

## **CHRAJ SUBMISSION OF UPR REPORT TO THE UN HCR**

### **Introduction**

1. This document is the report of the Commission on Human Rights and Administrative Justice (CHRAJ) on the human rights situation in Ghana, from 2004 to 2007, pursuant to Para 15 (a) of the HRC resolution 5/1. The CHRAJ is an A-accredited national human rights institution of Ghana established in 1993 in accordance with *the Paris Principles*. The CHRAJ has a total staff capacity of 772 employees with well established office set up in all the 10 regions and 100 out of the 138 districts in Ghana. This affords the advantage for its work to reach remote communities. The relative informality and flexibility of its procedures makes it more easily accessible to ordinary people throughout the country.

### **Preparation for the UPR**

2. The CHRAJ is not aware of any national consultation on the UPR by the Government of Ghana, though it urged the Attorney –General and Ministry of Justice to do so. Thus, the compilation of this report has been aided by a number of sources, chiefly the State of Human Rights Report on Ghana issued annually by the CHRAJ on UN International Human Rights Day, outcomes of the CHRAJ’s annual monitoring activities carried out by its Public Education and Research Department in the last four years. The monitoring activities comprise investigation, research and observation and information obtained from partner NGOs, the media, academia, and other monitoring entities.

### **Right to Health**

3. In spite of the introduction of the National Health Insurance Scheme (NHIS) the cost of health care is beyond the reach of many people. Some health institutions including government hospitals have been illegally detaining patients, including nursing mothers and babies, for their inability to pay their bills.<sup>1</sup> Funding for public health institutions has not been adequate. The Psychiatric hospital at Asylum Down in Accra reported several instances of neglect resulting in poor health care for the patients. Funding from the government to the hospital has also not been adequate to provide for needed care to inmates

### **Right to Adequate Housing**

4. Even though Ghana has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Government committed itself in the Habitat Agenda,<sup>2</sup> a series of forced evictions involving approximately 7000 people was recorded in 2006.<sup>3</sup> Following the evictions, a boat, overloaded with the evictees and their possessions capsized killing many of its occupants.<sup>4</sup> The government recognizing its responsibility in the said disaster is yet to fully compensate victims and /or provide alternative shelter.

### **The Right to Education**

5. The constitutional guarantee<sup>5</sup> for basic education in Ghana has not yet been realized in its totality. Government’s introduction of the Capitation Grant scheme in the 2005/2006 academic year does not cover all the costs of education at the basic level. There are many children of school going age who do not attend school either as a result of unavailability of schools within easy reach, or as a result of parents’ inability to bear the extra cost. It is estimated that about 1.357 million children in Ghana were not in school as at December 2006. Educational performance has not improved

---

<sup>1</sup> \* *TT Brothers to the Rescue*: Daily Graphic, Monday, November 20, 2006, p.4.

<sup>2</sup> Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, paragraph 40

<sup>3</sup> *ibid*

<sup>4</sup> COHRE, 2006. Putting people last-Forced Evictions from Digya National Park, Ghana(Draft report), Accra, Ghana

significantly either.<sup>6</sup> Meanwhile allegations are rife about the mismanagement, corruption and conflict of interest within the entity managing the school feeding program.

### **Cultural Rights**

6. The Constitution forbids all customary practices that dehumanize or are injurious to the physical and mental well-being of a person<sup>7</sup>. However, abhorrent cultural practices such as Female Genital Mutilation (FGM), and Trokosi (female servitude) and dehumanising and injurious widowhood rites persist in several communities in Ghana. With respect to the harmful discriminatory practices CHRAJ monitoring this year continued to reveal that in spite of our laws which forbid servitude, and FGM these practices persist. Furthermore there continues to be inhuman treatment of women suspected of being witches. In 2006 the Commission, commenced monitoring of camps inhabited by suspected witches as a follow up to previous research visits to the camp. The monitoring team visited the Gambaga, Kuku, Kpatinga, and Ngaani camps in the Northern region. Monitors who visited the Gambaga camp observed that although last year, 80 residents were registered with the National Health Insurance Scheme, their membership had since expired and it has been unable to procure funding for renewal. Reportedly, the entire project had faced a funding crisis since 2005-2006. The living quarters of suspected witches in the Gambaga camp seldom resembled a “camp” – the huts were similar to those found in the rest of the village and the suspected witches in some respects appeared to live a relatively normal life, free to move around as they wished. The trauma of community rejection in the Gambaga became apparent, however, when the team encountered one woman who had been brought to the camp and declared a witch only hours before our visit. She had apparently been lying on the floor of the hut of the leader of the suspected witches, refusing to speak. After some quiet encouragement, she emerged and told her story. Monitors felt that a claim that this new arrival had paid an entrance fee – beyond the traditional “kola” – merits further investigation. Likewise, reports that suspected witches returning to their communities are charged a hefty departure tax also require further examination.

### **Women’s Rights**

7. Discrimination against women still abounds in Ghana @ 50. This disparity manifests itself in different ways including:
  - low participation in governance and decision making
  - poor access to resources critical for making a living, and the predominance of women living in poverty in spite of the fact that women tend to be bread winners
  - Women’s health, particularly, the unacceptably high rates of maternal mortality.
  - The harmful and discriminatory social practices against women often justified in the name of culture and violence against women.
  - Before the recent government reshuffle out of 27 ministers, 4 were women; 36 deputy ministers, 9 were women, 4 deputy regional ministers and 25 out of 230 members of Parliament are women.

### **Conditions in Detention Institutions**

8. Article 15 of the 1992 Constitution provides that the dignity of all persons shall be inviolable and that no person whether he is arrested, restricted or detained, shall be subjected to torture or condition that detracts or is likely to detract from his dignity and worth as a human being. The

---

<sup>5</sup> Article 25 of the 1992 Constitution of Ghana guarantees that basic education shall be *free, compulsory and available to all*

<sup>6</sup> Katarina Tomasevski, 2006. *The State of the Right to Education Worldwide*

Free or Fee: 2006 Global Report, Copenhagen, August 2006

<sup>7</sup> Article 26 in the Constitution of Ghana

facilities in Ghana's prisons and places of detention fall below the required standards. The rules governing treatment in the areas of accommodation, bedding, medical care, education etc are being violated. Remand prisoners are treated as convicts and are incarcerated for unduly long periods and in some cases are forgotten of. There is overcrowding, lack of beds, with prisoners sleeping on the floors.

### **Child Trafficking**

9. In spite of the passage in December 2005 of the Human Trafficking Law, Act 694 which prohibits all forms of trafficking in persons, child trafficking is still rife in Ghana. The Commission notes with concern that Ghana is a source, transit, and destination country for children trafficked for forced labour and sexual exploitation<sup>8</sup>. Children are trafficked within and outside the country as domestic servants, labourers, for work in the fishing industry, and for use in sexual exploitation. The International Organisation for Migration (IOM) estimates that the number of trafficked children in the country is in the thousands.

### **Child Labour & Exploitation**

10. The issue of Child Labour in Ghana remains a serious problem serving as one prominent source of child exploitation and abuse. The ILO Global Report re-launched in May 2006, indicated that there are about two million children in Ghana who are engaged in child labour. It is a very common sight to see children of school-going age at all times of the day engaged in menial jobs.”<sup>9</sup> Sectors that are rife in child exploitation include fishing, agriculture, mining and quarrying. What is of utmost concern is the increasing incidence of rape and defilement of children and the resulting low conviction rate for offenders.

### **Rights and Fundamental Freedoms of People Living in Mining Communities**

11. Since 2004 the CHRAJ has been undertaking investigations to determine the impact of mining activities on the rights of mining communities in the country as a result of the persistent allegations by these communities of the complicity of the law enforcement agencies ( with alleged tacit governmental approval) and the mining companies harassing critics of companies and in some cases alleged unlawful imprisonment and assault .

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

12. Chapter 5 of the 1992 Constitution (the Bill of Rights) contains a comprehensive list of human rights and freedoms embracing civil and political rights as well as economic, social and cultural rights. Civil and political rights include the right to life, personal liberty, fair and speedy trial, human dignity, protection from slavery and forced labour freedom of speech and expression, freedom of association, freedom of assembly and movement, freedom from discrimination etc. Economic and social rights recognized under the Constitution include the right to work under satisfactory, safe and healthy conditions, the property right of spouses, the right to property, the right to equal educational opportunities, women and children's rights, the rights of the disabled and the rights of the sick. Cultural rights include the right to practice, profess and maintain any culture, language tradition, or religion. Other legislation providing for protection of rights include the Childrens' Act, People with Disabilities Act , the Domestic Violence Act, and the Human Trafficking Act.

---

<sup>8</sup> See U.S. State Department, Trafficking in Persons Report, June 2006

<sup>9</sup> CHRAJ , Upper East Mid Year Report (January – August, 2006)

13. The Courts have the primary responsibility to enforce fundamental human rights and freedoms. But access to justice is greatly hampered by the unequal distribution of courts nationwide and the shortages of magistrates and judges to man these courts. Added to this is the inordinate delays in court proceedings due to frequent unexplained adjournments and the cost of court processes.
14. The CHRAJ has the Constitutional mandate for the promotion, protection and education of human rights has a triple mandate being the national human rights institution, the ombudsman and an anti-corruption agency but suffers from under resourcing and unattractive conditions of service. The CHRAJ over the years has continued to maintain a close collaboration and networking relations with these and other human rights institutions, government agencies, including the Department of Social Welfare, the Ministry Of Women And Children's Affairs (MOWAC), Domestic Violence Victims Support Unit (DOVVSU) of the Ghana Police Service and Non Governmental Organisation (NGOs) in carrying out its public education programmes, investigations and mediations.

### **Investigation of Complaints**

15. The CHRAJ was given a hard blow in the recent Supreme Court case of **Republic** versus Fast Track High Court, Accra Ex **Parte 1. CHRAJ 2. Richard Anane** when on December 21, 2007 it ruled by a majority of 4 to 1 that the word "complaint" within Article 218 (a)<sup>10</sup> of the Constitution and within section 7 (a) of the CHRAJ Act (Act 456)<sup>11</sup> should be interpreted to mean a "formal" complaint brought to the CHRAJ by an identifiable complainant and that the CHRAJ cannot on its own motion investigate human rights violations, abuse of office and conflict of interest. The Supreme Court relied in part on the opinion of the Attorney General in that regard. This unfortunate decision has the effect of dampening our proactive stance which has earned us much credibility and had indeed allowed the CHRAJ to conduct its own investigations triggered by allegations in the media. The CHRAJ has a critical role to play in promoting and protecting human rights and integrity. Therefore it must not be inhibited in any way, particularly in doing investigation of human rights violations from credible sources including newspaper reports unfortunately, only one of the 5 five Supreme Court Judges who examined the matter agreed with the CHRAJ

### **Police Brutalities and the "resurgence" of mob justice.**

16. Police brutalities seem to be on the increase. Cases of death of suspects while in police custody have been reported. At the same time there is a decidedly an increase in reported cases of mob justice. The failure of the courts to sit on cases in a timely fashion and the allegedly unjustified release of suspects while in police custody have been given as justification for this phenomenon.

### **Cooperation of reviewed country with human rights mechanisms**

17. Ghana was the first country to be reviewed by the African Peer Review mechanism. In spite of the fact that Ghana has not yet ratified certain international treaties, it has signaled its commitment to do so. The Attorney-General and the Minister of Foreign Affairs as indeed the President of the Republic have at various national and international for a declared Ghana's commitment to ratify and domesticate human right treaties.

---

<sup>10</sup> See Annex 1 attached

<sup>11</sup> See Annex 2 attached

## Assessment and Recommendations

18. There is no doubt that there has been a distinct improvement in the promotion and protection of human rights in Ghana and that there has been a positive increase in space for discourse regarding human rights and much greater tolerance for especially freedom of expression. However the CHRAJ and other partners have called the on the government to translate their declared good intentions and commitment to human rights and the rule of law to action. For example; the CHRAJ and CSOs have time and again called on the Government to seriously address the major challenges that stand against the fight against corruption and the promotion of integrity within the public sector and are advocating the following among others;

- The decoupling of the position of Attorney-General and Minister of Justice and appointing independent non partisan public prosecutor;
- Ensuring the speedy passage of the Freedom of Information Law to enable individuals, CSOs, and particularly, the media to access information from public officials more easily;
- Adequate resourcing of key governance institutions
- Exhibiting greater political will to fight corruption.

## 19. Recommendations

- The Government of Ghana should urgently extend the school feeding program to cover every Ghanaian child and conduct an inquiry into the alleged mismanagement plaguing the program.
- The Government should ratify the following instruments and harmonize their provisions with domestic laws:
  - The Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty (DP);
  - The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which seeks to establish a system of regular visits to places where people are deprived of their liberty;
  - Government also needs to take steps to ratify human rights instruments recommended by the AU and significant global instruments on governance and human rights referred to by the African Peer Review Mechanism-Country Review Report and Program of Action of the Republic of Ghana published in June 2005
- The CHRAJ urges Parliament to make certain amendments in the following Acts:
  - The Domestic Violence Act
  - The Disability Act
  - The Whistle Blower Act
- The CHRAJ also urges Parliament to expedite the passage of the following bills into law:
  - The Freedom of Information Bill
  - The People Representation Bill

## Annex 1

### 1992 Constitution of Ghana (Chapter 18) Commission on Human Rights and Administrative Justice

218. The functions of the Commission shall be defined and prescribed by Act of Parliament and shall include the duty.

- (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;
- (b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those service;
- (c) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution.
- (d) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this clause through such means as are fair, proper and effective, including -
  - (i) Negotiation and compromise between the parties concerned;
  - (ii) causing the complaint and its finding on it to be reported to the superior of an offending person;
  - (iii) bringing proceedings in a competent Court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and
  - (iv) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;
- (e) to investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations;
- (f) to educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia; and
- (g) to report annually to Parliament on the performance of its functions.

**The Commission on Human Rights and Administrative Justice Act (Act 456)**

**PART II  
FUNCTIONS OF THE COMMISSION**

7. The functions of the Commission are –
- (a) To investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuses of power and unfair treatment of any person by a public officer in the exercise of his official duties;
  - (b) To investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Coordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those services;
  - (c) To investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution;
  - (d) To take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this subsection through such means as are fair, proper and effective, including-
    - (i) negotiation and compromise between the parties concerned;
    - (ii) causing the complaint and its finding on it to be reported to the superior of an offending person;
    - (iii) bringing proceedings in a competent court for a remedy to secure termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and
    - (iv) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;
  - (e) to investigate allegations that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct for Public Officers) of the Constitution;
  - (f) to investigate all instances of alleged or suspected corruption and the mis-appropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigation;
  - (g) to educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia; and
  - (h) to report annually to Parliament on the performance of its functions.