

MINISTRY OF EDUCATION/GHANA EDUCATION SERVICE

**CONSTITUTIONAL AND LEGAL
FRAMEWORK**

FOR

THE RIGHT TO PRE-TERTIARY

EDUCATION IN GHANA

BY

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PREFACE

The passing of the Education Act in 1961 marked a significant landmark in defining the purpose and pattern of education in Ghana. It brought about an expansion in access and content, in addition to giving education a national character, which sought to make it relevant to the enhancement of the nation's human resource and national development agenda.

Since the mid 1970s, the educational system has been subjected to a number of studies, reviews and reforms. These were undertaken with the view of making educational outcomes respond to the changing needs of the nation, and furthermore to make it correspond to the global socio-economic and political development trends. In the process, some recommendations were made for a new education act to replace the Education Act of 1961. Nonetheless, there was the need for a closer look at the legal conditions that influenced the passing of the Education Act of 1961, in relation to the present constitutional situation of the country and within the purview of global conventions on the rights of the child and the right to education. This would make it possible for the new act to have the desired impact on the attempts to make education accessible, qualitative and meaningful for children. The study into the *Constitutional and Legal Framework for the Right to Pre-tertiary Education in Ghana* was undertaken against the background of this necessity.

This report on the study, presents the historical basis that provides a broad picture of the foundations of pre-tertiary education in Ghana. The report would make it possible for framers of the new Act to take into account the changing circumstances in promoting access and enforcing the right to education. The comparative reference to situations in other countries with regard to the fundamental purpose of providing education is a helpful basis for defining new approaches to encouraging increased access to education as a right.

It is anticipated that this report will be a useful tool in the preparation towards the formulation of a new education act and in stirring up national support for its implementation.

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Ag. Director-General, GES

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LIST OF ABBREVIATIONS

AFRC	Armed Forces Revolutionary Council
BECE	Basic Education Certificate Education
CEDAW	Convention on Elimination of all forms of Discrimination Against Women
CHRAJ	Commission on Human Rights and Administrative Justice
CRC	Convention on the Rights of the Child
CRDD	Curriculum Research and Development Division
DEOC	District Education Oversight Committee
ECHR	European Court of Human Rights
FCUBE	Free Compulsory and Universal Basic Education
GES	Ghana Education Service
GLSS	Ghana Living Standards Survey
GLR	Ghana Law Reports
JSS	Junior Secondary School
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
LRC	Law Reports of the Commonwealth
MOE	Ministry of Education
NCLR	Nigeria Constitutional Law Reports
NLC	National Liberation Council
PNDC	Provisional National Defence Council
PTA	Parent-Teacher Association
SCGLR	Supreme Court of Ghana Law Reports
SMC	School Management Committee
SMC II	Supreme Military Council II
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children Fund
UNESCO	United Nations Education, Scientific and Cultural Organization
WCEFA	World Conference on Education for All

LIST OF INTERNATIONAL INSTRUMENTS

African Charter on Human and Peoples' Rights, 1981
African Charter on the Rights and Welfare of the Child, 1990
Convention on the Elimination of All Forms of Discrimination Against Women, 1979
Convention on the Rights of the Child, 1989
Declaration on the Elimination of All Forms of Racial Discrimination
Declaration on the Elimination of Discrimination Against Women
Declaration on the Rights of the Child
Declaration on Social Progress and Development
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
International Covenant on Civil and Political Rights (ICCPR), 1966
International Convention on the Elimination of All Forms of Racial Discrimination
Recommendation Concerning the Status of Teachers, 1966 (UNESCO)
UNESCO Convention Against Discrimination in Education, 1960
Universal Declaration of Human Rights

LIST OF LEGISLATION

Ghanaian Legislation

Avoidance of Discrimination Act
Children's Act 1998, Act 560
Constitution of Ghana 1957
Constitution of Ghana 1960
Constitution of Ghana 1969
Constitution of Ghana 1979
Constitution of Ghana 1992
Constitution of the Gold Coast, 1951
Criminal Code 1960
Education Ordinance 1882
Education Ordinance (No. 14 of 1887)
Education Ordinance 1925
Education (Colony and Ashanti) Ordinance, Cap. 21
Education (Northern Territories) Ordinance, Cap. 122, 1928
Education Act 1961, Act 87
Education (Amendment) Act 1965, Act 266
Ghana Education Service Act, 1995, Act 506
Ghana Education Service Decree 1974 (NRCD 247)

Foreign Legislation

Canadian Charter of Rights
Constitution of Nigeria 1979
Constitution of Namibia
Constitution of Zimbabwe
Schools Act 1980 of the Province of Alberta, Canada

LIST OF CASES

A Juvenile v The State [1989] LRC (Const.) 774
Archbishop Okogie v The Attorney General of Lagos State (1989) 2 NCLR 337
Brown v Board of Education 347 US 483, 74 S.Ct. 696, 96 L.Ed. 873 (1954)
Costello v UK Publications ECHR, Series A Vol. 243-C
Ex parte Attorney-General of Namibia, In re Corporal Punishment by Organs of State [1992] LRC (Const.) 515.
Jones v The Queen [1988] LRC (Const.) 289
National Patriotic Party v Attorney General (CIBA Case) [1996-97] SCGLR 729
Tyrer v United Kingdom, Judgment of 25 April 1978 (Series A No. 26)
Ukaegbu v Attorney General, Imo State (1984) 5 NCLR 78

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***"Poverty begins when one child
is denied access to education"***

***Kofi Annan,
Oslo, Norway
December 10, 2001***

EXECUTIVE SUMMARY

Basic Education is a right not a privilege. Statistics, however, suggest that 17% of Ghanaian Children are not in school. This situation is traceable to a number of social, economic and cultural factors and also to the absence of any effective legal regime that regulates education.

The Education Act of 1961 and its amendment (The Education (Amendment) Act of 1965) do not provide the requisite legal framework that could support the various educational policies that have been put in place from time to time. The existing Education Act definitely needs reformulation to bring the law into conformity with Ghana's international obligations on the right to education and also to accord with the various changes brought about by various national policies over the years.

A number of recommendations have therefore been made for inclusion in the long overdue new legislation on Education. Some of the suggestions are that:

- Local education authorities should provide alternative education for the out of school children in their areas of authority.
- Children shall not be sent away from school for non-payment of levies of whatever nature.
- The state shall ensure that provision is made for pupils who suffer from any disability of mind or body by providing either in special schools or otherwise, special educational treatment, that is to say, education by special methods appropriate for persons suffering from that disability.
- School discipline shall be administered in a manner consistent with the child's human dignity.
- It shall be an offence for any parent or guardian to withdraw a child from school for

any purpose whatsoever expect for reasons of transfer to another school or for health grounds.

- School Heads, with the approval of the District Education Oversight Committee of the area shall have the authority to schedule school hours, days and holidays as are comfortable for the pupils having regards to local circumstances.
- It shall be the duty of every District Assembly to provide regular Medical Examination of Pupils in their areas of Authority.
- No proprietor of a private school shall determine and charge fees without first seeking approval for same from the Ministry of Education.
- No proprietor of a private school shall impose levies on parents for the purpose of infrastructural development or rehabilitation.
- School Management Committees should be established in all schools and charged with the responsibility of managing the school.

PART I

OVERVIEW OF EDUCATION DEVELOPMENT IN GHANA

1.0 Background

Education is a basic right and a necessity for survival in the modern context. Being a basic right it is the primary responsibility of governments to ensure its realization. Since independence in 1957, the various governments of Ghana have enacted a number of laws and also formulated a number of policies aimed at the realization of the right to education. The international community has since 1948 also formulated a number of treaty provisions that have addressed this right to education.

Ghana is the first country to ratify the UN Convention on the Rights of the Child (CRC) in 1990 and fully participated in the World Summit for Children. The country had earlier in 1986 ratified the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). In 1992, the ten-year National Programmes of Action for Children, titled “The Child Cannot Wait” was drawn up, reflecting the provisions in the UN Convention on the Rights of the Child and the World Summit for Children goals to the actual situation of Ghana’s children. The 1992 Constitution of Ghana makes basic education free and compulsory. This was followed by the Children’s Act 1998, Act 560.

The adoption of human rights instruments makes the State fully responsible and accountable for the development and accessibility of basic education and other levels and forms of education for all including the vulnerable ones. It is, however, an obvious fact that not all children enjoy their rights to education. Statistical information indicate that at the primary school level, the net enrolment rates at the national level increased from around 74% in 1991-1992 to 83% in 1998 – 1999.¹ Statistically that is an impressive increase over the period, but the issue is that about 17% of Ghanaian children are denied their rights to education. Moreover distortions

¹ See Ghana Statistical Service, Poverty Trends in Ghana in the 1990s, October 2000, p.28.

still exist in terms of the enrolment role of girls which is still below that of boys and also in the rural savannah areas where the net enrolment rates are still comparatively much lower.²

There also exists the fact of a correlation between place of residence and level of school attendance. The GLSS for 2000 indicates that attendance rates rise with increased urbanization. The figures indicate for instance that 95 percent of all boys in Accra aged 6 to 11, and 91 percent in other urban areas, were enrolled in school while in rural savannah the corresponding figure was only 66 percent.³

The girl child school attendance follows a similar pattern. Generally, in terms of the sexes, male attendance rates are higher with the exception to a few regions. Some of these statistical facts are recorded in Table 1 below:

Table 1 - School attendance rate by age, locality and sex

Age Group	Accra		Other Urban		Rural Coastal		Rural Forest		Rural Savannah		Ghana		
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	All
6-11	95.0	85.6	91.1	87.4	82.7	85.7	90.8	88.2	66.3	61.3	84.4	81.6	83.1
12-15	85.9	85.2	89.9	81.2	91.0	81.4	86.8	81.0	66.5	55.2	83.8	76.8	80.4
16-18	70.9	42.1	58.2	50.5	55.6	37.5	41.6	40.2	48.3	29.1	51.9	41.8	47.0
19-25	25.1	17.3	22.5	10.3	12.2	9.8	10.9	4.5	25.7	4.6	19.0	8.5	13.5
All	69.2	57.9	70.6	60.5	70.0	63.6	67.7	61.8	55.6	45.8	66.2	58.4	62.3

Source: Ghana Living Standards Survey Report of the Fourth Round 2001 (GLSS 4) Table 22 at p.9.

² Ibid.

³ Ghana statistical Service, Ghana Living Standards Survey Report of the Fourth Round (GLSS4), p.9.

1.1 Objectives of Study

The main objectives of this research are:

- To examine the impediments existing towards full implementation of the right to basic education under the legal and constitutional framework of Ghana.
- To make recommendations regarding necessary improvements in the law on education in Ghana: (a) for better securing the right to education under the law in terms of content, (b) for rationalizing the domestic law to meet the international standard, and (c) ensuring and guaranteeing enforcement.

1.2 Analytical Approach

This study is guided by the *rights framework* using a *rights approach*. The *rights framework* has been explained to imply that:

Individuals are the holders of economic, social, political, civil and cultural rights. Governments have corresponding obligations to respect, promote, protect and fulfill these rights. The legal and normative standards for the character of the rights and associated governmental obligations are based on international covenants, treaties, conventions, declarations and recommendations and in national provisions for human rights.⁴

The *rights approach* is also explained as one that uses “international human rights norms and treaties to hold governments accountable for their obligations.”⁵

1.3 Centrality of Education to Human Rights

The value of basic education to life is self-evident. Education is said to be “the root of all development”;⁶ “the crucible for democracy and liberty, and is as indispensable to national development as it is to individual development”.⁷ Nowak has put the value of basic education in an elaborate form that:

⁴ International Human Rights Internship Program, *Ripple in Still Waters: Reflections by Activists on Local and National Level Work on Economic, Social and Cultural Rights*, IHRIP, Washington DC, 1997, p. 11.

⁵ *Ibid.*

⁶ William Draper III, Administrator, UNDP, quoted in Final Report: World Conference on Education for All- 5-9 March 1990 Jomtien, Thailand – Inter- Agency Commission, WCEFA (UNDP, UNESCO, UNICEF, World Bank), p. 22. (Hereafter referred to as Jomtien, Final Report.)

⁷ Jomtien, Final Report, p.10.

Education is a precondition for the exercise of human rights. The enjoyment of many civil and political rights, such as freedom of information, expression, assembly and association, the right to vote and to be elected or the right of equal access to public service depends on at least a minimum level of education, including literacy. Similarly, many economic, social and cultural rights, such as the right to choose work, to receive equal pay for equal work, the right to form trade unions, to take part in cultural life, to enjoy the benefits of scientific progress and to receive higher education on the basis of capacity, can only be exercised in a meaningful way after a minimum level of education has been achieved.⁸

The purpose of basic education has therefore been identified as extending beyond the traditional approaches of imparting literacy, numeracy and related cognitive skills; it extends to relevant areas such as environmental education, health and population, and also to effective moral, spiritual, cultural and national values.⁹

In the popular American case of *Brown v. Board of Education*¹⁰ Chief Justice Warren in delivering the opinion of the Court in a suit challenging the segregation of blacks and whites in the American School system, had this to say of education:

Today, education is perhaps the most important function of state and local government. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education in our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal basis.¹¹

Education was therefore established as a right and not a privilege. As a right, it must be provided by the state on an equal basis.

We can deduce, in a very refined form, the value of education from the preamble to the World Declaration on Education for All which recalled that education is a *fundamental right* for all people and that:

Education can help ensure a safer, healthier, more prosperous and environmentally sound world, while simultaneously contributing to social,

⁸ Nowak, Manfred, "The Right to Education" Eide & Ors (eds.) Economic, Social and Cultural Rights (Dordrecht/Boston/London: Martinus Nijhoff, 1995), 189.

⁹ *ibid.*, p.24.

¹⁰ 347 US 483, 74 S.Ct. 696, 96 L.Ed.873 (1954)

¹¹ Emphasis supplied

economic, and cultural progress, tolerance, and international cooperation.

It is also realized as the key to personal and social improvement.

The Committee on Economic, Social and Cultural Rights in its General Comment No.11 (1999) classified the right to education as an economic right, a social right, a cultural right and also in many ways as a civil right and a political right, since it is central to the full and effective realization of those rights as well.¹² It is therefore no overstating the obvious that "the lack of educational opportunities for children often reinforces their subjection to various other human rights violation";¹³ children deprived of education are particularly vulnerable to economic exploitation.

Irrespective of the admitted value of education, the high cost involved is often used as an apology for its non-provision. At the 1993 Education for All Summit of Nine High-Population Countries, Mahbub ul Huq, Director of UNDP's Human Development Report, stated:

Let us not forget that the cost of each, jet fighter equals one million children in primary school. If only the leaders of the nine summit countries would commit themselves today that in the next seven years they will buy only 75 fewer jets, the targets of basic education for all would be met. How much more would that sentence of political commitment be compared to millions of words that flow from such conferences, year in, year out.¹⁴

The fact of economic difficulties notwithstanding, a proper setting of priorities could ensure the availability of adequate resources for funding at least primary education for all children which has become a sine qua non for the ability of the individual to demand and protect his/her other basic rights. The position in Ghana was that, between 1997-99 education accounted for 35% of Government's discretionary budget while generally, basic education was said to have accounted for about 67% of the total education budget in the 1990's.¹⁵

¹² See General Comment No. 11(1999) Adopted by the Committee on Economic, Social and Cultural rights at its twentieth session, 10 May 1999 para 2, reproduced in Bekker, Gina, (editor), *Economic and Social Rights* series volume 1, Pretoria, Centre for Human Rights, 1999, p.118.

¹³ Ibid.

¹⁴ Education for All: achieving the Goal Working Document 16-19 June 1996, Amman, Jordan p.45.

¹⁵ Situation Analysis, p.88.

1.4.0 Brief Historical Record of Education Ordinances, Acts, and Policies

1.4.1 Colonial Education Policies and Ordinances

Modern Ghana started as a trading outpost for European trading concerns. At the time that the country was under the control of various trading establishments, virtually no attention was paid to education.¹⁶ The Portuguese who were the first settlers were not known to have established any school. On the other hand, the Dutch, the Danes, and the English had schools for their own children at their respective headquarters.¹⁷ Those schools were not established to benefit the natives. It was actually the Missionaries that took up the initial responsibility of establishing schools for the native population. By 1881, apart from the two government schools at Cape Coast and three at Accra all other schools, totaling about 267¹⁸ were all owned by the various Missionary groups.

Teaching at the Mission schools was mostly done in the vernacular and there was very little proficiency in the English language. In addition the systems of management of the various Mission schools differed considerably. In order to correct these "shortcomings" in the educational system, the colonial Government in May 1882 promulgated the first Education Ordinance. It had as its objectives the promotion and assistance of Education. That Ordinance provided inter alia that the subjects of instruction shall be "Reading and Writing of the English Language, Arithmetic and, in the case of girls, Needle work. English Grammar, English History, and Geography could be taught at the option of the teacher".¹⁹

The 1882 Ordinance went through some amendments. In 1887 a new Education Ordinance (No.14 of 1887) was passed. That Ordinance provided inter alia, with respect to assisted schools, as follows:

7(4) That the schools be open to children without distinction of religion or race. 13 Pauper Children - Any school receiving aid from public funds shall be bound to receive pauper children, who may be assigned to it by the

¹⁶ See Report of The Educationists' Committee, appointed by His Excellency The Governor of the Gold Coast on 5th March 1920, To Advise the Government on Educational Matters, p.18.

¹⁷ Ibid.

¹⁸ See Ibid., p.18.

¹⁹ Ibid., p.19.

Government, in such numbers and upon such terms as may be decided on by the Board of Education.

Various other Ordinances on education were promulgated during the colonial era; these included the Education Ordinance of 1925, the Education (Colony and Ashanti) Ordinance Cap. 121, 1927 and the Education (Northern Territories) Ordinance Cap. 122, 1928.

Bening traced the beginning of formal education in the northern territories in the early 1890s by both the Missionaries and the colonial administration.²⁰

Education during the colonial period was obviously aimed at producing scholars that would provide the needed manpower requirement in the merchant houses, clerks in the civil service and missionary workers. The educational system was not integrated with the economic, social and political needs of the local people.²¹

1.4.2 Education under the Nkrumah Administration

Upon assumption of office under the 1951 Constitution, the Nkrumah Administration introduced the Accelerated Development Plan for Education.²² That new programme on education, which was put into action in 1952, introduced a free-tuition elementary education for children between the ages of 6 and 12. This was followed in 1961 with the Education Act, which made primary education not only free but also compulsory.

Upon the attainment of independence in 1957 the Nkrumah government pursued an aggressive programme of rapid expansion of education. In his contribution to parliamentary debates in 1961, the then Minister of Education touched on the importance of an accelerated rate of education thus:

In Ghana today, we have great development projects in hand ... The increasing rate of industrialization of our country makes imperative the rapid expansion of education so as to ensure that trained personnel are forthcoming in the required numbers to man the administrative machinery

²⁰ See Bening, R. Bagulo, *A History of Education In Northern Ghana - 1907 - 1976* (Accra: Ghana Universities Press, 1990), p.5.

²¹ Antwi, M.K., *Education, Society and Development in Ghana* (Accra: Unimax Publishers Ltd., 1992), p.33.

²² See *ibid.*, p.38.

at all levels, to meet the demands of commerce and industry and also to ensure that the products of industry are fully and intelligently utilized for all sections of the people of this country to make real progress.²³

Earlier in the month the then President Nkrumah had in his Sessional Address to Parliament stated the objectives of the government's education policies that:

It is only through universal education that we can give our people the full opportunity to develop their latent abilities and intelligence. At the same time, education must not alienate the educated from their social environment and their people. All primary and secondary schools in the country should develop their own school farms where the youths can be taught new and improved methods of production and feeding and the need for social co-operation in community development. In this way education will be closely integrated with our effort to raise the general well-being of our people.²⁴

It was in line with this realization of the importance of education to the development of the individual and the society generally that the 1961 Education Act was promulgated making provision for free and compulsory education.

This led to a tremendous increase in the enrolment levels at the primary school level. "During the 1960s and early 1970s the number of children in school rose dramatically"²⁵. It was, however, observed that the impressive growth in the enrolment level was not matched by an equal rise in the standards of education in the elementary and secondary schools. The reasons assigned include the lack of adequate supply of qualified teachers to match the expanded educational system. In addition was the fact that even though the system of supply of free textbooks was commendable, the books were not sufficient and were not properly handled by pupils and moreover, they were not allowed to take them home for use.²⁶

There was also the problem that many school leavers could not have access to the few secondary schools available while vocational and technical education did not receive the requisite attention.²⁷

²³ The Hansard, 26 July 1961, p.728.

²⁴ Sessional Address to Parliament on Tuesday 4th July, 1961 by President Nkrumah. See The Parliamentary Debates, Official Report, First Series, Volume 24 p.17.

²⁵ FCUBE Programme, p. 12.

²⁶ See *ibid.*, p.41

²⁷ *Ibid.*

With the aim of reducing the educational gap between northern Ghana and the rest of the country, the Nkrumah Administration established a special scholarship scheme for Northerners in 1957.²⁸ Under the scheme, which is still in operation, tuition, boarding, lodging and books are free.

1.4.3 Education Policies from 1966 to 1981

Between 1966 and 1981 the following administrations came onto the saddle of government - the NLC government, (1966-1969), the Busia Administration (1969-1972) the Acheampong Administration, (1972-1978), SMC II under Major-General Akuffo (1978-1979), the AFRC Era, (1979) and the Liman Administration, (1979-1981). Most of these did not have enough time to introduce far-reaching changes into the educational system.

The Acheampong Administration, however, approved proposal for a new structure and content of education in 1974. That new policy sought to reduce the duration of pre-university education from the old maximum of 17 years to 13 years.

That reform programme failed due to lack of political will and inadequate funding.²⁹ The fact of inadequate funding was the consequence of the protracted period of economic decline that began in the 1970s.³⁰ Education at the basic level declined considerably.

Government financing of education declined leading to a sharp fall in school enrollment. This was coupled with the inability of parents to support the education of their children due to economic hardships.³¹

²⁸ see Antwi, op.cit., p.52.

²⁹ See Government of Ghana, *The Child Cannot Wait: A National Programme of Action on the Follow-up to the World Summit for Children* (Accra: 1992), p.15.

³⁰ Ibid.

³¹ Ibid.

1.4.4 The PNDC Era (1981-1992)

In order to reverse the decline and improve basic education, the PNDC government, in 1987, embarked on the Education Reform Programme. It had as its aims, improving assess, quality, efficiency and equity; stated in broad principles as follows:

- i. To restructure pre-tertiary education, reducing it from 17 years to 12 years of schooling;
- ii. To re-orient and improve the quality and relevance of the curriculum, moving away from a purely academic focus toward one including skills and attitudes development leading to productive activities;
- iii. To contain and partially recover costs;
- iv. To enhance sector management and budgeting procedures through a merger of planning, budgeting, monitoring and evaluation functions;
- v. To decentralize decision-making and supervision from the region to the district and circuit levels, and to increase the level of school visitation and supervision.³²

This New Educational Reform Programme underlines the principles inherent in the Programme for the Provision of Free, Compulsory and Universal Basic Education by the year 2005 (otherwise referred to as the FCUBE Programme). It is the educational system currently in operation.

These far reaching educational reforms notwithstanding, the fact of the matter is that all those policies were and are still being guided by the Education Act of 1961 (as amended).

³² See FCUBE Programme p.13.

PART II

INTERNATIONAL AND MUNICIPAL LAW PROVISIONS ON THE RIGHT TO EDUCATION

2.0 International Law Regime

2.1 The Evolution of Human Rights and the Right to Education

2.1.0 UN Charter

With the coming into being of the United Nations the protection of human rights ceased to be a matter essentially within the domestic jurisdiction of states; it became a matter of international concern. The preamble of the UN Charter expresses the determination of the United Nations “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.”

In Article 1, the goal of the United Nations is set out as being towards the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. Human rights have become a matter of legitimate concern for the international community. This aspiration notwithstanding the Charter failed to define in any precise terms what human rights and fundamental freedoms consist of. More than that, it did not provide for or indicate the machinery to secure the observance of rights and fundamental freedoms.

2.1.1 Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights (UDHR) of 1948 was therefore put in place to provide the missing impetus behind the otherwise ineffective Charter provisions. The Declaration as adopted was not intended to impose legal obligations

on States, but rather to establish goals for states to work towards.³³ As stated in its preamble therefore, the UDHR had as its prime objective the establishment of

a common standard of achievement for all peoples and nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance both among the peoples of member States themselves and among the peoples of territories under their jurisdictions.

It is thus, a document which represents a most significant step in the efforts of the human society to assert the universal recognition of the inherent dignity of the human person not merely for its sake, but also as the foundation of freedoms, justice and peace in our various communities, nations and the world at large. The UDHR is a document that encompasses not only the political and civil rights put also the economic social and cultural rights together with what we now describe as the third generation or solidarity rights. It therefore did not limit itself to only the problems of its age but it also reached into the future and provided the basis for the emergence and development of some of the relatively newer rights such as the right to development, right to food etc.

It was the UDHR that, as far back as 1948 set out in an elaborate form, the basic elements of the right to education. Article 26 of the UDHR defined the right to education in general terms to be that:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.”

As already stated the Universal Declaration of Human Rights therefore did not possess any enforcement machinery and this fact derogated from the possibility of the

³³ Robertson, *Human Rights In The World* (New York: Manchester University Press, 1992), p.26.

concrete realization of the rights enumerated therein. To make up for this weakness the General Assembly in its resolution proclaiming the Universal Declaration of Human Rights, requested the Economic and Social Council to ask the Commission on Human Rights "to continue to give priority to preparing a draft covenant on human rights and a draft measure of implementation".³⁴

2.1.2 Whether A Single or Two Different Covenants: Covenant on Civil and Political Rights or Covenant on Economic Social and Cultural Rights

The Commission commenced work on a draft document titled "Draft Covenant on Civil and Political Rights".³⁵ In 1952, however, the General Assembly at its Paris session decided that instead of one document, the Commission should draft two separate documents; one to be a Covenant on Civil and Political Rights and the second, a Covenant on Economic, Social and Cultural Rights.³⁶

Four reasons were assigned for this change of mind viz:

1. that the economic and social rights are objectives, which lend themselves to progressive realization while the civil and political rights, would demand instantaneous application upon ratification.
2. that legislation is what is often required to guarantee the realization of the civil and political rights while the economic and social rights would necessitate a certain basic level of economic condition to guarantee realization,.
3. that the economic and social rights are of necessity drafted in broad and sweeping language while the civil and political rights are in precise terms,.
4. that the machinery being contemplated for the civil and political rights would not be suitable for the economic and social rights.³⁷

It was particularly argued that the two sets of rights could not be subject to the same implementation mechanisms. It was thought that the interstate complaint machinery would be suitable for the civil and political rights which can be given immediate effect while the inherent progressive nature of realization of the economic and social rights would rather lend themselves to the reportorial mechanism.

³⁴ Ibid., p.90.

³⁵ Ibid.

³⁶ Ibid.

Those opposed to any separation were convinced that **the separation of human rights into two covenants with different implementation machinery would relegate the importance of and hinder the effective implementation of economic social and cultural rights.**³⁸

Even though there was some strong point in the arguments of the separatists, it is possible to conjecture that this singular act of separating the two categories of rights at that nascent stage of their growth decisively affected the degree of seriousness which governments have come to attach to the economic, social and cultural rights.

With the separation of the civil and political rights from the economic, social and cultural rights it became possible to formulate the two covenants with different characteristics. The former are formulated in mandatory terms while the economic, social and cultural rights are formulated in rather broad terms and with separate implementation mechanisms.

The Covenant on Economic Social and Cultural Rights was adopted by the United Nations General Assembly on 16th December, 1966 and entered into force on 3rd January, 1976. It recognizes the right to work, just and favorable conditions of work; rest and leisure, form and join trade unions and to strike; social security; special protection for the family, mothers and children, an adequate standard of living, including food, clothing and housing; physical and mental health; education and scientific and cultural life.³⁹

By their nature of formulation these rights are not as compelling as the civil and political rights. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) for instance is couched in very mandatory terms; it reads "*Every human being has the inherent right to life. Law shall protect this right. No one shall be arbitrarily deprived of his life.*"

On the other hand, Article 6 of the ICESCR provides that:

The states parties to the present covenant recognize the right to work which includes the right of everyone to the opportunity to gain his living by work

³⁷ Ibid.

³⁸ McGoldrick, Dominic, *The Human Rights Committee* (Oxford: Clarendon Press, 1996), p.11.

³⁹ Ibid., p.12.

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

The civil and political rights, as exemplified above, possess such character as to constitute restraints on the encroaching influence of the state “*there is therefore inherent therein “a hands-off policy”*”.⁴⁰

The economic, social and cultural rights on the other hand possess the character of the individual's "rights of credit" against the state. These rights are to be demanded of the state if they are to be achieved.

Upon a critical study of the economic, social and cultural rights it is possible to create an integral connection between them and the rights protected as civil and political thus making their enforcement through the machinery of the ICCPR possible.

The transformation of a non-justiciable interest into a justiciable one would demand the existence of an activist judiciary: a judiciary that is committed to the promotion of human rights in consonance with the Bangalore principles.

2.2 International Law Provisions on Education

As was envisaged to be the objective of the UDHR, its Article 26 on the right to education became the standard provision on education to be found in other international human rights instruments, including;

- International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 13 and 14
- Declaration on the Rights of the Child, Principle 7
- International Covenant on the Rights of the Child, Articles 28 and 29
- African Charter on the Rights and Welfare of the Child, Article 11
- International Convention on the Elimination of All Forms of Racial Discrimination, Article 5
- Declaration on the Elimination of All Forms of Racial Discrimination, Article 8

⁴⁰ See as summarized in Steiner & Alston, *International Human Rights Law in Context* (Oxford: Clarendon Press,

- Declaration on the Elimination of Discrimination Against Women, Articles 9 and 10
- Convention on the Elimination of All Forms of Discrimination Against Women, Article 10
- Declaration on Social Progress and Development, Article 10

The provision of the ICESCR on the right to education, which is an elaboration on the UDHR reads as follows:

Article 13

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
- a. Primary education shall be compulsory and available free to all;
 - b. Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - c. Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - d. Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - e. The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The states parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State party to the present Covenant which, at the time of becoming a party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

These provisions have, however, been elaborated upon and further emphasized by the more recent provisions of the CEDAW and the CRC. The relevant Article 10 of

1996), p.263.

CEDAW provides that:

State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a. The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- b. Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c. The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- d. The same opportunities to benefit from scholarships and other study grants;
- e. The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- f. The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- g. The same opportunities to participate actively in sports and physical education;
- h. Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 28 of the Convention on the Rights of the Child elaborated on the right to education as follows:

1. States parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity they shall, in particular
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means,
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and conformity with the present Convention.
3. States parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination" of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern

teaching methods. In this regard, particular account shall be taken of the needs of developing countries”.

Ghana having ratified the ICESCR, CEDAW and the CRC, it is proper to assert that the interpretation ascribed to the right to education in the ICESCR, CEDAW and the CRC are equally ascribable to the provision on the right to education under the 1992 Constitution of Ghana.

That position would still hold even in the absence of ratification of these treaties because **Article 33(5) of the 1992 could be interpreted as permitting recourse by our courts to international human rights provisions.** The said Article 33(5) reads:

(5) The rights and 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.

By this provision the various international instruments on education are therefore relevant guides to our interpretation of the right to education in Ghana. This view is in keeping with the Bangalore Principles that encourage the judiciary to endeavour to interpret municipal legislation in line with international human rights instruments and principles.

2.3.0 National Institutional Responses to International Human Rights Evolution

Under the current constitutional regime, the more relevant legal instruments relating to pre-tertiary education are:

- The 1992 Constitution, especially Articles 25 and 38
- Education Act, 1961, Act 87 as amended by the Education Amendment Act, 1965 Act 266
- The Children's Act, 1998, Act 560
- Ghana Education Service Act, 1995, Act 506

2.3.1 The 1992 Constitution

The 1957 Independence Constitution and the 1960 Republican Constitution did not

contain elaborate fundamental rights provisions. Following from the Supreme Court's decision in the case of *Re Akoto*⁴¹ that Article 13 of the 1960 Constitution did not contain enforceable provisions, it went without saying that the right to education, which was not even specifically mentioned therein, was not constitutionally protected.

The 1969 Constitution that succeeded the 1960 Constitution had a whole chapter on fundamental rights but the right to education was not mentioned thereunder. That Constitution did not even contain provisions on the Directive Principles of State Policy.

The 1979 Constitution also did not provide for education under the fundamental rights in chapter six. It however, went a little beyond the 1969 Constitution by mentioning it in Article 10, which fell under the Directive Principles of State Policy. The said Article 10 merely stated that Government shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for the people of Ghana. Nothing was said about free, compulsory and universal basic education. The Directive Principles of State Policy are, however, not by themselves alone justiciable in a court of law.

The 1992 Constitution is therefore a great improvement on the previous constitutional provisions on the right to education. Its relevant provisions with regards to education are Articles 25 and 38.

Article 25 of the 1992 Constitution falls under Chapter 5 of the Constitution. That Chapter covers the Fundamental Human Rights and Freedoms while Article 38 is found under Chapter 6 which is titled The Directive Principles of State Policy. While the provisions under Chapter 5 are generally regarded as justiciable those under Chapter 6 are regarded as non-justiciable by themselves alone⁴². Article 25 provides that:

- (1) All persons shall have the right to equal educational opportunities and facilities and with a view to achieving the full realization of that right -
 - a) basic education shall be free, compulsory and available to all;
 - b) secondary education in its different forms, including technical and vocational education, shall be made generally available and accessible

⁴¹ [1961] GLR 523.

⁴² See *National Patriotic Party v. Attorney-General (CIBA Case)* [1996-97] SCGLR 729.

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

Article 38 which compliments Article 25 reads:

- (1) The State shall provide educational facilities at all levels and in all the Regions of Ghana, and shall, to the greatest extent feasible, make those facilities available to all citizens.
- (2) The Government shall, within two years after Parliament first meets after the coming into force of this Constitution, draw up a programme for implementation within the following ten years, for the provision of free, compulsory and universal basic education.
- (3) The State shall, subject to the availability of resources, provide –
 - a) equal and balanced access to secondary and other appropriate pre-university education, equal access to university or equivalent education, with emphasis on science and technology;
 - b) a free adult literacy programme, and a free vocational training, rehabilitation and resettlement of disabled persons; and
 - c) life-long education."

Compared to the international instruments on the right to basic education the Article 25(1) of the 1992 Constitution is in essence a replica of Article 13(2) of the ICESCR, Article 28 of the CRC and to a large extent Article 10 of CEDAW. It however failed to spell out the aims and objectives of education as are enumerated in Article 13(1) of the ICESCR and Article 29 of the CRC.

2.3.2 The Education Act, 1961, Act 87

The Education Act of 1961, which is the principal legislation on the right to education was formulated and enacted long before the coming into existence of the ICESCR. Section 2 of the Education Act 1961 is perhaps the only provision that specifically touched on any of the various elements on the right to education. The said section, which has its margin note as "*Compulsory education*" reads:

- 2(1) Every child who has attained the school going age as determined by the Minister shall attend a course of instruction as laid down by the Minister in a school recognized for the purpose by the Minister.
- (2) any parent who fails to comply with the provisions of the preceding subsection commits an offence and shall be liable on summary conviction

to a fine not exceeding ten pounds and in the case of a continuing offence to a fine not exceeding two pounds in respect of each and every day during which the offence continues.

It may be proper to mention that the Ghana legislation does not permit a parent to keep his/her child at home with the excuse that education is being provided at home. In the Province of Alberta, Canadian, the School Act permits such a situation. That law nevertheless, expects a parent to obtain the permission of an inspector of the Department of Education before that system of Education can be adopted. The said School Act 1980 of the Province of Alberta, Canada provides in its section 142(1) that:

Every child who has attained the age of 6 years at school opening date and who has not attained the age of 16 years is a pupil for the purposes of this Act and unless excused for any of the reasons mentioned in section 143 shall attend a school over which a board has control.

Section 143 provides alternatives to attending a school over which a school board has control. The relevant parts of that section read as follows:

143(1) A pupil is excused from attendance at school if
(a) A Department of Education inspector or a superintendent of schools (whether appointed by a board or the Department of Education) certifies in writing that the pupil is under efficient instruction at home or elsewhere,
(b) he is attending a private school approved under the Department of Education Act...

In the Canadian case of *Jones v. The Queen*⁴³ the appellant objected to availing himself of these alternatives. He was charged with truancy on the part of his three children, contrary to section 180(1) of the School Act 1980 of the Province of Alberta. The appellant, the pastor of a fundamentalist Church, had refused on religious grounds to send his children to public school as required by section 142(1) of the Act or to seek exemption under section 142(1) of the Act on the basis that the children were receiving efficient instruction at home or elsewhere. The children (along with others) were in fact receiving instruction from the appellant in the basement of his church.

The appellant alleged in his defence that the requirements of the Alberta Act violated his constitutional rights under sections 2 and 7 of the Canadian Charter of Rights and freedoms. Section 2(a) of the Charter reads as follows:

⁴³ [1988] LRC (Const.) 289.

2. Everyone has the following fundamental freedoms:
(a) freedom of conscience and religion.”

Section 7 also reads:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles and fundamental justice.

It was held by the Supreme Court that the effect of the School Act was to constitute some interference with the appellant’s freedom of religion in that it effectively restricted his absolute freedom to educate his children according to his religious convictions for imposing a requirement of compulsory education by attendance at a public school, by certified efficient instruction at home or elsewhere or by attendance at an approved private school. However, **the state had a legitimate and compelling interest in the education of the young and pursuant to that interest, was entitled to place such reasonable limits on the freedom of those who believed that they should themselves attend to the education of their children in accordance with their religious convictions.** This was permitted by section 1 of the Charter, which provided that the rights and freedoms set out therein were subject to “such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

In the case of Ghana the Constitution itself makes basic education compulsory and section 2(1) of the Education Act requires a child of school going age to “attend a course of instruction as laid down by the Minister in a school recognized for the purpose by the Minister.” The argument of the appellant in the Canadian case discussed above will equally not hold sway in the Courts of Ghana.

The Education Act, 1961 further spells out some other elements on the right to education. In its outdated tone, it describes the public system of education as to be organized in two progressive stages of primary and middle education on the one hand and the secondary education on the other. As would be indicated below, various policy changes have remodeled the structure of the education thus rendering that provision outdated..

The Act makes it the duty of local education authorities to work for the spiritual, moral mental and physical development of the community by securing efficient education. A local education authority is expected to perform the following functions:

- a. Build, equip and maintain all public primary and middle schools in its area;
- b. Establish all such primary, middle and special schools as are in the opinion of the Minister, after consultation with the minister responsible for local government required in the area:
- c. Advise the Minister on all matters relating to primary and middle school education in its area and such other matters as may be referred to it by the Minister;
- d. Perform in its area all the prescribed functions of a local education authority.

These local education authorities are the equivalent of the present day District Assemblies.

The Act requires all local education authorities to establish an education Committee (section 8(1)) to perform on its behalf any of the functions spelt out above.

It is important to note that the Act permits the Minister in charge of education to declare any local education authority as having defaulted in the performance of any of its function. As a remedial measure the Minister may direct the local authority to perform the function in respect of which it is in default or even transfer to another person, the performance of any of the functions of the local education authority in default.

The Act further regulates the establishment of private institutions as well. By section 17(1), the prior approval of the Minister responsible for education is required before a private institution can be established. The said Article 17 was subjected to amendment by the Education (Amendment) Act, 1965, Act 266.

The Minister has the additional authority to require the closure of any private institution if he is satisfied that its continued existence is against the public interest due perhaps to the fact that the institution is dangerous or potentially dangerous to the physical or moral welfare of the pupils attending it.

As complements to the imposition of compulsory education are sections 21 and 22 of the Act that touch respectively on payment of fees and prohibitions on admissions based on race language and religion. Section 21 prohibits the payment of tuition fees at public primary, middle or special schools. It however, made provision for the payment for the provision of essential books or stationery or of materials required by pupils for use in practical work.

That was the extent to which the free nature of education went. As would be seen under the FCUBE, payment for the provision of text-books has also been eradicated at the primary and JSS levels.

Section 22 of the Act, seeks to remove any basis for discrimination in admission to schools on account of the religious persuasion, nationality, race or language of the pupil him/her self or of either of his/her parents. This is in keeping with the contemporary trend in the fight against discrimination based on race, language and religion. A child from an Islamic religious background for instance cannot be denied admission into an educational institution under the control of a Christian Education Unit.

It is obvious that the 1961 Education Act (as amended) is a creature of a period that is long past; there is the very urgent need for its reformulation to be in line with the contemporary conception of the nature of the right to education.

2.3.3 The Ghana Education Service Act 1995

The Ghana Education Service Act, 1995 Act 506 repealed the Ghana Education Service Decree, 1974 (NRCD 247) and its subsequent Amendments.⁴⁴ The Ghana Education Service was established to be responsible for the implementation of approved national policies and programmes relating to pre-tertiary education. It is managed by a governing body known as the Ghana Education Service Council. The

⁴⁴ Ghana Education Service (No.2) Decree, 1975 (NRCS 252), Ghana Education Service (Amendment) Decree, 1975 (NRCD 357) and Ghana Education Service (Amendment) Decree, 1976 (SMCD 63)

Ghana Education Service has its functions enumerated in section 3(2) of the Act as follows:

- a. To provide and oversee basic education, senior secondary education, technical education and special education;
- b. To register, supervise and inspect private pre-tertiary educational institutions;
- c. To submit to the Minister recommendations for educational policies and programmes;
- d. To promote the efficiency and the full development of talents among its members;
- e. To register teachers and keep an up-to-date register of all teachers in public system;
- f. To carry out such other functions as are incidental to the attainment of the functions specified above and
- g. To maintain professional standards and the conduct of its personnel.

In the performance of these functions, the Council is to be assisted at the District levels by the **District Education Oversight Committee**. The District Education Oversight Committees are to be concerned with

- a. Conditions of school buildings and other infrastructure requirements of the schools;
- b. The provision of teachers and the regular and punctual attendance of teachers and pupils at the school;
- c. The proper performance of duties by staff at the schools.
- d. The moral behaviour of staff and pupils and matter relating to general discipline;
- e. Complaints relating to or from teachers, non-teaching staff and pupils;
- f. The environmental cleanliness of schools and facilities herein; and
- g. The supply of textbooks and other teaching and learning materials.

The Ghana Education Service was obviously established to provide the required attention and specialized administrative management system of the pre-tertiary education sector of education in the country.

2.3.4 The Children's Act 1998

The Children's Act, 1998 is exceptionally sketchy on the rights of the child to

education. Unlike the UN Convention on the Rights of the child, which is very elaborate on the right to education. The Children's Act refers to the right to education in only very sketchy forms in the following of its provisions of the Act:

S.6(2) Every child has the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents.

S.8(1) No person shall deprive a child access to education, immunization, adequate diet, clothing, shelter, medical attention or any other thing required for his development.

Other sections that mentioned education with respect to the child are as follows:

- Section 10(1), which guarantees the right of disabled child to education.
- Section 59, which makes it an offence for anyone who fails to supply the necessities of education for a child.
- Section 87, which prohibits labour that is exploitative of a child and deprives the child of its education or development.

These provisions need to be expatiated upon and incorporated into the new education law.

The **child panels and family tribunals** provided for under the Children's Act may be considered for adoption under the new education law, for use in ensuring the practicalization of the compulsory nature of education.

PART III

ANALYSIS/DESCRIPTION OF HUMAN RIGHTS INSTRUMENTS IN RELATION TO EDUCATION

3.0 Nature of the right to education

3.1 Basic Goals of Education

Various national policies may determine the aims and objectives of education for a particular people but at the international level, Human Rights instruments have spelt out the basic goals that education should aspire to achieve. One may start with Article 26(2) of the Universal Declaration of Human Rights, which provides that:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

The aims and objectives of education inherent in this classical formulation may be itemized as follows that education shall be aimed at:

- i. The full development of the human personality
- ii. Strengthening of respect for human rights and fundamental freedoms
- iii. Promote understanding tolerance and friendship among various groups.
- iv. Further the activities of the United Nations for the maintenance of peace.

The 1960 **UNESCO Convention against Discrimination in Education** is another relevant Human Rights instrument. Article 4 provides that States Parties undertake to formulate, develop and apply a national policy which will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

- (a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;
- (b) To ensure that the standards of education are equivalent in all public Educations of the same level, and that the conditions relating to the quality of

education provided are also equivalent;

- (c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity.

Article 5(1)(a) provides:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Article 13(1) of the ICESCR is an improvement on these other provisions. The Article provides:

1. The States parties to the present Covenant recognize the right of everyone to education. They agree that *education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*⁴⁵

However, what has been described as "the most detailed provision on the aims and objectives of the right to education in international law"⁴⁶ may be found in Article 29(1) of the UN Convention on the Rights of the Child (CRC). Article 29(1) provides that education shall be aimed at:

- a. The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- b. The development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations,
- c. The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own,
- d. The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin,
- e. The development of respect for the natural environment.

Nowak, after reaching the conclusion that "there exist today at least a fairly broad

⁴⁵ Emphasis supplied.

⁴⁶ See Nowak, "The Right to Education" in Eide & Ords ed., *Economic Social and Cultural Rights, loc. Cit.* p.194.

universal consensus on the major aims and objectives of the right to education"⁴⁷ went further to distill the following as the basic aims and objectives emanating from the various instruments:

- (a) to enable a human being to freely develop his or her personality and dignity;
- (b) to enable a human being to actively participate in a free society in the spirit of mutual tolerance and respect for other civilizations, cultures and religions;
- (c) to develop respect for one's parents, the national values of one's country, and for the natural environment; and
- (d) to develop respect for human rights fundamental freedoms and maintenance of peace.⁴⁸

The Anform Report on Basic Education defined Basic Education in Ghana as "the minimum formal education to which every Ghanaian child is entitled as a right, to equip him/her to function effectively in the society."⁴⁹

Under the Ghana - Vision 2020, the educational objectives were itemized as follows:-

- Strengthen and improve the system of basic and secondary education
- Increase enrolment rates at basic and secondary education levels, particularly among girls and in rural areas
- Increase opportunities for pre-schooling
- Increase female enrolment and completion rates at all levels of the educational system.
- Reduce drop out rates particularly among girl's and in rural areas
- Re-orient the education system so that it promotes creativity and the acquisition of more flexible basic skills
- Update the quality of teachers at all levels of the system
- Increase emphasis on science and technology and make education more relevant to socio-economic realities and national aspirations.⁵⁰

⁴⁷ Ibid., p.195.

⁴⁸ Ibid.

⁴⁹ Report of the Education Commission on Basic Education (Anfom Report) August 1986, p. 9

⁵⁰ Ghana -Vision 2020 (The First Step: 1996-2000) presidential Report on Co-ordinated programs of Economic and social Development Policies p.50

3.2 Value content of primary education

Generally speaking therefore primary education is credited with a dual function.⁵¹

The first comprises the objective to impart essential cognitive skills and knowledge, which in terms of curriculum content, cover

- Reading
- Writing
- Basic mathematics

Addition to these, in certain cases, are added

- Basics of scientific method
- Moral and civic education

Further to these, "the curriculum also promotes the attitudes and essential skills necessary for individuals to function effectively in their society."⁵²

The second function is that primary education prepares students for further learning.⁵³

3.3 Elements of the Right to Education

The international law provisions on education, standing by themselves, are general provisions that need further operationalization. A guide to what elements need to be taken into account by all countries in the formulation of comprehensive educational policies has been set out in paragraph 10 of the *Recommendation concerning The Status of Teachers* 1966⁵⁴ as follows that:

- (a) it is the fundamental right of every child to be provided with the fullest possible educational opportunities; due attention should be paid to children requiring special educational treatment;
- (b) all facilities should be made available equally to enable every person to enjoy his right to education without discrimination on grounds of sex, race, colour, religion, political opinion, national or social origin, or economic condition,
- (c) since education is a service of fundamental importance in the general public interest, it should be recognized as a responsibility of the State, which should provide an adequate network of schools, free education in these schools and material assistance to needy pupils; this should not be construed so as to interfere with the liberty of the parents and, when applicable, legal guardians to choose for their children schools other than those established by the State, or so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions

⁵¹ See Background Document, World Conference on Education for All, Jomtien, p.46.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Adopted in Paris on 5 October 1966 by a special intergovernmental Conference convened by UNESCO

- which conform to such minimum educational standards as may be laid down or approved by the State;
- (d) since education is an essential factor in economic growth, educational planning should form an integral part of total economic and social planning undertaken to improve living conditions;
 - (e) since education is a continuous process the various branches of the teaching service should be so co-ordinate as both to improve the quality of education for all pupils and to enhance the status of teachers,
 - (f) there should be free access to a flexible system of schools, properly interrelated, so that nothing restricts the opportunities of each child to progress to any level in any type of education;
 - (g) as an educational objective, no State should be satisfied with mere quantity, but should seek also to improve quality;
 - (h) in education both long-term and short-term planning and programming are necessary; the efficient integration in the community of today's pupils will depend more on future needs than on present requirements;
 - (i) all educational planning should include at each stage early provision for the training, and the further training, of sufficient numbers of fully competent and qualified teachers of the country concerned who are familiar with the life of their people and able to teach in the mother tongue;
 - (j) coordinated systematic and continuing research and action in the field of teacher preparation and in-service training are essential, including, at the international level, co-operative projects and the exchange of research findings;
 - (k) there should be close co-operation between the competent authorities, organizations of teachers, of employers and workers, and of parents as well as cultural organizations and institutions of learning and research, for the purpose of defining educational policy and its precise objectives;
 - (l) as the achievement of the aims and objectives of education largely depends on the financial means made available to it, high priority should be given, in all countries, to setting aside within the national budgets, an adequate proportion of the national income for the development of education.

This is an elaborate provision that can help in the deduction of the elements of education.

The body that is charged with the function to monitor State parties' compliance with their obligations under the ICESCR is the Committee on Economic, Social and Cultural Rights. That Committee has formulated the nature of the obligations that each State Party carries under the various provisions of the ICESCR; it includes Articles 13 and 14 that relate to the right to education. Taken together with the reporting requirements under the Convention on the Prevention of Discrimination Against Women, the Convention on the Rights of the Child and the African Charter on Human and Peoples' Rights, **the following elements can be deduced as the operationalized form of "the right to education"**:

Box 1: Elements of the Right to Education

- free primary education
- compulsory primary education
- secondary education including technical and vocational secondary education that is generally available and accessible to all
- efforts to be made to establish a system of fundamental education for those who have not received or completed the whole period of their primary education
- government to set goals and bench marks towards the realization of the right to education
- nature of the school system to be designed to help achieve the right of the child to education
- accessibility to schools in terms of location especially in the rural areas
- accessibility in terms of schooling schedules
- extent to which particular vulnerable and disadvantaged groups are specially taken into account – eg.
 - young girls
 - children of low income groups
 - children in rural areas
 - children who are physically or mentally disabled
- actions must be taken to guarantee equal access to all levels of education – eg. – anti discriminatory measures
 - financial incentives
 - positive or affirmative action
- favourable conditions for teaching staff
- steps to eradicate cultural practices that inhibit access to education
- steps to remove economic factors that inhibit access to education

These general elements of the right to education should form the basis of the analysis of right to education at the municipal level.

Box 2: Elements for inclusion in New Law in Education

The Education Act therefore needs to be reformulated to take into account the following as very relevant elements of the right to education; that it shall (be):

- Free
- Compulsory
- Accessible
- Equitable
- Ensure quality education
- Non-discriminatory
- Protect the dignity of the pupils as far as discipline is concerned
- Provide adequately for out of school children
- Provide for effective community participation
- Provide for more effective supervision and motivation of teachers
- Provide for the health of the children
- Provide for children with special educational needs
- Provide for prohibition of customary practices that inhabit the child's education
- Create responsibilities for the child to be at school.
- Provide for prohibition, of labour that inhabits or deprives a child his right to education
- Provide for panels or tribunal that would ensure compliance to compulsory education and other related matters.

Some of these provisions can be extracted from other legislation such as the Criminal Code, the Avoidance of Discrimination Act and the Children's Act among others.

A suggested draft for a new Education Law as far as it relates to pre-tertiary education in Ghana is suggested in the last chapter.

PART IV

REVIEW OF THE GHANA PLAN OF ACTION ON PRE-TERTIARY EDUCATION

4.0 Introduction

As stated earlier on, the Universal Declaration of Human Rights guarantees the right to education in its Article 26; this is further emphasized by the ICESCR in Articles 13 and 14, CEDAW, Article 10 and CRC, Article 28. The said Article 14 of the ICESCR specifically requires each State Party

to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

In a similar vein, by the CRC Article 4

States parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of rights recognized in the present Convention. With regard to economic, social and cultural rights, States parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

In line with these provisions Article 38(2) of the 1992 Constitution requires Government to:

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

In keeping with this constitutional injunction, the Government of Ghana formulated the policy titled "**Basic Education - A Right: Programme for the provision of Free, Compulsory And Universal Basic Education by the year 2005,**" (hereinafter referred to as the FCUBE programme.⁵⁵ The stage of education that is described as "fundamental" in Article 26(1) of the Universal Declaration of Human Rights is left to the discretion of the particular State to define.⁵⁶

That it shall be "elementary" implies that education shall include "basics such as

⁵⁵ FCUBE has become a popular acronym for Free, Compulsory and Universal Basic Education.

literacy, fundamental mathematics and basic civic education."⁵⁷

4.1 The Pre- FCUBE Structure

The 1961 Education Act made provision for a six-year primary education followed by a four-year middle school course. Thereafter those who are capable, go on into the secondary schools, teacher training institutions and other such institutions. In the 1968-1971 Ghana Ministry of Education Report, however, it was stated that the system of six-year primary education followed by a four-year middle school course was being systematically replaced by an integrated basic eight-year course for children between the ages of 6 and 14.⁵⁸ Children, who were capable, enter into secondary schools by a selective common entrance examination.⁵⁹

Children who were not able to move into the secondary schools proceed to a two-year "continuation school"; that programme was pre-vocational in nature. It had the aim to "equip pupils who do not have the opportunity of entering secondary schools with skills and the right attitude that will make them ready for absorption into various occupational enterprises or gainful employment."⁶⁰ This educational system was introduced in the 1962-63 school year.⁶¹

In 1974, the entire pre-university education system was restructured⁶². That new system had as its structure,

- two years of kindergarten education for children between 4 and 6 years;
- six years of primary education
- three years of junior secondary education

Pupils from the junior secondary level proceed into the next cycle, which is made up of three terminal but at the same time continuation levels. These are:

⁵⁶ See Arajarvi, Pentti, "Article 26" in Alfredsson & Eide (eds.) *The Universal Declaration of Human Rights: A common Standard of Achievement* (The Hague/Boston/London: Martinus Nijhoff Publishers, 1999), p.554.

⁵⁷ Ibid.

⁵⁸ See Ghana Ministry of Education Report 1968-71, p. 17.

⁵⁹ Ibid.

⁶⁰ Ibid., p. 19. UNICEF was mentioned as having given generous aid in support of the programme. See page 19 of the Report.

⁶¹ See Bame, Kwabena N., *Teacher Motivation and Retention in Ghana* (Accra: Ghana Universities Press, 1991), p.34

⁶² See Ibid., p.21.

- Senior secondary level
- Technical
- Commercial.⁶³

The 1974 new Structure and Content of Education for Ghana had its aims and objectives as follows:

Kindergarten Education

The aims and objectives of the Kindergarten course shall be:

- i. To provide opportunities for the overall personal development of the child through individual play and group activities;
- ii. To pre-dispose the child to conditions of formal education in order to accelerate the learning process during formal scholarship.

Primary Education

The aims and objectives of the primary education shall be:

- i. Numeracy, i.e. the ability to count and use numbers;
- ii. Literacy, i.e. the ability to read, write, comprehend and communicate.
- iii. Socialization, i.e. the development of such skills and attitudes that will enable the individual to be an effective citizen.

Attitudes to be imparted through the educational process

- a) To develop in the child an appreciation of the need for change and adaptation to change.
- b) To develop in the pupils a desire for self-improvement.
- c) To help children to learn, appreciate and practice those things which are worthy of preservation and improvement in our culture.
- d) To help our pupils appreciate the importance of co-operation and tolerance and the inter-dependence of people of different nations and cultures.

⁶³ See *ibid.*, p.21-22 see also The New structure and content of education for Ghana, Ministry of Education February 1974.

- e) To inculcate in our pupils healthy living habits including appreciation for the need for and use of leisure.
- f) To give children opportunities to cultivate respect for truth
- g) To develop in pupils (i) the habit of asking questions and (ii) a keenness to find things out for themselves.
- h) (i) To provide opportunities that will pre-dispose our pupils to acquire the knowledge, skills and pre-vocational experiences that will enable them discover their aptitudes and potentialities and to develop a longing for further improvement.
(ii) To help our pupils appreciate the dignity of work and the inter-dependence of all workers.

Secondary Education

The objectives of the Secondary course shall be:-

- i. To reinforce the objectives of the primary course;
- ii. To provide opportunities for developing in our students the qualities of leadership which will enable them accept positions of responsibility in all sectors of our society.
- iii. To equip students with those occupational skills which will enable them to enter into gainful employment.
- iv. To develop in them the longing for further improvement.

4.2 The FCUBE Programme

The FCUBE programme, which was conceived to start operation from 1995, consolidated the then existing system of basic education, which consisted of 6 years of primary education and 3 years of junior secondary education. In the FCUBE programme, fundamental education is defined to cover the primary school level and the junior secondary school level. Senior secondary school education does not fall under the scope of basic education. **The basic education system is supposed to be tuition free, compulsory and universal for all children of school going age.** The FCUBE document defined these concepts as follows:

- i. **Free:** that no parent or guardian shall be called upon to pay fees for tuition in basic schools;
- ii. **Compulsory:** that every parent or guardian shall be compelled by law to send his/her child to school on attaining the age of six years and shall keep him/her there until he/she completes the course in basic education;
- iii. **Universal:** that all children aged between 6 and 14 years should be enrolled in the formal system of education;
- iv. **Basic education:** means a basic nine-year course of education, covering six years of primary education and three years of junior secondary education.

The programme has as its general objectives:

- i. expanding access to basic education for all Ghanaian children of school-going age and reducing drop-out rate;
- ii. improving quality of teaching and learning and raising the standard of basic education so that children acquire numeracy and literacy, i.e. ability to use numbers, read, write and communicate effectively;
- iii. laying the foundation for the development of manipulative, inquiry and creative skills which will be the basis for scientific and technological development.

Primary education, which as stated, starts at age 6 and lasts for 6 years has the following stated objectives:

- i. Developing the child's ability to count, use numbers, read, write and communicate effectively;
- ii. Laying the foundation for the development of the child's ability for inquiry and creativity;
- iii. Developing sound moral attitudes and a healthy appreciation of our cultural heritage and identity in children;
- iv. Developing the child's ability's to adapt constructively to a changing environment;
- v. Laying the foundation for the development of manipulative and other skills for living, that would prepare the child to function effectively to his/her advantage and that of his/her community;
- vi. Inculcating good citizenship in the child as a basis for effective participation in

- national development;
- vii. Laying the foundation for national unity and cohesion (especially through sports and cultural activities organized at District, Regional and National levels).

According to the FCUBE Programme, the junior secondary school has the same objectives as the primary level in addition to the following:

- i. Making children discover their aptitudes and potentialities and inducing in them the desire for self-improvement;
- ii. Making children appreciate the use of the hand as well as the mind and making them creative and production oriented;
- iii. Inculcating in the child the value of hard work;
- iv. Making children understand their environment and making them eager to contribute towards its survival and development;
- v. Prepare pupils for continuing education in senior secondary or technical and vocational institutions.

To a large extent the FCUBE Programme has endeavoured to satisfy the essential elements inherent in the right to basic education, at least in its conceptual framework. **The more important question, however, is to what extent are these being realized on the ground?** An insight into this may be gleaned from the subsequent chapter on the discussion on what in fact pertains on the ground in the educational system.

PART V
ELEMENTS OF HUMAN RIGHTS TO EDUCATION VRS REALITY

The right to education reasonably implies not only the availability of relevant educational facilities but also the accessibility to those who need them. Inherent in the idea of accessibility are certain elements discussed below:

5.0 How Free is Basic Education

The requirement that the right to primary education be free is described as being unequivocal; that it should be free means just exactly that. According to the Committee on Economic, Social and Cultural Rights, "the right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians."⁶⁴ The interpretation has relevance to the other human rights instruments on free education, that is, CEDAW, CRC and UNESCO provisions.

This interpretation follows from the realization that **fees of whatever nature do constitute disincentives to the enjoyment of the right**. Governments are required in their plans of action for the realization of the right to education to address these costs. The invidious existence of indirect costs such as compulsory levies on parents need to be controlled as they can have negative effects on the realization of the right to basic education. This does not rule out every kind of indirect costs. Certain indirect costs, as the committee admitted, need to be recognized.

This provision for free education should also take into account the right of the parent in Article 13(3) of the ICESCR and also Article 29(2) of the CRC, that parents and guardians have the right to choose for their children schools, other than those established by the public authorities.

Under the UNESCO instrument on Convention against Discrimination in Education⁶⁵, States Parties undertake in its Article 4(a) to formulate, develop and

⁶⁴ See General Comment No. 11 (1999) para.7.

⁶⁵ Adopted on 14 December 1960 by the General Conference of UNESCO at its 11th Session, held in Paris.

apply a national policy to make primary education free and compulsory while secondary education is to be made generally available and accessible to all.

Some commentators have sought to interpret the "free" in Article 26(1) of the UDHR to be that, apart from the interpretation that education be free,

it can also be understood in a broader sense namely that school supplies shall be provided for free.⁶⁶

Ensuring that the necessary facilities and conditions are provided for the child to realize the right to education is a shared responsibility between the government and the parents.

The GES spelt out the responsibilities as follows:

...under the FCUBE programme, the Government provides, Free Tuition, Textbooks and Teaching and Learning Materials and subsidizes the cost of exercise books. It also supplements Basic Education Certificate Education (BECE) Fees for both public and private candidates. It is to be noted further, that it is the responsibility of District Assemblies, by law, to build, equip and maintain public Basic Schools. In the case of parents, they are expected to send all their children of school-going age to school, feed them and provide them with school uniforms, school bags, stationery and transport where necessary.⁶⁷

As a policy this seems to conform to the international provision on the right to basic education. **What is very clear, as a national policy, is that tuition fees are not charged in the basic school system. What is, however, not certain is the policy on the collection of what one might classify as ancillary fees.**

According to a release by the GES:

While the initiative and dynamism of PTAs in supporting schools is appreciated, any increase in fees or levies set by PTAs in Basic schools must be cleared with respective SMC's, DEOC's and District Assemblies as to avoid a situation where few PTA members impose higher fees/levies on majority of parents who may not be able to afford such high fees.⁶⁸

It is stated that by a directive of the Ministry of Education in January 1997 all fees that were centrally charged including Textbook User Fee, Sports Fee and Culture Fee

⁶⁶ Arajarvi, Pentti, "Article 26" in Alfredsson & Eide (eds.) *The Universal Declaration of Human Rights: A common Standard of Achievement* (The Hague/Boston/London: Martinus Nijhoff Publishers, 1999), p.554.

⁶⁷ Daily Graphic, Friday, November 17, 2000, p.19.

were abolished. The same directive, however, allowed District Assemblies to institute special levies for the development of education in their respective Districts. This was, however, made subject to the provision that no child was to be sent out of school for non-payment of such fees.⁶⁹

The fact on the ground is, however, that some head-teachers are compelled as a reaction to policies of the District Education Authorities, to send away children for non payment of these levies. Some head teachers in the Akwapim North District of the Eastern Region for instance described a system whereby an "embargo" is placed on a head-teacher's salary if he/she fails to collect and pay the approved levies at designated dates. The embargo operates through an instruction to the particular head-teacher's Bank instructing the Bank to withhold payment of his/her salary until further notice. The possible rationale for this is to prevent the temptation on the part of the head teacher to embezzle such funds collected by him/her. The negative consequence, however, is that since all the pupils, especially in the rural communities are not able to settle their bills immediately schools re-open, the head-teacher is often compelled to source funds and pay up on behalf of the pupils so as to avoid his/her salary being embargoed. Of course, to retrieve his/her money, the head-teacher has no option but to send the pupils out of school to compel their parents to pay up. This, the head-teachers admit, often results in some pupils staying away from school the rest of the school term, and in some few cases, some pupils never return to school; they forever become drop outs.

As a practice, it obviously defeats the rights of the child to education. It is worth noting that the "embargo" system is not known in some other Districts such as the Tamale Municipal Assembly area. Again in the Tamale area, children are not, in keeping with policy, sent away from school for non-payment of such levies.

In rural communities where parental perception of the value of education is very low, coupled with low levels of income and large family sizes, these levies need to be reconsidered. It should be possible to devise mechanisms to sensitizing parents about the value of education and encouraging them to pay as the experience with the School

⁶⁸ Daily Graphic, Friday, November 17, 200, p.19.

⁶⁹ See *ibid*.

For Life programme has shown. Through effective sensitization under the School for Life programme parents who previously showed no regard for education now took up the responsibility for the upkeep of the facilitators of the programme in their communities.

Meanwhile **any new legislation on education should prohibit the sending of pupils away from school for the non-payment of levies.**

Generally, the **elements of the right to free basic education that can be deduced from the law and policy in Ghana** may be summarized as follows:

- In Ghana education at the basic level is tuition free for public schools.
- Textbooks are equally supplied free of charge at the basic level.
- Generally tuition is free at the senior secondary level.
- The policy of free education extends to the supply of classroom furniture as well.
- Government pays 60% of the Basic Education Certificate Examination fee in respect of every examination candidate, including pupils in private schools.
- Other teaching and learning materials such as notebooks, chalks and school registers are provided free of charge.
- At the basic level parental responsibility in the funding of education includes the provision of school uniforms, bags, transport to and from school and feeding.
- There has been the policy that put in place a really comprehensive system of free education at the second cycle levels for students of Northern Ghana origin. The policy, which is still in place, provides for free tuition, free feeding and free accommodation.
- At present some District Assemblies, such as the Akwapim North District Assembly do provide school uniforms to some identified needy pupils.
- It is the responsibility of District Assemblies to build, equip and maintain schools; these are not the responsibilities of parents. It is a common sight, however as one travels along the highways in the rural areas to see school children carrying kitchen stools on their way to school.
- District Assemblies can institute levies to finance or support education in their areas of authority.

5.1 Is Second Cycle Education Free?

Second cycle education is not, as a policy, a right as such; it is available but open to those with the academic ability and potential to qualify for admission. The BECE is designed as both a terminal and continuing certification point. Those students who qualify through the examination can proceed to the second cycle institution of their choice. Those who do not qualify would have to be exposed to technical and other skills.

The generally low level of salaries in the country has made it difficult for parents of senior secondary schools to comfortably settle the fees of their wards at the beginning of each academic year. There is also the incidence of extra levies imposed by the schools without the approval of the Ministry of Education.

For the academic year beginning 2001, the fees approved by the Ministry of Education are as follows:

Admission Fee	-	25,000
Boarding Fee	-	280,000
Text Book User Fee	-	20,000
Examination Fee	-	12,000
Building Maintenance	-	12,000
General Stationery	-	5,000
Medical (Boarders)	-	4,000
		(Day Student – 2,000)
Sports	-	3,000
Furniture maintenance and replacement, sanitation and environment	-	5,000
Postage	-	1,000
Use of Science Resource Centre	-	4,000
Report Book	-	25,000

School uniform and vocational fees are to be determined by the Board of Governors of the various schools whilst utility charges are to be centrally controlled and paid by

the Accountant General.

It is estimated that all the above-mentioned amounts and the other approved items taken together should come to about ₵700,000 per student. Nevertheless, many schools especially those classified by the public as grade “A” schools, have been charging fees in the region of ₵1million and ₵1.2 million.⁷⁰ These are far beyond the reach of the average salary earner in the country. **The proposed legislation would need to rationalize this issue of fees.**

5.2 How Compulsory is Basic Education?

That education is compulsory can be interpreted as providing for the protection of the right of the child "as it means that parents may not prevent his/her education."⁷¹ In other words "the element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the state are entitled to treat as optional the decision as to whether the child should have access to primary education."⁷²

The 1961 Education Act of Ghana makes basic education compulsory. In all its years of existence, however, no one can point to a particular incidence of prosecution for violation of the law. This might be attributable, inter alia, to the absence of specialized tribunals to handle such cases.

The enforcement of the compulsory aspect of the right to education can be realized through the other general processes created under the CHRAJ mechanism and the enforcement mechanisms of the Children’s Act. The Children’s Act has made provision for the enforcement of the rights of the child created under the Act. As stated above the right to Education is one of those rights. While public sensitization of the need to educate the child should be intensified, it is equally believed that the prosecution of one or two parents or guardians would send the right message to the public.

⁷⁰ See Daily Graphic, Tuesday, January 16 2001. P.14.

⁷¹ Arajarvi, loc. Cit., p.554.

⁷² See General Comment No.11 (1999) of 10 May 1999 para.6

The CHRAJ has the constitutional duty to protect the rights guaranteed under the constitution, including the right to education. In the exercise of its mandate the CHRAJ has been mediating in disputes that often involve the education of children. In the unreported case simply titled CHRAJ/306/99/1525, the CHRAJ through mediation was able to get the father of a child to accept to take care of the child's school fees.

The ordinary Court process is also very often used to compel parents, especially the fathers, to pick up the bills for their children's education. This is done through child maintenance suits brought under the Maintenance of Children Decree 1977 (SMCD 133) usually filed before the Community Tribunals.⁷³

Even though the CHRAJ process and the child maintenance suits do not result into imprisonment the desired results are often achieved. **A new education law must examine the possibility of creating such specialized tribunals as are in the Children's Act.**

The compulsory nature of education also imposes an obligation on the pupil "in the form of an implied obligation to participate in education."⁷⁴ Education has therefore been described as "one of the few human rights for which it is universally agreed that the individual has a corresponding duty to exercise this right."⁷⁵

The compulsory nature of primary education encompasses the provisions prohibiting gender discrimination in access to education. This assertion takes into consideration the provisions of Article 2 (2) and Article 3 of the ICESCR, Article 2 of CEDAW and Article 2 of the CRC which prohibit discrimination in the realization of the rights guaranteed. Article 17 of the 1992 Constitution prohibits discrimination on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status. The Avoidance of Discrimination Act of 1957 also prohibits discrimination.

⁷³ See Courts Act, 1993, section 47(2).

⁷⁴ Arajrvi, Loc. Cit., p.554.

⁷⁵ Nowak, loc.cit., p.197.

5.3.0 Issues of Accessibility

Accessibility of education can be seen from various elements:

5.3.1 Locational equity

It is asserted that the presence of a school is the minimum condition for participation.⁷⁶ Access to primary education can be affected by the lack of schools within reasonable distances from the communities. The unequal distribution of schools creates locational inequities especially between the rural and urban areas. Inequities in respect of the disabled must also be avoided.

It is the declared policy of the GES that no child walks more than three kilometers before getting to school. It has been admitted however that, in certain cases where the population is sparse and widely distributed, the three-kilometer policy might become unrealistic to implement; in such cases five kilometers is considered the most viable proposition. In the rural areas of Tamale for instance, a five-kilometer range was held to be what pertains now. On the other hand it was estimated to be within the range of two kilometers in the Konkon area of the Akwapim North District in the Eastern Region.

5.3.2 Accessibility in terms of school schedule

- **Flexible Time Table Systems**

In order to create schedules that are comfortable to the pupils and therefore encourage school attendance, the GES does not mandate rigid time-table regimes for all in the country. School time-tables could be fixed having regards to local conditions e.g. a school in a fishing community would take into account the time that the children normally return from or depart for fishing expeditions in fixing the school's time-table schedule. This could be done by the head-teacher with the approval of the District Director of Education. It must also be to the knowledge of the District Education Oversight Committee of the particular District Assembly.

⁷⁶ Background Document, p.55.

5.3.3 Accessibility in terms of availability of space

- **The Shift system**

The shift system was designed as a schedule to take into account the large number of pupils as against limited educational facilities. In July 1961, the then Minister of Education informed parliament of the inadequate classroom facilities in the country for primary education. He went on further to announce that “*a shift system is accordingly being worked out to ensure that free and compulsory education becomes a reality.*”⁷⁷

He made it clear that the shift-system was intended to be a stop-gap, operating only where the local authority was not yet able to provide the additional classrooms needed. Without doubt, the system has the advantage of making possible the existence of two school streams at a time thus making possible the doubling of school intake vis a vis existing classroom facilities.

General opinion exists, however, that the shift system does contribute to the poor performance rate in the public schools system. Apart from the effect on teaching and learning of the reduction in the school hours, the system is alleged to be encouraging truancy among pupils. It is said to afford an easy explanation to pupils as to why they are not in school in the morning or in the afternoon⁷⁸.

Irrespective of its shortcomings it also serves to some extent to make primary education available to many children. It is in that respect that the private schools become very important partners in the provision of access to basic education; especially in the cities.

5.3.4 Private Schools and the right to education

The significant role of private institutions in the provision of basic education is generally acknowledged. As shown in Table 2, which a statistical data from the

⁷⁷ Parliamentary Debates, First Series Volume 24, Session 1961-62, 4th July 3rd August, 1961, p.728.

⁷⁸ See Daily Graphic, Thursday, February 22, 2001, p.1.

Ministry of Education, there has been a comparatively faster growth rate in the numbers of private educational institutions at the pre-tertiary level than of public schools. The difference between them in the 1985/86 and 1988/89 is particularly revealing of the stagnation in the growth of public institutions as against the phenomenal growth in numbers of private schools.

Table 2: Numerical strength of Public and Private Schools

LEVEL OF EDUCATION	TYPE	NO OF SCHOOLS		
		1984/85	1985/86	1988/89
Primary Schools	Public	8,683	11,435	11,563
	Private	145	954	1,552
	Total	8,828	12,389	13,115
Middle, Junior Secondary Schools.	Public	5,207	5,394	5884
	Private	-	245	510
	Total	5,207	5,639	6,394
Senior Secondary Schools.	Public	230	453	464
	Private	27	46	48
	Total	257	499	512
Teacher Training Colleges (Only Public)	Public	38	38	38
	Private	-	-	-
	Total	38	38	38

Source: Ministry of Education, Accra, 2001.

The provision of educational facilities is a shared responsibility between the state and the private sector. This is recognized in Article 13(4) of the ICESCR, which is exactly replicated in Article 29(2) of the CRC. Article 25(2) of the 1992 Constitution follows in a similar vein that:

(2) Every person shall have the rights at his own expense, to establish and maintain a private school or schools at all levels and of such categories and in accordance with such conditions as may be provided by law.

An international definition used in a UNESCO questionnaire defines a private school as a school not operated by a public authority, whether or not the school receives financial support from such authority.⁷⁹ The dominant consideration there is the management of the school.

On the other hand, section 32 of the Education Act, 1961 defines it as follows:

‘private’, in relation to an institution, means maintained neither wholly nor in part from Central or Local Government funds.

The emphasis in this respect is on the source of funding. This flows from Article 25(2) of the 1992 Constitution that

Every person shall have the right, *at his own expense*, to establish and maintain a private school ...⁸⁰

Their being private does not remove them from the administrative supervision of the Ministry of Education. The guaranteed right of individuals to establish private schools has been interpreted not only as a means of realizing the right to freedom of expression and dissemination of opinion but also as a means of realizing the constitutional right to participate in the economic life of the country.

Article 16 of the 1979 Constitution of Nigeria was held to have conferred that right on the individual to establish a private educational institution as an economic venture and therefore participation in the economic life of the country. The said Article 16 which came under the Chapter on Fundamental Objectives and Directive Principles of State Policy provided that:

1. The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution

...Without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activity outside the major sectors of the economy.

In the case of *Ukaegbu v. Attorney General, Imo State*⁸¹ the appellant therein was working towards the establishment of a private university. The appellant neither sought nor obtained approval of the Federal Government of Nigeria or of the government of Imo State for the establishment of the university. The Imo State Government thereupon proceeded to court seeking a declaration that it was illegal for the defendant or anybody to establish a private school or institution without the written approval of the Imo State Commissioner for Education, and further a declaration that it was illegal for any body to establish a university in Imo State

⁷⁹ See Background Document p.22. Other criteria that may be used have been mentioned as the ownership of a school or its source of income, the stated purpose of a school and the clientele it serves may also be a definitional factor.

⁸⁰ Emphasis supplied.

⁸¹ (1984) 5 NCLR 78

without a law authorizing the establishment of such institution. The High Court held that it was illegal for the defendant to establish a university without the written approval of the Imo State Commissioner for Education and also without the National Assembly making laws with respect to establishment of such institution.

The defendant/appellant appealed against the judgment of the High Court and the question inter alia was whether the establishment of educational institutions was such

an economic activity under Section 16 of the Constitution which a private person has the right to pursue subject to governmental control by legislation in order to ensure standard, health and other social requirements in respect of public welfare.

The Supreme Court took into consideration the provisions of Section 36 of the 1979 Constitution which entrenched the right of every individual to "own, establish and operate any medium for the dissemination of information, ideas and opinions ..." ⁸² It held that sections 16 and 36 together confer the right on an individual to establish a university, both as a medium for the dissemination of information, ideas and opinions and also as an economic venture. ⁸³

Earlier on the Court of Appeal held in the case of *Archbishop Okogie v. The Attorney General of Lagos State*, ⁸⁴ that the running of an educational institution can be undertaken by an individual as an economic venture in accordance with section 16(1)(c) of the 1979 Constitution of Nigeria. At the same time the government was enjoined to provide educational opportunities free of charge when practicable. The Court therefore held that an attempt by the Lagos State Government to abolish private primary schools was unconstitutional. ⁸⁵

Establishment of private schools is recognized by both international human rights instruments and municipal law provisions. Although Article 13(4) of the ICESCR, Article 29(2) of CRC and Article 25(2) of the 1992 Constitution of Ghana guarantee the right to establish private schools they at the same time subject those schools to

⁸² See Section 36(2) of the 1979 Constitution of Nigeria. This section falls under the Chapter on Fundamental Rights.

⁸³ Soon after that decision the Military Government headed by General Buhari which abrogated the 1979 Constitution made a Decree that prohibited the establishment of any private universities at the time.

⁸⁴ (1989) 2 NCLR 337.

⁸⁵ Ibid p.351.

some conditions. While Article 13(4) of the ICESCR and Article 29(2) of the CRC are clear in the intended subject matter of the control, Article 25(2) of the 1992 Constitution is imprecise. The two Articles make it explicit that the establishment of a private school shall be in accordance with the principles enumerated in paragraph 1 of the respective Articles and in addition "the education given in such institutions shall conform to such minimum standards, as may be laid down by the State." This latter part laid emphasis on standards.

Thus while it is possible to itemize the conditions stipulated by Article 13(4) of the ICESCR and Article 29(2) of the CRC, the Ghanaian provision in Article 25(2) gives very general powers to the legislature to enact laws imposing conditions it deems fit on the establishment of the right to education. This wide discretion notwithstanding, one would want to argue that **if any law should be promulgated, that, in its operation frustrates the desires of individuals to establish private schools, that law would be unconstitutional.** This assertion stems from the basic consideration that the Constitution itself guarantees the right to the establishment of private schools in the first place.

The 1961 Education Act, Act 87 as amended by the Education (Amendment) Act, 1965 Act 266, requires approval by the Minister of Education before any private individual can establish a private educational institution. The Ministry of Education maintains a Private Schools Unit as one of its branches. This Unit has the duty to ensure that prospective private schools satisfy certain basic requirements that are designed to protect the interests of the pupils and guarantee conformity with the highest standard of education.

The following are some of the conditions for approval and/or grading of private schools. The Education (Private Schools) Regulation 1999 that is yet to be approved by the government would formalize them.

- Number of persons per Class
 - Kindergarten - 30 pupils but not more than 35
 - Primary - not more than 45
 - JSS and SSS - not more than 40

- Grading of Basic Schools

A school could be graded as A1, A, B, C.

Guideline for Grade A1 Basic School is as follows:-

a) Infrastructure

- Permanent structure with standard classrooms built on approved school plan
- An administration block with provision for Head's Office, Staff Common Room, a General Office and a Store.
- Toilet facilities for students and staff.

b) Furniture & Equipment

- Set of standard furniture for each classroom
- Teachers tables/chairs
- Teaching aids
- Display Boards
- Storage Facilities
- Computers etc.

c) Additional facilities-

- Well equipped library
- Science laboratory
- Home Economics Room
- Workshop(s)
- A playing field

d) Staffing

- All Teachers should have professional qualification

e) Curriculum

- The school should use the National syllabuses

f) Results

- B.E.C.E. results over a period of five years should be at 80% passes and above.

Equivalent Guidelines exist for the other categories as well as for the 2nd Cycle institutions.

These conditions at the least, can only be described as designed to ensure the attainment of high standards of education and are therefore in conformity with the Article 13(2) of ICESCR and Article 29(2) of the CRC that the private institution shall conform to such minimum standards laid down by the State.

5.4.0 Some Issues on Private Schools

5.4.1 Parent Contributions to Building Funds in Private Schools

If one should go strictly by the above provisions of the 1992 Constitution and Education Act, 1961 on the meaning of “private school”, then **it is very unconstitutional and illegal for any owner of a private school to impose "levies" on parents for the development of the school.** This follows from the fact that the education provided in the institution is not free of charge. It is unconscionable if not illegal for any such development levies to be charged.

5.4.2 The Issue of Exorbitant fees by Private Schools

One effect of the free market economy adopted by Ghana is the often unbridled propensity of some private schools to charge school fees that render those schools unaffordable by many. One may be tempted to agree with the decision in the Nigerian cases mentioned above that the right to establish a private educational institution is also a means of participating in the national economy. That being the case, the essence of the free market system should reflect in the educational system as well, thus meaning that the best schools should be free to charge fees that would enable them to attain and maintain standards that those who can afford would be willing to pay for.

On the other hand, it is equally arguable that government has a constitutional duty, as is required of it under Article 36(2)(c) of the 1992 Constitution, of "ensuring that individuals and the private sector bear their fair share of social and national responsibilities including responsibilities to contribute to the overall development of the country". If this provision is taken together with Article 25(2) of the Constitution it should be possible for one to defend the proposal in the Education (Private Schools)

Regulation 1999 to the effect that the overall fees chargeable in a private school shall be regulated by the GES Council in consultation with the Private School Associations recognized by the Ministry of Education. In addition, that no Proprietor of a private school shall determine, charge or revise the level of school fees without applying to the GES Council for approval. **Apart from its constitutional authority to do so, government has the moral authority in the sense that even though these private schools make profits, the government does not exclude their students from benefiting from the supply of school textbooks at heavily subsidized costs.**

There is an obvious need for the amendment of the Education Act to include the above mentioned control mechanisms because the Education Act as it is at present does not permit the government to legally interfere in the fixing of school fees by private school proprietors. This was so held in a matter that went before the Commission on Human Rights and Administrative Justice in 1993. The facts of the case that was simply recorded as Case No.CHRAJ/359/93⁸⁶, were that, the Management Board of a private educational institution petitioned against the Ghana Education Service (GES) which had threatened the school with closure unless they reverted to their old fees. Petitioners' case was that they offered specialized quality education for their pupils. They had modern learning equipment and facilities for the children; pupil/teacher ratio was extra-ordinarily low enabling the children to have the optimum attention of teachers; staff salaries were also very high compared to those of other institutions. These claims were not challenged by the GES. It was petitioners' contention that the GES had no authority or power to close down a private school on the sole ground that its fees were high. The GES, on the other hand, argued that by virtue of Section 31 of the Education Act, 1961 (Act 87) the Minister of Education could make regulations in respect of matters relating to education. It turned out however that no such regulations had been made pursuant to Section 31 of Act 87. The Commission found that the GES had not been vested with any power or authority to regulate or dictate fees chargeable in private institutions.

In its ruling on the matter the Commission declared that the power that the GES intended to exercise against the petitioner did not exist. They had no power to

⁸⁶ CHRAJ Second Annual Report, 1995, p. 48.

determine fees chargeable in private schools and petitioners were therefore not obliged to succumb to their demand.

5.5 Alternative Basic Education

The formal education system envisages a child of normal abilities of a certain specified age group attending an approved course of study at an approved educational institution.

Various factors may create a group of children who might not find themselves in the formal educational system as and when they should be. Developing nations harbour large numbers of a category of out of school children. The factors of poverty, unfavourable parental attitude to education, inhibiting cultural factors or competing economic demands of their parent and often, absence of adequate educational facilities can also be contributory factors.

The Education Act does not mention the possibility of special and alternative education for these out of school children. As stated above, the FCUBE programme does not also contemplate them. The GES has a unit that caters for children requiring special education by virtue of some disability. Out of school children are however completely lost in the system.

This group can be categorized into two –

- The first group made up of mainly rural children who could not be enrolled into the formal school system because of the competing economic demands of their parents. Examples are the shepherd boys and girls whose labour is required at the domestic level or on the farm.
- The other category is essentially found in the urban areas and constitutes what is referred to as the street children.

This category of children is also entitled to education and Government therefore has the correlative duty to make available the financial and other resources to ensure the provision of relevant quality education for these groups.

By Article 4(c) of the UNESCO Convention against Discrimination in Education, State Parties undertake to formulate, develop and apply a national policy “to encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity.”

The educational programme for the out-of-school youth should be fashioned to cover skill training, health, nutrition, family planning, environmental protection, family life and other knowledge.⁸⁷

In Bangladesh, the Bangladesh Rural Advancement Committee has put in place an Alternative Primary Education Programme, which offers education opportunities to such out of school children between the ages of 8 and 10.⁸⁸ It is a programme that offers a curriculum appropriate to rural culture and needs and the teaching is done by paraprofessionals recruited from the community. The support of parents is enlisted and school hours are adapted to local conditions. Parents groups are involved in the supervision and management of the schools.⁸⁹ This strategy in Alternative Primary Education has been adopted by an NGO, School For Life, which is operating in the Northern Region of Ghana.

5.5.1 The School for Life Programme

An NGO that is doing a commendable work and whose approach government should study and adopt to meet its responsibility to another category of deprived children is the **School For Life**.

School for Life is an NGO located in the Northern Region. It has as its objectives, to introduce, facilitate and operate afternoon schools for children between 8 and 12 years of age who do not otherwise receive primary schooling. The project arose out of the realization that there exist large numbers of rural children who because of their

⁸⁷ see Jomtien Final Report, p.28.

⁸⁸ See Background Document, p. 35.

⁸⁹ Ibid.

engagement in various economic or domestic engagements for their parents have missed out on school. These children include shepherd boys who have to tend cattle and other animals in the fields and girls who have to stay back at home and take care of their younger brothers and sisters while their parents are away to the farm.

School for Life animates a chosen community with assistance from the Department of Community Development. Thereafter the community itself is encouraged to identify a facilitator from among its own members. The facilitator must be literate enough to teach the class in the local language. It is the community that employs him/her by assisting him/her through rendering communal work on his/her farm and or contribution of foodstuffs to him/her at the end of the farming season. School for Life on its part gives a token of ₦20,000 as allowance labeled "Soap money." In addition, School for Life provides a bicycle for anyone who has completed two cycles as facilitator. The community has the ownership of the programme and therefore ensures the class attendance of pupils.

As a policy, School For Life permits only a maximum of 25 pupils per class. This limitation is imposed so as to ensure effective delivery by the facilitators. The teaching project lasts for 9 months and teaching is done in the afternoons after the pupils might have returned from the fields or farm.

For the period 1995 to 2000 when the programme was run on a gradual incremental basis in just eight districts of the Northern Region, about 10,000 children have gone through the programme. Many of those who graduated have opted to continue in the formal educational institutions, while some went into the informal system. It is interesting to note from the statistics that some have even graduated from the basic formal level and gained admission into second cycle institutions. The following statistical information speaks volumes for themselves.

Table 3: Statistical Data On SFL Graduants - 1999 - 2000 Literacy Cycle

District	Enrolment In October			Enrolment In November			Drop-Out			No. Graduated			Intended For Formal School		
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total
Tamale	720	521	1241	720	521	1241	72	53	125	648	468	1116	638	415	1053
Savelugu	556	665	1221	556	665	1221	26	76	102	530	589	1119	520	568	1088
Gushegu	699	537	1236	645	560	1205	44	62	106	601	498	1099	561	398	959
Tolon/Kum.	635	615	1250	631	613	1244	39	55	94	592	558	1150	586	538	1124
Yendi	742	508	1250	742	508	1250	33	44	77	709	464	1173	659	411	1070
Zab/Tatale	776	434	1250	764	421	1185	43	47	90	721	374	1095	675	355	1030
Naunmba	669	581	1250	665	581	1246	10	8	18	655	571	1226	640	498	1138
Saboba/Chere	724	526	1250	724	526	1250	16	57	73	708	469	1177	690	446	1139
Totals	5521	4387	9908	5447	4395	9842	293	402	695	5164	3991	9155	4969	3632	8601

Source: School for Life Offices, Tamale

Table 4: Statistical Data of SFL Grandaunts in Formal Schools for Four Cycles - (1995-99)

YENDI	CYCLE ONE (1)			CYCLE ONE (2)			CYCLE ONE (3)			CYCLE ONE (4)		
	Boys	Girls	Totals	Boys	Girls	Totals	Boys	Girls	Totals	Boys	Girls	Totals
ENROLMENT	732	512	1244	746	496	1242	731	512	1243	677	555	1232
GRADUATED	706	471	1177	691	450	1141	704	473	1177	628	492	1120
DROP-OUT RATE	29	41	70	55	46	101	27	39	66	49	63	112
IN FORMAL SCHOOLS	413	220	633	594	326	920	420	327	747	512	397	909
GUSHEGU/KARAGA												
ENROLMENT	673	505	1178	718	506	1224	725	489	1214	699	537	1236
GRADUATED	638	642	1100	652	472	1124	675	435	1110	640	466	1106
DROP-OUT RATE	35	43	78	66	34	100	72	59	131	59	71	130
IN FORMAL SCHOOLS	258	117	375	422	334	576	379	274	653	348	413	761
TAMALE							1997 - 1998			1998 - 1999		
ENROLMENT							252	248	500	517	353	1068
GRADUATED							248	119	367	625	465	1090
DROP-OUT RATE							4	909	94	90	70	160
IN FORMAL SCHOOLS							145	102	247	476	453	929
SAVELLUGU/NANTON							1997 - 1998			1998 - 1999		
ENROLMENT							617	630	1247	691	535	1226
GRADUATED							571	536	1107	630	473	1103
DROP-OUT RATE							46	69	115	61	63	124
IN FORMAL SCHOOLS							331	276	607	264	337	601
ZABSUGU/TATALE							1997 - 1998			1998 - 1999		
ENROLMENT							802	447	1249	755	470	1225
GRADUATED							752	385	1137	685	406	1091
DROP-OUT RATE							50	62	112	70	64	134
IN FORMAL SCHOOLS							360	199	559	434	198	632

Source: School for Life Offices, Tamale.

The statistical information is reproduced just to demonstrate the large numbers of deprived children in the rural areas; without doubt not only in the Northern Region, but in almost all the other regions. It also shows significant success that the School For Life programme has achieved. It is an indication to government that **with a little bit of innovation every child can be accorded his/her right to education.**

The sheer number of students recorded as having gone through the School For Life programme within this short period, in just that limited corner of the country, and its relative success, should provide enough compelling reason for the Government to wake up to its responsibilities in respect of the out of school children.

Government no doubt has to put in place the necessary units to take up official responsibility in these respects because there is a limit to which the NGOs can go.

5.5.2 Street Children

The phenomenon of Street Children is another problem that has bedeviled the educational system and society generally. The issue of street children has become a drag and an inhibition on the education process. These children of school going age take to the streets doing all manner of menial and dangerous jobs instead of being in school. The reasons for their being on the streets include mainly lack of parental control and care.⁹⁰

Research has indicated that almost all of these children do not really enjoy being on the streets and would grab any opportunity that would remove them from the streets and set them up under relatively better circumstances.⁹¹ The examples of some NGOs in this respect are very worthy of emulation by the government, which in fact has duty to these children in accordance with the children's right to education.

⁹⁰ See Apt, Nana Araba, & Ors, *Listening to Girls on the Street Tell Their Own Story* (Accra: Centre for social Policy Studies, Faculty of Social Studies, University of Ghana, 1997); Korboe, David, *A Profile of Street Children in Kumasi* (Accra; Centre for Social Policy Studies, Faculty of Social Studies, University of Ghana, 1997); Agarwal, Sema, & Ors, *Bearing The Weight* (Accra, Centre for Social Policy Studies, Faculty of Social Studies, University of Ghana, 1997); Apt, Nana, & Ors, *Street Children in Accra; A Survey Report*, being a Report Produced By Department of Sociology, University of Ghana For The Department of Social Welfare And Save The Children Fund (U.K).

⁹¹ Ibid.

The Solid Foundation, a private educational institution at Accra organizes evening classes free of charge for street children in the slum areas around Abelenkpe, a suburb of Accra. The objective is to equip the children with basic skills that would enable them to become independent.⁹²

Among the other NGOs working in the field on this issue of Street Children is ACTIONAID Ghana. In its Tamale Street Children Project (TSCP) for instance, the ACTIONAID has taken 1035 children from the street by helping them to acquire education and employable skills.⁹³ The ACTIONAID school for street children in the Tamale area is christened TIZAA, which is the Dagbani language for “All of Us” (ie it belongs to all of us.) The Children are admitted into these kinds of schools but the problem is traced to the child's home through social investigation. At the TIZAA the training is in the acquisition of work skills. Counseling is also given. Various trades are available including - mechanics, welding, sewing and hairdressing. Those students who want to go back to school are supported to do so. The training takes place at the project sites, however, those children who opt for some particular professions are attached to master craftsmen in workshops in the Tamale area. Upon graduation ACTIONAID supports the children with tools. Government in fact has a responsibility to these children.

The ACTIONAID programme has a credit component for the parents of the children; while the children are being trained at the school, their parents are identified and supported to get into some income generating activities. The rationale for this is that research has shown that the home from which a street child comes is most likely to produce other street children. Support to the parents of the street child would therefore forestall the creation of more street children.

The success of ACTIONAID and other NGOs in this direction should serve as good examples for Government in living up to its responsibility to this category of deprived children. **That the FCUBE Programme did not mention this category of children is an anomaly that a new education law must ameliorate.**

⁹² See Daily Graphic, Tuesday, January 16, 2001. p.14.

⁹³ See ACTIONAID Hand bill for 2001.

5.5.3 People with Disabilities

Some schools exist to meet the special educational needs of people with disabilities. However, the general policy of the GES is not to encourage the segregation of that category of persons from the other children in their education. A **Special Education Division** exists within the GES and it is responsible for the education of children with disabilities. Parapathic officers in each district visit schools to observe and identify those children that exhibit signs of disabilities and then refer them to the appropriate source for special education if need be.

5.5.4 The Quranic Schools

Another category of children and also a school system that is completely glossed over in educational matters are the Quranic schools. Like Christianity, the Islamic religion came with the Quranic schools. They predominate in the Islamic communities and provide the first avenue of opportunity of a “formal” school atmosphere for the overwhelming majority of Islamic children. Research has shown that these schools are completely independent and are not accountable to anybody, not even in respect of what they teach.⁹⁴ They are individual properties in the real sense of it. The syllabus is essentially the study of the Quran, the Hadiths and ethics of the Islamic faith. The curriculum, learning and teaching conditions and the general atmosphere in the Quranic schools are not such as could prepare the pupils for a place in the modern economic and social scheme of things.

The Government of Ghana owes it as a responsibility to adopt the proper strategies to integrate the products of the Quranic schools into the formal secular system.

⁹⁴ See Muslim Relief Association of Ghana (MURAG), Early Childhood Upbringing In Quranic Schools in Six Districts of the Northern and Upper East Regions (UNICEF(Ghana), January 2001), p.1.

5.5.5 Some other socio- economic and cultural factors inhibiting education

There exist a number of social problems that have inhibited the right to education. Among these are **teenage pregnancy, broken marriages, poverty and parental nonchalance** to the educational needs of their children and wards. Rural communities have additional inhibiting factors. The barriers to learning attainment in rural areas include the **limited quantity and poor quality of schools, poor reinforcement from the non-school environment, irrelevance of the curriculum, high opportunity costs for children whose labour is needed at home and long distances between the home and the school.**⁹⁵

In Ghana, inequities in education arise mainly out of **poverty, gender and location**. The endemic nature of poverty in Ghana impacts negatively on the education of children.

The effect of poverty

According to the GLSS for 1999, “The incidence of extreme poverty remains very high in 1998-1999, with over one quarter of the Ghana population being unable to meet their basic nutrition needs even if they devoted their entire budget to food”⁹⁶ The facts of survival have affected the provision of education and its assessment by the majority especially the urban poor and the general population of the rural areas. Research has shown that generally, "poverty affects both the ability of the family to support schooling and its willingness to bear the costs."⁹⁷

Parental Attitude

Adults who were themselves denied access to education for one reason or the other, unsurprisingly do not themselves have a positive attitude to the education of their children. Research indicates that many parents in the rural communities do not appreciate the changes that education can bring about in the future prospects of their children

⁹⁵ Background Document, p.55.

⁹⁶ Ghana Statistical Service, Poverty Trends in Ghana in the 1990s, October, 2000, p.10.

⁹⁷ Nowak, loc.cit. p.54.

This is further exacerbated by the incidence of lack of role models for both parents and pupils. The presence of large numbers of primary and JSS school drop-outs in the rural communities serve as a disincentive to some parents and pupils. Many therefore see no prospects in education.

Many parents see greater value in the immediate labour provided by their children on the farms and at home than what might benefit the children through education. In the farming communities of the North for instance, there is a strong competition between the education of the girl child and the labour required of her on the farm and also as a baby nurse when the mother goes to the farm or the market. It is reported that at Langa for instance, it is normal for a girl to seek permission to leave for home to prepare food for the family in anticipation of their return from the farm or market.

Community sensitization to the value of education and also on the fact of the compulsory nature of education are very essential.

Cultural/Religious Practice – the Trokosi Practice

In the rural communities, education often competes with cultural or religious practices to its disadvantage. A good example is the Trokosi practice, which is predominant in the southern portions of the Volta Region and parts of the Greater Accra and Eastern Regions. “Trokosi” is a practice, which compels young virgins to be betrothed as vestal virgins to fetish gods to “atone” or serve for the transgressions of a family member.⁹⁸ Research findings have painted a dismal picture of the living conditions of the girls in cult houses. To say the least, formal education has no place in the scheme of things of the cult-houses. It is even a taboo in certain cases because it is thought of as having the potential to turn the inmates against their masters.

This practice has been criminalized under a recently amended portion of the Criminal Code, section 314A. There are still a large number of children held in some of the cult houses. The CHRAJ and International Needs (an NGO) together with some other human rights NGOs have been working relentlessly to eradicate the practice.

Forced Marriage

The incidence of forced marriage is very prevalent in the northern sector of the country. Teachers interviewed recount stories of girls of about the age of 13 being forced to abandon school to take up marital responsibilities. This practice follows from the traditional perception of the female as essentially designed to procreate and take care of the family.

The Criminal Code of Ghana in its section 109 criminalizes compulsory marriage. There is, however, a vast gap between the law and practice. It will take a great deal of sensitization to reverse the trend.

A good example of this practice was a case that went before the CHRAJ in 1997. The facts of the case, recorded as case No.CHRAJ/NR/WMD/008/3/97 were that, the petitioners, who were a married couple, filed the petition on behalf of a thirteen-year old girl. They sought the commission's assistance to stop the forced marriage of a child to an elderly man.

The child had been married off by her parents at a very early age but had not moved into her matrimonial home because of her rather tender age. She was approximately eight years old when she went to live with the petitioners in Accra as house help. The petitioners sent her to school and treated her as a member of the family

In 1997, the parents of the girl demanded to take the child back from the Petitioners so that, now that she was "old enough" she could go and live with her husband. She was approximately 13 years at the time.

The Commission affirmed parental right to custody of their children. However, it explained to the parents the illegality of forced marriages. The Commission concluded that in the special circumstances of the case, the child's right to education was

⁹⁸ See Quashigah, "Religious Freedom and Vestal Virgins: the Trokosi Practice in Ghana", in *African Journal of International and Comparative Law*, June 1998 volume 10 pt.2 p.193.

paramount and that the child should be allowed to continue living with the Petitioners in order to further her education.⁹⁹

This was one instance in which the little girl was lucky enough to have been rescued and given the opportunity to continue with her education.

Teenage Pregnancy

Girl drop out due to pregnancy is very common especially in the rural communities. The lack of role models often contributes to the situation. According to a head-teacher, he had to often chase away immediate past pregnant pupils who take pride in displaying themselves to those still at school.

5.6 Quality in pre-tertiary education

The right to education extends to the provision of quality education that is "relevant to the child and must promote the realization of the child's other rights".¹⁰⁰

5.6.1 Indices of Measuring Quality Education

Some Indices of measuring quality of education have been identified at the Jomtien World Conference on Education for All. These can be itemized as follows:

a. Pupil Performance in examinations

Performance in examinations by pupils from the public basic schools, compared to those of the private basic schools in Ghana is a good indication of the quality of education. This has been a cause of concern to many educationists who have often called for special consideration for pupils from public basic schools seeking admission into secondary schools in competition with pupils from the private schools.

⁹⁹ see CHRAJ, Fourth Annual Report 1997, p.147.

¹⁰⁰ See General Comment No.11 (1999) para.6.

b. Teacher effectiveness

Indices for measuring this would include:

- Formal academic study
- Teacher training
- Subject mastery
- Verbal ability
- Attitudes towards teaching
- Availability i.e. attendance
- Pupil/teacher ratio

Formal Academic Study & Teacher Training

These relate to the formal preparation of the teacher. This is in practical terms, reflected in the number of trained teachers in the schools. The indications are that the urban areas do have enough supply of trained teachers. It is the rural schools that, however, lack the full complement of trained teachers. At Langa, a village in rural Tamale for instance, the local primary school has only one trained teacher. The trend is the same in most other rural areas where even different levels of classes are combined for lack of even the “pupil teachers”.

Subject Mastery, Verbal ability & Attitudes towards teaching and Availability

Training opportunities and salary incentive systems can operate to affect the level of subject mastery. The unavoidable use of untrained and unmotivated teachers has affected the quality of delivery especially in the rural schools.

Verbal instruction is a very prominent method of teaching in our basic schools. This is more so having regards to the fact of non-availability of relevant instructional materials. Without doubt the teacher's attitude to the verbal instructional system can be affected by his/her remuneration and general conditions of service. This factor also applies to the teacher's availability.

Absenteeism is a real problem in the rural schools. Absenteeism among teachers and pupils has been a continuous concern to the GES.¹⁰¹ The story is told of a rural community near Tamale that was compelled to prevail upon the education authorities until a teacher that was noted for absenteeism and lateness was re-assigned away from their school.

The incidence of absenteeism and lateness in the rural areas often stems from the fact of lack of any reasonably decent accommodation facilities in the rural communities for the teachers. Many of them reside outside their areas of teaching and have to rely on the very unreliable public transportation for commuting to and from school daily. **The District Assemblies in areas with this problem should address it by providing appropriate accommodation.** Effective supervision cannot be overemphasized.

Pupil/Teacher Ratio

Research has indicated that very small classes do have learning advantages.¹⁰² In a 1996 conference report, the Conference of Principals of Training Colleges pointed out that:

For sometime now pupil numbers per class have increased beyond reasonable bounds. Where a class should have 45 pupils there are now 60 and in some cases, as many as 90 has been recorded. Yet it has not been possible to expand facilities in proportion to such increase.¹⁰³

The consequence, according to the report, is a situation where 45 pupils shared 6 books for "reading comprehension".¹⁰⁴ In addition, **the large numbers have affected the capacity of teachers in being effective**; for example, teachers often resort to objective tests as a means of assessing pupils thus depriving the pupils the benefits of composing.¹⁰⁵

The incidence of extremely large classes exists in the urban areas of Ghana. In certain

¹⁰¹ See GES Circular Ref.No.GES/DG/011/11/179 of 25th May, 1990 and GES/DG/011/11/23 of April, 1993.

¹⁰² See Background Document p.50.

¹⁰³ Education Commission Report on addressing Problems in language and Communication Skills in Education October 1996, at p.15 para 3.21.1.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

cases some classes have as many as 65 pupils as against the prescribed GES standard of 46¹⁰⁶ at the highest. On the other hand the situation is often different in the rural schools where in certain cases even when two different classes are combined, to be taught by the same teacher, the number on role is often less than 20.

This situation of large classes would have been worst but for the existence of private basic schools in the urban areas.

Availability of educational Materials

The availability of educational materials does make a difference in the level of learning achievements.¹⁰⁷ This factor very often explains the marked differences in quality of education between rural and urban schools and also to a large extent between the public basic schools and private basic schools generally. Availability of relevant educational materials can make up for poor teacher quality, apart from helping to shape up the teachers as well.

c. Effective Supervision of the School System

The observable trend on the ground in the public school sector is that, in most cases, effective supervision of the school system is lacking from both the education authorities and the head-teachers, especially at the basic levels. Lack of transport facilities and also lack of prompt payment of transport claims by supervisors have resulted into a lack of enthusiasm.

The indications are, however, clear that where the community takes an active interest in the affairs and therefore management of schools, there is a positive impact on the quality of learning and teaching. This is very evident from the quality of those schools that have strong PTA involvement in the administration. **This approach calls for a decentralized system that places more authority in the hands of teachers, the principal, the community (including parents), and local education officials.**¹⁰⁸

¹⁰⁶ see GES Circular Ref. No. GES/GAR/PT.1/26 OF 14th July, 1997.

¹⁰⁷ Background Document, p.51.

¹⁰⁸ See *ibid.*, p.52.

The involvement of parents in the school management system would make up for the incidence of ineffective supervision by education officials. The School-Based Management (SBM) and its inherent philosophy of Shared Decision-Making (SDM) system perhaps may be recommended as an integral part of the administrative system of all schools in the country. The SBM and SDM system have been described at the Jomtien Conference that:

School-Based Management allows the local managers of the school to decide on school policy. Shared Decision-Making includes especially the teachers, but potentially the other school staff as well as parents and students.¹⁰⁹

School Performance Appraisal Meetings have been put in place. It affords the opportunity to both teachers and parents to meet and examine the class performance of pupils. This process apart from ensuring quality may also serve to interest parents in the administration of the schools.

d. Lack of adequate provision of Workshop facilities for the JSS system

The BECE programme is not designed to produce graduates who have been prepared for the job market; they are rather trained to enter into apprenticeship. There is the recognized need for more workshops as well as greater exposure to the practical aspects of the training. It is suggested that the equipment problem can be addressed in the short run through the provision of well-equipped workshops to service a cluster of schools.

There is in addition the recognized need to put in place an examination assessment method that should demand practical work. It is suggested that examiners need to be trained in designing questions such that a candidate could only answer them effectively if he/she had actually participated in practical work.

¹⁰⁹ *ibid.*, p.54.

e. Modification of School Curriculum for Functional Education

The gender-stereotyped nature of the school curriculum has been noticed. The Curriculum Research and Development Division (CRDD) of the Ministry of Education has started the process of redesigning the syllabuses to expunge therefrom those aspects that have emphasized the dominant roles of male over the female. Basic school textbooks that, for instance are illustrated depicting the girl child sweeping while the male child plays football are being reversed. It is however doubtful if the mere reversal of the roles would be enough.

f. Girl Child Education

The GES has established a **Girls' Education Unit** in the Basic Education Unit of the GES. It is aimed at sensitizing parents to educate their girls. As a means of encouraging girls to take more interest in the study of science, the **Science, technology and Mathematics Education Clinics** project is designed to expose and encourage girls to take to the sciences.¹¹⁰

g. The Shift System

The shift system is not designed to be a permanent system. It was designed to serve as an ad hoc system to make up for the lack of facilities to absorb the large number of pupils. It therefore has its advantage in ensuring a higher level of access. Nevertheless, the system has the consequence of reduction in subject periods from the requisite 45 minutes to 35 minutes. When computed for all the subjects and over the whole school year period, the loss in terms of teacher/pupil contact hours or instructional time in the schools can be staggering.

As a system, it is meant to be gradually eased out when more educational facilities are put in place. The general trend has been that the Metropolitan Assemblies have not been able to effectively provide the requisite number of educational facilities as expected due often to the problem of non-availability of land for the construction of

¹¹⁰ See Situation Analysis, p. 97.

new educational facilities. The District Assemblies located in rural areas have been more effective in the gradual eradication of the shift system because they are not generally hampered by the problem of unavailability of land.

It has been observed that the shift system encourages absenteeism because it gives room to children to play the truant. This is because there would always be the excuse that he/she is scheduled to be at school in the afternoon when in fact he/she may be due to be at school in the morning.

Without doubt **the shift system is not the best school system that should be maintained.** Efforts must therefore be made to replace it.

h. Lack of Suitable Physical Structures

The nature of the classroom facilities do, to some extent influence the readiness of parents and pupils to take advantage of existing educational facilities. The example of the very dilapidated and dangerous nature of the Kanda Cluster of Schools at Accra led to the withdrawal of almost four hundred pupils from the school during the 2000/2001 academic year.¹¹¹ An example of the positive effects that a well laid out and well constructed school can have on enrolment is found in the Tamale Municipal area. As a result of the reconstruction of the dilapidated school at Tunayili with a grant from the Japanese Embassy, the school the enrolment figures went up dramatically.

i. Utilization of Child Labour by Teachers

The use of child labour to the detriment of the children is not limited to the homes. Schools, especially those in the rural and semi-urban areas, do hire out school children to work on farms, carry cocoa or work on private building sites for what has been described as paltry sums of money.¹¹² The most damaging aspect of the report is that very often, the monies generated out of those projects are not used for the improvement of the schools and not accounted for by some school heads. For the

¹¹¹ Ghana TV News Item of 19th March 2001.

¹¹² See GES Circular Ref.No.GES/DG/011/11/179 of 25th May, 1990.

avoidance of doubt, **the new legislation must proscribe the practice of hiring out of school children for private labour on farms, building projects etc.**

j. Extra Classes in Public Schools

The issue of extra classes, i.e vacation classes, remedial classes and special classes in public schools had been the subject of complaint by the public. The perception existed that many teachers in the public system deliberately neglected to perform their duties with diligence during official hours with the hope of compelling pupils to register for the extra classes. In a reaction the GES had issued instructions banning the organization of extra classes in public schools.¹¹³

The practice nevertheless persists. According to a highly placed source at the GES any teacher who intends to conduct any extra lessons for a fee must seek and obtain the permission of the District Director of Education. In addition, he/she would be required to produce a report at the end of the period. It is now a controlled exercise.

k. Additional General Indications on Poor Quality Education

A Committee sitting under the auspices of the Tamale Municipal Assembly and the Tamale District Education authority identified the following causes of poor performance in both urban and rural communities in the Tamale Municipality:

¹¹³ See GES Circular REF. NO. GES/DD-G/005/VOL.III/146

Box 3: Causes of Poor Performance in Urban Tamale-

- Large enrolment
- Inadequate infrastructure
- Shift system
- Lack of teaching and learning materials - textbooks etc.
- Absenteeism – teachers
- Absenteeism – pupils
- Poor siting of schools
- Poor supervision by both head-teachers and supervisors
- Lack of commitment – parents
 - Teachers
 - All stakeholders

Box 4: Causes of poor performance in Rural Tamale-

- Poor enrolment
- Poor infrastructure
- Poor attendance by both teachers and pupils
 - irregularity
 - lateness
- poor/low caliber teachers
- poor commitment - parents/community
- poor staffing (in numbers)
- inadequate supply of teaching materials
- lack of commitment by teachers
- lack of social amenities
- poor transport system
- lack of commitment to profession
- proliferation of schools

Box 5: Recommendations For Improvement

The meeting went on to recommend the following as means of improvement of teaching and learning:

1. Enrolment drive - Rural Tamale
 - Teachers and circuit supervisors to educate communities on enrolment
 - Provision of infrastructure
 - Merge schools that are very close
 - Avoid opening new schools haphazardly
2. Motivation of Teachers
 - Accommodation
 - Transportation, provision of motorcycles etc
 - Awards for meritorious work
 - Training
3. Provision of Teaching and learning Materials
 - Textbooks, flash cards etc.
 - Recreational materials drums, sea-saw etc.
4. Supervision
 - Regular visits by supervisors
 - Supervision of preparation of lesson notes
 - Effective head teachers
 - Training for heads and other supervisors
 - Prompt payment of T&T
 - Maintenance and fuelling of motor bikes
 - Means of transport for supervisors.
5. Co-curricula activities – competitions (academic)
6. Good Relationships between communities and Teachers
 - Effective PTA/School Management Committees

Obviously, these problems and suggested solutions stand good for other areas of the country as well. **The overriding factor of change is commitment on the part of all those who are involved in the realization of the right to education. It is for this reason that a new legislation on Education must institutionalize a viable system**

of collaboration between all stakeholders. It should be a system that makes for effective check of one unit by the other to ensure that each is up to its responsibilities as required by the law and society.¹¹⁴

5.6.2 Other factors affecting Quality

a. Control and Governance of Pre-tertiary Institutions

The process of decentralization puts management of the schools into the hands of the local education authorities and the community (including parents), nevertheless, the school remains accountable for its use of public funds and also pursues curricular standards and adopt other measures that conform to general education regulations.¹¹⁵ Just as is the case in Ghana, research generally¹¹⁶ has shown that individuals and communities are more willing to finance primary education when they participate in decision making relating to it. As has been realized in Korea, Parent Teacher Associations (PTAs) can play an important role in the finance of primary education.¹¹⁷ In Ghana some public/private primary schools have PTAs that make financial contributions for the improvement of the schools and part of these contributions are used to supplement teacher salaries. They also are very active in the making and implementation of improvement policies for the schools.

b. Early Child Development

It has been established through research that nutrition, health and early social development are the most critical determinants of the learning capacity of children entering primary school.¹¹⁸ Opportunities for early child development can be viewed as possessing *preventive*, *compensatory* and *reinforcing* potentials.¹¹⁹ It is preventive in that "it combats the cognitive and behavioural disadvantages that originate from malnutrition, disease, inadequate care giving or an unstimulating social

¹¹⁴ See last chapter for proposed legislative reform in this respect.

¹¹⁵ See Background Document, p. 52.

¹¹⁶ Ibid., p.61.

¹¹⁷ Meeting Basic Learning Needs: A vision for the 1990s, Background Document, World Conference on Education for All 5-9 March 1990, Jomtien, Thailand p.13 Box 1.07

¹¹⁸ Background Document, p.43.

¹¹⁹ Ibid.

environment."¹²⁰

Research has established that the provision of early childhood learning opportunities do offset some of the damages to infants from inadequate preconditions for learning".¹²¹ Apart from these benefits, it is also reinforcing in that the health and nutrition services that are often offered at the early child development stage do "reinforce the ability of individuals to benefit from the basic learning provided".¹²²

The overwhelming importance of early childhood development programmes through the nursery and kindergarten systems cannot therefore be underestimated. In fact some interviewees questioned during the research clearly confirmed the overwhelming importance of the exposure of the children to the pre-school programme system before their eventual absorption into the primary grades. **If the basic right to primary education is to be fully realized then the pre-school system must equally be made a priority in the educational system.** The Ghana National Commission on Children has drafted a comprehensive policy on Early Child Care and Development for consideration by parliament.¹²³

c. Health and Nutrition

- **Nutrition**

It is trite knowledge that proper nutrition is a very essential element in ensuring quality education. Research has shown that a majority of pupils who took some meal in the morning before coming to school did pass tests administered to them while the majority of those that did not eat that morning failed. As stated below, **there is the obvious need for some supplementary feeding for the pupils especially in the disadvantaged communities.**

¹²⁰ *ibid.*, p.44.

¹²¹ See, *ibid.*, p.44 - It is asserted that "early intervention programmes among poor children in countries as diverse as Brazil, Colombia, Haiti, India, Thailand and the United States demonstrate the long-term advantages to children and society that such programmes offer" –see Background Document p.43.

¹²² *Ibid.*

¹²³ see *Situation Analysis of Children and Women in Ghana*, Government of Ghana/UNICEF, October 2000, p. 75

- **Health**

The Ministry of Education has health officers attached to each District. These must be upgraded to Medical Officer status so that they can, on a regular basis, **visit schools and inspect and recommend treatment for the children. This might be, for the majority of children in this country, the only opportunity of having access to a qualified medical officer in the early stages of their growth.** This policy apart from health improvement benefits could serve as a motivation for pupils to go to and remain at school.

d. Corporal Punishment at School

The issue of corporal punishment at school has exercised the minds of many and has been the issue contested in a number of cases even before the European Court of Human Rights. In The 1993 case of *Costello v. U.K*¹²⁴ the headmaster of a private school gave a 7 year-old boy three "whacks" on the bottom with a gym shoe. The boy claimed that this constituted degrading punishment contrary to Articles 3 and 8 of the European Convention for the protection of Human Rights and Fundamental Freedom. Article 3 provides that:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The complainant maintained that although the actual physical force to which he had been subjected had been moderate there had nevertheless been an assault on his dignity and physical integrity. The court held by five votes to four that there had been no violation of Article 3.

The court, in coming to this conclusion, made reference to its earlier decision in the case of *Tyrer v. United Kingdom*¹²⁵. That case was to the effect that, corporal punishment may constitute an assault on a person's dignity and physical integrity as protected under Article 3. That position was, however, subject to the proviso that, in order for punishment to be "degrading" and in breach of Article 3, the humiliation or debasement involved must attain a particular level of severity and must in any event be other than that usual element of humiliation inherent in any punishment. The court thereby distinguished between punishment per se and one that is "inhuman" and "degrading". According to the Court, Article 3 by expressly prohibiting "inhuman" and "degrading" punishment, implies that there is a distinction between such punishment and punishment more generally.¹²⁶

In reaching this conclusion, the court was not oblivious of Article 28(2) of the UN Convention on the Rights of the Child which provides that:

¹²⁴ Publications ECHR, Series A Vol. 247-C. See also Lawson & Schermers, (eds) *Leading Cases of the European Court of Human Rights* (Nijmegen: Ars Acqui Libri, 1997), pl.484 .

¹²⁵ Judgment of 25 April 1978 (Series A No. 26).

¹²⁶ Lawson & Schermers, op.cit., p.487.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner not inconsistent with the child's human dignity and in conformity with the present Convention.

This Article applies to Ghana and is reinforced by Article 15(2) of the 1992 Constitution which reads that:

(2) No person shall, whether or not he is arrested, restricted or detained, be subjected to - (a) torture or other cruel, inhuman or degrading treatment or punishment;

Following upon the European Human Rights Court's distinction between punishment generally and punishment that is "inhuman" and "degrading", it may be argued that Article 15(2) of the 1992 Constitution does not seek to exclude even ordinary punishment from our scheme of things. Teachers, just like parents should be justified in imposing punishment, including corporal punishment that is reasonable in the circumstances. As was explained in the case of *Costello v. UK*¹²⁷ **"The concept of "reasonableness" permits the courts to apply standards prevailing in contemporary society with regard to the physical punishment of children.**¹²⁸ This qualification is similar to what is contained in section 13(2) of the Children's Act, 1998 Act 560 of Ghana, that:

No correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction.

The GES has put in place a Unified Code of Discipline for Basic Education Schools¹²⁹. The code prescribes the disciplinary measures that may be administered for various offences committed by pupils. Corporal punishment is not left out, for example, a first instance of fighting attracts strong warning, a second incidence attracts caning while a third incidence attracts groundwork. A first incidence of sexual misconduct attracts caning and suspension while a second incidence attracts withdrawal. The Code is therefore selective and does not permit a general system of corporal punishment.

¹²⁷ Ibid.

¹²⁸ See *ibid.*

¹²⁹ see GES, *Headteachers' Handbook* (Accra, Ministry of Education, 1994), Appendix 2 p. 257.

In Namibia, the Ministry of Education, Culture and Sport had provided a code which was designed to regulate corporal punishment. The material provisions of the code provide that:

- (i) the head of the school has the exclusive responsibility for the administration of corporal punishment;
- (ii) if circumstances so demand the head of the school may extend this responsibility to the deputy and departmental heads;
- (iii) the administration of corporal punishment by a teacher may only take place in the presence of and with the approval of the head of the school;
- (iv) no corporal punishment may be administered upon females;
- (v) corporal punishment may only be imposed in respect of serious contraventions of which the following are examples: bullying; continuous and serious failure to perform duties; swearing; indecency; abusive language; unbecoming conduct; truancy; insubordination; deliberate damage to property; assault;
- (vi) corporal punishment must be administered moderately so that it does not cause permanent bodily injury or give rise thereto;
- (vii) the age and bodily condition of the student must be taken into account;
- (viii) before any corporal punishment or any other punishment is administered there must be a proper investigation of the contravention which the student is alleged to be guilty of;
- (ix) no corporal punishment may be imposed in the presence of other students;
- (x) only an ordinary cane may be used in the administration of corporal punishment. This cane may not be longer than 75 cm and thicker than 13 mm;
- (xi) the cane used for the administration of corporal punishment may not be in the possession of a teacher in the classroom;
- (xii) corporal punishment may not be imposed on the hands or the legs or any other part of the anatomy except for the buttocks;
- (xiii) pulling the hair or ears of the student or smacking or pinching or knocking him or assaulting him in any other way is strictly prohibited.
- (xiv) A full written record of the imposition of the corporal punishment in all cases must be maintained in a punishment register which must show the name of the student, his age, the number of strokes imposed, the name of the person who administered the punishment, the date on which the punishment was administered and a full description of the contravention.

It is obvious that the code sought to make the imposition of corporal punishment somehow humane. In the case of *Ex parte Attorney-General of Namibia, In re Corporal Punishment by Organs of State*¹³⁰ the Supreme Court of Namibia was called upon to determine whether the imposition and infliction of corporal punishment by or on the authority of any organ of State was constitutional. The relevant Article 8(2)(b) of the Namibian Constitution provides that:

No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

¹³⁰ [1992] LRC (Const.) 515.

The court, taking that provision into account, held that corporal punishment was unlawful.

Article 8(2)(b) of the Namibian Constitution and the Namibian Code outlined above are very similar to Article 15(2) of the 1992 Constitution of Ghana and the GES's directives on corporal punishment respectively.

By section 15(1) of the Constitution of Zimbabwe “ No person shall be subjected to torture or inhuman or degrading punishment or other such treatment” In the case of *A Juvenile v The State*¹³¹ the Zimbabwean court expressed the opinion that corporal punishment was an inhuman and degrading punishment and therefore contrary to section 15(1) of the Constitution.

If one is to take this Namibian and Zimbabwean positions as guide, then corporal punishment could be declared unconstitutional in Ghana.

The present general policy of prohibition of corporal punishment in Ghana has, as claimed by some teachers interviewed, affected the level of discipline in our basic school system. Many teachers have simply resigned themselves to limiting themselves, strictly to the business of teaching and not caring about the level of discipline exhibited by the pupils. If teachers are to be seen to be performing their functions as being in *loco parentis* then they must have the same capacity of punishing the child as the parents.

Some teachers no doubt do inflict corporal punishments that are inhuman and degrading. In any case any punishment that is considered inhuman or degrading could be made the subject matter in a law-suit against the teacher.

It is now the general policy of the GES that pupils are not subjected to corporal punishment by school authorities. The reservation has however, been expressed by some teachers who thought that this fact has led to a degeneration of discipline in the schools. This lack of discipline, according to them, has negatively impacted on

teaching and learning.

¹³¹ [1989] LRC (Const.) 774.

PART VI
SUGGESTIONS FOR LEGAL REFORM FOR
PRE-TERTIARY EDUCATION

6.0 Background Paper on Suggested New Legislation

Basic education is a right of children and its correlatives are the duties of the state and the parents to ensure that children are educated.

The Education Act, 1961 Act 87 and its amendment, the Education (Amendment) Act, 1965, Act 266 have been overtaken by social growth. The law lags behind the aspirations of the people of Ghana. Since the promulgation of the Education Act 1961, the educational system of Ghana has gone through many policy changes. Various Commissions have been established by governments, and out of their reports various recommendations have been churned out. Governments have equally switched from one education policy to another based on those reports and often driven along by donor interests.

Various international human rights instruments that came into force long after the signing of the Education Bill into law in 1961, have also introduced some new ideas on the right to education. All these changes notwithstanding, the statute on education in Ghana has remained fossilized in the Education Act, 1961, Act 87.

There is definitely the pressing need for the formulation of a new Education law that should incorporate all those positive changes that have emerged on the educational scene.

The absence of this new law and the practice of resort to policies have created within the educational system a great deal of uncertainty in many respects. Head-teachers for instance often have their own conceptions about how to determine and impose levies different from how the GES perceives such matter.

At the international scene for instance, the Beijing Platform for Action, in its paragraph 14 requires that Government shall endeavour, in policy and legislation to

ensure that curricula and teaching materials are made sensitive to the specific needs of women. This, it is believed, is necessary to break down the traditional female and male roles that have so far operated to deny women opportunities for full and equal partnership in society.¹³²

Various disadvantaged groups have been forgotten in the educational policies, or at best, been ascribed scant recognition. The FCUBE programme for instance does not make provision for the out-of-school children. All disadvantaged groups must be consciously made an integral part of the new educational system. Underserved groups such as the poor street and working children, rural and remote populations as well as nomads need to become a focus of concern for the government, taking a cue from the activities and success of NGOs in working with these groups. The new legislation must put in place mechanisms that would in fact ensure the enforcement of the compulsory aspect of the right to education.¹³³

The important roles that School Management Committees and PTAs can play in the improvement of the educational system cannot be discounted.

The educational needs of disabled children need to be emphasized.

The mass promotion policy does not augur well for the quality of education we wish to see implanted in the country. The law should empower the teacher to determine and repeat any pupil that in his/her view needs to be repeated.

The Education Act provided for compulsory education but it does not specify the minimum age bracket for schooling. It should now be possible to specify the age bracket, taking into account the reform under the FCUBE system.

The law on compulsory education exists but lacks any specific explanation as to the elements that constitute the breach of the law. A new law needs to be promulgated to make provision for that. So far, it has not been possible to enforce the law on compulsory education, possibly because no proper and special enforcement

¹³² See the Beijing Platform for Action para 74.

¹³³ See Children's Act.

mechanisms have been put in place. The creation of special tribunals in line with those to be created under the Children's Act could serve a useful purpose.

It is appreciated that the provision of basic Education is the joint responsibility of both community and central Government. This conviction had been clearly emphasized at the Jomtien Conference on Education for All, 1990. It is important that this conviction be translated into law to ensure effect being given to it as would be expected. It is in this regard that provisions should be inserted into the law requiring the creation of School Management Committees that already exist in certain cases. These Committees should, by their structure and functions invest the management of the schools into the hands of parents and community groups on the one hand and the government on the other.

Child labour should be such as should not interfere with the child's education. That primary education is compulsory imposes obligations on parents, guardians and the State not to treat primary education as an optional decision.

The exploitation of child labour by teachers should be completely prohibited.

One may go even further to add that even the child has a duty to the society at large to avail him/herself to the educational opportunities provided by the State. This realization follows from the fact that an uneducated child is a potential liability and a social problem for the society at large. The society therefore has an interest in the education of all children and must ensure that all children that need to be in school are in fact in school.

Procedure for the imposition of levies must be well spelt out in the new legislation because it is often easy for a few relatively better endowed and vocal parents to impose levies on the whole school under the guise of their being voluntary. A provision of this nature should however take into account the rights of parents in Article 13(3) of the ICESCR "to choose for their children schools other than those established by public authorities." Article 29(2) of the CRC has a similar effect. This should give room for the establishment of private schools to which parents would be at liberty to access for their children. These private schools must, however, conform

to such minimum educational standards as may be laid down or approved by the State.

Early Child Development needs to be taken up as a full responsibility of the government. Research has demonstrated the subsequent advantages of pre-school education to learning at the basic levels. As was mentioned in the Jomtien Final Report¹³⁴, pre-school education should be seen as an essential aspect of early human development that would include nutritional, health, social and emotional development as well as cognitive and language development. It is noted that children perform better at the primary level when they have been exposed to pre-school education.

Government policy should be designed to extend basic education to isolated and marginalized communities not only with educational facilities but also quality, affordable and sustainable education.¹³⁵

Punishment in schools needs to be clearly defined. Whether corporal punishment should be expunged from the system or not must be firmly settled by legislation.

6.1 Suggested Provisions for inclusion in New Legislation on Education¹³⁶

Basic Education to be Free, Compulsory and Universal

Basic education shall be free, compulsory and universal for all children of school going age. Basic education shall be **Free** in that no parent or guardian shall be called upon to pay fees for tuition in basic schools; **Compulsory** in that every parent or guardian shall be compelled by law to send his/her child to school on attaining the age of six years and shall keep him/her there until he/she completes the course in basic education; **Universal** in that all children aged between 6 and 14 years should be enrolled in the formal system of education.¹³⁷

¹³⁴ at p. 28.

¹³⁵ Jomtien Final Report, p.28.

¹³⁶ The Education Act of UK, in certain cases served as the guide in some of these formulations.

¹³⁷ Adapted from the FCUBE programme.

Enforcement of attendance at basic school

If a pupil fails to attend school as is required under this Act due to inhibitions from his parents or guardian, the latter shall, unless an order has been made against him/her in respect of the same matter under section 59 of the Children's Act 1998 or by the Commission on Human Rights and Administrative Justice be liable to a fine not exceeding ₦2 million or a term of imprisonment not exceeding six months or to both.

Power to prohibit or require suspension of employment of children of school going age

The local education authority shall, have power to prohibit or suspend the employment of any child who is under an obligation to attend a basic school if the authority considers such action necessary in order to ensure that the child would be in a fit mental and bodily condition to receive full benefit from attendance at school.

Duty of local education authorities to secure provision of primary and junior secondary schools

It shall be the duty of every local education authority to secure that there shall be available for their area sufficient schools for providing primary and junior secondary education within walking distance for children of school going age in their areas of authority.

Duty of local education authorities to secure provision of alternative education facilities

It shall be the duty of every local authority to secure that there shall be available for their area educational facilities for providing education for the out of school children in their area of authority.

Duty of local education authorities to secure provision of nursery schools

It shall be the duty of every local authority to secure that there shall be available for their area, sufficient facilities for nursery education.

Education facilities for People with Disabilities

The state shall ensure that provision is made for pupils who suffer from any disability of mind or body by providing either in special schools or otherwise, special educational treatment, that is to say, education by special methods appropriate for persons suffering from that disability.

School Discipline

School discipline shall be administered in a manner consistent with the child's human dignity.

No Fees to be charged in Public Schools

No tuition fees shall be charged in public first and second cycle institution.

Levies other than Tuition Fees

No other levies shall be collected in public first and second cycle schools unless as approved by the Ministry of Education.

Prohibition on Withdrawal of Children from School

It shall be an offence for any parent or guardian to withdraw a child from school for any purpose whatsoever except for reasons of transfer to another school or for health grounds.

Re-admission after delivery of Pregnancy

Where a female student is withdrawn due to the incidence of pregnancy, she shall not be refused re-admission into another school of her choice immediately upon delivery.¹³⁸

¹³⁸ See African Charter on the Rights and Welfare of the Child, 1990, Article 11(6). See also Headteachers' Handbook, Appendix 2.

Flexible School and Time-Table Systems

School Heads, with the approval of the District Education Oversight Committee of the area shall have the authority to schedule school hours and days as are comfortable for the pupils having regards to local circumstances.

Medical Examination at School

It shall be the duty of every District Assembly to provide regular Medical Examination of Pupils in their areas of Authority.

Provision of Meals

It shall be the responsibility of District Assemblies with schools in deprived communities to provide meals for pupils in attendance at such schools. The Minister in charge of Education shall make regulations indicating which schools qualify for the provision of meals and also the persons or body against whom the cost is to be charged.

Fees in Private Schools

No proprietor of a private school shall determine and charge fees without first seeking approval for same from the Ministry of Education and which approval must be conveyed to him/her in writing.

Imposition of Levies by Private Schools for infrastructural development

No proprietor of a private school shall impose levies on parents for the purpose of infrastructural development or rehabilitation.

Levies by PTAs.

Any levies agreed to be imposed by any parent Teacher Association upon its members

shall require the approval in writing of the District Education Authority before such levies shall be collected. The District Education Authority shall have the power to seek any further clarifications on the levy before giving approval.

School Management Committees

School Management Committees shall be established in all schools and charged with the responsibility of managing the school for efficient work.

The School Management Committee shall be composed of Parents Representatives, Ministry of Education Representatives of the Teachers of the school and Representatives of the District Assembly of the area.

Scholarships for indigent students

District Assembly shall apply a percentage of their fund for poverty alleviation to the provision of scholarships for indigent pupils in their areas of authority.

School Uniform Policy

While every school going child shall be expected to attend classes in the prescribed school dress, the non possession of such prescribed dress shall not be reason to deny the child school attendance.

District Assembly to ensure Adequate Educational Facilities

Each District Assembly shall have the responsibility to provide adequate educational facilities for the basic level of education to ensure that the prescribed number of pupils per class is achieved.

Interpretation

"Within walking distance" shall mean, in the case of a child below the age of 11 years, 3 kilometers and for a child between 11 and 14 years, 5 kilometers.

"First cycle institution" shall mean primary and junior secondary schools"

"Second cycle institutions shall mean Senior Secondary Schools, Technical Schools, Commercial Schools, Vocational Schools and Teacher Training Colleges.

Basic education shall mean a basic nine-year course of education, covering six years of primary education and three years of junior secondary education.

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