

## The Passage of Domestic Violence Legislation in Ghana

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On 21<sup>st</sup> February 2007, Ghana's Parliament passed the much-awaited Domestic Violence Bill (DVB), which had been laid before it in 2003 and had been the subject of heated debate. The process leading to the passage of the law involved not only the introduction of new legislation, but also confronting a social system that tolerates various forms of violence against women and girls, especially in the context of gender relations and in the domestic sphere. Between February and March 2002, four married women were killed by their husbands on suspicion of infidelity (*The Ghanaian Chronicle* 2002; *The Ghanaian Times* 2002).



During a protest march by *Sisters Keepers*, a loose coalition of NGOs formed to confront violence against women, some women marchers were assured by male bystanders that so long as women continued to step out of line, they would be (physically) disciplined by their partners as was proper in 'our culture'.

Marriage is viewed as a necessary and desirable social status for both men and women in Ghana, although perceptible changes are underway; the Ghana Demographic and Health Survey reports later ages at first marriage especially for women, while the proportion of persons who have never been in union has been increasing. In general, marriage confers particular rights and obligations between spouses, but it is also characterised by some fluidity and ambiguity which is sought to be resolved through negotiations and bargaining between the parties over time. While several complementarities between the genders exist in different Ghanaian communities, the various systems of customary law under which the majority of marriages and partnerships are contracted do not view women and men as equal partners; recent constitutional guarantees of equality and non discrimination of persons have not succeeded in eradicating such views. A prime example of this is in the perceived 'right' of husbands and partners to 'correct' both actual and perceived transgressions of their wives, such as disobedience or stepping out of line. Such correction can take the form of beating, although it is expected that a reasonable man would "exercise moderation (sic) in beating his wife so as not to hurt her." In addition, while both parties in a relationship have the right to sexual satisfaction and unreasonable refusal to engage in sexual relations can be a ground for divorce, over time a husband's right to sexual satisfaction relations has come to be viewed as paramount. Women's refusal to submit to the demands of husbands or partners can lead to physical chastisement and or emotional abuse. Such a position is reinforced by the provisions of § 42(g) of Ghana's Criminal Code, 1960 (Act 29), inherited from British jurisprudence, which accepts the use of force in marriage on the basis of the supposed consent given upon marriage.

To a large extent, views about, and practices within, marriage that subordinate women to men have remained unchallenged in Ghanaian society, such that when women are physically assaulted or sexually abused within conjugal relations, it is not regarded as unusual. As a consequence, many women tolerate and remain in abusive relationships and do not complain publicly about their ordeals

because such issues are considered 'private', although they may complain to family members or their pastors who usually counsel them to be patient or to behave better.

Public effort aimed at addressing cases of abuse and domestic violence in Ghana came to the fore in 1997 following a nation-wide study on the prevalence, patterns and responses to gender violence undertaken by a partnership of NGOs under the leadership of the Gender and Human Rights Documentation Centre. One in three women and girls surveyed had experienced physical, psychological or emotional abuse. This contributed to the establishment of the Women and Juvenile Unit (WAJU, now renamed the Domestic Violence Victim Support Unit, DOVVSU) by the Police Administration in 1998 initially in Accra and Kumasi to respond to the increasing reports of abuse and violence against women and children. By 2002, WAJU offices had been extended to all regions, but reported increases in violence, the sheer volume of cases, the attitudes of police personnel, inadequacies in the Criminal Code and family and societal pressures on complainants led to the push for more comprehensive legislation to deal with cases of domestic violence.

The draft Domestic Violence legislation was prepared by the office of the Attorney General in 2002, and was meant to offer a holistic and effective legal framework for addressing domestic violence in Ghana; provide broad redress for cases of domestic violence, sanctions on perpetrators and protective remedies for victims; and to improve Ghana's compliance with its legal obligations under international human rights standards. The Bill contains provisions criminalizing various acts of violence – physical, sexual (within or outside of marriage, and between a wide variety of individuals in a domestic relationship including family and non-family members such as house-helpers and people who do not physically live together, economic and psychological abuse, intimidation and harassment. It makes provision for protection orders, psychological and rehabilitative services for victims or perpetrators, and processes for promotion of reconciliation.

However, this important initiative was compromised by the shallow understanding of gender based violence as an equality issue both within government and some organs of the state and among the general public. In contrast what emerged was fixed attitudes about women's inferior status in marriage, the tendency to blame women for precipitating acts of violence against them such as dressing provocatively, or being unfaithful. Supporters of the bill and gender activists were portrayed as purveying foreign ideas that threatened Ghanaian cultural beliefs and practices, in particular, the sanctity of marriage and men's rights within it. The Bill was subject to an unprecedented nation-wide consultation on the grounds that its provisions had serious implications for family life and gender relations. The National Coalition on Domestic Violence Legislation was formed by individuals and human rights organizations which organized from 2003, a nationwide consultation to win support for passage of the DVB. Several strategies were adopted by the Coalition including a pictorial campaign entitled 'Faces of Violence,' a collection of pictures of abused women, projecting 'voices' and 'faces' of real victims of abuse in the press, a documentary on domestic violence, newspaper articles, radio & TV discussions, meetings with parliamentarians and lobbying members of parliamentarians. The major challenge faced by the Coalition was addressing the widespread view that the bill would endanger marriages and a narrow focus around the marital rape provision rather than on the bill in its entirety.

After a protracted debate on the content of the DVB in both the media and Parliament, the law was finally passed after a number of amendments had been made to it. The law, which is in three parts, prohibits domestic violence within an existing or previous relationship and defines domestic violence to include physical, sexual, economic and emotional abuse. It also defines a domestic relationship and provides that a single act can amount to domestic violence. There are provisions on the filing of complaints to the police, police assistance and arrests by the police. The second part of the Act makes provisions for protection orders, and procedures to activate these. The final part of the Act covers miscellaneous provisions including the relation of the Act to the Criminal Code, the promotion of reconciliation by the Court, publication of proceedings, criminal charges and protection, civil claims for damages, regulations and interpretation.

In apparent reaction to the real financial constraints faced by many victims of gender based violence and societal pressures on them not to report abuse, the Act has established a "Victims of Domestic Violence Support Fund." The fund is to be applied to towards the basic material support of victims of domestic violence, tracing the families of domestic violence, the rescue, rehabilitation and reintegration of victims of domestic violence, the construction of reception shelter for victims of

domestic violence, and their training and capacity needs. These funds are to be raised from voluntary contributions by individuals, organizations and the private sector, and Parliamentary votes, as well as moneys from sources approved by the Ministry of Finance.

While the Act did not explicitly repeal § 42(g) of the Criminal Code 1960 (Act 29) that justifies the use of force in marriage, it provides that “The use of violence in the domestic setting is not justified on the basis of consent.”

The passage of the Act has been lauded as an important first step towards addressing gender-based violence in Ghana. However civil right groups and the state-instituted Commission for Human Rights and Administrative Justice (CHRAJ) have argued that the retention of § 42(g) of the Criminal Code 1960 (Act 29) reinforces popular notions that marriage serves as an automatic consent to sex, and would make it difficult, if not impossible, for women who experience sexual abuse from their spouses to seek redress.

Civil rights groups are also aware of the enormous challenges to be overcome in its implementation. These include training and sensitisation for judges and magistrates, tracking cases reported to the court and building jurisprudence around the Act. Ensuring commitment of funds in the national budget to domestic violence is also a challenge as in practice government has relied on donors to fund gender work in Ghana. For civil society itself, several challenges remain to be addressed; these include developing broad based education on the contents of the law and translating the law into different Ghanaian languages; developing indicators and tools to monitor and evaluate the implementation of the Act and its consequences; tracking cases that go to court to assess the arguments advanced by both lawyers and judges, and finding ways to hold government accountable for the commitments it has made under the law.

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