

**A SPEECH DELIVERED BY MR. JOSEPH WHITTAL,
COMMISSIONER FOR HUMAN RIGHTS AND ADMINISTRATIVE
JUSTICE (CHRAJ) ON THE OCCASSION OF WORLD DEMOCRACY
DAY, 15TH SEPTEMBER 2023 WITH THE THEME: ‘UNPACKING
GHANA’S DEMOCRACY TO CONSOLIDATE THE GAINS’ WITH A
FOCUS ON CIVIL AND POLITICAL RIGHTS AT TEACHERS’ HALL,
ACCRA**

Prof Rosina Kyerematen, Chairperson of the Occasion,
Representatives of Political Parties,
Distinguished Resource Persons,
Distinguished Members of Academia,
Students and lovers of democracy,
Members of the Media

Madam Chair,

15th September every year has been set down by the UN General Assembly since 2007 as a day for every nation and society particularly those nations which practice any of the variants of democratic governance throughout the world for sober reflection on how democracy is fairing in the respective countries with a view to identifying what works and what are the challenges in order to strengthen the democratic practices in the country.

This year 2023, the UN Secretary-General has chosen as the theme to mark International Democracy Day “**Empowering the Next Generation**”- this focuses on the essential role of children and young people in safeguarding democracy today and in the future. Indeed, the focus is that it is not enough to listen to children and young people. We must support them with massive investments in education, skills-building and life-long learning. We must protect human rights and advance gender equality. And we must expand the meaningful participation of young people in decision making processes at all levels. The Secretary-General concludes his message on this important Day with a call for all

to “join hands across generations and work as one to build a more just world for all”.

Back home in Ghana, I have been invited by the Organizers of this Programme – CARE FOR FREE AND FAIR ELECTIONS GHANA- an NGO who have chosen to mark the 2023 International Day of Democracy with the local theme: **“UNPACKING GHANA’S DEMOCRACY TO CONSOLIDATE THE GAINS”** and on the topic: **CIVIL AND POLITICAL RIGHTS IMPACT ON SUSTAINABLE DEMOCRACY.**

Madam Chair,

1.0 Background

As a background to my topic, over the last two centuries, the cherished ideals of liberty, equality, fraternity and democratic values have witnessed considerable acceptability. These ideals themselves are no doubt worth pursuing, as are values such as social justice, individual freedom and the idea of a state that could liberate people from the shackles of both tradition and modernity. These ideals and values somewhat provided mankind with a vision of social order that is humane and just. Democracy was also believed to provide the necessary framework, both institutional and ideological through which a just and humane society can be realised. The end of the cold war and the collapse of the Berlin wall with **GLASNOST** and **PERESTROIKA** as the new governance style in Eastern Europe also catalysed the rise of democracy as socialism and communism were seen as having been defeated. These ideals swept across Europe and other parts of the world including Sub Sahara Africa.

In sub-Saharan Africa, post-independence developments both internally and externally hugely influenced the call for democratization in many African states.

Whilst these calls yielded some positive results in achieving democratisation in certain contexts, others degenerated into authoritarianism.

In Ghana, the path to democratisation has been a checkered one. The first constitutional democratic experiment was from 1957 to 1966 under the first republic. Unfortunately, the first republic was truncated by a military overthrow in 1966. Attempts at democratisation was reignited in 1969 which birthed the second republic which lasted for only three (3) years. In 1979, the third republic was also birthed which lasted from 1979-1981 following its overthrow in 1981. It was not until 1992 when the door for competitive democratic practice through free and fair elections was opened after 11 years of military stewardship. Thankfully, the fourth republic has been considered as Ghana's best republic with no military interruptions since its adoption.

2.0 Conceptualising Democracy & its Distinguishing Features

Madam Chair,

In our attempt to unpack Ghana's democracy to consolidate the gains, it is very important to recall what democracy is really about. I will attempt to conceptualise democracy by referring to Abraham Lincoln's definition as "the government of the people, by the people and for the people". In other words, government constituted by the people, which expresses their wishes and aspirations as well as working for their interest. In the light of this understanding, one may ask, are democracies as being presently practised all over sub-Saharan Africa including Ghana 'of the people, by the people, and for the people?' The honest answer to this question as to whether Ghana's democracy is faring well or not would lead us to reflecting on the substantive features of a true democracy.

It is generally agreed that any progressive democracy worth its salt should exhibit some outstanding features. These distinguishing features include free and independent institutions with appropriate checks and balances, particularly a free

and Independent Judiciary, universal adult suffrage, representative government, free, fair and competitive elections, guaranteed fundamental human rights and freedoms such as freedom of speech and expression, freedom of association and movement, Media freedom, right to demonstrate and protest, open society among others.

My topic does not allow me to dive into an assessment of some of these features. But permit me to indicate that any unpacking of Ghana's democracy along the lines of the Montesquieu concept of checks and balances will surely expose that the incestuous relationship between the Executive and the Legislature under Article 78 clearly negates the proper functioning of the concept under the 1992 Constitution. Representative democracy under the 4th Republican Constitution leaves much to be desired with the Legislature playing handmaid to the Executive. The awesome power of the Executive which has come to be humorously called "winner-takes-all" is indeed the elephant in the room of the 1992 Constitution and the cause of our democratic slippages.

3.0 Human Rights Particularly Civil and Political Rights & their Significance to Democracy

It is not in dispute that protection of fundamental human rights and freedoms is at the heart of every democracy. The importance of respect for human rights in guaranteeing good governance is beyond doubt. Governments are constituted for the generally accepted purpose of working for the protection of the personal liberties of the people and the improvement of their social, political and economic lives. For civil and political rights in particular, it provides citizens with the requisite tools and voice to actively partake in the democratic enterprise. In the context of Ghana, these tools include right to vote and elect their leaders including President, Members of Parliament and district assemblies, the right to be voted for, the right to demonstrate and protest against unfavourable government policies

and actions, and the right to approach the court or other adjudicating bodies to vindicate their rights among others.

It is important to state that events leading to the promulgation of Ghana's 1992 Constitution and the very foundation of the fourth republic upon which it stands is deeply rooted in the essence of human rights. It is therefore no wonder that the 1992 Constitution under chapter 5 has guaranteed a plethora of civil and political rights and vested protection regime of human rights generally with the courts. It is also true that the Directive Principles of State Policy in chapter 6 of the Constitution have adopted the human rights-based approach to development and have been interpreted by the Supreme Court as justiciable and enforceable. Ghana has also ratified the International Covenant on Civil and Political Rights (ICCPR) and African Charter on Human and People's Rights and other international human rights instruments indicating further its commitment to civil and political rights.

4.0 The Gains within the Civil and Political Rights Context

Madam Chair,

as we unpack Ghana's democracy it is refreshing to note that as a country Ghana has taken some commendable steps in consolidating civil and political rights. In the first place, the repeal of the criminal libel law particularly sections 112-19, 182A, 183, 183A and 185A of the Criminal Offences Act, 1960 (Act 29) was seen as remarkable step. These provisions collectively imposed extensive limitations on the right to freedom of expression and media freedom. For instance, Sections 112 -19 sought to punish criminal libel; whilst section 182A gave the President unfettered power to prohibit any organisation whose activities were deemed contrary to public interest. Section 183A also sought to punish any publication intended to bring the President into hatred, ridicule or contempt

including other oppressive provisions. The repeal of these provisions have undoubtedly opened up the democratic space for rigorous public discourse and strengthened media accountability of public power as the criminalisation of free expression have become a thing of the past.

As a consequence of the repeal of the criminal libel provisions coupled with the constitutional safeguards of freedom of expression, these positive changes have engendered increased civil and political participation. Citizens are able to express their dissenting views freely and boisterously against government policies and actions without fear of any reprisals. If those grievances do not receive the needed government responses, citizens mobilise and demonstrate to express their frustrations and demand accountability from government. These demonstrations have sometimes yielded some positive results whereby governments have either backtracked on its policy direction or the subject matter of demonstrations have taken centre stage of public discussions for weeks resulting in social change.

Another development worth noting is the liberalisation of the media landscape. There can be no democracy without the media. The media serves as a bridge between citizens and the government where it informs the citizens on government policies and relay citizens' concerns to government. The media has become a force to reckon with whereby journalists have amplified the developmental challenges of communities, exposed serious environmental and human rights violations such as galamsey, abuse of power, and corruption. These contributions have been possible largely due to the relatively friendly environment in which the media operates. The vibrancy of the media in Ghana has earned the country enviable position on the World Press Freedom Index. In 2018 for instance, Ghana earned the first place on the Press Freedom Index as the most enabling environment for media practitioners on the continent. In addition, the quality of work by Ghanaian journalists has also been recognised globally. During elections the media also play a role by monitoring the electoral processes to ensure that the

overall objective of ensuring free and fair democratic elections is achieved. These feats by the media would not have been possible without the relatively empowering democratic space.

5.0 The Gaps /Deficits

Distinguished Ladies and Gentlemen,

Notwithstanding the above gains, there exist serious challenges. It is imperative to point out that these challenges must be considered seriously in the light of recent developments in the sub region and other parts of the world. The resurgence of coups d'états in the sub-region especially the recent overthrow of democratically elected governments in Guinea, Burkina Faso, Mali, Niger and Gabon should be a matter of grave concern to watchers of democracy on the continent. The reasons underlying these developments in neighbouring countries should be of interest to us in Ghana because Ghana is not immune from the possibility of similar military takeovers even though we pride ourselves as the beacon of democracy on the continent. It is in our country's interest to overcome these challenges to our democratic practices. What are some these challenges from the perspective of my position as the Commissioner for Human Rights and Administrative Justice (CHRAJ)?

Firstly, it relates to the freedom of assembly including freedom to take part in processions and demonstrations under Article 21 (d). The Public Order Act, 1994 (Act 491) requires persons who intend to hold a special event such as processions and demonstrations to notify the Police of not less than five (5) days before the event. As a practice, the Police and organisers meet to discuss pertinent issues concerning the procession or demonstration such as possible routes to use for the exercise so as to ensure public law and order while the protest is held. Where the Police disagrees with the organisers of the demonstrations, the Police would

usually make an ex-parte application to the court to stop the demonstrations. In almost all cases, these ex-parte applications are granted and this is quite problematic. It is important to emphasise that the freedom to assemble and to take part in processions and demonstrations is a constitutionally guaranteed fundamental human right and freedom which must be jealously guarded. This is not to suggest that human rights cannot be restricted. However, before such a constitutional right is curtailed through an ex-parte application the court must give both parties the opportunity to argue the merits for the justification of the Police action. That way, the court gets the opportunity to hear both sides and come to a conclusion that carefully balances competing interests. Furthermore, while injunctions may be considered as a normal practice of the court, it has the tendency to undermine such an important civil and political right available to citizens. As a Commissioner for Human Rights, it is my considered view that such restrictions on fundamental human rights must at all times meet the threshold of necessity, legitimacy and proportionality.

Madam Chair,

another spectacle which undermines the enjoyment of civil and political rights is the assault and arrest of journalist even after the repeal of the criminal libel law. The constant assault of journalists by law enforcement officers and other public officials is well documented by civil society organisations such as Media Foundation for West Africa (MFWA). Sadly, the Police often carry out these arrests under some ambiguous offences such as “breach of the peace”, “causing fear and panic” under the Criminal Offences Act. While reckless journalism is not condoned, assault and arrest of journalists have the potential to water down the effectiveness of the media’s watchdog role. The murder of Ahmed Suale still haunts Ghana’s press freedom credentials. These happenings have culminated in Ghana’s recent poor showing on the World Press Freedom Index.

Ladies and Gentlemen, a wayward media practitioner/journalist should by all means be held accountable either by reporting such conduct to the National Media Commission or resorting to the civil courts for defamation suits. That is the surest way of striking a good balance between safeguarding media freedom and holding the media accountable for any unprofessional conduct.

Madam chair,

Vigilantism and its associated electoral violence is increasingly finding its way into our body politic and democracy for that matter. Elections as we all know is a process which affords citizens the opportunity to choose their leaders in a peaceful manner. The happenings during Chereponi and Ayawaso West Wuogon by-elections and the 2020 Presidential and Parliamentary elections where violence and deaths of about eight people were recorded are deeply regrettable. What is more disturbing is that given our experience as a democracy that has conducted several competitive elections in the past thirty years, it was therefore unacceptable for us as a country to have witnessed such manner of violence and deaths. If these developments are not urgently addressed, they would have the propensity to seriously undermine confidence in the electoral system. This will further heighten mistrust among citizenry and stakeholders of the electoral processes as incapable of delivering safe and credible outcomes this is not good for our democracy. Nobody should perish because there is an elections!

Madam Chair,

One of the major reasons for elections in Ghana becoming needlessly violent and acrimonious is the phenomenon of the ‘winner takes all’ syndrome where the victorious political party tends to take all the ‘spoils of war’ and the vanquished loses everything. As a multi-party democratic society like ours resorting to a winner takes all has the tendency to foment trouble for the stability of our democracy going forward.

Madam Chair,

Current opaqueness surrounding political party financing where vested interests fund winnable political parties to capture state power in order to advance private interests at the expense of the collective good is deeply concerning. This is attributable to the high cost of undertaking politics in the country. The Centre for Democratic Development (CDD) in a recent study estimates that to successfully prosecute a presidential campaign, a candidate will have to spend about \$100 million. Coupled with the winner takes all syndrome, it fuels insatiable greed for political power notwithstanding its ramification in society. Once political power is secured, the victorious candidate, given the support received from financiers and other vested interests, the ruling party tends to do the bidding of their financiers as they seek to reap the profit from their investments. This invariably raises the political stakes very high resulting in democracy capture, unbridled corruption with its attendant human rights violations.

The right to vote and the requirement imposed on the Election Management Body (EMB), the Electoral Commission (EC) to ensure that Ghanaians are given the opportunity to register in order to exercise this right is so fundamental to the democratic process of selecting our leaders to govern the country both at Central and Local government levels that the supreme law of Ghana, the 1992 Constitution has provided in Article 42 that:

Every citizen of Ghana of eighteen years of age and of sound mind has the right to vote and is entitled to be registered as a voter for purposes of public elections and referenda.

In fact, in the seminal case of **Abu Ramadan and Another; and Kwasi Danso Acheampong v the Electoral Commission and Another** (2014) Wood (Mrs.) CJ observed as follows:

If the right to vote is important in participatory democracy, the right to register is even more fundamental and critical. It is the golden key that opens the door to exercising the right to vote.

In the light of this very wise dictum of the former Chief Justice, the decision by the Electoral Commission to carry out the 2023 limited voter registration exercise at only the District Offices of the Commission and not polling stations within the communities is problematic. The considerations that might have gone into taking this decision by the EC might be defensible but certainly one would wonder whether the circumstances of the ordinary poor Ghanaian and the accessibility and the far-flung nature of our settlements to the EC District Offices were part of the considerations.

The question of voter registration and the compilation of a credible voter register is one key challenge to participatory democracy and a permanent solution needs to be found.

6.0 Concluding Observations & Recommendations

Madam Chair, in conclusion, democracy has become the preferred form of government for many societies the world over including Ghana. However, democracy is at the crossroads in the light of recent developments globally. For us in Ghana, we had our fair share of the struggles in our efforts at consolidating democracy until we attained stability from 1992. This stability should not be construed as an end itself. There must be continuous nurturing of the constitutional democratic order by strengthening our governance systems, creating strong but interdependent arms of government anchored on respect for human rights of the citizen including further strengthening civil and political rights if we are to achieve democratic sustainability.

To this end, I would like to make the following proposals as my contribution to Ghana's democratic consolidation. These recommendations include:

- Undertaking Constitutional reforms by revisiting the Constitutional Review project that had actually “unpacked Ghana's democracy” by meeting Ghanaians across the length and breadth of the country and compiling the views of the people of Ghana on the 1992 Constitution and making recommendations for constitutional, legislative and administrative reforms in 2010. The Committee submitted its Report in 2011 to Government and for some inexplicable reasons this Report and impressive recommendations never saw the light of day. Twelve years after the Prof Fiadzoe Report and 30 years since the 1992 Constitution came into being the need for constitutional reforms has become even more urgent.
- Any constitutional reforms must of necessity tackle the excessive powers of the Executive especially the power to appoint all Article 71 Public Officials under the Constitution. Appointment of these officials must be subjected to transparent and open competition with the one appointed based on merit as under the Kenyan and the South African Constitutional practice.
- Serious consideration should be given to the role of ex parte applications by the police to the courts in order not to unnecessarily restrict the constitutional rights to processions, protests and demonstrations,
- Addressing the winner takes all syndrome within Ghana's democracy which raises the stakes in elections very high and very costly,
- Affirmative action both in law and practise to realise equality for women and other minority groups.
- Professional misconduct by journalists and media practitioners should be treated as a civil matter to be addressed either by the National Media

Commission or civil courts as opposed to criminal law (Police) enforcement.

Long Live Ghana! Long Live Ghana's Democracy!!

Thank you.