



LEGAL LANDSCAPE ANALYSIS: TB LAWS AND LEGAL REMEDIES

GHANA

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I. Introduction and Acknowledgments

This legal landscape analysis is part of the Lawyers Alert Challenge Facility for Civil Society (CFCS) round 11 regional project for Anglophone Africa. The project aims for greater accountability among tuberculosis (TB) decision-makers and access to justice for people affected by TB in five African countries: Ghana, Kenya, Malawi, Nigeria, and Zimbabwe.

This memorandum outlines the TB legal framework in Ghana, analyzing constitutional law, legislation, administrative law, and other instruments to identify legal remedies and accountability mechanisms available to people affected by TB. The analysis further considers whether TB laws and policies adopt a human rights-based approach, fulfilling the right to health, prohibiting TB-based discrimination, and protecting privacy and confidentiality, among other things.

Brian Citro, CFCS 11 Expert Legal Consultant, researched and wrote this memorandum. **[Complete acknowledgments after Score TB Ghana's review and contributions.]**

II. Key Takeaways and Action Items

This section lists the key takeaways and action items from the Ghana legal landscape analysis, highlighting existing legal remedies, accountability mechanisms, gaps, and opportunities for reforms. Each action item includes a link at the end to the section in the memorandum where it is discussed.

1. People affected by TB have legal standing under article 33 of the Constitution to bring claims in the High Court seeking protection and redress for violations of their Fundamental Human Rights and Freedoms in Chapter 5 of the Constitution (see section [Judicial Protection and Limitations on Rights](#) below).
2. People affected by TB may bring constitutional claims in court for violations of their rights to human dignity, equality, and freedom from discrimination on grounds of "social status" under articles 15 and 17 of the Constitution, with reference to the right to protection from discrimination based on "type of illness" in the Patient's Charter of the *Public Health Act*, for stigmatizing or discriminatory treatment in health care, employment, education, housing, or other areas of life

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(see sections [Chapter 5: Fundamental Rights and Freedoms](#) and [Public Health Act](#) below).

3. People affected by TB may bring novel constitutional claims in court for violations of their right to health related to challenges experienced before, during, or after their TB diagnosis, treatment, care, or support, building on the arguments outlined in section IV(C) below, based on articles 13, 30, 33(5), 34, and 36 of the Constitution, with reference to “the right to quality basic health care” in the Patient’s Charter of the *Public Health Act* (see sections [Chapter 5: Fundamental Rights and Freedoms](#), [The Right to Health in Ghana](#), and [Public Health Act](#) below).
4. People affected by TB subject to involuntary or compulsory isolation, hospitalization, or detention may seek redress before a court or administrative tribunal under their rights to personal liberty and administrative justice in articles 14 and 23 of the Constitution, noting the limitation on article 14 allowing liberty deprivations “in accordance with procedure permitted by law ... in the case of a person suffering from an infectious or contagious disease” (see sections **Error! Reference source not found.** [Chapter 5: Fundamental Rights and Freedoms](#) and [Judicial Protection and Limitations on Rights](#) below).
5. People affected by TB may bring legal claims in court for violations of their right to privacy related to TB case finding, contact tracing, screening, diagnosis, treatment, care, or support under article 18 of the Constitution with reference to the rights to privacy and confidentiality in the Patient’s Charter of the *Public Health Act* (see sections [Chapter 5: Fundamental Rights and Freedoms](#) and [Public Health Act](#) below).
6. Women affected by TB may bring constitutional claims in court for gender or sex discrimination related to their TB diagnosis, treatment, care, or support under articles 17 and 27 of the Constitution (see section [Chapter 5: Fundamental Rights and Freedoms](#) below).
7. Children affected by TB may bring constitutional claims in court for violations of their rights as children and their right to education under articles 28 and 25 of the Constitution for stigmatizing or discriminatory treatment in education (see section [Chapter 5: Fundamental Rights and Freedoms](#) below).



8. Women and children affected by TB may have access to the International Federation of Women Lawyers Ghana to address discriminatory practices meted out against them.
9. Workers affected by TB may seek redress in court or file a complaint with the National Labour Council for unfair termination, discrimination during or while seeking employment, and other workplace issues under their rights to work and freedom from discrimination in articles 24 and 17 of the Constitution and protection against discrimination and unfair termination in sections 14(e), 63, and 64 of the *Labour Act* (see sections [Chapter 5: Fundamental Rights and Freedoms](#) and [Labour Act](#) below).
10. People affected by TB, Score TB Ghana, and their partners should consider advocating in the Parliament of Ghana for reforms to the *Public Health Act* to amend, update, and expand Part 1 on communicable diseases to lay the foundation for a rights-based, people-centered TB response, reducing public health officials' power to take intrusive and restrictive actions, and establishing legal rights for people affected by TB enforceable in court through a private right of action similar to the rights of people living with HIV enshrined in the *Ghana AIDS Commission Act* (see sections [Public Health Act](#) and V(C) below).
11. People affected by TB may try and enforce their rights in the Patient's Charter of the *Public Health Act*, including the rights to primary quality health care, non-discrimination, information, privacy, and confidentiality, as part of broader legal actions in court or through complaints lodged with the Commission on Human Rights and Administrative Justice (see sections [Public Health Act](#) and [Commission on Human Rights and Administrative Justice](#) below).
12. People affected by TB who are members of the National Health Insurance Scheme may file complaints with the National Health Insurance Adjudication Committee seeking redress for problems they experience with the health care they receive under the Scheme (see section [National Health Insurance Act](#) below).
13. People living with HIV/TB co-infection, TB survivors living with HIV, and people affected by TB perceived to have HIV may institute legal proceedings in court for violations of their rights to health, non-discrimination, privacy, confidentiality, work, education, freedom of movement, and sexual and reproductive health

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under sections 28 to 38 of the *Ghana AIDS Commission Act* (see section [Ghana AIDS Commission Act](#) below).

14. People with TB may be protected under the *Ghana AIDS Commission Act* even if they are not HIV-positive as persons "highly at risk of HIV infection"; if so, they may institute legal proceedings in court under section 38 of the law for violations of their rights to health, non-discrimination, privacy, confidentiality, work, education, freedom of movement, and sexual and reproductive health (see section [Ghana AIDS Commission Act](#) below).

15. Disabled people affected with TB may have enforceable right under article 29(4) of the 1992 constitution of Ghana against discrimination, abusive or degrading treatment.

16. Score TB Ghana and its partners should determine how people with disabilities affected by TB, including TB survivors with post-TB sequelae, can enforce their rights in the *Persons With Disability Act*, including non-discrimination, access to public services, and free health care, in conjunction with their rights as disabled persons under article 29 of the Constitution (see sections [Chapter 5: Fundamental Rights and Freedoms](#) and [Persons With Disability Act](#) below). People with disability affected with TB may try and enforce their rights on the combined effect of Article 33 of the 1992 constitution of Ghana, section 15 of the Courts Act 1993 (Act 459) which provides that "the high court shall have original jurisdiction over all matters but specifically section 15(d) which states "the high court shall have jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by the Constitution". Provisions in the disability Act can be used to advance the argument.

17. People affected by TB, Score TB Ghana, and their partners should consider engaging the Ghana AIDS Commission as part of this project to collaborate in promoting access to justice and legal remedies for people affected by TB in line with the Commission's *Strategic Plan for a Comprehensive Response to Human Rights-Related Barriers to HIV and TB Services in Ghana, 2020-2024* (see section [Ministry of Health and National TB Program](#) below).

18. People affected by TB may file complaints with the Commission on Human Rights and Administrative Justice [online](#), by phone (0302662150), by email (complaint@chraj.gov.gh), or in person (Old Parliament House, Box AC 489, High Street, Accra), seeking an investigation and remedies for violations of their human rights (see section [Commission on Human Rights and Administrative Justice](#) below).

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19. Children affected by TB may have enforceable right under the combined effect of article 33 of the 1992 constitution and section 8 of the Children's Act 1998 (Act 560) which stipulates "No person shall deprive a child access to education, immunization, adequate diet, clothing, shelter, medical attention and any other thing required for their development.
20. People affected by TB may have equal access to justice and treatment before the law through the legal aid system that serve as public defender for the poor in need of cost effective justice.
21. Pregnant women affected by TB may have enforceable right under article 27 of the 1992 constitution of Ghana to be given special care before and after child birth.
22. A person with mental disorder affected with TB may have enforceable basic human rights under sections 54, 55 of the Mental Health Act, 2012 ACT 846.
23. Any person affected by TB or relative of a person affected by TB who may have an information that may put a person affected with TB at safety risk as a result of actions of another may disclose of the impropriety where there is reasonable cause to believe that the information tends to show the health or safety of an individual is endangered or likely to be endangered. (Section 1(f) of the whistleblower Act 2006 (Act 720). Section 3(h) further provides disclosure may be made to the Commission on Human Rights and Administrative Justice.
24. The laws of Ghana have not been tested on the abuse of human right in respect of healthcare, specifically people affected by TB and therefore there are no precedence to establish how these cases may be conducted.

III. Legal System Overview

Ghana is a presidential democratic republic with a multi-party political system. The President is the head of state and head of government elected for a four-year term with a maximum of two terms. The President appoints the cabinet, which is responsible to Parliament.



The Parliament of Ghana is a unicameral legislature of 275 members elected by popular vote for four-year terms. Parliament has the power to enact legislation, approve the government's budget, and oversee government operations.

The Ghanaian legal system is based on English common law but also recognizes customary law. The court system is divided into two main branches – the superior courts and the inferior courts. The superior courts are the Supreme Court, the Court of Appeal, and the High Court. The inferior courts include the district, circuit, and juvenile courts. The Supreme Court is the highest court in Ghana. It has the power to interpret the Constitution and settle disputes between the government and citizens. The High Court is the principal trial court for civil and criminal cases. The Court of Appeal hears appeals from the High Court.

Ghana is a member of the Economic Community of West African States (ECOWAS) and a signatory to the African Charter on Human and Peoples' Rights, and International Covenant on Economic, Social and Cultural right (ICESCR),

IV. Constitutional Law

This section examines Ghana's constitutional law, analyzing the text of the national constitution and relevant judicial opinions. The 1992 Constitution of Ghana is the supreme law of the country. Article 1(2) states:

"This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void."

The Supreme Court of Ghana has the exclusive power to interpret the Constitution and to resolve disputes or ambiguities relating to the Constitution's provisions. Section 3 of the Court Act 1993 (Act 459) provides for the original jurisdiction of the Supreme Court;

Section 3–Original Jurisdiction of Supreme Court.

- (1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of the Constitution, the Supreme Court shall have exclusive original jurisdiction in–
- (a) all matters relating to the enforcement or interpretation of the Constitution; and
 - (b) all matters arising as to whether an enactment was made in excess of the



powers conferred on Parliament or any other authority or person by law or under the Constitution.

(2) Where an issue that relates to a matter or question referred to in subsection (1) of this section arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.

Chapter 18 of the Constitution establishes the Commission on Human Rights and Administrative Justice (CHRAJ) to investigate and remedy violations of fundamental rights and freedoms and educate the public about their rights. See section VI below for a discussion of CHRAJ and its relevance for people affected by TB.

A. Chapter 5: Fundamental Rights and Freedoms

Chapter 5 of the Constitution sets forth “Fundamental Human Rights and Freedoms.” Article 12 establishes that the rights in Chapter 5 are enforceable by the courts and must be respected and upheld by “the Executive, Legislature and Judiciary and all other organs of government and its agencies.” Chapter 5 does not include the right to health, but it establishes the following justiciable human rights relevant to people affected by TB:

- Right to life (art. 13)
- Right to personal liberty (art. 14)
- Right to human dignity, including freedom from “torture or other cruel, inhuman or degrading treatment or punishment” (art. 15)
- Right to equality and freedom from discrimination “on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status” (art. 17)
- Right to privacy (art. 18)
- General fundamental freedoms, including freedoms of association, assembly, information, and movement (art. 21)
- Right to administrative justice, including the right of “persons aggrieved by [administrative acts and decisions] ... to seek redress before a court or other tribunal” (art. 23)
- Rights of women (art. 27)
- Right to work “under satisfactory, safe and healthy conditions” and to “receive equal pay for equal work without distinction of any kind” (art. 24(1))
- Right to education (art. 25)
- Rights of children, including children’s right not to be “deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs” (art. 28)
- Rights of disabled persons, including protection against discriminatory treatment (art. 29)



- Rights of the sick “not be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs” (art. 30)

Article 17’s protection against discrimination defines “discrimination” as giving “different treatment to different persons ... whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.”

1. *Judicial Protection and Limitations on Rights*

Part III of Chapter 5 is titled “Protection of Rights by the Courts.” Article 33 in Part III states that:

“Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.”

Article 33(2) further establishes that the High Court may “issue such directions or orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition, and quo warranto as it may consider appropriate for the purposes of enforcing” the rights in Chapter 5 of the Constitution. Individuals may appeal High Court decisions to the Court of Appeal and then the Supreme Court (art. 33(3)).

Ghanaian legal scholar Raymond A. Atuguba refers to article 33(5) as the “omnibus rights provision” because it allows for the recognition of other human rights not explicitly enshrined in the Constitution.¹ The provision reads:

“The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.”

¹ Raymond A. Atuguba, *The Right to Health in Ghana: Healthcare, Human Rights, and Politics*, p. 102, in *ADVANCING THE HUMAN RIGHT TO HEALTH*, José M. Zuniga, Stephen P. Marks, and Lawrence O. Gostin eds. (Oxford University Press, 2013).



Chapter 5 rights are subject to certain limitations. The right to personal liberty in article 14 allows for deprivations of liberty “in accordance with procedure permitted by law ... in the case of a person suffering from an infectious or contagious disease.” Article 14(2) further states that any person restricted or detained “shall be informed immediately, in a language that he understands, of the reasons for his ... restriction or detention and of his right to a lawyer of his choice.” Article 21’s fundamental freedoms may be restricted by law in the interest of protecting “public health or the running of essential services” (art. 21(4)). The right to privacy in article 18 may be infringed “in accordance with law and as may be necessary in a free and democratic society for public safety or ... the protection of health or morals (art. 18(2)).

People affected by TB may bring court claims for their constitutional rights to life, human dignity, equality and non-discrimination, privacy, work, education, and others related to challenges experienced before, during, or after their TB diagnosis, treatment, care, or support or in the context of their employment or education.

B. Chapter 6: Directive Principles of State Policy

Chapter 6 of the Constitution contains “Directive Principles of State Policy.” Article 34 explains that the principles should “guide all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, political parties and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions.” Article 34 also requires the President to report each year to Parliament on the “realization of basic human rights” and “the right to good health care,” among other things. This provision represents the most explicit formulation of the right to health in the Constitution of Ghana.

Chapter 6 does not otherwise provide robust principles to direct state health policy. Article 36 on “Economic Objectives” declares that the “State shall safeguard the health, safety and welfare of all persons in employment.” Article 37 on “Social Objectives” does not discuss health policy but directs the State to enact “appropriate laws” to ensure the right to participate in “development processes.” Article 37 also establishes that the State shall “provide social assistance to the aged such as will enable them to maintain a decent standard of living” (art. 37(6)(b)). Article 38 lays out “Educational Objectives,” and article 39 contains “Cultural Objectives,” including “that traditional practices which are injurious to the health and well-being of the person are abolished.”



C. The Right to Health in Ghana

As noted above, the Constitution of Ghana does not contain an explicit, justiciable right to health in Chapter 5. Chapter 5 enshrines the “rights of the sick,” but they are limited to protection against religious- and belief-based discrimination in accessing medical care. Article 34 in Chapter 6 mentions “the right to good health care” as part of the President’s obligation to report to Parliament on the government’s progress in achieving the Constitution’s directive principles of state policy. Article 36 commits the State to safeguard “the health, safety and welfare” of workers.

A search in October 2023 for “right to health” in the Ghana Legal Information Institute database of judgments yielded no results.²

Notwithstanding the lack of judgments and a clear textual basis for a constitutional right to health, some scholars argue that the right nonetheless exists in Ghana. In a 2013 paper, Prof. Atuguba notes that the Ghana Constitution Review Commission’s 2011 report considered whether the Constitution creates a right to health. Without expressly confirming the lack of an enforceable constitutional right to health, the Commission recommended that article 30 should be re-titled “The Right to Health” and amended to “guarantee the right of every Ghanaian to the highest attainable standard of health, including access to healthcare services without barriers.”³ Prof. Atuguba also notes that, at the time, the courts in Ghana had not issued any decisions interpreting the right to health. Nonetheless, highlighting the “omnibus rights provision” in article 33(5), he argues that:

“The Ghanaian Constitution can be interpreted to enforce a right to health, though it is not expressly included. At the very least, the Constitution imposes a duty on the government to take and report on steps for the realization of the right to health of Ghanaians.”⁴

² Ghana Legal Information Institute, *Search: “right to health”*, <https://ghalii.org/search/?q=%22right+to+health%22> (accessed Oct. 16, 2023).

³ Republic of Ghana Constitution Review Commission, *Report of the Constitution Review Commission: From a Political to a Developmental Constitution* (Dec. 20, 2011), available at <http://ir.parliament.gh/handle/123456789/1545>.

⁴ Atuguba, note 1 at pp. 102, 109.



Legal scholar Benjamin Kunbuor contends that “taking the totality of Ghana’s human rights legal architecture and its health policies, one ‘ought’ to draw the conclusion that there ‘is’ the right to health in Ghana.”⁵ Prof. Kunbuor highlights the rights of the sick in article 30 of the Constitution and the elements of the right to health enshrined in Chapter 6’s Directive Principles of State Policy. He argues that Ghana’s Constitution is “silent on the justiciability” of the directive principles in Chapter 6,⁶ unlike the Constitution of Nigeria, which explicitly states that its Fundamental Objectives and Directive Principles of State Policy are not justiciable, with some exceptions.⁷ Prof. Kunbuor further cites *New Patriotic Party v. Attorney General*, in which the judge writing for the majority of the Supreme Court of Ghana held that he did “not subscribe to the view” that Chapter 6 of the Constitution is not justiciable.⁸ Instead, the judge declared that the Constitution “as a whole is a justiciable document” and that “[i]f any part of it is to be non-justiciable, ... [it] must say so.”⁹ Prof. Kunbuor also draws attention to the rights in the Patient’s Charter in the Sixth Schedule of Ghana’s *Public Health Act* of 2012, including the “right to quality basic health care.” He further considers the possibility that the right to health is an “unenumerated” right flowing from the omnibus rights provision in article 33(5) of the Constitution.¹⁰ However, noting that Ghanaian courts are committed to legal positivism and the “black-lettered law,” Prof. Kunbuor eventually concedes that “in the absence of an express provision of a right to health, the courts are unlikely to uphold the right [to] health.”¹¹

Notwithstanding the legal uncertainty, people affected by TB may consider bringing novel constitutional claims for their right to health related to challenges experienced before, during, or after their TB treatment, building on the arguments set forth above based on articles 30 and 33(5) in Chapter 5 and articles 34 and 36 in Chapter 6 of the Constitution.

V. Legislation

⁵ Benjamin Kunbuor, *Is There a Right to Health in Ghana? The Case of Ghana’s 1992 Constitution*, UCC Law Journal, vol. 1, issue 1, pp. 1-48, 45 (2021).

⁶ *Ibid* at p. 44.

⁷ Constitution of Federal Republic of Nigeria, 1999, § 6(c).

⁸ *New Patriotic Party v. Attorney General*, [1993-1994] 2 GLR 35 SC.

⁹ *Ibid* at pp. 65-66.

¹⁰ Kunbuor, note 5 at pp. 40-41.

¹¹ *Ibid* at 45.



This section surveys legislation relevant to people affected by TB in Ghana. There is no TB-specific legislation in Ghana. Instead, general health laws and other legislation govern the TB response. This section discusses the *Public Health Act*, *National Health Insurance Act*, *Ghana AIDS Commission Act*, *Labour Act*, and *Persons with Disabilities Act*.

A. Public Health Act

The *Public Health Act* of 2012 consolidates the law governing public health to prevent disease and promote and protect public health. Part 1 covers communicable diseases, empowering the Minister of Health (MoH) to designate diseases and communicable and to be governed by the act. The author could not find the MoH directive declaring TB a communicable disease under the law, but he assumes TB has been designated as such and is governed by Part 1 of *the Public Health Act*. The act does not lay the foundation for a rights-based, people-centered TB response. It does not recognize the rights of people affected by infectious diseases or establish standards for treatment, care, and support. Instead, the law primarily empowers public health officials to take intrusive and restrictive actions against people affected by TB. These include removing “a person suffering or suspected to be suffering from a communicable disease ... to a health facility or designated place” and ordering “a person living in the same house ... or a person who has come into contact with another person suffering or suspected to be suffering from a communicable disease ... to be isolated in a designated place” (sections 10(1), 11(1)). The act also empowers the Minister of Health to make regulations on a wide range of issues to “control” communicable diseases, such as “for isolating persons suffering or suspected to be suffering from a communicable disease” and “the detection, investigation, notification and reporting” of infectious diseases (sections 16-17).

The Patient’s Charter in the Sixth Schedule of the *Public Health Act* aims “to protect the rights of the patient in the [Ghana] Health Service.” The Charter sets forth two lists of patient’s rights and responsibilities, ending with this statement: “In all health care activities the patient’s dignity and interest must be paramount.” The list of rights contains 14 rights prefaced by a short list of items the Charter aims to address, including three other rights. The Patient’s Charter includes the following rights:

- Right to “basic quality health care irrespective of the patient’s geographic location”
- Right to protection from discrimination based on “type of illness,” among other things



- Right to “full information” on the patient’s condition, treatment risks, and alternatives
- Rights to privacy and confidentiality

The *Public Health Act* does not appear to create a private right of action, allowing individuals to bring claims in court for violations of their rights in the Patient’s Charter. Section 174(1) simply states, “This Act binds the Republic.” Instead, the act establishes certain rules and procedures empowering the government to enforce the law against individuals and other entities that violate the law’s provisions. Prof. Kunbuor also questions the enforceability of the Patient’s Charter of rights, noting the lack of an express provision in the law creating “legal obligations between the state and the citizen” and the lack of reference to the Charter in the Constitution or other relevant legislation.¹²

Nonetheless, people affected by TB may try and enforce their rights in the Patient’s Charter in the Sixth Schedule of the *Public Health Act* as part of broader legal actions in court or through complaints lodged with the Commission on Human Rights and Administrative Justice (see section VI(B) below).

People affected by TB may also try and enforce their rights on the combined effect of Article 33 of the 1992 constitution of Ghana, section 15 of the Courts Act 1993 (Act 459) which provides that “the high court shall have original jurisdiction over all matters but specifically section 15(d) which states “the high court shall have jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by the Constitution”.

B. National Health Insurance Act

The *National Health Insurance Act* of 2012 establishes the National Health Insurance (NHI) Authority, Scheme, and Fund. Among other things, the act aims to “ensure ... equity in health care coverage; access by the poor to healthcare services; [and] protection of the poor and vulnerable against financial risk” (section 3(f)). The law directs the NHI Authority to “provide a decentralised system to receive and resolve complaints by members of the [NHI] Scheme and healthcare providers.” It also creates an Adjudication Committee appointed by the Minister of Health (sections 3(i), 106). The purpose of the NHI Adjudication Committee is “to hear and determine complaints made by a member of the scheme” (section 106(3)). The act directs the Minister of Health to make regulations for “procedures for the resolution of

¹² Kunbuor, note 5 at 46-47.



complaints and disputes by the Adjudication Committee and for receipt of feedback by the committee” (section 108(1)(m)).

People affected by TB who are members of the NHI Scheme may file complaints with the NHI Adjudication Committee seeking redress for problems they experience with the health care they receive under the Scheme.

C. Ghana AIDS Commission Act

The *Ghana AIDS Commission Act* of 2016 establishes the Ghana AIDS Commission and National HIV and AIDS Fund and enshrines a list of “Human Rights of Persons Living with HIV or AIDS.” Sections 28 to 37 establish enforceable legal rights for people living with HIV. They include:

- Right to non-discrimination, including for people “highly at risk of HIV infection,” allowing individuals to “institute legal proceedings to claim damages against the person who carried out that act of discrimination” and for court proceedings to be held *in camera* with anonymity
- Right to health, defined as “the right to a reasonable standard of health which includes access to health care services,” including the right to informed consent
- Right privacy and confidentiality regarding a person’s HIV status, requiring written consent for disclosure
- Right to work, including broad protections against discrimination in employment and prohibiting mandatory HIV testing
- Right to education
- Freedom of movement, including the right not to be quarantined or placed in isolation
- Sexual and reproductive rights, including the rights to marry and have a family

Section 38 on “Legal proceedings” provides for the enforcement of the rights in the *AIDS Commission Act*. It states:

- (1) The rights created under sections 28 to 37 are enforceable in accordance with article 33 of the Constitution.
- (2) A public agency or a non-governmental organisation may institute legal proceedings for and on behalf of a person living with or affected by HIV or AIDS for infringement of the rights referred to in sections 28 to 37.

Section 39 covers “Offences and penalties” for rights violations, establishing that violators are “liable on summary conviction to a fine of not less than two hundred



penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than eighteen months and not more than three years or to both the fine and imprisonment.”

The *AIDS Commission Act* does not explicitly apply to people affected by TB. However, the law may apply to people with TB under the law’s term “person highly at risk of HIV infection” because people with TB are at high risk of HIV.¹³ People living with HIV/TB co-infection, people affected by TB perceived to have HIV, and TB survivors living with HIV are all directly protected under the law and may institute legal actions in court to defend their rights.

D. Labour Act

The *Labour Act* of 2003 consolidates the laws on labor, employers, trade unions, and industrial relations and establishes a National Labour Commission. The law applies to all workers and employers except for a few government agencies.

Section 10 establishes the “Rights of a worker,” including the right to “work under satisfactory, safe and healthy conditions” and “receive equal pay for equal work without distinction of any kind.” Section 14(e) on “Prohibition of restrictive conditions of employment” broadly prohibits discrimination against employees and persons seeking employment “on grounds of gender, race, colour, ethnic origin, religion, creed, *social* or economic status, *disability* or politics” (emphasis added). Section 87 protects against discrimination in the constitutions and rules of trade unions and employers’ organizations “on grounds of race, place of origin, political opinion, colour, religion, creed, gender or disability.” Section 127 prohibits employment discrimination, intimidation, and other threats against workers because of their membership in trade unions.

Section 63 in Part XVII on “Unfair Labour Practices” prohibits “unfair termination” on several grounds, including:

“(c) that the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act or any other enactment;

¹³ See Stop TB Partnership, *Key Populations Brief: People Living with HIV*, available at https://stoptb.org/assets/documents/resources/publications/acsm/KPBrief_PLHIV_ENG_WEB.pdf (accessed Sept. 27, 2023).



(d) the worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;

...

(f) in the case of a worker with a disability, due to the worker's disability;

(g) that the worker is temporarily ill or injured and this is certified by a recognized medical practitioner."

Section 64 provides for remedies for unfair terminations. Workers who have been unfairly terminated may file a complaint with the National Labour Commission. Upon finding a worker was unfairly terminated following an investigation, the Commission may order the employer to reinstate, re-employ, or pay compensation to the worker.

Part XV on "Occupational Health, Safety and Environment" establishes a duty of employers to ensure "satisfactory, safe and healthy" working conditions (section 118). Section 119 prohibits employers from requiring workers to work "in circumstances where there is a continuing imminent and serious danger to the life, safety or health" or terminating or withholding remuneration from workers who remove themselves from unhealthy working situations.

The *Labour Act* does not appear to create a private right of action allowing aggrieved workers to bring claims directly in court seeking redress for labor rights violations. Instead, the law empowers the National Labour Commission to receive and investigate workers' complaints, including for unfair labor practices (sections 132, 139). The law grants the Commission authority to make remedial orders for aggrieved workers, including ordering employers to restore the position of an unfairly terminated worker or pay a specified sum to compensate a worker for lost earnings (section 133). The act declares that an order from the National Labour Commission "shall have effect as if it were made by the High Court" (section 133(4)). Section 172 on "Enforcement of orders of the Commission" further establishes that:

"Where any person fails or refuses to comply with a direction or an order issued by the Commission under this Act the Commission shall make an application to the High Court for an order to compel that person to comply with the direction or order."

Workers affected by TB may file complaints with the National Labour Commission related to problems they experience during employment or while seeking employment. People affected by TB may seek protection under section 14(e) of the *Labour Act* against discrimination during employment or while seeking employment based on their social status due to illness or history of TB. Workers affected by TB



unfairly terminated due to illness or social status may seek redress under sections 63 and 64 of the law, filing a complaint with the National Labour Commission.

E. Persons With Disability Act

The *Persons With Disability Act* of 2016 protects the rights of persons with disabilities and establishes a National Council on Persons with Disability. The act defines “person with disability” to mean “an individual with a physical, mental or sensory impairment including a visual, hearing or speech functional disability which gives rise to physical, cultural or social barriers that substantially limits one more of the major life activities of that individual” (section 59). The law begins with a list of disability rights, including the rights to non-discrimination and to access public services, and provides penalties for persons who violate these rights (sections 1-8). Sections 16-22 protect the right to education for people with disabilities. Sections 31-35 address health care, requiring the Minister of Health to create “health policies [that] provide for free general and specialist medical care, rehabilitative operation treatment and appropriate assistive devices for persons with total disability.”

The *With Disability Act* does not appear to create a private right of action, allowing aggrieved individuals to bring legal claims directly in court for violations of their rights. The law also does not establish a complaints process whereby persons with disabilities can seek redress under the law, such as with the National Council on Persons with Disability. Section 41 on “Object and functions of the Council” does not mention complaints or investigation procedures as part of the Council’s functions. Overall, the act does not include any provisions for the law’s enforcement.

People with disabilities affected by TB, including TB survivors with post-TB sequelae, are protected by the *Persons With Disability Act*.¹⁴ However, it is unclear how they can enforce their legal rights. More research is needed to determine how the act is enforced and how people with disabilities affected by TB can seek redress for violations of their rights under the law.

¹⁴ For a discussion of TB sequelae and their socioeconomic consequences, see Giovanni Sotgiu, Rosella Centis, and Giovanni Battista Migliori, *Post-Tuberculosis Sequelae and Their Socioeconomic Consequences: Worth Investigating*, *The Lancet*, vol. 9, e1628-e1629 (Dec. 2021), available at [https://www.thelancet.com/journals/langlo/article/PIIS2214-109X\(21\)00454-X/fulltext](https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(21)00454-X/fulltext).



F. Mental Health Act, 2012 (Act 846)

The mental health Act provides for the rights of persons with mental disorder against discrimination and on their basic fundamental human right in sections 54 and 55 of Act 846.

Non-discrimination

54. (1) A person with mental disorder is entitled to the fundamental human rights and freedoms as provided for in the Constitution.

(2) A person with past or present mental disorder shall not be subjected to discrimination and, whatever the cause, nature or degree of the mental disorder, has the same fundamental rights as a fellow citizen.

(3) A tenant or employee who develops mental disorder shall not be

(a) evicted from the place of residence of that person, or

(b) dismissed from the place of employment of that person on the basis of mental disorder.

Basic human rights

55. (1) A person with mental disorder has the right to enjoy a decent life as normal and as full as possible which includes, the right to education, vocational training, leisure, recreational activities, full employment and participation in civil, economic, social, cultural and political activities and any specific limitations on these rights shall be in accordance with an assessment of capacity.

(2) A person with mental disorder is entitled to humane and dignified treatment at any time with respect to personal dignity and privacy.

(3) A person with mental disorder has

(a) the right to wear personal clothes while in a treatment facility and to maintain personal belongings subject to space limitations, ...

People with mental disorder affected by TB, including TB survivors with post-TB sequelae, are protected by the mental health Act and may enforce their rights in the high court by the combined effect of article 33 of the constitution and 54,55 of the mental health Act.

Section 15 of the Courts Act 1993 (Act 459) provides that "the high court shall have original jurisdiction over all matters but specifically section 15(d) which states "the high court shall have jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by the Constitution".



VI. Administrative Law

This section reviews Ghana's administrative bodies and processes, focusing on the Ministry of Health, the national TB program, and the Commission on Human Rights and Administrative Justice.

A. Ministry of Health and National TB Program

In November 2019, the Ghana AIDS Commission released a *Strategic Plan for a Comprehensive Response to Human Rights-related Barriers to HIV and TB Services in Ghana, 2020-2024*. The plan aims to "remove human rights-related barriers to HIV and TB services and to improve access to quality HIV and TB healthcare and support services through pragmatic implementation strategies" (section 3.3). The plan commits to six strategic objectives, including coordinating human rights interventions, advocating for law reform, and eliminating stigma and discrimination.

The third strategic objective is to "promote access to justice, HIV-and TB-related legal services and human rights interventions, and to facilitate TB and HIV legal literacy ('Know Your Rights')" (section 3.5.3). This objective aims to create an "enabling environment to promote access to justice by all, irrespective of their HIV or TB status" (section 3.5.3). The plan discusses several ongoing programs, including the Commission on Human Rights and Administrative Justice's online complaints mechanism (discussed in the next section). The document also lists limitations and challenges experienced in meeting this objective. Challenges include a lack of coordination "by state agencies aimed at promoting access to justice," a disconnect "between existing laws, service delivery, human rights and law enforcement practices," the limited geographic reach of ongoing programs, and difficulties disadvantaged communities face using the online complaints mechanism (section 3.5.5(iii)).

People affected by TB, Score TB Ghana, and their partners should consider engaging the Ghana AIDS Commission as part of this CFCS 11 project to collaborate in promoting access to justice and legal remedies for people affected by TB in line with the Commission's *Strategic Plan for a Comprehensive Response to Human Rights-related Barriers to HIV and TB Services in Ghana, 2020-2024*.



B. Commission on Human Rights and Administrative Justice

Chapter 18 of the Constitution of Ghana and the *Commission on Human Rights and Administrative Justice Act* of 1993 established the Ghana Commission on Human Rights and Administrative Justice (CHRAJ). CHRAJ is empowered to investigate complaints of violations of fundamental human rights and freedoms, injustice, corruption, abuse of power, and unfair treatment by public officers in exercising their official duties. CHRAJ also works to ensure remedies for human rights violations and other abuses. Article 218(d) of the Constitution and section 7(d) of the CHRAJ law authorize the Commission:

“to take appropriate action to call for the remedying, correction and reversal of ... [human rights violations] through such means as are fair, proper and effective, including-

- i. negotiation and compromise between the parties concerned;
- ii. causing the complaint and its finding on it to be reported to the superior of an offending person;
- iii. bringing proceedings in a competent Court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and
- iv. bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires.”

Article 229 of the Constitution and section 9 of the act further affirm the CHRAJ Commissioner’s authority to initiate legal proceedings in court seeking legal remedies for victims of rights abuses:

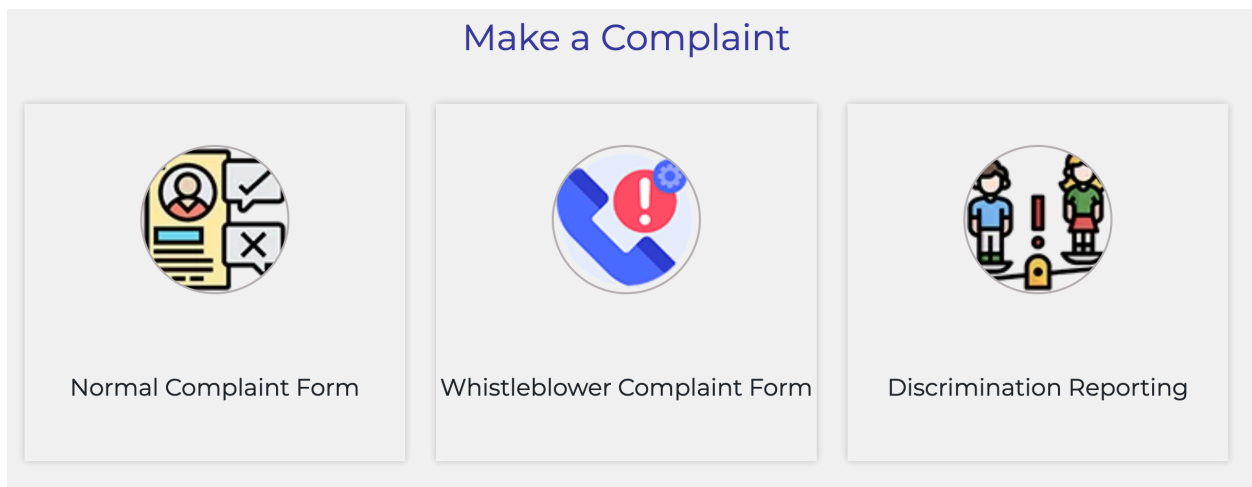
“For the purposes of performing his functions under the Constitution, this Act and any other law, the Commissioner may bring an action before any court in Ghana and may seek any remedy which may be available from that court.”

Part III of the CHRAJ law establishes procedures for complaints and investigations, stating that a complaint “may be made by any individual or a body of persons whether corporate or unincorporated” (section 12(5)). The CHRAJ website contains an online platform to file complaints, with a red, flashing link in the upper lefthand corner on the homepage.¹⁵

¹⁵ Commission on Human Rights and Justice, <https://chraj.gov.gh/#> (accessed Oct. 17, 2023).



The complaint page displays three options – normal complaint form, whistleblower complaint form, and discrimination reporting:¹⁶



The “normal complaint form” link leads to a [fillable online complaint form](https://chraj.gov.gh/make-a-complaint/). The “whistleblower complaint form” and “discrimination reporting” links were not working when the author clicked on them while writing this memo.

¹⁶ Commission on Human Rights and Justice, *Make a Complaint*, <https://chraj.gov.gh/make-a-complaint/> (accessed Oct. 17, 2023).



People affected by TB may file complaints with CHRAJ [online](#), in person (Old Parliament House, Box AC 489, High Street, Accra), by phone (0302662150), or by email (complaint@chraj.gov.gh) seeking remedies for violations of their human rights.