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List of issues in relation to the initial report of the Ghana

Addendum

Replies of Ghana to the list of issues*

[Date received: 10 June 2016]

* The present document is being issued without formal editing.

Issue 1

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. Article 1 of the 1992 Constitution states as follows:

> "Supremacy of the Constitution
>
> 1. (1) The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised in the manner and within the limits laid down in this Constitution.
>
> (2) The Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void."

2. For a treaty to be binding on the Republic, it has to be ratified in accordance with article 75 of the Constitution. Once the treaty is ratified by an Act of Parliament, it is binding on the Republic to the extent that it is not inconsistent with the provisions of the Constitution. Ghana subscribes to the dualist tradition in international law. Therefore the attitude of the Courts of Ghana is that, when a treaty has been ratified by Parliament, it does not automatically alter municipal or domestic law until and unless it is incorporated into Ghanaian law by appropriate legislation. (Date-Bah JSC, *Republic v. High Court (Comm. Div) Accra ex parte Attorney-General; NML Capital Ltd., The Republic of Argentina*, No. J5/10/2013, 20th June 2013, pg 2).

3. The International Covenant on Civil and Political Rights was ratified by Parliament on the 7th of September, 2000. The Covenant is yet to be incorporated into the municipal law of Ghana. The Constitution of Ghana under Article 73 enjoins the Government of Ghana to conduct its international relations and diplomacy in accordance with accepted principles of international law and to respect its treaty obligation.

4. In the case of *Dexter Eddie Johnson v. The Republic of Ghana* it is understood that the abolition of the death penalty is not yet a rule of customary international law although Ghana has over several years now observed a moratorium on the death penalty. It is worthwhile to note that, in the Dexter Johnson petition, the Committee did not find or conclude that the death penalty was a violation of the right to life provision in the national constitution of Ghana. The Committee, however concluded that Ghana appears to be in violation of fair trial standards, to the extent that the relevant Constitutional law provisions and Statute Law did not grant the Trial Judge or a Court in Ghana the discretion to impose a lesser sentence other than the death sentence once an accused person is convicted of murder. The competent authorities in Ghana are yet to amend the laws of Ghana to be in conformity with the views of the Committee regarding the minimum sentence in murder cases in Ghana.

5. In the meantime, in terms of the death penalty as a whole. The Government has submitted a Bill to Parliament following the Recommendations of Constitutional Review Commission for the abolition of the death penalty. The Constitutional Review Commission (Commission) considered the effect of the death penalty on the human rights of persons sentenced to death or to be executed and recommended the abolition of the death penalty. The Commission, in December 2011, published a report in which it recommended that the death penalty should be abolished and replaced with life imprisonment without parole. Among the reasons, it cited for its recommendation were the irreversible consequences of executing wrongfully-convicted individuals, the failure of the death penalty as a deterrent, the barbaric nature of the punishment, the fact that executions do not necessarily provide closure to victims' families, the arbitrariness of the punishment, the dehumanizing effect of

executions, the need to focus instead on rehabilitation and the current international practice which is in favour of abolition of the death penalty. In furtherance of the foregoing, in June 2012, the Government issued a White Paper on the Constitutional Review Report, supporting the recommendations of the Commission that, the death penalty should be abolished in Ghana and be replaced with life imprisonment without parole. In the implementation of the recommendations, the Commission developed the Constitution (Amendment) Bills for both the entrenched and non-entrenched provisions of the Constitution of Ghana. The Commission in 2013 drafted the Constitution (Amendment) (Entrenched Provisions) Bill which seeks to amend the entrenched provisions of the Constitution in accordance with the Report of the Commission. Among the entrenched provisions is the provision to amend the clause on the death penalty. The Bill in clause 2 amends article 13 to abolish the death penalty to provide that "no person shall be deprived of life intentionally". Effectively, this replaces the death penalty with imprisonment for life without parole. The Bill was granted Cabinet approval on 24th April, 2014. It is to be noted that, in accordance with article 290 of the Constitution, 1992, the abolition of the death penalty will involve a referendum, since the same is an entrenched provision in the Constitution.

6. Chapter 18 of the 1992 Constitution provides for the establishment of the Commission on Human Rights and Administrative Justice (CHRAJ). Accordingly, in 1993, the Commission for Human Rights & Administrative Justice Act 1993 (Act 456), was enacted by Parliament. CHRAJ consists of three persons; a Commissioner and two Deputy Commissioners. CHRAJ also has supporting staff at the national level. This is meant to ensure that, in the absence of the Commissioner, any of his two deputies could effectively perform his functions. The Commissioner and the two deputies are appointed by the President of Ghana under Article 70 of the 1992 Constitution in consultation with the Council of State. The Commissioner must be qualified to be a Justice of the Appeal Court and the deputies must be eligible to be justices of the High Court. CHRAJ has regional and district offices throughout the country. Under Article 70 of the Constitution, the President appoints the Commissioner and the two deputy Commissioners in consultation with the Council of State. The functions of the Commission includes:

- Investigating complaints of violations of fundamental human rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties.
- Investigate complaints concerning the functioning of Public Services Commission, the administrative organs of State, the Armed Forces, the Police Service, the Prison Service, etc.
- Investigate private institutions and persons where these relate to violations of fundamental rights and freedoms under the 1992 Constitution.

7. Both the 1992 Constitution and Act 456 stipulate that the administrative expenses, including all salaries, allowances and pensions payable to or in respect of persons serving with CHRAJ, are charged on the Consolidated Fund. To this end, CHRAJ has embarked on measures to submit directly its annual budget to Parliament for scrutiny and approval. With appropriate budgetary allocation, CHRAJ's independence will be enhanced further and better placed to undertake its activities effectively. The Commission in 2011 published a report in which it recommended the creation of a Democracy Fund for all independent constitutional bodies such as the CHRAJ, the National Commission for Civic Education and the Bank of Ghana, among others.

Issue 2

Non-discrimination and equality between men and women (arts. 2, 3 and 26)

8. Article 17 of the 1992 Constitution of Ghana provides that:

> "(1) All persons shall be equal before the law
>
> (2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, creed or social or economic status."

9. This article shows the importance of the fundamental human rights of all persons. The constitutional provision does not allow Ghanaians to discriminate against non-Ghanaians on the basis of their nationality and or migration status or origin.

10. The Disability Law 2006 (Act 715) was passed by the Parliament of Ghana on 23rd June, 2006. This is aimed at ensuring that, persons with disability enjoy the rights enshrined in Article 29 of the 1992 Constitution of Ghana, with the view to improving their quality of life and that of other vulnerable groups. The law also guarantees persons with disability (PWDs) access to public places, free general and specialist medical care, education, employment and transportation among other things. Section 16-23 of Act 715 provides that, a parent or guardian of a child with disability must send the child to school. The Ministry of Education has the duty to provide the necessary facilities and equipment in learning institutions. This action is to ensure that the Ministry takes cognizance of the following:

(a) Free education for PWDs and the establishment of special schools as well as inclusion of special education in technical, vocational and teacher training institutions;

(b) PWDs should not be refused admission into any of these institutions;

(c) Appropriate library facility is to be provided for PWDs in these special institutions.

11. The involvement and implementation of policies and strategies to enable PWDs enter and participate in the mainstream of the national development process, has been ongoing for some time now with organizations dedicating budgetary allocations to organize programmes to create awareness about problems confronting PWDs. Action Aid Ghana, a nongovernmental organization, to empower PWDs in the Upper East Region, has been collaborating with Action for Disability and Development (ADD) since 2004, which has resulted in the construction of a resource centre. The Government and the relevant Ministries Departments and Agencies have put the necessary structures in place to make the Disability Law functional.

12. Conditions in public psychiatric hospitals are being improved, by ensuring adequate food, shelter, and health care and by prohibiting practices of beating patients, prolonged seclusion, and forced admission and treatment without judicial oversight. Develop voluntary community-based mental health services in consultation with persons with mental disabilities and their representative organizations. Ensure that persons with mental disabilities and their representative organizations participate fully in planning, implementing, and monitoring government programs on mental health and disability. Formulate and implement a national policy on non-orthodox mental health service provision, which should regulate prayer camps as centers for the treatment of persons with mental disabilities, to ensure that patients are not involuntarily admitted or detained, are not abused, or not given treatment without their consent. Train and recruit more mental health professionals to improve the doctor/nurse-patient ratio, and increase the number of non-medical staff in psychiatric hospitals to help nurses with cleaning and other non-medical tasks.

13. Ghana's strategic documents on HIV that define how the national response should be implemented have proactively prioritized the role of female sex workers (FSW). Current interventions addressing the needs of FSW include, expanding the preventive and curative services to the FSW nationwide. Increasing the number of FSW who access user-friendly HIV Testing and counseling (HTC) and STI services. Increasing the proportion of FSW who adopt proper primary prevention behaviour with clients and non-paying sexual partners. Negotiating proper condom use, for all penetrative sex and referrals for other HIV-related services like Antiretroviral Therapy (ART). Educating the populace about certain actions that violate the rights of FSW.

14. In addition, the Police Service is in the process of identifying FSW friendly police personnel (mostly senior and middle level officers) who would be trained to monitor the activities of FSW in their areas of jurisdiction, participate in their routine meetings and provide protection to the FSW where appropriate.

15. In accordance with Article 17(2) of the 1992 Constitution stated earlier, a person living with albinism is a person worthy of respect and dignity and shall not suffer any form of discrimination. We are increasing awareness and understanding of albinism in order to fight against global discrimination and stigma against persons with albinism. We are also increasing awareness on the presence of the Albinism population in the country. We are eradicating all forms of stigma attached to Persons with Albinism in the country, and to seek justice for all PWAs.

16. The Government of Ghana attaches importance to the fight against the HIV/AIDS disease and has come out with laws that do not allow discrimination at all levels. Schools are being encouraged to teach respect and understanding of persons living with AIDS. Religious leaders are being sensitized to preach tolerance. The media is being educated to condemn prejudice and use its influence to advance social change. The fear and prejudice that lie at the core of the HIV/AIDS-related discrimination are being tackled at the community and national levels, with AIDS education playing a crucial role. The Government of Ghana has created an enabling environment to increase the visibility of people with HIV/AIDS as a "normal" part of any society. The presence of treatment has made this task easier. People are less afraid of AIDS and victims are more willing to be tested for HIV, to disclose their status, and to seek care if necessary. The task is to confront the fear-based messages and biased social attitudes in order to reduce the discrimination and stigma of people living with HIV and AIDS. The Government in collaboration with non-governmental organizations are rendering their support to the Ghana Aids Commission to discharge its functions effectively.

17. The 1992 Constitution, in article 15 specifically enshrines the concept of equality before the law. Thus every person has an equal right to own property irrespective of a person's gender. This is buttressed in Article 18 which is to the effect that every person has the right to own property either alone or in association with others.

18. Within the context of marriage, the Constitution further imposes an obligation on Parliament to enact legislation to regulate the property rights of spouses. A Bill has been introduced in Parliament that establishes rules and workable standards for the courts and spouses for the realization of the provisions of the Constitution on spousal property rights, thus ensuring certainty in matters connected with the property rights of spouses. The Bill was published in the *Gazette* on 4th October 2013. The Bill is currently before the Parliamentary Committee on Constitutional, Legal and Parliamentary Affairs for consideration.

19. In tandem with this Bill, is the new Intestate Succession Bill, which was published in the gazette on 13th November, 2013. The Bill has as its object, the removal of the anomalies in the present law relating to intestate succession and the provision of a uniform

intestate succession law that will be applied throughout the country irrespective of the inheritance system of the of the intestate and the type of marriage contracted. The Bill is currently being considered by Parliament.

20. With reference to the Affirmative Action Bill, the Bill is designed to help eliminate gender-based discrimination. It is based on the principle that each citizen shares the equal right to self-development and that both women and men with equal abilities should have equal opportunities. The Bill, effectively redresses social, economic and educational gender imbalance in Ghana, based on historical discrimination against women which impedes sustainable national development. The Bill also promotes the full and active participation of women in public life by providing for a more equitable system of representation in electoral politics and governance that is in accordance with the laws of country. Currently, the Bill is before Cabinet for approval before being laid in Parliament.

21. The draft Affirmative Action Bill passed through an extensive consultative process led by the twenty-one (21) member National Technical Working Group comprising parliamentarians, representatives of political parties, civil society networks, the academia, legal practitioners, the private sector, and representatives from Ministries, Department and Agencies. During the consultation process, a cross section of the Ghanaian public were engaged on the key tenets of the bill, leading to rich discussions about how Ghana can proceed in bridging the gender gap. The draft bill has been duly finalized by the Attorney General and has been submitted to Cabinet for approval. Cabinet approval may be received in the month of June, 2016, after which the bill will be laid before Parliament for passage into law.

22. Also, the Ministry of Gender, Children and Social Protection (MoGCSP) launched a Gender Policy at the end of 2015 and has been engaging various ministries using the policy as a basis to promote gender mainstreaming and equality in their institutions. This will call for a balance in recruitment, improved gender budgeting and enhance gender sensitive programming. Through consistent engagement with the National and Regional House of Chiefs by various stakeholders, both houses have begun the process to admit and fully integrate queen mothers in daily deliberations and key decision making; a development that marks a significant step in strengthening women leadership in traditional governance institutions.

23. Pending the passage of an Affirmative Action Law, the Ministry and its partners are engaging with political parties using the tenets of the Bill as a basis to increase the election of women into political office. Additionally, the United Nations Development Programme (UNDP) is in the process of supporting political parties to develop gender policies and these policies will be based on provisions in the draft Bill in order to bridge gender gaps in political leadership and decision making.

24. This year being an electoral season, the Ministry will be launching a campaign aimed at breaking down cultural stereotypes and myths about women and leadership so as to encourage the election of more women into Parliament and an increase in the appointment of women into ministerial positions.

Issue 3

Violence against women and children, including domestic violence (arts. 3, 7, 23, 24 and 26)

25. The Ministry of Gender, Children and Social Protection, under the Domestic Violence Secretariat is currently implementing a three-year Initiative to End Child Marriage in Ghana. Thus is being done in partnership with UNICEF and with support from the Royal Netherlands Embassy in Ghana. The Project aims at changing the attitudes, behaviors and

to re-orient the values of the girl-child through mass communication, direct community engagements, media campaigns, and empowerment of the girl-child in local communities. The Ministry is developing a national strategic framework as the country's guide on how to effectively respond to and prevent child marriage. The Ministry has developed Documentaries and jingles to be screened and aired as effective tools for sensitizing the public on ending child marriage. The National End Child Marriage Project was launched in February 2016 by the First Lady of the Republic of Ghana, H.E. Mrs Lordina Mahama and 5 other African first Ladies in Accra. The Ministry engaged various stakeholders, Chiefs, Queen mothers, civil society, and communities in the sensitization programs on ending child marriage.

26. As part of efforts to eradicate violence against women and girls, the Ministry of Gender, Children and Social Protection in collaboration with DANIDA, UNFPA, UNICEF, and African Development Bank at various times embarked on massive sensitization programs in several communities, engaging Chiefs, Queen Mothers, Opinion Leaders, schools and organizing community durbars to create awareness on domestic violence and issues of gender based violence which includes *Trokosi*, widowhood rites and witchcraft accusation as reported earlier. Various men's groups were equally engaged as change agents on issues of violence against women and girls. Some of the Ministry's activities included but were not limited to the following:

(a) A national stakeholder's dialogue for the judiciary to improve prosecution and adjudication for Domestic Violence/Sexual & Gender Based Violence cases (15th April 2015);

(b) School Symposium on the theme "From Peace in the home to peace in the world, make education safe for all; Domestic Violence and Ending Sexual and Gender Based Violence, Teenage Pregnancy, and Ensuring Empowerment for 300 school pupils" on 14th December 2015 in James Town Cluster of schools as part of the 2015 commemoration of the 16 days of Activism against Domestic Violence;

(c) Held Community dialogues, community durbars and focal group discussions to end Domestic Violence/Sexual and Gender Based Violence, Teenage Pregnancy, and the Empowerment of women and girls in 2015 at Anyaman and Oshieyie (Greater Accra Region) Tolon, Karaga (Northern Region), Mankessim, Winneba (Central Region) respectively;

(d) Sensitized 1140 men from 10 regions on DV/SGBV and their role as change agents on 11th June 2015 in (Western Region), (Volta Region) on 22nd and 23rd July 2015, (Ashanti Region) 6th-7th November 2015, 29th October 2015, (Upper East Region) 5th November 2015, (Upper West Region), 19th November 2015, (Eastern Region), 23rd November 2015, (Brong Ahafo Region), 2nd December 2015 (Central Region) 17th December 2015, (Greater Accra Region) 23rd March 2016;

(e) The Media was engaged and sensitized on Sexual and Gender Based Violence for over 99 Media Reporters, Editors, and Talk Show Hosts on how to report on domestic violence and SGBV cases in all the 10 regions from May 2015 to February, 2016;

(f) Organized a walk dubbed "Men Walk to End Gender Based Violence";

(g) Sensitized people during over 2800 people during Community Durbars on DV/ SGBV prevention and response in 8 regions as follows: (Western Region) 10th June, 2015, (Volta Region), 21st July, 2015 (Ashanti Region), 12th August, 2015, (Northern Region) 28th October 2015 (Upper East Region), 4th November 2015, (Upper West Region), 18th November 2015, (Eastern Region) 24th November 2015 and (Central Region) 16th December 2015.

27. Appropriate redress:

(a) Family Tribunal and Gender-Based Violence Courts have been established to fast track and resolve gender-based violence cases in a speedy manner and more importantly to improve on the administration of justice for gender-based violence;

(b) Strategies have been put in place to ensure that all citizens have access to legal services within a framework of the legal aid system that delivers justice equitably to all;

(c) Established two DV/SGBV Response Centers in Mallam Atta and Agbogbloshie Markets in Accra, in the Greater Accra Region for Market women and head porters ("Kayayei") to report cases of violence to the centers. These centers are manned by officers from DOVVSU, CHRAJ, Social Welfare, Education and Health among others. They handle minor cases and refer others to appropriate agencies for treatment.

Issue 4

Right to life (art. 6)

28. Article 13 of the 1992 Constitution guarantees the right to life. However, that right may be taken away in the exercise of the execution of a sentence of a court of competent jurisdiction in respect of a criminal offence under the laws of Ghana of which that person has been convicted. The criminal offences in respect of which a person can be sentenced to death are as follows:

> "(a) Treason as stated in Article 3 of the Constitution, which provides that individuals who commit treason against the constitutional order 'shall, upon conviction, be sentenced to suffer death.' This is reiterated in section 180 of the Criminal Offences Act, 1960 (Act 29).
>
> (b) Murder as stated in section 46 of Act 29.
>
> (c) Attempt to commit murder by a convict provided for in section 49 of Act 29.
>
> (d) Genocide as stated in section 49A of Act 29. Genocide includes offences not resulting in death committed with the intent of destroying in whole or in part a national, ethnic, racial or religious group. The following acts committed with genocidal intent are punishable by death. Causing serious mental or bodily harm on members of a group, inflicting conditions intended to destroy the group, imposing measures to end births in the group or forcibly transferring children from that group to another group.
>
> (e) Piracy as stated in section 193 of Act 29.
>
> (f) Smuggling as stated in section 317A of Act 29. An individual concealing or carrying away from Ghana any gold or diamond without lawful authority or with the intent to evade any enactment concerning the export of gold or diamond "shall be liable on conviction to a sentence of death."

29. The Constitutional Review Commission considered the effect of the death penalty on the human rights of persons sentenced to death or to be executed and recommended the abolition of the death penalty on grounds already stated in paragraph 4 above.

30. The personnel of the Ghana Police Service are trained and equipped to act within the ambits of the law when it comes to the use of force. Police Officers are taught and given practical lessons on the use of minimum force when the need arises. On the issue of unlawful killings by law enforcement and security personnel, the Ghana Police Service has

extensive provisions in their Service Instructions and Police Service Regulations 2012 (C.I. 76) that regulates the use of firearms by personnel. Police personnel generally operate within the law but sometimes, as can be found in all human institutions, they over step the legally accepted limits in the use of force which can result in injuries and unlawful killings. When that happens, it is thoroughly investigated and disciplinary action taken against the perpetrator provided a prima face case is made against him as a result of the investigation. The disciplinary action is twofold. Either the perpetrator is made to face an Internal Disciplinary hearing and when found liable can be punished by reducing the rank of the Officer, stoppage of salaries for a year, removal from the service or dismissed from the service.

The second leg of disciplinary action is criminal prosecution of the perpetrator. This is normally done on the advice of the Attorney General and Minister for Justice. The punishment for prosecution, if the perpetrator is convicted, is the same as provided under sentencing in the Criminal Procedure Act (Act 30) of 1960 with no exception whatsoever. It is worthy of note that the decision to either subject a perpetrator to an administrative service enquiry or criminal prosecution in a court of competent jurisdiction is not mutually exclusive. Both can be pursued at the same time according to sections 9(1) (2) of the Criminal Offences Act (Act 29) of 1960. Section 9(1) states "where an act constitutes an offence under two or more enactments the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence**"**. Section 9(2) states "this section shall not affect a right conferred by an enactment on any person to face disciplinary measures against the offender in respect of the act constituting the offence". 31. The remedy for victims of use of excessive force and unlawful killings is financial compensation.

32. The issue to bring the permissive regulations on the use of lethal force, including article 13 of the 1992 Constitution of Ghana, into compliance with the State Party's obligations under article 6 of the Covenant is an executive decision which can be taken in collaboration with Parliament.

33. Implementation of MDG5 Acceleration Framework (MAF) which has resulted in the reduction of maternal mortality includes but not limited to the following:

(a) Prioritized interventions to improve Skilled Delivery coverage like *maintaining the implementation of the Free Maternal Delivery policy in line with the NHIS*;

(b) Interventions to improve Family Planning (FP) coverage;

(c) FP services is now considered as an essential component of the NHIS as part of measures in improving access to FP services;

(d) The costing for the implementation of the FP-2020 has also been done and completed;

(e) Task-shifting in the area of getting Community Health Nurses (CHNs) to provide comprehensive maternal health services has also been introduced as part of measures to improve access to midwifery services in the country;

(f) Interventions planned towards the provision of Emergency Obstetric and Newborn Care Services.

34. Steps taken to ensure women's effective access to legal, safe and affordable abortions are:

(a) Strengthening the collaboration with NGOs like Marie Stoppes and IPAS Ghana to build the capacity of service providers to promote safe and affordable abortions;

(b) There have also been community sensitization on the law on abortion and the availability of abortion care services;

(c) Personnel in the security and legal outfits in the country have been also been engaged and educated on how to handle abortion related cases;

(d) Management of abortion complications is considered part of the benefit package of the NHIS;

(e) Adolescent Reproductive Health Services have been scaled up to include FP services as part of interventions at reducing the resort of adolescents to unsafe abortions.

Issue 5

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 2 and 7)

35. During the initial review of Ghana before the Committee against Torture (CAT) in 2012, the delegation of Ghana accepted the recommendation of the Committee to enact legislation to criminalize torture. Ghana became a state party to the CAT after ratifying the Convention in the year 2000. The ratification by Ghana of the Optional Protocol to the Convention is currently pending before Parliament following a recommendation by Cabinet for consideration by Parliament in December 2015 and referred to the Parliamentary Select Committee on Constitutional, Legal and Parliamentary Affairs the same day. It is currently awaiting the consideration of the Parliamentary Select Committee on Constitutional, Legal and Parliamentary Affairs. After the ratification processes are completed, the Government will take necessary and urgent steps to enact a comprehensive legislation to prohibit and punish torture in order to fill any perceived gaps in existing laws on torture in Ghana.

36. A perusal of the laws of Ghana including the 1992 Constitution indicates that there is no definition for torture that takes account of the four cumulative elements of the definition of torture in article 1 of the Convention against Torture. In the light of this lacuna, Ghana is in the process of developing a legislative framework to address the situation as mentioned above. The proposed legislation will create the offence of torture as well as define torture to reflect at minimum, the definition under article 1 of the Convention against Torture. However, it should be noted that, the 1992 Constitution has several provisions that indicate the State's abhorrence for torture. Article 12 provides generally for the protection of fundamental human rights and freedoms. Article 15 provides for the respect for human dignity. Article 16 further provides for protection from slavery and forced labour. Other provisions as pointers to the prohibition of torture are contained in article 17 which places all and sundry as equal before the law and therefore frown on discriminatory behaviour. Article 21 guarantees the basic fundamental freedoms of an individual.

37. Furthermore Article 15, clause 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 Offences Act, 1960 (Act 29). Nonetheless torture is prohibited in Ghana and provisions can be found in the Mental Health Act, 2012 (Act 846), the Criminal Offences Act, 1960 (Act 29), Prisons Service Act, 1972 (NRCD 46). NRCD 46 directly prohibits torture or cruelty against a person in custody. The Human Trafficking Act, 2005 (Act 694) and the Anti-Terrorism Act, 2008 (Act 762) also provide indices against torture or cruel or inhuman treatment.

38. In effect, several pieces of legislation deriving validity from the Constitution resonate in the provisions of the Constitution on the State's abhorrence for torture. The Criminal Offences Act, 1960 (Act 29) makes provision for several crimes that invariably connote the commission of torture or the infliction of pain or harm. These relate to assault, use of offensive weapons, female genital mutilation, cruel practices in relation to bereaved spouses, genocide, unlawful use of human parts and sexual exploitation.

39. With regards to the inadmissibility of forced confession and evidence procured by means of torture and the codification of this in domestic legislation, it should be noted that the admissibility of evidence is governed by the Evidence Act, 1975 (NRCD 323). Section 120 of NRCD 323 excludes confession statements made by an accused involuntarily and in the absence of an independent witness. The confession statement would have to be made voluntarily and in the presence of an independent witness for it to be admissible. If the person who made the statement was induced to make the statement by being subjected to cruel or inhuman conditions or by the infliction of physical suffering upon him by a Police officer, the evidence so adduced is inadmissible.

40. The Evidence Act 1975 (Act 323), states explicitly as follows:

"**Section 6 – Objections to Evidence**

(1) In every action, and at every stage thereof, any objection to the admissibility of evidence by a party affected thereby shall be made at the time the evidence is offered.

(2) Every objection to the admissibility of evidence shall be recorded and ruled upon by the court as a matter of course."

"**Section 8 – Power of Court to Exclude Evidence**

"Evidence that would be inadmissible if objected to by a party may be excluded by the court on its own motion."

"**Section 120 – Confessions**

"(1) In a criminal action, evidence of a hearsay statement made by an accused admitting matter which—

(a) constitutes; or

(b) forms an essential part of; or

(c) taken together with other information already disclosed by him is a basis for an inference of, the commission of a crime for which he is being tried in the action is not admissible against him unless the statement was made voluntarily.

(2) Evidence of a hearsay statement shall not be admissible under subsection (1) if the statement was made by the declarant while arrested, restricted or detained by the State unless the statement was made in the presence of an independent witness (other than a police officer or member of the Armed Forces) approved by the accused.

(3) The independent witness must be a person who—

(a) can understand the language spoken by accused;

(b) can read and understand the language in which the statement is made, and where the statement is in writing the independent witness must certify in writing that the statement was made voluntarily in his presence and that the contents were fully understood by the accused.

(4) Where the accused is blind or illiterate, the independent witness shall carefully read over and explain to him the contents of the statement before it is signed or marked by the accused, and shall certify in writing on the statement that he had so read over and explained its contents to the accused and that the accused appeared perfectly to understand it before it was signed or marked.

(5) For the purpose of this section a statement that was not made voluntarily includes, but is not limited to, a statement made by the accused if—

(a) the accused when making the statement was not capable, because of a physical or mental condition, of understanding what he said or did; or

(b) the accused was induced to make statement by being subjected to cruel or inhuman conditions, or by the infliction of physical suffering upon him by a public official, or by a person who has a direct interest in the outcome of the action, or by a person acting at the request or direction of a public official or such interested person; or

(c) the accused was induced to make the statement by a threat or promise which was likely to cause him to make such a statement falsely, and the person making the threat or promise was a public official, or a person who has a direct interest in the outcome of the action, or a person acting at the request or direction of public official or such an interested person.

(6) in a criminal action tried by a jury a party may not, in the presence of the jury, offer to prove a hearsay statement under this section.

(7) When a party offers to prove a hearsay statement under this section the court shall, in the absence of the jury, determine the admissibility of the statement as provided in section 3.

(8) A determination by the court under subsection (7) that a statement is admissible shall not preclude the jury from determining that the statement is not to be believed."

41. No Official has been prosecuted and or punished for extracting a confession under torture.

42. Several cases have been prosecuted in court where such confessions have not been admitted into evidence. The voluntariness of confession statements made by accused persons is so jealously guarded by the courts that as soon as the accused person raises any issue of force or threats to obtain the statement, it automatically calls for a mini trial to determine that the statement was taken voluntarily. There are several instances where such statements have been rendered inadmissible on the basis of being obtained under threats, force or duress. For instance, by section 25 of the Prisons Service Act, an official or any person who has a direct interest in the outcome of the action or by a person acting at the request or direction of a public official or an interested person and in the absence of an independent witness, that statement would not be admissible.

43. In Ghana, our laws especially the Criminal and other offences (Procedure) Act, 1960 (Act 30) and the 1992 Constitution of the Republic of Ghana give accused persons the right to apply for bail and for *habeas corpus* applications as well as other processes by which accused persons can seek review of their detentions. It is worthy to note that these rights are exercised on a daily basis by accused persons.

44. Article 15(2) of the 1992 Constitution of the Republic of Ghana expressly prohibits the meting out of any form of torture, cruel, inhumane or degrading treatment to any person who has been arrested, detained or restricted. This position of the law is reiterated under sections 6 and 9(3) of the Criminal Procedure Act, 1960 (Act 30) which states that a person

arrested or in custody should not be treated with unnecessary restraint or treated inhumanely in accordance with article 15 of the Constitution. Drawing inspiration from the Constitution, the supreme law of the land, the Ghana Prisons Service has in its laws also prohibited officers from torturing or subjecting inmates to any form of cruelty and also prohibits inmates from doing same to other inmates. Section 25 of the Prisons Service Act, 1972 (NRCD 46) makes it an offence for a prison officer to in any way torture or subject an inmate to cruelty and all offending officers are reported to the Police, made to stand trial and subsequently convicted when found guilty by a court of competent jurisdiction. Regulation 82 of the Prisons Regulations, 1958 (L.N 412/58) which is emphasized under Standing Orders 482 of the Prisons Service Standing Orders, 1960, also categorizes violence by a prisoner against a fellow prisoner as a major offence and all inmates found culpable are dealt with administratively by the Service and when found guilty are sanctioned accordingly as the law permits. The Service therefore seriously frowns upon torturing or meting out any form of ill-treatment to inmates.

45. With the Ghana Police Service, Officers and Men of the Service are prohibited by their Service regulations from torturing or administering any form of ill treatment in detention facilities. Regulation 82(1) (j) of the Police Service Regulations, 2012 (C.I. 76) states that, "it is a major offence for an officer to maltreat or use unnecessary force towards a person in the officer's custody".

46. Reported cases of torture and ill treatment are promptly investigated and perpetrators are made to face an internal disciplinary action. If found liable, a perpetrator can be removed from the Service or dismissed from the Service. The punishment is severe enough to deter perpetrators from torturing in detention facilities. The Police Administration does not shield perpetrators. Victims of torture and ill treatment by the police can report the conduct of the perpetrators for investigation and action to be taken against them; they can also take legal action against the perpetrators personally or sue the Police Administration as a whole for compensation. The Police Administration has a Directorate called the Police Intelligence and Professional Standards (PIPS) which investigates cases of professional misconduct and ill treatment in detention and recommends punishment for perpetrators. They also make unannounced visits to detention facilities to ensure that inmates are not manhandled and also investigate and make recommendation or any torture or ill treatment of inmates.

47. Major steps have been taken to change the situation, where prolonged psychiatric sanction by a court without periodic judicial review and hospitalization of patients long beyond their discharge date, through the enactment of the Mental Health Act, 2012 (Act 846). This law establishes a Mental Health Review Tribunal which will review all such cases and either order discharge of these patients or compel the courts to come for them. The Mental Health Board, the governing body of the agency responsible for implementing the law, is in the process of constituting this Tribunal to implement this aspect of the law. By the end of the next quarter this Tribunal would have been established and functioning.

48. The hospital has taken steps to train nurse-anesthetics to administer anesthesia before ECT (electro-shock) is given. The hospital is also taking steps to acquire an anesthetic machine for this purpose. In terms of its use as last resort, the psychiatrists who administer this treatment are well trained and fully qualified; they use their professional training and knowledge to decide who qualifies to be put on ECT so there is no indiscriminate use of ECT. Whenever it is given, patients are educated and their consent received before administration. For the past one year the electroshock machine of the hospital has broken down and so no electroshock treatment is being given.

49. To address the torture and inhuman treatment at the prayer camps, nation-wide training of these pastors on the Mental Health Act has been done. Specific training on

alternative approaches of handling patients without human rights abuses, which includes early referral, will be embarked on soon. Visiting Committees to ensure compliance with human rights are also being formed and by the end of the next quarter this would be completed. These Committees will go round these centres to make sure no violation of human rights is perpetrated against patients.

50. As mentioned earlier, the Visiting Committees prescribed by the Mental Health Act, 2012 (Act 846) being formed are the mechanisms to monitor prayer camps on regular basis. These camps under the new law will not be allowed to detain patients beyond 48 hours and the Visiting Committees will ensure compliance.

51. The Ghana Prisons Service wishes to categorically deny that prisoners are entrusted to exercise authority over other prisoners in their cells or blocks in place of prison officers. Rather, prisoners are selected from amongst their peers to lead the various cells and blocks in accordance with the laid down procedures and their responsibilities do not include physical control which could lead to abuses. Standing Order 460 of the Prisons Standing Orders, 1960, enjoins the administration of the Service to place prisoners who have shown good conduct and steady industry over a period of time in a special class known as the "Star Class" or "Black Coats" in prison parlance. These "star class" prisoners act as a liaison between the administrations of their respective stations and their fellow inmates. Some of these "star class" prisoners also serve as peer educators in the prison.

52. The Service would like to state that in strict compliance with Standing order 482 clause 8, which categorizes violence against a fellow prisoner as a major offence, "star class" prisoners are not allowed to wield canes neither are they allowed to beat their fellow inmates. "Star Class" Prisoners are not entitled to any further privileges beyond the ones expressly enumerated in Standing Order 460. Offending prisoners, including prisoners of the "star class" are sanctioned in accordance with the existing Service rules and regulations and even in extreme cases, such acts are reported to the police for further action.

53. Regulation 87(1) (g) of the Prisons Service Regulations 1958 (LN 412/58), permits the flogging of prisoners amongst several punishment options for prisoners who have been found guilty of misconduct. However, before such punishment can be carried out by any officer, the Service is required to obtain the written approval of its sector Minister. Regulation 88 further elaborates the maximum number of strokes that may be inflicted on an offending prisoner and requires that a cane or other instrument is used. It must however be stressed that the Service recognizes that in the current national and international legal dispensation, the said provisions on flogging or whipping are clearly obsolete and a violation of the fundamental human right of prisoners. In practice therefore, the Service can state categorically that it does not flog or whip its inmates or permit same. The Service must also state that the said Regulations are under review and shall expressly exclude any form of corporal punishment.

Issue 6

Liberty and security of person and treatment of persons deprived of their liberty (arts. 7, 9 and 10)

54. It is a constitutional requirement in Ghana that all persons, who are arrested upon suspicion of having committed a crime, are produced before a court of competent jurisdiction for the court to determine the lawfulness of their detention within 48 hours of their arrest. In most instances, this obligation is complied with. Where there is a breach of this requirement, such persons resort to the courts for redress. It is not the practice in Ghana for police officers to sign remand warrants. Such warrants would not be recognized by the prison authorities.

55. The trial of a juvenile is strictly regulated by the Juvenile Justice Act (2003) Act 653.The Act provides under section 33 that, the case involving a juvenile shall be dealt with expeditiously and must be completed within six months. Failure to complete the trial within six months shall lead to the discharge of the juvenile and the juvenile is not liable to further proceedings in respect of the same offence. A juvenile upon arrest is immediately entitled to be released on bail upon recognizance or the recognizance of a parent or guardian or close relative or any other responsible person. Where a juvenile is not released on bail in instances where the juvenile has committed serious offences, a Juvenile Court may commit the juvenile to the care of the juvenile's parent, guardian, close relative or any fit person or to a remand home. The maximum period of a remand warrant shall be seven days and shall not be renewed without the appearance of the juvenile at the hearing. The total period of a remand of a juvenile shall not exceed three months. A juvenile shall not be placed on remand in an adult prison neither shall male and female juveniles be mixed in the same remand centre. They shall also not be placed together with adults. The Act provides for the diversion of the juvenile from the juveniles' justice system with or without conditions upon the consideration of a social enquiry report.

56. Ghana has been implementing a policy of decongesting the prisons through a programme known as the "Justice for All Programme". This programme tackles the problem of remand prisoners who have been in custody for a long period of time and whose remand warrants have expired. Through the programme, many remand prisoners have been discharged either unconditionally or with conditions, whilst others have been granted bail. The success of this programme in addressing the problem of arbitrary and unlawful detention occasioned by lengthy delays in the administration of justice, where that may be the case, has been greatly appreciated by all stakeholders in the justice sector.

57. The Constitution of the Republic is being amended to establish Legal Aid Commission as an independent constitutional body to be funded and operated like the other bodies independent of the Executive. A Legal Aid Commission Bill is under consideration to review the legal regime of legal aid delivery including establishment and operation of a Directorate of Public Defenders under the Legal Aid Commission operating like the Directorate of Public Prosecutions under the Attorney-General's Department.

58. The legal Aid Commission Bill also provides for ensuring participation of private law practitioners in legal aid delivery by tying the renewal of their practising licence to evidence of their participating in legal aid delivery. The conditions of lawyers employed by the Legal Aid Scheme has now been harmonized with those of their counterparts in Attorney-General General's Department and the bench making legal Aid delivery more attractive to the lawyers.

59. The prison authorities in Ghana and the Ghana Police Service have been facing problems with providing security for prisoners who seek medical care even in Public Hospitals. The problem is how to ensure that accused person or prisoners do not escape in their attempt to seek medical care. Private medical centres, for the purposes or doctor/patient confidentiality, do not allow the police or prison wardens to be present whilst consultation is done. For security purposes, the security agencies are uncomfortable with this arrangement and thus the prison Officers tend to prefer to take prisoners to government hospitals where they can monitor prisoners whilst they seek medical care. Thus prisoners in essence are not denied medical care but for security reasons they are taken to public hospitals for medical attention.

60. In Ghana, our laws especially the Criminal and other offences (Procedure) Act, 1960 (Act 30) gives accused persons the right to apply for bail and *habeas corpus* applications as well as other processes by which accused persons can seek review of their detentions. It is worthy to note that these rights are exercised on a daily basis by accused persons. Thus, even remand prisoners are assisted by the Prison Service to have recourse to these

processes where such remand prisoners have no Counsel to act for them. The courts do not hesitate to discharge or grant bail to accused persons when such applications are brought before them. In fact, such legal processes are the primary means by which such infractions on the rights and liberties of persons are challenged.

61. The various legislations are outlined below:

Criminal and other offences (Procedure) act, 1960 (Act 30)

"**Section 96 – Granting of Bail**

(1) Subject to the provisions of this section, a court may grant bail to any person who appears or is brought before it on any process or after being arrested without warrant, and who—

(a) is prepared at any time or at any stage of the proceedings or after conviction pending an appeal to give bail, and

(b) enters into a bond in the manner hereinafter provided, with or without a surety or sureties, conditioned for his appearance before that court or some other court at the time and place mentioned in the bond.

(2) Notwithstanding anything in subsection (1) of this section or in section 15, but subject to the following provisions of this section, the High Court or a Circuit Court may in any case direct that any person be admitted to bail or that the bail required by a District Court or police officer be reduced.

(3) The amount and conditions of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive or harsh.

(4) A court shall not withhold or withdraw bail merely as a punishment.

(5) A court shall refuse to grant bail if it is satisfied that the defendant—

(a) may not appear to stand trial; or

(b) may interfere with any witness or evidence, or in any way hamper police investigations; or

(c) may commit a further offence when on bail; or

(d) is charged with an offence punishable by imprisonment exceeding six months which is alleged to have been committed while he was on bail.

(6) In considering whether it is likely that the defendant may not appear to stand trial the court shall take into account the following considerations—

(a) the nature of the accusation;

(b) the nature of the evidence in support of the accusation;

(c) the severity of the punishment which conviction will entail;

(d) whether the defendant, having been released on bail on any previous occasion, has willfully failed to comply with the conditions of any recognizance entered into by him on that occasion;

(e) whether or not the defendant has a fixed place of abode in Ghana, and is gainfully employed;

(f) whether the sureties are independent, of good character and of sufficient means."

The Habeas Corpus *act, 1964*

"**Section 1 – Application for an Order of *Habeas Corpus***

(1) Where an allegation is made by any person that he is being unlawfully detained an application may be made under this section to the High Court or any Judge thereof for an enquiry into the cause of the detention.

(2) The application may be made by—

(a) the person alleging that he is being unlawfully detained,

(b) any person entitled to the custody of the person detained,

(c) any other person acting on behalf of the person detained.

(3) Every such application shall be in writing containing the following particulars—

(a) the name and other description of the person detained;

(b) the place of detention;

(c) the mode and manner of arrest; and

(d) any other particulars the applicant may wish to bring before the High Court.

(4) Notwithstanding anything in any enactment or rule of law, where an application has been made to the High Court or a Judge thereof under this section by or on behalf of any person, no such application shall again be made by or on behalf of that person on the same grounds, whether to the same Court or Judge or to any other Court or Judge, unless fresh evidence is adduced in support thereof."

62. Measures taken:

(i) **Psychiatric health**: Again major steps have been taken to change this situation through the enactment of the Mental Health Act, 2012 (Act 846). The Mental Health Authority with its partners continue to advocate for resources towards enhancing the living conditions and treatment of patients in psychiatric institutions. In Accra Psychiatric Hospital, a lot of measures have been taken; patients who have improved and are still there are being sent home by the hospital. So far in the last three years some 700 such patients have been sent home. The decongestion has also enabled the Hospital to improve upon sanitary and other conditions;

(ii) Admittedly, overcrowding is a major problem to the administration of the Ghana Prisons Service which is caused by the closure of some large holding facilities without their replacement and the ever-increasing remand populations in the various prisons. Being aware of this situation, the Service in collaboration with other agencies has taken some practical steps to alleviate the situation which includes the following:

- The facilitation of remand prisoners' access to justice with the assistance of officers who have undergone training as paralegals
- Introducing periodic court sittings in the prison through the Justice For All Programme to hear the cases of inmates with overstayed warrants
- The periodic transfer of prisoners from notably overcrowded prisons to under-populated prisons
- Facilitation of the grant of amnesty to selected inmates as directed by the terms and conditions of the exercise

- Speeding up work on the completion of the Ankaful Maximum Security Prison to make the facility fully operational;

(iii) **Inmates' Nutrition**: Inmates are fed on the approved rate of GH¢ 1.80 per day but the Service tries to subsidize where possible. Overcrowding at the country's high security prisons where prisoners on the death row are held also has a direct bearing on their livelihood;

(iv) **Access to Medical Care**: Healthcare has been a major issue because of the limited supplies to our infirmaries. The Service however tries to solve the problem by sending its sick prisoners to government hospitals for treatment. It is expected that the infirmaries in our prisons be upgraded and stocked with drugs to make them more functional. Also, engaging medical and paramedical professionals such as medical doctors, psychiatrists, clinical psychologists and counselors would help meet prisoners' health needs;

(v) **Shortage of Prison Staff**: Despite the ban on employment, the Government of Ghana has recently opened a window for the recruitment of support staff for the prisons service. This, it is hoped, will be followed by the recruitment of officers who will undergo the requisite training to enable them augment the staffing strength of the service;

(vi) **Educational Opportunities and Skills Training**: The service has introduced formal and informal educational programmes in most of the prisons in Ghana since 2007. For instance, there are junior and senior high school educational programmes in the Nsawam medium Security Prison, the Kumasi Central Prisons and the Wa and Tamale Central Prisons. The Service also has ICT and vocational training facilities in other prisons across the country. However, the Service is not able to extend these educational programmes to other prisons for lack of space, infrastructure and *resources/funding*. It is the desire of the Service that every prisoner has access to education and thus wishes that appropriate educational facilities are eventually provided in every prison in Ghana. The Government through the GETFUND[1] has constructed a 12-unit classroom block at the Nsawam Medium Security Prison and the Wa Central Prison. Work on a third facility for the Ankaful Prisons Complex will soon commence;

(vii) **Meaningful Family Visits**: It needs to be emphasized that with the exception of the Senior Correctional Centre which is for juveniles, all the prisons in Ghana are for adults where minors are not entertained. While organized family visits involving spouses and their children are allowed, our prisons lack facilities where minors only could meet to have meaningful interaction with their parents. To ensure that the Ghana Prisons Service operates in accordance with the UN minimum Standard Rules for the treatment of prisoners, the prison administration is seeking assistance to renovate prisons facilities to provide basic amenities such as family visit centres, recreational centres and other similar facilities for prisoners to keep them in constant touch with families for effective re-integration, ease stress and improve their mental wellbeing.;

(viii) **Juvenile Offenders**: Article 15(4) of the 1992 Constitution categorically states that "a juvenile offender who is kept in lawful custody or detention shall be kept separately from an adult offender". Pursuant to the above mentioned provision and in accordance with the laws regulating the Service, adult prisoners are detained in adult prisons while young offenders and juvenile offenders who have committed serious offences are detained at the Senior Correctional Center which is also under the administration of the Ghana Prisons Service. The Service therefore in the performance of its mandate, separates the adult prisoners from the young or juvenile offenders. Where through no fault of the

[1] Ghana EducationTrust Fund.

Service young offenders are found in adult prisons, steps are taken by the Service in collaboration with the Department of Social Welfare and Ministry of Interior to transfer them to appropriate institutions. In the best interests of the child, remand homes for juveniles are required to be sited closer to the offenders and their families to sustain family bond and to ensure effective reintegration. It is however difficult to achieve this objective as most of these remand homes have closed down resulting in travelling long distances to ensure their safe custody;

(ix) **Segregation of Convicts and Suspects**: The 1992 Constitution of the Republic of Ghana under Article 15(3) makes it imperative that suspects (remands) are separated from convicts. This provision is strictly being complied with by the Ghana Prisons Service to the largest extent practically possible. The Service keeps remand prisoners in separate cells from the convicts. However, even though the respective facilities are segregated, they are usually situated on the same compound because of inadequate space. To further alleviate this problem, the Government has initiated the construction of a remand facility at the Nsawam Medium Security Prison. In this regard therefore, the Service is not in contravention of the law which requires the separate incarceration of convicts and remands as it continues to ensure as much as practicable the segregation of convicts from non-convicts;

(x) The need for alternative punishments though admitted as an integral aspect of a holistic justice administration is yet to be fully implemented in Ghana, though the courts in very rare cases issue sentences with the option of fines and suspended sentences in certain situations;

(xi) **Alternatives to Non-Custodial Sentences**: The absence of a legal framework and proper structures for institutionalizing alternatives to imprisonment compels the courts to commit persons to prison resulting in congestion with its associated challenges. The Ghana Prisons Service, though limited in the Service's mandate to ensure the safe custody and welfare of convicted individuals has submitted a proposal for non-custodial sentence for approval;

(xii) **Other matters**: Independent Visits: The law also enjoins visits into the prison by independent accredited bodies like the Commission on Human Rights and Administrative Justice (CHRAJ), Visiting Committees and Judges. Such visits are to facilitate the assessment of the actual conditions within the prisons for the appropriate interventions.

Issue 7

Right to a fair trial and independence of the judiciary (arts. 14 and 24)

63. Article 88(1) of the 1992 Constitution of Ghana provides that, "There shall be an Attorney-General of Ghana who shall be a Minister of State and the principal legal advisor to the Government." The Attorney-General (A-G) is thus a member of the Executive Arm of the government.

64. The Judicial service has instituted a directive to ensure that criminal cases are disposed of in time. This includes short adjournments only by the courts. A judge cannot adjourn a criminal case for more than two weeks during a trial. Where the prosecution is delaying a trial, the court has the power to discharge the accused persons or order the prosecution to continue with its case. Most of the courts are automated courts and it is easy for lawyers of accused persons to be furnished with records of proceedings on time. This essentially shortens the turnaround time and leaves no cause for delays.

65. Human Rights Courts, as a division of the High Court, have been instituted to deal with cases of violations of the rights and freedoms of individuals including delays in trials.

66. To deal with the issue of the backlog of remand cases, the Attorney-General's Office initiated the Justice for All Programme. The Justice for All Programme is an initiative of the Ministry of Justice and Attorney-General's Department and seeks to bring together the key stakeholders in the Justice Sector to ensure access and justice for all remand prisoners who have been kept in custody unduly. The programme which was initiated in 2007 has seen remarkable progress over the years. The Judiciary has also played a critical role to ensure its sustainability up to date. The report for the programme for 2015 is as follows; from the 20th of March to the 27th of November 2015, the Justice for All Programme was organized in Koforidua Prison, Nsawam Prison, Tamale Prison, Akuse Prison, Ho Prison, Tarkwa Prison, Sekondi Prison, Ankaful Prison, and Sunyani Prison. In all, a total of 458 cases were considered across the regions.

67. The breakdown of the cases handled is as follows:

(a)	Number discharged unconditionally or bonded	73
(b)	Number cautioned and discharged	7
(c)	Number Cautioned, discharged but Bonded-	7
(d)	Number Fined-	1
(e)	Number Imprisoned	58
(f)	Number on Bail	2
(g)	Number granted Bail	127
(h)	Number with Bail Conditions Reviewed	21
(i)	Number with Bail Refused	84
(j)	Number declined Jurisdiction	1
(k)	Number Convicted by Other Courts	1
(l)	Number Struck Out	5
(m)	Number Absent	24
(n)	Number referred for Psychiatric Treatment	5
Grand Total		**458**

68. Accused persons are to be brought to court within "a reasonable period of time" under article 14(4) of 1992 constitution – The provision states that, "where a person arrested, restricted or detained under paragraph (a) or (b) of clause (3) of this article is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released, either unconditionally or upon reasonable conditions, including in particular, conditions reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial." In practice, cases are brought to trial within reasonable time. However, in some instances some cases could take longer to investigate than others. This could be so in instances like homicide involving several persons or complicated financial crimes. Delays are often the result of prolonged investigations. Section 96(7) of the Criminal Procedure and Other Offences Act 1960 (Act 30), an accused person was not entitled to bail. The Supreme Court, however, on the 4th of May, 2016, in the unreported case of *Martin Kpebu v. The Attorney-General*, declared section 96(7) of the said Act, to be in contravention of Articles 15(2) and 19(2) (c) of the 1992 Constitution of Ghana and thus unconstitutional. In effect, now bail could be

granted to accused persons irrespective of the nature of the offence committed. The argument in respect of undue delay is therefore rendered moot with this recent decision.

Issue 8

Elimination of slavery and servitude (art. 8)

69. Article 13 of the 1992 Constitution guarantees the dignity of all persons. It further provides in article 16 for protection from slavery and forced labour. It states in clause 1 and 2 as follow:

"(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour."

70. Thus, all forms of slavery and forced labour are illegal within the Ghanaian legal context. Parliament has in furtherance of this, enacted legislation to buttress the constitutional provision.

(a) Section 87 of the Children's Act, 1998 (Act 560), prohibits all forms of exploitative child labour. Act 560 defines exploitative child labour as labour which deprives the child of health, education or development;

(b) Section 58 of the Labour Act, 2003 (Act 651), prohibits the employment of young persons in hazardous work. A young person is defined in Act 651 as a person between the ages of eighteen and twenty-one years of age. The provision is to the effect that an employer must not employ a young person in any type of employment or work likely to expose the person to physical or moral hazard. Furthermore, the employment of a young person in an underground mine work activity is strictly prohibited by Act 651.

71. Ghana has also taken steps to address cross border trafficking with the passage of the Immigration (Amendment) Act, 2012 (Act 848). The Act prohibits migrant smuggling and makes it an offence for a person to engage in migrant smuggling. A person who engages in migrant smuggling and is convicted is likely to be imprisoned for not less than five years and not more ten years.

72. **Elimination of the Worst Form of Child Labour (WFCL)**: the National Plan of Action (NPA) was launched in Ghana in 2011. The objective was to ensure that the worst form of child labour is reduced to the barest minimum by 2015 while fighting to eradicate the WFCL in the longer term. Currently, the document is being reviewed and validated which is at the costing stage at present, timeline is 2015-2020.Under the NPA, there are specific projects that are being handled by the International Labour Organisation (ILO) and other partners at the mining, cocoa and fishing sectors at the endemic districts in selected communities. At the district level, child protection committees have been formed to monitor and report to the national level on issues of child labour have been. ILO is as well working on artisanal small scale mining by providing direct interventions to the children – they withdraw the children from the work, support their parents and support the communities as well.

73. In relation to sexual exploitation of children, the Criminal Offences Act, 1960 (Act 29) in section 101(1) makes it an offence for a person to have sex with a child under sixteen years of age. If a person is found guilty, that person is liable on summary conviction to a term of imprisonment of not less than seven years and not more than twenty-five years. Act 29 defines sexual exploitation as the use of a person either for sexual activity that causes or is likely to cause serious physical and emotional injury, in prostitution or pornography.

74. Ghana's Parliament successfully passed the Human Trafficking Legislative Instrument (L.I. 2219) in November 2015 which will go a long way to aid effective implementation of the Human Trafficking Act and the fight against trafficking in persons.

75. With funding support from The United States of America, Ghana is implementing the Child Protection Compact Agreement aimed at combating Child Trafficking, Child Slavery, and Child labour in Greater Accra, Volta and Central Regions. Presently Standard Operating Procedures and Trafficking in Persons Data Base are being developed to identify victims of trafficking and follow up on various assistance interventions.

76. There are two Government owned Shelters in Osu and Madina in Accra, which will be undergoing some renovations soon.

77. The General Agriculture Workers Union (GAWU) project, is working at Kpondo-Torkor to eliminate trafficking & child labour in the fishing sector (Volta Lake). They have working protocols with the community to protect children and send them to school. A speed boat was launched in April 2015 to assist volunteers to monitor activities on the Lake to arrest perpetrators and rescue children on the lake.

Issue 9

Treatment of aliens including refugees and asylum seekers (arts. 7, 12 and 13)

78. Steps have been taken to review the Ghana Refugee Law, 1992 (PNDCL 305D) to improve fairness and efficiency in the asylum application process. A draft bill has been submitted to the Minister for the Interior for onward transmission to Cabinet. Some of the details are as follows:

(a) Border Referral Mechanisms: Periodic training organized by the Ghana Refugee Board (GRB) and the UNHCR for Officers of the Ghana Immigration Service at the crossing points to ensure that appropriate referral mechanisms are adhered to in the referral of persons intending to seek asylum, at the country's borders;

(b) Appeals Procedures: Amendments have been proposed to improve the Appeals Process for persons whose applications are rejected at first instance by the Board. In the current bill, asylum seekers whose applications have been refused can appeal against their decision and have their case re-examined only by the Minister for the Interior. The following proposals have been put forward:

(i) The Bill contains an Appeals Committee which shall consider appeals from of the decisions of the Commission refusing to recognize an applicant as a refugee;

(ii) The Appeals Committee to be appointed by the Minister shall consist of three (3) members, at least one of whom shall have a working knowledge in matters relevant to the functions of the Commission;

(iii) Members of the Appeals Committee shall be paid such allowances as the Minister may determine;

(iv) A person aggrieved by refusal of the Commission to grant refugee status may within thirty (30) days of being notified of such refusal, appeal in writing to the Appeals Committee set up under the Section;

(c) Effective Legal Remedy for Rejected Applications: The Board has reached an agreement with the Legal Aid Scheme (LAS) to assist vulnerable persons and refugees who may require legal assistance. The Service has therefore been providing legal service for some refugees in refugee hosting areas who demonstrate the need for it since 2015;

(d) Amend refugee legislation to ensure fair access to asylum procedures;

(e) Including referral mechanisms at crossing points and adequate procedural safeguards particularly;

(f) Effective legal remedy for those whose asylum applications have been rejected;

(g) Legal Remedy to prevent People from Becoming Stateless: Government has committed to accede to the Conventions on Statelessness, to this end a Focal Point for Statelessness was appointed by the Government to spearhead activities leading to accession to the two Conventions. A plan of Action was drafted by Stakeholder forum. This is being forwarded to Cabinet through the Minister for Interior and Minister for Foreign Affairs and Regional Integration. The proposal is to ensure that Ghana signs up to the Conventions by end of 2017;

(h) The broad policy objectives to address the causes of internally displaced persons in the Northern Region and to ensure in law and practice the protection of them are:

(i) To promote collaborative conflict resolution and prevention to achieve sustainable development;

(ii) To institute early warning mechanisms for internal displacement;

(iii) To mitigate the condition of internally displace persons (IDPs).

79. The Strategies are:

(a) Promoting conflict prevention and non-violent dispute settlement;

(b) Intensify research and data gathering on environment migration linkages;

(c) Strengthen institutions to monitor and enforce environmental standards;

(d) Mitigate the effect of internal displacement through enhanced capacity building.

80. Government of Ghana is working in collaboration with relevant institutions to adopt appropriate measures for preventing and managing internal displacement in the Northern Region. Government has adopted policies and practices that protect the rights of internal displaced persons and provide them with education and skills and training opportunities to facilitate reintegration.

Issue 10

Right to privacy and family life (art. 17)

81. The 1992 Constitution of Ghana demands a balance between respecting the right to privacy and lawful interception. The preamble to the Constitution 1992 begins as follows: "we the people of Ghana IN EXERCISE of our natural and inalienable right to establish a framework of government which shall secure for ourselves and posterity the blessings of liberty, equality of opportunity and prosperity". The Preamble to the 1992 Constitution affirms the resolve of Ghanaians to subject the governance of the country to well defined principles of law. Article 18(1) and (2) of the Constitution provide that:

"(1) Every person has the right to own property either alone or in association with others.

(2) No person shall be subjected to interference with the privacy of his home, property or 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".

82. This is to say that, Article 18(2) of the 1992 Constitution specifically prohibits interference with the privacy of "correspondence or communication except in accordance with law. Thus, the right to privacy, like most other human rights, is not absolute but is subject to constitutionally circumscribed limits.

83. Currently, in Ghana, interception of communication is prohibited and criminal unless permitted expressly by law. Accordingly, interception is permitted under various provisions of the Security and Intelligence Agencies Act, EOCO Act, Narcotics Control Act, Electronic Communications Act (ECA), the Mutual Legal Assistance Act, and to some extent, the Electronic Transactions Act. The provisions in these Acts are unanimous as follows: "There should be no interception without a court order/warrant."

84. Additionally, and under the ECA, the President may authorize or demand interceptions but only through the deliberate process of issuing an Executive Instrument (EI).

85. The Telecom companies in Ghana may intercept, but for strictly specified industry purposes, which do not include disclosure to third persons. All of these circumstances, in our view, are apt, and fit into the constitutional exceptions to the right to privacy by providing necessary safeguards against abuse, namely, (i) securing a court order/warrant, (ii) passing an EI or (iii) complying with strict legislative controls.

86. The State and its agents have never in the history of the country secretly taped Politicians either from the ruling party or the opposition. However, there are allegations of Politicians being taped by their confidants and close associates who divulge the information to the media. Thus, it appears that the main actors behind these tapes are the same political bigwigs. So, can we confidently say that, politicians are their own enemies?

87. The State and its agents have condemned in no uncertain terms this so-called secret-tape-syndrome which is putting so much trepidation into people and eroding trust from society. Both politicians and nonpoliticians are being educated to be mindful of what they say, where, when, and how they say what they say; not underestimating to whom and about whom they say what they say.

88. To address this problem, the Government of Ghana is exploring the possibility of seeking a court order to forbid the airing of leaked controversial tapes on radio. People are being educated to draw a dichotomy between what is meant for private consumption and what is meant for the public.

Issue 11

Rights of the child (arts. 16, 24 and 26)

89. The Government of Ghana has instituted measures to address corporal punishment in schools and other childcare institutions. The Ghana Education Service (GES) has developed a Code of Conduct for Teachers, which defines physical violence to include corporal punishment. Teachers are consequently prohibited from inflicting any form of corporal punishment on a child. The Code has been presented to the Ghana Education Service Council for consideration and approval.

90. Schools in Ghana generally, have codes of conduct for pupils and students, which prescribe corrective measures when children misbehave. Also, GES has also developed a toolkit for alternative methods as positive measures to be used by 1200 teachers in

2 districts which is under piloting by end of September, 2016. After piloting it is expected to scale up to 50 districts and roll-out by end of 2016.

91. The Ghana Police Service has also integrated child friendly policing strategy to ensure children rights are protected.

92. Ghana Education Service has taken a number of significant measures aimed at abolishing corporal punishment within the context of Child Friendly School Programming. The Head-teachers' Handbook has been revised and teachers are being made aware of likely prosecution where children are canned.

93. Since 2012, Government agencies including Department of Children (DOC) Department of Social Welfare (DSW) and CHRAJ have held community forums aimed at sensitizing the population on the negative effects of corporal punishment on children. The DSW and DOC alone have had interaction with over 250,000 people in about 250 communities across the entire country on violence against children. There have also been prosecutions in some cases of corporal punishment.

94. Child and Family Welfare Policy is also aimed at eliminating corporal punishment and other forms of abuse against children in both home and school settings. Violence against children is one of the priority areas of concern for the Policy. The key strategic interventions under this Policy to address violence and abuse of children include:

(a) Strengthening of community structures (chiefs, queen-mothers, community leaders, religious leaders and faith-based organizations);

(b) Improvement in child and family welfare services;

(c) Empowering children and young people to understand situations of abuse and violence and report to the relevant authorities;

(d) Empowering families and communities to better understand abuse and violence against children and make better choices to prevent and respond to situations of risk.

95. A sufficient number of specialized juvenile courts**:** In accordance with sections 47(1) (h) and 49(3) of the Courts Act, 1993 (Act 459), a District Court in Ghana has the jurisdiction to double as a Juvenile Court upon the order of the Honorable Lady Chief Justice and has the statutory power to hear and determine a civil or criminal matter that involves a juvenile. There are 216 administrative districts in Ghana and currently there are 216 Districts that have jurisdiction to deal with matters involving juveniles. About ten (10) of the District Courts lack sitting magistrates due to the recent removal from office of some few magistrates. Relieving magistrates will sit in some of these ten District magistrates as soon as possible.

96. A sufficient number of remand facilities: There are in Ghana about four (4) operational or functional remand facilities and one (1) customized police cell for holding juvenile offenders. These are in the Eastern Region, Western Region, Greater Accra and Northern Region; there is no operational or functional facility in Ashanti Region (Kumasi). The remand facility in Central Region (Cape Coast) is only a customized Police cell by the Ghana Police Service to serve as a remand facility.

97. Given that Article 15(4) of the Ghana Constitution 1992, provides that "[a] juvenile offender who is kept in lawful custody or detention shall be kept separately from an adult offender", it is obvious that the situation in the area of remand facilities is crying for urgent improvement.

98. Detention only when absolutely necessary**:** Under section 29 of the Juvenile Justice Act, 2003 (Act 653), the juvenile courts have the power to discharge the juvenile offender

conditionally or unconditionally; to commit the juvenile offender to the care of a relative or other fit person; to send the juvenile offender to a correctional centre; to order the juvenile offender or the parents to pay a fine, damages, or costs; to order the parent, guardian or close relative of the offender to give security for the good behavior of the juvenile offender or to deal with the juvenile offender in any other lawful manner that the Court considers just and fair in the overall circumstances of the case. The Court again has the power to make a diversion order that allows the juvenile offender to be dealt with outside the justice system.

99. Notwithstanding the broad and discretionary jurisdiction to deal with the juvenile offender in a just and fair manner, the Juvenile Courts and courts of summary jurisdiction are prohibited by section 32 of Act 653 from sentencing a juvenile offender to a term in prison or to death. Where, however, the Minister responsible for Interior considers that a detained convicted juvenile offender is incorrigible or of a bad influence on the other inmates of the correctional center or other facilities, the Minister may commute the unexpired period of the term of the detention to a term of imprisonment with or without hard labour.

100. The foregoing confirms that the legal framework in Ghana for dealing with juvenile offenders makes detention of a juvenile offender a measure of last resort which kicks in only when absolutely necessary.

101. Custody as a last resort**:** All public officials involved in the juvenile justice system including the juvenile courts must be informed by section 2 of Act 653 which provides that the best interest of a juvenile is

(a) paramount in a matter concerned with the juvenile;

(b) the primary consideration by a juvenile court, institution or any other body in a matter concerned with a juvenile.

102. Additionally, the long title of the Juvenile Justice System Act, 2003, Act 653 reads:"An act to provide a juvenile justice system, to protect the rights of juveniles, ensure *an appropriate and individual response* to juvenile offenders, to provide for young offenders and for connected purposes". The long title shows that the law provides for a broad array of ways in which the juvenile offender may be dealt with by the courts acting in concert with the Social Welfare Department, probation officers and correctional centres including the relevant Ministries. Some of these ways are discharge, diversion, undertaking, probation, correction, care, remand, fines and damages. Mindful of this broad array of options in dealing with a juvenile offender and the prevailing legal policy, the law requires that the juvenile courts would resort to detention only as a last resort.

103. Custody for as short a period as possible: Section 46 of Act 653 provides for the periods of detention for juvenile offenders. The Judicial Service has developed the Ghana Sentencing Guidelines to aid judges and magistrates including juvenile courts in the exercise of their sentencing jurisdiction.

104. In addition to section 42 of Act 653 which requires that the Ministries responsible for the Interior and Social Welfare as well as the Commission on Human Rights and Administrative Justice (CHRAJ) visit the relevant juvenile facilities, the Judiciary has put in place a reporting system that brings decisions of judges and magistrates including sentencing orders under the administrative radar of the Honourable Lady Chief Justice. There is also the Justice for all Programme under the auspices of the Judicial Service. These are all aspects of a laudable self-correcting system that has the potential to ensure that juvenile offenders are held in custody only when it is absolutely necessary, as a last resort and for as short a time as is reasonably necessary.

105. Alternative measures to imprisonment and application in practice: Apart from section 50 of Act 653 empowering the sector Minister to order the transfer of an incorrigible convicted juvenile offender from, for example, a correctional facility to prison, section 32 of the Act prescribes sentencing juveniles to prison terms. For this reason, section 29 of the Act provides for alternative measures, namely, discharge, undertaking, probation, correctional centre, care home, remand centres and damages.

106. In effect Ghana has in place a robust legal framework and adequate institutional structures that ensure that juvenile offenders are held in custody only when it is absolutely necessary, as a measure of last resort and only for as short a time as possible.

107. The Ghana Refugee Board with the assistance of UNHCR in 2016 has initiated a programme to systematically ensure the registration of refugee children born in Ghana. To this end, the Ghana Refugee Board has taken over the function of facilitating birth registration from another implementing partner of the UNHCR. In collaboration with the Birth and Deaths Registry, the programme seeks to clear a backlog of unregistered children born in Ghana and also ensure the registration of new births. In total eighty-eight children under one year were registered in the first quarter of 2016. This figure includes both new births and those who were not registered at birth. Discussions are on-going to register children above one year who were not registered at birth.

108. The Birth and Death Registry of Ghana has over the years taken measures to improve birth registration coverage. Some of the activities that the Registry is undertaking continuously with the view to increasing birth registration are, the establishment of Community Population Registers in the local communities, mass mobile registration and awareness creation through Faith Based Organizations. Other activities are the celebration of Child Health Promotion week with the Ghana Health Service and the Births and Deaths Day celebration held every 1st September. The Registry has also launched a programme which is making use of mobile phone technology to register birth in real time.

109. These interventions have made it possible for the Registry to move registration coverage from 17% in 2002 to 67% in 2007. However, the progress has stalled for the past nine (9) years. Currently, one (1) out of three (3) children born in Ghana is left unregistered. The Births and Deaths Registration Act, 1965, Act 301, does not allow the registration of children born outside Ghana, hence we do not have any arrangement in place for registration of refugee children.

Issue 12

Freedom of opinion and expression (art. 19)

110. There have been times that journalists have clashed with the Police and Security Forces in the performance of their duties. Nevertheless, these are isolated cases because there is no deliberate or systematic policy on the part of the Security Forces to attack journalists physically or subject them to threats in order to silence them. The security forces also do not arrest and detain journalists for expressing their opinion. Due to individual and institutional differences and professional ramifications, there are professional misunderstandings sometimes, leading to clashes between the media and other bodies or even individuals.

111. There are situations where security agencies do not want the media to cover, or delay coverage not only due to issues bordering on national interest but more importantly the disclosure of such stories may jeopardize investigation and subsequently affect prosecution. On the contrary, the media may also consider it paramount for coverage due to its newsworthiness. This may spark misunderstanding between the security agency and the

media. That notwithstanding, there is tolerance, considering the fact that, the ultimate goal of the two institutions is the national interest.

112. The Ghana Police Service for instance, has taken a serious stance against Police brutalities in all forms such that, in their Public Confidence Re-affirmation programme, this subject matter has been given prominence. The expansion of public affairs activities in the Service to all regions and the subsequent construction of a separate office accommodation for the development is an attestation of the Police Administration's appreciation of the relevance of the media in its preparedness to collaborate with them. In the operational orders of the Service for instance, there are special provisions to see to it that, personnel embarking on operation handle members of the media with utmost civility and professionalism and where necessary special protection made for them. In recognition of the role that the media play in enhancing security in the country, the Police administration went a step further to solicit inputs of the Ghana Journalists Association in developing Standard Operational Procedures (SOP) document in dealing with the media.

113. The independence of the media is enshrined in article 162 of the 1992 Constitution of Ghana and it is proper that this provision is safeguarded without any hindrance. Any individual body that impedes media personnel from carrying out its legitimate duty is in breach of the law. To go to the extent of assaulting or brutalizing a journalist compounds ones' criminal liabilities as it could bring in offences like assault, causing harm, causing damage or even murder when one loses his life.

114. Status of the right to information bill: The Right to Information Bill seeks to give effect to article (21)(1) (f) of the 1992 Constitution which provides that, "All persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society." The Bill was published in the Gazette of Wednesday, 31st July, 2013, laid before Parliament on 12th November, 2013 and obtained Second Reading on 25th June, 2015. The Bill is still under consideration by Parliament.

115. The purpose of the Bill is to provide the legal framework under which information held by public and private institutions may be obtained. In the preparation of the Bill the International Covenant on Civil and Political Rights provided guidelines as to the import of the right to information. The underlying factor in the qualifications to the right to information is the need to protect the safety and integrity of the State and the privacy of individuals. This need is summed up in the general term of "subject to respect for the rights and freedoms of others" and "for the public interest". In the language of article 12(2) of the Constitution,

> "Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter, but subject to respect for the rights and freedoms of others and for the public interest."

116. The required qualification to the right to information finds expression in the Bill through the exemptions and protection from disclosure of various kinds of information. In the provision for the exemptions and protection, however, care has been taken to make them relate to specific circumstances and situations and to make them address specific pressing social needs so as to ensure that loopholes are not available which will be taken advantage of to whittle away the right of access in the implementation of the law. Thus, the Right to Information Bill guarantees access to information but subjects this right to various restrictions which is in compliance with article 19 of the Covenant.

117. The decision in the recent case of the High Court Case of Lolan Sagoe-Moses vs. The Attorney-General will lead the way in ensuring more transparency in government and especially enable journalists and anti-corruption activists to seek information and expose nefarious activities of public officials. The decision is also another major victory for human

rights and especially the right to information in Ghana. It presents an important avenue for the enjoyment of the right to information, especially access to official government information.

Issue 13

Dissemination of information relating to the Covenant and the Optional Protocol (art. 2)

118. We always educate the public on the rights in the Covenant and the First Optional Protocol. The Commission on Human Rights and Administrative Justice now has a department on Human Rights.

119. The Commission on Human Rights and Administrative Justice provided technical advice in the preparation of the report because it is an independent body.