

**THE PROTECTION OF WOMEN'S RIGHTS IN AFRICA THROUGH
NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIs): A CASE STUDY
OF GHANA AND THE REPUBLIC OF SOUTH AFRICA**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS OF THE DEGREE LLM (HUMAN RIGHTS AND
DEMOCRATISATION IN AFRICA)**

BY

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Plagiarism Declaration

I, LINDA AYANDA MTSHALI do hereby declare that the dissertation '**The Protection of Women's Rights in Africa through National Human Rights Institutions (NHRIs): A Case Study of Ghana and the Republic of South Africa**' is my original work and that it has not been submitted for any degree or examination in any other university. Whenever other sources are used or quoted, they have been duly acknowledged.

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Dedication

To my amazing parents, Fayo and Mazi Mtshali – for always believing in me, supporting me and encouraging me to be the best that I can be. I thank God for the blessing and honour of being your daughter. Your prayers and love have blessed and continue to bless me. Ngiyabonga!

I also dedicate this work to my wonderful sister, Thokozani – a phenomenal woman who makes a positive impact and brings joy wherever she goes. Words are not enough, but I'll summarize it as follows: Thank you for everything!

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Acronyms

CSVR	Centre for the Study of Violence and Reconciliation
CGE	Commission on Gender Equality
CHRAJ	Commission on Human Rights and Administrative Justice
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
DVA	Domestic Violence Act
FGM	Female genital mutilation
GBV	Gender-based violence
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic and Social Rights
MOWAC	Ministry of Women and Children's Affairs
NGO	Non-governmental organizations
NHRI	National Human Rights Institution
RSA	Republic of South Africa
SAHRC	South African Human Rights Commission
UN	United Nations
VAW	Violence against women

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Chapter One: Introduction

1.1. National Human Rights Institutions (NHRIs)

Marginalized and vulnerable groups have always existed in societies. Such groups have always needed protectors of their rights. In democratic countries institutions have had to be established to ensure that the rights of these groups are protected. National Human Rights Institutions (NHRIs) are part of these institutions. NHRIs are important and vital as they 'serve as independent bodies for the protection and promotion of human rights'.¹

The United Nations (UN) describes NHRIs as 'a body established by a government through the constitution, or the law or decree, with the specific functions of promotion and protection of human rights'.² It is universally accepted that the benchmark of standards which all NHRIs ought to comply with are the Paris Principles³, adopted by the UN General Assembly in 1993.

The Paris Principles are a set of guidelines outlining minimum standards for NHRIs. These standards relate to the competence and responsibilities of the NHRIs; their composition; guarantees of their independence and pluralism; and the methods of their operation. The Paris Principles reinforce the principle that NHRIs play a significant role at national level 'in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms'.⁴ It is universally accepted that unless an NHRI adheres with the Paris Principles it cannot be accredited as an NHRI and its effectiveness is brought into question. Of particular significance for this paper is the minimum standard impacting on the mandate and powers of NHRIs. It is important that NHRIs have a broad mandate and that its powers in relation to the promotion and protection of human rights are not limited. This is relevant when addressing the issue of the protection of women's rights.

¹ J Matshekga 'Toothless bulldogs? The human rights commissions of Uganda and South Africa: A comparative study of their independence' (2002) 2 *African Human Right Law Journal* 68.

² R Murray *The role of National Human Rights Institutions at the international and regional levels: an African experience* (2007) 3.

³ The Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (Paris Principles), Resolution 18/134 of 20 December 1993.

⁴ Paris Principles (n 3 above).

As institutions that have recognition at national, regional and international level, NHRIs are in the best position to protect and promote women's rights in accordance with their overall purpose to protect human rights. NHRIs as semi-official institutions have the advantage of being able to have a relationship with government and non-governmental institutions (NGOs). Murray captures this as follows:

NHRIs are different from NGOs because they are presumed to occupy some semi-official position. On the other hand, an NHRI is presumed to be the watchdog of government and in order to do so, must not be in the pocket of government; it must ideally have integrity to step back and make decisions alone which may conflict with the views of the government.⁵

An NHRI is 'an official body working on the protection of human rights...and are in a unique position to influence politicians and civil servants' and thus 'guarantee a certain expertise...free from any politically partisan approach'.⁶ If this component of an NHRI is handled well there can be optimum results for the protection of women's rights throughout Africa. NHRIs can influence greater and speedier implementation of legislation protecting women's rights through state agencies and work with non-state actors as well. Although this balancing act is not an easy task, it is one that NHRIs need to undertake with care and diligence. In carrying out this task NHRIs should be aware of 'succumbing to the pressure'⁷ of other actors in order to ensure that it is effective in its promotion and protection of human rights. Though NHRIs cannot attend to all social ills and there must be realistic expectations placed on them viewed in light of the political, economic and social context in which they were created,⁸ the importance in women's rights protection cannot be downplayed.

⁵ Murray (n 2 above) 6.

⁶ N 2 above.

⁷ N 2 above.

⁸ R Murray 'National human rights institutions: criteria and factors for assessing their effectiveness' (2007) 25/2 *Netherlands Quarterly of Human Rights* 191.

1.2 Protection of women's rights

Human rights by their nature include the rights of women. Women have been marginalized for many years throughout the world based on their being women and through discrimination based on culture, patriarchal supremacy and at times religious traditions. Therefore there has been a need to try and eliminate every form of discrimination of women and to protect and promote women's rights. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) defines discrimination against women as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁹

On a regional level in Africa, the Protocol on the Rights of Women¹⁰ adopts a similar definition of discrimination against women as does CEDAW, save that the definition includes that discrimination against women includes 'differential treatment based on sex'.¹¹

Despite progress and success in the protection women's rights, women still face issues which negatively impact on their human rights. Work that has been done by NHRIs and NGOs has led to many states enacting legislation and policies for the protection of women's rights. For example both Ghana and the Republic of South Africa (RSA) have legislation that criminalizes domestic violence against women, something that was once unheard of in Africa because domestic matters were considered private and not involving the state.

Due to the issues that still face African women in Ghana and RSA there should be no false sense of complacency in the protection of women's rights because of the progress made. Some of the issues facing women are those that have been in existence and have either gotten worse or evolved. As a result of these existing issues the protection of women's rights continues to be an area of great importance. The fact that there are still bodies set up at international,

⁹ Adopted by the UN General Assembly in Resolution 34/180 of December 1979.

¹⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Protocol on the Rights of Women), adopted 11 July 2003.

¹¹ Art 1(h) Protocol on the Rights of Women.

regional and national levels to try and address issues facing women is testament of the fact that there is still a need to protect women's rights. The UN Secretary-General confirms that:

Violence against women and girls continues unabated in every continent, country and culture. It takes a devastating toll on women's lives, on their families, and on society as a whole. Most societies prohibit such violence — yet the reality is that too often, it is covered up or tacitly condoned.¹²

Sadly despite positive achievements for the protection of the rights of African women they still face violations of their civil and political, and socio-economic rights.

Protection of women's civil and political rights in Ghana and RSA are still a challenge due to violations of the rights to life,¹³ human dignity¹⁴, equality¹⁵ and protection from slavery and forced labour.¹⁶ The protection of socio-economic rights is also a concern due to issues relating to land, poverty, lack of access to basic health care and education. Furthermore there is the challenge of HIV/AIDS in Africa¹⁷ where women are most vulnerable to infections due to rapes, unfaithfulness of their partners and/or the inability, in certain situations, to negotiate for safe sex.

A recent conference attended by the author in Ghana at the Women's Human Rights Policy Advocacy Forum Series (Ghana's Women Conference)¹⁸ an official from the Ghanaian NHRI – Commission on Human Rights and Administrative Justice (CHRAJ) confirmed that although work had been done, there was still a greater role for each stakeholder to play in the protection of women's rights in Ghana. These practices include female genital mutilation (FGM) and trokosi.

¹² United Nations Development Fund for Women 'Violence against women – facts and figures' www.unifem.org/.../violence_against_women/facts_figures_violence_against_women_2007.pdf (accessed 16 August 2010).

¹³ Sec 11 of the Constitution of the Republic of South Africa Act 108 of 1996 (South African Constitution) and art 13 of the Constitution of the Republic of Ghana (Amendment) Act 1992 (Ghanaian Constitution).

¹⁴ Sec 11 South African Constitution and art 15 Ghanaian Constitution.

¹⁵ Sec 9 South African Constitution and art 17 Ghanaian Constitution.

¹⁶ Art 16 Ghanaian Constitution.

¹⁷ Houda Mejri 'Major Gains and Challenges for Women in Africa', 8 March 2005

http://www.uneca.org/eca_resources/news/030805acgd_dna.htm (accessed 16 August 2010).

¹⁸ Held by the Ark Foundation of Ghana on 9 September 2010.

The challenges that continue to face women should not cause discouragement but should lead to a vigorous protection of women's rights. It is in this role that NHRIs are of grave importance. As promoters and protectors of human rights, NHRIs play a pivotal role in ensuring that a culture of human rights is practiced in a country.

1.3 Problem statement

Harmful cultural practices, GBV, rape, HIV/AIDS, stigmatization/discrimination are just some of the issues that women in Ghana and RSA continue to face. These practices and incidents continue to violate their rights and raise the concern that there should be greater protection of women's rights. Unfortunately, women continue to be vulnerable and marginalized and are 'most often the ones whose human rights are violated'.¹⁹ Women's rights require special attention, promotion and protection due to their vulnerability and marginalization. The effect of continued degradation and discrimination of women has an adverse affect on society at large.

Though it would be unrealistic to expect a complete eradication of the violation of women's rights, it is important to ascertain the relationship between the protection of these rights and the existence of NHRIs. The problem therefore is the fact that violations of women's rights continue in Ghana and RSA and need to be addressed.

1.4 Research questions

The main question that this paper seeks to answer is whether the NHRIs have fulfilled their mandates by the protection of the rights of women in Africa and the impact made. In order to get an answer to this question the following areas will be examined:

- What are NHRIs and what the overall challenges faced by women in Africa and in particular women in Ghana and RSA?
- What are the mandates, powers and functions of CHRAJ and South African Human Rights Commission (SAHRC)? Do the mandates equip them to protect women's rights? What is their responsiveness to gender within their own structures? What are the relationships between these NHRIs with a general

¹⁹ Speech by Hillary Clinton 'Women's rights are human rights' on 5 September 1995 <http://www.famousquotes.me.uk/speeches/Hillary-Clinton/> (accessed 5 July 2010).

human rights mandate and institutions specifically set up to promote the rights of women in both countries such as the Ministry of Women and Children's Affairs (MOWAC) in Ghana and the Commission on Gender Equality (CGE) in RSA?

- What are the main human rights violations that are faced by women in Ghana and RSA? How have the mandates of these NHRIs enabled them to address these violations?
- Comparative analysis of CHRAJ and the SAHRC. What are their achievements, differences and/or similarities?
- What conclusions and recommendations can be drawn to assist in development of these NHRIs regarding the protection of women's rights?

These areas will be explored in light of the various instruments and agreements such as, the Paris Principles, constitutional provisions establishing the NHRIs of Ghana and RSA and their enabling legislation; international, regional and national instruments applicable to women's rights.

1.5 Significance of study

As previously stated above, women are still a marginalized and vulnerable group, and although significant progress has been made in the promotion of women's rights, the challenges regarding the promotion and protection of their rights are still a concern. It is the purpose of this work to raise the awareness that women's rights still require vigorous protection and that there remains a strong need for the participation of NHRIs in establishing this protection. It is hoped that this study will encourage NHRIs to play a more prominent role in the promotion and protection of women's rights and to assist NHRIs in identifying how this can be achieved. There remains the gap of effective implementation of international instruments on women's rights in such a manner that it impacts the people who need them most. This study seeks to show that there is still work to be done in this area, a work that NHRIs can impact in a positive way.

1.6 Defining terms

This paper will be limited in its scope of addressing women's rights and will include the girl child as she is regarded as a woman according to the Protocol on the Rights of Women.²⁰ 'Women's rights begin with the girl-child, who must be protected against discrimination, ill health, malnutrition, violence, FGM, forced marriage and exploitation'.²¹ Due to various limitations the inclusion of the girl child will not be the inclusion of children's rights in its broad sense.

1.7 Literature survey

There is a vast amount of literature on NHRIs; their functions; roles that they ought to play in relation to human rights protection; how they can adhere to the Paris Principles and how to assess their effectiveness. However, there is not much mention of their role in the protection of women's rights. The relationship between NHRIs and women's rights promotion and protection is a vital one, because if used effectively, it can lead to a more expedient elimination of practices, acts and unfounded beliefs which violate women's rights. Admittedly, much has been written on women's rights and how to ensure their protection and promotion so as to ensure gender equality and respect. However, most literature has focused on these aforementioned areas, NHRIs and women's rights protection and promotion, separately.

Murray²² writes about the NHRIs and the roles that they ought to play on the international and the regional level of the African continent. In this work she comprehensively addresses what NHRIs are and the various forms that these institutions take; how the functions vary; the importance of states establishing NHRIs; the role of the Paris Principles in NHRIs; the importance of the characteristics of independence, accountability and legitimacy at the international and regional levels. The focus of the work is purely on NHRIs, the role of international standards and bodies such as the UN and regional body of the AU. In addressing these various issues, Murray's work explores the various NHRIs throughout Africa and highlights various characteristics of these institutions in the context of work. There is no particular attention given to the role of NHRIs in the protection of women's rights in Africa.

²⁰ Art 1(k) Protocol on the Rights of Women.

²¹ Houda Mejri (n17 above).

²² Murray (n 8 above) 9.

In another work, Murray addresses the importance of criteria and factors to assess the effectiveness of NHRIs. These factors include the capacity of an NHRI (its legal status; how it protects its independence; the type of political support that it received at its creation; the political context at the time of establishment and the effect that this has on NHRIs; the power of its mandate and financial resources); the performance of an NHRI and issues related to legitimacy. In this regard the angle of her work is focused on how NHRIs can use the Paris Principles to assess their effectiveness and whether the Paris Principles are indeed useful in this respect.²³ The NHRIs which were considered in this work were more limited, namely being the Northern Ireland Human Rights Commission and the SAHRC. Where necessary to do so consideration was given to other NHRIs, such as CHRAJ. Once again the main focus is purely on NHRIs and issue of the protection of women's rights as integral component of NHRIs is overlooked.

Similarly, Peter²⁴ also focuses on NHRIs, with a particular focus on those in Africa. He narrows down his work by exploring a sample of NHRIs, which are the NHRIs of RSA, Uganda and Tanzania. In exploring these NHRIs he draws on the factors of the establishment of the NHRI, its composition, mandate, the kind of work it does and the evaluation of that work. Peter indirectly brushes over women's rights protection when addressing, for example, cases that an NHRI has dealt with which involves women's rights.²⁵ Important observations are made regarding the lessons and opportunities that can be gleaned from these NHRIs, such as the fact that NHRIs 'can be very effective instruments'²⁶ in the protection and promotion of human rights on the African continent.

Writings on NHRIs also sometimes tend to focus on the issue of whether the NHRIs are truly independent. In looking at the African NHRIs of Uganda and RSA, Matshekga²⁷ addresses this issue. The importance of the independence of an NHRI is explored and thereafter he embarks on a comparative analysis of the respective NHRIs in an attempt to measure whether they are truly independent by discussing the various issues that may affect their independence. No particular and significant focus is placed on women's rights protection.

²³ Murray (n 8 above) 189.

²⁴ CM Peter 'Human rights commissions in Africa – lessons and challenges' in A Bösl & J Diescho (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (2009) 351.

²⁵ CM Peter 'Human rights commissions in Africa – lessons and challenges' in Bösl & Diescho (n 24 above) 356, footnote 42 mentions a case of violence against women linking culture.

²⁶ CM Peter 'Human rights commissions in Africa – lessons and challenges' in Bösl & Diescho (n 24 above) 369.

²⁷ Matshekga (n 1 above).

There is arguably a stronger role and stance that can be taken by NHRIs in the protection and promotion of women's rights. The mere fact that a violation of women's rights still occurs in Africa and even in long standing democracies such as Ghana and RSA, indicates that there is a gap relating to the implementation of the legal instruments that are placed to promote and protect women's rights. There is a need for a stronger stance to be taken by national human rights defenders such as NHRIs.

Most literature work that deals with NHRIs sometimes briefly mentions the importance of NHRIs being involved in women's rights protection and promotion. For example the International Council on Human Rights Policy, in addressing the importance of the educational and public awareness function of an NHRI acknowledges that 'women's rights should be a special focus.'²⁸

At times the focus is on the assessment of laws and policies relating to gender equality and an assessment of institutions specifically established for the protection and promotion of gender equality. The work of the Unit for Gender Research in Law Unisa (University of South Africa)²⁹ is an example in this regard. In this work part of the focus is placed on the national machinery for women in RSA and all the institutions that are part of the protection of gender quality. This relates to a relationship between institutions and the protection and promotion of women's rights. An acknowledgment is given that although the SAHRC is not necessarily part of the national machinery for women there is a need for it to be involved in the protection and promotion of women's rights. What this work does not address is the fact that over and above focusing on issues that indirectly affect women's rights, there should also be a proactive move towards ensuring an elimination of issues that continue to violate women's rights.

Writings on challenges that women in Ghana and RSA face do in certain instances mention that there needs to be an involvement of NHRIs in protecting women's rights. Bilyeu,³⁰ when writing on the harmful cultural practice of trokosi in Ghana, acknowledges the importance of the relationship between NHRIs and the protection of women's rights by encouraging

²⁸ International Council on Human Rights Policy *Assessing the effectiveness of National Human Rights Institutions* (2005) 20

http://books.google.com.gh/books?id=oZIKxtnb_n8C&pg=PA20&dq=NHRIs+%2B+women%27s+rights&hl=en&ei=96LBTku0Kc3JswbC3cTaCA&sa=X&oi=book_result&ct=result&resnum=2&ved=0CCgQ6AEwAQ#v=onepage&q=NHRIs%20%2B%20women%27s%20rights&f=false (accessed 22 October 2010).

²⁹ J Linnegar & K McGillivray (eds) *Women and the law in South Africa empowerment through enlightenment* (1998).

³⁰ AS Bilyeu 'Trokosi – the practice of sexual slavery in Ghana: Religious and cultural freedom vs human rights' (1998-1999) *Indiana International and Comparative Law Review* 458 <http://heinonline.org> (accessed 20 September 2010).

CHRAJ's involvement to eliminate the practice. At times the mention of the role of NHRIs in the struggle of challenges facing women is too brief as is found in the writing of Andrews³¹, which mentions that there is an NHRI in RSA, but does not explore the importance of the role that an NHRI can play in the protection of women's rights.

It is these gaps relating to the impact and importance of the active role of NHRIs in women's rights protection that this work seeks to address and portray.

1.8 Proposed methodology

This paper will rely primarily on desk top research, looking at relevant legal instruments, annual reports of the Commissions and any case law; electronic mail communication and interviews (where possible).

1.9 Proposed structure (overview of chapters)

The paper has five chapters. The **first chapter** is introductory in nature and addresses the overall challenges that women in Africa face and an introductory background into NHRIs.

The **second chapter** explores the mandates, powers and functions of CHRAJ and SAHRC; the ability of these mandates to address the protection of women's rights; the responsiveness of these NHRIs to gender issues within its own structures and the relationship between the NHRIs and other state institutions that have the mandate to protect women's rights.

The **third chapter** discusses the human rights violations that are faced by women in Ghana and RSA and the protection of women's rights by the NHRIs in both countries.

The **fourth chapter** will look at the achievements, differences and/or similarities of CHRAJ and the SAHRC.

The **final chapter** will focus on a conclusion of the findings and recommendations that could assist these NHRIs in enhancing their contribution to the protection of women's rights.

³¹ PE Andrews 'Violence against women in South Africa: The role of culture and the limitations of the law' (1998-1999) *Temple Political and Civil Rights Law Review* 444 <http://heinonline.org> (accessed 20 September 2010).

1.10 Delineations and limitation study

This research will not look at the broad aspect of NHRIs in its entirety. It will be limited to the mandate and the power of the NHRIs in relation to their protection of women's rights. Secondly, it will limit the investigation discussion of women's right to issues of harmful cultural practices, domestic violence and witchcraft in the Ghanaian context, and GBV and HIV/AIDS in the South African context.

1.11 Assumptions underlying study

The assumptions of this study are that:

- Both the CHRAJ and SAHRC are independent NHRIs
- Both Commissions still maintain their "A" compliance status with the Paris Principles
- Both NHRIs can protect women's rights

Chapter Two: The mandates of CHRAJ & the SAHRC and the promotion and protection of women's rights in Ghana and RSA

2.1 Introduction

The purpose of this chapter is to set out the important factors impinging on the protection of women's rights through the application of the international and regional instruments by the NHRIs of Ghana and RSA. The chapter will also explore how these mandates have been affected by other statutory or constitutional bodies with similar mandates to protect the rights of women.

2.2 The role of the influence of international and regional human rights instruments in the work of NHRIs

The influence of international and regional instruments in the work carried out by NHRIs with regards to the protection of women's rights is important. These instruments should influence the domestic legislation establishing the NHRIs and be aimed at protecting women's rights. The Paris Principles encourage NHRIs to assist in combating violations of human rights and freedoms that are contained in international instruments, thus showing the importance of these instruments in the work of NHRIs. Regional instruments are of equal importance.

Important for this paper are the instruments that support the protection and promotion of women's rights on the international and regional levels. These instruments include, at the international level, CEDAW,³² the UN International Covenant on Civil and Political Rights (ICCPR),³³ UN Covenant on the Rights of the Child (CRC),³⁴ and at the regional level in Africa, the Protocol on the Rights of Women,³⁵ and the African Charter on the Rights and Welfare of the Child (African Children's Charter).³⁶ It is imperative that NHRIs consider these instruments when carrying out their duties and formulating strategies for the protection of women's rights at the national level. These instruments are intended to ensure maximum protection and promotion of women's rights. The impact of these instruments at the national level is determined by

³² N 9 above.

³³ UN General Assembly Resolution 2200, 16 December 1966.

³⁴ UN General Assembly Resolution 44/25, 2 September 1990.

³⁵ N 10 above.

³⁶ Adopted in 1990.

whether the states have ratified these instruments and, if a dualist state, whether it has domesticated the instruments. The question of whether these instruments are applicable to CHRAJ and the SAHRC will be touched on briefly in the following chapter.

2.3 Role of the Paris Principles in influencing the structure and mandates of NHRIs

The Paris Principles came about through a general consensus amongst the Member States of the UN to establish national institutions that will be the overseers of the promotion and protection of human rights within various Member State territories. These principles are in line with the Vienna Declaration and Program of Action³⁷ which

reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information and in education in human rights.³⁸

As a result of the minimum standards set by the Paris Principles, NHRIs are encouraged to have a broad mandate, which is to be set out in the national constitution or in legislation. Although the Paris Principles do not provide a guideline regarding what a broad mandate should entail, the underlying principle is that the mandate must enable an NHRI to possess the necessary competence to promote and protect human rights within the state.³⁹ The Paris Principles recommend that the mandate of an NHRI enable it to adequately compile reports, recommendations, proposals and opinions required in relation to the protection and promotion of human rights.⁴⁰ Of particular importance for the purpose of this paper are the responsibilities of NHRIs to report on human rights violations against women; being responsible for human rights education and research in promoting women's rights, and its implementation; and human rights public awareness with the aim of combating human rights abuses against women.⁴¹

³⁷ Adopted by World Conference on Human Rights June 1993.

³⁸ Paris Principles (n 3 above) Preamble.

³⁹ Paris Principles (n 3 above) Competence and Responsibilities.

⁴⁰ Paris Principles (n 3 above) Art 3(a).

⁴¹ Paris Principles (n 3 above) Art 3(a)(ii),(iii),(f)and(g).

2.4 Composition of NHRIs

It is important that the composition of the commissioners of these NHRIs reflect gender balance. An institution which promotes and protects human rights should be seen to practice the principles that it attempts to instil in the nation and those which it seeks to protect. It is easier to believe in and trust an institution that is exemplary in its own conduct regarding the principles that it seeks to uphold, promote and protect in the public.

The Paris Principles are surprisingly silent on the issue of gender balance being a factor to be considered in the composition of an NHRI. One would reasonably expect that the issue of gender would be considered as a minimum standard for NHRIs, especially because gender inequality is a challenge throughout the world. However, the Paris Principles only state that the procedure by which the members of the NHRI are selected must ensure ‘the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights’.⁴²

Though gender balance is not an explicit standard, it is advisable for a state that is serious about the protection of women’s rights to ensure that its NHRI’s composition reflects gender balance. This is particularly important in the African context. It is therefore necessary to analyze the mandates of the NHRIs in Ghana and RSA to assess their adherence to the Paris Principles in relation to these aforementioned minimum standards, focusing on their mandate and composition. This will set the tone for the analysis of whether their mandates adequately equip them for the protection of women’s rights and whether they can be used to ensure better protection of women’s rights in their countries.

2.5 CHRAJ

An NHRI must be established upon legal principles to ensure that its legitimacy and protection. The legal foundation of an NHRI ‘should be entrenched in the constitution or clearly stipulated in the enabling legislation’.⁴³ The concept of setting up an NHRI, which is now known as CHRAJ is found in Chapter 18 of the 1992 Ghanaian Constitution and section 216 requires that CHRAJ be

⁴² Paris Principles (n 3 above) Art 4.

⁴³ Murray (n 8 above) 194, 195.

established by an Act of Parliament. CHRAJ is protected by the Constitution and the enabling Act and is an independent institution.

The enabling act, enacted in 1993, is the Commission on Human Rights and Administrative Justice Act (Act 456). Act 456 further expands on the essential characteristics of CHRAJ which are in the Ghanaian Constitution. The Ghanaian Constitution outlines various aspects relating to CHRAJ as an NHRI which include the appointment of its commissioners and their qualifications; the functions of the NHRI including its special powers of investigation and the limitations thereof; and its independence. It has been said that CHRAJ is based on a hybrid type of model because it has been tasked with addressing 'all aspects of human rights and administrative justice as well as being an anti-corruption agency'.⁴⁴ Hybrid institutions are supported by the UN.⁴⁵

CHRAJ describes its vision to be that of creating a society where the principles of justice and freedom are upheld for the protection of human dignity, the accountability of the use of power and the transparency of governance.⁴⁶ Its mission includes the promotion, protection and enforcement of the fundamental rights and freedoms for all in Ghana.⁴⁷ In order to achieve its vision and mission, CHRAJ seeks to cultivate a 'culture of respect for the rights and obligations of all people in Ghana'.⁴⁸ The fundamental rights that CHRAJ seeks to protect and promote are found in chapter 5 of the Ghanaian Constitution. In order to be able to fulfil its vision and mission CHRAJ has to have the competence to act and that is dependent on its mandate and powers.

2.5.1 The mandate, functions and powers of CHRAJ

In accordance with the Paris Principles wherein NHRIs are encouraged to have 'as broad a mandate as possible'⁴⁹, CHRAJ has a broad mandate which is divided into three parts:

- Human rights institution;
- Ombudsman (which looks into issues of administrative justice); and

⁴⁴ A Bossman 'The Protection Role of the Ghana Human Rights Commission' in Koninklijke Brill NV *Protection Role of National Human Rights Institutions* (2005) 57.

⁴⁵ Murray (n 8 above) 190. See footnote 3.

⁴⁶ CHRAJ 2007 Annual Report 13.

⁴⁷ N 46 above.

⁴⁸ N 46 above.

⁴⁹ Paris Principles (n 3 above) Art 2 Competence and Responsibilities.

- Anti-corruption agency.

CHRAJ relates to each of the aspects of its mandate as a core function.⁵⁰

Article 218 of the Ghanaian Constitution and article 7(1) (a) – (h) of Act 456 set out the functions of CHRAJ in relation to its mandate. The provisions in both pieces of legislation are the same. Of interest in this paper is the CHRAJ human rights institution mandate, and its relation to women’s rights. CHRAJ’s human rights mandate is further divided into two categories, namely, protection and enforcement; and promotion and prevention.

The relevant provisions in relation to human rights are Article 218 (a), (c) and (f) of the Ghanaian Constitution and article 7 (1) (a), (c) and (f) of Act 456, which states that CHRAJ has the duty to, investigate complaints of violations of fundamental rights by any public officer; investigate complaints concerning practices and actions by persons, private enterprises and other institutions of alleged violations of fundamental rights and freedoms; and to educate the public about human rights and freedom through any means.

These duties relate to CHRAJ’s human rights mandate categories of protection and enforcement; and promotion and prevention. The first two duties permit CHRAJ to protect human rights through the investigation of complaints where there have been allegations of violations of human rights. The ability to be able to lay a complaint against *any*⁵¹ person, private enterprise or other institution, offers greater protection of women’s rights. This point will be explored in greater detail in the following chapters, including any limitations that exist in these provisions and the impact on the protection of women’s rights. Lastly, the duty to carry out human rights education and awareness is also an important tool in addressing the protection of women’s rights. This falls within the category of the promotion of human rights and the prevention of human rights violations.

The powers accorded to CHRAJ in relation to human rights enable CHRAJ to carry out the enforcement arm of its human rights mandate. Articles 218 (d), 219 (1)⁵² and Act 456 articles 7(1) (d), 8(1) give CHRAJ the power to take appropriate action to remedy, correct or reverse the instances of human rights abuse through negotiation or referral of a matter to a

⁵⁰ Bossman (n 44 above).

⁵¹ My emphasis.

⁵² Ghanaian Constitution.

competent court. CHRAJ can subpoena a person to attend a formal hearing before the Commission and/or request any document relevant to the investigation. Failure to adhere to a CHRAJ subpoena can lead to a prosecution of that person before a court of law.

Further to the functions and powers found in legislation, CHRAJ conducts special investigations related to human rights abuses which are classified as systematic, cultural or are in the areas of public interest.⁵³ CHRAJ conducts research, field investigations and public hearings where necessary.⁵⁴ CHRAJ also exercises its enforcement and prevention arm by conducting monitoring exercises in public areas or institutions where human rights violations are likely to occur. This is of importance to the protection of women's rights and permits CHRAJ to note issues that could lead to a violation of human rights.

The special investigation on human rights abuses which are cultural and/or of public interest is also important to the protection of women's rights. This is because some of the violations of the civil and political rights, and socio-economic rights of Ghanaian women occur as a result of harmful cultural practices.

There remains the question of implementation of legislation that protects women's rights effectively and the role that NHRIs like CHRAJ can play in such instances. It is important to note that CHRAJ has a Women and Children's Unit which is dedicated to overseeing the implementation of CHRAJ's human rights mandate to women and children in Ghana.

2.5.2 Composition of CHRAJ

The Paris Principles are silent on the issue of gender balance as a factor that has to be considered in the composition of an NHRI, writer suggests that gender composition be considered and an NHRI 'reflect gender balance, the ethnic diversity of society and the range of vulnerable groups in their respective society'.⁵⁵

For CHRAJ to be trusted as a protector of women in Ghana, it must be seen to respect and uphold gender equality in its own composition. The composition of the CHRAJ is such that it has a chair commissioner and two deputy commissioners. One of the commissioners is Ms Anna Bossman, who is recognized as a women's rights protector in Ghana. She heads the unit

⁵³ CHRAJ 2007 Annual Report (n 46 above) 14.

⁵⁴ N 46 above.

⁵⁵ Murray (n 8 above) 205.

of Legal and Investigation, under which the human rights mandate falls. The other commissioners are Mr. Emile Short (chair commissioner) and Mr. Richard Quayson (head of the Public Education and Anticorruption Unit). In this regard CHRAJ has taken into due consideration gender balance and a representation of the vulnerable group of women in the composition of its members, which is encouraging and instils confidence in CHRAJ's ability to protect women's rights in Ghana. The Deputy Commissioner Anna Bossman has in times past received awards for her work in women's rights protection and promotion in Ghana.⁵⁶

2.5.3 The capability of the mandate of CHRAJ to address the challenges facing Ghanaian women

The human rights mandate of CHRAJ means it has legitimate power and function to be able to protect and promote women's rights in Ghana. The mandate enables CHRAJ to promote, enforce and protect women's rights, and to prevent human rights abuses against women in Ghana. CHRAJ's powers and functions enable it to be capable of addressing the challenges facing Ghanaian women.

To ensure the protection of women's rights CHRAJ has to apply the principles of protection found in human rights instruments and in the Ghanaian Constitution. Ghana has ratified CEDAW, ICCPR, and the CRC. It is bound by the principles of these instruments even where it has not domesticated the instruments, as Ghana is a dualist state. Though Ghana has not domesticated CEDAW for example, CEDAW did influence the formulation of the Domestic Violence Act (DVA) of Ghana and principles of CEDAW have been incorporated into the DVA. On a regional level, Ghana has ratified the African Children's Charter and it is reported that it has ratified the Protocol on the Rights of Women although it has not deposited the instrument with the African Commission on Human and Peoples' Rights.⁵⁷ The fact that it has not yet deposited the instrument does not eliminate the responsibility in terms of international law to not go against the principles of an instrument once it has been ratified. These instruments can also be enforced by virtue of article 33 (5) of the Ghanaian Constitution which permits courts to protect rights that may not be expressly mentioned in the Constitution but which are 'inherent in democracy' and intended for the 'freedom and dignity of man'.

⁵⁶ 'Network for Women's Rights in Ghana Awards Ms. Bossman' *CHRAJ News Issue 2* 2009 Edition 17.

⁵⁷ J Ogada 'Africa: SOAWR update on the Protocol on the Rights of Women in Africa' 4 May 2007

<http://www.pambazuka.org/en/category/wgender/41217> (accessed 20 July 2010)

Since Ghana is party to the international and regional instruments mentioned above, CHRAJ has the duty to ensure that Ghana and people in Ghana do not violate the principles and objectives of those instruments and to ensure that the rights that are afforded in those instruments are afforded to women in Ghana for their protection.

2.6 SAHRC

The SAHRC was established by the South African Constitution in terms of chapter 9. Chapter 9 institutions are state institutions established for the purpose of supporting constitutional democracy in the country.⁵⁸ The South African Constitution protects institutions such as the SAHRC by stating that 'these institutions are independent...subject only to the Constitution and the law...they must be impartial and...exercise their powers and perform their functions without fear, favour or prejudice'.⁵⁹ Interference with these institutions is prohibited.⁶⁰ The SAHRC therefore has the legal foundation which is important for NHRIs.⁶¹

RSA apartheid history has made it important to safeguard against the reoccurrence of human rights abuses. There needed to be an institution that would promote and protect these human rights. The South African Constitution states that its objective is to 'heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights'.⁶² It is on this basis that the SAHRC was established, to safeguard, protect and promote the human rights that so many sacrificed their lives for, and this includes the rights of women. Former President Nelson Mandela at the dawn of RSA democracy emphasized the importance to true freedom being linked with the protection of women.⁶³ This is recognition of the fact that 'for as long as discrimination (in any form) continues, as long as South African women are oppressed, the ideal of equality cannot be achieved'.⁶⁴ The rights that the SAHRC is to promote and protect are contained in chapter 2 of the South African Constitution known as the Bill of Rights.

⁵⁸ Art 181 (1) South African Constitution.

⁵⁹ Art 181 (2) South African Constitution.

⁶⁰ Art 181 (5) South African Constitution.

⁶¹ Murray (n 8 above) 194.

⁶² Preamble of the South African Constitution.

⁶³ NR Mandela: State of the Nation Address May 1994 'it is vitally important that all structures of government, including the President himself, should understand this fully: that freedom cannot be achieved unless women have been emancipated from all forms of oppression'. <http://www.info.gov.za/speeches/1994/170595002.htm> (accessed 26 October 2010).

⁶⁴ J Linnegar & K McGillivray (eds)(n 29 above)251.

Section 184 of the South African Constitution outlines the functions and powers of the SAHRC, which forms the basis of the SAHRC mandate. These functions and powers are important for the protection of women's rights.

The South African Constitution makes provision for an enabling Act which is the Human Rights Commission Act.⁶⁵ The Human Rights Commission Act outlines in detail all matters concerning the SAHRC, including an extension in the functions stated in the South African Constitution; extension of its investigative powers⁶⁶; powers to search, attach and remove articles⁶⁷ needed for its ongoing investigation, offences and penalties⁶⁸ of anyone who fails to adhere to the commission's hearings and the procedures.

The mission of the SAHRC acknowledges that in order to support constitutional democracy there has to be first and foremost the protection and promotion of human rights, which include women's rights. It also acknowledges all the necessary tools of ensuring that women's rights are protected, such as raising awareness of human rights issues; education on human rights; monitoring human rights observance and addressing any human rights violations. When implemented and used effectively these tools can make a considerable impact in the protection of women's rights.

Like CHRAJ, in order for the SAHRC to be able to fulfill its mission it has to have the competence to act and that is dependent on its mandate and powers.

2.6.1 The mandate, functions and powers of the SAHRC

The mandate of the SAHRC gives it the competence to achieve its mission. The mission statement of the SAHRC confirms that it is a 'national institution established to support constitutional democracy by the protection and promotion of human rights'.⁶⁹ It aims to achieve this mission by undertaking to do the following:

⁶⁵ Human Rights Commission Act 54 of 1994 (Human Rights Commission Act). It is also important to note that the Act refers to the provisions of the South African Interim Constitution of 1993 (interim Constitution).

⁶⁶ Art 9 Human Rights Commission Act.

⁶⁷ Art 10 Human Rights Commission Act.

⁶⁸ Art 18 Human Rights Commission Act.

⁶⁹ SAHRC (2009) Annual Report 8.

- Raising awareness of human rights issues;
- Education and training on human rights;
- Monitoring and assessing the observance of human rights; and
- Addressing human rights violations and seeking effective redress.⁷⁰

Although the SAHRC is not a hybrid institution like CHRAJ, its mandate is broad and diverse. In addition to the general mandate to strengthen constitutional democracy,⁷¹ the SAHRC has a three-pronged specific broad mandate to promote respect for human rights and a culture of human rights; promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in the country.⁷² The Human Rights Commission Act further expounds on these functions by stating that the SAHRC also has the duty to,

- develop and conduct information programmes to foster public understanding of this Act, Chapter 3 of the Constitution⁷³ and the role and activities of the Commission;
- maintain close liaison with institutions, bodies or authorities similar to the Commission in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction;
- consider such recommendations, suggestions and requests concerning fundamental rights as it may receive from any source;
- carry out or cause to be carried out such studies concerning fundamental rights as may be referred to it by the President and present a report with recommendations it considers appropriate;
- bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons.⁷⁴

The mandate and functions of the SAHRC have placed it in a position of great responsibility and expectation. The current mandate and functions are, if used effectively, able to effect great change in the protection of women's rights. Despite the progress that has been made in the protection and promotion of women's rights in RSA there are still challenges faced by South

⁷⁰ N 69 above.

⁷¹ Art 181 (1) South African Constitution.

⁷² Art 184 (1) South African Constitution.

⁷³ Reference is made here to the interim Constitution. Chapter 3 is now Chapter 2 of the final Constitution of 1996.

⁷⁴ Art 7(1) Human Rights Commission Act.

African women. The mandate of the SAHRC empowers it to positively impact the protection of women's rights in RSA.

2.6.2 The composition of the SAHRC

The SAHRC, like CHRAJ, has attained a gender balance in its NHRI composition. The outgoing commissioners, whose term ended in 2009, had a female commissioner as the deputy to the chair commissioner. The composition of the current commissioners is reflective of gender balance, as it has 3 female and 3 male commissioners. It has been said that an influencing factor to the composition of the SAHRC commissioners has been influenced by the leadership in RSA which gave 'due regard to the history and social set-up of the country'.⁷⁵ Concerning gender balance it is of important for an institution like the SAHRC to have the trust and confidence of the public. Matshekga correctly notes that

Human rights commissions ... are vital to the interest of the poor as an approachable place for conciliation and enforcement of rights. Serving this broad segment of the population makes diversity of composition a pre-requisite. Therefore human rights commissions must include NGOs, women, men...and other minorities.⁷⁶

An NHRI needs to be trusted so that it can make an impact in society and work effectively to protect and promote human rights. Consequently, the composition of the SAHRC shows a commitment to representation of women and other vulnerable groups and gives the confidence of the ability to be able to be instrumental in the protection of women's rights.

2.6.3 The capability of the mandate of SAHRC to address the challenges facing South African women

The SAHRC human rights mandate gives it the requisite powers to be able to protect and promote women's rights in RSA. It gives the SAHRC the duty ensure to that the rights in the Bill of Rights are accessible to all in RSA, including women. As a state institution supporting constitutional democracy the SAHRC is bound by the duty to 'respect, protect, promote and

⁷⁵ CM Peter 'Human rights commissions in Africa – lessons and challenges' in Bösl & Diescho (n 24 above) 355.

⁷⁶ Matshekga (n 1 above) 88.

fulfill the rights enshrined in the Bills of Rights'.⁷⁷ The mandate of the SAHRC enables it to ensure there is a respect of women's rights; the protection of women's rights and that legislation and policies that protect the rights are implemented through monitoring.

The Human Rights Commission Act gives the SAHRC the responsibility to develop public awareness and educational programs.⁷⁸ As a tool this promotes women's rights and plays a role in their protection. The SAHRC can also bring proceedings before a competent court in its own name or on behalf of a person or group of persons. This enables the SAHRC to be proactive in protecting women's rights. The fact that the SAHRC is encouraged to consider recommendations, suggestions and requests relating to fundamental human rights enables to interact with the community, which includes individuals, NGOs, CSOs and other state actors interested in the protection of women's rights.

RSA has ratified CEDAW, the ICCPR, the CRC, the Protocol on the Rights of Women and the African Children's Charter, and therefore has the duty to ensure that women's rights found in these instruments are promoted and protected.

The mandate of the SAHRC therefore renders it capable to protect the rights of women in RSA.

2.7 Relationship between CHRAJ and SAHRC with other executive/constitutional bodies

NHRIs cannot 'exist in a vacuum'⁷⁹ when it comes to addressing human rights issues as it goes against 'an effective system'.⁸⁰ The protection of human rights is such that no one organization can singularly address it effectively and efficiently. In Ghana and RSA the NHRIs are not the only bodies that deal with the protection of women's rights. Ghana has MOWAC and RSA, the CGE. These institutions have mandates that enhance the protection and promotion of women's rights in the two countries.

⁷⁷ Sec 7(2) South African Constitution.

⁷⁸ Art 7(1) Human Rights Commission Act.

⁷⁹ Murray (n 8 above) 215.

⁸⁰ N 8 above.

2.7.1 MOWAC

MOWAC was set up by Executive Instrument 8 (EI 8) in 2001 at cabinet level to ensure that all matters pertaining to women and children are addressed at an executive level with the purpose of 'advancing the status of women'.⁸¹ This has been taken to be evidence of the fact that the Ghanaian government takes seriously the protection and promotion of gender equality.

MOWAC's mandate is 'to initiate or formulate policies which promote gender mainstreaming across all sectors that will lead to the achievement of gender equality and empowerment of women and facilitate the survival, development and growth of children'⁸². The crucial aspect of the mandate is the power of MOWAC to initiate or formulate policies that seek to promote and protect the rights of women in Ghana. As an institution at cabinet level it is in a unique position to ensure positive developments in the protection of women's rights in Ghana. MOWAC also has the responsibility to monitor policy formation and program implementation in sector areas with the purpose of coordinating issues on women and children and evaluating the impact thereof.⁸³

Part of its 4-year Sector Medium Term Development Plan (SMTDP) 2010 – 2013 addresses, the protection of women's rights by public awareness campaigns and the development of policies and legislation. MOWAC also has a Gender Responsive Skills and Community Development Project aimed at the promotion of 'gender equitable socio-economic development through institutional capacity building and improvement of women's gainful employment and entrepreneurship'.⁸⁴

A) Relationship with CHRAJ

According to CHRAJ's Women and Children's Unit, a good relationship exists between it and MOWAC and where there is a need to work in collaboration these two institutions do so.⁸⁵ These programs include: collaboration on legal reform for the protection of women's rights, such as assisting MOWAC in drafting the Legal Instrument (LI) for the DVA; hosting collaborative projects and community celebrations on Gender Day; community based exhibitions on the rights

⁸¹ MOWAC website www.mowacghana.net (accessed 11 October 2010).

⁸² N 81 above.

⁸³ N 81 above.

⁸⁴ N 81 above.

⁸⁵ Interviews with Rowena and Michael of the CHRAJ Women's and Children's Unit, 28 September 2010.

of children; combating harmful cultural practices such as trokosi in 2008 by conducting awareness campaigns. The work between the two institutions has led to successful and positive outcomes.

The challenge is that at times there is a lack of communication between the institutions which results in duplication of initiatives and duplications of funds being used for similar projects. Collaboration on projects would ensure a greater impact made to the protection and promotion of women's rights as a wider range of programs can be coordinated.

Since MOWACs mandate is specialized and focuses only on women and children's concerns, with special attention to the rights dimension it ensures that issues relating to women's rights protection will receive attention and the requisite policies can be formulated and recommendations given to influence legislative changes. This compliments CHRAJ's human rights mandate and in so doing, if used in a collaborative manner, can ensure that the NHRI fulfills its obligations in terms of international, regional and national instruments for the protection of women's rights, thereby offering maximum protection to women in Ghana.

2.7.2 CGE

The CGE, like the SAHRC, is a chapter 9 institution and is subject to the same general principles.⁸⁶ Its sole purpose is promoting and protecting gender equality and improving the status of women in RSA. It is suggested that the reason that the CGE was included as a constitutional body and separate structure to the SAHRC is due to the fact that RSA women did not want to risk being marginalized following the discrimination suffered during the apartheid regime.⁸⁷ Another argument advanced is that by opting not to have a ministry for woman it ensured that RSA women avoided the pitfall of having a space in the state which did not actually translate to a change or transformation of the unequal position of women in society.⁸⁸ As a result RSA gender activists opted for a National Gender Machinery Framework of which the CGE is a part.

⁸⁶ Sec 181 South African Constitution.

⁸⁷ R Manjoo 'Case study: The Commission for Gender Equality South Africa. Promotion and protection of gender equality – are separate structures necessary?' *Griffith Law Review* 14 (2005) 271.

⁸⁸ R Manjoo (n 87 above).

The CGE has done a great deal of work in RSA towards the promotion and protection of women's rights through ensuring gender equality. Its mandate is found in the South African Constitution⁸⁹ and the Commission for Gender Equality Act (CGE Act),⁹⁰ and it is to 'promote respect for gender equality and the protection, development and attainment of gender equality'.⁹¹ It has the power to 'monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality'.⁹² The functions of the CGE include:

- evaluating policies and practices of various state organs and other enterprises;
- development public awareness programs; evaluating any Act of Parliament or any system of law including customs and practices;
- making recommendations to Parliament on any existing or new legislation;
- initiating investigations into gender equality issues or investigating complaints;
- maintaining close relationships with institutions and organizations with shared objectives; and
- monitoring compliance with international conventions/covenants or charters that SA has ratified.⁹³

The mandate and functions of the CGE are impressive and relevant to the protection of women's rights. However, the CGE has an advisory role and no enforcement powers. This does not give an institution with such an important mandate the transformatory clout that it requires to make a positive impact in the protection of women's rights in RSA.

B) Relationship with the SAHRC

According to the SAHRC there exists an informal relationship between it and the CGE.⁹⁴ Any collaborative work done is on an ad hoc basis. There have been cases where the two institutions collaborated, but the feeling has been that these initiatives were not effective and

⁸⁹ Sec 187 South African Constitution.

⁹⁰ Act 39 of 1996.

⁹¹ Sec 187(1) South African Constitution.

⁹² Sec 187(2) South African Constitution.

⁹³ Sec 11 Commission on Gender Equality Act.

⁹⁴ E-mail from Ms Ramkissoon, Senior Researcher at the SAHRC on 1 October 2010.

hindered the speedy resolutions of these matters.⁹⁵ It appears safe to conclude that these institutions carry out their mandates in silos.

When it comes to the protection and promotion of women's rights it would appear that although women's rights fall in the sphere of human rights, the SAHRC does not delve in that arena but leaves it to the CGE to oversee and resolve. The SAHRC appears to indirectly protect and promote women's rights where there arises a case of a violation of human rights and women's rights are affected as well. Examples of such cases are those which affect socio-economic rights protection. The SAHRC has been found to limit its work to socio-economic issues, arguably to ensure that its work does not overlap with other institutions.⁹⁶ This makes the SAHRC as one of the NHRIs with a narrow application of its broad mandate.⁹⁷

⁹⁵ N 94 above.

⁹⁶ Electoral Institute for the Sustainability of Democracy in Africa <http://www.eisa.org.za/WEP/souagency2.htm> (accessed 16 October 2010).

⁹⁷ N 96 above.

Chapter Three: Protecting Women's Rights in Ghana and RSA through CHRAJ and the SAHRC

3.1 Introduction

The following chapter will explore the main human rights challenges faced by women in Ghana and RSA and how the mandates of CHRAJ and SAHRC when applied ensure the promotion and protection of women's rights in their respective countries.

3.2 The human rights challenges faced by women in Ghana and RSA

As stated in the first chapter, although there has been significant and undeniably good progress in the protection and promotion of women's rights in Ghana and RSA, there are still challenges that face women and their enjoyment and exercise of human rights. These challenges affect both civil and political rights as well as socio-economic rights. The lack of effective implementation of the laws that are legislated for the protection of women's rights and for elimination of practices that violate these rights is a major concern. The Constitutions of these respective countries afford rights to all. It is expected that women should benefit from having these rights promoted and protected. Since it is not feasible in this work to look at all human rights that affect women, only certain human rights challenges of women in Ghana and RSA will be assessed. The purpose of this assessment is to determine the human rights challenges which call for the attention and assistance of NHRIs for their protection.

3.2.1 Women in Ghana

In the last census undertaken in 2000, women in Ghana formed 51% of the nation.⁹⁸ Despite the fact that women form the majority of society a number of them still experience violations of their human rights.

Amidst the many challenges that women face in Ghana the brief focus of this next section will be on the harmful cultural practices in Ghana. Seeing that much academic work has

⁹⁸ Gender Studies and Human Rights Document Centre (Ghana), 'Facts on Violence Against Women in Ghana' http://www.gendercentreghana.org/article_details.php?id=9 (accessed 26 September 2010).

been done pertaining to harmful cultural practices, the discussion of what each of these practices are will be briefly stated.

A) FGM

This practice is commonly known as female circumcision and falls within the definition of a harmful practice as defined in the Protocol on the Rights of Women⁹⁹ and the African Children's Charter.¹⁰⁰ FGM is an operation that is performed on girls between the ages of 4 and 12¹⁰¹ where a part of the vagina is removed or, at times, the whole clitoris. This is often performed by an excisor (often an old woman) and is performed without anaesthetic with tools such as 'knives, scissors, razors, pieces of broken glass or sharp and burning stones'.¹⁰² Often the tools are blunt and used on different people, thus there is the potential for a spread of diseases. One belief that perpetuates FGM is that a girl can only be marriageable if she has undergone it. It is also believed that it will 'preserve the girl's virginity'¹⁰³ and make her valuable for marriage.

Much has been written regarding this practice and the psychological and physical trauma suffered by victims. The effects are long term affecting sexual intercourse and lead to complications during childbirth. Victims of FGM may haemorrhage and be affected with tetanus, HIV and hepatitis B due to the use unsterilized tools and the application of local dressing such as herbal concoctions; ashes; cow dung among other preparations'.¹⁰⁴

This practice violates the civil and political rights of the victims, namely the right to life; dignity and physical integrity and privacy. It is also discriminatory in nature violating the right to equality. Male circumcision is performed to remove the foreskin covering of the penis by way of preventing it from trapping filth and germs and to help in the passage of urine,¹⁰⁵ whereas the purpose of FGM is to reduce a woman's enjoyment of sex. The practice also violates women's

⁹⁹ Art 5 Protocol on the Rights of Women. Definition of *harmful practices*: 'all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity'.

¹⁰⁰ Art 21 African Children's Charter.

¹⁰¹ P Wheeler 'Eliminating FGM: The role of the law' (2004) *International Journal of Children's Rights* (2) 258.

¹⁰² SA Akapule 'Fighting Female Genital Mutilation in Ghana', 17 March 2008

<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=140760> (accessed 8 August 2010).

¹⁰³ P Wheeler (n 101 above) 258.

¹⁰⁴ SA Akapule (n 102 above).

¹⁰⁵ N 102 above.

socio-economic right to health. It is a customary practice which is cruel¹⁰⁶, dehumanizing and injurious to the physical and mental health of the victims.¹⁰⁷

In Ghana FGM was criminalized by the Criminal Code Amendment Act of 1998 (Criminal Code).¹⁰⁸ Although monitoring exercises by CHRAJ indicate that the practice of FGM has declined¹⁰⁹, at the Ghana Women's Conference,¹¹⁰ NGO representatives raised the concern that FGM was still being practiced in Ghana and that the ages of victims had drastically decreased. NGOs stated that due to fact that children were being educated about FGM in schools parents were opting to conduct FGM on their children before they are of school-going age. The fact that this practice still continues in Ghana, even if it is on a reduced scale, is a concern that requires the intervention of CHRAJ to ensure its elimination. Communities need to fully understand that 'the decision to stop FGM is a community decision as is the decision to practice it'.¹¹¹

B) Trokosi

The name 'trokosi' means 'slave of the gods' or 'wife of the gods'. In Ghana it is a practiced by the Ewe tribe in the southern part of Ghana, the Volta Region.¹¹² The practice of trokosi is a form of slavery which also leads to sexual abuse and forced labour. It is a practice where culture and religion collide with human rights.

Under the system a young virgin is given to the fetish priests in shrines to atone for a sin against the gods committed by one of her relatives. At times these young women are generational trokosis in that a family has to give a virgin to the fetish priests for generations until the priest states that the family has atoned for the crime.

Trokosis are forced to work for the priest in the fields, fetching water, performing rituals and ensuring the general upkeep of the shrines. The families of the trokosi are responsible for

¹⁰⁶ Art 2(2) Ghanaian Constitution. The Ghanaian Constitution does not expressly outlaw FGM. This provision prohibits customary practices that are dehumanizing or injurious to the well-being of a person physically or mentally.

¹⁰⁷ Art 26(2) Ghanaian Constitution.

¹⁰⁸ Art 69A Criminal Code Amendment Act

¹⁰⁹ Interview with Josephine of the CHRAJ Public Education and Research Department on 28 September 2010.

¹¹⁰ N 109 above.

¹¹¹ P Wheeler (n 101 above) 265.

¹¹² Interview with Josephine (n 109 above).

providing her with food and clothing. At times the priests rape them.¹¹³ At the Ghana Women's Conference it was stated that if a trokosi becomes pregnant the priest does not maintain the child/children, citing that the children belong to the gods and the gods will care for them. Ultimately these women become sex slaves of the priests.

The practice of trokosi violates the civil and political, and socio-economic rights of the women. It violates the right to be protected from slavery and forced labour and child labour; and the right to human dignity. It is also discriminatory; abusive and sexually exploitative and amounts to inhuman and degrading treatment and punishment. Lastly it violates the right to health and in some instances, the right to education.

Ghana has criminalized the practice of trokosi through a provision in the Criminal Code.¹¹⁴ CHRAJ has worked with NGOs to educate communities about the harm of Trokosi to women's rights. Despite these successes NGOs reveal that this practice continues and also raise the concern of the lack of implementation of the law criminalizing it. Communities are reluctant to report the practice due to fear of the fetish priests and angering the gods, therefore the police are unable to make any arrests without complaints being made.

C) Witch camps

To be accused of being a witch in communities that have deep superstitious beliefs can be dangerous and fatal for those so accused. Accused witches are treated as outcasts and are sometimes disowned by their families.¹¹⁵ As a result of being cast out of their families and homes, accused witches find themselves seeking refuge at witch camps. These witch camps have become havens for some who fear to return to their homes due to the severe stigmatization and discrimination towards them, or even death. The witch camps in Ghana are found mostly in the Northern Region of the country.¹¹⁶ The victims are usually elderly women,¹¹⁷ which goes against the Protocol on the Rights of Women.¹¹⁸ In 2008 it was reported that there

¹¹³ AS Bilyeu (n 30 above) 457.

¹¹⁴ Art 314A(1) Criminal Code Amendment Act.

¹¹⁵ E Teye-Topey 'The witch camps in northern Ghana' (1999) *Cardozo Journal of International & Comparative Law* 212 <http://heinonline.org> (accessed 20 September 2010).

¹¹⁶ Unpublished CHRAJ State of human rights in Ghana 2008 report 63.

¹¹⁷ E Teye-Topey (n 115 above) 211.

¹¹⁸ Art 22 Protocol on the Rights of Women.

were six witch camps in northern Ghana.¹¹⁹ Women in these camps often spend their entire lives there.

These women face challenges such as difficulty in accessing clean water, as they often do not have running water in the camps; working for nearby communities in order to be able to obtain food; having to care for their children (if the accused women still has young children) or grandchildren; lack of proper sanitation and lack of adequate shelter. Some of the children in these witch camps face discrimination from the communities as well, and sometimes face lack of access to education. These women at times find themselves at the mercy of the hands of the camp owners who 'use the women for their own benefit by forcing the women to farm, gather firewood, manually quarry stones in the blazing tropical sun and walk long distances to fetch water'.¹²⁰

A number of civil-political and socio-economic rights of the Ghanaian Constitution are violated or threatened when one is accused, found guilty of being a witch and being exiled from the community. The right to human dignity; life; protection of personal liberty; to not be discriminated against; not to be subjected to inhuman or injurious cultural practices; and the right to freedom of movement within Ghana.¹²¹ The right to health is also affected where the women cannot access clinics and have a challenge accessing clean water and having adequate sanitation.

There is currently no legislation criminalizing discrimination against those accused of witchcraft. CHRAJ has recommended that the government promulgate a law that will put an end to the discrimination of accusing people of being witches.¹²²

¹¹⁹ N Huck, 'Life in a witch camp: the exile of women in northern Ghana', 11 March 2008 <http://www.travelblog.org/Africa/Ghana/Northern/Tamale/blog-255010.html> (accessed 8 August 2010).

¹²⁰ E Teye-Topey (n 115 above) 212

¹²¹ Articles 15(1) & (2), 13(1), 14(1), 17(2), 26(2), 21(1)(g) Ghanaian Constitution.

¹²² Unpublished CHRAJ State of human rights in Ghana 2008 report (n 116 above) 68.

D) The mandate of CHRAJ in addressing rights violations faced by Ghanaian women

The practices of FGM, trokosi and witch camps violate the civil-political and socio-economic human rights of women. These rights are protected by the instruments that were mentioned in the previous chapter. Trokosi and accusations of witchcraft violate and/or threaten the right to life which is protected by ICCPR,¹²³ the CRC,¹²⁴ Protocol on the Rights of Women,¹²⁵ and the Ghanaian Constitution.¹²⁶ The right to human dignity, which is violated by all the challenges discussed above, is protected by CEDAW,¹²⁷ the ICCPR,¹²⁸ the CRC,¹²⁹ Protocol on the Rights of Women,¹³⁰ and the Ghanaian Constitution.¹³¹

The challenges cited also violate the right to bodily and physical integrity, and personal liberty which is protected by ICCPR,¹³² the CRC,¹³³ and the Ghanaian Constitution.¹³⁴ FGM and trokosi violate the right to privacy and this protection is afforded by ICCPR,¹³⁵ the CRC,¹³⁶ and the African Children's Charter.¹³⁷ All the aforementioned challenges further violate the right to not be discriminated against on the basis of sex or gender and the right to equality. These rights are protected by CEDAW,¹³⁸ the ICCPR,¹³⁹ the CRC,¹⁴⁰ Protocol on the Rights of Women,¹⁴¹ and the Ghanaian Constitution.¹⁴²

¹²³ Art 6 International Covenant on Civil and Political Rights 1966 (ICCPR).

¹²⁴ Art 6 Convention on the Rights of the Child 1990 (CRC).

¹²⁵ Art 4(1) Protocol on the Rights of Women.

¹²⁶ N 13 above.

¹²⁷ Art 5 Convention on the Elimination of all forms of Discrimination Against Women 1979 (CEDAW). This is implied on the basis that when a woman is discriminated against on the basis of cultural and traditional practices can lead to a violation of the right to human dignity.

¹²⁸ Art 10 ICCPR.

¹²⁹ Art 34 CRC.

¹³⁰ Art 3(1) Protocol on the Rights of Women.

¹³¹ N 14 above.

¹³² Art 9 ICCPR.

¹³³ Art 19(1) & 34 CRC.

¹³⁴ Art 14(1) Ghanaian Constitution.

¹³⁵ Art 17 ICCPR.

¹³⁶ Art 16 CRC.

¹³⁷ Art 10 African Charter on the Rights and Welfare of the Child 1990 (African Children's Charter).

¹³⁸ Articles 2,5 & 15(1) CEDAW.

¹³⁹ Art 26 ICCPR.

¹⁴⁰ Art 2(2) CRC.

¹⁴¹ Article 2(1)(a) Protocol on the Rights of Women.

¹⁴² N 15 above.

The right to protection from slavery and forced labour, including child labour, is violated by the practice of trokosi and is stipulated as unlawful in the ICCPR,¹⁴³ the International Convention on Economic, Social and Cultural Rights (ICESCR),¹⁴⁴ the CRC,¹⁴⁵ the African Children's Charter¹⁴⁶ and the Ghanaian Constitution.¹⁴⁷ The right to not be subject to torture, cruel, inhumane and degrading treatment is protected in ICCPR,¹⁴⁸ the CRC,¹⁴⁹ Protocol on the Rights of Women,¹⁵⁰ the African Children's Charter¹⁵¹ and the Ghanaian Constitution¹⁵² and is violated by all the aforementioned challenges. The right to freedom of movement is violated by the accusation of being a witch and is protected by the ICCPR,¹⁵³ and the Ghanaian Constitution.¹⁵⁴ Lastly all these practices and acts violate a women's right to peace as is provided by the Protocol on the Rights of Women.¹⁵⁵

The socio-economic rights that are challenged by the practice of FGM and trokosi are the right to health as protected by CEDAW,¹⁵⁶ ICESCR,¹⁵⁷ CRC,¹⁵⁸ Protocol on the Rights of Women,¹⁵⁹ the African Children's Charter¹⁶⁰ and the Ghanaian Constitution,¹⁶¹ and the right to education, which also affects some children who live in witch camps. The right to education is protected by CEDAW,¹⁶² ICESCR¹⁶³ and CRC,¹⁶⁴ African Children's Charter¹⁶⁵ and the Ghanaian Constitution.¹⁶⁶

¹⁴³ Art 8 ICCPR.

¹⁴⁴ Adopted by General Assembly Resolution 2200A 1966. Article 10 (3) International Covenant on Economic, Social and Cultural Rights (ICESCR).

¹⁴⁵ Articles 19(1), 32(1), 34 CRC.

¹⁴⁶ Art 15 African Children's Charter.

¹⁴⁷ N 16 above.

¹⁴⁸ Art 7 ICCPR.

¹⁴⁹ Articles 19 1),37(a) CRC.

¹⁵⁰ Art 4(1) Protocol on the Rights of Women.

¹⁵¹ Art 16 African Children's Charter.

¹⁵² Art 15(2) Ghanaian Constitution.

¹⁵³ Art 12 ICCPR.

¹⁵⁴ Art 21(g) Ghanaian Constitution.

¹⁵⁵ Art 10 Protocol on the Rights of Women.

¹⁵⁶ Art 12 CEDAW.

¹⁵⁷ Art 12 ICESCR.

¹⁵⁸ Art 24(1) CRC.

¹⁵⁹ Art 14 Protocol on the Rights of Women.

¹⁶⁰ Art 14 African Children's Charter.

¹⁶¹ Art 30 Ghanaian Constitution.

¹⁶² Art 6 CEDAW.

¹⁶³ Art 13 ICESCR.

¹⁶⁴ Art 28 CRC.

¹⁶⁵ Art 11 African Children's Charter.

¹⁶⁶ Art 25 Ghanaian Constitution.

The human rights mandate of the CHRAJ empowers CHRAJ to protect and enforce human rights and to promote and prevent human rights abuse or violations. This mandate is in harmony with the Paris Principles. CHRAJ therefore is empowered to protect the human rights of women in Ghana. Since Ghana is party to the international and regional instruments mentioned above, CHRAJ has the duty to ensure that the principles and objectives of those instruments are upheld and that the rights in those instruments are afforded to women in Ghana for their protection.

As an NHRI, CHRAJ is in the unique position to ensure the protection of women's rights in Ghana. It is also in the unique position to link the state with non-state actors in the protection of women's rights in Ghana. Seeing that the harmful cultural practices are still continuing in Ghana it is important that CHRAJ lead the drive or strategy to ensure the elimination of these practices is fully realized.

The human rights mandate of CHRAJ gives it the power to investigate complaints of the violation of fundamental human rights by any person/s, private enterprises and organizations.¹⁶⁷ Women can lay complaints against any of the aforementioned if their rights are violated and CHRAJ has the obligation to investigate. The only limitation afforded by this provision is that a complaint has to be made before CHRAJ can investigate a matter thereby causing a reactionary as opposed to proactive action.

The human rights mandate permits CHRAJ to conduct educational and public awareness campaigns to teach Ghanaians about the fundamental rights and the importance of upholding and respecting them.¹⁶⁸ This is a tool that needs to be applied strongly because the fact that these are continuing indicates the need for education on the human rights of women.

¹⁶⁷ Art 218(c) Ghanaian Constitution and Art 7(c) Commission on Human Right and Administrative Justice Act 456 (CHRAJ Act).

¹⁶⁸ Art 218(f) Ghanaian Constitution and Article 7(f) CHRAJ Act 456.

3.2.2 Women in RSA

Women's rights protection and advocacy is quite vibrant in RSA with many NGOs, Civil Society Organisations and individuals involved in the plight of protection the rights of South African women. RSA has legislation and policies that advocate the protection and empowerment of women, such as the DVA,¹⁶⁹ Employment Equity Act,¹⁷⁰ and other pieces of legislation and policies. Yet, despite these noble and indeed important successes there are still issues that continue to violate and threaten the protection of women in RSA. The protection of women's rights in RSA is also unique because there is an increase of migrant women in RSA who also fall victim to the challenges below.

A) Violence Against Women (VAW)

The UN defines VAW as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'.¹⁷¹ VAW, as the UN General Secretary said 'is never acceptable, never excusable, [and] never tolerable'.¹⁷² VAW is 'one of the most extreme manifestations of power and inequality between men and women'¹⁷³ and it is a something that needs to be addressed. VAW needs to be tackled with robust measures that are consistently implemented and monitored. The most common form of VAW is domestic/intimate violence, which is when a woman is abused (sexually and/or physically) by her spouse or partner.

VAW is a great concern in RSA with many materials written on it. Many NGOs advocate the protection and promotion of women's rights in RSA, including People Opposing Women Abuse (POWA) and Gender Links to name a few. The available statistics on violence against women in the form of sexual offences against women in RSA shows an increase as opposed to a decline, as depicted below:

¹⁶⁹ Act 116 of 1998.

¹⁷⁰ Act 55 of 1998.

¹⁷¹ World Health Organisation (WHO), 'Violence against women' Fact sheet No 239 November 2009 <http://www.who.int/mediacentre/factsheets/fs239/en/> (accessed 7 October 2010).

¹⁷² R Manjoo '50th Anniversary Commemorative Letter: Due Diligence Obligations and Violence Against Women' *Virginia Journal of International Law* (2009-2010) 793 <http://heinonline.org> (accessed 20 September 2010).

¹⁷³ H Combrinck 'The dark side of the rainbow: Violence against women in South Africa after ten years of democracy' in C Murray and M O'Sullivan (eds) *Advancing women's rights: the first decade of democracy* (2005) 175.

Total Sexual Offences in the RSA for April to March 2003/2004 to 2008/2009¹⁷⁴ (reported cases)

Province	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009
Eastern Cape	8,238	8,626	10,312	9,117	9,087	9,463
Free State	4,734	4,972	4,559	4,386	4,396	4,518
Gauteng	16,137	16,054	15,362	14,820	15,074	19,106
KwaZulu-Natal	11,378	12,122	11,932	11,649	11,355	13,239
Limpopo	4,491	5,070	4,671	4,780	4,528	4,685
Mpumalanga	4,375	4,674	4,756	4,631	4,169	4,678
North West	4,784	4,889	4,860	4,892	4,837	5,222
Northern Cape	2,191	2,212	1,993	1,957	1,749	1,907
Western Cape	9,751	10,498	9,631	8,969	8,623	8,682
RSA	66,079	69,117	68,076	65,201	63,818	71,500

Unfortunately it is not clear from the statistics provided by the South African Police (SAPS) which kind of sexual offences are on the increase and which are not. Precise statistical information pertaining to VAW is not easily obtainable in RSA. This was a concern raised by the CGE in its Beijing +15¹⁷⁵ Report on the achievements and challenges facing RSA as far as VAW is concerned. ¹⁷⁶ There are many reasons for this, ranging from the unwillingness of victims to report due to fear and despair with the inefficiency of the judicial system; to the manner in which certain members of the SAPS handle cases of VAW (not taking the victims seriously or being biased towards the perpetrator). Migrant women, for example, may be reluctant to report any abuse due to fear of being discriminated against, experiencing further violence and deportation.¹⁷⁷

¹⁷⁴ South African Police Services (SAPS) <http://www.saps.org> (accessed 4 February 2010).

¹⁷⁵ Beijing Declaration and Platform Action 1995.

¹⁷⁶ PowerPoint presentation of Commissioner Advocate B Khutsoane <http://www.cge.org.za> (accessed 27 September 2010).

¹⁷⁷ Human Rights Watch Report 'No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South Africa' (December 2009) 6.

POWA in its shadow report compiled for the Beijing +15¹⁷⁸ raised the concern voiced by the CGE, NGOs and CSOs concerning VAW in RSA. The report reiterates the concern that VAW in RSA is amongst the highest in the world,¹⁷⁹ and that RSA's violent history has had an impact on VAW (slavery, imperialism, colonialism, apartheid) and has left the country with 'nurtured extremely violent masculinities to the detriment of women'.¹⁸⁰

VAW in RSA is prevalent as shown by media and NGO reports. Reports on rape and other sexual assaults against women and children are reported on daily. A concern is that the reports may become so familiar that they desensitize the society to the seriousness of VAW. This is a challenge for the SAHRC. Although the aim of reporting is to raise awareness against VAW in RSA, there seems to be apathetic attitude towards it as it is not declining.

Concerning VAW who are migrants, Human Rights Watch (HRW) raised the concern that they were raped at the border between Zimbabwe and RSA.¹⁸¹ These migrant and refugee women find difficulty in accessing protection services by virtue of ignorance and being unable to confide in police due to immigration issues.

Recently VAW has taken on a homophobic element, where lesbian women in RSA are targeted in 'corrective rape' cases. Unfortunately, violence against 'lesbians, migrant workers and sex workers...is often excluded from studies on domestic and sexual violence'.¹⁸²

Both the CGE and POWA reports for Beijing +15 cite the role that cultural and traditional practices play in VAW in RSA. Practices which perpetuate VAW are ukuthwala (abduction of young girls for forced marriages, prevalent in the Eastern Cape Province), polygamy, FGM and virginity testing, which has revived in the KwaZulu-Natal Province.¹⁸³ There exists an air of cultural relativism in RSA and the cultural practices of the current head of state of the country tend to make advocacy against certain cultural practices difficult.

The consequences of VAW are detrimental and civil-political and socio-economic rights are violated such as the right to life; human dignity; equality; bodily and psychological integrity

¹⁷⁸ People Opposing Women Abuse (POWA) 'Criminal injustice: violence against women in South Africa', Shadow Report on Beijing +15 March 2010 (POWA Shadow Report).

¹⁷⁹ POWA Shadow Report (n 178 above) 6.

¹⁸⁰ N 178 above.

¹⁸¹ Human Rights Watch Report (n 177 above) and POWA Shadow Report (n176 above) 11.

¹⁸² POWA Shadow Report (n178 above) 8.

¹⁸³ CGE Beijing +15 Report (2010) <http://www.cge.org.za> (accessed 17 September 2010) and POWA Shadow Report (n178 above) 19.

and the right not to be subject to torture. In relation to socio-economic rights it violates the right to health. The negative impact of VAW affects different facets of society. It impacts on the criminal justice system, health system, the educational system.¹⁸⁴

As mentioned above RSA has promulgated legislation and policies in an attempt to protect and promote women's rights. RSA recently established the Department of Women, Children and Persons with Disabilities in May 2009 to address issue and challenges related to these vulnerable groups.

South African NGOs have concerns regarding the lack of effective implementation of legislative provisions protecting women's rights. There is a great deal of work being done by the CGE and the NGOs however, in contrast to the magnitude of the problem, it is not sufficient. There needs to be the involvement of SAHRC.

B) HIV and AIDS

The HIV/AIDS pandemic has and continues to ravage Sub-Saharan Africa. It was reported that 60% of the people living with HIV in Sub-Saharan Africa are women.¹⁸⁵ Women in RSA are especially vulnerable to contracting HIV due to the link between HIV and VAW¹⁸⁶ and the inability to access health care services. The RSA government in its HIV & AIDS and STI Strategic Plan for South Africa 2007 – 2011 takes into consideration the link between VAW and HIV and notes that strategies need to take into consideration GBV.¹⁸⁷ This is due to the fact that not all women are in the position to be able to negotiate for safe sex. Furthermore due to the violent nature of sexual abuse, women are unable to fight against their attackers let alone be able to protect themselves.

Women do not report the crime due to fear (fear of being deported in the case of migrant women or subject to more abuse or fear of the attacker), shame and victimization. These are some of the reasons that prevent women from accessing health services. HRW states that

¹⁸⁴ Centre for the Study of Violence and Reconciliation (CSVR) 'We can prevent violence: Symposium on strengthening primary prevention of gender-based violence in South Africa' (2009) 14,15 <http://www.csvr.org.za/> (accessed 7 October 2010).

¹⁸⁵ The Centre for Human Rights, Faculty of Law, University of Pretoria *The impact of the Protocol on the Rights of Women in Africa on violence against women in six selected Southern African countries: An advocacy tool* (2009) 7.

¹⁸⁶ N 185 above

¹⁸⁷ POWA Shadow Report (n 178 above) 9.

migrant and refugee women stated that they experienced discrimination from health services personnel and fear to access health services.¹⁸⁸ It is said that the 'fear of violence often prevent women from seeking testing and counselling'¹⁸⁹ and this leads to the spread of HIV.

Women in RSA also face the risk of the HIV-stigma that continues to prevail in certain communities. Men do not always test for HIV and as a result place women at risk of contracting HIV. Various challenges face the RSA government in being able to combat the HIV pandemic, including the fact that there are not enough resources to attend to the needs of patients. HIV/AIDS prevalence amongst women has a negative impact on society as there is increased mother-to-child-transmission, which leads to many HIV/AIDS orphans, and many child-headed homes in the country. This in turn also places strain on the budget of the state and negatively impacts on the future of the girl-child who may find herself heading up a household and no longer attending school.¹⁹⁰

The link between HIV/AIDS and VAW leads to the violation of human rights, namely the right to dignity, the right to life and the right to health. It cuts across civil-political and socio-economic rights.

C) The mandate of SAHRC in addressing women's rights violations in RSA

VAW violates the civil-political and socio-economic human rights of women protected by the international and regional instruments that RSA is party to as was shown in Chapter 2. In addition the South African Constitution also protects the rights to life;¹⁹¹ human dignity;¹⁹² the right to bodily and physical integrity;¹⁹³ the right to privacy;¹⁹⁴ the right to not be discriminated against on the basis of sex or gender and the right to equality;¹⁹⁵ the right to not be subject to

¹⁸⁸ Human Rights Watch Report (n 177 above) 5.

¹⁸⁹ The Centre for Human Rights, *The impact of the Protocol on the Rights of Women in Africa on violence against women in six selected Southern African countries: An advocacy tool* (n 185 above).

¹⁹⁰ SAHRC, 5th Economic & Social Rights Report Series 2002/2003 (2004) 26.

¹⁹¹ N 13 above.

¹⁹² N 14 above.

¹⁹³ Sec 11(2) South African Constitution.

¹⁹⁴ Sec 14 South African Constitution.

¹⁹⁵ N 15 above.

inhumane and degrading treatment¹⁹⁶; and the right to health.¹⁹⁷ The spread of HIV/AIDS also leads to a violation of the right to health due to difficulty in accessing medical treatment.

Since RSA is party to the international and regional instruments, the SAHRC mandate enables it to ensure that the women's rights found in these instruments and in the Constitution are protected and promoted, and that people are educated regarding the importance of respecting women's rights. As mentioned previously, the SAHRC can bring proceedings before a competent court in its own name or on behalf of a person or group of persons. Since this has assisted in the development of protection of human rights in the past it can be beneficial for the protection of women against VAW and the battle with HIV/AIDS. Although the work of gender protection has been left to the CGE, women in RSA can benefit from the involvement of the SAHRC.

¹⁹⁶ Sec 12(1)(e) South African Constitution.

¹⁹⁷ Sec 27(1)(a) South African Constitution.

Chapter Four: Comparative analysis of CHRAJ and the SAHRC

4.1 Introduction

This chapter will briefly explore the achievements, challenges, similarities and differences of CHRAJ and the SAHRC.

4.2 Achievements and challenges

4.2.1 CHRAJ

Though not specifically set up to fulfill the mandate of promoting and protecting women's rights, CHRAJ has been actively involved in the protection of women's rights in Ghana. Most interestingly, in 2007 it established a Women and Children's Unit at its headquarters in Accra. This shows its commitment to the importance of the protection of women's rights. The rationale for such a decision was to devote special attention to women and children's rights cases. This act can be interpreted as reflecting CHRAJ's commitment to promoting affirmative action as enshrined in the CEDAW as well as article 17(4) of the Ghanaian Constitution. The Unit is not set up in the regions and districts of Ghana. It is currently working on a project to train officers in its regional and district offices to be gender focal persons.¹⁹⁸ It only has four people working within it, which can be challenging. It has worked on a number of decisions of the Commission pertaining to women's rights, including cases on maintenance and unfair dismissal due to taking maternity leave.

Through the lobbying of CHRAJ along with other NGOs the practices of trokosi and FGM have been criminalized in Ghana, however, challenges still exist. CHRAJ has taken positive steps to deal with the problem of alleged witches and their being cast out of the society to live in witch camps. However, it has not yet been able to contribute to the creation of legislation criminalizing the discrimination of those accused of being witches.

Also among its accomplishments, one can mention the leading role played by CHRAJ in highlighting the endemic problem of sexual harassment which persists and is gradually becoming a source of concern for women, particularly at the workplace. Thus, in the landmark

¹⁹⁸ Interview with Yvonne of the CHRAJ Women and Children's Unit on 25 October 2010.

decision *Tettey v Norvor, Chief Executive Officer*¹⁹⁹, in the absence of a specific law on sexual harassment or a working definition of the practice, CHRAJ concluded that the applicant was sexually harassed by her boss and awarded damages against her employer, Fan Air.

CHRAJ has also contributed in the fight against FGM. Apart from its role in education on the subject and helping to criminalize the practice, it investigated a complaint that led to the criminal prosecution of respondents who were conducting FGM. The respondents were given a warning and fined.²⁰⁰

CHRAJ has conducted campaigns and monitoring exercises against the practice of trokosi in the Volta Region, together with the International Needs Network of Ghana (INN). As a result more trokosis have been liberated and efforts made to reintegrate them.

CHRAJ has also conducted monitoring exercises on the health services industry and prisons in 2008 and 2009. It noted in its findings the challenges women face in accessing health care and the condition of female prisoners. The finding of the prison conditions have also been tabled in the 2005 Annual Report. In its report on the state of human rights in the Ghanaian mining communities CHRAJ noted that women were amongst those affected by the polluted and air in mining communities.²⁰¹

Another activity of CHRAJ worth-mentioning is working with NGOs in the promotion of children's rights which involve the girl-child, in matters combating child labour and child defilement.²⁰² In a related development, CHRAJ plans to conduct a National Gender Equality Campaign, together with MOWAC and NGOs to gender sensitize Ghanaian rural communities in 2011. Also, CHRAJ has conducted advocacy campaigns against discrimination of suspected witches, working with NGOs. However, the campaigns have failed to yield the intended result of decreasing acts of discrimination against suspected witches.²⁰³

¹⁹⁹ *Tettey v Norvor, Chief Executive Officer* (1999).

²⁰⁰ Shadow Report on Ghana's Implementation on CEDAW (2006) 11. The complaint was laid by a priest who had given shelter to girls that had escaped from a FGM ceremony.

²⁰¹ The State of Human Rights in Mining Communities in Ghana, CHRAJ, March 2008.

²⁰² Unpublished CHRAJ State of human rights in Ghana 2009 report 179.

²⁰³ Unpublished CHRAJ State of human rights in Ghana 2009 report (n 202 above) 205 – 218.

4.2.2 SAHRC

The SAHRC may not be 'part of the national machinery for women.'²⁰⁴ However, this has not precluded it from being involved in the protection of women's rights. The existence of CGE has resulted in the SAHRC taking on an indirect and minimal role in women's rights protection. This could arguably be seen as the SAHRC merely adhering to its function to liaise with other institutions or bodies that are to it.²⁰⁵

The SAHRC in accordance with its mandate monitors, assess and reports, annually, on the observance of economic and social rights by state organs.²⁰⁶ This ensures that the socio-economic rights enshrined in the Constitution are realized for South Africans. Women's socio-economic rights are hereby indirectly realized and protected.

The SAHRC has been involved in litigation involving the protection of women and children's rights to inheritance²⁰⁷ and shelter.²⁰⁸ In the inheritance case the SAHRC brought a class action on behalf of all women and children prevented from inheriting. This is an example of the initiative that it can take in relation to the protection of women's rights.

When the SAHRC publicly condemned the taxi rank/mini skirt incidents where a woman was striped and assaulted in a Johannesburg taxi rank for wearing a mini skirt.²⁰⁹ It once again depicted that it is supportive of the protection of women's rights.

Another important achievement of the SAHRC was the submission that it made in supporting the prohibition of virginity testing being incorporated into the Children's Bill.²¹⁰ In this submission the SAHRC showed that a balance has to be struck between the right to culture and the duty to uphold the rights enshrined in the Bill of Rights.

²⁰⁴ J Linnegar & K McGillivray (eds)(n 29 above) 249

²⁰⁵ Art 7(1)(b) Human Rights Commission Act.

²⁰⁶ SAHRC, 5th Economic & Social Rights Report Series 2002/2003 (2004)(n 190 above).

²⁰⁷ *Bhe and others v Magistrate, Khayalisha and others; Shibi v Sithole and others; SAHRC V President of the Republic of South Africa and others* 2005 (1) SA 563 (CC).

²⁰⁸ *Government of the Republic of South Africa and others v Grootboom and others* 2001 (1) SA 46 (CC).

²⁰⁹ E-mail from Ms Ramkissoo (n95 above). Also see News24.com

<http://www.news24.com/SouthAfrica/News/Close-Noord-St-rank-POWA-20080331> (accessed 20 October 2010).

²¹⁰ SAHRC Submission to the Select Committee on Social Services <http://www.sahrc.org.za> (accessed 17 October 2010).

4.3 Differences and similarities

4.3.1 Legal framework

Both institutions are established in terms of their respective Constitutions and supported by legislation. Each has the task to protect and promote the fundamental rights of the land which includes women's rights. In keeping with the Paris Principles the duty both NHRIs have a duty to protect the fundamental rights found in other human rights instruments outside their national laws, which include human rights instruments catering for the protection and promotion of women's rights.

Ghana and RSA have dualist legal systems in that 'international law and national law are distinct legal systems having no jurisprudential relationship'.²¹¹ In order for international and regional instruments to have effect they have to be domesticated into national law. However, where the countries have ratified an instrument and have not domesticated it they are still obligated not to go against the objects and purposes of the instrument.²¹²

The Constitutions of both countries have provisions that permit international instruments to be considered when interpreting the fundamental rights that are enshrined therein. Although the Ghanaian Constitution is not directly specific it does provide that the rights that are mentioned in the Constitution do not exclude other rights that are not mentioned in the Constitution if these rights are 'inherent in a democracy and intended to secure the freedom and dignity of man'.²¹³ This permits the interpretation whereby rights which are not specifically mentioned in Chapter 3 of the Constitution but fit the aforementioned criteria may be considered. The South African Constitution also makes provision for international law to be considered when interpreting the Bill of Rights.²¹⁴

CHRAJ and the SAHRC in terms of the following ratified instruments: CEDAW, ICCPR, CRC, Protocol on the Rights of Women and the African Children's Charter are obligated to abide by the objects and purposes of these instruments. The framework of Ghana and RSA give the NHRIs the legal space within which to have maximum impact on the protection of women's rights.

²¹¹ L Henkin *International Law: Politics and values* (1995) 64,65. <http://books.google.co.gh> (accessed 22 October 2010).

²¹² Art 18 Vienna Convention on the Law of Treaties 1969.

²¹³ Art 33(5) Ghanaian Constitution.

²¹⁴ Sec 39(1)(c) South African Constitution.

4.3.2 Mandate, functions and powers

Both institutions have a human rights mandate to promote and protect human rights, which include the rights of women. The mandates are entrenched in the constitution, and the functions and powers of are found in the enabling Acts. Both institutions have the powers to investigate any complaints concerning the violation of human rights.

These NHRIs may conduct hearings into a matter and subpoena any persons who are necessary to an investigation into human rights violations and to subpoena for any documentation that they deem necessary for the investigation. Failure to comply with a subpoena and the investigative process of each institution may lead to criminal prosecution. The remedial action that can be applied by both institutions is through negotiation.

These NHRIs have the power to bring proceedings to competent court for adjudication on any matter involving human rights violations.

Another similarity between the two institutions is the fact that a complainant may lay a complaint against any person/private enterprise of other institutions. This encourages reporting and enhances the protection of women's rights by permitting women to be able to lay a complaint against any person. In RSA the SAHRC reported that most of the complaints laid in the past year were mostly made by women.²¹⁵

There is a similar concern regarding the lack of resources to carry out the work of the NHRIs effectively. Both institutions have the duty to arrange and conduct educational and/or public awareness programs for the purpose of creating a culture of the respect for human rights.

These functions and powers place the NHRIs in a position to protect and promote the rights of women in their respective countries. The powers and functions of the SAHRC incorporate the powers and functions that were in the South African Interim Constitution (interim Constitution)²¹⁶ which was in force prior to the enactment of the final Constitution. In terms of the interim Constitution the SAHRC may initiate its own investigations²¹⁷ without a complaint being laid. This differs from CHRAJ which has to receive a complaint prior to investigating it, according to its mandate and powers. Furthermore the SAHRC has the authority to assist complainants to

²¹⁵ SAHRC Annual Report 2008 – 2009 Annexure 145.

²¹⁶ South African Interim Constitution 1993.

²¹⁷ Sec 116(3) interim Constitution.

approach a competent court for redress or to assist the complainants with finance to approach a competent court. There is no similar provision in CHRAJ's Act 456.

In relation to the failure to comply with a subpoena and the investigative process of each institution, RSA's Human Rights Commission Act further makes a provision for the minimum penalties applicable. Ghana's Act 456 merely states that such failure will result in one being charged with contempt of court, which then falls within the legal principles of the Criminal Code of Ghana. Arguably by incorporating penalties and offences in the Human Rights Commission Act, gives the SAHRC additional legitimacy as it were by giving it a certain level of enforcement powers.

Chapter Five: Conclusion and recommendations

In light of the discussions above, this chapter will present the conclusions made and suggest recommendations on what can be done by NHRIs to ensure the protection of women's rights.

5.1 Conclusions

The NHRIs in Ghana and RSA have the overall general mandates, powers and functions to protect the rights of women in their countries. Furthermore, their strategic positioning (having offices throughout the countries) and ability to relate to both the state and NGOs and members of the public, make these NHRIs wholly suitable to protect women's rights.

This work has striven to show that despite the work done in the protection of women's rights in Ghana and RSA the women in these respective countries continue to face challenges that negatively affect their dignity and well-being. The fact that harmful practices such as FGM, trokosi and the discrimination against women accused of being witches continue in Ghana is an indication that the work of women's rights protection is not yet complete and cannot be ignored or postponed. Similarly the grave issue of VAW in RSA against South African women and migrant women is significant of a challenge that if not adequately and robustly addressed could unravel the good work that has been done to protect women's rights in the country. CHRAJ and the SAHRC need to lead against combating these challenges as promoters and protectors of human rights. Women in Ghana and RSA need these NHRIs to move on their behalf.

The achievements of these NHRIs in the protection of women's rights show their capabilities to address the challenges that face Ghanaian and South African women. The work has made a positive impact in the protection of women's rights. It is apparent though that CHRAJ is more directly involved in women's rights protection than the SAHRC. This is a concern considering that the SAHRC has a powerful aspect in its function to initiate investigations into women's right abuses compared to CHRAJ.

CHRAJ's active and consistent involvement in the protection and promotion of women's rights is commendable. Although Ghana has MOWAC this has not caused the CHRAJ to be less active in the protection of women's rights. This is a commendable stance which the SAHRC should consider adopting. Although it is true that NHRIs need to work with other bodies to ensure that there is no duplication of work and unnecessary expenditure of resources it is

advisable that NHRIs ensure that they are still the ‘main port of call for human rights matter’²¹⁸ though at times it is necessary that a matter be dealt with by another body.

5.2 Recommendations

It is recommended that CHRAJ consider the following suggestions in its efforts to protect women’s rights in Ghana:

- Lobby for an amendment of Act 456 to make provision for CHRAJ to initiate its own investigations into human rights violations. This will ensure that maximum protection is afforded all including women. The inability to initiate its own investigations in a matter, even when it is aware of a problem, limits the protection that it can afford women in Ghana.
- Develop a strategy to engage government to put in place effective measures to ensure the implementation of the legislation and the policies that have been enacted to protect the rights of women. This can be realized, first, through education and sensitization activities which it is recommended CHRAJ should liaise more with civil society and community-based organizations as well as the National Commission for Civic Education (NCCE) on the harmful effect of these practices on women. Also, lobby strongly for legislation to prevent discrimination against those accused of being witches.
- Develop a strategy along with MOWAC and NGOs to eliminate the remaining practices of FGM and trokosi; and to consider where necessary, lobbying for amendment of legislation to increase the protection of women.
- Increase public awareness of the Women and Children’s Unit in CHRAJ as well provide adequate funding for this Unit to become an effective specialized unit devoted to promoting women and children’s rights. The regional and progressively, the district offices of CHRAJ should be given the funding to set up such units in their offices.
- CHRAJ should review CEDAW against Ghana’s laws on women and see the extent to which the latter has not fulfilled its commitments under the treaty. It should also review the various international and regional human rights instruments touching on women’s rights which Ghana has not signed or ratified or if ratified, not domesticated, to do so. For example, Ghana has signed but not ratified the CEDAW Optional Protocol which

²¹⁸ Murray (n 8 above) 216.

would lead to recognition of the competence of the CEDAW committee to entertain individual complaints against the government. Also, Ghana has not deposited its instrument of ratification on the Protocol on African Women's Rights. CHRAJ should lead the crusade to lobby Ghana to become a State Party to such treaties and these laws applicable in the Ghanaian context.

It is recommended that the SAHRC consider the following suggestions in its efforts to protect women's rights in South Africa:

- The SAHRC should incorporate into its annual plans a strategy to undertake a more robust role in the protection of women's rights in SA, working in collaboration with the CGE. This can be achieved by the SAHRC conducting research on the state of human rights of women in SA and thereafter developing projects to address the gaps that it will find. In the event that it uncovers human rights violations it can also initiate investigations.
- SAHRC should lobby for the government to prioritize the issue of VAW and to ensure that robust mechanisms are put in place to combat VAW. Examples are: ensure that the government drafts policies for the recently revived Family Violence and Child Protection and Sexual Offences Unit in the SAPS so as to equip the officers with knowledge as to how to handle cases of VAW. Train the officers that will be part of this Unit and place these Units throughout the country. Encourage the development of a code of conduct and guidelines for the SAPS and health service personnel to be able to handle, without discrimination and insensitivity, corrective rape cases against lesbians. Lastly, lobbying for specialized courts that will only handle cases of VAW to ensure that matters are prosecuted speedily and effectively.
- Support the CGE and NGOs in programs aimed at creating awareness about VAW and the human rights of women which are affected by it.
- Consider having campaigns, in collaboration with CGE emphasizing a human rights and benefits based approach to combat VAW, as is suggested by CSV. ²¹⁹ In so doing it will highlight the human rights component whilst balancing it with the benefit to society if the issue of VAW is addressed.

²¹⁹ CSV 'We can prevent violence: Symposium on strengthening primary prevention of gender-based violence in South Africa' (n 184 above) 9.

The recommendations are not exhaustive and due consideration is given that protection of women's rights will not be achieved overnight. However, concrete steps must be taken.

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Bibliography

Books

Centre for Human Rights, Faculty of Law, University of Pretoria (2009) *The impact of the Protocol on the Rights of Women in Africa on violence against women in six selected Southern African countries: An advocacy tool* ABC Press

Linnegar, J & McGillivray, K (eds) (1998) *Women and the law in South Africa empowerment through enlightenment* Juta & Company Limited

International Council on Human Rights Policy, (2005) *Assessing the effectiveness of National Human Rights Institutions* Imprimerie SADAG, Bellegarde/Valserine, France
http://books.google.com.gh/books?id=oZIKxtnb_n8C&pg=PA20&dq=NHRIs+%2B+women%27s+rights&hl=en&ei=96LBTku0Kc3JswbC3cTaCA&sa=X&oi=book_result&ct=result&resnum=2&ved=0CCgQ6AEwAQ#v=onepage&q=NHRIs%20%2B%20women%27s%20rights&f=false
(accessed 22 October 2010)

Henkin, L (1995) *International Law: Politics and values* <http://books.google.co.gh> (accessed 22 October 2010)

Murray,R (2007) *The role of National Human Rights Institutions at the international and regional levels: an African experience* Hart Publishing

Chapters from books

Bossman, A 'The Protection Role of the Ghana Human Rights Commission' in Koninklijke Brill NV *Protection Role of National Human Rights Institutions* (2005) Brill Academic Publishers

Combrinck, H 'The dark side of the rainbow: Violence against women in South Africa after ten years of democracy' in C Murray and M O'Sullivan (eds) *Advancing women's rights: the first decade of democracy* (2005) Juta and Company Limited

Peter, CM 'Human rights commissions in Africa – lessons and challenges' in A Bösl & J Diescho (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (2009) Macmillan Education Namibia

Journals and other articles

Andrews, PE 'Violence against women in South Africa: The role of culture and the limitations of the law' (1998-1999) *Temple Political and Civil Rights Law Review* 444 <http://heinonline.org> (accessed 20 September 2010)

Bilyeu, AS 'Trokosi – the practice of sexual slavery in Ghana: Religious and cultural freedom vs human rights' (1998-1999) *Indiana International and Comparative Law Review* 458 <http://heinonline.org> (accessed 20 September 2010)

Human Rights Watch Report 'No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South Africa' (December 2009)

Manjoo, R '50th Anniversary Commemorative Letter: Due Diligence Obligations and Violence Against Women' *Virginia Journal of International Law* (2009-2010) 793 <http://heinonline.org> (accessed 20 September 2010)

Matshekga, J 'Toothless bulldogs? The human rights commissions of Uganda and South Africa: A comparative study of their independence' (2002) 2 *African Human Right Law Journal*

Murray, R 'National human rights institutions: criteria and factors for assessing their effectiveness' (2007) 25/2 *Netherlands Quarterly of Human Rights*

Wheeler, P 'Eliminating FGM: The role of the law' (2004) *International Journal of Children's Rights* (2)

Internet sources and others

Electoral Institute for the Sustainability of Democracy in Africa
<http://www.eisa.org.za/WEP/souagency2.htm> (accessed 16 October 2010)

E Teye-Topey 'The witch camps in northern Ghana' (1999) *Cardozo Journal of International & Comparative Law* 212 <http://heinonline.org> (accessed 20 September 2010)

Gender Studies and Human Rights Document Centre (Ghana), 'Facts on Violence Against Women in Ghana' http://www.gendercentreghana.org/article_details.php?id=9 (accessed 26 September 2010)

Houda Mejri 'Major Gains and Challenges for Women in Africa', 8 March 2005 http://www.uneca.org/eca_resources/news/030805acgd_dna.htm (accessed 16 August 2010)

J Ogada 'Africa: SOAWR update on the Protocol on the Rights of Women in Africa' 4 May 2007 <http://www.pambazuka.org/en/category/wgender/41217> (accessed 20 July 2010)

MOWAC website www.mowacghana.net (accessed 11 October 2010)

News24.com <http://www.news24.com/SouthAfrica/News/Close-Noord-St-rank-POWA-20080331> (accessed 20 October 2010)

N Huck, 'Life in a witch camp: the exile of women in northern Ghana', 11 March 2008 <http://www.travelblog.org/Africa/Ghana/Northern/Tamale/blog-255010.html> (accessed 8 August 2010)

SA Akapule 'Fighting Female Genital Mutilation in Ghana', 17 March 2008 <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=140760> (accessed 8 August 2010)

South African Police Services (SAPS) <http://www.saps.org> (accessed 4 February 2010)

Speech by Hillary Clinton 'Women's rights are human rights' on 5 September 1995 <http://www.famousquotes.me.uk/speeches/Hillary-Clinton/> (accessed 5 July 2010)

United Nations Development Fund for Women 'Violence against women – facts and figures' www.unifem.org/.../violence_against_women/facts_figures_violence_against_women_2007.pdf (accessed 16 August 2010)

International instruments and other documents

Beijing Declaration and Platform Action 1995

Convention of the Elimination of all forms of Discrimination Against Women UN General Assembly in Resolution 34/180 of December 1979

Convention on the Rights of the Child UN General Assembly Resolution 44/25, 2 September 1990

International Covenant on Civil and Political Rights UN General Assembly Resolution 2200, 16 December 1966

International Covenant on Economic, Social and Cultural Rights General Assembly Resolution 2200A 1966

The Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (Paris Principles), Resolution 18/134 of 20 December 1993

Vienna Declaration and Program of Action Adopted by World Conference on Human Rights June 1993

Vienna Convention on the Law of Treaties 1969

World Health Organisation (WHO), 'Violence against women' Fact sheet N°239 November 2009 <http://www.who.int/mediacentre/factsheets/fs239/en/> (accessed 7 October 2010)

African regional instruments

African Charter on the Rights and Welfare of the Child Adopted in 1990

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa adopted 11 July 2003

Domestic legislation and other documents

Commission on Gender Equality Act 39 of 1996

Constitution of the Republic of South Africa Act 108 of 1996

Human Rights Commission Act No. 54 of 1994

South African Human Rights Commission 2009 Annual Report

South African Human Rights Commission 5th Economic & Social Rights Report Series 2002/2003 (2004)

South African Human Rights Commission Submission to the Select Committee on Social Services <http://www.sahrc.org.za> (accessed 17 October 2010)

Commission on Gender Equality Beijing +15 Report (2010) <http://www.cge.org.za> (accessed 17 September 2010)

Centre for the Study of Violence and Reconciliation (CSVR) 'We can prevent violence: Symposium on strengthening primary prevention of gender-based violence in South Africa' (2009) 14,15 <http://www.csvr.org.za/> (accessed 7 October 2010)

People Opposing Women Abuse (POWA) 'Criminal injustice: violence against women in South Africa', Shadow Report on Beijing +15 March 2010

NR Mandela: State of the Nation Address May 1994 'it is vitally important that all structures of government, including the President himself, should understand this fully: that freedom cannot be achieved unless women have been emancipated from all forms of oppression'. <http://www.info.gov.za/speeches/1994/170595002.htm> (accessed 26 October 2010)

Ghana legislation and other documents

Constitution of the Republic of Ghana (Amendment) Act 1992

Commission on Human Rights and Administrative Justice 2007 Annual Report

'Network for Women's Rights in Ghana Awards Ms. Bossman' *CHRAJ News Issue 2* 2009 Edition 17

Unpublished Commission on Human Rights and Administrative Justice (2008) State of Human Rights in Ghana Report

Unpublished Commission on Human Rights and Administrative Justice (2009) State of Human Rights in Ghana Report

Shadow Report on Ghana's Implementation on CEDAW (2006)

The State of Human Rights in Mining Communities in Ghana, Commission on Human Rights and Administrative Justice, March 2008

Case law: Ghana

Tettey v Norvor, Chief Executive Officer (1999)

Case law: South Africa

Bhe and others v Magistrate, Khayalisha and others; Shibi v Sithole and others; SAHRC V President of the Republic of South Africa and others 2005 (1) SA 563 (CC)

Government of the Republic of South Africa and others v Grootboom and others 2001 (1) SA 46 (CC)

E-mails and interviews

E-mail from Ms Ramkissoo, Senior Researcher at the SAHRC on 1 October 2010

Interview with Josephine of the CHRAJ Public Education and Research Department on 28 September 2010

Interviews with Rowena and Michael of the CHRAJ Women's and Children's Unit, 28 September 2010

Interview with Yvonne of the CHRAJ Women and Children's Unit on 25 October 2010 Interview with Yvonne of the CHRAJ Women and Children's Unit on 25 October 2010