

PRISONERS' RIGHTS IN GHANA

**Written by Edudzi Ofori and Chelsea Paradis
University of Ottawa Law Students**

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***“All prisoners shall be treated with the respect
due to their inherent dignity and value as human beings.”***

- Article 1 of the Basic Principles for the Treatment of Prisoners

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Executive Summary

We, Edudzi Ofori and Chelsea Paradis, are two Canadian law students from the University of Ottawa who undertook an internship with an international non-governmental organization called Journalists for Human Rights (JHR), in Accra, Ghana for a period of three months (May 22 to August 11 2006), through an organization called Canadian Lawyers Abroad (CLA). Working under the supervision of Madame Georgette Francois, an Attorney-at-Law in Accra, we conducted research on human rights law as provided for under the 1992 Constitution of the Republic of Ghana as well as Ghana's international obligations.

We began our research by critically looking at Part V of the 1992 Constitution that entrenches the fundamental human rights and freedoms of the people of Ghana. The objective was to examine the systems and procedures in place that protect these rights and ensure that the people whose rights are violated have adequate means to seek redress for the abuse they suffered. In doing this, we observed some of the components of the Ghanaian judicial system by interviewing members of various organizations and administrative bodies involved in advocating and ensuring the protection of human rights. After a series of observations and discussions, we came to the conclusion that one area in the legal system that lacked adequate attention was the rights of prisoners and detainees in Ghana.

Aside from the Constitution, there are several statutes and regulations that protect the rights of prisoners within Ghana. In addition to those, the Republic has ratified many international conventions and treaties that protect prisoners' rights and human rights in general. Because of its domestic laws and numerous international obligations, Ghana is considered, by

the international community, to be one of the leading countries in Africa to promote and protect fundamental human rights. We find this to be very interesting and contradictory when there are still far too many human rights violations occurring in Ghana. For instance, prisoners' rights are being grossly violated on a daily basis and it is a wonder that very little is being done to address this problem.

Besides the Commission of Human Rights and Administrative Justice (CHRAJ), Ghana does not have an effective monitoring system of prison conditions, the actual situation of prisoners and the activities of the prison authorities. Based on our findings, we made the following observations: prisoners' rights abuses include poor prison conditions such as overcrowding, lack of clean drinking water and food available to prisoners, poor medical treatment, police beatings of prisoners; lack of access to a lawyer or to a fair trial; prisoners' low level of knowledge or understanding of their rights; and prisoners' lack of financial support. We concluded that poverty, which is a huge impediment to accessing justice, is one of the root causes of human rights abuses of prisoners in Ghana.

It is crucial to critically analyze in depth the issue of prisoner's rights, in order to create awareness with various organizations and also with the general public in the hope that the Ghana Prisons Service, the Ghana Police Service and ultimately, the Government of Ghana, will be held more accountable and responsible for the treatment of its prisoners. In order for Ghana to be able to live up to its reputation, it will need to review its existing legal and policy framework.

This report is a compilation of information from various sources including interviews that were conducted in January 2006 by Stanford law students with the Centre for Public Interest Law (CEPIL), an NGO in Accra; Annual Reports of the Ghana Prisons Service; our own research on domestic and international laws pertaining to prisoners' rights in Ghana; and our

ground work consisting of interviews with lawyers, judges, NGO representatives, and the Legal Aid Board.

This report is divided into four parts. Part I begins with a short description of the methodology used in gathering our information. It is then followed by a summary of the CEPIL interviews, a table summarizing the statistics compiled by the Ghana Prisons Service Annual Reports, and our visit at the James Fort Detention Centre. Part II analyzes our findings in the legal context both in the domestic and international spheres, and discusses the relevant legal standards that address the treatment of prisoners. Part III is a compilation of the interviews we conducted with various organizations and administrative bodies, highlighting their work in ensuring the protection of prisoners' rights. Part IV concludes this report with a series of recommendations.

We would like to express our sincere appreciation to Madame Georgette Francois, our mentor and supervisor throughout the entire project and to all her staff at the West Africa Dispute Resolution Centre (WADREC) who accommodated us and assisted us in our work. We would also like to especially thank Mr. Dominic M. Ayine, Executive Director of CEPIL, for being so generous in giving us their report that we used to base some of our findings on. Furthermore, we would like to extend a special thank you to Mr. Prize McApreko, Director of Amnesty International, Ghana, Mr. Samuel Bosompem of the Commission on Human Rights and Administrative Justice, Mr. Martin Nwosu of the Legal Aid Board and Mr. T. Addey of the Supreme Court Library, who welcomed us into their office and directed and advised us on this project.

Part I: Research

The main method used to gather information for this report was by conducting interviews with experts in the fields of law and human rights. This section contains findings based on the CEPIL interviews, followed by a summary of data on prisoners in Ghana from the Ghana Prisons Service Annual Reports and finally a report of our observations from our visit to a detention centre.

1. Centre for Public Interest Law (CEPIL) Interviews

Background:

A group of five students from Stanford Law School and their supervising professor took part in an internship program sponsored by the Center for Public Interest Law (CEPIL) in Accra and Stanford Law School. The project consisted of an intensive investigation of remand prisoners¹ from three Police detention centres in Accra, where the students and lawyers conducted interviews with 37 detainees.² We had to rely on their interview report³, which CEPIL graciously gave us a copy of, because it was extremely difficult to gain access into the prisons and to interview prisoners. We were able to visit the James Fort Prison in Jamestown (an area in Accra), but our visit was limited to cursory observation. We were denied access to the Nsawam Prison just outside of Accra.

The following is a summary of the general overall patterns we found from examining the 37 interviews from the CEPIL report. The reader must however keep in mind that this is a mere generalisation as the interviewers had no control over who they interviewed, thus making the

¹ A “remand prisoner” consists of “...any suspect confined in prison custody whose case is awaiting hearing or pronouncement of sentence. In prison parlance, remand prisoners are also referred to as unconvicted or untried prisoners.”

² The three detention centres are the Accra Central, East Legon and Legon Police Stations.

³ “Access to Justice: Detainees in Ghana’s Jails”, prepared for the Access to Justice: Remand Prisoners Project of the Center for Public Interest Law, May 9, 2006.

sample of interviews not necessarily representative. Nevertheless, it gives a good idea of the detention centres' poor conditions and the human rights violations occurring in these centres.

Legal Issues:

- The police do not advise the accused of his rights or the reasons for his arrest in most cases.
- In many cases, the accused is a mere suspect and there is no clear evidence against him proving his guilt. A person can be accused through hearsay or finger pointing. The “mob” mentality is very present in Ghana. In some cases, someone paid the police to arrest the accused who may well be innocent.
- The police investigator will get the statement from the accused and will not necessarily read it back to him before asking him to sign it. This means that the accused is unaware of what the police investigator wrote as his statement and is unaware of what he has signed on to. Sometimes it is read back to him. In some cases, the accused will not read it before signing it. Others read it and either refuse to sign it or sign it against their will.
- It is rare to have a third party present when the accused is giving his statement to the police investigator.
- In general, the accused is not taken to court for a long period of time after his arrest. Some detainees have reported remaining in a police cell for months before going to court.
- All of the detainees claimed their innocence and refused to confess except for one accused who confessed to the crime.
- Police are quick to presume the accused as being guilty rather than to presume his innocence until proved guilty.

Police Brutality:

- When beating the accused, the police officers consistently threaten to beat the accused to death or until he confesses.
- The police do not routinely provide drinking water or food to the inmates.

Life in a Police Cell – Conditions and Human Rights Abuses:

- Because they are not given any drinking water, the inmates must resort to drinking water from the shower. One inmate said he drinks the water from the top of the toilet reservoir (the cistern).
- If a new inmate is unable to pay the cell initiation fee of 30,000 or 50,000 cedis (between \$4.00 to \$6.50 CAD)⁴, he will be maltreated by the other inmates and punished by being forced to sleep next to the toilet or in the shower.
- Inmates must have money to pay for food themselves or else they generally do not eat. Most inmates do not have money. Family members or friends who visit them may bring them food – that’s the only way they will be fed. Inmates who have no family or friends must rely on other inmates’ generosity to give them some food or else they eat other inmates’ scraps of food.
- Inmates fight amongst themselves for food and money on a daily basis.
- Inmates bathe once a day, often without soap, unless visitors bring them some.
- The inmates’ health conditions are deplorable: inmates complain of getting cholera, having their skin burned from sleeping near urine and feces and suffer from rashes, boils and cysts. Some inmates get “weak bones” because there is not enough space to move

⁴ Equivalency of Ghanaian cedis to Canadian dollars: \$1.00 CAD = 7,935 GHC (Ghana cedis), XE.com - Universal Currency Converter, online: <<http://www.xe.com/ucc/convert.cgi>>.

around in the cell. Others have complained of having weak eyes and have difficulty seeing because of the lack of light.

- If they are lucky, inmates will receive some medical treatment when necessary. But more often than not, they do not receive treatment and therefore suffer from injuries sustained by the police beatings and the poor living conditions mentioned above, which may result in death.
- Inmates complain of difficulty communicating with family members; many have no way of contacting their family.

Specific conditions of the Accra Central Police Station:

- All inmates at this location have reported the presence of anywhere between 80-100 inmates confined in the cell at once.
- There is one working shower.
- There are two toilets that do not flush so the inmates are forced to scoop the excrement by hand and into the shower to be drained.
- The number of men sleeping in one small room per night varied between 8 to 17 men, sharing two spread out blankets. In order to all fit in the room and on the shared blankets, the inmates sleep head to toe like sardines.
- All inmates have seen at least one person die while in detention. One inmate saw up to five people die while he was in detention.

Specific conditions of the East Legon Police Station:

- There is one shower but it has apparently broken down.
- There is one available toilet for all the male inmates that is working and clean.
- A total of 7-11 male inmates were there during one of the inmate's time there.

2. Ghana Prisons Service Annual Reports

The Ghana Prisons Service Annual Reports offer some insight on statistics of remand prisoners for the years 1998 to 2003.⁵

	1998	1999	2000	2001	2002
Total Annual Lock-up	434,902	477,844	494,549	537,269	592,289
Total lock-up of Remand Prisoners	19,609	23,624	23,570	26,628	134,594
Average Monthly Lock up	1,634	1,969	N/A	44,772	47,357
Feeding Rate of Inmates	1,500 c per inmate per diem.	1,800 c per inmate per diem.	2,000 c per inmate per diem	2,500 c per inmate per diem	3,000 c per inmate per diem
Number of Deaths	N/A	N/A	105	134	N/A

Cause of Death of inmates	1998	1999	2000	2001	2003
HIV/AIDS⁶	20.2%	18 (23.6%)	N/A	21	22
Tuberculosis (TB)	19.04%	11 (14.4%)	N/A	17	26
Anaemia	16.7%	8 (10.5%)	N/A	19	15
Malnutrition	15.5%	3 (3.9%)	N/A	9	N/A
Malaria	14.3%	9 (11.8%)	N/A	8	4
Congestive Cardiac Failure	14.3%	11 (14.4%)	N/A	11	4
Pneumonia	N/A	7 (9.2%)	N/A	5	13

The difference between Prisons, Prison Camps and Police Cells:

Prisons:

- The prisoners are forced to do harder labour, for example clearing the roads with machetes, etc.

⁵ The latest published report available at the time of our research was the 2003 Annual Report.

⁶ The HIV/AIDS rate is higher in prisons than in the regular Ghanaian society.

- Hard labour is regulated by law and the prisoners have to be under escort by prison officials.

Prison Camps:

- Many are located in the Western Region of Ghana.
- Innovative way of keeping prisoners because these camps are settlement farms (or camps). It's a more relaxed environment.
- The type of prisoner sent to these prison camps are those who are less likely to run away.
- The feeding conditions are better than in prisons and police cells and the prisoners look healthier.

Police Cells:

- Located at almost all police stations in the country.
- Not an end point, they are merely to hold suspects and remand prisoners who will be prosecuted in courts before going to an actual prison.

3. Visit at the James Fort Detention Centre

Numbers at James Fort:

We had the opportunity to visit the James Fort Detention Centre in Accra and interview three remand prisoners. This facility is intended to hold remand prisoners only, however with the overflow of prisoners in the system, there were some convicted prisoners also being held at this detention centre. Remand prisoners are not required by the law to do any labour as they have not been convicted and they are also not entitled to learn a skill or trade. Only convicted prisoners are ordered by law to do labour work. The total number of prisoners at James Fort is 720, which includes 680 remand prisoners, 18 convicts and 4 lodgers. Lodgers are inmates who are mostly

being transferred from one facility to another and are currently lodging at James Fort in interim, or are lodging pending trial. Of the 680 remand prisoners, only 18 are currently under trial.

Convicts vs. Remand Prisoners:

Due to the overcrowding of other prisons mainly Nsawam, James Fort is compelled to house a few convicts, while Nsawam, a medium security prison that is not supposed to house remand prisoners, does hold some. The convicts are identifiable in a blue uniform, while the remand prisoners are allowed to wear what they wish. The convicts at James Fort are currently not segregated from the remand prisoners, which should not be the case, according to the Prisoners Decree and the Prison Regulatory & Standing Orders 1958 LN 412/58, which regulate all prisons in Ghana. In discussion with the Deputy Director, he explained that the law was very strict on remand prisoners in terms of their treatment within the prison system. There is no maximum number of years that a person can be held on remand and then released. To his knowledge, the maximum number of years a person has been held on remand at James Fort is fourteen (14) years without having any access to justice. The prisoner was recently released, with the help and intervention of the Legal Aid Board.

Punishment of Prisoners:

As order and discipline are important aspects of running a prison, a prisoner may be transferred to another institution, such as Nsawam, a medium security facility, if he misbehaves. Nsawam is the biggest prison in the area and the only other one in the Accra region besides James Fort. This is a form of punishment for prisoners because in most cases, they have no way of informing their family or friends prior to their relocation. Another form of punishment is that the Deputy Director has the right by law to deny visitors to a prisoner if he is misbehaving. For instance, he can deny visitors for a month at a time if he wishes. When asked if prisoners were

also denied visits from counsel, the Deputy Director provided an evasive answer. Visitors are allowed to bring in everything except drugs, alcohol and arms. They mostly bring food, clothing, and other basic necessities such as soap to the prisoners.

Medical Clinic:

There is a medical clinic at the prison with a trained nurse on site full time. A doctor comes in to visit once in a while and in cases of emergency. The prison authorities can also bring a prisoner to the hospital if necessary. There are 130 officers in total who work at the prison in varying shifts. The Deputy Director declined to tell us how many work at the same time, probably for security reasons. It is illegal for prison employees and officers to go on strike by law.

Our Observations:

We spent less than five minutes in the main section of the prison and therefore had a brief look at the cells and the inmates. We were not permitted to inspect any of the cells, thus unable to determine or accurately assess the living conditions and the treatment of the inmates. The Deputy Director granted us interviews with three inmates albeit in the presence of prison authorities. We could only ask specific questions such as the inmates personal information, including address, marital status, employment status, and the circumstances surrounding their situation. We found the interviews futile as we were unable to ask questions pertaining to their living conditions and overall treatment.

Part II: Legal Framework

The 1992 Constitution of the Republic of Ghana (“the Constitution”) entrenches a number of fundamental rights and freedoms of the people of Ghana.⁷ The rights and freedoms guaranteed include the right to life, protection of personal liberty, fair trial and equality before the law. In addition to the Constitution, the country is also a signatory to various international human rights instruments, such as the International Convention on Civil and Political Rights, the African Charter of Human Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁸

All these instruments and conventions set out principles that uphold the basic tenets of human rights. These are rights and freedoms that are fundamental to human existence. They are inherent entitlements that come to every person as a consequence of being human, and are founded on respect for the dignity and worth of each person. They are neither gifts nor privileges nor can they be taken away by an arbitrary power. This notion is embodied in Article 15 of the Ghanaian Constitution which defines human rights as inalienable rights available to all persons regardless of whether they are detained, arrested, or imprisoned. As evidenced from the reports, interviews and observations, this right is rarely upheld in Ghana. On a daily and continual basis, fundamental rights are being violated.

What is interesting, but not surprising is the fact that these violations are not only general knowledge but that they evoke very little sympathy from the average Ghanaian. Society views detainees and especially prisoners, as the condemned lot deserving of procedural unfairness when it comes to arrest, detention and trial and deserving of the inhumane living conditions once

⁷ Chapter five of the Constitution deals extensively with human rights issues. These rights and freedoms are contained in Articles 12-23.

⁸ Of the conventions that Ghana has signed on to, some have not yet been ratified, others have been ratified but none have been adopted into domestic law.

they are imprisoned. What is most unfortunate is that most of the prisons are composed of inmates who are awaiting trial.⁹ Not many realize that unless the Government as well as society at large takes the initiative to ensure the general welfare of the prison population, both during the time of incarceration and after their release, there is a looming danger that instead of getting assimilated back into society, many might actually re-offend.

Aside from the general sentiments of society relating to prisoners and the judicial system, the detainees and prisoners whose rights are violated are not taking an active role in seeking redress and demanding better treatment and facilities. The stigma attached to being incarcerated makes most ex-prisoners not want to voice their experience and advocate for their rights. As a result, redress on human rights abuses against prisoners through the judicial system has not been well documented in Ghana.¹⁰ What has been documented are reports based on first hand observations by organizations that have inspected the prisons and interviewed prisoners and detainees giving their account on the prison conditions and the treatment they were subjected to.

1. Domestic Law

In addition to the Constitution, there are quite a number of domestic legal instruments that define the rights of prisoners. These include the Criminal Procedure Code (1960, Act 29), the Prison Service Decree (1972), and other rules and regulations by administrative bodies, such as the Commission on Human Rights and Administrative Justice Act (1995). The Criminal Code, the Criminal Procedure Code (1960, Act 30) and the Evidence Decree (1975, NRCD 323) along with the Constitution define the rights and treatment of persons when they are arrested, detained and tried. The Prison Service Decree (1972) and also the Constitution set out the treatments of

⁹ Prisoners awaiting trial are referred to as “Remand Prisoners”.

¹⁰ Case law research on prisoners’ rights was futile. Most of the reported cases against the Ghana Prisons Service pertained to extradition issues. There were a few cases against the Prisons Service that involved the issue of detention without probable cause arising out of the 1979 coup by the Armed Forces Revolutionary Council. No cases were found relating to the infringement of prisoners’ rights.

persons who are imprisoned and the recourse that is available to them when their rights are abused. Below is a summary of all the rights available to detainees and prisoners through these domestic instruments.

I. RIGHTS BEFORE THE LAW

A. General

The Constitution of the Republic of Ghana

Article 14

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

Article 15

1. The dignity of all persons shall be inviolable.

Article 17

1. All persons shall be equal before the law.

2. A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

B. Rights upon arrest

The Constitution of the Republic of Ghana

Article 14

2. A person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice.

Article 15

2. No person shall, whether or not he is arrested, restricted or retained, be subjected to

(a) torture or other cruel, inhuman or degrading treatment or punishment;

(b) any other condition that detracts or is likely to detract from his dignity and worth as a human being.

Article 19

2. A person charged with a criminal offence shall

- (d) be informed immediately in a language that he understands, and in detail; of the nature of the offence charged;

Criminal Procedure Code

Section 7

Except when the person arrested is in the actual course of the commission of a crime or is pursued immediately after escape from lawful custody, the police officer or other person making the arrest shall inform the person arrested of the cause of the arrest, and, if the police officer or other person is acting under the authority of a warrant, shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Section 9

Any person who is arrested, whether with or without a warrant, shall be taken with all reasonable dispatch to a police station, or other place for the reception of arrested persons, and shall without delay be informed of the charge against him.

C. Right to Legal Consultation and Recourse

The Constitution of the Republic of Ghana

Article 14

2. A person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice.

Article 19

2. A person charged with a criminal offence shall -

- (d) be informed immediately in a language that he understands, and in detail; of the nature of the offence charged;
- (e) be given adequate time and facilities for the preparation of this defence;

Criminal Procedure Code

Section 9

Any person who is arrested and in custody will be given reasonable facilities for obtaining legal advice, taking steps to furnish bail, and otherwise making arrangements for his defence or release.

D. Right to a Prompt and Fair Trial

The Constitution of the Republic of Ghana

Article 14

3. A person who is arrested, restricted or detained -
 - (a) for the purpose of bringing him before a court in execution of an order of a court; or
 - (b) upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana, and who is not released, shall be brought before a court within forty-eight hours after the arrest, restriction or detention.
4. Where a person arrested, restricted or detained under paragraph (a) or (b) of clause (3) of this article is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released wither unconditionally or upon reasonable conditions, including in particular, conditions reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

Article 19

1. A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.
2. A person charged with a criminal offence shall -
 - (c) be presumed to be innocent until he is proved or has pleaded guilty;
 - (f) be permitted to defend himself before the court in person or by a lawyer of his choice;
 - (g) be afforded facilities to examine, in person or by his lawyer, the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on the same conditions as those applicable to witnesses called by the prosecution;
 - (h) be permitted to have, without payment by him, the assistance of an interpreter where he cannot understand the language used at the trial; and
6. No penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that could have been imposed for that offence at the time when it was committed.

Criminal Procedure Code

Section 15

1. A person taken into custody without a warrant in connection with any offence shall be released from custody not later than forty-eight hours after his arrest unless he is earlier brought before a court of competent jurisdiction.

Section 77

The police officer or person executing a warrant of arrest shall (subject to section 74 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by the warrant or the requirements of section 81 to produce such person, and shall return the warrant to the Court with an endorsement thereon showing the time and the place of its execution.

E. Right to Compensation for Unlawful Detention

The Constitution of the Republic of Ghana

Article 14

5. A person who is unlawfully arrested, restricted or detained by any other person shall be entitled to compensation from that other person.
7. Where a person who has served the whole or a part of his sentence is acquitted on a appeal by a court, other than the Supreme Court, the court may certify to the Supreme Court that the person acquitted be paid compensation; and the Supreme Court may, upon examination of all the facts and the certificate of the court concerned, award such compensation as it may think fit; or, where the acquittal is by the Supreme Court, it may order compensation to be paid to the person acquitted.

II. GENERAL RIGHTS OF PRISONERS

A. Right to Humane Treatment

The Constitution of the Republic of Ghana

Article 15

2. No person shall, whether or not he is arrested, restricted or retained, be subjected to
 - (a) torture or other cruel, inhuman or degrading treatment or punishment;
 - (b) any other condition that detracts or is likely to detract from his dignity and worth as a human being.

Article 16

1. No person shall be held in slavery or servitude.

Prisons Service Decree

Section 2

In the performance of its duty the Prisons Service shall ensure that

- (a) no person shall be subjected to
 - (i) torture or inhuman or degrading punishment; or
 - (ii) any other condition that detracts or is likely to detract from his dignity and worth as a human being;

Section 35

1. It shall be the duty of the Director of Prisons to ensure that every prisoner—
 - (a) is regularly supplied with wholesome and nourishing food in quantities sufficient to maintain him in good health;
 - (b) is at all times kept supplied with clothing, soap, bedding and other necessaries in quantities sufficient to maintain his decency, cleanliness and good health;
 - (c) is at all reasonable times permitted access to washing and toilet facilities sufficient to keep himself clean and decent in his person;
 - (d) is permitted to take daily exercise outside his cell during the hours of daylight for a period not less than one hour in every day;
 - (e) is promptly supplied with all medicines, drugs, special diets or other things prescribed by a medical officer of health as necessary for the health of that prisoner.

B. Right to Equality/Freedom from Discrimination

The Constitution of the Republic of Ghana

Article 17

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

C. Use of Least Restrictive Measures

Criminal Procedure Code

Section 6

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

D. Right to Life, Liberty, Security

The Constitution of the Republic of Ghana

Article 13

1. No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.

Article 14

1. Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in the following cases and in accordance with procedure permitted by law

- (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

E. Protection Against Torture/Mistreatment

The Constitution of the Republic of Ghana

Article 15

1. The dignity of all persons shall be inviolable.
2. No person shall, whether or not he is arrested, restricted or retained, be subjected to -
 - (a) torture or other cruel, inhuman or degrading treatment or punishment;
 - (b) any other condition that detracts or is likely to detract from his dignity and worth as a human being.

Prison Service Decree

Section 35

3. No punishment shall be imposed on any prisoner which has the effect of—
 - (a) changing his diet;
 - (b) reducing the quantities of clothing, soap, bedding or other necessities to be supplied to him;

- (c) restricting or removing his access to washing or toilet facilities;
- (d) restricting his daily exercise outside his cell to less than one hour in any day;
- (e) preventing him from having access to such medicines, drugs, special diets and other things as may be prescribed by a medical officer of health as necessary for his health.

F. Rights Governing Use of Force, Firearms and Physical Restraint

Prison Service Decree

Section 43

1. No person other than the Director of Prisons or the officer in charge of a prison shall have power to impose any punishment on a prisoner for an offence against discipline.
3. The Director of Prisons shall have power to investigate and decide complaints respecting any offence against prison discipline, and he may order any prisoner found guilty by him of any such offence —
 - (b) to be confined in a solitary cell for any period not exceeding twenty-eight days;
 - (c) to perform hard labour for any period not exceeding twenty-eight days, with the prior written approval of a medical officer, where the offender is not undergoing a sentence of imprisonment with hard labour;
 - (d) to receive punishment diet, with the prior written approval of a medical officer, for any period not exceeding seven days;
 - (e) to be caned, subject to and in accordance with the provisions of section 44;
 - (f) to forfeit any special privileges accorded to the prisoner by regulations.

Section 44

1. Where, in exercise of his powers under section 43 (3), the Director of Prisons finds any male prisoner over the apparent age of eighteen years guilty of mutiny, incitement to mutiny, or gross personal violence to a member of the Prisons Service or to a fellow prisoner, the Director may order that he receive, subject to the provisions of this section, not more than fifteen strokes of a light cane.
2. Caning shall not be inflicted on any prisoner unless
 - (a) the Prisons Service Board has in writing authorized the infliction of such punishment on the prisoner concerned, and has specified the number of strokes to be inflicted; and
 - (b) a medical officer has certified in writing the fitness of the prisoner to undergo such punishment, and the suitability of the cane to be used; and
 - (c) the officer in charge of the prison and the medical officer attend the infliction of such punishment.

Section 45

1. Save as provided by this section, no prisoner shall be subjected to handcuffs, shackles, leg-irons or any other form of mechanical restraint within a prison.
2. Where the officer in charge of a prison considers that it is necessary to impose a mechanical restraint on a prisoner in order to prevent his escape, or to prevent him from doing injury to himself or any other person, that officer may, subject to the provisions of this section, impose on that prisoner a mechanical restraint of a type approved by the Prisons Service Board.
3. A mechanical restraint shall not be imposed under sub-section (2) unless
 - (a) the case is one of urgent necessity; and
 - (b) the officer in charge of the prison has in writing authorized the imposition of a restraint on the prisoner concerned, and has specified the type of restraint to be used; and
 - (c) the officer in charge of the prison has immediately notified a medical officer.

Section 46

1. Save as provided by this section, no prison officer shall use force, or any weapon, against a prisoner.
2. A prison officer may use such force against a prisoner as is reasonably necessary in order to make him obey a lawful order which he has refused to obey or in order to maintain discipline.
3. A prison officer may use weapons against a prisoner escaping or attempting to escape
4. A prison officer may use a weapon against any prisoner
 - (a) who is using violence to any person, if such prison officer has reasonable ground to believe that such violence is likely to cause grievous harm to that person; or
 - (b) who is engaged with others in riotous or threatening behaviour and refuses to desist when called upon.
6. The use of any weapon under this section shall, as far as possible, be to disable and not to kill.

III. RIGHTS DURING TERM OF IMPRISONMENT

A. Duties of Authorities and State Officials

Prison Service Decree

Section 50

1. As soon as may be after the 30th day of June in each year the Director of Prisons shall prepare a report giving details of the administration of the Prisons Service during the previous twelve months.

2. The report shall be submitted to the Commissioner who shall cause it to be laid before the National Redemption Council.

B. Right to Make Complaints

Prison Service Decree

Section 22—Complaints by Prisoners

1. Any prisoner shall be entitled, without prejudice to any other means of redress legally available to him, to make a complaint in writing, signed by him, as to

- (a) any instance of assault, maltreatment or intimidation by a prison officer;
- (b) any neglect or non-performance of his duties by a prison officer;
- (c) any other misconduct by a prison officer.

3. The Director of Prisons or other superior prison officer, as the case may be, on receiving a written complaint under this section, shall cause a full and impartial investigation to be made, and shall

- (a) send a report of his conclusions to the complainant;
- (b) take such action on the report as the circumstances may require.

5. Every prisoner shall be entitled, in accordance with regulations, to make a verbal complaint on any matter to the superior prison officer in charge of the prison.

Section 39—Communications with Prisoners

4. Every prisoner shall be entitled, in addition to his entitlement under the foregoing provisions of this section, to write any number of letters to and receive any number of letters or telegrams from

- (a) his legal advisers;
- (b) the Ombudsman;
- (c) his minister of religion.

6. A prisoner may, subject to regulations, be permitted to receive parcels with the consent of the officer in charge of the prison.

C. Right to Independent Inspections

Prison Service Decree

Section 47—Visiting Committees

1. The Prisons Service Board shall appoint a Visiting Committee for each prison, consisting of two or more visitors (other than the medical officer of the prison) who shall visit such prison not less than twice in every month to inspect all wards, cells, yards, solitary cells, kitchens, washrooms, toilets and every other part of the prison, and to hear the complaints of the prisoners, and to inspect the registers, books and records of the prison.
2. The Visiting Committee shall call the attention of the officer in charge of a prison to any failure to observe this Decree or the regulations, and any lack of discipline among prison officers, and any other matter which requires attention or redress.
4. For the purposes of this section the Visiting Committee may at any time enter the prison and shall have free access to every part of it and to every prisoner.

Section 48—Judiciary May Visit Prisons

1. Any magistrate or judge may visit a prison and may examine the condition of the prison and of the prisoners therein.
4. For the purposes of this section a magistrate or judge may at any time enter any prison and shall have free access to any part of it and to every prisoner.
5. Nothing in this section shall authorize a magistrate or judge to communicate with any prisoner except on the subject of his treatment in the prison.

The Constitution of the Republic of Ghana

Article 218

The functions of the Commission (Commission of Human Rights and Administrative Justice) shall be defined and prescribed by Act of Parliament and shall include the duty.

- (a) to investigate 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;
- (b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those service;

D. Visitation and Correspondence

Prison Service Decree

Section 38—Visits to Prisoners

1. Every prisoner under sentence of imprisonment shall be entitled, once in every two weeks, to receive a visit from friends or relatives in the presence of a prison officer.
4. Every prisoner shall be allowed all reasonable opportunities of receiving visits from his legal advisers.

E. Religious Rights

Prisons Service Decree

Section 40—Religious Observances

1. No prisoner shall be hindered in the reasonable exercise of his religious observances.
2. Every prisoner shall be entitled to attend every religious service of his faith or denomination held within the prison.
3. Ministers, howsoever known, of any religious faith or denomination shall be admitted at reasonable and proper times to visit prisoners who may wish their services.
4. Moral and religious instruction shall be given to prisoners who are willing to receive it.
5. This section shall apply notwithstanding that a prisoner is undergoing punishment for any offence against prison discipline.

F. Education and Culture

Prisons Service Decree

Section 41—Education of Prisoner

1. With a view to encouraging prisoners to lead useful and responsible lives after their release, the Director of Prisons shall, after consultation with such Government, welfare and other bodies as he may think fit, establish in every prison courses of training and instruction designed to teach simple trades, skills and crafts to prisoners who may benefit from such training.
3. The Director of Prisons shall, after consultation with the Commissioner responsible for education, establish in every prison classes in which illiterate prisoners may learn to read and write, and classes where prisoners desirous of doing so may further their elementary education.
5. The Director of Prisons shall, so far as practicable, encourage and assist any prisoner who wishes to study for and sit any educational examination; and for this purpose the Director may consult the Commissioner responsible for education.

G. Accommodation

Prisons Service Decree

Section 37—Cell Accommodation

1. The Commissioner shall satisfy himself from time to time that in every prison sufficient accommodation is provided for all prisoners.
2. No cell shall be used for the confinement of a prisoner unless a medical officer certifies in writing that its size, lighting, heating, ventilation, fittings and furniture are adequate for health and that it allows the prisoner to communicate at any time with a prison officer.

H. Health, Hygiene, Clothing and Nutrition

Prisons Service Decree

Section 35—Health and Welfare of Prisoners

1. It shall be the duty of the Director of Prisons to ensure that every prisoner—
 - (a) is regularly supplied with wholesome and nourishing food in quantities sufficient to maintain him in good health;
 - (b) is at all times kept supplied with clothing, soap, bedding and other necessaries in quantities sufficient to maintain his decency, cleanliness and good health;
 - (c) is at all reasonable times permitted access to washing and toilet facilities sufficient to keep himself clean and decent in his person;
 - (d) is permitted to take daily exercise outside his cell during the hours of daylight for a period not less than one hour in every day;
 - (e) is promptly supplied with all medicines, drugs, special diets or other things prescribed by a medical officer of health as necessary for the health of that prisoner.
3. No punishment shall be imposed on any prisoner which has the effect of
 - (a) changing his diet;
 - (b) reducing the quantities of clothing, soap, bedding or other necessaries to be supplied to him;
 - (c) restricting or removing his access to washing or toilet facilities;
 - (d) restricting his daily exercise outside his cell to less than one hour in any day;
 - (e) preventing him from having access to such medicines, drugs, special diets and other things as may be prescribed by a medical officer of health as necessary for his health.

Section 36—Cleanliness of Prisons

It shall be the duty of the Director of Prisons to ensure that all cells, kitchens, and washing and toilet facilities within a prison are at all times kept in a clean and sanitary condition.

I. Administrative Safeguards Against

The Constitution for the Republic of Ghana

Article 23

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.

IV. SPECIAL GROUP RIGHTS - Detainees/Unconvicted Prisoners

A. General Rights

Prisons Service Decree

Section 38

3. Every prisoner not under sentence of imprisonment shall be allowed all reasonable opportunities daily of receiving visits from friends or relatives.

B. Separation from Convicted Prisoners

The Constitution of the Republic of Ghana

Article 15

3) A person who has not been convicted of a criminal offence shall not be treated as a convicted person and shall be kept separately from convicted persons.

Criminal Procedure Code

Section 2

b. a person who has not been convicted of a criminal offence if kept or confined in a prison, shall not be treated as a convicted person, and shall be kept away from convicted persons

2. International Law

Ghana has signed or ratified many international treaties and conventions. As a result, the international community considers the country to be a leader in the region as one which respects human rights and adheres to international law. In all, none of the instruments that Ghana has ratified since independence have been adopted into domestic law.¹¹ It appears that Ghana is signing on to all these instruments to place it in good standing and to gain respect within the international community. Another reason Ghana might be doing so is that, in order to get international investors and financial support from world organisations, such as the International Monetary Fund and the World Bank, a developing country must respect human rights.

This section will outline several of the international instruments that pertain to prisoners' rights which Ghana has either signed or ratified. It further examines whether or not Ghana has the political will, capacity or infrastructure to implement them.

A. Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR)¹² was adopted by the United Nations' General Assembly in 1948. It is not a legally binding instrument, however, it expects all of the United Nations' States parties (including Ghana) to respect its provisions as it carries moral and normative significance in international law. It is an advisory instrument which ensures individuals' rights while states have the duty to fulfil those rights and to ensure the enforcement of remedy options if necessary.¹³ Article 11 (1) of the UDHR states that "Everyone charged with

¹¹ Interview with Nana Oye Lithur, lawyer at the Commonwealth Human Rights Initiative (CHRI), July 11, 2006.

¹² Universal Declaration of Human Rights, online: Office of the High Commissioner for Human Rights <<http://www.unhcr.ch/udhr/index.htm>>.

¹³ The UDHR was the first international instrument to establish human rights norms and has remained to this date, the single most cited human rights instrument. Henry J. Steiner and Philip Alston, *International Human Rights in Context - Law, Politics, Morals*, 2nd ed., (New York: Oxford University Press, 2000) at 139.

a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

In general, police officers presume the suspects or detainees are guilty rather than innocent before given the chance to a defence. This presumptuous attitude is widespread among the police force in Ghana, as well as the society at large. To further compound the problem, there is a lack of independence between the judiciary and the police force. For example, in many cases at the lower level courts (district and circuit levels), there are designated police officers who are prosecutors for less serious crimes. The right to a fair trial is undermined, as the police officers who arrest the suspects are the very same people who prosecute them.

B. International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is one of the two principal treaties that was derived from the UDHR and was adopted in 1966 and entered into force in 1976.¹⁴ Ghana ratified the ICCPR on September 7th, 2000. When a criminal charge has been laid against an individual, article 14 (3) of the ICCPR stipulates the minimum guarantees entitled to that person. These include (a) the right to be informed promptly and in a language that the individual understands, of the nature and cause of the charge against the individual, (b) to have time to prepare his defence and to communicate with counsel of his choice, (c) to be tried without delay, (d) to be present during his trial in order to be able to defend himself or to have legal assistance of his choice defend him and to be informed that he has the right to legal assistance and, if he is unable to pay for it, that legal assistance should be assigned to him if required.

¹⁴ International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49, online: <http://www.unhchr.ch/html/menu3/b/a_ccpr.htm>.

Upon reading the testimonies earlier in this report, it is obvious that in many cases these rights are not being respected. Ghana has an obligation to implement the provisions of the ICCPR because it is a State party to the instrument. In reality, however, getting a fair trial without delay is a luxury that most Ghanaians cannot afford. The courts are so congested that a simple case which should take at most three months to settle can take up to three years. The infrastructure of the judicial system is poor and unable to ensure the right to be tried without reasonable delay. Besides the lack of financial and material resources available to the judicial service, there is also the need for better training of police and prison officers to communicate effectively with the judiciary.

C. The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights was adopted in 1981 by the Organisation of African Unity and came into force in 1986.¹⁵ It has since been ratified by over forty African states, including Ghana, making it the most widely accepted regional convention. Unlike other Human Rights Conventions, the African Charter covers economic, social and cultural rights as well as civil and political rights. The originality of this Charter also lies in the fact that it stipulates not only individual rights but also the rights and responsibilities of the community as a whole (ie: "peoples"), since Africa places such importance on community living.

The African Charter stipulates in article 3 (1) that "Every individual shall be equal before the law." and 3 (2) "Every individual shall be entitled to equal protection of the law." Unfortunately, not everyone in Ghana is equal before the law, as it costs money to have legal representation in court. Many poor people cannot afford to be represented by counsel, making access to justice very limited and difficult for them to obtain. A visit to any lower level court and

¹⁵ African Charter on Human and Peoples' Rights, online:
<http://www.diplomacy.edu/africancharter/acharter_intro.asp> [African Charter].

one will observe a lot of adjournments and self-representation of parties. Legal Aid is available but many Ghanaians, especially the illiterate, are unaware of its services. Those who are aware do not necessarily receive adequate representation because the Legal Aid Board is overburdened, under staffed and improperly structured to handle the high demand. Therefore, not all people are equal before the law.

D. The Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

Ghana ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)¹⁶ in 2000. Since then, Ghana has signed but not yet ratified the Optional Protocol to the UNCAT (OPCAT), which entered into force on June 22, 2006 after twenty states became party to the Protocol.¹⁷ At a roundtable discussion on Torture Prevention hosted by CHRAJ in early June of 2006, the discussion revolved around the issue of whether or not Ghana should ratify the OPCAT. The Government is optimistic that it will soon ratify it because Ghana has the political will to do so. Only now, Ghana must strengthen its structures that are already in place in order to implement the obligations tied in with ratifying the OPCAT.

The aim of the OPCAT is “to prevent torture and other forms of ill-treatment by establishing a system of regular visits to places of detention carried out by independent international and national bodies.”¹⁸ By ratifying the OPCAT, countries pledge to protect human rights in all of their detention centres, including the protection of prisoners from being tortured. Upon ratification, countries accept unannounced visits by international observers to the detention

¹⁶ Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in accordance with article 27 (1), online: <http://www.unhcr.ch/html/menu3/b/h_cat39.htm>.

¹⁷ Office of the United Nations High Commissioner for Human Rights, Optional Protocol to the Convention against Torture (OPCAT), online <<http://www.ohchr.org/english/bodies/cat/opcat/index.htm>>.

¹⁸ “Resolved to prevent torture”, Association for the Prevention of Torture (APT) pamphlet, August 2003.

centres in order to evaluate them. Furthermore, these international and national bodies can privately interview persons of their choice in the detention centres.

Within one year of ratifying the OPCAT, States parties must have in place one or several national preventive mechanisms. These are not specified in type, therefore NGOs, Human Rights Commissions or any other type of organisation could carry out this function. The international and national bodies make recommendations for improvements in the conditions and treatment of detainees, as a follow-up to their visits. Perhaps one downfall of the Protocol is that it works on an honour system whereby countries who sign and ratify it promise to act on the Protocol; there are no punitive sanctions if they do not respect it.

If Ghana opened up its prison system to international scrutiny, this would be very effective in decreasing human rights abuses currently occurring there. Ghana is renowned as being one of the leaders of the African nations to respect human rights, yet it has fallen behind neighbouring countries such as Benin, Mali and Senegal which have ratified the OPCAT.¹⁹ Ghana should raise its standards by comparing itself to other countries outside of Africa.

E. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted by the United Nations General Assembly in 1988.²⁰ These principles are intended to be applied universally for the protection of all persons under any form of detention or imprisonment. Principle 24 stipulates that “A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the

¹⁹ *Ibid.*

²⁰ Resolution 43/173 of 9 December 1988. Found online at the Office of the High Commission for Human Rights at: <http://www.unhchr.ch/html/menu3/b/h_comp36.htm>.

place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”

Many other treaties mention the need for medical care for the detainees, such as article 16(1) of the African Charter which stipulates the “right to enjoy the best attainable state of physical and mental health.” Furthermore, article 16(2) stipulates that the states “should take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”²¹ But this is not the case in the prisons and police cells as the prisoners rarely get the medical treatment they need. Many of the detainees’ deaths in the police cells stems from the lack of treatment they receive after the injuries they have sustained from the police beatings or from the poor living conditions mentioned in the first section of this report.

F. The Basic Principles for the Treatment of Prisoners

The Basic Principles for the Treatment of Prisoners has provisions encouraging a reformatory rather than a punitive approach to prisoners. Article 8 says: “Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.”²² In addition, article 10 stipulates that: “With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.” This is something Ghana should highly consider implementing consistently in all of its incarcerating institutions. There are rehabilitative programs available in some institutions, however it is unclear how effective they have been.

²¹ African Charter, *supra* note 15.

²² Basic Principles for the Treatment of Prisoners, Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, online <<http://www.ohchr.org/english/law/basicprinciples.htm>>.

3. Conclusion on the Legal Framework

It is quite clear that prisoners in Ghana are not receiving the protection against abuse and the right to dignified conditions guaranteed to them. The challenge lies in the fact that domestic law is not being implemented systematically on a daily basis, thus making it more difficult to incorporate international obligations. This begs the question of why Ghana is signing on to all these international instruments if it does not abide by its own domestic law. There is an illusion that Ghana is a human rights defender and protector. This in turn can be dangerous as it fools the international community in believing the country is doing well and can therefore turn a blind eye to the real human rights violations occurring in Ghana. There is also the problem that many Ghanaians, including the Government, do not want to face reality in trying to solve some of the major human rights violations. By signing and ratifying international human rights instruments, Ghana might believe that it is doing its part in trying to protect prisoners' rights and thus feels satisfied with where it currently stands, preventing the elimination of human rights abuses and stumping the growth to progress in the future.

Part III: Interviews with NGOs and Administrative Bodies

1. Commission on Human Rights and Administrative Justice (CHRAJ)

Background:

The Commission on Human Rights and Administrative Justice (CHRAJ) is an administrative body with the mission to enhance democracy, good governance, integrity, peace and social development by promoting, protecting and enforcing fundamental human rights and

freedoms for all persons in Ghana. CHRAJ is not a tribunal, but rather is an investigative constitutional body with a three-pronged mandate, including:

- 1) An agency in the area of administrative justice;
- 2) An anti-corruption body; and
- 3) A Human Rights Commission.

As an investigative body, CHRAJ's findings and recommendations are not binding. However, if for example CHRAJ takes up a complaint and after investigation, makes a recommendation to the Prisons Service who decides not to adhere to it, CHRAJ can then take the issue to court and ask that the court give an order which the Prisons Service will have to follow.

Prisons and Prisoners' Rights:

As part of its duty to ensure the protection of human rights and freedoms for all persons in Ghana, including prisoners, the CHRAJ has a Prison Monitoring Program. This program has been in existence since 1995 and consists of an annual inspection of all the prisons and police cells in the country. CHRAJ then publishes an annual report on its findings.²³ The general conclusion is that the conditions prisoners live in are very poor. For example, the police cells are supposed to contain three people per cell, but they currently hold thirty people.

Another important issue to consider is the fact that job security in prisons is extremely low. Employees can get fired anytime which creates a high level of insecurity amongst the prison officers, causing them to have high levels of stress. However, CHRAJ assures us that the situation has improved and is better today than it was in the previous years, due in large part to CHRAJ's efforts.

If we want to see a decrease in human rights violations of prisoners, major changes will have to be made to bring transparency into prisons and police cells. This would be beneficial to

²³ Commission on Human Rights and Administrative Justice, Nationwide Inspection of Prisons and Police Cells, 2002 and 2003 Reports, Ghana.

all parties involved because it would expose and place under scrutiny the activities of the detention centres, which would inevitably force both the Ghana Police Service and the Ghana Prisons Service to improve their treatment of prisoners, thus decreasing the violation of their human rights. Furthermore, this would increase the service departments' chance of receiving more funding and resources to improve the detainees' living conditions, as it would be known that they are lacking funds which create the deplorable conditions.

2. Amnesty International, Ghana (AI Ghana)²⁴

The Optional Protocol to the Convention against Torture (OPCAT):

Amnesty International (AI) is an international non-governmental organisation working to promote and defend human rights around the world. AI Ghana is involved in projects aimed at protecting prisoners' rights. It has been putting pressure on the government to ratify the Optional Protocol to the Convention against Torture (OPCAT) which has already been signed by Ghana. By ratifying it, a country commits itself to comply with human rights in places of detention of the country. If Ghana ratified the OPCAT, it would compel the government to revisit the prison conditions to improve them for the sake of prisoners' rights. It is important to remember that as a prisoner, one loses his civil and political rights, but all other rights must remain intact. It is most probable that the Ghanaian government has not yet ratified the OPCAT because it is fully aware that it cannot fulfill the Protocol's objectives.

Eliminating capital punishment:

Another one of AI Ghana's focus is campaigning to eliminate the death penalty in Ghana, which is legal under the 1992 Constitution. There has been much debate around abolishing it, but nothing has been done yet to do so. The fact that it is stipulated and supported by the

²⁴ The information under the Amnesty International, Ghana section has been taken mostly from interviews with its Director, Mr. Prize McApreko between June and August 2006 in Accra.

Constitution creates a major problem in that it violates the most fundamental right of all humankind: the right to life. Ghana is proud of being an icon of democracy (at least within Africa) and claims to have good governance, especially as it was the first sub-Saharan African country to gain independence in 1957. However, it is not living up to its reputation.

The last execution in Ghana was carried out in 1993; however death sentences continue to be passed. According to the Ghana Prisons Service, there were 152 people on death row as of March 2006. All these people who are being detained for years end up suffering from torture in prison. They suffer from physical and psychological torture in that they know they are on death row and are basically waiting to die. The governments of Senegal and Liberia abolished the death penalty in 2004. Ghana should have been the leader amongst West African nations by abolishing the death penalty first, given its pioneering role in the sub-region, but failed in that regard. At the end of the day, the Constitution has flaws and it is important that Ghana takes steps to abolish the death penalty, which is merely punitive rather than reformative in nature. It is also necessary that Ghanaians openly discuss the human rights abuses taking place within their nation, if progress is to be made.

Prisons:

AI Ghana is of the opinion that all units involved are to be blamed for poor conditions of prisons and police cells in Ghana. First of all, the Ministry of the Interior oversees both the Ghana Prisons Service and the Ghana Police Service and has the most control in policy making. Next is the Prison Council, which implements the policies. Leaders at this level can bring change when issues are brought up. Finally, there is the groundwork, the front liners: the Ghana Police Service and the Ghana Prisons Service. They work in a framework and in a context of rules laid out by the Ministry of the Interior therefore they cannot do much to change the conditions.

However, at the same time, they can play an extremely key role in changing the conditions because they are the best people to give feedback and evaluate the situation since they are part of the system. For example, both services lack funding, thus the officers on site have to make do with what they have, which results in the detainees not being served enough food or any food at all.

The main issues AI Ghana raises are the following:

- Why keep on sentencing people when the prisons and police cells are already completely congested? The Prisons Service and/or the Government should be focussing its work on decongesting the prisons rather than accepting new cases daily. Alternatively, expand existing facilities.
- Ghanaian society's attitude today remains that prisoners do not deserve any human dignity, thus rendering it more difficult to change. Many people believe that they should be kept behind bars where they belong, and that they should be left there to die. Many people in Ghana do not respect or care much about human rights.
- Prisons should be a place of rehabilitation rather than a place of punishment, which is what it currently is. The thinking and attitude right now is to punish the culprit and not rehabilitate him to facilitate integration into society.
- One of the main problems in the justice system is that ordinary Ghanaians are not aware of their rights, therefore access to justice is frustrating.

AI Ghana believes that it is crucial to hold its government accountable for human rights abuses. Another interesting point is that if civil society and the media further used their powerful position, they could do a lot to advance human rights. The media plays an important role in

bringing up the information to the public's attention and thus can help keep the focus on certain important issues related to human rights.

3. Legal Resource Centre (LRC)

Background:

The Legal Resource Centre (LRC) is an NGO interested in using law to promote development, human rights campaigns, research and advocacy. They have a Prisons Project where the goal is to bring justice to innocent convicts who have been incarcerated. They also try to identify human rights abuses in prisons and find a way to address some of these abuses.

Prisons Project:

Their five-year prison reform project started in 2002-03 but because of problems with funding, it has been decreased to a three-year project and currently, it has unfortunately been put on hold. The project consisted of going to prisons, categorising prisoners, visiting remand prisoners, condemned prisoners and "lifers" to examine the conditions they were living in, after which they made recommendations for reform. They also provide free legal representation and began the process of making appeals to the Court of Appeal and the High Court, for convicts who they thought would not have been convicted if they had had legal representation.

For other prisoners, LRC exhausted all forms of support by writing letters of amnesty to the President of Ghana. In 2003-04, 2000 prisoners were granted amnesty across the country. A Prisons Coalition was formed with other NGOs to push forward the Prisons Project. These include the Centre for Public Interest Law (CEPIL), the Commonwealth Human Rights Initiative (CHRI) and Prisoners Rehabilitation and Welfare Action (PRAWA). If a coalition works well, it can achieve a lot of things. However, NGOs in Ghana are faced with many challenges, one of

them being that it is very difficult to keep a balance between the NGOs involved and unfortunately, this coalition of NGOs seems to have fallen apart for the time being.

4. Commonwealth Human Rights Initiative (CHRI)

Prisons Project:

As part of the original Prisons Coalition, CHRI is interested in a prisons project whereby it is looking at the state of the prisons and police stations in Ghana from a human rights perspective to see what issues need to be dealt with. Examples of issues are remand prisoners and the congestion in prisons and looking at how to reduce the congestion. Also, access to justice from the prisons is a huge problem. CHRI is exploring police brutality and human rights violations occurring within the prison system. The NGO is assessing “powers of arrest”, whether the police is respecting the rights of the detainees granted under the 1992 Constitution during arrests, for instance, whether they tell detainees about their rights and if they tell them why they are being detained or arrested. CHRI wants public attention to be redirected towards these issues.

Even Parliamentarians and policy-makers themselves do not know the rights of Ghanaians, so they sometimes say things that completely contradict the law. For example, a Parliamentarian was quoted as saying that the government should castrate rapists. But Ghana has signed the UNCAT (UN Convention against Torture) so that statement completely conflicts with their obligation of non torture towards its citizens.

5. Centre for Public Interest Law (CEPIL)

Background:

CEPIL is a public interest law and human rights non-governmental organisation that was established in 1999. Its aim is to help provide legal redress to poor individuals and communities whose basic human rights have been abused by a powerful actor. For instance, one of their main

focus has been the Mining and Environment Program whereby CEPIL provides free legal counsel and court representation to communities living in and around mining zones.

Prisons Project:

For the past five years, Stanford law students have come to CEPIL to work and design programs with the NGO. They look at rights of remand prisoners because their problem is more serious as they stay in detention for longer periods of time without legal representation and live in often horrible conditions. Goals of the project were to assist remand prisoners in getting legal representation and to release them if they were innocent. For instance, James Fort Detention Centre has over 800 remand prisoners who stay, on average, for a period of five years without trial. A success story explains how CEPIL lawyers managed to release a remand prisoner who was at the Accra Central Police Station for six years without any evidence of the crime. They are currently looking for funding for this project as they need money to represent the prisoners.

6. Prisoners Rehabilitation and Welfare Action (PRAWA)

Background:

Prisoners Rehabilitation and Welfare Action (PRAWA) is an NGO that seeks to improve conditions for prisoners, ex-convicts and prison officers in the country, because PRAWA defends that prisoners are still human beings and deserve to be treated with dignity. The advocacy organisation fights for the rights of prisoners, victims of torture, ex-offenders, and juvenile offenders. It works at educating the public, improving health services for prisoners and integrating prisoners into Ghanaian society.

The following activities have been carried out to sensitise the public and create awareness about the human rights of prisoners: the training of prison officers and other criminal justice agents on human rights, policy advocacy, research, public awareness and provision of

prison/community-based support services for target groups. Members of PRAWA are currently trying to visit prisons but have been refused access, which is frustrating because the group prior to them was able to access the prisons, interact with the prisoners and also take photos. PRAWA is very aware that there are political reasons for prisons to be tight-lipped and unwilling to open their doors to scrutiny. This is also frustrating because PRAWA, as an independent organisation, would like to be more vocal based on what they see and they refuse to be stopped by the Ghana Prisons Service from doing their advocacy work.

Abolition of Capital Punishment Project:

One of PRAWA's major projects was the Awareness Creation on the Abolition of Capital Punishment in Ghana. The project's goal was to contribute to the promotion of fundamental human rights in Ghana and to create public awareness of individual human rights in particular. As part of the project, PRAWA held a symposium last fall which counted 250 people from various backgrounds: human rights advocates, the police, students, and ex-prisoners. The latter shared their experience of living in prison and spoke about the conditions they lived in, mentioning that the threat of developing a skin disease, malaria, an STD, or AIDS were everyday struggles. Some participants of the symposium were of the view that prisoners should be killed and that they deserved to die. Participants were not afraid of saying what they thought, which made for some very interesting discussions.

PRAWA also focuses its attention on the congestion of police cells. They managed to visit the Accra Central Police Station where they interacted with remand prisoners. As we saw from the CEPIL interviews, the cells are congested and not conducive to human stay as they currently hold more people than they can handle. There are no beds, only worn out blankets, ventilation is poor, and there is no light. The Accra Central Police Station has turned to PRAWA

to work on a project together whereby it gave PRAWA a proposal to seek funds from Ghanaians in order to expand the Accra Central police cells. Unfortunately, the fundraising has not been going so well since protecting prisoners' rights is not the priority of Ghanaians as prisoners are seen as being bad people. PRAWA would like this project to be a Ghanaian-led initiative, instead of reaching for financial support outside of Ghana. PRAWA and Mr. Prize McApreko of AI Ghana have met on several occasions to discuss on how best they can find funds, thus here is an example of two different NGO members working in collaboration.

PRAWA wishes to continue serving as an advocacy group and would like to get more organisations in the country involved to be vocal about prisoners' human rights abuses, to gain support and to talk openly about the problem in Ghana. PRAWA would also like to publish their newsletter on a more regular basis, in collaboration with all the other NGOs who are doing the same type of work, but there is a lack of network and collaboration. Interestingly enough, around the time of this interview, we had just met the other NGOs who were part of this collaboration for the Prison Project, but they all complained about the same thing, rather than speak to each other about it and come to an agreement to collaborate together. If the NGOs we met worked together on this Prison Project, surely it would create more progress as they could achieve more activities and goals together.

7. Legal Aid Board

There are two categories of cases where prisoners may seek the help of Legal Aid. The first category is appeal cases. In many cases, prisoners seeking aid have been told by relatives, friends or prison officers, that they have a good chance of winning their case on appeal. Unfortunately by then, it is common that the prisoners have depleted their resources and are therefore unable to seek private representation in which case they turn to Legal Aid for help.

Relatives can apply on their behalf, but usually prisoners apply to Legal Aid through the referral of the prison officers. The second category is remand prisoners, who either have not had the opportunity to go to trial or their trial is still ongoing. Currently, there is a very large number of remand prisoners in Ghana's prisons waiting to be processed through the court system, making this issue the most pertinent one related to the prison system. This problem in turn has created some serious overcrowding in detention centres, which has been ongoing for a long time.

This prompted Legal Aid, with the help and resources of the United Nations Development Programme (UNDP), to start a Prisons Project. Furthermore, CHRAJ, who publishes annual reports on the prisons in Ghana, highlighted the need to process the overwhelming number of remand prisoners. The Project's goal is to determine the number of remand prisoners in the country and to come up with ways to gain access to them to see what can be done to mitigate this serious problem. Legal Aid does not have officers stationed at the various prisons, but as part of their Project, it is seriously considering doing so. Case officers would not have to be lawyers; they could simply be trained to do the intakes inside the prisons. If this cannot be achieved, Legal Aid hopes that at least some of the prison officers could be trained to conduct case intake. Legal Aid is obviously concerned with this issue because its mandate dictates the duty to represent the poor in both criminal and civil matters. To date and to Legal Aid's knowledge, there have not been any formal complaints to Legal Aid about the conditions or the maltreatment of prisoners, although there are rumours of such problems. If there were any, CHRAJ is the best organization to handle such complaints.

Part IV: Conclusion and Recommendations

1. Conclusion

Comparing our research findings to the provisions listed above, it is quite obvious that most of the provisions are not being adhered to. There are a gamut of reasons and explanations on why this is so. Some suggest that the lack of proper training of police and prison officers on procedural and constitutional aspects of their role in society is the main cause of this widespread abuse. Others stress that the lack of communication between the policing, judiciary and the correctional bodies is causing gaps in the system leaving room for human rights violations. Furthermore these bodies are placing the blame on one another without taking responsibility for their own actions (or lack of).

Another argument is that the average Ghanaian lacks awareness of his or her constitutional rights that is causing. Ghanaians are not taking the initiative to hold the government and the various bodies responsible for their actions. There is also the argument that the country is taking great strides to ensure that human rights abuses are minimized. Considering the country's recent change from a 21 year military rule where transparency and accountability by the state was an ideology, Ghana has come a long way in achieving a sustainable government. It is obvious that there are old habits and practices in the system that will be discarded and changed with time.

A major underlying issue in all these arguments is the lack of resources available to the various administrative bodies involved in the system. The police service complains that inadequate funding results in improper training, facilities, resources and compensation for its force. As a result, frustration among police officers is widespread, fostering an environment of corruption, abuse and police brutality. Lack of resources available to the judicial service has also

led to frustration and widespread corruption not only by the officers of the court, but by the members of the legal community as a whole. There is a substantial inequality of access to justice by the average citizen and this is mostly due to all of the problems previously listed. The Prison Service also complains of lack of resources. First of all, the prisons are old and in poor conditions. For example, the James Fort Detention Centre, in actual fact an old fort dating back to 1746 was used during colonial rule. Because of poor funding, new prisons are not being built therefore prisoners are forced to stay in inadequate facilities. The inefficiencies of the judicial system to process unconvicted prisoners within a reasonable time, further exacerbates the problem, creating a huge backlog leading to overcrowding. Inadequate funding and poor infrastructure do not justify the abuse of a person's rights, regardless of the circumstances.

2. Recommendations

Several recommendations have been stated throughout this report. Provided below is a summary of the recommendations that we think, if taken into account, could help alleviate the problem of prisoner's rights abuses in Ghana.

A. Remand Prisoners

Remand prisoners should have the right to different treatment from convicted prisoners because they have not been found guilty and should be presumed innocent of the offence for which they have been charged.

- Immediately upon arrest, remand prisoners should be informed of the offence with which they are charged.
- In order to receive a fair trial, it is important that remand prisoners be able to keep in contact with legal counsel and family so as to prepare their defence properly.

Immediately upon arrest, they must be allowed to communicate with their family and friends and be provided with facilities for communicating with them.

- Remand prisoners should be segregated from convicted prisoners and should be subject to separate treatment.

B. Legal Aid and Defence

A significant number of remand prisoners are in detention centres because they do not have legal representation. There are some remand prisoners and to some extent convicted prisoners who do not know the specific facts of their case. Facts such as the arresting officer, the specific offence charged with, their case number or when their next court hearing is. For convicted prisoners, some do not know about their rights to appeal.

- It is necessary for the Legal Aid Board to keep identifying those who need and deserve legal aid. Legal aid workers must identify such prisoners and educate them about their right to legal aid.
- Legal aid workers must help in getting the remand prisoners released on bail instead of being detained.
- Legal literacy drives should be launched with the aim not only of sensitising the prison administration but also of spreading awareness amongst prisoners about their rights and obligations.
- Paralegal staff should be utilised to work in prisons to provide the required legal aid to prisoners.

C. Inadequate Facilities

Overcrowding is seen as the root problem to a number of other problems relating to health care, food, clothing and poor living conditions in the prison system. As observed by Mr. Samuel

Bosompem, a lawyer at CHRAJ who was part of the team conducting annual prison visits, overcrowding is so acute in some prisons that inmates often have to sleep in shifts of 4 hours due to lack of space.

- Optimum population capacity of prisons needs to be assessed and provisions made accordingly.
- More detention centres need to be built and the older and outdated ones need to be retrofitted or abandoned completely.

D. Alternatives to Sentencing

A serious and long term solution to the problem of overcrowding in prisons needs to be addressed. Perhaps a review and an overhaul of the entire criminal justice system should be undertaken, including the system of arrests, sentencing policies and notions of crime.

- Certain offences should be decriminalised and alternatives to imprisonment such as community service should be designed to deal with such cases.
- The police force should be properly trained and safeguards should be installed to ensure that unnecessary and indiscriminate arrests are avoided by its personnel.
- Half-way housing should be provided for misdemeanor offenders.
- Alternative care homes for non criminal mentally ill persons should be built.

E. Rehabilitation and Parole

Overcrowding has also begun to affect the attempts of the prison administration to empower prisoners with skills that would involve them in gainful employment after release. These attempts come in form of workshops where prisoners are taught carpentry, masonry, welding and soldering, and weaving. Workshop buildings are being used to house prisoners to compensate for the overcrowding.

- Rehabilitation: Prison authorities should be creative in exploring avenues to use prisoners efficiently and productively, because most prisoners are able-bodied men and women. They could do labour work such as cleaning the streets or cultivate on farms. Mr. McApreko of AI Ghana gave a pro-active example of using prisoners to do productive work while also protecting the environment: rather than simply throwing out coconut shells which are used to make car seats, prisoners could pick up coconut shells from the beaches and prepare them for manufacturing. This is a simple solution that does not require much funding or resources and it would give the prisoners some skills and work to do all the while helping to protect the environment.
- Parole: Parole does not exist in Ghana, thus it might be a good idea to look at other countries that do have parole programs to help prisoners gradually reintegrate into society with controlled supervision and monitoring.
- Half-way houses: The use of half-way houses is not practiced in Ghana. It would be beneficial to receive government funding to build a few half-way houses especially in the main cities. These houses would be an opportunity for prisoners to reintegrate into society by learning a new trade or gain skills while living within the community, outside the prison walls.

F. Special Categories of Prisoners

1- Detention of Women

Female prisoners' rights are particularly flawed in Ghana. The plight of women prisoners is heightened by virtue of the fact that they are female and because they make up a minority of the prison population. Historically, prisons have been built and created with men in mind. As male prisoners are the "norm", female prisoners pose specific problems for prison administrators.

- Accommodation: Women pose difficulties because the numbers are too small to require a special prison building which leads to the creation of makeshift prisons or women's prisons annexed to male prisons. The alternative would be to place them in special women's prisons but these are usually far removed from the general community, thus isolating women further from their families and communities.
- Role of Women: The fact that women play the role of general caregivers of their children and family within the community poses severe problems. Imprisonment of women creates a gap within communities, as many children are left to fend for themselves without the presence of their mothers. Furthermore, women are particularly vulnerable in the coercive environment of prisons. They require special safeguards to ensure that they are not harassed or abused in any way.
- Pregnant and Nursing Mothers: Women who come into prison pregnant or as nursing mothers face great problems. Bringing up a baby in prison is far from ideal even if the prison conditions are hygienic and suitable. To separate a baby from its mother is a difficult decision to make.
- Access to Education and Training: Women prisoners rarely have access to the same level of facilities for education and training as men do. They often find themselves restricted to do work such as sewing, cleaning, child care and other limited vocational opportunities. As much as possible, women prisoners should be able to select the sort of work from which they can benefit.

2- Detention of Juveniles

In Ghana, juveniles are to be detained in separate institutions called Borstal Institutions. Without exception, any convicted person under the age of 18 should be placed in a juvenile institution. If

not yet convicted and being housed in a detention centre or in a police cell, that person should be segregated from the adult population. Unfortunately this is not the case in most prisons and detention centres. Juveniles are most often housed with adult offenders where they are subject to abuse and maltreatment from adult inmates. During one of our interviews, someone mentioned that juveniles serve longer sentences if they are sent to Boral Institutions, but if they lie about their age and are tried as adults, they will serve shorter sentences. Knowing this fact, many encourage accused juveniles to lie about their age in order to get shorter sentences.

- Segregation: Arresting officers should be sensitized and trained to identify and segregate under aged accused from the adult inmates. In the alternative, precaution and safeguards should be in place to monitor the welfare and treatment of juvenile offenders held in custody.
- Training and Education: In Boral Institutions, emphasis should be placed on training and rehabilitating juveniles so that the likelihood of recidivism when released is reduced.

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