

THE ROLE OF CIVIL SOCIETY IN PROMOTING AND PROTECTING HUMAN RIGHTS ENSHRINED IN THE 1992 CONSTITUTION OF GHANA

{A Lecture delivered at a five-day Human Rights Training Programme organised by the Marian Conflict Resolution Centre (**MCRC**) at the Catholic University College, Fiapre - Sunyani, in the Brong – Ahafo Region of Ghana}

Honourable Chairpersons, my Lord Justice of the High Court (rtd.), our revered members of the Clergy, faculty members, Nananom, distinguished participants, invited guests; I deem it a great honour to be in your midst today to deliberate on a very important subject that lies at the very core of our human existence – **HUMAN RIGHTS**.

I wish to commend and congratulate the organisers of this programme; i.e. the Marian Conflict Resolution Centre (MCRC) and most importantly the Catholic Church, for conceiving this whole idea of bringing together such an important gathering to discuss something that is so fundamental to our very existence as human beings. It is written in Genesis Chapter 1 verses 26 and 27:

“And God said, Let us make man in our image, after our likeness... So God created man in His own image, in the image of God created He him; male and female created He them”.

If our Father the Creator, created us in His own image, as the Holy Book teaches us, then it behoves us to see ourselves as equals before Him. We must see ourselves as the same person in the image of our Creator, but in different garbs or clothing. For that matter, we have to respect each other’s rights as human beings, notwithstanding the earthly positions we hold in society. There is this saying that; *what is sauce for the goose is sauce for the gander*.

Having gone through an intensive training in various topics on the subject, namely; Introduction to Human Rights, Constitutional Rights in Ghana, International Bill of Human Rights, Human Rights and Islam in Ghana, Human Rights and Traditional Values, Human Rights and Christianity in Ghana and Human Rights and Administrative Justice, as the training content

portrays, I do not wish to digress from the topic assigned me and stray into those areas, save for purposes of relevance.

My topic is; ***“The role of Civil Society in Promoting and Protecting Human Rights enshrined in the 1992 Constitution of Ghana”***.

I commence my dilatation with the words of one of the greatest jurists Britain has ever produced, Lord Denning (MR) in the case of **Gouriet v Union of Post Office Workers [1977] 1 QB 729 at 761-762**; *“To every subject in this land, no matter how powerful, I would use Thomas Fuller’s words over 300 years ago: ‘Be you never so high, the law is above you’”*.

Thomas Fuller was an English churchman and a historian who lived between the years 1608 and 1661. He admonished his countrymen in those words, to respect the laws of England because; the law was more powerful than anyone else, no matter how powerful one thought oneself to be. Lord Denning quoted these very words in 1977 (about 300 years after their utterance by Fuller), in his judgment in the case referred to above, to show that nothing had changed since then with regard to the relationship between the citizen and the law. The same has been the case to the present day. Another common quote which carries the same message is; ***“No one is above the law”***.

No matter what rights we have as human beings, we are all subject to the laws that society has made to govern our relationship and survival. By society, I mean the people of a State or nation as a component body; in our case, the Ghanaian society. The supreme law that we have promulgated to govern our relationship and survival as a people is the Constitution, 1992. Any law, already existing or made thereafter that is inconsistent with the provisions of the Constitution is void and of no legal effect. Article 1 under Chapter One of the Constitution provides:

“1. (1) The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised in the manner and within the limits laid down in this Constitution.

(2) This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void”.

Every organised or civilised Society/State/Nation like our country Ghana is made up of three sectors. These have been categorised as; the Public Sector, the Private Sector and the Civil Sector.

1. THE PUBLIC SECTOR

The public sector is the governing sector, made up of the government with its three arms; the Executive, the Legislature and the Judiciary which together, form the power structure. This sector takes care of law and order through institutions established for that purpose, viz; the armed forces, police, prisons, immigration, revenue agencies, courts, local government, education, etc.

2. THE PRIVATE SECTOR

The private sector is the business sector or the profit-making sector. It offers goods and services in exchange for money. Its principal aim is to supply goods and services for profit. It is made up of the industrial firms, banks, private enterprises, insurance companies, construction companies, trading companies, etc. This sector partners the public sector to fuel the economy. Both the public and private sectors help to keep society moving by providing jobs for the citizenry.

3. THE CIVIL SECTOR

The Civil Sector is what we normally call ‘Civil Society’. It is the aggregate of non-governmental organisations, institutions, families and even individuals that manifest interests and will of citizens. Its contribution to governance is the provision of assistance in various forms for little or no fees. It is not motivated by profit or government. It works in the interest of citizens but operates outside of the governmental and profit-making sectors. It is referred to as the third sector of society and distinct from government and business.

It comprises of a wide array of organisations known as ‘Civil Society Organisations’ (CSOs) and ‘Non-Governmental Organisations (NGOs). Examples are; community groups, indigenous groups, charitable organisations, faith-based organisations, professional organisations, labour unions, foundations, etc. Some of these organisations and associations have international dimensions like Amnesty International, United Nations High Commission on Human Rights (UNHCR), United Nations Educational, Scientific and Cultural Organisation (UNESCO), Human Rights Watch (HRW), Human Rights without Frontiers (HRWF), International Committee of the Red Cross (ICRC), Children’s Defence Fund (CDF), Commonwealth Human Rights Initiative (CHRI), Ford Foundation, Friedrich Ebert Foundation/Stiftung, etc. Others are local; i.e. the Ghana Bar Association (GBA), Catholic Bishops Conference (CBC), Ghana National Association of Teachers (GNAT), Ghana Pentecostal Council (GPC), Christian Council of Ghana (CCG), National Union of Ghana Students (NUGS), Ghana National Union of Polytechnic Students (GNUPS), Polytechnic Teachers Association of Ghana (POTAG), University Teachers Association of Ghana (UTAG), Ghana Journalists Association (GJA), Occupy Ghana (OG), Civil Servants Association (CSA), Judicial Service Staff Association of Ghana (JUSSAG), Citizen Ghana Movement (CGM), Institute of Economic Affairs (IEA), Institute of Democratic Governance (IDEG), Centre for Democratic Development (CDD), Queen Mothers’ Association and of course MCRC, and a host of others.

HUMAN RIGHTS – What are they?

To understand what human rights are, we must first of all understand what ‘rights’ are. What are Rights? A right is an interest which will be recognised and protected by a rule of law, *respect for which is a legal duty, violation of which is a legal wrong*. Black’s Law Dictionary, eighth edition by Bryan A. Garner, defines it as; “*something that is due to a person by just claim, legal guarantee, or moral principle*”. ‘Human Rights’ are therefore rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, *or any other status*. They are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being. In a broader sense, they are those rights to which every person inhabiting any

part of the world should be deemed entitled by virtue of having been born a human being. They are therefore essential or indispensable that is why they are described as **‘fundamental’**. They go to the very root of human existence.

As you have learnt through this training, human rights are as old as human civilization but their use and relevance have been well defined in recent years. They gathered more importance in the post-second-world war period, particularly after the United Nation’s Declaration of Human Rights (UNDHR) on 10th December 1948.

Talking on how to attain universal peace, the Burmese Diplomat (now Myanmar), who became the 3rd United Nations Secretary-General from 1961 to 1971 and the first non-European to hold that position by name U Thant, echoed; ***“The establishment of human rights provides the foundation upon which rests the political structure of human freedom; the achievement of human freedom generates the will as well as the capacity for economic and social progress; the attainment of economic and social progress provides the basis for true peace”***.

Peter Tosh, in one of his reggae music lyrics, said; ***“Everyone is crying out for peace, but none is crying out for justice. I don’t want no peace, I want Equal Rights and Justice”***.

It is true the cry for peace is loud everywhere. Notwithstanding these loud cries for peace, peace, peace; peace seems to elude us as there is no peace anywhere in this world. In the United States (Police shooting of blacks and retaliatory actions); in France, Germany, Belgium (mass shootings attributed to terrorist activities); in Syria, Yemen, Iraq, Libya, Sudan, Somalia, Jordan, Egypt, Tunisia, Mali, and even in God’s own backyard Israel, to mention just a few, we have cases of human beings killing their fellow human beings. Why is it so? How can there be true peace? The answer lies in the words of U Thant as quoted above. There can only be true peace if Human Rights are well-established in our society. There can only be true peace if we respect each other and accord each other the rights God our Father instilled in us upon our creation as human beings. *Human rights give birth to human freedom, human freedom gives birth to economic and social progress and*

economic and social progress or advancement, gives birth to true peace. Human Rights are therefore an important subject that should concern all of us.

What role then, should the third sector play, to encourage or actively support the development and establishment of the inalienable rights of humankind, as embodied in our Constitution, in our body politic? If true peace can only be attained when Human Rights are well-established in our society, then how can the third sector (CS) help in achieving this, where the State has failed or is doing little; or how can this sector partner both the public and private sectors, to achieve this?

Undoubtedly, the protection of groups and individuals as well as their rights falls under the functions of the State. It is the primary duty of the State to protect its citizens against human rights abuse or violations and crimes against humanity to ensure the sustenance of peace. This covers the establishment of standards, laws and institutions that derive their legitimacy from popular sovereignty and are capable of protecting the rights of individuals and groups. That is the reason behind the entrenchment of Human Rights provisions in our Constitution. That is the reason behind the establishment of the Commission on Human Rights and Administrative Justice (CHRAJ) and the National Centre for Civic Education (NCCE).

However, we are witnessing a paradoxical process. The expansion of freedom and the democratization process are accompanied by a civic disengagement, political demobilization and crisis of confidence in institutions, including political parties. CHRAJ was established to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, among others, whilst the NCCE was established to promote and educate Ghanaians on their civic rights under Chapters 18 and 19 of the Constitution respectively. How effective are these State institutions? How many people know of the functions of these institutions or bodies? Apart from CHRAJ, which is relatively known in almost all districts of the country, NCCE is little known. Their activities are normally hampered by financial inadequacies, as we always learn from media reports. Given the persistence of authoritarian reflexes, this only reinforces the belief that civil society can

replace the State and Political Parties. The big question however is; how can this be done while having neither the capacity nor the vocation?

THE DEVELOPMENT OF HUMAN RIGHTS IN GHANA

Our country Ghana has seen the promulgation of five different constitutions since its birth and has witnessed about five military interventions. The first is the Independence Constitution of 1957. The second is the first Republican Constitution of 1960. The third is the second Republican Constitution of 1969. The fourth is the third Republican Constitution of 1979 and the fifth and the current is the fourth Republican Constitution of 1992. None of the first two constitutions; i.e. the 1957 Independence Constitution and the 1960 first Republican Constitution, contained any express provisions on Fundamental Human Rights.

1957 Independence Constitution

The 1957 Independence Constitution took the form of An Order in Council with a legislature that was moulded on the British system. Three important limitations were imposed on the powers of the Legislature, from a human rights perspective. These were articles 31 (2), 31 (3) and 34 which provided that the legislature had no power to make any law that would be discriminatory with regard to racial community or for a racial community to be liable to disabilities which persons of other communities are not made liable. It could also not make any law to deprive any person of his freedom of conscience or his right freely to profess, practise or propagate any religion except for limitation imposed for the preservation of public order, morality or health. Also, private property could only be confiscated for the use of the State upon payment of compensation judicially determined as accurate. Again, the legislature could not make laws to alter the names of regions, make acts affecting the status and functions of chiefs and make acts modifying the constitutional provisions.

1960 Republican Constitution

Though there were no human rights provisions under the first Republican Constitution, article 13 (1) of the Constitution provided: - *“Immediately after the assumption of office, the President shall make the following solemn*

declaration before the people – ‘On accepting the call of the people to the high office of President of Ghana, I solemnly declare my adherence to the following fundamental principles –

- a. That the powers of government spring from the will of the people;*
- b. That freedom and justice should be honoured and maintained...;*
- e. That no person should suffer discrimination on grounds of sex, race, tribe, religion or political belief;*
- h. That subject to such restrictions as may be necessary for preserving public order, morality or health, no person should be deprived of freedom of religion or speech, or the right to move and assemble without hindrance or of the right of access to the courts of law;*
- i. That no person should be deprived of his property save where the public interest so requires and the law so provides”.*

Article 13 had all the attributes of any constitutional provisions on fundamental human rights. It protected the right to free speech, assembly, movement, belief and property. However, when the occasion came for our justice institution to pronounce on the essence of this article, it was one of disappointment. I am referring to the celebrated case of **RE: AKOTO & 7 Others**.

Okyeame Akoto and 7 others were arrested in November 1959 and detained under an Order made by the Governor-General, which was signed on his behalf by the Minister of Interior under section 2 of the Preventive Detention Act, (PDA), 1958. The applicants applied to the High Court for writs of Habeas Corpus to issue for their appearance in court for the State to give reasons for their arrest but the High Court refused the applications. Upon the promulgation of the 1960 Constitution, they appealed to the Supreme Court on the grounds that; the PDA was in excess of the powers conferred on Parliament by article 13 (1) of the Constitution and contrary to the Solemn Declaration of Fundamental Principles made by the President upon assumption of office.

The issue for determination by the then apex court of the land was; **“Whether PDA was ultra vires the Constitution (1960) and therefore null and void”**.

The highest court held that article 13 (1) imposed only a moral obligation upon the President. According to the Court, the declaration which the President was required to make was like the Coronation Oath of the Queen of England and did not constitute a Bill of Rights which could be regarded as creating legal obligations enforceable in a court of law. The appeal was accordingly dismissed. {Note! – The constitutional position of the Queen of England and that of the President of the Republic of Ghana – One was a ceremonial position and the other an executive one – could not therefore be the same}

Flowing from that decision, nobody could talk of human rights, as breaches of human rights of individuals became rife. This development led to the need to make elaborate provisions in the 1969 Constitution, after the Nkrumah regime, aimed at protecting human rights and freedoms of Ghanaians.

The 1969 Republican Constitution

Instead of the term, ‘Fundamental Human Rights’, the framers of the 1969 Constitution used the term, ‘Liberty of the Individual’. There were as many as seventeen articles, i.e. articles 12 to 28, in the 1969 Constitution on the protection of the liberty of the individual. The readiness of the State to fully guarantee these rights was however put to the test by one Sallah. He challenged his dismissal by the Progress Party government of Dr. Busia as Manager of the then Ghana National Trading Company (GNTC) after the overthrow of the Nkrumah regime in the then highest court of the land. This case was fallout of what notoriously became known as the ‘Apollo 569’ affair, when the new regime dismissed about 569 public office holders upon assuming office. {Note! the ‘No Court’ pronouncement by the then Prime Minister}

The reign of the Progress Party was, however, cut short by the Military after about two and a half (2 ½) years in office so we never reaped the benefits of the Human Rights envisaged under that constitution. The Constitution was

suspended save the provisions on the judiciary. The 1969 Republican Constitution later paved way for a new Republican Constitution in 1979 when the military decided to relinquish power after internal wrangling arising from civil agitations.

The 1979 Republican Constitution

All the seventeen (17) articles on Fundamental Human Rights embodied in the 1969 Constitution were re-introduced in the 1979 3rd Republican Constitution under articles 19 to 35. This Constitution too, like the 1969 one, did not last as a result of another military intervention in our democratic development in 1981. The military ruled for ten (10) good years from December 1981 to 1991 until it handed over power to a civilian regime after elections conducted in December 1991. It was that military regime (PNDC) that gave birth to our current Constitution; i.e. the 1992 Constitution.

The 1992 Fourth Republican Constitution

Having learnt from our sordid past, the framers of the 1992 Constitution decided to devote a whole chapter of the constitution; i.e. Chapter Five, containing twenty-two articles, to what they described as; **“Fundamental Human Rights and Freedoms”**. It is one of the chapters of the Constitution that contain what we call, ‘entrenched provisions’. They are entrenched in the sense that they are solidly established to the point that amending them requires a whole referendum of all valid voters to be held throughout the country. The referendum would only be valid if forty per cent (**40%**) of qualified voters or persons entitled to vote, voted at the referendum. And an amendment could only be made, if seventy-five per cent (**75%**) of those who voted, voted in favour of it. It is therefore not easy to remove these provisions from the Constitution. (*See article 290 of the Constitution*)

Another aspect of the 1992 Constitution that gives a boost to these fundamental rights enshrined under Chapter Five of the Constitution is Chapter Six on ; **“The Directive Principles of State Policy”**. In some jurisdictions, Directive Principles of State Policy are not regarded as justiciable provisions. However, our Supreme Court has pronounced ours as justiciable, notwithstanding the non-justiciability of a few of them that sound like political questions.

The Fundamental Human Rights and Freedoms enshrined in our Constitution, 1992

What are these fundamental human rights and freedoms enshrined in our Constitution that Civil Society must promote and protect? Our Constitution pledges fundamental, economic, social, educational, cultural and other rights including equality before the law, right to life, etc.

The first article under Chapter 5 of the Constitution on Fundamental Human Rights and Freedoms is article 12. It provides as follow:

“12. (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 others and for the public interest”. {Emphasis mine}

** [Stress on the bodies or organs of government that are obligated to uphold the rights as enshrined in the Constitution and persons entitled to these rights and the limitations to the rights].

These rights and freedoms, which have their own limitations and exceptions, are: -

Article 13.(1) - **The right to life** – No one 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.

(2)- A person shall not be held to have deprived another person of his life if that other person dies as the result of a lawful act of war, or if that person dies as the result of the use of justifiable force: -

(a) for the defence of any person from violence or for the defence of property; (b) to effect a lawful arrest or to prevent escape of person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection or mutiny; or

(d) in order to prevent the commission of crime.

14(1) – Protection of personal liberty – Every person shall be entitled to his personal liberty except -

a. in execution of a sentence upon conviction;

b. in execution of an order of a court punishing him for contempt of court;

c. in execution of an order of a court (bench warrant);

d. for the purpose of his care or treatment or the protection of the community (persons suffering from contagious disease, person of unsound mind, drugs addiction, etc.);

e. for the purpose of education or welfare of person below 18 years;

f. for the purpose of preventing unlawful entry into the country or extradition;

g. upon reasonable suspicion of having committed or about to commit a criminal offence.

But note the rights of such persons under clause (2) –

- i. to be informed of reasons for arrest, restriction or detention and of his right to a lawyer of his choice;
- ii. to be arraigned before court within 48 hours after arrest, restriction or detention, or to be released on bail;
- iii. to be paid compensation when made to wrongly serve a sentence upon acquittal on appeal.

15.(1) – Dignity of all persons inviolable - (2) No person shall, whether or not he is arrested, restricted or detained, be subjected to torture or inhuman treatment or any condition that detracts or is likely to detract from his

dignity and worth as a human being; {Note the case of **ADJEI-AMPOFO v A.M.A [2007-2008] 1 SCGLR 611**}

16.(1) – Protection from slavery and forced labour – with the exception of –

- i. labour required as a result of a sentence or order of a court;
- ii. labour required as a member of a disciplined force or service;
- iii. labour required in war time;
- iv. labour reasonably required as part of normal communal or other civic obligation.

17.(1) – Equality before the law and freedom from discrimination – exceptions – (4) Nothing in this article prevents Parliament from enacting laws that are reasonably necessary to provide -

- i. implementation of policies and programmes aimed at redressing social, economic or educational imbalance in the Ghanaian society, e.g. (free education in the north implemented by the first President);
- ii. for matters relating to adoption, marriage divorce, burial, devolution of property on death or on matters of personal law;
- iii. for the imposition of restrictions on the acquisition of land by persons who are not citizens of Ghana;
- iv. for making different provision for different communities having regard to their special circumstances, etc. –

18.(1) – Protection of privacy of home and other property – right to own property either alone or in association with others – exceptions (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 well-being 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 freedom of others;

19. – Fair trial - A person charged with a criminal offence shall be given a fair trial within a reasonable time;

20. – Protection from deprivation of property – compulsory acquisition of property by the State only in the interest of defence, public safety, public order, public morality, public health, etc. but with prompt payment of compensation, etc.;

21. – General Fundamental Freedoms - All persons shall have the right to –

(a) freedom of speech and expression (freedom of the press);

(b) freedom of thought, conscience and belief (including academic freedom);

(c) freedom to practise 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 for the protection of interests;

(f) information – {Note! - Civil Society agitations on the passage of the RTI Bill that has been in Parliament for decades};

(g) freedom of movement – the right to move freely in and out of Ghana.

But there are limitations to these freedoms – imposition of restrictions reasonably required in the interest of defence, public safety, public health, etc.;

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 to enact legislation regulating the property rights of spouses as soon as practicable after the coming into force of the Constitution (**HOW MANY YEARS NOW?** – 24 years – no law passed);

23. – Administrative Justice – administrative bodies and officials to act fairly and reasonably and to comply with law;

24. – Economic rights – right to work under satisfactory, safe and healthy conditions; receive equal pay for equal work without distinction; right to form and join trade unions of choice, etc.;

25. – Educational rights – equal educational opportunities, free basic education, secondary, technical higher education to be made accessible to all, right to establish private school, etc.;

26. - Cultural rights and practices – right to promote enjoy, practice profess and maintain any culture, language, tradition or religion subject only to the provisions of the Constitution – Meanwhile, all customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited (FGM, TROKOSI, WIDOWHOOD RIGHTS, ETC.); They are all violations against human rights.

27. – Women’s rights – special care to be accorded mothers during a reasonable period before and after child-birth – working mothers to be accorded paid leave – facilities to be provided for the care of children below school going age to enable women to realise their full potential- equal rights to training and promotion, etc.;

28. – Children’s rights – right to the same measure of special care;

i. be entitled to reasonable provision from the estate of parents;

ii. interest of children paramount;

iii. special protection against exposure to physical and moral hazards;

iv. protection and advancement of the family for the promotion of the interest of children;

v. right to be protected from engaging in work that constitutes a threat to health, education or development;

vi. protection from torture or other cruel, inhuman or degrading treatment or punishment;

vii. shall not be deprived by any person of medical treatment, education or any **other social or economic benefit by reason only of religious or other beliefs.**

29 – Rights of the disabled –

- i. rights to live with their families or foster parents and to participate in social and creative activities;
- ii. not to be subjected to differential treatment...;
- iii. to be protected against exploitation;
- iv. to be provided with appropriate facilities in every place to which the public have access;
- v. to give special incentives to the disabled in business and business organisations that employ the disabled in significant numbers.

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.

Article **31** is not a provision on human rights as such but on the Emergency Powers of the President. It espouses the President's power to declare a state of emergency in the country. This may entail the restriction and/or detention of a person or persons.

Article **32** makes provision for how a person restricted or detained during such period should be treated –

- a. to be informed immediately or within 24 hours of the reasons for his restriction or detention and the statement read to him;
- b. to inform, spouse, parent, child or next of kin of detention and the right of access to the detained or restricted;
- c. opportunity to consult lawyer of his choice, etc.

Again, in every month, a Minister of State authorised by the President shall make a report to Parliament of the number of persons restricted and detained and a publication made in both the gazette and media notwithstanding appearance in Parliament.

Article **33** is on the protection of these rights by the Courts. The High Court has jurisdiction to hear cases on violations of human rights. It can issue orders in the nature of habeas corpus, certiorari, mandamus, prohibition and

quo warranto as it may consider, for the purposes of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled. A person who initiates an action in the High Court has a right of appeal up to the Supreme Court. There are rules with respect to the practice and procedure of the Superior Courts for the purposes of this article.

On the other hand, a person can bring an action in the Supreme Court involving a practice or conduct of another on the ground that, that practice or conduct contravenes the Constitution. Such practice or conduct could be one that infringes the fundamental human rights of another or others, but not the initiator of the action. {Note the cases of; NANA ADJEI-AMPOFO v A.M.A. and OCANSEY v ELECTORAL COMMISSION & ATTORNEY GENERAL}

Note clause (5) of 33 – *“The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man”*.

Chapter Five (5) on Fundamental Human Rights and Freedoms is closely followed by Chapter Six (6) on **Directive Principles of State Policy**. I regard Chapter 6 of the Constitution as a bulwark to the realisation of the rights embodied under Chapter 5. This Chapter charges the President to report to Parliament at least once a year all the steps taken to ensure the realisation of basic human rights, a healthy economy, the right to work, the right to good health care and the right to education. It charges the State to cultivate among all Ghanaians respect for fundamental human rights and freedoms and the dignity of the human person. It charges the State to take appropriate measures needed to protect and safeguard the national environment for posterity. It again charges the State to secure the protection and promotion of all basic human rights and freedoms embodied under Chapter 5.

But what do we see? – Is the State protecting and safeguarding the national environment for posterity? {Note! the ff.: **chain-saw operations, ‘galamsey’, bush-fires, pollution of rivers and water bodies, illegal fishing, etc.-**}

- i. effect on the nation as a whole (rainfall pattern, desertification, our power problems);
- ii. effect on the local people – health hazards, polluted drinking water, destruction of fertile lands and adverse effects on food security and the total effects on posterity.

What do we do as civil society?

It must be emphasized that these rights are not to be exercised in a vacuum. The same Constitution charges all citizens of Ghana with certain **duties** and **obligations**. Article 41 under Chapter 6 on Directive Principles of State Policy provides: -

“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 expose 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 co-operate 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.***

The question is; how many people in this country know about their rights as human beings and as citizens? How many of them know about their duties

and obligations as citizens? How many of them know about the provisions of the Constitution just referred to?

The truth is that having Human Rights principles enshrined or embodied in a Constitution does not necessarily mean the said principles would be wholly adhered to by policy makers and managers within both the public and private sectors.

The United States, for instance, was one of the forty-eight (48) States that adopted and proclaimed the Universal Declaration of Human Rights in Paris on 10th December 1948. The preamble of the Declaration recognised the fact that ***“the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and PEACE in the world”*** {Emphasis mine}.

Article 1 of the Declaration reads: ***“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”***.

All this while and even several years after the proclamation of the UDHR, the United States did not recognise the black and coloured people of the U.S. as equals to the whites: contrary to the provisions in the declaration she and other nations had proclaimed; contrary to what the Holy Book teaches us in Genesis 1, 26-27. There were laws segregating the two races with regard to their presence in certain public facilities. Black children could not attend the same school with white children. In the railroad transport sector, blacks had their coaches and whites had theirs. The two are incompatible in the same coach. Some public places were reserved for whites only while the blacks had theirs. Even in the churches, christened Houses of God, there was segregation. Some churches did not admit black congregants. The American civil rights groups had to fight to attain the equality the General Assembly of the United Nations had adopted and proclaimed.

As a result of these civil rights agitations, a writ was issued at the U.S. Supreme Court against the Board of Education challenging segregation in public schools. The title of the case is: **BROWN v BOARD OF EDUCATION**. It is one of the notorious constitutional cases recorded in United States constitutional history. Brown wanted all schools to be desegregated so

people could choose the school they wished to attend as equals. This was in 1954 (6 years after the passage of the UDHR) by the United Nations including the United States.

Fifty-eight years before this date; i.e. in the year 1896, a U.S. court had ruled in favour of segregation in public facilities. This was in the case of **PLESSY v FERGUSON**. Plessy, who was 7/8 white with insignificant black trace, was arrested for trying to sit in a railroad car which was designated 'for whites only'. He was arrested, prosecuted and convicted for violating a state law on segregation of whites and blacks. He appealed against his conviction but lost. The Brown case was therefore a test case for the courts. The U.S. Supreme Court ruled that segregation of children in public schools solely on the basis of race, even though the physical facilities are equal, deprive the children of the minority group of equal protection of the law.

Notwithstanding this decision, segregation still continued in certain states of the U.S. It was not until 1969 that the Supreme Court, in the case of **ALEXANDER v HOLMES COUNTY BOARD OF EDUCATION**, called for an immediate end to dual school systems. This even did not put to an end this discrimination on the bases of race. More actions were pursued in 1971 and 1973 in the U.S. on desegregation on the basis of race and these were all fallouts from the struggle spearheaded by civil rights groups.

The role of civil society in promoting human rights therefore takes in this context, a fundamental value. Beyond its role of monitoring respect for human rights, laws and their constitutionality, safeguarding lawful property, etc. civil society has a role to play as a force of change by mobilising the people, a force for generating ideas with the support of experts and researchers, a force of empowerment of the citizenry, a force of promotion and awareness creation through education as the MCRC has done within this week, a force of protection of the rights of the marginalised and the poor in society.

When one lacks awareness of one's rights and of mechanisms available to enforce or address them, the ability to claim or defend these rights is weakened. Human Rights education is therefore one of the key or core functions of CSOs, NGOs or Human Rights Defenders (HRD). In fact, I regard

this education aspect as the major role of CSOs and NGOs in the promotion and protection of human rights.

Human rights education entails teaching about human rights. Education about human rights creates awareness and information about human rights. For example, the citizenry must know about the inherent dignity of all people and their right to be treated with respect.

The police and other law enforcement/security agencies have been violating with impunity, the rights of the marginalised and the poor. This includes; the detention of persons arrested, either lawfully or unlawfully, beyond the constitutionally mandated period of 48 hours; unlawful arrest of persons who have not committed any crimes (e.g. arrest of debtors when police are not debt-collectors); torture and other cruel, degrading and inhuman treatment of persons arrested; refusal to grant bail to persons who deserve to be admitted to bail upon arrest on flimsy excuses; violation of the rights of people, particularly workers, through overzealous reaction to peaceful protests and demonstrations guaranteed under the Constitution; etc. These are contrary to article 15 on the inviolability of the dignity of man.

There is therefore the need to educate the police and other security agencies to be abreast with the fundamental rights of citizens as enshrined in our Constitution, to give the rights a practical meaning. Respect for human rights by law enforcement agencies actually enhances the effectiveness of those agencies. This task is not beyond CSOs and NGOs and they must take it up.

Again, civil society can encourage the citizenry, through education, to participate in the decision-making process– a probability for people to freely choose their leaders - Aside of election observations, CSOs and NGOs should be able to mobilise and engage in pre-election campaigns to educate the people on their rights without any political biases, to insulate them from deceit and lies and their possible dangers – violence and civil rife. *[Examples – the noise on bloated register, dead persons on register, minors, etc. What do the electoral laws say? Is it possible to vote with someone else's name and picture under a biometric culture? The important thing is vigilance by polling*

agents so that it would be impossible for any election official to change figures meant for one candidate for another}.

Such education must be extended to cover Parliamentarians (our law-makers) to affirm their independence as an arm of government and make them allies and a counterweight not underdogs to the executive branch, since they represent the people who voted them into power. This will go a long way to help control the way Parliamentarians fulfil their responsibilities and commitments to the citizenry but not their Parties or government in power, and to promote the clear provisions of the separation of powers. Civil society cannot become strong and flourish if political society, whose function is to manage institutions, is not strengthened. This calls for a strong Civil Society-State or Public Sector Partnership

Again, CSOs and NGOs have a duty to monitor the actions of not only government institutions but the private sector as well and pressurise them to act according to human rights principles. To achieve this, CSOs and NGOs should strengthen ties with the private sector through partnership, co-operation and/or coordination for the development of the communities within which they operate.

This entails the education of the work force of private institutions on their responsibilities as good citizens as provided under article 41 of the Constitution, the obligations of the State and the obligations of the employer towards their welfare and rights as human beings.

With the development of information technology, CSOs and NGOs can maintain websites and other platforms documenting violations and calling for remedial action both at governmental and grass-roots levels. They can use these platforms to whip public support and condemn abuses of human rights. Calls for reforms are always successful when backed by strong advocacy from the public. They can pressurise governments to act where there are human rights abuses like what Amnesty International, UNHCR and UNESCO have been doing.

At times, it is appropriate for CSOs and NGOs to descend into the arena of conflict by fighting individual violations of human rights either directly or by supporting particular test cases through relevant court actions; offering

direct assistance to those whose rights have been violated; lobbying for changes to national, regional and international laws that inhibit human rights development and promoting knowledge of and respect for human rights among the population – (Note! MCRC Training - also, court actions by Nana Adjei Ampofo, Ocansey, Citizen Ghana Movement, etc.)

There are new rights emerging, e.g. the kayaye menace – (their rights as Ghanaians and human beings, homelessness, political violence and victims' rights, etc. To let political supporters know that being opponents does not make them enemies – level of intolerance can give rise to human rights violations - abusive language, threats, actual violence, etc.

CSOs and NGOs can resort to street actions, demonstrations, media reports, etc. to back demands against the violations of the human rights of individuals and vulnerable groups. Luckily, there has been an emergence of a dynamic and relatively independent media with the promulgation of the 1992 Constitution – Several newspapers of both questionable and unquestionable objectives have resurrected. CSOs can make use of the media to whip sentiments and expose such violations with threats of court actions.

They can engage in private meetings or briefing with officials on human rights issues. Even the mere threat of bringing a court action or something to the public domain may be enough to change policy that is not in the interest of the citizenry. {For example, Citizen Ghana Movement (CGM) took action against the Attorney-General over the re-branding of 116 buses and succeeded in obtaining a court Order for a refund of the excess amount paid to the contractor who was assigned the job; International Needs Ghana (ING) an NGO, worked hand in hand with CHRAJ for the release of Trokosi children in the Volta Region, etc.}

There is no doubt to the fact that civil society organisations contribute to the promotion, protection and advancement of human rights. Organisations like Human Right Defenders, Human Rights NGOs, the Bar Association, Students' Associations or Unions, Trade Unions, Universities and Charity Organisations which are civil society actors, work for a better future and share common goals of justice equality and human dignity.

The two most organised Human Rights Organisations dedicated to the promotion and protection of human rights are; The Human Rights Advocacy Centre (HRAC) and the Commonwealth Human Rights Initiative (CHRI), both of which have offices in Accra. The former has its headquarters in Accra. They monitor and fight for the rights of all on rule of law, access to justice, respect for the Constitution, police accountability, children's rights, women's rights, reproductive rights, (fgm), rape, human trafficking, unlawful detention and evictions and rights to information. These organisations run research activities, publications, workshops on training and capacity building. Other CSOs can partner these umbrella bodies to promote and protect the human rights of the poor and vulnerable.

There are human rights abuses in mining communities which should attract the attention of CSOs and Human Rights NGOs. Examples are; pollution of water resources or bodies, deprivation and loss of livelihoods, excesses by security agencies and security contractors of mining communities, inadequate compensations paid to farmers in mining areas, unacceptable alternative livelihood projects, absence of effective channel of communication and consultation between mining companies and communities, excesses against illegal mining, reckless spillage of cyanide and its attendant health hazards and unfulfilled promise of employing local people in the mining industry. Some of these abuses were exposed by CHRAJ in one of its reports conducted in the Western Region some few years ago.

Government institutions charged with the responsibility to monitor mining companies against these excesses have done very little to arrest these human rights abuses, thus making it imperative for civil society to step in to come to the aid of these communities. CSOs can liaise with CHRAJ to fight against these emerging trends of human rights abuses through advocacy and education of people living within these communities, including court actions where possible.

Another sordid development that can hinder human rights development is the rise of hate speech on our airwaves, which civil society must rise and fight against. It was hate speech that gave birth to the wave of political violence and genocide in Rwanda and Burundi. Other countries have

suffered civil rife due to bad media. We should not encourage this development and this is a task for civil society organisations.

In all these, we must appreciate the fact that, while the liberty of the individual or subject is a human right to be preserved under all possible conditions, it is not and cannot be an absolute right, because one man may use his liberty to take away the liberty of another and must be restrained from doing so. It is therefore no gainsaying to say that, where freedoms conflict, the State has a duty to protect those in need of protection.

It has therefore been held, right up to the present day, that the freedom of the individual must take second place in extreme cases to the security of the State; meaning, it must take second place to the duty of the State to protect the lives of the ordinary people. It is the duty of civil society to educate the citizenry on their fundamental human rights and their limitations; i.e. where they begin and where they end. {Note articles: - **12(2)**; **13(2)**; **17(4)**; **18(2)** and **31(10)** of the Constitution}

['W'ankasa wotiri ho a, ye yi wo ayi bone'; 'Okwasia ani te a, na agoro agu']