

Legal Framework for the Protection of Children's Rights in Ghana

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Abstract

Children are a category of vulnerable persons in societies who need adequate protection. Relatives and guardians provide physical protection to children under them. Collectively as a nation however, it is expected that we provide for our children. This paper discusses the legal frameworks that provide protection for the rights of children in Ghana. The paper contends that there are enough legal instruments in the country that provide protection for the rights of children. The major challenge is the failure to enforce the provisions in these legal instruments. The paper identifies the 1992 Constitution and the Children's Act, 1998 as major sources of protection for rights of children along the line of the United Nations Convention on the Rights of the Child (CRC) which Ghana was the first to ratify. The paper does this by identifying some areas of children rights and providing how these documents and many other relevant Acts provide for their protection. There is indeed the need to enforce the elaborate legal provisions for the protection of the rights of children.

Introduction

Ghana as a country has experienced distorted political history since it gained independence on the 6th March 1957. There have been recorded periods of constitutional rule often characterized by provisions for the protection and promotion of human rights of the citizens. Military regimes also emerged in the country. These periods of military regimes had constitutions suspended and as a result, legal provisions for the enjoyment of human rights were absent. However, from 1993 to date, the country has enjoyed a relatively stable constitutional democracy where fundamental human rights are entrenched in Chapter Five of the 1992 Republican Constitution. This relatively stable period of constitutional rule presents a good time frame by which we attempt to assess the protection of children rights in the country.

The write-up highlights how the Constitution of the Republic of Ghana, 1992 and the Children's Act of Ghana, 1998 serve as legal bedrocks for the protection of children's rights in the country. This is followed by some specific children's rights conditions and how these two documents together with others seek to protect them.

The Constitution of the Republic of Ghana, 1992 and Children's Rights

Ghana has put adequate provisions in her supreme law; the Constitution of the Republic of Ghana, 1992, to protect, and promote the human rights of its citizens and this is in accordance with the United Nations Universal Declaration of Human Rights (UDHR, 1948). The Preamble of the document (UDHR) states that: *'whereas Member States (including Ghana) have pledge themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, ... the General Assembly proclaims the document (UDHR) as a common standard of achievement for all peoples and all nations to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and progressive measure, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member State themselves and among the peoples of territories under their jurisdiction'*.

As the supreme law of Ghana, the Constitution of the Republic of Ghana, 1992 provides for the rights and freedoms of all persons in Articles 12 to 33 which are under the Chapter 5 of the document. Specific and relevant article for the purpose of this paper is **Article 28** which talks about **Children's Rights** (bold is authors'). In addition to this provision, the Constitution, under its Chapter Six – The Directive Principles of State Policy, also provides for social, economic, educational, political and cultural objectives for the Government. Thus, article 37(2b) provides the detail requirement for protectionist legislation to protect and promote the rights of the disabled and children amongst others.

Specifically on children's rights, the 1992 Constitution provides that Parliament shall enact such laws as are necessary to ensure that -

- (a) every child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;
- (b) every child, whether or not born in wedlock, shall be entitled to reasonable provision out of the estate of its parents;
- (c) parents undertake their natural right and obligation of care, maintenance and upbringing of their children in co-operation with such institutions as Parliament may, by law, prescribe in such manner that in all cases the interest

of the children are paramount;

(d) children and young persons receive special protection against exposure to physical and moral hazards; and
(e) the protection and advancement of the family as the unit of society are safeguarded in promotion of the interest of children (*Article 28*).

The constitutional provisions for the protection of children rights are based on the common law and various international conventions which the country has ratified. The principal ones are the United Nations Convention of the Rights of the Child (CRC), which Ghana was the first country to ratify in February 1990. Others are the African Charter on the Rights and Welfare of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice, and the International Labour Act (ILO) Conventions 138 and 182.

According to the Constitution of the Republic of Ghana, 1992, a child is defined as any person below the age of 18 years. Provisions in the constitution that deal with the rights of the child are in areas such as non-discrimination; maintenance of the child; right to life, survival and development; respect for the views of the child; right to name and nationality, freedom of expression, thought, conscience and religion; right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; right to parental guidance and responsibility, rights for children with disabilities and rights not to be subjected to sexual exploitation and abuse. Every child under the 1992 Constitution has the right to be protected from engaging in work that constitutes a threat to his health, education or development and a child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment. 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.

But enacting the laws is one thing and seeing to their implementation is another task. It is upon this that the Commission on Human Rights and Administrative Justice (CHRAJ) was established by an Act of Parliament - *Commission on Human Rights and Administrative Justice Act 1993, Act 456 - Section 7 (1) (vii)* under the dictates of the Constitution to see to the realization of all these laudable and lofty constitutional provisions for human rights including those of children. The National Commission for Civic Education (NCCE) was also established by an Act of Parliament - *National Commission for Civic Education Act 1993, Act 452, Section 2*, to educate the citizenry on their fundamental human rights and responsibilities.

The Children's Act 1998 (Act 560)

The Children's Act, 1998 (Act 560) is the main legislative reform in Ghana concerning children since the 1992 Constitution came into force. The Act derived from the work of Child Law Reform Advisory Committee in 1995, established by the Ghana National Commission on Children to review, revise and update the laws on child rights, justice and the welfare of children in Ghana. Section 2 of the Act captures the principle of the best interest of the child in line with the UN Convention on the Rights of the Child. The Act further deals with the following: Children's right to protection from abuse, neglect and sexual contact with adults; protection of children from the worst forms of child labour; protection of street children because of their special vulnerability; the health needs of children; protection of children from customary practices which degrade and humiliate them; protection from stigma and discrimination as well as children in conflict with the law.

The law (Act 560) requires that every child would have right to name and nationality, and grow up with parents. They would also have right to parental property, right to social activity, opinion, education and well-being. The act further sets out to protect the child from exploitative labour, discrimination, torture and degrading treatment, as well as betrothal and marriage.

In addition, the Act defines the variety of institutions and individuals and the mechanisms for implementing these noble objectives for the betterment of the status of children in Ghana. Among the many requirements are the following:

- a) All districts shall have social welfare officers designated for the job of implementing the Act,
- b) All parents and other persons, who are legally liable to maintain a child is under a duty to supply the necessities of life, health, education and reasonable shelter,
- c) There shall be established child rights committees and residential homes to advocate for children's rights and to cater for needs of children outside of their homes and
- d) The act also stipulates the establishment of a family tribunal with a panel that would consider and deliberate on all cases involving children.

Having established the maximum age of 18 years for a child (section 1), Act 560 makes provision for a child beyond that age who needs parental support because of ill-health or continuing education. Act 560 has made interesting innovations such as the provision for the payment of arrears of maintenance by an erring parent, the provision of maintenance as well as a reasonable sum for the continued education of mother if she is a child herself.

The Child Panel which is provided for by the Children Act, 1998, promotes the welfare of children in the country. In civil cases the panel mediates in any matter that concerns the rights of the child and parental duties, while it criminally it assists in victim-offender mediation in minor matters involving the child where the circumstances of the offence are not serious. The courts also have the onerous duty to apply the *principle of best*

interests in all matters involving the child (section 2).

We shall now attempt to show how certain rights of children in the country are protected by the 1992 Constitution, Children's Act, 1998 and other relevant legal documents.

Children and Education Rights

Children have a right to education. Article 25 of the 1992 Constitution provides for educational rights and mentions amongst others that basic education shall be free, compulsory and available to all children of school going age. The latest educational reform (Ananuah-Mensah Educational Reform Committee Report, 2007) specifies what comprise the basic first cycle level as the two years Kindergarten, six years of Primary education and three years of Junior High School education. The second cycle of education consists of three years of Senior High School education. Technical, Vocational, Business and Agricultural programmes also form part of a child's pre-tertiary education.

The new educational reform has a regulatory framework for private institutions. 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.

Protection from Abuse and Neglect

Children suffer various forms of abuse. In Ghana sexual abuse and physical beating are common. In fact, the Ghanaian society has an attitude that appreciates chastisement of children resulting in the creation of the belief that beating is acceptable. Many Ghanaians think that child beating is normal, right, and acceptable. In fact, there is a lack of distinction between physical punishment for corrective purposes and child abuse.

Legally, children are generally protected against all forms of abuse and neglect in Ghana. Sections 71, 91 and 92 of the Criminal Offences Act, 1960 (Act 29) criminalizes the abandonment or exposure of a child to danger, abduction of a child. It has also in Section 97 through to 102 covers a range of sexual offences that could render a child vulnerable to HIV and other infections. The 1998 amendment of this Act further provides protection for children to include procurement, causing or encouraging the seduction or prostitution of a child less than sixteen years and allowing persons under sixteen to be in brothels as unlawful practices.

On sexual abuse, the age of sexual responsibility has been raised from fourteen to sixteen years in the 1998 amendment to the Criminal Offences Act, (Act 29). This means the age for statutory rape referred to as defilement is now sixteen years and below. The penalty for rape has been increased to a minimum of five years in imprisonment and a maximum of twenty-five years without the option of a fine. Defilement also now attracts a penalty of a minimum of seven years and a maximum of twenty-five years without an option of a fine. 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.

The Criminal Offences Act, 1960 and the Children's Act provide the legal framework to check child abuse and the Domestic Violence and Victim Support Units (DOVVSU) of the Police Service provide focal points for complaints and counseling.

Children in Commercial Sex Work

There is a general perception that child prostitution is on the increase in Ghana. However, because the identity of those involved is kept secret and the activities are carried out in secret, data on child commercial sex workers is scarce. Therefore there are no reliable estimates of the number of children involved in commercial sex work. 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. 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.

The Children Act, 1998 in Section 6 provides for the protection of children that will result in keeping children from commercial sex work. The Act provides that every child has the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents. Every parent has rights and responsibilities whether imposed by law or otherwise towards his child which include the duty to:

- (a) protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression;
- (b) provide good guidance, care, assistance and maintenance for the child and assurance of the child's survival and development;
- (c) ensure that in the temporary absence of a parent, the child shall be cared for by a competent person and that a child under eighteen months of age shall only be cared for by a person of fifteen years and above except where the parent has surrendered his rights and responsibilities in accordance with law.

Domestic Violence

The Domestic Violence Act, 2007 (Act 732) provides for protection from physical abuse, sexual abuse, economic abuse and emotional, verbal or psychological abuse. Harassment including 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.

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 Ghana Police Service plays 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. Sections 8-10 deal with the receipt of a complaint and arrest with and without warrant by the police. Sections 11-22 of the Act provide 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 conditions of the order are spelt out in section 17. These include counseling especially for children, 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.

Child Labour

Child labour in Ghana according to the Ghana Statistical Service (2013) is on the increase. Children within the ages of 5 – 17 are engaged in economic activities. 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.

The Children's Act in addressing this canker provides ages for admission to employment, proscribes labour which exploits the child by deprivation of health, education or development. The Act provides that no person shall engage a child in exploitative labour. It goes on to explain that labour is exploitative of a child if it deprives the child of its health, education or development. Similarly, the Act prohibits engagement of a child in night work which it defines to include any work engaged by children between the hours of eight o'clock in the evening and six o'clock in the morning. The Act furthers states the minimum age for admission of a child to employment to be fifteen years.

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 abduction, outright sale, bonded placement, deceit of parents or guardians and coercion.

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. To address this, the Human Trafficking Act 2005 (Act 694) was enacted 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 related 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 in the Human Trafficking Act, 2005 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 placed on everyone in the Act to provide information on human trafficking to the police. The Act (Human Trafficking Act, 2005) also established a Human Trafficking Fund and an inter-ministerial cooperation to co-ordinate matters concerned with human trafficking.

Apprenticeship

Prior to the Children's Act 1998 (Act 560), apprenticeship in the informal sector was unprotected by law. In the

Children's Act, however, 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 addressed. 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 further identifies the implementing agencies and the Chief Rights Regulations 2003 (L.I.1705) to supplement the Act in providing the regulatory framework. The legislation is based on the International Labour Organization (ILO) Convention with emphasis on the authority of the state to protect children.

Non-Discrimination

The Convention on the Rights of the Child (CRC) calls for non-discrimination against children. The principle on non-discrimination in the Constitution applies to all persons. Article 17 of the 1992 Constitution states that all persons are equal before the law. 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 that "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 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 Non-Governmental Organizations (NGOs).

Children and Disability

The rights of the disabled are spelt out in Article 29 of the 1992 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, which include the family, social services and employment.

Female Genital Mutilation

Female Genital Mutilation (FGM) is a traditional practice carried out in most African states including Ghana. This practice involves excision of parts of the female genitalia in various forms. Ghanaians have one form of justification or the other for many of the cultural practices but strangely, this practice is not supported by any religious ideology, has no scientific value but rooted in myths. Female Genital Mutilation basically affects girls. The procedure is unhygienic, torturous, dehumanizing and cruel. The procedure inflicts physiological problems at childbirth as well as psychological damage for some victims.

As a measure to eradicate this inhuman practice, the Criminal Offences Act 1960 (Act 29) was amended in 1994 to criminalise the practice. Parliament has also passed an amendment bill to punish not only the circumcisers but also those found to have any responsibility for the practice. The penalty has been increased from three years to not less than five years and not more than ten years. The penalty also affects cross border offenders. In order to capture the practice the name has been changed from female circumcision to female genital "cutting".

Child Marriage

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 Act prohibits forced betrothals, dowry transactions and forced marriage. It also stipulates that the minimum age for marriage of whatever type is eighteen years.

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

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 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 which includes the various children's homes managed by the Department of Social Welfare or recognized 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. They are also to ensure that within the district, governmental agencies liaise with each other in matters concerning children.

Every child has the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents (1992 Constitution & Children's Act, 1998). 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.

Conclusion

This work has attempted an exposition to the legal framework that exists in Ghana for the protection and promotion of the rights of children. References have been made to the UN Convention on the Rights of the Child, 1992 Republican Constitution of Ghana, Children's Act, 1998, Criminal Code, Domestic Violence Act and others. This thus shows adequate legal provisions for child's rights protection and promotion in the country. 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.

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