Review of Rights Discourses – Ghana

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<table>
<thead>
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<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ABANTU</td>
<td>ABANTU for Development</td>
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<tr>
<td>ACHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
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<tr>
<td>AMA</td>
<td>Accra Metropolitan Authority</td>
</tr>
<tr>
<td>CAT</td>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<tr>
<td>CDD-Ghana</td>
<td>Centre for Democratic Development</td>
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<tr>
<td>CEDAW</td>
<td>Convention for the Elimination of All Forms of Discrimination Against Women</td>
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<tr>
<td>CEPIIL</td>
<td>Centre for Public Interest Law</td>
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<tr>
<td>CHRAJ</td>
<td>Commission on Human and Administrative Justice</td>
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<td>CHRI</td>
<td>Commonwealth Human Rights Initiative (Ghana)</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organisation</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<tr>
<td>GAPVOD</td>
<td>Ghana Association of Private Voluntary Organisations in Development</td>
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<tr>
<td>GFD</td>
<td>Ghana Federation for the Disabled</td>
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<td>GLAB</td>
<td>Ghana Legal Aid Board</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>IDEG</td>
<td>Institute for Democratic Governance</td>
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<tr>
<td>ISODEC</td>
<td>Integrated Social Development Centre</td>
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<tr>
<td>LRC</td>
<td>Legal Resource Centre</td>
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<tr>
<td>NETRIGHT</td>
<td>Network of Women’s Rights in Ghana</td>
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<tr>
<td>NCOM</td>
<td>National Coalition on Mining</td>
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<tr>
<td>NDC</td>
<td>National Democratic Congress</td>
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<tr>
<td>NPP</td>
<td>New Patriotic Party</td>
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<tr>
<td>OSIWA</td>
<td>Open Society Initiative for West Africa</td>
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<tr>
<td>PNDC</td>
<td>Provisional National Defence Council</td>
</tr>
<tr>
<td>RAVI</td>
<td>Rights and Voice Initiative</td>
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<tr>
<td>TWN</td>
<td>Third World Network-Africa</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>WACAM</td>
<td>Wassa Association of Communities Affected by Mining</td>
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<tr>
<td>WILDAF</td>
<td>Women in Law and Development in Africa</td>
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INTRODUCTION

This report traces the evolution of human rights discourses and practices in Ghana, concentrating on the years since the return to constitutional rule in January 1993. The report focuses attention on civil society organisations (CSOs) given that, as the review shows, the rights agenda in Ghana has been driven primarily by CSO advocacy.

It is important to clarify our usage of ‘rights’ and ‘human rights’. Although the terms tend to be used interchangeably, in this report we use ‘human rights’ to refer to international standards and instruments. ‘Human rights discourses’ refers to political, legal and civic debates and actions in which human rights have been important and guiding principles.

Our report makes reference to the idea of rights more broadly, even where these rights claims do not (yet) have basis in international law. This is because ‘rights’ and ‘human rights’ are related in the sense that consciousness about and advocacy around rights-in-general can support the expansion and acceptance of human rights.

The review is guided by the following questions:

• In what ways have human rights discourses emerged and evolved in Ghana, focusing on the post-1992 period?
• Which actors and agencies, state and non-state, local and international, have been responsible for progressing human rights discourses? What strategies have they used and what obstacles have they faced?
• Which type of rights have been emphasised and which have been relatively neglected?
• What is the degree of societal awareness and approval of human rights?
• How important have been the regional and international [UN] systems of human rights in progressing national discourses?
• What is the current state of human rights protection and promotion in Ghana? What have been the main areas of progress? What shortcomings, deficits and obstacles remain?

Methodology

The strength of this review is its basis in a series of in-depth interviews conducted with knowledgeable individuals, most of whom are in current and a few in former roles as executives or top administrators with civil society organisations and national institutions involved in human rights work. In all, we conducted interviews with 18 individuals across 15 organisations. The organisations were chosen to represent the range of rights-promoting local and international CSOs, and also to reflect to a diversity of programmatic areas, such as women’s rights, disability rights, public interest law, forest and environmental rights; and to reflect a range of approaches such as advocacy, rights education, and legal aid. (See Appendix A for a list of organisations interviewed). The interviews were carried out from December 2008 to March 2009, and each
lasted between one and three hours. (See Appendix B for the interview guides used for each set of organisations).

We also reviewed literature from the sampled organisations, including annual reports, publicity material and other information obtained directly from the organisations or from their websites.

**Organisation of Report**

The report is organised as follows. Chapter One provides an overview of the codification of human rights in Ghana through constitutional provisions and other domestic laws, and through international human rights instruments. An overview is presented of the institutional frameworks that support rights, including mechanisms for redress of rights violations.

Chapter Two profiles important institutional actors involved in the advancement of human rights discourses in Ghana. These include the government, local and international CSOs, the media, and ‘external’ actors such as Western governments, donors, and international governance institutions.

Chapter Three then examines the status of rights in current public discourse, describing both areas of support for and opposition to rights language. We discuss the ways in which CSOs have responded to resistance to rights discourses, and highlight the strategies they have evolved to attempt to overcome such resistance.

Chapter Four concludes the report with an overview of the process of legislating and implementing new rights laws, explicating the challenges involved.
CHAPTER ONE

FRAMEWORK OF LEGAL RIGHTS AND HUMAN RIGHTS IN PRINCIPLE

Ghana has made various commitments in principle to human rights in domestic and international laws. This chapter provides an overview of the institutional and legislative framework for human rights in Ghana. We discuss the range of the rights that have formal protection in law, and then describe the national human rights institution, the Commission on Human Rights and Administrative Justice (CHRAJ), primarily responsible for investigating and redressing human rights violations.

Legal Commitments to Human Rights in Principle

The 1992 constitution defines the laws of Ghana as being comprised of the following: the constitution itself, acts passed by parliament, orders and regulations by any authority to which the constitution confers such power, common law, and existing laws that conform to the constitution.

The constitution forms the bedrock for human rights in Ghana, and is supported by other national laws, as well as by human rights instruments to which Ghana is signatory.

The Constitution

The 1992 Constitution, the fourth in Ghana's history, incorporates the collective lessons of the three civilian and four military regimes that have governed the country since independence in 1957. As a result, the constitution is a well-drafted document, comparable with other such documents, on and outside the continent, in the areas of civil and political liberties, the independence of the judiciary and the media, and the functioning of a national human rights commission.\(^1\)

The preamble to the constitution affirms as a guiding principle “the protection and preservation of Fundamental Human Rights and Freedoms”. The central passage on human rights is Chapter Five--“Fundamental Human Rights and Freedoms”-- which sets out a range of rights to which “every person in Ghana” is entitled. Chapter Five also makes mention of specific groups of persons whose rights society should be especially careful to protect; namely women, children, persons with disability, and the sick. (See Appendix A for a list of rights provisions in the constitution).

Chapter Six on “The Directive Principles of State Policy” elaborates the principles by which individuals, civil society and government should interpret the constitution, and by which laws and policies should be made. The chapter

\(^1\) In the view of majority of interviewees.
sets out Political Objectives, Economic Objectives, Social Objectives, Educational Objectives, Cultural Objectives, International Relations and Duties of a Citizen.

Chapter Six is variously described as a guide, a set of philosophical ideals, and the “conscience of the constitution” (Quashigah, 2007). It can also be thought of as a template for development in the sense that the chapter essentially describes the society that Ghanaians, and the state as the people’s representative, should work towards, and makes explicit the idea(1)s that should steer this enterprise. Article 37(3) links rights and development by recommending that “the State [be] guided by international human rights instruments which recognize and apply particular categories of basic human rights to development processes”. Further, Article 37(2a) of Chapter Six articulates the “rights of effective participation in development processes”.

There is as yet unresolved legal debate about the justiciability of Chapter Six of the constitution. This is an important debate since the chapter contains important statements that could significantly alter or expand our conception of human rights, particularly in the area of social and economic rights. On a related note, the chapter explicitly puts a burden on the government to provide certain economic and social rights which, were they legally enforceable, would give great power to the rights-based approach in its bid to hold ‘duty-bearers’ to account. One school of thought, articulated by Justice Bamford-Addo of the Supreme Court (now Speaker of Parliament), is that the Chapter Six statements are merely “guides”. An opposing perspective is that, to the extent that the constitution in its entirety is legally binding, the provisions of Chapter Six ought to have legal standing also. The precedence set by the rulings of the courts and CHRAJ, shows a leaning towards the more conservative interpretation of Chapter Six as an important set of principles but not legally enforceable unless linked with the rights under Chapter Five (see Quashigah, 2007 for a fuller discussion).

In addition to Chapters Five and Six, there are disparate statements about rights in various other sections of the constitution, including the right to vote, the right to decent work conditions and equal pay, and a reiteration of the right to freedom of speech as it applies specifically to the media. (See Appendix A for a list of rights guaranteed by the constitution).

Finally, the constitution sets out a number of rights that should be legislated into law, such as spousal property laws, children’s right to care, and disability laws.2

The constitution is rather more detailed in its articulation of civil and political freedoms than for social and economic rights. For instance, the constitution affirms the right of workers to work under fair conditions but does not address the right to work, nor does it provide for rights to basic material needs such as housing, food and water. This lop-sidedness is a reflection of the fact that the purposeful reconstruction of democracy occurred after a cycle of military regimes during which civil liberties were suspended or actively violated. Thus civil and political rights were an overriding concern. It is also a reflection of the historical era in which it was drafted where economic, cultural and social rights -- so-called ‘second generation’ rights--had less recognition globally.

2 Articles 22(2), 28(1) and 29(8) respectively.
However, the fact that the constitution is limited and dated in its conception of human rights should not, in principle, be a challenge to the protection of rights since the framers of the constitution purposefully made the provisions on rights ‘expandable’ (R. Atuguba, interview, 23 December, 2008). Article 33(5) states:

“The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.”

The constitution thus makes room to incorporate into the legal framework those rights that are articulated and protected outside our national space, and those that might exist in the future.

**Other Domestic/National Laws**

Beyond the constitution, there are other national laws to protect human rights. Some of these were laws existing before the 1992 Constitution, and some were enacted in response to constitutional demands. Others are provisions of international human rights instruments that have been codified into domestic law.

Listed below are domestic laws and bills that are among the most important in terms of rights protection in Ghana, according to our interviewees.

- Intestate Succession Law, 1985 (PNDC Law 111)
- Public Order Act, 1994
- Children’s Act, 1998
- Criminal Code (Repeal of Criminal Libel and Seditious Laws – Amendment Bill), 2001
- Labour Act, 2003
- Disability Act, 2006
- Whistleblowers’ Act, 2006
- Domestic Violence Act, 2007
- [Freedom of Information Bill]
- [Property Rights of Spouses Bill]

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3 The law provides the formulae for the distribution of property among family, spouse and children in the event that a person dies without a will. It is generally seen as most significant for the protection for spouse and children who might otherwise, under customary law, be entitled to little.

4 The Public Order Act replaced the Public Order Decree. It gave the right to demonstrate without prior approval from the police; it also affirmed the right of demonstrators to protection (OSIWA and IDEG, 2007).

5 As with the Intestate Succession Law, the spousal property rights bill, while gender neutral in language, is seen as especially important for protecting women under a
The statutes of Ghana include common law, customary law, colonial laws and various decrees passed by non-civilian governments, among others. A review of these laws to bring them into line with the constitution and its human rights standards is therefore important (OSIWA and IDEG, 2007). A Law Review Commission, set up in 1968, is mandated to undertake such a review and make recommendation to the Attorney General for reforms of statutory and common laws. In 1998, the position of Statute Law Reform Commissioner was established within the Ministry of Justice. The Commissioner, a government appointee, was given the task of recommending amendments to bring all acts into conformity with constitutional provisions.

A report on the Justice Sector credits the Law Reform Commission with being instrumental in the passage of laws such as the Intestate Succession Law, the Disability Act, the criminalisation of harmful traditional practices such female circumcision and ‘ritual slavery’ (trokosi). The Commission is further recommended some laws that are yet to be passed, including the Property Rights of Spouses Bill. Among the achievements of the Statute Law Reform Commissioner is the modification of the criminal code. However, the report also notes that the reform has been slow due to logistic, human resources challenges, and dependence on the Attorney General to implement recommendations for reform (OSIWA and IDEG, 2007).

**International Conventions**

Ghana, as a member of the global community, has signed and/or ratified a number of treaties on human rights. Table 1 is a schedule of the country’s major international rights commitments.

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<thead>
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<th>TABLE 1: SCHEDULE OF MAJOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS</th>
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<td><strong>STATUS OF NINE CORE UN TREATIES</strong></td>
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customary system in which woman’s right of inheritance and rights to property within marriage is generally unprotected.

6 The sentence of ‘imprisonment with hard labour’, for instance, was removed because it was argued that it contravened the fundamental human right protection against torture or degrading treatment contained in the constitution and international human rights law (OSIWA and IDEG 2007, p. 33)

7 See OSIWA and IDEG (2007) for a more detailed description of Ghana’s commitments in regards to international treaties, including various optional protocols.
The main source of international human rights agreements is the United Nations (UN). The UN’s Universal Declaration of Human Rights (1948), while a non-binding declaration, contains the principles out of which have evolved an international rights regime (Doyle and Gardner, 2006).

There are nine core international treaties on human rights under the UN system (see Table 1), some of which have optional protocols. These do have the status of international law and entail limited obligations on those states that sign and ratify the treaties.

The African Charter on Human and People’s Rights merits discussion as an important regional commitment that draws on and buttresses international rights instruments, but also reflects “African” ideas of rights (Wohlegemuth & Sall, 2006). The Charter upholds group, collective or solidarity rights (usually articulated in terms of the right of a nation-state), including the right to “self-determination, to development and to environmental integrity and the right to freely dispose of natural resources” (ibid. p. 4). The African Charter also

<table>
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<th>Treaty</th>
<th>Title</th>
<th>Year(s)</th>
<th>Status</th>
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<tbody>
<tr>
<td>CAT</td>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
<td>1984</td>
<td>1987</td>
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</tbody>
</table>

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8 There are a number of human rights instruments with differing statuses in law. Once ratified, the following are considered to be international law: covenants, conventions, statutes and protocols. Declarations, guidelines, recommendations and principles are not legally binding (OHCHR, n.d.)

9 The incorporation of group or collective rights – referred to as “third generation rights” – may also be a function of the era in which the African Charter was written. The earliest regional charter – the European Convention on Human Rights of 1953 –
uniquely links rights with the duties of individuals to the state and to their society (Doyle & Gardner, 2003; Jallow, 2006; Wohlgemuth & Sall, 2006). Further, the Charter covers specific right issues that are of concern for the continent; to illustrate, in relation to child rights, it seeks protection for children against traditional practices, armed conflict, poverty and hunger (Wohlgemuth & Sall, 2006).

Finally, Wohlgemuth and Sall (2006) note that the Charter puts economic, social and cultural rights on a par with civil and political rights, in keeping with the development imperative that is the constant preoccupation of African states. They note that in making these second generation rights justiciable, the Charter should be an important reference point for advocates of the rights-based approach to development.

As stated, the Ghanaian Constitution is the most important basis for advocating for rights, but international human rights instruments complement the constitution, firstly because the constitution was itself influenced by international human rights conventions; for instance, there are provisions that are directly derived from the Universal Declaration of Human Rights and the African Charter on Human and Peoples’ Rights (Kludze, 2008). Secondly, these instruments help to supplement the constitution by plugging its deficiencies, especially as regards certain rights that have not as yet gained traction in legal jurisprudence or in public opinion. One interviewee involved in women’s rights work remarked that the usual response of the Attorney General to a push for a closer adherence to international conventions on women’s rights is to point out that these rights are already contained in the constitution. Yet, the constitutional provisions are not as elaborate as those provided for in international treaties such as CEDAW or the African Charter’s Protocol on Women (B. Sam, interview, 9 January, 2009).

The power of international rights instruments to influence thinking and practices on human rights locally depends on how they are deployed, whether within a legal setting as laws or in the public arena for moral persuasion. The lawyers in our sample of interviewees observed that the courts are generally not amenable to the idea that international instruments have more than persuasive value, even when ratified and therefore legally-binding on the state. In Ghana, these instruments must be further “domesticated” into national law; that is, passed as legislation by parliament. However, Ghana has a poor track record of codifying international rights instruments into domestic law (OSIWA and IDEG, 2007).10 In the view of one rights activist, it does not appear that Ghanaian lawyers and activists are doing as much as they could to pursue test cases that would expand jurisprudence to incorporate international rights law, especially in the area of economic and social rights (B. Sam, interview, 9 January, 2009; contained only civil and political rights, while the American Convention on Human Rights of 1978 had both first generation and economic, social, and cultural rights (Doyle and Gardner, 2003). The ACPHR, the latest regional charter, incorporates all three categories of rights.

10 Notable exceptions are the Children’s Act of 1998 which incorporates the CRC, and sections of the criminal code which, in line with CEDAW, criminalises cultural practices that effectively enslave women (Appiagyei-Atua, 2000).
Quashigah, 2007). The influence of the international rights instruments are perhaps stronger outside of the legal setting; they can be effective when evoked in public conversations as part of rights advocacy, given that they have moral force to persuade or pressure the state and other actors.

Institutions for protection and redress of human rights

It is fair to say that the government has the primary responsibility to directly, or through delegation, protect the rights of its citizens and redress any violations. This duty is carried out primarily through the courts and an independent body to protect rights in Ghana, namely the Commission of Human Rights and Administrative Justice (CHRAJ).

The Courts

The judiciary in Ghana consists of the superior and lower courts, as set out in the constitution. The superior courts of judicature are the Supreme Court, the Court of Appeal, the High Court and regional tribunals. The lower courts are “circuit courts and tribunals, the district courts, the juvenile courts, the National House of Chiefs and every traditional council, and any other lower court that Parliament may establish” (OSIWA and IDEG, 2007, p. 34).

The constitution further names the Supreme Court as having “exclusive and original jurisdiction” in interpreting and enforcing the constitution but also states in Article 140(2) that “the High Court shall have jurisdiction to enforce the Fundamental Human Rights and freedoms guaranteed by [the] Constitution.” It appears then that the constitution gives the High Court and the Supreme Court the primary responsibility to protect rights and address rights violations; however, in practice and by legal precedence, the High Court has its primary jurisdiction over matters of rights enforcement and redress, while the Supreme Court limited itself to questions of interpretation (Quashigah, 2007).

Chapter Four discusses in more detail the role and limitations of the courts in promoting human rights in Ghana.

Commission for Human Rights and Administrative Justice (CHRAJ)

The primary non-judicial institution to which complaints about human rights can be sent is the Commission on Human Rights and Administrative Justice (CHRAJ). CHRAJ was established in 1993 by an act of parliament (Act 456 of 1993) in accordance with Article 216 of the constitution. It has three areas of focus: human rights, administrative justice, and abuse of power or corruption. By this mandate, CHRAJ is a hybrid of three institutions: Ombudsman Office, Human Rights Commission, and an anti-corruption agency.

The reasons for the multiple mandate of CHRAJ is said to be because of the financial cost of having three separate institutions, and the idea that questions of human rights, corruption and administrative justice overlap and are mutually reinforcing (Bossman, 2006). The Political Context of Human Rights in Ghana report makes a similar argument about the connection between human rights and corruption that is particularly pertinent within the framework of the rights-based approach: that corruption (the wrongful use of both money and influence) undermines the responsiveness of the state and other agencies/agents.
to the demands of citizenry. Indeed, CHRAJ itself states, “The most serious threat to the enjoyment of fundamental human rights and freedoms is corruption” (CHRAJ 2008, p. 11). Despite this rational, the current Acting Commissioner questions whether the breadth of their responsibilities does not compromise the Commission’s effectiveness (Bossman, 2006), a comment that is echoed by the interviewees in our study.

The President appoints the Commissioner and two Deputies whose tenures are until the attainment of ages seventy and sixty-five years of age. Other staff members are recruited by the Commission. The “near life-long” tenure of CHRAJ commissioners has its logic in the fact of Ghana’s unstable political history, in which context it was deemed important to protect the independence and integrity of CHRAJ by granting the Commissioner and his or her deputies the same length of tenure as justices of the High Court and the Court of Appeal (Olukoshi, 2006). Nonetheless, the appointment of the Commissioners by the president could politicise these positions, and call into question the independence and competence of the commissioners. The Acting Commissioner has, however, expressed her opinion that there needs to be a revision of the rules of appointments to make them more transparent and open, and to bolster perception of the independence and competence of the Commission (Bossman, 2006).

CHRAJ draws a budget out of the government’s coffers on the approval of the Minister of Finance. The oversight of CHRAJ’s budget by a cabinet minister may potentially compromise their independence, and the recommendation has been made that CHRAJ should be allowed to submit its budget directly to the parliament (Bossman, 2006; Appiagyei-Atua, 2008).

CHRAJ has the authority carry out investigations, to issue subpoenas for persons and documents, and to make recommendations for redress of rights and other abuses. CHRAJ does not have the authority to prosecute, however. In Ghana, the right to prosecute is vested solely in the Attorney-General. This means CHRAJ has to resort to the courts to enforce its recommendations when necessary (CHRAJ, n.d). Article 229 of the constitution states, “For the purposes of performing his functions under this Constitution and any other law, the Commissioner may bring an action before any court in Ghana and may seek remedy which may be available from that court.” Article 218 of the constitution also gives CHRAJ the power to bring to “any competent court” proceedings to end or restrain any action that contravenes human rights laws. CHRAJ cannot, however, review or overturn a court ruling nor take on a case that is before a court (CHRAJ, 2005).

In theory, the separation of powers of investigation and prosecution could be positive, since it can act as a check on CHRAJ; for an institution involved in protecting human rights, acquiring wide-ranging powers to detain, investigate and prosecute may lead CHRAJ itself into human rights violations. In reality, there are instances where the Attorney General, who by constitutional provision is a member of cabinet and by practice has been the Minister of Justice, may not be inclined to prosecute a rights case. Therefore there are those who would like to see CHRAJ be given more powers to prosecute and enforce its rulings (C. Ayamdoo, 12 January, 2009).

CHRAJ has established itself as an effective human rights institution, both by the reckoning of the Acting Commissioner and by independent assessors. Ms.
Bossman, at a workshop on rights institutions in the West Africa region, gave Ghana’s commission institution good marks in the areas of public confidence, legal autonomy, geographical accessibility, and the breadth of its mandate. CHRAJ is well-regarded in the sub-region. Hucker (2006) names the commissions of Ghana, South Africa and Uganda as being noteworthy examples of respected and competent national human rights institutions, a commendation made earlier by a Human Rights Watch report which, on the whole, was critical of rights commissions on the continent as being weak and ineffective (Nowrojee and Human Rights Watch/Africa, 2001).

Quashigah (2007) argues that, while CHRAJ’s rulings are not legally binding, their influence is such that they are have advanced the interpretations of rights. He points specifically to the case of Morgan and other v Ghana International School during which CHRAJ made interpreted the constitutional provisions of equality and freedom from discrimination (p. 36). A report by the Open Society Initiative for West Africa (OSIWA) and the Institute for Democratic Governance in Ghana (IDEG) also commends CHRAJ for having a uniquely open approach to economic and social rights, compared to the courts (OSIWA and IDEG, 2007). Quashigah, however, has found cause to criticise CHRAJ for still being too conservative in its approach to rights. He cites a case in which a Ghanaian migrant who had returned to Ghana came to CHRAJ to compel the Department of Social Welfare to provide her with food and shelter, saying it was her ‘right’ as a citizen. Quashigah in this instance faults CHRAJ for not using the opportunity to evoke Article 33(5) of the constitution which allows one to argue for human rights that are allowed in other democratic contexts. Instead, CHRAJ stated that it was not in a position to accede the complainant’s request ‘since the law as it stands now [does] not guarantee the right to food and shelter’ (CHRAJ 1995, quoted in Quashigah 2007, p. 36).

CHAPTER TWO

THE EVOLUTION OF HUMAN RIGHTS DISCOURSES

The political and social historical context in which rights have evolved in Ghana has been well discussed in a companion report, The Political Context of Human Rights in Ghana. This chapter follows the contours of that report. We identify important institutional actors in Ghana, and provide perspective on their influence on rights discourses and practices over the past two decades. These actors include the state and its agencies; local CSOs; the media; and Western governments, bilateral and multilateral agencies, donors and international NGOs.

It must be noted that a fuller story of these institutional actors would reveal interactions and coincidences of interests. However, for analytical purposes, we discuss each category of actors separately in order to highlight their unique contributions.

The State

The evolution of the state's consciousness around rights can be divided into three phases: late colonial rule to 1966, the cycle of military regimes from 1966 to 1992; and then the transition to and consolidation of constitutional rule from 1993 to the present.

Pre-independence to 1966

A history of rights in Ghana must reference the anti-colonial struggle in which nationalist leaders evoked a variety of lesser rights in pursuit of their ultimate goal – the right to self-determination as a sovereign state and as full citizens therein. As Raymond Atuguba (interview, 23 December, 2008) explains:

“Contestations between local activists and colonial government were couched in the language of rights. They advocated for freedom of the press because they needed to use newspapers for the anti-colonial agenda; freedom of movement and freedom from arrest because they [the colonial government] were catching them and locking them up.”

Post-independence, somewhat ironically, rights became salient again due to their absence during the government of Kwame Nkrumah (1957-1966), whose gradual accumulation of power led to the curtailing of civil and political liberties. Opposition leaders such as J. B. Danquah gave legal defence to government opponents and other citizens caught in the net of the infamous Preventive Detention Act of 1958 (PDA). One such case is the oft-cited Re Akoto in which the courts ruled that the PDA did not contravene the constitution. This ruling effectively “allowed the executive to say that it was not obliged to defend rights” (R. Atuguba, interview, 23 December, 2008). Despite the independence struggle, the 1960 constitution of the first republic, following the British tradition, did not contain a strong stance on individual rights (Quashigah, 2007; Kludze, 2008); rather, it allowed power to be concentrated in the hands of the
executive (Gyimah-Boadi, 2004). The Akoto case revealed both the deficiency of that constitution and perhaps the unwillingness of the judiciary to challenge executive power. It is also important to note that the main arena for such contestation was the courtroom and as a result (and also because of the state’s control over the media) these legal battles, while significant in shaping the legal context, did not have much impact on the public conversations about rights at the time (Atuguba, interview, 23 December, 2008). Nonetheless, these events became a part of collective memory and eventually led to subsequent constitutions adopting a stronger position on civil and political rights.

1966-1992

After Nkrumah’s overthrow in 1966 and a period of military rule, the Second Republic (1969-1972) was ushered in with a new constitution. The 1969 constitution contained a stronger articulation of rights than its predecessor (Gyimah-Boadi, 2004; Kludze, 2008) but its effect on national life was short-lived as it was almost immediately trampled underfoot by a military coup. After military rule from 1972 and 1979, another constitution was drawn up to buttress the Third Republic. This survived only three years (1979-1981) before being overtaken by the military government of the Provisional National Defence Council (PNDC), which then evolved from January 1993 into the civilian National Democratic Congress (NDC) administration.

The era of the PNDC (1982-1992) was important because of its direct influence on contemporary rights discourse and practice. The PNDC came to power with a promise to clean up a corrupt government and restore an enfeebled economy. Despite these noble claims, the means by which the regime attempted to achieve these goals included those that directly abused rights. For example, the PNDC is recorded to have committed human rights abuse (as has been also true of previous military governments), including seizure of property, detentions and imprisonment, public humiliation, torture, and summary executions, among others (Gyimah-Boadi, 2004). Women, as a social group, were also targets, as they often are under military governments; for instance, Ghanaian female market traders were said to have gained from the fallen economy at the expense of others, and were economically and physically tyrannised with seizure of merchandise and physical harassment (Manuh, 1993; Robertson, 1983). The PNDC also clamped down on the press by censoring the media, restricted freedom of association by banning political parties, and circumscribed religious freedoms for instance with its ban on the Jehovah Witness and Mormon groups (Gyimah-Boadi, 2004)

Ironically, it was this same military government that put the structures in place for the most elaborate constitution in Ghana’s history in terms of the promotion and protection of rights both as a response to global currents of democracy but also on its own imperative, as has been discussed in the report on the Political Context of Human Rights in Ghana.
1993-present

The inauguration of the Third Republic in January 1993, heralded by the 1992 Constitution, represented a decisive break with three decades of unstable government in which human rights had a tenuous place in national life, both in principle and in practice. There is no doubt that rights have become more salient official policies and practices of both state and non-state institutions, and also into public discourse. This development can be traced to a number of factors well set out in the report on *The Political Context of Human Rights in Ghana*. To reiterate, the main factor was the adoption of a constitution that makes clear statements about the centrality of human rights to national life and that prescribes certain mechanisms and legislations to enforce these rights. The writing of the constitution was only a first step in the transition to democratic rule and the subsequent decade and a half of uninterrupted constitutional rule has further entrenched rights, and expanded the space for its advocacy.

However, the progress from 1993 to the present has not been entirely smooth. Appiagyei-Atua (2009) provides a nuanced analysis of the rights record of the military-turned-civilian government of the (P)NDC, in light of its supervisory role over the transition back to democratic rule. In terms of international rights, the PNDC even as a military regime, had ratified international rights treaties including CEDAW, CRC and the ACHPR. As a democratic government, it went further to ratify ICCPR, ICESCR and CAT (see Table 1). Further demonstrating a concern for its image at home and abroad and perhaps a genuine commitment to human rights, the NDC government began submitting reports to international treaty bodies from 1995.

There is some support for the claim that President Rawlings and his NDC administration were invested in the democratic process, there was some amount of self-interest in the ways they tried to construct it. The undue power of the executive is given as one example of this attempt to control the democratic transition process (D. Tsikata, interview, 16, March, 2008; also Oquaye, 1995). Another example is the government’s resistance to consistent pressure to repeal the Criminal Code on libel. Despite the fact that the code was unconstitutional, the NDC government continued to use these laws because they were a convenient means of exerting control over the media and muting criticism (Gadzekpo, 2008; Quashigah, 2007).

The NDC also had a strained relationship with CHRAJ, attempting to overturn CHRAJ rulings that took an unfavourable view of government actions. Indeed, the Attorney-General went to court to challenge CHRAJ’s jurisdiction over a number of cases, and in particular one brought against the Minister of Interior for human rights abuses meted out to demonstrators during a march to protest the government’s economic policies in 1995, which resulted in 8 deaths (Appiagyei-Atua, 2009). CSOs were also targets of the government’s autocratic tendencies, as evidenced by the attempt to pass an NGO bill that would require NGOs to obtain a license to operate from the government, which license would be given only if the government deemed the CSOs’ activities in line with its development programming (ibid.).

Thus, despite the fact that the return to constitutional rule from 1993 was a watershed moment in Ghanaian history, the change in policies and attitudes
was a gradual one. Gyimah-Boadi (2004) observes an improving climate for human rights in the country over the eight-year tenure of the NDC, and points to the evidence of increased media freedom, the relaxing of laws restricting political association and public assembly, and the increasing adherence by the government to the rule of law. At the same time, there were no effective counterbalancing sites of power; the CSOs were not powerful enough, the courts were inconsistent in their position on human rights, and CHRAJ, despite its valiant efforts, could only do so much as one institution to resist the hegemonic tendencies of the state (ibid.).

There are those perceive the National Patriotic Party (NPP) government, in power from 2001-2008, as being more rights-friendly than the NDC, and this is likely because of the latter’s association with a military government (Appiagyei-Atua, 2009). However, there are others who see some continuity between the NDC government and the Kufuor administration tenure from 2001 to 2008, in that the latter only consolidated a process that the (P)NDC had begun (ibid). The NPP government built on the gains of the previous administration with an immediate repeal of the Criminal Code, including the law on libel, in keeping with its campaign promise; freedom of expression under the administration was thus improved. The NPP also continued the trend of increasing adherence to law, and the rulings of courts, although there is suggestions that, as in the case of its predecessors, there the government influenced cases if only by delaying them (OSIWA and IDEG, 2007). Similarly, on a CHRAJ’s list of landmark cases are a number that involve the government as plaintiff. Although many of the cases relate to corruption or administrative justice issues, one can argue that a regard for the rule of law in general fosters adherence to human rights laws in particular.  

**True Commitment?**

While there is concrete evidence of successive governments having made progress on rights issues, it is difficult to gauge the extent to which they have genuine commitment to the process. A related question is how deeply the practice and the discourse of human rights have permeated different parts of the government, including the judiciary, the sector ministries, the armed forces, and so on.

As we have discussed, the state historically has neither adopted rights willingly nor pursued rights consistently. There have been pressures within and without, and various governments have adopted rights language and practices partly as a strategic means to other ends, such as gaining an improved image in the global community or an increased chance of receiving donor funds. However, it would be cynical to describe the state as impervious to human rights concerns beyond self-interest. Ghanaians as a collective have absorbed rights language and so has the government, which is of course a part of society. Our interviews turned up anecdotes of the government backing down from a planned course of action when confronted with its rights implications; for example, the Accra

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12 See the document “CHRAJ landmark cases” at www.chraj.org
Metropolitan Authority (AMA) has not yet carried out its threat to evict squatters off land earmarked by the government for development -- even though a court judgement gave it the greenlight for the eviction during a case brought by the Centre for Public Interest Law (CEPIL), a CSO, against the AMA in 2002. The head of CEPIL suggests that one reason for the lack of action on the part of AMA and the central government was the fear of public censure and loss of votes (see Box C).

On the other hand, the government has notoriously, though not inexplicably, been unresponsive to pressure to rein in multilateral corporations that are implicated in violations of human and environmental rights, most notoriously by mining companies. CHRAJ (2008) has, in collaboration with WACAM and other CSOs, produced a report based on its investigation of human rights violations in the mining sector. The report declares that “the causes of violations of human rights appear systemic in nature” (p. 11) and finds that the personal and collective rights of residents of mining towns are violated through illegal detentions and assault, loss of livelihoods, pollution of the environment and water bodies, and inadequate compensation, among others. It talks also talks about the need to protect “rights and fundamental freedoms”, specifically “the rights to livelihood, a home, clean water, safe environmental” which is a reference to economic and social rights, although not specifically identified as such (p. 11, 17). The violators of rights identified in the report include the mining corporations, security personnel and the government for not taking action to stem the abuse. The Ghana Chamber of Mines has condemned the review as being one-sided (Amevor, 2008) and the government has not given any public indication that it will act to correct the situation.

Government departments are not all equal in their sensitivity to rights issues. The judiciary has shown a slow learning curve. So also have the military, the police and prisons services which make consistent appearances in reports as violators of rights (e.g. CHRAJ, 2008; CHRI, 2008). In terms of sector ministries, there are a few that have absorbed certain international discourses as a result of popularized rights instruments such as CRC and the CEDAW, which Ghana ratified in the 1990 and 1986, and around which there were public campaigns both by civil society and by the government, both in response to the intense global campaign around these issues. In that respect, the Ministry of Women and Children’s Affairs and other government agencies with similar areas of concern speak may speak fluently of ‘the child’s right to education’ and ‘women’s right to participation’. One can speculate that this is due to a coincidence of interest among the international community, government, society and CSOs. On the other hand, the Ministries of Health, Food and Agriculture, and Housing do not speak in similar ways about a right to health, food or housing, likely because these categories of rights have not received as much attention internationally and because economic and social rights place a heavier obligation on the government This again supports the point that the government’s attitude

13 Credit must be given specifically to the 31st December Women’s Movement; as a NGO with political links to the government, it was instrumental in popularising children and women’s issues in the country.
towards rights corresponds somewhat to that of the general public, in terms of the categories rights that are more accepted.

**Civil Society Organisations**

The term ‘civil society’ is very broad and generally refers to non-governmental actors. In this sense, it includes private citizens, various community-based organisations (CBOs), and other forms of associational life including local credit unions, women and youth societies, and so on (Darkwah, Amponsah and Gyampoh, 2006). The focus of this report is on formal organisations that explicitly promote rights through articulated policy or in practice (NGOs), although in this section we also consider the contributions of the trade unions, and other politicized organisations that use the language of rights.

The past decade and a half has seen a growth in CSO numbers, activity and influence (Opoku-Mensah, 2007); from an estimated 80 registered NGOs in the early 1980s, the numbers rose to 350 in 1990 and was estimated at 1300 by 2007. Opoku-Mensah points out that these numbers do not reflect the fact that there are many more NGOs that are unregistered.

However, the ability of CSOs to positively impact the growth of rights discourse has depended not only on their numbers, but in large part on the political environment, as has been discussed in the discussion on the state in this report and in the *Political Context of Human Rights in Ghana*. We can examine this statement in light of the experiences of the women’s CSOs, which have arguably been the most visible set of CSOs in Ghana.

Tsikata (1989) points out that from independence through to the military regime of the PNDC, women’s organisations with explicit political goals were unable to make any real advances in promoting women’s causes for a number of reasons, including a political environment hostile to independent political organisations and the apolitical orientation of these organisations to women’s issues.

In the early days of the PNDC regime, the Federation of Ghanaian Women (FEGAWO) was created by women’s groups “to struggle for equal rights and opportunities for women in economic, social and political matters” (Tsikata 1989, p. 83). This translated practical into group discussions of women’s concerns; education about policy and issues, such as health and family planning; and support for economic or business ventures. Despite the existence of FEWAGO, the reality was that the space for independent political organising was narrow and the civil society arena was instead dominated organisations that were politically-affiliated to the PNDC but which took on the appearance of civil society associations. The 31st December Women’s Movement (DWM) was one such group. Inaugurated by the Head of State, Flt. Lt. Rawlings, and headed by his wife, Nana Konadu Agyeman Rawlings, it began as a wing of the ruling military junta and eventually became a self-identified NGO with international profile and external funding. It gradually crowded out other women’s groups (which, in any case, had been largely apolitical social welfare, self-help, or religious organisations). The DWM, having monopolised the CSO space on women’s issues, focused on “nation-building” and the practical needs of women, and was
less concerned with women’s rights *per se*. Additionally the DWM was not in a position to criticize the government, given its closeness to and dependence on the military regime (ibid.)

The DWM might be considered one of the GONGOs (government-organised NGOs) to which Isa Shivji makes reference (cited in Appiagyei-Atua, 2009). This implies that civil society was not homogenous or unified in terms of their relationship to government, and contradicts the assumption often made that civil society is independent of and can act as a counterforce to the state.

Notwithstanding the above discussion about the restricted space for civil society associations, and particularly for politically-minded organisations, NGOs grew in profile from the mid-80s onwards. This was not because the government created a conducive atmosphere for their growth but because of the role assigned them in the economic reform programs of that time. Opoku-Mensah (2007) traces the dramatic rise in the numbers of local and foreign NGOs in Ghana to the structural adjustments programs recommended by multilateral agencies for Southern countries from the 1980s. As the state was pushed back from its leadership role both in social provision and in the larger project of development, foreign and local NGOs took over the social welfare functions of the state, and also became channels of funds, becoming in some ways substitutes for a state discredited by donors and the international global governance institutions.

Yet a feature of this NGO growth from the 1980s onwards was their major preoccupation with service provision, rather than advocacy or direct political engagement. (D. Tsikata, interview, 31 December, 2008). Fallon (2008) suggests that one reasons for this apolitical posture of women’s groups in particular is the violence which is a feature of politics in Ghana and on the continent, and which has been targeted at women during military and other authoritarian rule. This is true for other CSOs as well.

The point then is that there have been few CSOs who have been willing to confront power. An important exception are the labour unions which have been a strong political force in both the struggles for independence and democracy. Thus, the labour unions came to represent a force for social change, forming alliances with various other groups, such as students groups, professional associations, and political groups to push against oppressive economic and political regimes. However, as already stated, for the most part, CSOs have remained apolitical and have chosen to concentrate on presumably apolitical welfare functions for the benefit of their own membership or for other persons or groups. It is clear then growth in numbers of CSOs alone does not result in real social change (Jad, 2004).

However, the CSOs interviewed pointed to change in the orientation of CSOs over time. In fact, the consensus of our interviewees was that CSOs have played a pivotal role in advancing the rights agenda, both by evoking the rights guaranteed by the constitution, and by generating more elaborate provisions that expound on those in the constitution. One respondent went so far as to declare, “Without civil society in Ghana, our democracy will fail”.

This statement contradicts separate studies on civil society which have asserted that civil society has little influence, at least in the policy process.
The disparity between the perspectives on the role of CSOs may be resolved by thinking about the nature of their influence. While it may be true that CSOs may not be very effective in influencing policy on rights, they contribute to incremental increases in knowledge and awareness which directly or indirectly, and with further impetus from other ‘external’ actors, push both the state and society in a more positive direction.

To make CSOs even more effective, Dominic Ayine (interview, 30 December 2008) advised that there should be a decreased reliance on a “talk-shop approach” in favour of “conducting more research to support advocacy”. This statement is a recognition that CSOs need to be more purposeful and systematic about pursuing human rights through public education, policy advocacy or legal actions, beyond merely talking about the importance of human rights at various workshops and conferences. It has also been recommended that CSOs first must build their own capacity to engage in the policy process (Darkwah, Amponsah and Gyampoh, 2006) and to increase their knowledge of international and human rights standards so they can use them more effectively (B. Sam, 9 January, 2009).

**Proposed NGO Bill**

We must add the post-script that the ability of CSOs to continue to advance a rights agenda is dependent on a conducive political and legal framework. Some rights advocates have expressed strong reservations about the Trust Bill and the National Policy Guidelines on NGOs which were released in 2006. The bill is not the first attempt at control by a government alarmed by growth in CSO numbers and worried about regulation and accountability. The NDC government’s attempt at an NGO bill in 1993 was received very negatively by civil society organisations suspicious of the government’s motives, and of the ways in which the bill could be used as a tool for repression. The confrontation gave way to negotiations that resulted in 2000 in a Strategic Partnership Agreement that was to frame government-NGO relations and to be the basis for an NGO law. However, the Trust Bill was drafted by the NPP government, outside of the Strategic Partnership Agreement, and without significant input from civil society (GAPVOD, n.d.). The reservation of civil society is not about the fact of a bill, which NGOs themselves agree is necessary given that NGOs in Ghana are under-regulated, but about its contents. Perhaps the most worrying aspect of the bill for CSOs is the provision for setting up a commission to oversee NGOs, whose Commissioner can be removed by government; this would indirectly place NGOs under the government (ibid.). The bill is yet to be debated in parliament.

**The Media**

The media are part of civil society but merit a separate discussion. First, the experience of the media over various administration is a good barometer of freedom of speech, which is one precondition of the citizen’s ability to make right claims. It has also been argued that the media has a unique role as preservers of democracy; the media allows citizens to participate in public life by giving them
space to articulate their views; they mediate dialogue between the government and its citizens; and they hold governments to account (Gadzekpo, 2008). In Ghana, the ability of the media to act out this set of mandates has been constrained externally by political repression and internally by a failure to live up to ethical and professional standards of journalism (ibid).

The story of the media in Ghana starts on an illustrious note, as Gadzekpo (2008) describes it: During the independence struggle --which, as we have noted, was essentially a rights struggle -- newspapers were virtually the only public avenues through which nationalist leaders could advertise their cause. Successive governments, however, carried out explicit or implicit policies that sought to muzzle the independent media, and used the criminal libel and sedition laws consistently and to good effect to protect the state and its agents from censure.

There are three seminal events in the past two decades that have freed up the media to potentially play its role as a defender of rights. These are, first, the writing of the 1992 Constitution which, in Article 12, spells out provisions for the protection of the media (and which explicitly repeals all laws requiring newspapers to be licensed); second, the repeal of Criminal Code on libel; and thirdly, the end of state monopoly of the media and the consequent “liberalisation” of the airwaves (K. Karikari, interview, 8 February, 2008).

This third event occurred from the early to mid-1990s and was part of the general wave of democratisation, during which demands grew for a free press and an end to the state’s wielding of the media as “part of an arsenal for repressing society” used to deny the people information, to disseminate propaganda, and to punish dissenting voices (K. Karikari, interview, 8 February, 2008). With this coincidence of viewpoints on the part donors and civil society on the need for the media freedom, the Rawlings administration somewhat grudgingly opened up the frequencies to allow private radio and television stations to broadcast (which had previously been controlled from the seat of government by the Security services).

The proliferation of private radio stations (mainly commercial, but with some public and community media agencies) has in itself enhanced the capacity of the public to give voice to their concerns and to make demands of the state. This capacity has been greatly supported by the increasing use of Ghanaian languages, particularly in radio broadcasts, and the availability of communication technologies that allow the public to directly channel their own opinions through SMS messaging and mobile phone call-in to radio stations. These channels of self-expression are particularly important given the illiteracy rates in Ghana which might otherwise prevent people from either receiving or responding to the print media’s output. There is even the phenomenon where people have started channelling various complaints through radio presenters, and this may be partly due to a distrust of official institutions and channels of redress (such as the police and the judiciary), and partly the perceived power of radio stations to hold official agents and agencies to account (K. Karikari, interview, 8 February, 2009). Regardless of the reasons for it, this phenomenon may be seen optimistically as indicating and adding to rights awareness among the public.
However, there is a lack of an explicit and consistent attention to rights within the media. The only rights that the media has historically focused on are media freedoms, perhaps unsurprisingly given the historical tensions between the media and the state. For the same reason, the media has focused disproportionately on instances of corruption and abuse of power (Gadzekpo, 2008). However, there is not as consistent an articulation of other rights issues, even though much of what the media covers as news may have rights at its roots. For instance, a trend in television news broadcast is to report case after case of what they describe as social ills, primarily the abuse of women and children and sexual assault on minors. There is also a trend to unearth the ways in which government (central and local) have been remiss in certain duties, such as the provision of good school facilities, provision of water, and maintenance of a healthy environment (see Box B). 14

Box A: Media coverage of protest over refuse dump

The television stations for a few years have covered many cases of the dumping of refuse in low-income neighbourhoods in Accra by a garbage collection companies, often by or with the tacit approval of the Accra Metropolitan Authority (AMA) and traditional land authorities. The news items are a criticism of public officials and their perceived negligence of duty or active contravention of the law.

On the January 16, 2009, edition of its 8 p.m. news broadcast, Metro TV (a private news station) featured residents of two neighbourhoods in Accra (Ashaiman and Kokroko) expressing anger about waste being dumped on their land. In the case of Ashaiman, it was reported that the chiefs had apparently given the AMA and the private waste companies permission for this activity. The residents said these actions were morally reprehensible and illegal. Their primary goal appeared was to use the media attention to either shame or pressure the AMA into taking action to correct the situation.

The news anchor in the studio spoke on air with an official of the Environmental Protection Agency (EPA) who admitted that the matter had only come to his attention that afternoon when “members of the media” called him. He commented that the reported actions were clearly against the “human rights” of the neighbours and advised that the communities had a right to take legal action.

While the EPA official cast the incidence of refuse dumping as a rights violation, neither the journalists nor the residents had made that explicit link. For the latter two, it was a case of the powerful (the AMA and chiefs) taking advantage of the powerless. While the connection to rights is missing, one might also argue, on a positive note, that the attention to these incidents of wrongdoing by authorities may be a stepping-stone to empowering citizens to make demands on duty-bearers for their entitlements.

Interestingly, news reports for Saturday, 7 March, 2009 indicate that the refuse has been cleared from the land ((cf. Sam, 2009). This shows a responsiveness of the authorities, if not to the plight of the people, then to their negative portrayal in the media.

Problems with media coverage of rights issues

14 The latter trend seems to have began with a few private television who, unfettered from having to cover the government activities almost exclusively as the state media was wont to do, started to search for news in other quarters.
In addition to their inability to cover news items through the lens of rights, the media tends to treat these incidents as individual cases; they do not analyse these instances of human rights violations they report as being situated within a larger structural context (K. Karikari, interview, 8 February, 2009). For instance, the popular television show, “Obra Mu Nsem” which is hosted by a well-known actor, Grace Omaboé, brings to light cases of victimization among children and women. It has gained such popularity that members of the public spontaneously approach the host with cases that they want to be brought to public attention for possible redress. While one may argue that the mere fact of unveiling these social problems is a public service, the show does not always characterise these as rights violations in a legal sense. In fact, the show may itself advocate action that are against human rights, calling in moralistic tones for a rapist to be castrated or other extra-judicial punishments to be visited on the perpetrators (ibid.). Again, the show focuses public ire on the individual perpetrators without pointing to the social dynamics and institutional frameworks that catalyse these behaviours and allow them to continue.

If there has been an improvement in the range and coverage of rights, it may have less to do with a conscious decision of the media to attend to rights concerns, and more to do with the fact that the media is influenced by civil society organisations (K. Karikari, 8 February, 2009). This is best illustrated by the media’s interaction with the women’s movement in Ghana (R. Mensah-Kutin, interview, 2 January, 2009). For instance, during the campaign to promote the Women’s Manifesto (“a bill of rights for women”), the media responded to the invitation of the women’s organisations to cover their activities. Having been pointed in the right direction, the media continues to cover the themes that were raised and thus give further voice to the women’s advocates to provide commentary on the news reports. The media, by this same process, has responded to CSOs’ and government’s concerns about the anti-rights nature of certain social practices such as female circumcision; the trokosi system in which women and girls are given in servitude to traditional priests as collateral or in payment for family debt; and “witch camps” in which reside mostly elderly women who have been cast out of their homes and communities on suspicion of witchcraft.

Despite the progress they have made, the media is not self-directed and continues to be reactive when it comes to rights. This means that the media cannot effectively act as an advocate of rights; given its short attention span and its myopic perspective of the cases it does report on which have rights implications, it is doubtful that the media as it is at present can engage in a long-term campaign for rights (K. Karikari, interview, 8 February, 2009).

**Donors, Western governments and other international actors**

Michael (2004) addresses the question of the lack of power of local (African) NGOs, defining power as “the ability of an NGO to set its own priorities, define its own agenda and exert influence over others to achieve its ends” (p. 1). The main way in which local NGOs cede power is through dependence on external funds. One interviewee put it baldly, “Civil society in Ghana today can collapse if the external drive (and money) is cut off.” In the case of WILDAF, its
International NGO (INGO) donor influenced the site of their projects, ‘persuading’ the CSO to undertake a project in Western Region because the INGO had already established other programs there (B. Sam, 9 January, 2009). Some CSOs interviewed stated that they had clear guidelines about not accepting funds that would derail them from their primary focus, but they also acknowledged that many CSOs are not as resolute.

However, not all local CSOs see the partnership with international institutions in such cautionary terms; some view such relationships in positive terms because it gives them access to networks, ideas and funding. As Hannah Owusu-Koranteng of WACAM (interview, 16 December 2008) stated, “The best advantage of globalization is that you can also globalize the struggle.” Through WACAM’s collaboration with the Global Mining Campaign, and Food First Information Action Network (FIAN), a German NGO, the organisation has broadened its programmatic and thematic range (D. Owusu-Koranteng, interview, 16 December, 2008).

Western governments, bilateral and multilateral agencies are influential actors on the continent, to such an extent that the World Bank and IMF in particular have been referred to as ‘off-shore governments’ (Olukoshi, 1998). There is no doubt that these agencies influence policy discourses and directions, through dissemination of ideas and the imposition of conditionalities. Some rights activists interviewed insist that by continuing to impose a neo-liberal agenda, the interests of these institutions are ultimately inimical to the welfare and rights of the people of Ghana. Such activists point out that the capitalism that is prescribed by these actors, for instance, allows international mining companies to abuse communities, privileges the property and other rights of the elite, and encourages the state to pull back from providing its people with needed services and facilities.

The rights-based approach as a donor agenda?

The rights-based approach (RBA) to development is part of the new paradigm of development promoted in the mainstream of development discourses and backed by donor funding. In Ghana, the Rights and Voice Initiative (RAVI) has been set up by the UK’s Department of International Development (DFID) to fund CSOs in the area of the RBA. Their stated aim is to “ensure that there are strong grassroots organizations that are capable of engaging with the decentralized local government structures...for the promotion, protection, respect for and fulfilment of the rights of citizens” (RAVI n.d., p. 5).

Our interviewees disagreed about the extent to which local CSOs have adopted the RBA into their programming and their thinking, although there was some agreement that the approach is gaining popularity and that there are increasing numbers of CSOs who claim to do rights work.

There are a few groups that consider themselves rights-based organisations even before the advent of RBA. For instance, WACAM was created as a community-based organisation mobilising to assert their rights against mining companies outside of RBA approach, although now they are make explicit the link between their work and the RBA (D. Owusu-Koranteng, interview, 16 December, 2008).
Other organisations welcome the rights-based approach as a new basis of legitimacy for their work. ActionAid Ghana, which considers itself a ‘learning organisation’, is candid about its internal struggles with the RBA approach adopted by ActionAid as a global entity. The Country Director described their attempt negotiate the imperative of RBA to support the agency of people to make right claims of the government and their own impulse to directly meet obvious (A. Kluvitse, interview, 15 January, 2009). However, our interviewees suggest that many CSOs are not as self-reflective as ActionAid appear to be and might be using RBA as a gloss over old practices and approaches, or might be misunderstanding and misapplying the concept.

Our interviews revealed a third category of organisations whose work essentially focus on rights—e.g. NETRIGHT, TWN, Civil Response—but who resist the rights-based approach on a number of grounds. First, they express scepticism about the reasons why the RBA is being promoted by donors. In the midst of calls for ‘local ownership’ and ‘participation’ which have become themes and even conditionalities in development programming, it assumption of the part of donors is that the civil society should play a role in holding government to account for policy implementation (UNDP, 2000).

A few of our interviewees saw the RBA as an attempt by donors to strong arm CSOs into acting as government watchdogs. Atuguba (n.d.) reiterates this view in blunt terms:

“In simple terms, development agencies give money directly to the government, in Ghana through an agency known as the Multi-Donor Budgetary Support (MDBS), and ask them to spend it on specific programs. They then give money to CSOs and ask the CSOs to watch that the government spends the money on what the government is supposed to spend the money on. The donor countries and development agencies then sit back, relax and watch the fight. That is the rights-based approach to development” (p. 21).

The resistance from some parts of civil society is to the idea that they are being co-opted into an already defined (neoliberal) agenda; once a CSO is pulled into monitoring the implementation of a certain paradigm of development, it means it has given implicit assent to its ideas (Tsikata, interview, 31 December, 2008). For some CSOs, rejection of RBA is their attempt to retain the right to create their own agenda.

The RBA also identifies the state as the main target of right claims, and this can obscure the role of global institutions in creating global and national environments (though unfair trade agreements and a liberal economy, for example) that may constrict human rights (Y. Graham, interview, 28 December, 2008; Tsikata, 2004).

There are also reservations about the utility of the RBA in advancing the kinds of rights that are important to the local public. A founder of Civic Response, a CSO that promotes the rights of forest communities, explains that the RBA is delimiting in its focus on legal rights.

“Whether or not there is a legal convention on forests, whether or not Ghana’s laws recognise a right on the part of those communities to make
decisions about those forests, for us is immaterial. Where those rights exist, they become an instrument in our struggle but they are neither the source of, nor the confines for, the work we do. So legal rights are an important tool for advancing communities’ struggles for socioeconomic – the rights to develop, to have some security. But legal rights are not the foundation.” (K. Opoku, interview, 30 December, 2008).

According to Opoku, Civic Response concentrates on the “information problem” that will inform both communities of their rights and the government of its obligations, and they recognise that this information problem is based on power inequalities. “So we focus more on power relations that underlie the legal relations; the legal relations are important but they are more fundamental issues” (ibid.) The approach of Civic Response acknowledges that the language of legal human rights may excise those issues which are difficult to couch in terms of legal human rights, especially in Ghana’s conservative legal space. Such issues include globalisation and global power relationships, trade policies, class and gender, to name a few (Tsikata, 2004; also D. Tsikata, interview, 31 December, 2008).

Again, by focusing on legal rights, the RBA de-emphasizes other “traditional” and perhaps more effective bases and channels that people would otherwise use to make their claims (Nyamu-Musembi and Cornwall, 2004). These ways of making claims that do not involve legal language and the involvement of institutions such as the courts and CHRAJs may be more effective because they do not require the kind of technical expertise that is needed to understand, interpret and use international human rights standards, and because they draw on arguments, skills and institutions that are more accessible to ordinary people.

The reservation expressed about the RBA by local CSOs is one indication of the tensions that exist between mainstream (international) and local interpretations of human rights.
CHAPTER THREE

THE STATUS OF RIGHTS IN CURRENT PUBLIC DISCOURSE

The chapter assesses the extent of the awareness and acceptance of rights in everyday public discourse. We identify the arguments for and against rights, and investigate the power dynamics involved in these contestations.

Permeation of Rights Discourse in Contemporary Ghanaian Society

Organisations interviewed including CHRAJ, WILDAF, CEPIL and LRC point to the increasing numbers of people who come to them with rights complaints as an indication of public awareness of rights, and of the public's willingness to make right claims. Even CHRI, whose focus initially did not include responding to individual requests for legal assistance, has been compelled by the needs expressed by the public to provide such a facility. CHRI reports that in 2008 alone, it had more than 100 walk-ins; it even get referrals from government agencies such as the Ghana Legal Aid Board, the police, and the Ghanaian army (N. O. Lithur, interview, 9 January, 2009). These CSOs described their caseloads as overwhelming and the demand for their services unending. Overall, the rights practitioners interviewed offered their considered opinion that rights have gained a stronger foothold in the Ghanaian psyche. This conclusion tallies with the findings of a survey conducted among NGOs and government officials in which both categories of respondents rated public awareness of rights as being “good” or “very good” (Atiemo, cited in Appiagyei-Atua, 2009).

CSOs can be given some credit for this trend. Civil society organisations – primarily national and international NGOs – are the most vocal advocates of rights within the country, even if donors, international governance institutions, and Western donors may exert more influence behind the scenes, as discussed in the previous chapter. Our interviewees offered anecdotal evidence to suggest that the influence of rights-promoting organisations has grown over time in terms of the public discourse on rights. For instance, respondents with CHRI, ABANTU and NETRIGHT mentioned that the media and the government seek out their perspectives on rights issues in the country (although it is not guaranteed that their perspectives are always incorporated into policy).
We should however be careful not to credit CSOs with single-handedly creating demands for rights. Sometimes CSOs merely give people the language to articulate, and the skills and resources to pursue, what was implicitly a rights agenda, as in the case of the LRC and the Federation of Youth Clubs (FYC), where a group of loosely organised young people learned to use the language of rights to underpin their basic struggles for economic and social justice. The rights that they fought for were therefore derived from their personal circumstances and the concerns that they held even before the advent of LRC (see Box B).

The case of the FYC, while not representative of other neighbourhoods or civil CSOs in the country, nonetheless shows how powerful rights language can be when it coincides with the latent needs and struggles of people. Raymond Atuguba described the FYC this way: “This was a group of active young people who felt that they needed legal backing and support in order to realize the rights that they felt had been denied them by everybody else in Ghana. So the language

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**Box B: The LRC and the Federation of Youth Clubs**

The Legal Resource Centre (LRC) was founded in 1997 by five law students. They began working in Nima, a low-income neighbourhood of Accra, with residents who are predominantly from northern Ghana. While still in school, they spent their weekends, nights and early mornings doing rights literacy campaigns. They made use of existing women’s, men’s and youth groups as a ready-made audience and a base for later organising.

Raymond Atuguba, one of the founders of LRD, spoke of how their message found very receptive ears among members of what would later become the Federation of Youth Clubs – a group made up of younger residents of Nima and neighbouring Maamobi. Prior to the arrival of LRC, the young people had been using the language of "self-help and divisive politics" both to survive economically and to protest the social inequalities they perceived. R. Atuguba described these inequities evocatively: The young people would be cleaning up the choked gutters in their neighbourhood, and while they were engaged in this task, the waste from the residences in near-by high income Kanda and Roman Ride would refill the gutters.

LRC taught them a new language in which to speak their dissatisfaction, and soon these young people, now much better organised, were saying, "We have a right to do this; or this can’t be done to us – it’s against our rights" (R. Atuguba, interview, 23 December, 2008).

The rights that these young persons demanded cut across political, civil, social and economic rights – they were concerned about access to facilities, and improvement in the delivery of services such as health, education and housing. They would set up meetings with the local government authorities to convey their concerns, or threaten to sue a government hospital for denying free health care to eligible members in the community. They were also concerned about the oppressive presence of the police in their neighbourhoods. Through dialogue with the police and crime education, facilitated by the Legal Resource Centre, the police service has better relations with the neighbourhood of Nima and police raids are less frequent than they used to be.

In recent times, the Federation of Youth Clubs has become a social force not only in Nima but also on the national scene. During the elections of December 2008, they had a verbal standoff with the Greater Accra Regional Police Commander who tried to prevent FYC from a scheduled demonstration. After checking with one of the lawyers at LRC about the constitutional basis of their claims, they reiterated to the police commander their rights under the Public Order Act to demonstrate without a permit. Heavy-handed tactics having failed, the regional commander was forced to negotiate with the FYC and their president who, it should be pointed out, has no education beyond secondary school and no professional experience in the human rights field.
of rights sold like hot cakes. In fact,” he added, “we had to actually restrain them 
from taking the idea, from being fuelled by the idea into excesses” (interview, 23 December, 2008).

Such a coincidence of priorities does not always occur. As Atuguba (n.d) 
observes, there tends to be “a gap between the way in which rights are framed in 
actual struggles informed by people’s own understanding of what they are 
etitled to and in dominant discourses about rights” (p. 20). NETRIGHT, after a 
review in 2001, decided to focus on economic justice issues for women; ‘broadly 
issues related to how economic policies affect people’s rights, and in terms of the 
fairness and equity of policies and their impact’ (Tsikata, interview, 16 March, 
2008). NETRIGHT recognised a lack of attention to these areas; that is to say, 
though there are a number of women’s CSOs who focus on livelihood issues of 
women, notably micro-finance and so on, they do not regard their work as being 
in the human rights arena. Despite this declaration of intent, NETRIGHT finds 
itself being drawn by the demands of members into working on a various 
policies that affect women (e.g. rising petrol prices and the National Health 
Insurance Scheme). NETRIGHT makes an effort to address these areas of 
concern, but members also complain that the CSO does not follow through on 
these issues; this is because NETRIGHT has to balance these mini-campaigns 
with their big-picture priorities. Thus, they address one “crisis” at a time, 
through for instance a period of intense engagement with the government or 
other “duty-bearer” over a particular action, and thus do not have the space to 
pursue a well-planned and comprehensive programme to address a broader 
range of issues related broad development policy, land tenure, and access to 
services (D. Tsikata, interview, 31 December, 2008).

The NETRIGHT case illustrates the fact that members of the public have 
their own priorities related to their practical and immediate needs, and may be 
less interested in broader issues and long-term causes. This is an observation 
made by a number of the CSOs interviewed – they complain that they are so 
pressured to put out fires that they are unable to engage in longer range 
strategies that might push the boundaries of human rights in Ghana, through 
sustained policy advocacy, for instance, or by through court actions that attempt 
to push the understanding of human rights in Ghana.

It is also clear that members of the public may have not just different 
priorities about rights, but completely different understandings that do not 
correspond to either the concerns of local CSOs or to international human rights 
standards. A recent survey captured the “rights” priorities of Ghanaians; the list 
included the “right to a decent burial, the right not to be denied proper care in 
old age, the right to be given a name (identity), the right to be listened to, and the 
right to play, the right to inherit ‘grandmother-land’” (cited in Appiagyei-Atua, 
2008). This recalls the point made in the introduction of this report about the 
disjuncture between what is recognized as international human rights standards 
(which is the focus of the current project) and the ways in which people and 
organizations interpret rights in national contexts.
Factors mediating rights acceptance

The salience of rights is uneven across social demographic groups and geographical location. It is hardly surprising that the respondents for this study located the strongest interest in and awareness of rights in the urban areas. This coincides with higher education and the greater exposure of urban residents to diverse ideas, which might imply a declining influence of “traditional” norms. In particular, younger persons are identified as being most receptive to the idea of rights and more willing to make rights claims, as the example of the FYC suggests (see Box B).

However, the relationship between urban residence, education and age is not an uncomplicated. One of our interviewees opined that the strength of the rights discourse is also a direct function of the number and influence of CSOs in the area. He pointed to the three northern regions of Ghana (Northern, Upper East and Upper West regions) as a place where rights have gained a strong foothold because of the work of NGOs. This is despite the fact that northern Ghana is largely rural, and poverty is higher and education generally lower than southern parts of the country (Abaane, interview, 14 January, 2009). By that same token, the perceived greater awareness of rights in urban areas may be due to the fact that influential rights-promoting CSOs are disproportionately represented in urban areas, and particular in the capital Accra (ibid).

There is also variation in the kinds of rights that are accepted. The experience of the coalition around the Women's Manifesto is illustrative. According to its proponents, the goal of the Women's Manifesto was to provide “a common framework around which women could claim rights” (R. Mensah-Kutin, interview, 2 January, 2009). The rights theme was clear:

The original basis for making these demands is the material conditions of ordinary women in the country where we see that there are inequalities, there are disparities, and there are the denial of rights...and once you're making demands, you're talking about what you're entitled to. We were no longer saying 'Women should be helped', no. We were saying that this is our country and wherever we are in our development, that cake has to be shared equally for women to benefit” (ibid.).

The Manifesto made reference to, and used as “justification and backup”, the constitution and national laws, and international agreements such as CEDAW, the ACHPR and its Protocol on Women (which Ghana is yet to ratify). ABANTU for Development, which headed the initiative, formed a coalition around the manifesto made up of different kinds of groups, including not only women’s groups and CSOs, but the trade unions, professional associations, and women’s wings of political parties. Rose Mensah-Kutin of ABANTU commented on the commitment displayed by members of the coalition; they were not hesitant or unsure; they were “very clear” that demands had to be made on the government to correct past injustices. Even so, while there was consensus around issues such as women’s representation in political offices, or the urgency of pushing the Domestic Violence bill through parliament, on issues such as land rights and economic justice, there was markedly less fervour. Mensah-Kutin speculates that perhaps there was a lack of clarity for members on the status of
those issues as rights issues, or perhaps members simply did not consider them to be as important to their interests (interview, 2 January, 2009).

We can also use the kinds of cases that are brought by the public to the CSOs to assess public acceptance of rights. The complaints received by the CSOs in our study cluster around issues arising from family and marital relationships, and also civil rights; for example, corporal punishment in schools, detentions, unlawful arrests, marital abuse or negligence and evictions. These are the rights that resonate with people’s immediate personal experiences or perhaps these are the rights for which they believe they can successfully seek redress.

Within the wider society, the validity of economic and social rights is called into question more than are civil and political rights. For example, while there is a better appreciation of the illegality of false imprisonment (even if people may feel powerless to prevent it), people have difficulty recognising the right of communities to livelihood, or to food and shelter, as legitimate rights. The frequency with which the government evicts traders from streets, or other people from settlement areas, often in the name of development, shows the economic and social rights have not received high enough profile as human rights (and further points to the tendency to privilege or even use “development” or public interest as an excuse to ignore human rights).

Ghanaian history helps explain the concern over civil and political rights, given their abuse by successive administrations, including the colonial government. Moreover, the tendency to privilege civil and political rights is in keeping with the evolution in the human rights regime within which ‘second‐generation’ rights are not as entrenched. Therefore, it is hardly surprising that the human rights discourse in Ghana promoted by both CSOs and the public would not be as fluent in that language of economic and social rights. Finally, as is discussed elsewhere in this report, duty‐bearers are more resistant to claims on the basis of economic and social rights because of the cost it imposes on them (B. Akolgo, 19 December, 2008). The story in Ghana has not been different, and the judiciary and CHRAJ, as advocates on behalf of society, have both been ambivalent about the legal status and the practical enforceability of such rights.

Beyond this broad statement about the salience of different categories, specific rights relating to children and women have become more common both in public discourse and in public policy. Ghana established a Children’s Commission in 1979 and was the first state to ratify the Convention on the Rights of the Child (CRC) on 5 February 1990. With regard to women, the Beijing Platform of Action became a part of every day conversation, however superficially, after the 1995 Beijing conference on women which was very well publicised by local and international activists: The term “Beijing!” was bandied around in ordinary conversation, with derision or good‐humouredly to connote any statement or action that was seen to be promoting women’s equality, and those members of the public who were ideologically against women’s equality (or what they understood to be equality) blamed any perceived misstep by women as the fault of “Beijing.” As a result of the publicity that these human rights have received publically and its support by the government, women’s and children’s rights have even found their way into policy; the child’s right to education has been translated into a policy on free compulsory basic education;
and women's right to political participation is manifested in quotas.\textsuperscript{15} Again, the rights of the disabled have also gained some attention because of the campaign around the Disability Act.

Clearly then, despite the progress on rights awareness on the part of both duty bearers and those making right claims, there are still social categories whose rights are not recognised. The area of gay rights is an obvious example of rights that neither civil society nor the government attempts to even begin a dialogue on, and there is hardly a CSO on the Ghanaian scene that has taken up advocacy on this in any significant way, likely because it is seen as being contrary to Ghanaian "culture". Indeed the Commissioner of CHRAJ is on record as having said that his institution will not promote gay rights because the Ghanaian public would be strongly opposed to such advocacy ("CHRAJ won't advocate gay rights – Short", 2003).

CSOs also express concern about the insufficient attention to the rights of prisoners, squatters and the homeless (N. O. Lithur, interview, 9 January, 2009).

\textbf{Box C: \textit{CEPIL and squatters' rights}}

CEPIL in 2002 took on the case of Issah Abass v AMA. The Accra Metropolitan Authority (AMA) had given two weeks eviction notice to squatters living in place called Sodom and Gomorrah, on the banks of Korle Lagoon of Accra. Some of the residents came to CEPIL for help, and the CSO went to court to challenge the eviction.

CEPIL did not contest the AMA's position that the squatters had no legal rights to the land, but stated that this did not strip the residents of their fundamental human rights. CEPIL argued creatively that the squatters' right to life, as guaranteed in the constitution, implied a right to water and to housing. CEPIL also evoked a number of economic and social rights, including others such as the right of the children to education and women to livelihoods. Their argument was that evicting families would mean that children would be unable to attend school, at least temporarily, and women would lose their trade.

Where national laws were inadequate (because the Rent Act does not provide adequately for protection of squatters, and there is no explicit statement about right to water and housing in the constitution), they appealed to international law, specifically the International Covenant on Economic, Social and Cultural Rights. They also cited legal precedence in other countries.

CEPIL lost the case. The judge privileges Ghanaian property right laws, and stated that persons who had acted illegally by trespassing someone's property could not claim rights. While rejecting the claims about right to shelter and a living, the judge did rule that the manner in which the AMA proposed to evict the squatters violated their human rights and ruled that they should be given adequate time to prepare and that the

\textsuperscript{15} The Rawlings administration in the 1990s drew up an administrative document stating that district assemblies should have 40% women. There is no equivalent administrative directive or policy for quotas at the parliamentary level, although there is advocacy for such a policy (D. Tsikata, interview, 16 March, 2009).
eviction should be done without any form of abuse. The AMA, however, did not proceed with eviction. It may be that they noticed that there were 21,000 registered voters among the squatters and the 2004 elections was around the corner. (The ruling party eventually lost the parliamentary seat to the main opposition party).

Response to the case was divided among the public and among the media. Some said the government displayed “indecent haste” to evict its own citizens. Others thought the squatters were delaying national progress by holding up the construction work.

Dominic Ayine, Director of CEPIL, believes that if the same case was prosecuted today, there would be a different outcome because of the heightened knowledge of rights among the judiciary. The judgement might be different in the court of public opinion also. More recently, CEPIL took up a case against the Railway Corporation and the Attorney General’s Office. CEPIL argued that squatters’ rights to housing and shelter was being violated by the demolition of housing structures near the railway lines. They argued further that the squatters were being discriminated against since there were similarly situated residences (including those of public officials) which also violated laws about the appropriate distance of buildings from the rail lines. The central government took a different tack from the AMA that had disparaged squatters rights in the Issah Abass case; it met with the squatters to explain to them that the eviction was for their own safety and was not intended to violate their rights. In the end, the government did not proceed with the demolitions and the squatters remained.

**Bases for resistance to rights**

There are two broad motivations for resisting rights. On the part of the government, there is the desire to retain power, and there is the financial implications of giving in to demands for rights. These help explain the hold-up on the passage of the Freedom of Information bill (see report on the *Political Context of Human Rights in Ghana*) and the seeming insensitivity of the government to human rights abuses in the mining sector. In the wider society, the resistance seems to draw from societal and cultural values.

It has been noted that the communal inclinations of African societies might predispose them to resist the conventional formulation of human rights principally as individual rights. Ake (1987) writes, “We put less emphasis on the individual and more on the collective, we do not allow that the individual has any claims which may override that of the society. We assume harmony, not divergence of interests, competition and conflict; we are more inclined to think of our obligations to other members of our society rather than our claims against them” (quoted in Wohlgemuth and Sall, 2006).

Thus, the notion of individual human rights finds detractors when set up in opposition to what people perceive to be the societal good. Some persons might argue against women’s rights on the basis that it sets up unhealthy confrontation between men and women that strain the social fabric.16 Other

16 This line of argument was clear in the public discussions around the Domestic Violence bill. One argument opponents used was that the law could interfere with a private relationship between spouses (which, it must be pointed out, is only one set of
rights, such as the right to land, may be resisted on the grounds that it undermines customary land tenure and the social structures within which these land systems operate.

Another source of resistance to human rights standards may be the cultural norms about social hierarchies. One area of human rights abuse that is commonly reported in Ghanaian newspapers is physical abuse of children by guardians. A cursory look at the descriptions of such cases suggests that these abusive acts are often used as means of control or discipline. One might infer that the persons perpetrating these violent acts believe that their perceived higher social status give them almost complete authority over their dependants or spouses. It must be pointed out that such violent acts are generally condemned by both the public and public officials, but the point is that in a society that is largely patriarchal and privileges age, the idea that children, for instance, can claim rights might be difficult for some members of the public to absorb.

The resistance to rights language does not only come from those who are duty-bearers or who stand to lose some power should certain rights receive validation, it can also come from those who would be expected to make right claims themselves, especially when the government is the target of such claims. Various hypotheses were advanced during the interviews to explain this observation. One clear theme was the historical relationship between the government and its people. There is also a way in which, in the public’s mind, traditional systems of authority are laid over a democratic government, which is possibly what Prempeh (2008) means by his characterisation of the executive branch as a “presidential monarchy”. Our interviewees saw clues of this in the informal title of “Father of the Nation” Ghanaians give to the president, and also in the tendency to treat the president as a traditional chief who cannot be criticised or public challenged. Consequently, there is a reluctance to make claims of the government; instead, there is a preference for appeals (K. Karikari, interview, 8 February, 2009). To illustrate the point, NETRIGHT was involved in one of the not infrequent cases of demolition of market stalls by the AMA. The organisation went on the offensive and issued media statements that were widely carried by the media. The market women affected by AMA’s actions were happy to have this influential CSO on their side, and themselves characterised AMA’s actions as unjust. Yet they also expressed discomfort with the approach of direct confrontation that NETRIGHT recommended. Instead, the women wrote a letter to President Kufuor, asking him to intervene in the case. The President responded by asking the AMA to stop the demolition and subsequently

relationships covered by the bill), and undermine the authority that a husband should have over his wife.

17 For instance, a newspaper story of 20 December, 2008 headlined “Mom sets daughter ablaze” reports that the perpetrator’s act was punishment for her daughter’s failure to give her proper account of the day’s sale of provisions (“Yamoah, Ekow (2008, December, 20).”Mom sets daughter ablaze”. The Mirror, p. 3).

18 This title seems to be accepted by President Mills who, in his inaugural address, promised to be a “father to all”.

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the market women were reported on the news expressing gratitude to the president for his gracious intervention (D. Tsikata, interview, 31 December, 2008).

The government is not the only potential recipient of right claims. The constitution makes clear that the rights also operate “horizontally”, between citizens (Quashigah, 2007). Here again, Ghanaian culture offers partial explanation why people are not always insistent on their rights. There are many instances of abuses of people in vulnerable positions—children, employees, women— that go unreported, or that are settled “at home”, that is, out of the law courts or any institutional setting. People tend to rely on these traditional mechanisms of avenues for resolving concerns conflict resolution perhaps because they are more accessible or are seen to be more effective than formal institutions such as the courts. It is may also be the case that sometimes these concerns are not addressed at all because people are cowed by the great differentials in power between themselves and the violators of their rights, be they husbands, parents, teachers, employers, traditional authorities, or the wealthy and educated.

This is to say that, even when people are aware of their legal rights (which is not always the case), they may not believe that asserting these rights is the most effective way of achieving an end, and that end may not always be legal justice; it could be partial compensation, the cessation of the abuse, or the restoration of a relationship. People may therefore calculate that their interests will not be best served by pursuing actions which might be long-drawn out and which might ultimately rupture economic and socially beneficial relationships. In the case of NETRIGHT and the market women, the strategy of the traders was perhaps more effective in a social environment where there is a predisposition to resolving conflicts (and even when it involves criminal acts such as sexual assault) in informal, preferably non-confrontational ways. In this environment, therefore, the most effective arguments for rights may not always be legal arguments.

**Overcoming resistance to rights**

Some CSOs have found that, in engaging with government officials who may not be aware or very interested in legal definitions of rights, using moral or ethical arguments are more effective than arguments based on human rights standards. The Executive Director of ISODEC describes his approach to persuading government officials who believe human rights are “foreign”; he uses the analogy of a man whose spouse works in the home and leads his audience to admit that the spouse is a partner who should be appreciated and given the support she needs to do her work. In a similar way, he will conclude, social services should be seen not as gifts, but as necessities and entitlements that allow citizens to be fruitful and fulfilled members of society (B. Akolgo, interview, 19 December, 2008). This is an instrumentalist argument based not on the inherent right of citizens, but on their presumed value to society.

A CSO might use different approaches depending on their audience. The Ghana Federation of the Disabled discovered that in confronting cultural prejudices about the disabled, moral arguments about the worth of each
individual were effective for persuading the general public about the need for disability rights, while services providers responded to arguments about their obligation non-discriminatory services. With the district assemblies, they relied on straight education, interpreting the bill and clearly spelling out its legal implications (R. Kusi, interview, 6 January, 2009).

In spite of the foregoing, there is no denying that wielding legal human rights (national and international) can be effective in getting the government’s attention, especially coupled with a judicious use of the media. In fact, the CSOs interviewed have found different and increasingly more creative and assertive ways of engaging with the government, which is, after all, the major duty-bearer and the main target of most right claim.

To begin with, CSOs have gained ground and confidence because of the constitution:

“We can speak the language of rights comfortably knowing that the constitution guarantees those rights, and that there are constitutional institutions, however imperfect, that can assist the civil society organisations, when need-be, or even serve as the arena of competing ideas about the best way to uphold fundamental human rights in our society” (D. Ayine, interview, 30 December, 2008).

As an outflow of that confidence, CSOs seem willing to be more vocal and public in their critique of the government. The women’s movement in Ghana has been quite strategic about putting their cause out in the public domain, sometimes to the irritation of the government such as during the campaign around the Women’s Manifesto when the use of regular and frequent press conferences and releases by the coalition was perceived by the then Minister of Women and Children’s Affairs as undue coercion (R. Mensah-Kutin, interview, 2 January, 2009).

CSOs have also learnt to build alliances within the government, such as with parliamentary committees and with cabinet ministers. However, there are some rights advocates who are concerned that getting too “cosy” with the government may compromise the ability of CSOs to challenge the government when necessary (Y. Graham, interview, 28 December, 2008; D. Tsikata, interview, 31 December, 2008). Other CSOs, recognising this tension, have taken action to address it; in the case of ISODEC, as it moved from being a “sub-contractor to the state”, providing social services primarily, and began to engage more in advocacy on rights, their source of funding shifted from the government to bilateral agencies and other international funders (B. Akolgo, interview, 19 December, 2008).

CSOs also build alliances among themselves. Our interviewees noted that this is one of the most effective strategies of policy advocacy. They pointed to the powerful coalitions such as the National Coalition on Mining (NCOM) which started with four organisations in 2001 and now has more than 15 organisational members, including TWN, ISODEC and CEPIL, and which has international links with the Global Mining Campaign and the Africa Initiative on Mining, Environment and Society. WACAM and NCOM’s research was the basis for the CHRAJ report on mining rights (see CHRAJ, 2008). NCOM also campaigned
around the bill that eventually became the Minerals and Mining Act, 2006 (Act 703); the result was positive changes to the provisions on compensation, and on notification of communities, among others.\(^\text{19}\) There are other networks of CSOs that have worked to influence major pieces of rights legislation, notably the coalitions that helped to pass the Disability and the Domestic Violence laws.

Our interviewees, however, cautioned that such coalitions are not common and tend to be unsustainable because local NGOs eventually retreat into their specific causes, and tend to compete for the same pots of funds (unless, of course, donor insist on networking as a prerequisite for funds). One interviewee also mentioned that networks could become stifling to individual member organisations through bureaucracy and the processes of consensus building and compromise that can hinder quick and effective action.

Some CSOs are learning to make their voice heard internationally. CHRI is a good example: The CSO started a campaign demanding that the Ghana government investigate the death of Ghanaian migrants who were among approximately fifty African nationals allegedly executed by the Gambian government in 2005. CHRI has doggedly pursued the campaign; it has gone on radio to discuss the case, embarked on demonstrations and sit-ins, and has advocated on the international stage, engaging with bodies such as the AU, ECOWAS, the Commonwealth, among others. The CSO has essentially embarrassed the government into at least appearing to take an interest in the case, with support from a conscientised public. As a result of its efforts, a joint ECOWAS-UN team has been commissioned to investigate the matter (N.O. Lithur, interview, 9 January, 2009).

A final important tool that CSOs have to overcome government inertia in the area of rights is the ability to submit alternative reports to international bodies. However, few CSOs have made use of these channels; in the year 2008, only six CSO submitted shadow reports to the UN Human Rights Council (CHRAJ, 2008).

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\(^{19}\) See the website of Third World Network Africa, www.twn.org
CHAPTER FOUR

CREATION AND IMPLEMENTATION OF RIGHTS LEGISLATION

This chapter discusses how new rights legislation emerges, revealing the procedures, actors, and challenges involved in the process. We also discuss the further challenges of implementing rights once they have been codified into law.

Legislating New Rights Laws

Sources of New Rights Legislation

Three potential sources of new rights legislations will be discussed in this chapter: those that are required by the constitution; those that are suggested by Ghana’s international legal commitments; and those that originate mainly from national and international non-governmental organisations. There have been examples within the current constitutional regime of all three types of legislation.

Let us begin with the constitution which recommends a number of laws be passed to support rights in the country. There are provisions about the creation of specific bodies to oversee rights promotion and protection – these include CHRAJ, and the National Commission on Civic Education that is charged with educating citizens on rights (also an aspect of CHRAJ’s mandate). Additionally, the constitution states that laws on disability and spousal property must be passed within six months of the first sitting of parliament under the Fourth Republic (that is, in 1993). The response to these constitutional laws is characterised by inconsistency and foot-dragging; for instance, the Disability Act was passed only in 2006 while the spousal property law is still pending, some 17 years later after the constitution’s deadline.

Secondly, the legal system in Ghana requires that international treaties should be “domesticated” by being passed by the legislature as national law. From the perspective of the rights-promoting organisations interviewed, Ghana has been slow to codify international agreements into domestic laws (also OSIWA and IDEG, 2007).

Finally, there are bills that are pushed through largely by the initiative of civil society.20 The Domestic Violence Act is one such law that went through the process of becoming law on the strength of a powerful coalition of CSOs.

The question arises as to the origins of these laws; how do certain issues come to be pursued as legislation? Our interviewees offered contrasting answers. Some thought that most new rights legislation is actually initiated by ‘outside’ actors (international NGOs, Western governments, and international

20 This is not to say that CSOs do not influence the passing of other forms of legislations, that is, those derived from the constitution and from international agreements.
bodies such as the Un and World Bank) and local CSOs are merely their agents. Others said that the initiative is mainly from local CSOs, with the support of international actors. The most likely explanation is a combination of the two perspectives. Admittedly, external actors are influential agenda setters because of their financial and political power. At the same time, these issues have to find resonance in local civil society, and whether they do depends on the interest and competencies of local CSOs (D. Tsikata, interview, 31 December, 2008).

How Rights Laws Pass

Regardless of the source of new rights laws, there are a number of institutional blocks to their passage. Ideally, parliament should be the main mover of rights legislation, but there are constitutional and practical challenges to this happening.

In the first place, the constitution has been criticized for a tendency towards “executive hegemony” (Prempeh, 2008). Article 108 of the constitution states that any bill that imposes a tax or a charge on public funds must be initiated “by, or on behalf of, the President”. This provision constrains the legislature in its law-making capacity by limiting their initiative (ibid.), and yet, the executive does not have a great deal of motivation to draft rights bills that will oblige them to commit financial and other resources.

Another reason why parliament’s ability to make rights laws is restricted is a lack of capacity. Two interviewees, both lawyers with experience of drafting and advocating legislation, commented that that parliament lacks the expertise, the time, the office and equipment to do its work.

As a result of these two factors, our interviewees stated, the burden has fallen on CSOs to not only advocate rights legislation but to take up responsibilities that should be within the purview of parliament. Thus, CSOs have been involved in conceiving, drafting, and pushing through major rights bills that have come before parliament – including the Domestic Violence Law, the Disability Act, the Whistleblowers Act, the Human Trafficking Law, and the Right to Information bill. This fact led one interviewee to declare, “It is the civil society that is running the rights agenda in Ghana, not the executive, not the parliament, not the judiciary. In fact they are obstacles in our way!”

An important question is why some rights bills get through the process successfully to become laws and others do not. Why, for instance, did the Disability and Domestic Violence Bills pass, and why has the Right to Information Bill stalled? One might even ask why the Disability Act passed with relatively less controversy and contention than Domestic Violence Act which took eight years from bill to law? These are questions we put to our interviewees. The responses we received suggest that the passage of new rights legislation is a function of funding and, second, of the will and determination of civil society organisations to advocate for that particular legislation.

Three respondents stated unequivocally that the single most important factor in passing legislation was money to mobilize the support of civil society and government. While admitting nuances and complexities to the process of getting new legislation passed, one respondent said that it becomes “incredibly easy” when there is significant financial backing. Money facilitates the processes of identifying interests groups, gathering them together, drafting a bill around
which the different groups can rally, and presenting it before the relevant parliamentary committee. Once the select committee makes its recommendation or revisions and places the bill before parliament, its passage is virtually guaranteed (unless it is a bill that stirs controversial, perhaps by appearing to contravene strongly held social/cultural assumptions, as happened with the provision on marital rape within the Domestic Violence bill which was strongly opposed on the floor of the parliament and in the public arena, and which was eventually left out of the bill).

Secondly, bills are successful because they have “champions”. The Disability Bill found a champion in Prof. Gyimah-Boadi of the Centre for Democracy and Development (CDD), a local think-tank, and the Domestic Violence bill had a strong coalition behind it. The Whistleblower’s Act and the Human Trafficking Law were pushed through because, according to our interviews, the donor community and Western governments had vested interest in it. Conversely, it was suggested that the reason the Information Bill is struggling is because it does an influential backer.

The use of money and influence is not necessarily illegitimate; one does need both to support the logistical program that is necessarily to do legislative advocacy. Money, for instance, funds research, publicity and the schedule of meetings that are necessarily to build coalitions and consensus. However, there is the question of when the use of money and influence tip into the category of undue influence and corruption. This is an important question, especially if one is to believe the assessment of one of our interviewees that “The policy space can be so easily hijacked by even one person who is persistent enough, strong enough, and with financial backing.”21 While the apparent porosity of the parliamentary system can be used to push through human rights legislations, it does raise concerns about whether legislation that supports human rights may also be obstruct rights through the same means.22

In this unvarnished explanation of how legislations are passed, it might appear that the government (represented by the legislature) has no vested interest in one bill or another; they merely respond to external factors such as money or pressure. However, we do know that the government’s self-defined interests do enter the equation; our interviews suggest that the government is particularly resistant to rights laws that will require significant budgetary allocation, and that will take power away from the government. In this regard, then, civil rights are relatively easier to pass than social and economic rights. Again, interviewees stated that the government’s inclination to protect its power

21 One interviewee pointed to the passage in 2003 of the Bilateral Non-Surrender Agreement as one example of the hijacking of the legislative process by the US government, in this case. This agreement fundamentally contravenes Ghana’s commitment to the Rome Statute establishing the International Criminal Court - a treaty that Ghana had ratified in 1993 and which came into force in 2002.

22 This is certainly the claim of CSOs who worked on the Mining and Mineral Law Act, 2006 that the provisions that would have provided compensation for the community was eventually watered down, presumably because of the lobby of the mining companies.
is one reason why the Freedom of Information Bill has not passed, despite the fact that it is premised on a constitutional right to information in Article 21(1) and has the backing of influential CSOs such as the CHRI. It is difficult to get it through parliament because it is threatening to government, according to our interviewees, and because it will give the public more power to hold the government to account.

There are, however, strategies that CSOs use to increase the chances that a rights-promoting bill will be passed into law. There is general agreement among our respondents that one of the most effective strategies is coalition building. CSOs have also broadened their repertoire to include public campaigns, and have become more effective at making their voices heard in this endeavor (R. Mensah-Kutin, interview, 2 January, 2009). Demonstrations have also become effective as the government has become more wary of negative publicity at home and abroad. The coalition around the Domestic Violence Act is a good example of the use of these strategies: it was “large, vocal constituency” that was well-organised and had a strategic plan that included a media campaign, demonstrations, and interaction with influential parliamentary committees (N. O. Lithur, interview, 9 January, 2009; D. Ayine, interview, 30 December, 2008). The coalition around the Disability Bill employed similar tactics. Even though there was some interest group lobbying of the government (e.g. firms in construction and real estate for whom providing access to the disabled would have financial implications), the coalition carried out an effective campaign that brought the public opinion firmly to their side, to the extent that members of the public would call into the radio stations to chide the government for being uncaring of the plight of these members of society (R. Kusi, interview, 6 January, 2009).

Implementation Rights Legislation

If the process of passing rights legislation can be arduous, the implementation of new laws is even more challenging. One challenge to successful implementation of rights laws is the financial requirement; another is the lack of commitment on the part of duty-bearers to enforce these rights, perhaps rooted in their lack of appreciation of the import of rights (N. O. Lithur, interview, 9 January, 2009). We detail these challenges through a discussion of the roles of four institutions that together have key responsibilities for ensuring that laws are enforced: the executive and legislative branches of government, CHRAJ, the judiciary and the police.

The role of the executive and legislative branch

One of the biggest burdens of implementation, and which the executive and legislature primarily bear, is the provision of financial and human resources. In that wise, some rights may be easier to enforce than others. Our interviewees

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23 By implementation, we mean the steps that are taken to set up frameworks to promote and enforce the law, and to correct or redress any abuses.
observed that, because of the significant financial outlays involved the government is more wary of the obligations under economic and social rights that usually apply to a larger number of people. Quashigah (2007) attempts to make a similar delineation between rights that are to be protected and presumably do not require significant resources (such as civil rights), and those that are to be promoted and which require significant expense (such as economic and social rights). This distinction is not wholly convincing since the promotion of a respect for any kind of rights (especially where these have been consistently abused) means making a concerted effort to educate, monitor, report on, protect or provide redress for violation. The main point, however, is that the greater the budget implications of a rights legislation, the more challenging it is to pass it.

The role of CHRAJ

The constitution makes the promotion of rights a national or collective concern. The courts and CHRAJ are jointly charged by the constitution with addressing rights violations, although CHRAJ has been noted to be more accessible than the courts. One reason is that, in contrast to the courts whose procedures are slow and more expensive than many Ghanaians can afford, the services of CHRAJ are free (OSIWA and IDEG, 2007; Quashigah, 2007).

However, CHRAJ has its own challenges, some of which were discussed in Chapter One (for instance, its financial dependence on the government through the Ministry of Justice, and the limitations on its power to legally enforce its rulings). Another challenge is its caseload, the major part of which is made up of complaints from individuals. The number of cases has increased over the years: in its first five years of operation, CHRAJ received an estimated 9,000 cases; from 2001, CHRAJ had an averaged 12,000 cases a year; in 2007 alone, there were over 14,000 cases (C. Ayamdoom interview, 12 January, 2009). On the one hand, the exponential increase in complaints can be seen as a growth in public awareness of rights issues. It is also an expression of confidence in CHRAJ and, conversely, an indication of failure of or lack of confidence in other institutions to deal with human rights violations. However, the workload, and the unattractive conditions of service, makes it difficult for CHRAJ to retain qualified staff, which further diminishes its capacity and effectiveness. Another challenge to CHRAJ’s effectiveness is the fact that its offices in the regions and districts are not adequately resourced (CHRAJ, 2008; OSIWA and IDEG, 2007).

CHRAJ has also faced resistance from governments and other agencies in the past. For example, while CHRAJ has wide jurisdiction, the Acting Commissioner noted that some sections of the security and armed services tend to resist CHRAJ’s authority (Bossman, 2006).

There was mixed reviews about CHRAJ’s efficacy in our CSO interviews. One interviewee opined that CHRAJ, with its resources and influence, should be a stronger force for advancing human rights. She suggested that perhaps CHRAJ’s sense of itself as a ‘semi-government institution’ makes it cautious about vigorously challenging the government in the ways that CSOs might. There was the suggestion from another interviewee that CHRAJ’s inability to more effectively challenge government is in part due to the change in leadership. The perception was that the Commissioner, Emile Short (who is currently on leave)
was more pro-active in seeking out human rights issues and had greater influence among government and other institutions and officials because of his personal networks. This observation underlies a theme that comes through the report – that as important as institutions are, advancements and breakthroughs are at least partly dependent on the will and commitment of individual actors, especially where either there is inadequate institutionalization of human rights concerns.

The role of the courts

The constitution puts the mandates of defending rights on the High Courts and Supreme Court, and of interpreting rights on the Supreme Court alone. CSOs, on their part, have used the courts to implement and deepen the laws. This means that the courts not only protect existing rights laws, but have the potential to expand the scope of rights under Article 33(5) of the constitution. However, it is also true that without an explicit articulation of these rights, one has to make an argument for their relevance to the Ghanaian legal context. The problem, as various lawyers we interviewed stated, is that members of the legal community in Ghana, including the judiciary, often lack adequate training in constitutional law or rights laws (OSIWA an IDEG, 2007). This lack of knowledge about human rights law, and particularly about international human rights laws, has been identified as a challenge to the countries in the West Africa’s region in terms of protection of human rights (Loada, 2006).

‘[Therefore] if you have a conservative judge who is unwilling to think innovatively”, one interviewee said, ‘it will be difficult to convince him or her that there is an inherent right to water as a logical extension of the right to life, as has happened in the South African courts...It would be better if these rights were made explicit. Instead, we have to rely on innovation and creativity to steal in these “latter day” rights’ (D. Ayine, interview, 30 December, 2008).

On the part of potential clients of the court, access to courts is a challenge. Although the constitution guarantees legal aid for those unable to afford it, legal representation and the other expenses can be prohibitive for some persons (Quashigah, 2007). The Ghana Legal Aid Board (GLAB) was set up to provide legal services to the poor but is dogged by lack of money, human resource and the fact that it is not present in all districts of Ghana (OSIWA and IDEG, 2007). Additionally, many procedures of courts can be intimidating, especially for the majority of the population that is non-literate. This possibly explains the overwhelming numbers of legal cases that CSOs such as LRC, WILDAF, CHRI, Civic Response and CEPIL receive, some of which are forwarded to them by GLAB itself.

The Chief Justice has stated her intent to set up human rights court which presumably will expedite human rights cases. She has said further that such a court would support CHRAJ by enforcing its decisions which, as we have explained, can only be made legally binding through a court ruling (Judicial Service of Ghana, n.d.). While it might be a laudable idea to create a court that will focus exclusively on trying rights cases, the question is that, given how
under-resourced the existing courts are, both materially and in terms of human resource, how well will this speciality court fare?

The role of law enforcement, the ministries and other government departments

The police are an important factor in the implementation of human rights laws because they have a duty to protect people’s lives and properties. In Ghana, they also have delegated authority from the Attorney General to act as prosecutors in many criminal cases.

There is jaundiced public perception of the force as either being rights violators themselves or, at best, being unhelpful in the enforcement of rights. The likely explanations for this state of affairs include the fact that the police are not well trained (particularly in rights) and are not well equipped. Another reason is the long history of the use of the police and armed services by the military governments, in particular, as instruments of authoritarian rule. The Commonwealth Human Rights Initiative in Ghana stresses that police brutality is still a matter of grave concern (CHRI, 2008).

Apart from the police force, there are departments and units of ministries that have specific duties related to promoting or protecting rights. The reliance on the government, which itself lacks effective coordination, that makes implementation difficult. Both the Domestic Violence and the Disability Acts require that a body be set up to oversee implementation of the law. The Board for the Domestic Violence Act was only set up in 2008 after CSOs petitioned the Minister of Women and Children’s Affairs to work to set up the body before she left office; however, at the time of our interviews, the council for the Disability Act had not been officially inaugurated.

The interviews conducted among CSOs for this report suggest that the commitment of any department or ministry to rights is largely a function of the individual convictions of the cabinet minister. For instance, the former Deputy Minister in the Ministry of Manpower, Youth and Employment (a former Country Director of the CSO, ActionAid) was instrumental in pushing through the a Disability Act that had been moribund before her tenure.

There are other tasks spread across the entire public service, and it appears from the interviews that not enough is done after the passing of the legislation to restructure these services to respond to the new laws. As an example, the Domestic Violence Act states that victims of domestic abuse are entitled to free medical consultation; however, the response of health officials in the clinics is to tell these patients that their consultation is not covered by the national health insurance scheme.24 Clearly, then, human rights laws are important, but it appears that implementation is a part of the equation that has not been addressed adequately. While the CSOs we interviewed lamented the slow or uneven implementation of these laws, we did not get the sense that much advocacy is directed in this area.

The role of international enforcement mechanisms

The government has not been regular with submission of reports to treaty monitoring bodies. For instance, in 1998 and after six years in power, the NDC government submitted cumulative reports (1992-1996) on the ICERD. Three CEDAW reports were submitted together in 2005 by the NPP government. As at 2007, no reports have been submitted for CAT, ICCPR, ICESRC or ICRMW, all of which were signed in 2000. In regards to the ACHPR, just before the NDC administration left office after the 2000 elections, it cleared a backlog of reports on the ACHPR (from 1995-1999) although subsequent reports have been delayed (see OSIWA and IDEG, 2007 for a comprehensive report of Ghana’s reporting record). In all, the government has been inconsistent, either not reporting at all or reporting late. One reason for the inability to adhere to reporting requirements, beyond a lack of commitment, is that different treaties are housed in disparate ministries, so that there is a lack of coordination (OSIWA and IDEG, 2007).

Ghana has recognised only three UN treaty bodies that can receive individual complaints against the government: the Human Rights Committee, the Committee on the Elimination of all Forms of Racial Discrimination, and the Committee Against Torture.25 Surprisingly, despite the relative strength of women’s CSOs in Ghana and the acceptance of the women’s empowerment or rights discourse in policy circles, Ghana has not recognized the CEDAW committee.

It is recommended that Ghana regularizes its reporting procedures, and that it sign up to the treaty bodies for the various instruments it has ratified (OSIWA and IDEG, 2007).

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25 According to the report by OSIWA and IDEG (2007), no report or petition had been brought up against Ghana in these committees.
CONCLUSION

It is clear that human rights have evolved in Ghana since the return to constitutional rule in 1993. The report indicates significant progress in rights awareness and rights acceptance in Ghanaian society as a whole. However, the interpretation of rights do not always coincide with human rights standards and the language of human rights is often not used to express concerns that could be framed in such terms. Moreover, it appears that far too often the government, as the main duty-bearer, has been pushed along by international agents and civil society actors, rather than taking the lead on the promotion and protection of human rights.

We have seen that public acceptance of rights have improved, although there is evidence of resistance. We identify cultural and societal norms about relationships as one reason for such resistance. Olukoshi (2006) further suggests that there may be such a resistance to rights if it is not seen to form part of a plan of national development or societal advancement. It would appear from our discussion, that people do not always believe that the human rights discourse speaks to their concerns and priorities. This is fundamentally the reason for the reservations expressed by CSO about the rights-based approach.

In sum, there are deficits in the promotion and protection of human rights in Ghana, especially in regards to economic and social rights for vulnerable and disadvantaged groups such as the poor, homeless and prisoners. However, one can still describe the current state of human rights promotion and protection in Ghana as positive because of the indisputable evidence of continued growth in understanding and responsiveness on the part of both the government and civil society.
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APPENDIX A

RIGHTS GUARANTEED UNDER THE CONSTITUTION

Civil & Political Rights

- Right to life (Article 13)
- Personal liberty (Article 14)
- Respect for human dignity (Article 15)
- Protection from slavery and forced labour (Article 16)
- Equality and freedom from discrimination (Article 17)
- Protection of privacy of home and other property (Article 18)
- Right to a fair trial (Article 19)
- Protection from deprivation of property (Article 20)
- Right to ‘administrative justice’ – i.e. rights to seek redress in courts for administrative injustices (Article 23)
- ‘General fundamental freedoms’ – freedom of speech, thought, religion, freedom assembly, association, information, and movement (Article 21)
- Right to vote (Article 42)
- Right of the media (Article 162)
  - Freedom from censorship, control and interference
  - Right to establish press private press or media

Economic, Social and cultural rights

- Property rights of spouses (Article 22)
- Right to administrative justice (Article 23)
- Economic rights (Article 24)
  - right to good work under ‘satisfactory, safe and healthy conditions and receive equal pay for equal work’ (Article 24)
  - right ‘reasonable limitation of working ours and periods of holidays with pay’
  - right to join a union
- Educational rights (Article 25)
  - right to ‘equal educational opportunities and facilities’
  - right to establish a private school
- Cultural rights and practices (Article 26)
  - right to ‘enjoy, practice, profess, maintain and promote any culture, language, tradition or religion’
  - prohibition of ‘all customary cultural practices which dehumanises or are injurious to the physical and mental well-being of a person’
- Women’s rights (Article 27)
  - right to maternity leave
- care of school-age children
- right to non-discrimination in training and promotion

**Children's rights (Article 28)**
- right to care from parents and protection 'against exposure to physical and moral hazard'
- right to protection from 'work that constitutes a threat to [the child's] health, education or development'
- right to be free from 'torture or other cruel, inhuman or degrading treatment'

**Rights of disabled persons (Article 29)**
- right to full social participation
- right to receive non-discriminatory treatment
- right of access to public spaces
- right to receive 'special incentives' to engage in business

**Rights of the sick (Article 30)**
- right of a person 'who by reason or sickness or any other cause is unable to give his consent' not to be refused treatment, education and other social or economic benefits
# APPENDIX B

## LIST OF INTERVIEWEES

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Description</th>
<th>Person Interviewed</th>
<th>Position</th>
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<tbody>
<tr>
<td>Wassa Communities Affected by Mining (WACAM)</td>
<td>advocacy against mining companies</td>
<td>Daniel &amp; Hannah Owusu-Koranteng</td>
<td>Co-founders</td>
</tr>
<tr>
<td>Network of Women’s Rights in Ghana (NETRIGHT)</td>
<td>network of women’s groups in Ghana</td>
<td>Dr Dzodzi Tsikata</td>
<td>Member &amp; former Convener</td>
</tr>
<tr>
<td>ABANTU for Development</td>
<td>advocacy</td>
<td>Dr Rose Mensah-Kutin</td>
<td>Director</td>
</tr>
<tr>
<td>Women in Law and Development in Africa (WILDAF)</td>
<td>women’s legal rights – legal literacy &amp; education</td>
<td>Bernice Sam</td>
<td>National Program Coordinator</td>
</tr>
<tr>
<td>ISODEC</td>
<td>community development</td>
<td>Bishop Akolgo</td>
<td>Executive Director</td>
</tr>
<tr>
<td>Centre for Public Interest Law (CEPIL)</td>
<td>public interest law</td>
<td>Dr Dominic Ayine</td>
<td>Director</td>
</tr>
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<td>Legal Resource Centre (LRC)</td>
<td>legal services &amp; advocacy</td>
<td>Dr Raymond Atuguba</td>
<td>Co-founder</td>
</tr>
<tr>
<td>Civic Response</td>
<td>forest rights advocacy</td>
<td>Kyeretwie Opoku</td>
<td>Co-founder</td>
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<td>Ghana Federation of the Disabled (GFD)</td>
<td>advocacy for disabled groups</td>
<td>Rita Kusi</td>
<td>Executive Director</td>
</tr>
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<td></td>
<td></td>
<td>Dr. Koray</td>
<td>Lawyer involved in Disability Act campaign</td>
</tr>
<tr>
<td>Third World Network Africa (TWN)</td>
<td>raising ‘African voices’ on national, regional and global issues - research and advocacy</td>
<td>Dr Yao Graham</td>
<td>Executive Secretary</td>
</tr>
<tr>
<td>Media Foundation for Africa</td>
<td>to promote right to freedom of expression among media and society generally</td>
<td>Prof. Kwame Karikari</td>
<td>Executive Director</td>
</tr>
<tr>
<td>ActionAid Ghana</td>
<td>Community development</td>
<td>Adwoa Kluvitse</td>
<td>Country Director</td>
</tr>
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<td></td>
<td></td>
<td>Isaac Aboagye-Oware</td>
<td>Dep. Country Director</td>
</tr>
<tr>
<td>Rights and Voice Initiative (RAVI)</td>
<td>funding program to support CSO rights activities</td>
<td>Robert Abaane</td>
<td>Monitoring &amp; Evaluation Facilitator</td>
</tr>
<tr>
<td>Commonwealth Human Rights Initiative – Ghana (CHRI)</td>
<td>national branch of international NGO – rights advocacy</td>
<td>Nana Oye Lithur</td>
<td>Regional Coordinator of the Africa Office</td>
</tr>
<tr>
<td>Commission on Human Rights and Administrative Justice (CHRAJ)</td>
<td>national human rights institution</td>
<td>Charles Ayamdo</td>
<td>Dep. Commissioner</td>
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