human rights law in general. The records show that Ghana is often late in discharging its reporting obligations under most human rights treaties to which the country is a Party.

#### 0.4.2.2 **Follow up action on recommendations from Treaty Based Committees**

0.4.2.2.1 Generally, follow up action on recommendations of the Treaty Based Committees and other mechanisms such as the Universal Periodic Review is not prompt and satisfactory. For instance, at the first Periodic Review of Ghana in 2008, it was noted that Ghana's poor struggled with issues of sanitation, infrastructure, natural disasters and floods. The Centre for Housing Rights and Evictions was concerned about difficulties in the housing sector and recommended that Ghana's Ministry of Water Resources, Works and Housing initiated a consultative process to enable stakeholder inputs into a national shelter policy. This recommendation was targeted at overcoming gender-based inequalities and enjoyed the support of the Government of Ghana. It appears that not much has been done since the recommendation was made in May 2008. Further to this, the Constitution Review Commission in December 2011, also made specific recommendations on the right to housing in Ghana.<sup>10</sup> The 2012 National Report submitted to the Human Rights Council as part of the Universal Periodic Review did not have any updates on the 2008 recommendation to hold a consultative process towards the development of a national shelter policy.

0.4.2.2.2 In view of the above, it will be useful to monitor and track national responsiveness to recommendations resulting from Ghana's submission of reports to international human rights bodies and specifically any actions taken in response to such international recommendations.

### 0.4.3 **The situation of vulnerable groups**

#### 0.4.3.1 **Vulnerable groups defined**

For the purposes of this study, vulnerable groups include children and juveniles; persons with disabilities; persons with HIV/AIDS; the aged; women; persons in detention facilities;

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<sup>9</sup> Ghana signed this Optional Protocol on 24<sup>th</sup> September 2013. See [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GHA&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GHA&Lang=EN)

<sup>10</sup> Report of the Constitution Review Commission (December 2011), presented to the President of Ghana on 20<sup>th</sup> December, 2011, pages 691 to 692, available at [http://www.ghana.gov.gh/images/documents/crc\\_report.pdf](http://www.ghana.gov.gh/images/documents/crc_report.pdf) (last accessed 20 December, 2016).

refugees and internally displaced persons; migrant workers; and lesbians, gays, bisexual, transgendered and intersex persons.

#### 0.4.3.2 Public awareness of the rights of vulnerable groups

Field data collected from the general public, shows that 59% of Ghanaians are aware that children and juveniles do have rights. 53.17% of respondents were aware that women had rights. Awareness of the rights of other vulnerable groups fell below 41% of respondents. The lowest awareness rates were reported for LGBTI, migrant workers and persons in detention, where 88%, 81% and 78% respectively of respondents believed that these groups do not have rights.

### 0.4.4 Persons in detention

#### 0.4.4.1 General welfare of inmates

0.4.4.1.1 The Ghana Prisons Service engages in reformation, rehabilitation as well as improvement of the general welfare of prisoners. The Service is mindful of Ghana's human rights obligations under international laws. To ensure officers appreciation of relevant international conventions, the Prisons Service has developed a training manual containing Ghana's human rights obligations. This has been incorporated into the curricular for the training of prison officers. Rules and regulations governing the conduct of prisoners have been spelt out in a brochure which is issued to prisoners, on admission, to inform and educate them on their rights.

0.4.4.1.2 In 2003, a survey conducted by the Center for Democratic Development (CDD) on Police-Community Relations, found that many of those arrested believed that they were not treated according to the law; there was a strong belief that Police often violated the human rights of those arrested. Of those who stated that they were arrested, 46 percent were not informed of the charges against them; 51 percent were not informed of their rights; 67 percent reported they were not given the opportunity to contact a lawyer; and 44 percent believed they were presumed guilty from the onset.<sup>11</sup> The situation has not changed very much in 2014 as there were continued reports of arbitrary arrests by police.<sup>12</sup>

#### 0.4.4.2 Death penalty

0.4.4.2.1 The legal authority for capital punishment may be derived from both the Constitution and the Criminal Offences Act, 1960 (Act 29). Article 13(1) of the 1992 Constitution provides that every person is entitled to the right to life. However, the article permits a

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<sup>11</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Ghana Country Report on Human Rights Practices, 2004 at page 8.

<sup>12</sup> US Department of State, Human Rights Report for 2015, available at <http://www.state.gov/documents/organization/252899.pdf> (last accessed on 26 September 2016) at page 6.

person to be deprived of life, in exercise of the execution of a sentence of a Court in respect of a criminal offence under the laws of Ghana of which that person has been convicted. The offences which are punishable by death are murder; attempt to commit murder, genocide, treason and high treason.

0.4.4.2.2 The Second Optional Protocol to the international Covenant on Civil and Political Rights commits its signatories to the abolition of the death penalty within their borders. The Protocol however, allows Parties to make a reservation permitting executions for grave crimes in times of war. Ghana has neither signed nor acceded to this Protocol in spite of civil society campaigns for accession to this protocol. The Constitution Review Commission recommended the replacement of the death penalty with imprisonment for life without parole. Government accepted to abolish the death penalty in article 13 of the Constitution and other laws and to replace it with imprisonment for life. This is in recognition of the sanctity of life and the uncertainties of judicial systems all over the world.

#### 0.4.4.3 **Prison conditions and related issues**

0.4.4.3.1 Persons in detention suffer the consequences of poor maintenance, unsanitary, poorly ventilated and overcrowded facilities. These factors contribute to a high prevalence of skin and other diseases among prison inmates. Many prisoners die due to extremely harsh conditions and lack of medical treatment. In 2000, 106 inmates died of various diseases: 5 from malnutrition, 20 from HIV/AIDS, 17 from tuberculosis, 11 from diarrhoea or dehydration, and the rest from other illnesses. In 2001, 134 prisoners died in the country's prisons, 9 from malnutrition, 21 from HIV/AIDS, 17 from tuberculosis, 13 from diarrhea or dehydration, 8 from malaria, and the rest from other illnesses. The situation has not changed much over the years as reports from 2015 describe prison conditions as harsh and life threatening with many prisoners sleeping on the bare floor or taking turns to sleep on beds.<sup>13</sup>

0.4.4.3.2 In his 2013 visit, the UN Special Rapporteur characterized Ghana's prison overcrowding situation as "alarming." The male section of Nsawam Prison, designed to hold 717 prisoners, held 3,773. Kumasi Prison, with a capacity of 800, held 1,981 prisoners. Cellblocks in Kumasi Prison contained 115 convicted prisoners sharing a space of approximately 415 square feet. The pretrial detention sections are often even more congested, with cells overcrowded with 40 inmates in a cell designed for 4 persons. Prisoners in Sekondi Prison sleep in shifts, with some sometimes sitting up, due to lack of space. Many prisoners sleep on the floor without a mattress, a mat, or a blanket. In his follow-up assessment in October, 2015, the UN special rapporteur observed no improvements in prison conditions.<sup>14</sup>

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<sup>13</sup> US Department of State, Human Rights Report for 2015, available at <http://www.state.gov/documents/organization/252899.pdf> (last accessed on 26 September 2016) at 2.

<sup>14</sup> *Id.*

0.4.4.3.3 In most cases, families had to supplement prisoners' food, their medicine and also bribe officials for visitation rights. The situation in Ghana's Police cells appears worse as suspects allegedly pleaded guilty to crimes in order to be sent to prison as a means of escaping the harsh unsanitary conditions in police remand cells.<sup>15</sup>

0.4.4.3.4 In August 2013, the amount allocated for feeding of each prisoner was one Ghana cedi and eighty pesewas (GHS1.80) per day. In addition, a percentage of foodstuffs produced on prison farms across the country are used to supplement the ration of the inmates. All prisoners are classified as indigent persons under the National Health Insurance Scheme and therefore enjoy free registration, enabling them to access health care services under the Scheme. Unfortunately, the Prison Service is unable to attract and retain health care professionals. In view of this, officers are being sponsored to pursue health-related courses to provide health care services to the inmates.<sup>16</sup>

0.4.4.3.5 The Prison Service is gradually improving and expanding the various skills training programmes in prisons. The Service has also begun offering certificate courses for inmates in order to improve the chances of inmates securing jobs when they are released.

#### 0.4.4.4 **Family visitation rights (demand for the realisation of conjugal rights)**

0.4.4.4.1 An extremely strong request by persons in detention, in particular prison inmates is for a review of the family visitation arrangements in practice. It was observed that prison inmates are afforded very limited visitation rights. In many instances, family members visit inmates for less than five (5) minutes within any two-week period. Typically, prison officers will remain in close proximity throughout such visits. An overwhelming demand is for such visitation rights to be modified and improved with a view to affording inmates more time with their family members, in particular, spouses and children. For a start, an arrangement by which family members and inmates may be allowed to interact on an open field once a month for a period longer than an hour or two may suffice. This arrangement may be compared to the practice of allowing a large number of members of the public into Nsawam prison for instance during festive periods such as the celebrations held at the end of Ramadan.

#### 0.4.4.5 **Violation of bodily integrity of inmates**

There were also repeated reports of prisoners being beaten by the Police, as well as arbitrary arrests and detention. In 1999, a woman was reported to have been detained in a cell with her husband and 15 other males. In the same year, a family of a deceased man alleged that he had been brutalized by police and detained in handcuffs for 5 days.<sup>17</sup>

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<sup>15</sup> *Id.* at 3.

<sup>16</sup> National Report submitted by Ghana for the Universal Periodic Review (UPR) of Ghana at the Human Rights Council of the United Nations, 2<sup>nd</sup> Round in 2012, dated 10<sup>th</sup> August, 2012 at page 4.

<sup>17</sup> It was also noted that authorities do not routinely notify prisoners' families of their incarceration, such information is often obtained only by chance.

Similar abuses were recorded over the years, for example, the 2012 US Department of State, Human Rights Report revealed that Police sometimes beat suspects in their custody.

#### 0.4.4.6 **Undue delay in trials**

0.4.4.6.1 Remand prisoners were reportedly held for periods ranging from 1 week to 8 years. However, in 2009, CHRAJ reported that one inmate at Nsawam Prison has been in detention for 17 years.<sup>18</sup> In another case, a woman was granted bail in January 2009 after 37 months in detention.<sup>19</sup> Remand prisoners continue to be housed with convicted prisoners. There is a practice of the Police arresting persons on Friday and keeping them in detention over the weekend until court is in session on Monday. This practice is seen as a deliberate circumvention of the 48-hour maximum period allowed under the 1992 Constitution for detention prior to arraignment before a Court or release by law enforcement agencies on bail. In 2010, the Police acknowledged that they were not able to locate files for approximately 300 cases since 2007.<sup>20</sup> This ostensibly was due to the transfer and retirement of prosecutors and investigators. The detainees were being held at Nsawam Prison while prison officials, courts and the police rebuild the case dockets.

0.4.4.6.2 Lengthy pretrial detention remains a serious problem. Prisons Service statistics available in October 2015 indicated that 2,479 prisoners, constituting 18 percent of all prisoners, were in pretrial status. There were numerous instances in which the length of the pre-trial detention exceeded the maximum sentence for the alleged crime.<sup>21</sup>

#### 0.4.4.7 **Babies in prison**

The Prisons Service recognises the intolerable situation of keeping babies of incarcerated mothers in prison. A baby friendly unit has been established at the Nsawam prisons to take care of such babies. The Service requires support to establish similar facilities in the remaining female prisons.

#### 0.4.4.8 **Juveniles in adult prisons**

Article 15(4) of the 1992 Constitution requires that a juvenile offender who is kept in lawful custody or detention, be kept separately from an adult offender. Section 23(6) of the Juvenile Justice Act, 2003 (Act 653) requires that a juvenile shall not be placed on remand in an adult prison. However, Juveniles are sometimes incarcerated in adult prisons in Ghana. This is a major concern for the Ghana Prisons Service. The Prisons Service indicates that it is committed to fully implement the Juvenile Justice Act 2003

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<sup>18</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Ghana Country Report for 2009, page 7.

<sup>19</sup> *Id.*

<sup>20</sup> US Department of State Human Rights Report for 2010, page 10.

<sup>21</sup> US Department of State, Human Rights Report for 2015, available at <http://www.state.gov/documents/organization/252899.pdf> (last accessed on 26 September 2016) at 6.

(Act 653) which provides for the transfer of juveniles in adult prisons to the appropriate institutions for safe custody and care.

#### 0.4.4.9 **Expired warrants**

A major challenge for the Prisons Service is that some remand prisoners remain in the prison facilities long after their warrants have expired. This situation occurs mainly due to lack of coordination between the Prisons Service and the Police in ensuring their attendance in court. The Service is therefore taking steps to take complete custody of remand prisoners from the Police to enable prison officers ensure their court attendance when the time is due. Previous studies have recommended that the mandate of the Prisons Service should include full responsibility for remand prisoners.<sup>22</sup>

#### 0.4.4.10 **Lack of engagement by the Prisons Council and the Ministry of Interior**

0.4.4.10.1 Article 206 of the 1992 Constitution establishes the Prisons Council. It is part of the functions of the Prisons Council to advise the President on matters of policy relating to the organization and maintenance of the prison system in Ghana including the role of the Prisons Service, prisons budgeting and finance, administration and the promotion of officers above the rank of Assistant Director of Prisons. The Prisons Council may with the prior approval of the President, by Regulations control and administer the prisons and the Prisons Service. The Ministry of Interior has oversight responsibility for the Prisons Service.

0.4.4.10.2 It was observed that a great majority of inmates in Ghana's prisons have not had any direct interaction with members of the Prisons Council and senior officials of the Ministry of Interior. Some inmates are concerned whether they are purposefully kept in ignorance of the role of the Prisons Council in ensuring an efficient Prisons System in Ghana. It would be helpful even for the diligent discharge of the functions of the Prisons Council if members of the Council are able to interact with the inmates of the various prisons in order to learn first hand from the inmates, their concerns which could then be factored into policy decisions the Prisons Council is obligated to take under the 1992 Constitution.

### 0.4.5 **Good practices and improvements in prison conditions**

1. There have been some improvements in Ghana's prisons conditions over the course of the years. For example, from the year 2000, juveniles were more frequently being separated from the adult prisoners,<sup>23</sup> prisoners' food allowance has increased and

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<sup>22</sup> Ministry of Justice and Attorney General's Department and UNDP, Baseline Survey of the Justice Sector, 2012 at page 68.

<sup>23</sup> For example, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Ghana Country Report on Human Rights Practices for 2000 at page 11. See also the same report for year 2002 at 2.

amnesty is often granted to old and ill prisoners and prisoners who had not been convicted for rape, robbery or narcotics.

2. To deal with the congestion in prisons, Government commissioned Ankaful Maximum Security Prisons in the Central Region on 8<sup>th</sup> November, 2011. Ankaful has the capacity for 2000 inmates. As at August 2013, there were less than three hundred (300) inmates in Ankaful Prisons as some amount of work was still on-going. Inmates from other prisons were being moved to the new prison facility to ease the congestion. At Ankaful prisons, there are on average ten (10) inmates in each cell. Each inmate has access to his own bedding facilities. Unlike other prisons facilities across the country, inmates in Ankaful are not permitted to cook by themselves. The inmates rely greatly on their rations from the Prisons kitchen and beverages supplied by their families. As Ankaful inmates are unable to supplement their diet due to the restrictions on cooking, the food quality from the prison kitchen must be regularly evaluated in order to ensure that the inmates are fed nutritious and balanced diets.
3. There are some infrastructure works ongoing in the various prisons to provide facilities that cater for the education needs of the inmates. One such facility is the “GETFund building” in Nsawam Prisons. Monitoring project execution to ensure speedy completion would contribute to creating enlightened prison inmates.
4. The Government also sought to address the unsafe and unsanitary conditions of the prisons through construction such as the Ankaful Maximum Security Prisons in the Central Region. Much of the prison population is held in buildings that were old colonial forts or abandoned public or military buildings, with poor ventilation and sanitation, dilapidated structures, and limited space. Sekondi Prison is an example of such an old prison building with very poor ventilation.
5. Civil Society advocacy work on the right of prisoners to vote led by the Legal Resources Centre (LRC) and a Court action by the Centre for Human Rights and Civil Liberties (CHURCIL) in 2008 led to pronouncements by the Supreme Court acknowledging the right of prisoners to vote. In December 2012, prisoners participated in the presidential elections although many prisoners were unable to meet some requirements for registration in order to vote. Prisoners throughout the country are very eager to participate in the democratic governance of Ghana through voting for their choice of Presidential and Parliamentary candidates. A review of the factors which prevented many prisoners from meeting the qualification requirements for voting should be undertaken in order to ensure that prisoners are able to exercise their franchise in future elections.
6. Since the introduction of the “Justice for All Programme” there have been gradual improvements with respect to the number of prisoners who have regained their freedom through this programme. By 2011, 1,499 inmates had attended the courts situated in the



prisons. Out of this number, 345 were discharged, 243 granted bail, 35 were convicted and the rest were referred to court for their cases to take their normal courses. There is a concern that the Justice for All programme concentrates more on the cases of remand prisoners to the detriment of convict prisoners. A review of the Justice for All programme to take care of the interests of the convict prisoners as well would help expedite action on good appeal cases. It is suggested that some appeal cases, which may not require the attendance in court of witnesses, could be heard in the prisons just like the remand cases.

A review of the entire justice delivery system to reduce constant adjournments, and to encourage speedy trials, institutionalize regular evaluations of the jury system, promote the use of non custodial sentences, the use of a parole system, and tackle the medical and employment needs of inmates or ex-prisoners would improve the human rights of persons in detention.

#### **0.4.4 The situation of Children and Juveniles**

##### **0.4.5.1 Trafficking in persons for labour exploitation**

Abuses of the rights of children persist in Ghana. Mostly, these abuses are labour and sex related. The perennial problem of boys being contracted or given out by their parents or guardians to do fishing on Lake Volta and in other fishing settlements within the country is a typical example. There were also reports of children trafficked to work either elsewhere in the country or in neighbouring countries. International bodies including the UPR have suggested that Ghana steps up its efforts to deal with trafficking in persons.<sup>24</sup> An analysis of the basis for this recommendation, together with a proposed timeframe for reviewing and responding to these recommendations is useful. This is one issue that a NHRAP should address.

##### **0.4.5.2 Sexual assaults**

There are also reports of frequent sexual assaults on female students by their teachers. The girls often are reluctant to report the attacks. When reports are made to parents, social pressure often prevents parents from going to the police and other authorities. In April 2001, a mathematics tutor at Aburi Girl's Secondary School fled after being accused of sexually assaulting at least 17 girls. Students reportedly told the school administration, including the headmistress, about the assaults, but they were rebuffed and no action was taken. The teacher was not arrested. The Ghana Education Service ordered the headmistress to go on leave while it conducted an investigation. This is an ongoing situation and each year, there are reports of cases of sexual assaults against children. A study by Plan Ghana published in 2009 revealed that about 14% of school

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<sup>24</sup> Human Rights Council, Working Group on Universal Periodic Review, Draft Report on Ghana, Geneva, 22 October – 5<sup>th</sup> November, 2012 Session, A/HRC/WG.6/14/L.4 at page 19.



children, mostly 14 and 15 year olds had been sexually abused. The main perpetrators being classmates (89%), teachers (21%) and relatives (13%).<sup>25</sup>

#### 0.4.5.3 **The right of children to education**

0.4.5.3.1 Article 25 of the 1992 Constitution provides that all persons shall have the right to equal educational opportunities and facilities, and with a view to achieving the full realisation of that right, basic education shall be free, compulsory and available to all; secondary education, including technical and vocational education shall be made available and accessible to all with a progressive introduction of free education; and higher education shall be made equally accessible to all, on the basis of capacity and by a progressive introduction of free education. There is in existence the Free Compulsory Universal Basic Education policy and a capitation grant is being implemented in public schools.

0.4.5.3.2 Evidently, not all children of school going age in Ghana are in school. Therefore, the Free Universal Basic Education Policy is not being fully implemented. Some children of school going age spend a lot of time doing household chores to the detriment of their education. Children aged 7-14 years spend an average of nearly 30 minutes (28.4 minutes) daily caring for other children and 27.9 minutes cooking.<sup>26</sup> Those aged 15-19 years spend an average of 36.4 minutes cooking, 35.2 minutes taking care of children and 23.2 minutes taking care of the sick. In general, females in this age group spend more time on housekeeping activities than their male counterparts.<sup>27</sup>

0.4.5.3.3 It does not appear that there is discrimination against female children in education, but girls and women frequently drop out of school due to societal or economic pressures.<sup>28</sup> The Government actively campaigns for girls' education and in 1997 established a girls' education unit within the basic education division of the Ghana Educational Service. Generally, the right to education of children is affected by the perennial problems of strike actions by teaching and non-teaching staff of academic institutions. Such strikes often bring several weeks of preparations for final examinations of basic schools to a halt.

0.4.5.3.4 Free Compulsory Universal Basic Education should therefore be fully enforced by the Ministry of Education with emphasis on quality education.

#### 0.4.5 **The aged**

0.4.5.1 Article 37(2)(b) of the 1992 Constitution requires the State to enact appropriate laws to ensure the protection and promotion of basic human rights and freedoms for some vulnerable groups including the aged.

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<sup>25</sup> Report on the Study of Child Sexual Abuse in Schools, commissioned by Plan Ghana, 2009.

<sup>26</sup> Ghana Statistical Service, Ghana Living Standards Survey, Round 6 (August 2014), page 64.

<sup>27</sup> *Id.*

<sup>28</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Ghana Country Report on Human Rights Practices for 2000 at page 11. See also the same report for year 2003 at 29.

- 0.4.5.2 The aged have received very little attention related to respecting, protecting and fulfilling their rights over time. The Constitution Review Commission recommended the creation of a special deputy commissioner position at CHRAJ to take responsibility for issues concerning children, the aged and persons with disabilities. Government accepted this recommendation in the White Paper on the Constitution Review Commission's Report.
- 0.4.5.3 Housing is one of the most critical needs of the aged in Ghana. On 21 February 2013, President Mahama in his maiden State of the Nation Address, acknowledged that "one most basic right is the right to housing and provision of a place of convenience." This acknowledgement should be leveraged upon for fulfillment of the housing rights of the aged.

## **0.4.6 Persons with disabilities**

### **0.4.6.1 The laws on rights of persons with disabilities**

- 0.4.6.1.1 Article 29 of the 1992 Constitution contains provisions on the rights of the persons with disability. The areas covered include the right to live with family and participate in social, creative and recreational activities, the freedom from discrimination and exploitation, the right to participate in judicial proceedings and the right to have access to public places, among others. In addition, the State is required to enact a law for the protection and promotion of the rights of persons with disabilities.<sup>29</sup> The Persons with Disability Act, 2006 (Act 715) contains detailed provisions on the rights of persons with disabilities covering their health care, education, transportation and the employment of persons with disability. The Act establishes a National Council on Persons with Disability whose function is to propose and evolve strategies to enable persons with disability to enter and participate in the mainstream of national development. Regulations are yet to be made to operationalize Act 715.

- 0.4.6.1.2 While the Government does not systematically or overtly discriminate against persons with disabilities, in practice, such persons often experience systemic discrimination in Ghana in many areas including:

### **0.4.6.2 Absence of sign language interpreters in hospitals**

The Ghana National Association of the Deaf (GNAD) has on many occasions complained about the lack of sign language interpreters in hospitals and its consequences for the health rights of persons who have hearing impairments.<sup>30</sup> Lack of sign language interpreters has resulted in improper diagnosis at health facilities due to communication barriers between the deaf and hearing medical officers. This sometimes leads to wrong

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<sup>29</sup> Article 37(2)(b) of the 1992 Constitution.

<sup>30</sup> This is available at <http://edition.myjoyonline.com/pages/news/201303/102880.php>.

prescriptions and complications in some cases and preventable deaths. There is lack of adequate knowledge on deaf people, their culture and language by healthcare personnel. In the absence of official sign interpreters at healthcare institutions, some relatives of deaf patients are compelled to get their deaf relatives sign language interpreters. It is important for government to recognize sign language as an official language for the deaf and make provision for the employment of sign language interpreters in healthcare centres and among essential service providers nationwide.

#### **0.4.6.3 Congestion and food ration inadequacy**

Serious issues continue to bedevil mental health care services including congestion and feeding challenges leading to violation of rights of other patients e.g. a patient strangled another to death on 14 January 2013 at the Accra Psychiatric Hospital. There are also concerns related to physical abuse, food ration adequacy etc.

#### **0.4.6.4 Access to public buildings**

The law provides persons with disabilities access to public buildings “as far as is practical.” Activists supporting the rights of persons with disabilities have complained about the slow implementation of the Disability Act to date. Discrimination against persons with disability in employment and the inaccessibility of public buildings are major concerns for advocates for the rights of persons with disability.

#### **0.4.6.5 Physical abuse**

0.4.6.5.1 Persons with mental and physical disabilities are frequently subjected to abuse and intolerance. Some were also reported to have been killed for ritual purposes. For example in March 2009, four persons appeared in court on murder charges in connection with the July 2008 killing of Yakubu Busanga, a hunchback. The report speculated that the murder may have been motivated by a desire to obtain body parts for use in ritual practices. In addition, it was reported that in July 2009, a two-year-old albino boy was stolen from his mother for ritual purposes.

0.4.6.5.2 Some religious groups reportedly believe that persons with mental disabilities are afflicted by demons that should be exorcised. The abuse of children with disabilities is also common.<sup>31</sup> There were reports that children with disabilities were tied to trees or under market stalls and caned regularly. There are also reports of family members killing children with disabilities.<sup>32</sup>

#### **0.4.7 Persons living with HIV/AIDS**

0.4.7.1 Nearly four percent of people in Ghana have not heard of HIV/AIDS.<sup>33</sup> There is little variation in knowledge across regions and localities. But awareness in the three northern

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<sup>31</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Ghana Country Report on Human Rights Practices for 2000 at page 11. See also the same report for year 2009 at 26.

<sup>32</sup> *Id.*

<sup>33</sup> Ghana Statistical Service, Report of the Ghana Living Standards Survey (Round 6), August 2014 at xvii.

regions is relatively lower than in the southern regions: about 8 percent of persons in the 3 northern regions have never heard of HIV/AIDS. Less than two percent of the urban population has not heard of HIV. In rural areas, 5% of the population has not heard of HIV.

- 0.4.7.2 Although most people have heard about HIV, advocacy efforts to improve awareness need to be intensified. This is because nearly 16 percent of the Ghanaian population does not know that a healthy looking person can have the HIV virus.<sup>34</sup> Awareness that a healthy looking person could carry the virus is high in Greater Accra, Volta and Ashanti. However, such awareness is relatively low in the three northern regions. Knowledge in urban areas (88.9%) is higher than in rural areas (76.5%).
- 0.4.7.3 One of the key intervention methods to minimize the HIV infection rate is prevention of the mothers' transmission of HIV to her baby during pregnancy, delivery and breastfeeding. People's awareness of the possibility of mother to child transmission is relatively high and ranges between 79 and 92.5 percent. Almost 84 percent of rural inhabitants and 89 percent of their urban counterparts know about mother to child transmission.<sup>35</sup>
- 0.4.7.4 There is a National HIV Strategic Plan and in 2004, cabinet approved a policy to protect the rights of persons living with HIV/AIDS. However, the legal and human rights aspects regarding combating HIV/AIDS and improving knowledge of Bioethics in Ghana to cover areas such as sperm and organ donations, surrogacy and the right to refuse life-sustaining treatment, remain largely unexplored.
- 0.4.7.5 Discrimination against persons with HIV/AIDS is a problem. The fear of stigmatization continues to discourage persons from being tested for HIV infection. The government and NGOs subsidize many centres that provide free HIV testing to citizens, although reports indicate that confidentiality was not consistently respected. Generally, access to retroviral drugs is normal with the exception of occasional shortages necessitating agitations from persons affected.<sup>36</sup>

#### **0.4.8 Refugees and internally displaced persons**

- 0.4.8.1 Refugee Law, 1992 (PNDCL 305D) governs the affairs of Refugees in Ghana. The Ghana Refugee Board (GRB) was established under PNDCL 305 D with representation by stakeholder institutions. The Board is the decision making body and there is a Secretariat, which advises the Board and implements the Board's decisions. UNHCR works with the Government of Ghana through the Ghana Refugee Board, to coordinate

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<sup>34</sup> Ghana Statistical Service, Report of the Ghana Living Standards Survey, Round 5 (Sept. 2008) at 29.

<sup>35</sup> *Id.* at 28. See also Ghana Living Standards Survey (Round 6), August 2014 at 29.

<sup>36</sup> Efua Idan Osam, We need anti-retroviral drugs now, citifmonline, 15 May 2015, available at <http://citifmonline.com/2015/05/15/we-need-antiretroviral-drugs-now-hiv-patients/> (last accessed 30 December, 2015).

- international protection and the delivery of humanitarian assistance to asylum seekers and refugees in the country.
- 0.4.8.2 The Ghana Refugee Board is the sole agency mandated by Law to grant refugee status to asylum seekers. The Board coordinates refugee management, advises Government and also ensures that Government Policy is implemented and adhered to in the management of refugees. GRB therefore liaises with the UNHCR, state actors and other non-governmental organisations; particularly, the implementing agencies of UNHCR, in the implementation of activities for the refugee programme.
- 0.4.8.3 The Government cooperates with the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organisations in assisting refugees. The law conforms largely to the 1951 U.N. Convention relating to the Status of Refugees and its 1967 Protocol. Asylum has been granted to nationals from Liberia, Togo, Sierra Leone, Sudan, Nigeria, and other countries.
- 0.4.8.4 In spite of this record, there have been some clashes between the refugees and law enforcement in Ghana. For instance, on 24<sup>th</sup> March 2001, a mob of Liberian refugees from the Bujumbura Refugee Camp in the Greater Accra Region rioted following the alleged attack on a refugee by a Ghanaian. Armed with sticks, stones, and knives, the rioters vandalized the local police and fire stations, set free prisoners in the police cells, destroyed police and fire service living quarters, and looted, inflicting damage estimated at thousands of dollars. The mob also attacked vehicles on the Accra-Winneba road, which passes directly by the camp, damaging vehicles, burning tires, and harassing drivers. Several rioters were reportedly injured and 24 were arrested. On 18<sup>th</sup> April 2001, they appeared in court and were charged with rioting, unlawful damage, and stealing. All pleaded not guilty; 18 were remanded into police custody, and 6 were granted bail.
- 0.4.8.5 Refugees in Ghana have freedom of movement within the country and are not required to carry identification at all times. Refugees are also allowed to apply for work permits through the same process applicable to other foreigners. However, work permits generally are issued only for employment in the formal sector, and the majority of refugees work in the informal sector. Refugee children have had access to public primary schools. Refugees have also been enrolled on the national health insurance system with funding from the UNHCR.
- 0.4.9 Migrant workers**
- 0.4.9.1 The legislation in Ghana makes no distinction between national workers and migrant workers. Every person in Ghana, regardless of nationality, has access to the courts and enjoys the protection of the rights guaranteed by law. There are initiatives to encourage the transfer of earnings and savings by Ghanaian migrant workers to Ghana. But there is the absence of information about partnerships with financial institutions to facilitate the

transfer of earnings and savings for Ghanaian migrant workers abroad and for migrant workers in Ghana.

- 0.4.9.2 National legislation recognizes the right of Ghanaians residing abroad to participate in public affairs in Ghana and to vote. Article 42 of the 1992 Constitution states, “every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda.” This right has been duly protected since the 1992 Constitution came into force. However, citizens who live abroad have not benefited from this right except those citizens (and their spouses) employed in a post outside Ghana in the service of the Republic, the United Nations or any other international organization who were entitled to vote outside Ghana. This was because section 7 of the Representation of the People’s Law, 1992 (PNDCL 284) required residency of all potential voters in a polling division in Ghana. This meant that persons who were migrant workers outside Ghana could not meet the qualifications for voting. This was amended by section 1(b) of the Representation of the People (Amendment) Act, 2006 (Act 699) to allow all Ghanaians abroad the opportunity to vote.
- 0.4.9.3 On 1 July 2003, the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families came into force. Ghana signed and acceded to this Convention on the 7<sup>th</sup> of September 2000. In accordance with the Convention, a Committee was set up by the UN to monitor state’s compliance with the Convention. It is important to note that states acceding to the Convention also undertake to submit reports to the Committee every fifth year on the implementation of the Convention’s rules at the national level.
- 0.4.9.4 The Committee on the Protection of the Rights of all Migrant Workers and members of their families considered the initial report of Ghana on 2 and 3 September 2014.
- 0.4.9.5 The Committee recommended that Ghana takes the necessary steps to ensure that its national laws and policies are in line with the provisions of the Convention. It also encouraged Ghana to ensure that the national migration policy is in line with the Convention and to accelerate its adoption by the Parliament. The Committee further recommended that Ghana intensifies its efforts to improve the coordination among ministries and agencies at all levels of government for the effective implementation of the rights protected under the Convention and ensure a clear mandate and appropriate human and financial resources for the Inter-Ministerial Committee to carry out its work.

## **0.4.10 Women**

### **0.4.10.1 The basis of women's rights**

0.4.10.1.1 Women's rights are simply the elaboration of the human rights of women. The idea of women's rights was conceived as an attempt to acquire for women the same levels of realisation of the benefits of international human rights as men. The foundation of the lack of women's realisation of their rights was found to be discrimination against women in economic, social, political and cultural spheres of life. Discrimination is therefore a core problem that women's rights seek to address.

0.4.10.1.2 Describing 'discrimination' as *'any distinction, exclusion or restriction made on the basis of sex which has effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'*, the international community under the UN codified its intent of 'elimination of such discrimination in all its forms and manifestations' in the Convention on Elimination of all forms of Discrimination Against Women (CEDAW) in 1979 and this convention entered into force in 1981.

0.4.10.1.3 Another problem was the international human rights instruments' blindness to and omission of the unique circumstances and needs of women as a result of their biological construction, and social, economic, political and cultural situations, which required special recognition and attention by the general rights' statements such as those related to health, work, and public participation among others.

0.4.10.1.4 In the context of Women's Human Rights, the international community has therefore been moved by the women's movement around the world to come together to reiterate the principles of equality and non-discrimination between men and women in the new light of the understanding of the different types of discrimination against women, the social institutions that perpetuate them, and a new understanding of the unique needs of women in light of their biological construction and situations in life.

0.4.10.1.5 The social significance of maternity, as well as the role of both parents in the family and in the upbringing of children have been recognized meaning that the role of women in procreation should not be taken as a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole.

### **0.4.10.2 Experiences of women in Ghana**

0.4.10.2.1 Violence against women is a problem. The predominant offences against women are rape and domestic violence, particularly in low-income areas. Most abuses usually go unreported and seldom come before the courts. The Police also have a tendency not to intervene in domestic disputes. In 2009, reports captured the story of the Paramount



Chief of the Goaso traditional area in the Brong Ahafo region, who ordered his men to beat a 28-year-old woman with canes, for not kneeling before him. When the victim reported the incident to the police, the police refused to accept the complaint and detained the victim and her mother without charges.<sup>37</sup> They were later released.

0.4.10.2.2 Rural women can be punished with banishment by traditional village authorities for teenage pregnancy or suspected witchcraft. Hundreds of women accused of witchcraft were sent to penal villages in the Northern Region by traditional authorities. In 1997, 2 of such villages contained 400 elderly women, and 1 village contained 2,000 women and family members, all based on the decisions of village authorities. Although the women face no formal legal sanction if they leave, most fear that they would be beaten to death if caught outside the penal villages.

0.4.10.2.3 In Ghana, one in three women will reportedly experience physical violence including beating, slapping or other physical punishment at the hands of current or previous partners.<sup>38</sup> Abusers and victims come from all backgrounds – the rich, the poor, the educated, the non-educated, rural as well as urban dwellers, high or low class – there is no exception.<sup>39</sup> While those in the lower classes may report their abuses, women in the upper or working classes prefer to suffer in the quiet because exposing their suffering may be to their disadvantage.<sup>40</sup>

### **0.4.10.3 Efforts to combat discrimination against women in Ghana**

0.4.10.3.1 Efforts have been made over the years to address discrimination against women in Ghana. For example, legislation was reviewed to double the mandatory sentence for rape. In the same vein, DOVVSU was established in 1998 to handle cases involving domestic violence, child abuse, and juvenile offenses. In the first quarter of operation, this unit recorded 199 cases, including 30 assaults on women and 9 rapes. In 2001, the Accra Branch of this unit recorded 658 cases, including 204 defilement cases, 58 rapes, 5 cases of incest, 28 indecent assaults, 232 instances of assault and wife battery, and 9 abductions. Women's rights groups have also been active in implementing educational campaigns and in executing programmes to provide vocational training, legal aid, and other support to women.<sup>41</sup>

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<sup>37</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 2010 Country Report on Ghana, page 6.

<sup>38</sup> According to a study carried out by the Gender Studies and Human Rights Documentation Centre, University of Ghana, Legon, one third of women in Ghana admitted living with an abusive man. Further information is available at <http://gendercentreghana.org/?p=63> (last accessed 30 May 2016).

<sup>39</sup> Vicky Wireko, Violence against women affects 1 in 3, available at <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/COMMENT-Violence-against-women-affects-1-in-3-266965>

<sup>40</sup> *Id.*

<sup>41</sup> This information is available at <http://edition.myjoyonline.com/pages/news/201303/102376.php> (last accessed 30 May 2017).



0.4.10.3.2 The Domestic Violence Act, 2007 (Act 732) was passed to combat violence in the domestic setting.

0.4.10.3.3 A key issue of interest to women in Ghana is the passage of a law on the property rights of spouses, which is the responsibility of Parliament. In the absence of such a law, the Supreme Court has developed the “equality is equity” principle in cases such as *Arthur v. Arthur* and *Mensah v. Mensah*. It is recommended that Parliament should work at enacting a law on the property rights of spouses. The law should also take account of situations in which one of the parties to marriage dies intestate.

#### **0.4.11 Lesbians, Gays, Bisexuals, Transgendered persons and Intersex people (LGBTI)**

##### **0.4.11.1 The gay rights controversy in Ghana**

In recent times, Ghanaians have witnessed an increased level of public discourse on LGBTI persons and their rights. Often, the discussions on LGBTI issues are on whether the practice of homosexuality and the Ghanaian culture are compatible. There is a general non-acceptance of homosexuality by the Ghanaian society irrespective of the social, economic, and other status of the opinion holders. For instance, in a vetting of the then Minister designate for Gender, Children and Social Protection, many parliamentarians posed questions that suggested their non-acceptance of the practice of homosexuality.<sup>42</sup> This study is concerned amongst other things with whether in the view of Ghanaians, LGBTI persons have rights which must be realized. The study is not about the acceptance or otherwise of the practice of homosexuality in Ghana.

##### **0.4.11.2 The 5 steps towards the realisation of gay rights**

0.4.11.2.1 Recently, a former UN High Commissioner for Human Rights, Ms. Navi Pillay noted that the case for extending the same rights to lesbian, gay, bisexual and transgender (LGBT) persons as those enjoyed by everyone else is neither radical nor complicated. It rests on two fundamental principles that underpin international human rights law: equality and non-discrimination. The opening words of the Universal Declaration of Human Rights are unequivocal - “All human beings are born free and equal in dignity and rights.”<sup>43</sup>

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<sup>42</sup> Bertha Badu Agyei, Matters arising from the vetting of Nana Oye, vibeghana.com news report, available at <http://vibeghana.com/2013/02/07/matters-arising-from-the-vetting-of-nana-oye-lithur/> (last accessed 31<sup>st</sup> December 2016).

<sup>43</sup> Navi Pillay (United Nations High Commissioner for Human Rights), *Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law*, 2012 at 7.

0.4.11.2.2 The office of the UN High Commissioner for Human Rights has recommended five steps that can be taken towards the respect, protection and fulfillment of the rights of LGBTI persons. These five steps include:<sup>44</sup>

1. Protect people from homophobic and transphobic violence. Include sexual orientation and gender identity as protected characteristics in hate crime laws. Establish effective systems to record and report hate-motivated acts of violence. Ensure effective investigation and prosecution of perpetrators and redress for victims of such violence. Asylum laws and policies should recognize that persecution on account of one's sexual orientation or gender identity may be a valid basis for an asylum claim.
2. Prevent the torture and cruel, inhuman and degrading treatment of LGBT persons in detention by prohibiting and punishing such acts and ensuring that victims are provided with redress. Investigate all acts of mistreatment by State agents and bring those responsible to justice. Provide appropriate training to law enforcement officers and ensure effective monitoring of places of detention.
3. Repeal laws criminalizing homosexuality, including all laws that prohibit private sexual conduct between consenting adults of the same sex. Ensure that individuals are not arrested or detained on the basis of their sexual orientation or gender identity, and are not subjected to baseless and degrading physical examinations intended to determine their sexual orientation.
4. Prohibit discrimination on the basis of sexual orientation and gender identity. Enact comprehensive laws that include sexual orientation and gender identity as prohibited grounds of discrimination. In particular, ensure non-discriminatory access to basic services, including in the context of employment and health care. Provide education and training to prevent discrimination and stigmatization of LGBT and intersex people.
5. Safeguard freedom of expression, association and peaceful assembly for LGBT and intersex people. Any limitations on these rights must be compatible with international law and must not be discriminatory. Protect individuals who exercise their rights to freedom of expression, association and freedom of assembly from acts of violence and intimidation by private parties.

0.4.11.2.3 The criminalization of private, consensual sex between adults of the same sex breaches a State's obligations under international law, including the obligations to protect individual

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<sup>44</sup> Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law, 2012 at 13 available at <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>. (last accessed 31st December 2016).

privacy and to guarantee non-discrimination. This has been the consistent position of United Nations human rights experts since 1994, when the Human Rights Committee decided *Toonen v. Australia*.<sup>45</sup> *Toonen* concerned a challenge to laws in the Australian State of Tasmania criminalizing consensual same-sex sexual conduct. The Human Rights Committee found that it was “undisputed that adult consensual sexual activity in private is covered by the concept of ‘privacy’” under article 17 of the ICCPR. It did not matter that Mr. Toonen, the author of the communication, had never been prosecuted. The mere existence of the criminal law “continuously and directly interferes with the author’s privacy.” Under article 17 of the ICCPR, individuals are protected against “arbitrary or unlawful interferences” with their privacy. An “arbitrary interference” can be one provided for by law that does not meet the requirements of being “in accordance with the provisions, aims and objectives of the Covenant” and “reasonable in the particular circumstances.”

#### 0.4.11.3 The domestic law and experiences of LGBTI persons

Unnatural carnal knowledge is a misdemeanor in Ghana.<sup>46</sup> The law and strong socio-cultural beliefs discriminate against homosexuals.<sup>47</sup> Additionally, gay and lesbian activists report that gay men were particularly vulnerable to extortion by police. As at 2009 and 2010, there were no registered LGBTI organizations.

#### 0.4.11.4 Educational content and LGBTI rights

Educational content in biology, medical and health science textbooks, which in the past have mostly been imported European standard text books, highlight heterosexual activities as “natural” and others as “un-natural” based on scientific findings on the male and female sexual organs. This type of content, according to key informants for this baseline, has informed many individuals positions on LGBTI rights and underscores how controversial and complicated the subject matter is.

#### 0.4.11.5 Position of the Government of Ghana on LGBTI rights

There is no clear position of Government on the rights of LGBTIs. When the opportunity was presented by the Constitution Review process, the Commission recommended that the issue of legality or otherwise of homosexuality should be decided by the Supreme Court when it comes up. Government has taken note of the recommendation of the Constitution Review Commission that the legality or otherwise of homosexuality be decided by the Supreme Court if the matter comes before the Court.<sup>48</sup> On 7 February, 2013, the Attorney General and Minister of Justice at her vetting

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<sup>45</sup> *Toonen v. Australia*, Human Rights Committee Communication No. 488/1992, CCPR/C/50/D/488/1992, 4 April 1994.

<sup>46</sup> Section 104(1)(b), Criminal and other offences Act, 1960 (Act 29).

<sup>47</sup> U.S. Department of State, Human Rights Report on Ghana (2005) dated 8<sup>th</sup> March 2006 at page 27.

<sup>48</sup> White paper on the Report of the Constitution Review Committee of Enquiry (June 2012), White Paper number 1/2012 at page 45. The White Paper on Report of the Constitution Review Commission presented to the President is available at <http://www.ghana.gov.gh/index.php/information/reports/2572-white-paper-on-the-report-of-the-Constitution-review-commission-presented-to-the-president> (last accessed on 31 December 2016).

re-stated the position put forward by the CRC that the matter be decided by the Supreme Court. Earlier, on 28 January, 2013, Minister of Gender, Children and Social Protection was resolute in her stand recognizing the fundamental rights of LGBTI persons. However, she also noted that she was not going to use her position to promote homosexuality.

#### **0.4.5 Healthcare concerns**

0.4.5.1 A cross-cutting issue for all vulnerable groups is access to healthcare. Public healthcare is financed mainly by the National Health Insurance Scheme (NHIS). The goal of NHIS is to assure a specified minimum healthcare benefit package to all Ghanaians at the point of service within five years following its implementation. Active membership on the National Health Insurance Scheme has grown from 1.3 million in 2005 to 8.9 million in 2012.<sup>49</sup> However, many people are detained in hospital after they have been discharged due to non-enrolment on the scheme or the inability to pay fees which are not covered by the health insurance.

0.4.5.2 Act 852 also makes provision for free registration and access to healthcare for the poor and vulnerable. There are calls for the inclusion of cancer treatment, particularly for children in the National health Insurance Scheme. This is because about 1000 children below 15 years of age are annually diagnosed with cancer that could be treated. It is recommended that an in depth study into the various other illnesses which could be accommodated by the National Health Insurance Scheme is carried out for the realization of the health rights of all in Ghana.

#### **0.4.6 Institutional framework for human rights realization**

##### **0.4.6.1 Constitutional basis for institutions with human rights mandates**

Article 12(1) of the 1992 Constitution requires that:

... fundamental human rights and freedoms ... shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution.

This article provides the broad framework within which state institutions, parastatals, corporate institutions, other groups, some of which may not be corporate entities or even registered at all, and individuals must work for the realisation of human rights in Ghana. The provision places the primary responsibility on state institutions to *enforce* the rights of people in Ghana and provide avenues for redress of any violations. This duty is carried out primarily through the courts and CHRAJ, an independent body provided for under chapter 18 of the 1992 Constitution to protect rights in Ghana.

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<sup>49</sup> National Health Insurance Scheme Annual Report for 2012 at page 38 available at <http://www.nhis.gov.gh/files/2012%20NHIA%20ANNUAL%20REPORT.pdf> (last accessed 31 December 2016).

0.4.6.2 **The Commission on Human Rights and Administrative Justice (CHRAJ)**

0.4.6.2.1 CHRAJ was set up by the CHRAJ Act, 1993 (Act 456). It has the mandate to work towards the realisation of human rights, combat corruption and redress administrative injustice. CHRAJ continues to make remarkable progress in the promotion and protection of human rights and improving access to justice.

0.4.6.2.2 Between 2009 and 2011, CHRAJ received over 12,000 complaints annually. In 2011, for instance, CHRAJ received 12,018 complaints. Out of this number, 11,230 representing 93.1% of the complaints received were human rights related. 767 (6.4%) were administrative justice related cases, and 21, thus 0.2% were corruption related. 11,465 of the complaints received were successfully resolved by CHRAJ.<sup>50</sup> The Annual Performance Review Report of the National Development Planning Commission for 2015 reveals that number the human rights cases CHRAJ receives has not changed very drastically.

0.4.6.2.3 CHRAJ has carried out public education, sensitization and awareness creation programmes aimed at deepening citizens' understanding of human rights and entrenching a culture of respect and dignity for people in the Ghana. Over 3000 public education programmes have been held annually across the country.<sup>51</sup>

0.4.6.3 **Legal Aid Scheme**

0.4.6.3.1 A functioning legal aid system, as part of an effective criminal justice system, may reduce the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, wrongful convictions, prison overcrowding and congestion in the courts, and reducing reoffending and re-victimization. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process. Legal aid can be utilized to contribute to the prevention of crime by increasing awareness of the law. In general, legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial measures; promoting greater community involvement in the criminal justice system; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources.

0.4.6.3.2 Act 542 established the Legal Aid Scheme to make available free legal services to persons who are unable to pay for legal services. Any persons desirous of enforcing any provision of the Constitution, or who has taken any actions in connection with any proceedings relating to the Constitution if he has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings, is entitled to legal aid under the Legal Aid Scheme.

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<sup>50</sup> 2012 National report submitted by Ghana to the Universal Periodic Review in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 at page 3.

<sup>51</sup>Id.

#### 0.4.6.4 **National Commission on Civic Education (NCCE)**

0.4.6.4.1 The NCCE was established in 1993 under the NCCE Act, 1993 (Act 452). The functions of the Commission as mandated under Act 452 are: to create and sustain awareness of the principles and objectives of the Constitution as the fundamental law; to educate and encourage the public to defend the Constitution at all times, against all forms of abuse and violation; to formulate for the consideration of Government, from time to time, programmes at the national, regional and district levels aimed at realizing the objectives of the Constitution; to formulate, implement and oversee programmes intended to inculcate in the citizens of Ghana awareness of their civic responsibilities and an appreciation of their rights and obligations as free people; and to assess for the information of Government, the limitations to the achievement of true democracy arising from the existing inequalities between different strata of the population and make recommendations for re-dressing these inequalities.

0.4.6.4.2 The Law also provides that the Commission “shall not be subject to the direction or control of any person or authority in the performance of its functions”. The NCCE tries to engage the citizenry through several programmes and community outreach projects.

0.4.6.4.3 The NCCE has 170 district offices (one in every district of Ghana), 10 regional offices. The NCCE has a staff strength of approximately 1800 staff. The Commission is supposed to be present in every community in Ghana.<sup>52</sup> The NCCE organizes annual democracy lectures to educate Ghanaians on their human rights and responsibilities.

#### 0.4.6.5 **Other institutions**

0.4.6.5.1 Several ministries, departments and agencies within the government machinery have responsibilities towards the realization of human rights for persons in Ghana. These include the Ministry of Gender, Children and Social Protection and the Department of Children; the Ministry of Employment and Social Welfare and the Department of Social Welfare.

0.4.6.5.2 In some instances, the mandate and functions of the different state apparatus may complement each other, strengthening the potential for the realization of human rights in Ghana. In other instances, the mandates and functions of these institutions overlap with the potential of duplication of efforts and creating some lacunae as to which institutions should have responsibility for the realization of the particular human rights in question. For instance, which state institution has the responsibility for meeting the employment needs of persons with disabilities? Is it the Ministry with responsibility for Employment and Social Welfare, the Ministry of Gender, Children and Social Protection, the Department of Social Welfare or the National Council for Persons with Disabilities?

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<sup>52</sup> This information is available at [http://ncceh.org/index.php?option=com\\_content&view=article&id=46:our-work&catid=34:liquid-news](http://ncceh.org/index.php?option=com_content&view=article&id=46:our-work&catid=34:liquid-news) (last accessed 30 May 2016).

#### 0.4.6.6 **The case for a coordinated machinery for human rights work**

0.4.6.6.1 There appears to be a loose institutional arrangement with many institutions provided for under the 1992 Constitution and created by legislation as well as the government bureaucracy. However, there is a weak linkage between the planning and operations of these different governmental and independent institutions. Creating such linkages and synergies as well as improving the coordination of the planning of programmes and implementation of activities by all these institutions, that have some form of human rights mandate, will improve the chances of the realization of human rights in Ghana. It is possible for instance, to create a quarterly platform on which all these institutions meet and interact with regard to their work, leveraging on each other's plans and operations, eliminating duplications and filling or addressing lacunae.

0.4.6.6.2 The implementation of a human rights action plan requires a well-defined framework that will facilitate efficient linkages to translate the action plan goals and objectives into programmes at all levels to improve the living conditions of persons in Ghana. It is recommended that CHRAJ leads the co-ordination, to ensure the proper functioning of linkages at both international, national and sub national levels. This coordination function should also ensure that the key indicators that each institution in the framework, ought to be working to achieve, are defined, documented and shared. The idea is to create an effective framework which can compel the various relevant institutions to work for the realization of human rights.

0.4.6.6.3 The baseline data gathered from specific Vulnerable Groups (VGs) shows that the LGBTI community believes the Ghana Aids Commission has adequate capacity to support them. All other groups including Women, Children, Migrant Workers, Refugees and Internally Displaced Persons, the Aged, PLWD and PLWHA had less than 70% of their representatives indicating that their lead institution has adequate capacity to help respect, protect and fulfill their rights. Gaps that were identified as contributing factors to inadequate capacity for their key institutions are:

1. Inadequate staff strength and lack of adequate staff technical capacity;
2. Unsatisfactory working conditions including low remuneration;
3. Lack of commitment to work towards the realisation of the rights of VGs;
4. Lack of logistical support including vehicles, laptops, desktop computers;
5. Excessive administrative bottlenecks in carrying out duties;
6. Lack of decentralization or non-availability of branch or agency offices in the districts;
7. Low public knowledge of the level of rights abuses and infringements due to inadequate reporting;
8. Non-enforcement of the law as a result of bribery and corruption; and
9. Inadequate funding for such agencies to respect, protect and fulfill human rights of VGs.



## 0.4.7 Human Rights education in Ghana

### 0.4.7.1 The need for human rights education in Ghana

0.4.7.1.1 Article 34(4) of the Constitution provides that the State shall cultivate among all Ghanaians respect for fundamental human rights and freedoms and the dignity of the human person. Some human rights experts believe that:

“Freedom is participation in power ... Education gives us that freedom, that option to participate in power – the power to participate in building a socially developed country peopled by civically conscious and public-spirited citizens.”<sup>53</sup>

0.4.7.1.2 For the purposes of this survey, formal human rights education is defined as instructions, lectures or lessons received from accredited, structured and curriculum based sources. Hence, only accreditation by the National Accreditation Board is considered sufficient to meet the requirements of a formal human rights training institution in Ghana.

0.4.7.1.3 The UDHR recognizes that every individual and every organ of society, shall strive by teaching and education to promote respect for human rights and freedoms...<sup>54</sup> In addition, the World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the UDHR and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms.<sup>55</sup>

### 0.4.7.2 Formal Human Rights Education in Ghana<sup>56</sup>

0.4.7.2.1 Since 2010, human rights have been incorporated into the curriculum of basic schools in Ghana. This positively reflected in the insightful views expressed by basic school pupils who participated in this survey. Human Rights is however not part of the curriculum in the Senior High Schools. At the tertiary level, human rights is strictly treated as a law subject, and only offered in the law faculties of a number of universities in Ghana.<sup>57</sup> It is therefore only available to law students as part of their legal training and is in most cases an elective subject. Therefore, it is only the few law students who are interested who may

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<sup>53</sup> Prof. Ken Attafuah, Fifty Years of Secondary Education in Ghana: Reflections from Criminological and Human Rights Perspectives, a keynote speech delivered at a convocation of St. Peter's Secondary School on the occasion of the golden jubilee celebration of the school, available at <http://www.perscoba.com/pdf/Reflectionson50YearsofEdulecture.pdf> (last accessed on 31st December 2016).

<sup>54</sup> Preamble to the Universal Declaration of Human Rights, 1948, available at <http://www.un.org/en/universal-declaration-human-rights/> (last accessed on 31 December, 2016).

<sup>55</sup> Paragraph 33, section 1 of the Vienna Declaration and Programme of Action, available at <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf> (last accessed on 31 December, 2016).

<sup>56</sup> This section relies heavily on a lecture delivered by Prof. Ken Attafuah, Fifty Years of Secondary Education in Ghana: Reflections from Criminological and Human Rights Perspectives.

<sup>57</sup> Ashesi University College does not have a law faculty; it however offers a semester run course on child rights in partnership with Wilfrid Laurier University.



opt for it.<sup>58</sup> At the postgraduate level, it is offered at even fewer of the nation's Universities.<sup>59</sup> This minimal effort at human rights education in Ghana can only be described as a failure to develop the fundamentals for the blossoming of an appropriate human rights culture which would sustain our fledgling democracy. Inadequate human rights education will amongst other things produce an ineffective public administration system.

- 0.4.7.2.2 Public administration in Ghana evinces inadequate appreciation of the centrality of human rights to governance and well-being and the inadequate integration of the principles of natural justice and procedural fairness. This is partly as a result of an absence of focused training or education relating to the principles of human rights, administrative justice and good governance.
- 0.4.7.2.3 Education curricula for teacher training institutions include courses in education management, sociology of education, child psychology, and adolescent psychology. However these are inadequate and uncoordinated. Human Rights must be taught in a focused manner using proven instructional methodologies and techniques. The lack of proper training in effective citizenship, civility and human rights, democracy and peace education lies at the heart of various agitations that have been experienced in Ghana. Schools must be equipped to deliver human rights education so as to imbue in the youth and ultimately the general populace, the requisite qualities for respecting, protecting and fulfilling human rights.
- 0.4.7.2.4 The study of human rights illuminates the human condition, and stresses the universality of the search for human dignity. The delivery of justice would be greatly enhanced if lawyers and judges possessed sound appreciation of human rights principles, values and norms. The practice of medicine and nursing would evince greater sensitivity to the inherent dignity of the patient. The teacher, the employer, the politician, the police officer, the immigration and customs officer, as well as the trader in the market, would all show greater respect for everyone with whom they interact on a daily basis, if they were better exposed to, and educated on human rights values, principles and norms.
- 0.4.7.2.5 Human rights education will help achieve a wider societal appreciation of the critical links between human rights, peace, stability and development. A society imbued with respect for human rights will be less prone to major human conflicts and wars. All people, especially students, need to understand human rights in all three contexts: national, comparative, and international. Globalisation is a social fact, and human rights violations in Sierra Leone, Nigeria and Liberia have as much potential to affect us as a

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<sup>58</sup> University of Ghana, Kwame Nkrumah University of Science and Technology (KNUST), Ghana Institute of Management and Public Administration (GIMPA) and Mountcrest University offer human rights as a subject as part of their LL.B. programmes.

<sup>59</sup> University of Ghana, Legon and Mountcrest University.

- people in a common sub-region, as human rights violations in Ghana have the potential to affect the lives of people elsewhere in the sub-region and beyond.
- 0.4.7.2.6 The study of specific human rights documents such as the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the human rights provisions of national Constitutions, and the statutory human rights codes of nations can do a lot to dissipate ethnocentric views of rights.
  - 0.4.7.2.7 It is important to recognize that rights violations can be very subtle. For instance, discrimination based on ethnic or tribal origin, refusal to employ someone or to rent accommodation to a family because, they are Dagombas or Ewes or Ashantis or Bandas, for instance may be difficult to detect. Rights violations can also be endemic, and thereby considered as normal.
  - 0.4.7.2.8 It must also be emphasized that many rights conflicts do not have easily defined boundaries. Sometimes, to defend freedom of speech can mean defending pornographers, or even hate-mongers; to limit this freedom opens the door to censoring ideas with which the majority of society is uncomfortable.
  - 0.4.7.2.9 In addition, human rights education is also important for instilling the cardinal values of integrity, discipline, self-respect, and democratic practice. The internalization of these values serves as important inhibitors against corruption, indiscipline and abuse of power.
  - 0.4.7.2.10 One objective is to help shape independent thinking, rational, and participatory citizens, well- adapted to living in a democracy. Another goal is to imbue students with a sense of the value human life represents, culminating, as a long-term objective, in the development of a human rights culture.
  - 0.4.7.2.11 The idea is to generate an educational process which centres on the individual as a moral being, and aims at developing an autonomous conscience, and the responsible exercise of individual freedoms within an equitable education community where everyone is heard, respected, and valued as a thinking being. It is especially important for Ghanaian society to deliberately nurture independent and self-controlled individuals capable of transforming their reality and promoting a life style based on respect for human dignity. Human rights education must have an important social impact by maximizing compassion and minimizing the tendency to resort to violence, particularly the dastardly acts of armed robbery, and mob violence perpetrated in the name of justice. These objectives are so compelling that human rights education must be an integral part of teacher training curricular, and of secondary school education as well.
  - 0.4.7.2.12 The integration of human rights and citizenship education in the secondary school system will enable us cultivate citizens who understand their rights. It is vital that

secondary schools emphasize education and training in human rights, effective citizenship, and democracy. Teacher training institutions should emphasize civic education for citizenship. Specialization in human rights at the higher institutions of learning should also be encouraged.

#### 0.4.7.3 *Informal Human Rights Education in Ghana*

- 0.4.7.3.1 Human rights awareness in the general Ghanaian population can mostly be credited to informal education usually championed by civil society groups. A significant number of local human rights NGOs<sup>60</sup> across the country have been engaged in creating human rights awareness at the grassroots level. These awareness programmes have been particularly successful because of the employment of social marketing strategies as well as the extensive use of the media, particularly radio.
- 0.4.7.3.2 When general public respondents were asked whether they were aware of the rights of the vulnerable groups listed, fifty-nine (59%) and fifty-three (53%) respectively of general public respondents interviewed indicated that they were knowledgeable about the rights of children and juveniles, and women respectively. Knowledge of the rights of other vulnerable groups by the randomly interviewed general public members ranged just between 10% and 40%. Consequently the general public is relatively better informed about the rights of children and juveniles and women, than on any other vulnerable group.
- 0.4.7.3.3 Many respondents noted that they were not aware of the rights of most of the key vulnerable groups namely LGBTI, Migrant Workers, Refugees and Internally Displaced Persons, the Aged, PLWD and PLWHA. For example, the majority of respondents, 88% and 81% respectively were unaware about the rights of lesbians, gays, bisexuals, transgendered, intersex (LGBTI) persons and of migrant workers.
- 0.4.7.3.4 It appears therefore that public education through NCCE is either not providing sufficient awareness creation on the rights of vulnerable groups or the communication efforts by NCCE have been inadequate. This is because, with respect to the awareness on the rights of persons with disabilities for instance, only between 0.5% and 4% of respondents obtained their sensitization through the efforts of the NCCE. The capacity of the NCCE, CHRAJ and to some extent, the Ghana Education Service must therefore be invigorated to discharge their public education and awareness creation functions much better. This will potentially enhance CHRAJ's public human rights education, sensitization and awareness creation programmes aimed at deepening citizens' understanding of human rights and entrenching a culture of respect and dignity for all people in the country. Between 2009 and 2011, over 3000 public education programmes were held annually across the country, as noted earlier. With particular reference to

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<sup>60</sup> Legal Resources Centre, FIDA, Ark Foundation, Human Rights Advocacy, Commonwealth Human Rights Initiative (CHRI), etc, are well known NGOs engaged in human rights education and awareness creation across the country.

informal human rights education, NCCE in particular must be equipped with the necessary human and material resources to discharge its principal duty, namely to foster Constitutionalism among Ghanaians, and to help create a new and dynamic sense of citizenship in Ghana. These state institutions require substantial state support to improve the environment for effective human rights observance and responsible citizenship. The Centre for Civic Education of the late 1960s, and Col. Acheampong's era of the Charter of Redemption supported high quality citizenship education of a kind that motivated and boosted the self-confidence of Ghanaians to meet the challenges of the time. These efforts should be revisited, reviewed and key lessons factored into future public education initiatives.

- 0.4.7.3.5 NGOs were the least cited by members of the general public in the baseline survey as being the source of information they had received on the rights of vulnerable groups. However, it is useful to note that many of the radio programmes are likely to have had NGO representatives as resource persons and again the activities of NGOs tend to be targeted at vulnerable groups with specific needs and less often the public at large. Between 69% to 98% of respondents displayed a lack of awareness related to the contents of policies or laws established to support these key vulnerable groups.

## **0.5 Challenges faced by Ghana in the realisation of human rights**

Several challenges confront Ghana as it seeks to meet its human rights obligations. These challenges are cross cutting and affect several if not all the vulnerable groups.

### **0.5.1 Lack of Resources**

- 0.5.1.1 This is a key challenge which cuts across and affects all areas of human rights realisation. Almost all state institutions that work to protect, respect and fulfill human rights in Ghana are grossly under resourced, not just in relation to financial resources but also human and logistical resources as well.<sup>61</sup> These institutions include schools, health facilities, family tribunals, juvenile courts etc. For example the Department of Social Welfare (DSW), which is primarily mandated among other things to promote and protect the rights of children and also to provide community care for the disabled and needy adults, is also affected by the resource challenges of state institutions.<sup>62</sup> Effective implementation of DSW's mandate is severely affected by institutional, financial and human resource capacity challenges. Budgetary allocations are highly inadequate, and its local offices lack adequate personnel and logistics.<sup>63</sup>

- 0.5.1.2 Inadequate funding and resources has also been cited as the greatest challenge to CHRAJ

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<sup>61</sup> Ghana NGOs Coalition on the Right of the Child (GNCRC), Report on the right of the child submitted to the UN Committee on the Rights of the Child, on implementation of the Convention of the Rights of the Child by the Republic of Ghana. June 2014, pages 44 and 45, available at [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/GHA/INT\\_CRC\\_NGO\\_GHA\\_17939\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/GHA/INT_CRC_NGO_GHA_17939_E.pdf) (last accessed 31 December 2016).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 49.

achieving its mandate. This has resulted in low salaries, poor working conditions, and the loss of many of its staff to other government and non-governmental agencies.<sup>64</sup> In another example, the lack of counselling skills, shelter and other resources needed to protect women and children continues to affect the ability of the Police to protect, respect and fulfill the human rights of victims.<sup>65</sup>

## **0.5.2 Inadequate information management systems leading to poor record keeping**

0.5.2.1 To develop appropriate interventions to protect, respect and fulfill human rights, an effective system for collection, collation and analysis of information is needed. However, this has either not been instituted by most key Human Rights institutions or where such systems exist, they are not being efficiently managed. Unfortunately, therefore most human rights institutions do not have an electronic system of collecting and storing information. Consequently, it is hard to analyse trends and to determine whether interventions are having the necessary impact; for example, whether there has been a decrease nationwide in the trafficking of children in fishing areas over a certain period of time due to increased advocacy on the subject.

0.5.2.2 Data disaggregated by sex, age, socio-economic circumstances, ethnicity, etc is extremely difficult to find, that is, if it is available at all in areas such as justice, migration and social welfare.<sup>66</sup> Besides education and health, data on several key areas of child rights and protection is either not available or grossly inadequate.<sup>67</sup> Until recently and even now most courts are not automated. Proceedings are recorded by hand thereby prolonging the process, as testimonies have to be given slowly, often with long pauses to enable the judge record. Even with automated courts, testimonies still have to be given at a handwriting pace to enable the clerks record. Missing dockets in the courts, are a common occurrence directly resulting in prolonged trials as the case cannot proceed without the dockets.

## **0.5.3 Turf Wars between various government agencies**

0.5.3.1 Turf wars do not foster cooperation between government agencies which should otherwise be cooperating together to protect, respect and fulfill human rights. Some of these turf wars between human rights agencies have occurred as a result of the overlap of mandates. For example there is the question of whether policy making relating to early childhood development, belongs to the Ministry of Gender, Social Protection and Children (MGSPC) or the Ministry of Education. Again, at the passing of the Human Trafficking Act, 2005, there was tension between MOWAC and the then Ministry of Manpower Development and Employment (MMDE) as to which would be the implementing Ministry.

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<sup>64</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 2015 Country Report on Ghana, pages 12 and 13.

<sup>65</sup> *Id.*

<sup>66</sup> *Supra* note 61 at page 14.

<sup>67</sup> *Id.*

- 0.5.3.2 It is perceived that these “wars” delay initiation and implementation of relevant policies and laws that would facilitate the protection, respect and fulfillment of human rights.

#### **0.5.4 Tradition, Culture, Stigmatization and Religion**

- 0.5.4.1 Women and children are more often than not, direct victims of almost if not all negative cultural practices. Female Genital Mutilation, trokosi, witches camps, and widowhood rites are all examples of traditional practices that violate the rights of women and children.

- 0.5.4.2 Legislation has been passed to fight some of these practices but because of the deep religious beliefs that are attached to these practices, it is almost impossible to stop these practices with legislation alone. Additionally, the lack of political will to enforce legislation also contributes to continuous violations of victims. For example, despite criminalizing widowhood rites,<sup>68</sup> in 2008 the media carried a story about three widows in Mo in the Brong Ahafo Region, who for nine years had become virtual prisoners as part of widowhood rites for their deceased husband.<sup>69</sup> There was no reported arrest or prosecution when the story broke.

- 0.5.4.3 Children have also been reportedly denied medical treatment because of their parents’ religious beliefs. It has also been noted that social stigma associated with HIV/AIDS makes it difficult for people living with the virus to come forward to receive the needed help. Cases of sexual abuse and domestic violence also go largely unreported because of cultural secrecy, fear of social stigmatization and reprisals from family members.<sup>70</sup>

#### **0.5.5 Capacity gaps**

The proper knowledge, skills and attitudes required to promote human rights are generally currently unavailable and where available are inadequate to enhance the protection, respect and fulfillment of human rights in Ghana. Legislation is more often than not, not implemented within a human rights framework. In some cases there are no inbuilt mechanisms in legislation to protect the rights of the vulnerable, for example, there is no legal requirement that child victims should be taken through court process preparation. Additionally, very often, child victims have no choice but to face their adult abusers in court when they have to give evidence.<sup>71</sup> When the law clearly states what must be done, it is not always adhered to.

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<sup>68</sup> Section 88A of the Criminal Offences Act, 1960 (Act 29). See also Criminal Code (Amendment) Law, 1984 (PNDCL 90).

<sup>69</sup>“Freedom for the Mo Widows,” published on 13 May 2008, available at <http://www.modernghana.com/news/165187/1/freedom-for-the-mo-widows.html> (last accessed on 31 December 2016).

<sup>70</sup> Ghana National Report submitted in accordance with paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1 \* paragraph 65.

<sup>71</sup> *Supra* note 61 at page 28.

## **0.6 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

0.6.1 It is recommended that CHRAJ leads the co-ordination, and development of a national framework for realization of human rights in Ghana and the proper functioning of linkages at the international, national and sub national levels. The coordinating function should also ensure that key indicators that each institution should be targeting, reporting on and sharing are defined. The idea is to create a framework which can compel all the relevant institutions to work for the realization of human rights.

0.6.2 It is hereby recommended that:

1. A National Human Rights Action Plan (NHRAP) should also be developed through broad based stakeholder consultation processes, submitted to Parliament for approval and a National Manager recruited for the implementation of the NHRAP;
2. NHRAP should have an inbuilt mechanism for regular monitoring and must avoid duplication in its development and implementation. It must do this by seeking to complement other National Plans of Actions such as the National Action Plan against Corruption (NACAP), and the National Plan of Action on Human Trafficking;
3. The NHRAP should contain specific activities to build a good culture of human rights, responsibility and accountability in Ghana;
4. A national mechanism for the implementation of UPR recommendations accepted by Ghana, and recommendations of other international charter and treaty-based mechanisms should be set up. Government should be encouraged to set this up as an inter-ministerial committee on UPR and other recommendations. This platform should also be tasked with ensuring that Ghana meets its timebound reporting obligations under various treaties to which Ghana is a party;
5. A stronger national Human Rights institutional arrangement/framework and platform should be created. CHRAJ should take the lead in driving the process and hosting the secretariat;
6. Government functionaries and all MMDAs need to be more actively educated at all levels on the use of a Human Rights Framework in the planning and implementation of their programmes, etc;
7. A human rights based approach to development on a sector-wide basis should be adopted. This will necessarily require training for national, regional and local policy level government officials. NHRAP should also work towards institutionalizing the use of human rights indicators for monitoring the status of human rights in Ghana;

8. NHRAP should contain an effective strategy to enhance general awareness about human rights but also specifically increase awareness on the rights of identified vulnerable groups;
9. Disaggregated data on vulnerable groups should be collected to guide the formulation and implementation of policies. Such information should be disseminated among stakeholders working with these groups;
10. An Ombudsman for Children, Persons with Disability should be created at the CHRAJ.



## CHAPTER ONE

### INTRODUCTION TO THE HUMAN RIGHTS SITUATION IN GHANA

#### 1.1 BACKGROUND

- 1.1.1 On 15<sup>th</sup> May 1992, the 4<sup>th</sup> Republican Constitution of Ghana was gazetted.<sup>72</sup> The preamble to the 1992 Constitution posits that the Constitution was made...

“IN EXERCISE of our natural and inalienable right to establish a framework of government, which shall secure for ourselves, and posterity the blessings of liberty, equality of opportunity and prosperity;

IN A SPIRIT of friendship and peace with all peoples of the world;

AND IN SOLEMN declaration and affirmation of our commitment to;

Freedom, Justice, Probity and Accountability;

The Principle of Universal Adult Suffrage;

The Rule of Law;

The protection and preservation of Fundamental Human Rights and Freedoms, Unity and Stability for our Nation...”<sup>73</sup>

- 1.1.2 The 1992 Constitution guarantees fundamental human rights and freedoms for everyone in Ghana, irrespective of race, place of origin, political opinion, colour, religion, creed or gender.<sup>74</sup> The Constitution also obligates everyone including the Executive, Legislature, the Judiciary and all other organs of government to respect and uphold the fundamental human rights and freedoms contained in the Constitution. Hence, Ghana Government’s long-term objective for work regarding human rights at the national and international levels may be aptly captured as to ensure full realisation of human rights. This requires that human rights, as emanating from Ghana’s international obligations and domestic sources shall be *respected, protected and fulfilled*. A National Human Rights Action Plan (NHRAP) will help provide a comprehensive framework for the full realisation of human rights for everyone in Ghana.

#### 1.2 THE NEED FOR A HUMAN RIGHTS ACTION PLAN

- 1.2.1 The idea of National Human Rights Action Plans (NHRAP) for States arose out of the World Conference on Human Rights held in Vienna, Austria in 1993. 171 countries and over 7000 participants attended the conference. The participants agreed that after 50 years of evolution of international human rights instruments, much of the national commitments have not gone beyond rhetoric and unfulfilled pledges with little or no follow up actions.

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<sup>72</sup> The fourth Republican Constitution of Ghana is hereinafter referred to as the “1992 Constitution.”

<sup>73</sup> Preamble, 1992 Constitution.

<sup>74</sup> Article 12 (2), 1992 Constitution.

Under Part III, paragraph 71 of the Vienna Declaration and Programme of Action (VDPA), “the World Conference on Human Rights recommends that each State considers the desirability of drawing up a National Action Plan identifying steps whereby that State would improve the promotion and protection of human rights.”<sup>75</sup>

- 1.2.2 In proposing the NHRAP, the World Conference took the view that a comprehensive and structured approach to human rights planning would facilitate the achievement of positive outcomes. A NHRAP is consequently a recommended framework for the implementation of human rights because it is practical for actors and stakeholders in the realisation of human rights. The NHRAP is expected to provide a systematic approach to the promotion and protection of human rights in Ghana. It will also afford Ghana the opportunity to address all human rights concerns in a holistic and comprehensive manner.
- 1.2.3 It is with these benefits in mind that at the United Nations (UN) Universal Periodic Review (UPR) of Ghana on 23<sup>rd</sup> October, 2012, the Ghanaian delegation informed the UPR working group that as part of efforts to address gaps in its human rights framework, the Government is working with the Commission for Human Rights and Administrative Justice (CHRAJ) and other stakeholders to develop a NHRAP.<sup>76</sup>
- 1.2.4 The UN Office of the High Commissioner for Human Rights (OHCHR) Handbook on National Human Rights Plans of Action identifies the conduct of baseline surveys as one of the best practice principles for the development of a NHRAP.<sup>77</sup> As a result, conducting this baseline survey is critical to the development of the NHRAP. This Baseline Survey is informed by a range of sources of information including the recommendations of national and international human rights bodies. This Baseline Survey also takes into account views expressed by some treaty bodies in order that such concerns may be noted and tackled in the NHRAP.
- 1.2.5 Chapter one of this report is the introduction. It contextualises Ghana’s obligation to develop a NHRAP, provides information on the scope of this survey and the methodology utilised to generate the data and information captured in this report. Chapter two provides a brief historical overview of the human rights situation in Ghana. Chapter three examines the national legal framework for the realisation of human rights in Ghana. Various thematic aspects of human rights are examined. Chapter 4 reviews Ghana’s obligations under the international legal framework for the realisation of human rights. The institutional framework for the realisation of human rights and the prospects of achieving widespread

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<sup>75</sup> Paragraph 71, Vienna Declaration and Programme of Action, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> (last accessed on 31st December, 2016).

<sup>76</sup> Report of the Working Group on Universal Periodic Review, twenty second session, Geneva, 13th December, 2012 (A/HRC/22/6), paragraph 117 at page 14 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/187/36/PDF/G1218736.pdf?OpenElement> (last accessed on 31 December 2016).

<sup>77</sup> Office of the United Nations High Commissioner for Human Rights, *Handbook on National Human Rights Plans of Action* at 6, available at <http://www.ohchr.org/Documents/Publications/training10en.pdf> (last accessed 31 December 2016).

internalisation of human rights is discussed in chapter five. The state of formal and informal forms of human rights education in Ghana is examined in Chapter six. Chapter seven examines the situation of some vulnerable groups. Challenges faced by Ghana in the realisation of human rights are discussed in chapter eight. Chapter nine provides the concluding words for the report. It also recommends actions to take for the realisation of human rights in Ghana.

### **1.3 SCOPE OF THIS BASELINE SURVEY**

1.3.1 The terms of reference for this baseline survey required the Consultant to:

1. Examine the legal framework for promoting and protecting human rights. This was to take into account incorporation of international human rights norms into domestic law as well as to do a survey of the status of ratification of major international human rights treaties;
2. Examine the institutional framework for promoting and protecting human rights including the effectiveness of civil society organisations (CSOs) / non-governmental organisations (NGOs), etc;
3. Evaluate the state of human rights education and awareness;
4. Identify the challenges and constraints faced by Ghana as a State Party to international human rights treaties to meet its three levels of obligations to: respect, protect and fulfill human rights;
5. Assess the situation of vulnerable groups based on the relevant social indicators. This assessment should identify and include groups in the society requiring special attention.

1.3.2 The TOR is attached to this Report as Appendix 1.

1.3.3 The above-mentioned tasks were to be undertaken within the context of the priority focus of Stakeholders such as:

1. Tackling discrimination in enjoyment of Economic, Social and Cultural Rights (ESCRs);
2. Examining laws to conform to relevant human rights treaties concerning civil and political rights; and
3. Evaluating legal and administrative mechanisms for protecting the rights of women, children, persons with disability, persons living with HIV and AIDS, the aged, the mentally ill, refugees and asylum seekers, internally displaced peoples, migrant workers etc.

1.3.4 Recommendations on the basis of the Baseline Survey were to be made for inclusion in a five year National Human Rights Action Plan (NHRAP) for Ghana.

### **1.4 METHODOLOGY**

1.4.1 Key steps

1.4.1.1 Steps in the conduct of the survey included the following:

1. Preparatory discussions with CHRAJ;
2. A desk review of secondary data;

3. Field data collection;
4. Report drafting and debriefing of CHRAJ;
5. Presentation of draft report to CHRAJ key stakeholders for comments, and
6. Finalization of the report.

1.4.1.2 For the secondary data review, the Consultant took into account documents including the following:

1. CHRAJ's State of Human Rights Reports;
2. CHRAJ's Reports submitted to Parliament in fulfillment of requirements of article 218 (g) of the 1992 Constitution and Section 7 (1) (h) of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456);
3. Reports by the Public Education and Research Department of CHRAJ on its monitoring activities;
4. CHRAJ thematic reports, e.g. annual publications on prison conditions;
5. Case law that affects operations of CHRAJ, for instance, the Republic v. Fast Track High Court, Ex parte CHRAJ, Richard Anane,<sup>78</sup> Commission on Human Rights and Administrative Justice (No. 1) v Attorney-General,<sup>79</sup> Ghana Commercial Bank v CHRAJ;<sup>80</sup> and so forth;
6. CHRAJ reports on cases handled, particularly through its hearings and alternative dispute resolution;
7. Human rights project documents on projects supported by development partners and executed by CHRAJ;
8. News reports related to human rights;
9. Treatises and articles on human rights; and
10. Cases heard by international human rights bodies such as the UN Human Rights Committee, the African Commission on Human and Peoples Rights and the African Court of Human and Peoples Rights.

1.4.2 These and other documents reviewed are contained in the References and Select Bibliography of this Report.

#### 1.4.3 Fieldwork Methodology/Primary Data Collection

1.4.3.1 The mixed method or pragmatic approach to field research was adopted for this baseline survey as it appears most suitable for the survey.<sup>81</sup> Kimberly A. Galt believes this method helps to integrate statistics with text. Ethical principles of autonomy, beneficence and justice in implementing research activities were observed to ensure that the safety and rights of each

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<sup>78</sup> (2007-2008) SCGLR 213.

<sup>79</sup> (1998-99) SCGLR 871.

<sup>80</sup> (2003-2004) SCGLR 91.

<sup>81</sup> This approach according to Creswell, J.W. (2003) has the advantage of enabling triangulation of data. See Creswell, J.W., A framework for design, in Research Design: Qualitative, Quantitative and Mixed Methods, (2003).

respondent was upheld.<sup>82</sup> Informed consent was obtained for each interviewee while indicating that information would be protected from unauthorized observation and use. In the main, purposive sampling was utilised to obtain vital and expert opinion.

1.4.3.2 In addition, a stratified random sampling was conducted for selecting focus group discussants and general public respondents. Efforts to address biases in the evaluation design were also made through the use of:

1. Randomisation to average out variations for non-purposive sampling;
2. Blinding so that the investigator was not involved in the random selection of respondents; and
3. Triangulation to enhance the validity of findings and conclusions drawn.

1.4.3.3 Primary data from key informants (representatives of relevant national institutions, civil society organizations and vulnerable groups) was collected. General views from the public were obtained as well.

1.4.3.4 The ten (10) regions of Ghana were targeted for this baseline survey. In each region, a minimum of seven (7) focus group respondents representing each of the nine (9) identified key vulnerable groups was targeted. In addition, one (1) key informant each from three (3) relevant Non-Governmental Organisations in the region and one key informant each from CHRAJ, Ministry of Local Government and Rural Development, Ministry of Education, Ministry of Social Welfare, Ministry of Health and Ministry of Children, Gender and Social Protection<sup>83</sup> were targeted making a total of ten (10) key informant respondents per region. Thirty (30) members of the general public were also targeted in each region to guarantee the national character of the assignment and to provide statistically significant results.

1.4.3.5 Specifically, in each region the following process was utilised:

1. An initial meeting and interview with the CHRAJ Regional Director or representative;
2. Meetings and interviews with key informants from a minimum of three (3) Civil Society Organisations engaged in human rights work in the region;
3. Random selection and visit to one rural district office to identify and interview one representative of the following key sector ministries at the district level:
  - a. Ministry of Health
  - b. Ministry of Education
  - c. Ministry for Works and Housing
  - d. Ministry of Children, Gender and Social Protection
  - e. Ministry of Employment and Social Welfare

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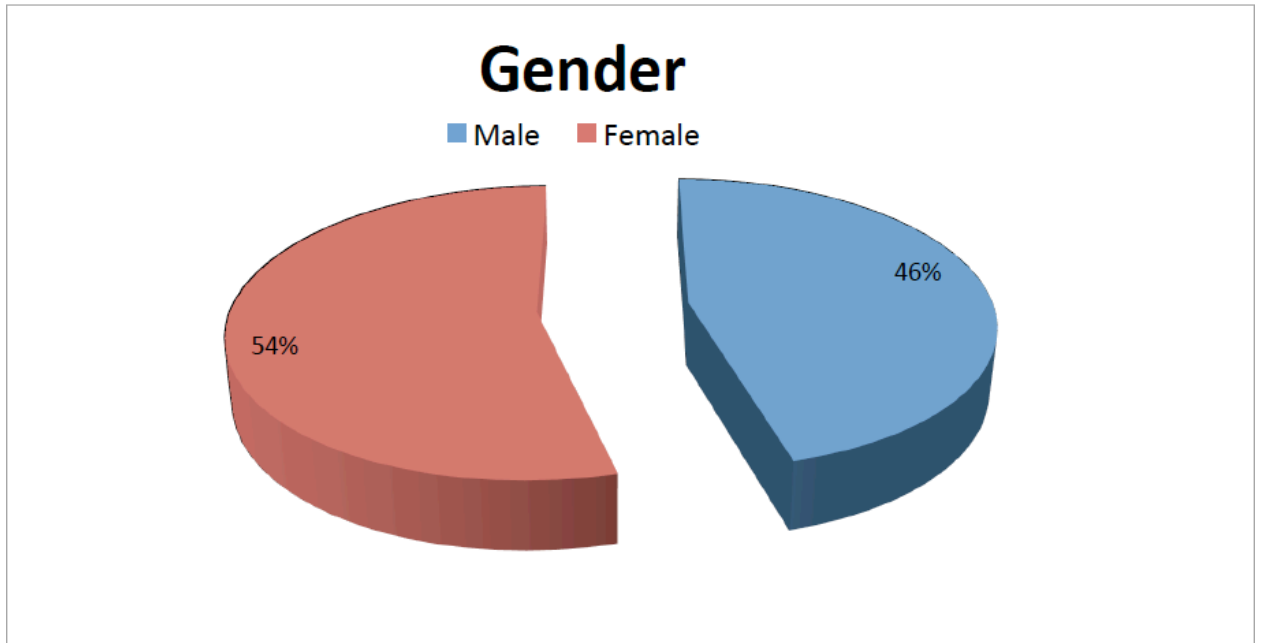
<sup>82</sup> See Kimberly A. Galt Qualitative, Quantitative and Mixed Method Approaches to Research & Inquiry (2009).

<sup>83</sup> This Ministry was formerly the Ministry of Women and Children's Affairs (MOWAC) but re-designated as Ministry of Gender, Children and Social Protection in January 2013. See <http://www.ghana.gov.gh/index.php/2012-02-08-08-32-47/general-news/1276-ministry-hails-appointment-of-nana-oye-lithur> (last accessed on 31 December 2016).

- f. Ministry of Local Government and Rural Development
4. Focus Group Discussions with at least seven (7) persons including leaders from the following nine (9) vulnerable groups where available in each region:
    - a. Children and Juveniles;
    - b. Persons living with disabilities;
    - c. Persons living with HIV/AIDS;
    - d. The aged (both formal and informal sector);
    - e. Refugees and Internally Displaced Persons (IDPs);
    - f. Women;
    - g. Lesbians, Gays, Bisexuals, Transgender and Intersex (LGBTI);
    - h. Persons in detention;
    - i. Migrant Workers (both local and international migrant workers).
  5. Random interviews of thirty (30) members of the general public in each region.
- 1.4.3.6 Based on this breakdown, the regional target was therefore a minimum of ten (10) Key informant interviews per region, nine (9) Focus Group Discussions with a minimum of seven (7) participants each, giving sixty three (63) respondents per region and thirty (30) general public members per region.
- 1.4.3.7 The national target for the baseline survey was therefore one hundred (100) key informants, ninety (90) focus group discussions involving six hundred and thirty (630) respondents and three hundred (300) members of the general public. In addition ten (10) other reputable and nationally acknowledged human rights practitioners and experts were targeted to complement the data collected. In all, one thousand and fifty (1050) individuals participated in the survey.
- 1.4.3.8 Three (3) separate interview guides were developed and used for:
1. Key Informant interviews;
  2. Focus Group Discussions and;
  3. General Public interviews.
- These are attached as Appendix 2.
- 1.4.3.9 Preparing and utilising the guides ensured structured collection of data for analysis and comparison. In terms of analysis, information from the nine (9) key vulnerable groups was triangulated with information obtained from the key informants or experts as well as the secondary data available. During the field visits for primary data collection, perception based rankings were often used to further qualify information. These tools were adopted to collect sufficient and adequate qualitative and quantitative data for analysis as well as to facilitate triangulation of key information from the three (3) key sources of information. The baseline

survey methodology also highlights issues related to the organisation and coordination of various activities to respect, protect and fulfill human rights in Ghana. This survey is therefore based on a considerable number of points of view, approaches and materials collected.

1.4.4 The gender distribution for the survey is represented below.



**Figure 1: Gender representation of field research participants**

1.4.4.1 An analysis of the bio-data provided by respondents (focus group and key informants) shows that 46% of the interviewees were male whilst 54% were female.

1.4.4.2 Age distribution per region. The age distribution of the respondents is shown below:

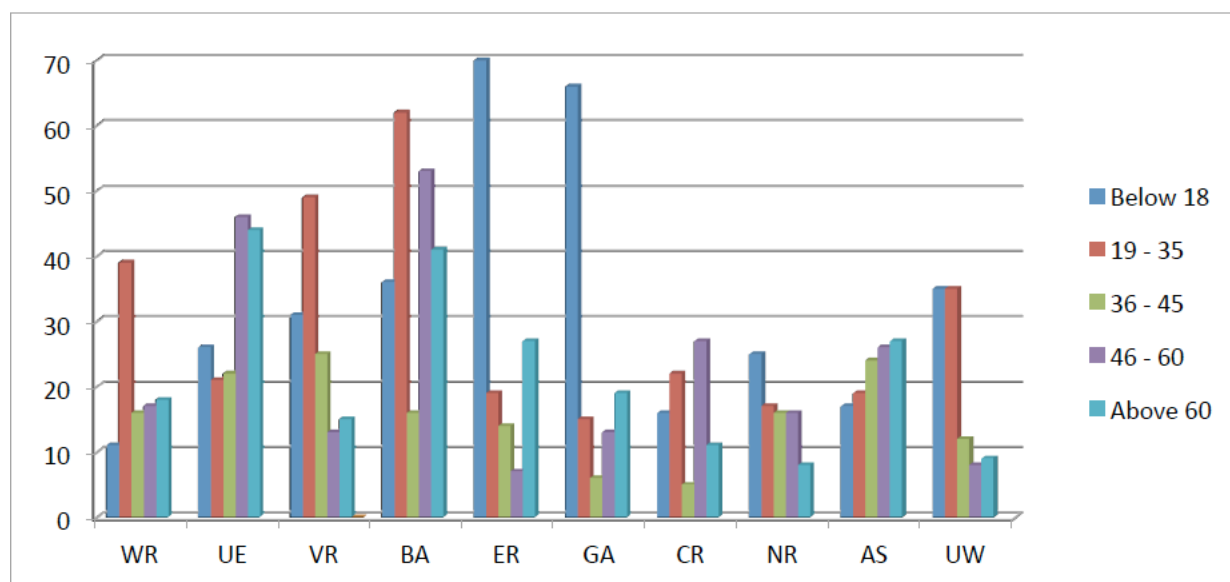


Figure 2 – Age distribution per region

1.4.4.2.1 The Age Distribution Table provides a regional representation of age ranges for Respondents. Overall, Respondents below the age of 18 were in majority in three (3) regions, specifically the Eastern, Greater Accra and Northern regions. Similarly Respondents between 19 to 35 years old formed the majority in three (3) regions namely the Brong Ahafo, Volta, and Western regions of Ghana. Respondents below 18 and between 19 to 35 years were a joint majority in the Upper West region.

1.4.4.2.2 27% of the interviewees (333 Respondents) were below 18 years of age. 24.2% of the interviewees (298 Respondents) were in the 19 – 35 age range. 12.7% of the Respondents were in the 36 – 45 age range, whilst 18.3 % of the interviewees were between 46 to 60 years old. 17.8% of the Respondents were above 60 years of age. Thus, 51.2% of the population interviewed is generally youthful, coinciding with the 15 – 35 years age range defined as youth in the National Youth Policy of Ghana.<sup>84</sup>

## 1.5 LIMITATIONS OF THE ASSIGNMENT

1.5.1 The main limitations of the assessment are:

1. Not all of the key vulnerable groups identified were in each of the ten (10) regions targeted. This is the case particularly for LGBTI and PLWHA. Hence, it is useful to conduct in the future, a study specifically focused on the presence of vulnerable groups such as LGBTIs and PLWHAs in all regions of Ghana.
2. In view of the above, only a limited number of such vulnerable groups interviews covering groups such as LGBTI, PLWHA were conducted.

<sup>84</sup> Government of Ghana, National Youth Policy of Ghana, August 2010, page 5 available at [http://planipolis.iiep.unesco.org/upload/Youth/Ghana/Ghana\\_YouthPolicy.pdf](http://planipolis.iiep.unesco.org/upload/Youth/Ghana/Ghana_YouthPolicy.pdf)



## CHAPTER TWO

### HISTORICAL OVERVIEW OF HUMAN RIGHTS IN GHANA

#### 2.1 INTRODUCTION

2.1.1 The evolution of human rights in Ghana may be divided into five phases:

1. The pre-colonial era;
2. The colonial period up to independence;
3. Post independence up to 1966 when the first coup d'état occurred in Ghana;
4. The period from 1966 to 1992 (covering a period of various military takeovers and civilian regimes); and
5. Constitutional rule from 1993 to the present era.

#### 2.2 HUMAN RIGHTS IN THE PRE-COLONIAL PERIOD

2.2.1 Prior to the arrival of the colonial powers in the Gold Coast around the 15<sup>th</sup> Century, customary laws governed the various communities that now constitute Ghana. These laws varied from community to community. These Laws included principles of human rights, including the sanctity of life; the right to live in a community; the right to own property, individually and communally; and the right to fair trial.<sup>85</sup>

2.2.2 On the other hand, some aspects of pre-colonial governance, such as slavery, executions that followed the death of some chiefs, betrothal marriages, dictatorial chiefs and patriarchy, have been cited by modern day human rights activists as violations of human rights during the pre-colonial era.<sup>86</sup>

#### 2.3 HUMAN RIGHTS IN THE COLONIAL PERIOD UP TO INDEPENDENCE

2.3.1 When the first Europeans came to the Gold Coast in the 15<sup>th</sup> century, their primary interest was mining of gold from various gold mines.<sup>87</sup> There were many human rights abuses in relation to unfair trade, slave trade, forced labour and political oppression.

2.3.2 During the colonial period, the British entered into the Bond of 1844 with a number of Fante and other local Chiefs. The Bond legalised the imposition of the British legal system on the Gold Coast, acknowledging the power and jurisdiction that the British had exercised *de facto* in the territories adjacent to the British forts and settlements. The declaration was also to the effect that the first objects of the law were the protection of individuals and property and that human sacrifice, panyarring (the putting up of human beings as collateral for debt payment), and other barbarous customs were abominations and contrary to Law. It was further agreed that serious crimes should be tried by the Queen's Judicial Officers sitting

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<sup>85</sup> Report of the Constitution Review Commission, *supra* note 10 at page 627.

<sup>86</sup> *Id.*

<sup>87</sup> Ato Ashun, *Elmina, the Castle and the Slave Trade*, Nyakod Printing Works, 2<sup>nd</sup> edition, 2013 at 22.

with the chiefs, thereby moulding the customs of the country into the general principles of British Law.

2.3.3 The effect of the Bond of 1844 on human rights in the Gold Coast was that it laid down the test for the acceptability of Customary Laws to the English Courts. The test was that for a law to be acceptable in the English Courts, it must not be repugnant to natural justice, equity and good conscience. Thus, any Customary Law or practice that was repugnant to natural justice, equity and good conscience was not acceptable. In a sense, this test began the process of subjecting customary laws to English principles of human rights. English practices in the colony, no matter how detestable, were presumed acceptable.<sup>88</sup>

2.3.4 In 1874, Britain abolished slavery in the Gold Coast. In the same year, the British proclaimed the Gold Coast a protectorate and a British Crown Colony. The colonial powers divided the African continent in the Berlin Conference of 1884-1885, without any consideration of people, cultures and languages.

2.3.5 Under colonial rule, Ghana experienced improvements in the economy and in education. As a result of these changes, and political developments, Ghanaians began demanding that “*all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*”<sup>89</sup> A power shift from British officials to Ghanaians therefore began to occur. It was observed that:

“The contestations between local activists and colonial government were couched in the language of rights. They advocated for freedom of the press because they needed to use newspapers for the anti-colonial agenda; freedom of movement and freedom from arrest because they [the colonial government] were catching them and locking them up.”<sup>90</sup>

2.3.6 These struggles led to the formation of groups including the Aborigines Rights Protection Society (ARPS), the National Council of British West Africa (NCBWA), the United Gold Coast Convention and the Convention Peoples Party (CPP). The CPP ultimately steered Ghana into independence on 6<sup>th</sup> March, 1957.

## 2.4 POST INDEPENDENCE UP TO 1966 WHEN THE FIRST COUP D'ÉTAT OCCURRED IN GHANA

2.4.1 The first president of Ghana, Dr. Kwame Nkrumah had Marxist ideals and wanted to establish a system oriented on these principles. Proclaiming Ghana a Republic in 1960 and establishing a single-party (CPP) system represented the first steps to achieving that goal. Even though the rise to independence was motivated by ideas such as the right to self-determination, national sovereignty, freedom, justice, equality and progress, these rights were

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<sup>88</sup> Report of the Constitution Review Commission, *supra* note 10 at page 628.

<sup>89</sup> ICCPR and ICESCR, Articles 1.

<sup>90</sup> Nana Akua Anyidoho, *Review of Rights discourses – Ghana* at 16 (Mar. 2009) quoting an interview with Dr. Raymond Atuguba on 23 Dec. 2008.

not entirely self-evident in the first Republic. The gradual accumulation of power in the Executive led to the curtailing of human rights, mainly civil and political. For instance, government passed the Deportation Act, 1957 in the same year that ethnic, religious, and regional parties were banned. This Act empowered the government and generals to expel people who were considered not to be in the best interest of the public good. Even though the Act was only supposed to apply to non-Ghanaians, officials deported many citizens of the Republic as well.<sup>91</sup>

2.4.2 The Government also passed the Preventive Detention Act (PDA), 1958 giving officials the right to detain persons up to five years without trial. It restricted individual freedoms and was considered one of the first major official acts of human rights infringement. Many cases of abuses were also reported. One such case is *Re Akoto*<sup>92</sup> in which the courts held that the Preventive Detention Act did not contravene the Constitution. This decision effectively “allowed the Executive to say that it was not obliged to defend rights.”<sup>93</sup> Despite the independence struggle, the 1960 Constitution of the first Republic did not contain a strong stance on individual rights. Rather, the Constitution allowed power to be concentrated in the hands of the executive. During this period, Ghanaians generally feared that Nkrumah’s rule had turned Ghana into a dictatorship, considerably curtailing their rights.

2.4.3 Nkrumah wanted industrial development for Ghana and placed the country in debt to do so. To fill this financial hole, Government raised taxes. This affected ordinary persons, especially cocoa farmers. This raised resentment among a great part of the population and a subsequent coup forced Nkrumah to end his rule in 1966. However, it is worthy of note that many human rights related international agreements were also signed during the Nkrumah era.<sup>94</sup>

## 2.5 HUMAN RIGHTS IN THE POST NKRUMAH AND PRE 4TH REPUBLICAN CONSTITUTIONAL ERA

2.5.1 Dr. Kofi Busia succeeded Dr. Kwame Nkrumah after elections in 1969. The 1969 Constitution contained a stronger articulation of rights than its predecessor. The 1969 Constitution did not operate for a long of period of time. President K.A. Busia was removed from office in 1972 and replaced by a military regiment of two officials, Ignatius Acheampong and Frederick Akuffo. After military regimes from 1972 and 1979, (with the Supreme Military Council (SMC) toppling the National Redemption Council (NRC) in a “palace” coup, the Third Republic Constitution was promulgated. This survived only three years (1979 to 1981). The 1979 Constitution was suspended and later abrogated by the

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<sup>91</sup> Balogun and Others v. The Minister of Interior [1959] GLR 452.

<sup>92</sup> (1961) GLR 523.

<sup>93</sup> *Id.*

<sup>94</sup> These include the 4 Geneva Conventions ratified on 2 August 1958, Freedom of Association and Protection of the Right to Organise Convention ratified on 2 June 1965, Convention concerning forced or compulsory labour ratified on 20<sup>th</sup> May 1957, the abolition of Forced Labour Convention ratified on 15 December 1985, Discrimination (Employment and Occupation) Convention ratified on 4 April 1961, and the Convention on the status of Refugees ratified on 18 March 1963.

Provisional National Defence Council (PNDC) 1981 led by Flt. Lt. J.J. Rawlings in December, 1981.<sup>95</sup>

- 2.5.2 It is believed that under the various military regimes, violations of human rights increased. The NRC for instance, militarized the Ghanaian society with appointments of senior military officers to positions in all major departments, regional bodies, state corporations and public boards. Under Rawlings rule, human rights abuses persisted. Amnesty International raised serious concerns about unlawful detention, arbitrary imprisonment, killings and unfair trials. However, it appears the PNDC became increasingly responsive to human rights as it ratified some major international rights treaties including the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the African Charter on Human and People's Rights (ACHPR). By 1992, the PNDC led Ghana to promulgate the 4<sup>th</sup> Republican Constitution.

## **2.6 HUMAN RIGHTS UNDER THE 1992 CONSTITUTION**

- 2.6.1 In 1992, Ghanaians promulgated the 4<sup>th</sup> Republican Constitution. The Constitution established an executive presidency and a unicameral legislature with an independent judiciary and a number of independent governance institutions such as the Commission for Human Rights and Administrative Justice, the Electoral Commission, the National Commission on Civic Education and the office of the Auditor-General.
- 2.6.2 The Constitution guarantees fundamental rights for every individual in Ghana. Chapter 5 contains an expansive list of Fundamental Human Rights and Freedoms including the right to life, economic rights, women's right and the rights of persons with disabilities. Chapter 6 contains additional "human rights" mainly of the economic, social and cultural rubric.<sup>96</sup>
- 2.6.3 The 1992 Constitution makes clear statements about the centrality of human rights to national life and provides for the enactment of a law to regulate the procedure for the enforcement of these rights.<sup>97</sup> However, it was not until 2004 that the Rules of Procedure for the Enforcement of Human Rights actions were made. These Rules of Procedure are examined in Chapter three of this Report.
- 2.6.4 The government repealed sections 112 and 117 (h) of the Criminal Code, 1960 (Act 29)<sup>98</sup> on criminal libel. The criminal libel provision is a convenient means of exerting control over the media and muting criticism.

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<sup>95</sup> S.Y. Bingpong-Buta, *Sources of Law in Ghana*, [1983-86] vol. XV, RGL 129.

<sup>96</sup> The thematic human rights contained in both chapters 5 and 6 of the 1992 Constitution are discussed in Chapter 3 of this Report under the Legal framework for the realisation of human rights in Ghana.

<sup>97</sup> Article 33(4), 1992 Constitution.

<sup>98</sup> On 2<sup>nd</sup> August 2001, the then President of the Republic, His Excellency J.A. Kufuor gave his assent to the enactment of the Criminal Code (Repeal of Criminal Libel and Seditious Libel Laws) (Amendment) Act, 2001 (Act 602).

- 2.6.5 The present dispensation has experienced some major issues of concern for the human rights community. These include human rights abuses meted out to demonstrators during a march to protest the government's economic policies in 1995, which resulted in 8 deaths, the "unlawful" arrest of over 630 refugee women and children and their relocation to Kordiabe in the Eastern region, violations of the right to housing through demolitions and forced evictions particularly by the Accra Metropolitan Assembly, domestic violence of children and spouses, corporal punishment, and retention of the death penalty.
- 2.6.6 There was a draft NGO bill that would have required NGOs to obtain a license to operate from the government, which license would have been given only if the government deemed the CSOs activities in line with its development programming.
- 2.6.7 Many key human rights experts<sup>99</sup> observe that there is an improving climate for human rights in the country in the 4<sup>th</sup> Republic with evidence of increased media freedom, the relaxing of laws restricting political association and public assembly, and the increasing adherence by the government to the rule of law. These experts posit however that, at the same time, there are no effective counterbalancing sites of power, that civil society organizations are not powerful enough, the courts are inconsistent in their position on human rights, and CHRAJ, despite its valiant efforts, can only do so much as one institution to resist the hegemonic tendencies of the state. Reports indicate that advances in the area of civil and political rights have outpaced achievements in the realization of economic, social and cultural rights.<sup>100</sup>
- 2.6.8 CHRAJ has heard a number of landmark cases some of which involved the government as a Respondent. Although many of the cases relate to corruption or administrative justice issues, one can argue that a regard for the rule of law in general fosters adherence to human rights laws in particular. It is worthy of note that in one such case, the Republic v. CHRAJ, Ex parte Richard Anane,<sup>101</sup> the Supreme Court held that generally, CHRAJ by its rules of procedure cannot initiate investigations *suo motu*. The decision in the Anane case and other challenges to the CHRAJ's procedure for investigation of complaints, contributed to the revocation of C.I. 7 by the Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (C.I. 67).<sup>102</sup>
- 2.6.9 Under the 4<sup>th</sup> Republican Constitution, many other cases have shed light on the scope of human rights in Ghana. Such cases include T.T. Nartey v Godwin Gati;<sup>103</sup> Ghana Lotto Operators Association and Others v Ghana Lottery Authority;<sup>104</sup> Tehn Addy v The Electoral Commission;<sup>105</sup> Apaloo v Electoral Commission of Ghana;<sup>106</sup> Ahumah Ocansey v Attorney-

<sup>99</sup> Nana Akua Anyidoho, *Review of Rights Discourses – Ghana*, 2009 at page 19, citing Prof. Gyimah Boadi.

<sup>100</sup> CHRAJ & Human Rights NGOs Forum Joint UPR Submission – Ghana, March 2012.

<sup>101</sup> [2007-2008] SCGLR 340.

<sup>102</sup> Regulation 5 provides that with respect to allegations of corruption or misappropriation of State funds, the Commission may receive or act on such allegations from any source.

<sup>103</sup> (2010) SCGLR 745.

<sup>104</sup> (2007-2008) SCGLR 1089).

<sup>105</sup> (1996-97) SCGLR 589.

General & CHURCIL v Attorney General;<sup>107</sup> New Patriotic Party v Attorney-General (The CIBA case);<sup>108</sup> Quartson v. Quartson;<sup>109</sup> Arthur v, Arthur;<sup>110</sup> Gorman & Gorman v. Ansong;<sup>111</sup> Tindana v. Chief of Defence Staff;<sup>112</sup> FEYDAG v. Public Universities of Ghana;<sup>113</sup> Opare Yeboah v. Barclays Bank Ghana Ltd;<sup>114</sup> and Rockson v. Ghana Football Association.<sup>115</sup>

- 2.6.10 Ghana continues to ratify major international human rights treaties including the ICCPR, ICESCR and CAT. The government continues to submit reports to international treaty bodies. The performance of Ghana under its obligations to submit reports under human rights treaties ratified is examined in Chapter four of this Report.

## **2.7 THE IMPORTANCE OF HUMAN RIGHTS TO GHANAIS**

- 2.7.1 There is no doubt that historically, human rights are important to Ghanaians. When respondents were asked for the purposes of this Report, whether human rights are important to them, the answers provided were 100% in the affirmative. For the majority of Ghanaians who responded to questions on the importance of human rights in their lives, they believe “human rights serve as a basis for peaceful co-existence.”

- 2.7.2 In relation to what human rights are, the most frequent understanding is that these are freedoms or privileges that people enjoy because they are humans. The next widely held view was that human rights provide guidelines or a set of rules to govern how a person should live or behave in society. The most recurring examples of fundamental human rights and freedoms provided were freedom of speech, followed by the right to vote, freedom of worship, right to education, freedom of association and freedom of movement.

## **2.8 HOW GHANAIS FEEL ABOUT WHETHER THEIR HUMAN RIGHTS ARE BEING VIOLATED**

- 2.8.1 The 4<sup>th</sup> Republican Constitution is the longest democratic era in the history of Ghana. The Survey results indicate that many persons in Ghana feel that their rights are being abused or have been abused at one time or the other. The chart below demonstrates this. The majority of vulnerable focus group and key informant respondents say their rights have been or are being abused. When asked about whether their rights were ever abused, 76.14% of vulnerable group and key informant respondents combined responded affirmatively (Figure 3 below). 23.16% indicated that their rights had never been abused.

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<sup>106</sup> [2001-2002] SCGLR 1.

<sup>107</sup> [2010] SCGLR 575.

<sup>108</sup> [1996-97] SCGLR 729.

<sup>109</sup> [2012] 2 SCGLR 1077.

<sup>110</sup> Supreme Court Civil Appeal No J4/19/2013 (Case is unreported).

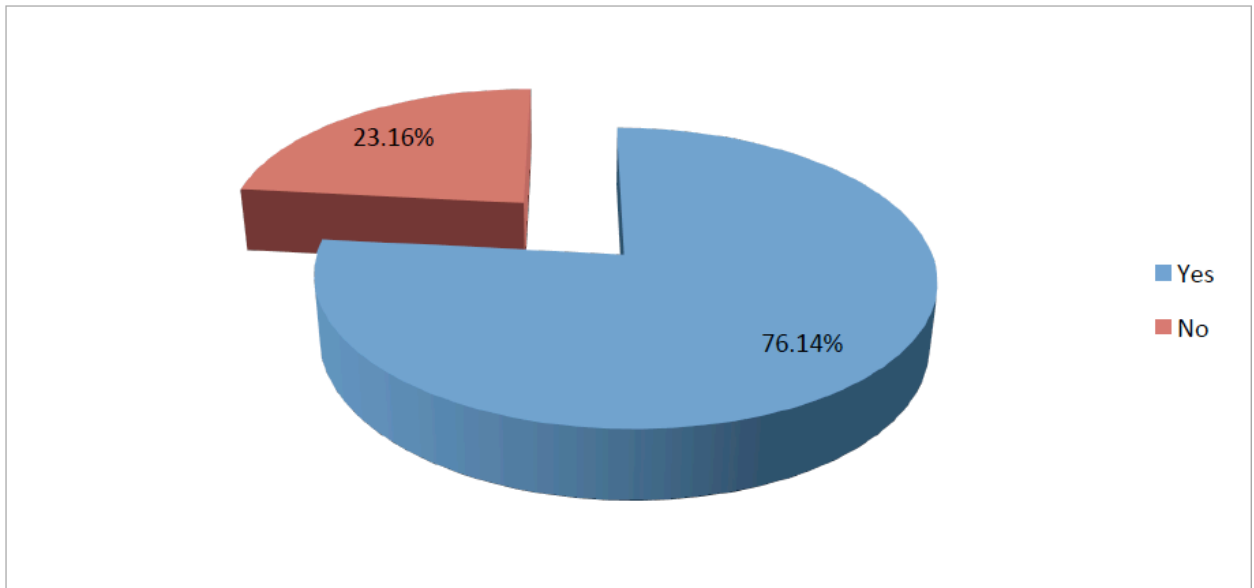
<sup>111</sup> [2012] 1 SCGLR 174.

<sup>112</sup> [2011] 2 SCGLR 739.

<sup>113</sup> [2011] 2 SCGLR 1081.

<sup>114</sup> [2011] 1 SCGLR 330.

<sup>115</sup> [2010] SCGLR 443.



**Figure 3: – 76.14% of vulnerable group members feel their rights have been or are being abused**

- 2.8.2 Overall, combining all the vulnerable focus group and key informant responses, 55% of these respondents had not taken any steps to help people whose rights had been abused or violated. 45% on the other hand, had helped people whose rights had been abused or violated.
- 2.8.3 A further comparism between vulnerable groups as reflected in Figure 7 below to identify the specific vulnerable group likely to offer help to others, reveals that LGBTI (76.92%), PWDs (76.27%) the Aged (59.26%) and PID (56%), are the most likely to take steps to help other people whose rights had been abused or are being abused.
- 2.8.4 It is significant to note that there appears to be a sharp contrast in the responses of vulnerable focus group members as well as key informants as compared to responses from the general public. The responses from the vulnerable group and key informant interviews show 76.14% indicating that their rights have been abused or are being abused. However, the Survey showed that 80% of the Ghanaian general public does not think that their rights are being abused or had ever been abused. 20% of the general public felt that their rights had been abused under the 4<sup>th</sup> Republic (Figure 5).
- 2.8.5 The lack of awareness and understanding of human rights issues by the general public is highlighted by these figures. The attention paid by government and non-governmental actors to human rights issues in relation to specific vulnerable groups such as persons with disabilities, children and women may have contributed to these vulnerable groups having a more in-depth understanding of human rights than the “ordinary” members of society.

## **CHAPTER THREE**

### **NATIONAL LEGAL FRAMEWORK FOR THE REALIZATION OF HUMAN RIGHTS IN GHANA**

#### **3.1 INTRODUCTION**

- 3.1.1 Ghana's human rights obligations are derived from domestic and international legal sources. This chapter provides an overview of the legal framework for human rights in Ghana and discusses the range of human rights that have formal protection in law. In the domestic setting, the first of these laws is the 1992 Constitution. Apart from the 1992 Constitution, there are other national laws for the realisation of human rights. Some of these laws existed before the coming into force of the 1992 Constitution. Other laws were enacted in response to Constitutional requirements and obligations undertaken as a result of Ghana's membership of the Comity of Nations. Generally, the laws of Ghana include the common law, customary law, colonial laws and various decrees passed by non-civilian governments, among others.
- 3.1.2 The entirety of the legal framework which prescribes or proscribes conduct regarding human rights in Ghana may be classified as:
1. The 1992 Constitution;
  2. Acts of Parliament, Decrees and Laws;
  3. Subsidiary Legislation-Constitutional Instruments, Legislative Instruments, Executive Instruments and Bye-Laws;
  4. Judge-made Law/Case Law;
  5. Customary Law; and
  6. International Law.
- 3.1.3 A review of these laws to bring them into line with the Constitution and its human rights standards is important. Hence, in 1998, the position of Statute Law Reform Commissioner was established within the Ministry of Justice. The Commissioner was given the task of recommending amendments to bring all Acts into conformity with Constitutional provisions.
- 3.1.4 The substantive and procedural domestic sources of law are discussed first followed with an analysis of the international regime for the realization of human rights in Ghana.



## **3.2 DOMESTIC LEGAL AND POLICY FRAMEWORK – SUBSTANTIVE AND PROCEDURAL**

### **3.2.1 The 1992 Constitution**

- 3.2.1.1 The chequered political history and development of Ghana since independence may have guided the promulgation of the 1992 Constitution as it contains extensive provisions on civil and political rights, the independence of the judiciary and the media, and the establishment of a national human rights commission.
- 3.2.1.2 Article 11 of the 1992 Constitution provides the sources of law in Ghana. The laws are the Constitution itself, Acts passed by Parliament, Orders and Regulations made by any authority to which the Constitution confers such power, the Common law, and the Existing law. These sources of law must be consistent with the Constitution in order to continue to have the force of law in Ghana. The Constitution forms the bedrock for human rights in Ghana, and is supported by other national laws, as well as by human rights norms to which Ghana is bound either by express commitment by the State to be bound or through the universal application of such norms. The Constitution sets out a number of human rights that should be backed by law. These include the property rights of spouses,<sup>116</sup> children's right,<sup>117</sup> and rights of persons with disability<sup>118</sup> and the rights of the aged.<sup>119</sup> The categories of rights protected under the 1992 Constitution are not exhaustive. This is because rights that are “inherent in a democracy and intended to secure the freedom and dignity of man” are not considered excluded by the Constitution.<sup>120</sup>
- 3.2.1.3 Article 33(1) of the 1992 Constitution gives the High Court, the jurisdiction to provide redress for human rights violations or anticipated abuses of human rights. When persons desirous of taking the benefit of article 33(1) are dissatisfied with decisions of the High Court, such aggrieved persons have a right of appeal to the Court of Appeal and a further right of appeal to the Supreme Court if such persons are dissatisfied with the decisions of the Court of Appeal.
- 3.2.1.4 The Constitution envisaged the need for different rules of procedure for human rights redress in Ghana and hence mandated the Rules of Court Committee set up under article 157 of the 1992 Constitution to make rules to govern the practice and procedure for the adjudication of human rights cases.<sup>121</sup>

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<sup>116</sup> Article 22, 1992 Constitution.

<sup>117</sup> Article 28, 1992 Constitution.

<sup>118</sup> Article 29, 1992 Constitution.

<sup>119</sup> Article 37(2)(b), 1992 Constitution.

<sup>120</sup> Article 33(5), 1992 Constitution.

<sup>121</sup> Article 33(4), 1992 Constitution.

### 3.2.1.5 **Chapter 5 of the 1992 Constitution**

3.2.1.5.1 The preamble to the Constitution affirms as a guiding principle “the protection and preservation of Fundamental Human Rights and Freedoms”. The fulcrum of human rights in the Constitution is chapter 5 which sets out a range of rights to which “every person in Ghana” is entitled. It mentions specific *vulnerable groups* including women, children, persons with disabilities, and the sick for protection. Article 33(5) is an omnibus human rights provision. It stipulates that the fundamental human rights mentioned in chapter 5 are not to be regarded as excluding others not specifically mentioned.

3.2.1.5.2 This means chapter 5 does not exhaust the full gamut of rights including socio-economic rights. Article 33(5) admits of rights *which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man*.

### 3.2.1.6 **Chapter 6 of the 1992 Constitution**

3.2.1.6.1 Chapter 6 contains “the Directive Principles of State Policy”.<sup>122</sup> This chapter elaborates the principles by which individuals, civil society and government should interpret the Constitution. The Directive Principles of State Policy (DPSP) also guide the making of laws and policies. The chapter sets out Political Objectives, Economic Objectives, Social Objectives, Educational Objectives, Cultural Objectives, International Relations and the Duties of a citizen of Ghana.

3.2.1.6.2 Chapter 6 may be considered as a guide for Ghana’s development as it describes the ideal society that Ghanaians, and the state as the people’s representative, should work towards, clearly noting the standards and principles which should form the foundations for governance in Ghana. The connection between human rights and development is created in article 37(3). Article 37(3) requires the State to be “guided by international human rights instruments which recognize and apply particular categories of basic human rights to development processes”. Civic participation in governance is bolstered in article 37(2a) which guarantees the “rights of effective participation in development processes.”

3.2.1.6.3 As noted, article 34(1) requires that the DPSP serve as guidelines in the application and interpretation of the Constitution. Soon after the coming into force of the 1992 Constitution, the courts were called upon to decide the “status” of chapter 6 rights. The question was whether the socio-economic rights mentioned in chapter 6 of the Constitution are rights enforceable by the courts. The history of the justiciability or otherwise of the chapter 6 rights of the 1992 Constitution of Ghana is properly traceable through at least three (3) cases.<sup>123</sup>

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<sup>122</sup> The 1979 Constitution of Ghana also contains the Directive Principles of State Policy (DPSP).

<sup>123</sup> *New Patriotic Party (NPP) v Attorney General* (the 31st December case) [1993-94] 2 GLR 35-192; *New Patriotic Party (NPP) v Attorney General* (CIBA case) [1996-97] SCGLR 729-803; and *Ghana Lotto Operators Association & 6 Ors. v. National Lottery Authority* [2007-2008] SCGLR 1088.

3.2.1.6.4 **The 31st December case**

3.2.1.6.5 In the *31st December case*, an action was brought by the plaintiff, a registered political party in the supreme court for a declaration that the celebration of the 31st December as a statutory public holiday was inconsistent with articles 3, 35(1) and 41(b) of the Constitution. Amongst the issues for determination was whether the directive principles of state policy were justiciable. This was because the declaration sought was in respect of two provisions under chapter 6 of the Constitution.

3.2.1.6.6 Adade JSC, in giving the lead judgment of the court stated that "the Directive Principles of State Policy contained in the 1992 Constitution, Chapter Six were justiciable because the Constitution as a whole was a justiciable document and accordingly, if any part was non-justiciable, the Constitution itself had to indicate it". But no provision in the Constitution had indicated that chapter Six was not justiciable.

3.2.1.6.7 **The CIBA case**

3.2.1.6.8 The *CIBA case* was concerned with a declaration sought under article 2(1) of the 1992 Constitution by the NPP to the effect that the Council of Indigenous Business Association (CIBA) law was inconsistent with and thereby contravened articles 21 (1) (c), 35(1) and 37(2)(a) and (3) of the 1992 Constitution. The defendant raised a preliminary objection to the suit on the ground that the articles relied on by the plaintiff fell under chapter 6 of the 1992 Constitution and were thus not justiciable.

3.2.1.6.9 In ruling on the preliminary objection to the action, the majority held that the DPSP had the effect of providing goals for legislative programmes and a guide for judicial interpretation but were not by themselves legally enforceable by any court. Bamford Addo JSC on behalf of the majority however qualified this statement to the effect that the DPSP could be justiciable when read in conjunction with other enforceable provisions of the Constitution by reason of the fact that the courts are mandated to apply them, they become justiciable. Further, any provision in chapter 6 that could be interpreted to mean a guaranteed fundamental right also became justiciable with each case to be decided on its own merits.

3.2.1.6.10 **The Lotto case**

3.2.1.6.11 The Supreme Court decision in the *Lotto case* may be said to be the most recent and hence the current position of the law on the DPSP. In this case, a reference was made to the Supreme Court of Ghana for a determination as to whether the National Lotto Act, 2006 (Act 722) violated Articles 33(5), 35(1) and 36(2) of the 1992 Constitution of Ghana. A writ was issued by some private lotto operators in Ghana challenging a decision by the defendant established under the National Lotto Act, 2006 to the effect that no person other than the National Lottery Authority could lawfully operate any form of lottery in

Ghana. The plaintiffs who were aggrieved sought a declaration *inter alia* that, Act 722 violated the Articles 33(5), 35(1) and 36(2) of the 1992 Constitution.

3.2.1.6.12 Date-Bah JSC, giving the judgment of the court stated that the most relevant issue to be determined was whether the Act violated Article 36(2) of the Constitution. He examined this article by stating that an issue was justiciable if it was capable of being settled by a court. For him all the provisions in the Constitution were justiciable because it contained the most important rule on political governance. He stated that the rights set out in chapter 6 are predominantly the economic, social and cultural rights which by international and domestic practice are becoming *just as fundamental as the rights in chapter 5*. The court further opined that the enforceability of these economic, social and cultural rights was a legitimate purpose for the court to seek to achieve through appropriate purposive interpretation and so any interpretation to article 34 of the Constitution should take into account the purpose of expanding the range of enforceable human rights in Ghana.

3.2.1.6.13 He added that a presumption of justiciability in respect of Chapter 6 of the Constitution would strengthen the legal status of socio-economic and cultural rights in the Ghanaian jurisdiction and that any provision that does not lend itself to enforcement by its nature would rebut such a presumption. Any ambiguity in article 34 should be resolved in favour of enforceability so as to strengthen the enforcement of fundamental human rights as a core value of the current legal and Constitutional system. Date-Bah JSC however cautioned that the enforceability of these economic, social and cultural rights did not mean that the implementation in respect of it would be the same as the civil and political rights embodied in Chapter 5.

3.2.1.6.14 Ghana has pushed the frontiers of human rights with reference to social, economic and cultural rights. However, it is worth noting that economic, social and cultural rights are not only now becoming *just as fundamental as the rights in chapter 5*, at least at the international scene. These rights were long before recognized as *fundamental* with the negotiation and adoption of the Economic Covenant in 1966.

### **3.2.2 Human Rights issues arising out of the Review of the 1992 Constitution in 2009**

3.2.2.1 In January 2010, Government set up a Constitution Review Commission under the Constitution Review Commission of Inquiry Instrument, 2010, C.I. 64 to consult with the people of Ghana on the operation of the 1992 Constitution and on any changes that need to be made to the Constitution. The Commission was also tasked to present a draft bill for the amendment of the Constitution in the event that any changes were warranted. Specifically, the mandate of the Commission was:

(a) To ascertain from the people of Ghana, their views on the operation of the 1992 Fourth Republican Constitution and, in particular, the strengths and weaknesses of the Constitution;

(b) To articulate the concerns of the people of Ghana on amendments that may be required for a comprehensive review of the 1992 Constitution; and

(c) To make recommendations to the Government for consideration and provide a draft Bill for possible amendments to the 1992 Constitution.

3.2.2.2 In the review process, the fundamental human rights and freedoms provisions of the Constitution were subjected to scrutiny.

3.2.2.3 The Commission submitted its Report to Government on the 20<sup>th</sup> December 2011.<sup>124</sup> Government issued a White Paper on the report of the Constitution Review Commission accepting or rejecting recommendations contained in the report.<sup>125</sup> Some of the issues of concern were:

3.2.2.3.1 **Death penalty**

3.2.2.3.1.1 The death penalty is one of the important human rights issues in Ghana. The main issues which come up with respect to the death penalty is whether the death penalty should be abolished or be converted to imprisonment for life or be retained?

3.2.2.3.1.2 In Ghana, legal authority for capital punishment may be derived from both the Constitution and the Criminal Offences Act, 1960 (Act 29). Article 13(1) of the 1992 Constitution provides that every person is entitled to the right to life. However, the article permits a person to be deprived of life, in exercise of the execution of a sentence of a Court in respect of a criminal offence under the laws of Ghana of which that person has been convicted. The offences that are punishable by death are murder; attempt to commit murder by a convict, genocide, treason and high treason.

3.2.2.3.1.3 Ghana is a State Party to the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR recognises the inherent right to life of the individual and requires every State to protect this right by law. However, the Covenant does not prohibit the death penalty, although it restricts its application to the most serious crimes and forbids it to be used on children and pregnant women. In this connection, it is worth noting that the United Nations Human Rights Committee interpreted the Article as strongly suggesting that abolition of the death

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<sup>124</sup> Report of the Constitution Review Commission presented to the President on 20<sup>th</sup> December, 2011 is available at [http://www.ghana.gov.gh/images/documents/crc\\_report.pdf](http://www.ghana.gov.gh/images/documents/crc_report.pdf) (last accessed 31 December, 2016).

<sup>125</sup> White Paper on Report of the Constitution Review Commission presented to the President is available at <http://www.ghana.gov.gh/index.php/information/reports/2572-white-paper-on-the-report-of-the-Constitution-review-commission-presented-to-the-president> (last accessed on 31st December 2016). A Constitution Review Implementation Committee (CRIC) was set up to implement the recommendations of the Government White Paper on Report of the Constitution Review Commission. CRIC is also to develop and report on the public reactions to the Government White Paper and the Constitution amendment bills for both the entrenched and non-entrenched provisions of the Constitution. CRIC has also been tasked to prepare the people for a referendum on the entrenched provisions of the Constitution as well as facilitate the passage of the bills for the amendment of the non-entrenched provisions of the Constitution.

penalty is desirable. The Committee regards any progress towards the abolition of the death penalty as advancing the right to life.

3.2.2.3.1.4 The Second Optional Protocol to the Covenant commits its signatories to the abolition of the death penalty within their borders; but it allows Parties to make a reservation allowing execution for grave crimes in times of war. Ghana has not ratified this Protocol in spite of civil society campaign for the ratification of this protocol.<sup>126</sup>

3.2.2.3.1.5 The Constitution Review Commission found that the primary reason proffered for the retention of the death penalty is based on the theory of retribution. This proposes that any person who takes the life of another should have his life taken as a punishment. The Commission found strong arguments against the continued use of the death penalty including:

- The possibility that genuinely innocent people will be executed and there is no possible way of compensating them for this miscarriage of justice. Death is the one penalty which makes an error irreversible. It was also noted that the chance of error in the judicial process is inescapable since convictions are necessarily based on human judgment.
- The last time anyone was executed in Ghana was in 1993. The reason why there have not been any executions for so long, despite convictions for offences punishable by death, is the unwillingness of the various past (and even current) Presidents of the country to sign death warrants. The effect is that people sentenced to death are kept on death row for some years and after some time they may be released under the President's prerogative of mercy. They may also have their death sentences first commuted to imprisonment for life and subsequently totally pardoned and released. The present system, therefore, does not adequately punish people convicted of crimes that are punishable by death.
- The Commission also found that in almost every part of the globe, countries have abolished the death penalty. At the end of 2010, out of the 193 independent members of the United Nations (or with observer status with the UN) only 41 or 21% maintained the death penalty in both law and practice. Some 95 States (or 49%) have abolished the death penalty while 8 States (or 4%) retain it for crimes committed in exceptional circumstances (such as in time of war). Some 49 States (or 25%) permit its use for ordinary crimes but have not used it for at least 10 years. Many of these States have a policy (or practice) of not carrying out

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<sup>126</sup> CSOs such as Amnesty International Ghana have been urging government to ratify the 2<sup>nd</sup> optional protocol to the ICCPR. A recent appeal by Amnesty International is available at <http://newsghana.com.gh/parliament-urged-to-ratify-2nd-optional-protocol-to-iccpr/> (last accessed 20 October 2015).

executions, or have adopted a moratorium on executions. It can thus be seen that current international opinion is predominantly in favour of the abolition of the death penalty.<sup>127</sup>

3.2.2.3.1.6 The Commission recommended the replacement of the death penalty with imprisonment for life without parole, a stiffer penalty than the current practice. Government accepted to abolish the death penalty in article 13 of the Constitution and in other laws and to replace it with imprisonment for life.<sup>128</sup> This is in recognition of the sanctity of life and the uncertainties of judicial systems the world over.

3.2.2.3.2 **Pre-Trial Detention**

3.2.2.3.2.1 Concerns in relation with pre-trial detention include abuse of the maximum period of 48 hours permitted for detention prior to arraignment before court; undue delay in trial periods; congestion in prisons and cells and the attendant health risks; nutrition challenges in detention facilities; training and rehabilitation of the inmates; abuse of inmates by officials (police, prison officers, immigration officers etc.), lack of access to communication facilities and so forth.

3.2.2.3.2.2 Other concerns are the absence of a clear policy or guideline on the maximum period of pre-trial detention; whether there should be a category of offences which should not attract pre-trial detention; whether there should be an automatic right to be released after a certain period of pre-trial detention and should the automatic right of release from pre-trial detention, if adopted, apply irrespective of the offence charged? In other words, should there be a specific category of offences, for example, first-degree felonies, for which there should be no relief from pre-trial detention?

3.2.2.3.2.3 The 1992 Constitution provides in article 14(3)(b) that a person who is arrested, restricted or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana, and who is not released, shall be brought before a Court within 48 hours after the arrest, restriction or detention.

3.2.2.3.2.4 A recommendation by the Constitution Review Commission that article 14(3) of the 1992 Constitution be amended to reduce the time beyond which a person may not be detained before being brought to trial from 48 hours to 24 hours did not find favour with Government as Government did not think it was in keeping with international best practice.<sup>129</sup>

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<sup>127</sup> Report of the Constitution Review Commission, *supra* note 10 at 645.

<sup>128</sup> White paper on Report of the Constitution Review Commission, *supra* note 48 at 44.

<sup>129</sup> Report of the Constitution Review Commission, *supra* note 10 at page 650. See also White Paper on Report of the Constitution Review Commission, *supra* note 48 at page 44.

- 3.2.2.3.2.5 The Commission observed that in the last two decades, efforts have been made to provide facilities for justice in all parts of the country, in order to bring justice closer to the people. There is also the possibility of dispensing justice through electronic communication, at least in the case of assessing the validity of a pre-trial detention.
- 3.2.2.3.2.6 Dispensing justice through electronic communication is an area requiring understanding and advocacy as it has the potential to reduce time and cost of access to the justice system for determining the validity of pre-trial detentions and other relevant issues with respect to the human rights of court users.
- 3.2.2.3.3 **Discrimination**
- 3.2.2.3.3.1 Different forms of discrimination abound in the Ghanaian society. For instance, access to social services including medical services for persons with disabilities is hampered as a result of the lack of sign language interpreters.
- 3.2.2.3.3.2 There are various cultural and economic factors that have been shown to affect the level of representation of minorities and other marginalized groups in Parliaments worldwide.
- 3.2.2.3.3.3 The Commission recommended that flowing from the anti-discrimination and affirmative action provisions of the Constitution, Parliament should enact an affirmative action law which, in part, provides for more inclusive representation in Parliament and in particular for at least 30% representation, each for women and men. The Commission further recommended that the Affirmative Action law should require political parties, as a condition for their continued existence, to achieve certain levels of representation for marginalized groups within specific timeframes.
- 3.2.2.3.3.4 Government accepted the recommendation of the Constitution Review Commission to enact an Affirmative Action Act to deal with all types of discrimination against vulnerable groups and minorities. This Affirmative Action law will also deal with disparities in gender representation in elective and non-elective public offices.<sup>130</sup>
- 3.2.2.3.4 **Grounds of discrimination**
- 3.2.2.3.4.1 There are concerns as to whether the grounds upon which discrimination is unlawful should include sex, sexual orientation, North-South discrimination, Natural resource discrimination, age and disability.
- 3.2.2.3.4.2 Article 17 of the 1992 Constitution provides that a person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

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<sup>130</sup> White Paper on the Report of the Constitution Review Commission, *supra* note 48 at 23.



- 3.2.2.3.4.3 The Supreme Court in *Nartey v Gati*<sup>131</sup> gave an interpretative opinion on the meaning of discrimination as proscribed in the Constitution and the context in which article 17 of the 1992 Constitution must be understood.<sup>132</sup> The Supreme Court noted that article 17 did not mean that every person within the Ghanaian jurisdiction had, or must have, exactly the same rights as all other persons in the jurisdiction. For the Court, the crucial question is whether the differentiation in their rights was justifiable, by reference to an object that was sought to be served by a particular statute, Constitutional provision or some other law. The equality referred to in article 17 is freedom from unlawful discrimination. Therefore, that equality before the law requires equal treatment of those similarly placed, implying different treatment in respect of those with different characteristics. Thus, equals must be treated equally while the treatment of persons not equal must be different.
- 3.2.2.3.4.4 In *Budu II v. Caesar*,<sup>133</sup> the Court was of the opinion that whenever a judge finds himself in circumstances in which there appears to be so much antagonism between him and counsel or when it appears to him that counsel is guilty of contempt of court during the proceedings before him, it will be safer for the judge to take appropriate action immediately in order to avoid the possibility of any suggestion that there has not been a fair trial rather than to proceed with the hearing in such a tense atmosphere.
- 3.2.2.3.4.5 The Constitution Review Commission found that the anti-discrimination provisions in the 1992 Constitution have not been operationalized, and so the legitimate concerns of women relating to equitable appointments to public offices have been

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<sup>131</sup> [2010] SCGLR 745.

<sup>132</sup> Article 17 of the 1992 Constitution provides:

“(1) All persons shall be equal before the law.

(2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

(3) For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.

(4) Nothing in this article shall prevent Parliament from enacting laws that are reasonably necessary to provide -

(a) for the implementation of policies and programmes aimed at redressing social, economic or educational imbalance in the Ghanaian society;

(b) for matters relating to adoption, marriage, divorce, burial, and devolution of property on death or other matters of personal law;

(c) for the imposition of restrictions on the acquisition of land by persons who are not citizens of Ghana or on the political and economic activities of such persons and for other matters relating to such persons; or

(d) for making different provision for different communities having regard to their special circumstances not being provision which is inconsistent with the spirit of this Constitution.

(5) Nothing shall be taken to be inconsistent with this article which is allowed to be done under any provision of this Chapter.”

<sup>133</sup> [1961] GLR 176.

sub-optimally addressed.<sup>134</sup> As the Commission noted, in order to be abreast with current international practices there is the need for the country to provide clear mechanisms for a minimum gender quota in public offices. It is recommended that this is addressed in the Human Rights Action Plan.

3.2.2.3.4.6 The Constitution Review Commission observed that at the National Constitution Review Conference, it was proposed that Article 17(2) should be amended to read thus: - A person shall not be discriminated against *directly or indirectly* on grounds of *sex*, gender, race, colour, ethnic origin, religion, creed, *civil, political*, social, *cultural*, or economic status, *disability or age or any other ground*.

3.2.2.3.4.7 The Commission recommended that the Affirmative Action Bill should deal with all types of discrimination against vulnerable groups and minorities. In view of the above, it is recommended that the Affirmative Action Bill currently before Parliament is reviewed to ensure that all the different categories of protections against discrimination are covered.

#### 3.2.2.3.5 **Recognition of LGBTI Rights:**

3.2.2.3.5.1 The report of the CRC provided Government with an opportunity to provide its informed view of the rights of lesbians, gays, bisexuals, transgendered and intersex persons. However, Government only took note of recommendations that the legality or otherwise of homosexuality be decided by the Supreme Court if the matter comes before the Court.<sup>135</sup>

3.2.2.3.5.2 If Government believes there is a case for the Supreme Court to decide regarding the lawfulness or otherwise of homosexual rights, Government should lead the process to afford the Supreme Court such an opportunity for a decision.<sup>136</sup>

#### 3.2.2.3.6 **Right to Fair Trial and Legal Aid**

3.2.2.3.6.1 The right to a fair trial is one of the cornerstones of a just society. Without fair trials, innocent people are convicted and the rule of law and public faith in the justice system may collapse. Without fair trials, when justice appears to have been done in civil cases, the ordinary man in the street may not have seen it to have been done.

3.2.2.3.6.2 Each person accused of a crime should have their guilt or innocence determined by a fair and effective legal process. But the right to a fair trial is not just about protecting suspects and defendants. It also makes societies safer and stronger. Without fair trials, trust in justice and in government collapses.<sup>137</sup>

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<sup>134</sup> Report of the Constitution Review Commission, *supra* note 10, page 127.

<sup>135</sup> White Paper on Constitution Review Commission Report, *supra* note 48 at page 45.

<sup>136</sup> More information on the LGBTI rights is provided in Chapter 7 of this Report.

<sup>137</sup> Statement made by Fair Trials International available on <http://www.fairtrials.org> (last accessed 31 December, 2016).

- 3.2.2.3.6.3 Fair trial and fair hearing rights include:<sup>138</sup> that all persons are equal before courts and tribunals; the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law.
- 3.2.2.3.6.4 The other guarantees are the presumption of innocence, and minimum guarantees in criminal proceedings, such as the right to counsel and not to be compelled to self-incriminate.
- 3.2.2.3.6.5 The right to a fair trial and a fair hearing applies to both criminal and civil proceedings, and in cases before both courts and tribunals. It also applies to military disciplinary hearings. The right is concerned with procedural fairness, rather than with the substantive decision of the court or tribunal. The right to a fair trial may be achieved for some categories of members of society when access to justice is afforded them.
- 3.2.2.3.6.6 Access to Justice is considered as access to state-sponsored or state sanctioned legal services. These legal services include: access to information about legal rights and responsibilities; legal advice; legal counseling; legal representation; and other legal advocacy services. At the individual level, access to Justice may be defined as a person's ability to seek and obtain fair and effective responses for the resolution of conflicts, the control of abuse of power and the protection of rights through transparent, accountable and affordable mechanisms and processes that are responsive to broad social needs and sensitive to culture and the needs of disadvantaged groups.
- 3.2.2.3.6.7 The cost of legal services in Ghana is astounding.<sup>139</sup> Hence it is important to provide legal aid services to the poor in order to facilitate access to justice for the poor. The Legal Aid Services protect and promote the human rights of the poor and marginalized through legal empowerment. Legal aid creates an enabling environment for the poor and marginalized to seek equitable justice through formal and informal systems. These services include Legal Clinics, Legal Education, Alternative Dispute Resolution (ADR) mechanisms, Counseling, and Legal Referrals.
- 3.2.2.3.6.8 Legal aid is provided across Ghana. Legal aid programmes seek to help those who cannot afford to pay court and legal fees. Cases of public interest have also been taken up to promote human rights principles as enshrined in the 1992 Constitution of Ghana, as well as in other pieces of legislation and international treaties Ghana

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<sup>138</sup> See article 14 of the ICCPR. See also article 40 of the Convention on the Rights of the Child and article 13 of the Convention on the Rights of Persons with Disabilities.

<sup>139</sup> Consultation fee for senior lawyers is about one thousand Ghana cedis (GHS 1000). Depending on the nature of the case, hourly professional fee charges may range between two hundred and fifty U.S. dollars (US\$250) and five hundred U.S. dollars (US\$500). See Ghana Bar Association Scale of Fees adopted at the mid-year review conference of the Ghana Bar Association at La-palm Royal Beach Hotel on 9<sup>th</sup> April 2015.

has ratified. A number of Organisations (as listed in the next few paragraphs) are involved in legal aid programmes in the form of counseling, mediation, court representation and legal outreaches.

- 3.2.2.3.6.9 The International Federation of Women Lawyers-Ghana, (FIDA-Ghana) provides Legal Aid Program services in the following areas: Alternate dispute resolution and court representation; Child maintenance and paternity of children; Custody of children and child marriages; Enforcing inheritance rights of adolescents who will otherwise fall prey to exploitative sexual activities for reasons of survival; Enforcing the inheritance rights of HIV/AIDS orphans; Enforcing the property rights of spouses, particularly upon divorce.
- 3.2.2.3.6.10 Under its Anti-Violence Program (AVP), the Ark Foundation provides Legal Aid Services which respond to violence against women and children (VAWC). The Legal Resource Centre (LRC) also offers legal aid to indigents, most especially in the Nima/Mamobi community.
- 3.2.2.3.6.11 Government's acceptance of a recommendation to establish the Legal Aid Scheme as an Independent Constitutional Body and funded in the same manner as other Independent Constitutional Bodies is laudable.
- 3.2.2.3.6.12 What constitutes a fair hearing will require recognition of the interests of the accused, the victim and the community (in a criminal trial) and of all parties (in a civil proceeding). In any event, the procedures followed in a hearing should respect the principle of 'equality of arms', which requires that all parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage them as against other parties to the proceedings. The UN Human Rights Committee for example has found a violation of article 14(1) of the International Covenant on Civil and Political Rights in a case in which a right of appeal was open to the prosecution but not to the accused.
- 3.2.2.3.7 **The right to a public hearing**
- 3.2.2.3.7.1 The right to a public hearing incorporates the principle that justice should not only be done, but be seen to be done. This requires subjecting legal proceedings to public scrutiny. However, pre-trial decisions made by prosecuting authorities are not required to be made in public. In some cases, appellate decisions may be made 'on the papers', rather than on the basis of a public hearing. This will not breach the right to a public hearing if the material on which the court bases its decision is publicly available, as is the decision itself.
- 3.2.2.3.7.2 The requirement in article 14(1) of the 1992 Constitution that decisions be made public is based on the principle that legal proceedings are subject to public scrutiny.

Some methods through which witnesses give evidence, for example testimony by video link, or where the witness is shielded from the accused, may raise issues regarding the right to a public hearing. Proceedings may also be closed to the public in the interests of national security. The boundaries of what is national security are not very easy to define in all circumstances. State agencies therefore could hide behind national security considerations to defeat the principle behind the requirement of a public hearing of cases.

#### 3.2.2.3.7.3 **Trial within a reasonable time**

Article 19 of the 1992 Constitution provides the broad framework for the manner in which a trial should occur in order to meet the requirements of fair trial as a human right.<sup>140</sup> The right to a trial within a reasonable time is heavily implicated when the situation of remand prisoners is discussed. In criminal trials, the reasonableness of the length of trial is important for several reasons including the presumption of innocence of the accused person. In civil matters, trials within a reasonable time will engender confidence in the users of facilities for the discharge of justice.

#### 3.2.2.3.8 **Children's Rights**

3.2.2.3.8.1 The 1992 Constitution defines a child as anyone below the age of 18.<sup>141</sup> The Constitution and the Children's Act outline many rights of the Child in Ghana. The Constitution states that there should be no discrimination in the enjoyment of rights between children born in and out of wedlock.<sup>142</sup>

3.2.2.3.8.2 The Children's Act provides that every child has a right to a name and nationality.<sup>143</sup> Entailed in this right is the right of the child to know the child's natural parents and the extended family. Situations in which some children are not registered have the potential to affect the realization of the right to know one's natural parents.

3.2.2.3.8.3 Parliament responded to the demands of Article 28 in 1998, when the Children's Act was passed. The approach of the Act was to stipulate certain rights for the child, specifying parents as duty bearers and attempting to establish a regime for children in need of care. However, the Act conceals the point that the state remains the principal duty bearer, although parents are obviously the immediate care-givers.

3.2.2.3.8.4 The Children's Act states that no one should deny a child the right to live with his or her parents and family and grow up in a caring and peaceful environment. Exceptions to this rule include instances where living with parents may lead to significant harm to the child, including physical abuse of the child, or the attenuation

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<sup>140</sup> Article 19 of the 1992 Constitution provides that a person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.

<sup>141</sup> Article 28 of the 1992 Constitution. The Children's Act also defines a child as anyone below 18 years of age.

<sup>142</sup> Article 28(1)(b), 1992 Constitution.

<sup>143</sup> Section 4, Children's Act, 1998 (Act 560).

of their general interests as a child. Parents are under a duty not to deprive a child of their welfare, irrespective of the marital status of the parents or whether they are living together or in separation. The parents are further entrusted with a duty to ensure the child's right to life, dignity, respect, leisure, liberty, health, education, and shelter are respected, protected and fulfilled. The parents have a further responsibility to protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression. They are further responsible to provide good guidance, care, assistance and maintenance for the child, just as they must ensure the child's survival and development. When temporarily absent, the parents must ensure that the child is cared for by a competent person and that a child under eighteen months of age shall only be cared for by a person of fifteen years and above.

- 3.2.2.3.8.5 The law further makes parents responsible for the registration of their children, with the names of both parents appearing on the registration certificate, unless the father is unknown to the mother. In accordance with the Constitution, the Children's Act stipulates that no one should deprive the child of reasonable entitlement from his or her parent's estate. Hence parents have a duty to ensure that there is reasonable provision in their wills and that, in case of intestacy, a child should receive a reasonable entitlement from the parents' estate. The Act further stipulates other rights for children, where the correlative duties are on both the parents and everyone else. No person should deprive any child of access to education, immunization, adequate diet, clothing, shelter, medical attention or any other thing required for the child's development. Similarly, no person should deny a child medical treatment by reason of religious or other beliefs. In addition no person should deprive a child of the right to participate in sports, or in positive cultural and artistic activities or other leisure activities.
- 3.2.2.3.8.6 The response of the Children's Act to the Constitutional requirement that a child with disability be treated with dignity, and be provided with special care, education and training to the best of their ability so that they are self-reliant, has been to restate the Constitutional position.
- 3.2.2.3.8.7 The Children's Act alludes to the right of the child to participate in decision-making which affect the child's well-being according to the child's evolving capacities in section 11. It provides that no person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his well-being, the opinion of the child being given due weight in accordance with the age and maturity of the child. The Act further prohibits parents and others from subjecting a child to exploitative labour.

- 3.2.2.3.8.8 The Children's Act attempts to criminalize the practice of Child betrothal. However, the offences created are easy to defend as the Act stipulates that the offences are committed when a person forces a child to be betrothed, to be a subject of dowry, or to be married. Considering that a parent is entitled to provide guidance to her child, it is easy to argue against an allegation that an offence was committed by simply saying that the parent was merely offering advice to the child. The practice persists in Ghana well after the enactment of the Children's Act.
- 3.2.2.3.8.9 Ghana signed and ratified the Convention on the Rights of the Child on 29th January 1990 and 5th February, 1990 respectively. On 18th August 1997, Ghana signed the African Charter on the Rights and Welfare of the Child; on 13th June 2000, Ghana ratified the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; and on 23rd September 2003, Ghana signed the Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed conflicts.
- 3.2.2.3.8.10 Societies must have the best interest of the child as a primary consideration in all decisions and actions that may affect present and future children at all societal levels. This principle underpins the implementation of child rights. The Children's Act also contains this principle.
- 3.2.2.3.8.11 The Constitution Review Commission found that some children suffer discrimination in Ghana. Children born with disabilities and their parents are often victims of abandonment, neglect, and stigma in their communities. Other children who suffer discrimination are children in street situations, orphaned children, the children of asylum-seekers, children of immigrants, and children infected with or affected by HIV/AIDS.
- 3.2.2.3.8.12 The Commission also noted that in recent times there has been an upsurge in child pornography and child prostitution in Ghana. Children are often too innocent to understand what is being done to them and too frightened to report what has been done to them. The ratification and domestication of the Protocol on the Prevention of the Sale of Children, Child Prostitution and Child Pornography will offer more protection for the children of Ghana and ensure their healthy growth and development.
- 3.2.2.3.8.13 The Commission observed that the approach taken by the Children's Act toward the realisation of the rights of the child is to criminalize acts or omissions that deny or deprive the child of the enjoyment of those rights. The assumption, therefore, is that parents and other duty bearers have sufficient capacities to carry out the duties and responsibilities that correspond to the stipulated rights. This is not the case for all parents. Largely because of this reason, the State has to remain the key duty bearer

for the respect, protection, fulfillment, and promotion of child rights. For failing parents, a noteworthy cause is the lack of knowledge or the absence of proper care practices at the household level.

- 3.2.2.3.8.14 The Commission observed that the UN General Assembly adopted in December 2011, the third Optional Protocol to the Convention on the Rights of the Child, which establishes a communications procedure for violations of Children's rights. The effect of the adoption of this optional protocol is that now children who are victims of abuses and violations of their rights will be able to make a complaint to the UN Committee on the Rights of the Child, if they have not been able to get legal remedies for these violations in their countries. The Protocol however requires the ratification of at least 10 States to enter into force. The Commission recommended that Government ratifies the optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.
- 3.2.2.3.8.15 In order to strengthen the institutional arrangement for the realization of the rights of children, persons with disabilities and the aged, Government intends to create an 'Office of the Special Commissioner for Children, Persons with Disability and the Aged' within CHRAJ.<sup>144</sup> Furthermore, a recommendation that article 27(2) of the 1992 Constitution be amended to require that: "Facilities shall be provided at the work place for the care of children below school going age to facilitate care by parents" has also been accepted by Government.<sup>145</sup>
- 3.2.2.3.9 **Representation and Empowerment of the Youth:** Government accepted the proposal that provision be made in the Directive Principles of State Policy that the State shall take measures including affirmative action programmes to ensure that the Youth access relevant education and training; have opportunities to associate, be represented and participate in political, social, economic and other spheres of life; access employment; and are protected from harmful cultural practices and exploitation.<sup>146</sup>
- 3.2.2.3.10 **Rights of the Aged:** The aged must live in dignity, free from abuse. It is therefore, unconvincing that Government disapproves of the extension of the right to dignity to include obtaining adequate state pension and social welfare as recommended by the CRC. It is noted with concern that article 37(2)(b) of the 1992 Constitution requires Parliament to enact a law to protect vulnerable groups including the aged, children and persons with disabilities. The law is yet to be passed for the realisation of the rights of the aged.

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<sup>144</sup> White Paper on Constitution Review Commission Report, *supra* note 48 at page 26.

<sup>145</sup> *Id.* at page 44.

<sup>146</sup> *Id.* at page 45.



3.2.2.3.11 **Environmental Rights:** The acceptance of Government to include a right to a clean and healthy environment in the Constitution represents a good step towards strengthening domestic recognition of economic, social and cultural rights.<sup>147</sup>

3.2.2.3.12 **Consumer Rights:** Government has also accepted the recommendation that consumer rights be provided for as part of fundamental human rights in the Constitution and, that such rights should include but not be limited to: information on competing goods and services; protection from misleading or false advertising or labeling of goods and services; protection from dangerous and hazardous goods; unfair competition; safety of goods; and the right to reject defective goods.<sup>148</sup>

### 3.2.3 **Children's Act, 1998 (Act 560)**

3.2.3.1 A child is anyone under 18 years of age. The Children's Act is the single most comprehensive piece of legislation on children's rights in Ghana. It is built on the foundation of the Constitution by providing detailed provisions on children's rights. The Ministry of Gender, Children and Social Protection has overall responsibility for matters affecting children in the country.

3.2.3.2 The Act rests on the welfare principle that recognises that the interest of the child shall be central in all matters concerning the child. The law requires that every child would have a right to a name and nationality, and grow up with parental guidance. Children have the right to parental property, social activity, opinion, education and well-being. The act further sets out to protect the child from exploitative labor, discrimination, torture and degrading treatment, as well betrothal and marriage.

3.2.3.3 The Act provides for institutions, functionaries and the mechanisms for implementing the objectives for the betterment of the status of children in Ghana. Among the many requirements are the following: all districts shall have social welfare officers designated for the job of implementing the Act; all parents and other persons who are legally liable to maintain a child are under a duty to supply the necessities of life, health, education and reasonable shelter; there shall be established child rights committees and residential homes to advocate for children's rights and to cater for needs of children outside of their homes. The Act also requires the establishment of a family tribunal with a panel that would deliberate on all cases involving children.

3.2.3.4 Since the enactment of the Children's Act in 1998, there have been a number of policies aimed at realizing the practical implementation of the contents of the Act. These policies include:

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at page 46.

- 3.2.3.5 The Early Childhood Care and Development Policy<sup>149</sup> developed to provide a framework for the guidance of Government and all stakeholders specifically Sector Ministries, District Assemblies and its Structures, communities, families, Civil Society including Non Government Organisations and the Donor Community in their effort to support the survival, protection and development of the children of Ghana in their early years. The overriding goal of the policy is to promote the survival, growth and development of all children (0-8 years) in Ghana. The Policy outlines the institutional arrangements for implementation of Early Childhood initiatives. The overall responsibility for ensuring appropriate and successful policy implementation lies with the then Ministry for Women and Children Affairs, presently the Ministry for Gender, Children and Social Protection. A national committee for coordinating the activities of the numerous stakeholders with responsibilities assigned to them by the national Constitution, institutional mandate and corporate directives has been established to perform various functions.
- 3.2.3.6 The National Policy Guidelines on Orphans and Other Children made Vulnerable by HIV and AIDS 2005, outlines a broader framework for the protection and provision of comprehensive and integrated developmental services for OVC as contained in the seven OVC Programme Implementation strategies. A National Plan of Action (2010-2012) was developed to give effect to the National Policy Guidelines on Orphans and Other Children made Vulnerable by HIV and AIDS. The Gender and Children Policy<sup>150</sup> was developed to provide a framework to regulate the handling of women and children at institutional and individual levels. The Adolescent Reproductive Health Policy provides broad guidelines for policy makers, implementers of programmes and the general public on reproductive health among adolescents and young people. It provides the framework and the context within which information and services will be provided to adolescents and young adults on sexual and reproductive health.
- 3.2.3.7 A National Plan of Action to combat child labour for the period 2017 to 2021 was rolled out in June 2017 after the first National Plan for the period 2009 to 2015 had expired.
- 3.2.3.8 Part IV of the Children's Act deals with adoption and fosterage of children. The provisions on fosterage were to ensure better protection for the child by providing guidelines for foster parents and the clarification of the legal rights of children who are fostered informally. This is a very progressive development as many children deprived of a family environment in Ghana are informally adopted or fostered by members of their extended family.

<sup>149</sup> Early Childhood Care and Development Policy available on <http://planipolis.iiep.unesco.org/upload/Ghana/GhanaECCDP.pdf>

<sup>150</sup> The Gender and Children Policy is available at <http://www.hsph.harvard.edu/population/womenrights/ghana.gender.04.pdf>

- 3.2.3.9 Further, sections 105 to 126 of the Children's Act provides for institutionalized care by introducing legal requirements for privately owned residential homes and orphanages, in terms of standards of care for all children under their care. The Act also defines the role of government in the protection of children deprived of a family environment in terms of support to families in their responsibility to care for and protect the child.
- 3.2.3.10 As a measure of assistance to parents in discharging their care, protection and other responsibilities towards children, the government introduced the Livelihood Empowerment for Alleviation of Poverty (LEAP) policy in March 2008. LEAP provides cash and health insurance to extremely poor households across Ghana to alleviate short-term poverty and encourage long-term human capital development. Eligibility is based on poverty and having a household member in at least one of three demographic categories; single parent with orphan or vulnerable child (OVC), elderly poor, or person with extreme disability who is unable to work.
- 3.2.3.11 Section 8(2) of the Children's Act guarantees children's right to health. Under the national health insurance scheme, children and pregnant women are entitled to free medical care. There are however cultural and religious barriers that make it difficult for some children to access health care. Examples include the refusal of blood transfusion and the stigma attached to HIV/AIDS. Many children also do not get to know their HIV status, and those who do, particularly orphaned children are not easily received by orphanages and as such may be unable to access the important health care services they need.<sup>151</sup> The practice of Female Genital Mutilation (FGM), which puts the health of many female adolescents at risk, also continues to be practised in parts of the country.<sup>152</sup>
- 3.2.3.12 Section 8 of the Children's Act guarantees the right to education, along with any other factor necessary for the educational development of the child. The Ghanaian Education Act of 1961 also guarantees free and compulsory primary education for all children of school going age. Section 10 of the Children's Act protects children with disabilities. In spite of this, children with disabilities suffer discrimination and often face rejection and abandonment by the society. There are 2 schools for the blind, 8 schools for the deaf located in 8 regions, and 5 special schools for the mentally challenged situated in various parts of the country.
- 3.2.3.13 The Children's Act prohibits violence against children. Violence against children includes 'any cultural practice which dehumanises or is injurious to the physical and

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<sup>151</sup> Estelle Matilda Appiah, Protecting the Rights of Children in Ghana: The legal framework and ancillary matters, page 16 available at <http://www.cepa.org.gh/researchpapers/Protecting69.pdf> (last accessed 31 December, 2016).

<sup>152</sup> *Id.*

mental wellbeing of a child.’ The law does not clearly prohibit corporal punishment in Ghana. However, the Children’s Act provides that a corrective measure which is unreasonable in kind or degree according to the age, physical and mental condition of the child is not justifiable. Further, a corrective measure is not justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction.<sup>153</sup> The scope of this provision appears broad enough to cover corporal punishment. Exploitative labour, child labour and hazardous work by children are prohibited under the Children’s Act.<sup>154</sup>

- 3.2.3.14 Currently, about 5,000 children live in orphanages and other residential care institutions in Ghana.<sup>155</sup> There is an increasing number of orphanages resulting from the failure of the country’s child protection system, despite efforts by the authorities to ensure child protection.<sup>156</sup> Available statistics from Domestic violence and Victims Support Unit (DOVVSU) of the Ghana Police Service as well as stakeholder offices handling abuse against children indicate that a total of 4674 cases of non-maintenance were recorded in 2010. The number shot up to 5489 cases the following year. UNICEF and other development partners are working with government to develop a new national child policy.

### 3.2.4 **Juvenile Justice Act, 2003 (Act 653)**

- 3.2.4.1 A juvenile is a child in conflict with the law. In Ghana, the age of criminal responsibility is twelve years.<sup>157</sup> This is a departure from an old regime where there was a rebuttable presumption that nothing done by a child between the ages of 7 and 12 years was a crime unless a court determined that the child could understand the nature and consequences of the conduct in which s(he) was engaged.

- 3.2.4.2 Research has shown that 95% of crimes in which juveniles are involved is theft.<sup>158</sup> But, recent findings from the DOVVSU reveal an increasing incident of child-on-child sexual offences.<sup>159</sup> The original juvenile justice provisions were in the Criminal

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<sup>153</sup> Section 13 (2), Act 560.

<sup>154</sup>By section 87 of Act 560, labour is deemed exploitative if it deprives the child of his or her health, education or development. The list of activities which amount to hazardous work include: going to sea; mining and quarrying; portage of heavy loads; manufacturing industries where chemicals are produced or used; work in places where machines are used; and work in places such as bars, hotels and places of entertainment where a person may be exposed to immoral behavior.

<sup>155</sup> This information is available at <http://ghananewsagency.org/social/child-protection-worsens-as-more-children-live-in-orphanages-in-ghana-58383>

<sup>156</sup> The UNICEF noted that from global research, children thrive in a family environment, but their development and protection are often hampered when they grow in institutions.

<sup>157</sup> Section 26, Criminal Offences Act, 1960 (Act 29) as amended by Criminal Code Amendment Act, 2003 (Act 646).

<sup>158</sup> UNICEF 2000 Situation Analysis of Women and Children in Ghana. See also Estelle Matilda Appiah, Protecting the Rights of Children in Ghana: The legal framework and ancillary matters, page 16 available at <http://www.cepa.org.gh/researchpapers/Protecting69.pdf>

<sup>158</sup> Section 32, Act 560.

<sup>159</sup> Estelle Matilda Appiah, Protecting the Rights of Children in Ghana: The legal framework and ancillary matters, page 16 available at Estelle Matilda Appiah, Protecting the Rights of Children in Ghana: The legal framework and ancillary matters, page 16 available at <http://www.cepa.org.gh/researchpapers/Protecting69.pdf>

and Other Offences (Procedure) Act, 1960 (Act 30). Although Act 30 provided that a juvenile or young offender was to be treated differently from an adult, it did not provide adequately for the rights of a juvenile. An improvement in Act 653 is the punishment regime and the use of institutionalization as a punishment of last resort.

- 3.2.4.3 For juveniles, the Children's Act provides a number of procedures for redress including: Child Panels (a non-judicial body for minor offences); the 'Family Tribunal' (for certain classes of felonies) and institutions known as 'Junior Correctional Centres'. A correctional centre is not a prison and as such focuses on the rehabilitation, character formation and reintegration of the child through counseling and education. The Child Panel has powers to mediate in any civil matter concerned with the rights of the child and parental duties and minor crimes alleged to have been committed by children.<sup>160</sup> The panel system de-emphasizes criminalization of children, and focuses rather on enabling communities and families to be involved in the resolutions of 'criminal' problems concerning children. However, it appears the Panels are only used minimally, at least in Accra according to key informant interviews.
- 3.2.4.4 In sections 10.2 and 13 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice,<sup>161</sup> the Rules state that a judge should immediately consider release, and that institutionalization before trial should be the last resort (Section 10.2 and Section 13). In Accra, however, bail is rarely granted to accused juveniles and most are sent to the remand home.<sup>162</sup> It is apparent therefore that institutionalization before trial is not being used as a measure of last resort. Though the Juvenile Justice Act states that diversion from the criminal justice system should be used where possible, this is rarely the case in practice.<sup>163</sup>
- 3.2.4.5 The Rules require that there should be police officers who are trained in the prevention of juvenile crime and that special police units should be created in the larger cities (Section 12). This is not currently being done in Ghana, with many police officers lacking the know how to deal with juvenile offenders. They often refer the juveniles to DOVVSU, even though this is not the core business of DOVVSU. Ghana should specifically train police officers at each police station who are aware of the laws pertaining to juvenile arrests.

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<sup>160</sup> Section 32, Act 560.

<sup>161</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, A/RES/40/33, adopted 29<sup>th</sup> November, 1985 is available at <http://www.un.org/documents/ga/res/40/a40r033.htm>

<sup>162</sup> Stephanie Hoffmann and Corinne Baerg, Juvenile Justice in Ghana, 2011, available at <http://www.humanrightsinitiative.org/publications/ghana/JuvenileJusticeinGhana.pdf>. Section 40 of the Juvenile Justice Act, 2003 (Act 653) authorizes Minister responsible for Social Welfare to establish remand homes where juveniles and young persons may temporarily be kept in custody in accordance with the order of a court.

<sup>163</sup> Section 11 of the Rules states that diversion should be the first consideration after a juvenile is arrested, depending on the crime and the circumstances of the juvenile. This requires effective use of the Child Panels.

- 3.2.4.6 The Juvenile Justice Act mandates that cases be completed within 6 months.<sup>164</sup> But, there are always delays which extend the life of cases. This jeopardizes the juvenile's schooling and any benefits that may be achieved through the justice process. Judges at Juvenile Court should ensure that such cases do not go beyond 6 months and that inefficiencies which delay the process are eliminated.
- 3.2.4.7 Finally, Section 30 of the United Nations Minimum Rules for the Administration of Juvenile Justice includes a provision for doing research in order to monitor and change the policy currently in place. It is more than 10 years since Act 653 was passed. However, there is no public information that such research is being done. It is also important to note that there is currently no systematic mechanism for keeping statistics and data relating to juvenile justice.
- 3.2.4.8 **Recommendation**  
It is recommended that the various actions required to be undertaken for the realization of the rights of juveniles should be identified and acted upon. This should include conducting research on best practices for juvenile justice, setting up a juvenile justice unit at the Ministry of Gender, Children and Social Protection and developing a system for tracking cases and keeping accurate statistics on juvenile justice cases.
- 3.2.5 Persons with Disability Act, 2006 (Act 715)**
- 3.2.5.1 Disability can affect anyone at any time regardless of age, gender, culture, ethnicity or social class. Provisional results from the 2010 population and housing census indicate that 4.8 million Ghanaians have disabilities. Persons with disabilities face severe social stigma, creating a culture of entrenched discrimination. Article 29 of the 1992 Constitution provides for the protection of persons with disabilities.
- 3.2.5.2 The National Disability Policy of 2000 was developed in accordance with article 29 of the Constitution. In 2006, article 29 of the 1992 Constitution was supplemented by the enactment of a Disability Act, promoting and protecting the rights of persons with disabilities. In the 2004 presidential and parliamentary elections, tactile ballot papers were introduced for the first time to facilitate voting by blind voters.
- 3.2.5.3 In 2013, Dr. Dannaa, a visually impaired person became the first person with disability to be appointed a Minister of State. Dr. Dannaa's appointment as Minister generated a lot of public discussions with some commentators raising concerns on whether or not his disability could potentially create a cultural barrier or obstacle in the performance of his official duties as a Minister of Chieftaincy & Culture, having regard to the fact that his official duties included dealing with traditional rulers some of whom called for his removal as their traditions do not allow them to be in direct

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<sup>164</sup> Section 20, Act 653.



contact with persons with disability. This necessitated a response from the President of the Republic calling on all to rather judge Dr. Dannaah by his competence and not his disability as disability does not mean inability.<sup>165</sup>

3.2.5.4 The Persons with Disability Act, 2006 (Act 715) provides comprehensively for people with disability. The Act defines a person with disability as someone affected by a physical or mental impairment which limits one or more of the major life activities of that person.<sup>166</sup> The Act details all aspects of life in which the lives of the disabled should be protected, these are family, social services and employment. The Act introduces tax incentives for businesses that employ persons with disabilities, manufacturers of technical aids and appliances as well as for educational, healthcare, cultural and social activities. The Act confers a host of legal rights upon people with disabilities in Ghana. It guarantees access to public places, free general and specialist medical care, education, employment and transportation. The Act also regulates the commitments and other responsibilities of public and private service providers. The National Council on Persons with Disability (NCPD) was established in 2009 to coordinate the activities of organizations working with and for persons with disabilities. It is also charged with the mandate to monitor the implementation of the provisions of the Persons with Disability Act (Act 715).

3.2.5.5 This is a significant official step. However, much more needs to be done by the government to address current problems and issues that affect the rights of persons with disabilities including their access to resources and opportunities especially in education and employment. Service provision to persons with disabilities in Ghana is done mainly by non-governmental organizations with limited resources. Many children with disabilities are still excluded from any form of education. In 2011, a visit by the CHRAJ to 233 schools revealed that no disability facilities were provided, denying children with disability access to any form of education.<sup>167</sup> The healthcare system is unequipped to accommodate the needs of persons with disabilities and the state of mental healthcare is pitiful. Inadequacies of the healthcare system have led to recent allegations of persons with disabilities dying as a result of misdiagnosis resulting from communication gaps between healthcare providers and persons with disabilities as indicated by some of the key informants. Commitments made relating to employment creation have been unmet and where persons with disabilities do gain employment they continue to face many constraints.

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<sup>165</sup> News of the President's interaction with the members of the National House of Chiefs when he spoke on his appointment of Dr. Dannaah is available at [http://www.africanelections.org/ghana/news\\_detail.php?nws=7230&t=Judge%20Dr.%20Danna%20by%20his%20competence%20-%20President%20Mahama](http://www.africanelections.org/ghana/news_detail.php?nws=7230&t=Judge%20Dr.%20Danna%20by%20his%20competence%20-%20President%20Mahama)

<sup>166</sup> Section 59, Persons with Disability Act, 2006 (Act 715).

<sup>167</sup> See <http://chriafrika.blogspot.com/2011/06/denying-ghanas-disabled-their-rights.html>.

- 3.2.5.6 Disability can be socially constructed through the actions of society in erecting barriers and structures that limit the ability of certain persons in society to function “normally”.<sup>168</sup> Such barriers also limit the ability of such persons to access the opportunities, privileges and resources in society. People with impairments are disabled by the fact that they are excluded from participation within the mainstream of society as a result of physical, organizational and attitudinal barriers. These barriers prevent them from gaining equal access to information, education, employment, public transport, housing and social/recreational opportunities.
- 3.2.5.7 The primary source of disadvantage is not the impairment but society’s responses to people who are considered disabled. If a community allows physical, architectural, transportation, and other barriers to remain in place, society is creating handicaps that oppress individuals with disabilities. If, on the other hand, a community removes those barriers, persons with disabilities can function at much higher levels. In simple terms, it is not the inability to walk or inability to sit that prevents a person entering a building unaided but the existence of stairs or the lack of benches to lie down, that are inaccessible to a wheelchair-user or a person with a sitting disability. Public attitudes and beliefs on disabilities in Africa which are often based on fear and misunderstandings, stereotype individuals with disabilities exposing them to prejudice, discrimination and ultimately to the denial of rights and resources that are afforded to all citizens. These public attitudes and perceptions about persons with disabilities in Ghana have created situations that lead to the further isolation and stigmatization of persons with disabilities.
- 3.2.5.8 Persons with disabilities have rights to autonomy - individual rights, as well as rights to full participation in society. Stigma is the single most difficult barrier to living “normal” and productive lives by persons with disabilities. Stigma arises from superstition/ignorance, lack of knowledge and empathy, old belief systems and a tendency to fear and exclude people who are perceived as different. Stigma results in discrimination, stereotyping, fear, embarrassment, anger, and avoidant behaviors, among others. Some examples of disability stigmas in Ghanaian society are the following: Persons with disabilities are generally referred to in Ghanaian society as “ayarefuo” (sick people). Persons with Autism and Downe Syndrome are labeled as “Kwasea Kwasea” or “Gyimi Gyimi” (stupid person, imbecile). Persons with hearing impairment are referred to as, “Mumu” (dumb). A person with any form or level of mental illness is referred to as “Obodamfuo” (Mad Person).<sup>169</sup>
- 3.2.5.9 In Ghana, there is the establishment and continuous existence of segregated or “special” schools for persons with disabilities. There are a number of “Schools for

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<sup>168</sup> Michael Baffoe, Stigma, Discrimination & Marginalization: Gateways to Oppression of Persons with Disabilities in Ghana, West Africa, Journal of Educational and Social Research, Vol 3(1), 2013, page 188.

<sup>169</sup> *Id.* at 193.



the Blind”, Unit Schools for the Deaf” and vocational institutions for persons with physical disabilities. These schools and institutions “train” persons with disabilities who end up with some form of graduating certificates that usually fit them no-where in the mainstream economic system.

#### 3.2.5.10 **Recommendations**

To make a positive difference in the lives of persons with disabilities in Ghana, there is the need for effective country-wide community education campaigns aimed at eliminating the myths, negative perceptions, stereotyping, superstitions and their resultant discrimination and marginalization of persons with disabilities. There is also the need for mobilization and community support for services directed at persons with disabilities. These public education and community mobilization campaigns should be aimed at getting people to recognize and accept persons with disabilities as people first. They should not be tagged with their disabilities as illnesses that needs to be cured. These will hopefully lead to eventual public support and acceptance and the inclusion of persons with disabilities as normal, important and productive members of society.

### 3.2.6 **Mental Health Act, 2012 (Act 846)**

3.2.6.1 The World Health Organization (WHO) has estimated that there are 2.8 million persons with mental disabilities in Ghana, 650,000 of whom have severe mental disabilities.<sup>170</sup> Act 846 regulates all matters concerning persons with mental disabilities, including women and children. The law introduces a number of initiatives, such as the establishment of a Mental Health Service, whose objective is to promote mental health and to provide humane care in a least restrictive environment at the primary health care level.

3.2.6.2 The Act also establishes visiting committees at the regional and district levels to ensure mental health laws are implemented through periodic inspection and inquiries about patient complaints. It also provides for admission to, treatment within, and discharge from public psychiatric hospitals, and it creates a mental health review tribunal mandated to investigate complaints of persons in psychiatric hospitals, including cases of involuntary admission and treatment, as well as an appeal process against the decisions of the tribunal.

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<sup>170</sup> World Health Organization (WHO), Mental Health Improvement for National Development (MIND), Country Summary Series: Ghana, 2007, [http://www.who.int/mental\\_health/policy/country/GhanaCountrySummary\\_Oct2007.pdf](http://www.who.int/mental_health/policy/country/GhanaCountrySummary_Oct2007.pdf) (accessed 1 April 2013). Mental disabilities are classified as severe when someone is undergoing episodes of psychosis, which may, among other symptoms, result in hallucinations. See also, Human Rights Watch, *Like Death sentence, abuses against persons with mental disabilities in Ghana*, 2012, at page 25, available at <https://www.hrw.org/report/2012/10/02/death-sentence/abuses-against-persons-mental-disabilities-ghana> (last accessed on 31 December, 2016).

- 3.2.6.3 The 2012 Mental Health Act conflicts with the Convention on the Rights of Persons with Disability (CRPD)<sup>171</sup> in several aspects. The law, for example, permits involuntary admission and treatment, without giving any guidelines on how persons with mental disabilities will access courts of law to challenge such acts. The Mental Health Act also presumes the incapacity of some persons with mental disabilities, limiting their ability to make decisions about where they live and what treatment they receive. The Act does not effectively provide a framework for supported decision-making, as envisioned by the CRPD. There is also the Health Institutions and Facilities Act, 2011 (Act 829) which regulates public and private facilities and activities such as prayer camps where many people seek help.
- 3.2.6.4 The passage of Act 846 was touted as the beginning of the golden age of mental health care. However, field research by Human Rights Watch in the Greater Accra, Central, and Eastern Regions of Ghana between November 2011 and January 2012 found that the rights of thousands of persons with mental disabilities are still being routinely violated. Many are placed, often against their will, in overcrowded and dirty psychiatric hospitals; others face confinement, often in appalling conditions, in prayer camps privately owned by religious institutions.<sup>172</sup>
- 3.2.6.5 **Recommendations**  
There should be a monitoring and evaluation of how well the regional and district level committees set to ensure the implementation of the Mental Health Act are performing.
- 3.2.7 National Health Insurance Act, 2012 (Act 852)**
- 3.2.7.1 At independence, Ghana set up a National Health Service (NHS) which was fully financed from state revenue. It provided service for everybody without any costs, and protected poor people from financial shocks. The NHS system did not involve out-of-pocket payments at point of service.
- 3.2.7.2 The system however could not be sustained due to inadequate resources and budgetary constraints. Quality of medical services deteriorated. The urban population benefitted from this system more than the rural poor.
- 3.2.7.3 Government later in 1971 introduced minimal user fees to cover hospital procedures and overheads. But with the general decline in agricultural productivity and exports which affected consumer goods, increased inflationary pressures, and a gradual build up of unemployment in the 1980s, Ghana could not continue with even the minimal subsidies in the delivery of essential social services such as education and health. This led to the introduction of the structural adjustment programme in 1983. Central to

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<sup>171</sup> Ratified by Ghana on 31<sup>st</sup> July 2012. See UN Treaty Database available on [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=iv-15&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&lang=en)

<sup>172</sup> Human Rights Watch, *Like death sentence*, *supra* note 170 at 90.

this was the goal of getting prices right by withdrawing subsidies, liberalising the domestic and external trade regime. There were budget cuts on social spending with health and to some extent education bearing the heaviest brunt. Government then introduced full cost recovery (also known as "cash and carry") into the health system in Ghana.<sup>173</sup>

- 3.2.7.4 The Cash and Carry System put an enormous financial pressure on the poor and served as a major barrier to healthcare access. Healthcare inequalities became widespread, especially around the latter part of the 1990s and early 2000.
- 3.2.7.5 Ghana introduced a national health insurance scheme (NHIS) in 2004 as part of a major development policy framework, the Ghana Poverty Reduction Strategy (GPRS). The National Health Insurance Act, 2003 (Act 650) was enacted to enable Ghanaians obtain basic health care services without paying money at the point of delivery of the service.<sup>174</sup>
- 3.2.7.6 Act 650 established an independent council known as the National Health Insurance Council (NHIC), which is tasked with creating and monitoring the development and operation of the NHIS, including the management of the National Health Insurance Fund (NHIF).
- 3.2.7.7 The stated goal of NHIS is to assure a specified minimum healthcare benefit package to all Ghanaians at the point of service within five years following its implementation. Active membership on the National Health Insurance Scheme has grown from 1.3 million in 2005 to 8.9 million in 2012.<sup>175</sup> However, many people are still detained in hospital after they have been discharged due to non-enrolment on the scheme or inability to pay fees which are not covered by the health insurance.
- 3.2.7.8 Implementation of Act 650 was faced with many challenges including the “independence” and non-profit corporate status of the various District Health Schemes with their Boards established at the District level, delays in the issuance of identity cards after registration, inability of subscribers to access services between the period when they registered and when their cards are issued, difficulties of subscribers accessing services outside of their districts of registration and so on. As a result a new National Health Insurance Act, 2012 (Act 852) was promulgated.

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<sup>173</sup> Clement Adamba, *The Thrills and Tears of National Health Insurance Scheme Cardholders in Ghana*, at 2 available on <http://www.nai.uu.se/ecas-4/panels/121-140/panel-128/Adamba-Clement-full-paper.pdf>.

<sup>174</sup> UNDP Human Development Report, 2014 at page 87 available at <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf> (last accessed 31 December, 2016).

<sup>175</sup> National Health Insurance Scheme Annual Report for 2012 at page 38 available at <http://www.nhis.gov.gh/files/2012%20NHIA%20ANNUAL%20REPORT.pdf>

- 3.2.7.9 Act 852 established a nationwide health insurance scheme to which residents in Ghana shall belong.<sup>176</sup> The National Health Insurance Scheme is to provide financial access to the basic health care services specified under section 30 for residents of the country. The Act establishes the National Health Insurance Authority as a body corporate with the object of ensuring universal health coverage for persons in Ghana.<sup>177</sup>
- 3.2.7.10 Section 29 exempts the following categories of persons from making contributions although they must register with the scheme in order to benefit from its services: a child; a person in need of ante-natal, delivery and post-natal healthcare services; a person with mental disorder; a person classified by the Minister responsible for Social Welfare as an indigent; categories of differently-abled persons determined by the Minister responsible for Social Welfare; pensioners of the Social Security and National Insurance Trust; contributors to the Social Security and National Insurance Trust; a person above seventy' years of age; and other categories prescribed by the Minister. Thus, Act 852 has provided legal backing for the free maternal care policy introduced in July 2008 to meet the health needs of expectant mothers.
- 3.2.7.11 Act 852 also makes provision for free registration and access to healthcare for the poor and vulnerable. All persons under 18 years have free access to health insurance. They represented almost 50% of registered members of the NHIS as at December 2012. Malaria, TB, HIV opportunistic diseases are covered under Ghana's National Health Insurance Scheme.
- 3.2.7.12 There are calls for the inclusion of cancer treatment, particularly for children in the National health Insurance Scheme.<sup>178</sup> This is because about a 1000 children below 15 years of age are annually diagnosed with cancer that could be treated. However, most of these children lose their lives as a result of the inability of their parents to afford the cost of treatment estimated to be six hundred dollars (\$600.00) on the average.
- 3.2.7.13 **Recommendations**  
It is recommended that an in depth study is carried out into the various other illnesses which could potentially be accommodated by the National Health Insurance Scheme for the realization of the health rights of all in Ghana.
- 3.2.8 Intestate Succession Law, 1985 (PNDC Law 111)**
- 3.2.8.1 In 1985, P.N.D.C.L. 111 was enacted to provide relief for spouses and children who were often victims of ejection and other forms of persecution when the breadwinner of the family, usually the husband, died intestate.

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<sup>176</sup> Section 26, National Health Insurance Act, 2012 (Act 852).

<sup>177</sup> Sections 1 & 2 of the National Health Insurance Act, 2012 (Act 852).

<sup>178</sup> Daily Graphic, 18<sup>th</sup> February, 2015, page 71.

- 3.2.8.2 The intention behind PNDCL 111 was to determine intestacy and to create a system backed by statute for the devolution of the property of an intestate. The law also made room for the application of customary law to a limited portion of the estate of the intestate. The Law was intended to prevent members of the extended family from taking over the assets of the deceased for their own use to the detriment of the surviving spouse and children of the deceased.
- 3.2.8.3 The justification for PNDCL 111 appears in the Intestate Succession Law, 1985 Memorandum pages i-iv. The Memorandum, among other things, maintains that:
- This Law is aimed at removing the anomalies in the present law relating to intestate succession and to provide a uniform intestate succession law that will be applicable throughout the country irrespective of the class of the intestate and the type of marriage contracted by him or her.
- 3.2.8.4 The law theoretically tilted the balance of convenience in favour of the conjugal family by providing some protection and security for the surviving spouse and children. PNDCL 111 is applicable to the distribution of the estate of a person who dies without a testamentary disposition of self-acquired property.
- 3.2.8.5 Section 3 of PNDCL 111 provides that the surviving spouse and children are entitled absolutely to a house (if any) and household-chattel. The household-chattel includes furniture, implements, books, private cars, jewellery, household livestock, home appliances, simple agricultural tools and all the clothing and things used in the house. If there is more than one house, then the surviving spouse and children choose first. All the properties, less the house and household-chattel, form the remainder.
- 3.2.8.6 The law renders the marriage type irrelevant for the distribution of the estate. It repeals Sections 48 and 10 of the Marriage Ordinance and Mohammedan Marriage Ordinance respectively. PNDC Law 264 amended PNDC Law 111 by the inclusion of section 16a and substitution of section 17. The effect of this law is, before the distribution of the estate, no person shall, whether the deceased died intestate or testate, eject a surviving spouse or a child from the matrimonial home.
- 3.2.8.7 PNDC Law 111 has some limitations. First, the statute applies only to property not included in a valid Will. For example, should a man die semi-intestate, the law applies to only the part of his estate that has not been covered by his will. Thus, an individual might override the provisions of Law 111 by simply making a Will. Such a Will will be valid once it meets the formal requirements of a Will and is not unconstitutional. A Will will be unconstitutional if it contradicts article 22 of the 1992 Constitution of Ghana. Article 22 of the 1992 Constitution provides that:

1. A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.
2. Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.
3. With a view to achieving the full realisation of the rights referred to in clause (2) of this article –
  - a. Spouses shall have equal access to property jointly acquired during marriage;
  - b. Assets that are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of marriage.

3.2.8.8 In accordance with the prescription of article 22(1), the surviving spouse can claim a reasonable share of the testate property whether or not she was a beneficiary under the will. As a Chapter 5 provision of the 1992 Constitution, the Courts, in particular, the High Court has jurisdiction to override the provisions of a will in order to give effect to article 22 of the 1992 Constitution so as to grant the surviving spouse, a reasonable portion of the estate of the testate. Written wills in Ghana are governed by the Wills Act, 1971 (Act 360). The Wills Act enables the High Court to make reasonable provision out of the estate for a spouse, father, mother, or child under 18 years if the High Court finds that the will does not contain reasonable provision for their maintenance.

3.2.8.9 The question is whether these provisions apply to the distribution of the property of an intestate since death of a partner may not necessarily be understood as leading to the dissolution of the marriage between the parties. This is particularly so when one takes into account that in many customary settings, it is understood that the parties to a marriage contract go beyond the individual man and woman who are professing love and intending to take each other as husband and wife. It is recommended that Parliament enacts a law which covers the rules as stated in article 22 of the 1992 Constitution and deeply interpreted by the Supreme Court in *Arthur v. Arthur* and *Mensah v. Mensah* to include situations in which one of the parties to marriage has died intestate.

3.2.8.10 Some of the provisions of the PNDCL 111 have however proved inimical to the interest of the immediate family of the deceased. Some of these difficulties are:

- The provisions on the fractional distribution of the estate of the deceased have been difficult to implement.

- The specific portion of the estate to devolve on the spouse irrespective of the number of spouses involved, fixed by the law creates a problem.
- No provision was made for polygamous marriages where the deceased is survived by a number of spouses so they are all compelled to share the same fraction that the law stipulates for the surviving spouse.
- The requirement that where the estate includes only one house, the surviving spouse or the child or both of them is or are entitled to that house<sup>179</sup> has often resulted in acrimony. This is partly because the child or some of the children may not be children of the surviving spouse. P.N.D.C.L. 111 is silent on the issue of joint acquisition of property and how this should affect the fraction of the estate that the surviving spouse is entitled to. The surviving spouse may therefore lose out on any investment made in the property.

3.2.8.11 The age limit and circumstances of children who may inherit a portion is also worth examining. Law 111, like customary law, does not place any age limit for children that may qualify to inherit property of their deceased parents. Neither does it make room for the special circumstances of any of the under age children. Thus, a child of 40 years, married and gainfully employed, is entitled to equal share with the 10-year-old child simply by the fact that both are off-springs of the deceased. This seems unfair to the younger child. The Will Act of 1971 (Act 360), Section 13(1), under which a person is under no obligation to make a disposition to an adult child may help avoid such situations.

3.2.8.12 Law 111 does not address the situation of divorced women and women in non-marital relationships in relation to their property inheritance. Due to these weaknesses, PNDC Law 111 has not fully met the standards set by the international human rights regimes on women's property inheritance. Reform of the law to meet the international standards of inheritance as enshrined in the Protocols to both the African Charter and the CEDAW as reflected in the 1992 Constitution of Ghana is necessary.

3.2.8.13 In view of this, a review process began in 2008 with the aim of enacting a new law to remove the anomalies in the present law.<sup>180</sup> The draft seeks to give a larger portion of the estate to the spouse and children, and acknowledges that the fractional distribution of the estate has been difficult to implement. The draft also recognises that the lack of provision for polygamous marriages in the 1985 law creates a problem, and that the law should contain special provisions for spouses' jointly

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<sup>179</sup> Section 4, Intestate Succession Act, PNDCL 111, 1985.

<sup>180</sup> Memorandum to the Intestate Succession Law (Amendment) Bill, 2009.

acquired property, as well as for dependent parents and children of the deceased who are still in school.

- 3.2.8.14 While there are revisions to the current formula for dividing an estate, its percentage-based replacement in the current bill remains complicated: a surviving spouse is entitled to 35 percent of an estate, a child (or children) 40 percent, a surviving parent(s) 15 percent and 10 percent is to be devolved in accordance with customary law. For polygamous marriages, surviving spouses are entitled to equal shares of 50 percent of the estate, the children 40 percent, five percent to the parent(s) and five percent to customary devolution. If a surviving spouse made a contribution to the acquisition of the matrimonial home, the Bill proposes that she should be entitled to 50 percent share of the matrimonial home. There are other rules included when there is no spouse and/or no children, and/or no surviving parent. There are also instructions that school fees must be provided for any children and dependants of the deceased who are still in school, before the deceased's estate is distributed.
- 3.2.8.15 These revisions reflect concerns among women's and children's rights organizations that the portions of spouses' property inheritance should be separate from that of the children in the distribution of the estate (i.e. all spouses and children should not be expected to share a portion of the inheritance, such as a house). However even so, there is still inadequate protection of wives in polygynous marriages. It is recommended that there should be protection for the rights of a wife and/or a child to inherit and continue to reside in the house (with its chattels) where a wife and/or child lived with the deceased. In addition, further protection should be provided through legislation for rights of individual wives to property they acquired, or contributed to the acquisition of, during the period of marriage. For example, the bill could be amended to explicitly exclude a spouse's acquired property from the intestate's estate. To further protect property rights of the parties in polygynous marriages, the distribution of property upon a husband's death may take into consideration the duration of marriage, and provide greater property rights for those surviving spouses who have been in the marriage longer.
- 3.2.8.16 There are other important provisions in the draft bill including recognizing what constitutes 'contribution' to acquisition of property during marriage. A 'contribution' may include payment of money for acquisition or maintenance of the home, care of household members, and or performance of household duties. This follows on judicial pronouncements in previous court cases concerning the distribution of assets upon marriage dissolution or death, and provides increased protection for women's rights to marital property. Yet who counts as a spouse under the intestate Succession Act remains tied to definitions of marriage set in other legislation as well as case law.



- 3.2.8.17 The provisions of the Bill run contrary to customary systems of lineage property ownership and governance. The Bill if it becomes law will also change the property distribution laws for Muslims, as it contrasts with the laws set in the Qur'an. Under the Qur'an, a man will inherit 1/2 of the estate of his wife, upon her death, if she does not have children. If she has children, her husband will inherit 1/4 of her estate. In each case, a woman receives only half of what a man would receive under the same circumstances.
- 3.2.8.18 The provisions in relation to contribution may be irrelevant taking into account the decision of the Supreme Court in **Arthur v. Arthur**<sup>181</sup> making the requirement of contribution unnecessary as far as the property rights of spouses are concerned. What is important is whether such property was acquired in the course of the marriage and whether there is any agreement contrary to the position of the Supreme Court that such property should be equitably shared. Based on the maxim that equality is equity, such property must be equally shared.
- 3.2.8.19 **Recommendation**  
A thorough review of the Intestate Succession Amendment Bill and the Property Rights of Spouses bill with a view to bringing the provisions in line with decided cases is appropriate and hence recommended.
- 3.2.9 Labour Act, 2003 (Act 651)**
- 3.2.9.1 The 1992 Constitution of Ghana has detailed provisions on the human rights of workers in Ghana. Article 24 (1) of the 1992 Constitution states that every persons has the right to work under satisfactory, safe, and healthy conditions, and shall receive equal pay for equal work without distinction of any kind. Again, clause 2 of the same article provides that "every worker shall be assured of rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays." The 1992 Republican Constitution again provides in Article 24(4) points out that "Restriction shall not be placed on the exercise of the right of the worker to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests."
- 3.2.9.2 The President is required to report to Parliament once a year on all the steps taken to ensure the realisation of the policy objectives contained in the Directive Principles of State Policy (DPSP), particularly the realisation of basic human rights, a healthy economy, the right to work, the right to good health care and the right to education.<sup>182</sup>

<sup>181</sup> Case unreported but See Civil Appeal No J4/19/2013 dated 26<sup>th</sup> July 2013 (Supreme Court).

<sup>182</sup> Article 34 (2), 1992 Constitution of Ghana.

- 3.2.9.3 The Labour Act, 2003 (Act 651) consolidated and updated various pieces of legislation, and introduced provisions to reflect ratified International Labour Organisation (ILO) Conventions.<sup>183</sup> Act 651 covers all employers and employees except those in strategic establishments such as the Armed Forces, Police Service, Prisons Service and the Security Intelligence Agencies.<sup>184</sup>
- 3.2.9.4 Major provisions of the Labour Act include establishment of public and private employment centres, protection of the employment relationship, general conditions of employment, employment of persons with disabilities, employment of young persons, employment of women, fair and unfair termination of employment, protection of remuneration, temporary and casual employees, unions, employers' organisations and collective agreements, strikes, establishment of a National Tripartite Committee, forced labour, occupational health and safety, labour inspection and the establishment of the National Labour Commission (NLC). The NLC is heavily engaged in the settlement of labour related disputes, investigation of unfair labour practices and the promotion of labour cooperation between labour and management.<sup>185</sup>
- 3.2.9.5 Act 651 prohibits employers or employees engaged in the provision of an essential service from resorting to a lockout or strike in connection with or in furtherance of any industrial dispute involving the workers.<sup>186</sup> There are pending cases at the High Court with respect to this issue in connection with strike actions embarked upon by members of the Ghana Medical Association.
- 3.2.9.6 Section 12 (1) of the Labour Act provides that *"The employment of a worker by an employer for a period of six months or more or for a number of working days equivalent to six months or more within a year shall be secured by a written contract of employment."* However, there are several cases of workers being kept as casual labour long after six (6) months of work and others who are laid off just about six (6) months in order to circumvent this law. The engagements of these casual labourers are not secured with any written contracts. Paragraph (2) of the same section adds that a contract of employment shall express in clear terms the rights and obligations of the parties. These are fundamental rights of the employee in any employment set up. Employees, according to the Labour Act, 2003, are entitled to be furnished with the statement of the particulars of the main terms of contract of employment signed by the employer.

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<sup>183</sup> For instance the International Labour Organisation Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Adopted at Geneva, 87th ILC session (17 June 1999) ratified by Ghana on 13<sup>th</sup> June 2000.

<sup>184</sup> Section 1, Labour Act, 2003 (Act 651).

<sup>185</sup> Section 138, Labour Act, 2003 (Act 651).

<sup>186</sup> Section 163, Labour Act, 2003 (Act 651).

- 3.2.9.7 It is useful to note that the National Vocational Training Act (Act 351), 1970 and the National Vocational Training Regulations (Executive Instrument 15) enjoin companies to introduce apprenticeship schemes when there is a technical business attached to the establishment. Employers are therefore obliged to provide training for their employees for the attainment of the level of competence required for the performance of their jobs and to enhance their career.
- 3.2.9.8 These provisions aim at protecting the employee in Ghana in order to enhance productivity. The Labour Act, 2003 (Act 651) catalogues the rights of a worker as:
1. the right to work under satisfactory, safe and healthy conditions.
  2. the right to receive equal pay for equal work
  3. the right to rest, leisure and holidays with pay
  4. the right to form or join a Trade Union
  5. be trained and retrained for the development of his or her skills
  6. receive information relevant to his or her work
- 3.2.9.9 In the absence of written terms of employment, employees face challenging moments regarding their proof of employment when they are subjected to harsh treatment. Such employees would not be able to make demands with reference at appropriate avenues for redress. The case would be different where the employee has a contract document stating rights and responsibilities and terms of conditions of employment.
- 3.2.9.10 The employee can apply to the Employment Tribunal who may determine what should be in the written statement if the employer fails to supply a statement within two (2) months of starting the work.
- 3.2.9.11 The Right to Work under Satisfactory, Safe, and Healthy Conditions - Article 15 of the 1992 Ghanaian Constitution provides that “the dignity of persons shall be inviolable”. Every person has inherent worth as a human being and his or her dignity must be assured and respected. This dignity of a person ought much to be recognized and respected at the place of work. Decent and safe working conditions must be established at the workplace to give workers dignity they deserve.
- 3.2.9.12 Section 18 of the Labour Act mandates employers to ensure that every worker employed by them works under satisfactory, safe, and healthy conditions. Employers are accordingly expected to provide and maintain at the workplace all the necessary information, instructions, training, and supervision, to prevent contamination of the workplace from toxic gases, provide adequate safety appliances, provide toilet and washing facilities, and even supply clean water. Any employer who fails to provide for satisfactory, safe and healthy conditions at the workplace is liable for summary

conviction to a fine not exceeding 1000 penalty units or imprisonment or both. The spirit behind this provision is to compel owners of businesses or organizations to commit the needed resources in providing for the realisation of the dignity of their employees. Enforcement and supervisory institutions and agencies therefore, have the responsibility of ensuring that organizations and institutions comply with this provision.

- 3.2.9.13 Working conditions in some work places are horrible. Some private schools are noted to be in this category.<sup>187</sup> But all employers have a statutory duty to take care of the health and safety needs of all their employees. For example, they should provide first aid equipment and adequate means of escape in case of fire, protective clothing and ensure all machinery is safe. Employers must as far as possible ensure protection from harassment, bullying, and violence at the workplace.
- 3.2.9.14 The Right to Receive Equal Pay for Equal Work - Every worker ... shall receive equal pay for equal work without any distinction of any kind.<sup>188</sup> This provision places emphasis on the nature and volume of work being performed by workers and not academic qualification or seniority being the determinants of salary levels. This seems to downplay the need for workers to seek to advance themselves professionally and or academically. Whiles agreeing that equal attention ought to be given to persons who perform equal work, performing the same volume of work would not necessarily result in the same output. If education is for enlightenment, higher education would result in higher enlightenment which would manifest in effectiveness and efficiency of persons at work. Such enlightened individual would very likely use less resources and time to perform assigned duties at work. Consequently, the argument is that persons with higher qualifications although performing similar work with others, have higher effectiveness and efficiency, hence, should be given higher remuneration.
- 3.2.9.15 The 1992 Constitution of Ghana and Labour Laws prohibit discrimination on the basis of race, sex, ethnic origin, creed, colour, religion, social, or economic status whatsoever which includes wages and salary earned for work done. Some form of discrimination against women has also been detected in many collective bargaining agreements especially concerning medical insurance and other benefits.<sup>189</sup> Until recently, in most of the collective agreements between unions and firms, wives of male employees could benefit from medical insurance offered by the employer but husbands of female employees were not covered. A form of unlawful discrimination occurs where a female worker is paid less than the male counterpart for doing the same or similar work.

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<sup>187</sup> David Naya Zuure, Thesis (untitled) submitted to the University of Education, Winneba, Ghana at 28.

<sup>188</sup> Article 24(1), 1992 Constitution of Ghana.

<sup>189</sup>David Naya Zuure, Thesis (untitled) submitted to the University of Education, Winneba, Ghana at 30.

- 3.2.9.16 The Labour Act, 2003, provides that the National Tripartite Committee should determine the National Daily Minimum Wage. Section 69 of the Labour Act, 2003, of Ghana also protects employees against unnecessary deduction by way of discount, interest or any similar charge on account of an advance of remuneration made to worker in anticipation of the regular period of payment of remuneration. No pecuniary penalty shall be imposed by an employer upon a worker for any case whatsoever.
- 3.2.9.17 The Right to Rest, Leisure, and Reasonable Limitation of Working Hours and Period of Holidays - Sections 33 to 39 of the Labour Act cover hours of work. A maximum is set at 8 hours a day or 40 hours a week, except in cases expressly noted in the Act. Provision is made for overtime work pay, and the Act permits unpaid overtime in certain exceptional circumstances “including an accident threatening human lives or the very existence of the undertaking”. Under section 40, workers in continuous workdays are entitled to a rest period of at least 30 minutes counted as normal hours of work, but where the normal hours of work are split into two, the break should not be less than one hour duration and is not counted as part of the normal work hours. Workers have the right to a continuous daily rest period of at least 12 hours between 2 consecutive work days, and a weekly rest period of 48 consecutive hours in every 7 days of normal working hours. Section 44 excludes task workers and domestic workers from the 8 hours a day or 40 hours a week maximum.
- 3.2.9.18 The Right to be Trained and Retrained - The Labour Act places special emphasis on training and retraining to enable the worker to cope with any aspect of the job. Section 8(e) enumerates training and retraining for the development of his or her skills as one of the rights of a worker. Where it is necessary to train and retrain a person in order to cope with any aspect of the person’s employment, the employer may provide or arrange at the employer’s expense the training or retraining for the person.
- 3.2.9.19 The Right to Form or Join Trade Union - Sections 79 to 95 of the Labour Act cover the formation, registration and free internal administration of these occupational organisations. Two or more workers employed in the same undertaking may form a union, and two or more employers in the same industry or trade, each of whom employs not less than 15 workers, may form or join an employers’ organisation.
- 3.2.9.20 A person who engages in anti-union discrimination is guilty of an unfair labour practice<sup>190</sup> similarly interference by employers in the formation of a union or in union affairs is prohibited by section 128 of the Labour Act, 2003. Reasonable facilities and

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<sup>190</sup> Section 127, Labour Act, 2003 (Act 651).

time must be afforded to officers of a trade union, but trade union officers may not engage in union activities during working hours without the consent of the employer.

- 3.2.9.21 In addition to the Trades Union Congress (TUC) and its affiliated national unions, other workers organisations have evolved into strong labour organisations. These include Ghana National Association of Teachers (GNAT), Ghana Registered Nurses Association (GRNA), Civil Servants Association (CSA), Textile, Garments and Leather Workers' Union (TEGLEU) and Judicial Services Association of Ghana (JUSSAG).
- 3.2.9.22 The informal sector has virtually no formally recognized unions. Developing capacity to extend unions to the sector will help them have some form of representation and protection. The Ghana Private Road Transport Union operates fully in the informal sector whilst the General Agricultural Workers Union through its Rural Workers Organizations Division has been organizing workers in the informal sector since 1970. Some efforts are being made by the TUC to bring employees in the informal sector on board. Workers in Ghana have exercised the right to form or join a trade union since the enactment of the Trade Union Ordinance in 1941. The Ghana Trade Union Congress was formed in 1945.
- 3.2.9.23 An employee has the right to join a trade union, and should not be refused a job, dismissed, harassed or selected for redundancy because they are a member of or wish to join a trade union.<sup>191</sup> An employee also has the right not to join a trade union if he or she wishes, and should not be refused a job, dismissed, harassed or selected for redundancy because they refused to join. A member of a trade union has the right to take part in trade union activities, for example, recruiting members, collecting subscriptions and attending meetings. Trade union activities must take place either outside the employee's normal working hours or at a time agreed with the employer.
- 3.2.9.24 Some public services such as security agencies are legally enjoined not to unionise.<sup>192</sup> The capacity of a number of public services to unionise has become a matter of some controversy in recent times. At the Constitution Review Commission, the issue of classification of institutions as security agencies thereby disenabling them from the right to unionise was contentious. The Constitution Review Commission observed that the classification of the Customs Division of the Ghana Revenue Authority and some other public institutions as security agencies implies, the provisions of the Labour Act, including the right to unionise, do not apply to these institutions.

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<sup>191</sup> Article 24(3), 1992 Constitution of Ghana.

<sup>192</sup> *Customs, Excise and Preventive Service v. National Labour Commission & Attorney-General (Public Services Workers Union of TUC Interested Party) (the CEPS case)* [2009] SCGLR 530.

- 3.2.9.25 The CEPS has been treated as a security agency for the purposes of unionization by the Supreme Court in the CEPS case. This decision was delivered before the coming into force of the Ghana Revenue Authority Act, 2009 (Act 791). That Act now merges IRS, CEPS and the Value Added Tax (VAT) Service under one umbrella body, the Ghana Revenue Authority, with the main function of generating revenue for Ghana. Act 791, however, does not repeal PNDCL 330; the CEPS is continued in existence as a Department (Division) of the Ghana Revenue Authority with PNDCL 330 undergoing the necessary amendments to reflect the changes introduced by Act 791. While employees of the Customs Division of the Ghana Revenue Authority would not be entitled to unionise, the other two Divisions of the Authority, namely, the Domestic Tax Revenue Division and the Support Services Division may be allowed to do so. Such a huge difference in the treatment of personnel of divisions in the same organization may not augur well for the effective management of the Ghana Revenue Authority.
- 3.2.9.26 **Challenges in Granting Employment Rights at the Workplace** - There are bottlenecks that bedevil implementation of the international conventions, national documents, and Constitution and laws on employment rights leading to abuses despite these international conventions and laws protecting the fundamental human rights.
- 3.2.9.27 Some believe technicalities in the judiciary make it difficult for the full implementation of laws. This largely accounts for the reason why many people are reluctant to report cases of rights abuse. The low success in the prosecution of cases of violation and the fact that there are situations where the victims have to face the accused can be intimidating. Indeed, facing the accused in court has the tendency of causing the victim to relive the painful and humiliating experience. People, therefore, feel reluctant to resort to the justice administration system in Ghana.
- 3.2.9.28 Others believe that the perception of human rights as a western ideal makes its acceptance difficult, hence, leading to poor implementation. It has been observed that this could be a sheer excuse for states to shirk their responsibilities to international conventions. There are several issues which require attention as far as labour rights are concerned. These include employment of casual workers for unduly long periods of time; disregard of the law prohibiting resort to strike actions by employees of essential service providers and disregard for the right to written contracts.
- 3.2.9.29 **Recommendations**  
It is recommended that an assessment of the situation of casual labourers is carried out and programmes developed to tackle the many rights abuses against casual labourers.

### 3.2.10 Human Trafficking Act, 2005 (Act 694)<sup>193</sup>

- 3.2.10.1 Trafficking in persons occurs internally and across borders. The elements of trafficking in persons include the engagement in a prohibited act by a prohibited means for the purpose of exploitation.<sup>194</sup> An intermediary may be involved and the intention must be to exploit the victims in order for the crime of human trafficking to be committed. The majority of persons trafficked within the country are children, particularly girls between the ages of 7-16 years who come from northern parts of the country. Boys aged 10-17 years are lured to the mining and coastal areas to engage in mining and fishing. Methods of acquiring children include: abduction, outright sale, bonded placement, deceit of parents or guardians and coercion. Underlying causes that contribute to trafficking include the tradition of migration for socio-cultural and economic reasons and growing urbanisation leading to the breakdown of traditional family systems. Other factors are the low education level of parents, insufficient educational opportunities, family instability and poverty, demand for cheap, exploitative labour and ignorance.
- 3.2.10.2 Act 694 seeks to prevent, reduce and punish human trafficking as well as provide for rehabilitation and re-integration of victims. The enactment of the law was necessary because although the Criminal Code creates offences associated with the subject, these relate to the perpetrator rather than the victim whose rights have been violated. The Act provides for the rehabilitation and re-integration of victims of trafficking. It is an offence to convey, send to or receive any person for purposes of trafficking. This extends to intermediaries. The minimum penalty is five years of imprisonment. Ancillary offences include the supply and conveyance of a trafficked person and there is a duty to provide information on trafficking to the police. The Act established a Human Trafficking Fund and a Human Trafficking Management Board to take care of the inter-ministerial cooperation required to co-ordinate and deal with matters concerned with human trafficking.
- 3.2.10.3 Many judges, law enforcement officers and lawyers including those from the Office of the Attorney General have been trained on the intricacies of trafficking in persons. The Police Service established regional anti-human trafficking offices to help fight the exploitation of victims or survivors of human trafficking. There have also been several interceptions of busloads of children to some destinations considered by many as areas where children are exploited or put to exploitation and even hazardous labour. The concern is that many of these children are often on legitimate trips during long vacations to visit their parents in Yeji. The interceptions visibly have effect on many of them and may lead to unnecessary victimization if not well organized.

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<sup>193</sup> See US Department of State Trafficking in Persons Report, 2014 at pages 186-187 available at <http://www.state.gov/documents/organization/226846.pdf> for most of the contents of this section.

<sup>194</sup> Section 1, Human Trafficking Act, 2005 (Act 694) as amended by the Human Trafficking (Amendment) Act, 2009 (Act 784).



- 3.2.10.4 The situation of inadequate shelters also has an effect on the fight against trafficking in persons as sometimes this leads to a situation in which a human trafficking suspects may be granted bail while the supposed victim may remain in the care of security persons in environments not appropriate for the care of these victims.
- 3.2.10.5 **Prosecution** - In 2013, the Anti-Human Trafficking Unit (AHTU) of the Ghana Police Service (GPS) conducted 140 trafficking investigations, initiated 20 prosecutions, and secured 6 convictions. This reflects an increase from 2012 when it reported 75 investigations, 7 prosecutions, and 3 convictions. All 20 prosecutions involved sex trafficking crimes. There were no prosecutions of suspected labour trafficking offences during the reporting period. The convicted traffickers received sentences ranging from 18 months to 15 years' imprisonment. The AHTU of the GPS, a unit made up of police officers and prosecutors, was responsible for the vast majority of these investigations, prosecutions, and convictions. They, however rely mainly on international and local donors for resources to conduct their investigations. It is also worthy to note that no prosecutors have received specific anti-trafficking training since 2011. In October 2013, the AHTU conducted specific anti-trafficking training for 30 police officers. But new recruits into the Ghana Immigration Service and the GPS receive training on trafficking related topics as part of their basic introductory training.
- 3.2.10.6 **Protection** - The AHTU identified 182 victims in 2013, a decrease from 262 victims identified in 2012. Although the government referred 157 of these victims to government and NGO-run facilities offering protective care, it is unclear how many victims received direct support from the government. The Human Trafficking Fund, which was established by the 2005 Human Trafficking Act to finance protection efforts, was without funds for the second consecutive year; as a result, shelters operated in serious and dangerous conditions without the resources to make basic repairs and government officials used their own personal funds to assist victims. The Department of Social Welfare (DSW) is responsible for operating the two government supported shelters in Ghana—the Shelter for Abused Children in Osu, a multi-purpose shelter, and the Madina Shelter for Rescued Trafficked Children in Madina, the only shelter specifically for trafficking victims. As at 2014, both shelters were in disrepair and lacked any form of functioning security due to funding gaps. Shelter officials struggled to feed, clothe, and provide general care for trafficking victims. The Osu and Madina Shelters only provide short-term care, generally limiting victims' stays to 3 months, although extensions may be granted on a case-by-case basis. There were no government-run shelters for adult victims, and although both children's shelters could accept adult victims if space permitted, adult victims were often placed in hotels or hostels.

3.2.10.7 **Prevention** - The government decreased anti-trafficking prevention efforts. The Ministry of Gender, Children, and Social Protection (MGCSP), which is responsible for overseeing the government's anti-trafficking efforts, did not receive any government funding to carry out anti-trafficking activities during 2013. As a result, the MGCSP was unable to fulfill its mandate to conduct monitoring and evaluation, data collection, and research relating to trafficking. The Human Trafficking Management Board (HTMB) was inaugurated in August 2014.<sup>195</sup> The HTMB is the government's inter-ministerial committee responsible for advising the MGCSP on anti-trafficking policy, promoting prevention efforts, and facilitating the rehabilitation and reintegration of trafficking victims. The HTMB was dissolved due to the lack of funding, and as a result, the government did not have the means to coordinate and oversee national anti-trafficking efforts or finalize and implement a national action plan to combat trafficking. The government participated and assisted in the organization of anti-trafficking information and education campaigns, including sensitization programs in the Volta Region and cocoa-producing communities. State-owned radio and television programmes aired anti-trafficking programming.

3.2.10.8 **Recommendations** - It is recommended that the Human Rights Action Plan makes provision to monitor efforts of government to:

1. Investigate and prosecute trafficking offenses, including cases involving labour trafficking and punish trafficking offenders;
2. Provide the AHTU adequate resources to conduct law enforcement efforts; train law enforcement personnel to proactively identify trafficking victims among vulnerable populations—such as women in prostitution and children working in agriculture—and refer them to protective services;
3. Provide trafficking-specific training to prosecutors and other judicial personnel;
4. Adopt the legislative instrument to effectively implement the 2005 Human Trafficking Act;
5. Provide sufficient government funding for protective services to victims, including to the Human Trafficking Fund;
6. Ensure the maintenance of government-operated shelters; improve data collection and reporting on victims identified and assisted.

### 3.2.11 **Domestic Violence Act, 2007 (Act 732)**

3.2.11.1 Violence within the home setting takes many forms. An in-depth study on violence against women conducted by The Gender Studies and Human Rights

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<sup>195</sup> The Board was re-inaugurated in August 2014. See for more details <http://ghana.gov.gh/index.php/2012-02-08-08-32-47/general-news/6124-human-trafficking-management-board-inaugurated-in-accra>

Documentation Centre (Gender Centre) determined that one in three Ghanaian women suffer from physical violence at the hands of a past or current partner.<sup>196</sup>

- 3.2.11.2 Act 732 provides for protection from physical abuse, sexual abuse, economic abuse and emotional, verbal or psychological abuse. Any behaviour or conduct that in any way harms or may harm another person, endangers the health or wellbeing of another person or undermines another person's privacy, integrity or security or detracts or is likely to detract from another person's dignity and worth as a human being is proscribed by the Act. Report on domestic violence offences by the Domestic Violence and Victim Support Unit of the Ghana Police between 2010 and 2013 shows a steady increase most likely due to increased public awareness of the protections available under the Domestic Violence Act.<sup>197</sup> A child may be assisted to file a complaint by a friend. A social worker, probation officer or health care provider may also file complaints. The police play a vital role in the enforcement of domestic violence legislation since the police station is likely to be one of the first places that a victim of violence will go. The co-operation of the police is stated in mandatory terms in section 7 of the law. Section 8-10 deal with the receipt of a complaint and the process of arrest with or without warrants by the police. Sections 11-22 of the Act provides for protection orders.
- 3.2.11.3 The application may be filed where the applicant or respondent resides or carries on business or where the domestic violence took place. It may be ex-parte unless the court otherwise decides. A social and a psychological enquiry report may be prepared to assist the Court. The Act provides a system of interim orders. The duration of the interim order is for a period not exceeding three months. A protection order cannot exceed one year at the first instance but may be extended, modified or rescinded as the Court determines.
- 3.2.11.4 The conditions of the order are spelt out in section 17. These include counseling, relocation of the respondent, relinquishment of property and others. The social and psychological enquiry report may also guide the Court on the nature of the order. Issues related to child custody within the context of domestic violence and the rights of the child are to be referred to the Family Tribunal. Protection orders may be extended to other persons under certain circumstances. An occupation order may be issued by the Court. This is an order to vacate the matrimonial home after consideration of the social and psychological enquiry report. Protection orders may be discharged by a Court on an application on notice by the applicant or respondent. The contravention of a protection order is a criminal offence.

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<sup>196</sup> Dorcas Coker-Appiah & Kathy Cusack, Violence Against Women and Children In Ghana: Report of A National Study On Violence at 65 (1999). See also Nancy Chi Cantalupo et al, Domestic Violence in Ghana: The Open Secret, 7 Geo. J. Gender & L. 535 (2006).

<sup>197</sup> DOVVSU Report shows increase in Domestic Violence available on <http://news.peacefmonline.com/pages/social/201412/224734.php> (last accessed 1st January, 2017).

- 3.2.11.5 The Criminal Offences Act may be used to prosecute situations such as assault, incest, customary servitude and female genital mutilation. Prosecution of these offences results in arrests and jail sentences which do not promote the family as a unit of society as envisioned in article 28 (1) (e) of the Constitution as a safeguard in the promotion of children's rights.
- 3.2.12 Whistleblowers' Act, 2006, (Act 720)**
- 3.2.12.1 The Auditor General's report on some public institutions for the year ended 31<sup>st</sup> December 2010 established that the State lost huge sums of money through fraud.<sup>198</sup> The rise in economic crimes has a direct impact on the ability of the State to achieve its economic prosperity objectives and the provision of public goods for the realisation of rights, particularly, socio-economic and cultural rights.
- 3.2.12.2 Act 720 was enacted to provide incentives for persons with information on economic crimes to furnish relevant persons and institutions with such information. Under the Act, disclosures may be made regarding: breaches or likely breaches of the law; miscarriages of justice; environmental degradation; endangerment of individual and community health and safety; and waste, appropriation or mismanagement of public resources.
- 3.2.12.3 The Act outlines the instances and processes through which employees can disclose information on the illegal conduct or corrupt actions of their employers or fellow employees without fear of retribution. The law allows the whistleblower to disclose the misuse of public funds to various groups and individuals. These include: the whistleblower's employer; a Police Officer; the Attorney General; the Auditor General; a staff member of the Intelligence Agencies; a member of Parliament; the Economic and Organised Crime Office; CHRAJ; the National Media Commission; the Narcotics Control Board; a traditional chief; a minister of state; or the Office of the President. Where a disclosure is made to any of these persons or institutions, the recipient of the information must investigate the matter or refer it to the Attorney General or other body as directed by the Attorney General, who will initiate an investigation into the disclosure.
- 3.2.12.4 A whistleblower is not liable to civil or criminal proceedings in respect of the disclosure unless it is proven that the whistleblower knew that the disclosure was false or that it was made with malicious intent. Additionally, a provision in an employment contract or other agreement between an employer and an employee is void if it seeks to preclude or discourage an employee from making a disclosure, instituting a court action or claiming a remedy for victimization.

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<sup>198</sup> Reports of the Auditor General on the Public Accounts of Ghana, Pre-University Educational Institutions for the Financial Year ended 31<sup>st</sup> December, 2010, page 3 available at [http://www.ghaudit.org/reports/pre\\_university.pdf](http://www.ghaudit.org/reports/pre_university.pdf) (last accessed 1 January, 2017).

### 3.2.13 **Public Order Act, 1994 (Act 491)**

3.2.13.1 This law regulates the organization of “special public events.”<sup>199</sup> Act 491 requires anyone intending to hold a *special event* at a public place to inform the police 5 days prior to the event. Special events as defined in section 10 of Act 491 include a procession, parade, carnival, street dance celebration of traditional custom, outdoorings of traditional ruler, demonstration, public meeting and similar events with the exception of religious meetings; charitable, social or sporting gathering; and any lawful public entertainment or meeting.

3.2.13.2 Act 491 does not require public event organizers to ask the police permission prior to organizing such as an event.<sup>200</sup> However, experiences in the implementation of this law demonstrate that the police are averse to the choice of days which coincide with national activities or celebrations such as 6<sup>th</sup> March (Independence day), 1<sup>st</sup> July (Republic day) etc. The organisers of public events within the context of Act 491 may consider these national event days as ideal for the desired impact of their activities, e.g. demonstrations. On the other hand, the police are sensitive to the choice of these days as they consider themselves too busy in order to have adequate number of police for the protection of participants in the special events. The Police are also sensitive to some routes or locations of the public event. There is therefore the need to strike a delicate balance between the right to associate on a day of choice and the resource availability of the Police to offer the necessary protection for a smooth special event.

### 3.2.14 **Criminal Code (Repeal of Criminal Libel and Seditious Laws – Amendment Act), 2001**

3.2.14.1 The press played a significant role in the anti-colonial struggle, mobilising nationalist consciousness and exposing the oppression and other rights violations under colonialism.<sup>201</sup> Criminal libel and seditious laws were passed by colonial government in response to the nationalist agitations. It was an attempt to deter nationalist newspapers and publicists from exposing the ills of colonialism.

3.2.14.2 The Criminal Code and Seditious laws appeared to have been used to punish dissent to the ruling political views. One of such cases was Mensah Gyimah v. The Republic. Mensah Gyimah was a politician whose political activism dated back to the anti-colonial struggle when he was a young man. By 1969, he had become a prominent political leader in the country. He had published an article alleging that members of the Border Guards branch of the Ghana Armed Forces connived to engage in

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<sup>199</sup> Section 1, Public Order Act, 1994 (Act 491).

<sup>200</sup> *New Patriotic Party v. Inspector General of Police*, [1993-94] 2 GLR 459 at 509.

<sup>201</sup> See Outlawing criminal libel laws in Ghana, Speech delivered by Nana Akuffo Addo, at a conference on the themes “African Constitutionalism: present challenges and prospects for the future” and “African Constitutionalism and the media”, co-organised by the Institute of Comparative and International Law and the Konrad Adenauer Stiftung, at the University of Pretoria, Pretoria, South Africa on 4th August, 2011, available at <http://mobile.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=216002>

certain illegal importations and exportations of goods. In addition these guards evaded customs duties and further took bribes from smugglers around Ghana's borders with neighbouring countries. He was charged with negligent libel and sedition under the Criminal Code and convicted on both counts at the trial court. On appeal against the conviction, the Court of Appeal held that there was enough evidence to support the charge on sedition, but upheld the appeal against conviction on the charge of negligent libel as, in the opinion of the Court of Appeal, the trial judge had misdirected himself with regard to the defence of justification under that offence.

3.2.14.3 But the need for the review of the criminal libel law was relevant even then as Justice Archer, in his judgment in *Mensah Gyimah v. The Republic* noted as follows:

“I venture to suggest that the time is now ripe for the whole law of criminal libel, intentional libel, negligent libel and seditious libel, to be thoroughly reviewed and reformed for the benefit of the lawyer and the layman, what is the use of the law if its language cannot be understood”.<sup>202</sup>

3.2.14.4 The 1992 Constitution guarantees freedom of expression, including freedom of the press and other media as a fundamental human right. The Constitution also makes elaborate provisions for the freedom and independence of the media in chapter 12 of the 1992 Constitution, particularly articles 162-165.

3.2.14.5 Article 164 is clearly, in its own words, an exception, limiting the freedoms guaranteed in Articles 162 and 163 and must accordingly be construed narrowly to give full effect to the media. This approach is in conformity with the pre-eminent status that the Committee of Experts that drafted the 1992 Constitution envisaged for freedom of expression, including the freedom and independence of the media. The Committee stressed in paragraph 180 of its proposals that:

“The experience of modern states has demonstrated convincingly that in the absence of freedom of press and thought, and an enlightened and vigilant public opinion, a safe future for democracy and its success cannot be ensured anywhere. So vital is the role of the media that freedom of expression along with that of the press has been called “the first freedom”. Indeed, any successful attack on human rights governments often starts with a suppression of the freedom of the press. Once this freedom is denied, governments are free to abuse basic human rights without any publicity and frequently with impunity”.

3.2.14.6 Article 164 must accordingly be narrowly construed to give effect to the intention of the framers of the Constitution in guaranteeing the freedom and independence of the media. However, the 1992 Constitution also continued in force the existing laws

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<sup>202</sup> *Gyimah v. The Republic* [1971] 2 GLR 147 at 163.

which are not in conflict with the Constitution. Some of the existing law included the Criminal libel and seditious law which could be used to curtail free speech.

- 3.2.14.7 As recently as 2011, the United Nations Human Rights Committee (UNHRC) pronounced against the criminalization of libel in the Philippines. According to the Committee, the criminalization of libel violates the Freedom of expression and is inconsistent with Article 19 of the International Covenant on Civil and Political Rights.
- 3.2.14.8 The Committee sought to encourage state parties to decriminalise defamation. The Committee is of the view that imprisonment in such instances is never an appropriate remedy.<sup>203</sup> This right to freedom of expression is such that it is fundamental to the existence of human rights.
- 3.2.14.9 On 2<sup>nd</sup> August 2001, President Kufuor signed the Repeal of Criminal Libel and Seditious Libel Laws) (Amendment) Act, 2001 (Act 602) into law. The remedy of civil defamation is available to any person who feels aggrieved by a particular publication. There seems to be no pressing social need to criminalize defamatory publications in writing.<sup>204</sup>
- 3.2.14.10 From recent events,<sup>205</sup> despite the repeal of criminal libel and seditious law, freedom of speech may be unreasonably threatened by some other laws including the offence of offensive conduct conducive to breaches of the peace and the offence of publishing false news likely to cause fear and alarm to the public.<sup>206</sup> On the other hand, Ghanaians must begin to be circumspect and take responsibility for the integrity of information put in the public domain through the media. This is one of the reasons for setting up of the National Media Commission under the National Media Commission Act, 1993 (Act 449) pursuant to Chapter 12 of the 1992 Constitution.<sup>207</sup> The National Media Commission is required to take all appropriate measures to ensure the establishment and maintenance of highest journalistic

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<sup>203</sup> Olivia Anku-Tsede, *The Media and the Offence of Criminal Libel in Ghana: Sankofa*, 9 Journal of Law, Policy and Globalization (2013) (ISSN 2224-3259 (Online)) at 31.

<sup>204</sup> Olivia Anku-Tsede, *The Media and the Offence of Criminal Libel in Ghana: Sankofa*, 9 Journal of Law, Policy and Globalization (2013) (ISSN 2224-3259 (Online)) at 33.

<sup>205</sup> See the case of the Republic v Amina shows the attitude of the Police who under the guise of the offences of breach of the peace and or causing fear and panic, effect arrest of persons who have expressed some views unpopular with some sections of the society.

<sup>206</sup> See Outlawing criminal libel laws in Ghana, Speech delivered by Nana Akuffo Addo, at a conference on the themes “African Constitutionalism: present challenges and prospects for the future” and “African Constitutionalism and the media”, co-organised by the Institute of Comparative and International Law and the Konrad Adenauer Stiftung, at the University of Pretoria, Pretoria, South Africa on 4th August, 2011, available at <http://mobile.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=216002>

<sup>207</sup> Article 166 of the 1992 Constitution provides for the establishment of the National Media Commission and its membership and charges it with promoting and ensuring the freedom and independence of the media for mass communication of information.

standards in the mass media including the investigation, mediation and settlement of complaints made against or by the press or other mass media.

- 3.2.14.11 The Constitution Review Commission found that the National Media Commission is not adequately resourced and therefore recommended that the National Media Commission be well resourced to regulate and monitor the airwaves and impose sanctions on errant media houses that gloss over indecency in their newspapers, radio and television stations that they operate.<sup>208</sup>
- 3.2.14.12 That notwithstanding, it appears the repeal of the above criminal libel laws in Ghana might not be sufficient to protect the media from unwarranted criminal prosecution. This is because, there are still some statutory provisions which may threaten the freedom of the media. Some of these laws may include sections 207 and 208 of the Criminal Code of Ghana, which provides for the offence of offensive conduct conducive to breaches of the peace as well as the offence of publishing false news likely to cause fear and alarm to the public. It is suggested that, as a state party to the ICCPR, Ghana should take positive steps to operate within the confines of article 19 thereof and must therefore empower individuals to express their opinions within a free and fair political and economic environment.
- 3.2.14.13 **The Media Commission and the National Communication Authority** - There are suggestions for the empowerment of the National Media Commission to regulate both the tools and the platforms for communication.<sup>209</sup> It was argued that it is Constitutionally the mandate of the NMC (under Article 167(d)) to do so. However, the establishment of the National Communication Authority has hindered the development of the technical capacity of the NMC to discharge that aspect of its Constitutional mandate. It has also been suggested that the NMC and NCA should be merged into one institution, under the umbrella of an enhanced National Media Commission to regulate both the tools and platform for communication. It was further highlighted that such an arrangement aligns with international trends on technology and media development. In this regard, it was further suggested that the National Media Commission should also regulate telecommunications. The Constitution Review Commission observed that from the state of the law in Ghana there currently appears to be some ambiguity and tension in the legal framework with regard to which state institution is the regulatory authority for broadcasting and other electronic media for communication. On the one hand, the Constitution mandates the National Media Commission as the primary body responsible for the promotion of the freedom and independence of the media for mass communication or information, as well as for the regulation of broadcasting. On the other hand, the National Communications Authority Act, 1996 (Act 542) and the Electronic

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<sup>208</sup> Report of the Constitution Review Commission, *supra* note 10 at page 760.

<sup>209</sup> Id.



Communication Act, 2008 (Act 775) seek to vest the National Communications Authority with the authority to license and regulate communications activities and services in the country, including providing for the regulation of communication, the regulation of broadcasting, and the use of the electro-magnetic spectrum. The Constitution Review Commission recommended that the Constitution should empower the NMC to assume its Constitutional mandate as the primary body with responsibility for the regulation of broadcasting. The NCA may continue to exercise its mandate over the setting up of technical parameters for broadcasting frequency assignment and other electro-magnetic spectrum, affecting the telecommunications and internet industry; to ensure that broadcasting signals do not interfere with one another as well as the negotiation of international frequency clearance for broadcasting frequency assignment, as with other radio frequency assignments.

### **3.2.15 Right to Information Bill**

3.2.15.1 Article 21(1)(f) of the 1992 Constitution guarantees freedom of information for everyone in Ghana. In order to give effect to this provision and outline the parameters within which this freedom to information may be practically exercised, Government including Parliament of Ghana has been working on the Right to Information Bill for several years.

3.2.15.2 The passage of the Freedom of Information Law will afford Ghanaians the chance to know what government, public authorities and private legal persons are doing and how public resources are allocated. This will provide an enabling power to fight corruption. A Freedom to Information law will also enhance civic participation in the democratic process as the acts of government will be less shrouded in secrecy and mystery, enabling the people of Ghana to know what is happening. It will also improve the fight against waste and impunity as it enables the people to investigate acts of Government they feel concerned about.

3.2.15.3 Generally, there is concern about the delay in the passage of the Right to Information Bill into law. There appears to be no assurance of how soon this Bill would be passed into law. Pending the passage of a Right to Information law, Ghanaians should take advantage of article 21(1)(f) of the Constitution which guarantees for every citizen freedom of information as a fundamental right.

### **3.2.15.4 Recommendation**

There is the need for a sustained action with a view to ensuring that the Right to Information Bill is passed into law.

### **3.2.16 Property Rights of Spouses Bill**

3.2.16.1 Article 22 (2) of the 1992 Constitution requires that Parliament passes a law to regulate the property rights of spouses for the realisation of an important economic right – the property right of persons who have been living as husband and wife. The

bill is yet to be passed into law although the idea has been under consideration since the 1992 Constitution came into force.

3.2.16.2 As Parliament remained non responsive to its obligations under article 22 of the 1992 Constitution, the Courts took the opportunity to fill the void with progressive interpretations of the relevant provisions of the 1992 Constitution on the property rights of spouses through a number of cases. The courts have adopted the Jurisprudence of Equality Principle in the distribution of spousal property relying heavily on the maxim “equality is equity.” Some of these recent cases<sup>210</sup> on the distribution of spousal property are:

3.2.16.2.1 **Arthur v. Arthur**

3.2.16.2.1.1 This is the most recent case on spousal property rights. This is an appeal from a unanimous judgment of the Court of Appeal. The orders made by the Court after its judgment were as follows:

1. “The dissolved marriage is affirmed.
2. The Appellant is given reasonable access to the children in the U.K. and in Ghana.
3. Respondent is restrained from intermeddling with the assets of the dissolved marriage without the Appellant’s consent and approval.
4. Respondent is ordered to render accounts of the GH¢30,000 given her to buy treasury bills without (sic) 30 days hereof, failing that she shall refund the money to Appellant after the due date.”

3.2.16.2.1.2 The facts which led to the delivery of these orders and the judgment on which they were based were that the petitioner and the respondent entered into a customary marriage which was later converted into an Ordinance marriage celebrated on 24<sup>th</sup> December, 1998 at the Emmanuel Presbyterian Church in Dansoman, Accra. The couple have three children. Both parties are citizens of Ghana and France, domiciled in Ghana. The respondent was a professional footballer who practised his profession in Nigeria, Germany, France and Dubai. While the petitioner lived with the respondent in France, she served as his driver, since he could not drive. She averred that, apart from the normal household work, she drove the respondent on all his rounds throughout the day and also drove the children to school and back for the entire duration of their stay in France. It was part of her case that the respondent refused to allow her to look for work because of this driving responsibility. She further averred that it was the understanding between the parties that because the petitioner was prevented from working and by virtue of her role as a driver, any and

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<sup>210</sup> In addition to these, the following are also helpful for a historical view of the development of the law with the respect to the property rights of spouses: Abebrese v Kaah [1976] 2 GLR 46; Yeboah v. Yeboah [1974] 2 GLR 114; Anang v. Tagoe [1989] 2 GLR 8; Sykes v. Abbey [1995-1996] 1 GLR 81; Achiampong v Achiampong [1982 -1983] GLR 1017; Ribeiro v Ribeiro [1989-1990] 2 GLR 109; Christiana Quartson v Pious Pope Quartson, Civil Appeal No. J4/8/2012 decided on 31<sup>st</sup> October 2012 (Supreme Court).

all money that the respondent earned from his football career was to be for the parties jointly and any property that the parties acquired or purchased was to be owned by both parties. During the marriage, the parties constructed a matrimonial home and a storey building at Weija in Accra. The petitioner has asserted part-ownership of these properties on the basis of her housekeeping, her role as a driver, and her supervision of the construction of the buildings. The respondent resisted these claims of the petitioner and insisted that the properties at Weija were his and that he financed their acquisition through his income from his football career.

3.2.16.2.1.3 In the absence of Parliament's implementation of the principles embodied in article 22(3), the Supreme Court sought to implement them through Constitutional interpretation in *Mensah v Mensah* as captured subsequently.

3.2.16.2.1.4 In *Arthur v. Arthur*, the Supreme Court held that in the light of the decision in *Mensah v. Mensah*, it is no longer essential for a spouse to prove a contribution to the acquisition of marital property in order to equally benefit from it. It suffices for the property to have been acquired during the marriage.

3.2.16.2.2 **Gladys Mensah v. Stephen Mensah<sup>211</sup>**

3.2.16.2.2.1 This case was an appeal from the judgment of the Court of Appeal which affirmed the judgment of the High Court in a petition filed by the Petitioner/Respondent/Respondent (hereinafter Petitioner). The Petitioner averred that she and the Respondent/Appellant/Appellant (hereinafter Respondent) were married under customary law in March 1989. The marriage was later converted to one under the Ordinance in June of 1989. About a decade after marriage, the Petitioner was accusing the Respondent of acts of infidelity. According to the Petitioner, the Respondent later moved into their jointly acquired home in Adenta with his illicit lover. The parties also acquired substantial assets during the subsistence of the marriage. The Petitioner therefore prayed for a dissolution of the marriage and for the assets jointly acquired to be shared equally. The Court relied on article 22 (3) (a) & (b) to give judgment in favour of the Petitioner. It was clear to the Court that from the Constitutional provisions, the principle of having equal access to property acquired during marriage and that of equitable distribution of property upon dissolution of the marriage were espoused. The Court saw the principle in article 22 as similar to the emerging principle of "Jurisprudence of Equality".

3.2.16.2.2.2 In the view of the Court, common sense, and principles of general fundamental human rights requires that a person who is married to another, and performs various household chores for the other partner like keeping the home, washing and keeping the laundry generally clean, cooking and taking care of the partner's catering needs as well as those of visitors, raising up of the children in a congenial atmosphere and

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<sup>211</sup> Unreported judgment of Supreme Court, Suit No.J4/20/2011, delivered on 22<sup>nd</sup> February 2012.

generally supervising the home such that the other partner, has a free hand to engage in economic activities must not be discriminated against in the distribution of properties acquired during the marriage when the marriage is dissolved. This is so because, it can safely be argued that, the acquisition of the properties were facilitated by the massive assistance that the other spouse derived from the other.

- 3.2.16.2.2.3 The Court noted that, in such circumstances, it will not only be inequitable, but also unconstitutional to state that because of the principle of substantial contribution which had been the principle used to determine the distribution of marital property upon dissolution of marriage in the earlier cases decided by the law courts, then the spouse will be denied any share in marital property, when it is ascertained that he or she did not make any substantial contributions thereof. The Court believed that it was because of the inequalities in the older judicial decisions that informed the Consultative Assembly to include article 22 in the Constitution of the 4<sup>th</sup> Republic.
- 3.2.16.2.2.4 Even though it has been held that the ordinary incidents of commerce do not apply in marital relations and that the courts will not employ mathematical division to determine each spouse's share in the property, the courts currently apply the equality is equity principle. This principle is backed by Constitutional force in article 22(3) (b) of the 1992 Constitution.
- 3.2.16.2.3 **Mensah v. Mensah**<sup>212</sup>
- 3.2.16.2.3.1 In *Mensah v. Mensah*, the court applied the equality is equity principle to determine which proportions the couple's joint property would be shared. Bamford-Addo JSC held at 355 that "... the principle that property jointly acquired during marriage becomes joint property of the parties applies and such property should be shared equally on divorce; because the ordinary incidents of commerce has no application in marital relations between husband and wife who jointly acquired property during marriage."
- 3.2.16.2.3.2 It would appear from *Gladys Mensah v. Stephen Mensah*, that the court favoured equal sharing of joint property in all circumstances. However, this position has been modified and clarified subsequently in the case of *Boafo v. Boafo*.
- 3.2.16.2.4 **Boafo v. Boafo**<sup>213</sup>
- 3.2.16.2.4.1 In *Boafo v. Boafo*, the husband petitioned for divorce and the wife cross-petitioned for divorce. The marriage was dissolved. On the issue of distribution of properties, the trial judge found that the properties had been jointly acquired; that the couple had operated their finances jointly, but that the degree of financial contribution by the wife to the acquisition of the joint properties was not clear. The trial Judge then

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<sup>212</sup> [1998-1999] SCGLR 350.

<sup>213</sup> [2005-2006] SCGLR 705.

made distribution orders which were not on a half and half (equal) basis. The wife appealed to the Court of Appeal on the ground, inter alia, that the trial judge failed to distribute the property in accordance with article 22(3) (b) of the 1992 Constitution. The Court of Appeal held that the properties should have been distributed equally on a half and half basis and allowed the appeal. The husband appealed to the Supreme Court. In delivering the judgment of the court dismissing the appeal, Dr. Date-Bah JSC referred to the decision in *Mensah v. Mensah* and further explained the position of the court that:

“On the facts of *Mensah v. Mensah*, the Supreme Court (per Bamford-Addo JSC) held that equal sharing was what would amount to a “just and equitable” sharing. The view of Denning LJ (as he then was), in *Rimmer v. Rimmer* [1952] 1 QB 63 at 73 that on the facts of that case equality is equity seems to have inspired the learned Supreme Court Judge’s approach. ... Denning LJ’s view was that where it is clear that the matrimonial home or furniture of common use belongs to one or the other of the married couple, then the courts would respect the proprietary rights of the particular spouse. But where it is not clear to whom the beneficial interest belongs or in what proportions, then the equitable maxim of equality is equity would be applied. The spirit of Bamford-Addo JSC’s judgment in *Mensah v. Mensah* appears to be that the principle of the equitable sharing of joint property would ordinarily entail applying the equitable principle, unless one spouse can prove separate proprietorship or agreement or a different proportion of ownership. This interpretation of *Mensah v. Mensah* as laying down the principle of equitable sharing of joint property, accords with my perception of the contemporary social mores ...”

- 3.2.16.2.4.2 The learned judge also underscored the essence of section 20(1) of the Matrimonial Causes Act, 1971 Act 367 and article 22(3) (b). He said of article 22(3) (b):

“... Thus article 22 firmly places within the domain of social human rights the distribution of the property of spouses, on divorce... It was meant to right the imbalance that women have historically suffered in the distribution of assets jointly acquired during marriage. An equal division will often, though not invariably, be a solution to this imbalance.”

Then at 714, he said of section 20(1) of Act 367: “The question of what is “equitable”, in essence, what is just, reasonable and accords with common sense and fair play, is a pure question of fact, dependent purely on the particular circumstances of each case. The proportions are, therefore, fixed in accordance with the equities of any given case.”

- 3.2.16.2.4.3 These developments of the law must inform provisions of the bill intended to amend the Intestate Succession Law in Ghana. With these developments, there does not appear to be the need for two separate laws dealing with the property rights of spouses, thus, the Property Rights of Spouses bill and the Intestate Succession Law

amendment bill. The Intestate Succession Law amendment bill can form part of the Property Rights of Spouses Bill as the same principles enunciated by the Supreme Court must underlie the provisions in both bills, with one taking effect in the case of termination by divorce and the other through death. The mode of termination of the marriage should not lead to the promulgation of two different of legislation on a subject matter almost identical.

#### 3.2.16.2.5 **Current Position of the law on distribution of property**

3.2.16.2.5.1 The decision in *Boafo v. Boafo* affirmed the equality is equity principle as relied upon in *Mensah v. Mensah*. It also gave further meaning to section 20(1) of Act 367 and article 22(3)(b) of the 1992 Constitution. Consequently, the issue of proportions are to be fixed in accordance with the equities of each case. The court duly recognized the fact that an equal (half and half) distribution, though usually a suitable solution to correct imbalances in property rights against women, may not necessarily lead to a just and equitable distribution as the Constitution and Act 367 envisage. The court made room for some flexibility in the application of the equality is equity principle by favouring a case-by-case approach as opposed to a wholesale application of the principle. This principle must be at the heart of the new legislation on the Property Rights of Spouses and Intestate Succession in Ghana.

3.2.16.2.5.2 It must be noted that the paramount goal of the court would be to achieve equality. Thus, the court endorsed the Court of Appeal's position to the effect that an inability or difficulty to identify clearly distinct contributions in the acquisition of the joint property would not in itself preclude a half and half sharing.

3.2.16.2.5.3 It is therefore apparent that the Ghanaian Courts have accepted this equality is equity principle in the sharing of marital properties upon divorce. *Mensah v. Mensah* brought to an end the substantial contribution principle, making way for the equitable distribution as provided for under article 22 (3) of the Constitution 1992. In coming to its conclusion, the Supreme Court was not unaware of complications that may arise in the application of the principle of equality in the context of polygynous marriages but expects that those complications can be tackled on a case by case basis in subsequent case law development, or by direct statutory intervention by the Legislature.

#### 3.2.16.3 **Recommendation**

The current Bill on the Property rights of spouses and the Intestate Succession Bill must be assessed against the backdrop of the developments in the Supreme Court regarding the property rights of spouses with a view to improving the Bill with the law as expressed by the Supreme Court.

### 3.2.17 **The High Court Civil Procedure Rules (C.I. 47)**

3.2.17.1

Under the 1992 Constitution, the High Court is charged with enforcement of fundamental human rights and freedoms. A dissatisfied party has the right of appeal to the Court of Appeal and further to the Supreme Court. Article 33(4) of the 1992 Constitution requires the Rules of Court Committee to promulgate legislation to regulate the procedure by which human rights cases may be handled. It was not until 2004 that the rules of procedure for human rights adjudication at the High Court were developed.<sup>214</sup> Prior to that, any attempts to enforce some of the provisions in Chapter 5 of the 1992 Constitution would have to be done through the normal time consuming and highly technical processes of the Superior Courts. In *Edusei v. Attorney General*,<sup>215</sup> the Supreme Court noted that for over three years after the coming into force of the Constitution, the Rules of Court Committee did not comply with the provisions of article 33(4) of the Constitution. The High Court then even though it had been vested with jurisdiction, did not have a method by which the court could be approached on human rights matters. The Court noted that the policy reason behind the Constitutional provision that the Rules of Court Committee should make rules with respect to the practice and procedure of the Superior Courts, is to prevent human rights cases being bogged down with the notoriously unnecessary adjournments and delay procedures, now encountered in the Superior Courts which would defeat the purpose of Chapter 5 of the Constitution.<sup>216</sup>

3.2.17.2

There were challenges with the mode of invoking the jurisdiction of the courts since the Rules of Court Committee did not prescribe the procedure for redress of human rights actions. In *Awuni v. WAEC*,<sup>217</sup> for instance, an action brought by students invoking article 23 of the Constitution went through the full tedium of the normal civil procedure and took not less than 3 years to be resolved. Therefore, the enactment of Order 67 of CI 47 in 2004 to regulate the procedure for Human Rights adjudication was an important step forward for the human rights community in contributing towards building the human rights culture of Ghana.

3.2.17.3

The Human Rights Rules of Procedure provide for an expedited mode of invoking the jurisdiction of the High Court. The High Court's jurisdiction is invoked through an application as opposed to the issuance of a writ of summons. Order 67 rules 2 and 3 require that the application is served on the Respondent and the Attorney General who shall file their affidavit in opposition if, any, within 21 days. There is no provision in the Rules on interlocutory matters or orders. Neither do the rules provide for an expedited appeal from the decision of the High Court. It is unclear why the A-G should necessarily be served notice of all human rights applications even if the application does not have anything to do with the State although it may

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<sup>214</sup> The High Court (Civil Procedure) Rules, 2004. These Rules became effective from 3<sup>rd</sup> January 2005.

<sup>215</sup> [1996-97] SCGLR 1.

<sup>216</sup> [1996-97] SCGLR 1 at 19.

<sup>217</sup> [2003-2004] 1 SCGLR 471.

be argued that the Attorney General as the Minister of State of Justice should always be informed of the pendency of any human rights case. Order 67 creates room for interference and delays in human rights applications, particularly as the Attorney General has been given 21 days within which to respond to an application if the Attorney General so desires.

### **3.2.18 CHRAJ Rules of Procedure (C.I. 67)**

3.2.18.1 The CHRAJ Act, 1993 (Act 456) establishes CHRAJ to investigate complaints of violations of fundamental human rights and freedoms, injustice and corruption, abuse of power and unfair treatment of persons by public officers in the exercise of their duties, with power to provide remedy in respect of such acts or omissions.

3.2.18.2 CHRAJ is empowered by both the Constitution and Act 456 to make, by Constitutional instrument, regulations regarding the manner and procedure for bringing complaints before it and the investigation of the complaints.<sup>218</sup> In exercise of its powers, CHRAJ made the CHRAJ (Complaint Procedure) Regulations, 1994 (C.I. 7) to regulate the procedure for investigating complaints. However, following the decision in the “Anane Case” and other challenges to the Commission’s procedure for investigation of complaints, C.I. 7 was revoked and a new investigations procedure regulations, the Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (C.I. 67) came into force.

3.2.18.3 Section 12 of Act 456 and C.I. 67, which deal with the procedure for lodging a complaint with the Commission, provide that a complaint may be made in writing or orally to the national offices of the CHRAJ or to a representative of CHRAJ in the region or district branches. It is further provided under section 12(3) of Act 456 that where the complaint is made orally, the person to whom it is made shall reduce same into writing and he or she shall append his or her signature and the signature or thumbprint of the complainant thereto.

3.2.18.4 If after an investigation, CHRAJ is of the view that the decision, recommendation, act or omission that was the subject of the investigation, amounts to a breach of the provision(s) of Act 456, CHRAJ shall report its decision and the reasons for it to the appropriate person, Minister, department or authority concerned and shall make such recommendations as it thinks fit and submit a copy of its report and recommendations to the complainant.<sup>219</sup>

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<sup>218</sup> Article 230 of the Constitution and Section 26 of Act 456.

<sup>219</sup> Article 229, 1992 Constitution and Section 18(1) of Act 456.



- 3.2.18.5 If within three months after the report is made no action is taken, the Commissioner, may bring an action before a court and seek such remedy as may be appropriate for the enforcement of the recommendations of CHRAJ.<sup>220</sup>
- 3.2.18.6 CHRAJ has no direct powers of enforcement of its decisions following an investigation. It is mandated to bring an action before any court in Ghana and seek any remedy which may be available from that court.<sup>221</sup> As in the case of the procedure for the enforcement of fundamental human rights and freedoms in the 1992 Constitution, until the coming into force of CI 47, the procedure by which CHRAJ was to bring the action for the enforcement of its recommendations generated much legal debate. The debate generally centred around two questions: by what method or procedure is the Commission to bring the action to seek enforcement of its recommendations? Then, when the matter comes before the court, is the court to simply order the enforcement of the recommendations or will it be entitled to review the findings and recommendations?
- 3.2.18.7 Neither the Constitution nor Act 456 lays down any specific method by which the Commission may seek enforcement of its recommendations. In *Ghana Commercial Bank v CHRAJ*,<sup>222</sup> CHRAJ took the action by originating summons or notice of motion supported by an affidavit. One of the issues raised for determination by the court related to the procedure by which the CHRAJ sought to enforce its recommendation. The Supreme Court relied on *People's Popular Party v Attorney-General*<sup>223</sup> case to hold that when a statute provides for an application to court without specifying the form in which it is to be made and the normal rules of court do not expressly provide for any special procedure, such an application may be made by an originating motion. Hence the use of originating summons or notice of motion by the CHRAJ could not be faulted.

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<sup>220</sup> Article 218(a) (iii) and (iv), and section 18(2) of Act 456.

<sup>221</sup> *Id.*

<sup>222</sup> [2003-2004] SCGLR 91.

<sup>223</sup> [1971] 1 GLR 138.

## CHAPTER FOUR

### GHANA'S OBLIGATIONS UNDER INTERNATIONAL LEGAL FRAMEWORK FOR HUMAN RIGHTS REALISATION

#### 4.1 INTRODUCTION

- 4.1.1 Inherent to membership of the international communities such as the United Nations or regional groupings such as the African Union or sub regional comity of nations such as the Economic Community of West African States (ECOWAS) is the recognition that the State has a central role in *respecting, protecting and fulfilling* human rights.
- 4.1.2 The State has the principal duty to put in place the necessary institutions and mechanisms to make human rights a reality. It has a responsibility not only to ensure that its agents, whether they are the police, the army or civil administration, abide by internationally recognised standards, but also to ensure that others such as private companies, religious or ethnic groups or individuals, do not infringe on the human rights of any person or community of persons.
- 4.1.3 It is in the light of this that the State is enjoined in article 37(1) of the 1992 Constitution "... to secure and protect a social order founded on the ideals and principles of freedom, equality, justice, probity and accountability as enshrined in Chapter 5 of this Constitution; and in particular, the State shall direct its policy towards ensuring that every citizen has equality of rights, obligations and opportunities before the law." In the performance of its obligations under article 37 (1) of the 1992 Constitution, the State is required to be guided by international human rights instruments which recognize and apply particular categories of basic human rights to development processes.<sup>224</sup> By article 40(c) of the 1992 Constitution, the Government is also required to promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means.
- 4.1.4 While the international human rights regime is structured principally around the concept of the State, which has the primary responsibility to protect human rights, norms of human rights obligations have also developed in recent times for transnational corporations and other businesses.
- 4.1.5 The international human rights obligations of Ghana impose a duty on in-country law making bodies at the national and sub-national levels to formulate policies, draft laws, and establish institutions that actively realize the human rights of individuals and communities. This is part of Ghana's obligations to the international community.
- 4.1.6 The main international framework for human rights has been developed through the United Nations (UN). From its inception in 1945, the UN has affirmed its commitment to human rights. This is apparent through the drafting of the Universal Declaration of Human Rights

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<sup>224</sup> Article 37(3), 1992 Constitution.

(UDHR), the 10 core human rights treaties and many other human rights related treaties, declarations and basic principles to guide the development of the global human rights legal framework. A Table of signature, ratification and accession is attached as Appendix 3.

#### **4.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)**

4.2.1 The UN General Assembly adopted the UDHR in 1948. It is a statement of principles on which to base a new world order that was designed to prevent the atrocities of the two world wars from being repeated. The UDHR states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.<sup>225</sup> It is the wellspring from which all international treaties and declarations on human rights have emanated. The UDHR outlines minimum standards of human rights that each State must realize for all people no matter who they are, what they do or from where they come.

4.2.2 The standards laid down in the UDHR have been refined and included in separate documents that guarantee civil and political rights, economic social and cultural rights, rights against racial discrimination, women’s rights, children’s rights, rights against torture, rights of migrant workers and more.

#### **4.3 THE NINE CORE HUMAN RIGHTS TREATIES**

4.3.1 The UDHR, the International Covenant on Civil and Political Rights with its two optional protocols,<sup>226</sup> and the International Covenant on Economic, Social and Cultural Rights form the international bill of rights. Ghana’s membership of the international community implies a duty to abide by the rights guaranteed in the international bill of rights.

4.3.2 The rights outlined in the International Bill of Rights may be limited in specific circumstances in the interest of morality, public order and the general welfare in a democratic society. However, there are certain rights that can never be suspended or limited, even in emergency situations. These non-derogable rights are: the right to life; the right to freedom from torture; the right to freedom from enslavement or servitude; the right to protection from imprisonment for debt; the right to freedom from retroactive penal laws; the right to recognition as a person before the law; the right to freedom of thought, conscience and religion.

4.3.3 At present, in addition to the UDHR, the UN has developed nine core human rights treaties. These treaties articulate not only human rights standards but also the obligations on States.

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<sup>225</sup> Preamble to the Universal Declaration of Human Rights, available at [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf) (last accessed 2<sup>nd</sup> January, 2017).

<sup>226</sup> Optional Protocol to the International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 9 and Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989.

These treaties usually provide for a committee to be set up to monitor how that treaty is being implemented. They usually require the presentation of periodic reports to the appropriate Committee set up under the Treaty. The nine core UN human rights treaties are discussed below.

- 4.3.4 The extent of Ghana's fulfillment of its reporting obligations is captured in the Table on Ghana's Reporting Obligations at the end of this Chapter.

#### **4.4 INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD)<sup>227</sup>**

- 4.4.1 This treaty came into force in 1969. It is intended to prevent any kind of discrimination and racism. It states that any doctrine of racial differentiation or superiority is false, morally condemnable, socially unjust and dangerous and cannot be justified in theory or in practice. It requires countries to condemn all forms of racial discrimination, whether based on race, color, descent, or national or ethnic origin, and to work towards eliminating racial discrimination. States must guarantee everyone's right to equality before the law, and to various political, civil, economic, social and cultural rights. The ICERD recognizes that affirmative action measures may be necessary to achieve these ends.

- 4.4.2 This committee on racial discrimination monitors how States fulfill their human rights obligations under the treaty and requires reports every two years. The Committee hears individual complaints of violations and also accepts complaints from one State about racial discrimination in another. It also has an early-warning procedure to be able to quickly respond to serious and urgent incidents.

- 4.4.3 Ghana is a State party to this Convention having ratified it on 8<sup>th</sup> September 1966. Ghana is therefore bound by the full obligations under the ICERD.

#### **4.5 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)**

- 4.5.1 This treaty was adopted by the UN General Assembly in 1966 and came into force in 1976. It guarantees civil and political rights, including the right to life, freedom from torture, the right to equality and to be treated equally under the law, the right to self-determination and the rights of minorities, the right to privacy, the right to expression, religion and association.

- 4.5.2 Civil rights are rights generally relating to or involving the general public, their activities and civic affairs in the public realm, as distinguished from special affairs in designated realms such as military or religious affairs. It describes a category of human rights that are held by individuals to enjoy freedom and equality with others within the public realm. Civil human rights are intrinsically individual and include the right to life; liberty; security of person; equality; freedom of expression, movement, association, conscience; judicial remedy among others.

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<sup>227</sup> This Convention is available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

- 4.5.3 Political rights are human rights that accord individual and groups the opportunity to choose a government through voting, to form a government through running for governmental office, forming political parties, and to influence the conduct of government and governmental policy in order to effect changes in his/her society. These include the right to vote and to otherwise take part in government, equal access to public service, freedom of assembly, expression and association among others. They are also called negative rights in that they require government to not use its powers to violate them.
- 4.5.4 The ICCPR also has two optional protocols: one relating to individual complaints (if a country agrees to this Optional Protocol, then individuals can send complaints of violation in that country to the committee) and the other relating to abolition of the death penalty.
- 4.5.5 The treaty also explains the obligations of states and provides for the Human Rights Committee to monitor how states comply with the treaty. All countries that are party to the ICCPR must report to the Human Rights Committee every five years on what they have done to promote these human rights and about the progress made. The Committee reviews these reports in public meetings, including representatives of the state whose report is being reviewed.
- 4.6 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)**
- 4.6.1 This treaty was adopted in 1966 at the same time as the ICCPR. It also came into force in 1976. The economic, social and cultural rights in this document include: the right to work with fair conditions and to form trade unions, the right to an adequate standard of living including food, clothing and housing, the right to education, and the right to marry and to participate in cultural life.
- 4.6.2 These rights emanate from the human person's need to survive and live in dignity, and to be free from want. They facilitate economic independence and security and complete the ideal of freedom and equality in the pursuit of happiness. They emanate from the logic that political and individual liberty is not sufficient because a person with physical want cannot be free.
- 4.6.3 The ICESCR does not make any explicit distinction between economic and social rights. Commentators have differed over different characterizations of the right with the view that most rights evidence both economic and social concerns. In some rights, the *economic* and work place characteristic is dominant. For example, the right to work and to favourable conditions of work such as wages necessary for a decent living or right to form and advocate through trade unions (Articles 6-8). Articles 11-14 range from rights to the highest attainable standard of physical and mental health, to the rights to education and an adequate standard of living. Article 11 defines such a standard of living to include adequate food, clothing and housing.

- 4.6.4 Rights contained in articles 11-14 have been called *social rights* – that is food, clothing, housing, education even though they have important economic consequences.
- 4.6.5 *Cultural* rights are contained in Article 15, but are dealt with in relation to the ICCPR in its provisions against discrimination, minority provisions, and specific rights such as freedom of expression, religion and association, and the right to take part in public affairs.
- 4.6.6 The Economic, Social and Cultural Rights Committee monitors the implementation of this treaty and requires countries to submit reports to the Committee every five years outlining the legislative, judicial, policy and other measures taken towards fulfilling their obligations. This Committee does not take up individual complaints, but it encourages economic, social and cultural rights to be progressively realized. However, increasing advocacy around this may lead to an Optional Protocol which would create an international complaint mechanism against violations of economic, social and cultural rights, similar to that which exists for the ICCPR.
- 4.7 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)<sup>228</sup>**
- 4.7.1 This came into force in 1981 and defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which impairs or stops the recognition, enjoyment or exercise by women of any human right or fundamental freedom”. Under the treaty, States must adopt legislation prohibiting all forms of discrimination against women, and must not act in a way that is discriminatory to women. However, CEDAW has the maximum reservations of any treaty. While there are no non-derogable rights and there is no specific article to which reservations are prohibited, incompatible reservations are not permitted.
- 4.7.2 The UN Convention on the Elimination of all Forms of Discrimination against Women of 1979 contains a framework to ensure equal rights for women and men. The Convention came into force in 1981. Ghana ratified the Optional Protocol of the Convention on 24<sup>th</sup> February, 2000. The protocol gives individuals and groups of individuals the right to complain to the UN Committee on the Elimination of Discrimination against Women in alleged cases of breaches of the Convention. The protocol also enables the Committee to investigate, on its own initiative, serious and systematic breaches of the rights stated in the Convention.
- 4.7.3 Issues of violence are not expressly dealt with in the CEDAW. The UN Committee on the Elimination of All Forms of Discrimination against Women has, however, stated that the general ban against gender-based discrimination should also be considered to include

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<sup>228</sup> This Convention is available at <http://www.un.org/womenwatch/daw/cedaw/>

gender-based violence.<sup>229</sup> The ban includes violent acts on the part of both private persons and persons in public service. In December 1993 the UN General Assembly adopted a special declaration on the elimination of violence against women. The declaration states that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms. The state has a general, far-reaching responsibility to prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by the state or by private persons. The state should also protect and support the victims of such violence.<sup>230</sup>

4.7.4 The Committee on the Elimination of Discrimination against Women is the monitoring body for this treaty. All countries must submit reports to this committee every four years. The Committee can make suggestions and general recommendations on the implementation of the Convention; but cannot pronounce a State to be a violator of the Convention and as such does not pressure individual States to change their policies and legislation. An Optional Protocol came into force in 2000, which means that the Committee can now investigate individual cases as long as they relate to a country that has agreed to the Optional Protocol.

#### **4.8 CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)**

4.8.1 This treaty came into force in 1987. It describes torture as “any act which causes severe pain (physical or mental) to a person as a way of obtaining information or a confession, or to punish him/her for an act he/she or a third person has or is suspected of having committed”.

4.8.2 Torture could be aimed at intimidating the victim or a third party and is committed with the consent of a public official, but does not include suffering that comes about as a result of legal penalty. States that are party to the Convention are required to take action to prevent torture in their territory. It is worthy of note that exceptional or emergency circumstances such as war or an order from a superior officer cannot be used to justify torture.

4.8.3 The Committee Against Torture reviews States' reports, which are submitted every four years. It considers individual complaints, as well as complaints from one State about another. An Optional Protocol to the Convention allows on-site visits to places of detention in countries that have agreed to the Optional Protocol.

4.8.4 Ghana signed and ratified this Convention on the 7<sup>th</sup> of September 2000.<sup>231</sup>

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<sup>229</sup> General recommendations made by the Committee on the Elimination of Discrimination against Women (specifically General Recommendation No. 19 (11th session, 1992) and General Comment 6) available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

<sup>230</sup> Summary of the Swedish Government Communication (2005/06:95), A National Action Plan for Human Rights 2006–2009 at 52.

<sup>231</sup> The status of ratification of this treaty can be accessed at [https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg\\_no=iv-9&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-9&chapter=4&lang=en)



#### **4.9 CONVENTION ON THE RIGHTS OF THE CHILD (CRC)**

- 4.9.1 This treaty came into force in 1990 and has more ratifications than any other convention as all but two members of the UN (USA and Somalia) have ratified it. The four guiding principles of the treaty are: non- discrimination (no child should suffer discrimination under any circumstances); best interest of the child (in any decision by State authorities that affects a child, the best interest of the child must be the first consideration); right to life, survival and development (this includes the child's positive mental, emotional, cognitive, social and cultural development; and the views of the child (the views of the child on all matters affecting them should be considered, taking into account the age and maturity of the child). The CRC has two Optional Protocols: one on preventing the involvement of children in armed conflict; and one on the sale of children, child prostitution and child pornography.
- 4.9.2 States must submit reports every five years to the Committee on the Rights of the Child on steps taken to put the Convention into practice and details of progress in their territories. The Committee operates under the guideline of the four principles laid down by the Convention and does not accept individual cases.

#### **4.10 INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (ICMW)**

- 4.10.1 The ICMW came into force in 2003. It aims to prevent and end the exploitation of migrant workers (which includes both documented and undocumented migrants) throughout the entire migration process.
- 4.10.2 The ICMW lays out the obligations and responsibilities of both sending and receiving States. In particular, it seeks to put an end to illegal or clandestine recruitment and trafficking of migrant workers and discourages the employment of migrant workers in an irregular or undocumented situation.
- 4.10.3 The Committee on Migrant Workers monitors this treaty and requires reports from States every five years, and will, in certain circumstances, consider communications from individuals claiming that their rights under the Convention have been violated.
- 4.10.4 Ghana ratified this Convention on the 7<sup>th</sup> day of September 2000.<sup>232</sup>

#### **4.11 OTHER INSTRUMENTS**

- 4.11.1 In addition to the International Bill of Rights and the core human rights treaties, the UN has stressed greater protection of human rights through conventions and declarations on specific issues. The UN also has prescribed standard basic minimum rules and principles to guide States in dealing with particular situations. Some of them are listed below.

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<sup>232</sup> The status of ratification of this treaty may be accessed at [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-13&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-13&chapter=4&lang=en)



- 4.11.2 The universal system of human rights standards can be viewed as a four-tier normative structure in the order of their chronological appearance and development processes:
- 4.11.3 The UN charter is at the top of the human rights system. The few references it has made to human rights have been accorded great significance and provide the basis for the development of the rest of the body of human rights.

#### **4.12 ILO INSTRUMENTS**

- 4.12.1 Ghana joined the International Labour Organisation in 1957 and ratified many of the ILO Conventions including the ‘core’ Conventions that guarantee workers the right and freedom to form or join unions (Convention No. 87), the right to collective bargaining (Convention No. 98), abolition of forced labour (Conventions Nos. 29 and 105), and equal treatment (Conventions Nos. 100 and 111). The details of ratification are contained in Appendix 3 to this Report.
- 4.12.2 Many other ILO Conventions that seek to promote industrial harmony and the welfare of workers were also ratified. These included Conventions on hours of work in industry, weekly rest, minimum wage fixing, labour inspection, underground work by women, employment service, night work by women, social policy, working environment, child labour, labour administration, and many others. The details of ratification are contained in Appendix 3 to this Report.

#### **4.13 OTHER SIGNIFICANT CONVENTIONS**

- 4.13.1 Other conventions which are important to the human rights community because of the issues dealt with include the Indigenous and Tribal Peoples Convention, 1989 (No. 169); Worst Forms of Child Labour Convention, 1999 (No. 182); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; Convention on the Prevention and Punishment of the Crime of Genocide and Convention relating to the Status of Refugees. The details of ratification are contained in Appendix 3 to this Report.

#### **4.14 SIGNIFICANT DECLARATIONS**

- 4.14.1 Declarations form part of the non-binding sources of international human rights law. Some relevant international human rights law declarations are:
1. Declaration on the Rights of Mentally Retarded People;
  2. Declaration on the Rights of Disabled Persons;
  3. Universal Declaration on the Eradication of Hunger and Malnutrition;
  4. Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind;
  5. Declaration of Commitment on HIV/AIDS;
  6. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; and
  7. Declaration on the Human Rights of individuals who are not nationals of the Country in which they live.

#### 4.15 SIGNIFICANT BASIC PRINCIPLES AND RULES

4.15.1 Basic principles and rules provide guidance on acceptable behaviour relative to international human rights law. They form part of the soft sources of law for the UN. These include:

1. Code of Conduct for Law Enforcement Officials;
2. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
3. Standard Minimum Rules for the Treatment of Prisoners;
4. Basic Principles for the Treatment of Prisoners;
5. Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
6. Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
7. Safeguards guaranteeing protection of the rights of those facing the death penalty;
8. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;
9. Basic Principles on the Independence of the Judiciary;
10. Basic Principles on the Role of Lawyers;
11. Guidelines on the Role of Prosecutors;
12. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;
13. Declaration on the Protection of All Persons from Enforced Disappearance; and
14. Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.

#### 4.16 HUMANITARIAN LAW

4.16.1 In addition to human rights law, there is a body of humanitarian law commonly known as the **Geneva Conventions** that prescribe the conduct of a country in times of war. These are:

1. Geneva Convention relative to the Treatment of Prisoners of War;
2. Geneva Convention relative to the Protection of Civilian Persons in Time of War;
3. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I);
4. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non- International Armed Conflicts (Protocol II).

#### 4.17 AFRICAN UNION INSTRUMENTS

Some of the African Union Instruments of importance to human rights are:

1. Protocol to the Constitutive Act of the African Union relating to the Pan African Parliament (Revised Protocol);
2. OAU Convention Governing the Specific Aspects of Refugees Problems in Africa;
3. African Charter on Human and People's Rights;

4. Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights;
5. Special Declaration provided in Article 34 (6) of the Protocol on the Establishment of the African Court, allowing individuals and NGOs to seize the Court;
6. African Union Convention on Prevention and Combating Corruption;
7. African Charter on Democracy, Elections and Governance (ACDEG);
8. The Protocol to the African Charter on Human Rights and People's Rights on the Rights of Women in Africa (the Maputo Protocol);
9. African Charter on the Rights and Welfare of the Child;
10. African Charter on the Values and Principles of Public Service and Administration;
11. African Union Convention for the Protection and Assistance of the Internally Displaced Persons in Africa;
12. African Unions Convention on Cyber Security and Personal Data Protection; and
13. African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development (no ratifications, not in force).

Ghana has ratified:

1. OAU Convention Governing the Specific Aspects of Refugees Problems in Africa;
2. African Charter on Human and People's Rights;
3. Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights;
4. African Union Convention on Prevention and Combating Corruption;
5. African Charter on Democracy, Elections and Governance (ACDEG);
6. The Protocol to the African Charter on Human Rights and People's Rights on the Rights of Women in Africa (the Maputo Protocol);
7. African Charter on the Rights and Welfare of the Child.

Ghana has also made the Special Declaration provided required by article 34 (6) of the Protocol on the Establishment of the African Court, allowing individuals and NGOs to access to the Court.

Ghana is yet to ratify

1. Protocol to the Constitutive Act of the African Union relating to the Pan African Parliament (Revised Protocol);
2. African Charter on the Values and Principles of Public Service and Administration;
3. African Union Convention for the Protection and Assistance of the Internally Displaced Persons in Africa;
4. African Unions Convention on Cyber Security and Personal Data Protection; and
5. African Charter on the Values and Principles of Decentralization, Local Governance and Local Development.

#### 4.18 GHANA'S COMPLIANCE WITH REPORTING OBLIGATIONS FOR THE NINE CORE UN, AND AFRICAN UNION<sup>233</sup>

Ghana is committed to the nine key human rights treaties. However, Ghana needs to also observe the other human rights treaties and instruments to which it is a signatory, as well as the international law of human rights in general. The decisions of UN treaty bodies are authoritative statements on the obligations under the treaties that Ghana has signed. African Union Instruments also provide opportunities for the realization of human rights in Ghana.

The table below shows how Ghana has performed in the discharge of its reporting obligations under the international and some selected regional instruments listed above.

TABLE OF GHANA'S REPORTING OBLIGATIONS						
No	Treaty	Type of report	Date report due	Date report submitted	Comments / Recommendations	List of issues for Ghana to deal with/concluding observations
<b>The nine core UN treaties</b>						
1.	Convention against torture and other cruel, inhumane or degrading treatment or punishment (CAT)	Initial	07/10/2001	26/11/2009	Report was submitted 8 years late	List of issues for Ghana to address sent prior to the presentation of Ghana second periodic report may be found at <a href="https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/001/60/PDF/G1600160.pdf?OpenElement">https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/001/60/PDF/G1600160.pdf?OpenElement</a>
		2 <sup>nd</sup> round	03/06/2015	Not yet submitted	Report is about 2 years overdue	
2.	International Covenant on Civil and Political Rights (ICCPR)	Initial	08/02/2001	17/11/2014	This report was submitted more than 13 years late.  Concluding observations, published on 8 <sup>th</sup> August 2016 from the consideration of Ghana's initial report is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGHA%2fCO%2f1&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGHA%2fCO%2f1&amp;Lang=en</a>	List of issues for Ghana to respond to after the consideration of the initial report is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGHA%2fQ%2f1&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGHA%2fQ%2f1&amp;Lang=en</a> . A response to the list of issues submitted by Ghana on 10 <sup>th</sup> June 2016 is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fRLI%2fGHA%2f24274&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fRLI%2fGHA%2f24274&amp;Lang=en</a>
3.	International Convention on the Elimination of all forms of discrimination against women (CEDAW)	Initial	01/02/1987	29/01/1991	The initial report was submitted 4 years late.	The Concluding observations after the consideration of the initial and 2 <sup>nd</sup> periodic reports are available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f47%2f38(SUPP)&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f47%2f38(SUPP)&amp;Lang=en</a>
		2 <sup>nd</sup>	01/02/1991	29/01/1991	The 2 <sup>nd</sup> periodic report was submitted timely but combined with the initial report	
		3 <sup>rd</sup>	01/02/1995	23/02/2005	The 3 <sup>rd</sup> to 5 <sup>th</sup> periodic reports were combined and submitted more than 2	The concluding observations published on 28 <sup>th</sup> August 2006 is available at
		4 <sup>th</sup>	01/02/1999	23/02/2005		
		5 <sup>th</sup>	01/02/2003	23/02/2005		

<sup>233</sup> Relevant information on Ghana's efforts to comply with these treaties may be found at <http://www.bayefsky.com/about.php>. These are mainly reports due from 1992 and the concluding observations thereon and also on <http://www.unhchr.ch/tbs/doc.nsf/NewhvVAllSPRByCountry?OpenView&Start=1&Count=250&Expand=67.4#67.4>.

					years after the 5 <sup>th</sup> report was due.	<a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGHA%2fCO%2f5&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGHA%2fCO%2f5&amp;Lang=en</a>
		6 <sup>th</sup> & 7 <sup>th</sup>	01/02/2011	11/06/2012	The 6 <sup>th</sup> and 7 <sup>th</sup> combined reports were submitted about a year and half late.	The concluding observations published on 14 <sup>th</sup> November 2014 is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGHA%2fCO%2f6-7&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGHA%2fCO%2f6-7&amp;Lang=en</a>
		8 <sup>th</sup>	1/11/2018	Not yet due	NHRAP should monitor the timely submission of this impending report.	Not yet due
4.	International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	Initial	04/01/1970	27/04/1970	This report was submitted a few months late.	This report and the concluding observations do not appear to be publicly available.
		2 <sup>nd</sup> & 3 <sup>rd</sup>	04/01/1972	18/03/1974	This was submitted more than 2 years late.	This report and the concluding observations do not appear to be publicly available.
		4 <sup>th</sup> & 5 <sup>th</sup>	04/01/1976	20/03/1978	This was submitted more than 2 years late.	This report and the concluding observations do not appear to be publicly available.
		6 <sup>th</sup> & 7 <sup>th</sup>	04/01/1980	08/07/1982	This was submitted more than 2 and a half years late.	This report and the concluding observations do not appear to be publicly available.
		8 <sup>th</sup>	04/01/1984	16/05/1985	This report was submitted almost a year and half late.	The concluding observations published on 1 <sup>st</sup> January, 1987 is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f42%2f18&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f42%2f18&amp;Lang=en</a>
		9 <sup>th</sup>	04/01/1986	17/07/1986	This report was submitted about 6 months late.	The concluding observations published on 12 <sup>th</sup> August 1988 is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f43%2f18&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f43%2f18&amp;Lang=en</a>
		10 <sup>th</sup> & 11 <sup>th</sup>	04/01/1988	12/06/1991	This report was submitted about 3 years and 6 months late.	This report and the concluding observations do not appear to be publicly available.
		12 <sup>th</sup> , 13 <sup>th</sup> , 14 <sup>th</sup> & 15 <sup>th</sup>	04/01/1992	22/06/1998	This report was submitted about 6 years late.	The concluding observations published on 1 <sup>st</sup> May 2001 is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2f304%2fAdd.90&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2f304%2fAdd.90&amp;Lang=en</a>
		16 <sup>th</sup> & 17 <sup>th</sup>	04/01/2000	05/06/2002	This report was submitted about 2 years and 6 months late.	The concluding observations published on 2 <sup>nd</sup> June 2003 is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2f62%2fCO%2f4&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2f62%2fCO%2f4&amp;Lang=en</a>
		18 <sup>th</sup> &	04/01/2006	Pending	This report is more than	Not yet available.

		19 <sup>th</sup>			11 years late.	
5.	International Covenant on Economic, Social and Cultural Rights (CESCR)	Initial	30/06/2003	Pending	This report is almost 14 years late.	
		2 <sup>nd</sup>	30/06/2008	Pending	This report is more than 8 years late.	
6.	International Convention on the rights of Migrant Workers and Members of their families (CMW)	Initial	01/07/2004	31/08/2014		The concluding observations published on 25 <sup>th</sup> September 2014 is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2f62%2fCO%2f4&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2f62%2fCO%2f4&amp;Lang=en</a>
		2 <sup>nd</sup>	05/09/2019	Not yet due	NHRAP should monitor the timely submission of this impending report.	Not yet available.
7.	Convention on the Right of the Child (CRC)	Initial	01/09/1992	20/11/1995	This report was submitted more than 3 years late.	The concluding observations published on 18 <sup>th</sup> June 1997 is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.73&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.73&amp;Lang=en</a>
		2 <sup>nd</sup>	01/09/1997	19/03/2004	This report was submitted more than 6 years late.	The concluding observations published on 17 <sup>th</sup> March 2006 is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGHA%2fCO%2f2&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGHA%2fCO%2f2&amp;Lang=en</a>
		3 <sup>rd</sup> , 4 <sup>th</sup> & 5 <sup>th</sup>	01/03/2011	24/05/2012	This report was submitted a year and two months late.	The concluding observations published 10 <sup>th</sup> June 2015 is available at <a href="http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fCO%2fGHA%2f20799&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fCO%2fGHA%2f20799&amp;Lang=en</a>
		6 <sup>th</sup>	01/09/2020	Not yet due	NHRAP should monitor the timely submission of this impending report.	Not yet available.
8.	Convention on the Rights of Persons with Disability (CRPD)	Initial	31/07/2014	Overdue	Almost 3 years overdue. NHRAP should develop a mechanism to work with the Ministry of Justice and the Attorney General's Department for the submission of this Report.	Not yet available.
9.	Convention for the protection of all persons from Enforced disappearance (CED)	Ghana signed on 6 <sup>th</sup> February, 2007. However, the Convention is yet to come into force.				Not yet available.
African Union Human Rights treaties						
No	Treaty	Type of report	Date report due	Date report submitted	Comments/Recommendations	List of issues for Ghana to deal with/concluding observations
10.	African Charter on Human and People's Rights (ACHPR)	Initial	21/10/1988	29/09/1992	These Reports are due every 2 years from 21 <sup>st</sup> October, 1986, the date the Charter entered into force.	The concluding observations are not publicly available.
		2 <sup>nd</sup> periodic	21/10/1990	01/09/1998		

11.	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women's in Africa (the Maputo Protocol)				The Protocol entered into force on 25 <sup>th</sup> November 2005. By virtue of article 26 of the Maputo Protocol, States Parties must include in their Initial and Periodic reports submitted under article 62 of the African Charter, legislative and other measures towards the realization of the rights contained in the Maputo Protocol.	
12.	African Charter on the Rights and Welfare of the Child (ACRWC)	Initial	15/07/2007	September 2014	Entered into force on 29th November 1999.	The concluding observations on initial report published in December 2016 is available at <a href="http://www.acerwc.org/download/concluding-observations-ghana/?wpdmdl=9997">http://www.acerwc.org/download/concluding-observations-ghana/?wpdmdl=9997</a>
		Periodic	15/07/2010		Initial report is due within 2 years after entry into force of the Charter and thereafter every 3 years.	
		Periodic	15/07/2013		This initial report was prepared to cover the periods 2005 to 2013	
13.	OAU Convention Governing the Specific Aspects of Refugees Problems in Africa	The reports on the condition of refugees, the implementation of the Convention and the laws, regulations in force in relation to refugees are to be furnished the appropriate AU authority when requested.			20 <sup>th</sup> June 1974	Not applicable

## CHAPTER FIVE

# INSTITUTIONAL FRAMEWORK FOR HUMAN RIGHTS REALISATION IN GHANA

## 5.1 INTRODUCTION

### 5.1.1 Article 12(1) of the 1992 Constitution states that:

“The fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution.”

### 5.1.2 Article 12 (1) provides the broad framework within which state institutions, corporate institutions, loose groups and individuals must work for the realisation of human rights in Ghana. This provision places the primary responsibility on state institutions to enforce the rights of people in Ghana and redress any violations. This duty is carried out primarily through the courts and CHRAJ, an independent body to protect rights in Ghana.

### 5.1.3 Article 33 (1) of the 1992 Constitution makes provision for the forum where applications for human rights redress may be made. Where a person alleges that his or her rights under the Constitution have been violated or is about to be violated, that person may apply to the High Court for redress. As discussed above, Order 67 of CI 45 provides the procedure for invoking the jurisdiction of the High Court in human rights matters.

## 5.2 THE JUDICIAL SYSTEM: THE COURTS AND THE JUDICIAL SERVICE

### 5.2.1 The 1992 Constitution imposes a duty on the judicial system to provide the necessary mechanisms to deliver and assure justice. The elaboration of fundamental human rights and Directive Principles of State Policy (DPSP) and the Constitutional role of the courts to protect these further show the commitment of the framers of the 1992 Constitution to making the judicial system an effective organ of State in which people can place their trust and hope for justice.

### 5.2.2 A specialized Human Rights division of the High Court was created to focus mainly on the adjudication of Human Rights cases. There are many concerns regarding the Courts as an avenue for seeking justice as a right. These concerns include:

#### 5.2.2.1 Delays in the delivery of Justice

##### 5.2.2.1.1 Article 19 of the 1992 Constitution guarantees fair trial of both civil and criminal cases.<sup>234</sup> The right to a fair trial, as guaranteed in article 19 of the 1992 Constitution, encourages

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<sup>234</sup> Article 19(1) of the Constitution, for example, states that a person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court. This is an entrenched provision of the Constitution.



expeditious delivery of justice in the society so as to safeguard the innocent from an unduly long interaction with the justice system in addition to affording an accused person reasonable facilities for the preparation of his or her defence.

- 5.2.2.1.2 The Courts Act, 1993 (Act 459) also encourages the disposal of cases within reasonable periods through recourse to Alternative Dispute Resolution (ADR) mechanisms. Section 73 of Act 459 extends this to criminal cases and provides that a court with criminal jurisdiction may promote reconciliation, encourage and facilitate a settlement in an amicable manner of an offence not amounting to felony and not aggravated in degree. This may happen on payment of compensation or on any other terms approved by the court.
- 5.2.2.1.3 Article 19 of the 1993 Constitution and section 73 of the Courts Act guarantee the right to a trial within a reasonable time in both criminal and civil proceedings. The Constitution is thus, not only concerned in the criminal being appropriately punished and the innocent being absolved from criminal blameworthiness but seeks equally to ensure that civil wrongs receive quick and effective redress.
- 5.2.2.1.4 The concerns of delays in the administration of justice attracted the attention of the Constitution Review Commission in 2011. The Commission observed in its Report that domestic and international human rights instruments recognize the fundamental right of everyone to due process of law. This includes the right to a quick, fair and a public hearing by a competent and impartial tribunal established by law. The Commission further observed that the global trend is to allow courts to determine how long a case may stay undecided. In this regard, the courts have the power to determine if the accused person's right to a trial within a reasonable time has been violated. In most of these jurisdictions, the courts, though favouring a case by case approach, have identified and set some benchmarks as guides for arriving at such conclusions.<sup>235</sup>
- 5.2.2.1.5 The Commission further observed that the National ADR Programme of the Judicial Service was put in place in 2001 by the Office of the Chief Justice following recommendations tendered by an ADR Task Force set up to determine an appropriate and customized policy direction that incorporates ADR in the court adjudication process. It must equally be noted that following the recommendations of the Task Force, the Chief Justice issued a policy directive adopting and incorporating ADR as part of the adjudication process of the Judicial Service of Ghana and as an available option for parties in dispute.

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<sup>235</sup> For more information on the various approaches to solving the problem of delay in the adjudication of cases by other countries such as the United States, Canada and Nigeria and international bodies like the European Court of Human Rights, see Report of the Constitution Review Commission, *supra* note 10 at page 203 – 204.

5.2.2.1.6 The Commission equally observed that in 2009, the Judicial Service unveiled its intentions to extend the implementation of the ADR Programme to all courts in Ghana. In pursuit of this vision, a new policy directive outlined in June 2009, established a separate ADR Directorate to coordinate all ADR activities within the Judicial Service.

5.2.2.1.7 The Commission observed that with the passage of the ADR Act, 2010 (Act 798), ADR has been provided the needed impetus for making it attractive to parties to disputes in court. The success of the implementation of the provisions of the Act would, in the Commission's view, depend on the development of human capacity in the form of qualified arbitrators and mediators as well as the development of a new set of procedural rules.

#### **5.2.2.1.8 Recommendation**

It will be appropriate NHRAP to consistently monitor progress in the administration of justice as a result of the introduction of ADR into justice delivery in Ghana.

#### **5.2.2.2 Corruption in the Judiciary**

5.2.2.2.1 Public office holders are enjoined under Chapter 24 of the 1992 Constitution not to put themselves in positions where their personal interests are likely to conflict with the performance of the duties of their offices. The Constitution also provides that certain categories of public officers declare their assets before assuming office.

5.2.2.2.2 The Criminal Offences Act, 1960 (Act 29) deals with corruption. Section 240 of the Act provides that a public officer commits the crime of corruption in respect of his or her office if the public officer directly or indirectly agrees or offers to permit to be influenced by any other person. Other forms of corrupt behaviour such as bribery, extortion and embezzlement have also been criminalised by the Act. There are no special or specific legal and regulatory provisions to deal with the issue of judicial corruption.

5.2.2.2.3 Judges and judicial officers can thus be investigated for engaging in corrupt practices. Also, where the said conduct amounts to serious fraud as defined under the Economic and Organized Crime Office Act, 2010 (Act 804), the officer can be investigated and prosecuted under the Act.

5.2.2.2.4 The Judicial Service Act, 1960 (C.A.10) and the Judicial Service Regulations, 1963 contain an elaborate set of provisions on disciplinary measures to be taken where a judicial officer has been found to misconduct him or herself or to have performed unsatisfactorily. The Judicial Service Regulations prohibit persons convicted of criminal offenses involving fraud or dishonesty from being employed in pensionable positions within the Service. In addition, persons against whom adverse findings have been made by Commissions of Inquiry cannot be employed as pensionable staff of the Judicial Service.

5.2.2.2.5 The Constitution Review Commission also observed that the Judiciary Committee of Parliament, after conducting public hearings on judicial corruption in 8 regions in Ghana, concluded that judicial corruption is no longer a perception, but a reality in Ghana. The reality of corruption in the Judiciary was reinforced by undercover investigations by Tiger Eye PI led by Anas Aremeyaw Anas, an investigative journalist capturing many Judges on camera engaging in corrupt practices. This was made public by Tiger Eye PI in September 2015.

5.2.2.2.6 The Commission on Human Rights and Administrative Justice (CHRAJ), which has been vested with Constitutional jurisdiction to, among other things investigate complaints of corruption and abuse of office by public officials in the exercise of official duties. Other legal and institutional developments, such as the establishment of the Serious Fraud Office (now the Economic and Organized Crime Office) help in the fight against corruption.

### **5.2.2.3 The adjudication of electoral disputes**

5.2.2.3.1 The Commission received submissions on which court should have final appellate authority over electoral disputes, and the need for a specialised court to exclusively handle electoral disputes as a measure to expedite the disposal of such cases. In the case of presidential election disputes, the Constitution provides that the declaration of the presidential election may be challenged by a petition presented to the Supreme Court. The Constitution further stipulates that the Rules of Court Committee shall make rules to regulate the practice and procedure for petitions to the Supreme Court challenging the election of a President. The Rules of Court Committee has accordingly drafted rules defining what constitutes a petition so far as challenging presidential elections is concerned. Thus the Rules of Court Committee is in the process of revising the Rules of Court that govern such petitions and has already come out with a preliminary draft for discussion. It is expected that subsequently the revised Rules will come into force.

5.2.2.3.2 In relation to parliamentary election disputes, Article 99(1) of the Constitution confers jurisdiction on the High Court to hear and determine any question concerning whether a person has been validly elected as a Member of Parliament or the seat of a member has become vacant.

5.2.2.3.3 In terms of the appellate jurisdiction of the Supreme Court in relation to parliamentary disputes, Article 99(2) of the 1992 Constitution provides that: a person aggrieved by the determination of the High Court under this Article may appeal to the Court of Appeal. This provision is non-entrenched. Article 131(1)(a) of the 1992 Constitution also provides as follows: an appeal shall lie from the judgment of the Court of Appeal to the Supreme Court as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or Regional Tribunal in the exercise of its original jurisdiction. However, the Supreme Court has held

that there was no right of further appeal from the Court of Appeal to the Supreme Court in respect of an appeal from an election petition determined by the High Court under Article 99(1) of the 1992 Constitution. The Supreme Court, notwithstanding the general appellate jurisdiction of the Supreme Court enshrined by the Constitution, held that Article 99(2) had provided that a person aggrieved by the determination of an election petition by the High Court under Article 99(1) might appeal to the Court of Appeal. According to the Court, that provision had the effect of ensuring that such appeals were not affected by the general provision in Article 131(1) that allowed a further appeal to the Supreme Court from the judgment of the Court of Appeal.

- 5.2.2.3.4 The CRC recommends that the Constitutional provision with regard to the Court of Appeal being the final appellate court over parliamentary electoral disputes should be maintained. Accordingly, the Commission further recommended that an appropriate amendment to article 99(2) be made to clarify the state of the law and expressly recognise the principles enunciated by the Supreme Court in the Wulensi case.

#### **5.2.2.4 Human Rights knowledge in the Courts**

The Constitution places the mandate of enforcing human rights on the High Court. CSOs, on their part, have used the courts to implement and deepen the laws. The courts have the potential to expand the scope of rights under article 33(5) of the Constitution. However, without an explicit articulation of any particular rights, one has to make an argument for their relevance within the Ghanaian legal context. The problem is that members of the legal community in Ghana, including the judiciary, often lack adequate training in international human rights laws. Generally, the lack of knowledge about international human rights law is a challenge to the protection of human rights. If one appears before a conservative judge who is unwilling to think “innovatively”, it will be difficult to convince him or her that there is an inherent right to water, for instance, as a logical extension of the right to life. In such a situation, enforcement is better if rights are made explicit.

#### **5.2.2.5 Complicated Court Procedures**

Court procedures can be intimidating, especially for the majority of the population that is non-literate. This possibly explains the overwhelming numbers of legal aid cases that CSOs such as LRC, Human Rights Advocacy Centre (HRAC), WILDAF, CHRI, CEPIL and the Centre for Human Rights and Civil Liberties (CHURCIL) receive. The effect of the supporting role of the judicial service personnel such as court clerks, bailiffs, filing clerks etc. on the human rights of those who get in contact with the judicial system cannot be underestimated.

### 5.3 COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ)

- 5.3.1** The primary non-judicial institution to which complaints about human rights may be referred to is CHRAJ. CHRAJ was established in 1993 by the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) in accordance with article 216 of the 1992 Constitution.
- 5.3.2** In 1968, the Commission set up to elicit proposals from the public for the promulgation of the 1969 Constitution recommended the establishment of an Ombudsman to provide citizens with a machinery to address grievances against maladministration in the public sector. The appointment however was not made before the 2<sup>nd</sup> Republican Constitution was overthrown.
- 5.3.3** Under the 1979 Constitution, the Ombudsman was established as an independent public authority through whom the citizens could hold the officials of State to account for any illegal or improper exercise of State power. The Office of the Ombudsman did not appear effective during the periods after the overthrow of the 1979 Constitution.<sup>236</sup>
- 5.3.4** CHRAJ has three areas of focus: human rights, administrative justice, and abuse of power or corruption. By this mandate, CHRAJ is a hybrid of three institutions: Ombudsman Office, Human Rights Commission, and an anti-corruption agency.
- 5.3.5** CHRAJ is clothed with the competence to hear complaints on fundamental human rights. The CHRAJ Act spells out the functions and powers of the Commission. The long title to the Act describes it as:
- An Act to establish a Commission on Human Rights and Administrative Justice to investigate complaints of violations of fundamental human rights and freedoms, injustice and corruption; abuse of power and unfair treatment of persons by public officers in the exercise of their duties, with power to seek remedy in respect of such acts or omissions and provide for other related purposes.<sup>237</sup>
- 5.3.6** The reasons for the multiple mandates of CHRAJ is said to be because of the financial cost of having three separate institutions, and the idea that questions of human rights, corruption and administrative justice overlap and are mutually reinforcing. CHRAJ states, that “the most serious threat to the enjoyment of fundamental human rights and freedoms is corruption.”<sup>238</sup> Despite this rationale, the question remains whether the breadth of its responsibilities does not compromise CHRAJ’s effectiveness.

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<sup>236</sup> Report of the Constitution Review Commission, *supra* note 10 at page 326.

<sup>237</sup> Stephen Sondem, *National Human Rights Institutions, the Ghanaian Experience*, available at [http://studiorum.org.mk/evrodijalog/16/pdf/Evrodijalog\\_br\\_16\\_7\\_S-Sondem\\_ENG.pdf](http://studiorum.org.mk/evrodijalog/16/pdf/Evrodijalog_br_16_7_S-Sondem_ENG.pdf)

<sup>238</sup> CHRAJ Annual Report for 2008 at page 11.

- 5.3.7** The President appoints the Commissioner and two Deputies whose tenures are until the attainment of ages seventy and sixty five years, respectively.<sup>239</sup> Other staff members are recruited by the Commission. The “near life long” tenure of CHRAJ Commissioners is as a result of Ghana’s unstable political history, in which context it was deemed important to protect the independence and integrity of CHRAJ by granting the Commissioner and his or her deputies the same length of tenure as justices of the Court of Appeal and High Court, respectively.
- 5.3.8** CHRAJ draws a budget out of the consolidated fund<sup>240</sup> on the approval of the Minister of Finance. The oversight of CHRAJ’s budget by a cabinet minister may potentially compromise its independence. A possible solution is for CHRAJ to be allowed to submit its budget directly to parliament.
- 5.3.9** CHRAJ has the authority to carry out investigations, to issue subpoenas for persons and documents, and to make recommendations for redress of rights and other abuses. However, CHRAJ does not have the authority to prosecute. The right to prosecute is vested solely in the Attorney-General although the Attorney-General may permit others to prosecute on his or her behalf. This means CHRAJ has to resort to the courts to enforce its recommendations when necessary as article 229 of the Constitution provides that the Commissioner may bring an action before any court in Ghana and may seek remedy which may be available from that court. CHRAJ cannot, however, review or overturn a court ruling or take on a case that is before a court.
- 5.3.10** The distribution of investigation and prosecution powers between CHRAJ and the courts could be positive, since it acts as a check on CHRAJ. This is because as an institution involved in protecting human rights, acquiring wide-ranging powers to detain, investigate and prosecute may lead CHRAJ itself into human rights violations. However, there could be instances where the Attorney-General, who is a member of cabinet and by practice has also been the Minister of Justice, may not be inclined to prosecute a rights or corruption related case. Therefore, some experts including some senior CHRAJ officers believe it would be appropriate for CHRAJ to be given the power to prosecute and enforce its rulings by itself.
- 5.3.11** CHRAJ has established itself as an effective human rights institution in the areas of public confidence, legal autonomy, geographical accessibility, and the breadth of its mandate.<sup>241</sup> CHRAJ’s rulings though not legally binding, have advanced the interpretations of rights. Prof. Quashigah, Dean of the Faculty of Law, University of Ghana for instance points specifically to the case of *Morgan v Ghana International School* in which CHRAJ

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<sup>239</sup> See articles 217, 223 and 70 of the 1992 Constitution.

<sup>240</sup> Article 227 of the 1992 Constitution. The Consolidated Fund is defined by articles 175 and 176 of the 1992 Constitution as a public fund into which all monies raised by government or in trust for government are paid.

<sup>241</sup> Hucker (2006) names the commissions of Ghana, South Africa and Uganda as being noteworthy examples of respected and competent national human rights institutions (Nowrojee and Human Rights Watch/Africa, 2001).

interpreted the constitutional provisions of equality and freedom from discrimination. A report by the Open Society Initiative for West Africa (OSIWA) and the Institute for Democratic Governance in Ghana (IDEG) commend CHRAJ for having a uniquely open approach to economic and social rights, compared to the courts. Some experts, however, have cause to criticise CHRAJ for being too conservative in its approach to rights.<sup>242</sup> They cite a case in which a Ghanaian migrant who had returned to Ghana came to CHRAJ to compel the Department of Social Welfare to provide her with food and shelter, saying it was her ‘right’ as a citizen. CHRAJ did not use the opportunity to evoke Article 33(5) of the Constitution which allows one to argue for human rights that are allowed in other democratic contexts. Instead, CHRAJ stated that it was not in a position to accede the complainant’s request ‘since the law as it stands now [does] not guarantee the right to food and shelter’ (CHRAJ 1995). CHRAJ is encouraged to take up the mantle and pronounce authoritatively on the justiciability of chapter 6 rights. In effect, CHRAJ is in a unique position to move forward the debate from where the Supreme Court has left it in the National Lotteries case.

**5.3.12** CHRAJ has continued to make remarkable progress in the promotion and protection of human rights and improving access to justice. Between 2009 and 2011, it received over 12,000 complaints annually.

**5.3.13** In 2011, for instance, CHRAJ:

- Received 12,018 complaints. Of the number, 11,230 representing 93.1% of the complaints received were human rights related. 767 (6.4%) were administrative justice related cases, and 21 i.e. (0.2%) were corruption related. 11,465 of the complaints received were successfully resolved by the Commission.<sup>243</sup>
- CHRAJ also stepped up its public education, sensitization and awareness creation programmes aimed at deepening citizens’ understanding of human rights and entrenching a culture of respect and dignity for people in the country. Between 2009 and 2011, over 3000 public education programmes were held annually across the country.<sup>244</sup>

**5.3.14** In 2012, CHRAJ:<sup>245</sup>

- Completed investigations into 10,964 human rights complaints;
- Conducted 2,750 public education programmes in rural communities and schools;
- Worked with heads of public sector institutions to promote understanding of its administrative justice oversight role.

<sup>242</sup> Nana Akua Anyidoho, Review of Rights Discourses – Ghana at page 8 quoting Prof. E.K. Quashigah.

<sup>243</sup> National report submitted to the Universal Periodic Review in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 at page 3.

<sup>244</sup> Id.

<sup>245</sup> National Development Planning Commission (NDPC), 2012 Annual Progress Report on the implementation of the Ghana Shared Growth and Development Agenda, page 190 (November 2013).

**5.3.15** In 2013, CHRAJ:<sup>246</sup>

- Received and investigated 10,219 human rights cases
- Conducted about 800 public education programmes in rural communities and schools
- Worked with heads of public sector institutions to promote understanding of its administrative justice oversight role.

**5.3.16** In 2014, CHRAJ:<sup>247</sup>

- Conducted human rights education and sensitization programmes in 1,555 rural communities and schools to build a culture of respect for human rights;
- Investigated about 6,000 human rights complaints and conducted special investigations into human rights abuses that were systemic and cultural;
- Organized 548 public education and sensitization programmes to assist the public to demand high quality service from public service institutions and hold their officials accountable. In addition, CHRAJ investigated 482 complaints of abuse of power, unfair treatment of persons by public officers, injustice, hardship and general maladministration;
- CHRAJ facilitated the adoption of National Anti-Corruption Action Plan (NACAP), which was approved by Parliament and conducted a number of training programmes for Chief Executives of State Owned Enterprises (SOEs) and Chief Directors of MDAs as part of efforts to build capacity to secure high integrity in the public service under the National Integrity Programme (NIP).

**5.3.17** In 2015, CHRAJ:<sup>248</sup>

- Conducted 719 public education programmes on human rights in communities and schools;
- Conducted 379 public education programmes to enable citizens demand better service delivery from duty bearers and trained 125 members of staff on Ombudsman investigations (Panel Hearings);
- In compliance with the Conduct of Public Officers, initiated a process to enforce the law and assist MDAs and MMDAs to develop internal Codes of Conduct for their staff;
- Trained regional and district directors on the web-based discrimination reporting system and its privacy and confidentiality policy;

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<sup>246</sup> National Development Planning Commission (NDPC), 2013 Annual Progress Report on the implementation of the Ghana Shared Growth and Development Agenda, page 210 (December 2014).

<sup>247</sup> National Development Planning Commission (NDPC), 2014 Annual Progress Report on the implementation of the Ghana Shared Growth and Development Agenda, pages xxviii and 181 (December 2015).

<sup>248</sup> National Development Planning Commission (NDPC), 2015 Annual Progress Report on the implementation of the Ghana Shared Growth and Development Agenda, page 196 (December 2016).



- Completed the mapping of institutions, agencies and organizations involved in child protection nationwide;
- In collaboration with the Public Services Commission, organized a training programme on ethics and integrity for Public Officers' from 35 selected MDAs; and
- Engaged 37 Members of Parliament and selected staff of Parliament on the Code of Conduct of Public Officers' Bill, 2013.

**5.3.18** The Constitution Review Commission observed that the membership of CHRAJ must reflect the plurality of the society and represent a broad spectrum of interests in conformity with international practice.<sup>249</sup> The Commission was particularly concerned about projecting the image of a caring and compassionate Ghanaian society. Thus, it would not only be desirable for the membership of CHRAJ to include women; it would be equally imperative to create an Office of the Special Commissioner for Children, Persons with Disability, and the Aged within the CHRAJ.

**5.3.19** The Constitution Review Commission found that it would be desirable for the CHRAJ to comprise 5 full-time members including at least a woman and non-lawyers. On the inclusion of non-lawyers, the Commission observed that there are several non-legal issues involved in the mandate of the CHRAJ. Hence, it would not be enough to simply employ lawyers to provide the legal expertise required to effectively discharge the mandate of the CHRAJ.

**5.3.20** The Commission further recommended that the Constitution be amended to allow for the CHRAJ to be composed of 5 members: a Commissioner and 4 Deputy Commissioners. The Commission recommended that the 4 Deputy Commissioners should include a Special Commissioner for Children, Persons with Disability, and the Aged, as previously noted, who will be partly responsible for the protection, implementation and monitoring of the rights of Children, Persons with disability and the Aged. The Commission also recommended that each of the remaining 3 Deputy Commissioners should respectively be in charge of the human rights; ombudsman, and anti-corruption mandates of CHRAJ. The CRC further recommended that non-lawyers should qualify to be appointed to the CHRAJ and the Chairman of the CHRAJ should be a person qualified to be appointed as a Justice of the Supreme Court.<sup>250</sup>

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<sup>249</sup> Report of the Constitution Review Commission, *supra* note 10 at page 342. See also Principles Relating to the Status of National Institutions (The Paris Principles), G.A. Res. 134, UN GAOR, 48th Sess., 85th Mtg., U.N. DOC. A/RES/48/134 (1993); Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, adopted at the meeting of the 32nd Session, 17th to 23<sup>rd</sup> October, 2002, Banjul.

<sup>250</sup> White on the Report of the Constitution Review Commission, *supra* note 48 at page 26 accepted all these recommendations.

## **5.4 LEGAL AID SCHEME, 1997 (ACT 542)**

- 5.4.1** A functioning legal aid system, as part of a functioning criminal justice system, may reduce the length of time suspects are held in police stations and detention centres. A functioning legal aid system may also help to reduce prison population, wrongful convictions, prison overcrowding and congestion in the courts. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process. Legal aid can be utilized to contribute to the prevention of crime by increasing awareness of the law. Legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial measures; promoting greater community involvement in the criminal justice system; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources.
- 5.4.2** The Legal Aid Scheme, 1997 (Act 542) established the Legal Aid Scheme to make available free legal services to persons who are unable to pay for legal services. Any persons desirous of enforcing any provision of the Constitution, or who have taken any actions in connection with any proceedings relating to the Constitution if he has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings, is entitled to legal aid under the Legal Aid Scheme.
- 5.4.3** Applicants for legal aid must pass a means test set by the law. Thus, such persons should not earn more than the Government minimum wage. In addition, they must desire legal representation in a criminal or civil matter. Legal aid offered under the Scheme consists of representation by a lawyer, including all such assistance as is given by a lawyer, in the steps preliminary or incidental to any proceedings or arriving at or giving effect to a compromise to avoid or to bring to an end to any proceedings.
- 5.4.4** On the part of potential clients of the Legal Aid Scheme, the cost of access to the courts is a challenge. Although the Constitution guarantees legal aid for those unable to afford the cost of legal services, the cost of appearance in court and other dispute resolution fora and other expenses connected to the dispute can be unaffordable for some persons. Efforts of the Legal Aid Scheme are hampered by insufficient funds, inadequate human resource and a lack of presence in all districts.<sup>251</sup>
- 5.4.5** The Legal Aid Scheme Act requires that there are Regional Committees for the selection of cases and decision-making on who qualifies and should be supported with Legal Aid.<sup>252</sup> These Regional Committees are non-existent. In June 2016, the High Court, Wa decided that in the absence of the Regional Committees, a private lawyer assigned to a legal aid

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<sup>251</sup> Interviews with the Director of Legal Aid Scheme reveal that for the whole of 2016 for instance, the Legal Aid Scheme received the sum of seven thousand Ghana cedis (GHS 7000) for its administrative expenditure.

<sup>252</sup> Sections 10-12 of the Legal Aid Scheme Act, 1997 (Act 542).

client of the LAS could not support the legal aid client / beneficiary.<sup>253</sup> The facts of the case are that a private lawyer to whom a case was referred by LAS filed an action for a woman seeking a divorce, and custody on behalf of the legal aid client. The Respondent's Counsel raised an objection to representation by the private lawyer in the absence of a Regional Committee to decide who qualified for legal aid in the upper West Region. Counsel for the Respondent further argued that the Applicant's case should never have been filed, and therefore the Court did not have jurisdiction.

## **5.5 ELECTORAL COMMISSION (EC)**

**5.5.1** The Supreme Court of Ghana pronounced the right to vote as one of the most fundamental rights from which all other rights emanate.<sup>254</sup> Article 43 (1) of the Constitution sets up the EC as an institution of state to manifest the right to vote for Ghanaians. The EC is made up of seven (7) members; a Chairman, two Deputy Chairmen and 4 other Members all of whom are appointed by the President on the advice of the Council of State. The Chairmen and deputies have permanent tenure of office and the same conditions of service as judges of the Superior Courts. Thus, the Chairman has conditions of service of Appeals Court Judges while the two Deputy Chairmen have conditions of service of High Court judges.

**5.5.2** The seven members of the Commission collectively constitute the policy-making and management body of the organization, and exercise general supervision over the staff. The Commission is required to meet at least once every two months. On a day-to-day basis, the Chairmen and the deputy chairmen, exercise executive powers on behalf of the Commission. The Commission has about 1,450 employees and its administrative expenses are charged on the Consolidated Fund.

**5.5.3** The main functions of the Commission are outlined in section 2 of the Electoral Commission Act, 1993 (Act 451) as amended in 2003 to include:

- To compile the register of voters and revise it at such periods as may be determined by law;
- To demarcate the electoral boundaries of both national and local government elections;
- To conduct and supervise all public elections and referenda;
- To educate the people on the electoral process and its purpose;
- To undertake programmes for the expansion of the registration of voters; and
- To perform such other functions as may be prescribed by law;
- To prepare and issue voter identity cards.

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<sup>253</sup> Suit number E6/03/2015, Awuzara Zinbaani v. Aminu Yaarow, (High Court, unreported) June 2016.

<sup>254</sup> Tehn-Addy v. Attorney-General and Electoral Commission [1997-98] 1 GLR 47.

**5.5.4** In addition to the obligations of the EC in article 45, the EC is assigned other functions in various parts of the Constitution and various other laws such as the Political Parties Law, 2000 (Act 574); Public and Political Party Office Holders (Declaration of Assets and Eligibility) Law, 1992 (PNDCL. 280); and the Local Governance Act, 2016 (Act 936).<sup>255</sup>

**5.5.5** The EC has conducted elections since 1992 to give meaning to the right to vote as declared as one of the foremost fundamental human rights around which all other rights revolve. In spite of the execution of seven (7) relatively peaceful and successful elections, challenges remain in the administration of elections in Ghana. A high level of illiteracy appears to affect the work of the Electoral Commission in securing the integrity of the ballots as cast by voters in parliamentary and presidential elections. The situation of “rejected ballots” has a bearing on the exercise of the right to vote in Ghana.

**5.5.6 Recommendation**

A study on the specific effects of the “rejected ballots” in various elections could be undertaken under the NHRAP.

**5.6 NATIONAL COMMISSION ON CIVIC EDUCATION (NCCE)**

**5.6.1** The NCCE was established in 1993 under the NCCE Act, 1993 (Act 452). The functions of the Commission as mandated under Act 452 are:

- to create and sustain awareness of the principles and objectives of the Constitution as the fundamental law;
- to educate and encourage the public to defend the Constitution at all times, against all forms of abuse and violation;
- to formulate for the consideration of Government, from time to time, programmes at the national, regional and district levels aimed at realizing the objectives of the Constitution;
- to formulate, implement and oversee programmes intended to inculcate in the citizens of Ghana awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;
- and to assess for the information of Government, the limitations to the achievement of true democracy arising from the existing inequalities between different strata of the population and make recommendations for re-dressing these inequalities.

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<sup>255</sup> Section 2 (2) of the Local Governance Act, 2016 (Act 936) for instance gives the Electoral Commission the authority to review the areas of authority of the Sub-Metropolitan District Councils, Urban Councils, Town Councils, Area Councils and Unit Committees by Constitutional Instrument after a national population census.

**5.6.2** The Law also provides that the Commission “shall not be subject to the direction or control of any person or authority in the performance of its functions”. The NCCE has 216 district offices (one in every district of Ghana) and 10 regional offices. The NCCE has a staff strength of approximately 1679 staff as at 2<sup>nd</sup> April 2015. The Commission is present in every district in Ghana.<sup>256</sup>

**5.6.3** The NCCE tries to engage the citizenry through several programmes and community outreach projects such as:

- the Dialogue Series;
- the Annual Constitution Week;
- Project Citizen and
- the establishment of Civic Education Clubs.

Below is a summary of the Programmes undertaken by the NCCE in 2014 as captured in its Annual Report.

**5.6.4 Dialogue Series<sup>257</sup>**

The Commission in line with its constitutional mandate introduced the quarterly Dialogue Series “Educate. Engage. Empower” as one of its platforms on which critical national issues towards sustaining and strengthening Ghana’s democracy are discussed. The series of dialogue sought to engage, educate and deepen citizens’ understanding of Ghana’s democratic process to empower Ghanaians to actively participate in governance. The maiden dialogue held in June 2014 was themed “Beyond the August 29 Verdict: Lessons and the Path Ahead”. The second dialogue organised in October 2014, focused on the Separation of Powers on the theme “Balancing the Power between the three Arms of Government: What are the Constitutional Guarantees of Independence, Theoretically and in Practice and how the Arms of Government can be strengthened.”

**5.6.5 Annual Constitution Week<sup>258</sup>**

To commemorate Ghana’s acceptance of the 1992 Constitution through a referendum, the Commission instituted an Annual Constitution Week in 2001.

**5.6.6 Annual Citizenship Week**

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<sup>256</sup> Annual Report of the National Commission for Civic Education for 2014 at page 36 available at <http://nccegh.org/site/media/annualreport/pdf/Twenty%20First%20Annual%20Report.pdf>. (last accessed on 3 January, 2017).

<sup>257</sup> Annual Report of the National Commission for Civic Education for 2014 at page 12 available at <http://nccegh.org/site/media/annualreport/pdf/Twenty%20First%20Annual%20Report.pdf>. (last accessed on 3 January 2017).

<sup>258</sup> Annual Report of the National Commission for Civic Education for 2014 at page 14 available at <http://nccegh.org/site/media/annualreport/pdf/Twenty%20First%20Annual%20Report.pdf>. (last accessed 3 January, 2017).

The Annual Citizenship Week engaged prominent personalities and staff of the Commission to sensitise and inculcate virtues of good citizenship in pupils of first cycle educational institutions across the country.

#### **5.6.7 Project Citizen**

One of the platforms through which the Commission reaches out to the youth, a vital segment of Ghana's population is "Project Citizen", a Project on public policy formulation and implementation and participation in democratic processes for senior high school students. With support from Hanns Seidel Foundation, Project Citizen was extended to five (5) new schools in each region across the country. Thus, the Commission organised ten (10) training workshops in the ten (10) regions for two (2) patrons and fifteen (15) participants from fifty (50) schools on Project Citizen. Currently, Project Citizen is in two hundred and forty-five (245) senior high schools from one hundred and ninety-five (195) schools in 2013. Also in March 2014, ten (10) special presentations were made by selected schools on the phenomenon of "Child, Early and Forced marriages in Ghana" in all ten regions across the country.

#### **5.6.8 Constitution Quiz Competitions<sup>259</sup>**

The Constitution Quiz competitions are used to teach youth-in-schools the 1992 Constitution and governance related subjects. Approximately four hundred and twenty-three (423) Constitution Quiz Competitions were held at regional and district levels nationwide in 2014. Students were awarded branded plaques, books for their school libraries, certificates, souvenirs and food products. Promasidor Ghana Limited and Pens and Plastics Ghana Limited supported some quiz competitions. A special Eastern regional quiz competition was supported by the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

#### **5.6.9 Civic Education Clubs (CECs)<sup>260</sup>**

The Commission's Civic Education Clubs encourage and create interest in the study of the 1992 Constitution at the basic, secondary and tertiary levels of Ghana's educational institutions and in communities. Through the CECs, the Commission works to ensure that students at all levels and the entire citizenry are taught to understand and appreciate their roles in consolidating Ghana's democracy. Students and members of the clubs meet to discuss governance and development related issues. Currently, there are three thousand and ninety-nine (3,099) CECs in schools, communities and organisations nationwide. Nine thousand eight hundred (9,800) CEC activities were undertaken across the country in year 2014.

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<sup>259</sup>Annual Report of the National Commission for Civic Education for 2014 at page 19 available at <http://nccegh.org/site/media/annualreport/pdf/Twenty%20First%20Annual%20Report.pdf>. (last accessed on 3<sup>rd</sup> January, 2017).

<sup>260</sup> Annual Report of the National Commission for Civic Education for 2014 at page 21 available at <http://nccegh.org/site/media/annualreport/pdf/Twenty%20First%20Annual%20Report.pdf>. (last accessed on 3<sup>rd</sup> January, 2017).

## **5.7 MINISTRY FOR EMPLOYMENT AND LABOUR RELATIONS**

The Ministry's mandate is to facilitate the development of human resources, create an environment conducive to investment promotion, harmonious labour relations as well as a safe and healthy working environment. This is the Sector Ministry for the Fair Wages and Salaries Commission (FWSC).

## **5.8 MINISTRY OF GENDER, CHILDREN AND SOCIAL PROTECTION AND THE DEPARTMENT FOR CHILDREN (DOC) & AND THE DEPARTMENT OF SOCIAL WELFARE (DSW)**

**5.8.1** The Ministry of Gender, Children and Social Protection is responsible for the social integration of people with disabilities (PWDs), the vulnerable, the extremely poor and excluded into the mainstream of society to enable them to contribute towards national development and growth.

**5.8.2** A Domestic Violence (DV) Secretariat under the then Ministry of Women and Children's Affairs (MOWAC)<sup>261</sup> was established in 2008, with a mandate to provide effective coordination to facilitate the smooth implementation of the Domestic Violence Act by all stakeholders, through specific interventions outlined in the National Policy and Plan of Action. The Act deals with prevention, protection, safety and the provision of services.

### **5.8.3 The Department of Children**

**5.8.3.1** The mission of the DOC is to enhance the survival, development, protection and increased participation of children in the development process, through the formulation of child specific development policy frameworks, guidelines, advocacy strategies and plans for implementation by Ministries, Departments and Agencies (MDAs), District Assemblies and private sector agencies, NGOs and other development partners; as well as the monitoring and evaluation of both the process and impact of child specific plans and programmes being implemented.

**5.8.3.2** The core functions of the units of the DOC includes developing programmes and projects out of the policies and plans of the Ministry of Gender, Children and Social Protection in respect of child related issues; monitoring and evaluating programme implementation activities carried out by the MDAs, NGOs, Community Based Organization (CBOs) and other civil society organizations; gathering information through research, seminars, workshops etc. as input to policy-making functions of the Ministry for Gender Children and Social Protection; providing both referral and on the spot counselling services at both regional and district levels.

### **5.8.4 Department of Social Welfare (DSW)**

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<sup>261</sup> In 2013, the ministry of Women and Children's Affairs (MOWAC) was renamed Ministry for Gender, Children and Social Protection.



- 5.8.4.1 The Department of Social Welfare (DSW) is under the Ministry for Gender, Children and Social Protection. It was purposely set up to promote sustainable employment opportunities, vocational skills development, training and re-training, harmonious industrial relations, social integration of the vulnerable, excluded and the disadvantaged for the development and growth of the economy.
- 5.8.4.2 The DSW is in charge of social interventions such as the Livelihood Empowerment Against Poverty (LEAP) programme, which is responsible for distributing grants to qualified individuals and families throughout the country. The LEAP programme was introduced in 2008 to support extremely poor households with grants to enhance their incomes and livelihoods. In 2013, the mandate for Ministerial oversight for these social interventions programmes moved from the Ministry with responsibility for employment and social welfare to the Ministry for Gender, Children and Social Protection.
- 5.8.4.3 In March 2015, the Government launched the LEAP 1000, a social cash transfer programme, which provides financial support and health insurance to extremely poor households across Ghana to alleviate short term poverty and to encourage long term human capital development.

## **5.9 MINISTRY OF JUSTICE AND ATTORNEY GENERAL'S DEPARTMENT**

- 5.9.1 The Ministry of Justice and Attorney General's Department have the mandate to entrench respect for the Rule of Law and the observance of human rights. This is to ensure equality of access to Justice and treatment before the Law for all citizens, promoting by law, social justice and facilitating a fair, efficient and transparent legal system to propagate a culture of due process and legality. The Ministry is responsible for leading the defence of the constitutional order, guaranteeing the rights and liberties of members of the public, protecting the state's legal interest, enforcing criminal laws, and developing the human resources of the legal sector.
- 5.9.2 In September 2007, the Ministry of Justice and Attorney General's Department launched the Justice For All Programme (JFAP). The aim of the programme was to bring justice to the doorsteps of all clients especially the vulnerable within the criminal justice system. The programme has four focus areas such as the Remand Review Project, the Sentencing Review Project, the Prosecutor's Capacity Building Programme and the Systems and Procedures Analysis Project. Four Technical Working Groups (TWGs) were developed along the lines of the four focus areas to aid in the implementation of the programme.
- 5.9.3 The JFAP faced many challenges in relation to funding to facilitate the work of the TWG. It is therefore incumbent on the National Steering Committee to explore effective ways in addressing issues of finance to facilitate implementation of the action plans to meet set targets. There were also challenges in relation to timely finalisation of Plans. As a result of these challenges and more, the JFAP was halted. Even with these difficulties, many



prisoners secured their freedom through the JFAP. In 2014, there was a renewed interest in the implementation of the JFAP.

- 5.9.4** The idea behind the JFAP is a laudable one. It will be useful to conduct a review of the programme from its inception in order to capture lessons learned and to inform future programming of the JFAP. NHRAP can develop a monitoring mechanism on the implementation of the JFAP. Further information on the JFAP is provided in Chapter Seven of this Report under “Persons in detention” as a vulnerable group.

**5.9.5 Recommendation**

NHRAP should develop a monitoring mechanism on the implementation of the Justice for All Programme with a view to identifying strengths and weaknesses of the Programme.

**5.10 PARLIAMENT**

- 5.10.1** Parliament’s basic function is law making. But Parliament also performs oversight, representational and deliberative functions. Chapter 13 of the 1992 Constitution vests control of all public funds in Parliament including withdrawals from the Consolidated Fund.

- 5.10.2** Parliament’s deliberative function enables the legislature to debate an array of policy issues. Deliberations may throw light on underlying tensions in society and help to foster consensus, compromise and reconciliation. Parliament is in a unique position to affect the human rights discourse in Ghana through its legislative, deliberative and oversight functions.

- 5.10.3** Under the 1992 Constitution, Parliament is required to pass legislation to give effect to human rights. Some of the legislation Parliament succeeded in passing to give effect to human rights include the Children’s Act, 1998 (Act 560), the Persons with Disability Act, 2006 (Act 715), the Labour Act, 2003 (Act 651), the Legal Aid Scheme Act, 1997 (Act 542).

- 5.10.4** Parliament however is yet to pass legislation to give effect to human rights in areas such as the rights of the aged, the Right to Information, and Property Rights of Spouses. An audit to identify all the areas in which Parliament ought to pass legislation in order to give effect to the full gamut of human rights in Ghana should be undertaken under NHARP.

**5.10.5 Recommendation**

An audit to identify all the areas in which Parliament ought to pass legislation in order to give effect to the full gamut of human rights in Ghana should be undertaken under NHARP.

## **5.11 NATIONAL COUNCIL ON PERSONS WITH DISABILITY**

**5.11.1** Section 41 of Act 715 established the National Council on Persons with Disability as a body corporate to propose policies and strategies to enable persons with disability enter and participate in the mainstream of the national development process. The Council may for the performance of its functions acquire and hold movable or immovable property and may enter into contract or any other transaction.

## **5.12 EFFECTIVENESS OF LOCAL GOVERNMENT MACHINERY**

**5.12.1** The international human rights obligations of Ghana may be realized through the local government machinery. Article 240 (2)(e) of the 1992 Constitution provides that “to ensure the accountability of local government authorities, people in particular local government areas shall, as far as practicable, be afforded the opportunity to participate effectively in their governance”. Indeed Article 35 (6) d of the Directive Principles of State Policy also states in part that: the State shall take appropriate measures to “make democracy a reality by decentralizing the administrative and financial machinery of government to the regions and districts and **by affording all possible opportunities to the people to participate in decision making at every level in national life and in government.**” It is noteworthy that not enough platforms, channels and spaces have been created at the Metropolitan, Municipal or District Assembly level nor the Ministries, Department and Agency levels by government for citizens to participate and realize their rights as required by the constitution. This has led to the development of the National Popular Participation Policy Framework (2016) to promote greater participation by citizens.

**5.12.2** There is the Local Governance Act, 2016 (Act 936) which provides for a national development planning system and regulates planning procedures of District Assemblies.

**5.12.3** The delivery of public goods and essential services on an equitable and sustained basis was designed to be the preserve of the local government machinery of Ghana under the 1992 Constitution as the District, Municipal and Metropolitan Assemblies are required “to plan, initiate, co-ordinate, manage and execute policies in respect of all matters affecting the people within their areas, with a view to ultimately achieving localization of those activities.”

**5.12.4** The objectives of decentralization through the local government machinery are to “ensure more responsive tailor made solutions; stimulate local initiatives or development; expedite decision making to easily deal with issues that arise; provide training grounds for politicians so that they can better appreciate issues when they rise to the national level;

bring the concept of government closer to the people; and facilitate implementation of development projects.”<sup>262</sup>

- 5.12.5** Citizen participation in governance through decentralized systems and the potential of the local government machinery to be deployed for human rights realization through development plans at the local level is constrained by several factors including the perception that local development is central Government's responsibility; inadequate socio-economic databases; over-dependence on the District Assembly Common Fund instead of internally generated funds; ineffective assembly members; poor conditions of service for assembly members; limited platforms, spaces and channels for citizen participation and inadequate infrastructure.<sup>263</sup>
- 5.12.6** If the local government system runs effectively, it may be the most potent machinery through which the broad masses of persons in Ghana may be reached with human rights. Achieving this may begin with sensitizing the membership of various assemblies on human rights and the human rights based approach to doing development work and how the development plans and budgets, processes and systems may be made human rights compliant.

## **5.13 CONCLUSION**

- 5.13.1** Several ministries, departments and agencies within the government machinery have responsibilities towards the realization of human rights for persons in Ghana. In some instances, the mandate and functions of the different state apparatus may complement each other, strengthening the potential for the realization of human rights in Ghana.
- 5.13.2** In other instances, the mandates and functions of these institutions overlap with the potential of duplicating efforts and creating lacunae as to which institutions should have responsibility for the realization of the particular human rights in question. For instance, which state institution has the responsibility for meeting the employment needs of persons with disabilities? Is it the Ministry with responsibility for Employment and Labour Relations, the Ministry of Gender, Children and Social Protection, the Department of Social Welfare or the Council for Persons with Disabilities? And, who is coordinating the activities of CHRAJ, the prisons service and parliament to ensure that recommendations of CHRAJ to Parliament concerning the rights of prisoners are accorded the importance they deserve and timeously implemented? A dedicated mechanism for monitoring, reporting and enforcing corrective actions taking into account relevant feedback from stakeholders will be appropriate.
- 5.13.3** There appears to be a loose human rights institutional arrangement with many institutions created under the Constitution, legislation as well as by government bureaucracy. The

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<sup>262</sup> “A Review of 20 Years of Decentralization and the District Assembly System in Ghana.” A report by NALAG/MLGRD/UNDP/AFRICA 2000 NETWORK- GHANA, page 28.

<sup>263</sup> *Id*, at page 30.

loose arrangement results in weak linkages between the planning and operations of these different governmental and independent institutions and therefore duplication of efforts and inefficient deployment of resources. Creating stronger linkages and better coordination of the planning of programmes and operations of all institutions which have some form of human rights mandate, will improve the chances of the realisation of human rights in Ghana. It is possible for instance, to create a quarterly platform on which all these institutions meet and interact with regard to their work, leveraging on each other's plans and operations and eliminating duplications.

- 5.13.4** The implementation of a human rights action plan requires a well-defined framework that will facilitate efficient linkages to translate its goals and objectives into programmes at all levels in order to improve the living conditions of persons in Ghana. CHRAJ should lead the process of coordinating and establishing an appropriate national institutional framework, to ensure adequate linkages at both international, national and sub national levels. This coordinating function should also ensure that key indicators which should be targeted and captured by each institution are well defined and shared with stakeholders to enhance collaborative efforts. The idea is to create a framework which enables human rights institutions to work together more effectively and efficiently for the realization of human rights. To so effectively, targets for all the areas for human rights realization. Thus, there must be targets for *respecting* human rights; *protecting* human rights and *fulfilling* human rights in Ghana.
- 5.13.5** There is a need for MDAs and MMDAs to satisfy their constitutional obligation under Article 35 (6) d, to establish well defined platforms, channels or spaces such as bi-annual popular participation meetings or other interfaces with citizens and report providing channels, to facilitate the respect, protection and fulfillment of the rights of citizens including the citizens right to participate in governance and to influence decision making towards accelerated national development.

## CHAPTER SIX

### HUMAN RIGHTS EDUCATION AND AWARENESS

#### 6.1 INTRODUCTION

- 6.1.1 Article 34(4) of the 1992 Constitution provides that the State shall cultivate among all Ghanaians respect for fundamental human rights and freedoms and the dignity of the human person. According to Prof. Ken Attafuah, “Freedom is participation in power ... Education gives us that freedom, that option to participate in power – the power to participate in building a socially developed country peopled by civically conscious and public-spirited citizens.”<sup>264</sup>
- 6.1.2 For the purposes of this survey, formal human rights education is defined as instructions, lectures or lessons received from accredited, structured and curriculum based sources. Hence, only accreditation by the National Accreditation Board is considered sufficient to meet the requirements of a formal human rights training institution in Ghana.
- 6.1.3 The UDHR recognizes that every individual and every organ of society, shall strive by teaching and education to promote respect for human rights and freedoms.<sup>265</sup> In addition, the World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the UDHR and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect for human rights and fundamental freedoms.<sup>266</sup>
- 6.1.4 The state of human rights education in Ghana is examined below. Both formal and informal efforts at educating persons in Ghana were evaluated.

#### 6.2 FORMAL HUMAN RIGHTS EDUCATION IN GHANA<sup>267</sup>

- 6.2.1 Since 2010, human rights have been incorporated into the curriculum of basic schools in Ghana. This positively reflected in the insightful views expressed by basic school pupils who participated in this survey. Human Rights is however not part of the curriculum in the Senior High Schools. At the tertiary level, human rights is strictly treated as a law subject, and only offered in the law faculties of a number of universities in Ghana.<sup>268</sup> It is therefore only available to law students as part of their legal training and is in most cases as an elective subject. Therefore, usually, it is only some law students who are interested who may opt for

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<sup>264</sup> Prof. Ken Attafuah, *Fifty Years of Secondary Education in Ghana: Reflections from Criminological and Human Rights Perspectives*.

<sup>265</sup> Preamble to the Universal Declaration of Human Rights, 1948, *supra* note 54.

<sup>266</sup> Paragraph 33, section 1 of the Vienna Declaration and Programme of Action, *supra* note 1.

<sup>267</sup> This section relies heavily on a lecture delivered by Prof. Ken Attafuah, *Fifty Years of Secondary Education in Ghana: Reflections from Criminological and Human Rights Perspectives*.

<sup>268</sup> Ashesi University College does not have a law faculty; it however offers a semester course on child rights in partnership with Wilfrid Laurier University.

it.<sup>269</sup> At the postgraduate level, it is offered at even fewer of the nation's Universities.<sup>270</sup> This minimal effort at human rights education in Ghana can only be described as a failure to develop the fundamentals for the blossoming of an appropriate human rights culture to sustain a fledgling democracy. Inadequate human rights education results in ineffective public administration to the extent that it does not embrace and respond adequately to the rights of citizens. Consequently, public administration in Ghana has generally reflected a poor appreciation of the centrality of human rights to governance and to the well-being of citizens. In addition, there has been inadequate integration of the principles of natural justice and procedural fairness into public administrative activities. These developments may be the result of an absence of adequate training covering principles of human rights, administrative justice and good governance.

- 6.2.2 Education curricula for teacher training institutions include courses in education management, sociology of education, child psychology, and adolescent psychology. But these are inadequate and uncoordinated for the purpose of creating a good human rights culture in Ghana. Human Rights must be taught in a focused manner using proven instructional methodologies and techniques. The lack of proper training in effective citizenship, civility and human rights, democracy and peace education lies at the heart of different forms of agitations in Ghana. Schools must be equipped to deliver human rights education so as to instill in the populace the requisite attitudes for respecting, protecting and fulfilling human rights.
- 6.2.3 The study of human rights illuminates the human condition, and stresses the universality of the search for human dignity. The delivery of justice would be greatly enhanced if lawyers and judges possessed sound appreciation of human rights principles, values and norms. The practice of medicine and nursing would evince greater sensitivity to the inherent dignity of the patient. The teacher, the employer, the politician, the police officer, the immigration and customs officer, as well as the trader in the market, would all show greater respect for everyone with whom they interact on a daily basis, if they were better exposed to, and educated on human rights values, principles and norms.
- 6.2.4 Human rights education will help achieve a wider societal appreciation of the critical links between human rights, peace, stability and development. A society imbued with respect for human rights will be less prone to major human conflicts and wars. Everyone, especially students, need to understand human rights in all three contexts: national, comparative, and international.

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<sup>269</sup> University of Ghana, KNUST, Ghana Institute of Management and Public Administration (GIMPA) and Mountcrest University offer human rights as a subject as part of their LL.B. programmes.

<sup>270</sup> University of Ghana, Legon and Mountcrest University.

- 6.2.5 Globalisation is a social fact, and human rights violations in Sierra Leone, Nigeria and Liberia have as much potential to affect people in a common sub-region just as human rights conflicts in Ghana may affect the lives of people elsewhere.
- 6.2.6 The study of specific human rights documents such as the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the human rights provisions of national Constitutions, and the statutory human rights codes of nations can do much to dissipate egocentric and ethnocentric views of rights.
- 6.2.7 It is important to recognize that rights violations can be very subtle, like discrimination based on ethnic or tribal lines, refusal to employ someone or to rent accommodation to a family because, they are Dagombas or Ewes or Ashantis or Bandas. Rights violations can also be endemic, and thereby considered as normal. It must also be emphasized that many rights conflicts do not have easily defined boundaries. Sometimes, to defend freedom of speech can mean defending pornographers, or even hate-mongers; to limit this freedom opens the door to censoring ideas with which the majority of society is uncomfortable.
- 6.2.8 In addition, human rights education is also important in instilling the cardinal values of integrity, discipline, self-respect, and democratic practice. The internalization of these values serves as important inhibitors against corruption, indiscipline and abuse of power.
- 6.2.9 One objective is to help shape independent thinking, rational, and participatory citizens, well- adapted to living in a democracy. Another goal is to imbue students with a sense of the value human life represents, culminating, as a long-term objective, in the development of a human rights culture. The short-term objective should to transform the kind of violent, inhumane and self-deprecating attitudes that enable university students to smear human excreta on public property on university premises as a strategy for disputing with authorities.
- 6.2.10 The idea is to generate an educational process which centres on the individual as a moral being, and aims at developing an autonomous conscience, and the responsible exercise of individual freedoms within an equitable education community where everyone is heard, respected, and valued as a thinking being. It is especially important for Ghanaian society to deliberately nurture independent and self-controlled individuals capable of transforming their reality and promoting a life style based on respect for human dignity. Human Rights education must have an important social impact by maximizing compassion and minimizing the tendency to resort to violence, particularly the dastardly acts of robbery, and mob violence perpetrated in the name of justice. These objectives are so compelling that human rights education must be an integral part of teacher training curricular, and of secondary school education.

- 6.2.11 The integration of human rights and citizenship education in the secondary school system will enable us cultivate new citizens who are “qualified to understand their rights, to maintain them and to exercise with intelligence their parts in self-government.”
- 6.2.12 It is vital that secondary schools emphasize education and training in Human Rights, effective citizenship, and democracy. Teacher training institutions should emphasize civic education for citizenship. Specialization in human rights at the higher institutions of learning should also be encouraged.

### **6.3 INFORMAL HUMAN RIGHTS EDUCATION IN GHANA**

- 6.3.1 Human rights awareness in the general population can be credited to informal education usually championed by the NCCE, CHRAJ and civil society groups. A significant number of local human rights NGOs<sup>271</sup> across the country have been engaged in creating human rights awareness at grassroots level. These awareness programmes have been particularly successful because of the employment of social marketing strategies as well as the extensive use of the media, particularly radio and television.
- 6.3.2 When general public respondents in this baseline study were asked whether they were aware of the rights of the vulnerable groups such as children, juveniles, women, persons in detention, migrant workers, persons with disability, persons living with HIV/AIDS, LGBT and Intersex persons, fifty nine percent (59%) and fifty three percent (53%) of general public respondents indicated that they were knowledgeable about the rights of children and juveniles, and women’s rights, respectively. These two (2) vulnerable groups stand out as the top two groups on whose rights the general public appears relatively well educated. Knowledge of the rights of other groups was much lower and ranged between 10% and 40% of the randomly interviewed members of the general public.
- 6.3.3 Generally, many public respondents noted that they were not aware of the rights of most of the key vulnerable groups investigated namely Lesbians, Gay, Bisexual, Transgender and Intersex (LGBTI), Migrant Workers, Refugees and Internally Displaced Persons, the Aged, Persons Living With Disability (PLWD) and Persons Living With HIV/AIDS (PLWHA). Specifically 88% were unaware of the rights of LGBTI, 81% were unaware of the rights of migrant workers and 78.33% and 73.83% respectively did not have knowledge about the rights of persons in detention or refugees and internally displaced as shown in figure 4 below.

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<sup>271</sup> Legal Resources Centre, FIDA, Ark Foundation, Human Rights Advocacy, CHRI, etc, are well known NGOs engaged in human rights education and awareness creation across the country.



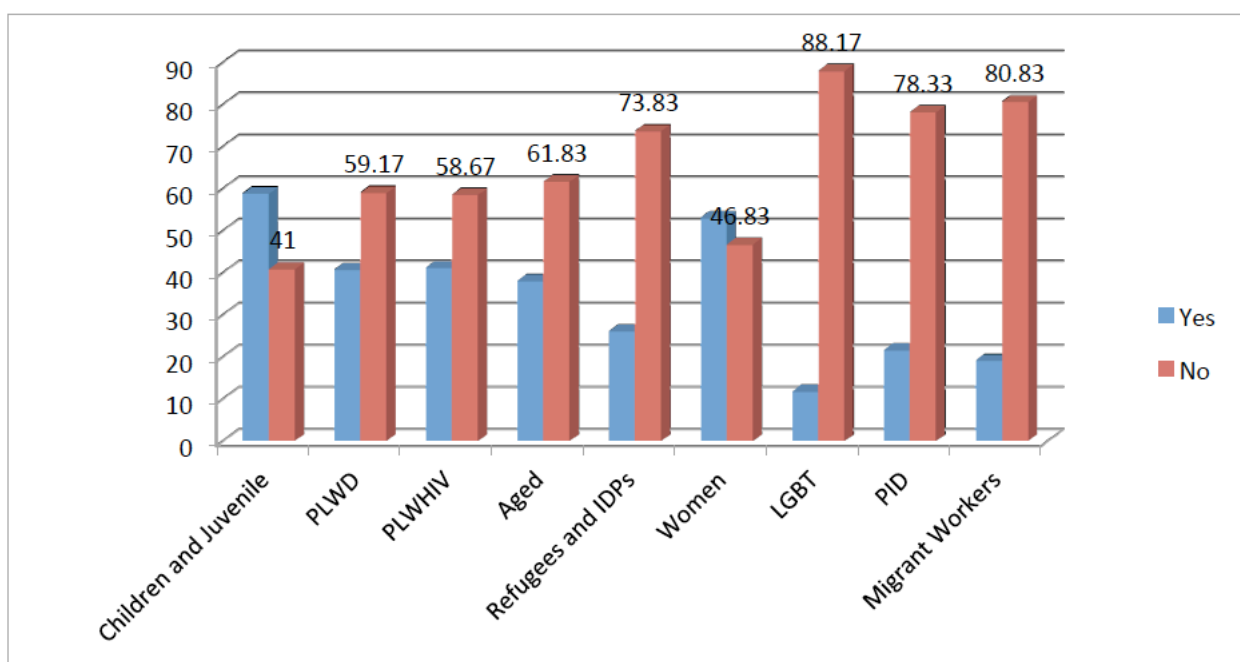


Figure 4: Level of Awareness on Rights of Vulnerable Groups

- 6.3.4 It has been noted that international and local NGOs have played a significant role in providing informal human rights education on vulnerable groups in the country. For example, international organizations such as Amnesty International have been executing human rights education programmes in Ghana.<sup>272</sup>
- 6.3.5 Most general public respondents indicated that they had been educated through radio. When general public respondents who indicated that they were *aware of the rights of some of these vulnerable groups* were probed for the means by which they became aware of the rights of the vulnerable groups, their responses showed that, radio accounts for over 60% of all of the media by which respondents received their awareness.
- 6.3.6 Education in schools, television and reading were the next highest ranked channels of communication from which persons in Ghana received awareness on the rights of vulnerable groups.
- 6.3.7 Public education and sensitization by NCCE was ranked low in all cases and ranged between 0.5% and a maximum of 4% of respondents who obtained education on Persons with Disability, for example. NGOs were the least cited by members of the general public regarding the source of information they had received on the rights of vulnerable groups. This is shown in Table 1. However, it is useful to note that many of the radio programmes are likely to have had NGO representatives as resource persons and again the activities of

<sup>272</sup> Amnesty International conducted an Africa Human Rights Education (AHRE) Project in Ghana. The report of this project is available at - [http://africa-hre.org/eng/images/stories/reports-and-docs/reports/Ghana\\_HRE\\_Impact\\_Assessment\\_case\\_study.pdf](http://africa-hre.org/eng/images/stories/reports-and-docs/reports/Ghana_HRE_Impact_Assessment_case_study.pdf)

NGOs tend to be targeted at vulnerable groups with specific needs and less often the public at large.

**Table 1: How did you become aware of the human rights of the VGs below?**

	READING (%)	RADIO (%)	TV (%)	THROUGH FRIENDS (%)	RELATIVES (%)	TAUGHT IN SCHOOL (%)	PUBLIC EDUCATION NCCE (%)	NGO (%)	OTHER (%)
<b>Children &amp; Juveniles</b>	7.6	61.9	8.8	6.5	2.3	9.0	0.8	0.0	3.1
<b>PLWD</b>	6.5	63.7	7.35	3.7	1.22	11	3.7	0	2.86
<b>PLWHA</b>	8.9	64.5	10.1	2.4	1.2	10.1	1.2	0.0	1.6
<b>The Aged</b>	10	61.1	5.7	4.4	4.8	9.2	1.7	0.4	2.6
<b>Refugees &amp; Internally Displaced</b>	10.8	65.6	6.4	2.5	0.0	10.8	0.6	0.0	3.2
<b>Women</b>	8.5	60.2	13.5	6.0	1.6	7.5	0.6	0.0	2.2
<b>LGBTI</b>	1.4	73.2	11.3	4.2	0.0	2.8	1.4	0.0	5.6
<b>Persons in Detention</b>	13.85	56.9	10.78	3.1	0.77	11	0.8	0.0	3.077
<b>Migrant Workers</b>	4.348	72.17	9.5652	1.7	0	7	0.9	0.87	3.478

6.3.8 Public education through NCCE is evidently low unless they also utilize radio and television as key communication and education channels.

6.3.9 With particular reference to informal human rights education, NCCE in particular must be equipped with the necessary human and material resources to discharge its core mandate of promoting and sustaining Ghana's democracy and inculcating in the citizenry, awareness of their rights and obligations, through civic education. These state institutions require substantial state support to improve the environment for effective human rights observance and responsible citizenship.

6.3.10 The Centre for Civic Education of the late 1960s, and Col. Acheampong's era of the Charter of Redemption supported high quality citizenship education of a kind that motivated and boosted the self-confidence of Ghanaians to meet the challenges of the time. These efforts should be revisited, reviewed and key lessons factored into future public education initiatives.

6.3.11 Between 69% to 98% of general public respondents displayed a lack of awareness related to the contents of policies or laws existing to support these key vulnerable groups. Admittedly, for groups such as LGBTI and Internally Displaced Persons, no clear-cut policies or laws appear to be in place currently and therefore the general public responses are not entirely surprising.

6.3.12 The question that was put to the general public Respondents was: “Do you know the content of any policy or law related to the following vulnerable groups?”

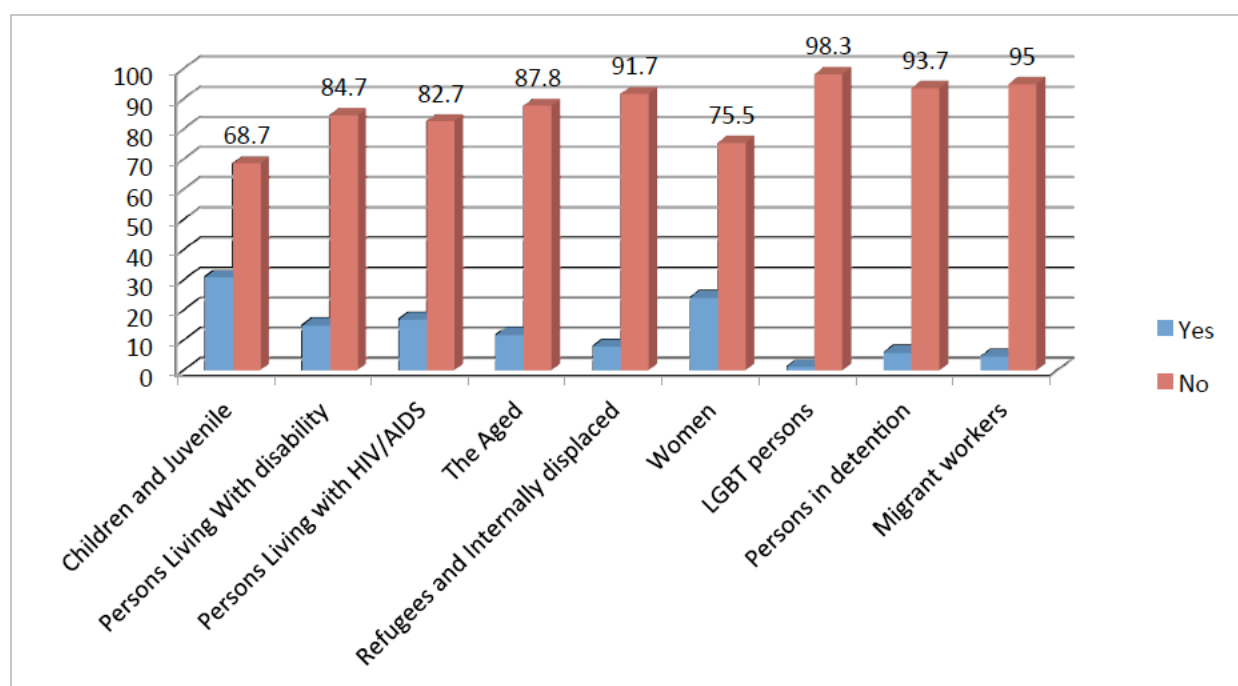


Figure 5: Do you know the content of any policy related to these vulnerable groups?

6.3.13 About 98.3% knew no policy or law related to LGBTI persons. Similarly, 93.7% of the members of the general public were unable to remember any policies relating to Persons in Detention, whilst for Refugees and Internally Displaced persons, 91.7% of general public respondents did not know of any policies or laws related to them.

6.3.14 Some awareness however was reflected by 31.3% of the general public regarding policies related to children and juveniles. This was followed by 24.5% of respondents who knew about policies related to women, about 17.33% who had some knowledge on policies related to persons living with HIV/AIDs and about 15.33% who had some knowledge on policies related to Persons With Disability as depicted in figure 5.

6.3.15 The majority of general public respondents (59% to 90.1%) did not have detailed knowledge or understanding pertaining to specific rights of the key selected vulnerable groups as shown in Table 2 below. Regarding the rights of children, about 19.2% of respondents knew about the right of children to education, yet this was the most commonly known right. This was followed by the ‘right to personal safety/no violence’ and the ‘right to life’ with about 12.7% and 3.4% of the responses respectively.

- 6.3.16 About 10.6% of the general public respondents were aware of the rights of persons living with disability to ‘equal treatment’ followed by freedom of movement and association (4%) and the right to life (4%) for that vulnerable group.
- 6.3.17 1.6% of respondents were aware that PWDs have a ‘right to health care.’ For persons living with HIV/AIDs, about 9.7% of respondents were aware of their right to healthcare and about 6.9% knew about their right to equal treatment.
- 6.3.18 In the case of the aged, their right to healthcare (8.3%) was the commonest known right followed by the right to life (7.4%). The right to equal treatment and non-discrimination was the most well-known right for women with 22.3% of respondents indicating knowledge of this right.
- 6.3.19 The vulnerable group whose human rights are least known were LGBTI. 90% of the total sample had no knowledge of any of the rights of this group as reflected by Table 2.
- 6.3.20 In general human rights knowledge amongst the Ghanaian population can be said to be low.

**Table 2: Knowledge of the rights of key vulnerable groups**

	No violence (%)	Equal rights (no discrimination) (%)	Right to education (%)	Freedom of movement and association (%)	Right to health care (%)	Right to basic needs (%)	Right to life (%)	Don't know (%)
<b>Children &amp; Juveniles</b>	12.7	2.5	19.2	0.3	1.1	1.7	3.4	59.0
<b>PLWD</b>	3.3	10.6	2.4	4.1	1.6	2.0	4.1	71.8
<b>PLWHA</b>	4.0	6.9	0.8	2.0	9.7	1.6	2.8	72.2
<b>The Aged</b>	0.4	4.8	0.0	2.2	8.3	2.6	7.4	74.2
<b>Refugees &amp; Internally Displaced</b>	1.3	7.0	1.3	3.2	1.9	5.1	9.6	70.7
<b>Women</b>	6.3	22.3	3.1	0.3	0.0	1.3	4.1	62.7
<b>LGBTI</b>	1.4	0	1.4	2.8	0.0	0.0	4.2	90.1
<b>Persons In Detention</b>	0.0	6.15	0.769	0.77	0.8	0.8	10	80.77
<b>Migrant Workers</b>	0.87	3.48	0.0	0.0	0.0	0.0	6.96	88.7

## 6.4 KNOWLEDGE OF INSTITUTIONS FOR REDRESS

- 6.4.1 With respect to where to go if these vulnerable groups wanted to seek redress on an issue (Table 3), general public respondents were mostly well informed about which institutions to contact. 82% could state where children and juveniles could go for help. 79% of respondents were able to indicate institutions working to address issues relating to women, 53% were able to mention some institutions supporting the Aged. The institution where LGBTI

persons may resort to for redress is the least known with only 16% of respondents identifying an institution supporting the LGBTI group.

6.4.2 Table 3 below captures the general public knowledge of the institutions for redress for vulnerable groups.

Table 3: Do you know where they can go to seek redress?

Vulnerable Group	Yes (%)	No (%)
Children and Juvenile	82	18
Persons Living With disability	51.67	48.3
Persons living with HIV/AIDS	52	48
The aged	52.83	47.2
Refugees and Internally displaced persons	38	62
Women	79	21
LGBT persons	16.17	83.8
Persons in detention	30.67	69.3
Migrant workers	29.33	70.7

## 6.5 WILLINGNESS TO ASSIST VICTIMS SEEK REDRESS FOR HUMAN RIGHTS ABUSES

6.5.1 When a respondent comes across a person whose rights are being abused, or has been abused, how will such a respondent react? The data gathered on whether respondents have assisted someone to seek redress for a human rights violation in figure 6, shows that about 60% of Ghanaians represented by the general public data may never have assisted anyone to seek redress for a rights violation.

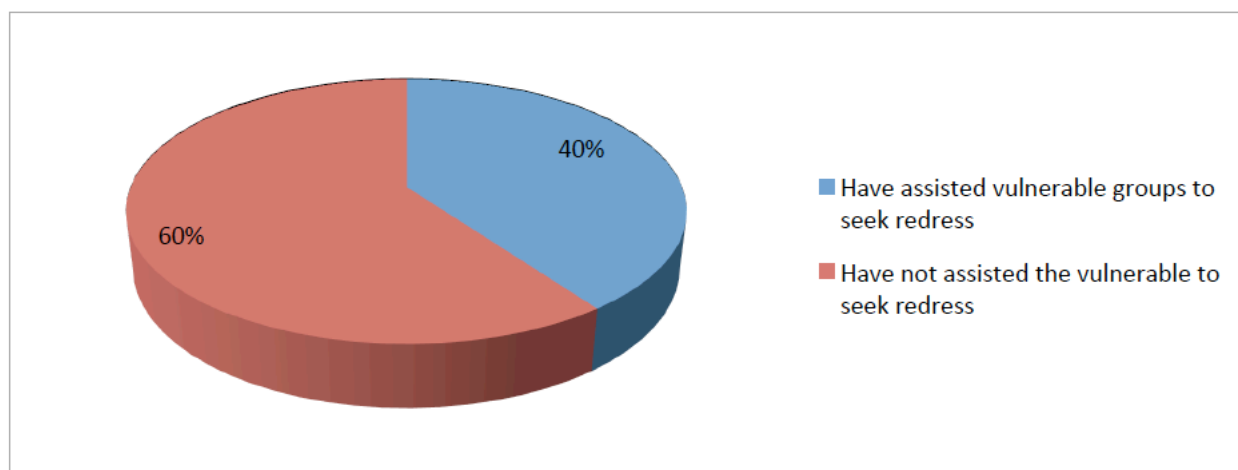
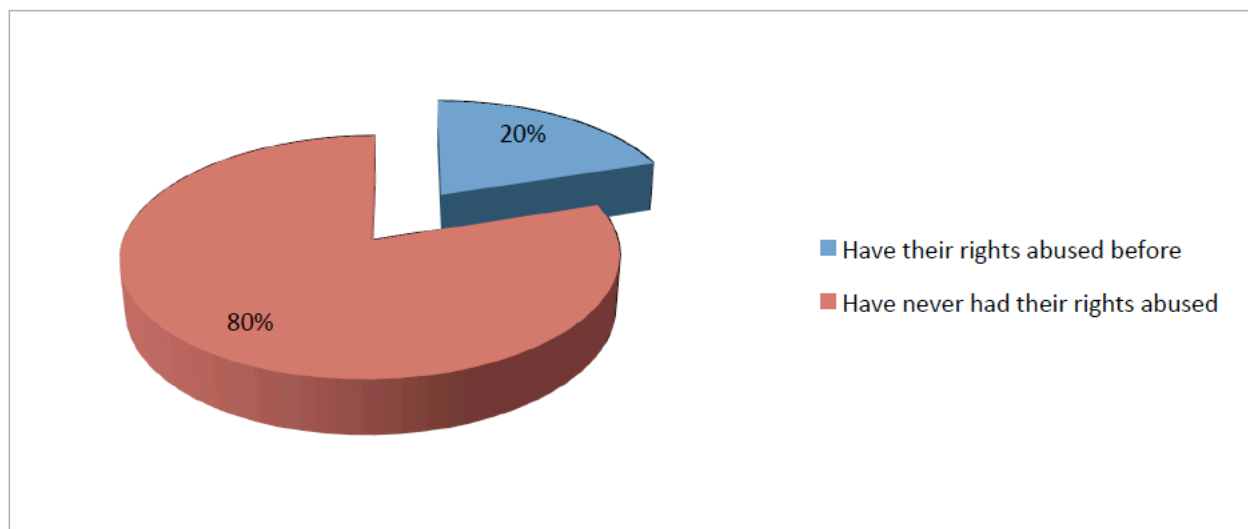


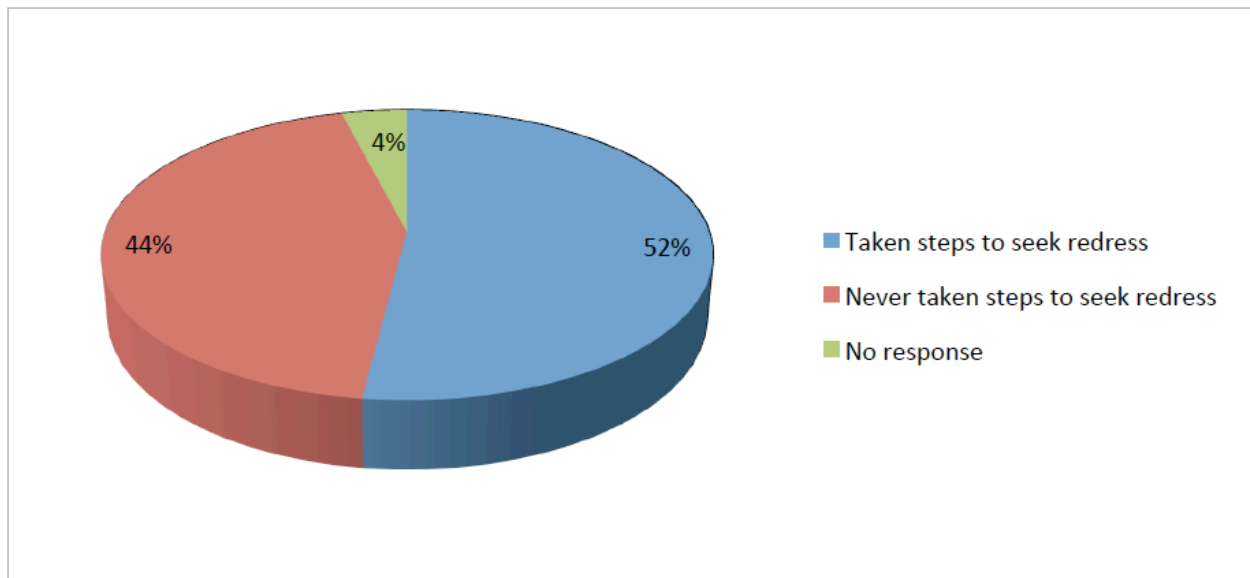
Figure 6: Have you ever assisted someone to seek redress?

- 6.5.2 Out of this 60%, 50.83% did not provide any reason for not supporting anyone to seek redress, while 42% stated that they had not come across such human rights issues.
- 6.5.3 The results above appear surprising but may just underscore the general lack of knowledge and awareness on human rights issues. Some respondents mentioned a lack of resources to offer such help, and not knowing the appropriate offices to deal with such issues as the reasons for not assisting any member of these vulnerable groups to seek redress.
- 6.5.4 Figure 7 below revealed that 80% of general public respondents also reported that their rights had never been violated. Breaking down the 20% whose rights had been abused, 34% of this percentage indicated they felt cheated by someone including the police, 29% experienced physical abuse or attacks.
- 6.5.5 24% of Respondents were unwilling to discuss how their rights had been abused. Another 3% mentioned unfair working conditions.



**Figure 7: Have Your Rights Been Abused Before?**

- 6.5.6 52% of general public respondents whose human rights had been violated indicated (Figure 8) that they had taken steps to seek redress. Amongst the 44% who had not taken steps to seek redress, 27% mentioned that this was because the perpetrator was a family member or an elderly person, while 23% cited police potential police inaction as their reason. 15.4% stated that they forgave the other party and 12% indicated that they did not know where to go. Another 12% of respondents also revealed that fear of victimization prevented them from seeking any help.



**Figure 8: Did you take steps to seek redress?**

- 6.5.7 When vulnerable group respondents were asked whether they had taken steps to help anyone whose rights had been abused, the responses were much more affirmative than was the case for the general public.
- 6.5.8 Consequently Figure 9 shows that 76.92% of LGBTI respondents and 76.27% of PWD group respondents had been proactive in taking steps to protect their rights. On the other hand, the children and juvenile group recorded the highest negative response (81.67%) related to taking steps to redress issues concerning rights abuse, followed by refugees where 71.43% of respondents noted that they had not taken any steps to help others whose rights were being infringed upon.

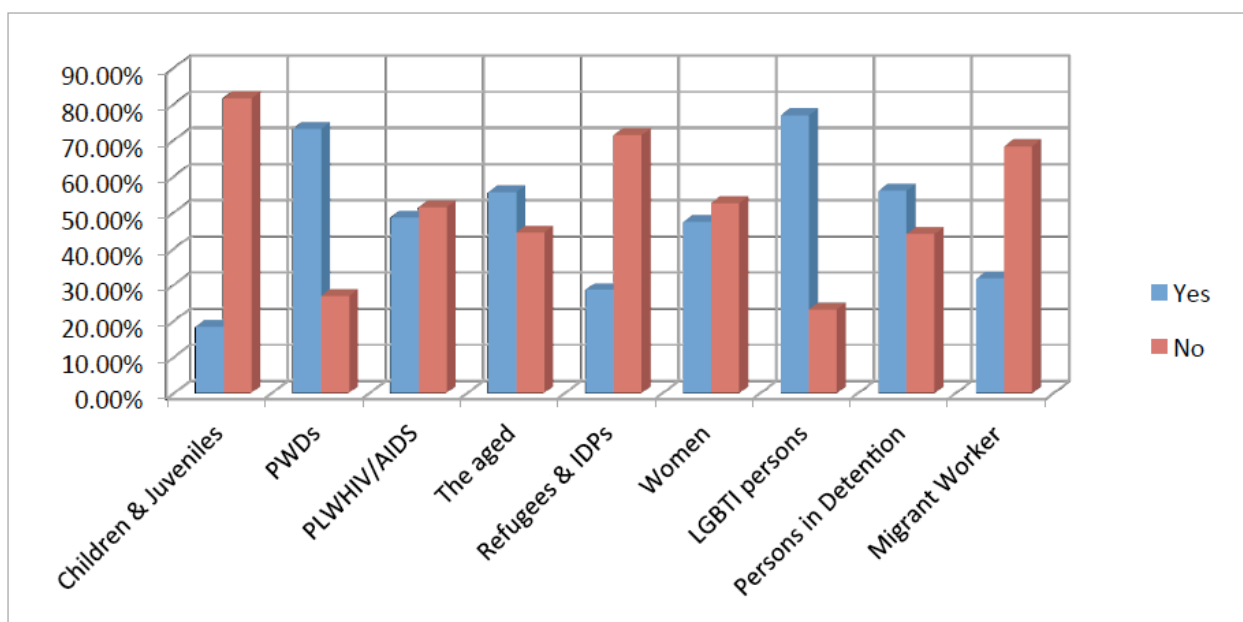


Figure 9: Have you taken steps to help anyone whose rights have been abused?

## 6.6 RECOMMENDATIONS

It is recommended that:

1. Human rights law should become a compulsory course in the various faculties of law where Ghana's lawyers receive their education.
2. Social context training would also enable the justice community to better understand and deal with gender-, child- and disability-sensitive issues, including domestic violence.
3. The National Commission on Civic Education (NCCE) should also undertake human rights education and awareness-creation among the general population. An assessment of how the NCCE could be made more visible even for the awareness creation it currently undertakes can be undertaken under NHRAP.
4. Secondary school educational curricula should also cover human rights education as it provides a critical foundation for citizens to respect, protect and fulfill the human rights of society at large.



## CHAPTER SEVEN

### THE SITUATION OF VULNERABLE GROUPS

#### 7.1 INTRODUCTION

- 7.1.1 For the purposes of this survey, vulnerable groups are defined to include children and juveniles; persons with disabilities; persons living with HIV/AIDS; the aged; women; persons in detention facilities; refugees and internally displaced persons; migrant workers; and lesbians, gays, bisexual, transgendered and intersex (LGBTIs).

#### 7.2 CHILDREN AND JUVENILES

##### 7.2.1 The right of children to education

- 7.2.1.1 The relevant law is provided under Article 25 of the 1992 Constitution. Article 25 provides that all persons shall have the right to equal educational opportunities and facilities, with a view to achieving the full realization of that right. It provides further that basic education shall be free, compulsory and available to all. Article 25 requires that secondary education, including technical and vocational education shall be made available and accessible to all with a progressive introduction of free education. Higher education is expected to be made equally accessible to all, on the basis of capacity and by a progressive introduction of free education.
- 7.2.1.2 Article 38(2) of the Constitution provides that the Government shall, within two years after Parliament first meets after the coming into force of the 1992 Constitution, draw up a programme for implementation within the following ten years, for the provision of free compulsory and universal basic education.
- 7.2.1.3 The Education Act, 2008 (Act 778), came into force on 9 January 2009, and enhances the right to education of every child. Under the Act, each child who attains school going age has a right to free compulsory basic education in Ghana. The Act also stipulates that the design of a school should be able to accommodate children with special needs and provides requirements to prevent the discrimination against children with disabilities.
- 7.2.1.4 There are several concerns regarding the right of children to education in Ghana. The Constitution Review Commission deliberated upon issues such as:
- Basic education not being free in practice in spite of Constitutional requirements for free basic education. These concerns arise out of complaints that there are occasions where parents of basic school going children are told that, the government only pays fees for the first and second terms and leaves out the third term, so the parents must pay for the third term;
  - Whether free education should be available for children from basic school up to the university level;

- Whether in technical schools, apprenticing should be made free to help the needy to educate their children;
- Whether the law should expressly recognize the obligation of the state to ensure that every child of school-going age attends school;
- Whether Professional studies should start at the SHS level.

7.2.1.5 The Commission recommended that Free Compulsory Universal Basic Education be fully enforced by the Ministry of Education with emphasis on quality education and that the Right to Education be explicitly guaranteed in the Constitution.

7.2.1.6 Generally, the right to education of children is affected by the perennial problems of strike actions by teaching and non-teaching staff of academic institutions. In March 2013, nationwide strikes by the Ghana National Association of Teachers (GNAT) and National Association of Graduate Teachers (NAGRAT) disrupted preparations for the West African Senior Secondary Examinations.<sup>273</sup>

## 7.2.2 **Discrimination against Children**

7.2.2.1 There is no legal basis for discrimination in the realization of the right to education in Ghana. However, girls and women frequently drop out of school due to societal or economic pressures. The Government actively campaigns for girls' education and in 1997 established a girls' education unit within the basic education division of the Ghana Educational Service.

7.2.2.2 The Constitution Review Commission also found that there are children who suffer discrimination in Ghana. Children born with disabilities and their parents are often victims of abandonment, neglect, and stigma in their communities. Other children who suffer discrimination are children in street situations, orphaned children, the children of asylum-seekers, children of immigrants, and children infected with or affected by HIV/AIDS.

## 7.2.3 **Trafficking in children for labour exploitation**

7.2.3.1 The Human Trafficking Act, 2005 (Act 694) prohibits the trafficking of children. However, labour exploitation of children is persistent and glaring on the streets of major cities in Ghana. Child exploitation for labour purposes was the most frequently reported type of abuse by respondents in this survey. Mostly, these abuses are labour and sexual exploitation related. There is a problem of boys being contracted or given out by their parents or guardians to do fishing on Lake Volta and other fishing settlements in the country. There were also reports of children trafficked to work in neighbouring countries.

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<sup>273</sup> Reports on the NAGRAT, GNAT and TEWU strikes is available at <http://tv3network.com/Education/teachers-strike-takes-full-effect-nationwide.html> (last accessed 1 February, 2017).

7.2.3.2 International bodies such as the United Nations through the UPR have suggested that Ghana adopts a more comprehensive, human rights based approach to trafficking in persons.

#### 7.2.4 Sexual assaults

7.2.4.1 There is significant evidence of the occurrence of sexual abuse in the family in Ghana. Cases of home-related violence have been reported by the media, whilst records at the Domestic Violence Victim Support Unit of the Ghana Police Service also provide information as to the occurrence of the phenomenon. The most commonly reported sexual abuse cases are defilement, incest, harassment, indecent assault and unnatural carnal knowledge. Most victims of sexual violence within the family are girls. In a few instances, boys are victims of sexual violence. Incest is the most common sexual violence that occurs in the home. Sexual abuse and harassment are commonly perpetrated against girls at school and in other educational settings. The next table provides some figures on the number of sexual offences reported in 2005, 2006, 2007 and 2010. The cases reported include the cases that occurred in schools.<sup>274</sup>

	Year	2005	2006	2007	2010
<b>Offence</b>					
Defilement		713	1427	1578	986
Incest		11	11	10	22
Attempted defilement		5	4	5	10

Source: DOVVSU Records as reproduced in Ghana's Consolidated 3<sup>rd</sup> to 5<sup>th</sup> Report to the Committee on the Rights of the Child, United Nations.

7.2.4.2 There are also reports of frequent sexual assaults on female students by their teachers. The girls often are reluctant to report the attacks to their parents, and social pressure often prevents parents from going to the police and other authorities when reports are made.

7.2.4.3 Commercial sex work involving young girls is an issue of concern, this is in spite of the fact that sexual exploitation and prostitution are criminal acts in Ghana, and any person who procures a child for the purposes of prostitution commits a crime and could be prosecuted.

7.2.4.4 Research carried out by the United Nations Population Fund (UNFPA) into commercial sex work involving children found that 57 per cent of children interviewed had engaged in commercial sex work without using condoms. The Ghana Police Service had taken up that research and was working with civil society organizations such as Marie Stopes International

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<sup>274</sup> Ghana's Consolidated third to fifth periodic reports of States parties due in 2011 received by the Committee on the Rights of the Child on 24<sup>th</sup> May 2012 at page 70 available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GHA/3-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GHA/3-5&Lang=en)

to combat the problem and related reproductive health issues, starting with the coastal belt of Ghana.<sup>275</sup>

#### 7.2.5 Children and crime

7.2.5.1 Children are criminally responsible when they attain 12 years of age. In Ghana, children usually come in conflict with the law as a result of irresponsibility and lack of supervision by parents or people in charge of them. In isolated instances, insecurity from broken homes is also cited as a contributory factor. The Juvenile Justice Act, 2003 (Act 653) provides the legal framework for juvenile justice in Ghana.

7.2.5.2 The laws of Ghana do not allow the detention of children in adult detention facilities, but a number of juveniles were found held in police stations pending trial. Children are likely to be detained in adult detention facilities when they inflate their ages. This sometimes happen as a result of acting on wrong advice from the police. In 2008, some juveniles inflated their ages to avoid lengthy rehabilitation sentences in the correctional centres. In response, the DSW and the Prison Service collaborated to transfer younger juveniles in adult prisons to juvenile correction centres and older juveniles back to the senior correctional centre. Juveniles are now more frequently separated from the adult prison population.<sup>276</sup>

7.2.5.3 Between 2005 and 2010, a total number of 1,748 children were reported to have been held in pretrial detention in the police stations. The average number of days or length of detention for girls ranged between 33 and 123 days, whilst that of boys was between 86 and 796 days.<sup>277</sup>

7.2.5.4 The chances of the realization of the rights of children would be improved with the establishment of an office of an independent deputy commissioner in charge of the rights of children, persons with disabilities and the aged as recommended by the Constitution Review Commission.

#### 7.2.5.5 Recommendations

1. Monitoring the number of sexual assault and exploitation cases involving children and developing plans to prevent same, prosecute the perpetrators and protecting the victims is recommended for incorporation into the NHRAP.

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<sup>275</sup> Ghana's Consolidated third to fifth periodic reports of States parties due in 2011 received by the Committee on the Rights of the Child on 24<sup>th</sup> May 2012 at page 70 available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GHA/3-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GHA/3-5&Lang=en)

<sup>276</sup> In 2012, the US Department of State Human Rights Report stated that Authorities did not house juvenile detainees separately from adults.

<sup>277</sup> Ghana's Consolidated third to fifth periodic reports of States parties due in 2011 received by the Committee on the Rights of the Child on 24<sup>th</sup> May 2012 at page 64 available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GHA/3-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GHA/3-5&Lang=en)

2. The chances of the realization of the rights of children would be improved with the establishment of an office of an independent deputy commissioner in charge of the rights of children, persons with disabilities and the aged as recommended by the Constitution Review Commission.

### **7.3 THE AGED**

- 7.3.1 Article 37(2)(b) of the 1992 Constitution requires the State to enact appropriate laws to assure the protection and promotion of all basic human rights and freedoms, including the rights of the aged. Further, the State is expected to provide social assistance to the aged such as will enable them to maintain a decent standard of living as provided for in article 37(6)(b) of the 1992 Constitution.
- 7.3.2 The aged have received very little attention in relation to respecting, protecting and fulfilling their human rights since the coming into force of the 1992 Constitution. However, issues affecting the rights of the aged, received attention from the Constitution Review Commission. The Commission found that the main problems of the aged relate to economic and social wellbeing, especially access to healthcare and for psycho-social support. The Commission further found that care for the aged is very important and requires specific legal provisions, budgetary allocation and administrative actions to address.
- 7.3.3 Housing is one of the most critical needs of the aged in Ghana. The acknowledgement by President Mahama in his maiden State of the Nations address on 21<sup>st</sup> February 2013 that one of the most basic rights is the right to housing and the provision of a place of convenience should be leveraged upon for fulfillment of the housing rights of the aged.
- 7.3.4 The Commission observed that the rights of the aged are a matter of growing concern in Ghana and recommended that the Constitution be amended to guarantee the right of the aged to live in dignity, to be free from abuse and to obtain adequate state pensions and social welfare. The Commission also recommended appropriate amendments to the Constitution to make provision for the appointment of a Special Commissioner of CHRAJ for Children, PWDs and the Aged.
- 7.3.5 The Commission also recommended that within 12 months of the coming into force of the new Constitution, Parliament should enact legislation on the rights of the Aged and for the Department of Social Welfare and the District Assemblies to allot greater attention to the Aged in their plans and budgets than is currently the case.
- 7.3.6 In Ghana, the appropriate department to provide the required welfare for the aged is the Social Welfare Department. However, that Department is highly under-resourced and is unable to cater for the needs of the Aged in an appropriate manner.

### 7.3.7 Recommendations

1. NHRAP should monitor the process of amending the Constitution and creation of the position for deputy Commissioner in charge of Children, the Aged and Persons with Disabilities.
2. A process to ensure that the Ministry for Gender, Children and Social Protection and the Department of Social Welfare budgets appropriately for the realization of the rights of the Aged should be put in place.

## 7.4 PERSONS WITH DISABILITIES

- 7.4.1 The law on disability in Ghana is mainly found in article 29 of the 1992 Constitution and in the Persons with Disability Act, 2006 (Act 715). The rights of persons with disability that are protected under article 29 include the right to live with their families or with foster parents and to participate in social, creative or recreational activities. There is a prohibition against differential treatment of such persons in respect of their residence other than that required by their conditions or by the improvement which they may derive from such treatment. In addition, the Constitution guarantees the protection of persons with disability from all exploitation and from all treatment of a discriminatory, abusive or degrading nature.
- 7.4.2 The Persons with Disability Act contains detailed provisions on the right to health care, education, transportation and the employment of persons with disability. The Act establishes a National Council on Persons with Disability whose function is to propose and evolve strategies to enable persons with disability to enter and participate in the mainstream of the national development process.
- 7.4.3 While the Government does not systematically or overtly discriminate against persons with disabilities, in practice, such persons often experience societal discrimination. There are several issues of concerns relating to persons with disabilities. Some of these issues are:
- 7.4.3.1 **Absence of sign language interpreters in hospitals:** The Ghana National Association of the Deaf (GNAD) has on many occasions complained about the lack of sign language interpreters in hospitals and its consequences for the health rights of persons who have hearing impairments.<sup>278</sup> Lack of sign language interpreters has resulted in improper diagnosis at health facilities due to communication barriers between the deaf and hearing medical officers. This often leads to wrong prescriptions and complications in some cases and preventable deaths. There is a lack of adequate knowledge about deaf people, their culture and language by healthcare personnel. In the absence of official sign interpreters at healthcare institutions, some relatives of deaf patients are compelled to get their victims sign language interpreters. It is important for government to recognize Ghana Sign Language as

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<sup>278</sup> A news report is available at <http://edition.myjoyonline.com/pages/news/201303/102880.php> (last accessed on 3 February, 2017).

an official language for the deaf and make provision for the employment of sign language interpreters in healthcare centres and essential service provision points across the country.

- 7.4.3.2 **Congestion and food ration inadequacy:** Serious issues continue to bedevil mental health care delivery in Ghana including congestion, and feeding challenges. Specifically food ration and medication inadequacy lead to the violation of rights of such patients.
- 7.4.3.3 **Access to public buildings:** The law provides persons with disabilities access to public buildings "as far as is practical." Activists supporting the rights of persons with disabilities have complained of the slow implementation of the Disability Act particularly the fact that many public buildings are inaccessible and the design of new ones do not regularly take their accessibility into consideration.
- 7.4.3.4 **Physical abuse of PWDs:** Persons with mental and physical disabilities are frequently subjected to abuse and intolerance. Some were also reported to have been killed for ritual purposes. For example in March 2009 four persons appeared in court on murder charges in connection with the July 2008 killing of Yakubu Busanga, a hunchback. The report speculated that the murder may have been motivated by a desire to obtain body parts for use in ritual practices. In addition it was reported that in July 2009 a two-year-old albino boy was stolen from his mother for ritual purposes. Some religious groups believe that persons with mental disabilities are afflicted by demons that should be exorcised. The abuse of children with disabilities is also common. There are reports indicating that children with disabilities have been tied to trees or market stalls and caned regularly. There are also reports of family members killing children with disabilities. Several government agencies and NGOs such as Mind Freedom and the Ghana Federation of the Disabled have reportedly been involved in addressing discrimination against persons with disabilities.
- 7.4.3.5 When the Constitution Review Commission deliberated on the issues affecting Persons with Disabilities, the Commission found that PWDs have generally poorer health, lower educational achievements, fewer economic opportunities and higher rates of poverty than people without disabilities. At present there are a lot of PWDs who are unable to achieve their dreams in life.
- 7.4.3.6 The Commission found that the Constitution protects PWDs from all forms of discrimination and stops short of guaranteeing the right of PWDs to employment. It, however, provides protection for the employment of persons with disability by offering incentives to disabled persons engaged in business and also to business organisations that employ disabled persons.
- 7.4.3.7 The Commission observed that the Constitution already makes provision for access to public places by PWDs whilst, the Persons With Disability Act specifically requires the owner or occupier of a place to which the public has access to provide appropriate facilities

that make the place accessible to and available for use by a person with disability. The Act further provides that a person who provides any service to the public, must provide the necessary facilities that make the service available and accessible to a person with disability. The violation of any of these requirements is an offence in law and the offender is liable on summary conviction to a fine not exceeding fifty penalty units or to a term of imprisonment not exceeding three months or to both.

7.4.3.8 The Commission recommended that the Draft PWDs Regulations be completed by the Disability Council and the Ministry in charge of Social Welfare for passage by Parliament, without further delay in order to operationalise the rights of PWD in the Constitution and the Persons with Disabilities Act. This is in addition to recommendations for amendments to replace the term Disabled Persons in article 29 of the 1992 Constitution with Persons With Disability to make the law consistent with current international best practice.

#### 7.4.4 Recommendations

1. It is important for government to recognize Ghana Sign Language as an official language for the deaf and make provision for the employment of sign language interpreters in healthcare centres and essential service provision points across the country.
2. NHRAP should make provision for monitoring work on the Regulations to the Disability Act.
3. There is the need to monitor the process for the amendment of article 29 of the Constitution to change the word “disabled” with persons with disabilities.”

### 7.5 PERSONS LIVING WITH HIV/AIDS

7.5.1 By 2013, an estimated 224,488 persons made up of 189,931 adults and 34,557 children (15%) were living with HIV in Ghana.<sup>279</sup> The need for anti-retroviral therapy (ART) in 2013 was estimated to be 125,396 (18,621 children 0-14years). The HIV prevalence amongst pregnant women attending Antenatal clinics for 2013 was 1.9%. This was a drop from 2.1% in 2012. This was the first recording below 2% in two decades.

7.5.2 There is a National HIV Strategic Plan, 2013 to protect the rights of persons living with HIV/AIDS.<sup>280</sup> Nearly four percent of people in Ghana have not heard of HIV/AIDS.<sup>281</sup> There is little variation in knowledge across regions and localities. But awareness in the three

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<sup>279</sup> Summary of 2013 HIV Sentinel Survey Report, available at [http://ghanaidhs.gov.gh/gac1/aids\\_info.php](http://ghanaidhs.gov.gh/gac1/aids_info.php)

<sup>280</sup> National HIV and AIDS, STI Policy, 2013 available at <http://ghanaidhs.gov.gh/gac1/pubs/Ghana%20National%20HIV%20and%20AIDS%20STI%20Policy.pdf>

<sup>281</sup> Ghana Living Standards Survey (Round 6), August 2014 available at <http://www.statsghana.gov.gh/glss6.html>



northern regions is relatively lower than in the southern regions. About 8 percent of people in the 3 northern regions have never heard of HIV/AIDS.<sup>282</sup>

- 7.5.3 Although most people have heard about HIV, advocacy efforts to improve awareness need to be intensified. This is because nearly 16 percent of the Ghanaian population does not know that a healthy looking person can have the HIV virus that causes AIDS. Awareness that a healthy looking person could carry the virus is high in Greater Accra, Volta and Ashanti. However, such awareness is relatively low in the three northern regions. Knowledge in urban areas (88.9%) is higher than in rural areas (76.5%).<sup>283</sup>
- 7.5.4 One of the key intervention methods to minimize the HIV infection rate is prevention of the mother's transmission of the HIV infection to her baby during pregnancy, delivery and breastfeeding. People's awareness of the possibility of mother to child transmission is relatively high and ranges between 79 and 92.5 percent.<sup>284</sup> Almost 84 percent of rural inhabitants and 89 percent of their urban counterparts know about mother to child transmission.<sup>285</sup>
- 7.5.5 Discrimination against persons with HIV/AIDS is a problem. According to interviews with the Officers of the National Association of Persons Living with HIV/AIDS, PLWHIV/AIDS face discrimination even when they attempt depositing cash into their bank accounts. This is the case although efforts of the National Association of Persons Living with HIV/AIDS have worked progressively towards reducing discrimination at the work place and beyond. The fear of stigmatization continues to discourage persons from being tested for HIV infection.
- 7.5.6 The government and NGOs subsidized many centres that provided free HIV testing to citizens, although there were reports that confidentiality was not consistently respected. Advocacy on the rights of PLWHIV/AIDS improved with "HIV/AIDS Ambassadors" using public media to create awareness on their rights.
- 7.5.7 It appears access to retroviral drugs is generally normal with the exception of occasional shortages necessitating agitations from persons concerned.
- 7.5.8 The legal and human rights aspects relating to combating HIV/AIDS and improving knowledge of Bioethics in Ghana to cover areas such as sperm and organ donations, surrogacy and the right to refuse life-sustaining treatment remain largely unexplored.

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<sup>282</sup> National HIV and AIDS, STI Policy, 2013 available at <http://ghanaid.gov.gh/gac1/pubs/Ghana%20National%20HIV%20and%20AIDS%20STI%20Policy.pdf>

<sup>282</sup> Ghana Living Standards Survey (Round 6), August 2014 available at <http://www.statsghana.gov.gh/glss6.html>

<sup>283</sup> Ghana Living Standards Survey (Round 5), September 2008 at 29.

<sup>284</sup> Ghana Living Standards Survey (Round 6), August 2014 at 29.

<sup>285</sup> Ghana Statistical Service, Report of the Ghana Living Standards survey, Round 5 (Sept. 2008) at 28.

## 7.6 PERSONS IN DETENTION

7.6.1 By June 2015, the total prison population in Ghana was about 14297. The pre-trial detainees population formed about 16.9%. The female population made was about 1.4% of the prison population. The juvenile population was about 0.9%. The official capacity of the prison facilities in Ghana is 9875.<sup>286</sup>

7.6.2 Prisoners in Ghana face many problems including:

7.6.2.1 **Congestion and unsanitary conditions in detention facilities:** Persons in detention suffer the consequences of poor maintenance, unsanitary, poorly ventilated and overcrowded facilities which contribute to a high prevalence of skin and other communicable diseases. Many prisoners die due to extremely harsh conditions and lack of medical treatment. In 2000, 106 inmates died of various diseases; 5 from malnutrition, 20 from HIV/AIDS, 17 from tuberculosis, 11 from diarrhoea or dehydration, and the rest from other illnesses. In 2001, 134 prisoners died in the country's prisons, 9 from malnutrition, 21 from HIV/AIDS, 17 from tuberculosis, 13 from diarrhoea or dehydration, 8 from malaria, and the rest from other illnesses. 2008 recorded 107 deaths of prisoners while in custody. 2011 Prisons Service statistics stated that 13,467 prisoners were held in prisons designed to hold approximately one-third of that number.<sup>287</sup> In most cases, families had to supplement prisoners' food, medicine and also bribe officials for visitation rights. The situation in Ghana's cells appears worse as suspects allegedly pleaded guilty to crimes in order to be sent to prison and to leave the unsanitary conditions in the police remand cells.

7.6.2.2 The Service is gradually improving and expanding the skills training programmes in its prisons. The Prison Service has also begun offering certificate courses for inmates to acquire further education and to improve the chances of inmates to secure jobs when they are released.

7.6.2.3 As at August 2013, the amount allocated for feeding of each prisoner was one Ghana cedi and eighty pesewas (GHS1.80). Some available report also suggests that the feeding ration has been increased from 0.40 United States dollar to 1 United States dollar.<sup>288</sup> In addition, a percentage of foodstuffs produced on prison farms across the country are used to supplement the ration of the inmates. All prisoners are classified as indigents under the National Health Insurance Scheme and thus enjoy free registration, enabling them to access good health care services under the Scheme. Prisoners who contract communicable diseases are sent to a health facility for care. In view of the service's inability to attract and retain health providers, officers are being sponsored to pursue health-related courses to provide health care services to the inmates.<sup>289</sup>

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<sup>286</sup> These are available at <http://www.prisonstudies.org/country/ghana>

<sup>287</sup> US Department of State 2012 Human Rights Report.

<sup>288</sup> National Report submitted to the Working Group on the Universal Periodic Review, Human Rights Council, 10 August, 2012 at pages 4-5.

<sup>289</sup> Ghana UPR report for 2<sup>nd</sup> round.

- 7.6.2.4 Family visitation rights concerns (demand for the realisation of conjugal rights):** An extremely strong request by persons in detention, in particular, prison inmates is for a review of the family visitation arrangements currently in practice. It was observed that prison inmates are afforded very limited visitation rights. In some instances, family members are allowed to visit inmates for less than five (5) minutes within a two-week period with prison officers in close proximity during such visits. An overwhelming demand is for such visitation rights to be modified and improved with a view to affording inmates more time with their family members, in particular, spouses and children. For a start, an arrangement by which family members and inmates may be allowed to interact on an open field once a month for a period longer than an hour or two may suffice. This arrangement may be compared to the practice of allowing a large number of members of the public into the Nsawam prison, for instance, during festive periods such as the end of Ramadan.
- 7.6.2.5 Violation of bodily integrity through physical abuse:** There were also repeated reports of prisoners being beaten by the Police, as well as arbitrary arrests and detention. In 1999, a woman was reported to have been detained in a cell with her husband and 15 other males. In the same year, a family of a deceased man alleged that he had been brutalized by police and detained in handcuffs for 5 days. Again, in January 2000, a 65-year-old cocoa farmer from Dadieso in the Western Region alleged that a police inspector detained him for 2 days without bail and beat him after allegations that he owed the Government money. Similar abuses have been recorded over the years. It was also noted that authorities do not routinely notify prisoners' families of their incarceration. Such information is often obtained only by chance.
- 7.6.2.6 Undue delay in trials:** Remand prisoners were reportedly held for periods ranging from 1 week to 8 years. As of early July 1999, about 23%, or 1,840 of the 8,000 inmates nationwide, were remand prisoners. In 2011, 21% of the prison population was in pre-trial status. They continue to be housed with convicted prisoners and sometimes served more time in detention awaiting trial than the maximum sentence for the alleged crime committed.<sup>290</sup> There is a practice of the Police arresting persons on Friday and keeping them in detention over the weekend until court is in session on Monday. This practice is seen as a deliberate circumvention of the 48-hour maximum period allowed under the 1992 Constitution for detention prior to arraignment before a Court or release by law enforcement on bail. Police acknowledged that they were not able to locate files for approximately 300 of these prisoners since 2007. This ostensibly was due to the transfer and retirement of prosecutors and investigators. The detainees were being held at Nsawam Prison while prison officials, courts and the police rebuilt the case dockets.
- 7.6.2.7 Skills training for inmates:** The Ghana Prisons Service continues to be focused on the reformation, rehabilitation as well as improvement of the welfare of prisoners. Mindful of

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<sup>290</sup> US Department of State, 2012 Human Rights Report.

Ghana's commitment to international laws, treaties and conventions, and to ensure officers appreciation of these international conventions, the Prisons Service has developed a training manual which has been incorporated into the curricular for the training of prison officers. Rules and regulations governing the conduct of prisoners have been spelt out in a brochure which is issued to train prisoners, on admission, to educate them on their rights.

7.6.2.8 **Babies in prison:** The Prisons Service recognizes the intolerable situation of keeping babies of incarcerated mothers in prison since they should not be made to suffer for the transgressions of their parents. A baby friendly unit has been established at the Nsawam prisons to take care of such babies. However, additional support is required to establish similar facilities in the remaining female prisons.

7.6.2.9 **Juveniles in adult prisons:** The Service is also concerned that juveniles are sometimes incarcerated in adult prisons. It is therefore committed to fully implement the Juvenile Justice Act 2003 (Act 653) which provides for the transfer of juveniles in adult prisons to the appropriate institutions for safe custody and care. These actions are critical given the findings of many studies demonstrating that youth imprisonment and police contact often results in later reoffending, imprisonment and a cycle of recidivism.

7.6.2.10 **Expired warrants:** A major challenge for the Prisons Service is that prisoners remain in the prison facility long after their warrants have expired due to lack of coordination between the Prisons Service and the Police in ensuring their attendance in court. The Service is therefore taking steps to take complete custody of remand prisoners from the Police to enable prison officers ensure their court attendance when due.<sup>291</sup>

7.6.2.11 **Lack of engagement by the Prisons Council and the Ministry of Interior:** It was observed that a great majority of the inmates of prisons have not had any direct interaction with members of the Prisons Council and senior officials of the Ministry of Interior. Some inmates wonder whether they are purposefully kept ignorant about the role of the Prisons Council in ensuring an efficient Prisons System in Ghana. It would be helpful for the diligent discharge of the functions of the Prisons Council if members of the Council are able to interact with the inmates of the various prisons in order to learn firsthand, their concerns which can then be factored into policy decisions the Prisons Council is obligated to take under the 1992 Constitution.

### 7.6.3 **Good practices and improvements in prison conditions**

7.6.3.1 The situation of prison inmates has not remained the same over the years. Some improvements have been recorded over time. For example, from the year 2000, it was reported that juveniles were more frequently being separated from the adult prisons even though there was concern that they continued to be sentenced with adults. Furthermore

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<sup>291</sup> National Report submitted to the Working Group on the Universal Periodic Review, Human Rights Council, 10 August, 2012 at pages 4-5.

despite the continued lack of funding, food allowance was increased and amnesty was granted to old and ill prisoners and about a thousand prisoners who had not been convicted for rape, robbery or narcotics. The Government also sought to address the unsafe and unsanitary conditions of the prisons. A portion of the prison population was being held in buildings that were originally old colonial forts or abandoned public or military buildings, mostly characterized by poor ventilation and sanitation, or in dilapidated buildings with limited space. Sekondi prison is a typical example of such an old prison building with very poor ventilation.

- 7.6.3.2 To deal with congestion in prisons, Government commissioned Ankaful Maximum Security Prisons in the Central Region on 8<sup>th</sup> November, 2011. Ankaful has the capacity for 2000 inmates. As at August 2013, there were less than three hundred (300) inmates in Ankaful Prisons as some amount of work was ongoing. Inmates from other prisons were being moved to the new prison facility to ease the congestion. There is however the need to refurbish most of the existing structures to make life in the prisons more humane.
- 7.6.3.3 At Ankaful prisons, there are ten (10) inmates in each cell. Each inmate has access to his own bedding facilities. However, unlike other prisons facilities across the country, inmates in Ankaful are not permitted to cook. The inmates rely greatly on their rations from the Prisons kitchen and beverages supplied by their families. As Ankaful inmates are unable to supplement their diet due to the restrictions on cooking, the food quality from the prison kitchen must be regularly evaluated in order to ensure that the inmates are fed nutritious and balanced diets.
- 7.6.3.4 There are some infrastructural works ongoing in the prisons to provide facilities for the education needs of the inmates. One such facility is the “GETFund building” in Nsawam Prisons. Monitoring of work on the project to ensure that it is completed on time and not stalled would contribute to creating enlightened prison inmates.
- 7.6.3.5 Civil Society advocacy work on the right of prisoners to vote commenced by the Legal Resources Centre (LRC) in 2008 and later pursued by the Centre for Human Rights and Civil Liberties (CHURCIL) led to pronouncements by the Supreme Court acknowledging the rights of prisoners to vote. Consequently, in December 2012 and 2016, prisoners participated in the presidential elections although many prisoners were unable to meet some of the eligible requirements for registration and therefore to vote. Prisoners throughout the country are very eager to participate in the democratic governance of Ghana through voting for their choice of Presidential and Parliamentary candidates. A review of the factors which prevented many prisoners from meeting the qualification requirements for voting should be undertaken in order to ensure that prisoners are able to exercise their franchise in subsequent elections.

7.6.3.6 Since the introduction of the “Justice for All Programme” there has been gradual improvement with respect to the number of prisoners who have participated in the programme. By the year 2011, 1,499 inmates had attended the court sittings in the prisons. Out of that number, 345 were discharged, 243 granted bail, 35 were convicted and the rest were referred to court for their cases to take the normal course. There is a concern that the Justice for All programme concentrates much more on remand prisoners cases to the detriment of convict prisoners. A review of the Justice for All programme to take care of the interests of the convict prisoners as well, would help expedite action on cases with good potential for success on appeal. It is suggested that some appeal cases which may not require the attendance in court of witnesses be heard in the prisons just like the remand cases.

7.6.3.7 A review of the entire justice delivery system to reduce constant adjournments and to encourage speedy trials is important. In addition regular evaluations of the jury system, mainstreaming the use of non-custodial sentences, adopting the use of a parole system and tackling the medical and employment needs of inmates or ex-prisoners would all help to improve the human rights of persons in detention.

7.6.4 **Recommendations:** It is recommended that NHRAP engages:

1. The Ghana Prisons Service to review of the visitation rights of prisoners with a view to permitting more time for prisoners with their families and friends.
2. In an audit of the processes, if any, by which the Prisons Service notifies families of persons in their custody.
3. In a review of the entire justice delivery system to reduce constant adjournments and to encourage speedy trials.
4. The Prison Service on steps initiated by the Prisons Service to take complete custody of remand prisoners from the Police to enable prison officers ensure their court attendance when due.
5. In a review of the state of the implementation of court decisions on the rights of prisoners to vote in public elections in Ghana.
6. In a review of the factors which prevented many prisoners from meeting the qualification requirements for voting in order to ensure that prisoners are able to exercise their franchise in subsequent elections.
7. A review of the Justice for All programme to take care of the interests of the convict prisoners as well. This would help expedite action on some appeal cases which may not require the attendance in court of witnesses.

## 7.7 REFUGEES AND INTERNALLY DISPLACED PERSONS

### 7.7.1 Reception of refugees

7.7.1.1 The Refugee Law, 1992 PNDCL 305D governs Refugee matters in Ghana. Generally, Ghana is a refugee friendly country. The Government cooperates with the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees. Asylum has been granted to nationals such as Liberians, Togolese, Sierra

Leoneans, Sudanese, Nigerians, and more. In October 2012, the UNHCR estimated a total of 19,640 refugees and asylum seekers in Ghana. This includes 5,229 from Liberia, 3,793 from Togo, 9,301 from Cote d'Ivoire and 499 from Sudan.<sup>292</sup>

7.7.1.2 In spite of this positive record, there have been some clashes between the refugees and law enforcement agencies. For instance, on 24<sup>th</sup> March 2001, a mob of Liberian refugees from the Bujumbura Refugee Camp in the Greater Accra Region rioted following an alleged attack on a refugee by a Ghanaian. Armed with sticks, stones, and knives, the rioters vandalized the local police and fire stations, set free prisoners in the police cells, destroyed police and fire service living quarters, and looted, inflicting damage estimated at thousands of dollars. The mob also attacked vehicles on the Accra-Winneba road, which passes directly by the camp, damaging vehicles, burning tires, and harassing drivers. Police reinforcements, called in from Accra and Winneba, used tear gas and warning shots to control the crowd. Several rioters reportedly were injured and 24 were arrested. On 18<sup>th</sup> April 2001, they appeared in court and were charged with rioting, unlawful damage, and stealing. All pleaded not guilty; 18 were remanded into police custody, and 6 were granted bail.

7.7.1.3 Also on 9<sup>th</sup> November 2005, police fired tear gas and warning shots at Krisan refugee camp in the Western Region to control a riot that left buildings and a vehicle burned. Several hours after the riot, police proceeded from house to house, beating refugees.<sup>293</sup> Records at the camp clinic indicate that 100 refugees were treated for injuries sustained during the period 8<sup>th</sup> - 11<sup>th</sup> November 2005. In a separate incident on 21 July 2005, two refugees who were part of a group of refugees held in a former prison in Accra attempted to leave the prison to seek medical treatment but were mistakenly refused permission to exit. Violence ensued between refugees and community residents. Two refugees and two Ghanaians sustained minor injuries as a result.

7.7.1.4 Refugees have freedom of movement within the country and are not required to carry identification at all times. Refugees are allowed to apply for work permits through the same process applicable to other foreigners. However, work permits generally were issued only for employment in the formal sector, and the majority of refugees worked in the informal sector. Refugee children have access to public primary schools. Refugees are enrolled in the national health insurance system with funding from the UNHCR. Urban refugees have access to health care on a fee-for-service basis.

## **7.8 MIGRANT WORKERS**

7.8.1 Migrant workers and in particular internal migrants face abuses from employers and middlemen. These internal migrant workers are mainly young girls and boys who work as porters in various commercial enclaves in major cities such as Accra, Kumasi and Sekondi -

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<sup>292</sup> United States Department of State, 2013 Human Rights Report.

<sup>293</sup> United States Department of State Report on Human Rights, 8<sup>th</sup> March 2006 at 15.

Takoradi. The girls are at risk of sex trafficking and forced labour.<sup>294</sup> Citizens from West African countries are subjected to forced labor in Ghana in agriculture or domestic service.<sup>295</sup>

7.8.2 Generally, the law protects foreign workers. The Constitutional provisions on the rights of workers do not differentiate between foreign migrants and nationals or internal migrants. Neither does the Labour Act, 2003 make any such distinctions. Internal migrant workers, particularly, women and children often experience exploitative labour.

7.8.3 On 1 July 2003, the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families came into force. In accordance with the Convention, a committee has been set up to monitor states' compliance with the Convention. States acceding to the Convention undertake to submit reports to the Committee every fifth year on the implementation of the Convention's rules at national level. The Committee held its first meeting in March 2004.

7.8.4 **Consideration of Ghana's initial report and matters arising**

The Committee on the Protection of the Rights of all Migrant Workers and members of their families considered the initial report of Ghana on 2<sup>nd</sup> and 3<sup>rd</sup> September 2014. Some matters arising from the deliberations with the Committee include:

7.8.5 **Non-discrimination**

The Committee noted that, according to Ghana, national legislation makes no distinction **between** national workers and migrant workers. However, the lack of information on actual practice and examples that would make it possible to assess the implementation of the right to non-discrimination pursuant to the Convention was not provided. The Committee urged Ghana to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy, without discrimination, the rights recognized by the Convention, in accordance with article 7 thereof.

7.8.6 **Right to an effective remedy**

Every person in Ghana, regardless of nationality, has access to the courts and enjoys the protection of the rights guaranteed by law. However, there was no information on the number of cases and/or proceedings brought before those organs, including the Commission on Human Rights and Administrative Justice, since the ratification of the Convention by migrant workers and members of their families, including those in an irregular situation, which may reflect a lack of awareness on their part of their rights and of the legal remedies available to them.

7.8.7 **Initiatives to encourage the transfer of earnings**

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<sup>294</sup> United States Department of State, Trafficking in Persons Report, 2016 at page 180.

<sup>295</sup> *Id.*



There are initiatives to encourage the transfer of earnings and savings by Ghanaian migrant workers to productive projects in Ghana. But there is the absence of information about partnerships with financial institutions to facilitate the transfer of earnings and savings for Ghanaian migrant workers abroad and for migrant workers in Ghana. There is the need to expedite efforts to facilitate the transfer of remittances by Ghanaian migrant workers abroad.

#### **7.8.8 Voting by Ghanaians abroad**

National legislation recognizes the right of Ghanaians residing abroad to participate in public affairs in Ghana and to vote. It also noted the vote-by-proxy mechanism for migrant workers residing abroad, but was concerned that the mechanism, as described by the delegation of the State party, was inadequate to guarantee the exercise of the right to vote and participate in public affairs for Ghanaian migrant workers and members of their families. The Committee encouraged Ghana to undertake measures, including those of a legislative nature, to ensure the implementation of the right to vote for Ghanaian migrant workers residing abroad and, in the near future, to increase its efforts towards facilitating the exercise of the right to vote by Ghanaian nationals residing and working abroad in the presidential elections.

#### **7.8.9 Diasporan Affairs Bureau**

The Committee noted the establishment of the Diaspora Affairs Bureau and its mandate to develop a diaspora policy. However, there is lack of clarity about processes and fora for Ghanaian migrant workers abroad to participate in consultations regarding their views on how to contribute to national development.

#### **7.8.10 Recommendations**

It is recommended that NHRAP works with Office of the Minister of Justice and the Attorney General, the Ghana Immigration Service and the Ministry of Interior to implement the recommendations by the Committee on Migrant Workers. The recommendations are that Ghana:

1. Ensures that all migrant workers and members of their families are able to subscribe to a social security scheme and that they are informed of their rights in that regard;
2. Enters into bilateral and multilateral social security agreements to guarantee the social protection of migrant workers;
3. Undertakes measures to facilitate the transfer of earnings and savings by migrant workers in Ghana with preferential transfer and reception fees and to make savings more accessible to migrant workers and members of their families;
4. Makes available to migrant workers and members of their families, free of charge, and to the extent possible, in a language that they are able to understand appropriate information on the rights set out in the Convention and their rights and obligations in Ghana;

5. Continues its collaboration with the media to inform migrant workers of their rights under the Convention;
6. Conducts capacity-building programmes on the Convention for relevant public officials, such as law enforcement officials, embassy and consular staff, social workers, judges, prosecutors and other government officials;
7. Takes the necessary measures to guarantee to migrant workers and members of their families, both in law and in practice, the right to form, and be a member of associations and unions for the promotion and protection of their economic, social, cultural and other interests; and
8. Ensures that the Diaspora Affairs Bureau facilitates consultations and the exchange of views with Ghanaian diaspora associations about their contribution to national development processes.

## 7.9 WOMEN

### 7.9.1 The basis of women's rights

7.9.1.1 Women's rights are simply the elaboration of the human rights of women. The idea of women's rights was conceived as an attempt to acquire for women the same levels of realisation of the benefits of international human rights as men.

7.9.1.2 The foundation of the lack of women's realisation of their rights was found to be discrimination against women in economic, social, political and cultural spheres of life. Discrimination is therefore a core problem that women's rights seek to address. Another problem was the international human rights instruments' blindness to and subsequent omission of the unique circumstances and needs of women as a result of their biological construction, and social, economic, political and cultural situations, which required special recognition and attention by the general rights' statements such as those of health, work, and public participation among others.

7.9.1.3 Discrimination is defined as any *"distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"*.<sup>296</sup>

7.9.1.4 The social significance of maternity and the role of both parents in the family and in the upbringing of children have been recognized, meaning that the role of women in procreation should not be taken as a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole.

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<sup>296</sup> Article 1, UN Convention on the elimination of all forms of discrimination against women (CEDAW), available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

7.9.1.5 In the course of the work of the Constitutional Review Commission in 2011, the issues in relation to women's rights were discussed. The Commission observed that women make up more than 50% of the national population, yet they constitute only 8% of political and public office appointments. This exclusion of women in political and public appointments is to some extent grounded in the socio-cultural context rather than the absence of adequate gender-related statutes. Thus:

“A number of structural, cultural and institutional factors tend to limit the rights of women relative to men when it comes to access to resources and social goods. Societal attitudes, customary practices and beliefs, traditional roles of women, gender relations within the family, limited access of women to education and training and inadequate representation of women on decision making bodies, among others, operate together to place Ghanaian women in a disadvantaged position in society. These silent and subtle forms of discrimination and limitations tend to be reinforced through the process of socialization. For example, certain traditional notions which advocate a preference for the education of male children effectively limit the access of female children to formal education and thus reduce their opportunities for any training, employment and consequently their financial independence in the future. This in turn affects their capacities and opportunities to participate in decision-making and other political processes.<sup>297</sup>

7.9.1.6 The Constitution Review Commission further observed that the Supreme Court has held that the Directive Principles of State Policy, including the provisions in those Principles which call for redressing gender imbalances, are presumed to be justiciable.<sup>298</sup> This means that any question regarding the failure of an appointing authority to ensure reasonable gender balance in recruitments and appointments to any public office should be actionable in court. What constitutes reasonable gender balance in recruitment and appointment to public offices may vary from case to case, but it is a question that can be safely left to the courts to determine.

7.9.1.7 The Constitutional Review Commission again observed that articles 35(6)(b) and 36(6) and article 17(4)(a) of the Constitution permit Parliament to enact laws that are reasonably necessary to provide for the implementation of policies and programmes aimed at redressing any social imbalance, such as gender imbalance in public appointments.

7.9.1.8 The Commission observed that in giving effect to gender equality as a fundamental human right, many jurisdictions around the world are fashioning policies and laws that would reduce the gender gap in the public sector. Increasingly, many countries are introducing various types of gender quotas for public offices. In some countries, gender quotas are mandated by the national Constitution itself, while in others the quota provision is stipulated in other

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<sup>297</sup> Report of the Constitution Review Commission, *supra* note 10 at page 286. See also Raymond A. Atuguba, Christine Dowuona-Hammond and Julius N. Fobil, —*Social Exclusion: The Political and Legal Dimension*ll, in Ghana Human Development Report 2007: Towards a More Inclusive Society, (UNDP, 2007), p. 112.

<sup>298</sup> *Ghana Lotto Operators Association v. National Lottery Authority* [2007-2008] 2 SCGLR 1088.

legislation. Yet in others, the quota provision is mandated for political parties when they present candidates for election into office.

7.9.1.9 South Africa, in its quest to address the issue of gender balance in its Public Service is proposing to adopt a process that moves away from treating gender issues as business as usual, and towards locating it at the centre of the transformation process in the Public Sector. Achieving the goal of gender equality is, therefore, premised on the fundamental integration of women and gender issues within all structures, institutions, policies, procedures, practice, programmes and projects of government. In addition, the South African Cabinet has given support to the development of a Gender and Governance Plan of Action that would ensure substantial progress is made on women's empowerment and gender equality in the Public Service. The country in March 2006 achieved a 30% women representation in Senior Management Service in the Public Service and by March 2009, the South African Cabinet approved a 50% target for women at all levels of the Senior Management Service.<sup>299</sup>

7.9.1.10 The Civil Service of Nigeria can boast of widespread female presence, yet women senior public administrators are relatively rare. The national government of Nigeria established a Ministry of Women Affairs with a mandate to review substantive and procedural laws that affect women.<sup>300</sup>

7.9.1.11 Argentina is ranked as one of the top 10 countries worldwide with a high percentage of women representation in the legislative arm of government. The country adopted a 1991 quota law that required that women should account for at least 30% of candidates for public office. This law has had a positive effect on the proportion of women holding elected office. In 1991, women's representation was 5%. This figure increased to 35% in 2005 after the implementation of a national gender quota law for legislative elections in 1991.<sup>301</sup>

## 7.9.2 Experiences of women in Ghana

7.9.2.1 Violence against women is a problem in Ghana. The predominant offences recorded over the period are rape and domestic violence. These are noted as most prevalent in low-income areas. Most abuses usually go unreported and seldom come before the courts. The Police also tend not to intervene in domestic disputes. In 2009, there were reports that the Paramount Chief of the Goaso traditional area in the Brong Ahafo region ordered his men

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<sup>299</sup> See Report of the Constitution Review Commission, page 287. See also PUBLIC SERVICE AND ADMINISTRATION, REPUBLIC OF SOUTH AFRICA, A STRATEGIC FRAMEWORK FOR GENDER EQUALITY WITHIN THE PUBLIC SERVICE (2006-2015) CONSULTATION DOCUMENT (2006), <http://www.info.gov.za/view/DownloadFileAction?id=126557>.

<sup>300</sup> Report of the Constitution Review Commission, *supra* note 10 at page 287. See also Comm. On the Status of Women, 49th Sess. Feb. 28- Mar. 11, Integration of gender perspectives in macroeconomics, written statement submitted by Nigeria.

<sup>301</sup> Report of the Constitution Review Commission, *supra* note at page 287. See also LESLIE A. SCHWINDT-BAYER, Female Legislators and the Promotion of Women, Children, and Family Policies, Manuscript prepared as a background paper for UNICEF's State of the World's Children Report 2007. Final Draft – May 1, 2006.

to beat a 28-year-old woman with canes for not kneeling before him. When the victim reported the incident to the police, the police refused to accept the complaint and detained the victim and her mother without charges.

7.9.2.2 Rural women can be punished with banishment by traditional village authorities for teenage pregnancy or suspected witchcraft.<sup>302</sup> Hundreds of women accused of witchcraft were sent to penal villages in the Northern Region by traditional authorities. In 1997, 2 villages contained 400 elderly women, and 1 village contained 2,000 women and family members, all sentenced by village authorities. In 2010, CHRAJ reported that there were 175 female residents in the camp. In May 2011, a 17 year old girl was sent to the Gambaga witches camp after being accused of stealing the intelligence of other students. Although the women face no formal legal sanction if they leave, most fear that they would be beaten to death if caught outside the penal villages.

7.9.2.3 Women were also reported to experience societal discrimination. Women in urban centres and those with skills and training encounter little overt bias, but resistance to women entering nontraditional fields persists. Only about one quarter of university students are women, although women's enrollment is increasing. Women, especially in rural areas, remain subject to burdensome labour conditions and traditional male dominance. Traditional practices and social norms often deny women their statutory entitlements to inheritances and property.

### 7.9.3 Violence against women

7.9.3.1 In Ghana, one in three women will experience physical violence including beating, slapping or other physical punishment at the hands of current or previous partners.<sup>303</sup> Abusers and victims come from all backgrounds – the rich, the poor, the educated, the non-educated, rural as well as urban dwellers, high or low class – there is no exception. While those in the lower classes may report their abuses, women in the upper or working classes prefer to suffer in the quiet because exposing their suffering may be to their disadvantage.<sup>304</sup>

### 7.9.4 Efforts to combat discrimination against women in Ghana

7.9.4.1 Efforts have been made over the years to solve the problems of discrimination. Legislation doubled the mandatory sentence for rape. There was more media coverage of assault and rape cases. DOVVSU was established in 1998 to handle cases involving domestic violence, child abuse, and juvenile offenses. In the first quarter of operation, this unit recorded 199 cases, including 30 assaults on women and 9 rapes. In 2001, the Accra Branch of this unit recorded 658 cases, including 204 defilement cases, 58 rapes, 5 cases of incest, 28 indecent

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<sup>302</sup> United States Department of State Report on Human Rights, 11<sup>th</sup> March 2010 at 19.

<sup>303</sup> According to a study carried out by the Gender Studies and Human Rights Documentation Centre, one third of women in Ghana admitted living with an abusive man.

<sup>304</sup> Vicky Wireko, Violence against women affects 1 in 3, available at <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/COMMENT-Violence-against-women-affects-1-in-3-266965>

assaults, 232 instances of assault and wife battery, and 9 abductions. In 2011, it recorded 388 defilement cases, 144 rape cases, 91 indecent assault cases, 19 attempted rape cases and 7 cases of incest. 2012 recorded 290 reports of rape, with 135 arrests, 81 prosecutions, resulting in five convictions.<sup>305</sup>

7.9.4.2 Women's rights groups have also been active in conducting educational campaigns and in implementing programmes to provide vocational training, legal aid, and other support to women.<sup>306</sup>

The Constitution Review Commission examined women's rights issues and recommended that:

- The Constitution be amended to require that an Affirmative Action Act be enacted by Parliament within 12 months of the coming into force of the amendments to the Constitution. The Commission further recommended that the Affirmative Action Act should include a provision to the effect that each sex should have at least 30% of representation in all public institutions and offices;
- That the Political Parties Act, 2000 (Act 574) be amended to accord with the Affirmative Action Act as it pertains to creating gender balance in public offices;
- That all public institutions should adopt gender policies, including recruitment policies aimed at achieving a balanced structuring of those institutions in terms of gender;
- That the Electoral Commission should take cognizance of the Affirmative Action Act in the performance of its functions;
- That political parties should be encouraged by all public agencies to adopt voluntary political party quotas. In this respect, political parties may voluntarily include in their Constitutions percentages of women to be presented as candidates for elections or set and implement targets to include a certain percentage of women as candidates for elections, beyond what is mandated in the Affirmative Action Law. The Electoral Commission may consider taking this up at the level of the Inter-Party Advisory Committee (IPAC).

#### 7.9.5 Recommendations

It will be useful to take note of these recommendations from the Constitution Review Commission in the NHRAP for advocacy and monitoring of developments in the remainder of the processes leading up to the amendment of the relevant provisions of the Constitution.

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<sup>305</sup> 2013 US Department of State, Human Rights Report.

<sup>306</sup> A report on this is available at <http://edition.myjoyonline.com/pages/news/201303/102376.php> (last accessed 3 February, 2017).

## 7.10 LESBIANS, GAYS, BISEXUALS, TRANSGENDERED AND INTERSEX (LGBTI)

### 7.10.1 The gay rights controversy in Ghana

7.10.1.1 In recent times, Ghanaians have witnessed an increased level of public discourse on LGBTIs and their rights. Often, the discussions on LGBTI issues are on whether the practice of homosexuality and the Ghanaian culture are compatible. There is a general non-acceptance of homosexuality by the Ghanaian society irrespective of the social, economic, and other status of the opinion holders.<sup>307</sup> For instance, in a vetting of the then Minister designate for Gender, Children and Social Protection, many parliamentarians posed questions suggesting their non-acceptance of the practice of homosexuality.<sup>308</sup>

7.10.1.2 The concerns of this survey with respect to the issue of homosexuality is not the acceptability or otherwise of the practice of homosexuality by persons in Ghana. This survey is concerned with whether Ghanaians believe that LGBTIs do have rights, which must be realized.

7.10.1.3 Recently, the UN High Commissioner for Human Rights, Ms. Navi Pillay noted that the case for extending the same rights to lesbian, gay, bisexual and transgender (LGBT) as those enjoyed by everyone else is neither radical nor complicated. It rests on two fundamental principles that underpin international human rights law: equality and non-discrimination. The opening words of the Universal Declaration of Human Rights are unequivocal: “All human beings are born free and equal in dignity and rights.”<sup>309</sup>

7.10.1.4 The Ghanaian socio-cultural and religious context as already noted, generally frowns on same sex relationships. Key informants in this survey noted that the country has a long history of educational content in biology, medical and health sciences supported by other medical research that describes heterosexual activities as “natural” and homosexual activities as “un-natural”. These positions are based on the muscle structure and hormonal functions and secretions of the sexual organs in males and females. This position is further strengthened by the socio-cultural and religious perspectives that view same sex relationships as unacceptable.

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<sup>307</sup> The Constitution Review Commission found that at first brush the majority of the people of Ghana find the concept of same-sex marriage repulsive.

<sup>308</sup> Report on vetting of Nana Oye Lithur, Minister Designate for Gender, Children and Social Protection, <https://www.hrw.org/report/2012/10/02/death-sentence/abuses-against-persons-mental-disabilities-ghana> (last accessed on 3 February, 2017).

<sup>309</sup> Navi Pillay (United Nations High Commissioner for Human Rights), Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law, 2012 at 7.

### 7.10.2 The 5 steps towards the realisation of “gay rights”

7.10.2.1 The office of the UN High Commissioner for Human Rights recommends five steps towards the respect, protection and fulfillment of the rights of LGBTI persons. These five steps are that:<sup>310</sup>

- States should protect people from homophobic and trans-phobic violence. This requires inclusion of sexual orientation and gender identity, as protected characteristics in hate crime laws. It is also helpful to establish effective systems to record and report hate-motivated acts of violence, and to ensure effective investigation and prosecution of perpetrators and affording redress to victims of such violence. It is also required that asylum laws and policies recognize that persecution on account of one’s sexual orientation or gender identity may be a valid basis for an asylum claim.<sup>311</sup>
- Governments should prevent the torture, cruel, inhuman and degrading treatment of LGBTI individuals in detention by prohibiting and punishing such acts and ensuring that victims are provided with redress. They must also investigate all acts of mistreatment by State agents and bring those responsible to justice. Law enforcement officers must be provided appropriate LGBTI rights training and effective monitoring of places of detention put in place.
- Laws criminalizing homosexuality, including all laws that prohibit private sexual conduct should be repealed.
- Discrimination on the basis of sexual orientation and gender identity should be prohibited. States must enact comprehensive laws that include sexual orientation and gender identity as prohibited grounds of discrimination. In particular, States must ensure non-discriminatory access to basic services, including in the context of employment and health care and provide education and training to prevent discrimination and stigmatization of LGBT and intersex people.
- Freedom of expression, association and peaceful assembly for LGBT and intersex people must be safeguarded. Any limitations on these rights must be compatible with international law and must not be discriminatory.

Criminalization of same sex as a breach of international human rights law

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<sup>310</sup> Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law, 2012 at 13 available at <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>.

<sup>311</sup> UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity (see footnote 1), para. 3; see also UNHCR in relation to Secretary of State for the Home Department v. Patrick Kwame Otchere, 1988.



### 7.10.3 Unlawfulness of criminalization of consensual same sex

The criminalization of private, consensual sex between adults of the same sex breaches a State's obligations under international law, including the obligations to protect individual privacy and to guarantee non-discrimination. This has been the consistent position of United Nations human rights experts since 1994, when the Human Rights Committee decided *Toonen v. Australia*.<sup>312</sup> *Toonen* raised a challenge to laws in the Australian State of Tasmania criminalizing consensual same-sex sexual conduct. The Human Rights Committee found that it was "undisputed that adult consensual sexual activity in private is covered by the concept of 'privacy'" under article 17 of the ICCPR. It did not matter that Mr. Toonen, the author of the communication, had never been prosecuted. The mere existence of the criminal law "continuously and directly interferes with the author's privacy." Under article 17, individuals are protected against "arbitrary or unlawful interferences" with their privacy. An "arbitrary interference" can be one provided for by law that does not meet the requirements of being "in accordance with the provisions, aims and objectives of the Covenant" and "reasonable in the particular circumstances."

### 7.10.4 The domestic law and experiences of LGBTI persons

The state of the law with respect to the legality or otherwise of LGBTI practices in Ghana is far from controversy. Many are of the view that the Criminal Offences Act makes the practice of homosexuality amongst men a criminal offence in Ghana by providing that a person who has unnatural carnal knowledge of another person of not less than sixteen years of age with or without the consent of that other person commits a misdemeanor.<sup>313</sup> Unnatural carnal knowledge is defined at common law to involve penile penetration of anything other than a vagina. By this definition, the law only anticipates the situation where a man has unnatural carnal knowledge of a woman or another man, but does not envisage the situation where a woman engages in unnatural carnal knowledge of another woman. However, unnatural carnal knowledge cannot be equated to homosexuality. While some LGBTIs may engage in unnatural carnal knowledge, homosexuality goes beyond unnatural carnal knowledge.

### 7.10.5 Experiences from different parts of the world

7.10.5.1 The Constitution Review Commission observed that in many countries, same-sex marriages have been approved by Acts of the Legislature, even without judicial pronouncements on the issue of their Constitutionality. In others, same-sex marriages have been legitimised mainly as a result of court decisions which state or imply that a ban on (or discrimination against) same-sex marriages is unconstitutional. An example is the 2003 decision of the Court of Appeal of Ontario (in Canada) that the Canadian law on marriage violated the

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<sup>312</sup> *Toonen v. Australia*, Human Rights Committee Communication No. 488/1992, CCPR/C/50/D/488/1992, 4 April 1994.

<sup>313</sup> Section 104(1)(b) of the Criminal Offences Act, 1960 (Act 29).

equality provisions in the Canadian Charter of Rights and Freedoms because it restricted the legal definition of marriage to unions between heterosexual couples.

7.10.5.2 The Commission further observed that in Africa, South Africa remains the only country where same sex marriages are recognised after the Constitutional Court of the country ruled that same sex marriages should enjoy the same legal status as those between men and women. The Court held that the refusal to give legal status to same sex marriages, though grounded in common law violated the Constitution's guarantee of equal rights.<sup>314</sup>

7.10.5.3 As the Constitution Review Commission observed:

The principal basis for challenging laws which give preferential treatment to unions between persons of different sexes, as opposed to same sex unions, is that such preference amounts to unconstitutional discrimination against persons of the same sex who desire to enter into a marriage union. On that basis, it may be argued that failure to recognize same sex marriages in Ghana constitutes discrimination that is not permitted by Article 17 of the Constitution. That article states that all persons shall be equal before the law and contains the general proposition that a person shall not be discriminated against on grounds, inter alia, of gender. Although the article grants Parliament the power to enact laws that are reasonably necessary to provide among others – for adoption, divorce, marriage, burial etc, it could also be argued that a law that prohibits or does not fully recognize same sex marriages would not be a law that is reasonably necessary to provide for marriage. On that basis, it might be argued that the failure to recognise and treat same-sex marriage in the same way as heterogeneous marriage would constitute discrimination and would, as such, be incompatible with the Constitution. The Commission also found that it is also possible to argue that the Constitution does not, and cannot be assumed to prohibit laws that merely take account of and give recognition to natural or physical differences between different persons.

#### 7.10.6 Experiences of LGBTIs in Ghana

7.10.6.1 Homosexual men often are subjected to abuse in prison. Four male students were reported to have been dismissed from a boy's school in Akosombo for allegedly engaging in homosexual acts.<sup>315</sup> In August 2014, when a mob in Walewale threatened to lynch a 21-year-old male student for wearing women's clothes and having sex with men, the police responded by arresting the victim. The mob threatened to kill the student and his family if he were released.<sup>316</sup>

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<sup>314</sup> *Minister of Home Affairs v Fourie*. [2005] ZACC 19, 2006(1) SA 524 (CC).

<sup>315</sup> US Department of State, Human Rights Report on Ghana (2005).

<sup>316</sup> Colin Stewart, *Ghana student faces anti-gay threats, so police arrest him*, 76 CRIMES (Aug. 27, 2014), available at <http://76crimes.com/2014/08/27/ghana-student-faces-anti-gay-threats-so-police-arrest-him/>; see also Zoure Stephen, *Gay Man Arrested*, PEACE FM (Aug. 25, 2014), available at <http://news.peacefmonline.com/pages/social/201408/212045.php>.

7.10.6.2 According to interviews conducted for this Baseline survey, LGBTIs are also often arrested by the police on suspicion and non-crime related personal effects such as mobile phones and cash are confiscated without any opportunities for redress.<sup>317</sup>

7.10.6.3 In 2015, the LGBT community in the Nima area of Accra was terrorized by a homophobic vigilante gang called “Safety Empire,” whose stated aim is to “wage a crusade against homosexuality.”<sup>318</sup> The leader of this group, who goes by various names including Sulley Fuseini and Doya Dundu, referred to himself on one of his Facebook pages as “The Gay Slayer.”<sup>319</sup> According to reports, Fuseini and his gang would attack their victims after Fuseini had lured them on Facebook under the guise of asking them on a date. Upon a victim’s arrival, Fuseini and his gang would strip, beat, and humiliate the victim. Videos of these attacks were posted on social media, thus further humiliating the victim and causing fear in the LGBT community.<sup>320</sup> In one such incident, on August 14, 2015, Sulley Fuseini led a Safety Empire mob in brutally attacking a man they accused of being gay. The victim was stripped naked and whipped mercilessly with belts, sticks, and sharp metal. The attackers videotaped the attack.

7.10.6.4 As at 2009 and 2010, there were no registered LGBTI organizations. On 4<sup>th</sup> June, 2010, the first antigay protest march was held in Takoradi, Western Region, when about a 1000 people were reported to have participated in a peaceful rally against gay and lesbian activities in their city.<sup>321</sup> The CHRAJ does not appear to have a consistent position on the realization of gay LGBTI rights.<sup>322</sup>

## 7.10.7 Position of the Government of Ghana on LGBTI rights

7.10.7.1 There is no clear position of Government on the rights of LGBTI rights. When the opportunity was presented by the Constitution Review process, the Commission recommended that the issue of legality or otherwise of homosexuality should be decided by the Supreme Court when it comes up. The Government white paper indicates that Government has taken note of the recommendation of the Constitution Review Commission that the legality or otherwise of homosexuality be decided by the Supreme Court if the matter comes before the Court.<sup>323</sup> On 7<sup>th</sup> February, 2013, the Attorney General and Minister of Justice at her vetting in Parliament re-stated the position put forward by the

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<sup>317</sup> Interviews with Founder and Director of the Centre for Popular Education and Human Rights - Ghana (“CEPEHRG”).

<sup>318</sup> *Gay Gets 100 Lashes for Attempting Recruit Another Man Over*, NEWS GHANA (Aug. 16, 2015), <http://www.newsghana.com.gh/gay-gets-100-lashes-for-attempting-recruit-another-man-over/>; Linda Tenyah Ayettey, *Nima Gay Attacker Arrested*, DAILYGUIDE (Sept. 18, 2015), available at <http://dailyguideafrica.com/nima-gay-attacker-arrested/>.

<sup>319</sup> Colin Stewart, *Warning: Violent homophobe active in Ghana*, ERASING 76 CRIMES (Aug. 15, 2015), available at <http://76crimes.com/2015/08/15/warning-violent-homophobe-active-in-ghana/>.

<sup>320</sup> *Id.*

<sup>321</sup> U.S. Department of State Human Rights Report for 2010, page 26.

<sup>322</sup> Commissioners of CHRAJ took opposing views on the recognition and protection of LGBTI rights. See analysis available at <http://ilga.org/ghana-the-commission-for-human-rights-and-administrative-justice-chraj-back-down-on-lgbti-human-rights/> (last accessed on 1 November 2015).

<sup>323</sup> White paper on the report of the Constitution Review Committee, *supra* note 48 at 45.

CRC that the matter be decided by the Supreme Court. Earlier, on 28<sup>th</sup> January, 2013, Minister of Gender, Children and Social Protection was resolute in her stand recognizing the fundamental rights of LGBTI persons. However, she also noted that she was not going to use her position to promote homosexuality.

7.10.7.2 In 2012, a retired Supreme Court Judge brought an action against the Attorney General and the Inspector General of Police for a declaration that gay rights are not a human rights issue. It does not appear that this case heard and decided by the Supreme Court.

## 7.11 Views of Ghanaians on vulnerable groups - Do vulnerable groups have rights?

7.11.1 The chart below reflects the views of vulnerable group members on whether the listed key vulnerable groups have rights. With the exception of the LGBTI group, respondents overwhelmingly indicated that the other eight vulnerable groups have rights. The data for views on LGBTI indicates that a very significant 55.4% of vulnerable group respondents said that LGBTIs do not have rights; 37.4% said they do have rights, whilst another 7.2% refrained from answering the question.

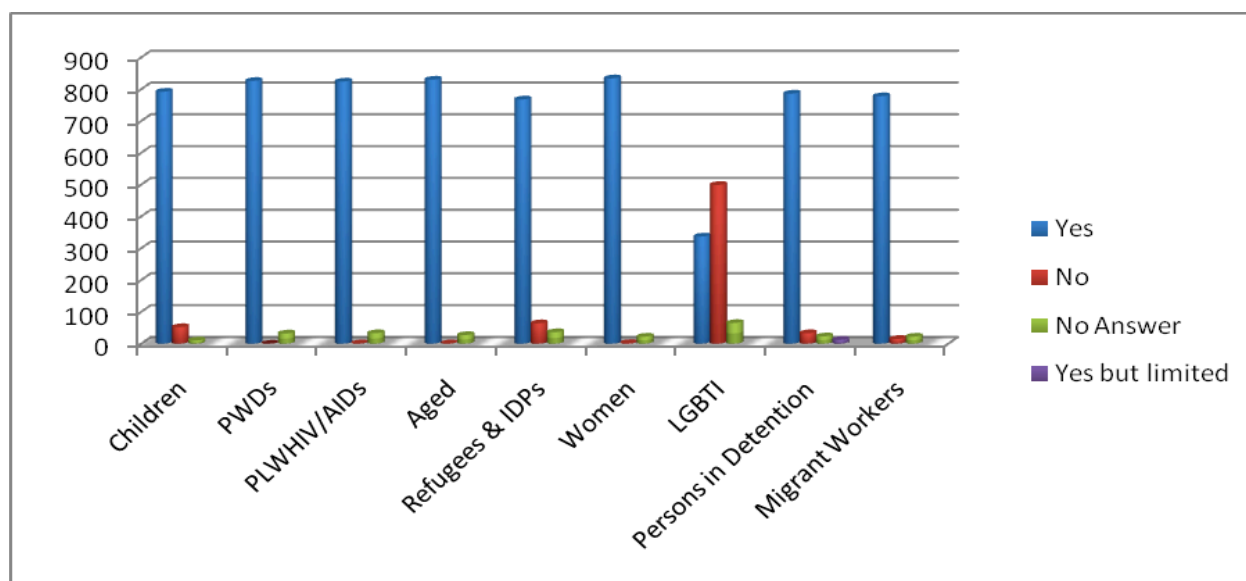


Figure 10 – Do these vulnerable groups have human rights?

7.11.2 When probed, those Respondents who indicated that LGBTIs do not have rights appear to have meant that they disapprove of LGBTI practices. This is because while these Respondents agree that LGBTIs do have fundamental rights and freedoms such as the right to education, health and access to justice, they all strongly disapprove of LGBTI sexual practices.

7.11.3 For most of the other vulnerable group categories, specifically PWDs, PLWHIV/AIDS, the Aged, Internally Displaced Persons, and Migrant Workers, over ninety five percent (95.0%)

of the vulnerable FGD respondents stated that these groups have rights. Those falling between 88% and 95% included Children, where 92.6% of respondents said they had rights, Persons in Detention where 92% of respondents said they had rights and the lowest response in this range was for Refugees and IDPs where 88.5% of respondents stating that they were sure they had rights.

## 7.12 VIEWS OF VULNERABLE GROUPS ON CAPACITIES OF HUMAN RIGHTS INSTITUTIONS FOR THE REALISATION OF THEIR HUMAN RIGHTS

- 7.12.1 Responses on whether key institutions had the capacity to support vulnerable groups (Table 5) were mixed. They ranged from as low as only 4.55% of persons in detention who expressed the view that their lead agency which essentially was the prisons service could help them realize their rights and therefore 96% of PIDs did not think their lead agency had the capacity to help them realize their rights to 95.33% of children and juveniles who felt that the Ministry of Gender, Social Protection and Children had adequate capacity to support them to realize and enjoy their rights.
- 7.12.2 It is also important to note that the majority of PWDs (52.14%) did not think that the Ministry of Social Welfare and Employment or the National Council for Persons with Disability had the capacity to help them realize their rights. A number of members of some vulnerable groups namely Migrants, LGBTI as well as the Aged who had worked in the informal sector could not clearly identify a state institution mandated to promote their rights and therefore could not assess their capacity to support them.
- 7.12.3 Questions posed to Respondents: Do you think state institutions mandated to support your group have the appropriate skills to ensure that your human rights are realized?

TABLE 5: ASSESSMENT OF THE CAPACITY OF STATE INSTITUTIONS TO SUPPORT VULNERABLE GROUPS		
Name of VG	Yes	No
Women	67.38%	36.62%
Children and Juveniles	95.33%	4.67%
PWDs	47.86%	52.14%
PLWHA	51.39%	48.61%
PID	4.55%	95.45%
AGED (Formal Sector)	92.31%	7.69%
AGED (Informal Sector)	-	-
Migrants (Internal & International)	-	-
LGBTI	-	-

- 7.12.4 Gaps that were identified as contributing factors to the low ranking for some of the key institutions include:
- Inadequate numbers and capacity of staff of the State institutions;

- Unsatisfactory working conditions including low salaries levels;
- Lack of commitment to work towards the realisation of the rights of VGs;
- Lack of logistical support including vehicles, laptops, computers;
- Excessive administrative bottlenecks in carrying out duties;
- Lack of decentralization or non-availability of branch or agency offices in districts;
- Low public knowledge of the level of rights abuses and infringements due to inadequate reporting;
- Non-enforcement of the law because some officials accept bribes from offenders; and
- Inadequate funding for agencies to respect, protect and fulfill human rights of VGs.

7.12.5 With the exception of women, where DOVVSU was selected as the main institution of choice to seek redress by 31% of respondents, 30% to 56% of the other groups expressed the view that the police service was the main institution to go to for redress. For all categories of vulnerable groups, religious leaders or platforms were seen as the least likely people or places to go for redress. Figure 11 shows the avenues for redress of human rights violations as expressed by the Respondents.

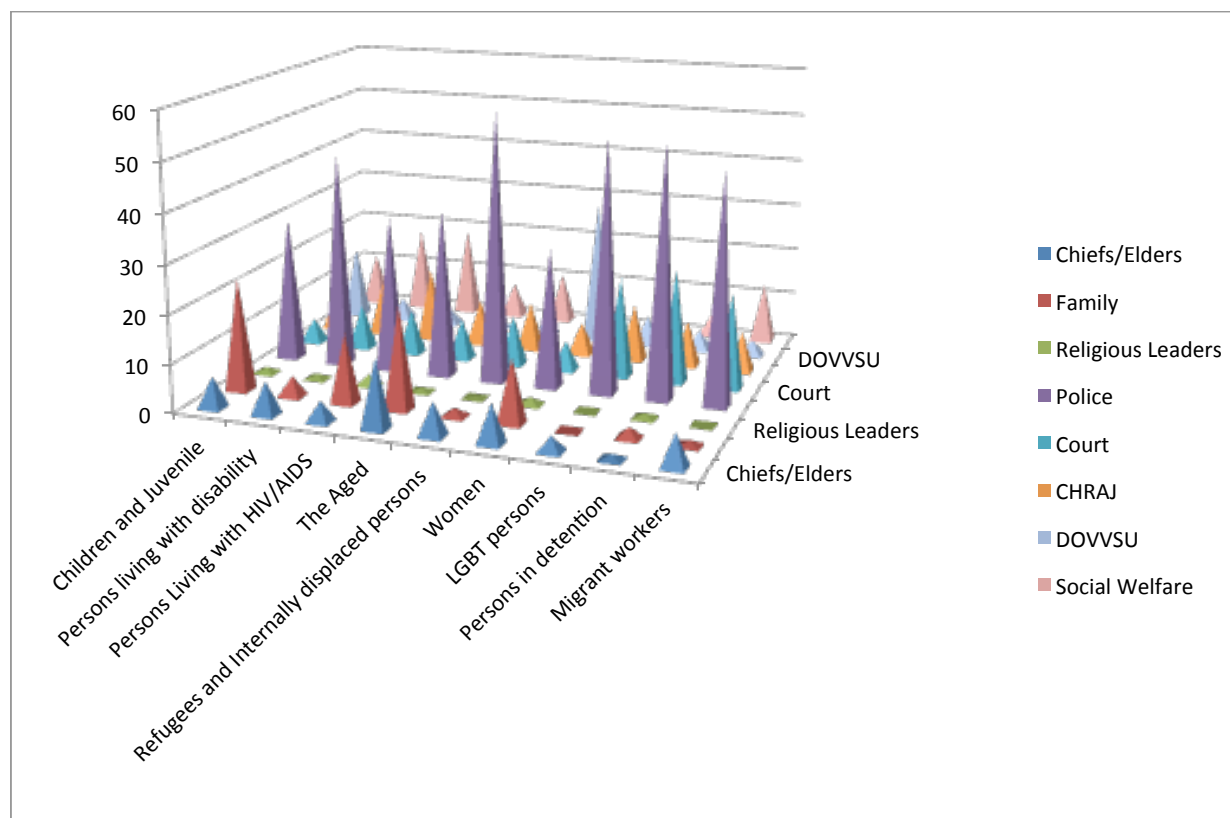


Figure 11: Where would each vulnerable group go for redress?

### 7.13 ACCESS TO JUSTICE

- 7.13.1 A cross cutting theme in the challenges all the vulnerable groups face is inadequate access to justice. The problems of Access to Justice faced by the poor, women and marginalized are associated with poverty and non-enforcement of socio-economic and cultural rights. The causes of these specific issues need to be addressed and long-term solutions adopted in the social, economic, and political arena to promote access to justice.
- 7.13.2 Constitutional guarantees are routinely violated by long delays in bringing cases to trial. The police, magistrates and judges, and A-G's Department each assert that the others are to blame for this situation. Although the Legal Aid Scheme (LAS) provides legal aid to accused persons who are qualified, many persons charged with criminal offences do not have legal representation in court. Witness protection is of particular concern. Some victims of robbery have reportedly expressed fear of reprisals by the suspects or their agents.<sup>324</sup> Although the police and courts have taken some measures to respond to these problems, such as by conducting in-camera hearings and providing police protection, these are inadequate to address the concern. As a result, witness intimidation has led to cases being dropped.
- 7.13.3 Support for victims of violence is inadequate. Also, the fact that victims of violence have to bear the costs of medical examination when giving reports to the police affects their access to justice. There is also the concern about the prevalence of a patriarchal ideology with firmly entrenched stereotypes and the persistence of deep-rooted cultural norms, customs and traditions, including widowhood rites, female genital mutilation, and "trokosi" (ritual servitude of girls including sexual abuse and forced labor) which constitute serious obstacles to women's enjoyment of their human rights. In addition, the fact remains that women accused of being witches are subjected to violence and are confined in witches' camps. Ghana should introduce concrete measures to modify and eliminate customs, specifically harmful cultural and traditional practices that discriminate against women.
- 7.13.4 The main issues of concerns for access to justice in Ghana were captured in a 2012 Baseline Survey of the Justice Sector in Ghana by the Law and Development Associates for the Ministry of Justice and Attorney General's Department and UNDP Ghana as follows:
- Multiple-barriers against accessing justice including high cost of initiating or defending suits; limited and under-resourced justice institutions; the complexity of judicial processes; limited knowledge of the public about the justice sector; disempowerment, and exclusion;
  - The cost of legal advice is an important impediment to accessing justice, in Ghana. A highly formalized court system, with strict rules of procedure for submitting a

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<sup>324</sup> Ministry of Justice and Attorney General's Department and UNDP Ghana, Baseline Survey of the Justice Sector of Ghana, 2012, page 121.



complaint of violation of human rights, has exacerbated the problem. Article 294(1) of the Constitution provides for legal aid for the indigent and the Ghana Legal Aid Scheme (LAS) plays an important role in providing representation for the poor. LAS has recently increased its national coverage, but it is still not present in many districts. This is not only a question of money, but also of the lack of lawyers to provide representation in very remote rural areas, and the absence of a formal requirement for lawyers to do pro bono work;

- The APRM Country Review Report and Programme of Action for Ghana made recommendations for the extension of legal aid services, which should be implemented as a matter of urgency. Other avenues should also be explored, such as the establishment of legal aid clinics at all university law faculties;
- Delay in the disposal of cases occasioned by frequent adjournments; missing case dockets; slow processing of documents, resulting from a high caseload;
- High perception of corruption leading to minimal trust by the public in the Ghanaian courts;
- High perception of executive and political interference in the work of the judiciary, through the appointment and promotion of judges for example;
- Lack of effective collaboration and networking among key institutions of the justice sector leading for example, to over population of Ghanaian prisons by remand prisoners with expired warrants;
- Detention without trial and long pre-trial detention by security agencies;
- Insecurity from crime vigilante justice, and deficiencies in the criminal investigation and adjudication systems;
- Inadequate funding and permanent staff of the Law Reform Commission;
- Inadequate logistical and human resource capacity of the Department of Social Welfare;
- The absence of separate police cells for men, women and juveniles;
- Lack of coordination between the police and the Department of Social Welfare.

7.13.5 In 2006, the United Nations Committee on the Rights of the Child (CRC) was concerned about cases of ill-treatment and abuse, including sexual abuse and about the fact that there



are no mandatory reporting requirements for professionals with regard to child abuse. It recommended that Ghana takes the necessary measures to prevent child abuse and neglect; investigate cases of domestic violence and sexual abuse through a child-sensitive judicial procedure, and ensure that sanctions be applied to perpetrators; whilst raising awareness among the public about the problem of domestic violence, with a view to changing public attitudes and traditions that inhibit victims, particularly women and girls, from reporting it.

7.13.6 The CRC was also concerned about the information that sexual exploitation, particularly sex tourism, is growing in the country and that many girls and boys at a very young age are engaged in commercial sexual exploitation. It recommended that Ghana effectively implement the Human Trafficking Act and provide adequate programmes for prevention, assistance, recovery and reintegration for trafficked children.

7.13.7 There have been a lot of efforts aimed at improving access to justice in Ghana. Some of these are:

- Automation of the courts;
- The creation of a second Court of Appeal to service the northern sector of the country;
- The creations of more divisions of the High Court - the Fast Track Division of the High Court and other specialized divisions of the High Court such as the Commercial Court, the Land Court, the Financial and Economic Crimes Court, the Industrial Court and the Human Rights Court;
- Electronic allotment of cases to courts;
- The engagement of more personnel for the courts;
- The introduction of the private bailiffs system to enhance the service of court processes;
- The establishment of a banking system for the collection of court fees and revenue;
- The production of informative annual judicial reports, newsletters and magazines;
- The creation of the Judicial Training Institute for the training of new and sitting judges and other court personnel;
- The creation of more District Courts;
- Reforms in legal education;
- The opening of a new Faculty of Law, the second in a public university, the opening of more campuses of the Ghana School of Law at the Ghana Institute of Management and Public Administration (GIMPA), the University of Ghana and the Kwame Nkrumah University of Science and Technology;
- The creation of the Court Inspectorate and Public Complaints Unit of the judicial service to receive and resolve complaints about the administration of justice;
- The creation of a website for the Judicial Service that is regularly updated to indicate the list of cases to be heard in the courts on weekly basis;

- The review of court rules and the passage and coming into force of the High Court (Civil Procedure) Rules, 2004 (CI 47) in 2005 and the passage of the District Court Rules, 2009
- The mainstreaming of Alternative Dispute Resolution into the work of many courts in Ghana;
- The Access to Justice Programme: which offers legal advice to men and women, and also provides legal training for community leaders throughout the country with the aim of helping them protect their rights enshrined in the Ghanaian Constitution and international human rights instruments to which Ghana is signatory.
- The Justice for All Programme to decongest Ghana's prisons and
- The setting up of a Court Reforms Directorate to take charge of coordinating and monitoring all judicial reforms.

7.13.7.1 In spite of the above, UNICEF noted that the juvenile justice administration system has been weakened by inadequate logistical and human resource capacity of the Department of Social Welfare. The absence of separate police cells and lack of coordination between the police and the Department of Social Welfare have led to an increase in the presence of juveniles in adult police cells.

7.13.7.2 The slow pace of publication of law reports has affected the ability of judges – and other lawyers – to access interesting and precedent-setting judgments and to write expert comments and analysis on such cases and apply them in their own work. This situation has the tendency to stifle the progressive development of law in the country. The new Ghana Monthly Law Reports, so far covering only the Supreme Court and Court of Appeal, should be extended progressively to the High Court and other courts and made available in all court buildings and online.

7.13.7.3 Although the Constitution does not recognize any traditional court institutions (with the exception of the role of the judicial committees of the traditional councils, regional and national houses of chiefs in adjudicating chieftaincy disputes), chiefs' traditional councils have nevertheless extended their jurisdiction beyond strictly chieftaincy-related matters to family and property disputes, including divorce, child custody, and land. Recognizing such important de facto jurisdiction, individual institutions such as the World Bank have supported provision of training to traditional chiefs in basic law and ADR mechanisms. There is a need for greater consultation on the role of justice mechanisms under the authority of the chiefs, in order to consider measures to capitalize on the accessibility of these mechanisms, while ensuring that they are respectful of human rights, especially in relation to gender equality.

7.13.7.4 The African Peer Review Mechanism (APRM) recommended that Ghana ratified or accede to outstanding international and African treaties as well as taking steps to improve its poor reporting record to the treaty-monitoring bodies.<sup>325</sup>

7.13.7.5 In spite of the reforms, there are still serious delays in case management, a great accumulation of cases in the courts, limited access to services, corrupt practices, and an appreciable level of mistrust among citizens regarding judicial decisions and corruption. Given these shortcomings, the role of CSOs becomes imminent. The political importance and coverage of these organisations empower them to pass judgment on the legitimacy of institutional and cultural change. By promoting the participation of and alliances with sectors such as mass media, trade associations, academia, and the private sector in general, CSOs become a powerful instrument in promoting access to justice as they monitor and follow up on the assurances and commitments of duty-bearers in this sector. At the same time, CSOs end up promoting trust and support for governance institutions when they disseminate successful results of initiatives. CSOs can significantly contribute to the diffusion and evaluation of comprehensive, reliable, and timely statistics on the justice system, which has several advantages for a sector characterized by “secretive” handling of information and resistance to accountability. A great deal of Civil Society Organisations may directly get involved in the rendering of legal and educational services to the community, as well as in private conflict resolution activities.

7.13.8 The following reforms were suggested in the 2012 Baseline Survey of the Justice Sector by the Law and Development Associates:

- The fair and speedy trial and related human rights provisions of the Constitution should be elaborated on in Acts of Parliament;
- The Rules of Court should be innovatively reviewed by auditing them for their capacity or otherwise to enhance fair and speedy trial: such as by, limiting interlocutory appeals to the Court of Appeal, setting timelines for the delivery of judgments, and eliminating inordinate adjournments. Guidelines should be introduced urgently to incorporate Alternative Dispute Resolution mechanisms in criminal and civil trials;
- The upgrading and refurbishing of court structures, equipping of registries; promotion of court automation; and the institution of proper and effective case documentation and record-keeping processes;
- The current penal legislative framework should be reviewed and streamlined to incorporate well studied and defined sentencing guidelines and procedures so as to ensure uniformity in sentencing, as well as to favour the progressive prescription of non-custodial sentences, especially for minor offences;
- Formal abolition of the death penalty; and

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<sup>325</sup> One of such treaties is the African Charter for Popular Participation in Development. See 4<sup>th</sup> Annual Progress Report of the African Peer Review Mechanism, December 2009, at page 85.

- The Law Reform Commission should be strengthened through the appointment of additional permanent staff and the allocation of adequate funding.

## 7.14 STATE OF SOME THEMATIC HUMAN RIGHTS

7.14.1 The following issues for various human right thematic areas may be helpful for consideration in the development of the NHRAP.

No.	Theme	State of affairs
1.	Access to information	<ul style="list-style-type: none"> <li>• Article 21(1)(f) of the 1992 Constitution provides that everyone has the right to freedom of information subject to qualifications and laws as are necessary in a democratic society.</li> <li>• In June 2013, Cabinet approved the Freedom of Information Bill for passage by Parliament after the bill was initiated in 2010.</li> <li>• The Freedom of Information Bill when passed will give Ghanaians the right to ask any public sector organization for all the recorded information they have on any subject.</li> <li>• Civil Society and members of the media have been concerned about the delay in the passage of the Right to Information Bill.</li> <li>• Generally, the citizenry has not taken advantage of the broad provision in article 21 of the 1992 guaranteeing freedom of information in Ghana. Actions to enforce article 21(1)(f) could have helped build jurisprudence on the right to information in Ghana.</li> </ul>
2.	Freedom of Association	<ul style="list-style-type: none"> <li>• Ghanaians continue to enjoy Freedom of Association.</li> <li>• In the 2011 District APRM Governance Assessment Survey, as many as 94.8% of male respondents and 97.5% of female respondents indicated that they freely enjoyed freedom of association without insults, intimidation or threats from any member of society.</li> </ul>
3.	Freedom of expression	<ul style="list-style-type: none"> <li>• The 2011 District Governance Report indicated that majority of Respondents (93 percent of males and 76 percent of females) were able to freely express themselves without fear of intimidation or assault.</li> <li>• The Report also notes that increasingly, Ghanaians have indicated that this freedom is being whittled away by the Police who under section 208 of the Criminal Offences Act, 1960 (Act 29), which bans “publishing false news with intent to cause fear or harm to the public or disturb the public peace” made arrests of some individuals.</li> </ul>
4.	Women’s Rights	<ul style="list-style-type: none"> <li>• The law on Domestic Violence has been passed.</li> <li>• Ministry for Gender, Children and Social Protection and the Attorney General’s Department are working towards the enactment of the Property Rights for Spouses Bill.</li> <li>• The Criminal Code (Amendment) Bill was passed by Parliament on Thursday, June 14, 2007. Under the Bill the offence of female circumcision has been changed to “female genital mutilation” and the scope of offence widened to reflect the actual nature of the offence.</li> </ul>

No.	Theme	State of affairs
		<ul style="list-style-type: none"> <li>Ghana does not have a legal framework to enforce the Affirmative Action (AA) Policy.</li> </ul>
5.	Rights of the Aged	<ul style="list-style-type: none"> <li>The government approved the National Ageing Policy.</li> <li>The Department of Social Welfare and the Ministry of Employment and Social Welfare under the Community Care Programme developed strategies to render care and support to the aged. Other interventions available to support the aged include: the National Social Protection Strategy, 2006; the Ghana National Disability Policy and the Livelihood and Empowerment Programme.; coverage for the elderly under the National Health Insurance Scheme (NHIS) and introduction of a micro finance credit scheme for older women.</li> </ul>
6.	Property Rights	<ul style="list-style-type: none"> <li>The Property Rights Bill, the Spouses Property Bill and the Interstate Succession Bill have been laid before Parliament. The three Bills have encountered numerous delays even though the 1992 Constitution stipulated that legislation regulating the property rights of spouses should be enacted as soon as practicable after the coming into force of the Constitution.</li> </ul>
7.	Right to life	<ul style="list-style-type: none"> <li>The death penalty continues to be sanctioned by the Constitution although there appears to be a “de facto abolition.” Government has accepted the recommendation of the Constitution Review Commission to abolish the death penalty.</li> <li>The rate of maternal death continues to be high particularly during strike actions by medical service providers.</li> <li>Abortion is not permitted under the law save under some specific circumstances including situations in which the life or health of the expectant mother is in danger, and pregnancy as a result of incest.</li> <li>The law is unclear on what constitutes death and whether there is a right to removal of life sustaining treatment.</li> <li>Insufficient resource allocation to facilities housing vulnerable groups such as persons with mental disability (psychiatric hospitals) and prison and police cells have led to death of inmates. For instance, an inmate strangled another inmate to death at the Accra psychiatric hospital on 14 January 2013.</li> <li>“Mob injustice” continues to occur.</li> </ul>
8.	Right to health	<ul style="list-style-type: none"> <li>No sign language interpreters at health facilities to do interpretation for the deaf.</li> <li>Strike actions by health service providers in spite of their designation as essential service providers under the Labour Act deprive persons in Ghana the right to adequate healthcare.</li> <li>Individuals continue to be detained in healthcare facilities after “discharge” as they are unable to afford bills for their treatment because some very expensive treatments are not covered by their health insurance subscriptions.</li> <li>There is an inadequate number of healthcare personnel in comparison with</li> </ul>

No.	Theme	State of affairs
		<p>the population of persons in Ghana. There is only one doctor per 9,043 persons.<sup>326</sup> Majority of these doctors practice in the country's two largest cities of Accra and Kumasi.</p> <ul style="list-style-type: none"> <li>• There is very little knowledge on bio-ethics and its relationship with the law although there is information indicating a surge in practices such as sperm selling, surrogacy and organ donation (e.g. cornea donation). This area of medical practice remains totally unregulated.</li> </ul>
9.	Right to education & awareness	<ul style="list-style-type: none"> <li>• Current school attendance rate of school going age persons at all levels of education in Ghana is 80.8 percent.<sup>327</sup> The rates for females are lower than those for males especially in the Northern Region. The three northern regions have comparatively lower attendance rates for all school going ages.</li> <li>• More than half (56.3%) of the adult population is literate in English with a higher rate for males (67.3%) than for females (46.9%).<sup>328</sup></li> <li>• Perennial strike actions affect pupils and students learning and preparations for examinations.</li> <li>• There is no human rights education at the senior high school and teacher training college levels</li> <li>• On going public human rights education, awareness creation programmes by CHRAJ, NCCE, CSOs are on a limited basis, most often happening in city centres.</li> </ul>
10.	Right to housing & water	<ul style="list-style-type: none"> <li>• Government acknowledges the right to housing and an appropriate place of convenience as a fundamental right.</li> <li>• Most households in Ghana (60.6%) live either in rooms in compound houses or other types of rooms.<sup>329</sup> About 45 percent (26 percent in urban areas and 59 percent in rural areas) of the households in Ghana own the houses they live in. About 73 percent of urban households have access to pipe-borne water compared to only 14 percent of rural households.</li> <li>• Almost four-fifth (79%) of households in urban areas have electricity for lighting as against 27 percent of households in rural areas.</li> <li>• About 19 percent (18.8%) of households have no toilet facilities and therefore use the bush, field or beach.<sup>330</sup></li> <li>• The Supreme Court has held that pan latrine necessitating carriage by another violates fundamental rights.</li> <li>• There is arbitrary pricing in the landlord – tenant relationships particularly in Accra and the regional capitals.</li> <li>• The Rent Control office has stepped up its operations but complains of</li> </ul>

<sup>326</sup> World Health Organization (WHO) Country Office for Ghana, 2014 Annual Report, page 9.

<sup>327</sup> Ghana Living Standards Survey (Round 6), 2014, page 13.

<sup>328</sup> Ghana Living Standards Survey (Round 6), 2014, page xvii.

<sup>329</sup> Ghana Living Standards Survey (Round 6), 2014, page 192.

<sup>330</sup> *Id.* at page 93.

No.	Theme	State of affairs
		severe under funding.
11.	Right to work	<ul style="list-style-type: none"> <li>Seven out of every 10 of the adult population aged 15-64 are economically active. Males recorded a slightly higher economic activity rate (54.9%) than females (53.4%). Nearly 13 percent of children aged 7 to 14 years are economically active. The activity rates for males exceed those for females in all age groups except in the 15 to 24.</li> <li>44.3 percent of households in the country operate non-farm enterprises, half of which are in urban localities (50.4%) while a little over one-third are in rural areas (36.8%). In the urban areas, the proportion of females (69.0%) engaged in trading activities is higher than males (67.1%).<sup>331</sup></li> <li>On average, men receive higher earnings than females across industry sectors except for manufacturing, transport and communication, and public administration. Information on working conditions of employees in public or private organizations shows that nearly 6 out of every 10 employees (57.3%) do not have any formal contract of employment with their employers before starting work.</li> <li>31.7 percent of the apprentices are into the making of textile, apparel and furnishing, 21.9 percent in personal/grounds services, 13.8 percent in building and 10.0 percent in automotive trade.<sup>332</sup></li> <li>The unemployment rate, as computed for persons who during the reference period were without jobs and were “potentially” available for work is 5.2 percent; the rate is higher for females (5.5%) than males (4.8%). Unemployment is higher in urban (6.5%) than in rural (3.9%) areas.<sup>333</sup></li> </ul>
12.	Right to bodily integrity	<ul style="list-style-type: none"> <li>Law enforcement, particularly the police work in dangerous and potentially life-threatening situations. Nevertheless, force has been misused in the past with fatal consequences in circumstances that could not be promoting and working towards zero tolerance for such conduct. Excessive use of force by the law enforcement agencies - The misuse of force by police is a serious issue as evidenced by the shoot to kill attitude of the Ghana Police in early 2009. This problem is exacerbated by the lack of public enquiry into such shooting incidents and the resultant deaths</li> <li>Domestic violence continues to be an issue of concern</li> </ul>
13.	Rights of persons with disabilities	<ul style="list-style-type: none"> <li>The Constitution provides for the rights of persons with disabilities. Persons with disability law and a Mental Health Law have been passed. However, implementation of the provisions of these laws is slow.</li> <li>Non-therapeutic sterilization may be on going on the blind side of the law.</li> <li>Though the Disability Law has been passed, no Legislative Instrument has been made.</li> <li>The National Disability Council is in place.</li> </ul>
14.	Right to information	<ul style="list-style-type: none"> <li>The Constitution provides for a right to information in article 19. A Right to information law has been pending in Parliament for almost a decade.</li> <li>The Right to Information (RTI) Bill, which would deepen the process of accessing public information, has been laid before Parliament.</li> </ul>

<sup>331</sup> *Id.* at page xx.

<sup>332</sup> *Id.* at page xvii.

<sup>333</sup> *Id.* at page 191.

No.	Theme	State of affairs
		<ul style="list-style-type: none"> <li>Few efforts have been made to enforce the Constitutional provision on the right to information including the case of Elizabeth Vaah v. Lister Hospital in which the right to the medical records of the Plaintiff / Applicant was upheld by the Human Rights High Court, Accra.</li> <li>Public electronic media, particularly Ghana Television (GTV) utilizes the services of sign language interpreters to ensure that the deaf have access to the major news items. Private media houses do not have such facilities for the benefit of the deaf even on a limited scale like GTV.</li> </ul>
15.	Rights of children and juveniles	<ul style="list-style-type: none"> <li>2.6 percent of children below the age of 6 have never received any vaccination. The proportion who has not received any vaccination is higher in rural localities than in urban areas. Nearly 6 percent of rural forest children aged 5 years have never been vaccinated. But in Accra (GAMA) and other urban areas every child aged five years has been vaccinated. More than 70 percent of parents pay GH¢1.00 or less for vaccination of children.</li> </ul>
16.	Right to participation in governance	<ul style="list-style-type: none"> <li>The need for the Local government machinery to contribute to Ghana's engagement with UN bodies and be part of the implementation of any initiatives designed to enhance legal protections for human rights.</li> <li>Review and reform of counter-terrorism laws to ensure their compliance with Ghana's human rights obligations.</li> </ul>
17.	Fulfilling Ghana's international reporting obligations and follow ups on recommendations	<ul style="list-style-type: none"> <li>There is no coordinated mechanism addressing gaps in legal protection for human rights which will enhance Ghana's engagement with international human rights bodies and the not for profit sector.</li> </ul>
18.	Anti-Human Trafficking efforts.	<ul style="list-style-type: none"> <li>However, there was developed a National Plan of Action to combat trafficking in persons. A review responding to international bodies' recommendations that Ghana adopts a more comprehensive, human rights-based approach to people trafficking under the issues is encouraged.</li> </ul>
19.	Rights of LGBTI persons	<ul style="list-style-type: none"> <li>There was a lot of public debate on the issue of gay rights in Ghana. The 1992 Constitution does not explicitly say that homosexuality is illegal but section 104(1)(b) of the Criminal Offence Act, 1960 (Act 29) regards "unnatural carnal knowledge" as a misdemeanour.</li> </ul>
20.	Rights of persons in detention	<ul style="list-style-type: none"> <li>As at August 2013, work on the Ankafu prisons in the central region was not completed. However, inmates from other prisons are being moved to Ankafu. The new Ankafu prison has a holding capacity of 2000 inmates. This is helping to reduce the problem of congestion in prisons.</li> <li>Inmates continue to yearn for education services.</li> <li>Feeding grant of GHS1.80 per prisoner is woefully inadequate.</li> <li>Interactions between inmates and the Prisons Council is practically non-existent.</li> <li>Visitation of families members to inmates is inadequate. A policy on the improved visitation rights, with the possibility of conjugal visits needs to be considered.</li> </ul>
21.	Ratification of international human rights instruments	<ul style="list-style-type: none"> <li>Ratification of OPCAT – Ratification of OP-CAT, Ops-CRC (OP-CRC-AC and OP-CRC-SC) have all been approved by Cabinet and will soon be considered by Parliament.</li> </ul>
22.	Rights of IDPs, Refugees, asylum seekers	<ul style="list-style-type: none"> <li>The Ghana Refugee Board assesses applications for refugee status and makes final decisions on granting refugee status. The Minister of Information who is a member of the Ghana Refugee Board is the appellate authority from whom the refugee applicant seeks redress in case of refusal.</li> </ul>



No.	Theme	State of affairs
23.	Mining and environmental rights	<ul style="list-style-type: none"> <li>Ghana has recently witnessed challenges in the mining sector including illegal mining and its attendant environmental hazards and dissatisfaction among the mining communities. This finds expression in conflicts. To address this problem, Parliament has passed six sets of regulations in June 2012 to give full effect to the Mineral and Mining Act.</li> </ul>
24.	Human Rights institutions funding constraints	<ul style="list-style-type: none"> <li>All independent Constitutional bodies with a human rights related mandate have insufficient resources for their work.</li> </ul>

## CHAPTER EIGHT

### CHALLENGES AND CONSTRAINTS FACED BY GHANA IN MEETING ITS HUMAN RIGHTS OBLIGATIONS

#### 8.1 INTRODUCTION

8.1.1 Several challenges confront Ghana as it seeks to meet its human rights obligations. These challenges affect all the vulnerable groups. The major ones identified are lack of resources, poor record keeping, turf wars, tradition, culture and religion, and capacity gaps.

#### 8.2 LACK OF RESOURCES

8.2.1 This is a major challenge which affects all areas. Almost all state institutions that work to protect, respect and fulfill human rights in Ghana are grossly under resourced, not just in relation to financial resources but also human and logistical resources.<sup>334</sup> These institutions include schools, health facilities, family tribunals, juvenile courts etc. The Department of Social Welfare (DSW), which is primarily mandated among other things to promote and protect the rights of children and also to provide community care for the persons with disabilities and needy adults, is also affected by the resource challenges of state institutions.<sup>335</sup>

8.2.2 Prison facilities remain inadequate, with conditions of overcrowding, poor medical care, inadequate clothing and insufficient food for inmates.<sup>336</sup> Juveniles are remanded in adult prisons where there are no juvenile remand facilities; legal aid support for children in conflict with the law is severely limited, as the State's Legal Aid Scheme suffers severe human and logistical resource constraints.<sup>337</sup>

8.2.3 There is no particular implementing agency responsible for dealing with the inefficiencies or the successes of the juvenile justice system. The system is spread across many departments hence there is a lack of will for one department to take charge. In the words of the Warden of the Boy's Remand Home, if he "had to rely on the government, the place would collapse."<sup>338</sup>

8.2.4 Inadequate funding and resources has also been cited as the greatest challenge to CHRAJ achieving its mandate. This has resulted in low salaries, poor working conditions, and the loss of many of its staff to other government and non-governmental organizations.<sup>339</sup>

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<sup>334</sup> The Ghana NGO Coalition on the right of the child. The Ghana NGO Report to the UN Committee on the Rights of the Child, on implementation of the Convention of the Rights of the Child by the Republic of Ghana. May 2005, page 8.

<sup>335</sup> [http://www.ovcghana.org/about\\_dsw.html](http://www.ovcghana.org/about_dsw.html)

<sup>336</sup> 2011 USDS Human Rights Report, available at <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154349.htm>, the same challenges are reported in the USDS reports from 1999 to 2013.

<sup>337</sup> Supra note 45 at page 12.

<sup>338</sup> CHRI, Africa Office: Juvenile justice in Ghana, A study to assess the status of juvenile justice in Ghana. 2011, page 21.

<sup>339</sup> 2013 USDS Human Rights Report.

- 8.2.5 Lack of counselling skills, shelter and other resources needed to protect women and children continue to affect the ability of the Police to respect, protect and fulfill the human rights of victims.<sup>340</sup>

### **8.3 INADEQUATE INFORMATION MANAGEMENT SYSTEMS LEADING TO POOR RECORD KEEPING**

- 8.3.1 To develop appropriate interventions to protect, respect and fulfill human rights, an effective system for collection, collation, storage and analysis of information is needed. However, for many of the key human rights institutions, an electronic knowledge management system has either not been instituted or is not being efficiently managed. Consequently, it is hard to analyse trends to determine whether interventions are having the necessary impact. For example, whether there has been a decrease nationwide in the trafficking of children in fishing areas over a certain period of time due to increased advocacy on the subject is unknown.
- 8.3.2 Data disaggregated by sex, age, socio-economic circumstances, ethnicity, etc is extremely difficult to find, that is, if it is available at all in areas such as justice, migration and social welfare.<sup>341</sup> Besides education and health, data on several key areas of child rights and protection is either not available or grossly inadequate.<sup>342</sup>
- 8.3.3 Until recently and even now most courts are not automated. Proceedings are recorded by hand thereby prolonging the process as testimonies have to be given slowly often with long pauses to enable the judge record. Even with automated courts, testimonies may still have to be given at a handwriting pace to enable the clerks record. Missing dockets in the courts are a common occurrence directly resulting in prolonged trials as the cases cannot proceed without the dockets.

### **8.4 TURF WARS BETWEEN VARIOUS GOVERNMENT AGENCIES**

- 8.4.1 Turf wars do not foster cooperation between government agencies which should otherwise be cooperating to protect, respect and fulfill human rights. These occur when there is an overlap of mandates. For example, there is the question of whether policy making relating to early childhood development, belongs to the Ministry of Gender, Social Protection and Children (MGSPC) or the Ministry of Education.<sup>343</sup> Again, at the passing of the Human Trafficking Act, there was tension between MOWAC and the then Ministry of Manpower Development and Employment (MMDE) as to which would be the implementing Ministry.
- 8.4.2 It is perceived that these “wars” delay initiation and implementation of relevant policies and laws that would facilitate the protection, respect and fulfillment of human rights.<sup>344</sup>

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<sup>340</sup> 2007 and 2011 USDS Human Rights Report.

<sup>341</sup> *Supra* note 61 at page 10.

<sup>342</sup> *Id.* page 7.

<sup>343</sup> *Id.* at page 11.

<sup>344</sup> *Id.* at page 11.

## 8.5 TRADITION, CULTURE AND RELIGION

- 8.5.1 Women and children are often direct victims of most negative cultural practices. Female Genital Mutilation, Trokosi, witches camps, widowhood rites are all traditional practices that violate the rights of women and children.
- 8.5.2 Legislation has been passed to fight some of these practices but because of the deep religious beliefs that are attached to these practices, it is almost impossible to stop these practices with legislation alone. Additionally the lack of political will to enforce legislation in these areas also contributes to continuous violations of victims. For example despite criminalizing widowhood rites,<sup>345</sup> in 2008 the media carried a story about three widows in Mo in the Brong Ahafo Region, who for nine years had become virtual prisoners as part of widowhood rites for their deceased husband.<sup>346</sup> There was no reported arrest or prosecution when the story broke.
- 8.5.3 Children have also been reportedly denied medical treatment because of their parents' religious beliefs.<sup>347</sup> Social stigma associated with HIV/AIDS makes it difficult for people living with the virus to come forward to receive the help needed. Cases of sexual abuse and domestic violence also go largely unreported because of cultural secrecy, fear of social stigmatization and reprisals from family members.<sup>348</sup>

## 8.6 CAPACITY GAPS

- 8.6.1 The human rights knowledge, skills and attitudes required to enhance the protection, respect and fulfillment of human rights in Ghana are inadequate. Legislation is more often than not, not implemented in a human rights framework. In some cases, there are no inbuilt mechanisms in legislation to protect the rights of the vulnerable. For example, there is no legal requirement that child victims should be taken through court process preparation. Additionally, victims have no choice but to face their adult abusers in court when they have to give evidence.<sup>349</sup>
- 8.6.2 The Constitution clearly provides that a detained individual must be informed immediately in a language he understands of the reasons for the detention and of his or her right to a lawyer at the expense of the State if the individual is indigent. However, in many recorded instances, this all important constitutional provision has been ignored.
- 8.6.3 The primary data collected as part of this baseline survey shows that some State institutions which have a responsibility regarding human rights realization have some level of skills while others do not. Between 57% and 72% of respondents felt that NCCE, Ghana Police Service,

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<sup>345</sup> Section 88 of the Criminal Offences Act, 1960 (Act 29)

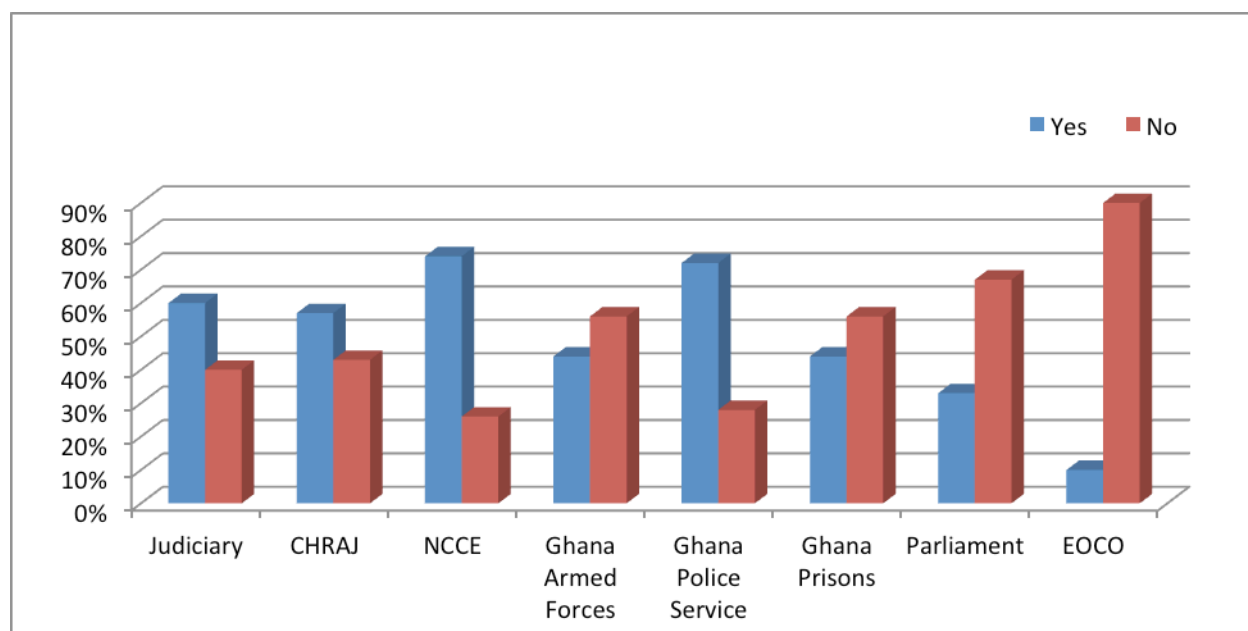
<sup>346</sup> "Freedom for the Mo Widows," published on 13 May 2008, available at <http://www.modernghana.com/news/165187/1/freedom-for-the-mo-widows.html>

<sup>347</sup> 2001 USDS Human Rights Report

<sup>348</sup> Ghana National Report submitted in accordance with paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1 \* paragraph 65.

<sup>349</sup> *Supra* note 61 at page 15.

CHRAJ, and the Judiciary had the appropriate skills to deal with human rights issues. However, only 10% to 33% of the respondents expressed the view that EOCO and Parliament had the appropriate skills.



**Figure 12: Do state institutions have appropriate level of skills to fulfill Ghana's human rights obligations**

## 8.7 RECOMMENDATION

1. Funding and resources for human rights realization must improve. Advocacy for better funding must be supported by evidence based analysis of the disparity between funding for State human rights institutions and other state institutions.
2. State institutions responsible for the realization of Human Rights must periodically engage in assessments and trend analysis to determine the real impact of their work. Consequently, it is hard to analyse trends to determine whether interventions are having the necessary impact. An effective electronic knowledge management system for collection, collation, storage and analysis of information is recommended.
3. Studies on quick and effective justice delivery is recommended.
4. Review of present inter-agency collaboration with a view to improving better working relationship of all the State agencies in the area of human rights realization is recommended.
5. Studies of the impact of tradition, religion and culture on the full gamut of human rights are recommended.
6. Regular programmes to build the capacity of institutions with responsibility for human rights are recommended.

## CHAPTER NINE

### CONCLUSIONS AND RECOMMENDATIONS

#### 9.1 CONCLUSIONS

- 9.1.1 Since independence in 1957, Ghana has advanced tremendously in the pursuit of good governance, human rights and the rule of law. This is particularly the case with the return to civilian rule in 1992. The 1992 Constitution has elaborate provisions for the realization of human rights in Ghana. It is argued that the 1992 Constitution encourages the human rights based approach to development, generally delineating the public as rights holders and government and its apparatus as the duty bearers. The Constitution demands observance of the human rights provided for in Chapter 5 and other provisions of the Constitution by all persons and institutions.
- 9.1.2 Among practitioners, there is understanding that human rights are interrelated and indivisible. The Constitution acknowledges that not all human rights could have been captured in the Constitution and therefore made room for the incorporation of such rights as are normally enjoyed in all civilized democracies. This is a recognition that there must be a holistic framework for the realization of human rights in Ghana. That holistic framework should be a National Human Rights Action Plan.
- 9.1.3 The first step in preparing the National Human Rights Action Plan is to establish an evidence base relating to human rights in Ghana. This study demonstrates that Ghana has a strong human rights record, and its constitutional system, democratic institutions and legal protections create a stable foundation for human rights realization. The study also demonstrates the importance of continuing work to support access to justice, to ensure that Ghana's vulnerable groups have their human rights respected, protected and fulfilled.
- 9.1.4 **Distinct issues of concern for each vulnerable group:** Every vulnerable group faces various distinct challenges. For example:
- Children's rights to bodily integrity are often violated through corporal punishment and violence in the domestic setting;
  - The trials of juveniles go beyond the 6 months limitation provided by law and juveniles are sometimes incarcerated in adult prisons;
  - Various categories of persons with disability face serious challenges. For instance, the deaf face difficulties communicating with the hearing public and other professionals with the possible alarming consequence of death in cases where there is mis-diagnosis in hospitals;

- Persons in detention face serious issues relating to congestion, malnutrition and inadequate family visits with no opportunities for the realisation of conjugal rights;
- LGBTIs face hate crimes and invasion of their bodily integrity as well as violation of property rights without adequate avenues for redress. LGBTIs are also often arrested by the police on suspicion and non-crime related personal effects such as mobile phones and cash are confiscated without any opportunities for redress;
- PLWHIV/AIDS face discrimination even when they attempt depositing cash into their accounts at banks although the efforts of the National Association of Persons Living with HIV/AIDS has worked progressively towards reducing discrimination at the work place and beyond;
- The contribution of women within the domestic setting in some marriages are not recognized leading to the dispossession of property acquired within marriage in the event of the death of their male counterparts. However, the Supreme Court has adopted the “equality is equity” principles in the settlement of the property rights of spouses in the event of a dissolution of the marriage;
- Refugees face economic challenges including access to social facilities;
- Migrant workers and in particular internal migrants face abuses from employers and middlemen. These internal migrant workers are mainly young girls and boys who work as porters in various commercial enclaves in major cities such as Accra, Kumasi and Sekondi - Takoradi.

#### 9.1.5 Sufficiency of legal framework

- Generally, legislation exists to deal with the issues raised. Sometimes, several laws afford protection to the specific vulnerable group. For instance, the Children’s Act, the Labour Act and the Human Trafficking Act all protect children against exploitative labour. However, the provisions of these laws are not rigorously enforced. Consequently, there is a need for a sustained effort to ensure enforcement of various human rights laws.
- In some instances, laws need to be amended to afford protection to vulnerable groups. Some of those instances include amending the 1992 Constitution to abolish the death penalty or the promulgation of a new law in protection of the rights of the Aged.

#### 9.1.6 Institutional framework for human rights realisation in Ghana

- Successes with the implementation of human rights laws are usually realized through the development of comprehensive structures and /or systems that aid compliance with the laws and reasonable provision of resources to support the work of implementing

agencies. Many institutions have been set up under the 1992 Constitution and by various legislations to ensure that human rights are respected, protected and fulfilled. These include CHRAJ, the NCCE, the Legal Aid Scheme, the Judiciary and the Judicial Service, the Children's Department of the Ministry of Gender, Children and Social Protection, the Prisons Council and the Disability Council.

- Generally, there are great concerns about the efficiency of the institutions set up to ensure the realization of human rights. For instance, over the past decade, the Judicial Service of Ghana, has initiated and implemented a number of reforms and modernization activities to enhance justice delivery. The reforms were initiated to respond to concerns of the public regarding delays in the disposal of cases as well as allegations of corruption in the judiciary. In spite of these reforms, there are still serious delays in case management, a great accumulation of cases in the courts, limited access to services (especially by the poor), and corrupt practices. These issues, breed mistrust among citizens regarding judicial decisions. Hence, even when justice is done, it may not be seen to have been done. The image of the judiciary and the judicial service was also heavily dented by the "Anas exposure" of corruption in these institutions of State.
- CSOs are also contributing significantly to the realisation of human rights through awareness creation on human rights. In addition, some CSOs are directly rendering legal and educational services to individuals and groups.

9.1.7 Some activities which can improve the capacities of the institutions mandated to ensure that human rights are respected, protected and fulfilled are:

- Compiling human rights case statistics, evaluating performance of State institutions mandated to realize human rights and making these reports available to the public;
- Building alliances across sectors such as justice delivery, education and health through pilot projects that apply innovative ideas and methods.
- Organizing legal awareness educational programmes to promote better knowledge of rights and duties, available mechanisms and procedures.
- Providing ADR services and legal aid, programmes to low income persons and communities.

9.1.8 Above all, there has to be coordination of the institutions working for the realization of human rights in Ghana. The activities of Government offices, independent Constitutional bodies with a human rights mandate and CSOs must be coordinated so as to enhance efficiency of the system. Possible duplications of work can be avoided through such coordination.

9.1.9 **Access to justice**

- There have been many efforts by successive governments to fully discharge their human rights obligations with due emphasis on most of the vulnerable groups identified and



targeted by this survey. A cross cutting challenge identified as affecting all the vulnerable groups is inadequate access to justice. The level of poverty in Ghana coupled with a lack of enforcement of social, economic and cultural rights; and the difficulties relating to the supply of justice services, hampers access to justice. The causes of these specific issues need to be addressed and long-term solutions found in the social, economic and political arena to promote access to justice.

#### 9.1.10 Human Rights education and awareness

- Individuals need to be empowered with knowledge on their rights to enable them to lodge complaints against abuses of rights and seek redress. When people are aware that a right is being violated, there must be well publicized and available channels that can be utilized for reporting and seeking redress. It is therefore necessary to facilitate legal awareness and rights education among the poor, women and marginalized groups.
- The bulk of awareness creation and human rights education is carried out by CSOs. In this regard, CSOs need to forge alliances with mass media, trade associations, academia, and the private sector. CSOs are a powerful instrument for the realization of human rights as they monitor and follow up on the assurances and commitments of duty-bearers.

## 9.2 RECOMMENDATIONS

It is hereby recommended that:

1. A National Human Rights Action Plan (NHRAP) should be developed through broad based stakeholder consultation processes, submitted to Parliament for approval and a National Manager recruited for the implementation of the NHRAP;
2. NHRAP should have an inbuilt mechanism for regular monitoring and must avoid duplication of functions being performed by existing institutions. It must do this by seeking to embrace or encompass and complement other National Plans of Actions such as the National Action Plan against Corruption (NACAP), and National Plan of Action on Human Trafficking;
3. The NHRAP should contain specific activities to build a good culture of human rights, responsibility and accountability in Ghana;
4. A national mechanism for the implementation of the recommendations of the UPR, APRM and recommendations of other international charter and treaty-based mechanisms should be set up. This mechanism should be tasked with ensuring that Ghana meets in a timely manner its reporting obligations under various treaties to which Ghana is a party and implements recommendation from these treaty and charter mechanism, in particular those which are accepted;

5. A stronger national Human Rights institutional arrangement and platform should be created. CHRAJ should take the lead in driving the process and hosting the secretariat;
6. Government functionaries and all MMDAs need to be more actively educated at all levels on the use of a Human Rights Framework in the planning and implementation of their programmes etc;
7. A human rights based approach to development on a sector-wide basis should be adopted. This will necessarily require training for national, regional and local level government officials. NHRAP should also work towards institutionalizing the use of human rights indicators for monitoring the status of human rights realization in Ghana;
8. NHRAP should contain an effective strategy to enhance awareness about human rights generally but also specifically on the rights of the identified vulnerable groups;
9. Disaggregated data about the vulnerable groups should be collected to guide formulation and implementation of policies. Such information should be harmonized with and disseminated among stakeholders working with these groups;
10. An Ombudsman for Children, the Aged and Persons with Disability should be created at the CHRAJ.

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## APPENDICES

**Appendix 1 – Table of Signature and Ratification of Treaties**

Instruments	Signature	Ratification	Accession	Succession
<b><i>International bill of rights</i></b>				
International Covenant on Civil and Political rights	7 Sep 2000	7 Sep 2000		
Optional protocol on International Covenant on Civil and Political rights	7 Sep 2000	7 Sep 2000		
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty				
International Covenant on Economic, Social and Cultural Rights	7 Sep 2000	7 Sep 2000		
<b><i>Prevention of Discrimination on the Basis of Race, Religion, or Belief; and Protection of Minorities</i></b>				
International Convention on the Elimination of All Forms of Racial Discrimination	8 Sep 1966	8 Sep 1966		
<b><i>Women's Human Rights</i></b>				
Convention on the Elimination of All Forms of Discrimination against Women	17 Jul 1980	2 Jan 1986		
Optional Protocol to the Convention on the Elimination of Discrimination against Women	24 Feb 2000			
United Nations Convention against Transnational Organized Crime		21 Aug. 2012		
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime			21 Aug. 2012	
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime			21 Aug. 2012	
<b><i>Slavery and Slavery-Like Practices</i></b>				
Slavery Convention				3 Mar 1963
Protocol amending the Slavery Convention	Not signed			
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	Not signed			
Convention for the Suppression of the Traffic in Persons and of the Exploitation	24 Sep 2003			

Instruments	Signature	Ratification	Accession	Succession
of the Prostitution of Others				
Slavery Convention				3 Mar 1963
Protocol amending the Slavery Convention	Not signed			
<b>Protection from Torture, Ill-Treatment and Disappearance</b>				
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	7 Sep 2000	7 Sep 2000		
<b>Rights of the Child</b>				
Convention on the Rights of the Child	29 Jan 1990	5 Feb 1990		
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts	24 Sep 2003			
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	Not signed	13 Jun 2000		
<b>Freedom of Association</b>				
Freedom of Association and Protection of the Right to Organise Convention		2 Jun 1965		
Right to Organise and Collective Bargaining Convention		2 Jul 1959		
<b>Employment and Forced Labour</b>				
Convention concerning Forced or Compulsory Labour		20 May 1957		
Equal Remuneration Convention		14 Mar 1968		
Abolition of Forced Labour Convention		15 Dec 1958		
Discrimination (Employment and Occupation) Convention		4 Apr 1961		
Employment Policy Convention	Not signed			
Convention concerning Occupational Safety and Health and the Working Environment	Not signed			
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	7 Sep 2000	7 Sep 2000		
<b>Education</b>				
Convention against Discrimination in Education	Not signed			
Convention relating to the Status of Refugees			18 Mar 1963	
Protocol Relating to the Status of Refugees			30 Oct 1968	
<b>Nationality, Statelessness, and the Rights of Aliens</b>				
Convention on the Reduction of			7 Sep 2000	

Instruments	Signature	Ratification	Accession	Succession
Statelessness				
Convention relating to the Status of Stateless Persons	Not signed			
<b>War Crimes and Crimes Against Humanity, Genocide, and Terrorism</b>				
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity	Not signed			
Convention on the Prevention and Punishment of the Crime of Genocide			24 Dec 1958	
Rome Statute of the International Criminal Court	18 Jul 1998	20 Dec 1999		
<b>Law of Armed Conflict</b>				
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field		2 Aug 1958		
Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea		2 Aug 1958		
Geneva Convention relative to the Treatment of Prisoners of War	Not signed	2 Aug 1958		
Geneva Convention relative to the Protection of Civilian Persons in Time of War		2 Aug 1958		
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)	12 Dec 1977	28 Feb 1978		
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II)	12 Dec 1977	28 Feb 1978		
<b>Terrorism and Human Rights</b>				
International Convention Against the Taking of Hostages			10 Nov 1987	
International Convention for the Suppression of Terrorist Bombing			6 Sep 2002	
International Convention for the Suppression of the Financing of Terrorism	12 Nov 2001	6 Sep 2002		
International Convention for the Suppression of Unlawful Seizure of Aircraft	16 Dec 1970	16 Dec 1973		
International Convention on the Prevention and Punishment of Crimes Against International Protected Persons			25 Apr 1975	

Instruments	Signature	Ratification	Accession	Succession
<b>African Regional Conventions</b>				
African [Banjul] Charter on Human and Peoples' Rights*			24 Jan 1989	
Convention Governing the Specific Aspects of Refugee Problems in Africa *	10 Sep 1969	19 Jun 1975		
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa *	Not signed			
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights *	9 Jun 1998			
African Charter on the Rights and Welfare of the Child*	18 Aug 1997			



## Appendix 2 - Questionnaire

# The State of Human Rights in Ghana

## Baseline Survey on Human Rights Situation in Ghana

## Questionnaire

Date of interview:

Timing:

Respondent No:

Place of interview:

Interviewer:

VG:

Thank you for your time and your availability to participate in this survey today. The purpose of this interview is to contribute to establishing the current human rights situation in Ghana. Your responses are therefore invaluable and will help Ghana use the eventual survey report as a baseline or reference point for improving its human rights situation. I would therefore be asking you some questions about human rights in Ghana. Please answer these questions as accurately as possible. If you have any questions or doubts, do not hesitate to ask me at any time. Some of these questions may be very personal. If you do not want to give an answer, you do not have to and please note that confidentiality of the responses is guaranteed. Thank you.

**All information provided will be kept in the strictest confidence.**

## Demographic information

1. Sex:           ( ) male                         ( ) female
2. Age range?                 ( ) Below 18          ( ) 19-35              ( ) 36-45              ( ) 46-60              ( ) Above 60
3. What is your ethnic group?
4. What is your religious affiliation?  
  
      ( ) Christian               ( ) Muslim           ( ) Traditional   ( ) Other           ( ) None
5. What is your level of education?  
      ( ) Primary   ( ) Junior high school certificate   ( ) Senior high school certificate   ( ) Tertiary (please  
      indicate                (undergraduate / graduate)           ( ) Other

## General Questions

6. What is your understanding of Human Rights? \_\_\_\_\_
7. Are Human Rights important to you? Yes ( ) No ( ) Why?

## POLICY, PRACTICE, SKILLS AND INSTITUTIONS

HUMAN RIGHTS POLICIES									
Questions	Children & Juveniles	PWDs	PLWHIV/ AIDS	The aged	Refugees & IDPs	Women	LGBTI	Persons in detention	Migrant workers
8. Do the following VGs have rights?	Children								
	Juveniles								
9. What are the most fundamental rights of VGs? List 5 in order of importance to you.									
10. What in your view are the most fundamental needs of the following VGs? Give 5 examples.									
11. Are you aware of any government policies to ensure that Human Rights knowledge, skills and appropriate attitudes are adopted and internalized?  Give 5 examples.									

12. If yes to 13, do you think these policies have been effectively implemented? Yes/No									
13. If yes/no, Please explain why?									
<b>HUMAN RIGHTS INSTITUTIONS</b>									
	<b>Children &amp; Juveniles</b>	<b>PWDs</b>	<b>PLWHIV/ AIDS</b>	<b>The aged</b>	<b>Refugees &amp; IDPs</b>	<b>Women</b>	<b>LGBT persons</b>	<b>Persons in detention</b>	<b>Migrant workers</b>
14. In order of importance to you, which are the government institutions to protect, promote and fulfill Human Rights for the following groups in Ghana?									
15. Which key mechanisms do the institutions mentioned above use to ensure that Human Rights are respected, promoted and fulfilled?									
16. In your experience, which of these key mechanisms do you think have helped to more effectively									

respect, promote and fulfill your rights?								
17. If there is no institution or mechanism to help respect, protect and fulfill the rights of a particular VG, should one be created?								
18. Do you think these institutions and mechanisms have the appropriate level of capacity to fulfill Ghana's human rights obligations? Yes/No								
19. If no, what are the capacity gaps?								
20. How in your view, can the institutional capacity deficiencies, if any, be dealt with in an enduring manner?								
21. How will you rate human rights education in Ghana? Please rate from 1 (lowest) to 10 (highest)	Informal:  Why?  <hr/> Formal:  Why?							

SKILLS FOR HUMAN RIGHTS WORK									
	Children & Juveniles	PWDs	PLWHIV / AIDS	The aged	Refug ees & IDPs	Women	LGBT persons	Persons in detention	Migrant workers
22. Have you had any formal training on lobbying, advocacy and documentation? Yes/No  State when.	Yes/No								
23. In your view, are lobbying, advocacy and documentation skills being effectively used to advance Human Rights for the following groups in Ghana? Yes/No  Please rank from 1 (lowest) to 10 (highest)									
24. Do you think state institutions and mechanisms for the following groups have the appropriate level of skills to fulfill Ghana's									

Human Rights obligations?									
<b>MECHANISMS</b>									
25. Do you think the following state institutions and mechanisms have the appropriate level of skills to fulfill Ghana's Human Rights obligations?  Please rank from 1 (lowest) to 10 (highest)		Yes	No	Why					
	Judiciary								
	CHRAJ								
	NCCE								
	EOCO								
	Ghana Police Service								
	Ghana Prisons								
	Parliament								
<b>PRACTICE OF UPHOLDING HUMAN RIGHTS</b>									
26. Have your rights ever been abused / violated? Yes ( ) No ( ) Please explain Not willing to discuss ( )									
27. Please list five instances of a Human Rights abuse you are aware of. Give details.									
28. Have you ever taken any steps to help anyone whose rights have been abused/violated? Yes ( ) No ( )									
	<b>Children &amp; Juveniles</b>	<b>PWDs</b>	<b>PLWH IV/ AIDS</b>	<b>The aged</b>	<b>Refugees &amp; IDPs</b>	<b>Women</b>	<b>LGBT persons</b>	<b>Persons in detention</b>	<b>Migrant workers</b>
29. Do you know of any good practices for the realisation of the rights of the following groups?									
30. What practices will you suggest to improve the enjoyment of Human Rights for the following groups?									

Are Human Rights being adequately respected, promoted and fulfilled in Ghana?						
31. <b>Obligation to Respect</b> – This means that Ghana must refrain from interfering with or curtailing the enjoyment of human rights. E.g., freedom of religion guaranteed in the 1992 Constitution		Most adequately	Very highly	Adequately	Below expectation	Not at all
	Why?					
	Suggestions for improvement					
32. Has your metropolitan, municipal or district assembly developed any plans to ensure Ghana's obligation to respect human rights is met?		<input type="checkbox"/> Yes,  if yes, has the plan been implemented? Please probe for details on specific activities carried out, when and where...  <input type="checkbox"/> No				
33. <b>Obligation to Promote</b> - This requires Ghana to protect individuals and groups against human rights abuses. E.g., by enacting laws that protect the rights of children, etc.		Most adequately	Very highly	Adequately	Below expectation	Not at all
	Why?					
	Suggestions for improvement					
34. Has your metropolitan, municipal or district assembly developed any plans to ensure Ghana's obligation to promote human rights is met?		<input type="checkbox"/> Yes,  if yes, has the plan been implemented? Please probe for details on specific activities carried out, when and where...  <input type="checkbox"/> No				
35. <b>Obligation to Fulfill</b> – This requires Ghana to take positive actions to facilitate the enjoyment of basic human rights. E.g., provision of infrastructure, schools, health facilities, etc. Providing all the things that contribute to a person living a		Most adequately	Very highly	Adequately	Below expectation	Not at all

dignified life.						
	Why?					
	Suggestion for improvement					
36. Has your metropolitan, municipal or district assembly developed any plans to ensure Ghana's obligation to fulfill human rights is met?		<input type="checkbox"/> Yes, if yes, has the plan been implemented? Please probe for details on specific activities carried out, when and where...  <input type="checkbox"/> No				

**Enforcement of rights**

37. Do you have any special concerns about the enforcement of any of the above rights in Ghana?

Is /are there any other issue(s) you will want to see addressed or is there any comment you would like to make on any of these human rights issues discussed?

**We would like to THANK YOU most sincerely for your patience in responding to this questionnaire.**