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| **GHANA** |
| **Civil Society Report on the Implementation of the ICCPR**  **(Contribution to the List of Issues)**  To be submitted for the adoption of the List of Issues  on the Initial Periodic Report of Ghana (CCPR/C/GHA/1)  At the 115th session of the Human Rights Committee  (Geneva – October 2015) |

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With the support of the Centre for Civil and Political Rights (CCPR-Centre)

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1. Introduction

On the 20-21st of April, a two-day National Consultation meeting on the Implementation of the International Covenant on Civil and Political Rights (ICCPR) in Ghana was held in Accra. This meeting was facilitated by the joint collaboration of Human Rights Advocacy Centre (HRAC) and the Centre for Civil and Political Rights (CCPR Centre) and hosted more than fifteen Civil Society Organisations (CSOs).

The meeting primarily provided CSOs with a better understanding of the ICCPR review process. At the said meeting representatives provided information for the drafting of this report to contribute to the adoption of the List of Issues on Ghana by the Human Rights Committee. Subsequent meetings were held to validate and improve sections of the reports lacking data and information. CSOs hope this report will help the Human Rights Committee to identify the main issues the implementation of the ICCPR in Ghana.

1. Suggested questions for the List of Issues

* Indicate how often the Covenant has been invoked before and applied by the courts and administrative authorities of the State party and provide examples, if any, of such cases.
* Provide examples of instances in which the Covenant has prevailed over a national law when there has been a conflict between them.
* Specify the measures taken by the State party to ensure that information on the Covenant is disseminated among judges, lawyers, law enforcement officers and the public.
* Is the State considering to modify the 1992 Constitution to include protection against discrimination on the grounds of sexual orientation?
* Please indicate whether the State party intends to increase the percentage of the national budget allocated to the Ministry of Gender, Children, and Social Protection in order to improve the respect of women and children’s rights?
* What are the measures being put in place to address stereotyping and discrimination against women?
* What is the legal status of homosexuality in Ghana?
* Please provide information on any measures taken by the State party to provide effective protection against acts of discrimination for: (a) lesbian, gay, bisexual and transgender people; (b) sex workers; and (c) people living with HIV and AIDS
* Please indicate whether the State party intends to ratify the Second Optional Protocol to the ICCPR.
* Please indicate whether the State intends to implement the recommendations issued by the Constitutional Review Commission.
* Please indicate whether the State party intends to modify Article 13 of the Constitution according to international standards on the use of lethal force.
* Please provide information on measures taken to adequate the definition of torture and cruel, inhuman or degrading treatment into the laws of the State party, according to the international standards.
* Please indicate what measures are being taken to prevent police abuses and to investigate allegations.
* Please describe the measures currently being taken to improve prison conditions in the State party.
* What mechanism has the government of Ghana put in place to prevent torture, degrading and inhuman treatment of vulnerable groups and individuals at the prayer camps, traditional healing centres and the witch camps harbouring mental health patients and women branded as witches in their communities?
* Please indicate whether the State party intends to ratify the Optional Protocol to the Convention Against Torture.
* How is the government empowering person´s with disability to feel integrated into the governance system and society?
* How is government working on the effective implementation of the Disability Act, Act 715 which was passed in 2006?
* When will the Legislative Instrument to the Mental Health Act be passed to ensure its effective implementation?
* Please indicate the measures being implemented to combat slavery and forced labour in Ghana, in particular the measures to eliminate the trokosi system.
* How is the government of Ghana ensuring that all detainees are able to effectively exercise their right to promptly challenge the lawfulness of their detention before a court, and to ensure that they are immediately released if their detention is found to be unlawful?
* What effective steps are being taken to ensure prompt and fair trials for those accused of a criminal offence, in compliance with international and regional standards of fair trial?
* What mechanisms are being put in place to separate remand prisoners from convicted prisoners?
* Please indicate whether the State party intends to review article 14(4) of the 1992 Constitution of Ghana and the Criminal Code in order to reduce undue detention of remand prisoners?
* How is the State party committed to sustaining the Justice for All Programme without donor support?
* Please provide information on the measures taken to guarantee the right to privacy, in particular to prevent and sanction the recording of private conversations.
* What legislative framework has been put in place to regulate the monitoring of individuals communication in line with right to privacy?
* How is the State party going to deal with increase in the practice of secret tape recordings of prominent Ghanaian politicians?
* Please comment on the allegations of attacks against journalists. Provide information on the investigations conducted in such cases, the prosecution of the persons responsible and the penalties imposed upon them.
* How is the government resourcing the National Media Commission to effectively, independently and efficiently carry out its work?
* Please provide information on the measures taken to guarantee the right to the exercise of freedom of assembly and association in the State party and to protect human rights defenders, leaders of political parties and trade unions from interference in their activities.
* Please indicate whether the State envisages to review its legislation in order to prohibit corporal punishment against children.
* Please provide information on the cases of allegations of corporal punishment and violence against children in schools and on investigations into such acts and the sanctions of those responsible for such acts.
* Please provide information on the steps taken by the State party to eradicate the practice of early and forced marriages and to enforce the respect of the age of 18 as the minimum legal age of marriage.
* Please provide information on the measures to guarantee the independence of the Electoral Commission
* Please provide information on the measures taken to guarantee in practice the right to vote for people with disabilities

1. Contribution to the List of Issues
   1. Constitutional and legal framework within which the Covenant and the Optional Protocol are implemented, right to effective remedy (art. 2)

In 2000, by ratifying the ICCPR, Ghana as a State Party committed itself to fulfil the provisions of the treaty. Prior to this commitment, the 1992 Constitution was adopted as the one supra legal framework that outlines the basic rights of all persons in Ghana. The 1992 Constitution in many respects reflects the provisions in the ICCPR. However, sometimes the ICCPR is more protective than the Constitution.

The Constitution mandates the Commission on Human Rights and Administrative Justice (CHRAJ) and the Legal Aid Scheme to ensure the effective implementation of the constitutional provisions on access to justice and protection of human rights as well monitoring and addressing state administrative injustices and corruption. The CHRAJ was established in 1993 by Act 456, also called the Commission on Human Rights and Administrative Justice Act*.* The CHRAJ is mandated to act as an independent national human rights organization, an ombudsman to ensure administrative justice, and an anti-corruption agency for the public sector. It also has the mandate to protect fundamental human rights as well as to act as a quasi-judicial institution to ensure transparency and accountability in the public sector. CHRAJ meets its objectives by addressing complaints of maladministration, corruption and human rights violations within the country. It may also initiate investigations, but this power is limited by Article 135 of the Constitution, which grants exclusive jurisdiction to the Supreme Court to determine whether a document should not be produced because it may be detrimental to state interests. In practice, there has not been any visible interference by government in the work of the Commission and in the fulfilment of its tripartite mandate.

**Suggested questions:**

* Indicate how often the Covenant has been invoked before and applied by the courts and administrative authorities of the State party and provide examples, if any, of such cases.
* Provide examples of instances in which the Covenant has prevailed over a national law when there has been a conflict between them.
* Specify the measures taken by the State party to ensure that information on the Covenant is disseminated among judges, lawyers, law enforcement officers and the public.
  1. Non discrimination and equality between men and women (arts. 3 and 26)

The Constitution of Ghana prohibits discrimination on the grounds of gender, race, colour, religion or belief, social or economic status, political opinion, occupation, national or ethnic origin.[[1]](#footnote-1) Further, the Constitution requires the government to protect persons with disabilities against discrimination[[2]](#footnote-2) and prohibits discrimination based on place of origin, circumstances of birth, ethnic origin, gender, religion or belief.[[3]](#footnote-3) In practice, however, discrimination – particularly on the basis of gender, race, ethnicity or social status – persists.[[4]](#footnote-4)

Also, although the Constitution offers a general framework for the protection against discrimination in Ghana, it is silent on the specific rights of sexual orientation and the claim to sexual identity of Lesbian, Gays, Bisexuals, Transgender, Intersex and Queer (LGBTIQ).

The 1992 Constitution upholds equality before the law and the rule of law in Ghana. Despite the existence of legislation on non-discrimination, in practice some perpetrators of some offences are more equal than others. An example is the rape case between a popular radio personality Kwesi Kyei Darko and Ewurafia Orlean Thompson who was bailed although rape cases under section 96(7) of Criminal Procedure Act, Act 30 laws in Ghana is non-bailable.[[5]](#footnote-5) The accused was bailed on but later the complainant decided to withdrew the case for lack of interest. The State decided to take up the case since it was a criminal case but later on also withdrew.

a) Discrimination against women

Ghana has taken great strides in advancing non-discrimination policies since the adoption of the 1992 Constitution, in particular to ensure the rights of women. While there are many NGO’s that provide additional support to women, more however must be done to protect and further women’s rights. One area that can be improved is the percentage of the national budget allocated to the Ministry of Gender, Children, and Social Protection. Currently, the budgetary allocations remain under one per cent of the total national budget. If Ghana is to take seriously the obligation to respect women’s rights, more opportunities must be afforded to women. Increasing this budget may be one simple way in which women’s rights can be furthered.

*Affirmative Action (AA) Bill*

Affirmative action has been used in Ghana to address various imbalances with regard to access to education, health, work, and politics but few gains have been made in female representation in politics. In the 2008 elections, 103 women stood for parliamentary elections but only 20, in the 230 member parliament, were elected (AA, 2). None of the political parties in Ghana have systematic plans to increase the number of women candidates selected in their primary elections (AA, 17). Direct and indirect discrimination must be addressed via legislation to improve the participation of women in politics and public life. Article 17 of the Constitution provides an important legal basis for affirmative action and justifies affirmative action as a means to address the imbalances within Ghanaian society (AA, 27). In order for affirmative action to be successful, advocacy campaigns are crucial to ensuring that government officials, women, and minorities are aware of the standards to secure equal representation in politics and public life. Previous attempts to implement affirmative action policies have been limited and heavily contested. Institutional weaknesses must be amended to allow effective mechanisms for implementation, monitoring, and evaluation. The representation of women in formal decision-making positions is a crucial step to addressing issues of broader gender equality. An Affirmative Action Bill is currently being finalized to be submitted to the Cabinet.[[6]](#footnote-6)

This type of policy exemplifies further Ghana’s desire to promote the rights of women within the country. While Ghana is working diligently to ensure that women are not discriminated against in the workplace, economy, or any other area, one area that lags behind is the number of women in the political process. Ghana has taken the appropriate measures to pave the way for women to obtain high-level political positions, however women continue to battle under-representation. Women make up 29% of ministers, 23% of deputy ministers, 16% of chief directors, and 8% of District/Municipal/Metropolitan Chief Executives.[[7]](#footnote-7) Because these positions are appointed and not elected, the responsibility for the lack of women in the political arena falls squarely on the appointer. The focus should be on ensuring that women are given an equal opportunity for all political appointments.

Besides discrimination in the workplace however, Ghana has made great strides in ensuring all women are entitled to equal education. In one year from 2012/13 to 2013/14, the Senior High School completion rate for female students increased by 10%, from 28%-38%. This dramatic increase adequately demonstrates the fruits of Ghana’s hard work in ensuring that appropriate legislation and conditions make it possible for women to attend school. From 2012 to 2013 45.4% females were enrolled in Senior High School.[[8]](#footnote-8) The State needs to continue its efforts in this sense.

b) Discrimination against Lesbian Gay Bisexuals and Transgender

The status of homosexuality in Ghana can be characterized as one of extreme stigmatization and discrimination, evidenced by the frequent vilification of homosexuality in the media without the support of facts or data to supplement claims. The media has provided the platform for hate speech and helped to increase homophobia against Men who have Sex with Men (MSMs) in Ghana. One journalist admitted “I know nothing and admit that I am committing a rash presumption... they [homosexuals] should come out and tell us why they think they have rights. If they cannot… then there is a presumption of guilt and therefore they deserve the public bashing they now receive.”[[9]](#footnote-9)

A major contributing factor to the widespread discrimination faced by homosexuals in Ghana is the connection made by the general population between homosexuality and other activities that contribute to the “worldwide moral breakdown.”[[10]](#footnote-10) The belief that homosexuality is equivalent to other illegal activities, such as theft, murder and pedophilia, is not supported by any current legislation. The Criminal Offences Act of Ghana only criminalize “unnatural carnal knowledge.”[[11]](#footnote-11)

Currently, the Criminal Code definition of ‘unnatural carnal knowledge’ is ambiguous. This definition has not received interpretation from the Supreme Court which is the highest adjudicating body in Ghana. It is generally interpreted that the term “unnatural carnal knowledge,” referenced frequently in the Criminal Offences Act of Ghana, refers to homosexuality. However, no mention of the term “homosexuality” occurs in the Act and Section 104 (2) of the Criminal Offences Act only defines “unnatural carnal knowledge” as “sexual intercourse with a person in an unnatural manner or with an animal.”[[12]](#footnote-12) “Unnatural carnal knowledge” is most broadly interpreted as referring to sodomy, and can be applied to a consenting heterosexual couple as legally as it can be applied to a homosexual one. It is difficult to define the concrete legal status of homosexuality in Ghana, as the Criminal Act, lacking any specific terminology referring to homosexuality, allows for any case brought to court to be judged on an individual basis. An example of the case is where an Accra Gender-Based Violence Circuit Court on 16th June, 2015 handed a 20-year jail term to a petty trader for sodomy. The convict, Eric Dodoo aka Nii Otto, 21, is said to have on March 12, 2015 at about 7pm in James Town, Accra, had unnatural carnal knowledge of a male child aged 13. Although the convict had denied the offence, the court, presided over by Mrs. Rita Agyeman-Budu, found him guilty and accordingly jailed him 20 years to serve as a deterrent to others.[[13]](#footnote-13) The judgement falls within the maximum sentence for defilement in Ghana which is twenty five years according to the Criminal Code Thus, the sentence pronounced in the said case cannot be adequately said to have been given based on the perpetrator’s suspected homosexual orientation. Currently, no case has been filed on unnatural carnal knowledge between two consenting adults.

Due to the hostile environment in which homosexuality is understood, abuses are perpetrated against homosexuals and those believed to be homosexuals and channels that exist for victims to seek justice, or even to seek education on the rights they have are not fully utilized.

In a focus group conducted by HRAC, homosexuals reported incidences of abuse by the police and the general population, unlawful eviction, denial of health care, and difficulty accessing legal representation. All participants in the focus group agreed that there was a general environment of discrimination, which is perpetuated by a misunderstanding of the legal status of homosexuality. One participant stated, “until Ghana becomes more open and the literacy rate increases, people won’t accept MSMs.”[[14]](#footnote-14) This firsthand evidence is supplemented by a GTZ and Ghana AIDS Commission survey which found that 69.1% of the general population would not welcome MSMs into their homes and 40% would exclude them from their families.[[15]](#footnote-15)

c) Discrimination against sex workers

Another group whose rights are undermined on the purview of legal interpretation on sex work is sex workers. Sex workers face the same discriminatory environment as homosexuals in Ghana. The Criminal Offenses Actis unambiguous in its criminalization of the commercial sex trade. It states: “Any person who knowingly lives wholly or in part on the earnings of prostitution; or is proved to have, for the purposes of gain, exercised control, direction or influence over the movements of a prostitute in such manner as to aid, abet or compel the prostitution with any person or generally shall be guilty of a misdemeanor.”[[16]](#footnote-16) However, while it is explicit in the legality of the sex trade, it does not directly prohibit the act of prostitution or of being recognized as a prostitute. Soliciting is the act that is criminalized.

HRAC organized focus group discussions to discuss the issues faced by sex workers in Ghana. Sex workers and police personnel were interviewed to obtain an understanding of the situations both parties deal with in regard to the sex trade. Sex workers interviewed reported frequent abuse by the police. Incidents of rape, physical abuse and extortion of money or sex under threat of arrest or even, in one case, death was reported. One participant claimed that police abducted her and forced her to have sex with them. “[The policemen said,] If I don’t become quiet they will shoot me,” she told the interviewer. Another sex worker reported that “when they arrest us, they toot their horn or alarm to signal to the public that sex workers have been arrested.”[[17]](#footnote-17) Police personnel interviewed admitted that abuses do occur. Many were open to addressing the problem but were unaware as to how to begin.

The general population exhibits a tendency to perceive commercial sex workers as immoral. In a 2009 Ghana AIDS Commission survey, it was revealed that 59% of the population and 54.6% of police personnel would not freely welcome a commercial sex worker into their home. This stigmatized environment makes it difficult for commercial sex workers to escape the abuses they face or to seek medical treatment. Because the police are major perpetrators of abuses against commercial sex workers, the victims often find themselves without a channel to access justice. Steps towards creating a safe environment for commercial sex workers were outlined in the National HIV/AIDS Strategic Framework II which calls for educational programs, condom promotion, referrals to alternate jobs/training programs for sex workers willing to change vocation and the establishment of a drop-in centre for roaming sex workers.

d) Discrimination against people living with HIV and AIDS

Even though the general population has gained a better understanding of HIV and AIDS recently and the National HIV and AIDS and Sexually Transmitted Infections (STI) Policy 2004 establishes principles of non-discrimination against Persons Living with HIV (PLHIV), it is the groups that are most at risk to contract the infection that face discrimination, not because of their HIV and AIDS status, but because of their stigmatized status as members of certain demographics in society.

Though the rate of HIV and AIDS infection has waned since its extreme high at 3.1% in 2003, Ghana is still being affected by the infection.[[18]](#footnote-18) In a Survey conducted by the Ghana Health Service in 2009, it was recorded that 78.5% of respondents ages 15-49 responded positively when asked whether they would care for a family member infected with AIDS. This indicates that a majority of the population is tolerant of persons living with the infection but the 21.5% who responded negatively still represent a strikingly large figure.[[19]](#footnote-19) In a USAID-GAC-GHS (Futures Group) study, a respondent stated that “when a person living with HIV/AIDS raises an issue in a meeting… it is not recorded.”[[20]](#footnote-20) Incidents such as these constitute the type of discrimination that the proposed program would seek to address and eliminate.

In a recent interview with HRAC during its research and legal audit of laws and policies on HIV and AIDS in Ghana, a Ghana AIDS Commission representative stated that “people see those infected with the disease as promiscuous people.”[[21]](#footnote-21) This stigma was recognized as the consequence of a desire by many Ghanaians to be seen as “morally upright.”

**Suggested questions:**

* Is the State considering to modify the 1992 Constitution to include protection against discrimination on the grounds of sexual orientation?
* Please indicate whether the State party intends to increase the percentage of the national budget allocated to the Ministry of Gender, Children, and Social Protection in order to improve the respect of women and children’s rights?
* What are the measures being put in place to address stereotyping and discrimination against women?
* What is the legal status of homosexuality in Ghana?
* Please provide information on any measures taken by the State party to provide effective protection against acts of discrimination for: (a) lesbian, gay, bisexual and transgender people; (b) sex workers; and (c) people living with HIV and AIDS
  1. Right to life (art. 6)

1. Death penalty

Article 13 of Ghana’s Constitution, guarantees the right to life as follows;

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

Article 3 (3) provides for mandatory death sentence for persons convicted of high treason:

*3. (3) Any person who (a) by himself or in concert with others by any violent or other unlawful means, suspends or overthrows or abrogates this Constitution or any part of it, or attempts to do any such act; or (b) aids and abets in any manner any person referred to in paragraph (a) of this clause; commits the offence of high treason and shall, upon conviction, be sentenced to suffer death.*

While the 1992 Ghanaian Constitution guarantees the right to life, it also allows the state to execute its citizens in “execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.” Article 3 (3) provides for mandatory death sentence for persons convicted of high treason. In addition to the Constitutional provisions, the Criminal Code of 1960 also makes crimes such as murder, attempted murder, treason, genocide punishable by death. The Armed Forces Act of 1962 and the Suppression of Robbery Decree, No. 11 of 1972 also make death the ultimate punishment in the event that a robbery results in loss of life.

While no death row prisoner has been executed since 1993, death sentences continue to be imposed. As of 31st December 2014, there were 137 people on the death row in Ghana.  On 1st July 2015, Ghana's Republic day, the President (H.E. John Dramani Mahama) under his prerogative of mercy, commuted the death sentences of 14 prisoners on death row to life imprisonment again. This brings the number of people on death row in Ghana presently to 123.[[22]](#footnote-22)

Death-row prisoners are separated from the general population, are held in small, overcrowded, dark and poorly ventilated cell blocks and show signs of severe mental and physical trauma. They are denied access to any educational or recreational activities. These prisoners and those serving life sentences depend heavily on their families to provide food and medication, a burden that causes great economic hardship for their relatives. Many inmates stop receiving family visits as the years pass, which leaves them at greater risk of physical and mental deterioration.

The review of the 1992 Constitution of the Republic of Ghana provided a unique opportunity for Ghana to truly and fully commit to the protection of internationally recognized human rights by amending the sections of the Constitution relating to the death penalty and by abolishing the death penalty.

The Constitutional Review Commission recommended to the Government of Ghana to abolish the death penalty by:

* *Amending articles 3 (3) and 13 (1) of the 1992 Fourth Republican Constitution of Ghana to remove the mandatory death sentence for persons convicted of high treason (3(3)) and to prohibit the execution of citizens by the state (13(1)).*
* *Entrenching in the new Constitution the abolition of the death penalty.*
* *Amending article 13 (2) of the Constitution to restrict the circumstances under which lethal force can be used.*

The Constitutional Amendment, if accepted, sets the milieu for the abolishment of the death sentence in Ghana. Government’s plans to put to a referendum recommendations of the Constitutional Review Commission that require changes to the Constitution, including the removal of the death penalty, were not implemented in 2014. However, Ghana continues to maintain the de facto moratorium on the death penalty**.**

Ghana’s human rights record was examined in 2008 during the Country’s Universal Periodic Review at the United Nations Human Rights Council. One of the recommendations to Ghana was to establish a moratorium on executions. The Government representatives replied to this recommendation that the death penalty is an entrenched provision in the Constitution which requires a referendum before it could be amended, and that in the interim, the Government would continue to maintain the de facto moratorium on the application of the death penalty (Report of the Human Rights Council on its Eighth session, A/HRC/8/52). During the Universal Periodic Review in 2012, State parties made recommendations to Ghana concerning the death penalty: Australia, Spain, Rwanda, Switzerland, France, Uruguay and Norway recommended Ghana to ratify the Second Optional Protocol to the ICCPR, while Slovakia, Greece, Spain and Belgium recommended to abolish the death penalty. Unfortunately, Ghana did not accept, but only noted these recommendations. The only recommendation accepted by Ghana was the one made by the United Kingdom: “Put to an early referendum all recommendations of the Constitutional Review Commission approved by the Government that require changes to the Constitution, including the removal of the death penalty”. [[23]](#footnote-23)

The following were the recommendations made due to the fact that the death role was not abolished as at November 2013 following the UPR.

a) Give effect to the white paper of the Constitutional Review Implementation Committee, which was tasked with implementing the recommendations of the Constitutional Review Commission, and hold a referendum to change the Constitution, including an official moratorium and abolition of the death penalty;

(b) Commute all outstanding death sentences to term sentences and formalize the current de facto moratorium on the death penalty by abolishing the death penalty for murder, a statutory offence which does not require the Constitution to be amended;

(c) Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

(d) Develop a public awareness strategy, in consultation with NGOs, to educate civil society about the cruel and inhuman treatment that results in persons being sentenced to death and detained for years on death row.[[24]](#footnote-24)

1. Use of Lethal Force

Article 13 of Ghana’s Constitution, which guarantees the right to life also provides for much wider grounds for the use of lethal force than is permissible under international standards. Article 13 (2) of the Ghanaian Constitution states:

13. (2) A person shall not be held to have deprived another person of his life in contravention of clause (1) of this article if that other person dies as the result of a lawful act of war or if that other person dies as the result of the use of force to such an extent as is reasonably justifiable in the particular circumstances.

*(a) for the defense of any person from violence or for the defense of property; or*

*(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or*

*(c) for the purposes of suppressing a riot, insurrection or mutiny; or*

*(d) in order to prevent the commission of a crime by that person.*

While the use of force and firearms may sometimes be permissible when making an arrest or preventing a person from escaping, the provisions of Article 13 of Ghana’s Constitution are impermissibly broad and do not require the existence of an imminent or grave threat of death or serious injury and have a more lenient standard of necessity than that which is required by international standards.

**Suggested questions:**

* Please indicate whether the State party intends to ratify the Second Optional Protocol to the ICCPR.
* Please indicate whether the State intends to implement the recommendations issued by the Constitutional Review Commission.
* Please indicate whether the State party intends to modify Article 13 of the Constitution according to international standards on the use of lethal force.
  1. Prohibition of torture and ill-treatment and conditions of detention (arts. 7 and 10)

1. Criminalisation of torture

Article 15, paragraph 2, of the 1992 Constitution of Ghana states that “no person shall ... be subjected to (a) torture or other cruel, inhuman or degrading treatment or punishment, (b) any other condition that detracts or is likely to detract from his dignity and worth as a human being”. However, the offence of torture, as defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has not yet been included in the Criminal Code.[[25]](#footnote-25)

1. The practice of torture and ill-treatment

The United Nations Special Rapporteur on Torture visited Ghana in November 2013. According to his findings, “the situation on the ground regarding the practice of torture or ill-treatment by the police is one in which abuses do occur in some individual cases during arrest, transfer to police stations and interrogation, but the Special Rapporteur did not find evidence that those abuses were part of a widespread pattern or systemic practice. The Special Rapporteur visited Nkawkaw central police station, Ejisu police station, the Cape Coast regional police station and Kotokuraba central police station. In at least three of the police stations visited, he noted traumatic scars on inmates’ bodies that were consistent with allegations of beatings with canes or batons.”[[26]](#footnote-26)

During his meeting with the Police Service, the Special Rapporteur was not provided with recent statistical data on allegations of torture and ill-treatment and on the results of any investigations undertaken in respect of law enforcement.[[27]](#footnote-27) The lack of data on this regard was also a concern raised by the Committee Against Torture in 2011. [[28]](#footnote-28)

1. Police brutality

In Ghana, the role of the Ghana Police Services (GPS) is described as “to prevent and detect crime, to apprehend offenders, and to maintain public order and the safety of persons and property.” Police standards are laid out in the Police Services Act (1970), the 1992 Constitution, and other regulations, which also lay out procedures regarding misconduct and disciplinary measures. However, the GPS is accused of using force and violence in an arbitrary and excessive manner with regards to a number of issues including: arrests, the use of excessive force, and forced evictions. Cases of poor crowd control and brutalities against individuals in police custody have been cited as evidence accusing the GPS of being an instrument of force and oppression with perpetrators of police brutality held to limited, if any, accountability measures.

One of many cases citing police brutality and injustice is a student who was arrested on his way to campus to retrieve his bike. During his arrest this student was beaten, unable to give a statement, put in a cell with over 20 others, forced to remove his clothing, and further beaten by police. During his detention he was not informed of the reason for his arrest, given access to a lawyer, nor allowed to make a phone call. It was not until he arrived at court that he learned of the charges against him and released on bail.

Many cases of police brutality also cite police conduct as violent during an individual’s arrest and detention, denial of basic human rights while in custody, and limited (if any) access to due process or representation. Officers often ignore fair trial guarantees under Article 19 of the Constitution during arrests and subsequent detentions. The mistreatment of individuals in police custody constitutes misconduct under the Police Service Instructions and is subject to the appropriate punishment. However, in most instances police personnel found guilty of mistreating civilians have only been dismissed, with no further repercussions.[[29]](#footnote-29)

Sometimes, officers of law enforcement agencies commit abuses. In most situations, these cases remain in impunity due to the so-called state backing for perpetrators in these services. In a recent case of an alleged defilement of a 12-year-old girl by a police officer, Lance Corporal Emmanuel Bartels of the Ghana Police Service have been reported. In the said case, the report indicated that the police officer had sexual intercourse with the 12-year-old Junior High School student on three occasions, which subsequently led to her being pregnant. However, since the case was reported in April 2015 at the Domestic Violence and Victims Support Unit (DOVVSU) of the Ghana Police Service (GPS), no reasonable action has been taken to ensure the prosecution of the case.[[30]](#footnote-30)

1. Poor facilities and deplorable prison conditions

Ghana’s prisons are currently operating at 170 per cent capacity. Overcrowding is severe in many of the country’s prisons. It is common for as many as fifty-five inmates to share a cell intended for twelve. Food and medical care are inadequate and many prisoners rely on family members and outside organizations for additional food, medicines and other necessities. Skin diseases are common; and tuberculosis, malaria, hepatitis and pneumonia are also prevalent but the prison health system is unable to guarantee adequate medical care within the prisons.[[31]](#footnote-31)

Penal institutions in Ghana are in need of repair, refurbishment and maintenance. Some inmates do not have access to toilets at night so they use buckets or plastic bags in which to urinate and defecate. Many of the preventable illnesses that affect prisoners are a result of the dark, overcrowded and unhygienic conditions in the cells. In some cases, the conditions are so poor that they constitute cruel, inhuman and degrading treatment. Those who endure these prison conditions include both convicted prisoners and hundreds of people in pre-trial detention.[[32]](#footnote-32)

1. Witch camps

Many people who are poor and elderly, mostly in the northern regions of Ghana, are falsely accused as witches and banished to “witches camps”.[[33]](#footnote-33) These witch settlements are located at Ngani in the Yendi district, Gambaga in the east Mamprusi district, and Kukuo in the Bimbilla district and Kpatinga in the Fushegu district. These places are sanctuaries for people, mostly women, accused of witchcraft in their communities. The alleged witches are banished from their communities and sent to the chief priest of these villages where they are exorcised.  There are about a thousand women in northern Ghana inhabiting camps whose sole occupants are deemed to be witches. Many, if not most, of the women are elderly.

On 17th June 2015, a media report titled “Freed Witches Cry for Help”, revealed that two alleged victims and their relatives of demolished witch camps in Tamale and Sagnrigus namely Samata Alhassan and Hawabu Iddi are seeking refuge in a Bonyasi witch camp since they are currently homeless and vulnerable to discrimination and stigmatization from community members. The witch camps in Tamale and Sagnrigus in the Northern region which served as homes for persons most especially women branded as witches is believed to have been closed by the Ministry of Gender, Children and Social protection and its partners- ActionAid Ghana , the Ministry of Chieftaincy and Culture among others.

This report also mentioned that there are six more existing witch camps in the Northern region within the Kukos, Bonyansi, Gambaga, Gnai-Tindang, Naboli and Tindan-Zhie disctricts, of which the Ministry of Gender, Children and Social protection states its intention to ban them upon a proper assessment carried out.

In response to the above allegations, the Ministry of Gender, Children and Social protection in a press release decried the said media report as ‘false’. The Ministry continued the witch camps in ‘Tamale and Sagnrigus in the Northern region’ do not exist in the first place. The Ministry attested to the fact that it has rather closed down a witch camp at Bonyasi in the Northern Region and it also intends to ‘eventually close down the remaining five camps’. The Ministry also explained that ‘ActionAid and partners are constantly in touch with the freed alleged witches’ they explained, and that their checks and investigations reveal that so far none of the freed alleged witches has complained of ill treatment from friends, relatives of community members. The Ministry of Gender, Children and Social protection declared that it would constantly work to uphold the rights of the freed alleged witches, and with support from ActionAid as well as the Ministry of Chieftaincy and Culture they would ensure that these alleged witches enjoy the freedom they deserve to enable them contribute to the development of their communities.

1. Prayer camps and traditional healing centres for persons with mental disability

The underlying premise of the Persons with Disabilities Act (PDA) is to enable persons with disabilities to function as normally in Ghanaian society as possible. To phrase it another way, the goal is to put persons with disabilities on an equal plane to persons without disabilities. While private discrimination is difficult to change through immediate legislation, the PDA calls for present reform in the areas of public facilities, accommodations and services. This includes a wide variety of situations. The goal in all of them is to enable participation by persons with disabilities to the fullest extent possible without undue burden or cost.

People with mental disabilities are cared for in two main places in Ghana: either the hospitals or prayer camps, where people are given spiritual support. Though the Ghana Mental Health Act (846), 2012 prohibits the torture and ill-treatment of individuals with mental health problems, the practice continues against them. Under the care of hospitals and prayer camps, people with mental disabilities face various human rights abuses. People are chained and left at the vagaries of the weather. Some are exposed to reptiles and are deprived of food and water for several days. Others are also whipped in the process of “exorcising” them of “evil spirits”. The abuses also include involuntary admission, prolonged detention, inhumane conditions of confinement which includes chaining, overcrowding, poor hygienic conditions, denial of food, forced seclusion, lack of shelter, denial of adequate health care, verbal abuse, involuntary treatment, forcing patients to take medications. Also in the prayer camps there is not enough water for washing, bathing and drinking. Toilets are broken and in some places; some have no toilets at all. Sometimes you would have to eat, sleep and go to toilet at the same place, as one patient reported to Human Rights Watch. Admitted patients are allowed to stay outside whether rain, shine or at night. Some people cannot afford their medication and their situation get worse each day. Patients at the hospital are verbally assaulted because they complain about hunger, pain, medicine, going against rules or wanting to leave the hospital.

The Persons with Disability Act 2006 makes provisions for persons with disabilities and not excluding the mentally challenged. The Acts makes outlines healthcare, transport, education, association, family life, judiciary provisions among others in order to facilitate the life of a mentally challenged person. It also includes the right to rehabilitation centers after treatment.

**Suggested questions:**

* Please provide information on measures taken to adequate the definition of torture and cruel, inhuman or degrading treatment into the laws of the State party, according to the international standards.
* Please indicate what measures are being taken to prevent police abuses and to investigate allegations.
* Please describe the measures currently being taken to improve prison conditions in the State party.
* What mechanism has the government of Ghana put in place to prevent torture, degrading and inhuman treatment of vulnerable groups and individuals at the prayer camps, traditional healing centres and the witch camps harbouring mental health patients and women branded as witches in their communities?
* Please indicate whether the State party intends to ratify the Optional Protocol to the Convention Against Torture.
* How is the government empowering person´s with disability to feel integrated into the governance system and society?
* How is government working on the effective implementation of the Disability Act, Act 715 which was passed in 2006?
* When will the Legislative Instrument to the Mental Health Act be passed to ensure its effective implementation?
  1. Prohibition of slavery and forced labour (art. 8)

Chapter 5 (1) to (3) (d) of the 1992 Constitution of Ghana states that the practice of slavery and forced labour of any kind is forbidden in Ghana. Even though the declaration on the prohibition of forced labour comes with its exemptions, the chapter on the Fundamental Human Rights and Freedom of Ghana safeguards all Ghanaians (both in and abroad) and non-Ghanaians living in Ghana from forceful labour and slavery.

*Existing boundaries of the prohibition of slavery and forced labour*

According to Chapter 5 (3) (a) of the Constitution of Ghana, the prohibition of forced labour is limited to the confines of a court order or a sentence. Also, according to Chapter 5 (3) (c), forced labour is acceptable when Ghana is at war, or an event of emergency that threatens the life and the community. Another exemption to the protection on forced labour found in subsection (d) of the article is when the labour is reasonably required as part of a normal command or other civic obligations.

‘Trokosi’ as a form of forced labour of young girls

Trokosi is a practice in south-eastern Ghana where young virgin girls, typically from eight to fifteen years of age, are sent to fetish shrines to live and atone for the crimes of their family members. The origins of this practice cannot be traced to a specific date, but it is believed that the practice began in the 16th century during the migration of the Ewe ethnic group from the Niger River Delta region. The victims of this practice are denied their rights to education as stipulated in the Convention of the Rights of the Child (Article 28). Children under the trokosi system are also victims of child labour. In this form of slavery children are separated from their families and withdrawn from school, forced to work on fields from morning to evening without food and any form of medical care.

The trokosi system is against the 1992 Constitution of Ghana since it violates these provisions: Article 16 (Clause 1) says “No person shall be held in slavery or servitude”. Clause 2 of the same article says “No person shall be required to perform forced labour”. Article 26 (Clause 2) also stipulates that, “All customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited. Article 28 (Clause 4) reads, “No child shall be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs”. On June 12, 1998, the government of Ghana illegalised the trokosi practice by passing a law that banned all forms of ritualised forced labour and made it an offence punishable by a minimum of three years in jail. It is unfortunate to note that even with the existence of all these legal instruments, the trokosi system still in practice today and no arrests have been made since the 1998 law was passed[[34]](#footnote-34). This came to light after a week of undercover mission to some of the shrines, where the practice is still “treasured” in some parts of the Volta Region by the chronicle newspaper of Ghana[[35]](#footnote-35).

**Suggested questions:**

* Please indicate the measures being implemented to combat slavery and forced labour in Ghana, in particular the measures to eliminate the trokosi system.
  1. Prohibition of arbitrary detention, right to equality before courts and to a fair trial (arts. 9 and 14)

Article 14(4) of the 1992 Constitution of Ghana declares that a person who is arrested or detained (placed on remand), but has not received a trial within a ‘reasonable period of time’, is entitled to unconditional release or release subject to conditions necessary for reappearance for judicial proceedings. What constitutes reasonable time, as stipulated by the Constitution, is yet to be properly determined. The absence of codification of this rule is primarily responsible for the excessive periods persons detained on suspicion of having committed a crime in Ghana are held without trial.

*The State of the Remand Prisoner*

When someone is arrested and charged before a competent Court of Jurisdiction by the Police/prosecution, the Court may begin trial, grant bail under section (96) of the Criminal Procedure Code of 1960 or issue a ‘remand warrant’ for the person to be kept either in Police or Prison Custody. The warrant issued ought to be renewed fortnightly in order to legitimize the continued detention. When the remand warrant on which the prisoners are held expires, it results in the illegal detention of the remand prisoner. In most cases, prisoners are not brought before court within the 14 days period and in cases where they do appear before the courts, their warrants are frequently renewed and they are sent back to prison without evidence that progress is being made in the investigations. The courts in some instances remand prisoners without charge, for indefinite periods of time since Article 14(4) of the Constitution which makes provision for persons to be held on remand for a ‘reasonable time frame’ fails to define what time frame amounts to a ‘reasonable timeframe’.

Even in the case of untraceable dockets and files, remand warrants are renewed and prisoners are incarcerated for unduly long periods of time. In some instances, such cases just become ‘forgotten’. Detainees sometimes serve more time in detention awaiting trial, than the maximum possible sentence the law prescribes for their offences. Another contributing fact is case management procedures on the part of the Police. Sometimes prisoners are kept on remand while their cases are being investigated. If investigating police affairs are transferred, re-assigned or retire without proper handing over of cases to another officer, such remand prisoners get ‘lost in the system’ and consequently spend years in prison.[[36]](#footnote-36)

To heighten the issue of overcrowded prisons, lengthy pretrial detention remains a serious problem in Ghana. According to the 2013 Prisons Service Annual Report the average daily remand population for 2013 was 3,023. This represents an annual remand reduction rate of 0.1%. Of the total remand figure 2,966 representing 98.1% were male remands while 57 representing 1.9% were female remands.[[37]](#footnote-37)

In order to mitigate the rise in remand prisoner numbers, there has always been the need for collaborative effort between civil society and the key agencies tasked with Justice Delivery. One such collaborative initiative is the Justice for All Program that sets up special courts to adjudicate Remand Prisoner Cases in the prisons to have access to justice and reduce overcrowding. Established in 2007, the Justice for All Program currently spearheaded by the Judicial Service has faced several constraints due to lack funds from the state, but has been successful due to donor support and collaboration from civil society.

Under the Justice For All program, remand inmates who meet specific criteria are interviewed; and applications are prepared and filed on their behalf by lawyers working with civil society groups. Applications are served on both the Attorney General and the Police Service in the various Regions towards the Special Court Sittings. As part of the 2014 Program, experienced Appeals and High Court Judges are appointed to review and adjudicate remand cases before them as done in the regular courts with police and state Attorneys for prosecution.

In 2014, POS Foundation in partnership with the Center for Law and Development and with Funding from Star-Ghana collaborated with the Judiciary and Ghana’s Prison Service to organize the Access to Justice Project under the Justice For All Program in six prisons within four regions. The 2014 program brought justice to 259 remand prisoners. The program secured bail for 110 remand inmates. The Courts discharged 85, convicted 4, and 56 of the applications were dismissed.

**The cases reviewed under the 2014 Justice for All Program included but were not limited to;**

* **Zorro Kuta (over 20 years on Remand) -** Zorro Kuta a 72 year old man, charged with manslaughter was discharged unconditionally after spending over 20 years on remand. He was first arrested in the Ashanti Region, remanded to Kumasi Central prisons and later moved to Nsawam, and finally Ankaful Prisons where he was discharged by this program. In the application filed on his behalf by POS Foundation, Mr. Zorro Kuta denies the charge and explained to the police that, there was a fight involving him and ten other people but was later told one of them got shot at the hospital and died. This led to his arrest and detention in prison custody for about 36 years (date of arrest 1978) as he claimed, without a lawyer to represent him in court. Although records/data on him could not be fully ascertained, pieces of records of events put together points out to more than 20 years of his custody. His condition has obviously made him suffer partial mental illness and virtually wasted his life.
* **Yaw Inkum (over 6 months on Remand; unable to pay for one cedi local gin-‘Akpeteshie’)** - Yaw Inkum went to a drinking bar and bought a local gin (Akpeteshie) GH ¢1 Ghana cedi and couldn’t pay so he was later arrested in February, 2014 in Winneba after the seller lodged a complaint to the police. He was charged with threat of death which he denied, but admitted not paying for the local gin. He had been in custody for more than six months without bail and trial but was discharged by the program.
* **Kwame Boadi, charged with stealing a fowl and of Assault, spent 2 years on Remand -**Kwame Boadi, was accused of stealing a fowl and of assault. He had been on Remand for two (2) years but was granted bail as a result of the justice for all program with an amount of GHC 1,000 with one surety and to appear in court on 4/12/2014. These are ‘bailable’ offences and one will wonders why they could be sent on Remand in the first place, and spent 2 years?
* **Rashida Halidu (mother who gave birth to a baby boy in prison) –** Rashida Halidu, charged with the murder of her boyfriend told the court that, the boyfriend used to beat her. One day in his usual act of beating her though pregnant at the time, Rashida struggled with him and was thrown to the ground where she struck her head on an object and passed out. She regained consciousness at the hospital only to be told her boyfriend was stubbed to death. Based on previous incidents Rahida believes her boyfriend stubbed himself to death, perhaps with the fear that she (Rashida) had died when she passed out. She was arrested and subsequently remanded to Kumasi Female Prisons where she gave birth to a baby boy in prison who was five-months old at the time of the special court sittings and was discharged.
* **Yaw Adams (Trotro Driver makes wrong U-turn and spends 2 years on Remand) -** Yaw Adams was arrested in January 2013 and was charged with escape from unlawful custody. He denies the charge and explained that as a Commercial Bus ‘Trotro’ Driver in Kasoa he made a wrong U-turn and was arrested with his bus conductor or ‘Mate’ and sent to court but the charge sheet had only the conductors′ name on it. The court/judge asked the Police to go back and amend the charge sheet to include him (Adams). On their return to the Police Station, the conductor-Mate tried to escape custody, when Adams prompted the police. The police shot him (Bus Mate) and died. Yaw Adams has since been on remand for two years and has never had a lawyer to represent him in court. He was discharged unconditionally at Winneba Prison during the special court sittings since the application was not opposed by the State Attorney.
* **Tei Emmanuel – the alleged snail thief -** Tei Emmanuel was arrested in June, 2014 and charged with stealing snails. The accused (Emmanuel) denied the charge and explained to the police that he was in his house when a group of guys came and showed him a mobile phone to find out if it was his. He responded no and showed them his phone. Emmanuel asked them what the problem was and they explained to him that the night before, a guy had gone to steal snails and whilst he was being chased he dropped his phone and was searching for the person. Among the group of guys in his house was the ex-boyfriend of Emmanuel’s girlfriend who insisted that Emmanuel was the snail thief. They got into a fight, assaulted him and took him to the police station where he was detained and further remanded. Like the other cases, Emmanuel’s warrant had expired and had been on remand for 5 months until Justice for All Program took the courts to his door-step at the prisons for his freedom (Been discharge).
* **Mr. Kojo Mensah (identified and accused of beating up an old lady by virtue of his haircut) -** Mr. Kojo Mensah was identified by an ‘old lady’ and arrested in March, 2014 at Cape Coast in the Central Region after being accused of beating up the old lady by virtue of his haircut that looked same as someone who had earlier assaulted the old lady. He had been in custody for 8 months even though assault is a ‘bailable’ offence. He was discharged unconditionally pursuant to Article 14(4) of the 1992 Constitution.
* **Kwabena Asante (5 years on Remand for the death of his two months old baby after both accidentally fell down the Staircase) -** Kwabena Asante from Eastern Region was arrested in March, 2009 and charged with murder. He explained to the police that, he got home from a funeral and was a bit drunk. His wife had gone to the market and their two months old baby was crying in the bedroom. He picked up the baby and whiles descending the stairs, he fell down the staircase together with the baby. They were taken to the hospital but the baby died later. He was arrested for killing his own baby irrespective of the trauma the situation had put him through. Without any witness and a lawyer, he had spent 5 years on remand with expired warrant until Justice for All got to him.
* **Henry Arku (spent 1 and half year on Remand for looking like a thief)** Henry Arku was arrested in May, 2013 at Kukurantumi in the Eastern Region and charged with stealing. He denies the charges and explained that he was on his way to Koforidua market when he was arrested by the police, claiming that he was part of a group that stole from a house at Kukurantumi. They claimed he looked like one of the thieves. He had been granted bail of GHC 11,000 with three sureties from one of the courts in the Eastern Region. Unable to meet the bail conditions he has been in prison for one and half years. He was discharged unconditionally. (*2014 Report on Justice for All Programme by POS Foundation*).

*Independence of the judiciary and fair trial*

The Constitution states the independence of the judiciary. There has been no incidence of government interference in the affairs of the judiciary. The tenure, appointment, dismissal and disciplining of the members of the judiciaryis enshrined in the Constitution. The Chief Justice and Supreme Court Judges are appointed by the President who follows the stipulations of the Constitution. However, dismissal of judicial appointees is not the sole prerogative of the President. Nevertheless, there is a general opinion that the judiciary is corrupt. The socio-political and cultural structures contribute to the perceived corruption of the judiciary.[[38]](#footnote-38)

The Constitution also provides that every person has a right to “enjoy, practice, profess, maintain and trial took place in a “competent court”. [[39]](#footnote-39) In the case of access to the right to effective remedy, the said provision is sometimes compromised. In that, the Attorney General and Minister of Justice, a single political official, has the final decision as to whether to institute a criminal prosecution in Ghana.[[40]](#footnote-40) In their comprehensive review of the justice sector, OSIWA and AfriMap note that this single official’s dual political and prosecutorial roles present a potential conflict of interest. They have suggested that in some instances in Ghana the executive may have influenced the progress of particular prosecutions.[[41]](#footnote-41)

At the district and the rural areas there are times confessions are treated as evidence and accused convicted on the bases of his/her confession. Sometimes, the accused is not legally represented. There is a case of a mother of an eighteen months baby convicted upon her confession.

Ghana has set up special courts to help expedite trials in cases bordering on human rights, domestic violence and others. Thus, the Human Rights Court was set up as a special court. Also, the Chief Justice has the sole prerogative to determine who handles a case.

The traditional trial of cases is also accepted in many communities. In that, there are Customary Courts where the Chief’s ruling is accepted and binding in any case brought before him.

The Legal Aid Scheme was set up by an Act of Parliament, Act 1997, (Act 542) to realise the provision that any person in Ghanaian is entitled to legal aid under certain circumstances. The Legal Aid Scheme according to the Act “was established to protect and defend the rights of the poor and vulnerable against abuse. It also ensures that no person in Ghana suffers injustice by virtue of his or her poor economic status.” However, the existing Legal Aid Scheme is bedevilled with challenges. There is an average of three attorneys for each regional office with a total of fourteen attorneys servicing Ghana’s total population of twenty four million[[42]](#footnote-42). Again, the lack of awareness about legal rights, long delays in proceedings and the woeful representation of lawyers at the legal aid scheme and cost associated with the legal process and running of other supporting agencies impede the practical delivery of justice.

**Suggested** **questions**

* How is the government of Ghana ensuring that all detainees are able to effectively exercise their right to promptly challenge the lawfulness of their detention before a court, and to ensure that they are immediately released if their detention is found to be unlawful?
* What effective steps are being taken to ensure prompt and fair trials for those accused of a criminal offence, in compliance with international and regional standards of fair trial?
* What mechanisms are being put in place to separate remand prisoners from convicted prisoners?
* Please indicate whether the State party intends to review article 14(4) of the 1992 Constitution of Ghana and the Criminal Code in order to reduce undue detention of remand prisoners?
* How is the State party committed to sustaining the Justice for All Programme without donor support?
  1. Right to privacy (art. 17)

Art. 18 (2) of the 1992 Constitution states that: “No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others”. There has however been recent cases of secrete tape recordings of prominent Ghanaian politicians both in government and opposition. For example the recording of the former Finance Minister, Mr. Yaw Osarfo Marfo, on tribal affiliation and elections in Ghana (Block Voting),[[43]](#footnote-43) Former Deputy Minister, Ms. Victoria Hammah,[[44]](#footnote-44) and the current National Organizer of the National Democratic Congress, Kofi Adams.

**Suggested question:**

* Please provide information on the measures taken to guarantee the right to privacy, in particular to prevent and sanction the recording of private conversations
* What legislative framework has been put in place to regulate the monitoring of individuals communication in line with right to privacy?
* How is the State party going to deal with increase in the practice of secret tape recordings of prominent Ghanaian politicians?
  1. Freedom of opinion and expression (art. 19)

Art. 21 (1) (a) of the 1992 Constitution states that “all persons shall have the right to freedom of speech and expression, which shall include freedom of the press and other media.” Subsequently, in 2001 Ghana repealed the Criminal Libel Law, which brought about the conducive environment for the freedom of speech. This created an enabling environment for freedom of expression. However, according to a report by the Media Foundation for West Africa (MFWA), Ghana in the last ten years has recorded a total of 138 incidents of violations against journalists and media workers, representing an average of nearly 14 violations a year. In 2014, Ghana was the leading country with the most violations as it recorded eight (incidents) out of a total of twenty five violations committed against journalists and media in 16 countries in the sub region. According to the report, the violations included arrests and detentions, attacks and threats, and imposition of fines.[[45]](#footnote-45)

One of such cases reported in the media was the attack of Ms. Afia Pokuaa of Adom FM and other reporters by officials of the National Health Insurance Scheme (NHIS) in Accra. Afia Pokua and two other journalists were on Thursday, 11th September, 2014, in the afternoon brutalized by the Manager of the NHIS at Ablekuma in Accra. The three journalists were physically assaulted at Ablekuma, Flamingo- Zongo Junction. Nana Sefa, a reporter with the station, had gone there to report on the frustrations and complaints of persons who had been queueing since 3am to go through biometric registration and subscription unto the national health insurance scheme. Nana Sefa had his mobile phone confiscated by Mr. Israel Kwame Laryeah, the Scheme Manager of the NHIS there. Mr Laryeah detained the reporter, insisting he would only release him if his Editor came there. But things took a different turn when Afia Pokua also known as ‘Vim Lady’ got there in the company of another reporter, Kofi Assan. According to Kofi Assan, the Scheme Manager released Nana Sefa after he and Afia intervened. But the journalists walked out of the Manager's office to a hostile crowd which accused the young reporter of going to hide in the Manager's office, leaving them to their fate. Attempts by the news editor, Afia, to explain things to them infuriated Mr. Laryeah who pounced on her and assaulted her badly. Assan said he received severe beatings too when he tried to defend his editor.[[46]](#footnote-46)

Another example was on Saturday, 6th September, 2014, where Felix Akunor, a driver with MultiTV and two journalists, Solomon Joojo Cobbinah and Festus Jackson Davies were arrested on the orders of the Mayor of Accra, Alfred Vanderpuije while covering a story on the plight of some displaced people at Mensah Guinea in Accra, following the demolition of their structures the previous day by city authorities.

The journalists were charged them with offensive conduct.

The MFWA emphasized in its report that some violations may not have been captured and thus, the number of violations could possibly be more than the 138 recorded. The MFWA also reports that physical attacks on journalists have been the most prevalent form of violation in Ghana during the last 10 years. Over 67% of all violations recorded by the MFWA (93 out of 138) in the last 10 years have been physical attacks on journalists followed by detention of journalists with 16 incidents. The worst year during the ten years was 2008 with 24 violations. Other bad years for journalists during the decade were 2009 (21 violations); 2006 (20 violations); 2010 (16 violations) and 2014 (14 violations so far).

In terms of the perpetrators of violations, security agencies (police and military) have been the worse culprits accounting for over 38% of all violations against journalists (53 out of 138). Next to the security agencies are political party supporters (30 violations); followed by individuals (22 violations).

Unfortunately, perpetrators of violations often go unpunished or at best, they simply render apology to their victims. The lack of conscious and determined effort on the part of the state to punish crimes committed against journalists has the potential of fostering impunity and emboldening perpetrators and potential ones to commit further violations. [[47]](#footnote-47)

Since the repeal of the Criminal Libel Law, the National Media Commission arbitrates in matters involving the media and political commentators without recourse to interference from government. Also, in matters where they feel their rights have been abused by the media, members of political parties and commentators can access the courts. An example of such instance was when the General Secretary of the National Democratic Congress Mr. Johnson Asiedu Nkatia filed a suit against a media house for defamation of character. Mr. Nketia, the General Secretary of the National Democratic Congress (NDC) on the 27th of February 2014, won a defamation suit he had brought against the Daily Guide Newspaper, for publishing articles with headlines “Aseidu Nketia Plush Mansions” and” I am not useless, Aseidu Nketia bluffs.”Those stories alleged that Mr. Aseidu Nketia used his position as chairman of the Bui Power Authority Board to divert building materials for his personal building project. Also in the publications the defendants contended that Mr. Aseidu Nketia had built a story building at Oyarifa and Kumasi and attached photographs of the buildings. The Plaintiff pointed out that a simple inquiry by the defendants would have revealed that the supposed houses at Kumasi was the same as that one in Oyarifa. The according to the plaintiff, he had been inundated with calls to answer embarrassing questions and inquiries from different people, including business associates, colleagues, friends and family relations in Ghana and abroad. The Court ordered the newspaper to pay GHc 250,000 as damages for defamation and further ordered the newspaper to pay GHc 15,000 as cost. It also asked the defendants to retract the story four times with much prominence at its front pages[[48]](#footnote-48).

**Suggested questions**

* Please comment on the allegations of attacks against journalists. Provide information on the investigations conducted in such cases, the prosecution of the persons responsible and the penalties imposed upon them.
* How is the government resourcing the National Media Commission to effectively, independently and efficiently carry out its work?
  1. Freedom of assembly and association (arts. 21 and 22)

Art. 21 (1) (d) of the 1992 Constitution states that all persons shall have the right to freedom of assembly including freedom to take part in processions and demonstrations. There are no incidence of harassment and excessive use of force towards peaceful demonstrators, but there have been pockets of clashes between supports of the two major parties.

Article 12 (1)(e) of the 1992 Constitution provides that all persons shall have the right to freedom of association, which shall include freedom to form or join trade unions or other associations, national or international, for the protection of their interest. No law controls and regulates the NGOs/CSOs funding in Ghana, sometimes leading to lack of accountability and transparency in their work.[[49]](#footnote-49)

**Suggested question:**

* Please provide information on the measures taken to guarantee the right to the exercise of freedom of assembly and association in the State party and to protect human rights defenders, leaders of political parties and trade unions from interference in their activities.
  1. Protection of the family and rights of the child (arts. 23 and 24)

A legalframework is in place to ensure the protection and prohibition of violence against children. These include: the 1992 Constitution, the *Children’s Act 1998, the 2003 Juvenile Justice Act, Act 653* protects children from degrading or dehumanizing behaviour. However, there are some loopholes and contradictions in the framework. For instance the Children’s Act provides that children should not be subjected to torture or other cruel, inhumane or degrading treatment or punishment[[50]](#footnote-50); yet the Criminal Code 1960 rationalizes that force and harm can be justified when an authority is correcting a child for misconduct[[51]](#footnote-51). This disparity may lead to violence being perpetuated against children and may not be properly addressed by legal standards.

1. Corporal punishment of children

In practice, corporal punishment exists in the government schools, especially in the remote areas. In a case where a pupil teacher asked the students to lie down and stepped on them. A teacher of the Multi Educational Complex at Wassa Akropong in the Western region of Ghana has been caught on camera stomping on pupils who failed to do their homework or read properly. In a video circulated on YouTube, two pupils could be seen lying face-down while class was in session as the teacher identified as Christiana Owusu merrily jumped on their backs to punish them. The helpless class four pupils reeled in pain. According to Starr FM, reports say some of the pupils have been enduring this method of punishment for some time now and authorities in the region have refused to act.[[52]](#footnote-52)

Also, Gender Based Violence in schools persists in Ghana. The CSO’s in collaboration with the Domestic Violence and Victim Support Unit (DOVVSU) are working to address the issue, but the State does not have rehabilitation facilities for such abused children.

1. Early and forced marriages

One area where Ghana is to be commended is the partnership with UNICEF and Holland to address early and forced marriages. Since ratifying the UN Convention on the Rights of the Child in 1990, Ghana has made efforts to improve the rights and protection needs of children throughout the country. However, early and forced marriages still remains an abusive cultural practice. Since 2005, national efforts have been aimed at lowering the number of early and forced marriages as well as raising general awareness of the effects this practice can have on the life of young girls. Between 2005 and 2010, 69 cases of forced marriages were reported to the Domestic Violence Victim Support Unit of the Ghana Police Service. While there have been efforts at lowering the number of early and forced marriages, especially since 2005, the persistence of this practice is disheartening.

Despite legislation in place to protect the rights of the child, enforcement remains difficult and weak in practice. In order to combat harmful traditional practices, such as early and forced marriages, the government must continue, and promote, awareness-raising public education campaigns and other advocacy initiatives. These campaigns must coincide with efforts to implement efficient enforcement mechanisms to close the gap between law and practice. Successful inter-ministry coordination and cooperation can ensure that the implementation of laws regarding children and their respective rights are carried out.[[53]](#footnote-53)

A parliamentary seminar combating early and forced marriage was held on March 3-4, 2014 to address the effectiveness of government laws and structures and the inability to lower the 25% rate of early and forced marriages in Ghana, despite legislation fixing the age of 18 as the minimum legal age of marriage. According to the UNFPA report in 2010, 277,000 women in Ghana aged 20-24 were married/in union before age 18. While Ghana has ratified and passed international treaties and domestic laws directly and indirectly addressing early and forced marriages, effective implementation is lagging. Participants of the seminar listed causes of early and forced marriages to include: gender inequality within societal norms and practices; poverty and the perception that girls may be viewed as an economic burden; traditional and religious practices; the failure to enforce laws; and/or the increased economic pressures on households due to conflict or disaster.[[54]](#footnote-54)

Legislation exists to protect the welfare and rights of women and girls but more must be done to eliminate the practice of early and forced marriage. While enforcement of policies remains a challenge, the government can develop and implement policies aimed at educating rural communities, empowering girls, and providing health information services and social support. Suggested strategies to combat the practice include: empowering girls with information, skills and support; sensitizing parents and community members on the effects; enhancing girls’ access to quality education; encouraging supportive healthcare and social service policies; and integrating educational programs with maternal and child health rights.[[55]](#footnote-55)

**Suggested questions:**

* Please indicate whether the State envisages to review its legislation in order to prohibit corporal punishment against children.
* Please provide information on the cases of allegations of corporal punishment and violence against children in schools and on investigations into such acts and the sanctions of those responsible for such acts.
* Please provide information on the steps taken by the State party to eradicate the practice of early and forced marriages and to enforce the respect of the age of 18 as the minimum legal age of marriage.
  1. Participation in public affairs and electoral rights (art. 25)

The right to participate in public affairs and electoral rights is respected and there are legal provisions that support these rights. Electoral Reforms were undertaken after every election year. In the 2012, the Electoral Commission (EC) introduced the biometric voting system in the general elections. The EC by law is the independent body to investigate irregularities in elections; however any political party or individual reserves the right to go to the Supreme Court for redress. For example, the 2012 election petition in the Supreme Court by the opposition National Patriotic Party.

On the 28th of December 2012, the flag bearer of the New Patriotic Party (NPP) and his running mate, Dr Mahamadu Bawumia, and the National Chairman of the NPP, Mr. Jake Obetsebi-Lamptey (Petitioners), filed a petition under Article 64 of the 1992 Constitution; Section 5 of the Presidential Election Act, 1992 (PNDCL 285) and Rule 68 and 68 A of the Supreme Court (Amendment) Rules 2012, CI 74, challenging the election of President John Dramani Mahama. The petitioners led by Lawyer Philip Addison, requested that 3,931,339 of votes be annulled because there were violations and malpractices at 10,119 polling stations in the country. On the other hand, President Mahama represented by lawyer Tony Lithur insists that they won the Presidential elections and that it was free and transparent; no violations, irregularities or malpractices. It was either Nana Akufo-Addo could be declared the winner of the polls or the court could order for a re-run of the election at affected polling stations or state that even if those 'invalid' votes (if any) are to be annulled they are not enough to affect the outcome of the presidential poll, hence affirm the EC's declaration of President Mahama as the winner of the December 2012 Presidential election[[56]](#footnote-56). But at the end of the verdict, the Supreme Court of Ghana dismissed the petition making President John Dramani Mahama the winner[[57]](#footnote-57). A new Electoral Commissioner has been appointed by the President in May, 2015.

All persons in Ghana with Universal Adult Suffrage, which is age 18years, have the right to exercise their franchise. However, challenges persist in terms of making the process of voting accessible for persons with certain disabilities. By law, there are several legislations that cater for the rights of persons with disability but in practice they are highly disadvantaged especially in this.

**Suggested questions:**

* Please provide information on the measures to guarantee the independence of the Electoral Commission
* Please provide information on the measures taken to guarantee in practice the right to vote for people with disabilities

1. ANNEX: Contact details of joining NGO

|  |  |  |  |
| --- | --- | --- | --- |
|  | **CSO** | **REPRESENTATIVE** | **EMAIL** |
| 1 | Ghana News Agency | Elsie Appiah-Osei | [nanaafriyieg2@ymail.com](mailto:nanaafriyieg2@ymail.com) |
| 2 | Human Rights Advocacy Centre | George Owoo | [george@hracghana.org](mailto:george@hracghana.org) |
| 3 | Human Rights Advocacy Centre | Wendy Abbey | [wendy@hracghana.org](mailto:wendy@hracghana.org) |
| 4 | POS Foundation | Jonathan Osei Owusu | [posjonathan@gmail.com](mailto:posjonathan@gmail.com) |
| 5 | Gender Studies and Human Rights Documentation Centre | Patricia Ida Annan | p.annan@gendercentreghana.org  [info@gendercentreghana.org](mailto:info@gendercentreghana.org) |
| 6 | Amnesty International | Frank Doyi | [frank@amnestyghana.org](mailto:frank@amnestyghana.org) |
| 7 | Abantu for Development | Ellen Dzah | ellbabs@yahoo.com abanturowa@yahoo.com |
| 8 | Institute of Democratic Governance | Samuel Kwakye | [skwakye@ideg.org](mailto:skwakye@ideg.org) |
| 9 | Basic Needs- Ghana | Anaba Sunday | sunday.anaba@basicneeds.com  peter.yaro@basicneeds.org  [info@basicneedsgh.org](mailto:info@basicneedsgh.org) |
| 10 | Legal Resources Centre | Daphne Lariba Nabila | [dnabila@lrcghana.org](mailto:dnabila@lrcghana.org) |
| 11 | Centre for Democratic Development | Felix Boakye | boakye\_felix@hotmail.com |
| 12 | NETRIGHT | Ruth Aba Grant | [netright@gmail.com](mailto:netright@gmail.com)  [info@netrightghana.org](mailto:info@netrightghana.org) |
| 13 | Mind Freedom Ghana | Dan Taylor | [mindfreedomghana@yahoo.co.uk](mailto:mindfreedomghana@yahoo.co.uk) |
| 14 | Mind Freedom Ghana | Andrews Dowona | [mindfreedomghana@yahoo.co.uk](mailto:mindfreedomghana@yahoo.co.uk) |
| 15 | Ark Foundation | Sarah Akornor | [sallyodoc@yahoo.com](mailto:sallyodoc@yahoo.com)  [thearkgh@yahoo.com](mailto:thearkgh@yahoo.com) |

1. 1992 Constitution, Ch. V, art. 17. [↑](#footnote-ref-1)
2. 1992 Constitution, Ch. V, art. 29 (4). [↑](#footnote-ref-2)
3. 1992 Constitution, Ch. VI, art. 35 (5). [↑](#footnote-ref-3)
4. See Human Rights Council Working Group on the Universal Periodic Review, Compilation Prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Ghana, 4 April 2008, A/HRC/WG.6/2/GHA/2, paras. 11-15. In the past, the CEDAW committee has commented that “women’s ability in practice to [access justice] and to bring cases of discrimination before the courts is limited by factors such as limited information of their rights, lack of assistance in pursuing these rights, and legal costs.” Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Ghana, 25 August 2006, CEDAW/C/GHA/CO/5, para. 15. It has also been reported that access to justice is difficult to obtain for cases of sexual and gender-based violence, which are often protracted and difficult to prosecute. 2008 UPR Summary, para. 21 [↑](#footnote-ref-4)
5. https//www.ghananewsagency.org/social/court-grants-kkd-bail-84601 [↑](#footnote-ref-5)
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7. Idem. [↑](#footnote-ref-7)
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16. Section 274, *Criminal Offenses Act,* 1960. [↑](#footnote-ref-16)
17. HRAC, “Female Sex Workers Study” Accra and Cape Coast, Ghana, September 24, 2010. [↑](#footnote-ref-17)
18. USAID – Ghana, “HIV/AIDS Health Profile”. [↑](#footnote-ref-18)
19. Ghana Statistical Service, Ghana Health Service, “Demographic and Health Survey”, 2008, pg. 247. [↑](#footnote-ref-19)
20. Maj-Britt, Lithur N.O. Futures Group/USAID research on MARPS 2010 Interview with Mr. Ohene-Adjei of the Ghana AIDS Commission. [↑](#footnote-ref-20)
21. Maj-Britt, Lithur N.O. Futures Group, Health Policy Initiative, Task Order 1. “Assessment: Legal and Regulatory Framework Affecting Treatment of and Services for Most At Risk Populations in Ghana.” September 2010. [↑](#footnote-ref-21)
22. Amnesty International, Ghana. [↑](#footnote-ref-22)
23. United Nations General Assembly Universal Periodic Review, Report of the Working Group on the Universal Periodic Review

    \*Ghana, A/HRC/22/6 , 25 October 2012, Human Rights Council, Fourteenth session. [↑](#footnote-ref-23)
24. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/118/18/PDF/G1411818.pdf?OpenElement> [↑](#footnote-ref-24)
25. Concluding Observations of the UN Committee Against Torture on Ghana, 15 June2011, CAT/C/GHA/C0/1, para. 9 [↑](#footnote-ref-25)
26. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez - Addendum - Mission to Ghana, A/HRC/25/60/Add.1, 5 March 2014, paras 12-13. [↑](#footnote-ref-26)
27. Ibid, para 35. [↑](#footnote-ref-27)
28. Concluding Observations of the UN Committee Against Torture on Ghana, 15 June 2011, CAT/C/GHA/1, paras. 66–75. [↑](#footnote-ref-28)
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30. http://www.myjoyonline.com/news/2015/July-23rd/police-officer-defiles-12-year-old-girl-impregnates-her.php [↑](#footnote-ref-30)
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42. http://www.modernghana.com/news/398087/1/govt-urged-to-expand-legal-aid-scheme.html [↑](#footnote-ref-42)
43. <http://graphic.com.gh/audios/39139-the-leaked-osafo-maafo-tape-audio.html> [↑](#footnote-ref-43)
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57. <http://www.africanelections.org/ghana/news_detail.php?nws=7237&t=Supreme%20Court%20Delivers%20Final%20Verdict%20On%20Election%20Petition>

    [↑](#footnote-ref-57)