



COUNTRY SECTION: Ghana

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OVERVIEW OF THE GHANAIAN LEGAL SYSTEM

Since independence, Ghana's Constitutions have guaranteed gender equality. The current Constitution and several laws continue to advance gender equality and a number of state institutions have mandates that promote gender equality. However, Ghana operates under a dualist legal system, whereby legislative or executive action is needed to incorporate ratified international treaties into national law. Very few treaties have been domesticated or incorporated into national laws.

INTERNATIONAL INSTRUMENTS

Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW)

CEDAW is an international treaty that requires states to eliminate all forms of discrimination against women. Ghana ratified CEDAW in 1986 without reservation and ratified the Optional Protocol to CEDAW in 2009. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports to the CEDAW Committee, at least every four years, on measures they have taken to comply with their treaty obligations. Ghana missed its initial report which was due in 1987. It submitted cumulative 3rd, 4th and 5th Periodic Reports in February 2005.

Universal Declaration of Human Rights 1948 (UDHR)

The Universal Declaration of Human Rights recognises the inherent dignity and the equal and inalienable rights of all members of the human family regardless of sex, race, colour, language, religion or distinction of any kind.

International Covenant on Civil and Political Rights 1966 (ICCPR)

The ICCPR deals in detail with the rights outlined in the Universal Declaration of Human rights and guarantees basic civil and political rights to all persons, "without distinction of any kind, such as race, colour, [or] sex..." [Article 2(1)]. These rights include, amongst others, the right to life, freedom of movement, equality before the law, privacy, freedom of religion and the right to participate in public affairs including the right to vote. Ghana ratified the Covenant on 7 September 2000.

International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)

The ICESCR articulates important rights including the right to work and the right to fair wages and equal pay for equal work for women, the

right to an adequate standard of living including adequate food, clothing and housing, the right to enjoyment of the highest standard of health and the right to education. Ghana ratified the Covenant on 7 September 2000.

The Beijing Platform for Action 1995 (BPfA)

The Beijing Conference of 1995 identified 12 critical areas of concern that were impacting negatively on the ability of women to fully access their human rights. The Beijing Declaration and Platform for Action set out specific objectives and urgent priority actions in response to the identified critical areas. Ghana has signed the Platform for Action. The Platform also calls upon governments to develop strategies or national plans of action to implement the Platform locally and improve the situation of women in their country. Ghana has been consistent with submission of progress reports on the Beijing Declaration and Platform for Action.

Declaration on the Elimination of Violence Against Women of 1993 (The Declaration)

The Declaration, adopted by the United Nations General Assembly, defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women”. Article 4 requires states to “condemn violence against women and...not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination”. In addition, article 4(d) states, “women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms”.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000 (Trafficking Protocol)

The Trafficking Protocol draws special attention to women, and requires states to legislate in order to combat human trafficking. Ghana ratified the Trafficking Protocol in 2009.

Convention on the Rights of the Child 1989 (CRC)

The CRC applies to all children and prohibits discrimination against girls. Ghana ratified the CRC on 5 February 1990 and has signed but not ratified the two Optional Protocols to CRC on the involvement of children in armed conflict and child prostitution and pornography.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT)

CAT is an international human rights instrument which aims to prevent torture around the world and requires states to take effective measures to prevent torture within their borders. Rape as an act of torture has been affirmed by successive UN Special Rapporteurs on Torture. Ghana ratified the Convention and the Optional Protocol on 7 September 2000.

Other international instruments

Ghana also acceded to the Convention on Political Rights of Women and the Convention on the Nationality of Married Women in 1965. Ghana further signed and ratified the Rome Statute on the International Criminal Court in 1999 and the International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) in 2000.

Millennium Development Goals 2000

The 55th Session of the United Nations (UN) held in September 2000 adopted the United Nations Millennium Declaration which articulated among other things eight Millennium Development Goals with targets set to be achieved by 2015. Ghana has been touted by development partners as the country that has achieved the global objective to halve extreme poverty by 2015 (MDG 1). Yet, despite an increase in aid from development partners towards improving gender equality, implementation of gender equality objectives has been disappointing. For example:

- The trends show that Ghana is on track to achieve the target of gender parity especially at the Primary and Junior High school (JHS) levels. However, gender parity at the secondary and tertiary levels is unlikely to be achieved by the target date of 2015.
- The progress towards increasing the number of women in public life and decision making, particularly in Parliament, suffered a setback with the reduction of the number of women elected into Parliament during the 2008 elections. The proportion of seats held by women in Parliament in 2009 was 8.7% (20). This was an almost twenty percent decline from the figure of 10.9% (25) which represented the percentage of female parliamentarians in 2005.
- There have been reductions in the maternal mortality rate over the last two decades, but the pace of change has been slow. Between 1990 and 2005, the maternal mortality rate reduced from 740 per 100,000 live births to 503 per 100,000 live births. It declined further to 451 deaths per 100,000 live births in 2008. If the current trends continue, maternal mortality will be reduced to only 340 per 100,000 by 2015 – compared with the MDG target of 185 per 100,000 by 2015.

REGIONAL INSTRUMENTS

African Decade for Women

The African Union declared 2010 to 2020 as a Decade of Women and identified ten themes around which member States are to take action. The goal of the Decade is to promote gender equality and women's empowerment from the grassroots to national, regional and continental levels by speeding up the implementation of commitments made by States through the various international treaties. The themes are: Women's health, reduce maternal mortality and address HIV/AIDS; Women's economic empowerment and entrepreneurship; Agriculture and food security; Education, science and technology; Environment, climate change and sustainable development; Peace, security and violence against women; Governance and Legal Protection; Gender financing and budgeting; Women in decision making; and Young Women's Movement. An African Women's Decade Fund has been established to support activities towards achieving objectives under the thematic areas.

The African Charter on Human and People's Rights (Banjul Charter)

The Banjul Charter is a regional human rights instrument which guarantees the rights of all individuals to equality, dignity, health, freedom from exploitation, and work under equitable and satisfactory circumstances. Article 18(3) requires states to "...ensure the elimination of every discrimination against women". Ghana ratified the Charter in 1984. The First State report on implementation of the African Charter was submitted in September 1992. Ghana then combined four overdue reports for 1993, 1995, 1997 and 1999, and submitted these in March 2000.

The Protocol to the African Charter on Human and People's Rights on the Rights of Women 2005 (The Maputo Protocol)

The Maputo Protocol builds on the Banjul Charter, focusing specifically on the need to promote and protect women's rights. It includes articles relating to trafficking in women, violence against women, widow's rights, harmful practices, food security, equal partnership in marriage, sexual and reproductive rights, and the right to equal opportunity in work and career advancement. Ghana ratified the Protocol on the Rights of Women in Africa in 2007 but has not submitted any report as yet.

Using the Women's Protocol

Civil society in Ghana has prepared reports on implementation of the Protocol on Women's Rights and the Solemn Declaration on Gender Equality which were included in reports by Femmes Solidarité Africaines (a group that advocates on AU protocols). The report found that despite measures taken to improve women's rights, there were other areas that required action such as women's representation in decision-making and domestic violence. In reaction to the poor reporting record, Ghana was urged by the African Peer Review Mechanism to adopt a *'deliberate plan to clear outstanding reports and institute a mechanism for automatic compliance with reporting obligation'*.

Other African Union instruments

Ghana signed the Protocol to the African Court of Justice in 2003 and ratified the Protocol establishing the African Human Rights Court in 2004. The African Refugee Convention and the African Charter on the Rights and Welfare of the Child were ratified in 2005, and the African Charter on Democracy, Elections and Governance in 2010. Other significant instruments in the African Union gender architecture are the African Union Constitutive Act, Solemn Declaration on Gender Equality (2004) and the African Union Gender Policy (2008), all of which Ghana has acceded to.

Economic Community of West Africa States (ECOWAS)

Ghana has ratified the Protocol on Democracy and Good Governance and the ECOWAS Initial Plan of Action against Trafficking in Persons in 2011. It has also endorsed the ECOWAS Gender Policy (2003).

DOMESTIC LAWS

The Constitution

Ghana's Constitutions since independence have guaranteed gender equality. The 1992 Constitution guarantees fundamental human rights and freedoms of the individual, including provisions that advance gender equality and women's rights. All persons are equal before the law and cannot be discriminated against on the basis of gender; all persons are protected from slavery; all have a right to own property; women are guaranteed maternity leave with pay and a right to training and promotion without any impediments; and customary practices that undermine people's physical and mental well-being are inhibited.

The National Health Insurance Act 2003 (Act 650)

This Act establishes measures to provide accessible, affordable and quality health care for all citizens, both women and men. Government has also introduced additional dimensions to the Health Insurance Scheme which allows pregnant women to enjoy free delivery services.

National Gender and Children's Policy 2004 (the National Gender Policy)

This policy aims to bring gender concerns into every aspect of the national development process. The specific objectives of the Policy are to: redress gender imbalances through policy review, legal reforms and enforcement of existing legislation; implement activities to strengthen women's role in economic development; and promote women's equal access to and control over economically significant resources.

Employment Rights:

The Labour Act 2003 (Act 651)

Within this Act, women are guaranteed adequate remuneration and rights to equal remuneration for equal work.

Violence against Women

The Children's Act 1998 (Act 560)

This Act prohibits child marriages.

The Criminal Code (Amendment) Act 1998 (Act 554)

The Amendment Act amended the Criminal Code 1960 (Act 29). It made the definition of defilement (statutory rape) gender neutral and the sentence for defilement has been reviewed to from 7 to 25 years. Rape now attracts a sentence of 5 to 25 years. A new crime, indecent assault, has been introduced by the Amendment.

The Human Trafficking Act 2005 (Act 694)

This Act provides for the safety of persons by prohibiting removal from their normal place of abode for exploitative activities such as child labour, child prostitution or pornography. The Human Trafficking Act of 2005 conforms to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons.

The Domestic Violence Act 2007 (Act 732)

This Act prohibits domestic abuse, including physical, psychological, sexual and economic abuse.

There are **other pieces of legislation** that abolish customary practices that are injurious to girls and women. These include the criminalisation of female servitude (trokosi), female genital mutilation (FGM) and harmful widowhood rites.

Marriage and the Family:

The Matrimonial Causes Act, 1971 (Act 367)

This Act provides for divorce, financial provision, child custody.

The Wills Act 1971 (Act 360)

This Act allows for the revision of a Will so that reasonable provision is made to dependents not catered for out of the estate of the deceased.

Intestate Succession Law 1985 (PNDCL 111)

This law provides a means for distributing inheritance on intestacy (when someone dies without a valid Will) with the aim of protecting surviving spouse and children. Presently, a new bill for the review of this law is before Parliament for passage into law.

The Customary Marriage and Divorce Registration Law 1985 (PNDCL 112)

This provides for the optional registration of customary marriages by the State as proof of marriage.

OVERVIEW OF GENDER MACHINERY

A number of institutions are in place to promote gender equality and women's empowerment.

Ministry of Women and Children's Affairs

In 2001, the Government established the Ministry of Women and Children's Affairs (MOWAC). There are two departments in the Ministry - the Women's Department and the National Commission on Children. These departments are mandated to coordinate formulation of gender and children specific development policies, guidelines, advocacy tools, strategies and plans for implementation by Ministries, Departments, Agencies and District Assemblies. They also monitor and evaluate the implementation process and the impact of specific development plans and programmes on women and children.

Apart from MOWAC, other relevant bodies include:

Other Government Departments

- Ministry of Health, which implements programmes including

- reduction of maternal and neo-natal deaths;
- Ministry for Food and Agriculture, which has a Women in Agriculture (WIAD) directorate that focuses specifically on women in the agricultural sector;
- Department of Community Development; and
- Ministry of Education and the Ghana Education Service, which have programmes designed to improve gender parity in school.

Commissions

- Ghana AIDS Commission, which provides support to gender-focused programmes;
- Commission on Human Rights and Administrative Justice (CHRAJ);
- Commission on National Development Planning, which provides national planning guidelines to ensure that planning processes nationally and at the district level are participatory, including specifically stipulating the inclusion of women in planning and monitoring; and
- Ghana Statistical Service which has developed a Statistical Compendium of Women and Men in Ghana.

Justice Mechanisms:

- Domestic Violence and Victims Support Unit of the Ghana Police Service which currently has 87 Units across the country to address domestic violence;
- Ghana Legal Aid Board which assists poor and vulnerable groups to access justice through mediation or representation in court; and
- The Judiciary, which has established a number of Juvenile and Family Courts, a Human Rights Court, and has designated some courts as Domestic Violence Courts.

Other Domestic Policies and Programmes:

Area	Policy Developments
Health	<ul style="list-style-type: none"> ● The National Health Insurance Scheme caters for poor vulnerable groups in society who cannot afford quality health care ● Reproductive Health Policy and Strategy, and Reproductive Health protocols, integrate gender-based violence; ● A five -year strategic frame work for service delivery has been developed with improved maternal and child health outcomes as a key focus; ● Health Sector Gender Policy has been developed; and ● Declaration of maternal mortality as a national emergency with a ministerial task force put in place in April 2008.

Area	Policy Developments
Education	<ul style="list-style-type: none"> ● The Ministry of Education Strategic Plan (ESP) 2003-2015 ● Ghana Education Trust Fund (2000) which funds construction of structures including more girls' dormitories to increase the intake of girls; ● Annual Science Technical Mathematics Education (STME) Clinics for girls to increase interest in science; ● Re-entry policy for pregnant students dropping out of school.
Women in Decision Making	<ul style="list-style-type: none"> ● Affirmative Action Policy Guideline (2008) that provides for 40% representation of women in public life and decision-making positions. As a result women have been appointed as ministers and deputy ministers, Speaker of Parliament, Chief Justice, Attorney General, Government Statistician and District Chief Executives, among others; ● At the decentralised level, a government directive to ensure that 40% women are represented in the district assemblies through appointments was issued in 2002 and 2010; ● A Women in Local Government Fund was established in 2006 and a District Capacity 20 Project in 2010; ● Gender Desk Officers have been recruited for all district assemblies and some Ministries to facilitate integration of gender concerns in sector policies.
Women's Economic Empowerment	<ul style="list-style-type: none"> ● The Women's Development Fund and the Micro-Finance and Small Loans Scheme (MASLOC) were implemented to support women's economic empowerment; ● Gender Responsive Budgeting is currently being implemented in three Ministries - Agriculture, Education and Health.
Land	<ul style="list-style-type: none"> ● The Land Administration Project seeks to regulate land ownership and title by simplifying and harmonising procedures.

PARLIAMENTARY PROCESS:

Legislative powers are vested in parliament but, in practice, these are highly constrained by Article 108 of the Constitution, which prohibits Parliament from initiating any bill that has financial implications. To become law, legislation must have the assent of the president, who has a qualified veto over all bills except those to which a vote of urgency is attached.¹

¹ You can read in detail about the legislative process here - http://www.ndi.org/files/73_gh_ra_legis.pdf

EXPERIENCE OF WOMEN'S ORGANISATIONS IN GHANA

Central challenges faced by women's organisations in Ghana include:

- **The gap between legislation and implementation in practice;** for example, despite the prohibition of harmful customary practices under the Constitution and the criminalisation of FGM, trokosi and cruel widowhood rites, high illiteracy rates and entrenched cultural beliefs allow these practices to persist. The customary practice of child marriage also continues among certain ethnic groups even though the Children's Act fixes the minimum age of marriage at 18 years.
- **Gender neutral laws,** which are not enough to end the discrimination that characterise women's lived experiences. For example, under the Constitution every person has a right to own property yet in reality few women own property, especially land. Where they do, land is registered in the names of their husbands. In some parts of the country, a woman cannot request a piece of land to farm from a chief or land owner unless her husband gives consent or a male relative vouches that she is not married. These gender neutral laws therefore do little to challenge discriminatory practices.

The case study below offers an example of an effort by civil society to push for changes in the Constitution to better address discrimination against women.

Example The Constitution Review Process

In Ghana, the Constitution Review Process is coordinated by the Constitution Review Commission which is constituted by nine members – three of whom are women. As part of the process, all individuals and groups were able to make submissions to suggest new provisions to be included in the Constitution or to recommend that existing provisions should be removed. The Commission organised consultations with various stakeholders at the district and national levels including the private sector, state institutions, traditional and religious authorities and civil society groups.

Women's groups, including the Women's Caucus in Parliament, the Network for Women's Rights (NETRIGHT), Women in Law and Development in Africa (WILDAF Ghana) and women's wings of political parties, among others, made proposals that sought to amend and expand the Constitution to address discrimination against women in many spheres. Submissions on gender equality also came from organisations other than women's groups including the Institute of Economic Affairs, Institute for Democratic Governance and the Centre for Democratic Development.

The argument made by the gender equality civil society groups was that gender equality provisions in the Constitution have not resulted in improved legal protection for women. The submissions outlined the challenges facing women, highlighted gaps in government policies and programmes, and drew on international human rights treaties including CEDAW and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. Specific articles proposed included the following: affirmative action to increase women's participation in public and political positions; prohibition of religious practices that dehumanise or are injurious to the well-being of a person; protection for women's health and reproductive rights; and replacing all articles that uses 'he' with 'person'.

The various groups who advocated for these changes must now wait and see if their proposals are incorporated into the reviewed Constitution.

The Strength of Networks

In Ghana, non-governmental organisations at the national and local levels are working in coalition to enable greater impact on the gender equality and women's empowerment agenda:

- The Network for Women's Rights continues to play a key role in economic justice
- Women in Law and Development in Africa advocates for affirmative action to increase women's representation in politics and builds capacity of people in communities to provide legal literacy
- The Domestic Violence Law Coalition works on ensuring implementation of the Domestic Violence Act
- The Society for Women and Aids in Africa (SWAA) works on women and HIV and AIDs.

CONCLUSION

Several international and continental treaties have been signed and ratified by the government, and compliance to these treaties through periodic reports demonstrates commitment to promoting gender equality and women's rights, even if reporting is not consistent. However, while progress has been made in many areas, challenges remain. These include overdependence on aid and vulnerability to global financial shocks; low retention of students in school especially girls, as well as low quality of education and teacher apathy; low numbers of women in public and decision making positions; unacceptable maternal mortality rates; stigma and discrimination against people living with HIV/AIDS; and a lack of access to justice, especially for rural women.