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Ghana Integrity Initiative and Transparency International – Secretariat

Submission to the Universal Periodic Review mechanism of the UN Human Rights Council

The Ghana Integrity Initiative (GII) is the national chapter of Transparency International (TI) in Ghana. Established in 1999, GII is a non-partisan, non-profit civil society organization focused on addressing corruption. GII works towards a vision of ‘a corruption-free society where all people and institutions act accountably, transparently and with integrity’.

Transparency International (TI) is the global coalition against corruption. TI works together with governments, businesses and citizens to stop the abuse of power, bribery and secret deals. As a global movement with one vision, TI seeks a world free of corruption. Through chapters in more than 100 countries and an international secretariat in Berlin, the organization is leading the fight against corruption to turn this vision into reality.

The link between human rights and anti-corruption fundamentally rests upon the same values of equal participation, accountability, democracy and empowerment particularly of vulnerable and marginalized groups within a society.¹ In Ghana, areas where corruption impacts negatively on the enjoyment of human rights include access to basic services such as health care and education, as well as in the equitable use of land. Through its research and advocacy work, GII has identified critical areas of concern that require the attention of the Ghanaian government as well as of the international community to ensure that existing legislation as well as international obligations that protect human rights and safeguard a country’s integrity system are upheld and vigorously enforced. A further concern is the degree to which the main institution tasked with the protection of human rights and promotion of integrity, the Commission on Human Rights and Administrative Justice (CHRAJ), has over the years been under resourced (human and financial) and incapacitated to fulfill its mandate. It is also instructive to note that, a bulk of CHRAJ’s work in the last few years has been dependent on donor support.

Legal and institutional provisions

Chapter V of the 1992 Constitution of the Republic of Ghana outlines the fundamental human rights and freedoms of individuals. Particularly relevant to this submission are:

- The right to own property, including right to equal access of property acquired during marriage for spouses
- Freedom from arbitrary evictions
- Right to equal educational opportunities including free, compulsory and available basic education for all

- The obligation of the state to protect social order ‘founded on the ideals and principles of freedom, equality, justice, probity and accountability’
- The commitment of the State to ‘be guided by’ international human rights instruments In the discharge of its obligations²

Funding of national institutions

The Commission for Human Rights and Administrative Justice (CHRAJ) is the primary institution mandated to protect human rights and basic freedoms, as well as to spearhead anti-corruption efforts in the country. Since its inception in 1993, CHRAJ been promoting a close link between good governance, anti-corruption, the rule of law and human rights. This is grounded in the belief that sustainable democracy can only be attained in an environment that upholds the rule of law and adopts the highest standards of good governance.³

CHRAJ is the foremost constitutionally mandated body to investigate corruption and conflict of interest of public office holders through investigations of abuse of power and “all instances of alleged or suspected corruption and the misappropriation of public monies by officials”. It also investigates allegations of conflict of interest under Chapter 24 (Articles 284 to 288) of the 1992 Constitution.

Legal backing in investigating acts of corruption is also given to CHRAJ through the Whistleblower Act. The Commission can investigate disclosures under the act and complaints of victimization of whistleblowers in both the public and private sectors. It can further provide free advice and services on corruption prevention in Ghana; contribute to the conceptualization and implementation of corruption prevention initiatives as well as engage in broad awareness raising of the general public about corruption and its detrimental effects on development.

Given the very problematic broad mandate of CHRAJ, the Commission suffers from a number of challenges in the performance of their mandate. A key challenge is the routinely insufficient resource allocations and disbursements.⁴ Governance experts, civil society organizations and senior officials from CHRAJ have repeatedly called upon the government to provide the necessary resources for the Commission to fulfill its role.⁵ Furthermore, CHRAJ has been heavily reliant on funding support from development partners, notably the Danish International Development Agency for International Development, which in 2014 allocated GHC 7.5 million (US\$ 1.5 million) to complement the GHC 1.5 million (US\$ 320,000) allocated by Ghana’s government.⁶ According to a publication by the Institute for Economic Affairs, ‘CHRAJ is chronically under-resourced as government after government routinely provides it only a fraction of its required annual budgets’.⁷

Most recently, during an event organized by GII on promoting stronger cooperation between accountability institutions in an effort to ensure timely and efficient resolution of corruption cases, a senior official of CHRAJ made remarks alluding to the abysmally low resources dedicated to CHRAJ: he referred to inadequate human and financial resources as the main source of challenges, followed by a high tolerance for corruption, as evident by the low number of corruption reports.⁸

Land rights discrimination and evictions

Land deals can affect the customary users of land negatively. In Africa, a large portion of arable land is in tenure by small-scale farmers – often women. Each land deal – whether transparent or opaque – deprives customary land users of two of their most relevant resources: water and land. Unfortunately, the results are often (more) poverty and hunger.

Corruption in local land administration and at grand level between investors and local elite favors “land grabs” and state capture, and marginalizes local populations.

Qualitative data from TI’s Advocacy and Legal Advice Centers (ALAC) in Africa and a “Land and Corruption Risk Mapping” carried out by several TI National Chapters in Africa confirm that citizens are severely affected by corrupt practices in land administration, and that loopholes exist in legal frameworks on land and tenure rights, giving room to land deals fueled by corruption – disproportionately affecting the poor and already disadvantaged. Clients’ reports of corruption cases to ALACs in Africa prove that corruption in the land sector and in land administration reduces access to land, and harms the livelihoods of small-scale producers, agricultural laborers, indigenous communities and landless rural and urban poor. Women, young people, and indigenous communities bear the direct brunt of corruption.⁹

Even though the Constitution does not discriminate between men and women, in practice customary tenure – lands owned collectively by ethno-tribal entities such as families, tribes or ethnic groupings - which defines access and control of an estimated 80% of land in Ghana, is permeated by cultural traditions and practices which are skewed in favor of men. Customary practices in Ghana also often exacerbate the vulnerability of women with respect to their right to use and own land. Migrant women, unmarried women, divorced women and married women without children may all be exposed to various forms of discrimination with respect to land across both the matrilineal and patrilineal spectrum of customary tenure. Decision-making on land at the community level is almost exclusively the preserve of chiefs, clan/family heads and other designated customary leaders who are mainly men. Even when women have been present at decision-making meetings, ‘they are to be seen and not to be heard’. At the household level, women have limited voice in land related decisions and this is reflected in the choice of crops – women should produce food crops to feed the family while men invest in long term cash crops. In effect, there are limited opportunities for gender equality under customary land tenure, with women being worst affected.¹⁰

Infringements of the right against arbitrary evictions are also well documented in Ghana. A case in point is one reported to GII’s ALAC relating to evictions of residents near Kade in Ghana’s Eastern Region. As many as 1,100 households are estimated to be affected. The land of Kwae near Kade in Eastern Region was nationalized in 1975 under “Operation Feed Yourself” when Acheampong was ruling the country. The state ordered compulsory acquisition of 12,050 hectares of land but only inhabitants of 3000 hectares received compensation. Under former President Jerry John Rawlings in the late 1990s, the oil and palm plantation decayed, the former employees harvested the fruits, and the trees were also cut down. People started to replant, and farmers took the land to earn a living. With President John Agyekum Kufuor assumed office privatization became the order of the day. In 2002 the farm was turned into a company with limited liability, a Belgium investor was found and the government maintained a

40% interest in the enterprise.¹¹ The Chief of the community had agreed to sell the land to the Belgian investor, evicting community members who had been working the land and living there for over three decades.

Access to education

The Constitution guarantees free, universal, compulsory and available basic education to all children. GII conducted a *Stakeholder and Political Will Analysis Report* which also maps out some of the main corruption risks in the sector.¹² Some of the greatest challenges that inhibit performance of Ghana's education include a lack of sufficient teaching and learning materials, inadequate teacher – pupil ratios, and teacher absenteeism, as well as overall low performance. These challenges have resulted in poor quality education, particularly in rural settings of Ghana. Parents and guardians still face a significant cost burden due to the government's inability to provide the necessary resources and infrastructure needed to support education, leaving children from poor households out of school. Corruption further exacerbates the problem by diverting limited resources. The evidence shows that corruption manifests itself most in embezzlement of resources and abuse of the system.¹³ These arise as a result of a cumbersome hierarchy which breeds difficult bureaucratic procedures; a lack of sufficient participation in the processes of resource allocation and utilization; and inadequate supervision at the school level overall and when administering exams.

Furthermore, GII's *Stakeholder and Political Will Analysis Report* documents that teacher attrition and absenteeism fuel corruption in the sector. Government payroll is rife in *ghost names* – names of teachers who no longer work for the sector are being paid nonetheless.¹⁴ The financial loss to the state ultimately undermines its ability to fulfill its human rights obligation of guaranteeing basic education to all. Clearly children cannot realize their right if teachers are being paid but not present in class. Much more rigorous supervision is needed to restore accountability in the sector through decentralized structures such as school management committees.

Access to health

Access to timely, acceptable and affordable health care of appropriate quality is a basic human right. Even though not explicitly enshrined in Ghana's Constitution *per se*, clauses of non-discrimination in any public service implicitly guarantees equal access of all Ghanaians to health care. As a party to the ICESCR, Ghana also recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including "creation of conditions which would assure to all medical service and medical attention in the event of sickness" (Article 12(d)).

A GII initiative to implement community scorecards in 2014 documented key challenges as well as effects of citizen participation and feedback and the quality of health care provision.¹⁵ In Ghana, Decentralized Ministries, Departments and Agencies (MDAs) have been mandated to ensure that the health care needs of the people are catered for. Furthermore, policies have been initiated to ensure that every Ghanaian can access healthcare no matter where they live. There is, however, still the issue of lack

of monitoring to ensure that citizens can provide feedback on whether the services provided meet their needs.

Corruption is particularly detrimental in health care delivery in Ghana. The direct impact is visible – a poor policy decision can result in unequal access, unnecessary trauma and ultimately higher mortality rates for patients seeking care. Furthermore, bribery, favoritism and extra fees for drugs and treatment that are routinely demanded prevent poor communities from accessing their due health care.

Recommendations

In light of the above, GII and Transparency International call upon States, as part of the third Universal Periodic Review of Ghana, to recommend that Ghana should:

- Ensure the provision of adequate and secure funding for CHRAJ to enable the Commission to effectively and efficiently fulfill its mandate
- Decouple the anti-corruption mandate from the CHRAJ's human rights and administrative justice mandates to ensure effectiveness in CHRAJ's work
- Reduce the burden of education on parents by implementing the much-lauded free education programme as stipulated in the country's 2017 budget
- Increase monitoring and sanctions of teacher absenteeism, including through school management committees
- Create avenues to ensure increased citizen's participation in monitoring of health services delivery

¹http://www.transparency.org/whatwedo/publication/working_paper_no.5_2008_human_rights_and_corruption

² http://www.ghana.gov.gh/images/documents/constitution_ghana.pdf

³ <http://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Bossman.pdf>

⁴ p.17, *The Role of the Commission on Human Rights and Administrative Justice (CHRAJ) in Promoting Public Service Accountability Under Ghana's Fourth Republic*, Sam Asiubui, African Training and Research Centre in Administration for Development

⁵ <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/We-need-more-resources-to-fight-corruption-CHRAJ-322560> and <http://kessbenfm.com/provide-anti-corruption-agencies-with-adequate-resources-chraj-tells-govt/>

⁶ <http://www.a1radioonline.com/2014/09/16/state-spends-over-ghc7-billion-on-chraj-boss-for-rent-in-37-months/>

⁷ p.10, *Empowering Ghana's Anti-Corruption Institution in The Fight against Corruption*, The Institute of Economic Affairs (IEA), Ghana:2015

⁸ <http://www.ghananewsagency.org/social/chraj-processes-59-cases-in-2016-114788> plus author's own notes.

⁹ See Policy Brief on Women, Land and Corruption in Ghana, available at

<https://www.tighana.org/resources/research/>

¹⁰ Policy Brief on Women, Land and Corruption in Ghana, available at

<https://www.tighana.org/resources/research/>

¹¹ https://landjustice4wa.org/2016/05/19/gopdc_kade_ghana/

¹² See p.4 TAHQEWA Stakeholder Analysis Report, available at <https://www.tighana.org/resources/research/>

¹³ Ibid, p. 4

¹⁴ Ibid, p. 8

¹⁵ See GII Report on the Implementation of Community Scorecard: <https://www.tighana.org/resources/research/>