

Challenges to the Application of International Women's Human Rights in Ghana

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Cet article tente d'analyser l'adoption et l'implantation de la Convention pour l'élimination de toutes les formes de discrimination à l'égard des femmes (CEDAW), de la Déclaration de Beijing et autres instruments des droits humains non seulement à travers les lois du Ghana, mais aussi à travers les stratégies implantées au niveau national en vue d'examiner si dans la pratique, on a appliqué les droits des femmes.

Violence against women constitutes a violation of the rights and freedoms of women. The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) advocates the implementation of national laws and policies that support the rights of women. It reaffirms that discrimination against women violates the principles of equality and respect for human dignity and suggests a program of action for governments, citizens, and non-governmental organizations to implement women's rights. The Beijing Declaration and Platform for Action¹ is also an international agreement among states oriented towards the effective implementation of women's human rights as a condition for social justice. It states that it is the duty of states regardless of their political, economic, and cultural systems to promote and protect all human rights and fundamental freedoms. It also acknowledges, as does CEDAW, that since the majority of rural women continue to live in conditions of economic underdevelopment and social marginalization, they deserve special attention. Paragraph 17 of the Declaration reaffirms that obliterating violence against women and the feminization of poverty requires a radical transformation of the relationship between women and men.

The United Nations has established that in many countries, there is a vast gap between women's rights on paper according to law and policy, and their actual experiences (The UN and the Advancement of Women). The 1992 Constitution of Ghana (hereafter referred to as the Constitution) acts as the supreme law of Ghana and provides a system of remedies for violations of fundamental rights and freedoms. The state is guided by international human rights instruments that recognize and apply particular categories of basic human rights to development processes. At the same time, customary law forms part of the laws of Ghana. Cultural rights are recognized and protected, and every person is entitled to enjoy, practise, profess and promote any culture, language, tradition or religion.

This paper seeks to explore the impacts of international human rights instruments, like CEDAW and the Beijing Declaration, national laws like the Constitution, and local customary laws of Ghana² on women. I will focus on a custom of South Eastern Ghana in which virgin females, *trokosis* (Ewe) or *woryokwes* (Danbge), are made to serve fetish priests or priestesses as pacification to the gods for an offence committed by a member of their clan. Through this example, I will explore the inter-relationship between human rights guidelines, national law, and customary law on the rights of women and explore the effectiveness of legal remedies.

The *trokosis* and *woryokwes*

The *trokosi* practice is part of traditional religion. It is said to have developed over time in the communities as the next and most appropriate response to restoring community relationships after a criminal act. Victims of crime in indigenous communities normally seek justice from the gods for the retrieval of a lost item, the cause of a loved one's death, or the determination of a culprit in a case. When consulted, the shrines point to the source of the ill omen and the family concerned must give up a virgin female or a curse will be inflicted on the whole clan. Most *trokosis* or *woryokwes* are sent to shrines at five or six years old. On arrival at a shrine, a *trokosi* begins working on the farm of a priest without any remuneration while simultaneously cultivating her own farm for sustenance. Other abuses suffered in incarceration include barriers to education and basic health needs. Since the girls are in confinement, some priests subject them to sexual abuse, consequently, it is common for a *trokosi* to start bearing children soon after puberty. Trial by ordeal and threat of harm, crimes according to the Criminal Code of Ghana, are also practised in the shrines for those who disobey rules.

The *trokosis* lead isolated lives and the effect of the ritual of committal in the shrines severely restricts their freedom of movement and deprives them of their personal liberties

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Renée Valiquette, "Shades of Gray," acrylic on canvas, 29" x 22", 2000.
Photo: Sal Renshaw.

contrary to the Constitution. Article 15 of the Constitution describes the dignity of all persons as inviolable and individuals are not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. It also provides that no person shall be restricted in "a condition that detracts or is likely to detract from her dignity and worth as a human being." In response, some traditionalists say they should be allowed to determine what is dehumanizing within the context of their culture, and not within the context of alien universal human rights rules. They claim they have the legal basis to promote and practice their religion and culture and manifest it as such, within the provisions of the Constitution.

Violence against women

The Declaration on the Elimination of Violence against Women, defines violence against women to include:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological

harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. (Declaration on the Elimination of Violence Against Women: Article 1)

The *trokosi* system is clearly discrimination based on one's gender since it makes members of a clan particularly girls pay for crimes committed mainly by male relations. CEDAW states that efforts at eliminating factors that impede women's advancement under unjust customary practices should include the elimination of prejudices and customs based on the idea of the inferiority of women (CEDAW). The unjustified and undignified aspect of the practice lies not only in punishing a person who has done no wrong but also in the perpetuity of the punishment; some *trokosis* are members of the second and third generations of their families serving an imprisonment for the same crime. Crimes are also not categorised and the penalties are the same. Once a case is reported to the shrine, whether it is for petty theft or rape, the punishment is the same. To the victims of this practice, the practical realisation of the principle of equality with men, stated in the Constitution and various human rights instruments like the Vienna Declaration and Programme of Action and the African Charter, are yet to be attained.

Economic rights for women

The state is required under article 36 (6) of the Constitution to give equal opportunity to all citizens and in "particular to take all necessary steps so as to ensure the full integration of women into the mainstream of the economic development of Ghana." A *trokosi* girl-child is forced to engage in employment ventures at a very early age. According to the Constitution, she has the right to be protected from engaging in work that constitutes a threat to her health, education or development. The life of a *trokosi* or *woryokwe* is one of neglect, cruelty and exploitation, which are all, stated to have negative effects on one's physical, mental and moral development. Although the right to work is also recognized as a human right, complete submission to the priest by a *trokosi* involves handing over proceeds of earnings from any work undertaken outside the shrines. The servile status of *trokosis* is also seen in the duties they perform in the shrines, for which no payments are made, which is contrary to Article 16 of CEDAW which provides that no person can be held in servitude nor required to perform forced labour. Most *trokosis* I have spoken to who get lucky to be released normally come out of the shrines as adults with nothing. When asked whether they own anything even cooking utensils they begin to weep and it becomes ethical for one to either avoid such questions or reframe them if necessary. Patience, a child of a *trokosi* grew up with her mother in one of such shrines. She said when she was young, she thought they were

partners in family business and saving towards the future, since they worked so hard, but it was when she grew up that she realised that their legal status was that of slaves. "We came out of the shrines with nothing." She said bitterly. Nothing actually means nothing in the barest sense of the word. To put it mildly, one lady said "except my ten fingers with which to start life again." Apart from forced labour, the pariah nature of the custom also inhibits their capacity to develop their value on the job market since most people do not patronise their wares because of their status. It should be noted that in Ghana, traditionally women are guaranteed social, political and economic rights which makes the case of the *trokosi* a very sad one.

The challenges—promoting practical equality for women

As can be seen from the above, even though the *trokosi* practice has no legal basis and claimants have standing under various laws to launch legal claims, these methods, like most issues concerning women's rights, have hardly been used. The result shows that the mere adoption by one's country of an international legal instrument may not have much impact on women suffering from any dehumanizing practice. Women's rights are formally recognized but ignored in practice. This means that women are still in an inferior position because, in spite of these legal provisions, they remain powerless. So far women have rarely sought to remedy rights violations in Ghana for a number of reasons. Most women are either unaware that they are entitled to the protection of such rights or do not know where to seek redress or information concerning available remedies. The challenges that face women in Ghana and most African countries are that in addition to such information being made available, the environment must also exist for such an individual to make such a claim. The individual's community must be made aware that there is in existence such a mechanism, the reasons behind its formation and penalties for breaches of its provisions. In some cases, women as individuals are made aware of their rights but because it does not involve their immediate kith and kin that are supposed to assist in its implementation, enforcement of such rights becomes a problem. In such cases a woman would rather prefer to sleep on her rights and live in peace with her community rather than risk isolation.

Ritual servitude

In spite of the law not having been utilised to the advantage of the *trokosis*, I realised on further reading of the law that there were a number of loopholes especially dealing with the prosecution of offenders and the admissibility of evidence. Of particular difficulty was a provision in the criminal code, which by generally embodying social norms had disadvantaged women. Even though

slavery is a crime under section 314 of Act 29, the criminal code of Ghana, most of the provisions in that section deal with practices that have died out long ago, such as the buying and selling of slaves. Further reading of sub section (2) also reveals that:

This section does not apply to any such coercion as may lawfully be exercised by virtue of contracts of service between free persons, or by virtue of the rights of parents and other rights, not being contrary to law, arising out of the family relations customarily used and observed in Ghana.

What this section meant was that for anyone to successfully prosecute any of the fetish priests for engaging in slavery, it must be proved that the contract did not arise out of any family relations customarily observed in Ghana. I realised that this would be an uphill task considering the fact that the practice is one that goes on with the consent of parents, guardians and family members. The priests alone could also not be singled out because relations normally bring the girls to the shrines without any coercion per se from the priests. Even though one may say the coercion is spiritual, it would be very difficult to prove such an issue in court. It would also be difficult to expect *trokosis* already traumatised by their experiences to testify against their own family members. Indeed individuals bringing up actions are also not likely to get the cooperation of very vital witnesses in the community. In order to get out of this difficulty, I had to ask this question within the context of CEDAW and other international human rights documents. Unlike other human rights treaties, CEDAW does not solely address actions by the state or its agencies. Under article 2 (e) "any person, organisation or enterprise" can also take appropriate measures where necessary to eliminate discrimination against women. As part of my research work on amending this provision, I recommended that a broader and more modern definition of "slavery" be used, which would cover all acts constituting violence against women and children. A new law had to be drafted to specifically make ritual servitude a crime³ (1998). The new definition had to include contemporary forms of slavery and related forms of violations of human rights covered by international conventions and national legislation. These contemporary definitions of slavery and institutions similar to slavery include child labour, debt bondage and serfdom, although they could be described as falling within the definition of a custom. Slavery also includes the act of inducing dependants into servile status or any attempt to perform such acts and being an accessory thereto (Supplementary Convention on the Abolition of Slavery).

Economic exploitation of the girl child

Section 44 of the Labour Decree, although prohibiting

the employment of young children, states that: "Except where the employment is with the child's own family and involves light work of an agricultural or domestic character only." This definition of "agricultural undertaking" meant that it would not be easy prosecuting the priests under this decree because they would state that the work the children undertake is a light one. The provisions in the labour decree seemed to be obsolete compared with the provisions of the Constitution, a much later document that prohibits inhuman or degrading treatment or punishment on children. In order to make the prosecution of exploitation of children's labour easier, this section of the law had to be amended. On a general note, it would also deter people from taking advantage of family members from rural to urban areas to exploit such children for economic benefit. I also found an amendment to this provision in article 32 of the 1989 UN Convention on the Rights of the Child, which also provided a conventional definition of child labour. Its definition of child labour included economic exploitation and no exceptions were made to it, unlike that of the labour decree, which was passed in the 1970's.

Law abolishing ritual servitude

Even though these recommendations were accepted and submitted to government in the latter part of 1995, the draft law took about two years in parliament because there was also effective lobbying being done by other organizations who said there was nothing wrong with the practice. I then took part in a series of seminars and workshops for parliamentarians to lobby for the passage of the law (Heymann Ababio 1998; Heymann Ababio 1997). At the community level, non-governmental organizations already having problems with their intervention programmes saw the need for such a law and I also took part in a number of workshops in various communities. These campaigns and workshops at the community level were very important because it helped to prepare the minds of community members and convince them of the illegality of the practice and the need for change (Ababio 1996). These same communities had earlier refused to co operate with other organizations in releasing *trokosis*. It also kept them abreast on other issues concerning violence in the family. These methods proved so useful that based on this information, a number of communities released *trokosis* in their shrines well ahead of the law. On September 4, 1998, the Criminal Code (Amendment) Act, 1998, Act 554, came into effect to ban all customary practices of servitude such as the *trokosi* practice. The recommendations for a ban on economic exploitation of children are now embodied in section 12 of The Children's Act of 1998.

Conclusion

In Ghana, even though women's human rights are fully

guaranteed in law, the actual implementation and protection of these rights are often impeded by a complex system of practices based on historical, cultural, religious and sometimes political reasons. The guarantees of human rights through international instruments are therefore not necessarily acknowledged, respected and implemented in spite of national laws. The success of international human rights law can only be measured worldwide through the lived experiences of women such as the *trokosis* and *woryokwes*. In Africa, in order to ensure women's full equality under the law, there is the need for a constant review of outmoded customs and practices. Awareness raising is also essential because it is supposed to initiate change and facilitate the abolition of dehumanizing practices. Changes in laws to address the injustices that women suffer is necessary in any society, however legal measures if not backed by other measures such as education and programmes of implementation have only limited impact. This must involve the implementation of government policies, further decentralisation of local decision making structures and effective communication with communities so as to create the congenial atmosphere for the implementation of women's rights. The paper concludes with the view that women's vulnerability to poverty cannot be achieved only by establishing legal equality but also working towards practical equality. With the legal basis as the starting point for the illegality and intervention of any practice; practical equality needs to be accompanied with culturally enhancing methods to raise the consciousness of not only individuals but entire communities in order to bring about effective changes in the lives of women.

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¹The Declaration in paragraph two also reaffirms the fundamental principles set out in the Vienna Declaration and Programme of Action and upholds CEDAW.

²Ghana is situated in West Africa. It is bordered on the West by Togo, on the East by Ivory Coast and to the north by Burkina Faso. Its population of 18 million is divided into 50 ethnic groups each with its own language and cultural heritage. The largest groups are the Akan, Dagomba, Ewe and Ga- Adangme. The size of Ghana is 92,100 square miles and the type of government is multi-party democracy.

³Recommendations based on this research, later became a Law Reform Commission report to Government in November of that year. The *trokosi* practice was specifically stated to be a crime under the criminal code in the latter part of 1998.

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DONNA J. DENNISON

God's Gift of an Answered Prayer

Ten years ago, I was seventeen; just a baby myself,
when I had to approach my the Lord above and ask him for help.
I said, "Father, I am with infant, what ever am I to do?"
He said, "My child, you're first priority should have been school."
I replied, "But Father, I can feel movement of a miracle within."
He says, "I'm sorry, but you have committed a sin.
I trusted that you would make the right choices in your days,
but whatever you were attempting to accomplish, was handled the wrong way.
Now you must live with what you have done,
and your sacrifices will begin to mound from that one evening of fun."
The moment came; nine months from the time the baby was conceived.
He was the most precious little dear; way beyond my belief.
I wrapped him securely, and cradled him in my arms.
I thought he was protected, and sheltered from harm.
I would have been so relieved just to feel him breath,
but my Father spoke and told me that the baby had to leave.
The tears fell uncontrollably as they rolled down my face.
I pleaded for the Lord not to take him, and break my embrace.
I said, "For the rest of my life, I will do whatever needs to be done.
Please, Dear Lord, return me my son.
Dear Father, I beg you to grant me this one asking prayer.
For this pain is one that I just cannot bear.
You have not only taken my heart and soul; he was my everything."
Then, as I gazed toward the floor, I heard the flapping of an angels wings.
The angel spoke to me with the softest and gentlest of tone,
and told me about the long journey that he had flown.
After our conversation, he vanished; never to return,
unless he is my ten year old that is now named Vern.