

**SEARCHING FOR THE MIDDLE GROUND
IN CHILDREN'S RIGHTS:**

**IMPLEMENTING THE CONVENTION ON
THE RIGHTS OF THE CHILD IN GHANA**

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ABSTRACT

The Convention on the Rights of the Child, adopted unanimously by the United Nations General Assembly in 1989, is the world's most widely and rapidly ratified international convention. Although it was hoped that the Convention would have an enormously positive impact on all children, this has not happened in many parts of the world for a variety of reasons, including its western bias, which has, hitherto, dominated the debate on children's rights.

However, this universality vs. relativity dichotomy does not help us to protect children on the ground. Hence, it is necessary to move beyond the binary debate relating to the universality and relativity of children's rights and engage with children's local realities, which illustrate that there is, indeed, a middle ground in which people live their lives that may facilitate dialogue on children's rights with local communities. In order to identify this middle ground the thesis focused on eliciting the perceptions of adults and children in two local communities in Accra, Ghana, the first country to ratify the Convention in February 1990, on children's rights, constructing childhood and the socialization of children and their implications for the implementation of the Convention. Special attention is given to Article 12, which has caused controversy in countries around the world.

Dedicated to my son, Chinua, who has had to share his life so far with a thesis that has sometimes been all too consuming.

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THIS THESIS HAS SOUGHT TO HIGHLIGHT THE NEED TO MOVE BEYOND THE UNIVERSALITY AND CULTURAL RELATIVITY DICHOTOMY IN ORDER TO BETTER, AND MORE EFFECTIVELY, IMPLEMENT THE CONVENTION AND CHILDREN’S RIGHTS MORE GENERALLY. HOWEVER, WHILE DOING THIS, POLICY-MAKERS AND THOSE WORKING TOWARDS THE MORE EFFECTIVE IMPLEMENTATION OF THE CONVENTION, CANNOT, AND IN FACT, SHOULD NOT, OVERLOOK OR BELITTLE THE IMPORTANCE CULTURAL VALUES HOLD FOR LOCAL COMMUNITIES. RATHER, THEY MUST ACKNOWLEDGE THE IMPORTANCE CULTURE HOLDS FOR LOCAL COMMUNITIES, ESPECIALLY IN RELATION TO CHILD-REARING AND SOCIALIZATION PRACTICES. TO GO FURTHER, THEY NEED TO ENGAGE WITH THESE VALUES AND THEIR LIMITATIONS AND INCORPORATE THEM INTO THE DISCOURSE ON CHILDREN’S RIGHTS, AS WELL AS IN THE STRATEGIES DEVELOPED TO ACHIEVE MORE EFFECTIVE IMPLEMENTATION OF THE CONVENTION. IT IS IN THIS WAY THAT IT WILL BE POSSIBLE TO ENSURE THAT CHILDREN ARE PROTECTED WITHIN THE ENVIRONMENTS THAT HAVE THE MOST IMPACT ON THEIR LIVES: THEIR FAMILIES AND COMMUNITIES.261

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LIST OF ACRONYMS

A.U. - African Union

AMA – Accra Metropolitan Assembly

ANPPCAN- African Network for the Prevention and Protection against Child Abuse and Neglect

BBC – British Broadcasting Corporation

CENCOSAD – Centre for Community Studies, Action and Development

CLO - Civil Liberties Organisation

CRI - Child Rights International

DCEs – District Chief Executives

DFID – UK Department for International Development

DOVVISSU – Domestic Violence Victims Support Unit (of the Ghana Police Service)

DSW – Department of Social Welfare

FGD – Focus Group Discussion

GBC – Ghana Broadcasting Corporation

GBP – Great British Pound

GDP – Gross Domestic Product

GH – Ghanaian Cedi

GLSS – Ghana Living Standards Survey

GNA – Ghana News Agency

GSS – Ghana Statistical Service

HDI – Human Development Index

HIPC – Highly Indebted Poor Countries

ICESER – International Covenant on Economic, Social and Cultural Rights

ILO – International Labour Organisation

IRIN - Integrated Regional Information Network (UN Office for the Coordination of Humanitarian Affairs)

JSS – Junior Secondary School

MDGs – Millennium Development Goals

MOWAC – Ministry of Women and Children

NGO – Non-governmental organisation

O.A.U. – Organisation of African Unity

SSS – Senior Secondary School

UN- United Nations

UNAIDS –United Nations Joint Programme on HIV/AIDS

UNDP – United Nations Development Programme

UNICEF- United Nations Children’s Fund

WAJU – Women and Juvenile Unit

INTRODUCTION

The Convention on the Rights of the Child, adopted unanimously by the United Nations General Assembly on 20th November 1989, is the world's most widely ratified international convention. All countries in the world except the USA and Somalia have now ratified it. It is also the most rapidly ratified international convention in the history of the United Nations and, to date, it is the only Convention to be adopted just one year after ratification.

The Convention was adopted partly in an attempt to set international norms and establish a universal standard for the concepts of childhood and child,¹ promote a particular nature of childhood for children everywhere and to set a universal approach for protecting all children around the world. Hence, it sets out in detail what every child needs to have in order to have a safe, happy and fulfilled childhood. These include the right to: life; a name and identity; to be raised by their own parents within a family or cultural grouping and have a relationship with both parents even if they are separated; to express their opinions and to have those opinions heard and acted upon when appropriate; to be protected from abuse or exploitation; and to have their privacy protected. Similarly to the broader concept of human rights, children's rights are founded on respect for the dignity and worth of each individual child, regardless of race, colour, gender, language, religion, opinions, origins, wealth, birth status or ability and therefore, they apply to every human being everywhere. Thus, central to this law is the universal adoption and implementation of these rights for children globally.

Although it was hoped that the Convention would have a significant and positive impact on the lives of all children, which was one of the main guiding principles behind its creation, this has not happened in many parts of the world. Thus, to date, no country has fully realised its provisions. According to Freeman, 'much of the world has as much chance of implementing the Convention as sending its citizens to the moon ... Unfortunately most countries would also rather do the latter' (1992: 40 –41). While lack of political will, resources and lack of awareness are certainly critical in analysing

¹ The Convention defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier' (United Nations, 1989).

the obstacles confronting the Convention, central to our understanding of its limited implementation is the cultural bias that is inherent both in its drafting and content.

This western-bias of the Convention has dominated the debate on the implementation of the Convention from its earliest days. On the one hand are the many supporters of the Convention who argue that its universal nature is reflected by the fact that it has been ratified by 192 countries, making it the most widely ratified Convention in the history of the United Nations. Thus, for many this is a remarkable achievement and ‘reflects a common desire to achieve a better world for children’ (Muscroft, 1999: 21). That it was entered into force only one year after its adoption further strengthens the argument of those asserting the universality of the Convention.

However, on the other hand are the relativists who continue to insist that childhood is a relative concept that changes according to historical time, geographical environment, local culture and socio-economic condition (Dasberg, 1989; Franklin, 1995). Hence, they argue that the definition of childhood outlined in the Convention is culturally and historically bound to the social preoccupations and priorities of the capitalist countries of Europe and the USA (Boyden, 1997). De Waal supports this viewpoint:

The idea of a single (gender neutral) age of legal maturity [evident in the Convention] reflects the western juridical tradition and concepts of citizenship built around the universal franchise and eligibility for conscription into the army (2002: 14).

While acknowledging the validity of both arguments the key point underpinning this study is that the universality – relativity dichotomy does not help us to achieve children’s rights or protect children on the ground. The reality of children’s lives, in fact, illustrates that there is, indeed, a middle ground, a grey area in which people live their lives, which needs to be better reflected in the debate on children’s rights. Therefore, there is a need to

move beyond this dichotomy, which I believe creates a deadlock or an *impasse* due to the fact that both sides put forward arguments that are as valid as they are flawed. Instead, those seeking the universal implementation of the Convention need to explore how it can be made to work for different communities around the world; or put another way, they need to examine how they can localise the global discourse on children's rights. To do this, policy-makers and others working towards the more effective implementation of international standards need to work on building bridges between the Convention and diverse local communities around the world instead of looking at it as an imposition. Building such bridges will require the involvement of local communities in the interpretation and implementation of the Convention by initiating a dialogue about children's rights – at least as a first step. The statement below emphasises the importance of ensuring that dialogue is initiated with local communities for effective implementation of the Convention:

It is not enough to go to Switzerland, New York etc and put your thumb print on some document, you have to relate the contents of that policy to your own people and allow them to implement it. They can only do this if policies are couched in a way they can understand. If they are going to work, policies must be implemented through local and traditional administrations. Where these have atrophied, they need to be re-established and modernised. Do this and not only will African children have a chance, but the rest of us will be better off. Think globally and act locally. We have never done this in Africa...Protection of our children has to be considered through our understanding of children in society. By all means sign international agreements but to be effective these have to be modified to fit in with our own traditions and culture. Ghana for instance may have been quick to sign the UN Convention on the Rights of the Child and yet it does little or nothing to eradicate the practice where young children (girls especially) are given to traditional priests as virtual slaves and too often as sex slaves.² Paradoxically this practice for instance can only be eradicated if it is approached with respect for its basis in tradition. This is not to approve of it but it is to understand it and therefore devise the best way to eradicate it (*Informal Discussion Vincent Gasana, London, 21st September 2006*).

² This is a reference to *Trokosi*, a customary practice, which has been a feature of the Volta region of Ghana for the last 300 years. According to this system, if someone commits a serious crime or social infraction, traditional leaders order that a young girl, usually under the age of 10, from that family be sent to the shrine as a form of atonement for a period of 3-5 years. However, in recent years this practice has been subject to abuse and there are reports that the young slaves have been sexually abused, with some going on to bear children for the priests.

Exploring local perceptions will deepen understanding within policy-making and children's rights circles³ of the limited implementation of the Convention within national boundaries. This process will also enable these groups to identify ways that the discourses that take place at the international or national level can fit into local realities and thus, ensure that strategies that are developed are able to protect children more effectively. Moreover, it will ensure that local laws that emerge as a result of harmonising national legislation with the Convention are not simply imitative of its contents, but also take into account the peculiarities and features of a given society such as cultural values, traditional methods of tackling problems, and importantly, the capacity of the existing structure of a particular government to enforce the law. The engagement with local communities is critical as it is their local realities that count in the implementation of children's rights. Whilst legislators and politicians are certainly necessary for conceptualising and drafting laws, the ordinary public is critical for ensuring their effective implementation; and laws, at the end of the day, are nothing without their implementation. To partly quote Monrad Paulsen (1974), 'no law can be better than its implementation' (in Freeman, 1992: 41).⁴

The need to engage in dialogue with local communities on issues relating to children's rights and protection is particularly evident in Africa where most countries are poorer

³ The thesis focuses on policy-makers particularly those working in a national context as it recognises that they are effective in working with local communities to effect change on the ground. One example of how projects can work with policy-makers and other change agents is the Young Lives Project coordinated by the University of Oxford, which is a long-term international research project investigating the changing nature of childhood poverty amongst 12,000 children in Ethiopia, Peru, Vietnam and India (see <http://www.younglives.org.uk/>).

⁴ The full quote by Paulsen in his volume on the laws on the reporting of child abuse was 'no law can be better than its implementation and implementation can be no better than resources permit' (1974 in Freeman, 1992).

today than they were four decades ago (Nsamenang, 2002: 64). Fifty years after the first sub-Saharan African country gained independence from colonial rule, the region is lagging behind all other regions in recognised indicators such as per capita income, accessibility to potable water, life expectancy, nutritional status, literacy and mortality rates, and incidence of diseases. Living standards have declined to levels much lower than at independence, and there is an absolute increase of people living in abject poverty (UNDP, 1996 in Ibid). That all countries ranked at the bottom of the Human Development Index (HDI) produced by the United Nations Development are African is a further indication of the socio-economic challenges facing the continent's development today.⁵

Not only is Africa the world's poorest region, but it also consists of its youngest populations. Young people under the age of 15 constitute half of the continent's 500 million inhabitants (Ibid: 64). Those over 60 years, on the other hand, represent only 5% of the continent's population, further underlining the dominance of children and young people demographically, if not socially and politically. The demographic importance of those under the age of 15 is illustrated in the table below:

Table 1: Proportion of Under-15s in the Population of African Countries

Country	Total Population (in millions)	% of Population aged 15 or under
Ghana	22.5	39.0

⁵ The African countries at the bottom of the HDI index are: Senegal, Eritrea, Nigeria, Tanzania, Guinea, Rwanda, Angola, Benin, Malawi, Zambia, Côte d'Ivoire, Burundi, Congo, Ethiopia, Chad, Central African Republic, Mozambique, Mali, Niger, Guinea-Bissau, Burkina Faso and Sierra Leone. While a number of African countries are ranked as medium development countries, including Ghana, Kenya, South Africa, Gabon, Gambia and Uganda, none are amongst the countries ranked at the top of the index, with Iceland at the top of the index. However, this ranking needs to be examined critically as it does not appear to include countries such as Afghanistan and Iraq.

Cameroon	17.8	41.8
Kenya	35.6	42.6
Uganda	28.9	49.4
Nigeria	141.4	44.3
Tanzania	38.5	44.4
Angola	16.1	46.4
Zambia	11.5	45.7
Burundi	7.9	45.1
Congo DRC	58.7	47.2
Ethiopia	79.0	44.5
Chad	10.1	46.2
Mali	11.6	47.7
Niger	13.3	48.0
Guinea-Bissau	1.6	47.4
Burkina Faso	13.9	46.2
Sierra Leone	5.6	42.8

Source: United Nations Development Programme, 2006/2007 Human Development Report (<http://hdr.undp.org/en/>)

When those aged between 15 and 17 are included in the equation, the proportion of children in the population of many countries in the region rises above 50%, further reinforcing the demographic importance of under-18s in the region. This is particularly the case in countries such as Sierra Leone, Mali, Chad, Burundi, Zambia and Guinea-Bissau, which have relatively small populations as a whole.

At the same time the proportion of young people is increasing rapidly, so also are the challenges affecting them – so much so that it can confidently be asserted that a crisis of the continent is, in effect, a crisis of the young and vice versa. Three examples highlight this point well. Firstly, whilst the HIV/AIDS pandemic is wreaking havoc on the continent,⁶ it has now been acknowledged that most of the newly infected cases/those

⁶ South Africa has been particularly affected by the HIV/AIDS pandemic. 320,000 people died from HIV/AIDS (more than 875 deaths per day) in 2005 (UNAIDS 2005 Update).

who are most at risk of HIV are those aged between 15 and 25 (UNAIDS 2005 epidemic update). This puts young people at the centre of the pandemic and emphasises the need for them to become the focus of societal efforts to tackle the spread of infection.

Secondly, not only have children borne the brunt of civil wars that have ravaged countries across the region over the last 20 years,⁷ but they have also been used as perpetrators of the violence that is part and parcel of such conflicts. Of the estimated 300,000 child soldiers in the world, 120,000 can be found in Africa alone (Coalition to Stop the Use of Child Soldiers, 2004). They are at the heart of modern warfare and this has led some commentators to ask the following question: ‘where would war makers be without youth’ (Argenti, 2002:145)? Hence, the central role children play in conflicts on the continent underscores the need to ensure that they are also at the heart of strategies developed to prevent conflict and reconstruct societies in the post-conflict period.

Thirdly, the process of globalisation sweeping around the world has led to new developments that encounter more traditional beliefs and practices. In some cases this meshing, or coming together, of global and traditional forces has led to the emergence of phenomena that impact children more adversely than ever before. In Africa, for example, a traditional practice that has long provided a social insurance system for many poor families has been the sending of children to live with wealthier relatives in order for them to gain a better life through education and access to more social opportunities. In turn, the children, as an integral part of their socialisation process, assist in household chores.

⁷ In recent years violent conflicts have devastated countries in sub-Saharan Africa, including Angola, Burundi, the Central African Republic (CAR), Congo-Brazzaville, Chad, Côte d’Ivoire the Democratic Republic of Congo (DRC), Ethiopia, Eritrea, Guinea-Bissau, Liberia, Rwanda, Senegal, Sierra Leone, Somalia, Sudan and Uganda.

However, this traditional social welfare system is now being exploited by the global multi-billion dollar human trafficking industry, which sees children as commodities or merchandise to be sold into slavery and trafficked from their homes for their labour. As a result of this industry, individuals not related to families are able to gain access to children for abusive and exploitative purposes without the benefits that were attached to traditional fosterage arrangements such as education/skills development. This development illustrates that in order to combat phenomena created by the meshing of globalization and traditional practices, it is necessary to adopt an approach that incorporates the international standards proffered by the Convention, as well as the local values and belief systems that many communities still use to guide their lives, especially when raising their children.

Despite the centrality of young people to the socio-economic and political crises taking place across the continent they are held at bay, on the margins of the family, community and nation. They are silenced and marginalised, even from decisions that affect their lives and are perceived as objects to be acted upon, not to act.⁸ Boeck and Honwana aptly describe the situation:

The voices, views and vision of young people themselves still wait to be heard and considered. We know remarkably little about them. Children and youth, in Africa, as elsewhere have often remained our 'silent others,' our voiceless *enfants terribles*. They are constructed from the outside and from above as a 'problem' or 'lost generation' in 'crisis' (2005: 2)

⁸ This remains true despite the abundant evidence that illustrates the active role this group plays in society. Examples are the participation of children as resisters during the anti-colonial movement, as fighters who led protest movements during the anti-apartheid struggle in South Africa, as student protestors rebelling against government laws and policies, as political pawns used by different interest groups with their own agendas such as the Bakassi boys in Nigeria, as soldiers fighting in civil wars across the continent, and as workers earning money that, in some cases, their families rely upon for survival.

Therefore, because of their demographic dominance and comparative vulnerability on a continent consisting of countries facing economic, social or political crises, Africa's children and youth bear the brunt of these worsening conditions. Hence, bearing in mind the ever-increasing challenges facing children in Africa, how can commentators continue to debate children's rights at the lofty levels of universality and relativity? Put another way, when children are being abused, misused, exploited, maltreated, not least because of their vulnerability and subordination in society, how can we still talk in terms of universality and relativity? This thesis will maintain that for children in this situation it is not the language of universalism or relativism that is required. What is needed in order to effect change on the ground is the language of compromise, which reflects both the principles underlying the Convention, as well as the values of the societies in which they live.

Aim and Scope

This thesis is based on the premise that no matter the limitations of the Convention, it is here to stay. Arguments for its cultural bias, however persuasive, will not make it vanish or halt efforts made in its name to ensure children's rights for all. Hence, it is necessary to move beyond the scope of the universality and relativity dichotomy and engage with children's local realities in order to understand, firstly, how they impact on the implementation of the Convention and secondly, how they can be incorporated into the children's rights discourse and the enforcement of child-focused legislation in specific contexts.

This study poses three primary questions. Firstly, how can commentators engaged in the children's rights discourse move beyond the universality and relativity debate and explore

alternatives that contribute towards achieving better protection for children on the ground in a way that allows societies to meet the Convention's standards, but is also acceptable in the eyes of local communities in Ghana? Following on from this, the second question is: is there a middle ground or a common culture of rights at some global level, which can be used to engage local communities in a discussion on children's rights? Thirdly, even in instances where differences persist between local perceptions of children's rights and more international perspectives, does this necessarily preclude the ability of policy-makers to engage local communities in dialogue on children's rights and explore the opportunities that are available?

In order to answer these questions this research study seeks to identify a middle ground that may lead to the identification of possible avenues that policy makers could use to engage local communities in discussion on children's rights and facilitate the implementation of the Convention. I will do this by engaging with two local communities to elicit and foreground their perceptions of children's rights, constructing childhood and the socialization of children. This thesis concentrates on Accra, Ghana, which was the first country to ratify the Convention on the Rights of the Child on 5th February 1990, and one of the few African countries to have domesticated the Convention by introducing a Children's Act into its legislative framework.⁹ Special attention is given to Article 12, which is very much rooted in Western, specifically the American ideology of civil and political rights, and refers to the rights of children to influence decisions made on their behalf and express their views on issues affecting them. This article has caused controversy around the world, especially in societies where children are seen as the

⁹ Other African countries to have domesticated the Convention into national law are: Uganda (1996), Kenya (2001), Mauritius (2003), Nigeria (2003), Gambia (2005), South Africa (2005).

property of their parents who must do as they are told and not question. As a result, its implementation has been severely limited and will remain so until policy-makers charged with implementing the Convention engage with local communities, understand their perceptions and their realities and develop a culturally-appropriate strategy to implement this provision on that basis.

Methodology

Situating the Research within a Framework

Traditionally within the social sciences childhood and children's lives have been explored through the eyes of adults who impose their own judgment claims and interpretations on children's lives (James and Prout, 1990, 1997; Alanen, 1988; Corsaro, 1997).

However, since the adoption of the Convention on the Rights of the Child, researchers seeking to operate within its framework have increasingly begun to adopt a child rights approach, which heavily emphasises the role of children as social actors and subjects rather than passive objects. As Alderson and Morrow assert, respect for children's rights has grown since the adoption of the Convention on the Rights of the Child in 1989, which has inspired numerous new policies and projects in countries around the world (2004: 10). Christiansen and James discuss the impact of the paradigm shift caused by the Convention on the ways researchers seeking to explore a variety of issues relating to children's rights and protection undertake their projects. They claim that most of the contributors to their publication, *Research with Children: Perspectives and Practices*:

Demonstrate in their accounts of researching childhood how a distinct paradigm shift has had implications for the ways in which they undertake their research work within their own particular field of study or in their professional expertise and practice... This shift has involved repositioning children as the subjects, rather than objects of research (2000: 3).

This shift occurred at the same time as a new paradigm for understanding and investigating childhood became widely accepted within the social sciences. Prior to this, children were effectively marginalised in this discipline. They were perceived as objects rather than subjects, actors or participants whose experiences and views were important in themselves (see Corsaro, 1997; James and Prout, 1990). According to Qvortrup (1993), children have not so much been ignored as they have been marginalised in social sciences and this has been due to their subordinate characterization in societies and in theoretical conceptualisations of childhood and socialization, which view children in a forward-looking way (quoted in Corsaro, 1997: 7). Alanen adds to this perspective when she states that ‘the study of children is either totally absent in sociology or is treated within very limited contexts which are considered marginal for sociological theory and research’ (1988: 53).

However, the paradigm that emerged in the early 1990s, promoted primarily by James and Prout (1990, 1997), moves away from these approaches to childhood and instead takes the view that children are actors who are active in constructing and reconstructing childhood and negotiating the boundaries. They are not passive recipients of a childhood created by adults and structures in society and imposed on them; and they do not simply regurgitate the constructions and ideologies of childhood imposed by those who are more powerful in society – be they adults in their families and communities or policy makers in official capacities. Thus, James and Prout posed a challenge to what was characterised as the dominant conceptual frameworks of socialization and development, which represented childhood and children as natural, passive, incompetent and incomplete, and in so doing foreclosed a series of important questions for theory and empirical research (1990: x). As a result of their work, the view of children as subjects and actors whose

experiences and views are important is becoming much more common in research undertaken in the social sciences.

The key features of the paradigm are delineated as follows. Firstly, as a social construction, childhood is distinct from biological immaturity and is neither a natural nor universal feature of human groups. Rather, it appears as a specific structural and cultural component of many societies. Secondly, as a variable of social analysis, childhood can never be entirely divorced from other variables such as class, gender, or ethnicity. Thus, there is a variety of childhoods rather than a single and universal phenomenon. Thirdly, children's social relationships and cultures are worthy of study in their own right, independent of the perspective and concerns of adults. Fourthly, children are not merely passive subjects of social structures and processes. Rather, they are active in the construction and determination of their own social lives, the lives of those around them and of the societies in which they live. Fifthly, ethnography is a particularly useful methodology for the study of childhood as it allows children a more direct voice and participation in the production of sociological data than is usually possible through experimental or survey styles of research. Finally, they claim that to proclaim a new paradigm of childhood sociology is also to engage in, and respond to, the process of reconstructing childhood in society (Ibid:8).

Out of these six features of the paradigm, three are key to the methodological framework of this research because they: 1) underline the importance of children's social relationships and cultures as important to study in and of themselves; 2) stress the role of children as actors in the construction and determination of their own social lives and that

of their wider societies; 3) highlight the importance of ethnography as a particularly useful methodology for the study of childhood.

The emergence of this paradigm, alongside the adoption of the Convention, has led to the proliferation of research projects seeking to work with children as participants and subjects in research. However, the majority of the methodological assumptions about this form of research, and the ethical processes associated with it, are elaborated in Western European and North American studies. Examples are Mayall (2002) who has conducted research with primary school children in the UK, and Corsaro (1997) whose research was undertaken with children in primary schools in Italy (1997). As a result of the increase in such research with children, some ethical considerations have been put forward in order to guide other researchers seeking to work with this group. Three are particularly notable in the discussion on participatory research with children. Firstly, the principle of voluntarism has been identified as an important consideration in research undertaken with children (see Alderson and Morrow, 2004). This principle requires that children should be able to make a free and informed choice as to whether or not they want to participate, as well as offers them the opportunity to withdraw from the project at any time. Secondly and closely related to the principle of voluntarism is the issue of informed consent, which is central to research with children. This consideration means that it is important that researchers ensure that children are well informed and receive correct information about projects in order to enable them to decide whether or not they want to participate in a particular project (France et al, 2000). Finally, because of the subordinate position of children in most societies, the issue of power-imbalances between adults, who hold greater status, more experience and physical presence, and children is an area that has

received much attention in participatory approaches with children (see Barker and Weller, 2003; O’Kane, 2000; France et al, 2000). It is because of these inherent power-imbances that the Young Lives Project, a 15 year longitudinal study supported by DFID, has argued that:

Participatory research processes necessitate three distinct but inter-related elements: research, mutual learning/education and action. In particular, it is important that the learning/education process is seen as a “two way street” and real efforts are made to understand the underlying logic of local communities’ beliefs and practices (Young Lives, Working Paper No. 25).

While these studies are invaluable at a time when there is an increase in participatory research with children, it must be acknowledged that very few of such studies focus on contexts other than those in Europe and North America. In Africa, most participatory research with children has hitherto focused on HIV/AIDS (see Van Beers, 2002), street children (see Swart, 1990) and children living in situations of conflict (see Man and Tolfree, 1998). This thesis hopes to contribute to this body of knowledge.

The Process of Undertaking Fieldwork in Ghana

The new paradigm of the sociology of childhood, promoted by James and Prout, informed the process in which I undertook my fieldwork in two communities in Accra over a period of ten months (between May 2005 and March 2006). The communities I focused on were Nima and Ga Mashie,¹⁰ which are two major slum areas located at the heart of the city, and where most adults are engaged in low-skilled occupations, if occupied at all; for example, petty trading, transport work, as artisans, in fishing (Ga Mashie), sewing and cooking foodstuff wholesale such as *kenkey*, *gari* and *fufu*¹¹ (in Ga Mashie) and these in

¹⁰ See Ch IV for a more detailed description of Ga Mashie and Nima (Chapter IV, Section 4.1.1. and 4.1.2).

¹¹ *Kenkey* is prepared from fermented ground white corn (maize), partially cooked, then wrapped in banana leaves, maize or corn husks, or foil, and steamed. It is served with

addition to *tuo zafi*¹² (in Nima). Nima is a predominately Muslim community with most of its inhabitants from northern Ghana and other Muslim-dominated West African countries, in addition to a significant minority of Ewe, Ga and Akan speakers. In turn, Ga Mashie is comprised mainly of members of the Ga ethnic group who are indigenous to Accra. Despite their central location in the capital, these two densely populated areas have high levels of unemployment, underemployment (especially amongst the youth) and illiteracy. The illiteracy stems not only from the fact that many children drop out of school, but that many never attend school at all because of poverty or the mixed priorities of their parents, which make their needs the last to be considered.¹³ Further, both communities lack amenities such as running water, electricity, toilet facilities and schools (the latter also contributes to the high levels of literacy).¹⁴

Following on from the paradigm promoted by James and Prout (1990, 1997), my research in these two communities assumed that children are social actors whose perspectives about their lives and experiences are invaluable for understanding the reality in which they live. To this end, I focused on fieldwork methods that enabled children to have a more direct voice in the research and allowed me to foreground their perceptions, rather than simply lean towards, and listen to, more dominant voices in society who are usually consulted on children's rights; for example, government officials, policy makers and community leaders.

fish. *Fufu* is usually made from *yams*, sometimes combined with *plantains* and served with soup. *Gari* is made from fresh cassava, which is grated and fermented; the excess liquid is then squeezed out; the remaining cassava is then fried, resulting in a crisp and crunchy product, which is stored easily. It is eaten with stew or soup or black pepper and fish.

¹² *Tuo zafi* is a Hausa dish from northern Ghana made of millet flour or maize and served with soup.

¹³ See Chapter V, Section 5.1.1.

¹⁴ See below, Chapter IV, Section 4.1.1. and 4.1.2.

Hence, as part of the first phase of the research, participant observation was undertaken in the two focus communities over a period of two months, using two schools and two service delivery NGOs in each community as entry points. This enabled me to gain an overall impression of social interactions between adults and children, the attitudes of adults towards children and the position of children within these communities. Furthermore, I gained an insight into how children challenge or negotiate with adults, if at all.

In the second phase of the research focus group discussions (FGDs) were conducted with both adults and children separately. This method encouraged children to share their views and importantly, show their knowledge on issues affecting them in their communities – something which was a new experience for many.¹⁵ The FGDs also opened up new questions and led me to consider other issues that I had not taken into account prior to my fieldwork; for example, the centrality of reciprocity in social relationships in Ghana, especially in intergenerational relations.¹⁶

Within the communities of Nima and Ga Mashie, 78 adults participated in seven FGDs (30 in Ga Mashie, 48 in Nima). In Nima all adult participants in the four FGDs that were conducted were Muslims from either northern Ghana or from neighboring countries such as Togo, Guinea, Burkina Faso and Mali. In Ga Mashie while most adults participating in the three FGDs were Ga, there were a few who were Fante from the Central region, but

¹⁵ See Swart (1990) and Mann and Tolfree (2003) for more of a discussion on ethical considerations when conducting focus group discussions with children within an African context.

¹⁶ See below for a more in-depth discussion, Chapter IV, Section 4.4.4.

had been settled in Ga Mashie for generations. While in Nima, men and women participated equally in FGDs, in Ga Mashie the majority of participants in the three FGDs held were women. In fact, only nine men participated in all three FGDs conducted in this community.¹⁷ In Nima most of the female participants were petty traders or housewives, whilst male participants were mainly engaged in low-skilled occupations such as transport workers, electricians and mechanics. One male participant was an Islamic teacher at a Koranic school. In Ga Mashie the few male participants who participated in FGDs were unemployed whilst most female participants were all engaged in an income-generating activity such as petty trading, sewing and the cooking and selling of popular dishes. One female participant was a primary school teacher.

Since, I wanted to obtain a greater range of perspectives on the issues I was interested in, two further FGDs were undertaken with two other groups of adults who were able to shed more light on the questions under discussion. The first extra group consisted of eight media professionals who often report on children's rights and protection issues across the country. They included editors and reporters from both the print and broadcast media, including the Ghana Broadcasting Corporation (GBC), *The Chronicle*, the Ghana News Agency (GNA) and *The Daily Graphic*. The second extra group comprised 12 mature students from the Social Work department at the University of Ghana, Legon who had previously worked as police officers, social workers, teachers and in service delivery NGOs focusing on children. Therefore, in total nine FGDs were held with 98 adults.

¹⁷ See Chapter IV, Section 4.1.2. for a possible explanation of why very few men participated in FGDs in Ga Mashie.

In the 21 FGDs organised for children in Nima and Ga Mashie 243 participated, including school children and those who had dropped out or had never attended school. The table below presents a breakdown of the number of participants in each community.

Table 2: Profile of Children Participating in FGDs in Nima and Ga Mashie: Numbers of School Children vs. Out-of-School Children

	Nima	Ga Mashie	Total
School-Going Children	99	73	172
Out-of-School Children	30	41	71
Total	129	114	243

From the table we can see that more children participated in Nima than in Ga Mashie largely because I spent a longer time in that community and as a result, had much less time to collect data in Ga Mashie. One reason I spent more time in Nima was because I had difficulty in identifying out-of-school children, which explains the disparity between the two groups of children in this community (99 school children compared to only 30 out-of-school children). Those out-of-school children I did manage to gain access to were organised for me to meet by Assemblymen in the area and other community leaders. Of the 129 children who participated in FGDs in Nima, 48 were male and 81 female, which indicates that in this community girls were much more interested in participating in the project, possibly because they identified with me as a woman. This particularly emerged in one school where I was able to conduct the selection of children myself. After informing the relevant classes about the project and its aims and objectives, children from each class were asked to indicate if they wanted to participate. The majority of those who did volunteer were girls. Thus, in the FGD with this particular school there were only three boys in a group of 12 children.

In Ga Mashie, there was also a disparity between the numbers of school and out-of-school children who participated in the FGDs. However, this was more because I had a shorter period of time to collect data in this community rather than because of difficulty in identifying out-of-school children who are very visible. Here, I was able to gain access to children who live and work on the streets through two NGOs in the surrounding areas, the Catholic Action for Street Children, which is in nearby Laterbiokoshie and Street Academy, which is on the High Street, not too far from Ga Mashie. In addition, key community leaders such as elders at the Sempe Mantse Palace and other key figures organised out-of-school children for FGDs. Of the 114 children who participated in FGDs in Ga Mashie, 59 were female and 57 male. Hence, in Ga Mashie both sexes showed a similar interest in participating in the research – possibly because they were more aware of the perks that come along with such attention from researchers and other agencies.¹⁸ In both communities most children who participated in the FGDs were aged between 12 and 16. However, because of my reliance on community leaders and NGOs to gain access to children, some participants were 18 and thus, no longer children according to the Convention and the country's own Children's Act.¹⁹

In addition, I also had the opportunity to hold a FGD with 12 members of Curious Minds: Children and Youth in Broadcasting, a group of young broadcasters who are often put forward as a good example of children's participation in the country (8 male and 4 female). This group was aged between 13 and 16.

¹⁸ See below, Chapter IV, Section 4.2, for more for a discussion about the extent to which Ga Mashie is focus of NGO and governmental attention.

¹⁹ See below, this section, for a more detailed explanation of the impact of relying on community leaders on the research.

Because of the similarities in responses from all groups in Nima and Ga Mashie about their experiences and knowledge of children's rights (and Article 12), I subsequently decided to conduct FGDs and interviews with children from three private schools in relatively affluent areas of Accra, namely Airport Residential Area and Cantonments/Kanda. The aim of this was to ascertain if their knowledge and experience of children's rights greatly differed from those of children in the two focus communities. This was done to avoid reaching a conclusion that would appear biased and deterministic – something that I had been accused of in several informal discussions I had had with a number of academics and civil society representatives in the early stages of my fieldwork. They questioned my choice of undertaking research in two slum communities and claimed that by focusing on these areas the research would lead to a conclusion that would only emphasise the obstacles facing children's rights, and not illustrate the progress that has been made since the government ratified the Convention and the opportunities that exist for ensuring that the enforcement of children's rights is more effective. Thus, towards the end of my period of fieldwork, I made arrangements to conduct FGDs with 36 children in three private schools (12 in each school) equally divided across both sexes (18 were male and 18 female). They were all aged between 11 and 15. In total, then, 291 children participated in 25 FGDs.

As the aim of the FGDs with both adults and children was to collect local perceptions of childhood, children's position in society and understand their implications for children's rights, I developed a FGD schedule²⁰, which included questions that focused on the following: the constructions of childhood as defined by children and their communities;

²⁰ See Appendix 5 for the general FGD question schedule, which was then modified with each group depending on the time available and whether they were adults or children.

children's position in society; adults' and children's knowledge of, and reactions to, children's rights; knowledge of the implementation of the Convention and the Children's Act in Ghana and the reasons behind the limited implementation of the Convention; and the context for children's participatory rights.

During the actual fieldwork process, I was only able to go through the whole FGD schedule with two groups of school children with whom I spent several weeks and one group of out-of-school children whom I met every week for two months. In most cases I only had one or two hours with children and as a result, I was not able to go through the entire schedule. Therefore, I was required to modify the schedule with different groups of children and focus on key areas that I felt were critical. These were, notably, children's perceptions of the construction of childhood, their knowledge of children's rights (and the order in which they prioritize rights) and their experience of participation. A similar focused was adopted when modifying the FGD schedule for adults who also had very limited time to spend in a FGD.

Moreover, as part of the strategy for data collection I intended to use games, mapping and stories to enable children in particular to share their perspectives and experiences on the issues I sought to focus on. However, I realised early on in my fieldwork that this approach would not be the most effective primarily because of lack of time. Therefore, I found it easier to use straight forward FGD discussions, which I think worked well as participants also enjoyed discussing the issues with each other and hearing other people's perspectives.

With regards to the language used, English was the medium of communication in all FGDs with the participating groups of school children, Curious Minds, the journalists and

the mature students at the University of Ghana, Legon. Therefore, I facilitated these sessions while my research assistant made notes. However, in FGDs with out-of-school children and adults in the two focus communities, Ga and Hausa were the primary languages used. In these instances, I still facilitated the FGDs, but relied on research assistants to translate for me while I documented responses.

In relation to the documentation of FGD proceedings, I had initially intended to use tape recorders and flip chart papers to document the discussions. When I asked the first two groups of children I worked with for permission to record the first few FGDs I held, which were in Nima, they agreed. However, I soon realised that they were so conscious of the tape recorder that it made it even more difficult to break the ice as they became even more tense and reluctant to speak. Therefore, I decided to document proceedings on only flip chart paper, which enabled children who were literate to see how I had written down their statements. They were also given opportunities to correct the meaning if I was wrong. For other groups of children I summarised the key points they had made during the sessions and gave them an opportunity to validate their meaning.

Early on in my fieldwork in Ghana, I realised the importance of questionnaires and surveys to the local academic and civil society environment in Ghana. For my findings to be credible within this context, I needed to include a quantitative method, notably a survey/questionnaire, which many within academic and civil society circles in Ghana continue to rely on as their primary method of data collection. Therefore, I decided to include structured interviews/survey as part of my data collection method. This notwithstanding, it is important to understand that data collected using this method was

not based on statistical sampling and thus, is not representative. It can only be subject to qualitative interpretation.

The inclusion of this method meant that it was possible to corroborate issues raised in FGDs through questionnaires carried out with a selection of the children who had participated in the FGDs (see Swart, 1990). Questionnaires were administered to a total of 133 children. Of these 56 were in Nima (37 in-school and 19 out-of school), 61 in Ga Mashie (34 in-school and 27 out-of-school) and 16 in three private schools. All children interviewed had been participants in the FGDs conducted in each community. As a result, these questionnaires enabled me to better familiarise myself with children with whom I had interacted during the FGDs, and build a profile of a selection of the participants from these sessions. While all interviews with school children were conducted either in English, Hausa or Ga, interviews with out-of-school children were conducted solely in Hausa or Ga.

The tables below show the breakdown of the profile of interviewees by group on the basis of age, gender and ethnicity. More girls participated in the interviews than boys, possibly because of their personal interest in finding out a bit more about me and doing something a little different from the norm.²¹ As the research focused on children from basic schools (primary and junior secondary), most children were aged between the ages of 10 and 16. While the mean age for all children interviewed in Nima was 13, in Ga Mashie it was 14.

Table 3: Age and Gender of School Children Interviewed in Nima

GENDER:		Frequency	Percent	AGE:		Frequency	Percent

²¹ See above, this section.

Valid	Female	19	51	Valid	10	5	14
	Male		18		49	11	
Total		37	100	12		7	19
				13		10	27
				15		3	8
				16		5	14

Table 4: Age and Gender of Out-of-School Children Interviewed in Nima

GENDER		Frequency	Percent	AGE		Frequency	Percent
Valid				Valid	11	3	16
	Female	12	62		12	1	5
	Male	7	37		16	15	79
	Total	19	100		Total	19	100

Table 5: Age and Gender of School Children Interviewed in Ga Mashie

GENDER:		Frequency	Percent	AGE:		Frequency	Percent
Valid	Female	19	56	Valid	12	3	9
	Male	15	44		13	5	15
	Total	34	100		14	11	32
					15	7	21
					16	8	24
					Total	34	100

Table 6: Age and Gender of Out-of-School Children Interviewed in Ga Mashie

GENDER:		Frequency	Percent	AGE		Frequency	Percent
Valid	Female	16	59	Valid	12	1	4
	Male	11	41		13	5	19
	Total	27	100		14	8	30
					15	7	26
					16	6	22
					Total	27	100

Table 7: Age and Gender of Private School Children Interviewed

Gender:		Frequency	Percent	AGE:		Frequency	Percent
Valid	Female	12	75	Valid	11	1	6
	Male	4	25		12	3	19
	Total	16	100		13	8	50
					14	3	19
					15	1	6
					Total	16	100

Although Ga Mashie and Nima are predominately associated with particular ethnic groups, there are a number of other groups residing in these communities. This is an indication of how multicultural and even multinational communities in Accra have become over the years.²² For example, although the population in Nima is predominately made up of groups originating from northern Ghana, most of the school children interviewed for the questionnaire were from the southern parts of the country. Examples are the Ga who are the indigenes of Accra, some Ewe from the Volta region in the south east and Fante from the Central region in the south west of the country. However, the ethnic profile of the out-of-school children interviewed better reflects the ethnic composition of the community as almost all were Muslims from either Ghana or the West Africa sub-region. In turn, Ga Mashie is an indigenous Ga suburb, and this was reflected in the profile of school children interviewed as the majority of this group was Ga (although there were a substantial number of Ewe and Akan speakers such as the Fante). However, amongst out-of-school children, the Gas were actually in the minority. This can largely be attributed to the fact that in order to gain access to out-of-school children in this community within a relatively short period of time I worked with two service delivery NGOs in the surrounding areas catering to the needs of street children in Central

²² See Chapter III, Section 3.1. and Chapter IV, Section 4.1.

Accra. Therefore, many of the children who use the services of these NGOs do not necessarily live in the area and are not necessarily Ga.

Table 8: Ethnic Profile of Nima School Children

Ethnicity		Frequency	Percent
Valid	Chamba	1	3
	Zamarma	2	5
	Kotokoli	3	8
	Busanga	1	3
	Kardo	3	8
	Fante	5	14
	Ewe	6	16
	Yoruba	1	3
	Ga	8	22
	Kwahu	1	3
	Frafra	1	3
	Akwapim	1	3
	Fulani	1	3
	Looso	1	3
	Banda	1	3
	Chokosi	1	3
	Total	37	100.0

Table 9: Ethnic Profile of Nima Out-of-School Children

Ethnicity		Frequency	Percent
Valid	Mamprusi	1	5
	Sisala	1	5
	Dagomba	1	5
	Chamba	3	16
	Zamarma	3	16
	Kotokoli	4	21
	Busanga	1	5
	Samire	1	5
	Nzema	1	5
	Hausa	2	11
	Banda	1	5
	Total	19	100.0

Table 10: Ethnic Profile of Ga Mashie School Children

Ethnicity		Frequency	Percent
Valid	Hausa	1	3
	Fante	6	18
	Ewe	2	6
	Asante	2	6
	Ga	18	53
	Akwapim	1	3
	Akyem	2	6
	Ada	1	3
	Total	33	97
Missing	No Response	1	3
Total		34	100.0

Table 11: Ethnic Profile of Ga Mashie Out-of-School Children

Ethnicity		Frequency	Percent
Valid	Hausa	2	7
	Fante	7	26
	Ewe	5	19
	Ga	10	37
	Akyem	3	11
	Total	27	100

Table 12: Ethnic Profile of Private School Children

Ethnicity		Frequency	Percent
Valid	Fante	1	6
	Ewe	2	13
	Asante	7	44
	Ga	3	19
	Akwapim	1	6
	Ibo	1	6
	Total	15	94
Missing	No Response	1	6
Total		16	100

In addition, I included interviews with key figures in the society as one of my data collection methods in order to build a more holistic picture of children's lives and rights in the country.²³ Therefore, in order to develop a more in-depth picture of children's rights, the challenges facing children in the country overall, as well as details of the progress of the Convention and the Children's Act, I interviewed government officials and representatives of international and national children's rights organisations. With regards to the two focus communities, I held interviews with chiefs, Assemblymen, an MP and a social worker who were able to deepen my understanding of children's lives in these two contexts and corroborate the information I had collected from adults and children through FGDs and questionnaires. All interviews with this group were conducted in private in their offices and I personally documented and transcribed all notes.

Ethical Implications

As a study situated within child participatory principles and focusing primarily on eliciting the views of children, ethical considerations were central to the research process. In order to ensure that the research did not take advantage of, exploit or harm children in any way, I took into account several ethical factors as I developed my methodological framework prior to my fieldwork.

Firstly, in hierarchical cultures such as Ghana, where children are spoken to last, if at all, research studies focusing only on eliciting the views of children are at risk of being challenged by adults within the communities who wonder why the research is focusing on children when their own voices and needs have never been heard (Mann and Tolfree,

²³ See Appendix 1 for the details of the interviews conducted.

2003).²⁴ As a result, I felt that it was important that the research also included adults, especially as they have the most impact on the daily lives of children. This approach worked well, as by conducting FGDs with adults as well as children, it was also possible to validate the research and appease adults within the communities to which children belonged (Ibid: 19). Therefore, not only did this approach enable me to take into consideration an important ethical factor, but it was also effective as no one in the two focus communities questioned or criticised me for only focusing on children's views. Adults who saw me talking to children understood that I would also talk to them on another occasion. In some cases we were able to talk to both mothers²⁵ and their children on different occasions, which enabled me to obtain differing opinions on one issue from people within the same family.

However, this approach was not without its problems. On one occasion in Ga Mashie, one of the mothers participating in a FGD attempted to find out what her son, a 15 year old who had participated in a FGD and interview the previous week, had told my research assistant during the one-on-one interview for which he had volunteered. She had not been able to send him to school for several months and was embarrassed that he may have raised the issue during the interview. I firstly explained to her that we could not tell her what her son had said to us as everything disclosed in interviews was confidential. As it seemed she wanted an opportunity to explain herself, I spent some time talking to her and listened as she told me about some of the challenges she faced as a single mother, which I

²⁴ See below for more information on the hierarchical structure of Ghanaian society and its impact on the participation of adults, as well as children, see above, Chapter V, Section 5.2.1.

²⁵ The emphasis placed on mothers and their children here is because I became aware during the fieldwork process of the occasions we spoke to mothers and their children. We may have also spoken to fathers and their children, but it did not emerge in discussions.

think appealed her somewhat. Also, the fact that the facilitator in this FGD was a well-respected member of the community may also have contributed to resolving the issue without too much debate.

Secondly, because of the importance of local communities in the lives of children, I felt that it was crucial to obtain the support of community elders such as chiefs and assemblymen who are elected members of district assemblies.²⁶ This decision was based on my belief that by involving them, I would be better able to access both adults and children for FGDs and interviews. Also, I did not want to be seen as disrespectful by bypassing the leadership of the community and approaching children and young people directly (see Aye, 2003). This approach particularly benefited me in Ga Mashie where the support of elders within the community was key to ensuring that I did not antagonise community members who often watched me coming and going with great interest and may have challenged me if it had not been for the evident support I had from elders.

In Nima, this approach was also important but for different reasons. As I found it difficult to identify children who were out-of-school,²⁷ I came to rely on community leaders such as imams, assemblymen and local businessmen to help me gain access to this group. However, the problem associated with this approach was that on each occasion most of the children they organised for me to meet were actually in school, had completed Junior

²⁶ See below for more information about the structure of district assemblies, Chapter III, Section 3.1.

²⁷ This is most likely because of the importance people attach to the value of education within this community – not least because of its importance in the teachings of Islam, the religion of most residents of (see below Chapter IV, Section 4.1.1.).

Secondary School (JSS),²⁸ or were over the age of 18. Thus, in the end the number of out-of-school children we were able to gain access to in Nima was substantially smaller than those who were in school (37 School children were interviewed compared to 19 out-of-school children). However, I found it difficult to object to this because, by depending on such community leaders to facilitate my access to adults and children, I had entered a relationship where I, as the young female researcher, was subordinate to these leaders, mainly older men, who were very conscious that they were doing me a favour. Therefore, I found it difficult to assert myself within this relationship and make demands that I may otherwise have made in a different context.

Another problem that arose with this dependence on community leaders was that I could not control how they explained the project to the parents of children. In some cases I became aware that they misled them as to the purpose of the project. On one occasion in Ga Mashie I was conducting a FGD with out-of-school children when a woman rushed into the courtyard of the compound in which we were based with her son because she had heard we were 'doing school'. This, I was told, meant that she thought we were sending children to school and paying school fees. While I dealt with this particular case by restating the aims and objectives of the study to the mother, it did make me wonder how the project had been explained to the children and their families and the reasons behind their participation. Ethically, it was a problem for the research because I feared that children and their parents were being misled about the purpose of the research. However,

²⁸ JSS (Junior Secondary Schools) is the equivalent of middle school or secondary school excluding the 6th form level.

by ensuring that I restated my objectives at the beginning of all FGDs and interviews, I believe that I addressed this problem somewhat.

Thirdly, a key component of my strategy to gain access to children was to approach NGOs and schools, which I believe was effective and facilitated my ability to access large numbers of children that I may not otherwise have been able to. However, it also had ethical implications. Gaining access to school children required following formal procedures, such as presenting a letter of introduction and gaining the permission of the circuit director who is responsible for all the schools in the area. In private schools I was required to write letters explaining what I wanted to talk about in more detail in order for them to be able to inform the parents of the children. However, gaining access to children associated with service provision NGOs was more straight forward and thus more problematic in ethical terms. Most organisations only had one question for me: ‘When do you want to do it?’ Initially, I wondered if they expected some kind of financial compensation for this, but they were satisfied with the provision of refreshment for the participating children and staff. While this study benefited from such easy access to children, I could not help but wonder about the problems that may be associated with such readiness to make such children in their care available to strangers and the child protection problems it could lead to. However, after spending time with both of these organisations I realised that staff never left children alone with me or other visitors. In FGDs I conducted they always remained in the background, which led to another ethical concern as I feared that they would interfere in discussions or that their mere presence would inhibit the children from speaking freely. However, as the topics being discussed were not too sensitive it did not appear to restrict participants’ speech. Besides, the adults

who did sit in FGDs remained very much in the background and sometimes did their own work.

Fourthly, central to the development of my methodological framework was the need to address power imbalances between researchers and children in projects. This is due to the subordinate position of children in most societies. Whether we like it or not when adults and children come together in projects, adults hold the power no matter how participatory the environment is, and this is bound to affect the subsequent interaction that takes place.

O’Kane adds to this viewpoint:

Ultimately the biggest challenge for researchers working with children is the disparities in power and status between adults and children. Working within a historical and cultural context in which children’s voices have been marginalised, researchers face great challenges in finding ways to break down the power imbalance between adults and children, and in creating space, which enables children to speak up and to be heard (2000: 136 – 137).

In many cases adults enter projects with pre-determined ideas of how they want children to participate, proceed to talk down to children, misinterpret what they say or put words into their mouths. Therefore, due to these inherent power dynamics that are bound to be present, I was conscious that I needed to take steps to reduce the imbalance of power in this research. My particular case was made more complex because I was working with children who not only saw me as an adult, but also as a foreigner despite the fact that in some instances, I spoke the same language as them. Therefore, my strategy to address the power imbalances was focused on making FGDs as informal as possible and ensuring that children’s participation was voluntary and not forced by offering them the opportunity to withdraw at different stages. I also informed them of the project aims and objectives and used the fact that I was a stranger in the community to present myself as an ignorant being looking up to them to deepen my knowledge of their lives and experiences.

However, during the data collection process, I came to realise the strength of the socialization process on the ability of children to talk to me as an adult. In this cultural context children are trained from a very early age that they must respect and obey elders and not question what they are told to do.²⁹ This was evident in the FGDs with all groups of children. Children did not feel that it was their role to speak, not even on issues that affect them. Many did not understand why I sought to obtain their views, and some informed me that I would be better off talking to their mothers, who, they felt, would be better positioned to engage in this discussion.³⁰ As a result, although I repeatedly informed them that they could ask me questions on the project after providing a brief overview, most did not feel able to ask me for more information about the research or how the data would be used. Out of 21 FGDs with children in Nima and Ga Mashie only one girl, who was actually over the age of 18, asked further questions about the research study and its planned use. Furthermore, while I gave participants the opportunity to withdraw at any time, the only group who took me up on my offer was one group of street children I worked with in Central Accra. In FGDs with this particular group of children, they came and left whenever they wanted to as they got distracted and bored and wanted to do something else such as play football or watch TV. This meant that with this particular group of children, their participation was not consistent over the two month period or even in the course of one one-hour session, which meant that some of the data collected was from a variety of children rather than a particular group of children. However, during the two month process of working with this group there emerged a core

²⁹ See below for a more detailed discussion on the socialization process in Ghana, Chapter IV, Section 4.4.2; Chapter V, Section 5.2.2.

³⁰ See below for a more detailed discussion on children's attitudes to their own participation in decision-making on issues affecting them, (Chapter V, Section 5.2).

group of eight children (seven boys, one girl) who always came and stayed till the end. Most of the data collected from this group was based on the views and experiences of these eight children in particular.

Furthermore, although I made attempts to present myself as someone who was not a teacher and the FGDs as not being a class, it was difficult for participants to relate to me in any other way than as a teacher and an adult, and thus, wielding a considerable amount of power over them. As a result, respondents insisted on raising their hands or standing up before speaking although I repeatedly told them that there was no need for them to do so. In the end I decided to overlook it as I realised that not standing up before speaking to me made them uncomfortable. In the instances where I was able to meet with children over a period of time, I believe that this power imbalance was addressed somewhat, based on how they relaxed in their interaction with me, shared jokes with me and felt more comfortable to ask me questions about myself as the weeks went by.

Research assistants also contributed to the power imbalance in relationships with children. While they were imperative to the data collection process – not least because of their ability to communicate in languages I could not - they did present some challenges. Firstly, although all were graduates or students of the Department of Social Work at the University of Ghana, Legon, they were not sensitised or convinced of children's rights and child participation principles, which were central to the research methodology. Their attitude to children was, in fact, a reflection of wider societal attitudes, and this was apparent in the way they spoke to children during FGDs and the administration of questionnaires. This attitude contributed to recreating teacher-student relations in FGDs that sought to adopt a more informal atmosphere. Their attitude and approach also had an

impact on how they related to children and how children, in turn, responded to them in interviews. During the administration of questionnaires where questions had to be translated into Ga, Hausa or in some cases Twi in order for children to understand, research assistants asked leading questions to which children could only answer in one way: 'yes' or 'no'. Furthermore, on occasion when a child's answer was not clear, they interpreted the answer in their own way without seeking clarification from the child. The fact that they knew the communities of focus well further made it possible for them to make assumptions about what a child was trying to say. Therefore, on some occasions I questioned the extent to which the response written down on the questionnaire accurately conveyed the respondent's meaning. However, it is still worth noting that many of the responses from the questionnaires corroborate the FGD data, which I facilitated in all cases.

Finally, financial compensation was never provided to children or adults as payment for their involvement. Most of the children I worked with expected something and it was clear that that was the incentive for their participation. Hence, in some cases I provided note books, stationery, snacks or food (packs of fried rice and drinks). The latter was provided to all out-of-school children and to school children with whom I had spent several weeks in order to mark the end of the sessions.

The only occasion where compensation emerged as an issue was with adults in Ga Mashie. Very often the first question I was asked after I informed elders and community leaders about the project was, 'What are you going to do in return for us because, you know, this is a poor area?' They did not mean what I was going to do for the community in the long-term, but rather, as compensation after the FGD. The facilitator who helped

me organise some groups of adults and out-of-school children in Ga Mashie informed me from the outset that whilst adults in Nima had been grateful for a bottle of super malt and plantain chips as compensation, that would not be sufficient for the adults of Ga Mashie. Rather, he advised me to buy packs of fried rice for both the children and adults participating in the FGDs, although in Nima I had only done this for children out of school.³¹ Even then, not everyone was satisfied with this. In one FGD with a group of adults in Bukom Square (Ga Mashie) they informed me that they would rather have the money I was going to use to buy packs of fried rice in order for them to buy enough balls of *kenkey* and fish to feed their whole family. The fact that this issue was resolved without much discussion was due to the fact that the facilitator who helped me to organise this particular group of respondents was a well-respected figure in the community. This further emphasises the importance of working with community leaders and elders in order to not only gain access to, but also manage relationships with, community members.

Structure of Thesis

In order to provide a context for the discussion on the universality-relativity of children's rights, Chapter I traces the history of children's rights to 17th century Western Europe and proceeds to illustrate how efforts in the 20th century have focused on universalising this conception of children's rights around the world with a particular focus on international law. Following on from this, Chapter II outlines the universality and relativity dichotomy, highlighting both the validity and flawed nature of each side of the debate and makes a case for building a bridge between these two positions in order to achieve progress in protecting children on the ground. In order to highlight the possibility of a middle ground

³¹ To better understand the possible reasons for this difference in attitudes between Nima and Ga Mashie, see below, Chapter IV, Section 4.2.

approach to children's rights, Chapter III focuses on the efforts made to harmonise national law with the Convention's standards in Ghana. Specific attention is given to the 1998 Children's Act, which not only considers the Convention's provisions, but also the values of local communities. However despite the conducive legal and policy framework that exists for the enforcement of children's rights, the reality of children's lives in Ghana remains in stark contrast to the legal framework. This highlights the need to engage with local communities and elicit their perceptions of children's rights in order to identify commonalities of thought between their views and more international perspectives. As a result, Chapter IV presents data collected from adults and children on children's rights and the socialization of childhood in order to identify these commonalities of thought on children's rights and understand the reasons behind the differences that persist. Chapter V focuses on the implementation of Article 12 in Ghana in order to explore the possibility of identifying a middle ground even with regards to rights that are seen to be very much at odds with cultural values in Ghana and elsewhere.

CHAPTER I

Ensuring a Particular Childhood For All: The Movement towards a Universal Child Rights Convention

1.0. Introduction

There seems to be an assumption in many parts of the world that we know what the nature of childhood is and what its special requirements are. This assumption can be seen from such statements as those below:

Children need a childhood to grow in.³²

I saw how important children are to the world. People should protect children. I feel the whole world is feeling my feelings.³³

When our eldest daughter was five, I suggested she could help with the washing-up. ‘Oh no, Daddy’ she replied, ‘I’m only a little girl and I have to get as much playing done while I can.’³⁴

BOREDOM!!! SHOOTING!!! SHELLING!!! PEOPLE BEING KILLED!!! DESPAIR!!! HUNGER!!! MISERY!!! FEAR!!! That’s my life! The life of an innocent eleven-year-old schoolgirl!!! A schoolgirl without a school, without the fun and excitement of school. A child without games, without friends, without the sun, without birds, without nature, without fruit, without chocolate or sweets, with just a little powdered milk. In short a child without a childhood.³⁵

The Convention on the Rights of the Child, adopted by the United Nations General Assembly in 1989, is both a product and facilitator of this assumption of childhood. It is a product in the sense that it is the culmination of over a century of international discourse

³² Fergal Keene, a British journalist, made this comment on Monday 17th February 2003 in a discussion on BBC Radio 4’s *Woman’s Hour* on children’s understanding of the forthcoming war with Iraq.

³³ Speaking from his hospital bed in Kuwait City this comment was made by Ali Abbas, a 12 year old boy who lost both his arms and most of his family in a Baghdad bomb blast during the initial stages of the Iraq War in March –April 2003, (quoted in the *Metro* Wednesday 7th May 2003).

³⁴ This anecdotal story was sent to the *Daily Mail* by a father in Tavistock, Devon (UK), Friday 13th June 2003.

³⁵ This extract is taken from the diary of Zlata Filipovic, an 11 year old caught up in the siege of Sarajevo in June 1992, quoted in Cunningham (1995:1). The diary has now been published as *Zlata’s Diary: A Child’s Life in Sarajevo* (London, 1994).

on childhood and children's rights. It is also a facilitator since it is now guiding the spread of this assumption of childhood around the world even in communities, which have historically had different assumptions about childhood.

Therefore, the aim of this chapter is to trace the history of childhood and children's rights in order to illustrate the efforts made to ensure a particular childhood for all, initially within national boundaries, and then internationally through international law. Firstly, it will explore how the notion of childhood was transformed in Western Europe from the 17th century onwards, leading to a new conception of childhood, which led to new ideas about the nature of children and their needs. Secondly, it will focus on how this conception of childhood was spread to the working classes and the efforts made to ensure that the concept was universally entrenched in society. Thirdly, it will argue that the attempts to make the modern Western conception universal moved beyond national boundaries and spread internationally – not least because of the horrors of the First and Second World Wars – and were greatly facilitated by the adoption of key international treaties during the course of the 20th century. Finally, it will examine the challenges that one of these treaties, the Convention on the Rights of the Child, has faced since its adoption in 1989 in order to highlight the difficulties in exporting a particular notion of childhood and its entitlements to countries with diverse cultural and social values and belief systems.

1.1. Tracing the History of Children's Rights

To begin, it is important to explore how the notion of childhood changed over the centuries in Western Europe. The focus of this section will particularly be on changes that took place in the UK. During the Middle Ages, it has been argued that children were

largely undifferentiated from adults as there was no recognition of the special state of childhood, or of life cycle stages (see Aries, 1962; De Mause, 1974; Hoyles, 1989).³⁶ Thus, children lived, played and worked in the adult world, alongside adults. Schools were for everybody no matter their age, meaning that a 24-year-old man could be in the same class as an 11-year-old child (Hoyles, 1989: 18). According to Tudor criminal law those aged seven and above could be hanged for theft (Ibid: 19). All children over the age of four or five could work and earn their own bread. In fact, apprenticeships were compulsory after the age of 12 and some began as young as seven (Ibid: 18). Furthermore, children of 11 could join the army and in some instances, they held positions of leadership. For example, in the American War of Independence (1775–1783) one of the ship commanders was a boy of 16 (Ibid). Like adults, children gambled and went hunting and conversely, like children of today, adults played games such as blind man’s bluff, the frog game, hide and seek and fiddle-de-dee, games which have now been left to the realm of children (Ibid: 69; Plumb, 1972: 157). Toys, apparently, did not appear until 1600 and even then they were only child size replicas of adult objects and were not used beyond the ages of three and four (Firestone, 1971:88). Since their life was not separated from adults, their position was undifferentiated. It was not felt that they required a special environment, special entertainment, special clothes, nor did they need to be separated from the sophistications and ribaldries of adult life (Plumb, 1972: 158). As Tucker (1974) notes, ‘that children were human beings with human needs seldom entered their [adults’] minds...’ (quoted in Weisberg, 1978: 43).

³⁶ However, there are numerous accounts that show that societies in the Middle Ages (both in the UK and other Western European countries, especially where Catholicism was the dominant religion), did recognise the different nature of children compared to adults (see Pollock, 1983; Cunningham, 1983; Orme, 2001; Heywood, 2001).

However, during the course of the 17th century attitudes towards children changed. The conception of childhood in Western Europe became narrower, more rigid and intrinsically intertwined with concepts such as modern education and biological age.³⁷ Archard supports this point when he states that at this time a more elaborate, explicitly stated and abstract appreciation of what is involved in being a child emerged (1993: 17).

Jean Jacques Rousseau was particularly influential in this period of change as he pioneered the ideology of the innocence of childhood on which the modern Western conception of childhood is based. Rousseau's landmark novel, *Emile ou Traite de l' Education* (1762), the story of a boy and his tutor, was a catalyst for the change that took place. In this study Rousseau strongly criticises those 'seeking the man in the child without thinking of what he is before being a man' (quoted in Archard, 1993: 22). In this new ideology childhood has its place in the order of human life and therefore, 'the man must be considered in the man, and the child in the child' (Ibid). *Emile* came to be treated as the dividing line between the dark age of childhood and the beginning of an enlightenment concern (Somerville, 1982: 127).

The impact of Rousseau and his ideas are evident. According to P. Robertson (1976):

If the philosophy of the Enlightenment brought to 18th century Europe a new confidence in the possibility of human happiness, special credit must go to Rousseau for calling attention to the needs of children. For the first time in history, he made a large group of people believe that childhood was worth the attention of intelligent adults, encouraging an

³⁷ The viewpoint of this study that a new conception of childhood emerged during the 17th century is markedly different from Ariès' landmark study entitled *Centuries of Childhood: A Social History of Family Life* (1962), which posits that in the 17th century, the very concept of childhood was invented. Prior to that, he argues, there was no concept of childhood in Medieval Europe. However, this study prefers to argue that all that really happened from the 17th century onwards was that the conception of childhood changed and people began to put more thought into the nature of childhood and children's needs and qualities (see also, Orme, 2001; Heywood, 2001; Cunningham, 1995; Archard, 1993; Pollock, 1983).

interest in the process of growing up rather than just the product. Education of children was part of the interest in progress which was so predominant in the intellectual trends of the time (quoted in Jenks, 1996: 65).

As a result, parents began to invest their children with new affection and they became concerned with the purity of children and their innocence and began to worry about their exposure to vice (Hendrick, 1997b: 38; Firestone, 1971: 89). Importantly, it was these ideas advocated by Rousseau that were later reiterated by reformers such as the Seventh Earl of Shaftesbury,³⁸ in their mission to solidify and standardise this conception of childhood in the 19th century and early 20th century.

One important area where the impact of Rousseau was especially felt was the formal education sector. This is crucial for our purposes because education was instrumental in changing conceptions of childhood. As Firestone aptly puts it, ‘if childhood was only an abstract concept, then the modern school was the institution that built it into reality’ (1971: 92). Schooling was redefined. No longer was it open to men of all ages and centred on scholarship. By the 19th century schools were divided into classes and boys of the same age were moved from class to class, resulting in the eventual exclusion of adults from this environment. Gambling and alcohol were also banned in schools. Literature in schools was censored. In fact, in the 19th century the headmaster of Harrow forbade novels in the school in case it corrupted the reader (Plumb: 1972: 162).

³⁸ Born in 1801 as Anthony Ashley Cooper, the 7th Earl of Shaftesbury became a Tory MP in 1826 and almost immediately became a leader of the movement for factory reform. He was largely responsible for the Factory Acts of 1847, 1853. One of his chief interests was the welfare of children and he was the Chairman of the Ragged Schools Union, which were charitable schools dedicated to the free education of destitute children without any government support.

In addition, specialised games, toys and literature for children emerged in society. By 1780 London was inundated with toy shops, manufacturing sophisticated toys specifically for children such as rocking horses, soldiers and forts and mechanised toys for every home (Somerville, 1982: 146). Literature that had been previously read by both adults and children alike was now left to the realm of childhood as adults became more sophisticated in their choice of reading. This was partly due to improved literacy among adults, which honed their critical abilities (Ibid).³⁹ In fact, by the end of the 18th century there was such an abundance of literature for children that the publishing industry established the principle that ‘children’s books do not have to make sense to adults, that children’s minds are not simply smaller versions of adult minds’ (Ibid: 146). A change in sexual attitudes was also noted during this period. Whereas the modern idea of avoiding sexual references in the presence of children was entirely foreign to the medieval period (Ariès, 1962: 98), in the 17th century this practice became entrenched in society.

These changes were linked to the development and widespread acceptance of the concept that childhood was an innocent stage in the life cycle and that it was the duty of adults to preserve it (Plumb, 1972: 158). In this way, the child and his distinctive status of childhood came to be not only recognised, but also respected. He became categorised as a special creature with ‘a different nature and needs, which required separation and protection from the adult world’ (Ibid: 159). Somerville describes the change in attitudes:

Parents were made aware that some things are suitable for children and other things are not; they were further encouraged to accept amusement as good in itself. It was part of the child’s right to a happy childhood; the widespread acceptance of such a right was seen as a milestone in the history of childhood (1982: 147).

³⁹ Fables, fairy stories and nursery rhymes that appeared in medieval sermons and romances such as *Robin Hood* and *the Seven Wise Masters*, now became the property of younger readers and this is signified by the fact that they were printed more cheaply (see Somerville, 1982).

Hence, as Plumb asserts, the period between seven and adolescence rapidly became ‘a world of its own’ (1972: 159). In this way a new image of childhood emerged, with a new set of expectations, norms and roles. Childhood was now conceived as a special time of life, separate and distinct from adulthood. Rather, it came to be seen as a preparatory stage for adulthood, which must be managed properly to ensure that children grow up to become responsible, well-rounded and autonomous adults able to stand on their own in the adult world (Ncube, 1998: 15). Children became a separate group with separate characteristics (mainly defined as innocent, physically weak and mentally immature), of whom specific behaviour was expected (see Veerhellen, 1994). As a result, it was recognised that they require special protection and rights specifically designed for them because of their immaturity, lack of sound judgment and lack of experience in the ways of the world (Ncube, 1998: 15).

Initially this modern conception of childhood excluded the working classes who continued to graduate immediately from infancy to adulthood for most of the 17th and 18th centuries.⁴⁰ This exclusion of the poor disappeared in all sectors during the 19th century for two reasons, namely the spread of affluence, and the political and cultural struggle to extend the developing constructions (and reconstructions) of childhood through all social classes (Hendrick, 1997b: 34).

⁴⁰ This exclusion of the lower classes and upper class girls from the new concept of childhood, has led Firestone to conclude that this was due to the fact that the end of childhood marked a graduation to adult male power. However, as girls and lower class boys were never to achieve this power, there was no reason for them to pass through this rite of passage. After all, ‘there was nothing for them to grow up to’ as both groups were always to be servile to upper-class men (1971: 91).

The passage of social legislation in the 19th century was central to the ‘determined efforts made to provide such a childhood for everyone, even if it meant squeezing some into the mould’ (Somerville, 1982: 189). In the UK, for example, the Factory Act of 1833, which prohibited the employment of children under nine years and limited the working day to eight hours for those between the ages of nine and 13, marked the beginning of a change in attitudes towards children. Thus, by 1840 the wage-earning child was no longer the norm. Instead, childhood was now seen as constituting a separate and distinct set of characteristics requiring protection and fostering through school education. According to Hendrick, the campaign ‘to reclaim the wage-earning child for civilization was one of the first steps along the road of what can be described as the social construction of a universal childhood’ (1997b: 39-42). For the rest of the century reformers, educationalists and social scientists strove to make real the idea through further reconstructions and elaborations (Ibid).

Central to these reconstructions in the UK was the 1870 Education Act, which made provisions for compulsory education for all who could not already afford it and by 1880 most children below the age of 13 were going to school. By the early 20th century the major pieces of legislation and institutions to promote this conception had been firmly established. Laws were passed banning children from public houses and forbidding them to gamble; a new concept of the ‘age of consent’ emerged, leading to the tight regulation of children’s sex lives (Plumb, 1972: 163).⁴¹ Institutions such as youth groups, welfare

⁴¹ It is important to note that this construction of childhood and its functions was due to a ‘social need’. Children were seen as being ‘of the Nation’. Investing in them meant investing in the future of the country, which was particularly crucial during this competitive period of the ‘scramble’ for colonies (Plumb, 1971: 163) and industrialisation. Thus, it was socially crucial for all children in England to be moulded into this image of childhood and to have that childhood and its vulnerability protected by regulating all aspects of their lives.

agencies, and correctional institutions for the young emerged that pushed forward the standardisation or the universalisation of this particular conception of childhood. As a result,

Today the malingerer or dropout has a full-time job just warding off the swarm of specialists studying him, the proliferation of government programs, and the social workers on his tail... (Firestone, 1971:104).

Despite the proliferation of laws and policies, the universalisation of this notion of childhood within the UK met great resistance amongst certain sections of the population, which continued well into the 20th century. For working-class families this resistance against this conception of childhood was based primarily on economic considerations. Hitherto, the majority of working-class parents regarded their children in a manner largely conditioned by financial and labour considerations, without much of what nowadays would be regarded as ‘expressions of feelings or sentiments’ (Hendrick, 1997a: 19). Parent-child relations amongst this group were traditionally based more on the notions of reciprocal rights and responsibilities. Children could expect to be generally cared for in terms of food, clothing, shelter and education in return for which they were expected to contribute to the family economy through wage labour and help around the house as soon as they were able (Ibid: 20).

Thus, the inclusion of working-class children into the newly constructed notion of childhood arguably made them economically useless and a burden on their families who struggled to survive without their wages. As a result, as late as the early 20th century a section of the British working-class was still opposed to ending child labour for economic reasons. For example, at the 1902 Trades Union Congress the Gasworkers’ Union

resolution to prohibit the employment of children under the age of 15 was carried by only 535, 000 votes to 514, 000 votes (Hoyles, 1989:37). Also, strikes by children such as the match girls' strike of 1888 and several children's strikes in the early 20th century were partly in response to what they considered to be their imprisonment in schools and to the restrictions on their ability to earn a living.

The key point when exploring the universalisation of childhood within national boundaries in Europe in the 19th and early 20th centuries is that even in Western societies, from which the modern concept of childhood emerged, significant numbers of children had to be squeezed into this new conception constructed by middle-class reformers. Bearing this in mind, it is surprising that these reforms were translated from law and policy into reality in a relatively short period of time. I would argue that the reason for this was that the reformers, who were very often influential members of society, had resources and political will on their side. Therefore, they were able to advocate for, and push through, these changes in all spheres of children's lives and overcome much of the class-based resistance that resulted. For example, by making education compulsory (and ensuring that inspectors were out in force to monitor adherence to this law), children were now spending significant parts of their day out of the home. This enabled them to come under the scrutiny of a new group of professionals who were central to fostering and maintaining this new idea of childhood - teachers, social workers, pediatricians, nutritionists, and development psychologists, amongst others. In this way it became possible to normalise and universalise the conception of childhood within national boundaries in Western Europe. Thus, political will and resources were critical to the extent to which the modern conception of childhood spread across all sectors of society.

In the 20th century three key developments, namely, the First and Second World Wars and colonial rule led to reformers expanding their focus from their own countries to take on a more global focus. The result was the exportation of this definition of childhood to other parts of the world, leading to what may be called the internationalization of the project seeking to universalize a particular notion of childhood for all children. The adoption of a series of international laws was central to this project.

1.2 Tracing the Global Universalisation of Children's Rights

1.2.1 The 1924 Declaration of the Rights of the Child

The first attempt to internationalise this notion of childhood that had developed in Western Europe during the 18th and 19th centuries came when English schoolteacher and founder of the Save the Children movement, Eglantyne Jebb, began to promote the concept of an international Declaration of the Rights of the Child as part of her mission to expand the work of Save the Children, particularly in war-torn countries.⁴² She believed that for her work to be effective it needed international status. Hence, Jebb produced a five-point Charter, which she submitted to the League of Nations, the predecessor of the United Nations, in 1923. It was then adopted the following year at the fifth Assembly of the League as the Geneva Declaration of 1924 or the Declaration of the Rights of the Child, making it the first comprehensive international instrument on any issue.⁴³

⁴² While the 1924 Declaration was the first formally recognised attempt to internationalise children's welfare, Polish national, Janusz Korczak, began formulating a declaration long before the Declaration was conceived. Korczak advocated that children had a right to respect, a right to live in the present: 'children are not people of tomorrow; they are people of today'. He further advocated that children had a right to be themselves, a right to make mistakes, a right to be taken seriously, a right to resist educational influence that conflicts with his or her own beliefs.

⁴³ Many may find it surprising that the first human rights declaration adopted by any inter-governmental organisation was related to children due to their relative invisibility at the time. However, this thesis suggests that it reflected the growing and overwhelming attention paid to children in Western Europe and North America by policymakers,

The Declaration, which was very much concerned with protection and provision rather than rights, established the claim that ‘mankind owes to the child the best it has to give’ (Preamble).⁴⁴ The five principles of the Charter were namely: the child must be given the means requisite for its normal development, both materially and spiritually; the child that is hungry must be fed, the child that is sick must be nursed, the child that is backwards must be helped, the delinquent child must be reclaimed and the orphan and waif must be sheltered and succoured; the child must be the first to receive relief in times of distress; the child must be protected against every form of exploitation; and the child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men (1924 Declaration of the Rights of the Child). Therefore, although the Declaration is entitled the Rights of the Child, its text is mainly concerned with the provisions of children’s economic, psychological and social needs, which is more pertinent to the language of welfare. This is further borne out by the fact that the Declaration places these duties directly upon men and women instead of making children the holders of rights that they can claim against adults. Thus, children were not seen as the holders of rights, but more as recipients of adult protection and provision.

The wording of the Declaration also illustrates that it was not supposed to be binding on States. Although not a binding treaty, the 1924 Declaration was significant in several respects. According to Heintze,

teachers, educationalists, psychologists, doctors and social workers by the beginning of the 20th century. In Britain this focus was also partly because the development of the nation was now seen as dependent on children who would grow up to become missionaries, soldiers and officers of colonial governments, and thus central to the maintenance and expansion of British power (See Plumb, 1972).

⁴⁴ This notion of an unrepayable debt is echoed in the subsequent 1959 Declaration on the Rights of the Child and the 1989 Convention on the Rights of the Child.

Though it was essentially an aspirational document, by introducing basic principles on the international plane, it did prepare the ground for the progressive development of international norms (1992: 72).

Van Bueren supports this point. Firstly, the Declaration established internationally the concept of the rights of the child and the idea that a child may have rights, thereby laying the foundations for future international standards in this field. Secondly, the Declaration is significant because it illuminates as a fallacy the contention that the international rights of the child is a new development in international human rights law. In fact, this shows that the adoption of international standards protecting the rights of the child preceded the adoption of international codified universally recognised human rights. Thirdly, the Declaration is also evidence that the early development of international human rights law was not exclusively concerned with the development of civil and political rights as it highlights the economic and social entitlements of children. Finally, the Declaration is important because its title provides the first international acknowledgement of the link between child welfare and the rights of the child and begins to draw the attention of states to the necessity of protecting the rights of children when acting on their behalf in welfare situations (1995: 8).

1.2.2. The 1959 Declaration on the Rights of the Child

The Second World War saw new concerns about human rights abuses that led to the realisation that a more effective international framework that would establish clear standards and expectations for the behaviour of governments and others towards their subjects was needed. It was within this context that the United Nations was established in 1945. Once established, the Temporary Social Commission of the Economic and Social Council of the United Nations began to discuss the possibility of a second Declaration on

the Rights of the Child, which was intended to be an additional document to the Universal Declaration of Human Rights (1948). The rationale behind the decision for a separate declaration concentrating on children was that this group had special needs, which justified a separate legal instrument. Many countries showed an interest in this initiative, and in March 1949, 21 governments submitted comments to the Secretary-General, including Belgium, Burma, Canada, Columbia, Czechoslovakia, the Dominican Republic, Egypt, Mexico, South Africa, Sweden, Panama, the Philippines, Mexico, the Netherlands, the UK, the USA and Venezuela. The diversity of the countries (culturally and economically) that made an input in the discussion enabled commentators to argue that from the beginning the Declaration was a global initiative (Ibid: 10). However, despite this initial enthusiasm, it took a further 13 years before the draft Declaration reached the General Assembly. It was finally adopted without abstention on 20th November 1959.

The Declaration enshrines the key principle that children are entitled to special protection and that such special protection should be implemented by reference to the best interests of the child, which shall be the paramount consideration (Ibid: 11). It also provides a more detailed vision of children's protection and welfare than its predecessor, the 1924 Declaration. The Declaration consists of a preamble and 10 principles, thus honing the image of childhood beyond the five points outlined in 1924. The preamble not only reiterates that of the 1924 Declaration, which stipulated that 'mankind owes to the child the best it has to give', it also describes the principles contained in the body of the Declaration as enunciating rights and freedoms, which governments should observe by legislative and other measures taken. By putting the onus on governments to ensure these rights for children, it goes further than the 1924 Declaration, which placed duties directly upon men and women of all nations. With regards to its provisions, the Declaration

stipulates that the child is entitled to a name and nationality, adequate nutrition, housing, medical services, education and play and recreation. Attention is also paid to the special needs of physically and mentally disabled children and to children without a family.

The Declaration goes further than its predecessor (the 1924 Declaration) in a number of other respects. For example, it goes beyond the language of protection and for the first time, speaks in terms of the rights to which children are entitled (Heintze, 1992: 72). Also, the preamble places a specific duty upon voluntary organisations and local authorities to strive for the observance of these rights. The role of voluntary organisations is highlighted because of their instrumental role in persuading governments of the need for international legal protection of children's rights and of their impartial expertise in the formulation of these rights (Van Bueren, 1995: 10). This, thus, shows that the important role allocated to civil society in the Convention on the Rights of the Child was noted as far back as 1959 and was therefore not the ground-breaking initiative that was claimed during the drafting of the Convention.⁴⁵

It is interesting to note that even at this time some countries were advocating for a Convention that would be binding. In fact, Poland made it a point to mention that it would have preferred to adopt a Convention on the Rights of the Child rather than a non-binding Declaration. However, the majority of states opposed this approach. According to the Netherlands, the time had not yet come for the creation of a Convention because:

The great economic, social and cultural differences and the greatly divergent views on morality and religion prevailing in the various Member States [would] give rise to many problems which must, at least for the time being, be considered to be insoluble (Ibid: 11).

⁴⁵ See below for a discussion of the extent to which civil society organisations were involved in the drafting of the Convention, Section 1.3.1, this chapter.

Even the suggested title of the UN Charter of the Rights of the Child was rejected as it implied that the instrument was intended to have legally binding force.

The Declaration had substantial long-term impact on society. It represented great progress in the conceptual thinking of children's rights as it went further than the language of protection and provision and adopted the language of entitlements and rights. Thus, it marked the beginning of a shift in the perception of children in international law- from recipients of rights and welfare to subjects/holders of rights who are able to enjoy the benefits of specific rights and freedoms (Ibid: 12). During the 1960s and 1970s, the Declaration contributed to raising awareness and consciousness of the plight of children and of the importance of vesting children with rights in order to tackle some of the major problems in the world. Twenty years later in 1979, the International Year of the Child as designated by the UN, the General Assembly concluded that:

The principles of the Declaration have played a significant part in the promotion of the rights of children in the entire world as well as in shaping various forms of international cooperation in this sphere (Ibid).

Thus, the Declaration does indeed represent great progress in the conceptual thinking of children's rights.

1.3. The Convention on the Rights of the Child

1.3.1. The Emerging Context

One of the most telling impacts of the 1959 Declaration is that twenty years after its adoption, Poland was finally able to submit a draft of what is now known as the Convention on the Rights of Child to the United Nations Commission on Human Rights

in 1978.⁴⁶ Although Van Bueren argues that it would be too simplistic to see Poland's advocacy for a Convention on the Rights of the Child in terms of the East-West debate, which dominated the Cold War period (see *Ibid*), others disagree. According to Alston, the submission of the original draft of the Convention to the UN Commission on Human Rights in 1978 constituted a 'quintessentially political gesture' (1994: 6). He further claims that:

While the formal occasion for the proposal was the 20th anniversary of the Declaration of the Rights of the Child combined with the celebration (in 1979) of the International Year of the Child, the Polish government was probably motivated more by a desire to seize at least some of the human rights initiative from Jimmy Carter...The rights of the child seemed to be the ideal topic for this purpose, not only because of a long association between Poland and the promotion of the concept at the international level, but more importantly because it was assumed that any such convention could justifiably be confined to the economic, social and cultural rights to which communist countries wanted to accord priority... (*Ibid*).

The reason for Poland's success at this time was because of the fact that the same states that had objected to a binding treaty twenty years earlier withdrew their opposition.⁴⁷ Van Bueren points to several principal factors behind the change in attitudes. Firstly, many states had themselves undergone a fundamental change in their attitude towards the status of children in their national laws. Consequently, the 1959 Declaration of the Child no longer reflected the needs of many of the world's children; for example, the Declaration is silent about the civil and political rights of children, which many states were beginning to recognise as equally important for children, as well as adults. Secondly, by this time states had started to better appreciate that children require a higher standard of protection than

⁴⁶ The Polish government's interest in the passage of the Convention on the Rights of the Child reflects its interest in protecting children, which can be traced back to the Second World War when two million Polish children were killed. Many were subjected to Nazi persecution and medical experimentation. The Polish delegation to the United Nations during its formative years pressed the Commission on Human Rights to deal with the numerous child-related problems that had arisen out of the war (see LeBlanc, 1995: 16).

⁴⁷ See Alston, 1994 and Van Bueren, 1995 for a more detailed analysis of the politics behind the drafting of the Convention.

that which was found in existing international law because of their vulnerability and immaturity. Thirdly, twenty years had elapsed since the Declaration and there had been a spawning of international, regional and bilateral agreements, which dealt with specific issues relating to children's rights and protection. This, in turn, created a need for uniformity in international standards. Fourthly, member states were also prepared to reconsider the need for a Convention because they had recognised that neither the two Declarations nor the two International Covenants⁴⁸ were comprehensive instruments on the rights of children. This was key as one of the principal aims of the drafters of the Convention on the Rights of the Child was to provide a comprehensive document on the rights of the child, which would be acceptable to children and to those working in the field of children's rights. Finally, the fact that the UN had previously designated 1979, the 20th anniversary of the adoption of the Declaration of the Rights of the Child, as the International Year of the Child undoubtedly acted as an emotional magnet drawing states towards the idea of Convention (1995: 13-14).

On the basis of a number of positive replies from Member States to the Secretary-General of the United Nations, the Human Rights Commission decided to establish a pre-sessional working group to draft the Convention on the Rights of the Child in 1979. However, as Van Bueren warns, a withdrawal of opposition by states is not the same as enthusiastic support. Some states tried to downplay the importance of the initiative in order to make

⁴⁸ The International Covenant on Civil and Political Rights is a United Nations treaty based on the Universal Declaration of Human Rights, created in 1966 and entered into force on 23rd March 1976. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and entered into force on 3rd January 1976. It commits states parties to work toward the granting of economic, social, and cultural rights (ESCR) to individuals.

the drafting process as slow as possible. However, by the mid-1980s the Convention developed a momentum of its own and developed far beyond the original draft produced by Poland, which was merely repetitive of the 1959 Declaration and was focused more on economic, social and cultural rights (Ibid: 12). In fact, the final text did not resemble the initial Polish draft in either form or content.⁴⁹

The factors propelling the momentum behind the Convention are numerous. The ending of the Cold War was of course significant. The former Communist countries were now anxious to demonstrate their new found attachment to a comprehensive package of international human rights norms, and were therefore, eager to endorse the Convention – civil and political rights and all. The replacement of Ronald Reagan with George Bush in January 1989 finally removed the likelihood of any attempt by the US to prevent or delay the final push to adopt the Convention. This had been the problem under the Reagan administration which had feared that the initial draft of the Convention, with its focus on economic, social and cultural rights, would continue to promote communist principles even as the Cold War came to an end.

In addition, due to the active participation of UNICEF from 1986 many governments of developing countries were urged to participate in the drafting process. This, in turn, enhanced the eventual acceptability of the draft to the governments of those countries and enabled them to make a greater input than might otherwise have been the case. In what

⁴⁹ Whereas the draft Convention produced by Poland had ten very brief articles that closely resembled the norms proclaimed in the 1959 Declaration of the Rights of the Child, the final form of the Convention consisted of 41 detailed substantive articles and extensive provisions regarding its implementation through the Committee on the Rights of the Child, with the assistance of international governmental organisations and non-governmental organisations (see Le Blanc, 1995:24).

has been claimed as an unusual move, 40 NGOs were principal actors in this process. They organised themselves into an ad hoc group to coordinate the drafting of their proposals and to maximise their lobbying of states. Their involvement at the early stage is said to have ‘not only improved the content of the Convention but also generated an unprecedented level of commitment to making it work’ (Muscroft, 1999: 14). In fact, on some occasions, uniquely for the UN, texts of the NGOs were adopted as the basic text for consideration (Van Bueren, 1995: 14). Therefore, the participation of a wide range of state and non-state actors in the drafting arguably laid the foundation for the so-called widespread support, which was to be accorded to the Convention in the early 1990s.⁵⁰

Following the Polish call for a new and binding Convention in 1978, the actual drafting of the Convention took another 10 years – not least because of the Cold War, which explains much of the politics behind the drafting process. This period consisted of negotiations among government delegations, inter-governmental organisations and NGOs from every part of the world. All provisions had to be adopted by consensus, meaning that at any time a single determined delegation could effectively exercise a veto power over a proposal.

The Convention was finally adopted by the General Assembly on 20th November 1989, the 10th anniversary of the International Year of the Child and the 30th anniversary of the UN Declaration on the Rights of the Child. All countries except the USA and Somalia

⁵⁰ See below, Chapter II, Section 2.1.1. for more detailed arguments on the widespread support of the Convention.

have now ratified it.⁵¹ However, it is worth also noting that by signing the Convention both Somalia and the USA have signalled their intention to ratify it in the future.

1.3.2. A Very Western Convention: An Overview of its Provisions

The Convention is rooted in modern Western values and conceptions of childhood, child development, child protection and the entitlements that should be awarded to children. The key principles of the Convention are: the right of all children to enjoy all the rights of the Convention without discrimination of any kind; respect for the best interests of the child as a primary consideration in all decisions affecting the child; the right to survival and development; and the right of the child to express her views and feelings on all matters affecting her. These four principles must be implemented equally if children's entitlements are to be fulfilled. They guide the interpretation and implementation of the Convention and are reflected throughout the treaty in the articulation of specific rights.

Two of these principles are firmly embedded in modern Western social belief systems. The right to development is intrinsically linked to a particular type of development. Specifically, it is based on modern theories of childhood development originating from Western Europe, which believe that any child's development follows a universal and unilinear progression. In fact, by referring to the rights of the child, rather than the rights of

⁵¹ Whilst the reason behind Somalia's non-ratification is that the country has not had a recognised government for over a decade because of the civil war, the position of the USA is based on its particular human rights liberal tradition, which treats rights as the legally enforceable obligations of a state towards its citizens. Within this tradition there is a strong and coherent argument that, firstly, children do not have rights because as legal minors, they cannot go to court to enforce those rights; and secondly, that social and economic rights (such as those to education and healthcare) should not be regarded as rights because they cannot be enforced by the state in the same way as civil and political rights. Whilst the latter can be respected by restraining government action, the former requires substantial resources and public action in order to be realised (See de Waal, 2002: 3-4).

children, implicit within the Convention is a universal child following a particular development trajectory and requiring particular entitlements (Stephens, 1995).⁵² The resulting impact of exporting this modern European conception of childhood to non-Western countries, and its attendant urban, middle class and white values, was to render deviant, dysfunctional or criminal the activities of lower class children in these societies (Boyden, 1997: 203).

Thus, today child development that deviates from this model is seen as abnormal, malformed, faulty and requiring assistance to return to the norm. This further emphasises the determination of the international community to provide a particular childhood for all, even if it means squeezing them into it. Recently, questions have been raised about the dominance of Western thinking and research in the child development field, and in particular, the use of middle-class urban childhood experienced in industrialised societies as the archetype for childhood and child development.⁵³ According to Petren and Hart,

In order to translate the universal right to development into the specifics of reality, dialogue is needed within every country on the meaning of childhood, child development and children's rights (2000: 52).

The right of the child to express her views especially in all matters affecting her is, again, rooted in modern Western ideology, specifically that which relates to civil and political rights. This component was introduced into the drafting process of the Convention by the US government to deter Poland and other members of the Eastern bloc who were the main promoters of a children's rights Convention that would especially focus on their key

⁵² The 1924 and 1959 Declarations on the Rights of the Child also use the terminology of the rights of the child.

⁵³ See below, Chapter II, Section 2.2.1 for a more detailed discussion about the impact of exporting middle class childhood to non-Western societies.

interests of social, cultural and economic rights. This principle is articulated in various articles of the Convention, which make provisions for children's right to influence decisions made on their behalf, express their views on issues affecting them (Article 12 and 13), have freedom of thought, conscience and religion (Article 14) and also their right to form associations (Article 15). Children's views and opinions are significant and they are seen as active members of their local communities and national societies. However, this principle goes against values found in many societies, making it the most controversial of all the Convention's guiding principles. In societies across the world children are seen as the property of their parents who should obey and not question, which severely limits their ability to contribute to decision-making or express their views on issues affecting them.⁵⁴

Despite the evident cultural bias present in the drafting and content of the Convention, it does take into consideration the importance of local needs and peculiarities. The preamble stipulates that:

...Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child (see United Nations, 1989).

Within the actual body of the Convention this recognition of the need to consider the local context and peculiarities is further reflected. Article 1 defines children as all those under 18, a definition rooted in the modern western conception of childhood. However, it dilutes its cultural bias by including a condition that takes into consideration the possibility that different societies may allow for the achievement of adulthood at ages lower than 18. Furthermore, the best interests of the child principle, which is seen as the

⁵⁴ See below Chapter V for a more detailed discussion the implementation of this principle within the Ghanaian context.

overarching guiding principle, is only stipulated as being a paramount consideration in all actions, instead of being the paramount consideration, thus acknowledging that in certain contexts it may not be possible for the child's best interests to be the overriding consideration. Hence, there is an acknowledgement that there needs to be room for manoeuvre by national governments in implementing the Convention within their particular social and cultural contexts.⁵⁵ According to Ncube, while the Convention does not give primacy to culture, 'it recognises that the rights it grants to children should, in their localisation and implementation, bear the local cultural fingerprinting without, however, extinguishing the essential core of the rights itself' (1998: 14-15). Thus, as Petren and Hart claim, 'wisely it [the Convention] has also been worded in an open-ended way that allows for new findings and evolving interpretations' (2000: 46). The fact that the Convention has now achieved almost universal ratification is therefore, partly a result of its flexibility and acknowledgement of the need for local interpretations.⁵⁶

The Convention, which covers the full range of civil, political, economic, social and cultural rights, contains 54 articles and sets out the following provisions:

1. Children are defined as all persons under 18 years of age, unless the legal age of majority in a country is lower;
2. Children are entitled to civil rights and freedoms, including the right to a name and nationality, to freedom of expression, thought and association, to access to information and to freedom from torture;

⁵⁵ See below, Chapter II, Section 2.3, for the full argument on implementing the Convention's standards while taking into consideration cultural beliefs and values of local communities.

⁵⁶ See below Chapter II, Section 2.1.1.

3. Children have the right to a family environment and alternative care, including the right to live with parents, to be reunited with parents if separated from them and to the provision of appropriate alternative care where necessary;
4. States Parties should ensure that children are provided with basic health and welfare, including the rights to health care, social security, child-care services and an adequate standard of living;
5. Children are entitled to education, leisure and cultural activities, including the right to education, play, leisure and participation in cultural life and the courts;
6. States Parties are obliged to provide special protection measures covering the rights of refugee children, those caught up in armed conflicts, children in the juvenile justice system, children deprived of their liberty and children suffering economic, sexual or other exploitation.

Furthermore, the Convention covers a range of rights not previously covered by its two predecessors. Firstly, it creates new rights under international law for children where no such rights existed, including the child's right to preserve his or her identity and the right of indigenous children to live according to their own culture. Secondly, it enshrines rights in a global treaty, which had until the Convention's adoption only been acknowledged or refined in case law under regional human rights treaties; for example, a child's right to be heard either directly or indirectly in any judicial or administrative proceedings affecting him, and to have these views taken into account is now recognised. Thirdly, it creates binding standards in areas which, until the Convention's entry into force, were non-binding recommendations; these include safeguards in adoption procedures and the rights of mentally and physically disabled children. Fourthly, it imposes new obligations in relation to the provision and protection of children; these include the obligation of a state

to take effective measures to abolish traditional practices prejudicial to the health of children⁵⁷ and to provide for rehabilitative measures for child victims of neglect, abuse and exploitation. Finally, the Convention, for the first time, views children as full human beings; they are seen as subjects, the bearers of rights, who can play an active part in the enforcement of their rights.⁵⁸

The last 13 articles establish the mechanism for monitoring the implementation of the Convention by member states. Important here is the establishment, by Article 43, of a Committee on the Rights of the Child in 1991, which initially consisted of 13 independent experts, but has since been expanded to include 18 members. The structure and procedures of the Committee are very similar to that of other UN treaties. However, the important progress here is that the Committee is allowed to cooperate intensively with NGOs, as Article 45 stipulates:

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- a) The specialised agencies, UNICEF and other UN organizations shall be entitled to be represented at the consideration of the implementation.
- b) The Committee shall transmit, as it may consider appropriate, the specialised agencies, UNICEF and other competent bodies, any reports from State Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committees observations and suggestions, if any, on these requests or indications (1989 United Nations Convention on the Rights of the Child, 1989: Article 45).

In this way the drafters continued to build on the legacy of those who conceptualised the 1959 Convention by recognising the vital role of the NGO sector and indeed, this marks

⁵⁷ Although not mentioned expressly, these include female circumcision.

⁵⁸ See Chapter V for a further discussion on the Convention's perception of children as subjects who are bearers of rights and the implications this has had for the implementation of children's rights in Ghana.

progress in the struggle for effective implementation.⁵⁹ Under Article 44 State Parties must submit to the Committee periodic country reports on the status of children's rights, which the Committee reviews and may request additional information. The Committee is supposed to receive initial reports from governments two years after ratification and every five years thereafter. UN agencies and NGOs are also invited to submit their own reports to the Committee as alternatives to those provided by the governments. This allows a more holistic picture of the situation of children in a given country to be drawn. After considering all the information submitted, often with government representatives, the Committee publishes its concerns and recommendations, referred to as Concluding Observations.

1.4. The African Charter on the Rights and Welfare of the Child: Facilitating the Spread of a Global Childhood?

The mission to internationalize the notion of childhood that was developed in Western Europe from the 17th century onwards has been, to an extent, facilitated by the adoption of the African Charter on the Rights of the Child in 1990 by the Organisation of African Unity (O.A.U.).⁶⁰

In the same way that 1979, the International Year of the Child, proved to be a magnet for the countries involved in drafting the Convention on the Rights of the Child, it also influenced Member States of the O.A.U. Thus, that year the Assembly of Heads of State and Government at the O.A.U. adopted a Declaration on the Rights and Welfare of the Child at its 16th Ordinary Session in Monrovia, Liberia, as it 'recognised the need to take

⁵⁹ See above, Section 1.2.2.

⁶⁰ The O.A.U, which was established in 1963, was officially replaced by the African Union in July 2002.

all appropriate measures to promote and protect the children in Africa' (Lloyd, 2003: 1). Consequently, African states began to draft a regional endorsement of the Convention. Similarly to the Convention, civil society played a significant role in the drafting process. It was at a regional conference organised by the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) to discuss children in armed conflict in Nairobi, Kenya that it was decided that there was a need to have an African Child Charter, which would not only complement the Convention, but cover issues peculiar to the African context (Ibid: 1-2). Subsequently the African Children's Charter was drafted by two lawyers in Kenya and was presented to the O.A.U. Eventually it became known as the African Charter on the Rights and Welfare of the Child and was adopted on 11th July 1990 by the 26th Ordinary Session of the Assembly of Heads of State and Government in Addis Ababa, Ethiopia.

The Charter was adopted because of the need to have a document, which explicitly took into consideration the virtues of the African cultural heritage, historical background and the values of African civilization and which 'should inspire and characterize their reflection on the concept of the rights and welfare of the child' (Preamble). Nevertheless, in many ways not only is the Charter very similar to the Convention, but in certain respects, it takes a more stringent perspective. For example, the Charter adopts a similar definition of childhood to the Convention. However, its definition is more comprehensive and more stringent than the Convention as it is applicable to every human being under the age of 18 without any conditions – unlike the Convention.⁶¹ This is despite the fact that

⁶¹ See Chapter II, Section 2.1.1. for a more detailed account of how stringent the Charter is compared to the Convention despite the fact that it was adopted in order to ensure that the protection of children's welfare and rights on the continent were rooted in the culture and values of African societies.

the achievement of adulthood on the attainment of a random age such as 18 does not strictly reflect the various cultures and traditions found in Africa, as within these contexts childhood is not conceptualised or fixed by chronological age.⁶²

The Charter has four key principles, which are in line with the Convention, and these are non-discrimination (Article 3 and 26); the best interests of the child (Article 4); the right to life, survival and development (Article 5); the participation of the child, which has been subdivided into two further principles, namely respect for the child's views (Article 7) and the provision of information to children and promotion of their participation (Articles 4, 7, 12) (Lloyd, 2003: 4-5).

The Charter goes further than the Convention in several noteworthy respects. It makes 14 completely new additions to children's rights, which are not covered in the Convention, but which particularly take into consideration the reality of children's lives on the continent. These include:

1. Article 11 (6) on education safeguards pregnant girls, enabling them to complete interrupted education and ensures that pregnancy is no longer capable of being considered a legitimate ground for discrimination;
2. Article 14 (2) (g) aims at the full realisation of the right to health through special means of national development plans;
3. Article 20 (1) (b) stipulates that there is an obligation on parents/legal guardians, to secure living conditions necessary for the child's development – limited by the ability and financial capacities of the child's parents/guardians;

⁶² See Chapter II, Section 2.2.1. for further discussion about how childhood is constructed in various African societies traditionally, normally defined as during the pre-colonial period.

4. Article 20 (1) (c) allows the administration of domestic discipline, but must be applied with humanity and be consistent with the inherent dignity of the child;
5. Article 21 (1) (a) and (b) stipulates that States Parties are obligated to take appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child. Particular attention is given to customs and practices prejudicial to a child's health or life and those that are discriminatory to a child on grounds of sex or other status.
6. Article 21 (2) prohibits child marriages and betrothals and obliges States to take effective action and specify that 18 is the minimum age and all marriages are to be officially registered;
7. Article 22 (2) increases protection in conflict to include 15-18 year olds; States must take all necessary, rather than feasible, measures.

The Charter reiterates the provision in the 1981 African Charter on Human and People's Rights (the Banjul Charter) that all individuals have responsibilities toward their family, society and the State. The idea in the Charter is that the concept of children possessing responsibilities helps educate others in the potential value of children's contribution to society, a potential contribution that is often overlooked (Van Bueren, 1995: 24). Therefore, in accordance with the Banjul Charter, Article 31 of the African Charter on the Rights and Welfare of the Child imparts duties on children: - every child has responsibilities towards his family and society, the state and other legally recognised communities, including the international community. Although the provision limits the subjection of duties according to the age and ability of the child, it obliges the child to serve his national community – physically and intellectually. Furthermore, he must preserve and strengthen African cultural values, the independence and integrity of his

country and contribute at all times and at all levels to the promotion and achievement of African Unity.

The Charter also further insists that children have a responsibility to work for the cohesion of the family, to respect parents and elders at all times and to assist them in cases of need. This particular provision has caused some unease among human rights commentators. UNICEF, for example, is uncomfortable with this supplement. Van Bueren puts forward her concerns about this provision as follows:

Apart from the difficulties of creating such duties in international law, the responsibility to respect parents and elders at all times is too unquestioning and general. Where family members are abusing or exploiting children to maintain that children are obliged to respect the abuser is a dangerous precedent (Ibid: 24-25).

It is indeed commendable that the Charter did not simply imitate the Convention, but went further to establish new and innovative provisions, which are relevant and useful for Africa. However, the fact that the Charter closely resembles the Convention and in many ways takes a more Western or stringent approach to defining childhood and its entitlements than the Convention illustrates the role it plays in facilitating the universalisation of the modern conception of childhood in regional treaty-making in Africa. Due to the slow ratification of the Charter its impact has, however, not been as wide-reaching as the Convention, which remains the principle document guiding government policy and law in countries across the continent.

1.5. Assessing the Convention's Progress

1.5.1 The Achievements of the Convention

The Convention represents an achievement in many significant respects. Ratification, whatever the motivation, is a key step forward as it creates a real opportunity for public scrutiny of government performance and for a deliberate effort to work towards the

fulfillment of children's rights (Muscroft, 1999: 22). In ratifying the Convention, governments voluntarily accept the obligations it sets out and hold themselves accountable for their success or failure in executing its provisions. Furthermore, the process of monitoring implementation has created the opportunity for much more public debate about the performance of governments in implementing the Convention and addressing children's issues (Ibid). The establishment of numerous coalitions of NGOs whose core mission is the advancement of the Convention such as the Ghana NGO Coalition on the Rights of the Child has also facilitated the monitoring process.

Many governments have taken a series of actions that could allow for far greater implementation of the Convention if there was sufficient funding and technical assistance (Woll, 2000: 35). As a result of ratifying the Convention, numerous governments have initiated the process of law-reform. In 50 countries focused on in a study conducted by the UNICEF Innocenti Centre, the Convention has been incorporated into the national legal framework by legislative reform, including constitutional amendment (Santos Pais and Bissel, 2006: 689). In the years following the adoption of the Convention, Children's Acts or Codes were introduced into the legislative framework in a number of countries such as Brazil, Uganda and Ghana.

Independent children's rights watchdogs have been set up in 38 countries world wide, acting as catalysts for the realisation of children's rights (Ibid) as they monitor legislative proposals, review the impact of government initiatives, increase public and official awareness of children's rights and provide a means for children's voices to be heard on issues affecting them (Muscroft, 1999: 23-24). An example is the children's rights

watchdog in Uganda, which also comprises sub-national institutions that monitor children's rights within provincial or municipal bodies.

Furthermore, the Convention has been used by governments and NGOs as an additional tool to push for advances for children in their specific contexts. According to Woll, the ratification of the Convention emphasises the concept of children as people with rights, beginning a transformation of public policy from one based on needs to one based on rights (2000: 26). As a result, children's rights and human rights more generally are more visible in society today than they were twenty years ago.

1.5.2. Challenges to the Global Universalization of Childhood

Despite the efforts to squeeze the world's children into a particular childhood with particular entitlements, several factors - both internal and external - have affected the full implementation of the Convention, and thus impeded the project to universalise childhood and children's rights globally. Thus, to date, no country has fully realised its provisions.

There is a general consensus that the chief weakness of the Convention lies in the mechanisms for its implementation, which are governed by the principle of the best interests of the child (Article 3). The constraints on implementation are not helped by the fact that the Committee on the Rights of the Child, the main body monitoring implementation, has found it increasingly difficult to manage its workload. As Muscroft argues:

Even with the assistance of civil society organisations, it [the Committee] faces a major challenge in effectively scrutinizing and challenging the actions and behaviour of all the world's governments (1999:189).

Moreover, the five-year gaps (which, in reality, are often more) between the progress reports submitted by governments to the Committee on the Rights of the Child mean that the state of children's rights is seen only in snapshot, rather than in the ongoing flux of progress and setbacks. Thus, the Committee is not provided with a holistic picture of the lives of children in a particular country. Hence, as delays build up in the examination of the reports submitted by governments the credibility of the monitoring process may begin to be challenged by civil society groups.

Even after submitting reports to the Committee, governments tend to pay little attention to the Committee's Concluding Observations and in many instances it is unclear which government department is responsible for follow up (see Woll, 2000: 35). This situation is worsened by the fact that implementing agencies often have little knowledge of the Convention and do not feel that it is their responsibility to implement its provisions. Furthermore, they have very limited budgets and a high turn over of staff, which limits their capacity to deliver services and tackle pressing policy-related issues. They also lack basic data on children, which prevents effective monitoring of the Convention (Ibid: 38). In addition, local governments, in light of the decentralization policies of many countries, have increasingly become responsible for the implementation of children's rights. However, generally they have low levels of awareness about the Convention and thus, do not make much effort to implement it, particularly in rural areas.

External factors have undoubtedly been significant in limiting the effectiveness of the Convention. Even in cases where governments are committed to the vision of the Convention, they were charged with implementing its provisions at precisely the time when their ability to do so was being most rapidly eroded. The 1990s were a period in

which the capacity of governments to bring about change was increasingly constrained by cut-backs in resources and social welfare expenditure due to Structural Adjustment Programmes, the competitive pressures of globalisation and the growing power of giant corporations whose wealth far exceeded that of many developing countries. Widespread and systemic poverty proved a significant barrier to the realisation of rights such as access to health, education and social services. The ability of governments at the national level to manage their own affairs continues to be increasingly challenged, while the mechanisms of global governance are as yet too weak to control market forces. In light of these conditions, Freeman cogently argues that it is doubtful whether poorer countries can by themselves afford to implement the Convention as they have large populations, smaller incomes and a higher percentage of their population tend to be children (1992: 40).

In addition, the Convention has operated in a hostile socio-political environment since its adoption. Polarised political conditions or instability have impeded the progress of implementation. The end of the Cold War unleashed a series of brutal, prolonged intra-state conflicts, which killed and displaced millions of people including children who were often at the centre, either as victims or perpetrators of violence, or both at different times. AIDS continues to wreak havoc on populations across the world, but especially in sub-Saharan Africa where it claims thousands of lives every year, including many children. In some countries, the 1990s saw AIDS reverse progress that had been made in previous decades in child health, leading to deaths among children under five doubling or even tripling in some southern African countries and diverting resources away from treating preventable diseases (Muscroft, 1999: 19). For Muscroft, 'all this has made the Convention even more relevant and its implementation more urgent...but it has also

increased the size of the task involved and the range of issues that must be tackled' (Ibid: 21).

1.6. Conclusion

While the movement to internationalize a universal image of childhood and children's rights, which can be traced back to 17th century in Western Europe had been codified into international law by the early 1990s and can now be found in the national laws of countries around the world, the reality on the ground presents a picture that remains in stark contrast to the Convention and national laws. Part of the reason for this must be attributed to the perception of the Convention as a document rooted in modern Western values. This further emphasises the need for the international project seeking to globalize the universal image of childhood to have the public on its side in order to ensure effective implementation. Hence, the promoters of the Convention need to legitimise it in the eyes of the public and engage them in dialogue. In order to do this they need to move beyond the cultural bias inherent in the Convention and take into account the compromises that many Africans make in order to survive in a rapidly globalising world. When this reality is taken into account, it is realised that while cultural values and practices continue to guide the lives of many Africans, they are also heavily influenced by external values that have filtered into society through colonisation, mission activities and globalisation. As a result, it is not possible to limit the discussion on children's rights to the universality-relativity dichotomy, which has, hitherto, dominated the debate on children's rights and human rights more generally.

CHAPTER II

A Cultural Bridge, Not an Imposition: Legitimising Children's Rights in the Eyes of Local Communities

2.0 Introduction

Central to our understanding of the limited implementation of the Convention on the Rights of the Child is the cultural bias inherent in its drafting and content, which have led to many questions about its relevance to non-Western communities around the world. As a result, in order to understand the dynamics of the debate, an in-depth analysis of the universality and relativity dichotomy, which has underpinned the debate on children's rights and human rights for centuries, is required. This will help in the search for a common ground, a compromise that will take into account the reality on the ground and enable policy-makers to develop strategies that are more contextually appropriate.

Thus, this chapter aims to explore the ways we can move beyond this debate in order to make the Convention applicable and relevant to local communities. To put it another way, it will explore the ways in which the Convention can be legitimised in the eyes of local communities. Firstly, it will outline and critique the key tenets of both sides of the universality and relativity dichotomy. Secondly, it will explore how policy-makers can bridge the universality-relativity divide as both sides of the debate are critical for the protection and development of children in our increasingly globalised world. The central questions are: how can policy-makers and commentators move beyond the relativity and universality dichotomy and situate the Convention within the context of a given society? How can the Convention be made relevant and applicable to local communities around the world? Other questions are: what does the cultural relativity of rights signify for the notion of a children's rights framework? And how far down the line of relativism can we

travel whilst millions of children around the world are being exploited due to the very fact that they are children and thus, more vulnerable?

2.1 Outlining the Universality Position on Children's Rights

2.1.1. Putting Forward the Case for Universality

The many supporters of the Convention argue that its universal nature is reflected by the fact that it has been ratified by 192 countries, making it the most widely ratified Convention in the history of the United Nations, and thus, the most universal – on paper at least. It is also the most rapidly ratified international treaty. The Convention was open for signature on 26th January 1990 and by the end of that year, 62 states had ratified it, with Ghana being the first.⁶³ According to Muscroft, a third of countries ratified the Convention in 1990, over one-fifth the following year and nearly nine-tenths within five years of its adoption by the General Assembly (1999: 21).⁶⁴ This leads her to conclude that ‘compared with other human rights treaties, this is a remarkable feat and reflects a profound common desire to achieve a better world for children’ (Ibid). Furthermore, for many countries, the Convention was the first international human rights treaty that they had signed. Therefore, for Muscroft:

It is now possible to talk of a common ethical and legal framework relating to children that is virtually universally accepted...it cannot easily be argued that the Convention is a ‘Western’ view of human rights of children, incompatible with, say, Asian or African views (Ibid: 22).

The almost universal ratification of the Convention and other human rights instruments has also led Rhoda Howard to conclude that although not universal in origin, human rights are now, in principle, universally applicable because of the social evolution of the

⁶³ See below, Chapter III, Section 3.2, for more about Ghana's ratification of the Convention.

⁶⁴ In fact, more than half of the early signatories were African.

entire world towards state societies (1992: 81). An-na'im and Hammond support this point when they assert that the specific origin of an idea does not prevent it from achieving universal acceptance (2002: 17).

Commentators have put forward possible reasons for the universal acceptance of the Convention by governments over the years. Alston argues that not only is the Convention the most detailed and comprehensive of all the existing international human rights instruments in terms of the rights recognised, as opposed to the categories of persons covered, it is also more sensitive to different approaches and perspectives than most of the principal human rights treaties adopted earlier (1994: 7). In fact, whilst the Convention leaves space for different conceptions of childhood, the definition advanced by the African Charter on the Rights and Welfare of the Child is more stringent. For example, although the Convention and the Charter both define a child as every human being below the age of 18, the Convention adds a condition that '...unless, under the law applicable to the child, majority is attained earlier', leaving more room for maneuver by governments. However, the unequivocal definition set out by the Charter leaves no space for local interpretations.⁶⁵ According to Chirwa, the Convention's definition was motivated by the awareness of the fact that communities view durations of childhood differently (2002: 158). Implied in this statement is the viewpoint that the African Charter is not aware that the numerous communities on the continent construct childhood in various ways other than age, which contradicts the very basis on which the Charter was founded.⁶⁶ The ironic point here is that the Charter, which prides itself on reflecting the African heritage and perspective (whatever that may be) adopts an even more Western and rigid definition of

⁶⁵ See above, Chapter 1, Section 1.4.

⁶⁶ Ibid.

childhood than the Convention itself, a document supposedly rooted in modern Western developments and thinking about childhood. This point undermines the stance taken by relativists who seek to emphasise that it is because of the cultural bias inherent in the Convention that African governments came to adopt a Charter.

Furthermore, whilst Article 4 (1) of the Charter states that the best interests of the child are the primary consideration, Article 3 (1) of the Convention provides for a lower standard by stipulating that ‘the best interests of the child are to be given a primary consideration’. According to Lloyd, this lower standard allows judges and others to consider what is in a child’s best interests, but the final decision may not reflect this as it recognises that there are other considerations that are equally important to guarantee the child’s best interests. Thus, it allows for the primacy of whatever cultural norms on upbringing happen to be current (2002: 183).

The drafting process of the Convention is arguably partly responsible for the stance taken by the universality camp. The Working Group established for the drafting of the Convention reflects the membership structure of the UN Commission for Human Rights. However, as an open-ended group,⁶⁷ the Working Group sought the active participation of as many States as possible in the drafting process (Johnson, 1992: 96). The idea behind this was:

The more that the Convention reflects the views and participation of a wide spectrum of States, the more likely it is that the Convention will attract broad support and be ratified by a large number of States. This is, after all, one of the most important measures of success for any international convention (Ibid).

⁶⁷ Open-ended working groups, which are increasingly becoming important within the UN treaty-making system, enable both states and non-state actors to participate in the meetings of the group (Le Blanc, 1995: 25).

Importantly, UNICEF began to play an active role in the drafting of the Convention from 1986 and encouraged and facilitated the active participation of developing countries. The result of this, it is argued, is that more countries were prepared to accept the principles of the Convention and this explains the extraordinary widespread support, which was to be accorded this treaty in the early 1990s (Alston, 1994: 7). The involvement of 40 NGOs in the process from an early stage further broadened the scope of the Convention and enriched its quality.⁶⁸ This leads Alston to conclude that:

One of the happy consequences of this combination of circumstances is that the Convention is not the product of a distorted or unduly contentious drafting process, as could well have been the case if some of the ingredients described above had been absent (Ibid: 7).

Johnson also argues that the drafting process was remarkable for its convergence rather than its divergence. The Second Reading proved to be a test of the impact of cross-cultural factors in setting international human rights norms. Over the course of 22 meetings, differences arising from cultural, regional, religious, or socio-economic cleavages were salient in the debate over only five issue areas, which were namely freedom of religion; inter-country adoption; rights of the unborn child; traditional practices harmful to children; and the duties of children towards their parents (1992: 95). A compromise was eventually reached on these contentious areas at the Second Reading. An example of how a compromise was achieved can be seen in one particular issue area. In 1987 the Working Group decided to consider for adoption a proposal submitted by Radda Barnen (Swedish Save the Children) on behalf of the NGO Ad Hoc Group. The proposal read:

The States Parties to the present Convention shall seek to eradicate traditional practices harmful to the health of children and shall take all appropriate action including necessary legislative, administrative, social and educational measures to ensure that children are not subjected to such practices (Ibid: 109-110).

⁶⁸ See above, Chapter I, Section 1.3.1.

At the stage when female circumcision was raised for discussion, the Senegalese delegate counselled prudence when dealing with issues that entailed differences in cultural values and emphasised the danger of forcing practices into clandestinity if they were prohibited by State legislation. Nevertheless, the delegates of the US, UK and Canada proposed alternative formulations that would refer to female circumcision to indicate that this was the type of practice targeted by the proposed provision. After some debate the final wording adopted for the provision, which was subsequently included under the article on health (Article 24 (3)) at the Second Reading was:

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

As it did not refer to female circumcision (and thus, was not targeting Africa) there was no objection to this wording when it was considered for re-adoption at the Second Reading. The agreement on this provision represents, for many, strong evidence of converging international opinion on fundamental human rights standards in areas ‘highly coloured by cultural values’ (Ibid: 110).

Therefore, for some commentators the very fact that only five issue areas were affected by factors other than strictly legal or political ones is impressive. This is especially so when one considers the size of the document outlining the Convention’s provisions - 54 Articles and a Preamble. Johnson has put forward two explanations for this cultural compromise. Firstly, cleavages in cultural perspectives may be less cross-national in character than rooted in socio-economic factors. Secondly, cultural differences notwithstanding, there is after all an irreducible core of common experience and concern in all human lives – especially if human rights are thought of in negative rather than

positive terms, that is, that they attempt to curb pain and suffering. He refers to noted human rights jurist, Thomas Buergenthal, who presents this view well:

Of course there exist in various countries and regions of the world differences, distinctions and preferences in the application and definition of specific human rights and in their conceptual nuances. But when it comes to massive denials of the right to life, of the right not to be tortured, or the right to be protected against disappearance and against lengthy detention without trial, these nuances and differences are of no significance. Human tolerance for pain, suffering, hunger and oppression may be greater in one part of the world than in another, but victims of oppression and of human rights violations certainly do not enjoy their suffering any more than anyone else would (Quoted in Ibid: 112-13).

2.1. 2. Critiquing the Universality Stance

Despite Johnson's insistence on the consensus behind the drafting process, the Working Group established to draft the Convention was very much dominated by Western countries – despite its 'openness'. State interest in the Convention peaked during the Second Reading when it was reviewed in its entirety. This is due to the fact that when it became apparent that the Convention was about to be finalised, many countries that had not extensively participated in the drafting process seized the opportunity offered by the Second Reading to iron out contentious issues and propose revisions that corresponded more with their cultural and legal perspectives. Among the five regional caucuses (West, East, Asia, Africa and Latin America) the Western delegations showed the greatest interest in participating, comprising an average of over 40% of the States represented in the Working Group. On the other hand, sub-Saharan African States showed the least interest in attending the sessions of the group (Ibid: 97). This apparent lack of interest was tempered by financial constraints as many could not afford to send a representative. Staffing levels among the permanent missions to the UN in Geneva are naturally lower for the smaller and poorer nations of the world compared to their Western counterparts. Thus, interest and financial constraints are two key factors determining participation in the creation of international norms - and between these two factors, financial constraints

undoubtedly affected the level of interest African governments demonstrated in the drafting of the Convention.

Furthermore, Muscroft and Howard may stress that despite all the above problems the key point is that most governments ratified the Convention, thereby reinforcing the universality of the rights of the child. However, it must be noted that due to the long history of imperialism and colonisation, States may be more universal than their societies, as in many countries the gap between the State and its society is significant. Thus, just because a government is prepared to accept the Convention does not necessarily mean its subjects are – an obvious, but often overlooked point. This is critical, because when it comes to the implementation of the Convention (or any other social legislation), it is the society, the general population, who are the key to effective implementation. In fact, one can go further and say that this group can make or break the enforcement of a law. Therefore, a distinction needs to be made between governments who sign and ratify treaties at will, and their subjects who may have little or no information about the actions of their government on an international level, and who may outrightly reject the provisions of a treaty, and thus present obstacles to effective implementation.

Even in the instances where governments have ratified the Convention, one cannot easily conclude, as Muscroft does, that this signifies universality in attitudes towards children's rights. Indeed, many African governments rushed to ratify the Convention but almost 20 years later the fruits of ratification are yet to yield - even at the legislative and policy levels. Hence, it is necessary to examine the motivation for ratification. De Waal bluntly argues that some African states are likely to have acceded to the Convention without their leaders genuinely acknowledging the commitments they were making or simply in bad

faith, without a real intention to deliver on their commitments. In some cases presidents may have regarded ratifying the Convention as little more than signing up to the World Declaration and Plan of Action at the September 1990 World Summit on Children, which were, indeed, no more than unenforceable promises (2002: 4).

An incident that caused controversy in Nigeria further leads us to question a government's motivation for ratification and emphasises the point that ratification does not mean a universality of opinion on the subject of children's rights. On 30th October 2002 the Bill seeking an 'Act to provide for the rights and responsibilities of a child in Nigeria and a system of child justice administration', sponsored by the presidency, was overwhelmingly rejected by the Nigerian federal legislative lower Chamber, the House of Representatives, at Second Reading (The Nigerian *Guardian*: Special Report, 17th November 2002). The Bill was supposed to domesticate the Convention into the laws of the country, one of the very first to ratify it in 1991.⁶⁹

The representatives particularly centred their objections on a provision in the Bill setting eighteen years as the minimum age for marriage. This, they said, was incompatible with religious and cultural values in various parts of the country, especially the north, where women are sent into marriage before the age of sixteen.⁷⁰ According to the then MP for Benue (North Central Nigeria), Hon. Ohepo Ejiga, the Bill neglected the dynamism of the

⁶⁹ The Bill was later passed by the Federal government in 2003, but it has still not been passed by all State governments.

⁷⁰ This practice of early marriage has resulted in a large number of cases of vesico-vaginal fistula, a condition caused by giving birth when the cervix is not fully developed. Victims of fistula are often ostracised and abandoned as the uncontrollable trickle of urine makes these women unhygienic and physically offensive to their families who abandon them. One of the aims of the establishment of eighteen years as a minimum age for marriage in the Act was to reduce this occurrence.

Nigerian socio-cultural background and he was concerned that it might have a counter effect on cultural values (The Nigerian *Guardian*: Special Report, 17th November 2002). The lack of political will demonstrated by the House of Representatives caused an outrage among human and women's rights organisations in the country. The then executive director of the Civil Liberties Organisation (CLO), the late Chima Ubani, described the claims that the Bill was not in conformity with Nigeria's diverse cultures and religions as 'spurious and unacceptable', proceeding to ask this very pertinent question: 'What culture or religion would support child labour, child marriage, child slavery and all those violations that the CRC seeks to outlaw' (*IRIN* 12th November 2002)?

The key point in this example is that although Nigeria rushed to become one of the first countries to ratify the Convention in 1991, when the time came to harmonise the Convention's standards into national law 11 years later, politicians reverted to cultural and traditional values to explain their opposition. Hence, this further highlights the argument that the universality of opinion on children's rights a treaty cannot be claimed on the basis of state ratification of a treaty alone.

The depth of the consensus underpinning the Convention is further thrown in doubt when the African Charter on the Rights and Welfare of the Child is drawn into the analysis. Despite the fact that the Charter was adopted only a year after the Convention, it took nearly 10 years for the requisite 15 African States to ratify the Charter, even though its provisions are broadly similar to the Convention.⁷¹ It finally came into force on 29th November 1999. As of March 2007, only 39 out of the 53 African Union Member States

⁷¹ See above, Chapter I, Section 1.4.

have ratified the Charter, which is telling, as the remaining states that have not yet ratified the Charter have ratified the Convention.⁷² Even in those instances where States have ratified the Charter, it is important to point out that while many of them rushed to ratify the Convention in the first few years after its adoption, they were more hesitant to ratify the Charter, of which they could claim more ownership. For example, Ghana was the first country to ratify the Convention in February 1990, but it did not ratify the Charter until June 2005.

Lloyd puts forward a number of explanations for the slow uptake of the Charter compared to the Convention. She argues that one important factor is the more stringent provisions contained in the Charter; whilst the Convention is drafted in ambiguous terms, the Charter is said to accord a higher standard and deeper obligations on African Union member states, making it more difficult to evade their obligations. Thus, ‘by ratifying the Children’s Charter member states are obligating themselves to a higher standard of promotion, protection and monitoring of children’s rights and welfare issues’ (2002: 182). For de Waal, the slow uptake of the Charter, compared to the Convention, is an interesting commentary on the politics of international conventions as African states rushed to sign and ratify the Convention, but took a much longer time to accede to the Charter – if at all, despite its similarities to the Convention. This not only casts doubt on the sincerity of the commitment of some African states to children’s rights and their implementation, it also calls into question the very idea of Pan-Africanism, which is the basis on which the O.A.U./A.U. was founded; instead of uniting to ratify the African

⁷² These countries include the Central African Republic, Côte D’Ivoire, Djibouti, the Democratic Republic of Congo, Gabon, Guinea-Bissau, Liberia, Sao Tome & Principe, Sudan, Swaziland, Tunisia and Zambia. Somalia is the only country that has not ratified either.

Charter and thereby, build structures to implement its provisions on the continent, a significant number of African states have kept their distance, preferring rather to ratify the international Convention on the Rights of the Child.⁷³ This state of affairs has led de Waal to ask the following questions:

Is this because signing an international convention is regarded by many as a largely symbolic act, a means of acquiring status in international fora? And do African governments care more for their status in front of the wider international community than with respect to their peers (2002: 4-5)?

Therefore, it is critical that governments do not ratify a Convention if they are not going to enforce it, as signing and ratifying a Convention, in the long run, is not going to give a favourable impression of a state. Added to this are the severe implications of these inconsistent actions. States that ratify international conventions but have no intention of domesticating them into their national laws, or states that ratify conventions without fully realising the implications of that action could be at risk of endangering children within their jurisdiction. This is a concern because they are raising their hopes in one minute and then dashing them the next, without considering the effects this will have on the children in their countries. Freeman supports this perspective:

The true recognition of children's rights requires implementation, as in practice unimplemented, partially implemented or badly implemented (and this applies equally to international legislation) may actually do children more harm than good (1992: 41).

The tendency of African governments to ratify Conventions further weakens the argument for universalists who have hitherto centred the bulk of their case on the fact that the

⁷³ During my 10 - month stay in Ghana for my fieldwork, I became aware of this hierarchy in international conventions. While the Convention on the Rights of the Child and the Children's Act of Ghana were talked about as if they go hand-in-hand, the African Charter, which Ghana has only recently ratified, was hardly mentioned – not in private meetings nor larger fora. On the few occasions it was mentioned, it was more as an after-thought than as something that should be accorded equal weight to the Convention and the Children's Act.

Convention has achieved almost universal ratification. Therefore, by overlooking the politics that are at play behind the ratification of Conventions by African and other governments, the stance taken by those promoting the universality of the Convention is weakened.⁷⁴

2.2. Understanding the Position of Cultural Relativists on Children's Rights

2.2.1. The Persistence of Cultural Relativism

Cultural relativists continue to insist on the relevance and pertinence of their case even in, or especially because of, this so-called age of globalisation. Relativists focus the bulk of their case on the argument that different societies and cultures construct childhood in different ways, which, they argue, has implications for the construction of children's rights in different societies. Therefore, Dasberg (1989) and Franklin (1986; 1995) have led the cultural relativist call for acknowledging the importance of difference between peoples and societies and the need to respect these differences. They argue that childhood is a relative concept that changes according to historical time, geographical environment, local culture and socio-economic conditions. Hence, a definition of childhood, which is culturally and historically bound to the social preoccupations and priorities of the industrialized countries of Europe and the USA, cannot easily be transferred to non-Western communities. Thus, they attack international children's rights lawyers who crystallized in international law a universal system of rights for the child based on notions of childhood that emerged and were consolidated in the West in the nineteenth century (Boyden, 1997: 197). It can be argued that it was this domination of Western notions of childhood and child development underlying the Convention that led to proposals for an

⁷⁴ However, this trend by African governments does not necessarily enhance the argument of relativists either, because what is at play here is not allegiance to the cultural values of a given country, but the politics of international conventions, which means that African governments are keen to gain the favour of their Western counterparts who control the flow of aid and trade.

African Charter on the Rights and Welfare of the Child, which was to address the social and cultural circumstances specific to the region such as the importance of children having duties and the concept of the extended family.⁷⁵

The relativist argument gains substantial support from the social constructionist paradigm, which has emerged as the dominant view of childhood in disciplines such as sociology and history. The working definition of social constructionism is as follows:

[Social constructionism is].....the way in which our lives and our institutions are socially produced, that is by ourselves, rather than naturally or divinely given.....Childhood, then, as distinct from biological immaturity, is neither a natural nor universal feature of human groups, but appears as a specific structural and cultural component of many societies....In other words, though biological immaturity may be natural and universal, what particular societies make of such immaturity differs throughout time and between cultures (Hendrick, 1997a: 9-10).

Jenks insists that all contemporary approaches to the study of childhood are clearly committed to the view that childhood is not a natural phenomenon and cannot properly be understood as such. In his view, the social transformation from child to adult does not follow directly from physical growth and the recognition of children by adults and vice versa, is not singularly contingent upon physical difference (1996: 7). Thus, childhood is to be understood as a social construction and as such it always relates to a particular cultural setting and its status is constituted in particular socially located forms of discourse (Ibid: 29).

James and Prout,⁷⁶ have played a major role in consolidating the new sociology of childhood.⁷⁷ The title of their landmark work, 'Constructing and Reconstructing

⁷⁵ See below Chapter IV, Section 4.4.3. for a discussion on children's responsibilities within the family in Ghana.

Childhood', encapsulates their views on the nature of the social institution of childhood: an actively negotiated set of social relationships within which the early years of human life are constituted (1997: 7). They acknowledge that the immaturity of children is indeed a biological fact of life, but the ways in which this immaturity is understood and made meaningful is a fact of culture (Ibid). These facts of culture may vary and can be said to make childhood a social institution. Hence, it is in this sense that one can talk of the social construction of childhood, and also of its re-and deconstruction.

In order to understand the centrality of childhood as a social and cultural construction to the argument of relativists, it is worth exploring how childhood and adulthood are constructed within African societies. The traditional African worldview of childhood (whatever that may be) and its termination, sharply contrast with modern Western's society's focus on the age of 18 as the entry into adulthood as reflected in the Convention. In numerous African societies, as in other non-western cultures, chronological age as an indicator for the termination of childhood is perceived as an arbitrary concept. As Ncube states,

The notion that someone by some magical wand on the stroke of a pen turns into a fully competent mature, wise and autonomous individual upon attaining a certain arbitrary fixed age has no scientific empirical basis in fact and reality (1998: 20).

Rather, the ending of childhood has little to do with achieving a particular age, and more to do with physical capacity to perform acts reserved for adults. According to Tchibinda and Mayetela (1983), childhood in Zaire traditionally began at birth and continued until the child attained a degree of economic independence and fully participated in the work

⁷⁶ *Constructing and Reconstructing Childhood*, an edited volume by Allison James and Alan Prout, was first published in 1990 (second edition published in 1997).

⁷⁷ See above, Introduction, Methodology section.

of adults, which was normally between the ages of 17 and 20 (quoted in Kuper, 1997: 16-17). Thus, rather than childhood being intertwined with the notion of age as in the modern Western conception, the landmark for the attainment of adulthood in this context was economic independence.

Marriage and the establishment of a new residence are traditionally two prime indications of adult male status in many African communities. To be classified a child means that a man has not achieved the level of economic importance that would permit him to acquire a wife, build his own compound and become an economically viable agent. According to Last, in pre-colonial northern Nigeria, boys became adults by acquiring a dependent; that is, by taking a wife whilst girls achieved adulthood on their entry into motherhood (2003: 3). Writing of the Gonja of northern Ghana, Goody claims that the entry into adulthood for girls involved the allocation of sexual rights and rights over children (1982: 147). Nsamenang, focusing on the West African sub-region more generally, argues that an unmarried childless person is never accorded full adult status and marriage alone just confers proto-adult status on a person. (1992: 84). Achieving adult status, then, requires that a person be 'married with children' (Ibid: 84-85). Formal puberty rites have now been prohibited by law or modified as a result of social change in many African countries, but there remains a belief that achieving adult status is dependent on the following landmarks: independence (defined as the ability to look after yourself and your parents) and marriage and parenthood, not simply age. Without achieving these landmarks, a person may legally be an adult, but will always be seen as somewhat lacking, or incomplete. In this way, it is possible for a 14 or 15-year-old adolescent to become an adult by virtue of marriage and parenthood while an unmarried, childless person, 24-years-old or older, remains socially immature and excluded from full adult status as he

has not passed the necessary rituals to achieve adult status. Omari and Mbilinyi provide further support to this in their study of childhood and children's rights in Tanzania:

Among the Wapare before a person is married he is considered to be a child and cannot share with the adults in many of the social gatherings. Such a person could not share in any decision-making process related to the marital issues. For the women, if a woman has not given birth to a child she is considered a child, hence she is normally separated from any discussion and activities related to motherhood and adulthood among the women. In order for people to graduate from childhood to adulthood, they either undergo a circumcision ritual or get married and have children (1997: 2).

Clearly, then, childhood refers more to a position in the social hierarchy than to biological age. In order to become an adult it is necessary to ascend this hierarchy (Argenti, 2002: 125). However, it is important to note that in numerous societies across the continent the majority of women (along with paupers and foreigners) would always be seen as minors, no matter their age or the number of children they have given birth to (De Waal, 2002: 14).⁷⁸ In this way, childhood is broadened to encompass all those who are dependent economically, socially or even politically on another person, normally an older adult male, whether they are under the age of 18 or older.

The construction of childhood further determines the role assigned to children in a particular society. According to Archard in non-western societies, the end of childhood is associated with factors such as permission to marry, departure from the parental home or assumptions of the responsibility to provide for oneself. He concludes that, 'the adoption of one conception rather than another will reflect prevailing general beliefs, assumptions and priorities' (1993: 27). Therefore, while childhood in modern Western society is seen as a stage of incompetence, in the non-western context it is not necessarily so. On the contrary, children are said to be seen as competent and capable. It has been suggested that

⁷⁸ This is similar to past societies in Europe where the term 'child' referred to all dependents including slaves and serfs (see Firestone, 1971; Plumb, 1972).

this is probably because whereas in Western societies adulthood is the goal, in other societies it is a process, ‘a continued becoming, a never completed maturing’ (Ibid: 36; see also Omari and Mbilinyi, 1997). Thus, although an individual can become more of an adult (but never a complete adult), he or she does not leave childhood altogether, even though its characteristics may decrease (or even increase) as she ages (Archard, 1993: 36). If adulthood is conceived as a becoming in these cultures, no obvious line can be drawn between this state and childhood. Furthermore, if adulthood is never fully achieved, then it also means that childhood is not an inferior stage, which is left behind completely at the arrival of some arbitrary age or even after passing through a rite of passage. As a result, childhood becomes a never-ending process.⁷⁹

This view of childhood may account for the responsibilities and duties that are assigned to the status of childhood. Archard supports this point when he argues that, in non-Western societies, no clear distinctions are made between work and play; the two activities go hand in hand as children are seen as having a responsibility, like adults, to contribute to the subsistence of their families and wider communities (Ibid: 30). In many societies children are required to undertake tasks such as caring for infants, fetching water and fuel, or cattle herding, depending on the gender of the child. Bennett, who argues that a particular type of economy may prove crucial in shortening or lengthening the duration of childhood, further elaborates on this conception of childhood. If people live at subsistence level, capacities and responsibilities of adulthood begin early: ‘because an average life span is short and survival is a struggle, a long period of dependency as a child is a luxury that families cannot afford’ (1998:19). Therefore, in these contexts, then, childhood may

⁷⁹ See Chapter V, Section 5.2.2. for a more detailed discussion of the never-ending nature of children within one particular African context: Ghana.

be never-ending in terms of parental authority and eternal subordination to elders, but it is also of a shorter duration in economic terms due to the need for children to contribute to the sustenance of the family, by not only participating in household chores, but also by working outside the home to generate income for the family.

As a result of the social construction of childhood illustrated above, relativists argue that the Convention is at odds with these definitions of childhood found in various African societies. They are further concerned about the legal implications this universalisation of the definition of childhood contained in the Convention has for children and their traditional roles in their societies. Ncube, for example, argues that, ‘the perception of children [in the Convention] as physically weak and mentally immature has far-reaching implications for the societal roles assigned to them and for the legal construction of childhood’ (1998: 14).

2.2.2. The Individuality of Rights and the ‘African’ Community Spirit

Furthermore, at the heart of the relativists’ argument is that children’s rights, and indeed human rights more generally, have their roots in 18th century Western European philosophical theory and ideologies. Therefore, the need to uncover what these ideologies and theories are and the problems they pose for the implementation of human rights in Africa is a central tenet of the relativists’ argument. As a theory emerging from 18th century Western European philosophical beliefs, the human rights tradition, as we understand it, has the rights of the individual at its very core. As Leary asserts, given the primacy of the individual in the modern Western conception of rights, there is little room for a concept of group or communal rights (1990: 18). The very definition of human rights underlines the individuality central to the doctrine: ‘human rights are, by definition,

the rights, in the strict and strong sense of entitlements that one has simply because one is a human being' (Donnelly: 1990: 39). Without the enjoyment of human rights one is almost certain to be alienated or estranged from one's moral nature. As a result, according to Donnelly:

Human rights are regularly held to be inalienable, not in the sense that one cannot be denied the enjoyment of these rights – every repressive regime daily alienates its people from their human rights – but in the sense that losing these rights is morally impossible. One cannot lose these rights and live a life worthy of a human being (Ibid: 42).

Critics of the human rights doctrine argue that African societies and cultures are characterised as communal or group-oriented in contrast to Western individualist societies, which are 'obsessed' with the dignity of the individual, his worth, personal autonomy and property (Legesse, 1980 quoted in Silk 1990: 310). In African societies, they argue that the collective was stressed and as a result, they did not allow the individual to exercise any claims which may override those of the kin group.⁸⁰ As Ojo explains:

The Africans assume harmony not divergence of interests, competition and conflict and are more inclined to meet their obligations to other members of society rather than their claims against them (1990: 120).

Thus, in this tradition, it was the community, the collective that was sacralised and individual rights had to be viewed within the context of the community. The problem this focus on group rights and identity has for human rights principles are well outlined by Rwezaura (1994) who points to two that are relevant to this discussion. Firstly, there is an assumption in human rights theories that the rights holder may not be denied what is deemed her rights by anyone who is holding the rights. However, in African societies

⁸⁰ Any individual rights that were exercised within this tradition were based on group membership and not on the basis of one's humanity, and hence were not universal. This meant that while members of the group were able to claim entitlements from society, others were excluded, including slaves, serfs, aliens, and to some extent, women and children who belonged to that society.

where the concept of an individual is submerged in the group, individual rights may be denied if by granting such rights it violates community norms, values and welfare. Secondly, the rights presume that individual entitlement as part of his rights does not depend on favour, kindness or considerate nature of the person who is holding such rights, which means that they should be applied to the rights holders without demanding anything extra above and in addition to entitlement. This differs from many African societies where one has to fulfil certain conditions to qualify for the stipulated rights due to the importance of the values of reciprocity and responsibility in this cultural context. (in Omari and Mblinyi, 1997: 6).

With regards to children's rights, these claims that children have in international law can be made not only against the state, but also the society and the group, which undermines the sacralisation of the collective. Herein lays the bone of contention for relativists. In cultures where the focus is on the interests of the group or the extended family, the family's interests and those of the children become inseparable (Bennett, 1999: 96). In fact, children within these contexts have no especially favoured position in relation to their parents and other relatives. A child's claim against the family for food and shelter is of little account because it is taken for granted that all members of a family will be adequately maintained (Ibid). Therefore, now that children are perceived in law to have these claims that can be made not only against the state, but also the society and the group, the collective is now undermined and therefore, this causes resistance.

The questions that this discussion provokes are as follows: can commentators still talk in terms of traditional African society? Further, can policy-makers continue to devise laws and policies based on values from that era in the 20th and 21st century, after centuries of

contact with European cultures, decades of colonisation, which was closely followed by the globalisation of culture, economies and development? While for some commentators such as Ojo, the extent of social atomization is still very limited and mainly confined to urban areas, implying that Africa has not changed much, Howard derides those commentators who talk of traditional Africa society in the present tense as if it still exists. She argues that 'the present and the past tenses are used interchangeably in the literature; traditional African society is frequently referred to as if it still exists in unaltered form' (1990: 163). This leads her to claim that it is, in fact, a version of the 'myth of Merrie Africa' that was critiqued by John Iliffe (1987). Therefore, there is a need to acknowledge the impact of social change on society. When Howard does this she realises that the undifferentiated communitarian society no longer exists, if it existed at all (as some pre-colonial states were highly stratified), and that Africans are becoming increasingly motivated by individual, not collective advancement (see 1986). The effect of this is that people, who are increasingly becoming interested in their individual welfare, may now find it easier to make claims against both the state and the groups to which they belong in order to ensure the fulfilment of their rights. The process of urbanisation has facilitated this development due to the migration of many people from rural areas to large cities, which are more impersonal and where the power of the extended family and the kin group are somewhat weakened.

2.2. 3. The Limitations of Cultural Relativism

Although the cultural relativism position is very persuasive, it comprises several key limitations. The very concept of culture and what it is, is one such limitation. An-Na'im and Hammond explain that one function of culture is to establish a more or less

homogenous set of beliefs and assumptions by which everyone can project their perceptions and expectations onto other people without thinking about it. This provides the sense of security that comes with predictability (2002: 22). However, this thesis maintains that culture cannot easily be used to refer to distinct geographical areas with homogenous populations sharing a unique culture that has been passed on from generation to generation from the ancestors and remains unchanged. Culture is not given *a priori*. It is not a static entity descended from our ancestors. Rather, it is a man-made dynamic construct. According to Diane Austin Broos (1987):

Culture is the condition of humankind, our very mode of existence, but the fact that human beings make, indeed create, the various cultures in which we live means that we constantly carry with us the capacity to transform society and create new human environments (in An-Na'im and Hammond, 1992: 23).

Related to this is the fact that powerful individuals and groups tend to monopolise the interpretation of cultural norms and manipulate them to their own advantage. Those who seek to preserve, as well as those who seek to change, customs may be seeking their individual or group self-interest. Even when articulating the interests of the group such spokesmen are likely to stress, in their articulation of group values, the particular values that are most to their own advantage (Howard, 1986: 33). Thus, it is possible that in a given society, a large proportion of the population may not have been included in the current construction of that culture, and may, in fact not subscribe to it.

As a result, far from being unquestioned, the concept of culture in a given society is often contested and debated. In fact, An-Na'im and Hammond argue that the different, and sometimes conflicting, features of culture are subject to many different interpretations by both members of a society and outsiders; and that the extent to which a particular culture provides value and meaning to the lives of the people who participate in it may vary

among the members of the culture and may itself be the subject of different interpretations (An-Na'im and Hammond, 2002: 35). Hence, as a result, culture is 'full of tension, diversity and differentiation, rather than compact and singular as it is sometimes made out to be' (Ibid: 23).⁸¹

As An-na'im and Hammond assert, all cultures are influenced, directly and indirectly, by other cultures; members of one culture may be exposed to, or have access to, other cultures, and even participate as members in one or more other cultures (Ibid: 35). Therefore, it is important to emphasise that cultures can and do change. Related to this is the argument that through mission education, colonisation and globalisation European values were exported to Africa (and elsewhere) and have had an impact on the way groups articulate their culture. Although an argument can be made that these values remain largely on paper, it cannot be denied that they have managed to seep through into society and have been imbibed by certain sectors of the population. This rapidly growing group works hard to preserve these values, while scorning more local beliefs or whose outlook incorporates both local and westernised values, picking and choosing which cultural heritage to adopt and which to flout at any one time. Howard supports this point when she asserts that "people are quite adept at being cultural accomodationists; they are able implicitly to choose which aspects of a 'new' culture they wish to adopt and which aspects of the 'old' they wish to retain"" (1986:23). Furthermore, while Nsamenang acknowledges that children are part of a culture, which provides a structured framework for their development, he still maintains that, no child is encapsulated entirely in a monoculture as human development the world over occurs in multicultural contexts. This

⁸¹ This cleavage within members of a group was apparent during the row that ensued in Nigeria in 2002 after the children's rights Bill was rejected by the majority of the federal legislative lower Chamber of the government (see above, Section 2.1.2, this chapter).

is so especially in Africa where colonialism has led to European and traditional values existing side by side, supplemented by Islam in what Mazrui (1986) has termed Africa's 'triple heritage' (in Nsamenang, 2004:83).

Therefore, with particular regards to children's rights, it is important to question the assumption that there exist clearly distinct cultural regions, each constructing childhood and conditions for the lives of children in their own right. As Stephens asks, 'Where do we find regions free of influence from global modernity and the processes of global capitalism or regions free from the processes that are currently reshaping these constructions' (1995: 40)? She adds that this is not to argue that there are not profoundly important regional and local cultural differences, but we must also not lose sight of the ways these are, and will likely increasingly come to be, globally articulated (Ibid).

The cultural relativist argument is further weakened by the fact that there are those governments, which would like, for various, often selfish and culturally manipulative, reasons, to discredit the human rights concept. In fact, a number of governments have become firm supporters of the cultural relativist tradition, which they find as the most useful available ideology to justify their manipulative, abusive and exploitative practices and policies.⁸² According to Chanock,

Those rights discourses in which culture is invoked as an argument against universalism now largely belong to rulers, not to those who may need their rights protected, those who talk in terms of wrongs and needs, not rights and culture (2002: 38).

Hence, the relativist path is a journey full of pitfalls. Elvin Hatch (1983) has claimed that 'cultural relativism has been charged with neutralizing moral judgment and thereby

⁸² The rejection of the Child Rights Bill by the Nigerian federal legislative lower Chamber above is a good example, See above, section 2.1.2, this chapter.

impairing action against injustice' (in An-na'im, 1992: 24). In turn, I. C. Javier (1983) has outlined the danger of relativism well:

[It] has these objectionable consequences: namely, that by limiting critical assessment of human works it disarms us, dehumanises us, leaves us unable to enter into communicative interaction; that is to say, unable to criticize cross-culturally, cross-sub-culturally; intimately, relativism leaves no room for criticism at all...behind relativism nihilism lurks (quoted in Ibid: 24).

Similar concerns have been raised by child rights commentators about the social and political implications of the relativism implied by the social constructionist literature in the face of the political, social and economic maltreatment ventured against children on an international scale (see James and Prout, 1997). In light of this Sharon Stephens has asked how far it is wise to travel along the road of relativism (see 1995) whilst millions of children around the world are being exploited, abused, misused as result of their very vulnerability and subordination as children?

To hammer the point underlying this question home, a recent case in which culture was used as a defence for what is firmly labelled as child abuse in the Western country in which it occurred is noteworthy. In November 2006 Festus Oguhebe, a Nigerian professor living and working in Mississippi, USA, was convicted of child abuse and sentenced to five years in prison with three years suspended. Oguhebe, a single father of six children, was accused of abusing his 11-year old son by placing him in a bathtub, then putting hot pepper juice in his eyes, on his penis and buttocks, and also by tying his hands behind his back and covering his body with ants. He was further accused of abusing his son by whipping and striking the child in such a manner as to cause serious bodily injury and leaving him in need of hospital treatment (which he delayed in getting for him). According to records filed by the Hinds District Attorney, Jacqueline Purnell, he also punished his children for offences such as incomplete homework and attempting to steal

food in their own home during enforced religious fasts. In trying to explain his abuse of his child, Oguhebe claimed that the kind of discipline he inflicted upon his children was a custom in his native land, Nigeria (*Clarion Ledger*, 21st November 2006).

Oguhebe's case led to a great deal of debate amongst Nigerians, both on the continent and in the Diaspora. In October 2006 Reuben Abati, writing for the Nigerian *Guardian*, used culture to defend Oguhebe's treatment of his son:

The thing to note is that Oguhebe is unrepentant, even if he has pleaded guilty. Here is an African cultural activist living in America in the wrong century. He reportedly told journalists that he believes that children must be spanked at all times. 'If you whip your child and he gets a bruise, does that become a crime? Go to the Iboland of Africa and you don't see kids behave in this way'. What Oguhebe is up against is a clash of cultures. He lives in America, but he remains attached to his roots as an African. He affirms that he is an Ibo man, the product of a culture and world-view where it is believed that the rod is an important tool for bringing up a child, a vehicle of socialisation, to ensure that a child develops into a useful member of the community. In the African world-view, to whip a child is not considered a crime; what is considered punishment or brutality or child abuse by Western societies is regarded in African communities as a social process. This is borne out of the conviction that it is only when a child is brought up to experience pain, that he would appreciate the value of pleasure and that young persons must be made early enough to appreciate the need to be responsible (Nigerian *Guardian*, Friday 26th October 2006).

Views of other Nigerians reacting to Oguhebe's case and the above newspaper article were shared on an online discussion forum called Nigeria Village Square.com. One which is particularly noteworthy was sent by a user called African Queen:

I read the Oguhebe saga and thought here we go again... Another Nigerian man (supposedly educated) defending a crime/bad behaviour in the name of 'culture'... What sort of Igbo 'culture' involves pouring hot pepper on the genitals of a boy, tying him up and covering his body with ants...This is not an America vs. Africa issue. It's wrong anywhere (www.nigeriavillagesquare.com/index.php/content/view/4142/46).

These statements illustrate two very distinct points. The first statement highlights how culture can be used to defend certain actions or neutralise judgement even on issues where judgement is arguably required. The second statement shows how culture is impatiently put aside in order to allow criticism and judgement. Hence, we can see how

cultural relativity prevents us from making moral judgements and for some commentators, it cannot be allowed to undermine global standards. They further argue that whatever the cultural or economic circumstances, when the best interests of children are at stake, global norms should prevail (see Boyden, 1997: 218). For example, Thomas Hammarburg, a champion of children's rights internationally and a former member of the Committee on the Rights of the Child, once remarked: 'When there is a clash between cultural practices (like female circumcision in Sudan) and the rights of the child, we defend the latter' (quoted in Ibid: 219). Therefore, culture is not allowed to prevent or neutralise moral judgement.

This is certainly valid, but what impact will such human rights defenders make on the ground, unless of course the people of Sudan who practice female circumcision become convinced of their standpoint? And herein lies the thrust of this thesis. How do advocates for the universal implementation of the Convention legitimise universal standards in the eyes of local people who are, in effect, critical for the success of the implementation of any legislation? One suggestion being put forward by this thesis is that those seeking the universal implementation of the Convention should engage such local communities in dialogue, listen to their views, their definitions of childhood and their constructions and reconstructions of children's entitlements. Thus, it is necessary to explore how these statements, declarations and conventions made and ratified at the international and even, national level, can become relevant and applicable to local groups who view this practice as part of their culture, and thus, part of their very being.

2.3 Bridging the Universality Vs. Relativity Divide

The suggestion here is that the Convention should not be seen as an end in itself. It is necessary to understand it as an evolving process, and as such the focus has to be on how international and national policy-makers can make children's rights work for different and disparate communities, and thereby legitimise it in the eyes of local communities in different parts of the world.

The importance of this strategy has been repeatedly underscored by Abdullahi An-na'im, a Sudanese human rights academic, who has devoted a large part of his career to searching for a cultural legitimisation of human rights within both African and Islamic contexts. He argues that efforts to promote respect for international human rights standards are often likely to remain superficial and ineffectual until such time as they relate directly to, and where possible are promoted through, local cultural, religious and other traditional communities (see An-na'im 1992; 2002). Specifically, he claims that human rights stand a better chance of implementation if they are perceived to be legitimate within the various cultural traditions of the world (1992: 3). This further emphasises the fact that it is not enough to claim universality simply because governments have ratified relevant instruments.

As a result of this stand, An-na'im proposes an approach, which seeks to broaden consensus by exploring cultural reinterpretation and reconstruction through internal cultural discourse and cross-cultural dialogue, as a means to enhancing the universal legitimacy of human rights (1992: 3). In his view there may be 'room for changing a cultural position from within, through *internal discourse* about the fundamental values of the culture and the rationale for these values' (Ibid: 4). He suggests that this should be done by engaging the public and raising their awareness through intellectual and scholarly

debate, artistic literary expression of alternative views on these issues, and political and social action furthering these views. Furthermore, since cultures are constantly changing and evolving internally, as well as through interaction with other cultures, it may be possible to influence the direction of that change and evolution from outside through cross-cultural dialogue (Ibid). However, he adds that this process:

Must be both mutual between cultures and sensitive to the needs of internal authenticity and legitimacy...Those of one cultural tradition who wish to induce a change in attitudes must also be respectful of the integrity of the other culture...They must never even appear to be imposing external values in support of the human rights standards they seek to legitimize within the framework of the other culture (Ibid: 5).

By advocating such an approach An-na'im is not seeking to repudiate existing international standards, but rather aims to strengthen their implementation by legitimising them in the eyes of those who will be most affected by them: the local communities. This theoretical approach is based on the belief that despite their apparent peculiarities and diversity, human beings and societies share certain fundamental interests, concerns, qualities, traits and values that can be identified and articulated as the framework for a common culture of universal human rights (Ibid: 21). Berger (1977) adds to this viewpoint when he claims that notions of respect for humans are common to all cultures and provide the basis for fundamental human rights. Above that basic level, different cultures may choose to establish different, additional norms that reflect their particular values (in Silk, 1990: 317-318).

The benefits of legitimising human rights and specifically children's rights in the eyes of local communities cannot be dismissed. As An-Na'im and Hammond assert, 'local acceptance enriches the universal idea by giving it meaning and relevance to people's lives' (2002: 16). The logic of this new approach makes it possible to revise and

reformulate existing standards through a process of cross-cultural dialogue and analysis.

Mutua further supports this viewpoint when he claims that:

The construction and definition of human rights norms are dynamic and continuous processes. Human rights are not the monopoly or the sole prerogative of any one culture or people...The process of the construction of universal human rights is analogous to the proverbial description of the elephant by blind people: each, based on their sense of feeling, offers a differing account. However, all the accounts paint a complete picture when put together. As a dynamic process, the creation of a valid concept of human rights must be universal. That is, the cultures and traditions of the world must, in effect, compare notes, negotiate positions and come to an agreement over what constitutes human rights. Even after agreement, the doors must remain open for further inquiry, reformulation or revision (2002: 71-72).

2.4. Conclusion

In conclusion, then, the Convention, like all international human rights instruments, should be seen as work in progress. It cannot, and should not, be seen as an end in itself. Rather, it provides a foundation on which further blocks can be built in such a way as to meet international standards, as well as take into account local contexts. According to Bennett, because human rights standards lay down only minimum standards of behaviour and are stated in the broadest possible terms, each act of application requires modification and adjustment (1999: 10). In fact, the Convention takes cognizance of this as the next step after ratification is its domestication into national legislation, thus enabling governments to meet international standards, but also giving them the opportunity to ensure that the national laws that are developed take into account the particular social and cultural features of the given country. Crucial to this process is engaging communities in discussions to elicit their understanding of childhood and children's rights.

Thus, it is necessary to involve local communities in the interpretation and implementation of the Convention and domestic legislation by initiating dialogue about children's rights through local, cultural and religious belief systems and understandings.

This will ensure that laws that emerge as a result of harmonising national legislation with the Convention are not simply imitative of such international standards, but also take into account the peculiarities and features of a given society.

An encouraging factor is that unlike the binary debate relating to the universality and relativity of children's rights, the reality of people's lives illustrates that there is, indeed, a middle ground, a grey area in which people live their lives, which presents an entry point for dialogue. Therefore, it is necessary for policy-makers and those seeking a universal implementation of the Convention to devise ways to access this middle ground and find a compromise. As part of this process it is vital that they first uncover the views of local communities and how they understand and interpret concepts central to the children's rights debate. In order to illustrate how this rather abstract debate on the universality/relativity dichotomy vs. the argument for a middle ground plays out on the ground, this thesis will focus on Ghana, the first country to ratify the Convention. This country-based analysis will provide an entry point to explore the ways in which the universality/relativity dichotomy manifests itself in a particular cultural context. Furthermore and importantly, it will also enable us to search for a middle ground that can lead to compromises, which would mean that while the end goal is the protection of children, the strategy developed would be appropriately contextualised and supported by local communities.

CHAPTER III

Harmonising National Law to the Convention in Ghana

3.0 Introduction

The argument to move beyond the universality vs. relativity dichotomy and begin to focus more on the middle ground that constitutes the reality of children's lives is certainly pertinent in light of the challenges facing children today, which are further exacerbated by their very vulnerability and low-status or powerless position in society. Hence, children's rights commentators cannot continue to talk merely in terms of the universality vs.

relativity of children's rights as it prevents policy-makers from being able to take appropriate steps to protect the children of today. They cannot, as universalists do, overlook the importance of culture, nor can they, as relativists do, belittle the relevance of the Convention for societies around the world. What is required at this time is the need to take seriously two types of principles: those on which the Convention on the Rights of the Child is based, as well as those based on the cultural values and beliefs of local communities.

To underscore the need to adopt an approach that considers both international and local priorities and values, it is crucial for us to explore the implementation of the Convention in one particular context, which, in this case, is Ghana, the first country to ratify the Convention. Firstly, this chapter will provide a brief overview of Ghana's recent history, demographic profile and economic and political developments. Secondly, it will explore the reasons behind the government's speedy ratification of the Convention before outlining the legal framework established for its implementation, with a focus on the 1998 Children's Act. Thirdly, it will consider the extent to which the legal framework itself reflects the middle ground approach towards children's rights and thus, creates an opportunity to ensure implementation is contextually appropriate. Finally, it will explore the reasons behind the limited implementation of the Convention and the Act and argue that these reasons not only include lack of resources and awareness, but also cultural values, which prevent acceptance of the very concept of inalienable rights for anyone, let alone children.

3.1 Brief Overview of Ghana

The Republic of Ghana, which covers a land area of 238,537 sq km (92, 100 sq m), is located on the Guinea coast bordered by Côte d'Ivoire to the east, Togo to the west, Burkina Faso to the north and the Gulf of Guinea to the south. Formerly known as the Gold Coast, Ghana became the first country in sub-Saharan Africa to achieve independence on 6th March 1957 with Kwame Nkrumah as its first president. This brought an end to 83 years of British colonial rule, which was formalised in the southern part of the country in 1874 and extended to the Ashanti and Northern Territories in 1902.⁸³ In 1960 Ghana became a sovereign republic.

The main groups of people are distinguished largely by language, as well as political, social and other cultural institutions. The Akan (comprising the Ashanti, Brong, Akyem, Akwapim, Fante, Ahanta, Nzema, Denyikra, Akwamu) constitute almost half of the country's population (49.1 %) and can largely be found along the coast in the south west, as well as further inland in the east and what can be described as the middle belt. The Ewe (12.7%) and Ga-Dangme (8.0%) inhabit the south eastern part of the country, while in the north are the Mole-Dagbon (Mamprusi, Mossi, Dagomba, Gonja, Dagaba) who form 16.5% of the population. In addition to these, there are smaller groups such as the Sisala, Konkomba in the north and the Guan and Krobo in the eastern region. However, as a result of improvements in transport facilities and urbanisation, most parts of the country have become ethnically mixed, with many people moving from their hometowns to other parts of the country to make a living, especially to the Greater Accra (mainly Accra, Tema and Ashaiman), Ashanti (Kumasi and Obuasi) and Western (Bibiani, Tarkwa and

⁸³ For in-depth studies on Ghana's colonial and post-independence history see F.Buah, *A History of Ghana*, 1998; Kofi Awoonor, *Ghana: A Political History*, 1990; Adu A. Boahen, *Ghana: Evolution and Change in the 19th and 20th centuries*, 1975.

Prestea) regions. This movement of people around the country has also led to increased intermarriage between groups, making not only the regions, but also their people ethnically mixed.

The population of Ghana has increased threefold since independence in 1957 from 6.7 million at the first post-independence census in 1960 (growing to 8.6 million in 1970 and 12.3 million in 1984) to 18,912,079 million in the latest Population and Housing Census taken in 2000 (See Ghana Statistical Service, 2002).⁸⁴ This figure represents an intercensal growth rate of 2.7% since the last census in 1984. While this is slower than neighbouring countries in the sub-region, it remains higher than the global average. With regards to the structure of the population, Ghana is a youthful country. According to the latest census, the proportion of under 15s is 44%, which is a decline from 45% in 1984 and although this remains high, it is an indication of declining fertility rates. However, this could also be an indication of higher child mortality rates, which have actually increased in some parts of the country. For example, according to the 1998 and 2003 Demographic and Health Survey infant mortality and under five mortality rates increased during this period of time in the Ashanti, Eastern, Greater Accra, Upper West and Volta regions (Ibid). At the same time the proportion of those over 65 has increased from 4.0% to 5.3% since 1984, which, some believe, points to improvements in the health of the population and higher life expectancies (see Ibid.).

The structure of the Ghanaian economy remains to a large extent unchanged. It is primarily dependent on the production and export of a few primary agricultural and

⁸⁴ However, the UN has more recently put the figure at 21.8 in 2005.

mineral products such as cocoa,⁸⁵ gold, bauxite and aluminium. In June 2007, major offshore reserves of 600 million barrels of light oil were discovered at Cape Three Point, near the border town of Axim in the Western region, leading to expectations of a major economic boost for the country in the coming years. Agriculture, which includes hunting, fishing, and forestry, continues to be the principal activity for most of the employed population. This industry employs 52.3% of the economically active population and contributes over 35% to the GDP of the country, which means that despite the substantial increase in urbanisation (from 32% in 1984 to 43.8% in 2000), most of the country remains predominately rural. With regards to other sectors, wholesale and retail employ 14.5% of the economically active population while manufacturing follows with a share of 11.1%.

As the first sub-Saharan African country to gain independence from colonial rule, much was expected of Ghana after independence - not just by Ghanaians - but also by many of its neighbours in the sub-region and the rest of Africa. However, after the relatively successful years of the post-independence period the story of modern Ghana has been one of stagnation and decline. Economically, one of the fundamental problems that the country has faced in the post-colonial period is the persistence reliance on the export of a few primary products. This has made the economy vulnerable to price fluctuations dictated by buyers in developed countries. The low earnings from primary products have meant low revenue to the country. As a result, the economy of the 1970s and 80s suffered stagnation and decline resulting in the implementation of the World Bank and IMF's Economic Recovery and Structural Adjustment Programmes in the period following

⁸⁵ Ghana is the world's second largest producer of cocoa.

1983. Hence, this year in particular has come to be seen as a turning point in Ghana's recent economic history and has been referred to as the 'nadir' of the country's economic fortunes (Brydon and Legge, 1996: 10).⁸⁶ The extensive liberalization and adjustment in the 1980s produced some growth in services and mining, but did little to produce and sustain growth in agriculture and manufacturing (Government of Ghana, 2003:i). As a result, both growth and incomes remained stagnant. This continued into the 1990s when the economy was characterised by high rates of inflation, high interest rates, the continuous depreciation of the cedi, dwindling foreign reserves, excessive public debt overhang and stagnant economic growth. Spending on social programmes for poverty reduction such as health and education was low and further constrained efforts to poverty reduction. For instance, the levels of spending on health and education at 2% and 2.8% of GDP respectively were much lower than African averages with a disproportionate amount of the resources used for personnel emoluments and administration (Ibid:ii).

However, recently, there has been evidence of higher economic growth rates and macroeconomic stability. Since 2000, Ghana has sustained a period of economic stability and has seen one of the fastest rates of poverty reduction in Africa in recent years. Income poverty declined from 42% in 1997 to around 35% in 2005 (DFID Country Profile). Furthermore, real GDP growth averaged at 5% between 1983 and 2006 (hovering at 6% since 2005). This has led some to claim that Ghana is one of the few countries in sub-Saharan Africa that has a real chance of halving extreme poverty by 2015 (UN and the Government of Ghana, 2004). This became more possible when Ghana achieved HIPC

⁸⁶ Brydon and Legge argue that the reason they took 1983 to be the nadir of Ghana's economic fortunes was because things were so bad in that year (drought, bush fires, shortages of food in addition to the influx of 1 million Ghanaian nationals expelled from Nigeria) that most people remember it as a yardstick in the country's economic history (1996: 10).

(Highly Indebted Poor Countries) completion point for debt relief in July 2004.⁸⁷ In addition, the government was successful in arranging the cancellation of other external debts, which had amounted to approximately \$6 billion in 2001, cancelled (Ibid). All these recent successes reinforce the country's ambitions to achieve middle-income status driven by private-sector led growth within one generation.

These achievements notwithstanding, Ghana is still not on track to meet the Millennium Development Goals⁸⁸ in a number of specific areas, including education, health, water and sanitation. Job creation has also not benefited enough from economic growth, particularly in the rural areas, and there is growing evidence of deepening poverty amongst some groups (Government of Ghana, 2003). Food crop farmers, for example, have the highest incidence of poverty as they constitute 59% of the poor in Ghana as a result of lack of access to markets, high cost of inputs and low levels of economic infrastructure (Ibid). In addition, by income measure, poverty levels are highest in the three northern regions (Northern, Upper East and Upper West), ranging between 69% and 88% (Ibid).

As a result of the continuing challenges facing the country, the government of Ghana developed the Ghana Poverty Reduction Strategy, a comprehensive development policy framework, in early 2000 to facilitate the creation of wealth by stabilising the economy

⁸⁷ The cancellation of the debt amounts to \$230 million per year from 2004 – 2013 (UN and Government of Ghana, 2004).

⁸⁸ In September 2000, at the United Nations Millennium Summit, world leaders and leading development institutions agreed to a set of eight time bound and measurable goals and targets for combating poverty, hunger, disease, HIV/AIDS, illiteracy, environmental degradation and discrimination against women. Placed at the heart of the global agenda, they are now called the Millennium Development Goals (MDGs).

and laying down the foundation for a sustainable, accelerated growth and job creation. This is to be done by ensuring sound economic management for accelerated growth; increasing production and promotion of sustainable livelihoods; directing support for human development and the provision of basic services; providing special programmes in support of the vulnerable and excluded; ensuring good governance and increasing the capacity of the public sector while promoting the active involvement of the private sector as the main engine of growth (Ibid). With the implementation of this strategy the country is aiming for a continued decline in the number of people living below the national poverty line and the achievement of Middle Income Status by 2015, which requires an average annual income of \$1,000 per person (Ibid).

While the early years of independence saw periods of political instability and recurrent coups, followed, sometimes quite closely, by counter coups, there is a consensus that since the passage of the 1992 Constitution, there has been significant progress in democratic governance and civil liberties. As a result, Ghana is now considered as an 'island of peace and stability' in the West Africa sub-Region (DFID Country Profile). In December 2000, Ghana's nascent democratic status passed its litmus test by the completion of a peaceful election, which saw power transferred from one constitutionally-elected government to another for the first time in the country's history. Since then elections have been held in December 2004, which were also peaceful, further strengthening the democratic structures of the country. Elections are also scheduled to take place in December 2008.

Decentralisation of governmental institutions to regional, district, local and unit levels across the country was a key part of the democratic project. Thus, after 1992, the country

was divided into 10 administrative regions (Western, Central, Greater Accra, Volta, Eastern, Ashanti, Brong-Ahafo, Northern, Upper East and Upper West) and these regions were further divided into 138 districts, administered by assemblies of directly elected and appointed members. District Chief Executives (DCEs), who head the assemblies, are appointed by the incumbent President and approved by the District Assembly. The Assemblies, which are assigned with deliberative, legislative, as well as executive functions, were created as the focal point of administrative and developmental decision-making in the districts and thus, are the basic unit of government administration.⁸⁹

The strengthening of democratic structures in the period following 1992 was also accompanied by stronger observance of human rights and civil liberties, including those of children, with the government taking several steps in recent years to improve the situation of this group. This supports the argument that the achievement of children's rights is embedded in the realisation of a range of other rights. These include democratic rights and the rule of law, which requires good governance, a multifaceted improvement of political representation and institutional capacity, as well as economic development and poverty reduction (see de Waal, 2002: 6).

3.2. The Context for the Implementation of the Convention in Ghana

⁸⁹ The District Assemblies are either Metropolitan (population over 250,000), Municipal (population over 95,000) or District (population 75,000 and under). Following this structure, there are 3 Metropolitan Assemblies, 4 Municipal Assemblies and 103 District Assemblies. These District Assemblies are further divided into Urban/Town/Zonal/Area Councils and the Unit Committees. In the performance of its function the District Assembly works through the Executive Committee. This includes the Social Services Sub-Committee, Works Sub-Committee, Finance Administration and Development Planning Sub-Committee among others. The Executive Committee is presided over by the District Chief Executive and consists of not more than one-third of the total members of the Assembly excluding the Presiding member.

The government of Ghana's commitment to children's rights was made evident before the passage of the 1992 Constitution when the government ratified the Convention on the Rights of the Child on 5th February 1990, only three months after its adoption by the United Nations General Assembly. As a result, Ghana became the first country to commit itself to this international treaty.⁹⁰ The government has justified this rapid ratification of the Convention by pointing to the various steps it had already taken to ensure the welfare of children and create a conducive environment for the implementation of the Convention in the country.⁹¹ Education, for example, had long been considered a birthright. Basic education, which was defined as the first nine years of school (i.e. from age 6 to 15) by the 1987 Education Reform Programme, was made compulsory and free for all in the 1961 Education Act. Following this lead, the Labour Decree Act of 1967 stipulated that until the age of 15, children may only be employed within their own families undertaking light work of a domestic or agricultural nature. Although children aged between the age of 15 and 18 were permitted to work, there were limits to the type of work they could undertake. In addition, government officials and other commentators point to the

⁹⁰ Ghana has a long history of association with the United Nations. A few days after independence Ghana became a member of the UN on 8th March 1957. In 1960 its representative, Alex Quayson-Sackey, was elected the first black chairman of the UN General Assembly. Since then, the numerous military and civilian governments that have ruled the country have ratified numerous treaties adopted by the United Nations, often with no reservations, including: the International Covenant on Economic Social and Cultural Rights – ICESCR (Ratified: 7 December 2000; adopted by UN on 16th December 1966); the International Covenant on Civil and Political Rights – ICCPR and its optional protocol (Ratified on 7th December 2000; adopted by UN on 16th December 1966); the Convention on the Elimination of All Forms of Racial Discrimination (Ratified: 4 January 1969; adopted by UN in 21st December 1965); the Convention on the Elimination of Discrimination against Women (Ratified: 1st February 1986; adopted by the UN in 1979); the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Ratified: 7th October 2000; adopted by the UN on 4th February 1985).

⁹¹ Despite its early ratification of the Convention, the government has still not ratified its Optional Protocols. As of January 2008, the government has signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (September 2003), but it has yet to sign the Option Protocol on the Involvement of Children in Armed Conflict.

establishment of the Ghana National Commission on Children as early as 1979, the International Year of the Child, as another reason for enabling the government to ratify the Convention at this time. This is because the establishment of the Commission represented an important landmark in the collective effort to bring issues relating to children to the forefront of development policy and practice. As a result, some commentators have concluded that the combination of the above activities clearly demonstrates that Ghana ‘had a head start in appreciating the value of the Convention’ (see Tengey, 1998).⁹²

As ratification of the Convention requires governments to take steps to ensure that all children within their national boundaries are able to enjoy the rights stipulated in the Convention, governments are not only expected to report their progress to the UN Committee on the Rights of the Child periodically, but also to harmonise their national laws with the Convention’s standards. Hence, the government of Ghana began to review its policies and legislation after 1990. The return to democracy in 1992 assisted this process, as according to many government and civil society officials, its passage created a better climate for respecting and enforcing children’s rights. Thus, from 1992 onwards key landmarks relating to children’s rights and welfare were achieved in legislation. That same year, the Constitution, a product of the return to democracy, was passed by parliament and included specific provisions relating to the rights of the child. Article 28 guarantees rights and freedoms for children in similar terms to the Convention and enjoins Parliament to enact laws to ensure their survival, development and protection.

⁹² However, this leaves unanswered the following question: if Ghana really did have a head start in appreciating the Convention why did the government wait another 15 years to ratify the African Charter on the Rights and Welfare of the Child, which was adopted only one year later? See above, Chapter II, Section 2.1.1.

Following this, the government initiated a comprehensive law reform process in 1995 to ensure full compatibility between national laws and the Convention. Central to this process was the establishment of the Child Law Reform Advisory Committee by the Ghana National Commission on Children to review the status of, and law on, children in the country. The Committee concluded that the interests of children would be best served by the enactment of a comprehensive law, which would ensure easy reference for the prompt and effective administration of justice for children. The result of this process was the passage, in 1998, of the Children's Act (Act 560),⁹³ which brought together all laws relating to children into a single child-focused legislation that at the same time, domesticated the Convention into the national laws of the country. The Act entered into force in January 1999.

The passage of the Children's Act led many to hope that this would represent a real turning point in the progress of children's rights and welfare in the country. Indeed, it paved the way for the passage of other legislation and policies relating to children: the Juvenile Justice Act 2003 (Act 653), the Human Trafficking Act 2005 (Act 694), the Gender and Children's Policy (2002) and the Early Childhood Care and Development Policy. It also provided a conducive environment for the establishment of key institutions.

⁹³ Another key result of the law reform process of the mid-1990s was the passage of the Criminal Code Amendments Act (Act 554), which was passed by parliament in the same year as the Children's Act. The amendments made in this Act further strengthened the provisions of the Criminal Code 1960 (Act 29) and the amendments that were made to the code in 1994 (Act 484). The amendments made in the 1998 Act now mean that Ghana has a comprehensive criminal framework for addressing issues concerning women and children in abusive situations. Specifically, it increases the age of criminal responsibility from 7 to 12, makes provisions for tighter penalties for those charged with defiling a child under the age of 16 (those convicted can now serve a term of between 7 and 25 years), abolished all forms of customary servitude including *trokosi* (a form of female servitude) and further reinforced the provisions made in the earlier 1994 Amendments Act, which outlawed Female Genital Mutilation (FGM).

Two are noteworthy. Firstly, it facilitated the creation of the Domestic Violence and Victims Support Unit of the Ghana Police Service (formerly known as the Women and Juvenile Unit), which was initially established in Accra in November 1998 in an attempt to make the criminal justice system more responsive to the special needs of children and women who experience violence. The unit is now present in all 10 administrative regions of the country as well as Tema, which is considered part of the Greater Accra region.⁹⁴

Secondly, it led to the establishment of the Ministry for Women and Children's Affairs (MOWAC), which was set up in February 2001 with a mission to:

Champion the cause of all women and children, through the promotion of gender equality and the survival, development, protection and participation of children, to achieve equal status, equal opportunities and equal rights for women, men and children in the development of Ghana (Ghana National Commission on Children, 2005).

Consequently, the Ministry was charged with coordinating, monitoring and reviewing the formulation of gender and child responsive policies, as well as overseeing their implementation within the relevant sector ministries. As a result, it took over two interrelated organisations, the National Council on Women and Development and the National Commission on Children. With regards to the latter commission, its incorporation into the Ministry changed its status from an independent policy-making body to a department under the Ministry responsible for implementation. As a result, as a department within the Ministry, the Ghana National Commission on Children plays an essential coordination role and is paramount in coordinating the National Multi-Sectoral Committee and all Inter-Agency Committees on children's rights and protection (UN and Government of Ghana, 2004). Finally, the Act led to the decentralisation of other

⁹⁴ Steps are also underway to set up satellite offices in all 138 districts in the country.

institutions of child care and protection such as the District Assemblies, Family Tribunals, Circuit Courts and the High Court.

The Act, in and of itself, is a good comprehensive piece of legislation. As Woll claims, the Act is the most visible outcome of the Convention and one of the strongest examples of the government's commitment to children's rights (2000: 61). For the very first time in the Ghanaian legal framework, laws relating to children's welfare and protection, which were hitherto scattered throughout the statutes, were now brought together into one single document that embodies all legal issues relating to children. This was intended to make them more accessible, easier to promote and thereby easier to enforce.

As the architects of the Act were determined to identify the position of the child within the society, its provisions cover the protection of all children below the age of 18 in all aspects of their life, thus providing a clear and unambiguous definition of who is perceived as a child in Ghana in legislation and policy. It also protects the family unit by outlining parental and governmental roles and responsibilities in order to clarify any ambiguity surrounding who is supposed to do what for the child.

It is worthwhile outlining the various components of the Act, which is divided into six parts, with each part being further divided into sub-parts. Part I focuses on the rights of the child, which are all in accordance with the Convention's principles, including the best interests of the child, the right to education and well-being and the right to express an opinion on decisions affecting his welfare, the right to protection from torture, exploitative labour and forced betrothal. In this part of the Act the concept of the state as the parent of the child in need of care and protection not otherwise provided is introduced, with the implication that the state, in the form of the District Assembly, can assume

custody of a child who is being abused or neglected within the home. Part II of the Act provides for a quasi-judicial body called the Child Panel, which has the potential, when fully operationalised, to absorb not only the civil issues pertaining to non-maintenance of children, child labour, parental neglect or maltreatment and truancy/failure to send a child to school, but also minor crimes committed by children such as petty theft. Thus, this system will enable families and communities to seek their own way to resolve problems without recourse to the main judicial system, which is a costly and lengthy process.

Part III deals with parentage, custody, access and maintenance. The considerations that are now to be taken into account when making decisions regarding custody and access include the age of the child, the desire to keep siblings together, the need to maintain continuity and the views of the child. With regards to the maintenance of children, the Act makes parents liable for educating their children up to the basic educational level. An additional duty to provide reasonable shelter was added to the maintenance responsibility and action may now be brought to enforce the payment of existing maintenance arrears. Part IV of the Act focuses on adoption and fosterage, which is also a first for the Ghanaian legal framework and is a result of the recognition that the traditional practice of families handing over their children to another who is willing to undertake the care and maintenance of the child (i.e. fosterage) is increasingly becoming commercialized and vulnerable to exploitation.⁹⁵ Thus, its inclusion is an indication of the recognition by

⁹⁵ In recent years questions have been raised about the extent to which these contractual arrangements continue to benefit children today. According to Appiah and Afranie, the increasingly commercialization of child domestic work has weakened the contractual arrangements that accompanied traditional fostering practices, leading to children providing domestic services without receiving any benefits as was the case in the past (2001). Goody (1978) adds to this by arguing that under the banner of ‘fostering’ children are often abused because fostering may mean little more than food and shelter in exchange for labour with no provision being made for attendance at school (Quoted in Ibid). This traditional practice of ensuring social security through fosterage is now also

government that mechanisms need to be put in place to ensure that the rights of these children are not infringed in the process.

Part V deals with the employment of children. Children under 18 are prohibited from engaging in exploitative and hazardous labour, which is defined as any labour that deprives a child of its health, education or development (moral and physical), all in line with article 28 (2) of the Constitution and the Convention. However, they can be admitted into other types of employment and embark on apprenticeships from the age of 15, which coincides with the age of the completion of basic education. Part VI, the final part of the Act, makes provisions for institutionalised care such as the regulation of both state and privately-run residential homes, which can now have their licences cancelled or suspended if they fail to maintain the required standard of care. This is another legal first for the country, as previously, private children's homes existed without any legal framework and no provisions were made for their inspection and regulation, and thus, the protection of children within these institutions was not assured.

Interestingly, the Act itself supports the argument for a middle ground on children's rights as it provides a legal framework that represents a compromise that incorporates both international standards and traditional practices and belief systems. The similarities between the Act and the Convention have led some in Ghana to talk of it as merely a

vulnerable to the global multi- billion dollar industry, which makes parents complicit in this business by convincing them to sell their children for money (Gagnon, 2005). However, instead of these children being taken to the homes of relatives for training in exchange for their services, they are trafficked from rural areas particularly in northern Ghana to urban areas of the country such as Accra and Kumasi and also across borders into Burkina Faso, Togo and onwards to Nigeria and beyond for the purpose of exploitation.

domestication of the Convention in the country's legislative framework. Two of these are worth exploring in greater detail. Part I of the Children's Act makes provisions for the basic rights of children, including the right to grow up with parents, unless it is not in the best interests of the child, the right to parental property, the right to education and well-being (i.e. immunization, adequate diet, clothing shelter, medical attention), the right to social activity, the right to express an opinion and participate in decisions affecting her well-being and the right to protection from torture, degrading treatment and forced betrothal – all of which are in line with the Convention.⁹⁶ As any contravention of this part of the Children's Act is liable to a fine of not more than 5 million cedis⁹⁷ or a term of imprisonment not beyond one year or both, the Act criminalises the non-participation of children in decision-making in a culture where the government itself has admitted that child participatory rights are the most problematic of all rights stipulated in the Convention to implement in the Ghanaian social and cultural context. Therefore, in striving to harmonise national law to the Convention's standards, policy-makers have overlooked or disregarded the resistance that this provision would engender.⁹⁸

Moreover, while children from the age of 15 onwards can be engaged in employment and undertake apprenticeships, the Act proscribes their participation in exploitative and hazardous labour, which includes portering of heavy loads, going to sea/fishing, mining

⁹⁶ See above, Chapter I, Section 1.3.2.

⁹⁷ New currency notes were introduced in Ghana on 3rd July 2007. The new currency, known as the Ghanaian cedi (GH), replaced the previous cedi, which had been in circulation since 17 February 1967. The Ghanaian cedi will be exchanged at 10,000 old cedis to one new Ghanaian cedi. The exchange rate against the GBP was GH 1.9 to 1 GBP as of 3rd January 2008.

⁹⁸ For a more detailed discussion on the implementation of rights relating to children's ability to express opinions and participate in decision-making see Chapter V.

and quarrying, working in manufacturing industries where chemicals are produced or used, working with machinery, and being employed in places such as bars, hotels and places of entertainment where a person may be exposed to immoral behaviour. This is not only in line with the Convention, but also in accordance with the International Labour Organisation Minimum Age Convention, 1973 (No. 138).⁹⁹ Table 13 below further illustrates the similarities.

Table 13: Similarities between the Convention and the Children’s Act

Principle	Convention on the Rights of the Child	Children’s Act
Definition of a child	Article 1	Article 1
Non-discrimination	Article 2	Article 3
Best Interests of the child	Article 3	Article 2
Right to name and nationality	Article 7	Article 4
Right to live and be raised by natural parents	Article 9’	Article 5
Parental duty and responsibility	Article 18	Article 6
Right to education	Article 28	Article 8

⁹⁹ ILO Convention No. 138, which was adopted on 19th June 1973 by the General Conference of the International Labour Organisation (ILO), makes provisions concerning the minimum age for admission into employment. Although 150 governments have now ratified it, the government of Ghana has not despite the fact that its national legislation is in line with this Convention.

Right to health and health services	Article 24	Article 8
Right to special care and equal treatment of the disabled	Article 23	Article 10
Right to freedom of expression and opinion	Article 12	Article 11
Protection from exploitative labour, including minimum age of employment and regulation of working conditions	Article 32	Article 12
Protection from torture and degrading treatment	Article 37	Article 13
State Parties protection of children	Article 36	Article 16
Adoption when in the best interests of the child; Children's Act gives clear cut guidelines	Article 21	Article 65 – 76
Child labour; Children's Act further states that no child shall be engaged in work between 8.00pm and 6.00am and sets the minimum age of regular employment at 15 years and hazardous employment at 18 years.		

Source: Nana Agyemang-Mensah, Associates in Development, reproduced in Tengey, 1998

Despite the similarities, it is important to note that the Act is not merely a domestication of the Convention in Ghana. It also takes into consideration the local context within which it is to operate. This further shows the flexibility inherent in the Convention that enables governments to domesticate its provisions into national law, and at the same time take into account the cultural values and belief systems of their own peoples. An example of this is the Child Panel provision, which is rooted in the Ghanaian cultural and administrative context. It is a community-based structure composed of well-respected and trusted members of a community who are trained in children's rights and have the capacity to educate and influence others. Because of their role in the community, panel members are charged with mediating minor civil and criminal matters at this level, including those involving the rights of children and parental duties and assisting victim-offender mediation in minor criminal matters such as petty theft and threatening offences. In addition, the Act makes a distinction between work that is hazardous and exploitative

and that which is considered as ‘light.’ Such work does not affect attendance at school or the capacity of the child to benefit from school work and is undertaken between 6 o’clock in the morning and 8 o’clock at night. For example, selling products either on a stall or hawking on the streets before or after school, which can be done by children as young as 13. This provision not only takes into consideration traditional and cultural beliefs that emphasise children’s responsibilities towards their families and communities, but also takes into account the reality of the current socio-economic context that forces many impoverished families to rely on the labour of their children to supplement their income.

3.3. The Implementation of Children’s Rights Laws in Ghana

Although it was envisaged that the Children’s Act would represent a change in the lives of children in the country, the reality of children’s lives ten years after its passage remains in stark contrast to the picture the legislation sought to draw. The reality on the ground points to a hostile environment for child protection and the implementation of children’s rights. Children are subjected to various forms of physical, mental and sexual abuse. While it is difficult to assess the exact nature and scope of this phenomenon due to lack of official data, information from the media, courts and the Domestic Violence Victims Support Unit (DOVVISU) of the Ghana Police Service point to a number of violations of children’s rights, including defilement or statutory rape (very often by people closest to children such as uncles, teachers, neighbours), incest and harassment, harmful corporal punishment, abandonment, child abduction or stealing, trafficking, intentional neglect and commercial exploitation for domestic servitude or sexual purposes. Table 14 outlines the type of child-related cases reported to DOVVISU across the country over a five year period.

Table 14: National Statistical Data on DOVVISU Related Cases

From 1999 to December 2004

Type of Case	1999	2000	2001	2002	2003	2004	Total
Defilement	154	181	228	820	755	734	2872
Attempted Defilement	0	0	1	3	2	0	6
Incest	5	6	5	20	17	15	68
Abduction	3	5	10	147	169	190	524
Indecent Assault	11	17	29	104	90	74	325
Unnatural Carnal Knowledge	3	2	0	2	3	15	25
Child Stealing	1	3	1	17	16	15	25
Exposing child to Harm	1	0	4	72	61	63	203
Abandonment of Child	0	5	6	19	17	9	56
Compulsion of Marriage	0	2	0	14	6	3	25
Kidnapping	0	0	1	10	2	9	22
Child Trafficking	0	0	0	6	6	1	13
Non child maintenance	523	1383	1047	3066	5947	7421	19,387
Failing to supply basic necessities of life and health	0	7	17	164	102	67	357

Courtesy of the Domestic Violence and Victims Support Unit of the Ghana Police Service, 2006

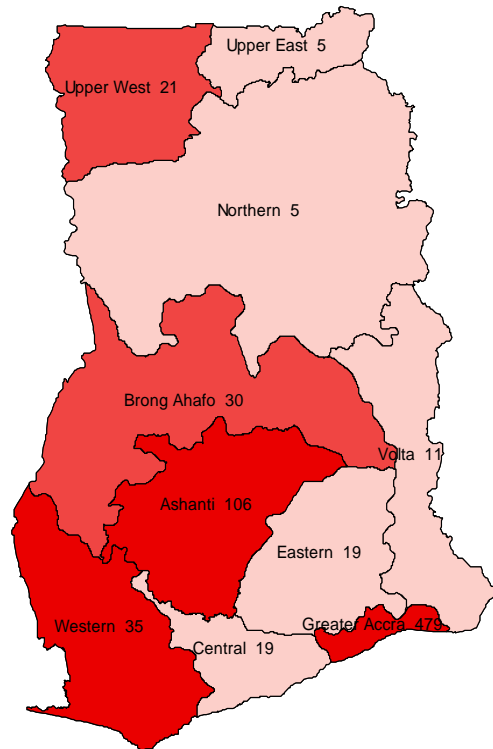
From the table it appears that while 2002 marked a turning point in the number of all cases reported to the unit, possibly the outcome of the expansion of the unit into the regions in the years following 1998 when the first DOVVISU office was established in Accra, two types of cases stand out. These are the non-maintenance of children and defilement, which were reported in high volume in 1999 and continued to increase quite dramatically in reportage in subsequent years. Non-maintenance of children was particularly high throughout the five year period compared to all other cases reported.¹⁰⁰

¹⁰⁰ See also Laird who notes that the vast majority of the Department of Social Welfare's workload in relation to child rights and protection (70%) is absorbed in handling child maintenance cases (2002: 894).

Hence, the table not only illustrates the extent of the problem of non-maintenance of children, but it also highlights the importance of this particular provision of the Children's Act to families. The reporting of such incidents is normally done by mothers or other adults on behalf of children. This has led Gagnon to argue that the concept of going to court for maintenance and paternity matters seems to gain importance, especially in the cities as the procedure is more widely known, and members of the public, at least many women, identify with this aspect of the law, which helps to ensure its implementation (2005:6). Thus, while many do not know of the Children's Act or its contents, they are very much aware of its provisions relating to child maintenance.

Defilement, a term used to describe the statutory rape of those under the age of 16, is another violation of children's rights, which increased sharply in its reportage between 1999 and 2004. Across the country cases of defilement, have been reported within the home, schools and other spheres of children's environments. However, it appears that most cases are reported in regions with large cities. In fact, according to the map below most of these cases are reported in the Greater Accra Region. This does not mean that other regions are free from the phenomenon; rather, it indicates that adults and children in Accra are more aware of the existence of DOVVISU and its mandate to pursue such crimes. They are also more able to report violations of children's bodily integrity to the police due to the relatively weakened power of extended families in such a big city as Accra where most of the cases in the region are reported.

Figure 1: Map Highlighting the Reportage of Child Sexual Abuse across the Different Regions



Courtesy of DOVVISU, 2005

However, these figures need to be analysed very carefully as it is very likely that actual incidences of child sexual abuse are much higher than those reported. This is due to the fact that in Ghana there is an attitude that problems, especially if they relate to sexual abuse and domestic violence more generally, must be resolved within the household or community in such a way that all parties can continue living side by side. Even when victims do speak up and report incidents of abuse to the police, many cases do not reach court. According to Beatrice Vib-Sanziri, the Assistant Commissioner of Police and Head of DOVVISU, less than 1% of children referred to the unit for sexual abuse have their cases sent to court (Presentation, London, 29th September 2006). Part of the reason for this must be attributed to the fact that victims, very often from impoverished families, must pay for medical reports, which they cannot afford. Thus, they frequently abandon their case. In addition, the official judiciary process, which is currently characterised by

exorbitant charges, bureaucracy, long waiting periods, frequent adjournments and very daunting structures, further discourages victims of abuse and their families from pursuing the case to the end (Ibid). Therefore, while there are laws in place seeking to protect children in the country, the structures and procedures remain largely unchanged, which contributes to the limited impact of the Act and the Convention.

Another factor that needs to be discussed when exploring children's welfare and protection in the Ghanaian context is their engagement in labour. Information collected for the 2003 Ghana Child Labour Survey compiled by the Ghana Statistical Service indicates that 2,474,545 children are engaged in usual economic activity, which is about 2 in every 5 children aged between 5 and 17 (2003:xvii). While approximately half of rural and one-fifth of urban children are engaged in economic activity, 40% of this group work for more than 6 months per year (many of those in Greater Accra, Central and Eastern regions). Therefore, children under the age of 18 remain very visible as labourers, including in work that has now been defined by the Children's Act as exploitative and hazardous, namely, mining, quarrying and galamsey,¹⁰¹ fishing¹⁰² agriculture and the hotel industry, which altogether employ an estimated 242,074 children (Ibid). According to the survey, 57% of the 2,474, 545 working children who participated in the study were engaged in agriculture/forestry/fishing; 21% worked as hawkers and street vendors, selling ice water and food; and 11% were engaged in general labourer chores, such as

¹⁰¹ Mining and galamsey are particularly associated with industrial areas in the Ashanti region and Western regions.

¹⁰² Large numbers of children can be found working in the fishing industry on Lake Volta where they dive over 30m under water without protective equipment, leading many to drown (see UNICEF-Ghana, 2002).

washing of cars, fetching firewood and water, pushing trucks and carrying goods as porters.

This latter occupation has received significant media attention in recent years. Many of these porters, also known as *kayaye*,¹⁰³ are predominately young female migrants from the three northern regions of Ghana who migrate to Accra in order to raise capital to start more profitable ventures or acquire necessary items for marriage. On arrival in Accra, they work as porters and carry head loads of 30kg over an average of 5km a day for shoppers and traders, which has an impact on their physical development (Ghana Statistical Service, 2003:xiv; UNICEF-Ghana, 2002). They also end up amongst the large numbers of street children who are found in large cities¹⁰⁴ not only working, but also living on the streets - sleeping at night at shop fronts, markets, office verandas and other open places- which make them vulnerable to sexual abuse and exploitation, as well as other types of violence.

While many children engage in economic activities in order to pay for their school-related expenses,¹⁰⁵ it must be acknowledged that this continued engagement in this type of work- be it part-time or full-time - hinders their ability to participate fully in school work. In some parts of the country families are so reliant on their children to assist them at

¹⁰³ Literally translated, *kayaye*, which is a mixture of Ga and Hausa words, means women who carry loads, normally on their heads.

¹⁰⁴ According to the Ghana Child Labour Survey, the Greater Accra Region, with an estimated 33,000 street children, has the highest proportion of street children followed by the Ashanti and Brong Ahafo regions (Ghana Statistical Service, 2003).

¹⁰⁵ According to the Child Labour Survey 64.3% of the 2, 474,545 children engaged in usual economic activity were attending school while working (Ghana Statistical Service, 2003: xiii).

certain times of the day or particular times of the year that children's attendance at school is at best irregular during these periods.¹⁰⁶

The forced and early marriage of children also affects the effective participation of girls in education as many are forced to leave before the completion of basic school to become junior wives to men who are often much older and act as domestic servants to their older co-wives. As a result of their position in their new household, these girls have little say in decisions on issues affecting them or their children.¹⁰⁷

3.3.1. The Problems of Resources and Lack of Awareness

Central to the understanding of the limited implementation of the Children's Act and as a result, the Convention, is the lack of resources – both human and financial - which has severely impeded the ability of key institutions charged with enforcing the Act to fulfill their mandates. This section will explore the challenges facing two bodies that are key to the implementation of the Act.

¹⁰⁶ In northern Ghana where most people are farmers, 80% of children do not attend school due to their commitments to generating income for the survival of the family (Ibid).

¹⁰⁷ However, it must be noted that many women, even those who are young put a great deal of emphasis on marriage and children. This is because of the stress placed on marriage and motherhood as key indicators of adulthood or womanhood (See Chapter II, Section 2.2.1). As Therborn states, 'if the African family has a single supreme value, it is probably fertility' (2006: 29). In her study of Sugar Daddies and Gold Diggers in Accra, Dinan argues that the normal pattern for Ghanaian women in traditional and contemporary rural and urban contexts is to marry and have children. This is the definition of the proper female adult role (1983: 344). In addition, marriage and motherhood enhances the status of women in society, gives them security and enables them to establish a business of their own with the support of their husbands. In some cases it gives them the freedom of movement, which may not have been possible before marriage. Thus, it can be argued that in order to do anything a woman has to be married and have children; hence the importance placed on becoming a wife and training girls in domestic skills from an early age.

The Children's Act (Sub-Part II of Part I) gives the responsibility for protecting the welfare of children, as well as promoting their rights, to the District Assemblies, which are charged with ensuring that the relevant sectors liaise with each other on matters concerning children. Therefore, much is expected of the decentralised local government system if the Children's Act is to be implemented effectively. However, studies have shown that an extremely limited proportion of the District Assembly Common Fund, which is allocated to District Assemblies by central government for the development of their districts, is used for the protection of vulnerable groups such as children while the bulk goes to capital projects such as building roads (United Nations and the Government of Ghana, 2004: 42). This can largely be attributed to the fact that a large number of District Assemblies have yet to be sensitised or educated on the Convention and the Act. In an interview with Hon. Adjiri Barnor, Accra Metropolitan Assemblyman for Nlgeshi (Ga Mashie), he admitted that he had not read the Children's Act and thus, did not know what it contained (Interview, Accra, 8th March 2006). As a result of this lack of knowledge that is widespread at the local authority level, it is difficult for the District Assemblies to appreciate the importance of children's rights and this limits their ability to incorporate these principles into their medium-term plans. In addition, those members of the District Assemblies who have been sensitised often have difficulty in understanding and comprehending the law. Even when aware and willing, most District Assemblies lack the capacity to implement the law effectively due to the sheer magnitude of local government responsibilities that have been placed on them at a time when they are facing severe staff shortages and high personnel turnover. Therefore, they have difficulty apportioning their time and resources adequately and are unwilling to take on new assignments (see Tengey, 1998; Woll, 2000).

The Department of Social Welfare, which is part of the Ministry of Manpower Development and Employment works in three programme areas, namely justice administration, child rights promotion and protection, and community care. The Department is particularly responsible for children ‘in need of care and protection’, who are defined in the Act as those who are neglected, ill-treated, abandoned, orphaned and begging on the streets. However, the capacity of the department to fulfill its mandate is restricted by a severe lack of both financial and human resources. Like the District Assemblies, conditions of service are poor and this, in turn, further demoralises the already disillusioned staff and results in a high turnover. Hence, there is a severe shortage of personnel to handle the workload of the department, which has increased tremendously since the passage of the Children’s Act in 1998. Many social welfare district offices are only able to employ one social worker, which limits the department’s ability to fulfill its mandate (Gagnon, 2005: 35). As a result, instead of being able to investigate or follow-up cases and monitor violations of children’s rights, district social workers are reduced to their desks and forced to wait for cases to be brought to them. This is problematic in a context where state intervention in family affairs is not welcomed and thus, families rarely take the initiative to report cases of abuse to social workers (Gagnon, 2005; Interview with Gifty Okine, Accra, 2nd March 2006). The restrictions the Department faces in its work are further compounded by the fact that district social welfare offices do not have vehicles at their disposal, restricting their mobility and making it difficult for them to reach families in more remote places.

In addition, the establishment of the Ministry of Women and Children’s Affairs has had an impact on the work of the Department. There has been lack of clarity in oversight responsibilities, particularly between the Ministry of Manpower, Youth and Employment,

the sector ministry in which the Department of Social Welfare is based, and the Ministry of Women and Children's Affairs. The mandates of the two agencies regarding the protection of children overlap in several areas, leading to duplication of efforts and gaps in services (UN and Government of Ghana, 2004). Stephen Adongo, the Deputy Director of the Department of Social Welfare raised the problem of coordination between the two agencies during my interview with him:

MOWAC [the Ministry of Women and Children's Affairs) is meant to be the coordinating ministry – coordinating issues relating to women and children in all ministries, but now they are venturing into implementation and that is where the problems are arising. MOWAC believes that they should do everything that is to do with children. There is an attitude that anyone can do social work so MOWAC feels they can do our work. They do not try to encroach on women and children's issues in other Ministries e.g. health, agriculture, but because they think social work can be done by anyone they interfere in our work... They have taken on child labour and maintenance cases. It won't work because they do not have the expertise... At the political level they play it down. They say it is no problem. But it is. Just last week the Minister of MOWAC said there was no child labour in the cocoa industry. The next day DSW [the Department of Social Welfare] was holding a workshop on child labour in the cocoa industry... The Ministers of the sectors involved have to clarify the roles (Interview, Accra, 21st February 2006).

Financially, while the government provides budgetary support to the department for the implementation of the Children's Act, it is seen to be severely inadequate. Government allocations (non salary expenditure) to the Department of Social Welfare for 2002-2004 ranged from 184 million to 261 million cedis for operations in the entire country, and even this was only released after a long delay, hampering activities (see UN and Government of Ghana, 2004). As a result, the Department has had to rely on financial support from international agencies such as UNICEF-Ghana. According to Stephen Adongo:

There is no separate budget for children. It's always tied to MOWAC and whatever allocation there is always late. Why? It is a matter of our concept of development. Successive governments think when you build roads, markets, toilets – that is development. Social welfare institutions are driven to the background because they are not providing revenue to the country. Governments think that when you improve education and health then you have social development. So these ministries get a lot from the government and donors. Therefore, it is down to political orientation. They do not see the output of what we do. It is not so tangible (as building a market). DSW is just seen as

a drain pipe. ... Our institutions such as children's homes and correctional institutions have become so run down that they themselves can be considered as cases of 'abuse' (Interview, Accra, 21st February 2006).¹⁰⁸

As a result of the Department's inability to fulfil its mandate, some NGOs have emerged to fill the resulting gap and take over part of the role of an institution which should be taking the lead in ensuring the provision of quality and standardised services for children in the country. Therefore, the credibility of the department has been undermined and its ability to undertake its work effectively has been impeded as it is now competing with civil society for donor funds.

The problem of the limited implementation of children's rights is not merely down to insufficient budget allocation from central funds. Senior figures within the government itself have pointed to numerous external factors that have impeded their ability to fully implement children's rights instruments to which the government had committed itself. As Vice President Mahama explained at the UN Special Session on Children in New York in May 2002, in spite of the government's policies and programmes and the fact that the Government is 'making every effort to mobilize resources locally to improve the situation of our children',

Ghana.... could not fully realize her desired goals for her children because of the lack of resources. Fluctuation on world prices of our export commodities, coupled with high petroleum prices on the international market, our growing external debt and dwindling official development assistance, have greatly limited the amount of resources at the disposal of government for the care of our children ...Mr. President, we in Africa acknowledge that it is our responsibility to ensure the well-being of children on our

¹⁰⁸ As a result, while public sector reform initiatives have touched other government departments, there are those within the Department of Social Welfare who maintain that the organisational structure and *modus operandi* of the department remain very much a 'left-over' of British colonial rule. This argument is supported by Laird who argues that although Ghana became independent in 1957, successive regimes retained much of the welfare structure created by the previous colonial administration (2002: 894). Thus, the Department of Social Welfare has not changed much since its establishment in 1946 when it took on similar responsibilities to those being exercised contemporaneously by departments providing welfare services in Britain.

continent. Unfortunately, we are unable to meet this all-important obligation (Mahama, 2002).

Due to these challenges, the responsibility to care for children is almost solely being held by parents who, more often than not, cannot afford to bear it in full. Some parents contend that they, as adults, also have economic and social rights, which are violated by bad economic policies pursued by the government. They, thus argue that if their rights cannot be met, society cannot expect them to assure the very same rights for their children (Tengey, 1998). Furthermore, endemic poverty in Ghana, where 42% of the 18.9 million inhabitants live in acute poverty on less than \$1 per day (Ghana Living Standards Survey, 2000), leads to children's rights becoming a low priority for many families and communities. The 1995 Ghana Living Standards Survey (GLSS) found a steady increase in school enrolment with rising levels of welfare (Ghana Living Standards Survey, 1995), indicating that parents are willing to send their children to school as long as they have the resources to cover the costs.¹⁰⁹ When these are not available they will not only stop sending their children to school, but will also need to rely on their labour. This is further supported by Sylvester Kyei-Gyamfi of the Research Unit at the Ghana National Commission on Children:

I am not trying to use poverty as an excuse, but in the situation that the people find themselves in, they have nothing else they can do other than fall on the assistance of children. There is no social safety net here in Ghana (Interview, Accra, 26th January 2006).

¹⁰⁹ This point is further supported by the Young Lives Project, a 15 year longitudinal study funded by the DFID and coordinated by the International Development Centre at the University of Oxford. In a paper on the factors preventing school enrolment in Ethiopia, it is argued that the decision to send a child to school depends to a large extent on the direct and indirect costs to the household and their capacity to afford them e.g. books, transport, school fees, and the loss of children's wages (Young Lives, Policy Brief 2).

In some cases parents have provided the initial capital for their children to set themselves up as street vendors (UNICEF-Ghana 2002: 135).¹¹⁰ Therefore, there is a need to recognise that very often parents make conscious decisions about using the labour of their children to ensure the survival of their family.

While financial and human resources are certainly severe impediments to the implementation of the Act and the Convention, lack of awareness is also a critical factor as it is arguably directly linked to lack of political will which, in turn, reinforces the lack of resources available for the effective implementation of children's rights. Most members of the public and even policy-making bodies do not know about the Children's Act and the Convention on the Rights of the Child. In cases where they do have knowledge of them, they do not know much about these legal instruments and their contents. Ruth Addison, Programme Manager at the Ghana National Commission on Children informed me that there are some MPs who do not even know what is in the country's Children's Act, which many of them voted into passage in 1998 (Interview, Accra, 27th February 2006). Even in cases where the public is aware of the Act, they do not recognise its importance or its relevance, given that traditionally, the extended family has played the role of caring for children, leading Gagnon to assert that, 'public intervention is thus quite alien to Ghanaian society' (2005: 4).¹¹¹ Even civil society, which is very much aware of children's rights and the relevant instruments, has not developed a habit of reporting children's cases to the Department of Social Welfare. In

¹¹⁰ Writing of the Nigerian context, Ifi Amadiume refers to research into child labour that reveals that underage workers, street sellers, housemaids and apprentice mechanics have often been pushed into the market place by parents who need the extra earnings to supplement the family income (2000: 122).

¹¹¹ See above, this section.

their research on violence against women and children in Ghana, Cusak and Appiah note that:

Reporting to state agencies is rare even when there are medical injuries; cases are being arbitrarily referred back to the family and/or community and cases are being closed as trivial, false and lacking in evidence (1999).

3.3.2. Moving Beyond the Problems of Resources and Lack of Awareness in the Analysis of Children's Rights in Ghana

Hence, there is a need to go beyond lack of awareness and resources as obstacles and problematise the concept and language of children's rights itself and its impact on the limited implementation of children's rights laws in Ghana. By focusing on the lack of awareness and resources as the key impediments to the implementation of the Convention and the Act, there is the assumption that that once people know about children's rights, they will accept it as if they are passive receivers of information and knowledge, or that once resources are available they will be used for children's rights, which has, hitherto, not been the case. Therefore, there is a need for policy-makers to acknowledge that even once people have information about children's rights and have the resources to facilitate its implementation, they may still reject the concept as it attacks and threatens the very premise on which Ghanaian cultural values are based – values centred on concepts such as respect and obedience, responsibility from an early age and importantly, reciprocity, which is antithetical to the idea of inalienable rights for anyone, let alone children.¹¹²

In some sectors of the population, there is the belief that children's rights (in cases where they are aware of such a concept) mean the right to empowerment only. According to Ruth Addison, 'some see children's rights as giving too much power to children'

¹¹² See below, Chapter IV, section 4.4. for a more in-depth discussion on the importance of reciprocity to social relationships, especially parent-child relationships, in Ghana.

(Interview, Accra, 27th February 2006). This viewpoint was further supported by a participant in a FGD with media professionals who said:

When children know their rights, they may over do it. Some children are very rude and this is because they know their rights. This is why some parents do not allow their children to know their rights (FGD with Media Professionals, 14th September 2005).

The anger felt towards the concept of children's rights in some sectors further became apparent in my interview with Nii Futa I, the Chief of Nima, one of the two focus communities of this study:

We have enough problems with children without giving them their rights. They should straighten up, go to school and look after us when we are old. Children's rights are a luxury that only people in London and New York can enjoy. But in Nima, the basic things are not being taken care of. When you have provided basic things (costs of schooling, medicine) then you can sit down and ask them for their opinions. Because of poverty levels and problems we do not have time to discuss these things. We do not have time to ask children their opinions unless they are going to be able to bring money. When I have to worry about where I am going to get my next pay from I cannot be asking my child for his opinion... Besides, you need to enforce things on children. If you leave them they will do the wrong thing (Interview, Accra, 16th December 2005).

Thus, there is an element of confusion or misunderstanding about what children's rights mean within communities. As a result, much of the anger felt is based on the belief that the concept of children's right is about children being empowered, rather than about the provision of basic needs such as education and food, clothing and shelter, which are also rights. According to Tine and Ennew, while there is much misunderstanding of what children's rights mean, there is considerable willingness to promote the fulfilment of children's needs (1998). When such basic rights such as education and food are focused on, there is much more understanding and acceptance by communities because they are perceived as needs that communities have been striving to provide for their children since the beginning of humanity as prescribed by tradition and culture or religion. This

particular point emerged in Nima¹¹³ where most adult participants to the study were Muslims and repeatedly referred to the teachings of Islam,¹¹⁴ which sets out duties towards children that many Muslims, who have never heard of the Convention or the Children's Act, have been using to guide their lives and raise their children for generations. An example of relevant teachings from the Quran is:

The mother shall give suck to their offspring for two whole years for him that wishes the sucking to be completed. They must be clothed and maintained in a reasonable manner by the father of the child (Sura Al-Baqra, Quran 2, Verse 233).

The hadiths¹¹⁵ also provide guidelines to Muslims in the care of their children: 'there is no bigger sin than neglecting your dependants' (Hadith Sharif). In Nima, one male participant to the study stressed the importance of Islam's teachings in how parents raise their children:

According to Islam, a man is responsible for his wife and children, and so they are treated strictly according to religious teachings. If a man does not educate his children God will

¹¹³ See Methodology Section in the Introduction and Chapter IV, Section 41.1. and 4.1.2 for a more detailed description of Nima and Ga Mashie.

¹¹⁴ Although the exact time Islam was introduced in what is now known as the Upper and Northern regions of Ghana is not known for certain, some scholars have maintained that this was not later than the 15th century, but it is possible that long before this, there were trading links between these regions and Western Sudan (see F.K Buah, 1998). Those responsible for its introduction are said to be Muslim Wangara traders in gold, followed by Hausa immigrants trading in kola. Certainly, by the formalisation of colonial rule towards the end of 19th century, there was already a substantial Muslim presence in these regions. Apart from the northern and upper regions, the areas of greatest concentration are in large cities such as Accra and Kumasi, but most towns include Muslims amongst their population (see Nukunya, 2003: 127). According to the last Population and Housing Census taken in 2000 15.9% of Ghana's 18.9 million population professes Islam as their faith compared with 68.8% who claim affiliation with Christianity and 8.5% who are adherents to traditional religions. Most reside in the northern region (1, 022, 331), with the Ashanti Region and the Greater Accra Region coming next, with 477, 214 and 295, 759 respectively (Ghana Statistical Service, 2002). The Volta region has the least number of Muslims.

¹¹⁵ In Islam, hadith is the term applied to specific reports of the Prophet Mohammad's words and deeds, as well as those of many of the early Muslims.

ask him about it on the Day of Judgment (First FGD with Congregation at the Islamic Institute Mosque, 5th November 2005).¹¹⁶

Therefore, when the language of rights is replaced with the language of basic needs, which focuses on the protection and development of children into responsible adults, an avenue is opened to engage communities in dialogue about children's rights. This is because these are issues that people themselves are concerned about and can comprehend as they also talk, as Chanock mentions above, in terms of 'wrongs and needs, not rights and culture'.¹¹⁷ Thus, there is a need to explore the ways we communicate children's rights to local communities. According to Idriss Abdullah of UNICEF-Ghana:

One obstacle we have is how many agents of change in communities understand children's participation and children's rights. How do you present children's rights to communities? There have been problems because communities have not understood the message. Therefore, communicators need to conceptualise it in local terms and terminology so that the community can understand it. Whether we encounter difficulties or not depends on how we couch the message. We need to transmit information in an unambiguous way (Interview, Accra, 18th January 2006).

Having said this, it is necessary to note that it is not adequate to put this resistance down to confusion or misunderstanding of what rights actually are. Even with regards to the basic provisions to which children are entitled and which societies know they must provide, there is currently some anger and frustration felt within communities. This is because of the shift in language and policy from a focus on parental obligations and children's needs to an emphasis on children's rights. By criminalising parental irresponsibility as the Children's Act does, the duty to maintain children is now perceived as a legal, not a moral issue. As a result, parental responsibility is now subject to

¹¹⁶ The centrality of educating children in Islamic teachings could partly explain why the research team found it so difficult to gain access to out-of-school children in Nima. This is discussed in more detail in the Introduction, methodology section.

¹¹⁷ See above, Chapter II, section 2.2.3.

sanctions and penalties for those parents who do not provide the necessities of life for their children.

This legalisation has occurred just at the time when parents can least afford it. As the contribution of children to the family economy declines (due to longer days and increasing number of years spent in school)¹¹⁸ and the rights to which they are entitled increase, children are seemingly becoming liabilities and burdens rather than the assets they once were.¹¹⁹ This has not only led to a decline in the desire for large families in some cases, but it is also partly responsible for the break down in parental care. Large numbers of adults are retreating from the responsibilities that come along with parenthood because of their inability to cope with its increasing responsibilities and demands. According to Oppong,

The emergence of a serious problem of street children in Accra and elsewhere is also a visible and tragic sign of the breakdown of parental care of numbers of older children. Adults are not only retreating from parenthood, they appear in many instances unable (or possibly unwilling) to cope with its responsibilities and demands (2006: 50).

¹¹⁸ Increasing numbers of children are entering the school system and spending longer periods of their waking time in educational environments. According to Nsamenang this limits and reduces their role as care providers, as well as contributors to family subsistence (1992: 138).

¹¹⁹ According to J. Bukh's 1979 study in Tsito, a village in south east Ghana, mothers are increasingly bearing the care of looking after children even after the age of seven when they used to go and live with their fathers. This change in practice is due to the fact that children are no longer considered the assets they once were, as now their economic contribution to the family (farming) is restricted to Saturdays and school holidays. Thus, parents have to bear full responsibility to feed, clothe and educate their children, which has led some fathers to withdraw from their responsibilities, leaving mothers to bear the full burden of care (1979: 46).

The paternal retreat from parenting can particularly be seen by the number of non-maintenance cases reported to the Domestic Violence and Victims Support Unit of the Ghana Police Service as shown above in Table 14.¹²⁰

While there are various reasons for this retreat by parents, including irresponsibility and the belief that the extended family still has obligations to one's child, endemic poverty in Ghana,¹²¹ which prevents parents from looking after their children as they would like to, is a critical factor for consideration. One comment that was made by a number of adults participating in the study was that while they might be aware that children are entitled to certain rights (notably education and medical care), they could only be expected to provide these if they have the resources. As one group of adults informed me in Ga Mashie, 'there is a need to make jobs for the mothers so they can look after the children. If the mother does not work, the child will not go to school' (Second FGD with Adults at Freeman's Memorial Chapel, 27th February 2006). Thus, depending on their mothers' employment status, some children may not be able to go to school, or mothers may have to look for local herbs to medicate their children when they are sick instead of taking them to hospital. Hence, the anger and resistance felt towards the idea of children's rights is also based on the feeling that while parents may strive to do their best with the little resources they have available to them - very often without much support from the State - they are now subject to penalties if they fail to meet their obligations to their children (importantly, by the same State that does little to help them). Penalising parents for doing what they consider their best causes anger and frustration towards the very concept of

¹²⁰ See above, Section 3.3.3, this Chapter.

¹²¹ See above, Section 3.1., this chapter for more about the economic challenges Ghana has faced in recent years.

children's rights and contributes to the retreat from parenthood that is evident in Ghana today.

3.4. Conclusion

This chapter has shown that despite the harmonisation of national law with the Convention's standards, implementation has proved problematic. Although lack of awareness and resources are important impediments to the implementation of the Convention on the Rights of the Child in countries around the world, inherent in analyses focusing on these factors is the assumption that once people have knowledge, or that once resources are available at the State, local government and family levels, children's rights will be implemented. This has not, hitherto, been the case because even when communities are aware of children's rights and when resources are available, the progress of children's rights has remained slow. A primary reason for the slow progress of the Convention is the community/public perception of children's rights as a concept. Many adults fear the implications such a concept will have for the cultural and social fabric of their societies. In particular, they worry about its impact on child rearing and socialisation processes. Hence, it is not sufficient to identify a middle ground in the laws and policies of a particular country such as Ghana. Policy-makers and others seeking to implement the Convention within this context must go further and explore the possibility of identifying a middle ground in local perception on childhood and children's rights as local communities are key to the effective implementation of the Convention and the national laws that it engenders. This further underlines the need to involve local communities in the interpretation of children's rights by engaging them in dialogue and eliciting their opinion about what constitutes children's rights in their context. The dialogue that will

emerge as a result will form the basis of a partnership for the implementation of rights that are not only recognised internationally, but which are also valued locally.

CHAPTER IV

Searching for a Middle ground on Children's Rights in Community Perceptions in Ghana

4.0. Introduction

A key tenet of this study is the argument that engaging local communities in dialogue on children's rights will enable policy-makers to not only develop a deeper understanding of their perceptions of children's rights, but also identify commonalities of thought and understand the reasons behind persisting differences in perceptions of children's rights. In this way, policy-makers will be able to explore how best they can implement the Convention without overlooking local values, which continue to guide the lives of many people in Ghana, especially when it comes to the raising of their children.

This chapter seeks to highlight the importance of this process by eliciting the perceptions of adults and children in two local communities in Accra, Nima and Ga Mashie, on children's rights with a focus on identifying areas of commonality and understanding differences in the identification of children's rights. Central questions are: what is the basis for consensus of opinions and divergence between local community perceptions and the Convention and the Children's Act? How can policy-makers make use of these commonalities and differences that emerge in discussions with local communities in order to achieve the effective implementation of children's rights at the community-level in Ghana? To address these questions, the chapter will firstly offer an overview of Accra and the two focus communities in the study: Nima and Ga Mashie. Secondly, it will assess the extent to which adults and children within the two focus communities are aware of children's rights. Thirdly, it will seek to find a middle ground between local perceptions and the Convention's standards. Finally, it will maintain that despite the commonalities

that can be identified, key differences persist, which further underscore the importance of cultural values and the need to engage local communities in dialogue about the interpretation and implementation of children's rights.

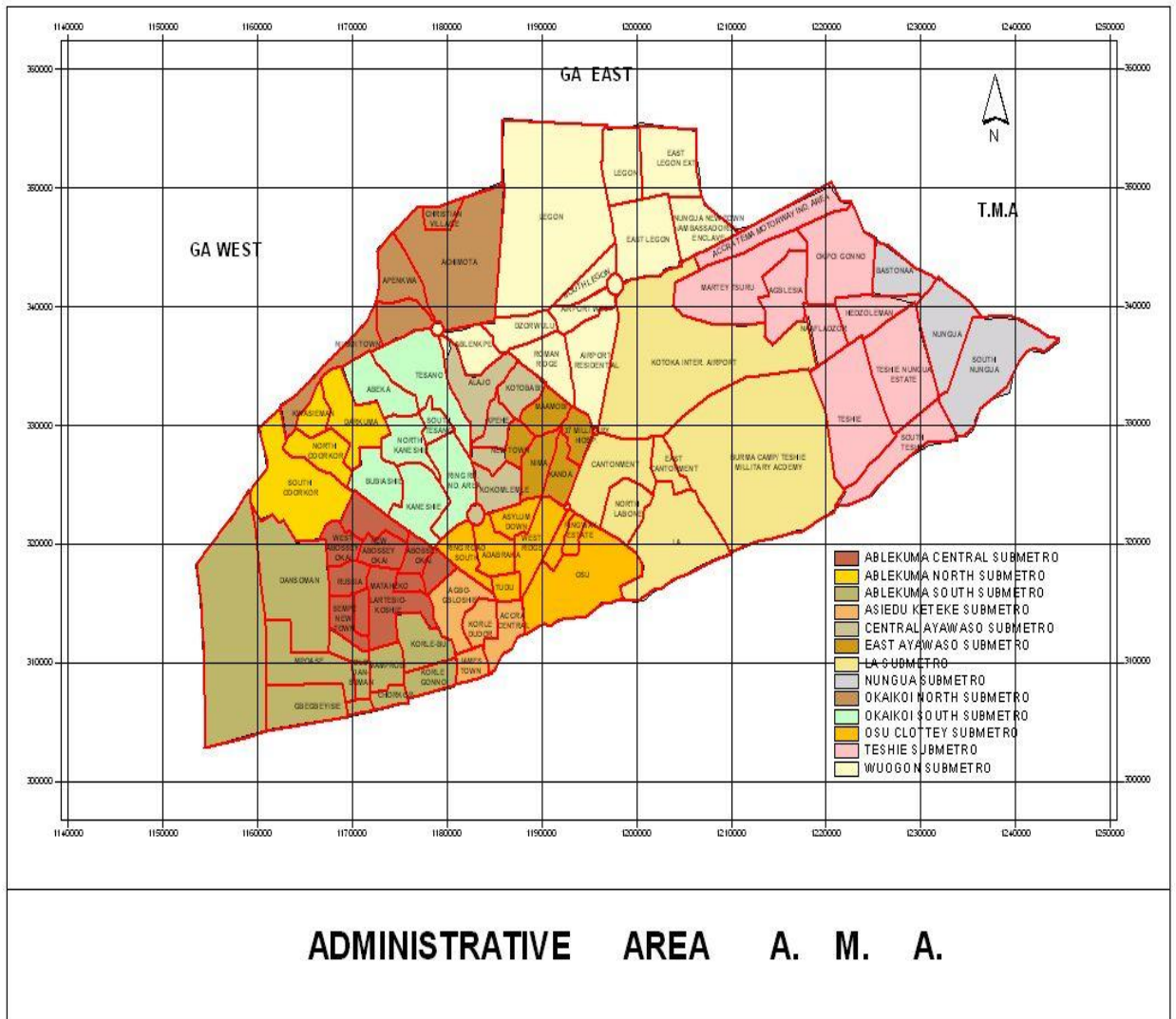
Information presented in the next two chapters was collected during 10 months of fieldwork in Accra, the capital of Ghana, between May 2005 and March 2006 primarily through focus group discussions and interviews with adults and children in two communities: Ga Mashie and Nima. In total 78 adults participated in seven FGDs in these communities. In addition, two extra FGDs were conducted with eight media professionals and 12 mature students from the Social Work department of the University of Ghana, Legon who had previously worked on children's welfare and protection in different capacities. With regards to children, 243 children participated in 21 FGDs in the two focus communities. Of these, 71 were not enrolled in school (41 in Ga Mashie and 30 in Nima/Maamobi). In addition, FGDs were conducted with 36 children from three private schools in Accra in order to compare their knowledge and experience of children's rights and the Convention and the Children's Act to those of children in the focus communities. A further FGD was held with 12 members of Curious Minds: Children and Youth in Broadcasting who are often put forward as a good example of children's participation in the country. Therefore, a total of 25 FGDs were held with 291 children. Interviews were also conducted with 133 children from the two communities and those in the three private schools. Out of this number 46 did not, or had never, attended school (19 in Nima; 27 in Ga Mashie).

4.1. Brief Overview of Accra

Nima and Ga Mashie are two major slum areas in Accra, which is located at the centre of the Greater Accra Region in the southern part of Ghana. The region is bordered on the west by the Central Region, on the east by the Volta region, on the north by the Eastern Region, and on the south by the Gulf of Guinea. The region is now divided into seven districts, two of which have recently been created: Dangme East, Dangme West, Tema Municipality, Ga East, and Ga West (formerly combined as one district known as Ga District) and the Accra Metropolitan Assembly (AMA).

The Accra Metropolitan Assembly, which is the governing district assembly for the two communities of focus in this study, is divided into six sub-metros, namely Osu Clotey, Kpeshie, Okaikoi, Ablekuma, Ashiedu Keteke, which covers Ga Mashie, and Ayawaso, which covers Nima. The map below illustrates the divisions of this particular District Assembly.

Figure 2: Map of Accra Metropolitan Assembly



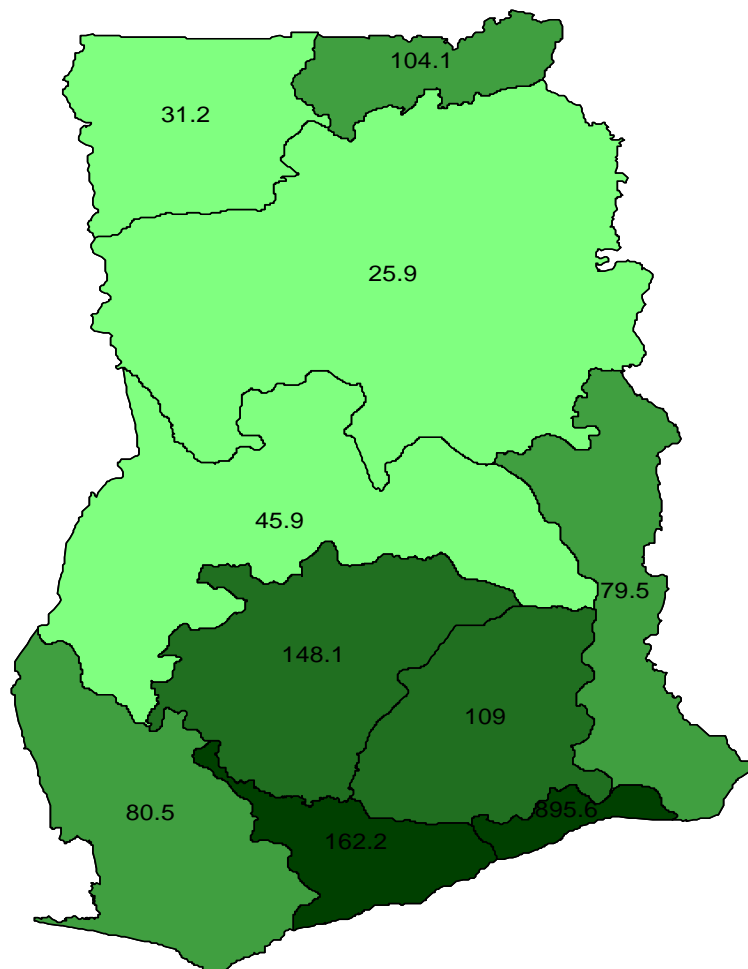
Courtesy of the Department of Land and Surveys, Government of Ghana

Accra, which assumed its administrative role in 1877 when the capital was transferred from Cape Coast,¹²² is now the ‘primate city’ of the country (Brydon and Legge, 1996: 26). It is the seat of national government ministries, the locus of most secondary industry, the site of the country’s major services such the Korle Bu teaching hospital, the country’s main international airport, Kotoka International Airport, the oldest university in the

¹²² While there are numerous reasons behind the decision by the British colonial government to move the capital from Cape Coast, in the Central Region, to Accra, one reason put forward by Kilson was that it was because of the latter’s drier climate (1974: 7).

country, the University of Ghana Legon and the Ghana Broadcasting Corporation and all major press agencies. As a result of its status as the home of the capital city, the population growth rate of the Greater Accra region, at 4.4%, has been higher than the national average of 2.7% since the last census in 1984. Hence, although it is the smallest region in the entire country, with a land size of 3,245 sq km (1.4% of the total land area of the country), it is also the second largest region in demographic terms, with a population of 2,905,726, which constitutes 15.4% of the overall population (Ghana Statistical Service, 2003). Thus, this is the most densely populated region in the country. The map below illustrates the population density of Accra compared to other regions.

Figure 3: Map Highlighting the Population Density of Each Region of Ghana¹²³



¹²³ Source: Ghana Statistical Service, 2000 Population and Housing Census, 2002

Migration is one of the main factors accounting for the growth rate of the population and the increasing density of the region. Due to its status as the home of the capital city, the net inward migration to the region, particularly to Accra, is very high. Many people relocate to Accra not only to work in the formal sector, but also to undertake work in the large informal sector such as petty trading and transport work. As a result, although the Greater Accra region is the home of the Ga-Dangme, 40% of the population of the region is Akan, while the Ga- Dangme comprise only 30%. Other groups in the region are Ewe (18%), Mole-Dagbani (5%), Guan (3%) and Grusi (2%) (Ghana Statistical Service, 2003). Partly as a result of this movement of people into the area the region's unemployment rate of 14% in 2000 is above the national average of 11.2% and is one of the highest in the country (Ibid). It is this population density and high unemployment rates, key features of urbanisation, that contribute to many of the challenges facing children in Ghana today. For example, the increasing population density leads to lack of adequate shelter as a result of overcrowding. This leads children to move onto the streets to live, as well as work and this, in turn, not only exposes them to violence and abuse, but also affects their educational prospects (See UN and Government of Ghana, 2004).

4.1.1 An Insight into Nima and its People¹²⁴

Nima, the largest low-cost area in Accra, and Maamobi, are separate communities located side by side in the East Ayawaso sub-metro district of the Accra Metropolitan Assembly. However, due to their socio-economic similarities, which will be outlined below, this research focuses on them as one community.

¹²⁴ See Appendix 9 for statistical data on Nima provided by the Ghana Statistical Service.

Nima was founded in 1924 by Mallam Futa, a Fulani immigrant from the Senegambia who bought land in the area to enable his family and followers to pasture cattle prior to sale in nearby Accra market. With the expansion of Accra during the 1940s a demand for residential land led to a more diverse group of people settling in Nima. Thus, the area steadily grew, initially with migrants from the northern parts of the country or Muslims from other countries in the West Africa sub-region. However, the Second World War was a turning point. Because of the demand for artisans to work at the newly established military base Burma Camp, and in the construction of Kotoka International airport, large numbers of other groups such as the Ewe from the Volta region moved into the area (see Brydon and Legge, 1996: 29). As a result, by the 1960s the land in Nima had become fully occupied, leading city planners to develop Maamobi, which was created to respond to the continuing demand for land in this area.

While the East Ayawaso sub-metro covers an area of just 473 acres, it currently has a population of 335, 394, which gives an indication of the high population density of the area. Of this population, 69,044 can be found in Nima and 49,812 in Maamobi (Ghana Statistical Service, 2002). Nima and Maamobi are both settler communities made up of predominately Muslims. In fact, Nima, with 54.3% of its population (37,520) adhering to Islam, is the largest concentration of Muslims in Accra, with most originating from the Northern, Upper East and Upper West Regions of the country, as well as from other countries in the sub-region such as Togo, Mali, Guinea, Côte D'Ivoire, Burkina Faso and Nigeria. Such migrants from neighbouring countries tend to be from similar ethnic groups and thus, share a common heritage and at least one language (Hausa) with their Ghanaian

neighbours.¹²⁵ Hence, the ethnic composition of the population is Hausa, Chamba, Mossi, Kotokoli, Frafra, Dagomba, Kokomba, Kanjago, Sisala, Wangara, Kador, Chokosi, Kusuntu, Balkua and Fulani. There are also some Ewe, Ga-Adangbe and Akans living in the area due to its central location and its proximity to the city centre and key places of employment such as Burma camp and Kotoka International Airport.

Today unemployment is a major problem in Nima, especially amongst the unskilled youth (6.9% of those between 15 and 19, 17.3% of 20 to 24 year olds and 23.8% of those between 25 and 29 are not able to find work). Those who are economically active tend to be engaged in unskilled or low-skilled occupations as labourers, artisans and traders (39.3%), with very few working in clerical (9.4%), administrative and managerial (0.25%) and professional and technical occupations (6.6%). The high unemployment rate is further exacerbated by the high levels of illiteracy found within the community. Because of the lack of educational facilities within the area, many children end their school careers after completing Junior Secondary School normally at the age of 15. The alternative is to travel long distances and pay fees if they wish to further their education at the Senior Secondary level. As a result, only 5.6% of a sample population of 14,730 children interviewed by the Ghana Statistical Service were enrolled in secondary school. Not only is overcrowding a major problem, with large households all sharing very few amenities, but also housing facilities are poor. Most houses lack proper ventilation, pipe-borne water, electricity and toilet facilities (such as Pan latrine and KVIP), which forces them to rely on public facilities that have to be paid for.

¹²⁵ However, it is important to note that while many people participating in this study claimed that they were from these countries, they were often third and even fourth generation Accra/Ghana residents (see Brydon, 1999: 375).

4.1.2: Insight into Ga Mashie and its People¹²⁶

Although seen as the indigenes of Accra, the Ga are said to have migrated to the area now known as Ghana from the east, possibly from the Republic of Benin (now located in the southern part of Nigeria). After living in scattered communities hunting and farming in the interior for several generations, they eventually moved as a group to Accra in the 17th century in order to escape the threat of war from neighbouring groups and to trade with the increasing number of Europeans operating on the coast, which also offered them some protection (Buah, 1998). The area they settled in Accra became known as Ga Mashie, which literally translated into English, means where the Ga built their houses or where the Ga settled. Some years later some of those who initially settled in this area moved to form other Ga communities in Accra, notably Osu, Labadi and Teshie.¹²⁷

The area that constitutes Ga Mashie comprises two areas: Usshertown and Jamestown which, in turn, consist of their own quarters or clans: Asere, Gbese, Sempe, Abola, Akumajen, Otubluhom and Alata.¹²⁸ While Asere, Gbese, Abola, and Otublohum form Usshertown, formerly Dutch Accra, Sempe, Akumajen and Ngleshie constitute the clans of Jamestown, formerly British Accra. Although within the Ga traditional system, the chief priest was the only ruler, the infiltration of neighbouring groups such as the Akan into the community led to the introduction of the concept of chieftaincy into the Ga

¹²⁶ See Appendix 10 for statistical information about Ga Mashie provided by the Ghana Statistical Service.

¹²⁷ For more history of the Ga in Accra, see Parker, 2004; Buah, 1998; Kilson, 1974; Manoukian, 1950; Field, 1940.

¹²⁸ The Ga-Dangme tribes were organised into seven quarters reflecting the seven sub-groups which emerged during the long migration through Central and Western Africa. With the relocation of the Ga capital to Accra the seven groups became synonymous with the seven distinctive quarters of Accra.

political system. As a result, there is now a hierarchical political system, which is based on clans and lineages with their own heads.¹²⁹

This area now falls under the jurisdiction of the Ashiedu Keteke sub-metro district of the Accra Metropolitan Assembly, which has a population of 88,717 (Ghana Statistical Service, 2003). Jamestown,¹³⁰ the largest neighbourhood within the area known as Ga Mashie, has a population of 39,201, all living in a total of 1,842 households (University College, London, 2004). Thus, it is a high density, low-income earning community.

Despite its status as an indigenous Ga community, urbanisation and migration have led other ethnic groups to move into the community over the years, including significant numbers of Ewe, Akan and Hausa – not least because of its prime location on the coast and at the heart of Accra, within the financial and business district, near parliament house and adjacent to key markets such as Makola and Agboghloshie. However, the Ga remain the majority, comprising 81.2% of a sample population of 5,290 and unlike other parts of Accra, Ga Mashie remains one of the few areas where Ga, as a language,¹³¹ dominates. Here, very few people are able or willing to speak Twi, the language of the Akan national majority, which has arguably become a *lingua franca* in other parts of the capital as a result of the inward migration of people into Accra.

¹²⁹ Until 1840 the Ga did not have a single recognised *Mantse* as their political leader. Hitherto, the Ga *Mantse* was only the *Mantse* of Accra, not of all the Ga people. In 1840 this changed when the native administration made him so (Field, 1940). Therefore, now the Ga *Mantse* is the chief of all the Ga people in the country.

¹³⁰ Jamestown is the oldest settlement of migrant population in Accra.

¹³¹ Ga is a sudanic language with some borrowed vocabulary from their Ewe and Twi-speaking Akan (Azu, 1974).

Today the main economic activities of the community include trading (34.7%), most likely due to its proximity to the central markets of Makola and Agbobloshie. Farming and fishing (20.6%),¹³² particularly the latter, continue to be the main activity of the area despite the closure of the Jamestown port as a commercial port in the early 1960s,¹³³ the high pollution levels on the beach and the depletion of fisheries due to over-fishing and the activities of large commercial companies. The continuing focus on a shrinking fishing industry here is partly down to the lack of viable alternative employment opportunities for people in the area, leading to extremely high levels of unemployment. While women are able to engage in petty trading, sewing and mass cooking of foodstuffs such as *kenkey*, *gari* and *fufu*,¹³⁴ there are very few opportunities for men other than fishing. Some have had to move out of the area to look for work elsewhere in Accra, leaving their families behind, creating a situation whereby not only are many households headed by women, but leading to a community dominated by the presence of women and children.¹³⁵ Out of a sample population of 5,290 included in a survey by the Ghana Statistical Service, 54.6% were women while 45.4% were men. This compares with Nima where the gap between the number of men and women was marginal (49.4% of the population are male while 50.6% are female).

¹³² This is a statistical category as there is no farming in Ga Mashie.

¹³³ Jamestown was closed as a commercial port as it was not a deep water port and could not easily accommodate large ships. It was replaced by a larger port in Tema, which was opened in 1962.

¹³⁴ See above, Introduction, Methodology Section, for a description of these different types of food.

¹³⁵ This explains the predominance of women in the FGDs I conducted in Ga Mashie (see Introduction, Methodology Section).

The domestic organisation of Ga society further highlights the dominance of women in the area. Traditionally, men and women lived in separate compounds. The male house (*hiiamli*) is the main lineage homestead and accommodates the lineage head and other male members of the family. The women's house (*yieamli*) is home for female members of the house by patrilineal descent and those who are daughters or grand daughters of women who were born in the compound or in some other women's compound of the same house (Manoukian, 1950:74; Field, 1940:6; Azu, 1974). The women's house includes all children of women, except boys over the age of 13 who move to the men's house to live and work alongside their fathers. As a result of this domestic organisation, Field, writing in the 1940s, noted that many men admitted to having little control over their wives. She also stated: 'solidarity of the Ga women against the men in defending their independence is monstrous in the eyes of the African stranger' (1940: 8). Thus, this residential pattern is crucial in our understanding of the Ga woman's continuing autonomy today.

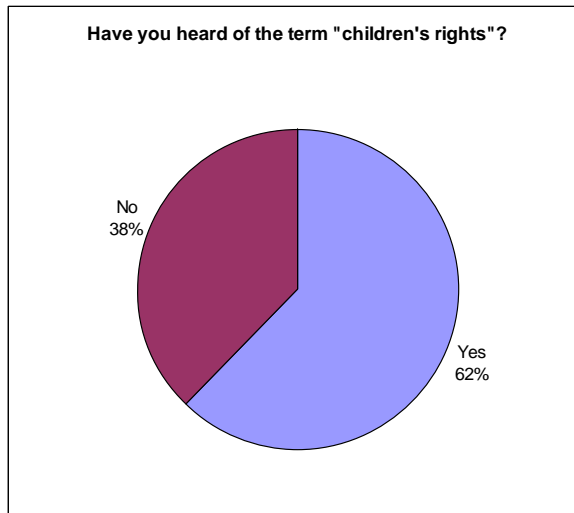
Like Nima, illiteracy and lack of education contribute to the problem of unemployment. There are few primary and junior secondary schools in the area and even fewer senior secondary schools. This leads children not to attend school at all, drop out after the junior secondary school level, or travel long distances and pay fees to continue their educational ambitions. Out of 1,267 interviewed by the Ghana Statistical Service, 54.9% were enrolled in primary school; this figure reduced to 20.2% at the junior secondary school level and to 4.9% at the senior secondary level. The lack of primary and secondary education facilities in the community is also a factor in the failure of residents to take up opportunities in the formal sectors (University College London, 2004: 5).

Despite the rising population in a relatively small area of land, housing and services in the community are inadequate (Ibid). Overcrowding is a major problem with each house accommodating several members of an extended family, and their own families who are all squeezed into one room. Hence, many children are forced to sleep outside at night due to lack of space in a room, which is shared by a family of five or more. Furthermore, many houses in the area lack electricity, running water, and toilet facilities, forcing people to choose between paying for public facilities or easing themselves in the nearby sea and lagoons, which exacerbates already high levels of pollution.

4.2. Assessing Knowledge of Children's Rights

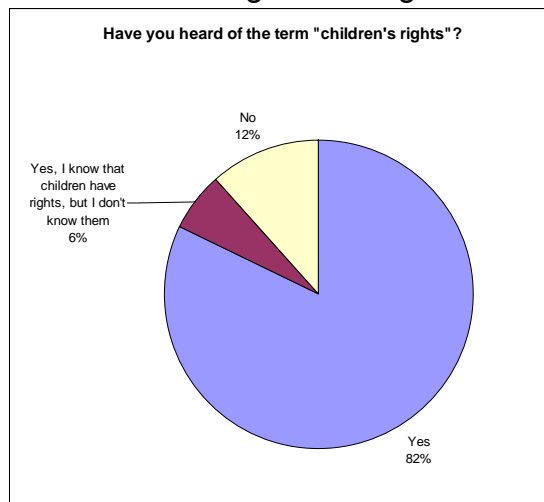
One of the first concerns of the research was to ascertain the number of people who were aware of children's rights as a concept. Very few of the 78 adults who participated in the seven FGDs that were held in Nima and Ga Mashie had heard of the Children's Act and the Convention on the Rights of the Child or even the concept of children's rights. Amongst the school children interviewed, the majority had heard of children's rights - ranging from 100% for the 16 children interviewed in three private schools, 82% for the 34 children interviewed in schools in Ga Mashie and 62% for the 37 school children interviewed in the Nima/Maamobi area. This can partly be attributed to the fact that it is part of the social studies curriculum that is taught at the upper primary and Junior Secondary School levels.

Figure 4: Knowledge of Children's Rights Amongst Nima School Children



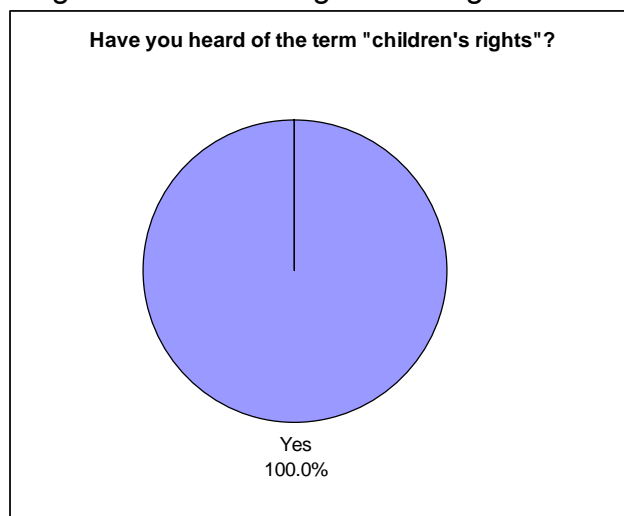
Have you heard of the term "children's rights"?			
		Frequency	Percent
Valid	Yes	23	62
	No	14	38
	Total	37	100

Figure 5: Knowledge of Children's Rights Amongst Ga Mashie School Children



	Frequency	Percent
Yes	28	82
Yes, I know that children have rights, but I don't know them	2	6
No	4	12
Total	34	100

Figure 6: Knowledge of Children's Rights Amongst Private School Children



		Frequency	Percent
Valid	Yes	16	100

Amongst the 46 children not enrolled in school who participated in the study, there appeared to be a relatively larger number of children in Ga Mashie who were aware of children's rights than in Nima. I would like to suggest that part of the reason for this higher level of awareness of children's rights as a concept in Ga Mashie is due to the amount of attention the area receives from non-governmental organisations (NGOs). While there are no significant NGOs working with children and young people in Nima,

several such as International Needs¹³⁶ and CENCOSAD¹³⁷ have recently implemented projects in Ga Mashie relating to teenage pregnancy, commercial sexual exploitation of children, educating communities about the dangers of child labour within the fishing industry and establishing children's clubs. That there is more NGO activity in this area may be attributed to its location. As a community situated at the heart of the capital's financial and business district, adjacent to prime markets such as Makola and Agboghloshie, and not too far from the seat of government, the problems afflicting Ga Mashie are more visible and more likely to receive attention from the media and policy-makers.¹³⁸ Their status as indigenes of Accra has also been put forward as a reason for the attention they receive. In an interview for the German magazine, *Development and Cooperation*,¹³⁹ James Annorbah-Sarpei, Director of CENCOSAD, informed journalist Tillman Elliesen that the difference between Nima and Ga Mashie is that:

¹³⁶ International Needs was established in 1985 in Accra as part of the global International Needs Network operating in other parts of Africa, Asia, Australia, America and Europe, seeking to improve the living standards of the most vulnerable and transform lives holistically. With regards to its children's rights work, it has focused on withdrawing children who are exploited for commercial sexual purposes and implementing prevention programmes in at risk communities in the Accra Metropolitan Area, with a focus on Ga Mashie and La, another indigenous Ga suburb of Accra. It does this by providing vocational training for those over 15, providing basic education for younger children and establishing micro-credit schemes for mothers of at risk children.

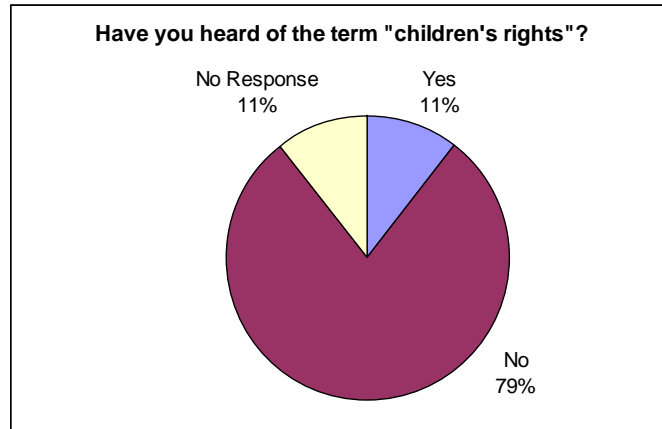
¹³⁷ The Centre for Community Studies, Action and Development (CENCOSAD) was established in Accra in 1977 as a NGO that promotes strategies for empowering and enabling communities of individuals and people to realise their own development. More recently, it has started to focus on children's rights and welfare through a stop child labour interactive theatre project, which seeks to contribute towards the progressive and sustainable elimination of child labour in two communities in Ghana (Ho and Ga Mashie).

¹³⁸ Interestingly enough, a large number of theses written as part fulfillment of a diploma or undergraduate degree in Social Work and Social Policy at the University of Ghana Legon are focused on Ga Mashie, especially the area of Bukom and nearby Chorkor, which are notorious for their socio-economic problems.

¹³⁹ *Development and Cooperation* (D+C) is the English edition of *Entwicklung und Zusammenarbeit* (E+Z), a German language publication on development issues funded by

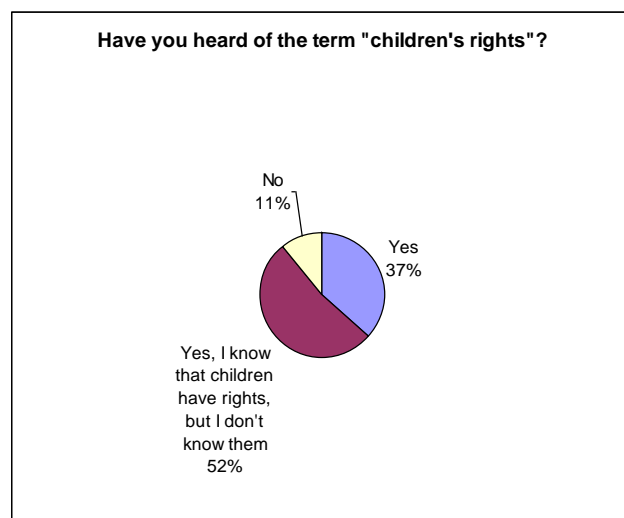
Aboriginal slum residents [in Ga Mashie] may have a representative in the municipality they can appeal to. The migrant community [in Nima], on the other hand, probably lacks this possibility and instead has to strive for recognition (see 2004).

Figure 7: Knowledge of Children's Rights Amongst Nima Out- of -School Children



		Frequency	Percent
Valid	Yes	2	11
	No	15	79
	Total	17	90
Missing	No Response	2	11
Total		19	100

Figure 8: Knowledge of Children's Rights Amongst Ga Mashie Out -of-School Children

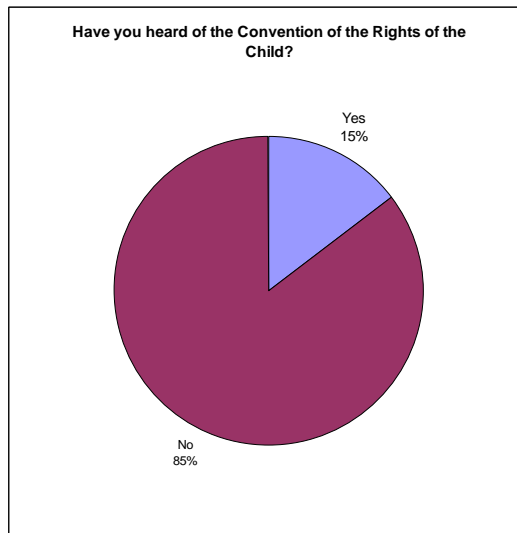


the German Federal Ministry of Economic Cooperation and Development. D+C and E+Z share the same content.

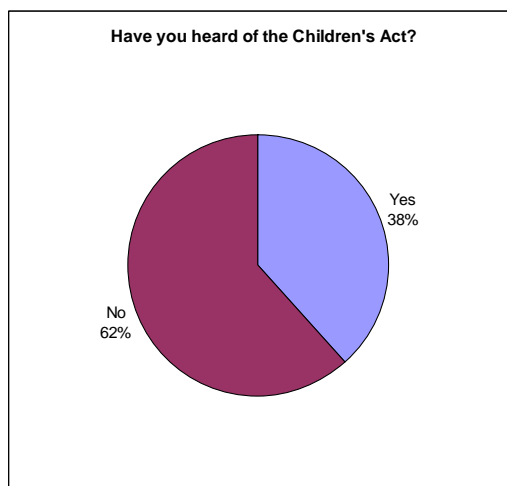
Have you heard of the term "children's rights"?			
		Frequency	Percent
Valid	Yes	10	37
	Yes, I know that children have rights, but I don't know them	14	52
	No	3	11
	Total	27	100

However, knowledge of children's rights amongst those who were aware of the concept did not immediately translate into knowledge of the Convention on the Rights of the Child or the Children's Act. In Ga Mashie although 82% of the school children who were interviewed were very much aware of the concept of children's rights, only 15% and 38% had heard of the Convention and the Children's Act respectively. Furthermore, even though 100% of the children interviewed at the three private schools included in the study were aware of children's rights, this figure decreased significantly when it came to their knowledge of the Convention or the Children's Act (69% and 63%). While 62% of school children in Nima had heard of children's rights, only 8% had heard of the Convention and this increased just slightly to 16% when they were asked about the Children's Act. This substantial reduction in figures begs the question: what is knowledge of children's rights based upon, if not the Convention and the Act? It is possible that this may partly be attributed to the fact that much of the awareness raising initiatives and discussions in the media focus on specific rights to which children are entitled for their welfare and protection without necessarily situating the discussion within the context of the national or international legal framework.

Figure 9: Knowledge of Convention and the Children’s Act Amongst Ga Mashie School Children

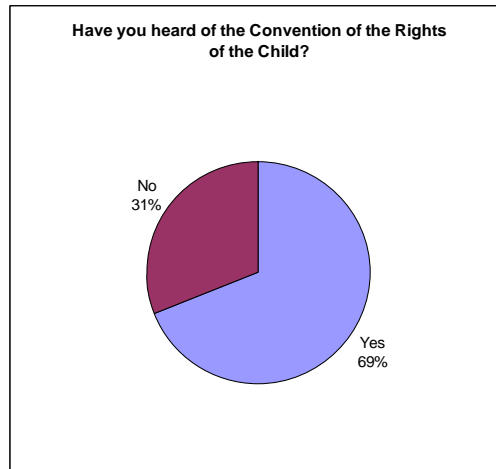


	Frequency	Percent
Yes	5	15
No	29	85
Total	34	100

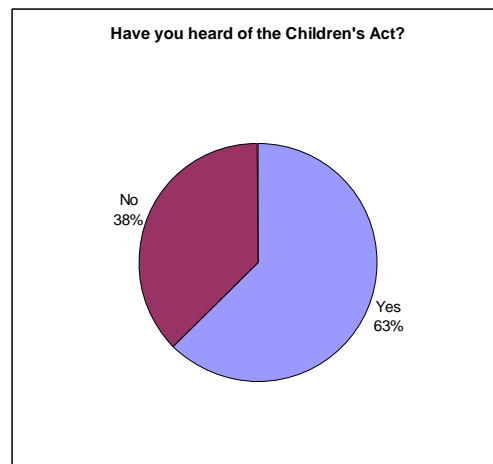


	Frequency	Percent
Yes	13	38
No	21	62
Total	34	100

Figure 10: Knowledge of the Convention and the Children’s Act Amongst Private School Children

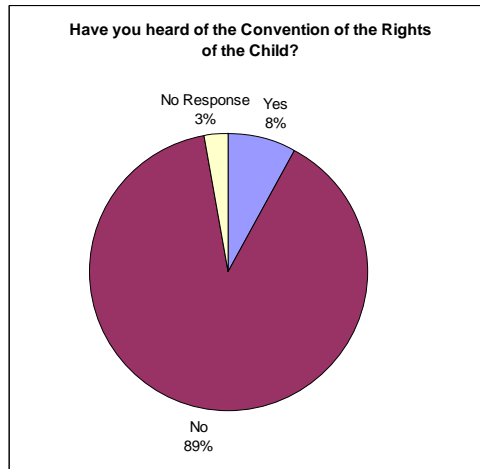


		Frequency	Percent
Valid	Yes	11	69
	No	5	31
	Total	16	100

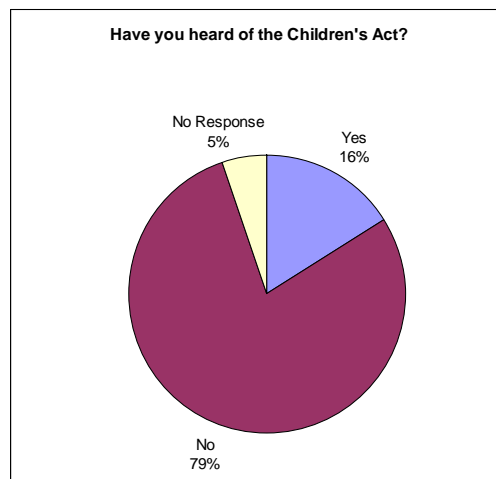


		Frequency	Percent
Valid	Yes	10	63
	No	6	38
	Total	16	100

Figure 11: Knowledge of the Convention and the Children’s Act Amongst Nima School Children



Have you heard of the convention of the rights of the child?		Frequency	Percent
Valid	Yes	3	8
	No	33	89
	Total	36	97
Missing	No Response	1	3
Total		37	100



Have you heard of the Children's Act?		Frequency	Percent
Valid	Yes	6	16
	No	29	79
	Total	35	95
Missing	No Response	2	5
Total		37	100

4.3. Searching for a Middle Ground in Community Perceptions of International Children's Rights Standards

4.3.1. Achieving a Middle Ground between Community Perceptions and International Standards on Children's Rights: The Views of Adults

Another concern for this research was to understand how communities prioritise children's rights and the extent to which commonalities can be identified between local community perceptions and the Convention and the Children's Act. Data collected during fieldwork in Nima and Ga Mashie actually indicated that a substantial number of rights identified by both children and adults in these communities were in line with those stipulated in the Convention and the Act.¹⁴⁰ The 30 adults who participated in the study in Ga Mashie included the following in their discussions on rights: children should go to school (this was also a priority even amongst those parents who do not send their children to school); parents should look after the child/the total upkeep of the child is up to parents; children have a right to food and to be dressed neatly; children should have somewhere good to sleep; if they are sick they need to go to hospital; children should not work, but for that to be possible parents need to be gainfully employed. Apart from the last right expressed, all others were repeated over and over again in each of the three focus group discussions conducted with adults in Ga Mashie.

In Nima, similar rights were expressed by the 48 adults who participated in FGDs: children should have education (Islamic and secular) in order for them to obtain jobs and become 'somebody' in future; children should be helped to find work after they complete their education; children need clothing and food, because if a child is always hungry he

¹⁴⁰ As large numbers of adults and out of school children had not previously heard of the term children's rights, I had to define the term before moving on with discussions. Thus, borrowing the definition from Susan Fountain's 1999 publication, *It's Only Right! A Practical Guide to Learning About the Convention on the Rights of the Child*, I defined children's rights as basic needs that children needed to survive and develop in order to live well.

will do bad things such as steal; the needs of the child is always the responsibility of the parents - the government should only intervene when a child is not being taken care of; children should have medicine when they are sick, but it was stressed that this is only possible if parents have the money to buy the medicines; children have the right to be asked what they want in terms of food instead of parents always commanding them or doing what they think is best for the child. Again, apart from the last right expressed by one participant, all others were repeated in each of the four adult focus group discussions held in Nima.

To further understand the rights that communities in Ghana prioritise, it is interesting to examine the data collected by the Domestic Violence and Victims Support Unit of the Ghana Police Service outlined in Table 14 above,¹⁴¹ which shows the type of cases reported to the unit between 1999 and December 2004 and the volume in which they were reported. We can see from the table that of all the rights reported to DOVVISU non-maintenance of children was significantly higher than all other types of case reported throughout the five year period covered by the table. Hence, while many do not know of the Children's Act or its provisions, they are very much aware of its provisions relating to child maintenance. This underscores the importance of this particular right for local communities. Gifty Okine, a social worker in Ga Mashie further underlined the importance of this factor for communities when she asserted that:

When they are in the lean season of fishing they [fathers] do not look after their children because they bring forth more children than they can look after so they stop looking after them. That is when we get a lot of complaints from women who come to DSW or WAJU about lack of maintenance for their children. When they start fishing again, the complaints reduce significantly (Interview, Accra, 1st March 2006).

¹⁴¹ See above, Chapter III, section 3.3.

It would appear, then, that for many people it is economic rights that are critical. Women, in particular, use this provision of the Act to ensure that the men who fathered their children, but have since failed to meet their obligations, are made to fulfil their responsibilities instead of leaving them to bear the financial burden of caring for the child, a responsibility that is normally seen as the father's.

4.3.2. Achieving a Middle Ground between Community Perceptions and International Standards on Children's Rights: the Views of Children

Like adults, education was the number one priority for the 291 children who participated in 24 FGDs and the 133 children who were interviewed. Data from FGDs with children, outlined in the series of tables in Appendices 11-13, highlight the extent to which education emerged as the key right for children. This underscores the centrality of education to people's lives due to the fact that it is seen as an avenue for a person to become a worthwhile and responsible citizen who can contribute to the community and importantly, look after his parents in their old age. The importance of this value is further borne out by the significant media attention paid to this particular right for children and the relatively substantial budget allocation that the sector Ministry receives every year.

Closely following education is the provision of basic needs such as food, clothing, medical care and reasonable shelter, which was defined by numerous children in several different FGDs as a place where children can be comfortable and be protected from mosquitoes. These basic provisions are seen to be the responsibility of parents to provide for children – an emphasis that I did not expect to find due to the fact that traditionally, child rearing was seen as a corporate responsibility involving numerous members of an extended family (Ardayfio Schandorf and Amissah, 1996:181). This was because parenthood was perceived as so critical, and the training of children so crucial, that it was

imperative for members of the extended family to participate in the rearing of the child in order for him to grow up disciplined and well trained (see Nukunya, 2003: 51). Among the Ga there is a belief that parents tend to pamper their children and do not exercise that ‘little bit of hardness, if not harshness, that Gas believe to be an essential ingredient of the socialisation process’ (Azu, 1974: 45). As a result, they were not perceived as the best people to look after their children and should certainly not keep all of them. Therefore, whilst a man and woman may bring forth a child, many other people were involved in the rearing of the child, especially after she had been weaned (Oppong 1973:40).¹⁴² Nsamenang’s corroborates this point:

Child care in West African cultures is not a parental prerogative, it is a collective social enterprise in which parents and kin, as well as siblings and sometimes neighbours and friends, are active participants (1992: 133).

This communal responsibility was largely carried out through child fostering – a process which children were passed on to people other than their own parents, for training services or companionship without losing parental rights (Ardayfio Schandorf and Amissah, 1996:181).¹⁴³ Its importance in society can be seen by the fact that it is not an ad hoc practice, but was institutionalized into societies. Among the Gonja of northern

¹⁴² Having said this it is worth noting that while there were numerous socializing agents in a child’s life in past societies, it did not necessarily, or even easily, follow that the love between parents and children was more diluted than in societies with more nuclear-based families (see Nzegwu, 2001:77). In the homes of their parent-delegates, foster children were often reminded in small ways that they were not the biological children of their foster mother or father, and were often made to work while the other children in the household play. Furthermore, there is evidence that suggests that despite the delegation of parental responsibilities, the parent-child bond remained the strongest overall (see Goody, 1973; Oppong; 1973). Thus, despite the numerous participants in the rearing of the child, parent-child relations remained strong, all things being equal; that is to say, as long as both parties continued to fulfil the obligations expected of them.

¹⁴³ This system of fosterage enabled such children to gain access to resources and eased the burden of parents who could not cope with child care responsibility, strengthen or reaffirm family ties or political relationships, or for children to learn a trade (see Goody, 1982).

Ghana, it was an obligation of the parents to send their children either to the mother's brother or the father's sister depending on their sex. The exception to the rule was the eldest son who was not required to leave his father's house (see Goody, 1973). It was difficult to refuse such requests as doing so could endanger the life of the child (Ibid).

Data collected from my FGDs and interviews was in stark contrast to the focus on extended families in the literature. Children in all FGDs repeatedly pointed to the need for parents to show love and attention to their children as they felt that this was critical for ensuring that their needs and rights are met. According to one participant in a FGD:

Parents must show love to their children – because love forms the basis of everything. If parents love their children they will provide everything for them (FGD with Youth Wing of Women's Orientation Centre, Maamobi, 4th February 2006).

This is because in their minds once a child has parental love and attention all else will follow, including food, shelter, medical attention, clothes, education, and even the opportunity to express views and participate in decision-making. The responsibility of caring for children, then, is firmly in the hands of parents. Comments made during FGDs with adults and children in Nima and Ga Mashie included: children must have basic needs provided for by parents;¹⁴⁴ your mother has to help you and you must help your mother;¹⁴⁵ parents provide the necessities of the child. The involvement of other adults in

¹⁴⁴ It must be acknowledged that there were instances where parents, referred to by children, were not actually their biological parents, but rather aunts. Therefore, it was not always initially clear who was being talked about when the word 'mother', especially, was used. However, this was normally clarified through follow-up questions, which revealed that in most cases, when children talked about their parents, they were referring to their biological parents.

¹⁴⁵ Very often, especially in Ga Mashie, mothers in particular were singled out for attention. This, according to some of the children questioned, was due to the fact that children in this community tend to have more contact with their mothers due to the dual residential system, and in a number of cases their fathers are not present in their lives and do not take responsibility for them. See also Section 4.1.2., this chapter.

the rearing of the child appears to be positive and welcomed, as long as the child's parents are nearby and remain chiefly responsible for her. It was when parents died or delegated their responsibilities to someone else that, according to child participants to the study, children began to encounter difficulties and hardships in life. Such beliefs were expressed in various ways:

Those who have parents can tell them their needs and if parents can provide them they will, but if you do not have parents you cannot tell anyone of your needs;

Some adults mistreat children because they are not their own;

When you give your child out to someone to take care of they do not take care of him as the parents would.

Some children do not stay with their parents so they end up selling, otherwise they will not get food to eat.

In fact, no positive comments were made about staying with a relative other than parents even though some children did indeed live with guardians and other relatives and spoke well of them – at least ostensibly.¹⁴⁶ Therefore, parents are now increasingly being seen as the only people who can take care of their children properly.¹⁴⁷ A man in Nima summed it up well during a FGD with adults when he stated:

Those children sleeping on the streets are mostly orphaned, that is, they do not have their parents to take care of them even though they have guardians. A parent will not allow his child to sleep outside (Second FGD with the Islamic Institute Congregation, 30th December 2005).

¹⁴⁶ Stepmothers in particular were singled out for their maltreatment of children who are not their own. Very often they were seen to go to great lengths to ensure that their children were better cared for. They did this by ensuring that their children were given larger portions of food, allocating the bulk of the house chores to their step-children, and even attempting to ensure that their children received a better education. The impression that I was left with after my interaction with children in particular, was that there was no such thing as a 'good' stepmother.

¹⁴⁷ Similarly, in her 2003 study of the Yoruba town Itapa, Renne noted that younger people disapproved of fostering out children, for in their opinion, biological parents are the best people to look after a child, especially if they are educated and in a position to ensure their child's access to education, one of the key purposes of fostering. According to the younger townspeople who had had some education, 'barring death or divorce, there is no one who will raise their children better than they can themselves' (2003: 98).

The rights children identified to education, food, shelter, clothes, medical attention and parental love and care also reflect the rights relating to the provision principle of the Convention. Hence, it suggests that with regards to the level of such basic needs a universality of ideas can be achieved. However, while a middle ground can indeed be identified and used as an entry point to engage communities in a discussion on children's rights, it is also important to acknowledge that these commonalities reveal the importance of local contexts, local realities and the local 'takes' that lead communities to prioritise the rights they believe children have in a particular way. This can be seen from the way participants discussed particular rights to which they felt children were entitled.

Firstly, while the right to education is provided for in the Convention and is probably one right on which communities around the world would be able to reach consensus, the identification of education as the key priority for children and adults in these two communities is talked about within the context of local realities. In this context the focus is not only on going to school to become 'somebody in future' and to 'have a better future,' but also as a way to ensure that children are able to look after their parents in their dotage, just as their parents have (or should have) looked after them when they were growing up:

Children have the right to go to school so you can get a job when you grow up and look after your mother and father.

Parents must take their children to school and provide them with everything they need to stay in school. If a child is sent to school he will grow up to become a responsible person and will take care of his parents.

Children have the right to go to school and when you grow up get money to look after your mother and father.

There is a need for parents to give children education so that when they go abroad they can look after them.

Secondly, while the emphasis on parental love and care is in line with the Convention, children, again, had their own local takes on why this was important. Thus, not only did they argue that parental love, care and attention was important to ensure that their rights and needs were fulfilled, but also because of the expectation of children to look after parents in their old age: ‘parents must take care of children always because a time will come when children will take care of their parents’ (FGD with Children at the Islamic Institute School, 13th December 2005). Therefore, the fact that children are now focusing on their parents as their primary carers is based on society’s expectation that they will, in turn, look after their parents when they are old.

Finally, while a child’s right to food is, again, a right that would likely be identified in communities around the world, in Ghana it is firmly situated within the local reality. For example, in Ga Mashie, where the importance of this right repeatedly emerged, a number of children informed me that, ‘children should be fed well, not just *kenkey* every day’. When this was explored further, it was revealed that as *kenkey*, a staple dish of the Ga, is normally made wholesale and is very cheap (especially if bought without fish), people in the area tend to buy it regularly, possibly more than once a day, rather than prepare meals at home. As a result, many children in Ga Mashie often talked of their parents giving them money to buy food, which they eat on the streets instead of ‘feeding them’ (that is, cooking for them) at home. The regular occurrence of this practice points to pressures on parents who do not have time to cook for their children and lack of social interaction between parents and children.

These local realities mean that while parents are able to identify children’s entitlements, they are also quick to follow these up with the argument that their ability to provide for

their children depends on the availability of resources to do so. Adults in FGDs undertaken in Ga Mashie recognised that while children should not work, they also stressed that for this to be possible parents need to be gainfully employed. In one FGD with adults in Bukom one participant expressed this feeling in the following way:

Parents/guardians cannot look after their children so the child has to go and sell ice water or go fishing to get money to eat...So it is not how the community wants it, but it is like this because of circumstances (First FGD with Adults at Freeman's Memorial Chapel, 22nd February 2006).

In another FGD with out-of-school children, an 11-year-old girl informed me that:

If I tell my mother¹⁴⁸ about what the Act says about children not working in dangerous jobs she will tell me that she does not have money so I should still go and sell pure water (FGD with Out of School Children at Street Academy, 27th January 2006).¹⁴⁹

In Nima, adults pointed out that although parents are aware that children are entitled to medical care when they are sick, it was stressed that if parents do not have money they cannot afford the medical care or the medicine that will be prescribed. Therefore, they will look for alternatives such as herbal treatments because they can afford that and at least then they will feel as though they are doing something to help their sick child.¹⁵⁰

Thus, whilst parents often know their responsibilities towards children and the basic rights to which they are entitled, they are also very much aware that their economic situation may not always allow them to take care of their children the way they would

¹⁴⁸ The use of the word 'mother' here actually referred to the girl's aunt (her mother's sister) with whom she lived, and not her biological mother.

¹⁴⁹ This comment also shows that while the selling of water is not defined as hazardous and exploitative by the Children's Act, children themselves frequently included this as hazardous due to the long hours they spend on the streets hawking products in the sun, regularly at risk of being struck by a car or being subjected to violence and abuse by older hawkers, traders, customers and others.

¹⁵⁰ This is despite the fact that there are numerous pharmacies and clinics in the Nima/Maamobi area – probably more than in Ga Mashie.

ideally like and there was a strong feeling that this factor needs to be taken into deeper consideration by policy-makers who keep telling them of their responsibilities, but yet are not empowering them economically to fulfil these very responsibilities.¹⁵¹ ¹⁵² Parents, I was frequently told, can only do their best with the resources they have available to them and the fact they can now be penalised for doing what they consider to be their best leads to a great deal of anger and frustration.¹⁵³

Therefore, while the cultural values that continue to guide the way many people raise their children enable us to identify commonalities between local perceptions and the Convention or the Act's standards, the socio-economic context in which people live their lives does not enable them to fulfil these rights as they would wish. Thus, alternatives or further middle ground solutions and approaches are required, particularly those that consider their realities and enable them to provide for their children more effectively within their particular contexts.

4.4. The Persistence of Difference: Rights Emerging from Communities and their Implication for the Implementation of Children's Rights

Children participating in the study from the two communities also identified particular rights, which are quite distinct from the rights provided for in the Convention. These community-based rights emerged due to the importance of values that regulate parent-child relationships within these communities. This further highlights the importance of

¹⁵¹ See above, Chapter III, Section 3.3.2.

¹⁵² According to the Ghana Statistical Service, if parents had the choice they would prefer their children to be either schooling or in training and to complete their education. Most children also prefer to go to school or complete their education before starting work. This suggests that some policy measure could help enrol and keep more children in the classrooms as expected of their age group (2003: XV).

¹⁵³ See above, chapter III, Section 3.3.2.

engaging local communities and eliciting their opinions. Three, in particular, are noteworthy for this study.

4.4.1. Children Have the Right to be Disciplined

In FGDs with children for this study, many repeatedly included the need for discipline and moral training as part of the rights to which they are entitled:

Children need discipline, if they do something wrong parents have to cane them and tell them it is not right;

Parents should do enough for their children, but not too much otherwise the child will get spoilt;

Parents should advise the child – if the child is stubborn they must advise him.

Physical correction was identified as key part of the discipline children need as it is seen as part of the socialization process, which enables children to grow up into honest, well-behaved, self-disciplined and obedient individuals. Thus, children see this physical correction as part of their training to become members of their societies. The perception of discipline as part of the socialization process is further supported by Ellis (1968) who argues that children accept parental punishment because of the attitude that ‘my father punishes me to correct my behaviour; my mother rebukes me because I am wrong’ (in Nsamenang, 1992: 151).

In fact, those parents who do not discipline and advise their children are seen to be lacking in their parental duties and are looked upon with disapproval by children themselves as it shows that they are not training their children properly and are thus, not giving them the attention they feel children need. This, I would suggest, indicates that children accept their role in society to be trained, given advice and disciplined by adults. Jahoda (1982) supports this line of argument as he claims that children are expected to,

and in fact do, take punishment without rancour and they accept a parental 'right to deal with them' as they think fit (in Ibid).

However, it is important to make a distinction between punishment by parents and that administered by teachers. The discipline and caning that children feel they require as part of their training should be, in their opinion, administered by their parents or guardians. In contrast, the physical punishment administered in schools and other institutions of care is seen as a form of violence that children face and contributes to high drop out rates or irregular attendance amongst school children. The insistence on the need for parents, in particular, to discipline their children may partly also be because punishment by parents is more likely to be measured and controlled due to the desire to avoid the stigma and shame of being labelled a harsh or wicked parent (see Nsamenang, 1992).

4.4.2. Children Have the Right to Obey and Respect Parents and Other Adults

The need for children to respect and obey their parents and other adults in their communities frequently emerged as a right to which children are entitled in statements made by children themselves such as 'children have the right to be obedient', 'children have the right to respect parents and all elderly people in the community' and 'children have the responsibility to respect elders and do what is right'. To understand the importance placed on respect, we need to understand the context in which children are raised. In Ghanaian culture children are trained from a very early age that they must respect and obey all elders, be humble towards adults, and take their advice.¹⁵⁴ They are not expected to challenge adults and certainly, not expected to question what they are told

¹⁵⁴ This focus on respecting all adults receives further support from The African Charter on the Rights and Welfare of the Child, see above, Chapter I, Section 1.4.

to do. Sarpong, writing in the mid-1970s, aptly describes the behaviour expected of children who are 'ideally expected to be respectful, charming and smiling when in the company of adults, ready to go, without hesitation, on the errands of adults'(1974: 70).¹⁵⁵

Children must not consider themselves as superior to elders and must submit themselves to parental control.¹⁵⁶ According to Gyekye,

African parents, like parents in all other societies, want their children to develop good character traits, to grow and become worthy, respectful and respectable adults and responsible citizens. Character development, accordingly, is an important aspect of the upbringing of children. In this connection, efforts are constantly made to instruct children in the values of the society to help them acquire the virtues that a person should possess in order to live a most satisfactory life (1996: 85).

Among the Ga, mothers teach their children from the age of five, the age from which they are deemed to 'have sense,'¹⁵⁷ how to talk to older people and which language to use.

¹⁵⁵ Writing about the Nyansongo in Kenya in the early 1960s, Levine and Levine (1963: 181) argue that the concept of intelligence within this context includes respect for elders and filial piety, which are critical ingredients in the socialisation process; see also Serpell (1993) who states that young people considered respectfulness and compassion as more important than trustworthiness, cooperativeness or intelligence.

¹⁵⁶ However, this does not mean that that quarrels do not take place between parents and their children or that children do not defy parents and other adults. Quarrels between fathers and children are indeed rare. However, quarrels do take place, especially between mothers and their daughters, which are often settled by the father whose word is seen as law. Even in cases where a child always claims to accept the authority of his parents or elders, he may still go ahead and do what he wants to do. One observation I made was that while children always said 'yes' to adults when asked to do something, they found ways of avoiding being sent on an errand in the first place; for example, pretending that they did not hear their name being called; telling an adult who has sent them that they have already been sent by someone else in the opposite direction; getting instructions wrong repeatedly to ensure that they are not sent again. This was more likely to happen to other elders in the community, not parents. Furthermore, I observed several instances where children were openly disrespectful to those adults who are generally not respected in the community (for example drunks, those who are lazy and their mothers' rival co-wives) because they know that they can 'get away with it'. According to Azu, a child who knows that her mother is quarrelling with another woman may go out of her way to be rude and disobedient to her, knowing that this woman will not dare punish her (1974: 41). On one occasion I also observed four youths surrounding and shouting at an elderly man old enough to be their grandfather in the middle of a busy market area near Bukom Square, Ga Mashie, with no one rebuking them or intervening. That such a blatant show of disrespect could take place in a public area is an indication of the modernisation of communities, which mean that for some sectors of the youth population 'a reserved store of respect' for elders (see Kaye, 1962) is no longer relevant.

From that age any signs of disrespect in language or action towards an older person will incur severe admonishment or punishment. Among the La of Laboni, Azu notes that fines may be levied on a person for any unguarded speech, in order to make him conscious of his words (1974: 41). Not only will disrespectful children be punished, but they will incur a curse. According to Oppong, 'a child who does not obey his father may suffer illness and death as a result of the latter's curses' (1973: 38). This may partly explain the reason the majority of children participating in the study took very seriously their role to respect and obey adults. As one child in Ga Mashie put it, 'if you respect you will get a long life [because you are accepted]. If you do not respect you will get a short life because someone will curse you' (FGD with School Pupils at Sempe I Primary, 1st February 2006). Goody supports this argument when she claims that the insistence upon respect due to parents is related to the position parents hold in relation to the ancestors:

For it is thought that either parent can bring illness and misfortune to a wilfully disobedient child, both while living and after death. This retribution need not even be intentional, for if a man's ancestors hear him complaining, even to himself, that his children are not fulfilling their filial obligations, his anger may lead them to retaliate without his consciously willing this to happen. Thus a father's apparent good nature is no insurance against trouble sent by the dead (1973: 173).

For those children who disobey and disrespect their parents, severe consequences await. Oppong, writing in the early 1970s, notes punishments such as fresh pepper put in the anus, water up the nose, being beaten with a leather tailed switch or pulled by the ear and being forced to stand and squat repeatedly (1973: 51). While these forms of punishment

¹⁵⁷ Children are deemed to have acquired sense from between the age of 5 and 7 when they begin to reason and are able to start fulfilling the role expected of them in the community, including respecting adults and contributing to family responsibilities (see Kaye 1962; Azu, 1974).

are increasingly being seen as outmoded,¹⁵⁸ especially in the urban areas, a good beating with a well selected stick or belt still awaits the disobedient child.

4.4.3. Children's Responsibilities as Rights?

Interestingly, there was, on some occasions, a blurring of the divide between rights and responsibilities. Children themselves frequently included their responsibilities in discussions on their rights and entitlements. Many felt that children have to do all duties that are asked of them. One child summed it up as 'children have to help parents in everything they are doing' (FGD with School Children at Sempe II Primary, 1st February 2006).

To understand this stress placed by children on their responsibilities, it is necessary to understand the role of children's responsibilities within this context. In Ghana, doing/taking part is a form of learning (see Nukunya: 2003: 96), which was crucial in past societies where there were no formal education structures. Thus, children assist their parents in all tasks that will be expected of them as adults – be they in the household, on the farm or at sea. This is not only an expectation of parents, but of customary law, which obligates children to assist the father in his station of life – be it as a farmer, fisherman (Mensa-Bonsu and Dowuna-Hamond, 1996: 15-16). Therefore, in fishing communities boys go to sea with their fathers and girls help their mothers to process and sell the catch of the day.

¹⁵⁸ However the case of Festus Oguhebe, the Nigerian professor convicted of child abuse in America, illustrates that such practices persist today and not just amongst the uneducated and illiterate poor of rural Africa (see above, Chapter II, Section 2.2.3.).

These responsibilities begin early within the household and by the age of 5 or 6 most children have tasks that are set aside for them to do on a daily basis:

All children know their work depending on their sex – if it is a girl she cooks and gives her father food and boys will sweep, clean the father’s shoes, bath and go to school. If the girl is the only girl in the family they will keep her at home while male children go to school and she will look after the family and help mother to sell. Among the fishermen and farmers they keep male children from school to help the father in fishing or farming. When a girl is the first born she is expected to help look after her younger brothers and sisters (FGD with Elders at Sempe Mantse Palace, 8th February 2006).

When a boy is born he is automatically seen as going to help his father on the farm/seashore and for girls, they are to help mother in the house. Children are born to help parents work (FGD with Media Professionals, 14th September 2005).

All children who participated in the study emphasised their household chores.¹⁵⁹ Children themselves identified their responsibilities as running errands for parents and other adults, contributing to the maintenance of the household by sweeping the compound and its interior, washing utensils, helping mother to cook, looking after younger siblings. Children’s participation goes beyond household duties as they participate in the main income-generating activity for the household. Girls in particular are encouraged to assist their mothers in trading or selling goods as part of their training. It is believed that trading develops interpersonal, numeric and money management skills, which are required for managing a household. Therefore, in Accra, it is usual to find children leaving school in the afternoon to sell sachets of water, snacks or other goods on the streets, or assisting their mothers in the marketplace.¹⁶⁰

¹⁵⁹ Writing of the Zambian context, Serpell (1993) argues that in a society where obedience is regarded as a sign of responsibility rather than of weakness or lack of imagination, errands are more of an opportunity for displaying competence than an infringement of freedom. The purpose of these errands is not incidental. Adults keep a mental tally of the proportion of errands that a give child performs adequately and this serves as an index of how the child is. It feeds into an assessment of that child’s expertise and responsibility.

¹⁶⁰ In fact, currently, the public school system in Ghana operates a shift system (which enables different groups of children in the same class to be taught in shifts), normally

While responsibility begins early, it is usually allocated in accordance with the physical size, competence and abilities of the child.¹⁶¹ According to a child participant to the study,

You get special treatment as a child. If you are a child in the house you would not get as much responsibility as older brothers or sisters. A child is not supposed to do hard work. (FGD with Children at the Catholic Action for Street Children, October and November 2005).

As they grow older and stronger the responsibilities increase and become more difficult and specialised until they finally attain adulthood. Thus, while a girl may begin helping her mother in the kitchen from a young age, she may not be given the responsibility for cooking for an entire household until she becomes a wife with her own household. Oppong outlines in great detail the gradual assumption of responsibilities on the farm for boys in Dagbon:

By 5 years or so a small boy can begin to care for his father's or uncle's chickens. By age 12 or more a boy is old enough to herd the cattle, which is a job beneath the dignity of a grown man. One criterion of maturity for boys is the ability to make 100 yam mounds in a day. When he has achieved this a boy may be given his own hoe to show he is now a farmer and the use of a piece of land of his own to cultivate in his spare time. From the produce of this with his father's or guardian's permission, he may begin to accumulate a few livestock of his own, chickens at first, later a goat and so on. Thus, the assumption of the roles of farmer and housewife are very gradual and graded according to increasing maturity and skill (1973: 52-53).

attributed to overcrowding in schools – certainly a pertinent reason. However, the shift system also allows a significant percentage of school children to engage in income-generating activities in the mornings when they are on the afternoon shift and in the afternoons when they are on the morning shift. As a result, they are able to continue meeting their obligations to their families while at the same time receiving an education. The problem the shift system has caused is that it has made it more difficult to spot truancy. A social worker operating in the fishing community of Jamestown told me that sometimes when they spot children on the seashore during the day, and ask why they are not in school, they are told by the children that they were in the morning shift and they have finished school, or they are in the afternoon shift and it is not time for school. Without knowing the particular schedule of the child's class, it is difficult to know the truth.

¹⁶¹ See Nsamenang (2004) for a discussion about responsibility as an indigenous form of learning and the ways parents are able to judge the ability of a child to do certain tasks at different developmental stages.

These services provided by children are essential for ensuring that the domestic unit functions effectively.¹⁶² They enable the maintenance of the household and ease the burden on adults by enabling parents, especially mothers, to focus on tasks that are more highly skilled or which are seen as specifically theirs to do; for example, cooking for their husbands. Hence, for households that are struggling to meet basic survival needs, children constitute a vital domestic and financial resource. Laird corroborates this viewpoint when she notes:

In light of the fact that households are multiply deprived of utilities (70% of the population do not have access to electricity; only 21% of the population has pipe borne water), children, specifically girls, are recruited to undertake the time-consuming and monotonous tasks of collecting water and firewood, disposing of human waste and assisting with washing and cooking. It would simply not be possible for an adult to complete these tasks alone; without completion basic survival needs could not be met. It is the labour of girls, which replaces the refrigerators, the cooker and the washing machine of homes in developed countries (2002:897).

Therefore, without the collective action of all family members in labour the multitude of poor families risk destitution as adults alone cannot complete the tasks that need to be done for the family to survive.

4.4.4. Reciprocity: The Tie that Binds Perceptions on Children's Rights

The stress by all informants on the importance of children's duties and the need to respect and obey parents and other adults can be attributed to the value of reciprocity, which underlines all social relationships in Ghana. The idea of children having rights *a priori* was often met with rejection during the data collection process for this study. As a result, when explaining the obstacles facing the concept of children's rights and the Convention

¹⁶² In her 1978 study on the socio-economic roles of children in urban Kano, Nigeria, Schildkrout posited that rather than children being dependent on adults, the reverse was actually true. The help provided by children, particularly in the home, allowed mothers to pursue an occupation and even enabled the preservation of institutions such as *purdah* (see 1978).

in Ghana several adults stated at various times during the research process that, ‘we do not want Western children here in Ghana.’¹⁶³ The implication behind this statement is that they believe that in Western countries children expect their entitlements, but do not give anything in return. What is evident here is the belief that rights, or better still entitlements, come along with duties. According to a journalist participating in one FGD:

The relationship between parents and children is a process of negotiation. A child does his duties and a parent fulfils the rights of this child (FGD with Media Professionals, 14th September 2005).

Furthermore, it was felt that children need to know that if they have rights they also have responsibilities: “It [the parent-child relationship] is about giving and taking and negotiating; it is about saying ‘if you do what I say, I will give you what you want’” (FGD with Media Professionals, 14th September 2005).

Hence, reciprocity, which is, in fact, the tie that binds other values such as responsibility, respect and entitlements, is at play here. Value is placed on a relationship based on the needs and demands of the parties involved – what the contracting party thinks she can extract from the other and what she must give in return. The specifics of the relationship are policed by an unwritten cultural rule of reciprocity. According to Pellow, while the concept of reciprocity is applicable to all societies, its special significance in Ghana lies in its pervasiveness and its explicit character (1977: 41). She argues that:

In its most crass form, reciprocity imputes a concrete value to any transaction or interaction. If one party gives or does something to (for) another, there is an ‘equivalent’ return to be made, contingent upon the role relationship. One does not receive something for nothing. Everything is given a concrete worth. Inherent in reciprocity is the quality of

¹⁶³ This emerged as an issue with Stephen Adongo, Deputy Director of the Department of Social Welfare (Interview, 21st February 2006) and in FGDs with the Women’s Orientation Centre in Nima/Maamobi (4th February 2006) and with Media Professionals (14th September 2005).

trust-trust in a just return. In Ghana this is not left to chance; the demands individuals make on one another are explicit (Ibid: 42).

As reciprocity forms a central component of the socialization process in Ghana, children grow up very much aware that the caring that their parents provide for them is based on the belief of a pay-off. By bringing forth a child and taking care of him during his childhood a parent is issuing a contract, which he expects to be paid back once the child is in position to do this by fulfilling their expected responsibilities and behaving in an appropriate manner. A child who does that will have their rights fulfilled. Mensa-Bonsu and Dowuona-Hamond support this claim when they claim that in Ghana, 'a child is obliged to render services to a parent which obligation is then reciprocated by the parent by care and maintenance' (1996: 15). Furthermore, Nsamenang, writing of the broader African context, argues that it is because African parents expect their children to serve them and compensate for their disappointments and failures in life that parents spare no effort to support and educate their children, especially during adolescence in order to raise their status and increase their ability to improve the welfare and resource base of the family (2002: 73).

This pay-back is expected from a very early age. In fact by simply being born, a child already begins to fulfil his part of the contract as he is a source of prestige and respect for his parents. As soon as he is old enough, he is expected to participate in household duties and in the main income-generating activities of the family as discussed above.¹⁶⁴ Because of the lack of any form of effective social welfare system in Ghana children have also come to be regarded as a form of security for old age. Therefore, as adults, children are expected to support their parents in the same way their parents looked after them when

¹⁶⁴ See above, Section 4.4.3, this chapter.

they were young, weak and dependent.¹⁶⁵ This is partly the reason some of the children participating in the study stressed the importance of education as it would enable them to look after their parents.¹⁶⁶ According to Awedoba:

The reciprocities between African parents and their children are life-long ones and are backed, not by legal requirements necessarily, but by moral and religious obligation. Society does not spare those African parents and children who fail in their reciprocal obligations. The recalcitrant child or parent may be ridiculed or gossiped about by concerned others. The aged parent may curse the negligent child who neglects that aged parent. Not only is this reciprocity life-long, it continues after the death of the parent and finds expression in religious prestations such as sacrifices and offerings at shrines erected to deceased parents in many African societies (2002: 90).

In fact, the reciprocities between parents and children go beyond the mortal world because when a child is born, his parents feel assured that they will be buried in an appropriate manner and that once in the afterlife, sacrifices will be made to their spirits.¹⁶⁷ Therefore, it is the expectation of a child's value – either as a child or in the future, as an adult - that obliges a parent to provide for that child.

It is because of the crucial role reciprocity plays in intergenerational relationships that children themselves emphasised values such as respect, obedience and the need to submit to parental control and discipline. They see these as crucial to ensuring that their needs are provided for by adults. Amongst the children interviewed for this study, there was a

¹⁶⁵ See Nsamenang (2002) and Therborn (2006) who argue that the family and intra-family support systems remain crucial in Africa due to the absence of effect social services or due to the weakness of institution and social clusters of the State.

¹⁶⁶ See above, Section 4.3.2., this chapter.

¹⁶⁷ The reciprocal relationship is also evident in Goody's account of the role of children during Gonja funeral rites. Both the eldest son and daughter keep by them a small iron model of handcuffs of the sort formerly used by slaves: 'The directness of the symbolism is striking:- it is said that as a child is the slave of the father and mother during their lifetime, anything they ask must be done, however difficult. When the parent dies, this servitude is ended at least in its overt form. But the shackles are a reminder of the debt a child owes its parents for care and guidance, indeed for life itself' (see 1973).

fear that if a child did not respect her parents, they may not pay school fees or even look after her. Comments made by children in FGDs in Nima and Ga Mashie reflect the extent to which this is factor in regulating their behaviour:

Children have the right to respect [elders] because if you do not respect your mother she will take you out of school or kick you out of the house.¹⁶⁸

If you are on the streets and you are respectful you could get someone to send you to school or help you in some way.

If you are disrespectful you will be sent out/kicked out of the house;

If you are disrespectful and you need help, you won't get it.

Children do not respect so they are not cared for.

It is because of this that children repeatedly included their duty to respect and obey and contribute to the maintenance of the household in discussions on their rights. They accept their position in society partly because it enables them to receive what they need from their parents, including the payment of school fees and even a roof over their heads.

In fact, I would like to go as far as to suggest the possibility that by accepting their position in society, children are not acting as passive objects, but as agents making active decisions because they are aware of the benefits that come with playing the subordinate role expected of them in society. The argument is further supported by the behaviour they adopt when parents do not fulfil their obligations to them. As Oppong claims above,

¹⁶⁸ See also Levine and Levine (1963) who, in their study of the Nyansongo in Kenya, argue that obedience, rather than initiative, is considered to be the key to success in the contemporary setting, as families cannot afford to send more than one child to school. Therefore, they choose to send the child who is the most obedient in order to ensure that s/he will not play truant and waste the school fees families can barely afford to pay. In addition, mothers tended to favour the more obedient child over his/her siblings in the apportionment of food and other material goods. This is not only an indication of the reciprocal nature of parent-child relations, but also an indication that in resource poor societies, economic conditions determine child rearing practices and values that are critical to childhood.

parents are currently retreating from their responsibilities,¹⁶⁹ which was further borne out in discussions with both adults and children in FGDs in Ga Mashie and Nima:

Adults do not have time for their children; they are always busy with their business and they don't make children feel happy.

Parents do not take good care of their children.

Some children are not treated well. Some have to fend for themselves because their parents do not feed them.

Some children are not taken care of by parents so they leave the house to work.

Some [children] are not getting love and care – their parents don't have time for them.

Some parents are lazy. They do not want to work to take care of children. They want their relatives to take care of the children.

In light of this parental retreat children are looking elsewhere for care, and very often, this is outside the kinship group. This issue emerged time and time again in Ga Mashie in particular where comments such as the following were made:

If a girl is not provided for at home she will go out with someone who can give her that and this leads to prostitution.

Some parents do not provide for their children's needs so they engage in sexual activities and get money to look after themselves.¹⁷⁰

Having found the care they are looking for outside the family context, these children may no longer feel the need to fulfil their duties to their parents, including showing them respect and being obedient. As one child said, 'parents do not talk to their children when they do something bad – because if a parent does not take care of their child they cannot advise them' (Second FGD with Out of School Children at Freeman's Memorial Chapel,

¹⁶⁹ See above, chapter III, Section 3.3.2.

¹⁷⁰ See Dinan, 1983, for a more detailed analysis of the sugar daddy phenomenon in Ghana where school girls cultivate relationships with older men in a calculated fashion in order to receive gifts such as shoes, cloths, bags and other things that they wanted without necessarily becoming emotionally attached to these men (see 1983: 346).

20th February 2006). When such a parent then wants to give advise to his children, they do not want to listen. They would prefer to listen to whoever it is that is taking care of their needs, which is increasingly the role being played by older men as ‘boyfriends’. As one group of children noted in Bukom Square, Ga Mashie, ‘when you ask your mother and she does not give you, and you have a boyfriend who does give you, you will do what he says instead of your mother’ (First FGD with Out of School Children at Freeman’s Memorial Chapel, 20th February 2006).¹⁷¹ Thus, parental retreat may be leading to a transfer of control over the parent’s traditional rights and services over their child to those who are not even kin – something that the traditional practice of fosterage did not achieve.¹⁷²

4.5. Conclusion

This chapter has illustrated that cultural values such as respect, reciprocity and responsibility play a crucial role in how communities perceive and interpret children’s rights. They form the basis of all discussions on children’s rights, not only on rights that are distinct from the Convention and the Act, but even on those that can be said to be in line with these legal instruments. Therefore, the key for policy-makers is to now explore how they can use values premised on culture, which regulate the attitude of parents towards their children, such as reciprocity, respect and responsibility, to achieve

¹⁷¹ Allman and Tashjian provide further support to this argument in their study of childrearing amongst the matrilineal Ashanti where traditionally, any authority a father wielded over his very children were contingent upon his looking after his children well. They refer to one of their informants who claimed that fathers gained authority if they took care of their children. If they did not, they ‘could not say anything’ (2000: 87). However, in the colonial period this changed as child rearing began to involve larger outlays of cash, in particularly the payment of school fees, which was seen as a responsibility of the father. This led to fathers giving children almost all they needed, which transformed his authority and rights over his children. His word became law (Ibid: 88 & 91)

¹⁷² See above, Section 4.3.2., this chapter.

children's rights in this context. This will also enable policy-makers to devise strategies for the better implementation of the Convention and the Children's Act and will lead to greater protection for children within the environment, which has the most impact on their lives: their families.

CHAPTER V

Searching for the Middle ground in the Implementation of Article 12 in Ghana

5.0. Introduction

Culture, as shown in previous chapters, remains a critical way for local communities around the world to define themselves. It also provides a framework for communities to explain their core beliefs and practices, especially surrounding child-rearing and the socialization of children into their societies. As a result, cultural values and beliefs permeate through all discussions on children's position in society, including the rights to which they are entitled. Therefore, there is a need to incorporate these key cultural values in the discourse on children's rights, as well as in the strategies developed to achieve more effective implementation of the Convention and thus, better protection for children in diverse contexts.

To highlight the need for this approach, this chapter will focus on Article 12, which sets out one of several civil and political rights to which children are entitled in the Convention - a first in the history of international treaties.¹⁷³ These civil and political rights of children refer to their rights to: influence decisions made on their behalf, express their views on issues affecting them (Article 12 and 13); freedom of thought, conscience and religion (Article 14); form associations (Article 15); and receive information (Article 17).¹⁷⁴ Article 12, in particular, is a powerful assertion that children have the right to be actors in their own lives and not merely passive recipients of adult decision-making

¹⁷³ See above, Chapter I, Section 1. 3

¹⁷⁴ Ibid.

(Landsdown 1995 in Percy-Smith, 1998). In relation to this particular article, the Convention stipulates that:

1. State parties shall assure to the child who is capable of forming his or her own views the right to express those opinions freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall, in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law (United Nations, 1989).

Therefore, although like its predecessors¹⁷⁵ the Convention recognises the economic and social rights of children, which require resources for effective implementation, it goes a step further. It acknowledges that they also have civil and political rights as they are not merely dependants waiting for adulthood to become full human beings, and hence eligible for participation in their local communities and national societies. This has led Sinclair Taylor to claim that the Convention was landmark legislation as it marked a significant development in thinking about children and their rights as individuals. Children began to be seen as potentially having views and ideas about their own lives and having a right to genuine participation in decision-making affecting them (2002: 22).

Having said this, there is a paternalistic ring to Article 12 as it only applies to those children who are capable of forming their own views; it also requires States to take account of children's views only to the extent warranted by their age and maturity. There are two problematic issues with these qualifications. By making this provision applicable to those children who are capable of forming their own views and emphasising the due weight that should be given to these views in accordance with the child's age and

¹⁷⁵ See above, Chapter I, Section 1.2.2. for more information about the 1924 Declaration of the Rights of the Child and the 1959 Declaration on the Rights of the Child.

maturity, questions are raised about how that will be determined and who will be responsible for making that decision. These qualifications imply that the interpretation of this article will depend greatly on how adults construct age, maturity and capability in their particular social and cultural context. Consequently, the control of children's participation rights is firmly handed to the management of adults who often resist or reject the very principles on which Article 12 is premised.

Some State Parties to the Convention have taken innovative steps to facilitate the ability of children to express their opinions by creating children's parliaments¹⁷⁶ and assemblies and enabling children to express their views in judicial proceedings, especially during custody hearings following a divorce. This notwithstanding, the implementation of their civil and political rights, especially Article 12, has been problematic in societies around the world. Although 192 governments have ratified the Convention, with very few making reservations on Article 12, many have since reported difficulties in implementing this particular provision within their social and cultural contexts. In a recent report to the Committee on the Rights of the Child, the Indonesian government claimed that traditional parental behaviour in the country is paternalistic and therefore, children do not have the right to express their views to their parents (World Vision, 2000: 10). On the other side of the world the government of Colombia reported to the Committee that Article 12 is not widely recognised in its present cultural context:

Because children are not seen as persons capable of interpreting the world and its events ...on the basis of their own experience; they tend to be provided with an opinion by their parents and relatives and other adults around them (Ibid).

¹⁷⁶ Good examples of such parliaments, acknowledged by the Committee on the Rights of the Child are the New Zealand Youth Assembly, the Senegal Children's Parliament and special councils in France, which inform children of their rights and encourage them to express their opinions.

In sub-Saharan Africa where many adults do not believe that children have the right to participate in decision-making, numerous governments have reported the challenges they face to the Committee on the Rights of the Child, including the government of Togo, which claimed that ‘Article 12 of the Convention may conflict with the traditional behaviour of African parents’ (Ibid). In turn, the Committee has also expressed concern about the limited progress of Article 12 on the continent. For example, in its latest concluding observations on the State Party reports submitted by the governments of Benin and Senegal, the Committee indicated its concern that ‘traditional societal attitudes limit children in freely expressing their views in schools, the courts, or within the family and the community’ (The United Nations Committee on the Rights of the Child, 2006).

Culture and its attendant values are central to the limited implementation of this article as they guide the way parents and other adults perceive and react to the principles on which Article 12 is based. Hence, in many communities children have been, and continue to be, seen as chattel, the property of their parents whom should obey and not question. The focus is more on their socialization and development; that is, on the process through which they become ‘rational’ adults who can fully participate in society. In the minds of many adults in various societies, young people, by virtue of their youth, should be protected or dictated to. Parents and caregivers regard the participatory principles behind Article 12 as an erosion of their authority as they fear that they will lose control and influence over their children. Also, they see it as an unwelcome interference by the authorities in the upbringing of their children and as a result, parents have often been antagonistic towards this particular article (Woolf, 2000: 19).

Therefore, it is necessary to focus on the implementation of Article 12 within the family context, as its effectiveness is greatly dependent on its application within the family environment due to ‘the child’s fundamental reliance on non-state structures’ (World Vision, 2000: 7-8). It is for this very reason that in their latest concluding observations to the government of Ghana’s State Party report, the Committee on the Rights of the Child recommended that the government must:

Strengthen its efforts to ensure that children’s views are given due consideration in the family, school, communities and courts, as well as in relevant administrative and other settings in accordance with Article 12 of the Convention (2006).

Due to the key roles parents play in the implementation of this article, this chapter seeks to explore the context in which Article 12 is implemented within the family sphere in Ghana and the reasons behind its limited progress. Also, as this thesis seeks to reveal the grey area in which children live their lives, it aims to identify a middle ground solution that will facilitate the implementation of the Convention’s standards as it relates to this particular Article, while at the same time adhering to cultural values, which continue to guide the way in which many people in Ghana live their lives.

5.1. The Context for the Implementation of Article 12 in Ghana

5.1.1. Societal Attitudes to Article 12

The government of Ghana not only ratified the Convention with no reservations,¹⁷⁷ but then proceeded to also incorporate Article 12 into Section 11 (Sub-Part I of Part I) of the Children’s Act, which was introduced in 1998:

No person shall deprive a child capable of forming views of the right to express an opinion, to be listened to and to participate in decisions, which affect his well-being, the opinion of the child being given due weight in accordance with the age and maturity of the child (Government of Ghana, 1998).

¹⁷⁷ In fact, the only sub-Saharan African countries that made reservations on any part of the Convention were Botswana, Mali and Swaziland and these were in relation to other sections, not Article 12.

Thus, the Children's Act closely interprets the provisions in Article 12, including narrowing the focus of this Article to only children who are capable of forming their own views based on their age and maturity, which once again puts the control of children's participation rights firmly in the hands of adults. In addition, the Child Panel provision¹⁷⁸ of the Act is based on the participation principles articulated in the Convention as it makes provisions for children to participate in panel hearings and express their views in this forum. As any contravention of Part I of the Act is liable to a fine of not more than 5 million cedis or a term of imprisonment not beyond one year or both, the Act criminalises the non-participation of children in decision-making in a country where, almost 10 years after the passage of the Children's Act in 1998, the government has acknowledged that this provision has proven the most problematic to enforce (Interview with Sylvester Kyei-Gyamfi, Ghana National Commission on Children, Accra, 26th January 2006).¹⁷⁹ One possible reason for this is that bearing in mind the current cultural and socio-economic context in Ghana, the effective implementation of this provision would mean that large numbers of adults would be fined or imprisoned, including key government officials and even the policy-makers responsible for its drafting, as well as the officials charged with its enforcement. This is because like the wider society, many of them have difficulties with the principles underlying this provision.

Therefore, it appears that the policy-makers, who are part and parcel of the society within which the Act is implemented, somehow overlooked the culturally-based resistance that this provision would provoke. Alternatively, they may possibly have been more concerned with drafting a law that would domesticate the Convention into national law

¹⁷⁸ See above, Chapter III, Section 3.2.

¹⁷⁹ Ibid.

rather than with the logistics of enforcement, in order to gain kudos from the international community.

Data collated from FGDs and interviews with adults and children both in Nima and Ga Mashie, the two focus communities of this study, and elsewhere, provide evidence of the reasons for the limited implementation of Article 12 within the Ghanaian social and cultural context. The information collected indicates that the right to express opinions and participate in decision-making is not seen as a right to which children are entitled in Ghana. Whilst the 78 adults who participated in seven FGDs in Nima and Ga Mashie were able to identify education, food, shelter and medical care as key rights to which children are entitled, only one person identified decision-making as a right for children.¹⁸⁰ The reason this particular right was overlooked in adult FGDs was because of the belief, as expressed by one informant, that ‘in Africa, we do not work with the ideas of children...’ (Second FGD with Adults at the Institute of Islamic Studies Mosque, 30th December 2005). Elsewhere, another informant explained that:

Some parents do not want their children to become naughty and haughty, e.g. some children who are brought up in Europe come to Ghana and talk anyhow to adults, bringing shame on their parents. This is what the adults here are trying to prevent. That is why they do not let them express opinions (FGD with Women from the Islamic Charity Centre for Women’s Orientation, 31st December 2005).

Stephen Adongo’s statement that ‘we do not need western children here in Ghana’¹⁸¹ is an indication of a more general belief that children in Western countries are too opinionated and not respectful of the boundaries between adults and children. As a result of this attitude, those children who do express their views or show signs of assertiveness are seen

¹⁸⁰ See above, Chapter IV, Section 4.3.1.

¹⁸¹ See also Chapter IV, Section 4.4.4.

as social deviants, disrespectful and are thus, punished or insulted (as witches or devils).¹⁸² Conversely, children who are respectful are not seen as assertive and they know how to behave in the company of adults, indicating that they have been trained properly by their parents. This belief is evident in a statement made in a FGD with a group of mature students from the University of Ghana, Legon:

Respect means submissiveness and quietness so that conflicts with child participation. A cultured child is a submissive and respectful child and not assertive. So a child who is assertive is not cultured (FGD with Mature Students at the Social Work Department, University of Ghana, Legon, 8th November 2005).

Hence, ‘a child who likes talking too much and is always bringing out his opinions is shut down’ (Second FGD with Adults at the Institute of Islamic Studies Mosque, 30th December 2005). These children bring shame on their parents as their behaviour shows that they have not been raised properly and thus, are not aware of the role of key cultural values such as respect and obedience in regulating all interactions between adults and children in this social and cultural context.¹⁸³

In fact, the very idea of a child being present when adults are talking is rejected by many in these communities. Children are not even expected to be in the same room when adults are talking, let alone speak when adults are speaking, primarily due to the fear that they will gossip. According to one participant in Ga Mashie, ‘I do not like it at all when a child is hanging around when adults are talking’ (Second FGD with Adults at the Freeman Memorial Chapel, Bukom Square, 27th February 2006). This point was also raised in a FGD with children, also in Ga Mashie: ‘they threaten to beat us if we come near when the

¹⁸² See above, Chapter IV, Section 4.4.2.

¹⁸³ Ibid.

mother is talking to another adult' (FGD with CENCOSAD's Freeman Stop Child Labour Club, 27th February 2006).

However, this contradicts data from other research that has highlighted the extent to which there is no division in the life of adults and children in African societies as children not only participate in economic life, but in adult social life more generally. According to Nsamenang, children may be taken everywhere – the farm, the market, family or clan meetings, funerals and feasts, as well as religious ceremonies. Thus, they are part of the adult world and are generally not regarded as being “in the way”, which is the case in many other cultures (1992: 155-156). Adults and children participating in this study also pointed to this involvement of children in cultural life during FGDs and interviews. According to them, older children, mainly teenagers, were sometimes able to accompany their parents to funerals, family meetings and religious ceremonies as part of their training to better understand how things are done in the community. However, I would argue that this involvement does not mean that they are seen as full participants of the community. Their involvement in these meetings and rituals is selective, which means that sometimes they are excluded for the very reason that they would indeed be ‘in the way’ and would prevent adults from discussing important matters in greater detail.

This attitude permeates through all spheres of children's lives. For example, within the school system, there are no formal channels for children to express their views and participate in decision-making at the basic level (primary and junior secondary).¹⁸⁴

¹⁸⁴ It is important to note that all the children in FGDs/interviews were pupils of basic schools and none had any experience of participation in decision-making within the sphere of the school as there are no mechanisms in place.

Although opportunities are provided at the Senior Secondary School level through mechanisms such as student representative councils whose members are represented on the School Management Committees where they are able to report the views of students to head teachers and other school managers, there remain difficulties. According to Bright Appiah, the Director of Child Rights International (CRI), which establishes children's rights clubs in senior secondary schools across the country:

At the school level the institutions feel that when children know of certain things they will start making demands and so children are relegated to the background in certain major decisions. At times it is very difficult for heads of institutions to allow children to participate...some children in the children's rights clubs (formed by CRI) now question what they are asked to do and this gets them into trouble with their head teachers and housemistresses (Interview, Accra, 21st February 2006).

As teachers are also a product of their societies, they also reject, or have difficulties with, the participatory principles underlying Article 12. This is reflected within the school environment – both in the management and in the teaching - as the Ghanaian education system is very didactic and leaves little room for children to question teachers or even articulate their views on particular subjects. The focus of teaching is more on answering questions, which are either right or wrong, not engaging in a discussion or sharing views on subjects that are under study.¹⁸⁵ Thus, the ability of children to express their views and participate in decision-making within this sphere of their environment is restricted.¹⁸⁶

¹⁸⁵ Writing of the Tanzanian context, Esther Obdam claims that the school system, in particular, teaches children that they are not important, that their ideas and opinions do not matter. They are to do as they are told without question. When a child disagrees or fails to do what is expected of her she is punished, often beaten. Children grow believing that they are not worth being listened to. They find it hard to formulate their thoughts and opinions because they are never asked for their views; they are told what to think. They are reluctant to speak up out of fear of doing something 'wrong' and being punished for it. The school system forces children to learn through memorization and does not give them the opportunity to think themselves or to take part in decisions that affect them. Together with the harsh punishments for mistakes and any behaviour that is out of the ordinary, this crushes creativity and imagination(1998: 212).

¹⁸⁶ This attitude towards the concept of children's participatory rights also became evident during the course of my fieldwork in Ghana. As one senior figure in the Social Work

In the 25 FGDs¹⁸⁷ with 291 children the right to express their opinions and participate in decision-making was only identified by school children in Ga Mashie, children from the three participating private schools and the youth broadcasting group, Curious Minds. This further highlights the greater extent to which school children in Ga Mashie and private schools are exposed to children's rights principles through the media and NGO initiatives in their respective local areas than children in Nima.¹⁸⁸ School children in Nima and out-of-school children in both communities did not highlight it as a priority because of the belief that parents know best and should be obeyed and listened to at all times. As Sylvester Kyei-Gyamfi of the Ghana National Commission on Children informed me, 'in our culture we think that whatever adults say is the best. Therefore, it is common to hear children saying, "my mother says this", "my father says this"...' (Interview, Accra, 26th January 2006). It is because of this belief that parents know best that a number of children claimed that this Article was not important as children 'are not equal to adults' and hence, 'do not know anything'. According to one child in Nima, it was not important for children to be involved in decision-making or express their views because 'some parents will spoil their children' (FGD with Nima Basic I Primary Pupils, 12th December 2005). This not only further highlights the emphasis children themselves place on the need for their parents to discipline them,¹⁸⁹ but also points to the social disapproval of those children

Department at the University of Ghana, Legon impatiently informed me as soon as I had introduced myself and my work: 'The problem I have with you people coming from developed countries is that you come here to research things that are not critical to Ghanaians. Instead, you should be looking at issues relating to basic needs and survival. Those are the critical areas in Ghana. Children's right to express their views and participate in decision-making is not critical' (Informal Discussion, August 2005).

¹⁸⁷ See Tables in Appendices 11, 12 and 13 for FGD data collected from children.

¹⁸⁸ See above, Chapter IV, Section 4.2.

¹⁸⁹ See above, Chapter, Section 4.4.1.

who are able to express their views as it is thought they are spoilt and thus, are not trained properly in the values of society. I also experienced this attitude during the course of my data collection process with children in Nima and Ga Mashie. Although children were always polite and never questioned me on anything, let alone choice of topic, a number of children made it clear that they felt the issue was not important and that the discussion should not involve them. Very often they made it clear that they did not know anything and that it may be more worth my while to talk to their mothers instead.¹⁹⁰

Even on the few occasions Article 12 was raised as a right to which children are entitled, it was not seen as a high priority because it was not ‘necessary for dire survival’ compared to other rights such as those to education, shelter, health care and food, which are critical to survival and development (FGD with Christ the King Pupils, 28th February 2006). There was a feeling that while children would not develop, or even survive, if they were not provided with food, shelter, education and medical attention, they could still develop into well-rounded responsible citizens if they were not given the opportunity to express their views or participate in decision-making during their childhood. Thus, there is a hierarchy of rights and needs which prioritises rights such as education, life, food, shelter and medical attention and parental care ahead of rights to express opinions and participate in decision-making. As several children explained to me quite simply when prioritising their rights,¹⁹¹ ‘if you do not express your opinions you will not die’.

¹⁹⁰ See Methodology Section of Introduction for more information on data collection process.

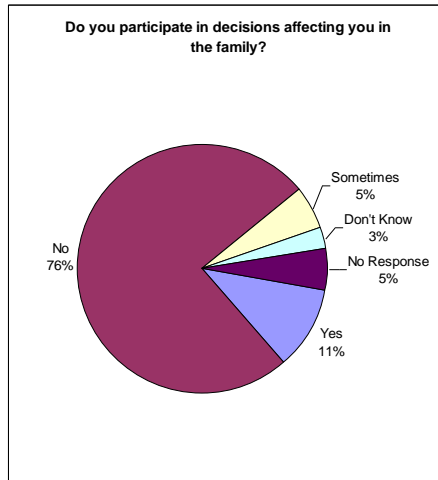
¹⁹¹ See Appendices 11, 12, 13

Data from interviews held with 133 children in Nima and Ga Mashie and in the three participating private schools, represented in the pie charts below, also reveal the limited ability for this group to express their opinions and participate in decision-making within their families. All children – be they school children in Nima and Ga Mashie, school children in private education or children who do not attend school at all – had an overall similar experience of this particular Article. This was interesting as I had made an assumption prior to my fieldwork that children with educated and professional parents would have more opportunity to express views and participate in decision-making due to the exposure of their parents to global influences, ideas and ways of thinking.

Of the 37 school- and the 19 out-of-school - children in Nima, only 11% in both cases, that is 4 and 2 respectively, claimed that they participate regularly in decision-making on decisions affecting them in their families. Hence, children in this community have a similar experience of this right no matter their background. This figure only increased slightly for children in the three private schools. Amongst the 16 respondents who were interviewed for this study only 13% (2) reported that they regularly participated in decision-making on issues affecting them. However, many children also reported that they were able to express their opinions and participate in decision-making on occasion. These figures show some difference between Nima children and those in private schools. While 5% (2) of school children in Nima claimed that they were able to participate on decisions affecting them sometimes, amongst the children from the three private schools the figure was 19% (3). However, they emphasised that this depended on the issue at hand.¹⁹²

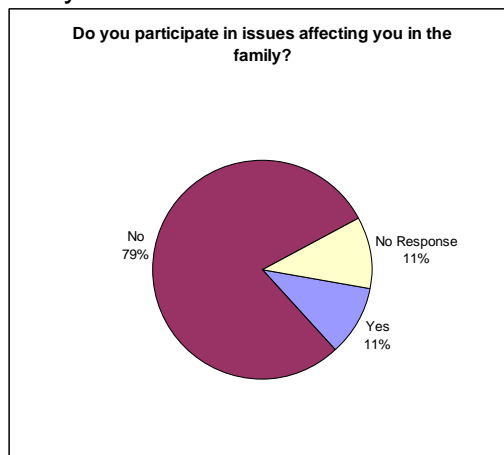
¹⁹² See below, Section 5.3.2, for an outline of the factors that may facilitate children's ability to participate in decision-making within the family

Figure 12: The Ability of Nima School Children to Participate on Decisions Affecting them in the Family



Do you participate in decisions affecting you in the family?		Frequency	Percent
Valid	Yes	4	11
	No	28	76
	Sometimes	2	5
	Don't Know	1	3
	Total	35	95
Missing	No Response	2	5
Total		37	100

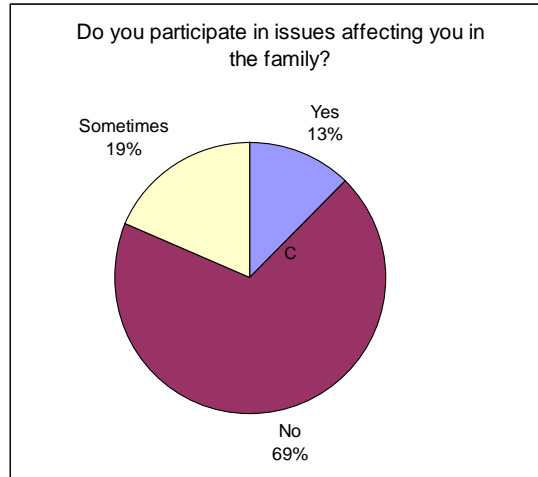
Figure 13: The Ability of Nima Out-of-School Children to Participate on Decisions Affecting them in the Family



		Frequency	Percent
Valid	Yes	2	11
	No	15	79

	Total	17	90
Missing	No Response	2	11
Total		19	100

Figure 14: The Ability of Private School Children to Participate on Decisions Affecting them in the Family

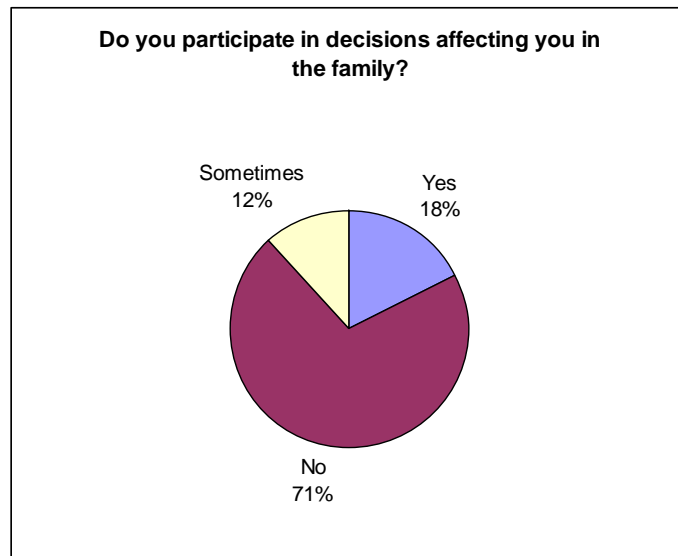


		Frequency	Percent
Valid	Yes	2	13
	No	11	69
	Sometimes	3	19
	Total	16	100

In Ga Mashie, both school and out-of-school children reported more opportunities for participation in decision-making on issues affecting them on a regular basis. Out of the 34 school children who participated in the study in this community, 18% (6) stated that they were able to participate regularly in decision-making on decisions affecting them within the home. Among the 27 children who had never attended or had dropped out of school, this figure dropped to 15% (4). The increased ability of children to participate in decision-making and express views on issues affecting their welfare in this community may be attributed to the large number of single parents and female-headed households that are

located here.¹⁹³ This may make it easier for children to express their opinions as, according to some informants, children tend to have a better relationship with their mothers than their fathers.¹⁹⁴

Figure 14: The Ability of Ga Mashie School Children to Participate on Decisions Affecting them in the Family

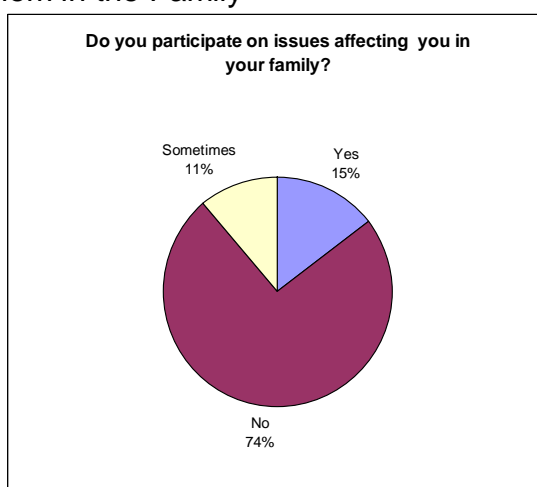


	Frequency	Percent
Yes	6	18
No	24	71
Sometimes	4	11
Total	34	100

¹⁹³ See above, Chapter IV, Section 4.1.2.

¹⁹⁴ See below, Section 5.3.2.

Figure 15: The Ability of Ga Mashie Out-of-School Children to Participate on Decisions Affecting them in the Family



Do you participate on decisions affecting you in the family?			
		Frequency	Percent
Valid	Yes	4	15
	No	20	74
	Sometimes	3	11
	Total	27	100

From the data presented above we can gather that within this social and cultural context, parents tend to decide and impose their decisions on their children. One of the key reasons for this is that they believe they are looking out for their best interests. As one child participant explained to me:

They do not consult me even in my choice of school. If they think it is something they must do they will not consult me because they think it is for my own good (FGD with Christ the King JSS Pupils, 28th February 2006).

A similar comment was made by a parent in Ga Mashie: ‘the child can speak what he wants, but parents do what they should’ (Second FGD with Adults at the Freeman Memorial Chapel, Bukom Square, 27th February 2006). In some instances, parents want to protect their children, as involving them in certain decisions or activities will leave a ‘bad taste in their mouths’. According to one participant in a FGD with journalists, when

her daughter completed junior secondary school, she found it difficult to find her place at a senior secondary school. As a result of this difficulty in obtaining a place for her daughter, she excluded her from the discussions with the various schools because she felt that if the daughter had participated in such discussions ‘it would have made her feel bad’ (FGD with Media Professionals, 14th September 2005). Children too expressed the belief that they do not need to participate in decision-making and express their opinions on issues affecting them because parents will have their best interests at heart and they will be satisfied with what their parents have done for them once they achieve adulthood.

However, contained in this belief is the assumption that all parents are looking out for the best interests of their children, which is at odds with the increase in parental neglect in the country,¹⁹⁵ leading Oppong to talk of a current retreat from the responsibilities of parenthood.¹⁹⁶ Data collected from children and adults in Nima and Ga Mashie highlight the extent to which many children are not adequately cared for as a result of parental irresponsibility and mixed priorities, which leaves children’s needs and rights not catered for, even when money is available. This is because of the importance placed on upholding one’s status in society through contributing to funeral expenses of relatives and acquiring cloth.

For example, despite the stress placed on education by both adults and children,¹⁹⁷ they also pointed out that even when parents have money that can be used to send their children to school, there is no guarantee that they will spend it on the essential needs of

¹⁹⁵ See above, Chapter III, Section 3.3.2, Chapter IV, 4.4.4

¹⁹⁶ See above, Chapter III, Section 3.3.2.

¹⁹⁷ See above, Chapter IV, Section 4. 3.1, 4.3.2

their children such as education. They rather use it to buy cloth or new clothes for themselves or spend it on weddings, funerals and parties, which enhance their status in society:

Some parents say they do not have money for school fees, but then they spend it on funerals, parties and clothes.

Some parents - even if they have money they will not send their children to school.

They [parents] do not pay school fees. Instead they use the money to buy clothes.

When the parents get work they will not send the child school, they use it for their own things.

Hence, although many adults attach a high priority to children's right to education, they also highly prioritise the need to increase, or maintain, their status and prestige in their communities. Thus, these two priorities often clash and result in children's needs being overlooked or being considered last.

This contradiction between children's insistence on parents having their best interests at heart, and the reality in the country, which shows increasing numbers of parents abandoning their responsibilities, raises questions. It is possible that this continuing insistence by children that parents will take care of them is because of the belief that compared to other adults, parents are more likely to look after them properly and consider their best interests – at least to some extent. Thus, the emphasis by children is a recognition that they must focus their attention on parents as their primary carers as the alternative is very often much more unfavourable.¹⁹⁸

¹⁹⁸ See above, Chapter IV, Section 4.3.2. for a more in-depth discussion on children's increasing focus on parents as the only people who will look after them properly.

5.2. Obstacles to the Implementation of Article 12

5.2.1. Poverty as an Obstacle to Article 12

Just as poverty is a key impediment to the implementation of children's rights generally,¹⁹⁹ it also emerged specifically as a factor limiting the implementation of Article 12 in Ghana. According to a number of participants, it is socio-economic factors that force parents to impose their decisions on their children:

If I do not have money to accommodate my child, I may know she has rights, but I cannot afford to allow her to express opinions or even allow her all her rights because I cannot afford it.

It is poverty that will not let you listen to your child.

Parents have their pockets to think of so they need to impose decisions...you need extra resources to cater for everyone's needs.

In the situation we are now in when you ask children what they want they will say something expensive, which we cannot afford so you do not ask and you just do your best for the child.

If I want *banku*²⁰⁰ and my mother does not have it, then she cannot give it to me.

When my sister's child finished JSS we chose a school for her, but she said no. She wanted to go to St. Mary's and so she went. Now she has finished SSS²⁰¹ and we want her to go to a polytechnic, but she wants to go to University, so by force we have to put her there and it is causing so much trouble in the house.²⁰²

Poverty, is then, key to parental attitudes towards children's right to express views and participate in decision-making. It leads parents to impose decisions on children and limits the opportunity for them to discuss issues with their children. The point here is that parents living on a small income, which is the case for most families in Nima and Ga

¹⁹⁹ See above, Chapter III, Section 3.3.1.

²⁰⁰ Like *kenkey*, *banku* is another staple food in Ghana. It is usually made from ground corn (*maize*) or a mixture of maize and grated *cassava* tuber.

²⁰¹ JSS (Junior Secondary Schools) is the equivalent of middle school or secondary school excluding the 6th form level SSS is Senior Secondary School, which is the equivalent of 6th form in the UK and as free and compulsory education ends at JSS, this level of education is only available to those few who are able to afford the costs.

²⁰² Polytechnics tend to be much cheaper than universities and thus, would have been easier for the family to afford and still take care of their other responsibilities.

Mashie, cannot afford to give children a choice. They can only do their best with the resources they have available to them. This lack of resources also creates tension between parents and their children, which further contributes to the limited interaction between them and their children. One participant in a FGD in Ga Mashie explained the impact of poverty on this limited interaction:

Currently, we are not fine with our children because we worry that every time they come to us they are coming to ask for money or tell us something that will lead to some expense. That is why we do not have a good relationship with them (2nd FGD with Adults at Freeman's Memorial Chapel, Bukom, 27th February 2006).

This is also an indication that some parents feel a certain amount of embarrassment and helplessness towards their children because they cannot afford to provide the items they require. Thus, they limit their interaction with them to ensure that their children do not question them or demand something that will lead to an expense they cannot afford. Added to this is the fact that in this social and cultural context where children are supposed to submit to the authority of their parents, many adults do not feel the need to explain why they cannot provide some of their needs.

In addition, the lack of interaction between parents is compounded by the fact that in both communities, but especially in Ga Mashie, there are substantial numbers of single parents. In an interview with Hon. Nii Ajiri Barnor, Assemblyman for Ngleshie in Ga Mashie, he said that adults do not have the opportunity to discuss issues with children because 'the women are single parents so they have to look for money and do not have much time for social interactions with their children' (Interview, Accra, 8th March 2006). According to the Assemblyman for Nima West, Hon. Ebenezer Kojo Boyetey:

Some families are single parent families and all the mothers have time for is to dump money on the table and go back out to look for work. Some parents do not even bother to know their child's welfare. If you do not know your child's welfare, how can your child come to you to talk (Interview, Accra, 20th January 2006)?

As a result of this limited interaction between parents and their children, the ability of children to simply talk to their parents or express views is restricted. As one adult in Ga Mashie informed me, ‘a lot of parents do not have a good relationship with their children, [thus] the children cannot speak to them and even ask for things or tell them about their problems’ (Second FGD with Adults at Freeman’s Memorial Chapel, 27th February 2006). This was further supported in an informal discussion with social workers and teachers working in Osu and Labadi, which are also indigenous Ga suburbs of Accra:

Parents are not close to their children. If adults are talking and a child hovers around they will send him/her away. If parents were closer to their children they [the children] would be able to report their problems to them (Informal Discussion, Accra, November 2005).

Also, when looking at the extent to which poverty presents an obstacle to children’s abilities to express views and participate in decision-making, it is necessary to acknowledge that in communities where poverty is rife, the inability to participate in decision-making and express opinions is not only applicable to children. Their parents too are often restricted in their ability to make decisions and speak freely, due to the hierarchical nature of Ghanaian society. In these contexts, it is the political, social and financial elites – be they male or female – who participate in decision-making in the community. All others are excluded, including poor men who do not participate because they depend on these elites for their upkeep and would not risk incurring the displeasure of their patrons who are critical to ensuring that their needs are met. According to Sylvester Kyei-Gyamfi of the Ghana National Commission on Children:

Many people in the community do not get to participate in community decision-making. Not just women and children, but also many poor men because they do not want to contradict the views of the rich/elite people who look after them. If adult men and women are not able participate in community life, how can you be talking of the need for children’s participation (Interview, Accra, 26th January 2006)?

This situation partly explains the attitude of many parents towards the participation principles on which Article 12 is premised. As Hart and Landsdown explain, for adults who themselves have never felt empowered, it is hard to accept the importance of empowering children (2002: 10). As children they were not able to express themselves, and even now, as adults, their views are not necessarily sought in the extended family or community context. In fact, in some cases biological parents have little authority over their children in the home since they, like their children, are also under the control of the head of the household and may have only a limited ability to make decisions affecting their children's lives, as well as their own. Parental authority has also been known to cause tension between successive generations. In her study of the Ga of Laboni, a suburb of Accra, Azu recorded that while children are expected to show respect to their parents, grandparents are seen as indulgent and this has implications for the parent-child relationship:

As a result of this indulgence to grandchildren the La parents never have complete control over their children whilst their parents are alive. They themselves are under the control of their parents who use this authority over their sons and daughters to prevent the grandchild from being punished in many cases (1974: 47).

5.2.2. Culture and Tradition as Obstacles to Article 12

While poverty is indeed a key factor, it is also necessary to explore how culture affects the ability of children to express their opinions and participate in decision-making due to the fact that the progress of this article has been confronted by obstacles in families of all classes and social backgrounds – though not entirely equally as the pie charts above show. Data collected for the research indicates that all children participating in the study had an overall similar experience of Article 12 within their families and communities, whether they attend private schools, government schools or do not attend school at all.²⁰³

²⁰³ See above, Section 5.1.1, this chapter.

This is because they live in a cultural environment where, according to one child, adults are mainly perceived as ‘wise men’ (FGD with Christ the King JSS Pupils, 28th February 2006). Thus, only they are entitled to participate in community life. Hence, not only are children made subordinates, but so also are the majority of women. As Sylvester Kyei-Gyamfi of the Ghana National Commission on Children informed me, ‘Ghanaian society is adult and also, male dominated. Thus, you need to look at whether even women have a say, let alone children...’ (Interview, Accra, 26th January 2006). According to a group of women in Nima, ‘when it is a matter affecting the whole community it is a matter for men; not even women are involved in decision-making’ (FGD with the Female Congregation at the Kardo Community Mosque, 15th December 2005). The role of women in communities is further corroborated in the literature by Yankah who argues that in several African societies, one of the virtues of ideal womanhood is abstinence from speaking publicly. In these contexts, he posits, ‘an ideal woman does not draw attention to her personality with speech’ (1998: 17). Therefore, everyone knows their role in society and very often they accept it as it enables them to ensure their needs are met, once again highlighting the centrality of reciprocity in regulating all social relationships this cultural context.²⁰⁴

Knowing your place in society is central to the maintenance of this social system and all effort is made to ensure that every child is taught her place from a very early age. In fact, childhood is constructed and children are socialized in a manner that will ensure that they know their place in this societal structure and do not overstep the boundaries when interacting with their parents and other adults. Data collected from Nima and Ga Mashie

²⁰⁴ See above, Chapter IV, Section 4.4.4.

highlighted four key components of the childhood construction and child-rearing process which, while crucial to ensuring children know their place in society, also restrict their ability to express their opinions, and thus, limit the implementation of Article 12 in Ghana.

The first component of the childhood construction and child-rearing process is dependency. In fact, for many of the children and adults interviewed for this study, dependency, more than age, was the crucial factor in constructing childhood. This means that it is possible for a 40 year-old who does not work and cannot take care of himself to be considered a child.²⁰⁵ According to a group of women in Ga Mashie, ‘if someone is 20 years-old, but they are still being given money by their parents, they will be seen as a child and excluded from a gathering of adults’ (First FGD with Adults at Freeman’s Memorial Chapel, 22nd February 2006).

Hence, instead of using age as a definition of childhood, many participants defined a child as ‘someone who cannot look after himself because he does not work’, ‘cannot pay school fees’ and ‘has no money to look after himself’, which means that ‘his parents take care of him and do everything for him.’ As several participants pointed out on different occasions during the research, ‘a child is fed by an adult; a child does not feed an adult.’ This point was further elaborated by the elders at the Sempe Mantse Palace who informed me that:

Parents expect you to agree with their decisions, because you are a child, and like it or not, you do it...because you do not feed yourself, you are fed. (FGD with Elders at the Sempe Mantse We, 8th February 2006).²⁰⁶

²⁰⁵ See above, Chapter II, Section 2.2.1

²⁰⁶ However, it is important to ask what this means for those children who work and whose families actually depend on the income they bring home? In discussions with children who hawk products after school, it was understood that though they make money, they give it to their parents who then give them some for food or school fees. This

As a dependent that is fed, a child relies on his parents for all his needs and to ensure that these needs are met, he must submit to their control and authority. This restricts his ability to express his views. Freedom of speech, I was told, is a privilege for those who feed people, which not only applies to parents, but also the elite who often look after entire families in addition to their own in return for their labour and loyalty.²⁰⁷

The second component of the child-rearing process, which closely relates to dependency, is parental control and ownership. As a dependent, a child is ‘someone who is under the control of his parents’ and is ordered about. Therefore, she has no say in decision-making within the family and ‘does not have the right to speak, but only to listen’. According to one participant in a FGD with a group of mature students from the University of Ghana, Legon, ‘in this traditional context children are ordered about and once you are ordered about you have no say’ (FGD with Mature Students 8th November 2005). Parents may inform and explain decisions to a child, but they will not necessarily involve her in decision-making because they ‘own’ the child and will, it is believed, do the best for her.²⁰⁸ In this way the idea of children controlled by parents is closely interconnected to the idea of parental ownership, which comes across in the following comment:

We do tell parents of the [Children’s]Act, but they say they brought forth the children so why should they have rights? While they are young and being catered for, their parents

is further corroborated by Claire Robertson who claims that among the Ga, girls who are apprenticed or who help their mothers to trade are supposed to give their mothers or mistress their profits in exchange for food, clothing and sometimes money to start up on their own business (See 1974: 659). Therefore, children who work do not have control over their earnings and in this way their parents are still able to claim that they are feeding their children. The immediate transfer of earnings to parents/guardians reduces any autonomy or control a child may make claims to as a result of engaging in an income-generating activity.

²⁰⁷ See Section 5.2.1, this chapter.

²⁰⁸ See above, Section 5.1.1, this chapter.

should take decisions for them. So there is conflict [i.e. resistance to the Act], especially in the fishing communities (Interview with Gifty Okine, The Department of Social Welfare Zone A Office, Accra, 2nd March 2006).

The perception that children belong to parents was further emphasised during a case meeting held in one of the local Department of Social Welfare offices in central Accra. The case involved two children (a girl who was aged 20 years and a boy of about 18, but still attending basic school), and their father. Their mother had died suddenly the previous year and they were now bringing their father, who had been estranged from the mother, to the Department's office for failing to maintain them. Understandably, everyone was tense and angry, and the bad feeling between the children and their father ran very deep. The daughter had brought along her boyfriend and his friend who did not hesitate to shout insults at the father at regular intervals (to the disapproval of all adults in the room), but the children tried to restrain themselves, even when they felt the father was lying. However, the son eventually could not contain himself any longer and interrupted his father, calling him a liar, amongst other things. Immediately, all the social workers were in uproar and started admonishing the son for his behaviour. When everything had settled, the lead social worker cautioned him, saying, 'I know you are angry, but do not forget that he is your father and he owns you'. The implication here is that as a child you cannot rebuke, insult and challenge the veracity of your parent's words, even if he is indeed lying. Although the case workers were prepared to listen to the children, understood the reasons for their anger and resentment, and were most likely going to make a decision that would favour them, they could not allow the son to talk to his father in that way due to the need to maintain boundaries that regulate interaction between father and child, particularly in public.

Oppong supports the idea of parental ownership in her study of the Dagomba of northern Ghana where a father is said to 'own' his children and is not only responsible for their misdemeanours, debts and moral failings, but is also a figure who should be obeyed implicitly (1973: 38). That the father is seen to own his children is very likely as a result of his fulfilling his responsibilities towards them, further stressing the reciprocal nature of parent-child relations in this context.

However, the idea of ownership not only applies to parents, but to elders more generally as in some parts of Ghana it is uncles who traditionally owned their sister's children, not fathers. This can be seen in Allman and Tashjian's study of the matrilineal Asante who, historically, believed it was the matrikin who owned the children born to their sister and her husband. In fact, a father had no legal authority over his children and they could be removed from his care by their maternal uncle if he was too poor to raise them in the way expected by tradition and culture (2000: 86). Once again, the reciprocal nature of parent-child relations becomes apparent as any authority a father wielded over his children and any rights he had to their labour and service, were contingent upon his looking after them well. However, with the advent of colonialism, looking after children came to involve larger outlays of cash, especially in relation to education and the payment of school fees, which were seen as the father's responsibility. Thus, fathers came to provide almost all their children's needs and this transformed their authority over their children. As Allman and Tashjian show, a father's cash expenditure on education brought with it the assumption of greater paternal ownership of his children (Ibid).

This parental control over children does not end with the attainment of adulthood. It is, in fact, life-long, according to Jahoda (1982) who argues that, 'parental authority does not

cease when children are adults but continues to be asserted when the offspring is trying to make his or her way in life' (in Nsamenang, 1992: 151). This leads onto the third component of childhood construction and child-rearing: the never-ending nature of Ghanaian childhoods. Due to the eternal nature of parental/elder authority and control, a person is always perceived as a child even once she achieves independence, marries and becomes a parent. According to the elders at the Sempe Mantse Palace,

You can be 40/30, but you will still be a child in the eyes of the older people. As long as the older people are alive and you are sitting down with them you are a child. When the fishermen go fishing and they distribute the catch, they do not give any to the youngest – no matter how old he is (FGD Elders at Sempe Mantse We, 8th February 2006).

Essentially, it is believed that in a group of adults the youngest is seen as a child, no matter his actual age. No matter how much one ages, there will always be people who are older who will perceive that person as a child.²⁰⁹ Hence, as long as he is with older people he will always be a child. According to a group of women in Nima, 'if someone is 40 years, married, has his own house and children, he is still a child in the eyes of his parents' (FGD with Congregation at the Kardo Community Mosque, 15th December 2005). Writing about West Africa more generally, Nsamenang posits that a father can intervene, 'without being considered as intruding, in the affairs of a married child, particularly his son' (1992: 143). He adds that 'as long as one's parents are alive a child is always a child' and must come under 'some sphere of parental authority even vicariously' (Ibid: 151). The literature on Ghana also underlines this belief. Gyeke, for example, provides further support to this viewpoint:

[T]here is no time in a person's life when his or her parents totally cease to show interest in his or her affairs. They do not exert control, but they always want to offer advice and guidance because parents always consider themselves as having had more or richer experiences than their children, at any age. Even 20 or 30 year old sons and daughters are

²⁰⁹ Children reproduce such practices amongst their own peer groups as they tend to recreate the hierarchy in society in their own worlds, leading to teenagers treating younger children the same way that the age group ahead of them treats them.

looked on as 'children' by reasons of their relatively limited experiences in life (1996: 85).

Also, in her discussions of fosterage among the Gonja of northern Ghana, Goody observed that an aged father living with his grown son continues to be treated as the head of the compound:

Everything is done in his name, and he makes, or appears to make, all the decisions. As the farm is also 'for him', it is said that he feeds the people of the household, rather than that they feed him. In fact, his sons may be doing all the farming...A man without sons may occupy a similar position in a compound where his brother's sons live (1982: 172).

In this sense, then, childhood is never-ending. Many young people are expected to remain in the family house beyond the age of 18, which the Convention has defined as the end of childhood for all children around the world. If they work they are not expected to leave their parental home until after marriage. The idea of leaving home to rent a flat alone or with friends is unusual for most young people except university students who are still expected to return home after graduation and continue living with their parents until marriage. Even when this group marries and has children, its members will still be perceived as children by their parents and older relatives.

Parental control and the perception that childhood is never-ending results in the marginalisation of a person within a group due to the perception that he is a 'child' even though he may be married, own a house, have children and is even looking after his parents. Several participants to the study observed that even when a person is 30-years-old he would not be involved when older people are making decisions: 'a person in his 20s/30s can still be pushed aside by elder relatives even if they are married and have their own house' (FGD with Media Professionals 14th September 2005). Hon. Ebenezer Kojo

Boyete, Assemblyman for Nima West, shared his own experiences of when his father died 30 years ago,

We had a meeting about his burial and every time my brothers who were grown men opened their mouths, my uncles would shout them down. In African culture, there is a feeling that if elderly people are talking, children should not – no matter the age of the child (Interview, Accra, 20th January 2006).

As a result, he will be treated as a child, which will impose limitations on his behaviour and freedom of speech. This may lead some to conclude that age is an important criterion for defining someone's status in society, which would be in line with the Convention's approach to defining childhood.²¹⁰ However, what is actually being suggested here relates not so much to biological age and more to the relativity of ages and the ideas surrounding gerontocracy and seniority.

There are exceptions to the image painted above, which is to be expected in this monetized and salaried age where money, more than land, plays a vital role in defining social relationships. The socio-economic changes that have taken place in recent years have resulted in the creation of a new generation of educated young people who work and have access to better resources than their parents, particularly those remaining in the rural areas. Consequently, in some instances, this has transformed power relations in the family in favour of the youth and against the elders, who hitherto relied on their control of land for the power they wielded over their children. In this new relationship the younger members of a family, who are well educated, have achieved success, gained financial stability and are now in a position to support the extended family and contribute significantly to the community, may wield considerable power in these spheres. Writing about the La of Laboni, Azu claims that one factor contributing to the weakening or

²¹⁰ See above, Chapter I, Section 1.3.

erosion of the patrilineage is the undermining of the elders' authority by younger members who have been educated and have moved into professional jobs, with attendant high salaries. As a result, when these new professional men want to have a voice in lineage affairs, it is impossible for the elders to refuse (See 1974). Added to this, Ncube, writing of the southern African context, claims that although traditional notions of childhood and the expectations of children still exist, the views of the youth within the family decision-making framework now carry greater weight owing to their economic power, on which many family members depend for survival (1998: 23-24).

Finally, obedience and respect, which has been discussed above in more depth,²¹¹ are also key components of the construction of childhood and child rearing process in Ghana. As soon as they are seen to have acquired sense, children are taught to respect, obey and submit to the authority of all adults, not only their parents. Children themselves insist on this as it not only enables them to ensure that their needs are met, but also because of the belief that adults will curse them and they will be punished by ancestors who are never too far away from community life.²¹²

Thus, virtually all the children who participated in the research for this study put respect and obedience as the two most important duties they have in society. In fact, these values are so important that many children highlighted them as key rights to which children are entitled.²¹³ Obedience and respect were seen as synonymous with childhood and are pre-requisite features of intergenerational relationships, no matter the age of the younger

²¹¹ See above, Chapter IV, Section 4.4.2.

²¹² Ibid.

²¹³ Ibid.

person involved in the relationship, further emphasising the never-ending nature of Ghanaian childhoods. These values are so important that children are taught them from an early age to ensure that they behave appropriately when interacting with adults and hence, do not bring shame on their parents whose status in society very often depends on the behaviour of their children. As a result, the correlation between obedience and respect on one hand, and childhood on the other, repeatedly emerged in comments made by children participating in the study. When asked what a child is, a pupil in a Nima school, explained: 'I am a child because I obey my parents' (FGD with School Children at the Islamic Institute Primary, 13th December 2006). Many children also linked this emphasis on respect and obedience to their role in society:

Children have to obey people in the community, not just parents;

Children must be obedient and do what they are asked to do;

If your parents disagree with the trade you want to learn, choose to obey them because they brought you into the world;

Children must always listen to the advice of their parents;

Children have to respect mother and father.

Thus, at the core of the very notion of what constitutes childhood is respect and obedience. As children they are dependents and thus rely on their parents for all their needs; being respectful and obedient helps to ensure that these needs are met and their rights are fulfilled. It is for this reason that children repeatedly focused on respect and obedience in discussions on their rights. Hence, once again, the central role of the value of reciprocity in this society is underlined.²¹⁴

²¹⁴ See above, Chapter IV, Section 4.4.4.

This focus on respect and obedience means that children find it difficult to challenge, disagree or question adults or correct them if they are wrong. Hence, the implication of this emphasis on respect and obedience is that it limits the ability of children to express their views.²¹⁵ Pellow describes the situation succinctly, ‘respect for one’s elders, when carried to an extreme, rules out any chance of exercising one’s free will’ (1977: 56). It also affects the ability of children to even talk to adults if they have a problem. As one child participant explained, ‘there are some of us who want adults to do something for us, but we cannot speak’ (FGD with Children Organised by the Sempe Mantse Palace, 10th February 2006). Furthermore, the impact of respect and obedience on children’s ability to express views also has implications for children’s development. As one of the elders at Sempe Mantse Palace said:

There is still a feeling that a child has a limit when sitting with elders. It does have its pitfalls, as it inhibits the children. They are shy, not outgoing and you do not get to see their potential (8th February 2006).

Obeng corroborates this point when she argues that despite the importance of children to Ghanaian families, some cultural values such as respect and obedience destroy the initiative and creativity of the child, who is afraid to confront traditional norms and is thus unable to speak her mind easily (1996:133). As a result, large numbers of children struggle to not only formulate and articulate their views, but find it difficult to even answer questions or simply talk unless it is in the company of their peers.²¹⁶ Therefore, adults feel vindicated that their attitude to children is necessary and thus, the socialization of children continues in the same way, leading to children who cannot question, cannot

²¹⁵ I also experienced this during the data collection process with children in Nima and Ga Mashie (see Introduction, Methodology Section).

²¹⁶ See above, Introduction, Methodology Section.

formulate their opinions and ask for help when they need it, which is crucial considering the current onslaught on childhood in Ghana today.

5.3. Opportunities for the Implementation of Article 12 in Ghana

5.3.1. Civil Society and Governmental Action and Linkages to Family Life

Some progress has been evident in recent years in the implementation of Article 12, particularly within civil society and governmental spheres. The media have been central to this development as they have been strong advocates of children's rights in recent years. Where people know about children's rights or the challenges facing children in society, it is mainly down to stories in the media. Journalists are now more proactive about talking about child protection issues and very often they interview children to collect their views and experiences. In an FGD with Curious Minds, a youth broadcasting group who are often put forward as a good example of child participation in the country, they claimed that education through the media has helped to improve children's participation in the family, and promote parent-child relationships by raising issues for consideration within the sphere of the family (FGD with Curious Minds, 9th September 2005).

Curious Minds have themselves been crucial to this process as they produce and present a bi-weekly radio programme on Ubonu FM, which is linked to the state-controlled Ghana Broadcasting Corporation (GBC). As the programme is presented in both English and local languages, this makes it accessible to a wide range of children and adults and it is now broadcast on over 100 stations across the country. In addition, they work with children from deprived communities to raise awareness about children's rights and responsibilities. Other radio programmes produced and presented by children have

emerged such as Smart Kids (Happy FM) and Choice FM's Children's programme. On television, the Children's Show on Ghana Television (GTV) is a bi-weekly programme which very often tackles topics relating to children's rights and responsibilities, as well as fun games and activities. However, it is in English, thus limiting its audience to mainly children who have received some education. Newspapers such as the *Junior Graphic* and *Young Mirror* often provide children with information on their rights and enable them to develop their knowledge of the issues affecting children in the country, as well as to air their views on issues they are concerned about. However, due to the nature of the medium, they are targeted at a particular class of children who can not only read, but also spare some cedis to buy the newspaper.

Some progress has also been noted at the governmental level in recent years as participatory approaches are now used to gather the views of children for a range of reports, including the latest State Party report to the Committee on the Rights of the Child, the Gender and Policy Guidelines and the Early Childhood Policy. Children are also frequently incorporated into conferences on issues affecting them. For example, in the 2005 Congress on Orphans and Vulnerable Children in Accra, which was organised primarily by the Ministry of Women and Children's Affairs and the Ghana AIDS Commission, children were involved in designing the programme and participated in the actual event. In addition, their views were included in the National Plan of Action, which was one outcome of the event. Furthermore, with the establishment of the Domestic Violence and Victims Support Unit, it is said to be easier for children to report crimes to this specialised unit, even when the perpetrator is a parent (Interview with Sylvester Kyei-Gyamfi, Accra, 26th January 2006). However, reporting parents to the police is still seen as a taboo and most cases are reported by adults on behalf of child victims. Moreover, the

Child Panel provision of the Children's Act, which enables children to participate in panel hearings and express their views on cases of civil matters and petty crime, is an interesting innovation by the government as it facilitates the principles behind Article 12 through the adoption of a community-based approach that is rooted in the Ghanaian cultural context.²¹⁷ However, despite a few pilot projects funded by international agencies such as Save the Children UK and UNICEF, this provision remains largely on paper.

NGOs, especially those operating on a national level, have also taken steps to improve the participation of children in their programmes. Not only are some establishing children's rights or child labour clubs such as CENCOSAD and Child Rights International mentioned above,²¹⁸ but many routinely elicit the views of children through consultations or FGDs for their research studies and other projects. For example, the Ghana NGO Coalition on the Rights of the Child regularly collects data from children using a variety of methods. This is incorporated into the NGO Alternative Report on the implementation of the Convention on the Rights of the Child in Ghana, which is sent to the Committee on the Rights of the Child every five years as an alternative source of information to that sent by the government.²¹⁹

Despite these innovative steps, there are questions surrounding the participatory approaches developed by governmental and civil society sectors. Most civil society and governmental interactions with children such as those mentioned above are occasional or one-off, which tend to be tied to particular projects and often done within restricted time

²¹⁷ See above, Chapter III, Section 3.3.

²¹⁸ See above, Chapter IV, Section 4. 2 and section 5.1.1, this chapter.

²¹⁹ See Chapter I, Section 1.3.2.

limits and budgets, meaning that even with regards to discussing sensitive topics with vulnerable groups of children, it is not possible to take ethical processes into serious consideration. Thus, after a one-off interview or half day consultation, children never see the researchers again, nor do they necessarily hear of the outcomes of their inputs. With regards to consultations and involvement of children in events organised by both governmental agencies and NGOs, it is common to find that the same faces appear at different events – most likely (and understandably) - because they are the children who have been trained and prepared to engage in the issues. These children are not necessarily school children as many of those who are out-of-school, especially those who live on the streets, are also invited to these consultations. However, those selected are normally associated with NGOs and thus are trained to articulate the issues being discussed at a particular forum.

Furthermore, very often the nature of adult-child relationships and the power dynamics between adults and children in the wider society is reproduced in a project based on participatory principles due to the fact that all participants are a product of the society in which they live. Thus, when working together on a project, both groups are very much aware of the cultural values that regulate social interactions between adults and children and this affects how they relate to each other. For example, it affects how questions are asked by adults and how they are answered by children, and how these responses are, in turn, interpreted by adults. There are some further doubts about whether the views of children are really heard and acted upon as ‘it cannot be taken for granted that more listening to children means hearing [them]...’ (Roberts, 2000: 229). In a discussion with *Curious Minds: Children and Youth in Broadcasting*, a number of participants raised this as an issue:

People who are paid to listen and act on the views of children such as individuals in a government agency or a NGO which promotes children's participation, will listen to the child, but there is no follow up with action.

They [adults] consult us just so they can say they did (FGD with Curious Minds, 9th September 2005).

Interestingly, the focus of governmental and civil society action has been to incorporate children and their views into their structures rather than trying to advocate for the need for this approach within families. This may be attributed to the recognition that families do not appreciate State interference in their lives, especially from a government that does little to support them in ensuring the survival of their families. This further supports the argument put forward by both Gagnon and Cusak and Appiah²²⁰ that government and civil society are hesitant about interfering in the family sphere as it is seen as private.

5.3.2. Opportunities within the Sphere of the Family

The family context (particularly the nuclear family where it is biological parents who tend to head the household) also provides some opportunities for children to participate in decision-making. As Sylvester Kyei-Gyamfi of the Ghana National Commission on Children, a Department of the Ministry of Women and Children's Affairs, informed me:

We cannot say that our people are so domineering and we cannot say that adults do not listen to children...In our own way we listen to children and take experiences from them, but we want children to respect adults so we do not want them to know we are listening to them. We want to help them to take decisions and sometimes it is like an over-imposition – that is how Europeans would see - but we just want to help them make the right decisions (Interview, Accra, 26th January 2006).

Thus, while parents tend to impose decisions on children, there is evidence that some parents do listen and take on board the views of their children, especially on issues affecting them such as their choice of school or trade, or whether they even want to

²²⁰ See above, Chapter III, Section 3.3.1

continue to Senior Secondary School or enter a trade following the completion of compulsory schooling at the age of 15. According to one parent, 'when it comes to the question of school, we ask the child for his opinion because if you force him to go to a particular school he may stop schooling altogether' (First FGD with Adults at Freeman's Memorial Chapel, Bukom, 22nd February 2006). Issues on which children felt they were able to participate in corresponded with those pointed to by adults; for example, choice of school or training centre, or whether to even continue school after JSS or enter a trade, as well as choice of clothes and the menu at home.

Based on the information collated from FGDs with adults and children and in interviews with children in both Nima and Ga Mashie, I was able to identify some general factors that would facilitate the ability of children to express their views within the family. Firstly, it depends on the relationship between the parent and child. As one child participant summed up aptly, 'if you have a good relationship with your child, when there is an issue you can call your child and discuss it with him/her' (FGD with the Youth Wing of the Women's Orientation Centre, 4th February 2006). In both focus communities many believed that there is much more exchange of opinion between mothers and their children than between fathers and children. This was attributed to the relatively good relationship between mothers and children. Thus participants in adult FGDs informed me that if a child wants to express her view she will do so to her mother. In turn, mothers are more likely to ask their children for their opinions than fathers. However, this will always be done in the privacy of their homes as opposed to the public domain because of the belief that in public, children must, at the very least, show their submission to their mother's authority. In Ga Mashie, some participants claimed that 'many children cannot speak to their fathers' (Second FGD with Adults at the Freeman's Memorial Chapel,

Bukom Square, 27th February 2006) because many of their fathers are absent in their lives.²²¹ Added to this is the general perception in Ghana that fathers are distant figures whose word is law.²²²

Secondly, the literacy of parents is an added factor that facilitates children's ability to express their views and participate in decision-making within this context. This factor particularly emerged as important in Nima where it was raised in both interviews and FGDs with a variety of adults. According to the Chief of Nima, Nii Futa I, 'some illiterates might rely more on the judgment of children than educated parents' (Interview, Accra, 16th December 2005). This is because the child can read and as a result of her education, may know more about certain issues than her parents, especially in this rapidly modernising age. In different FGDs with adults several participated noted that:

In a gathering of illiterates a child may be allowed to participate as he may be the only one who can read and write.

These days children are more civilized. Children today have been to school and the adults have not, so although the adults will tell them they are children, they know something the adults do not know, and so can participate in discussions and decision-making.

Even if you are 15 and in JSS, because you have been to school, can write and know some things we [adults] do not know, so you can be involved.

Thus, due to society's high regard for education, it is possible that children who are in school will be given more respect and may be more encouraged to participate in decision-making – both as children and in future as adults – than those children who do not receive

²²¹ See above, Chapter IV, Section 4.1.2.

²²² See above, Chapter IV, Section 4.4.2.

any education. This further emphasises the importance placed on children's right to education by both adults and children in the two focus communities.²²³

Finally, many felt that the ability of children to express views and participate in decision-making depended on whether the child 'has sense' or not. As one participant in Nima said,

It is not just about going to school, which is the deciding factor as to whether a child participates or not. The child must also be sensible. A child who is sensible knows what is right and wrong (FGD with Female Congregation at the Kardo Community Mosque, 15th December 2005).

One elder at the Sempe Mantse Palace gave further support to this view when he claimed that, 'the mind can be used to decide who a child is; even the youngest can give good advice as long as he is sensible' (FGD with Elders at the Sempe Mantse Palace, 8th February 2006). Having sense is also defined as being mature, having a sound mind and acting in a responsible manner, which includes respecting elders and behaving appropriately. Children who are respectful are allowed to speak when decisions are being taken, which is a viewpoint that emerges in the following statements:

If you are respectful the adults will let you talk.

Children need to be obedient and respectful. If they behave like this the adults might allow them [to express an opinion].

Every child must be brought up in the right way and this will set the standards for everything including children's participation in decision-making.

Some children do not respect and so they are not allowed to express views.

Children must be polite when expressing views or participating in decision-making.

Children these days do not respect. If children were raised well, then they would be able to participate in decision-making.

²²³ See above, Chapter IV, Section 4.3.1 and 4.3.2.

Thus, children who are respectful, courteous and well mannered are said to have more likelihood of being able to participate in decision-making. In this way, it is possible for a respectful child to express her views within the family despite her age. This shows that while the need for children to respect and obey limits their ability to express their views, it may also enable them to have their views taken into consideration, which again emphasises the key role the value of reciprocity plays in adult-child relations.

5.4. Conclusion

Therefore, parents are critical to the effective implementation of Article 12. This means that while participatory initiatives at the civil society and government are indeed commendable, they will always remain superficial until the principles behind these initiatives are adopted and practiced within the family, the environment which has most impact on children's daily lives. When we do focus on this sphere of children's lives we find that while many adults reject Article 12 and the principles behind it out rightly, on closer examination, a grey area can be identified, a middle ground in parental attitudes and children's actual experiences of this Article in their families and communities. This indicates that opportunities do exist for children to express their views and participate in decision-making in these spheres. These opportunities are couched in the terms of existing values and norms, which show that cultural values do not necessarily foreclose discussions on implementing Article 12 in diverse social and cultural contexts. Thus, policy-makers at both the international and national level need to explore how the cultural framework of a particular society can be used to engage communities in dialogue and explore the ways that this article can be implemented within the existing social and cultural context.

For example, one of the issues that has been particularly emphasised in the above discussion on the context for the implementation of Article 12 within the Ghanaian social cultural context has been the lack of interaction between parents and their children. This lack of interaction makes it premature to talk about children expressing their views since, in many cases, they cannot even talk to their parents and adults more generally. As one participant in a FGD with mature students at the University of Ghana Legon pointed out, ‘many children cannot even talk to their parents so how can you be talking of them expressing their views’ (FGD with Mature Students, 8th February 2006)?

Hence, there is a need for policy-makers to focus on other initiatives, which may facilitate the implementation of Article 12. One suggestion is to encourage parents to talk to their children, not just to ask about progress in school or interrogate them about their activities; and conversely, enable children to also talk to their parents and not merely ask them for money for school fees or food. In this way it will be possible to open an avenue to improve parent-child relations, which, some participants in Nima and Ga Mashie believed, may facilitate the better implementation of this Article. To put it succinctly, parents need to start talking and interacting socially with their children before policy-makers can begin to seriously consider the implementation of Article 12 within the family and community sphere in Ghana.

CONCLUSION

The starting point of this thesis was that in contrast to the binary debate between the universality and relativity of children's rights, the reality of children's lives illustrates that there is, in fact, a middle ground in which people live their lives. This is especially evident in Africa where a vast range of traditional values co-exist with European influences and Islam as a result of historical trading links, colonisation, missionary activities, globalisation and the migration of people around the world. Not only has this led to the emergence of cultural accommodationists who pick and choose the aspects of their culture they wish to follow or flout at any one time, but it also means that child-rearing and human development occurs in multicultural contexts.

As a result, the thesis was based on the premise that it is necessary to explore ways to move beyond the universality-relativity divide, which has dominated the discourse on children's rights since its earliest days. Going beyond the binary divide is particularly pertinent in our world today where children are being misused, abused and exploited because of their vulnerability, subordination and powerless status in society. In the light of the challenges facing children around the world, policy-makers cannot continue to talk merely in terms of the universality vs. relativity of children's rights as this prevents them from being able to take appropriate steps to protect and support the children of today. Rather, these challenges reveal that at this time an appropriate strategy required to achieve better protection for children needs to take into serious consideration both the principles on which the Convention is based and the cultural values and beliefs of local communities.

The strategy suggested in the thesis is to involve local communities in the interpretation and implementation of the Convention by initiating a dialogue about children's rights. This will enable policy-makers and others working towards the more effective implementation of the Convention to not only develop a deeper understanding of the views of local people on children's rights, but also to identify commonalities of thought, and understand the reasons behind persisting differences in perceptions of children's rights. In this way, those advocating for the implementation of the Convention will be able to explore how best they can implement the Convention without overlooking local values in relation to child rearing, which continue to guide the lives of many people in diverse countries around the world. Hence, the aim of all chapters presented here is to demonstrate the importance and vital need of engaging local communities in dialogue.

Following on from this, the thesis sought to highlight the flexibility inherent within the Convention, which enables governments to harmonise laws that are in line with the Convention, but also to incorporate the values of the context within which the laws they introduce will operate. In particular I focus on Ghana, the first country to ratify the Convention, and one of the few countries in Africa to have introduced a Children's Act into its national legislative framework. This Children's Act provides support for a middle ground approach to children's rights as it not only seeks to harmonise national law to meet the Convention's standards, but also incorporates provisions that are premised on the context within which it operates, for example the Child Panel provision and the recognition that children have responsibilities within the home which it describes as 'light' work. However, the example of Ghana further underscores the need to not only identify a middle ground in law and policy, but also in local community perceptions by engaging this group in dialogue. This is because despite the conducive legal and policy

framework that currently exists in the country, the reality of children's lives 10 years after the passage of the Act is in stark contrast to its provisions. These limitations to the implementation of the Convention and the Act have normally been explained in terms of lack of awareness and resources, but this assumes that once people have knowledge they will support children's rights and facilitate its implementation; or that once resources are available, they will be used to support the enforcement of children's rights laws. The evidence shows us that, hitherto, this has not been the case. Thus, I argue that it is critical that policy-makers and others working towards the implementation of the Convention consider local perceptions and reactions to the very concept of children's rights in greater depth because in cultural settings where the value of reciprocity underpins all social relationships, the idea of inalienable rights for anyone, let alone children, is foreign. In these contexts many believe that children's rights mean children's rights to empowerment only and hence, they reject the concept. When the language of needs was used instead, there was much less resistance as these are things that communities have been striving to provide for their children for hundreds of years and will continue to do so even if they never become aware of the Convention and the Act. However, there are some adults within the population who are feeling frustrated because of the fact that the introduction of the Children's Act and the concept of children's rights have led to a change in the way parental obligations are expressed, from the language of moral obligations to legally articulated responsibilities with the implication that parents can be penalised if they fail to provide the necessities of life for their children.

As a result of the continuing limited enforcement of the Children's Act, it becomes even more critical for us to identify the middle ground within local communities, not merely in the government policy and legal framework as it is the public who are key to the effective

implementation of any social legislation. Thus, this further underlines the need to involve local communities in the interpretation of children's rights by engaging them in dialogue and eliciting their opinion about what constitutes children's rights in their contexts. When the views of local communities, in this case Nima and Ga Mashie, are considered, commonalities of thought on children's rights are indeed identifiable. This is especially so when the language of rights is replaced with that of needs and protection (see Chapter IV). The rights communities identified were notably education, food, medical care, shelter, and parental care. However, although these were in line with the Convention and can be used as an entry point to engage communities in a discussion on children's rights, these commonalities also revealed the importance of local contexts, local realities and local 'takes' as they lead communities to prioritise the rights they believe children have in a particular way. For example, the emphasis children and adults placed on education and parental care was due to the belief that by ensuring these rights for children, they will, in turn, grow up and look after their parents in their dotage (see Chapter IV). This focus on parents as the primary carers of children was an unexpected commonality between local perceptions and global standards as traditionally in these contexts child-rearing was the responsibility of the wider kin group or the community. However, many participants to this study expressed the feeling that it was when parents died or delegated their responsibilities to someone else that children began to encounter difficulties and hardships in life. Thus, it appears that a shift in the role of biological parents within child-rearing has occurred in recent years.

Moreover, while commonalities of thought were certainly identifiable, the engagement with local communities also reveals that certain rights they identified were at odds with the Convention; for example, those relating to the need for children to be disciplined, to

respect and to undertake their responsibilities within the home. The persisting importance of these so-called rights emerged as a result of the importance of cultural values such as reciprocity, respect and responsibility, which constantly filtered into discussions with adults and children on children's rights and entitlements due to the important role they continue to play in regulating parent-child relations. Thus, this underscores the need for us to acknowledge the fact that cultural values and beliefs permeate through all discussions on children's position in society, including the rights to which they are entitled. This remains the case even with regards to those rights that were in line with international standards.

The importance of cultural values also highlights the need to incorporate these values in the discourse on children's rights, as well as in the strategies developed to achieve more effective implementation of the Convention and thus, better protection for children in diverse contexts. To illustrate how this approach can be achieved the thesis focuses on the implementation of Article 12, which is based specifically on American ideologies of civil and political rights, and as a result, it is at odds with the cultural and social values of many societies around the world, including Ghana. Specifically, I sought to explore the possibility of identifying a middle ground approach in relation to an Article so very much at odds with the cultural and social framework of local communities. The thesis reveals that while many adults reject Article 12 and the principles behind it outright, on closer examination it is possible to identify a grey area in parental attitudes and children's actual experiences of this Article in their families and communities in Ghana. This indicates that opportunities do exist for children to express their views and participate in decision-making in these spheres. Thus, cultural values do not necessarily preclude discussions about the implementation of Article 12 in these contexts. Having said this, policy-makers

and children's rights advocates need to bear in mind that the opportunities that do exist are very often couched in the terms of existing values and norms. As a result, they need to explore how they can use the cultural framework of a particular society to engage communities in dialogue. In this way they will be able to implement the Convention's standards within existing social and cultural contexts, bearing in mind the limitations, as well as the opportunities.

Implications for Research

The thesis has several implications for research undertaken in the fields of human rights law, sociology and anthropology, especially as they relate to children's rights, parent-child relations and child-rearing/socialization. In human rights law, it will contribute to the discourse on children's rights by underlining the need to move beyond the universality and relativity debate and explore strategies for effective implementation of children's rights laws and treaties, which are situated in local realities, but bearing in mind global standards. Within sociology the thesis will contribute to the ever-growing body of literature on the sociology of childhood by offering a perspective from an African context on the construction of childhood and the socialization of children, and by interrogating the broader discussion of children's rights in terms of the results. This is an important contribution because, while there are numerous studies on child-rearing and socialization practices in Ghana (Kaye, 1962; Oppong 1973; Goody 1973; 1982, Azu 1974; Nukunya, 2003) and other African countries, these for the most part, were carried out before the widespread ratification of the Convention on the Rights of the Child. Thus there is now a need for new anthropological and sociological research on child-rearing, which is linked to the children's rights discourse. This is important as such research has the ability to highlight the dynamics of parent-child relations, which are often not stated explicitly, but

have an impact on the implementation of the Convention and Children's Acts in societies around the world. By providing us with an insight into the minutiae of family relations, such research will illustrate key phenomena that have an impact on the enforcement of children's rights, which will not only contribute to furthering the discourse on children's rights beyond the universality vs. relativity dichotomy, but will also be invaluable for policy-makers developing strategies for more effective implementation of children's rights laws in their local contexts.

Thirdly, by focusing my attention largely on collecting the views of children in particular, the research gained a deep insight into what it means to conduct research with children in a Ghanaian context. By highlighting these insights and constraints into participatory research in Ghana, it contributes to broadening the focus of current discussions and initiatives on this subject beyond European and Northern contexts, which have hitherto dominated the discourse on participatory research with children. This is a crucial contribution because of the increasing number of projects seeking to involve children or elicit their views on a number of subjects in Ghana and other African countries. Hence, there is a need to develop a body of research focusing on ethical factors and processes on participatory research with children within these contexts.

Areas of Further Research

The thesis has opened up new areas for exploration, which are crucial to deepening our understanding of the limitations of children's rights and enabling us to explore strategies for more effective implementation, especially within a variety of African contexts. Three in particular are noteworthy. Firstly, a key issue that emerged in the research was that while communities reject the concept of children's rights, imported by the State or in the

projects of NGOs, a different response is obtained when the language of needs is used. This is because education, food and clothing are seen as basic needs community members have been striving to provide since the beginning of humanity, as prescribed by tradition and culture and religion. In Nima, where most inhabitants are Muslims this particular point repeatedly emerged as important; many Muslims who had never heard of either the Convention or the Children's Act (of Ghana) explained the way they perceive their duties solely in relation to Islamic teachings. This led me to realise the need to explore alternative ways of communicating children's rights principles in terms that can be better appreciated by a range of local communities. For example, exploring how Islamic teachings relating to parental duties can provide an entry point into engaging communities in dialogue on children's rights. This research would not only contribute to the children's rights discourse, but it would also have policy and practical implications for those working on policies related to children's rights' implementation within Muslim communities in Africa, as well as elsewhere.

Secondly, another issue that has emerged in this thesis is the changes that have occurred in parent-child relations in Ghana in recent years. Although child-rearing was seen as a communal responsibility in the past societies in the contexts in which I conducted fieldwork, recent years have seen a shift in the role of parents in the rearing of their children. Increasingly, children are pointing to their need for parents to show love and attention to them as they feel that this is critical in ensuring that their needs and rights are met. However, at the same time, large numbers of parents are retreating from their responsibilities of parenthood leaving behind an increasing number of 'inadequately parented children' (Nsamenang, 2004). As a result, it is critical that new sociological and anthropological research studies are developed, which seek to better understand the

changing role of parents in the rearing of their children and its impact on family relations within the home, as well as on children's rights and welfare overall. The impact of these changes on the concept of reciprocity, which underpins all social relationships in Ghana, would also be a critical area of exploration.

Finally, the thesis has heavily emphasised the extent to which cultural constraints and frameworks dominate discussions on topics such as children's rights, as well as their significance in terms of the limited implementation of the Convention in Ghana and Africa more generally. This focus on the importance of culture in local perceptions leads to new questions that need to be asked about the implications this has for those African parents who migrate with their children to Western countries to escape economic hardships, conflict or persecution. The case of Nigerian Professor, Festus Oguhebe, underscores the need for this research. Specifically, it is vital that such research should explore the challenges that parents face in adapting to their new environments while seeking to hold onto the cultural values that underpin their lives and outlooks. Furthermore, this research also has to explore the impact of these new environments on parent-child relations and on the principles of respect, responsibility and reciprocity that have, hitherto, regulated such relationships.

Concluding Words

This thesis has sought to highlight the need to move beyond the universality and cultural relativity dichotomy in order to better, and more effectively, implement the Convention and children's rights more generally. However, while doing this, policy-makers and those working towards the more effective implementation of the Convention, cannot, and in fact, should not, overlook or belittle the importance cultural values hold for local

communities. Rather, they must acknowledge the importance culture holds for local communities, especially in relation to child-rearing and socialization practices. To go further, they need to engage with these values and their limitations and incorporate them into the discourse on children's rights, as well as in the strategies developed to achieve more effective implementation of the Convention. It is in this way that it will be possible to ensure that children are protected within the environments that have the most impact on their lives: their families and communities.

APPENDIX I

Details of Interviews Conducted

1. **Iddriss Abdullah, Assistant Child Protection Officer, UNICEF-Ghana**, Accra, Wednesday 18th January 2006.

2. **Ruth Addison, Programme Manager, the Ghana National Commission on Children, the Ministry of Women and Children's Affairs**, Accra, Monday 27th February 2006.

3. **Stephen Adongo, Deputy Director of the Department of Social Welfare, The Ministry of Manpower, Youth and Employment**, Accra, Tuesday 21st February 2006.

4. **Bright Appiah, Director of Children's Rights International**, Accra, Tuesday 21st February 2006.

5. **Hon. Nii Adjiri Barnor, Assemblyman for Ngleshie (Ga Mashie)**, Accra, Wednesday 8th March 2006.

6. **Hon. Ebenezer Kojo Boyetey, Assemblyman for Nima West**, Accra, Friday 20th January 2006.

7. **Peter Edufful, Acting Executive Secretary of the Ghana National Commission on Children, the Ministry of Women and Children's Affairs**, Accra, Tuesday 24th January 2006.

8. **Nii Futa I, the Chief of Nima**, Accra, Friday 16th December 2005.
9. **Vincent Gasana, Freelance Journalist**, London, Thursday 21st September 2006
(Informal E-mail Discussion)
10. **Sylvester Kyei-Gyamfi, Research Department, the Ghana National Commission on Children, the Ministry of Women and Children's Affairs**
Accra, Thursday 26th January 2006.
11. **Gifty Okine, the Department of Social Welfare (Ashiedu Keteke/Ablekuma Zone A Office)**, Accra, Wednesday 1st March 2006.
12. **Hon. Nii Tackie-Commey, the National Democratic Congress (NDC) Member of Parliament for Ashiedu Keteke**, Accra, Wednesday 22nd February 2006.
13. **Hon. Shareau Tajudeen, Assemblyman for Nima East**, Accra, Wednesday 25th January 2006.
14. Presentation by **Beatrice Vib-Sanziri, Assistant Commissioner of Police and Head of the Domestic Violence and Victim Support Unit of the Ghana Police Service** at a Seminar Organised by the Centre for Community Development Initiatives, London, 29th September 2006.

APPENDIX 2

Profile of FGDs Conducted in Nima

FGDs with Adults

1. FGD with Congregation at the **Islamic Institute Mosque** Organised by Director of Institute, Sheik Hidr, Saturday 5th November 2005

2. FGD with Adults at the **Mosque of the Kardo Community**, Thursday 15th December 2005

3. FGD with Congregation at the **Institute of Islamic Studies Mosque**, Organised by local businessman, Mr Mohammed Tinash, Friday 30th December 2005

4. FGD with Women from the **Islamic Charity Centre for Women's Orientation** (Maamobi), Saturday 31st December 2005

FGDs with Out-of-School Children

1. FGD with Out-Of-School Children at **the Islamic Institute School** Organised by local businessman, Mohammed Tinash, Thursday 19th January 2006

2. FGD with Out-of-School Children **Organised by Nima East Assemblyman at Nima 441**, Wednesday 25th January 2006

3. FGD with Students at NIMA **441 Social Welfare** (Vocational Training Centre), Tuesday 14th February 2006

FGDs with School Children

1. FGD with School Children at Nima Basic I Junior Secondary School, 27th October – 14th December 2005 (meetings were held once a week for 1 hour)
2. FGD with School Children from Nima Basic I Primary, Monday 12th December 2005
3. FGD with School Children from Nima Basic II Primary, Monday 12th December 2005
4. FGD with School Children from Islamic Institute Primary School, Tuesday 13th December 2005
5. FGD with School Children Organised by the Nima West Assemblyman, Saturday 7th January 2006
6. FGD with School Children Organised by the Maamobi East Assemblyman, Thursday 26th January 2006
7. FGD with the Youth Wing of the Women's Orientation Centre, Maamobi, Saturday 4th February 2006

APPENDIX 3

Profiles of FGDs Conducted in Ga Mashie

Adult FGDs

1. First FGD with Adults at **Freeman's Memorial Chapel, Organised by Mr. Ebenezer Mettle, CENCOSAD Facilitator**, Bukom Square, Wednesday 22nd February 2006

2. Second FGD with Adults at **Freeman's Memorial Chapel, Organised by Mr Ebenezer Mettle, CENCOSAD Facilitator**, Bukom Square, Monday 27th February 2006

3. FGD with Elders of **the Sempe Mantse We**, 8th February 2006

FGDs with Out-of-School Children

1. FGD with Children from the **Catholic Action for Street Children**, Laterbiokoshie, 18th October – 15th November 2005.

2. Out-of-School Children at the **Street Academy**, High Street, Friday 27th January 2006

3. FGD with Out-of-School Children **Organised by the Sempe Mantse We**, Friday 10th February 2006

4. First FGD with Out-of-School Children at **Freeman's Memorial Chapel**,
Organised by Mr. Ebenezer Mettle, CENCOSAD Facilitator, Bukom Square,
Monday 20th February 2006

5. Second FGD with Out-of-School Children at **Freeman's Memorial Chapel**,
Organised by Mr. Ebenezer Mettle, CENCOSAD Facilitator, Bukom Square,
Monday 20th February 2006

FGDs with School Children

1. FGD with School Children from **Sempe II Primary**, Wednesday 1st February
2006

2. FGD with School Children from **Accra Royal Junior Secondary School**, 8th –
15th February 2006 (Two two-hour sessions)

3. FGD with **Bishop Mixed Junior Secondary School**, High Street, Wednesday 8th
February 2006

4. FGD with Children from **Independence Avenue I Junior Secondary School**,
near Makola Market, Friday 24th February 2006

5. FGD with **CENCOSAD's Freeman Stop Child Labour Club Organised by
Mr. Ebenezer Mettle at Freeman's Memorial Chapel**, Bukom Square, Monday
27th February 2006

6. FGD with School Children from **Independence Avenue II Junior Secondary School**, near Makola Market, Tuesday 28th February 2006

APPENDIX 4

FGDs with Other Groups

Adults

1. FGD with Media Professionals, Accra, Wednesday 14th September 2005
2. FGD with Final Year Mature Students from the Social Work Department at the University of Ghana, Legon, Accra, Tuesday 8th November 2005

Children

1. FGD with Curious Minds: Children and Youth in Broadcasting, Accra, Friday 9th September 2005
2. FGD with Junior Secondary School Pupils at Englebert's International School, Airport Residential Area, Accra, Thursday 23rd February 2006
3. FGD with Primary and Junior Secondary Pupils at Mary Mother of Good Counsel School, Airport Residential Area, Accra, Friday 24th February 2006
4. FGD with Junior Secondary School Pupils at Christ the King International School, Accra, Tuesday 28th February 2006

APPENDIX 5

FGD Question Schedule

Section I: Attitudes to/Perceptions of Children in Ghana Today

1. How is childhood constructed in your community? What/Who is a child according to the community?

2. What are the attributes/characteristics of childhood?

3. What roles does your community think children should play in society?

4. How are children treated?

5. What are the attitudes of adults towards children?/How are children perceived/regarded by adults in your community?

6. What signifies the end of childhood? Is it the age of 18 or something else?

Section II: The Concept of Children's Rights

1. Ask participants what they think children need to stay alive and grow up well.

2. Put the rights mentioned above in order of priority
 - a. Be sure to ask them why they have ordered them in this way

3. Ask participants which rights does their community do well at upholding?
 - a. Be sure to ask: what is their reason for saying this?
 - b. How do they know this?

4. Ask participants which rights does their community need to pay more attention to?
 - a. Be sure to ask: what is their reason for saying this?
 - b. How do they know this?

Section III: Knowledge of the CRC/Children's Act

1. Do you know about the Convention on the Rights of the Child?

2. Do you know about the Children's Act?

- a. How do you know about it?
- b. What do you know about it?

3. Select some articles of the CRC and some sections of the Children's Act, write them out on pieces of paper and ask participants to give their thoughts on the area especially how that right has been implemented in Ghana, its obstacles and opportunities. Questions to ask:

- a. What do they think of this particular provision of the Children's Act?
- b. What is the provision trying to achieve?
- c. What is the current situation in Ghana with regards to this particular right?
Is it being implemented from your experiences?
- d. What steps have been taken to enforce this provision? Who is responsible for this action? DA, NGO??? Etc
- e. What problems has enforcement faced?
- f. What obstacles have been in the way of enforcing this provision?
- g. What are the reasons for these obstacles or the problems?
- h. What needs to be done to make sure that this particular provision is implemented?
- i. What action needs to be taken to address this problem?

Section IV: The Context for Children's Participation

1. What is child participation?

2. Think about the different ways to participate in your environment

- a. Do you participate in any issues *affecting you at the family level?*
How?
- b. Do you participate in any issues *affecting you and other children in the community?* How?
- c. Do you participate in any *issues affecting the community?* How?

- d. Ask participants to do a mapping of their environment and pinpoint how they participate in each sphere of their environment.
3. What is the environment like for children's participation in your community?
Why is it like this?
4. What obstacles do children face when they try to participate? Why are they obstacles?
5. What are the reactions of adults to children's participation? /What are the attitudes of adults towards children's participation? What is the reason for this?
6. How do adults react to children who try to participate in issues affecting them or the community generally? Why do they react like this?

Section V: Importance of Participation

1. Do you think it is important for children to participate in matters affecting them? Why?
 - a. Participants to list 4 reasons why they think it is important/or not important for children to participate on issues affecting them.
2. Do you think it is important for children to participate in issues affecting the wider community? Why?
 - a. Participants to list 4 reasons why they think it is important/or not important for children to participate on issues affecting their communities.
3. How can children benefit from participation?
4. How can society benefit from children's participation?

Section VI: Factors That Would Facilitate Children's Participation

1. How can we make child participation work at the family level?
2. How can we make child participation work at the community level?
3. What conditions need to be established to make child participation work in Ghana? /How can we create an enabling environment for children's participation in Ghana?
4. Identify the key obstacles to children's participation and ask participants what solutions can be developed to address these obstacles.
5. In cases where adults themselves are not empowered, what approach would you take to convince them of child participation?

Section VII: Challenges Facing Children In Ghana Today & How to Address them

1. What are the challenges/problems facing children in Ghana today?
2. Why do you consider these as challenges/problems
3. What are the causes of these challenges?
4. How do these challenges/problems manifest themselves?
5. What are the consequences of these problems for children and wider society?
6. How do you know about these challenges? Where do you get your information from? (Sources of Knowledge/Info – the media, school, NGOs, from witnessing them on the streets, family, experience etc)
7. How can these challenges be addressed?

APPENDIX 6

The Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990.

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, '

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his

or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

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

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial

review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental

violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of

breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to

international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them

to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State

Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

4. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

APPENDIX 7
African Charter on the Rights and Welfare of the Child, O.A.U.
Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29,
1999

PREAMBLE

The African Member States of the Organization of African Unity, Parties to the present Charter entitled 'African Charter on the Rights and Welfare of the Child',

Considering that the Charter of the Organization of African Unity recognizes the paramouncy of Human Rights and the African Charter on Human and People's Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status,

Recalling the Declaration on the Rights and Welfare of the African Child (AHG/ST.4 Rev.I) adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia. from 17 to 20 July 1979, recognized the need to take appropriate measures to promote and protect the rights and welfare of the African Child,

Noting With Concern that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental

circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care,

Recognizing that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding,

Recognizing that the child, due to the needs of his physical and mental development, requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

Taking Into Consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child,

Considering that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone,

Reaffirming Adherence to the principles of the rights and welfare of the child contained in the declarations, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.

Have agreed as follows:

PART 1: RIGHTS AND DUTIES

Chapter One: Rights And Welfare Of The Child

Article 1: Obligation of States Parties

1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.

3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Article 2: Definition of a Child

For the purposes of this Charter, a child means every human being below the age of 18 years.

Article 3: Non-Discrimination

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

Article 4: Best Interests of the Child

1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.
2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

Article 5: Survival and Development

1. Every child has an inherent right to life. This right shall be protected by law.
2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.
3. Death sentences shall not be pronounced for crimes committed by children.

Article 6: Name and Nationality

1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
5. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 7: Freedom of Expression

Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.

Article 8: Freedom of Association

Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.

Article 9: Freedom of Thought, Conscience and Religion

1. Every child shall have the right to freedom of thought conscience and religion.

2. Parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child.

3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

Article 10: Protection of Privacy

No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.

Article 11: Education

1. Every child shall have the right to an education.

2. The education of the child shall be directed to:

(a) The promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) Fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;

- (c) The preservation and strengthening of positive African morals, traditional values and cultures;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;
- (e) The preservation of national independence and territorial integrity;
- (f) The promotion and achievements of African Unity and Solidarity;
- (g) The development of respect for the environment and natural resources;
- (h) The promotion of the child's understanding of primary health care.

3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:

- (a) Provide free and compulsory basic education;
- (b) Encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
- (c) Make the higher education accessible to all on the basis of capacity and ability by every appropriate means;

(d) Take measures to encourage regular attendance at schools and the reduction of drop-out rates;

(e) Take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.

5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

6. States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.

7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph I of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.

Article 12: Leisure, Recreation and Cultural Activities

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 13: Handicapped Children

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.

2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in

particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.

3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

Article 14: Health and Health Services

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:

(a) To reduce infant and child mortality rate;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To ensure the provision of adequate nutrition and safe drinking water;

(d) To combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;

- (e) To ensure appropriate health care for expectant and nursing mothers;

- (f) To develop preventive health care and family life education and provision of service;

- (g) To integrate basic health service programmes in national development plans;

- (h) To ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;

- (i) To ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;

- (j) To support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

Article 15: Child Labour

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.

2. States Parties to the present Charter shall take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:

(a) Provide through legislation, minimum wages for admission to every employment;

(b) Provide for appropriate regulation of hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;

(d) Promote the dissemination of information on the hazards of child labour to all sectors of the community.

Article 16: Protection against Child Abuse and Torture

1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms

of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.

2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

Article 17: Administration of Juvenile Justice

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.

2. States Parties to the present Charter shall in particular:

(a) Ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;

(b) Ensure that children are separated from adults in their place of detention or imprisonment;

(c) Ensure that every child accused in infringing the penal law:

- (i) Shall be presumed innocent until duly recognized guilty;
- (ii) Shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
- (iii) Shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;
- (iv) Shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;

(d) Prohibit the press and the public from trial.

3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.

4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Article 18: Protection of the Family

1. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.

2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the even of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.

3. No child shall be deprived of maintenance by reference to the parents' marital status.

Article 19: Parent Care and Protection

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.

2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.

3. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.

4. Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

Article 20: Parental Responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:

(a) To ensure that the best interests of the child are their basic concern at all times-

(b) To secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and

(c) To ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

2. States Parties to the present Charter shall in accordance with their means and national conditions the all appropriate measures;

(a) To assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;

(b) To assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and

(c) To ensure that the children of working parents are provided with care services and facilities.

Article 21: Protection against Harmful Social and Cultural Practices

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

(a) Those customs and practices prejudicial to the health or life of the child; and

(b) Those customs and practices discriminatory to the child on the grounds of sex or other status.

2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

Article 22: Armed Conflicts

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.

2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

3. States Parties to the present Charter shall, in accordance with their obligation under international humanitarian law, protect the civilian population in armed conflict and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflict. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Article 23: Refugee Children

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.

2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.

3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

4. The provisions of this Article apply *mutatis mutandis* to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

Article 24: Adoption

1. States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

(a) Establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;

(b) Recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive

family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;

(e) Promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;

(f) Establish a machinery to monitor the well-being of the adopted child.

Article 25: Separation from Parents

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;

2. States Parties to the present Charter:

(a) Shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that

environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;

(b) Shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.

Article 26: Protection against Apartheid and Discrimination

1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under Apartheid and in States subject to military destabilization by the Apartheid regime.

2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.

3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and Apartheid on the African Continent.

Article 27: Sexual Exploitation

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

- (a) The inducement, coercion or encouragement of a child to engage in any sexual activity;
- (b) The use of children in prostitution or other sexual practices;
- (c) The use of children in pornographic activities, performances and materials.

Article 28: Drug Abuse

States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

Article 29: Sale, Trafficking and Abduction

States Parties to the present Charter shall take appropriate measures to prevent:

- (a) The abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child;
- (b) The use of children in all forms of begging.

Article 30: Children of Imprisoned Mothers

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- (a) Ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
- (b) Establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- (c) Establish special alternative institutions for holding such mothers;
- (d) Ensure that a mother shall not be imprisoned with her child;
- (e) Ensure that a death sentence shall not be imposed on such mothers;
- (f) The essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

Article 31: Responsibility of the Child

Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty:

- (a) To work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;
- (b) To serve his national community by placing his physical and intellectual abilities at its service;
- (c) To preserve and strengthen social and national solidarity;
- (d) To preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;
- (e) To preserve and strengthen the independence and the integrity of his country;
- (f) To contribute to the best of his abilities. at all times and at all levels, to the promotion and achievement of African Unity.

PART II

Chapter Two: Establishment and Organisation of the Committee on the Rights and Welfare of the Child

Article 32: The Committee

An African Committee of Experts on the Rights and Welfare of the Child hereinafter called 'the Committee' shall be established within the Organization of African Unity to promote and protect the rights and welfare of the child.

Article 33: Composition

1. The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.
2. The members of the Committee shall serve in their personal capacity.
3. The Committee shall not include more than one national of the same State.

Article 34: Election

As soon as this Charter shall enter into force the members of the Committee shall be elected by secret ballot by the Assembly of Heads of State and Government from a list of persons nominated by the States Parties to the present Charter.

Article 35: Candidates

Each State Party to the present Charter may nominate not more than two candidates. The candidates must have one of the nationalities of the States Parties to the present Charter.

When two candidates are nominated by a State, one of them shall not be a national of that State.

Article 36

1. The Secretary-General of the Organization of African Unity shall invite States Parties to the present Charter to nominate candidates at least six months before the elections.

2. The Secretary-General of the Organization of African Unity shall draw up in alphabetical order, a list of persons nominated and communicate it to the Heads of State and Government at least two months before the elections.

Article 37: Term of Office

1. The members of the Committee shall be elected for a term of five years and may not be re-elected, however. the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.

2. Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to determine the names of those members referred to in sub-paragraph 1 of this Article.

3. The Secretary-General of the Organization of African Unity shall convene the first meeting of Committee at the Headquarters of the Organization within six

months of the election of the members of the Committee, and thereafter the Committee shall be convened by its Chairman whenever necessary, at least once a year.

Article 38: Bureau

1. The Committee shall establish its own Rules of Procedure.
2. The Committee shall elect its officers for a period of two years.
3. Seven Committee members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The working languages of the Committee shall be the official languages of the OAU.

Article 39: Vacancy

If a member of the Committee vacates his office for any reason other than the normal expiration of a term, the State which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term - subject to the approval of the Assembly.

Article 40: Secretariat

The Secretary-General of the Organization of African Unity shall appoint a Secretary for the Committee.

Article 41: Privileges and Immunities

In discharging their duties, members of the Committee shall enjoy the privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African Unity.

Chapter Three: Mandate and Procedure of the Committee

Article 42: Mandate

The functions of the Committee shall be:

- (a) To promote and protect the rights enshrined in this Charter and in particular to:
 - (i) Collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organize meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to Governments;
 - (ii) Formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;
 - (iii) Cooperate with other African, international and regional Institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.
- (b) To monitor the implementation and ensure protection of the rights enshrined in this Charter.

(c) To interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organization of African Unity or any other person or Institution recognized by the Organization of African Unity, or any State Party.

(d) Perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.

Article 43: Reporting Procedure

1. Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:

(a) Within two years of the entry into force of the Charter for the State Party concerned: and

(b) And thereafter, every three years.

2. Every report made under this Article shall:

(a) Contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and

(b) Shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.

3. A State Party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph I (a) of this Article, repeat the basic information previously provided.

Article 44: Communications

1. The Committee may receive communication, from any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.

2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.

Article 45: Investigations by the Committee

1. The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the State Party has adopted to implement the Charter.

2. The Committee shall submit to each Ordinary Session of the Assembly of Heads of State and Government every two years, a report on its activities and on any communication made under Article [44] of this Charter.

3. The Committee shall publish its report after it has been considered by the Assembly of Heads of State and Government.

4. States Parties shall make the Committee's reports widely available to the public in their own countries.

Chapter Four: Miscellaneous Provisions

Article 46: Sources of Inspiration

The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights and from African values and traditions.

Article 47: Signature, Ratification or Adherence

1. The present Charter shall be open to signature by all the Member States of the Organization of African Unity.

2. The present Charter shall be subject to ratification or adherence by Member States of the Organization of African Unity. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the Organization of African Unity.

3. The present Charter shall come into force 30 days after the reception by the Secretary-General of the Organization of African Unity of the instruments of ratification or adherence of 15 Member States of the Organization of African Unity.

Article 48: Amendment and Revision of the Charter

1. The present Charter may be amended or revised if any State Party makes a written request to that effect to the Secretary-General of the Organization of African Unity, provided that the proposed amendment is not submitted to the Assembly of Heads of State and Government for consideration until all the States Parties have been duly notified of it and the Committee has given its opinion on the amendment.

2. An amendment shall be approved by a simple majority of the States Parties.

APPENDIX 8
The 1998 Children's Act of Ghana (Act 560)

ARRANGEMENT OF SECTIONS

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SCHEDULE

THE FIVE HUNDRED AND SIXTIETH
ACT
OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA
ENTITLED

THE CHILDREN'S ACT, 1998

AN ACT to reform and consolidate the law relating to children, to provide for the rights of the child, maintenance and adoption, regulate child labour and apprenticeship, for ancillary matters concerning children generally and to provide for related matters.

DATE OF ASSENT: 30th December 1998

BE IT ENACTED by **Parliament as follows:** -

PART I - THE RIGHTS OF THE CHILD

Sub-Part I - Rights of the Child and Parental Duty

1. Definition of child -

For purposes of this Act, a child is a person below the age of eighteen years.

2. Welfare principle -

(1) The best interest of the child shall be paramount in any matter concerning a child.

(2) The best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child.

3. Non-discrimination -

No person shall discriminate against a child on the grounds of gender, race, age, religion, disability, health status, custom, ethnic origin, rural or urban background, birth or other status, socio-economic status or because the child is a refugee.

4. Right to name and nationality –

No person shall deprive a child of the right from birth to a name, the right to acquire a nationality or the right as far as possible to know his natural parents and extended family subject to the provisions of Part IV, Sub-Part II of this Act.

5. Right to grow up with parents-

No person shall deny a child the right to live with his parents and family and grow up in caring and peaceful environment unless it is proved in court that living with his parents would-

(a) Lead to significant harm to the child; or

(b) Subject the child to serious abuse; or

(c) Not be in the best interest of the child

6. Parental duty and responsibility -

(1) No parent shall deprive a child his welfare whether –

(a) The parents of the child are married or not at the time of the child's birth; or

(b) The parents of the child continue to live together or not.

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

(3) Every parent has rights and responsibilities whether imposed by law or otherwise towards his child which include the duty to-

(a) Protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression;

(b) Provide good guidance, care assistance and maintenance for the child and assurance of the child's survival and development;

(c) Ensure that in the temporary absence of a parent, the child shall be cared for by a competent person and that a child under eighteen months of age shall only be cared for by a person of fifteen years and above

Except where the parent has surrendered his rights and responsibilities in accordance with law.

(4) Each parent shall be responsible for the registration of the birth of their child and the names of both parents shall appear on the birth certificate except if the father of the child is unknown to the mother.

7. Right to parental property -

No person shall deprive a child of reasonable provision out of the estate of a parent whether or not born in wedlock.

8. Right to education and well-being -

No person shall deprive a child access to education, immunisation, adequate diet, clothing, shelter, medical attention or any other thing required for his development.

No person shall deny a child medical treatment by reason of religious or other beliefs.

9. Right to social activity -

No person shall deprive a child the right to participate in sports, or in positive cultural and artistic activities or other leisure activities.

10. Treatment of the disabled child -

(1) No person shall treat a disabled child in an undignified manner.

(2) A disabled child has a right to special care, education and training wherever possible to develop his maximum potential and be self-reliant.

11. Right to opinion -

No person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his well-being, the opinion of the child being given due weight in accordance with the age and maturity of the child.

12. Protection from exploitative labour -

No person shall subject a child to exploitative labour as provided under section 87 of this Act.

13. Protection from torture and degrading treatment -

(1) No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental well-being of a child.

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

14. Right to refuse betrothal and marriage -

No person shall force a child –

(a) To be betrothed;

(b) To be the subject of a dowry transaction; or

(c) To be married.

The minimum age of marriage of whatever kind shall be eighteen years.

15. Penalty for contravention -

Any person who contravenes a provision of this Sub-Part commits an offence and is liable on summary conviction to a fine not exceeding ₪5 million or a term of imprisonment not exceeding one year or to both.

Sub-Part II - Care and Protection

16. District Assembly to protect children -

(1) A District Assembly shall protect the welfare and promote the rights of children within its area of authority and shall ensure that within the district, governmental agencies liaise with each other in matters concerning children.

(2) The Social Welfare and Community Development Department of a District Assembly referred to in this Act as 'the Department' shall investigate cases of contravention of children's rights.

17. Persons to report child abuse and protection cases -

Any person with information on –

(a) Child abuse; or

(b) A child in need of care and protection

shall report the matter to the Department.

18. Meaning of care and protection –

(1) For purposes of this Act, a child is in need of care and protection if the child –

(a) Is an orphan or is deserted by his relatives;

(b) Has been neglected or ill-treated by the person who has the care and custody of the child;

(c) Has a parent or guardian who does not exercise proper guardianship;

(d) Is destitute;

(e) Is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child;

(f) Is wandering and has no home or settled place of abode or visible means of subsistence;

(g) Is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise, or is found in any street, premises or place for the purpose of begging or receiving alms;

(h) Accompanies any person when that person is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering, anything for sale or otherwise;

(i) Frequents the company of any reputed thief or reputed prostitute; is residing in a house or the part of a house used by any prostitute for the purposes of prostitution, or is otherwise living in circumstances calculated to cause encourage or favour the seduction of prostitution of or affect the morality of the child;

(j) Is a person in relation to whom an offence has been committed or attempted under section 314 of the criminal code, 1960 (Act 29) on slave dealing;

(k) Is found acting in a manner from which it is reasonable to suspect that he is, or has been, soliciting or importuning for immoral purposes;

(l) Is below the age of criminal responsibility under the Criminal Code, 1960 (Act 29) and is involved in an offence other than minor criminal matter; or

(m) Is otherwise exposed to moral or physical danger.

(2) A child shall not be considered to come within the scope of paragraphs (i) and (j) of subsection (1) if the only reputed prostitute that the child associate with is his mother and if it is proved that she exercises proper guardianship and care to protect the child from corrupt influences.

19. Investigation by Department

(1) If the Department has reasonable grounds to suspect child abuse or a need for care and protection, it shall direct a probation officer or social welfare officer accompanied by the police to enter and search the premises where the child is kept to investigate.

(2) The Department shall direct the probation officer or the social welfare officer to refer the matter to a Child Panel established under section 27 and of this Act if the child is not in immediate need of care and protection.

(3) If after investigations it is determined that the child has been abused or is in need of immediate care and protection, the Department shall direct a probation officer or social welfare officer accompanied by the police to remove the child to a place of safety for a period of not more than seven days.

(4) The child shall be brought before a Family Tribunal by the probation officer or social welfare officer before the expiry of the seven day period for an order to be made.

(5) Until the Family Tribunal determines the order, the Family Tribunal may commit the child to an approved residential home or to the care of a probation officer, social welfare officer or other suitable person.

20. Care order of Family Tribunal –

(1) Family Tribunal may issue a care order to the Department on an application by a probation officer or a social welfare officer under section 19(4).

(2) The care order shall remove the child from a situation where he is suffering or likely to suffer significant harm and shall transfer the parental rights to the Department.

(3) The probation officer or social welfare officer shall take custody of the child and shall determine the most suitable place for the child which may be -

- (a) An approved residential home;
- (b) With an approved fit person; or
- (c) At the home of a parent, guardian or relative.

(4) The maximum duration of a care order shall be three years or until the child attains eighteen years whichever is earliest and the Family Tribunal may make an interim order or may vary the order.

(5) The Family Tribunal may make a further order that the parent, guardian or other person responsible for the child shall pay for the cost of maintaining the child.

(6) A Family Tribunal shall not designate the manager of an institution as an approved fit person to whom care of a child can be entrusted unless the institution is one which the Minister responsible for Social Welfare has approved by notice

published in the Gazette or the institution as assigned that function by or under an Act of Parliament.

21. Supervision order of Family Tribunal –

(1) A Family Tribunal may issue a supervision order to the Department on an application by a probation officer or social welfare officer under section 19(4).

(2) The supervision order shall be aimed at preventing any significant harm being caused to a child whilst he remains at his family home in the custody of his parent, guardian or relative.

(3) The supervision order shall place a child under the supervision of the probation officer while he remains in the custody of his parent, guardian or relative.

(4) The maximum duration for a supervision order shall be one year or until the child attains eighteen years.

22. Duties of a probation officer or social worker -

The duties of a probation officer or social welfare officer with respect to a care or supervision order are to -

- (a) Advice and help the child and his family;
- (b) Take reasonable steps to ensure that the child is not subjected to harm; and
- (c) Hold regular reviews to plan for the future of the child.

23. Home visits –

A probation officer or social welfare officer shall be permitted by a parent, guardian or relative of the child to visit the child at his family home.

24. General provisions on orders –

(1) A child who contravenes an order from the Family Tribunal and runs away may be apprehended without warrant by the police and returned to the place of the care or supervision order.

(2) The Family Tribunal may make another order where the child has run away in order to place the child elsewhere if the approved fit person is not willing to take the child.

25. Discharge of orders –

A care or supervision order may be discharged in the best interest of the child by the Family Tribunal on the application of –

- (a) The child;
- (b) A probation officer;
- (c) A social welfare officer; or
- (d) A parent, guardian or relative of the child.

26. Care and adoption –

A child under a care order whose parent, guardian or relative does not show an interest in the welfare of the child within a period stipulated by a Family Tribunal may be put up for adoption.

PART II– QUASI –JUDICIAL AND JUDICIAL CHILD ADJUDICATION

Sub – Part I – Child Panels

27. Establishment of Child Panels –

There shall be establishment in each district such number of Child Panels as the District Assembly may consider necessary.

28. Function of Child Panels-

A Child Panel shall have non judicial functions to mediate in criminal and civil matters which concern a child prescribed under this Act.

29. Composition of Child Panel –

(1) A child Panel shall consist of the following persons in the relevant district-

- (a) The Chairman of the Social Services Sub- Committee of a District
- (b) Assemblyman who shall be the chairman;
- (c) A member of a woman’s organisation;
- (d) A representative of the Traditional Council;
- (e) The district social worker, who shall be the secretary;
- (f) A member of the Justice and Security Sub- Committee of the District Assembly; and
- (g) Two other citizens from the community of high moral character and proven integrity one of whom shall be an educationist.

(2) The members of a Child Panel shall be appointed by the Minister,

(3) The tenure of office of a Child Panel shall be the same as that of the District Assembly.

30. Meetings of Child Panel-

(1) A Child Panel shall meet as often as may be necessary except that a Child Panel shall meet at least once in every three months.

(2) The quorum at any meeting of a Child Panel shall be four and in the absence of the Chairman shall be chaired by a member elected by the members present from their number.

(3) Any agreement made between the parties shall be recorded by the secretary to the Child Panel.

(4) Any person with a significant interest in a matter before a Child Panel may be invited to attend and participate in its deliberations.

(5) A Child Panel shall permit a child to express his opinion and participate in any decision which affects the child's well-being commensurate with the level of understanding of the child concerned.

(6) Except as otherwise provided in this Sub –Part a Child Panel shall regulate the procedure at its meetings

31. Child Panel in civil matters –

A Child Panel may mediate in any civil matter concerned with the rights of the child and parental duties.

32. Child Panel in criminal matters –

(1) A Child Panel shall assist in victim-offender mediation in minor criminal matters involving a child where the circumstances of the offence are not aggravated.

(2) A Child Panel shall seek to facilitate reconciliation between the child and any person offended by the action of the child.

(3) A child appearing before a Child Panel shall be cautioned as to the implications of his action and that similar behaviour may subject him to the juvenile justice system.

(4) A Child Panel may decide to impose a community guidance order on a child with the consent of the parties concerned in the matters.

(5) A community guidance order means placing the child under the guidance and supervision of a person of good standing in the local community for a period not exceeding six months for purposes of this reform.

(6) A Child Panel may in the course of mediation propose an apology, restitution to the offended person or service by the child to the offended person.

Sub-Part II – Family Tribunal

33. Family Tribunal

(1) There shall be Family Tribunals, which shall exercise the jurisdiction provided under section 35, and any other provisions of this Act.

(2) Any reference to a Family Tribunal in this Act shall be construed to mean a Community Tribunal established under the Courts Act, 1993 (Act 456).

34. Composition of Family Tribunal –

A Family Tribunal shall be duly constituted by a panel consisting of a Chairman and not less than two or more than four other members including a social welfare officer appointed by the Chief Justice on the recommendation of the Director of Social Welfare.

35. Jurisdiction of Family Tribunal –

A Family Tribunal shall have jurisdiction in matters concerning parentage, custody, access and maintenance of children and shall exercise such other powers as are conferred on it by this Act or under any other enactment.

36. Family Tribunal sittings –

(1) A Family Tribunal shall sit either in a different building or room from that in which sitting of other courts are held, or on different days from those on which sittings of other courts are held and no person shall be present at any sittings of a Family Tribunal except –

(a) Members and officers of the Family Tribunal;

(b) Parties to the case before Family Tribunal, their counsel, witnesses and other persons directly concerned in the case;

(c) The parent or guardian of the child before the Family Tribunal;

(d) Probation and social welfare officers; and

(e) Any other person whom the Family Tribunal authorises to be present.

(2) The Chairman of a Family Tribunal shall arrange for its sitting as often as possible to dispose of cases expeditiously.

37. Procedure at Family Tribunal –

The proceedings at a Family Tribunal shall be as informal as possible and shall be by enquiry and not by adversarial procedures.

38. Rights of the child at Family Tribunal -

(1) A child shall have a right to legal representation at a Family Tribunal.

(2) A child shall have a right to give an account and express an opinion at a Family Tribunal.

(3) A child's right to privacy shall be respected throughout the proceedings at a Family Tribunal.

(4) The right of appeal shall be explained to the child, guardian and parents.

39. No publication of information on child

(1) No person shall publish any information that may lead to the identification of a child in any matter before a Family Tribunal except with the permission of the Family Tribunal.

(2) Any person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ₪5 million or imprisonment for a term not exceeding one year or both.

PART III – PARENTAGE, CUSTODY, ACCESS AND MAINTENANCE

Sub –Part I - Parentage

40. Application for parentage –

(1) The following persons may apply to a Family Tribunal for an order to confirm the parentage of a child-

- (a) The child ;
- (b) The parent of a child;
- (c) The guardian of a child;
- (d) A probation officer;
- (e) A social welfare; or
- (f) Any other interested person.

(2) The application to the Family Tribunal may be made –

- (a) Before the child is born; or

(b) Within three years after the death of the father or mother of a child; or

(c) Before a child is eighteen years of age or after the child has attained that age with special leave of the Family Tribunal.

41. Evidence of parentage –

The following shall be considered by a Family Tribunal as evidence of parentage –

- (a) The name of the parent entered in the register of births;
- (b) Performance of customary ceremony by the father of the child;
- (c) Refusal by the parent to submit to a medical test;
- (d) Public acknowledgement of parentage; and
- (e) Any other matter that the Family Tribunal may consider relevant.

42. Medical test –

The Family Tribunal may order the alleged parent to submit to a medical test and the Tribunal shall on the basis of the evidence before it make such order, as it considers appropriate.

Sub- Part II – Custody and Access

43. Custody –

A parent, family member or any person who is raising a child may apply to a Family Tribunal for custody of the child.

44. Access –

A parent, family member or any person who has been caring for a child may apply to a Family Tribunal for periodic access to the child.

45. Considerations for custody or access –

(1) A Family Tribunal shall consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access.

(2) Subject to subsection (1) a Family Tribunal shall also consider –

- (a) The age of the child;
- (b) That it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents;
- (c) The views of the child if the views have been independently given;
- (d) That it is desirable to keep siblings together;
- (e) The need for continuity in the care and control of the child; and
- (f) Any other matter that the Family Tribunal may consider relevant .

46. Unlawful child removal –

No person shall unlawfully remove a child from another person who has the lawful custody of the child.

Sub – Part III -Maintenance

47. Duty to maintain a child –

(1) A parent or any other person who is legally liable to maintain a child contribute towards the maintenance of the child is under a duty to supply the necessaries of health, life, education and reasonable shelter for the child.

(2) For the purpose of this section, education means basic education.

48. Application for maintenance order –

(1) The following persons who have custody of a child may apply to a Family Tribunal for a maintenance order for the child –

- (a) A parent of the child;
- (b) The guardian of the child; or
- (c) Any other person.

(2) The following may also apply to a Family Tribunal for a maintenance order –

- (a) The child by his next friend;
- (b) A probation officer;
- (c) A social welfare officer; or
- (d) The Commission on Human Rights and Administrative Justice.

(3) The application for maintenance may be made against any person who is liable to maintain the child or contribute towards the maintenance of the child.

49. Considerations for maintenance orders –

A Family Tribunal shall consider the following when making a maintenance order-

- (a) The income and wealth of both parents of the child or of the person legally liable to maintain the child;
- (b) Any impairment of the earning capacity of the person with a duty to maintain the child;
- (c) The financial responsibility of the person with respect to the maintenance of other children;
- (d) The cost of living in the area where the child is resident;
- (e) The rights of the child under this Act; and
- (f) Any other matter which the Family Tribunal considers relevant.

50. Request for social enquiry report –

- (1) A Family Tribunal may request that a probation officer or social welfare officer prepare a social enquiry report on the issue of maintenance before it for consideration.
- (2) The Family Tribunal shall in making any order consider the social enquiry report prepared by the probation officer or social welfare officer.

51. Form of Maintenance order –

(1) A Family Tribunal may award maintenance too the mother of a child whether married to the father or not where the father has been identified, and the maintenance shall include the following–

(a) Medical expenses for the duration of her pregnancy, delivery or death of the child;

(b) A periodic allowance for the maintenance of the mother during her period of pregnancy and for a further period of nine months after the delivery of the child; and

(c) The payment of a reasonable sum to be determined by the Family Tribunal for the continued education of the mother if she is a child herself.

(2) A Family Tribunal may order a periodic payment or lump sum payment for the maintenance of a child and the earnings or property of the person liable may be attached.

(3) The attachment order should be applicable in all cases of failure to pay maintenance.

(4) When considering an application for maintenance, a Family Tribunal may make a maintenance order, which it considers reasonable for any child in the household.

(5) A Family Tribunal may make an order for arrears of maintenance against any person liable to pay the maintenance.

52. Persons entitled to maintenance order –

(1) Any person who has custody of a child who is the subject of a maintenance order is entitled to receive and administer the maintenance order of the Family Tribunal.

(2) If the parent, guardian or whoever has custody of the child should cease to be a fit person, the Family Tribunal of the area where the child is resident may appoint another person to have custody of the child and administer the maintenance order and that person shall act as if originally appointed by the Family Tribunal

53. Duration of order-

(1) A maintenance order issued by the Family Tribunal shall expire when the child attains eighteen years of age or dies before that age.

(2) A maintenance order shall lapse before the child attains the age of eighteen years if before that age the child is gainfully employed.

54. Continuation of maintenance orders in certain cases –

(1) Notwithstanding section 53 a Family Tribunal may continue a maintenance order after a child has attained eighteen years if the child is engaged in a course of continuing education or training after that age.

(2) An application under this section may be brought by a parent of the child, any person who has the custody of the young person or the young person concerned.

55. Variation or discharge of orders –

A Family Tribunal may if satisfied vary or discharge a maintenance order on the application of a parent, the person who has the custody of the child or young person or any other person legally liable to maintain the child.

56. Enforcement of order -

An action may be brought by any person to enforce a maintenance order thirty days after the order is made or due.

57. Non-custodial parent to have access to child –

A non- custodial parent in respect of whom an application is made to a Family Tribunal for an order of parentage, custody, access or maintenance under the Part shall have access to the child who is the subject of the order.

58. Duplicity of maintenance applications –

The provisions of this Act are subject to the Matrimonial Causes Act, 1971 (Act 367) and no action may be brought for a maintenance order if an application for maintenance is pending in matrimonial proceedings.

59. Offences under this part –

Any person who -

- (a) Unlawfully removes a child from another person who has lawfully custody of the child contrary to section 46; or
- (b) Fails to supply the mercenaries of health, life, education and reasonable shelter for a child when legally liable to do so contrary to section 47; or
- (c) Brings an action for a maintenance under this Part while an application for maintenance is pending in matrimonial proceedings,
- (d) Commits an offence and is liable on summary conviction to a fine exceeding $\text{€}2$ million or a term of imprisonment not exceeding six months or to both.

60. Procedure for applications –

The forms to be used and the procedure for applications under this Part shall be provided for by regulations made under this Act.

61. Waiver of fees-

The Chief Justice may by legislative instrument waive part or all of the filling fees or other fees payable for an application under this Part.

PART IV – FOSTERAGE AND ADOPTION

Sub- Part I –Fosterage

Person who foster –

Any person above the age of twenty-one years of high moral character and proven integrity may be a foster parent to a child.

Definition of foster-parent –

A foster parent is a person who is not the parent of the child but is willing to under-take the care of maintenance of the child.

Foster-care placement –

(1) Where –

(a) A child has been committed to an approved residential home under a care order;

(b) A recommendation has been made by a probation officer or a social welfare officer that an approved residential home is the most suitable place for a child; or

(c) A child has been placed in approved residential home by any person,

A committee comprising a probation officer, social welfare officer, person in charge of the approved residential home and two other people from the community with the interest in the welfare of children selected by the Department may place the child with a foster parent.

(2) An application to foster a child shall otherwise be made to a probation officer, social welfare officer or to the person in charge of the approved residential home who shall forward the application to the Department.

(3) A foster-parent in whose care a child is placed or committed shall have the same responsibilities in respect of the child's maintenance as the parent of the child while the child remains in his care.

(4) A foster-parent is liable for contravention of any of the provisions under Part I of this Act.

(5) The Minister may by legislative instrument make regulations on fosterage.

Sub-Part II- Adoption Application

65. Jurisdiction and procedure for adoption –

An application for an adoption order may be made to the High Court, Circuit Court or to any Family Tribunal within the Jurisdiction where the applicant or the child resides at the date of the application.

66. Application for adoption –

(1) An application for an adoption order may be made jointly by a husband and his wife to adopt a child.

(2) An application for an adoption order may be made by a mother or father of the child alone or by either of them jointly with a spouse.

(3) An adoption application for an adoption order may be made by a single person subject to the provisions of the Sub –Part except that this shall only apply to a citizen of Ghana and with due regard to the best interest of the child.

67. Restrictions on making adoption orders -

(1) An adoption order shall not be made unless the applicant or, in the case of a joint application, one of the applicants –

(a) Is twenty- five years of age and is at least twenty- one years older than the child; or

(b) Is a relative of the child and is twenty- one years of age

(2) A male applicant shall only be granted an adoption order if the application is in respect of his son or the court is satisfied that special circumstances warrant the order.

(3) An adoption order shall not be made for a child unless –

(a) The applicant and the child reside in Ghana but this shall not apply if the applicant is a citizen of Ghana resident abroad;

(b)The child has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order; and

(c)The applicant has notified the Department of his intention to apply for an adoption order for the child at least three months before the date of the order.

(4) Except as provided under section 66 an adoption order shall not be made to authorise more than one person to adopt a child.

68. Consent of parents and guardians

(1) An adoption order shall only be made with the consent of the parents or guardian of the child.

(2) The court may dispense with the consent of any parent or guardian of the child if satisfied that the parent or guardian has neglected or persistently ill-treated the child, or that the person cannot be found or is incapable of giving consent or that the consent is unreasonably withheld.

(3) Any consent under this section may be given without the knowledge of the identity of the applicant for the order and where the consent is subsequently withdrawn only because the identity of the applicant was not known, the consent shall be considered to have been unreasonably withheld.

(4) Any parent or guardian of a child the subject of an application for adoption who has given consent for the adoption order shall not be entitled to remove the child from the care and possession of the applicant except with the permission of the court and in the best interest of the child.

69. Other consent -

(1) The court may require the consent of any person for an adoption order if it considers that the person has any rights or obligations in respect of the child such as under an agreement, court order or under customary law.

(2) Subject to sub-section (2) of section 66, where a married person is the sole applicant, the court may require the consent of the spouse of that person before the adoption order is made.

70. Conditions for adoption order –

(1) Before a court makes an adoption order it shall be satisfied that –

(a) The consent required under this Sub Part for the adoption order has been obtained and that the parent or guardian of the child understands that the effect of the adoption order will mean permanent deprivation of parental rights;

(b) It is in the best interest of the child and that the wishes of the child have been considered if the child is capable of forming an opinion;

(c) If the child is at least fourteen years of age, his consent to the adoption has been obtained unless it is impossible for the child to express an opinion; and

(d) The applicant has not received or agreed to receive any payment and that no person has made or agreed to make any payment or given or agreed to give any reward to the applicant for the adoption except such as the court may order.

(2) The court may impose conditions when granting an adoption order and may require the applicant to enter a bond to make such provision in respect of the child as the court considers necessary.

(3) The adoption order shall include the following particulars the –

(a) Date and place of birth of the child;

(b) Name, gender and surname of the child before and after the adoption;

(c) Name, surname, address, citizenship and occupation of the adopter; and

(d) Date of the adoption order,

Unless the court directs otherwise.

71. Interim order

(1) Subject to the provisions of this section, the court may postpone the determination of the application and make an interim order giving the custody of the child to the applicant for a period not exceeding two years by way of probation

and may attach such terms including provision for the maintenance, education and supervision of the child as it thinks fit.

(2) When making an interim order the court shall impose conditions that-

(a) The child shall be under supervision of a probation officer or a social welfare officer; and

(b) The child shall not be taken out of Ghana without the permission of the court.

(3) The consent and power to dispense with consent shall be the same for an interim order of adoption as for an adoption order.

(4) No interim order shall be made unless section 67(3) has been complied with.

(5) An interim order shall not be considered to be an adoption order under this Sub-Part.

72. Knowledge of adoption by child-

(1) An adoptive parent shall inform the adopted child of the fact that the child is adopted and his parentage but this disclosure shall only be made if it is in the best interest of the child and if the child is at least fourteen years of age.

(2) No person other than the adoptive parent shall disclose adoption to the adopted child.

(3) Any person who contravenes this provision commits an offence and is liable on summary conviction to a fine not exceeding ₵2 million or to a term of imprisonment not exceeding six months or to both.

73. Application by non citizen-

In an application for adoption by an applicant who is not a citizen of Ghana or where there is a joint application and one applicant is not a citizen of Ghana, the court shall make an interim order for a period of not less than two years and shall postpone the determination of the application.

74. Children previously adopted –

An adoption order or interim order may be made for a child who has already been adopted and the adopter under the previous adoption shall, if alive, be considered as the parent or guardian of the child for the purpose of the subsequent adoption.

75. Effect of adoption on parental rights-

(1) When an adoption order is made-

(a) The rights, duties, obligations and liabilities including those under customary law of the parents of the child or of any other person connected with the child of any nature whatsoever shall cease; and

(b) The adopter of the child shall assume the parental rights, duties, obligations and liabilities of the child with respect to custody, maintenance and education as if the child were born to the adopter.

(2) Where an adoption order is made jointly to a husband and wife, they shall assume the parental responsibilities jointly and the child shall relate to them as parents as if born naturally by them as husband and wife.

Sub-Part III- Devolution of Property on Adoption

76. Devolution of property on intestacy-

(1) Where an adopter dies intestate, his property shall devolve in all respects as if the adopted child is the natural child of the adopter.

(2) For the avoidance of doubt an adopted child is not entitled to inherit from his natural parents on intestacy.

77. Testamentary disposition-

(1) In a testamentary disposition of property, whether or not in writing made after the date of an adoption order-

(a) Any reference whether express or implied to the child of the adopter shall unless the contrary intention appears to be construed as a reference to the adopted child;

(b) Where a disposition made by the adopter prior to the adoption order makes no provision for the child, the adopted child may apply to court to vary the disposition to provide for the adopted child from the estate of the adopter;

(c) Any reference to a child of the adopted child's natural parents in a will shall not be construed as including a reference to the adopted child unless the contrary intention appears;

(d) Any reference to a person related to the adopter shall unless the contrary intention appears to be construed as a reference to the person as if he were the relative of the child who is adopted.

(2) A disposition by will executed before the date of the adoption order shall not be treated for the purpose of this section as if made after that date by a codicil giving retrospective effect to the will.

78. Supplementary provisions on intestacy and testamentary disposition –

(1) The administrators or executor of an estate may distribute the estate of a deceased person without incurring any liability where at the time of the distribution they had no notice of an adoption order by virtue of which the adopted person is to benefit under the estate but this shall not prejudice the right of any entitled person to trace the property except against a purchaser in good faith.

(2) The previous adoption order of a child that has been adopted for a second time shall be disregarded for the purpose of devolution of property on the death of the previous adopter.

Sub –Part IV-Miscellaneous adoption provisions

79. Adoption order and customary law

(1) An adopted child shall be subject to customary law as if he were natural child of the adopter only if the adopter is subject to customary law.

(2) Where there is joint adoption by husband and wife references to the adopter in this section shall be taken as a reference to the husband and wife.

80. Adoption order and citizenship-

(1) A child need not be a citizen of Ghana to be adopted.

(2) A child of not more than sixteen years of age neither of whose parents is a citizen of Ghana shall be a citizen of Ghana if adopted by a citizen of Ghana.

81. Effect of adoption order on fit person order-

Where an adoption order is made in respect of a child under a fit person care order of a Family Tribunal, the fit person care order shall cease to apply.

82. Adopted Children Register-

(1) The Registrar –General shall maintain at his office an Adopted Children Register in which shall be recorded particulars of the adoption order or interim order as the court may direct to be under this Part.

(2) Notwithstanding the provision made in any regulations under the Adoption Act, 1962 (Act 104), every adoption order or interim order made by a court shall be served on the Registrar –General by the registrar of the court concerned within 30 days of the making of the order.

(3) The Registrar –General may, by executive instrument, make rules with respect to the Adopted Children Register, particularly rules-

(a) For the admission in evidence of a certified copy of an entry in the Adopted Children Register;

(b) As to searches in that Register and the fees to be charged for service in connection with that Register.

(4) The Registrar –General shall keep other records that relate to entries in the Register of Births on adoption together with entries in the Adopted Children Register but these records shall not be available to the public and shall not be given to any person except under a court order.

83. Offences related to adoption-

(1) No person shall give any payment or reward in respect of an adoption order except with approval of the court.

(2) No person shall receive any payment or reward in respect of any arrangement that may or may not lead to an adoption order.

(3) Any person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ₪5 million or to a term of imprisonment not exceeding one year or to both.

84. Notice to be given to send child abroad –

(1) The Department shall be notified by the adopter when the adopted child is being sent out of the country permanently after the adoption order has been made by the court.

(2) The notice shall be given to the Department 30 days before the departure of the adopter and the adopted child from the country.

(3) Any person who contravenes this provision commits an offence and is liable on summary conviction to a fine not exceeding ₵2million or to a term of imprisonment not exceeding six month or to both.

85. Inter-Country adoption-

(1) Subject to the provisions of this Part, the Department may investigate an application for inter-country adoption as an alternative means of child care, if a child cannot be placed in a foster or an adoptive family in Ghana or cannot in any suitable manner be cared for in Ghana.

(2) A court may grant an inter-country adoption order if it is in the best interest of the child.

86. Procedure rules for adoption-

(1) For the purpose of adoption applications, the Rules of Court Committee may by constitutional instrument make rules for the procedure of adoption

(2) The rules shall provide for –

- (a) The proceedings to be held in camera except under exceptional circumstances;
- (b) The admission of documentary evidence relating to the consent required for the order;
- (c) Requiring a probation officer or social welfare officer to represent the interest of the child in proceedings relating to an adoption order or an interim order;
- (d) Requiring a probation officer or social welfare office to prepare a social enquiry report to assist the court to determine whether the adoption order is in the best interest of the child or not; and
- (e) Any other matter that the committee may determine.

(3) For the purposes of this Part 'court' means the High Court, Circuit Court and Family Tribunal within the jurisdiction where the applicant or the child resides at the time of the application.

PART V –EMPLOYMENT OF CHILDREN

Sub-Part I – Child Labour

87. Prohibition of exploitative child labour –

- (1) No person shall engage a child in exploitative labour;

(2) Labour is exploitative of a child if it deprives the child of its health, education or development.

88. Prohibition of child labour at night –

(1) No person shall engage a child in night work.

(2) Night work constitutes work between the hours of eight o' clock in the evening and six o' clock in the morning.

89. Minimum age for child labour –

The minimum age for admission of a child to employment shall be fifteen years.

90. Minimum age for light work –

(1) The minimum age for the engagement of a child in light work shall be thirteen years.

(2) Light work constitutes work which is not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from school work.

91. Minimum age for hazardous employment –

(1) The minimum age for the engagement of a person in hazardous work is eighteen years.

(2) Hazardous work includes –

(a) Going to sea;

(b) Mining and quarrying

- (c) Porterage of heavy loads;
- (d) Manufacturing industries where chemicals are produced or used;
- (e) Work in places where machines are used; and
- (f) Work in places such as bars, hotels and places of entertainment where a person may be exposed to immoral behaviour.

92. Application –

For the avoidance of doubt, this Sub-Part shall apply to employment in the formal and informal sector.

93. Registration of children and young persons in industrial undertakings –

(1) An employer in an industrial undertaking shall keep a register of the children and young persons employed by him and of their dates of birth if known or of their apparent ages if their dates of birth are not known.

(2) An industrial undertaking is an undertaking other than one in commerce or agriculture and includes –

- (a) Mines, quarries and other works for the extraction of minerals from the earth;
- (b) Undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished , adopted for sale, broken up or demolished, or in which materials are transformed including undertakings engaged in ship building or in the generation, transformation or transmission of electricity or motive power of any kin;

(c) Undertakings engaged in the transport of passengers or goods by road or rail including the handling of goods at docks, quays, wharves, warehouses and airports.

94. Offences under this Sub-Part –

(1) Any persons who contravenes the provisions of this Sub-Part commits an offence and is liable on summary conviction to a fine not exceeding €10million or to imprisonment for a term not exceeding two years or to both.

(2) Notwithstanding subsection (1) of this section, any person who contravenes section 93(1) commits an offence and is liable on conviction to a fine not exceeding €500,000.00

95. Enforcement in formal sector-

(1) A district labour officer shall carry out any enquiry he may consider necessary in order to satisfy himself that the provisions of this Sub-Part with respect to labour by children and young persons in the formal sector are being strictly observed.

(2) For purposes of this section any person may be interrogated by a district labour officer.

(3) If a district labour officer is reasonably satisfied that the provisions of this Sub-Part are not being complied with he shall report the matter to the police who shall investigate the matter and take the appropriate steps to prosecute the offender.

96. Enforcement in the informal sector –

(1) The Social Services Sub-Committee of a District Assembly and the Department shall be responsible for the enforcement of the provisions of this Sub-Part in the informal sector.

(2) For purposes of this section any person may be interrogated by a member of the Social Services Sub-committee or by a member of the Department.

(3) If the member of the Social Service Sub-Committee or the Department is reasonably satisfied that the provisions of this Sub-Part are not being complied with he shall report the matter to the police who shall investigate the matter and take the appropriate steps to prosecute the offender.

(4) Where the offender is a family member of the child whose rights are being infringed under this Sub-Part, the Social Services Sub-Committee or the Department shall request a probation officer or social welfare officer to prepare a social enquiry report on the matter.

(5) The social enquiry report prepared under subsection (4) of this section shall be considered by the police before any action is taken against the offender.

Sub-Part II – Apprenticeship

97. Act to apply to apprenticeship in the informal sector –

This Act applies to child apprentices in the informal sector.

98. Minimum age for apprentice-

The minimum age at which a child may commence an apprenticeship with a craftsman is fifteen years or after completion of basic education.

99. Responsibilities of a craftsman –

The responsibilities of a craftsman towards an apprentice under his care shall be as follows to-

- (a) Train and instruct the apprentice in a trade to the best of the ability, skill and knowledge of the craftsman and to the best ability of the apprentice or cause the apprentice to be trained in a trade under the supervision of the craftsman;
- (b) Be responsible for any harm caused to the apprentice in the course of his training;
- (c) Provide food for the apprentice unless otherwise agreed;
- (d) Provide a safe and healthy environment for the apprentice;
- (e) Be responsible for the moral training of the apprentice; and
- (f) Protect the best interest of the apprentice generally.

100. Apprenticeship agreement –

(1) The parent, guardian or relative of an apprentice shall enter into an apprenticeship agreement with the craftsman.

(2) The agreement shall be in accordance with the custom, which pertains to the specific trade but shall not include the performance of any induction ceremony, which may conflict with the rights of the child contained in Sub-Part I of Part I of this Act.

(3) The agreement shall contain such matters as may be agreed on between the parties and may include –

(a) Provision that the parent, guardian or relative shall bear the cost of protective clothing and the basic tools for the training of the apprentice;

(b) A duty that the craftsman is to provide shelter for the apprentice; and

(c) A provision that the craftsman is to give the apprentice an allowance of not less than half the minimum national daily wage for his daily sustenance.

(4) The agreement shall be in writing and shall contain provisions in the best interest of the parties and the apprentice.

(5) Should either party to the agreement contravene its terms, the agreement shall immediately lapse unless there is contrary intention in the agreement.

101. Duties of apprentice –

An apprentice shall diligently and faithfully obey and serve the craftsman and shall agree

–

- (a) That he will not absent himself from the apprenticeship without permission;
- (b) To prevent any deliberate damage to the property of the craftsman; and
- (c) Not to conceal any damage to the property of the craftsman.

102. Release of apprentice –

(1) The conditions for the release of an apprentice upon completion of his training shall not be exploitative and shall be in accordance with the best interest of the child under Sub-Part I of Part I of this Act.

(2) The craftsman shall on completion of a period of apprenticeship issue a certificate of release to the apprentice, which shall indicate that the apprentice has completed his training.

(3) If the craftsman refuses to issue the certificate of release without just cause he commits an offence and is liable on summary conviction to a fine not exceeding ₡2 million or six months imprisonment or both.

103. Resolution of Disputes–

Disputes related to an apprenticeship agreement shall be referred to the district labour officer of the district concerned by the parties to the apprenticeship agreement or the apprentice.

104. Application of Sub-Part I of this Part –

The provisions of this Sub-Part I of this Part on Child Labour shall apply to this Sub-Part.

PART VI- INSTITUTIONALISED CARE AND MISCELLANEOUS MATTERS

Sub- Part I – Approved Residential Homes

105. Approval of residential home-

(1) The Government may establish a home referred to in this Act as “a home “ for the care of children in such area as the Minister may determine.

(2) Any person or an NGO may also establish and operate a home for the care of children subject to the approval of the Minister.

(3) An application for the approval of a home shall be submitted to the Minister.

(4) The Minister shall cause the home to be inspected by the Department and if the home meets the required standard it shall be approved by notice published in the Gazette.

(5) Upon approval by the Minister, the home shall obtain a licence to operate issued by the Minister after payment of the prescribed fee but this provision shall not apply to a government home.

(6) Any non-governmental home in existence at the commencement of this Act shall apply to the Minister for approval and the issue of a licence within a period of six months from the commencement of this Act.

106. Department to monitor homes-

The Department of a District Assembly shall monitor homes within its district.

107. Power of Minister to give directives to homes-

The Minister may give such orders and directions to a home as may be expedient in the public interest.

108. Inspection-

The Minister may authorise the inspection of a home by the Department at any time to ensure that the home is being maintained at the required standard.

109. Admission of children to homes-

(1) A child may be admitted to a home –

(a) Pending the determination by a Family Tribunal of an order under Sub-Part II of Part I of this Act;

(b) On the recommendation of a probation officer or a social welfare officer who has determined that the approved home is the most suitable place for the child; or

(c) If the child is an orphan and the family care and fosterage are not available.

(2) If a home fails to maintain the required standard its licence to operate may be cancelled or suspended by the Minister and alternative arrangements shall be made by the Department for the children in the home.

(3) It shall be the responsibility of the staff of a home, the probation and social welfare officer and any other person to assist a child resident in the home to become reunited with its parents, guardian or relatives.

(4) After a child has been returned to his family home from a home, the probation and social welfare officer shall keep in regular contact with the child and his family to ensure that the best interest of the child is sustained.

(5) Where a child is unable to return to his parents or to go to foster-parents, or has no parent or foster-parent, he shall be encouraged and assisted by the home and the probation and social welfare officer to become independent and self-reliant.

110. Parental responsibility of staff of approved homes –

(1) While a child is in a home the staff of the home shall assume parental responsibility for the child and ensure that the rights of the child in Sub-Part 1 of Part 1 of the Act are protected.

(2) Notwithstanding subsection (1) of this section, the parents, guardian or relatives of a child in a home shall supplement the efforts of the home to safeguard

and promote the welfare of the child by visiting the child and otherwise protecting the interest of the child.

(3) Parental responsibility of a child in a home shall include an application to a Family Tribunal to protect the best interest of the child where necessary.

111. Power of Family Tribunal to order contribution

(1) A Family Tribunal may order that the parent, guardian or relative of a child in a home shall contribute towards the maintenance of the child in the home.

(2) Any amount to be contributed shall be reasonable and may be varied by the Family Tribunal if there is a change in circumstances of the contributor.

112. Approved home and adoption-

(1) Subject to the provisions of this Act a child in a home shall be put up for adoption if it is in the best interest of the child.

(2) The decision for the adoption of a child in a home shall be taken by the Department in consultation with the management of the home.

113. Regulations and homes-

The Minister may by legislative instrument make regulations for homes.

114. Offences under this Sub-Part-

(1) The penalty for contravention in respect of the rights of the child and parental duty in section 15 of this Act shall apply to any person in a home who fails to uphold the rights of the child.

(2) Any person who-

(a) Operates a home without a license issued by the Minister, or

(b) Continues to operate a home in contravention of this Sub-Part; or

(c) Obstructs or hinders any person conducting an inspection under this Sub-Part commits an offence and is liable on summary conviction to a fine not exceeding ₡5million or to a term of imprisonment not exceeding one year or to both and in the case of a continuing offence to a further fine not exceeding ₡100,000 for each day on which the offence continues.

Sub-Part II - Day-Care Centres

115. Application to operate day-care centre-

(1) An application for a permit to operate a day-care centre shall be submitted by the applicant to the Department.

(2) The application shall be accompanied by such fee as may be prescribed in a bye-law of a District Assembly.

(3) The Department shall inspect the proposed day-care centre and if it meets the required standard it shall approve the application and grant a permit upon payment of the fee for the permit prescribed in a bye-law.

(4) Any day-care centre in operation without a permit granted by the Department shall be closed on fourteen days notice to the owner or operator by the Department.

116. Inspection-

(1) The Department shall inspect the premises, books, accounts and other records of a day-care centre at least once in every six months and shall submit a report of the inspection to the Social Services Sub-Committee of a District Assembly.

(2) If the inspection reveals that the day-care centre is not being managed efficiently in the best interest of the children, the Department shall suspend the permit and the owner or operator shall be ordered to make good the default within the stipulated time.

(3) If the owner or operator fails to make good the default within the stipulated time, the permit shall be cancelled.

117. Bye-laws and guidelines -

A District Assembly shall issue such bye-laws and guidelines as it may determine for the operation of day –care centre within its district.

118. Policy directives –

The Ministry for Social Welfare and the Ministry for Education may issue such policy directives as may be necessary for the operation of day-care centres.

119. Existing operators-

Any person who owns or operates a day-care centre before the commencement of this Act who intends to continue to operate the day-care centre shall apply to the Department for a permit within six months of the commencement of this Act.

120. Offences under this Sub-Part-

Any person who-

- (a) Operates a day-care centre without a permit issued by the Department; or
- (b) Continues to operate a day-care centre in contravention of this Part; or
- (c) Obstructs or hinders any person conducting an inspection under this Sub-Part

Commits an offence and is liable on summary conviction to a fine not exceeding ₪5million or to a term of imprisonment not exceeding one year or to both and in the case of a continuing offence to a further fine not exceeding ₪100,000 for each day on which the offence continues.

Sub-Part III Miscellaneous Provisions

Registration of births –

(1) The District Health Department of a District Assembly shall in consultation with the Department of the District Assembly be responsible for registration of births in the district.

(2) The registration of births shall form part of the district primary health care programme.

(3) The District Assembly may delegate any of its functions under this section to a Unit Committee or to such other person as it may determine to be appropriate.

122. Determinations of age of a child –

(1) In the absence of a birth certificate or a baptismal certificate signed by a medical officer as to the age of a child below eighteen years of age shall be evidence of that age before a Family Tribunal without proof of signature unless the court directs otherwise.

(2) An order of a Family Tribunal shall not be invalidated by any subsequent proof that the age of the child has not been correctly stated to the Family Tribunal and the age presumed or declared by the Family Tribunal to be the age of that child shall be deemed to be the true age for the purpose of any proceedings under this Act.

(3) A statutory declaration issued and certified by the High Court of Justice or person authorised by law to authenticate same as to the age of a child upon an application by a parent or guardian of the child shall be evidence of the age of that child.

123. Regulations –

(1) Without limiting the power to make regulations under any Part of this Act, the Minister may, by legislative instrument, make regulations –

- (a) In respect of care and protection under Sub- Part II of Part I;
- (b) On fosterage under Sub-Part I of IV;

- (c) On child labour under Sub-Part I of Part V;
- (d) On apprenticeship under Sub-Part I of Part V;
- (e) On homes under Sub-Part I of Part VI;
- (f) On day-care centres under Sub-Part II of Part VI;
- (g) Generally for the implementation of the provisions of this Act.

(2) Regulations made under this Act may provide for the charging of fees for anything to be done under this Act.

124. Interpretation –

In this Act unless the context to otherwise requires –

‘Approved residential home’ means a residential home for children which is run by Government or a non-governmental home licensed by the Minister where children are given temporary substitute family care;

‘Child abuse’ means contravention of the child of the rights of the child which causes physical or mental harm to the child;

‘Craftsman’ means a person who can train and instruct an apprentice in a trade;

‘Day-care centre’ means any early childhood development establishment where children below compulsory school going age are received and looked after for the day or a substantial part of the day with or without a fee.

‘Department’ means the Social Welfare and Community Development Department of a District Assembly;

‘Disabled child’ means a child who suffers from abnormalities or loss of physiological functions, anatomic structure or psychological state and has lost in part or wholly the ability to engage in activities in a normal way and is as a result hampered in his normal functions in certain areas of social life;

‘District’ means the area of authority of a District Assembly and includes a municipality and metropolis;

‘District Assembly’ includes Municipal and Metropolitan Assembly;

‘District Chief Executive’ includes Municipal and Metropolitan Chief Executives;

‘Fit Person’ means a person of full age who is of high moral character and integrity and of sound mind capable of looking after a child, is not a relative of the child and has been registered by a probation officer or social welfare officer as being able to provide a caring home for a child;

‘Home’ means a residential place where a child is given temporary substitute family care;

‘Informal Sector’ means the area of economy other than industry;

‘Institution’ means an approved residential home;

‘Inter-country adoption’ means the adoption of a child by a person who is not a citizen of Ghana who resides outside Ghana and the removal of the adopted child from the jurisdiction;

‘Minor criminal matter’ means a minor offence such as petty theft, petty assault and threatening offences;

‘Minister’ means the Minister responsible for Social Welfare;

‘Next Friend’ means a person who intervenes to assist a child to bring a legal action;

‘NGO’ means a non-governmental organisation;

‘Parent’ means natural parent and includes a person acting in whatever way as parent;

‘Young person’ means a person of or above eighteen years who is under twenty-one.

125. Amendments and repeals –

The enactments specified in the first column of the Schedule to this Act are amended or repealed in the manner specified in, the second column of that Schedule.

126. Savings –

(1) Notwithstanding the repeal of the enactment specified in the schedule to this Act-

- (a) The Day Care Centres regulations, 1979 (L.I. 1230);
- (b) The Adoption (High Court) Rules 1663 (L.I.276); and

(c) Any other rules or regulations

made under the repealed enactments and in force immediately before the commencement of this Act are hereby continued in force until amended or revoked or otherwise dealt with under this Act.

(2) Family Tribunals in existence immediately before the commencement of this Act virtue of an enactment repealed by this Act are hereby continued in existence subject to the provisions of this Act.

APPENDIX 9²²⁴

Statistical Information on Nima

Table 9.1

Number and Percentage of Persons under and over 18 years old

	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	69,044	100.0	34,131	49.4	34,913	50.6
Less than 18 years	26,213	38.0	12,487	18.1	13,726	19.9
18 years and over	42,831	62.0	21,644	31.3	21,187	30.7

Table 9.2

Number and Percentage of Persons under and over 60 years old

Age Group	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	69,044	100.0	34,131.0	49.4	34,913	50.6
Less than 60 years	64,244	93.0	31,415	45.5	32,829	47.5
60 years and over	4,800	7.0	2,716	3.9	2,084	3.0

²²⁴ Source: Ghana Statistical Service, 2000 Population and Housing Census, 2002.

Table 9.3**Literacy and Highest level of Educational Attainment of Population(15 years and older) by Sex**

Literacy /Educational Level	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
All Forms of Literacy						
All Levels	47,668	100.0	23,847	50.0	23,821	50.0
None	18,439	38.7	7,223	15.2	11,216	23.5
Pre-School	61	0.1	24	0.1	37	0.1
Primary	3,039	6.4	1,321	2.8	1,718	3.6
Middle/JSS	15,041	31.6	8,380	17.6	6,661	14.0
Secondary/SSS	5,972	12.5	3,735	7.8	2,237	4.7
Vocational, Technical, Commercial	2,652	5.6	1,621	3.4	1,031	2.2
Post Secondary(Agric/Nursing/Teacher training)	1,085	2.3	598	1.3	487	1.0
Tertiary	1,379	2.9	945	2.0	434	0.9
Not Literate						
All Levels	14,922	31.3	5,452	11.4	9,470	19.9
None	13,890	29.1	5,079	10.7	8,811	18.5
Pre-School	13	-	5	-	8	-
Primary	969	2.0	343	0.7	626	1.3

Middle/JSS	50	0.1	25	0.1	25	0.1
Secondary/SSS	-	-	-	-	-	-
Vocational, Technical, Commercial Post Secondary(Agric/Nursing/Teacher training)	-	-	-	-	-	-
Tertiary	-	-	-	-	-	-

Table 9.4

Population (under 18years) by Current School Attendance of Persons under 18 years

Current School Attendance	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	14,730	100.0	7,281	49.4	7,449	50.6
Pre-School	2,308	15.7	1,168	7.9	1,140	7.7
Primary	8,214	55.8	4,017	27.3	4,197	28.5
Middle/JSS	3,327	22.6	1,655	11.2	1,672	11.4
Secondary/SSS	827	5.6	412	2.8	415	2.8
Vocational, Technical, Commercial	50	0.3	28	0.2	22	0.1
Post Secondary	4	-	1	-	3	-
Tertiary	-	-	-	-	-	-

Table 9.5

Religious Affiliation	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	69,044	100.0	34,131	49.4	34,913	50.6
Catholic	7,278	10.5	3,731	5.4	3,547	5.1
Protestant	7,821	11.3	3,706	5.4	4,115	6.0
Pentecostal/ Charismatic	11,545	16.7	5,352	7.8	6,193	9.0
Other Christians	2,887	4.2	1,404	2.0	1,483	2.1
Islam	37,520	54.3	18,867	27.3	18,653	27.0
Traditional	372	0.5	167	0.2	205	0.3
Other Religions	304	0.4	161	0.2	143	0.2
No Religion	1,317	1.9	743	1.1	574	0.8

Table 9.6

Source of Drinking Water for Occupied Dwelling Unit

Source of Drinking Water	Number	Percent
Total	15,151	100
Pipe-borne inside	4,492	29.6
Pipe-borne outside	9,436	62.3
Tanker supply	127	0.8
Well	914	6.0
Bore-hole	29	0.2
Spring/rain water	89	0.6
River/stream	15	0.1
Dugout/pond/lake/dam	34	0.2
Other	15	0.1

Table 9.7
Age Group of Unemployed Population by Sex

Age Group	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
under 1	4,577	100.0	2,413	52.7	2,164	47.3
1 - 4	-	-	-	-	-	-
5 - 9	-	-	-	-	-	-
10 - 14	126	2.8	66	1.4	60	1.3
15 - 19	314	6.9	119	2.6	195	4.3
20 - 24	794	17.3	363	7.9	431	9.4
25 - 29	1,091	23.8	601	13.1	490	10.7
30 - 34	648	14.2	360	7.9	288	6.3
35 - 39	348	7.6	184	4.0	164	3.6
40 - 44	284	6.2	151	3.3	133	2.9
45 - 49	187	4.1	100	2.2	87	1.9
50 - 54	211	4.6	120	2.6	91	2.0
55 - 59	150	3.3	76	1.7	74	1.6
60 - 64	120	2.6	69	1.5	51	1.1
65 and over	120	2.6	64	1.4	56	1.2
65 and over	289	6.3	182	4.0	107	2.3

Table 9.8**Major Occupation of Population (7years and older) by Sex**

Major Occupation	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	29,713	100.0	15,208	51.2	14,505	48.8
Professionals and Technical	1,959	6.6	1,448	4.9	511	1.7
Administrative and Managerial	63	0.2	41	0.1	22	0.1
Clerical and Related	2,796	9.4	2,301	7.7	495	1.7
Sales workers	11,686	39.3	3,428	11.5	8,258	27.8
Service workers	4,444	15.0	2,352	7.9	2,092	7.0
Agricultural, Animal, Forestry	747	2.5	529	1.8	218	0.7
Production, Transport Equipment	7,463	25.1	4,658	15.7	2,805	9.4
Others Labourers	555	1.9	451	1.5	104	0.4
New Workers	-	-	-	-	-	-

APPENDIX 10²²⁵

Statistical Information on Ga Mashie

Table 10.1

Number and Percentage of Persons under and over 18 years old

	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	5,746	100.0	2,635	45.9	3,111	54.1
Less than 18 years	2,405	41.9	1,229	21.4	1,176	20.5
18 years and over	3,341	58.1	1,406	24.5	1,935	33.7

Table 10.2

Number and Percentage of Persons under and over 60 years old

Age Group	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	5,746	100.0	2,635.0	45.9	3,111	54.1
Less than 60 years	5,312	92.4	2,499	43.5	2,813	49.0
60 years and over	434	7.6	136	2.4	298	5.2

²²⁵ Source: Ghana Statistical Service

Table 10.3**Literacy and Highest level of Educational Attainment of Population(15 years and older) by Sex**

Literacy /Educational Level	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
All Forms of Literacy						
All Levels	3,696	100.0	1,581	42.8	2,115	57.2
None	1,308	35.4	419	11.3	889	24.1
Pre-School	9	0.2	2	0.1	7	0.2
Primary	392	10.6	130	3.5	262	7.1
Middle/JSS	1,280	34.6	642	17.4	638	17.3
Secondary/SSS	409	11.1	230	6.2	179	4.8
Vocational, Technical, Commercial Post Secondary(Agric/Nursing/Teacher training)	162	4.4	83	2.2	79	2.1
Tertiary	85	2.3	49	1.3	36	1.0

Table 10.4**Population (under 18years) by Current School Attendance of Persons under 18 years**

Current School Attendance	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	1,267	100.0	651	51.4	616	48.6
Pre-School	251	19.8	125	9.9	126	9.9
Primary	696	54.9	367	29.0	329	26.0
Middle/JSS	256	20.2	128	10.1	128	10.1
Secondary/SSS	62	4.9	31	2.4	31	2.4
Vocational, Technical, Commercial	2	0.2	-	-	2	0.2
Post Secondary	-	-	-	-	-	-
Tertiary	-	-	-	-	-	-

Table 10.5**Religious Affiliation of Population by Sex**

Religious Affiliation	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	5,746	100.0	2,635	45.9	3,111	54.1
Catholic	184	3.2	83	1.4	101	1.8
Protestant	1,886	32.8	827	14.4	1,059	18.4
Pentecostal/ Charismatic	1,460	25.4	617	10.7	843	14.7
Other Christians	497	8.6	222	3.9	275	4.8
Islam	679	11.8	362	6.3	317	5.5
Traditional	73	1.3	35	0.6	38	0.7
Other Religions	29	0.5	6	0.1	23	0.4
No Religion	938	16.3	483	8.4	455	7.9

Table 10.6**Major Ethnic Grouping of Ghanaians by Birth by Sex**

Major Ethnic Grouping	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	5,290	100.0	2,402	45.4	2,888	54.6
Akan	729	13.8	364	6.9	365	6.9
Ga Dangme	4,295	81.2	1,904	36.0	2,391	45.2
Ewe	90	1.7	51	1.0	39	0.7
Guan	36	0.7	15	0.3	21	0.4
Gurma	2	-	1	-	1	-
Mole Dagbani	74	1.4	46	0.9	28	0.5
Grusi	43	0.8	14	0.3	29	0.5
Mande	1	-	1	-	-	-
All Other Tribes	20	0.4	6	0.1	14	0.3

Table 10.7

Source of Drinking Water for occupied Dwelling Unit

Source of Drinking Water	Number	Percent
Total	1,458	100.0
Pipe-borne inside	456	31.3
Pipe-borne outside	901	61.8
Tanker supply	12	0.8
Well	30	2.1
Bore-hole	3	0.2
Spring/rain water	47	3.2
River/stream	-	-
Dugout/pond/lake/dam	7	0.5
Other	2	0.1

Table 10.8
Age Group of Unemployed Population by Sex

Age Group	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	4,001	100.0	1,954	48.8	2,047	51.2
under 1	-	-	-	-	-	-
1 – 4	-	-	-	-	-	-
5 – 9	133	3.3	61	1.5	72	1.8
10 – 14	357	8.9	146	3.6	211	5.3
15 – 19	780	19.5	338	8.4	442	11.0
20 – 24	983	24.6	511	12.8	472	11.8
25 – 29	615	15.4	333	8.3	282	7.0
30 – 34	322	8.0	149	3.7	173	4.3
35 – 39	220	5.5	116	2.9	104	2.6
40 – 44	167	4.2	82	2.0	85	2.1
45 – 49	142	3.5	69	1.7	73	1.8
50 – 54	104	2.6	42	1.0	62	1.5
55 – 59	79	2.0	40	1.0	39	1.0
60 – 64	59	1.5	36	0.9	23	0.6
65 and over	165	4.1	88	2.2	77	1.9

Table 10.9
Major Occupation of Population (7years and older) by Sex

Major Occupation	Both Sexes		Male		Female	
	Total	Percent	Total	Percent	Total	Percent
Total	2,938	100.0	1,243	42.3	1,695	57.7
Professionals and Technical	138	4.7	87	3.0	51	1.7
Administrative and Managerial	3	0.1	2	0.1	1	-
Clerical and Related	135	4.6	106	3.6	29	1.0
Sales workers	1,020	34.7	281	9.6	739	25.2
Service workers	335	11.4	118	4.0	217	7.4
Agricultural, Animal, Forestry	604	20.6	305	10.4	299	10.2
Production, Transport Equipment	620	21.1	299	10.2	321	10.9
Others Labourers	32	1.1	19	0.6	13	0.4
New Workers	51	1.7	26	0.9	25	0.9

APPENDIX 1 1

Prioritising Children's Rights: Data from Children's FGDs in Nima

Nima School Children (Selection)

Order of Priority	Nima Basic I JSS	Islamic Primary Institute	Nima Basic II Primary	Youth Wing of the Islamic Women's Orientation Centre
1	To be educated so you can become someone in future	School so you can have a bright future	Medical attention when sick	Education which includes good training at home
2	Right to medical attention	Good food and water	Good food and clean water to grow well and they should give us food every day	Parents must show love to children because love forms the basis of everything. If parents love their children they will provide everything for them.
3	Right to tell parents when you are in trouble or worried	Medicine when sick	A good place to sleep	A good place to sleep where you feel comfortable
4	Right to be treated well	Parents must take care of children always so that when children grow up they will take care of their parents	Children should be sent to school so they can become someone in future	Children must be given what they need e.g. clothes
5	Right to be on good terms with parents – when you need something parents will provide it so you must be on good terms	Children have to dress neat		Right to be taught what is good and bad

	with them			
6	Responsibility to respect elders and do what is right		Parents should make children wear clean dresses	When they are bad children must be talked to or beaten
7	Right to tell the truth so that God will give you what you want		Parents must give advice to children when they are in difficulty	Right to be taught about the religion they are born into
8	Right to join youthful associations		Protection from mosquitoes	
9			Children need love and care	

Nima Out-of-School Children

Priority	Organised at the Islamic Institute Mosque	Organised by the Nima East Assemblyman	Organised by Maamobi East Assemblyman	Vocational Students at Nima 441 Social Welfare
1	Food	Good treatment – parents need to look after a child until s/he grows	Education in order to have a future	Medical attention
2	Water	Provide children with clothing	Shelter so the child doesn't get sick or roam the streets, which will lead him to join bad company, start stealing or if it is a girl, become a prostitute.	School – parents must take their children to school and provide them with everything they need to stay in school. If a child is sent to school he will grow up to become a responsible person

				and will take care of his parents
3	Medicine	Parents need to feed the child well	Advice – when a child is given advice he will know what is right and wrong and will make the right decisions in future	Parents must advice the child especially if the child is stubborn
4	Clothes	Parents need to provide the child with moral training (e.g. take the child to church or mosque)		Parents should provide vocational training to their children if they can't send them to school
5	Money so you can buy the things you need and help your family			

APPENDIX 12

Prioritising Children's Rights: Data Collected from FGDs with Children in Ga Mashie

Ga Mashie School Children (Selection)

Order of Priority	Sempe II Primary	Accra Royal	Independence I	Independence II
1	Education so they can become someone in future	Education	Education so children can get work in future	Education – without education the child cannot develop and neither will the country
2	Shelter	Shelter – it should not just be available for children whose parents can provide it	Shelter	Food
3	Children need to respect	Right to quality healthcare	Clothing	Shelter
4	Children need to be treated well e.g. sent to school, given food	Right to stay with own parents	Food	Clothing
5	If children are not in school they need work	Right to tell their parents what is bothering them	Health care	Parents must communicate with their children so if there is something wrong they can tell them
6	Children need discipline. If they do something wrong they have to be caned and told that it was not right	Right to speech or say what they feel in order to survive	Children need good homes where there is no conflict	Parents must give their children advice
7	Right to sleep early	Freedom of liberty and association	Parents have to listen to children's	Parents must show love to their children

			views	
8		Right to sue and be sued e.g. if a girl is raped she has the right to send that person to court	Love of parents	Freedom to play, watch TV at the right time and read books
9				Freedom of speech because the child might have some good ideas.

Ga Mashie Out-of-School Children

Priority	Catholic Action for Street Children	Out of School Children at the Sempe Mantse Palace	Out of School Children at Freeman's Memorial Group 1	Out of School Children at Freeman's Memorial Group 2
1	Right to respect because if you do not respect your mother she will take you out of school or kick you out of the house; if you are on the streets and are respectful you could get someone to send you to school or help you in some way	Right to go to school so you can get a job when you grow up and look after your mother and father	To have respect for parents	Parents should see to it that we go to school
2	School – going to school will help you become a responsible adult and you can get the work you want	Parents must look after their children so that when they grow up the children will also look after them	To tell mother what is bothering you	Parents should see to it that we are clothed
3	Food – if you don't eat you can't work or concentrate on school	Parents must send children to school	School, but if you are out of school you need work	Children should be given <u>good food</u>

4	Right to work – if you are on the streets you need to work as you don't have a mother who will look after you	Children must be healthy	To have a good mother	Parents need to take care children
5	Right to bathe and be neat ²²⁶	Children must respect parents and all elders in the community	Children should have a family who can help them when they are in need so they do not go astray	Children should take care of their parents in future
6		Children need to work and sell things to get money	Parents should do enough for children, but not too much otherwise children will get spoilt	
7		Children need to be religious and go to church	Children need to be humble to parents and all elderly persons so they can grow up and become responsible	
8		Your mother has to help you and you must help your mother	When children are in need of something the parents should understand them	

²²⁶ This particular 'right' is important for street children in Accra who have to pay to use public bathing facilities.

APPENDIX 13

Prioritising Children’s Rights: Data from FGDs with Children from Private Schools

Priority	Englebert’s School	Mary Mother of Good Counsel	Christ the King School
1	Life	To live – without this right no other can be given to you	Right to life
2	Parental care because if you have that all else will follow	Education – children are the future leaders and have to be educated	Right to healthy food and clean water
3	Good food and shelter	Health facilities	Right to good and free healthcare
4	Good health	To be loved by the family so that children do not feel lonely and do bad things	Right to education
5	Education	To be heard – there may be some things children have noticed in the community that adults have not	Right to shelter
6	Express views	Protection from sexual abuse	Right to a family – to have a home where children can discuss their problems with their family
7		To sue someone when he does something wrong to you	Right to express views in public, which is necessary, but not dire for survival

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