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ABSTRACT

This report to the United Nations Committee on the Rights of the Child contains observations of the World Organisation Against Torture (OMCT) concerning the application of the U.N. Convention on the Rights of the Child by the Republic of Ghana. The report's introduction asserts that although OMCT welcomes the measures taken by the Ghanaian authorities in order to bring national legislation and policy into line with the Convention, as well as the self-critical attitude adopted by Ghana's own report on its progress, OMCT regrets that Ghana's report deals only very briefly with certain of the main objectives incumbent upon the government and certain major violations affecting the rights of the child. The report then presents observations and recommendations in the following areas: (1) definition of a child; (2) age of criminal responsibility; (3) protection against torture and other cruel, inhuman or degrading treatments (penalties not proportionate to the gravity of the crimes committed against children, annihilation of criminal responsibility in certain circumstances, existence of discrimination based on the age and sex of minors); and (4) children in conflict with the law. Following its own conclusions, the report includes a summary of observations and recommendations by the U.N. Committee on the Rights of the Child--Ghana, in the following areas: positive factors, factors and difficulties impeding the implementation of the Convention, principal subjects of concern, and suggestions and recommendations. (EV)

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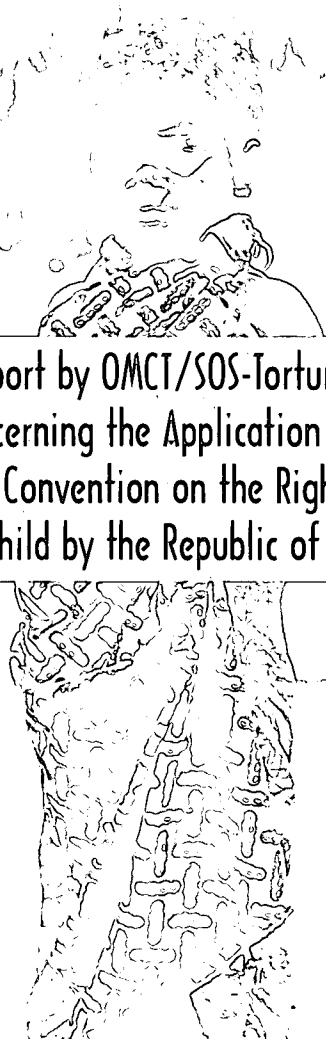
Rights of the Child in GHANA

OMCT
OPERATING THE SOS-TORTURE NETWORK

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COMMITTEE ON THE RIGHTS OF THE CHILD
15th Session - Geneva, May-June 1997



Report by OMCT/SOS-Torture
concerning the Application of
the Convention on the Rights
of the Child by the Republic of GHANA

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I. Preliminary Observations

① The Republic of Ghana ratified the Convention on the Rights of the Child in February 1990. The Convention came into force in September of the same year.

② It should however be noted that Ghana has not yet ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights.

③ The World Organisation Against Torture (OMCT) welcomes the measures

taken by the Ghanaian authorities in order to bring national legislation and policy into line with the Convention on the Rights of the Child. OMCT also welcomes the self critical attitude adopted by the authors of the report (CRC/C/3/Add.39), which contributes to a better understanding of the situation of the rights of the child in Ghana.

④ However, OMCT regrets that the report deals only very briefly with certain of the main objectives incumbent upon the government and certain major violations affecting the rights of the child.

II. Definition of a child

⑤ Under Article 28(5) of the 1992 Constitution a child is defined as a person under the age of 18.

While OMCT cannot but welcome the fact that the definition of a child has been standardised, it nevertheless notes that parallel to the concept of "child" there is also a definition, in terms of age, of the concept of "young person" which, for the

purposes of the 1960 Code of Penal Procedure, means any persons under the age of 17.

Moreover the Ghanaian legislation includes other provisions relating to persons between the ages of 12 and 18 years. Thus, the labour legislation applies the term "young person" to anyone between the ages of 15 and 18. Similarly,

article 314 of the Code of Criminal Procedure provides that the sentence of imprisonment shall not be imposed on a person under the age of 15 or, in the case of a district tribunal, under the age of 17.

6. OMCT would like to know the reasons which led to the adoption of these different age groups. In the light of the standardisation of the definition of a

child, OMCT wonders whether these groups will be maintained or amended accordingly since such subdivisions are frequently sources of discrimination (see reference to article 314 of the Code of Criminal Procedure above) prejudicial to the best interests of the child, and particularly with respect to minors above the age of 17 but under the age of 18.

III. Age of criminal responsibility

7. According to article 26 of the Criminal Code, the minimum age of criminal responsibility is 7 years. However, between the ages of 7 and 12 years a child cannot be prosecuted "*if it has not attained sufficient maturity to judge the nature and consequences of his conduct*" (§ 37, CRC/C/3/Add. 39).

Whereas the Convention does not give an age at which a minor may be held criminally responsible, article 4.1 of the Beijing Rules recommends that States whose juridical system recognises the concept should ensure that the age they determine should not be too low which, in the opinion OMCT, seems to be the case in Ghana.

Moreover, OMCT questions the ability of a child, aged over 7 but under 12 years, to judge the nature and consequences of its behaviour. OMCT fears that this provision may become the source of discrimination, in particular with respect to vulnerable sectors of the population including street children.

8. OMCT considers it essential that the authorities raise the age of penal responsibility and provide more ample explanations concerning the criteria and means enabling the judiciary to determine whether a child older than 7 but under 12 is capable of understanding the moral and psychological consequences of his/her actions.

IV. Protection against torture and other cruel, inhuman or degrading treatments

9. The State's report deals all too briefly with the question of torture and other cruel, inhuman or degrading treatment or punishment (§ 61, CRC/C/3/Add.39). This lack of information is all the more regrettable since the report mentions in its § 11, the existence of "*a considerable amount of legislation designed to protect children from neglect and abuse.*" OMCT considers that the authorities should provide the Committee with more precise information concerning the manner in which the child is protected against such a violation of its rights under the Ghanaian legislation.

10. This seems all the more necessary since, again according to its §11, the report recognises that "*the child protection laws are rarely invoked*" and that "*Culturally it is felt more appropriate for abuse and neglect to be dealt with at a family and community level.*"

11. While OMCT welcomes the fact that article 28(3) of the Constitution provides that no child may be subjected to torture

or other cruel, inhuman or degrading treatment or punishment, it nevertheless notes the absence of any definition of torture and particularly any reference to mental torture.

Indeed the articles quoted by the authors of the report under the heading of "*The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment*" – namely articles 31, 32 and 34 of the Criminal Code – protect the child solely "*from the use of unjustifiable force for his correction*" (§ 61, CRC/C/3/ Add.39).

Thus OMCT notes that physical suffering provoked by a physical action (use of force) is taken into account (even though it would be appropriate to reconsider the tolerance of the allegedly justified use of force, as would appear from the articles quoted above), the psychological or moral suffering endured by a child following mental torture is ignored.

12. Even though the Constitution, as indicated in § 27 of the report

(CRC/C/3/Add. 39), provides that Parliament shall adopt the necessary measures to ensure that minors are not subjected to such practices, the report does not mention the adoption of any laws in that respect.

Ghana is not a party to the Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee should thus encourage the authorities to ratify this international instrument and to draw up a definition of torture which would take into account not only the physical but also the mental suffering of the child.

13. OMCT welcomes the fact that Ghanaian legislation provides for relatively severe penalties for those responsible for crimes against children. However, examination of some of the provisions of the penal legislation raise a number of fears concerning the effective protection of the rights of the child under the Convention.

The OMCT notes in this connection :

a) the existence of penalties which are not proportionate to the gravity of the crimes committed against children;

b) the annihilation of criminal responsibility in certain circumstances;
c) the existence of discrimination based on the age and sex of minors.

a) Penalties not proportionate to the gravity of the crimes committed against children.

14. On reading the Criminal Code OMCT noted that certain penalties are not proportionate to the gravity of the crime committed. This disproportion is all the more a matter of concern since lesser breaches of the law are punishable by sanctions much more serious than those applicable in the case of certain offences committed against children.

Thus article 71 of the Criminal Code provides for up to 3 years' imprisonment for anyone unlawfully exposing or abandoning a child under the age of 7 years "*in such a manner that any harm is likely to be caused*". But article 172 (1, b) of the Criminal Code provides that anyone causing intentionally or unlawfully by any means whatsoever damage to property exceeding £100 incurs a penalty of up to 10 years' imprisonment.

Article 231 of the Criminal Code provides that “*Every officer of a prison who uses any kind of torture to a prisoner, or who is guilty of cruelty to a prisoner, shall be guilty of a misdemeanour.*” In such a case the person concerned is sentenced to a penalty which may not exceed three years’ imprisonment. Torture or any other form of cruel, inhuman or degrading treatment would appear to be considered by Ghanaian legislation as a misdemeanour.

15. OMCT would like the Committee to request the authorities to provide more information concerning this evident lack of proportionality. Moreover, taking into account article 231 of the Criminal Code, Ghana should also make clear what other penalties, if any, are imposed in case of torture, attempt to torture or any other act constituting complicity or participation in the act of torture.

16. The Committee should invite the authorities to ensure that a State agent or official who has carried out or ordered acts of torture against a child, in the sense of article 1 of the Convention, be severely punished in view of the gravity which is attached to the offence of torture and the

age of the victim. The authorities should also ascertain that the sanctions applicable to those responsible for such acts should be such as to act as a deterrent.

b) Annihilation of criminal responsibility in certain circumstances

17. In § 11 of its report Ghana explains that “*Culturally it is felt more appropriate for abuse and neglect to be dealt with at a family and community level.*” It also mentions that child protection laws are “*rarely invoked*”. While primary responsibility for bringing up a child rests jointly on both parents, as recognised in article 18 of the Convention on the Rights of the Child, article 19 of the same Convention provides that the State shall protect the child from all forms of ill-treatment on the part of the child’s parents or any other person who has care of the child. It would, however, appear that in this respect the State has renounced the obligations incumbent upon it under the Convention which quite obviously implies certain grave risks for Ghanaian children.

18. According to § 61 of the State's report, the child is protected by articles 31, 32 and 34 of the 1960 Criminal Code "against the use of unjustifiable force for his correction". Yet article 41 (a) of the Criminal Code recognises the right of a parent or any other person in *loco parentis* to inflict reasonable corporal punishment on a child below the age of 16.

This article provides that :

"A blow or other force, may be justified for the purpose of correction, as follows -

(a) a father or mother may correct his or her legitimate or illegitimate child, being under sixteen years of age, or any guardian, or person acting as a guardian, his ward, being under sixteen years of age, for misconduct or disobedience to any lawful command;"

And although paragraph (f) of the present article provides that :

(f) "no correction can be justified which is unreasonable in kind or in degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no

correction can be justified in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted"

OMCT thus wonders what is meant by "unreasonable in kind or in degree" and considers that this expression leaves too much latitude to the persons endowed with parental authority or to any other person responsible for the minor.

The enjoyment of parental authority may in no sense annul the responsibility of parents or any other person in *loco parentis* in the case of ill-treatment or abuse to which a child may be subjected. It is inconceivable that an act implying penal responsibility for its author, when the latter is not a member of the family circle, may be committed with full impunity by a parent or any person in *loco parentis*.

19. OMCT considers it essential that the Ghanaian delegation clarify the measures adopted in order to guarantee the physical and psychological safety of minors both within the family, the school and any other establishment.

It should be noted that in the absence of precise measures on the subject, this provision, which could apparently be applicable to children deprived of liberty, would appear to contravene article 37 of the Convention and article 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted by the General Assembly of the United Nations in its resolution 45/113 of December 14th 1990) which provides that *“All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment (...) or any other punishment that may compromise the physical or mental health of the juvenile concerned.”*

OMCT would like the Committee to request that the authorities provide more information concerning the distinction contained in article 41 (a) of the Criminal Code between the legitimate and illegitimate child. They should make it clear whether from the judicial, administrative or social point of view, there is a discriminatory practice between children based solely on whether or not they were born in wedlock.

20: OMCT stresses its concern with respect to the excessive power granted by law to the agents of the State, this power being even liable to favour impunity in the case of an offence.

Indeed, article 30 (1) of the Criminal Code provides that *“For the purposes of this Code, force or harm is justifiable which is used or caused in pursuance of such matter of justification, and within such limits, as are hereafter in this Chapter mentioned.”* There follows an enumeration (article 31) of reasons for which force and harm are justified, the term “harm“ being defined as : *“any bodily hurt, disease, or disorder, whether permanent or temporary”*.

Thus agents of the State, whether officers of the police, judiciary or any other official authority (articles 34, 35, 36 and 37) may use force in the exercise of their office.

Article 34

“Whoever is authorised to execute any lawful sentence or order of a Court may justify the force mentioned in the sentence or order.”

Article 35

“Whoever is authorised as a peace officer, or in any judicial or official capacity, to keep the peace or preserve order at any place, or to remove or exclude a person from any place, or to use force for any similar purpose, may justify the execution of his authority by any necessary force.”

Article 36

“Whoever by law may, with or without warrant or other legal process, arrest and detain another person may, if the other person, having notice or believing that he is lawfully arrested, avoids arrest by resistance or flight or escapes or endeavours to escape from custody, use any force which is necessary for his arrest, detention, or recapture, and may, if the arrest is made in respect of a felony, kill him, if he cannot by any means otherwise be arrested, detained, or retaken.”

Article 37

“For the prevention of, or for the defence of himself or any other person against any crime, or for the suppression or dispersion of a riotous or unlawful assembly, a person may justify any force or harm

which is necessary, extending, in case of extreme necessity, even to killing.”

Article 44

“Every person who is authorised to use force of a particular kind against a person may further use such additional force, as is reasonably necessary for the execution of his authority.”

It is therefore evident that these provisions could have particularly grave consequences as they are liable to allow State agents to claim they were acting on orders in order to diminish their responsibility, including cases of death on pretext of extreme necessity, which finally can only contribute to creating conditions encouraging a climate of impunity.

21. More particularly with respect to torture of children, OMCT notes that the report (CRC/C/3/Add. 39) does not state what possibilities of complaint are offered to minors who are victims of ill-treatment on the part of officials in authority (such as agents of the public forces, staff of penitentiary establishments, etc.).

The Committee should ask the authorities to provide clear information on the following points :

- does the Public Prosecution Service initiate proceedings automatically or do such proceedings depend on a complaint or denunciation by the victim?
- what is the deadline under the statute of limitation for starting legal procedure in case of torture?
- what is the deadline, under the statute of limitation, for the state's ability to act?

Similarly, the report fails to mention eventual guarantees concerning the investigation of such a complaint as soon as possible, nor of any mechanism ensuring its objective examination by a judicial or other impartial and independent authority.

In cases where legislation recognises and protects such rights, the authorities should make it clear what are the existing means of appeal are as well as the measures adopted to avoid the officials involved exercising pressure on the complainants. Moreover, more detailed information is required concerning the existence of a recognised right of child victims or their families to reparation and fair and adequate compensation.

Finally, OMCT deplores the fact that the Government's report does not indicate what measures have been adopted in order to ensure the rehabilitation and reintegration of child victims of abuse.

c) Existence of discrimination based on the age and sex of minors

22. OMCT is also gravely concerned over the sanctions provided for other crimes against children for which the Criminal Code not only lays down penalties that are not proportionate to the crime, but are discriminatory in terms of age and sex .

OMCT notes that rape, defined in article 98 of the Criminal Code as any sexual relation with a woman, regardless of age, without her consent, is termed a first degree felony and is punished by imprisonment for life or any lesser term.

However OMCT deplores the fact that an act which cannot be termed other than rape should entail lesser sanctions when the victim is a child.

Article 101 of the Criminal Code provides that any person having sexual relations

with any female under 10 years, with or without her consent, is guilty of a second degree felony punishable by a period of imprisonment not exceeding 10 years.

In addition, article 102 (1) of the Criminal Code provides that any person having unlawfully sexual relations with a female child aged 10 years or more but under the age of 14, with or without her consent, is guilty of a misdemeanour punishable by a term of imprisonment not exceeding 3 years.

Moreover clauses (2) and (3) of this same article provide a double restriction to the prosecution of this crime :

- a) it is possible for the defence to plead that the defendant could have reasonably believed that the female child was 14 or older;
- b) the law imposes on the victim a three months' limitation for initiating legal proceedings.

23. OMCT fears that these age limits as provided by these various articles imply an unwarranted discrimination and appear to contravene Convention and the

Constitution, since they appear to fail to protect minors aged over 14 years.

24. OMCT notes that articles 98, 101 and 102 (1) of the Criminal Code provide for different sanctions for crimes with the same characteristics, so that the author of a crime qualified under articles 101 and 102 as "defilement", constituting rape, would be liable to a lesser penalty than that provided under article 98 for the crime of rape. This would explain the fact that according to information received, in practice, those responsible for rape are rarely, if ever, subjected to penalties proportionate to the gravity of the crime.

25. OMCT also notes that contrary to the definition of rape contained in article 98 of the Criminal Code, articles 101 and 102 (1) refer to the crime of rape when there is no consent. They provide for a lesser penalty than that which should be applied in similar cases in accordance with article 98 of the Criminal Code. The fact that the amended law relating to the Criminal Code (1993, law n° 485) lays down the legal age for sexual consent as 14 years (§ 34. CRC/C/3/Add.39) leads one to conclude that girls below that age

should not be considered as having reached a sufficient degree of maturity, and that being so, the penal legislation should in no case take into account the presumed consent of the child.

26. The use of the adjective “unlawfully” in article 102 (1) also gives rise to concerns. Are we to suppose that this means that a situation is lawful if the protagonists are man and wife and consequently such sexual relations are not punishable? This would imply that the sexual act within an early marriage (§ 35, CRC/C/Add. 39) would be considered as an act committed legally and consequently would not be sanctionnable.

27. Another cause for concern is the restriction relating to the fact that the author of the crime could have believed that the female child was older than 14, which seems a most arbitrary restriction. The exterior signs of puberty may in no case be used as objective criteria for defence or as circumstances extenuating the responsibility particularly in the case of rape.

28. OMCT thus stresses its concern that

an act which cannot be termed other than rape is considered as a second degree offence, on the pretext of the presumed consent of a person who, in the eyes of the law, seems to lack discernment, as is the case of a child under 14 years.

29. Finally OMCT notes that these provisions do not cover the case where the victim is a male child. Even if, as seems likely, article 105 of the Criminal Code relating to unnatural sexual relations were applicable in such a case, that article does not provide for age limits as defined under articles 101 and 102 of the Criminal Code. Moreover, according to that same article the act would be considered as a first degree felony punishable by imprisonment for life or any lesser term. If article 105 were applicable, this would be tantamount to saying that sexual relations with a male child without his consent constitute a first degree felony while the same crime, committed against a female child is considered as a second degree felony if the victim is aged under 10 years and as a misdemeanour if the victim is over the age of 10 but under the age of 14.

30. The Committee should consequently encourage the authorities to amend the

legislation so that any crime against children (article 1 of the Convention), especially a sexual crime, be considered as particularly grave and should entail proportionately grave sanctions.

The Committee should also insist that all discrimination be removed from the statutes. It should request the authorities to ensure that the term of limitation for crimes committed against children, and particularly crimes of a sexual nature, be extended until such time as the victim is fully capable of reporting the crime or starting legal proceedings without any form of constraint. Finally, the Committee should encourage the authorities to amend the legislation so that there is no confusion similar to that attached to articles 98, 101 and 102 of the Criminal Code.

31. Article 106 (1) provides that a brothel keeper inducing a minor to lead a dissolute life is liable to imprisonment of up to life. But clause (2) of the same article restricts the scope of that principle by accepting that a means of defence may be to claim that the accused had serious grounds for believing that the minor in question was aged 14 or over.

OMCT considers that this provision is contrary both to the Convention and to the Ghanaian Constitution inasmuch as it does not protect children of over 14. Besides, reading this provision gives rise to the following questions:

- what are the reasons justifying the absence of protection under the law of minors aged 14 and over in matters of prostitution?
- what is the situation relating to prostitution involving male minors?

Once again OMCT considers that the restriction to the sanction provided under clause (2) based on an “apparent” age is highly arbitrary and may be a source of discrimination.

32. In matters of procuring, article 107 of the Criminal Code provides for imprisonment of up to 3 years and makes a distinction between categories of victims: “females under twenty-one years of age”, “females”, and “women and girls”.

In view of this age limit fixed at 21 years, OMCT is concerned by the fact that anyone guilty of procuring involving a

child, in accordance with article 1 of the Convention, can be punished by a sanction corresponding to the commission of a misdemeanour.

This type of offence should be punishable by more severe sanctions in order to act as a deterrent.

33. Article 108 of the Criminal Code provides that any person having charge or custody of a girl under the age of 14 who encourages or makes such a child perform acts of a sexual nature (seduction or prostitution) shall be liable to a penalty not exceeding 3 years' imprisonment. Article 110 of the Criminal Code provides in such a case for a possible withdrawal of parental authority and the placing of the victim under guardianship until the age of 21 or less.

OMCT wishes to stress its concern at the absence of protection for male children in connection with procuring on the hand and on the other hand at the extreme leniency of the penalties provided under articles 107 and 108 of the Criminal Code

which would obviously failed to act as a deterrent.

This is all the more serious in connection with the sanction provided by article 108, the leniency of which does not take into account the age of the victim or the gravity of the offence and the particular nature of the person responsible. This, moreover, is in contradiction with the principle according to which persons having the charge or guardianship of a child would be guilty of an offence against that child and would be liable to incur a heavier penalty than in the case of a third person.

34. The Republic of Ghana should be called upon to review its legislation in order to ensure the application of sanctions liable to discourage effectively that type of crime, including the sexual exploitation of children, whether male or female.

The authorities should ensure that with respect to these crimes, the legislation should take into account the definition of the child as given in article 1 of the Convention and the Constitution of 1992.

V. Children in conflict with the law

35: In § 38 of its report the State mentions that *“The juvenile court process is only available to juveniles, who are defined as being under 17 years of age.”* Paragraph 9 states that there is *“single age definition of a child”* and according to the Constitution a child is *“a person under the age of 18”*.

But article 295 of the Code of Criminal Procedure stipulates that *“Sentence of death shall not be pronounced on or recorded against a juvenile offender, that is to say, an offender who, in the opinion of the Court, is under the age of 17 years.”*

OMCT consequently wonders what is the situation of persons above the age of 17 but not yet 18 and considered as minors according to the Constitution :

- are they liable to incur such a penalty?
- what happens to a minor between 17 and 18 years convicted of murder, in view of article 46 of the Criminal Code which provides the death penalty for the perpetrator of such a crime? Is there a substitute penalty and if so, what?

On the other hand, OMCT notes that the Constitution of 1992 provides, in article 19 (15, b), that cases against persons under the age of 18, manifestly considered as minors, are heard *in camera*. It is therefore obvious that the age limit of 17 years, as laid down in article 295 the Code of Criminal Procedure contradicts this provision.

In view of the single definition of the child, Ghana should clarify whether this age limit will be maintained or amended accordingly so that both the penal and the civil majority is fixed at 18 years and that the legislative provisions referring thereto are amended.

36: On the question of the minor’s age, articles 295, 341 (1) as well as article 343 of the Code of Criminal Procedure provide the Court with discretionary powers. In the hypothetical case of a minor whose birth has not been registered, OMCT would like to know what means are available to the court in order to determine accurately his/her age. Is it possible that a minor, whose age had not been scientifically

determined, is tried by an ordinary court?

In the absence of information on the subject OMCT considers it essential that the authorities provide the Committee more generally with information concerning the system of registration of minors in conflict with the law – particularly as concerns admission, transfer and release – and up-dated statistics while respecting the confidential nature of the police file.

37. Moreover the subject of determining a minor's age article 343 of the Code of Criminal Procedure provides that when a person is brought before a court and it seems to the court that that person is a minor, the Court in question shall inquire into the age of the person concerned. However, that same article provides that no order or judgement shall be deemed invalid by reason of proof a posteriori that the age had not been correctly reported to the Court.

OMCT consequently wonders whether it is possible for a minor to be sentenced to the same penalty as an adult and possible be submitted to detention conditions

similar to those of an adult. In such a case does the minor concerned have the possibility of appealing against the decision?

38. OMCT recalls that by virtue of article 40 (2, b, v) of the Convention, a minor recognised as having infringed the penal law "*can have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority (...)*". But it should be noted that article 351 (4) of the Code of Criminal Procedure allows the minor, his parents or tutor to appeal to the Circuit Court against any decision taken with respect to him following the application of articles 346, 347 or 349. Such a possibility does not seem to exist with respect to article 343. Consequently the Committee should question the authorities concerning the possibility of appeal effectively available to minors to have the decision repealed or quashed, whatever the degree of the procedure involved.

39. In case of imprisonment article 314 of the Code of Criminal Procedure provides that such a penalty cannot be imposed upon a person under the age of 15 years

or, in the case of a district or local tribunal, under the age of 17 years. But article 346 (2) provides that no juvenile under the age of 17 shall be sentenced to imprisonment by a juvenile court.

OMCT is therefore concerned that the children may be sentenced to imprisonment according to the type of tribunal, which constitutes a discrimination.

OMCT has the following concerns :

- what is the minimum age at which a juvenile may be effectively sentenced to imprisonment?
- in view of the differences in the age limit depending on the type of tribunal, is it possible for a minor to be sentenced to a penalty similar to that of an adult? And if that were the case, what possible channels of appeal do they have?
- can courts other than juvenile courts – district or local courts – try children (a possibility which is envisaged in article 341 (1) of the Code of Criminal Procedure) and in paragraph 128 of the State report?
- what is the situation with respect to community tribunals set up, according

to § 128 of the State's report "*in order to try juvenile cases*"?

- what are the measures effectively adopted by the authorities in order to set up juvenile courts in every "place, district or area concerned" (article 341 (1) (b))?
- do the judges of these various instances receive adequate training in questions of administration of juvenile justice (training in the Convention on the Rights of the Child)?

It is essential that all State employees dealing with minors in conflict with the law or called upon to intervene in the application of the tribunals' decisions should receive specific training.

40. According to § 127 of the State's report referring to section 341 of the Code of Criminal Procedure, "no court of summary jurisdiction other than a juvenile court shall hear any charge against a juvenile (...)".

OMCT wonders to what extent this provision can be effectively applied in view of the fact that according to article 314 of the Code of Penal Procedure "*A Court shall not impose a sentence of imprisonment on a person*

who is under the age of fifteen years, or in the case of a District Court, under the age of seventeen years.”

41. In matters of arrest or detention article 14 (3) of the Constitution provides that a person arrested or detained should be brought before a court within 48 hours. Article 14 (4) of the Constitution provides that if the person concerned is not tried “*within a reasonable period*” he shall be released, at least provisionally.

In view of the absence of information in the report concerning the duration of provisional or preventive detention, it seems appropriate for the government to provide more ample information on the following points :

- what is to be understood by “*reasonable period*”?
- do the provisions of the Code of Criminal Procedure confirm, or better still, clarify these principles?
- is the decision to extend police custody and provisional or preventive detention taken exclusively by the judge? How many times can such decisions be authorised?
- is a medical examination carried out

during police custody or its expiry? Is such an examination carried out at the request of the person detained or a third person?

OMCT wishes to recall that police custody and provisional or preventive detention are temporary judicial measures and must consequently be reduced to a minimum. Moreover, the authorities should guarantee that any child placed in police custody be made to undergo a medical examination upon arrival at the place of detention and that this examination be entered into the appropriate register.

42. OMCT regrets the absence of information in the report concerning the legal aid granted to a minor or any appropriate assistance for his defence; the right to inform his family; the right to be informed of the decisions concerning him and of their motives in a language known to him.

OMCT recalls that by virtue of article 9 of the Convention on the Rights of the Child, all parties concerned – including the child – should have the possibility of taking part in the deliberations and making their opinion known.

43. In § 75 of the State report, it is stated that “*Children living and working on the streets is a growing phenomenon in Accra, Kumasi and other regional capitals.*” But article 349 of the Code of Criminal Procedure provides that any police officer may bring a juvenile before a juvenile court if he has sound reasons to believe, inter alia, that (f) he is a vagabond and (g) he is engaged in vagrancy or begging.

In reading this provision, OMCT considers that the Committee should ask the authorities whether vagrancy and begging by minors are considered as penal offences and what would be the penalty applicable in such a case.

The Committee should urge the authorities to “depenalize” such behaviour.

44. On matter of placing minors in institutions, the reports mentions the existence of industrial schools, borstal type institutions and remand homes for juveniles (nine in all). According to § 132 of the report, the number of children placed in institutions or detained is very small : it is estimated at 100.

OMCT would like to know whether the children detained, or merely placed in institutions, are effectively separated from each other. More ample information would also be necessary concerning these various establishments, the conditions prevalent in them (hygiene, health), the possibility provided to minors for education, reintegration and readaptation, the training of staff, etc. The authorities should also inform the Committee of the measures taken to carry out the obligation arising out of article 25 of the Convention.

45. Moreover, § 130 of the report states that a young delinquent may be detained “for three years” in one of these institutions and that “*In terms of justice, this may mean that a juvenile receives a longer sentence that he would if he were an adults.*”

OMCT would consequently like to know what are the measures taken by the authorities in order to avoid that young persons being subjected to longer sentences than if they have been adults? In the same paragraph, reference is made to the fact that juveniles have pretended to be older than they are. Again, what are the means used by the authorities to inquire in a accurate manner into the age of the minor?

VI. Conclusions

46. While recognising the difficulties hampering the implementation by Ghana of the Convention on the Rights of the Child, OMCT notes with concern that certain principles of the Convention, including the principle of non discrimination, are not reflected in the domestic legislation and that certain provisions of the national penal legislation are in contradiction with the basic standards of the 1992 Constitution.

47. OMCT is gravely concerned by the nature of the penalties imposed on sexual crimes for which the Criminal Code introduces not only discriminations based on the age and sex of the minors, but also provides sanctions which are not proportionate to the gravity of the crime.

It is indispensable that the authorities amend the penal legislation in such a manner that any crime of this nature perpetrated against the child (article 1 of the Convention and article 28,5 of the Constitution) be considered as particularly grave and be punished by proportionate sanctions liable to discourage

such crimes including sexual exploitation of minors.

48. OMCT recommends the promulgation of provisions expressly forbidding torture and other cruel, inhuman and degrading forms of treatments including the female circumcision and the system of Tro Kosi as well as any form of corporal punishment within the family. It is essential that Ghana should draft a definition of torture which would take into account the physical as well as the mental suffering which a child may endure. In this connection, it will be appropriate for Ghana to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The authorities should ensure that children victims of torture should have the possibility of taking legal action, that those responsible for torture or ill-treatment be punished and the victims receive appropriate compensation and redress as well as rehabilitation.


49. In the matter of administration of justice for minors, OMCT insists on the

need to grant a minor treatment which would take into account his age in conformity with the Convention and the 1992 Constitution.

The authorities should also ensure that the age of criminal responsibility be raised.

50. OMCT insists on the need to introduce a system of administering

juvenile justice aimed at the child, taking into account his superior interest and integrating – besides the principles and standards of the Convention – other relevant rules adopted by the UN on the subject including “The Beijing Rules”, The Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. ■



Concluding observations by
the UN Committee on
the Rights of the Child:
GHANA

① The Committee considered the initial report of Ghana (CRC/C/3/Add.39) at its 376th to 378th meetings (CRC/C/SR.376-378), held on 22 and 23 May 1997 and adopted* the following concluding observations:

A. Introduction

② The Committee welcomes the initial report and the written answers to the list of issues (CRC/C/Q/GHA/1) submitted by the State party. The Committee expresses its satisfaction at the additional information provided by the State party in the course of the dialogue with the Committee, during which the representatives of the State party indicated in a self-critical manner not only the policy and programme directions, but also the difficulties encountered in implementing the Convention.

B. Positive aspects

③ The Committee notes the establishment in 1979 of the Ghana National Commission on Children. It also welcomes the adoption of a National Plan of Action which has been incorporated into the National Development Policy Framework.

④ The Committee notes with appreciation that the State party promulgated a new Constitution in 1992 which includes specific provisions relating to children's rights. It also notes that the State party, through a multisectoral committee, in 1995, engaged in a comprehensive law reform process to ensure full compatibility between national laws and the Convention on the Rights of the Child.

⑤ The Committee welcomes the establishment in 1992 of the Commission on Human Rights and Administrative Justice which is also involved in the protection of the human rights of children.

C. Factors and difficulties impeding the implementation of the Convention

⑥ The Committee recognizes the economic difficulties faced by the State party, especially the constraint posed by its structural adjustment programme. Furthermore, the Committee notes that certain traditional practices and customs, prevailing particularly in rural areas, hamper the effective implementation of the provisions of the Convention, especially with regard to the girl child.

* At the 398th meeting, held on 6 June 1997.

D. Principal subjects of concern

7. While taking note of the measures undertaken in the field of law reform, including the intention to adopt a Children's Act, the Committee notes with concern that currently several provisions of the law are incompatible with the provisions and principles of the Convention, especially in the fields of civil rights, adoption and juvenile justice. The Committee also remains concerned about the conflict between customary law and the principles and provisions of the Convention in some areas such as marriage.

8. The Committee notes with satisfaction the existence of government bodies dealing with the welfare of children at the national and local levels; it nevertheless expresses its concern that there is insufficient coordination between them to develop a comprehensive approach to the implementation of the Convention.

9. While acknowledging the work undertaken by the Ghana National Commission on Children, the Committee is concerned about its weak institutional and financial status.

10. The Committee is concerned at the lack of a systematic mechanism to monitor progress in all areas covered by the Convention and in relation to all groups of children in urban and rural areas, especially during the current process of decentralization. The Committee is also concerned about the State party's limited capacity to collect and process data, as well as develop specific indicators to evaluate progress achieved and assess the impact of policies adopted on children, in particular the most vulnerable groups of children.

11. With regard to the implementation of article 4 of the Convention, the Committee notes with concern the absence of policies and measures to fully guarantee economic, social and cultural rights of children "to the maximum extent of available resources".

12. In the light of article 2 of the Convention, the Committee remains concerned about the persistence of discriminatory attitudes against some groups of children, especially girls and children with disabilities as well as children living in rural areas, which often results in limited access to basic social facilities such as health and education.

13. Concern is expressed by the Committee at the insufficient measures undertaken to ensure the effective implementation of the general principles (arts. 2, 3, 6 and 12) of the Convention on the Rights of the Child in relation to legal, judicial and administrative decisions as well as to the political decision-making process.

14. The Committee expresses its concern regarding the lack of sufficient awareness of the principles and provisions of the Convention in all parts of society, among adults and children alike. It also is concerned by the lack of sufficient training for professional groups working with or for children such as judges, lawyers, magistrates, law enforcement personnel, army officials, teachers, school managers, health personnel, social workers, officials of central and local administrations and personnel of child-care institutions.

15. In relation to article 7 of the Convention, the Committee is concerned that in many rural areas regulations on birth registration are not fully implemented and that children who are not registered may be seriously disadvantaged in the enjoyment of their rights.

16. The Committee is deeply concerned by the institutionalized use of corporal punishment as a means of discipline, particularly in schools, as well as at the absence of a comprehensive law that clearly prohibits the use of both mental and physical torture or other cruel, inhuman or degrading treatment or punishment against children.

17. In light of article 17 of the Convention, the Committee notes with concern that no mechanism exists to protect children from being exposed to harmful information, including pornography.

18. The Committee further notes with concern the inadequacy of existing laws in protecting children who are "adopted" – a situation which has led to abuses such as exploitation through domestic labour, particularly of girls.

19. The Committee is also concerned by the increase in the number of children living and/or working on the street in major cities. It is also worried by the violence that is often directed against them. The Committee is further concerned by the lack of statistical data and studies on such children.

20. The Committee is concerned by the persistence of malnutrition and the apparent difficulty in reversing this negative trend. It is also worried by the rapid spread of HIV/AIDS throughout the country and its devastating impact on children.

21. The Committee remains concerned at the persistence of traditional attitudes and harmful practices, such as female genital mutilation, early marriages, teenage pregnancies and Trokosi (ritual enslavement of girls).

22. With regard to the right to education (arts. 28 and 29), while noting that the principle of free, universal and compulsory basic education for all children is recognized by the State party, the Committee is concerned that this fundamental right is not yet fully and equally implemented throughout the country. Furthermore, the Committee is concerned about the low level of school enrolment and the high drop-out rates, especially among girls, the lack of learning and teaching facilities and the shortage of trained teachers, particularly in rural areas.

23. In light of articles 2, 3 and 22 of the Convention, the Committee is concerned about the difficulties encountered by refugee children in securing access to basic education, health and social services.

24. The Committee is concerned about the insufficiency of legal and other measures to prevent and combat economic exploitation of children adequately, especially in the informal sector.

25. The Committee is concerned by the recent emergence of substance abuse among children and the limited prevention and rehabilitation measures and facilities to combat this phenomenon.

26. The Committee is concerned by the absence of information and data concerning sexual abuse and exploitation, including in the family. In this regard, it is also worried about the fact that children aged between 14 and 18 years do not benefit from appropriate legal and social protection measures.

27. The situation in relation to the administration of juvenile justice and in particular its compatibility with articles

37, 39 and 40 of the Convention, as well as other relevant international standards, is a matter of concern. The Committee remains particularly concerned about, inter alia, violations of the rights of the child in detention centres, the low age (7 years old) for criminal responsibility and the inadequacy of existing alternative measures

E. Suggestions and recommendations

28. The Committee recommends that the comprehensive law on the protection of the child currently being drafted be in conformity with the principles and provisions of the Convention and that it be finalized and adopted in the near future.

29. The Committee recommends that the State party strengthen coordination among the various governmental bodies and mechanisms involved in children's rights, at both the national and local levels, with a view to developing a comprehensive policy on children and ensuring effective evaluation of the implementation of the Convention. The Committee encourages the State party to pursue its efforts to strengthen the

institutional framework designed to promote and protect human rights in general and the rights of the child in particular. In this regard, it recommends that the role and resources of the Ghana National Commission on Children be reinforced within as well as outside the government sphere. It encourages the State party to further cooperate closely with non-governmental organizations (NGOs). Furthermore, the Committee encourages the State party to ratify in the near future other major international human rights treaties, inter alia the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

30. The Committee also recommends that the State party give priority attention to the development of a system of data collection and analysis as well as to the identification of appropriate disaggregated indicators with a view to addressing all areas of the Convention and all groups of children in society. Such mechanisms can play a vital role in systematically monitoring the status of children and evaluating progress achieved and the difficulties hampering the realization of children's rights. They can be used as a

basis for designing programmes to improve the situation of children, particularly the most disadvantaged, including children with disabilities, the girl child, children ill-treated and abused within the family and in other institutions, children deprived of liberty, children who are victims of sexual exploitation, refugee children and children living and/or working on the street. It is further suggested that the State party request international cooperation in this regard.

31. In the light of articles 2, 3 and 4 of the Convention, the Committee recommends that priority be given in budget allocations to the realization of the economic, social and cultural rights of children, with particular emphasis on health and education, and on the enjoyment of these rights by children, particularly the most disadvantaged. In this regard, the Committee suggests that the authorities responsible for overall planning and budgeting continue to be fully involved in the activities of the Ghana National Commission on Children, with a view to ensuring that their decisions have a direct and positive impact on the budget.

32. The Committee further recommends that all appropriate measures, including public information campaigns be undertaken to prevent and combat all forms of discrimination against girls and children with disabilities, especially those living in rural areas, with a view, inter alia, to facilitating their access to basic services.

33. It is the Committee's view that further efforts must be undertaken to ensure that the general principles of the Convention, in particular "*the best interests of the child*" (art. 3) and the participation of children (art. 12), not only guide policy discussions and formulation and decision-making, but also are appropriately integrated into any judicial and administrative decisions, as well as in the development and implementation of all projects and programmes which have an impact on children.

34. The Committee recommends that the State party launch a systematic information campaign, for both children and adults, on the Convention on the Rights of the Child. Consideration should be given to the incorporation of the Convention in the curricula of all educational institutions and appropriate

measures should be taken to facilitate access by children to information concerning their rights. The Committee also suggests that the State party further direct efforts to provision of comprehensive training programmes for professional groups working with and for children such as judges, lawyers, magistrates, law enforcement personnel, army officials, teachers, school managers, health personnel, social workers, officials of central and local administrations and personnel of child-care institutions.

35. In light of article 7 of the Convention, the Committee recommends that special efforts be directed to development of an effective system of birth registration, to ensure the full enjoyment of their fundamental rights by all children. Such a system would serve as a tool in the collection of statistical data, in the assessment of prevailing difficulties and in the promotion of progress in the implementation of the Convention.

36. In light of articles 3, 19 and 28.2, the Committee strongly recommends that corporal punishment be prohibited by law and that references to disciplinary

measures using physical force, such as caning, be withdrawn from the Teachers Handbook. It further recommends that authorities develop and implement appropriate creative and socio-educational measures of discipline which respect all the rights of the child.

37. The Committee recommends that the State party take all appropriate measures, including legal ones, to protect children from harmful information, including in the audio-visual media as well as in media using new technologies .

38. With a view to fully protecting the rights of adopted children, the Committee recommends that the State party review its adoption laws in the light of article 21 of the Convention. Furthermore, the Committee recommends that the State party consider ratifying the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993.

39. The Committee encourages the State party to undertake to prevent and combat the phenomenon of children working and/or living on the street by,

inter alia, engaging in research and collection of data, promoting integration and vocational training programmes as well as guaranteeing equal access to health and social services.

40. The Committee recommends that the State party take all appropriate measures, including through international cooperation, to prevent and combat malnutrition.

41. The Committee suggests that the Government strengthen its information and prevention programmes to combat HIV/AIDS and sexually transmittable diseases (STD) as well as discriminatory attitudes towards children affected by or infected with HIV/AIDS. The Committee further recommends that the State party pursue and strengthen its family planning and reproductive health programmes, including for adolescents.

42. The Committee shares the view of the State party that serious efforts are required to address harmful traditional practices such as early marriage, female genital mutilation and Trokosi. The Committee recommends that all legislation be reviewed to ensure its full

compatibility with children's rights and that public campaigns involving all sectors of society be developed and pursued with a view to changing attitudes. All appropriate action in this regard should be taken on a priority basis.

43. In accordance with article 28 (a) of the Convention, the Committee encourages the State party in its efforts to make primary education free, compulsory and available to all. It also encourages the Government to implement measures to improve school enrolment and pupil retention, especially of girls. A system for the regular evaluation of the effectiveness of these and other educational measures, including of the quality of teaching, must be ensured. Further steps should be taken to develop guidelines for the participation of all children in the life of the school, in conformity with the principles and provisions of the Convention. In addition, the Committee recommends that, in light of the provisions of article 29 of the Convention and the United Nations Decade for Human Rights Education, the State party incorporate education on the rights of the child in school curricula. The State party may wish to consider reques-

ting further international cooperation for the implementation of the measures identified for the application of the provisions of articles 28 and 29 of the Convention.

44. In the spirit of articles 2, 3 and 22 of the Convention, the Committee recommends that the State party make all appropriate efforts to ensure easy and full access to basic services, including education, health and social services, to all children living under its jurisdiction.

45. The Committee encourages the State party to give specific attention to monitoring the full implementation of labour laws in order to protect children from being economically exploited. It further suggests that the authorities adopt explicit legislation and measures to protect children from exploitation through child labour in the informal sector. In addition, the Committee suggests that the State party consider ratification of ILO Convention No. 138 on minimum age for employment.

46. The Committee recommends that the authorities take all appropriate measures to prevent and combat drug and

substance abuse among children, such as public information campaigns, including in schools. It also encourages the State party to support rehabilitation programmes dealing with children victim of drug and substance abuse. In this regard, the Committee encourages the State party to consider seeking technical assistance from competent international organizations, such as the World Health Organization (WHO).

47. In light of article 34 and other related articles of the Convention, the Committee recommends that the State party reinforce its legislative framework to fully protect children from all forms of sexual abuse or exploitation, including within the family. It also recommends that the State party engage in studies with a view to designing and implementing appropriate policies and measures, including in the area of rehabilitation, to combat this phenomenon comprehensively and effectively. The Committee wishes in this regard to draw the attention of the State party to the recommendations formulated in the Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children held in Stockholm in 1996.

48: The Committee recommends that the State party consider undertaking a comprehensive reform of the juvenile justice system in the spirit of the Convention, in particular articles 37, 39 and 40, and of other United Nations standards in this field, such as the “Beijing Rules”, the “Riyadh Guidelines” and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Particular attention should be paid to protecting the rights of children deprived of their liberty, to raising the minimum age of criminal responsibility and to improving the quality and adequacy of alternative measures to imprisonment. Training programmes on the relevant international standards should be organized for all professionals involved with the juvenile justice system. The Committee further suggests that the State party consider

seeking technical assistance for this purpose from the High Commissioner/Centre for Human Rights and the Crime Prevention and Criminal Justice Division of the United Nations.

49. Finally, in the light of article 44, paragraph 6, of the Convention, the Committee recommends that the initial report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate on and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned NGOs. □

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