

**Submission of the Commonwealth Human Rights Initiative (CHRI) for the Universal Periodic Review of
Ghana
January 2008**

A. Consultation process

To date, the Government of Ghana has taken no active steps to conduct civil society consultations on its report to the Universal Periodic Review. CHRI has contacted the Ministry of Foreign Affairs requesting for a consultative meeting but received no feed-back.¹ This report has been prepared based upon information collated during investigative missions, interviews with victims and policy-makers within Government. Due to time constraints, consultations with other NGOs have only been conducted on a small-scale basis with the Media Foundation for West Africa and Legal Resources Centre.

B. The current normative and institutional framework

Chapter 5 of the Constitution of Ghana (1992) provides the basic premise for the protection of fundamental human rights and is to be upheld by all arms of Government and enforced by the Courts. It builds upon international human rights standards and sets out a broad range of rights including civil, political, social, economic and cultural rights. In addition, specific laws exist to provide substantive protection for individual rights for instance the Domestic Violence Act, Criminal Code Act, the Children Act, People with Disabilities Act and the Human Trafficking Act.

1) Civil and Political Rights

Provision for this category of rights is set out in the Constitution. In practice however, there is a general gap in operationalising these rights due to the absence of specific legislation setting out clear procedures to enforce them. A clear example is the 'Right to Information' (RTI), guaranteed under Article 21(1) (f) of the Constitution. The RTI Bill was drafted by the Attorney-General's department in 2002 and but has still not been passed.

2) Economic, Social and Cultural Freedom

Although there are existing laws protecting these rights, the rights continue to be perceived as second-category rights and, in practice less prioritised. A clear example is the right to adequate housing guaranteed under Article 11 (1) of the ICESCR.² In Ghana forced evictions by local government authorities have resulted in the displacement of hundreds of Ghanaian citizens without provision for alternative measures and compensation-in clear contradiction of this right. This is further worsened by the absence of a national evictions policy needed to guide such practices.

Similarly, although the law proscribes customary practices that are dehumanising,³ such as cultural servitude including *trokosi*⁴ and Female Genital Mutilation (FGM),⁵ are still commonly practiced. Section 8 of the Domestic Violence Act,⁶ provides for the right to free medical treatment for victims of

¹ Letter dated January 7, 2008

² International Covenant of Economic, Social and Cultural Rights

³ Article 26 (2), 1992 Constitution of Ghana

⁴ It involves the sexual enslavement of young girls, who are pledged to a shrine in order to atone for another family member's sins. This practice is commonly found among the Ewes of Tongu, the Anlo of the Volta Region and the Dangmes of the Greater Accra Region. Section 314A of the Criminal Code Act prohibits customary or ritual servitude of any kind, including *trokosi*. The minimum punishment for those convicted of practising *trokosi* is three years imprisonment. However, according to the 2007 report on religious freedom in Ghana by the U.S. Dept. of State, there remain approximately 50 children serving at *trokosi* shrines in the Volta Region alone.

⁵ Female genital mutilation (FGM) is forbidden under the Criminal Code Act 1960, Section 69A

⁶ Act 732

harassment *including cultural practices*, and yet to date, no such measures are in place to facilitate the exercise of this right.

3) **Institutional Mechanisms**

Primary responsibility for the enforcement of fundamental human rights lies upon the courts whose independence is guaranteed under Chapter 11 of the Constitution. In addition to the courts, independent institutions such as the Commission of Human Rights and Administrative Justice exist to investigate complaints of injustice and unfair treatment of any person.⁷ The Ghana Police Service also plays a key role in the enforcement of human rights pursuant to its role in prosecuting crime.⁸ Additionally, there are specialist institutions such as the Domestic Violence Victim and Support Unit (DOVVSU), which specifically handles domestic violence cases. More recently Juvenile courts have been instituted, so far, in Accra to expedite the hearing of cases involving minors.

4) **Civil Society & Human Rights Defenders**

Civil society organisations operate alongside national human rights institutions in monitoring state performance in the protection of human rights. Presently, human rights defenders in Ghana experience a relatively favourable environment that allows them to operate freely. There is a considerable understanding that NGOs' contribute towards national policy formulation but this has been marginalised by limited government commitment to act on civil society demands and policy recommendations.

The Government-sponsored Draft Trust Bill of 2006 and its accompanying policy guidelines of 2007 have been a potential threat to civil society space. Though these are meant to regulate NGO activity within the framework of trusts in principle they aim to place NGOs under government control and hence pose a risk to the much-needed independence of civil society.⁹ These Regulations provide wide powers to the Minister of Manpower Development and Employment in the approval of projects allowing for excessive Executive interference.¹⁰ The Draft Bill lumps NGOs with trusts and as a result fails to comprehend the diverse nature of NGOs that do not necessarily function as charities acting as sub-units of government agencies.¹¹ The Draft Bill was introduced in 2007 but since then, there has been a lack of proper consultation with civil society on the text of the Bill.

The media are also partners in the human rights framework and serve as instruments for human rights awareness. Since the repeal of the criminal libel provisions of the 1960 Criminal Code (Act 29) in 2001, the enjoyment of media freedom in Ghana has progressed. Today the freedom and independence of the media in Ghana is contained in Chapter 12 of the Constitution and in addition, protects the media from harassment and censorship.¹² The National Media Commission insulates the state-owned media from

⁷ Chapter 18, 1992 Constitution

⁸ Chapter 15, 1992 Constitution

⁹ For instance Clause 46 refers to the filling of vacancies and makes provision for the Trust Commissioner (administrator general) to appoint trustees in case a vacancy occurs in the number of trustees of an organisation upon application to court.

¹⁰ Regulation 8(2) provides that a project to be implemented in the country, shall not implemented unless approved by the relevant ministry and registered by the Ministry of Manpower, youth and employment.

¹¹ Dr. Raymond A. Atuguba, 'Legal Analysis of the Draft Trust Bill 2006 and the Draft NGO Policy Guidelines, 2007', Paper Prepared for the Parliamentary Advocacy Project of the Legal Resources Centre (LRC)-Ghana, April 2007. Also see; Civil Society Index – Ghana "Civil Society in A Changing Ghana: An Assessment of the Current State of Civil Society in Ghana", at

www.civicus.org/new/CSI_Ghana

¹² Article 162 (1)-(5), 1992 Constitution.

governmental control.¹³ Though state sponsored attacks on the media are non-existent, traces of media intolerance are still visible in attacks by supporters of political parties.¹⁴

E. The implementation of the normative and institutional framework

Much as there are laws in place to protect human rights, the disparity between legal theory and law in practice is still a major challenge due to the lack of effective implementation measures.

1) Fair trial guarantees

Fair trial guarantees under Article 19 of the Constitution are often flouted by police officers during arrests and detention. Evidence from the Accra Stadium Disaster Report,¹⁵ National Reconciliation Report,¹⁶ the Dansoman and Kotobabi Shooting Report¹⁷ and CHRI's investigations into the Takoradi Polytechnic Student Unrest,¹⁸ Odadao incident¹⁹ in June, Anloga,²⁰ Jayee students²¹ etc... reveal a consistent pattern of police brutality that the Ghana Police Service and the Inspector General of Police have failed to address. Mistreatment of persons in custody constitutes police misconduct under the Police Service Instructions and is subject to punishment-yet in most instances, police personnel found guilty of mistreating civilians have only been dismissed without further repercussion.

2) Access to justice

The 1992 Constitution of Ghana guarantees a right of access to justice²² however; this is hindered by various practical challenges including geographical imbalance in court distribution, which favours areas with higher economic activities, rather than areas with high population density.²³ Ashanti region which has a population approximately 25% higher than Greater Accra is represented by only 8 High Courts compared to Greater Accra's 29 courts.²⁴ The whole of the Northern region with a cumulative population of 3.3 million has only 5 High Courts. District Courts suffer from chronic shortages of magistrates; in 2007, there were 131 District Courts but only 50 appointed magistrates.²⁵

Long delays in attending to cases are a significant problem. According to DOVVSU,²⁶ in the first half of 2006, out of 5230 cases, 482 had been sent to court, with 301 awaiting trial.²⁷ It takes an average of two

13 Chapter 12, 1992 Constitution

14 The Media Foundation for West Africa's (MFWA) has been monitoring attacks on freedom of speech and expression in West Africa in 2006. Out of One hundred and forty-two (142) cases of violations recorded in fifteen of the sixteen countries covered Ghana is fifth on the list with thirteen (13) cases.

15 June 2001 Report

16 October 2004

17 May 2004

18 Incident took place on June 1, 2007 (*see attachment for details*)

19 Incident took place on June 7, 2007(*see attachment for details*)

20 Incident took place on November 1, 2007 (*see attachment for details*)

21 June 13, 2007

22 Article 19 provides that a court shall give every person charged with a criminal offence a fair hearing within a reasonable time.

23 AfriMAP and Open Society Initiative for West Africa, *Ghana Justice Sector and the Rule of Law: 2007*, Open Society Institute Network Publication p. 12

24 Ratio correct as at 2000; see 2000 Ghana Population Census

25 Nana Oye Lithur, 'Access to Justice in Ghana', 2007 (unpublished). *Nana Oye Lithur, Id.*,

26 *Supra*, B (3).

27 Nana Oye Lithur, 'Access to Justice for Children in Ghana', Paper prepared for CIDA, noted that of the 11,335 cases reported to DOVVSU's Accra branch between 1998 and 2004, only 19 percent led to a court appearance and less than 3 percent resulted in convictions from charges of assault. In October 2004, the Director of the Women and Juvenile Unit of Ghana (now known as the DOVVSU), commented that the unit has not been able to obtain a single conviction for rape since its establishment in 1999, despite the reportage of several hundred cases;

years for a sexual-crime case to be brought to trial, after the investigation stage. Perpetrators continue to be released pursuant to Article 14 (4) of the Constitution which provides that a person who is not tried within a reasonable time must be released without prejudice to the offence in question hence in some cases court delays present a serious risk to the victims.

The cost of initiating court proceedings is another challenge in ensuring access to justice. Many people cannot afford to pay for legal advice or representation. The hourly rate for a senior counsel is USD 300, and for a junior counsel is USD 150.²⁸ Article 294(1) of the Constitution contains provisions that grant the poor legal aid. Ghana Legal Aid Board (GLAB)²⁹ provides legal assistance to any person in need of it. A key problem with the legal aid service is the inadequate provision of pro bono lawyers.³⁰

Another issue is poor human rights awareness. CHRI conducted a survey of 1,000 people on their knowledge of Constitution of Ghana in Accra in 2002. In the survey 71% of respondents had not seen a copy of the Constitution and 44.7% said they did not know whether the Constitution was accessible and have never attempted to access it.³¹

Corruption by police and court officers is also a problem. Reported examples include court clerks taking money from litigants in the Judge's name; illegally granting adjournments and colluding with lawyers to falsify court documents, as well as judges over-charging clients for court fees.³²

Access to justice for victims of gender-based crimes is another challenge. *Trokosi*³³ is still practiced in the Volta region and yet not a single person has been convicted of this offence.³⁴ Sexual offenders remain undeterred in spite of amendments made to the Criminal Code Act in 1998. The amendments increased the mandatory minimum sentence for defilement from 5 to 7 years imprisonment, while ensuring that rape carries a sentence of between 5 and 25 years of imprisonment. Reports of rape however, increased from 533 in 2005 to 724 in 2006, and reports of defilement increased from 1779 in 2005 to 2442 in 2006.³⁵ In most cases, the victims are denied justice simply because they cannot afford to pay for a medical report, which costs Gh ₵15-35.

Bribery and corruption among police forces and the judiciary are also major impediments for the prosecution of gender crimes.³⁶ CHRI investigated a case in 2006, involving an elaborate scheme between the prosecutor of the case and counsel for the accused in a case involving the defilement of a 15-

²⁸ Scale of fees adopted by the Ghana Bar Association in 2002 at the mid-year General Conference

²⁹ The Board's operations are governed under the Legal Aid Scheme Act of 1997. The board is under the authority of the Ministry of Justice, who works to ensure equality of access to justice.

³⁰ *Nana Oye Lithur, Id.*,

³¹ CHRI Constitutionalism Report, 2003

³² CHRI has monitored instances of police prosecutors receiving money and threatening victims of sex-related offences with jail should they appear in court. (*infra*)

³³ *Supra*, n. 4

³⁴ *Id.*, n. 27

³⁵ Report on "Violence Prevention Initiatives in Ghana" by Dr Kofi Ahmed, Chief Medical Officer of Ghana, speaking at WHO Violence Prevention Conference July 2007

³⁶ The Report of the Parliamentary Select Committee of 2003 mentioned that judges extract illegal payments for court processes and proceedings. Similar statements were made in the 2004-2005 US Department Report on Human Rights for Ghana at www.state.gov/g/drl/rls/hrrpt/2004.41606; Nana Oye Lithur, 'Access to Justice in Ghana', 2007 (unpublished)

year-old. She was allegedly given a bribe, which she refused and was threatened with imprisonment and later given a false court date to prevent her from appearing at the trial.³⁷

F. Cooperation of the country under review with human rights mechanisms

Ghana is a signatory to several core human rights instruments and has in the past, taken exemplary steps to signal its commitment to such standards. For instance, Ghana was the first country to be reviewed by the African Peer Review Mechanism in 2005.³⁸ There have not been any reports of the state's non-cooperation with human rights mechanisms, although, it is observed that Ghana still has several outstanding reports pending submission to various monitoring bodies.³⁹

G. Human Rights instruments and documents

Ghana has ratified various human rights instruments but has not yet ratified the Second Protocol to the International Covenant on Civil and Political Rights, which aims at the abolition of the death penalty. Ghana is perceived to be a death penalty abolitionist state in practice although it still retains such punishment in its statute books.

H. Key national priorities as identified by CHRI

- Adoption of a National Evictions Policy
- Rehabilitation of Police cells
- Strengthening of judicial structures to ensure efficient delivery of justice
- Expansion of legal aid services to rural areas
- Effective implementation of human rights standards by the Police Service
- Increased civic education on human rights standards

³⁷ *The Republic v. Collins Nwafor*

³⁸ <http://www.nepad.org/2005/files/aprm/APRMGhanareport.pdf>

³⁹ These include; Convention against torture and other cruel inhuman or degrading treatment or punishment, International Covenant on Civil and Political Rights, International Covenant on the Elimination of all Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, International Convention on the protection of the Rights of all Migrant Workers and members of their families and the African Commission on Human & Peoples Rights