

# MAINSTREAMING HUMAN RIGHTS EDUCATION IN PRE - TERTIARY SCHOOL SYSTEM IN GHANA



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PRE-TERTIARY SCHOOL SYSTEM IN  
GHANA**

**REPORT ON CONTENT DEVELOPMENT FOR HUMAN  
RIGHTS EDUCATION IN PRE-TERTIARY SCHOOL  
SYSTEM IN GHANA**

Compiled by CHRAJ

2021

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## ABBREVIATIONS AND ACRONYMS

<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>AU</b>	African Union
<b>CBOs</b>	Community Based Organisations
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CHRAJ</b>	Commission on Human Rights and Administrative Justice
<b>CLOGSAG</b>	The Civil and Local Government Staff Association, Ghana
<b>CPR</b>	Civil and Political Rights
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CSOs</b>	Civil Society Organisations
<b>DIHR</b>	Danish Institute for Human Rights
<b>ECOSOC</b>	Economic and Social Council
<b>ESCR</b>	Economic, Social and Cultural Rights
<b>FCUBE</b>	Free Compulsory and Universal Basic Education
<b>GBA</b>	Ghana Bar Association
<b>GJA</b>	Ghana Journalists Association
<b>GMA</b>	Ghana Medical Association
<b>GNAT</b>	Ghana National Association of Teachers
<b>HRC</b>	Human Rights Council
<b>HRE</b>	Human Rights Education
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICERD</b>	International Convention on the Elimination of Racial Discrimination



<b>ICRMW</b>	International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families
<b>ICJ</b>	International Court of Justice
<b>ILO</b>	International Labour Organisation
<b>JHS</b>	Junior High School
<b>MoE</b>	Ministry of Education
<b>NACAP</b>	National Anti-corruption Action Plan
<b>NaCCA</b>	National Council for Curriculum and Assessment
<b>NAGRAT</b>	National Association of Graduate Teachers
<b>NAP</b>	National Plan of Action
<b>NHRI</b>	National Human Rights Institution
<b>NTC</b>	National Technical Committee for the Development of National Plan of Action for Mainstreaming Human Rights Education in the School System
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>PWDs</b>	Persons With Disabilities
<b>SC</b>	Security Council
<b>SDG</b>	Sustainable Development Goal
<b>SG</b>	Secretary General
<b>SHS</b>	Senior High School
<b>TOR</b>	Terms of Reference
<b>TV</b>	Television
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNDP</b>	United Nations Development Programme
<b>UNGA</b>	United Nations General Assembly
<b>USA</b>	United States of America

<b>VDPA</b>	Vienna Declaration and Programme of Action
<b>WHO</b>	World Health Organisation

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Mr. Lawrence Lartey	Director, Investigations (Member)
Nana Yamfoah Amua-Sekyi (Mrs)	Director, Public Education (Member)
Mr. Stephen Azantilow	Deputy Director, Anti-Corruption (Member)
Mrs. Mary A. Nartey	Deputy Director, Human Rights (Member)
Mr. Mawuli Avutor	Deputy Director, Public Education (Secretary)
Mr. Godwin Tignanaba Kuyole	Senior Research Officer (Member)
Mr. Clement Kadogbe	Senior Investigator (Member)
Mrs. Cecilia Adufo	Registrar (Member)

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## **EXECUTIVE SUMMARY**

The development of HRE content for the Pre-Tertiary school system is the first in the series of activities earmarked by the NAP for integrating HRE into the primary and secondary school systems in Ghana to address identified gaps in accordance with the Sustainable Development Goal (SDG) Target 4.7.

This report comprises the following components:

- i. Introduction and Background
- ii. Methodology
- iii. Conceptual Analysis of HRE
- iv. Legal Framework of HRE
- v. HRE in Pre-Tertiary school system
- vi. HRE Content for Various Stages at the Pre-Tertiary Level

The Report begins with the background to the content development. It covers the HRE in schools' project supported by the DIHR. It also captures the work of the National Technical Committee (NTC) which developed the National Action Plan (NAP) for mainstreaming HRE in the school system at the Pre-Tertiary Level.

This is followed by the methodology adopted in arriving at the HRE content. In line with its Terms of Reference (TOR), the Committee reviewed the NAP and relevant existing literature, including internet sources.

The Conceptual Analysis deals with the definition/meaning, rationale, goals, objectives and outcomes of HRE at individual, organizational/group and community/society levels. It further examines the justification of HRE in the pre-tertiary school system.

The Legal Framework considers specific provisions in various international, regional and national human rights instruments for HRE.

Strategically, HRE content at the Pre-Tertiary Level has been grouped into two parts: Kindergarten to Junior High School (JHS) and Senior High School (SHS).

At the Kindergarten to JHS Level, specific rights were selected from the International Bill of Rights (i.e. the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights). Specific rights relating to children were carefully chosen taking into account Maslow's hierarchy of needs (**see Table 1**). The enjoyment of human rights is inseparable from the performance of duties and obligations. Accordingly, Article 41 of the 1992 Constitution of Ghana which deals with the duties and responsibilities of the citizen has been included as part of HRE content at the JHS Level.

The content of HRE at the SHS Level consists of the following:

- i. Nature and Essence of Human Rights
- ii. Right-Holder and Duty-Bearer
- iii. International Bill of Rights
- iv. The United Nations and its Human Rights Mechanism
- v. Regional Human Rights Mechanism
- vi. National Human Rights Mechanism
- vii. The Role of Non-State Actors in the Promotion of Human Rights

## 1.0 INTRODUCTION AND BACKGROUND

The Office of the United Nations High Commissioner for Human Rights (OHCHR) is mandated by General Assembly Resolution 48/141 to promote and protect the enjoyment and full realisation by all persons of all human rights.<sup>1</sup>

Similarly, the Commission on Human Rights and Administrative Justice (CHRAJ) as the National Human Rights Institution (NHRI) in Ghana, is constitutionally responsible for the promotion and protection of fundamental human rights and freedoms of all persons in Ghana. Since its inception in July 1993, the Commission has creditably delivered on these obligations through various means, including Human Rights Education (HRE).

In furtherance of its public education function, and in line with SDG 4.7, in 2020 CHRAJ, in collaboration with DIHR initiated a project dubbed “National HRE Implementation in Africa 2020” to promote HRE in Pre-Tertiary schools in Ghana.

As part of this project, DIHR, in September 2020, launched the SDG/HRE Monitoring Tool to enable NHRIs monitor the HRE element of the global SDG Target 4.7 in their individual countries.

Target 4.7 of the SDGs states that:

*“[By] 2030 ... ensure all learners acquire knowledge and skills needed to promote sustainable development including through education for sustainable development and sustainable lifestyles, human rights, gender and equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture’s contribution to sustainable development”.*<sup>2</sup>

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<sup>1</sup> <https://www.ohchr.org/EN/ABOUTUS/Pages/Mandate.aspx>

<sup>2</sup> Sustainable Development Goals (SDGs) Target 4.7

Pursuant to the above, CHRAJ monitored and identified gaps in HRE at the Pre-Tertiary Level by consulting relevant stakeholders such as the Ministry of Education (MoE), National Council for Curriculum and Assessment (NaCCA) and the Ghana Education Service (GES).

The identified gaps were categorised into two broad areas to ensure effective integration of HRE into Pre-Tertiary school systems in Ghana. The broad gaps were:

- Absence of a NAP or Policy for HRE
- Lack of a National Standard Assessment guidelines for HRE in Pre-Tertiary School System in Ghana.

To address these gaps, in October 2020, CHRAJ constituted a 13-member National Technical Committee (NTC) consisting of experts from relevant institutions<sup>3</sup> (See Appendix 1) that developed a NAP for incorporating HRE in the Pre-Tertiary school system.

In furtherance of the NAP developed by the NTC in December 2020, CHRAJ constituted an internal committee (Committee) made up of representatives from various Departments to develop HRE content for pre-tertiary schools.

The Committee's Terms of Reference (TOR) were as follows:

- To consider the broad human rights areas identified by the NTC to see whether they cover all aspects of HRE for the various levels.

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<sup>3</sup> The NTC comprised representatives of the following institutions and organisations: Commission on Human Rights and Administrative Justice (CHRAJ), Ministry of Education (MoE), Ministry of Finance (MoF), Ghana Education Service, National Commission for Civic Education (NCCE), National Council for Curriculum and Assessment (NaCCA), Implementation Committee on SDGs under the National Development Planning Commission (NDPC), and Ghana National Association of Teachers (GNAT).



- To break down those broad areas into content draft, taking into consideration the various levels of education.
- To develop and submit a draft curriculum content on HRE for mainstreaming human rights education in the Pre-Tertiary school systems.

## **2.0 METHODOLOGY**

The development of HRE content began after the inauguration of the Committee. In terms of methodology and technical approach, the Committee engaged in desk review of secondary data and textbooks as well as scholarly works relating to literature on Human Rights generally and HRE in particular.

### ***2.1 Desk Review***

The desk review covered international, regional and national legal framework for the promotion and protection of human rights and fundamental freedoms and relied on written materials and internet sources with respect to HRE. The Committee also considered and reviewed literature relative to the broad human rights themes/areas identified by the NTC.

### ***2.2 Organisation of HRE Content***

The Committee approached its task of developing HRE content in line with the following:

- Definition/Meaning of specific rights.
- Nature, characteristics and scope of specific rights and their manifestations.
- Legal framework applicable to specific rights as stipulated under International, Regional and Domestic/National Human Rights Law (Constitution and Statutes) as well as ‘soft law’ (i.e. Reports, Concluding Observations of Special Procedures, General Comments of Treaty Bodies) and case law.

## **3.0 CONCEPTUAL ANALYSIS**

### **3.1 What is *HRE*?**

According to the UN Decade for HRE (1995-2004), the concept of HRE refers to the training, dissemination and information efforts aimed at building a universal culture of human rights through imparting of knowledge and skills and the moulding of attitudes directed at:

- The full development of the human personality and the sense of dignity;
- The promotion of understanding, tolerance, gender, equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;
- The enabling of all persons to participate effectively in a free society;
- The furtherance of the activities of the United Nations for the maintenance of peace; and
- Strengthening respect for human rights and fundamental freedoms.

### **3.2 Why *HRE*?**

The right to HRE is essential to human dignity and effective enjoyment of all human rights. The rationale for HRE includes:

- Promotion of values, beliefs and attitudes that encourage all individuals to uphold their own rights and those of others.

It helps the public to develop an understanding of everyone's common responsibility to make human rights a reality in each community and society at large; and

- Above all, HRE contributes to the long-term prevention of human rights abuses and represents a significant investment in the endeavour to achieve a just and equitable society in which the human rights of all persons are valued and respected.

As part of its mandate to ensure the full realisation of all human rights, the OHCHR aims to prevent human rights violations, secure respect for all human rights, promote international cooperation, coordinate related activities throughout the United Nations (UN) and strengthen the UN system for the promotion and protection of human rights. In this regard, the OHCHR, acting through its field offices, conducts HRE and training by providing support to State/Government institutions and Civil Society Organisations (CSOs).

In consonance with the above, the 1993 World Conference on Human Rights, which culminated in the Vienna Declaration and Programme of Action (VDPA) reaffirmed the importance of education, training and public information, which led to the proclamation of the UN Decade for HRE (1995-2004) (UN Decade). The UN Decade enjoins all Member States and segments of society to disseminate the Universal Declaration of Human Rights (UDHR) and educate people about its content. The UN Decade states:

*“Human rights education should involve more than the provisions of information and should constitute a comprehensive life-long process by which people at all levels in development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies”.<sup>4</sup>*

Specifically, the UN General Assembly (UNGA) proclaimed the World Programme for HRE as per UNGA resolution 59/113A of 10 December 2004 and a Plan of Action (2005 – 2007). These UN documents earmarked integration of HRE into Pre-Tertiary school systems.

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<sup>4</sup> UN Decade for HRE (1995-2004) (UN Decade)

### 3.3 Goal of HRE

The goal of HRE is articulated in the Preamble to the UDHR thus:

*“Every individual and every organ of society shall strive by teaching and education to promote respect for these rights and freedoms and to secure their universal and effective recognition and observance”.*<sup>5</sup>

The goal of HRE entails education **about** human rights, which aims at promoting greater respect for human rights targeted at all segments of society to understand human rights, including the interdependence and indivisibility of both civil and political rights, as well as economic, social and cultural rights. It also entails improved knowledge of international human rights standards as they affect governments and individuals.

Education **for** human rights as a goal of HRE focuses on understanding and embracing the principles of human equality and dignity and the commitment to respect and protect the rights of all people, and ultimately aimed at empowerment through imparting knowledge and skills for responsible and engaged citizenry committed to building a just and free society.

### 3.4 Objectives of HRE

- To value human dignity and develop individual self-respect and respect for others.
- To develop attitudes and behaviours that will lead to respect for the rights of others.

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<sup>5</sup> Preamble to the UDHR

- To ensure genuine gender equality and equal opportunities for women and men in all spheres.
- To promote respect, understanding and appreciation of diversity, particularly towards different national, ethnic, religious, linguistic and other minorities and communities.
- To promote democracy, development, social justice, communal harmony, solidarity and friendship among people and nations.
- To further activities of international institutions aimed at the creation of a culture of peace, based upon universal values of human rights, international understanding, tolerance and non-violence.

### ***3.5 Outcome of HRE***

The social or behavioural change expected through HRE will occur at the Individual, Organisational/Group and Community/Society levels.

### ***3.6 Individual level***

This level of HRE targets what knowledge, skills, attitudes and behaviours has the individual acquired, reinforced or modified.

### ***3.7 Organisational/Group Level***

This level of HRE targets what learning experiences have been transferred to the organisation/group or what effect might the new knowledge, skills, attitudes and behaviours have on the organisation/group.

### ***3.8 Community/Society Level***

This level of HRE targets what effects might be observed through the transfer of learning from the group.

### ***3.9 Legal Framework for HRE***

HRE is generally recognised and guaranteed by core human rights instruments, including:

- The Universal Declaration of Human Rights (UDHR), 1948.
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965.
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984.
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.
- Convention on the Rights of the Child (CRC), 1989.
- Convention on Rights of Persons with Disabilities, 2006.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990.
- African Charter on Human and Peoples' Rights (ACHPR), 1981.
- African Charter on the Rights and Welfare of the Child (ACRWC), 1990.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 (Maputo Protocol).
- The 1992 Constitution of Ghana

### 3.10 HRE IN THE PRE-TERTIARY SCHOOL SYSTEM

HRE in the school system is an important part of the right to education as stipulated in General Comment No. 1 of the Committee on the Rights of the Child on the aims of education. It states that:

*“States Parties agree that the education of the child shall be directed to:*

*(a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential*

*(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations*

*(c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own*

*(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin*

*(e) The development of respect for the natural environment ”.*<sup>6</sup>

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6 CRC General comment No. 1 (2001), Article 29 (1), The aims of education, 17 April 2001, CRC/GC/2001/1



HRE in schools contributes to improving the effectiveness of the educational system as a whole leading to a country's economic, social and political development by providing:

- Improved quality of learning achievements by promoting child-centered and participatory teaching and learning practices and processes, as well as a new role for the teaching profession;
- Increased access to and participation in schooling by creating a human rights-based learning environment that is inclusive and welcoming and fosters universal values, equal opportunities, respect for diversity and non-discrimination; and
- Social cohesion and conflict prevention by supporting the social and emotional development of the child and by introducing democratic citizenship and values.

## **4.0 HRE CONTENT DEVELOPMENT FOR THE VARIOUS PRE-TERTIARY LEVELS**

Based on a review of a corpus of human rights and fundamental freedoms themes/areas identified by the NTC as focus for HRE at various levels of the Pre-Tertiary School system, the Committee set out its content development in respect of these specific rights taking into account the peculiarities of content of HRE appropriate for Kindergarten, Lower Primary, Upper Primary and JHS Levels.

Regarding content of HRE appropriate for the SHS Level, the Committee, in line with the NTC's proposal, developed a nuanced HRE content that emphasised a blend of academic (theoretical) and practical/experiential aspects of HRE.

To fulfil part of the tenets of the Committee's TOR, apart from the human rights themes proposed by the NTC, additional human rights themes were considered by the Committee and incorporated into the content of HRE at respective levels of the Pre-Tertiary School system.

The content of HRE encompassing the definition/meaning, nature, characteristics and scope of specific rights covering all levels of the Pre-Tertiary school system are discussed in the subsequent paragraphs.

### ***4.1 RIGHT TO LIFE***

#### ***4.1.1 Definition***

The right to life concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.<sup>7</sup>

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<sup>7</sup> HRC General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35

#### ***4.1.2 Nature, Characteristics and Scope***

- The right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and inviting and commingling with fellow human beings (see *Francis Coralie Mullin v Administrator, Union Territory of Delhi* <sup>8</sup>)
- The right to life requires that governments should take appropriate measures to safeguard life by making laws to protect the people and in some circumstances by taking steps to protect people whose lives are at risk.
- The right to life requires that public authorities should also consider a person's right of life when making decisions that might put a person's life in danger or that affect a person's life expectancy.
- The right to life also connotes that the State is obligated to investigate suspicious deaths and deaths in custody.
- The right to life includes indirect threats such as deprivation of food, deprivation of health care and failure to protect people against natural disasters.<sup>9</sup>

#### ***4.1.3 Applicable Legal Framework***

- Article 3 of UDHR
- Article 6 of ICCPR

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<sup>8</sup> [1998] 2 SCR 516. The Indian Supreme Court in construing the right to life as per Article 2 of the Indian Constitution as manifested in the case of *Olga Tellis & Ors v Bombay Municipal Corporation* (1985) 2 Supp SCR 51 held, among others, that '...if the right to livelihood is not treated as part of the right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood'.

<sup>9</sup> See generally Christof Heyns and Thomas Robert, "Securing the Right to Life: A Cornerstone of the Human Rights System", *European Journal of International Law* OUP, Vol. 30 No. 1 August 2019

- Article 6 (1) of CRC
- Article 9 of ICRMW
- Article 10 of CRPD
- Article 4 of ACHPR
- Article 13 of 1992 Constitution
- Section 6 (2) of Children's Act, 1998 (Act 560)
- General Comment No. 6 of the CCPR<sup>10</sup> and General Comment No.14 adopted at the 23rd session in 1982 and 1984.

## **4.2 RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT**

Further to the right to life, the child's right to life has been articulated in Article 6(2) of the CRC.

### ***4.2.1 Definition***

As an offshoot of the substantive right to life, the definition of the child's right to life remains the same as defined above and as provided for in Article 6(1) of the CRC. Article 6(2) of the CRC enriches the child's right to life by expressly providing for his/her survival and development as inherent to ensuring the child's right to life.

### ***4.2.2 Nature, Characteristics and Scope***

The Survival component of the child's right to life includes:

- Protection from all forms of child abuse.
- Neglect.
- Exploitation and cruelty.
- The right to special protection in times of war/crises/natural disasters.

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<sup>10</sup> CCPR General Comment No. 6: Article 6 (Right to Life), 30 April 1982

- Protection from abuse in the criminal justice system.
- Protection from death sentence arising from crime committed.

The Development component of the child's right to life involves:

- Different forms of education (formal and non-formal).
- Primary health care.
- Leisure and recreation.
- Cultural activities.
- The right to a standard of living that is adequate for the child's physical, mental, spiritual, moral and social development<sup>11</sup>.

#### ***4.2.3 Applicable Legal Framework***

- Article 6 of CRC
- Article 6 of ICCPR
- Article 4 of ACHPR
- Article 5 of ACRWC
- Article 28 of 1992 Constitution
- Sections 2 and 6 of Act 560
- General Comment No. 6 (2005) of CRC

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<sup>11</sup> <https://europa.eu/capacity4dev/sites/default/files/learning/Child-rights/2.6.html>

## **4.3 RIGHT TO A NAME AND NATIONALITY**

### ***4.3.1 Definition***

This refers to the assertion of one's existence in a society and recognition of what differentiates him/her from his/her peers.

### ***4.3.2 Nature, Characteristics and Scope***

This right recognises the right of every child to be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

This right encompasses the following:

- Family name
- Birth registration and acquisition of birth certificate
- Acquisition of nationality.
- Preservation of identity.
- Identifying and living with parents/family relations.

### ***4.3.4 Applicable Legal Framework***

- Articles 7 and 8 of the CRC
- Article 6 of ACRWC
- Section 4, 5 and 6 of Act 560

## **4.4 RIGHT TO LEISURE/RECREATION**

### ***4.4.1 Definition***

The right to leisure and recreation means the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

### ***4.4.2 Nature, Characteristics and Scope***

This right entails the need for the child to be afforded the following opportunities:

- Rest
- Leisure
- Play
- Free participation in cultural and artistic activities

### ***4.4.3 Applicable Legal Framework***

- Articles 23 and 24 of UDHR
- Articles 2, 6 and 7 of ICESCR
- Article 31 of CRC<sup>12</sup>
- Article 12 of the ACRWC<sup>13</sup>
- Section 9 of Children's Act, Act 560

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<sup>12</sup> Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; entry into force 2 September 1990, in accordance with article 49

<sup>13</sup> [https://www.achpr.org/public/Document/file/English/achpr\\_instr\\_charterchild\\_eng.pdf](https://www.achpr.org/public/Document/file/English/achpr_instr_charterchild_eng.pdf)

## 4.5 RIGHT TO HEALTH

### 4.5.1 Definition

The right to health is defined as an inclusive right that extends to timely and appropriate health care as well as the underlying determinants of health such as access to:

- Safe and potable water.
- Adequate sanitation<sup>14</sup>
- Adequate supply of food, nutrition and housing
- Healthy occupational and environmental conditions
- Health-related education and information

Therefore, every human being is entitled to the enjoyment of the highest standard of health conducive to living a life in dignity.

### 4.5.2 Nature, Characteristics and Scope

It has been explained that health constitutes “*a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity*”.<sup>15</sup>

The right to health entails the following:

- **Availability** - functioning public health and health-care facilities, goods and services, as well as programmes, which have to be available in sufficient quantity within the jurisdiction of the State party.

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<sup>14</sup> For detailed explanation of the term “Adequate”, see CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, and CESCR General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999

<sup>15</sup> Preamble to the WHO Constitution, available at [https://www.who.int/governance/eb/who\\_constitution\\_en.pdf](https://www.who.int/governance/eb/who_constitution_en.pdf)



- **Accessibility** - health facilities, goods and services have to be accessible to everyone without discrimination within the jurisdiction of the State party.
- **Acceptability** - all health facilities, goods and services must be respectful of medical ethics and culturally appropriate
- **Quality** - health facilities, goods and services must also be scientifically and medically appropriate and of good quality<sup>16</sup>.

In addition, in order to realise the right to health, measures should be taken by a State Party aimed at:

- Reduction of stillbirth rates and infant mortality.
- Healthy development of the child.
- Improvement of environmental and industrial hygiene.
- Prevention, treatment and control of epidemic, endemic and other diseases.
- Provision of necessary medical assistance and health care to all children.
- Combating child disease and malnutrition.
- Ensuring appropriate pre-natal health care for mothers.

#### ***4.5.3 Applicable Legal Framework***

- Article 12 of ICESCR
- Article 5 of ICERD
- Article 12 of CEDAW
- Article 24 of CRC
- Article 16 of ACHPR
- Article 14 of ACRWC

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<sup>16</sup> CESCR General Comment No.14: The Right to the Highest Attainable Standard of Health (Article 12 of ICESCR) 1 August 2000, E/C.12/2000/4

- Article 28 of 1992 Constitution
- Section 8 of Act 560
- General Comment N0. 14 (2000) of CESCR
- *Eldridge v British Columbia (Attorney General)*<sup>17</sup>
- *Minister of Health and Others v Treatment Action Campaign*<sup>18</sup>
- *Soobramoney v Minister of Health, KwaZulu-Natal*<sup>19</sup>
- *SERAC v Nigeria*<sup>20</sup>

## 4.6 RIGHT TO EDUCATION

### 4.6.1 Definition

Education refers to all types and levels of education, and includes access to education, the standard and quality of education, and conditions under which it is given<sup>21</sup>.

The right to education recognizes that primary education shall be compulsory and available free for all (i.e. FCUBE). On the other hand, regarding secondary education the right to education requires States to ensure that it is generally available and accessible to all through progressive introduction of free education.

### 4.6.2 Nature, Characteristics and Scope

- Education is both a human right and an indispensable means of realising other rights.

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<sup>17</sup> [1997] 3 SCR, 624.

<sup>18</sup> [2002] 5 SA 721 CC

<sup>19</sup> [1998] 1 SA 765 CC.

<sup>20</sup> Comm. No. 155/96 (2001).

<sup>21</sup> Article 1(2) of UNESCO Convention against Discrimination in Education, 1960.

- Education is an empowerment right which provides the individual with control over the course of his/her life.
- Education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.
- Education serves as means of empowering the economically and socially marginalised in society to lift themselves out of poverty as well as participate fully in their communities.
- Education transcends access to formal schooling and embraces the right to specific quality of education and a broad range of life experiences and learning processes that enable children, individually and collectively, to develop their personalities, talents and abilities so as to live a full and satisfying life within society.

In addition, the determinants of the right to education include:

- **Availability** – entails availability of sufficient institutions and programmes.
- **Accessibility** – entails accessibility without discrimination and includes physical and financial/economic accessibility.
- **Acceptability** – curricula and teaching methods have to be relevant, culturally appropriate and of good quality.
- **Adaptability** – educational curricula should be adaptable (i.e. flexible and adapt to changes in needs of societies and communities, including diverse socio-cultural settings)<sup>22</sup>.

#### ***4.6.3 Legal Framework***

- Article 26 of UDHR
- Article 13 of ICESCR

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<sup>22</sup> See General Comment 13 of CESCR, E/C/12/1999/10 of 9 December 1999

- Articles 28 and 29 of CRC
- Article 17 of ACHPR
- Article 5 of ICERD
- Article 11 of ACRWC
- Articles 3 and 13 of the San Salvador Protocol
- Articles 25, 28 and 38 of 1992 Constitution
- Section 8 of Act 560
- General Comment 13 (1999) of CESCR
- *Brown v Board of Education of Topeka*<sup>23</sup>
- *SERAP v Federal Republic of Nigeria and Universal Basic Education Commission*<sup>24</sup>
- *Minority Schools in Albania*<sup>25</sup>

## 4.7 RIGHT TO FOOD

### 4.7.1 Definition

The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>26</sup>

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<sup>23</sup> US [1954], 493.

<sup>24</sup> [2010] ECW/CCJ/APP/12/07.

<sup>25</sup> [1935] PCIJ

<sup>26</sup> See <https://www.ohchr.org/EN/Issues/Food/Pages/AboutHRFood.aspx>

The right to adequate food is a fundamental right to freedom from hunger and malnutrition<sup>27</sup>.

#### ***4.7.2 Nature, Characteristics and Scope***

The core content of the right to adequate food implies availability of food in good quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.

The right to food entails the following elements:

- **Dietary needs** - implies that the diet as a whole should contain a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation.
- **Sustainability** – refers to adequate food and food security (i.e. long-term availability of food for both present and future generations)
- **Free from adverse substances** - sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.
- **Cultural or consumer acceptability** - implies the need to take into account, as far as possible, perceived non-nutrient-based values attached to

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<sup>27</sup> CESCR General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999

food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.

- **Availability** - refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.
- **Accessibility** - encompasses both economic and physical accessibility.

Furthermore, indicators for realizing the right to food include:

- Extent of nourishment.<sup>28</sup>
- Increased food production, subsidizing small scale farming.
- Decreasing the cost of food through elimination of taxes and tariffs on basic farming equipment and food.
- Availability of irrigation dams.
- Availability of agricultural extension officers, storage facilities, credit, etc.

#### ***4.7.3 Applicable Legal Framework***

- Article 25 of UDHR<sup>29</sup>
- Article 11 of ICESCR<sup>30</sup>
- Section 6 of Act 560<sup>31</sup>
- General Comment No. 12 (1999) of CESCR<sup>32</sup>

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<sup>28</sup>FAO, The state of food insecurity in the World (2010),<https://www.fao.org/3/i1683e/i1683e.pdf>

<sup>29</sup> United Nations (1948) Universal Declaration of Human Rights, adopted by UN GA on December 10, 1948, GA Res. 217A (III). See Article 25.

<sup>30</sup> United Nations (1976) International Covenant on Economic Social and Cultural Rights, adopted on December 16, 1966, entered into force January 3, 1976, GA Res. 2200 A (XXI). See Article 11

<sup>31</sup> The Children's Act, 1998, (Act 560)

<sup>32</sup> CESCR General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999

- FAO Voluntary Guidelines, 2004.<sup>33</sup>

## **4.8 RIGHT TO ADEQUATE HOUSING/SHELTER**

### ***4.8.1 Definition***

The right to adequate housing is the right of everyone to an adequate standard of living for him/herself and his/her family, including adequate food, clothing and housing, and to the continuous improvement in living conditions<sup>34</sup>.

Shelter refers to a place of refuge providing safety from danger, attack, or observation.<sup>35</sup>

### ***4.8.2 Nature, Characteristics and Scope***

The right to housing is the right to live somewhere in security, peace and dignity.<sup>36</sup>

The right to adequate housing/shelter is part of the right to adequate standard of living.

Adequate housing/shelter means adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at reasonable cost.<sup>37</sup> As a result, the right to adequate housing/shelter is linked to the enjoyment of other rights, including the rights to privacy, dignity, health, work, social security, etc.

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<sup>33</sup> FAO Council (2004) Voluntary Guidelines adopted by 127<sup>th</sup> Session of the Food and Agriculture Organization Council

<sup>34</sup> See Article 11 of ICESCR

<sup>35</sup> Black's Law Dictionary, 8th ed. (2004)

<sup>36</sup> See UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 21, The Human Right to Adequate Housing, November 2009, Fact Sheet No. 21/Rev.1

<sup>37</sup> CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23

The right to adequate housing entails the following:

- **Legal security of tenure** - all persons irrespective of their ownership or interest in land must have a degree of security of tenure devoid of forced evictions, harassments, threats, etc.
- **Availability of services, materials, facilities and infrastructure** - the need for availability of essential social facilities and services to ensure health, security, comfort and nutritional needs of inhabitants – e.g. safe drinking water, energy/lighting, drainage, sanitation and waste disposal, etc.
- **Affordability** – housing must be affordable – i.e. housing-related costs should be commensurate with income levels, avoidance of unreasonable rent increases, etc.
- **Habitability** - the need for provision of adequate space and protection from threats to health and structural hazards<sup>38</sup>
- **Accessibility**- housing must be accessible in a sustainable manner, particularly to disadvantaged groups.
- **Location** – location of houses should allow access to employment options as well as social services such as health care, schools, childcare centres. In addition, houses should not be located/sited in pollution-prone areas.
- **Cultural adequacy** - building materials used in housing must express the cultural identity and diversity and must take into account appropriate technology.

This right to adequate housing encompasses the following:

- Protection from forced evictions

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38 See Health Principles of Housing, World Health Organization, Geneva (1989)



- Freedom from arbitrary interference with one's home, privacy and family
- Equal and non-discriminatory access to adequate housing
- Affordable housing
- Accessibility for vulnerable groups, including special housing needs (e.g. PWDs, older persons, terminally ill persons)
- Prevention of homelessness in society
- Culturally adequate housing
- Participation in housing-related decision-making at the national and community levels.

#### ***4.8.3 Applicable Legal Framework***

- Article 11 of ICESCR
- Article 25 of UDHR
- Article 27 of CRC
- Article 23 of CRPD
- Section 6 of Act 560
- General Comment No. 4 (1991) of CESCR
- Republic of South Africa & Others v Grootboom & Others<sup>39</sup>,

## **4.9 RIGHT TO CLOTHING**

### ***4.9.1 Definition***

The right to clothing is linked to the right to adequate standard of living in Article 11 of ICESCR.

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<sup>39</sup> Case CCT 11/100, 4 October 2000)

#### ***4.9.2 Nature, Characteristics and Scope***

The right to clothing forms an aspect of the right to an adequate standard of living; as a result, this right seeks to protect the dignity of a person since being ill-clothed is emblematic of acute poverty.

As the right to clothing concerns such a fundamental aspect of humanity, it intersects with other human rights that are contained in human rights instruments. The intersection between the right to clothing and other human rights include the right to life, freedom of expression, freedom from discrimination, right to freedom from cruel, inhuman or degrading treatment or punishment, as well as other rights that protect adequate standard of living under Article 11 of the ICESCR.

#### ***4.9.3 Applicable Legal Framework***

- Article 11 of ICESCR
- Article 25 of UDHR
- Article 27 of CRC
- Articles 2 and 28 of CRPD
- Section 6 of Act 560

### **4.10 RIGHT TO WATER**

#### ***4.10.1 Definition***

The right to water refers to the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal or domestic use<sup>40</sup>.

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40 CESCR General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11

#### ***4.10.2 Nature, Characteristics and Scope***

- **Availability** - water supply must be sufficient and continuous for personal or domestic use.
- **Quality** - water required for personal or domestic use must be safe. Therefore, water should be free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.
- **Acceptability** – in terms of quality, water should be of an acceptable colour, odour and taste for each personal or domestic use. All water facilities and services must be culturally appropriate and sensitive to gender, life cycle and privacy requirements.
- **Accessibility** – water, water facilities and services have to be accessible to everyone without discrimination – these include physical, economic, non-discrimination and information accessibility (i.e. right to seek, receive and impart information concerning water issues).
- **Affordability** – water, water facilities and services must be affordable for all.

#### ***4.10.3 Applicable Legal Framework***

- Article 14 of CEDAW
- Article 24 of CRC
- Article 28 of CRPD
- Article 16 of ACHPR
- Section 6 of Act 560
- General Comment Nos. 14 and 15 of CESCR

- Sudan Human Rights Organisation & Center for Housing Rights and Evictions (COHRE) v Sudan<sup>41</sup>
- Mosetlhanyane & Others v Attorney-General (Kalahari Bushmen Case), Botswana<sup>42</sup>

## **4.11 RIGHT TO CLEAN AND HEALTHY ENVIRONMENT**

### ***4.11.1 Definition***

The right to a healthy environment refers to the environmental aspects of the entire range of human rights that depend on a safe, clean, healthy and sustainable environment<sup>43</sup>.

A safe, clean, healthy and sustainable environment is deemed necessary for the full enjoyment of other human rights, including the rights to life, health, food, water and development<sup>44</sup>

### ***4.11.2 Nature, Characteristics and Scope***

Environmental rights are linked to other rights such as the rights to:

- Life
- Health
- Adequate housing/shelter
- Adequate standard of living by living in an environment free from pollution of air, water, clean sanitation, etc.<sup>45</sup>

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<sup>41</sup> Comm. 296/2005.

<sup>42</sup> (2011) Civil Appeal No. CACLB – 074 -10)

<sup>43</sup> Report of the Special Rapporteur on the Right to clean and healthy environment, A/HRC/37/59, Thirty-Seventh Session, March 2018

<sup>44</sup> Special Rapporteur on the Right to clean and healthy environment, A/HRC/37/59, Thirty-Seventh Session, March 2018

<sup>45</sup> See generally outcome of the World Summit on Sustainable Development (2002); also the case of *Minors Oposa v Department of Environment and Natural Resources* (1994) 33 ILM 173 in which the

### ***4.11.3 Applicable Legal Framework***

- Article 12 of ICESCR
- Article 24 of CRC
- Article 24 of ACHPR
- Article 18 of the Maputo Protocol
- Convention on Access to Justice in Environmental Matters (Aarhus Convention, 1998)
- Article 36 (9) of 1992 Constitution
- Environmental Protection Act, Act 940

## **4.12 RIGHTS TO EQUALITY AND NON-DISCRIMINATION**

### ***4.12.1 Definition***

To discriminate means to give different treatment to different persons attributable only or mainly to their respective description by race, place of origin, political opinions, colour, gender, occupation, religion, or creed, whereby persons of another 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.<sup>46</sup>

Discrimination basically means to give different treatment to different persons.

### ***4.12.2 Nature, Characteristics and Scope***

Equality before the law and equal protection of the law without any discrimination constitute a basic and general principle relating to the protection of human rights<sup>47</sup>.

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Philippines Supreme Court upheld the right to a balanced and healthy ecology as guaranteed under section 16 of the Philippines Constitution, 1987.

<sup>46</sup> Article 17(3) of 1992 Constitution

<sup>47</sup> HRC CCPR General Comment No. 18: Non-discrimination, 10 November 1989

The rights to equality and non-discrimination entails the following:

- Equal treatment before a tribunal/court and all other organs administering justice.
- Equal access to public service.
- Equal participation in public life of all citizens.
- Equality of all rights.

#### ***4.12.3 Applicable Legal Framework***

- Article 2 of UDHR
- Article 2 of ICESCR
- Article 2 of ICCPR
- Articles 1 and 14 of CEDAW
- Articles 1 and 5 of ICERD
- Article 28 of CRPD
- Article 17 of 1992 Constitution
- General Comment 18 (1989) of HRC
- Section 3 of Act 560

### **4.13 RIGHTS TO LIBERTY AND SECURITY OF PERSON**

#### ***4.13.1 Definition***

The rights to liberty and security of a person imply freedom from harm, confinement of the body or acts or omissions capable of resulting in bodily or mental injury as well as causing harm or injury to the integrity, dignity or reputation of a person.

#### ***4.13.2 Nature, Characteristics and Scope***

Examples of violations of these rights, include:

- Arbitrary arrest and detention

- Arbitrary interference with a person's privacy, home or correspondence or attacks on honour and reputation.
- Freedom of thought, conscience and religion.
- Freedom of peaceful assembly.
- Intentional infliction of bodily or mental harm.
- Threats to life from governmental and private actors.

#### ***4.13.3 Legal Framework***

- Articles 3, 9, 12, 18, 20, 21 and 22 of UDHR
- Article 12 of CRC
- Articles 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21 and 22 of ICCPR.
- Articles 6, 9, 10, 11 and 12 of ACHPR
- Article 14 of 1992 Constitution.
- General Comment 35 of Human Rights Committee, CCPR/C/GC/35 of 16 December 2014 (replaces General Comment 8 (1982)).

### **4.14 RIGHT TO HUMAN DIGNITY**

#### ***4.14.1 Definition***

Human dignity is the belief that all people hold a special value that is tied solely to their humanity irrespective of their class, race, gender, religion, abilities, or any other factor other than them being human.

#### ***4.14.2 Nature, Characteristics and Scope***

The following practices undermine human dignity:

- Torture, rape, social exclusion, labour exploitation, bonded labour and slavery, poverty, etc.

- Humiliation - acts that humiliate or diminish the self-worth of a person or a group.
- Instrumentalisation or objectification - refers to treating a person as an instrument or as a means to achieve some other goal.
- Degrading treatment - refers to acts that degrade the value of the human being. These are acts that even if done by consent convey a message that diminishes the importance or value of all human beings. They consist of practices and acts such as slavery or instances where prisoners or persons under detention find themselves under inhumane living conditions.
- Dehumanization - these are acts that strip a person or a group of their human characteristics. It may involve describing or treating people as inferior human beings.
- Discrimination or stigmatization.

#### ***4.14.3 Legal Framework***

- Articles 5 and 23 of UDHR
- Article 5 and 16 of ACHPR
- Article 15 and 16 of 1992 Constitution
- Article 28(3) of CRC
- Sections 13 and 14 of Act 560

### **4.15 RIGHT TO FREEDOM OF MOVEMENT**

#### ***4.15.1 Definition***

The right to freedom of movement includes the right to move freely within a country for those who are lawfully within the country, including the right to leave any country and the right to enter a country of which one is a citizen.



Liberty of movement is described as an indispensable condition for the free development of a person<sup>48</sup>.

#### ***4.15.2 Nature, Characteristics and Scope<sup>49</sup>***

- Freedom of movement within a country
- Freedom to choose where to live within the country
- The right to leave any country, regardless of your citizenship
- The right to enter or return to a country of which one is a citizen
- Right to obtain necessary travel documents - e.g. passport, travel certificate, etc.
- Right to equality and non-discrimination.
- Restriction or limitation to this right is only necessary in the interest of protecting public order, public health or morals and the rights and freedoms of others.

#### ***4.15.3 Applicable Legal Framework***

- Article 13 of UDHR
- Article 12 of ICCPR
- Article 10 of CRC
- Articles 5, 8 and 39 of ICPRMW
- Articles 9 and 18 of CRPD
- Article 12 of ACHPR

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<sup>48</sup> CCPR General Comment No. 27, CCPR/C/2/Rev. 1/Add. 9, Sixty-seventh Session, 2 November 1999

<sup>49</sup> Stewart v Canada, Communication No. 538/1993

- General Comment No 27 of the Human Rights Committee<sup>50</sup>

## **4.16 RIGHTS TO FREEDOM OF OPINION AND EXPRESSION**

### ***4.16.1 Definition***

The right to free speech and expression is a fundamental human right. This right gives people the opportunity to hold any opinion at all, freely express those opinions whether in speech, in writing, artistically or in any other form they may deem necessary.

These rights are indispensable conditions for the full development of the person and constitute the foundation stone for every free and democratic society<sup>51</sup>.

### ***4.16.2 Nature, Characteristics and Scope***

- Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability.
- Freedom of expression is integral to the enjoyment of other rights, for example, the rights to education, freedom of assembly and association, vote, among others.
- Freedom of expression engenders a free, uncensored and unhindered press or other media landscape.
- Freedom of expression promotes and protects the right or access to information.

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<sup>50</sup> CCPR General Comment No. 27: Article 12 (Freedom of Movement) adopted at the Sixty-seventh session of the Human Rights Committee, on 2 November 1999 CCPR/C/21/Rev.1/Add.9, General Comment No. 27. CCPR/C/21/Rev.1/Add.9.

<sup>51</sup> General Comment No. 34, CCPR/C/GC/34, 102<sup>nd</sup> Session, July 2011 (replaces General Comment 10 of the Human Rights Committee)

#### ***4.16.3 Applicable Legal Framework***

- Articles 18, 19, 25 and 27 of ICCPR
- Article 21 of the 1992 Constitution.
- Section 11 of Act 560

### **4.17 RIGHTS TO FREEDOM OF ASSOCIATION AND ASSEMBLY**

#### ***4.17.1 Definition***

The rights to freedom of association and peaceful assembly are individual rights which are exercised as a collective right. These rights enable the individual or people to come together and collectively express, promote, pursue, and defend their collective or shared ideas and aspirations for their collective well-being.

#### ***4.17.2 Nature, Characteristics and Scope***

The right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies; this right is the foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism<sup>52</sup>.

These rights entail the following:

- Freedom of Speech and Expression.
- Freedom to assemble peacefully.
- Freedom to form associations and trade unions.
- Freedom to move freely in a territory or country.
- Suppression of repression.

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52 CCPR General Comment 37, Human Rights Committee, CCPR/C/GC/37, July 2020

- Creation of opportunities for inclusive, participatory and peaceful resolution of differences.

#### ***4.17.3 Applicable Legal Framework***

- Article 20 of UDHR
- Articles 8, 21 and 22 of ICCPR
- Article 5 of ICERD
- Article 15 of CRC
- Article 11 of ACHPR
- Article 8 of ACRWC
- Articles 2, 3, 4 and 5 of ILO Convention on The Freedom of Association and Protection of the Right to Organise Convention (1948) No. 87 and ILO Convention No. 98
- Article 10 and 11 of ACHPR
- Article 21 (d) (e) of 1992 Constitution
- Article 24 (3) of 1992 Constitution
- Article 55 of 1992 Constitution

### **4.18 RIGHTS TO FREEDOM OF THOUGHT, CONSCIENCE OR RELIGION**

#### ***4.18.1 Definition***

This right encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.

#### ***4.18.2 Nature, Characteristics and Scope***

- This right is protected alongside with the right to freedom of religion and hold beliefs<sup>53</sup>.
- This right protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess or manifest any religion or belief.
- The right covers all matters relating to one's personal convictions and protects not only religious people but also atheists, agnostics, sceptics and the indifferent.
- It also entails the right to change one's religion or not to be coerced or compelled to maintain, adopt or change one's religion.

#### ***4.18.3 Legal Framework***

- Article 2 of UDHR
- Articles 17 and 18 of ICCPR
- Articles 2, 4, 24, 18 and 26 of ICCPR
- Article 5 of CERD
- Article 14 of CRC
- Article 8 of the ACHPR
- Articles 21 (1) (c) and 26 of 1992 Constitution
- General Comment No. 22 of CCPR
- *ACHPR World Organisation against Torture v Zaire*<sup>54</sup>
- *John D. O Ouku v Kenya (ACHPR)*<sup>55</sup>

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53 CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4

54 Communication Nos. 25/89, 47/90, 56/91, 100/93;

55 Communication No. 232/99, 23 October-6 November, 2000;

- *Huri-Laws (on behalf of Civil Liberties Organisation) v Nigeria (ACHPR)*<sup>56</sup>

#### **4.19 Limitations/restrictions on enjoyment of human rights and fundamental freedoms**

Human rights and fundamental freedoms are not enjoyed absolutely; there may be derogation or imposition of restrictions that are reasonably required in the interest of public safety, order, health or morals or the fundamental rights and freedoms of others. These restrictions are generally applicable to the rights to:

- freedom of expression;
- freedom of association and assembly;
- freedom of movement; and
- respect for one's private and family life and correspondence

#### **4.20 DUTIES/RESPONSIBILITIES OF A CITIZEN**

Article 41 of the 1992 Constitution spells out the duties of a citizen as follows:

- to promote the prestige and good name of Ghana and respect the symbols of the nation;
- to uphold and defend this Constitution and the law;
- to foster national unity and live in harmony with others; to respect the rights, freedoms and legitimate interests of others, and generally to refrain from doing acts detrimental to the welfare of other persons;
- to work conscientiously in his/her lawfully chosen occupation;
- to protect and preserve public property and expose and combat misuse and waste of public funds and property;

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<sup>56</sup> Communication No. 225/98, 23 October – 6 November 2000

- to contribute to the well-being of the community where that citizen lives;
- to defend Ghana and render national service when necessary;
- to co-operate with lawful agencies in the maintenance of law and order;
- to declare his/her income honestly to the appropriate and lawful agencies and to satisfy all tax obligations; and
- to protect and safeguard the environment.

**Table 1****5.0 HRE CONTENT FOR KG TO JUNIOR HIGH SCHOOL LEVELS**

<b>Specific Rights</b>	<b>KG</b>	<b>Lower Primary</b>	<b>Upper Primary</b>	<b>JHS</b>
Life, Survival and Development	✓	✓	✓	✓
Name and nationality	✓	✓	✓	✓
Food	✓	✓	✓	✓
Health	✓	✓	✓	✓
Clothing	✓	✓	✓	✓
Adequate housing/shelter	✓	✓	✓	✓
Clean water	✓	✓	✓	✓
Freedom of movement	✓	✓	✓	✓
Equality and non-discrimination	✓	✓	✓	✓
Leisure/recreation	✓	✓	✓	✓
Human Dignity	✓	✓	✓	✓
Life	✓	✓	✓	✓



Freedom of opinion and expression	✓	✓	✓	✓
Freedom of thought, conscience and religion		✓	✓	✓
Identity	✓	✓	✓	✓
Education	✓	✓	✓	✓
Freedom of association and assembly		✓	✓	✓
Liberty and Security		✓	✓	✓
Clean and Healthy Environment	✓	✓	✓	✓
Duties and Responsibilities of a Citizen	✓	✓	✓	✓

## 6.0 SENIOR HIGH SCHOOL

HRE at this level will focus on civil, political and economic, social and cultural rights, anchored in '*freedom from fear*' and '*freedom from want*'. Also, HRE at this level will focus on introduction to human rights concepts such as:

- Nature and Essence of human rights.
- Principles of human rights – inalienability, universality, indivisibility, interrelatedness, and interdependence
- 'Duty-bearer' and 'Rights-holder'
- International Bill of Rights (UDHR, ICESCR and ICCPR) and its linkage with Chapters 5 and 6 of the 1992 Constitution
- United Nations Human Rights (UNHR) System
- African Charter on Human and Peoples Rights and the African Commission on Human and Peoples' Rights
- Mandates of CHRAJ - Human Rights, Administrative Justice (Ombudsman) & Anti-Corruption/Ethics
- Role of the Judiciary (High Court, Article 33(1) of the 1992 Constitution)
- Role of Parliament
- Human Rights and Administrative Justice: Linkages between Human Rights and Administrative Justice
- Human Rights and Corruption: Linkages between Human Rights and Corruption
- Role of Civil Society Organizations (CSOs)
- Role of Community Based Organizations (CBOs)
- Duties/Responsibilities of a Citizen (see Article 41 of the 1992 Constitution)

## 6.1 NATURE AND ESSENCE OF HUMAN RIGHTS

### 6.1.1 *Concept of human rights and fundamental freedoms*

The concept of Human Rights emerged as a post-World War II phenomenon due to the horrific and devastating experiences that were associated with that period in world history, which ultimately led to creation of the UN in 1945. The realisation and protection of human rights became one of the purposes of the UN at the universal level<sup>57</sup>. Hence, the international community, acting under the aegis of the UN, recognised the need to protect the individual from arbitrary exercise of State power and to promote social progress and better living standards for all<sup>58</sup>.

Prior to the efforts made by the UN towards the universal promotion and protection of human rights and fundamental freedoms, foundations had been laid in domestic legal systems notably the 1789 Declaration *des droits de l'homme et du citoyen* (Declaration of the Rights of Man and of the Citizen) in France, the 1776 Virginia Declaration of Rights and the Declaration of Independence of the United States, the establishment of the International Labour Organisation (ILO) in 1919 through the instrumentality of the Red Cross Movement and the adoption of the Geneva Conventions.

Subsequently, adoption of the UDHR in 1948 led to the conclusion and adoption of multilateral treaties and conventions through the UN system and at the regional levels<sup>59</sup>.

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<sup>57</sup> UN Charter, Articles 1

<sup>58</sup> OHCHR, Professional Training Series No. 9, 2003

<sup>59</sup> European Convention on Human Rights,(1950), American Convention on Human Rights(1969) and African Charter on Human and Peoples' Rights (1981).

The UDHR provides authoritative elaboration of the term “human rights” as used in the UN Charter.<sup>60</sup> It encompasses civil, political, economic, social and cultural rights. Additionally, the UDHR is seen as a timeless document that provides minimum standards for addressing the profound aspirations of humankind to live in dignity, equality and security<sup>61</sup>. Thus, human rights are expressed or legally guaranteed in treaties, customary international law, regional human rights laws, legal principles and other sources of law such as International Labour Organisation (ILO) Instruments and National Constitutions.

### ***6.1.2 Nature of Human Rights***

Human rights acknowledge that all human beings are born equal in dignity and rights.

Human rights are inherent in all members of the human family; thus they are *universal, inalienable* and *inherent*. As a result, human rights are claims, which all individuals are entitled to by virtue of their humanity alone irrespective of their race, colour, sex, place of birth, nationality, cultural difference or any other consideration.

Human rights are *inviolable* and therefore States are obligated to *respect, protect* and *fulfil* human rights.

### ***6.1.3 What are Human Rights?***

The UDHR defines human rights as “*rights derived from the inherent dignity of the human person*”.

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<sup>60</sup> Articles 1(3), 13(1)(b), 55(c), 62(2), 68 and 76(c)

<sup>61</sup> Sergio Vieira de Mello, former UN High Commissioner for Human Rights, 10 December 2002

Also, human rights have been defined as entitlements available to human beings to enjoy by virtue of being human and to ensure the realisation of their full potentials in dignity.

The concept of human rights acknowledges that all human beings are entitled to enjoy their rights without distinction.

#### ***6.1.4 Limitations/restrictions on enjoyment of human rights and fundamental freedoms<sup>62</sup>***

Human rights and fundamental freedoms are not enjoyed absolutely; there may be derogation or imposition of restrictions that are reasonably required in the interest of public safety, order, health or morals or the fundamental rights and freedoms of others. These restrictions are generally applicable to the rights to:

- freedom of expression;
- freedom of association and assembly;
- freedom of movement; and
- respect for one's private and family life and correspondence.

#### ***6.1.5 State of emergency***

Additionally, States/Governments may derogate from their human rights obligations in exceptional circumstances, particularly during armed conflicts, natural disasters or other public emergencies that threaten the life of a nation.

The following conditions must be met in respect of a declaration of a state of emergency:

- The state of emergency must be officially declared.

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<sup>62</sup> See generally Articles 12(3), 13, 18(3), 19(3), 21 and 22(2) of ICCPR; Articles 11 and 12(2) of the ACHPR; Articles 11(2), 12(3), 13(2), 15 and 16(2) of the American Convention on Human Rights; and Articles 8(2) – 11(2) of the European Convention on Human Rights)

- The specific measures derogating from an international treaty must be officially notified to the competent international organisations and other States.
- Derogation is permissible only to the extent strictly required by the situation or circumstances.
- The derogation must be lifted as soon as the situation permits.

#### ***6.1.6 Prohibition of derogations<sup>63</sup>***

The following human rights and freedoms are not subject to limitations or restrictions or derogation by States/Governments even during a state of emergency:

- Right to life.
- Torture, or cruel, inhuman or degrading treatment or punishment.
- Slavery and servitude.
- Detention for debt.
- Retroactive criminal laws.
- Freedom of thought, conscience, religion and belief.

For limitations/restrictions on human rights to be deemed legal and appropriate, States/duty-bearers must ensure that the limitations or restrictions:

- comply with the principle of legality (prescribed by law);
- are imposed exclusively for one or more of the objectives of the limitation or restriction;
- are necessary to achieve the objective concerned (principle of necessity); and
- are not discriminatory but applied in an objective and reasonable manner.

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<sup>63</sup> Article 4 of the ICCPR; Human Rights Committee, General Comment on Article 18(3) of the ICCPR; see also *K. Singh Bhinder v Canada*, Communication No. 208/1986; *Kokkinakis v Greece*, ECtHR, 25 May 1993, Series A, No. 260; *Buscarini and Others v San Marino*, ECtHR, 18 February 1999, Reports 1999-1

To promote and protect human rights and fundamental freedoms, there are human rights instruments, which are expressed in treaties, customary international law, soft laws and general principles of law. These instruments are legally binding and can be found in the nine core human rights treaties namely:

- International Covenant on Civil and Political Rights (ICCPR), 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- International Convention on Elimination of All Forms of Racial Discrimination (ICERD), 1966
- Convention on All Forms of Discrimination against Women (CEDAW), 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984
- Convention on the Rights of the Child (CRC), 1989
- International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW), 1990
- International Convention for the Protection of All Persons from Enforced Disappearance (CED), 2006
- Convention on the Rights of Persons with Disabilities (CRPD), 2006

## ***6.2 Principles and Characteristics of Human Rights***

The principles and characteristics of human rights were enunciated at the 1993 World Conference on Human Rights held in Vienna, Austria. Part 1, Para 5 of the VDPA adopted by the World Conference on Human Rights states that:

*“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne*

*in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”.*<sup>64</sup>

These Principles and Characteristics are as follows:

- **Universal** – everyone is entitled to enjoy human rights regardless of which part of the world a person is found or originates from; thus, human rights are to be applied equally without discrimination.
- **Inalienable**- human rights cannot be taken away; they are God given and no one can deny any person the enjoyment of rights except in specified situations or circumstances.
- **Indivisible** - human rights cannot be implemented indiscriminately in that no right is more important than the other as such human rights must be implemented equally.
- **Interdependent/Interrelated** - realisation of one’s right or freedom is dependent on another (e.g. right to life is dependent on realisation of the right to food, health, shelter, water, etc.)
- **Normative** – They prescribe how people and governments should behave.
- **Equality and Non-Discrimination:** The basis of human rights is that “all human beings are born free and equal in dignity and rights”.<sup>65</sup> The same rights and responsibilities are afforded equally to all women and men,

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<sup>64</sup> United Nations World Conference on Human Rights, Vienna Declaration and Programme of Action (1993), adopted 25<sup>th</sup> June 1993- UN doc. A/CONF.157/23

<sup>65</sup>UDHR, Article 1



boys and girls by virtue of their humanity and regardless of any role or relationship they may have.<sup>66</sup> They ensure that everyone is able to participate equally in society including groups that are often marginalized such as women and the poor.<sup>67</sup>

- **Participation:** This means involving claim-holders and major duty-bearers in the assessment, decision-making and implementation of policies and programmes.<sup>68</sup>
- **Accountability and Rule of Law:** Rule of law means that all people, organizations, institutions and the state itself are accountable under laws that are publicly promulgated; equally enforced; independently adjudicated and consistent with international human rights law. Accountability is where governments respond to the needs and respect the rights of the people when exercising their power; where all people have a voice in decision-making; and where the people are able to hold government to account for its decisions and actions.<sup>69</sup>

### ***6.2.1 Essence of Human Rights***

Promotion and Protection of human rights and fundamental freedoms:

- Guarantees the basic needs of people.
- Protects the vulnerable from abuse and exploitation.
- Provides standards and mechanisms to hold state and non-state actors accountable.
- Promotes sustainable development.
- Aids in protecting the environment.

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<sup>66</sup> “In Our Own Words – A Guide for Human Rights Education Facilitators”: Nancy Flowers, 1999

<sup>67</sup> “Democratization and Human Rights for the Benefit of the People”: Danida, 2009

<sup>68</sup> “A Human Rights Approach to Development – Primer for Development Practitioners”: Amparo Tomas, 2005

<sup>69</sup> “Democratization and Human Rights for the Benefit of the People”: Danida, 2009.

- Promotes equality and non-discrimination.
- Enhances equal opportunities to all.
- Guarantees privacy and guards against unnecessary interference with one's private life.

## **6.3 RIGHT-HOLDER AND DUTY-BEARER**

### ***6.3.1 Who is a Right-Holder?***

A right-holder is an individual or a group/collective to whom a State owes an obligation to promote and protect his/her or their rights and fundamental freedoms. Also, a right holder has legitimate claims of human rights against a duty-bearer. In general terms, all human beings and groups are rights-holders under international human rights law.

Regarding group/collective rights, the rights-holders include:

- Women
- Children
- Ethnic and Religious Minorities
- Persons with Disabilities
- Migrant Workers
- Refugees
- Older Persons

### ***6.3.2 Who is a Duty-Bearer?***

A duty-bearer is primarily a State/Government, which has obligation under international human rights law to realise human rights and fundamental freedoms. States are held accountable for their actions or inactions towards right-holders. Lately, non-state actors such as business enterprises are deemed duty-bearers and therefore accountable for their actions and inactions.

Duty-bearers include:

- The State and its agencies as well as public officials
- Non-state actors like business enterprises – large multinational or transnational organisations and small, medium scale businesses.

## **6.4 INTERNATIONAL BILL OF RIGHTS**

The International Bill of Rights consists of the UDHR, ICCPR and ICESCR.

### **6.4.1 UDHR**

UDHR has been described as the UN's foundational human rights document and the cornerstone for the international human rights system, setting a framework for understanding the content of rights that has stood the test of time.

The four pillars on which the UDHR is anchored are: Dignity, Liberty, Equality and Brotherhood<sup>70</sup>.

### **6.4.2 ICCPR**

ICCPR ensures the protection of civil and political rights. The ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within States to allow the enjoyment of civil and political rights. Countries that have ratified the Covenant are obligated *“to protect and preserve basic human rights... to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy”*.<sup>71</sup>

Human rights and fundamental freedoms that are protected under the ICCPR include:

- Right to life.

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<sup>70</sup> Micheline R. Ishay (2008) *The History of Human Rights: From Ancient Times to the Globalization Era*, University of California Press, California

<sup>71</sup> <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr>

Freedom from torture, and cruel, inhuman and degrading treatment or punishment.

Freedom from slavery, servitude and forced labour.

- Right to liberty and security of persons.
- Right of detainees.
- Right not be imprisoned merely on the ground of inability to fulfil a contractual obligation.
- Freedom of movement and choice of residence for lawful residents.
- Freedom of opinion and expression.
- Right to fair trial.
- Equality before the courts and tribunals<sup>72</sup>
- Freedom from retroactive legislation - no one can be charged with or be guilty of a criminal offence which did not constitute an offence at the time it was committed.
- Right to recognition as a person before the law.
- Freedom from arbitrary or unlawful interference.
- Right to freedom of thought, conscience and religion.
- Right to hold opinions without interference.
- Propaganda for war shall be prohibited by law.
- Right of peaceful assembly.
- Right to freedom of association with others.
- Right to marry and found a family.
- Right to political participation – to vote and be elected.
- Equality before the law.<sup>73</sup>
- Minority protection.

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<sup>72</sup> Article 14 ICCPR , <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>73</sup> Article 26 ICCPR, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

### 6.4.3 ICESCR

The ICESCR was adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966. ICESCR reflects the commitments adopted after World War II to promote social progress and better standards of life and reaffirming the international community's faith in human rights.

The Preamble of the ICESCR recognises that economic, social and cultural rights derive from the *"inherent dignity of the human person"* and that *"the ideal of free human beings enjoying freedom of fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as civil and political rights"*.<sup>74</sup>

The overarching principles of the ICESCR are: (1) equality and non-discrimination in regard to the enjoyment of all the rights set forth in the treaty; and (2) States parties have an obligation to *respect, protect* and *fulfil* both civil, political and economic, social and cultural rights.

Human rights and fundamental freedoms that are protected under the ICESCR include:

- Right to health,
- Right to education.
- Right to work.
- Right to just and favourable conditions of work.
- Right to form and join trade unions.
- Right to social security including social insurance.
- Right to protection and assistance for the family.
- Right to an adequate standard of living.
- Right to adequate food, water, clothing and housing.
- Right to the highest attainable standard of physical and mental health.

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<sup>74</sup> <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

- Right to recreation/leisure.
- Right to take part in cultural life and to benefit from scientific progress.

Also, ICESCR protects other rights such as group/collective rights, which include:

- Right to self-determination.
- Right to development.
- Right to peace.
- Right to a healthy environment.
- Rights of national, ethnic, religious and ethnic minorities.
- Rights of indigenous peoples.

## **6.5 THE UNITED NATIONS AND THE UNITED NATIONS HUMAN RIGHTS SYSTEM**

### **6.5.1 The UN**

The UN was founded on 26 June, 1945 in San Francisco, USA, at the conclusion of the UN Conference on International Organizations. The Charter of the UN came into force on 24 October, 1945, which is heralded as UN day.

The UN intervenes on a wide variety of issues due to its unique international character and the powers vested in it under its Charter. The UN Charter codifies the major principles of international relations from sovereign equality of States to the prohibition of the use of force in international relations.

Article 1(1) of the UN Charter lays down the purposes of the UN, which include:

*“To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice*

*and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace*’’<sup>75</sup>.

#### **6.5.1.1 Organs of the UN**

The UN is structured as follows:

- **The UN General Assembly (UNGA)** - it is the plenary organ of the UN currently representing all Member States. It is a platform where all Member States consider and debate any relevant matter of global concern, including human rights issues.
- **The Security Council (SC)** - like the UNGA, is one of the principal organs of the UN. The SC acts as the executive body of the UN with the primary responsibility of maintenance of international peace and security. The SC is made up of 15 members, 5 of which are permanent. The five permanent members are China, France, Russia, United Kingdom, and United States of America. The other 10 are elected by the Assembly for two years.
- **The Economic and Social Council (ECOSOC)** - this organ concerns itself with economic and general welfare issues including: trade, developmental and social matters notably population, children, housing and racial discrimination. Even though ECOSOC’s mandate covers a wide range of issues, its actual powers are limited to recommendations which are not binding on States. ECOSOC consists of 54 members, who are elected by the General Assembly for a three-year term in office.
- **The International Court of Justice (ICJ)** - it is the principal judicial organ of the UN, which is based in the Hague, Netherlands. ICJ consists of 15 judges elected by the concurrent votes of the Security Council and the General Assembly.

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<sup>75</sup> <https://www.un.org/en/about-us/un-charter/chapter-1>

- **The Trusteeship Council** - it works to encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the independence of the peoples of the world.
- **The Secretariat** - it is headed by the Secretary-General (SG); it involves the day-to-day functioning of the UN. The SG is appointed by the General Assembly on the unanimous recommendation of the Security Council.

### ***6.5.2 The UN Human Rights System***

Promotion and protection of human rights and fundamental freedoms are regulated by the UN through the following mechanisms:

- **Office of the High Commissioner for Human Rights (OHCHR)**, which is based in Geneva, Switzerland
- **The Human Rights Council (HRC)** - its main mandate is to promote and protect all human rights for all people<sup>76</sup>.
- **Universal Periodic Review (UPR)** created in 2006 by the HRC. It is responsible for reviewing the human rights record of Member States of the UN once every four-and-half year with the aim of improving human rights globally.
- **Special Procedures** - comprises experts variously called Special Rapporteurs, Independent Experts or a Working Group appointed by the HRC to report and advise it on thematic human rights issue(s) relative to a particular country.
- **Treaty Bodies** – comprises specialized Committees that issue reports in the form of General Comments.

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<sup>76</sup> UNGA Resolution 48/11 in respect of the OHCHR's detailed mandate



## 7.0 REGIONAL HUMAN RIGHTS MECHANISMS

There are four regional human rights mechanisms which are Europe, the Americas, Africa and the South Asian Regional Mechanisms. Among these four the three most well-established ones exist in Europe, the Americas and Africa.

### Africa

#### *7.1 The African Charter on Human and Peoples' Rights*

The African Charter on Human and Peoples' Rights (ACHPR) is an international human rights instrument that seeks to promote and protect human rights and basic freedoms in Africa. The ACHPR is also known as the Banjul Charter or the African Charter.

The ACHPR came into effect on 21 October 1986, which date is celebrated as "African Human Rights Day".

Oversight responsibility and interpretation of the African Charter is exercised by the African Commission on Human and Peoples' Rights (African Commission).

The ACHPR covers a wide spectrum of civil and political rights as well as economic, social and cultural rights.

Some specific rights guaranteed under the ACHPR include:

- Equality before the law and equal protection of the law.<sup>77</sup>
- Right to the respect of the dignity inherent in human beings<sup>78</sup>
- Right to a fair hearing/trial<sup>79</sup>
- Rights to freedom of conscience and religion<sup>80</sup>

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<sup>77</sup> Article 2 ACHPR, <https://www.achpr.org/legalinstruments/detail?id=49>

<sup>78</sup> Article 5 ACHPR

<sup>79</sup> Article 7 ACHPR

<sup>80</sup> Article 8 ACHPR

- Right to information<sup>81</sup>
- Right to health<sup>82</sup>
- Right to education<sup>83</sup>
- Right to development<sup>84</sup>
- Right to satisfactory environment<sup>85</sup>
- Rights to non-discrimination, mutual respect and tolerance<sup>86</sup>

The ACHPR is the only human rights treaty in the world that recognises a set of group/collective rights, including the right to development, the right to peace and security and the right to a satisfactory environment.<sup>87</sup>

Unlike other human rights treaties, the ACHPR, apart from protecting rights of individuals and peoples, imposes duties on individuals and citizens as contained in Article 29, which provides as follows:

- The duty to preserve the harmonious development of the family.
- To serve the national community by placing both physical and intellectual abilities at its service.
- Not to compromise the security of the State.
- To preserve and strengthen social and national solidarity.
- To preserve and strengthen national independence and the territorial integrity of one's country and to contribute to its defence.
- To work to the best of one's abilities and competence and to pay taxes in the interest of society.

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<sup>81</sup> Article 9 ACHPR

<sup>82</sup> Article 16 ACHPR

<sup>83</sup> Article 17 ACHPR

<sup>84</sup> Article 23 ACHPR

<sup>85</sup> Article 24 ACHPR

<sup>86</sup> Article 28 ACHPR

<sup>87</sup> Ilias Bantekas and Lutz Oette (2016) *International Human Rights Law and Practice* (2<sup>nd</sup> edn), Cambridge

- To preserve and strengthen positive African cultural values and in general to contribute to the promotion of the moral well-being of society.
- To contribute to the best of one's abilities to the promotion and achievement of African unity.

## ***7.2 The African Commission***

The African Commission was set up in November 1987 in Addis Ababa, Ethiopia, and is headquartered in Banjul, Gambia.

The African Commission is composed of eleven (11) members who are elected by the AU Assembly of Heads of State and Governments, who serve in their personal capacities.

The African Commission has a broad mandate to promote and protect human rights as laid down in Article 45 of the ACHPR. Its promotional mandate includes the consideration of States Parties' reports, the study of human rights issues and country specific situations, including by means of fact-finding missions and a system of Special Rapporteurs and Working Groups.<sup>88</sup>

## ***7.3 The African Court on Human and Peoples' Rights***

The African Court on Human and Peoples' Rights (African Court) was established under Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, which was adopted by the AU in Ouagadougou, Burkina Faso, in June 1998.

The African Court deals with complaints of violations of the African Charter and other human right treaties; it also proffers advisory opinions aimed at interpreting

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<sup>88</sup> Ibid

provisions of the African Charter, particularly in terms of their compatibility with domestic laws of States Parties.

## **8.0 NATIONAL MECHANISMS AND NHRIs**

### ***8.1 Mandates/Functions of CHRAJ***

The Commission on Human Rights and Administrative Justice (CHRAJ) is a creation of the 1992 Constitution of Ghana. It has three broad mandates namely: (a) Human Rights; (b) Administrative Justice; and Anti-Corruption.

#### ***8.1.1 Human Rights Mandate/Functions***

CHRAJ's human rights mandate is grounded in Article 218 (a), (c) and (f) of the 1992 Constitution, which include:

- “To investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties.
- To investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution.
- To educate the public as to human rights and freedoms by means as the Commissioner may decide including publications, lectures and symposia...”

Also, section 7(a)(c)(g) of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) replicates the functions of CHRAJ as per Article 218 of the 1992 Constitution.

CHRAJ is Ghana's NHRI; it is responsible for the promotion and protection of all human rights in Ghana.

CHRAJ carries out its promotional and preventive functions through public education, awareness creation, research, and monitoring.

CHRAJ also advises Government on human rights issues through advisories, press statements and appropriately proffer recommendations aimed at remedying human rights violations.

#### ***8.1.1.1 Public Education***

Public Education activities are undertaken to deepen the culture of respect for human rights in the country using electronic and print media – TV, radio, publication of articles in the newspapers, newsletters, social media, etc.

#### ***8.1.1.2 Research and Monitoring***

CHRAJ undertakes the following research and monitoring activities:

- conducts research to help develop best practice guidelines for government and the general public towards deepening the culture of respect for human rights;
- conducts research into systemic practices and recommend measures to improve practices and support initiatives that seek to review legislation, policies, or practices that undermine human rights;
- monitors observance of human rights in the country to ensure that the State complies with its obligations under national, regional, and international human rights instruments.

#### ***8.1.1.3 Protection and Enforcement***

CHRAJ's protection and enforcement mandate is carried out through:

- investigation of complaints of fundamental human rights and freedoms using various mechanisms such as mediation, negotiation, preliminary investigations, and panel hearing; and
- conducting systemic investigation into human rights violations.

### ***8.1.2 Administrative Justice Mandate***

As the Ombudsman of Ghana, CHRAJ investigates complaints of how public institutions and public officials carry out their day-to-day executive and administrative functions.

The legal framework that regulates CHRAJ's Administrative Justice mandate are:

- Article 218 (a) & (b) of 1992 Constitution
- Article 23 of the 1992 Constitution
- Article 296 of the 1992 Constitution
- Section 7(1)(a)(b)(d) of Act 456

Under this mandate, CHRAJ investigates the following acts and/or omissions by public officials:

- complaints of discrimination, delays, omissions, failure to act or take appropriate decisions by public officials;
- complaints in respect of decisions that occasion injustice or unfairness;
- complaints in respect of failure to comply with legal obligations, as well as policies and procedures in arriving at decisions;
- abuse of office, acts or practices that are oppressive, discriminatory; and
- acts and omissions based on irrelevant grounds or improper purpose or made in the exercise of a discretionary power where reasons must be given for the decision.

### ***8.1.3 Anti-Corruption Mandate***

As an Anti-Corruption institution/body, CHRAJ's functions include investigation of the following:

- Complaints/Allegations of Corruption<sup>89</sup>

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<sup>89</sup> Article 218(a) of 1992 Constitution and s. 7(1)(f) of Act 456

- Instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps including making reports to the Attorney-General and the Auditor-General resulting from that investigation.<sup>90</sup> The investigative machinery of CHRAJ in respect of Article 218(e) can be triggered by even “suspicions”, media reports etc.<sup>91</sup>
- Breaches of the Code of Conduct for Public Officers under Chapter 24 of the 1992 Constitution:<sup>92</sup>
  - Non-compliance with Conflict of Interest rules<sup>93</sup>
  - Non-declaration of Assets and Liabilities<sup>94</sup>
  - Illegal acquisition of property
  - Contravention of Oaths of office

The Commission also promotes principles of ethical values in public service.

## **8.2 Additional Functions**

The Commission has been granted additional functions in subsequent legislation including:

- Office of the Administrator of Stool Lands Act, 1994 (Act 481)

Section 7 provides as follows:

“A beneficiary of stool land revenue aggrieved by the apportionment of the stool land revenue, may submit a complaint to the Commission on Human Rights and Administrative Justice.”

- Children’s Act, 1998 (Act 560);

Section 48(2) provides that:

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<sup>90</sup> Article 218 (e) of 1992 Constitution

<sup>91</sup> See *Republic v High Court (Fast Track Division), Accra, Ex parte, CHRAJ (Richard Anane, Interested Party)* [2007-8] 1 SCGLR 213; *CHRAJ v Attorney-General and Kamara* [2011] 2 SCGLR 746)

<sup>92</sup> Articles 284-288 of the 1992 Constitution; Section (7)(e) of Act 456

<sup>93</sup> *Okudzeto Ablakwa (No. 2) & Another v Attorney-General* 2 [2012] SCGLR, 845)

<sup>94</sup> *ASEPA v Justice Annin- Yeboah*, Case No. CHRAJ/362/2019 delivered on 18<sup>th</sup> May, 2020.

“The following persons may apply to a family tribunal for a maintenance order ... (d) The Commission on Human Rights and Administrative Justice”

- The Juvenile Justice Act 2003 (Act 653);

Section 42(2) provides that:

“...the Commission on Human Rights and Administrative Justice may visit and inspect any centre.”

- Human Trafficking Act, 2005 (Act 694);

Section 6 of Act 694 provides as follows:

“A person with information about trafficking

(a) Shall inform the police, or

(b) The Commission on Human Rights and Administrative Justice...”

- Whistleblower Act, 2006 (Act 720).

The Act confers additional mandate on the Commission to investigate disclosures of impropriety (economic crime, waste, mismanagement, misappropriation of public resources, environmental degradation) and complaints of victimization of whistleblowers.

Section 3(1) (h) provides as follows:

“Disclosure of impropriety may be made to any one or more of the following ... the Commission on Human Rights and Administrative Justice”.

Section 13(1) provides as follows:

“A Whistleblower who honestly and reasonably believes that that Whistleblower has been subjected to victimisation or learns of a likely subjection to victimisation because a disclosure has been made, may in the first instance make a complaint to the Commission”

### **8.3 HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE**

Administrative Justice is a redress mechanism where claims of injustice and maladministration in the provision of public service delivery are resolved. The



main objective of administrative justice is to ensure that public officials or bodies are held accountable.

Administrative injustice or maladministration occurs when an action or decision is unfair, unreasonable and contrary to law.

### ***8.3.1 Administrative Bodies***

Administrative bodies are State institutions created by law, charged with the responsibility of implementing laws, regulations, and policies of the State. These bodies work on behalf of the government and are accountable to the people on whose behalf they exercise their powers.

Article 190 (1) of the 1992 Constitution lists the institutions that constitute the Public Service (Administrative Bodies) shall include:

**(a) The Civil Service**

The Judicial Service

The Audit Service

The Education Service

The Prisons Service

The Parliamentary Service

The Health Service

The Statistical Service

The National Fire Service

The Customs, Excise, and Preventive Service

The Ghana Revenue Authority

The Police Service

The Immigration Service and

The Legal Service

**(b)** Public Corporations other than those set up as commercial ventures

Some of these public corporations include:

- Council for Scientific and Industrial Research
- National Lotteries Authority
- Ghana Broadcasting Corporation
- National Health Insurance Authority

**(c)** Public Services established by the 1992 Constitution includes:

- Public Services Commission
- Offices of the Regional Coordinating Council
- District, Municipal and Metropolitan Assemblies
- The Armed Forces
- The National Commission on Culture
- National Commission on Civic Education (NCCE)
- The Electoral Commission of Ghana

**(d)** Such other public services as Parliament may by law prescribe.

### ***8.3.2 Some instances of Administrative Injustice***

Administrative injustice or maladministration leads to human rights violations which can manifest in various forms including:

- Discrimination
- Oppression
- Breach of principles of natural justice
- Unfair treatment
- Poor service delivery
- Administrative delays

- Arbitrariness or abuse of discretionary powers

## **8.4 HUMAN RIGHTS AND CORRUPTION**

Corruption has been defined by the World Bank as: “The abuse of public office for private gain”.

Transparency International defines corruption as: “The abuse of entrusted power for private gain”.

### ***8.4.1 Examples/Types of Corruption***

Examples of actions which constitute corruption:

- Embezzlement
- Theft/Stealing
- Fraud
- Favouritism
- Abuse of power
- Influence peddling
- Nepotism
- Extortion
- Misappropriation of Public Funds
- Manipulation of contract sums leading to shoddy jobs
- Bribery
- Kickbacks
- Conflict of Interest
- Set-up/Blackmail
- Examination Malpractices/Exams Leakage
- Illicit Enrichment
- Moonlighting

#### ***8.4.2 Effects of Corruption***

Corruption can have a devastating impact on the availability, quality and accessibility of human rights-related goods and services. Moreover, it undermines the effective functioning and legitimacy of institutions and processes, the rule of law and ultimately the State itself.

Disadvantaged groups and persons suffer disproportionately from corruption. They are often more reliant on public goods and services and have limited means to look for alternative private services. They typically have fewer opportunities to participate in the design and implementation of public policies and programmes and lack the resources to defend themselves. Some specific effects of corruption include:

- Lack of service delivery
- Poor service delivery
- Increases unemployment
- Denial of economic, social, cultural and environmental rights– e.g. poor healthcare system, inadequate educational infrastructure, housing, water, etc. for the vulnerable.
- Lack of faith and trust in state institutions/governments; corruption breeds mistrust thereby making citizens disregard and disrespect governments.
- Adverse economic effects - corruption has serious effects on the economy of any country.
- Corruption brings about a decrease in foreign investment, delay in growth, and low levels of development.

## **9.0 ROLE OF THE JUDICIARY (HIGH COURT) IN ENFORCEMENT OF HUMAN RIGHTS UNDER ARTICLE 33 OF THE 1992 CONSTITUTION**

In addition to CHRAJ's traditional human rights mandate, the Judiciary is empowered to deal with human rights issues. Under Article 33 of the 1992 Constitution, the High Court, which is part of the Judiciary and the Superior Courts of Ghana, has exclusive jurisdiction regarding enforcement of human rights.

Article 33 (1) provides:

*“Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress”.<sup>95</sup>*

Article 33(2) provides:

*“The High Court may, under clause (1) of this article, issue such directions or orders or writs including rites or orders in the nature of habeas corpus, certiorari, mandamus, prohibition, and quo warranto as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled”.<sup>96</sup>*

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<sup>95</sup> Article 33 of the 1992 Constitution

<sup>96</sup> Article 33 (2) of the 1992 Constitution

Article 33(3) provides:

*“A person aggrieved by a determination of the High Court may appeal to the Court of Appeal with the right of a further appeal to the Supreme Court”.*<sup>97</sup>

## **10.0 ROLE OF PARLIAMENT**

### **Legal Framework**

The 1992 Constitution of Ghana sets up three arms or branches of government namely, the Legislature, the Executive and the Judiciary. The executive power is vested in the President, legislative power in Parliament and judicial power in the Judiciary. Each arm is independent of the others thereby establishing what is known as the doctrine of Separation of Powers. This doctrine refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions or usurping the powers of another.

Article 93(1) of the 1992 Constitution of Ghana states that:

"There shall be a Parliament of Ghana which shall consist of not less than one hundred and forty elected members".

### **Qualification to become a Member of Parliament**

Constitutionally, a person aspiring to be a member of Parliament must be a citizen of Ghana who has attained the age of 21 years and is a registered voter. He or she must hail from or reside in the constituency for which he stands as a candidate for election or should have resided there for a total period of not less than 5 years out of the ten (10) years immediately preceding the election for which he/she stands. All his or her taxes should also have been paid.

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<sup>97</sup>Article 33 (3) of the 1992 Constitution

## **Functions of Parliament**

The basic function of the Ghanaian Parliament is law-making. Parliament also holds debates on public policy and serves as a check on government while representing the interest of the people. Other roles of Parliament include: **Financial, Oversight of the Executive, Representational and Deliberative.**

### ***Legislative***

Law-making is considered to be the most important function of Parliament. Article 93(2) of the 1992 Constitution gives legislative power to Parliament.

However, by the provisions of Articles 11 (1) (c) and (7) of the Constitution, allowance is made for what is known as Delegated, Subordinate or Subsidiary legislation. Accordingly, any Orders, Rules or Regulations made by a person or authority under a power conferred by the Constitution, or any other law shall:

- (a) be laid before Parliament;
- (b) be published in the Gazette on the day it is laid before Parliament; and
- (c) come into force at the expiration of twenty-one sitting days after being so laid unless Parliament, before the expiration of the twenty-one days, annuls the Order, Rule or Regulation by the votes of not less than two-thirds of all members of Parliament.

### ***Financial***

Parliament has the power to authorize the granting or receiving of loans. It also has the power and duty to monitor the expenditure of public funds to ensure that the monies it has authorised are used for the purposes for which they are intended.

### ***Oversight of the Executive***

Parliament keeps a watch over the performance of the Executive, which controls the public services, to ensure that the implementation of public policy conforms to the approved developmental agenda of the State and expenditure incurred is in accordance with Parliamentary authorizations. It controls members of the Executive, for example Ministers, through their appointment procedures and debates. The Legislature vet members of the Executive nominated by the President.

## ***Deliberative***

The deliberative function of Parliament enables it to debate an array of policy issues some of which result in the passage of resolutions. Deliberations may throw light on underlying tensions in society and help to foster consensus, compromise, and reconciliation. The deliberative function is exercised mainly through the mechanism of Statements, Motions, Questions, Ceremonial Speeches, etc.

## **Parliament**

The first Parliament in the Fourth Republic started with 200 seats. Presently there are 275 members of Parliament, with 40 of the members being females. Twenty (20) females from the New Patriotic Party (NPP) and twenty (20) from the National Democratic Congress (NDC). Parliament spans over a 4-year period from the first sitting.

The Speaker of Parliament is elected by the Members of Parliament. He is the head of the Legislature. The House is usually divided into two sides, the Majority side and the Minority side. The Majority side is the party with the most Members of Parliament and the Minority is the side with the least Members. The Majority Leader is chosen from the party with a Majority in Parliament

The first Speaker of Parliament in the Fourth Republican Parliament was Mr. Justice Daniel Francis Kweipe Annan, while the first female Speaker was Her Ladyship Justice Joyce Bamford-Addo, a former Justice of the Supreme Court.

The current Speaker of Parliament is Rt. Hon. Mr. Alban Kingsford Sumana Bagbin from the Minority side.

## **LEADERSHIP OF PARLIAMENT**

- i. Speaker of parliament
- ii. Deputy Speaker
- iii. Second Deputy Speaker
- iv. Majority Leader
- v. Deputy Majority Leader



- vi. Minority Leader
- vii. Deputy Minority Leader
- viii. Majority Chief Whip
- ix. Deputy Majority Whip
- x. Second Deputy Majority Whip
- xi. Minority Chief Whip
- xii. Deputy Minority Whip
- xiii. Second Deputy Minority Whip

## **11.0 ROLE OF NON-STATE ACTORS**

### ***11.1 Civil Society Organisations (CSOs)***

Civil society has been described as the intermediary layer between the public sphere of the State and private sphere of households and organisations within it that are voluntary and autonomous.<sup>98</sup>

NGOs form part of the broad umbrella of CSOs acting as non-state actors in the promotion and protection of human rights and good governance. Their role is basically advocacy and raising awareness on human rights and, in certain instances, engaging in public interest litigation to protect human rights.

Examples of CSOs involved in human rights include:

- The media
- Trade Union or workers' organisations – e.g. GNAT, NAGRAT, CLOGSAG
- Professional Bodies - e.g. GJA, GMA, GBA etc.
- Human Rights Advocacy Organisations

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98 H.M. Zafarullah and Md. H. M. H. Rahman, 'Human Rights, Civil Society and Non-Governmental Organisations: The Nexus in Bangladesh', (2002) 24 Human Rights Quarterly 1011 at 1016-17

- Academia
- Faith-Based Organisations and Traditional Authorities
- Community-Based Organisations and Opinion Leaders

## **12.0 DUTIES/RESPONSIBILITIES OF A CITIZEN**

Article 41 of the 1992 Constitution spells out the duties of a citizen as follows:

- to promote the prestige and good name of Ghana and respect the symbols of the nation;
- to uphold and defend this Constitution and the law;
- to foster national unity and live in harmony with others; to respect the rights, freedoms and legitimate interests of others, and generally to refrain from doing acts detrimental to the welfare of other persons;
- to work conscientiously in his/her lawfully chosen occupation;
- to protect and preserve public property and expose and combat misuse and waste of public funds and property;
- to contribute to the well-being of the community where that citizen lives;
- to defend Ghana and render national service when necessary;
- to co-operate with lawful agencies in the maintenance of law and order;
- to declare his/her income honestly to the appropriate and lawful agencies and to satisfy all tax obligations; and
- to protect and safeguard the environment.

## **13.0 CONCLUSION**

HRE is both a human right and a responsibility which deserves serious attention. In the school system, HRE is an important component of the right to education as it involves more than the provision of information and constitutes a

comprehensive life-long process. It enables the education system to fulfil its fundamental aims of promoting the full development of the human personality and appreciation of human dignity through enhancing respect for human rights and delivery of quality education for all.

Largely, HRE contributes to improving the effectiveness of the education system, which in turn boosts a country's economic, social and political development.

It is therefore imperative for CHRAJ as Ghana's NHRI to strengthen its collaboration with relevant stakeholders in its journey to mainstream HRE in the Ghanaian school system.

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## APPENDIX 1

<b>Representative</b>	<b>Name of Institution</b>	<b>Position</b>
Mr. Abdul-Razak Umar	Ministry of Education (MoE)	Chairman
Dr. Isaac Annan	Commission on Human Rights and Administrative Justice (CHRAJ)	Member
Mrs. Mary Nartey	Commission on Human Rights and Administrative Justice (CHRAJ)	Member
Mr. Mawuli Avutor	Commission on Human Rights and Administrative Justice (CHRAJ)	Secretary
Mrs. Gladys M. Osabutey	Ministry of Finance (MoF)	Member
Mrs. Cynthia Storph-Tegoe	Ghana Education Service	Member
Mr. Johnson Opoku	National Commission for Civic Education (NCCE),	Member
Mr. Anang J. Mensah	National Council for Curriculum and Assessment (NaCCA),	Member
Mr. Seidu Mahama	National Council for Curriculum and Assessment (NaCCA),	Member
Dr. Felix Addo	Implementation Committee on SDGs under the National Development Planning Commission (NDPC)	Member
Mr. Palham Oyiye	Ghana National Association of Teachers (GNAT)	Member