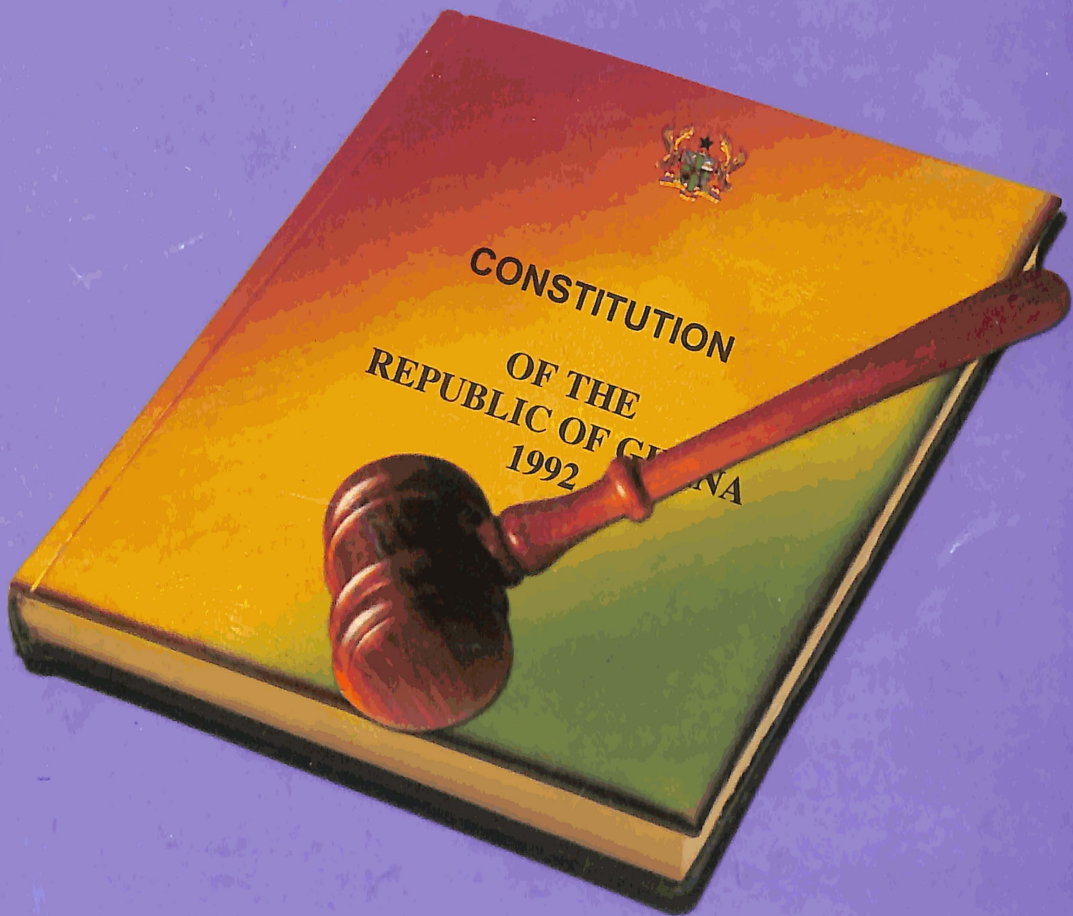


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Constitutional Review Series 12

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**GENDER AND THE  
1992 CONSTITUTION**



**IEA  
Ghana**

**THE INSTITUTE OF ECONOMIC AFFAIRS**

# **Gender and the 1992 Constitution**

**By:**  
**Mrs. Chris Dadzie**

*This work was carried out with the aid of a grant  
from The United Nation Democracy Fund (UNDEF)*

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ISBN: 988-584-62-8

ISSN: 0855-3238

## PREFACE

This last two decades have seen a drive towards constitutional reviews particularly in Africa. The results demonstrate a conscious effort to ensure the procurement of documents that are responsive to all citizens. In most cases, there is particular attention paid to the enhancement of equality provisions and clear direction for the establishment of both legal and institutional arrangements for promoting gender equality. There has been an emphasis on the use of affirmative action to speed up the process of obtaining a desirable state of gender equality especially through education and increased representation of women in decision making at all levels of governance. This move is evidence of States' obligation to be true to internationally agreed standards for eliminating debilitating disparities that keep Africa in the grips of poverty and underdevelopment.

Ghana's choice of democratic governance demands adherence to human rights standards that require the empowerment of all sectors of the population towards active participation in decision making and the equitable distribution of resources. Thus, it is absolutely necessary that there is adequate constitutional provision for ensuring the elimination of all forms of persisting discrimination against any segment of society, particularly, a population in which women and girls are in the majority.

The ongoing constitution review process in Ghana reflects recognition of the value of the Constitution as the foundation for creating and maintaining an environment for sustainable development for the benefit of all citizens. Thus a comprehensive consideration of the nation's status of gender equality is vital to the current process.

Accordingly this paper presents a timely evaluation of issues that impact on the gender responsiveness of a national constitution, reviews best practices of other jurisdictions and makes recommendations for appropriate amendments to be effected in the 1992 Constitution. This paper reflects the views of several gender and women's rights advocates that have collaborated for engagement with the constitution review process.

We look forward to receiving your feedback and hope you find this publication useful.

Thank you.

**Jean Mensa**  
**Executive Director**

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# INTRODUCTION

The 1992 Fourth Republican Constitution of Ghana reflects the nation's reaction to a history of inadequate protection of individual human rights and freedoms during constitutional administrations as well as periods of military led interruptions in constitutional governance. In comparison with preceding constitutions<sup>1</sup>, the 1992 Constitution contains several human rights provisions. However, an examination of this Constitution exhibits a number of gaps in provisions for gender equality and related rights of women. The low level of gender sensitivity was further manifested after amendments were made to the constitution in 1996 without any attempts to deal with the inadequacies in provisions on gender or women's rights.

The current constitutional review process has also revealed a similar lack of public appreciation of gender concerns as important ingredients of sustainable development: the Constitution Review Commission's (CRC)<sup>2</sup> ranking of topics that were considered important by the public do not include any issues of gender or women's rights. This unfortunate situation is in spite of the fact the CRC was established to involve the whole nation in evaluating the operation of the 1992 Constitution, particularly its strengths and shortcomings towards reviewing and formulating amendments for improving the Constitution's significance and efficacy.

There are a number of arguments that are usually advanced against the use of constitutional provisions and the State's intervention for promoting gender concerns. First, there is an argument in favour of keeping constitutional focus on general principles and leaving attempts at resolving such matters solely to the operations of public institutions. Second, civil society should be the important force for change towards ensuring civil liberties. These views have been expressed as follows:

*“we often seek a solution in an amending legislation rather than requiring the proper bodies and authorities to discharge their functions. We must stop that. Ultimately, the citizens must be the watchdogs of our liberties...”*<sup>3</sup>

<sup>1</sup> 1957, 1960, 1969 & 1979 Constitutions of Ghana

<sup>2</sup> The Constitution Review Commission of Inquiry (CRC) was established under the Constitution Review Commission of Inquiry Instrument, 2010 (C.I. 64) to ascertain the public's assessment of the 1992 Constitution; make recommendations for review and a draft Bill for possible amendments to the Constitution

<sup>3</sup> Kludze, 2010

It is also argued that discussions on gender invariably degenerate into considerations of the rights of women and girls. Another proposition is that governments are not omniscient, selfless "social guardians" and public policies and interventions are not costless (Krueger 1990).

The above observations notwithstanding, experiences in Ghana and elsewhere indicate that although men do not have a monopoly on violence, there is enough evidence that social norms and customs underlie most instances of gender inequities and tend to encourage the use of violence against more women than men.<sup>4</sup> Large gender disparities take their most direct toll on women and girls; for example, gender disparities are inextricably linked to poverty and women make up the largest proportion of the poor. Gender inequality hinders development, creating a negative effect on a country's ability to reduce poverty, grow sustainably or govern effectively.<sup>5</sup> It follows that discourses on gender are bound to generate a link to the area that needs most redress - the situation of women and girls. Ghana's legal (constitutional) and policy framework as well as institutional arrangements do not effectively address the systemic nature of gender disparities in the nation. It is surely the State that has the constitutional mandate and authority to protect its citizens and should directly prohibit and deal with harmful behaviour in both public and private spheres. In any case, civil society's watchdog role is only secondary to that of the State. It is thus, not civil society but the State and its agencies of government and public institutions that have the primary duty of upholding the rights of its electorate/citizens.

It is against this background that several groups concerned with gender equality have collaborated diligently and taken a comprehensive set of measures<sup>6</sup> to engage with the review process. It is submitted that any worthwhile review of a constitution needs to take serious account of gender

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<sup>4</sup> FIDA-Ghana 1998, [http://www.afrol.com/Categories/Women/profiles/ghana\\_women.htm](http://www.afrol.com/Categories/Women/profiles/ghana_women.htm) (Accessed January 2011)

<sup>5</sup> World Bank policy research report, 2001, *Engendering Development: Through Gender Equality In Rights, Resources, And Voice*, at [www.worldbank.org/gender/prr](http://www.worldbank.org/gender/prr) (Accessed January 2011)

<sup>6</sup> The measures have included a statement by Netright members requiring their representation in the review process and effective communication of their concerns. ABANTU for Development commissioned an analytical study on the 1992 Constitution from a gender perspective as part of the development of proposals for factoring gender responsiveness into the Constitutional Review process and its outcome. The proposals were further informed by a validation process involving identified stakeholders in gender and women's rights throughout the country. Finally, comprehensive submissions in both oral and written forms were made to the Constitution Review Commission in September 2010.



issues and the rights of a large group like women in order to ensure optimum results and full ownership of the process by all Ghanaians.

Accordingly, this paper<sup>7</sup> presents a gender audit of the 1992 Constitution as part of the effort to improve its capability for providing structures that are required for effective participation of all citizens' in national development. Relevant literature and developments in other jurisdictions are examined in order to glean best practices and outcomes in the application of constitutional provisions. Lessons from this study are expected to inform proposals for changes in text and content of the Ghanaian Constitution. Drafts are suggested for particular provisions in order to reflect internationally accepted standards of gender responsiveness in a constitution.

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<sup>7</sup>This paper is built upon a study that was commissioned by ABANTU for Development to be used as a tool for deliberations towards the submission of recommendations on gender issues to the Constitution Review Commission."

# PERSPECTIVES ON INTERNATIONAL APPROACHES TO GENDER EQUALITY

## **Internationally recognised standards for gender equality and women's rights**

In reference to the large population of women in any society, the Preamble of the Universal Declaration of Human Rights affirms the UN's belief in

*“the dignity and worth of the human person and in the equal rights of men and women”.*

The major standard setting international instruments on gender equality and women's human rights<sup>8</sup> oblige signatory States like Ghana to adopt and implement measures for eradicating discrimination, and stereotypes in traditional and cultural beliefs and all practices which legitimise and perpetuate the notion of the inferiority or the superiority of either of the sexes.<sup>9</sup> States are to affirm the health and reproductive rights of women, insisting on the correct view of maternity as a social function and accordingly requiring that the upbringing of children be shared fully by both parents.

## **Inclusion in politics and development**

This view keys in with the opinion that development involves the expansion of freedom, to earn money to secure adequate conditions of existence, to express one's views and associate with others and to participate in the formulation of the important decisions governing one's life.<sup>10</sup> For several decades, “Political equality was conceived as the equal right to cast a vote, not to be present in politics nor to elect representatives of one's choice”.<sup>11</sup> However, the current view promotes an additional component of political equality that focuses more on the right to participate in political decision making as well as the concept of descriptive representation which obtains when representatives resemble constituents in their personal characteristics and life experiences— a key element of a democratic society. Rwanda's

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<sup>8</sup> E.g. the Covenant on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women, (DEVAW) the African Charter and the Protocol to the African Charter on the Rights of Women in Africa (2003, Maputo Protocol)

<sup>9</sup> DEVAW Article 4 (j)

<sup>10</sup> Sen, 1999

<sup>11</sup> Htun, 2003

President underscores this need by declaring that “Women's underrepresentation distances elected representatives from a part of their constituency and, as such, affects the legitimacy of political decisions . . . Increased participation of women in politics is, therefore, necessary for improved social, economic and political conditions of their families and the entire country”.<sup>12</sup>

UN instruments on women require member States to make legal provision for women's access to equal opportunities to education, employment and meaningful participation in political and public life, including the right to vote and stand for election. Further, States are obliged to formally recognise women's contributions particularly to the informal and non-monetized economy.<sup>13</sup> The UN's human rights based approach to development has been recognised even by the World Bank as a necessary foundation for peace and development.<sup>14</sup> All the recent UN treaties and declarations on development<sup>15</sup> have purposely recognised and emphasised the rights and the need for women's specific involvement in varied development processes.

Political inclusion for all citizens is an important component of promoting development and therefore has to be seriously considered during constitutional reviews.

### **Delineating equality- gender mainstreaming**

The concept of gender mainstreaming has been acknowledged as an important tool for promoting gender equality. Gender mainstreaming requires the specific mention of women throughout a vital document like a national constitution on the basis that carefully crafted gender protection clauses will prevent the possibility of a document being interpreted and used in such a manner as may result in possibility of further violation of women's rights.

Thus the call is for a combination of general provisions on equality of both

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<sup>12</sup> Kagame, 2003

<sup>13</sup> Covenant on the Elimination of All Forms of Discrimination against Women, Article 14

<sup>14</sup> Development and Human Rights: The Role of the World Bank, 1998

<sup>15</sup> The World Conference to Review and Assess the Achievements of the United Nations Decade for Women: Equality, Development and Peace (Nairobi 1985); the Convention on Biological Diversity (1992); the Vienna Conference on Human Rights (Vienna 1993); the Convention to Combat Desertification (1994); the Fourth World Conference on Women, (Beijing 1995); the World Summit for Social Development (2000); the Conference on Disaster Reduction (Hyogo, 2005)

sexes as well as specific gender protection clauses in order to ensure effective inclusion of women in all aspects of development. In other words, the application of a “sameness” principle (asserting women's equality to men as individuals) and a “difference” principle (asserting women's group difference from men) are both necessary in constitutional text<sup>16</sup> thus establishing women's legal equality to men while acknowledging and providing for the differences in the sexes because of certain natural and societal responsibilities.

This concept is also articulated as the distinction between “formal” and “substantive equality”. Formal equality is expressed through constitutional provisions that forbid gender discrimination and guarantee the same rights and opportunities to women and men. However, by offering similar treatment to persons who are not similarly situated, formal equality can produce unequal results that further disadvantage already disadvantaged persons. On the other hand, substantive equality should be preferred since it treats people differently by offering positive or affirmative action measures for redressing persisting disadvantage.

For more than three centuries, written constitutions have been declaring the formal source of state authority, establishing governmental institutions and grant “the power to make, apply, enforce and interpret laws”.<sup>17</sup> National constitutions set out guarantees of fundamental rights and freedoms for citizens. As such, constitutions are essential for national development and should be the repository of adequate protection of the rights and freedoms of all inhabitants of a nation.

However, as already discussed, these foundational instruments should not only make general provisions for all persons but they should also ensure that there are specific provisions for addressing the peculiar circumstances of identifiable groups that need special protection. Specificity of constitutional text matters because it “empowers ordinary citizens to make claims on the Constitution's meaning.”<sup>18</sup>

For instance, at the international level, the UN has acknowledged that the fact that women are “persons” or “human” and provision of general clauses covering the rights of all persons in its human rights documents have not been enough to guarantee the proper realisation of women's rights. The UN has therefore crafted and adopted specific instruments to ensure the rights of

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<sup>16</sup> McDonagh, 2002

<sup>17</sup> Stone Sweet, 2000: 218

<sup>18</sup> Siegal, 2002

women. There has even been a formal declaration that women's rights are human rights by the Vienna Declaration on Human Rights in 1993. Additionally, in cases where the text of documents had originally excluded the mention of women (for instance through the use of sexist language), the relevant UN committee<sup>19</sup> has made appropriate comments to correct the exclusion and lack of visibility of women and to redress resultant inequities. Particularly, specificity of text is vital because the content of most national constitutions are either gender neutral or typically lean towards accommodating the needs of men at the expense of women. The recognition of this gendered state of traditional constitutional text, have resulted in reviews of many national constitutions and similar documents in order to deal with the disparities that even the constitutions themselves tend to create. Several countries have moved towards constitutional specific statements on the rights of women and otherwise overlooked or neglected gender issues.

### **Practices of National Constitutions**

The Constitution of the Republic of Uganda, 1995 has been acclaimed as among the most progressive in human rights. In addition to general provisions on fundamental human rights for all persons, constitutional text incorporates principles espoused in international conventions that Uganda has signed by making specific gender protection clauses for correcting hitherto denied or ignored issues of women's worth in society and publicly recognising women's contribution to development. While acknowledging the need for protecting women's reproductive rights, Uganda goes further to provide for both women and men's right to bodily integrity in constitutional text on both family and other spheres of life. For instance,

*“The State shall recognise the significant role that women play in society.”<sup>20</sup>*

*“The State shall ensure gender balance and fair representation of marginalised groups on all constitutional and other bodies.”<sup>21</sup>*

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<sup>19</sup> UN General Comments on Covenants

<sup>20</sup> Constitution of the Republic of Uganda, 1995, Social and Economic Objectives is found XV– Recognition of Role of Women in Society

<sup>21</sup> Constitution of the Republic of Uganda, 1995, National Objectives and Directive Principles of State Policy, # VI on Gender Balance and Fair Representation of Marginalised Groups

## Article 33

*“(1) Women shall be accorded full and equal dignity of the person with men;*

*(3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.*

*(4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.*

Uganda's Constitution makes specific provision for taking positive action to address underlying causes of systemic discrimination against women:

*33(5) “...women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.*

*(6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution.”*

Article 31 makes a clear statement to help eradicate offensive customary practices like forced and child marriages and address gender disparities in family life.

Article 31 *“(1) A man and a woman are entitled to marry only if they are each of the age of eighteen years and above and are entitled at that age-*

*(a) to found a family; and*

*(b) to equal rights at and in marriage, during marriage and at its dissolution.*

*(2) Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit property of their deceased spouses and to enjoy parental rights over their children.*

*(3) Marriage shall be entered into with the free consent of the man and woman intending to marry.”*

The constitution of South Africa exhibits expression on gender and women's protection in a different way from Uganda. South Africa incorporates equal rights for both men and women, but does not explicitly include text that refers only to the rights and protection of women. However, the current South African Constitution is definitely an improvement on previous ones by portraying a clear commitment to gender equality among its founding principles and providing comprehensive statements on equality:

*“1. The Republic of South Africa is one, sovereign, democratic state founded on the following values:*

*(a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.*

*(b) Non-racialism and non-sexism.”*

### ***“Equality***

*9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.*

*(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.*

*(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status ...” (emphasis added)*

The South African Constitution also has clauses which promote equality across differing entities and thus these provisions could eventually be used to protect many critical rights of women including the right to security of the person and freedom from all forms of violence from either public or private sources, the right to make decisions concerning reproduction, the right of access to health care services, including reproductive health care and social security.<sup>22</sup>

<sup>22</sup> Myakayaka-Manzini, 2002: 2; South African Constitution, Articles 12(1) & (2); 27(1)

Further, the South African Constitution is so careful to ensure the visibility and inclusion of both sexes that it specifically mentions women first, then men in appointments to most public positions such as heads of intelligence services, the Public Service Commission, Financial and Fiscal Commission, Auditor General and for representation on provincial legislatures, judicial service etc., all with the purpose of reflecting “*broadly the racial and gender composition of South Africa.*”<sup>23</sup> For example:

***“Control of police service***

*207. (1) The President... must appoint a woman or a man as the National Commissioner of the police service, to control and manage the police service.”*

**How much constitutional specific text is enough?**

The constitutional drafting style of both Colombia and Canada show “broad promises of equal treatment without providing for a specific standard for enforcement” and reliance on judicial standard-setting for interpretation of constitutional provisions. Yet, findings from case studies showed that women received more legal protection after Colombia adopted women's protection clauses. The caution is that the choice of actual constitutional text or effectiveness of protection clauses depends on a combination of factors in a country such as the current status of women's equality in a country; social support networks; enabling legislation and mechanisms for enforcement of constitutional provisions and improved access to courts for non-privileged persons. Particular attention should be paid to the level of confidence that could be reposed in the judiciary's gender sensitivity and consequent response when judicial interpretation to gender issues is required.<sup>24</sup>

Although it does not have as many women's separate protection clauses as the Uganda document, South Africa's new constitution (1996) portrays its commitment to gender equality through text that promotes implementation. For instance, it mandates the establishment of a separate independent institution to promote gender equality apart from seemingly similar institutions of the Human Rights Commission and the office of the Public Protector. Secondly, as already noted, its equality clause is comprehensive

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<sup>23</sup>E.g. Article 174(2)(b)

<sup>24</sup>Lucas, 2009



enough and includes a proviso that is aimed at ensuring substantive rather than formal equality by mandating positive action measures for protecting persons "... *disadvantaged by unfair discrimination.*" Moreover, even though the constitution does not specify those who have been disadvantaged, South Africa has the benefit of a judiciary that has been responsive as far as interpreting the proviso to include women.

The particular situation of a country like Uganda or Rwanda may necessitate reforms that include several new gender specific clauses in national constitutions. Rwanda's applauded high level of women's representation in politics is a good reflection of its constitutional reforms that incorporate international requirements for gender specific and women's rights clauses. Like South Africa and Uganda, Rwanda's constitution mandates the establishment of implementing institutions such as the Gender Monitoring Office, an independent public institution to monitor and supervise

*"the programme for ensuring gender equality...in the context...of sustainable development and to serve as a reference point on matters relating to gender equality and non discrimination for equal opportunity and fairness".<sup>25</sup>*

### **Affirmative action/ temporary special measures**

The UN CEDAW comments that in regard to repealing or modifying discriminatory laws, there is still a need for action to be taken by introducing measures to promote de facto equality between men and women, and *recommended* that "States parties make more use of *temporary special measures* such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment."<sup>26</sup>

Among such measures are quotas and reservations which are efforts to improve the representation of identity groups through various means. These measures provide groups that suffer from discrimination special opportunity for improving their lot, in education, economy, social status etc. and for running for public office with a fair chance. The 1995 Beijing Declaration and Platform for Action established a target of 30% representation of women

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<sup>25</sup> Rwanda Constitution, 2003, Article 185

<sup>26</sup> The Committee On The Elimination Of Discrimination Against Women- *General Recommendation No. 5: Temporary Special Measures, 1998, contained in document a/43/38.*

at all levels of decision-making and leadership for all UN member states. There is also the Commonwealth Plan of Action for Gender Equality (2005-2015) and for training young women towards increasing women's participation in politics.<sup>27</sup>

Different countries use a variety of quota systems. Constitutional quota provisions have been used to reserve seats for women in the national legislature. Reservations introduce group-specific avenues of representation that circumvent the existing party and electoral system. The measures include the setting aside of a percentage of legislative seats for members of a certain group such as women. Such seats may be filled through competitive election in specially-created electoral districts where only group members can compete; the appointment of group members to the legislature through designation by political parties or election by voters registered on separate electoral rolls.

Election law quotas involve national legislation that mandates election quotas (as in Sudan and Iraq). Political party quotas involve voluntary adoption of internal rules for enabling definite percentages of women as candidates for office. Examples are the governing parties in South Africa and Mozambique.<sup>28</sup> Statutory quotas intervene in party nomination procedures by requiring that a minimum number of candidates fielded by political parties for legislative election be from a certain group. For example, the Argentine Ley de Cupos (1991) requires that women comprise a minimum of 30 percent of the positions on party lists.

Electoral systems are commonly divided into proportional representation, majority/plurality and mixed representation systems. Quotas are said to be more readily implemented in countries with a proportional representation electoral system than in countries with majoritarian systems.<sup>29</sup> However, a solution has been suggested that even without changing to a proportional representation system, a good option is that pursued by Tanzania of reserving seats for women via a constitutional or legislated quota to be distributed among parties on a proportional basis.<sup>30</sup> It has also been observed that,

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<sup>27</sup> Commonwealth Foundation, 2009. The Port of Spain Civil Society Statement to the 2009 Commonwealth Heads of Government Meeting. Web: [www.commonwealthfoundation.com](http://www.commonwealthfoundation.com)

<sup>28</sup> Mutume, 2004: 8

<sup>29</sup> Ballington, Julie, 2009

<sup>30</sup> Morna, 2003:8

generally, voluntary quotas of political parties have not been as reliable as legislated or constitutional quotas.<sup>31</sup> However Uganda's majoritarian system has still managed to use the quota system with an appreciable level of positive results and South Africa has effectively employed the party quota measures to enhance women's political inclusion.

### **How effective are constitutional provisions on gender equality?**

It is recognised that general constitutional provisions do not mechanically produce the desired results and therefore are not a magic formula for the attainment of rights, especially gender-related rights that are embedded in entrenched beliefs, customs and practices. There must be properly instituted public structures and resources as well as political will for operationalising the constitutional guarantees. The concept of affirmative action (particularly quotas) has proved very effective and useful in many fields; education, the economy, political representation and identity participation. Currently, about half of African countries use gender quotas and have thereby seen significant increases in women's representation in governance and consequently helped the fight to eliminate social and political discrimination against women.

Since its 2008 elections, Rwanda tops the world ranking of women in national parliaments –56.3% women against Sweden's 46.4%.<sup>32</sup> This gives Rwanda 49% of women representation compared to a world average of 15.1%.<sup>33</sup> This remarkable achievement is the outcome of affirmative action that includes a constitutional guarantee, a quota system and innovative electoral structures<sup>34</sup>. Rwanda's constitutional reform that resulted in a new gender-sensitive constitution (2003) requires the government to set aside at least 30% of posts in decision-making bodies and 30% of seats for women candidates in the Senate; 24 out of 80 seats in the lower house of parliament is to be reserved for women and contested in women-only elections.

After the African National Congress enactment of a 30% quota for female candidates, South Africa moved past more than 100 countries on the world ranking to 3<sup>rd</sup> place in 2010, with women elected to 32.8% of its lower parliamentary seats. The number of women in Parliament increased from 23.8% in 1994 to 29.8% in the 1999 national election<sup>35</sup> and in 2009, 48.3% of

<sup>31</sup> Rumbidzai A Kandawasvika-Nhundu, iKNOW Politics Expert and Senior Programme Officer at International IDEA

<sup>32</sup> Inter-Parliamentary Union, Women in National Parliaments World Classification @ 30<sup>th</sup> November 2010

<sup>33</sup> Mutume, 2004:8

<sup>34</sup> Powley, Elizabeth, 2005

<sup>35</sup> Myakayaka – Manzini: 2002:1

<sup>36</sup> Morna *et al* 2009

the ANC seats in the provincial legislatures were occupied by women.<sup>36</sup>

In Uganda, it was on the authority of Article 180(2) (b) of the Constitution that the 1997 Local Government Act effected the reservation of one third of the membership of each local government council for women. It has been observed that when compared to the other modes of entry into Parliament, affirmative action at the district level has been one main measure that significantly affected the increase in the number of women representatives in Parliament<sup>37</sup>. From a maximum of four women in Parliament before 1986, the number rose to 17% by 1994, then from 19% during the 1996 – 2001 Parliament to 25% during the 2001 – 2004 Parliament<sup>38</sup>. This improvement in women's participation in decision making has presented them with opportunities to be leaders, as evidenced by the number of women who head different Parliamentary Committees. The increased visibility of women in leadership has also resulted in more women being currently disposed to contesting for political office.

Legislation in Finland stipulates that there should be representation of a minimum of 40% of each gender at various levels of power. The result has been an increase of women in decision making from 25% in 1980 to 48% in 1996.

Sudan has been under authoritarian or semi-authoritarian rule and it has been argued that the role of the legislature is usually diminished under such circumstances, making it difficult to assess the impact of interventions on the involvement of women in decision making. Yet, even in that environment, in 2008 Sudan enacted a new electoral law towards presidential and parliamentary elections in 2010. Out of 40% of the seats, 15% would be elected by proportional representation and 25% would be reserved seats for women from separate electoral lists.

In post conflict Iraq, the Interim Constitution of 2004 and a new electoral law adopted a system for women using a candidate-list based quota that has succeeded in integrating women into the political party system as well as putting them on equal footing with men within party lists. The results were that in an electoral system of proportional representation in the 2005 election, 70 women were elected to the 275 member parliament, making up 25.5% of the Parliament.

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<sup>37</sup> Kharono, Elizabeth, 2003

<sup>38</sup> Tamale, S., 1999

In spite of all these positive examples from other countries, Ghana has not made enough use of affirmative action measures like quotas to increase women's participation in governance. Ghana's ranking in the world on women's participation in national governance is abysmal as shown in Table 3 below.

**Table 3: Women in National Parliaments**

WORLD CLASSIFICATION @ 30 <sup>th</sup> November 2010									
Rank	Country	Lower or single House				Upper House or Senate			
		Elections	Seats*	Women	% W	Elections	Seats*	Women	% W
1	Rwanda	9 2008	8	45	56.3%	10 2003	26	9	34.6%
2	Sweden	9 2010	349	157	45.0%	--	--	--	--
3	South Africa	4 2009	400	178	44.5%	4 2009	54	16	29.6%
7	Finland	3 2007	200	80	40.0%	--	--	--	--
21	Burundi	7 2010	106	34	32.1%	7 2010	41	19	46.3%
23	Uganda	2 2006	324	102	31.5%	--	--	--	--
39	Iraq	3 2010	325	82	25.2%	--	--	--	--
51	Canada	10 2008	308	68	22.1%	N.A.	93	32	34.4%
72	United States of America	11 2010	433	73	16.9%	11 2010	100	17	17.0%
78	Burkina Faso	5 2007	111	17	15.3%	--	--	--	--
111	Ghana	12 2008	230	19	8.3%	--	--	--	--

Source - Inter-Parliamentary Union<sup>39</sup>

From the foregoing, it is clear that a national constitution establishes the institutional mechanisms that ultimately define the distribution and management of power and the interplay of relationships between the state, citizens and other actors. A constitution should ensure the State's endorsement of gender rights and its obligation to secure these rights. As such, the constitution puts the matter beyond the control and manipulation of partisan interests and the caprice of particular governments. A constitution should also afford interested persons the opportunity to require accountability from government for the realisation of their declared rights and consequent social transformation particularly for "...purposes of redressing the imbalances created by history, tradition or custom" (Constitution of Uganda).

<sup>39</sup> Women in National Parliaments, 2010

# THE STATE OF GENDER EQUALITY IN GHANA

An examination of the situation of gender equality, equity and agency in Ghana should further provide a realistic perspective for examining the nation's Constitution.

## Culture and Traditional Practices

At the traditional level of leadership, there is a great deal of lip service paid to the value placed on women leaders, yet the constitutionally established National and Regional Houses of Chiefs effectively exclude female chiefs and queen mothers. Over 90% of all HIV/AIDS cases are found in people between the ages of 15-49 and two thirds of these cases are females (Ministry of Health, 2001). To a large extent, this condition is attributable to women's cultural position in Ghanaian society and their consequent inability to negotiate safe sex, especially when they are economically or socially dependent on their partners.<sup>40</sup> Several customary practices such as child marriages, ritual servitude of women and girls, cruel widowhood rites and female genital mutilation result in the violation of the rights of women and girls.<sup>41</sup>

## Education

The 1992 Constitution guarantees free, compulsory, universal basic education for all at primary and junior secondary school levels and the gender gap in education has been improving over the years. There is limited application of the affirmative action policy for recruitment of female students into some tertiary institutions, yet the dropout rate increases and girls' enrolment decreases as the educational cycle moves from preschool to secondary and tertiary levels. The general literacy rate among women in Ghana is still quite low. More than twice as many females as males have never been to school, and only half as many females as males have secondary or higher qualifications.<sup>42</sup>

## Economy

In the last two decades, Ghana's government has executed some economic policy interventions that extensively liberalized major sectors of the

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<sup>40</sup> Tsikata, D, 2005

<sup>41</sup> MOWAC report to CSW, 2010

<sup>42</sup> ISODEC, 2010 Budget Analysis

economy, introduced privatization and cuts in social spending and decreased the State's role in economic life. Women were among the groups that were most adversely affected by the resulting increase in the cost of living<sup>43</sup> and consequent widespread poverty and insecure livelihoods. This was a consequence of women's specific roles and position in society and also because development plans have been made and executed without enough appreciation or consideration of rights or the value of women's contributions to the economy. Ghana's policy emphasis on export crops and the market-based economy tend to move the domestic terms of trade against food production which is mainly undertaken by women. Additionally, the recent global crises (financial, food and climate change) are already showing that, in Ghana, the differential and gendered impacts will impede efforts to promote gender justice, eradicate poverty and achieve the Millennium Development Goals for sustainable development.<sup>44</sup>

Women's ability to choose which sector of the economy they can engage in is highly restricted. The formal segment of Ghana's labour market is male-dominated because employment in that sector is contingent upon education and skills acquisition, requirements that tend to be met more by males than females for various reasons (notably financial, institutional and cultural as two times more women than men have no formal education). Thus, women generally occupy the lower and middle strata.<sup>45</sup>

In spite of these dire circumstances, Ghanaian women still manage to make a vital contribution to the rural economy. Food security is assured by women subsistence farmers who have, for a long time been responsible for about 70% of national food crop output.<sup>46</sup> Yet women's access to economic resources such as credit and land is very limited, and the age-old inheritance systems in the country do not favour women. The informal sector hardly has any access to social or legal protection. For instance, pensions under the Social Security and National Insurance Trust are skewed in favour of men as only 10% of women were on formal pension in December 2003.<sup>47</sup>

One third of households in Ghana are headed by a woman<sup>48</sup> but certain circumstances predispose female headed households to poverty. Most

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<sup>43</sup> Dei, G.J.S., 1993

<sup>44</sup> IPCC, 2010

<sup>45</sup> Sackey, 2005

<sup>46</sup> Amoako- Nuama, 1999

<sup>47</sup> ISODEC - UNICEF Collaboration Budget Analysis, 2010

<sup>48</sup> GLSS, 2000

women work in the informal sector in some very insecure and lowly paid jobs; others are unpaid workers in family enterprises or in the increasing burden of unpaid but vital domestic care economy - caring for the sick, obtaining food and ensuring the survival of their families.<sup>49</sup> The situation limits women's ability to engage in or excel in other fields of endeavour and yet Ghanaian women do not receive any formal recognition for this work.

The UN Committee on the Elimination of Discrimination against Women (CEDAW) notes that such unpaid work constitutes a form of exploitation and therefore recommends that the State should take the necessary steps to guarantee payment, social security and social benefits for women who work under these conditions.<sup>50</sup> Ghana is also required to act on UN recommendations for recognising, quantifying and including the unremunerated domestic activities of women in the gross national product.<sup>51</sup>

### **Legal and institutional framework**

Ghana's 1992 Constitution contains general provisions for promotion and protection of human rights and acknowledges international human rights instruments, norms and best practices.<sup>52</sup> Ghana has endorsed conventions, protocols and declarations on gender equality. Particularly relevant are the Convention on the Elimination of All Forms of Discrimination Against Women, the Maputo Protocol and the Beijing Platform for Action.

There has been the passage of national legislation that affects gender equality such as the Intestate Succession Law (PNDCL 111), 1985, and the Domestic Violence Act, 2007 (Act 723).

A number of social protection policy interventions have been initiated for addressing poverty and this should improve the situation of very poor people who are predominantly women and also enhance girls' enrolment in basic schools.<sup>53</sup>

Since 2001, Ghana has had a Ministry of Women and Children's Affairs (MOWAC) which is the main government agency for spearheading the

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<sup>49</sup> Takyiwaa Manuh

<sup>50</sup> CEDAW General Recommendation No. 16: (1991)

<sup>51</sup> CEDAW General Recommendation No. 17: (1991)

<sup>52</sup> 1992 Constitution Of Ghana, Article 37(3); 40(C) And (D)

<sup>53</sup> Examples of social protection measures include the Livelihood Employment Against Poverty, Capitation Grant and Ghana School Feeding programmes



development of mechanisms for the implementation of gender equality and women's rights. However, implementation of laws and policies has not been as effective as expected; MOWAC reports of inadequate funding, human resources and structures for policy coordination.<sup>54</sup> Thus the current legal framework and institutional interventions in Ghana have obviously not matched its international obligations concerning the promotion of gender equality.

## Political participation

The limited participation of women in decision-making has been attributed to such factors as low levels of education and cultural perceptions of women's roles in the society as not meant for political leadership.<sup>55</sup> This reflects in inadequate representation of women in both local government and in the national parliament as shown by Tables 1 and 2 below. Currently, there are 500 women elected assembly members, out of over 4,000 metropolitan/municipal and district assemblies and 8 women appointees out of 170 District Chief Executives. In spite of promises by presidential aspirants and party manifestos, only a token number of women are appointed to public boards, corporations and governance institutions.

Table 1: Women's participation in Local Government Structures

Year	Members	Men	Women	% of Men	% of Women
1998	4,820	4,624	196	95%	5%
2002	4,583	4,242	341	93%	7%
2006	4,691	4,248	443	90.6%	9.4%

Source: WILDAF Ghana

Table 2: Women's Representation in Parliament

Year	1992	1996	2000	2004	2008
No. of seats in Parliament	200	200	230	230	230
No. of Women candidates	23	53	95	104	103
No. of Women elected	16	18	19	25	20
% of Women in Parliament	8	9	9.5	10.9	8.7

Source: Ministry of Women and Children Affairs, 2009<sup>56</sup>

<sup>54</sup> Ministry of Women and Children's Affairs, 2010

<sup>55</sup> Ghana's combined 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> periodic reports to the CEDAW

<sup>56</sup> Ghana's 3<sup>rd</sup> Progress Report on the Implementation of the African and Beijing Platform for Action and Review Report for Beijing + 15, September 2000

These examples of gender disparities and the situation of women in Ghana show the unacceptably high level of vulnerability and exclusion of women from major development spaces, hence the need for corrective action through substantive gender protection provisions in the national constitution.

# ANALYSIS OF THE 1992 CONSTITUTION OF GHANA AGAINST THE BACKDROP OF GENDER EQUALITY

## Strengths

As the nation's foundational instrument, the 1992 Fourth Republican Constitution establishes the setting for democratic governance through concepts such as the rule of law, fundamental human rights, separation of powers and the independence of the judiciary. It also contains the framework for the operation of political parties, representation of the people, an independent Electoral Commission, freedom and independence of the media as well as political and public education.

The Constitution establishes several guarantees for the rights of individuals and groups of people and directive principles of state policy for the government's functioning as the duty bearer for promoting and protecting these rights.

## Equality and Non Discrimination

**Articles 12(2) and 17(1)** make the typical constitutional provision for the recognition of the equality of all persons:

*“Article 17(1) All persons shall be equal before the law.”*

Article 17 provides for the passage of *“laws that are reasonably necessary to provide – (a) for the implementation of policies and programmes aimed at redressing social, economic and educational imbalance in the Ghanaian society”*.

Article 17 also guarantees non-discrimination against any person or groups of persons in Ghana on grounds including *“gender...creed or social or economic status.”* Similarly, Article 35(5) condemns discrimination and promotes the integration of the people of Ghana.

**Article 35 (6)** requires the State to take action to achieve regional and gender balance in recruitment and appointment to public offices in particular, while Article 36(6) requires the State to *“take all necessary steps so as to ensure the full integration of women into the mainstream of the economic development of Ghana.”*

**Article 26** prohibits harmful traditional practices that usually affect the rights of women and girls.

### **Article 27**

There is provision on the protection of women's reproductive role of maternity and child care and one clause on capacity building for working mothers:

*“Article 27 (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**, realise their potential.*

*(3) Women shall be guaranteed equal rights to training and promotion without any impediments from any person.”*  
(Emphasis added)

### **Weaknesses and Cures**

#### **Nationality by marriage - Article 7**

There is a clear case of possible discrimination against men by placing more stringent demands on a man who applies for citizenship through marriage to a Ghanaian woman.

CEDAW has stated that nationality is critical to full participation in society. An adult woman should not be arbitrarily deprived of her nationality because of marriage or dissolution of marriage or because her husband or father changes his nationality. Neither should constitutional stipulations adversely affect a male spouse since that would amount to gender discrimination against men and could also affect the children of the marriage. Such a situation should be resolved with a constitutional amendment that has the same requirements for a man or a woman.

#### **Non-discrimination - Article 17**

On the face of it, the inclusion of “gender” in the list of prohibited grounds

would be thought to be sufficient for protecting the rights of both sexes. However, as the experience of many nations shows, such neutral language has not been found to be adequate for addressing women's rights in many cases and particularly in traditionally patriarchal societies like Ghana with a history of harmful traditional norms and practices that are injurious to women and girls.

There is no specific provision for dealing with both direct and indirect discrimination except for the reference to “*economic and educational imbalance*” in Article 17(4). This definition and similar provisions leave out references to “*political, cultural and disability*” issues that are recognised as potential areas where abuses and violations of the rights of women and girls are likely to occur.

### **Affirmative action, Gender institution**

Although Article 17(4) makes provisions for affirmative action in general, it does not specifically provide for affirmative action measures to deal with concerns of women similar to provisions in other countries like Rwanda, Burundi, Uganda etc., or measures like political quotas for enhancing women's political participation. This is a major limitation which should be addressed. In view of the grave situation of gender inequality and as part of learning from best practices elsewhere, the Constitution should provide for a separate institution to oversee gender concerns in a comprehensive and effective manner.

### **Inimical cultural practices - Article 26, 39 (2)**

The provisions are limited to the extent that they do not provide for other persistent practices (such as workplace sexual harassment, abuses involving the grant of maternity leave) that are as injurious to the rights of women, as harmful traditional or customary practices are to women.

### **“Women's Rights”- Article 27**

This provision is titled “Women's Rights” but negates the reality of Ghanaian women as whole human beings and rights holders because it overemphasises the reproductive rights of women without making provision for other aspects of women's rights and involvement in the nation's development.

The implication is that the 1992 Constitution reinforces the traditional limitations placed on women and raises grave challenges to Ghana's

“constitutional attitude” to the situation of women. At the same time Article 27 (1) and (2) helps perpetuate an unfortunate state of gender imbalance that denies men who are fathers' the healthy legal environment for properly realising their rights and roles as parents and equal partners with the mothers of their children. It also undermines the recognition of the family as an important unit of society (as in Article 28(1)(e)).

Though the third clause is not limited to the reproductive function of women, it is restricted to the circumstances of women involved in formal employment. Thus this provision does not provide for the large numbers of women, particularly those in rural areas, who are not in employment that calls for the kind of training and promotion envisaged in the Article. This situation also shows the lack of acknowledgement of the immense contribution that many women make to household income and to the general economy and development of the nation. To correct this lapse, it is important that Ghana complies with the UN recommendation to

*“Take steps...to quantify and include the unremunerated domestic activities of women in the gross national product...”<sup>57</sup>*

Ultimately, Article 27 should be replaced with comprehensive stipulations that acknowledge the actual rights, contribution and proper place of women in Ghana beyond issues of maternity and reproduction.

It is also suggested that the first two clauses of Article 27 could be expanded and captioned “Parental Rights” or “Family Rights” to acknowledge the need for involvement of fathers and men in nurturing of children as well as affording the legal framework for both women and men to contribute equally to other family obligations.

### **Traditional leadership**

The language used in Articles 277 to define a traditional leader -“chief” is gender neutral, leading to a presumption that a chief could be a man or a woman. Moreover, the definition also includes a “queen mother” a position known to refer to only female persons. Thus this constitutional definition could be interpreted to recognise either a man or a woman chief and a woman queen mother/chief.

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<sup>57</sup> General Comments on CEDAW, recommendation No. 17

The concept of “queen mother” does not exist in all traditional areas of Ghana and should not be a basis for excluding women from such areas from acknowledgement as chiefs. Secondly, there are women who are installed as “chiefs” and not queen mothers even in areas where there are queen mothers. However designated, female traditional authorities are not accepted as having the same value as male chiefs and are not accorded the same right or opportunity to participate in the Houses of Chiefs though these institutions are backed by the Constitution.

It is therefore suggested that the constitutional text should be rephrased to provide the kind of clarity that will deal with the relegation to inferior status of the female portion of traditional authorities. Further, an affirmative action measure of applying quotas should be used in the election of chiefs onto the Houses of Chiefs so as to include a minimum number of women traditional leaders.

### **Non-inclusive language**

In spite of many constitutional stipulations on human rights, Ghana's Constitution falls into the unfortunate category of national documents which use language that makes women and girls invisible, even in the very Article 12 that guarantees fundamental human rights and freedoms for all persons and prohibits non-discrimination. After a reference to “every person”, only the male pronoun is used:

*“Article 12(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...” (Emphasis added)*

This syndrome is found in numerous articles including those relating to life, personal liberty, execution of court processes, etc., and in references to public officials including the President and the Commissioner of the Commission on Human Rights and Administrative Justice. This is sexist language which should be completely eradicated from our national document.

### **Related issue - Children's Rights - Article 28**

Article 28 relates to all children of both sexes and so does not strictly fall under “gender”. However, a change is proposed because of the close and necessary link of children to women and family and to enhance the protection of the family as an important unit of society.

Article 28(1) does not make definite statements on the rights of the child. This clause should clearly state the rights of the child, especially since it may be argued that the passage of a comprehensive law on children in 1998 (The Children's Act) could be interpreted as having rendered Article 28(1) redundant as it stands. A new rendition would ensure the sustenance of the Constitution's supervision of the promotion and protection of the rights of children.



## SUMMARY OF RECOMMENDATIONS

Ghana's obligation to comply with international instruments and especially the UN CEDAW recommendations should result in the following measures:

- Remove the disparity in nationality provision so that spouses who claim citizenship through women (wives) shall be on equal footing as wives who claim citizenship through men (Article 7);
- Amend the definition of discrimination to make room for direct and indirect discrimination as well as “political, cultural and disability” aspects of citizens rights;
- Expand provisions on gender and women's rights beyond Articles 27 and policy directives in articles 35 and 36;
- Specifically declare the right of women to fully participate at all levels of decision making in political, social, economic and traditional arenas;
- Enhance the use of temporary special measures/affirmative action, particularly quota systems to advance women's effective integration into education, politics, the economy and employment;<sup>58</sup>
- Establish a separate independent institution as e.g. Uganda, Rwanda and South Africa's Equal Opportunities Commission/Gender Monitoring Office to deal holistically with gender equality concerns;
- Formally recognise the contribution of women, especially those in rural areas, to household income and the country's general economy and development;
- Quantify and include the unremunerated domestic activities of women in the gross national product;
- Guarantee payment, social security and social benefits for women who work without such benefits in family enterprises;

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<sup>58</sup> CEDAW GENERAL RECOMMENDATION NO. 5: 1998

- Use of inclusive and non-sexist language in order to make female persons both visible and relevant. (Male designations should not be used to subsume references to female persons.); and
- Children's rights should be specifically expressed in the form of a bill of rights (Article 28).

## CONCLUSION

National constitutions should be the main guarantor of the fundamental human rights and freedoms of citizens and other residents of a nation.

However, it has been submitted that even when constitutions seem to be gender neutral, they are historically “gendered” and their provisions result in differential impact on women. The human rights notions of equality and universality also recognise that rights are not experienced in the same manner by all persons or groups and therefore particular provision should be made for certain groups that are likely to be vulnerable to discrimination on several grounds including gender. Consequently, constitutions which claim to be founded on democratic principles cannot afford to neglect clearly articulated provisions for gender equality.

Since women form a large segment of society, the realisation of women's human rights is definitely a basic requirement for good governance and national development. Thus there should be a specific guarantee of affirmative action provisions for ensuring that women's concerns are adequately addressed throughout the Constitution, by clear and specific provisions that apply readily to the realisation of the rights of women and girls.

It is also legitimate that the approach to reviews of constitutional issues involving women should not be to “concentrate solely on those sections of the constitution which deal exclusively with women, but regard the entire Constitution as guaranteeing them all their dignity, equality, social justice and development.”<sup>59</sup> There is validity for women's active engagement in all matters affecting them and particularly in taking a position on their country's constitutional framework and the process and outcomes of reforms.

These requirements need to be applied to Ghana's 1992 Constitution since this study has revealed that provisions for promoting gender equality and related women's human rights are woefully inadequate. The Ghanaian situation is further compounded by a similar paucity of relevant effective policy intervention. Consequently, a number of proposals have been made by various bodies including political parties for strengthening the gender

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<sup>59</sup> Waligo, 1996

sensitivity of the Constitution. These proposals should be taken seriously in order to take full advantage of the opportunity offered by the current constitution review process.

**NOTE:** Examples of possible draft provisions are included in the attached appendix to enhance the clarity of these recommendations for amendments to the Constitution.

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## APPENDIX

### GENDER AND THE 1992 CONSTITUTION PROPOSED DRAFTS OF PARTICULAR CLAUSES

This section provides suggested revisions to the 1992 Constitution. Tables are used for easy comparison of original versions of provisions and draft proposals. Comments are provided to give reasons that informed the proposals.

Changes and new provisions are shown in **bold** and *italic* font.

Article 7: Persons Entitled to be Registered as Citizens		
Current Language - 1992 Constitution	Proposed new draft	Comment
3) Where the marriage of a woman is annulled after she has been registered as a citizen of Ghana under clause (1) of this article, she shall, unless she renounces that citizenship, continue to be a citizen of Ghana.	(3) Where the marriage of a <i>person</i> is annulled after she <i>or he</i> has been registered as a citizen of Ghana under clause (1) of this article, <i>that person</i> shall, unless she or <i>he</i> renounces that citizenship, continue to be a citizen of Ghana.	A man applicant for retention of, or registration for, Ghanaian citizenship has to meet requirements to establish his goodwill and permanent residence; the same demands are not
(4) A child of a marriage of a woman registered as a citizen of Ghana under clause (1) of this article to which clause (3) of this article applies, shall continue to be a citizen of Ghana unless he renounces that citizenship.	(4) Any child of a marriage of a <i>person</i> registered as a citizen of Ghana under clause (1) of this article to which clause (3) of this article applies, shall continue to be a citizen of Ghana unless he <i>or she</i> renounces that citizenship.	woman who marries a Ghanaian man.  A child of a marriage of such a man is also marginalised by the current provisions.
(5) Where upon an application by a man for registration under clause	(5) Where upon an application by a <i>person</i> for registration under	Thus the current provisions cause

<p>(1) of this article, it appears to the authority responsible for the registration that a marriage has been entered into primarily with a view to obtaining the registration, the authority may request the applicant to satisfy him that the marriage was entered into in good faith; and the authority may only effect the registration on being so satisfied.</p>	<p>clause (1) of this article, it appears to the authority responsible for the registration that a marriage has been entered into primarily with a view to obtaining the registration, the authority may request the applicant to satisfy the <i>authority</i> that the marriage was entered into in good faith; and the authority may only effect the registration upon being so satisfied.</p>	<p>potential gender discrimination against a foreign man who is married to a Ghanaian woman:</p> <p>The whole article should therefore be amended to apply the same conditions to a woman or man married to a Ghanaian citizen.</p> <p><b>Ref:</b> CEDAW Article 9(2)</p>
<p>6) In the case of a <i>man</i> seeking registration clause (1) of this article applies only if the applicant permanently resides in Ghana.</p>	<p>6) In the case of a <i>person</i> seeking registration clause (1) of this article applies only if the applicant permanently resides in Ghana.</p>	

**Article 17: Equality and Freedom from Discrimination**

<b>Current Language - 1992 Constitution</b>	<b>Proposed new draft</b>	<b>Comment</b>
<p>(2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.</p>	<p>(2) A person shall not be discriminated against <i>directly or indirectly</i> on grounds of <i>sex</i>, gender, race, colour, ethnic origin, religion, creed, <i>civil, political</i>, social, <i>cultural</i>, or economic status, <i>disability or age or any other ground</i>.</p>	<p>C l a u s e ( 2 ) introduces "<i>directly and indirectly</i>";</p> <p>-Clauses (2) and (3) add "<i>sex</i>" to ensure recognition of the natural/biological d i f f e r e n c e s between man and</p>

<p>(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 of 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.</p>	<p>(3) For the purposes of this Article, <i>discrimination means any distinction, exclusion or restriction made on the basis of sex, gender, race, colour, ethnic origin, religion, creed, disability, age, social, cultural, civil, political or economic status, or any other ground, which has the effect or purpose of impairing or nullifying the recognition, contribution, participation, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.</i></p>	<p>woman apart from the broader gender considerations; "<i>disability or age or any other ground</i>" to ensure comprehensive coverage of major and all other grounds of discrimination.</p> <p>-Clauses (2), (3) and (4) add "<i>civil, political and cultural</i>" to ensure non-discrimination and redress of imbalances in all areas of life.</p> <p>- Clause (3) proposes a new definition of discrimination which states the reason why a distinction amounts to discrimination in line with international standards.</p>
<p>(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</p>	<p>4) <i>Parliament shall enact such laws as are necessary to ensure:</i></p> <p>(a) the implementation of policies and programmes aimed at redressing <i>civil, political, cultural, social, economic and educational imbalance in the Ghanaian society.</i></p>	<p>- A new rendition turns (4) into a definite statement for positive action on redressing imbalances in society.</p>

<b>Article 26: Cultural Rights and Practices</b>		
<b>Current Language - 1992 Constitution</b>	<b>Proposed new draft</b>	<b>Comment</b>
(2) All customary practices which dehumanise or are injurious to the physical and mental wellbeing of a person are prohibited.	(2) All customary <i>and other practices</i> which <i>discriminate against</i> , dehumanise or are injurious to the <i>health or</i> physical and mental wellbeing of, a person are prohibited.	Article 26(2) should be expanded to cover any injurious practice that results in discrimination and affects "health" as well.
<b>Article 27: Women's Rights</b> (Extensive changes are suggested for Article 27)		
<b>Current Language - 1992 Constitution</b>	<b>Proposed new draft</b>	<b>Comment</b>
	(1) Women shall be accorded full and equal respect of the dignity of the person with men and shall be afforded equal opportunities in civil, political, economic, social and cultural activities.	The new (1) provides a specific statement on the rights of all women and for covering all areas of public and social life.
(3) Women shall be guaranteed equal rights to training and promotion without any impediments from any person.	(2) Women shall be guaranteed equal rights to training and promotion without any impediments from any person.	Clause (3) is retained for a required focus on protecting women's right to work and its incidences.
	(3) <i>The State shall prohibit direct and indirect discrimination against women in all its</i>	

	<p><i>forms and pursue vigorously by all appropriate means policies for eliminating discrimination against women.</i></p>	
	<p><i>(4) For the purposes of women's rights, the term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status and on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.</i></p>	<p>This new clause provides a definition of discrimination against women (in accord with CEDAW)</p>
	<p><i>(5) The State shall adopt appropriate special temporary measures aimed at accelerating de facto equality between men and women.</i></p> <p><i>For this purpose, the State shall:</i></p> <p><i>(a) adopt legislative and other measures, including sanctions</i></p>	<p>Clause (4) is on the State's internationally agreed obligation to take temporary positive measures to deal with all aspects of discrimination against women.</p>

	<p><i>forms and pursue vigorously by all appropriate means policies for eliminating discrimination against women.</i></p> <p><i>(4) For the purposes of women's rights, the term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status and on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.</i></p>	
<p>(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.</p>	<p><i>(5) The State shall adopt appropriate special temporary measures aimed at accelerating de facto equality between men and women.</i></p> <p><i>For this purpose, the State shall:</i></p> <p><i>(a) adopt legislative and</i></p>	<p>Clause 5 (a) expands on current 27(1) to address possible reduction in the benefits accorded working mothers.</p>

	<p><i>other measures, including sanctions where appropriate, prohibiting all discrimination against women.</i></p> <p><i>(b)institute measures to modify or abolish existing laws, customs or traditions and practices which discriminate against women;</i></p>	<p>Clauses 5(b) &amp; (c) enumerate further protection clauses for pregnant women and mothers.</p>
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**Proposed New Article 27A: Family Life and Marriage**

<b>Proposed new draft</b>	<b>Comment</b>
<p><i>1. The State shall eliminate discrimination against women in all matters of marriage and family relations and promote the equal rights of men and women.</i></p> <p><i>(1) Only persons of eighteen years and above have the right to marry.</i></p> <p><i>(2) Marriage shall be entered into only with the free and full consent of the intending spouses.</i></p> <p><i>(3) Spouses are entitled to equal rights as to</i></p> <ul style="list-style-type: none"> <li><i>(a) marriage, during the marriage and at its dissolution;</i></li> <li><i>(b) responsibility for and custody and access to their children;</i></li> <li><i>(c) acquisition, ownership, management and administration, enjoyment and disposition of property; and</i></li> <li><i>(d) the choice of an occupation and profession.</i></li> </ul>	<p>This new provision has been added to deal with challenges in marriage and family life, an area in which several issues of gender disparities are found.</p> <p>(This is recorded as Article 27A in line with drafting practice.)</p>
<p><i>(4) The family is the natural and fundamental unit of society and is entitled to protection by society and the State.</i></p>	<p>(4) is lifted from Article 28(1)(e) which limits the</p>



	family unit to children's perspective only.
<p><b><i>(5) The State shall adopt appropriate measures to</i></b></p> <p><b><i>(a) promote an appreciation of maternity and paternity as vital social functions and a recognition of the joint responsibility of men and women in the upbringing and development of their children; and</i></b></p> <p><b><i>(b) enable parents and other persons who have the care of children to combine this obligation with achieving their full potential and participation in public life, and in particular through the provision of the necessary supporting social services and promotion of the development of child-care facilities.</i></b></p>	<p>Clauses (4) and (5) are to help promote all members of the family unit and lift the traditional burden on women only as nurturers of children.</p>

## 28: Children's Rights

Current Language - 1992 Constitution	Proposed new draft	Comment
<p>(1) Parliament shall enact such laws as are necessary to ensure that</p> <p>(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</p>	<p>(1) 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 law.</p> <p>(1A) Every child, whether or not born in</p>	<p>Even though Article 28 relates to all children and so does not strictly fall under "gender", a change is proposed because of the necessary and close link of children to family and gender issues raised in family life.</p> <p>Clause 28(1) is reordered to provide definite</p>

<p>of the child in accordance with law;</p> <p>(b) every child, whether or not born in wedlock, shall be entitled to reasonable provision out of the estate of its parents;</p> <p>(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;</p> <p>(d) children and young persons receive special protection against exposure to physical and moral hazards; and</p> <p>(e) the protection and advancement of the family as the unity of society are safeguarded in promotion of the interest of children.</p>	<p>wedlock, shall be entitled to reasonable provision out of the estate of its parents.</p> <p><i>(1B) Every child has the right to care, maintenance and upbringing by his or her parents</i> in cooperation with such institutions as Parliament may, by law, prescribe in such manner that in all cases the interest of the child is paramount.</p> <p><i>(1C) Every child or young person has a right to receive special protection against exposure to physical and moral hazards.</i></p>	<p>statements on the rights of the child and then direct Parliament to enact laws for the realisation of those rights. This is similar to South Africa's provisions' format.</p> <p>(Presented here as clauses (1) to (1C) in line with drafting practice)</p> <p>(1)(e) should be exported to fit more appropriately in provisions on family.</p>
	<p><i>(6) Parliament shall enact legislation to achieve the full realisation of the rights referred to in this article.</i></p>	<p>This clause (6) should now cover all the clauses of Article 28.</p>

**Article 35 (6): Political Objectives**

<b>Current Language - 1992 Constitution</b>	<b>Proposed new draft</b>	<b>Comment</b>
<p>(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.</p>	<p>(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, <i>sex</i>, gender or religion, creed or other beliefs, <i>civil, political, social, cultural</i>, or economic status, <i>disability or age or any other ground</i>.</p>	<p>Similar additions as in Article 17.</p>
<p>(6) Towards the achievement of the objectives stated in clause (5) of this article, the State shall take appropriate measures to</p> <p>(b) achieve reasonable regional and gender balance in recruitment and appointment to public offices;</p>	<p>(6) Towards the achievement of the objectives stated in clause (5) of this article, the State shall take appropriate measures to</p> <p>(b) achieve reasonable regional and gender balance <i>and fair representation of marginalised groups</i> in recruitment and appointment to public offices.</p> <p><i>(6A) To give full effect to clause (6)(b) of this article: the State shall</i></p>	<p>Article 35(6) (b) is expanded to include a consideration of marginalised groups.</p> <p>In order to facilitate realisation of the expanded Clause 6(b), a new 6A is proposed to promote positive/affirmative action and set up a specific independent institution for dealing with gender equality issues.</p>

	<p><b><i>adopt measures to:</i></b></p> <p><b><i>(i) ensure that there is of a minimum of forty percent representation of each gender on public boards and elective public bodies;</i></b></p> <p><b><i>(ii) eliminate discrimination against women in public and political life of the country to ensure to women, on equal terms with men, the right to participate in the formulation and implementation of government policy; and</i></b></p> <p><b><i>(iii) enact relevant laws, including laws for the establishment of an Equal Opportunities Commission which shall ensure the realisation of gender equality and equity in all spheres of life and serve as a reference point on matters relating to gender equality and non discrimination.</i></b></p>	<p>This is in line with practice in other countries which have such an institution apart from other bodies like the Commission on Human Rights; Ombudsman / Public Prosecutor; National Council on Women, Ministry on Women etc.</p>
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## Article 36: Economic objectives

Current Language	Proposed new draft	Comment
<p>(6) The State shall afford equality of economic opportunity to all citizens; and, in particular, the State shall take all necessary steps so as to ensure the full integration of women into the mainstream of the economic development of Ghana.</p>	<p>(6) The State shall afford equality of economic opportunity to all citizens; and, in particular, the State shall take all necessary steps so as to ensure the full integration of women into the mainstream of the economic development of Ghana.</p> <p><i>(6A) Towards the achievement of the objectives stated in clause (6) of this article:</i></p> <p><i>(a) the State shall take appropriate measures to pay special attention to the peculiar challenges faced by women by acknowledging and supporting their contribution to household income and other resources as well as their contributions to the non-monetised sectors of the economy; and</i></p> <p><i>(b) the State shall provide special support to the female head of household.</i></p>	<p>In order to achieve the provision in 36(6), two new paragraphs have been added for the need to acknowledge the situation of women and the numerous female household heads and their peculiar challenges.</p> <p>(Ref: CEDAW)</p>

**Article 39 (2): Cultural Objectives**

Current Language	Proposed new draft	Comment
<p>(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.</p>	<p>(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 <b><i>and all other practices which discriminate against, dehumanise or</i></b> are injurious to the health and well-being of the person are abolished.</p> <p><b><i>(2A) The State shall take affirmative action in favour of groups marginalised on the basis of sex, gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.</i></b></p>	<p>Article 39 (2) should be expanded to cover any practice that results in discrimination and is injurious to the person; and the words “discriminate against” and “dehumanise” be added.</p> <p>A new Clause 2(A) has been added to require the State to take affirmative action for redressing the effects of discriminatory practices that result in marginalisation of persons.</p>

**Article 242 (d): Composition of District Assembly**

Current Language	Proposed new draft	Comment
<p>A District Assembly shall consist of the following members:</p> <p>(d) other members not being more than thirty percent of all the members of the District Assembly, appointed by the President in consultation with the traditional authorities and other interest groups in the district.</p>	<p>A District Assembly shall consist of the following members:</p> <p>(d) other members not being more than thirty percent of all the members of the District Assembly, <b><i>at least forty percent of whom shall be women</i></b>, appointed by the President in consultation with the traditional authorities and other interest groups in the district.</p>	<p>Article 242 (d) is expanded to enable the use of quotas to provide for 40% of women in the 30% of the President's nominees to the District Assembly.</p>

**Article 271: National House of Chiefs**

Current Language	Proposed new draft	Comment
<p>(2) The House of Chiefs of each region shall elect as members of the National House of Chiefs five paramount chiefs from the region.</p>	<p>(2) The House of Chiefs of each region shall elect as members of the National House of Chiefs five paramount <b><i>and other chiefs</i></b> from the region, <b><i>ensuring that there is a minimum of forty percent representation of each gender.</i></b></p>	<p>Clauses (2) and (3) are expanded to enable the use of quotas/reservation to provide for the inclusion in practice of chiefs who are women and queen mothers in the Houses of Chiefs.</p>

**Article 274: Regional House of Chiefs**

<b>Current Language</b>	<b>Proposed new draft</b>	<b>Comment</b>
(2) A Regional House of Chiefs shall consist of such members as Parliament may, by law, determine.	(2) A Regional House of Chiefs shall consist of such members as Parliament may, by law, determine, <i>ensuring that there is a minimum of forty percent representation of each gender.</i>	Similar to comment on Article 271.

**Article 277: Definition of chief**

<b>Current Language</b>	<b>Proposed new draft</b>	<b>Comment</b>
In this Chapter unless the context otherwise requires, "chief" means a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage.	In this Chapter unless the context otherwise requires, "chief" means a <i>man or woman</i> , who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage.	The definition of Chief as a "person" is changed to a "man or woman" to acknowledge the existence of women who are enstooled as "chiefs" and as different from queen mothers.



<b>Non-inclusive/sexist language</b>	
<b>Current Language</b>	<b>Comment</b>
<p>Note: Articles 3, 5, 7, 14, 19, 20, 32, 33, 52, 57, 58, 59, 60, 63, 66, 68, 69, 72, 88, 89, 94, 95, 97, 114, 116, 121, 127, 136, 139, 144, 145, 146, 155, 156, 179, 221, 224, 229, 243, 244, 246, 248, 255, 264, 279, 286, 293 and 297</p>	<p>All references to only male nouns and pronouns where provisions apply to both sexes should be corrected to include female designations.</p>

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