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REPORT ON  
GHANA'S COMPLIANCE WITH ITS REPORTING OBLIGATIONS  
PURSUANT TO ARTICLE 62 OF THE  
AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

BACKGROUND

Ghana gained independence from British colonial rule in March 1957. The country has experienced several military coups and civilian governments. Ghana is a unitary state with a presidential system of government. The country is divided into 10 administrative regions.

Ghana covers an area of about 238,537 square kilometers (92,100 square miles). It is situated in West Africa and bounded on the North by Burkina Faso, on the East by Togo, on West by La Cote d'Ivoire and on the South by the Atlantic Ocean. It has a coastline of 350 miles. The largest man-made lake in the world was created on the River Volta, which flows through and joins the sea in Ghana.

The population of Ghana as at the last population census in 1984 was 13.54 million with an annual growth rate of about 3%. The population was estimated in January 1997 at 18.5 million. Accra is the capital of Ghana and has the largest population density of about 52 persons per square kilometers.

In 1991, the military government of the erstwhile Provisional National Defence Council (PNDC), unveiled a transitional Programme to return Ghana to a constitutional democracy. A Committee of Experts was appointed to prepare a draft constitution for the administration of Ghana. A Consultative Assembly was set up by PNDC Law 253 to consider the draft constitution. In a referendum organized on 28<sup>th</sup> April 1992, the draft constitution was adopted by Ghanaians. This marked the start of a new process toward an era of liberal democratic governance.

In January 1993, Ghana returned to civilian constitutional rule after eleven years of military rule. The restoration of constitutional government occasioned the birth of several democratic institutions.

## Arms of Government

The powers of governance are shared among the three principal organs of state, the Executive, the Legislature and the Judiciary, each of which is expected to be independent of the other and to serve as a check against any potential abuse of power.

### 1. The Executive

The 1992 Constitution provides for a presidential system of government. Article 58(1) of the Constitution vests executive authority of Ghana in the President and enjoins the incumbent to exercise those powers in accordance with the provisions of the Constitution.

The primary functions of the President include execution and maintenance of the Constitution and all laws made under or continued in force by the Constitution. The President may exercise executive authority directly or through officers subordinate to him/her.

Article 67 of the Constitution enjoins the President, at the beginning of each session of Parliament and before a dissolution of Parliament, to deliver to Parliament an address on the state of the nation.

### 2. The Legislature

*The sovereign people of Ghana mandate their elected representative to go to Parliament and make laws for the effective administration of the Country*

There is a vibrant multi-party parliamentary democracy in Ghana, which has experienced two successful civilian national elections and a number of peaceful bye-elections.

Article 93 provides for an independent legislature, which shall exercise its power in accordance with the Constitution. Article 93 (1) of the Constitution provides for a Parliament which shall consist of not less than one hundred and forty elected members. Article 93(2) provides that "subject to the provision of this Constitution, the legislative power of

Ghana shall be vested in Parliament and shall be exercised in accordance with the Constitution. "

The power of Parliament to make laws is exercised through bills which it passes, and which are assented to by the President. The Parliament has no power to pass any law that takes effect before the date of the making of the law if it imposes limitations on the personal rights and liberties of any person.

### 3. The Judiciary

To guarantee the rule of law, Article 125 provides for an independent judiciary which shall be subject only to the Constitution and neither the executive nor the legislature shall have or be given final judicial power.

*The equality of all Persons before the law and their freedom of enforce their rights and liberties in a court a law is guaranteed under the constitution.*

*The independence of the Judiciary from the Executive and the Legislature is entrenched in the constitution.  
The Judiciary shall be accountable to the constitution and the people*

In exercise of its judicial power, the judiciary shall have jurisdiction in all matters civil and criminal, including matters relating to the Constitution and such other jurisdiction as Parliament may, by law, confer on it.

The top hierarchy of the judiciary is the Supreme Court which has exclusive jurisdiction in:

"all matters relating to the enforcement or interpretation of [the] Constitution; and

all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under [the] Constitution".

The powers and functions of the judiciary may be described as follows.

1. The Judiciary is the branch of government given authority to interpret, apply and enforce the laws of Ghana.
2. It shall be made up of the Supreme Court, the Court of Appeal, High Court and Regional Tribunals, and such Lower Courts and Tribunals as Parliament may establish.
3. The Courts and Public Tribunals form one structure headed by the Chief Justice.
4. The Supreme Court is given power as the highest authority to interpret the constitution.
5. The Supreme Court shall have the final authority to say what the law is including determining whether any acts of Parliament or President comply with the constitution. The High Court shall also have the power to enforce the Fundamental Human Rights and Freedoms under the constitution.
6. All citizens as guardians of the constitution have the right of unimpeded access to the courts to challenge any acts of the President, Parliament or any other body, public or private, which are inconsistent with the provisions of the Constitution.
7. In furtherance of the principle of independence of the Judiciary from both Parliament and the President, the financial administration of the Judiciary shall be independent of executive control and shall be subject to annual expenditure approvals by Parliament.
8. Citizens may exercise popular participation in the administration of justice through the institution of public and customary tribunals and the jury and assessor system.
9. In order to safeguard the principle of the judiciary, the financial independence, a justice of the Superior court or a chairman of the Tribunal or a Judicial officer shall not be removed from office except for stated misbehaviour or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind.

MEASURES (INCLUDING LEGISLATION OR POLICY) TAKEN BY  
GHANA TO IMPLEMENT THE PROVISIONS OF THE CHARTER

CIVIL AND POLITICAL RIGHTS

Articles 2 and 3 of the African Charter

Article 2

*Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.*

Article 3

- 1. Every individual shall be equal before the law*
- 2. Every individual shall be entitled to equal protection of the law.*

THE GHANAIAN CONSTITUTION

Article 12 of the 1992 Constitution provides:

1. The fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the courts as provided by the Constitution.
2. Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual (contained in this chapter) but subject to respect for the rights and freedoms.

Article 17 of the Constitution provides:

1. The dignity of all persons shall be inviolable.
2. No person shall, whether or not he is arrested, restricted or detained, be subject to:
  - a. torture or other cruel, inhuman or degrading treatment or punishment;
  - b. any other condition that detracts or is likely to detract from his dignity and worth as a human being.

Article 17 of the Constitution provides:

1. All persons shall be equal before the law

## B. LEGISLATION AND POLICY

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

The Public Order Act abolished the permit system, which previously restricted the right to demonstrate or picket in protest against particular policies of government that might be deemed inimical to public interest.

### Directive Principles of State Policy

In addition to the foregoing, the 1992 Constitution also contains a cardinal statement of national values, which are intended to guide the conduct of all citizens and authorities in Ghana. These values are found in Article 34 of the Constitution, which imposes collective responsibility on all citizens, organs of government (i.e. the Executive, Judiciary and Parliament), cabinet, political parties, and other bodies and persons in applying interpreting the constitution or any other law and also in taking and implementing policy decisions for the establishment of a just and free society. Specifically, Article 34(2) provides as follows:

"The President shall report to Parliament at least once a year all the steps taken to ensure the realization of the policy objectives contained in this chapter (i.e. Directive Principles of State Policy); and, in particular, the realization of basic human rights, a healthy

economy, the right to work, the right to good health care and the right to education”.

This provision is manifested in the President's annual Sessional Address to Parliament. The Sessional Address, which is obligatory on the President, reports on what the Executive has done in the preceding year towards the realization of the provision of Article 34(2). It is also an occasion for the Executive to provide its projections for the ensuing year to Parliament.

Additionally, the Directive Principles of State Policy sets out political, economic social and cultural objectives to guide policy, formulation and implementation by the state taking into account the sovereignty and dignity of the human person.

### Political Objectives

Article 35 articulates the political objective of the state, namely the building of a democratic society dedicated to the realization of freedom and justice; a society in which sovereignty resides in the people; and in which there is respect for the fundamental human rights and freedoms of all citizens.

The state is also enjoined to actively promote the integration of the people and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs.

### CASE LAW

#### *NPP v. ATTORNEY GENERAL (March 8, 1994)*

On December 31, 1981, the elected civilian government of Ghana established under the 1979 Constitution was overthrown in a military coup d' etat by Flt Lt. Jerry John Rawlings, who subsequently established the Provisional National Defence Council (PNDC) as the Government of Ghana. On January 7, 1993, a new constitution came into effect. The PNDCE ceased to exist from that day.

On December 19, 1993 the government announced December 31, 1993 as a holiday as it had previously done every year.

The New Patriotic Party the key opposition party in Ghana, challenged the legality or constitutionality of declaring 31<sup>st</sup> December a national holiday, a day on which a constitutional government was overthrown, and celebrating some with public funds.

The Supreme Court decided in favour of the plaintiffs. It held that, 31 being the anniversary of the day on which the military overthrown a constitutionally-elected government, it is unconstitutional to declare and celebrate it as a national holiday.

In *New Patriotic Party (NPP) v. Ghana Broadcasting Corporation (GBC)*, November 13, 1993 (Unreported), the NPP, an opposition party, complained that the GBC had denied it fair opportunity and equal access to its facilities to comment on the Government's 1993 budget. The Supreme Court ordered the GBC to afford the plaintiff, within 2 weeks from the date of the decision, the same opportunity as it had given to the ruling National Democratic Party to articulate its views on the 1993 budget.

Articles 4, 5 and 6 of the African Charter

Article 4

*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*



Article 5

*Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.*

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

a. THE GHANAIAN CONSTITUTION

Articles 13 to 16 of the Constitution provide:

No person shall be deprived of his life intentionally except in exercise of the execution of a sentence of a court of a criminal offence under the laws of Ghana of which he has been convicted.

Article 14 of the Constitution provides:

1. Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in accordance with procedure permitted by law.
2. A person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice.

Article 15 of the Constitution, as noted earlier, provides as follows:

1. The dignity of all persons shall be inviolable.
2. No person shall, whether or not he is arrested, restricted or detained, be subjected to:
  - a. torture or other cruel, inhuman or degrading treatment or punishment;
  - b. any other condition that detracts or is likely to detract from his dignity and worth as a human being.

Article 16 of the Constitution provides:

1. No person shall be held in slavery or servitude
2. No person shall be required to perform forced labour

The Parliament of Ghana has, through a variety, legislative enactments given expression to its commitment to the promotion and protection of the dignity of the individual. Laws prohibiting all forms of slavery and enslavement, as well as dehumanizing cultural practices, have been passed since 1993.

In addition, several independent statutory national institutions have championed the preservation and promotion of the dignity of the individual through a variety of public educational programmes. Among these are the Commission on Human Rights and Administrative Justice, the National Commission on Civic Education, the National Commission on Children, and the National Commission on Culture. Other para-statal organizations, such as and the National Council for Women and Development, and a plethora of NGOs are also actively involved in this important endeavour. Their activities cover such themes as the prevention of unlawful detentions, police and military brutalities against citizens, sexual and racial harassment and violence against women, children and persons with physical and mental disabilities.

Article 7 of the African Charter

Article 7

Every individual shall have the right to have his cause heard.

This comprises:

- a. The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
- b. The right to be presumed innocent until proved guilty by a competent court or tribunal;
- c. counsel of his choice;
- d. The right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission, which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provisions was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

THE GHANAIAN CONSTITUTION

Article 19 of the Constitution

1. A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court
2. A person charged with a criminal offence shall:
  - a. in the case of an offence other than high treason or reasons, the punishment for which is death or imprisonment for life, be tried by a judge and jury and -
    - i. where the punishment is death the verdict of the jury shall be unanimous; and
    - ii. in the case of life imprisonment, the verdict of the jury shall be by such majority as Parliament may be law prescribe;

Article 19 of the Constitution contains several provisions guaranteeing fair trial for persons charged with offences under the laws of Ghana.

Article 23 of the Constitution further provides that:

"Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and person aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal."

## LEGISLATION AND POLICY

### Legal Aid Board

The Legal Aid Board is established to serve as a body to offer free legal services at the expense of the state for indigent clients.

### The Commission on Human Rights And Administrative Justice

Article 216 of the Constitution entrenches the creation and maintenance of the Commission on Human Rights and Administrative Justice (CHRAJ) as an independent, statutory human rights agency.

Established by the *Human Rights and Administrative Justice Act [Act 456]* on July 6, 1993, the CHRAJ was formally inaugurated in October 1993. It is charged with the multiple responsibilities of investigating and mediating human rights complaints. The CHRAJ also doubles as an agency for preventing, investigating and redressing administrative injustices and corruption.

The CHRAJ has also been spear-heading a national campaign against unlawful detentions and detention beyond the allowable period of not more 48 hours. The CHRAJ undertakes regular inspection of prisons and police cells in order to ensure that inmates live under safe and congenial environment.

In addition, CHRAJ is responsible for educating members of the public about their rights and obligations under the *Act*, in consonance with the values of our new constitutional democratic order.

### Articles 8 and 9 of the African

#### Article 8

*Freedom of conscience, the profession and free practice of religions shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.*

#### Article 9

- 1. Every individual shall have the right to receive information.*
- 2. Every individual shall have their right to express and disseminate his opinions within the law.*

### THE GHANAIAN CONSTITUTION

Article 21 of the Constitution provides:

All person shall have the right to:

- a. freedom of speech and expression, which shall include academic freedom of the press and other media;
- b. freedom of thought, conscience and belief which shall include academic freedom;
- c. freedom to practise any religion and to manifest such practice;
- d. freedom of assembly including freedom to take part in processions and demonstrations;
- e. freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interest;

- f. information, subject to such qualifications and laws as are necessary in a democratic society;
- g. freedom of movement which means the rights to leave and enter Ghana and immunity from expulsion from Ghana.

In addition, Article 162 of the Constitution guarantees freedom and independence of the media. Article 165 recognises media rights and freedoms as additional to fundamental human rights. In effect, the principle of the freedom and independence of the media as an essential requirement of a free and democratic society is entrenched in the Constitution.

Article 162 of the Constitution also prohibits media censorship in Ghana. Furthermore, no person is required to obtain a license as a prerequisite to establishing or operating a private press or media

Editors and publishers and other officials of the mass media shall not be controlled, interfered with or harassed by the Government or any other person for their editorial opinions and views of the contents of their publications.

The state-owned media is also required by the Constitution to provide fair opportunity for the presentation of divergent views and dissenting opinions. In addition, publishers and editors are obliged to publish rejoinders from persons affected by earlier publications.

### The National Media Commission

Article 166(1) of the Constitution provides for the setting up of a National Media Commission (NMC) whose functions shall include the following:

- a. to promote and ensure the freedom and independence of the media for mass communication or information;
- b. to take all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards in the mass media, including the investigation, mediation and settlement of complaints made against or by the press or other mass media;

- c. to insulate the state owned media from government control;
- d. to make regulations by constitutional for the registrations by constitutional for the registration of newspapers and other publications, expect that the regulations shall not provide for the exercise of any direction or control over the professional functions of a person engaged in the production of newspapers or other means of mass communication.

The NMC, since its establishment in 1993, has been mediating complaints alleging infraction of privacy rights. It has facilitated out-of-court settlement of libel cases brought against journalists and other media practitioners.

The media scene in Ghana is replete with private radio stations which run interactive Programmes geared towards promoting accountability and transparency in governance - e.g. phone-ins, talk shows, etc. There are seven FM stations in Accra alone, with all the remaining nine regional capitals having at least one FM station. Kumasi, the second largest city in Ghana, boasts five FM radio stations.

A robust private press, made up of approximately 11 newspapers, competes for regular readership with the two national dailies (*The Ghanaian Times* and the *Daily Graphic*) and the two weeklies (*The Weekly Spectator* and *The Mirror*) which are state- controlled. Various high-quality professional magazines also maintain a prominent presence on the newsstands. Radio, television and newspapers reach virtually every corner of Ghana.

As noted earlier, the National Media Commission has oversight responsibilities for the free exercise of media freedom and the resolution of administrative issues and conflicts in the operation of the media. Today, there is a relatively free and vibrant media in Ghana compared with the situation in the PNDC era.

The Ghana Journalist Association (GJA), in conjunction with the NMC, has drawn up a Code of Ethics to guide media practitioners in attaining qualitative professional conduct among media practitioners.

Articles 10 and 11 of the African Charter

Article 10

1. *Every individual shall have the right to free association provided that he abides by the law.*
2. *Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.*

Article 11

*Every individual shall have the right assemble freely with others. The exercise of this right shall be subject only necessary restrictions provided for by law in particularly those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.*

LEGISLATION AND POLICY

Article 21 of the Constitution also provides:

1. All person shall have the right to:
  - a. freedom of speech and expression, which shall include academic freedom of the press and other media;
  - b. freedom of thought, conscience and belief which shall include academic freedom;
  - c. freedom to practise any religion and to manifest such practice;
  - d. freedom of assembly including freedom to take part in processions and demonstrations;
  - e. freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interest;



- f. information, subject to such qualifications and laws as are necessary in a democratic society;
- g. freedom of movement which means the rights to leave and enter Ghana and immunity from expulsion from Ghana.

### Political Pluralism in Ghana

Ghana has a pluralistic political system, which is manifest in the right to form political parties in accordance with the Political Parties Law (PNDCL). Article 3 of the 1992 Constitution debars Parliament from enacting a law establishing a one-party state whilst Article 55(a) guarantees the right to form political parties. There are approximately 7 registered political parties in the country.

### Professional and Interest Group Activity

Numerous professional bodies and interest groups also exist to freely champion the cause of their various constituents, and to exert pressures and checks on the state to act in ways favourable to their members. Among the most politically vocal and influential interests groups in the country are the Trade Unions Congress (TUC), the Ghana Bar Association (GBA), the Ghana Medical Association (GMA), the Ghana National Association of Teachers (GNAT), the National Union of Ghanaian Students (NUGS), the Ghana Registered Nurses' Association (GRNA) and the Judicial Services Staff Association (JUSAG).

Thus, trade unions, political parties and a host of interest groups operate in an atmosphere of institutionalized pluralism.

### Article 12 of the African Charter

1. *Every individual shall have the right to freedom and residence within the borders of a State provided he abides by the law.*
2. *Every individual shall have the right to leave any country, including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protections of national security, law and order, public health or morality.*
3. *Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.*

4. *A non-national legally admitted in a territory of a State Party to the present Charter may only be expelled from it by virtue of a decision taken in accordance with the law.*
5. *The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic, or religious groups.*

### THE GHANAIAN CONSTITUTION

Article 21(1)(g) provides that all persons in Ghana shall have the right to freedom of movement which means the right to move freely in Ghana, the right to leave and to enter Ghana, and immunity from expulsion from Ghana.

There are statutory bodies such as the Ghana Immigration Service and the National Refugee Board which have responsibility for regulating and managing immigration and refugee matters.

### Article 13 of the African charter

1. *Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.*
2. *Every citizen shall have the right of equal access to the public service of his country.*
3. *Every individual shall have the right to access to public property and services in strict equality of all persons before the law.*

## THE GHANAIAN CONSTITUTION

Article 21(3) of the Constitution provides as follows:

(3) All citizens shall have the right and freedom to form or join political parties and to participate in political activities subject to such qualifications and laws in a free and democratic society and are consistent with this constitution.

Thus, the Constitution guarantees the right of individuals to freely join or associate with others in the pursuit of professional, occupational, political and other legitimate social and economic activities.

### Decentralization of Political and Administrative Power

By virtue of Article 240 of the Constitution, political power and authority have been effectively decentralized in Ghana since 1992.

The Constitution guarantees to the people of Ghana a system of local Government administration that is characterized by the following:

- a. the election on a non partisan basis of 70% of the membership of the Assembly;
- b. the local direction and control of decentralized public services and government institutions; and
- c. the financing of developments including the establishment of District Assemblies Common Fund into which Central Government shall pay at least 5% of total national revenue.

The principle of participation by all the people in government through the District Assemblies is entrenched in the constitution. Participation of the people shall be through their election of 70% of the membership of the District Assembly and also their involvement in the implementation of the projects and programmes proposed by the Assembly. Communal labour for development is encouraged and recognized as a vital public service and duty.

1. At most 30% of the membership of the district assemblies shall be by appointment of persons from important and identifiable groups in the district. This will include representatives of traditional authorities.
2. The District Assemblies shall have power to initiate policies and implement programmes designed to develop their districts through the building of schools, health posts, and provisions of electricity and water among other functions. These powers extend also to making appropriate local laws to encourage good government and order in the localities.
3. Elections to the Assemblies shall be non-partisan and be held every 4 years. Political parties shall not sponsor candidates for elections to the Assembly. Assemblymen and women are required to have total allegiance to the community they represent irrespective of their party preference as individuals.
4. To ensure the availability of financial resources to fund district projects and programmes, the constitution establishes that district Assemblies Common fund into which at least 5% of the gross revenue of Ghana realized through taxation and other resources shall be paid. Payments from the Common Fund to the districts shall be based on a formular to be established by Parliament with equity as the overriding principle for allocation of these funds for development. Other financial resources shall come from government grants and also monies raised by District assemblies in exercise of their limited taxation and licensing powers.
5. Executive power at the District level shall be exercised by the District chief Executive who shall be responsible for the day-to-day administration of the district and be the link between the District and Central Government. He shall be appointed by the President and approved by two-thirds of the members of the Assembly present and voting.

The District Chief Executive shall, therefore, be accountable not only to the President but also to the district assembly and shall be expected to respect and promote the interest of the district in which he serves within the framework of national policy. His term of office shall be four years. He may be removed during the period for abuse

of office by two-thirds of all the members of the District Assembly. He will also be a non-voting member of the District Assembly.

6. The Principal Legislative office of the District Assembly shall be the Presiding Member of the Assembly. He shall be elected from the membership of the District Assembly by a two-thirds majority and is removable by the Assembly. His term of office shall be two years and he may seek re-elect.

He shall co-ordinate and ensure the smooth implementation of the Assembly's Legislative programme as well as consult from time to time with the District Chief Executive.

7. Citizens shall have the right to petition the Courts or the Commission for Human Rights and Administrative Justice for any violations of their freedoms resulting from the administrative and legislative actions of the District Assembly and its officers.
8. Regional Minister and Deputy Minister shall be appointed by the President and shall co-ordinate the affairs of all the districts through the Regional Co-ordinating Councils which shall include all District Chief Executives and Presiding Members in the region.

Thus, the citizenry is empowered politically to take part in local government administration through the decentralisation policy of government. One hundred and twelve administrative District Assemblies, with elected members and politically appointed heads, oversee the rural and community social and economic development. The legal framework for the realization of this objective is set out in Local Government Act 462 of 1993.

There is, in all, a liberalized political setting characterized by active competitive politics in Ghana.

#### Democracy-Enhancing Institutions

Various independent institutions have also been set up with the mandate of safeguarding the human and democratic rights of the citizenry. They include the following:

1. National Commission on Civic Education (NCCE)

2. Electoral Commission

An informal system of networking exists among these bodies. The objective is to ensure greater inter-agency collaboration in the pursuit of the broad goals of justice, democratic governance and human rights advancement in the country.

1. The National Commission on Civic Education (NCCE)

Article 321 of the Constitution provides for the establishment of the NCCE. The functions of the NCCE, as spelt out in the Constitution, include the following:

- a. to create and sustain within the society the awareness of the principles of and objectives of the 1992 Constitution as the fundamental law of the people of Ghana;
- b. to educate and encourage the public to defend this constitution at all times, against all forms of abuse and violation;
- c. to formulate for the consideration of Government, from time to time, programmes at the national, regional and district levels aimed at realising the objectives of the constitution; and
- d. to formulate, implement and oversee programme intended to inculcate in the citizens of Ghana awareness of their civic responsibilities and appreciation of their rights and obligations as free people.

The NCCE has been discharging its mandate through educational programmes aimed at sensitizing and raising civic awareness of the citizenry as far as their rights and responsibilities are concerned. Examples of such programmes are the formation of Civic Education Clubs in second and tertiary educational institutions.

Furthermore, a sustained programme for social/professional groups such as churches, trade associations traditional rulers the military, highlight issues on democracy and good governance.

## 2. The Electoral Commission

Article 43(1) of the constitution provides for the establishment of the EC. The functions of the EC included the following:

- a. to compile the register of voters and revise it at such periods as may be determined by law;
- b. to conduct and supervise all public elections and referenda
- c. to educate the people on the electoral process and its purpose; and
- d. to undertake programmes of rate expansion of the registration of voters.

The EC discharges its mandate by organizing periodically elections at the local government and national levels. It also supervises and conducts elections for the registered political parties as well as some professional bodies such as GNAT, TUC, etc.

Article 14 of the African Charter

*The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.*

## THE GHANAIAN CONSTITUTION

Article 18 of the Constitution provides:

- 1. Every person has the right to own property either alone or in association with others.
- 2. No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for protection of health or morals, for the prevention of

disorder or crime or for the protection of the rights or freedom of other.

Article 20 of the Constitution provides:

1. No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the state unless the following conditions are satisfied:
  - a. the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit; and
  - b. the necessity for the acquisition is clearly stated and is such as to provide reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property
2. Compulsory acquisition of property by the state shall only be made under a law which makes provision for:
  - a. the prompt payment of fair and adequate compensation; and
  - b. a right of access to the High court by any person who has an interest in or right over the property whether direct or on appeal from any other authority for the determination of his interest or right and the amount of compensation to which he is entitled.

## 2. ECONOMIC RIGHTS

### Article 15 of African Charter

#### *Article 15*

Every individual shall have the right work under equitable and satisfactory conditions, and shall receive equal pay for equal work.



## THE GHANAIAN CONSTITUTION

Article 24 of the Constitution provides:

1. Every person has the right to work under satisfactory, safe and healthy conditions, and shall receive equal pay for equal work without distinction of any kind
2. Every worker shall be assured of rest, leisure and reasonable limitation of working hours and periods of holidays with pay as well as remuneration for public holidays.
3. Every worker has a right to form or join a trade union of his choice for the promotion and protection of his economic and social interests.
4. Restrictions shall not be placed on the exercise of the right conferred by clause (3) of this article except restrictions prescribed by law and reasonably necessary in the interest of national security or public order or for the protection of the rights and freedoms of others.

## LEGISLATION AND POLICY

Several laws exist to regulate the relationship between employers and employees, and to ensure non-discrimination in remuneration, as well as the provision of safe and congenial working environment. Among these are:

1. Industrial Relations Act
2. Workmen's Compensation Law
3. Factory, Offices and Shops Act
4. Labour Decree; and
5. Investment Code

In addition to the constitutional provisions guaranteeing trade union rights, such rights are further protected and promoted by the Industrial

Relations Act of 1965, Act 299. A consumer protection initiative, under the Environmental Impact Assessment Programme, is being implemented to protect Ghanaians from the hazardous effects of unrestrained industrialisation, especially in the mining and commercial tree harvesting sectors of the economy.

### Economic Objectives of the Directive Principles of State Policy

With respect to the economy, Article 36 of the Constitution enjoins the state to take all necessary measures to ensure "a sound and healthy economy". Among other things, it calls on the state to manage the national economy in such a manner as to maximize the rate of economic and social development, and to secure the maximum welfare, freedom and happiness of every person. This includes providing adequate means of livelihood, suitable employment and public assistance to the needy.

### Framework for Promoting Economic Rights

Ghana pursues a macro-economic policy based on a market oriented liberalized system of economic management. In 1983, the country adopted an Economic Recovery/Structural Adjustment Programme (ERP/SAP).

The economy is deregulated with emphasis on private sector participation. State owned enterprises (SOEs) are being divested under the Divestiture Implementation Programme administered by the Divestiture Implementation Committee (DIC).

An umbrella advisory body to boost private sector participation in the economy, called the Private Enterprises Foundation (PEF), has been established. PEF coordinates and shapes policies affecting the private sector.

To promote investment locally and externally, the Ghana Investments Promotion Centre (GIPC) has been set up. GIPC facilitates investment initiatives in accordance with the Investment Promotion Centre Act 1994 (Act 478). A Free Zones Board has been established to further bolster competitive investment opportunities.

In addition, a National Development Planning Commission (NDPC) has been set up with a mandate to plan the overall development objectives of the country. The NDPC prepared a document known as *Vision 2020*, which

aimed at addressing a plethora of issues relating to growth and development in the country. The document is blueprint for the attainment of Ghana's development goals, including the attainment of middle-income status, by the year 2020.

A National Board for Small -Scale Businesses also exist to promote entrepreneurs within the non-formal sector of the Ghanaian economy.

A National Institutional Renewal Programme has been initiated to transform the public service to make it more responsive to the aspirations of the citizenry.

## SOCIAL AND CULTURAL RIGHTS

### Article 16 and 17 of the African Charter

#### *Article 16*

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the represent Charter shall take the necessary measures to protect the health o their people and to ensure that they receive medial attention when they are sick.

#### *Article 17*

1. Every individual shall have the right to education.
2. Every individual may freely take part n the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

### Social Objectives of the Directive Principles of State Policy

Article 37 of the Constitution enjoins the state to pursue such social policies as would secure and protect a just social order founded on the ideals of freedom, equality, probity and accountability. Furthermore, it shall be a policy of the state to ensure that every citizen has equality of rights, obligations and opportunities before the law.

## THE GHANAIAN CONSTITUTION

Article 25 of the Constitution provides:

1. All persons shall have the right to equal educational opportunities and facilities.
2. Every person shall have the right, at his own expense, to establish and maintain a private school or schools at all levels and of such categories and in accordance with such conditions as may be provided by law.

Article 26 also provides as follows:

26 (1) Every person is entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this constitution.

### Education and Training

Public schools funded by government co-exist with numerous private educational institutions, from nursery to senior secondary school. Five public universities exist in the country. One private university was established in Accra in 1998, and several religious bodies have recently unveiled plans to establish additional universities in various parts of the country.

The Government of Ghana has introduced a policy of Free, Compulsory and Universal Basic Education (FCUBE) in the country. The policy seeks to provide equal educational opportunities, especially at the basic level, for children of school going age.

The Ghana Education Service, which is the policy implementation agency of the Ministry of Education, has also set up a Non-Formal Educational Department which promotes functional literacy among new adult learners.

### Literacy

Although there has been some improvement in overall literacy rates in Ghana, a strong gender differential in education remains. For example, between 1970 and 1995, the overall literacy rate more than doubled from 30% to 64%; however, the female adult literacy rate in 1995 was 53%, versus 76% for men.

Moreover, the literacy gap shrunk only marginally from 25 percentage points in 1970 to 23 percentage points in 1995. In 1990, the primary school enrollment ratio for girls was 69%, whereas the overall primary school enrollment ratio was 77%.

### Culture and Human Dignity

Article 15 of the 1992 Constitution provides that the dignity of all persons shall be inviolable. Article 26 also guarantees cultural rights. It further prohibits customary practices which are degrading, dehumanising or injurious to the dignity of a person.

A National Commission on Culture (CNC) has been set up to promote a systematic cultural review. The objective is to ensure the promotion and enhancement of the positive elements of Ghanaian culture and to discourage the maintenance of those cultural values and practices which derogate from the dignity of the individual or which conflict with internationally-recognized standards of decency.

There is a sustained programme of education aimed at abolishing obnoxious cultural practices such as female genital mutilation (FGM), trokosi, maltreatment of persons suspected to be witches (usually women), and widowhood rites. This Programme is spear-headed by the CHRAJ, the NCCE and a variety of civil liberty-oriented NGOs such as International Needs (Ghana), FIDA, and the 31<sup>st</sup> December Women's Movement.

In 1995, Parliament passed a law abolishing FGM in Ghana. The practice continues nonetheless, and the CHRAJ and various human rights actors are increasingly pursuing a two-pronged approach of encouraging prosecution of offenders and the education of the public.

In August 1998, Parliament passed a bill prohibiting customary servitude, including the infamous trokosi system under which vestal virgins, usually young girls and women, are held in virtual slavery at fetish shrines in atonement for the alleged moral transgressions of their parents or other family members. As with the struggle against FGM, the CHRAJ has been urging the police and the wider society to couple prosecution with public education in the campaign to combat the trokosi system.

### Cultural Objectives

Article 39 of the Constitution enjoins the state to ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of society. However, traditional practices which are injurious to the health and well-being of the person are to be abolished.

### Preservation of the Institution of Chieftaincy

In recognition of our time-honoured cultural heritage, article 270 of the constitution guarantees the institution of chieftaincy, together with its traditional councils, as established by customary law and usage. The article further insulates the institution from control by any authority whatsoever. In addition, it provides the following framework to guide the institution of chieftaincy:

1. A Chief shall not take part in active party politics and any chief wishing to do so shall abdicate his stool or skin. However, a chief may be appointed to any public office for which he is qualified.
2. The power of government to give recognition to a Chief by way of gazetting is not required.
3. A person who has been convicted of serious crimes such as treason or offences involving dishonesty or moral turpitude shall not qualify to become a Chief.
4. Matters affecting Chieftaincy shall be mainly decided by Regional and National Houses of Chiefs.
5. Before any bill which affects the institution of chieftaincy is introduced in Parliament, it must first be referred to the National House of Chiefs.

Article 18 of the Charter

1. *The family shall be the natural unit and basis of society. It shall be protected by the State, which shall take care of its physical and moral health*
2. *The State shall have the duty to assist the family, which is the custodian of morals and traditional values recognized by the community.*
3. *The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women and the child as stipulated in international declarations and conventions.*
4. *The aged and the disabled shall also have the right so special measures of protection in keeping with their physical or moral needs.*

THE GHANAIAN CONSTITUTION

The Rights of Women, Children, Families and the Disabled

Protection of the Family

Like most social institutions in contemporary Africa, the family is the site of major struggles for human social advancement, release and realization of the human potential. Several articles in the Constitution provide for the protection of individuals from discrimination and other forms of unfair treatment. Most of these provisions serve to strengthen the family; an institution widely recognized as one of the most fundamental agents of social development.

Several aspects of the *Constitution* are progressive in their potential contribution to the protection of family welfare in Ghana. Without seeking to provide an exhaustive list of these provisions, it is pertinent to identify the following:

- Article 26(2) which provides that "all customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited";
- Article 27(1) which enjoins society, particularly employers, to accord "special care" to mothers during a reasonable period before and after child-birth, and to provide "working mothers" with paid leave;

### The Rights of Women

- Article 27(2) which stipulates that facilities shall be provided for the care of children below school-going age to enable women, who have the traditional care for children, realise their full potential"; and
- Article 27(3) provides that "Women shall be guaranteed equal rights to training and promotion without any impediments from any person".

The Constitution provides for the equal and equitable treatment of both women and men. Article 17(2) of the Constitution prohibits discrimination based on several grounds including sex. Specifically, it provides that:

"17(2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status." (Emphasis added)

In a recent landmark decision in *Tettey v. Norvor*, the CHRAJ interpreted the prohibition against gender-based discrimination in employment as including a prohibition against sexual harassment.

Partly as a result of advocacy work undertaken in furtherance of this provision, and partly as a result of general social development and a noticeable enhancement in the knowledge base of our society, there has been a remarkable progress toward redressing the acute gender imbalances and discriminatory treatment of women.

The average life expectancy for women in Ghana is 58 years, compared to 54 years for men. For both sexes combined, the average life expectancy is 56.

Approximately 28% of currently married women (including nearly 40% of married women in their forties) are in polygynous unions.



### Affirmative Action Policy

The government recently approved recommendations on Affirmative Action and subsequently announced the setting up of a Committee on Affirmative Action.

The Affirmative Action strategy seeks to enhance women's representation in the "centres of relevance" and their effective contribution to the development and implementation of policies. Among other things, the policy aims at redressing the significant systemic and historic gender imbalance in the representation of the sexes in the political and administrative spheres of the nation.

The Affirmative Action policy represents a greater commitment to social justice and fairness; it signifies recognition of the invaluable contribution women make to society and can make better if given the opportunity. It seeks to ensure appropriate representation of women on all advisory bodies; appointment of more women into government and to serve on Public Boards, Commissions, Councils, Committees and official bodies, including cabinet and the council of state.

It is envisaged that, in the medium and long term, women's representation on the above advisory boards would increase to a minimum of 40%. Furthermore, 30% of the seats in the District and Sub-districts Assemblies are to be allotted to women to ensure adequate representation in local government administration.

Politically, government has tasked the Electoral Commission to encourage political parties to put up more women as parliamentary candidates.

The National Council on Women and Development (NCWD) is being strengthened and resourced adequately to promote women's rights, including the realization of Programmes focused on uplifting the Ghanaian women.

Various women-centred NGOs, such as the 31<sup>st</sup> DWM and FIDA run programmes to supplement the efforts of the NCWD.

## The Rights of Children

Article 28 of the 1992 Constitution gives full recognition to the rights of all children in Ghana and enjoins Parliament, parents and society at large to respect and protect the rights of children in order to ensure their well-being and development. Special care and maintenance provisions are contained in Article 28 of the *Constitution*.

Ghana chalked a major international feat in the protection of the right of the child by being the first country to ratify the UN Convention on the Rights of Child (CRC) in 1990.

Ghana went further to demonstrate its commitment to CRC by preparing a National Programme of Action called "The child Cannot Wait", to deal with the provisions of the CRC.

Prior to the ratification of CRC, Ghana had long displayed its commitment to upholding the right of the child. In 1979, the Ghana National Commission on Children (GNCC) was established to articulate children's concerns and issues to shape policies and initiatives affecting the Ghanaian child.

Landmark initiatives aimed at promoting the rights of the child in Ghana include the commissioning of a consultant in 1985/86 by the GNCC to conduct a study on the status of the Ghanaian child.

As a socially vulnerable group, growth of the child and attainment of his right as enshrined in the CRC are being addressed in a multi-faceted manner:

- In the area of education, the FCUBE Programme has been introduced to address issues of inequitable access, deterioration and inefficiency service delivery. Early Childhood Development Centre have been set up to promote child-care at pre-school level.
- On health, national programmes dubbed the Expanded Programme on Immunisation (EPI), Primary Health Care (PHC) and the proposed National Health Insurance Scheme have been designed to protect the child against preventable killer diseases as well as addressing the constraints affecting the child's access to health delivery.

- Socio-cultural practices, which fetter the growth and self-confidence of children, are being checked by the passage of the *Children's Act* (1998). Among these practices are barter marriages, early betrothal of the girl child, FGM, trokosi and cruel and degrading punishment
- The Criminal code (Amendment) Act also provides heavier sanctions for offences relating to child abuse such a rape and defilement.

The Department of Social Welfare (DSW), in conjunction with the Family Tribunals, protect the child's right to maintenance. DSW also provides a regulatory framework for child fostering and placing. It runs children's homes for parentless children. Furthermore, DSW has set up Child Survival and Development Committees to sensitize parents and school children on child survival and development issue.

NGOs play significant role in the realisation of the rights of the child.

In 1995, the Ghana NGO Coalition on the Rights of the child was formed with a membership comprising about 40 NGOs located in Accra alone. The coalition's main task is to monitor the implementation of CRC.

*Intestate Succession Law (PNDCL 111)* protects the child from denial of his interest in the estate of the deceased parent(s). The law also provides a safety net for a surviving spouse and his or her children.

The Department of Social welfare (DSW) and the Family Tribunal system provide protection for children in need of parental care and attention.

### The Rights of the Disabled

Persons with physical disability are estimated to be approximately 10% of the wider population. Roughly 2-5 % of this figure is made up of persons with visual impairment. The number of persons with various degrees of mental disability may be equally high. By their sheer numbers, persons with disability constitute a significant portion of society, and improving their conditions constitute a major social issue of our time.

Article 29 of the 1992 Constitution protects the disabled from discrimination and guarantees working and living conditions as close as

possible to those of the normal life of a person of his age. Article 29(1) assures the wellbeing of the disabled in the family context.

Article 29(2) also protects such persons from discrimination in tenancy and requires reasonable modifications to housing facilities to accommodate their disabilities and to ensure their full and equitable enjoyment of housing opportunities commonly taken for granted by the able-bodied community.

Notwithstanding these constitutional guarantees, there is widespread discrimination against disabled persons in our society. We have not yet fostered widespread public awareness of the rights of disabled persons. As a result, such persons face discrimination in employment and rental accommodation, and their promotional opportunities in the workplace are often dwindled by a generalized misconception of them and their capabilities.

Such negative societal attitudes and practices contribute significantly to further disabling the disabled. Faced by unequal and segregated education, chronic unemployment, lack of job-training opportunities, unfair competition, paternalism and condescension from the larger society, the disabled are at a great disadvantage in society in asserting and enjoying their fundamental human rights.

The Ghana Society for the Disabled is dedicated to the advancement of the rights of persons with disabilities. It provides advocacy on behalf of such persons and renders them referral services.

The CHRAJ recommends the adoption of bold and innovative national policies, including an employment equity legislation, to address the problems of the disabled in our society.

### Problems in Implementing the Charter

In Ghana, several factors hinder the full and effective enjoyment of many of the rights and freedoms enunciated in the Charter. Notable among these are a lack of awareness of fundamental human rights, lack of a national program of public education on human rights, a patriarchal social order, and deep-seated cultural dispositions that are unfavourable to rights claims. Other factors include lack of funding for comprehensive mass public education on human rights and the strength of certain

cultural norms, values and practices which are inimical to human rights and derogate from the dignity of the individual.

### 1. Lack of Awareness about Human Rights

The continued existence of a patriarchal social order that is buttressed by widespread ignorance of rights and a relatively low literacy level is one hindrance to human rights enjoyment. Illiteracy is an enemy to human rights and freedoms; it is also a hindrance to the proper appreciation of the rights of others, and the performance of corresponding duties and obligations.

### 2. Patriarchal Dominance and Cultural Personality

Ghanaians have a gentle national persona. The Ghanaian socio-cultural milieu also eschews assertiveness. There is, as well, a generalized veneration of authority, both traditional and modern. In addition, there is a decisively dissuasive rather than enabling environment for self-assertiveness.

Politically, despite the elaborate civil liberty guarantees, as enshrined in the 1992 Constitution, Ghanaians still find it difficult to demand accountability and transparency from government institutions and high-ranking public officials, who may be charged with promoting and protecting human rights and democratic values.

Together, these circumstances foster widespread tolerance and endurance of rights violations by many victims, including some who are well-educated. This means that relatively few Ghanaians assert their rights, or consider it appropriate for younger persons to make rights claims against older persons or those in authority over them.

As a result of such deeply-ingrained cultural attitudes of subordination and subjection, women, children, students and subordinates in the workplace rarely complain openly about human rights violations to which they are subjected. People are encouraged to "give it all to God", rather than to pursue their rights and seek redress for rights violations perpetrated by husbands, parents, police officers or employers. This situation is aggravated by the reality of the victims' economic dependence on the abusers and their acute sense of helplessness.

### 3. Financial Constraints

Despite its laudable strides at democratization and economic recovery, Ghana is still trapped in the throes of dependence on external funding for crucial national programmes aimed at ensuring a durable democratic system of governance.

Thus, the resources needed to fund the democratic agenda are limited and thereby pose a major threat to progress in this direction. The constitutional and statutory agencies charged with educating the public on human rights and civic responsibilities, such as the CHRAJ and the NCCE, are yet to develop a comprehensive program of education, backed by the requisite level of funding, to combat the problem of ignorance of human rights.

### 4. Criminal Libel Law

There is a raging debate in Ghana on the desirability and constitutionality of criminal libel laws given the current democratic dispensation of which freedom of expression, including freedom of the media, is a key or foundational cornerstone. The right to information as basis for informed appreciation of issues and events is hampered by the existence on the statute books of legislation in respect of criminal libel. The private media find this piece of legislation as an affront to press freedom since it has been the subject of various libel suits pending before the courts.

### Summary

Overall, there has been a commendable rise in Parliamentary Democracy and ~~the~~ liberalism. On the whole human rights have improved greatly since the coming into force of the 1992 Constitution and the creation of the Commission. Arbitrary arrests and detention, etc. are gradually becoming a thing of the past. The aim of the Commission's awareness campaign is to cultivate a human rights culture among Ghanaians.

Ghanaians have also witnessed generalized improvements in the scale of enjoyment of economic, social and cultural rights. There is, in addition, an on-going cultural review in the country, the objective of which is to eradicate elements of our cultures and traditions which are degrading or dehumanising.