

**UNITED NATIONS UNIVERSAL PERIODIC  
REVIEW  
- GHANA -**

**Submission to the UN Human  
Rights Council**

**By the Human Rights Advocacy Centre**

House No: F1002/2 Koi Street,  
Osu Ako Adjei, Accra.  
P.O.Box OS 134,Osus  
Accra, Ghana

**Submission of the Human Rights Advocacy Centre (HRAC) for the Universal Periodic Review of  
Ghana, January 2008.**

**1.0 Introduction**

The Human Rights Advocacy Centre (HRAC) is a non-profit, independent, research and advocacy organization set up to advance and protect human rights in Ghana. This document is the joint report of the HRAC and Amnesty International Ghana, on the human rights situation in Ghana from 2009-2012, pursuant to Human Rights Council resolution 5/1.

**2.0 Preparation for the UPR: Methodology and Consultation**

The HRAC met with Amnesty International Ghana for a consultative meeting regarding the submission. This report has been prepared using information collated from HRAC research, investigative missions, stakeholder research, and other relevant sources, such as information obtained from partner NGO's, the media, and academia.

**3.0 Women's Rights - Commercial Sex Workers**

The Human Rights Advocacy Centre (HRAC), conducted research on commercial sex workers commissioned by the United Nations Population Fund (UNFPA) covering five regions in Ghana.<sup>1</sup> The main objective of the study was to fill a gap in knowledge about the commercial sex industry in Ghana and to ascertain the extent and types of abuses suffered by female sex workers (FSW) at the hands of the Ghana Police Service (GPS). The *Criminal Offences Act 1960* (Act 29) criminalizes commercial sex work in Ghana.<sup>2</sup>

HRAC collected data from approximately 150 commercial sex workers (CSWs) and 150 Ghana Police Service (GPS) officers, and conducted a pilot study of 10 male sex workers (MSWs), which revealed an overarching conclusion of a widespread problem of police abuse of female sex workers (FSW's) human rights. Interviews with GPS officers revealed that their knowledge related to sexual laws and international human rights law was poor.

*“They were three, I squatted and one inserted his penis in my vagina and another*

---

<sup>1</sup> The five regions were Ashanti, Central, Eastern, Greater Accra, and Western Regions; Study on Human Rights Abuses of Female Sex workers by the Ghana Police Service, report by HRAC and UNFPA, (19/4/2011).

<sup>2</sup> *Criminal Offences Act 1960* (Act 29), Section 276, of that act prohibits a person from persistent soliciting or importuning for the purpose of prostitution, and other sections of the same act prohibit knowingly living on the earnings of prostitution and keeping a brothel.

*also put his penis in my mouth. After having sex with me they took my money and the condoms in my bag and came to drop me somewhere. Three days later they came to arrest me and sent me to Central police station, I slept in cell for three days 'til my brother came to bail me. There are limited jobs in Ghana so they should rather find work for us to do and we will also stop the ashawo that we are doing.”<sup>3</sup> (FSW)*

According to the report, 62.4% of FSW's have been arrested, questioned and or detained by police; while 87.3% said police demanded a bribe (payment of a bribe would include payment of sexual favours).<sup>4</sup> Alarming, 20% said they had been raped by a police officer, while 34.3% of interviewees had unprotected forced sex with a police officer.<sup>5</sup> Of the surveyed FSW's, 20.9% reported police or military men as regular clients,<sup>6</sup> and 70.3% said they had encountered police during working hours.<sup>7</sup> While Ghana has signed and ratified CEDAW it is still not part of Ghana's national law.<sup>8</sup>

The survey results were not conclusive on Ghana's male sex workers (MSWs), however suggested that the GPS have subjected some MSWs to grave infringements of human rights, including rape and torture, and that they have distinct experiences from FSWs in relation to extortion by the GPS (specifically, there is a practice of the GPS extorting large sums of money from the MSW's clients).<sup>9</sup>

*“they are always like...you are stupid, are you a fool? Why should you sleep with a man?...then they slap you...stupid boy, you need to burn in hell’...and they say a lot of other abusive words...you can't take it.”<sup>10</sup> (MSW)*

Pursuant to the fifth chapter of the 1992 Constitution, the Ghana Police Service (GPS) has a mandate to protect citizens in the fulfillment of these rights. Additionally, the *Criminal Offences Act 1960*, s247, prohibits extortion.

---

<sup>3</sup> Study on Human Rights Abuses of Female Sex workers by the Ghana Police Service, report by HRAC and UNFPA, (19/4/2011).

<sup>4</sup> Study on Human Rights Abuses of Female Sex workers by the Ghana Police Service, report by HRAC and UNFPA, (19/4/2011).

<sup>5</sup> NB: differing interpretation of the terms of rape and sexual encounter may account for this discrepancy.

<sup>6</sup> NB: such figures would not necessarily take into account those who were not in uniform and therefore obviously not identifiable by the client.

<sup>7</sup> NB: working hours was defined as the time they were spending working as FSW's.

<sup>8</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 6, requires all States to take all measures “to suppress...exploitation of prostitution of women”.

<sup>9</sup> Study on Human Rights Abuses of Female Sex workers by the Ghana Police Service, report by HRAC and UNFPA, (19/4/2011), p9.

<sup>10</sup> Study on Human Rights Abuses of Female Sex workers by the Ghana Police Service, report by HRAC and UNFPA, (19/4/2011), p120.

The most disturbing outcome of the study was the abuse by the GPS of the young female sex workers. The 15-24 year olds, appear to be most vulnerable to abuse by the GPS, with approx. 66% reporting regular verbal abuse by GPS, and 57.1% of 15-19 year olds reported having unprotected sex with a police officer against their will.<sup>11</sup> Alarming, 100% of 15-19 year olds, 93.5 % of 20-24 year olds and 100% of 25-29 year olds, reported having police demand payment of bribes (this is compared to 50-60% between the 30-44 age brackets).<sup>12</sup> Within the 15-19 year olds, 57.1% reported paying bribes “in kind”, and 14.3% “other”,<sup>13</sup> with only 28.6% being cash bribes, whereas, within the 35-39 age bracket, 100% of those who reported being asked to pay bribes, were paying cash bribes. Furthermore, 85.7% of 15-19 year olds reported being treated very poorly by police when they are arrested/questioned or detained.<sup>14</sup> The Convention on the Rights of the Child (CRC), Articles 34 and 35, oblige governments to protect children from all forms of sexual exploitation and abuse and take all measures possible to ensure that they are not abducted, sold or trafficked. The CRC’s optional protocol on the sale of children, child prostitution and child pornography supplements the CRC by providing states with detailed obligations to end the sexual exploitation and abuse of children.

Information obtained from Commission of Human Rights and Administrative Justice (CHRAJ) and Legal Aid Scheme (LAS) representatives was that they were aware of the abuses and issues faced by CSWs, however, have no measures in place to specifically or directly target FSWs, nor has there been any case of FSWs reporting or gaining assistance to protect their rights from these organizations.

The HRAC advises the Government of Ghana to:

- Review the law applying to commercial sex work and repeal all provisions of the Criminal Offences Act that criminalize commercial sex work (s276)<sup>15</sup>
- Introduce laws to regulate the commercial sex work industry.<sup>16</sup>
- Ghana should ratify the optional protocol for the Convention on the Rights of the Child

---

<sup>11</sup> Study on Human Rights Abuses of Female Sex workers by the Ghana Police Service, report by HRAC and UNFPA, (19/4/2011).

<sup>12</sup> Study on Human Rights Abuses of Female Sex workers by the Ghana Police Service, report by HRAC and UNFPA, (19/4/2011).

<sup>13</sup> Payment of such bribes would include payment by means of sexual favours.

<sup>14</sup> Study on Human Rights Abuses of Female Sex workers by the Ghana Police Service, report by HRAC and UNFPA, (19/4/2011).

<sup>15</sup> Other than those provisions that target the exploitation or other abuse or another person in relation to commercial sex work, for example, trafficking of a person for the purpose of commercial sex work, or forcing a person to engage in commercial sex work.

<sup>16</sup> Study on Human Rights Abuses of Female Sex workers by the Ghana Police Service, report by HRAC and UNFPA, (19/4/2011), p182.

(CRC).

- Ghana should incorporate the obligations from CEDAW into national law.
- The Government must educate and raise awareness of the issues, in order to ameliorate the conditions that lead many women to become CSWs.
- Funding and resources to CHRAJ and LAS should be increased, and they should implement policy to engage CSWs and advocate for their human rights.
- The GPS must improve training of its police officers, with a view of heightening their understanding of and compliance with both human rights and the laws relevant to CSWs.

#### **4.0 Right to Non-Discrimination - LGBT Rights**

Homosexuality in Ghana is characterized by extreme stigmatization and discrimination at the hands of the government and society. Stigmas regarding the lesbian, gay, bisexual and transgender (LGBT) community, are caused by a lack of understanding, and permeate the media, perpetuating a harmful and discriminatory environment.

In addition to members of the media, political leaders are also opposed to homosexuals. As a case in point, President Mills promised to “combat the menace of homosexuality” as homosexuality is contrary to the “Word of God” and to the society’s cultural norms and values.<sup>17</sup> In July 2011, the Western Regional Minister, Paul Evans Aidoo, ordered the arrest of all homosexuals. MP David Tetteh, called LGBTs’ to leave the country and further warned them of the risk of being lynched in the future if they continued to “[tread] on dangerous grounds” within Ghana.<sup>18</sup>

Even spiritual leaders condemn homosexuality. The Moderator of the Presbyterian Church of Ghana, Reverend Professor Emmanuel Martey, openly labeled homosexuals as “filthy”, “ungodly” and “unbiblical”.<sup>19</sup> The Methodist Church’s Bishop sees no justification to homosexual practices; he was quoted saying “even animals do not engage in such despicable acts”.<sup>20</sup> Such assertions by highly respected leaders of Ghana’ religious elite, pose a serious concern and impediment for the adequate protection and promotion of LGBT rights.

---

<sup>17</sup> Daily Guide: “Mills Wild over Gays”, 15 July 2011, website: <http://www.dailyguideghana.com/?p=19762> (accessed 15/03/2012).

<sup>18</sup> GhanaWeb, ‘Homosexuals could soon be lynched in Ghana – MP warns’, 17 June 2011 (online), website: <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=211415> (accessed, 15/03/2012).

<sup>19</sup> Homos are Filthy’, Daily Graphic, 21 June 2011, p.1, 3.

<sup>20</sup> ‘No Justification for Homosexuality’, Public Agenda, 16 June 2011.

The *Criminal Offences Act* only criminalizes “unnatural carnal knowledge” as defined in Section 104 (2), as “sexual intercourse with a person in an unnatural manner or with an animal.”<sup>7</sup> The legislation lacks any specific terminology referring to homosexuality.

In a focus group discussion facilitated by the HRAC, homosexuals reported incidences of abuse by the police and the general population, including, unlawful eviction, denial of health care, and difficulty accessing legal representation.<sup>21</sup> All participants in the focus group agreed that there was a general environment of discrimination which is perpetuated by a misunderstanding of the legal status of homosexuality.

On 12 March 2012, HRAC received an emergency phone call from Jamestown, a suburb of Accra in Ghana, informing us that a group of men, women, and children numbering 100 were identifying individuals that they perceived to be gay or lesbian and proceeding to physically assault them. Victims of the attacks suffered various degrees of injuries resulting from the beatings and one man reported that his business was vandalized. The victims fled Jamestown in fear and filed a complaint with HRAC’s executive director, Nana Oye Lithur. She assisted them to report to the Coordinator of the Domestic Violence and Victim Support Unit of the Ghana Police Service, Elizabeth Dassah.

HRAC Recommendations:

- Relevant legislation must be amended and interpreted to recognize the human rights of homosexuals in Ghana.
- Perpetrators of crimes against LGBT individuals must be arrested and brought to justice.
- The Government needs to take initiative to promote and advocate for LGBT rights, specifically targeted awareness creation on respect for diversity and non-discrimination campaigns, not only for the general public, but also aimed at religious and other prominent leaders within society.

## **5.0 Right to Adequate Housing - the Practice of Forced Evictions**

Forced evictions have become commonplace within many regions of Ghana. In March 2006,

---

<sup>21</sup> Study on Human Rights Abuses of Female Sex workers by the Ghana Police Service, report by HRAC and UNFPA, (19/4/2011).

the government forcibly evicted 100 people from Dodzorme Island within the Digya national park in the tapa-Abotoase around Lake Volta. In July 2007, CHRI reported 420 buildings being destroyed beside the River Baale, in Mallam community.<sup>22</sup> In October, 2007, another eviction took place at Dambi Lakeside market located in the Volta Region, which left over 200 victims destitute and unemployed.<sup>23</sup> During the eviction process two people died, and several were injured as they tried to run for security.<sup>24</sup>

In December 2009, the Accra Metropolitan Assembly conducted a demolition as part of a 'beautification exercise' destroying kiosks and containers, at Odorkor, and at Danquah circle, leaving victims devastated. In February 2011, as early as 4.30am the AMA undertook a demolition exercise at Achimoa 'trotro' station. In March 2011, 40 residential buildings, in the final stages of construction were destroyed at Okess in Kumasi. The HRAC recently conducted fact finding missions at Odawna Railway, on the 26-29 January 2012, where it is estimated that over 1000 people were left homeless after the AMA demolished the slum community, on Friday 20th January, 2012, and at Dome market and Awudome estate near Kaneshie, where market stalls, and containers and kiosks were destroyed.<sup>25</sup>

The main recurring human rights violations are that there is not sufficient consultation with the communities carried out prior to the evictions, insufficient notice is given, and the evictions are sometimes carried out whilst people are sleeping, leaving members more vulnerable and at higher risk of injury. Furthermore, there is no option provided for alternative location or access to legal aid, nor any compensation for the affected persons.

The HRAC recommends that the government and authorities such as the A.M.A and other local government authorities, immediately cease the practice of unannounced demolitions and forced evictions. In circumstances where an eviction is unavoidable, due process as required by international law, should be implemented and enforced by the government and authorities in Ghana.<sup>26</sup> The HRAC recommends Local Government adopt a National Evictions and

---

<sup>22</sup> Commonwealth Human Rights Initiative (Africa Office), Annual Report 2007, p14.

<sup>23</sup> Commonwealth Human Rights Initiative (Africa Office), Annual Report 2007, p14.

<sup>24</sup> Commonwealth Human Rights Initiative (Africa Office), Annual Report 2007, p14.

<sup>25</sup> HRAC report, on Demolitions and Forced Evictions, February 2012.

<sup>26</sup> General Comment 7 (ICESCR) clearly defines the required process for evictions. Governments must provide an opportunity for genuine consultation with those affected; adequate and reasonable notice for all affected persons prior to the date of the eviction; information on the proposed eviction should be made in a reasonable time to those affected; government officials or their representatives should be present at the eviction; persons carrying out the eviction should be properly identified; evictions should not take place in particularly bad weather or at night; legal remedies should be available and legal aid should be available to those in need of it to seek redress from the courts and provide fair compensation and resettlement.

Demolition Policy that is compliant with International Human Rights Law.

## 6.0 Children's Rights - Gender Based Violence against Girls

While Ghana has enacted legislation to criminalise violence against children, including girls, in the *Criminal Code 1960*, the *Children's Act 1998* and the *Domestic Violence Act 2007*, girls are still subject to sexual abuse, physical violence, harmful traditional practices, physical abuse and neglect, child labour and socio-economic violence.<sup>27</sup>

While reported rates of defilement have declined from their peak in 2007, the incidence of defilement remains high, with girls the overwhelming majority of victims.<sup>28</sup> In 2009 and 2010 there were 2,304 cases of defilement reported to the Domestic Violence and Victims Support Unit (DOVVSU) of the Ghana Police Service.<sup>29</sup> An analysis of media reports conducted by HRAC over six months in 2009 and 2010 identified 27 reported cases of defilement.<sup>30</sup> In a study conducted by the Ghana National Education Campaign Coalition in 14 schools in the Sissala North District 1.8% said they have been forced to have sex, 13.8% confirmed touching, and 14% mentioned peeping.<sup>31</sup>

There have been some positive developments in the prosecution of defilement cases. For example, the conviction of high profile pastor 'Jesus One Touch' in 2011 for the defilement of his ten year old daughter, was a positive step in recognising children's rights. However, conviction rates remain low overall. For example, of the 987 reported cases of defilement in 2010, only 48 offenders were convicted during that year.<sup>32</sup> As at the third quarter of 2011, DOVVSU had 6,746 cases still under investigation due to factors such as the inadequate number

---

<sup>27</sup> Human Rights Advocacy Centre, *Mapping Study into Existing Legal and Policy Frameworks Addressing Violence Against Girls in Schools*, 2010, prepared by Human Rights Advocacy Centre in partnership with Ghana National Education Campaign Coalition and ActionAid; In addition to National Legislation, Ghana has obligations under International Human Rights laws pursuant to Article 19 of the *Convention on the Rights of the Child* provides that 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.'

<sup>28</sup> Statistics provided by DOVVSU. In 2007, 1,578 defilement cases were recorded while in 2010 this number had decreased to 987.

<sup>29</sup> Statistics provided by DOVVSU.

<sup>30</sup> Human Rights Advocacy Centre, *Mapping Study into Existing Legal and Policy Frameworks Addressing Violence Against Girls in Schools*, 2010, prepared by Human Rights Advocacy Centre in partnership with Ghana National Education Campaign Coalition and ActionAid, pp. 64-5.

<sup>31</sup> Ghana National Education Campaign Coalition, *Stop Violence Against Girls in School, The status of girls education and violence, A summary report of baseline survey of gender-based patterns in the Nanumba North and South Districts of Northern Region of Ghana*, September 2011.

<sup>32</sup> Statistics from the Domestic Violence and Victims Support Unit (DOVVSU).



of investigators and inability of victims to pay for medical reports.<sup>33</sup>

The persistence of harmful customary practices in Ghana also poses a threat to girls' development. For example, although the *Children's Act 1998* sets 18 as the minimum age for marriage, there are reports that child and early marriages continue to be contracted, particularly in the three Northern regions of Ghana.<sup>34</sup> There are also reports that *trokosi*, a practice whereby virgin daughters are given away to village priests, is still being practiced in some parts of the Volta region of Ghana.<sup>35</sup> Female genital mutilation also continues to be practiced in Ghana, particularly in the three Northern Regions, with the reported overall prevalence of female genital mutilation in Ghana at 3.8% of women aged 15-49 in 2006.<sup>36</sup>

Socio-economic violence, including non-maintenance, is also an ongoing problem facing girls in Ghana. Non maintenance refers to the failure to provide funds for a child's upkeep and well-being. In 2009 and 2010, DOVVSU recorded 13,637 cases of non-maintenance of children by parents and guardians, with the vast majority of the victims being girls.<sup>37</sup> For example, in the Greater Accra region, which had the highest number of non-maintenance cases, 81% of cases involved female children, while in the Ashanti region 100% of cases involved female children.<sup>38</sup>

To address these issues, HRAC believes action is needed at a national level, as well as in individual schools and the community. Key recommendations include:

- More effective enforcement of existing criminal sanctions, particularly with regard to harmful traditional practices. This would include improving the resourcing of DOVVSU, which currently does not operate in every District of Ghana, and is particularly understaffed in the Northern and Volta regions.<sup>39</sup>
- Strengthening data collection mechanisms on violence against girls to inform responses to this issue.

---

<sup>33</sup> DOVVSU Annual Report 2011.

<sup>34</sup> Comment from then Northern Regional Director of CHRAJ, Mr Alhassan Seidu, to NGA, 16 February 2010.

<sup>35</sup> "CHRAJ is keen to stop trokosi – Ms Lamptey", Modern Ghana, 12 August 2012, see

<http://www.modernghana.com/news/344806/1/chraj-is-keen-to-stop-trokosi-ms-lamptey.html>

<sup>36</sup> For women aged 16-49, based on 2005 data from the World Health Organization:

<http://www.who.int/reproductivehealth/topics/fgm/prevalence/en/index.html>

<sup>37</sup> Statistics provided by DOVVSU.

<sup>38</sup> Statistics provided by DOVVSU.

<sup>39</sup> DOVVSU Annual Report 2011, pp 12-13.

- Improved collaboration among key State institutions (including the implementation of the Memorandum of Understanding signed by DOVVSU and the Girls Education Unit of the Ghana Education Service), and between State institutions and community-based organisations.
- Considering the high proportion of child maintenance cases dealt with by DOVVSU, HRAC recommends the creation of a Child Support Agency to specifically support and enforce child maintenance claims.
- Further training and education of teachers, students and the community on violence against girls.
- Implementation of a protocol for schools on preventing and responding to violence against girls.

## **7.0 Right to Health**

### **7.1 Mental Health**

There is to date no affirmative right to health in the nation's constitution, denying citizens means to defend their right to access medical services and health care facilities. Incorporating a right to health in the constitution is the strongest commitment a government can demonstrate to the advancement of public health.<sup>40</sup>

The lack of mental health facilities in Ghana is a serious public health and human rights issue. There are only 14 psychiatrists, 3 clinical psychologists and 600 nurses to provide services within 3 psychiatric hospitals in Ghana, which clearly can not cater for the number of mentally ill in Ghana.<sup>41</sup> The HRAC conducted a fact-finding mission at the Accra Psychiatric Hospital which was built in 1906, and discovered patients living in inhumane conditions and seriously deprived of basic food, water, sanitation, medication and health care.<sup>42</sup> Such conditions are a result of long-term systematic failures by governments to remedy the situation.<sup>43</sup> Furthermore, it was revealed that in reality the hospitals are limited to USD 0.34 a day per patient, and are running at over 200% capacity.<sup>44</sup> Patients reported having been admitted, and staying there for 6

---

<sup>40</sup> HRAC, Memorandum for the Constitutional Review Committee, Rights to Health: The Key to Ghana's Prosperity, 2010.

<sup>41</sup> The Ghanaian Times, "Chief Psychiatrist lauds passage of Mental Health Bill", 8 March, 2012, p20.

<sup>42</sup> HRAC, Report: Visit to Accra Psychiatric Hospital, 15/2/2011.

<sup>43</sup> HRAC, Submission to the Ministerial Committee Investigating Administrative Lapses at the Accra Psychiatric Hospital, 3/2/2010.

<sup>44</sup> HRAC, Report: Visit to Accra Psychiatric Hospital, 15/2/2011.

months (in one case 3 years) without meeting a doctor directly.<sup>45</sup> Apparently, three nurse staff died as a result of one aggressive patient, and it was discovered that convicted criminals referred there from prisons are being kept together with other patients due to a lack of resources and facilities.<sup>46</sup>

In Ghana, there is an overriding belief that mental disorders are a result of evil spirits or witchcraft and can be healed spiritually in prayer camps.<sup>47</sup> Prayer camps are private, independently managed facilities, commonly run by prophets, apostles and religious ministers, who use various ‘religious’ practices to expel evil spirits.<sup>48</sup> Many Ghanaians use prayer camps as a means to cure themselves and their family members of mental illness.

Allegations of human rights violations have also been confirmed by a survey commissioned by the Commonwealth Human Rights Initiative in 2008.<sup>49</sup> Practices carried out in the name of the healing process, include:<sup>50</sup>

- chaining and confinement of aggressive patients
- intensive involvement in work
- flogging to exorcise demonic spirits out of patients
- sand baths where the inmate is striped naked and bathed in sand in public
- housing inmates in accommodation with no beds
- inadequate access to water, denial of food, denial of medical care
- extended isolation,

Alarming, uninfected patients were also discovered to be kept in the same room as those suffering from tuberculosis.<sup>51</sup> Inmates and their families believe that this harsh treatment will cure them and drive away evil spirits.

---

<sup>45</sup> HRAC, Report: Visit to Accra Psychiatric Hospital, 15/2/2011.

<sup>46</sup> HRAC, Report: Visit to Accra Psychiatric Hospital, 15/2/2011.

<sup>47</sup> HRAC Report: Human Rights training project for practitioner of traditional healing and prayer camp operators in Ghana, Dec 2010.

<sup>48</sup> HRAC Report: Human Rights training project for practitioner of traditional healing and prayer camp operators in Ghana, Dec 2010.

<sup>49</sup> Commission on Human Rights Initiative, Africa Office, Human Rights Violations in prayer camps and Access to Mental Health, 2008.

<sup>50</sup> HRAC Report: Human Rights training project for practitioner of traditional healing and prayer camp operators in Ghana, Dec 2010

<sup>51</sup> HRAC Report: Human Rights training project for practitioner of traditional healing and prayer camp operators in Ghana, Dec 2010.

*“They sometimes put me in chains... we also sleep in the open under a roof exposed to mosquitoes and other insects” (Male inmate).<sup>52</sup>*

*“most inmates eat and bath before 5pm because “evil spirits” visit camps after 5pm” (Pastor).<sup>53</sup>*

Traditional healing and prayer camps are also realistically filling a gap in access to medical services for mentally ill in the country’s health care delivery system. Practices in both psychiatric hospitals and prayer camps are in breach of Article 5 of the *Persons with Disability Act, 2006*<sup>54</sup>, and also violates Article 29(4) of the *1992 Constitution*.<sup>55</sup>

The HRAC has since, conducted trainings for 92 prayer camp operators, to inform and educate faith healers on human rights standards and how their actions were violating these laws.<sup>56</sup>

In March 2012, Parliament ratified the UN Convention on the Rights of Persons with Disability and the Optional Protocol.<sup>57</sup> The *Mental Health Bill* was introduced into Parliament in 2011, and passed by Parliament on the 3<sup>rd</sup> March 2012, replacing the *Mental Health Decree* of 1972.<sup>58</sup>

The Human Rights Advocacy Centre (HRAC) wishes to recommend:

- Institution of programmes’ in collaboration with CSOs geared towards raising awareness on human rights standards in institutions providing mental health care for the public.
- Conditions in public psychiatric hospitals and service delivery must be significantly improved to an acceptable standard, and also be made available in regional Ghana.

---

<sup>52</sup> Male inmate at the Zion Prayer Fellowship Centre in Komenda of the Central Region, Commonwealth Human Rights Initiative, Africa Office, Human Rights Violations in prayer camps and Access to Mental Health, 2008, p28.

<sup>53</sup> Pastor, Divine Healers Prayer Camp, Ada, Greater Accra Region, Commonwealth Human Rights Initiative, Africa Office, Human Rights Violations in prayer camps and Access to Mental Health, 2008, p30.

<sup>54</sup> Article 5 of the *Persons with Disability Act, 2006* states that ‘a person shall not discriminate against, exploit or subject a person with disability to abusive or degrading treatment’.

<sup>55</sup> See article 29(4) of the 1992 Constitution of Ghana; Article 29(4) of the *1992 Constitution* which stipulates that ‘Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.’

<sup>56</sup> HRAC Report: Human Rights training project for practitioner of traditional healing and prayer camp operators in Ghana, Dec 2010.

<sup>57</sup> Parliament Ratifies UN Convention for Disability, 12 March 2012, website: <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=232379> (accessed 22/03/2012)

<sup>58</sup> *The Mental Health Decree(1972)*; The new Law includes provisions for legal protection for mentally ill patients seeking treatment and incorporates compliance with human rights standards. This law is a significant development toward the improvement of hospital conditions, funding for public education on mental health issues, to ensure legal protection of patients’ rights, and also to mandate regulation and training of prayer camp workers.

- Prayer Camps must be held accountable and regulated to ensure protection of human rights of patients.
- We also recommend government to honour its international and constitutional obligations with the view of promoting and protecting the rights of persons with disabilities, and also improving and increasing access to mental health as a human right.

## 7.2 HIV/AIDs & Human Rights

Despite extensive efforts by the Ghana Aids Commission (GAC) and civil society, there remain several areas for concern from a human rights perspective in regards to the national response to the HIV/AIDS epidemic in Ghana. The 2003 Ghana Demographic Health Survey (GDHS), represents the most recent comprehensive population based survey on HIV prevalence in Ghana.<sup>59</sup> Data collected by the GDHS placed the national prevalence rate at 2% of the adult population aged 15 – 49, with 2.7% of the total female population and 1.5% of the total male population being HIV positive.<sup>60</sup> These statistics highlight a disproportionate prevalence of HIV in women. Studies indicate that the primary mode of HIV transmission in Ghana is heterosexual intercourse, which provides opportunities for HIV transmission from most at risk populations (MARPs) into the population at large, through partners of commercial sex workers (CSWs), female partners of men who have sex with men (MSM) and partners of Injecting Drug Users (IDUs).<sup>61</sup>

*“When I found out [that my husband had multiple sexual liaisons and partners], I decided to end the marriage, but my father said I shouldn’t because, when I was marrying the man he was not working and I had been with him all that while and how that he was working, I shouldn’t leave the marriage.” (56 year old Akyem respondent).<sup>62</sup>*

*“I spoke to him [about his womanizing] but he said if I cannot tolerate it then I should leave. But because of the children I couldn’t. I told his family about it, but he told them that he paid the bride price himself so if I am not happy about his lifestyle, I should pack and leave. No one could stop him. I*

<sup>59</sup>Ghana AIDS Commission. *National HIV & AIDS Strategic Plan 2011 - 2015*. Accra, 2010.

<sup>60</sup>Ibid.

<sup>61</sup> USAID, Nana Oye Lithur, Maj Britt Dhhie, Joanne Benner Jeffers, Assessment: Legal and Regulatory Framework affecting treatment and services for Most-at-Risk populations in Ghana.

<sup>62</sup> Gender Studies & Human Rights Documentation Centre, Gender Norms, Domestic Violence and Women’s Vulnerability to HIV/Aids, Report of a National Study, 2009, chapter 2.

*continued till he finally got infected wit the disease.” (40 year old Ewe).<sup>63</sup>*

A study by USAID,<sup>64</sup> revealed that of 13,437 new infections in 2008, 30.2% occurred in the general population, 15.5% in individuals who had casual heterosexual sex with non-regular partners, 22.2% among clients of CSW, 24% among CSWs, 7.2% among MSM and 23% among regular partners of CSW and MSM.<sup>65</sup>

Overall, HIV-infections in Ghana appear to be declining – HIV/AIDS prevalence declined from 3.4% in 2004 to 1.7% in 2008,<sup>66</sup> however, PLHIV are still being banished from their families, discriminated against in public and laid off from work, and even suffering from physical and verbal abuse. For example, the 2008 GHDS found that only 30.2% of women aged 30 – 39 would buy fresh vegetables from a shopkeeper with the AIDS virus.<sup>67</sup> According to respondents of the USAID research, “PLHIV are discriminated against by providers”. A nurse observed that before performing a C-section, doctors used to ask whether the patient is HIV positive, and if so, some will say they are too busy to operate.<sup>68</sup>

The national response to HIV/AIDS has been characterized by continued marginalization of most at risk populations (MARPs) such as female sex workers (FSWs), MSMs, and IDUs.<sup>69</sup> According to the GAC, these populations are highly exposed to HIV infection due to their risky sexual behaviour and tend to contribute a significant proportion of new HIV infections.<sup>70</sup> Although Article 18 of the 1992 Constitution of the Republic of Ghana guarantees the right to confidentiality of all persons, the criminalization of MARP activities such as prostitution<sup>71</sup> and

---

<sup>63</sup> Gender Studies & Human Rights Documentation Centre, Gender Norms, Domestic Violence and Women’s Vulnerability to HIV/Aids, Report of a National Study, 2009, chapter 2.

<sup>64</sup> USAID, Nana Oye Lithur, Maj Britt Dhhie, Joanne Benner Jeffers, Assessment: Legal and Regulatory Framework affecting treatment and services for Most-at-Risk populations in Ghana.

<sup>65</sup> USAID, Nana Oye Lithur, Maj Britt Dhhie, Joanne Benner Jeffers, Assessment: Legal and Regulatory Framework affecting treatment and services for Most-at-Risk populations in Ghana.

<sup>66</sup> Nzambi, Bevalot, Till, Dzokoto, Research Study: How does the General Adult Population see most at risk populations and how do most at risk populations see themselves in the context of HIV/Aids? A Study on stigma and discriminatory attitudes and perceptions in Accra and Tema Metropolis, August 2009, Ghana Aids Commission, German Technical Cooperation; Note, estimates since the 2003 GDHS have been calculated based on sentinel surveillance of pregnant women attending ANC and most recently through Estimation and Projection Package (EPP) Modelling.

<sup>67</sup> Ghana Statistical Service/Ghana Health Service. *Ghana Demographic and Health Survey 2008*. Accra, 2009.

<sup>68</sup> USAID, Nana Oye Lithur, Maj Britt Dhhie, Joanne Benner Jeffers, Assessment: Legal and Regulatory Framework affecting treatment and services for Most-at-Risk populations in Ghana.

<sup>69</sup> Ghana Aids Commission, National HIV&Aids Strategic Plan 2011-2015, Towards Achieving Universal Access to Comprehensive HIV Services, December 01, 2010, p19.

<sup>70</sup> Ghana Aids Commission, National HIV&Aids Strategic Plan 2011-2015, Towards Achieving Universal Access to Comprehensive HIV Services, December 01, 2010, p19.

<sup>71</sup> Criminal Code 1960 (Act 29), Section 276

homosexuality<sup>72</sup> has resulted in low treatment and testing rates in these populations due to the fear of criminal prosecution.

The MARP populations suffer from stigma and discriminatory perceptions from the general community. In the survey conducted by the Ghana Aids Commission, in August 2009, as a result of sex work and homosexuality being illegal in Ghana, two thirds of respondents thought police should arrest FSW and MSM when identified, 54.8% thought MSM should be ostracized from the community; about two thirds of the general population would not invite an IDU into their homes and 57.6% thought IDU should be excluded from their families.<sup>73</sup> According to the 2008 USAID research, respondents felt that some laws, specifically the criminal code, need to be classified as to how they should be applied and enforced within the context of the HIV epidemic.<sup>74</sup>

In line with Ghana's goal of zero HIV/AIDS related discrimination by 2015, the HRAC recommends:

- Further education and advocacy efforts in order to de-stigmatize HIV/AIDS including specifically targeted MARP and gender based initiatives
- Legislation reform surrounding the criminalization of MARP practices as well as strengthening and implementation of existing confidentiality legislation in order to facilitate increased access for MARP to HIV/AIDS resources.
- Entrenchment of legal protection from discrimination on the basis of sexual orientation and HIV/AIDS status.
- Creation of comprehensive and specific strategies and policies aimed at addressing gender dynamics in Ghana.

## **8.0 Right to Information**

The passage of the Right to Information (RTI) Bill into law is vital to the protection of human rights and democracy in Ghana. The 1992 Constitution of Ghana provides for the right to information for

---

<sup>72</sup> Criminal Code 1960-97 Chapter 6, Article 105

<sup>73</sup> Nzambi, Bevalot, Till, Dzokoto, How does the General Adult Population see most at risk populations and how do most at risk populations see themselves in the context of HIV/Aids?, Study on stigma and discriminatory attitudes and perceptions in Accra and Tema Metropolis, August 2009, Ghana Aids Commission, German Technical Cooperation.

<sup>74</sup> USAID, Nana Oye Lithur, Maj Britt Dhhie, Joanne Benner Jeffers, Assessment: Legal and Regulatory Framework affecting treatment and services for Most-at-Risk populations in Ghana.

every person.<sup>75</sup>

The Right to Information Bill was drafted in 2002 and approved by Cabinet in 2009. The bill is currently before Parliament and undergoing its reading after being assigned to the Joint Committee on Constitutional, Legal, and Parliamentary Affairs and Communications. After several delays regarding financial constraints, in 2011 Parliament held regional consultations throughout Ghana to discuss possible changes to the Bill. However, there has been additional delay in action as Members of Parliament have failed to provide a report on these consultations.<sup>2</sup> The Government must cooperate and expedite action on the RTI Bill to ensure its passage in a timely manner.

There are several major weaknesses to the current Bill that must be addressed and revised by Parliament in order for the Bill to be in line with international best standard practices. Key improvements include the need to create an independent oversight body to undertake the responsibility of enforcing the RTI Bill, inclusion of maximum disclosure, and reduction of the numerous exemptions in the Bill. The RTI Bill must include private sector and chieftancy institutions not only government agencies and the fees for accessing information must be minimal. The current bill also has a limited scope of penalties, which undercuts the need to provide information in a timely manner.

## 9.0 Death Penalty

The death penalty violates human dignity and the right to life, which is a fundamental value in all human cultures and a core human right. In 2011 in Ghana, 138 people were on death row, including four women, and seventeen people were sentenced to death by hanging, all for murder.<sup>76</sup> No executions have been carried out since 1993, when 12 prisoners were executed for either armed robbery or murder.<sup>77</sup>

Ghana can be defined as *abolitionist de facto*, as it has not carried out an execution for at least 10 years (meaning, in practice it is abolitionist).<sup>78</sup> The death penalty, or capital punishment, is legal in Ghana pursuant to the 1992 Constitution of Ghana and the Criminal Code of Ghana, Act 29 and can be invoked as a punishment for armed robbery (Section 149), treason (Section 180),

---

<sup>75</sup> The Constitution of the Republic of Ghana 1992, Article 21 (1)(f) states “All persons shall have right to information subject to such qualifications and laws as are necessary in a democratic society.”

<sup>2</sup> Ghana RTI Bill Criticized as Consultations Continue, 12 August 2011, Website (accessed 19/03/2012), <http://www.freedominfo.org/2011/08/ghana-rti-bill-criticized-as-consultations-continue/>.

<sup>76</sup> Amnesty International, 2011 Ghana Report, website: <http://www.amnesty.org/en/region/ghana/report-2011> (accessed 22/03/2012).

<sup>77</sup> Human Rights Advocacy Centre, Capital Punishment & Ghana, Memo to the Constitutional Review Committee, 2010.

<sup>78</sup> At the Third Committee of the UN General Assembly, 107 countries voted in favour of a world-wide moratorium on death sentences and executions, 36 abstained (including Ghana), and 38 countries voted against this.



and first-degree murder (Section 46).<sup>79</sup> The inclusion of Article 72 – Prerogative of Mercy<sup>80</sup> in the Constitution, is a means by which those sentenced to death may have had their sentences reduced. This article has enabled over 300 sentenced to death to have their sentences reduced to life imprisonment.<sup>81</sup>

The abolition of the death penalty was one of the priority areas for discussion in the Constitutional review process, which was facilitated by the HRAC. During the discussion, the subgroup raised significant arguments both for and against the death penalty. Arguments in support of the death penalty, included, the death penalty being a deterrent to crime, protection for other citizens from dangerous criminals, and to reduce the burden of the tax payer. However, statistics indicate there has in fact been an increase in serial killings, armed robbery, and cocaine trafficking,<sup>82</sup> which is evidence that the death penalty is not a successful deterrent to crime in Ghana.

Arguments supporting the abolition of the death penalty contended that it is morally wrong to deprive citizens of their lives; in reality crime rates are increasing; the practice of keeping offenders indefinitely on death row is a blatant abuse of human rights; and the finality of the death penalty does not allow for the correction of wrongful convictions. The case of Bernard Tagoe who was sentenced to death at the age of 18, was on death row for 24 years, and then exonerated is illustrative of how innocent people's rights can be violated, and how the death penalty can represent a grave travesty of justice.<sup>83</sup>

In order to protect the rights of Ghanaian citizens, the HRAC and Amnesty International Ghana, recommend that the Government of Ghana:

- Support the recommendation of the Constitutional Review Commission to abolish the death penalty, and pending abolition, the President should take the following steps as a matter of urgency:
- Commute without delay all death sentences to terms of imprisonment;
- Ensure that in capital cases the most rigorous internationally recognized and

---

<sup>79</sup> Human Rights Advocacy Centre, Capital Punishment & Ghana, Memo to the Constitutional Review Committee, 2010.

<sup>80</sup> Insert text for Article 72 Constitution.

<sup>81</sup> "Judges Divided Over Capital Punishment", website: [http://www.ghanaweb.com/public\\_agenda.php?ID=10380](http://www.ghanaweb.com/public_agenda.php?ID=10380) (accessed, 2010).

<sup>82</sup> "Increased Crime Rate in Ghana", Otchere John N.K, <http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=130398>

<sup>83</sup> Editorial: Abolish the death penalty, 1 August, 2010, Ghana Web website: <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=187292> (accessed: 22/03/2012).

constitutional standards for fair trial are respected; and,

- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) committing the government to take all necessary measures to abolish the death penalty within its jurisdiction.

## 10.0 Refugee Rights in Ghana

The HRAC has identified significant violations of refugees human rights through its casework and research into refugee rights, these are: resettlement fraud, unwilling voluntary repatriation, lack of government responsibility, stigma and discrimination and integration difficulty.

It was announced by the International community that June 30, 2012 was the deadline for Liberian refugees who fled their country because of the war, to be protected under refugee status. Liberian and Sierra Leonean refugee clients of the HRAC, claim that whilst their countries of origin may be deemed objectively safe for return of refugees, fear may still persist due to the breakdown of cultural and ethnic bonds with home communities and the threat of latent aggression towards those who ‘escaped’ the strife.<sup>84</sup>

In 2008, the Commonwealth Human Rights Initiative represented approximately 650 Liberian women and children in a *habeas corpus* claim. On 17 March, 2008, the women and children were arrested and taken to Kordeabe Voluntary Training Centre for detention. Their arrest was in response to the women’s peaceful protest against the UNHCR’s repatriation package.<sup>85</sup> On 31 March, 2008, all but 23 of the refugees were released following the filing of a *habeas corpus* in the Fast Track Division of Ghana’s High Court. The CHRI represented the remaining 23 refugees in a subsequent action concerning their loss of refugee status and attempted deportation.<sup>86</sup> They lost their case and were consequently deported to Liberia.

HRAC continues to provide pro bono legal assistance to other asylum seekers, refugees, and

---

<sup>84</sup> Nana Oye Lithur, Human Rights Advocacy Centre, Overview of Refugee Cases at the HRAC, Submitted to the UNHCR

<sup>85</sup> Nana Oye Lithur, Human Rights Advocacy Centre, Overview of Refugee Cases at the HRAC, Submitted to the UNHCR

<sup>86</sup> Nana Oye Lithur, Human Rights Advocacy Centre, Overview of Refugee Cases at the HRAC, Submitted to the UNHCR; The CHRI argued, *inter alia*, that the applicants were not illegal immigrants but undocumented asylum seekers who fall under the jurisdiction of the Ghana Refugee Board. They are therefore not subjected to the *Immigration Act* 2000 but the *Refugee Law* 1992. The Director of Immigration acted beyond his jurisdiction by issuing an order for the repatriation of the applicants.<sup>86</sup> The CHRI also contended that the protection afforded to the registered refugees should be extended to their unregistered family members pursuant to section 12 of the *Refugee Law* 1992. Moreover, the Immigration Board, by detaining minors, violated the rights of children according to the United Nations’ Convention on the Rights of the Child. Finally, the CHRI contended that the Immigration Board had never adduced sufficient evidence to prove that the applicants pose a threat to national security.<sup>86</sup> Unfortunately, Gyaesayor J. dismissed the application to stop the repatriation of the 23 Liberian refugees. His Honour also held that the detainees had failed to satisfy the court that they were refugees, despite the fact that they were bearers of cards issued by the UNHCR. The HRAC filed an appeal against Gyaesayor J.’s decision. The appeal was refused. The appeal is currently being reviewed.

individuals who are applying for refugee status, including, negotiations with the UNHCR for a refugee child and family who will be resettled in Canada, and offshore application for refugee status in Australia.

The UNHCR plans to assist the Ghana Refugee Board<sup>87</sup> to conduct refugee status determination (RSD), and to develop a national strategy for the local integration of long-staying refugees.<sup>88</sup> Societal discrimination against refugees has culminated in incidents such as the murder of Liberian refugee Pastor Emmanuel Finley in Takoradi in 2008.<sup>89</sup>

The claims of resettlement fraud reported to the HRAC, were that false ID cards have been used to claim resettlement in a third country, which prohibits the true claimant from being resettled. Sierra Leonean refugees that were based in the Krisan Camp<sup>90</sup> allege that the UNHCR is aware of this fraudulent activity but failed to act on it or issue new ID cards.<sup>91</sup>

All refugees interviewed by the HRAC alleged that they had suffered discrimination when looking for employment. Refugees state that their inability to speak local dialects or their refugee status prevents them from integrating in the workplace.<sup>92</sup>

In theory local integration is possible – specifically, section fourteen of the Ghana Refugee Law (PNDC Law 305D) allows for the naturalisation of refugees.<sup>93</sup> However, to make local integration practically possible, there is a need for the development of specific Government policy.<sup>94</sup> Hindering the formulation of explicit policy on local integration of refugees in Ghana relates to the lack of an appropriately constituted institution to carry out this mandate.<sup>95</sup>

---

<sup>87</sup> The Ghana Refugee Board is a collaborative body made up of representatives from the Ministry of the Interior, Foreign Affairs, Ghana Police Service, Bureau of National Investigation, Ministry of Justice, Ministry of Education, Ghana Immigration Service and UNHCR; Government of Ghana, Official Portal, Ghana Celebrates Refugee Day, 21 June 2011, Website: [http://ghana.gov.gh/index.php?option=com\\_content&view=article&id=6331:ghana-celebrates-world-refugee-day&catid=85:foreign-news&Itemid=232](http://ghana.gov.gh/index.php?option=com_content&view=article&id=6331:ghana-celebrates-world-refugee-day&catid=85:foreign-news&Itemid=232) (accessed: 02/04/2012)

<sup>88</sup> UNHCR, Ghana, Website: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=4a03e2f76>, (accessed 02/04/2012)

<sup>89</sup> Nana Oye Lithur, Human Rights Advocacy Centre, Overview of Refugee Cases at the HRAC, Submitted to the UNHCR

<sup>90</sup> There are five refugee camps in Ghana: Buduburam & Egyekrom Camps (Central Region), Krisan & Ampain Camps (Western Region), Egyekrom and Fetentaa Camp (Brong Ahafo Region); UNHCR, Ghana, Website: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=4a03e2f76>, (accessed 02/04/2012)

<sup>91</sup> Nana Oye Lithur, Human Rights Advocacy Centre, Overview of Refugee Cases at the HRAC, Submitted to the UNHCR

<sup>92</sup> Nana Oye Lithur, Human Rights Advocacy Centre, Overview of Refugee Cases at the HRAC, Submitted to the UNHCR

<sup>93</sup> The Law specifically states that “Subject to the relevant laws and regulations relating to naturalisation, the Ghana Refugee Board may assist a refugee who has satisfied the conditions applicable to the acquisition of Ghanaian nationality.”

<sup>94</sup> Samuel K. M. Agblorti, New Issues In Refugee Research, Research Paper No. 203, Refugee integration in Ghana: the host community’s perspective, University of Cape Coast Ghana, March 2011.

<sup>95</sup> The 1992 Refugee Law mandates the Ghana Refugee Board to advise government on all matters concerning refugees and liaise with all other stakeholder, however, since the current government’s inauguration in January 2009, the Ghana Refugee Board has not met once. At the time of the study (March 2011), the Board lacked the services of a substantive Chairperson (without whom the Board cannot sit) to effectively perform its functions as mandated in the constitution establishing it; Samuel K.

UN Resident Co-ordinator, Ruby Sandhu-Rojon recently announced that the UN refugee agency in Ghana's funding is running out, and that the consequence of this could be the premature cessation of support to over 7,000 people spread out in refugee camps in the Western Region.<sup>96</sup> It was reported, that refugees in the Ampain Camp are already suffering from a 30% reduction in food rations due to the shortage of funds. Ruby emphasized that the Government of Ghana take a leadership role of mobilizing funding to fill this gap, as the lives of at least 5000 refugees including children will be put at risk, and it will not be able to support the supply of food to the refugees after June this year.<sup>97</sup>

The 1951 Convention on the Status of Refugees recognises that particular protection must be granted to minors.<sup>98</sup> It is unacceptable for a lack of adequate resources to justify refugee children in particular going without basic necessities.<sup>99</sup>

### **Recommendations**

- The HRAC wishes to emphasise to the government that it must bear some of the responsibility for refugees. In particular, it must take a more forthright role in determining the situation of former refugees, as was the case for the Sierra Leonean former refugees.
- It must also clarify the status of those refugees who carry UNHCR ID cards but are not legally classified as refugees pursuant to Ghanaian law.<sup>100</sup>
- It must provide adequate financial assistance to provide for refugees and asylum seekers fundamental human rights – food, security, housing, health care and education.
- It must develop a National Refugee integration policy to protect the human rights of refugees according to International Human Rights Obligations

## **11.0 Implementation and Efficiency of Normative and Institutional Framework for the Promotion and Protection of Human Rights**

- Ghana recently passed the Mental Health Bill in Parliament in March 2012, which is a significant development for the development of adequate health care facilities and the protection of human rights.
- Ghana should ratify the optional protocol for the Convention on the Rights of the Child.

---

M. Agblorti, *New Issues In Refugee Research*, Research Paper No. 203, *Refugee integration in Ghana: the host community's perspective*, University of Cape Coast Ghana, March 2011.

<sup>96</sup> Daily Graphic, Ghana newspaper, UN, Ghana assess needs of refugees in Western Region, April 3, 2012, p19.

<sup>97</sup> Daily Graphic, Ghana newspaper, UN, Ghana assess needs of refugees in Western Region, April 3, 2012, p19.

<sup>98</sup> 1951 Convention on the Status of Refugees, Section IV, Part B.

<sup>99</sup> Nana Oye Lithur, Human Rights Advocacy Centre, *Overview of Refugee Cases at the HRAC*, Submitted to the UNHCR

<sup>100</sup> Nana Oye Lithur, Human Rights Advocacy Centre, *Overview of Refugee Cases at the HRAC*, Submitted to the UNHCR

- Ghana should incorporate its obligations pursuant to the Convention on the Elimination of All Forms of Discrimination against Women into domestic law.
- Ghana should guarantee the Right to Health in the Constitution of Ghana.
- Ghana should develop a National Refugee Integration Policy to protect the human rights of asylum seekers and refugees.
- Ghana should pass the Right to Information Bill.

## **12.0 Key National Priorities as identified by HRAC**

---

- The Ghana Police Service must actively train officers in Human Rights laws, to ensure protection of the rights of commercial sex workers and homosexuals (MARPs).
  - The Government must review and decriminalize laws affecting MARPS.
  - Forced Evictions should be immediately ceased, and the Ministry of Local Government should adopt a National Evictions and Demolition Policy that conforms with International Standards.
  - Further training of relevant stakeholders and a protocol for schools on preventing and responding to violence against girls should be implemented.
  - Funding and resources should be increased for the mental health sector to improve services and delivery in psychiatric care in Ghana and respect for human rights.
  - Legislation should be invoked for protection from discrimination on the basis of sexual orientation and HIV/Aids status.
  - The Government must amend the constitution to abolish the Death Penalty.
  - The Government must prioritize the passing of the Right to Information Bill.
- 

## **13.0 Appendix:**

- 13.1 Human Rights Advocacy Centre, Study on Human Rights Abuses of Female Sex Workers by Ghana Police Service, Executive Summary.....p17
- 13.2 HRAC Report: Human Rights training project for practitioner of traditional healing and prayer camp operators in Ghana, Dec 2010, Executive Summary.....p19
- 13.3 HRAC, The Legislative Audit and Assessment of HIV/AIDS related laws and policies in Ghana, September 2010, Executive Summary.....p21
- 13.4 Human Rights Advocacy Centre, Report on Unannounced Demolitions and Forced Evictions in the Greater Accra Region, 2012.....p25
- 13.5 Accra Psychiatric Hospital, Executive Summary (HRAC Annual Report 2010).....p31

13.6	HRAC Budumburam-Joint Fact Finding Mission, Refugee Rights.....	p32
13.7	Overview of Refugee Cases by HRAC, submitted to UNHCR.....	p34
13.8	HRAC, Memorandum to the Constitutional Review Committee, Right to Health Memorandum 2010 - Executive Summary.....	p37
13.9	Human Rights Advocacy Center, Submission to the Constitutional Review Commission, Capital Punishment and Ghana: A Change for Life, 2010.....	p39
13.10	Human Rights Advocacy Center, Submission to the Constitutional Review Commission, Supplementary Memo on the Death Penalty, 2010.....	p47

### **13.1 Human Rights Advocacy Centre, Study on Human Rights Abuses of Female Sex Workers by Ghana Police Service, Executive Summary:**

This Report is the product of a study commissioned by the United Nations Population Fund (UNFPA) and facilitated by Human Rights Advocacy Centre (HRAC). The main objective of the study was to ascertain the extent and types of abuses suffered by female sex workers (FSWs) at the hands of the Ghana Police Service (GPS), in five regions of Ghana: Ashanti, Central, Eastern, Greater Accra and Western Regions (AR, CR, ER, GAR and WR). The study was intended to fill a gap in knowledge about this serious problem in Ghana. The study's other key objectives were to ascertain the effect of the abuses, particularly the extent to which FSWs are able to redress those abuses using relevant institutions, and to make recommendations for appropriate interventions for reducing such abuses.

The rationale behind the study's objectives is twofold: to identify and overcome challenges that make Ghana's FSWs especially vulnerable to HIV infection and to combat the violation of Ghanaian and international human rights law. In relation to HIV infection, while Ghana is one of the sub-Saharan African countries with a relatively stable HIV epidemic, there are pockets of high HIV prevalence, one of which is amongst commercial sex workers (CSWs). One of the goals of Ghana's Second National Strategic Framework for HIV and AIDS (NSFII) was to reduce HIV infections amongst vulnerable groups. However, in interventions implemented during the period 2005 to 2010, there has been a lack of focus and research on the rights of FSWs and specifically on the violation of those rights by the GPS.

To date, there has also been insufficient research on the experiences of the male sex worker (MSW) community in Ghana. As a group in which two most-at-risk populations (MARPS) – CSWs and men who have sex with men (MSM) – intersect, MSWs' relevance to the goal of reduction of HIV infection is obvious. Given the need for research concerning Ghana's MSWs, while the terms and resources of the study did not permit a full investigation of MSWs parallel to that conducted in relation to FSWs, the study included a pilot survey of MSWs in GAR.

The field work for the study comprised a main round, focused on FSWs, and a subsequent pilot scoping survey focused on MSWs. In the main round of field research, data was collected from 294 GPS officers and CSWs, 149 CSWs and 145 GPS, as well as from representatives of the Commission on Human Rights and Administrative Justice (CHRAJ) and the Legal Aid Scheme (LAS), across the five surveyed regions. In the supplementary round of field research, data was collected from 10 MSWs in GAR.

#### **Major findings from the field research were:**

- That the data from the interviews and FGDs with FSWs powerfully indicate that the GPS frequently violate the human rights of FSWs in Ghana, as well as breaching domestic and international laws, through practices such as physical, sexual and verbal abuse, rape, torture, unlawful arrest and detention, and extortion.
- That when faced with infringement of their human rights, FSWs in the surveyed regions are generally obtaining help and/or protection through unofficial channels (mainly friends), rather than from law enforcement agencies or institutions, if they obtain help or protection at all.
- That while the MSW pilot survey cannot give rise to conclusive findings, the results suggest that the GPS have subjected Ghana's MSWs to some grave infringements of human rights,

including rape and torture, and that they have distinct experiences from FSWs in relation to extortion by the GPS (specifically, there is a practice of the GPS extorting large sums of money from the MSWs' clients).

- That the GPS and the FSWs presented different versions of the relationship between the two groups. Key differences included less frequent GPS abuse of FSWs overall than that suggested by the FSW field research. Various factors may have contributed to the differences; however, the sheer number of the accounts of abuse provided in the FSW FGDs, the similarity between those accounts and the detail provided in them are all compelling.
- That the GPS field research confirmed the existence of problems with the GPS's understanding of the laws concerning FSWs.
- That judging by the interview data, a great majority of Ghana's GPS officers are opposed to FSWs' operations on moral or religious grounds and do not support legalising those operations.
- That Police Intelligence and Professional Standards Bureau (PIPS) investigations of GPS misconduct in relation to, or abuse of FSWs, are uncommon, as is disciplinary action against GPS officer as a result of such an investigation.
- That CHRAJ and the LAS have thus far failed to take any positive steps to remedy the human rights abuses Ghana's FSWs face from the GPS.

The report draws a number of overarching conclusions from these research findings. The principal conclusion is that police abuse of FSWs' human rights is a grave and widespread problem in the five surveyed regions.

The report then makes both broad and more detailed recommendations based on the study's findings. Key recommendations are that:

- The GPS must improve its training of officers, with a view to improving officers' understanding of and compliance with both human rights and the laws relevant to FSWs, and the processes that should be instituted should they encounter an abuse perpetrated against a FSW.
- The GPS must review its internal procedures to determine the reasons for lack of sufficient involvement of PIPS and the GPS's Domestic Violence and Victims Support Unit (DOVVSU) in addressing violations of the human rights of FSWs in Ghana to date, and take measures to ensure those units are appropriately involved in the future.
- The GPS must improve its training and policies concerning safe sex practices.
- Both CHRAJ and the LAS must take measures to increase and improve their engagement with FSWs and their knowledge about FSWs' experiences.
- The Government of Ghana and other relevant stakeholders must also continue and increase measures to advance the status of Ghana's women more generally and in particular ameliorate the conditions that lead many women to become FSWs.
- The Government of Ghana must review the law applying to commercial sex work and in particular consider certain reforms (a number of specific alternatives are listed for consideration, including general decriminalisation of commercial sex work).
- The Government of Ghana and/or other relevant stakeholders should monitor and conduct further research, as needed, on the situation of FSWs in Ghana. In particular, research is required on the experiences of those FSWs in regions not included in the present survey.
- The Government of Ghana and/or another relevant stakeholder should conduct a more comprehensive study to obtain detailed and accurate information on abuses of the



human rights of MSWs in Ghana at the hands of the GPS, with a view to addressing those abuses.

**13.2 HRAC Report: Human Rights training project for practitioner of traditional healing and prayer camp operators in Ghana, Dec 2010, Executive Summary:**



*Patient undergoing treatment at the prayer camp visited by the HRAC*

Traditional healing and prayer camps are believed to contribute significantly to the health care delivery system in Ghana. People who have used prayer camps describe them as efficacious. Notwithstanding its contributions to the health care needs of the country, there are attendant challenges such as infractions on fundamental rights and freedoms of users. Over the years, there have been increasing reports in the media about practices in prayer camps violating the rights of people, especially mental patients seeking treatment from faith healers. The allegation of rights violations (chaining and confinement of aggressive patients, flogging to exorcise demonic spirits out of patients denial food, medical care and visitation) have been confirmed by a survey commissioned by the Commonwealth Human Rights Initiative in 2008.

The practice defies law and increases the vulnerability of patients, which when not addressed holistically can undermine the human resource of the country. It is for this reason the Human Rights Advocacy Centre (HRAC) in collaboration with Faith Complementary & Alternative Health Care of Ghana (FCHAG) with financial support from Rhodes Scholar Southern African Forum (RSSAF) organized two human rights training workshops for 90 faith and traditional healers from Greater Accra, Ashanti, Central and Volta region. The purpose of the workshop was to train prayer camp owners on human rights standards to reduce incidence of rights violations in the camps, encourage referrals of mental patients from prayer camps to hospitals, create a human rights monitoring tool for prayer camps, and create an environment where the right to mental health care is respected and enforced in Ghana

During the workshop participants were taken through practices considered violation of rights lessons on best practices delivered by experts in human rights issues and conventional medicine. As part of the training exercise participants were zoned into groups (and presented with questions) to identify examples of human rights violations and how they intended to address them, should they be confronted with similar situations in their camp. At the end of the programme participants were able to identify examples of abuses and recommended steps to

address and forestall their occurrence. The meeting also witnessed the launch of 500 posters.

As an outcome of the project, a task force has subsequently been set up by FCHAG in Volta and Ashanti region to monitor activities of practitioners to reduce human rights violations. Participants have also been awarded with Certificates of Participation. Additionally, participants requested for further training and an extension of the training to benefit practitioners in other regions.

### **13.3 HRAC, The Legislative Audit and Assessment of HIV/AIDS related laws and policies in Ghana, September 2010, Executive Summary:**

Auditing legislation presents a useful means for human rights monitoring. ‘Auditing’ in this sense purports to identify lacunae between international obligations, represented by those conventions or treaties to which a country is a signatory, and national practice as implemented by a nation’s legislative framework. In this Audit, Ghana’s commitment to protecting the rights of persons living with HIV/AIDS (‘**PLHIV**’) and creating an environment that reduces its population’s exposure to vulnerability and human rights abuses is evaluated.

The Audit involved several steps. The first step was to determine the form the Audit was to take. It was important to develop questions appropriate to Ghana’s legal system and the impact of the legal system on the country’s regulatory response to HIV/AIDS. The questions were informed by general international standards, the characteristics of the epidemic and previous audits conducted by the Kingdom of Nepal (2004)<sup>101</sup> and the Republic of South Africa<sup>102</sup>. The second step involved the identification of the relevant materials. Finally, consultations were arranged to discuss the content of the materials and to clarify any issues. It was important to consult with communities, various organisations, MDAs and individual workers in each particular field to evaluate the impact of the regulatory framework on the day-to-day life of the Ghanaian population. Part I of the Audit includes the legal and policy provisions relating to HIV/AIDS issues in general. The responses of national institutions mandated to protect human rights are included in Part II of the Audit.

#### **PART I: Legislative Audit Chapters**

##### *Anti-discrimination*

Ghanaian laws provide general protection against discrimination. Several acts strengthen the Constitutional prohibition against discrimination on the basis of disability within the education, accommodation and healthcare sectors. The laws also grant a reasonable time limit for lodging complaints and set up a national, independent institution to promote human rights education. Yet current anti-discrimination laws do not address the issue of HIV/AIDS-based discrimination. The National HIV/AIDS Policy prevents discrimination and prohibits derogatory practices such as pre-employment screening for HIV status. There is, however, an absence of laws and policies which address ostracised groups, including men who have sex with men (‘**MSM**’) and certain professions such as commercial sex work (‘**CSW**’). Currently, the activities of these groups are criminalised which inhibits the development of mechanisms to prevent discrimination against

---

<sup>101</sup> Forum for Women, Law and Development. March 2004. ‘HIV/AIDS and Human Rights: A Legislative Audit,’ Kingdom of Nepal.

<sup>102</sup> ‘Legal and Human Rights Responses to the HIV/AIDS Epidemic’. 2005. Republic of South Africa.

them. In addition, members of the public services and armed forces still undergo pre-employment screening. In general, the Audit exposed that there is still significant stigma and discrimination against PLHIV in practice in Ghana.

#### *Privacy and Confidentiality*

Privacy is a fundamental right expressly recognised in the Ghanaian constitution. There are several laws which maintain this right through the regulation of the media and healthcare industries and prohibit the disclosure of confidential communications between married couples, professionals and information disclosed as part of any investigation. These laws are general and may include, in practice, discrimination based on sero-status. The National HIV/AIDS Policy reiterates the importance of privacy specifically in relation to HIV/AIDS and states that disclosure of a person's sero-status, even by a health professional to a sexual partner, is prohibited. Where confidentiality is breached, stigma and discrimination continues to result. The Policy also prevents an employer from seeking an employee's HIV status. Current healthcare guidelines mandate confidential sexual and reproductive health services, including voluntary confidential testing ('VCT') for adults and children. Moreover, there appears to be a limited understanding regarding the right to privacy, leading to the ineffective use of these laws and policies. There is also a clear inadequacy in the law regarding sexual orientation. The criminalisation of "unnatural carnal knowledge" means that it cannot be assumed that the right to privacy extends to sexual orientation.

#### *Sexual and Transmission Offences*

Ghanaian criminal laws do not specifically address the transmission of HIV. The National HIV/AIDS Policy indicates that the *intentional* transmission of the virus may be criminalised as a generic act of causing harm and in some cases, may be classified as murder. The treatment of the intentional transmission of HIV as a generic form of harm can help to reduce the stigma associated with the virus. Yet the fact that there have been no cases relating to the transmission of the virus indicates the lack of prosecution on this issue. The law regarding the *negligent* transmission of the disease is less clear. There is no case law on the willful or negligent transmission of HIV to date. In contrast, domestic violence laws do criminalise the intentional transfer of HIV as a form of violence. Questions are raised, however, on the issue of consent to harm; there are inconsistencies in the law. Other positive aspects of the law include the prohibitions on human trafficking and child labour and the existence of healthcare guidelines regarding Post-Exposure Prophylaxis ('PEP').

#### *Criminalised PLHIV*

Ghanaian laws provide for diversion from the justice system to a healthcare institution in situations of necessity. However, there are inadequacies within the justice system for protecting the welfare of criminalised PLHIV. There is a lack of protection for commercial sex workers ('CSWs') from ill-treatment by police, clients and managers. Condoms are distributed to CSWs through programs organised by the Ministry of Health ('MOH') in conjunction with several Non-Governmental Organisations ('NGOs'), including WAPCAS, but more needs to be done to ensure that they are available and accessible to the poorest members of the community. Ghanaian policy does not advocate harm reduction programs to treat addicted drug-users, and to prevent the contraction and spread of HIV amongst intravenous drug users ('IDUs'). There are no needle-exchange programs in place and the issue of intravenous drug use ('IDU') remains largely unaddressed. The illegality of homosexuality is a recurring problem for Ghanaian laws and policies; the criminalisation of homosexual acts means that homosexuals do not receive adequate protection and access to treatment for HIV though they compose a significant proportion of those people affected by the epidemic.

### *Prison/Correctional Laws*

There are some positive aspects to the prison laws and policies. There are programs in place which facilitate access to information and education on HIV/AIDS-related issues and allow for prisoners to undergo VCT. The HIV status of a prisoner is confidential but where it becomes known or later diagnosed, there are mechanisms in place to treat the prisoner. Where a prisoner is diagnosed with AIDS, he or she may be eligible for a Presidential Pardon on the grounds of compassionate release. Whilst treatment is available for prisoners, the laws and policies do not address the prevention of transmission of the virus between prisoners through the provision of condoms. Moreover, there is potential for discrimination based on the sero-status of a prisoner as he or she may be disallowed from participating in certain tasks within the prison based on the medical examiner's recommendation.

### *Employment*

Employment law policy in Ghana specifically prohibits pre-employment screening. The prohibition, however, appears to suffer from a lack of clear implementation, particularly for the Police Service and Armed Forces. Other positive aspects of Ghanaian employment law and policy include the explicitly mandated promotion of safe and sanitary working conditions and the possibility for the general inclusion of the occupational transmission of HIV within existing Worker's Compensation legislation. Ghanaian employment law scores poorly, however, on the guarantee of employment security for HIV sufferers. Currently, HIV-positive employees are only protected by anti-discrimination provisions which are inadequate. Moreover, under current social security law, persons whose medical condition cannot be eliminated through the use of reasonable accommodations do not qualify for social security; this includes people living with AIDS. Recently, several NGOs and Ministries, Departments and Agencies ('MDAs') have attempted to address this shortcoming through the development of specific workplace policies.

### *Public Health*

Public health laws and policies in Ghana show some alignment with international standards. Positive aspects include the provision of access to Anti-Retroviral Therapy ('ART') and counselling for persons pre- and post-VCT. There is a strict policy in place for blood screening to ensure that blood products are free of contamination. Ghanaian policy also encourages tourism and hotel laws to eliminate discrimination against the Economic Community of West African States ('ECOWAS') citizens. In Ghana, the right to privacy outweighs the notification of a person's HIV-status to public health authorities. Negative aspects of public health issues include the confusion regarding the segregation of people based on their HIV status. Whilst discrimination based on a person's disability is prohibited, the Constitution provides a legal framework for the prevention of the spread of infectious and contagious diseases which may infringe on personal liberty. Moreover, there is no clear mechanism for the provision of information to the general public on HIV/AIDS-related issues.

### *Regulation of Healthcare and Ethical Research*

Ghanaian law deals in part with healthcare regulation. It provides remedies for breaches of health professionals' standards and provides for investigation by an independent body. Moreover, censorship is prohibited except in the case of the public interest, supporting the national educational effort relating to HIV/AIDS. However, there are some gaps in the policy framework regarding ethical research. Whilst there is no clear policy that regulates the ethics of medical research or the legal protection of research subjects, ethics committees have been set up under the GHS and existing privacy laws protect the confidentiality of participants. It is unclear to what extent investigative measures by independent bodies have been utilised to protect the rights of PLHIV.

### *Children and OVCs*

There are a number of laws and policies in Ghana which address issues faced by children, particularly children made vulnerable by HIV/AIDS. There is a specific Ministry which governs issues facing women and children. Moreover, the social welfare system has developed policies which provide support in the form of specific programs for OVCs affected by HIV/AIDS, which are overseen by the GAC. Ghanaian law also acts to protect children from exploitative situations that increase their vulnerability, such as trafficking, defilement and child labour. Moreover, there is policy in place which aims to prevent children contracting HIV/AIDS through government initiatives in conjunction with various stakeholders. Ghana also has a specific department which deals with violence against girls which seeks to re-enter pregnant and violated girls in school, protect them from violent and forced traditional practices and remove them from abusive and sexually violent situations. The questionable implementation of these policies, however, poses a serious issue. Within the healthcare system, however, more needs to be done to deal with children's issues specifically. Currently, young children are treated under the same guidelines as adults. Furthermore, clear policy guidelines must be developed regarding the treatment of defiled girls with PEP.

### *Gender*

Ghanaian laws typically do not address women's issues, particularly regarding HIV/AIDS issues. The education and social inclusion of women are focal points of a number of general policies. The National HIV/AIDS and STI Policy (2004) ('**the National HIV/AIDS Policy**') advocates the empowerment of women with regard to their sexual and reproductive lives but references no laws for implementation. Recently, women's independence has been encouraged through the development of several microfinance programs. Encouragingly, there is a comprehensive policy on PMTCT which aims to reduce the number of children exposed to the virus. The law is more effective and specific with regard to violence against women. Criminal laws and domestic violence laws both carry specific provisions relating to the protection of women from sexual abuse, forced marriage and marital rape.

### *Traditional and Customary Laws*

In order to more fully understand the cultural interplay of HIV/AIDS-related issues and Ghana's legal framework, several Focus Group Discussions ('**FGDs**') were conducted with traditional rural townships. The FGDs revealed that stigma and discrimination against PLHIV is still prevalent in the community. Surprisingly, however, the PLHIV demonstrated a relatively sound understanding of their rights as espoused in the Constitution and other laws. This response demonstrated in part the effectiveness of Ghana's education and awareness programs regarding HIV/AIDS. The communities were less aware of legal services for PLHIV. Moreover, gender-based violence and discriminatory traditional practices such as widow's inheritance rights and polygamy were identified as entrenched practices that negatively affect the communities' ability to address issues related to HIV/AIDS. There is a lack of guidance in Ghanaian laws and policies to rebalance the dichotomy between modern human rights values and traditional laws.

## **PART II: Institutional Responses**

Various institutions mandated to protect and uphold human rights in Ghana were interviewed regarding their approach to HIV/AIDS-related issues, both within the workplace and in the community. It was found that the majority of governmental bodies, including policy and justice institutions, have institutional mandates that deal specifically with HIV/AIDS. In contrast, the CSGs interviewed incorporated HIV/AIDS-related issues within a general human rights framework. This indicates that the governmental response has been effective within the

governmental institutions. Addressing HIV/AIDS-related issues, however, has been difficult.

The institutions highlighted a number of ongoing concerns. All institutions, both governmental and CSOs drew attention to a lack of resources. Moreover, the allocation of resources needs to occur more prudently and appropriately. The lack of attention given to women's issues was also mentioned by all institutions, with the notation that only when women are included in the HIV/AIDS debate can real progress be made. The stigma and discrimination against PLHIV is an ongoing issue that requires that government engage in rigorous education and awareness campaigns to remove negative perceptions regarding PLHIV. Finally, the institutions highlighted the low level of awareness of governmental programs regarding HIV/AIDS; this presents a significant barrier to the protection of PLHIV.

### **PART III: Conclusion**

The Audit highlights the lacunae between Ghana's international obligations and the current legislative and policy framework. It is hoped that the study is utilised by the Government of Ghana to address these inconsistencies and ensure more effective implementation of laws and policies to protect the rights and interests of PLHIV.

#### **13.4 Human Rights Advocacy Centre, Report on Unannounced Demolitions and Forced Evictions in the Greater Accra Region.**

##### **Executive Summary**

##### **1. About the HRAC:**

The Human Rights Advocacy Centre (HRAC) is a not-for-profit, independent, non-partisan, research and advocacy organization, set up to advance and protect human rights in Ghana.

##### **2. Facts:**

###### *Odawna Railway Settlement*

The Odawna Railway Settlement, refers to the area directly North-West of where the Odawna Railway intersects with Ring Road West, adjacent to the VIP bus terminal, near Kwame Nkrumah Circle in Accra. This area was home to approximately one thousand individuals, who were living in self-constructed wooden structures, and running businesses in kiosks and shops. At approximately 5:30am on Thursday, 16<sup>th</sup> January, 2012, the A.M.A fired three gun shots, and then proceeded to demolish the entire settlement.

###### *Awudome Estate*

Awudome Estate refers to land around the Awudome flats, in Kaneshie, in Accra Metropolis. On Thursday 26<sup>th</sup> January, 2012, A.M.A officials demolished approximately ten kiosks in this area.

###### *Dome Market*

On Tuesday, December 6<sup>th</sup>, 2011, the Ga East Municipal Assembly facilitated a demolition of a large area of market stalls at Dome market, conducted by Ghana Police Service.

As a result of these demolitions people have been left struggling to rebuild their lives. Nearly all of the residents in Odawna have been left homeless and with no means of income. With no alternative place of residents, people have been forced to stay in the area.

*"I have been sleeping outside with the six children. I have no money to*

*start a business again. My son was sent home from school because we do not have money to pay his school fees.” (resident from Odawna).*

*“I have been feeling suicidal because everything has gone.”  
(resident from Odawna).*

*“We are suffering...we are hanging here, [as we] have no place to go”  
(resident from Odawna).*



***Residents after the demolition at Odawna Settlement***

Nearly two months have passed since the demolitions, however, the A.M.A has not made any effort to even clean or beautify the areas. In Awudome Estate, the upturned containers or debris from the demolition still lie where they fell from the bulldozer.

*“I have no money to even remove my upturned container to somewhere else”... “Look at how they have even left the area”... “We had at least kept it maintained for the community” (residents from Awudome).*

### **3. Fact Finding Mission:**

The HRAC conducted a fact finding mission, at Ordawna Railway between the 26<sup>th</sup> and 29<sup>th</sup> of January 2012. The study sampled 50 residents at the settlement, and was conducted as short structured interviews to collect qualitative and quantitative data for analysis. The HRAC also surveyed ten residents from Awudome Estate about the unannounced demolition that occurred there, and six market traders from Dome market.

### **4. Findings from the Fact Finding Mission:**

#### ***Ordana Railway Settlement***

Of all the respondents interviewed by the HRAC, none of the residents had been informed of the date and time of the planned demolition. Only 47% of residents interviewed, had heard or were

aware of Mr. Vanderpuije's (A.M.A. Director) intention to clean up the area. These residents had heard him speaking on Monday 16<sup>th</sup> of January 2012, after there was an outbreak of fire on Sunday the 15<sup>th</sup> January 2012. Mr Vanderpuije informed residents that they would come to clean up the area on Friday the 20<sup>th</sup> January 2012. He did not provide any answers to pleas from residents that they did not have anywhere else to go, and not enough time.

Respondents informed the HRAC that the demolition was carried out at early dawn whilst people were sleeping and getting ready for work or school. The A.M.A conducted the demolition on Thursday 19<sup>th</sup> January, a day earlier than had been announced. Respondents spoke of being unable to salvage any of their personal or business properties. Consequently, school uniforms and books were destroyed; more than 86% of those interviewed reported that the demolition had affected their children's ability to go to school. More than 90% of residents had lost their main source of income and their assets which had been the foundation of their businesses, and therefore their livelihood.

*"Because of the rush, my wife was hurt and my child is sick" (wife sustained cuts, bruises, and scrapes) "we have no place to go" "if the government gives us a place to go, we will go" "over a fortnight we've been sitting here with nothing" (resident)*

*"We don't have a place to sleep. We have no job. We can only hang here. We have so many problems. We need money to get another place to stay. I had 500GHS in my house, and all my possessions were burnt. There has been no compensation." (resident)*

*"I need money to start my business again. I am praying for small money to start my business again. I don't know what I can do now. I am feeling mental and health illness". (resident)*



The Ghana Police Service and the A.M.A were armed, and residents told the HRAC stories of



how they were threatened, hit with the butt of rifles, and pushed into the gutter, without reason. 100% of residents spoken to by the HRAC, reported that after the demolition, they had not received any assistance from the A.M.A, the Ghana Police service, CHRAJ or NADMO. Moreover, they were not offered any alternative option for settlement, nor any compensation for their properties which were arbitrarily destroyed.

#### *Awudome Estate*

Shop owners reported to the HRAC that their containers and kiosks were demolished by the A.M.A, with no explanation as to the reason for the demolition. None of the residents had been informed of the date and time of the planned demolition. The A.M.A officers were armed, and respondents reported feeling threatened and intimidated. Of the proprietors, 65% held valid business permits (authorized by the AMA and the State Housing Authority). As a result of the demolition, 80 % of the proprietors have lost their primary source of income, and lost capital necessary to restart their businesses.

#### *Dome Market*

Respondents informed the HRAC that their shops were demolished and their goods were destroyed. They have significant concerns regarding the development of the area, as they have not been informed about who will have access to the new development and the repercussions for their businesses.

### **5. Violations**

International Human Rights Laws and the *1992 Ghanaian Constitution* unequivocally protect individuals from having their basic human rights violated through practices such as forced evictions and demolitions. The right to adequate housing is protected by Article 25(i) of the Universal Declaration of Human Rights (UDHR), International Convention of Economic Social and Cultural Rights (ICESCR) 11 (i), Convention on the Elimination of Racial Discrimination (CERD), Article 5 (e) (iii), Convention of Elimination of Discrimination against Women, (CEDAW), article 14(2), Convention of the Rights of the Child, article 27.

As a result of the demolitions by the A.M.A, residents' right to adequate housing, their right to food, water, sanitation, health, education, property and security, were breached. They were also exposed to a greater risk of other human rights violations such as, sexual assault, robbery, insecurity of property and other inhumane treatments.

The violations by the A.M.A were, as follows:

- Failure to consult with the affected persons in advance
- Failure to give adequate or reasonable notice of the planned demolition
- Failure to provide information on the proposed demolition
- Failure to provide an alternative location for settlement and
- Failure to provide any information or access to legal aid or support after the demolition.
- Conducted the demolition at early dawn (whilst some were asleep)
- Not providing support after the event or channel to claim compensation for their properties which were destroyed.

The A.M.A actions failed to comply with the procedural requirements set out in the General Comment No.7 to ICESCR on adequate housing and forced evictions, and are in therefore in blatant violation of International Human Rights Laws.

**6. HRAC Recommendations:**

- 1 The immediate cessation of the practice of unannounced demolitions and forced evictions in the Greater Accra Region, as well as across Ghana.
- 2 Explicit entrenchment into domestic law the rights of all Ghanaian citizens against the practices of forced eviction and unannounced demolition.
- 3 The Ministry of Local Government and the Government of Ghana, should adopt a National Evictions and Demolition Policy that conforms with international standards, including provisions that guarantee:
  - 3.1 Evictees will be issued formal notice in due time of an eviction.
  - 3.2 Evictees rendered homeless will be urgently provided with access to basic shelter, food, safe drinking water, sanitation and medical care if required.
  - 3.3 Evictees will be awarded alternative accommodation and/or other appropriate according to their personal circumstances.
  - 3.4 Evictions and demolitions will not be carried out in the early hours of the morning, while affected residents are sleeping and at risk of being killed or injured.
  - 3.5 Evictions and demolitions will only occur as absolutely necessary, in keeping with Article 20 of the Constitution.
  - 3.6 That the community will be adequately consulted with in advance to demolition or eviction in order to abate confusion and to facilitate a smooth transition to an alternative location.
- 4 Domestic legal reform in regard to the scope of the powers of district assemblies such as the AMA including:
  - 4.1 The creation of an independent tribunal for dispute resolution
  - 4.2 The creation of independent processes in order to facilitate redress for affected persons
  - 4.3 Increased limitations on power in relation to eviction and demolition
  - 4.4 Approval from another requisite body to increase accountability

**13.5 Accra Psychiatric Hospital, Executive Summary (HRAC Annual Report 2010)**

The HRAC visited the Accra Psychiatric Hospital to assess at first hand the living conditions of mental patient and the level of treatment provided for the inmates in the facility. The visit, which was led by Daniel Asare Korang, Programmes Manager and 10 volunteers, forms part of an ongoing advocacy initiatives to improve mental health as a human right.

**Findings**

The main and largest problem, the team uncovered, stems from a lack of funding which results in issues such as;

- Overcrowding/congestion
- Severe shortage of hospital staff
- Inadequate medical treatment
- Poor nutrition
- Inhumane living conditions

**Female Ward**

The Female Ward comprises 114 female patients with 5 professional nurses, two assistant nurses, and two paramedics. The ratio in this particular ward is 1 nurse to every 25 patients all of whom are divided amongst 3 shifts throughout the day. The patients suffer from a wide range of mental conditions, such as schizophrenia, manic depression, and epilepsy all of whom are housed together due to the lack of space to house them individually, including convicted persons.

### **Special Ward**

The Special Ward was built for 60 patients but currently housing 214 patients. This ward is called the Special Ward because it has historically housed many criminals. About half of the current patients have been convicted of rape, murder, and defilement and are all housed together with those who have committed no crimes at all. There are 26 beds in this ward, and the rest of the patients sleep on straw mats that are often torn. The patients range from 17 to 60 years of age and are not separated based on age or mental needs.

### **Vagrant Ward**

This ward comprises 50 male patients, whose ages range from 16 to 61. There are 15 staff members who are split between three shifts throughout the day. There is no real rehabilitative program in place for the patients, which therefore affects their overall treatment and indirectly their release from the facility. The patients are often aggressive, in which case they are put into solitary confinement.

### **V.I.P Ward**

The V.I.P. Ward is a ward for voluntary- paying patients. The facility is 4 years old and currently houses only 4 patients, though the housing capacity is 20. The cost of the V.I.P. Ward is 35 cedi per week where the rooms are considerably larger, furnished with beds, ceiling fans, a television, and clean tile floors. Patients in this facility have food choice, and have 10 medical attendants.

### **Children's Ward**

The Children's Ward is comprised of 20 patients, whose age ranges from 6 years old to 30 years old. The placing of patients in this facility is behavior-based (if a patient though old, behaves like a child, he is deemed a child) All of these patients are out of contact with their families and are often brought in by the Department of Social Welfare.

### **Meeting with Dr. Akwasi Osei, Medical Director of the Hospital**



According to Dr. Osei, the patients, on paper, are supposed to be entitled to 8 cedi 50 pesewa per day for food and resources; however, the patients receive 1/3 of the money to which they are entitled from the government. Each patient, in reality, is entitled to about 60 pesewa per day. The patients receive 3 meals a day, but they are not square meals and lack the basic nutrients. The hospital is very deep in debt as a result of taking out loans to sustain it to compensate for the lack of government funding. Dr. Osei calls this “state-sponsored human rights abuse.

### **Outcome**

The HRAC has written a report of the findings of

*Mental Patient in the Special Male Ward Courtyard Passing Time.*

the visit and is preparing to file a complaint with the President, Prof. John Evans Atta Mills on the state of Mental Health in Ghana and the Commission on Human Rights and Administrative Justice (CHRAJ) to investigate the human rights violations at the Accra Psychiatric Hospital.

### **13.6 HRAC Budumburam-Joint Fact Finding Mission**

On February 13, 2011 there were media reports about a violent clash between hundreds of Police Officers and Liberian Refugees at the Budumburam camp. According to the reports, the refugees had constituted a newly appointed Welfare Executives (Joint Liberian Refugee Board), and in a ceremony to outdoor the members the police violently prevented the inauguration, vandalized property, apprehended and brutalized several residents, shot scores of unarmed refugees leading to the death of four refugees.

These events triggered a joint fact-finding mission to the Budumburam Refugee Camp on February 25, 2011 by the Commonwealth Human Rights Initiative, Human Rights Advocacy Centre, Amnesty International and the Legal Resources Centre.

The team, on arrival, conferred with the opinion leaders in the camp who confirmed the incident and tendered in documentary evidence to support their account. According to a spokesperson, (name) they have been victimized and underrepresented by leaders appointed by the UNHCR and the Ghana Refugees Board contrary to international refugee law, and in their attempt to rectify the problem (by appointing people from within to represent them) hundreds of armed policemen besieged and raided the camp visiting atrocities on them.

The investigators, divided into sub-groups, spread through the camp and randomly administered questionnaire to 62 persons who witnessed the events of February 13.

#### **Findings:**

- The event occurred following the huge presence of scores of policemen (ostensibly to prevent the inaugural ceremony) deployed to the camp and the arrest of Tyron Marshall at 6 am (an opinion leader widely perceived to be the ring leader of the refugees) before the inaugural ceremony could be held at 3 pm.
- Scores of Liberian refugees massed up to question the reason for the arrest of Marshall.
- Police chased and openly shot live bullets and tear gas into the teeming crowd of refugees.
- Police killed 4 persons (contrary to claims by the Police of one casualty)
- Violent destruction of properties (houses) by the police
- The refugees were manhandled and beaten up by the Police
- 68 suspects were arrested by the police and detained in different police cells.
- several others were injured

#### **Outcome and Impact of the Fact-Finding mission**

On March 1 2011, the HRAC led by Nana Oye Lithur, the UNHCR represented 47 (in an application for bail) of the refugees who had been arrested and charged with rioting in the case of The Republic v. Stephen Goffah and 46 others. The team is yet to an interview with the Ghana Police Service and the Budumburam Camp manager.

Following several arguments by counsels for the accused persons, the presiding judge of the Cape Coast Circuit Court (in the Municipal building granted) all 47 were granted bail and the case was adjourned to March 28 2011.



*Women at Budumburam Refugee Camp*

13.7

## **Overview of Refugee Cases by HRAC, submitted to UNHCR**

### **1. Liberian Refugees**

Ghana has been host to thousands of refugees since Liberia's first civil war in 1989 – 2006 and the second civil war from 1999 – 2003. In its 2005 Statistical Yearbook the UNHCR stated that there were 38,500 Liberian refugees in Ghana. The repatriation of refugees following the end to strife in the country was not always conducted in line with international human rights standards.

**SUMMARY OF FACTS:** The CHRI (of which Nana Oye Lithur was Regional Director) in 2008, represented approximately 650 Liberian women and children in a habeas corpus claim. On 17 March, 2008, the women and children were arrested and taken to Kordeabe Voluntary Training Centre for detention. Their arrest was in response to the women's peaceful protest against the UNHCR's repatriation package.

**RESPONSE BY CHRI:** On 31 March, 2008, all but 23 of the refugees were released following the filing of a habeas corpus in the Fast Track Division of Ghana's High Court. The CHRI represented the remaining 23 refugees in a subsequent action concerning their loss of refugee status and attempted deportation.

The CHRI argued, inter alia, that the applicants were not illegal immigrants but undocumented asylum seekers who fall under the jurisdiction of the Ghana Refugee Board. They are therefore not subjected to the Immigration Act 2000 but the Refugee Law 1992. The Director of

Immigration acted beyond his jurisdiction by issuing an order for the repatriation of the applicants.

The CHRI also contended that the protection afforded to the registered refugees should be extended to their unregistered family members pursuant to section 12 of the Refugee Law 1992. Moreover, the Immigration Board, by detaining minors, violated the rights of children according to the United Nations' Convention on the Rights of the Child.

Finally, the CHRI contended that the Immigration Board had never adduced sufficient evidence to prove that the applicants pose a threat to national security.

**COURT FINDING:** Unfortunately, Gyaesayor J. dismissed the application to stop the repatriation of the 23 Liberian refugees. His Honour also held that the detainees had failed to satisfy the court that they were refugees, despite the fact that they were bearers of cards issued by the UNHCR.

**RESPONSE FROM HRAC:** The HRAC filed an appeal against Gyaesayor J.'s decision. The appeal was refused. The appeal is currently being reviewed.



*A child in detention is escorted to a bus by an Immigration Officer after court.*

## **2. Liberian Refugees: treatment of children**

**SUMMARY OF FACTS:** The grandmother of a young Liberian refugee visited the HRAC human rights clinic on 23 September, 2009 requesting assistance to enroll her grandson in school. All prior efforts to get UNHCR to fulfill their obligation to that effect had failed.

Whilst at the Refugee camp at Budumburam, the boy was sodomised by a neighbour and subsequently contracted HIV. After his infection, the young boy also suffered extensive injuries, including two broken legs, during a bad fall. He was the recipient of a UNHCR scholarship as

part of UNHCR's education program but was unable to study due to the trauma he suffered.

After his recovery, he expressed the desire to continue his education the following year but was informed by UNHCR that the scholarship program was no longer available to him. The HRAC was frustrated when several phone calls to the UNHCR office requesting a meeting on the matter were not reverted.

The UNHCR continued to pay for the boy's ongoing medical treatment. However, the boy's grandmother enrolled him in a private school and paid his fees and other school expenses with the feeding allowance they received from UNHCR. She bore the burden of maintaining her grandchild through the school for ten months. Then, in June, 2010, the UNHCR decided to fund his secondary education on the grounds that he enroll in a public senior high school. Following notification of the UNHCR's decision, the boy's grandmother agreed to send him to a public secondary school.

Due to a technical failure, which included the failure of the boy to make a regional selection for a public school the previous year, he was barred from enrollment.

**RESPONSE FROM HRAC:** The HRAC liaised with the UNHCR on behalf of the young boy to reach an agreement for support. The UNHCR is currently funding his education in the private school with aid from the Christian Council of Ghana. The HRAC continued to advocate for this boy, and him and his family will now be resettled in Canada.

**ISSUES:** The case of the young Liberian refugee highlights the plight of child refugees in Ghana. The 1951 Convention on the Status of Refugees recognises that particular protection must be granted to minors. The UNHCR claims that a lack of adequate resources restricts the ability of the UNHCR to help those refugees most in need in Ghana. In the case of children, this is unacceptable.

### **3. Liberian Refugees: verification of refugees**

**SUMMARY OF FACTS:** A Liberian refugee came to Ghana in 2003. He went through a verification process but was never given a card, merely a number. He went through the same verification process in 2007 but in 2009 was told his name was recorded as being voluntarily repatriated.

As he is not classified as a refugee, the Liberian refugee claims that he has been denied access to his basic rights, including the right to education. In August, 2009, the refugee reported his situation to the Commission on Human Rights and Administrative Justice ('CHRAJ') but no case went ahead.

**RESPONSE FROM HRAC:** In March, 2010, the HRAC met with the refugee to advise him on his reinstatement as a refugee. In July 2010, he received verification from the UNHCR.

He now seeks damages from the UNHCR regarding his interim period as a non-refugee. He claims that because he was not classified as a refugee he was denied his right to skills training and education through the UNHCR refugee program. He further claims that he suffered emotional stress due to the frustration of his situation.

**RESPONSE FROM HRAC:** The HRAC is liaising with the UNHCR and the refugee to reach a suitable outcome.

ISSUE: The UNHCR must clarify and stress the importance of retaining supporting documents to refugees. Without supporting documents, the UNHCR is restrained by technical requirements and the process of verification can be inhibited.

#### **4. Democratic Republic of Congo Refugees**

The situation in the DRC is dire. Ongoing civil wars in the DRC have caused massive suffering for its civilians. More than 5 million people have died from causes associated with the conflict. Close to 2 million people remain internally displaced and there are more than 450,000 Congolese refugees in neighboring countries.

SUMMARY OF FACTS: In April 2005, a journalist from the DRC published pictures of violence at Congolese hospitals. He immediately fled to the Ghana Embassy but his wife was raped. The refugee, his wife and two of his seven children were granted asylum in Ghana.

In December 2006, the UNHCR informed him that he would no longer benefit from the accommodation and financial assistance he was receiving from the UNHCR. The decision of the UNHCR was postponed following letters of support from the Ghana Journalists Association.

When the refugee's supervisor at a local newspaper found out he was a refugee he stopped paying him. He cannot find a job to properly feed his family and still relies on the help offered by the UNHCR. Five of his children are still in DRC. He does not want them to come to Ghana because the house provided by UNHCR is too small and he does not have the resources to take care of them. The refugee is still threatened by Congolese authorities who were able to find out he was in Ghana. He is also a diabetic.

The refugee would like to be part of the resettlement program to go to a developed country with his seven children. He has been in Ghana for five years and he cannot find hope of a better future. At the same time, the political situation in the DRC does not allow him to return. The refugee approached the HRAC on 23 November, 2010 to seek help regarding his claim for resettlement.

RESPONSE FROM HRAC: Resettlement is normally used in this case when voluntary repatriation and local integration in the country of asylum are not available within a reasonable period of time. The refugee apparently fulfils the criteria of the resettlement program but the UNHCR has been slow to act. The HRAC will liaise with the UNHCR to find a suitable outcome.

ISSUE: Recognising the principle of unity of the family, where families are separated and civil strife continues, the UNHCR must act swiftly to fulfill its mandate.

#### **5. Former Sierra Leonean Refugees**

Sierra Leoneans are no longer considered refugees following the International Community's announcement of the invocation of the cessation clause on 2 June, 2008. State Parties to the 1951 Refugee Convention, including Ghana, are obliged to apply the cessation clause. The only Sierra Leonean refugees, who can be afforded international protection after 31 December, 2008, are those who can demonstrate, either due to past persecution or an individual fear of future persecution for a Convention reason (political opinion, religion, race, membership of a particular social group and nationality) on return to Sierra Leone.

SUMMARY OF FACTS: The HRAC was approached by two men as representatives of approximately 130 Sierra Leonean refugees based at the Krisan Refugee Camp. The men sought



help from the HRAC as they were to be evicted from the camp. Sierra Leoneans are no longer considered refugees by the UNHCR in Ghana.

**RESPONSE BY THE HRAC:** The HRAC wrote several letters to the Minister of Interior but failed to receive a response. The failure of the Minister to appoint a Chairman of the Ghana Refugee Board also meant that there was a lack of direction or leadership regarding the plight of Sierra Leonean former refugees in Ghana. They could not appeal the decision of the Board to evict them from the camp.

Ultimately, the HRAC could not postpone the eviction of the Sierra Leoneans and in July of this year, they were evicted from the camp. They sought refuge at the Buduburam Camp after eviction.

Since their eviction, the refugees sought employment, education and permanent accommodation but were unable to find suitable outcomes. The UNHCR offered to continue the inclusion of the Sierra Leoneans in its skills training workshops but the Sierra Leoneans did not participate. With the option of resettlement very difficult, the Sierra Leoneans found the only viable option for them was voluntary repatriation.

**RESPONSE BY HRAC:** As they are no longer under the auspice of the UNHCR, the HRAC advised the refugee to approach the International Organisation for Migration ('the IOM') to seek help regarding repatriation.

**ISSUE:** The situation of former refugees in Ghana is very unclear. The UNHCR must collaborate with the Ghanaian government to determine a durable solution for these persons displaced by war and living in a foreign country.

### **13.8 HRAC, Memorandum to the Constitutional Review Committee, Right to Health Memorandum 2010 - Executive Summary**

In 1990, the Ghanaian government revealed an ambitious development plan to halve the proportion of individuals whose income is less than a dollar a day by the year 2015. As the deadline approaches, it is unmistakable that Ghana's ability to develop into a middle-income nation is highly dependent upon its commitment to advancing the health of its greatest resource—its people. As declared by Ghana's Ministry of Health, "the strategic direction of improving human capital makes health central to Ghana's development efforts."<sup>103</sup> However, despite how indispensable health is to the achievement of sustainable development there is no affirmative right to health contained in the nation's constitution. This reflects poorly on Ghana as the right to health is a fundamental human right that is inextricably connected to the full realization of several natural and inalienable rights—including the preservation of life and dignity. By failing to grant the right to health its highest form of legal protection the Ghanaian government is undermining its commitment to its people and the attainment of long-term prosperity.

As the first African country to gain independence Ghana is an exemplar of liberation and social progression for the African people. Ghana's resilience is reflected by the tremendous strides in health the country has made since the early decades of independence. Life expectancy has increased, smallpox has been eliminated and early prevention measures for communicable diseases such as measles and diphtheria has led to a decrease in child mortality and improvements in early development. Unfortunately, health development in Ghana has come to a standstill.

---

<sup>103</sup> Ministry of Health, *National Health Policy: Creating Wealth Through Health* (2007), p.8

Over the last ten years there have been no major changes in life expectancy and infant mortality rates. Ghana's human development index (HDI), which is a statistic composite of the country's life expectancy, education levels, and per capita GDP, has decreased from 0.563 in 2001 to 0.520 in 2005.<sup>104</sup> Hazardous environmental conditions such as polluted air, water, and soil have a dire impact on the health of Ghanaians as population growth continues to outpace structural developments for waste management. More alarming is that approximately 90% of the medical conditions that result in out-patient attendance at clinics are easily preventable if proactive measures are taken to improve environmental protection standards and combat poor lifestyle choices.<sup>105</sup>

According to a national poverty study there is a huge discrepancy between the quality of healthcare available in the northern and southern regions of Ghana. More than 30% of children in the north are not fully immunized prior to their first birthday. Whereas, the national average for incidences of diarrhea is 18% in the north the number is a staggering 31%. Figures for malnourished children are extremely high in the north—with 34 to 40 in 100 children receiving inadequate nutrition. In terms of access to clean water, the north is lack of access to water—with less than 20% of the population having access to pipe-borne drinking water. The northern region also has the lowest level of prenatal care and an increased risk for maternal fatalities.<sup>106</sup> Sadly, the government's failure to develop effective solutions is attributed to inadequate coverage of priority interventions, inadequate financing and dealings in disbursement of funds, poor staff attitude, and low productivity.<sup>107</sup> Consequently, if the Ghanaian government seeks to strengthen its legitimacy and maintain its reputation for social progression it must revitalize its commitment to health by providing a constitutional right to health.

Incorporating a right to health in the constitution is the strongest commitment a government can demonstrate to the advancement of public health. The Constitution is the supreme law of the land and as a result policies that run counter to the rights and provisions articulated in the Constitution are without force or effect. As a result observing the right to health as a constitutional right “provides a benchmark for the government obligations to respect, protect, fulfill and promote the right to health.”<sup>108</sup> Articulating a right to health in the constitution will provide a mechanism for government accountability and will encourage citizens to take proactive measures in securing healthy living conditions.

Because the constitution is both tangible and publicly accessible it will inform individuals of the government's commitment to improving public health and achieving health equity. Consequently, citizens will have a reference point to defend their right to access medical services and health care facilities. It will provide Ghanaians with a basis to compel the state to explain what it is doing to improve health conditions and how it intends to implement policies related to advancing public health; thereby, supporting a culture of openness and transparency. Furthermore, by extending constitutional protection to the right to health the government will allow citizens to instigate legal action against violators of health regulation. Similar to civil and political rights a positive right to health will be accessible to enforcement in a court of law and allow citizens to empower themselves through the legal process.

---

<sup>104</sup> IBID. p. 16

<sup>105</sup> IBID. p. 9

<sup>106</sup> Statistics from Institute for Transportation and Development Policy: *Report on Current Situation in the Health Sector of Ghana* (2005), p. 5-7

<sup>107</sup> Ministry of Health, *National Health Policy: Creating Wealth Through Health* (2007), p. 25

<sup>108</sup> Center for Health, Human Rights, and Development, *Constitutional Provisions for the Right to Health in East and Southern Africa* (2010), p. 3

### 13.9 Human Rights Advocacy Center, Submission to the Constitutional Review Commission, Capital Punishment and Ghana: A Change for Life, 2010

#### **Introduction**

Ghana, like most other nations in the world, strives to reach its highest potential, moving its citizens forward as time progresses. In this effort, Ghana must advance on all fronts, leaving no aspect of injustice for future generations, especially in the arena of human rights. Within Chapter Five of the Constitution of the Republic of Ghana, there are a number of inviolable, fundamental rights guaranteed to all people, the most important being the right to life. The right to life establishes the foundation upon which all of the other rights are built; yet there is a clause that remains in the Constitution allowing for a violation of that very right: the allowance of capital punishment.

The use of capital punishment in Ghana serves as a marker for a lack of progress in the arena of criminal justice. Ghana has served as a beacon for change on the African continent, but maintaining provisions that legalize state killings shows that the nation that led the way for decolonization still has a ways to go to ensure human rights to all citizens. Provisions within the criminal code and constitution leave room for using the death penalty to punish criminals convicted of specified crimes, namely, treason, first-degree murder, and armed robbery. While there has not been an execution in over a decade and a half, leaving these provisions in the Ghanaian Constitution leaves room for further human rights and equal protection violations.

Outside of Ghana itself, there are potential international repercussions for maintaining the death penalty. When examining the international aspects of the death penalty and how it is used, there is a noticeable gap between more economically developed nations and the developing world. Ghana has been known as one of the more progressive nations on the continent of Africa, and to keep this title, the government must be willing to abolish the death penalty.



*Nana Oye Lithur facilitating the CRC meeting*

#### **The Death Penalty in Ghana**

In Ghana, capital punishment remains legal although it has become a dormant practice. Because of the length of time between now and the last execution, the question of justification must be addressed. Because of the language of both documents, those in support of capital punishment may turn to both the Criminal Code and the Ghanaian Constitution to find support for the death penalty.

## **In the Constitution**

Capital punishment, or the death penalty, was written into the 1992 Constitution to legalize judicial executions for specified crimes. Presently, armed robbery, treason, and murder with intent are the three crimes for which the death penalty is an optional punishment. In addition to limited scope, there has also been limited follow-through with executions. The last federal execution in Ghana took place in 1993 when 12 prisoners were executed for either armed robbery or murder. While there are very few crimes for which the death penalty may be implemented and there have not been any executions in over a decade and a half, levying of the punishment has not ceased. As of January of 2009, approximately 105 prisoners were on death row. In 2008, 3 people were sentenced to death, and in 2007, 43 death row prisoners had their sentences commuted.

The Ghanaian Constitution mentions the use of the death penalty when addressing the tenets of a fair trial. Chapter 5, which outlines the human rights guaranteed to all Ghanaian citizens, addresses a fair trial in Article 19. More specifically, Subsection 2(a)(i) enumerates the heightened burden of imposing capital punishment:

2. A person charged with a criminal offence shall –
  - a. In the case of an offence other than high treason or treason, the punishment for which is death or imprisonment of life be tried by a judge and jury –
    - i. And where the punishment is death the verdict of the jury shall be unanimous.<sup>109</sup>

Because the text of the Constitution expressly allows for the use of the death penalty, there is no question as to the intent of the drafters of the 1992 Constitution. In regards to using capital punishment as a punitive remedy for treason and first-degree murder, the writers of the 1992 Constitution felt that this was not only justifiable, but was so important that it should be unambiguously stated. However, since its inception, the death penalty was only active for a little over a year. Therefore, it seems that the drafters included capital punishment to adhere to the traditions of the criminal justice system. to further prove that capital punishment is not seen as ultimately necessary is the inclusion of Article 72 under the powers of the Executive:

### Article 72 – Prerogative of Mercy

1. The president may, acting in consultation with the Council of State –
  - a. grant to a person convicted of an offence a pardon either free or subject to lawful conditions; or
  - b. grant to a person a respite, either indefinite or for a specified period, from the execution of punishment imposed on him for an offence; or
  - c. substitute a less severe form of punishment for a punishment imposed on a person for an offence; or
  - d. remit the whole or part of a punishment imposed on a person or of a penalty or forfeiture otherwise due to government on account of any offence.
2. Where a person is sentenced to death for an offence, a written report of the case from the trial judge or judges, together with such other information derived from the record of the case or elsewhere as may be necessary, shall be submitted to the President.
3. For the avoidance of doubt, it is hereby declared that a reference in this article to a conviction or the imposition of a punishment, penalty, sentence or forfeiture includes a conviction or the imposition of a punishment, penalty, sentence or forfeiture by a court-martial or other military tribunal.<sup>110</sup>

By including a means by which those sentenced to death, or any prison sentence, may have their sentence reduced, the drafters enabled the president to commute the executions of any and all persons

---

<sup>109</sup> The Constitution of the Republic of Ghana, Chapter 5, Article 19(2)(a)(i).

<sup>110</sup> The Constitution of the Republic of Ghana, Chapter 8, Article 72.

sentenced to the death penalty. In action, this article has resulted in over 300 death sentences being reduced to life imprisonment.<sup>111</sup> By using Article 72 to commute so many death sentences, the Presidents over the past decade and a half have illustrated that abolishing capital punishment is constitutionally justifiable. Utilizing the Prerogative of Mercy, the immediate past President, John Kufuor, commuted all of the death penalty sentences to life imprisonment before President Mills took his seat.<sup>112</sup> However, recent numbers from the Ghana Prisons Service shows that 103 prisoners still remain on death row.<sup>113</sup>

### **In the Criminal Code**

The Criminal Code of a country establishes the laws that all citizens must obey in order to ensure as much harmony as possible. However, when drafting a criminal code, nations must strive to ensure that the laws are written in such a way as to not unfairly burden certain citizens and so that law enforcement officials do not misinterpret the true intent of the legislation. For provisions that deal with capital punishment, even the most restrictive of laws causes the death of a prisoner who was guaranteed the right to life from the Constitution.

In the Criminal Code of Ghana, Act 29 legalizes the death penalty for first-degree murder in Section 46 and for treason under Section 180:

Section 46 – Murder

Whoever commits murder shall be liable to suffer death.

Section 180 – Treason

(1) Whoever commits treason shall be liable to suffer death.

(2) For the purposes of this section, "treason" shall have the meaning assigned to it by clause (3) of Article 3 of the Constitution.

(3) A person who is not a citizen of Ghana shall not be punishable under this section for anything done outside Ghana, but a citizen of Ghana may be tried and punished for an offence under this section wherever committed.

These two provisions explicitly state that the acts of murder and treason are punishable by death, but do so in a way that allows for other forms of punishment. The use of the term "liable" as opposed to merely stating "shall be" denotes the option of selecting another punishment. In addition, there is no provision within the Criminal Code that allows for the use of the death penalty after a person is convicted of armed robbery:

Section 149—Robbery

(1) Whoever commits robbery is guilty of an offence and shall be liable, upon conviction on trial summarily or on indictment, to imprisonment for a term of not less than ten years, and where the offence is committed by the use of an offensive weapon or offensive missile, the offender shall upon conviction be liable to imprisonment for a term of not less than fifteen years.

(2) For the purposes of subsection (1) the Attorney-General shall in all cases determine whether the offence shall be tried summarily or on indictment.

(3) In this section "offensive weapon" means any article made or adapted for use to cause injury to the person or damage to property or intended by the person who has the weapon to use it to cause injury or damage; and "offensive missile" includes a stone, brick or any article or thing likely to cause harm, damage or injury if thrown. [As substituted by the Criminal Code (Amendment) Act, 2003 (Act 646)].

This text does not lend itself to the use of capital punishment for someone convicted of armed robbery,

---

<sup>111</sup> "Judges Divided Over Capital Punishment," [http://www.ghanaweb.com/public\\_agenda/article.php?ID=10380](http://www.ghanaweb.com/public_agenda/article.php?ID=10380).

<sup>112</sup> "Right to Life, Stop the Death Penalty in Ghana". Amnesty International Ghana.

<sup>113</sup> "Right to Life, Stop the Death Penalty in Ghana". Ghana Prisons Service via Amnesty International Ghana.

yet the courts have used the two in conjunction.<sup>114</sup>

At present, authority for capital punishment may be derived from both the Constitution and the Criminal Code; however, a change in the Constitution through an amendment could negate the criminal code by striking all legislation that opposes the new amendment and penalizing any court or judge that does not respect the new provision.

### **Arguments Supporting the Death Penalty**

In Ghana and abroad, there are a number of arguments in support of capital punishment that have sustained the practice for centuries in many areas. The most prevalent arguments are deterrence and tradition. Contrary to the current trend toward abolishing the death penalty, these two arguments have been debated by scholars and used by governments to justify killing persons convicted of certain crimes.

### **Deterrence**

Many people who support capital punishment believe that killing convicted criminals will keep potential criminals from pursuing illegal activity; however, this has yet to be proven. The United States, the nation with the largest prison population in the world, is one example where the death penalty has not made a significant change in the crime rate. The chart below, created by Amnesty International, illustrates the murder rates of the states that perform the most executions in comparison to the states that do not employ capital punishment. Texas, with the highest number of death penalty executions, still has a murder rate higher than any of the states where the capital punishment has been outlawed (See **Table 1** in Appendix).

In addition, the number of criminals imprisoned in the United States has not decreased with the use of the death penalty. Part of this consistent rise in the prison population may be attributed to legislation that turns to incarceration more often than in the past; however, this does not negate the increase in the number of prisoners on death row. If, after using capital punishment for over a century, the United States has not significantly decreased the number of murders that take place every year, the argument of deterrence lacks merit.

Statistics indicate an increase in the crime rate in Ghana, in spite of the steady economic progress Ghana has attempted. In recent years, there has been an increase in serial killings, armed robbery, and cocaine trafficking.<sup>115</sup> In addition, Ghanaian prisons have not only reached capacity, they are overfilled by approximately 45%.<sup>116</sup> The combination of an increase in violent crime and an overcrowding of prisons illustrates that the death penalty is not a successful deterrent of crime in Ghana.

In addition to an undisputed increase in crime across the board, there is also evidence that the number of murders that take place in Ghana is not being reported properly (See **Table 2** in Appendix). If the crime rate is not being reported properly, and there are, in fact, more murders than the Statistical Office of Ghana has been reporting, the deterrent effect is even worse than most Ghanaians believe. If the murder rate continues to climb, then the government must find another way to deter the violent behavior of offenders. Capital punishment merely uses the threat of death to try to keep people from committing crimes when what Ghana needs is a government willing to look for the causes of violent behavior and try to eradicate it from inception.

The numbers released by the Ghana Prisons Service do not support the deterrence argument either. The Ghana Prisons Service's Annual Reports from 2004, 2005, 2006, and 2007 show an overall

---

<sup>114</sup> "Judges Divided Over Capital Punishment," [http://www.ghanaweb.com/public\\_agenda/article.php?ID=10380](http://www.ghanaweb.com/public_agenda/article.php?ID=10380).

<sup>115</sup> "Increased Crime Rate in Ghana". Otchere, John N.K. <http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=130398>.

<sup>116</sup> NationMaster – Ghanaian Crime Statistics. <http://www.nationmaster.com/country/gh-ghana/crime-crime>.

increase in the number of convictions for both murder and robbery (See **Graph 1** and **Graph 2** in Appendix). These numbers do not reflect the specific crimes of first-degree murder or armed robbery, but the statistics do show that the threat of death does not keep criminals in Ghana from continuing to commit crimes.

Therefore, Ghana, instead of attempting to deter a behavior by reacting after the crime has been committed, should focus on correcting the social issues that have created an environment that encourages crime. If the Ghanaian government strikes the clauses that allow for the death penalty, it will encourage other government agencies to adjust their policies in such a way as to promote more harmony, peace, and unity within Ghana's borders.

## **Tradition**

Traditional uses of the death penalty may be argued as a method of punishment that is justified by historical documents and beliefs or as the tradition of the legal system in which it is practiced.

Proponents of capital punishment have turned to the Bible or to the tradition of taking a life for a life. Some form of capital punishment has existed in most societies around the world, regardless of differences in cultures. However, over the years, many nations have turned away from using the death penalty as a punishment for any crime. Some proponents of the death penalty in Ghana trace the tradition of capital punishment to the Bible and attempt to justify the use of killing one person to justify the murder of another by planting the idea within religion. However, when turning to the Bible to defend capital punishment, many forget the elements of forgiveness and love that are constantly woven into the parables of Christ. There is no better way to illustrate forgiveness than for someone who has committed murder and no stronger display of love for our neighbor than to protect them from a justified murder by the state.

Another way to examine this argument is to recognize the history of the Ghanaian judicial system. With the establishment of colonialism in what was once the Gold Coast, English common law became the ruling system. British law included the death penalty as a punishment for certain criminals. Since the establishment of colonial control, Ghana has legalized capital punishment. However, while the United Kingdom has eradicated the death penalty in any form, Ghana has continued to keep capital punishment as an optional punishment for three specific crimes.

The legal tradition lends itself to justification when considering the desire for retribution. When a murder is committed, the community often reacts with a desire to see the criminal face the same fate that they imposed on an innocent victim, regardless of any mitigating factors. By punishing premeditated murder with capital punishment, the government feeds this attitude, justifying a thirst for blood from the community after losing one of their members. Condoning this type of behavior promotes mob mentality and creates an expectation of a life for a life. Using this thinking, a person could justify cutting off the hand of a thief or cutting out the tongue of a liar. These types of punishment do not allow for the more modern goal of rehabilitation sought by the prison system.

In addition to premeditated murder, the other two crimes where capital punishment is an optional punishment do not involve murder. In fact, to receive the death penalty for committing the other two, no one has to be harmed for the convicted person to face a firing squad. Armed robbery, which includes the use of any object that can be considered dangerous if used against another, carries the potential for harm to others. However, if there is already legislation on the books that punishes murder, assault, and battery, then any armed robbery that results in harm to another person can be tried accordingly, without the risk of killing someone who has not harmed another is excessive punishment for the act committed. Treason has the potential of crippling the government to the point where millions of people are negatively affected by the behavior of one person, yet, the United Nations has requested that member states remove any provisions that would result in capital punishment for any

type of political offense. For Ghana, this means adjusting the law to remove treason from the list of crimes that may result in the death penalty in order to comply with the orders of the United Nations.

### **International Aspect**

Ghana's decision to maintain the death penalty cannot be viewed as something that affects only Ghanaians. As a nation that strives to maintain global relationships, the decisions made within Ghana's borders affect how other nations interact with the government and citizens. Ghana is a member of a number of organizations where either the organization itself has asked for all member states to end the use of capital punishment or a significant number of other member states have chosen to do so.

The first international organization that comes to mind is the United Nations (UN). The UN has issued a number of mandates and resolutions that illustrate a clear desire to eliminate the death penalty from any nation within its ranks. Ghana, along with a number of other nations, are within the minority of countries that have refused to comply with these orders, leaving themselves open to criticism about human rights violations.

The United Nations, either in the General Assembly or through other international bodies, has issued statements or treaties that attempt to persuade member nations to transition from using the death penalty to declaring a moratorium on the death penalty or removing it completely from legislation.<sup>117</sup> The UN General Assembly passed Resolutions 62/149 and 63/168, which declared a moratorium on the use of the death penalty. Ghana was amongst the small group of nations that did not sign on to the resolutions, refusing to officially declare what has existed in the nation for over a decade and a half (See **Image 1** in Appendix). The International Covenant on Civil and Political Rights (ICCPR) ratified an optional protocol in 2007 to end the death penalty in its entirety. In addition, the ICCPR has called for a reduction in the use of the death penalty by restricting it to the most serious crimes, as opposed to being an option for an unspecified number of offenses. Along with the ICCPR, the UN Special Rapporteur has stated:

“[T]he restrictions set out in Safeguard 1 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty “exclude the possibility of imposing death sentences for economic and other so-called victimless offences, or activities of a religious or political nature - including acts of treason, espionage and other vaguely defined acts usually described as ‘crimes against the State’ or ‘disloyalty’” and that ‘Similarly, this principle would exclude actions primarily related to prevailing moral values, such as adultery and prostitution, as well as matters of sexual orientation.’”<sup>118</sup>

Outside of the United Nations, there are a number of other international and supranational organizations that have moved toward abolishing the death penalty amongst their member states. After the Council of Europe passed Protocol No. 13, many European nations have outlawed the death penalty.<sup>119</sup> Of the member states present during the signing of Protocol No. 13, four of forty-three did not sign the protocol, representing less than 10 percent of those nations present.<sup>120</sup>

---

<sup>117</sup> UN General Assembly, <http://www.un.org/News/Press/docs/2007/ga10678.doc.htm>.

<sup>118</sup> Amnesty International, January 2006, “International Standards on the Death Penalty”.

<sup>119</sup> Protocol No. 13 was signed at Vilnius on 3 May 2002. Not all current member states are included in this number.

<sup>120</sup> The nations that did sign the protocol are: Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, the United Kingdom, Bosnia and Herzegovina, and Serbia and Montenegro.



Ghana also holds membership status in a number of multinational organizations that include a higher percentage of African states. The Commonwealth of Nations, the African Union, and the Economic Community of West African States all include a number of other African nations. Taken in relation to the multinational organizations mentioned above, these organizations are more representative of the ideas about capital punishment on the African continent. When compared to the Council of Europe and the United Nations, these organizations have a higher percentage of nations that continue to use the death penalty (See **Table 3** in Appendix). While this denotes a regional pattern, it may also point to an opportunity for Ghana to be an example of change.

In addition, Ghana's rate of sentencing convicted criminals to the death penalty has not followed the global trend as reported by Amnesty International. Amnesty International, which is based in England, has called on Ghana to comply with the different international treaties that it has signed by complying with human rights obligations.<sup>121</sup> While, globally, the trend has risen and fallen in the past few years (See **Graph 4** in Appendix), Ghana's rate of sentencing people to the death penalty has risen steadily (See **Graph 3** in Appendix).

With the rising trend of abolishing the death penalty, Ghana runs the risk of missing out on the opportunity of remaining in step with this progression. Worldwide, capital punishment has become undesirable, and the Constitutional Review Committee must take note.<sup>122</sup> While Ghana would not be the first African nation to abolish the death penalty, it would show great support for human rights to declare the death penalty unconstitutional during this year's Constitutional Review. As a global player, Ghana's progression in the field of human rights has the potential of drawing attention to the nation; by abolishing the death penalty, the government can ensure that that attention will be more positive.

## **Change for Ghana**

### **Ending the Human Rights Violation**

The United Nations Human Rights Committee has released a number of resolutions and mandates on the subject of capital punishment. For nations that continue to utilize the death penalty, the UNHRC has stated that UN member states must restrict the application of capital punishment to exclude both minors and women who are pregnant. Without enumerations in the criminal code that would eliminate the possibility of executing pregnant women and children, Ghana's criminal code does not comply with the restrictions issued by the UNHRC.

Divorced from the discussion of international sentiments, considering the capital punishment solely as a practice, it cannot be defended as humane or aligned with the human rights that Ghana guarantees citizens in the text of the Constitution. Chapter 5 states:

“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 of others and for the public interest.”<sup>123</sup>

Chapter 5 continues:

“No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of

---

<sup>121</sup> “Amnesty International: Are human rights on Ghana's political agenda?” ModernGhana.com.

<http://www.modernghana.com/news/198070/1/amnesty-international-are-human-rights-on-ghanas-p.html>.

<sup>122</sup> “Death Penalty Phasing Out Worldwide,” CommonDreams.org, <http://www.commondreams.org/headline/2010/02/26-7>.

<sup>123</sup> The Constitution of the Republic of Ghana, Chapter Five, Section 12(2).

Ghana of which he has been convicted.”<sup>124</sup>

Taken together, these two sections constitutionalize the deprivation of life. In doing so, these two provisions undermine any moves made by the Ghanaian government to ensure the rights of all individuals within their borders. By allowing any intentional killing, the Ghanaian government illustrates that there are some lives that are considered more valuable than others.

#### Preventing an Equal Protection Violation

While the death penalty has been a part of Ghana’s judicial system since the law of the nation was written, there has not been an execution since 1993 when twelve prisoners were executed at the same time. While this mass execution was the last time capital punishment was followed through in Ghana, there are still people on death row. Because there are people waiting on death row, there are prisoners who have no idea when they will be executed, but they know that there is the chance that they may be executed arbitrarily.

The fact that there has not been an execution in over a decade and a half may be evidence enough for some to believe that the practice has become defunct; however, because the death penalty has not been used in such a long time means that those on death row must live knowing that at any point in time, they may be selected to be the person to restart the practice. In 2008, 105 people remained on death row, including three women.<sup>125</sup> As of August 2009, there were 102 prisoners awaiting death, two of them women.<sup>126</sup> With over 100 people facing capital punishment, there is potential for someone becoming the first person executed in nearly two decades.

#### Methods to Change Capital Punishment

The Constitutional Review Committee has presented a unique opportunity for Ghana whereby different aspects of the Ghanaian Constitution may be adjusted at once. At this juncture of Ghana’s history, the government has the opportunity to conform to the emerging standard surrounding the implementation of the death penalty by removing it from the Constitution and mitigating the sentences of the remaining prisoners on death row.

The text of the Constitution provides an outline of how to accomplish the constitutional change necessary to rid Ghana of the death penalty. Chapter four of the Ghanaian Constitution reads:

(1) The laws of Ghana shall comprise-

- (a) this Constitution;
- (b) enactment made by or under the authority of the Parliament established by this Constitution;
- (c ) any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitutions;
- (d) the existing law; and
- (e) the common law.

(2) The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature.

(3) For the purposes of this article, “customary law” means the rules of law which by custom are applicable to particular communities in Ghana.

---

<sup>124</sup> The Constitution of the Republic of Ghana, Chapter Five, Section 13(1).

<sup>125</sup> “Right to Life, Stop the Death Penalty in Ghana”. Ghana Prisons Service via Amnesty International Ghana.

<sup>126</sup> “Right to Life, Stop the Death Penalty in Ghana”. Ghana Prisons Service via Amnesty International Ghana.

(4) The existing law shall, except as otherwise provided in clause (1) of this article, comprise the written and unwritten laws of Ghana as they existed immediately before the coming into force of this Constitution, and any Act, Decree, Law or statutory instrument issued or made before that date, which is to come into force on or after that date.

(5) Subject to the provisions of this Constitution, the existing law shall not be affected by the coming into force of this Constitution.

(6) The existing law shall be construed with any modifications, adaptations, qualifications and exceptions necessary to bring it into conformity with the provisions of this Constitution, or otherwise to give effect to, or enable effect to be given to, any changes effected by this Constitution.

(7) Any Order, Rule or Regulation made by a person or authority under a power conferred by this Constitution or any other law shall-

(a) be laid before Parliament;

(b) be published in the Gazette on the day it is laid before Parliament; and

(c) come into force at the expiration of twenty-one sitting days after being so laid unless Parliament, before the expiration of the twenty-one days, annuls the Order, Rule or Regulation by the votes of not less than two-thirds of all the members of Parliament.<sup>127</sup>

From this chapter, the writers of the most recent Constitution illustrate the need for future change in the words of the document. This short chapter outlines the procedure that the Ghanaian government must follow to have the capital punishment provision removed. To change the death penalty in Ghana, the change must be presented before Parliament and published in the Gazette the day it is presented. This means that the change must be proactive, as opposed to a dormant provision being invalidated after decades of disuse. Finally, there must be a series of votes cast in order to follow democratic procedure.

For a provision that has come into disuse, but is still entrenched in the Constitution, the procedure of changing the law must be followed in order to comply with the foundation of democracy in the nation. By following the guidelines of the Constitution, the government would ensure the rights of all Ghanaians while upholding the fabric of democracy that has guided the progress of Ghana for the past five decades.

13.10 Human Rights Advocacy Center, Submission to the Constitutional Review Commission, Supplementary Memo on the Death Penalty, 2010

Introduction

This supplementary memo on the death penalty is submitted to the Constitutional Review Committee by the Human Rights Advocacy Centre in collaboration with the UK based NGO, The Death Penalty Project .

The key strategic objective of the Death Penalty Project is to promote and protect the human rights of those facing the death penalty in all jurisdictions. The critical objectives of the organisation are to promote the restriction of the death penalty in line with international minimum legal requirements; to uphold and develop human rights standards and the criminal law; to provide effective legal

---

<sup>127</sup> The Constitution of the Republic of Ghana, Chapter Four.

representation and assistance for those facing the death penalty; and, to promote increased awareness and greater dialogue with key stakeholders on the death penalty.

These submissions to the Constitutional Review Committee have been prepared with the assistance of Professor Roger Hood CBE, QC (Hon), PhD, DCL, FBA who is Emeritus Professor of Criminology, University of Oxford and Emeritus Fellow of All Souls College. Professor Hood was the consultant to the United Nations on the death penalty and was invited to draft for the Secretary General his fifth, sixth and seventh reports on capital punishment and implementation of the safeguards guaranteeing the rights of those facing the death penalty.

## **1. The United Nations and the International Covenant on Civil and Political Rights**

Countries that retain the death penalty commonly argue that it is not forbidden under international human rights law. They point to the fact that although Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) of 1966 proclaimed the right to life it did not ban capital punishment. Furthermore they claim that Article 6(2) legitimates the use of capital punishment as long as it is restricted to ‘the most serious crimes’, as does safeguard 1 to the ECOSOC Safeguards Guaranteeing the Protection of the Rights of those facing the Death Penalty, which defines the most serious crimes as those ‘intentional crimes with lethal or extremely grave consequences.’ However, this is to ignore the development of international human rights law since Article 6 of the ICCPR was formulated in 1957 when abolitionist countries were a small minority of UN member states.

Given the enormous increase in the number of countries that have, since the ICCPR was brought into force in 1976, abolished capital punishment for all crimes in all circumstances (see section 2 below), Article 6(2) must now be read in the context of Article 6(6) which declares that: ‘Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the ...Covenant’. It is now almost 40 years since, in December 1971, a resolution of the UN General Assembly (A/RES/28/57), following the lead of the Economic and Social Council resolution 1574(L) earlier in that year, affirmed that ‘in order to guarantee the right to life, provided for in article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries’. It therefore can be argued that countries, such as Ghana, that have ratified the ICCPR have an obligation under the treaty to move towards complete abolition of the death penalty.

Furthermore, it is becoming increasingly recognized that capital punishment inevitably in practice violates Article 7 of the Covenant which proscribes any ‘cruel, inhuman or degrading treatment or punishment’. Thus, in the case of *Öcalan v Turkey* in March 2003, the European Court of Human Rights endorsed the view that capital punishment amounts to a form of inhuman treatment which can “no longer be seen as having any legitimate place in a democratic society.”

## **2. The world-wide trend towards universal abolition**

Progress towards the UN objective was steady but slow until the end of 1988 when the abolitionist movement, still encompassed only 52 (29%) of the then 180 member states of the United Nations, only 35 of whom –less than one fifth of all nations – had eliminated it altogether from their penal and military codes – the remaining 17 reserving it for crimes against the state and under military law in time of war. But since then there has been a remarkable transformation: the number of abolitionist nations has doubled to 103 of the 196 UN member states. The vast majority, 95 of them, have abolished it for all crimes in all circumstances. In the USA, New Jersey, New York and New Mexico recently abolished capital punishment, bringing the number of abolitionist states to 15, plus the District of Columbia. Among the 93 countries that retain the death penalty in law, only 45 have executed anyone within the past 10 years – less than a quarter of all nations and Amnesty

International regards 35 as truly ‘abolitionist in practice’. Thus 70 per cent (138/196) of states no longer inflict or intend to inflict the ultimate penalty. At the UN General Assembly in December 2007, 104 countries voted in favour of a resolution calling for a world-wide moratorium on death sentences and executions, 34 abstained (including Ghana) and 54 countries voted against. Three years later in November 2010, when the resolution was again put before the Third Committee of the General Assembly, 107 countries voted in favour, with only 38 against and the number abstaining having risen to 36 nations, again including Ghana.

Abolition has been embraced across the globe by many different political systems, peoples and cultures. In Europe only Belarus retains and uses the death penalty but in 2009 no executions were recorded, and there can be little doubt that Belarus will soon abolish capital punishment. In South and Central America only three small countries (Belize, Guyana and Suriname) hang on to it, although none have carried out an execution for at least 10 years. There have been no executions in Cuba since 2003. The Commonwealth Caribbean island States, grimly maintain it in law, although successful challenges by dedicated human rights lawyers have made executions exceptionally rare: only one in the last 10 years.

A survey of the status of capital punishment worldwide carried out for the United Nations, published in 1988, noted that in Africa South of the Sahara only the small island states of Seychelles (1979) and Cape Verde (1981) had abolished capital punishment. Nevertheless, it noted that ‘the fact that a number of states have abandoned it in practice, and a number of others have found it necessary to use it only spasmodically, gives some grounds for optimism.’ This has come to pass, for now there are 15 countries that are completely abolitionist (the most recent being Burundi and Togo) and another 22 are abolitionist de facto, having not carried out an execution for at least 10 years (all but four being truly ‘abolitionist in practice’, according to Amnesty International). It should be noted that as far as the civilian (i.e. non-military) Penal Code is concerned, Uganda can be added to them, the last execution, other than under military law, having taken place in 1999. Only 10 of the 22 abolitionist de facto countries sentenced anyone to death in 2009. And although 11 sub-Saharan African countries have executed at least one person in the past 10 years, only five of them – Botswana (last execution 2009), Ethiopia (2007), Equatorial Guinea (2007), Somalia (2008) and Sudan (2010) – plus Uganda under military law (2006) – have, as far as can be ascertained, executed anyone since 2003. Furthermore, although Amnesty International reported that at least 194 death sentences had been imposed in 19 sub-Saharan African countries in 2009, judicial executions had been carried out in only two of them: Botswana and Sudan. It is also significant that in November 2008 a resolution calling for a moratorium on all executions in African countries was adopted by the African Commission on Human and People’s Rights. According to the UN Secretary General’s 8th Quinquennial Survey and Amnesty International’s report on death sentences and executions in 2009, the following African nations have indicated to the UN Human Rights Council that abolition of the death penalty is being considered: Burkina Faso, the Central African Republic, Congo, Gabon and Ghana. Mali, which has upheld a moratorium since 1984, has also come close to abolishing capital punishment.

Although all countries in the Middle East and North Africa where Islam is the dominant religion retain the death penalty, three of them – Tunisia, Algeria and Morocco – have not carried out any judicial executions for over 10 years. Abolition is being considered in Jordan, Morocco and Lebanon and executions have sharply declined in Egypt. It is notable that several secular states with large Muslim majorities have already joined the abolitionist movement: such as Albania, Azerbaijan, Bosnia-Herzegovina, Kyrgyzstan, Turkey, Turkmenistan and Senegal. They may soon be joined by the Maldives. In fact, only four retentionist Muslim countries now make regular and large scale use of capital punishment as a crime control measure: Iran, Saudi Arabia, Iraq and Yemen. According to Arab human rights scholars, whether and at what speed retentionist Islamic states will move towards abolition will depend on whether their legal systems remain dominated by fundamentalist interpretations of Islam, or whether these states move towards secular democratic government, which

will allow for a more modern, 'scientific', less authoritarian and more merciful interpretation of the Sharia. As Professors Johnson and Zimring have pointed out, this already appears to be the case in the Muslim majority countries of Asia, where execution rates have been maintained at a low level. Overall, the prospects for a steady movement towards abolition in the Muslim world are not nearly as bleak as some may imagine.

While only four Asian states (Nepal, Bhutan, Cambodia and Philippines) have so far completely abolished the death penalty, six others are now abolitionist de facto, including most recently South Korea. There are other countries that may be ready to move in this direction. In January 2010 President Elbegdorj of Mongolia called on the Mongolian Parliament to follow the path of the majority of the world's countries and abolish the death penalty. In India – with the second largest population in the world – the death penalty is in principle to be imposed in only the 'rarest of rare' cases. Death sentences are still imposed but the last execution took place in 2004, the first since 1997. As for the most populous country in the world, the People's Republic of China, three years ago its representative at the UN Human Rights Council stated that: 'The death penalty's scope of application was to be reviewed shortly ... with the final aim of abolishment'. That process has tentatively begun with the recent announcement that it will be abolished for 13 non-violent economic offences. The return of the review of all death penalty verdicts from the provincial High Courts to the Supreme People's Court at the beginning of 2007 has been of particular significance. According to former Chief Justice Xiao Yang, the aim is to impose the death penalty 'strictly, cautiously and fairly ... on a tiny number of serious criminal offenders.' It is regrettable that China still refuses to publish any statistics on the number of its citizens who are executed annually. Nevertheless, a vigorous debate on the 'reform' of the scope of the death penalty is now underway. As one prominent senior scholar put it recently at an international meeting, abolition is now 'an inevitable international tide and trend.'

Over half of the countries that have joined the abolitionist movement and abolished capital punishment completely since 1988 have also ensured through their own constitutions, or through interpretation of the Constitution by the Courts, as for example in Hungary, Namibia, South Africa and the Ukraine, that the death penalty cannot be reintroduced. For example, The Constitution of Namibia Article 6 states 'The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No court shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia'; and Article 40(2) of the Constitution of Mozambique simply states: 'In the Republic of Mozambique there shall be no death penalty'.

In addition, the number of countries actually carrying out judicial executions each year has shrunk drastically: only 18 in 2009 (and in all but 6 only a small handful of executions) compared with 38 in 1998. In Asia, according to Professors Johnson and Zimring, only 5 of the 29 jurisdictions had at least one execution every year between 1995 and 2007. With a few exceptions, such as Iran, the number of executions annually recorded appears to be falling almost everywhere. Singapore, which in the 1990s had the world's highest execution rate per head of population, executed only one person in 2009 and Pakistan, which had executed 34 people in 2008, executed none in 2009.

In the United States, to which many retentionist states point in support of their position, 40 of the 51 US state jurisdictions had no execution in 2009 and of the 52 executions, almost half (24) occurred in Texas alone. The number of death sentences imposed in the US has fallen from over 300 in the mid-1990s to only 106 in 2009 and to only 9 in that year in Texas compared with 28 in 2003. Since 1976, 16 of the states with the death penalty have executed no more than six people – an average of less than one every five years. Last year, the influential American Law Institute decided that it would withdraw its support for the death penalty "in light of the current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment." Indeed, the growing disenchantment with the death penalty combined with the very high cost of administering it and the incontrovertible evidence that innocent people have been sentenced to death, may well persuade yet more states to abolish the death penalty. The impression often given, that in

America there is enthusiasm everywhere for executions, is now wide of the mark. In recent years there has been some recognition by the US Supreme Court of norms that have been established elsewhere in the world. The decisions to ban the execution of the so-called mentally retarded (*Atkins v Virginia*, 2002) and of juveniles convicted of murders committed before the age of 18 (*Roper v Simmons*, 2005), both cited worldwide condemnation of these practices as embodied in the ICCPR and the 1983 UN Safeguards for those facing the Death Penalty, albeit many years after their promulgation. It may not be many years before the US Supreme Court will be able to find that the majority of states do not support the death penalty, and therefore rule that ‘emerging standards of decency’ will no longer tolerate the use of capital punishment in the USA.

### **3. The Human Rights Case against Capital Punishment**

There can be no doubt that the latest wave of abolition has been influenced greatly by the process of democratization in Europe, including the republics that were formerly part of the Soviet Union, and freedom from colonialism and post-colonial repression in Africa and several other parts of the world, including Cambodia in Asia. Foremost among these influences has been the insertion into instruments of international human rights law and international covenants and treaties distinct protocols aiming at world-wide abolition of the death penalty, notably Protocol No. 2 to the ICCPR (1989) and Protocols Nos. 6 (1983) and 13 (2002) to the European Convention on Human Rights (ECHR) and the Protocol to the American Convention on Human Rights (1990). Also, as mentioned above, new democratically inspired Constitutions in many countries have specifically banned the death penalty under their right to life provisions. Altogether, 82 countries have ratified or signed one or other of the international treaties or conventions which bars the imposition and reintroduction of capital punishment. As the Council of the European Union has declared: “the abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights”. The premise of the anti-capital punishment movement, simply put, is that the execution of captive citizens, whatever crimes they had committed and wherever they reside in the world, is a fundamental denial of their humanity and right to existence.

Thus, the human rights approach rejects the most persistent justifications for capital punishment, namely: retribution and the need to denounce and expiate through execution those whose crimes shock society by their brutality; that it is demanded by public opinion; and the utilitarian argument that nothing less severe can act as a sufficient deterrent to those who contemplate committing capital crimes.

The exclusion of capital punishment as a sanction by the UN Security Council when it established the International Criminal Tribunals to deal with atrocities in the former Yugoslavia and Rwanda, and from the Statute of the International Criminal Court established in 1998 for genocide, other grave crimes against humanity and war crimes, has raised the inevitable question: If it is not available for these atrocious crimes why should it be the punishment for lesser crimes?

Although public opinion cannot be entirely ignored, a country concerned for human right should not merely accept public opinion - especially when it may be based on misconceptions about the assumed deterrent effect of capital punishment, the fairness of its application, the absence of error, and other human rights considerations – as one of the main reasons for retaining the death penalty. The task of governments and the courts is to inform and lead the general public to appreciate and then to accept the human rights case for abolition. In any case it is worth noting that opinion polls can over-estimate the depth of public support for capital punishment.

It was of great significance that in post-apartheid South Africa, the newly created Constitutional Court abolished the death penalty in 1995, even though it recognized that ‘the majority of South Africans agree that the death penalty should be imposed in extreme cases of murder’. The Court declared that it was incompatible with the prohibition against cruel, inhuman or degrading

punishment and with ‘a human rights culture’ which would ‘protect the rights of minorities and others who cannot protect their rights adequately through the democratic process’. Reflecting on this issue, the distinguished human rights lawyer, Professor William Schabas, identifies the paradox that ‘Democracy leans towards abolition, but retentionists defend the death penalty in the name of the will of the people’. He asks: ‘Do human rights need to be protected from public opinion?’ His answer is unequivocal:

While it is desirable that the human rights norms that are enshrined in international instruments and national constitutions find a favourable echo in public opinion, they surely cannot be dependent on it. Human rights instruments ... are, first and foremost, aimed at protection of individuals from the state. ... If public opinion were to be canvassed each time individual rights were in jeopardy, there would be little doubt that human rights would come out the loser. Yet it would contradict the *raison d’être* of human rights law to make its efficacy contingent on public opinion, one of the very forces it is aimed at counteracting and neutralising.

The experience of most abolitionist countries is that those who grew up with the expectation that death would be the punishment for murder are relatively slow to abandon this idea, but the next generation, growing to maturity with no such experience, is far more likely to regard capital punishment as a barbaric relic of the past, abandoned as civilization has progressed.

As far as deterrence is concerned it has not been shown convincingly that capital punishment, as it is practiced in democratic states under the rule of law through the occasional execution or by leaving it unenforced on the statute book, as in Ghana, provides more protection for citizens than the alternative punishment of lengthy imprisonment. Furthermore, even if it were shown that retention of the death penalty could have a marginally greater deterrent effect than lengthy imprisonment, it could only be achieved by high rates of execution, mandatorily and speedily enforced. This would increase the probability of innocent or wrongfully convicted persons being executed and also lead to the execution of people who, because of the mitigating circumstances in which their crimes were committed, do not deserve to die. The message is that severity of punishment must be subject to respect for human rights.

The influence exerted by the weight of numbers as more countries have embraced the human rights case for abolition is illustrated by the change in the decisions reached regarding extradition of prisoners from Canada to the USA. Whereas in 1991 in the case of *Kindler v Canada*, both the Canadian Supreme Court and the United Nations Human Rights Committee held that there was no bar to extradition because there was no international consensus on the issue of capital punishment, 10 years later in *Burns v USA* (2001) and *Judge v Canada* (2003) both bodies held that it would be a violation of the defendant’s right to life to extradite without assurances that he would not be executed. They did so because, as the Canadian Supreme Court put it, of the “significant movement towards acceptance internationally of a principle of fundamental justice ... namely the abolition of capital punishment.”

#### **4. In Conclusion**

It is submitted that after 17 years without the death penalty being put into force by execution, it is time for Ghana also to accept that the imposition of the death penalty inevitably violates the right to life due to all citizens under Article 3 of the Universal Declaration of Human Rights and Article 6(1) of the ICCPR, (read alongside Article 6(6)), and that it cannot be enforced without violating article 15 2(a) of the 1992 Constitution of Ghana and Article 7 of the ICCPR both of which protect citizens from torture or other cruel, inhuman or degrading treatment or punishment.



---