

# GOVERNANCE

Vol. 6 No.2 ISSN 0855-2452

A Publication of the Institute of Economic Affairs March, 2000

## THE STATE OF WOMEN'S HUMAN RIGHTS IN GHANA: THE LAW AND ITS ENFORCEMENT

by

*Prof. Akua Kuenyehia\**

### Introduction

Human rights have been defined as the inherent and inalienable rights that are due to human beings by reason of their being human. These rights aim at ensuring the dignity of every human being<sup>1</sup>. Indeed the Universal Declaration on Human Rights adopted by the UN General Assembly on 10th December, 1948, states in Article 1 : "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards each other in a spirit of brotherhood." Even though the Universal Declaration on Human Rights is not a legally binding document, through its thirty articles the world has set a standard by which to measure

human actions. Constitutions throughout the world have adopted the rights listed therein as part of their Bill of Rights<sup>2</sup>.

However, an unfortunate dichotomy exists in human rights which has not served the cause of women. There is a clear distinction between civil and political rights on the one hand, and economic, social and cultural rights on the other. Very often constitutions provide for the justiciability of civil and political rights, while economic, social and cultural rights are provided for under Directive Principles of State Policy - ideals that the State should aim at achieving. This remains the case in spite of the fact that the Vienna Declaration after the

<sup>1</sup> Human Rights, Questions and Answers - Leah Levin, UNESCO, 1981

<sup>2</sup> See chapter 5 of 1992 Constitution of Ghana

*Governance is a monthly publication of the Institute of Economic Affairs, Ghana, a non-partisan, non-profit research Institute and co-sponsored by UNDP, Ghana and DANIDA, Ghana. Subscriptions to Governance are made available to those who make voluntary donations to the IEA. Address all correspondence to: The Editor, Institute of Economic Affairs, P.O. Box 01936, Christiansborg, Accra. Tel. 244716 & 7010714*

United Nations World Conference on Human Rights, stated very clearly in Article 5 that "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."<sup>3</sup>

Thus the Vienna Declaration soundly rejected the divisions and hierarchies that had earlier been introduced into human rights.

It must be stated, however, that the hierarchies continue, and the mechanisms for enforcing civil and political rights continue to be better articulated than those for economic and social rights. Women's rights issues continue to be on the fringes of the human rights debate

### **What then are Women's Human Rights?**

It has been observed that the term women's human rights refers to a framework and a movement through which women have sought to articulate their claims for recognition as full human beings in all spheres of public and private life<sup>4</sup>. Indeed it is a concept for the articulation of the concerns of women, as well as a movement for the realization of those ideals. Some of the vehicles through which women have sought to articulate these claims are the various international treaties, as well as the various United Nations Conferences.

Even though international human rights are framed as available without discrimination on the basis of sex, they have largely failed to work effectively to improve the situation of women. There are many factors that account for this failure, but that is not the focus of this presentation.

Additionally, women were not involved in the process of conceptualizing and defining human rights. Many issues of central concern to women, such as underdevelopment, illiteracy, the adverse impact of structural adjustment programmes and systematic violence, have not been defined as human rights issues by the mainstream. It is only in recent times that they are being considered by the mainstream.

Again, international human rights law effectively excludes many acts of non-state actors, and those that take place in the private sphere, especially in the family. Thus the numerous violations which are committed against women in their communities, their workplaces, and in their own families are excluded from the operation of international human rights.

It is against this background that the Convention on the Elimination of All Forms of Discrimination Against Women came into being. This convention has been hailed as the most comprehensive instrument dealing with the rights of women. The Convention addresses discrimination against women, rather than discrimination on the basis of sex. It deals with the public as well as the private lives of women. The Convention, through a step in the right direction, has not really succeeded in addressing the fundamental problem of the marginalization of women. This is partly due to the large number of reservations entered by some of the state parties, as well as the lack of political will on the part of governments to incorporate the provisions of the Convention into domestic legislation.

Ghana ratified the Convention in 1986, and by so doing undertook to adapt its legislation as well as introduce new ones where necessary

<sup>3</sup> Vienna Declaration, 1993

<sup>4</sup> Molokomme, 1998, Women's Human Rights. A Conceptual Framework

in order to translate the rights contained in the Convention into reality for Ghanaian women.

Among the policy measures needed to be taken upon ratification of the Convention, as embodied in Article 2 are:

- the abolition of all existing laws, customs and regulations that discriminate against women; and
- the establishment of institutions to protect them against discrimination.

In looking at what the state of women's human rights is in Ghana today, I have limited myself to two broad areas because time will not permit a larger study. These two broad areas are discrimination and violence. My remarks and observations will be limited to a few issues within these broad areas.

### **Discrimination**

As already noted, by ratifying CEDAW Ghana made a commitment to take all necessary steps to eliminate discrimination against women both in public life, and in private life. My remarks in this area will be limited to education and property, including access.

### **Education**

The Constitution of Ghana does not only guarantee the right to education to all persons, but also provides that basic education shall be free, compulsory and available to all. Steps have been taken by the appropriate sector ministries to ensure that we are well on our way to making basic education available to all persons. In addition to this, and within the framework of providing free compulsory basic education, there is a concerted effort to give girls special attention. A lot of effort is going into awareness programmes by governmental

as well as non-governmental organisations, to encourage parents and guardians to send their girls to school, and keep them there for as long as necessary for them to get qualifications.

As we are all aware, the term education does not only cover formal education, but includes non-formal education. It also includes awareness creation on various issues of concern to the populace. The beauty of non-formal education is that it can take place within the context of the day-to-day activities of the individual, thus making the learning process relevant. It can be said that this area is being taken care of by both governmental and non-governmental organisations.

Even though we cannot claim to have made a lot of progress, we can say that we are on the right track, and what we need is consistency and the will as well as the resources to sustain the programmes so far put in place. The benefits of education of women in any society cannot be overemphasised. It is therefore in our interest to ensure that the drive to educate women is sustained.

### **Property**

Under this heading I would like quickly to look at both the issue of access to economic resources, and the issue of the acquisition of property by women in the context of marriage.

#### *1. Access to Economic Resources*

It cannot be denied that all over the world including Ghana, social and economic conditions combine to maintain and perpetuate the subordination of women. In order to strive towards equality of men and women, it is necessary that an adequate balance is struck in the distribution of economic resources as between them. Over the last few years,

poverty has been said to have acquired a feminine face. The feminisation of poverty is a direct result of the gender disparities in economic power sharing. Macroeconomic policies, which target the formal sector almost exclusively, are also contributory factors to the feminisation of poverty.

Efforts are being made to address some of these issues. Microfinance institutions have sprung up all over the country in an effort to meet the economic resource needs of women. There is an ongoing national poverty alleviation programme.

The question is : are these programmes having the desired impact and addressing the problems relating to the socio-economic rights of women? Secondly, what can be done to improve access to economic resources by women?

It is a fact that the majority of women in this country are rural dwellers who engage in agricultural activities. The issue of access to land is one that has not really been addressed in any meaningful manner. The extensive involvement of Ghanaian women in food production and marketing is not really matched by their access to, and control of, productive resources.

Modes of land acquisition and tenure arrangements are founded on men's customary rights to inherit and control land almost everywhere in Ghana. In

principle, customary norms guarantee that women are not arbitrarily deprived' of basic resources for their production activities. However, because of the lopsided control that men exercise over decisions relating to allocation of resources both at home and in the public sphere, there is considerable room for abuse, and norms and actions do not always tally.

Access to land and land rights provide one of the most interesting insights into the real situation of women. There is presented a picture of what appears to be gender-neutral concepts whose application and operation are fraught with gender-stereotypes. This is an area that needs a comprehensive overhaul both in policy and legislation, if women are to realise their rights."

## 2. *Property acquired during marriage*

Art. 16 (1 )(h) of CEDAW provides: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and in particular shall ensure, on a basis of equality of men and women, the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."

Art. 22 (3) (a) of the Constitution provides: "Spouses shall have equal access to property jointly acquired during marriage."

<sup>5</sup>For a fuller discussion of the issues involved, see *Women and Land Rights in Ghana* by Nii Ashie Kotey and Dzordzi Tsikata. *Situational Analysis of Some Key Issues Affecting Women* in 1995 pp. 203 - 229

Art. 22 (3) (b) provides: "Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage."

More importantly, Art. 22 (2) provides: "Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses."

It is an agreed fact that in these days both spouses contribute to the economy of the family. Gone are the days when husbands were regarded as sole breadwinners of families.

In the absence of any legislative directive on the issue of the distribution of property between spouses upon divorce, especially under customary law, the courts have worked at a progressive development of the case law in that area. They have sometimes relied on the principles of equity in order to do justice between spouses. However, disadvantaged spouses are still left at the mercy of the judges and their interpretation of case law, as well as their understanding of the principles of equity.

Section 20 (1) Matrimonial Causes Act, Act 367 of 1971, provides: "The court may order either party to the marriage to pay to the other such sum of money, or convey to the other party such movable or immovable property as settlement of property rights, or in lieu thereof as part of financial provision as the court thinks just and equitable".

In making provision under this section, however, the courts have relied on the principle that the

party claiming a portion of such matrimonial property upon dissolution of marriage, must prove substantial contribution towards the acquisition of the property. Thus in a case in 1984, a high court in Accra held that even though it was not inconceivable that a wife would contribute to the cost of property being acquired by the husband, in the absence of evidence of the wife's actual financial contribution to the cost of the acquisition of the house, she could not ask for the house.

The wife had brought an action after the divorce for the transfer into her name of an estate house for herself and the children of the marriage. She had not adduced any evidence as to her contribution towards the acquisition of the property, and the court did not deem it fit to use the principles of equity to do justice as between her and her husband.

This absolute position has shifted in recent times when the courts give recognition to the fact that the work that a woman does in the house, and her contribution as a wife, are worthy of some credit. They have however stopped short of vesting part or all of the beneficial interest in property acquired during marriage in the wife, in the absence of evidence of further substantial contribution to the acquisition.

The present situation on the issue of the distribution of property acquired during marriage when there is a divorce, presents an area where more women suffer than men. The lack of definitive legislative action is acting as a barrier to the realisation of the human rights of women.

The Second Parliament of the Fourth Republic is rapidly drawing to an end; yet for whatever reasons, Art. 22 (2) of the Constitution has still not been made operational. A judge made a statement in a case that "In recent years the

wife is very often a wage earner, and makes contribution towards the common expenses by buying for, and running the home. Judicial opinion today shows that the trend is to give credit to the wife for her services in kind as a housekeeper, or for the use of her own income or savings in such a way as to enable her husband to use his for the purchase of a house". If nothing is done to make Art. 22 (2) operational, that statement will remain a pronouncement only. The situation will continue to be that a wife who is unable to prove some kind of substantial contribution which is capable of monetary computation, will not be able to successfully claim a share in the property which they acquire during the subsistence of the marriage.

## Violence

At the most basic level, violence is "an act carried out with the intention or perceived intention of physically hurting another person"? Adding the gender dimension to the definition then expands it to include violent acts against women because they are women.

Gender violence is a prevalent problem worldwide, and it touches all aspects of women's lives - from the home to the workplace to the streets. As observed in the Beijing Platform for Action, "Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women, is a matter of concern to all states and should be addressed."

The United Nations adopted the Declaration on the Elimination of Violence Against Women in 1993. The Declaration is a comprehensive statement of the international consensus on the protection of women from violence, and the first set of international standards on violence against women including domestic violence.

The Declaration further situated violence against women firmly within the human rights discourse, affirming that women are entitled to equal enjoyment and protection of all human rights and fundamental freedoms, including liberty and security of person, and freedom from torture or other cruel, inhuman or degrading treatment or punishment.

The Declaration enlarged the concept of violence against women to reflect the real situation of women's lives. It recognised not only physical, sexual and psychological violence, but also threats of such harm. It addressed violence against women within the family and within the community at large, and confronted the issue of violence perpetrated and/or condoned by the state.

It also affirmed the gender-based roots of violence. Gender-based violence is not random violence in which the victims happen to be female. The risk factor is being female.

Violence against women in all its forms is very prevalent in Ghana. In the past, failure to deal with the problem was attributed to lack of basic data on the form, nature, extent and prevalence of the problem, among others.

In a comprehensive country-wide study on violence against women carried out by GSHRDC in 1998, data was collected and a

<sup>6</sup> Bentsi-Enchill v Bentsi-Enchill (1976) 2GLR 303

<sup>7</sup> R. S. Geller & M. S. Straus, "Determinants of Violence in the Family: Towards a Theoretical Integration"- *Contemporary Theories About the Family* - Vol. 1

<sup>8</sup> Platform for Action - para. 112

rich source of information on the issue now exists that is capable of informing any intervention strategy that is needed to deal with the issue.

### **What has been done?**

Various legislative interventions have been introduced to deal with specific forms of violence. Art. 26(2) of the Constitution provides:

"All customary practices which dehumanise, or are injurious to the physical and mental well-being of a person are prohibited."

Cruel and inhuman, as well as grossly indecent widowhood rites have been outlawed by an amendment of the Criminal Code.

The Criminal Code (Amendment) Act of 1994, Act 484, makes female genital mutilation a second degree felony with a minimum sentence of three years imprisonment.

The Criminal Code (Amendment) Act of 1998, Act 554, makes Trakosi a criminal offence with a minimum sentence of three years imprisonment.

The provisions of the Criminal Code on sexual offences have been considerably strengthened both in terms of definitions and punishment.

A special unit, WAJU, has also been set up within the Police Service, to deal more expeditiously and more emphatically with matters involving women and children. This is a most welcome development, and it is hoped that the unit will be given every encouragement and support in order to operate efficiently. It is also hoped that in the course of time the idea will be extended to all

parts of the country. The officers in charge of these units need to be given the necessary training to equip them with the additional skills that they need to operate effectively.

Violence against women takes many forms. It could be physical, sexual or psychological, among others. The present state of the law is able only to touch the tip of the iceberg. The nation-wide study on violence against women mentioned earlier, shows that the level of all types of violence against women and adolescent females is very high. Therefore there is a need for a comprehensive policy as well as legislative intervention to deal with the problem. It is only when this is done that women will be free to enjoy their right to bodily integrity.

### **Conclusion**

What then is the state of women's human rights in Ghana today? Progress has been made in many areas in our efforts to ensure that women enjoy their human rights, and participate in the process of development as full citizens on the basis of equality. It is my submission, however, that a lot more needs to be done in order to ensure the full enjoyment by women of their human rights.

I have in this presentation, used a few examples to illustrate where progress has been made and where work needs to be done. At the end of the Fourth U~ World Conference on Women, there was a lot of optimism in relation to the rapid acceleration of the integration of women into the process of development. The Platform for Action that was the outcome of that conference, provides a framework for understanding the human rights of women. The PFA emerged out of a very inclusive preparatory process involving governments and non-governmental

It represents an agenda that calls for the integration of gender perspective into all policies and programmes. "The Platform for Action is an agenda for women's empowerment. It aims at accelerating the implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women, and at removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making".

It goes on to reaffirm that "Equality between women and men is a matter of human rights and a condition for social justice, and is also a necessary and fundamental prerequisite for equality, development and peace:".

It has been five years since Beijing and in June, the UN is convening a meeting in New York to review progress made so far in the implementation of the Platform for Action. As

part of that process, the ECA held a meeting in Addis Ababa in November 1999, the 6th African Regional Conference in preparation for the Beijing Plus Five meeting in June. The purpose of the Addis Ababa meeting was to assess progress made by African governments and non-governmental organisations in the implementation of the PFA.

Through the period from Beijing in 1995 till now, there has been a global plea from women to governments to show more commitment to the cause of women. In Ghana, we need to ensure that we are not found wanting when the roll is being called in June. The pace at which we are going is too slow.

As observed by the Chief of the African Centre for Women at the Economic Commission for Africa in November last year, "most African governments are talking the talk of gender equality but they are not walking the walk!".

<sup>9</sup>Platform for Action - Mission Statement p. 177 para. 1

<sup>10</sup> Platform for Action - Mission Statement p. 17 para. 1

<sup>11</sup> Josephine Ouedrago - in the Flame, Nov. 22 - The daily Newsletter of the 6th African Regional Conference on Women

*\* Prof. Akua Kuenyehia is in the Faculty of Law, University of Ghana, Legon .  
This paper was first presented at the Speaker's Breakfast Forum'*

Note: Nothing written herein is to be construed as necessarily reflecting the views of the Institute of Economic Affairs.