Compliance with the CRPD in States with Multiple Internal Legal Systems: The Case of Ghana

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ABSTRACT

This paper examines Ghana’s compliance with the CRPD in the face of the state’s multiple internal legal systems. Most African countries have multiple internal legal systems unlike other countries of the north but are expected to translate human rights treaties as though their states had homogenous systems. The vast internal diversity often hinders African state’s full compliance with their international obligations as they are unable to bring the varied non-state actors to internalize the international norms. The international treaties do not bind the non-state actors but they largely control the internal systems. Taking a cue from administrative law, this paper explores a bottom-up approach by which non-state actors in multiple legal systems like those of Ghana could contribute to state compliance with the norms of the CRPD.

Keywords: Cloud Based Platform, Pensions Schemes, Infrastructure, Architecture, Regulatory Bodies.

INTRODUCTION

The international human rights system expects that once a state signs a human rights treaty, it makes the treaty work. The system assumes that the state has control over its internal system and that it can translate the treaty’s norms throughout its territory. In translating the international norms, the international system assumes a level of state homogeneity that is more common in the north (or western countries) than in Africa. Africa has 3000 distinct ethnic groups and 2000 languages.1 The sheer heterogeneity of Africa makes translating of treaty norms’ a daunting task for individual states. In many African States, the complex internal diversity results in states limiting change to state actors and, paying little attention to changing the multiple non-state actors (their norms and practices included.)

Indeed we see this happening often and sadly so even in cases where it is clear that the treaty targets change from non-state actors and not just state actors. But sometimes, because of the complications in tracking some of the non-state actors and their laws and practices, it appears impossible to expect state parties to achieve change among non-state actors. I think it is possible and I show that through this case study of a bottom-up approach to Ghana’s compliance with the Convention on the Rights of Persons with Disability (CRPD).

Ghana, like many other African countries, is home to multiple internal legal systems operated by non-state actors. These non-state actors (varied lawmakers and law enforcers) whose laws and practices are targeted for change by the international human rights treaties such as the CRPD have very often not engaged with the treaties. The treaties bind state actors (it is their

1 People of Africa http://www.africanholocaust.net/peopleofafrica.htm (accessed 29 March 2016.)
duty to make it work) but actually do not bind non-state actors, even when they target change among non-state actors. Full compliance involves internalization of the international norms by both state and non-state actors. To change non-state actors the state party may have to go through some process to know what goes on at the non-state level (the specific actors, laws and practices) and what can actually work to achieve norm transformation at that level. The first section sets out the scope and methodology of the research. The second section presents an in-depth case study of disability rights in Ghana, discussing the rights in the light of the cultural beliefs that undermine those rights. Part 3 examines Article 8 of the CRPD (the provision on nurturing public perceptions and values towards the CRPD’s value system) to determine whether it can bring non-state actors into changing their laws and practices that are harmful to persons with disabilities (PWDs) in Ghana and if not, what can work within the context of Ghana’s internal laws to achieve the required change in the non-state actors.

International human rights regimes are very hard to enforce. International human rights treaties are generally not self-enforcing or self-executing. After ratification, few internal or external forces force states into full-throated enforcement of the legally binding norms.

The CRPD specifically obligates state parties to take ‘legislative, administrative and other appropriate measures’ to implement the rights protected under the treaty. This involves state actors and state level action. The CRPD further requires state parties to modify or abolish existing … customs and practices that constitute discrimination against persons with disabilities, ‘combat stereotypes, prejudices and harmful practices relating to persons with disabilities…’ Non-state actors control customs and cultural beliefs about disability some of which have fostered stereotypes, prejudices and harmful practices against PWDs. For a state party to change harmful cultural practices relating to disability, it must target non-state actors in its implementation of the international human right treaty. The issue becomes even more complex where state parties have multiple internal cultures accounting for varying harmful cultural practices against PWDs. This paper does not examine the merits of the CRPD. Rather, it examines the CRPD’s implementation in Ghana, a country whose internal legal pluralism churn out non-state level laws and practices inimical to the rights of PWDs. The issue is how to transform unfavourable non-state level laws and practices when these stem from multiple internal legal orders and authorities.

**METHODOLOGY**

Article 8 of the CRPD requires state parties to change harmful non-state practices through awareness creation and promotion. This paper examines Article 8 to determine whether it achieves this end within the context of Ghana, and if it does not, considers an alternative approach. A workable alternative, in the view of this paper, will be one developed through a bottom-up approach: that the people to be affected by the solution to the human rights issues (the non-state actors) participate in the drawing up of the solution to the problem. That the solution be developed through an inquiry into and an understanding of the meaning of the human rights issue in the context of the particular community where the violation occurs and then the creation of solutions that are meaningful to the members of the particular community to encourage acceptance and internalization of the international norm. This inquiry takes a qualitative approach to influencing non-state level cultural changes.

**Ghana and the CRPD**

The Ghana statistical services defines PWDs as persons “who are unable to or are restricted in the performance of specific tasks/activities due to loss of function of some part of the body as a result of impairment or malfunction.” It estimates that PWDs constitute 3% of Ghana’s population (737,743 PWDs out of Ghana’s total population of 24,658,823 in 2010). Of this population, 16.9% of PWDs in Ghana are located in the Ashanti Region and a total of 17.2% located in the three regions of the north

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4 Domestic influences are often not powerful enough to force recalcitrant governments into compliance.
5 J Goldsmith & E Posner The limits of international law (2005), Both Simmons (n 2 above); and R Goodman & D Jinks ‘How to influence states: Socialization and international human rights law’ (2004) 54 Duke Law Journal 632 acknowledge the lack of effective global enforcement mechanism for international human rights and the reluctance of foreign governments to force recalcitrant states into compliance owing to collective action problems.
7 CRPD (n 6 above) arts 4(1)(b) & 8(1)(b).
8 CRPD in 6 above) art 8. Article 8 is a positive right but for the purposes of this paper we consider it terms of the methods it prescribes for states to change harmful customs and practices.
9 Ghana Statistical Service ‘2010 Population and housing census national analytical report’ May 2013, 305 [http://www.statsghana.gov.gh/~/media/2010/Info/National_Analytical_Report.pdf] (accessed 16 January 2016). Of course, the CRPD defines disability differently as follows: CRPD (n 2 above) art 1: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” This paper however maintains the definition of disability by the Ghana’s statistical services because that informs the country-specific data on disability used in this paper.
10 as above. Other studies put the population of PWDs in Ghana at a much higher figure; eg, a 2011 UN report does not examine the availability of persons with disabilities in all aspects of development of Ghana (accessed 16 January 2016). Of course, the CRPD defines disability differently as follows: CRPD (n 2 above) art 1: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” This paper however maintains the definition of disability by the Ghana’s statistical services because that informs the country-specific data on disability used in this paper.
11 estimates that there were about 2.4 million persons living with all forms of disability in Ghana.
(Northern Region, Upper East Region and Upper West Region.)."11 The types of disabilities identified by the statistical services during the 2010 population and housing census were sight, hearing, speech, physical, intellectual, emotional and other forms of disability (unspecified) with visual impairments constituting the majority. “About 40 percent of all PWDs in Ghana had multiple disabilities.”12 On the distinction regarding when people acquire disabilities, the report indicated a higher prevalence of disability among adults than children throughout Ghana: “The disability rate rose from 1.4 percent at age group 0–14 years to 3.1 percent for those aged 15–64 years then to 14 percent at age 65+ years.”13 This pattern of low numbers of children with disabilities (CWDs) may be attributed to the high rate of killing of children born with disabilities in Ghana because of the various cultural beliefs associated with disability. It also shows that a large percentage of Ghanaian may not be born with disabilities but acquire disabilities during adulthood. The issue of how people acquired disabilities however, did not receive much discussion in the report. 49.1% of Ghana’s population dwells in rural areas14 and 54% of rural dwellers in Ghana are PWDs.15 The concentration of PWDs in rural communities is significant given the fact that most of the cultural beliefs about disability emanate from and thrive in rural settings and this paper contends that these cultural beliefs influence the degree to which Ghana can fully comply with its obligations under the CRPD. The predominant occupation among rural dwellers in Ghana is agriculture16 and 56.3% of PWDs dwell in agricultural households in Ghana.17 The overconcentration of PWDs in the informal sector (agriculture) and in rural communities rather than the formal sector and in urban communities could be linked to the regular construction of government and commercial buildings without disability access in urban areas in Ghana. This is so even though the Persons with Disabilities Act of Ghana (PWD Act) requires that public buildings be constructed to give access to the disabled.18 The relatively insignificant population of former combatants with disabilities and wounded warriors in Ghana compared to other West-African countries like Liberia and Sierra Leone could also be a contributory factor for the little effort from government in constructing buildings with disability access.

**Ghana’s Statutory Compliance with the CRPD and Positive Policies**

Following the 1975 GA Declaration on Rights of Disabled Persons,19 the 1979 20 and 1992 21 Constitutions of Ghana provided for the rights of PWDs. The 1992 Constitution particularly entrenched the rights of PWD22 borrowing its provisions almost entirely from the 1975 GA Declaration.23 In 2006, Ghana enacted the PWD Act24 - the same year the GA adopted the CRPD – and has since signed and ratified the CRPD.25 Ghana has recorded impressive gains in the Millennium Development Goals such as ‘halving extreme poverty (MDG1A), halving the proportion of people without access to safe drinking water (MDG 7B), universal primary school (MDG 2A) and gender parity in primary education (MDG 3).’26 These successes have been achieved through government policies such as the Free Compulsory Universal Basic Education (FCUBE) Policy, the School Feeding Programme and the Livelihood Empowerment Against Poverty Programme (LEAP). In the specific area of disability rights extra protections of the rights of PWDs have always formed part of the laws and policies of Ghana. For instance, there is evidence that in the pre-colonial era (circa 1772) Okomfo Anoyke in creating the Asante state, identified as one of the irrevocable seventy-seven Laws of Asante (Aman mmu) the non-execution of blind persons or Albinos for any offences merits the customary sanction of execution.27 In the colonial era, early missionaries commenced the education of CWDs in the 1930s.28 Upon attaining independence in 1957 Ghana’s

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2 The Constitution of the Republic of Ghana, 1979: art 10(3)(e) obligates government to provide free vocational training, rehabilitation and resettlement of ‘disabled persons.’


4 as above, art 29(1)(d) entrenches fundamental human rights provisions.

5 as above, art 29(1) - (3) (art 29(1) - (3) is a near verbatim reproduction of art 9 of the 1975 Declaration; art 29(4) of the 1992 Constitution corresponds to art 10 of the 1975 Declaration and art 29(5) corresponds to the second half of the 1975 Declaration.

6 PWD Act (n 18 above).


8 as above, art 29(1) - (3) is a near verbatim reproduction of art 9 of the 1975 Declaration; art 29(4) of the 1992 Constitution corresponds to art 10 of the 1975 Declaration and art 29(5) corresponds to the second half of the 1975 Declaration.


12 Ghana signed the CRPD in March 2007 and ratified it in July 2012.


14 In 1936 missionaries attempting at providing special education to children with disabilities’ and in 1945, ‘the first special school for children with visual and orthopedic impairment’ was established by the Basel Mission. In 1948 the Presbyterian and Methodist churches established the second special school for blind students in Wa, northern Ghana.”

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government continued the education of CWD. In 1958, the report of an Expert Committee on Medical Rehabilitation to the World Health Organisation emphasized the cardinal role of rehabilitation in enabling PWDs to participate in society. Following this Report and subsequent UN attention to disability issues in the 1960s, Ghana’s post-independence government adopted certain policies that facilitated the rehabilitation of PWDs. The initial emphasis on special education has shifted to inclusive education with support from UNICEF. Currently, Ghanaian PWDs are allocated 2% of the District Assemblies Common Fund, constituting 7.5% of Ghana’s total annual revenue, intended to minimize poverty among them and enhance their social image through the attainment of dignified labor.

Disability Rights in Ghana

Article 7 of CRPD requires Ghana to ‘take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.’ Article 10 of CRPD also guarantees the right to life of all PWDs. However the right to life of Ghanaian CWDs is frequently violated based on different cultural beliefs about disability. Among Asantes of central Ghana, the cultural belief is that babies born with disabilities are evil signs for the community from the gods, threatening the very survival of the community. Parents must have offended the gods to receive a CWD. Babies with intellectual disabilities are believed to be from rivers and are labelled ‘Nsouba’ literally; ‘child of the river.’ Such babies were returned to the river to go back to where they came from or ‘to their own kind.’ Babies with physical ‘deformities’ such as six fingers, were killed at birth (Munyi, 2012). Persons with physical disabilities are labelled ‘nea waddiem’ literally; ‘the one who has a physical deformity.’ This label signifies ‘an imperfect or incomplete person.’ Based on this belief, adults with physical ‘deformities’ could neither become chiefs nor appear before them.

Among northerners, babies born with disabilities were also killed because they were considered a threat to their parents’ prosperity. The common understanding of the problem among northern communities is that such babies are actually evil spirits sent to impoverish the parents, as parents would have to spend all their wealth nursing their CWDs to health. (This understanding has now been extended to include children born during a period of family crises.) Babies born with disabilities (or complex medical conditions) are labelled ‘spirit children’, ‘Kinkirigo’ (language in Kassena Nankana district) and their birth signifies the emergence of an evil force in the family necessitating their death or abandonment. In January 2013, an investigative journalist uncovered the active pursuit of the killing of “spirit children” through soothsayers in communities in northern Ghana. These practices of soothsayers have persisted as non-state level norms because of strong cultural belief about disabilities. Following the publication of Anas’ report some ethnic-group leaders in the Upper-East Region banned the killing of babies born with disabilities in April 2013. Although this a small step because there are dozens of other ethnic groups in northern Ghana whose leaders made no such commitments, it is particularly significant because it involved non-state level actors with a shared background understanding of disability (chiefs and soothsayers) regulating themselves to achieve practices that are consistent with the CRPDs norms.

Cultural beliefs about disability shape state and non-state level attitudes towards PWDs. Let us consider the effect of cultural beliefs in two areas - exclusion from non-state-level activities (community life) and state-level activities (accessibility to public places and services).
Operating at the non-state level, stigmatization is the single most difficult barrier to PWDs participating in community life. For PWDs, stigmatization starts from childhood and continues into adulthood. The cultural perception that the birth of a child with disability is the parent’s punishment for offending a god lead some parents of ‘normal’ children to stop their children from playing with CWDs, lest the ‘punishment’ is transferred to their ‘healthy’ or ‘normal’ children. On the other hand, parents of CWDs hide them from the community instead of seeking help for them. Baffoe (2013) narrates the response of a parent of a child with Intellectual disability who was a participant in his survey:

“When my child was born with this illness (Down’s syndrome), everybody told me that my family may have done something wrong for the gods to send me this child. I never brought him outside the house. The only time I bring him out of the room to the open compound is when everyone in the neighborhood has gone to the farm…”

In adulthood, cultural beliefs about disability prevent PWDs from having regular lives in their communities. There is a Ghanaian cultural practice that before someone marries, a background check is conducted of the prospective partner to determine if there are any issues of mental illnesses or other disabilities in that partner’s family. Where there are, the marriage is discouraged, least the disability (bad bloodline) is introduced into the ‘healthy’ family. A PWD’s chance of marriage is therefore severely hampered by cultural beliefs in clear violation Article 23 of CRPD which guarantees the right of PWDs to marry. ‘Disability in Ghana has been linked to cultural beliefs and myths that dehumanize affected persons. This has affected the self esteem of PWDs and limited their opportunities for social interaction.’ For instance, a regular pastime of adult Ghanian men, particularly those in rural areas (where PWDs are concentrated) is drinking together and calling out of drinking names to other men in their communities. Among the Ewe-Anlo of South Eastern Ghana, the calling out of drinking names of an Ewe-Anlo man awakens his personhood in ways that defy categorization using the five senses. The denial of a drinking name to a PWD on the basis of his disability is a blow on his personhood, making him feel ‘less than.’ Being denied the pleasure of that recognition from his community when colleagues are accorded it, affects one’s self-esteem and is an example of not being allowed to participate fully in the activities of the community because of one’s disability in violation of the right to be included in one’s community guaranteed under Article 19 of CRPD.

Even when an adult with disability is healed of his or her disability, he or she is always associated with the former disability. Members of the community continually make reference to the former disability to justify his or her exclusion from various communal activities. For instance, Ghana enacted the Mental Health Act in 2012, aimed at “promot[ing] a culturally appropriate … mental health care that will involve both the public and the private sectors.” Two years after the enactment of this legislation the Chief Psychiatrist of the Accra Psychiatric Hospital, Dr Akwasi Osei, complained that when mentally ill patients are treated and sent home, their families and communities do not want to accept them back because of the age-old cultural perception that ‘once a person has been mentally ill before, he or she still retained some mental illness no matter how well-recovered he or she may be.’

Attitudes about public places and services in Ghana equally reflect the cultural beliefs about disability. Let us consider accessibility to public places and provision of education. In the area of accessibility, Article 9 of the CRPD requires state parties to ensure to PWDs access to inter alia, buildings, roads, transportation and other indoor and outdoor facilities on equal basis with others, to enable them live independently and participate fully in all aspects of life. Ghana’s Constitution provides for equal access to public places for PWDs and Ghana’s PWD Act directly obligates the owner or occupier of a public place to provide appropriate facilities for disability access to them. However public places are frequently being

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48 ‘40% PWDs were married compared to 43% in the total population, while 42.5% of non-PWDs had never married the proportion for [non-] PWDs was 27.3 percent’
50 Mental Health Act of Ghana Act 846 2012 (Mental Act) sec 2(d).
51 Interview of Dr Akwasi Osei, 10 October 2014
53 Among Ewes the cultural belief is that a person with mental disability is a fool. Such persons are therefore labelled ‘Asovi’ meaning ‘a fool’ or an idiot, Avoke (n 48 above.)
54 Mental Health Act of Ghana Act 846 2012 (Mental Act) sec 2(d).
55 Constitution (n 21 above) art 24(1).
constructed without disability access in Ghana. In 2007, the Millennium Development Authority (Ghana) began constructing the George Walker Bush Highway in Ghana. The Ghana Federation of the Disabled (GFD) was not consulted during the design of the Highway although it is the umbrella body of PWDs in Ghana and the highway is a major one, linking some of the major vehicular and pedestrian traffic routes in the capital city of Ghana: Accra. Later, and in response to requests of the GFD, assurances were given that adequate provision had been made in the design of the Highway to facilitate its use by PWDs. The designer of the highway informed the GFD that overpasses and pelican crosses were available for use by pedestrians. During the actual construction of the Highway, the GFD observed that adequate provisions were not being made to accommodate their disabilities and this matter was brought to the attention of the appropriate officials albeit fruitlessly. The GFD applied for an interim injunction to restrain the government from commissioning the road without first addressing their concerns but the motion was unsuccessful. After commissioning, patronage confirmed the fears of the GFD. It showed that whereas able-bodied persons could traverse the highway safely by using either the overpasses or the pelican crossings, PWDs who are the more vulnerable of the two groups were limited to the Pelican crossings as the only medium for traversing the major highway. The overpasses were constructed in such a way that they were inaccessible to PWDs. At the foot of the overpasses, the initial step was so high that a person with mobility impairment could not easily climb it and the railings that could have supported their climb were absent at the ground level. Subsequent steps were also unevenly spaced and too steep for such PWDs to use. Where railings are located on the overpasses, these were not strong enough to support the weight of an adult and were so widely spaced that young children with mobility impairments were in danger of falling through. At the Pelican Crossings, the curbs did not facilitate crossing by PWDs in wheel chairs. (These observations were confirmed in a Safety Audit Report conducted by the Ghana Highway Authority on the Highway, which also classified some of the defects as requiring immediate action.) Secondly, the pelican crossings are so far apart from each other that the PWDs have the additional burden of walking long distances just to be able to cross the highway from one side to the other. This bad situation was worsened by the fact that most of the stops for commercial vehicles (the usual means of transportation of PWDs) on the highway are far away from the pelican crossings. Thus, when a PWD alights from a commercial vehicle but needs to traverse the road to reach her destination, she must walk a further distance to reach a pelican crossing, cross the road before continuing her journey. For these reasons the GFD issued a writ of summons at the High Court, Accra (Human Rights Division) seeking, inter alia, an order compelling the defendants to provide facilities to make the overpasses accessible to PWDs traversing the Highway in compliance with Article 17 of the 1992 Constitution (non-discrimination clause) and Act 715. What is particularly interesting about the case is the absence of disability access to the Human Rights courtroom. Thus the representative of the GFD who is mobility-impaired usually struggles up the stairs to the third floor where the Court is located.

Absence of disability access has become a barrier to the enjoyment of the right to education of PWDs guaranteed under Article 24 of the CRPD. Baffoe (2013) narrates the observations of a visually impaired student of the University of Ghana (Ghana’s premier public university.) “All the roads on this campus have open gutters beside them. There are no pavements by the roadside so it is very difficult for those of us that are blind to walk safely around the campus. Another difficulty I have is the stairs to climb to some of the lecture halls that are on the second and third floors. There is no lift (elevator) in the building so sometimes I get friends to carry me upstairs but this is difficult. When I don’t get any people to carry me upstairs to the lecture hall, I don’t go to class. It is as if the university is only for able-bodied persons.”

Teachers in elementary public inclusive education remain prejudiced against CWDs due to negative cultural beliefs about disability. The CRPD provides that PWDs should be guaranteed the right to inclusive education at all levels, regardless of age, without discrimination and on the basis of equal opportunity. Until recently, CWDs in Ghana were not inclusively educated. The change began in 1962 when Ghana’s education laws mandated inclusive education of children with moderate disabilities in regular schools. Currently, the Constitution, the PWD Act and the Policy of Inclusive Education collectively guarantee the right to inclusive education of CWDs according to certain guiding principles.

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53 The GFD issued a writ from the Human Rights Court, Ghana Federation of the Disabled v. Attorney-General of Ghana, Ghana Highway Authority and Millennium Development Authority, Suit No. HRC 12/12 (Case on going.)
54 At some point in the proceedings the Judge directed that the representative of the GFD may be excused from appearing before the Court due to the absence of disability access to the courtroom.
55 Baffoe (n 43 above) 194.
56 CRPD (n 6 above) art 24.
57 Education Act (n 32 above).
58 Constitution (n 21 above) arts 25 & 29; PWD Act (n 24 above) secs 16, 17, 18, 20 & 21; and
Yet an overwhelming number of the regular teachers are unwilling to teach CWDs inclusively; considering themselves ‘mentally unprepared’ to teach CWDs. In the face of clear provisions in the CRPD and Ghana’s legislation that CWDs have right to education, attitudes of teachers influenced by cultural beliefs about disability suggest the contrary. Consequently, CWDs complete the cycle of education ill-equipped to participate in society, which already does not expect their participation. Students who undergo specialized education graduate with “non-functional” diplomas because society is unwilling to employ them due to their disabilities. These examples demonstrate some of the rights guaranteed by the CRPD and the cultural beliefs undermining those rights as well as the influence of those cultural beliefs on attitudes of state and non-state actors in Ghana. This leads to the obvious question: can Ghana transform these non-state norms as required by the CRPD?

Achieving Compliance with the CRPD

Under the CRPD, Ghana is obligated to take legislative, administrative and other appropriate measures to eliminate disability-based discrimination by any person, organisation or private enterprise. Through the ratification of the CRPD, the enthrenchment of constitutional provisions guaranteeing the rights of PWDs, enactment of statutes protecting the rights of PWDs and Government policy statements, Ghana has formally proscribed discrimination against PWDs in Ghana. There are however non-state level customs and practices in Ghana that discriminate against PWDs. The issue is whether or not Article 8 offers the roadmap for bringing Article 8 of the CRPD is titled Awareness-raising. The article is in 2 parts; 8(1) and 8(2). Article 8(1), containing sub-articles (a)-(c), sets out the state party obligations whilst Article 8(2) (a)-(d) sets out the actual measures state parties are required to take. Article 8(1) requires states to take measures to ‘raise awareness’ about PWDs, foster respect for their rights and dignity, ‘combat stereotypes, prejudices and harmful practices relating to PWDs’ and ‘promote awareness of the capabilities and contribution of PWDs.’ The kind of measures states can take to achieve these ends are set out in Article 8(2). They include: ‘public awareness campaigns to nurture receptiveness of the rights of PWDs, promote positive perceptions and greater social awareness towards PWDs, and promote recognition of the skills, merits and abilities of PWDs, and their contribution to the workplace and the labour market.’ It also includes ‘promoting the education of PWDs at all levels and ages’ and ‘media depiction of PWDs which are consistent with the norms of the CRPD’ and ‘promoting awareness-training program concerning PWDs and their rights.’ In sum, Article 8 of the CRPD obligates state parties to undertake awareness raising and promotion to improve the recognition of the rights and dignity of PWDs, combat stereotypes, prejudices and other harmful practices relating to PWDs. Can awareness raising and promotion change Ghana’s non-state level harmful customs and practices?

Promotion Campaigns in Ghana for Disability

To create awareness about disability rights and promote disability rights as required under Article 8, governments elsewhere have used methods such as community outreach and mobilization, mass media campaigns, education-entertainment, communication and social marketing campaigns, and even games. In terms of community outreach and mobilization; community meetings, training and sensitization sessions with traditional authorities, community or religious leaders, street theatre and other cultural activities, marches and demonstrations have been tried. Mass media campaigns in the form of radio, television, billboards and other media have been applied because they reach a wide segment of a community and offers individuals anonymous access to valuable information and resources without them going through others they do not trust. Some governments have also pursued entertainment and education on the rights and capabilities of PWDs, use of electronic technologies (mobile phones and computers), street theatre, art, music and cultural activities as tools for promoting awareness of disability rights and affecting the norms of children towards PWDs before they are fully set. In Ghana, awareness of the rights of PWDs is neither novel nor unimportant. Infact, Mensah et al (2008) report that an informant in their field research – a woman with physical disability successfully ‘challenged discriminatory tactics of her employers’ because she knew her rights from ‘attending
seminars on advocacy and lobbying on disability issues.65

“I hold an HND qualification from a recognized Polytechnic Institution in Ghana. I applied for employment with a state agency and I was initially offered the job. But my appointment was deferred because I was pregnant. When I notified the employers of my intention to start work after delivery, I was told that the position had been taken over by another person. I therefore [petitioned] the Head office of the agency in Accra and my appointment came directly from Accra with conditions prohibiting the Regional Director from transferring me to any department or branch.”66

Over the past decade in which both the CRPD and Ghana Disabilities Act have been in force (2006 – 2016) Ghana’s government and Non-Governmental Organizations (NGOs) have used various awareness campaigns in combating stereotypes, prejudices and harmful practices relating to PWDs. Let us examine work done by the Government in awareness raising and promotion. The government of Ghana has instituted policy interventions such as the LEAP programme and the allocation of 2% of District Assembly Common Fund to PWDs as part of the measures of facilitating awareness and promotion of the norms of the CRPD. Recent appointment of PWDs into key government positions has also raised awareness of the capabilities of PWDs. However, several other areas remain unexplored by government for awareness-raising. For instance, the government can work to curb the current media disinterest in disability rights issues. Mainstream media in Ghana is not obligated by Government to cover disability issues.67 Some Television stations however show newscasts and important government addresses with sign language interpretation. The media still generally portray PWDs as in need of assistance and therefore use their media networks to seek financial assistance to aid PWDs rather than portraying PWDs as rights holders, raising awareness of their rights and holding government and other duty-bearers accountable for violation of those rights where necessary.

NGOs such as Afrikids in northern Ghana have used ‘advocacy and other interventions’ to ‘stop the tradition’ of killing of children with disabilities (“spirit children) in the Kessena-Nankan East and West Districts of Upper East Region of Ghana. This NGO recruited 30 “concoction men” (the link between the ordinary residents and the soothsayers) that were previously engaged in the actual killing of the children with disabilities as “Right to Lives Promoters”, ‘to protect children, particularly those with abnormalities.’68 For their new roles, the concoction men were each presented “four goats, a bicycle, food items and … registered under the National Health Insurance” at a ceremony in April 2013. This raises several questions: how sustainable are these presentations in preventing a relapse of the concoction men into their former roles? Since there was no mention of provisions for the soothsayers is it not possible for the soothsayers to by-pass the concoction men to explore other avenues for getting clients? The chief of one of the seven villages touted to have abandoned the practice of killing CWDs used the ceremony to debunk any other reportage of the continued killing of CWDs in those communities. Could the Chief’s speech have been a deliberate attempt to throw dust into the eyes of the public that the practice has been completely abandoned through the work of the NGO?

These awareness campaigns have not safeguarded the rights of PWDs generally in Ghana as Part 2 of this paper has demonstrated. The campaigns have not changed non-state customs and practices concerning disability because they do not resonate with the cultural beliefs of the people. The method of awareness raising and promotion proposed by the CRPD therefore produces policies which, at best, result in state actor compliance without non-state actor compliance as targeted by the treaty. This paper submits an alternative strategy for achieving compliance with the CRPD among the multiple non-state actors in Ghana: using a context-specific approach to achieve non-state actors’ compliance with the CRPD.

PROPOSED SOLUTIONS
Legal Pluralism In Ghana

Legal pluralism is a regular feature in most post-colonial African countries, in no small part due to modes of colonial governance that invented and attempted to implement multiple legal orders within the construct of the colonial state. Ghana is no exception. Legal pluralism in Ghana exists in two forms: the co-existence of state-based law and the “traditional” legal system (on the one hand) and the co-existence of state-based law and multiple rule systems within the “traditional” legal system (on the

65 Messiah (in 45 above) 13.
66 as above.
67 as above, 78.
other.) In a country like Ghana, which is ethnically, culturally and religiously diverse, there are several different kinds of non-state authorities (lawmakers and law enforcers). What kind of non-state authorities depends on geographic, ethnic, cultural and religious factors. Similarly, what kind of communal prejudice pertains against PWDs comes from varied combinations of these factors.

A state party like Ghana must go through some learning process to discover the meaning of disability within the context of those communities where the violations occur and take targeted context-specific measures to bring those meanings into consistency with the CRPD. One may argue that the state, through the local government structure (from District Chief Executives, District Assemblies, Assembly members to individual unit committee members) already knows the communal cultural beliefs about disability. Whereas this paper concedes that individual state officeholders at their personal levels may possess partial knowledge of the communal belief (owing to the sheer diversity of the beliefs), official comprehensive data, perhaps in the form of a policy document confirming the disability beliefs in each community, district or region is lacking. Even if one assumes individual officeholders know the complete information, there is no evidence that they have taken any positive steps that will let anyone impute the knowledge to the state.

### State Level Source of Solution

The first source of solution is the state (state level actors.) The state can go through some learning process to discover the cultural meaning of disability in the context of those communities where the violations take place and take targeted context-specific measures to bring those meanings into consistency with international disability norms.

Thus in Ghana, the state may need different approaches to the same issue of disability rights in order to achieve conformity with the CRPD in different communities within the country. For example if the people in the northern regions of Ghana consider a child with disabilities as a “spirit child” - a potential threat to the livelihood of the family because the members of the family would have to use up all their resources to nurse him to health, then the solution for such a community should be different from that which is given to members of an Asante community which considers the birth of a child with disabilities a bad omen and a threat to the survival of the community. For the people in the northern community, the problem is one of finance and perhaps if the family is financially resourced, they may not consider the need to kill the child with disability, whereas for the child with disability in the Asante community, in spite of the wealth of the people the child will be killed to protect the existence of the community. A culture-specific solution is therefore necessary and should be developed by first understanding what the disability means to the group of people through their understanding of disability. One could argue that having a culture-specific solution (or developing solutions culture by culture) is unconstitutional by being discriminatory under Article 17 and violating the directive principles of state policy under Chapter 6 of Ghana’s constitution. It could be considered discriminatory because in the process of developing an economic solution for the northern community, government maybe empowering them economically more than the Asante community, which requires non-economic solution to resolving the disability, right issue. This could be seen as violating the directive principles of state policy which are geared towards harmonization and social integration into one Ghanaian society. This has led to preference for a one-size-fits-all solution rather than a targeted solution. Article 35(5) specifically provides that “the state shall actively promote the integration of the peoples of Ghana and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs.”

But the Constitution itself in Article 17(4)(d) provides a higher law solution, affirming that it is not unconstitutional for government to provide differently for different communities based on their special circumstances: “Nothing in this article shall prevent Parliament from enacting laws that are reasonably necessary to provide for making different provision for different communities having regard to their special circumstances not being provision which is inconsistent with the spirit of this Constitution.”

Thus the Constitution of Ghana through Article 17(4) actually directs the state to solve problems through a community-specific approach – giving different (appropriate) solutions to different communities; and that the Constitution envisages that challenges will be better solved that way.

### Non-State Level Source Of Solution

Solutions could also arise from non-state actors (lawmakers and enforcers). As earlier mentioned, Ghana is home to multiple internal rule systems which co-exist with the state legal system within the “traditional” legal system. Taking a cue from
administrative law where lower-level law enforcement officials have been found to make and implement state-level laws with considerable context-specific adjustment, producing more sustainable and workable outcomes which are eventually adopted by the top-level officials as new rules.69 I propose same trajectory for non-state level lawmakers and enforcers in Ghana. I consider specifically the role three non-state actors can play: Chiefs, religious leaders and head of families.

**Chiefs**

Chiefs in Ghana occupy a unique position. They have their “own roots of legitimacy” – sacred authority, which pre-dates the pre-colonial era and through which they have retained various degrees of sovereignty through the pre-colonial, colonial and post-colonial eras.70 They make laws with their elders (council members) and enforce their laws through their elders, sub-chiefs and subjects. Their laws are binding to members of their community71 and they sanction violations of their law. They use the institutional settings of their courts to settle disputes for people from different social, religious and legal backgrounds in their communities in matters regarding their law and sometimes in matters outside their law but which they may assume jurisdiction over. In Ghana, there is a Chief (irrespective of rank) in every community (irrespective of size), whilst state presence, through the Police, for instance, is very limited. Chiefs are therefore the first points of authority for many rural and urban communities.

Although Chiefs are not officially part of state law enforcement agencies they still enforce state-level laws when the laws are part of their customary laws because under Article 11 of the Constitution customary laws are part of the Laws of Ghana and Chiefs are the primary enforcement agencies of customary laws in Ghana in their communities.72 “Customary law means the rules of law, which by custom are applicable to particular communities in Ghana.”73 Thus if the chiefs will be exposed to the international laws on disability that have been incorporated domestically they can in turn receive them into the customary law of their particular community. The reception of those laws - accepting and incorporating them into the customary laws of the various communities, will require each Chief to undertake a context-specific approach to the state level laws to make that state level law transform the negative cultural beliefs associated with disability in his community. Chiefs are however not part of the reference groups such as government officials or state elites who participate in the processes at the international level in the drafting of the international human rights treaties (such as those that participated in the drafting of the texts on the CRPD) nor are they part of the legislature at the state level that participated in the drafting of the PWD Act of Ghana, incorporating the international law into the domestic laws of Ghana.74 But Chiefs make customary law with their elders and can modify those laws over time. Thus they can modify their customs to reflect the CRPD’s norms and then they can enforce the disability laws because then the CRPD’s norms have become part of their customary law. The modification will have to be context-specific because the underlying negative cultural beliefs about disability vary from community to community. This is possible because the Ghanaian society is organized in communities and Chiefs, through their community’s customs, cultural beliefs and traditions, influence the practices of people in the community whether or not they are state level elites or non-state level actors. Thus Chiefs, in a context-specific approach to implementing disability rights in Ghana can influence state-level actors and non-state-level actors to act and make laws in such a way that would ensure a more sustainable implementation of disability rights in Ghana.

**Religious Leaders**

Although the Ghanaian constitution, 1992, guarantees freedom of thought, conscience and belief75 which have, in various circles, been argued to mean that Ghana is a secular state, Ghanaians in general are very religious. The generality of Ghanaians believe in the existence of some deity that must be worshipped and obeyed. The main religions practiced by majority of the population are Christianity, Islam and African traditional religion. Indeed, according to the 2010 Population Census in Ghana, 94% of Ghanaians indicated that they belong to one of the three named religions.76 As a result, religious leaders wield a lot of authority and influence on the Ghanaian public. These leaders are not state actors and have no formal authority to make laws. However, because what they say hold sway, people usually follow their utterances and teachings as if they were laws. For instance, many Christians in Ghana are continually convinced by their pastors that

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69 J Landau Bureaucratic experimentalism and immigration law: Duke LJ (forthcoming)
70 Nieuwaal (n 28 above) 65.
71 When Chiefs appropriately authorize the sale of parts of the land that authorization is law against any third party interest whether or not located within the Chief’s community.
72 Constitution (n 21 above) art 11(2)
73 As above, art 11(3)
74 as above, art 276 ‘Laws of Ghana proscribe chiefs from participating in active party politics.’
75 as 21 above, art 21(1)(b)
76 Census report (n 9 above)
the mental disabilities of their relatives are spiritually caused and can only be cured through ‘divine’ interventions. As a result, it is very easy to find persons with mental disabilities chained for days, weeks and sometimes years in various prayer camps in Ghana awaiting spiritual healing. Again in Ghana, once a fetish priest declares someone a witch or wizard, perhaps due to unusual behaviour arising from a disability, it would be near impossible for such a one, or his relatives to subsequently live regular lives in their community. Certainly, persons like the religious leaders who lead about 94% of Ghanaians cannot be left out of the process of internalizing CRPD norms in Ghana if a major success in the effort is desired. Thus, it is submitted that if religious leaders who are non-state actors will be exposed to the international laws on disability that have been incorporated domestically, they could be useful vehicles to cause a significant change in the lives and attitudes of their followers or congregants about PWDs. The approach has to be context specific - A pastor would be more convincing if he told a congregant to seek medical treatment for his mentally disabled relative instead of chaining the relative at a prayer camp, rather than if the congregant were to be told to seek medical treatment because it is the law.

Family Heads

Another important non-state actor is the Head of Family. The basic unit of the Ghanaian society is the family. Families are organized in the communal way and therefore by family, this paper means the extended family rather than the nuclear one. Almost every family in Ghana has a head of family though the person may not necessarily be called ‘Head of Family.’ The head of family is leader of the family and together with his elders are custodians of the family assets including their history, traditions and customs. The role and authority of the head of family has received several judicial pronouncements in the Ghanaian jurisprudence making them settled principles.

The head of family influences several decisions in the lives of the family members. For instance, because it is the customary law that a family member’s corpse belongs to the family, the head of family has a lot of authority when it comes to funerals of family member. A head of family may decide to disclaim the corpse of a deceased member of the family if that member had had some ‘embarrassing’ disabilities during his lifetime. He could also decide not to accord a deceased PWD the required honourable burial because of the disability. These are very undesirable situations in Ghana, which people would do anything to avoid – including hiding their disabilities. Again, as mentioned elsewhere in this paper, before a man would traditionally be allowed to marry from another family, his family undertakes its investigations to determine whether there is any disability in the lady’s family line (among other concerns.) The head of family and is part of this exercise. He can insist that the marriage be cancelled if any disability is reported. Also because heads of families have the authority to alienate family property, they tend to have much influence on members who would want some family lands to farm to make a living. It is often the case that a head of family chooses to give land to a person without disability over a PWD. Where a family’s customs and traditions are inimical to the CRPD norms, it is submitted that the best agent for change will be the head of family.

Thus, if the heads of family will be exposed to the international laws on disability that have been incorporated domestically, they could also be tremendous agents of change and modify specific aspects of their traditions and customs to incorporate the disability norms. For instance, a head of family can defend the allocation of land to a PWD family member rather than take it away from him and hand it to a non-PWD family member on account of the former’s disability. Thus rather than be a financial burden to family members, the PWD, through this work would be self-sustaining and helpful family member. This would have ripple effect on even the kind of funeral he would be accorded at his death: rather than a shabby funeral, the PWD would be according an honourable funeral. Such pragmatic changes would make the non-state actors’ practices consistent with the CRPD although they may never have heard of the treaty.

CONCLUSION

The scope of inquiry of this paper was limited to state compliance with the international norms on disability found in the CRPD. This paper demonstrated that the CRPD targets change in both state and non-state actors however due to Ghana’s multiple internal legal systems the treaty’s suggested processes of awareness raising and promotion under Article 8 are insufficient tools for transforming non-state level norms. Through a case study of disability rights in Ghana, this paper demonstrated that Ghana requires a context-specific approach to disability to bring norms and practices of non-state actors into

consistency with the CRPD. The paper explored solutions from both state-level actors and non-state level actors that would be consistent with, not only the CRPD, but also the laws of Ghana.

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