

**CENTER FOR PUBLIC INTEREST LAW-GHANA**



# **TRAINING MANUAL FOR PARALEGALS IN MINING COMMUNITIES**

 **OSIWA**

 **cepil**  
FOR THE PEOPLE OF GHANA



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For further information, contact  
Center for Public Interest Law (CEPIL)  
No 28 Naa Shika Avenue Haatso Accra  
P O Box GP 17152 Accra  
Tel: 0302- 543580  
Email: [cepilghana@gmail.com](mailto:cepilghana@gmail.com)  
Website: [www.cepil.org.gh](http://www.cepil.org.gh)

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# ABBREVIATIONS & ACRONYMS

<b>ACHPR</b>	<b>African Charter on Human and Peoples Rights</b>
<b>ADR</b>	<b>Alternative Dispute Resolution</b>
<b>AU</b>	<b>African Union</b>
<b>CEDAW</b>	<b>Convention on the Elimination of Discrimination against Women</b>
<b>CEPIL</b>	<b>Center for Public Interest Law</b>
<b>CHRAJ</b>	<b>Commission on Human Rights and Administrative Justice</b>
<b>CSO</b>	<b>Civil Society Organization</b>
<b>DA</b>	<b>District Assemblies</b>
<b>DCE</b>	<b>District Chief Executive</b>
<b>ECOWAS</b>	<b>Economic Community of West African States</b>
<b>EPA</b>	<b>Environmental Protection Agency</b>
<b>EIA</b>	<b>Environmental Impact Assessment</b>
<b>EIS</b>	<b>Environmental Impact Statement</b>
<b>ICCPR</b>	<b>International Covenant on Civil and Political Rights</b>
<b>ICESCR</b>	<b>International Covenant on Economic Social Cultural Rights</b>
<b>LI</b>	<b>Legislative Instrument</b>
<b>NFPA</b>	<b>National Federation of Paralegals Association</b>
<b>OSIWA</b>	<b>Open Society Initiative for West Africa</b>
<b>RMC</b>	<b>Resettlement Monitoring Committee</b>
<b>TA</b>	<b>Tradition Authority</b>
<b>UDHR</b>	<b>Universal Declaration of Human rights</b>
<b>UN</b>	<b>United Nation</b>

# ACKNOWLEDGMENT

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## ***Mission Statement of CEPIL***

*To continually strive for justice  
and fairness especially for the  
poor and marginalized in  
society by working to improve  
democratic governance, rule of  
law and ensuring Accountability  
of public and private actors  
through advocacy, litigation,  
social mobilization and  
research.*

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# Intro duction

The Center for Public Interest Law has through its paralegal programmes made some notable achievements towards bridging the legal and human rights knowledge gap, particularly within mining communities and citizens generally. There is however still significant knowledge gap among citizens and communities in the mining sector which has left them at a disadvantaged position, with rarely any ease of leverage to assert their rights and to hold policy makers and companies accountable for the management and utilization of the natural resources and

the violation of their fundamental human rights.

Also, a number of factors still hinder the ability of most of affected mining communities, particularly women. These factors include; inadequate access to legal education or the lack of information on their rights; lack of knowledge on the procedures for negotiating fairer compensation, legal assistance during the period of negotiation and resettlement stemming from the inability of these poor communities to afford legal representation,

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access to justice for the redress of their violated rights, the fact that governments and its agencies, who have an obligation to protect the rights of such communities, often are involved in the violation of such rights among other factors.

This reviewed Training Manual is intended to further narrow this knowledge gap particularly in the management of natural resources by providing communities and citizens the relevant information on mining and policies and human rights to enable citizens and communities engage with duty bearers and companies. The Training Manual is written out of experiences of CEPIL and its staff in providing trainings for mining communities and civil society groups in Ghana.

The approach to the manual is to stress on both the theoretical and practical aspects of areas and subjects covered. Numerous trends run throughout the manual. First, the language is graphic, and as much as possible, free from legal

jargon. Other trends include the potential and attainable role that paralegals have in advocating human rights, the importance of on the ground monitors, and the vital contribution paralegals can make to increase access to justice in Ghana.

The primary objective of the Manual is to provide the paralegal with practical tools including recording/taking down interviews, documenting and submitting findings that will enable the furtherance by paralegal and his or her community of their human rights objectives. Also, the manual is intended as a basis for the bringing together of human rights advocates and persons undergoing paralegal training in various communities in Ghana to share experiences and expand their professional network.

The manual is designed to:

- provide paralegals with an overview of fundamental human rights principles,
- introduce the paralegal to the Ghanaian Constitution, International

- 
- and Regional human rights instruments,
- offer practical lessons in the language and protocols of human rights investigating reporting and monitoring.
  - provide communities and citizens an understanding of the enacted basic legal framework and policies to facilitate social accountability in the mining sector.
  - 
  - inform communities and citizens on the interface of the mining sector with environmental governance and how communities can participate in environmental impact assessments.
  - offer practical lessons for citizen government engagement as well as community mobilization for engagement.
  - provide communities and citizens an understanding of the judicial system and the various forms communities and citizens can access justice.
  - manual's approach stresses the practical rather than the theoretical. However, its framework should not deter facilitators to develop other innovative approaches and methodologies.



# Using The Manual

This paralegal manual is composed of twelve (12) chapters designed to introduce paralegals to the basic concept of paralegalism as well as build a foundation of legal and rights based education. Along with the guidelines and substantive portion of this manual, we have created basic exercises to help in the practical development of skills. Each chapter is made up of the following components:

## **1. Introduction**

## **2. Objectives**

## **3. Methodology**

- Activity
- Discussion

## **4. Annexes**

- Reference Materials/hand-outs
- References/Sources

**Introduction** explains each session and gives the facilitator an overall summary

of the module and how it links to the previous and subsequent modules.

**Objectives** serve as set of indicators that the training should attain.

**Methodology and Text** provide a road map for facilitating the topics. It introduces appropriate educational approaches and techniques in handling the sessions. The topic outline in particular summarizes the minimum basic education the facilitator can share and discuss with the participants.

**Annexes** direct the facilitator to reading materials that he or she may use as references for her/his input. It also contains a bibliography of Human Rights (HR) literature utilized in this manual along with suggestions for further reading.





# CHAPTER 1

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## Getting Started

# Introduction

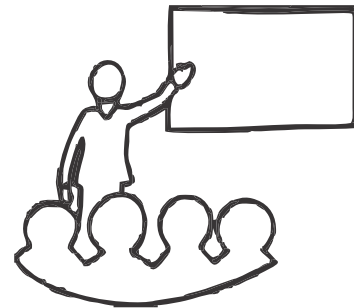
Training is the process of sharing skills and knowledge to achieve change and transformation. The paralegal training programme is a participant-centered programme. Therefore, the first part of the workshop lays the foundation for the training and allows the participants to become acquainted with the programme's objectives and content. In addition, this session provides the group the opportunity to become familiar with each other and explore the art of participatory learning.

## OBJECTIVES

- The objectives of this session are the following:
- To get to know the members of the training group and enable them work together productively
- To introduce participatory training
- To outline objectives and expectations of the training

- To review the objectives in relation to the needs and expectations expressed.
- To define rules to ensure participation, respect, and timeliness.

## *Program Overview*



The facilitator will introduce himself/herself and present the paralegal training workshop. Training materials such as the paralegal training manual and workshop schedule should be distributed to the participants. After that, the facilitator will present an overview of the training programme and briefly discuss the format of the coming days.

## ACTIVITIES

**Informal interviews** - The aim of this activity is to have participants interact and communicate with each other. It is important to allow participants and trainers time to be acquainted in order to build an atmosphere of trust and sense of belonging.

Participants should be divided into groups of two (preferably with someone they do not know). Each group will take five minutes to interact and perform an informal interview. The teams should ask general questions about each other e.g. “Are you married?”, “How many children do you have?” and “Where are you from?” etc. At the end of the stipulated time, the larger group will reconvene and each team will introduce his/her partner to the group.

### **Participatory Training**

Active participation fosters ownership and involvement. Participatory training enables participants to contribute to their personal learning experience while acquiring the basic knowledge and



practical experience to effectively perform their new role as paralegals.

In this context, a combination of participatory training methods and techniques are used throughout the manual giving emphasis to “learning by doing”. Such methods include *inter alia* role-plays, peer teaching, group exercises, and demonstrations. It is important to remember that this manual is meant to be used as a guideline. Further activities not included in this book are encouraged to enable additional learning and the improvement of the curriculum. Facilitators should ensure

that issues discussed throughout the training are relevant to the specific needs of trainees. Further, if possible, facilitators should introduce and implement activities that are relevant to the local context and to reflect existing community situations.

### ***Expectations of the Training***

This exercise allows participants to indicate their expectations before the start of the program and to check their expectations against the goals and

objectives of the training programme. The facilitator will write the expectations on a large piece of paper and post them on the wall in the training room. *Note:* It is important for the facilitator to explain what is intended by “expectations”. It can be explained as what each participant expects to be able to do or gain at the end of the training programme.

## ACTIVITIES

In this activity, participants together with the facilitator should develop ground rules to be applied throughout the training. Examples of helpful ground rules include:

- Listen and hear what is being said
- Refrain from interrupting others and allow each person the chance to speak
- Be on time
- Be respectful of other's ideas

Agreed upon rules should be written on flip chart paper and posted in the training area. It is important that all participants and

facilitators feel comfortable with the rules and commit to respecting them.



### ***Reference***

Canadian Human Rights Foundation. International Human Rights Training Program. Quebec, Canada, 2004.



# CHAPTER 2

## **Understanding the Work of a Human Rights Paralegal**

# Introduction

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The violation of human rights is one of the major problems facing the people of Africa, especially communities living in rural and economically deprived areas. Usually, women, children, ethnic minorities, indigenous groups and migrants are the most affected. Children for instance are forcibly recruited by armed groups, trafficked to work in coffee, tea and cocoa plantations and also to engage in small scale mining.

In Ghana, among the victims of human rights violations are the people in the rural areas who either do not know what their rights are or know them but do not know how to protect them. The majority of Ghanaians lack a basic knowledge of the law and their fundamental human rights. As a result, citizens are often incapable of recognizing when their rights are violated or threatened. These problems are worsened by:

- Inadequate access to legal education;
  - Lack of lawyers practicing human rights law and providing free legal services to poor people, especially those in rural parts of Ghana;
  - The fact that governments, who have an obligation to protect human rights, often are involved in the violation of such rights;
  - Inability to pay for legal services due to economic hardship;
  - Lack of desire to go to court on intangibles like human rights due to the slow nature of court processes, difficulty in understanding the court's language, and inaccessibility of the courts to the rural communities; and above all
  - Inadequate number of lawyers in the whole of Ghana.
- 
- It is because of these that the need for paralegals as human rights activists in Ghana has become extremely important.



Paralegals can provide legal assistance in poor rural communities by providing basic information to these communities and engaging in alternative ways of resolving legal disputes.

### **Objectives**

The discussion under this session focuses, in broad terms, on the work of human rights paralegals and at broadening the understanding of what it means to be human rights paralegal. At the end of the session, participants should be able to:

- . Define the term 'paralegal' and why they are important in our communities
- . Nature of human rights
- . Categories of human rights
- . The duties and responsibilities of a paralegal/functions of a paralegal
- . Knowledge and skill requirements of paralegals
- . Environment for paralegal work
- . Legal and paralegal tools for paralegal work

### **2.1 Who is a Paralegal?**

According to the American Bar Association, a paralegal is "a person qualified by education, training or

experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible."

The National Federation of Paralegals Association (NFPA) [USA] also defines the term as "a person qualified through education, training or work experience to perform substantive work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer."

From the above definitions, a paralegal is a person who is educated, has undergone training and has experience through his/her work in the legal field, which qualifies him/her to perform some legal tasks that would otherwise have been carried out by a lawyer.

In addition, we may describe a paralegal as a person who –  
knows about conflict resolution procedures;  
has basic knowledge of the law and its procedures;  
is either community-based or works

within some organization or structure; and has the necessary motivation, commitment, attitude and skills to help people and communities with their legal, human rights, administrative, constitutional and developmental problems, while at the same time empowering them to tackle these matters on their own in future.

It should be noted that a paralegal is not a lawyer. Therefore, he/she cannot professionally assist persons in court and other tribunals until she or he acquires the relevant qualification and accreditation. There are paralegals working in many different areas. Paralegals can do their work as a pay-job and get paid a salary, as in an advice office or a law firm or they can do paralegal work as volunteers without remuneration. Paralegal volunteers are persons who see their work as part of their community service and so they do paralegal work in their spare time.

Paralegals should always tell their clients that they are not lawyers. This also protects the paralegal should the client

take him/her to court in the future for giving wrong advice that should be given by a professional lawyer.

## ***2.2 Nature of Human Rights***

Human rights are universal in nature. They are the birth right of every person. Everyone is entitled to them. They are the same everywhere.

. Human rights are inalienable. That is, no one can have his human rights taken away or waived except in specific situations.

. Human rights are also indivisible, interrelated and interdependent – human rights are connected and they are equal in importance and are essential to the dignity and worth of every person – thus, a violation of one right could result in the infringement of others.

. Human Rights are also non-discriminatory – every person is entitled to them regardless of the person's gender, colour, religion, class, ethnicity, geographical location, social origin or political opinion.

## ***2.3 Categories of Human Rights***

Human rights are classified into three (3) sets.



- The first set of rights deal essentially with liberty and participation in political life. They are fundamentally civil and political in nature, and serve to protect the individual from excesses of the state. Examples of these rights include the right to life, the right to property, the right to a fair trial, the right to liberty and security of the person, equality before the law, the right to privacy, right not to be subjected to cruel, inhuman and degrading treatment or punishment, protection from slavery and forced labour. Others include freedom of association, right to freedom of thought, freedom of movement, conscience and religion, freedom of expression and the right to participate in government.

The second set of rights basically relate to social and economic equality. They assure different members of the citizenry equal conditions and treatment with respect to their economic, social and cultural lives. They include the right to housing, food, health, education, the right to practice one's culture; the right to education; the right not only to work but to enjoy just and favorable conditions of work, including payment of fair wages, decent

living, safe and healthy conditions of work and to social security.

The third set of rights goes beyond the civil and social rights. They include the right to clean and healthy environment, the right to economic and social development, group and collective rights such as the right to sovereign control of natural resources, the right to natural resources, the right to participate in cultural heritage and the right to intergenerational equity and sustainability.

From the foregoing and for our purposes, a human rights paralegal may be defined as:

A person educated, trained and equipped with basic knowledge of and skills in the law and who then provides legal assistance to his or her community through organizing the community to fight for their rights and who monitors human rights violation in his/her area of operation, be it at the national or chiefdom level.

## **2.4 The Duties and Responsibilities of a Paralegal as a Human Rights Activist**

**Legal Advice** – Since paralegals are community-based persons, one of the fundamental duties and responsibilities of paralegals is to give basic legal advice to the people in the community in which they live or operate. The stress is on the word "basic". The role of the paralegal is in the nature of legal first aid – a stop-gap measure or preliminary legal assistance

**Public Education** – Paralegals also carry out public education programmes focusing on the law and basic human rights in their communities through explanation of legal issues and the distribution of legal materials and literature (e.g. pamphlets simplifying important aspects of human rights law for laypersons) to literate community members. Also at the community level, well-trained paralegals can organize workshops to train fellow community members on their fundamental human rights. In that regard, the paralegals tend to serve as resource persons.

**Monitoring, Investigation and Analysis** – Paralegals are members of their communities and are usually either witnesses to or have easy access to information about the human rights violations taking place within their communities. This fact alone enables the paralegals to monitor closely and track developments relating to these violations. The duties may also include taking statements and interpreting and following up cases. Paralegals also track cases being handled by other human rights activists or paralegals. Any person or institution interested in information about these violations may contact the paralegals.

**Networking** – Paralegals establish links between or among their communities to individuals and institutions in society that 'matter', such as lawyers, state officials or organizations with a mandate to protect and promote human rights and civil society organizations working on human rights issues.

**Awareness** – Paralegals are also responsible for creating awareness and

bringing human rights issues to the attention of the public and the authorities by assisting in making contact with the press and in publicizing events and problems in their community. With the help of lawyers and community organizers, paralegals campaign for policy change and reform.

**Dispute Resolution** – A key function of paralegals is the provision of dispute resolution services to their communities. These services include negotiation, mediation and arbitration as well as the provision of counseling services to community members in situations of conflict.

**Information Gathering/Documentation** – Paralegals are also responsible for gathering and documenting information on human rights cases within the communities. They must follow up and keep track of cases in court, the Office of the Ombudsman, Human Rights Commission etc and document all of them.

## ***2.5 Knowledge and Skill Requirements of Paralegals***

### **Basic principles of law and legal**

**procedures** – A paralegal must have some basic knowledge of the substantive law and the procedures involved in enforcing those laws especially in the area of human rights.

**Practical legal skill** – A paralegal must possess the skill and knowledge on how to take statements or interview clients, e.g. victims of human rights violation; how to collect evidence for cases, how to write simple and basic legal letters. He or she must possess the skill for analyzing legal issues in order to give proper advice as a way of resolving problems.

**Ability to work with lawyer** – A paralegal must possess the skill needed to prepare a client/the community to take an issue to a lawyer, following up with lawyers about a client's case, acting as a link between lawyers and a community, doing preparatory and follow-up work on behalf of lawyers and taking up legal cases in a community.

**Dispute resolution and problem-solving skills** – A paralegal ought to be equipped with the art and skill of negotiation, mediation and arbitration which may be used to sort out problems in the

community rather than going to court.

**Monitoring skills** – a paralegal must also have the knowledge and skill for monitoring human rights activities within the communities in which he/she operates. A monitor is someone who watches and records what is happening – often when there is conflict between two sides. A monitor must be independent, and not take sides. A monitor must also be someone who is reliable and truthful. When there is conflict between different groups, for example in a community, or between the police and individuals, it helps to have monitors to give evidence about what happened from a neutral perspective since in any conflict, each side will tell a different story.

***A paralegal may monitor:***

prisons (has the person been given access to a lawyer, has s/he appeared in court within 48 hours/ what are the conditions in prison / what ages are the prisoners / are children in a separate cell etc.)

trials (who was the accused / what was the charge / who was the magistrate or judge / did the accused have a lawyer / what was the final judgment / was there an appeal application etc.)

hospitals (what types of illnesses or injuries are people suffering from / were medicines available/ were patients given proper treatment by doctors / nurses etc.)

vulnerable groups, such as refugees, women, children, the disabled and minority groups.

**Advocacy skills** – Paralegals should also possess advocacy skills by way of lobbying appropriate human rights institutions and be able to convince powerful bodies such as parliament, the Office of the Ombudsman or the courts, on the need to accommodate the interests of communities or groups on human rights issues.

**Public relations/media** – Also a paralegal must have basic skills in public relations. This must involve how to produce easy-to-read human rights pamphlets and booklets, how to speak to the media on human rights cases and how to collaborate with journalists and newspaper publishers to advocate and enforce human rights.

**Networking skills** – A paralegal must also develop good networking skills with

other partners in the field, such as law firms, legal resource centers, advice offices and community organizations by way of comparing notes, learning from others about strategies and collaboration.

**Organizing** – A paralegal is often the person who mobilizes the community around legal and human rights issues.

**Negotiating skill** – Paralegals may be called on to negotiate with authorities, and other parties concerning problems faced by their community.

## 2.5 *Qualities of a Paralegal*

In order for a person to effectively carry out the work of a paralegal, there are a number of important qualities they should possess. These include the following:

- Trust and honesty
- Patience
- Fairness
- Problem solving
- The ability to openly discuss the positive and negative consequences

of particular actions i.e. objectivity in analysis

- Honesty
- The ability to render proper advice
- Commitment to human rights principles
- Respect for each community's knowledge, traditions and culture.

## 2.6 *Legal and Paralegal Tools for Effective Paralegal Work*

**National Constitution:** The Constitution is the supreme law of the land. This means that any law that is inconsistent with any provision of the Constitution cannot be enforced as valid law. Most constitutions usually contain Bills of Rights, provisions on the Judiciary and other institutions for the enforcement of human rights. For



instance, the Ghanaian Constitution contains the following relevant provisions relating to human rights:

- Chapter (V) contains provisions on fundamental human rights and freedoms from articles 12-33.
- Articles 140 (2) gives the High Court control over enforcements of human rights
- Chapter 18 also establishes the Commission on Human Rights And Administrative Justice (CHRAJ) Article 216
- Chapter 11 establishes the judiciary articles 125 specifically establishes the judiciary) The Constitution should be the first point of call when a paralegal wishes to know whether a particular human right is recognized in Ghana and what its limits are.

### **Statutes:**

These are laws passed by parliament during constitutional regimes and are referred to as decrees when passed by military regimes. It is the constitution that gives Parliament the power to make laws.

Statutes also include laws made by institutions empowered by parliament and even the constitution itself to make such laws. They are subordinate to the national constitution, therefore if there is a provision in a statute which is contrary to a provision in the constitution, then it cannot have the force of law. Statutes must always be consistent with the constitution. Some of these laws affect the enforcement of human rights. Examples of statutes which affect human rights enforcement are:

Commission on Human Rights and Administrative Justice Act 1993 (Act 456)

### **International Covenants, Conventions and Treaties on Human Rights:**

These are international laws that affect members of that particular international body. These international laws usually come from the UN, regional bodies like the African Union and sub-regional bodies like ECOWAS. When these laws are ratified by a member state that member state must take steps to

implement or see to the realization of the provisions of the law. These covenants, conventions, and treaties are usually targeted at promoting, protecting and fulfilling human rights starting from the international level. These laws are enforceable both at the local national level by going to court or at the international level by going to the appropriate international court or tribunal. Failure to comply with the provisions of international law by a member state may attract sanctions from other members. Examples of these international laws are:

The Universal Declaration of Human Rights, 1948;

The International Covenant on Civil and Political Rights of 1966, which contains virtually all the provisions in the Universal Declaration of Human Rights;

The International Covenant on

Economic, Social and Cultural Rights, 1966;

The Convention on the Elimination of All Forms of Discrimination against Women 1979;

The Convention on the Rights of the Child;

The African Charter on Human and Peoples' Rights, 1981.

**Paralegal Tools:** These are published materials or manuals that will help paralegals in the performance of their work. They usually contain information on the methods, skills, knowledge and strategies required in order to be effective as a paralegal. They are only to be used by the paralegal to help him/her in the performance of his/her duties and not as legal documents.

## The Environment for Paralegal Work

### Social Environment

- network of social relationships within the community
- power relations between community leaders, chiefs and ordinary folk
- social conditions and environment have a profound impact on the effectiveness of paralegalism.
- effects of the war on social cohesion
- cultural influences that impact social relations

### Economic Environment

- lack of economic development fuels tension and conflict and adversely affects a person's ability to take on cases in the event of human rights violation
- as a result of abject poverty in the communities, a paralegal must not expect remuneration from the community for his/her services



## The Environment for Paralegal Work

### Political Environment

- the functioning of political institutions and how they affect individuals

### Legal Environment

- the functioning of judicial and other legal institutions
- access to justice
- the problem of lack of legitimacy of paralegalism
- significant shortage of trained lawyers in Ghana

#### Sources:

1. Center for Public Interest Law Paralegal Training Manual, June 2007
2. Paralegals and Advice Offices (HYPERLINK "<http://www.paralegaladviceoffice.co.za>")  
[www.paralegaladviceoffice.co.za](http://www.paralegaladviceoffice.co.za)), last visited February, 10,2008.
3. Ghanaian Constitution (1991).
4. D. J. Harris, *Cases and Materials on International Law*, 5th edition (200..).
5. Vivek Maru, "Between Law and Society: Paralegals and the provision of Justice Service in Sierra Leone and Worldwide", [Yale Journal of International Law, Vol. 31,2006]
6. Paralegals Advice Office, [www.paralegaladvice.org.za](http://www.paralegaladvice.org.za)

## ACTIVITIES

### **Why do we need paralegals in our communities?**

The facilitator should ask participants, as a group, to think of a situation in which they have needed a lawyer or someone who is familiar with the law to help them with a legal problem. Write the situations on flip chart paper. Next, divide the participants into small groups of four. Give each group a case study (which has been prepared in advance) representing different legal situations. Case studies should reflect situations that are appropriate to the group present at the workshop. For example, case studies involving workers rights, land compensation issues, and police brutality can serve as appropriate models for communities affected by mining. Ask the groups to discuss the role that they think a paralegal could play in the situation.

### **Discussion**

Prior to beginning the main training, it is important for the participants to fully understand the term “paralegal” and the role participants have as a paralegal in

their communities. Give the participants time to summarise the roles that paralegals can play and add any other roles not mentioned. Emphasize the following topics in the discussion:

What role(s) do you think a paralegal might play in your community?

For example in order to assert, promote and defend human rights such as adequate housing and just compensation in land acquisitions what kind of strategies and principles should a paralegal promote?

Should a paralegal have a basic knowledge of the law? If yes, give reasons why this is so.

### **Reference**

International Commission of Jurists (1999). Paralegal Training Manual. Nairobi,

The background image shows a mining operation. On the left, there is a large, red, industrial structure, possibly part of a conveyor system or a processing plant. A chain hoist is visible at the top center. On the right, a large bucket filled with brown earth is shown, with some material falling out. The sky is blue with some light clouds.

# CHAPTER 3

## **The Laws governing Mining in Ghana**

# Introduction

## ***Objective***

**The objective of this session is to provide:**

- The Paralegal with an understanding of a basic but relevant communities' aspect of the laws and regulations that govern the mining sector in the country.

### ***3.1 The Minerals and Mining Law***

Mining operations in Ghana is governed by the Minerals and Mining Act 2006(Act703) as amended by Act 900. Under the law every mineral in its natural state in, which is found under or upon land in Ghana, rivers, streams, water-courses throughout the country, the exclusive economic zone and an area covered by the territorial sea or continental shelf is the property of the Republic and is vested in the President in trust for the people of Ghana.

In that regard the President is given the power to acquire any land, or to approve

the occupation and use of any land if such land is needed for mining. However, there are some lands that cannot be used for mining. Such lands as provided under the law include

- land which is already granted for mining.
- lands which are reserved, by another law as areas where mining will not be allowed.
- Lands that the Minister may reserved or say that mining cannot take place in those areas.

The Minister in charge of lands and mining has the power of the president to grant mining rights for mining operations and is to give a notice in writing not less 45 to a chief or allodial owner and the relevant District Assembly of an application submitted to it by a mining company for the grant to it of a mineral right in respect of the land. This notice is to indicate the proposed boundaries of

the land in relation to which the mineral right is applied for' put in a gazette and exhibited at the offices of the District Assembly and published in a manner customarily acceptable to the areas concerned.

Where the mining company is granted a mineral right, it entitles the company to enter onto the land to commence mineral exploitation after paying compensation to the owner of the land and obtaining the necessary approvals and permits from the Environmental Protection Agency, the Forestry Commission, and the Water Resources Commission.

### ***3.2 The Right to use Water for mining operations***

The law provides that after obtaining the requisite approvals or licenses from the Water Resources Commission the company may, for purposes of or secondary to the mineral operations obtain, divert, impound, convey and use water from a river, stream, underground reservoir or watercourse within the land the subject of the mineral right.

### ***3.3 Rights of Communities to the use of the Surface of the Land***

Mining communities have the right to graze livestock upon or to cultivate the surface of the land in so far as it does not interfere with operations of mining company. However, they are not to upgrade their crops to a higher value (e.g from cassava to cocoa) without the written consent of mining company.

They are cannot also erect new buildings without the consent of the mining company. The consent of the company shall not be unreasonably withheld and if such consent is unreasonably withheld the person is to apply to the Minister for the consent to erect a new building.

Mining communities are also entitled to the payment of compensation for the taking of their lands and crops. (This is discussed extensively below)

To strengthen the regulatory framework governing the management of the minerals and mining industry, six (6) mining sector regulations have been enacted by Parliament to operationalise the Minerals and Mining Act, of 2006 (Act 703). These are,

1. the Minerals and Mining (General) Regulations 2012 (LI 2173);
2. the Minerals and Mining (Support

- Services) Regulations, 2012 (LI 2174);
3. the Minerals and Mining (Compensation & Resettlement) Regulations, 2012 (LI 2175);
  4. Minerals and Mining (Licensing) Regulations 2012 (LI 2176);
  5. Minerals and Mining (Explosives) Regulations, 2012 (LI 2177) and
  6. the Minerals and Mining (Health and Safety) Regulations, 2012 (LI 2182).

### **3.4 The Minerals and Mining (General) Regulations 2012 LI 2173**

The Minerals and Mining (General) Regulations 2012, LI 2173 seeks to regulate the general operations of licence holders including that of small-scale mining licence holders; the recruitment of expatriates; the training of Ghanaians; and the procurement of local products. Under the regulations, a holder of a reconnaissance licence or a mining licence is supposed to submit to the Minerals Commission for approval a programme for the recruitment and the training of Ghanaians and also indicate ongoing plans to replace expatriate staff with Ghanaians.

### **3.5 The Minerals and Mining (Support**

### **Services) Regulations 2012 LI 2174**

The Minerals and Mining (Support Services) Regulations 2012, LI 2174 also seeks to regulate support services provided for mineral rights licence holders by other companies. The companies to provide support services to small-scale miners are to be holders of licence Class B support service providers. The person to be licenced to provide support service to small-scale licence holders must also be Ghanaians and must have been specifically or exclusively licenced to provide the following services; mining, processing of ore, reclamation, re-vegetation and management of mining operations, haulage services and transportation of personnel among others.

### **3.6 Minerals and Mining (Licensing) Regulations 2012 (LI 2176)**

The Minerals and Mining (Licensing) Regulations 2012 (LI 2176) is one of the regulations enacted to operationalise the provision of the Minerals and Mining Act, Act 703. This regulation governs the grant of mining licence and sets the procedure and guidelines for processing mineral rights. It covers the processes and

procedures for the grant of reconnaissance licences, prospecting licences to the grant of a mining lease. It also has provisions on mergers, division, extension, renewals and expiration of reconnaissance and prospecting licences and mining leases.

### ***3.7 Minerals and Mining (Explosives) Regulations, 2012 (LI 2177)***

This legislative instrument seeks to regulate the use, storage, possession, conveyance and manufacture of explosives for mining purposes. The regulations have provisions on the safety measures that companies must put in place when using explosives. They include the need to obtain a certificate, licence and permits to use explosives, maintenance of operating plans, how to report an accident and general safety precautions.

### ***3.8 Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (LI 2182)***

These regulations also govern the health and safety issues in the operations of mining activities. It requires the submission of emergency plans, drawing up of code of safe working practice to the Inspectorate Division for approval among

other things. Generally the regulations have provisions on how to keep the mining activities safe and the workers and all other persons in good health and how accidents will be investigated.

### ***3.9 Payment of Compensation***

An owner or lawful occupier of a land is entitled to the payment of compensation for any disturbance of the rights of the owner or lawful occupier of the land. The claim for compensation is to be made by applying to the mineral rights holder/company with copies to the Minister and Land valuation Board.

The amount of compensation is determined by agreement between the company and the owner or lawful occupier of the land. The compensation is to be determined taking the following principles into consideration:

- i. the deprivation of the use or the particular use of the natural surface of the land or part of the land;
- ii. the loss or damage to immovable properties;
- iii. loss of earnings or sustenance suffered by the owner or lawful occupier in the case of a land under cultivation;
- iv. loss of expected income

When the person and company fail to

reach an agreement as to the level of compensation, the matter shall be referred by either of them to the minister to determine the compensation payable.

### **3.10 Minerals and Mining (Compensation & Resettlement) Regulations 2012, (LI 2175)**

The Minerals and Mining (Compensation & Resettlement) Regulations 2012, LI 2175 was passed to provide a framework for the payment of compensation and resettlement of communities who would be affected by the operations of mining licence holders as stated in the mining law of 2006. It sets out the criteria for applying for the payment of compensation and restates the principles that are to be used in the calculation of the quantum of compensation as stated above or the resettlement of communities.

Where the affected communities chose to be resettled by way of compensation, they are to be resettled on a suitable alternate land taking due regard to their economic wellbeing and respect for social and cultural values.

The cost for the resettlement of the communities is to be borne by the mining

company in agreement with the occupier and the structures to be constructed must compliance with town and country planning laws.

Apart from the above the company is also required to:

- i. Engage in prior consultation with District Assembly, Chiefs and inhabitants to be resettled on the impending resettlement activities;
- ii. Collect analyse and document information on socioeconomic and environmental conditions of the inhabitants to be settled;
- iii. Prepare a plan for the overall development of the resettlement area which shall include the measures, policies and strategies to guide the future development of the area; and
- iv. Prepare a strategic action plan which outlines specific projects and programmes with action plans, guidelines and institutional arrangement for execution”

3.11 The company is also required to prepare a resettlement plan and submit to the District planning authority who will after approving the resettlement plan is to submit the plan to the Minister. On the



receipt of the resettlement plan the Minister or person authorised by the Minister shall take necessary action to give effect to the resettlement plan.

As noted above the cost for implementing the plan shall be paid by the mining company who shall also be responsible for meeting obligations imposed on the company in the plan.

The mining company is not to carry out an activity or operation unless the inhabitants to be displaced by the proposed mining community have been resettled.

### **3.12 Resettlement Monitoring Committee (RMC)**

There should be established a Resettlement Monitoring Committee (RMC) who shall comprise of

- i. District Chief Executive,
- ii. District Engineers,

- iii. Town and country planning officer,
- iv. Assembly member,
- v. Two persons nominated by inhabitants;
- vi. A man and a woman,
- vii. Regional land officer,
- viii. Representative of the mining lease holder and
- ix. Representative of the Minister.

### **3.13 Annual Payments**

The mining company is required to pay annual ground rent as may be prescribed to the owner of the land or successors and assigns or to the Office of the Administrator of Stool Lands if stool land annual mineral right fees to the Commission, royalties and taxes where applicable

The background image shows a mining site with a large pile of earth and rocks. In the foreground, a person wearing a red headscarf and a striped shirt is visible, looking towards the left. A semi-transparent brown rectangle is overlaid on the center of the image, containing the chapter title.

# CHAPTER 4

## **Environmental Impact Assessment in the Mining Sector**

# Introduction

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The operations of mining companies create environmental impacts. Mining operations have major potential hazards for the environment, and may impact it at different levels: air, water, soil. Notable consequence of the mining activities is pollution and land degradation. Other environmental impacts include acid rain and the destruction of ecosystems. Therefore, all mining activities will be required to comply with environmental standards and guidelines put in place by the Environmental Protection Agency.

## **Objective**

**The session is to provide the paralegal**

- With an understanding the environmental impact assessment processes
- to appreciate the types of projects that requires an environmental impact assessment.

## **4.1 The Environmental Protection Agency**

One important institution or agency that regulates the oil and gas sector is the Environmental Protection Agency (EPA). The legal framework that set up the EPA is the Environmental Protection Agency Act 1994, Act 490. The role of the EPA is to advise the Minister responsible for Environment on the formulation of policies on the environment and in particular make recommendations for the protection of the environment and prescribe standards and guidelines relating to the pollution of air, water, land and any other forms of environmental pollution including the discharge of waste and the control of toxic substances.

The governing board of the Agency is appointed taking into consideration the knowledge, expertise and experience of the persons in matters relating to the environment. In addition, three other persons who are knowledgeable in finance or commerce are to be appointed

with at least one of them being a woman. Since its establishment, the board is always constituted with at least one woman as a member.

The EPA is the agency responsible for ensuring that companies comply with the laws and regulations on the environment. Specifically, mining companies are required to obtain environmental permits from the EPA as a basis for the grant of licence by the Petroleum Commission. Thus, the EPA supervises the conduct of the Environmental Impact Assessment by mining companies. It is also the EPA that monitors the environmental compliance of mining companies and other companies in the country through its regional and district offices.

#### **4.2 Environmental Assessment Regulations 1999, LI 1652**

In accordance with the EPA Act, the Environmental Assessment Regulations 1999, LI 1652 was enacted which among other things set out the processes and procedure for obtaining an environmental permit. The Environmental Assessment Regulations govern the processes for the

conduct of environmental impact assessments (EIA) and thus the acquisition of the environmental permit in the country. The EIAs are specifically aimed at an attempt to reduce the negative environmental impact arising from mining operation.

#### **4.3 Environmental Permit**

Companies whose activities will affect the environment are required to obtain an environmental permit. Every mining company requires an environmental permit to commence operations. An environmental permit is a prerequisite to obtaining a permit to carry out mining activities. No permit is issued unless an EIA is conducted.

The Environmental permit is obtained by an application made to the EPA.

#### ***What is an Environmental Impact Assessment (EIA)?***

An EIA is a planning and decision making tool applied to a proposed project, the implementation and development of which may have a *significant impact* on the environment.

#### ***What does the Environmental Impact***

### **Assessment involves?**

The EIA process involves the gathering and analysis of all relevant information on a proposed project to determine the likely consequences if implemented in a given area.

It also provides the mitigating and alternative measures to be put in place to lessen the negative impacts on the environment.

### **Key Actors in Environmental Impact Assessment**

The key actors involved in the EIA process include

- Proponent( Investor, Prospective

Developer, Mining Company etc)

- Environmental Protection Agency (EPA)
- Relevant Metropolitan/Municipal/District Assembly
- Relevant Ministry and departments
- Interested Parties (including communities, civil society organizations) etc

### **Projects that require Environmental Impact Assessment**

Generally, the following activities require an environmental impact assessment to be conducted.

Transportation(airport, roads, highways harbours etc)	Agriculture( Irrigation, land (40 hectares)
Health(Hospitals)	Mining(Gold, Diamond etc)
Energy (Oil & Gas fields)	Tourism(Hotels)
Manufacturing(Chemicals)	Forestry/wildlife
National parks	

## **Environmental Impact Assessment**

### **Procedures**

- Registration
- Screening
- Scoping
- EIS Study
- EIS Review
- Decision Making

### **Registration**

Any activity which has or is likely to have adverse effects on the environment or public health has to be registered by the EPA and an environmental permit obtained before the commencement of operations.

### **Screening**

Application for Environmental Permit shall include a report indicating the environmental, health and safety impact of the project; a clear commitment to avoid adverse environmental effects; commitment to address unavoidable environmental and health impacts and necessary steps for their reduction and the alternatives to the project.

The application for environmental permit will be initially assessed and screened

taking into consideration:

- the location, size & likely output
- the technology intended to be used
- the concern of the public
- land use
- other factors

After screening the application the EPA will issue a screening report indicating if the project is

- Approved or;
- Objected to or;
- Requires preliminary environmental report or
- Environmental impact statement

In respect of oil and gas operations, an EIA is mandatory. As a result, the EPA will require the company to prepare an EIS. The EPA will first request for the preparation of a Scoping Report by the company.

### **Scoping Report**

The scoping report shall set out the scope and extent of the EIA to be carried out which shall include draft terms of reference indicating the essential issues to be addressed by the EIS. This should include:

A description of the project;	An analysis of the need of the project;
Alternative to project;	Reasons for selecting site
Identification of existing environmental, social & economic concerns.	Information on negative and positive impacts of the project
The potential impact on health of people	Proposal to mitigate negative impact
Proposal to monitor the impact	Contingency plans
Consultation with the public	Provisional environmental management plan
Maps, tables, graphs etc	Proposal for payment of compensation

On the submission of the scoping report the EPA has 25 days to accept or reject the scoping report. If the scoping report is accepted, the applicant will submit the EIS based on the scoping report. If the scoping report is not accepted, the applicant will have to revise the report and re-submit.

### **Scoping Notice**

The Applicant is to give notice of the project to the relevant Ministries, Metropolitan

Municipal or District Assemblies. Also the applicant is to advertise the scoping notice in a national newspaper circulating in the locality. The applicant is also required to make available for inspection by the public copies of the scoping report. Usually copies of the report are placed at the District Assembly and the Chief's Palace.

### **Environmental Impact Statement (EIS)**

The EIS is required if the EPA is satisfied with

the scoping report prepared by the company.

The EIS on the proposed project may contain information such as the potential impact on the health of the people, and information on the possible health effect of the project on persons within and around the vicinity of the proposed project. The EIS

shall indicate a clear assessment of the project based on the scoping report and shall address the possible direct and indirect impacts of the project on the environment. The EIS should also among others address the possible direct and indirect impact of the project on:

Concentration of pollutants in the environment( air, water ,land)	Direct ecological changes from the pollutants on communities, vegetation
Provision of infrastructure e.g. roads, water, electricity etc	Changes in culture, social, economic patterns
Vehicular traffic	Immigration and demographic changes
Direct and indirect employment generation	Noise and vibration levels
Potential land use	Conflict and tourism
Possible health effects	Mitigation measures
Reclamation plan	



## **Public Hearing**

As part of EIA process, a public hearing will have to be conducted by the EPA on the proposed project under any of the following three circumstances;

- where there is great adverse public reaction to the commencement of the proposed undertaking;
- where the undertaking will involve the dislocation, relocation or resettlement of communities; or
- where EPA itself considers that the undertaking will have extensive or far reaching effect on the environment.

The EPA is to constitute a panel of not less than three (3) or more than five (5) persons.

At least a third of the members of the panel must be residents of the geographical area and reflect varied opinion. The Chairperson is to be appointed by EPA and must not be a resident of the locality where the project is to be situated. The Panel is responsible for organizing the public hearing and will receive submissions from bodies of persons and consider all the submissions and make recommendations to EPA within 15 days after the end of the public

hearing.

## **How citizens/communities can participate in the public hearing**

The public hearing presents opportunities during an environmental assessment process where members of the public can make contribution to the implementation or otherwise of the intended project. Depending upon the level of the assessment process, the participation of citizens and communities can range from submitting written comments or memoranda to making a presentation at a public hearing.

Ideally, citizens should participate in an EIA process as early as possible starting from the screening stage through to the scoping process to ensure that significant issues are identified and alternative ways of implementing the project are considered.

Public hearing gives the communities and citizenry an opportunity to evaluate and assess the proposed project and to make proposals regarding the impacts and measures that are to be put in place to avert these impacts, or to oppose the project altogether. Therefore citizens

should strive to engage as fully and effectively as possible in the EIA process especially the public hearings.

Experience has shown that public hearings organized by extractive companies are rather turned into public relations forums by the companies. Instead of educating the communities to be affected by the project both the positive and negative impacts of intended operations, such occasions are often used by the companies and other officials to extol and eulogize the benefits that the community will derive from the operations to the neglect of the negative.

In participating in the public hearing, citizens and communities must ask questions relating to

1. The impact of the proposed project on their existing water bodies
2. The impact of the project on the environment as a whole
3. The impact of the project on their present economic livelihood
4. The impact of the project on their general health

5. The concrete measure the company has put in place to avoid these impacts.

6. The mitigation measures put in place or are to be put in place to mitigate the impacts

The communities/citizens have the power through the EIA process in general and the public hearing in particular, to influence the outcome and implementation of the project through their participation in the process and can even disapprove the project and get the EPA to stop the project from being implemented or request for a relocation of the project to another site.

### **Review of EIS after Public Hearing**

The draft EIS is to be reviewed by EPA after receipt of the public hearing recommendations and if the EIS is acceptable, the applicant will be issued with the environmental permit. Where the draft EIS is not acceptable the applicant will be required to resubmit a revised EIS or will be required to conduct further studies determined by EPA and if the EIS is acceptable after further work has been done on it, the environmental permit will be issued and it will be valid for

18 months . All companies are required to submit annual environmental reports to the EPA.

### **Reclamation Bond**

A reclamation bond is to be posted based on the approved work plan for the reclamation of the project.

### **Complaints**

A person aggrieved with a decision of the EPA may submit a complaint in writing to the Minister within 30 days.

The Minister within 14 days must set up a panel comprising representatives of:

- Ministry of Environment
- Attorney-General's department

- Ministry responsible for the project
- Two other persons with specialization in the relevant field

The panel will hear the complaint and report their decision to the Minister within 60 days

### **Offence & Penalty**

It is an offence to:

- Commence operations without an environmental permit
- Fail to conduct EIA
- Provide false information
- Fails to submit annual environmental report
- Contravenes provisions of LI 1652.

The background of the slide features a blurred image of a courtroom. On the left, a brass scale of justice is visible. On the right, a dark wooden gavel rests on a surface. The overall tone is professional and legal.

# CHAPTER 5

## **The Ghanaian Judicial System**

# Introduction

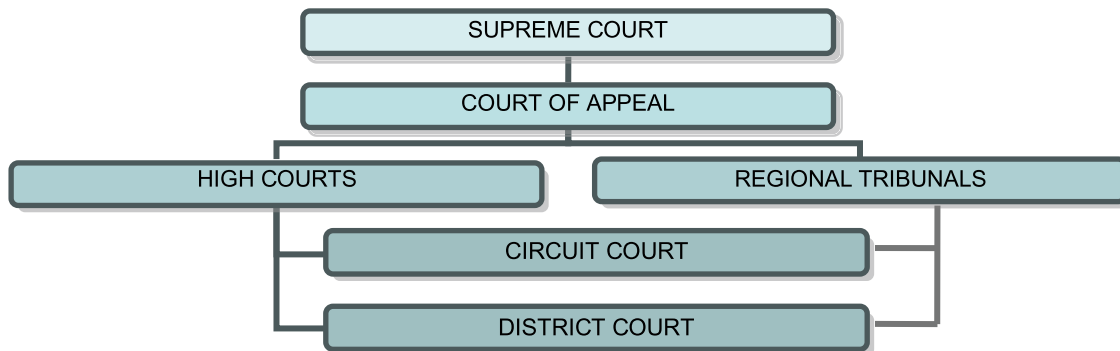
This session is intended to introduce participants to the Ghana judicial system and how it functions. The judiciary is often referred to as the "third arm of government". That is, besides the executive arm (the president and his ministers) and the legislative branch (parliament), the judiciary is the other public body that makes decisions about how government conducts its business of governing a country. The judiciary is also regarded by most people as the best 'guarantor' or 'protector' of the rights of citizens against violations by the state or by private persons or entities such as corporations.

## OBJECTIVES

The objectives of this session include the following:

- Understand the role and function of the courts in Ghana
- Examine the procedural steps in human rights litigation

The judicial system of Ghana is based on the English judicial system; it has its origin in the history of colonial rule. The judiciary in Ghana, just like its counterpart in the United Kingdom, comprises a system of 'superior' and 'inferior' courts which administer justice according to law. The superior or higher courts comprise the Supreme Court, the Court of Appeal, the High Court and the Regional Tribunal while the inferior or lower courts comprise the Juvenile Courts, District Courts, National and Regional Houses of Chiefs.





### **The Supreme Court – Article 128-135**

The Supreme Court of Ghana is established under article 128-135 of the Constitution. It is the highest court of the land as well as the final court of appeal. This means that decisions of the Supreme Court carry more weight than the decisions of other courts in Ghana and persons aggrieved by the decisions of courts lower than the Supreme Court can appeal in the final analysis to that Court

for relief. Its decisions can either affirm or override the decisions of lower courts. That is, all other courts are bound by the decisions of the Supreme Court

As a court, the Supreme Court is composed of the Chief Justice and not less than nine other justices of the Supreme Court. In order to sit for the conduct of its business, the Supreme Court is required to sit with a minimum of five judges. In other words, where the

number of judges sitting on a particular case is less than three, then the Supreme Court is said not to have quorum for the purpose of deciding that case.

Article 130 of the Constitution gives the Supreme Court, to the exclusion of all other Courts, the original power to deal with cases involving the enforcement or interpretation of the Ghanaian Constitution. This means that no other court in Ghana can seek to enforce or interpret the meaning of words or phrases in the Constitution or even determine whether there has been a breach of the provisions of the Constitution. Therefore, where any other court is dealing with a matter and an issue arises relating to the

enforcement or interpretation of the Constitution, that court must stay proceedings and refer the question of law in the case to the Supreme Court for determination. Unlike Sierra Leone in Ghana the Supreme Court has the original jurisdiction in Human Rights cases.

Finally, as the highest and final court of appeal in Ghana, Article 132 of the Constitution gives the Supreme Court supervisory power over all other courts and tribunals. This means that the Supreme Court can supervise the work of the other courts—the Court of Appeal, the High Court and the lower or inferior courts.





### **Court of Appeal – Article 136-138**

The Court of Appeal is created under article 136 of the 1992 Constitution. As a court, it is composed of the Chief Justice and not less than ten justices of the Court of Appeal. In certain cases, the Chief Justice may ask other superior court judges to join the Court of Appeal for the conduct of its sittings. The Court of Appeal may sit for the purpose of hearing a case with a minimum of three justices, Article 136 (1) (b) of the 1992 Constitution.

The Court of Appeal hears and determines appeals from the High Court and the Circuit Court exercises such other powers given to it under the law. It is significant to note that the Court of Appeal does not have original jurisdiction in the sense that it cannot hear a case at first hand but can only take on the case when there is an appeal by one of the parties. The Court can hear both criminal and civil cases and may sit at any place in Ghana as may be determined by the Chief Justice. When conducting its business, it is presided over by the most senior of the panel. But at the most it sits only in Accra. It can therefore handle Human Right cases on appeal from the High Court.

### **Regional Tribunals – Article 142-143**

Article 142 (1) gives the Chief Justice the power to establish Regional Tribunals in each region as the Chief Justice as the Chief Justice determines.

It is composed of the Chief Justice, one Chairman and other members who may or may not be lawyers as may be determined by the Chief Justice to sit as panel members of a Regional Tribunal.

In the performance of its functions, it shall be duly constituted a panel of the Chairman and not less than two other members. It handles only offences against the state and public interest which include, narcotic offences, economic fraud, loss of state funds or property, tax offence etc.

### **The High Court – Article 139 -143**

The High Court is made up of the Chief Justice and not less than twenty High Court Judges. It is duly constituted for its work by one judge or one judge and a jury. It has jurisdiction in both civil and criminal matters and can hear and decide appeals from inferior courts (e.g. Magistrate Courts). The High Court has been specifically given jurisdiction in human rights matters. What this means is that



human rights litigation must first start at High Court. It has jurisdiction over all lower courts.

### **The Inferior Courts**

These are the Circuit Courts, District Courts, National and Regional Houses of Chiefs and Traditional Councils which operate in areas demarcated magisterial districts across the whole of Ghana. Magistrates may be assigned to any of the magisterial districts or transferred from one magisterial district to another by the Chief Justice.

Magistrate Courts have power to deal with both civil and criminal cases within their areas of operation. However, they are limited in both areas as to the nature of civil and criminal cases they can handle. For instance, in criminal matters District courts have power to try summary offences which are punishable by a sentence of imprisonment which does not exceed two years and in the case of civil matters District courts cannot deal with matters involving contempt, if the claim, debt, duty or matter in dispute exceeds GH¢5000 in value.

The National, Regional Houses of Chiefs and Traditional Councils only handle chieftaincy cases.

### **Steps in Lodging a Civil Action High Court Rules C.I 47 2004,**

Typically, the cost of filing a lawsuit, let alone obtaining legal representation is more than what poor citizens or communities can afford. Court cases are often abandoned by local communities due to long delays in the judicial process or the financial costs involved. Each procedural step entails the payment of a fee that must be made to the court. Moreover, lawyers' fees contribute to the large expenditure required by those who wish to engage in a lawsuit.

The procedural steps in a Civil Action are as stated below. It is important for a paralegal to have a general understanding of these steps in order to assist fellow community members who are engaged, or wish to engage in a civil action. The steps are as follows:

#### **Stage 1**

1. Issue Writ of Summons with statement of claim. Writ of Summons must be served on defence personally or by

substituted services or service out of jurisdiction.

2. Entry of Appearance within 8 days of service of Writ.
3. File defence, 14 days after time limited for appearance and counter claim in any.
4. Application for direction and hearing of the application

### **Stage 2**

1. Plaintiff or the person on whom the burden of proof lies by the pleadings starts.
2. Plaintiff gives evidence in chief
  - . Cross examination of plaintiff by defendant
  - . Re-examination of plaintiff if any
3. If plaintiff has witness they are called who are examined, cross examined and re-examined
4. Plaintiff closes his case.
5. Defendant opens his case, gives evidence, examined, cross-examined and re-examined
6. Defendant opens his case, gives evidence, examined, cross examined and re-examined
7. Defendant closes his case.
8. Defendant addresses court

9. Plaintiff addresses court

10. Judgment by the Court

### **Stage 3**

1. Entry of Judgment by the successful party
2. (a) If judgment/order is payment of money the execution is by way of

. Writ of fieri facias

. Garnishee order

. Committal

. Sequestration

. Charging order, stop or

(b) Delivery of property

. Writ of sequestration

. Committal or

. Writ of delivery

(c) Recovery of possession of land

. Writ of possession

. Writ of sequestration or

. Committal

### **Stage 4**

1. Notice of Appeal must be filed by the unsuccessful party within 3 months from the date of judgment
2. Motion on notice by the appellant for stay of execution if necessary

3. Notice of settlement of record before the Registration of the trial Court
4. Settlement of records
5. Appellant fulfills conditions of appeal by entering into bond with sureties and paying an amount towards the cost of the records of appeal.
6. Preparation of the record of appeal by the registry staff
7. Record of appeal transmitted to the

appellate court and parties being formally notified

8. Hearing of the appeal
9. Judgment of the Court

If dissatisfied with the Court of Appeal's decision, appeal can be made to the Supreme Court.

### **Available Judicial Remedies**

The law provides remedies to persons whose legal rights have been violated. Courts generally grant these remedies for two purposes; (1) to exercise their supervisory power over lower tribunals and administrative bodies, (2) to vindicate private rights. The remedies are provided by the courts at the request of those who have been wronged. The remedies include damages, injunction, prohibition, mandamus, quo warranto, certiorari and declarations.

**Damages:** These are monetary compensation paid to a person for legal wrongs committed against that person. For instance, damages may be awarded to persons who have experienced environmental pollution by a mining company.

**Injunction:** An injunction is an order granted to restrain a person from engaging in conduct that may violate the rights of another person or cause injury to that person. It may be temporary or permanent. When an injunction is granted for a specific period and that period ends, the person must re-apply in order for the injunction to continue.

**Prohibition:** This is an order used to prevent a public body from violating the law. For instance, the remedy is available to prevent any public body from acting beyond the powers given it by statute or other public law powers or from abusing or exceeding its powers.

**Mandamus:** This is an order used to compel a public body to carry out a duty imposed on it by statute.

**Quo Warranto:** The name literally means "where is your warrant?" This is a remedy designed to question the exercise of power by public officials. For example, when the police have arrested a suspected criminal, the suspect may apply for a "quo warranto" order to question whether their arrest was legal. (e.g. where the police had no arrest warrant and the circumstances did not merit an arrest without warrant).

**Certiorari:** This is an order to invalidate the decision of an administrative body or lower court which has exceeded its lawful powers in making that decision. When a court, usually the High Court, grants a certiorari order, the decision of the administrative body or the lower court cannot be enforced against the person or persons affected by that decision.

**Declaration:** as the name implies, this remedy 'declares' the rights or claims of a party to a suit.

*References*

*Lewis C, Judicial Remedies in Public Law* (Sweet and Maxwell, London, 1992)



# CHAPTER 6

## **Human Rights Monitoring**

# Introduction

Human rights monitoring involves research, investigation, and documentation. Monitoring is the process of systematically following the activities and actions of institutions, organizations or governmental bodies. When a citizen or an organization decides to monitor human rights violations, it is essential to be clear regarding the monitoring objectives and goals.

## **Human rights monitoring is two -fold:**

1. Monitoring to find out whether the government and its agencies have complied or are complying with their human rights obligations. This kind of monitoring is undertaken to see whether international human rights standards or norms are met in the country;
2. Monitoring human rights violations/abuses by government, individuals and companies. This involves the proper documentation of such violations/abuse and finding avenues for the appropriate solutions of the violations/abuses.

A human rights monitor is a person who observes and records human rights abuses and compliance within his community or country.

## **OBJECTIVES**

This session is intended to enable the paralegal –

- keep track of and provide a historical record of human rights abuses/violations
- piece together information related to specific events
- monitor trends which can be used for preventable action
- illustrate the nature of the abuse
- disseminate information to the public, government officials, civil society organizations and the media
- seek justice and remedies for victims of human rights abuses, and
- provide evidence to be used in a court of law
- undertake other actions like condemnation and publicity campaigns, with the goal of bringing pressure on the government and/or to create public awareness



Paralegals Documenting a Forced Eviction of community

## 6.1 Types of Human Rights Monitoring

### 6.1.1 Situation monitoring

This kind of monitoring generally focuses on the general, i.e. the larger picture situation. It involves, for instance, the production of reports that largely describe and examine the occurrence of violations in a country or a community.

The situation report may also include an assessment of the progress a country has made towards the passage of relevant human rights legislation for the protection of the rights of the people and in compliance with the country's obligations under international law and also the performance

of human rights institutions.

*Examples of situation monitoring:-  
monitoring of human rights violations;  
monitoring the drafting and passing of legislation;  
monitoring the implementation of laws and policies; and  
monitoring the establishment and progress of human rights institutions.*

### 6.1.2 Case monitoring

This type of monitoring is very focused and victim-oriented. This involves following and documenting the developments in the case of a community or person or victim of human rights violation. This includes monitoring a human rights violation case before the courts, human rights commissions or traditional courts.

*Examples of case monitoring:-  
monitoring the legal process a case has gone through;  
monitoring of relief and rehabilitation services provided to a client; and  
monitoring of other forms of intervention in a case.*



## **6.2 Basic Principles of Human Rights Monitoring**

### **a) Do no harm**

The human rights monitor's primary duty is to protect the victim of human rights violation or potential victim by ensuring the safety of people who provide them with information. Human rights monitors must not put in danger the victims, witnesses and other individuals with whom they come into contact, in the course of their work.

### **b) Know the standards**

A person monitoring human rights must first know and understand the human rights standards and principles that are required in order to carry out an effective monitoring of a human rights situation.

### **c) Exercise Good Judgment**

A person monitoring human rights may not only apply the rules, but should sometimes use his or her personal judgment and common sense during the human rights monitoring.

### **d) Seek Consultation**

Human rights monitoring may require

consultation with other persons on how to handle certain difficult cases. A person doing human rights monitoring must make it a point to consult with others who may possess better information or have greater access to and knowledge of such information when handling cases that are difficult and complex.

### **e) Credibility**

Credibility is crucial to successful human rights monitoring. A human rights monitor must be trustworthy and must win the confidence of the community. If there is no trust, people will not be willing to cooperate and provide the person conducting the monitoring with reliable information. To have credibility the human rights must be known and accepted by the community as someone they can trust. In conducting monitoring, it is important that the monitor introduces himself or herself every time, especially when encountering persons he or she has not met before, explain what can or cannot be done with respect to the situation being monitored. A human rights monitor should not make promises that he/she cannot fulfill.

**f) Confidentiality**

The human rights monitor should assure the person providing the information that the information he or she is providing will be strictly confidential. Treating information obtained from human rights monitoring confidential is important for the person providing the information and the victim. It is therefore necessary to obtain the consent of the person giving the information before the use of the information in any other form. If the individual does not want the information attributed to him or her, the consent of the person is still necessary to use the information in any generalized sense. Measures must also be taken to safeguard the identity of the victims and persons providing the information.

**g) Security**

The human rights monitor must protect himself/herself by taking common sense security measures such as not traveling to conflict areas alone or putting himself or herself in a situation that may pose some risk or danger to his/her life.

**h) Understand the Community**

It is very important for a human rights

monitor to have a good understanding of the community in which the work is being carried out. Understanding the structure, e.g. who is in charge and what are his or her powers in the community, who to relate with, the culture, and custom is important. The monitor is more likely to receive the cooperation of the local population whose everyday life he/she understands and identifies with.

**i) Need for Consistency, persistence and patience**

It is important in human rights monitoring for the human rights monitor to collect sound, precise and factual information from reliable sources. For this reason, a variety of sources will have to be used in gathering the information. The information gathered must be carefully examined and verified. All possible sources of the information should be comprehensively examined. This will require consistency, patience and persistence on the part of the human rights monitor.

**j. Accuracy and Precision**

A human rights monitor must provide accurate and precise information

regarding the human rights issue. This requires that the report produced by the monitor be thorough and well documented.

#### **k. Objectivity**

The human rights monitor, when collecting and weighing information, should objectively consider all the facts, be unbiased and not take sides.

#### **l. Sensitivity**

A human rights monitor must be sensitive to the suffering that an individual may have experienced as well as the need to take steps to protect the security of the person. In conducting human rights monitoring, the human rights monitor must ensure that words used during the monitoring process are not insulting to individuals or the community at large.

#### **m. Integrity**

A person conducting human rights monitoring should carry out the monitoring with decency, respect and in an honest and honourable manner.

### **6.3 Scope of Human Rights Monitoring**

Human rights monitoring may be broad or narrow depending upon the rights covered, the target groups, and the geographical scope. It may cover a broad scope, for instance monitoring the performance of government in regard to civil and political rights, or economic social and cultural rights. The monitoring may also be specialized e.g. monitoring the disappearance of a person from the community.

Human rights monitoring may also cover the whole population of a country or community or be focused on specific sectors of the population like children, ethnic minorities, people with disabilities etc.

### **6.4 Approaches to Human Rights Monitoring**

There are two main approaches to human rights monitoring, namely

#### **a. The Violations Approach**

This is used to monitor civil and political rights, though it may be used for other rights as well. This approach seeks to identify the violation of a recognized right and not the steps government has taken

to comply with its obligations e.g. the monitoring of the torture or killing of a community member, the violation of an individual right to liberty, or a group's freedom of association etc.

#### **b. The Progressive Realization Approach**

Used for the monitoring of economic, social, and cultural rights. This approach

focuses on the periodic monitoring of government's efforts realizing economic, social, and cultural rights and comparing the progress made during the monitoring period with the previous record of the government. It may also be used to measure the progressive implementation of international standards by governments.

### **The Monitoring Process-What is Involved**

#### **Step 1- Determine the FOCUS of the monitoring activities**

- . Specify what and who will be monitored.
- . Examine your capabilities as a paralegal.
- . Set specific goals.

#### **Step 2- Investigation**

- . Collect information concerning the situation.
- . Crosscheck any information and examine the victim's and the violator's version of the story.
- . Continue to collect information for as long as the violation persists.

#### **Step 3-Documentation**

- . Systematic recording of information.
- . Analyze what has happened.

#### **Step 4 Reporting**

- . Produce a report (either oral or written) about the situation that includes an assessment of the situation.
- . Make sure the information is available to any of the organizations and people who are assisting the alleged victim. e.g. High Court, Human Rights Commission

## References:

Guzman, M., & Verstappen, B. (2001). What is Monitoring: Human Rights Monitoring and Documentation Series. Versoix, Switzerland Center for Public Interest law (2007) Paralegal Training Manual

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## SAMPLE HUMAN RIGHTS MONITORING REPORT

A human rights monitoring report will ensure accuracy and consistency in

investigating and documenting violations of human rights. The following framework should be used for the collection of information to ensure that the investigation is complete.

### The Victim

1. Name
2. Age
3. Gender
4. Status (married, single, widowed, deceased)
5. Address/town
6. Occupation
7. Affiliations (if applicable)

### Perpetrator(s)

1. Name
2. Gender
3. Organization (e.g. Army/Police or mining company)
4. Position (if applicable),

### Circumstances of Violation

1. What violations occurred?
2. Explain the circumstances in which the

violations were perpetrated?

3. Was anyone injured?

4. Did the police act in accordance with the law?

**When & Where:** Date and Place of the occurrence

**Analysis:** Reasons for the violation(s), if known.

**Supplementary materials** - maps, photographs, video, official orders

**Name of Human Rights Monitor:**

**Date of report :**

**References:** Human Rights Law Resources  
F:\austlii.edu.au\auotherHRLRes200116.html

Burma issues, *Human Rights Information Manual*, Tools for Grassroots Action,

## ACTIVITIES

Share your understanding of monitoring with the larger group. Then discuss the question below:

- . How can the process and results of monitoring activities assist those whose rights have been violated?

## CASE STUDY

*Kwesi Aduakwa is the lawful owner of a piece of land and a house in Nkwantakrom. One morning Kwesi and his family went to their fields to farm. Kwesi realized, upon reaching the farm that he had forgotten to take his machete. Therefore, he sent his 18-year old son, Ata home to get it. On his way*

*home Ata noticed two earthmoving machines parked at the outskirts of Nkwantakrom. At the village center, Ata came upon the village chief and his elders engaged in an intense argument with about 20 uniformed men. Apparently, the men had come with specific instructions to demolish the village and to make way for the commencement of Gold mining under a concession granted by the Government of Ghana. In no time, the uniformed men started to tear the village apart, building by building. Ata attempted to prevent the men from destroying Kwesi Aduakwa's house by standing in the way of the earth moving machines. Ata was knocked to the ground by one of the machines, whereupon the*

*uniformed men pounced on him and beat him until he fell unconscious. Several members of the village who tried to prevent the demolition also sustained various degrees of injuries and one teenager lost his life as a result of brutalities meted to them by the uniformed men. After destroying Nkwantakrom, the men left with a stern warning to the chief that he should instruct his people to vacate the village since the land on which it stood now belonged to the mining company.*

*The Nkwantakrom incident has been reported to you as a human rights monitor in the community.*

- a. What would be your first line of action?*
- b. What form of monitoring would you employ?*

- c. Draw up a Plan on how you will carry out this kind of monitoring.*
- d. Why is it necessary to perform human rights monitoring in this case?*
- e. What role, apart from human rights monitoring, can you play in assisting the community seek redress for the above human rights violations?*

Split the participants into groups. After the exercise, the group should come together and compare responses. The facilitator should highlight the strengths and weaknesses of the reports and choose model answers to serve as guidelines for future work.



# CHAPTER 7

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## **Human Rights Advocacy**



# Introduction

Human rights advocacy involves the strategies devised, actions taken and solutions proposed to influence decision-making at the community and national level to create positive change

Advocacy is:

- active promotion of a cause or principle
- action that lead to a selected goal
- one of many possible strategies, or ways to approach a problem
- non direct service.
- not necessarily confrontational

## OBJECTIVES

- This session is intended to enable the paralegal appreciate –
- the nature and scope of advocacy
- importance of advocacy
- ingredients of effective advocacy
- principles of advocacy
- types of advocacy
- when to choose advocacy
- tactics for effective advocacy

- advocacy methods/techniques
- survival skills for advocacy

## 7.1 Importance of Advocacy

Advocacy generally involves getting government or other institutions to correct an unfair or harmful situation affecting people in the community. The situation may be resolved through persuasion, by pressuring the authorities, by compromise, or through political or legal action. Advocacy is important for many different reasons.

- Advocacy is important because it is a way for a person to access what he/she is entitled to within the community and have his/her rights as an individual upheld
- Advocacy can change community attitudes and misconceptions
- Advocacy can assist people to gain access to resources, funding and information
- Advocacy can help make service providers and organizations

accountable and thus ensure that there is transparency in their actions and decisions

- Advocacy can help people have control over their situation
- Advocacy ensures that people have a voice that will be heard
- Advocacy ensures that there is recognition of the rights of individuals
- 

## 7.2 Ingredients of Effective Advocacy

- **The rightness of the cause:** If the cause is just, then positive results may likely flow from it.
- **The power of the advocate:** The success of advocacy also depends upon how influential the advocate is. This includes the ability of the advocate to forcefully present the issues, gather the necessary resources, and network with others.
- Factors such as the thoroughness with which the advocate researched the issues, the opposition, and the climate of opinion about the issue in the community can also determine the effectiveness of the advocacy.

- **Skill in using the advocacy tools available:** The skill with which the advocate applies the appropriate advocacy tools can also determine its effectiveness.
- **Above all, the selection of effective strategies and tactics:** The ability of the advocate to select the appropriate strategies and tactics would also to a large extent determine the effectiveness of the advocacy.

## 7.3 Principles of Advocacy

**a. Objectivity** – an advocate listens and evaluates information objectively. An advocate must know and recognize his/her own prejudices or biases. The effectiveness of an advocate is partly determined by the degree of objectivity the advocate brings to bear on a situation. Similarly, the degree of confidence or suspicion an advocate has in the system, and the belief in the potential of positive change, will affect the advocate's approach to advocacy and how he or she interprets situations and issues he or she encounters.

**b. Independence** – to effectively and credibly advocate for others, an advocate must exercise independent judgment at all times.

**c. Sensitivity & Understanding** – an advocate conveys interest and understanding. He/she will get more information and a more accurate sense of what others want if he/she shows that he/she is listening and is sensitive to the concerns of others. Similarly, an advocate must demonstrate a level of understanding of the issues he/she is advocating.

**d. Persistence & Patience** – effective advocacy requires the advocate to be determined, patient and persistent in whatever advocacy issue the advocate is dealing with. The advocate must be firm enough in his/her position, deal with setbacks, and maintain the momentum.

**e. Knowledge & Judgment** – the advocate must understand what to ask for, whom to ask, when to ask and be able to exercise judgment about what is reasonable, and what is not.

**f. Assertiveness** – an advocate should be

polite, but firm. He/she needs to have a good working relationship with others, but must not allow them to control him/her.

**g. Privacy & Confidentiality** – an advocate should respect the privacy and confidentiality of others, and respects the basic rules, to be effective and to maintain credibility. In addition, an advocate must be sensitive to the culture of the persons he/she is working with or advocating for.

#### **7.4 Types of Advocacy**

There are three main forms of advocacy. These are individual advocacy, systemic advocacy and self-advocacy.

**a. Individual Advocacy** – involves concentrating effort solely on advocating for one or two people. This type of advocacy is focused on the specific needs or situation surrounding the individual (e.g., a person with a disability).

**b. Systemic Advocacy** – primarily concerned with influencing and changing the 'system' in general, such as legislation, policy and practices, in ways that will benefit a group of people or community or the country as a whole. Systemic advocacy is used for advocating for overall changes in the law, service policies, government, and community attitudes.

**c. Self-advocacy** – similar to individual advocacy except it is undertaken by a person or group of people on behalf of themselves. If it is a group of people self-advocating they typically share the same characteristics, interests, or needs. An example is where small scale diamond miners in Sierra Leone advocate for a change in government policies that will benefit their group.

## **7.5 When to Choose Advocacy**

The best time to start planning for an advocacy campaign is:

- when your direct experience or preliminary research shows you cannot achieve your goals in any other way

- when you are sure you have or will have the capacity to carry it through
- when you have enough enthusiasm and energy to carry out the advocacy work

## **7.6 Tactics for Successful Advocacy**

**a. Understanding the Issue** – the advocate must first have an in-depth understanding of the issue(s) he or she is advocating. For example, a person advocating for the recognition of the rights of artisanal miners must first have a good understanding of the issues pertaining to artisanal mining. Also, advocacy is about influencing things that matter. A human rights advocate will need to know where the power of his/her opponents lies, and how he/she can most effectively influence or confront it.

**b. Recognizing Allies** – in human rights advocacy, the advocate must recognize the value and importance of allies. The human rights advocate must identify people or groups who share the cause he/she is about to advocate for or is advocating for, i.e. people who can bond together with him/her and give his/her

matter visibility and power. An advocate should however be careful about who to invite on board. Some allies may bring baggage that the advocate does not need. In addition to deciding, whether other groups have an interest in his/her cause, it is important to find out if an alliance with them is in his/her interest.

**c. Identifying Opponents and Resistance** – most advocacy campaigns have recognizable opponents. A human rights advocate must identify his/her opponents, understand the reason why they are putting up resistance, and what can be done about it. Note that people you may identify as opponents may turn out to be sympathizers or allies. Similarly, people from whom you might expect support might turn out to oppose you.

**d. Encouraging Involvement of Potential Opponents as well as Allies** – human rights advocates should as much as possible be able to approach certain groups or individuals who were opposed to the matter. Maybe they still are, but you may find that you may find help in unexpected areas. Possibly, because of your advocacy work, some aspects of your case may

become clearer to them, and you may find that although a certain group may still oppose you on some issues, they may side with you on other issues.

## **7.7 Advocacy Methods/Techniques**

Each advocacy situation is unique and relationships between and among the parties are unique. The experienced advocate will gather facts, consult with others, analyze the situation and determine the most effective method of intervention. Depending on how the situation develops, the strategy and techniques of the advocate may change. The following methods or techniques of advocacy could be employed by an advocate depending on the situation –

- writing letters to elected officials
- use of both print and electronic media (writing letters to editors)
- filing complaints before state agencies/officials or international human rights or donor agencies
- seeking enforcement of existing laws and policies
- lobbying decision makers
- conducting a petition drive

- organizing public demonstrations
- initiating legal action
- organizing boycotts
- organizing strike
- electronic advocacy (e.g. emailing networks with similar cases)

## 7.8 Survival Skills for Advocacy

The following are guidelines have been used successfully for other advocacy efforts and are effective in promoting the cause of the advocate –

- highlight the positive
- emphasize your organization's accomplishments to the community
- plan for small wins
- present the issues in the way you want others to see them
- develop your own public identity
- keep it simple
- check your facts
- be passionate and persistent
- be prepared to compromise
- be opportunistic and creative
- stay your course
- look for the good in others
- keep your eyes on the prize
- make issues local and relevant
- get broad based support from the start
- work within the experiences of your group members
- try to work outside the experiences of your opponents
- make your opponents play by their own rules
- tie your advocacy group's efforts to related events
- enjoy yourself!

Divide the participants into groups for a discussion and attempted resolution of the problem below.

## **CASE STUDY**

*The Government of Ghana has placed a Bill before Parliament for passage into law. The Bill is aimed at regulating the award and operation of mining concessions, and it contains the following provisions:*

### **Clause 1**

*(a) A mining concession shall be awarded to any person or entity by the Minister of Lands and Natural Resources. The award of a concession shall be at the sole discretion of the Minister if he is satisfied that it is in the national interest to make such an award.*

*(b) The decision of the Minister shall be final and it shall not be subjected to a judicial, administrative, or any other scrutiny.*

### **Clause 2**

*Notwithstanding Clause 1 of this Bill, a mining concession of more than two (2) hectares shall only be awarded to multinational corporations that are capable*

*of undertaking large scale mining operations.*

### **Clause 3**

*(a) A multinational corporation awarded a concession under Clause 2 of this Bill shall be exempted from paying any form of taxes, levies, duties or royalties for fifteen (15) years calculated from the date of the commencement of prospecting by the corporation.*

*(b) A multinational corporation awarded a concession under Clause 2 of this Bill shall not be liable to pay compensation exceeding one million cedis to any person or community for injuries or damages arising from its activities.*

### **Clause 4**

*Notwithstanding Clause 3(b) of this Bill, a multinational corporation awarded a concession under Clause 2 of this Bill shall have absolute rights over the land forming part of the concession, including the right to forcibly eject any person thereon, or to remove any structure or fixture thereon.*

### **Clause 5**

*(a) Nothing in this Bill or in any other law shall require a multinational corporation to provide social amenities in its area of*

operation.

(b) A multinational corporation may provide social amenities in its area of operation if it deems fit.

- Which provisions would you want amended?
- Why should these provisions be amended?
- What type of advocacy would you employ in this case?
- Map out an advocacy plan indicating the tactics, techniques and methods that you would adopt for an effective advocacy and why.

**References:**

Guzman, M., & Verstappen, B. (2001). What is

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The Community Tool Box- Bring Solutions to Light, Overview: Getting an Advocacy Campaign Off the Ground. <http://ctb.ku.edu>



A background photograph showing a group of young children in a classroom setting. They are looking down at a book or paper on a table. The image is slightly blurred and has a dark overlay in the center where the text is located.

# CHAPTER 8

## **Human Rights Education**

# Introduction

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A human rights education is a life-long process by which people at all levels of development and in all levels of society learns the respect for the dignity of others and the means and methods for securing that respect. In other words, it aims at building a culture of respect for human rights through instruction and learning.

## OBJECTIVES

This session is intended to enable the paralegal appreciate the –

- . need for human rights education
- . principles of human rights education
- . methods of human rights education

## 8.1 Why Human Rights Education?

Education in human rights is itself a fundamental human right as well as a responsibility. Human rights education promotes democratic principles. Because human rights education examines human rights issues without bias and from

diverse viewpoints, it often leads to a broader understanding and increased recognition of democratic principle and culture. Human rights education also encourages critical thinking essential to a democracy.

Similarly, and depending upon the level of the human rights education, it provides multicultural and historical perspectives on the universal struggle for justice and dignity. In addition, human rights education challenges communities to ask what human rights mean to them personally and encourages them to translate caring into informed, nonviolent action. Human rights education helps people feel the importance of human rights, internalize human rights values, and integrate them into the way they live. Human rights education also affirms the interdependence of the human family. It gives people a sense of responsibility for respecting and defending human rights and empowers them through skills to take appropriate action.

Human rights education can achieve the following:

- produce change in values and attitudes
- produce change in behavior
- empower people for social justice
- develop attitudes of solidarity across issues, communities and countries
- . develop knowledge
- . encourage participatory skills

## **8.2 The Goal of Human Rights Education**

The goal of human rights education is to help individuals understand human rights, value human rights, and take responsibility for respecting, defending, and promoting human rights. As noted above, one important outcome of human rights education is empowerment – a process through which people and communities increase their control over their own lives and the decisions that affect them. The ultimate goal of human rights education is people working together to bring about human rights, justice, and dignity for all.

## **8.3 Need for Human Rights Education in Communities**

People who are ignorant about their rights are more vulnerable to having them abused and often lack the language and the understanding of their rights to effectively advocate for them. Human rights education contributes to the building of free, just, and peaceful societies. It is also recognized as an effective strategy of preventing human rights abuses. Once community members understand human rights, they will work to secure and defend them for themselves and others. They will begin to look for the realization of human rights in their own lives. Through human rights education, individuals will examine their communities, families and their personal experiences from human rights perspectives.

Human rights education in communities helps to –

- cultivate respect for others, self-esteem, and hope
- engender an understanding of the nature of human dignity and respect for the dignity of others
- develop in individuals the ability to sympathize with those whose rights

- are violated
- assure the recognition that the enjoyment of human rights by all citizens is a precondition to a just and humane society
- inculcate the belief that valuing non-violence and believing that cooperation is better than conflict

#### **8.4 Who Needs Human Rights Education?**

Everyone needs human rights education. However, certain groups have a particular need for human rights education either because they are especially vulnerable to human rights abuses, or because they hold positions that require them to uphold human rights, or because of their ability to influence and educate. These persons include –

- law enforcement personnel, including police, army, and prison officials
- lawyers, judges, and prosecutors
- members of parliament
- public officials
- social workers
- journalists and media representatives
- women's organizations
- community activists and civic leaders

- minority groups
- members of the business community
- trade unionists
- indigenous peoples
- religious leaders
- others with a special interest in social justice issues
- the youth and all varieties of vulnerable groups like children, poor people, people with disabilities

#### **8.5 Principles of Human Rights Education**

No matter the setting, common principles inform the methods that are to be used to teach human rights. The following are some of the principles a person conducting human rights education should employ:

- providing open-minded examination of human rights concerns with opportunities for participants to arrive at positions different from those of the facilitator
- inclusion of an international and worldwide dimension to the human rights subject being examined

- avoiding too much focus on human rights abuses – emphasize human rights as a positive value system and a standard to which everyone is entitled
- affirming the belief that the individual can make a difference and provide examples of individuals who have done so
- inclusion of an action dimension that provides participants with opportunities to act on their beliefs and understanding – these actions should address problems both at home and elsewhere in the world
- be responsive to concerns relating to cultural diversity – activities should reflect a variety of perspectives (e.g., race, gender, religion,
- cultural/national traditions)
- be concerned about both content and learning process – it is difficult to engage participants in examining

issues related to rights and justice if the learning environment does not demonstrate respect for justice and human dignity

- keep lecturing to a minimum – instead use participatory methods of learning, such as role plays, discussion, debates, mock trials, games, and simulation
- connect people's lived experience directly to theoretical notions and legal instruments

## 8.6 Methods of Human Rights Education

- teaching
- brainstorming
- discussions
- dramatization
- video shows
- field trips
- hearings of tribunals and courts
- media
- story telling

## ACTIVITIES

Divide the participants into groups for a discussion and attempted resolution of the problem below.

### CASE STUDY

*In April 2006, Gold was discovered in large commercial quantities along the Asutifi*

District. The entire area was awarded to Aponkye Inc., a consortium formed by the Government of Ghana and Manu Inc, an American company.

Aponkye Inc. commenced mining operations and pouring Gold in earnest much to the desire of the Government and citizens of Ghana. Ghana is now self-sufficient in gold production and its derivatives. The economy is booming and unemployment has dropped to a world record low of 1%.

However, it was discovered in December 2007, that the mining practices of Aponkye Inc. has resulted in extensive pollution in Asutifi District and beyond, reaching as far as Tano Districts. Apparently, Aponkye Inc. had and is still engaging in discharging toxic compounds and mind waste into streams, the Supre River, and wetlands. In addition, the company has been burning waste products in open pits without temperature and air pollution controls.

These practices have and continue to contaminate the drinking water, rivers, streams, ground water and air with dangerously high levels of toxins. This has resulted in a massive depletion of fish stocks

in the watercourses. Livestock has also greatly reduced in numbers as a result of the withering away of pasture grounds. Almost every inch of land in Asutifi District has been rendered infertile and the crops on farmlands have withered away. A bag of very low quality maize now sells at 200 cedis and over.

Residents of Asutifi District now suffer from various illnesses, including strange body growths, and diseases directly linked to the contamination. There is a high infant mortality rate and stillbirths in these communities. A good number of children under a year are either deformed or terminally ill. The life expectancy rate in the communities has dropped drastically. There are no good hospitals in the district to attend to the sick and the dying. Teachers are refusing to accept postings to these areas resulting in a high school drop-out rate.

When the community leaders reported these occurrences to the Minister of Lands and Natural Resources in Accra, he replied that he had more important business to attend to and that these are little sacrifices that Asutifi District has to pay for the sustained prosperity of the nation.

1. What measures will you take to address the violations?
2. What challenges do you anticipate to face in an attempt to address these human rights issues?
3. How do you intend to overcome these challenges?

**References:**

Guzman, M., & Verstappen, B. (2001). What is Monitoring: Human Rights Monitoring and Documentation Series. Versoix, Switzerland Center for Public Interest law (2007) Paralegal Training Manual University of Minnesota Human Rights Center, Training Manual on Human Rights Monitoring University of Minnesota Human Rights

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# CHAPTER 9

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## **Human Rights Institutions and Procedures**



# Introduction

Human rights are defined, promoted and defended through human rights institutions. Institutions are agencies or organisations created at the national and international levels and mandated to promote and protect the basic rights of people. Human rights institutions include human rights commissions, courts and ombudsmen.

## OBJECTIVES

This session is intended to enable the paralegal appreciate the role and operations of –

- national human rights institutions and their complaints lodging procedures
- regional human rights institutions
- international human rights institutions

### 9.1 National Human Rights Institutions

National human rights institutions are those which are created by law to deal

with domestic human rights problems in Ghana. That is, they are established by the Constitution of Ghana or by legislation passed by the Parliament of the Republic of Ghana. These national human right bodies are the following

- The Human Rights Commission of Ghana
- High Court
- Supreme Court

#### 9.1.1 The Human Rights Commission of Ghana

The Commission for Human Rights and Administrative Justice (CHRAJ) is an independent body set up by Parliament. The Commission exists to foster a culture of respect for fundamental human rights and freedoms, as well as administer justice and fairness in Ghanaian society. In practice, the Commission was designed to investigate and settle complaints made by citizens quicker than the courts. Any citizen with a human rights complaint may file the grievance with the Commission

free of charge. CHRAJ has offices in all the regions of Ghana and their services are free.

The primary duties of the Commission are to:

- Investigate complaints of human rights abuses.
- Investigate all instances of alleged corruption.
- Educate the public about their human rights.
- Report to Parliament annually on their activities.
- How to file a human rights complaint with CHRAJ:
- Make a written or verbal complaint with the Commission.
- CHRAJ sends complaint to the

respondent (i.e the person or institution against whom the complaint is made who has 10 days to make a response.

- CHRAJ makes investigations into the allegations.
- Parties can mediate the dispute with the help of a CHRAJ representative.
- If found to be guilty, charge the body with a human rights violation and ask the body or person to remedy the situation and or pay compensation to the victim

## How to Lodge a Complaint before the Commission

Complaints may be filed by the victim or the victim's relative in his/her own native language



The complaint must be as specific as possible with respect to dates, names, witnesses, relevant evidence, action taken prior or contemporaneous to complaint



The complaint must clearly indicate the remedy sought by the complainant



After the complaint has been filed, an employee of the Commission will then explain the rest of the processes to the complainant



The Commission cannot investigate alleged violations pending before or already decided by a court of law,

## 9.2 Regional Human Rights Institutions

There are a number of human rights institutions at the regional (i.e African) and sub-regional (West African) levels. Ghana, being a member of the African Union (AU) and ECOWAS, is a party to most of the treaties establishing human rights institutions in the region and sub-region. The relevant institutions include the following.

### 9.2.1 African Commission on Human and Peoples' Rights

The Commission was established by the African Charter as the foremost organisation to promote and protect human and peoples' rights in Africa. Its mandate includes receiving and publishing periodic human rights reports of member states, including Sierra Leone. The Commission has three broad areas of responsibility, namely –

- promoting human and peoples' rights
- protecting human and peoples' rights
- interpreting the African Charter on Human and Peoples' Rights

### *Selected Human Rights Cases decided by the African Commission*

- 
- *Constitutional Rights Project & Another v. Nigeria* – this case dealt with the Abacha government's cancellation of elections considered free and fair by international observers. The Commission held that the cancellation violated the rights of individual voters as well as the right of all Nigerians as a people to choose their government. The Commission also appealed to the government of Nigeria to release all those who were detained for protesting against the cancellation of the elections.
- *African Institute for Human Rights and Development (on behalf of Sierra Leonean Refugees in Guinea) v. Guinea* – this case relates to the violation of the rights of Sierra Leonean refugees in Guinea. It was alleged by the complainant that on September 9, 2000, Guinean President Lansana Conte declared on national radio that Sierra Leonean refugees in Guinea should be arrested, searched, and confined to refugee camps. His speech incited soldiers and civilians to

engage in mass persecution and discrimination against Sierra Leonean refugees in violation of the African Charter. The Commission held that there was violation of the African Charter and the OAU Refugee Convention by the government of Guinea. The Commission recommended that a Joint Commission of the Sierra Leonean and the Guinean governments be established to assess the losses by various victims with a view to compensate the victims.

- *Bissangou v. Republic of Congo* – the complainant won a suit against the government of Congo but was unable to enforce the judgment. Upon application by the complainant, the Commission held that a refusal by the state to pay damages in execution of a judgment of a domestic court is a violation of the right to equality before the law, fair trial, and the right to property. The Commission requested the Republic of Congo to pay compensation for the loss suffered by the complainant as assessed by the High Court of Brazzaville.

- *Purohit & Another v. The Gambia* – this case was about appalling conditions of detention in a Gambian mental health institution. In its decision, the Commission held that requiring local people, like the patients in this case, without legal representation, to exhaust local remedies in the Gambia before approaching the Commission is not realistic. The Commission upheld the right to health and non-discrimination on the basis of disability.
- *International Pen & Others (on behalf of Saro-Wiwa) v. Nigeria* – a complaint against Nigeria was brought to the Commission on behalf of Ken Saro-Wiwa, after he and eight other persons were sentenced to death. A number of irregularities were identified in the trial and the Commission requested the Abacha government not to execute the accused until the final determination by the Commission. However, the government of Abacha disregarded the Commission's request and executed Saro-Wiwa and the other defendants.
- *Achuthan & Another (on behalf of Banda*

*and Others*) v. *Malawi* – two Malawian nationals, Vera Chirwa and Orton Chirwa, were tried by a traditional court without being defended by a counsel. They were sentenced to solitary confinement, where they were chained and fed very poor food. They were also denied medical care. This application for human rights violations was brought after the government that maltreated them was no longer in power. The Commission held that new governments are responsible for the human rights violations of their predecessors; that the trial of Vera and Orton without being defended by a counsel violated the African Charter.

- *Civil Liberties Organisation (in respect of Bar Association) v. Nigeria* – this matter was brought by the Civil Liberties Organisation, a Nigerian NGO, in protest against a decree which established a new governing body of the Nigerian Bar Association, namely the Body of Benchers. Of the 128 members of the Body of Benchers, only 31 were nominees of the Bar Association. The rest were nominees of the government. The Commission

held that governmental control of the Nigerian Bar Association was a violation of the right of freedom of association of practicing lawyers.

- § *Jawara v. The Gambia* – democratic rule in The Gambia came to an end in 1994 when President Jawara was removed in a coup d'etat. Jawara brought a complaint against the new government of The Gambia. The Commission held that by removing Jawara from power, the new government had violated The Gambian peoples' right to self determination.

## **9.2.2 African Court on Human and Peoples' Rights**

The African Court became operational in January 2006. It is a regional court that rules on African governments' compliance with the rights enshrined in the African Charter on Human and Peoples' Rights. It comprises eleven judges. The Court hears cases of human rights abuses provided the plaintiff or complainant has exhausted local remedies.

### **9.2.3 The ECOWAS Court of Justice**

The Court was established in pursuance to the Protocol to the Treaty establishing ECOWAS. It is mandated to hear cases involving human rights violations, among others. Unlike the African Court, the ECOWAS Court is a court of first instance

i.e. aggrieved persons or governments may go straight to the ECOWAS Court to seek redress. There is no requirement to exhaust local remedies in the domestic courts.



# CHAPTER 10

## **Alternative Dispute Resolution**



# Introduction

ADR is a general term that describes all conflict or dispute solving or resolution methods outside the court system. However, courts may assist the parties to use alternative dispute resolution. ADR methods offer a cheaper and speedier form of justice for ordinary citizens.

## **OBJECTIVE**

This session is aimed at enabling paralegals appreciate the existence and importance of the different methods of conflict resolution outside the court system and to learn skills to resolve conflicts successfully.

## ACTIVITIES

In this session, the facilitator should introduce ADR by asking the participants how they generally resolve conflicts with their friends, families, and work colleagues. It is important to point out the fact that most Ghana are more familiar with ADR than they may think. For example, many Ghana use informal arbitration by “respected persons” such as family heads and religious leaders. Additionally, chiefs and community based public hearings also serve as informal ADR mechanisms. For example, a land dispute between village members will

often be settled by a chief and not by the courts.

The facilitator should introduce a scenario about a conflict and request volunteers to act out the scenario and how it would be typically settled in their everyday lives.

## **DISCUSSION**

- How are conflicts typically resolved in Ghanaian society?
- What conflicts would you be inclined

to settle before a court?

- Is going to court always appropriate?
- Are there alternatives to going to court?

### 10.1 Legal Basis of ADR in Ghana

There appear to be some definitive legal basis of ADR in Ghana. The Courts Act, 1993 (Act 459) in sections 72 and 73 encourage the use of ADR to resolve disputes pending before the courts. the **Judicial Service of Ghana** has introduced a National **ADR** Programme as a mainstream process of resolving cases pending in **court** through **Court-Connected Mediation**. Under the High Court Civil Procedure Rules (C.I. 47), Mediation is practiced in the Commercial Division of the High Court of Ghana as a mandatory pre-settlement procedure.

### 10.2 Types of ADR Methods

#### 10.2.1 Negotiation

Negotiation is a shared effort at solving a problem and it involves the parties themselves interacting directly with each other to resolve a dispute – moving to a compromise that reflects what is

comfortable for either side. Negotiation is suitable for use in all cases in which the parties intend to resolve their dispute with the aim of achieving a result that is acceptable to all concerned. There is no involvement of any neutral third party who would decide on the dispute at the end of the interaction.

#### a. Common Negotiation Styles

- **Competitive Negotiation** – the negotiation is treated as a competition that must be won or lost. There must be a winner and a loser at all cost. This form is adopted where the relationship between the parties is unimportant as they do not have to deal with each other post-conflict.
- **Collaborative Negotiation** – the negotiation is treated as a joint effort at problem solving to allow both parties to benefit. The relationship between the parties is regarded as important especially if it is an on-going relationship and the parties would necessarily deal with each other post-conflict. This is the “win-win” approach to conflict resolution.
- **Balanced Negotiation** – this is a

combination of the competitive and collaborative styles.

## b. How to Conduct a Successful Negotiation

- **People/issues** – separate the parties from the problem (placing too much emphasis on the parties instead of the problem may lead to wrong conclusions)
- **Interest** – people are motivated by their interests although they may not voice them out – self-interest is often the most important factor of most conflicts (it is important to identify the interests of the parties in order to make a headway)
- **Options** – one must develop options in the negotiation process to assist one in deciding the best course to take
- **External Factors** – **outside** influences that may harm the negotiation process should be carefully considered - examples are national laws, tradition and custom and natural events

- The process of negotiating involves a number of steps:

1. The negotiator must plan.
2. The negotiator should approach the other party directly.
3. Dates and times for negotiation must be negotiated and not forced on the other party.
4. The negotiator must portray confidence and have an ability to influence.
5. Keep the negotiation in your control - within your limits.
6. Be flexible, fair and open minded.
7. When negotiating on behalf of a group you must consider –
  - The interests of the parties
  - The relationships that exist between and among the parties
  - The best alternative to negotiation for the parties
  - Commitment of the parties
  - Communication between and among the parties

## ACTIVITIES

Divide the participants into groups of two (2) for the role-play below. One member of each group will play the role of Jenifer, while the other member plays the role of Thomas. The part entitled “*Information for all parties*” should be given to both Jenifer and Thomas. The part entitled *Information for Jenifer* should be given to the group member playing Jenifer only. The part entitled *Information for Thomas* should be given to the group member playing Thomas only. Jenifer and Thomas will then negotiate and report to the larger group on their agreement or otherwise.

### **ROLE PLAY – TIE & DYE BUSINESS**

#### ***Information for all Parties***

*Thomas is the Sales Manager of Goaso Ltd., a company which produces good quality calico.*

*Jenifer is the representative of Ahafo Supplies Ltd, which uses Goaso's calico to produce tie & dye designs. Ahafo Supplies requires 30,000 bales of calico a month in order to satisfy all its customers.*

*The two companies have a contract that stipulates that Goaso Ltd is to supply 30,000 bales of calico a month to Ahafo Supplies for two years. Failure to do so attracts a liability fee of \$2,000 payable by Goaso Ltd. to Ahafo Supplies.*

*As a result of a strike by the local union, Goaso Ltd has failed to supply the bales of calico to Ahafo Supplies in three (3) months and has already paid \$6,000 in liability fees to Ahafo Supplies.*

*The union's strike action does not show any sign of ending soon and therefore Goaso Ltd. has hired temporary labour. The new work force can produce only 30,000 bales of calico in a month. Goaso Ltd. now finds that it cannot deliver the whole batch of 30,000 bales to Ahafo Supplies, since that would mean losing all the other customers of the company, and therefore wishes to discuss changing the terms of the contract.*

*Goaso Ltd is also considering cancelling the contract and paying the penalty. This would be cheaper than paying \$2000 a month to Ahafo Supplies for an unspecified period.*

### **Information for Jenifer**

Your company was too sure about its business plans and did not realize that during the lean season business would slow down. As a result of this you are having serious difficulty selling your product.

So far, it has been a great relief to you that Goaso Ltd. has not been able to supply your company for three (3) months. This has enabled you to earn \$6,000 dollars without sweat.

However, in a few months the Christmas season would begin and you would need to satisfy your customers. Usually, during the Christmas period, you are not able to meet the demand of your customers.

You are alarmed that Goaso Ltd. is considering terminating the contract because Goaso Ltd. produces the best quality calico. In fact, Ahafo Supplies has become a market leader because it uses Goaso calico.

You are even thinking about entering the export market and you are anxious to keep doing business with Goaso Ltd. If Goaso Ltd. should cancel the contract, serious harm would be done to your business.

### **Information for Thomas**

You are the Sales Manager of Goaso Ltd., and this is a very difficult time for you. Goaso Ltd. can produce only 30,000 bales of calico with the new work force as long as the strike does not end. Therefore, you must ensure that you keep all your customers by distributing the 30,000 bales among them till the strike ends.

You know that your company can presently easily supply 10,000 bales a month to Ahafo Supplies, if Ahafo Supplies could be persuaded to accept this lower figure.

Your company is not willing to pay more money to Ahafo Supplies for failing to supply the agreed 30,000 bales. If Ahafo cannot be persuaded to accept 10,000 bales, you will cancel the contract and pay the penalty.

Personally, cancelling the contract is not good for you since you have been promised promotion if you would manage to keep the customers during the strike period.

If the contract is cancelled, you would also have a big problem of finding new customers to replace Ahafo Supplies.



Thanks to compromise they were moving closer.



## Mediation

Mediation is a form of negotiation but which involves a neutral person who assists the parties to resolve their dispute - the neutral is referred to as the mediator. The mediator is not a judge and so he does not decide the case for the parties. The mediator facilitates, by way of advice, the interaction between or among the parties by suggesting ways by which the dispute may be resolved. Therefore, mediation is often referred to as assisted negotiation. Mediation is commonly used in situations where the parties intend to or have to

keep ongoing relationships by solving the dispute while preserving the relationship. Mediation does not usually result in a binding decision. Thus, it leaves all other forms of legal remedies available.



### a. The Mediator's Role The mediator –

#### Step 1 – sitting arrangement

must put the parties at ease and prevent hostile exchanges during the discussions

- keeps the discussion on-going
- builds the team when discussions have broken down by assisting the parties to move from hard-line positions to softer positions
- identifies areas of agreement
- opens communication channels
- creates options for the parties
- translates and transmits information
- distinguishes positions from interests by separating the "wants" and "needs" of the parties through reality testing (identifying unrealistic positions held by the parties and pointing out the negative consequences of such positions) – reality testing is

often done through a process called *The Caucus* - this involves taking one party to an aside for him to tell you what he does not want the other party to hear or know.

## **b. Qualities of a Mediator**

- *Good listener* – effective listening involves being attentive, patient, maintaining eye contact, nodding to show that you are following *what is being said*-- asking questions and allowing the parties to tell their own story
- *Friendly* – the mediator must be courteous to the parties and make them feel at ease
- *Objective* – the mediator must not take sides - he/she must be neutral, fair and firm
- *Creative* – the mediator must be able to create options for the parties for them to select what best suits their case
- *Sense of Humour* – the mediator must make the mediation process lively by ensuring that the tension is reduced to a minimum – however, the mediator must not turn the mediation process into a comic show
- *Knowledgeable* – the mediator must know what the parties are disputing over and how best to assist them to resolve it

### **Step 2 – reception**

introduction of the mediator and the parties

### **Step 3 – opening statements**

the mediator must commend the parties for choosing mediation and explain the process and how it would work by laying the ground rules and establishing his neutrality.

### **Step 4 – presentation by the parties**

time limits must be set depending on the nature of the dispute



### Step 5 – summarization

aimed at identifying the areas of agreement and dispute

### Step 6 – closure

the process of coming to a conclusion on the agreement - it need not be done at the end of the whole process - it may be done issue by issue.

## ACTIVITIES

Divide the participants into groups of three (3) for the role-play below. One member of each group will play the role of mediator, another will play the role of Kalaitu, while the other member plays the role of Sheku. The part entitled *Information for the parties and the mediator* should be given to both parties and the mediator. The part entitled *Information for Kalaitu* should be given to only the group member playing that role. The part entitled *Information for Sheku* should be given to only the group member playing that role. The mediator should attempt a settlement between the parties. The group members will then negotiate and report to the larger group on their agreement or otherwise.

### **ROLE PLAY – DEATH AND INHERITANCE IN THE FAMILY**

#### ***Information for the Parties and the Mediator***

*Kalaitu is a well-educated woman with a master's degree in science. Her husband, Salieu, died recently. He was the Deputy Minister of Education before his retirement. Sheku is a brother of Salieu. While not educated as his brother, Sheku is a royal and chief of police in his town. He is very powerful. Sheku has indicated that he represents the family of Salieu, the honour of their town and their ancestors.*

*A dispute arose when Kalaitu began clearing out the couple's property from the family home in Salieu's town soon after his death.*

The women in the town accused her of betraying her husband's spirit and insulting their ancestors, as she would not observe the traditional mourning rituals.

Kalaitu wants the property at all cost. She has gone to court for an order to enable her to do so but the local magistrate has decided that the dispute would be better settled out of court. He has sent for one of these new mediators to help resolve the dispute.

### **Information for Kalaitu**

You are not happy in Salieu's town. The women in the town have treated you as an outsider since your arrival, and have actually made fun of your education and the women in your town! You suspect it is because they are jealous of you and of the women in your town as they are more educated, being closer to the capital city.

You want to return to the capital city. You like the life and you will be closer to your children, including your stepsons if you live there. Also, your home town would be much closer. Salieu's town is too remote and does not have the amenities you like so much.

You consider local traditions and rituals silly. You see no reason why an educated person such as yourself should respect them. You were hoping the court would resolve the

dispute and you do not want the matter to be settled by the elders in Salieu's town.

You do not want to abandon your marital property, and besides, the law says that the husband's property goes to his wife upon his death, no matter what these backward people in Salieu's town think.

You believe that you have a right to live your life according to your own principles, and that the law is on your side even if the local magistrate is not. Your worry is that the local magistrate may not be fair since he is a close friend of Sheku. You hope that this mediator will be able to resolve the matter. After all, the mediator is said to be well trained in resolving disputes.

Your husband died of sudden and unexpected heart attack. It was painful enough for you without having to deal with these other problems as well.

### **Information for Sheku**

You come from a highly respected and powerful family in your town. Your father, who is quite elderly, is chief of the town. You have been taking over some of your father's duties at the clan level as it is difficult for your father to travel these days.

Your recently deceased older brother, Salieu, was well respected although many in the

town had trouble relating to him and his "city wife" when he came back from retirement. No one understood how he could treat his wife as an equal. Women are to be loved, respected, and taken care of. But that woman, Kalaitu! At times it seemed she did not understand that she was not a man. And such disrespect! She is not even in mourning for Salieu. Doesn't she know she needs to mourn for a year and undergo cleansing rituals? This is the way things have to be done but she thinks it is silly.

This woman does not even understand that the way of our people is that the family takes Salieu's property. She has no worry because the family is required to take care of her. The family will even provide a dowry if she remarries.

Kalaitu never tried to be part of your

community, and some of the women here are saying that her ways let in spirits that killed Salieu. They do not understand heart attacks, but they understand sudden death.

As Chief of Police, you have to enforce the law. However, the law is wrong when it comes to family property. May be the magistrate has taken sides with you and that is why he has not given an order for Kalaitu to take the property. After all, he is your close friend.

Maybe this mediator person who is coming will tell Kalaitu that she needs to respect your tradition. The old ways are the best. Your father is embarrassed and the whole town is watching. You are not sure this matter can be resolved.



## Arbitration

Arbitration involves a neutral third party, called an arbitrator, who listens to the parties and decides respective rights. The arbitrator imposes his decision on the parties. The decision of the arbitrator is called an award and it is usually binding on the parties. In most countries, the arbitrator's award is equal to the judgment of a court.

Arbitration may be compulsory or voluntary. Where a law requires parties to a dispute to use arbitration then the arbitration is said to be compulsory but where the parties themselves choose arbitration as the method to resolve their dispute, then it is said to be voluntary arbitration.

Arbitration may also be customary or commercial. It is commercial where it is between commercial entities or businesspersons. Customary arbitration, on the other hand, takes place in the traditional setup where chiefs or elders sit as arbitrators and decide on disputes.

## Advantages of ADR

- *Saves money and time* – a dispute can be resolved in months, weeks or even days through ADR, while a court trial can take several years to conclude. The absence of court fees and charges, sometimes lawyers' fees and expert witness fees also enable the parties to an ADR process to save money.
- *Increased flexibility and control* – the parties have the option of choosing the ADR method that is best for them, unlike in the case of a court trial. Except in the case of arbitration, the parties have full control of the dispute resolution process and the outcome is determined by them.
- *Confidentiality* – unlike court trials that are held in open court rooms and the judgments published in law reports for the whole world to read, ADR ensures that whatever is discussed and decided on remains secret.
- *Improves communication and preserves relationships* – in mediation and negotiation for example, the parties work together to solve the dispute

rather than against themselves as happens with court trials.

- *Reduces stress and increases satisfaction* – because ADR is not conducted in the tense and serious atmosphere of court trials, the parties are more relaxed and they get all the time to tell their own story thereby reducing stress and increasing satisfaction.

#### **Disadvantages of ADR**

- *Non-binding ADR may add to time and cost* – where the parties are not

required to accept the outcome of the ADR process, more time and money may be expended if the parties decide to go to court.

- *The neutral may charge a fee for his/her services* – arbitrators especially charge high fees for their services
- *ADR may not be suitable for all disputes* – as we noted earlier, it is not every conflict that can be resolved through ADR. In such cases, you have to go to court for the dispute to be settled.

A silhouette of a person standing at a podium, addressing a crowd. The speaker is holding a microphone in their right hand and gesturing with their left. The crowd in the foreground is also silhouetted, with several people holding up rectangular protest signs and raising their hands. The background is a solid light blue color.

# CHAPTER 11

## **Civil and Political Rights**

# Introduction



Civil and political rights refer to rights that aim at enabling individuals live in freedom and dignity and to participate meaningfully in the political activities of their communities. These rights are often tagged as *first generation rights* – in reference to their being the first to be recognized and guaranteed in international treaties and domestic constitutions. They include –

- right to life
- freedom of conscience
- freedom of speech and expression
- freedom from slavery and forced labour
- respect for human dignity
- protection of personal liberty
- freedom of movement

## OBJECTIVE

This session aims at enabling paralegals to appreciate the principles governing the recognition and protection of civil and political rights in Sierra Leone, covering not only the provisions of the law and Constitution of Sierra Leone but also those of international legal instruments.

## 11.1 Table of Civil and Political Rights

HUMAN RIGHTS	CONSTITUTION OF SIERRA LEONE	INTERNATIONAL INSTRUMENTS/ CASE LAW	STANDARD COVERED BY THE RIGHT
RIGHT TO LIFE	Art 13	UDHR, art. 3 ICCPR, art.6 2 <sup>nd</sup> Optional Protocol to the ICCPR, art. 1 CRC Banjul Charter, art. 4 <i>Augustus v. Gosset</i>	<ul style="list-style-type: none"> <li>no person is to be deprived of their life intentionally except in execution of a court order</li> <li>protection against unlawful arrest, murder by criminal act</li> <li>the right to livelihood</li> </ul>
FREEDOM OF CONSCIENCE	Art 21(b)	UDHR, arts. 18 & 19 ICCPR, arts. 18 & 19 Banjul Charter, art. 8 <i>Bruker v. Markowitz</i>	<ul style="list-style-type: none"> <li>freedom of religion, belief, thought, conscience</li> <li>freedom to manifest and propagate religion, belief in worship, teaching, practice and observance</li> <li>no taking of oath if it violates one's beliefs</li> </ul>
FREEDOM OF SPEECH AND EXPRESSION	Art 21(a)	UDHR, art. 19 ICCPR, art. 19 Banjul Charter, art. 9 <i>R v. Keegstra</i> <i>Rocket v. Royal College of Dental Surgeons of Ontario</i>	<ul style="list-style-type: none"> <li>liberty to speak freely and express one's self (way and manner of life), including seeking, receiving and imparting information or ideas</li> <li>freedom from interference with correspondence</li> <li>academic freedom in institutions of learning</li> </ul>



HUMAN RIGHTS	CONSTITUTION OF SIERRA LEONE	INTERNATIONAL INSTRUMENTS/ CASE LAW	STANDARD COVERED BY THE RIGHT
RESPECT FOR HUMAN DIGNITY	Art 15	UDHR ICCPR Banjul Charter <i>Canadian Foundation for Children, Youth &amp; Law v. Canada (A-G)</i>	<ul style="list-style-type: none"> <li>living a dignified life and protection of one's name, image, reputation and honour</li> <li>freedom from torture, treatment or punishment which is inhuman and degrading</li> </ul>
FREEDOM OF MOVEMENT AND ASSOCIATION	Art 21(g)	UDHR ICCPR Banjul Charter <i>NPP v. IGP</i> <i>Black v. Law Society of Alberta</i>	<ul style="list-style-type: none"> <li>geographic mobility</li> <li>economic mobility</li> <li>freedom to form or assume membership of an association of one's choice</li> </ul>
PROTECTION FROM SLAVERY AND FORCED LABOUR	Art 16	UDHR, arts. 4 & 23(1) ICCPR, art. 8 Banjul Charter, art. 5 <i>Van der Mussele v. Belgium</i>	<ul style="list-style-type: none"> <li>freedom from slavery and servitude or forced labour</li> <li>abolishment of human trafficking</li> <li>compulsory military service is permitted</li> <li>compulsory labour as part of prison sentence is permitted</li> </ul>
PROTECTION OF PERSONAL LIBERTY	Art 14	UDHR ICCPR Banjul Charter <i>Padila Case</i> <i>The Case of Juan Carlos Chaparro Alvarez and Freddy Hernan Lapo Iniguez</i>	<ul style="list-style-type: none"> <li>free movement without interference with integrity of person</li> <li>detention or imprisonment by law is permitted</li> </ul>

HUMAN RIGHTS	CONSTITUTION OF SIERRA LEONE	INTERNATIONAL INSTRUMENTS/ CASE LAW	STANDARD COVERED BY THE RIGHT
RIGHT TO A FAIR TRIAL	Art 19	UDHR, art. 10 <i>Palko v. Connecticut</i> <i>Benton v. Maryland</i>	<ul style="list-style-type: none"> <li>▪ presumption of innocence</li> <li>▪ right to speedy trial</li> <li>▪ right to counsel</li> <li>▪ rules of natural justice should be respected</li> <li>▪ right to an interpreter</li> <li>▪ prohibition of double jeopardy</li> <li>▪ act or omission complained of must be expressly prohibited with prescribed punishment</li> </ul>

# Appendices

## APPENDIX I

### SELECTED PROVISIONS OF THE CONSTITUTION OF GHANA, 1992

#### **CHAPTER 6** **THE DIRECTIVE PRINCIPLES OF STATE** **POLICY**

##### **Article 34- Implementation of directive principles**

(1) The Directive Principles of State Policy contained in this Chapter shall guide all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, political parties and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just free society.

(2) The President shall report to Parliament at least once a year all the steps taken to ensure the realization of the policy objectives contained in this Chapter; and, in particular, the realization

of basic human rights, a healthy economy, the right to work, the right to good health care and the right to education.

##### **Article 35-Political objectives**

(1) Ghana shall be a democratic State dedicated to the realization of freedom and justice, and accordingly, sovereignty resides in the people of Ghana from whom the Government derives all its powers and authority through this Constitution.

(2) The State shall protect and safeguard the independence, unity and territorial integrity of Ghana, and shall seek the wellbeing of all her citizens.

(3) The State shall promote just and reasonable access by all citizens to public facilities and services in accordance with law.

(4) The State shall cultivate among all

Ghanaians respect for fundamental human rights and freedoms and the dignity of the human person.

(5) The State shall actively promote the integration of the peoples of Ghana and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs.

(6) Towards the achievement of the objectives stated in clause (5) of this article, the State shall take appropriate measures to

a. foster a spirit of loyalty to Ghana that overrides sectional, ethnic and other loyalties;

b. achieve reasonable regional and gender balance in recruitment and appointment to public offices;

c. provide adequate facilities for, and encourage, free mobility of people, goods and services throughout Ghana.

d. make democracy a reality by decentralization the administrative and financial machinery of government to the regions and districts and by affording all

possible opportunities to the people to participate in decision-making at every level in national life and in government; and

e. ensure that whenever practicable, the headquarters of a government or public institution offering any service is situated in an area within any region, taking into account the resources and potentials of the region and the area.

(7) As far as practicable, the Government shall continue and execute projects and programmes commenced by the previous Governments.

(8) The state shall take steps to eradicate corrupt practices and the abuse of power

(9) The State shall promote among the people of Ghana the culture of political tolerance.

### **Article 36 - Economic Objectives**

(1) The State shall take all necessary actions to ensure that the national economy is managed in such a manner as to maximize the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Ghana and to provide adequate



means of livelihood and suitable employment and public assistance to the needy.

(2) The State shall, in particular, take all necessary steps to establish a sound and healthy economy whose underlying principles shall include

- a. the guarantee of a fair and realistic remuneration for production and productivity in order to encourage continued production and higher productivity;
- b. affording ample opportunity for individual initiative and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy;
- c. ensuring that individuals and the private sector bear their fair share of social and national responsibilities including responsibilities to contribute to the overall development of the country;
- d. undertaking even and balanced development of all regions and every part of each region of Ghana, and, in particular, improving the conditions of life in the rural areas, and generally,

redressing any imbalance in development between the rural and the urban areas;

- e. the recognition that the most secure democracy is the one that assures the basic necessities of life for its people as a fundamental duty.

(3) The State shall take appropriate measures to promote the development of agriculture and industry.

(4) Foreign investment shall be encouraged within Ghana, subject to any law for the time being in force regulating investment in Ghana.

(5) For the purpose of the foregoing clauses of this article, within two years after assuming office, the President shall present to Parliament a coordinated programme of economic and social development policies, including agricultural and industrial programmes at all levels and in all the regions of Ghana.

(6) The State shall afford equality of economic opportunity to all citizens; and, in particular the State shall recognize that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of

the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard.

(7) The State shall guarantee the ownership of property and the right of inheritance.

(8) The State shall recognize that ownership and possession of land carry a social obligation to serve the larger community and, in particular, the State shall recognize that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard.

(9) The State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek cooperation with other State and bodies for purposes of protecting the wider international environment for mankind.

(10) The State shall encourage the participation of workers in the decision-making process at the work place.

### **Article 37- Social objectives**

(1) The State shall endeavour to secure

and protect a social order founded on the ideas and principles of freedom, equality, justice, probity and accountability as enshrined in Chapter 5 of this Constitution, and in particular, the State shall direct its policy towards ensuring that every citizen has quality of rights, obligations and opportunities before the law.

(2) The State shall enact appropriate laws to assure

a. the enjoyment of rights of effective participation in development process including rights of people to form their own associations free from State interference and to use them to promote and protect their interests in relation to development processes, rights of access to agencies and officials of the State necessary in order to realize effective participation in development processes; freedom to form organizations to engage in self-help and income generating projects, and freedom to raise funds to support those activities;

b. the protection and promotion of all other basic human rights and freedoms including the rights of the disabled, the aged, children and other vulnerable groups in development processes.



(3) In the discharge of the obligations stated in clause (2) of this article, the State shall be guided by international human rights instruments which recognize and apply particular categories of basic human rights to development processes.

(4) The State shall maintain a population policy consistent with the aspirations and development needs and objectives of Ghana.

(5) The state shall ensure that adequate facilities for sports are provided throughout Ghana and that sports are promoted as a means of fostering national integration, health and self-discipline as well as international friendship and understanding.

(6) The State shall

- a. ensure that contributory schemes are instituted and maintained that will guarantee economic security for self employed and other citizens of Ghana; and
- b. provide social assistance to the aged such as will enable them to maintain a decent standard of living.

### **Article 38-Educational objectives**

(1) The State shall provide educational

facilities at all level and in all the regions of Ghana, and shall, to the greater extent feasible, make those facilities available to all citizens.

(2) The Government shall, within two years after Parliament first meets after the coming into force of this Constitution, draw up a programme for implementation within the following ten years, for the provision of free compulsory and universal basic education.

(3) The State shall, subject to the availability of resources, provide

- a. equal and balanced access to secondary and other appropriate pre university educational, equal access to university or equivalent education, with emphasis on science and technology;
- b. a free adult literacy programme, and free vocational training, rehabilitation and resettlement of disabled persons; and
- c. life-long education

### **Article 39-Cultural objectives**

(1) Subject to clause (2) of this article, the State shall take steps to encourage the integration of appropriate customary

values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.

(2) The State shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole; and, in particular, that traditional practices which are injurious to the health and wellbeing of the person are abolished.

(3) The State shall foster the development of Ghanaian languages and pride in Ghanaian culture.

(4) The State shall endeavour to preserve and protect places of historic interest and artifacts.

#### **Article 40- International relations**

- a. In its dealings with other nations, the Government shall
- b. Promote and protect the interest of Ghana
- c. Seek the establishment of a just and equitable international economic and social order;
- d. Promote respect for international law,

treaty obligations and the settlement of international disputes by peaceful means;

- e. Adhere to the principles enshrined in or as the case may be, the aims and ideals of,
  - i. the Charter of the United Nations;
  - ii. the Charter of the Organisation of African Unity;
  - iii. the Commonwealth;
  - iv. the Treaty of the Economic Community of West African States; and
  - v. any other international organisation of which Ghana is a member

#### **Article 41- Duties of a citizen**

The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, it shall be the duty of every citizen

- a. to promote the prestige and good name of Ghana and respect the symbols of the nation;
- b. to uphold and defend this Constitution and the law;
- c. to foster national unity and live in harmony with others;
- d. to respect the rights, freedoms and



- legitimate interests of others, and generally to refrain from doing acts detrimental to the welfare of other persons;
- e. to work conscientiously in his lawfully chosen occupation;
  - f. to protect and preserve public property and exposure and combat misuse and waste of public funds and property;
  - g. to contribute to the well being of the community where that citizen lives;
  - h. to defend Ghana and render national service when necessary;
  - i. to cooperate with lawful agencies in the maintenance of law and order;
  - j. to declare his income honestly to the appropriate and lawful agencies and to satisfy all tax obligations; and
  - k. to protect and safeguard the environment.

## **CHAPTER 5**

### **FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS**

#### **Article 12- Protection of fundamental human rights and freedoms**

(1) The fundamental human rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution.

(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 other and for the public interest.

#### **Article 13 –Protection of right to life**

(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.

- a. (2) A person shall not be held to have deprived another person of his life in contravention of clause (1) of this article if that other person dies as the result of a lawful act of war or if

- that other person dies as the result of the use of force to such an extent as is reasonably justifiable in the particular circumstances,
- b. for the defence of any person from violence or for the defence of property;
  - c. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - d. for the purposes of suppressing a riot, insurrection or mutiny; or
  - e. in order to prevent the commission of a crime by that person.

#### **Article 14-Protection of personal liberty**

- (1) Every person shall be entitled to his personal liberty and a person shall not 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;
- d. in the case of a person suffering from an infectious or contagious disease, a person of unsound mind, a person addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community; or
- e. for the purpose of education or welfare of a person who has not attained the age of eighteen years; or
- f. for the purpose of preventing the lawful entry of that person into Ghana, or of effecting the expulsion, extradition or other lawful removal of that person while he is being lawfully conveyed through Ghana in the course of his extraction or removal from one country to another; or
- g. upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana.

- (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.

(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, restricting or detention.

(4) Where a person who is arrested, restricted or detained under paragraph (a) or (b) of clause (3) of this article is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular, conditions reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(5) A person who is unlawfully arrested, restricted or detained by any other person shall be entitled to compensation

from that other person.

(6) Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he has spent in lawful custody in respect of that offence before the completion of his trial shall be taken into account in imposing the term of imprisonment.

(7) Where a person who has served the whole or a part of his sentence is acquitted on appeal by a court, other than the Supreme Court, the Court may certify to the Supreme Court that the person acquitted to 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.

### **Article 15 – Respect for human dignity**

(1) The dignity of all persons shall be inviolable.

(2) No person shall, whether or not he is arrested, restricted or detained, 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.
- (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.
- (4) A juvenile offender who is kept in lawful custody or detention shall be kept separately from an adult offender.

#### **Article 16 – Protection from slavery and forced labour**

- (1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced labour
- (3) For the purposes of this article, “forced labour” does not include;
  - a. any labour required as a result of a sentence or order of a court;
  - b. any labour required of a member of a disciplined force or service as his duties or, in the case of a person who has conscientious objections to a service as a member of the Armed forces of Ghana, any labour which that person is required by law to perform in place of such service;
  - c. any labour required during any period

when Ghana is at war or in the event of an emergency or calamity that threatens the life and wellbeing of the community, to the extent that the requirement of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purposes of dealing with the situation; or

- d. any labour reasonably required as part of normal communal or other civic obligations.

#### **Article 17- Equality and freedom from discrimination**

- (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.
- (3) For the purposes of this article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place or origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected



to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.

(4) Nothing in this article shall prevent Parliament from enacting laws that are reasonably necessary to provide

- a. for the implementation of policies and programmes aimed at redressing social, economic or educational imbalance in the Ghanaian society;
- b. for matters relating to adoption, marriage, divorce, burial, devolution of property on death or other matters relating to such persons; or
- c. for the imposition of restriction on the acquisition of land by persons who are not citizens of Ghana or on the political and economic activities of such persons and for other matters relating to such persons; or
- d. for making different provision for different communities having regarding to their special circumstances not being provision which is inconsistent with the spirit of this Constitution.

#### **Article 18- Protection of privacy of home and other property**

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

(2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic wellbeing of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.

#### **Article 19 – Fair Trial**

(1) A person charged with a criminal offence shall

- a. in the case of an offence, other than high treason, the punishment for which is death or imprisonment for life, be tried by a judge and jury and,
  - (i) where the punishment is death, the verdict of the jury shall be unanimous; and
  - (ii) in the case of imprisonment, the verdict of the jury shall be unanimous; and
- b. in the case of and an offence triable by a Regional Tribunal the penalty for which

- is death, the decision of the Chairman and the other panel members shall be unanimous;
- c. be presumed to be innocent until he is proved or has pleaded guilty;
  - 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 his defence;
  - 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
  - i. in the case of the offence of high treason, be tried by the High Court duly constituted by three Justices of that Court and the decision by the three Justices shall be unanimous.

(3) The trial of a person charged with a criminal offence shall take place in his presence unless

- a. he refuses to appear before the Court for the trial to be conducted in his presence after he has been duly notified of the trial; or
- b. he conducts himself in such a manner as to render the continuation of the proceedings in his presence impracticable and the Court orders him to be removed for the trial to proceed in his absence.

(4) Whenever a person is tried for a criminal offence the accused person or a person authorized by him shall, if he so requires, be given, within a reasonable time not exceeding six months after judgment, a copy of any record of the proceedings made by or on behalf of the Court for the use of the accused person.

(5) A person shall not be charged with or held to be guilty of a criminal offence which is founded on an act or omission that did not at the time it took place constitute an offence.

(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.

(7) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for the offence, except on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(8) Notwithstanding clause (7) of this article, an acquittal of a person on a trial for high treason or treason shall not be a bar to the institution of proceedings for any other offence against that person.

(9) Paragraphs (a) and (b) of clause (2) of this article shall not apply in the case of trial by a court-martial or other military tribunal.

(10) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(11) No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law.

(12) Clause (11) of this article shall not prevent a Superior Court from punishing

a person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty is not so prescribed.

(13) An adjudicating authority for the determination of the existence or extent of a civil right or obligation shall, subject to the provisions of this Constitution, be established by law and shall be independent and impartial; and where proceedings for determination are instituted by a person before such an adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(14) Except as may be otherwise ordered by the adjudication authority in the interest of public morality, public safety or public order the proceedings of any such adjudicating authority shall be in public.

(15) Nothing in this article shall prevent an adjudicating authority from excluding from the proceedings persons, other than the parties to the proceedings and their lawyers, to such an extent as the authority

- a. may consider necessary or expedient in circumstances where publicity

- would prejudice the interests of justice; or
- b. may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen or the protection of the private lives or persons concerned in the proceedings.
- (17) Subject to clause (18) of this article, treason shall consist only
- a. in levying war against Ghana or assisting any State or person or inciting or conspiring with any person to levy war against Ghana, or
  - b. in attempting by force of arms or other violent means to overthrow the organs of government established by or under this Constitution, or
  - c. in taking part or being concerned in or inciting or conspiring with any person to make or take part or be concerned in any, such attempt.
- (18) An act which aims at procuring by constitutional means an alteration of the law or of the policies of the Government shall not be considered as an act calculated to overthrow the organs of government.
- (19) Notwithstanding any other

provision of this article, but subject to clause (20) of this article, Parliament may, by or under an Act of Parliament, establish military courts or tribunals for the trial of offences against military law committed by persons subject to military law.

(20) Where a person subject to military law, who is not on active service, commits an offence which is within the jurisdiction of a civil court, he shall not be tried by a court-martial or other military tribunal under any law for the enforcement of military discipline.

(21) For the purpose of this article, "criminal offence" means a criminal offence under the laws of Ghana.

## **Article 20 – Protection from deprivation of property**

- (1) No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the following conditions are satisfied:
- a. the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public



morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit; and

- b. the necessity for the acquisition is clearly stated and is such as to provide reasonable justification for causing any hardship that may result to any person who has an interest or right over the property.

(2) Compulsory acquisition of property by the State shall only be made under a law which makes provision for

- a. the prompt payment of fair and adequate compensation; and
- b. a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from any other authority for the determination of his interest or right and the amount of compensation.

(3) Where a compulsory acquisition or possession of land affected by the State in accordance with clause (1) of this article involves displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic wellbeing and social

and cultural values.

(4) Nothing in this article shall be construed as affecting the operation of any general law so far as it provides for the taking of possession or acquisition of property.

- a. by way of vesting or administration of trust property, enemy property or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons or bodies corporate or unincorporated in the course of being wound up; or
- b. in the execution of a judgment or order of a court; or
- c. by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants; or
- d. in consequence of any law with respect to the limitation of actions; or
- e. for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry; or
- f. for so long as may be necessary for the carrying out of work on any land for the purpose of the provision of public facilities or utilities, except that where any damage results from any such work there shall be paid

appropriate compensation.

(5) Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.

(6) Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition, shall be given the first option for acquiring the property and shall, on such re-acquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the re-acquisition.

## **Article 21- General fundamental freedoms**

(1) All persons shall have the right to Freedom of speech and expression, which shall include freedom of the press and other media

a. freedom of speech and expression, which shall include freedom of the press and other media;

b. freedom of thought, conscience and belief, which shall include academic, freedom;

c. freedom to practice any religion and to manifest such practice

d. freedom of assembly including freedom to take part in processions and demonstrations;

e. freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interest;

f. information, subject to such qualifications and laws as are necessary in a democratic society;

g. freedom of movement which means the right to move freely in Ghana, the right to leave and to enter Ghana and immunity from expulsion from Ghana.

(2) A restriction on a person's freedom of movement by his lawful detention shall not be held to be inconsistent with or in contravention of this article.

(3) All citizens shall have the right and freedom to form or join political parties and to participate in political activities subject to such qualifications and laws as are necessary in a free and democratic



society and are consistent with the Constitution.

(4) Nothing in, or done under the authority of, a law shall be held to be inconsistent with, or in contravention of this article to the extent that the law in question makes provision.

- a. for the imposition of restrictions by order of a court, that are required in the interest of defence, public safety or public order, on the movement or residence within Ghana of any person; or
- b. for the imposition of restrictions, by order of a court, on the movement or residence within Ghana or any person either as a result of his having been found guilty of a criminal offence under the Laws of Ghana or for the purposes of ensuring that he appears before at a later date for trial for a criminal defence or for proceedings relating to his extradition or lawful removal from Ghana; or
- c. for the imposition of restriction that are reasonably required in the interest of defence, public safety, public health or the running of essential services, on the movement or residence within Ghana of any person or persons

generally, or any class of persons; or

- d. for the imposition of restrictions on the freedom of entry into Ghana, or of movement in Ghana, of a person who is not a citizen of Ghana; or
- e. that is reasonably required for the purpose of safeguarding the people of Ghana against the teaching or propagation of a doctrine which exhibits or encourages disrespect for the nationhood of Ghana, the national symbols and emblems, or incites hatred against other members of the community;

except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in terms of the spirit of this Constitution.

(5) Wherever a person, whose freedom of movement has been restricted by the order of a court under paragraph (a) of clause (4) of this, requests at any time during the period of that restriction not earlier than seven days after the order was made, or three months after he last made such request, as the case may be, his case shall be reviewed by that court.

(6) On a review by a court under clause (5) of this article, the Court may, subject to

the right of appeal from its decision, make such order for the constitution or termination of the restriction as it considers necessary or expedient.

### **Article 22 – Property rights of spouses**

(1) A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.

(2) Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.

(3) With a view to achieving the full realization of the rights referred to in clause (2) of this article,

Spouses shall have equal access to property jointly acquired during marriage;

Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.

### **Article 23 Administrative Justice**

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 decision shall have the right to seek redress before a court or holidays.

### **Article 24-Economic Rights**

(1) Every person has the right to work under satisfaction, safe and healthy conditions, and shall receive equal pay for equal work without distinction of any kind.

(2) Every worker shall be assured of rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays.

(3) Every worker has a right to form or join a trade union of his choice for the promotion and protection of his economic and social interests.

(4) Restrictions shall not be placed on the exercise of the right conferred by clause (3) of this article except restrictions prescribed by law and reasonably necessary in the interest of national security or public order or for the protection of the rights and freedoms of others.

### **Article 25- Educational Rights**

(1) All persons shall have the right to



equal educational opportunities and facilities and with a view to achieving the full realization of that right,

- a. basic education shall be free, compulsory and available to all;
  - b. secondary education in its different forms, including technical and vocational education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction;
  - c. higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular, by progressive introduction of free education;
  - d. functional literacy shall be encouraged or intensified as far as possible;
  - e. the development of a system of schools with adequate facilities at all levels shall be actively pursued.
- (2) Every person shall have the right, at his own expense, to establish and maintain a private school or schools at all levels and of such categories and in accordance with such conditions as may be provided by

law.

#### **Article 26 – Cultural rights and practices**

- (1) Every person is entitled to enjoy, practice, profess, maintain and promote any cultural language, tradition or religion subject to the provisions of this Constitution.
- (2) All customary practices which dehumanize or are injurious to the physical and mental wellbeing of a person are prohibited.

#### **Article 27- Women's rights**

- (1) Special care shall be accorded to mothers during a reasonable period before and after child-birth; and during those periods, working mothers shall be accorded paid leave.
- (2) Facilities shall be provided for the care of children below school-going age to enable women, who have the traditional care for children, to realize their full potential.
- (3) Women shall be guaranteed equal rights to training and promotion without any impediments from any person.

#### **Article 28-Children's rights**

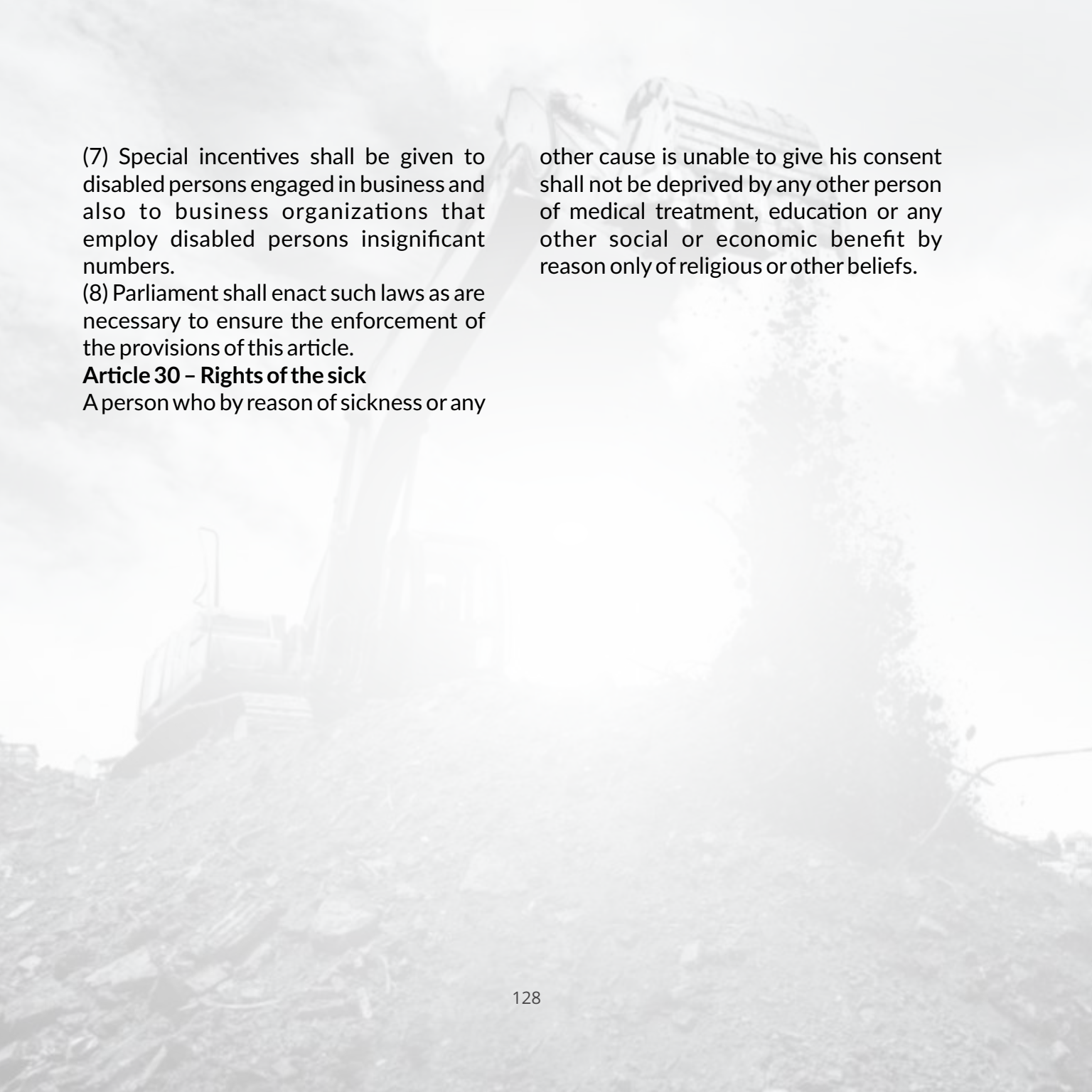
- (1) Parliament shall enact such laws as

- are necessary to ensure that
- a. every child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with the law;
  - b. every child, whether or not born in wedlock, shall be entitled to reasonable provision out of the estate of its parents;
  - c. parents undertake their natural right and obligation of care, maintenance and upbringing of their children in cooperation with such institutions as Parliament may, by law, prescribe in such manner that in all cases the interest of the children are paramount;
  - d. children and young persons receive special protection against exposure to physical and moral hazards; and
  - e. the protection and advancement of the family as the unity of society are safeguarded in promotion of the interest of children.

## **Article 29- Rights of disabled persons**

- (1) Disabled persons have the right to live with their families or with foster parents and to participate in social, creative or recreational activities.
- (2) A disabled person shall not be subjected to differential treatment in respect of his residence other than that required by his conditions or by the improvement which he may derive from the treatment.
- (3) If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions there shall be as close as possible to those of the normal life of a person of his age.
- (4) Disabled persons shall be protected against all exploration, all regulations and all treatment of a discriminatory, abusive or degrading nature.
- (5) In any judicial proceedings in which a disabled person is a party the legal procedure applied shall take his physical and mental condition into account.
- (6) As far as practicable, every place to which the public have access shall have appropriate facilities for disabled persons.



A faded background image showing a large excavator with its arm raised, working on a massive pile of rubble and debris. The scene appears to be the aftermath of a disaster or a large-scale demolition project.

(7) Special incentives shall be given to disabled persons engaged in business and also to business organizations that employ disabled persons insignificant numbers.

(8) Parliament shall enact such laws as are necessary to ensure the enforcement of the provisions of this article.

**Article 30 – Rights of the sick**

A person who by reason of sickness or any

other cause is unable to give his consent shall not be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs.

# Appendices

## APPENDIX II

### SELECTED PROVISIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

#### Article 1

2. All people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

#### Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force

at the time of the commission of crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Covenant on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or communication of the sentence. Amnesty, pardon or commutation of the



sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any state Party to the present Covenant.

#### **Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment of punishment in particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### **Article 8**

1. No one shall be held in slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. a. No one shall be required to perform forced or compulsory labour;

b. Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a

competent court;

c. For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

i. Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

ii. Any service of a military character and, in countries where conscientious objections is recognized, any national service required by law of conscientious objectors;

iii. Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

iv. Any work or service which forms part of normal civil obligations

#### **Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be

informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgment.

4. Any one who is deprived of his liberty by arrest or detentions shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation.

#### **Article 10**

1. All persons deprived of their liberty shall be treated with humanity and with

respect for the inherent dignity of the human person.

2. a. Accused person shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

b. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### **Article 11**

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

#### **Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.



3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

#### **Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice;

but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty in accordance to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require,

and without payment by him any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered facts shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be

compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### **Article 15**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal accordance to the general principle of law recognized by the community of nations.



#### **Article 16**

Everyone shall have the right to recognition everywhere as a person before the law.

#### **Article 17**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

#### **Article 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or

beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### **Article 19**

1. Everyone shall have the right to hold opinions without interference

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- a. For respect of the rights or reputations of others;
- b. For the protection of national security or public order (ordre public), or of public health or morals.

#### **Article 20**

- a. Any propaganda for war shall be prohibited by law.
- b. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

#### **Article 21**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### **Article 22**

- 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- 2. No restrictions may be placed on the

exercise of this right other than that which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organisation to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

#### **Article 23**

- 1. The family is the natural and fundamental group unit of Society and is entitled to protection by society and the State.
- 2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
- 3. No marriage shall be entered into



without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

#### **Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

#### **Article 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions.

a. To take part in the conduct of public affairs, directly or through freely chosen

representatives;

b. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

c. To have access, on general terms of equality, to public service in his country.

#### **Article 26**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### **Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

# Appendices

## APPENDIX III

### SELECTED PROVISIONS OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966

#### Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

#### Article 3

The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

#### Article 6

1. The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work



which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

#### **Article 8**

1. The State Parties to the present Covenant undertake to ensure:

a. The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of

others;

b. The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organization;

c. The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

d. The right to strike provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

#### **Article 10**

The State Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by

law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

#### **Article 11**

1. The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The State Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:
  - a. To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by dissemination knowledge of the principles of nutrition and by



developing or reforming agrarian system in such a way as to achieve the most efficient development and utilization of natural resources;

b. Taking into the account the problems of both food-importing and food exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

#### **Article 12**

1. The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- a. The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- b. The improvement of all aspects of environmental and industrial hygiene;
- c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- d. The creation of conditions which would assure to all medical service and medical

attention in the event of sickness.

#### **Article 13**

1. The State Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The State Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- a. Primary education shall be compulsory and available free to all;
- b. Secondary education shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- c. Higher education shall be made equally

accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

d. Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

e. The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to

establish and direct educational institutions, subject always to the observance of the principles set for in paragraph 1 of this article and so the requirement that the education given in such institutions shall conform to such minimum standard as may be laid down by the State.

#### **Article 14**

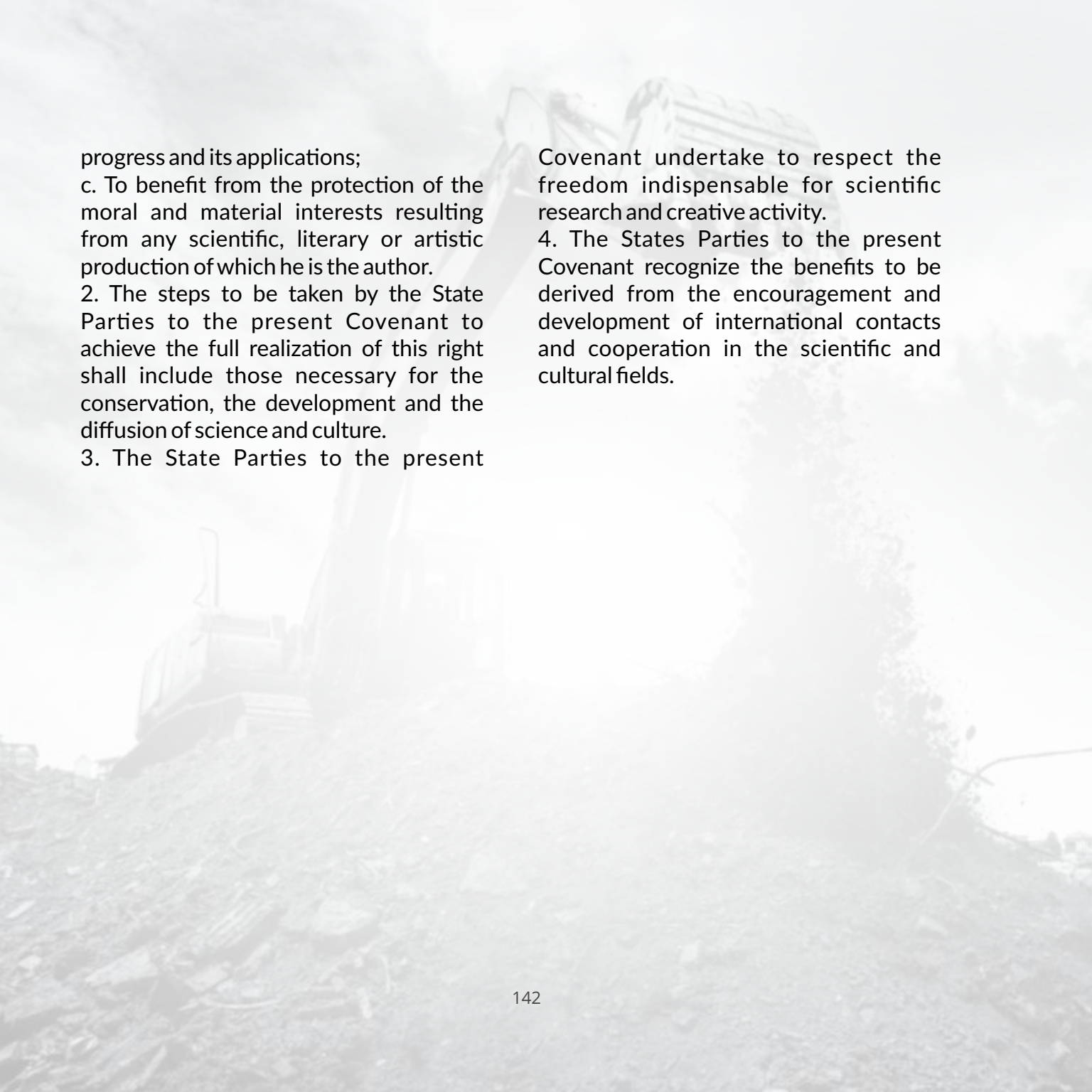
Each State Party to the present Covenant which, at the time of becoming a party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### **Article 15**

1. The State Parties to the present Covenant recognize the right of everyone:

- a. To take part in cultural life;
- b. To enjoy the benefits of scientific





progress and its applications;

c. To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The State Parties to the present

Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.

# Appendices

## APPENDIX IV

### SELECTED PROVISIONS OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

#### Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any opinion, national and social origin, fortune, birth or other status.

#### Article 3

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

#### Article 4

Human beings are inviolable. Every human being shall be entitled to respect for this life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

#### Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedoms except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

#### Article 7

1. Every individual shall have the right to have his cause heard. This comprises: (a)

the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

#### **Article 8**

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

#### **Article 9**

1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.

#### **Article 10**

Every individual shall have the right to free association provided that he abides by the law. 2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

#### **Article 11**

Every individual shall have the right to assembly freely with others. The exercise of this right shall be subject only to necessary restrictions provided or by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

#### **Article 12**

1. Every individual shall have the right to freedom of movement and resident and residence within the borders of a State provided he abides by the law.

2. Every individual shall have the right to leave any country including his own, and



to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.

4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

#### **Article 13**

Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of his country. 3. Every individual shall have the

right of access to public property and services in strict equality of all persons before the law.

#### **Article 14**

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in general interest of the community and in accordance with the provisions of appropriate laws.

#### **Article 15**

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

#### **Article 16**

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health  
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

#### **Article 17**

1. Every individual shall have the right to



education.

2. Every individual may freely, take part in the cultural life of his community.

3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

#### **Article 18**

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.

2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

3. The State shall ensure the elimination of all discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

#### **Article 19**

All peoples shall be equal; they shall enjoy the same respect and shall have the same

rights. Nothing shall justify the domination of a people by another.

#### **Article 20**

1. All people shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed people shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the State parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

#### **Article 21**

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

2. In case of spoliation the dispossessed

people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their people to fully benefit from the advantages derived from their national resources.

#### **Article 22**

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

#### **Article 23**

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter and the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:

(a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;

(b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

#### **Article 25**

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present



Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

#### **Article 26**

State parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

#### **Article 27**

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

#### **Article 28**

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain

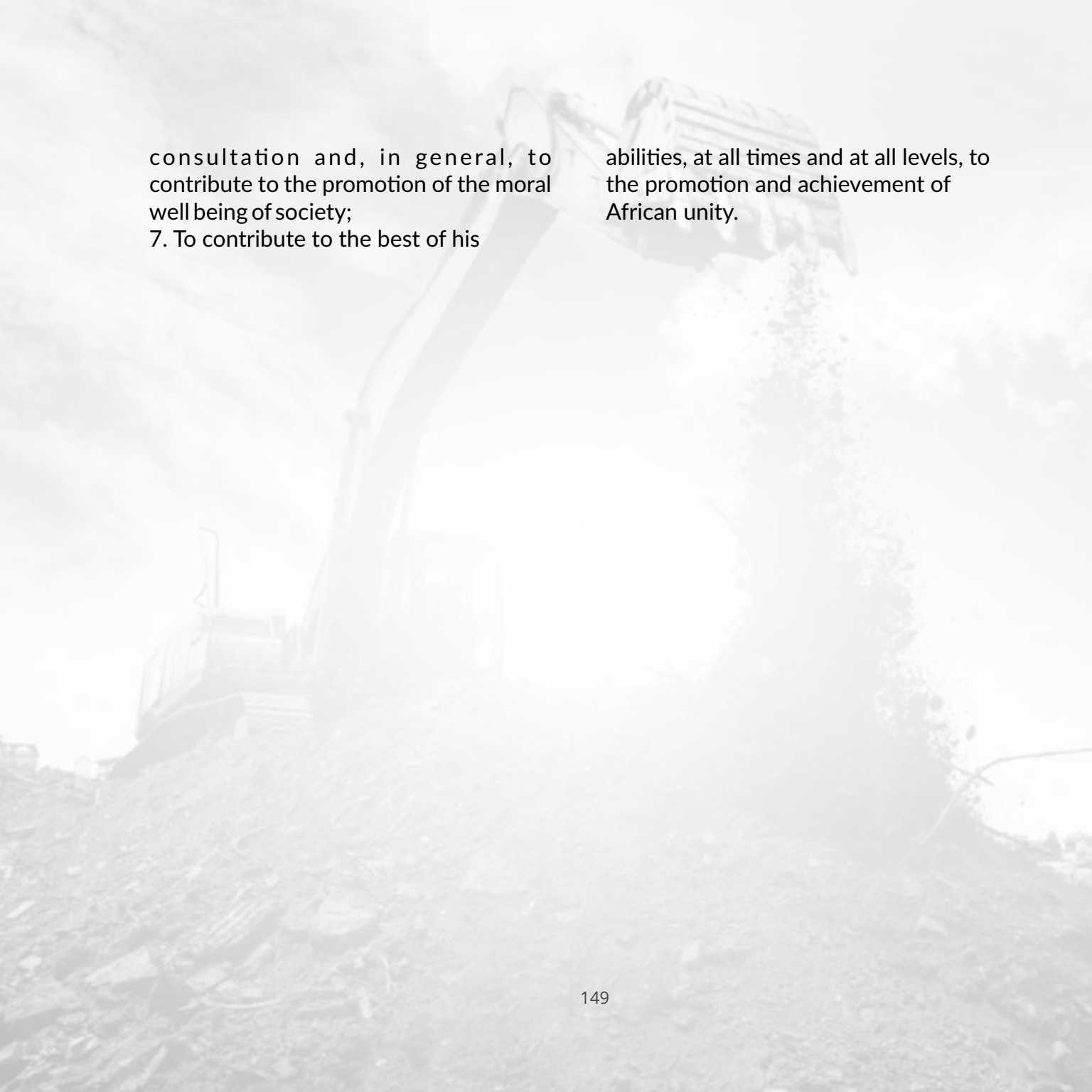
relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

All peoples shall have the right to a general satisfactory environment favorable to their development.

#### **Article 29**

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or residence he is;
4. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;
5. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
6. to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and



consultation and, in general, to  
contribute to the promotion of the moral  
well being of society;

7. To contribute to the best of his

abilities, at all times and at all levels, to  
the promotion and achievement of  
African unity.

# Appendices

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## APPENDIX V

### UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

#### 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 one another in a spirit of brotherhood.

#### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.

#### Article 3

Everyone has the right to life, liberty and security of person.

#### Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

#### Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### Article 6

Everyone has the right to recognition everywhere as a person before the law.



### **Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

### **Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

### **Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

### **Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

### **Article 11**

(1) Everyone charged with 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.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

### **Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attack upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

### **Article 13**

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

### **Article 15**

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

#### **Article 16**

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

#### **Article 17**

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

#### **Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in

public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### **Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

#### **Article 20**

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

#### **Article 21**

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.



### **Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

### **Article 23**

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

### **Article 24**

Everyone has the right to rest and leisure,

including reasonable limitation of working hours and periodic holidays with pay.

### **Article 25**

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

### **Article 26**

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of

The background of the page is a faded, grayscale photograph of a construction site. An excavator is visible in the upper left, with its arm extended. The ground is uneven and appears to be dirt or gravel. The overall tone is industrial and somewhat desaturated.

merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

### **Article 27**

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.





