

Ghana National Baseline Assessment of Business and Human Rights



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EXECUTIVE SUMMARY

This National Baseline Assessment of Business and Human Rights is the product of collaboration among the Commission on Human Rights and Administrative Justice (CHRAJ), Ghana Institute of Management and Public Administration (GIMPA), and the Danish Institute for Human Rights to evaluate the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) in Ghana.

The UNGPs is a non-binding business and human rights regime endorsed unanimously by the UN Human Rights Council on 16th June 2011 with the aim to advance the prevention and redress of human rights abuses amongst businesses. Anchored on the “Protect, Respect and Remedy” framework of the UNGPs, this National Baseline Assessment of Business and Human Rights evaluates the Government of Ghana's progress in achieving its obligations to respect, protect and fulfil human rights and fundamental freedoms, the compliance level of businesses in respecting applicable laws and upholding human rights in the performance of their business functions, and the existence of appropriate and effective judicial and non-judicial remedies accessible to victims when their human-rights and obligations are breached.

The assessment adopted a mixed method approach to data collection and analysis. The 1992 Constitution of Ghana, policy documents, various legislations, case law, and bilateral treaties and conventions were benchmarked against the UNGPs to ascertain the extent of compliance of the aforementioned three broad areas with the UNGPs. Gaps identified were further explained by research evidence, the reporters' first-hand/real life knowledge/experiences, journalistic pieces, and other secondary sources. Interviews were also conducted with leaders of businesses and regulators in four critical sectors of the Ghanaian economy: petroleum, finance, telecommunication, and mining. Qualitative data were analyzed to confirm or rebut the gaps identified through the UNGP benchmark assessment.

Overall, it was found that although some government policies, laws, treaties, and institutions meet the standards set by the UNGPs, there remains some gaps that require urgent attention to enhance governments and businesses' protection of and respect for human rights, and remedy to human right abuses in Ghana. The gaps are discussed across the three pillars of the “Respect, Protect, and Remedy” framework of the UNGPs.

PILLAR ONE: GOVERNMENT OF GHANA'S PROGRESS IN ACHIEVING ITS OBLIGATIONS TO RESPECT, PROTECT AND FULFIL HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Guiding Principle 1: State Duty to Protect Human Rights

The 1992 Constitution of Ghana and various policies and statutes provide for the protection of the fundamental human rights of all persons in Ghana, as well as the prevention, investigation, punishment and redress of human right abuses. This notwithstanding, there remain gaps in the following areas:

- a. The right to private ownership of property has sometimes been hampered by the government of Ghana's power of compulsory acquisition of land, particularly for mining, without adequate compensation. In some cases, compensation payments to victims are still delayed after many years of expropriation. Expropriated persons continue to suffer economic, social, and cultural losses.
- b. Most legislations are not intentionally gender-responsive. The Affirmative Action Bill remains pending in the parliament of Ghana after more than a decade of introduction to the floor of parliament and political manifesto pledges to ensure its passage. Women and girls continue to suffer overt and subtle discrimination in the political, economic, social, and cultural spheres of life.
- c. While various laws and policies seem inclusive of persons with disability, the reality is the opposite. Education delivery at all levels in Ghana is not very inclusive for persons with disability. To date, parts of many public buildings are not physically accessible to persons with disability in spite of the 10-year moratorium, ending in 2016, during which section 60 of the Persons with Disability Act, 2006 (Act 715) requires the owner or occupier of an existing building which is not accessible to persons with disability to make that building accessible to and available for use by a person with disability.
- d. Respect for freedom of religion is not a recognized priority for some businesses. This affects and occasionally limits educational and workplace opportunities of some religious minority groups.
- e. The freedom of thought, conscience, and belief of the media and academic community is increasingly being interfered with. A case in point is the introduction of the Public Universities Bill and increasing reports of attacks on media personalities by security forces.
- f. The use of excessive force to disperse demonstrators is not permitted by law, though it has occurred in previous years.
- g. There is no positive guarantee of healthcare for citizens. Right to health and shelter are not directly provided for by the Constitution but are contained in international human rights instruments that Ghana has ratified. They include the United Nations' Convention on the Rights of the Child (CRC), International Covenant on Civil and Political Rights (ICCPR).
- h. Death penalty is still not abolished. As recently as 5th March 2020, the Sekondi High Court convicted and sentenced two accused persons to death by hanging in a high profile case of kidnapping and murder of four girls in Takoradi.

Guiding Principle 2: Respect for Human Rights by All Businesses

Respect for human rights under Chapter 5 of the Constitution of Ghana is mandatory for business as it is for artificial persons. Businesses are also expected to uphold the rules of natural justice, which a Supreme Court decision have made the equivalent of human rights. However, there are challenges.

- a. A review of the basic regulations governing creation, operation, and oversight of various types of firms in Ghana (i.e. Companies Limited by Liability, Companies Unlimited By Liability, Companies Limited by Guarantee, Partnerships) reveal that while operations of firms in Ghana are extremely well regulated, the statutorily imposed rights based obligations are not present.
- b. The rights obligations placed by Ghanaian law on corporations are primarily in the areas of labour and environmental rights. There are also broadly spelt out rights related to obligations in the areas of Disability Rights, HIV Anti-Stigma, Privacy and Data Protection. There are relatively few remaining areas in which rights obligations are placed on companies.
- c. Ghana's freedom of information legislation does not yet apply to companies – only to the public sector.

Guiding Principle 3: Regulatory and Policy Functions

The gaps in the regulatory and policy functions were discussed under the following five Sub-Headings:

- a. Laws regulating business conduct in relation to labour rights
 - Micro, Small, and Medium Enterprises (MSMEs) occasionally terminate employment of their workers without compliance with the Law, particularly ununionized workers.
 - Some children are still engaged in illegal child labour activities.
 - Despite recent improvements, equal pay for equal work is still a challenge in the extractive industry particularly between locals and expats.
 - There is paid maternity leave but there is no paternity leave. Paid maternity is for a period of only 3 months.
 - Wage data by sector/industry is unavailable, hence workers are unevenly remunerated. Thus, there is no clear data on wage-based discrimination amongst sectors or clear evidence of wage based gender discrimination.
- b. Laws regulating business conduct in relation to environmental rights
 - Environmental and social impact assessment are not prerequisites for the award of mineral rights under section 19 of Ghana's Minerals and Mining Act, 2006 (Act 703).
 - The compensation principles provided for in regulation 3 of the Minerals and Mining (Compensations and Settlement) Regulations, 2012 (L.I 2175 does not cover environmental damage. The scope of regulation 3 principles is in respect of crops, deprivation of use or a particular use of the natural surface of land, commercial structures which affect a business, and immovable property, where there is a loss or damage.

Guiding Principle 5: Privatized Services and Businesses Regulated by Legislation.

This principle requires States to exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

- There is no evidence that the government has undertaken an analysis of the human rights impacts of private companies providing public services where this is not mandated by law.
- There is limited government or third-party oversight to ensure that social services provided by companies conform to relevant national and international standards.
- In areas where companies provide some social services the government has proved less willing to offer these services and/or ensure that sufficient good quality public services are provided.

Guiding Principle 6: State Contracted Companies

- Section 22 of the Procurement Act which outlines the qualifications of a tenderer is silent on the respect for human rights.
- There is also no publicly available evidence that State agencies engage in any preferential contract award systems to favor discriminated groups such as ethnic minorities or to companies working to achieve specific human right objectives such as gender equality.

Guiding Principle 7: Businesses Operating in Conflict Areas

There are no conflict areas in Ghana where businesses operate. The closest approximation to conflict arising out of business activities are in areas of Ghana in which illegal gold mining (galamsey) is occurring even though this cannot technically be defined as a conflict situation in most places.

- In the mining sector, human right abuses could lead to conflict. Human right abuses arise from lack of adequate consultation and consent; inadequate compensation; unacceptable livelihood project; unsafe living and working conditions; and lack of easy access to Justice.
- Branches of government agencies, which deal more closely with the public, do not realize what is expected of them per the “Protect, Respect and Remedy” framework.

Guiding Principle 8: Investment Treaties and Contracts

- Investment agreements to which Ghana is signatory are generic in application and do not mainstream opportunity considerations under them for women, the youth, or persons living with disability.
- Local content regulations, particularly in the oil and gas sector, set unrealistic targets that hinder effective local participation. Without building local capacity to take advantage of business opportunities in local content regulations, most

- There are no legal provisions on women's rights and young people-specific issues in relation to resettlement and compensation under Act 703.
- c. **Anti-Corruption and Company Responsibility to the State**
- Asset declaration is not enforced and non-compliance attract low punishment. Ghana's asset declaration regime has several deficits. There is a need for a more elaborate constitutional mechanism for detecting non-compliance with and contravention of the Code of Conduct for public officers. A more transparent asset declaration regime that has very strong provisions for the verification of the assets declared and strong punitive measures against persons who default could prove a very potent weapon for fighting corruption.
 - There is increasing evidence that weaknesses in the regime for the enforcement of corruption may facilitate the activities of companies who commit environmental, labour, or other types of rights abuses.
- d. **Criminal Culpability of Ghanaian Businesses**
- Case law is replete of state prosecution of business entities. Most criminal offences committed by business entities are punishable by fines. The punishment by way of fines for the offences is inadequate and non-deterrent.
 - Law does not anticipate category of offenders beyond natural and legal persons. With the coming of Artificial Intelligence (AI), it is not clear who will be held liable for human right breaches by machines.

Principle 4: Businesses Owned or Controlled by the State

- There are some human rights violations concerning SoEs and citizens in the private sector even though SoEs are less profit oriented, and highly regulated. Some key gaps include the following:
There is no evidence in laws or policies that businesses receiving substantial state support are required to take human rights considerations into account.
- Incidents of child labour in cocoa production where there are key players like the Cocoa Processing Company and the Ghana Cocoa Board. Questions naturally raises questions about the government's commitment to its own child protection laws.
- Development-Induced Displacement and Resettlement is another key area in which the government and its SoEs have consistently failed the Ghanaian people, with several examples of communities being displaced and inadequately compensated for SOE backed investments (Bui Dam, Volta Project, etc).
- The treatment of SoEs as agencies of government rather than independent artificial persons tends to minimize the sense of responsibility they feel towards the observation of human rights and ethical standards applicable to companies.
- There is a history of state agencies engaging in large scale state funded initiatives especially in the energy sector violating (or at the very minimum, not sufficiently taking into account) the rights of the affected persons within the locality.

businesses face the challenge of saving their bottom lines by denying economic rights of citizens versus complying with local content regulations which may negatively impact bottom lines.

Guiding Principle 10: Multilateral Institutions

- There is no evidence that the state of Ghana has established procedures to ensure support for business and human rights frameworks based on the UNGPs or other frameworks in international treaties it has acceded to.

PILLAR TWO: THE COMPLIANCE LEVEL OF BUSINESSES IN RESPECT OF APPLICABLE LAWS AND THE UPHOLDING OF HUMAN RIGHTS IN THE PERFORMANCE OF THEIR BUSINESS FUNCTIONS

Interviews with businesses in the petroleum, finance, telecommunication, and mining sectors revealed the following gaps in businesses' respect for human rights:

a. Petroleum Sector

- Environmental degradation and pollution
- Labor Risks [Health and Safety Issues]
- Economic and Social Issues
- Working excessively long hours under strenuous conditions which may lead to fatigue, accident or even injuries.

b. Finance Sector

Accountability mechanisms necessary to assess human rights policies within the sector are scanty.

- Persons with special needs are not adequately catered for in Ghana's finance sector.
- Lack of workers' unions in most entities surveyed. Active discouragement from the formation of Unions.
- A severe lack of awareness of employee rights in the finance sector. Reports of working outside office hours for no compensation.
- One bank reported it has an express policy which prohibits its personnel from active political involvement.

c. Telecommunications Sector

- Health and safety concerns arising from radiation and the hazards of communications masts and pylons construction contrary to internal, national, and international standards of health and safety.
- Issues of disproportionate gender representation is another challenge. The infrastructure subsector is dominated by males, while the mobile telephony subsector is dominated by females.
- The Human Rights issues also include freedom of Association in the form of efforts at unionization, customers' privacy, child labour (including 3rd party contractors), forced labour, all forms of discrimination (maternity related, religion)

d. Mining Sector

Health and safety issues as a result of air pollution/dust, noise pollution, water pollution, exposure to harmful chemicals, high radiation levels, etc.

- Financial issues with regards to salaries/wages and allowances: Considering the health and safety risks associated with working in the sector, employees

Indigenous land holders lose their interest in land and surface rights when a mining company finds ore.

- The loss of land is also the loss of livelihood and generational inheritance for affected persons who have inherited farmlands. Oftentimes, expropriated persons are not only paid inadequate compensation, but also, they are unable to invest compensations received to sustain their survival. Because they have known no alternative source of livelihood except farming, most expropriated indigenes are unable to adapt to, and invest in, viable livelihood options after receiving trainings under alternative livelihood programmes that the mining companies provide,
- Right to Live in Safe Environment: Activities of some mining companies is hazardous to the environment. First, they destroy forest lands driving different animal species away from their natural habitat. They fell trees and other species of herbs shrubs and do not replant them. Chemicals used by these mining companies sometimes find their way into water bodies of the communities which result in infections and killing of life in these water bodies.

PILLAR THREE: THE EXISTENCE OF APPROPRIATE AND EFFECTIVE JUDICIAL AND NON-JUDICIAL REMEDIES ACCESSIBLE TO VICTIMS WHEN THEIR HUMAN RIGHTS AND OBLIGATIONS ARE BREACHED.

Guiding Principle 26: State-Based Judicial Mechanisms

- Weak legal aid system in light of high costs of bringing claims in the courts considering the imbalance between victim and the business enterprise
- Long delays in the court process
- Lack of resources by State prosecutors including the Police to investigate and prosecute business-related human rights abuses which are also criminal in nature
- Perceived and actual corruption risk within the judiciary and the Police remains a weak point.

State Based Non-Judicial Mechanism

- Legal Aid, Labour Commission, CHRAJ etc. still suffer the constraints faced by similar state institutions i.e. inadequate resources
- Though there have been formal steps for to make commercial disputes more amenable to ADR by the introduction of regulation, there is still inadequate education focused on the business-related human rights functions of these non-judicial mechanisms.

Guiding Principle 27: Non-State-Based Non-Judicial Grievance Mechanisms

- There is a dearth of information on the existence, publicity and/or effectiveness and accessibility of operational grievance mechanisms since these are generally found within the business policies of business.

- The Minerals and Mining Act does not provide for free, prior and informed consent, as well as community dialogue in times of disputes between mining company and communities.

PART A: Introduction

The UN Guiding Principles on Business and Human Rights

In 2005, the predecessor institution of the United Nations Human Rights Council requested the UN Secretary General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises.

The Council recommended, through UN Human Rights Resolution 2005/69, that the special representative's mandate should include the following:

- (a) To identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights;
- (b) To elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation;
- (c) To research and clarify the implications for transnational corporations and other business enterprises of concepts such as “complicity” and “sphere of influence”; and
- (d) To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises.

John Ruggie, an international relations scholar and UN diplomat who had been instrumental in the development of the Global Compact on Business and Human Rights² was appointed by the UN Secretary-General as the UN Special Representative on Business and Human Rights.

The business and human rights framework, which was ultimately proposed by Ruggie, was entitled *“Protect, Respect and Remedy: a Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporation and other business enterprises”*.

It suggested the creation of a non-binding business and human rights regime leading to the generally well received UN Guiding Principles on Business and Human Rights (UNGPs).

¹ The United Nations Commission on Human Rights

² UN Global Compact on Business and Human Rights provides a framework for businesses, labour groups, agencies, advocacy groups and the United Nations to work together to promote a more equitable world for markets, employers and employees. It asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption. These principles are derived from: the Universal Declaration of Human Rights; the International Labour Organization's Declaration on Fundamental Principles and Rights at Work; the Rio Declaration on Environment and Development and the United Nations Convention Against Corruption

On 16th June 2011, the UN Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights (UNGPs) in its resolution 17/4³. The unanimous endorsement of the UNGPs was broadly viewed as a big step in the advancement of prevention and redress of human rights abuses amongst businesses.

The Protect, Respect and Remedy Framework created the three-pillar structure upon which the implementation of the UNGPs are currently founded. They focus on three broad areas:

1. The need for rights and obligations to be matched to appropriate and effective remedies when breached⁴.

The UNGPs therefore recognize that the responsibility to advance human rights does not rest solely with the state. In their engagement with people, whether as small, medium, national or trans-national corporations, businesses are equally responsible for advancing the rights of their internal and external publics through compliance with laws flowing from the state level, and through their own specific initiatives that advance the respect for human rights.

The UNGPs have gained universal support from governments, the private sector, and civil society. They have become the central and universally accepted reference point for efforts to prevent, mitigate and remedy the adverse human rights impact of business and corporate activities.

³ 'UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, United Nations Human Rights, Office of the High Commissioner, (United Nations: New York and Geneva) (2011)

⁴ 'UN Guiding Principles on Business and Human Rights' op cit, footnote 1.

National Action Plans & Baseline Assessments on Business and Human Rights

One of the objectives of the UNGPs is to allow individual states the flexibility to tailor national responses to their domestic business and human rights related deficits. Thus, rather than develop an international convention on business and human rights, the UNGPs encouraged governments to develop national initiatives or frameworks which adapt the UNGPs for domestic contexts. Countries are therefore encouraged to adopt National Action Plans (NAPs) on Business and Human Rights for the implementation and the enforcement of the UNGPs. The adoption of (NAPs) has thus become an important mechanism for implementing the UNGPs throughout the world.

NAPs are national policy documents which, in the field of business and human rights, are defined by the United Nations Working Group on Business and Human Rights (UNWG⁵) as

An evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights.

Normally, the UNWG recommends developing stand-alone NAPs on business and human rights. However, it recognizes that it might be meaningful in particular national contexts to initiate and situate the NAP within the context of other national strategies and action plans such as those focusing on development, human rights, labour rights, or corporate social responsibility.

Each NAP needs to reflect the social, business and human rights priorities of the relevant country context. For example, countries that have many multinational business enterprises will be expected to focus on a different set of questions and measures than countries that are home to those business enterprises. Similarly, if specific sectors are of particular importance to the economy of a country, this may lead to additional emphasis on those sectors in their NAPs. NAPs and the processes through which they are created and updated must also adjust to each State's economic and historic contexts and set out measurable and achievable actions that deliver the most impact possible on improving a countries business and human rights environment.

As a precursor to the adoption of NAPs within states, there is usually a need to undertake an assessment of the current state of affairs regarding existing regimes that protect and respect human rights and provide remedies for human rights abuses.

⁵ The Working Group on the issue of human rights and transnational corporations and other business enterprises (also known as the United Nations Working Group on Business and Human Rights) was established by the Human Rights Council in 2011 by Resolution 17/4 of 16th June, 2011 with the mandate of promoting the effective and comprehensive dissemination and implementation of the Guiding Principles on business and Human Rights framework.

Perhaps more importantly, an assessment preceding the adoption of NAPs also provides valuable information on loopholes in national systems that do not advance the protection and respect for human rights and also fail in the provision of remedies for human rights abuses. Thus, various countries that have adopted NAPs have preceded this with a national baseline assessment (NBA).⁶ A typical NBA seeks to ascertain the state of the existing legal framework in a country on business and human rights.

It also assesses non-legal initiatives, practices and mechanisms that promote the respect for human rights in the conduct of business in a country. An NBA thus aims at presenting the current state of affairs on business and human rights in a country prior to the development, adoption and implementation of a NAP.

The assessment also highlights gaps in the implementation of the UNGPs by the State, as well as by business enterprises.

Furthermore, the assessment outlines the various laws, regulations and policies a state has in place in relation to each of the relevant UN Guiding Principles so as to identify potential human rights protection gaps. The same is also done in regard to business enterprises active or based in the country's territory and their performance in regard to the UNGPs pillars affecting business. This includes assessing the extent to which business enterprises currently carry out human rights due diligence and provide effective remedy through operational-level grievance mechanisms.

As part of this assessment, relevant business and human rights stakeholders are typically invited to participate and provide input. In order for the assessment to generate the most credible information as a basis for further NAP development, the UNWG on business and human rights typically encourages governments to consider collaborating with their National Human Rights Institutions (NHRI) and with independent external or internal experts. Also, the results of the assessment should be made publicly available. To the greatest extent that the circumstances permit, this NBA has attempted to follow the methodological processes outlined by the UNWG with allowances made for the particular contexts and peculiarities of Ghana.

⁶ For example, Scotland, Kenya, Zambia and Germany.

Methodology for the Ghana NBA

This NBA was developed using a mixture of primary and secondary sources. With respect to primary data sources, firstly, data on human rights promotion, prevention and enforcement was obtained by interviewing organizations in key sectors of the economy of Ghana, as well as interviews with business regulators, business associations, civil society organizations, and business ethics focused academics.⁷ The interviews focused on organizations, Civil Society Organizations(CSOs), and regulators in the petroleum, telecommunications, mining, and finance sectors of Ghana's economies. It also included interviews with entities and government agencies whose role in Ghana's business sector was significantly more general – such as the Ghana Investment Promotions Council and the Ghana Association of Employers.

The primary data was supported by secondary data consisting of legal reviews of relevant provisions of the constitution of Ghana, laws, policy documents, and bilateral treaties and conventions. A number of human rights, corporate social responsibility, and ethics documents were collated in the course of the review. Others were downloaded from the websites of various corporations and government agencies after they had been brought to the attention of the researchers by their informants or through independent research.

A draft of the report was circulated to a number of key stakeholders. Ghana's NHRI, the Commission on Human Rights and Administrative Justice (CHRAJ), was a key partner in the development of the research design as well as in the validation of the draft reports. The report was also circulated to the Danish Institute for Human Rights. The draft also benefitted from comments from the defunct Ministry for Business Development, the Ministry of Trade, the Attorney General's Department.

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PART B:

Country Context

Political Context of Ghana

Ghana obtained independence in 1957. Though multiparty democracy existed at independence, the country shortly thereafter slipped into socialist authoritarianism, with the first president, Kwame Nkrumah, banning opposition parties and declaring a one party state by 1964.

A planned state led economy with little role for the private sector was put in place by the ruling party. The other leg of the plan was the provision of an ambitious social services program which involved the establishment of a wide range of social benefits including free or government supported health care.⁸ Both legs of this strategy were dependant on the continuation of high commodity prices, particularly a high cocoa price which was Ghana's primary revenue earner.

The collapse of the cocoa price and the economy was among the factors that ultimately doomed these plans and precipitated Kwame Nkrumah's removal from office by a military intervention in 1966. Politically, Ghana reached its peak period of instability in this period between 1966 and 1992. In this period, there were five successful military coups, and several unsuccessful coup attempts. Efforts to re-establish democratic constitutions in this period were short lived. The liberal democratic constitutions of 1969 and 1979 both lasted less than three years. As a result, in the 35 year period between independence in 1957 and the promulgation of the present constitution in 1992, Ghana spent less than seven years as a liberal democracy. For most of those years, Ghana was either under a single party regime, or under military dictatorship.

The return to political liberalism began in the late 1980s, with PNDC allowing non-partisan district assembly elections for the first time. It is not clear that the ruling PNDC and Rawlings were particularly interested in political liberalization, and Rawlings himself had spoken out periodically about the dangers of multiparty democracy. However, economic liberalization had come at the price of greater dependency, and hence increased influence, of international donors. Internal pressure also mounted as civil society organizations became increasingly bolder in their calls for democracy conducted by a government agency established by the PNDC – the National Commission for Democracy – discovered that Ghanaians were not averse to multiparty democracy.

In 1991, a commission of expert was established to create a draft constitution. This constitution was reviewed and debated by a Consultative Assembly of 260 members which, although appointed by the PNDC, was somewhat inclusive and engaged in serious debate of the draft constitution, making several revisions. The constitution was universally approved in a referendum in April,

⁸Killick, T., *Development Economics in Action Second Edition: A Study of Economic Policies in Ghana* Routledge, 30 April, 2010

1992. On 15th May, 1992, the ban on political parties which had been in force since Rawlings staged his coup on 31 December, 1981, was lifted. Elections were held in November and December, 1992.

Since democratic government was restored, Ghana has held six free and fair elections and thrice transferred power peacefully from one party to the other (in 2001, 2009, and 2017). Over the course of the last two decades, Ghana has developed a stable and highly competitive two-party political system.

The National Democratic Congress and the New Patriotic Party, the country's two main parties, appear to command roughly equal levels of electoral support nationally⁹, ensuring the presence of a strong and credible opposition to question all governmental initiatives. Moreover, each has won and lost at the ballot box since the first elections were held in 1992.

Years	Ruling Party	President	Winning % Presidential
1993 - 1996	NDC	JJ Rawlings	NDC - 58.4%
			NPP - 30.3%
1997 - 2000	NDC	JJ Rawlings	NDC - 57.9%
			NPP - 39.7%
2001 - 2004	NPP	JA Kufuor	<u>First round:</u>
			NPP - 48.17%
			NDC - 44.54%
			<u>Second Round:</u>
			NPP - 56.7%
			NDC - 43.1%
2005 - 2008	NPP	JA Kufuor	NPP - 52.45%
			NDC - 44.64%
2009 - 2012	NDC	JEA Mills	<u>First round:</u>
			NPP - 49.13%
			NDC - 47.92%
			<u>Second Round:</u>
			NDC - 50.23
			NPP - 49.7%
2013 - 2016	NDC	JD Mahama	NDC - 50.7
			NPP - 47.7%
2017 -	NPP	Nana Akufo Addo	NPP - 53.85%
			NDC - 44.4%
2020	NPP	Nana Akufo Addo	NPP - 51.2%
			NDC - 47.2%

Figure 1: Trend in Ghana's democratic election outcome

Source: Electoral Commission of Ghana

⁹Every election in Ghana is a toss-up. Winning margins in Ghanaian elections – particularly in recent times, rarely exceed a few percentage points. In 2008, the opposition famously won the election by less than .5%

The high level of instability and turbulence of the 1970s makes the current level of democratic consolidation and relatively high respect for human rights all the more striking. If one is to apply the standard “two-turnover”¹⁰ Ghana's democracy appears to be extremely well established.

¹⁰Huntington, Samuel P. (1991) *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press. in which the author argues inter alia argues that democracy is consolidated after 'two-turnover test.' Democracy, according to him is consolidated when a party that wins an election, loses and transfer power to another party that also loses an election and hand over power peacefully after an election. In Ghana, this has happened

Protection of Rights in Ghana

The progressiveness and relative effectiveness of Ghana's rights protection regime is even more remarkable if one considers that most of the 35 years before its introduction, human rights were barely recognized or non-existent in Ghana. In the 1980s, for example, the alleged repressiveness of the governing regime lead one academic to declare the existence of a “culture of silence” in Ghana.¹¹

Ghana is one of only 5 countries in sub-Saharan Africa to be ranked as “fully free” by Freedom House. It achieved this status in 2001 and it has generally been maintained. Ghana receives highest rankings (1/7) in the category of political liberties, and 2/7 in the category of civil liberties. Ghana's score in the Freedom House ratings compares favourably with other more established democracies.¹²

The Ibrahim Index of African Governance ranks Ghana 2nd overall in Africa in the joint category of Participation & Human Rights. Ghana ranks first on the continent in the sub category of rights. Its score has improved by almost 4% since the previous rankings in 2015. The Bertelsmann Transformation Index describes Ghana as a regional leader in most areas of transformation, as well as in many individual indicators. It ranks first in the categories of democracy and governance in West and Central Africa.¹³

The data sources above demonstrate how (from an admittedly low base) Ghana has been transformed from a country with severe deficits in its rights protection regime to a country in with an abundant supply of human rights.

¹¹Professor Emeritus Albert Adu Boahen (1932–2006)". *Journal of African History*. Cambridge: Cambridge University Press. 47 (3): 359–361. 2006. Agyeman-Duah, Ivor (2 June 2006). "Albert Adu Boahen. Historian who broke Ghanaian dictator's culture of silence". *The Guardian*. Retrieved 17 June 2009.

¹²Gyimah-Boadi, E and Brobbey, V. “Countries at the Crossroads: Ghana” Freedom House, 2012, available at <http://www.freedomhouse.org/sites/default/files/Ghana%20-%20FINAL.pdf>, last accessed March 2012.

¹³Bertelsmann Stiftung, Ghana Country Report 2017, Available at <https://www.bti-project.org/en/reports/country-reports/detail/itc/gha/>

Economic Overview and Business in Ghana

Economic History of Ghana

Ghana's economic trajectory closely mirrors its political past. The economy of Ghana was fairly robust at independence in 1957, but had collapsed by the mid-1970s.¹⁴ In the late 1950s, Ghana and South Korea had identical per capita income.

Ghana however, had a higher literacy rate and South Korea had just begun the process of rebuilding its economy after a devastating civil war. But by 1967, South Korea had doubled its real GDP while Ghana's GDP had increased only by about 5%. At independence, Ghana had reserves of \$335.5 million and South Korea had only \$94.8 million. By 1967 Ghana's reserves fell to \$77.1 million while Korea's increased to \$353.2 million. By 1977 Korea's reserves reached \$2,967.1 million and increased further to \$3,583.7 million by 1987 while Ghana's was \$148.6 million in 1977 and \$195.1 million in 1987.¹⁵ Between 1970 and 1980, Ghana experienced negative growth and balance-of-payments deficits in most years, an average annual 3 per cent decline in per capita incomes, and a decline in revenues from cocoa, Ghana's primary source of income, of 50 per cent.¹⁶

The words "miracle" has been used to describe the economic transformation that Ghana went through from 1983 to 1991¹⁷. The Economic Reform Program (ERP), which began in 1983, was brave and far reaching, and imposed by the ruling military junta.¹⁸ It was achieved with significant technical and financial support from the World Bank and the IMF. The producer price of cocoa was raised. There was retrenchment in the public service, and the removal of 'ghost' names from the civil service payroll. The mining sector was reformed – new mining laws and an investor friendly legal regime for minerals and mining were introduced. State owned enterprises were divested and a stock exchange was created.¹⁹

By the return to multiparty democracy in 1993, Ghana had achieved some economic success. Inflation, which had reached triple figures at the height of the crisis in the late 1970s and early 1980s, had stabilized at approximately 18%. Ghana averaged growth rates of approximately 5% per year. The economy, exports and import capacities improved dramatically. Also, the budget deficit was reduced. Though criticized, the ERP laid the groundwork for Ghana's current relative economic success and the relative growth Ghana has experienced in recent times.

¹⁴Hutchful, E. Ghana's Adjustment Experience: The Paradox of Reform. Oxford: UNRISD, 2002

¹⁵Killick 2010, *ibid*

¹⁶World Bank, Country Report, Ghana 2008 Available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/GHANAEXTN/0,,menuPK:351958~pagePK:141159~piPK:141110~theSitePK:351952,00.html>

¹⁷World Bank, Country Report, Ghana 2008 Available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/GHANAEXTN/0,,menuPK:351958~pagePK:141159~piPK:141110~theSitePK:351952,00.html>
World Bank, *Ibid*

¹⁸The Provisional National Defence Council had overthrown a democratically elected government on December 31st 1981.

¹⁹Hutchful, *ibid*

The Economy Today

Since 1993, Ghana's economic fundamentals have generally improved incrementally almost every year. Indeed by 1998, the Economist suggested that the economy of Ghana was “as good as it's ever been”.²⁰ The performance of the economy in more recent times has been undoubtedly mixed, but the over the long term, an examination of the trajectory in this time frame has been a positive one.

By regional standards, Ghana operates a relatively open economy. This is partly a holdover from the structural adjustment era of the 1980s. There are comparatively few impediments to accessing Ghanaian markets and trade barriers are low. Ghana even operates an extremely liberal currency exchange rate regime. Years of operating a fixed currency regime through fiscal crisis had led to significant discrepancies between the black market and official exchange rates. The government responded to this by legalizing currency exchanges among private citizens and allowing the cedi exchange rate to be market determined.²¹

Ghana's economy is also extremely resource commodity dependant. A significant proportion of the government's revenue comes from Gold, Cocoa, and Oil.²² Oil revenue was first introduced into the budget in 2011, creating a real GDP growth of 14%. While significant, oil revenue as a total of the overall budget revenue is still superseded by cocoa and gold. Indeed, a persuasive argument can be made that despite the discovery of oil in 2007, the basic structure of Ghana's economy has changed little in the last century.

Ghana's industrial sector is the second largest contributor to its GDP (28%) though its contribution is significantly less than Ghana's services sector, which makes up roughly half of Ghana's GDP.²³ It consists largely of the medium sized locally owned companies as well the local branches of global industrial concerns (such as Coca Cola and Accra Brewery). It contributed approximately 24% to total GDP in 2014 – approximately half of Ghana's much larger services sector (49.5% of GDP).

Today, Ghana's GDP/Capita is approximately \$65 Billion. In the last five years, it has experienced and is recovering from a moderately severe economic crisis. Ghana's economy continued to expand in 2019 as the first quarter gross domestic product (GDP) growth was estimated at 6.7%, compared with 5.4% in the same period of last year.

The current major revenue earners are mining, cocoa and petroleum.²⁴

²⁰See The Economist “As Good as it gets” October 1st 1998, which opens with the lines “It does not produce much. It doesn't even have enough electricity to keep all its lights on. But Ghana is an African success story—one of a handful of countries in the continent that is not ravaged by civil war or prone to coups or collapse. Accra, once a dreary capital, has never looked better. Dirt roads have been tarred and some areas bustle with fancy boutiques and restaurants patronised by a burgeoning middle class, a species more often found in exile in Europe than in Africa. The newly affluent live in new suburbs that were bush just a few years ago. Mortgages, cars and a decent education for their children are their priorities, and they work hard for them. They believe in God and country and building for the future. At weekends they mow the lawn”

²¹Hutchful, Killick

²²<http://www.imf.org/external/np/hipc/2002/gha/ghadp.pdf>

²³See http://www.statsghana.gov.gh/docfiles/GDP/GDP_2014.pdf

²⁴<http://www.imf.org/external/np/hipc/2002/gha/ghadp.pdf>

Mining Sector: The mining industry in Ghana has over the years grown to be a major driver of economic growth. The industry accounts for 5% of the country's GDP, and minerals make up about 37% of total exports. Ghana is rich in different kinds of minerals, including gold, bauxite, diamond and manganese.

However, Ghana's mining and minerals development industry is focused on gold. Gold contributes over 90% of the total mineral exports. Ghana is the second-largest gold producer in Africa. Currently, there are about 23 large-scale mining companies in the gold mining industry, including AngloGold Ashanti, Newmont Ghana, Gold Fields Ghana, Chirano Goldmines and Golden Star Resources Limited, which continue to invest in the Ghanaian mining industry. There are also over 300 registered small-scale mining groups and 90 mining support services companies.

The Petroleum Sector: Ghana's oil sector has expanded considerably after the discovery of the Jubilee Oil Field in 2007. The field started production in 2010, and has since increased from 7, 000 barrels per day in 2009 to a projected average production of 89 000 barrels per day by the end of 2019. Other fields have recently begun production. It is projected that crude oil production in Ghana could reach 500,000 barrels per day by 2024.

Agriculture is key to the overall economic growth and development of Ghana. Its contribution to GDP over the past three years ranged from 21.5% in 2014 to 20.3% in 2015 and 19.1% in 2016. Despite the marginal decline in its share of Ghana's GDP, the agricultural sector is estimated to employ about 46% of Ghana's labour force, most of whom are small land owners engaged in it mainly for subsistence purposes.

Manufacturing and Services:

Ghana's industrial sector is the second largest contributor to its GDP (28%) though its contribution is significantly less than Ghana's services sector, which makes up roughly half of Ghana's GDP. It consists largely of the medium sized locally owned companies as well the local branches of global industrial concerns (such as Coca Cola and Accra Brewery). It contributed approximately 24% to total GDP in 2014 – approximately half of Ghana's much larger services sector (49.5% of GDP).

The Banking Sector: Ghana's banking sector contributes close to 15% of Ghana's GDP. It currently consists of 24 banks of varying sizes. Some are locally owned. Others are branches of banks headquartered in Nigeria, South Africa, Trinidad and Tobago, Togo, and the United Kingdom. In the last 12 months, the regulator of the sector has increased its enforcement activities significantly, resulting in the closure of some banks and the involuntary consolidation of others. It has also led to significant lay-offs in the sector – it is estimated that there have been close to 2000 layoffs in this sector in the last 12 months.

This has created a number of intractable social and economic issues which the firms in the sector, the labor unions, and the state is still attempting to resolve.

The Telecommunication Sector.

The mobile telecommunication's sector contributes significantly to Ghana's economic growth every year. There are four active companies in this sector. Their services cover over 90% of the country. The sector is regulated by the National Communications Authority. The firms are organized into the Ghana Telecoms Chamber, which serves essentially as a lobbying and public relations arm for the mobile telephony sector. The issues faced by the sector range from land issues (relating to the siting of masts), labor issues, and privacy issues relating to unauthorized and sometimes authorized access to the services they provide to the public by the security services and others.²⁵

²⁵George Nyavor "Gov't withdraws Spy Bill from parliament", Available at <https://www.myjoyonline.com/politics/2016/june-30th/govt-withdraws-spy-bill-from-parliament.php> Myjoyonline.com, 30-06-2016

Businesses and Firms in Ghana: An overview

In a 2016 report, International Trade Centre (ITC) stated that the private sector in Ghana is dominated by enterprises in the informal sector, with approximately 90% of the companies employing less than 20 people²⁶. Small and medium-sized enterprises (SMEs) constituted about 85% of businesses and accounted for no less than 70% of gross domestic product.

The number of businesses registered in Ghana in 2003 was reported by the World Bank to be 802176²⁷. With an average of about 13,000 new businesses established in the country each year²⁸, the current total number of businesses should be in excess of 1 million now.

The services sector is the largest contributor to Ghana's real GDP, having displaced both the agricultural and industrial sectors. As at the end of the first quarter of 2017, the services industry had contributed about 60.1% of total GDP. This marks an estimated growth of 6.7% from its 2016 figures²⁹. Women own about 38% of the SMEs. Nearly 30% of small firms have a female top manager while only 24% do in the medium-sized firms. One of the categories with the highest representation of women in top management positions is exporters, indicating that good performers (exporters) might discriminate less on the gender of their managers.

Good governance has led to a good business environment. For example, Ghana over-performed in the World Bank's governance and business indicators compared to the country's peers and regional benchmarks. This is despite the decline of Ghana's Doing Business score in 2016, reflected in the ranking dropping from 112 to 114. More specifically, Ghana ranked above the sub-Saharan average in terms of 'time to export', 'cost to export', "cost to import" and 'border compliance'. This is probably influenced by the implementation of the National Single Window Project, in September 2015, which reduced the time and cost of customs clearance.

Yet, recent studies suggest that the vast majority of SMEs in Ghana are not competitive. This is partly because they often operate in labour intensive, low valued-added sectors, where wages tend to be low and technological advances are virtually absent. Several arms of government have recently been engaged to develop business enhancement strategies to support local enterprises through programmes such as the Ghana Shared Growth and Development Agenda (GSGDA II), which seeks to leverage the country's natural resources by providing incentives for linking industry to the agriculture sector.

²⁶ International Trade Centre, 2016 SME Competitiveness in Ghana: Alliances for Action

²⁷ <https://tradingeconomics.com/ghana/total-businesses-registered-number-wb-data.html>²⁸ World Bank Entrepreneurship Survey and database <http://econ.worldbank.org/research/entrepreneurship>

²⁹ PriceWaterHouse 2018 Doing Business and Investing in Ghana, www.pwc.com/gh

This positive profile of business in Ghana, notwithstanding, the Ghana Statistical Service estimates that 86.1% of all employment is to be found in the informal economy. 90.9% of women and 81% of men are working under circumstances which are to the largest extent not controlled, regulated or standardized by state institutions³⁰.

The informal sector is characterized by underemployment, bad working conditions, uncertain work relationships and low wages. Many people are living with high income insecurity³¹.

In 2018, the contribution of the informal sector to the economy was GH¢73bn, about 28.6% of GDP.³² About a decade ago, the Trade Union Congress (TUC) estimated that 250.000 graduates enter the labor market every year, out of which 5000 find employment in the formal economy (TUC 2009: p. ix). Indeed, it is in the informal sector that many human rights abuses may occur, unchecked. This is because of the extreme vulnerability of those who work in the sector.

The focus of this report has been on the formal sector but there is the need to shift some attention to the informal sector where the majority of people are engaged. For instance, illegal artisanal mining form, generally known as *galamsey* is a pervasive business in Ghana. *Galamsey* is buoyed by lack of viable employment or livelihood alternatives.

There have been reports of abuses in these illegal business operations³³ but their illegality has rendered them absent in the minds of many a researcher on business human rights.

³⁰ Haug, Julian (2014), Acritical Overview of (Urban) Informal Economy in Ghana, for Friedrich-Ebert-Stiftung

³¹ Clara Osei-Boateng and Edward Ampratwum (2011), The Informal Sector in Ghana, for Friedrich-Ebert-Stiftung

³² <https://thebftonline.com/2018/economy/informal-sectors-contribution-to-economy-hits-gh%2%A273bn-and-that-is-28-6-of-gdp>

³³ CHRAJ Report on Impact of Mining on Human Rights - Experiences from Ghana; UNDP (2016), Social Analysis of Ghana's Artisanal and Small-scale Mining Sector.

PART C: The Assessment

The UNGPS, Rights in Ghana, and Gaps Guiding Principle 1: State Duty to Protect Human Rights

“States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”

Building on the precedent set in previous constitutions (i.e., the short-lived 1969 and 1979 Constitutions³⁴) both of which had comprehensive human rights provisions, Chapter 5 of the 1992 Constitution vastly improved the supply of rights in Ghana. It guarantees, amongst other things, the protection of the rights to life, personal liberty, protection from slavery and forced labour, protection from inhumane treatment, the unlawful deprivation of property, privacy rights, freedom of conscience and religion, freedom of movement, association, assembly and speech. It also guarantees a right to information.

Furthermore it has provisions specifically guaranteeing rights to marginalized groups, including the disabled, children, and women. It provides specific education oriented rights, including a provision providing that all persons shall have the right to equal educational opportunities and facilities. Chapter 5 of the constitution therefore creates a fairly comprehensive (and easily enforceable) bill of rights.

Chapter 6 of the 1992 constitution guarantees many of what have come to be known as second generation rights³⁵. Hence, it contains provisions guaranteeing a number of economic and social rights, including provisions compelling the government to provide equitable access to education and create the appropriate economic and environmental conditions for the protection of the labour force, as well as to promote the economic and environmental welfare of the citizens of Ghana. Importantly, Chapter 6 of the constitution highlights the central role that business and the private sector are expected to play in the development of Ghana.

Other sections of the constitution also guarantee fundamental rights. The right to vote is guaranteed in Chapter 7³⁶.

³⁴ Human Rights Provisions were first introduced in 1969 as part of the response to the end of the authoritarian Nkrumaist era. The slide to authoritarianism under Nkrumah was caused in part by the absence of a clear bill of rights in both the 1957 and 1960 Constitution, which permitted the executive to pass a number of authoritarian laws and force through constitutional amendments which ultimately hollowed out Ghana's democracy. Subsequent constitutions have sought to prevent this by including comprehensive human rights provisions in the constitution.

³⁵ Definition of second generation rights.

³⁶ Article 42 provides that “Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda.”

Far reaching and extremely progressive rights to a free and independent media were provided for in Chapter 12³⁷. With the exception of guarantees against discrimination based on sexual orientation, virtually every major international civil, political, social, and economic right is directly or indirectly protected by the 1992 Constitution.

The key rights protections provided in the constitution include the following:

Article 13 of the 1992 Constitution satisfies the international norm of the right to life being protected by law and is similar to constitutional provisions on the right to life in the United States, Canadian, Hungarian and Indian Constitutions.

All of these qualify the right to life, usually by providing that the right to life shall not be deprived arbitrarily other than by a court sentence. Although article 13 is not explicit on arbitrary deprivation of life, sub section 2 creates an exception to the element of arbitrariness by providing that 'a person shall not be held to have deprived another person of his life in contravention of clause (1) if that other person dies as a result of a lawful act of war or if that other person dies as a result of the use of force to such extent as is reasonably justifiable'. It therefore presupposes that the right to life is not absolute and may be limited in terms stipulated under clause 2 of Article 13.

Ghana retains a provision for capital punishment. Sections 46, 49 and 49A of the Criminal Code³⁸ provide that whoever commits murder or genocide on conviction shall be sentenced to death. The retention of these provisions on the death penalty has been opposed by international groups including Amnesty International.³⁹ No executions have been carried out since 1993, but the government has not indicated any support for abolition of the death penalty. Death sentences have continued to be handed down.

⁴⁰ Ghana is not a party to the Second Optional Protocol on to the International Covenant on Civil and Political Rights (ICCPR) which explicitly abolishes the death penalty, although it is a party to the ICCPR itself which the UN Human Rights Committee has ruled should apply generally to abolition.

Article 14 of the Constitution conforms to the international and regional norms on protection of personal liberty and security of person. It also provides exceptions when a person may be deprived of his/her right to personal liberty – these exceptions, listed under subsection 1(a) through (g) are as follows:

- (a) in execution of a sentence or order of a court in respect of a criminal offence of which he has been convicted; or
- (b) in execution of an order of a court punishing him for contempt of court; or
- (c) for the purpose of bringing him before a court in execution of an order of a court; or

³⁷For example, Article 162 provides as follows: “(1) Freedom and independence of the media are hereby guaranteed. (2) Subject to this Constitution and any other law not inconsistent with this Constitution, there shall be no censorship in Ghana. (3) There shall be no impediments to the establishment of private press or media; and in particular, there shall be no law requiring any person to obtain a licence as a prerequisite to the establishment or operation of a newspaper, journal or other media for mass communication or information. (4) Editors and publishers of newspapers and other institutions of the mass media shall not be subject to control or interference by Government, nor shall they be penalized or harassed for their editorial opinions and views, or the content of their publications. (5) All agencies of the mass media shall, at all times, be free to uphold the principles, provisions and objectives of this Constitution, and shall uphold the responsibility and accountability of the Government to the people of Ghana.

³⁸ Criminal Code, 1960 Act 29

³⁹ Ghana: Briefing on the death penalty, Amnesty International, 2000, <http://web.amnesty.org/library/print/engaf280012000> Ghana: Time to abolish the death penalty, Amnesty International, 2002, <http://web.amnesty.org/library/print/engaf280012002>

⁴⁰ A 35-year-old carpenter was sentenced to death by hanging by an Accra High Court in August 2004. Chronicle, August 24 2004, page 5

Sub-sections (2) to (7) provide for the rights of accused and detained persons and the procedure for arrest and detention. Article 14 also provides that compensation shall be paid to a person who is unlawfully arrested detained or restricted. This right principally lays out the procedure for when the freedom of a person may be legally restrained. The substantive component requires the state to have good reasons for depriving someone of their freedom of personal liberty and the procedural component of the Constitution requires the deprivation to take place in accordance with fair procedures

Article 15 of the Constitution stipulates that the dignity of all persons shall be inviolable. Furthermore, Ghana is a signatory to the Article 1 of the UDHR which states that all human beings are born free and equal with dignity and rights. The ICCPR does not have a specific provision on human dignity. Its preamble states that human rights derive from the inherent dignity of the human person. The AfCHPR also stipulates that every individual shall have a right to the respect of the dignity inherent in a human being and recognition of his legal status. Article 16 of the Constitution is similar to the international and regional standards regarding slavery and forced labour. It provides that no one shall be held in slavery or servitude.

Efforts have been made to abolish abuses that derive from traditional culture, including the persistence of female circumcision and “*trokosi*”. Alongside the 1992 Constitution's guarantee of religious freedom, Article 26(2) bans all customary practices that “dehumanise or are injurious to the physical and mental well-being of a person”. Article 39 states in part that “...traditional practices that are injurious to the health and wellbeing of the person are abolished”. Additionally, several pieces of legislation have been passed specifically to address these issues, and civil society groups have continued their lobbying efforts.

In 1994, Parliament amended the Criminal Code of 1960, inserting Section 69A that explicitly includes the offence of female circumcision. The Section makes female circumcision a second-degree felony the punishment of which is a minimum of three years imprisonment. Very few cases of conviction under for this felony have been recorded to date.

In 1998, Parliament passed a further amendment to the Criminal Code, adding Section 314A (Prohibition of customary servitude), which criminalises customary or ritual enslavement of any kind. Again, as with female circumcision, the minimum punishment upon conviction is three years in prison.

There is an absence in Ghana of legal provisions specifically addressing the **trafficking in persons**, which remains a problem acknowledged by the Government.⁴¹ Arrests have been made under laws against slavery, prostitution, and underage labour; however, convictions have not followed.

⁴¹Raised specifically in Country Report on Human Rights Practice (Ghana) 2003, US State Department, <http://www.state.gov/g/drl/rls/hrrpt/2003/27730pf.htm>

The Government has set up a Human Trafficking Task Force to co-ordinate a response to the issue and discuss draft legislation. The International Labour Organisation (ILO) and its International Programme on the Elimination of Child Labour (IPEC) have been active in providing a key focus for anti-trafficking activities.

Government officials complain that current laws are insufficient and hamper law enforcement officials' efforts to prosecute. For example, in 2020, police arrested four people for trafficking-related offences, but none were convicted.

Two persons who tried to sell a child were sentenced to just two-year jail terms and fined. A woman arrested in 2001 on charges of child trafficking to the Gambia is still being prosecuted, and there is another trial underway involving several traffickers who were intercepted with 50 children in 2002.

Article 17 of the Constitution provides that all persons shall be equal before the law and a person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status. Again, this is in consonance with the UDHR, ICCPR and AfCHPR provide that States shall respect and ensure the rights of all people without any distinction based on colour sex race language religion political or other opinion national or social origin/birth property. The African Charter, to which Ghana is a signatory, adds “ethnic group” and “fortune” to this list.

The 1992 Constitution makes provision in several places for the protection of rights to free assembly and of rights to association. Article 21 states that:

- (1) All persons shall have the right to –
 - (a) freedom of assembly including freedom to take part in processions and demonstrations.
 - (b) freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interest;
 - (c) freedom of movement which means the right to move freely in Ghana, the right to leave and to enter Ghana and immunity from expulsion from Ghana.
- (2) A restriction on a person's freedom of movement by his lawful detention shall not be held to be inconsistent with or in contravention of this Article.

Article 24(3) repeats the right “to form and join a trade union” in the context of workers' rights. These clauses do not place the restriction of the right being subject to, or in conformity with the law as stipulated by the AfCHPR and the ICCPR.

The 1994 Public Order Act (Act 491) was intended to reassure citizens of their right to demonstrate freely as a means of free expression and association. It sets out the parameters for Assembly, which include informing the police before holding a “special event”. “Special event” is described in the Act as a “procession, parade, carnival, street

dance, celebration of a traditional festival, installation of a traditional ruler, demonstration, public meeting and similar event but does not include a religious meeting, charitable, social or sporting gathering or any lawful public entertainment or meeting". The police cannot unilaterally bar the gathering, but must apply to a court for an order to prohibit the holding of the special event. The judge "may make such order as he considers to be reasonably required in the interest of defence, public order, public safety, public health, the running of essential services or to prevent the violation of the rights and freedoms of other persons".⁴²

The use of force to disperse demonstrators is not permitted by law, though it has occurred in previous years. A ban on campus demonstrations has remained in effect but has never been enforced or challenged.

Freedom of association is limited in practice only by the routine requirements for NGOs to register with the Registrar General's Office and the Department of Social Welfare; and for political parties to seek accreditation with the Electoral Commission. Limitations on association have been more attributable to capacity limits on the part of CSOs, NGOs and CBOs than to legislative and statutory restrictions. In October 2003 the President signed into law a New Labour Act called Labour Act, 2003 (Act 651) to replace former legislation covering issues including trade unions and employers' organisation.

⁴³ The new law repealed legislation restricting the right to collective bargaining to groups that had been recognised by the Trades Union Congress (TUC). This enhanced the right of every worker to form or join a trade union and to bargain with employers for better conditions.

The 1992 Constitution guarantees the right to access information, "subject to qualifications and laws as are necessary in a democratic society", in Article 21 (1)(f). Article 18 gives recognition to privacy rights, thereby creating a right to access information held by Government about oneself. However, these provisions have so far not been adequately put into operation in the light of historical obstacles to the freedom of information.

⁴²Section 1 of the Public Order Act, 1994 (Act 491)

⁴³See also "Rights to employment" below.

Freedom of thought, conscience and belief is guaranteed by Article 21(1)(b) of the 1992 Constitution. Article 26(1) specifically guarantees the freedom to practice and promote “any culture, language, tradition or religion” subject to the Constitution's other provisions. Religious institutions seeking formal government recognition are required to register with the Registrar General's Department, as is the case for any non-governmental organisation.

The 1992 Constitution is clear in its provision for the rights of private ownership of property and of land. Article 18 states that “every person has the right to own property either alone or in association with others”, and protects against illegal interference with the privacy of property, home, correspondence or communication except in accordance with the law. Article 20 provides a guarantee against compulsory acquisition of private property by the state, with certain exceptions and arrangements for compensation. These exceptions are in the interest of defence, public safety, public health, public morality, public health, and town and country planning.

Guiding Principle 2: Respect for Human Rights by All Businesses Business and Human Rights Obligations

The primary source of human rights obligations faced by business entities in Ghana is the 1992 Constitution. The constitution frames the application of human rights obligations of Ghana in very broad terms. Article 12 of the constitution of Ghana provides that *“The fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution”*.⁴⁴

Thus, the human rights provisions outlined in the above sections are applicable to Ghanaian business, and the courts have frequently upheld the application of human rights against private entities. It is not uncommon for actions against Ghanaian businesses for negligence⁴⁵, or wrongful dismissal⁴⁶ to be framed in Human Rights terms.

In **CHRAJ v Ghana Commercial Bank**, the Supreme Court upheld the equal treatment provisions of the constitution to a state-owned commercial enterprise⁴⁷. The Human Rights provisions of the constitution have also been used as a basis for the application of administrative justice rights against businesses. These have been enshrined in Article 23 of the Constitution.

In **Aboagye v Ghana Commercial Bank Ltd**,⁴⁸ it was held that the rules of natural justice, though not specifically mentioned in the constitution’s human rights provisions they were strongly implied by article 19(3)⁴⁹ and essentially created binding procedural rules on public and private agencies.

As can be seen from Article 19(1) and (3) all courts and adjudicating authorities, are required to give a fair hearing, this requires that notice of proceedings be given to the person affected by any decision of the adjudicating authority and that he be given the opportunity to defend himself. Furthermore, Article 23 says that administrative bodies

⁴⁴ 1992 Constitution, Article 12 (1)

⁴⁵ Paul K. Agyekum v John Ayitey, Gellag Limited, Suit No: HRC 31/09, The 18th Day Of April, 2011, Before His Lordship, Justice Uuter Paul Dery,

⁴⁶ Francis Ebo Abrahams v Hotel Investments (Ghana) Limited Suit No. INDL 8/10 HE 17th Day Of November, 2011

⁴⁷ GCB v CHRAJ 2003-4 SCGLR 9 “The basic question at stake is why the rules of the bank should be applied differently from one manager to another or why the breach of the rules of the bank should result in the termination of one manager but the breach of the same rule in worse circumstances should attract consequences totally different from the termination meted out to another manager. For that different treatment, no answer was given by the appellant”. Per Brobbey JSC.

⁴⁸ (2001 - 2002) SCGLR 797

⁴⁹ Article 19(3), spells out with the duties of adjudicating authorities and provides as follows: “Article 19(3) An adjudicating authority for the determination of the existence or extent of a civil right or obligation shall, subject to the provisions of this Constitution be established by law and shall be independent and impartial and where proceedings for determination are instituted by a person before such an adjudicating authority, the case shall be given an adjudicating fair hearing within a reasonable time”

and officials shall act fairly and acting fairly implies the application of the rules of natural justice which have been elevated to constitutional rights and are binding on all adjudicating and administrative bodies as well as courts and tribunals...". Consequently the Defendant Bank which took disciplinary action against the Plaintiff through procedures provided by the Banks Disciplinary procedure rules should have followed the said procedure in those rules and also bound apply the rules of natural justice.

Furthermore, in the case of **L'air Liquide Ghana Ltd. v. Amin**⁵⁰ it was held by the Court of Appeal unanimously that:

"Whenever people were given power by law to consider facts and to arrive at conclusions affecting the fate of human beings, they were performing a quasi-judicial function and if the body violated the rules of natural justice the courts had power to declare the procedure invalid, as well as the conclusions there from.

In the present case the administrative inquiry violated the two cardinal principles of natural justice namely a man must not be judge in his own case. Since the evidence showed that the respondents were threatened with incarceration if they did not give answers the investigators expected to hear, and they were also not given the chance to confront their accusers, nobody, given such a trial could seriously be said to have been heard.

And since the members of the committee of inquiry included the same people who arrested the plaintiffs and sent them to the Police Station members who were very much interested in the subject, they were investigating, they were in the position of the accusers being made judges in their own case, consequently both the inquiry and the dismissal of the respondents were unlawful".

Notably, the findings of the court in this case were against the actions by L'Air Liquide, a private limited liability entity.

Importantly, the 1992 Constitution provides effective enforcement mechanisms for the realization of those rights. Article 33 designates the High Court as the primary means by which ordinary citizens can enforce all the rights which have been created in the constitution. The state has significantly enhanced the ability to enforce these rights against corporations by creating divisions of the High Court (i.e. the Human Rights Division) which are exclusively focused on Human Rights Violations and Labour matters.

⁵⁰(1991) GLR p. 460

Article 33 also stipulates that the rights listed in Chapter 5 of the constitution should not be considered exhaustive. The rights include “others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man”. This permits enforcement actions against corporations for human rights violations not mentioned in Ghana's Bill of Rights.

An example of this is Sexual Harassment. There is no right against sexual harassment listed in Chapter 5 of the constitution.

But in **CHRAJ v Norvor & Fan Airlines**, an airline stewardess was able to successfully bring a claim against her former employers and their Managing Director.⁵¹ The argument by his employer that as the right was not listed in the constitution, the action should not be allowed was rejected by the court on the basis that rights listed in Chapter 5 are not exhaustive.

Legislatively, there are a number of black letter rules which directly or indirectly impact the conduct of business in Ghana. Ghana has a fairly complex framework of labour statutes governing worker's rights.

A review of a number of basic regulations governing other aspects of the operations of business in Ghana reveal that while operations of firms in Ghana are extremely well regulated, the statutorily imposed human rights obligations are not considerable.

⁵¹ Ghana Law Reports 2001. *The Commissioner, Commission on Human Rights and Administrative Justice v. Prof. Frank Awuku Norvor*, Suit No. FT (HR) 6/2001, Accra

Guiding Principle 3: Regulatory and Policy Functions

States are obliged to enforce the law, encourage businesses to respect human rights, offer guidance on how to respect human rights, including in some cases, mandatory due diligence requirements. State failure to enforce the law might encourage businesses to violate human rights.

Laws Regulating Business Conduct in Relation to Labour Rights

The constitution and laws of Ghana has a number of provisions which seek to promote labor rights. It provides in Article 24 that “every person has the right to work under satisfactory, safe and healthy conditions, and shall receive equal pay for equal work without distinction of any kind”, reinforcing the language in the earlier articles of the constitution which speak to issues relating to human dignity. Other Articles provide that every worker shall be assured of rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays.

The freedom of association provisions in article 21 are also re-emphasized with every worker being granted a right to form or join a trade union of his choice for the promotion and protection of his economic and social interests.

The constitutional rights are supported by fairly detailed labor protections in Ghana's labor regulations. Ghana's primary labour law was adopted by Parliament in October 2003. The Labour Act seeks to act as a general legislation in the Ghanaian employment regime. It mends the lacunae seen in various (and former) legislations and further introduces provisions to reflect ratified ILO Conventions. The Labour Act covers all employers and employees save for those in strategic positions such as the Armed Forces, Police Service, Prisons Service and the Security Intelligence Agencies. Major provisions of the Labour Act include establishment of public and private employment centres, protection of the employment relationship, general conditions of employment, employment of persons with disabilities, employment of young persons, employment of women, fair and unfair termination of employment, protection of remuneration, temporary and casual employees, unions, employers' organisations and collective agreements, strikes, establishment of a National Tripartite Committee, forced labour,

⁵² See www.ilo.org; also the ILO's database of national labour, social security and related human rights legislation at http://www.ilo.org/dyn/natlex/natlex_browse.home. Also covered at length in the US State Dept [Country Report](#), as above.

occupational health and safety, labour inspection and the establishment of the National Labour Commission. The Labour Act, 2003 (Act 651) is compliant with International Labour Organisation standards.⁵²

It places a broad range of obligations on Ghanaian businesses.

- Protection of employment (rights and duties of employers and workers, etc)
- Establishment of Public Employment Centres and the registration of private employment agencies
- Protection of employment (rights and duties of employers and workers, etc)
- General conditions of employment (including annual leave with pay, hours of work, rest periods)
- Employment of persons with disabilities
- Employment of women
- Employment of young persons
- Fair and unfair termination of employment
- Protection of remuneration (equal pay for equal work, prohibited or permitted deductions, paid public holidays, etc)
- Special provisions relating to temporary workers and casual workers
- Trade unions and employers' organisation
- Collective agreement
- Forced labour
- Occupational health, safety and environment
- Labour inspection
- Unfair labour practices (discrimination, interference by employers in union affairs, complaints, etc)
- Strikes

A commission composed of representatives of the government, labour, and employers are responsible for setting and revising a minimum national daily wage. . Major provisions of the Labour Act include establishment of public and private employment centres, protection of the employment relationship, general conditions of employment, employment of persons with disabilities, employment of young persons, employment of women, fair and unfair termination of employment, protection of remuneration, temporary and casual employees, unions, employers' organisations and collective

⁵³ B Dwumfour-Asare and SA Asiedu, Awareness of the Factories, Offices and Shops Act 1970 (Act 328) at KNUST, Ghana Developing Country StudiesbVol.3, No.10, 2013

⁵⁴ Interview with Ghana Employers Association,

agreements, strikes, forced labour, occupational health and safety, labour inspection and the establishment of the National Labour Commission.

The Labour Act provides for the establishment of a Labour Commission, with a mandate to hear and settle industrial disputes, investigate labour-related complaints, promote effective cooperation between labour and management and facilitate access to mediation and arbitration.

The National Vocational Training Act, 1970, Act 351. (And the National Vocational Training Regulations, E.I. 15) together with their subsidiary legislation seek to create an apprenticeship-focused labour industry, especially with entities that engage in technical business. Thus, employers are expected to provide training for their employees for the attainment of the level of competence required for the performance of their jobs and to enhance their career. The Children's Act of 1998 sets the minimum employment age at 15 years, or 13 years for light work that is not likely to be harmful to the child and which does not affect the child's attendance at or capacity to benefit from school.

The law also specifies the types of work that is considered “hazardous labour”. In addition, the Hazardous Child Labour Activity Framework for the Cocoa Sector prohibits children under 18 years from being engaged in certain activities defined as hazardous, including exposure to pesticides while carrying water to spray cocoa trees; carrying heavy loads; working with dangerous tools, such as machetes used to clear underbrush; working with fire to burn underbrush; and felling trees.

Laws Regulating Business Conduct in Relation to Environmental Rights

Ghana's Environmental Protection Act (1994) has provisions which expand upon the constitutional requirement for a clean environment. Environmental permits are issued by the Environmental Protection Agency, in accordance with the Environmental Impact Assessment Regulations. Environmental impact assessments must include assessment of potential impacts on land and livelihoods, as well as on health.

The Minerals and Mining Act (2006) also requires that applications for mining licenses be made public for at least 21 days, during which communities can raise objections to the mine. Notices are posted on boards at district assemblies, trade councils, local information centers, with copies sent to the land owners concerned. Resettlement of communities is also covered in the Minerals and Mining Act (2006).

The Act provides for mining affected communities to be furnished with appropriate housing of a similar standard as that which the community members had prior to resettlement. It also states that resettled communities should not be worse off economically.

The constitution provides that the “*state shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek co-operation with other states and bodies for purposes of protecting the wider international environment for mankind*”⁵⁵. There is therefore no clearly stated right to a good environment. There is, however, a duty imposed on citizens to protect and safeguard the environment⁵⁶.

The Environmental Protection Agency (EPA) advises the Ministry of Science and Environment on sound environmental practices, and is responsible for regulating environmental policy. This was established in 1994 to develop environmental standards, issue directives and warnings on matters pertaining to environmental pollution and destruction, and issue permits. The EPA implements its statutes through enforcement notices and it may criminally prosecute offenders.

In Ghana, the regulation of environmental practices and environmental policy making is centralized. In each of the 10 regions, there is a Regional Coordinating Council presided over by a Regional Minister. The EPA has an office in each region and the Council is expected to coordinate its work with that of the central body. Each District Assembly, by law, has a committee devoted to environmental policy. Though the local communities in and around the mining areas may indirectly influence environmental policy through their respective local politicians and authorities, Ghanaian legislation does not provide specific avenues for communities to formally seek redress for violations of their rights.

While the EPA is designated with the role of regulator, precise standards for sound environmental practices still remain relatively ambiguous. For example, corporations are required to consult communities in the valuation of crops. Yet, mining companies have reportedly conducted private valuations of areas affected by deforestation, water diversion and land destruction without paying attention to protests from locals. Small-scale mining operations also add to land degradation. Small-scale mining, in particular the illegal operations tend to operate in surface-level mines which are most destructive to forest, rivers and arable land.

⁵⁵ 1992 Constitution, Chapter 6

⁵⁶ Ibid, 56

Ghana had not only participated in but also signed at least fifteen international conventions and treaties on environmental issues from the International Plant Protection Convention of 1951 to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and their Destruction in 1972. Of these 15 Conventions, 3 are not yet ratified. The country has also signed the Rio Conventions, but these are yet to be ratified by Parliament.

Laws Governing the Administration and Equitable Distribution of Land and Mineral Resources

The territories of Ghana, including its landmass, territorial seas and airspace, are defined under Chapter 4 of the Constitution. The Constitution devotes the whole of Chapter 21 to matters of lands and natural resources. These constitutional provisions generally define public lands and other lands; provide for the management of public lands by the Lands Commission; restrict the ownership of land by non-Ghanaians; provide for the vesting of Stool and Skin lands and property in the appropriate Stools or Skins on behalf of, and in trust for, the subjects of the stool in accordance with Customary Law and usage; and provides for the management of Stool and Skin lands and property jointly, by the Lands Commission and the Office of the Administrator of Stool Land.

They also provide for the protection of other natural resources through parliamentary oversight of contracts involving natural resources and the establishment of natural resources commissions. Conspicuously missing are explicit constitutional provisions on the nascent oil and gas industry.

Under Article 257(6) every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for, the people of Ghana.

This omnibus constitutional provision is replicated in Section 1 of the Minerals and Mining Act, 2006 (Act 703). It is specifically customised to petroleum existing in its natural state under Section 1 of the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84).

With the endowment of rich natural resources, Ghanaians have adopted for themselves a constitutional framework to regulate the exploitation of the resources. This framework includes the provision for the establishment of a number of commissions and institutions including a Lands Commission, an Office of the Administrator of Stools Lands, a Minerals Commission, a Forestry Commission, a Fisheries Commission and such other commissions as the Parliament of Ghana may determine, to be responsible for the regulation and management of the utilisation of the natural resources concerned and the coordination of the policies in relation to them.⁵⁷

The 1992 Constitution grants Parliament the power to authorise any other agency of Government to approve the grant of rights, concessions or contracts in respect of the exploitation of any mineral, water or other natural resource of Ghana.⁵⁸

The Constitution also provides that any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of Ghana, to any other person or body of persons howsoever described, for the exploitation of any mineral, water or other natural resource of Ghana made or entered into after the coming into force of the 1992 Constitution shall be subject to ratification by Parliament.⁵⁹

Between 1974 and 2001 Ghana embarked on two unsuccessful attempts at oil exploration. The third attempt, commencing in 2004, led to the successful discovery of oil, in commercial quantities. The regulation of the management of revenue from the extraction of oil and gas is now embodied in the newly enacted Petroleum Revenue Management Act, 2011 which was passed on the 11th April, 2011. This Act provides the framework for the collection, allocation and management of petroleum revenue in a responsible, transparent, accountable and sustainable manner for the benefit of the citizens of Ghana in accordance with Article 36 of the 1992 Constitution.⁶⁰

This article provides that “the State shall all necessary action that the national economy is managed and in such a manner as to maximise the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Ghana and to provide adequate means of livelihood and suitable employment and public assistance to the needy.”

⁵⁷ Articles 258, 267 and 269 of the 1992 Constitution of the Republic of Ghana.

⁵⁸ Article 269(2) of the 1992 Constitution of the Republic of Ghana.

⁵⁹ Article 268 of the 1992 Constitution of the Republic of Ghana.

⁶⁰ Petroleum Revenue Management Act, 2011 (Act 815).

“agriculture; physical infrastructure and service delivery in education, science and technology; potable water delivery and sanitation; infrastructure development in telecommunication, road, rail and port; physical infrastructure and service delivery in health; housing delivery; environmental protection, sustainable utilisation and protection of natural resources; rural development; developing alternative energy sources; the strengthening of institutions of government concerned with governance and the maintenance of law and order; public safety and security; and provision of social welfare and the protection of the physically handicapped and disadvantaged citizens.” This list is non-exhaustive.

The Constitution defers a large part of the protection of natural resources to legislative interventions, executive policies, administrative measures and judicial decisions. For example, there is currently the Minerals Commission, established under the Minerals Commission Act of 1993 to regulate and manage the utilisation of mineral resources and to co-ordinate the policies relating to mineral resources.⁶¹

The current legal framework for mining is embodied in the Minerals and Mining Act of 2006.⁶² There is also the Water Resources Commission which was established under the Water Resources Commission Act of 1996.⁶³ It is responsible for the regulation and management of the utilisation of water resources, and for the co-ordination of any policy in relation to them. The Fisheries Commission was established under the Fisheries Act of 2002.⁶⁴ The Fisheries Commission is responsible for the regulation and management of the utilisation of the fishery resources of the Republic and the coordination of the policies in relation to them.

Anti-Corruption and Company Responsibility to the State

Ghana has a number of statutes which prohibit misappropriation or other diversion of property by a public official. The Criminal Offences Act of Ghana provides that “If any public officer who is bound as such officer to pay or account for any money or valuable things, or to produce or give up any documents or other things, fails to pay or account for, or to produce or give up, the same according to his duty to any other officer or person lawfully demanding the same, he shall be guilty of a misdemeanor”.

⁶²Minerals and Mining Act, 2006 (Act 703).

⁶³Water Resources Commission Act of 1996 (Act 522).

⁶⁴Fisheries Act, 2002 (Act 625).

Other sections prohibit “any person who, (a) while holding a public office, corruptly or dishonestly abuses the office for private profit or benefit; or (b) not being a holder or a public office acts or is found to have acted in collaboration with a person holding public office for the latter to abuse the office corruptly or dishonestly for private profit or benefit, commits an offence”⁶⁵.

In addition to this provision, Financial Administration Act, 2003 (Act 654) Section 62 (1) (d) provides that any public officer engaged in or connected with the management of public funds who misrepresents the quantum commits an offence. The definition of property is vague, but can be reasonably be interpreted to include items in the category of “money or valuable things”. The prohibition could undoubtedly benefit from a broader definition of what constitutes property.

In addition to 179C, section 179A (3) criminalizes acts causing financial loss or endangers the security of the state through willful or malicious conduct, or fraudulent act or omission. Section 179A has attracted significant public commentary⁶⁶, and has been tested in a number of cases⁶⁷.

Its constitutionality has been challenged, and there have been calls for its repeal. The burden of proving willfulness, maliciousness, and fraud beyond reasonable doubt does not appear to have hampered the effective application of this law.

The Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) attempts, largely unsuccessfully, to provide a legal framework prohibiting illicit enrichment. The constitution of Ghana names categories of public officers who must submit a written declaration of their assets and liabilities to the Auditor-General. This must be done before taking office, after each four-year period, and at the end of the public officers' tenure of office. The constitutional framework is supported by the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 which extended the list of public officers required to declare their assets and liabilities to cover the generality of public office holders. Act 550 has also specified the details of the assets to be declared and the form in which the declaration list should be made.

⁶⁵Section 179C of the Criminal Offences Act, 1960 (Act 29).

⁶⁶H. Kwasi Prempeh “The Law of Causing Financial Loss to the State” Critical Perspectives 2003. See also *R v Wereko-Brobby*, *ibid*

⁶⁷*Mallam Ali Yusuf Issah v The Rep* (2/4/2003) CA No. 4/2001.

Rep. v Ibrahim Adam & others. (28/4/03) No. FT/MISC. 2/2000

Daniel Kwasi Abodakpi v The Rep. (Court of Appeal NO. H2/06/07)

Republic v Tsatsu Tsikata CA. NO: J3/4/2004

The failure of any public officer to make a declaration constitutes a breach of the Code of Conduct for Public Officers provided in the constitution. It is also a breach of the Code if an officer knowingly makes a false declaration. After the initial declaration, any property or other asset acquired by a public officer, which cannot reasonably be attributable to income, gift, loan, inheritance, or any other reasonable source will be regarded as an illegal acquisition.⁶⁸

Other provisions (for instance, Article 98(2)(b) of 1992 Constitution forbids parliamentarians from holding a private office of emolument if there is the likelihood of a conflict with the legislative duties of a member of Parliament. Pursuant to the same provision, the Standing Orders of

Parliament set up a committee on members holding offices of profit which monitors likely conflicts of interest arising from members' private activities. Article 104(5) of the Constitution requires a Member of Parliament who is a party to or a partner in a firm which is a party to a contract with the government to declare his or her interest and to refrain from voting on any question relating to the contract.

Ghana's asset declaration regime has several deficits. There is a need for a more elaborate constitutional mechanism for detecting non-compliance with and contravention of the Code of Conduct for public officers. A more transparent asset declaration regime that has very strong provisions for the verification of the assets declared and strong punitive measures against persons who default could prove a very potent weapon for fighting corruption. Also, the monitoring and verification machinery under the current arrangement is deficient. While the Auditor-General is the custodian of the declarations, there is no administrative procedure for verification beyond investigations triggered by a complaint made to the CHRAJ, or investigations carried out by a Commission of Inquiry. The fight against corruption is not enhanced by this arrangement.⁶⁹

Ghana passed an anti-money laundering statute in 2008. Sections 1 and 2 of the Anti-Money Laundering Act, 2008 (Act 749) provides, among other things, that any person who converts, conceals, disguises or transfers the property or the unlawful origin of the property, or takes possession of such property or aids any person to do any of the aforementioned acts commits an offence. Unlawful acts contemplated by the statute are defined to include any conduct constituting a serious offence, such as financing of a terrorist act. The law applies to acts committed in Ghana or elsewhere.

⁶⁸Article 286(4) of the 1992 Constitution of the Republic of Ghana.

⁶⁹Ghana's political actors' resistance to credible reform of asset declaration information is usually framed around the notion of protecting office holders' "right to privacy".

Anti-corruption is discussed in this report as it related to the ability of rights abusers, especially corporate rights abusers to act with impunity.

Criminal Culpability of Ghanaian Businesses

There is very limited capacity to hold corporations or other legal entities culpable for the commission of offences under the criminal code of Ghana. As is the case in all common law countries, criminal culpability often requires proof beyond reasonable doubt of a number of mental factors – such as intention, mens rea, actus reus, recklessness. It is difficult to demonstrate the existence of these elements for ordinary persons. It is especially difficult to show these elements exist in respect of acts caused by corporate entities. Ghana therefore urgently needs legislative interventions which will facilitate the ability of corporate entities to be held liable for corruption related offences.

There are a number of statutes which allow for administrative actions and fines to be imposed on corporations. However, there are no statutes that specifically seek to prohibit or punish corrupt or criminal behaviour by corporations as corporations.

In statutes in which there is possibility of corporate criminal liability for financial impropriety, some Ghanaian laws permit the piercing of the corporate veil to allow for officers of the corporate entity to be punished. The Anti-Money Laundering Act, for example, provides that where “an offence is committed by a company or a body of persons the penalty shall be a fine of not more than one thousand penalty units, and (a) in the case of a body corporate, other than a partnership, each director or an officer of the body is considered to have committed the offence; and (b) in the case of a partnership, each partner or officer of that body is considered to have committed that offence.” The punishment for the offences are however inadequate. The maximum punishment under this statute is approximately \$6,000. Other statutes (such as the Borrowers and Lenders Act, violations of which attract a maximum fine of up to \$30,000) have similar provisions.

Guiding Principle 4: Businesses Owned or Controlled by the State

The Guiding Principles state that “where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations.” This means that the State has an enhanced and particular obligation to ensure that any businesses that it owns or controls (such as State-owned enterprises or financial institutions that receive substantial State support) exercise respect for human rights.

International law and morality places a positive obligation on states to ensure the protection of the human rights of their citizens.

Not as much attention as has been paid to for-profit state-owned enterprises, and perhaps that ought to change. The commercial activities of the state, while conceptually distinct from its social and regulatory responsibilities, are of no less relevance to human rights discourse. More critically, considering their importance to third world economies, and the role they play in keeping essential services accessible to the poor, there is little doubt that SoEs are here to stay.

In the specific case of Ghana, there are fewer human rights violations concerning SoEs and citizens than in the private sector. This is because SoEs are less profit oriented, and highly regulated. Many of the SoEs are set up pursuant to an Act of Parliament, and are more likely to be the subject of political influence. SoEs, because of this, sometimes employ many more persons than they should. Nevertheless, they often provide essential and reasonably priced services.

There is still much to be done however. Concerns continue to exist among international commentators about Ghana's child trafficking and child labour record. This is particularly important in the agricultural sector where the government's participation is mandated through the Cocoa Processing Company and the Ghana Cocoa Board role as the primary purchasers of the crop.⁷⁰

The government is the principal facilitator in the cocoa production industry. Using its vehicle – the Ghana Cocoa Board – the government exercises a monopoly over the export of cocoa beans through a system where it buys the beans either directly from

⁷⁰Berlan, Amanda. "Child labour, education and child rights among cocoa producers in Ghana." *The political economy of new slavery*. Palgrave Macmillan, London, 2004. 158-178.

farmers or indirectly through intermediary companies, and resells it on the foreign market to large multinationals. There are two reasons for this; the first, being the profits that accrue to the government from this system, and the second, being the need to insulate farmers from the volatility of the commodities market. Set within an industry that is notorious for its use of child labourers, questions naturally arise about the government's commitment to its own child protection laws.

Understandably, there would be a logical disconnect where the government, on the one hand, promulgates laws and regulations governing the protection of children from exploitation, and on the other hand, profits from the exploitation of children in the cocoa production industry.

However, it has been argued that not all Ghanaian child workers on cocoa farms are victims of exploitation or slaves, for that matter. Many are no different from young school children interning at a family business or learning the tricks of the trade after school hours. If the nature of the work itself seems a little challenging by European standards, it can be because of the general poverty that exists within the area, not because children are being specifically exploited for profit.

Development-Induced Displacement and Resettlement is another key area in which the government and its SoEs have consistently failed the Ghanaian people.⁷¹ Alhassan, for example, traces the history of the Akosombo dam and its effect on the environment and on the people. In the years following the construction of the Akosombo and Kpong dams, over 88000 people would be displaced, and about 75% of the population in the areas surrounding the newly created Volta lake would be diagnosed with urinary schistosomiasis, a disease which only had a nationwide prevalence rate of less than 5%.⁷² The words of an anonymous commentator would ring true, years later, when a similar project - the Bui Hydroelectric Project – was commissioned, “the dam itself is good for development, but the treatment of the local people is the problem”⁷³.

The Bui Power Authority was created to oversee the construction of, and subsequent generation of electricity from, the Bui Hydroelectric Dam. The project caused the displacement of at least a thousand two hundred people from the surrounding towns. Given that property rights are guaranteed in Articles 18 and 20, the legitimate

⁷¹ Alhassan, Henry Shirazu. "Viewpoint–Butterflies vs hydropower: Reflections on large dams in contemporary Africa." *Water alternatives* 2.1 (2009): 148-160.

⁷² Yankson, Paul WK, et al. "The livelihood challenges of resettled communities of the Bui dam project in Ghana and the role of Chinese dam-builders." *Development Policy Review* 36 (2018): O476-O494.

⁷³ Alhassan, Henry Shirazu. "Viewpoint–Butterflies vs hydropower: Reflections on large dams in contemporary Africa." *Water alternatives* 2.1 (2009): 148-160.

expectations of the inhabitants of the affected communities were that they would be given compensation, that included resettlement, replacement of lost property and, where applicable, alternative sources of livelihood. Nsiah suggests that there has been varying levels of satisfaction with the government's efforts to compensate the people⁷⁴. On the one hand, there appears to be a high level of satisfaction with housing and access to amenities such as healthcare and clean drinking water, which either betters or is at par with what they were used to before their resettlement. On other hand, loss of livelihood appears to be a sticking point among many of the community members. Many farmers complain that the farmland allocation system allocated a fixed size of 0.8 hectares that did not take into account the previous size of their farmlands⁷⁵.

The complaints extend to the quality of the farmlands which do not support the cultivation of traditional crops such as tubers and cashew. The distance between the new settlements and the forests has also resulted in a decline in game hunting. The overall effect of the reduction in employment opportunities and food insecurity has been an increase in the cost of living⁷⁶.

This excerpt from Hausermann graphically captures the standard of living of Jama residents “Many respondents described similar problems: following relocation to less fertile land, crop production declined. When asked how households coped with lower yields, farmers responded they simply ate less...Our fathers used farming proceeds to take care of and educate us...but now, farming is not very effective. And the Bui Dam is the cause of that ... Farming has been the source of our livelihood for a long time. A time is coming where we would not be able to sponsor the children in school due to reduced farming activities. We encountered several households wherein sons, some as young as 14 years, worked in small-scale mining to assuage families' decreased farm income... Around Bui Dam, mining participation is driven by land dispossessions and food insecurity wrought by state-led development. Around Bui Dam, mining participation is driven by land dispossessions and food insecurity wrought by state-led development.”⁷⁷

Another SoE whose activities need in depth examination is the Tema Oil Refinery, which produces enough fine particulate matter to endanger the health of workers and nearby communities. Amoatey et al. observed that the “emissions might pose a serious health effect to the people living within the affected areas since [the daily inhalable](#)

⁷⁴ Nsiah, J. E. S. S. I. C. A. *Public Participation in Environmental Impact Assessment in Ghana: The Case of Bui Dam Project*. Diss. University of Ghana, 2019.

⁷⁵ Yankson, Paul WK, et al. "The livelihood challenges of resettled communities of the Bui dam project in Ghana and the role of Chinese dam-builders." *Development Policy Review* 36 (2018): O476-O494.

⁷⁶ Hausermann, Heidi. "'Ghana must progress, but we are really suffering': Bui Dam, antipolitics development, and the livelihood implications for rural people." *Society & Natural Resources* 31.6 (2018): 633-648.

particulate matter concentrations in the TOR area exceeded all the standard limits set by WHO, USEPA, and European Commission (EC).”⁷⁸

A counter argument has been proposed that production of fossil fuels is in itself an environmentally-unfriendly endeavour. Proponents of this argument have argued that perhaps the failure does not lie so much with the Tema Oil Refinery as it does the Tema Development Corporation for not doing more to keep the settlements away from the refinery. However, the results of Amoatey et al.'s research suggests that the air pollution covers a 10kilometer radius. Amoatey's paper does not mark the first incidence of allegations against TOR for pollution. In 2007, the Centre for Public Interest Law successfully sued the refinery for the pollution of the Chemu Lagoon which, in the plaintiff's words, constituted a violation of their right to a clean and healthy environment “under the Constitution and under international law”.⁷⁹ Again in 2017, the refinery had to be shut down after a malfunction at the refinery's crude distillation unit caused an explosion, which luckily did not result in any fatalities.

⁷⁷ Article 15(2)(a)&(b), The 1992 Constitution of Ghana

⁷⁸ Article 17(2), The 1992 Constitution of Ghana

⁷⁹ Article 29(2),(3)&(6), The 1992 Constitution of Ghana

In a report by the Office of the United Nations High Commissioner for Human Rights titled “Survey on the Implementation of the Guiding Principles on Business and Human Rights: The Role of States as Economic Actors”, submissions therein assessed Ghana's progress in achieving the goals of the Guiding Principles. To answer the question whether the state has aligned the Guiding Principles into its operations in SOEs, it stated, *“There are no known specific government policies, regulations or guidance directing State owned enterprises (SOEs) to specifically implement respect for human rights throughout their operations.”*

However, SOEs are expected to respect and protect fundamental human rights and freedoms as they operate under the 1992 Constitution of Ghana that has prioritized fundamental freedoms and human rights of all persons in the country. ... An opportunity exists for implementation of specific steps to ensure that businesses including SOEs respect human rights and protect human rights including safeguarding the environment in their operations.

Indeed some tentative steps have been taken to increase awareness among the stakeholders including local businesses about human rights and responsibilities of businesses as defined in the Guiding Principles.”

The treatment of SoEs as agencies of government rather than independent artificial persons tends to minimize the sense of responsibility they feel towards the observation of human rights standards. It is submitted that SoEs ought to be treated like multinationals, and held to the same standards. An approach such as that will undoubtedly increase the sense of responsibility these SoEs feel, but could negatively affect their bottom line, which is counterproductive to the commercial interests of the state. A fine balancing act will be required to navigate these straits

Guiding Principles 5: Privatized Services and Businesses Regulated by Legislation.

The State should exercise “adequate oversight” to meet its international human rights obligations when it contracts businesses to provide privatized services. The same standard of care is required when the State enacts legislation to regulate businesses to provide services that may impact human rights.

Questions do remain about the government's commitment towards the enforcement of human rights legislation, particularly in its oversight of private persons and body corporates operating in various sectors of the economy. As already indicated, the Constitution of Ghana makes adequate provision for the protection of human rights in this country, as contained in Chapters Five and Six.

Among these provisions is Article 15 which states that the dignity of all persons shall be inviolable, and guarantees freedom from any condition that is likely to detract from the dignity and worth of any person *as a human being*.⁸⁰

Articles 17 and 35(5) also guarantee freedom from discrimination.⁸¹ Article 29 restates both of these rights in relation to persons with disability, by providing that such persons shall not be discriminated against, especially in terms of access to accommodation or public spaces,⁸² or be subjected to abusive or degrading treatment.⁸³ In particular, the provision on equal and reasonable access to public spaces and services, by all, is restated in Article 35(3), in this instance, making it a duty of the state to guarantee.⁸⁴

Articles 25 and 26 make provision for the right to equal educational opportunities,⁸⁵ and practice of any religion, culture or tradition, as long as they are not harmful or dehumanizing.⁸⁶ In Article 18, the freedom from interference with one's privacy is guaranteed,⁸⁷ whereas Article 28 contains extensive provisions on child protection.⁸⁸

Some of these rights are expounded in various pieces of legislation enacted by Parliament. For example, the Persons with Disability Act 2006⁸⁹ restates the provisions of the Constitution in respect of the rights of disabled individuals, and includes detailed provisions relating to derogatory names, employment, transportation, and access to public spaces and services.

⁸⁰ Article 15(2)(a)&(b), The 1992 Constitution of Ghana

⁸¹ Article 17(2), The 1992 Constitution of Ghana

⁸² Article 29(2),(3)&(6), The 1992 Constitution of Ghana

⁸³ Article 29(4), The 1992 Constitution of Ghana

⁸⁴ Article 35(3), The 1992 Constitution of Ghana

⁸⁵ Article 25, The 1992 Constitution of Ghana

⁸⁶ Article 26, The 1992 Constitution of Ghana

⁸⁷ Article 18(2), The 1992 Constitution of Ghana

⁸⁸ Article 28, The 1992 Constitution of Ghana

⁸⁹ Persons With Disability Act, 2006 (Act 715)

The relevant provisions include sections 6 which provides that “The owner or occupier of a place to which the public has access shall provide appropriate facilities that make the place accessible to and available for use by a person with disability”;⁹⁰ section 7 which provides that “A person who provides any service to the public shall put in place the necessary facilities that make the service available and accessible to a person with disability”;⁹¹

Section 26 which provides that “each public place for parking vehicles shall have a clearly demarcated area for the exclusive use of persons with disability”⁹² and; section 29 which provides that “A person responsible for the booking of passengers on a commercial bus shall reserve at least two seats for persons with disability except that where the bus is full without the reserved seats having been occupied, the driver or the person responsible for putting passengers on the bus may, fill the reserved seats with other passengers.”⁹³ The Labour Act 2003 also protects persons with disabilities from dismissal on account of said disabilities⁹⁴ and offers incentives to businesses that employ such persons.⁹⁵ Section 53 specifically places a positive obligation on firms to bear the cost of training or retraining persons with disability to enable them cope with their employment.⁹⁶

In respect of expansions to the right to education and the rights of the child, the Children's Act 1998 proscribes exploitative labour for children, and defines exploitative labour as labour that *inter alia* deprives a child of their education.⁹⁷ It also has provisions protecting the child from unreasonable punishment and child abuse, with child abuse defined as any such infringement of the child's rights that causes physical or mental harm to the child.⁹⁸

The Criminal Offences Act 1960⁹⁹ also contains a slew of provisions protecting children, under the age of 16, from all forms of sexual contact.¹⁰⁰ The Labour Act also prohibits the engagement of children in any work that exposes them to *physical or moral hazard*.¹⁰¹

With regard to other constitutionally guaranteed rights such as the right to privacy and dignity, recourse may be had to the Electronic Communications Act 2008¹⁰² The Data Protection Act 2012,¹⁰³ the Rent Act 1963,¹⁰⁴ the Health Institutions and Facilities Act 2011,¹⁰⁵ the Mental Health Act 2012,¹⁰⁶ and even the Local Government Act 1993.¹⁰⁷ The Electronic Communications Act, for example, criminalizes the unauthorized interception, interference with, or theft of electronic communications or data. The Data Protection Act was, among others, to protect the privacy of the individual and personal data by regulating the processing of personal information.¹⁰⁸

⁹⁰Section 6, Persons With Disability Act, 2006 (Act 715)

⁹¹Section 7, Persons With Disability Act, 2006 (Act 715)

⁹²Section 26(1), Persons With Disability Act, 2006 (Act 715)

⁹³Section 29, Persons With Disability Act, 2006 (Act 715)

⁹⁴Section 50, Persons With Disability Act, 2006 (Act 715)

⁹⁵Section 46, Labour Act, 2003 (Act 651)

⁹⁶Section 53, Labour Act, 2003 (Act 651)

⁹⁷Sections 12 & 81(1)&(2), Children's Act, 1998 (Act 560)

⁹⁸Sections 17, 19 & 124, Children's Act, 1998 (Act 560)

⁹⁹Criminal Offences Act, 1960 (Act 29)

¹⁰⁰Section 58(1), Labour Act, 2003 (Act 651)

¹⁰¹Section 58(1), Labour Act, 2003 (Act 651)

¹⁰²Electronic Communications Act, 2008 (Act 775)

¹⁰³Data Protection Act, 2012 (Act 843)

¹⁰⁴Rent Act, 1963 (Act 220)

¹⁰⁵Health Institutions and Facilities Act, 2011 (Act 829)

¹⁰⁶Mental Health Act, 2012 (Act 846)

¹⁰⁷Local Government Act, 1993 (Act 462)

The Rent Act guarantees tenants' right to privacy by protecting tenants from interference with premises whether directly, as in the case of ejectment, or indirectly as in the case of denial of services inducing tenants to leave.¹⁰⁹ In the case of the right to dignity in particular, the Local Government Act, for example, mandates the local authorities to develop by-laws that require landlords to provide household toilets and penalties imposed for defaulters.¹¹⁰ The Mental Health Act also provides that persons with mental disorders are entitled to humane and dignified treatment.¹¹¹

There are other rights that are relevant to this paper, such as the right to health and shelter that are not directly provided for by the Constitution but are contained in international human rights instruments that Ghana has ratified. They include the United Nations' Convention on the Rights of the Child (CRC), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR is of singular importance to this paper as it guarantees the rights to health and adequate housing that are not expressly provided for in Chapter 5 of the Constitution, but are still relevant by virtue of Article 11 which lists international treaties as a source of law.

In truth, that the government of Ghana is under a positive obligation to observe and protect the human rights of its citizens is not in question, and indeed, in many ways, the government does what it can to directly meet this obligation. However, with the government's complete or partial withdrawal from the direct provision of services in many sectors, questions arise as to whether the private persons that have replaced the government will be as committed to the observance of said human rights obligations. The answer to these questions lies in how the government exercises regulatory oversight of those sectors.

The housing and infrastructure sector, for example, interfaces with the state's human rights obligations in a number of ways. Concerning disability rights, for instance, the state should be ensuring that construction companies erect buildings that are compliant with the provisions of the Persons with Disability Act, in terms of ensuring access to persons with disability.

The existing body of research on the subject has not been flattering to the country in general. According to Peprah Opoku et al. (2002) persons with disabilities continue to face limited integration into national life because of "prolonged barriers erected against them".¹¹² An inquiry into the State of Accessibility For The Disabled In Selected Monumental Public Places conducted by Danso et al. (2011)¹¹³ revealed that little has been done by way of implementing the provisions of the Persons With Disability Act in the construction of buildings in the country since its passage.¹¹⁴

According to Ansah and Owusu (2012), contractors and designers continue to neglect completely, or pay little attention to, the needs of the disabled in the construction of buildings.¹¹⁵

¹⁰⁹Sections 17 & 21, Rent Act 1963 (Act 220)

¹¹⁰Antwi-Agyei, Prince, et al. "Toilets for tenants: a cooperative approach to sanitation bye-law enforcement in Ga West, Accra." *Environment and Urbanization* 31.1 (2019): 293-308.

¹¹¹Section 55, Mental Health Act, 2012 (Act 846)

¹¹²Opoku, Maxwell Peprah, et al. "They think we are all beggars": the resilience of a person with disability in Ghana." *J Except People* 2.11 (2017)

¹¹³Danso, Anthony K., J. Ayarkwa, and Ayirebi Dansoh. "State of accessibility for the disabled in selected monumental public buildings in Accra, Ghana." (2011).

¹¹⁴Ibid.

¹¹⁵Ansah, Samuel K., and Kwaku Owusu. "State of public buildings in Ghana after the passage of the Persons with Disability Act (Act 715): The case of tertiary institutions." *Journal of Construction Project Management and Innovation* 2.2 (2012): 448-463

Investigations made by Tudzi et al. (2017) confirmed that there the non-existence of a set of laws to lend enforce ability to the Persons with Disability Act.¹¹⁶ Consequently, in spite of the wealth of legislative provisions guaranteeing the right to education, many tertiary institutions, public and private, had given very little attention to making their environments disability friendly.¹¹⁷ Regarding the rights adequate housing, dignity and health, it appears that regulatory oversight is even more ineffective. For instance, under the Local Government Act, landlords must comply with municipal and district by-laws stipulating that they provide sanitation facilities for their tenants,¹¹⁸ yet, only 15% of the population has access to toilet facilities in their homes.¹¹⁹

In the Ga-West Municipality, Antwi-Agyei et al. (2019) found that a whopping 25% of the population emptied their bowels in plastic bags and dumped them wherever they could, creating serious health hazards for persons living in the community.¹²⁰ The reason for this is simply that landlords do not provide these facilities for tenants for a number of reasons, including the fact that landlords would rather use the land to put up more rooms, and the fact that there is no enforcement of the regulations.

In relation to the right to adequate housing, the lack of a comprehensive housing policy has created a housing deficit estimated at more than one million units. Many low income residents in Accra have to resort to squatting in slums, because the real estate market targets expatriates and higher earning residents in the city. Notably, the Ghana Real Estate Developers Association (GREDA), which was formed, in part, to address this problem following the privatization of the housing sector, has been criticized for constructing homes for the rich.¹²¹ Additionally, access to mortgage facilities from financial institutions is typically restricted to salaried workers, usually at interest rates that would make it impossible for low income persons to pay back.

Kwofie et al. (2011) estimate that of the entire Ghanaian population, only 15% have access to mortgage facilities and 8% can buy a house without mortgage. Residents in the city's slums constantly live under the threat of ejection and destruction of their homes, in city officials' efforts to *decongest* the city, a measure which has been justified as an entrepreneurial strategy to attract tourism and investment by transforming Accra into a modern "Millennium City"¹²³

¹¹⁶Tudzi, Eric P., John T. Bugri, and Anthony K. Danso. "Human rights of students with disabilities in Ghana: Accessibility of the university built environment." *Nordic Journal of Human Rights* 35.3 (2017): 275-294.

¹¹⁷Ansah, Samuel K., and Kwaku Owusu. "State of public buildings in Ghana after the passage of the Persons with Disability Act (Act 715): The case of tertiary institutions." *Journal of Construction Project Management and Innovation* 2.2 (2012): 448-463

¹¹⁸Section 62, Local Government Act, 1993 (Act 462)

¹¹⁹Awunyo-Akaba, Y., et al. "Sanitation investments in Ghana: An ethnographic investigation of the role of tenure security, land ownership and livelihoods." *BMC public health* 16.1 (2016): 594

¹²⁰Antwi-Agyei, Prince, et al. "Toilets for tenants: a cooperative approach to sanitation bye-law enforcement in Ga West, Accra." *Environment and Urbanization* 31.1 (2019): 293-308

¹²¹Appiagyei, Nkyi Benjamin. "Constraints in Real Estate Development Finance in Ghana." *WEST AFRICA BUILT ENVIRONMENT RESEARCH (WABER) CONFERENCE 19-21 July 2011 Accra, Ghana*. 2011

¹²²Kwofie, Titus Ebenezer, Emmanuel Adinyira, and Edward Ayebo Botchway. "Historical overview of housing provision in pre and post-independence Ghana." (2011)

¹²³Gillespie, Tom. "Collective self-help, financial inclusion, and the commons: Searching for solutions to Accra's housing crisis." *Housing Policy Debate* 28.1 (2018): 64-78.

In the educational sector, much of the human rights discourse has been centered around sexual violence, religious freedoms and the use of corporal punishment as a mode of correction. The violation of these rights do not just impact the mental and physical health of students, they also constitute a denial of the right to education as they tend to discourage access to education. There is enough evidence indicating that it is a common practice that non-Christian students, for example, are forced to partake in Christian services at school.¹²⁴

In 2008, a Muslim high school student died after jumping from the fourth floor of a school building in an attempt to escape corporal punishment for not attending a mandatory Christian service.¹²⁵ There is also evidence that suggests that sexual exploitation of female students in Ghana is rife.¹²⁶ According to the World Health organization (WHO), for many young women, the most common place where sexual coercion and harassment are experienced is in schools.¹²⁷

Unfortunately, the body of research that exists on human rights within the educational sector makes little distinction between private and public educational institutions. This makes it difficult to accurately quantify the level of responsibility that private institutions should take for the occurrence of recorded abuses. For instance, the HRAC Report¹²⁸ which interviewed 215 students and 95 teachers from 6 public junior secondary schools and 3 private junior secondary schools did not segregate the data according to the type of school. So while the data does point to the existence of gender based violence, and in particular, sexual violence occurring within schools and the environment within which they are set, there is little information regarding its prevalence in private schools specifically. What is especially concerning about the findings of the report is how little is being done to remedy the situation. According to Agu et al. (2018) in a large percentage of cases, incidents of sexual abuse were reported either to a family member or a friend, but the overwhelming majority of students were not confident that the measures taken, if any at all, were satisfactory.¹²⁹

Within this context, more work needs to be done on protecting children from sexual violence, not just in schools, but also within the tourism industry.

¹²⁴ Human Rights Advocacy Centre. Gender based violence in Ghanaian Schools – Final Report. HRAC, May 2014.

¹²⁵ Agu, Augustine Obeleagu, et al. "Perspectives on sexual abuse of school children in basic and secondary schools in Ghana." *African Journal of Criminology and Justice Studies: AJCJS* 11.1 (2018): 122-141

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There is a growing body of research that points to the complicity of hotels, and indeed the police, in the sexual exploitation of children.¹³⁰ This is how a recent report captured the situation, “Many actors, including hotels, in the travel and tourism sector do not have official child protection policies nor campaign visually against sexual exploitation of children”.¹³¹ Social workers and regulators have, in some cases, attempted to intervene, but largely continue to struggle with the situation.¹³² The result is that Ghana has earned itself the unenviable reputation of being a destination for travelling child sex offenders and the production of child pornography.¹³³

Not much information exists in the public eye about breaches of data privacy in the telecommunications sector. This could be because legislation that deals with privacy rights tends to subject those rights to a number of vague considerations, such as national security, which gives the government wide powers to bypass those provisions. It could also be because there is a lower privacy concern in Ghana than one would find elsewhere in the world.¹³⁴ Recently, however, the Ghanaian Ministry of Communications ordered telecommunications companies in the country to connect their operations to “common platform monitoring system”, for the purposes of tracking and taxing revenues accruing to said telecommunications companies.

The Ghana Chamber of Telecommunications raised concerns that the “platform” would give the government and its contractor the power to intercept communications between citizens. The standoff culminated in a lawsuit at the Human Rights division of the Accra High Court, which was dismissed for “lack of evidence”¹³⁵ It is clear that more needs to be done in respect of the enforcement of the impressive body of regulations Ghana has in place for the protection of human rights. A big reason for the lack of enforcement is the chronic under-funding that many of the regulatory bodies have to contend with. If history is anything to go by, funding from a central government which usually prioritizes a number of politically expedient projects is unlikely to improve. Regulatory bodies should be given wider and more stringent enforcement powers, to directly impose fines on private companies that are found to have contravened the laws of this country. As an added incentive, monies raised from fines should be kept by the relevant agencies for the running of their operations.

¹³⁰ <https://www.insideover.com/society/child-prostitution-in-ghana-on-the-rise.html>

¹³¹ Joint submission by the Ghana NGO Coalition for the Rights of the Child (GNCRC), Defence for Children International-Ghana (DCI-Ghana) and Plan International-Ghana, with the technical support of Defence for Children International (DCI) and ECPAT International

¹³² Dacre, J.S. von. “Child Prostitution and Sex Tourism Is on the Rise in Ghana.” *InsideOver*, InsideOver, 12 July 2019, www.insideover.com/society/child-prostitution-in-ghana-on-the-rise.html. Date Accessed: 13th February 2020

¹³³ Ibid.

¹³⁴ Dagbanja, Dominic N. “The right to privacy and data protection in Ghana.” *African Data Privacy Laws*. Springer, Cham, 2016. 229-248

¹³⁵ Fast Company. “Ghana’s Tax-Driven Plan to Scan Telecom Traffic Stokes Privacy Fears.” *Fast Company*, Fast Company, 26 July 2018, www.fastcompany.com/90208376/ghanas-plan-to-scan-telecom-traffic-advances-despite-privacy-concerns.

More importantly, bodies like the National Commission on Civic Education (NCCE) should really be doing more in terms of educating the general population about their rights and how to go about protecting themselves from breaches. Much of the research points to the fact people simply do not know that they have rights, and in some cases, those breaching the rights do not even know that they are contravening any laws.¹³⁶ It is suggested that people are more likely to alert regulators about breaches when they know that their rights are being breached, and when the process for reporting these breaches are simple and effective.

¹³⁶Awunyo-Akaba, Y., et al. "Sanitation investments in Ghana: An ethnographic investigation of the role of tenure security, land ownership and livelihoods." *BMC public health* 16.1 (2016): 594

Guiding Principle 6: State Contracted Companies

“States should promote respect for human rights by business enterprises with which they conduct commercial transactions”

The UNHCR commentaries on the Guiding Principles recommend that Companies demonstrate their respect for Human Rights by implementing certain policies and putting in place certain processes for the protection of human rights. It goes on to add that they must undertake regular human rights due diligence to identify and prevent or at least mitigate and account for the human rights impact which result from their activities. Where their breaches cannot be prevented or mitigated, the guiding principles require that companies establish remedial processes which are fair, and accessible to the victims.

In Ghana, one of the primary institutions responsible for the protection of Human Rights is the Commission on Human Rights and Administrative Justice (CHRAJ). According to research conducted by the Business and Human Rights Resource Centre in collaboration with the Commission on Human Rights and Administrative Justice (CHRAJ), The Government of Ghana, through the Ministry of Environment, Science and Technology (MEST), in July 21, 2009 set up a six-member Committee which reviewed the Commission on Human Rights and Administrative Justice Report on: “The State of Human Rights in Mining Communities in Ghana”, (2008) and made recommendations. The Government of Ghana in collaboration with CHRAJ has organised workshops on the UN Guiding Principles on Business and Human Rights. Three workshops were held in July 2014 organized by CHRAJ, Shift and SOMO.

In relation to Labour rights, apart from existing constitutional provisions in the 1992 Constitution of Ghana, the state has also enacted legislation to protect individuals from human rights violations such as Forced labour & trafficking, and child labour.

The Labour Act, 2003 (Act 651) incorporates provisions of the ILO Conventions as well as previous legislation on the subject. So of the major interventions introduced by the labour Act include the protection of the employment relationship, employment of persons with disabilities, fair and unfair termination of employment, protection of

remuneration and the provision of labour rights for temporary and casual employees. The Act guarantees the right of both workers and employers to form unions, and to negotiate collective agreements. This is in line the obligations of the Government towards promoting the right to freedom of association as provided in article 22 of the ICCPR and article 8 of the ICESCR.

As far as access to judicial or quasi-judicial remedies for breaches of these rights, the Labour Act establishes a National Tripartite Committee, forced labour, occupational health and safety, labour inspection and the establishment of the National Labour Commission. The Labour Commission's functions include facilitating the settlement of industrial disputes, investigating unfair labour practices, preventing labour disputes and promoting cooperation between workers and management. The act provides some protection against discrimination by providing that a person who suffers a disability shall not have their employment terminated merely on the basis of that disability unless the employer is unable to find an alternative assignment or role within the establishment which is within the residual work capacity of that employee.

Some degree of protection for gender rights and the right to family as captured in article 23 of the ICCPR is reflected in Section 57(8) of the Labour Act which forbids an employer from dismissing a woman because of her absence from work on maternity leave.

Additional protection comes in the form of the Children's Act 1998 (Act 560). Sections 12 and 87 of the Children's Act prohibit engaging a child in exploitative labour. The Act defines a child is a person below the age of eighteen years and defines "exploitative labour" to mean labour depriving the child of its health, education or development.

The Human Trafficking Act, 2005 (Act 694) and its amendment the Human Trafficking (Amendment) Act, 2009 (Act 784) address the recruitment, transportation, transfer, harbouring, trading or receipt of persons, within and across borders, by the use of threat, fraud and exploitation of vulnerability or by paying to gain consent as well as induced prostitution and other forms of sexual exploitation, forced labour, slavery or the removal of organs.

Guiding Principle 7: Businesses Operating in Conflict Areas

The State should help businesses operating in conflict areas to identify human rights issues and devise how to address them, paying attention to the vulnerable groups. This should include human rights due diligence requirements, if necessary. The State should also cease providing public support to businesses that are complicit in conflicts.

While states can assist and in fact, protect companies during conflict times, the company can also do the inverse, which may ultimately be to their own advantage as well. A war-ridden host nation is not a conducive ground for business. A quid-pro-quo relationship is most beneficial in these circumstances. The State ought to, however ensure that at all times the activities of the business are in alignment with the laws of the law (compliance) and they must also be accounted for and be done in due diligence.

The Western Region in Ghana is a known hub for diverse agricultural activities, mining and from a recent discovery, oil and gas. Proceeds therefrom contribute significantly to the country's economic needs. The town Tarkwa is the capital of Tarkwa-Nsuaem Municipal District in the Western Region of Ghana. It has the highest concentration of mining companies in the country, and perhaps even in the continent.¹³⁷ From the 11 large-scale mines currently operating in Ghana, 7 of them are found in and around Tarkwa, contributing substantially to Ghana's gold output. The Goldfields mine is the biggest single goldmine in Ghana producing 19% of total gold output in 2018,¹³⁸ among 12 other mining companies. The commercial interests of these mining companies coupled with the State's quest for revenue have often defeated the state's responsibility of protecting the mining communities from all forms of human right abuses, some of which are reported below.

Lack of Adequate Consultation and Consent – Residents of Tarkwa report little to no dialogue between the people and mining companies seeking consent before they commence operations. Ghana, currently, has only one legal instrument in force which requires prior consultation in such circumstances, i.e. the Environmental Assessment Regulations. This makes the jurisprudence fall short in this context in comparison to international standards.

¹³⁷Akabzaa, T. & Darimani, A. (2001). "Impact of Mining Sector Investment in Ghana: A Study of the Tarkwa Mining Region", Draft Report Prepared for SAPRI

¹³⁸The Ghana Chamber of Mines, "Performance of the Mining Industry in Ghana – 2018", <http://ghanachamberofmines.org/wp-content/uploads/2019/07/Performance-of-the-Mining-Industry-2018.pdf> accessed 2/20/2020

¹³⁹Akabzaa *supra*

Inadequate Compensation – Natives who lose their property in land concessions are treated unfairly in that, they are either inappropriately compensated for the loss of the land or not compensated at all. The Minerals and Mining Act¹⁴⁰ provides that due compensation should be given for the loss of land use as well as that of crops and immovable property. However, this provision is seldom complied with in practice. This results in many community members being compensated for the loss of their crops and not general loss of the land use

Unsafe Living and Working Conditions – Mining operations by their very nature result in adverse impacts on the lives of the people in the mining communities. These may be in the form of environmental degradation, illnesses and unsafe working conditions. Surface mining, usually involves a lot of blasting, which is severely damaging to the environment as evidenced by persistent chemical spillages that have destroyed forests and farms and also polluted or dried up many water bodies in mining areas.¹⁴¹

Mining companies continue their operations regardless of these conditions, only worsening them to the detriment of the natives, who then have to resort to less desired unemployment after losing their farms, forcefully relocate, and so on. Again, in clear violation of the Minerals and Mining Act, mining companies fail to employ natives¹⁴² thus, denying them fair work opportunities while simultaneously depleting their environment.

Lack of Access to Justice – Community members usually are under-read on their when it comes to dealing with corporate entities. The government has failed to do a satisfactory job on educating its citizens of their basic rights. Thus, upon all the injuries suffered by natives, they are usually unaware of appropriate grievance mechanisms, judicial and extra-judicial, from which they can seek protections and remedies for their rights and breaches thereof.

Other forms of abuses include violence against community members by both private and national security forces, corruption at all levels and social vices such as prostitution and STDs.¹⁴³

¹⁴⁰2006, Act 703

¹⁴¹Akabzaa supra

¹⁴²ILO, (2005). Safe work. Global estimates of fatal work related diseases and occupational accidents, World Bank Regions

¹⁴³Universal Periodic Review - Ghana Human Rights violations in the context of large-scale mining operations Submission by FIAN International (May 2008)

The issues discussed above, singularly or collectively, are mostly the contributing factors to the rise of conflict within a mining area – among community people or between the community people and (staff of) the mining companies.

Following these violations and consequential sufferance, the Commission on Human Rights and Administrative Justice (CHRAJ) in 2008 responded to petitions from residents of mining communities to investigate those violations and make necessary assessments.

The goal of this investigation was to critically analyze the recurring problem of human rights violations in mining communities and finding out reasons for increasing reports thereof. The official report of the Commission indicated the “Specific Issues Investigated” as including;

- Violent, illegal arrest and detention of community members.
- Torture of persons illegally arrested and detained.
- Assault and battery (sometimes involving the use of firearms and other deadly weapons) of youth accused of trespassing on mine property and illegal mining.
- Interference (often violent, involving the use of firearms) against citizens engaged in public protests against activities of mining companies.

The above issues contain scenarios indicative of conflict. The Commission stipulated in its report that it found evidence to conclude that there has been widespread pollution of communities' water sources, deprivation and loss of livelihoods. There were also confirmed cases of negligent behavior by hired security personnel of mining companies, which sometimes resulted in fatalities.

The occurrence of these rights violations are not without duly designated governmental /statutory remedies. Each aspect of category identified by the Commission as part of the major issues identified in the report falls within the authority of a government body. These issues identified are: inadequate compensation for destroyed properties; unacceptable alternative livelihood projects, absence of effective channels of communications/consultations between companies and communities; excesses against gamamseys; health problems attributed to mining, reckless spillage of cyanide, and unfulfilled promises of employment.

Section 100 of the Minerals and Mining Act stipulates the Minerals Commission shall perform the duties charged to it by the Act and further, supervise the proper implementation of the provisions of the Act and its subordinate regulations.

¹⁴⁴Per Article 33 of the 1992 Constitution

The Minerals Commission is therefore in charge of overseeing compliance of the Minerals and Mining Act alongside its subordinate regulations, which focus on the interests of natives and employees of the sector. Such subordinate regulations include; the Minerals and Mining (Compensation and Resettlements) Regulations 2012 (LI 2175), the Minerals and Mining (Support Services) Regulations 2012 (LI 2174), the Minerals and Mining (General) Regulations 2012 (LI 2173), the Minerals and Mining (Health, Safety and Technical) Regulations 2012 (LI 2182) and the Minerals and Mining (Explosives) Regulations 2012 (LI 2177).

Thus, Ghana seem to uphold human rights in the workplace only due to expectations of the 1992 Constitution and its enforceable duty of compliance.¹⁴⁴ Whilst this is not on its own a sign of poor performance in upholding human rights, it lacks the extra fortification of the Guiding Principles. As a result, the branches of government agencies, which deal more closely with the public, do not realize what is expected of them per the Protect, Respect and Redress framework.

Illegal mining, known locally as 'galamsey', in the artisanal and Small Scale Mining (ASM) subsector is a real threat to the mining sector and the nation at large.

“Galamsey” is a mining practice where small and unlicensed operations are undertaken on registered mining companies' concessions, usually, or any such parcel of land without first satisfying the legal requirements for undertaking such operations.

In a CHRAJ¹⁴⁵ report discussing the State of Human Rights in Mining Areas in Ghana, the Commission pointed out the need of 'galamseymers' to improve their gold recovery processes and rapidly cease the use of mercury. This report further recommended that surfaces that are dug out for mining should be refilled upon exploitation to regenerate the ecosystem.

The task remains on the Mineral Commission to closely monitor the operations of artisanal and small-scale miners to ensure their activities do not extend beyond their licensed parameters and to ensure they operate with a license.

Relating the above discussion to “conflict” simpliciter, one would then wonder whether the violations recorded by the Commission, or any violation at all that occurs during civil unrest is excusable.

¹⁴⁵Commission on Human Rights & Administrative Justice, “The State of Human Rights in Mining Communities in Ghana”, March 2008

Guiding Principle 8: Investment Treaties and Contracts

'States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts'.

Ghana has signed twenty-eight bilateral investment treaties (BITs) with other states. Out of the twenty-eight signed BITs, nine are in force, one has been terminated, and the remaining 18 are not in force. The Ghana Model BIT which the country uses as a template in its investment treaty negotiations with other states spells out various economic rights and protections to be accorded to foreign investors.

These include fair and equitable treatment,¹⁴⁶ full protection and security,¹⁴⁷ national treatment,¹⁴⁸ most favoured nation treatment,¹⁴⁹ and protection against expropriation.¹⁵⁰ The stated protections of economic rights granted to foreign investors in Ghana apply to both natural and legal persons.¹⁵¹ While the Ghana Model BIT is evidently not legally enforceable, it serves as the basis for Ghana's investment treaty negotiations and thus gives an appreciably consistent picture of what currently pertains in its signed and ratified BITs.

For example, the above stated protections of economic rights of foreign investors in the Ghana Model BIT are also replicated in the Ghana-UK BIT¹⁵² and Ghana-China BIT.¹⁵³

Regarding Ghana's BITs allowing for adequate domestic policy space to meet its human rights obligations, there can be some tensions with respect to the rights accorded to foreign investors under BITs and the rights of Ghanaian citizens. This is typically reflected in rights in land in Ghana. It is estimated that about 80 per cent of land in Ghana is privately owned.¹⁵⁴ However, the minerals in all lands in Ghana are owned by the state. Article 257(6) of the Constitution of Ghana states that:

Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any

¹⁴⁶Article 3(1) of Ghana Model BIT

¹⁴⁷Ibid.

¹⁴⁸Article 4 of Ghana Model BIT

¹⁴⁹Ibid

¹⁵⁰Article 7 of Ghana Model BIT

¹⁵¹E.g. Articles 3, 4 and 7 of Ghana Model BIT

¹⁵²Articles 3, 4 and 7 of Ghana-UK BIT

¹⁵³Articles 3 and 4 of Ghana-China BIT

¹⁵⁴Ayitey, J.Z.; Kidido, J.K. and Tudzi, E.P., Compensation for Land Use Deprivation in Mining Communities, the Law and Practice: Case Study of Newmont Gold Ghana Limited, *The Ghana Surveyor*, 4(1) (2011), pp.32-40

¹⁵⁵Ibid

area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana.

This means that privately owned lands that have minerals like gold or diamond can be expropriated/compulsorily acquired by the state and given as mining concessions to foreign investors.¹⁵⁵ While domestic law provides for compensation for such expropriation by the state,¹⁵⁶ balancing the rights of indigenes to undertake agricultural economic activities on their lands with the right of the state to grant concessions for extraction of minerals from privately owned lands can be quite lopsided against the indigenous land owners.¹⁵⁷ It is worthy of note that where the state expropriates land from the indigenous owners and these lands are given as mining concessions to foreign investors originating from countries that have signed BITs with Ghana, the economic rights of the foreign investors protected under relevant BITs will compel Ghana to respect these economic rights even if they conflict with the commensurate economic rights of the indigenes.

Thus the rights in a mining concession granted to foreign investor will take precedence over the rights of the indigenous land owner from whom the land was compulsorily acquired by the state. Considering the fact that gold mining is the biggest contributor to GDP in the extractives sector¹⁵⁸ and mining concessions would almost invariably stem from lands compulsorily acquired by the state from indigenous owners, the tensions between protecting the rights of foreign investors and those of indigenes remain quite a thorny issue.

¹⁵⁶ Article 20 of the Constitution of Ghana

¹⁵⁷ Ayitey, J.Z.; Kidido, J.K. and Tudzi, E.P., Compensation for Land Use Deprivation in Mining Communities, the Law and Practice: Case Study of Newmont Gold Ghana Limited, *The Ghana Surveyor*, 4(1) (2011), pp.32-40

¹⁵⁸ UNDP, Final Report: Review of Alignment between the Africa Mining Vision (AMV) and Ghana's Policy/ Legal Frameworks for Solid Minerals, July 2015, [https://www.undp.org/content/dam/ghana/docs/Doc/Inclgro/UNDP_GH_INCGRO_AMV-Ghana-Alignment-Review-Final%20\(1\).pdf](https://www.undp.org/content/dam/ghana/docs/Doc/Inclgro/UNDP_GH_INCGRO_AMV-Ghana-Alignment-Review-Final%20(1).pdf)

Table of Bilateral Investment Treaties Signed by Ghana

Source: UNCTAD **Investment Policy Hub**
<https://investmentpolicy.unctad.org/international-investment-agreements/countries/79/ghana>

NO.	SHORT TITLE	STATUS	PARTIES	DATE OF SIGNATURE	DATE OF ENTRY INTO FORCE
1	Ghana - Turkey BIT (2016)	Signed (not in force)	Turkey	01/03/2016	
2	Barbados-Ghana BIT	Signed (not in force)	Barbados	22/04/2008	
3	Ghana - Spain BIT (2006)	Signed (not in force)	Spain	06/10/2006	
4	Botswana-Ghana BIT (2003)	Signed (not in force)	Botswana	04/07/2003	
5	Ghana-Zimbabwe BIT	Signed (not in force)	Zimbabwe	30/06/2003	
6	Ghana - India BIT (2002)	Terminated	India	05/08/2002	
7	Ghana - Mauritania BIT (2001)	Signed (not in force)	Mauritania	18/05/2001	
8	Ghana-Mauritius BIT (2001)	Signed (not in force)	Mauritius	18/05/2001	
9	Ghana - Zambia BIT (2001)	Signed (not in force)	Zambia	18/05/2001	

NO.	SHORT TITLE	STATUS	PARTIES	DATE OF SIGNATURE	DATE OF ENTRY INTO FORCE
10	Benin - Ghana BIT (2001)	Signed (not in force)	Benin	18/05/2001	
11	Burkina Faso-Ghana BIT (2001)	In force	Burkina Faso	18/05/2001	18/08/2003
12	Ghana-Guinea BIT (2001)	Signed (not in force)	Guinea	18/05/2001	
13	Ghana - Serbia BIT (2000)	In force	Serbia	25/04/2000	07/07/2000
14	Cuba - Ghana BIT (1999)	Signed (not in force)	Cuba	02/11/1999	
15	France - Ghana BIT (1999)	Signed (not in force)	France	26/03/1999	
16	Ghana - South Africa BIT (1998)	Signed (not in force)	South Africa	09/07/1998	
17	Ghana - Italy BIT (1998)	Signed (not in force)	Italy	25/06/1998	
18	Egypt - Ghana BIT (1998)	Signed (not in force)	Egypt	11/03/1998	

NO.	SHORT TITLE	STATUS	PARTIES	DATE OF SIGNATURE	DATE OF ENTRY INTO FORCE
19	Côte d'Ivoire - Ghana BIT (1997)	Signed (not in force)	Côte d'Ivoire	04/11/1997	
20	Ghana - Malaysia BIT (1996)	In force	Malaysia	08/11/1996	18/04/1997
21	Germany - Ghana BIT (1995)	In force	Germany	24/02/1995	23/11/1998
22	Denmark - Ghana BIT (1992)	In force	Denmark	13/01/1992	06/01/1995
23	Ghana - Switzerland BIT (1991)	In force	Switzerland	08/10/1991	16/06/1993
24	Bulgaria - Ghana BIT (1989)	Signed (not in force)	Bulgaria	20/10/1989	
25	China - Ghana BIT (1989)	In force	China	12/10/1989	22/11/1990
26	Ghana - Romania BIT (1989)	Signed (not in force)	Romania	14/09/1989	

NO.	SHORT TITLE	STATUS	PARTIES	DATE OF SIGNATURE	DATE OF ENTRY INTO FORCE
27	Ghana - Netherlands BIT (1989)	In force	Netherlands	31/03/1989	01/07/1991
28	Ghana - United Kingdom BIT (1989)	In force	United Kingdom	22/03/1989	25/10/1991

Guiding Principle 10: Multilateral Institutions

States when acting as members of multilateral institutions that deal with business-related issues, should:

- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
- (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;
- (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

Ghana has ratified treaties that make it a member of a number of multilateral institutions. Relevant multilateral institutions that Ghana is a party to include the World Trade Organisation (WTO), the African Continental Free Trade Area (AfCFTA), the Economic Community of West African States (ECOWAS), the International Monetary Fund (IMF), and the International Bank for Reconstruction and Development (World Bank).

Regarding Ghana's participation in multilateral institutions, perhaps the most significant is the WTO. As the sole global institution responsible for international trade, the 164 members of the WTO account for 98% of world trade.¹⁵⁹ Ghana's membership of the WTO is significant as the multilateral rules in the trade regime aim at liberalising trade in goods and services with protection for intellectual property rights. As a member of the WTO, Ghana's ability to balance its obligations of trade liberalisation and the need to protect human rights that come into conflict with the rules of the trade regime is very pertinent. It is thus important to note that while the core principles of non-discrimination, reciprocity and market access underpin Ghana's obligations at the WTO,¹⁶⁰ there are also exceptions to the rules that would allow Ghana to derogate from its WTO obligations if this is justified on such grounds as protection of public morals, human life and health, and exhaustible natural resources, *inter alia*.¹⁶¹

¹⁵⁹ https://www.wto.org/english/thewto_e/thewto_e.htm

¹⁶⁰ e.g. Articles I, II, III, and XI of the General Agreement of Tariff and Trade; Articles I, II, XVI and XVII of the General Agreement on Trade in Services.

¹⁶¹ Article XX of the General Agreement on Tariffs and Trade and Article XIV of the General Agreement on Trade in Services.

At the regional level, Ghana's membership of ECOWAS also obliges it to accord free movement of goods and services to products of ECOWAS origin and free movement of persons and freedom of establishment to ECOWAS citizens under the ECOWAS Revised Treaty 1991. ECOWAS as an organisation has also acceded to the African Charter of Human and Peoples Rights. This gives ECOWAS citizens the right to directly bring a case against an ECOWAS member state for breach of any of the rights stipulated in the African Charter of Human and Peoples Rights. Thus a Ghanaian or any ECOWAS citizen living in Ghana whose rights under the African Charter have been breached by the state can, after exhausting domestic remedies, bring a case against Ghana at the ECOWAS Court of Justice.¹⁶²

For compliance with Principle 10 of the UNGP, this is significant as the right of ECOWAS citizens to have standing at the ECOWAS Court of Justice is limited only to cases of breaches of human rights.¹⁶³ Thus, while breaches of substantive ECOWAS treaty provisions like free movement of goods or freedom of establishment does not result in granting ECOWAS citizens the directly petition the Court of Justice, breaches of human rights do.

Regarding Ghana's membership of the IMF and World Bank, as a relatively frequent user of IMF and World Bank loans, the globally well-documented and much commented on issues of conditionalities that are tied to, especially IMF loans,¹⁶⁴ are of significance. The requirement to reduce government spending as part of IMF conditionalities invariably affects spending on social policies like health delivery.¹⁶⁵

¹⁶²See *Pinheiro v Ghana* (2012)

¹⁶³*Ibid*

¹⁶⁴Thomas Stubbs, Alexander Kentikelenis, David Stuckler, Martin McKee, Lawrence King, The impact of IMF conditionality on government health expenditure: A Cross-National Analysis of 16 West African Nations, *Social Science & Medicine*, Volume 174, 2017, Pages 220-227

¹⁶⁵*Ibid*

PILLAR 3: ACCESS TO REMEDY

The UN Guiding Principles on Business and Human Rights provides as much prominence to access to remedy as it does to the obligation of States to protect human rights and business enterprises obligation to respect human rights. The Foundational Principle of Pillar III (Access to Remedy) provides thus:

As part of their duty to protect against business-related human rights abuses, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

Legislative Means (The 1992 Constitution and Other Laws of Ghana)

The 1992 Constitution of Ghana provides the required general judicial, administrative, and legislative means to access to remedy.

Chapter Five of the 1992 Constitution of Ghana is devoted to fundamental human rights and freedoms. Article 12(1) provides that the fundamental human rights and freedoms enshrined in Chapter 5 shall be respected and upheld by the executive, legislature and judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and **legal persons** in Ghana, and shall be enforceable by the Courts.

Rights protected under Chapter Five relevant to business-related human rights include respect for human dignity,¹⁶⁶ protection from slavery and forced labour,¹⁶⁷ equality and freedom from discrimination,¹⁶⁸ economic rights,¹⁶⁹ women's rights,¹⁷⁰ children's rights¹⁷¹ and rights of disabled persons.¹⁷²

The concluding Article under Chapter Five provides as follows: “The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter ***shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.***”¹⁷³

The Constitution further provides for protection of rights by the courts under Article 33. Where a person alleges that a provision of the Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, ***without prejudice to any other action that is lawfully available***, that person may apply to the High Court for redress.

¹⁶⁷ Article 16

¹⁶⁸ Article 17

¹⁶⁹ Article 24

¹⁷⁰ Article 27

¹⁷¹ Article 28

¹⁷² Article 29

¹⁷³ Article 33(5)

The Constitution also provides for the Commission for Human Rights and Administrative Justice (CHRAJ) whose functions included investigating complaints of violations of fundamental 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; investigating complaints concerning practices and actions by persons, ***private enterprises*** and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution.¹⁷⁴

To operationalise and effect Pillar three through judicial, administrative, legislative or other appropriate means, the UN Guiding Principles recommends to States the use of State based judicial mechanisms, non-State based judicial mechanisms and non-State based non-judicial mechanisms for remediating business-related human rights abuses.

¹⁷⁴ Articles 216 and 218

Guiding Principle 26.

State-Based Judicial Mechanisms

States should take the appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and relevant barriers that could lead to a denial of access to remedy.

Effective State based judicial mechanism are recognised as being at the core of ensuring access to remedy for victims of business-related human rights abuses. The judiciary of Ghana consists of the Superior Court of Judicature comprising the Supreme Court, the Court of Appeal, the High Court and Regional Tribunals; and further consists of such lower courts or tribunals as Parliament may by law establish. The independence, including the financial independence of the judiciary is enshrined in the Constitution. The High Court is vested with original jurisdiction to adjudicate human rights violations.

The High Court may, in the exercise of its jurisdiction, issue such directions or orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as it may consider appropriate for the purposes of securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled. A person aggrieved by the determination of the High Court may appeal to the Court of Appeal with the right of a further appeal to the Supreme Court.

The High Court has various divisions including the Human Rights and Labour Divisions to deal with human rights and labour related disputes. There is established in Ghana the Judicial Training Institute which provides judicial training for judges and magistrates on regular basis and definitely for new judges to the various hierarchies of the court.

As part of its efforts to ensure a faster and smooth service delivery, the judiciary has introduced an E-justice system which aims to foster electronic filing of processes at the court. Prior to the E-justice system, most of the courts in the capital, Accra, were automated and removed the manual methods of recording of proceedings in the court. Prosecution of business-related human rights abuses, where those abuses are either also or solely in contravention of the criminal laws of Ghana is undertaken by the office of the Attorney General of Ghana through its Director of Public Prosecutions and related officers of that office, including the Ghana Police.

Flowing from the above, some of the gaps include the weak legal aid system in light of high costs of bringing claims in the courts considering the imbalance between victim and the business enterprise. Long delays in the court process; Lack of resources by State prosecutors including the Police to investigate and prosecute business-related human rights abuses which are also criminal in nature; Perceived and actual corruption risk within the judiciary and the Police remains a weak point.

Guiding Principle 27: State-Based Non-Judicial Mechanisms

States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Under the Guiding Principle 27, other non-judicial mechanisms which include national human rights institutions are to be provided by States to fill the gaps in the provision of remedy for business-related human rights abuses, particularly because judicial mechanisms cannot carry the burden of addressing all alleged abuses. Chapter 18 of the 1992 Constitution provides for CHRAJ, with regional and district branches in Ghana. Act 456, known as CHRAJ Act, was passed in 1993 to provide for CHRAJ, its functions and related matters in accordance with the Constitution. Act 456 spells out the function of CHRAJ to include the following:

- ♣ To investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of a person by a public officer in the exercise of official duties;
- ♣ To investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution
- The Constitution provides for the independence of the Commission and its Commissioners including financial independence.¹⁷⁵
- For the purposes of performing his functions under the Constitution, the Commissioner may bring an action before any court in Ghana and may seek any remedy which may be available from that court.¹⁷⁶
- CHRAJ has special powers of investigation under Act 456 to issue subpoenas, cause a person contemptuous of a subpoena issued by the Commission to be prosecuted before a Court, question a person in respect of a subject matter under investigation before the Commission, require a person to disclose truthfully and frankly any information within the knowledge of that person relevant to an investigation by the Commission

¹⁷⁵Articles 225 and 227. Also Section 6 of Act 456

¹⁷⁶Article 229 and Section 9 of Act 456

- CHRAJ must however receive a complaint before investigations begin. A complaint to the Commission shall be made in writing or orally to the national offices of the Commission or to a representative of the Commission in the regional or district branch.¹⁷⁷
- Where after investigation, the Commission is of the view that the decision, recommendation, act or omission that was the subject matter of the investigation amounts to a breach of any of the fundamental rights and freedoms provided in the Constitution, the Commission shall report its decision and the reasons for it to the appropriate person, Minister, department or authority concerned and shall make the recommendation that it thinks fit.¹⁷⁸
- If within the three months after the report is made an action which seems to the Commission to be adequate and appropriate is not taken, the Commission may, after considering the comments made by or on behalf of the department, authority or person
- against whom the complaint was made, bring an action before a Court and seek an appropriate remedy for the enforcement of the recommendations of the Commission.¹⁷⁹
- In 2003, the Labour Act, Act 651 was passed to amend and consolidate the laws relating to labour, employers, trade unions and industrial relations; to establish a National Labour Commission and to provide for matters related to these.
- Act 651 establishes rights and duties for both employers and workers.¹⁸⁰
- The duty of an employer includes providing working and appropriate raw materials, machinery, equipment and tools as well as taking practical steps to ensure that the worker is free from risk of personal injury or damage to health during and in the course of the worker's employment or while lawfully on the employer's premises.
- Converse to the duties of an employer, a worker has the right to work under satisfactory, safe and healthy conditions; receive equal pay for equal work without distinction of any kind; have rest, leisure and reasonable limitation of working hours and a period of holiday with pay as well as remuneration for public holidays; form or join a trade union; be trained and retrained for the development of skills and to receive information relevant to the work of the worker.
- Act 651 further makes provisions for employment of women by regulating night work or overtime by pregnant women, prohibition of assignment of post to pregnant women and provides for maternity, annual and sick leave for a woman worker.¹⁸¹

¹⁷⁷Section 12 of Act 456

¹⁷⁸Section 18 of Act 456

¹⁷⁹Ibid

¹⁸⁰Sections 8, 9, 10 and 11 of Act 651

¹⁸¹Section 55-57 of Act 651

- Act 651 also prohibits the employment of young persons in hazardous work making it a criminal offence for anyone that contravenes this Section.¹⁸²
- The National Labour Commission is established under Act 651 with functions that include settling industrial disputes and investigating labour related complaints, in particular unfair labour practices and to take such steps as it considers necessary to prevent labour disputes.¹⁸³
- In performing its functions, the Commission has the power to enforce the attendance of witnesses and examining them on oath, compel the production of documents and issue a commission or request to examine witnesses abroad.¹⁸⁴
- The Commission enjoys the same privileges and immunities pertaining to proceedings in the High Court.¹⁸⁵
- Settlement of industrial disputes under the auspices of the Labour Commission is done through negotiation,¹⁸⁶ mediation,¹⁸⁷ arbitration¹⁸⁸ and compulsory arbitration.¹⁸⁹
- Where a person fails or refuses to comply with a direction or an order issued by the Labour Commission under Act 651, the Commission shall make an application to the High Court for an order to compel that person to comply with the direction or order.¹⁹⁰

Gap

- CHRAJ and the Labour Commission suffer the usual constraints faced by similar state institutions i.e. inadequate resources
- Inadequate education focused on the business-related human rights functions of these non-judicial mechanisms.
Hence, it is recommended that there needs to be an increase in the education on access to these State based non-judicial mechanisms to address business-related human rights abuses.
Also, resourcing these State based non-judicial mechanisms, including training of its officers to handle and give orders that are business-human rights compliant.

¹⁸²Section 58 of Act 651

¹⁸³Section 138 of Act 651

¹⁸⁴Article 139 of Act 651

¹⁸⁵Ibid

¹⁸⁶Section 153 of Act 651

¹⁸⁷Ibid, Section 154

¹⁸⁸Ibid, Section 157

¹⁸⁹Ibid, Section 164

¹⁹⁰Ibid, Section 172

Guiding Principle 27.

Non-State Based Non-Judicial Grievance Mechanisms;

States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms.

Under this Guiding Principle, it is expected that one category of this type of mechanism is where business enterprises alone, or with stakeholders, by an industry association or a multi-stakeholder, come up with mechanisms that, though non-judicial, may be adjudicative, dialogue based or other culturally appropriate and rights-compatible processes. Platforms for communal engagement with affected communities and other stakeholders in the value chain of the business are also imperative to address community concerns by business activities. Mostly the mechanisms under this Guiding Principle is operation based and usually produced under the auspices of the highest executive power within the business structure of respective businesses. Some come in the form of code of conduct with suppliers and the community and may use channels, usually on anonymity, such as drop boxes, email, or informing the supervisor or Human Resources manager.

There is a dearth of information on the existence, publicity and/or effectiveness and accessibility of operational grievance mechanisms since these are generally found within the business policies of business. The Minerals and Mining Act does not provide for free, prior and informed consent, as well as community dialogue in times of disputes between mining companies and communities. Sensitisation of business enterprises on this mechanism as an imperative mode of redress within Pillar III. Education of business enterprises on the effectiveness criteria under Guiding Principles 31 of the UN Guiding Principles to measure any operational level grievance mechanism. That such mechanisms be legitimate, accessible, predictable, equitable, transparent, rights compatible, a source of continuous learning and based on engagement and dialogue with all stakeholders including those in the value chain of businesses. Also there is a need to amend relevant laws, particularly in the extractive sector, to require businesses to adopt this mechanism in community disputes.

Summary Recommendations for Action

Arising out of the above, the following are the recommendations for future action for the advancement of Business and Human Rights in Ghana and towards adherence to the principles of the UNGPS

- I. A formal declaration by the Republic of Ghana of the commitment of the Government of Ghana to the United Nation's Guiding Principles on Business and Human Rights.*
- II. The Establishment of a Steering Committee consisting of representatives from Government, Civil Society, Private Sector/Labour, Academia, Independent Constitutional Bodies to oversee the development of a National Action Plan on Business and Human Rights in Ghana.*
- III. The Commission on Human Rights and Administrative Justice to monitor the implementation of the UNGPs to address the gaps in Ghana's Business and Human Rights environment identified by the National Baseline Assessment and the National Action Plan on Business and Human Rights.*

