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3. Ghana



Statistics

GENERAL

Population

- Ghana's total population is 17.7 million, of which 50.4% are women.¹ The population growth rate is approximately 3.1% per annum;² the median age of the population is 17 years.³
- In 1993, the proportion of the Ghanaian population residing in urban areas was estimated to be 35.4%.⁴

Economy

- In 1993, the World Bank estimated Ghana's gross national product ("GNP") per capita to be U.S.\$430.⁵
- In 1995, the gross domestic product ("GDP") grew at an estimated rate of 4.5%, a significant increase since 1994, when the GDP growth rate was 3.8%.⁶
- The government spent approximately 3.5% of its GDP on health in 1990,⁷ compared to the U.S., which spent approximately 12.7% of its GDP on health in the same year.⁸

Employment

- In 1993, approximately 6.2 million persons were employed in Ghana.⁹ Women account for 39.5% of the total labor force.¹⁰
- The gross national income per capita was U.S.\$360 in 1993, down from U.S.\$370 in 1992.¹¹

WOMEN'S STATUS

- The average life expectancy for women is 58 years, compared to 54 years for men. For both sexes combined, average life expectancy is 56.¹²
- Approximately 28% of currently married women (including nearly 40% of married women in their forties) are in polygynous unions.¹³
- Although there has been some improvement in overall literacy rates in Ghana, a strong gender differential in education remains. For example, between 1970 and 1995, the overall literacy rate more than doubled from 30% to 64%; however, the female adult literacy rate in 1995 was 53%, versus 76% for men.¹⁴ Moreover, the literacy gap shrunk only marginally from 25 percentage points in 1970 to 23 percentage points in 1995.¹⁵ In 1990, the primary school enrollment ratio for girls was 69%, whereas the overall primary school enrollment ratio was 77%.¹⁶
- Violence against women, including rape and wife beating, remains a significant problem. Abuses generally go unreported and seldom come before the courts. Police tend not to intervene in domestic disputes.¹⁷

ADOLESCENTS

- Approximately 48% of the Ghanaian population is less than 15 years old.¹⁸
- An estimated 30% of Ghanaian women and girls (2.3 million) have undergone female genital mutilation ("FGM").¹⁹
- The median age at first marriage for women is approximately 18.9 years.²⁰
- At least 4,500 girls and women are bound to various shrines in the *trokosi* system, a traditional practice that enslaves girls, often under the age of 10, to a fetish shrine for offenses allegedly committed by a member of the girl's family.²¹

MATERNAL HEALTH

- Median age at first birth is 20 years.²² The median birth interval is 36.4 months.²³
- The total fertility rate in 1996 was 4.6 children per woman, a decrease from the 1993 rate of 5.1 and the 1979 rate of 6.3 children per woman.²⁴
- The maternal mortality rate in Ghana is estimated to be 214 per 100,000 live births.²⁵

- The infant mortality rate for 1996 is estimated to be 80.3 per 1,000 live births. The under-five mortality rate is estimated to be 126 per 1,000 live births in 1996.²⁶
- Of pregnant women, 26.5% receive antenatal care from doctors, while 59.2% receive antenatal care from nurses or midwives. About 13% receive no antenatal care.²⁷
- Home deliveries account for 56.9% of births, while 42.2% of births are delivered in public health facilities or clinics.²⁸ Births are most commonly assisted by nurses or midwives (37.3%), followed by traditional birth attendants (15.3% trained, 15.2% untrained), friends or others (20.7%), and doctors (6.5%).²⁹

CONTRACEPTION AND ABORTION

- As of 1993, contraception was used by approximately 20.3% of all currently married Ghanaian women between the ages of 15 and 49 years,³⁰ but only about half of those women used modern contraceptive methods. Use among unmarried women is slightly lower.³¹
- Approximately 0.9% of currently married women between the ages of 15 and 49 years have undergone a sterilization procedure.³²
- Little is known about the overall incidence of abortion in Ghana, but it is believed to be fairly common. According to a 1984 survey, 20% of obstetric patients had had at least one induced abortion.³³
- Between 9% and 13% of maternal deaths in 1990-1991 were due to abortion complications. Sixteen percent of total gynecological admissions were due to abortion-related complications.³⁴

HIV/AIDS AND STDs

- By 1994, approximately 16,000 cases of AIDS were reported to the World Health Organization ("WHO"), although the actual number of cases in Ghana is probably two to three times that number.³⁵ It is estimated that, as of 1994, approximately 172,000 adults in Ghana were infected with HIV, a prevalence rate of 2.3% among sexually active adults.³⁶
- Sentinel surveillance for HIV among pregnant women in 1992 showed prevalence rates of 3.2% and 4.2% in the urban centers of Koforidua and Kumasi, respectively.³⁷ Recent evidence shows an increasing level of HIV infection among commercial sex workers, from 25% in 1987 to 38% in 1991.³⁸

ENDNOTES

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4. WORLD BANK, WORLD TABLES 1995, at 307 (1995) [hereinafter WORLD TABLES].
5. *Id.* at 305.
6. HON. KWAME PEPRAH, THE BUDGET STATEMENT AND ECONOMIC POLICY OF THE GOVERNMENT OF GHANA FOR THE FINANCIAL YEAR 1996 1 (Feb. 2, 1996).
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19. NAHIB TOUBIA, FEMALE GENITAL MUTILATION, A CALL FOR GLOBAL ACTION 25 (Rainbø 1995).
20. DEMOGRAPHIC SURVEY, *supra* note 13, at 61-62.
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22. DEMOGRAPHIC SURVEY, *supra* note 13, at 29-30.
23. *Id.* at 27-29.
24. POPULATION TRENDS: GHANA, *supra* note 1, at 4.
25. GHANA/UNFPA, *supra* note 2, at 2.
26. POPULATION TRENDS: GHANA, *supra* note 1, at 4.
27. DEMOGRAPHIC SURVEY, *supra* note 13, at 93.
28. *Id.* at 96.
29. *Id.* at 97.
30. POPULATION TRENDS: GHANA, *supra* note 1, at 4.
31. DEMOGRAPHIC SURVEY, *supra* note 13, at 38-39.
32. POPULATION TRENDS: GHANA, *supra* note 1, at 4.
33. UNITED NATIONS DEPARTMENT FOR ECONOMIC AND SOCIAL INFORMATION AND POLICY ANALYSIS, ABORTION POLICIES: A GLOBAL REVIEW II 29 (1993).
34. INTERNATIONAL PLANNED PARENTHOOD FEDERATION, AFRICA REGION, UNSAFE ABORTION AND POST-ABORTION FAMILY PLANNING IN AFRICA 28 (1994).
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37. *Id.*
38. *Id.*

The Republic of Ghana was established in 1960, three years after Ghana gained political independence from British colonial rule.¹ A 1964 referendum conferred on Ghana's first president, Kwame Nkrumah, a wide range of powers that enabled him to establish a one-party socialist state.² In 1966, Ghana's "First Republic" was overthrown by a military coup.³ A new constitution was promulgated and elections were held in 1969. From 1972 to 1993, with one exception of a brief constitutional period from 1979 to 1981, Ghana's Constitution was continually suspended and four different military governments ruled by decree.⁴ The latter two military coups were led by Flight Lieutenant Jerry Rawlings, who was recently elected to a second four-year term as president.⁵ The country's fourth republican Constitution, which permits multi-party politics, came into effect in January 1993.⁶ December 7, 1996 marked the first time since independence that an elected government completed its first term and was democratically elected to a second term of office.⁷

Ghana's total population is approximately 17.7 million,⁸ and approximately 50.4% of the population is women.⁹ Ghana's principal ethnic groups are the Akans (44% of the population), Mole-Dagbani (16%), Ewes (13%), Ga-Adangbe (8%), Grussi (2%), and a number of smaller groups.¹⁰ Approximately two thirds of Ghanaian heads of households are Christian, 14% are Muslim, 18% practice traditional religions, and 4% are adherents of smaller religious groups.¹¹

I. Setting the Stage: The Legal and Political Framework

To understand the various laws and policies affecting women's reproductive rights in Ghana, it is necessary to consider the legal and political systems of the country. Without this background, it is difficult to determine the manner in which laws are enacted, interpreted, modified, and challenged. The passage and enforcement of laws often involves specific formal procedures. Policy enactments, however, are not subject to such a process.

A. THE STRUCTURE OF GOVERNMENT

The Constitution of the Republic of Ghana, 1992 (the "Constitution"), was approved by national referendum on April 28, 1992, and it entered into force on January 7, 1993.¹² It establishes a constitutional democracy and declares itself to be the supreme law of the land¹³ from which the power of the three independent branches of government — the executive, legislature, and judiciary — is derived.

The Executive Branch

The executive branch of government consists of a president, who is head of state, head of government, and commander-in-chief of the armed forces.¹⁴ The president is not elected to more than two four-year terms.¹⁵ The Constitution also provides for a vice-president,¹⁶ as well as a cabinet appointed by the president and approved by Parliament to assist in determining the general policy of the government.¹⁷ In addition, the president is advised, at his request, by a Council of State consisting of, *inter alia*, representatives from the various regions of Ghana, the president of the National House of Chiefs, and other members appointed by the president.¹⁸ The Constitution guarantees the institution of chieftaincy¹⁹ and establishes a National House of Chiefs, which is charged with certain functions relating to customary law and has certain appellate jurisdiction on matters affecting chieftaincy.²⁰

Ghana is divided administratively into 10 regions that in turn are divided into 110 districts.²¹ Ghana's Constitution prescribes a decentralized system of local government and administration.²² The District Assembly is the highest political authority in each district, subject to the Constitution, and exercises deliberative, legislative, and executive powers²³ as prescribed by Parliament. Its powers include administering programs and plans for the district's development and the levying and collection of taxes.²⁴ Each District Assembly is composed of one person from each local government electoral area, elected by universal adult suffrage, the member(s) of Parliament pertaining to that district, up to 30% of other members appointed by the president in consultation with traditional and other interest groups,²⁵ and the district chief executive, who is appointed by the president and approved by two thirds of the District Assembly.

Each region has a House of Chiefs, composed of paramount chiefs who in turn head numerous traditional councils consisting of a paramount chief and his subordinate chiefs.²⁶ As prescribed in the Constitution and described above, regional and local traditional bodies deal exclusively with customary law.²⁷

The Legislative Branch

Legislative power rests with a unicameral Parliament²⁸ which exercises its power through the passage of bills assented to by the president.²⁹ After considering the president's reasons for refusing to assent to a bill, Parliament may override him by a two-thirds vote of all members, and the president must then assent within 30 days.³⁰ Any order, rule, or regulation made by a person or authority under a power conferred by the Constitution or any other law is to be laid before Parliament prior to its entry into force, and Parliament is empowered to annul such order, rule, or regulation by a vote of two

thirds of all its members within 21 days of its being laid before Parliament.³¹

The Judicial Branch

Courts both create and interpret law. The judicial system can have significant impact on legislation, including that affecting reproductive rights, because it is able to enforce the law and deal with complaints from individuals challenging the constitutionality of specific laws. An independent judiciary, subject only to the Constitution, administers all judicial power.³² The Constitution establishes an integrated hierarchical system of superior courts comprised of, in descending order, the Supreme Court, the Court of Appeal, the High Court, and Regional Tribunals, all of which constitute the Superior Courts of Judicature, and such lower courts or tribunals as Parliament shall establish.³³ The Supreme Court, headed by the chief justice and at least nine other justices,³⁴ is the highest court of appeal in all civil and criminal matters.³⁵ It has original jurisdiction to hear all matters relating to the enforcement or interpretation of the Constitution and all matters that arise when an enactment is allegedly made in excess of Parliament's or any other person's authority.³⁶ The chief justice and Supreme Court justices are appointed by the president in consultation with the Council of State and with Parliament's approval.³⁷ The chief justice is also a member of the Court of Appeal, the High Court, and each of the 10 Regional Tribunals.³⁸ The Court of Appeal hears appeals from the High Court and Regional Tribunals.³⁹ The justices of the Court of Appeal and of the High Court and the chairmen of Regional Tribunals are appointed by the president, acting on the advice of a judicial council established pursuant to the Constitution.⁴⁰

The inferior courts,⁴¹ which handle civil and criminal matters of a less serious nature, consist of circuit courts and tribunals,⁴² community tribunals, and juvenile and family tribunals. In addition, the National House of Chiefs, the Regional House of Chiefs, and Traditional Councils that hear matters in their jurisdictions relating to chieftaincy are also considered to be part of the inferior courts.⁴³

B. SOURCES OF LAW

Domestic Sources of Law

Laws that affect women's legal status — including their reproductive rights — derive from a variety of sources. Ghana's legal system encompasses concepts of English common law, indigenous customary law,⁴⁴ and Ghanaian statutory law.⁴⁵ The sources of law specified in Ghana's Constitution are: the Constitution itself; enactments made by Parliament; orders, rules, and regulations made pursuant to constitutional authority; existing law; and the common law.⁴⁶ Statutory law has

played a central role in the Ghanaian legal system since colonial times, as "acts" passed by civilian governments subject to constitutionally mandated substantive and procedural requirements, and as "decrees" issued by military regimes when few limits on substantive lawmaking powers existed.⁴⁷ Subordinate forms of legislation, such as orders, rules, and regulations made by an authorized person under legislative or constitutional authority are also an important source of Ghanaian law often directly touching citizens' lives.⁴⁸

Ghana's Constitution enumerates certain fundamental human rights and freedoms accorded constitutional protection, thus requiring all governmental organs and agents and, where applicable to them, all natural and legal persons in Ghana to respect and uphold such rights and freedoms.⁴⁹ Moreover, entitlement to those rights and freedoms occurs without regard to a number of factors including race, political opinion, religion, and gender. But such rights are made "subject to respect for the rights and freedoms of others and for the public interest."⁵⁰ There is also a specific non-discrimination provision that includes gender,⁵¹ a provision granting spouses equal access to property and distribution thereof,⁵² and a women's rights provision.⁵³ The Constitution also includes as a fundamental right the right of "every person to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution."⁵⁴ However, it prohibits "[a]ll customary practices which dehumanize or are injurious to the physical and mental well-being of a person."⁵⁵ Furthermore, the Constitution sets forth certain "Directive Principles of State Policy" that are intended to guide all citizens, all branches of government, and other bodies in "applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just and free society."⁵⁶ These policy objectives include a long list of objectives, such as the realization of basic human rights, the right to health care, and the right to education.⁵⁷

The term "common law" in Ghana means "the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature."⁵⁸ Ghanaian common law has been characterized as the most persuasive source of law in Ghana, an essential guide for judges where statutes are lacking or inadequate.⁵⁹

The Constitution specifically incorporates customary law, the body of largely unwritten laws applicable to particular communities in Ghana. Such law, in effect, controls the day-to-day lives of a large segment of the population and is particularly relevant to all matters governing family law.⁶⁰ The Courts Act, 1993, guides a court's application of customary

law and its relationship to common law.⁶¹ Ghanaian lower courts and tribunals are to ascertain whether, as a matter of law, the parties intended a system of customary law to apply to the transaction and, if so, the courts are to apply it.⁶² Where the parties are not subject to a system of customary law, the court is directed to apply rules of the common law, or customary law, or both, as will do substantial justice, having regard to equity and good conscience.⁶³

International Sources of Law

The Constitution authorizes the president to execute or cause to be executed treaties, agreements, or conventions on behalf of the government of Ghana.⁶⁴ Such agreements must be ratified by an Act of Parliament or a resolution of Parliament supported by the votes of not less than half of Parliament's members.⁶⁵ Moreover, international legal instruments become enforceable in Ghana after they are incorporated into domestic law by implementing legislation.⁶⁶ Ghana's Constitution has established as one of its "directive principles of state policy" the promotion of international law and treaty obligations and adherence to "the principles enshrined in or as the case may be, the aims and ideals of" the Charter of the United Nations, the Charter of the Organization of African Unity, and any other international organization of which Ghana is a member.⁶⁷ The Constitution also states that the government "shall be guided by international human rights instruments which recognize and apply particular categories of basic human rights to development processes."⁶⁸ Various international human rights treaties, particularly the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), recognize and promote specific reproductive rights. Such treaties are legally binding instruments and therefore create an obligation on the part of the government to take action at the national level. Ghana has ratified, *inter alia*, the following international legal instruments: the CEDAW;⁶⁹ the Convention on the Elimination of All Forms of Racial Discrimination;⁷⁰ the Convention on the Rights of the Child;⁷¹ and the African Charter on Human and Peoples' Rights.⁷²

II. Examining Reproductive Health and Rights

Issues of reproductive health and rights are dealt with primarily in Ghana within the context of the country's health and population policies. Thus, an understanding of reproductive rights in Ghana must be based on an examination of those policies.

A. HEALTH LAWS AND POLICIES

Objectives of the Health Policy

Ghana's national health policy is currently known as the Medium Term Health Strategy and its general objectives are to provide universal access to primary health care and to improve the quality of services.⁷³ Recent data indicate that only 60% of the population has access to some form of modern medical facilities and health services, a figure which drops to 45% in rural areas.⁷⁴ National health objectives were recently articulated in terms of both long-term and medium-term goals.⁷⁵ The objectives of Ghana's health policy in the medium-term are to: increase access to health services, especially in rural areas; reorient the health system toward delivery of public health services; reduce rates of infant, child, and maternal mortality; and control risk factors that expose individuals to major communicable diseases.⁷⁶ Other health objectives articulated by the Ministry of Health ("MOH") to be realized by the year 2000 include increasing the prevalence of family planning methods by 25%, improving coverage of antenatal care, intensifying the government's breast-feeding campaign, reducing the incidence of immunizable diseases by 50%, intensifying education on AIDS prevention, reducing mortality attributable to communicable diseases, and increasing awareness of the dangers of teenage pregnancy.⁷⁷ The government has given increased attention to reproductive health matters, as demonstrated by the MOH's introduction in 1996 of the Reproductive Health Service Policy and Standards (the "Reproductive Health Service Policy").⁷⁸

Although public and private sector expenditures are roughly equal,⁷⁹ the majority of Ghanaians depend upon the public sector for health care needs. Ghana's MOH oversees the delivery of public health care through a decentralized Primary Health Care ("PHC") delivery system, introduced in 1978,⁸⁰ designed to provide a basic package of cost-effective services that will ensure widespread access to promotive and preventive health services as well as emergency curative services.⁸¹ The PHC concentrates its efforts in key priority areas, including: nutrition, immunization, health education, maternal and child care, family planning, sexually transmitted diseases and HIV/AIDS, and control of malaria and diarrheal diseases.⁸²

Infrastructure of Health Services

Ghana's Parliament recently passed the Health Service and Health Management Bill, 1996, which provides for the establishment of the Ghana Health Service at the national, regional, and district levels.⁸³ This new law implements a constitutional provision that calls for the public services of Ghana to include a health service.⁸⁴ The Ghana Health Service will

be the implementing agency of the MOH and will approve national policies, increase access to health services, and manage resources for the provision of health services.⁸⁵ The Ghana Health Service is to be comprised of medical personnel already in the MOH's employ and other public officers transferred to the service, and will have national, regional, and district committees to advise and implement policy.⁸⁶ The new law also states that the Ghana Health Service will include teaching hospitals at the apex of the health system, state-owned hospitals and health stations, and will provide for the internal management of such institutions.⁸⁷

As of 1995, Ghana's decentralized health system was comprised of approximately 177 hospitals (including two teaching hospitals, eight regional hospitals, 85 public hospitals, 41 mission hospitals, and 51 private hospitals), 733 health centers (404 of them public), and 869 clinics (267 of them public clinics).⁸⁸ As of 1995, Ghana had approximately 1,100 registered physicians and 12,600 registered nurses.⁸⁹ There is one clinic for every 10,512 persons.⁹⁰ As is the case with other government services, health care providers work at the community, subdistrict, district, regional, and national levels, depending upon the nature of the service required.⁹¹

Within Ghana's general health infrastructure, reproductive health services are offered at virtually every level.⁹² Most small rural communities depend on traditional birth attendants ("TBAs"), who may or may not be trained. Ghana's current reproductive health policy within the PHC is described below in the section entitled "Population and Family Planning."

Cost of Health Services

Ghana's public health care services are subsidized by the government, although they are generally not offered free of charge, except for prenatal and postnatal services (excluding hospital accommodation and catering), standard immunizations, and treatment for certain communicable diseases, including venereal diseases.⁹³ Health care in all public health institutions also is free to indigents whose status as such has been established by social welfare officials.⁹⁴ Ghanaian law exempts indigents, students, those under 18 years who are unemployed, those over 65, and most maternity patients from payment for hospital services.⁹⁵ Consultations, laboratory tests (including pregnancy tests), minor operative procedures, minor and major surgical procedures (including all gynecological and obstetric procedures, caesarean sections, hysterectomies, and tubal ligations), drugs, and hospital accommodations, are all charged according to set rates for children and adults.⁹⁶ Significantly higher rates are charged to non-Ghanaians.⁹⁷ Ghana's ongoing structural adjustment reforms have resulted in the withdrawal of subsidies for such health care. These changes have severe repercussions in a

country such as Ghana, where the majority of people cannot pay for their health needs.⁹⁸ For example, in 1992 the MOH introduced its Cash and Carry Programme to ensure the continuous supply of essential drugs at health facilities.⁹⁹ Due to the program's focus on recovering costs, many health workers have disregarded the policy provisions for free health services, resulting in serious mishandling of emergencies and cases involving indigents.¹⁰⁰

Regulation of Health Care Providers

Who is legally permitted to provide what types of health care services? Are there meaningful guarantees of quality control within health care services? Because the Ghanaian government regulates these issues, reviewing relevant laws is important. Ghana has three statutory schemes creating regulatory councils to deal with qualification, registration, and disciplinary actions for: doctors and dentists;¹⁰¹ nurses and midwives;¹⁰² and pharmacists.¹⁰³

The Medical and Dental Council (the "Medical Council") is composed of registered medical and dental practitioners, medical school representatives, distinguished non-medical members, and health services officials. It is responsible for securing, in the public interest, the highest standards in the practice of medicine and dentistry in Ghana by overseeing medical and dental study and training, establishment of professional conduct, maintenance of a registry of practitioners, and exercise of disciplinary standards.¹⁰⁴ Only registered physicians and dentists may practice medicine and dentistry, respectively.¹⁰⁵ However, the practice of "an indigenous system of therapeutics" is permitted by indigenous inhabitants of Ghana who do not perform acts dangerous to life or supply, administer, or prescribe any restricted drug.¹⁰⁶

To register as a medical or dental practitioner in Ghana, an individual must hold a "primary qualification" through work in medical school, be of "good character," pass examinations, and complete a term of medical or dental residency for a period prescribed by the Medical Council with an approved hospital or institution.¹⁰⁷ Anyone who willfully and falsely practices, professes to practice, or receives payment for practicing medicine or dentistry without having registered or who willfully procures or attempts to procure registration by giving false information shall be guilty of an offense and subject to imprisonment not exceeding 12 months and/or a fine.¹⁰⁸

Pursuant to the Nurses and Midwives Decree, nurses and midwives are governed by the Nurses and Midwives Council (the "Nurses Council"), whose function is to oversee the training, education, maintenance, and promotion of standards of professional conduct and efficiency for nurses and midwives.¹⁰⁹ The Nurses Council issues a certificate to an individual who "has attained the necessary standards of

proficiency” or “has acquired an adequate practical experience.”¹¹⁰ Such a certificate facilitates registration that entitles one to practice nursing or midwifery.¹¹¹ The Nurses and Midwives Decree establishes an offense punishable by up to 12 months imprisonment and/or a fine where an individual procures registration by false information, implies qualification to practice nursing or midwifery or practices, professes to practice, or receives compensation without being registered as a nurse or midwife.¹¹²

Ghana also recently promulgated the Pharmacy Act, 1994 (the “Pharmacy Act”), which regulates pharmacists through a body similar to the two councils described above, known as the Pharmacy Council.¹¹³ The Pharmacy Council is responsible for overseeing adequate study and training in pharmacy, prescribing and enforcing standards of professional conduct, exercising disciplinary powers to ensure such standards, maintaining a register of qualified and registered pharmacists, and regulating the licensing of premises and chemical sellers to sell and distribute certain restricted drugs in the country.¹¹⁴ No person may practice pharmacy nor operate a retail pharmacy unless he or she is qualified as a pharmacist, has passed the Ghana Pharmacy Professional Qualifying Examination, and has otherwise registered in accordance with the statute.¹¹⁵ Moreover, no person may either describe himself or herself or hold himself or herself out to be a pharmacist, or open any premises under the description of “pharmacy,” “chemist,” “drug store,” etc., unless a registered pharmacist is on the premises to supervise the dispensing of drugs or medication. In addition, no person may carry on a business of supplying from any premises certain classified drugs specified by law, unless that person has a valid general or limited license for such premises issued under the Pharmacy Act.¹¹⁶

While traditional health care practitioners are not yet regulated by statute in Ghana, the government has begun to recognize the need for greater integration of traditional practitioners into the health care system, particularly with respect to reproductive health. The Reproductive Health Service Policy, recently issued by the MOH, specifically includes a program of training for TBAs and other community providers and integrates them into all aspects of reproductive health services promoted through the Reproductive Health Service Policy.¹¹⁷ For example, *wanzams* or “circumcisers” who practice Female Genital Mutilation (“FGM”) are regarded as key players that could assist the MOH to discourage FGM.¹¹⁸ Recently, the government introduced a draft proposal of a law to regulate and control the practice of traditional medicine, entitled the “Ghana Traditional Medicine Act.”¹¹⁹

Patients’ Rights

Laws also seek to ensure quality health services by protecting the rights of patients. Ghana’s Criminal Code provides that anyone engaged in medical or surgical treatment of any person who negligently endangers that person’s life is guilty of a misdemeanor¹²⁰ punishable by imprisonment of up to three years and/or a monetary fine at the court’s discretion.¹²¹ The Criminal Code also specifies that where in the course of medical or surgical treatment, any person “intentionally causes harm to a person which, in the exercise of reasonable skill and care he ought to have known to be improper, he will nonetheless be liable to punishment as if he caused the harm negligently” rather than intentionally.¹²² Ghanaian law permits an aggrieved patient to bring an action in tort against a health care provider for any alleged medical malpractice.¹²³

The Penal Cases Committee of the Medical Council investigates allegations of malpractice and refers cases warranting inquiry to the Disciplinary Committee of the council.¹²⁴ The Disciplinary Committee may, at its discretion, reprimand, suspend, or remove from the registry any practitioner where an inquiry merits action against him or her.¹²⁵ A practitioner may appeal any such disciplinary measure to the Court of Appeal.¹²⁶ The Disciplinary Committee may at any time restore a practitioner to the register who has been removed, although a practitioner may not apply for restoration until at least 12 months after removal from the register.¹²⁷ Similarly, disciplinary proceedings for alleged professional misconduct may be brought to the registrar against nurses or midwives under the Nurses and Midwives Decree and, at the registrar’s discretion, referred to the Nurses Council’s Disciplinary Committee for full inquiry.¹²⁸ The Disciplinary Committee of the Pharmacy Council inquires into matters relating to professional conduct and standards referred to it by the council.¹²⁹

The Medical Council also has ethical guidelines stating that, in their own interests, practitioners should obtain informed consent from either the patient or a relative prior to undertaking medical or surgical procedures.¹³⁰ The regulations enacted by the Medical Council do not contain requirements relating to consent, but provide that it is the Medical Council’s duty to “determine what action or course of conduct constitutes infamous conduct” in a professional respect in each disciplinary case.¹³¹ The regulations do state that it is against professional conduct for a practitioner to disclose voluntarily, without the patient’s consent, any information obtained in the course of his or her professional relationship, except that such information may be disclosed in the public interest and if the practitioner is required to do so by statute or a court of law.¹³² The regulations also state that it is an offense against professional ethics “for a practitioner to abuse

his special access to a patient by way of adultery or any other improper association with the patient at the material time.”¹³³

B. POPULATION AND FAMILY PLANNING

The Population and Family Planning Policy

In 1969, the government issued a comprehensive policy on population entitled “Population Planning for National Progress and Prosperity: Ghana Population Policy,”¹³⁴ which stated that population control was a basic element in all developmental planning activity and identified the need to adopt measures to reduce population growth.¹³⁵ In 1992, the National Population Council (“NPC”), under the office of the president, was established to undertake the revision of the 1969 population policy with input from a wide spectrum of society,¹³⁶ and to act as adviser, promoter, and as a coordinating body to oversee population policy implementation at both the national and regional levels.¹³⁷ The NPC is appointed by the president in consultation with the Council of State and is comprised of representatives from various ministries and other private experts.¹³⁸ In 1994, because of a continuing “unacceptably high level” of population growth, the absence of a coordinated institutional machinery, and other factors such as concerns regarding HIV/AIDS and teenage pregnancy, the population policy was revised and updated after extensive debate.¹³⁹ Ghana’s recent Constitution specifically refers to the state’s obligation to “maintain a population policy consistent with the aspirations and development needs and objectives of Ghana”¹⁴⁰ as part of the Constitution’s Directive Principles of State Policy.¹⁴¹

Ghana’s development plans view population policy as an integral part of development. Ghana’s National Development Planning Commission, which has primary responsibility for national development planning, included both medium- and long-term population objectives in its comprehensive development policy, Ghana — Vision 2020¹⁴² (“Vision 2020”). The policy describes the “widespread failure to comprehend the negative effects of a continuing high rate of population growth and to implement effective family planning technologies” as a major constraint on development and cautions that reluctance to reduce the rate of reproduction will “prevent the achievement of the development targets proposed in this programme.”¹⁴³ The long-term objective articulated in Vision 2020 is to reduce the present annual growth of 3% per annum to 2% per annum by the year 2020.¹⁴⁴ Vision 2020 also articulates as medium-term strategies the development of the capacity of the population to effectively exercise options to control its fertility, as well as the strengthening and enhancement of services to promote and support improved fertility management.¹⁴⁵

The current National Population Policy (the “Population Policy”) is primarily aimed at achieving, in the long term, a population size that is compatible with the provision of an adequate standard of living for all, and for sustainable development.¹⁴⁶ Other stated goals of the Population Policy include: alleviating mass poverty and enhancing the welfare of the population; reducing maternal morbidity and mortality and promoting reproductive and sexual health for all, including adolescents; enhancing the status of women in society through the elimination of discriminatory laws and cultural practices that are inimical to women’s well being and self-esteem; promoting wider productive and gainful employment opportunities for women and increasing the proportion of women entering and completing at least secondary school; and examining the structure of government conditions of employment and changing them in such ways as to minimize their pronatalist effects.¹⁴⁷ The Population Policy seeks to achieve a number of specific objectives, many of which are set forth in quantitative terms. These targets include:¹⁴⁸

- Reducing the total fertility rate from 5.5 to 5.0 by the year 2000, to 4.0 by 2010, and to 3.0 by the year 2020; and achieving a contraceptive prevalence rate of 15% for modern methods by the year 2000, 28% by 2010, and 50% by 2020;
- Reducing the present annual population growth rate of about 3.0% to 1.5% by the year 2020;
- Reducing the proportion of women who marry before the age of 18 by 50% by the year 2000 and by 80% by the year 2020;
- Reducing the proportion of women below the age of 20 and above the age of 34 bearing children by 50% by the year 2010 and by 80% by the year 2020, and achieving a minimum birth spacing interval of at least two years by 2020;
- Increasing the proportion of 15-to-19-year-old women with secondary education and above by 50% by the year 2005 and by 80% by the year 2020;
- Achieving full immunization for 80% of infants (0-to-11 months) by the year 2020;
- Reducing the infant mortality rate from its current level of about 66 infant deaths per 1,000 live births to 44 in the year 2005 and to 22 in the year 2020;
- Making family planning services available, accessible, and affordable to at least half of all adults by the year 2020; and
- Increasing life expectancy of the population from its current level of about 58 years to 65 years by the year 2010 and to 70 years by the year 2020.

The Population Policy also identifies several objectives to achieve the above goals, including: ensuring that population issues are systematically integrated in all aspects of development planning; enhancing integrated rural and urban development to improve living conditions, particularly in rural areas; providing the population, including adolescents, with the necessary information and education on the value of small family size, as well as sexual and reproductive health; ensuring accessibility to, and affordability of, family planning means and services; developing programs aimed at the empowerment of women; integrating family planning services into maternal and child health care services; educating the general public about HIV/AIDS and other sexually transmitted diseases; and ensuring that the Law Reform Commission, Parliament, and other law-making agencies are well sensitized on population issues.¹⁴⁹ Finally, the population policy has detailed implementation strategies in many of the principal areas addressed by the policy, including maternal and child health, family planning, health and welfare, empowerment of women, the role of men in family welfare, and children and youth.¹⁵⁰

In 1996, the MOH issued the Reproductive Health Service Policy, which seeks to directly address issues affecting reproductive health care.¹⁵¹ Specifically, the Reproductive Health Service Policy sets out general rules and regulations for health care providers to provide uniform policy guidance and standards concerning a wide array of reproductive health issues, recognizing that the past concentration on family planning failed to address other components of reproductive health care.¹⁵² The Reproductive Health Service Policy thus includes the following components: safe motherhood (including antenatal, labor and delivery care, and postnatal care); adolescent reproductive health; the prevention and management of unsafe abortion; reproductive tract infections including STDs and HIV/AIDS; infertility; and the discouragement of harmful traditional reproductive health practices.¹⁵³ The Reproductive Health Service Policy endorses the principle that reproductive health care involves preventive, curative, and promotional services for the improvement of the health and well-being of the population, especially mothers, children, and adolescents. The policy states that all couples and individuals have the basic right to decide freely and responsibly about their reproductive lives and to have the information and means to do so.¹⁵⁴ A central objective of the Reproductive Health Policy is to provide information to enable such reproductive self-determination and to provide affordable contraceptive services, including a full range of safe and effective contraceptive methods.¹⁵⁵

Government Delivery of Family Planning Services

The government provides reproductive health services at

every level of its health system.¹⁵⁶ However, the current health system is not able to meet the needs of Ghanaians. As of 1992, there was approximately one clinic for every 10,512 persons and one hospital for every 94,224 persons in Ghana. Most of these health care facilities provide family planning services in some form.¹⁵⁷ These figures demonstrate that less than three fifths of the population has access to some form of modern medical facility and health service, including reproductive health care services.¹⁵⁸ Data also indicates that Ghanaian programs are still falling short of meeting women's demand for services.¹⁵⁹ According to 1993 data, just under 13% of mothers who had children in the previous three years did not receive any antenatal care,¹⁶⁰ 56.9% gave birth at home rather than in some type of health facility,¹⁶¹ and less than 60% were assisted during deliveries by a doctor, nurse, midwife, or TBA.¹⁶²

The fees charged for all reproductive health services, including male and female sterilizations, are mandated by the Hospital Fees Regulations.¹⁶³ In addition, clients are required to pay for contraceptive devices.¹⁶⁴ However, the regulations provide that no fees other than the cost of prescription drugs shall be charged to any person suffering from venereal disease, and that no fees other than hospital accommodation and catering shall be paid in any government hospital or clinic for antenatal and postnatal services and treatment at Child Welfare Clinics.¹⁶⁵ Treatment and services for persons with HIV/AIDS are free.¹⁶⁶ Prenatal, labor and delivery, and postnatal services are available in government-run hospitals and clinics, as well as in private maternity homes.¹⁶⁷

Contraceptives are available through both public and private sources. The following contraceptive methods and information are available in public health care facilities: condoms, spermicides, cervical caps, diaphragms, oral contraceptive pills, injectables, lactational amenorrhoeal method ("LAM"), natural family planning methods, intrauterine devices ("IUDs"), implants, tubal ligation, and vasectomy.¹⁶⁸ Although 43.3% of women who are current users of modern methods obtained contraceptives from a public source, 52.2% of women users of modern methods obtained their supply from private sources, primarily pharmacies.¹⁶⁹ The government sector, however, is largely responsible for providing female sterilization (73%), injections (85.7%), and IUD insertions (87.1%).¹⁷⁰

Ghana's Reproductive Health Service Policy also contains an information, education, and communication ("IEC") component whose principal purpose is to foster awareness, to educate, and to enable people to make informed choices and take action with respect to their reproductive health.¹⁷¹ The principal IEC activities in the promotion of reproductive health include production and distribution of materials, coun-

seling, training, resource mobilization, and community involvement.¹⁷² Specific target groups of the reproductive health IEC programs in health facilities, schools, and the community are school-aged and adolescent children, religious bodies, clients with reproductive health diseases, policy makers, and opinion leaders.¹⁷³

C. CONTRACEPTION

Among currently married Ghanaian women, contraceptive prevalence is approximately 20%, with 10% prevalence of modern methods.¹⁷⁴ In 1993, the following contraceptive methods were reportedly used by married women: the pill (3.2%); IUD (0.9%); injections (1.6%); diaphragm/foam/jelly (2.2%); sterilization (0.9%); periodic abstinence (7.5%); and withdrawal method (2.1%).¹⁷⁵ Prevalence rates are higher for men: 33.5% report use of any method.¹⁷⁶

Legal Status of Contraceptives

Ghanaian law does not restrict the use of contraceptives. The Ministry of Health's Reproductive Health Service Policy states that the government's family planning policies include the goals of providing affordable contraceptive services and a full range of safe and effective methods.¹⁷⁷ In general, the Reproductive Health Service Policy clearly states that spousal consent for contraceptive use is not required.¹⁷⁸ Doctors and pharmacists determine whether particular contraceptive methods are appropriate for particular patients.¹⁷⁹

New contraceptive methods must be approved and registered by the Pharmacy Council prior to use in Ghana.¹⁸⁰ Several other provisions of the Pharmacy Act affect the supply of contraceptives to consumers. Because certain contraceptives are classified as "restricted drugs," there are limitations on how they may be distributed and sold. The Pharmacy Council is empowered to issue general or limited certificates regarding premises where drugs are to be sold and to revoke such certificates if the premises cease to be suitable.¹⁸¹ No person may carry on a business of supplying "restricted drugs," which would include birth control pills and injections, unless that person has a valid general or limited license issued under the Pharmacy Act.¹⁸²

Moreover, to ensure the safe supply of contraceptive and other drugs to consumers, the Pharmacy Council is empowered to revoke a license if it believes a license holder has contravened the Pharmacy Act.¹⁸³ In addition, no person may mix, compound, prepare, or supply "restricted drugs" unless that person is a pharmacist or is employed by a licensed company, or unless that person is a medical practitioner, dentist, or veterinary surgeon supplying a drug to a patient in urgent need.¹⁸⁴ A pharmacist or licensed company may supply "Class A" drugs, which include oral contraceptives and injec-

tions, only upon presentation of a prescription issued by a medical practitioner, dentist, or veterinary practitioner.¹⁸⁵ The Pharmacy Act prohibits any person from supplying a "dangerous drug" unless the drug is in a container of the prescribed description and the container bears a label indicating the prescribed particulars of its contents.¹⁸⁶ Condoms and spermicides are sold in pharmacies, supermarkets, and by the National Trading Corporation, which distributes them through government clinics.¹⁸⁷

Regulation of Information on Contraception

In 1986, the Ghanaian government banned the advertisement of contraceptives in the mass media.¹⁸⁸ Moreover, although there are no laws specifically controlling information provided to clients seeking contraceptives or family planning services, the general penal laws on obscenity apply.¹⁸⁹ Thus, any person who publishes any "obscene" writing or representation is guilty of a misdemeanor.¹⁹⁰ Although obscenity is not defined, the statute provides an illustration that describes a person who publishes extracts from a medical book in a manner that gives "unnecessary prominence to indecent matters" and states that the person should be convicted if the court or jury believes that such publication "is calculated unnecessarily and improperly to excite passion, or to corrupt morals."¹⁹¹ However, certain types of information regarding contraception is encouraged by the government. The Reproductive Health Service Policy requires service providers to provide clients with an array of information and counseling, including that with respect to family planning and contraception.

D. ABORTION

Although there are no official statistics on abortion in Ghana, recent studies indicate that it is a common practice, particularly among adolescents.¹⁹² Despite the liberalization of abortion laws, illegal abortions continue to occur.¹⁹³ Moreover, most people, including health workers, are not aware that the abortion laws have been liberalized and still consider all abortions to be criminal acts.¹⁹⁴

Legal Status of Abortion

Ghana's laws permit abortion in a number of circumstances. Ghana's Criminal Code provides that "[w]hoever intentionally and unlawfully causes abortion or miscarriage shall be guilty of a second degree felony"¹⁹⁵ and states that the offense of causing abortion or miscarriage can be committed either by the pregnant woman or by any other person.¹⁹⁶ Ghana clarified its criminal laws by enacting an amendment in 1985 regarding abortion (the "1985 Abortion Amendment"). The 1985 Abortion Amendment specifically defines "abortion or miscarriage" to mean "the premature expulsion or removal of conception from the uterus or womb before

the period of gestation is completed.”¹⁹⁷ The amendment sets forth a number of conditions under which an abortion will be considered legal. An abortion is legal when the pregnancy is the result of rape, incest, or “defilement” of a mentally handicapped woman, and also if there is substantial risk that the child might suffer from or later develop a serious physical abnormality or disease.¹⁹⁸ It is also legal when the continuation of the pregnancy would involve a risk to the life of the pregnant woman or injury to her physical or mental health.¹⁹⁹ The 1985 Abortion Amendment specifically criminalizes common methods used to induce illegal abortions, thereby covering certain actions that arguably may not have been covered previously. It provides that any person who supplies or administers to a woman any “poison, drug or other noxious thing or uses any instrument or any other means” with the intent to cause or induce or abet an abortion or a miscarriage is guilty of an offense and liable to imprisonment not exceeding five years.²⁰⁰ The offense of causing abortion is also committed by causing a woman to prematurely deliver a child with intent to unlawfully cause or hasten the death of the child,²⁰¹ or where intent to commit the offense is present even if the woman is not in fact pregnant.²⁰²

Requirements for Obtaining Abortion

As stated above, Ghanaian law not only specifies the circumstances under which an abortion may be performed, but it also states that the procedure may be legally performed only “by a registered medical practitioner specializing in gynaecology or any other registered medical practitioner in a Government hospital or in a private hospital or clinic registered under the Private Hospital and Maternity Homes Act, 1958²⁰³ or in a place approved for the purpose.”²⁰⁴ No second medical opinion is required. As is the case with other surgical treatment, the pregnant woman must consent to the abortion procedure in any of the circumstances summarized above in which abortion is legal unless she lacks capacity to consent, in which case the 1985 Abortion Amendment provides that her next of kin or the person in *loco parentis* must consent in the case of rape or incest or risk to the health of the pregnant woman.²⁰⁵ Spousal or partner consent is not required to obtain an abortion.²⁰⁶ As is the case with other health services in Ghana, a pregnant woman must pay the applicable government fees to obtain a legal abortion unless she can demonstrate that she is indigent, in which case she would receive dispensation from payment of medical fees.

Policies Regarding Abortion

Ghana’s Reproductive Health Service Policy contains specific guidelines on the “prevention and management of unsafe abortion and post abortion care.”²⁰⁷ Specifically, the policy defines abortion as “the loss of pregnancy before the foetus is viable,”²⁰⁸ in contrast with the definition contained in the

1985 Abortion Amendment described above. It also states that the objective of unsafe abortion and post-abortion care is to manage and/or refer abortion complications, to create public awareness of the dangers of unsafe abortion, to educate clients regarding complications arising therefrom, and to prevent unwanted pregnancies through family planning.²⁰⁹ The policy is targeted to all women, including adolescents, spouses and partners, and also encompasses nurses, midwives, TBAs, and physicians who provide services.²¹⁰

Penalties

Under Ghana’s Criminal Code, illegal abortions were previously considered a second-degree felony, punishable by a fine and a maximum imprisonment term of 10 years.²¹¹ The woman who obtained an abortion, the person performing an abortion, or any other person involved may be prosecuted under the criminal statute.²¹² The amendment now provides that any person who administers “any poison or noxious substance” or who “uses any instrument or any other means” to cause an abortion or who assists or encourages a woman to cause or consent to an abortion is guilty of an offense and is liable to imprisonment for a term not exceeding five years, regardless of whether the pregnant woman gives her consent.²¹³ Those who seek or perform abortions illegally, including health care providers, do so at their own risk. In one reported case, senior hospital nurses who had unsuccessfully attempted to procure an abortion for a pregnant nursing student who requested their assistance were convicted of a second-degree felony, with corroborating testimony provided by the nursing student they had sought to assist.²¹⁴

Regulation of Abortion Information

Because abortion is available only in specifically prescribed circumstances at a government hospital or registered private hospital or clinic, general advertising of abortion services does not occur.²¹⁵ While not explicitly prohibited by statute, the criminal prohibition against inducing or aiding and abetting a woman to cause abortion or miscarriage may cover advertisements relating to abortion services.²¹⁶ However, Ghana’s Reproductive Health Service Policy explicitly seeks “to create public awareness of the dangers of unsafe abortion and to educate clients on the complications of abortion.”²¹⁷ Thus, some information regarding the hazards of abortion and the comparative benefits of family planning is communicated to clients by government providers of reproductive health services.²¹⁸ Hence, the government is increasingly aware of illegal abortions and their health implications.

E. STERILIZATION

Sterilization is not a widely used contraceptive method. In 1993, only 0.9% of currently married women reported using

female sterilization and 0.1% of currently married women reported that their husbands had been sterilized using male sterilization.²¹⁹ There are no specific laws governing sterilization in Ghana. Ghana's Criminal Code states that causing a "wound of grievous harm" does not constitute a criminal act if "undertaken in good faith for the purpose of medical or surgical treatment."²²⁰ Moreover, the MOH's Reproductive Health Service Policy specifically states that tubal ligation and vasectomy shall be available as family planning methods²²¹ provided that the client is fully informed and consents in writing to the procedure. Spousal consent is encouraged but not required.²²² As with other medical care in Ghana, sterilization at public facilities and all attendant care must be paid for by the client at a prescribed rate.²²³

F. FEMALE GENITAL MUTILATION/ FEMALE CIRCUMCISION

The prevalence of female genital mutilation ("FGM") — also referred to as female circumcision — in Ghana is estimated to be high. Approximately 2.325 million women have undergone this procedure.²²⁴ The practice is common mostly in Muslim communities in the northern regions of Ghana and in the northern migrant settlement areas of the Accra metropolitan area.²²⁵ Respondents to a study on FGM in Ghana stated that it is considered to be a precondition for marriage and is also regarded as a religious imperative.²²⁶

Despite its prevalence, FGM is a second-degree felony punishable by imprisonment.²²⁷ The Criminal Code now provides that "[w]hoever excises, infibulates or otherwise mutilates the whole or any part of the labia minora, labia majora and the clitoris of another person... shall be guilty of a second degree felony and liable on conviction to imprisonment of not less than three years."²²⁸ In addition, the Constitution prohibits customary practices that harm one's physical and mental well-being and would appear to grant women de jure protection from this practice.²²⁹

The MOH's Reproductive Health Service Policy explicitly discourages FGM and includes discouragement of its practice as one of the eight core components of the policy.²³⁰ The Reproductive Health Service Policy also advocates numerous strategies to discourage the practice, including integrating reproductive health activities, enforcing the law on FGM, and treating and counseling the victims of the practice.²³¹ For further discussion regarding FGM, see section on adolescents below.

G. HIV/AIDS AND SEXUALLY TRANSMITTED DISEASES

Examining HIV/AIDS issues within a reproductive health framework is essential insofar as the two areas are interrelated from both a medical and public health standpoint. Hence, a

full evaluation of laws and policies affecting reproductive health and rights in Ghana must examine HIV/AIDS and sexually transmitted diseases ("STDs"). MOH figures indicate that from 1986 to 1995, 17,564 AIDS cases were reported in Ghana.²³² In 1990, the MOH instituted the HIV "sentinel sero-surveillance system,"²³³ which indicated that prevalence in semirural areas ranged from 0.3% to 10.5%, and in urban areas it ranged from 0.8% to 3.8%.²³⁴ In 1993, approximately 43% of reported AIDS cases were from the central Ashanti region of Ghana.²³⁵ Data also indicates that women comprise a disproportionately high number of all AIDS cases in Ghana.²³⁶

Laws Affecting HIV/AIDS

There are no laws specifically dealing with HIV/AIDS in Ghana. However, laws that generally address all sexually transmitted diseases are discussed in the following section.

Laws Affecting STDs

Few laws in Ghana specifically address STDs. Ghana's Criminal Code states that the publication of any advertisement related to "venereal disease, nervous debility, or other complaint or infirmity arising from or relating to sexual intercourse" shall constitute a misdemeanor, unless such advertisement relating to "venereal disease" is published by or with the authority of the MOH.²³⁷ The provisions of the Pharmacy and Drugs Act, 1961, which restricted publication of descriptive matter with respect to "syphilis, gonorrhoea, soft chancre and any other form of genito-urinary disease or other disease connected with the human reproductive function," as well as certain other diseases, were repealed by a later amendment.²³⁸ To date, no other similar law has been enacted to restrict such publications.

Policies Affecting Prevention and Treatment of HIV/AIDS

The government has stated its commitment to strengthening all existing programs on AIDS and other STDs.²³⁹ In 1986, the government set up a National AIDS Control Programme.²⁴⁰ In 1990, the MOH instituted a system of HIV sero-surveillance whose objectives are to obtain information on the prevalence of HIV/STD infection in specific populations, to monitor trends in HIV infection, and to provide information for evaluating intervention programs against HIV/AIDS.²⁴¹ In 1992, the MOH published Guidelines for AIDS Prevention and Control (the "AIDS Guidelines") to assist regions and districts to integrate AIDS prevention and control activities within existing primary health care activities, to prevent the further transmission and spread of HIV, and to decrease the impact of AIDS.²⁴² The AIDS Guidelines also provide for psychosocial support to affected individuals, adequate clinical management to affected individuals, and information and education to strengthen the control of other STDs.²⁴³ The

AIDS Guidelines promote safe sex, the necessity of counseling prior to and after administering HIV tests, and confidentiality with respect to all test results.²⁴⁴ The AIDS Guidelines specify that no patient should be denied admission to a hospital because he or she has been diagnosed with AIDS.²⁴⁵

One of the components of Ghana's new Reproductive Health Service Policy is the prevention and management of reproductive tract infections, including HIV/AIDS.²⁴⁶ Specifically, the policy seeks to prevent, control, diagnose, and treat reproductive tract infections, including HIV/AIDS, by targeting all sexually active individuals, including adolescents, all pregnant women, post-partum and post-abortion clients, and commercial sex workers. The prevention campaign features mass-media efforts, entertainment, education, promotion of condoms and interpersonal communication, family life education, and advocacy.²⁴⁷ The policy specifically isolates management of HIV/AIDS patients and provides for counselors on HIV/AIDS at the regional level.²⁴⁸

Ghana's hospital fees regulations provide that no fees other than the cost of prescribed drugs are to be paid for services rendered in government hospitals to any person suffering from a "venereal disease."²⁴⁹ In addition, treatment and services for HIV/AIDS are provided free of charge.²⁵⁰

III. Understanding the Exercise of Reproductive Rights: Women's Legal Status

Women's reproductive health and rights cannot be fully evaluated without investigating women's status within the society in which they live. Not only do laws relating to women's legal status reflect societal attitudes that will affect reproductive rights, but such laws often have a direct impact on women's ability to exercise reproductive rights. The legal context of family life, a woman's access to education, and laws and policies affecting her economic status can contribute to the promotion or the prohibition of a woman's access to reproductive health care and her ability to make voluntary, informed decisions about such care. Laws regarding the age of first marriage can have a significant impact on a young woman's reproductive health. Furthermore, rape and other laws prohibiting sexual assault or domestic violence present significant rights issues and can also have direct consequences for women's health.

A. RIGHTS WITHIN MARRIAGE

Marriage Law

Ghana has three legal regimes governing marriage: monoga-

mous marriage pursuant to the Marriage Ordinance, marriage (including polygamous unions) under customary law, and marriage pursuant to the Marriage of Mohammedens Ordinance.²⁵¹

The Marriage Ordinance²⁵² is a statutory registration system based on monogamy and the nuclear family.²⁵³ A registrar of marriage may not marry anyone either already married "by native law or custom to any person" or anyone under 21 years of age unless his or her parent or guardian consents in writing to the marriage.²⁵⁴ Moreover, a person who is married under the Marriage Ordinance, or whose marriage is declared valid by it, is incapable of contracting a valid marriage under customary law during the continuance of the statutory marriage.²⁵⁵

The formalities and essentials of a valid customary law marriage differ slightly among different ethnic groups.²⁵⁶ Customary marriage in Ghana has been defined as "principally the union of, or a contract between, a man and a woman to live as husband and wife, during which period there arises an alliance between the two family groups based on a common interest in the marriage and its continuance,"²⁵⁷ and the payment of "marriage consideration" by the husband or on his behalf and its acceptance by the bride's family.²⁵⁸ Yet Ghana's Criminal Code, which applies to all marriages, provides that "[w]hoever by duress causes any person to marry against his or her will, shall be guilty of a misdemeanor."²⁵⁹ All customary law marriages in Ghana are potentially polygamous.²⁶⁰

In 1987, Ghana's Law Reform Commission considered the issue of reforming customary dowry payment. But it concluded that "no legislation by the Government can solve the problem" and that it would be "futile to introduce a uniform system of payment of dowry" in light of different customary practices.²⁶¹

Under customary systems, upon marriage, the husband acquires exclusive rights over his wife. She does not, however, acquire such exclusive rights over him.²⁶² For example, the husband may marry additional wives without consulting his first wife.²⁶³ If adultery is committed by a woman her husband may either divorce her and reclaim "marriage consideration" and all his expenses from her family or he may continue the marriage after collecting adultery damages from the lover and a "pacification fine" from the wife.²⁶⁴ But a wife has no right in customary law to claim damages when her husband commits adultery.²⁶⁵ Generally, the husband is responsible for the debts and torts of his wife during their marriage, although strictly speaking it is her family who is responsible unless the husband admits liability.²⁶⁶ Ghana's Criminal Code also requires husbands to supply all "necessaries of health and life to his wife," which are defined to

include proper food, clothing, shelter, warmth, medical or surgical treatment, and any other items which are reasonably necessary for the preservation of health and life of a person.²⁶⁷ A wife is expected to submit to her husband, look after children, and perform normal household duties. She has no obligation to pay his debts.²⁶⁸ Widows are usually not permitted to remarry under customary law.²⁶⁹

In 1985, Ghana enacted the Customary Marriage and Divorce (Registration) Law, which provides for a uniform system of registering customary law marriages and divorces and requires that all marriages contracted and divorces effected under customary law, whether prior to or after the law's entry into effect, be registered.²⁷⁰ In 1991, the law was amended to make the registration of customary marriages optional rather than mandatory.²⁷¹ Because of the continued practice of polygamy, the law does not limit the number of marriages that can be registered by any one person.²⁷²

The Marriage of Mohammedans Ordinance²⁷³ was first enacted in 1907 and provides for the registration of marriages and divorces contracted under Islamic law. Every marriage celebrated under Islamic law must be registered within a week at the office of the registering agent²⁷⁴ and every divorce so effected must be registered within one month.²⁷⁵ It has been noted that in Ghanaian Islamic marriage, the husband pays a dowry to the wife, is entitled to marry up to four wives at one time, and to have unlimited "concubines."²⁷⁶ Despite its 90-year existence, the Marriage of Mohammedans Ordinance is "hardly ever enforced," and its registration provisions "are probably not known to many Muslims."²⁷⁷

Divorce and Custody Law

Divorce, like marriage, is regulated by statutory law, customary law, and Islamic law. Statutory divorce and all ancillary relief are governed by the Matrimonial Causes Act (the "Matrimonial Act").²⁷⁸ The Matrimonial Act applies to all monogamous marriages,²⁷⁹ which must include all marriages under the Marriage Ordinance; and, also upon application to a court by a party to a non-monogamous marriage, the court is directed to apply the act's provisions, subject to regard for "the peculiar incidents of that marriage" in determining appropriate relief, financial provision, and child custody.²⁸⁰ Subject to its discretion, a court may grant any form of relief recognized by the customary law of the parties.²⁸¹ According to the Matrimonial Act, a marriage may be dissolved at the request of either party only if a court determines that the marriage "has broken down beyond reconciliation."²⁸² The statute also contemplates dissolution on grounds of presumption of death or nullity.²⁸³ A marriage may be nullified on other specific grounds.²⁸⁴ Moreover, pursuant to the Matrimonial Act, the court may grant just and equitable provisional mainte-

nance pending suit or financial provision to either party to the marriage.²⁸⁵ The court may then order either party to make gross or installment payments to the other and/or convey or transfer all or a portion of movable or immovable property as settlement.²⁸⁶ The court is also able to issue an order of restraint to prevent flight from the jurisdiction or harm to or interference with the spouse or a child.²⁸⁷

With respect to child custody and maintenance, the Matrimonial Act provides that, at its own or either party's initiative, as the court thinks reasonable and for a child's benefit, the court may award custody of a child to any person, regulate the right of access of any person to the child, and provide for her or his education and maintenance out of the property or income of either or both spouses.²⁸⁸ In determining child custody in the case of a divorce in a polygamous marriage, the court is to consider the peculiar incidents of the marriage subject to justice, equity, and good conscience.²⁸⁹ The court also has the power to prevent or rescind the disposition of assets or property (except to a purchaser in good faith for value) of either party to the marriage if such disposition has occurred prior to the settlement or to defeat the financial or property settlement.²⁹⁰ Women married under the Marriage Ordinance generally have greater legal protection from arbitrary divorce and greater economic security in receiving maintenance.²⁹¹

Although application can be made to an appropriate court to entertain suits for divorce and other matrimonial causes under the Matrimonial Act, most customary law marriages, whether or not they are polygamous, are in fact dissolved through customary law process.²⁹² Customary marriages are usually dissolved by negotiations between the families and both spouses.²⁹³ If reconciliation fails, the dispute may be referred to arbitrators nominated by the families of both parties who will hear both sides formally, afford each an opportunity to cross-examine the other, and pronounce a sentence, including property settlement.²⁹⁴ A wife's single act of adultery, barrenness, desertion, or "practice of witchcraft" is sufficient grounds for divorce.²⁹⁵ On the other hand, customary law permits a wife to petition to divorce her husband for neglect, cruelty, impotence, desertion, and, in rare cases, persistence in pursuing numerous extramarital associations.²⁹⁶ In addition, "[i]t has been held... that a husband has a lien on the ante-nuptial property and property acquired during marriage for the payment of the husband's marriage expenses. The wife, if she is lucky, is only entitled to send-off money."²⁹⁷ There is generally no obligation to support an ex-wife.²⁹⁸

The Marriage of Mohammedans Ordinance, applicable to divorces pursuant to Islamic law, is silent about grounds and/or procedures for divorce. It merely provides for the registration of divorces effected under Islamic law in Ghana.²⁹⁹

Courts adjudicating a Muslim divorce are required to apply the Matrimonial Act, which states that courts are to be guided by the requirements of justice, equity, and good conscience in determining appropriate relief, financial provision, and child custody.³⁰⁰

The Maintenance of Children Decree applies with respect to many disputes regarding custody and maintenance of children regardless of whether a divorce is involved. The decree establishes family tribunals in each magisterial district consisting of three members, of whom at least one shall be a woman, to hear and determine complaints regarding paternity, custody, and maintenance of children.³⁰¹ The decree changes an earlier law by updating provisions that discriminated against fathers. For example, the decree permits an application for maintenance to be brought against any person legally liable to maintain a child, including a father, mother, or guardian, and it permits fathers, as well as mothers, to apply for the custody of a child.³⁰² Traditionally, among patrilineal groups such as the Ewe and the Ga, custody of children was awarded to the father. Among matrilineal groups, such as the Ashanti, the Fante, and the Nta, it was awarded to the mother.³⁰³

B. ECONOMIC AND SOCIAL RIGHTS

Property Rights

Ghana's Constitution declares that every person has the right to own property either alone or in association with others.³⁰⁴ Although the Constitution does not explicitly apply this provision to women, it is presumed that constitutional guarantees of equality before the law and non-discrimination on the basis of gender would prohibit discrimination against women with respect to property.³⁰⁵ Ghanaian women have also benefited generally from legal reform with respect to land acquisition, such as the Land Title Registration Law.³⁰⁶ The main purpose of the Land Title Registration Law was to eliminate the uncertainties with respect to land title.³⁰⁷ While women may indirectly benefit from greater certainty in establishing legal title to land, many women lack the education or means to undertake the land registration process to their benefit.³⁰⁸

The Constitution also explicitly provides that spouses shall have equal access to property jointly acquired during marriage and that assets acquired jointly shall be distributed equitably upon dissolution of the marriage.³⁰⁹ Furthermore, the Constitution states that whether or not the deceased had a will, a spouse shall not be deprived of a reasonable provision from the estate of a deceased spouse.³¹⁰ Despite these constitutional provisions and other legal reforms described below, customary law continues to adversely affect the property rights of women in Ghana, particularly in rural areas.³¹¹ Problems of intestate succession in Ghana have been attributed to

the application of a mosaic of laws: English law of intestate succession (which occurs when an individual dies without leaving a will disposing of his or her estate, or with a will disposing of only part of the estate), patrilineal succession, matrilineal succession, the patriarchal rules of primogeniture and ultimogeniture (in which the youngest child succeeds to the estate), Islamic rules of succession, and the different marriage systems.³¹² Because the customary law conception of marriage does not regard a wife as part of the husband's economic unit, a wife's claims to his property is very limited or nonexistent in contrast to that of his extended family.³¹³ The 1959 Ghanaian High Court ruling in *Quartey v. Martey* held that the proceeds of the joint effort of a man and his wife and/or children and any property acquired from such proceeds are by customary law the individual property of the man and not the joint property of the husband and wife.³¹⁴ By applying general rules of equity, Ghanaian courts have subsequently alleviated the situation. However, women are left "at the mercy of judges and their interpretation of case law and also their understanding of rules of equity."³¹⁵

The Intestate Succession Law, 1985³¹⁶ (the "Intestate Law"), was enacted to remove "the anomalies in the present law relating to the intestate succession and to provide a uniform intestate succession law that will be applicable throughout the country irrespective of the class of the intestate and the type of marriage contracted by him or her."³¹⁷ The Intestate Law also sought to reverse the discrimination implicit in succession by widows and widowers, which exists under both the Marriage Ordinance and the Marriage of Mohammedans Ordinance, by repealing specific provisions of those earlier laws.³¹⁸ The 1991 Customary Marriage and Divorce (Registration) (Amendment) Law, which makes registration of customary marriages optional rather than mandatory provides that if a court is satisfied by oral or documentary evidence that a marriage was validly contracted under customary law, then the Intestate Law shall be applied.³¹⁹

Labor Rights

All Ghanaian workers are constitutionally guaranteed the right to work under satisfactory, safe, and healthy conditions and to receive equal pay for equal work without distinction of any kind.³²⁰ The Constitution also guarantees women equal rights to training and promotion.³²¹ Moreover, a right to "special care" during a reasonable period before and after childbirth, including paid leave, is also guaranteed in the Constitution.³²² Finally, the Constitution provides for the provision of child care facilities "to enable women, who have the traditional care for children, [sic] realise their full potential."³²³

Several other laws address women's labor rights. The Labour Decree, 1967, prohibits the employment of a female

in underground work in a mine and in night work in any industrial undertaking, except in exceptional circumstances with the written permission of a Labour Officer empowered pursuant to the decree.³²⁴ In addition, the decree provides that the employer of any industrial, commercial, or agricultural undertaking shall give six weeks leave at not less than 50% pay after a female worker gives birth (eight weeks in the case of abnormal birth or multiple births) and six week's leave also at not less than 50% pay, upon medical recommendation, prior to the date a female worker is scheduled to give birth.³²⁵ The administrative regulations of certain national institutions such as the civil service and the armed forces also have provisions treating women differently from men. For example, women in the armed forces may not have children until they have served three years, and women employed by the prison service may not marry until they have completed a period of two years' probation.³²⁶ In his 1996 sessional address to the Parliament, the president stated that the government would soon issue a firm policy statement on affirmative action to benefit women.³²⁷

Rules Governing Credit

Although Ghana's Constitution explicitly guarantees women certain rights to participate in economic life,³²⁸ it does not make specific reference to women's access to credit. Generally, Ghanaian women have very poor access to credit in light of their low level of education, social status, and inability to meet collateral requirements for the limited institutional credit made available for small scale enterprise.³²⁹ However, certain government and international programs operating in Ghana suggest some governmental recognition of the need to improve women's access to credit.³³⁰

Education

In light of Ghana's gender differentials in education, it is not surprising that Ghana's Constitution grants an equal right to educational opportunities and facilities.³³¹ It provides that basic education shall be free, compulsory, and available to all and that secondary education shall be made generally available and accessible to all by every appropriate means and, in particular, by progressive introduction of free education.³³² The government has initiated general measures to improve the primary, secondary, and university education systems, with certain programs aimed at girls.³³³ In his recent report to Parliament regarding economic and social development policies, the president also discussed the need to increase female enrollment and completion rates at all levels in the educational system.³³⁴ For further discussion regarding education, see section on adolescents below.

Women's Bureaus

In 1975, the National Council on Women and Development ("NCWD") was established to promote the advancement of women.³³⁵ Prior to a proposed restructuring still under consideration as of early 1997, the NCWD was under the office of the president and was composed of a 15-member council of women appointed by the government with experience in women-in-development issues and the advancement of women.³³⁶ Since 1989, the NCWD has focused on building networks, providing training and information, monitoring, evaluating, and formulating projects with NGOs, and linking NGOs to government and external assistance.³³⁷ The NCWD submitted its "Memorandum on Affirmative Action" policy proposal to the government, and the president announced its acceptance in principle in his January 1996 address to Parliament.³³⁸

C. RIGHT TO PHYSICAL INTEGRITY

Rape

A 1993 amendment of Ghana's Criminal Code provides that rape is a first-degree felony punishable by not less than three years' imprisonment and a fine, with a maximum sentence of life imprisonment.³³⁹ Rape is defined in Ghana's Criminal Code as "the carnal knowledge of a female of any age without her consent."³⁴⁰ The Criminal Code also recognizes the crime of "defilement" or statutory rape, stating that "whoever carnally knows any female under fourteen years of age, whether with or without her consent" is guilty of a second-degree felony, punishable by imprisonment for a term of between 12 months and 10 years.³⁴¹ A similar provision applies to a person who has carnal knowledge of any female "idiot," "insane person," or "patient in a lunatic asylum," whether with or without her consent, whether or not the circumstances amount to rape, provided the perpetrator knew of the woman's mental state.³⁴² Ghana's Criminal Code also penalizes "unnatural carnal knowledge," providing that "[w]hoever is guilty of unnatural carnal knowledge (a) of any person without his consent, is guilty of first-degree felony; (b) of any person with his consent, or of any animal, is guilty of a misdemeanor."³⁴³

Ghanaian law does not criminalize marital rape.³⁴⁴ As described below, the Ghanaian Criminal Code provides that a married woman cannot object to the use of force by her husband because her consent to the act is presumed. For further discussion on sexual offenses against minors, see section on adolescents below.

Domestic Violence

A criminal statute prohibits wife beating.³⁴⁵ Ghana has a criminal code general provision rooted in British common law

that establishes a legal defense to the use of force where the person has consented to such force being used against him or her. The provision automatically extends this consent to use of force to a married couple unless and until they are divorced or legally separated.³⁴⁶ Thus, the Ghanaian Criminal Code has not to date been amended to repeal the common law marital exemption relating to the use of force, including rape.³⁴⁷

Sexual Harassment

No specific legislation relating to sexual harassment currently exists in Ghana.³⁴⁸

IV. Focusing on the Rights of a Special Group: Adolescents

The needs of adolescents are often unrecognized or neglected. Ghana's 1993 Demographic and Health Survey showed that almost 22% of all adolescent girls aged 15-19 had already commenced childbearing at the time of the survey.³⁴⁹ Moreover, given that approximately 12.5% of the Ghanaian population is between the ages of 13 and 18³⁵⁰ and that approximately 43% of the country is under the age of 15,³⁵¹ it is particularly important to meet the reproductive health needs of this group. The effort to address issues of adolescent rights, including those related to reproductive health, are important for women's right to self-determination as well as for their health.

Ghana's Constitution includes a provision on children's rights which defines a "child" as a person below the age of 18 and specifies certain rights of children to special care, assistance and maintenance from their natural parents, protection against physical and moral hazards, and freedom from torture or degrading treatment.³⁵²

A. REPRODUCTIVE HEALTH AND ADOLESCENTS

Ghana's Population Policy seeks to reduce the proportion of women who marry before the age of 18, reduce the number of women who bear children before the age of 18, and promote education among young women between the ages of 15 and 18.³⁵³ Ghana's Reproductive Health Service Policy specifically endorses the principle that reproductive health care services must fully incorporate adolescents.³⁵⁴ All of the Reproductive Health Service Policy's substantive service components purport to incorporate all sexually active couples and individuals, without limitation on age. For example, with respect to antenatal care, the Reproductive Health Service Policy states that "[t]he beneficiaries shall be all pregnant women, including adolescents,"³⁵⁵ and with respect to preventing and managing cancer of the reproductive tract, ado-

lescents are also specifically targeted.³⁵⁶ Moreover, Ghana's Reproductive Health Service Policy includes a detailed information, education, and communication policy designed to "create awareness, improve knowledge and change attitudes" in order to enable identified target groups, including adolescents, to make informed choices and decisions and to take action to improve their reproductive health status.³⁵⁷

In November 1996, the National Population Council issued its Adolescent Reproductive Health Policy (the "Adolescent Policy"), which is designed to provide a guide for policy makers to address the reproductive health needs of the large Ghanaian adolescent population.³⁵⁸ The Adolescent Policy acknowledges the right to information and services of adolescents and the serious gender disparities in status, education, health, and employment.³⁵⁹ It seeks to provide knowledge, skills, and services to: reduce or eliminate unintended pregnancies, reproductive tract infections, including STDs, HIV/AIDS, unsafe abortions, FGM, early marriage, and malnutrition among adolescents; improve access to education and employment opportunities; and eliminate violence against adolescents and abuses against the girl-child.³⁶⁰

B. FEMALE GENITAL MUTILATION AND ADOLESCENTS

FGM was outlawed in 1994.³⁶¹ The Reproductive Health Service Policy's FGM policy seeks to "target" various groups, including politicians and policy makers, traditional and local leaders, religious bodies, women's and men's groups, *wanzams* (circumcisers), and other groups.³⁶² The strategies for discouragement of harmful traditional practices include: integration of FGM-related services into all ongoing reproductive health services and activities; integration of services into the school health education program; encouraging community involvement; training reproductive health service providers; and strengthening the government's database on harmful traditional practices.³⁶³ To combat and treat the effects of FGM, the Reproductive Health Service Policy requires enforcement of the 1994 law on FGM and the provision of full medical services, with the assistance of law enforcement officers, medical personnel, teachers, politicians, peer counselors, traditional rulers, opinion leaders, and *wanzams*.³⁶⁴ The Adolescent Policy also states as an objective the reduction or elimination of FGM.³⁶⁵

C. FEMALE RELIGIOUS BONDAGE

Primarily in the southeastern Volta Region of Ghana and within certain ethnic groups, such as the Ewe, female religious slavery dating to the 17th century is still practiced.³⁶⁶ Virgin girls, often under 10 years old, are given by their families to

work as slaves in religious shrines to appease the gods for crimes committed by relatives.³⁶⁷ These approximately 4,500 girls and women, known as *trocosi* (slaves of the gods), are considered a priest's property and may be freed only by him, usually after the woman is no longer appealing to him because she has borne many children and been overworked. In such cases, the family must give another virgin, often in perpetuity, to atone for a serious crime.³⁶⁸ These women are forced to serve their husband/master sexually and to live in deplorable conditions without adequate food, performing unpaid domestic and farm labor, deprived of education and access to health care.³⁶⁹

This traditional practice continues despite legal prohibitions. Ghana's Constitution explicitly bans slavery and forced labor³⁷⁰ and prohibits customary practices that harm one's physical and mental well-being.³⁷¹ Moreover, numerous provisions of Ghana's Criminal Code are violated by this practice, including those related to rape and other sexual offenses, slavery, and forced marriage.³⁷²

D. MARRIAGE AND ADOLESCENTS

Recent survey data show that the median age at first marriage is 18.9 years for women in Ghana between the ages of 20 and 49.³⁷³ But the Marriage Ordinance provides that each of the parties to a marriage must be 21 years old.³⁷⁴ If either the man or the woman is below that age, a parent's or a guardian's consent is required.³⁷⁵ However, the great majority of marriages are solemnized in accordance with customary law, rather than pursuant to the Marriage Ordinance. None of the customary laws applicable to various ethnic groups in Ghana specify a minimum age at which persons become legally capable of entering into marriage.³⁷⁶ The Marriage of Mohammedans Ordinance applicable to Islamic marriages does not specify a minimum age for first marriage.³⁷⁷ The traditional practice of forced childhood marriage still exists in Ghana,³⁷⁸ despite the Criminal Code's provision voiding compelled marriage.³⁷⁹

E. EDUCATION AND ADOLESCENTS

Although the gender ratio in Ghanaian educational institutions is generally improving, significant discrepancies remain, particularly at higher levels of education. In 1987, the government initiated a program to enhance gender equity by increasing enrollment of girls in schools, and the Ministry of Education has targeted a 50:50 male/female ratio in pre-tertiary education by the year 2005.³⁸⁰ The reforms are designed to improve literacy and to prepare girls for vocational and professional skills, as well as to encourage girls to pursue careers in science, engineering, and other traditionally male careers.³⁸¹ In its Vision 2020 report on economic and social

development policies, the Ghanaian government also states the objective of increasing female enrollment and completion rates at all levels in the educational system.³⁸²

F. SEX EDUCATION FOR ADOLESCENTS

The Ghanaian government has initiated a Population Planning and Family Life Education ("POP/FLE") program for adolescents both in and out of school.³⁸³ The POP/FLE program incorporates a broad range of topics including human reproduction, STDs and HIV/AIDS, methods of family planning, population and environmental issues, and gender issues.³⁸⁴ It is still in the process of being integrated on a nationwide level into several different existing courses at the various levels of the education system, and obstacles remain.³⁸⁵ The MOH's Reproductive Health Service Policy specifically targets education and counseling programs towards adolescents both in and out of school, and an effort is made to make such programs "culturally sensitive."³⁸⁶ This policy's information, education, and communication program seeks to reach out to adolescents through all reproductive health facilities and schools in both the public and private sectors.³⁸⁷

G. SEXUAL OFFENSES AGAINST MINORS

As stated above, Ghana criminalizes statutory rape by establishing a second-degree felony for anyone who "carnally knows any female under fourteen years of age, whether with or without her consent."³⁸⁸ This crime is punishable by imprisonment of not less than 12 months or more than 10 years.³⁸⁹ However, the application of this law is weakened by Section 102 of the Criminal Code, 1960, which categorizes as a misdemeanor the "defilement" of a female between the ages of 10 and 14, but states that no prosecution for this offense may be commenced more than three months after its commission. This provision also establishes as a defense that the accused had reasonable cause to believe the girl was above 14 years of age.³⁹⁰

It is a first-degree felony for the owner or occupier of any premises to induce or "knowingly suffer" any female under 14 years of age to "carnally know" any person, whether one particular person or generally.³⁹¹ Procurement of a female under the age of 21 who is not a "common prostitute" or "of known immoral character" to have "unlawful carnal connection" is also a criminal offense under Ghanaian law, as are other actions to procure any female to become a prostitute or inmate in a brothel.³⁹²

ENDNOTES

1. AN OFFICIAL HANDBOOK OF GHANA 16 (1991) [hereinafter GHANA HANDBOOK].
2. THE WORLD ALMANAC AND BOOK OF FACTS 1997 768 (1996) [hereinafter WORLD ALMANAC].
3. THOMAS H. REYNOLDS & ARTURO A. FLORES, FOREIGN LAW: CURRENT SOURCES OF CODES AND LEGISLATION IN JURISDICTIONS OF THE WORLD III, GHANA 1 (1993).
4. *Id.*
5. *Ghanaians Vote for President and Parliament*, N.Y. TIMES, Dec. 7, 1996, at A8; World News Brief, *Ghana's Chief Declared Victor in Election*, N.Y. TIMES, Dec. 12, 1996, at A4 [hereinafter *Ghanaians Vote*].
6. CONST. OF THE FOURTH REPUBLIC OF GHANA (PROMULGATION) Law, Provisional National Defense Council Law 282 (1992) [hereinafter CONST. LAW (282)].
7. *Ghanaians Vote*, *supra* note 5, at A8.
8. U.S.A.I.D. & U.S. DEP'T OF COMMERCE, WORLD POPULATION PROFILE A-6 (1996).
9. ARJUN ADLAKHA, U.S. DEP'T COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, BUREAU OF THE CENSUS, INT'L BRIEF: POPULATION TRENDS: GHANA (July 1996).
10. GHANA STATISTICAL SERVICE, GHANA DEMOGRAPHIC AND HEALTH SURVEY 1993, at 1 (1994) [hereinafter HEALTH SURVEY].
11. *Id.*
12. CONST. LAW (282), *supra* note 6.
13. GHANA CONST. ch. 1, art. 1(2).
14. *Id.* ch. 8, art. 57(1).
15. *Id.* ch. 8, art. 66.
16. *Id.* ch. 8, art. 60.
17. *Id.* ch. 8, arts. 76, 78.
18. *Id.* ch. 8, arts. 89, 91.
19. *Id.* ch. 22, art. 270(1). The provision refers to the institution of chieftaincy, "together with its traditional councils as established by customary law" and prohibits Parliament from enacting any laws conferring on any person the right to accord or withdraw recognition to or from a chief or that detracts from the honor of the institution of chieftaincy. *Id.*
20. Specifically, the National House of Chiefs is to advise any person or authority on any matter affecting chieftaincy, undertake to study, interpret and codify customary law, evaluate traditional customs that are socially harmful and hear certain judicial appeals which may then be appealed to the Supreme Court. GHANA CONST. ch. 22, arts. 272, 273.
21. THE WORLD ALMANAC 768 (1997); REYNOLDS & FLORES, *supra* note 3, at 1.
22. GHANA CONST. ch. 20, art. 240(1).
23. *Id.* ch. 20, art. 241(3).
24. *Id.* ch. 20, art. 245.
25. *Id.* ch. 20, art. 242. Candidates seeking election to a district assembly or any lower local government unit must run as an individual and may not run under any political party, nor may political parties endorse or sponsor such a candidate in any way. *Id.* ch. 20, art. 248.
26. REYNOLDS & FLORES, *supra* note 3, at 1.
27. *Id.*
28. GHANA CONST. ch. 10, art. 93(2).
29. *Id.* ch. 10, art. 106.
30. *Id.* ch. 10, arts. 106(9), (10).
31. *Id.* ch. 4, art. 11(7).
32. *Id.* ch. 11, arts. 125(1), (3).
33. *Id.* ch. 11, art. 126(1).
34. *Id.* ch. 11, art. 128(1).
35. *Id.* ch. 11, art. 131(1)(a).
36. *Id.* ch. 11, art. 130.
37. *Id.* ch. 11, arts. 144(1), (2).
38. *Id.* ch. 11, arts. 139(1), 141(1).
39. *Id.* ch. 11, art. 137.
40. *Id.* ch. 11, art. 144(3).
41. Samuel O. Gyandoah, Jr., *The Legal System of Ghana in MODERN LEGAL SYSTEMS CYCLOPEDIA* § 1.3 (A)(4) (1982).
42. For example, the jurisdiction of the circuit courts, which hear civil matters, includes: (1) certain personal actions arising under contract or tort, (2) matters relating to minor's guardianship and custody and (3) certain probate matters for estates valued below a certain amount. See Courts Act (459) pt. I, § 41 (1993) (Ghana). The jurisdiction of the circuit tribunals, which hear criminal matters, includes all criminal matters arising within their territorial jurisdiction, except for treason, murder, first degree felonies, and offenses punishable by death or life imprisonment. *Id.* pt. I, § 44.
43. *Id.*, pt. II; GHANA HANDBOOK, *supra* note 1, at 37.
44. This includes Islamic law in the case of the country's small Muslim population, particularly with respect to family law matters. Gyandoah, *supra* note 41, § 1.2 (A); GOVERNMENT OF GHANA/UNFPA, 3RD COUNTRY PROGRAMME 1996-2000, U.N. Doc. DP/FPA/CP/151, at 47, ¶ 141 (1995) [hereinafter 3RD COUNTRY PROGRAMME].
45. Gyandoah, *supra* note 41, § 1.2 (A); GHANA HANDBOOK, *supra* note 1, at 36.
46. GHANA CONST. ch. 4, art. 11(1). Existing law comprises written and unwritten laws existing immediately before the coming into force of the Constitution and it is to be construed with any modifications, adaptations, qualifications and exceptions necessary to bring it into conformity with the Constitution. *Id.* ch. 4, arts. 11(4), (6).
47. Gyandoah, *supra* note 41, § 1.2(H).
48. *Id.*
49. GHANA CONST. ch. 5, art. 12(1).
50. GHANA CONST. ch. 5, art. 12(2).
51. GHANA CONST. ch. 5, art. 17. Moreover, Parliament is permitted to enact laws reasonably necessary to provide, *inter alia*, "for making different provision for different communities having regard to their special circumstances not in provision [sic] which is inconsistent with the spirit of this constitution." *Id.* ch. 5, art. 17(4)(d).
52. *Id.* ch. 5, art. 22.
53. *Id.* ch. 5, art. 27.
54. *Id.* ch. 5, art. 26(1).
55. *Id.* ch. 5, art. 26(2).
56. *Id.* ch. 6, art. 34(1).
57. *Id.* ch. 6, art. 34(2).
58. *Id.* ch. 4, art. 11(2). "Customary law" in that article means "the rules of law which by custom are applicable to particular communities in Ghana." *Id.* ch. 4, art. 11(3).
59. Gyandoah, *supra* note 41, § 11.2(I).
60. REYNOLDS & FLORES, *supra* note 3, at 2.
61. Courts Act, pt. III.
62. *Id.*; REYNOLDS & FLORES, *supra* note 3, at 2.
63. *Id.*
64. GHANA CONST. ch. 8, art. 75.
65. *Id.*
66. Memorandum from Victoria Addy, President, FIDA-Ghana, to The Center for Reproductive Law and Policy (Feb. 20, 1997) (on file with The Center for Reproductive Law and Policy) [hereinafter Addy Memorandum III].
67. *Id.* ch. 6, art. 40.
68. *Id.* ch. 6, art. 37(3).
69. Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (*entry into force* Sept. 3, 1981) (signed by Ghana on July 17, 1980 and ratified Jan. 2, 1986).
70. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (*entry into force* Jan. 4, 1969) (signed and ratified by Ghana on Sept. 8, 1966).
71. Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, U.N.G.A.O.R., 44th Sess., Supp. No. 49, U.N. Doc. A/44/49, *reprinted in* 28 I.L.M. 1448 (*entry into force* Sept. 2, 1990) (ratified by Ghana on Feb. 5, 1990).
72. African Charter on Human and Peoples' Rights, *adopted* June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev 5 (1981), *reprinted in* 21 I.L.M. 59 (1982) (*entry into force* Oct. 21, 1986) (ratified by Ghana on Mar. 1, 1989).
73. See Presidential Report on Co-ordinated Programme of Economic and Social Development Policies, GHANA — VISION 2020 (The First Step: 1996-2000) § 5.1.5 (1995) [hereinafter GHANA VISION]; MINISTRY OF HEALTH, NATIONAL REPRODUCTIVE HEALTH SERVICE POLICY AND STANDARDS iv (Apr. 1996) [hereinafter REPRODUCTIVE HEALTH POLICY]; GHANA HANDBOOK, *supra* note 1, at 55.
74. GHANA VISION, *supra* note 73, § 2.1.5; 3RD COUNTRY PROGRAMME, *supra* note 44.
75. GHANA VISION, *supra* note 73, §§ 1.1-1.3, 3.1.5, 5.1.5 (citing National Development Policy Framework — Volume 1: Long-Term Development Objectives for Ghana — Vision 2020 and the Co-ordinated Programme of Economic and Social Development Policies (The First Step: 1996-2000)).
76. *Id.* § 5.1.5.
77. HEALTH SURVEY, *supra* note 10, § 1.4.
78. REPRODUCTIVE HEALTH POLICY, *supra* note 73.
79. WORLD BANK, WORLD DEVELOPMENT REPORT 1993: INVESTING IN HEALTH 210 (1993). Of the 3.5% of GDP spent on health, an estimated 1.7% was attributed to the public sector and 1.8% to the private sector. *Id.*
80. 3RD COUNTRY PROGRAMME, *supra* note 44, at 10, ¶ 34.
81. HEALTH SURVEY, *supra* note 10, at 4.
82. *Id.*

83. Health Service and Health Management Bill (1996) (Ghana) (on file with The Center for Reproductive Law and Policy) [hereinafter Health Bill].
84. GHANA CONST. ch. 14, art. 190(1)(a).
85. Health Bill, *supra* note 83.
86. *Id.* § 2.
87. *Id.* §§ 29-34.
88. REPUBLIC OF GHANA, MINISTRY OF HEALTH, THE HEALTH SECTOR IN GHANA: FACTS AND FIGURES 12 (1996) [hereinafter HEALTH SECTOR]. Hospitals are facilities that provide in- and out-patient services; health centers are facilities providing mainly out-patient and preventive services; and clinics are facilities providing one or two services. *Id.* at 13.
89. *Id.* at 14. Using 17.7 million as Ghana's estimated population, the doctor-population ratio is approximately 1 per 16,000 and the nurse population ratio is approximately 1 per 1,405. *Id.*
90. 3RD COUNTRY PROGRAMME, *supra* note 44.
91. See REPRODUCTIVE HEALTH POLICY, *supra* note 73, at 35.
92. See *id.* at 26, 29.
93. See Hospital Fees Regulations, L.I. 1313 (Legislative Instrument) (1985) (Ghana) [hereinafter Hospital Fees Regulations]; see also Memorandum from Victoria Addy, President, FIDA-Ghana, to The Center for Reproductive Law and Policy (Feb. 1997) (on file with The Center for Reproductive Law and Policy) [hereinafter Addy Memorandum II].
94. Addy Memorandum III, *supra* note 66.
95. Hospital Fees Act (387) §§ 2-4 (1971) (Ghana) [hereinafter Hospital Fees Act].
96. *Id.*
97. *Id.*
98. 3RD COUNTRY PROGRAMME, *supra* note 44.
99. MINISTRY OF HEALTH, 1993 ANNUAL REPORT 18 (1994) [hereinafter MOH 1993 ANNUAL REPORT].
100. *Cash and Carry Programme: Report on Programme Review* iii (Mar. 1996) (on file with The Center for Reproductive Law and Policy).
101. Medical and Dental Decree N.R.C.D. 91 (National Redemption Council Decree) (1972) (Ghana) [hereinafter Medical Decree].
102. Nurses and Midwives Decree N.R.C.D. 117 (National Redemption Council Decree) (1972) (Ghana) [hereinafter Nurses Decree].
103. Pharmacy Act, 1994 (489) (1994) (Ghana) [hereinafter Pharmacy Act, 1994].
104. Medical Decree, § 4.
105. *Id.* §§ 39, 40.
106. *Id.* § 41.
107. *Id.* §§ 21, 22.
108. *Id.* § 35.
109. Nurses Decree, §§ 2, 4.
110. *Id.* § 13.
111. *Id.* § 22.
112. *Id.* § 25.
113. Pharmacy Act, 1994, § 1.
114. *Id.* §§ 2, 27-30.
115. *Id.* §§ 15, 17.
116. *Id.*, §§ 24, 31.
117. REPRODUCTIVE HEALTH POLICY, *supra* note 73, §§ 3.5, 4.1-4.5.
118. *Id.* § 2.8.
119. See Addy Memorandum II, *supra* note 93.
120. CRIMINAL CODE (29) § 73(b), (c) [hereinafter CRIM. CODE (29), 1960].
121. CRIMINAL CODE (30) § 296 (4) [hereinafter CRIM. CODE (30), 1960].
122. CRIM. CODE (29), 1960, § 82. Causing intentional and unlawful harm is a second degree felony, punishable by up to 10 years' imprisonment, in contrast to negligently and unlawfully causing harm which is a misdemeanor, punishable by up to three years' imprisonment. See *id.*, §§ 69, 72; CRIM. CODE (30), 1960, § 296.
123. See Memorandum from Victoria Addy, President, FIDA-Ghana to The Center for Reproductive Law and Policy (Jan. 1997) (on file with The Center for Reproductive Law and Policy) [hereinafter Addy Memorandum I].
124. Medical Decree, §§ 42, 43.
125. *Id.* § 43.
126. *Id.* § 46.
127. *Id.* §§ 47, 48.
128. Nurses Decree, § 27.
129. Pharmacy Act, 1994, § 23.
130. PROFESSIONAL CONDUCT AND ETHICS (GUIDES AND REGULATIONS) ¶ 9 (Medical and Dental Council) (1975) (Ghana) [hereinafter PROFESSIONAL CONDUCT].
131. See *id.* ¶ 14.
132. *Id.* ¶ 4.
133. See *id.* ¶ 5.
134. NATIONAL POPULATION COUNCIL, NATIONAL POPULATION POLICY iii (revised ed. 1994) [hereinafter POPULATION POLICY].
135. 3RD COUNTRY PROGRAMME, *supra* note 44, at 7, ¶ 23.
136. The NPC worked to initiate grassroots participation in the policy formulation of the revised population policy, a key improvement over the 1969 policy, which lacked input from implementors and different societal groups. See 3RD COUNTRY PROGRAMME, *supra* note 44, at 10, ¶ 31.
137. See National Population Council Act (435), art. 3 (1994) [hereinafter Population Act]; 3RD COUNTRY PROGRAMME, *supra* note 44, at 59, ¶ 186.
138. Population Act, *supra* note 137, art. 2.
139. POPULATION POLICY, *supra* note 134, at iii, 25; 3RD COUNTRY PROGRAMME, *supra* note 44, at 7, ¶ 24 (1995).
140. GHANA CONST. art. 37(4).
141. *Id.* art. 34(1).
142. GHANA VISION, *supra* note 73.
143. *Id.* § 4.2.
144. *Id.* § 3.1.9.
145. *Id.* § 5.1.3.
146. *Id.*
147. POPULATION POLICY, *supra* note 134, § 4.2.
148. *Id.* § 4.4.
149. *Id.* § 4.3.
150. *Id.* §§ 5.1-5.20.
151. REPRODUCTIVE HEALTH POLICY, *supra* note 73, at iii.
152. See *id.* at iv. In addition to general rules and regulations governing the various areas of reproductive health services, the service policy guidelines address training, components of reproductive health services, target and priority groups for service and basic information, information, education and communication eligibility for services, who will provide what services, and planning and implementation of training, logistics, supervision and evaluation activities. *Id.* The service standards set out minimum-acceptable performance levels and expectations for each component of reproductive health services, the expected functions of service providers and levels of service delivery, and the basic training content required for the performance of these functions. *Id.*
153. *Id.* at iv, § 1.3.
154. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 1.1. The Reproductive Health Policy specifically adopts the reproductive health definition from the 1994 Cairo International Conference on Population and Development. *Id.* § 1.2.
155. *Id.* § 2.2.1.
156. *Id.* §§ 1.1, 1.4.
157. 3RD COUNTRY PROGRAMME, *supra* note 44, at ii.
158. *Id.* at 4, ¶ 16.
159. HEALTH SURVEY, *supra* note 10, § 6.2.
160. *Id.* § 8.1.
161. *Id.*
162. *Id.*
163. Hospital Fees Regulations, *supra* note 93.
164. Report by Victoria Addy, President, FIDA-Ghana, Accra, Ghana, § 3.3.2 (Sept. 1996) (on file with The Center for Reproductive Law and Policy) [hereinafter Addy Report II].
165. Hospital Fees Regulations, *supra* note 93, §§ 2(q), 3.
166. Addy Memorandum II, *supra* note 93.
167. *Id.*
168. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 2.2.5.
169. HEALTH SURVEY, *supra* note 10, § 4.8.
170. *Id.*
171. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 3.1.
172. *Id.* § 3.3.
173. *Id.* §§ 3.1, 3.2.
174. HEALTH SURVEY, *supra* note 10, § 4.5. The number of currently married women practicing family planning in 1993 increased as compared to the 1988 demographic and health survey in which 13% of married women used family planning (5.1% using modern methods). *Id.*
175. *Id.* § 4.5. No women reported use of implants as their currently used contraceptive method. *Id.*
176. HEALTH SURVEY, *supra* note 10, § 4.5.

177. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 2.2.1. Specifically, the Reproductive Health Service Policy lists condoms, spermicides, cervical caps, diaphragms, oral contraceptive pills, injectable lactational amenorrhea method, natural family planning, IUDs, implants, tubal ligation and vasectomy. *See id.*
178. *Id.* § 2.2.3.
179. Addy Memorandum III, *supra* note 66.
180. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 2.2.5.
181. Pharmacy Act, 1994, art. 27.
182. *Id.* art. 31. *See* Pharmacy and Drugs Act, 1961, 2d sched. (Class A Drugs), 3rd sched. (Class B Drugs), 4th sched. (Class C Drugs, including condoms and spermicide, primarily any proprietary drug which does not contain any Class A or Class B drugs). The Pharmacy and Drugs Act, 1961 was largely repealed pursuant to the Pharmacy Act, 1994 except for most of the First, Second, Third and Fourth Schedules which are to remain in effect until the Minister of Health on advice of the Food and Drugs Board specifies which drugs are Class A, B and C. *See* Pharmacy Act, 1994, arts. 38, 48. To date, new regulations specifying the classifications of drugs have not been issued.
183. *Id.* art. 29.
184. *Id.* art. 36.
185. *Id.* art. 35.
186. *Id.* art. 33. The Act also requires the supplier of a drug to keep certain records with respect to restricted drugs and dangerous drugs. *Id.* arts. 32, 34.
187. Addy Memorandum III, *supra* note 66.
188. *See* Ban on advertising of contraceptives, July 1986. *See also* Vol. 13, 220 CONTRACEPTION, at 23 (citing International Planned Parenthood Federation, 14 PEOPLE 32 (No. 2, 1987)).
189. CRIM. CODE (29), 1960, §§ 280-81.
190. *Id.*
191. CRIM. CODE (29), 1960, § 280.
192. *See Abortion Policies: A Global Review*, U.N. Department for Economic and Social Information and Policy Analysis, at 27-29, U.N. Doc. ST/ESA/SER.A/129/Add.1 (1993) [hereinafter *Abortion Policies*]; INT'L PLANNED PARENTHOOD FEDERATION AFRICA REGION, UNSAFE ABORTION AND POST-ABORTION FAMILY PLANNING IN AFRICA 8, 28 (1994) [hereinafter UNSAFE ABORTION].
193. *Abortion Policies*, *supra* note 192, at 29.
194. UNSAFE ABORTION, *supra* note 192, at 8.
195. CRIM. CODE (29), 1960, § 58.
196. CRIM. CODE (29), 1960, § 59(1).
197. CRIMINAL CODE (Amendment), 1985 (amending CRIM. CODE (29), 1960, §§ 58 & 59) [hereinafter CRIM. CODE, 1985].
198. *Id.*
199. *Id.* § 58(2)(b).
200. *Id.*
201. *See id.* § 59(2).
202. CRIM. CODE (29), 1960, § 59(1).
203. Private Hospital and Maternity Homes Act (9) (1958) (Ghana).
204. *See* CRIM. CODE, 1985.
205. *Id.*
206. *See* Report by Victoria Addy, President, FIDA-Ghana, Accra, Ghana 7 (Jan. 1997) (on file with The Center for Reproductive Law and Policy) [hereinafter Addy Report II].
207. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 2.3.
208. *Id.* § 2.3.1.
209. *Id.*
210. *Id.* §§ 2.3.2, 2.3.5.
211. *See* CRIM. CODE (29), 1960, § 58; CRIM. CODE (30), 1960, § 296.
212. CRIM. CODE (29), 1960, § 59(1).
213. CRIM. CODE, 1985.
214. *See* Addy Report II, *supra* note 206, at 8 (describing case of State v. Chene-Kesson and Mensah, 1961 G.L.R. 708 (Ghana Sup. Ct.)).
215. *Id.* at 7.
216. *See* CRIM. CODE, 1985.
217. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 2.3.1.
218. *Id.* § 2.3.
219. HEALTH SURVEY, *supra* note 10, § 4.4.
220. United Nations Population Fund, *Survey of Laws on Fertility Control* (1979) (citing CRIM. CODE (29) § 42(c)) [hereinafter *Fertility Control*].
221. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 2.2.5.
222. Addy Report II, *supra* note 206, § 4.2; *see also* *Fertility Control*, *supra* note 220, at 14 (1979); Statement from Josephine Addy of Planned Parenthood Association of Ghana (on file with The Center for Reproductive Law and Policy).
223. Hospital Fees Regulations, pt. B. The cost listed for minor surgical operations which encompasses sterilization is 500 Cedis. *Id.*
224. NAHID TOUBIA, FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION 25 (Rainbø 1995).
225. UNICEF, CHILDREN AND WOMEN OF GHANA: A SITUATION ANALYSIS 65 (1990) [hereinafter CHILDREN AND WOMEN]; U.S. DEPT. OF STATE, 1996 HUMAN RIGHTS REPORT: GHANA § 5 (1997) [hereinafter HUMAN RIGHTS REPORT].
226. CHILDREN AND WOMEN, *supra* note 225, at 65.
227. CRIM. CODE, 1994.
228. *Id.* § 1.
229. *See* GHANA CONST. ch. 5, art. 26(2).
230. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 2.8.
231. *Id.*
232. NATIONAL AIDS/STD CONTROL PROGRAMME, AIDS SURVEILLANCE REPORT JANUARY TO DECEMBER 1995 (1996). The Ministry of Health reported 13,699 HIV-positive cases as of 1994. *See* 3RD COUNTRY PROGRAMME, *supra* note 44. The Ministry of Health estimated the percentage of the Ghanaian population that was HIV-positive in 1992 at 0.2%. *Id.* Twenty-six AIDS cases were reported in 1986 and 3,140 cases were reported as of December 1991. MINISTRY OF HEALTH, GUIDELINES FOR AIDS PREVENTION AND CONTROL ACTIVITIES AT THE REGIONAL AND DISTRICT LEVEL 1 (1992) [hereinafter AIDS GUIDELINES].
233. Sentinel surveillance involves the selection of specific sites at which a pre-determined number of people from specific population group(s) are tested in a regular and consistent way according to a pre-determined protocol. MINISTRY OF HEALTH, DISEASE CONTROL UNIT, HIV SENTINEL SURVEILLANCE I (1995) [hereinafter HIV SENTINEL].
234. *Id.* at 6.
235. MOH 1993 ANNUAL REPORT, *supra* note 99, at 8.
236. In 1992, it was estimated that women accounted for 77% of all AIDS cases. *See* 3RD COUNTRY PROGRAMME, *supra* note 44, at 46; *See also* NATIONAL COUNCIL ON WOMAN AND DEVELOPMENT, THE STATUS OF WOMEN IN GHANA (1985-1994) § 6.2.7 (1994) (citing 71%) [hereinafter STATUS OF WOMEN].
237. CRIM. CODE (29), 1960, § 284.
238. Pharmacy Act, 1961, 5th sched., repealed by Pharmacy Act, 1994 (489), art. 48 (1).
239. HON. KWAME PEPEH, MINISTER OF FINANCE, THE BUDGET STATEMENT AND ECONOMIC POLICY OF THE GOVERNMENT OF GHANA FOR THE FINANCIAL YEAR 1996, at 18, ¶ 90 (Feb. 2, 1996).
240. 3RD COUNTRY PROGRAMME, *supra* note 44, at 12, ¶ 34(v).
241. HIV SENTINEL, *supra* note 233, at i.
242. AIDS GUIDELINES, *supra* note 232, at ii.
243. *Id.* at 1.
244. *Id.* §§ 4.5, 5.1. With respect to confidentiality, the AIDS Guidelines state that the test results may not be given if the person did not know she was being tested, nor may any other person be told of the results without the consent of the person tested. *Id.*
245. *Id.* § 8.1.
246. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 2.4.
247. *Id.* § 2.4.4.
248. *Id.* § 2.4.5.
249. Hospital Fees Regulations, *supra* note 93 § 2(2)(g).
250. Addy Memorandum II, *supra* note 93.
251. W.C. Ekow Daniels, *The Legal Position of Women under our Marriage Laws*, IX U. GHANA L.J. 39, 40 (1972).
252. Marriage Ordinance (127) (Gold Coast, 1951) [hereinafter Marriage Ordinance, 1951].
253. GHANA IN SISTERHOOD IS GLOBAL 255 (Robin Morgan ed., The City Univ. of N.Y., Feminist Press 1996) [hereinafter GHANA SISTERHOOD]; *See* Daniels, *supra* note 251, at 39, 40.
254. Marriage Ordinance, §§ 14(2), (4).
255. *Id.* § 44. However, nothing in the Marriage Ordinance affects the validity of any marriage contracted under or in accordance with any customary law. *Id.*
256. W.C. Ekow Daniels, *Laws Relating to Husband and Wife in Ghana*, II U. GHANA L.J. 20, 22 (1965) [hereinafter *Laws Relating*].
257. *Id.* at 22-23. This system impliedly requires the consent of both the couple and their parents. *See* GHANA SISTERHOOD, *supra* note 253, at 255.
258. *Laws Relating*, *supra* note 256, at 23; *see also* Gordon Woodman, *Judicial Development of Customary Law: The Case of Marriage Law in Ghana and Nigeria*, XIV U. GHANA L.J. 115, 121-22 (1977).
259. CRIM. CODE (29), 1960, § 109.

260. *Laws Relating*, *supra* note 256, at 20, 22.
261. GHANA LAW REFORM COMMISSION, 12th Annual Report, at 12 (1987).
262. *Laws Relating*, *supra* note 256, at 36.
263. *Id.*
264. *Id.*; see Addy Report II, *supra* note 206, at 1 (citing *Asumah v. Khair* [1959] G.L.R. 355, 356 (1959)).
265. Daniels, *supra* note 251, at 44.
266. *Laws Relating*, *supra* note 256, at 37.
267. CRIM. CODE (29), 1960, § 79.
268. *Laws Relating*, *supra* note 256, at 37.
269. GHANA SISTERHOOD, *supra* note 253, at 255-56.
270. Customary Marriage and Divorce (Registration) Law P.N.D.C.L. [Provisional National Defense Council Law] 112, § 1 (1985) (Ghana) [hereinafter Customary Registration Law, 1985]. Proof of customary law marriages has always been by oral testimony of the parents of the husband or wife or anyone present when the marriage was celebrated. See E.K. Quansah, *Updating Family Law: Recent Developments in Ghana*, 36 INT'L & COMP. L. Q. 389, 394-395 (1987).
271. Customary Marriage and Divorce (Registration)(Amendment) Law, 1991 (263) (1991)(Ghana) [hereinafter Customary Registration Law Amendment]. The amendment repeals the provision of the 1985 law that established an offense punishable by fine or imprisonment for failure to register a marriage or dissolution of a marriage. *Id.* at § 4. However, the amendment empowers the Minister of Justice to prescribe periods within which failure to register a marriage contracted before or after the date of the amendment shall be an offense. *Id.* at § 2(b). To date, the Minister of Justice has not exercised this power.
272. Quansah, *supra* note 270, at 395; Michael D.A. Freeman, *Ghana: Legislation for Today*, 11 J. FAM. L. 159, 161 (1987).
273. Marriage Ordinance, 1951.
274. Marriage of Mohammedens Ordinance, 1951 (129), § 6 [hereinafter Mohammedens, 1951].
275. Mohammedens, 1951, § 8.
276. GHANA SISTERHOOD, *supra* note 253, at 256.
277. Memorandum, Intestate Succession Law, 1985 (111) P.N.D.C.L. [Provisional National Defense Council Law] 111 (1985) (Ghana) [hereinafter Intestate Law, 1985].
278. Matrimonial Causes Act, 1971 (367) (1971) (Ghana) [hereinafter Matrimonial Causes Act].
279. *Id.* art. 41(1). However, many customary law marriages are also dissolved pursuant to customary law, rather than under the Matrimonial Act. The Matrimonial Act states that "[m]onogamous marriage does not include a potentially polygamous marriage." *Id.* at § 43.
280. *Id.* art. 41(2)(a). The formerly unwritten customary grounds for dissolution of a marriage are incorporated into the statute as nonexclusive grounds the court is to recognize in determining whether a polygamous marriage has broken down beyond reconciliation. *Id.* art. 41(3).
281. *Id.* art. 41(2). The first reported case of a dissolution of a customary marriage under the Matrimonial Act occurred in 1975 where the High Court granted the wife's petition for dissolution and ordered her husband to pay back money he had borrowed and awarded a nominal amount as customary compensation. See Addy Report II, *supra* note 206, at 4 (citing *Mensah v. Bekow*, 2 G.L.R. 347 (1957)).
282. Matrimonial Causes Act, art. 1(2).
283. *Id.* art. 13. For example, if the marriage is not consummated, if one of the parties was insane, if the woman was pregnant by another man at the time of marriage or if one of the parties was "suffering from an incurable venereal disease in a communicable form." *Id.*
284. *Id.* arts. 13, 15. The nullification proceeding must be brought within one year of the commencement of the marriage and may be brought only if marital intercourse with the petitioner's consent has not taken place since his or her discovery of the grounds for nullification. *Id.*
285. *Id.* art. 19.
286. *Id.* arts. 20, 21. The amount awarded "as a rule does not exceed one-third of the husband's income, although the court is required to consider the standard of living of the parties and their circumstances." Daniels, *supra* note 251, at 59.
287. *Id.* art. 25.
288. Matrimonial Causes Act, art. 22.
289. *Id.* art. 41(2).
290. *Id.* art. 26.
291. GHANA SISTERHOOD, *supra* note 253, at 256.
292. See Daniels, *supra* note 251, at 59.
293. *Id.* at 59-60; GHANA SISTERHOOD, *supra* note 253, at 256.
294. Daniels, *supra* note 251, at 60.
295. *Id.*; *Laws Relating*, *supra* note 256, at 47-48.
296. *Laws Relating*, *supra* note 256, at 48-49.
297. Daniels, *supra* note 251, at 60.
298. GHANA SISTERHOOD, *supra* note 253, at 256.
299. Mohammedens, 1951, § 7, 8.
300. Matrimonial Causes Act, § 41(2).
301. Maintenance of Children Decree, S.M.C.D. 133 (Supreme Military Council Decree) pt. I (1977) [hereinafter Maintenance Decree].
302. Maintenance Decree, §§ 4, 7.
303. GHANA SISTERHOOD, *supra* note 253, at 256.
304. See GHANA CONST. ch. 5, art. 18.
305. *Id.* ch. 5, art. 17. Article 17(4)(d) which permits Parliament to enact laws containing "different provision for different communities having regard to their special circumstances" prohibits any such law from being inconsistent with the spirit of the Constitution. *Id.* ch. 5, art. 17(4)(d).
306. Land Title Registration Law, 1986, P.N.D.C.L. 152 (Provisional National Defense Council Law) (1986) (Ghana).
307. See Beatrice Duncan, *Women and Land in Ghana*, at 30-32 (unpublished paper, on file with International Human Rights Law Group, Women in the Law Project, 1995).
308. *Id.* at 31-32.
309. GHANA CONST. ch. 5, art. 22(3).
310. *Id.* ch. 5, art. 22(1).
311. See generally Duncan, *supra* note 307.
312. Ernest K. Banks, *Problems of Intestate Succession and the Conflict of Laws in Ghana*, 26 INT'L L. 437 (1992).
313. E.V.O. Dankwa, *Property Rights of Widows in Their Deceased Husbands' Estate*, XVI U. GHANA L. J. 1, 2 (1982-85).
314. *Quartey v. Martey*, 1959 G.L.R. 377 (Ghana High Ct.); Duncan, *supra* note 307, at 7, 15.
315. Akua Kuenyehia, *Women and Family Law in Ghana: An Appraisal of Property Rights of Married Women*, XVII U. GHANA L. J. 72, 82 (1986-90).
316. Intestate Law, 1985.
317. *Id.* at i.
318. *Id.*; see Marriage Ordinance, 1951, § 48; Mohammedens, 1951, § 10. The Intestate Law was amended in 1991 to provide that prior to distribution of any estate, no person may eject a surviving spouse or child from the "matrimonial home," except in very limited circumstances. See Intestate Succession (Amendment) Law, 1991, P.N.D.C.L. 264 (Provisional National Defense Council Law) (1991) (Ghana).
319. Customary Registration Law Amendment, at 5.
320. GHANA CONST. ch. 5, art. 24(1).
321. *Id.* ch. 5, art. 27(3).
322. *Id.* ch. 5, art. 27(1).
323. *Id.* ch. 5, art. 27(2). The small percentage of women employed in the public sector receive full pay for maternity leave. See Memorandum from Victoria Addy, President, FIDA-Ghana, to The Center for Reproductive Law and Policy (Feb. 28, 1997) (on file with The Center for Reproductive Law and Policy).
324. Labour Decree, 1967 N.L.C.D. [National Liberation Council Decree] 157, ¶ 41 (1967).
325. *Id.* ¶ 42. Paragraph 76 provides that the Decree shall apply to employment by the Republic of Ghana. *Id.* ¶ 76. Paragraph 42 also permits new mothers to take their annual leave in conjunction with their paid maternity leave. Also, a pregnant worker may not be assigned to posts outside her place of residence after the fourth month, nor work overtime if pregnant or with a child less than eight months old. *Id.* The decree also prohibits dismissing a female absent for maternity leave or during any illness resulting from pregnancy until her absence has exceeded a maximum period as directed by the Chief Labour Officer. *Id.* ¶ 43.
326. STATUS OF WOMEN, *supra* note 236, § 3.3.
327. President of the Republic of Ghana's Sessional Address On the Occasion of the State Opening of Parliament in Accra, at 15 (Jan. 12, 1996) (on file with The Center for Reproductive Law and Policy) [hereinafter Sessional Address].
328. GHANA CONST. ch. 5, arts. 24(1), 27(3).
329. STATUS OF WOMEN, *supra* note 236, § 5.2.
330. See 3RD COUNTRY PROGRAMME, *supra* note 44, ¶ 147. A project entitled Enhancing Opportunities for Women in Development (ENOWID) was commenced in 1991 as part of Ghana's Program of Action to Mitigate the Social Cost of Adjustment (PAMSCAD). The credit and training components were executed by Ghana's National Board for Small Scale Industries and the repayment rate for credit for income generating activities

- was 96% from 360 women's groups. *Id.* Approximately, 45% of grants from PAMSCAD are set aside for women in both rural and urban areas. STATUS OF WOMEN, *supra* note 236, § 5.2.3.
331. Female illiteracy in 1990 was 49% compared to 30% for men. *See* STATUS OF WOMEN, *supra* note 236, § 6.1.2.
332. GHANA CONST. ch. 5, art. 25(1).
333. STATUS OF WOMEN, *supra* note 236, § 6.1.5.
334. GHANA VISION, *supra* note 73, § 3.1.3.
335. STATUS OF WOMEN, *supra* note 236, § 2.1.
336. *See* Organisational Structure of the National Council on Women and Development (1994 chart) (on file with The Center for Reproductive Law and Policy).
337. STATUS OF WOMEN, *supra* note 236, §§ 2.2, 2.3.
338. Sessional Address, *supra* note 327, at 15.
339. CRIM. CODE, 1993, § 2.
340. CRIM. CODE (29), 1960, § 98.
341. CRIM. CODE, 1993, § 2(a).
342. *Id.* § 2(a).
343. CRIM. CODE (29), 1960, § 105.
344. When Ghana's Parliament amended its rape laws in 1993, the matter of marital rape was not discussed. It has been asserted that a woman could attempt to rely on existing rape law notwithstanding the consent defense available to a husband, discussed below. *See* Addy Report II, *supra* note 206, at 10.
345. STATUS OF WOMEN, *supra* note 236, § 7.0 (1994).
346. CRIM. CODE (29), 1960, § 42(g). Section 32 of the Criminal Code does limit the legal defense of justification for force to the amount and kind of force reasonably necessary in the situation. CRIM. CODE (29), 1960, § 32.
347. *See* Beatrice Akua Duncan, *Marital Rape as a Form of Domestic Violence and the Need for Law Reform in Ghana*, at 27-29 (1994) (unpublished L.L.M. paper, Georgetown University Law Centre) (on file with The Center for Reproductive Law and Policy).
348. Addy Report I, *supra* note 164, § 9.7.4.
349. *See* HEALTH SURVEY, *supra* note 10, § 3.7.
350. ADLAKHA, *supra* note 9.
351. *Id.*
352. GHANA CONST. ch. 5, art. 28.
353. POPULATION POLICY, *supra* note 134.
354. REPRODUCTIVE HEALTH POLICY, *supra* note 73, at 2.
355. *Id.* § 2.1.1.
356. *Id.* § 2.6.
357. *Id.* § 3.1.
358. NATIONAL POPULATION COUNCIL, ADOLESCENT REPRODUCTIVE HEALTH POLICY 3 (1996) [hereinafter ADOLESCENT POLICY].
359. *Id.* at 4.
360. *Id.* at 5, 11-12.
361. CRIM. CODE, 1994.
362. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 2.8.
363. *Id.* § 2.8.2.
364. *Id.* § 2.8.4.
365. ADOLESCENT POLICY, *supra* note 358, at 11.
366. Hilary Amesika Gbedemah, *Tiokosi: Twentieth Century Female Bondage, A Ghanaian Case Study* (unpublished L.L.M. paper, Georgetown University Law Centre, Apr. 1996) (on file with The Center for Reproductive Law and Policy).
367. Fitnat Naa-Adjeley Adjetey, *Reclaiming the African Woman's Individuality: The Struggle Between Women's Reproductive Autonomy and African Society and Culture*, 44 AM. U. L. REV. 1351, 1364 (1995); Howard W. French, *The Ritual Slaves of Ghana: Young and Female*, N.Y. TIMES, Jan. 20, 1997, at A1.
368. French, *supra* note 367 at A1; HUMAN RIGHTS REPORT, *supra* note 225.
369. *See* Naa-Adjeley Adjetey, *supra* note 367, at 1364; Amesika Gbedemah, *supra* note 366, at 2.
370. GHANA CONST. ch. 5, art. 16.
371. GHANA CONST. ch. 5, art. 26(2).
372. CRIM. CODE (29), 1960, §§ 97, 100, 101, 102, 106, 107, 109 & 314.
373. HEALTH SURVEY, *supra* note 10, § 5.3 (Dec. 1994). The median age has increased from 18.3 years in the 1988 Demographic and Health Survey. *Id.* In comparison, the median age for men at first marriage among men 30-59 is 25.5 years. *Id.*
374. Marriage Ordinance, 1951, § 14(2).
375. *Id.* § 14(2).
376. 3RD COUNTRY PROGRAMME, *supra* note 44, ¶ 141.
377. Mohammedens, 1951, § 6(7). The issue of whether the Quran permits child marriage has proved to be contentious. *See* ASGHAAR ENGINEER, THE RIGHTS OF WOMEN IN ISLAM 110 (1992).
378. HUMAN RIGHTS REPORT, *supra* note 225, § 5.
379. *See* CRIM. CODE (29), 1960, § 100.
380. 3RD COUNTRY PROGRAMME, *supra* note 44, at ¶ 144.
381. *Id.*
382. GHANA VISION, *supra* note 73, §§ 3.1.3, 5.1.7.
383. 3RD COUNTRY PROGRAMME, *supra* note 44, at ¶ 34(iv).
384. MINISTRY OF EDUCATION, POPULATION/FAMILY LIFE SKILLS EDUCATION PROGRAMME (on file with The Center for Reproductive Law and Policy).
385. *Id.*
386. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 3.2. There exist some parental and societal reservations regarding education on family life/sexuality and the provision of family planning services. *See* 3RD COUNTRY PROGRAMME, *supra* note 44, ¶ 34(iv).
387. REPRODUCTIVE HEALTH POLICY, *supra* note 73, § 3.1.
388. CRIM. CODE, 1993, § 2(a).
389. *Id.*
390. CRIM. CODE (29), 1960, § 102.
391. *Id.* § 106.
392. *Id.* § 107.