“WHAT CONSTITUTES HUMAN RIGHTS? THE ROLE OF PARLIAMENT IN HUMAN RIGHTS MATTERS?” PAPER PRESENTED BY DR. BENJAMIN KUNBUOR, PARLIAMENT OF GHANA AT THE POST-ELECTION SEMINAR IN SWAZILAND ON THE 4TH SEPTEMBER, 2014

INTRODUCTION

Human Rights are norms that help to protect all people everywhere from any form of abuses. They are conditions of life that guarantee human beings live a more meaningful life. That is a life full of respect and dignity. Human Rights matters have been in existence since the days of human civilization. The relevance of these rights to the development of the human race cannot be gainsaid. In fact human rights define the relationship between state authority and that of its citizenry. The bases of human rights are grounded in law, and it is one of the key values of democracy. They provide the scope and parameters of human freedoms and liberties.

ELEMENTS OF HUMAN RIGHTS

In terms of scope and character, human rights are held by all persons equally, universally and forever. They are inalienable: that is you cannot lose these rights any more than you can cease being a human being. These rights are indivisible. That is so because one cannot be denied a right because it is less important or non – essential. All human rights are part of a complementary framework. For example, one’s ability to participate in a governance process is directly affected by one’s right to freedom of expression, to get an education, and even to obtain the necessities of life. Another important characteristic of human right is that it provides the basic standard without which people cannot live in dignity. That is why I consider the most basic, fundamental and inalienability of human rights to be the right to be human and to remain human. It is the human person who is the bearer of rights.
To violate one’s rights is to treat that person as though that fellow was not a human being. To advocate human rights is to demand that the human dignity of all people be respected. In claiming these rights, everyone also accepts the responsibility not to infringe on the rights of others and to support those whose rights are abused or denied.

The promotion as well as protection of human rights is therefore a collective responsibility, and the role of democratic institutions in this process is enormous. Since these institutions are the edifice of a democratic dispensation there is an obligation on their part to ensure that the right of persons as guaranteed by law and other universal declarations are respected and honoured. In talking about the role of democratic institutions in this process, one must be quick to highlight the prominence of the law-making arm of government, which is the legislature because it is the pivot around which democratic governance revolves.

HISTORICAL BACKGROUND
Though a codified document on human rights was initiated by a UN committees lead by Eleanor Roosevelt. However, it is indeed the case that a lot of people’s struggles predated such legal formulations or enunciations. It is therefore not always accurate to equate human rights enunciation with its architects. To appreciate the various ramifications of human rights story telling we need to put it first in a historical context for us to understand two important story lines; First the politics of human rights and the politics for human rights, and second human rights as an ethical and moral discourse, and human rights as a legal category. In doing so you can understand two things in human rights action and thinking:
• The founding fathers of the American Constitution (at least Adams and Jefferson) who loudly proclaimed that *we hold it as self-evident that all men (not women and children) are born equal*; were slave owners.

• And as Anatole France will have it, *the law in its majestic impartiality forbids both the rich and the poor from stealing bread and sleeping under bridges.*

• Human *human rights* and trade-related market friendly human rights.

The UN document basically defined and universally granted the basic rights to all human beings, terming them the equal and inalienable rights of every human being as a matter of law. This declaration which came to be known as the Universal Declaration of Human Rights (UDHR), was adopted by the UN General Assembly on December 10, 1948. The UN formed in 1945 to replace the defunct League of Nations, was the first to put up a formal global setup to define human rights. It is instructive to state that, hitherto, individual countries had their own codes concerning human rights, but a coordinated and a codified approach to human rights matters was necessary because of the horrors of the holocaust. With this inhumane development the UN’s authoritative intervention became crucial. The UN charter on human rights spans from Article 1 to Article 30. This charter covers all aspect of human rights from the right to equality, freedom from discrimination, the right to security of persons, freedom from slavery, freedom from inhuman treatment, the right to legal recognition, right to equality before the law, right to remedy by competent tribunal et cetera.

Basically, these rights were generated from what we could describe as political, legal, civil, social religious, cultural and personal rights. That is so because there were series of abuses in these respects. In effect, the necessities of the days coupled with the high degree of authoritarianism and genocide led to the culmination of this
It is however curious to note that the UN document provided expressly for private property rights and the rights of corporate entities and those on women and children had to await decades to be recognized. A similar situation awaited the right to self-determination. It certainly would not be surprising to find out that women in Ghana had the right to vote before women in the United Kingdom— they were doing human rights before the UN document.

VIOLATIONS
Having touched on the existence of these rights in the UN charter on human rights which portrays a global picture from which individual states take inspiration, it is also proper that we touch on the possible arrears of violations. Human rights are a sanctum of the civilized world. But there have been cases of violations the world over. These violations range from wars and genocide to workplace harassment and all that falls in between. Matters of starvation, lack of medical facilities, lack of food, human trafficking all come under the heading of human right violations. When the freedoms to speak, express, write, move around one’s own country or city are curbed and put under restriction, they constitute human rights violation.

LOCAL EFFORTS (Human rights Glocalization)
Apart from the global efforts aimed at the promotion and protection of human rights through institutions or organs of the United Nations, national efforts have also come to complement this action. Local actions in this respect are grounded in national laws, such as the constitution. It is refreshing to state that in my jurisdiction human rights matters are of great importance and a key component in our forward match towards optimum democracy. It is indeed the same for most Commonwealth Countries which crafted and or revised (as in the case of Swaziland) their constitutions within the third democratization wave in the late 1980s and early 1990s. It is important to read chapters III and V of the Swazi Constitution on Human
Rights and the Directive Principles of State Policy (DPSP); particularly section 59 on the economic objectives.

To further demonstrate our commitment towards this drive, commissions on human rights and other allied entities have been established to complement the work of the Judiciary, which is the final arbiter in the adjudication process and the administration of justice. One of such important bodies is the Commission on Human Rights and Administrative Justice. The jurisdictional parameter of this body is huge. It has the mandates to handle all manner and forms of human rights violations. It cuts across political, economic, civil, social and cultural rights. Furthermore, one can mention the important role of the Domestic Violence and Victims Support Unit of the Ghana Police Service. Although its mandate is restricted to domestic violence, its existence has succeeded to a large extent to raise a high level of awareness on the right of the most vulnerable in our society. Other relevant institutions whose functions impact directly on human right matters include the Judiciary and Parliament.

For the purpose of this paper, attention would be focused on the role of Parliament in human rights matters because Parliaments the world over are at the forefront of Public Policy initiative and formulation. Apart from its core mandate of law making Parliament plays a key role in human rights matters. It is pertinent to reiterate that this does not fall directly within its traditional functions as defined by most national constitutions. For instance the Constitution of Ghana stipulates the functions of Parliament in Article 93(2). It states that “subject to the provisions of this constitution, the Legislative power of Ghana shall be vested in parliament and shall be exercised in accordance with the constitution. In the effective discharge of its traditional functions such as; law making, deliberative and oversight, parliament is empowered by Article 103(1) to set up committees. This Article states that
“Parliament shall appoint Standing Committees and other Committees as may be necessary for the effective discharge of its functions.” The detail functions of these committees have been spelt out in Article 103(3), and it states “Committees of parliament shall be charged with such functions including the investigation and inquiry into the activities and administration of ministries and departments as parliament may determine; and such investigation and inquiries may extend to proposals for legislation. Clearly as a representative body which seeks to champion the wishes and aspirations of the people, one can safely state that the promotion and protection of human rights by parliament fall squarely within its expanded functional jurisdiction. That is so because Parliament can provide a direct intervention in human rights matters through legislation and Public Policy arrangements.

LEGAL BASES OF HUMAN RIGHTS
To explain this position better, one needs to indicate clearly that matters of human rights are well captured in the national constitution of Ghana as in the Constitution of Swaziland. I must admit that Swazi’s revised Constitution is more in line with the African Charter on Human Rights in as much it provides expressly for the family as the basic unit of society and the prominence it gives to tradition and culture.

As a matter of fact, the whole of chapter five (5) of Ghana’s constitution is devoted to matters on the fundamental human rights and freedoms. For instance Article 12(1) states that “the fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, as shall be enforceable by the Courts as provided for in this constitution.” Having established the legal bases for human rights matters in Ghana and its means of enforcement, it is proper for one to state
how parliament can function to ensure that the various provisions on human rights are respected, especially in the discharge of its oversight function.

**ROLE OF PARLIAMENT IN HUMAN RIGHT MATTERS**

First of all, it is pertinent to indicate that matters of human rights are daily occurrences. They are varied, and normally fall within the scope of domestic violence, unlawful arrest, unfair trial, lack of access to good healthcare, lack of access to education, child abuse, the curtailment of media freedom, freedom of speech and expression et cetera. In most cases some of these abuses do not come to the limelight, and they go unnoticed. Could it be the case that the victims are ignorant of the existence of these rights, and that the means of seeking redress is obscure and therefore unknown to them? Parliament which offers the highest platform for national discussion and deliberation can issue statements to condemn such abuses anytime they occur. Such platforms can help sensitize public opinion and increase the level of awareness.

Furthermore, parliament through its relevant committees can initiate some investigations into any form of human rights abuse. This position is fortified in law by Article 103(6). It states that a committee appointed under this Article shall have the powers, rights and privileges of the High Court or a Justice of the High Court at a trial for: (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; (b) compelling the production of documents; and (C) issuing a commission or request to examine witnesses abroad. This constitutional mandate offers a committee of parliament the necessary power and comfort to delve into matters of human rights no matter the form or shape it takes.

Furthermore, the structured nature of human rights fall rightly within the scope and operations of parliament, and this makes the promotion and protection of same by
the legislature flexible. For instance the Committee on Education can champion the
course of human rights matters on education. Fact of the matter is that, Article 25(1)
of the Constitution states that “All persons shall have the right to equal educational
opportunities and facilities. The same provision expatiates on the details in
achieving this right. It further states that basic education shall be free, compulsory
and available to all. On secondary education it states that secondary education in its
different forms including technical and vocational education, shall be made
generally available and accessible to all by every appropriate means, and in
particular, by the progressive introduction of free education. On higher education, it
further states that higher education shall be made equally accessible to all, on the
basis of capacity, by every appropriate means, and in particular, by progressive
introduction of free education.

All these are matters of human rights purely on education captured under the
proviso educational rights. Once the bases have been established legally, Parliament
through its relevant committee must ensure that matters of Public Policy on
education take inspiration from this constitutional provision. In essence what it
means is that the Committees of Parliament through their deliberative functions can
intervene in government policy formulation to ensure compliance to constitutional
provision on human rights. The case for educational rights is the same for other
categories of human rights such as cultural rights and practices, economic rights,
children’s rights, rights of disabled persons et cetera. In certain respects, parliament
has the direct responsibility to ensure that the right legal framework is established
for the regulation and protection of human rights.

As part of the state, parliament shares with all the other organs of state (including
The Executive and Judiciary) the obligations to respect, protect and fulfill the
human rights to which the state has bound itself by international treaties to respect
and protect. Parliament is therefore obliged to protect and promote human rights. It must respect human rights itself by refraining from unjustifiably interfering with human rights for example by passing legislation which violates human rights or which confers a power on others which is likely to be exercised in a way which violates human rights. But this does not discharge its obligation in relation to human rights matters. It must seek to fulfill human rights where there is an obligation on the state to take action to give effect to a human right and that action can be taken or initiated by the legislature.

Also Parliament’s unique responsibility for the state’s legal framework make it the best-placed institution of state to realize human rights in the sense of making the necessary adjustments to the legal framework to ensure that human rights are adequately protected and fulfilled.

**CONCLUSION**

In addressing these matters effectively Parliament has a duty to ensure that it scrutinizes for compatibility all government undertakings and activities. It must also facilitate parliamentary scrutiny of Executive records on human rights generally, in relation to policy and not just legislation. Parliament can also monitor the adequacy of government compliance to court judgments on human rights violations. Also there should be a mechanism which will ensure ongoing parliamentary involvement in the monitoring of the institutional machinery for the protection and fulfillment of human rights.