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7. HUMAN RIGHTS IN CONTEMPORARY GHANA: FRUITIONS AND POSSIBILITIES

7.1 Introduction

In the previous chapters, we have explored religion as it manifests itself in Ghana and how it is integrated into other departments of life. Focusing on its manifestation at the popular level rather than at the official institutional level, we have noted that the contemporary culture of Ghana sits on a huge platform of religion. Our discussions have also included issues of current interests in human rights discourse as it relates to religion and culture. In that regard, we adopted a definition that favours a concept of human rights, which, in the spirit of the Vienna Declaration and Programme of Action (1993), avoids a hierarchical categorisation of human rights into generations. Defining human rights as ‘resources or conditions that constitute the minimal conditions for human existence,’ we leave a gateless doorway for values that future circumstances might make expedient to include or exclude. Taking this approach is also appropriate for the Ghanaian context, since ‘resources and conditions’ can easily accommodate the ‘spiritual’ and any other resources and conditions that are valued locally but might be looked on with suspicion elsewhere. For most people in Ghana, ‘resources and conditions’ are complete when they fulfil both material and spiritual purposes. We also discussed aspects of the historical development of ideas and practices related to human rights in Ghana. We identified indigenous as well as non-indigenous elements that could be activated or modified to service a human rights culture in the appropriate social and political climate. We now move on from this point to focus on human rights and contemporary attitudes toward them, as well as the various cultural and religious factors that facilitate or impede their growth.

7.2 The Human Rights Situation in Ghana

Commitment to protecting and promoting human rights is quite high in contemporary Ghana. Statutory bodies and non-governmental organisations (NGOs) involved in human rights that responded to our questionnaires were unanimous in the view that both public awareness of human rights and the government’s commitment to protecting human rights have grown tremendously since the restoration of constitutional rule in 1992.¹ This positive assessment is confirmed by the human rights reports published annually by the United States Embassy in Ghana.² Since 1992, there has been a steady improvement in the human rights record of the country.³ Several new legislative Acts aimed at improving general enjoyment of human rights

¹ Organisations that responded to our queries included the Commission on Human Rights and Administrative Justice (CHRAJ), which is the main statutory body responsible for human rights issues; the National Commission on Civic Education (NCCE), which has the responsibility of educating citizens on their rights and responsibilities; the Domestic Violence and Victim Support Unit (DOVVSU) of the Ghana Police Service, and the Department of Social Welfare. Others were the Ghana National Commission on Children (GNCC) and the Ministry of Women and Children Affairs (MOWAC). NGOs that returned our questionnaires included the Ark Foundation, a faith-based (Christian) organization dedicated to the promotion and protection of women’s human rights; the Muslim Family and Counseling Services, Centre for the Development of People (CEDEP), and the NGO Coalition on the Rights of the Child.

² See, an example of report (2005 edition), ‘Ghana -Country report on Human Rights Practices – 2005’ U.S. Department of State Website: <http://www.state.gov> (accessed on June, 12, 2008).

³ See E. Gyimah-Boadi, ‘Confronting the Legacy of Human Rights Abuse in Africa: Lessons from Ghana’ (Ghana Center for Democratic Development, CDD-Ghana, March, 2004) 10.

have been passed in recent years. Among them are the Domestic Violence Act (2007); the Disability Act (2006); Whistle Blowers' Act (2006); Human Trafficking Act (2005) and the Juvenile Justice Act, (2003). Others are the Criminal Code (repeal of criminal Libel and Seditious Laws) Act, (2001) and the Children's Act (1998). Ghana has also ratified or signed most United Nations (UN) and African Union (AU) human rights treaties (see Appendix 4). But the picture is still far from perfect; as the caption of a newspaper article put it, 'Systematic Human Rights Violations still Persistent.'⁴ The Commission on Human Rights and Administrative Justice (CHRAJ) report of 2006⁵ draws attention to several instances of violations throughout the country. Violations highlighted include detention of new mothers and their babies by hospital authorities because of their inability to settle medical bills; the denial of quality health-care delivery service to several sections of the population; and the inaccessibility of quality education for many children. The report also highlights the persistence of child labour and the physical and psychological abuse of alleged witches. It estimates that there are one million children in Ghana who do not go to school. Furthermore, in spite of the passage of a law on persons with disability, several public facilities, including educational and religious institutions, lack provisions for physically-challenged persons to gain easy access to them without depending on other people for assistance. Added to these are the several customary practices that encourage violations, namely widowhood rites, ritual servitude such as *trokosi* and female-genital mutilation (FGM). Police brutality against civilians and a growing culture of mob justice meted out to alleged criminals, were also decried by the report.

The Constitution makes human rights in Ghana everybody's business. In addition to the 'Executive, the Legislature, and Judiciary and all other organs of government and its agencies,' fundamental human rights as enshrined in the Constitution 'shall be respected and upheld' also by 'all natural and legal persons in Ghana.'⁶ This understanding seems already widely recognised. In our field research, the question, 'whose duty is it to ensure that people's human rights are protected?' returned the answer: 'all of us' in its various forms, such as 'every citizen,' 'you and I,' and 'all Ghanaians.' Though there were answers that distributed the responsibility between central governments, District Assemblies, chiefs, parents and the general citizenry, the general idea, as gathered from focus groups and interviews with individual discussants in the research areas is that the promotion and protection of human rights are the responsibility of all citizens. This is not only in agreement with aspects of traditional culture,⁷ but also with certain provisions of the African Charter on Human and Peoples' Rights.⁸ Yet, there is not much effort on the part of the state to promote human rights education in the curricula of schools.

The Commission on Human Rights and Administrative Justice (CHRAJ), the National Commission on Civic Education (NCCE) and a number of NGOs are doing well with respect to citizens' education on human rights at the non-formal level, but not much is being done through the formal system of schools and colleges. The seeming awareness and acknowledgement of the constitutional responsibility shown by research participants obviously has very little to do with

⁴ *The Chronicle*, (December 14, 2005) 5.

⁵ Commission on Human Rights and Administrative Justice, 'State of Human Rights in Ghana, 2006' (December 8, 2006).

⁶ Article 12(1).

⁷ Wiredu, 'An Akan Perspective on Human Rights,' 249.

⁸ Articles 27 – 29 prescribe the duties of individuals toward the family and society, the state and the international community.

the article that enjoins them to protect and promote human rights. This became clear when in a focus group discussion one participant suggested that human rights were the responsibility of the government. The rest of the group looked amused by the suggestion and tried to correct her by asking, ‘who is the government?’ and answering their own question, said, almost in unison: ‘all of us are the government!’ This idea is found to be widespread; it was encountered in all the traditional areas.’ It seems it has resulted from the attempt by agencies of civic education to undo the damage caused by aspects of the colonial government’s approach to governance, which almost completely alienated the citizens from the government. It was part of the attempt to mobilise the support of citizens for national reconstruction in the early post-independence period that created the claim that everybody was part of the government.⁹

While the colonial experience in general helped make explicit both cognate ideas to human rights in the Ghanaian indigenous culture and those that had come in through the encounter with the West, it also, to catastrophic levels, undermined people’s original sense of freedom, justice, and fairness. Though Ghanaians, as Adu Boahen explains, never reconciled themselves to the fact of colonialism and resisted the colonialists from beginning to end,¹⁰ by the end of the experience the resistance had come to involve mostly the elites. Most of the people had become cowed into submission to what has been known in Akan as *Aban*. *Aban* is the Akan translation of government and derived from the Akan word for ‘castle.’

The colonial government had its headquarters in the ‘Castle,’ first the Cape Coast castle and then Christiansborg Castle in Accra. These used to be both the seats of the colonial governors and the warehouses of the slave trade period, where the human ‘wares’ were kept before their onward shipment to the labour fields across the Atlantic. The ‘Castle,’ with its prison and mounted canons and iron gates, came to symbolise the use of brute force that no one could question.¹¹ It was from there that the harsh colonial policies of forced labour, the imposition of arbitrary taxes, arbitrary arrests, humiliation even of kings, and exclusion from governance were issued. From that time onwards, *aban* (government) became not only physically remote from the people but also psychologically remote and terrifying. Traditional prayers, for family members and citizens, whether at family home or chief’s palace usually include a line of petition for protection from getting into trouble with *aban*.

⁹ This idea seems widespread, especially, in the rural areas. Nana Okra Tawia of Gomoa Sampah thinks that the idea became widespread through the activities of government civic education departments in the post-independence era, in efforts to create a sense of patriotism and civic responsibility in citizens. (Personal interview with Nana Okra Tawia at Gomoa Antseadze on 6th March, 2008). Mr., J. B. Crayner, a retired educationist and expert on Mfantse culture confirmed this view. (Personal interview with Mr. J. B. Crayner at Mankessim on 8th March, 2008).

¹⁰Boahen, ‘The Concept and Practice,’ 28.

¹¹ In fact some African rulers who questioned the usurping of their power by the Europeans, even at a time when there was no formal colonial rule were ruthlessly dealt with. King Aggrey of Cape Coast, for example, was sent into exile in 1866 for complaining about what he felt was undue interference with the internal affairs of his kingdom by the British officials. It was mainly through the use of force rather than education and diplomacy that the British authorities got the chiefs to do their bidding. As Annobil explains, *Ngyiresi aban ennya mbew no do ahemfo wɔn ho adagyer annkyerEkyerE nsEm mu annkyerE hɔn, nsi hɔn nyeE fa ara etur na aprEm ho suro na wodze yEe*. (The British colonial government did not take time to explain issues to the chiefs of the Gold Coast. Instead they used guns and bullets to cow them into submission.’ See J. A. Annobil, *Mfantse EbirEmpɔn* (Cape Coast, Methodist Book Depot, 1955) 40 – 44.

This development has had serious ramifications for human rights, even after Independence. As we pointed out in chapter five, the new shrines, particularly *Tigari*, saw the colonial government as an enemy, a foreign entity fleecing the country of its wealth. They reacted by excluding from its prohibitions the offence of stealing any items taken from the government or its affiliated commercial companies. Many local observers believe that the genesis of the lamentable lack of commitment on the part of many Ghanaians to their jobs in public or state enterprises (*aban dwuma*)¹² can be traced to the colonial era. However, with respect to human rights, the development has been damaging to the roots.

The fear of *aban* became extended to the fear of *aban nyimpa* (literally, ‘government person,’ but more appropriately, public officer or agent of the state). *Aban nyimpa* includes all kinds of public officers, especially, civil servants, the police and the army, and politicians at the national and the local levels. Gyimah-Boadi suggests that: ‘perhaps, the most important negative legacy left behind by the colonial state was police/security personnel and to some extent public official intimidation and even brutalization of people.’¹³ The psychological distance between the government and the people, and the fear attached to ‘government,’ became shocking to the sensitivities of Ghanaians when, after Independence, the African successors of the colonialists became more brutally repressive than the Europeans.

The resulting frustration on the part of succeeding governments and agents of civic education over people’s inability to recover from this feeling of alienation and fear seems to have led to this idea of all citizens being part of the government. Apart from the obvious lie contained in the idea, it is also damaging to the cause of human rights. It has led to a general unwillingness on the part of many Ghanaians to hold the government accountable for acts of omission and commission that deny people of their human rights. In the 1980s, the idea was found so counter-productive by the Christian Council of Ghana that in some of their publications and in some public pronouncements of their officials, they sought to educate the public by drawing a difference between the ‘state’ of which every citizen could claim to be a part, and the ‘government’ which was different from the state. ‘Government’ had designated members and a definite life span.¹⁴

7.2.1 Public awareness of human rights in Ghana

In terms of public awareness of human rights, the situation in Ghana is quite good. Both government agencies and NGOs maintain that there is an appreciable level of awareness of human rights among Ghanaians. In a score range between ‘excellent’ and ‘very poor,’ most government agencies said awareness was ‘very good;’ and most of the NGOs said it was ‘good.’ In our survey in the cities of Accra and Kumasi to gauge people’s awareness of human rights, we

¹² Since the 1970s, many state corporations collapsed and since then governments have not been keen in running businesses.

¹³ Gyimah-Boadi, ‘Confronting the Legacy of Human rights Abuse in Africa: Lessons from Ghana,’ 1. See also the National Reconciliation Commission (NRC) report 1.4.1.1, ‘Ghana Police Service’: It reports that policing was introduced into the Gold Coast in 1831 to among other things, ‘patrol the trade routed that linked Ashanti and the coastal states and also to protect the colonial merchants and officials in and around the coast. It was also used to suppress civil disorder, often resorting to the use of brute force.’

¹⁴ See for example, the booklet, *The Church and Ghana’s search for a New Democratic System: A Study Material for Christians* (Accra: Christian Council of Ghana, 1990) 15 – 17.

asked a series of six questions: 1. Do you know about human rights? 2. Can you give examples of human rights? 3. Have you heard about the Universal Declaration of Human Rights? 4. Do you know about the African Charter on Human and Peoples' Rights? 5. Which human rights agencies in Ghana do you know about? 6. Why should people have human rights? If somebody answered 'no' to question 1, we recorded it and discontinued the interview with them. Twelve percent of the total number of respondents said they did not know about human rights. Eighty-eight percent of respondents said they knew about human rights but only twenty-eight percent knew about the UDHR. Conversely, only sixteen percent said they had heard about the African Charter on Human Peoples' Rights (ACHPR). (See tables below). Of the twelve percent that did not know about human rights, majority were women within the age range of 45 to 65 with only basic level education or no education at all. All the respondents who knew about the UDHR had, at least, a basic level educational background. All the respondents who had heard about the ACHPR had had tertiary level educational training. Judging from the responses, it seems that Ghanaians are more familiar with the activities of the United Nations Organisation than they are with that of the African Union. The United Nations human rights system seems better known among Ghanaians than the African regional mechanism. This may be explained in terms of the fact that the UN has been around longer than the AU and that the several UN agencies and the roles they play make it more visible than the AU, which has practically no presence on the ground. The appointment of Mr. Kofi Anan, a Ghanaian as Secretary-General of the United Nations must also have been an important contributing factor to this development.

Table 4(a)

Do you know about human rights?

Opinions	Frequency	Percentage
Yes	44	88.0
No	6	12.0
Total	50	100

Table 4(c)

Have you heard about the Universal Declaration of Human Rights (UDHR)?

Answers	Frequency	Percent
Yes	14	28.0
No	36	72.0
Total	50	100

Table 4(d)

Do you know about the African Charter on Human and People's Right (ACHPR)?

* See Appendix 3 for complete set of tables on data from survey.

Answers	Frequency	Percent
Yes	8	16.0
No	42	84.0
Total	50	100

In terms of basic rights, respondents mentioned the following, ranked in terms of frequency: the right to life, right to the freedom of movement, right to the freedom of speech, right to the freedom of worship, right to health, right to education, right to good drinking water, right to vote, right to belong to a family, equality before the law, right to work and earn a living, right to marry and have children, right to be treated fairly before the courts. It is noteworthy that most of the rights mentioned fall within the domain of civil and political rights, and that these appeared more frequently than the others did. Since our respondents were accosted and interviewed in the streets it is possible that they did not have time to reflect on the questions before giving their answers, and the ideas of human rights that came naturally to them were those that have been dominant over the years. It is also possible that living in the cities and being somewhat educated, they have been influenced by the frequent references to human rights issues in terms of the dominant notions in the press. This is highly probable, especially since a comparison with data from the traditional areas shows significant differences.

Table 4(b)
Give examples of human rights.

Human Rights	Frequency	Percent
Right to life	15	15.0
Right to the freedom of movement	14	14.0
Right to the freedom of speech	12	12.0
Right to the freedom of worship	11	11.0
Right to health	10	10.0
Right to education	9	9.0
Right to good drinking water	8	8.0
Right to vote	6	6.0
Right to belong to a family	5	5.0
Equality before the law	4	4.0
Right to work and earn a living	3	3.0
Right to marry and have children	2	2.0
Right to be treated fairly before the court	1	1.0
Total	100	100

In the traditional areas, in terms of frequency, the following list emerged: the right to life, right to food, right to health, right to identity, right to own/not be deprived of property, right to shelter, right not to be enslaved, right to freedom of speech, right not to be forced to perform a customary rite such as widowhood rites, right to freedom of worship, right to vote and be voted for, right to freedom of association. Other rights mentioned were the right to equal access to family inheritance, the right to a decent burial, the right not to be denied proper care in old age, and the right not to be discriminated against. Respondents also mentioned rights that are specific to children and women. With regard to children, the following came up: the right to be given a name (identity), the right to be protected from cruelty, the right to have guardians, the right to go to school, the right to health-care, the right not to be enslaved, the right to be listened to, and the right to play. Women's rights mentioned were, in terms of frequency, as follows: the right to marry and have a family, the right to work and acquire property, the right to inherit 'grandmother-land' (Anloga), the right to be protected from cruelty in marriage, the right to be provided for in marriage, the right to be listened to, and the right not to be forced to go through a customary rite such as widowhood rites.

In the traditional areas, knowledge about the international mechanisms such as the United Nations system and that of the African Union was not generally appreciable. However, participants who had had some education and young people still in school had heard about the UDHR but not about the ACHPR. But almost all participants knew about, at least, one of the national statutory bodies in Ghana and some of the civil society groups working in the area of human rights. When asked to mention where they could seek help from in the event of human rights abuse, they readily mentioned CHRAJ, WAJU (DOVVSU), and FIDA. CHRAJ is the Commission for Human Rights and Administrative Justice, WAJU stands for Women and Juvenile Unit of the Ghana Police Service, the name by which Domestic Violence and Victim Support Unit (DOVVSU) was previously known; and FIDA is the Federation of International Women Lawyers, an advocacy and service delivery organisation dedicated to women's human rights.

7.3 Human rights in the mother tongues

To set out in search of direct mother-tongue equivalents of human rights in non-Western cultures is to embark on a tricky adventure. It appears that a term that captures the abstract concept, 'human rights,' does not exist in any of the local languages of the ethnic groups that were the subject of this research. Translations that came out have only cognate links to the term, 'human rights.' In Ewe, participants suggested the following:

AmEgbEt fe dedien n.

Human beings safety

AmEgbEt fe abl me n n.

Human freedom

AmeNut fe didi.

one's own needs

AmEgbEt fe abl de kple dzidz EmE kp kp.
being

freedom and comfort that a human
must have.

Nusiwo dena bubu gbet□fe agben□n□ Nuti.

The things that give respect to the human being.

Nusi hia be amE naw□le se nu.

Lawful things that human beings should do

*Amegbet□fe didiwo alo hiahiawo si mele
be woax□lE esi o.*

Human needs and wants which no one must be deprived of.

M□nukp□kp□ si Mawu na amE.

Opportunities God gives to human beings

Bubu d□d□ amE nu.

Respect due to human beings.

The Akan and the Ga gave fewer suggestions. In Akan (Mfantse), the following suggestions were made:

Nyimpa ne fa ho dzi.

The freedom, independence, liberty of human beings

Nyimpa biara ne kyEpEn.

That which is due to each human being.

Dza nyimpa w□ho kwan dE onya anaa □yE.

That which human beings have permission/way/authority to do or take (that is, as sanctioned by legal/moral/customary norm).

Nyimpa biara na adehyedze.

The inheritance of every human being.

In Ga only three terms were suggested:

Gb□m□ adesa gbEnaa.

That which human beings have permission/way/authority to do (that is, as sanctioned by legal/moral/customary norm).

HegbE ni gb□m□ adesa y□□.

The authority/way/permission/ human

beings have

*Ny□Nm□dr□m□kEEenii ni gb□m□adesa ko
nyENNash□yE edEN.*

God's gracious gifts which no human
being can take away from his/her

hands.

Englund seems right in his observation that translated equivalents of 'human rights' in African languages have meanings that are 'situational rather than abstract.'¹⁵ In public discussions on radio, the phrase that is used in reference to human rights in Akan is, *fa ho dzi* (freedom/independence/liberty). Callers into radio phone-in programmes in Akan, who wish to complain about infringements of their human rights often say, *woetsiatsia mefahodzi do* (they have trampled on my liberty).¹⁶ There does not seem to be any phrase or term in the local languages that captures the idea of human rights as an abstract concept. This does not, in any way, undermine the position that indigenous ideas and practices existed in Ghana that had affinities to human rights. The absence of a term or phrase to capture the idea in abstract terms does not signify the absence of the idea itself. Most of the terms used are closely related to the idea of human rights, even if they do not state it in precise terms.

7.4 Human Dignity, Human Rights and the Constitution

Traditional ideas that set the human being apart as sacred and, therefore, deserving of respect have continued into the contemporary situation. Attitudes generated by the traditional religious beliefs about the human being seem to inform contemporary attitudes toward human rights. As discussed in the previous chapter, traditional ideas of human dignity among the Anlo, Mfantse and Ga were expressed in terms of taboos, which the Anlo-Ewe call, *egudodoame*. Basic to that idea was a religious cosmology that envisioned the human being as a being connected to various spirit beings in such a way that the human being's life and worth were regarded as based on the sacred. In contemporary times this idea is expressed in terms of 'God's creation,' 'children of God,' or 'image of God.'

The Akan maxim, *onipa ne asâm* (it is the human being that matters), makes the human person the centre and measure of the legitimacy of all decisions by society: *onipa ne asâm: mefrâ sika a, sika nnye so; mefrâ ntama a, ntama annye so* (I called gold: gold did not respond; I called clothes: clothes did not respond; it is the human being that matters). This idea makes the human person not only a bearer of rights but also a bearer of responsibilities toward other individuals and groups in society. Participants in focus group discussions and respondents in the survey generally justified human rights on two bases: First, the human being is sacred and, therefore, must not be treated negatively; secondly, all human beings are part of a community and have the

¹⁵ Englund, *Prisoners of Freedom*, 48.

¹⁶ These are also the terms used by the NCCE in their Akan (Asante) translations of human rights. 'Human rights' is translated: *fawohodie ne wokyâfa* or *onipa kyâfa ne ne fahodie ho nnyinasoo*. The first one literally translates, 'freedom and your portion/due.' The second one translates, 'the basis of the human being's portion/due.' See *Ghana Adehyeman Amammuo Ho Mmara Apôsoapôso*, (published by the National Commission on Democracy 1992).

responsibility to respect one another's human rights for the harmonious function of society. With respect to the first reason, this was mainly expressed in terms of the biblical concept of the 'image of God' or of the human being as God's creation and regent on earth, or of all human beings as God's children. The second reason was still connected to human dignity. The ability to live with others in a community, respecting others and fulfilling one's responsibilities to them is in itself considered an expression of one's humanity. How is this idea of dignity that combines inherent worth with a sense of responsibility reflected in the current constitution of the country?

The Constitution of Ghana 'declares' and 'affirms' a fundamental commitment to certain foundational provisions, including 'fundamental human rights and freedoms,'¹⁷ but there is no reference to 'human dignity' in the preamble, though it is mentioned in the actual text. Does this signify an absence of a validating foundation for the country's human rights regime? Alternatively, does it mean that some principle, other than human dignity, provides a basis for its human rights regime? In any case, does it matter, in terms of practical importance, where a provision appears in a constitution? Mentioning human dignity in the preamble could indicate that it is fundamental to human rights; its mention in the actual text without its appearance in the preamble could mean that it is important, but not fundamental.¹⁸ It is a rule in international law that provisions of constitutions should be interpreted also in terms of its preamble.¹⁹ This is affirmed by the Vienna Convention of the Law of Treaties (1969) in section 31 (2) which spells out the function of the preamble to a constitution.²⁰

Matthijs de Blois sets in opposition to each other the ideas of 'individual self-determination' and 'human dignity' as the two basic principles upon which any human rights formulation may be based.²¹ According to him, a human rights regime derives its inspiration and patterns of interpretation from either of these two principles. A regime that emphasises the principle of individual self-determination operates on extreme individualistic considerations. It does not grant either the state or any other entity the right to interfere with the life and freedom of individuals, so long as their actions do not harm or interfere with the rights of others. In other words, the only basis on which the state can interfere with the freedom of an individual is to prevent them from harming others.²² Those inspired by the principle of human dignity, tend toward social responsibility with regard to the well-being or the best interest of all persons. In that sense, the degrading of human dignity in one person is a degradation of the dignity of all. In the spirit of Kantian duty toward treating the human being with dignity, whether in one's own person or in the person of another, the state or others can interfere in a person's life in that person's best interest. The conviction that all human beings have inherent worth that must be respected in all circumstances, irrespective of any additional high or base qualities, is central to this approach. A human being is a human being whether male or female, young or old, poor or rich, citizen or

¹⁷ The Preamble to *The 1992 Constitution of the Republic of Ghana*.

¹⁸ Johannes A. van der Ven, S. Jaco Dreyer, Hendrik J. C. Pieterse, *Is there a God of Human Rights? A Complex Relationship between Human Rights and Religion: A South African Case Study* (Leiden/ Boston: Brill 2005) 277.

¹⁹ P. Van Dijk et al. *International Law, Human Rights* (Den Haag Koninklijk Vermande, 2000) 454 – 47. Cited in van der Ven, et al. *Is there a God of Human Rights?* 276.

²⁰ van der Ven, et al. *Is there a God of Human Rights?* 276, fn. 14.

²¹ Matthijs de Blois, 'Self-Determination or Human Dignity: The Core Principle of Human Rights' in Mielle Bulterman, Aart Hendriks, and Jacqueline Smith (eds.), *To Baehr in Our Minds: Essays on Human Rights from the Heart of the Netherlands* (Utrecht: SIM Special, no21, 1998) 524.

²² C. S. Nino, *The ethics of Human Rights* (Oxford: Clarendon Press, 1991) 132.

immigrant, king or subject; physically or mentally handicapped or strong, prisoner or free. Inclining toward either of the two principles has implications for the understanding and interpretation of human rights, whether in terms of moral norms or legal formulations.²³

An examination of Ghana's constitution leads us to the understanding that both human dignity and individual self-determination are core principles of the human rights regime of the country. This seems to be the case with the human rights regimes of most countries in the world, though in terms of emphases, countries may differ in their preferences for one principle or the other. In the case of Ghana, if the two principles were set in opposition to each other on a scale, preference would weigh in favour of human dignity. This is in spite of the observation that human dignity does not receive mention in the preamble to the constitution. Article 15(1) stipulates that, 'The dignity of all persons shall be inviolable.' And section 2 (a) prohibits 'torture or other cruel, inhuman or degrading treatment or punishment' of arrested or detained persons. Section 2(b) also protects 'arrested' or 'detained' persons from being subject to 'any other condition that detracts or is likely to detract from' their dignity. Article 33 (5), affirms 'fundamental human rights' by allowing the courts to 'roam the highway of human rights the world over and pick and apply certain rights which are not found in the constitution but which are intended to, among others, secure the 'freedom and dignity of man.'²⁴ So Article 33(5) caters for the recognition of new rights without going through the usual process of signing, ratifying and incorporating new international human instruments into the domestic law. The protection of personal liberties of individuals is assured in Chapter Five of the constitution, which deals with fundamental human rights and freedoms. But these liberties are set in the context of a balance between the individual's rights and the security and moral considerations of the state.²⁵ The range of human rights provided for by the constitution is comprehensive, encompassing all the rights previously categorised into generations.

7.5 The Constitution and Religion

The preamble of the Constitution begins with the phrase 'in the name of God' and invokes the 'natural and inalienable right' of the people to enact a constitution for themselves and posterity. In keeping with the general trend, it may be argued that a pluralistic country such as Ghana should leave the invocation of God out of its constitution and lawmaking. However, it is at least, considered legitimate to refer, in the preamble, to the 'cultural, spiritual and religious traditions that have significantly influenced the history' of the nation.²⁶ Professor Quashigah of the Law Faculty of the University of Ghana quotes what Justice Douglas said of the constitution of the United States of America to describe the position of Ghana's constitution with respect to religion:

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma.²⁷

²³ Matthijs de Blois, 'Self-Determination or Human Dignity,' 525 -539.

²⁴ Appiagyei-Atuah, personal conversation with author, December 11, 2008.

²⁵ See Article 12 (2).

²⁶ van der Ven, et al. *Is there a God of Human Rights?* 283.

²⁷ *Zorach v. Clauson*, 343 U.S. 306, 313(1952). Cited in Quashigah, 'Legislating Religious Liberty,' 598.

‘Natural and inalienable right, ‘invoked in the preamble of Ghana’s constitution resonates with the idea of ‘natural rights,’ that incidentally, finds affinity with views about human rights propounded by religious thinkers: ‘Any governmental or social order claiming to be “humane” must respect the dignity which man has by virtue of his being in the image of God.’²⁸ While natural rights and natural law seem to have been overtaken by positivism, their relevance for the contemporary human rights system can be established; modern neo-natural law thinkers such as John Finnis continue to engage in discourses on them.²⁹

7.6 Human Rights in the Context of Plural Values

Several scholars have noted the connection between Christianity and the evolution of human rights in Western Europe. Christianity has shaped European values, including secular ones. What this means is that the context of Europe, within which human rights first came to be explicitly stated and developed, had been shaped by a single politico-religious ideology – Christendom. In Europe, human rights developed in the context of a largely homogenous value system, in which there was little conflict between core values and ideals that supported their development. However, the contemporary context of Ghana presents a completely different picture. There is nothing like the Christendom ideology through which culture is supported mainly by a single value system. Ghana is a highly pluralistic country in which several different religious traditions exist together with a few people who do not practice any religion or who prefer to maintain secular perspectives on issues of central concern such as human rights.

Implications of pluralism for the public sphere are complex. Religious differences, including secular thought, cannot be ignored in a discussion of public values of interpersonal and inter-communal consequence. The use of religion in relation to the expression and projection of identity, solidarity, and difference make it unwise for such differences to be ignored. In the history of Ghana religious identity has sometimes defined whether one belongs to a majority or to a minority group. Depending on where a person finds himself or herself at any particular time, he or she becomes either part of the majority or the minority, with all the advantages or the disadvantages that go with such a status. By extension, the situation of pluralism and religious difference also becomes the context of struggle, contestations and compromises about issues of power and domination. For example, it would seem that the institutionalisation of the two Islamic holidays of *Id al- Adha* and *Id al- Fitr* in 1996 by an Act of Parliament was primarily to enhance the enjoyment of religious freedom and eliminate religious discrimination. But it was also the fruit of a long period of murmurs of agitation and lobbying by Muslim opinion leaders. It was done to balance the Christmas and Easter holidays of the Christians. The creation of a Muslim Educational Unit and the establishment of Islamic educational institutions have served to neutralise the virtual monopoly that Christianity has held in the educational sector of the country. Muslim opinion leaders, since Independence, have seen reforms in Islamic education and changes in Muslim attitudes to Western-type education as the most important paths for Muslims to take in order to catch up with their Christian compatriots in terms of socio-economic development.

²⁸ J. Moltmann, ‘What Right has the Image of God’ in *Evangelische Kommentare* 9, 5 (1976) 280 -282. Cited by Torleiv Austad, ‘The Theological foundation of Human Rights’ in Jørgen Lissner and Arne Sovik, *A Lutheran Reader on Human Rights* (Geneva: Lutheran World Federation, 1978) 55-65.

²⁹ John Finnis, ‘Natural Law and Natural Rights’ *Political Theory*, 10/1(Feb., 1982) 133 – 136.

Religious constituencies in pluralistic contexts pay attention to issues of influence and power in the public sphere, since this is the arena where debates about values take place. They are also not indifferent to issues about numbers, since in most cases numerical strength determines who is perceived to wield greater influence; although in several cases a vociferous minority could dominate the public sphere and determine the course of debates and resulting policies. Yet in the current situation of regular elections to retain or change governments, numbers do count; and politicians desiring to manipulate religious sentiments are sensitive to such figures in their strategic political calculations. Against this background, the controversy that erupted over the release of the provisional results of the 2000 Ghana Population and Housing Census may be properly appreciated. The statement issued by the Coalition of Muslim Organisations – Ghana (COMOG) contended that the Muslim population of the country was much more than the 15.9% the official report claimed. They charged that their population had been underestimated in order to deny them development:

When it suits our adversaries, they accuse us of giving birth indiscriminately, but they turn around to short-charge and defraud us when our increasing numbers have the potential of turning into a seeming advantage.³⁰

According to a news report, some social commentators interpreted the reaction of the Islamic group as an expression of the ‘age-old fear of Islam playing second fiddle to Christianity.’³¹

Nevertheless, the public sphere in Ghana involves players of both religious and secular persuasions; and debates over issues do not normally take place between clearly delineated constituencies in terms of religious affiliation. For example, in the debate on the Domestic Violence Bill, there were both Christians and Muslims who supported almost every part of the Bill; and, on the other hand, there were Christians as well as Muslims who were against certain provisions of it. There were also those who took sides in the debate without any religious or moral consideration. In the debate concerning the exclusion of ‘religious and moral education’ from the courses proposed for the educational reforms, Muslims and Christians were united in demanding that the subject be re-introduced. Despite such manifestations of unity and collaboration, there is a high sensitivity to perceptions of communal differences on the part of the state. A perception widely held is the one that divides the country into the ‘Muslim north’ and the ‘Christian south.’ Such perceptions have compelled almost all political parties to seek to ensure a balance between a perceived ‘Muslim north’ and ‘Christian south’ in the distribution of offices. Though several research reports have proved otherwise, the perception still persists. For example, the 2000 population and housing census report revealed that Muslims in the three northern regions constitute about 7.5% of the total population of the region and in the three southern regions about 8.5% of the total population.³² In spite of this revelation, the old

³⁰ Statement attributed to Sheik Seebaway Zakariah, spokesperson for the Coalition of Muslim Organisations – Ghana (COMOG), ‘Muslims cry foul over population figures,’ *Africanews* – 71 – February 2002, http://web.peacelink.it/afrinews/71_issue/8.

³¹ Amos Safo, ‘Muslims cry foul over population figures,’ *Africanews* – 71 – February 2002, http://web.peacelink.it/afrinews/71_issue/8.

³² *2000 Population and Housing Census. Summary Report of Final Results* (Accra: Ghana Statistical Service 2002). See also E. Gyimah-Boadi and Richard Asante, ‘Minorities in Ghana,’ A Paper prepared for the Commission on Human Rights, Sub-Commission on Promotion and Protection of Human Rights, Working Group on Minorities (E/CN.4/Sub.2/AC.5/2003/WP.4) 5. May 2003, <http://www.unhcr.ch/huridocda/huridoca.nsf/0>

perception that divides Ghana into ‘Muslim north’ and Christian south has not gone away. Hence, any discussion about human rights in Ghana, whether academic or policy-oriented, must take into account religious and secular perspectives.

7.6.1 Legal pluralism

The state seems to give tacit recognition to the plurality of values in the country and, to some extent, it seems to foster its persistence. As a matter of policy, state educational institutions, for example, are mostly run jointly by the state and religious groups. In spite of the prohibition of practices and rules that might deny students the right to freedom of religious expression, the religious institutions in Ghana strive to impose their identity on the schools. In the past, when there were only few Islamic schools in the mainstream, Muslims who enrolled in Christian schools complained of discriminatory practices against them by school authorities.

The state’s recognition of plural values within its borders is reflected most clearly in the pluralism of its legal system. According to the Constitution,

The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of *customary law* including those determined by the Superior Court of Judicature.³³[Emphases are mine].

‘Customary law’ is defined as, ‘the rules of law which by custom are applicable to particular communities in Ghana.’³⁴ This means the law that applies to people as members of communities, ethnic and/or religious. Customary law in this sense refers to what Gedzi prefers to call ‘indigenous law.’³⁵ It is the ‘personal law’ that governs a person as a member of a particular community; the customary law to which a person is subject.³⁶ Customary law applies, especially, in matters such as marriage and family life, land, chieftaincy, and other customary beliefs and practices. There are a few problems, however, when the Constitution seems to take for granted the fact that the meaning of the phrase ‘particular communities’ is clear to everybody and that what it means is conveniently applicable in the context of the modern nation-state. An example of the problems we have in view is the multiple meanings that one can ascribe to the designation, ‘particular communities.’ It could mean one or all of the following: 1. A group of people living together in the same place but not necessarily belonging to the same ethnic or religious group; for example, Alajo community or La community. 2. People identified by their common membership of an ethnic group but not necessarily living together in the same place; for example, an Ashanti living in Accra or an Mfantse living in Anloga are members of their ethnic groups as communities but not living in their home areas. 3. A group of people that share a common interest such as a religious persuasion, as in, ‘Christian community’ or ‘Muslim community,’ in which case the members of the community are hardly confined to a single place as their abode.

In the case of first meaning, it would be relatively easy and in keeping with modern practice to invoke laws that apply to ‘particular communities.’ Area councils and sub-metro councils have

³³ The Constitution of Ghana, 1992, Article 11(2).

³⁴ The Constitution, Article 11 (3).

³⁵ Victor S. Gedzi, ‘Principles and Practices of Dispute Resolution in Ghana: Ewe and Akan Procedures on Females’ Inheritance and Property Rights’ (PhD diss., the International Institute of Social Studies of the Erasmus University of Rotterdam, The Hague, 2009) 28, 29.

³⁶ Court Act, 1993(Act 459) Section 54 (1).

by-laws that apply in their communities. However, if, apart from the by-laws made by the Area Councils, a traditional council in Alajo or La seeks to invoke a customary law, should it apply to natives of the area alone? Or should it also apply to non-natives living there? Since customary laws are often overlaid with religious beliefs in content and application, would it not mean a violation of the right to freedom of religion if non-natives or even natives who do not subscribe to the indigenous beliefs any more, are subject to such laws?³⁷ In the case of the second meaning, some of the issues raised above apply. In addition, the application of customary law in matters regarding land administration, marriage and divorce, family life, and practices related to the burial and funeral of the deceased can lead to the blurring of the boundaries between the human rights of non-natives and the limits of traditional authority.³⁸ This is especially so since in practice, chiefs and their traditional councils, sometimes, assume the power to enforce customary laws.³⁹ The courts of traditional rulers, where justice is administered on the basis of customary laws, are active in several communities in Ghana. Gedzi's recent study reveals that the chiefs' courts in Anlo and Asante continue to 'resolve cases that otherwise would go to the formal courts.'⁴⁰

It seems that this type of legal pluralism is an attempt by the state to ensure the rights of religious, cultural and ethnic communities, in keeping with international human rights norms regarding cultural and social rights. But it also reflects the lack of capacity on the part of the state to register an effective presence throughout the country. In the face of the inadequate resources of the nation-state, the state is compelled to ignore the critical issues involved in the chiefs' adjudication of particular cases and their attempt to apply customary sanctions, including those that undermine the human rights of citizens. Our fear with respect to the use of customary law in Ghana is that it might be used as a smokescreen to cover up human rights violations in 'particular communities.'

The very idea of customary law as the 'personal law' of people as members of 'particular communities' is potentially, a cover up for a multitude of sins. For example, it may serve as a cloak of respectability for abusive community leaders and violators of human rights in the domestic setting. This arrangement shows too little potential for a vibrant human rights culture, especially because of the patriarchal and authoritarian nature of Ghana's cultural and religious communities. Moreover, issues may be raised as to why part of the country's legal system should

³⁷ Cf. Abamfo O. Atiemo, 'International Human Rights, Religious Pluralism and the Future of Chieftaincy in Ghana,' *Exchange* 35/4 (2006) 360 – 382.

³⁸Section 55(1) of the Courts Act, 1993 (Act 459) provide some guidelines for applying customary law in the regular courts of law but in the courts of the chiefs customary laws are applied, in most cases on the basis of principles that are not explicitly guided by human rights principles.

³⁹ In several towns and villages in southern Ghana, traditional authorities seek to enforce customary laws, including those with obvious religious overlays. The sanctions are sometimes extremely harsh and abusive of people's human rights as citizens. An incident I witnessed in an Mfantse town, a woman who was said to have consistently refused to contribute to a funeral fund had been handed a very severe sanction. She was not to be seen to fetch water from the public bore-hole, she was not to buy or sell in the town's market, and if she died she would be denied the normal funeral rites for citizens. In November, 2007, while collecting material for this work, I heard on one of the FM stations – Peace FM, about a similar incident in Akim-Abuakwa, in which a woman had been put under similar sanctions. When the chief of the town was contacted on air, his explanation confirmed that such sanctions had been imposed on the woman. In Anloga, when Christians refused to observe a customary period of silence, preceding the festival of the gods, the traditional council made attempts to apply similar sanctions.

⁴⁰ Victor S. Gedzi, 'Principles and Practices,' 212.

be determined by the ethnic or religious identity of its citizens instead of by their national identity. In any case, most Ghanaians have more than one form of identity. An Anlo may also be a Christian or a Muslim. With respect to marriage, for example, the legal system makes provisions for Christian Marriage, Islamic, Customary/Traditional and secular marriages. Yet, no Christian marriage takes place without the customary or traditional rites. While it is important for the law to reflect the value acceptances in the country in a comprehensive manner, it is also imperative for the state to ensure that legal pluralism does not lead to abusive restrictions on the human rights of citizens. It is under such arrangements for, example, that restrictions on people's freedom to choose a marriage partner, or decide on divorce, or propagate or change a religious faith are easily imposed.

Such arrangements can be traced to the colonial period, when for the administrative convenience of the government, the country was ruled in terms of separate provinces – the Colony, Ashanti, and the Northern provinces.⁴¹ They were maintained for practical reasons in the independence era in the wake of the controversy between the 'regionalists' and their rivals.⁴² Nevertheless, the persistence of customary law practices and the resort to them both in the arbitration courts of chiefs and in the official courts of the state is a reflection of the diversity of values and worldviews that continue to exist in Ghana.

7.6.2 Diversity, human rights and peaceful co-existence

In spite of the evolved cultural synthesis which we have referred to as a 'common Ghanaian culture' (ch.4), differences exist. Human rights as a universal concept presume a shared humanity. Confronted with the diversity of cultural values and moral doctrines, scholars have argued either in favour of irreconcilable cleavages between cultures⁴³ or in favour of diversity, with an underlying basic inclination toward mutual accommodation for the protection of a common humanity.⁴⁴ Ghana has been largely spared interreligious or inter-ethnic conflicts, though in recent times, there have been pockets of violent clashes over religious or ethnic differences. Suspicions held by different religious and ethnic groups against one another continue to exist and raise the level of tension occasionally. Rivalry for public influence becomes intense occasionally, and gets tangled up in issues of appointment or election to political office and in the distribution of other public goods.⁴⁵

We have already referred to the controversy over the results of the 2000 Population and Housing Census and the suspicion by Muslims that certain people wanted to deprive them of their share of development. Elom Dovlo, in examining the challenges and opportunities that religion in the public sphere presents to law making in Ghana, points out that mutual suspicion between ethnic and religious groups is part of the problem for the failure of such laws to achieve their intended objectives.⁴⁶ He cites the example of a practitioner of traditional religion who saw the Criminal

⁴¹ Boahen, *Ghana: Evolution*, 174.

⁴² Boahen, *Ghana: Evolution*, 183 – 188.

⁴³ S. Huntington, 'The Clash of Civilizations?' *Foreign Affairs*, 72/3 (Summer, 1993) 22- 43.

⁴⁴ John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1973), *Political Liberalism*, (New York: Columbia University Press, 1993).

⁴⁵ Both religious and regional (and sometimes, ethnic) lobby groups put pressure on political parties to give certain appointments to their people. Especially, the position of the president and the vice-president has become, for some people, offices to be shared between the North and the South or between a Muslim and a Christian.

⁴⁶ Dovlo, 'Religion in the Public Sphere,' 656 – 657.

Code (Amendment) Act of 1998 as an attempt by the government to destroy indigenous religions in the country.⁴⁷ We earlier referred to the communiqué issued by the Catholic Bishops' Conference, which insinuated that 'political and financial institutions from the Western world'⁴⁸ were behind the proposed expunging of Religious and Moral Education from the syllabus of the basic schools (ch.5). The reaction of the bishops confirms Martin Marty's argument that 'religions of the world regard Enlightenment reasoners to be one more set of competitors on the religious scene.'⁴⁹

What is required to ensure peaceful co-existence is an approach that does not ignore the diversity of perspectives – religious and non-religious – of the Ghanaian population; an approach that does not go ahead to impose a supposedly neutral moral principle on everybody. In this direction, the line taken by Rawls, Habermas and Nussbaum, especially is appropriate. Common to all of them, as we shall find out in our discussion below, is a basic direction toward the realization of common grounds among the diverse individuals and groups for a just and peaceful society. Each of these theories is developed in a comprehensive manner, providing many different insights. However, we shall dwell on aspects that will help us explain how consensus may be reached for peaceful coexistence in plural societies.

John Rawls proposes 'an overlapping consensus.'⁵⁰ His theory has gone through some revision since it was first propounded. Basically it holds that in any modern human society such as a country, people hold 'different comprehensive doctrines' which are all reasonable and, in many cases, incompatible. In order for fundamental political principles such as human rights to work in pluralistic contexts, people cannot be expected to abandon their varying comprehensive doctrines. Rather, individuals and communities are encouraged to find justification for such common projects within their own 'comprehensive doctrines' in order to reach what he calls an 'overlapping consensus.'⁵¹ Rawls bases his theory on the assumption that human beings share a common capability toward objective and impartial reasoning. His theory also presumes a well-ordered liberal democratic society characterised by the fundamental intuitive idea of 'justice as fairness.'⁵² That is, the basis of the 'overlapping consensus' is the idea of justice, which is intuitively accepted by people from the diverse backgrounds. If everybody decides to hold on to their own comprehensive doctrines, there cannot be any consensus, and it will be difficult, almost impossible, to have societal life. Yet, it is almost impossible for people to abandon their comprehensive moral views. Therefore there will be the need to keep the 'comprehensive doctrines' away from the public sphere, even though people's acceptance of the common principles are grounded, each in their own 'comprehensive doctrine.' To that end, 'overlapping consensuses' is primarily concerned with the validation of a common doctrine for the stability of society.

⁴⁷ Dovlo, 'Religion in the Public Sphere,' 656.

⁴⁸ Statement by Ghana Catholic Bishops' Conference, on 'the new educational reforms' issued on November 9, 2007 and signed by the Most Rev. Abadamloora, Bishop of Navrongo-Bolgatanga and President of the Ghana Catholic Bishops' Conference.

⁴⁹ Martin Marty, in J. Witte and J. van der Vyver (eds.) *Religious Human Rights in Global Perspective: Religious Perspectives* (The Hague/London: M. Nijhoff, 1996) 15.

⁵⁰ See his early writings, especially, *A Theory of Justice* (Columbia University Press, 1971).

⁵¹ John Rawls, 'Justice as Fairness: Political not Metaphysical,' *Philosophy and Public Affairs*, 14/3 (1985) 250.

⁵² Rawls, 'Justice as Fairness,' 231.

Obviously, the presumed moral orientation of people toward readiness for cooperation cannot be taken for granted. Human beings, as recent world events demonstrate, are not so naturally ready to give up on aspects of their 'comprehensive doctrines' for the sake of stability. Yet Rawls' idea is an important one for universalising human rights in the contemporary world of plural values. One of its unique strengths is that it does not seek grounding in only one validating foundation (ch.2); but it is to be grounded in several sets of justifications. Furthermore, while favouring an open discourse on issues that are controversial, it does not concern itself with issues of truth or falsehood of any of the claims made. His concern is 'justice as fairness' as a political rather than a metaphysical concept; a 'conception of justice... that can serve as a basis of informed and willing political agreement between citizens viewed as free and equal persons.'⁵³

For Habermas, there are two worlds: a 'life-world' and a 'systems world.' The 'life-world' is the familiar realm of cultural experiences and inter-subjective interactions that lead to identity formation, transmission of knowledge and consensus building with regard to ethical norms. In the words of Schutz and Luckman, the 'life-world' is 'the unquestioned ground of everything given in my experience and the unquestionable frame in which all the problems I have to deal with are located.'⁵⁴ It is within the 'life-world' that people make meaning of events through the language and cultural norms established through processes of inter-subjective communication. The various departments of life that have now been differentiated into distinct and separate sectors were originally all part of the 'life-world.'⁵⁵ Politics, economics, law and religion were interlinked with 'love, sex, and children's upbringing in the family.'⁵⁶ Within the 'life-world' interactions were easy due to shared values and common norms; in any matter that called for a decision at the collective level, consensus was reached by an examination of the validity of each claim. In the end the most reasonable claim was taken.

With the onset of modernity and societal interactions becoming more complex, structures were established to meet the increasing sophisticated demands of the 'life-world.' These structures include the systems of economic, political and legal arrangements that are separated from the 'life-world.' These are features of the 'systems world.'⁵⁷ In situations of diversity of values and opinions, such systems help maintain order and social cohesion. The 'systems world' imposes itself on the 'life-world' and eventually overwhelms it. This development Habermas describes as the 'colonisation' of the 'life world' by the 'systems world.' Our interest in Habermas at this point has to do with the 'life world' and his idea of communicative action, which enables consensus to be reached in a pluralistic society.

Martha Nussbaum has developed what she calls, the 'capabilities approach' as the source of political principles for a liberal pluralistic society. These capabilities are presented in a manner that makes them free of any specific metaphysical grounding. This way, they become the object of an 'overlapping consensus' among people who otherwise have very different comprehensive conceptions of the good. She uses the approach to provide the philosophical underpinning for an account of 'core human entitlements' that should be respected and implemented by

⁵³ Rawls, 'Justice as Fairness: Political not Metaphysical,' 231.

⁵⁴ Cited in Habermas, *The Theory of Communicative Action*, 131.

⁵⁵ Habermas, *The Theory of Communication*, 157.

⁵⁶ Johannes A. van der Ven, Jaco S. Dreyer, Hendrik J. C. Pieterse, *Is there a God of Human Rights? A Complex Relationship between Human Rights and Religion: A South African Case Study* (Leiden/ Boston: Brill 2005) 40.

⁵⁷ Habermas, *The Theory of Communicative Action*, 154.

‘governments of all nations, as a bare minimum of what respect for human dignity requires.’⁵⁸ Our purpose for invoking her theory is to draw attention to its value as a basis for achieving consensus of a shared conception of humanity in a world of diversity. We shall revisit Nussbaum’s capabilities approach in chapter eight.

7.6.3 Culture, Religion and Human Rights

The progress in human rights culture in Ghana, demonstrated in the passing of several human rights-related laws and the growing awareness of human rights norms by the public as shown by the report of the survey discussed above, is indicative of the fruitions of the inculturation of human rights that have been going since colonial times. The side-by-side existence of modern state-structures and traditional authority of the ethnic chiefdoms makes a certain level of legal pluralism inevitable. Legal pluralism implies a multicultural society in which plural values exist. But how does the situation of plural values affect the development of human rights in Ghana? There is a ground of consensus based on human dignity and why it has to be protected. Beliefs about the human being as created and possessing physical as well as metaphysical components largely serve as the justification for the idea of human dignity.

Continuities between traditional ways of protecting human dignity and a modern human rights culture can also be discerned in certain practices and attitudes of Ghanaians. In all three traditional areas that constituted the research sites, there appeared to be a readiness to resort to less confrontational mechanisms of resolving issues of human rights violations. As our data show, our research participants were more ready to seek the assistance of institutions such as CHRAJ, DOVVSU, and FIDA than to go to court. This preference could be explained by several factors, but the two that were cited by the discussants were the free services that most of them offer and the arbitration approach, which makes them more friendly to societies that still hold dear the traditional values of harmony and stability. In the focus groups in all research sites, the general perception was that the courts delayed in dealing with cases, were expensive and favoured the rich and the influential.

The idea that it is the troublesome citizen that resorts to litigation also persists and, as much as possible, people would like to avoid going to court. Responses from our focus groups revealed three main sources from which redress would normally be sought by victims of human rights violations. Listed in order of importance, according to the frequency with which they were mentioned by participants in the various focus groups: These were first, statutory bodies and NGOs such as CHRAJ, DOVVSU and FIDA; secondly, traditional authorities such as chiefs, community and family elders, but also, pastors; and thirdly, the police and the law courts. Several of the participants said that what they would do if their human rights were violated would be determined by the nature of the abuse and who the perpetrator is. In certain cases they would be prepared to go to court or report to the police; in other cases, they would ‘give it to God,’ meaning, they would not seek redress. In a survey conducted in the cities of Accra and Kumasi as part of this research to gauge public awareness of human rights, the police service was not only mentioned as an institution to protect human rights but as the institution that received the most frequent mention as the institution to which people would report violations of human rights, [See Appendix 3, table 4(e)].

⁵⁸Nussbaum, *Frontiers of Justice*, 76 -78.

However, the religious worldview, which continues to be popular and informs practices and attitudes of many Ghanaians, also poses special challenges to human rights. Interpreting events as being caused by spirits can be a serious obstacle to the growth of a human rights culture. This makes it difficult in certain circumstances to ensure human rights and the peace of the community. The strong belief in the reality of spirits sometimes deprives people of the courage to insist on their rights, even when they themselves do not share in those beliefs. In August 2004, a ban was placed on fishing in Keta by the priestess of a traditional shrine, who claimed that some fishermen had caught fishes that were the children of a deity.⁵⁹ The priestess was demanding some rituals to be performed to pacify the deity before fishing could resume but, due to a chieftaincy dispute, the chiefs who are the custodians of such customs were not available to see the performance of these rituals through. As a result, fishermen in the area were prevented from going about their legitimate economic activities for days.

The problem with such incidents is that in the modern multi-religious society, not everybody shares in the traditional beliefs of the particular community. In the Keta case that we have referred to above, there were fishermen who belonged to religions other than the traditional religion and who were not willing to contribute money toward the performance of the rituals demanded by the traditional priests. Similar prohibitions, imposed by chiefs periodically as part of the observance of certain important days on the traditional calendar, have often provoked resistance from Pentecostal Christian groups.⁶⁰

In several traditional areas and urban communities certain traditional beliefs and practices may lead to human rights violations. Among such practices is *Trokosi*, found among the Ewe in Ghana, Togo and Benin, as well as the Ga-Adangbe.⁶¹ In this practice, teenage girls are given by their families to serve at a shrine as atonement for the sins of another family member. Since some NGOs drew public attention to the abusive nature of the practice about a decade ago, controversy has built up around it, contesting the merits and the demerits of the practice.⁶² Eventually, the practice came to be banned under the Criminal Code (Amendment) Act of 1998.⁶³ Yet, as Quashigah predicted⁶⁴ before the law was enacted, criminalisation of the practice has not led to its total demise.

⁵⁹ *The Mirror* 14th August, 2004.

⁶⁰ Atiemo, 'International Human Rights,' 374.

⁶¹ E. K. Quashigah, 'Religious Freedom and Vestal Virgins: The *Trokosi* Practice in Ghana,' *African Journal of International Comparative Law*, 10/2 (1998) 194.

⁶² The Afrikania Renaissance Mission, for example, has become an avowed defender of *Trokosi*. The advocacy of the Mission and other influential supporters of the system seem to have been successful in persuading sections of the international community that the practice is a harmless cultural practice that must be allowed to exist. This is reflected in the 2004 report of the US Embassy on human rights in Ghana. The softening commentary on the practice suggests it must be accommodated, as if the very idea of sending a child to serve in atonement for another person's misdeeds is not outrageous enough. The report reads: '*Trokosis* help with the upkeep of these shrines and pour libations during prayers. *Trokosis* sometimes live near shrines, often with extended family members, during their period of service, which lasts from a few months to three years. Government agencies, such as CHRAJ, have at times actively campaigned against *Trokosi*, although local officials portray it as a traditional practice that is not abusive. Some NGOs maintain that *Trokosis* are subject to sexual exploitation and forced labor, while supporters of traditional African religions, such as the Afrikania Renaissance Mission, have said these NGOs misrepresent their beliefs and regard their campaigns against *Trokosi* as religious persecution.'

⁶³ Dovlo, 'Religion in the Public Sphere,' 630.

Witchcraft accusations too continue to occur in many communities in the country, including in the cities. The belief in witchcraft is strong and widespread in Ghana. In all the traditional areas, of our research, participants said ‘witches’ were real, and described them as not being ‘properly human.’ Just as the case of *trokosi*, laws passed against witchcraft accusations since colonial times have not been able to banish the practice effectively. The 2004 human rights report on Ghana issued by the US embassy says about this practice,

A strong belief in witchcraft continued in many parts of the country. Most accused witches were older women, often widows, who were identified by fellow villagers as the cause of difficulties such as illness, crop failure, or financial misfortune. Many of these women were banished by traditional village authorities or their families and went to live in witch camps, villages in the north populated by suspected witches. The women did not face formal legal sanction if they returned home; however, most feared that they could be beaten or lynched... There were several cases of lynching and assault of accused witches. In September, Yendi police arrested a Tamale farmer for allegedly cudgelling to death a woman suspected of being a witch. In August 2004 the court sentenced a man to death for killing his wife, who he believed was a witch.⁶⁵

Other practices in this category are related to widowhood rites and rites of puberty, which are all supported by religious beliefs that draw legitimacy from custom. Most of the time, it is the fear of spirit powers that prevents citizens from standing up against obnoxious customs and their related practices. For example, according to Quashigah, ‘*Trokosi* girls are intimidated with the threat of spiritual calamities if they should dare escape.’⁶⁶ This fear also keeps victims of human rights abuses away from reporting to the police or other authorities. In that case, the most effective remedy for securing the rights of people in such contexts is to grant them refuge from their traditional fears.

Fear of spiritual powers may be an important factor in the inability or the reluctance of some victims of human rights violations, especially women and children, to seek redress but the most important implicating factors are linked with the judicial system. We have noted above factors such as the perception of corruption, long delays in hearing cases in the courts, the psychological and, in some cases, physical distance between the courts and the people and the expensive nature of judicial processes. These, rather than religious convictions, are sometimes responsible for the decision by some victims not to pursue cases but to ‘give it to God’ (*fa ma Nyame*) or to resort to ‘spiritual justice.’

In spite of the comprehensive human rights provisions embodied in the constitution and the great improvement in the country’s efforts toward promotion and protection, there is a clear weakness in enforcing the laws against harmful customary practices.⁶⁷ However, such weaknesses are not easy to overcome. They stem from the recognition of the complexity of the problem by both state officials and human rights workers. As already pointed out, in Ghanaian communities, the value of harmony and stability are highly priced. Hence, in matters involving members of a family or of the same community, reporting abuses to the police and resorting to litigation in courts occur

⁶⁴ Quashigah, ‘Religious Freedom,’ 214.

⁶⁵ The U.S. Department of State Website at <http://www.state.gov> (accessed, July 4, 2008).

⁶⁶ Quashigah, ‘Religious Freedom,’ 201.

⁶⁷ See Ghana: *Justice Sector and the Rule of Law* (Dakar: Open Society Initiative for West Africa, 2007) 88.

only in extreme cases of abuse.⁶⁸ Halim candidly observes, ‘as natural as resorting to the legal system may seem to western women, it is a hateful scandalous process for African women.’⁶⁹ Sometimes, those who are expected to enforce the law are themselves so deeply influenced by traditional norms that they fail to appreciate the need to prosecute offenders.⁷⁰ The best way to go seems to be to seek to promote more the non-conventional approaches with which most Ghanaians are comfortable and gradually build on the successes already achieved. Combining this with education and exposure of the custodians of customary laws and practices to modern human rights norms will eventually lead to great increase in the fortunes of human rights in Ghana.

7.7 Conclusion

The human rights situation in Ghana has seen a remarkable improvement through legislation and the work of state institutions dedicated to human rights. Public awareness of human rights is also high, though knowledge about major international instruments such as the UDHR is not extensive. It appears that continuities of the modern universal system of human rights with indigenous ideas of human dignity and the way in which that dignity is protected has been an important factor in the modest growth of the human rights culture in Ghana. The preference for non-confrontational approaches, which reflect the traditional orientation toward the value of stability, leads citizens to use the services of state institutions and NGOs that employ methods of arbitration rather than litigation in settling cases. Religious and cultural values often do not support conventional methods of protecting and promoting human rights such as litigation and other adversarial strategies.

In the context of ethnic and religious diversity, legal pluralism is resorted to as a means of achieving co-existence. Human rights has developed in Ghana in a context of plural values, with the national constitution recognising the pluralistic situation and allowing the application of indigenous laws in matters related to issues of personal concern such as marriage and family life. This arrangement also, to some extent, gives room for the expression of group rights within the bounds of the national constitution. However, in certain cases, customary norms provide the pretext for the violation of human rights within particular communities. But the continuous exposure of customary norms to modern human rights norms which are incorporated into the national constitution will lead to reforms in the direction of human rights.

⁶⁸ Audrey Gadzekpo, ‘Women’s and Girl’s Experience and Understanding of Violence’ in Coker Appiah and Cusack, *Violence against Women and Children in Ghana*, (Accra: Gender and Human Rights Documentation Centre, 1999) 81.

⁶⁹ A. Halim, ‘Tools of Suppression’ in *Gender, Violence and Women’s Human Rights in Africa* (Centre for Women’s Global Leadership, 1994) 28.

⁷⁰ Corinne A. A. Packer, *Using Human Rights to Change Tradition: Traditional Practices Harmful to Women’s Reproductive Health in sub-Saharan Africa* (Atwerpen/Oxford/ New York: INTERSENTIA, 2002) 151.