

# **PROTECTING THE RIGHTS OF CHILDREN IN GHANA: THE LEGAL FRAMEWORK AND ANCILLARY MATTERS**

**BY**

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## **INTRODUCTION**

Ghana has had a chequered political history since it gained independence as the first British colony in Africa to do so on the 6th March 1957. Periods of constitutional rule have been interspersed with military governments. The Third Republican Constitution came into force on the 24th September 1979, but was suspended, its lifespan was very short because Parliament was dissolved and political parties proscribed in 1981. This occurred when a military coup took place on the 31st December 1981, it heralded the administration of the Provisional National Defence Council, which I was in place until January 7th 1993, when the Fourth Republican Constitution came into force. For more than 14 years since then, Ghana has had a constitutional democracy where fundamental human rights are entrenched in Chapter 5 of the Constitution and the rights of the vulnerable are protected. The commencement of the Constitution presents a good time frame for this paper which will focus on the protection of the rights of children in Ghana, associated legal framework and ancillary matters.

As the supreme law, the Constitution provides for general fundamental freedoms in article 21. Apart from that, other relevant articles are article 15 on the inviolable dignity of a person, article 16 on the prohibition of slavery, servitude and false labour, article 17 on non-discrimination and article 19 on fair trial. Others are article 26 on cultural rights and practices, article 28 on children's rights and article 29 on the rights of the disabled. The articles in chapter 6 on the non-justiciable Directive Principles of State Policy also provide

social objectives for the Government. These can be found in article 37 (2) (b) that details the requirement for protectionist legislation to protect and promote the rights of the disabled and children amongst others.

The constitutional provisions on human rights are based on the common law and various international conventions which the country has ratified. The principal ones are the UN Convention on the Rights of the Child, which Ghana was the first country to ratify in February 1990. Others are the African Charter on the Rights and Welfare of the Child together with the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing rules) and the ILO Conventions 138 and 182. Ghana is also “state party” to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination against women (CEDAW), and the African Charter on Human and People’s Rights (the African Charter). These Conventions though not referred to specifically in the domestic law, have greatly influenced the legal position on children’s rights.

The main thrust of legislative reform concerning children since the Constitution came into force is the Children Act, 1998 (Act 560). In furtherance of its statutory obligation, the Ghana National Commission on Children established a Child Law Reform Advisory Committee in 1995 to review, revise and update the laws on child rights, justice and the welfare of children. The exercise culminated in the enactment of various laws which will be discussed in this paper. This paper focuses on the principle of the best interest of the child, and deals with the following: Children have a right to protection from abuse, neglect and sexual contact with adults; children should be protected from the worst forms of child labour; street children require protection because of their special vulnerability; the health needs of children also require protection, children should also be protected from customary practices which degrade and humiliate them and children in conflict with the law are in difficult

circumstances and require special assistance, and protection from stigma and discrimination is also in a child's best interest. This paper will consider these requirements for protectionist legislation and examine the legal framework in this context.

## **PROTECTION FROM ABUSE, NEGLECT AND MALTREATMENT**

Generally, children are protected by law against all forms of abuse and neglect. Section 71, 91 and 92 of the Criminal Offences Act, 1960 (Act 29) as amended in 1998 now referred to as the Criminal Offences Act, 1960 (Act 29) criminalised the abandonment or exposure of a child to danger, abduction of a child and a range of sexual offences that could render a child vulnerable to HIV infection. The 1998 amendment strengthened the law to include procuration, causing or encouraging the seduction or prostitution of a child under sixteen years and allowing persons under sixteen to be in brothels.

Child abuse takes many forms including sexual abuse, the age of sexual responsibility was raised from fourteen to sixteen years in the 1998 amendment to the Criminal Code, (Act 29) meaning the age for statutory rape referred to as defilement is now sixteen years. The penalties for rape were increased in the 1998 amendment, the penalty is now a minimum of five years in imprisonment and a maximum of twenty-five years without the option of a fine. The penalty for defilement is now a minimum of seven years and a maximum of twenty-five years without an option of a fine. Sexual offences were made gender neutral. A new offence of indecent assault was also introduced. Indecent assault is an assault of a sexual nature which does not amount to rape, defilement or unnatural carnal knowledge.

Recent studies by UNICEF suggest that sexual abuse of children goes on in some public schools and there is a need for sexual protection in the school setting. Due to the culture of

silence with respect to matters of reproductive health and children it is not easy to assess the cases of sexual abuse in schools. Apart from abuse of a sexual nature, there is physical violence, abandonment, abduction and child stealing as well as exploitation of children through child labour, which constitutes abuse. Exposure to drugs, alcohol and cigarettes and other risky behaviour amounts to child abuse and is rampant especially in the urban areas. The Criminal Offences Act and the Children's Act provide the legal framework to check child abuse and the Domestic Violence and Victim Support Units of the Police provide focal points for complaints and counseling.

The stereotyped attitude of society towards the chastisement of children creates the belief that beating is acceptable and has always been accepted. In a national study on violence against women and children in Ghana, 61 percent of the respondents think child beating is acceptable, 32 percent think it is sometimes acceptable, and 8 percent think it is not acceptable<sup>1</sup>. In general, there is a lack of a socially acceptable and unambiguous distinction between physical punishment for corrective purposes and child abuse. . Offending children are normally disciplined by their fathers. Finally, The neglectful treatment of stepchildren could be construed as a form of child abuse.

### **Child Commercial sex workers**

Children on the streets aged between 10-17 years often engage in commercial sexual activity and the living conditions of street children facilitate sexual exploitation. Studies have shown that child prostitution is probably on the increase but because identity is kept secret and activities are carried out in secret, data are scarce on the subject. Thus there are no reliable estimates of the number of children involved<sup>2</sup>. Prostitution is seen as lucrative work to top up income from other street activities as no investment is required. Children engage in commercial sex for economic survival. The concept of exploitative sex is not as well

appreciated and applied as the sexual offence of defilement because sexual abuse is associated with violence and the multiplicity of partners. There is lack of institutional support and child commercial sex workers are often the victims of trafficking. The fundamental causes of child commercial sexual activity are economic deprivation and irresponsible parenting. Streetism is an underlying cause which leads to a lack of shelter for some children of poor parents and facilitates the phenomenon. The lack of employable skills for children and the lack of parental control, as well as peer pressure exacerbate the problem.

### **Domestic violence**

Violence within the home setting takes many forms. The Criminal Offences Act may be used to prosecute situations such as assault, incest, customary servitude and female genital mutilation. Prosecution of these offences results in arrests and jail sentences which do not promote the family as a unit of society as entrenched in article 28 (1) (e) of the Constitution and is a safeguard in the promotion of child rights. Similarly, custodial sentences after protracted court processes often do not provide the victims with the redress they need. In quite a large number of cases what is required is a prompt, cost effective and less traumatic means of redress.

The Domestic Violence Act, 2007 (Act 732) provides for protection from physical abuse, sexual abuse, economic abuse and emotional, verbal or psychological abuse. Harassment inducing sexual harassment and intimidation by inducing fear in another person is also covered. The behaviour or conduct that in any way harms or may harm another person, endangers the health or wellbeing of another persons or undermines another person's privacy, integrity or security or detracts or is likely to detract from another person's dignity and worth as a human being is proscribed by the Act. The reportage of domestic violence offences to the Domestic Violence and Victim Support Unit of the Ghana Police between 2004 and 2006 reveals a steady increase most likely due to increased public awareness of

the protection available (Appendix 1).

Under the Domestic Violence Act, a child may be assisted to file a complaint by a next friend and complaints may be filed by a social worker, probation officer or health care provider. The personal representative of a deceased person may also file a complaint. The police play a vital role in the enforcement of domestic violence legislation since the police station is likely to be the first place that a victim of violence will go. The co-operation of the police is stated in mandatory terms in section 7. Section 8-10 deals with the receipt of a complaint and arrest with and without warrant by the police. Section 11-22 of the Act provides for protection orders. A court of original jurisdiction is to have jurisdiction to hear and determine matters of domestic violence and may issue a protection order.

The application may be filed where the applicant or respondent resides or carries on business or may be filed where the domestic violence took place. It is to be ex-parte unless the court otherwise decides. A social and a psychological enquiry report may be prepared to assist the Court. The Act provides a system of interim orders. The duration of the interim order is for a period not exceeding three months. A protection order cannot exceed one year at the first instance but may be extended, modified or rescinded as the Court determines.

The conditions of the order are spelt out in section 17. These include counseling, relocation of the respondent, relinquishment of property and others. The social and psychological enquiry report may also guide the Court on the nature of the order as in the Children's Act, 1998 (Act 560). Issues related to child custody within the context of domestic violence and the rights of the child are to be referred to the Family Tribunal. Protection orders may be extended to other persons under certain circumstances. An occupation order may be issued by the Court. This is an order to vacate the matrimonial home after consideration of the social and psychological enquiry report. Protection orders may be discharged by a Court on

an application on notice by the applicant or respondent and contravention of a protection order is a criminal offence.

## **Child labour**

Child labour in Ghana presents great challenges, for although the Children's Act provides ages for admission to employment, proscribes labour which exploits the child by deprivation of health, education or development, working children are a common phenomenon. The Ghana Statistical Service in 2003<sup>3</sup> revealed that 39 percent of children between 5-17 was engaged in economic activity. Child labour in the urban areas includes street hawking, portering of heavy loads, shoe shining, supporting people with disability, cart pushing and working in eating places. Rural child labour includes shepherding of cattle and sheep, fishing, crop farming and stone quarrying. Other forms of child labour exist which are hidden from the public eye such as child domestic servitude, child prostitution, illegal mining, drug peddling and pick-pocketing.

## **Child domestic workers**

The practice of children working in domestic settings as maids, child minders and general house helps takes root from customary servitude. It is one of the most common forms of child employment and affects girls more than boys. What started as a form of customary fosterage has now become commercialised. It has long been considered as part of a socialisation process and is accepted as training for young girls who will ultimately manage their own homes. However, child domestic work has ceased to be a family affair. Children work in households which are not their own. One percent of children canvassed in the Child Labour Survey were child domestic workers<sup>4</sup>.

The issue of child domestic workers is very complex as it goes on behind closed doors. Research commissioned by ILO/IPEC reveals that the two regions with the greatest

concentration of child domestic workers are Ashanti and Greater-Accra Regions with duration of the employment of children ranging between two and ten years. Only 37 percent of those studied attended school, mainly at the primary level. The push factors are parental neglect due to large family size, the need for self preservation, abduction and sale as well as occupation by birth, where children are born into domestic servitude. Recruitment is diverse but mostly engineered by parents, who constitute 51 of the total and intermediaries constituting 18 percent. The children do not have contracts and there are no working hours. Payment for service is in kind. The practice itself is not institutionalized. It is kept hidden and confined within the homes where the labour is needed<sup>5</sup>.

It is clear that as society develops and more and more women leave the home to work, the demand for child domestic workers will increase. There is therefore an urgent need for protective safety measures for the children who are at risk in the home despite the legal framework.

### **“Kayayei” — Girl child porters**

In Ghana, women are predominantly active in the informal sector and petty trading is primarily the occupational province of women. The system of head portering is a petty form of trading and has been a part of the informal trading business for generations. The demand for female porters is determined by congestion in markets and petty trading activities that requires the rapid movement of wares from one place to another. Portering is done by both sexes of all ages, however in recent years there has been a large influx of girls, mostly from the Northern Regions, serving as porters. They are known as ‘kayayei’ and do this work as a way of raising capital to start a more profitable venture or to acquire the necessary items to enter marriage<sup>6</sup>



Kayayei are girls usually under the age of 18 who are not indigenous to the major cities and regions where they work. The underlying causes why the girls migrate to urban areas to work include poverty, refusal of parents to support them through school, abusive socio-cultural practices and death of parents. The portering business is determined by the need to acquire capital, not available in the rural areas. The girls are often at the mercy of patrons, older boys who rape them and protect them from other rapists at night for a small fee. They are most vulnerable to unexpected pregnancies, sexually transmitted diseases and HIV/AIDS.

### **Street children**

In recent times, the public has shown much concern about the increasing involvement of children in various street income-earning generating activities. Urbanisation and other socio-economic factors are creating the phenomenon of street children. There are two types of children on the street: those who are on the street trading during the day but go home to sleep at night and those who work on the street and at night sleep in front of shops, markets and other such open places. The phenomenon of street children thus refers to the latter category of children who live on the streets and have made it their permanent sleeping place<sup>7</sup>.

In the recent child labour survey conducted by the Ghana Statistical Service, of the 17,034 children interviewed, 7,120 (41.8 percent) were aged 5-9 years, while 6,737 (39.5 percent) were between the ages 10-14 and 3,177 (18 percent) between 15-17 years. Thus about four-fifths (81.3 percent) of the children were aged 5-14 years. Greater Accra has the highest proportion of street children followed by the Ashanti and Brong-Ahafo Regions due to high demand and poverty. Results of the child labour study revealed that 71 percent of children was illiterate. They gave reasons for not going to school or dropping out as inability

to pay school fees, loss of interest in school work and the need to work for financial support for themselves and their families. About 78 percent of the children wanted Government to provide them with free education. The underlying causes for the growing numbers of street children include rural/urban drift, the poverty of parents, the survival of the children and the harsh economic conditions prevailing in the deprived areas they come from.

## **Child trafficking**

Trafficking occurs internally and across borders. The elements of child trafficking are the conclusion of a transaction, the handing over of a person to a third party with or without a fee for the purpose of exploitation. The intervention of an intermediary is a common factor and the motive is to exploit. The majority of persons trafficked within the country are children, particularly girls between the ages of 7-16 years who come from northern parts of the country. Boys aged 10-17 years are lured to the mining and coastal areas to engage in illegal mining and to become fisher children. Methods of acquiring children include the following: abduction, outright sale, bonded placement, deceit of parents or guardians and coercion. Table 1 shows the type of work engaged in by trafficked children.

Table 1 Gender and type of work of trafficked children

Gender	Type of work
Girls	Commercial sex work, domestic work, selling
Boys	Mining, fishing, agricultural work, vehicle mates, truck pushing

Source: DANIDA, Report on Child Trafficking in Ghana, 2002:32

It is estimated that 40,000 children are trafficked internally<sup>8</sup>. Underlying causes that contribute to child trafficking include the tradition of migration for socio-cultural and economic reasons and growing urbanisation leading to the break-down of traditional family systems. Other factors are the low education level of parents, insufficient educational

opportunities, which create frustration; family instability and poverty together with the ever-increasing demand for cheap, exploitative labour, ignorance and the weak legal and regulatory framework.

The child rights violations of child trafficking include trauma, inability to communicate, long working hours, health hazards, cruel and inhuman treatment. Others are the lack of education, sexual exploitation and the risk of pregnancy. The Human Trafficking Act 2005 (Act 694) seeks to prevent, reduce and punish human trafficking as well as provide for rehabilitation and re-integration of victims. The enactment of the law was necessary because although the Criminal Code creates offences associated with the subject, these relate to the perpetrator rather than the victim whose rights have been violated. The Act provides for the rehabilitation and re-integration of victims of the phenomenon. It is an offence to convey, send to or receive any person for purposes of trafficking. This extends to intermediaries and the penalty is a minimum of five years imprisonment without the option of a fine. Ancillary offences include the supply and conveyance of a trafficked person and there is a duty to provide information on trafficking to the police. The Act also established a Human Trafficking Fund and the inter-ministerial cooperation required to co-ordinate matters concerned with human trafficking is addressed by the Human Trafficking Management Fund.

## **Apprenticeship**

Prior to the Children's Act 1998 (Act 560) apprenticeship in the informal sector was unprotected by law. In the Children's Act, the responsibilities of the craftsman and the duties of the apprentice are stated. The release of the apprentice after training, a common aspect of abuse is clearly stated. The Act provides the legal framework on the elimination of child labour which sets out objective, minimum ages for admission to employment and sanctions. The Act identifies the implementing agencies and the Chief Rights Regulations 2003

(L.I.1705) supplement the Act and provide the regulatory framework. The legislation is based on the ILO Convention with emphasis on the authority of the state to protect children.

## **CHILDREN AND HEALTH**

### **Children and mental health**

In this country mental illness is manifested in emotional problems such as anxiety, fear, bed-wetting and school phobia in children which are diagnosed as neurosis. Conduct disorders, which are characterised by bullying, vandalism, aggression and stealing are more common with boys than girls. Children with psychiatric problems sometimes contribute to divorce and separation between spouses due to the stress put on the marriage by the problem.

Information available on children with mental health problems is very limited and for this analysis has been restricted to the Accra Psychiatric Hospital. There are three psychiatric hospitals in the country, Pantang, Ankafu and the Accra Psychiatric Hospital, all in the southern sector of the country. On the other hand, there are not many facilities for children with mental illness in the country, particularly for special education. The special schools manage the mentally challenged children until adolescence after which there is no special provision and they either remain in the same institution or are left to their own devices. Seizure disorders are the most frequently seen problems in children at the Accra Psychiatric Hospital.

New mental health legislation has been prepared to replace the 1972 Mental Health Act (NRCD 30) which focused on institutional care. The new law will take several accounts of children with mental illness and shift the focus towards community mental health care and

include traditional and spiritual healers who were omitted from the 1972 legislation. It is felt that this approach will provide better protection for the human rights of mental health patients.

### **Health and vulnerability**

The National Health Insurance Act, 2003 (Act 650) introduced a mechanism to enable residents in the country obtain at least basic health care services without paying money at the point of delivery of the service. Formerly, cost recovery in the health sector was based on 'cash and carry' which was introduced in 1985. Due to poverty levels, this system created genuine pathetic cases of hardship. In the new social health insurance scheme, residents in geographic areas are required to seek membership of a scheme in their district of residence. This community based district mutual health insurance scheme concept does not prevent the establishment of private mutual health insurance schemes or commercial health insurance schemes. Health insurance is a humane system which will assure basic health care if well implemented. At the end of September, 2006 it was reported that 34 percent of the total population had enrolled as members of the District Mutual Health Schemes.

. The Convention on the Rights of the Child calls for non-discrimination against children. The principle on non-discrimination in the Constitution applies to all persons. Article 17 states that 'all persons are equal before the law. Gender, race, colour, ethnic origin, religion or creed, social or economic status are outlined as grounds for non-discrimination. Article 28 (4) states that 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. This principle of non-discrimination is further protected in Section 3 of the Children's Act. It provides 'no person shall discriminate against a child on grounds of gender, race,

age, religion, disability, health status, custom, ethnic origin, rural or urban background, birth or other status, socio-economic status or because the child is a refugee. Where any of the these rights are suspected to have been contravened, the child or the guardian, of the child whose rights have been violated may file a complaint with the Commission on Human Rights and Administrative Justice, the courts, the Department of Social Welfare and NGOs.

### **Children and disability**

The rights of the disabled are spelt out in article 29 of the Constitution. The Ministry responsible for Social Welfare estimates that about 10 percent of the population was disabled in 2000. The National Disability Policy of 2000 was developed in accordance with article 29 of the Constitution which grants persons with disability specific rights to family life, housing and employment. The Persons with Disability Act 2006 (Act 715) has provided comprehensively for people with disability. The Act defines a person with disability as someone affected by a physical or mental impairment which limits one or more of the major life activities of that person. The Act details all aspects of life in which the lives of the disabled should be protected, these are family, social services and employment. The Act introduces tax incentives for businesses that employ disabled, persons, provides incentives for manufacturers of technical aids and appliances as well as for educational, healthcare, cultural and sporting activities.

## **CHILDREN AND CUSTOMARY PRACTICES**

### **Female genital mutilation**

Female Genital Mutilation (FGM) is a traditional practice carried out in the northern part of the country by particular ethnic groups. It involves excision of parts of the female genitalia in various forms. The practice is not supported by any religious ideology, has no scientific value and is steeped in myths, beliefs and values of the people who practice it. The

procedure is unhygienic and cruel. The procedure causes physiological problems at childbirth as well as psychological damage for some victims. A 1999 study by the Population Impact Project at the University of Ghana estimated that 69.1 percent of women in the Wa district have had their genitals cut.

In an effort to eradicate this inhuman practice, the Criminal Offences Act 1960 (Act 29) was amended in 1994 to criminalise the practice. There have been very few prosecutions though, because traditions die hard. Parliament has recently passed an amendment bill which is awaiting Presidential assent to punish not only the circumcisers but also those in the web of responsibility for the practice, such as people who coerce others to undergo the practice, actively participate in the practice and send to or receive people for the practice to be carried out. The penalty has been increased from three years to not less than five years and not more than ten years and ropes in cross border offenders. In order to capture the practice the name has been changed from female circumcision to female genital “cutting”.

### **Child marriage and puberty rights**

Puberty marks the transition from childhood to adult for boys and girls. It takes the form of a rite of passage ceremony. Though heterosexual, the human rights violations affect girls more since they may lead to early betrothals, teenage pregnancy with health problems and marriage. The Children’s Act prohibits forced betrothals, dowry transactions and marriage and stipulates that the minimum age for marriage of whatever type is eighteen years.

### **Ritual enslavement — “Trokosi”**

Trokosi is a customary practice prevalent in the south-eastern coastal area of the country. It is a custom where virgins are given to shrines to serve fetish priests and priestesses in reparation for crimes committed by a family member. The practice violates the human rights

of the person since Trokosi girls do not have formal education, are stripped of their freedom, condemned to life-long poverty and work virtually as slaves. The Criminal Offences Act 1960 (Act 29) as amended in 1998 creates the offence of ritual enslavement and criminalises any form of ritual or customary servitude or any form of forced labour relating to a customary ritual.

The Children's Act criminalises cruel, inhuman and degrading treatment and complaints can be made to the Commission on Human Rights and Administrative Justice, the constitutional body set up by statute in the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456). The Commission on Human Rights and Administrative Justice and NGO's have been involved in awareness campaigns and some trokosi victims have been liberated and assisted to acquire training.

### **CHILDREN IN CONFLICT WITH THE LAW**

The Criminal Offences Act, 1960 (Act 29) by amendment in 1998 increased the age of criminal and sexual responsibility. Formerly there was a rebuttable presumption which provided that nothing done by a child between the age of 7 and 12 years was a crime unless a court or jury determined that a child could understand the nature and consequences of conduct. That has been scrapped and since 1998 the age of criminal responsibility is now twelve years.

The situation where children who are criminally responsible above twelve years are in conflict with the law can be attributed to irresponsibility and lack of supervision by parents of people in charge of children. Insecurity from broken homes is also a contributory factor. Research has shown that juveniles, children under eighteen years in conflict with the law, are mainly engaged in crimes such as theft which accounts for 95 percent of offences committed<sup>10</sup>. Recent findings from the Domestic Violence and Victim Support Unit however



reveal increasing incidents of child-on-child sexual offences. There has been a special treatment regime for juveniles since 1960 but the protection of juveniles was inadequate and did not meet international standards. It also did not reflect the principle of increasing responsibility with age. Juvenile Justice was therefore included as part of the child law review programme and there is a new Juvenile Justice Act, 2003 (Act 653).

The original juvenile justice provisions were in the 1960 Criminal and Other Offences (Procedure) Act, 1960 (Act 30). Although Act 30 provided that a juvenile or young offender was to be treated differently from an adult, it did not provide adequately for the rights of a juvenile. The major improvement in the new law is the punishment regime and the policy that institutionalisation should be a last resort. Juvenile justice regulations are yet to be made however and the UN Office on Drugs and Crime is considering an international model law on child victims of crime and child witnesses which the Republic of Ghana may wish to domesticate to strengthen the framework for the child who is a victim of a crime.

### **CHILDREN IN CHILDREN'S HOMES**

Prior to the Children's Act of 1998, there was no legislative framework for children's homes because historically there were only state run children's homes. Private children's homes have been increasing in number in response to societal development and the HIV/AIDS pandemic and some homes are discriminatory as they do not admit disabled children. Specific provision for their regulation is provided in the Children's Act and in the Child Rights Regulations 2002 (LI. 1705), however monitoring by district assemblies, part of the local government machinery, is not satisfactory.

### **CHILDREN AND EDUCATION**

Children have a right to education<sup>11</sup>. Ghana has had an Education Act, (Act 87) since 1961

but it has remained unchanged since it was passed despite the fact that education has undergone many changes. A new Education Bill has been prepared which seeks to incorporate the change in thinking in education and to give substance to Article 38 which enjoins the government to provide educational facilities at all levels throughout the country. Article 25 provides for educational rights and mentions amongst others that basic education shall be free, compulsory and available to all. The new Bill specifies what comprises the basic first cycle level which is two years kindergarten, six years of primary education and three years of junior secondary education. The second cycle of education consists of three years of senior secondary school. Technical, vocational, business and agricultural programmes also form part of a child's education.

Additional systems of education after the higher level are included in the new Bill and this may consist of one to four years of tertiary education. These additional systems are based on community colleges, non-formal education, functional literacy programmes and others. For those who fail to take advantage of the Free, Compulsory, Universal, Basic Education provided by the country there are sanctions. Local government structures are to provide the funds for needy students where necessary.

A regulatory framework for private institutions is included in the Bill and there is a grievance procedure which enables parents dissatisfied with the inferior standards of teaching or learning in a private institution to complain. Complaints can also be made about discrimination or apathy and the matter may be taken up with the Education Service Council or the National Council for Tertiary Education. It is hoped that when this novel law is passed, the country will be provided with a system of education which provides knowledge, skills and social value required to move the country forward in the best interest of the child.

## **OTHER CHILDREN'S RIGHTS**

### **Intestacy rights of children**

It is more than twenty years since the ground breaking Intestate Succession Act 1985 (PNDCL.III) was enacted. Although the law achieved its objective of ensuring the best interest of the widows and children, it has had shortcomings. Certain provisions have proved difficult to implement such as the fractional distribution of the estate. Provision was not made for polygamous marriages and PNDCL III is silent on the issue of joint acquisition of property and how this should affect the fraction of the estate that the surviving spouses are entitled to. Dependent parents are not provided for and the continuing educational needs of children older than eighteen years are not addressed. Due to these shortcomings in the existing law, approval has been sought from Cabinet to amend PNDCL.III to make the law more responsive to the needs of the people and a revised bill is being prepared.

### **Rights of refugee children**

The rights of the refugee child in this country are protected by the articles in the UN Convention related to the status of refugees in 1951, the Protocol related to the status of refugees 1967 and the Refugee Act 1992 (PNDCL 305D).

### **Right to care and protection of children**

A child in need of care and protection may be described as a vulnerable child who may be put at risk of infection, such as HIV. Section 18 of the Children's Act specifies conditions in which a child can be said to be in need of care and protection and these include an orphan or a child deserted by relatives, one who has been neglected or ill treated by the person who has the care and custody of the child. Others are where the child has a parent or guardian who does not exercise proper guardianship, where the child is destitute, is wandering and has no home or settled place of abode or visible means of subsistence. It

also covers a situation where the child frequents the company of a reputed thief or reputed prostitute. A child is also vulnerable where the child is residing in a house or the part of a house used by a prostitute for the purpose of prostitution or is otherwise living in circumstances calculated to cause, encourage or favour the seduction or prostitution of or affect the morality of the child. A child found acting in a manner from which it is reasonable to suspect that he or she is or has been, soliciting or importuning for immoral purposes is also in need of care and protection.

Section 19 (3) of the Children's Act gives the Department of Social Welfare the mandate to remove a child in need of care and protection as stated under section 18 (1)

(a-n) to a place of safety irrespective of the status of that child whether a Ghanaian or a refugee. A place of safety includes the various children's homes managed by the Department of Social Welfare or recognised private children's homes or to the home of a fit person in the locality or fosterage within the family. District Assemblies are to protect the welfare of children and promote the rights of children within their area of authority and shall ensure that within the district, governmental agencies liaise with each other in matters concerning children.

Parental duty and responsibility means that no parent shall deny a child its welfare whether the parents of the child are married or not at the time of the child's birth or the parents of the child continue to live together or not. Every child has the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents. Every parent has rights and responsibility whether imposed by law or otherwise towards his or her child which include the duty to protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression.

In addressing maintenance, the Children's Act requires parents or other legally liable

persons to supply the necessities of health, life, education and reasonable shelter for the child. The Family Tribunal may hear petitions for maintenance by the child's custodian, a probation officer, a social welfare officer, the child by a representative or a next-of-kin. Left without caregivers, orphaned children must rely on extended families, communities and social welfare institutions for guardianship. The Children's Act aims to assist children, including orphans in need of care and protection.

### **CHILDREN'S ACT AND MISCELLANEOUS MATTERS**

The Children's Act as stated earlier was the culmination of a child law review process, existing laws on maintenance, adoption, care and protection were improved and consolidated. Extra-judicial child panels were introduced to mediate in civil and minor criminal matters to exclude children from the legal system and avoid tagging. Formerly with respect to the maintenance of children, the responsibility of a parent was to provide reasonable education. This has been strengthened and the responsibility is clearly stated as the provision of basic education. The gap whereby arrears of maintenance could not be claimed has also been filled. Single parent adoption by a citizen is now permitted and expatriate Ghanaians who could not adopt children in Ghana may now do so.

The Act filled loopholes and for the first time provided for fosterage sometimes referred to as customary adoption by statute. Customary adoption is where children are voluntarily handed over by their natural parents to another person to raise without legal process, which is common-place and subject to child abuse. The Act spells out the responsibilities of a foster parent and the qualifications to foster. The Act provides for inter-country adoption for the first time. This is a system whereby a child is adopted by a person who is not a citizen of Ghana and the child is removed from the jurisdiction without the normal adoption procedures where the child cannot be placed in a foster or an adoptive family in Ghana or cannot be cared for in a suitable manner in this country. The regulatory framework for inter-

country adoption has not been prepared however, and the procedure whereby children can be taken out of the country under exceptional circumstances is liable to abuse.

## **CONCLUSION**

The Republic of Ghana has twice defended its position on the Convention on the Rights of the Child before the UNICEF Committee. The first was before the Children's Act 1998 (Act 560) was enacted. The second was in January 2005. The conclusion at the second defence was that the legal framework for child protectionist legislation is satisfactory although there are legislative gaps such as the making of Juvenile Justice Regulations and legislation on child victims and witnesses of crimes. The challenge is with the implementation of the laws. It has to be said that where customary practices are concerned, law will never be a panacea if it is not accompanied with public awareness and education. It is incumbent on everyone to be mindful of the rights of children because with partnership and co-operation the best interest of the child is likely to be assured.

## References

1. Coker Appiah and Cathy Casack 1999, Violence against Women and Children in Ghana P:78
2. Adomako Ampofo, Akosua, Government of Ghana: Report on Child Sexual Exploitation in Accra Study.
3. Ghana Child Labour Survey ILO/IPEC 2003 conducted by Ghana Statistical Service.
4. Ghana Child Labour Survey supra.
5. ILO/IPEC Research Report on Child Domestic Work, November 2006 (draft) prepared by Centre for Social Policy Studies, University of Ghana.
6. Bearing the weight: The Kayayo, Ghana's Working Child Argrawal 1997.
7. Ghana Child Labour Survey supra
8. Research by the African Centre for Human Development, Report on Child Trafficking in Ghana (2002)
9. UNICEF 2000 Situation Analysis of Women and Children in Ghana
10. UNICEF 2000 supra, 156
11. Article 28 (4) of the Constitution

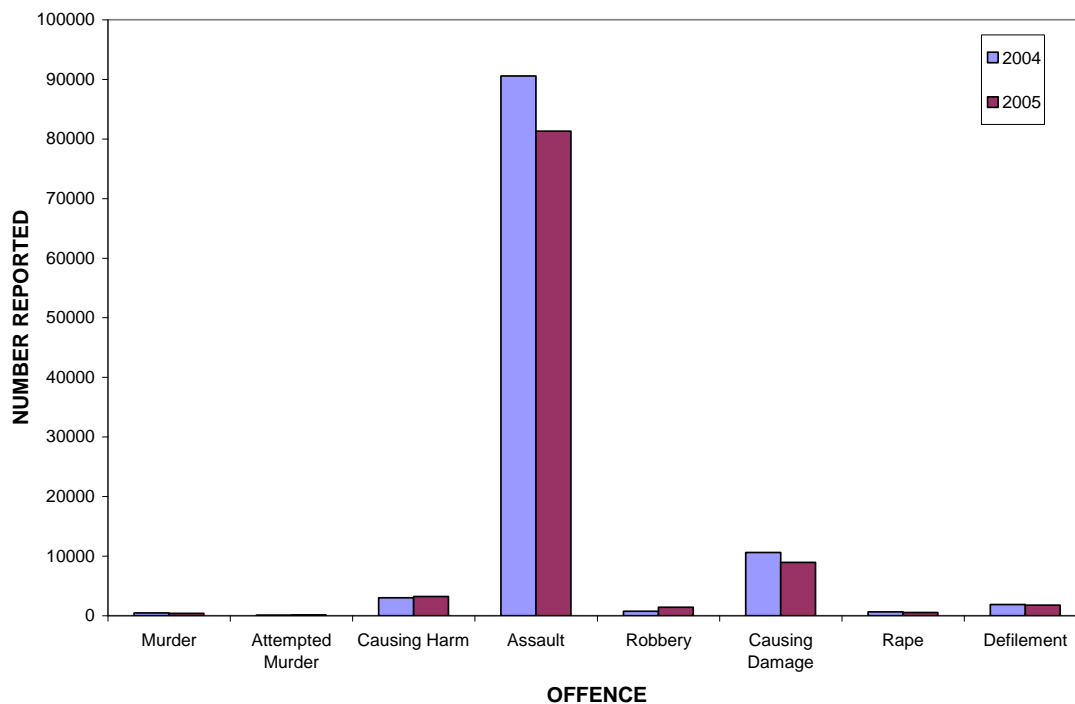
## APPENDIX

### STATISTICS ON VIOLENT CRIME 2004 - 2006

OFFENCE	YEAR		RELATIVE CHANGE
	2004	2005	
<b>Murder</b>	452	393	-59
<b>Attempted Murder</b>	69	90	21
<b>Causing Harm</b>	3,002	3,216	214
<b>Assault</b>	90,560	81,313	-9,247
<b>Robbery</b>	728	1,399	671
<b>Causing Damage</b>	10,601	8,928	-1,673
<b>Rape</b>	631	533	-98
<b>Defilement</b>	1,881	1,779	-102



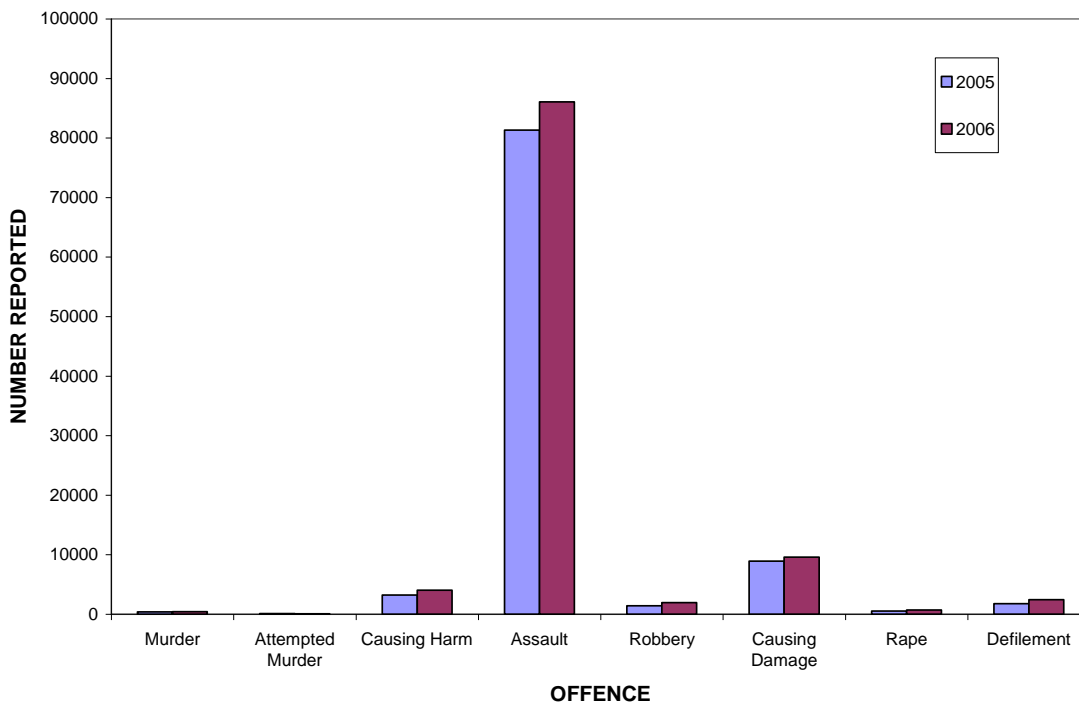
### STATISTICS ON VIOLENT CRIME



SOURCE: STATISTICS AND INFORMATION TECHNOLOGY UNIT, CID HQRS, ACCRA

OFFENCE	YEAR		RELATIVE CHANGE
	2005	2006	
<b>Murder</b>	393	412	19
<b>Attempted Murder</b>	90	58	-32
<b>Causing Harm</b>	3,216	4,021	805
<b>Assault</b>	81,313	86,075	4,762
<b>Robbery</b>	1,399	1,949	550
<b>Causing Damage</b>	8,928	9,598	670
<b>Rape</b>	533	724	191
<b>Defilement</b>	1,779	2,442	633

### STATISTICS ON VIOLENT CRIME



SOURCE: STATISTICS AND INFORMATION TECHNOLOGY UNIT, CID HQRS, ACCRA

OFFENCE	YEAR			RELATIVE CHANGE (2004-2006)
	2004	2005	2006	
<b>Murder</b>	452	393	412	-40
<b>Attempted Murder</b>	69	90	58	-11
<b>Causing Harm</b>	3,002	3,216	4,021	109
<b>Assault</b>	90,560	81,313	86,075	-4485
<b>Robbery</b>	728	1,399	1,949	1191
<b>Causing Damage</b>	10,601	8,928	9,598	-1003
<b>Rape</b>	631	533	724	93
<b>Defilement</b>	1,881	1,779	2,442	561

## Reported Domestic Violence offences by Year, Ghana. 2004 – 2006

OFFENCE	2004	2005	2006
ABANDONED CHILD		14	17
ACT TENDING TO DISTURB PUBLIC PEACE	0	2	14
ABDUCTION	190	187	320
ASSAULT BY IMPRISONMENT		2	0
ASSAULT (MOSTLY WIFE BATTERY)	2059	2430	3573
ATTEMPTED ABORTION	20	18	35
ATTEMPTED DEFILEMENT	0	5	4
ATTEMPTED MURDER			1
ATTEMPTED RAPE	15	24	52
ATTEMPTED TO COMMIT CRIME			3
BIGAMY	4	9	8
CARNAL KNOWLEDGE OF A FEMALE IDIOT			9
CAUSING DAMAGE	70	118	164
CAUSING HARM	42	41	78
CHILD ABUSE			5
CHILD STEALING	15	58	22
CHILD TRAFFICKING			12
COMPULSION MARRIAGE	0	9	7
CRIMINAL ABORTION	35	37	82
DEFILEMENT	734	713	1427
DEFORMATION OF CHARACTER			1
DEFRAUDING OF FALSE PRETENCE			1
DEPRIVATION OF ENTITLED PERSON OF PROPERTY			16
EXPLOITATIVE OF CHILD LABOUR			7
EXPOSING A CHILD TO HARM/DANGER			307
FAILING TO PROVIDE THE NECESSARIES OF HEALTH & LIFE			3374
EXPOSING CHILD TO HARM	63	135	0
FRAUD			3
HARRASMENT			1
HINDERING OF INQUEST			1
FAILING TO SUPPLY NECESSARIES OF LIFE	67	3171	0
INCEST	15	11	11
INDECENT ASSAULT	74	106	138
INSULTING BEHAVIOUR			9
INTERMEDDLING WITH PROPERTY OF DECEASED	0	8	0
KIDNAPPING			6
NEGLECT OF PARENTAL DUTY/RESPONSIBILITY			1607
NON CHILD MAINTENANCE	7421	4266	19
OFFENSIVE CONDUCT	323	671	452
RAPE	181	206	345
SODOMY	0	1	4
STEALING	156	301	471
THREAT OF HARM	0	94	126
THREATENING	435	560	691
UNLAWFUL EJECTION	0	11	25
UNLAWFUL ENTRY	0	2	9

UNLAWFUL REMOVAL	0	2	23
UNNATURAL CARNAL KNOWLEDGE	15	12	16
OTHERS			93
TOTAL	11934	13224	13589