

Enforcement of Socio-economic Rights of Head Porters in the Advent of the COVID-19  
Pandemic in Ghana

By

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## ABSTRACT

The world was plunged into a global panic when the novel coronavirus (COVID-19) was declared a global pandemic in 2020, with scathing effects on all spheres of life. Its effects proved to be more devastating on vulnerable groups, such as the female migrant head porters in Ghana, locally known as ‘Kayaye’. This research examines the enforcement of the socio-economic rights of head porters during the pandemic. Central to the inquiry is whether government responses to the pandemic, particularly lockdowns, social protection measures, and public health directives, safeguarded or undermined the socio-economic rights to health and housing of this vulnerable group. The study examines the extent to which international and national legal frameworks protect these rights, as well as the effectiveness of their enforcement mechanisms. Policy responses, including the Coronavirus Alleviation Programme (CAP) and the Ghana Alleviation and Revitalization of Enterprises Support (GCARES), provided some food and personal protective aid but failed to address structural inequities. Healthcare policies did not offer direct initiatives to safeguard the head porters during this period. This study argues that the Ghanaian government's poor and incompetent crisis management has undermined the rights of head porters to the highest attainable standard of health and to adequate housing, exacerbated by preexisting gender-based disparities. It calls for a rights-based framework prioritizing inclusive social protection and participatory policymaking to safeguard marginalized groups during crises. The findings underscore the need to reconcile public health objectives with the socio-economic realities of informal workers in the post-pandemic recovery efforts and any future health emergencies.

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I am grateful to my entire family: Dad Ahaji Muniru Ibrahim, sisters Hajia Jawharatu Muniru, Ayinawu Muniru, and Sumaiya Muniru. I owe my life to these selfless people. To my incoming first child, Baby Hajia Haajara, you are the reason I live to be a better person and dad. Coming to Canada as a first-time traveller and undergoing an impromptu surgery on January 26th, 2024, has made me appreciate every single day of life more than ever. My story could have been different if life in Canada had not unfolded as it did.

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## **DEDICATION**

In the name of Almighty Allah, the Beneficent, the Merciful. AlhamduliLlah,

AlhamduliLlah, AlhamduliLlah (All praise is due to Allah, x3).

And to the memory of my mum, Hajia Haajara Musah. I know you would be proud of  
me.

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## CHAPTER ONE

### INTRODUCTION

#### 1.0 Background

The unprecedented impact of the novel coronavirus pandemic (COVID-19), which the World Health Organization declared a "Public Health Emergency of International Concern" on January 30, 2020,<sup>1</sup> has profoundly shaped the global landscape of health crisis management. This event, along with numerous others that followed (economic consequences, technological and scientific innovations, political and democratic shifts, behavioural and social changes), magnified and laid bare existing disparities and vulnerabilities prevalent in societies worldwide, significantly impacting marginalized and disadvantaged groups. The primary emphasis of this study is on head porters (Kayaye) in Ghana, a highly disadvantaged group that was impacted by the coronavirus pandemic.

This chapter serves as the groundwork for the thesis, outlining key contextual factors that shape the study. It opens with a background to the research, situating the issue within the broader impact of the COVID-19 pandemic on access to socio-economic rights. A brief clarification is offered on the distinction between "enforcement" and "implementation," given their frequent interchangeable use. The discussion then introduces the general concept of socio-economic rights and provides an overview of Ghana's head porters. The chapter also sets out the research problem and highlights the study's significance, concluding with a synopsis of the thesis structure to orient the reader for the chapters that follow.

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<sup>1</sup> World Health Organization, 'Rolling updates on coronavirus disease' (2020), online: World Health Organization <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>>

In March 2020, several African countries were confronted with the realities of the pandemic as cases began to surge, prompting governments to declare emergencies as a proactive response to anticipated looming impacts.<sup>2</sup> Many countries imposed stringent nationwide movement restrictions and lockdown measures as part of their crisis management strategies.<sup>3</sup> For example, Brunei, Turkey, and Peru were among the first countries to implement strict containment measures after their first confirmed cases.<sup>4</sup> In some countries, such as Angola and South Africa, law enforcement agencies were deployed to enforce public compliance with the lockdown measures.<sup>5</sup>

In many instances, the pandemic and related measures that were adopted highlighted the need for universal access to social and economic amenities, such as: food assistance programs to support economically disadvantaged sections of the population; social welfare services like temporary shelters and subsidized housing; and healthcare facilities and medical services to ensure access to quality and affordable healthcare.<sup>6</sup> These services are critical components of the socio-economic rights obligations of States, as will be discussed further in Chapter Three. The pandemic exposed existing inequalities in access to these fundamental rights, and there is sufficient evidence to show that millions of people around the world still live below the poverty

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<sup>2</sup> Lily Mburu, "The Dual Crisis of Forced Evictions and Covid-19 in Kenya: Rethinking Judicial Enforcement and Civic Engagement on the Right to Housing" in Alfred Justice Mavedzenge, ed, *COVID-19 Pandemic and Socio-Economic Rights in Selected East and Southern African Countries* (Cape Town: Juta (Pty) Limited, 2020) 32.

<sup>3</sup> WC Koh, MF Alikhan, D Koh, & J Wong, "Containing COVID-19: Implementation of Early and Moderately Stringent Social Distancing Measures Can Prevent the Need for Large-Scale Lockdowns" (2020) 86:1 *Ann Glob Health* 88, doi:10.5334/aogh.2969.

<sup>4</sup> *Ibid.*

<sup>5</sup> Amnesty International, "Governments and Police Must Stop Using Pandemic as Pretext for Abuse" (2 December 2020), online: <<https://www.amnesty.org/en/latest/press-release/2020/12/governments-and-police-must-stop-using-pandemic-as-pretext-for-abuse/>>

<sup>6</sup> M Nicola, *et al*, "The Socio-Economic Implications of the Coronavirus Pandemic (COVID-19): A Review" (2020) 78 *Int J Surg* 185, online: PubMed Central <<https://pmc.ncbi.nlm.nih.gov/articles/PMC7162753/>>

line even after the stark reminders of the pandemic—findings in the following paragraph support this position.

In a recent 2025 study, it was observed that over 8.5% of the world population lives in extreme poverty (roughly 692 million people surviving on less than \$2.15 a day), with around 429 million people on the African continent, representing a third of the continent’s population, living below the poverty line in 2024.<sup>7</sup> Even before the pandemic in 2020, a report by the Southern African Development Community, conducted by the National Vulnerability Assessment Committees of Member States, indicates that over 41 million people in Southern Africa lived without adequate food.<sup>8</sup> This significant disparity revealed an underlying fragility within vulnerable populations, rendering them disproportionately susceptible to the socio-economic impacts of the pandemic.

In March 2020, Ghana recorded its first few cases of the COVID-19 pandemic.<sup>9</sup> By July 23rd, the virus had spread to all regions in the country, primarily to the two major cities of Accra and Kumasi, likely attributable to overpopulation, with over 32,969 recorded cases and 168 COVID-related deaths.<sup>10</sup> Despite the high levels of recovery, the country’s death rate surpassed 300, with reported cases exceeding 47,000 by October 2020.<sup>11</sup> As in many countries worldwide, Ghana instituted specific measures to curtail the spread of the virus. In line with the Act

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<sup>7</sup> Statista, "Extreme Poverty as a Share of Global Population in Africa by Country" (2025), online: Statista <<https://www.statista.com/statistics/1228553/extreme-poverty-as-share-of-global-population-in-africa-by-country>>

<sup>8</sup> SADC Regional Vulnerability Assessment & Analysis (RVAA): “*Synthesis Report on the State of Food and Nutrition Security and Vulnerability in Southern Africa*” (2019). <<https://www.sadc.int/news-events/news/food-insecurity-continues-rise-southern-africa-new-sadc-report-projection-puts-41-million-risk/>>

<sup>9</sup> Razak M. Gyasi, ‘Fighting COVID-19: Fear and internal conflict among older adults in Ghana.’ (2020) 63:6 *Journal of Gerontological Social Work* 688.

<sup>10</sup> Bright Nkrumah, "The (Il) Legality of Ghana’s Covid-19 Emergency Response: A Commentary" in Ebenezer Durojaye & Derek Powell, eds, *Constitutional Resilience and the COVID-19 Pandemic: Perspectives from Sub-Saharan Africa* (Cape Town: Juta, 2022) 311.

<sup>11</sup> Abdulai, Abdul Gafaru & Mohammed Ibrahim, “Ghana’s Social Policy Response to Covid-19: Leaving the Poorest Behind?” (2021) CRC 1342 Covid-19 Social Policy Response Series No 31.

declaring a state of emergency,<sup>12</sup> the executive tabled a draft instrument for legislative scrutiny, i.e. the Imposition of Restrictions Bill (IRB).<sup>13</sup> This legal requirement under section one of the Emergency Powers Act led to the passage of the Imposition of Restrictions Act on March 21,<sup>14</sup> 2020, granting the government the necessary legal authority to impose restrictions to curb the pandemic's adverse effects. Restrictive measures are discussed further in Chapter Two.

The passage of this bill into law (like the United Kingdom Coronavirus Act,<sup>15</sup> and Canada's COVID-19 Response Measures Act,<sup>16</sup> among others) was likely to impact individuals and groups and incite conversations on the passage of such laws on human rights. The Center for Human Rights, Ghana, reported incidents of police using excessive force and arrest to enforce restrictions, even though there were no credible reports of fatalities resulting from violence by law enforcement agents.<sup>17</sup>

Relatedly, while governments were imposing restrictive measures ostensibly to protect public health and safety, economic interventions were also deployed to safeguard the general population from the socio-economic impact of the pandemic.<sup>18</sup> With support from donor countries and its international partners, the Ghanaian government implemented several measures to manage the pandemic and cushion individuals and families who could not meet their financial expectations due to the lockdown measures.

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<sup>12</sup> *Emergency Powers Act 1994* (Ghana), Act 472 s. 1.

<sup>13</sup> *Imposition of Restrictions (Coronavirus Disease (COVID-19) Pandemic) (No. 4) Executive Instrument* (GHA), 2020, EI 67. For further discussion, see K Agyeman-Budu, "Constitutionalism and Covid-19 in Ghana" (2020) African Network of Constitutional Lawyers, online: <<https://ancl-radc.org.za/blog/constitutionalism-and-covid-19-in-ghana>>

<sup>14</sup> *Imposition of Restrictions Act 2020* (Ghana), Act 1012.

<sup>15</sup> *Coronavirus Act 2020* (UK), c 7.

<sup>16</sup> *COVID-19 Response Measures Act*, SC 2020, c 12.

<sup>17</sup> Centre for Human Rights, 'Ghana' (2020), online: University of Pretoria, <<https://www.chr.up.ac.za/covid19-database/ghana>>

<sup>18</sup> Organization for Economic Co-operation and Development (OECD), Government Support and the COVID-19 Pandemic (2020), online at: <[https://www.oecd.org/en/publications/government-support-and-the-covid-19-pandemic\\_cb8ca170-en.html](https://www.oecd.org/en/publications/government-support-and-the-covid-19-pandemic_cb8ca170-en.html)>

Having established a general background for this research, the central focus of this study will be on the implications of such measures for the socio-economic rights of one vulnerable group in Ghana, commonly referred to as the head porters or kayaye. The head porters are a group of young women who migrate internally from the northern parts of Ghana to southern cities in search of a better life. The choice of this target group for the research is due to the hardships they face. This includes various socio-economic deficiencies, such as limited access to adequate housing, inadequate healthcare services, inadequate sanitation infrastructure, and a shortage of sustainable employment opportunities, among others.

### **1.1 Enforcement and Implementation**

Effective implementation and enforcement are essential to achieve the objectives of any legal instrument. Recognized as universal claims grounded in human dignity and reinforced by collective societal understanding, human rights call for the adoption of strong, enforceable legal policies to transform them from conceptual principles into tangible realities.<sup>19</sup> Enforcement and implementation, while intertwined and identical, possess distinct legal characteristics. These concepts operate through advocacy, legal, policy, and programmatic frameworks, each contributing uniquely to the realization of human rights.<sup>20</sup>

Implementation involves the integration of rights into legal and administrative systems, ensuring that rights are respected and protected through policy and practice, while enforcement encompasses the mechanisms and processes designed to secure compliance with the law, address

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<sup>19</sup> N Hren, M Kelman, M Pyvovar, A Koval & Y Melnyk, "Human Rights and Current Discriminatory Manifestations (on the Example of Age Discrimination in the Social and Communicative Sphere)" (2022) 19 *The Age of Human Rights Journal* 71. <<https://doi.org/10.17561/tahrj.v19.7124>>

<sup>20</sup> Sofia Gruskin & Daniel Tarantola, "Health and Human Rights: Overview" in Stella R Quah, ed, *International Encyclopedia of Public Health*, 2nd ed, 3 (Oxford: Academic Press, 2017) 385.

violations through appropriate remedies, and prevent future infringements.<sup>21</sup> Understanding the distinction between these two concepts is crucial for this research as it helps to clarify how rights are not only conferred through policy measures but also actively operationalized through judicial and administrative mechanisms. It also offers guidance for the appropriate use of the terms throughout the study.

## 1.2 Economic, Social and Cultural Rights

With the inauguration of the United Nations Charter on June 26, 1945, by the United Nations General Assembly, came a massive wave of change and evolution in human rights. This undertaking took the form of international legal instruments that set forth an agreed-upon corpus of substantive socio-economic rights, explicitly recognized under the Universal Declaration of Human Rights (UDHR)<sup>22</sup> and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)<sup>23</sup> Together with the International Covenant on Civil and Political Rights (ICCPR)<sup>24</sup>, these are often referred to as the International Bill of Human Rights.<sup>25</sup> This reference was formally adopted and popularized by the United Nations Commission on Human Rights at its second session in December 1947.<sup>26</sup> For this research, I will refer solely to the class of human rights generally recognized as socio-economic rights.

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<sup>21</sup> Nhina Le, "Are Human Rights Universal or Culturally Relative?" (2016) 28 Peace Review 203. <<https://doi.org/10.1080/10402659.2016.1166756>>

<sup>22</sup> U.N. GA, *Universal Declaration of Human Rights*, GA Res 217 A (III), UN GAOR, 3rd Sess, Supp No 13, UN Doc A/810 at 71 (10 December 1948). [UDHR].

<sup>23</sup> *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, 999 UNTS 171 (entered into force March 23, 1976) [ICESCR].

<sup>24</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976). [ICCPR].

<sup>25</sup> Francisco Forrest Martin, Stephen J. Schnably, Richard J. Wilson, Jonathan Simon, and Mark Tushnet, "International Human Rights Tribunal Procedure and Remedies" in *International Human Rights and Humanitarian Law*, (Cambridge: Cambridge University Press, 2006) 270.

<sup>26</sup> John P. Humphrey, "The International Bill of Rights: Scope and Implementation" (1976) 17:3 William & Mary Law Review 527 at 528, online: <<https://scholarship.law.wm.edu/wmlr/vol17/iss3/6>>

The International Covenant on Economic, Social, and Cultural Rights is the most comprehensive human rights instrument that addresses socio-economic rights, including the rights to adequate food, housing, education, health, social security, participation in cultural life, water and sanitation, and work.<sup>27</sup> Additionally, several international conventions, declarations, and agreements address socio-economic rights. Some of the few to be discussed in this research include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>28</sup> the Convention on the Rights of the Child (CRC),<sup>29</sup> and the African Charter on Human and Peoples' Rights (ACHPR).<sup>30</sup> These instruments were selected for their comprehensive and complementary legal frameworks, which align with the ICESCR, intersectional protections that cover gender-specific and unique regional circumstances, and enforceable provisions.

Despite the challenges with the practical enforcement of socio-economic rights, there has been a noticeable growth trend worldwide toward improved implementation and adjudication procedures for these rights.<sup>31</sup> For example, the 40-member Council of Europe adopted a revised European Social Charter, which came into force in July 1999. This charter protects socio-economic rights, including the right to adequate housing.<sup>32</sup> Socio-economic rights have increasingly gained recognition across sovereign States, with robust constitutional protections now firmly established

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<sup>27</sup> Ontario Ministry of the Attorney General, Constitutional Law and Policy Division, *'The Protection of Social and Economic Rights: A Comparative Study.'* Staff Paper (19 September 1991) at 34.

<sup>28</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, GA Res 34/180, UNGAOR, 34th Sess, Supp No 46, U.N. Doc A/34/46 UNTS 1249 (1979). [CEDAW]

<sup>29</sup> *Convention on the Rights of the Child*, November 20, 1989, 1577 UNTS 3 (entered into force September 2, 1990). [CRC].

<sup>30</sup> *African Charter on Human and Peoples' Rights*, June 27, 1981, 1520 UNTS 217 (entered into force October 21, 1986) [African Charter].

<sup>31</sup> *European Social Charter (Revised)*, 3 May 1996, ETS No. 163 (entered into force 1 July 1999).

<sup>32</sup> *Ibid* at Art. 31.

in numerous jurisdictions globally.<sup>33</sup> The Ghanaian Constitution<sup>34</sup> also contains entrenched provisions that guarantee the enjoyment of socio-economic rights, which I will discuss in detail in subsequent chapters.

Another avenue that has played a crucial role in advancing these rights is the judiciary. With the aid of judicial decisions at the national, regional, and international levels discussed extensively in Chapter Three, a robust jurisprudence has been developed on the content and mechanism for the enforcement of socio-economic rights. Nevertheless, the absence of a strong activist stance within Ghana's judiciary remains a considerable obstacle to effectively addressing human rights violations, especially socio-economic rights violations impacting vulnerable populations. I will address in Chapter Three how this institutional shortfall constrains the availability of legal remedies for affected groups within Ghana.

### 1.3 Ghana's Head Porters

Although Ghana is touted as one of the fastest-growing economies in Africa,<sup>35</sup> evidence has shown that the national poverty rate stands at around 24%,<sup>36</sup> highlighting the urgent need for effective measures to ensure economic stability. To lift themselves out of the poverty bracket,

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<sup>33</sup> Some examples of provisions within global constitutions that enshrine socioeconomic rights are: South Africa's constitution, "Constitution of the Republic of South Africa, 1996, SA 1996 Constitution", which guarantees rights to housing, health care, food, water, and social security. Similarly, Spain's constitution, "Constitución Española, B.O.E. núm. 311, 29 diciembre 1978 (Spain)", enshrines rights to health protection, housing, and education. India's constitution includes provisions for the right to work, education, and public assistance, while Brazil's constitution "(Constitution of the Federative Republic of Brazil, 5 October 1988 (Brazil))", explicitly lists social rights such as education, health, food, housing, and social security as fundamental. In Oceania, Fiji's constitution "(Constitution of the Republic of Fiji 2013 (Fiji))" affirms rights to education, economic participation, and social security. Together, these examples demonstrate a global commitment to integrating socioeconomic rights into constitutional frameworks, thereby promoting social justice and human dignity.

<sup>34</sup> *Constitution of the Republic of Ghana*, (1992). [Constitution of Ghana]. Articles 34-41.

<sup>35</sup> Maxwell Akalaare Adombila and Christian Akorlie, "Ghana's Economy Surges 6.9% in Q2 2024, Fastest in Five Years" Reuters (18 September 2024), online: <<https://www.reuters.com/world/africa/ghanas-economy-grew-69-second-quarter-2024-2024-09-18/>>

<sup>36</sup> World Bank, 'Poverty and Equity Brief: Ghana.' April 2023. <<http://www.worldbank.org/poverty>>

women and girls in rural areas travel from the northern parts of Ghana to the southern parts to engage mainly in the head portering business.<sup>37</sup> These women engage in what is sometimes termed the 3-D jobs: dirty, dangerous, and demanding.<sup>38</sup>

The head porters, known as ‘Kayaye,’ are typically unskilled, younger women and girls with little to no formal education.<sup>39</sup> In their quest for survival, these female migrants carry goods or wares for traders in and around Ghana's commercial business district for an agreed-upon fee.<sup>40</sup> The northern part of Ghana, where they migrate from, is noted for abject poverty.<sup>41</sup> Agriculture is the primary occupation, which, unfortunately, is characterized by overdependence on rainfall amidst its unpredictable patterns.<sup>42</sup> This and other sociocultural factors, such as ethnic conflicts and early marriages, contribute to the decision-making patterns of women and girls to migrate and seek greener pastures.<sup>43</sup>

Regrettably, they mostly live in concentrated and dense informal settlements with poor hygienic and healthcare accessibility and inadequate supply of water and other essential services, rendering them vulnerable in many ways, such as to illness, violence, and abuse.<sup>44</sup> In addition to

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<sup>37</sup> Ziblim Shamsu-Deen, & Yidana Adadow, "Health Seeking Behaviour Among Migrant Female Head Porters in the City of Accra, Ghana" (2019) 16:2 Ghana J Dev Stud 138, online: <<https://doi.org/10.4314/gjds.v16i2.7>>. See also Stephen Kwankye, & John Anarfi, Cynthia Adoquaye Tagoe, A Castaldo, (2009). "Independent North-South Child Migration in Ghana: The Decision-Making Process", 6(1) (Sussex Centre for Migration Research) 35. Kayayei and Kayayoo are compound words formed from the Hausa and Ga languages. Kaya is often translated from Hausa as "load" or "burden." In Ga, yei means "women," and yoo means "woman." Participants in this study most often used the single Hausa term kaya to refer to their work, as in "I carry kaya." <<https://www.researchgate.net/publication/237379997>>

<sup>38</sup> Sarah A Quandt, Alice E. Arcury-Quandt, Emma J Lawlor, Lourdes Carrillo, Antonio J Marín, Joseph G Grzywacz, and Thomas A. Arcury. (2013) "3-D Jobs and Health Disparities: The Health Implications of Latino Chicken Catchers' Working Conditions" (2013) 56:2 Am J Ind Med 206.

<sup>39</sup> Charity Afua Boateng, "Finding a Suitable Solution to the Kayayei Problem in Ghana" (2018) 2:12 J Afr Interdisciplinary Stud 16.

<sup>40</sup> *Ibid.*

<sup>41</sup> World Bank, *supra* note 36.

<sup>42</sup> *Ibid.*

<sup>43</sup> YA Agyei, E Kumi & T Yeboah, "Is Better to Be a Kayayei than to be Unemployed: Reflecting on the Role of Head-portering in Ghana's Informal Economy" (2016) 81 GeoJournal 293 at 297.

<sup>44</sup> Foresight, *Migration and Global Environmental Change: Final Project Report* (2011), Government Office for Science (London).

their vulnerabilities, they also tend to face higher rates of occupational hazards in their line of work.<sup>45</sup> Through their resilience, some still manage to save and remit money to assist their struggling parents back home.<sup>46</sup>

During the pandemic, head porters encountered increased hardships, including food insecurity, heightened vulnerability to health issues, and instances of abuse.<sup>47</sup> Some of them also reported neglect by their family members back home, who refused to accommodate them for fear of transmitting the virus due to the risk of increased exposure in the cities.<sup>48</sup> This comes amidst widespread allegations of corruption at the government level in the distribution of COVID-19 relief assistance.<sup>49</sup> 72% of Ghanaians polled in believe that resources intended for the COVID-19 response were lost to corruption, while only 20% reported receiving some form of assistance.<sup>50</sup> It casts a grim reality on the lives of this vulnerable group of women and girls as they managed to survive through the months of health and economic turmoil.

According to the latest figures reported at a Kayaye National Dialogue in January 2022, more than 100,000 female migrants and their children make up the head porters, with Accra alone containing over 70% of that population.<sup>51</sup> Unfortunately, there is no government data to corroborate this figure. These vast numbers provide crucial insight into the prevalence of head portage in Ghana, highlighting the necessity of supportive networks and inclusive policies to

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<sup>45</sup> James Quesada, Laurie Kain Hart & Philippe Bourgois, "Structural Vulnerability and Health: Latino Migrant Labourers in the United States" (2011) 30:4 Med Anthropology 339, online: <<https://doi.org/10.1080/01459740.2011.576725>>

<sup>46</sup> Kennedy Alatinga, "Internal Migration, Socio-Economic Status and Remittances: Experiences of Migrant Adolescent Girl Head Porters in Ghana" (2019) 5 African Human Mobility Review 3.

<sup>47</sup> Crispin Mbamba *et al*, "'I don't think anyone thinks of us': experiences of teenage head porters amidst COVID-19 in Ghana" (2021) 17:1 Vulnerable Children & Youth Stud 1.

<sup>48</sup> *Ibid.*

<sup>49</sup> Afrobarometer Data, Ghana. Round 9, (April 2022), online: <<https://www.afrobarometer.org>>

<sup>50</sup> *Ibid.*

<sup>51</sup> Laura Kiniry, "The Women Dedicating Their Work to the Wellbeing of Ghana's Head Porters" (14 February 2022), online: Condé Nast Traveler, <<https://www.cntraveler.com>>

empower and enhance the lives of this unique and vulnerable population dispersed throughout the nation.

To understand and adequately address the gravity of issues relating to the needs of the Kayaye group during the COVID-19 pandemic and any future emergencies, it is imperative that the protection and promotion of social, cultural, and economic rights, particularly of vulnerable and marginalized groups, must be placed at the core of any intervention. This will provide the safeguards necessary to insulate them from the adverse effects of the crises. Central to this approach is ensuring equitable access to essential services such as quality healthcare, safe and adequate housing, and robust social assistance programs. Furthermore, policies must be enacted to safeguard the livelihoods and strengthen the economic resilience of head porters, recognizing their unique vulnerabilities and the significant contributions they make to society. A detailed examination of these issues and the relevance of appropriate interventional measures will be discussed in subsequent chapters.

Throughout this study, I will use "head porters" and "Kayaye" interchangeably.

#### **1.4 Problem Statement**

The socio-economic rights of head porters in Ghana, like all other citizens, are grounded in provisions of the Constitution of Ghana, 1992<sup>52</sup> and several international human rights instruments, including the International Covenant on Economic, Social, and Cultural Rights,<sup>53</sup> the African Charter on Human and Peoples' Rights,<sup>54</sup> the Convention on the Elimination of All Forms of Discrimination Against Women,<sup>55</sup> and the Convention on the Rights of the Child,<sup>56</sup> to which

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<sup>52</sup> Constitution of Ghana, *supra* note 34 at Arts. 34-41.

<sup>53</sup> ICESCR, *supra* note 23.

<sup>54</sup> African Charter, *supra* note 30.

<sup>55</sup> CEDAW, *supra* note 28.

<sup>56</sup> CRC, *supra* note 29.

Ghana is a State party. Despite these legal provisions and implementation at the domestic level in Ghana, which will be dealt with extensively in Chapter Three, practical enforcement remains a constant challenge.

Unfavourable social and dehumanizing cultural practices continue to hinder social progress, relegating vulnerable persons, including women, children and persons with disabilities, to subservient roles.<sup>57</sup> Regulatory frameworks have yet to be extracted from the abundant legal repository and effectively enforced. For the head porters in the country, the coronavirus pandemic was a reminder of their vulnerabilities, heightening the impact of existing barriers and revealing additional challenges. Issues such as the lack of a comprehensive social safety net, limited access to healthcare, economic insecurities, inadequate housing, and weak enforcement mechanisms reemerged as critical concerns.<sup>58</sup> The enforcement challenges encompass a complex interplay of political, legal, administrative, societal, and gender-based barriers that impede head porters' access to rights guaranteed under the law. These are further examined in Chapter Three when exploring the legal frameworks for the enforcement of socio-economic rights in Ghana.

Researchers in the study of female migrants in Ghana hesitate to establish discussions about the head porters' knowledge of their human rights and the government's utter failure to provide a social safety net to accommodate their struggles, especially during the pandemic. Foli & Ohemeng<sup>59</sup> assert that the government's response has exposed the existing inequalities in Ghana due to inadequacies in the country's social welfare system, which has neglected certain

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<sup>57</sup> M Ayim, A Abdullah, H Bentum, EB Amponsah, E Cudjoe, & E Manful, "Contributing to Indigenous Social Work Practice in Africa: A Look at the Cultural Conceptualizations of Social Problems in Ghana" (2023), 22:1 *Qualitative Social Work* 30.

<sup>58</sup> Christabel E Dadzie & Dhushyanth Raju, "Data-Driven Social Safety Net Response to the COVID-19 Crisis in Ghana" (4 January 2021), World Bank Blogs, online: <<https://blogs.worldbank.org/en/nasikiliza/data-driven-social-safety-net-response-covid-19-crisis-ghana>>

<sup>59</sup> Rosina K Foli & Frank L K Ohemeng, "Provide our basic needs or we go out": the COVID-19 pandemic lockdown, inequality, and social policy in Ghana (2022) 41:2 *Policy and Society* 217.

groups, particularly those in the informal sector. This position supports my thesis that the Ghanaian government's response measures failed to uphold the socio-economic rights of the head porters during the pandemic. Consequently, as I will explain, it does not fulfill its obligation under domestic and international law.

It becomes imperative to assess the effectiveness of the government's response and investigate the implications of the pandemic in safeguarding the social and economic rights of head porters in Ghana. Lessons drawn from the assessment can inform better preparedness for future health emergencies, ensuring that social protection systems are robust enough to protect the most at-risk populations. Consequently, my research aims to examine whether the enforcement of COVID-19 response policies implicated the socio-economic rights to health and adequate housing of head porters in Ghana, and what measures were taken to ensure the protection and/or fulfillment of these rights during and after the pandemic.

### **1.5 Significance of the Study**

In the wake of the global pandemic, understanding the nuanced impact on vulnerable groups has become an indispensable and timely topic. This study holds profound significance as it ventures into the realms of social and economic rights of internal migrants in Ghana, specifically, head porters. By examining the experiences of head porters, this research adds a crucial layer to the extensive literature on their lived experiences, providing valuable insights that can inform broader discussions on social and economic rights during crises. The study acknowledges the unique challenges faced by this group, which were amplified by the pandemic's complexities.

Secondly, the research could serve as a valuable resource for students, policymakers, international partners, and practitioners, providing comprehensive insights into the plight of head porters in Ghana. The evidence and perspectives uncovered in this study will shed more light on

the specific needs, gaps, and weaknesses within the legal framework and human rights implementation and enforcement mechanisms. This informed understanding is crucial for devising targeted interventions that address the challenges faced by head porters, ultimately contributing to a more equitable and inclusive society. The study advances the discourse by proposing policy and legal reforms aimed at enhancing the enforcement of social and economic rights, particularly for head porters, who have undergone a substantial evolution. Based on the information provided above, the chapters of this research are organized as follows:

In this chapter, I examine the background of the research topic, recounting the events of the coronavirus pandemic. In exploring the background, the chapter also discussed the brief history and nature of socio-economic rights, with a focus on the rights of female migrant head porters. The research statement is clearly articulated in this chapter, while also presenting the significance of the chosen topic.

In Chapter Two, I will provide an extensive context for the research topic with a brief historical overview of head portage and its migratory roots. I also examine the existing research on the COVID-19 pandemic and its distinct focus on head porters. Subsequently, I will focus specifically on the health and housing-related challenges faced by head porters within the context of the pandemic. This exercise aims to provide a more nuanced understanding of the factors contributing to the complex migratory and socio-economic circumstances of head porters, as well as their unique challenges.

Chapter Three examines the legal framework for enforcing socio-economic rights by reviewing the provisions of some international human rights instruments, the Constitution of Ghana, domestic legislation, and jurisprudential dispositions on socio-economic rights and their enforcement mechanisms. The chapter aims to examine Ghana's socio-economic rights through a

legal lens. By doing so, I will establish a framework for assessing the lived experiences of head porters during the pandemic's peak.

Chapter Four begins by providing a general overview of Ghana's pandemic response. I will also examine the primary intervention of the state in response to the pandemic that relates directly to the head porters. These interventions will be analyzed to determine the government's adherence to international and domestic law obligations, and how they uphold the rights to health and adequate housing of the head porters. Chapter Five summarizes the entire work, offers recommendations for policy and practical social interventions, and suggests areas for future research.

As I have illustrated in this chapter, preexisting inequalities rendered the head porters susceptible to the pandemic's disruptions. The pandemic did not create new challenges but rather revealed historic failures to uphold socio-economic rights under domestic and international legal frameworks. For the head porters whose efforts sustain the urban market in Ghana, yet remain unrecognized in policy making, the crisis reinforced their exclusion from Ghana's development agenda. Building on the foundation in this chapter, Chapter Two will provide a broad contextual understanding of the plight of the head porters and how this has led to the injustices they face as a vulnerable group.

## CHAPTER TWO

### GHANA'S HEAD PORTERS: INSIGHTS INTO HEALTH, HOUSING, AND DAILY STRUGGLES

#### 2.0 Introduction

The plight of head porters in Ghana has not garnered global attention. Still, their stories and challenges are very familiar in sub-Saharan Africa, especially in Ghana, where the head porters are prevalent. During the COVID-19 pandemic, the Ghanaian government's response measures, while aimed at curbing the spread of the virus, had unintended consequences for this vulnerable group.<sup>60</sup> This reflects the broader challenge faced by many countries in balancing the public health response with socio-economic consequences. In this chapter, I will offer some insights into the livelihoods of Ghana's head porters. These insights will enable readers to adequately understand the role of the head porters in the Ghanaian society, the systemic failures that create their most significant challenges, and the need for urgent responses to remedy their situation. It will also be relevant to establish a contextual narrative for the analysis in the subsequent chapters on the socio-economic rights of the head porters.

The chapter is structured as follows: I will begin with an overview of Ghana's history and migration trends since independence, linking these patterns to the emergence of head porters as a recognized demographic. Additionally, I will examine two main challenges confronting the head porters: *health* and *housing*, especially before and during the pandemic. The health and housing challenges of head porters were purposely identified for discussion because of their significance to the group's economic livelihoods, offering a crucial understanding of the depth of the head

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<sup>60</sup> Agnes Khoo, "Ghana in COVID-19 Pandemic" (2020) 21:4 Inter-Asia Cultural Studies 542.

porters' social and economic marginalization. The health and housing challenges also expose deficiencies in the existing social safety nets available in the country.

This structure for the chapter is logically coherent because it moves from a broader historical and migratory perspective to the focused challenges of health and housing, demonstrating how these issues affect the systemic vulnerabilities of head porters and the inadequacy of social safety nets in Ghana. In the context of this research, it also demonstrates how systemic neglect has hindered the enforcement of basic socio-economic rights in Ghana after nearly seven decades of independence.

## **2.1 Ghana: A Country Context**

Ghana was the first sub-Saharan African nation to attain independence from British colonial rule in 1957.<sup>61</sup> It currently practices a democratic system of governance. Ghana is a country in West Africa that borders three other nations: Togo to the east, Burkina Faso to the north, and Côte d'Ivoire to the west.<sup>62</sup> The Gulf of Guinea forms its southern frontier. Ghana's territory is 239,533 square kilometres, divided into 16 regions, with the stunning seaside metropolis of Accra as its capital.<sup>63</sup> Even though English is recognized as the official language of the State, over 80 other recognized and spoken local languages exist. The country's linguistic diversity is a manifestation of its rich cultural heritage.<sup>64</sup>

After the 2021 Population and Housing Census, the country's total population stood at 30.8 million, with Greater Accra leading the chart with 17.7% of the total population.<sup>65</sup> The

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<sup>61</sup> SF Amoako, "Sixty years of deaf education in Ghana (1957-2017)" (2019) 7:1 Communication Disorders, Deaf Studies & Hearing Aids 1. DOI:<[10.4172/2375-4427.1000191](https://doi.org/10.4172/2375-4427.1000191)>

<sup>62</sup> <<https://en.wikipedia.org/wiki/Ghana>>

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> Ghana Statistical Service, "Ghana 2021 Population and Housing Census (PHC): Population of Regions and Districts" (2021) General Report 3A.

report also indicates a significant growth in the urban population from 50.9% in 2010 to 56.7% in 2021, while the rural population stands at 43.3%.<sup>66</sup> About half of the population is concentrated in two major cities.<sup>67</sup>

It is essential to put into perspective the plight of head porters within Ghana's history of colonial legacy, nation-building, and regional disparities. Under its first president, Dr. Kwame Nkrumah, Ghana's post-independence trajectory was shaped by Pan-Africanist ideals and aspirations for modernization.<sup>68</sup> However, colonial-era structural inequities persisted, particularly in favouring southern infrastructure and education, while relegating the north to a labour reservoir.<sup>69</sup> Nkrumah's centralized governance and industrial policies failed to dismantle these hierarchies, exacerbating northern economic deprivation.<sup>70</sup>

This entrenched regional disparity is reflected in the kayaye phenomenon, with young women from northern Ghana driven by extreme poverty and cultural stressors, migrating to southern cities to engage in kayaye as a means of economic survival.<sup>71</sup> This, along with other factors such as political instability, poor governance and regressive economic policies, explains why, after nearly seven decades of independence, Dr. Nkrumah's vision never fully materialized.<sup>72</sup> The foregoing explanation provides this research with a concise account of one of

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[https://statsghana.gov.gh/gssmain/fileUpload/pressrelease/2021%20PHC%20General%20Report%20Vol%203A\\_Population%20of%20Regions%20and%20Districts\\_181121.pdf](https://statsghana.gov.gh/gssmain/fileUpload/pressrelease/2021%20PHC%20General%20Report%20Vol%203A_Population%20of%20Regions%20and%20Districts_181121.pdf)

<sup>66</sup> *Ibid* at 99.

<sup>67</sup> *Ibid* at 28.

<sup>68</sup> Patrick Iskandar, "Ghana and Côte d'Ivoire: Currents of Post-Colonial Democratization" (28 April 2019), online: *CRG Review* <<https://crgreview.com/ghana-and-cote-divoire-currents-of-post-colonial-democratization/>>

<sup>69</sup> *Ibid*.

<sup>70</sup> Dr Yao Eli Sebastian Nafrah, "The Dynamics of Head Porters 'Kayayei' in Accra and 'Paa Oo Paa' in Kumasi: A Generational Challenge" *MyJoyOnline* (22 May 2024), online: <<https://www.myjoyonline.com/the-dynamics-of-head-porters-kayayei-in-accra-and-paa-oo-paa-in-kumasi-a-generational-challenge/>>

<sup>71</sup> JA Opare, "Kayayei: The Women Head Porters of Southern Ghana" (2003) 18:2 *J Social Development in Africa* 33.

<sup>72</sup> Chuka Okeke, "The Intellectual and Political Legacies of Kwame Nkrumah" (2012) 4:10 *Journal of Pan African Studies* 126.

the significant factors that gave rise to the kayaye phenomenon in Ghana and how it is still persistent today.

## 2.2 A Brief History of Migration in Ghana

The history of migration in Ghana is extensive.<sup>73</sup> The African way of life has traditionally been characterized by migration, with people moving from one place to another since ancient times.<sup>74</sup> After gaining independence on 6<sup>th</sup> March 1957, Ghana's relative affluence continued to attract migrants from neighbouring countries.<sup>75</sup> Employment opportunities increased, and the industrialization drive attracted workers from both within the country and the West African subregion.<sup>76</sup> Most of the migration during the 1960s occurred within the nation's boundaries, involving individuals and ethnic groups relocating to other areas for security as the country experienced a surge in intertribal conflicts.<sup>77</sup>

Another migration phase in Ghana occurred in the 1970s and 1980s. The Convention People's Party (CPP), which governed from 1957 until it was overthrown in a coup on February 24, 1966, maintained a liberal immigration policy driven by a pan-Africanist ideological orientation, with the objective of making Ghana a leader for unity on the African continent.<sup>78</sup> However, the government of the subsequent Prime Minister, Kofi Busia, cut short this policy through the Alien Compliance Order.<sup>79</sup> The Order, a directive issued by the Ministry of Interior

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<sup>73</sup> M Peil, "Ghana's Aliens" (1974) 8:3 International Migration Review 367.

<sup>74</sup> *Ibid.*

<sup>75</sup> Thomas Antwi Bosiakoh, *Understanding Ghana's Migrants: A Study of Nigerian Migrant Associations in Accra, Ghana* (MPhil thesis, Sociology Department, University of Ghana, Legon, 2008) [unpublished].

<sup>76</sup> *Ibid.*

<sup>77</sup> A Adu Boahen, *Ghana, Evolution and Change in the Nineteenth and Twentieth Century* (London: Longman, 1975). See also RW Wyllie, "Kponoe and Tado Stool: Problem in Interpretation of Anlo Migration Tradition (Ghana-Togo)" (1977) 72:1 *Anthropos* Freiburg 119.

<sup>78</sup> DS Dzorgbo, *Ghana in Search of Development: The Challenge of Governance, Economic Management and Institution Building* (Uppsala: Uppsala University, 1998).

<sup>79</sup> *Immigrants (Expulsion from Ghana) Order, 1969* (NLCD 345) [Alien Compliance Order].

on November 18, 1969, resulted in the expulsion of many immigrants from Ghana in the following months.<sup>80</sup> The Order mandated that all non-resident immigrants with no permits leave the country immediately, while those with valid permits were required to strictly obey the terms of their permits.<sup>81</sup> This policy harmed Ghana's image on the African continent. It led to neighbouring countries, such as Togo, Nigeria, and Burkina Faso, being displeased with the Busia-led administration, as their nationals were primarily affected.<sup>82</sup>

Migration in Ghana in recent years has taken a different turn. Contrary to the traditional view that men are more likely to venture out to support their families, the pattern has recently shifted; the prevailing trend of migration from north to southern Ghana involves significantly more females.<sup>83</sup> Even though migration still exists between West African states, intra-state migration in Ghana is the most common, as many head porters journey across the country's regional borders to seek a better life.<sup>84</sup>

### **2.3 Intra-State Migration**

If economic engagement and advancement opportunities were readily available, most people would prefer to live within their socio-cultural environment and close to their relatives.<sup>85</sup> This instinct tends to be people's natural orientation. However, individuals are often forced to move away from their families and socio-cultural comfort in search of improved livelihood

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<sup>80</sup> Adjei Adjepong, "The origins, implementation and effects of Ghana's 1969 Aliens Compliance Order" (MA Thesis, University of Cape Coast, 2009) [unpublished].

<sup>81</sup> *Ibid.*

<sup>82</sup> Mariama Awumbila et al, "Migration Country Paper (Ghana)" (2013) Centre for Migration Studies, University of Ghana, Accra.

<sup>83</sup> *Ibid.*

<sup>84</sup> Samuel Boateng et al, "Migrant female head porters' enrolment in and utilization and renewal of the National Health Insurance Scheme in Kumasi, Ghana" (2017) 25:6 J Public Health 625.

<sup>85</sup> Philip Martin, "Managing International Labour Migration in the 21st Century South-Eastern Europe" (2013) 1:1 Journal of Economics 9; See also, Opare, *supra* note 71.

opportunities elsewhere.<sup>86</sup> As a result, migrants opt for economic and socio-cultural opportunities in their new locations, even if it means sacrificing the socio-cultural comforts of their places of origin.<sup>87</sup>

Approximately half of Ghana's population is estimated to be internal immigrants.<sup>88</sup> This means that many Ghanaians reside in cities where they were not born. There has always been a significant pattern of internal migration from the north to the southern parts of the country, which can be attributed to the substantial economic and development differences between the two geographical locations.<sup>89</sup> Over the years, youth in the northern parts have migrated southward to cities like Accra, Takoradi, and Kumasi in search of greener pastures due to factors including high levels of poverty and limited employment opportunities, a perceived good life in the south, a longing for consistent earnings, and a pursuit of individual autonomy.<sup>90</sup> This type of internal migration can be traced to a long-standing practice dating back to the colonial era, when colonial authorities actively solicited labour from the northern zone.<sup>91</sup>

Shamsu-Deen and Mariama noted that past literature on migration mainly focused on male migrants who moved to the South alone or with their dependents for economic reasons.<sup>92</sup>

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<sup>86</sup> TY Ennumh & MO Adoma, "The Living Conditions of Female Head Porters in the Kumasi Metropolis, Ghana" (2012) 3:7 *J Social & Development Sciences* 229.

<sup>87</sup> *Ibid.*

<sup>88</sup> M Awumbila, "Women Moving Within Borders: Gender and Internal Migration Dynamics in Ghana" (2015) 7:2 *Ghana J Geography* 132.

<sup>89</sup> John Anarfi & Stephen Kwankye, "The Costs and Benefits of Children's Independent Migration from Northern to Southern Ghana" (Paper delivered at the International Conference on Childhoods: Children and Youth in Emerging and Transforming Societies, Oslo, 2005) [unpublished].

<sup>90</sup> S Boateng, "Examining the health-seeking behaviours of migrant female head porters in the Kumasi Metropolis, Ghana" (2020) 27 *Social Education Research* 27. See also E Otieku, CG Ackah, & D Forkuor, "Motivations, income determinants and livelihood vulnerability of female teenage head porters in Kasoa, Ghana" (2017) 44 *International Journal of Social Economics* 2396–2408.

<sup>91</sup> Ira Lobnibe, "Of Jong Migrants and Jongsecans: Understanding Contemporary Rural Out-Migration from Northwest Ghana" (2010) 7:10 *J Dagaare Studies* 1.

<sup>92</sup> Z Shamsu-Deen, "Beyond the Cedis: Migration and reproductive health among female potters in Accra" (2014) 2:1 *ABC Research Alert* 1. See also, Mariama Awumbila, "Internal Migration, Vulnerability and Female Porters in Accra, Ghana" (Paper delivered at the Annual Meeting of the Population Association of America, New York City, 2007) [unpublished].

Most of these migrants lack the skills necessary for the formal sector, which forces them to engage in informal economic activities, such as hawking, petty trading, casual labour, and seasonal labour on farms.<sup>93</sup> While migration in earlier periods was predominantly characterized by male movement driven by economic and social imperatives, contemporary migration patterns increasingly reflect a significant feminization, with women constituting a growing proportion of migrants due to economic and socio-cultural dynamics.<sup>94</sup>

As I will address in more detail below when I focus on the specific situation of the head porters, female migration within Ghana, primarily from northern rural areas to southern cities, is a common reaction to challenging social and cultural norms and a way to deal with the inequalities experienced by migrants in their hometowns.<sup>95</sup> Some families willingly encourage their daughters' migration decisions and even fund the process because of the benefits associated with remittances.<sup>96</sup> This massive movement has significantly contributed to the underdevelopment of Ghana's northern regions, resulting in the highest incidences of poverty due to the diminishing human capital necessary for development.<sup>97</sup>

Remittance is a crucial aspect of migration studies and a fundamental component of the Kayaye trade.<sup>98</sup> Addison<sup>99</sup> defines remittance as 'that portion of migrants' earnings sent from the

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<sup>93</sup> IM Hashim, "Research Report on Children's Independent Migration from Northeastern to Central Ghana" (Brighton (UK): Development Research Centre on Migration, Globalization and Poverty, University of Sussex, 2005) at 58.

<sup>94</sup> B Alhassan, AD Issah & A Fauzia, "Women and Girls on the Move: Determinants of Female Internal Migration in Northern Ghana – Insights from East Mamprusi District, Ghana" (2025) 8:8 International Journal of Social Science Research and Review 283.

<sup>95</sup> K Van der Geest, "North-South Migration in Ghana: What Role for the Environment" (2011) 49:1 International Migration 69.

<sup>96</sup> Awumbila, *supra* note 88.

<sup>97</sup> Ghana Statistical Service & Ghana Health Service, *Ghana Demographic and Health Survey 2008* (Accra: GSS & GHS, 2009).

<sup>98</sup> Stephen Adaawen & Boabang Owusu, "North-South Migration and Remittances in Ghana" (2013) 5:1 African Rev Economics & Finance 29.

<sup>99</sup> EKY Addison, "The Macroeconomic Impact of Remittances in Ghana" (Paper delivered at the Conference on Migration and Development in Ghana, 14-16 September 2004) at 5.

migration destination to the place of origin.' Existing literature indicates that migration and remittance generally help alleviate poverty, enhance living standards and well-being, and foster human development in the communities where migrants originate.<sup>100</sup> Despite this, the condition of the northern regions of Ghana hasn't experienced significant improvement even with the migrant influx to the south. Studies have shown that migrants' origin, educational level, income level, and length of stay are the most critical variables in determining remittance among head porters.<sup>101</sup> Using a logistic regression model, Alatinga's study also found that age, work experience, and socio-economic status significantly influenced remittance decisions among the head porters.<sup>102</sup> Remittance among the head porters is an important aspect which helps this study to understand the socio-economic status of the kayaye and how remittances affect that status. Remittances impose a crucial personal cost on the kayaye, undermining their ability to accumulate wealth.<sup>103</sup>

## 2.4 Head Portage in Ghana

In most parts of Africa and Ghana, people carrying goods or heavy loads on their heads is a common sight. People, particularly women in rural communities with farming as their primary occupation, resort to carrying loads to transport their yields home.<sup>104</sup> Unsurprisingly, this age-old activity has now been commercialized and serves to earn daily wages for people. Head portage as a form of trade was introduced to Ghana by male migrants from Mali and Niger, two of the

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<sup>100</sup> AM Abdulai, L Boakye-Yiadom, & P Quartey, "The impact of migration on the welfare of households in Ghana: A propensity score matching approach" (2017) 3:1 African Human Mobility Review 732.

<sup>101</sup> Adaawen & Owusu, *supra* note 98.

<sup>102</sup> Alatinga, *supra* note 46.

<sup>103</sup> *Ibid.*

<sup>104</sup> Ennumh & Adoma, *supra* note 86.

countries in the Sahel region of West Africa.<sup>105</sup> Commercial head portage gained prominence in Ghana after 1969, when it became typical for women migrating from the northern regions to reside and work in urban areas, such as Accra and Kumasi.<sup>106</sup>

Head portage is a type of small-scale commerce in which the participants typically operate as self-employed members within the informal sector of the Ghanaian economy.<sup>107</sup> The head porters view this trade as ultimately enabling them to save enough capital to venture into a less taxing and more profitable business.<sup>108</sup> Because head portage only requires very little initial capital investment, it becomes more attractive to underprivileged girls as a readily available economic activity.<sup>109</sup> Essentially, they are integral to the transportation structure of the market setting in Ghana.<sup>110</sup> Despite their value to the market economy, subsequent discussion will demonstrate that they were not accorded sufficient protection as an integral part of the country's macroeconomic framework.

Most head porters are women and girls aged between fifteen and thirty-five years who migrate to flee struggles such as child marriage and extreme poverty.<sup>111</sup> The kayaye phenomenon exemplifies how structural inequalities, including economic, environmental, and political factors, interconnect to drive migration. Low literacy levels among the head porters limit employment alternatives and perpetuate reliance on informal work.<sup>112</sup> The problems of systemic exploitation

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<sup>105</sup> Kwasi Twumasi-Ankrah, "Rural-urban migration and socio-economic development in Ghana: some discussions" (1995) 10:2 J Soc Dev Afr 13. See also Olusola Adegbite, "A Load Too Heavy: Kayayei Practice and Ghana's Child's Rights Obligation Under Domestic and International Law" (2023) 1:1 Ohio Northern U Intl L J 1. CHECH

<sup>106</sup> See e.g. Boateng, *supra* note 90.

<sup>107</sup> Opare, *supra* note 71.

<sup>108</sup> Seema Agarwal et al., "Bearing the Weight: The Kayayoo, Ghana's Working Girl Child" (1997) 40:3 Int'l Soc Work 245.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> YA Agyei et al, *supra* note 43.

<sup>112</sup> Ennumh & Adoma, *supra* note 86.

and weak child protection laws link over 30,000 children to child labour and extreme poverty.<sup>113</sup> These problems are reinforced by the laxity in policy enforcement that fails to protect children and leads them down the path of exploitation.<sup>114</sup>

Kayaye is undoubtedly a form of child labour.<sup>115</sup> The United Nations Agency for Humanitarian and Developmental Aid to Children (UNICEF) refers to child labour as an act that is damaging to children's health and education, while having the potential for further abuse and exploitation.<sup>116</sup> Among the socio-cultural issues that have been identified as contributing to indulgence in the practice of kayaye include parental irresponsibility or abandonment, illiteracy, and female genital mutilation.<sup>117</sup> Additionally, the long-standing tradition in the northern regions of Ghana, predominantly among the Dagomba tribe, which involves handing over children to extended family relatives to strengthen family relationships, has had negative unintended consequences contributing to the kayaye phenomenon.<sup>118</sup> Considering the poor economic situation in the north, these family members send the girls to work independently or give them to third parties as bonded labour, exposing them to various forms of abuse.<sup>119</sup> Aside from this, some of the girls receive the blessing of their relatives to migrate south, given the limited opportunities for work within their locality and the ability to support their families with remittances.<sup>120</sup>

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<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> Government of Ghana & UNICEF, "It Takes a Village to Raise a Child - National Child Protection Study: Quantitative and Qualitative Research Towards the Strengthening of Child Protection in Ghana" (2014), in UNICEF & Global Affairs Canada, *Infra* note 121 at 4.

<sup>116</sup> UNICEF, Child Protection Information Sheets, 3 (2006).

<sup>117</sup> A Ziblim, "Addressing the Labour Market Vulnerabilities of Female Head porters (Kayayei) in Urban Ghana: An Optimal Policy Approach" (2017) 5:8 Intl J Humanities & Soc Stud 310.

<sup>118</sup> Sheryl Buske, "Prostitutes, Orphans, and Entrepreneurs: The Effect of Public Perceptions of Ghana's Girl Child Kayayei on Public Policy" (2014) 20:2 Wm & Mary J Women & L 295.

<sup>119</sup> *Ibid* at 304.

<sup>120</sup> See e.g. Opare, *supra* note 71.

A 2015 report by Global Affairs Canada, in collaboration with UNICEF, points out that Ghana is taking a systematic, evidence-based approach to enhancing its child protection frameworks through informed policy development and practical implementation.<sup>121</sup> The Report, however, did not shy away from pointing out the inadequacies of the existing child rights protection regimes, a remnant of colonial-era policies that do not meet the existing State context, including child marriages, trafficking and exploitation, and child labour in the fishing, agriculture, and mining industries.<sup>122</sup> These inadequacies also impact the protections available to the kayeye who face several vulnerabilities.

Kayaye is a trade where the customer has the leverage to determine what is heavy or not for the girls to carry.<sup>123</sup> The loads they carry in the market are hefty, considering the tender ages of many of the girls. Given the weight of the load they carry and the long distances they sometimes commute, they come under severe strain and end up with various health complications.<sup>124</sup> Some common health issues they encounter include chronic neck, waist, and joint pains, often worsened by poor posture and repetitive strains.<sup>125</sup> They also experience recurrent headaches due to prolonged physical exertion under harsh conditions.<sup>126</sup> They are not only vulnerable to customers who may refuse to pay at all or pay less than agreed upon, but they also sometimes contend with harassment by other members of the public, such as commercial drivers and even local police officers operating in and around the market centers.<sup>127</sup>

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<sup>121</sup> UNICEF & Global Affairs Canada, "Building a National Child Protection System in Ghana: From Evidence to Policy and Practice" (2015), online: <<https://www.cocoainitiative.org/knowledge-hub/resources/building-national-child-protection-system-ghana-evidence-policy-and>>

<sup>122</sup> *Ibid.*

<sup>123</sup> Buske, *supra* note 118 at 308.

<sup>124</sup> MA Yeboah & K Appiah-Yeboah, "An Examination of the Cultural and Socio-Economic Profile of Porters in Accra, Ghana" (2009) 18 *Nordic J Afr Stud* 2.

<sup>125</sup> Rhanda Kyerewaa Opuni et al., "Health needs of migrant female head porters in Ghana: evidence from the Greater Accra and Greater Kumasi Metropolitan areas" (2023) 22:1 *Int J Equity Health* 151.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

Kayaye girls primarily manage their finances by hiding their earnings or saving with an informal and traditional means called "Susu,"<sup>128</sup> which involves depositing an agreed-upon amount for each day of the week, while the money collector retains a fraction of the total amount at the end of the month.<sup>129</sup> Fraudulent manipulations mar this savings system, and people are occasionally defrauded by susu collectors who run off with their savings.<sup>130</sup>

As domestic economic migrants, the Kayaye's living conditions are inhumane. Most cannot afford to pay for accommodation and therefore sleep in the markets where they operate, at bus terminals, and in front of stalls at the end of business days.<sup>131</sup> They also lack provisions for electricity, running water, and proper sanitation.<sup>132</sup> As a result, they become vulnerable to various forms of sexual abuse and diseases, as well as exposure to harsh weather conditions and the risk of robbery attacks at night.<sup>133</sup> An extensive version of their housing-related challenges is examined below in this chapter.

It is striking to observe that most studies on head porters in Ghana focus mainly on their socio-economic conditions, migratory patterns, and health challenges, rather than framing these issues as fundamental human rights subjects.<sup>134</sup> This obvious loophole in the literature on head porters is the focus of my research, which aims to explore the human rights dimension and frameworks that specifically address most of the complexities associated with kayaye. Much of

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<sup>128</sup> Opare, *supra* note 71.

<sup>129</sup> *Ibid.*

<sup>130</sup> Yeboah and Appiah-Yeboah, *supra* note 124 at 3.

<sup>131</sup> Y.A. Agyei et al., *supra* note 53.

<sup>132</sup> *Ibid* at 298.

<sup>133</sup> *Ibid.*

<sup>134</sup> See for example, Vincent de Paul Kanwetuu, Jonathan Worae & Gloria Boatemaa Acheampong, "Coping with the Challenges of Head Portage in Ghana: The Case of Female Head Porters (Kayayei) in Kumasi" (2023) 7:1 Journal for Social Thought 14099; Jennifer Amoako, The Experiences of Young Female Head Porters (Kayayei): Social Support of Child Migrants in Accra, Ghana (MA Thesis, Norwegian University of Science and Technology, 2018) [unpublished]; Joyce Komesuor et al, "Work-related challenges and their associated coping mechanisms among female head porters (Kayayei) in Ghana" (2024) 19(7) PLOS ONE e11288907.

the policy research focuses more on the general hardships rather than their implications on human rights.<sup>135</sup> This approach mainly results in identifying problems without connecting them to violations of national and international human rights standards.

For this reason, my research stands out as it goes a step further by applying a human rights lens to the challenges of the head porters as described by other studies, and identifying the possible violations that ensue. Indeed, the rights to health and adequate housing, as discussed in subsequent paragraphs, are among the severe challenges that the head porters face. As my analysis will show, inadequate access to these rights has hindered the growth of the head porters both individually and as a group.

## **2.5 Housing-Related Challenges of Kayaye**

Adequate housing remains a constant challenge, especially in developing countries like Ghana. Ghana's housing deficit stood at 2.7 million in 2010, owing to rapid population growth and rural-urban migration.<sup>136</sup> A recent report by the Ghana Statistical Service, after the 2021 Population and Housing Census, points to a significant reduction in the national housing deficit by 33% since the year 2000,<sup>137</sup> with the current estimate of about 1.8 million.<sup>138</sup> With rapid urbanization, the compounding effects of the pandemic crisis and its disproportionate impact on the most vulnerable segment of the population, including head porters, will be discussed in detail in Chapter four.

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<sup>135</sup> *Ibid.*

<sup>136</sup> P Amoako, et al. "Housing Options and Incidence of Common Illness of Marginalized Groups: The Case of Female Head Porters in Urban Ghana" (2019) 1:1 Valley View U J Multidisciplinary Studies 111.

<sup>137</sup> Ghana Statistical Service, "2021 Population and Housing Census: Housing Characteristics" (Volume 3K, Ghana Statistical Service, Accra, 2021) at 36.

<sup>138</sup> Ghana Investment Promotion Centre, "Ghana's Real Estate Sector Report" (2022), online: Ghana Investment Promotion Centre <<https://www.gipc.gov.gh/wp-content/uploads/2023/04/Ghanas-Real-Estate-Sector-Report.pdf>>

Schaefer<sup>139</sup> and the World Health Organization (WHO)<sup>140</sup> discuss the critical link between housing and health. Schaefer identified vital health benefits of proper housing based on the WHO's report, including protection against infectious disease, injury, and poisoning, minimal exposure to mental and emotional stress, and provision of adequate neighbourhood services.<sup>141</sup> The WHO study emphasizes that adequate housing is foundational to physical, mental, and social well-being.<sup>142</sup> The study also highlights the housing-related challenges and the need for targeted interventions and inclusive housing policies to protect the health and dignity of marginalized groups.<sup>143</sup>

Adaawen & Owusu<sup>144</sup> examined the continued migration of head porters to the Kumasi metropolis and the conditions under which they live and work. Data from the survey of 100 head porters revealed that these girls live in harsh, hazardous conditions, which include poor housing, inadequate nutrition, and sanitation.<sup>145</sup> The study found, in corroboration with King & Amponsah,<sup>146</sup> that 49% lived in wooden shacks in slums that lacked basic household facilities such as bathrooms, toilets, and kitchens.<sup>147</sup> It also argues that head porters are priced out of the formal housing market because of their low incomes.<sup>148</sup>

Similarly, Amoako et al.<sup>149</sup> investigated the socio-economic factors influencing the housing choice for head porters in Accra and Kumasi through a simple random sampling

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<sup>139</sup> M Schaefer, "Home and Health: On Solid Foundations" (1990) 11.

<sup>140</sup> World Health Forum 38. See also World Health Organization, Housing: *The implications for health* (Geneva: WHO, 1987).

<sup>141</sup> Schaefer, *supra* note 139 at 38.

<sup>142</sup> WHO, *supra* note 140.

<sup>143</sup> *Ibid.*

<sup>144</sup> Adaawen & Owusu, *supra* note 98.

<sup>145</sup> *Ibid.*

<sup>146</sup> RS King & O Amponsah, "The Role of City Authorities in Contributing to the Development of Urban Slums in Ghana" (2012) 2 J Construction Project Management & Innovation 285.

<sup>147</sup> Adaawen & Owusu, *supra* note 98.

<sup>148</sup> *Ibid.*

<sup>149</sup> Amoako, et al. *supra* note 136.

technique of four hundred head porters. The typical housing choices observed among Kayaye were wooden shacks, open spaces, uncompleted buildings, and rented houses.<sup>150</sup> Some key determinants of housing decisions were found to correlate with education, family relations, and income levels.<sup>151</sup> The above research, like Awumbila et al.,<sup>152</sup> confirms that some head porters may have relatives in urban areas. However, the notion that having relatives in an urban setting might alleviate the head porters' housing challenges is inaccurate, as the studies detailed above indicate that many still live under substandard conditions.<sup>153</sup> The study by the WHO,<sup>154</sup> introduced above, offers insight into the intricate relationship between access to adequate housing and health outcomes, leading into the subsequent section to focus on the health-related challenges of the head porters.

## 2.6 Health-Related Challenges of Kayaye

It is fundamental to address the right to health in this work because several studies have shown the direct connection between head porters and health challenges such as reproductive health, pre- and post-natal care, mental health, and communicable diseases, due to their environment and the nature of their work. Komesuor & Meyer-Weitz, Opuni et al., and Dassah et al.,<sup>155</sup> have all underscored the need for a targeted response with an extensive focus on the health needs of kayaye. It is also evident that the pandemic's primary impact is on human health,<sup>156</sup>

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<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> Awumbila et al., *supra* note 82.

<sup>153</sup> *Ibid.* See also, Amoako et al, *supra* note 77.

<sup>154</sup> WHO, *supra* note 81.

<sup>155</sup> J Komesuor & A Meyer-Weitz, "Factors associated with mental health of internal migrants (Kayayei) in Agbogbloshie-Ghana" (2023) 23 BMC Women's Health 449; Opuni et al, *supra* note 125. Cornelius Dassah, Maximillian Kolbe Domapielle & Joshua Sumankuuro, "Contraceptive use among female head porters: implications for health policy and programming in Ghana" (2022) 8:12 Heliyon e11985.

<sup>156</sup> World Health Organization, "Coronavirus disease (COVID-19)", online: World Health Organization <[https://www.who.int/health-topics/coronavirus#tab=tab\\_1](https://www.who.int/health-topics/coronavirus#tab=tab_1)>

thereby making it prudent to explore the right to health as a prerequisite for effective legal mechanisms to ensure adequate intervention.

As part of its strategy to transition from a low-income country to a middle-income country, Ghana has focused on improving its health status by establishing a national health policy that aims to enhance access and quality of healthcare by equitably and efficiently distributing resources in the health sector.<sup>157</sup> With the introduction of the National Health Insurance Scheme (NHIS) in 2003, primary healthcare became available to every citizen after a registration process.<sup>158</sup> Although the Ghana National Health Insurance Scheme was intended to address the health needs of mainly poor people, membership was mostly associated with urban residents who had relatively higher socio-economic status.<sup>159</sup>

With a growing sentiment around the accessibility of the insurance scheme for low-income individuals, the national health insurance authority began deploying new strategies to enroll people with limited incomes.<sup>160</sup> This effort increased enrolment by 213% between 2012 and 2013, covering an additional 1.2 million Ghanaians.<sup>161</sup> Despite this effort, studies have provided insights into the scheme's low active enrollment of female head porters.<sup>162</sup> Some studies have also examined the payment for health expenditures and their effects on the general

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<sup>157</sup> Ghana, Ministry of Health, National Health Policy: Ensuring Healthy Lives for All (Rev ed, Accra: Ministry of Health, 2020), at 16 online: Ministry of Health <[https://www.moh.gov.gh/wp-content/uploads/2020/07/NHP\\_12.07.2020.pdf-13072020-FINAL.pdf](https://www.moh.gov.gh/wp-content/uploads/2020/07/NHP_12.07.2020.pdf-13072020-FINAL.pdf)>

<sup>158</sup> Samantha Lattof, "Migration and Health: A Mixed-Methods Study Among Female Migrants in Accra, Ghana" (PhD Dissertation, London School of Economics and Political Science, 2017) [unpublished].

<sup>159</sup> J Akazili et al., "Is Ghana's pro-poor health insurance scheme really for the poor? Evidence from Northern Ghana" (2014) 14:1 BMC Health Services Research 637.

<sup>160</sup> Lattof, *supra* note 158.

<sup>161</sup> *Ibid.*

<sup>162</sup> Godwin-Sallah Afizie Yiran, Joseph Kofi Teye & Gerald Akilah Bayor Yiran, "Accessibility and Utilisation of Maternal Health Services by Migrant Female Head Porters in Accra" (2015) 16:4 J Intl Migration & Integration 929. See also SR Lattof, "Health insurance and care-seeking behaviours of female migrants in Accra, Ghana" (2018) 33:4 Health Policy & Planning 505.

public, particularly the less privileged.<sup>163</sup> The results of these studies indicate that, despite efforts to improve healthcare delivery in Ghana, the finances of poor and vulnerable groups are put under considerable strain when seeking healthcare.<sup>164</sup>

While equitable access to healthcare remains a fundamental pillar of public health, it is crucial to recognize that this access must also encompass specialized areas such as reproductive and sexual health, where unique social, cultural, and medical challenges demand targeted attention and resources. Throughout history, reproduction and sexuality have been vital aspects of human identity and the creation of fulfilling social and personal relationships.<sup>165</sup> Significantly, sexual and reproductive health (SRH) is crucial to the existence of head porters. This is because most head porters are in the peak sexual reproductive years, but unfortunately lack access to SRH services despite having a considerable risk for sexually transmitted infections (STIs), unplanned pregnancy, and gender based violence.<sup>166</sup> The WHO defines reproductive health as "a state of complete physical, mental, and social wellbeing, and not merely the absence of disease or infirmity, in all matters related to the reproductive tract, its functions, and processes."<sup>167</sup> This definition, by implication, means that people can decide when, if, and how to reproduce and have a satisfying and safe sex life.<sup>168</sup>

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<sup>163</sup> Akazili et al., 2014, *supra* note 159. See also EW Kanmiki et al., "Out-of-pocket payment for primary healthcare in the era of national health insurance: Evidence from northern Ghana" (2019) 14:8 PLoS ONE.

<sup>164</sup> Adam Wagstaff et al., "Progress on impoverishing health spending in 122 countries: a retrospective observational study" (2018) 6:2 Lancet Global Health 180.

<sup>165</sup> Bernstein S & Hansen CJ, *Public choices, private decisions: Sexual and reproductive health and the Millennium Development Goals* (2006) United Nations Development Programme.

<sup>166</sup> Jarvis K et al, "Interventions Impacting the Accessibility of Sexual Reproductive Health Services for Head Porters in Sub-Saharan Africa: A Scoping Review Protocol" (2023) 18:8 PLoS One e0289564.

<sup>167</sup> World Health Organization, "Defining Sexual Health: Report of a Technical Consultation on Sexual Health, 28-31 January 2002, Geneva" (2006) World Health Organization.

<sup>168</sup> H Odoi-Agyarko, "*Profile of Reproductive Health Situation in Ghana.*" World Health Organization, Ghana, 2003.

Ghana introduced its first national reproductive health policy in 1996 as a framework for the provision of sexual and reproductive health services.<sup>169</sup> Considering that sexual and reproductive health hinges on sensitive religious, social, and cultural norms, most people shy away from discussing topics related to it.<sup>170</sup> Montagu and Graff assert that sexual and reproductive health incites an emotional response that ignites moral and cultural debate,<sup>171</sup> which in turn contributes to the majority of people with sexually transmitted diseases not reporting their symptoms for professional health assessment.<sup>172</sup> Other research findings point to a high literacy rate among Ghanaian women about modern contraceptives; however, that has not translated into effective use.<sup>173</sup>

Some scholars contend that the reasons for not utilizing sexual and reproductive health options include social-cultural factors, limited access, and low-quality standards.<sup>174</sup> For example, despite the effort by stakeholders to eradicate female genital mutilation, religion and ethnicity were found to be significant factors that influenced male preference for circumcised women in some remote parts of northern Ghana.<sup>175</sup> These practices were more prevalent in rural areas

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<sup>169</sup> *Ibid.*

<sup>170</sup> Olivia Tulloch et al., "Using Research to Influence Sexual and Reproductive Health Practice and Implementation in Sub-Saharan Africa: A Case-Study Analysis" (2011) 9:1 Health Research Policy & Systems 1, online: <<https://doi.org/10.1186/1478-4505-9-S1-S10>>

<sup>171</sup> Dominic Montagu & Maura Graff, "Financing mechanisms to improve equity in service delivery" in S Malarcher, ed, *Social determinants of sexual and reproductive health: Informing future research and programme implementation* (Geneva: World Health Organization Press, 2010) 37 at 40.

<sup>172</sup> RM Adanu et al, "Sexually Transmitted Infections and Health Seeking Behaviour among Ghanaian Women in Accra" (2008) 12:3 African J Reproductive Health 151.

<sup>173</sup> R M Adanu et al., "Sexual and Reproductive health in Accra, Ghana" (2012) 46:2 Ghana Medical J 58. See also Richard MK Adanu et al., "Contraceptive use by women in Accra, Ghana: Results from the 2003 Accra Women's Health Survey" (2009) 13:1 African J Reproductive Health 123.

<sup>174</sup> PB Adongo et al., "Cultural factors constraining the introduction of family planning among the Kassena-Nankana of Northern Ghana" (1997) 45 Social Science & Medicine 1789. See also S H Mayhew & S Adjei, "Sexual and reproductive health: Challenges for priority-setting in Ghana's health reforms" (2004) 19:1 Health Policy & Planning 150.

<sup>175</sup> E Sakeah, A Beke, HV Doctor & AV Hodgson, "Males' Preference for Circumcised Women in Northern Ghana" (2006) 10:2 African Journal of Reproductive Health 37.

where clinical services that do not conform to cultural norms may not be utilized even if they are accessible and free.<sup>176</sup>

It is no surprise that sexual and reproductive health discourse has advanced further research, including studies about the various health needs of head porters facing distinct challenges in their quest for survival within the unforgiving conditions under which they operate.<sup>177</sup> This advancement of sexual and reproductive health discourse, particularly that which focuses on the head porters, demonstrates how their health needs form an integral part of their survival. As I will discuss in subsequent chapters, maintaining the health of head porters was a crucial element in Ghana's response to the pandemic and underscores the importance of implementing socio-economic rights as a means to alleviate the compounded hardships the head porters already experience.

## **2.7 Impact of the COVID-19 Pandemic**

The impact of the COVID-19 pandemic cannot be overemphasized as it has profoundly shaped the implementation and enforcement of social and economic rights in Ghana.

Additionally, as I will address in subsequent chapters, the already precarious situation of the head porters was made worse by the COVID-19 pandemic.<sup>178</sup> In this section, I provide an overview of the general impacts of the COVID-19 pandemic.

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<sup>176</sup> J K Awoonor-Williams, M N Vaughan-Smith & J F Phillips, "Scaling up health system innovations at the community level: a case study of the Ghana experience" in S Malarcher, ed, *Social determinants of sexual and reproductive health: Informing future research and programme implementation* (Geneva: World Health Organization Press, 2010) 51 at 60.

<sup>177</sup> See, Opare, *supra* note 71; Boateng, *supra* note 90; Opuni et al, *supra* note 125.

<sup>178</sup> Moses Aberese-Ako et al, "The socio-economic and health effects of COVID-19 among rural and urban-slum dwellers in Ghana: A mixed methods approach" (2022) 17:7 *PLoS One* e0271551, online: <<https://doi.org/10.1371/journal.pone.0271551>>

The pandemic led to an accelerated decline in economic activities, severely disrupting all facets of livelihoods, including social and cultural aspects.<sup>179</sup> Aside from the COVID-19-related deaths recorded, the pandemic's impacts sparked fears of a possible economic recession globally.<sup>180</sup> The International Labour Organization reported that almost 2.7 billion people, representing 81% of the world's workforce, were affected by lockdown measures,<sup>181</sup> while over 26 million people filed for unemployment insurance during the pandemic.<sup>182</sup>

The pandemic's impact on Ghana's working class has received some attention. The Ghana Statistical Service reported that approximately 83% of households experienced declining incomes due to restrictions, with about 52.1% reducing their food consumption.<sup>183</sup> Approximately 42,000 people lost their jobs during the first two months of the pandemic.<sup>184</sup> The informal sector, which employs a large proportion of Ghana's workforce, faced significant challenges. A report by Women in Informal Employment: Globalizing and Organizing (WIEGO) found that during the lockdown period, only about 45% of market traders and 18% of street vendors were able to continue working.<sup>185</sup>

Head porters bore the brunt of the lockdown, with only about 2% able to work in April 2020 during the peak of the outbreak.<sup>186</sup> These numbers indicate the severity of measures that

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<sup>179</sup> M Nicola, *et al*, "The Socio-Economic Implications of the Coronavirus Pandemic (COVID-19): A Review" (2020) 78 *Int J Surg* 185, online: PubMed Central <<https://pmc.ncbi.nlm.nih.gov/articles/PMC7162753/>>

<sup>180</sup> DT Aduhene & E Osei-Assibey, "Socio-economic impact of COVID-19 on Ghana's economy: challenges and prospects" (2021) 48:4 *Intl J Social Economics* 543.

<sup>181</sup> International Labour Organization, "ILO Monitor: COVID-19 and the world of work. Second edition" (7 April 2020), online: ILO <[https://www.ilo.org/wcmsp5/groups/public/dgreports/dcomm/documents/briefingnote/wcms\\_740877.pdf](https://www.ilo.org/wcmsp5/groups/public/dgreports/dcomm/documents/briefingnote/wcms_740877.pdf)>

<sup>182</sup> Michael Karpman *et al.*, "The COVID-19 pandemic is straining families' abilities to afford basic needs" (2020) *Urban Institute* at 500.

<sup>183</sup> Ghana Statistical Service. *Brief on COVID-19 Households and Jobs Tracker*. Ghana Statistical Service (2020), online:

<<https://statsghana.gov.gh/gsspublications.php?category=MjE5MDQ4Nzg5MS4yNDk1/webstats/p289p3ssr9>>

<sup>184</sup> Aduhene & Osei-Assibey, *supra* note 180.

<sup>185</sup> WIEGO. "COVID-19 Crisis and the Informal Economy: Informal Workers in Accra, Ghana." January 2021, online: International Development Research Centre <<http://www.wiego.org/COVID-19-Global-Impact-Study>>

<sup>186</sup> *Ibid.*

limited the group's ability to work and generate revenue. At the same time, they had to contend with the risk of contracting the virus due to deplorable housing conditions, as I have pointed out above. According to Wenham et al.,<sup>187</sup> the pandemic had a disproportionate impact on women because most women tend to engage in the informal economic sector with little or no social protection and security, making them susceptible to shocks. The discussion in Wenham et al.,<sup>188</sup> above of the impact on women, offers some insight into the likely impact of the pandemic on the head porters who are some of the most vulnerable women in Ghana. Alon et al. concurred with the above finding while adding that the closure of schools and daycares, with the majority of women workers, exacerbated the gender divide regarding the standard of living.<sup>189</sup>

Bukari et al.,<sup>190</sup> remarked that the pandemic exacerbated disparities in individual consumption behaviour, with a reported 18% decline in consumption in households headed by unemployed persons. Schotte et al.,<sup>191</sup> discovered that approximately 42% of households in Ghana lost their sources of income, while about 82% experienced a reduction in income. The study also found that the pandemic's impact was more intense on women in the informal sectors of the Ghanaian economy, such as head porters, than on men.<sup>192</sup> According to the study, low-income earners, including head porters, were more likely to drop out of work during the early phase of the pandemic, and they also encountered challenges in recovery even after restrictions were eased.<sup>193</sup>

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<sup>187</sup> Clare Wenham, Julia Smith & Rosemary Morgan, "COVID-19: the gendered impacts of the outbreak" (2020) 395:10227 *Lancet* 846.

<sup>188</sup> *Ibid.*

<sup>189</sup> Titan Alon et al, "The Impact of COVID-19 on Gender Equality" (2020) National Bureau of Economic Research Working Paper No 26947.

<sup>190</sup> Chei Bukari et al, "Impact of COVID-19 on Poverty and Living Standards in Ghana: A Micro-Perspective" (2021) 9:1 *Cogent Economics & Finance* 1879716.

<sup>191</sup> S Schotte et al., "The Labour Market Impact of COVID-19 Lockdowns: Evidence from Ghana" (2021) WIDER Working Paper 2021/27, UNU-WIDER.

<sup>192</sup> *Ibid.*

<sup>193</sup> *Ibid.*

Akuoko et al.<sup>194</sup> examined the impact of the pandemic on the informal sector, with considerable emphasis on the vital role of informal sector workers, often disregarded by city authorities, and regulatory reforms that need to be implemented during and after a major pandemic like COVID-19. The study found that urban workers, in particular, street hawkers and head porters, could not get access to enough food due to the lockdown imposed in the cities.<sup>195</sup> Food rations supplied by the government were inadequate and failed to protect individuals living in poverty from the hardships brought about by the pandemic.<sup>196</sup> The inadequacy of food support will be examined further in chapter four, where its tangible effects on the daily subsistence strategies of head porters will be determined.

## **2.8 Chapter observations**

In this chapter, I have extensively demonstrated a contextualized understanding of head portage in Ghana and the Kayaye's constant struggles in urban settings. I presented a brief overview of Ghana and its migratory trends since independence, and how these relate to the phenomenon of head porters. I also documented the housing, health, and other aspects of their daily living before and during the pandemic. This exercise is intended to provide a background upon which my discussion in chapter four, which focuses on an analysis of Ghana's targeted responses and their implications for the right to health and adequate housing, will develop. The Ghanaian situation merited attention, given the praise the government received for managing the

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<sup>194</sup> B Patience Akuoko, Vincent Aggrey & Alexander Amoako-Arhen, "Ghana's informal economic sector in the face of a pandemic" (2021) 3:1 Social Sciences & Humanities Open 100094.

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

crisis.<sup>197</sup> Despite the praise and massive international support, as I will address in my analysis, the results of its responses are less than exceptional.<sup>198</sup>

The challenges faced by the Kayaye were made worse by the COVID-19 pandemic as they struggled to comply with pandemic preventive measures. Their unhygienic conditions, which are primarily congested and with little space for social distancing, put them at a higher risk of contracting the disease.<sup>199</sup>

To fully appreciate the scope of these challenges and to identify effective pathways for change, it is essential to examine the legal frameworks that govern the protection and enforcement of the socio-economic rights of head porters in Ghana. The next chapter will therefore explore Ghana's Constitutional, statutory, and international obligations, assessing the extent to which these legal instruments offer protections and how they can be translated into actionable practices.

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<sup>197</sup> Augustine Blay Arko, "Does Collaborative Governance Work? Looking at Ghana's Response to the COVID-19 Pandemic" (2024) 10:1 Cogent Social Sciences 2420436, online: <<https://doi.org/10.1080/23311886.2024.2420436>>

<sup>198</sup> NK Quakyi et al., "Ghana's COVID-19 Response: The Black Star Can Do Even Better" (2021) 6:3 BMJ Global Health e005569.

<sup>199</sup> Suleiman Dauda & Razak J Imoro, "Ghana and COVID-19: Perspectives on Livelihoods, Health and Living Conditions of Internal Migrants in Accra" (2022) 8:1 Cogent Social Sciences, online: <<https://doi.org/10.1080/23311886.2022.2072060>>

## CHAPTER THREE

### LEGAL FRAMEWORK FOR THE ENFORCEMENT OF SOCIO-ECONOMIC RIGHTS

#### 3.0 Introduction

Eradicating poverty and underdevelopment are inextricably linked with successfully implementing and enforcing socio-economic rights.<sup>200</sup> Strengthening these rights, including access to healthcare, nutrition, adequate housing, and social security, not only safeguards human dignity but also acts as a critical mechanism for improving overall living standards.<sup>201</sup> As I will detail below, the legal landscape that shapes socio-economic rights has undergone significant evolution over the past few decades. Through landmark human rights treaties, a robust legal framework of socio-economic rights has developed and helped influence regional agreements and national legislation.

This chapter explores the legal framework governing the implementation and enforcement of socio-economic rights in Ghana. Relying on international legal instruments like the Universal Declaration of Human Rights (UDHR),<sup>202</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>203</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>204</sup> and the Convention on the Rights of the Child (CRC),<sup>205</sup> to which Ghana is a party, I highlight in this chapter relevant provisions

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<sup>200</sup> Lilian Chenwi, "An Appraisal of International Law Mechanisms for Litigating Socio-economic Rights, with a Particular Focus on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the African Commission and Court" (2011) 22:3 Stellenbosch L Rev 683.

<sup>201</sup> S Liebenberg, "South Africa's Evolving Jurisprudence on Socio-economic Rights: An Effective Tool in Challenging Poverty?" (2002) 6:2 Law, Democracy & Development 159.

<sup>202</sup> UDHR, *supra* note 22.

<sup>203</sup> ICESCR, *supra* note 23.

<sup>204</sup> CEDAW, *supra* note 28.

<sup>205</sup> CRC, *supra* note 29.

relatable to head porters and how they can be applied to address their socio-economic rights, specifically the rights to health and adequate housing. I also point out provisions germane to socio-economic rights from a domestic legal perspective by examining relevant legislation in Ghana and briefly discussing the justiciability debate within the Ghanaian legal system.

Understanding the justiciability debate within the Ghanaian legal system is crucial, as it directly influences the extent to which socio-economic rights can be legally enforced and the grounds upon which the state can be held to account for violations or failures in fulfilling its obligations.

Legal enforcement mechanisms for realizing these rights are also mentioned, considering judicial and non-judicial avenues. This exercise aims to contextualize socio-economic rights from a legal perspective in Ghana and establish a human rights standard for measuring the lived experiences of head porters during the pandemic. Additionally, it serves as a benchmark to gauge the government's compliance with its commitments to international and domestic laws. Such an approach is integral to the efficacy of rights-based advocacy and to ensuring that Ghana meets its responsibilities at both the domestic and international levels.

The transition from chapter two, which provided a holistic context on head portage and its intricacies, to this chapter, which will examine the principal legal frameworks for enforcing socio-economic rights in Ghana broadly, is logical and essential for this research. This linkage is significant because it underscores the need for a contextualized legal frame that addresses the specific issues that are relevant to this research, i.e. the right to health and adequate housing. This chapter, therefore, will examine how existing laws and policies address, or fail to address, the vulnerabilities of marginalized groups like head porters in times of crisis.

### 3.1 International Legal Framework

Since the United Nations (U.N.) General Assembly adopted the UDHR in 1948,<sup>206</sup> significant progress has been made in the recognition and protection of human rights around the world.<sup>207</sup> The milestone acceptance of the UDHR is regarded by some policymakers, legal scholars and human rights advocates as the beginning of modern efforts to safeguard human rights.<sup>208</sup> In this chapter, I have limited the discussion to the UDHR and four primary international legal frameworks: the ICESCR, CEDAW, CRC, and the African Charter.<sup>209</sup>

I chose these texts as my primary sources because they collectively form the core legal and normative framework for protecting and promoting human rights globally, but perhaps more importantly, socio-economic rights at the regional and State levels. An analysis of the relevant provisions from these instruments will help to ensure that this research develops a comprehensive and contextual framework for analyzing the situation of the head porters. That is because these instruments embody the evolution, codification, and regional adaptation of international human rights norms and practices.

### 3.2 Universal Declaration of Human Rights (UDHR)

The U.N. first codified human rights through the UDHR in 1948.<sup>210</sup> The UDHR was drafted by the Commission on Human Rights.<sup>211</sup> As a General Assembly resolution, it was not

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<sup>206</sup> The Universal Declaration of Human Rights (UDHR) was adopted by U.N. General Assembly Resolution 217 (III), on December 10, 1948, at the Palais de Chaillot, Paris. See UDHR, *supra* note 22.

<sup>207</sup> Hurst Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law" (1996) 25 Ga J Intl & Comp L 287.

<sup>208</sup> David Weissbrodt & Connie de la Vega, *International Human Rights Law: An Introduction* (Philadelphia: University of Pennsylvania Press, 2007) at 3.

<sup>209</sup> African Charter, *supra* note 30.

<sup>210</sup> UDHR, *supra* note 22.

<sup>211</sup> United Nations, "Universal Declaration of Human Rights (1948), Drafting History" (19 June 2014), online: *United Nations Research* <<https://research.un.org/en/undhr/draftingcommittee>>

intended to be legally binding. In the words of Mrs. Roosevelt, the Chair of the Commission on Human Rights, during its drafting the UDHR “is not, and does not purport to be a statement of law or legal obligation” but to act as a “common standard of achievement for all peoples of all nations.”<sup>212</sup> However, the UDHR has inspired subsequent human rights treaties at the U.N. and sub-regional levels and is widely accepted by UN member states as part of customary international law.<sup>213</sup> It has also impacted the essence of national Constitutions and decisions of domestic courts.<sup>214</sup>

The UDHR draws an evident distinction between Civil and Political (CP) rights (Arts. 3-21) and Economic, Social, and Cultural (ESC) rights (Arts. 22-27).<sup>215</sup> Article 2 affirms the universality and non-discrimination applicable to all rights,<sup>216</sup> while Article 3 establishes life and security as foundational to the CP framework.<sup>217</sup> The recognition of ESC rights as fundamental in Articles 22-27 marked a significant normative innovation, yet also exposed ideological and practical tensions over their enforceability and their relationship to the more established CP rights, highlighting persistent challenges to the principle of indivisibility in human rights law.<sup>218</sup>

Relative to the right to health, a provision that is relevant to this research and the state of head porters, Article 25 of the UDHR states that,

"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, adequate housing, and medical care and necessary social services, and the right to security in the event

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<sup>212</sup> Alain Destexhe, “Neutrality or Impartiality” in Kevin M Cahill, ed, *History and Hope: The International Humanitarian Reader* (New York: Fordham University Press, 2013) 54 at 78.

<sup>213</sup> Hannum, *supra* note 207 at 312.

<sup>214</sup> Manisuli Ssenyonjo, "Reflections on State Obligation with Respect to Economic, Social and Cultural Rights in International Human Rights Law" (2011) 15:6 Int'l J Hum Rts 969.

<sup>215</sup> UDHR *supra* note 22 at Art. 3-27.

<sup>216</sup> UDHR *supra* note 22 at Art. 2.

<sup>217</sup> *Ibid* at Art. 3.

<sup>218</sup> MA Glendon, "Knowing the Universal Declaration of Human Rights" (1998) 73:5 Notre Dame L Rev 1153 at 1167.

of... sickness or disability... or other lack of livelihood in circumstances beyond his control."<sup>219</sup>

This provision encompasses a comprehensive set of circumstances that clearly define the right to health. As I will examine below, this provision incorporates the essential requirements which will adequately frame my discussion on the right to health of the head porters in light of the pandemic.

Even though the UDHR is legally non-binding, its significance cannot be overstated. The principles it embodies, groundbreaking at the time of their introduction, have since attained a universal and enduring relevance, and have catalyzed the creation of over 70 human rights instruments, consistently and progressively implemented and interpreted at both global and regional levels.<sup>220</sup> It serves as a benchmark for the Universal Periodic Review undertaken by the UN Human Rights Council for each state party's human rights record and as a framework to measure compliance with human rights obligations.<sup>221</sup> For these reasons, I thought it prudent to reiterate the UDHR in this chapter as a foundational legal framework in discussing the socio-economic rights of head porters.

### **3.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The ICESCR was adopted in 1966 and came into force in 1976.<sup>222</sup> It is at the core of the international human rights legal order, forming part of the International Bill of Human Rights.<sup>223</sup> It transforms the aspirational principles found under articles 22-27 of the UDHR into binding

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<sup>219</sup> UDHR, *supra* note 22 at Art. 25.

<sup>220</sup> Hannum, *supra* note 207 at 290.

<sup>221</sup> Universal Periodic Review: Basic facts, OHCHR, online: <<https://www.ohchr.org/en/hr-bodies/upr/basic-facts>>

<sup>222</sup> United Nations Treaty Collection, online:

<[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en)>

<sup>223</sup> Mary Dowell-Jones, "Contextualizing the International Covenant on Economic, Social and Cultural Rights: Assessing the Economic Deficit" in *International Studies in Human Rights*, 1 (Leiden: Martin Nijhoff Publishers, 2004) at 1.

legal commitments. Through substantive articles, the ICESCR guarantees human rights to decent employment, access to healthcare services, educational opportunities, a sufficient standard of living, and access to social security systems, among others.<sup>224</sup> It is one of the treaties with an overwhelming number of ratifications, with current standing of 173 state parties.<sup>225</sup>

Unsurprisingly, its controversial nature attracted a significant number of declarations and reservations.<sup>226</sup> Despite this, emerging democratic nations such as Ghana and South Africa have incorporated socio-economic rights into their domestic Constitutional frameworks.<sup>227</sup> This inclusion represents, at least in principle, a commitment by states to gradually improve basic social welfare standards for their citizens.<sup>228</sup> While the practical enforcement may vary, the Constitutional and statutory recognition of these rights signifies an acknowledgment of the State's role in promoting social and economic well-being.

### **3.4 State Obligation Under ICESCR**

The ICESCR imposes a triple normative duty on states – respect, protect, and fulfill socio-economic rights.<sup>229</sup> As will be seen below, in Ghana, these overarching obligations shape both the interpretation of rights and the requirement for effective legislative, policy, and administrative actions. State obligation is one of the most important components of every international human rights treaty. This section examines the international human rights

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<sup>224</sup> *Ibid.*

<sup>225</sup> United Nations Treaty Collection, *supra* note 222.

<sup>226</sup> United Nations Treaty Collection, online: <<https://treaties.un.org/>>

<sup>227</sup> Constitution of Ghana, *supra* note 34. *Constitution of the Republic of South Africa*, (1996) [Constitution of South Africa].

<sup>228</sup> Cecilia Jung & Evan Rosevear, “Economic and Social Rights Across Time, Regions, and Legal Traditions: A Preliminary Analysis of the TIESR Dataset” (2012) 30:3 *Nordic J Hum Rts* 372.

<sup>229</sup> U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties’ Obligations (Art 2(1) of the Covenant), 14 December 1990, UN Doc E/1991/23 at para 1. [Hereinafter, General Comment No. 3]

obligations of State parties to the ICESCR arising from Article 2(1) as they directly shape and influence the implementation and interpretation of each substantive right outlined in the

Covenant. Article 2(1) provides that:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”<sup>230</sup>

Four obligations immediately arise from the text of the provision.

1. The obligation to take steps .... by all appropriate means,
2. The obligation to progressively achieve the realization of ESC rights.
3. The obligation to utilize maximum available resources,
4. The obligation of international assistance and cooperation.

Having outlined the four core obligations incumbent on States under article 2(1) of the Covenant, it is now essential to analyze how these duties are interpreted and applied in practice.

### **3.4.1 Obligation to take steps.... by all appropriate means**

The requirement to take steps by all appropriate means represents an obligation on states to implement measures that are urgently suitable to realize ESC rights.<sup>231</sup> A crucial step that must be adopted is the passage of legislative instruments that serve as a firm foundation to protect and enforce rights in the event of a potential violation.<sup>232</sup> In Ghana, legislation is a crucial step for implementing and enforcing the rights guaranteed under the ICESCR, enabling these rights to be protected and realized through national law.<sup>233</sup> It also serves as a base at the domestic level, which can be developed further through judicial review.<sup>234</sup>

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<sup>230</sup> ICESCR, *supra* note 23 at Art. 2.

<sup>231</sup> General Comment No. 3, *supra* note 229 at para 2.

<sup>232</sup> Ssenyonjo, *supra* note 15.

<sup>233</sup> Constitution of Ghana, *supra* note 34 at Art. 75.

<sup>234</sup> *Ibid.*

### 3.4.2 Progressive realization

The obligation of progressive realization recognizes that ESC rights may only be achieved partially within a short period, considering the realities of the world and the complexities of full implementation and enforcement.<sup>235</sup> It mandates that states continuously improve ESC rights and refrain from taking retrogressive measures.<sup>236</sup> They must also be "taken within a reasonably short time after the Covenant's entry into force for the states concerned" and be "deliberate, concrete and targeted as clearly as possible" to fulfill State obligations.<sup>237</sup>

### 3.4.3 Obligation to utilize maximum available resources

The obligation to utilize the maximum available resources under the ICESCR requires states to allocate and efficiently use all their accessible resources to progressively realize economic, social, and cultural rights without forgoing other essential services.<sup>238</sup> This obligation also requires that priority be accorded to the vulnerable in times of strained resources.<sup>239</sup>

### 3.4.4 International assistance and cooperation

International assistance and cooperation have always been pivotal for advancing human rights on the regional and global stage.<sup>240</sup> Although developed countries have consistently asserted that they bear no legal obligation to transfer resources to developing countries, they have nonetheless continued to extend support.<sup>241</sup> The Committee on ESCR notes that international assistance and cooperation are 'particularly incumbent' upon states that can provide

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<sup>235</sup> Bruce Porter, *Rethinking Progressive Realization: How Should it be Implemented in Canada?* (Background Paper for a Presentation to the Continuing Committee of Officials on Human Rights, 4 June 2015) at 3.

<sup>236</sup> *Ibid.*

<sup>237</sup> General Comment No. 3, *supra* note 229 at para 2.

<sup>238</sup> Philip Alston & Gerard Quinn, "The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights" (1987) 9:2 Hum Rts Q 156.

<sup>239</sup> General Comment No. 3, *supra* note 229 at para 12.

<sup>240</sup> United Nations Human Rights Council, Implementation and Enhancement of International Cooperation in the Field of Human Rights, UN Doc A/HRC/53/46 (2023) at para 3.

<sup>241</sup> *Ibid.*

the necessary support, since the drafters of the Covenant conceived the idea of ‘maximum available resources’ to refer to those resources within the country and across the international community.<sup>242</sup>

By implication, developed nations should provide assistance where it is desperately required, in order to help less affluent states meet their minimum core obligations. To further understand state obligations under the ICESCR, it is essential to explore the concept of the minimum core obligation, which delineates the baseline standards that must be guaranteed to all individuals regardless of resource constraints. The following section will discuss this critical concept in detail.

### **3.5 Minimum core obligations**

The requirement for State parties to submit periodic reports on the measures adopted and progress made in achieving the rights guaranteed under the ICESCR<sup>243</sup> led to the establishment in 1985 of a body of independent experts responsible for monitoring State party compliance with the provisions of the Covenant and for issuing comprehensive reports that address their concerns and recommendations (General Comments).<sup>244</sup> The Committee on Economic, Social and Cultural Rights (CESCR) is widely accredited with being the first United Nations operative body to articulate the concept of ‘Minimum core obligations’<sup>245</sup> and has since 1990 equated the concept with a presumptive legal entitlement and a baseline for basic compliance.<sup>246</sup>

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<sup>242</sup> General Comment No. 3, *supra* note 229 at paras 13 and 14.

<sup>243</sup> ICESCR, *supra* note 23 at Art. 16.

<sup>244</sup> United Nations, Committee on Economic, Social and Cultural Rights, online: OHCHR <<https://www.ohchr.org/en/treaty-bodies/ceschr>>

<sup>245</sup> General Comment No. 3, *supra* note 229 at para 10.

<sup>246</sup> *Ibid.*

The minimum core obligations are essential interpretive tools to guide states in realizing the object and purpose of international treaties and their obligations in good faith.<sup>247</sup> The goal of the minimum core obligation is to establish nominal legal content for the nuanced claims of ESC rights by recognizing the essential components of the rights to health, food, education, and adequate housing,<sup>248</sup> in accordance with essential legal obligations. This strategy imitates the minimalist ideology of rights realization by scaling down goals to achieve maximum results.<sup>249</sup> In response to the outbreak of the COVID-19 pandemic, the Committee on ESCR emphasized that as part of states' minimum core obligation, special attention must be offered to the most marginalized and disadvantaged groups, such as the elderly, persons with disabilities and migrant workers.<sup>250</sup> It also reiterated that social protection measures must be strengthened to mitigate the economic and social shocks resulting from the pandemic.<sup>251</sup> Responses were to be on a non-discriminatory basis and ensure equal access to essential services.<sup>252</sup>

Reading these obligations into this research, the ICESCR imposes a duty on Ghana to always prioritize, with immediate effect, the minimum essential levels of healthcare access and decent housing options for the head porters. This obligation continued during the pandemic. The general guidance offered by the Committee through its Statement on COVID and the Statement on equitable access to vaccines provided a specific interpretation of more abstract treaty language requirements.<sup>253</sup> These statements should have served as a guide for Ghana's responses,

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<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.*

<sup>249</sup> Joshua Cohen, "Minimalism about Human Rights: The Most We Can Hope For?" (2004) 12:2 J Political Philosophy 190 at 192.

<sup>250</sup> CESCR, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, 17 April 2020, E/C.12/2020/1 [Hereafter, Statement on Covid] para. 15.

<sup>251</sup> *Ibid* at para 16.

<sup>252</sup> Statement on universal and equitable access to vaccines for COVID-19, 27 November 2020, E/C.12/2020/2. [Herein, Statement on Vaccines] at 3.

<sup>253</sup> *Ibid.*: Statement on Covid, *supra* note 250.

which should have been developed to address the particular health, and accommodation concerns appropriate to the pandemic. As I will address in Chapter four, in respect of the head porters, Ghana's response fell short of its obligations.

### **3.6 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

Since its inception in 1945, the U.N. has considered equality for women a fundamental principle.<sup>254</sup> Acting on this proposition, the U.N. adopted the CEDAW as a landmark treaty on December 18, 1979.<sup>255</sup> It entered into force on September 3, 1981, after 20 U.N. member states initially ratified it.<sup>256</sup> The Convention acknowledges the various forms of discrimination suffered by women due to their gender and reaffirms the U.N.'s and specialized agencies' commitment to promoting equality between men and women.<sup>257</sup> The Convention also tasks State parties with accelerating the realization of men's and women's equality and addressing prevailing gender relations and stereotypes.<sup>258</sup>

One unique feature of this treaty, among other human rights conventions, is the novel emphasis on rural women, which is critical to the subject of my research. Article 14(1) recognizes "the particular problems faced by rural women" as well as "the significant roles which women play in the economic survival of their families." It obliges states to "ensure the application" of the Convention's entirety to "women in rural areas."<sup>259</sup> Article 14(2) details how rural women are or might be distinguishably disadvantaged compared to their counterparts in

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<sup>254</sup> Charter of the United Nations, 1 UNTS XVI (entered into force, 24 October 1945) at Art. 8.

<sup>255</sup> CEDAW, *supra* note 28.

<sup>256</sup> *Ibid.*, at Art. 27(1).

<sup>257</sup> *Ibid* at Preamble.

<sup>258</sup> *Ibid* at Art. 5.

<sup>259</sup> *Ibid* at Art. 14(1).

urban settings. The rights articulated in this section suggest that rural women generally do not enjoy specific benefits such as education, healthcare, social security, and other communal activities. The list could also be interpreted as delineating rural women's fundamental rights, even though some of these rights, like the right to health care, are covered in other parts of the treaty. Lastly, incorporating rights such as social security into this section recognizes the link between rural areas and their contribution to the informal economy.<sup>260</sup>

Like the ICESCR, the adoption of CEDAW was also met with reservations from over 50 state parties. Some of the reservations stem from a rejection of the applicability of, for example, Article 9, relating to the equality of men and women vis-à-vis the nationality of their children, and Article 29, which concerns the interpretation or application of the convention's provisions and the resolution of a dispute.<sup>261</sup> However, there is no record of Ghana making a reservation to CEDAW. This indicates a strong commitment to the Convention's principles and the elimination of gender discrimination.

In response to its obligations under the Convention, Ghana submitted a report to the Committee on CEDAW covering the period from 1993 to 2003. The report points to progress made in women's health, education (especially of the girl child), and economic empowerment.<sup>262</sup> The report indicates that about 66% of the population resides in rural areas, without specifying the rural female population at the time.<sup>263</sup> It provides details about inroads made in terms of rural women's education, access to safe drinking water, maternal care and safe contraceptive use. It

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<sup>260</sup> Lisa R. Pruitt, "Migration, Development, and the Promise of Cedaw for Rural Women" (2009) 30:3 Mich J Int'l L 707.

<sup>261</sup> Laurel B. Mullins, "CEDAW: The Challenges of Enshrining Women's Equality in International Law" (2017) 20:3 Public Integrity 257.

<sup>262</sup> Committee on the Elimination of Discrimination against Women, "Combined Third, Fourth and Fifth Periodic Reports of States Parties: Ghana", UNCEDAWOR, 2005, U.N. Doc CEDAW/C/GHA/3-5. [Combined 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> periodic report].

<sup>263</sup> *Ibid* at para 183.

also highlights the limited land rights of women, despite their significant role in the country's food chain.<sup>264</sup> Other barriers, such as traditional patriarchal systems, widespread polygamy in rural areas and other customary practices, unfortunately, contribute to the problems rural women face.<sup>265</sup> These issues are very common among the head porters, as mentioned in chapter 2.

In addressing the report submitted by Ghana, the Committee commended Ghana for its efforts to promote gender equality, including legal reforms and the establishment of institutional mechanisms to advance women's rights.<sup>266</sup> It expressed concern over persistent discrimination against women in various spheres, particularly in relation to customary practices, violence against women, and women's limited participation in decision-making.<sup>267</sup> It also highlighted challenges such as inadequate enforcement of laws, insufficient resources for gender equality initiatives, and the continued prevalence of harmful traditional practices.<sup>268</sup> It further recommends that the State party pay particular attention to the conditions of women workers in the informal sector with a view to ensuring their access to social services.<sup>269</sup>

Key among its recommendations are; strengthening the enforcement of existing laws, adopting temporary special measures to accelerate de facto equality, increasing efforts to eliminate violence against women, addressing the needs of rural women, and enhancing data collection on women's status.<sup>270</sup> The recommendations specifically addressing the challenges of rural women,<sup>271</sup> can be identified as steps that can positively impact the head porters and end the

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<sup>264</sup> *Ibid* at para 191.

<sup>265</sup> Cynthia Gyan, *Gasping for Breath: Women's Concerns and the Politics of Community Development in Rural Ghana* (PhD Dissertation, Wilfrid Laurier University, 2018) [unpublished].

<sup>266</sup> Concluding comments of the Committee on the Elimination of Discrimination against Women: Ghana, CEDAW/C/GHA/CO/5 (2006).

<sup>267</sup> *Ibid* at 246.

<sup>268</sup> *Ibid* at 233.

<sup>269</sup> *Ibid* at para 241.

<sup>270</sup> *Ibid*.

<sup>271</sup> *Ibid* at paras 33-34.

cycle of indignity that has plagued this group for decades. Had these recommendations been thoroughly enforced with the full potency of law and political will, it might have improved the situation of the head porters, because it would have required the state to proactively address the poverty and lack of access to fundamental services that head porters face. However, results from recent studies, as cited in Chapter Two, and the realities of head porters during the pandemic support the thesis that there has been a systemic failure to address the concerns of head porters, and the pandemic exposed this violation of state obligations. This position will be thoroughly analyzed in Chapter 4.

### **3.7 Convention on the Rights of the Child (CRC)**

The U.N. General Assembly adopted the CRC<sup>272</sup> in 1989. Ghana was the first nation to ratify it on February 10, 1990.<sup>273</sup> The Convention was the inaugural global treaty that consolidated a comprehensive set of standards for children's rights within a single document, framing those rights not as merely aspirational goals but as legally enforceable obligations.<sup>274</sup> This approach raises the status of children's rights, requiring State parties to treat them with the same seriousness and urgency as other human rights.

This research recognizes that a substantial proportion of head porters are below the age of 18 and therefore qualify as children within the meaning of Article 1 of the CRC.<sup>275</sup> This classification triggers the application of a range of binding child rights obligations. Of relevance are the principles of non-discrimination (Article 2) and the best interests of the child (Article 3), which provide a normative lens through which all state and policy actions must be evaluated.

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<sup>272</sup> CRC, *supra* note 29.

<sup>273</sup> United Nations Treaty Collection, *supra* note 222.

<sup>274</sup> UNICEF, *The State of the World's Children 2000* (New York: UNICEF, 2000).

<sup>275</sup> Agyei, Kumi & Yeboah, *supra* note 43.

The rights to life, survival, and development (Article 6) and to the highest attainable standard of health (Article 24) are similarly implicated, with the right to privacy (Article 16) capable of being interpreted to encompass access to safe and decent accommodation,<sup>276</sup> a condition that, as noted above, is materially linked to health outcomes.

Yet, despite the existence of Ghana's broader child protection framework the Children's Act,<sup>277</sup> and a suite of national child welfare policies,<sup>278</sup> the absence of a specific policy framework addressing the child Kayaye phenomenon specifically represents a systemic shortfall.<sup>279</sup> This policy void not only fragments the protective reach of existing laws but also exposes these children to heightened risks of exploitation, hazardous living conditions, and chronic rights violations. This is because without clear legal frameworks, these children lack the adequate safeguards, support, and recognition necessary to ensure their safety and well-being.

### **3.8 African Charter on Human and Peoples Rights (ACHPR)**

At the height of Africa's growing independence struggle from colonial rule in the 1950s and 1960s, African nationalists like Dr. Kwame Nkrumah and Sékou Touré necessarily placed more weight on consolidating Africa's independence and sovereignty than on the continent's socio-economic transformation.<sup>280</sup> With the rise of military dictatorships, corruption, political conflicts, and unsustainable debt burdens, the limited provision of social services like health and

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<sup>276</sup> UN Committee on Economic, Social and Cultural Rights, The Right to Adequate Housing, UN Doc E/1992/23 (13 December 1991), para 7. [General Comment No. 4]. The interconnectedness of the right to adequate housing and privacy is restated under this paragraph.

<sup>277</sup> *Children's Act 1998* (Ghana), Act 560.

<sup>278</sup> See, Ghana, Ministry of Gender, Children and Social Protection, Child and Family Welfare Policy (Accra: Ministry of Gender, Children and Social Protection, 2015); Ministry of Gender, Children and Social Protection, Ghana National Social Protection Policy (Accra: Ministry of Gender, Children and Social Protection, 2015).

<sup>279</sup> Clara Osei-Boateng, "A Report on Kayayei in Ghana" (2012) Trade Union Congress Research Paper, online: <<https://www.wiego.org/wp-content/uploads/2019/09/G05.pdf>>

<sup>280</sup> Christopher Mbazira, "A Path to Realising Economic, Social and Cultural Rights in Africa - A Critique of the New Partnership for Africa's Development" (2004) 4:1 Afr Hum Rts LJ 34.

education broke down, resulting in aggravated unemployment and widespread poverty.<sup>281</sup> The adoption of the African Charter<sup>282</sup> ushered in a new era of reformation that was desperately needed to elevate the continent, laying considerable emphasis on socio-economic rights.

The African Charter imposes a range of both negative and positive obligations on states to refrain from violating existing rights and commit to steps, including legislative measures, resource mobilization, and others, to comply with their obligations to improve socio-economic rights under the Charter.<sup>283</sup> Some of the fundamental socio-economic rights recognized under the Charter include the right to the highest attainable standard of health (Art. 16), and the right to education (Art. 17). Effective protection of these rights requires a supervisory body in the form of the African Commission on Human and Peoples' Rights (African Commission)<sup>284</sup> and the African Court of Human and People's Rights (African Court)<sup>285</sup> to provide a practical assessment of the implementation and enforcement of State obligations arising under the Charter.

Through the African Court's decision in *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v Nigeria*,<sup>286</sup> the Charter is also 'implicitly' understood to include the rights to adequate housing and food, following a purposive interpretation of the right to life and health (Art. 4 & 16, respectively).<sup>287</sup> These guarantees are undoubtedly relevant in understanding the socio-economic rights that head porters in Ghana are entitled to, even at the continental level.

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<sup>281</sup> *Ibid.*

<sup>282</sup> African Charter, *supra* note 30.

<sup>283</sup> Anneth Amin, "Assessing Violations of States' Socio-economic Rights Obligations in the African Charter: Towards a Model of Review Grounded in the Teleological Approach" (2020) 4 Afr Hum Rts YB 16.

<sup>284</sup> The African Commission is established under Article 30 of the African Charter.

<sup>285</sup> The African Court is established under Article 1 of the Protocol to the African Charter on Human and Peoples' Rights.

<sup>286</sup> *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria, Communication*, [2001] ACHPR 155/96. (African Court) [SERAC v Nigeria]

<sup>287</sup> *Ibid* at para 64-66.

Building on the preceding discussion of the international legal frameworks for the enforcement of socio-economic rights, it is essential to consider how these global standards are compatible with Ghana's domestic context. Ghana's legal landscape has been shaped by its commitments to international instruments. These principles, while comprehensive in their articulation of socio-economic rights and aspirations, have historically raised questions regarding their justiciability and enforceability, leading to significant judicial interpretation and debate over the extent to which they can be invoked in Ghanaian courts. The following section will therefore examine the local legal framework, exploring how Ghana's Constitutional provisions, statutes, and judicial decisions have shaped the practical enforcement of socio-economic rights, and assess the challenges and opportunities that arise in bridging international commitments with domestic realities.

### **3.9 Domestic Legal Framework in Ghana**

Ghana has adopted and ratified several international human rights instruments inspired by the UDHR. This has shaped the country's commitment to fundamental human rights. For example, Ghana's 1992 Constitution and various statutes expressly and implicitly provide for the protection of fundamental human rights and freedoms, reflecting the principles enshrined in the UDHR, such as the right to life, liberty, security of person, and equality before the law.<sup>288</sup> Steps have also been taken towards the abolishment of witch camps and the death penalty. Following the passage of the Criminal Offences Act,<sup>289</sup> the death penalty was largely abolished, and

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<sup>288</sup> Constitution of Ghana, *supra* note 34 at chapter 5; *Commission on Human Rights and Administrative Justice (CHRAJ) Act 1993* (Ghana), Act 456; *Labour Act 2003* (Ghana), Act 651; *National Health Insurance Act 2012* (Ghana), Act 852.

<sup>289</sup> *Criminal Offences (Amendment) Act 2023*, (Ghana) Act 1101.

remains applicable only for grave crimes. The abolition reflects Ghana's commitment to upholding human rights and responding to both domestic and international calls for reform.<sup>290</sup>

As I will detail below, Ghana's international and domestic legal framework on socio-economic rights is characterized by decades of global commitments and gradual national implementation strides. This evolving relationship highlights the need for ongoing legal reform and judicial involvement to fully realize human rights at the domestic level. International frameworks, such as those discussed above, provide a normative standard for incorporating socio-economic rights into domestic systems. The overall legal framework of Ghana comprises a hierarchy of laws, with the Constitution of the Republic serving as the supreme law of the land. This hierarchy, as stated under Article 11 of the Constitution, consists of the following:

- The Constitution, 1992
- enactments made by or under the authority of the Parliament of Ghana
- any orders, rules and regulations made by any person or authority under a power conferred by the Constitution
  - the existing law, which comprises the written and unwritten rules of Ghana as they existed immediately before the coming into force of the Constitution, and any Act, Decree, Law or Statutory instrument issued or made before that date
  - the common law, which per Article 11(4) comprises 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.

Following its independence in 1957, Ghana experienced a tumultuous period of alternating military and Constitutional governments for over three decades until the introduction of the 1992 Constitution. The Fourth Republic, established by this Constitution, marked a significant turning point in Ghana's political landscape, providing a more stable environment for

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<sup>290</sup> JC Awudja, RO Mensah, A Kwegyiriba & A Frimpong, "Public Attitudes towards Death Penalty Provisions: Relevance of Ethico-Phenomenological Principles in the Operation of Articles 3(3) & 19(2) of the 1992 Republican Constitution of Ghana" (2021) 9 Open J Soc Sci 1, online: <<https://doi.org/10.4236/jss.2021.912001>>

advancing ESC rights.<sup>291</sup> Before this, the Third Republican Constitution<sup>292</sup> introduced the concept of socio-economic rights as "directive principles of state policy" (DPSP), representing the first meaningful incorporation of such language in post-independence Ghana.

Ghana's responsibility has become more pronounced in the past three decades since the establishment of the Fourth Republic, with the 1992 Constitution catalyzing its continued progress towards realizing ESC rights.

### **3.10 Constitutional Guarantees of Economic, Social and Cultural Rights**

Certain events preceded the adoption of the 1992 Constitution of Ghana.<sup>293</sup> The Committee of experts that drafted the Constitution<sup>294</sup> proposed the continuation of DPSP in the new Constitutional framework in its report. The Committee also noted, however, that these directive principles are traditionally not justiciable,<sup>295</sup> and therefore, recommended that they should 'not of and by themselves be legally enforceable by any court.'<sup>296</sup> The final draft was approved through a referendum, and the Constitution was passed into law by the Consultative Assembly without further comment on this issue. The approved Constitution contained two distinct chapters: Fundamental human rights and freedoms,<sup>297</sup> and directive principles of state policy.<sup>298</sup>

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<sup>291</sup> Nana Tawiah Okyir, "Toward a Progressive Realization of Socio-economic Rights in Ghana: A Socio-Legal Analysis" (2017) 25:1 Afr J Int'l & Comp L 91.

<sup>292</sup> Constitution of the Republic of Ghana, 1979. The Constitution came into force in September 1979 and was overthrown in December 1981. Chapter 4 of the Constitution was on Directive Principles of State Policy, while Chapter 6 was on Fundamental Human Rights.

<sup>293</sup> Constitution of Ghana, *supra* note 34.

<sup>294</sup> Report of the Committee of Experts (Constitution) on Proposals for A Draft Constitution of Ghana (July 31, 1991). The Committee was a nine-member body of eminent Ghanaian professionals and traditional rulers tasked by the Military Regime to provide the draft of a new Constitution for the consideration of a Consultative Assembly.

<sup>295</sup> *Ibid* at para. 94-96.

<sup>296</sup> *Ibid* at para. 96.

<sup>297</sup> Constitution of Ghana, *supra* note 34 at Chapter 5 (contains traditional Civil and Political rights).

<sup>298</sup> *Ibid* at Chapter 6 (contains traditional Economic, Social, and Cultural rights).

The Supreme Court of Ghana has clarified that Chapter 6, which encompasses the directive principles of state policy, guarantees several objectives in the form of Economic, Social, and Cultural (ESC) rights.<sup>299</sup> Although it is not expressly stated, the Ghanaian Constitution can be interpreted to implement the right to health. Fundamentally, the Constitution obligates the government to undertake and report on measures aimed at advancing the right to health for Ghanaians.<sup>300</sup> It mandates the president to “report to parliament at least once a year all the steps taken to ensure the realization of the policy objectives”, including “the right to good health care”.<sup>301</sup>

The right to health can also be implied through other provisions, such as Article 33(5) under the Fundamental Human Rights and Freedoms (Chapter 5), which references such other rights not specifically mentioned within the chapter but ‘are considered to be inherent with a democracy’, and other enactments under the Constitution, including the Children's Act<sup>302</sup> and the Public Health Act.<sup>303</sup> These laws are embedded with provisions that prescribe specific duties and measures aimed at safeguarding health and promoting access to health care services for all persons in the country.<sup>304</sup> Protections against property deprivation and non-interference with an individual's privacy are firmly rooted in articles 18 and 20 of the Constitution, respectively. These provisions ensure that no person is arbitrarily deprived of their rightful possessions or privacy except in accordance with clearly defined legal conditions, with just compensation and due process.

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<sup>299</sup> *Ghana Lotto Operators v National Lottery Authority*, [2007-2008] Supreme Court of Ghana Law Report 1088 at 1104 (Ghana) [Ghana Lotto Case].

<sup>300</sup> Constitution of Ghana, *supra* note 34 at Art. 34(2) and 36(10).

<sup>301</sup> *Ibid* at 34(2).

<sup>302</sup> Children's Act, *supra* note 277.

<sup>303</sup> *Public Health Act 2012* (Ghana), Act 851.

<sup>304</sup> *Ibid* at ss. 1, 23, 26; Children's Act, *supra* note 277 at ss. 6(2), 8(1) (2).

### 3.11 Role of the Courts in Enforcing Socio-economic Rights in Ghana

The enforcement of socio-economic rights in Ghana has evolved over the years through a complex process of Constitutional interpretation, active judicial involvement, and persistent legal and social repositioning. The judiciary in Ghana derives its power under Chapter 11 of the Constitution. The judiciary consists of:

- (a) The Superior Courts of Judicature comprising -
  - (i) the Supreme Court.
  - (ii) the Court of Appeal; and
  - (iii) the High Court and Regional Tribunals.
- (b) such lower courts or tribunals as Parliament may by law establish.<sup>305</sup>

The Ghanaian judiciary is vested with judicial power and mandated by law to have “jurisdiction in all matters civil and criminal, including matters relating to this Constitution, and such other jurisdiction as Parliament may, by law, confer on it.”<sup>306</sup> The Constitution of Ghana also requires that a treaty, agreement, or Convention executed by the State be subjected to ratification by an Act of Parliament or a resolution supported by more than half of the parliamentary members.<sup>307</sup> Despite Ghana's dualist approach to international law, the courts have demonstrated courage in applying rules not formally adopted by the country.<sup>308</sup> This approach both challenges the limitations of dualism and potentially strengthens the enforcement of ESC rights through judicial interpretation and application.

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<sup>305</sup> Constitution of Ghana, *supra* note 34 at Art. 126.

<sup>306</sup> *Ibid* at Art. 125(5).

<sup>307</sup> *Ibid* at Art. 75(2).

<sup>308</sup> Christian N. Okeke, "The Use of International Law in the Domestic Courts of Ghana and Nigeria" (2015) 32:2 *Ariz J Intl & Comp L* 409. A Dualist approach to international law argues for a clear separation between international and domestic law. It requires the passage of legislation by Parliament to give effect to international treaties.

For example, the Supreme Court of Ghana in *New Patriotic Party v. Inspector-General of Police*,<sup>309</sup> which concerned the Constitutionality of Section 7 of the Public Order Decree,<sup>310</sup> which imposed restrictions on freedom of assembly, subject to prior consent or a permit from the Minister of Interior, transcended national laws to rely on the African Charter, even though Ghana had not yet formally incorporated the Charter into its domestic laws through an Act of Parliament or any legislative instrument, as required under Article 75 of the Constitution. The Court determined that the Decree violated a provision of the African Charter, which guarantees the “right to assembly.”<sup>311</sup>

Archer, CJ., added the following declaration to the leading judgement of Hayfron-Benjamin, J., stating:

“Ghana is a signatory to [the African Charter on Human and Peoples' Rights], and Member States of the Organization of African Unity and parties to the Charter are expected to recognize the rights, duties and freedoms enshrined in the Charter and to undertake to adopt legislative and other measures to give effect to the rights and duties. I do not think the fact that Ghana has not passed specific legislation to give effect to the Charter means that the Charter cannot be relied upon. On the contrary, Article 21 of our Constitution recognizes the right to assembly, as mentioned in Article 11 of the African [Banjul] Charter.”<sup>312</sup>

The Constitution provides the mechanism for enforcement under the chapter on fundamental human rights and freedoms.<sup>313</sup> The rights guaranteed in Chapter 5 are protected under the jurisdiction of the High Court, including anticipatory breaches of those rights.<sup>314</sup> The only contention that ever arose about the protection mechanism of this chapter was whether the Supreme Court of Ghana shared ‘original jurisdiction’ with the High Court (H.C.) in human

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<sup>309</sup> *New Patriotic Party v Inspector-General of Police*, [1993-94] 2 Ghana Law Report at 459. (Ghana)

<sup>310</sup> *Public Order Decree 1972* (Ghana), NRCD 68.

<sup>311</sup> African Charter, *supra* note 30 at Art. 11.

<sup>312</sup> Okeke, *supra* note 308 at 411.

<sup>313</sup> Constitution of Ghana, *supra* note 34 at Chapter 5.

<sup>314</sup> *Ibid* at Art.33(1).

rights cases.<sup>315</sup> This contention has since been settled in cases such as the *Federation of Youth Association of Ghana (Fedyag) v Public Universities of Ghana & Ors.*,<sup>316</sup> *Edusei V Attorney-General*,<sup>317</sup> and in the *New Patriotic Party v Attorney General (CIBA case)*,<sup>318</sup> conclusively, the H.C. has jurisdiction where the case is 'in relation to an individual' instead of seeking a general interpretation or challenging the Constitutionality of a provision. Having established through landmark cases that the High Court has jurisdiction over matters concerning individuals rather than abstract constitutional questions, the focus now shifts to the critical issue of justiciability and its implications for the enforcement of socio-economic rights.

### 3.12 The Issue of Justiciability

Justiciability refers to matters that the courts can appropriately resolve. Its purpose is to establish the appropriateness of judicial intervention for a set of fundamental rights that have traditionally met some adjudicatory resistance in courts. This discussion aims to determine whether head porters can access legal remedies when the State neglects or violates their socio-economic rights. By examining the justiciability of socio-economic rights in Ghana, this research demonstrates whether Ghana's legal framework comprehensively protects the ESC rights of vulnerable groups, such as head porters or merely offers aspirational guarantees without enforceable mechanisms. This is also central to the effectiveness of rights-based advocacy and the realization of Ghana's national and international obligations.

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<sup>315</sup> Kofi Quashigah, "Trends in the Promotion and Protection of Human Rights Under the 1992 Constitution" in Kwame Boafo-Arthur, ed, *Ghana: One Decade of the Liberal State* (London: Zed Books, 2007) 21 at 24. See *Adjei-Amפוfo (No. 1) v. Accra Metropolitan Assembly & Attorney-General No. 1* [2007-2008] SC of Ghana Law Report at 611. (Ghana)

<sup>316</sup> *Federation of Youth Association of Ghana (Fedyag) v Public Universities of Ghana & Ors.*, [2011] 1 SC of Ghana Law Report at 53.

<sup>317</sup> *Edusei V Attorney-General* [1996-97] 1 SCGLR. (Ghana).

<sup>318</sup> *New Patriotic Party v Attorney General*, [1997-98] 1 Ghana Law Report at 378 (Ghana) [*CIBA case*].

Inherent to the controversy on justiciability is the opening provision of chapter 6, which states, among other things, 'The DPSP... shall guide all citizens, Parliament, the President, the Judiciary ... in applying or interpreting this Constitution... for the establishment of a just and free society.'<sup>319</sup> Some argue that the provisions in Chapter 6 are merely guiding principles and are not enforceable.<sup>320</sup> The counterargument then becomes, 'If they are merely guiding principles of interpretation and action, one wonders why all the subsequent substantive articles in chapter 6, such as Articles 35 through 41, are couched in the normally mandatory language of "shall" rather than "shall endeavour to" or "is expected to".'<sup>321</sup>

Amid a rising trend of countries adopting Constitutional provisions for economic, social, and cultural (ESC) rights, and numerous rulings by domestic and regional courts on their justiciability, it can be argued that the debate over the justiciability of socio-economic rights, which had persisted for decades, has come to a close.<sup>322</sup> ESC rights have been litigated in regional bodies such as the African Court of Human Rights, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights.<sup>323</sup>

In Ghana, the case of *New Patriotic Party v the Attorney-General (31st December case)*<sup>324</sup> was the first instance where the justiciability of chapter 6 of the Constitution was

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<sup>319</sup> Constitution of Ghana, *supra* note 34 at Art. 34(1).

<sup>320</sup> See, opinion of Bamford-Addo JSC, in the *CIBA Case*, *supra* note 318 at 391.

<sup>321</sup> See, Justice Professor Modibo Ocran, Former Justice of the SCG, and Emeritus Professor of Law, University of Akron School of Law, Keynote Address at the Loyola University Chicago International Law Review Symposium: The Rule of Law and Delivering Justice in Africa (February 15, 2007) 7.

<sup>322</sup> Aoife Nolan, Bruce Porter & Malcolm Langford, "The Justiciability of Social and Economic Rights: An Updated Appraisal" (2007) New York University School of Law Center for Human Rights and Global Justice Working Paper No. 15 at 3, online: <<https://ssrn.com/abstract=1434944>>

<sup>323</sup> See, e.g., *K. Modise v Botswana, African Commission on Human Rights*, ACHPR Communication 97/93 (1997) involving property rights under Art. 14 of the African Charter; *Centre on Housing Rights and Evictions v The Sudan*, ACHPR Communications 279/03 296/05 (2009), Right to health and right to development: *Comunidad Mayagna (Sumo) Awas Tingni v. Nicaragua*, (Inter-American Court of Human Rights Series C, No. 79, August 31, 2001, Involving the property right); *Dilcia Yean and Violeta Bosica v. Dominican Republic*, (Inter-American Commission on Human Rights, Report 28/01, Case 12.189, December 7 2005, involving the rights of the child).

<sup>324</sup> *New Patriotic Party v the Attorney-General*, [1993-94] 2 Ghana Law Reports at 35 (Ghana) [31<sup>st</sup> December Case].

questioned. In a case not directly related to human rights, the plaintiff challenged the use of public funds by the Government to commemorate the anniversary of a coup d'état on December 31, asserting that it violated provisions in the Constitution, including Articles 35(1) and 41(b). Article 35(1) mandates the state to promote national unity and ensure the realization of principles embedded in the directive principles. In contrast, Article 41(b) imposes a duty on citizens to uphold and defend the Constitution. The Attorney-General objected to the Supreme Court's jurisdiction on the grounds, among other things, that the entirety of Chapter 6 was not justiciable and, therefore, Articles 35 and 41 could not form the basis of a cause of action.

The majority of the court held that the directive principles of state policy, as outlined in Chapter 6 of the Constitution, were justiciable and could be enforced under appropriate circumstances.<sup>325</sup> Justice Amua-Sekyi, supporting the majority view, emphasized that the Supreme Court's broad powers extended to legal issues arising from the Constitution, even if they had political dimensions, and that the Constitution is the supreme law controlling all legislation and state actions.<sup>326</sup> The strict political doctrine question was rejected by the majority, thereby asserting that Ghana's Constitutional framework did not preclude the judiciary from reviewing cases that involved state or political discretion.<sup>327</sup>

Despite the majority support in this case, the question of the justiciability of the directive principles remained contentious. The minority view remains essential because it underscores fundamental concerns about the separation of powers, cautioning against judicial overreach. In his support of the minority view, Justice Archer defended the theme of the political question doctrine and reasoned that:

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<sup>325</sup> *Ibid* at para 65.

<sup>326</sup> *Ibid* at para 130, in MO Mhango, "Separation of powers in Ghana: the evolution of the political question doctrine" (2014) 17:6 Potchefstroom Electron LJ 2704.

<sup>327</sup> *Ibid*.

“I think if the order is granted, it would amount to judicial officiousness - poking our noses into the affairs of Parliament and intermeddling with the prerogative of the executive by directing the government not to spend money approved by Parliament. Such a move clearly amounts to a violation of the doctrine of separation of powers, which is the core of our Constitution”.<sup>328</sup>

Four years after the *31st December* case was determined, the Supreme Court was presented with another opportunity to comment on the justiciability of Chapter 6 in the *New Patriotic Party v Attorney General (CIBA case)*.<sup>329</sup> In this case, the plaintiff challenged the Constitutionality of a law (Council of Indigenous Business Associations (CIBA) Law<sup>330</sup>) which compels Indigenous businesses to belong to an association that the Government controls, as inconsistent with articles 21(1) (Freedom of association), 35(1) (promotion of integration of peoples of Ghana and prohibition of discrimination and prejudice on grounds of ethnic origin, gender, religion, or other beliefs), and 37(2)(a) (the right to form or join association without undue interference from the State) of the Constitution. Unlike the *31st December case*, 3 out of 5 justices concurred with Bamford-Addo JSC’s position in the *CIBA case*,<sup>331</sup> that Chapter 6 is generally justiciable, but only when read in conjunction with other enforceable provisions of the Constitution. The learned Justice explained that:

“... there are exceptions to this general principle. Since the courts are mandated to apply them [the DPSP] in their interpretative duty, when they are read together or in conjunction with other enforceable parts of the Constitution, 1992, they then, in that sense, become enforceable.”<sup>332</sup>

Following this decision, the justiciability of the DPSP was clarified and finalized in the *Ghana Lotto Case*.<sup>333</sup> The plaintiffs in this case challenged the Constitutionality of the National

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<sup>328</sup> *31st December case*, *supra* note 324 at 52

<sup>329</sup> *CIBA case*, *supra* note 318.

<sup>330</sup> *Council of Indigenous Business Associations Act 1993* (Ghana), PNDCL 312.

<sup>331</sup> *CIBA case*, *supra* note 318.

<sup>332</sup> *Ibid* at 394.

<sup>333</sup> *Ghana Lotto Case*, *supra* note 299.

Lottery Act,<sup>334</sup> which prohibits individual lottery operations, except for those of the National Lottery Authority. The plaintiff argued that it violated Article 36(2) of the Constitution, which obliges the State to follow an economic objective ‘affording ample opportunity for individual initiative and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy.’ The Supreme Court held that the provisions of Chapter 6 are generally justiciable.

Justice Date-Bah reasoned that the "... starting point of analysis should be that all provisions in the Constitution are justiciable, unless there are strong indications to the contrary in the text or context of the Constitution."<sup>335</sup> However, the court further clarified that the presumption of justiciability is not absolute: specific provisions may not lend themselves to judicial enforcement. In such instances, the presumption of justiciability may be rebutted if it is demonstrated that a particular provision is unsuitable for enforcement by the court.<sup>336</sup>

These developments produced a healthy discussion that influenced the understanding of socio-economic rights in Ghana, marking a shift from aspirational principles to actionable legal standards. These legal advancements underscore the importance of integrating socio-economic rights into the core of Ghana's Constitutional and governance structure, ensuring that the promise of justice and dignity is realized for all citizens. As I will discuss in chapter four, it also offers an avenue for head porters to demand accountability for their rights. Ultimately, strengthening the enforceability of socio-economic rights not only aligns Ghana with international human rights obligations but also serves as a critical tool for addressing poverty and social exclusion.

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<sup>334</sup> *National Lottery Act 2006* (Ghana), Act 722 at s. 4.

<sup>335</sup> *Ghana Lotto Case*, *supra* note 299 at 1099.

<sup>336</sup> *Ibid.*

Despite these controversies and the Supreme Court's slippery position, successive governments have implemented legislation and policies in the past three decades, driven towards a progressive realization of socio-economic rights.<sup>337</sup> This can be viewed as a step in the fulfillment of its legal obligations.

### **3.13 Relevant Domestic Legislation**

Over the last 30 years, Ghana has maintained a steady democratic system. During this time, various administrations have implemented laws and strategies to fulfill their global commitments and Constitutional duties. These efforts have been directed towards fostering an environment conducive to national growth and ensuring a satisfactory quality of life for the country's population. In this section, I will outline a few of the most relevant statutes that offer substantive provisions, which, if effectively enforced, will meaningfully address the challenges faced by women in Ghana, as well as the woes of head porters. I will provide a concise summary of each enactment's significance and vital provisions in one paragraph. This analysis is essential for identifying legislative reforms that strive towards greater equity and justice in realizing socio-economic rights for the head porters.

The Labour Act<sup>338</sup> consolidates and modernizes employment standards to reinforce worker protections, with several provisions of particular significance to head porters. Some of the Act's most relevant provisions include mandates for safe and healthy working conditions (s. 10), prohibitions on discriminatory employment practices (s. 14), and safeguards for

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<sup>337</sup> The Government of Ghana introduced a concept of free and compulsory primary education for every school-age child to be realized by introducing the Free Compulsory Basic Education Programme (FCUBE), launched in 1996. The main policy goal of the FCUBE programme was to provide an opportunity for every school-age child in Ghana to receive quality primary education by the year 2005. In early 2005, the introduction of the Capitation Grant policy, a significant step towards making education more accessible, targeted to provide public schools with grants from the Government that would replace fees being charged to parents and other legislations mentioned above.

<sup>338</sup> *Labour Act*, *supra* note 288.

vulnerable groups, such as pregnant women (s. 55) and young workers (s. 58). The prohibition of forced labour (s. 116) further affirms the commitment underlying the Act to preserving human dignity in the workplace. Collectively, these protections address structural vulnerabilities in the informal labour sector and create enforceable rights that can function as critical tools for advancing the socio-economic position of marginalized workers by giving workers the means to demand the proper implementation of their rights. However, efforts to seek protection under this statute will require integrating the provisions of the Act with international standards like those developed by the International Labour Organization (ILO), where Ghana is a member State. This is because of the absence of express provisions that guarantee the maximum protection of informal sector workers as a recognizable group, something addressed in ILO Convention No 181.<sup>339</sup> Therefore, an integration of both frameworks provides a comprehensive structure that encompasses all the protections needed.

Collectively, these protections address structural vulnerabilities in the informal labour sector and create enforceable rights that can function as critical tools for advancing the socio-economic position of marginalized workers. The protections empower informal workers by providing legal recognition and access to social security, fair working conditions, and mechanisms to address exploitation and discrimination, thereby enhancing their ability to claim rights, improve income stability, and participate more fully in economic and social life.

The Children's Act<sup>340</sup> addresses child labour through a rights-based legal framework that both prohibits direct abuses and safeguards developmental well-being. Section 13's ban on torture, degrading treatment, and harmful cultural practices aligns domestic protections with

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<sup>339</sup> International Labour Organization, Private Employment Agencies Convention, 1997 (No 181), opened for signature 19 June 1997, 2137 UNTS 186 (entered into force 10 May 2000), at Art. 2(1).

<sup>340</sup> Children's Act, *supra* note 277.

universal human rights norms. Section 87 defines exploitative labour in terms of its adverse impact on a child's health, education, and development. Section 89 establishes a minimum employment age of 15, rendering any employment below this threshold unlawful. Together, these provisions embody a statutory commitment to the holistic protection of children and the prevention of exploitation.

The National Health Insurance Scheme (NHIS), established under the National Health Insurance Act,<sup>341</sup> represents a pivotal policy direction for advancing universal primary healthcare in Ghana. Despite its transformative potential, its sustainability is undermined by structural inefficiencies, including escalating costs, uneven distribution of facilities and personnel, weak oversight, and limited public awareness.<sup>342</sup> Yet, targeted interventions—such as the Ministry of Gender, Children and Social Protection's subsidized enrollment of marginalized groups—have enhanced access for vulnerable populations.<sup>343</sup> Evidence from Samuel Boateng et al. demonstrates increased enrollment and utilization among female head porters, illustrating the NHIS's capacity to mitigate entrenched inequities when integrated with complementary social policies.<sup>344</sup>

It is pertinent to note that abuses like those faced by head porters in the forms of forced labour, sexual exploitation and practices akin to slavery and servitude have been captured under the Human Trafficking Act.<sup>345</sup> The Act seeks 'the prevention, reduction, and punishment of human trafficking, for the rehabilitation and reintegration of trafficked persons and related

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<sup>341</sup> National Health Insurance Act, *supra* note 288.

<sup>342</sup> Robert K Alhassan, Edward N Amponsah & Daniel K Arhinful, "A Review of the National Health Insurance Scheme in Ghana: What Are the Sustainability Threats and Prospects?" (2016) 11:11 PLOS ONE e0165151.

<sup>343</sup> Ministry of Gender, Children and Social Protection, "2,000 Kayayei, 500 Elderly Receives Free NHIS In Ashanti" (May 13, 2016), online: Ministry of Gender, Children and Social Protection <<https://www.mogcsp.gov.gh/2000-kayayei-500-elderly-receives-free-nhis-in-ashanti/>>

<sup>344</sup> Samuel Boateng et al., "Migrant female head porters' enrolment in and utilization and renewal of the National Health Insurance Scheme in Kumasi, Ghana" (2017) 25:6 J Public Health 625.

<sup>345</sup> *Human Trafficking Act 2005* (Ghana), Act 694.

matters.<sup>346</sup> It also prohibits using threats, coercion, abduction, deception, or exploitation for the transportation, recruitment, trading, or harbouring of persons within and across national borders.<sup>347</sup> As I've pointed out in Chapter Two discussions, vulnerable girls from rural communities are susceptible to these practices, which deprive them of fundamental rights, with no knowledge or ability to escape the exploitation. Provisions are also made in the Act for the rescue, care, counselling, rehabilitation, and compensation of victims of trafficking.<sup>348</sup>

One of Ghana's interventions, in line with CEDAW's legal requirements, is the passage of the Interstate Succession Act<sup>349</sup>, which aims to mitigate some of the issues women generally face in the country, such as lack of property rights. The purpose of the Act is to "provide a uniform system of property distribution."<sup>350</sup> According to the report submitted to the Committee on Economic, Social and Cultural Rights, the Ministry of Women and Children's Affairs established a women's development fund, which distributes micro-loans to women and coordinates skills training and other programs, as another interventional measure.<sup>351</sup> The Government also established self-help groups as platforms for rural women's education and development, exploring solutions, and participation in local political engagement.<sup>352</sup>

The abovementioned legislation bolsters Ghana's strides towards women's empowerment. Despite these interventions, the discussion in Chapter 2 points out that many rural women still flocked to major cities to engage in different forms of labour to survive. However, it is crucial to recognize the immense contribution that legislation like that discussed above has to offer, as well as what a practical implementation can achieve. The success of these regulations and enactments

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<sup>346</sup> *Ibid* at Preamble.

<sup>347</sup> *Ibid* at s. 1.

<sup>348</sup> *Ibid* at ss. 14-19.

<sup>349</sup> *Intestate Succession Act 1985* (Ghana), P.N.D.C.L. 111.

<sup>350</sup> Combined 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> periodic report, *supra* note 262 at para 205.

<sup>351</sup> *Ibid* at para 175.

<sup>352</sup> Pruitt, *supra* note 260 at 741.

can be realized if the judiciary addresses concerns with a fervent commitment to fulfilling the state's domestic and international obligations, thereby empowering the most endangered members of society. This point directly leads the discussion to the next section, which will explore other enforcement mechanisms.

### **3.14 Other Enforcement Mechanisms**

It is essential to acknowledge additional quasi-judicial mechanisms that may serve as alternative avenues for individuals seeking redress in cases of rights violations. The Constitution empowers and recognizes the role of quasi-judicial bodies in resolving legal issues.<sup>353</sup> This conflict resolution system ensures that the courts are not overburdened by cases that could otherwise be determined at a lower court or other quasi-judicial body established by parliament. This is relevant to my research because it identifies the necessary adjudicating bodies from which head porters can seek resolution for violations of their rights. It also serves as a more convenient avenue compared to the technicalities and complexities generally associated with litigation through the higher court system.

Established by the Constitution<sup>354</sup> and the Commission on Human Rights and Administrative Justice (CHRAJ) Act,<sup>355</sup> CHRAJ has a broad mandate covering human rights, administrative justice, and anti-corruption-related activities. It has the power to investigate complaints of human rights violations, including socio-economic rights, abuse of power by public officers, and complaints against public institutions, and to take appropriate action to seek remedy or reversal of decisions.<sup>356</sup>

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<sup>353</sup> Constitution of Ghana, *supra* note 34 at Art. 126(1)(b).

<sup>354</sup> Constitution of Ghana, *supra* note 34 at Art. 216.

<sup>355</sup> CHRAJ Act, *supra* note 288.

<sup>356</sup> *Ibid* at ss. 7, 12, 24.

The Labour Commission, established under the Labour Act,<sup>357</sup> is equipped to facilitate the settlement of industrial disputes, investigate labour-related complaints, and take steps necessary to prevent labour disputes.<sup>358</sup> The Commission is empowered to enforce witness attendance, examine witnesses on oath, and require the production of documents in settling industrial disputes.<sup>359</sup> It also enjoys a high court's privileges and immunities with respect to its proceedings. The commission's primary jurisdiction is on the formal sector, though it can receive complaints from any 'worker' in the country.<sup>360</sup> However, due to a lack of awareness, regulatory gaps, and non-compliance with formal requirements (e.g., written contracts), the commission's practical coverage of the informal economy is minimal.<sup>361</sup>

This section highlights the role of quasi-judicial bodies in providing accessible and effective mechanisms for resolving rights violations, including those related to socio-economic rights. These institutions serve as an essential alternative to the formal court system, offering simpler, less technical processes that can be more accessible to marginalized groups like head porters. Understanding these enforcement mechanisms is crucial for analyzing how the Ghanaian government's COVID-19 response affected the head porters' ability to seek redress for rights violations. Additionally, it informs recommendations aimed at strengthening these institutions and improving their outreach better to protect vulnerable informal workers against socio-economic injustices during crises.

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<sup>357</sup> Labour Act, *supra* note 288 at s. 135.

<sup>358</sup> *Ibid* at s. 138.

<sup>359</sup> *Ibid* at s. 139(2).

<sup>360</sup> *Ibid* at s. 139(1)(a).

<sup>361</sup> A Akorsu, 'Labour Standards Application in the Informal Economy of Ghana: The Patterns and Pressures' (2013) 58 *Economic Annals* 157.

### 3.15 Chapter Observation

This chapter has endeavoured to briefly and concisely unpack key provisions from the various domestic and international legal frameworks that guarantee Ghanaians' socio-economic rights, particularly those provisions relevant to the situation of the head porters. It highlights the enforcement avenues within the Ghanaian judicial system while addressing the justiciability question that has surrounded socio-economic rights. Through the discussion, it is evident that after decades of inconsistent jurisprudence, Ghana's position is now tilted toward the 'presumption of justiciability.' Given the case law recognizing the justiciability of socio-economic rights, the earlier view that such rights were non-justiciable is now outdated.

The discussion in this chapter has established a standard for a human rights approach to observing and analyzing, in the next chapter, the policy interventions of the Ghanaian government and their effects on the enforcement of the socio-economic rights of head porters during the pandemic. This provides an opportunity to assess whether there is sufficient and credible evidence that the right to adequate housing and health gained considerable attention, and to what degree the government strove to meet its commitments under law. This thesis, therefore, argues that only through a holistic implementation and enforcement of laws by duty-bearers can a successful realization of the rights enumerated above be achieved. Therefore, my analysis in the next chapter will show how the response of the Ghanaian government to the Covid-29 pandemic fell short of its human rights obligations.

## CHAPTER FOUR

### TARGETED INTERVENTION AND ITS EFFECTS ON THE SOCIO-ECONOMIC RIGHTS OF HEAD PORTERS

#### 4.0 Introduction

In the preceding chapters, I have comprehensively examined head portage and its intricacies, as well as legal texts focusing on socio-economic rights relevant to head porters. This chapter narrowly evaluates the efficacy of Ghana's interventions in safeguarding the socio-economic rights of the head porters during the worst of the COVID-19 pandemic. It explores the impact of responses on their right to health and adequate housing and reviews potential rights violations. It also highlights the discrepancy between legal commitments and practical implementation. Furthermore, it examines recent post-pandemic governmental initiatives aimed at empowering head porters.

This chapter is structured to provide a comprehensive and systematic examination of the rights to health and housing in the context of the COVID-19 pandemic. It begins by analyzing the relevant legal frameworks that define and govern these rights, as were elaborated in chapter three above, with particular attention to their applicability to the circumstances of the head porters during the pandemic. The legal framework provides a basis for evaluating the government's responses to determine whether there were violations of the State's human rights obligations. The discussion subsequently considers the disparity that lies between treaty obligations and actual enforcement. Through this organization, a coherent foundation is established for understanding how these interrelated dimensions influenced the protection and realization of health and housing rights of the head porters during the crisis.

This discussion centers on Ghana's international legal obligations, as enumerated in chapter three above, primarily under the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>362</sup> as well as domestic law. The ICESCR has the most comprehensive coverage of socio-economic rights among all other international human rights instruments. Utilizing the ICESCR's comprehensive protections, holistic scope and distinct implementation mechanisms, the research can effectively address whether Ghana properly implemented the socio-economic rights of the headporters. Reference will also be made to other frameworks such as the CEDAW and CRC. This is premised on the fact that, as established in Chapter Three, both the CEDAW and CRC encompass provisions addressing the rights to health and/or housing; consequently, it is essential to further expound on these aspects within the framework of the pandemic response measures adopted by the Ghanaian government.

#### **4.1 Informal sector workers in Ghana**

In chapter two, I extensively dealt with the many threats to the head porters in Ghana and how measures implemented during the pandemic prevented them from engaging in active economic activities, with severe consequences. Despite the pandemic's impact on their income, health, and food security, the government's relief measures did not directly include the head porters in their framework. While a 600 million Ghana Cedis fund was set up to support small businesses under the Coronavirus Alleviation Program (CAP), no corresponding cash relief scheme was established to support informal sector workers directly.<sup>363</sup> Challenges such as the

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<sup>362</sup> ICESCR, *supra* note 23

<sup>363</sup> WIEGO, *supra* note 185.

complexity of the online application process and the lack of a Tax Identification Number (TIN), among many informal workers, prevented them from accessing this vital financial lifeline.<sup>364</sup>

#### 4.2 Overview of Ghana's Pandemic Response Policies

This section provides a brief overview of the Ghanaian government's policy responses. The responses will be analyzed in subsequent sections by relating their effectiveness in securing the rights to health and to adequate housing for the head porters. Following the World Health Organization's March 11, 2020, declaration of the novel coronavirus as a global pandemic, governments worldwide scrambled to implement containment measures to minimize the impact. The most common strategies were upscaling testing, closing international borders, instituting social distancing protocols, banning public gatherings, and imposing partial or total lockdowns.<sup>365</sup> After reports of the first few cases on March 12, 2020, the Ghanaian Government announced strategies to mitigate the spread of the virus. Among the strategies were limiting the importation of cases, detecting and containing cases, implementing social and economic policies, and building domestic capacity.<sup>366</sup> According to a statement by the Ghana Health Service, the first few cases were traced to two people who had returned from Norway and Turkey.<sup>367</sup> This prompted the president of the Republic of Ghana, in a televised address to the nation on March 21, 2020, to impose restrictions on travel by ordering the closure of Ghana's land, sea, and air borders to human traffic effective midnight on March 22, 2020.<sup>368</sup>

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<sup>364</sup> *Ibid* at 10.

<sup>365</sup> Sibiri et al, *supra* note 10. T Hale, et al, "Government responses and COVID-19 deaths: Global evidence across multiple pandemic waves" (2021) 16:7 PLoS ONE e0253116, online: <<https://doi.org/10.1371/journal.pone.0253116>>

<sup>366</sup> World Health Organization, "COVID-19 Response: Ghana's Experience" (Kwaku Agyeman-Manu, Minister for Health) (Geneva: WHO, 2020) at 3, online (pdf): *WHO* <[https://apps.who.int/gb/COVID-19/pdf\\_files/07\\_05/Ghana.pdf](https://apps.who.int/gb/COVID-19/pdf_files/07_05/Ghana.pdf)>

<sup>367</sup> G Dzando et al, "Healthcare in Ghana amidst the coronavirus pandemic" (2021) 39:1 Pan Afr Med J 8.

<sup>368</sup> KPMG, "Ghana - COVID-19-Related Travel Restrictions and Safety Directives" (March 23, 2020), online: KPMG <<https://home.kpmg/xx/en/home/insights/2020/03/flash-alert-2020-094.html>>

Through the Ministry of Trade and Industry, the Government selected certain local manufacturing companies to produce sufficient personal protective equipment for frontline health workers, thereby enhancing local capacity.<sup>369</sup> With the support of the Bank of Ghana, commercial banks also disbursed approximately GH¢3 billion to local companies, particularly those in the pharmaceutical, healthcare, services, and manufacturing industries, to support their operations.<sup>370</sup> Incentive packages were announced for healthcare workers. They included about US\$60,000 in insurance coverage per person, tax-free salaries on emoluments for all health workers for three months, free transportation, and 50% of the basic salary allowance for frontline workers.<sup>371</sup>

To minimize the pandemic's economic impact, the president launched the Coronavirus Alleviation Program on May 19, 2020, as a recovery plan to boost businesses and households.<sup>372</sup> On March 26, the Government declared it would cover water bills for all Ghanaians for three months, pay electricity bills for lifeline customers, and offer a 50% subsidy for other customers.<sup>373</sup> Additionally, negotiations with the banks led to a 2% reduction in interest rates, effective April 2020. After Parliament's approval, the president announced GH¢1 billion in

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<sup>369</sup> Modern Ghana. COVID-19: local production of PPEs in Ghana. (May 24, 2020), online:

<<https://www.modernghana.com/news/995097/covid-19-local-production-of-ppes-in-ghana-photo.html>>

<sup>370</sup> The Presidency, Ghana. President Akufo-Addo's May Day celebration speech. (May 24, 2020), online <<https://www.gbcghanaonline.com/speeches-and-lectures/president-akufo-addos-2020-may-day-celebration-speech/2020/>>

<sup>371</sup> James Asamani, et al, "Cost Analysis of Health Workforce Investments for COVID-19 Response in Ghana" (2022) 7 BMJ Global Health e008941.

<sup>372</sup> Sibiri et al, *supra* note 10.

<sup>373</sup> *Ibid.*

support of small and medium-sized enterprises (SMEs), with about 110,000 SMEs owned by women reportedly benefiting from the funds.<sup>374</sup>

Responding to the adverse impact of pandemic restrictions, the government launched an intervention that provided meals to the head porters through the “FEED-A-KAYAYO” project.<sup>375</sup> The initiative aimed to provide food and support to vulnerable head porters affected by movement restrictions, which directly affected their ability to earn income. The project ran for 12 days from April 1 to 12, 2020, during the peak of the lockdown measures.<sup>376</sup> It provided approximately 10,000 hot meals to head porters and other informal sector workers on the streets of Ghana's capital, Accra. During the period, 145,746 food packs, valued at GHS 906,541, were distributed to beneficiaries.<sup>377</sup> The food items distribution mentioned above appears to be the only government intervention designed to target head porters directly in Accra and Kumasi.

Despite being one of the most authoritative government policies developed to identify and address systemic deficiencies exposed by the pandemic, the Ghana COVID-19 Alleviation and Revitalization of Enterprises Support (Ghana CARES)<sup>378</sup> program fails to address the specific issues affecting head porters. The two-phase program is part of a broader, successive pandemic response measure aimed at providing emergency relief, revitalizing key sectors such as agriculture, light manufacturing, digital economy, and ultimately fostering a stronger, more

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<sup>374</sup> Government of Ghana-Ministry of Finance & Ministry of Trade and Industry, “2023 Budget Statement and Economic Policy” (May 2023) at 12. CAPBuSS funding and beneficiaries, online (pdf): *Ministry of Finance* <<https://mofep.gov.gh/sites/default/files/pbb-estimates/2023/2023-PBB-MOTI.pdf>.>

<sup>375</sup> AB Arko & G Asekere, "Policy Responses to the COVID-19 Crisis in Ghana: Preliminary Assessment" (2021) 1:1 African J Social Sciences Education 16 at 32. See also, "KPMG Partners Ghana COVID-19 Private Sector Fund to roll out FEED-A-KAYAYO Project" <[https://assets.kpmg.com/content/dam/kpmg/gh/pdf/gh-Internal-Quarterly-Africa-Newsletterpplx\\_KPMG-in-Ghana\\_Final.pdf](https://assets.kpmg.com/content/dam/kpmg/gh/pdf/gh-Internal-Quarterly-Africa-Newsletterpplx_KPMG-in-Ghana_Final.pdf).>

<sup>376</sup> Arko & Asekere, *Ibid.*

<sup>377</sup> *Ibid.*

<sup>378</sup> Ministry of Finance, *Ghana COVID-19 Alleviation and Revitalization of Enterprises Support (CARES) Obaatanpa Programme* (Ministry of Finance, Government of Ghana, 2020), online: Ministry of Finance <<https://www.mofep.gov.gh/sites/default/files/news/care-program.pdf>.>

resilient economy.<sup>379</sup> It builds on the government's existing interventions and provides a medium- to long-term framework to revitalize and transform the economy. It outlines plans to alleviate hardships for Ghanaians by reducing the cost of basic services, ensuring food security, protecting businesses and workers, and further strengthening the healthcare system. These aspirational policies form part of the State's effort to address the general challenges of implementing socio-economic rights, but they ignore the existential threat posed by the pandemic in the interim.

These interventions raise considerable concerns about vulnerability and inequality. While the Imposition of Restrictions Act provided necessary tools for crisis management, it raises critical questions about the balance between emergency powers and civil liberties, public health measures and individual rights, and the potential for administrative overreach due to broad powers granted to the executive.<sup>380</sup> Concerns were also raised about the extent to which the government's social interventions were inclusive, particularly concerning vulnerable groups, such as head porters.<sup>381</sup> This was due to the government's apparent lack of data on aid recipients during the temporary food distributions, which were fraught with challenges.

Critics point to the inadequacies in the water and electricity bill waivers as a lifeline for citizens.<sup>382</sup> This was because many of the population, such as head porters and other informal sector workers, lacked access to adequate housing or permanent dwellings with a stable water supply and were likely to have been excluded from this initiative. The main opposition political party in the country, the National Democratic Congress (NDC), also alleged that social

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<sup>379</sup> *Ibid.*

<sup>380</sup> Kwadwo A Tuffuor & Frederick Awuah, "Interrogating the Imposition of Restrictions Law During the COVID-19 Pandemic in Ghana" (2022) 2:1 UCC LJ 1.

<sup>381</sup> Abdul-Gafaru & Ibrahim, *supra* note 11.

<sup>382</sup> *Ibid.*

interventions were characterized by political gimmicks and motivated by the incumbent New Patriotic Party (NPP) 's desire to retain power in the 2020 general election.<sup>383</sup>

### 4.3 Legal Analysis

Building on the overview of Ghana's pandemic responses and the existing critiques of those responses, this section examines some of the relevant legal instruments outlined in Chapter Three and their implications amid the crisis. It assesses whether frameworks for health and housing provided adequate safeguards for the head porters, and how design or implementation gaps influenced their experiences during lockdowns and restrictions.

#### 4.3.1 Pandemic Restrictions, Legal Impact

One of the foremost steps taken by the government in handling the COVID-19 pandemic was the passage of the Imposition of Restrictions Act (IRA).<sup>384</sup> The Act provided the Government with legal authority to impose restrictions in response to the pandemic.<sup>385</sup> It derives its legitimacy from Article 21(4)(c), (d), and (e) of the Constitution, which permits the curtailment of certain rights during emergencies. The primary objective of the Act was to limit movement within the country, especially in the two most populous cities in the country (Accra and Kumasi). Additionally, entry into the country was restricted under the Act, and public gatherings were banned.<sup>386</sup> There was no mention of the use of personal protective equipment in the Act, as that is the domain of health regulators, and not a parliamentary function.

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<sup>383</sup> National Democratic Congress (NDC), "Jobs, Prosperity and More: The People's Manifesto" (2020) 77.

<sup>384</sup> Imposition of Restrictions Act, *supra* note 14.

<sup>385</sup> Sibiri et al, *supra* note 10.

<sup>386</sup> Imposition of Restrictions Act, *supra* note 14 at s. 3(1)(c).

Each restriction was limited to three months, subject to exigencies deemed necessary by the President.<sup>387</sup> Exemptions to the rules were granted to specific categories of people, including those in the three branches of Government, and to essential service providers such as healthcare, food supply, and utility providers.<sup>388</sup> To enforce compliance, strict penalties for violations were imposed, with fines ranging from 1,000 to 5,000 penalty units (GHS 12,000 to GHS 60,000).

Where pandemic restrictions have been challenged in some domestic courts, it has generally been concluded that mobility restrictions could be justified. In *Taylor v. Newfoundland and Labrador*<sup>389</sup> the Supreme Court of Newfoundland and Labrador examined whether provincial travel restrictions imposed under the authority of section 28(1)(h) of the Public Health Protection and Promotion Act<sup>390</sup> to curb COVID-19 spread violated mobility rights under sections 6 and 7 of the Canadian Charter of Rights and Freedoms.<sup>391</sup> The Court, relying on medical and scientific evidence, ruled that the province's travel restrictions were consistent with the *Constitution*.<sup>392</sup>

A similar holding was reached in the case of *Nordic Info BV v Belgische Staat*.<sup>393</sup> The Court of Justice of the European Union addressed the legality of Belgium's COVID-19 measures and its permissibility under EU law, specifically articles 27 and 29 of the Citizenship Directive.<sup>394</sup> The Citizenship directive lays down the conditions governing the exercise of the

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<sup>387</sup> *Ibid* at s. 4.

<sup>388</sup> *Ibid* at s. 5.

<sup>389</sup> 2020 NLSC 125.

<sup>390</sup> S.N.L. 2018 c. P-37.3.

<sup>391</sup> Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (the "Charter").

<sup>392</sup> 2020 NLSC 125, *supra* note 389 at para 493. See also, Nicholas Hughes and Lindsay Frame, "COVID-19: What Could the Taylor Decision Mean for Interprovincial Travel?" McCarthy Tétrault (20 January 2021) <<https://www.mccarthy.ca/en/insights/publications/covid-19-what-could-taylor-decision-mean-interprovincial-travel>> It is pertinent to note that the reasoning of the court could be open to criticism because of the court's determination of that the right to remain in Canada implying the right to mobility in Canada (which is not necessarily in the Charter), then holding that such restrictions on the right were justifiable.

<sup>393</sup> (C-128/22), ECLI:EU:C:2023:951 [*Nordic Info*]

<sup>394</sup> Directive 2004/38/EC, Chapter VI.

rights of free movement and residence by Union citizens and their family members,<sup>395</sup> as well as the limits placed on these rights. The court upheld Belgium's travel restrictions, finding them legitimate and proportionate public health measures.<sup>396</sup> The decision recognized that measures restricting free movement could be justified on public health grounds.<sup>397</sup>

These rulings suggest that Ghana's Act could potentially withstand judicial scrutiny by demonstrating objective grounds as justification. The legality of the IRA was challenged in *Prof. Kwadwo Appiagyei-Atua & 7 other Plaintiffs v. The Attorney-General*.<sup>398</sup> The plaintiffs argued that the Executive branch misused Article 21(4) of the Constitution, a limitation clause, as a derogation tool and bypassed Articles 31 and 32 of the Constitution, which are specifically meant for emergency procedures. The Supreme Court upheld the plaintiff's argument. It voided the Act as inconsistent with Articles 21, 31, 32, 58, 93(2), and 125(3) of the Ghanaian *Constitution*<sup>399</sup> for circumventing proper emergency protocols despite the obvious public health crisis.

This ruling targeted the procedural validity of the Act rather than its substantive measures, confirming that restrictions on gatherings and mobility could remain justifiable amid public health emergencies, consistent with precedents in other jurisdictions. Despite the court's decision, the government has already used the law to implement its pandemic-related restrictive measures. The next section, therefore, explores the governments compliance with delivering on the right to health information of the head porters and whether it was adequately enforced.

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<sup>395</sup> *Ibid* at Art. 1.

<sup>396</sup> VN Delhomme, "The Legality of Covid-19 Travel Restrictions in an 'Area without Internal Frontiers': Court of Justice (Grand Chamber) 5 December 2023, Case C-128/22, *Nordic Info*" (2024) 20:2 *European Constitutional Law Review* 307 at 308, DOI: <<https://doi.org/10.1017/S1574019624000245>>

<sup>397</sup> *Ibid* at 312. See also, *Nordic Info, supra* note 393 at paras. 52-54.

<sup>398</sup> [2023] DLSC 15177.

<sup>399</sup> Constitution of Ghana, *supra* note 34 at Art. 21,31,32,58,93(2), and 125(3).

### 4.3.2 Right to Health Information

The Committee on Economic, Social and Cultural Rights (CESCR) underscored that access to health-related education and information is integral to realizing the right to health under Article 12 of the ICESCR making information accessibility a core component of this right.<sup>400</sup> Whether there was a successful implementation of policies in this regard will be crucial in determining the success or failure of the Ghanaian government's COVID-19 response.

Extensive public awareness campaigns commenced even before the first few cases of COVID-19 were recorded in Ghana through televised periodic presidential addresses.<sup>401</sup> The information provided included details about national measures adopted, coronavirus symptoms, transmission, treatment, and prevention measures such as wearing masks, handwashing, and social distancing.<sup>402</sup> The government used multiple channels to broadcast information, including TV, radio, community centers, and social media.<sup>403</sup> Information was provided in different local dialects to ensure a wider reach.<sup>404</sup> As a very enthusiastic religious society, religious leaders used their podiums to educate congregants about the dangers of the pandemic and the need to adopt protective measures to prevent its spread.<sup>405</sup>

The extent to which head porters were informed about important health information cannot be quantified. However, given the use of community centers and other public awareness

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<sup>400</sup> U.N. Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), August 11, 2000, E/C.12/2000/4, [Hereafter General Comment No. 14].

<sup>401</sup> Include Platform, "COVID-19 as a Looking Glass to Ghana's Structural Inequalities and Mounting Distrust in Politics" (April, 2021), online: *Include Platform* <<https://includeplatform.net/theme/covid-19-as-a-looking-glass-to-ghanas-structural-inequalities-and-mounting-distrust-in-politics/>>

<sup>402</sup> *Ibid.*

<sup>403</sup> "COVID-19 in Ghana: Raising Awareness, Promoting Safety and Protecting Essential Services" (July 6, 2021) <<https://www.worldbank.org/en/news/feature/2021/07/06/covid-19-in-ghana-raising-awareness-promoting-safety-and-protecting-essential-services.>>

<sup>404</sup> *Ibid.*

<sup>405</sup> C Prempeh, "Religion and the State in an Episodic Moment of COVID-19 in Ghana" (2021) 4:1 Social Sciences & Humanities Open 100141, online: <<https://doi.org/10.1016/j.ssaho.2021.100141.>>

measures, it is unlikely that the head porters were wholly uninformed or deliberately excluded from information dissemination about the pandemic. Despite being stigmatized as potential virus carriers, they were primarily strict adherents to the use of Personal Protective Equipment (PPE) provided by the government and other private organizations. About 73% of informal sector workers reported frequently using PPEs.<sup>406</sup> This high level of compliance suggests that the head porters and other informal workers likely had some access to credible information about the coronavirus, aligning with broader reports that about 81% of Ghanaians were informed about the seriousness of the pandemic and the necessary preventive measures.<sup>407</sup>

While these extensive communication strategies strengthened public awareness and engagement, studies have noted ongoing concerns about the transparency and completeness of the information shared, particularly regarding the timeliness, depth, and accessibility of critical health data.<sup>408</sup> Despite these gaps, Ghana's response largely made efforts to satisfy the requirements of Article 12(1)(c) of the ICESCR and paragraphs 11 and 12 of General Comment No. 14,<sup>409</sup> to engage in extensive information dissemination to achieve the full realization of the right to health. The overall extent of compliance with Ghana's other international human rights obligations will be addressed in the subsequent section when discussing Ghana's adherence to international and domestic law. Having examined Ghana's efforts to enforce the right to health information during the COVID-19 pandemic, it is essential to consider the broader legal

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<sup>406</sup> *Ibid.*

<sup>407</sup> Dorcas Serwaa, et al. "Knowledge, Risk Perception and Preparedness Towards Coronavirus Disease-2019 (COVID-19) Outbreak Among Ghanaians: A Quick Online Cross-Sectional Survey" (2020) 35 Suppl 2 Pan African Medical Journal 44.

<sup>408</sup> A Lohiniva, A Nurzhynska, A Hudi, B Anim & D Aboagy, "Infodemic Management Using Digital Information and Knowledge Co-creation to Address COVID-19 Vaccine Hesitancy: Case Study From Ghana" (2022) 2:2 *JMIR Infodemiology* e37134, online: <<https://infodemiology.jmir.org/2022/2/e37134>>

<sup>409</sup> General Comment No. 14, *supra* note 400 at para 11 and 12.

obligations the State undertakes under Article 2 of the ICESCR (progressive realization of economic, social, and cultural rights without discrimination).

### **4.3.3 Ghana's Obligations Under Article 2 of ICESCR**

With reference to the foundational obligations under the ICESCR, as stated above in Chapter Three, Ghana is required to take steps, by all appropriate means, to progressively achieve ECS rights by utilizing its maximum resources and through international assistance and cooperation. At this point, the research will carefully examine whether this obligation was translated into a feasible realization of the head porters' fundamental rights to health and adequate housing during the pandemic. The primary goal of this section is to determine whether the government's interventions mentioned above satisfied at least the state's minimum core obligations under the ICESCR. Through that exercise, violations of the State's obligation are also identified and highlighted.

#### **1. The Right to Health**

The right to health is comprehensively guaranteed under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>410</sup> To achieve its object and purpose as discussed in chapter 3 above, the Covenant places an obligation on states to take steps for the prevention, treatment, and control of epidemic, endemic, occupational, and other diseases, and the creation of conditions that would assure all medical services and medical attention in the event of sickness.<sup>411</sup> These obligations are further explicated in the General Comment 14 of the Committee which clarified the broad scope of the right to health to include: healthcare and underlying determinants of health such as water, sanitation, and housing;<sup>412</sup> an obligation to

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<sup>410</sup> ICESCR, *supra* note 23 at Art. 12.

<sup>411</sup> *Ibid.*

<sup>412</sup> General Comment No. 14, *supra* note 400 at para 11.

implement a national public health strategy and plan of action;<sup>413</sup> the participation of the population in health decision making;<sup>414</sup> and remedies and accountability for violations of these obligations.<sup>415</sup>

Several international human rights bodies expressed concerns about the pandemic's impact on the right to health.<sup>416</sup> The chairpersons of the 10 UN Treaty bodies urged global leaders to ensure respect for human rights in addressing the public health threat posed by the pandemic and to adopt measures to protect the right to life and health without discrimination.<sup>417</sup> The ESCR Committee subsequently issued statements that shed some light on how Article 12 obligations should be interpreted in the context of the COVID-19 pandemic.<sup>418</sup> These statements embody several recommendations that serve as guidance for state parties and are a crucial source of information upon which some of my analysis will be drawn. Central to this were the prevention, control and treatment of COVID-19 that was rapidly spreading.<sup>419</sup>

At this point, I will turn my attention to the three key variables of the right to health relevant to the COVID-19 pandemic as elaborated by the Committee.

### **Prevention obligation**

The Committee's language does not specify the State's exact obligations regarding the duty to prevent infectious diseases. General Comment 14 requires states to establish 'prevention and education programs for behaviour-related health concerns' in areas related to sexually transmitted infections, such as HIV, and to 'promote social determinants of good health, such as

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<sup>413</sup> *Ibid* at para 43(f).

<sup>414</sup> *Ibid* at para 54.

<sup>415</sup> *Ibid* at para 59-62.

<sup>416</sup> OHCHR, "UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19" (24 March 2020), online: <<https://www.ohchr.org/en/press-releases/2020/03/un-human-rights-treaty-bodies-call-human-rights-approach-fighting-covid-19>>

<sup>417</sup> *Ibid*.

<sup>418</sup> Statement on Covid, *supra* note 250.

<sup>419</sup> Statement on universal and equitable access to vaccines, *supra* note 252 at para 6.

environmental safety, education, economic development, and gender equity'.<sup>420</sup> This doesn't provide full clarity concerning the prevention of epidemics and other health-related emergencies of an international nature, like the Ebola virus, which wracked countries in West Africa in 2013. In its statement on COVID, the ESCR Committee relied on the obligation of prevention to mandate the "provision of vaccines for COVID-19 to all persons" as a "maximum priority" in order "to provide immunization against the major infectious diseases and to prevent and control epidemics".<sup>421</sup>

To expand on General Comment 14's focus on basic health parameters, considering social determinants such as 'the conditions in which people are born, live, work and age, and the underlying systems that impact them,'<sup>422</sup> the CESCR emphasized the need for States to protect against the spread of COVID-19 among communities and groups that are "subject to structural discrimination and disadvantage, including through providing water, soap, and sanitizer to communities that lack them."<sup>423</sup>

From the foregoing, it may be observed that stopping the spread of the virus, especially among vulnerable groups, was the Committee's primary concern. One of the major fears among the head porters was the uncontrolled spread of the virus, considering the limited access to health facilities in their mostly impoverished surroundings.

Contact tracing was adopted to identify individuals who came into contact with confirmed cases, institute measures to reduce their interactions with others, and screen them for possible infection. This procedure increased surveillance, accounting for about 63% of active

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<sup>420</sup> General Comment No. 14, *supra* note 400 at para 16.

<sup>421</sup> Statement on Covid, *supra* note 250 at para 3.

<sup>422</sup> World Health Organization, *Social Determinants of Health* (30 May 2019), online: *World Health Organization* <<https://www.who.int/health-topics/social-determinants-of-health>>

<sup>423</sup> Statement on Covid, *supra* note 250 at para 15.

COVID-19 cases identified during the partial lockdown period.<sup>424</sup> Through limited contact tracing and community-based surveillance, individuals who had been in contact with confirmed cases were identified and monitored, thereby averting the risk of uncontrolled spread.<sup>425</sup> Despite the obstacles that this process faced, such as staffing shortages, stigmatization, and difficulties in locating contacts, it was widely perceived as helpful in COVID-19 containment measures.<sup>426</sup>

There is limited direct documentation specifically detailing contact tracing efforts focused exclusively on head porters, despite the initiative being designed to cover all high-risk and mobile populations. It will be challenging to determine conclusively, whether the government has fulfilled its preventive obligations under the Covenant. However, some of the government's initiatives involved distributing handwashing facilities and hygiene supplies to vulnerable groups, often coordinated through community-led partnerships and local assemblies.<sup>427</sup> This exercise reflects meaningful government effort, weighing heavily in determining whether Ghana fulfilled its obligation to prevent the spread of COVID-19, despite apparent gaps in aid distribution.<sup>428</sup>

### **Treatment obligation**

Among the challenges of COVID-19 were significant limitations in accessing treatment due to excessive demand for hospital beds, oxygen, and ventilators; serious corruption at both the government and local levels; inequalities and discrimination experienced by certain segments of

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<sup>424</sup> N Asimwe et al, "Stakeholders' perspective of, and experience with contact tracing for COVID-19 in Ghana: A qualitative study among contact tracers, supervisors, and contacts" (2021) 16:2 PLoS ONE e0247038, online: <<https://doi.org/10.1371/journal.pone.0247038>>

<sup>425</sup> *Ibid.*

<sup>426</sup> *Ibid.*

<sup>427</sup> James Tayler "Ghana SDI Alliance Community Response to Covid-19," Slum Dwellers International, 24 June 2020, online: <<https://sdinet.org/2020/06/ghana-sdi-alliance-community-response-covid-19/>>

<sup>428</sup> Afrobarometer Data, *supra* note 49.

the population; and underfunded hospital systems.<sup>429</sup> As part of the general obligation under the ICESCR mentioned in Chapter Three, specific provisions such as Article 12(2)(c) of the Covenant requires States parties to take steps for the treatment of epidemic and endemic diseases. In contrast, Article 12(2)(d) obliges States to create conditions that will guarantee medical services and medical attention in the event of sickness. General Comment 14 also recommends that State parties develop a 'system of urgent medical care in cases of epidemics',<sup>430</sup> an obligation that can be interpreted as urgent COVID-19 treatment for individuals experiencing the illness. All these obligations, however, are subject to the legal architecture of Article 2 of the Covenant, requiring pragmatic steps to be taken using a state's maximum available resources and any other collaboration and assistance to ensure swift treatment for persons affected by the virus.<sup>431</sup>

Article 12 of CEDAW mandates states to take all appropriate measures to eliminate discrimination against women in the field of health care, thereby ensuring equitable access to health services.<sup>432</sup> Complementing this, Article 24 of the CRC establishes the right of children to the highest attainable standard of health without discrimination.<sup>433</sup> Together, these provisions provide a framework for interpreting the right to health for groups such as the head porters, mainly comprised of women and children,<sup>434</sup> It emphasizes the state's duty to eliminate discrimination and to guarantee comprehensive, accessible health care tailored to individuals' unique needs.

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<sup>429</sup> Bueno de Mesquita, Judith, Anuj Kapilashrami, and Benjamin Mason Meier. "Human rights dimensions of the COVID-19 pandemic." (2021) at 17, online (pdf): <<https://repository.essex.ac.uk/31127/1/Background-paper-11-Human-rights.pdf>>

<sup>430</sup> General Comment No. 14, *supra* note 400 at para 16.

<sup>431</sup> ICESCR, *supra* note 23 at Art. 2.

<sup>432</sup> CEDAW, *supra* note 28 at Art. 12.

<sup>433</sup> CRC, *supra* note 29 at Art. 24.

<sup>434</sup> Kiniry, *supra* note 51.

Article 12(2)(c) has not been interpreted by the Committee to grant a particular right to receive COVID-19 treatment. Instead, it has focused on obligations to create conditions for accessible treatment, through the sharing of scientific knowledge among States to expedite effective treatment, as well as international assistance and cooperation in sharing research, medical equipment, and supplies.<sup>435</sup> These Statements were adopted early in the pandemic when there was uncertainty about the most effective forms of treatment. Thus, it can be inferred that the Committee reasonably expected the right to provide adequate treatment to be a mandatory obligation on states, but more significantly, as also imposing a larger obligation on the international community, given the evolving medical advancements during the crisis.

Ghana administered COVID-19 treatment through a standardized protocol developed by the Ministry of Health, which applied to all individual confirmed cases. The COVID-19 Standard Treatment Guidelines prescribed a combination of non-pharmacological and pharmacological measures, including isolation or quarantine, psycho-social support, management of asymptomatic contacts of confirmed cases, management of exposures of healthcare workers and management of confirmed cases with mild and moderate symptoms.<sup>436</sup> While there is no evidence of a treatment protocol explicitly tailored for head porters, they were included in the broader national response. The treatment guidelines developed and enforced could be inferred as a step toward fulfilling Ghana's general obligation under Article 12 on the right to health. By developing comprehensive guidance on pandemic management, it fulfills its obligation through

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<sup>435</sup> Bueno de Mesquita, Judith, Claire Lougarre, Lisa Montel, and Sharifah Sekalala. "Lodestar in the Time of Coronavirus? Interpreting International Obligations to Realise the Right to Health During the COVID-19 Pandemic" (2023) 23:1 Human Rights Law Review ngac036, 1.

<sup>436</sup> Ministry of Health, "Provisional Standard Treatment Guidelines for Novel Coronavirus Infection (COVID-19 Guidelines for Ghana)" (2020), at 20 online: *Accra: Ministry of Health* <<https://www.moh.gov.gh/wp-content/uploads/2016/02/COVID-19-STG-JUNE-2020-1.pdf>>

“the adoption of a national strategy to ensure to all, the enjoyment of the right to health, based on human rights principles which define the objectives of that strategy”.<sup>437</sup>

Despite the varied non-discrimination clauses inherent in the main international frameworks discussed in this section, i.e., the ICESCR, CEDAW, and CRC, Ghana’s standardized health protocols during the COVID-19 pandemic did not fully ensure non-discrimination in the treatment of head porters. Although the government implemented nationwide public health measures to control the pandemic, these protocols largely failed to account for the specific vulnerabilities and living conditions of the head porters. Studies show that head porters faced exclusion from targeted health services, testing, and social support programs due to their precarious status, lack of official documentation, and residence in overcrowded informal settlements.<sup>438</sup> Given the systemic discrimination that the head porters have endured for decades, it is unsurprising that Ghana's standard health protocol did not achieve an equitable, accessible, and inclusive healthcare, falling short of the government’s legal obligations.

### **Control obligation**

As discussed in Chapter Three, the Committee notes in General Comment 14 that, as part of the obligation to control the spread of disease derived under article 12 of the ICESCR, States are to ‘make available relevant technologies, using and improving epidemiological surveillance and data collection on a disaggregated basis, the implementation or enhancement of immunization programs and other strategies’.<sup>439</sup> The Committee recognized ‘immunization

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<sup>437</sup> General Comment No. 14, *supra* note 400 at para 53.

<sup>438</sup> EJ Dun-Dery, F Dun-Dery, ME Ashinyo, J Avoka, "Are Internal Migrants (Head Porters) Sexually Vulnerable Due to the Coronavirus Pandemic? A Qualitative Study of the Situation in Ghana" (2025) 57:2 Journal of Biosocial Science 147.

<sup>439</sup> General Comment No. 14, *supra* note 400 at para 16.

programs against the major infectious diseases’ as a core obligation.<sup>440</sup> Drawing a linkage between this and the right to ‘enjoy the benefits of scientific progress’,<sup>441</sup> the Committee’s statement on universal and equitable access to vaccines for COVID-19 clarified that ‘every person has a right to access a vaccine for COVID-19, which is safe, effective, and based on the application of the best scientific developments’.<sup>442</sup> The elements noted by the Committee — surveillance, immunization, and other measures will be addressed below in sequence.

Public health surveillance detects early signs of emerging health threats, tracks the progress of threats, supports the evaluation of necessary interventions, and helps shape policy responses.<sup>443</sup> As a result, surveillance is a vital element in both the prevention and control of epidemic and endemic diseases, as stated in General Comment 14.<sup>444</sup> Surveillance, however, raises human rights concerns, such as impacts on privacy.

Surveillance measures like contact tracing can infringe on the right to privacy because they involve collecting and processing personal and health data, which may be accessed or misused in the absence of proper safeguards. The right to privacy, while enshrined in domestic and international law (ICCPR Art. 17),<sup>445</sup> is not absolute, and may be lawfully restricted under circumstances such as the protection of public health. States may also derogate from the right to privacy in times of public emergencies.<sup>446</sup> Therefore, any approach needs to be compatible with the requirements of confidentiality, and in the case of Ghana, Article 18 of the Constitution,<sup>447</sup> which relates to the protection of the privacy of the home and other property, to prevent

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<sup>440</sup> *Ibid* at para 44 (b).

<sup>441</sup> ICESCR, *supra* note 23 at Art. 15(1).

<sup>442</sup> Statement on universal and equitable access to vaccines, *supra* note 252 at para 4.

<sup>443</sup> de Mesquita et al, *supra* note 435.

<sup>444</sup> General Comment No. 14, *supra* note 400 at para 16.

<sup>445</sup> ICCPR, *supra* note 24 at Art. 17.

<sup>446</sup> *Ibid* at Art. 4.

<sup>447</sup> Constitution of Ghana, *supra* note 34 at Art. 18.

government overreach. Given Ghana's successful contact tracing mentioned above, which averted a wider spread of the virus, it can be concluded that the government's response adequately fulfilled its surveillance obligations in accordance with the Committee's guidance.

In terms of the implementation and enhancement of immunization, the Committee, recognized that it was impractical to make vaccines available to all due to limited supply in the early days of the pandemic. As a result, it adopted the concept of accessibility to describe the distribution of vaccines. It also used statements such as “States must ensure access to the COVID-19 vaccine for all; vaccines must be made accessible based on equality and non-discrimination, and guarantee physical accessibility to vaccines, especially for marginalized groups and people living in remote areas.”<sup>448</sup> This can be viewed as an affirmation and reiteration of the concept of progressive realization as a fundamental principle of the central obligation under Article 2(1) of the Covenant.

In terms of Ghana’s application of the above guidance, the government moved quickly to secure doses through bilateral channels and the COVID-19 Vaccines Global Access (COVAX), receiving its first delivery on 24 February 2021.<sup>449</sup> In a bid to meet the World Health Organization’s *Strategy to Achieve Global COVID-19 Vaccination*,<sup>450</sup> with a stated objective of vaccinating 70% of the world’s population against COVID-19 by mid-2022, the government implemented a series of targeted measures to bolster COVID-19 immunization efforts, including the designation of December 2021 as National Vaccination Month, the issuance of directives

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<sup>448</sup> Statement on universal and equitable access to vaccines, *supra* note 252.

<sup>449</sup> A Pushkaran, VK Chattu & P Narayanan, “A Critical Analysis of COVAX Alliance and Corresponding Global Health Governance and Policy Issues: A Scoping Review” (October 2023) 8:10 *BMJ Global Health* e012168.

<sup>450</sup> World Health Organization, *Strategy to Achieve Global COVID-19 Vaccination by mid-2022* (Geneva: World Health Organization, 2021) online: <<https://www.who.int/publications/m/item/strategy-to-achieve-global-covid-19-vaccination-by-mid-2022>>

mandating vaccination for specified priority groups, and the enforcement of proof-of-vaccination for travellers.<sup>451</sup>

As of 1 April 2024, WHO data indicate that 80% of healthcare workers, 41.70% of older adults, 32% of individuals with underlying medical conditions, and 425,174 people under 17 years of age in Ghana had completed their primary COVID-19 vaccination series.<sup>452</sup> Despite the above, it is clear that coverage remains well below the WHO's 70% of population target. This mixed outcome indicates that Ghana substantially met its obligation of conduct by adopting reasonable, context-appropriate measures despite supply limitations to ensure vaccine availability and accessibility. However, the failure to attain universal access implies that the obligation of result was only partially fulfilled.

The Committee, in its COVID-19 statement, also emphasized that measures to combat the pandemic must be based on "the best available scientific evidence to protect public health."<sup>453</sup> This insistence on the need for measures deployed to be based on scientific evidence affirms the position taken by the Committee in General Comment 14, which states that intervention for the right to health must be "scientifically appropriate."<sup>454</sup> This means that the right to health can accommodate stringent control measures as long as they are based on the best scientific evidence to advance the pursuit of public health, such as the use of indoor ventilation systems, restrictions on movements, and public gatherings.<sup>455</sup>

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<sup>451</sup> ME Addadzi-Koom, "'No Jab, No Entry': A Constitutional and Human Rights Perspective on Vaccine Mandates in Ghana" (2022) 24:2 Health & Human Rights 47.

<sup>452</sup> WHO. (2024, May 19). Power BI Report. Online:

<https://app.powerbi.com/view?r=eyJrIjoieWJiNDNiZDIiYmVlZS00NWQ2LTgwNDQyY2JmNTM5NTNINDM0IiwidCI6ImY2MTBjMGI3LWJkMjQeNGl3OS04MTBiLTNkYzI4MGFmYjU5MCIslmMiOjh9>

<sup>453</sup> Statement on Covid, *supra* note 250 at para 10.

<sup>454</sup> General Comment No. 14, *supra* note 400 at para 12(d).

<sup>455</sup> Michael Gormley, Lidia Marawska & Don Milton, "It is time to address airborne transmission of coronavirus disease 2019 (COVID-19)" (2020) 71:9 Clinical Infectious Diseases 2311.

Data from the World Health Organization (WHO) and the Coronavirus Resource Center at Johns Hopkins University and Medicine puts Ghana's all-time confirmed COVID-19 cases at an estimated 171,834, with 1,463 mortalities.<sup>456</sup> Although there are no specific numbers on COVID-19-related data for head porters, research indicates that about 68% were at high risk of contracting the virus due to overcrowding and the unhygienic environments in which they live.<sup>457</sup> Some head porters reported that many of their colleagues had tested positive, while others displayed symptoms.<sup>458</sup> These figures suggest that health implications prevalent among the head porters may have gone unreported or unnoticed by health authorities and reinforce stereotypes about head porters as potential virus hosts.

As discussed above and in Chapter Three, Article 12 of the ICESCR guarantees a comprehensive and indispensable set of health rights that encompass a wide range of underlying determinants of health.<sup>459</sup> A critical overview of Article 12 and the discussion above in contrast to the realities of Ghana's response, suggests a serious State non-compliance with its obligations to uphold the right to health of head porters.

A targeted approach addressing the specific needs of head porters was notably lacking, as responses were predominantly focused on food distribution programs, as I alluded to in chapter 2.<sup>460</sup> Healthcare interventions during the pandemic were structured to serve the general population without regard for this vulnerable group.<sup>461</sup> This shortcoming highlights a significant

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<sup>456</sup> World Health Organization, "Ghana: WHO Country Profile", online: *World Health Organization* <<https://www.who.int/countries/gha>>; Johns Hopkins University, "COVID-19 in Ghana", online: *Coronavirus Resource Center* <<https://coronavirus.jhu.edu/region/ghana>>

<sup>457</sup> Include Platform, *supra* note 401.

<sup>458</sup> Mbamba et al, *supra* note 47.

<sup>459</sup> ICESCR, *supra* note 23 at Art. 12.

<sup>460</sup> Akuoko et al, *supra* note 194.

<sup>461</sup> COVID-19 Guidelines for Ghana, *supra* note 436.

gap between the protections envisaged by legal frameworks and the actual experiences of head porters in accessing adequate healthcare services during the COVID-19 crisis.

## **2. The Right to Adequate Housing**

Housing is an essential component of our social and personal lives. In chapter 2, I discussed the importance of housing in the lives of the head porters, and in chapter 3, I explored some of the guarantees of the right under international and Ghanaian domestic frameworks. As emphasized in those earlier discussions, the right to adequate housing is a critical human right, and several international human rights instruments comprehensively address its various dimensions.<sup>462</sup> Yet for the head porters, as for many other Ghanaians, this right remains largely unfulfilled. As I pointed out in chapter two of this research, Ghana faces a substantial housing deficit, exacerbated by uncontrolled rural-urban migration, and people in lower-income brackets are disproportionately affected by this national challenge.<sup>463</sup> During the pandemic and related restrictions, housing reemerged as one of the most pressing needs of the Kayaye. This section examines the right to adequate housing as it pertains to head porters and the specific measures implemented to address this problem during the pandemic.

In Chapter Three, I showed how Article 11(1) of the ICESCR stands out as the most comprehensive and significant provision in guaranteeing the right to housing. Under Article 11 of the ICESCR, State parties recognize the right to an adequate standard of living, “including adequate food, clothing and housing.”<sup>464</sup> Although the term “adequacy” in the provision may be

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<sup>462</sup> See, for example, Article 25(1) of the Universal Declaration of Human Rights, Article 5(e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14(2) of the Convention on the Elimination of All Forms of Discrimination against Women, Article 27(3) of the Convention on the Rights of the Child, and Art. 11(1) of the ICESCR.

<sup>463</sup> *Ibid.*

<sup>464</sup> ICESCR, *supra* note 23.

subject to relative determination by social, economic, cultural, and other factors, the Committee on Economic, Social and Cultural Rights elaborated on the key aspects of the right to housing that must be considered in any given context. They include the following:

1. Legal security of tenure.
2. Availability of services, materials, facilities and infrastructure.
3. Affordability.
4. Habitability.
5. Accessibility.
6. Location.
7. Cultural adequacy.<sup>465</sup>

The Committee recognized States' obligation to confer legal security of tenure on various settlements, including 'emergency housing and informal settlements'.<sup>466</sup> It also identifies the need for all housing options to contain facilities essential for health and comfort, such as safe drinking water, energy for cooking, heating, and lighting, as well as sanitation and washing facilities.<sup>467</sup> In terms of affordability, the CESCR noted that housing costs should be maintained at a level that does not undermine the ability to meet other essential needs.<sup>468</sup> Thus, tenants should be protected against unreasonable rent and other property-related fee increments.

Habitability is a key component of the right to adequate housing, as the Committee expounded.<sup>469</sup> Habitability ensures protection from 'cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors' while also guaranteeing physical safety.<sup>470</sup> The other of the seven determinants I will focus on in my analysis is location. Adequate housing should be situated in areas, whether urban or rural, that provide residents with access to

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<sup>465</sup> General Comment No. 4, *supra* note 276 para 8.

<sup>466</sup> *Ibid* at 8(a).

<sup>467</sup> *Ibid* at 8(b).

<sup>468</sup> *Ibid* at 8(c).

<sup>469</sup> *Ibid* at 8(d).

<sup>470</sup> *Ibid*.

employment opportunities, healthcare facilities, educational institutions, childcare services, and other essential social amenities. Furthermore, housing must not be constructed on or adjacent to contaminated sites that could compromise the health of its occupants.<sup>471</sup> The two components of the right to housing mentioned above form, in my observation, the most pressing elements that hinder the realization of the right to housing for the head porters. Securing affordable housing in a favourable location in a very urbanized location, such as the city of Accra, Ghana, where head porters are heavily concentrated, is a very challenging endeavour.

CEDAW, despite not explicitly articulating a standalone provision on the rights to adequate housing, implicitly reinforces women's housing rights by addressing discrimination in property, inheritance, and family law contexts under Article 15(3) on women's freedom of residence and domicile.<sup>472</sup> The CEDAW Committee has consistently emphasized that gender-based discrimination in access to adequate housing, land, and property violates women's equal enjoyment of economic and social rights, recommending that states integrate a gender-responsive and human rights-based approach into national housing policies.<sup>473</sup> It reiterates the need to protect women's rights to land by recognizing their legal capacity and security of tenure, and to address housing, especially for rural women, as part of the overall rural development program.<sup>474</sup>

Article 27 of the CRC acknowledges every child's right to a standard of living adequate for their physical, mental, spiritual, moral, and social development, placing corresponding obligations on States Parties to assist parents and guardians in securing adequate housing and living conditions.<sup>475</sup> The Committee on the Rights of the Child reiterated the requirements for

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<sup>471</sup> *Ibid* at 8(f).

<sup>472</sup> CEDAW, *supra* note 28 at Art. 15(3).

<sup>473</sup> Committee on the Elimination of Discrimination against Women, [General Recommendation No. 34] (2016) on the Rights of Rural Women, UN Doc CEDAW/C/GC/34 (2016) at para. H(1).

<sup>474</sup> *Ibid* at para 2.

<sup>475</sup> CRC, *supra* note 29 at Art. 27(1).

“legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy” as an essential component of Article 27, particularly relevant for children in street situations.<sup>476</sup>

The provisions of the CEDAW and CRC mentioned are among the sources that augment article 11 of the ICESCR and the Committee’s interpretation of the right to adequate housing, especially when applied to vulnerable groups. The discussions that follow this paragraph show that Ghana failed to meet any of these international obligations to provide temporary or permanent housing for the head porters during the pandemic.

With an estimated 39% of urban dwellers in Ghana living in slums,<sup>477</sup> the housing debate is integral to the national development agenda. The existing housing deficit further complicates the drive towards a sustainable realization of the right to adequate housing for head porters. The minimum requirements implied under Article 2 of the ICESCR entail, at the very least, providing emergency shelter for head porters during the COVID-19 pandemic. This is because providing shelter is essential to protect the health, dignity, and survival of the head porters, as inadequate housing exposes them to heightened risks of infection and undermines their right to an adequate standard of living. In contrast, city authorities demolished the temporary structures of head porters in the heart of Accra, Ghana, during the pandemic.<sup>478</sup>

The progressive realization of the right to adequate housing during the pandemic required the State to assume responsibility for identifying and temporarily relocating vulnerable groups, such as head porters residing in slums and makeshift dwellings, into more secure and spacious

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<sup>476</sup> Committee on the Rights of the Child, General Comment No. 21 (2017) on Children in Street Situations, CRC/C/GC/21 (21 June 2017) at para 50.

<sup>477</sup> COVID-19 Law and Policy: Ghana, University of Pretoria, Centre for Human Rights, (2023), online: <<https://www.chr.up.ac.za/covid19-database/ghana>>

<sup>478</sup> *Ibid.*

vacant housing facilities. This duty stems from the understanding elaborated by the CESCR that the right to housing transcends the provision of four walls and a roof. Instead, it encompasses the key elements outlined above, including secure tenure, sufficient living space, habitability, accessibility, and protection from physical and health risks.<sup>479</sup> Thus, relocating vulnerable populations into secure vacant housing directly furthers the objectives of adequate housing by addressing immediate health and safety needs, ensuring dignity, and counteracting structural disadvantages, key requirements under the right to housing framework.<sup>480</sup>

Furthermore, emergency housing interventions needed to be guided by objectives that were consistent with and firmly grounded in international human rights standards. The failure to provide adequate housing for head porters during the pandemic, as part of the government's response measures, is evidence that Ghana did not meet this standard and, hence, may have violated its obligation.

The obligation to utilize the maximum available resources required the allocation of all available national resources to renovate or construct new structures that could have served the purpose of accommodating the head porters temporarily while addressing the underlying causes of the housing insecurity of the head porters, including the significant housing deficit and the high proportion of urban slum dwellers in the country. This duty emanates from the baseline guarantees of the right, specifically the minimum core obligations discussed in chapter 3 and as defined by the CESCR.<sup>481</sup>

The government was required to allocate financial resources from national budgets, donor funds, and international assistance to improve the living conditions of the head porters. The

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<sup>479</sup> General Comment No. 4, *supra* note 276 at para 7.

<sup>480</sup> *Ibid.*

<sup>481</sup> General Comment No. 3, *supra* note 229 at para 10.

government had an obligation to demonstrate that extensive commitment “had been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations”.<sup>482</sup> A viable proposed solution was the temporary resettlement of head porters in vacant boarding schools, as there was a national halt to educational activities.<sup>483</sup> However, I found no documented information suggesting that this proposal was implemented when desperately needed in any of the vibrant Kayaye settlements.

The lockdown policy implemented in Ghana was stringent, and it worsened conditions in slums and impoverished communities, potentially increasing transmission in overcrowded informal settlements.<sup>484</sup> With approximately 53% of households in Ghana relying on shared facilities, home confinement posed a significant challenge for many residents.<sup>485</sup> The housing deficit, overcrowded slums, and rural-urban migration made adhering to lockdown protocols difficult, weakening the policy’s effectiveness in preventing the spread of COVID-19.<sup>486</sup> This situation was further undermined when the Accra Metropolitan Assembly demolished wooden shelters of informal dwellers, rendering about 1,000 slum dwellers homeless during the lockdown.<sup>487</sup>

The demolition of these structures by the Accra Metropolitan Assembly during the lockdown critically worsened the living conditions of head porters, exposing them to health hazards and increased economic hardships, and drawing condemnation for disregarding their

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<sup>482</sup> *Ibid.*

<sup>483</sup> Kenneth Nii Sackey, "Why not house head porters in our boarding schools amid Covid-19 pandemic?" (30 March 2020), online: <<https://www.myjoyonline.com/why-not-house-head-porters-in-our-boarding-schools-amid-covid-19-pandemic/>>

<sup>484</sup> Lewis Abedi Asante & Richael Odarko Mills, "Exploring the Socio-economic Impact of COVID-19 Pandemic in Marketplaces in Urban Ghana" (2020) 55:2 Africa Spectrum 170.

<sup>485</sup> Samuel Adu-Gyamfi, "An analysis of the socio-economic impacts of the lockdown policy in Ghana" in Peter Sutoris et al, eds, *Pandemic Response and the Cost of Lockdowns: Global Debates from Humanities and Social Sciences*, 1st ed (London: Routledge, 2022) at 133.

<sup>486</sup> *Ibid.*

<sup>487</sup> COVID-19 Law and Policy, *supra* note 477.

fundamental human rights amid a public health emergency.<sup>488</sup> Residents of Agbogbloshie market, among whom are many head porters, pleaded with the Assembly to postpone the planned demolition, citing concerns about homelessness and the inability to relocate due to movement restrictions and loss of income amid the pandemic.<sup>489</sup> To this end, the research found no response from the AMA regarding the demolition exercise. The Accra Metropolitan Assembly's demolition and eviction of vulnerable informal residents, which includes head porters, demonstrates a clear breach of the right to adequate housing, as no alternative accommodations were provided to those displaced.<sup>490</sup>

Moreover, the central government's inaction in addressing the severe hardship arising from the Metropolitan Assembly's violation, particularly its failure to develop a sustainable response to the housing crisis affecting head porters, further infringes on the right to housing by undermining all legal obligations to respect, protect, and fulfill the right. These actions collectively reflect a significant neglect by Ghanaian public authorities in fulfilling their obligations to safeguard the human rights of marginalized groups. It also parallels the findings of the African Commission in *SERAC v Nigeria*<sup>491</sup> which found the actions of the Nigerian government, such as forced evictions and destruction of homes, leading to environmental

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<sup>488</sup> Amnesty International Ghana, "Demolition Exercise at Old Fadama is Untimely and Insensitive to Human Rights Protection of the Most Vulnerable in Ghana's Fight Against COVID 19" (April 2020) online: <<https://drive.google.com/file/d/18WWTmFK2ltCiyUKQxqXPCveg4WPSyIHW/view>>

<sup>489</sup> Daniel Anaba "Postpone demolition exercise' – Agbogbloshie residents beg AMA" (13 April 2020) Citi Newsroom (online), online: <<https://citinewsroom.com/2020/04/postpone-demolition-exercise-agbogbloshie-residents-beg-ama/>>

<sup>490</sup> See *SERAC v Nigeria supra* note 286, where the African Commission on Human and Peoples Rights held that Nigeria violated several articles of the African Charter by failing to protect, promote, and fulfil the rights of the Ogoni people, including the right to health, the right to a satisfactory environment, and the implied rights to housing and food. The Commission found that both direct government actions (such as forced evictions and destruction of homes) and failures to regulate private actors (notably oil companies) led to environmental degradation, loss of livelihood, and disregard for community participation. The Commission called on Nigeria to prevent further abuses, grant relief and compensation to victims, conduct investigations, undertake environmental cleanup, and guarantee meaningful consultation for affected communities.

<sup>491</sup> *Ibid.*

degradation and loss of livelihood, amounted to a violation of the property rights (Art. 14) and the right to health (Art. 16) of the African Charter, among others. In the same vein, the failures of the Ghanaian state would constitute a violation of internationally recognized human rights standards, especially the right to housing.

Throughout my research, I have not come across any policy document(s) developed during the pandemic that specifically catered to the emergency housing needs of the head porters. Despite the “stay-at-home” restrictions, many head porters remained homeless or in insecure housing.<sup>492</sup> Promises made by some political figures to assist the head porters,<sup>493</sup> primarily as a convenient means of campaigning for the impending 2020 general elections, never materialized. In view of the failure to implement these measures, the government’s response fell short of fulfilling its obligations to realize the head porters’ right to adequate housing as mandated by law.

#### **4.4 The Disjunction Between Treaty Obligations and Enforcement**

As discussed in Chapter 3, Ghana's domestic legal framework for protecting socio-economic rights is extensive. Yet, systemic barriers limit the extent to which these legal provisions are meaningfully operationalized.<sup>494</sup> Non-compliance with legal obligations, especially in Ghana, is evidence of how far human rights law and practice have yet to travel on

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<sup>492</sup> Mbamba, *supra* note 47.

<sup>493</sup> See for example, Former President John Mahama, while criticizing some support programs for head porters as insufficient, pledged to focus on training about 10,000 Kayayei in vocational skills for sustainable employment rather than solely providing accommodation if re-elected, <<https://www.modernghana.com/news/719458/ndc-to-employ-10000-Kayayei-mahama.html>> Dr. Hassan Ayariga, flagbearer of the All People's Congress (APC), launched the party’s manifesto focused on institutional reforms, anti-corruption, support for local foods, and investment in head porters (Kayayei), <<https://www.myjoyonline.com/hassan-ayariga-outdoors-running-mate-launches-apc-2020-manifesto/>>

<sup>494</sup> Cynthia Gyan, *Gasping for Breath: Women’s Concerns and the Politics of Community Development in Rural Ghana* (PhD Dissertation, Wilfrid Laurier University, 2018) [unpublished].

the slippery road of indivisibility.<sup>495</sup> This thesis argues that Ghana's lack of a unified national policy direction and unflinching political will to act poses the biggest hurdle to realizing socio-economic rights, in general and, more specifically, the socio-economic rights of head porters. As shown in this chapter and preceding ones, the lack of a clear policy direction leads to fragmented governance, inefficient resource allocation, inconsistent policy implementation, hindered economic development, and misplaced priorities in addressing pressing national issues, such as poverty, healthcare, and education.

As analyzed in this chapter, Ghana's COVID-19 response largely overlooked the needs of head porters despite their contribution to the informal economy. This indifference to the human rights of head porters reflects a broader inadequacy in implementing a national and internationally guaranteed socio-economic rights framework. As I discussed above, by failing to ensure accessible and adequate healthcare services, specifically through rigorous contact tracing and testing protocols for head porters during the pandemic, the State placed this vulnerable population at increased risk, thereby heightening their susceptibility to COVID-19. As I have shown, the insufficient distribution of food items to the head porters, crucial for survival, was also a significant oversight that undermined the right to food security, which directly correlates with the right to a healthy lifestyle. The analysis in this chapter highlights key patterns of inadequate implementation and enforcement of the socio-economic rights of head porters during the pandemic, including the rights to adequate housing, health, and food security. In light of the extensive examination documented above, the following section summarizes the State's general compliance with its national obligations.

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<sup>495</sup> Scott Leckie, "Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights" (1998) 20:1 Human Rights Q 81 at 83.

## 4.5 Compliance with National Obligations

Research on the right to health and housing in Ghana is relatively scarce, possibly because the 1992 Constitution fails to define these rights clearly.<sup>496</sup> Consequently, discussions of these rights remain underdeveloped. Ghana has made significant strides in implementing and practicing an admirable level of civil and political rights.<sup>497</sup> However, unique challenges persist in fully realizing socio-economic rights. Building on the preceding analysis of Ghana's international human rights obligations, this section briefly examines whether Ghana complied with its corresponding national duties to protect the socio-economic rights of head porters during COVID-19.

Although socio-economic rights are generally recognized and accepted as part of Ghana's legal architecture, realizing them remains a constant challenge.<sup>498</sup> As demonstrated in Chapter 3, the Constitution of Ghana provides a steady framework for socio-economic rights.<sup>499</sup> Guarantees for the protection of the right to healthcare and the well-being of all citizens, the right to education, the development of a healthy economy, and the implementation of maximum welfare and social assistance programs are crucial objectives of the State to undertake, through all feasible means, to ensure the realization of these fundamental rights as outlined in the Constitution.<sup>500</sup>

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<sup>496</sup> Benjamin Kunbuor, "Is There a Right to Health in Ghana? The Case of Ghana's 1992 Constitution" (2021) 1:2 UCC LJ 1.

<sup>497</sup> Commission on Human Rights and Administrative Justice (CHRAJ), "Final Report of Ghana Human Rights Baseline Survey" (2017). Online (pdf): <<https://chraj.gov.gh/wp-content/uploads/2025/09/2017-Final-REPORT-OF-GHANA-HUMAN-RIGHTS-BASELINE-SURVEY.pdf>>

<sup>498</sup> *Ibid.*

<sup>499</sup> Constitution of Ghana, *supra* note 34 at Chapter 6.

<sup>500</sup> *Ibid* at Art. 34.

#### 4.6 Assessment of government measures during COVID-19

The Right to health: As part of its right to health obligation under Art 34(2) of the Constitution, Ghana implemented limited testing, contact tracing, and outreach measures to contain the virus, including training contact tracers and deploying them for case identification and monitoring.<sup>501</sup> Nonetheless, the discussions above have demonstrated that these efforts were generalized, with little targeted focus on overcrowded informal settlements where head porters reside, limiting the efficacy of surveillance in the high-risk communities.<sup>502</sup> Moreover, challenges such as delays in test results and poor coordination hindered timely interventions. Data collection often lacked disaggregation by vulnerable groups, contributing to underreporting of health issues among head porters and limiting services.<sup>503</sup>

With an estimated 100,000 head porters across the country,<sup>504</sup> the government's food distribution drive, which provided only up to 10,000 meals a day, was wholly insufficient. This did not even cater to the 70% reportedly residing in Accra, the capital city.<sup>505</sup> Among the 70% residing in Accra are thousands of infants whose sustenance depends solely on their temporarily unemployed mothers.<sup>506</sup> This inadequacy completely undermined Article 28 of the Ghanaian Constitution, which guarantees children the right to necessary care and assistance, including their nutritional needs. It also threatened the right to health, as the risk of malnutrition became imminent. Consequently, despite efforts to address the health-related hardships of the pandemic,

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<sup>501</sup> Amoakoh-Coleman M et al, "Utility of Early Diagnosis, Contact Tracing and Stakeholder Engagement in Outbreak Response in Three COVID-19 Outbreak Settings in Ghana" (2021) 55:2 Suppl Ghana Med J 29.

<sup>502</sup> *Ibid.*

<sup>503</sup> Obodai, E et al, "Data Management During COVID-19 Outbreak Response in Ghana: A Reference Laboratory Perspective on Key Issues and Measures" (2021) 55:2 Suppl Ghana Med J 51.

<sup>504</sup> Kiniry, *supra* note 51.

<sup>505</sup> *Ibid.*

<sup>506</sup> *Ibid.*

head porters had inadequate access to the most critical health interventions, underscoring systemic deficiencies in Ghana's public health response's inclusivity.

**The Right to Adequate Housing:** As noted above, the Accra Metropolitan Assembly undertook a large-scale demolition exercise at the height of the COVID-19 pandemic, without adequate consideration of the impending public health and housing crises confronting residents of informal settlements in Ghana's capital city.<sup>507</sup> These demolitions were carried out in the absence of sufficient relocation plans or protective measures for those displaced, resulting in widespread homelessness and deteriorating living conditions amid national lockdowns.<sup>508</sup> Such actions not only undermined the fundamental socio-economic rights of head porters but also further entrenched their vulnerability during the pandemic. Consequently, the government's failure to reconcile pandemic response measures with the protection of housing rights and human dignity violated socio-economic rights guaranteed in the constitution, especially Article 18.<sup>509</sup>

**Livelihoods and social protection:** In chapter two, I explored Ghana's implementation of social protection interventions, including cash transfer schemes and food distribution programs, intended to alleviate the economic consequences of the crisis for vulnerable groups.<sup>510</sup> However, head porters often faced significant challenges in accessing these reliefs. Practical barriers, such as a lack of formal documentation, difficulties with registration, and issues with equitable targeting, meant that many head porters were excluded from crucial support.<sup>511</sup> This exclusion undermined the economic hardships of head porters and constrained the government's capacity

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<sup>507</sup> Amnesty International Ghana, *supra* note 488.

<sup>508</sup> *Ibid.*

<sup>509</sup> Constitution of Ghana, *supra* note 34 at Art. 18.

<sup>510</sup> Abdul Gafaru & Ibrahim, *supra* note 11.

<sup>511</sup> *Ibid.*

to protect their livelihoods effectively, amounting to a violation of Article 34(2) of the Constitution.<sup>512</sup>

Ghana's COVID-19 response measures were clearly fraught with design and implementation flaws. Most of the interventions were not tailored to the realities of highly mobile, informally employed women and children living in overcrowded settlements, many of whom lacked the documentation, stable addresses, or social networks needed to access government schemes effectively.<sup>513</sup> Crucially, the government's failures across many of the fronts I discussed above constitute a clear violation of its human rights obligations. Despite being a state party to multiple international human rights frameworks, the extensive analysis undertaken above shows that Ghana failed to take reasonable steps to realize those rights domestically. At the same time, its constitutional and statutory guarantees remained under-enforced, non-justiciable in practice, or inaccessible to marginalized groups, especially informal-sector workers like the head porters.

#### **4.7 Conclusion**

This chapter has examined the Ghanaian government's pandemic policies, focusing specifically on interventions aimed at addressing the dire needs of head porters. While the policy responses addressed some members of the informal economy, albeit without well-defined procedures, there was a notable absence of tailored measures to ameliorate the living, health, and economic conditions of head porters. Although public perception favoured Ghana's pragmatic efforts to control the spread of the virus,<sup>514</sup> the record of its socio-economic policies exposed

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<sup>512</sup> Constitution of Ghana, *supra* note 34 at Art. 34(2).

<sup>513</sup> WIEGO, *supra* note 8.

<sup>514</sup> Evelyn Yorke, "A Survey of Public Perception, Knowledge and Factors Affecting Vaccine Acceptability in Ghana" (2023) 13 *Journal Community Med & Health Educ* 1.

preexisting structural inequalities and a weak social welfare system. These are evidenced by poor law enforcement, as seen in the lack of emergency shelter for the head porters, the destruction of existing lodging by city authorities, and other violations demonstrated throughout this chapter.

The findings of this study demonstrate that the inadequate, poorly conceived, and non-compliant policy measures implemented by the government of Ghana during the COVID-19 pandemic directly address this study's most crucial inquiry: whether State responses implicated the socio-economic rights of head porters. Based on the extensive legal and literature-based examination undertaken, it is evident that the government's neglect of the socio-economic rights of head porters—rights guaranteed under Ghana's Constitution and reinforced by international legal obligations—constituted a clear breach of its duty to provide for and protect this vulnerable group during the pandemic. This failure highlights the insufficiency of existing social protection frameworks in safeguarding marginalized populations, particularly head porters, during profound and unforeseen crises such as the COVID-19 pandemic. Building on the analysis presented in this chapter, the next chapter concludes the research by synthesizing the findings to highlight key lessons and propose recommendations that address the core issues identified.

## CHAPTER FIVE

### SUMMARY, RECOMMENDATIONS, AND CONCLUSION

#### 5.0 Summary

As my discussion in the preceding chapters of this research has shown, Ghana's response to the COVID-19 pandemic lacked the prerequisite entitlements necessary for the full realization of the socio-economic rights of head porters. Based on this premise, this research calls for urgent attention to be given to the general socio-economic well-being of this vulnerable group. This proposition is grounded in the facts which highlight the continued vulnerability of head porters despite the legal frameworks that guarantee their rights, as I presented in this research, which highlights the extensive international and domestic legal frameworks that guarantee the enjoyment of socio-economic rights. As a proud democratic and developing West African nation, Ghana ought to do more to fulfill its legal obligations.

The study thoroughly examined the phenomenon of head portage and the community of head porters in Chapter Two, offering substantial background to contextualize their lived experiences in Ghana. Central to the research were the enforcement of the rights to an adequate standard of health and housing during the pandemic, as these are crucial for the well-being and survival of the head porters. To ensure a rigorous analysis, I explored in Chapter Three the legal frameworks that regulate the protection and fulfillment of socio-economic rights in Ghana. Unfortunately, this research has shown that weaknesses in the drive towards a full realization of socio-economic rights stem from ambiguous constitutional provisions, incoherent jurisprudence, and an indifferent political community.

In Chapter Four, the study identified the specific government response to the socio-economic rights to health and housing of the head porters, and developed a discussion of the meaning of the provisions that address these rights, as well as their applicability in the context of the COVID-19 pandemic. Through this discussion, the principal argument of this research was established. While the government made efforts to address the pandemic's health and socio-economic impacts, responses that directly affected the head porters failed to adequately protect their rights. The rights to health and adequate housing were notably absent from the government's response framework. The exclusion of many informal workers from relief programs and the limited reach of social protection measures collectively meant that the rights of head porters were not sufficiently safeguarded during the pandemic.<sup>515</sup>

This thesis, therefore, contends that the Ghanaian government's responses to the adverse effects of the COVID-19 pandemic violated the socio-economic rights of head porters in Ghana.

## **5.1 Post-Pandemic Interventions**

Following promises made in 2019 by the then Vice President, Dr. Mahamudu Bawumia, on behalf of the government, to provide adequate housing and empowerment programs for head porters, the Vice President launched the 'Kayaye Empowerment Program' on May 21, 2024, and inaugurated two newly built multipurpose hostels and skill training facilities in Madina and Ashaiman, in the capital city of Ghana.<sup>516</sup> At the outset, the initiative aims to empower about 5,000 head porters nationwide through technical and vocational education, with 600 persons evenly distributed each month across cohorts.<sup>517</sup> As Dr. Bawumia noted, the government's

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<sup>515</sup> Foli & Ohemeng, *supra* note 59.

<sup>516</sup> Chris Nunoo, "Bawumia launches kayayei empowerment programme" (May 21, 2024), online: *Graphic Online*: <<https://www.graphic.com.gh/news/general-news/bawumia-launches-kayeyei-empowerment-programme.html>>

<sup>517</sup> *Ibid.*

ultimate objective is to provide decent accommodation for head porters and to create a holistic, sustainable pathway for economic empowerment, ensuring the resilience of these individuals.

"This multifaceted program is characterized by a rigorous and exhaustive recruitment process, culminating in the selection of initial training cohorts comprising 5,000 head porters. Over the course of three weeks, participants will be immersed in a transformative learning experience, encompassing essential modules such as baking and beading, supplemented by invaluable training in soft skills, including personal healthcare, financial management, and entrepreneurial acumen.<sup>518</sup>

The program has made significant strides as this research progressed. Six cohorts have graduated from the program, and many participants have expressed their desire to establish independent businesses.<sup>519</sup> A discussion was held to expand the training program to include Information and Communication Technology (ICT) training and bus driving.<sup>520</sup> These options will expand the range of opportunities for head porters to pursue their passions. However, there are concerns over the program's magnetizing effect to attract more rural girls to the cities rather than addressing the root cause of the north-south migration, where the head porters encounter all kinds of abuse.<sup>521</sup> Launched with positive intentions, the Kayaye empowerment program could become an exploitative avenue for some rural families and unscrupulous individuals to drive rural girls into the cities in the hope of joining the program. However, this is not a viable solution to the many issues that plague rural communities, like poverty, archaic cultural practices, and

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<sup>518</sup> Chris Nunoo, *supra* note 516.

<sup>519</sup> Mercy Mensah, "The sixth group of graduates from Bawumia's Kayaye Skills Empowerment Program" (November 9, 2024), online: *GhanaWeb* <<https://www.ghanaweb.com/blogs/mercy360/The-sixth-group-of-graduates-from-Bawumia-s-Kayaye-Skills-Empowerment-Program-1991>>

<sup>520</sup> Vincent Ashitey "Bawumia launches Kayeye Empowerment Programme to train 5,000 head porters" (12 June 2024), online: Prime News Ghana <<https://www.primenewsghana.com/general-news/bawumia-launches-kayeyei-empowerment-programme-to-train-5-000-head-porters.html>>

<sup>521</sup> Hope Education Project, "The Kayaye Crisis: Why Skills Training and Accommodation in Accra Are Not Enough", online: Hope Education Project <<https://hopeeducationproject.org/the-kayaye-crisis-why-skills-training-and-accommodation-in-accra-are-not-enough/>>

illiteracy, which bring about uncontrolled migration and ultimately result in abuse and vulnerability for the girls.<sup>522</sup>

The State's provision of hostel facilities to head porters and its commitment to expand this skill-training and housing program conform to Ghana's obligations under Articles 18 and 20 of the Constitution.<sup>523</sup> These provisions protect the rights to privacy and property ownership, respectively, and have been interpreted to encompass the right to housing.<sup>524</sup> It also represents a gradual attempt to realize the right to adequate housing, as outlined in Article 11 of the ICESCR.<sup>525</sup> The provision of housing extends beyond providing a safe lodging home to an environment that supports the health and well-being of head porters from the slums and shacks in which they reside, as explained in Chapter Two. The State's actions therefore made some progress in fulfilling the right to housing and also addressed the interconnectedness of housing and health rights, reinforcing broader human rights protections owed to head porters. Although progress has been made in protecting the rights of head porters, greater collective efforts are still required to achieve more meaningful and lasting improvements, as reflected in the recommendations presented below.

## 5.2 Recommendations

This research proposes recommendations to address the challenges faced by head porters, with particular emphasis on upholding their socio-economic rights to health and adequate housing.

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<sup>522</sup> *Ibid.*

<sup>523</sup> Constitution of Ghana, *supra* note 34 at Arts. 18, 20.

<sup>524</sup> See, *The Republic v. High Court, Accra; Ex Parte Attorney-General* (Abban, Interested Party) (1996-97) SCGLR 610.

<sup>525</sup> ICESCR, *supra* note 23.

1. There's a need to strengthen legal recognition for the thousands of informal sector workers under Ghana's domestic laws. A strengthened legal recognition grants head porters and other informal workers protection from discrimination and access to essential services, including food, emergency shelter, healthcare, and income support during crises, such as the pandemic. It would also ensure their full inclusion in social protection schemes, including standard health insurance coverage, pensions, and affordable and adequate public housing projects, which are typically unavailable to informal workers.

2. A transformative and integrated social policy framework, which supersedes fragmented and politically driven interventions, is essential for Ghana's national development and the protection of vulnerable groups. Some of the existing social policy frameworks in Ghana are: the Livelihood Empowerment Against Poverty,<sup>526</sup> the National Health Insurance Scheme,<sup>527</sup> and the Ghana School Feeding Program.<sup>528</sup> By prioritizing structural reforms and evidence-based strategies, such a framework could facilitate more sustainable and equitable access to education, healthcare, social protection, and economic opportunities for the head porters, thereby promoting social inclusion and long-term poverty alleviation.<sup>529</sup>

3. It is crucial to revive the introduction and adoption of private members' motions in Ghana's Parliament, grounded in Article 108 of the Constitution,<sup>530</sup> to advocate specifically for the rights of head porters. This could prove to be the most effective avenue through which the

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<sup>526</sup> Government of Ghana, "Livelihood Empowerment Against Poverty (LEAP)", online: <<https://www.mogcsp.gov.gh/projects/livelihood-empowerment-against-poverty-leap/>>

<sup>527</sup> National Health Insurance Act, *supra* note 288.

<sup>528</sup> Ministry of Gender, Children and Social Protection (MoGCSP), Ghana School Feeding Programme (GSFP) (5 February 2017), online: Ministry of Gender, Children and Social Protection <<https://www.mogcsp.gov.gh/ghana-school-feeding-programme-gsfp/>>

<sup>529</sup> Z Abukari, AB Kuyini and A Kuyini Mohammed, "Education and Health Care Policies in Ghana: Examining the Prospects and Challenges of Recent Provisions" (2015) 5 SAGE Open 1, online: <<https://doi.org/10.1177/2158244015611454>>

<sup>530</sup> Constitution of Ghana, *supra* note 34 at Art 108.

plight of head porters can be featured heavily in the national discourse, ensuring that their specific needs and challenges are addressed in urban planning and labour policies.

### **5.3 Contribution to Research**

Since the emergence of the COVID-19 pandemic, research has examined its effects on vulnerable groups, including persons with disabilities and head porters.<sup>531</sup> In Ghana, much of this research has focused on the social impact of the pandemic on these groups. Both empirical investigations and scholarly commentaries have addressed this issue. To the best of this researcher's knowledge, however, no study has dedicated effort to investigating the human rights dimensions of the health, education, housing, and other challenges faced by head porters.

Thus, this research was conducted to uncover the socio-economic rights guarantees of the head porters and identify attempts by the Ghanaian government to enforce them, as well as any potential violations that undermined these legal guarantees. The study identified social factors that negatively affected the head porters' rights to health and housing. With this knowledge, directing crisis response interventions specifically toward head porters may yield more effective outcomes than those observed during the COVID-19 pandemic in Ghana.

### **5.4 Area for Further Research**

While the study captured the perspectives of head porters on the impact of government responses to their socio-economic rights, the head porters do not represent the generality of vulnerable persons in Ghana. Faced with a different reality, the experiences of groups such as

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<sup>531</sup> See, Foli & Ohemeng, *supra* note 59: Rita Osei-Kuffour, An Exploration into the Social Impact of COVID-19 on Persons with Disabilities Living in Kumasi, the Ashanti Region of Ghana (MA Thesis, University of Manitoba 2023). [unpublished].

persons with disabilities, child beggars and street hawkers could differ significantly from those of the head porters. Therefore, future research that focuses on the impact of the pandemic on other vulnerable groups will provide a holistic understanding of the government's COVID-19 intervention on their socio-economic rights. Additionally, since the scope of this study was limited to the rights to health and adequate housing of the head porters, a survey into other socio-economic rights significantly affected by the pandemic, such as the right to education and its impact on the millions of children in Ghana, will provide valuable information that can inform future policies around public education.

## **5.5 Conclusion**

As this study has shown, the COVID-19 pandemic revealed the longstanding vulnerabilities and systemic neglect faced by head porters in Ghana, highlighting the urgent need to enforce their socio-economic rights. This research has demonstrated that, although legal and policy frameworks exist in Ghana to protect socio-economic rights, significant gaps in enforcement persist, leaving head porters at increased risk of rights violations during the pandemic. The pandemic's impact has underscored the importance of legal recognition, comprehensive social protection, and targeted policy measures that address both the immediate and long-term structural challenges faced by these informal workers. Moving forward, a rights-based approach, rooted in participatory policy development, gender sensitivity, and effective government accountability, must be prioritized to ensure that head porters are protected in times of crisis and empowered to claim their rightful place in Ghana's socio-economic environment. This requires that the head porters be included in the civil and political discourse that shapes their lives. Only through such sustained and inclusive efforts can the nation meet its

constitutional and international obligations to uphold the dignity and rights of all its citizens, especially the most marginalized.