Collective Activism: The Domestic Violence Bill becoming Law in Ghana

Akosua Adomako Ampofo
Institute of African Studies, University of Ghana, P.O. Box LG-73, Legon, Ghana
adomako@ug.edu.gh, adomako@gmail.com

Abstract
This article reflects on contemporary struggles for citizenship rights through an examination of civil society’s advocacy for the passage of domestic violence legislation in Ghana. The National Coalition on Domestic Violence Legislation, established in 2003 specifically to push for the passage of the legislation, at various times worked closely with, and at other times independently of, or even in conflict with, the state. These processes and engagements point to the vibrancy of civil society and suggest the need for new analyses of social movements, political power and democracy that are rooted in Africa’s contemporary realities.

Keywords
citizenship, social movements, women’s collective action, domestic violence, domestic violence legislation

Domestic Violence: Contemporary Issues
Contemporary women’s movements and organisations constitute an area of prolific output, especially in sociology and political science. In recent years feminist scholars in the global South have focused much attention on the ways in which civil society organisations have addressed women’s rights and, further, expanded the concept of rights and contributed to the democratisation process (Moghadam, 2005). Violence against women, and gender-based violence, have become an important arena for exploring the subject of women’s “rights” and citizenship (Mama, 2005), as evidenced by the annual mobilisation of women globally around the theme “Sixteen Days of Activism against Gender Violence”. Daily, all over the world, women are abused by colleagues, friends, family members and intimate partners. While a legal infrastructure

1 The United Nations Development Fund for Women reports that, “at least one out of every three women around the world has been beaten, coerced into sex, or otherwise abused in her
may not necessarily end gender-based, and particularly domestic violence, laws can do a number of things. They provide unequivocal statements on what a nation considers as violence against its citizens, even in the so-called private sphere; they highlight that the state considers these infractions in the private sphere as worthy of intervention; and, most importantly, they point out that even in the most private of spaces – the home – all are equal citizens before the law. Furthermore, domestic violence legislation can provide reliefs such as access to medical care, provision of shelters and even compensation for survivors of violence. However, currently most survivors of domestic violence in Africa have limited options for legal recourse. Typically they are compelled to seek prosecution under general assault provisions, which do not provide the specific compensation, protections or access to the services that so many survivors need.

As at my last count, only four countries in Africa had domestic violence legislation: South Africa, Mauritius, Zimbabwe and, since May 2007, Ghana. Using the case of the successful push by a coalition of women’s rights and gender advocates for the passage of domestic violence legislation in Ghana, this paper analyses new modes of struggles for recognition of citizenship in Africa. The Ghanaian journey towards law enactment was significantly influenced by social movements, specifically women’s collective action, that, at different times engaged with, as well as challenged the state. All over the world women’s organisations have helped develop greater awareness of, and sensitivity to gender inequities. The collective action of women and men from different classes and ideological persuasions discussed in this paper shows that this challenging of gender inequities, even with its political edge, prospered without direct references to, or even necessarily understandings of “feminist” language. The nature of the collective, the actions and process, suggest the need for new, context (Africa) specific frameworks for the analyses of social movements and work on political power and democracy in Africa.

In the next two sections I present a brief history of women’s activism in Africa generally, and then in Ghana more specifically. I then go on to provide a conceptual framework for collective action. The fourth section of the paper sketches the legal and social environment in which gender-based violence occurs in Ghana. In the fifth section of the paper I detail the processes leading to the drafting of a domestic violence bill and the establishment of a coalition to push for the passage of the bill into law. I conclude by reflecting on the democracy and citizenship project in Africa.

Women’s Organising in Africa

Women’s activism has a long history in Africa. As noted by Steady, women’s collective activism in Africa is rooted in “indigenous mechanisms of female mobilisation and cooperation; the historical experiences of colonisation; and the present reality of corporate globalisation” (2006:1). Steady goes on to assert that as a result of their historical experiences a large part of African women’s collective efforts have prioritised social and human-centred goals, rather than a “narrow preoccupation with gender equity alone”, which is an important difference between feminism as it is understood in the global North and South. Indeed, if we think of some of the major political upheavals expressed by groups of women such as the so-called Aba Women’s War (“riots”) that challenged the imposition of British taxes in Nigeria, or the boycotting of the markets by women traders in Ghana, these were not about agitating for specific women’s rights or challenging men. According to Steady African women’s collective activism today focuses on challenging exploitative development polices, advocating for more democratic institutions and peace; facilitating access to resources for poor and rural women, and promoting formal and informal education. Today, women in Nigeria’s Delta State have demonstrated against the activities of multinational oil corporations that have polluted their environment, damaged their livelihoods (which were dependent on fishing) and failed to provide employment for local residents. African women’s efforts range from welfare efforts among small, rural service-oriented groups to mass-based coalitions who lobby at national and international meetings and have helped make the international agenda more democratic (Steady 2006). Thus, it is important to distinguish between movements that primarily seek to address issues of male-dominance, and those which seek to combat wider forms of political and social subordination. As noted elsewhere, this would allow us to define feminism in a way that does not limit its applicability to those mobilisations that exclusively challenge women’s subordination to men without recognising the wider global forces at play (Tripp and Ferree 2006).

Nonetheless, historically African women have also mobilised around specifically gender-related issues. For example, Obeng and Akyeampong (2005) describe a very carefully planned strategy among an Asante chief’s wives to protect their gender interests by subjecting him to menstrual taboos and thus successfully dis-empowering him. The post colonial years have seen an increase in collective action around women’s issues, including what might be called more specifically gender-equity concerns. The scholar-activist Association of African Women for Research and Development, AAWORD, of which Steady herself was a founding member, was established in 1977, with the purpose of “envisioning an agenda for African feminism” through scholarship and
Activism (Mama, 1996: 6). Organisations such as AAWORD were an important part of African women’s collective activism that has played a significant role in developing discourses and international agenda setting around issues of development, peace and human rights (Rathgeber, 1990; Tinker, 1990). African women have also played focal leadership roles in other transnational feminist networks (TFN’s) such as Development Alternatives with Women for a New Era (DAWN) and Women Living Under Muslim Laws (WLUM) (Moghadam, 2005; Osirim forthcoming). These organisations are dedicated to promoting economic and social justice as well as overall human rights for women in the current phase of globalisation. In addition to significant leadership for such groups provided by African women such as Bolanle Awe and Ayesha Imam, in 2004, DAWN also located its Secretariat in Calabar, Nigeria. African women’s leadership roles in TFN’s and other global efforts to advance the position of women were perhaps most evident in the appointment of Gertrude Mongella as Secretary-General of the Fourth UN World Conference on Women in Beijing in 1995.

After the end of apartheid in South Africa women engaged successfully in gender politics, creating the powerful lobby group, The Women’s National Commission, which developed the Women’s Charter. The African Feminist Forum initiated by the African Women’s Development Fund, AWDF, is a more recent example of specifically feminist mobilising. The first forum which brought together over 100 feminist activists from all over the region and the Diaspora took place in Accra from November 15-19, 2006. The Forum adopted a charter of feminist principles that, in the words of the document, “sets out collective values that we hold as key to our work and to our lives as African feminists. It charts the change we wish to see in our communities, and also how this change is to be achieved. In addition it spells out our individual and collective responsibilities to the movement and to one another within the movement” (AWDF, 2006; emphasis mine). Movement building was a key topic for discussion at the Forum and local plans for action were designed which led to Ghana holding her own National Feminist Forum in 2007.

Ghanaian Women Mobilising for Change

Though not many written accounts of the nation’s history pay tribute to Ghanaian women’s roles in the nation’s struggle for freedom, self-government and democracy, Ghanaian women have a long history of political activism and participation in public life (Aidoo, 1985; Arhin 1983; Manuh, 1991; Tsikata, 1989). Prior to Ghana’s independence in 1957 women were involved in different stages of state building tackling the intricate and yet very crucial aspects of
the country’s political struggles for independence as well as other social and legal struggles (Aidoo, 1985; Arhin, 1983). During the independence struggles women organised cocoa hold-ups, they provided food for political activists at rallies throughout the country, and were foot soldiers who worked to recruit people to join the independence movement. Some, like Mabel Dove Danquah and Akua Asabea Ayisi worked side by side with Kwame Nkrumah, who became Ghana’s first president, on the *Evening News* writing political pamphlets, demanding independence, activities that exposed them to the risk of arrest, and some even ended up in prison (Manuh, 1991). Indeed, in his autobiography Nkrumah himself notes that:

> Much of the success of the CPP has been due to the efforts of the women members. From the very beginning women have been the chief field organisers. They have traveled through innumerable towns and villages in the role of propaganda secretaries and have been responsible for the most part in bringing about the solidarity and cohesion of the party (Nkrumah, 1989).

Unlike the experiences of many newly, independent African nations where women were usually ignored or their contributions downplayed, Kwame Nkrumah, made a conscious effort to recognize and validate the important contributions of women in nation building by including them in his government. Through an affirmative action policy, a number of women were included in the National Assembly of his Convention People’s Party (CPP) government. Between 1951 and 1960 a number of women’s organisations were born. In 1951 the CPP Women’s League was formed, charged with organizing rallies, dances, picnics and the newly established Ghana Women’s Day (Prah, 2004). The Ghana Federation of Women was formed in 1953, largely as a welfare and social support group, while the Women’s League was established with what might be read as a more feminist agenda. However, in 1960, Kwame Nkrumah had a brain wave to set up a national women’s organisation and mandated his reluctant aide, the CPP general secretary, Adamafio, to establish the National Council of Ghana Women, NCGW, as the only body under which all Ghanaian women were to organise and be organised (Adamafio, 1982). Although the NCGW was not independent of government, it was an important locus of development and training for women as they organised rallies, built day care centres and sent younger members abroad to study (Tsikata 1989).

2 The CPP reserved 10 seats for women in parliament although, as Manuh (1991) notes, this was not without incident: one member of parliament, Victor Owusu, was said to have objected to having the “lip-sticked and pancaked women” dilute the quality of the august house.
After the 1966 coup that overthrew Nkrumah, Ghana suffered many political and economic setbacks that have, in turn, substantially eroded women’s options for participation in the nation’s socio-economic life. Under the tenure of the Armed Forces Revolutionary Council (AFRC, 1979) and the Provisional National Defence Council (PNDC, 1982-1992), both headed by Flight Lieutenant Jerry John Rawlings, women endured untold indignities, political marginalisation and economic hardships as they were frequently vilified and blamed for the nation’s economic woes. Market women were singled out as scapegoats and blamed for Ghana’s moral decadence as they were alleged to exploit client relationships with powerful men to amass undue profits (Adomako Ampofo, 1993). Although a women’s machinery had been established in 1985 by the National Redemption Council military regime, the fortunes of the Council were short lived. Rawlings’ wife, Nana Konadu Agyeman-Rawlings set up her own movement, the 31st December Women’s Movement, DWM, and effectively “clipped the wings” of the NCWD by dissolving the governing council, setting up a management committee, and filling the latter with DWM members. Thus from the mid 1980s until the Rawlings’ government lost power to the NPP government in 2000 the women’s front was being characterised by what Prah refers to as an “illusion of activity” (Prah, 2004:37), and, I might add, an illusion of collective power, as state feminism and the first lady syndrome so aptly described by Mama (1995) took hold.

With the return to a more open form of government in 2000, civil society has come alive again, seeking to actively engage with the state around issues of citizenship, and women are an active part of this process. Two significant examples that pre-date the Domestic Violence Coalition, and that provided an environment for coalition building are Netright and the Women’s Manifesto Coalition. Both are networks of organisations many of whose members are also members of the Domestic Violence Coalition, and both recognise that by working in collectives they can more effectively lobby, advocate and campaign to bring gender perspectives to national processes in ways that individuals, groups of individuals, or even organisations cannot. Netright currently focuses on two areas, economic justice advocacy, specifically on issues of how people’s livelihoods are affected by the Ghana Poverty Reduction Strategy and Multi Donor Budget Support frameworks; and land tenure reforms. The network’s

---

3 The primary objective of Ghana’s Poverty Reduction Strategy of 2003 to date has been to free resources for addressing poverty while at the same time pursuing prudent fiscal policies including wide ranging reforms agreed upon with the international financial institutions. A review of the conception, process and implementation of GPRS has, however, exposed once again the flawed nature of economic reform policies, their lack of sufficient interest in regional and urban-rural differences in the experience of poverty, and their inherent gender biases.
objectives include (i) to work with, and support the work of the national machinery on women’s issues; (ii) to provide a forum for sharing of ideas and information on issues, developments and approaches to gender equality work and to reduce duplication and fragmentation of efforts on similar concerns; (iii) to strengthen and support NGO presence and participation in gender equality and women’s rights in Ghana; and (iv) to inject a human rights discourse to women’s equality work in Ghana (Netright, 2004). Initiated by ABANTU for development, the Women’s Manifesto Coalition is a response to the “insufficient attention given to critical issues affecting women... It is also a result of concern about the under-representation of women in politics, policy and decision-making.” (Coalition on the Women’s Manifesto for Ghana 2004:5). Thus the coalition has a very specific political agenda to put together issues of concern to women in Ghana, and to make demands of the state, political parties and civil society organisations for addressing them. The ensuing political document, The Women’s Manifesto, provides these demands under the following themes: Women’s Economic Empowerment; Women and Land; Women, Social Policy and Development; Women in Politics, Decision-Making and Public Life; Women, Human Rights and the Law; Discriminatory Cultural Practices; Women and the Media; Women, Conflict and Peace; Women with Special Needs. The document concludes by examining, and making demands of institutions with a mandate to promote women’s rights such as the national machinery, the Ministry for Women and Children’s Affairs, MOWAC; the Commission on Human Rights and Administrative Justice, CHRAJ; the then Women and Juvenile Unit of the Police, Waju; as well as civil society institutions. Both Netright and the Women’s Manifesto were important precursors for the Domestic Violence Coalition, which, though addressing a more contentious political issue, built on the format of these networks and indeed drew on their membership.

A Conceptual Framework for Collective Action

Globalisation is not a new phenomenon, however, the ways in which global integration today differs from earlier times is the extent to which, and the ways in which “ordinary citizens”, not just elites, are involved (Ferree, 2006). Indeed, as Ferree notes, globalisation is not merely something that happens to vulnerable people, especially in the global South, but also involves the collective force(s) of different actors, including the less privileged. The social

---

4 ABANTU for Development is an African regional non-governmental organisation established in 1991 to promote the development of policies in Africa from a gender perspective.
movements literature tells us that class, race, gender, ethnic and other social factors play an important role in the kinds of issues people organise around and the ways in which these movements act together for change (Feree, and Aili Mari Tripp 2006). Women’s movements, and movements organising around gender issues are among the most mobilised of social actors/actions in contemporary times. The intersection of factors such as race, gender and class are also important in the development of a shared “feminist consciousness” in the global South, which is, in turn, an important prerequisite for collective political action (Prah, 2004). Such a “shared feminist consciousness” is evident in the establishment and activities of TFN’s that unite feminists scholars, activists and policy makers across geographical boundaries against the forces of globalization and fundamentalism that negate women’s prospects for equality, human rights and social justice. Thus, as Feree (2006), suggests, we can define feminism here in a way that does not limit its applicability to exclusively women’s subordination to men, but to broader questions of citizenship for all.

The collapse of the Berlin wall saw a surge in civil society activism challenging authoritarian and repressive governments, and the growth of democracy and civil rights globally. Unfortunately, while the end of the cold war has seen a growth in human and civil rights discourse, we have, particularly since the “9-11” bombings of the twin towers in New York, seen a rise in religious and cultural fundamentalisms in the North and the South. These new fundamentalisms include essentialising cultural definitions of womanhood and gender relations that tacitly support the variety of abuses women experience in their homes. Within this context the struggle for democracy, “releases the creative potential of all people in the participation and enhancement of the decision-making process” (Steady, 2006:15).

Although Steady’s (2006) explanation of women’s collective action to challenge and transform gender relations emphasises women’s position within the global economy, and de-emphasises “narrow feminist goals”, aspects of her model are useful in drawing a conceptual model for gender-based collective activism. In the same way that she proposes that organisations simultaneously act and react to global forces, so also would advocates for women’s rights act and react in relation to the state as they seek to ensure equal citizenship for women. To cite Tarrow, whom Steady also quotes, “organisers use contention to exploit political opportunities, create collective identities, bring people together in organisations, and mobilise them against more powerful opponents” (Tarrow, 1998:56). Given the increasing levels of domestic violence and the state’s seeming inability or unwillingness to confront these culturally-constructed inequalities, in mobilising for change gender activists are com-
pelled to seek a rights-based feminist approach that invokes “international” human rights standards for the measurement of individual and collective well-being. In other words, the notion of cultural relativism for local practices is rejected.

Not all women’s groups, i.e. groups that name women as a constituency have goals of gender transformation. The current framework considers a network of organisations that reflects a collective consciousnesses, strategising and the building of constituencies around domestic violence, an issue that can be defined as related to gender relations and politics. Thus, questions of power and individual rights are central to their theory (stated or not) and praxis.

**Domestic Violence in Ghana**

I begin this section by reproducing two stories of domestic violence that were among several documented by the National Coalition on Domestic Violence (2006). The stories reflect typical areas of abuse that go unrecognised, unreported, and are frequently denied. It was the increasing incidence of cases like these that eventually led to the recognition that specific legislation for domestic violence cases was needed.

Abby was only 9 years old when her mother gave her to a distant relative in Accra so she could ‘take care of her’ and she was to in turn help her at home. Abby was treated like a slave in the house. She was the first to wake up and the last to sleep. She was not allowed to eat from the same bowl as her Aunt’s children. She slept in the kitchen and did all the household chores. She did not go to school and dared not touch any of her cousin’s books even out of curiosity. Whenever she made any mistakes she was denied food that day. She was also afraid to tell on her Aunt’s husband who had started touching her breasts. He had warned her that she will go back to the village if she dared say anything…

Ama has been married to Kofi for 4 years. She was a caterer before they met. When they got married Kofi asked her to stop working and be a housewife. Even though she was unhappy with this request she agreed to it because Kofi promised that he will make sure she lacked nothing. A few months after their marriage Kofi begun to mistreat her. He refused to let her visit any friends, relatives or go to any gatherings without him. He humiliated her at every opportunity and refused to give her any money apart from ‘chop’ money. Any attempt to request for money for her bare necessities resulted in physical abuse. Ama had tried several avenues, family members and friends to find a solution to the problem but none had been successful…

Violence in marriage is a particularly vexed problem because marriage continues to be viewed as a necessary and desirable social status for both men and women in Ghana. Views about, and practices within, marriage that subordinate
women to men generally go unchallenged, such that when women are physically assaulted or sexually abused within conjugal relations, it is not regarded as unusual. As a consequence, many women tolerate and remain in abusive relationships, indeed some do not even recognise certain abusive behaviours of their partners as abusive (Prah and Adomako Ampofo forthcoming). As occurs all over the world, women who do acknowledge that they are being abused do not complain publicly about their ordeals because such issues are considered “private”, although they may complain to family members or religious leaders (Adomako Ampofo, Awotwi and Dwamena-Aboagye, 2005). Women in both global North and South societies also fear further retribution and even death from reporting acts of domestic abuse (Osirim, 2003). In general, marriage confers particular rights and obligations between spouses, but it is also characterised by some fluidity and ambiguity which can be resolved through negotiations and bargaining between the parties over time. While several complementaries between women and men exist in different Ghanaian societies, the various systems of customary law under which the majority of marriages are contracted do not view women and men as equal partners. The post-independence constitutional guarantees of equality and, since 1992 explicit clauses on non-discrimination of persons, have not succeeded in eradicating such views. An example of such thinking is reflected in the perceived “right” of husbands and partners to “correct” both actual and perceived transgressions of their wives (Prah and Adomako Ampofo forthcoming). The “correction” can take the form of beating, although under customary law the chastisement could not be excessive nor the markings of such chastisement visible. In addition, while both parties in a relationship have the right to sexual satisfaction and unreasonable refusal to engage in sexual relations can be grounds for divorce among many ethnic groups such as the Akan (Sarpong, 1977) over time a husband’s right to sexual satisfaction has come to be viewed as paramount. A woman’s refusal to submit to the demands of her husband or partners can lead to physical chastisement and/or emotional abuse (Adomako Ampofo and Prah forthcoming). Such a position is reinforced by the provisions of § 42(g) of Ghana’s Criminal Code, 1960 (Act 29), inherited from British jurisprudence, which accepts the use of force in marriage on the basis of the supposed consent given upon marriage.\(^5\) Thus, while sanctions and pun-

\(^5\) Section § 42(g) of the 1960 criminal code read, inter alia., “The use of force against a person may be justified on the ground of his consent, but a person may revoke any consent which he has given to the use of force against him, and his consent when so revoked shall have no effect for justifying force; save that the consent given by a husband or wife at marriage for the purposes of marriage cannot be revoked until the parties are divorced or separated by a judgement or decree of a competent Court” (emphasis mine).
ishments, including physical punishments, formed an important part of the
social system, there were lines drawn between punishment and abuse (Prah
and Adomako Ampofo forthcoming). Sexual violence, for example, was
abhorred, as was any form of sexual interaction with a girl not considered to
be of marriageable age. Even slaves were generally treated well – both for
the instrumental reason that an ill slave was no good, but also because intermar-
riage was not uncommon and slaves could become citizens. Today we seem to
have arrived at a place where various forms of violence against women and
girls, especially in the context of gender relations and in the domestic sphere,
are tolerated.

Public effort aimed at addressing cases of abuse and domestic violence in
Ghana came to the fore in 1997 following a nation-wide study on the preva-
ience, patterns and responses to gender violence undertaken by a partnership
of non-governmental organisations under the leadership of the Gender and
Human Rights Documentation Centre (Coker Appiah and Cusack, 1999).
According to the published research, one in three of the women and girls sur-
veyed had experienced physical, psychological or emotional abuse. One in
four had been threatened with physical violence while one in three had been
sexually harassed. Over 90 percent of the perpetrators of these crimes were
said to be men with 95 percent being close relatives. Between February and
March 2002, four married women were reported killed by their husbands on
suspicion of infidelity (The Ghanaian Chronicle 2002; The Ghanaian Times
2002). According to the Greater Accra Domestic Violence Victims Support
Unit (DOVVSU) of the police service, between 1999 and 2003 reported cases
of defilement increased from 154 to 509, incidents of threatening behaviour
from 21 to 461, and non-maintenance cases from 523 to 3024. There was also
an increasing incidence of indecent assault and rape.6

Ghana has done very well when it comes to signing, ratifying, and adopting
(as the case may be) several international documents that promote democracy
and citizen’s rights. Included among these are the International Convention
on Civil and Political Rights (ICCPR), International Convention on Eco-
nomic, Social and Cultural Rights (ICESCR), Convention on the Elimina-
tion of All forms of Violence Against Women (CEDAW), The Declaration
Against all Forms of Violence Against Women (DEVAW) and the Convention
on the Rights of the Child (CRC). These documents place an obligation on
states to respect, promote and protect the fundamental human rights of all its
citizens and to bring all national laws into conformity with these documents.
However, Ghana’s domestic record in drawing up specific legislation to extend

human rights has been less impressive than her international ratification record. Even though the obligation of the state to protect its citizens extends to the domestic setting, despite its reported increasing prevalence, until the late 1990s violence in the home was treated as a private family matter and received little attention in Ghana. Mama (2000) notes that although African governments have generally removed constitutional and legally enshrined discriminations against women, they have maintained a “deafening silence” on the subject of gender-based violence (2000:2).

The state’s situation is made worse by the fact that law enforcement agencies have not been adequately equipped with the tools to deal with the problem. A report by The Ark Foundation, a legal and human rights organisation notes, “Violence against women and children still remains unacceptably high in Ghana. Apart from the numbers, initial results being compiled from the Baseline survey conducted…show that services to assist victims/survivors with their problems have many serious challenges.” (Ark Foundation 2007:4). The report notes several challenges to addressing domestic violence cases, including inadequate services, especially for rural dwellers; poor documentation of cases; poor tracking of victims/survivors who are referred to other services; problems of recruitment and retention of police officers; logistics constraints and low remuneration among service providers, particularly the police; inadequate training and capacity to respond among the police; corruption among both the police and judiciary; and victims/survivors own poor financial capability to pursue cases.

The Justice System and Domestic Violence

In 1998 the government established the Women and Juvenile Unit (WAJU) of the Police Service, subsequently renamed the Domestic Violence Victims Support Unit (DOVVSU) in 2003, to respond to the increasing reports of abuse and violence against women and children.7 Initially set up in the two major cities, Accra and Kumasi, by 2002, WAJU offices had been extended to all regions, with, so their web site states, clinical psychologists and counsellors in most regional offices/units who provide counselling services free of charge. Regional units are also said to have social workers attached to the unit who deal with matters concerning non-maintenance, custody and marital issues. According to their website DOVVSU also provides free services to members

7 According to its web site DOVVSU’s goal is to create an environment that provides timely and equitable response to victims of abuse. The unit’s mission statement includes that it seeks “To prevent, protect, apprehend and prosecute perpetrators of domestic violence and child abuse.”
of the public including providing victims with information on their cases as well as details of the investigations. It also claims to refer victims for medical services and/or counselling and support services in the community. As a community service DOVVSU provides advice on crime prevention in schools, churches and markets. Nonetheless, from research carried out in two regional capitals in 2004, including the capital city Accra, survivors of violence found the processes of accessing services time consuming, costly and unfriendly, at best. At worst survivors were sceptical, even cynical about the ability and willingness of the police to prosecute cases either because they knew the police lacked the necessary resources, or because they were said to demand bribes (Adomako Ampofo, Awotwi and Dwamena-Aboagye 2005). However, it needs to be acknowledged that the police work under difficult conditions. They often have to follow up on cases at their own cost and, especially in small, close-knit communities; they are not immune from pressures to drop cases. Until the passage of the Domestic Violence Act in 2007 police also had little to guide them on how to respond to domestic violence, and thus had the discretion to decide how to classify an offence and whether to refer victims of domestic violence for medical treatment or other services. In 2003 the then Deputy Inspector General Of Police, Elisabeth Mills Robertson, admitted that even when domestic violence cases were reported to the police most victims do not receive the needed response. “We are hamstrung by many factors,” she said. “These include lack of requisite skills and expertise by police personnel in the receiving of complaints, investigation, apprehension and prosecution of perpetrators in domestic violence cases.”

Even before the passage of the Domestic Violence Act the courts were generally available to handle acts of gender-based violence specified by law; however, they were constrained by delays in the justice system, inefficient investigative processes, plus the fact that not all judges and magistrates were familiar with human rights approaches or sensitive to gender issues. According to Netright there is a high level of gender insensitivity in the family tribunals and they tend to be male dominated so that judgments on violence against women tend to be biased (Netright 2004). Few female legal personnel occupy positions in the Supreme Court and the effects of the appointment of Ghana’s first female Chief Justice in 2007 are yet to be felt. The courts are often unwilling to assist domestic violence survivors because of a strict separation between the so called public and private spheres: the persisting perception that “private” domestic disputes are not to be dealt with by public law-enforcement.

---

8 Mills Robertson was speaking at an intra Consultative Workshop on Domestic Violence in Accra. “It is common knowledge that the Ghana Police Service is confronted with dearth of materials and logistics.” (December 1, 2003).
and court systems. One Ghanaian judge recently stated his opinion that “it is un-Ghanaian for a man to be sentenced to imprisonment because he slapped or pushed his wife” (Ghanaian Chronicle 2004). It should thus be understandable that even if women make it past the police, they may be reluctant to turn to unsympathetic judges for assistance. However, the courts are also laden with problems that affect their effective operation. In 2003, a judge of the Supreme Court, Justice Brobbey, acknowledged that justice delivery in domestic violence cases raises a number of issues. He noted that sometimes advice from the Attorney-General’s office takes a long time before it is effected. This, according to the judge, is exacerbated because several cases are assigned to one prosecutor while the law makes it clear that a case should be struck out if the prosecutor fails to appear in court and does not give any tangible excuse.

The DV Coalition and the Path to Domestic Violence Legislation

Depending on who you speak to, one receives different accounts of the chronology of events leading up to the drive for domestic violence legislation, and who was responsible for what. In what follows my data have come from the following: I have relied on the accounts of the first and current coordinators of the Domestic Violence Coalition, as well as those of the Executive Director of a leading Women’s Rights NGO who is also a member of the two women’s legal rights organisations that were instrumental in the early years of the processes; newspaper and radio accounts; and my own records, as a member of the coalition (including minutes of meetings as well as email messages and correspondence from the coalition’s list serve).

- **1998-1999:** Early discussions around the possibility of having legislation are held by LAWA, who had been working with the Georgetown University International Human Rights Law Clinic. The processes were led by Sheila Minkah-Premo (Ghana) and Professor Susan Shela (Georgetown). This leads to some research being carried out and early draft proposals being put forward.

- **1999:** The process is picked up by the International Federation of Women Lawyers, FIDA Ghana, and efforts are made to push it as a private member’s Bill in Parliament. FIDA’s consultations with the women’s caucus in parliament leads them to discover that this would not work.

---


10 My sincere gratitude goes to the two coordinators, Nana Asantewa Afadzinu and Adolf Awuku Bekoe, as well as Angela Dwamena-Aboagye, the Executive Director of the Ark Foundation, for filling me in with the details of dates and events in the process.
• **2000:** Serial murders of women leads to the establishment of a loose coalition, *Sisters Keepers*, who take on the government for providing inadequate security for women. In late 2000 *Sisters Keepers* march to the seat of government expressing displeasure with government’s response, and soon after the change of government in early 2001 the new government appoints a new Inspector General of Police.

• **2001:** A draft bill is submitted to the Attorney General’s (AG’s) department for consideration.\(^{11}\)

• **2002:** The Law Reform Commission also submits their research and proposals to the AG’s department. Together with the momentum from the then just-released Gender Centre Study on violence (Coker-Appiah and Cusack, 1999) the then Attorney General and Minister of Justice, the Hon. Nana Akuffo Addo, considers all these and his office puts together the first draft for public comment. The Bill then becomes a Government Bill.

• The Ark Foundation, a legal and Human rights NGO holds its first “activists night out”, an annual dinner for anti-violence advocates and activists to simply relax and reflect together. Someone present proposes a civil society consultation on the draft Bill.

• **2003:** A National Strategic Planning Workshop on the Domestic Violence Bill is held to actualise the suggestions made at the Advocates’ Night Out. The meeting is organised by Women’s Initiative for Self Empowerment, WISE, under the umbrella of the Gender Violence Survivors Support Network, GVSSN, and with support from Action Aid-Ghana and the UN Gender Systems programme for Promoting Gender Equality in Ghana. The National Domestic Violence Coalition is born. The coalition is made up of both urban and rural women and men and civil society organisations.\(^{12}\)

• A Secretariat is established and Nana Asantewa Afadzinu is appointed as the first Coordinator. She is tasked to publicise the existence and work of the Coalition, start a nationwide sensitisation and coordinate other activities of the Coalition.\(^{13}\)

• **2003:** The Ministry for Women and Children’s Affairs, MOWAC, under the Hon. Gladys Asmah is tasked by government as the Ministry sponsor.

---

\(^{11}\) The Domestic Violence coalition’s secretariat has a copy of the Draft Domestic Violence Legislation submitted to the Attorney-General’s Department. It is dated December 2001. The memorandum attached to the Act now puts the date of “initiatives from the International Federation of Women Lawyers (FIDA) together with other NGO partners” as 2000.

\(^{12}\) For example rural people from Northern Ghana, the poorest parts of the country, are represented on the coalition through organisations such as BEWDA, CENSUDI and Amasachina.

\(^{13}\) The Women’s Initiative for Self Empowerment hosted the Coalition during its formative years, thereafter it was hosted by the the Ark Foundation.
the Bill, supported by the then Minister of Justice, Paapa Owusu-Ankomah. The AG’s department prepares a second draft.

- To effectively respond to the pre-legislation and post legislation challenges of the Bill and conduct strategic and collaborative advocacy for its passage, the government deems it necessary to subject the draft Bill to national consultation.

- **December 2003:** The then Minister for Women and Children’s Affairs, Hon. Gladys Asmah mobilises resources from the United Nations System and MOWAC undertakes outreach and consultative programmes on the Draft Bill in four regions, namely Brong Ahafo, Western, Upper East and Northern Regions, with the launching done in Koforidua in the Eastern Region. The minister emphasises, “We want a non-violent means of resolving inter-gender and spousal misunderstandings.”

- The Bill is subjected to an unprecedented nation-wide consultation on the grounds that its provisions have serious implications for family life and gender relations. MOWAC is directed to collate public views on the consultations and submit a report to government for consideration. The Minister, MOWAC, makes several pronouncements during consultations and to the press indicating that sections of the Bill run counter to Ghanaian “culture”.

- **2004:** Over 100 individuals and organisations sign up as members of the coalition.

- Following successful pressure from civil society groups, particularly the coalition, there is a changing of the guard at MOWAC and a new minister, a lawyer and gender expert, the Hon. Hajia Alima Mahama, is appointed.

- **2005:** Since the earlier consultations outreach programme did not cover the whole country MOWAC is tasked by Cabinet to cover the rest of the

---

14 At each forum a prayer, either Christian or Moslem, was said to get activities started. This was then followed by the introduction of the chairperson. In almost all the districts, either the District Chief Executives (DCEs), Presiding Members of the Assemblies, Traditional Rulers or a Head of a Decentralized Department chaired the function. Other important participating dignitaries included Regional Ministers and Members of Parliament. After the chairperson had delivered his/her opening address, the National Director of the Women’s Department of MOWAC read the Statement of Purpose of the gathering, this was followed by a Key Note Address by either the Minister, Deputy Minister, or a Director at the Ministry. The main presentations by resource persons from MOWAC or the coalition then brought the programmes to a climax. (DV Coalition document).

15 Interestingly, around the same time, a Bill on the rights of Ghanaians in the diaspora to vote in general elections, Representation of the People’s Amendment Bill, ROPAB, experienced a speedy ride through parliament despite loud calls for its delay from the opposition and civil society.
country and the second phase of the sensitisation and consultative programmes visits the remaining six regions, namely the Volta, Upper West, Eastern, Central, Greater-Accra and Ashanti Regions. The coalition participates in, and facilitates many consultations. Attendance at the programmes in all the regions is encouraging with overwhelming support expressed for the passage of the Bill.16

- **2006**: The Hon. Esther Obeng Dapaah, a member of parliament, notes important shortcomings of existing legislation, namely the criminal code, for dealing with domestic violence, including the fact that the law does not provide compensation for the victim or counselling for the victim and abuser.
- Cabinet decides to send the Bill to parliament but without the section calling for the repeal of section 42(g) of the criminal code.
- The Coalition agrees to write to the president objecting to the removal of the clause (see Appendix 1).
- **2006 (May 24)**: The Bill is introduced in parliament and referred to two committees for comment: the joint committee on gender and children, and the committee on constitutional, legal and parliamentary affairs. This is meant to ensure adequate protection for women and children, and to promote human dignity in accordance with provisions of the constitution and internationally acceptable norms and practices.
- **2007 (February 21)**: After more than 6 years of civil advocacy, political agitation and parliamentary wrangling, the passage of the hotly debated Domestic Violence Bill is received with applause in Parliament. Women members of the house wave their handkerchiefs, and embrace each other when the Speaker of the House, Mr. Ebenezer Sekyi Hughes, pronounces the Bill passed at exactly 11.45 a.m. The MOWAC minister, the Hon. Hajia Alima Mahama, tells the *Daily Graphic*, “I did not believe my ears when the Speaker pronounced the bill passed”, adding, “I had to ask another colleague to confirm whether the bill had really been passed” (Adu-Gyamerah, 2007).
- Some male MPs also stand in groups to express their joy. The MP for Bia, Mr. M.C. Boampong says he is happy because the bill would protect the interests of children and says, “Both men and women in the country should be happy for achieving such a feat and consider today as an important one on the country calendar”. Mr. Awuku-Bekoe, coordinator for the coalition speaks to the *Daily Graphic* after the passage of the bill and

---

16 Participants at the consultations included traditional and religious leaders, community members, and the media.
says the coalition will continue to agitate for the repeal of Article 29 in the Criminal Code. He explains that by taking out the removal of Clause 42(g) from the bill this means that force could still be applied in a marriage union (Adu-Gyamerah 2007).

The coalition was extremely active in its efforts to seek the passage of the legislation. Member organisations and individuals worked tirelessly and doggedly. Between September and December 2003, the DV Coalition embarked on a nationwide consultation programme on the domestic violence bill with the sole aim of mobilizing public support for the passage of the bill into law. This was highly successful as it helped give visibility to the subject of domestic violence in Ghana. In all, about two thousand, two hundred and seventy participants took part in the consultation process. In the Upper West Region for example, during one such consultation, Mahmood Yahaya, a programme officer with Amasachina, a local organisation, was facilitator. Following this the then regional minister publicly committed to endorsing the Bill, which he did. The major challenge faced by the Coalition was addressing the widespread view that the bill would endanger marriages, and a narrow focus among some around the so called marital rape provision rather than on the bill in its entirety. Between 2003 and 2004 the coalition held a series of consultations with influential persons and groups including the Chief of Staff, the Chief Justice, the Minister for Women and Children’s Affairs, the National Chief Imam, the Attorney-General, Newspaper editors, and the Gender and Children’s Committee of parliament. A special programme of parliamentary advocacy, a polling of MPs to know their position on section 42(g), was proposed to help the coalition map out different strategies to deal with those who were in favour, against and indifferent to the Bill as well as the clause.

Several other strategies were adopted by the Coalition including a pictorial campaign entitled “Faces of Violence”, a collection of pictures of abused women, projecting “voices” and “faces” of real victims of abuse in the press; a documentary on domestic violence; newspaper articles; radio & TV discussions; meetings with parliamentarians and lobbying members of parliament. Sensitisation programmes were held in markets and lorry stations; among the Trades Unions, professional bodies, students, and traditional and religious leaders. A highly successful Walkathon, a Men’s March, was held on 19 June, 2004, to commemorate Fathers day. The coalition itself held regular meetings, however, the strength of communication, information sharing, consultations, discussions, planning and strategizing among members happened via a very active list serve. Since the coalition did not have any formal staff the way it
worked was to assign different tasks to member organisations, so for example WISE accepted the responsibility to organise the polls among MPs.

The coalition’s visibility meant that support for the Bill grew and as individuals and organisations joined they also carried out separate activities to support the work of pushing for the passage of the Bill. For example in 2003 the Federation of African Women Lawyers trained about 200 policewomen on the dynamics of handling domestic violence cases. In 2006, the Foundation of Female Photojournalists (FFP) developed a documentary addressing domestic and gender-based violence in order to “motivate viewers to support initiatives that would assist victims of gender violence and the quest to build a society of equal rights to all” (Ghana News Agency, 2006). The coalition also enjoyed support from sections of the international Women’s movements reflected in solidarity messages, especially on international women’s day; blogs and podcasts that made references to the coalition’s efforts and re-posting of news from Ghana on these organisations’ web sites.

The Domestic Violence Bill and the Marital Rape Controversy

As the chronology of events shows, the road from draft Bill to actual law was a long one, interrupted by an obvious lack of support from some sections of government. The draft legislation was meant to offer a holistic and effective legal framework for addressing domestic violence in Ghana; provide broad redress for cases of domestic violence, sanctions on perpetrators and protective remedies for victims; and to improve Ghana’s compliance with its legal obligations under international human rights standards. The Bill contained provisions criminalising various acts of violence – physical; sexual (within or outside of marriage) and between a wide variety of individuals in a domestic relationship including family and non-family members such as house-helps, and people who do not physically live together; economic and psychological abuse; intimidation; and harassment. It contained unique provisions for protection orders, psychological and rehabilitative services for victims or perpetrators, and processes for alternative dispute resolution and the promotion of reconciliation. However, the greatest bone of contention for government was the so-called marital rape clause included in the Bill.

The controversy around “marital rape” came about because a section of the Bill sought to criminalise marital rape. Part II of the draft legislation under the Protection Orders of the Bill stated that the court “may prohibit a person from forcing the applicant to engage in any sexual contact whether married or not or engaging in any sexual contact that abuses, humiliates or degrades the
applicant or otherwise violates the applicants sexual integrity *whether married or not*” (emphasis mine). Additionally, the Bill sought to specifically repeal Section 42 (g) of the Criminal Code of 1960 (Act 29) referred to earlier, which states that a husband and wife have consented, by the mere fact of getting married, to use force against each other. Although the law is based on British legislation, the arguments against the inclusion of the repeal clause were constructed around so-called Ghanaian custom and tradition, while sexual violence in marriage was trivialised relative to more pressing social needs. A member of parliament asked, “Why should Parliament pass a bill which will allow our wives to trample upon us and deny us conjugal rights? Why should parliament pass the DVB when Guinea Worm is endemic in Ghana, and there is a clear and present danger posed by the possible arrival of the H5N1 virus?”

The most severe damage to the cause of the Bill, however, came from none other than the Hon. Gladys Asmah, Minister for Women and Children’s Affairs, who incessantly emphasised during consultations that concepts and definitions of domestic violence emanating from other cultures, particularly Western, European and American notions, were not necessarily appropriate for Ghana’s circumstances. She frequently noted that so-called cultural differences made it imperative that the issue of marital rape in the proposed domestic violence bill ought to be thought through “properly” (Gyau 2003). By constructing the issue in cultural terms she appealed to essentialist notions of so-called “authentic” and “pure” African identities, reducing a discussion about women’s well being, indeed women’s very lives, to one of cultural relativism. The sub-text also conveyed the notion of superior male rights in marriage.

The minister also reinforced particular notions of decency. She asked:

What happens when a woman comes out publicly to say that she has been raped by her husband or that she has been forced into bed by her husband? She runs to the police, the man is arrested, charged, convicted and sentenced. The question is: can this woman return to her matrimonial home when her husband is in prison or heavily fined? . . . My Ministry believes that giving society and for that matter the people of Ghana the opportunity to consider other options will be welcomed because every traditional area may have its own ideas about what constitutes marriage or domestic violence and how to address it (Gyau, 2007).

Women’s rights advocates were angry, but they were also worried about the consequences for the Bill’s fortunes. The coordinator for Netright, Dzodzi Tsikata, a member of the coalition noted that the Bill brought to the fore a debate among many Ghanaians as to whether rape in marriage exists, stressing that “women have to be vigilant about it (the Bill) and ensure that it is passed”
The coalition’s minutes of 19th May 2004 remind one how angry members were as harsh comments were made about the minister. The minutes caution members to make efforts to control their emotions and avoid being provocative. The coalition was able to hold a meeting with the minister on 18th June, 2003; however, the Minister made it plain that the coalition was preaching to the converted and she did not need a group of activists to teach her about domestic violence. Fortunately, however, and contrary to views expressed by the Minister and other prominent voices against the sexual abuse clause, most Chiefs and the opinion leaders who participated in the consultations affirmed that proper traditional practice in marriage calls for dialogue in all matters including sex.

The support for the Bill in its entirety notwithstanding, cabinet decided to send the Bill to Parliament without section 30, which sought the repeal of section 42(g) of the Criminal Code 1960 (Act 29). At a meeting of the coalition held on May 2, 2006 it was decided that the Coalition should disagree with Cabinet’s decision. Nevertheless, it was the view of members that the coalition’s position should not be communicated to mean that without the repeal of section 42(g) the entire Domestic Violence Bill would not be useful. The meeting decided to express its disagreement with Cabinet in the form of an open letter to the President (Appendix 1), highlighting Ghana’s obligations under international human rights law, the justification for the repeal of section 42(g) made by the former Attorney-General Nana Akufo-Addo, and a response to the reason for the removal of section 30 from the Bill. After the open letter, a press conference was held to make the Coalition’s position known to the public. As was generally the case with major communications that would go out in the coalition’s name, a draft of the open letter to the President was sent to the listserv for members’ attention and comment.

After a protracted debate on the content of the Bill in both the media and Parliament, the law was finally passed after a number of amendments had been made to it. The law, a very progressive piece of legislation, is in three parts. It prohibits domestic violence within an existing or previous relationship and defines domestic violence to include physical, sexual, economic and emotional abuse. It also defines a domestic relationship and provides that a single act can amount to domestic violence. There are provisions on the filing of complaints to the police, police assistance and arrests by the police. The second part of the Act makes provisions for protection orders, and procedures to activate these. The final part of the Act covers miscellaneous provisions including the relation of the Act to the Criminal Code, the promotion of reconciliation by the Court, publication of proceedings, criminal charges and protection, civil claims for damages, regulations and interpretation. In
apparent reaction to the real financial constraints faced by many victims of gender based violence and societal pressures on them not to report abuse, the Act has established a “Victims of Domestic Violence Support Fund.” The fund is to be applied towards the basic material support of victims of domestic violence, tracing the families of domestic violence, the rescue, rehabilitation and reintegration of victims of domestic violence, the construction of reception shelters for victims of domestic violence, and their training and capacity needs. These funds are to be raised from voluntary contributions by individuals, organisations and the private sector, Parliamentary votes, as well as monies from other sources approved by the Ministry of Finance.

While the Act did not explicitly repeal § 42(g) of the Criminal Code 1960 (Act 29) that justifies the use of force in marriage, it does provide that “The use of violence in the domestic setting is not justified on the basis of consent.” The passage of the Act was lauded as an important first step towards addressing gender-based violence in Ghana. However, civil rights groups and the state institution, the Commission for Human Rights and Administrative Justice, CHRAJ, have argued that the retention of § 42(g) of the Criminal Code 1960 (Act 29) reinforced popular notions that marriage serves as an arena for the automatic consent to sex, and that this would make it difficult, if not impossible, for women who experience sexual abuse from their spouses to seek redress. There is an interesting postscript, however. The infamous section 42g of the Criminal Code, 1960 (Act 29), the so-called “marital rape clause”, was repealed a few months later at the instance of the Commissioner of the Statute Law Revision project, Justice Vincent C.R.A.C. Crabbe. Acting under the authority of the Laws of Ghana Revised Edition of Act 1998 (Act 562), the project could simplify, revise or delete laws that do not conform to the 1992 constitution. Justice Crabbe just happened to have been a member of one of the coalition’s sensitisation programmes with parliamentarians in which he served as chairperson. In my own interactions with him after that event he lauded the coalition’s efforts and was obviously impressed enough to remove the offending law from Ghana’s statute books.

**Collective Alliances, Avenues for Democratisation**

Women’s social locations within their societies and even within their networks may vary, however, the National Domestic Violence Coalition shows that 1) women and men, even those not consciously “feminist” can converge around a common feminist purpose when the issues involved speak directly and deeply to their lived experiences; and 2) a deep commitment to a common “feminist” purpose can influence the cause of a country’s democratisation
The ambivalent, and frequently contentious relationship between civil society and the state is well known (Rah, 1996); however, the coalition’s efforts reveal the power of collective action for equal rights of citizenship. This is a very important case in the democratisation process in Ghana which can possibly serve as a model for other African/global South states as it shows that when feminist goals are read by groups and individuals, not in academic jargon, not as “foreign” interventions, but in the everyday language and lives of “ordinary people” the state can be made to respond. This is especially true in the way that this movement for the passage of the Domestic Violence Act brought together state actors, NGOs, and ordinary women and men, despite conflicts with the state. Along the journey the advocates faced considerable resistances but, in the process, they also displayed strong skills in mobilisation, cooperation and alliance building that are a testimony to women’s history of collective action in Africa. Today the coalition’s online network remains an important site for activism around mainly women’s gender concerns.

The coalition of scholars, activists, policy-makers and has been a really grassroots effort to foster social justice and human rights. Indeed, human rights as understood among grassroots communities and organisations was reflected in international discourse and practice in that *humanness*, and right to be treated as *human* is understood as fundamental to the difference between humans and animals.\(^{17}\) Thus, even though typical feminist theorising and language was not always present in different consultations, the shared understanding of certain rights as those humans are entitled to (as opposed to being an animal) is central to notions of citizenship rights as understood by rights based approaches.

Ghana’s lessons can serve as a valuable example to predict the types of obstacles and resistances that advocates in other countries may face when seeking to pass similar laws, and thus suggest strategies for mobilising and advocacy that may be useful for women and men all over the world. Other countries seeking to pass such laws should consider making similar efforts, in order to increase the probability of successful passage and enforcement of gender-sensitive laws, while at the same time maintaining a national sense of cultural identity and autonomy.

While the existence of laws does not necessarily translate into social reform, legal precedents can become catalysts for change as revealed by recent interactions among rural communities in Ghana. During the afore-mentioned evaluation people were persuaded that with the coming into force of the law,

\(^{17}\) An evaluation of an anti-violence programme of the Gender and Human Rights Documentation centre in four regions in Ghana, including 2 in Northern Ghana, reflects these understandings of a shared humanness and right to be treated as such (Adomako Amfo, 2008).
communities would be much better able to respond to domestic violence, and indeed, that known perpetrators (i.e. husbands in this case) had recognised that they could no longer beat their wives (Adomako Ampofo 2008).

References


Appendix 1: Letter to The President of Ghana

THE CASTLE, OSU

26th May, 2006

Your Excellency President John. A. Kufuor,

REPEAL OF SECTION 42(G) OF THE CRIMINAL CODE 1960 (ACT 29)

The National Coalition on Domestic Violence Legislation in Ghana (The DV Bill Coalition) applauds you and the current Government on strides taken to improve the current status of Ghanaian Women. To this, we say Ayekoo.

We, however, note with grave concern, the decision made by Cabinet to present the Domestic Violence Bill to Parliament for passage, without the repeal of section 42(g) of the Criminal Code 1960 (Act 29), referred to by Hon. Ayikoi Otoo the then Attorney-General and Minister of Justice, as the “so-called marital rape clause”.

Your Excellency, section 42(g) of the Criminal Code 1960 (Act 29) states: “save that the consent given by a husband or wife at marriage for the purposes of marriage, cannot be revoked until the parties are divorced or separated by a judgement or decree of a competent Court”.

Mr. President, the import of this clause goes beyond the unbridled use of force in sexual relations to the instrumental application of force to coerce, intimidate and control every facet of spousal relationship. Research in Ghana and elsewhere overwhelmingly indicate that when it comes to the use of force in marriage, both cultural and socio-economic factors have conditioned women and children to receive the shorter end of the stick. The global effort headed by one of Ghana’s illustrious sons Mr. Kofi Annan, the UN Secretary-General to end violence, gives credence to the debilitating and paralysing effect of violence in the domestic setting. Violence is a crime and nothing should justify the perpetration of it; especially not marriage!

We of the DV Bill Coalition, strongly disagree with the decision to remove the repeal of Section 42(g) of the Criminal Code 1960 (Act 29) from the Domestic Violence Bill.

Your Excellency, our position is informed by the fact that such a decision by Cabinet is an affront to the rule of law and the respect for the fundamental human rights of all citizens of Ghana as enshrined in chapter five of our Fourth Republican Constitution. Ghana is not a passive stakeholder in the global initiative to end violence. Ghana has ratified without reservation, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) showing to the whole world her commitment to removing all
impediments preventing women from realising their fullest potential and enjoying their God-given rights. Why then do we say that in Ghana, women who feel violated in their marriages, whether sexually or through other forms of physical abuse and mental abuse, have no recourse to justice?

Furthermore, we are saddened by the decision because the proposal for the repeal of section 42(g) of the Criminal Code (Act 29) was made by the ruling government through the Attorney-General’s Department under whose directive this Bill was drafted. In a memorandum attached to the proposed Domestic Violence Bill justifying the repeal of section 42(g) of the Criminal Code (Act 29), the previous Attorney General, Hon. Nana Addo Dankwa Akufo-Addo notes that, “this clause traces its origin from English law during the reign of Henry IV, which states that ‘the wife hath given up herself in this kind, which she cannot retract’”. The then Attorney-General further reminds that English protagonists of the law have abolished it; understanding this clause to be “out of touch with the status of women.” Moreover, he strongly suggests its repeal from the Ghanaian statutes.

We of the DV Bill Coalition are in agreement with the above position that section 42(g) does not represent the current view, as enshrined in our Constitution, on the status of Ghanaian Women. Ghanaian women have come too far to be tied to the dictates of a colonial relic which has no use in the country of origin, the United Kingdom. It is inconceivable that in this day and age a country that prides itself with the best practices in good governance and the rule of law would consider the physical, sexual or emotional abuse of one spouse by another as acceptable practice. Are we by this saying that it is safer for a woman to remain single than for her to be married?

We would therefore like to take this opportunity to appeal to you, Mr. President, and to your government to listen to the voices of victims who experience sexual and other forms of violation at the hands of their spouses daily and yet are being told by you and your government to endure the indignities of rape and its resultant HIV/AIDS, because they consented to all these when they said “I Do” at the altar. This is not fair; it is not just and it is not freedom!

The DV Bill Coalition looks forward to working alongside you Mr. President to put Ghana at the forefront of Women’s Rights in West Africa and the world.

Yours in the Pursuit of Freedom and Justice,

Adolf Awuku Bekoe
Coordinator
On behalf of The National Coalition on Domestic Violence Legislation in Ghana