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MASTER'S THESIS IN INTERNATIONAL LAW AND HUMAN RIGHTS

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**A CRITICAL ANALYSIS OF THE 'TROKOSI' PRACTICE IN PARTS OF WEST AFRICA
AS A HARMFUL TRADITION AGAINST WOMEN AND GIRLS: STATES OBLIGATIONS
UNDER INTERNATIONAL HUMAN RIGHTS LAW**

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Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Convention Against Torture
FGM	Female Genital Mutilation
UDHR	Universal Declaration of Human Rights
DEVAW	Declaration on the Elimination of all Forms of Violence against Women
ICESCR	International Covenant on Economic, Social and Cultural Rights
UNCRC	United Nations Convention on the Rights of the Child
OHCHR	Office of the High Commissioner for Human Rights
WHO	World Health Organization
ACRWC	African Charter on the Rights and Welfare of the Child
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
NGO	Non-Governmental Organization
ING	International Needs Ghana
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
CHRAJ	Commission for Human Rights and Administrative Justice

ABSTRACT

Trokosi is an old West African traditional practice that involves the sending of young female children, particularly virgins to a shrine to serve as atonement, for a crime committed by a family member. It is practised in various West African States such as Ghana, Togo, Benin and parts of Nigeria. There are several perspectives from which this practice has received debates over the years. The major debate stems from the universalists and cultural relativism discourses. The universalism perspective of human rights is basically an opposition of the practice on account that, the practice is harmful and constitutes grave violations of the human rights of women and girls such as the right to be free from slavery and forced labour, discrimination based on gender, all forms of harm and abuse as well as torture and other cruel, inhuman or degrading treatment or punishment. Following the above argument, the universalist approach seeks to protect the right of the child through the eradication of the practice using a human rights based approach which involves the due diligence principle of states to prevent acts of violence, protect acts of violence, protect victims, prosecute and investigate the incidence of violence and provide redress to the victim for the harm suffered. On the other hand, cultural relativists are of the view that the given norms of a particular culture are the grounds on which a society should be judged as there are no absolute principles because different cultures have different moral beliefs. There are also various inconsistencies in the effective implementation of international human rights standards which creates a barrier in the elimination of the harmful traditional practices and in this context, the trokosi practice. One such obstacle is that the practice is deeply embedded in the traditional values of the societies who practice it.

The present thesis is an attempt to examine states obligations under international human rights law in the context of the trokosi practice. The due diligence principle in assessing a state's compliance with taking appropriate measures to respond to harmful traditions will also be analyzed. The major instruments used throughout the thesis is based on international and regional legal frameworks such as the Convention on the Elimination of all forms of discrimination against women, the Convention on the Rights of the Child, the African Charter on Human and People's Rights, and the International Covenant on Civil and Political Rights. The current research is relevant for understanding the reasons for the prevalence of harmful traditions in West Africa despite efforts made at the international level to combat violence against women. The paper makes further recommendations on measures that can be undertaken to eradicate the trokosi practice. This research concludes that this practice is a violation of the human rights of women and states are therefore under the obligation to prevent women from all forms of violence including harmful traditions.

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1. Introduction

The situation of children in West Africa mostly does not conform to the environment required by international human rights instruments.¹ As described by Ike and Twumasi- Ankrah, childhood in West Africa is riddled with ‘poverty, malnutrition, child labour, rural- urban migration, ignorance and lack of education, parental lack of financial support and maintenance of children’.² The Global Fund of Children has also claimed that, children in West Africa are more likely to be raped, trafficked, beaten or abused and are less likely to go to school or receive proper health care or be properly nourished compared with fifteen years ago, even though these are children’s rights protected in various binding legislations to improve the situation of children.³

These critical circumstances often contribute to the reasons why domestic servitude and ritual slavery are deeply embedded in some West African countries and are systemic forms of African Traditional religions.⁴

The Trokosi system is no exception to this form of contemporary slavery and ritual servitude. It constitutes one of the most ancient cultural practices in some parts of West Africa such as Ghana, Togo, Benin and Nigeria. In Togo and Benin it is called ‘voodooosi’ or ‘vudusi’.⁵ Its origin is shrouded in mystery, tradition and obscurity (Nukunya 2003).⁶ ‘Trokosi’, which literally means ‘slaves to the gods’ is a cultural practice that is widespread particularly among the ‘Ewe’ ethnic group in Ghana and certain parts of West Africa such as Benin, Togo and South-western Nigeria. (Aird, 2001). It is estimated that there are over 5 000 victims of this cultural practice in Ghana alone, and 29 000 to 35 000 in the other remaining countries.⁷

The practice involves sending young virgin girls to live in the shrines to serve shrine priests and are often used as sex slaves. These female children are basically used as an atonement to the gods to

¹ Veronika G, Domestic Servitude and Ritual Slavery in West Africa from a Human Rights Perspective. p. 92.

² M Soussou & J Yogtiba, Abuse of children in West Africa: Implications for social work education and practice, 2009, 39 British Journal of Social Work 1219. See also, Veronika G, Domestic Servitude and Ritual Slavery in West Africa from a Human Rights Perspective, p. 92.

³ M Soussou & J Yogtiba, Abuse of children in West Africa: Implications for social work education and practice, 2009, 39 British Journal of Social Work 1219.

⁴ Veronika G, Domestic Servitude and Ritual Slavery in West Africa from a Human Rights Perspective, p. 92.

⁵ Field Findings on the System of Slavery Commonly Known as Trokosi, L W Rouster, M.R.E., ECMAfrica Publications, 2005, p.1.

⁶ Dr. Victor SG, Field of Power: A Religio- Cultural Analysis of Trokosi in Ghana.

<file:///Users/tubormillicent/Downloads/FieldofPower.AReligio-CulturalAnalysisofTrokosiinGhana.pdf>

⁷ SC Aird Ghana’s slaves to the gods, <http://www.wcl.american.edu/hrbrief/v7i1/ghana.htm>, See Also JY Asomah Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society, (2015, 15 African Human Rights Law Journal 131

pay for crimes committed by other relatives or family members. Crimes of this nature ranges in severity from petty theft to murder, and adultery.

The custom demands offering a virgin daughter, typically from age six (6) to fifteen (15) (Aird, 2001). A girl sent into servitude becomes a 'slave to the gods' for the rest of her life but has to be replaced by another female member of the family if she dies or manages to escape from the shrine (Parrot & Cumming, 2006).

Among those who practice this custom, it is believed that, the god is the 'god of transformation' which connotes that the practice is good for the people.⁸ The practice is considered as a justice system which deters people from committing crimes and also ensures the acquisition and protection of people's property.

1.1 Background and Problem Statement

A ubiquitous form of human rights abuse is violence against women and girls; however, it was not until the 1990's that violence against women featured seriously on the agenda of the international community.⁹ Although this specific form of violence has been approached at the global level and received increasing attention over the years, it is to some extent still prevalent in various parts of the world and constitutes a grave violation of the fundamental human rights of women.

Traditional cultural practices however reflect the cultural values and beliefs held by members of a community for periods often spanning generations, some of which are beneficial to all members, while others are harmful to a specific group, such as women.¹⁰ The present thesis focuses particularly on the '*trokosi*' practice; a harmful traditional practice against women and female children in parts of West Africa.

The obligation to eliminate harmful practices is explicitly pronounced in various international human rights treaties.

The appreciable number of ratifications of various international legal instruments which prohibit violence against women such as the International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of all of Discrimination Against Women (CEDAW), Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC), as well as other relevant frameworks to a large extent is an expression that the international community considers that

⁸ Apollo Rwomire, 'The Trokosi: A Conceptual Framework' in 'African Women and Children: Crisis and Response', pp. 92

⁹ Edwards, A., 'Violence against Women under International Human Rights Law' (2010) 7.

¹⁰ UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children, August 1995, No. 23

discrimination against half the world's population is unacceptable and should be eliminated¹¹, yet these traditions continue to be practiced. Most of the harmful traditions against women often take place to put men in the privileged position, either by establishing male supremacy in an economic and political sense or the control of female sexuality, thereby, accounting for discrimination and inequality.¹²

One major feature people identify themselves with is their cultural values and beliefs which often contributes to their perception of what does or does not constitute an act of violence. This therefore makes violence against women a cross-cultural phenomenon.¹³ The values surrounding Female Genital Mutilation (FGM), child marriages and the '*trokosi*' practice are deeply embedded in specific cultural contexts; that is, harm is inflicted in certain ways and supported by structures and ideologies that permit a specific form of violence to continue in its own precise context.¹⁴ For instance, cultural relativists argue that society portrays a wide array of cultures which often connotes diverse views of what is considered right and wrong. Notwithstanding the number of ratifications of international and regional human rights instruments that protect women against harmful traditions and the obligations placed on states¹⁵ as well as the international values of the Universal Declaration of Human Rights (UDHR) which even though does not expressly say anything about violence against women but makes mention of fundamental freedoms such as the right to life and security of persons, right to equality and the prohibition against torture,¹⁶ which to a larger extent are associated with violence against women, implementation of laws and policies is still falling behind.

Harmful traditional practices persist because they are hardly "questioned or challenged and therefore take on an aura of morality in the eyes of those practicing them". (Maluleke MJ 2012, p. 2). Many influential people in the communities, including some intellectuals and traditionalists support the traditional practice and contend that it is part of their culture.¹⁷ Most politicians in Africa tread cautiously when dealing with highly controversial issues that may have an effect on their political fortunes.¹⁸

¹¹ UNGEI, The International Legal Framework for Protection 3.

¹² Linda van Gils, Cultural Relativism and Harmful Traditional Practices: A consideration of the efforts to eradicate FGM, (2010) 5.

¹³ Fontes LA & McCloskey KA, Cultural Issues in Violence against Women (2011) 151

¹⁴ Heise, 1998; Heise, Ellsberg, & Gottermoeller, 1999; Sokoloff (2005).

¹⁵ Yusuf, C & Fessha, Y., Female Genital Mutilation as a Human Rights Issue: Examining the effectiveness of the Law against Female Genital Mutilation in Tanzania, African Human Rights Law Journal (2013) 13 AHRLJ

¹⁶ Articles 3, 5 and 7 of the UN General Assembly, Universal Declaration of Human Rights

¹⁷ Emile Short, (2004), Powerful Persuasion: Combating traditional practices that violate human rights, pp.8

¹⁸ Emile Short, (2004), Powerful Persuasion: Combating traditional practices that violate human rights, pp.8

An understanding and critical assessment of the root cause of cultural traditions plays a crucial role in combating violence against women. For this reason, this paper seeks to explore the connection between culture and human rights, more specifically in relation to the ‘trokosi’ practice and the extent to which this may create a barrier in the protection of women against harmful traditional practices in the African context in the context of the ‘trokosi’ practice.

1.2 Objectives and research questions

This thesis serves as a contribution to previous research work carried out on the protection of women against violence in the case of harmful traditions and the debate on the application of universalism and cultural relativism in addressing these harmful cultural traditions. The thesis will first of all assess the ‘Trokosi’ practice in the context of universality and cultural relativism while analysing the practice as a violation of the human rights of women and girls in parts of West Africa and then move on to address the main question which is to examine the states obligations under international human rights law in the context of the ‘trokosi’ practice and to assess the extent to which these states’ obligations are incorporated into the domestic laws of the various African countries in order to eradicate the practice.

The thesis further analyses the domestic measures adopted by the respective West African states particularly in Ghana in the quest to eradicate the practice as well as the challenges in the effective implementation of the relevant human rights norms.

The eradication of harmful traditions demands the transformation of underlying societal norms and cultural factors. These practices are promoted by customs, traditions and religious laws thereby creating barriers to the enforcement of laws prohibiting such practices. Prevention and elimination of the ‘trokosi’ practice for instance can also be made more effective through efforts of the people who themselves are involved in carrying out these practices.

International Human Rights Law regulates only the conducts of governments upon their citizens.¹⁹ One may argue that it is unfair to hold governments accountable due to the fact that the ‘Trokosi’

¹⁹ Cook (ed) *Human Rights of Women: National and International Perspectives* 167. See also, LW Makundi, *Harmful Cultural Practices as Violations of Girls' Human Rights: Female Genital Mutilation in Tanzania and South Africa*. https://repository.nwu.ac.za/bitstream/handle/10394/5100/makundi_lw.pdf?sequence=1&isAllowed=y

practice is carried out by private actors such as the shrine priests.²⁰ However, states are required to take direct action against this practice which means that states are not exempted from being accountable before international law if they fail to fulfil such obligations.²¹ The ‘Trokosi’ practice violates and impairs and nullifies the enjoyment of human rights of girls and women and therefore a state may be held responsible for non-compliance of international obligations when it fails to respect and ensure the full enjoyment of those individual human rights.²²

States are however held accountable by the ‘due diligence principle’ for human rights abuses committed not only by the State or State actors, but also by non-State actors. Discrimination against women is perpetrated by both State and non-State actors. Therefore, by holding the State accountable for discrimination committed by both State and non-State actors, public international law recognizes that discrimination against women, regardless of who commits it, constitutes a human rights violation.²³

The international standard concerning States obligations when dealing with violence against women is one of due diligence to prevent human rights before they happen, investigate, prosecute effectively and punish them once they have been committed, and compensate as well as ensure the provision of effective redress for individuals and groups that have subject to rights violations.²⁴ For the purpose of this thesis, this chapter focuses on the obligation of prevention. In compliance with

²⁰ See Packer Using Human Rights to Change Tradition 50.

²¹ Doebbler C F International Human Rights: Cases and Material 200486

²² Sepulveda, M.M., The Nature of obligation under the ICESCR164. See also, Rahman A and Toubia N Female Genital Mutilation 44.

²³ Zarizana AA & Janine M. The Due Diligence Principle and the Role of the State: Discrimination against Women in Family and Cultural Life. P. 4.
https://www.ohchr.org/Documents/Issues/Women/WG/Family/Written_Submissions/DDP_Submission_UNWG_Discr%20ag%20Women%20Family%20Cultural%20Life15.pdf

²⁴ Committee on the Elimination of Discrimination Against Women, General Recommendation 19 (11th session, 1992); Declaration on the Elimination of Violence Against Women, art. 4(c), U.N. Doc. A/RES/48/104 (Dec. 20, 1993); United Nations Commission on Human Rights Res. 1994/45: Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women (Mar. 4, 1994); Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, art. 5, Apr. 7, 2011, Europ. T.S. No.210.
See Also, Julie Goldscheid & Debra J. Liebowitz, Due Diligence and Gender Violence: Parsing its Power and its Perils”. pp. 304

the due diligence standard, states are obligated to prevent violence against women. CEDAW addresses this obligation by calling on states' parties:

to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.²⁵

The 2011 report by Special Rapporteur states that, "the most common first step to prevent acts of violence against women is the enactment of legislation"²⁶ on violence against women.

The findings of this study will give a clearer understanding of the distinctive circumstances associated with harmful traditions against women with respect to culture and aid its incorporation into the development interventions at the community level that are culturally relevant and sensitive.²⁷ Harmful traditions is best scrutinized in the context of universal human rights and cultural relativism and this research is therefore critical in the quest for balancing between the two as they often stand in opposition to one another. The research is also relevant for understanding how culture can create a barrier for states to implement universal ideas to tackle violence against women.

1.3 Methods, Sources and Limitation

a. Sources and methods

The method adopted in this thesis is primarily a legal dogmatic research. In order to meet the objectives of this thesis and to answer the questions raised, the major relevant norm which will be used throughout the thesis to interpret and analyse the law on harmful traditions against women will be the Convention on the Eradication of all Forms of Violence against Women (CEDAW) since it is the main framework which addresses discrimination against women as well as the Convention on

²⁵ Convention on the Elimination of all Forms of Discrimination Against Women, art. 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13.

²⁶ Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, ¶ 53, U.N. Doc. A/66/215 (Aug. 1, 2011) (prepared by Rashida Manjoo). See Also, Zarizana AA & Janine M. "The Due Diligence Principle and the Role of the State: Discrimination against Women in Family and Cultural Life". Pg. 5.

²⁷ Rees, S 'Human Rights and the Significance of Psychological and Cultural Issues in Domestic Violence Policy and Intervention for Refugee Women' (2004) AUJHRights 19; (2004) 10(2) Australian Journal of Human Rights 19

the Rights of the Child (CRC). CEDAW is relevant for the purpose of this thesis because the trokosi practice is primarily a cultural practice based on discrimination against women.

The primary sources of this thesis constitute international and regional human rights instruments on violence against women, statutes, legislation including domestic level constitutions, and other legal instruments related to women's rights and violence.

Various materials comprising books, articles, journals, reports, public documents from United Nations (UN) websites and other internet sources corresponding to violence against women and human rights particularly in Africa will serve the purpose of the secondary sources of this research work from which the discussions relating to culture and human rights will be made.

b. Structure

The thesis is divided into six different chapters. The research begun with chapter one which has provided an introduction to harmful traditional practices and a brief description of the 'trokosi' practice in West Africa taking into account the cultural background. The main objectives, research questions and methods have also been outlined.

The Second chapter gives an in- depth and more detailed overview of the 'Trokosi' practice which includes a discussion of the origin and nature of the practice, the religio- cultural background as well as some cited examples of stories about the 'practice. The aim of this chapter is to give more insight into the cultural aspect of the 'trokosi' practice which forms one of the major parts of the thesis.

This is followed by chapter three which focuses on a discussion of the theoretical discourses and challenges regarding the scope of the practice. These include universalism and cultural relativism, the theory on culture, spirituality and human rights and the translation of human rights. The discussions of the chapter will end with addressing the balance between universalism and cultural relativism as the 'trokosi' practice is best analysed using these two theoretical approaches.

Chapter four, which is the central scope of the present thesis examines the human rights relevant in the context of the 'trokosi' practice, an analysis of the various international human rights frameworks which determines the different legal provisions on which the grounds of engaging state obligations are based. It also consists of a discussion regarding the 'due diligence principle' and a thorough examination of the states' obligations to address harmful traditional practice in the context

of the 'trokosi' practice. These include states' obligations to: protect against slavery, servitude and forced labour, inequality and non- discrimination on the basis of gender, all forms of harm and abuse of children and torture or other cruel, inhuman or degrading treatment or punishment. The various human rights violations of the trokosi practice will also be explored.

In chapter five, the focus will be on the domestic measures and challenges in the implementation of international human rights obligations with regard to the trokosi practice in the various West African countries. The countries under scrutiny will be Ghana, Togo and Benin. These measures include a discussion on the country specific legislations and other strategies which have been adopted in the elimination process of the trokosi practice.

The thesis ends with the final chapter where the results will be analysed and summarized, and further recommendations will be made for interventions to eliminate the trokosi tradition.

c. Limitation of the study

This research is limited to States' obligations to protect women against harmful traditions rather than the obligations to investigate, persecute and compensate.

2. Overview of the trokosi practice

2.1 Origin and nature of the trokosi practice.

There are different splits explaining the actual purpose or form and nature of the trokosi practice. For instance, according to one commentator, Amy Small Bilyeu, the practice appears to have always been a conceivably negative practice where young girls were killed and offered as sacrifices to the gods.²⁸ On the hand, according to Dr. E.K. Quashigah, the idea of becoming a trokosi was rather originally perceived to be a constructive and effective step.²⁹

²⁸ See Bilyeu, *supra* note 1, at 470, See also, Aziza NK, 2008, *Abolished by Law- Maintained in Practice: The Trokosi as Practised in Parts of the Republic of Ghana*, pp. 374. Available at: <https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1065&context=lawreview>. Retrieved on May 26, 2019.

²⁹ See E.K. Quashigah, *Legislating Religious Liberty: The Ghanaian Experience*, 1999 *BYU L. REV.* 589, 602-603 (1999) [hereinafter Quashigah, *Legislating*] (citing E.K. Quashigah, *Religious Freedom and Vestal Virgins: the Trokosi Practice in Ghana*, 10 *J. AFR. SOC'Y INT'L & COMP. L.* 193 (1998) [hereinafter Quashigah, *Freedom*]). It is unclear when the Trokosi practice changed from the original conception that Quashigah mentions.

Dr. E.K. Quashigah maintains the position that: the trokosi practice is a characteristic of a religious tradition which has become, over the years, rather manipulated and reduced to look like an abominable form of the original practice. The Trokosi practice was a system under which young virgin girls were sent into fetish shrines to make amends for the misdeeds of relatives. In its original conception, the trokosi practice was compared to the entry into convents rather than for the atonement of crimes. This means that the young girls were sent there, not because any of their relatives had committed an offence, but for the same reasons other girls entered convents. From that perspective, the major aim for the trokosi system was to create an avenue to groom class of traditionally elite women, or what is termed in the Ewe language as “Fiasidi.” These “marriageable king’s initiates” were to become the mothers of the elite men and women of the society, the kings, the philosophers, the seers, and other men and women of virtue.³⁰

In its perverted construction, the priesthood demands young virgin girls as servants for the gods. During their stay in the shrines, the girls are sexually abused and denied fundamental care, including medical care. They are also not granted the chance to attend schools and are economically exploited. Instead, they live in virtual slavery and are compelled to serve the needs and pleasures of the shrine priests. In its present abused form, it is characteristic of a system ridden with debauchery, immorality, and resulting in the depreciation of the purity of womanhood; an exact contradiction of what it was intended to accomplish.³¹ Whichever way the ‘trokosi’ practice emerged, it is accessible that the criticism for the current form the practice has taken is well documented yet the practice still continue to persist in various parts of West Africa. As late as 2008, ten years after the endorsement of a Ghanaian law outlawing the Trokosi practice in Ghana, an article by the Ghanaian government’s National Commission on Culture noted that: “A senior lecturer at the University of Ghana, Legon, S.K. Kufogbe, noted that before the law was enacted, there was a total of about 278 ‘trokosi’ shrines operating in North Tongu, Ketu, Akatsi, Keta, Dangme East and West districts”³² of Ghana. Moreover, an earlier report by the internationally recognized Human Rights Watch indicated that the Trokosi is:

³⁰ Aziza NK, 2008, Abolished by Law- Maintained in Practice: The Trokosi as Practised in Parts of the Republic of Ghana, pp. 374. Available at: <https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1065&context=lawreview>. Retrieved on May 26, 2019.

³¹ Quashigah, Legislating, supra note 21, at 603 (citing Quashigah, Freedom, supra note 21).

³² (Ghanaian) National Commission on Culture: Review of Trokosi Law—Research Study by Winston Tamakloe, Akatsi (July 3, 2007) (citing The Ghanaian Times Thursday, July 3, 2008, pp. 25), available at <http://www.ghanaculture.gov.gh/index1.php?linkid=65&archiveid=1080&page=1&adate=03/07/2008> (last visited May 26 2019) (noting that “a research study of the practice of Trokosi in Ghana has revealed the need to review the Trokosi law, its implementation mechanism and the role of institutional agencies in abolishing the practice”).

...a system in which a young girl, usually under the age of ten, is made a slave to a fetish shrine for offenses allegedly committed by a member of the girl's family. It is believed that if someone in that family has committed a crime, such as stealing, members of the family may begin to die in large numbers unless a young virgin girl is given to the local fetish shrine to atone for the offense. Most Trokosi girls and women are condemned to a lifetime of hard labour, sexual servitude, and continuous childbearing at the service of the village priest. There are an estimated 3,500 girls and women bound to various shrines in the 'trokosi' system. This figure, however, does not include the slaves' children. These children also grow and live in the shrines as servants to the priests. Female children born to 'trokosi' women are also sexually abused whereas male children are trained to assume the position of shrine priests when they come of age. There are few instances where some women and girls are released from the shrines and sent back to their families. However, even if they are released, more often than not without skills or hope of marriage, a 'trokosi' woman usually has continued obligations to the shrine for the duration of her life. In some cases when the fetish slave dies, the family is expected to replace her with another young girl for the fetish shrine. Some women in the shrines today represent the fifth successive generation of the same family to pay for a crime.³³ It is possible that after the law on the prohibition of the 'trokosi' practice was enacted the priests perpetuating the practice, perhaps fearing prosecution, continued the practice underground.³⁴

As noted by the Human Rights Watch, the estimation of how many girls and women are bound to shrines often do not consist of the children of the original trokosi. Anthony Owusu-Ansah also indicates that the Trokosi is a form of fetish slavery.³⁵ In addition, Ansah notes that: It is an aspect

³³ Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commissions in Africa* (2001), <http://www.hrw.org/reports/2001/africa/overview/contributions.html> [hereinafter *Protectors or Pretenders*]. An article in *Equality Now* notes that: According to the trokosi tradition practiced in southeastern Ghana, virgin girls are given to village priests as a way of appeasing the gods for crimes committed by family members. The word trokosi in the Ewe language means "slaves of the gods." Once given to the priest, a girl becomes his property and is made to carry out domestic chores such as cooking and washing, as well as farming and fetching water. After the onset of menstruation, the bondage also involves sexual servitude.

³⁴ *Supra* note 18 (citing Professor Kufogbe who indicated that: "After the enactment [of laws outlawing the Trokosi], NGOs rushed to the various shrines to persuade and negotiate with the head priests to release the inmates. [Professor Kufogbe] explained that some of the priests agreed but others refused and went underground with the practice").

³⁵ Anthony Owusu-Ansah, *Trokosi' in Ghana: Cultural Relativism or slavery?* (2007), <http://www2.ncsu.edu/ncsu/aern/trokony.html> (noticing that some people who believe in the current Trokosi practice may have a dual world view, that is, someone may identify themselves as Christian or a Muslim yet still believe in the Trokosi practice). To end the current form of the Trokosi practice, it may be helpful to point out to families that the

of African traditional religion, a cultural practice, and a science that developed among the ancestors of two patrilineal groups in Ghana: the Ewes of Tongu and Anlo of Volta region and the Ga Adangmes of the Greater Accra region. Within these communities, the number of children a man has determines his status, thus a fetish priest elevates his status within the community by getting many of the 'trokosi' slaves pregnant. Under this type of slavery, a family must offer a virgin daughter to the gods to atone for the "sins and crimes" of a relative who, in most cases, may be long dead. These crimes may range in severity from murder to petty thefts. Whatever the crimes are, offending individuals and families have a duty to turn their young girls between the ages of eight and fifteen over to serve as slaves to the gods or risk living lives of perpetual misery, misfortune, diseases and even a succession of deaths within the family.³⁶

2.2 Trokosi as a religio- cultural practice

Religion as it stands, is humans' attempts to understand the supreme source and purpose of life and power for living.³⁷ Due to the fact that it is humans' attempt there is the probability for wrong interpretations of the concept to meet variety of objectives. One of such interpretations of religion is the example of the "Nyigbla" religion in the Volta Region of Ghana responsible for instituting the enslaving of virgin girls as punishment for alleged crimes committed by their family members. According to Clifford Geertz, culture is "a system of inherited conceptions expressed in symbolic forms by means of which people communicate, perpetuate, and develop their knowledge about and attitudes towards life".³⁸ Perhaps, it is because culture is "a system of inherited conceptions" that it does not only easily constitute religion a major ally, but both also symbiotically relate. Recent studies have demonstrated how culture and religion represents a major field of power that systematically puts certain restrictions on the actions through the control of people's minds and their "definitions of the world";³⁹ and this either for good or bad.

The understanding of the concept of 'trokosi', therefore, demands an analysis of the religio-cultural background or the traditional metaphysics of the "Anlo" also known as the Southern Ewe

current system has not always been the one practiced – people may then see that the current form of the Trokosi is not a necessary element of their religion. Id.

³⁶ Aziza NK, 2008, Abolished by Law- Maintained in Practice: The Trokosi as Practised in Parts of the Republic of Ghana, pp. 376. Available at: <https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1065&context=lawreview>. Retrieved on May 26, 2019.

³⁷ Gedzi 2013: 223, See also, Field of Power: A Religio- Cultural Analysis of Trokosi in Ghana, 2016, pp. 130.

³⁸ Geertz 1973: 89; Gedzi 2009: 50.

³⁹ Stopler 2008.

people of Ghana. The traditional metaphysics of the Southern Ewe comprises “Mawu”, the Supreme Being who is the Creator of everything in the universe. Mawu is believed by the people to operate through agents such as gods (“trowo” in the Ewe language) and ancestral spirits, who are considered intermediaries between humans and “Mawu”.⁴⁰ The “gods, “trowo”, are owned by individuals, families or the ‘state’” and are said to “perform protective, welfare and truth searching functions for worshippers”.⁴¹ One such god is “Nyigbla” around which the “trokosi” institution evolves. A 73-year-old key informant⁴² who is a priest of Nyigbla, sees his god as a vicegerent of God. He quoted psalm 82: 1- 6⁴³ of the Bible to buttress his point.

According to this psalm, God gathers the gods of the world and as heads of the nations, the gods share the task of supreme judge. God reprimands the gods and demands that they eschew injustice and avoid showing partiality to the wicked. For this key informant, God has given power to lesser gods like Nyigbla to judge people on earth. In his view, Nyigbla plays important role in administering justice among people of Afife and surrounding towns and villages. It also helps to check social vices like stealing- One of the major crimes atoned for by the ‘trokosi’ practice. He indicated how the worship of Nyigbla has put fear into the people and this prevents them from involving themselves in crimes.

This Nyigbla religion, a variant of the African Traditional Religion fosters a morality of collective responsibility, which affects the people’s general way of life. Thus, socially, the society of the Southern Ewe “operates on a system of collective responsibility, with the actions of an individual potentially having consequences for other clan members”.⁴⁴ This means that clan members can be held responsible for an individual’s wrongdoing. In order to avoid this, clan or family members try to be of each other’s keeper by way of disciplining a member who goes wayward.

The Nyigbla god is believed to use the same principle of collective responsibility to execute its justice. Because of these, families within the clan try hard to find the truth about crimes committed, in their quest to escape possible punishment.⁴⁵ In order to find out about the perpetrator of a crime, oracle consultation (divination) as well as hexing or “*amedede tro me*” is employed. According to Malacci Ohrt, the purpose of the oracle is to serve as the medium for humans to communicate with

⁴⁰ Abotchie 1997: 65.

⁴¹ Ohrt 2011: 14

⁴² The key informant of this latest interview, which took place on the 16 and 17 of August 2015 at his residence in Afife was Torgbui Yevugah. He was 73 years old, and a traditional priest of the Nyigbla god at Afife.

⁴³ See commentary and text in Christian Community Bible, the Thirty-Eight edition, copyright 2005.

⁴⁴ See, Ohrt 2011, See also, Field of Power: A Religio- Cultural Analysis of Trokosi in Ghana, 2016, pp. 131.

⁴⁵ iOhrt 2011: 15.

supernatural forces and this is done either through visible magical objects or invisible “vocal” oracles”. Then hexing is used to deal with the offender. According to the fieldwork, whenever hexing is made on a family, the family experiences serial death (series of death) before it gets to know the reason for the frequent death. The reason for the death is known through an oracular consultation. Mostly, the innocent family members are those who die leaving the one who has committed the offense. According to Chris Abotchie,

“Hexing is employed in three instances in traditional southern Ewe society: (a) invoking the supernatural forces to pass judgment on unknown offenders, (b) invoking their wrath against known wrongdoers or (c) placing an evil “spell” or “curse” upon an object of value to protect it against trespassers”.⁴⁶

In the case of the trokosi, it is the first process of hexing that is employed. The complainant reports the case to the shrine. According to the research, the complainant can request the god to visit a particular type of disaster such as death, maiming, blindness on the wrongdoer.⁴⁷

Malacci Ohrt has provided a vivid illustration of how to become a trokosi:

Ameyo was seven years old when she was first sent to the shrine. Her grandmother was visited by a trokosi who unfortunately dropped her gold earrings, which were later retrieved by an unknown member of the family. People in her family started dying because the case was taken to the deities. In the end, she was the one to suffer by going into bondage to serve the deities for life.⁴⁸

When Ameyo realized that she had become a trokosi she was very unhappy about it. She indicated that when one entered the shrine, she was given a new name usually after the crime that led her to the shrine. That is why she was named as “earring.” She summed up her narrative that her life in the shrine was simply “mental torture”.⁴⁹

2.3 Voices of trokosi women

⁴⁶ Abotchie 1997: 79.

⁴⁷ Field of Power: A Religio- Cultural Analysis of Trokosi in Ghana, 2016, pp. 131.

⁴⁸ Ohrt 2011: 34.

⁴⁹ Ohrt 2011, See also, Field of Power: A Religio- Cultural Analysis of Trokosi in Ghana, 2016, pp. 132.

A. The stories of Dora and Mercyⁱ

The following story was recounted by Nirit Ben-Ari.⁵⁰ Dora was helped by the non-governmental organization (“NGO”) “International Needs Ghana” (“ING”), which attempts to help women reclaim their natural lives after escaping the Trokosi.⁵¹ Dora and another woman learned hairdressing skills at the vocational centre. Dora had spent seven years in a shrine. Dora told of how she was compelled by the priest to work on the shrine’s farm from morning until evening without any payment or food. Dora explains:

“I had to cut down trees and uproot tree stumps to burn into charcoal to sell and make some money to take care of myself. I did not have the right to take crops from the farm unless the priest allowed me to. Occasionally my parents sent me some food, but that was kept in the priest’s room and I had to request it any time I needed some. I was forced to have sex with the priest as one of the rituals in the shrine, but luckily, I did not get pregnant”.⁵²

In analysing the mental experience of the slavery, iAbolish, an antislavery network, recounts the story of Mercy Ameyo Senahe, (“Mercy”), who was also enslaved from the tender age of ten, to twenty-three.⁵³ Mercy told researchers from Columbia University:

“I never had the chance to tell the priest how I felt about him. I would have told him that he is the most wicked person on earth . . . I can’t trust anyone in my family now. Of course, I blame them for sending me to be punished for a crime I did not commit and for destroying my life. Maybe I could have been a doctor or teacher, but instead I am a single parent of four children from a wicked priest in a wicked system . . . I believe I can recover, but it is going to be a long and painful road”.⁵⁴

Mercy was “given,” by her parents, to the fetish priest at a local religious shrine in atonement for family sins: as penance for her grandmother’s theft of a necklace.⁵⁵ Understandably, Mercy blames

⁵⁰ Ben-Ari supra note 1. See also, Aziza N, K.B (2008), *Abolished by Law- Maintained in Practice: The Trokosi as Practised in Parts of the Republic of Ghana*, pp. 377.

⁵¹ Austin Cline, *International Religious Freedom Report 2003: Ghana*, ABOUT.COM, Dec. 18, 2003, http://atheism.about.com/library/irf/irf03/blirf_ghana.htm.

⁵² Ben-Ari supra note 1 (emphasis added).

⁵³ Ben-Ari supra note 1. See also, Aziza N, K.B (2008), *Abolished by Law- Maintained in Practice: The Trokosi as Practised in Parts of the Republic of Ghana*, pp.377

⁵⁴ Ben-Ari supra note 1. See also, Aziza N, K.B (2008), “Abolished by Law- Maintained in Practice: The Trokosi as Practised in Parts of the Republic of Ghana”. Pg. 377

⁵⁵ Mercy Ameyo Senahe, *The Slave Experience: In their Words*, IABOLISH.ORG, http://www.iabolish.org/slavery_today/slave_experience/narratives/mercy_ameyo_senahe.html. See also Ben-Ari supra note 1. See also, Aziza N, K.B (2008), *Abolished by Law- Maintained in Practice: The Trokosi as Practised in Parts of the Republic of Ghana*, pp. 377

her parents; but the current Trokosi practice preys on the families' fears of the fetish priest.⁵⁶ It should be noted that fetish priests are not the same as Christian priests, and fetish priests are often considered very wise.⁵⁷ Sadly, the stories of what Dora and Mercy endured during their lives in the Trokosi may not be uncommon.⁵⁸ What may be uncommon is that Dora and Mercy were rescued from the Trokosi.⁵⁹ Again, sources vary, and it is not fully clear how many women are in the Trokosi, or how many ever escape.⁶⁰ It is, however, clear that according to the laws discussed above, the current Trokosi practice is illegal.⁶¹

3. Theoretical perspectives and conflicting discourses.

3.1 The universalism and cultural relativism conception of the trokosi practice

This chapter will enhance our knowledge of the role of cultural relativism and how this interferes with the advancement of universal human rights in the case of the trokosi practice.

The trokosi practice is best scrutinized in the context of universalism and cultural relativism and that is what the present chapter seeks to analyse. Theoretically, universalism takes precedence in the full enjoyment and protection of human rights, however, in practice, the actual enforcement of human rights laws that conflict with other cultural values and practices can be messier and more complex than it is often conceptualized.⁶²

The question of the universality of human rights often raises diverse views; There are those who believe in cultural relativism and thus would support different conceptions of human rights based on dissimilar cultural contexts. Others believe that human rights, by nature, should

⁵⁶ See, e.g., id.

⁵⁷ Ben-Ari supra note 1. See also, Aziza N, K.B (2008), Abolished by Law- Maintained in Practice: The Trokosi as Practised in Parts of the Republic of Ghana, pp. 377

⁵⁸ See Protectors or Pretenders, supra note 25.

⁵⁹ See Cline, supra note 32.

⁶⁰ See Cline, supra note 32.

⁶¹ See infra p. 20.

⁶² JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society (2015) 15 African Human Rights Law Journal. <http://www.ahrlj.up.ac.za/asomah-j-y>

be considered universal despite differing cultural contexts. And there are also those who consider both views and advocate a middle ground that serves to accommodate varying cultural contexts and yet still assert a certain degree of universality of human rights.⁶³

The differentiation made on the varied interpretation of human rights are characterized by western and non-western societies. Classical Western liberal notion of human rights emphasizes absolute individual political and civil rights while most non-Western, Third World traditions place greater emphasis on the community basis of rights and duties, on economic and social rights and on the relative character of human rights. Marxist or socialist ideas highlight economic and social rights and duties absolutely grounded in collectivist principles. (Johnson 1988: 43)⁶⁴

On the other hand, traditional cultures are of the view that, the individual is not an autonomous being and therefore his rights are not above the society.⁶⁵ According to Pathak 1989, the individual is often conceived as an integral component of a group, or the family or clan, the tribe, or the local community, which is regarded as the basic unit of society. This does not however limit the protection of the individual against societal abuses.

In spite of the existence of a universal framework for the protection of human dignity and integrity from all manner of actions and practices such as slavery, torture, oppression, tyranny, genocide, that are not only de-humanizing, but also threatening to the survival and wellbeing of individuals, groups and humanity as a whole,⁶⁶ grave violations of human rights, especially with regards to women and children continue to exist in several forms often on cultural grounds of which the 'trokosi' practice is a significant example. Societies dominated by patriarchy in the cultural context label universal human rights as 'Western imperialism'. In effect, culture can be invoked to assert human rights, and, at the same time, it can be deployed to rationalize the violation of the rights of others.⁶⁷

⁶³ Hurights Osaka, Human Rights and Cultural Values: A Literature Review.

<https://www.hurights.or.jp/archives/database/hr-cultural-values.html#note1>

⁶⁴ See Hurights Osaka, Human Rights and Cultural Values: A Literature Review.

⁶⁵ Hurights Osaka, Human Rights and Cultural Values: A Literature Review

⁶⁶ JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society (2015) 15 African Human Rights Law Journal 130. See Also, Universal Declaration of Human Rights

⁶⁷ JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society (2015) 15 African Human Rights Law Journal 131, 2015.

The argument in favour of seeing human rights as relative concepts is based on the premise that human rights as presently conceived reflects the culture of the major authors of human rights instruments starting with the United Nations' Universal Declaration of Human Rights (Pathak 1989: 7).⁶⁸ Critics of the notion that human rights are universal often assert that the West has the most influence on the modern-day conceptualization of human rights which in effect is expressive of its values, mores and norms⁶⁹ and which cannot therefore be assumed that human rights are applicable to other regions.

The respect for cultural diversity and cultural sensitivity other than one's own is the basis for the arguments raised by cultural relativists. Attention is also drawn to cultural pluralism, and the need to celebrate and respect this diversity of cultures.⁷⁰ Proponents of cultural relativism in the context of a human rights framework argue that local cultures are capable of ensuring human dignity.⁷¹ In essence, the pro-cultural-relativist camp contends that the observance of universal human rights is 'intrusive and disruptive' to the deeply-held traditional mechanisms for the protection of lives, liberties, freedoms and security of people.⁷² This implies the cultural-specific nature of human rights.

The assumption supporting the basis for this argument however appears to be weak. This weak claim is evident in the violation of the human rights of women and children especially in the global south, in the cases of for example female sexual mutilation and the 'Trokosi'.⁷³ In view of this, granting the demand for culturally-based human rights can to some extent be equated to the legitimization of human rights abuses.⁷⁴ The free expression of cultural uniqueness and identity

⁶⁸ Hurights Osaka, Human Rights and Cultural Values: A Literature Review.

<https://www.hurights.or.jp/archives/database/hr-cultural-values.html#note1>

⁶⁹ IPI Global Observatory, Is 'human rights' a Western concept? <https://theglobalobservatory.org/2018/10/are-human-rights-a-western-concept/>

⁷⁰ RA Wilson Human rights, culture and context: Anthropological perspectives, 1997.

⁷¹ JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society (2015) 15 African Human Rights Law Journal 132, 2015.

⁷² D Ayton-Shenker 'The challenge of human rights and cultural diversity' (1995) 2

⁷³ RK Ameh, Reconciling human rights and traditional practices: The anti-trokosi campaign in Ghana (2004) 19 Canadian Journal of Law and Society 51-72, 2014.

⁷⁴ JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society (2015) 15 African Human Rights Law Journal 132, 2015

must be given minimum standard of guarantees to avoid the exercise of arbitrary discretionary powers, which tends to create room for abuse as a result of limited commonly-enforceable standards.⁷⁵ There should be no subject of controversy on universalism if all cultures equally ensure the protection of the universal rights of people given that it presupposes an existence of a shared objective of promoting human dignity. This shared vision should then be a unifying force, rather than a divisive one.⁷⁶

Cultural relativists assert that to have a universal package of moral or legal standards for the guarantee of human freedoms and protection is ethically wrong and morally unjust because of the plurality and the context-specific nature of moral values and aspirations embedded in different cultures.⁷⁷ The imposition of a universal set of norms therefore, ignores and fails to accommodate such diversity and differences.⁷⁸ Mutua's argument on universal human rights depicts an attack on the cultural fabric of states regarded as inferior compared to Western standards.⁷⁹ Therefore, for cultural relativists, the only valid way to effectuate change in cultural practices is from within the local community, for example, as a result of the impetus of local women.⁸⁰

On the other hand, pursuing universal human rights is compatible with the advancement of political liberalism, such as the rule of law, good governance, and market capitalism.⁸¹ Consequently, a greater emphasis is put on cultural and political rights without equal emphasis on economic and social rights, such as the right to education, to health, to decent housing and to an adequate standard of living.⁸² To consider this, human rights may be viewed as an extension of the civilization mission

⁷⁵ JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society (2015) 15 African Human Rights Law Journal 132, 2015

⁷⁶ JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society (2015) 15 African Human Rights Law Journal 132, 2015.

⁷⁷ Ayton-Shenker (n 8 above). See Also JY Asomah Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society (2015) 15 African Human Rights Law Journal 132, 2015

⁷⁸ Vedna Jivan and Christine Forster, what would Gandhi say? Reconciling universalism, cultural relativism and feminism through women's use of CEDAW, pp. 111

⁷⁹ M Mutua, Savages, victims, and saviours: The metaphor of human rights (2001) 42 Harvard International Law Journal 201-245, 2001.

⁸⁰ Miller, supra note 2 at 789

⁸¹ F Mégret, where does the critique of international human rights stand? An exploration in 18 vignettes (2010) Faculty of Law, McGill University, 2010.

⁸² JY Asomah 'Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society' (2015) 15 African Human Rights Law Journal 133

that underpinned colonialism; that is expanding Western imperialism and liberalism in the quest to advance Western interests.

However, the reality of gross human rights abuses is often downplayed when the latter is rather characterized as a projection of Western ideology. In essence, universal human rights do not constitute a particular ‘cultural standard’, but ‘rather one legal standard’, which reflects a collective consensus of the international community, although law to some extent often reflects cultural values. Consequently, human rights cannot solely be ascribed to any particular religion or cultural orientation.⁸³

Claiming cultural preservation disproportionately impedes the full enjoyment of the human rights of women.⁸⁴ As Erturk argues, ‘women’s human rights discourse and movements have become entangled within a culture-versus-rights dualism’.⁸⁵ The indication is that, the claim for cultural rights may also promote the interests of patriarchal societies where the subordination and oppression of women and girls are persistent. Cultural relativism overlooks the possibility for cultural dynamism which is critical aspect of culture. This poses a restraint on local cultures to adapt to social transformation.⁸⁶

From the lens of the universal human rights framework, human rights that are guaranteed in international treaties and conventions should be applicable in all countries and must prevail even when they conflict with established cultural or religious practices.⁸⁷ This notion is based upon the

⁸³ Ayton-Shenker (n 8 above) 2-3. See Also JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society (2015) 15 African Human Rights Law Journal 133, 2015

⁸⁴ JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society, (2015) 15 African Human Rights Law Journal 133, 2015.

⁸⁵ Y Erturk ‘Culture versus rights dualism: A myth or a reality?’ (2012) para 1 <http://www.opendemocracy.net/5050/yakin-erturk/culture-versus-rights-dualism-mythor-reality> (accessed 20 March 2014)

⁸⁶ JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society, (2015) 15 African Human Rights Law Journal 133, 2015.

⁸⁷ Karen Musalo, When Rights and Cultures Collide. Markkula Center for Applied Ethics, Santa Clara University Nov 12, 2015, p. 2. See Also, István Lakatos, “Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights”. Pg. 10. http://ceere.eu/pjiel/wp-content/uploads/2018/08/8_pjielPJIEL1801.pdf

equality, indivisibility and universality of all human rights.⁸⁸ Shestack notes that, “modern universalist theories of human rights can be based on natural law, justice, reaction to injustice, dignity, and equality of respect and concern.”⁸⁹ As mentioned by Michael Freeman, universality cannot be confused with conformity, as universality promotes diversity by protecting cultural freedom.⁹⁰

‘The protection of cultural heritage and the freedom of thought, conscience and religion’ are accommodated, recognized and promoted by universal human rights, however, this protection does not extend to cases where the observance of cultural or religious practices violates the rights of others.⁹¹ Not all cultural practices require preservation. Practices that are repressive, discriminatory and violent should be abolished regardless of the sources of their origin.⁹²

3.2 Culture, spirituality and human rights

In the Southern Eweland, the culture is the spiritual. It is therefore important to understand how this has been made relevant to the Human rights framework, especially in the process of vernacularization.⁹³ Akrong expresses that the African conceives of reality at its core as spiritual, attributing causality to spiritual agency and material causes functioning, if at all, only secondarily (1999: 4-5). In this regard:

“The significance of this metaphysical analysis of the construction of reality and meaning is not to describe primitive mentality, nor compare primitive mentality to modern mentality nor even to equate supernatural agents to atoms and molecules. But to make the point that the process of development involves Africans in a new domain of discourse whose lexicon and logic they struggle to master because their world-view predisposes them to different domain

⁸⁸ István Lakatos, Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights, pp. 10

⁸⁹ Michael E. Goodhart, Origins and Universality in the Human Rights Debates: Cultural Essentialism and the Challenge of Globalization, Human Rights Quarterly, Volume 25, No. 4, p. 940.

⁹⁰ Michael Freeman, p.132.

⁹¹ Ayton-Shenker (n 8 above); Deinayurveda.net ‘Universal human rights and cultural relativism’ (2011) <http://www.deinayurveda.net/wordpress/2011/04/>. See Also, JY Asomah, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society (2015) 15 African Human Rights Law Journal 134, 2015.

⁹² Zarizana AA & Janine M, The Due Diligence Principle and the Role of the State: Discrimination against Women in Family and Cultural Life, p. 6

⁹³ Malacci Ohrt, Ghana, 2011, Conflicting Discourses on the Trokosi Practice in Ghana: Exploring Tensions in the Global/ Local Human Rights Translation, pp. 20.

of discourse which contradict that of development at the very core of meaning [...] On the level of meaning this tendency in African theory of meaning makes the appropriation, assimilation and integration of the benefits of modern scientific thought very difficult and thus accentuate the problem of meaning and interpretation in the transfer of and acquisition of knowledge, which is the key to the whole process of development” (1999: 5).⁹⁴

According to Akrong “the cultural and spiritual alienation at the heart of development discourse in Africa has instead disturbed the African society rather than helped it to respond to the modern changes that are affecting her life” (1999: 7). The term development is addressed here primarily because human rights has found its place in our current era as being integral part of the modernization process of third world countries. As a result of this progression, development has moved beyond an economic boundary into a rather multi-dimensional approach, where meeting the basic needs of individuals (also understood as basic rights inherit and entitled to all individuals by virtue of being human) is the essential focus.⁹⁵

In light of the above, development has taken a rights-based approach with the fundamental principles of human rights as the driving force. In the case of culture, the realization of human rights in connection with the process of development has been perceived as disruptive to societies whose value systems are not in line with the Western proponents within which the human rights corpus and modernization are embedded in. Realizing this, Akrong demonstrates the need for evolving in a “cultural milieu” in order to address the challenge of making culture and religion an “integral part of development not an appendage, but a core component” (1999: 12). Similarly, Beek contends that “the role of spirituality, whether as a hindrance or as a support has been ignored in rural development” (2000: 37). Beek states that “little is known about the role of spirituality in the development process, and little or no guidance is given to development practitioners as to how to address spiritual issues, resulting in less effective and even damaging development efforts” (2000: 38). He equates one of the reasons for this limited knowledge to the fear development practitioners have of imposing or appearing to impose an outsider’s perspective, whether religious or scientific/materialistic (2000: 39). On the other hand, individuals with scientific perspectives tend to perceive the concept of spirituality and religions as belief systems based on myths whose overall negative impact on society would be replaced eventually by sound scientific thinking (Beek 2000:

⁹⁴ Malacci Ohrt, Ghana, 2011, *Conflicting Discourses on the Trokosi Practice in Ghana: Exploring Tensions in the Global/ Local Human Rights Translation*, pp. 20.

⁹⁵ Malacci Ohrt, Ghana, 2011, *Conflicting Discourses on the Trokosi Practice in Ghana: Exploring Tensions in the Global/ Local Human Rights Translation*, pp. 21.

39). Additionally, he is of the view that the avoidance of spirituality in the discussion of development presents a degree of condescension implicit in withholding what one believes to be a superior understanding of reality so as not to offend or impose. He states that even though people's spirituality and culture is viewed as weak and to be protected, there is a "silent conviction that science and development ultimately will allow people to leave behind their spiritual and unscientific beliefs" (Beek 2000: 39). Finally, he states, "without increased attention to spirituality, development efforts will fail in their attempts to sidestep an issue which permeates life in the South" (2000: 40). Also, Beek highlights the following:

"the purpose of integrating indigenous spirituality into development is neither to impose outside knowledge nor to manipulate it as a means to the outsider's ends, but rather for mutual reflection and learning" (Beek 2000: 41).

In spite of the fact that many arguments exist concerning the role or place of spirituality in the human rights discourse, it is beyond the scope of this paper to address this. The paper is however limited to the concept of spirituality and culture as it applies to the trokosi practice and its human rights framework.⁹⁶

3.3 Theory on the translation of human rights

The approach by which the language of human rights is formulated is crucial to understanding the way in which the targeted communities embrace its rhetoric. In view of the indisputable Eurocentric element of the human rights corpus and the need for cross-cultural dialogue and overall cultural suitability in the way it is framed and implemented in non-Western communities, Merry effectively outlines the process through which human rights can be translated in order to reduce tensions, therefore reaching compromise.⁹⁷ In her article on translating human rights from the global to the local, Sally Merry recognizes the significance of translators, who play a critical role in advancing human rights through their translation from the global arena down and from the local arenas up. Translators are powerful as they serve as "knowledge brokers between culturally distinct social worlds" yet they are vulnerable to "manipulation and subversion by states and communities"

⁹⁶ Malacci Ohrt, Ghana, 2011, *Conflicting Discourses on the Trokosi Practice in Ghana: Exploring Tensions in the Global/ Local Human Rights Translation*, pp. 21.

⁹⁷ Malacci Ohrt, Ghana, 2011, *Conflicting Discourses on the Trokosi Practice in Ghana: Exploring Tensions in the Global/ Local Human Rights Translation*, pp. 19.

(Merry 2006: 38). According to Merry, as ideas from the transnational sources trickle down to local communities they are “vernacularized”.⁹⁸ “Vernacularization” is the process of extracting universal human rights language and adapting to local institutions and meanings (2006: 39). Within this procedure, the symbolic dimension of vernacularization is then called “indigenization” and this refers to a “shift in meaning particularly the new way in which an idea is framed and presented in terms of existing cultural norms, values and practices” (2006: 39). Here, local meanings, terminology and symbols are used to frame human right discourses. Specifically, the frame is defined as a way of packaging and presenting ideas that generate shared beliefs, collective action as well as define suitable strategies of action. It is an interpretive package surrounding a core idea (2006: 41). In this regard, indigenization is the applicatory process of an innovation being framed by local symbols and terminology (2006: 41). That said, the higher the frame is resonant with local ideas, the greater the likelihood it will be successful (2006: 41). Crucial to vernacularization is the role of translators whom by working in the middle, “refashion global rights agendas for local contexts and reframe local grievances in terms of global human rights principles and activities” (2006: 39). Translators work in a field of “conflict and contradiction” as they are both powerful yet vulnerable (2006: 40). Translators are “able to manipulate others who have less knowledge than they do but still subject to exploitation by those who installed them” (2006: 40). In addition, translators work within the field of unequal power, as their work is either influenced by those who fund them or by the targeted community (2006: 40). In both circumstances, their loyalties to the source or the target are always questioned by either party. According to Merry, there are two ranging methods within which indigenization occurs and this is either through replication or hybridity (2006: 44). In the process of replication, “the transnational mode sets the overall organization while the local context provides its distinctive content. Transnational idea remains the same, but local understanding shape the way the work is carried out. The source is relatively dominant”. On the other hand, hybridity “takes a more interactive form, with symbols, ideologies and organizational forms generated in one locality merging with those of other localities to produce new hybrid institutions. The target is more powerful” (2006: 44). Overall, translators whose interests and commitment are vested in the target group, produce more hybrid transplants whereas those vested in the source create replicas (2006: 48). In all Merry posits a contradiction in the current human rights framework. For human rights to be accepted within local communities, they have to be tailored to the local context and resonant with the local cultural framework. However, to

⁹⁸ Malacci Ohrt, Ghana, 2011, *Conflicting Discourses on the Trokosi Practice in Ghana: Exploring Tensions in the Global/ Local Human Rights Translation*, pp. 19.

be part of the human rights system, they must emphasize individualism, autonomy, choice, bodily integrity, and equality – ideas embedded in the legal documents that constitute human rights law (2006: 49).

3.4 Balancing universalism and cultural relativism

The deviations in the implementation of international human rights norms relating to cultural, historical or religious differences must be separated from those references to cultural traditions which are intended to justify human rights violations by the political leadership.⁹⁹

The conflict between universalism and cultural relativism can have positive effects as well.¹⁰⁰ Both discourses can reinforce each other. In the development of human rights campaigns by human rights advocates, the cultural sensitivity of cultural relativism is relevant for the avoidance of negative reactions from the host society.¹⁰¹ Human rights experts on the other hand can contribute to the development of a culture, making it more adaptive to international human rights standards by helping to reconcile traditional practices with them.¹⁰² As stated by Kofi Annan, “No single model of human rights, Western or other, represents a blueprint for all states”.¹⁰³

“The most important human rights, and gross and massive violations of them are not culturally conditioned”.¹⁰⁴ Their forms may vary according to different cultural practices, but their content is culturally irrelevant.¹⁰⁵ The reconciliation of local and international norms is not always possible, but it is possible in many cases, especially in light of the fact that international norms are usually not as detailed as local ones.¹⁰⁶ That is one of the reasons why the practice of the so called “margin

⁹⁹ Rein Müllerson, p. 83. See Also, Pécs Journal of International and European Law - 2018/I: Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights. pp. 17

¹⁰⁰ Nhina Le, p. 209.

¹⁰¹ Ibid p. 209

¹⁰² ¹⁰² István Lakatos, Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights, pp. 17

¹⁰³ Ibid p. 209

¹⁰⁴ Rein Müllerson, 2014.

¹⁰⁵ Rein Müllerson, pp. 79-80

¹⁰⁶ Istvan Lakatos, Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights, pp.17.

of appreciation”¹⁰⁷ was established by the European Court of Human Rights to solve that kind of problems under its jurisdiction.¹⁰⁸ The cultural relativists’ position that human rights are not observed worldwide because they are not integrating the non-Western concepts of dignity is not sustainable as the main elements, values of our present human rights system can be found in almost all the cultures as due to the globalization, people are facing similar threats everywhere and human rights are still the best answers to address them.¹⁰⁹

Howard suggested an interesting model in order to reconcile cultural relativism and universalism: She would support a national legislation permitting women to „opt out” of traditional practices in favour of universal values. Of course, in certain cases- like that only families can use the community owned lands – this reconciliation is not possible but, in some cases, it can be a solution.¹¹⁰

Also, despite individual differences, there are certain cross- cultural universal values, which are adopted by all societies and which can be used to legitimize universal moral standards.¹¹¹ Dembour proposes that we should take an intermediary position allowing local factors to be taken into account during the implementation of international human rights law.¹¹²

The contemporary discussion has moved away from the classical dichotomy of radical universalism versus radical cultural relativism, and scholars have been taking more nuanced positions by acknowledging both the merits of universal human rights projects and the significance of culture in the conceptualization and implementation of human rights.¹¹³

¹⁰⁷ The national authorities of Contracting States to the Convention for the Protection of Human Rights and Fundamental Freedoms (also known as: European Convention on Human Rights – ‘ECHR’) are permitted a degree of latitude in respect of the manner in which they discharge their obligations under the Convention. This degree of freedom is referred to as the doctrine of the “margin of appreciation”. The doctrine plays a pivotal role in ensuring that the ECHR is workable throughout the Contracting States despite the varied differences found in the national systems of Contracting States.

¹⁰⁸ Ibid p. 80

¹⁰⁹ Istvan Lakatos, Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights, pp.17.

¹¹⁰ Jack Donnelly, Cultural Relativism and Universal Human Rights, pp. 418-419, See also, Istvan Lakatos, Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights, pp.18.

¹¹¹ Ibid pp. 465-466, See also, Istvan Lakatos, Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights, pp.18.

¹¹² Ibid p. 465, See also, Istvan Lakatos, Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights, pp.18.

¹¹³ Ibid pp. 465-466, See also, Istvan Lakatos, Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women’s Rights, pp.18.

4. Examination of states' obligations to address of the trokosi practice

The purpose and scope of this chapter is to address some of the human rights violations of women and girls by the 'Trokosi' practice. It also addresses states' obligations under the various international and regional human rights frameworks.

Addressing the 'trokosi' practice as a violation of human rights places obligations on states not to only refrain from the violation of these rights but also to ensure the protection and fulfilment of human rights in their jurisdictions and policies.¹¹⁴

Several international and regional human rights instruments make provisions for the protection of women and girls from all forms of violence both in the public and private spheres and compel states to undertake the necessary measures to ensure the prevention and elimination of these practices.¹¹⁵ Ratification of a treaty signals a State's commitment to the principles and obligations set out therein. Nonetheless, in order for states to ensure their capability of practically complying with all aspects of the treaty, a number of positive steps must be taken by those states.¹¹⁶ States are therefore required to adopt all relevant legislative and other measures and to guarantee their full force and effect within their national legal system.¹¹⁷ The procedures to be used in the incorporation of treaty obligations is based on the discretion of states which will normally depend on their constitutional and political system.¹¹⁸

The 'Trokosi' practice constitutes "other traditional practices harmful to women" according to the Declaration on the Elimination of Violence against women (DEVAW) although not explicitly mentioned like Female Genital Mutilation (FGM).¹¹⁹

Article 2 of the declaration however explicitly includes sexual abuse of female children as well as violence related to exploitation as part of what is understood to constitute violence against women;¹²⁰ Sexual slavery of female children is one major act depicted by the 'trokosi' practice. Various

¹¹⁴ Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation. pp. 36

¹¹⁵ "Protecting children from harmful practices in plural legal systems with a special emphasis on Africa". https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/publications/5._protecting_children_from_harmful_practices_low_res.pdf. pp. 7

¹¹⁶ Legal Frameworks to Prevent Torture in Africa. pp. 7. Available at: <https://redress.org/wp-content/uploads/2017/12/1603anti-torture-legislative-frameworks-in-africa.pdf>. Retrieved on 23 May 2019.

¹¹⁷ Protecting children from harmful practices in plural legal systems with a special emphasis on Africa, pp. 7

¹¹⁸ Legal Frameworks to Prevent Torture in Africa. pp. 7. Available at: <https://redress.org/wp-content/uploads/2017/12/1603anti-torture-legislative-frameworks-in-africa.pdf>. Retrieved on 23 May 2019

¹¹⁹ Article 2(a) of the Declaration on the Elimination of violence against women

¹²⁰ Article 2(a, b) of the Declaration on the Elimination of violence against women

conventions which provide for women's rights have been adopted to eliminate as well as protect women from the 'trokosi' practice¹²¹ one of which is the Universal Declaration of Human Rights (UDHR), which serves as the foundation of international human rights law and the binding conventions adopted thereafter. Although it is not an international treaty, it provides the basic principles for the achievement of a common standard for all people and all nations.¹²² Article 1 of the declaration proclaims the equality of all human beings both in dignity and in rights.¹²³

It further establishes equal entitlement to all the rights and freedoms set forth in the declaration to everyone without any kind of distinction.¹²⁴ The provision on the prohibition against torture or cruel, inhuman or degrading treatment or punishment is also stipulated in the declaration¹²⁵ as well as the right to life, liberty and security of person.¹²⁶

The 'trokosi' practice is contrary to many of the rights in the UDHR in the case that girls sent to the shrines are denied of their right to liberty, security and dignity as human beings. They are also subjected to sexual abuse and cruel, inhuman and degrading treatment or punishment upon becoming slaves against their will and work under the total control of the priests.¹²⁷

Other treaties relevant in the context of eliminating the trokosi practice are: the International Covenant on Civil and Political Rights (ICCPR);¹²⁸ the Convention on the Elimination of All Forms of Discrimination against women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and the Convention on the Rights of the Child (CRC), as well as their respective protocols.¹²⁹

Ghana has ratified the ICCPR, UNCRC, CAT and CEDAW and therefore, Ghana has the obligation to incorporate the provisions of these treaties in the domestic laws of the state.

¹²¹ Trokosi- The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights. pp. 477

¹²² Universal Declaration of Human Rights, Dec 10, 1948, G.A. Res. 217 III. A, U.N. GAOR, 34d Sess., Pt. I, at pmb., U.N. Doc. A/ 810 (1948)

¹²³ Article 1 of the Universal Declaration of Human Rights

¹²⁴ Article 2 of the Universal Declaration of Human Rights

¹²⁵ Article 5 of the Universal Declaration of Human Rights

¹²⁶ Article 3 of the Universal Declaration of Human Rights

¹²⁷ Trokosi- The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights. Pg. 480

¹²⁸ See Articles 3, 7 and 24 of the ICCPR

¹²⁹ The provision of the CRC is to be read together with 2 General Comments of the CRC Committee: No. 8 and No. 13. General Comment No. 8 addresses the right of the child to protection from corporal punishment and other cruel or degrading punishment (Arts. 19, 28(2) & 37(a) of the CRC). General Comment No. 13 addresses "all forms of violence;" Art. 19 (para.1) of the CRC provides that: States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians(s) or any other person who has the care of the child.

There are several regional instruments which purportedly protect the rights violated by the 'Trokosi' practice and these mainly include: The African Charter on the Rights and Welfare of the Child and The African Women's Protocol. Detailed examination of the major frameworks is made in the subsequent chapters.

4.1 African culture versus human rights of women in Africa

The realization of women's rights in Africa has improved over the years especially with the inclusion of women in African legislation.¹³⁰ Currently, most African constitutions and national policies make several provisions on sexual and gender- based violence, economic, social and cultural rights and non- discrimination across the continent. These are provisions made by the Protocol to the African Charter on Human and People's Rights. However, women are still vulnerable and are denied the full enjoyment of their rights as human beings.¹³¹

The African culture often undermines the human rights of women in African particularly considering the social construct of African communities regarding the gendered roles that are used to differentiate men from women. In most cases, African cultural practices and attitudes often poses various threats to the full enjoyment of the human rights of women. African women are often at the disadvantaged end due to the presence of inequality evident in for instance, the patriarchal system characterized by male dominance. It is for this reason of male supremacy that women are often exposed to violence. Men are often the perpetrators of the harmful traditions while women remain the victims. One major question often raised with regards to the trokosi practice, for example, is why young girls are used as slaves and not male children especially when the crimes that are atoned for are often committed by male family members. Most traditional practices are fundamentally biased against women and gender- insensitive.¹³² Gendered roles of the African culture portray women as the weaker vessel-

¹³⁰ United Nations Human Rights Office of the High Commissioner, Women's Rights in Africa- UN and African Union Launch Report ahead of International Women's Day. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21312&LangID=E>. Retrieved on May 27, 2019.

¹³¹ United Nations Human Rights Office of the High Commissioner, Women's Rights in Africa- UN and African Union Launch Report ahead of International Women's Day. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21312&LangID=E>. Retrieved on May 27, 2019.

¹³² Mukto- Mona, Institute for Ethics and Emerging Technologies, Women's Rights in Traditional African Practices and Islam, 2012. Available at: <https://ieet.org/index.php/IEET2/more/igew20120203>. Retrieved on May 27, 2019.

extensions of men and secondary human beings¹³³ and as such, they are not able to fight or challenge the shrine priests unlike the males.

According to the first ever report launched by the United Nations on human rights of African women, more than one in three women (36.6%) in Africa report having experienced physical, and/ or sexual partner violence or sexual violence by a non- partner.¹³⁴

The Convention on the Elimination of all Forms of Discrimination against Women requires that women be accorded rights equal to those of men and that women be able to enjoy all their rights in practice.¹³⁵ The promotion of the right of equality of men and women can be an effective tool for curbing the menace of harmful traditions.

4.2 Right to be protected against slavery, servitude and forced labour

Slavery, servitude and forced labour are serious violations of human rights.¹³⁶ They are absolutely prohibited in the major human rights instruments and the prohibition is non-derogable.¹³⁷

According to the slavery convention of 1926, slavery is defined to include the following:

“... the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

“The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves”.¹³⁸

¹³³ Mukto- Mona, Institute for Ethics and Emerging Technologies, Women’s Rights in Traditional African Practices and Islam, 2012. Available at: <https://ieet.org/index.php/IEET2/more/igew20120203>. Retrieved on May 27, 2019.

¹³⁴ New African Woman, The True State of the State of Women’s Rights in Africa. Available at: <https://nawmagazine.com/the-true-state-of-the-state-of-womens-rights-in-africa/>. Retrieved on May 27, 2019

¹³⁵ United Nations Office of the High Commissioner, Women’s Rights are Human Rights, pp. 34.

¹³⁶ Article 5 of the African Charter on Human and People’s Rights, 1981,1520 UNTS 363; International Covenant on Civil and Political Rights, 1966, Article 8, 999 UNTS 171.

¹³⁷ Ryszard Piotrowicz, 2012, States’ Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations, pp. 182.

¹³⁸ Article 1 of the Slavery convention

The above definition of slavery has been recognised as having the status of customary international law and even of *jus cogens*¹³⁹, and focuses on the notion of ‘ownership’, the idea that a person could be bought or sold, and therefore ‘owned’.¹⁴⁰ It is however evident that the practice of enslavement continue to exist even though it is not legally possible to own another human being.¹⁴¹

Contemporary slavery has been described as ‘a relationship in which one person is controlled by another through violence, the threat of violence, or psychological coercion, has lost free will and free movement, is exploited economically, and is paid nothing beyond subsistence’.¹⁴² This may describe some of the conditions in which many people who might be perceived as ‘slaves’ live, but the legal definition of slavery is narrower.¹⁴³ The element of ownership or, rather, ‘powers attached to the right of ownership’, is crucial.¹⁴⁴ Nowadays, it is no longer regarded as requiring the ‘acquisition’ of a person for money or some other value.¹⁴⁵ It has rather taken on a more contemporary form. The ‘*trokosi*’ practice is a representation of contemporary domestic servitude and ritual slavery which is prohibited by international law.¹⁴⁶

¹³⁹ Prosecutor v Kunarac, Kovac and Vukovic, Judgment of 22 Feb 2001, Case No IT-96-23-T and 23/1, para 520 (regarding the customary status of the norm); Case Concerning Barcelona Traction, Light and Power Company Ltd, ICJ Rep 1970 3, 32 (regarding slavery as *jus cogens*).

¹⁴⁰ Ryszard Piotrowicz, 2012, States’ Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations, pp. 183.

¹⁴¹ Ryszard Piotrowicz, 2012, States’ Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations, pp. 183.

¹⁴² K Bales, Z Trodd and AK Williamson, Modern Slavery: The Secret World of 27 Million People (2009), 31.

¹⁴³ Ryszard Piotrowicz, 2012, States’ Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations, pp. 183.

¹⁴⁴ J Allain, The Slavery Conventions: the Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention (2008), 59; AT Gallagher, ‘Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway’ (2009), 49 VJIL 789, 799-810, See also, Ryszard Piotrowicz, 2012, States’ Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations, pp. 183.

¹⁴⁵ Kunarac, above n 6, para 542. See also Gallagher, *ibid*, 805, citing, albeit with some reservation, the 1953 ‘Report of the Secretary-General on Slavery, the Slave Trade and Other Forms of Servitude’, and arguing: ‘... the existence of slavery does not require a legal right of ownership’.

¹⁴⁶ United Nations ‘Report of the Temporary Slavery Commission to the Council of the League of Nations’ (A.17.1924.VI.B) quoted in ‘The suppression of slavery’ Memorandum submitted by the Secretary-General to the Ad Hoc Committee on Slavery, United Nations document ST/SPA/4 (1951) para 22. See also, African Human Rights Law Journal, <http://www.ahrj.up.ac.za/component/content/article/47-issues/volume-17-no-1-2017/542-domestic-servitude-and-ritual-slavery-in-west-africa-from-a-human-rights-perspective?highlight=WyJlZHVjYXRpb24iXQ==>, See, V Gyurácz ‘Domestic servitude and ritual slavery in West Africa from a human rights perspective’ (2017) 17 African Human Rights Law Journal 89-113

No international treaty defines the term ‘servitude’, which is only mentioned in the Preamble of the 1956 Supplementary Convention on the Abolition of Slavery but not in its text.¹⁴⁷ However, the concept is used extensively in both international law and international human trafficking law.¹⁴⁸

Protection against all forms of slavery has received global attention, however, traditions like the *trokosi* practice presents a form of modern-day slavery by forcing young girls into ritual servitude¹⁴⁹ where forced labour as well as exploitation of women and girls persist.

What has become clearer is that the state has a duty under human rights law to prevent enslavement, forced labour and servitude perpetrated by private citizens, as well as to protect those at immediate risk.¹⁵⁰

The wording for the prohibition of slavery in the various human rights instrument varies but the basic prohibition is the same.¹⁵¹ The ICCPR bans slavery, servitude and forced labour, while expressly providing that ‘slavery and the slave trade in all their forms shall be prohibited’.¹⁵²

The ICCPR imposes on the states the obligations to uphold the freedom from slavery by requiring states to submit regular reports to the ICCPR Committee on how the rights of the Covenant are

¹⁴⁷ European Parliament: Contemporary forms of slavery. According to the convention, slavery is defined to include the following: “... the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” “...all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves”.

¹⁴⁸ See European Parliament: Contemporary forms of slavery. See also, Art. 4 UDHR, Art. 8.2 of ICCPR, Art. 11.1 of ICMW, Art. 4.1 of ECHR, Art. 5.1 of the Charter of Fundamental Rights of the European Union, Article 6 of the 1969 American Convention on Human Rights⁷⁰, and Article 10.1 of the 2004 Arab Charter on Human Rights. See also ASEAN Convention Against Trafficking in Persons, Especially Women and Children 2015, <http://agreement.asean.org/media/download/20160303122945.pdf>, last accessed on 30.09.2018. See also, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101 of 15.4.2011, p. 1

¹⁴⁹ A Journal on Sexual Exploitation and Violence, Tradition and Culture in Africa: Practices that Facilitate Trafficking of Women and Children, pp. 1

<https://digitalcommons.uri.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1007&context=dignity>

¹⁵⁰ Ryszard Piotrowicz, 2012, States’ Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations, pp. 183.

¹⁵¹ Ryszard Piotrowicz, 2012, States’ Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations, pp. 186.

¹⁵² Article 8 of the ICCPR.

being implemented.¹⁵³ In addition, under article 41 of the Covenant makes it possible for the Committee to examine inter- state communications of various violations of the provisions of the Covenant brought before it as stated:

“A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration”.¹⁵⁴ The First Optional Protocol to the Covenant also gives the Committee the capacity to investigate individual complaints with regards to violations of the Covenant by state parties.¹⁵⁵

The African Charter also forbids the same practices, and (interestingly for an instrument adopted in 1969) specifically prohibits ‘traffic in women’.¹⁵⁶ The ACHPR is a bit different in that it treats slavery as a form of degradation along with torture.¹⁵⁷ Article 5 of the ACHPR states that:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”.¹⁵⁸

State obligations to suppress the worst forms of child labour are comprehensively and explicitly mentioned in the Convention on the Rights of the Child.¹⁵⁹ It recognizes the right of the child to be protected from economic exploitation and from “performing any work that is likely to be hazardous

¹⁵³ Slavery in International Law, Available at: https://en.wikipedia.org/wiki/Slavery_in_international_law. Retrieved on May 25, 2019.

¹⁵⁴ Article 41 of the ICCPR.

¹⁵⁵ Optional Protocol to the International Covenant on Civil and Political Rights, New York: United Nations, 1966.

¹⁵⁶ Article 6 of the African Charter on Human and People’s Rights.

¹⁵⁷ Ryszard Piotrowicz, 2012, States’ Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations, pp. 186.

¹⁵⁸ Article 5 of the African Charter.

¹⁵⁹ OHCHR, David W. & Anti- Slavery International, Abolishing Slavery and its Contemporary Forms, pp. 40

or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development".¹⁶⁰

The 'trokosi' practice also violates the Convention to Suppress the Slave Trade and Slavery also known as the 1926 Slavery Convention as well as the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. West African states like Ghana and Nigeria where the 'Trokosi' practice exist have ratified the slavery convention which requires state members to adopt all appropriate measures and steps "to prevent and suppress the slave trade; and "to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms", including compulsory and forced labour.¹⁶¹

The Slavery Convention and its supplementary document are beneficial in providing an international definition of slavery; however, there is no significant enforcement behind these documents; both are declarations made by the collaboration of the international community, and agreements that signatories would modify their national laws in accordance with the convention, with the assistance of the United Nations if necessary; however, there are no consequences outlined in either document that provide incentive for signatories to abide by the convention.¹⁶² Also, there are no established procedures for reviewing the incidence of slavery in States parties and it lacks an international body which could evaluate and pursue allegations of violations.¹⁶³

Several other instruments prohibit slavery. The ICESCR provides for free choice and acceptance of work by an individual to gain his living.¹⁶⁴ Article 8 of International Covenant on Civil and Political Rights (ICCPR), makes an extensive provision on the prohibition of slavery and servitude. It states that:

"no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited" and "no one shall be held in servitude".¹⁶⁵

¹⁶⁰ UNCRC, supra note 156, Article 32

¹⁶¹ Article 2 of the Slavery convention. See also, A Journal on Sexual Exploitation and Violence, Tradition and Culture in Africa: Practices that Facilitate Trafficking of Women and Children, pp. 6

¹⁶² Slavery in International Law, Available at: https://en.wikipedia.org/wiki/Slavery_in_international_law. Retrieved on May 25, 2019.

¹⁶³ David Weissbrudt and Anti- Slavery International, Office of the United Nations High Commissioner for Human Rights: Abolishing Slavery and its Contemporary Forms, pp. 5.

¹⁶⁴ ICESCR, Article 6(1)

¹⁶⁵ ICCPR, Article 8.

Forced labour is also prohibited under Article 8 of the ICCPR. The ‘Trokosi’ violates the Convention to Abolish slavery and the ICCPR because the practice in itself is slavery and it involves the exploitation of children and their labour.¹⁶⁶ Forced labour includes “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.¹⁶⁷ ‘Trokosi’ girls are usually condemned to a lifetime of hard labour at the service of the village gods.¹⁶⁸

The Forced Labour Convention, 1930 (No. 29) provides for the abolition of forced labour.¹⁶⁹ The tolerance of the practice of trokosi slavery is a violation of states obligations under the 1930 Forced Labour Convention (ILO No. 29) and the 1957 Abolition of Forced Labour Convention (ILO No. 105), where slavery entails “forced or compulsory labour” as well as all work or service “exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.¹⁷⁰ The ILO Convention No. 29 obliges States parties to “suppress the use of forced or compulsory labour within the shortest possible time”.¹⁷¹

Ratification of the convention requires states to take measures to suppress the use of forced or compulsory labour, however, the trokosi system continues to encourage the giving away of innocent children to shrines where they are forced to work in order to generate substantial income for shrine owners. Failure to comply often leads to physical abuse of children such as beating by the shrine priests.¹⁷² Article 25 of the convention also obliges all State parties to ensure that, “the illegal exaction of forced or compulsory labour” is “punishable as a penal offence and the penalties imposed are adequate and strictly enforced”.¹⁷³

The United Nations Convention on the Rights of the Child (UNCRC) contains one of the most explicit and comprehensive set of State obligations relating to the suppression of the worst forms of

¹⁶⁶ Trokosi- The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights. p. 484

¹⁶⁷ Article 2 of the 1930 Forced Labour Convention

¹⁶⁸ “Slaves of the fetish” <https://www.independent.co.uk/arts-entertainment/slaves-of-the-fetish-1337314.html>

¹⁶⁹ The ILO Forced Labour Convention, 1930, is the most widely ratified ILO convention with 158 States parties.

¹⁷⁰ See “Forced Labour Convention” article 2

¹⁷¹ ILO Forced Labour Convention, 1930 (No. 29), art. 1, para. 1, United Nations Treaty Series, vol. 39, p. 55; entered into force on 1 May 1932 (emphasis added).

¹⁷² See, Trokosi: An opportunity to abuse women and girls

<https://www.ghanaweb.com/GhanaHomePage/features/Trokosi-Opportunity-to-Abuse-139525#>

¹⁷³ C029- Forced Labour Convention, 1930 (No. 29)

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

child labour.¹⁷⁴ Article 32 of the Convention recognizes the Child's right to be protected from economic exploitation and from "performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development".¹⁷⁵ This is further supported by the obligation of state parties to take measures which includes legislative, administrative, social and educational means in order to ensure the provisions of Article 32(1) of the CRC.¹⁷⁶

State parties are also obligated to undertake measures necessary for abolishing debt bondage, serfdom, forced marriage or "any institution or practice whereby a child or young person under the age of eighteen years is delivered by either or both of his natural parents or by his guardian to another person, whether or not for reward, with a view to exploit the labour of the child or young person".¹⁷⁷ The right to freedom from slavery and servitude is an absolute right and can therefore not be restricted or justified under any circumstance.¹⁷⁸

4.3 The right to equality and non- discrimination based on gender

In 1979 the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women¹⁷⁹ (CEDAW) to remedy the pervasive and structural

¹⁷⁴ David Weissbrudt and Anti- Slavery International, Office of the United Nations High Commissioner for Human Rights: Abolishing Slavery and its Contemporary Forms, pp. 40.

¹⁷⁵ Convention on the Rights of the Child, supra note 156, art. 32, See also, David Weissbrudt and Anti- Slavery International, Office of the United Nations High Commissioner for Human Rights: Abolishing Slavery and its Contemporary Forms, pp. 40.

¹⁷⁶ CRC, Article 32 (1) (2).

¹⁷⁷ See Convention to Abolish Slavery, art. 1(a). Debt bondage is defined as: the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined. See also, 1(b). Serfdom is "the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status." See also, art. 1(c). The term forced marriage refers to any institution or practice whereby: (a) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) a woman on the death of her husband is liable to be inherited by another person and art. 1(d)

¹⁷⁸ Attorney- General's Department of the Australian Government, "Absolute rights".
<https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Absoluterights.aspx>

¹⁷⁹ Preambular para. 6 of the Convention.

nature of violations of the human rights of women.¹⁸⁰ Discrimination against women, as defined in article 1 of the Convention on the Elimination of all forms of Discrimination against women (CEDAW), includes:

“... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁸¹

The ‘trokosi’ practice falls within the definition and can be seen as a form of gender discrimination. The practice is a reflection of deep- rooted inequality between the sexes.

The definition is concerned with differential treatment on the basis of sex and, or gender; that is the distinctions between women and men, women exclusion as well as the limitations imposed on the women’s rights and not men.¹⁸² The ‘Trokosi’ practice depicts such differences in treatment between men and women and imposes restrictions on the full enjoyment of the rights of women. It therefore violates the principle of non- discrimination on the grounds of sex.

The obligation to eliminate all forms of discrimination against women encompasses direct and indirect discrimination against women on the grounds of gender and sex,¹⁸³ as well as the aggravated forms of discrimination faced by women, such discrimination on the grounds of sex or gender and race, age, socio- economic status, sexual orientation and/ or disability.¹⁸⁴

The right to equality and freedom from discrimination by the state and non- state (i.e. private) actors, in recognition of the fact that many forms of discrimination experienced by women occur in

¹⁸⁰ Catarina Krause and Martin Scheinin, *International Protection of Human Rights*, 2012. p. 211.

¹⁸¹ CEDAW, article 1.

¹⁸² Simone Cusack and Lisa Pusey, *CEDAW and the Rights to Non- Discrimination and Equality*, p. 7.

¹⁸³ See Articles 1-5 and 24 of the Convention. See also General Recommendation no. 28, *supra* (note 7), paras. 4-5

¹⁸⁴ See General Recommendation no. 28, *supra* (note 7), paras. 5, 18; *Alyne da Silva Pimentel Teixeira (deceased) v. Brazil* (Communication no. 17/ 2018), views adopted 25 July 2011, UN doc. CEDAW/C/ 49/ D/ 17/ 2008, para. 7. 7. See also Committee on the Elimination of Discrimination against Women, General Recommendation no. 27 (2010), older women and protection of their human rights, UN doc. CEDAW/ C/ 2010/ 47/ GC. 1; Committee on the Elimination of Discrimination against Women, General Recommendation no. 26 (2008), women migrant workers, UN doc. CEDAW/C/ 2009/ WP. 1/ R. See generally Adrienne Katherine Wing, *Critical Race Feminism: A Reader* (New York University Press, 2nd. Ed., 2003). See also, Catarina Krause and Martin Scheinin, *International Protection of Human Rights*, 2012, p. 212.

the private sphere,¹⁸⁵ in all areas of public and private life¹⁸⁶ are codified under several international and regional human rights instruments.

Three obligations are fundamental to States Parties' efforts under CEDAW to eliminate all forms of discrimination against women and achieve substantive equality:

The first obligation of States parties is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination committed by public authorities, the judiciary, organizations, enterprises or private individuals in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States' parties are obliged to improve the de facto position of women through concrete and effective policies and programmes. Thirdly, an obligation of States' parties is to redress prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.¹⁸⁷

Violence against women is not explicitly mentioned in CEDAW, but General Recommendations 12 and 19 clarify the inclusion of violence against women in the convention and makes detailed recommendations to states parties.¹⁸⁸ However, the principal concern of CEDAW is the elimination of all forms of discrimination against women¹⁸⁹ and includes all forms of violence against women (and girls) as a form of discrimination.¹⁹⁰

¹⁸⁵ See Article 2(e) of the Convention. See also Committee on the Elimination of Discrimination against Women, General Recommendation no. 19 (1992), violence against women, UN doc. HRI/ GEN/1/ Rev. 9 (vol. II), pp. 331- 336, para.9; General Recommendation no. 28, *supra* (note 7), paras. 10, 36.

¹⁸⁶ Benedek W., Kisaakye M.E, & Oberleitner G., Human Rights of Women, international instruments and African experiences, p. 120.

¹⁸⁷ Catarina Krause and Martin Scheinin, International Protection of Human Rights, 2012. Pg.213. See also, General Recommendation no.25, *supra* (note 7), para. 7. See also Rebecca J. Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (Philadelphia: University of Pennsylvania Press, 2010); Simone Cusack, 'CEDAW as a Legal Framework for Transnational Discourses on Gender Stereotyping', in Anne Hellum and Henriette Sinding Aasen (eds), *The Added Value of CEDAW: International, Regional and National Perspectives* (Cambridge: Cambridge University Press, forthcoming 2012) (examining the third core obligation to eliminate wrongful gender stereotyping).

¹⁸⁸ UN Women, "Global norms and standards: Ending violence against women".

<http://www.unwomen.org/en/what-we-do/ending-violence-against-women/global-norms-and-standards>. See Also, UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 12 and 19: Violence against women

¹⁸⁹ Simone Cusack and Lisa Pusey, CEDAW and the Rights to Non- Discrimination and Equality, p. 7.

¹⁹⁰ Protecting children from harmful practices in plural legal systems with a special emphasis on Africa, p.7.

Under international law, a violation of the principle of non-discrimination arises if: a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; or c) if there is no proportionality between the aim sought and the means employed.¹⁹¹

For instance, all the shrines where the ‘trokosi’ practice takes place are dominated by male priests and male shrine owners; there is no female ownership.¹⁹² The practice is male dominated which explains the tendency to use young virgin girls as atonement for crimes committed instead of boys.¹⁹³

A custom that demands only females to be offered to pacify the gods for crimes committed mainly by male relations is clearly discriminatory based on one’s sexuality.¹⁹⁴ Considering this, states that have ratified CEDAW, for example Ghana, are bound by article 5 which obliges them “to eliminate sexual prejudices and customary and all other practices on the basis of inferiority or the superiority of either sexes or on stereotyped roles for men and women by modifying both social and cultural patterns of conduct of men and women”.¹⁹⁵ If fundamental human rights like “the right to equality” of other members in the society such as girls and women are violated, a state cannot achieve to eliminate a harmful tradition such as the ‘Trokosi’.

States are also required to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”.¹⁹⁶

CEDAW acknowledges that culture may be misused as a basis for discrimination and calls on states’ parties “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”.¹⁹⁷ Article 2 of CEDAW condemns all forms of discrimination against women, and calls on the agreement of States’

¹⁹¹ European Court (see, e.g., *Marckx v. Belgium*), the Inter-American Court (see, e.g., Advisory Opinion No. 4, para. 57) and the Human Rights Committee (see, e.g., General Comment 18, para. 13 and *Jacobs v. Belgium*).

¹⁹² Apollo Rwomire, *African Women and Children: Crisis and Response*, p. 96.

¹⁹³ Apollo Rwomire, *African Women and Children: Crisis and Response*, p. 96.

¹⁹⁴ *Trokosi: An opportunity to abuse women and girls*. <https://www.ghanaweb.com/GhanaHomePage/features/Trokosi-Opportunity-to-Abuse-139525#>

¹⁹⁵ CEDAW, Article 5, See also, *Trokosi: An opportunity to abuse women and girls*.

<https://www.ghanaweb.com/GhanaHomePage/features/Trokosi-Opportunity-to-Abuse-139525#>. See Also the African Women’s Protocol, Article 2(2)

¹⁹⁶ CEDAW, Article 16

¹⁹⁷ Article 2(f) of CEDAW, See also, *Trokosi- The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights*. Pg. 488

parties 'to pursue by all appropriate means and without delay a policy of eliminating discrimination against women' by undertaking constitutional, legislative, administrative and other measures.¹⁹⁸

Cultural customs cannot be used as justifications to deny individuals their integrity and dignity as human beings on the basis of sex. The right to cultural life may be restricted at a point when it infringes on or violates another human right.¹⁹⁹ According to article 4 of the Universal Declaration on Cultural Diversity, "No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope".²⁰⁰

Article 3 of the Convention further establishes an obligation of States' parties to take all measures in all fields 'to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men'.²⁰¹ Article 24 is a reinforcement of Article 3 as it requires States' parties to 'adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized' in the Convention.²⁰²

However, in practice, it is an established principle of international law that States' parties in addition to refraining from interference of human rights must also adopt positive measures to ensure those rights are guaranteed.²⁰³ A State Party can therefore be held legally accountable for its failure to act with due diligence to prevent, investigate, punish, and remedy private acts of discrimination.²⁰⁴

¹⁹⁸ Article 2 of CEDAW, Portela A Program of Action for Elimination of FGM 2009 <http://www.umarfeminismos.org/documentostemp/PoAlnqles.PDF>, See also Makundi LW, harmful cultural practices as violations of girls' human rights: female genital mutilation in Tanzania and south ,Africa. pg. 18 https://repository.nwu.ac.za/bitstream/handle/10394/5100/makundi_lw.pdf?sequence=1&isAllowed=y

¹⁹⁹ UNESCO, Culture for Sustainable Development. <http://www.unesco.org/new/en/culture/themes/culture-and-development/the-future-we-want-the-role-of-culture/culture-and-human-rights/>

²⁰⁰ Article 4, Cultural Diversity Declaration. See also, Silvia Borelli & Federico Lenzerini, Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law, p. 126

²⁰¹ Article 3 of CEDAW. See also, Catarina Krause and Martin Scheinin, International Protection of Human Rights, p. 215, 2012.

²⁰² Article 24 of CEDAW. See also, Human Rights Committee, General Comment no. 31 (2004), the nature of the general legal obligation on States Parties to the Covenant, UN doc. HRI/ GEN/ 1/ Rev. 9 (vol. I), pp. 243- 247, para. 13.

²⁰³ See, e.g., *X and Y v. the Netherlands*, judgement of 26 March 1985, Publications of the European Court of Human Rights, Ser. A, no. 91; *Airey v. Ireland*, judgement of 9 October 1979, Publications of the European Court of Human Rights, Ser. A, NO. 32; *Maria Da Penha Maia Fernandes v. Brazil*, Inter- American Commission on Human Rights, no. 12. 051, Annual Report of the Inter- American Commission on Human Rights, 2000, OEA/ Ser. L / V/ 111/ doc. 20 rev. 704.

²⁰⁴ Catarina Krause and Martin Scheinin, International Protection of Human Rights, 2012. Pg.215. See also, General Recommendation no. 19, *supra* (note 10), paras. 8-9; General Recommendation no. 28, *supra* (note 7), paras. 13, 19.

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The principle of equality and non- discrimination is a fundamental principle of human rights law.²⁰⁵ According to the UDHR, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.²⁰⁶ Freedom against discrimination is also provided for in the following instruments: ICCPR (arts. 2, 3 and 26), the ICESCR (arts. 2 and 3), the CRC (art. 2) and the African Charter on Human and People’s Rights (arts. 18 and 28).

Article 2 of the UNCRC states that:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, Political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.²⁰⁷

In view of the above provision, States Parties are required to:

“take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinion, or beliefs of the child’s parents, legal guardians, or family members”.²⁰⁸

The non- discrimination principle does not bar affirmative action, the legitimate differentiation in treatment of individual children; a Human Rights Committee General Comment emphasizes that states will often have to take affirmative action to diminish or eliminate conditions that cause or help to perpetuate discrimination.²⁰⁹

The African Women’s Protocol makes a similar provision on discriminatory customs against women by calling on states’ parties to “enact and effectively implement” measures which include the

²⁰⁵ Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation. Pg. 28.

²⁰⁶ UDHR, article 2.

²⁰⁷ Article 2(1) of the UNHCR, See also, UNICEF, Implementation Handbook for the Convention on the Rights of the Child, pp. 17.

²⁰⁸ UNCRC, Article 2(2)

²⁰⁹ Implementation Handbook for the Convention on the Rights of the Child, pp. 17.

prohibition and suppression of all forms of discrimination, “particularly those harmful traditions which endanger the health and general wellbeing of women”.²¹⁰

4.4 Obligations to protect children from harm and all forms of Abuse

The protection of children from harm and all forms of abuse is recognized in article 19 of the United Nations Convention on the Rights of the Child (UNCRC) which requires states’ parties to undertake necessary measures “to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.²¹¹

There are no exceptions to what constitutes “all forms of harm” and this includes also, traditional practices like the ‘trokosi’ practice which are harmful to the child and violates several of the rights of the child although not explicitly mentioned in the list contained in Article 19 regarding the category of ‘harm’. Article 19 applies to all children in all settings.²¹² In the General Comment, the Committee gives priority to proactive preventive measures over intervention and encourages a child- rights based, comprehensive and coordinating approach to implementation, at all levels of government and society.²¹³

The Committee on the Rights of the Child has constantly maintained the position that all forms of violence against children, however light, are unacceptable and therefore, “all forms of physical or mental violence” permits no level of legalized violence against children.²¹⁴

In order to protect children from all forms of abuse such as physical and sexual abuse and exploitation, the CRC obliges “states parties to take all appropriate legislative, administrative, social and educational measures to protect the child” from all forms of abuse “while in the care of parent, legal guardian or any other person who has the care of the child”.²¹⁵ This is the positive obligation of states’

²¹⁰ Article 2(1) (b) of the African Women’s Protocol

²¹¹ UNCRC, Article 19

²¹² Catarina Krause and Martin Scheinin, *International Protection of Human Rights*, p. 263, 2012.

²¹³ Catarina Krause and Martin Scheinin, *International Protection of Human Rights*, p. 263, 2012.

²¹⁴ General comment No. 13 (2011), The right of the child to freedom from all forms of violence. https://www.unicef-irc.org/portfolios/general_comments/CRC.C.GC.13_en.doc.html

²¹⁵ UNCRC, Article 19(1)

parties to take effective measures and appropriate measures to ensure that female children are not exposed to any form of abuse for instance the ‘Trokosi’ practice.²¹⁶

The African Children’s Charter is more extensive and more specific on the issue of harmful social and traditional practices as compared to the CRC.²¹⁷ Article 24(3) of the CRC provides that State Parties have to take appropriate measures with a view to abolishing traditional practices prejudicial to the health of the child. This is stated only in the health context.²¹⁸ Whereas Article 21(1) of the ACRWC addresses the elimination of harmful social and cultural practices affecting the welfare, dignity and normal growth of the child. Article 21(1)(a) and (b) provide for the elimination of customs and practices prejudicial to the health or life of the child, and customs and practices discriminatory on the grounds of sex or other status.

Other similar provisions include protection against child abuse and torture²¹⁹, protection against harmful social and cultural practices, imposing on states parties the obligation to discourage customs, traditions, cultural or religious practices that are not in conformity to the rights, duties and obligations in the Charter^{220 221} and protection from all forms of sexual exploitation²²² as follows:

“States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

(a) the inducement, coercion or encouragement of a child to engage in any sexual activity”²²³

The obligation to protect children “against torture and abuse” can also be found under the ICCPR. The covenant however maintains that child protection should be on the part of the family, society and state.²²⁴ State parties therefore gain legal responsibility to protect girls from the ‘Trokosi’ practice. In that regard, failure of states to protect children and to eliminate the practice is a violation of their obligation to protect under the covenant.²²⁵

²¹⁶ See Committee on CRC: General Comment No 4 2003 para 12.

²¹⁷ Mukovhe MM, Combating Traditional Practices Harmful to Girls: A consideration of legal and community-based approaches. .6

²¹⁸ Mezmur n 6 above, 16.

²¹⁹ African Children’s Charter, Article 16

²²⁰ Article 1, African Charter on the Rights and Welfare of the Child

²²¹ African Children’s Charter, Article 21

^{222 222} African Children’s Charter, Article 27

²²³ Article 27 of the African Charter on the Rights and Welfare of the Child

²²⁴ CCPR, Article 24(1)

²²⁵ See Trueblood, The Denver Journal of International Law and Policy 6.

The ‘Trokosi’ system does not comply with the provisions of the UNCRC because young female children are separated from their families, usually against their will,²²⁶ subjected to physical and mental abuse, neglect, negligent treatment, maltreatment and exploitation, including sexual abuse²²⁷ by the priests. It also deprives the girl child the right to an adequate standard of living necessary for physical, mental, spiritual, moral and social development.²²⁸ Children are economically exploited to engage in hazardous work that mostly deprives them of the right to education as well as harmful to their health.²²⁹

4.5 Obligation to protect against torture or other cruel, inhuman or degrading treatment or punishment

The right to be free from torture is one of the most fundamental principles of international law. According to Convention against Torture, torture is defined as:

“ Any act by which severe pain or suffering, whether physical or mental is international inflicted on a person for ... any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.²³⁰

The ‘trokosi’ practice may be considered as an act of torture as young female children are subjected to torture through rape by the shrine priests. They also undergo severe physical harm or harsh punishment when they resist or refuse to obey the orders by the priest. Girls who are caught while trying to escape are also made to go through several severe forms of punishments.

Starting with the Universal Declaration of Human Rights, the prohibition against torture and “cruel, inhuman or degrading treatment or punishment” pervades the extensive network of international and

²²⁶ See UNCRC, Article 9(1)

²²⁷ See UNCRC, Article 19(1)

²²⁸ See UNCRC, Article 27(1)

²²⁹ UNCRC, Articles 28 and 32

²³⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment, 1984, referred by Brownlie Ian. Basic Huna Documents on Human Rights 5th ED., 2006. p.405

regional instruments constituting human rights and humanitarian law.²³¹ ²³² The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is however, the only legally binding convention that is exclusively concerned with the eradication of torture at the international level²³³ even though there are other human rights instruments stipulates the right to be free from torture. For instance, the right is protected under the African Charter as follows:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”.²³⁴

The CAT imposes significant obligations on states’ parties to undertake necessary measures for the prevention of torture and the facilitation of redress to torture victims and survivors.²³⁵

The prohibition of torture is an absolute and non-derogable right. Article 2 of CAT allows for no justification of torture in any circumstances.²³⁶

Under Article 2 of the CAT, “Each State party is required to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.

4.6 The right to enjoy the best attainable state of physical and mental health

The serious physical injuries and mental harm inflicted on women and girls who are victims of ‘*trokosi*’ denies them of their right to enjoy the best attainable state of physical and mental health as guaranteed under the International Convention on Economic, Social and Cultural Rights (ICESCR).²³⁷ It is however explicitly recognized at the international level that violence against

²³¹ Apt: A handbook on State Obligations under the UN Convention against Torture, p.7.

²³² Article 5 of the Universal Declaration of Human Rights (1948); Article 7 of the International Covenant on Civil and Political Rights (1966); Article 37 of the Convention of the Rights of the Child (1989); Article 5 of the African Charter on Human and People’s Rights (1981).

²³³ Apt: A handbook on State Obligations under the UN Convention against Torture, p. 7.

²³⁴ Article 5 of the African Charter.

²³⁵ Apt: A handbook on State Obligations under the UN Convention against Torture, p. 7.

²³⁶ Article 2 of the Convention against Torture.

²³⁷ International Covenant on Economic, Social and Cultural Rights, 1966, referred by Ian Brownlie, 2006, p. 348, See also, University of Oslo, Faculty of Law, 2012, State Responsibility and International Human Rights. A case of

women in general and in particular, harmful traditions as the word ‘harm’ is already visible, puts the health and lives of women at risk²³⁸ and states are therefore encouraged to take serious measures, for example, by directing the states to work to ensure that women subjected to violence have specialized assistance, including health services,²³⁹ and by providing support services for victims, including specially-trained health workers and counselling.²⁴⁰ States must therefore take the necessary steps to ensure that domestic violence and this respect domestic slavery and servitude does not deprive women the ability to enjoy the best attainable state of health.²⁴¹

5 An analysis of the domestic measures undertaken and challenges in the implementation and enforcement of human rights obligations with regard to the ‘Trokosi’ practice

This chapter is limited to the measures taken by Ghana to eliminate the ‘Trokosi’ practice as well as discussions on the inconsistencies and challenges in the implementation of international law regarding the ‘Trokosi’ practice.

The exercise of the ‘trokosi’ practice which depicts domestic servitude and ritual slavery is clear evidence that contemporary forms of human rights violations still exist in some countries particularly of West Africa even though the international and regional protection of human rights has given much attention to the special needs of children and women.²⁴² Domestic servitude and ritual slavery which constitutes forms of slavery are forbidden under international law²⁴³ which

Domestic Violence Against Women in Norway, pp. 21. Available at: <https://www.duo.uio.no/bitstream/handle/10852/35938/HUMR5200-EmmaxGabrielxAlexander.pdf?sequence=1&isAllowed=y>. Retrieved on May 26, 2019.

²³⁸ See CEDAW General Recommendation No.19, supra note 6, paras. 19-20

²³⁹ DEVAW supra note 2, art. 4

²⁴⁰ Ibid and see also CEDAW General Recommendation 19, supra note 6, para. 24, See also, University of Oslo, Faculty of Law, 2012, State Responsibility and International Human Rights. A case of Domestic Violence Against Women in Norway, pp. 21- 22, Available at: <https://www.duo.uio.no/bitstream/handle/10852/35938/HUMR5200-EmmaxGabrielxAlexander.pdf?sequence=1&isAllowed=y>. Retrieved on May 26, 2019.

²⁴¹ University of Oslo, Faculty of Law, 2012, State Responsibility and International Human Rights. A case of Domestic Violence Against Women in Norway, pp.22, Available at: <https://www.duo.uio.no/bitstream/handle/10852/35938/HUMR5200-EmmaxGabrielxAlexander.pdf?sequence=1&isAllowed=y>. Retrieved on May 26, 2019.

²⁴² The African Charter on the Rights and Welfare of the Child (1990), Protocol to the African Charter on Human and Peoples’ Rights of Women in Africa (2003). See Also, African Human Rights Law Journal (2001). p. 101

²⁴³ United Nations ‘Report of the Temporary Slavery Commission to the Council of the League of Nations’ (A.17.1924.VI.B) quoted in ‘The suppression of slavery’ Memorandum submitted by the Secretary-General to the Ad Hoc Committee on Slavery, United Nations document ST/SPA/4 (1951) para 22

belongs to the category of *jus cogens* norms, meaning that this principle has to be applied unconditionally regardless of the fact that countries have ratified the relevant conventions.²⁴⁴ The lack of consensus about which practices should be categorized as slavery poses a barrier in the adoption and implementation of abolition programmes as well as the presence of a strong patriarchal framework and the family structure²⁴⁵ within these countries.

5.1 Ghana

As mentioned in the earlier chapters, Ghana has ratified several international treaties which protect women and girls from all forms of violence. Despite the existence of domestic laws such as the 1992 Ghana Constitution and the Criminal Code (Amendment) Act, 1998 which protects ‘trokosi’ victims as well as ratifications by Ghana of various international human rights conventions, the ‘Trokosi’ practice which discriminates against women and girls is still being practiced in the country. According to the constitution of Ghana, the fundamental human rights that relate to the ‘Trokosi’ practice include respect for human dignity, protection from slavery and forced labour, cultural rights and practices and the rights of children.²⁴⁶

5.1.1 The provisions of 1992 Ghana Constitution relating to the ‘trokosi’ practice

Slavery is explicitly prohibited by the 1992 Ghana Constitution. It states the following: that,

- (1) “No person shall be held in slavery or servitude. (2) No person shall be required to perform forced labour. (3) For the purposes of this article, "forced labour" does not include - (a) any labour required as a result of a sentence or order of a court; or (b) any labour required of a member of a disciplined force or service as his duties or, in the case of a person who has conscientious objections to a service as a member of the Armed Forces of Ghana, any labour which that person is required by law to perform in place of such service; or (c) any labour required during any period when Ghana is at war or in the event of an emergency

²⁴⁴ D Weissbrodt, Abolishing slavery and its contemporary forms, 2002, 3 <http://www.ohchr.org/Documents/Publications/slaveryen.pdf> (accessed 29 April 2017).

²⁴⁵ Nicholas AB, The Relevance of National and International Laws for the Protection of the Rights of Women and Children in Ghana: A Critical Look at the Trokosi System in Ghana. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1687646

²⁴⁶ Trokosi- The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights. Pg. 494-495.

or calamity that threatens the life and well-being of the community, to the extent that the requirement of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purposes of dealing with the situation; or (d) any labour reasonably required as part of normal communal or other civic obligations”.²⁴⁷

Additionally, Article 15 of the constitution establishes that the dignity of persons shall not be violated. It also ensures the protection of all persons against “torture or other cruel, inhuman or degrading treatment or punishment” and “any other condition that detracts or is likely to detract” an individual “from his dignity and worth as a human being.”²⁴⁸ The ‘Trokosi’ woman is under absolute control and is required to “fulfil the sexual pleasures of the fetish priest” is left with no dignity.”²⁴⁹

Similar to CEDAW, the Ghana constitution under Article 17(2) makes provisions to ensure the prohibition of discrimination against a person on gender grounds.²⁵⁰

However, despite the above provisions of the constitution, there are still some inconsistencies between these constitutional rights and religious freedom.

The rights of children are also specifically protected by the constitution. These include: “special protection against exposure to physical and moral hazards,”²⁵¹ protection “from engaging in work that constitutes a threat to his health, education or development,”²⁵² and the right of the child not to be “subjected to torture or other cruel, inhuman or degrading treatment or punishment.”²⁵³

Article 21(4)(e) of the constitution nevertheless grants limitations on religious freedom by affording government the flexibility to restrict any religious practices that may conflict with any other rights provided for by the constitution.²⁵⁴ Under this provision, laws that “safeguard the people of Ghana against teaching or propagating doctrines which exhibits or encourages....or incites hatred against

²⁴⁷ Ghana Constitution (1992), Article 16.

²⁴⁸ Ghana Constitution (1992), Article 15

²⁴⁹ Amy Small Bilyeu, *Trokosi - The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights*, 9 *Ind. Int'l & Comp. L. Rev.* 457, 496 (1999).

²⁵⁰ Ghana Constitution (1992), Article 17(2).

²⁵¹ Ghana Constitution (1992), Article 28(1)(d).

²⁵² Ghana Constitution (1992), Article 28(2).

²⁵³ Ghana Constitution (1992), Article 28(3).

²⁵⁴ Ghana Constitution (1992), Article 21 (4)(e)

other members of the community.”²⁵⁵ Although the above article does not directly address slavery or forced labour, it is relevant and applicable because it enables the government to enact statutes and regulations in order to ban any such religious acts or traditions that compromise the national values.²⁵⁶

Under Article 26, “Every person is entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion”²⁵⁷ except as limited by the Constitution. However, this further goes on to state that “all customary practices which dehumanize or are injurious to the physical and mental wellbeing of a person are prohibited.”²⁵⁸ There is no question therefore that the mental and physical wellbeing of a ‘Trokosi’ victim is negatively impacted by her forced servitude.²⁵⁹ The limitation which follows article 26(1) indicates that Ghana recognizes that some cultural traditions contradict human rights standards. It therefore follows from this Constitutional provision “that no religion or other belief of culture can be legitimately practised in such a way as to deprive others of their rights, freedoms or to subject others to dehumanizing or degrading treatment.”²⁶⁰ The practice of offering the young girls to the shrines violates the Constitution by forcing them to live enslaved to the priests who subject them to dehumanizing and degrading treatment, and it deprives them of their rights and freedoms.²⁶¹

Furthermore, the state, according to the constitution is required to “enact laws which are appropriate to ensure the protection and promotion of all other basic human rights and freedoms, including the rights of the disabled, the aged, children and other vulnerable groups in development processes.”²⁶² Children comprise the vast majority of slaves under the ‘Trokosi’ system as they are often sent away to serve in the shrines before they reach adulthood. This therefore means that the government under the authority of Article 37 of the constitution can act in order to outlaw the practice of

²⁵⁵ Dr. E. K. Quashigah, *Legislating Religious Liberty: The Ghanaian Experience*, 1999 *BYU L. Rev.* 589, 602 (1999) (quoting Constitution of the Republic of Ghana (1992), art. 21(4)(e)).

²⁵⁶ Rutgers Race & the Law Review, *Modern Day Slavery in Ghana: Why Application of United States Asylum Laws should be Extended to Women Victimized by the Trokosi Belief System*, p. 4, 2011

²⁵⁷ Ghana Constitution (1992), Article 26(1).

²⁵⁸ Ghana Constitution (1992), Article 26(2).

²⁵⁹ Rutgers Race & the Law Review, *Modern Day Slavery in Ghana: Why Application of United States Asylum Laws should be Extended to Women Victimized by the Trokosi Belief System*, p. 4, 2011.

²⁶⁰ Short, *supra* note 74

²⁶¹ Trokosi- The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights. p. 496.

²⁶² Ghana Constitution (1992), Article 37(b).

offering young girls to fetish priests. Also, in cases where a slave enters captivity as an adult, the government can still act under Article 37 on the basis of “other vulnerable group”.²⁶³

Ghana’s Children’s Act (1998), supports the protection of children against the ‘Trokosi’ practice in the following provisions: the “best interest of the child principle” (Children’s Act, 1998, s. 2) “the right to grow up with one’s parents,” (Children’s Act, s.5). “the right to dignity, respect, leisure, liberty, health and education” (s. 6 (2)(a) and the duty of parents to protect children from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression (s. 6 (3)).²⁶⁴

5.1.2 Ghana’s Criminal Code

Following the quest to eliminate child slavery,²⁶⁵ the Ghana Commission for Human Rights and Administrative Justice (CHRAJ) sent teams to the shrines to study the practice.²⁶⁶ Parliament received recommendations from the investigators for changes in the law to curb the ‘Trokosi’ practice the result of which is Ghana’s Criminal Offences Act, 1960, (Act 29) as amended. The Criminal Code (Amendment) Act, 1998, also known as “the trokosi law”, which prohibits the “Trokosi” practice by protecting women and children from “customary servitude” including the criminalization of any ritualized type of forced labour.²⁶⁷ According to Section 314(A)(1)(b) of the Criminal Code anyone who

“participates in or is concerned in any ritual or customary activity in respect of any person with the purpose of subjecting that person to any form of ritual or customary servitude or any form of forced labour related to a customary ritual commits an offence and shall be liable on conviction to imprisonment for a term not less than three years.”²⁶⁸

²⁶³ Ghana Constitution (1992), Article 37(b). See Also, Rutgers Race & the Law Review (2011), Modern Day Slavery in Ghana: Why Application of United States Asylum Laws should be Extended to Women Victimized by the Trokosi Belief System, p. 4.

<https://www.mitchellwilliamslaw.com/webfiles/MODERN%20DAY%20SLAVERY%20IN%20GHANA%20WHY%20APPLICATION%20OF%20UNITED%20STATES%20ASYLUM%20LAWS%20SHOULD.pdf>

²⁶⁴ Nicholas AB, The Relevance of National and International Laws for the Protection of the Rights of Women and Children in Ghana: A Critical Look at the Trokosi System in Ghana, p. 84.

²⁶⁵ See Bailey, supra note 70. Even though at one time President Rawlings defended Trokosi as an important part of Ghana's cultural heritage, President Rawlings has been commended for his efforts in eliminating this practice. See id

²⁶⁶ See Short, supra note 74.

²⁶⁷ Aird, supra note 17, at 8.

²⁶⁸ Quashigah, supra note 43, at 606 (quoting Criminal Code (Amendment) Act, § 314(A) (Ghana))

Perpetrators of the practice is not limited to only the shrine priest; it incorporates parents, the person who made an agreement with the gods, any spectators at the girl's initiation ritual, and any mediators involved in the negotiations between the priest and the child's relatives are all subject to criminal prosecution.²⁶⁹

Despite the enactment of the Criminal Code and the basic human rights and fundamental freedoms enshrined in the Ghana Constitution, the practice has not yet been eradicated. The deeply entrenched traditional beliefs from which the practice emanates create a barrier for any legislative prohibition alone to eliminate the practice.²⁷⁰

Under the Criminal Code, with reference to Section 314(A)(2), almost every individual concerned with the practice even though not the direct actor but with knowledge of child's enslavement may be subjected to criminal liability which as a result may create deterrence for individuals with knowledge of the practice to voice it out.²⁷¹

The lack of government enforcement also accounts for the ineffectiveness of the Criminal Code. As of 2000,²⁷² the Ghanaian government has yet to enforce the Criminal Code as a result of many Ghanaian officials who "view the practice as an integral part of their [own] religious beliefs".²⁷³

Judicial Review and Case Law

In light of the above, the Constitution as well as ordinary law, including the Criminal Code offers a strong protection against the 'trokosi' practice.

Generally, the constitution establishes a Commission on Human Rights and Administrative Justice (CHRAJ)²⁷⁴ with the following mandate:

²⁶⁹ Ghana's Criminal Code Section 314(A)(2)

²⁷⁰ Ghana Country Report, *supra* note 63, at 141.

²⁷¹ Rutgers Race & the Law Review (2011), Modern Day Slavery in Ghana: Why Application of United States Asylum Laws should be Extended to Women Victimized by the Trokosi Belief System, p. 5.

²⁷² *Fiadjoe v. Attorney Gen. of the U.S.*, 411 F.3d 135, 139 (3d Cir. 2005). Although 2000 is the most recent date that can be noted with certainty, all research indicates that there has yet to be any prosecution under the Criminal Code to date. *Id.*

²⁷³ Aird, *supra* note 17, at 8.

²⁷⁴ Ghana Constitution (1992), Article 216.

(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;

(c) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution.²⁷⁵

The Commission is also obligated to remedy, correct, and reverse these violations through negotiation, reporting, initiation of court proceedings to secure termination of the offending action or conduct, and "to educate the public as to human rights and freedoms."²⁷⁶ These elaborate powers establish an effective way for dealing with the 'Trokosi' practice but no such cases have been brought before the Commission.²⁷⁷

Any individual who claims a violation of his or her rights is also allowed under the constitution to seek redress from the High Court, with the right to appeal to the Court of Appeal and a right of further appeal to the Supreme Court.²⁷⁸

A report of the Ghana Law Reform Commission (1995), indicates a dilemma of courts in Ghana when examining cases regarding traditional religious practices.²⁷⁹ Several cases revealed mixed judicial interpretations due to the lack of clear direction by the court's ruling regarding the status of harmful customary practices and traditional religious rules in respect to the rights of Ghanaians.²⁸⁰ These cases are discussed below in further details:

In the case of *Atomo v. Tekpetey*²⁸¹ the issue brought before the court was to decide whether the 'Trokosi' custom of considering all children born to a 'trokosi' (female slave) during and after the lifetime of a shrine priest as children of the priest and hence, not eligible to inherit from their biological father should be upheld. The court did not uphold the 'Trokosi' custom on the basis that it was "unreasonable, and repugnant to natural justice, equity, and good conscience." This ruling by

²⁷⁵ Ghana Constitution (1992), Article 218.

²⁷⁶ Ghana Constitution (1992), Article 218(d)(f).

²⁷⁷ Trokosi- The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights. p. 498.

²⁷⁸ Ghana Constitution (1992) Article 126 (1), See Also, Saah, *supra* note 285.

²⁷⁹ Robert KA, DeBrenna LA, Nana AA, Children's Rights in Ghana: Reality or Rhetoric?

²⁸⁰ Robert KA, DeBrenna LA, Nana AA, Children's Rights in Ghana: Reality or Rhetoric?

²⁸¹ *Atomo v. Tekpetey* (1980). 1995: 13-15

the court could have been a turning point against harmful traditions but while the court rightly ruled against the practice, a similar case of *Tano v. Akosua Koko*²⁸² was contradictory.²⁸³ The case concerned a practice where the court sided with elements of the customary practice. In this custom, 'Krobo' women are meant to undergo a customary puberty rite known as 'dipo' which is required of all 'Krobo' women (meant to usher young girls into womanhood). Any young woman who become pregnant prior to the ceremony is ostracized and liable to banishment. However, this punishment was upheld by the court.²⁸⁴

The outcome of the above cases has also played a relevant role in calling for the amendment of section 314 of Act 29 and other relevant sections of the Ghana Criminal Code to include customs that enslave people and subject them to forced labour.

5.1.3 Other measures

International Needs Network Ghana (INNG)

The International Needs Network Ghana (INNG) is a Christian Non-Governmental Organization (N.G.O) which was established in 1984 and has a membership consisting of nine executive members. It is also a member of the worldwide International Needs Network (INN) which operates in over 35 countries.²⁸⁵ In 1998, International Needs Ghana led a campaign that gained worldwide attention on the abolition of 'trokosi'.²⁸⁶ The duties of the network include: human rights advocacy, human rights education and rehabilitations of victims of dehumanizing cultural practice, such as 'trokosi'.²⁸⁷ According to the INNG website, 3000 'trokosi' victims have so far been liberated with an estimation of more than 5000 women still in captivity in Ghana.²⁸⁸

The main tool adopted by the network to eliminate the 'trokosi' practice is education. They believe that educating the people by making them aware of the injustice of the practice is significant in the elimination process of 'trokosi'. With regards to the above, the INNG is working to educate priests

²⁸² *Tano v. Akosua Koko*, 1974.

²⁸³ Robert KA, DeBrenna LA, Nana AA, *Children's Rights in Ghana: Reality or Rhetoric?* p. 141

²⁸⁴ Robert KA, DeBrenna LA, Nana AA, *Children's Rights in Ghana: Reality or Rhetoric?* p. 141

²⁸⁵ Sofia Wiking, *From Slave Wife of the Gods to 'ke te pam tem eng*, p. 21.

²⁸⁶ International Needs Ghana. Available at: <https://ineeds.org.uk/countries/ghana/>

²⁸⁷ Sofia Wiking, *From Slave Wife of the Gods to 'ke te pam tem eng*, p. 21.

²⁸⁸ Ghana, 2008, *Trokosi of West Africa*, 2007, Dissemination workshops on the Trokosi practice in Ghana, 2008: 4-5

and communities on the awareness of the practice as unjust and harmful by bringing to their knowledge other alternatives that could be used as remedy for wrongdoing such as giving out material items which may include alcohol and money instead of sending young girls and women to the shrines.²⁸⁹

The INNG is of the view that the elimination of the ‘trokosi’ practice cannot be achieved simply by legislation whether international or national but rather an understanding of the practice is necessary in order to criminalize the practice.²⁹⁰

5.2. Togo

The Republic of Togo has also ratified several of the international human rights treaties such as the CRC, CAT and its Optional Protocol, ICCPR, CEDAW²⁹¹ and the African Charter²⁹² which means that like Ghana, Togo is also bound by the provisions of the above-mentioned legal instruments.

At the domestic level, The Constitution of Togo makes provisions for the equality of all persons before the law. Article 11 of the Constitution states that, “All human beings are equal in dignity and in right”. It goes further to make an explicit emphasis on gender by stating that, “The man and the woman are equal before the law”.²⁹³ The third paragraph of Article 3 states the following:

“No one may be favoured or disadvantaged for reason of their familial, ethnic or regional origin, of their economic or social situation, of their political, religious, philosophical or other convictions”.

The above provision clearly spells out the unconstitutionality of the ‘trokosi’ practice as woman are discriminated against and disadvantaged in the full enjoyment of their rights. The ‘trokosi’ practice

²⁸⁹ Feature- Ritual slavery in Ghana. See also Sofia Wiking, *From Slave Wife of the Gods to ‘ke te pam tem eng*, p. 22.

²⁹⁰ Ben- Ari, 2001. See also, Sofia Wiking, *From Slave Wife of the Gods to ‘ke te pam tem eng*, p. 22.

²⁹¹ United Nations Human Rights, Office of the High Commissioner, UN Treaty Database. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx. Retrieved on May 24, 2019.

²⁹² African Commission on Human and Peoples’ Rights. Available at: <http://www.achpr.org/states/togo/ratifications/>. Retrieved on May 24, 2019.

²⁹³ Article 11 of the Constitution of Togo.

deprives victims of their physical and mental integrity as human beings. The Constitution however imposes on the state the obligation:

“The State has the obligation to guarantee the physical and mental integrity, the life and the security of every living person in the national territory”.

The Freedom of thought, of conscience, of religion, of belief, of opinion and of expression is protected in article 25 of the Togolese Constitution, however, this right is limited to or within the laws of the country. In the third paragraph of article 25, it is states that:

“The religious denominations have the right to organize themselves and to exercise their activities within respect of law”.

The Constitution imposes on the state the obligation to, “Protect the youth against any form of exploitation and or manipulation”.²⁹⁴

5.3 Benin

According to a study by the Ministry of the Family and National Solidarity on Violence against Women in Benin (ministère de la Famille et de la Solidarité nationale sur la violence envers les femmes au Bénin), published in 2009 and based on a survey of 4,649 women and girls aged 6 and over, it was indicated that 68.6 percent of respondents aged 15 and over reported having suffered violence "at the hands of men or society by reason of their status as women" at least once in their life.²⁹⁵

On the international level Benin has only ratified CEDAW and the CRC. However, it has acceded to the ICCPR, and CAT. It has also ratified the African Charter on Human and People’s Rights and its Protocol as well as the African Charter on the Rights and Welfare of the Child.²⁹⁶

The domestic legal framework in the country also makes provisions for the protection of women and girls against violence. One of such frameworks is the Constitution of the People’s Republic of Benin (Constitution de la République du Bénin), which states that:

²⁹⁴ Article 36 of the Constitution of Togo.

²⁹⁵ *ibid.* Oct. 2009, 75, See also, Canada: Immigration and Refugee Board of Canada, Benin: Domestic violence, including availability of state protection and support services (2009-2015), 9 February 2016, BEN105406.FE, available at: <https://www.refworld.org/docid/56d7f6b44.html> [accessed 25 May 2019]

²⁹⁶ Thomson Reuters Foundation, Benin: The Law and FGM, Appendix I: International and Regional Treaties, pp. 8.

“men and women are equal under the law” and goes on further to say that, “The State shall protect the family and particularly the mother and child”.²⁹⁷

The Constitution does not explicitly refer to harmful traditions.²⁹⁸ However, under article 8 of the Constitution, “The human person is sacred and inviolable”.²⁹⁹ This imposes on the State, the obligation to respect and protect the human person as stated in article 8 as follows [translation]:

“The State has the absolute obligation to respect it and protect it. It shall guarantee him a full blossoming out”.³⁰⁰

Under Article 18, “No one shall be submitted to torture, nor to maltreatment, nor to cruel, inhumane or degrading treatment”.³⁰¹ In order to ensure the above, Article 19 establishes that, “Any individual or any agent of the State who shall be found responsible for an act of torture or of maltreatment or of cruel, inhumane or degrading treatment in the exercise of, or at the time of the exercise of his duties, whether of his own initiative or whether under instruction, shall be punished in accordance with the law”.³⁰²

Aside the Constitution, Benin passed the ACT No. 2011- 26 of 9 January 2012 on the Prevention and Repression of Violence against Women ((Loi no 2011-26 du 09 janvier 2012 portant prévention et répression des violences faites aux femmes).³⁰³

Section 2 of the present Act defines violence to include the following [translation]:

“all acts of violence directed at the female gender that can or do cause women harm or physical, sexual or psychological suffering, including the threat of such acts, the arbitrary denial of or restrictions on freedom, be it in public or private life”.³⁰⁴

²⁹⁷ Article 26 of the Benin Constitution (1990).

²⁹⁸ Thomson Reuters Foundation, Benin: The Law and FGM, pp. 2.

²⁹⁹ Article 8 of the Benin Constitution (1990).

³⁰⁰ Article 8 of the Benin Constitution (1990).

³⁰¹ Article 18 of the Benin Constitution (1990).

³⁰² Article 19 of the Benin Constitution (1990), See also, Thomson Reuters Foundation, Benin: The Law and FGM, pp. 2.

³⁰³ Ibid. 2012, See also, *ibid.* Oct. 2009, 75, See also, Canada: Immigration and Refugee Board of Canada, Benin: Domestic violence, including availability of state protection and support services (2009-2015), 9 February 2016, BEN105406.FE, available at: <https://www.refworld.org/docid/56d7f6b44.html> [accessed 25 May 2019]

³⁰⁴ Section 2 of Act No. 2011-26 of 9 January 2012, Benin.

These acts of abuse involve the following:

“Physical, moral, sexual or psychological violence taking place within the family, such as blows, spousal rape, sexual assaults and abuse, female genital mutilation as prescribed by Act No. 2003-03 of 03 March 2003 on Repression of the Practice of Female Genital Mutilation in the Republic of Benin (Loi 2003-03 du 03 mars 2003 portant répression de la pratique des mutilations génitales féminines en République du Bénin), forced or arranged marriages, "honour" crimes and other traditional practices harmful to women”.³⁰⁵

Unlike the Benin Constitution which makes no mention of harmful practices, the Act No. 2011-26 explicitly define traditional harmful practice as follows:

“traditional practices harmful to women as: acts based on habits and customs that are harmful to women” to include for example “rape, defined to include: any act of vaginal, anal or oral penetration by the genital organ of the perpetrator, or vaginal or anal penetration by some object without the informed and willing consent of the penetrated individual”.³⁰⁶

The ‘trokosi’ practice clearly fits into the above definition of traditional practices harmful to women; the trokosi victims are sexually abuse and mostly forced into having sex with shrine priests.

The Act criminalizes any offence that represses physical or sexual violence and categorizes such offence as an aggravating circumstance.³⁰⁷

The provisions of the 1990 Benin Constitution and Act No. 2011-26 of Benin therefore make the ‘trokosi’ practice unconstitutional and a violation of the fundamental human rights of women and girls.

³⁰⁵Canada: Immigration and Refugee Board of Canada, Benin: Domestic violence, including availability of state protection and support services (2009-2015), 9 February 2016, BEN105406.FE, available at: <https://www.refworld.org/docid/56d7f6b44.html> [accessed 25 May 2019]

³⁰⁶ Section 3 of Act No. 2011-26 of 9 January 2012, Benin.

³⁰⁷ Section 3 of Act No. 2011-26 of 9 January 2012, Benin.

5.4 Implementation and enforcement challenges of international human rights obligations to combat harmful traditional practices in West Africa.

This chapter will discuss the barriers to the effective implementation and enforcement of international human rights obligations with respect to combating and eliminating harmful traditional practices against women and girls in West Africa. In fulfilling their international obligations, Ghana, Togo and Benin have signed and ratified several treaties and conventions which prohibits the 'Trokosi' practice, however even though the practice has no legal basis and individuals who claim a violation of their rights have standing under various laws to launch legal claims, these methods, especially those concerning women's rights, have hardly been used.³⁰⁸ These legal provisions are recognized but ignored in practice. The shortcomings that states have to deal with in the implementation of an effective state responsibility ranges from legislative obstacles to inefficient criminal justice systems that refrain from interfering in the private sphere.³⁰⁹ Specifically in the African cultural setting, cultural beliefs which are considered outmoded are additional factors that have considerable negative impact concerning the eradication of harmful traditions against women.

The conflicting discourse in the differentiation made by human rights law with regards to the public and private spheres in the protection of women from violence is also one of the main hindrances to the protection of women from violence.³¹⁰ The protection from abuse offered by human rights law is targeted mostly at the public entity.³¹¹ This therefore reveals that, the public sphere is subject to the interference of the state, whereas the private area is void of such intrusion.³¹² Even though international human rights law is the fundamental guarantee of freedoms in relation to the state as the holder of public power,³¹³ it does not necessarily imply that the state is not under the positive obligation to protect individuals by taking appropriate measures against some forms of interference

³⁰⁸ Anita M. HA, *Challenges to the Application of International Women's Human Rights in Ghana*, p. 169

³⁰⁹ Cigdem Kaya, 2009, *State Responsibility Regarding Domestic Violence against Women with Focus on Turkey*, pp. 32.

³¹⁰ UN Commission on Human Rights, *supra* note 194, p. 14.

³¹¹ Vledder, *supra* note 1, p. 21.

³¹² C. Moore, *Women and Domestic Violence: The Public/Private Dichotomy in International Law*, 7 *The International Journal of Human Rights* (2003) p.93.

³¹³ Byrnes, *supra* note 3, p. 229.

by other individuals.³¹⁴ Despite the public and private distinction in the protection of human rights, states can still be held directly responsible when there is a breach of a convention provision.³¹⁵

There are several other deficiencies in the mechanisms used for enforcement of international human rights. One major reason which accounts for these shortcomings is the principle of state sovereignty.³¹⁶ The effectiveness in the implementation of human rights norms are dependent on the degree to which those norms have been codified and approached by the international community as conventional law which is binding.³¹⁷ State sovereignty, which is defined as the supreme authority and independence of a state is the major contributing factor which accounts for deplorable nature of the phenomenon with regards to the means by which the international implementation of human rights is controlled.³¹⁸ Various international actors such as international organizations to some extent also contribute to the implementation of the degree to which international norms are accepted to be binding,³¹⁹ however the sovereignty of states stands as the principal component of the system of international law, both politically and legally.³²⁰ Apart from the creation of international standards for the protection of human rights at the national level by the states, the sovereignty of states also puts states in the best position to determine the process by which they execute or

³¹⁴ Ibid, See Cigdem Kaya, 2009, State Responsibility Regarding Domestic Violence against Women with Focus on Turkey, pp. 32.

³¹⁵ Ibid, See Cigdem Kaya, 2009, State Responsibility Regarding Domestic Violence against Women with Focus on Turkey, pp. 32.

³¹⁶ E- International Relations Students, Hannah Moscrop, 2014, Enforcing International Human Rights Law: Problems and Prospects. Available at: <https://www.e-ir.info/2014/04/29/enforcing-international-human-rights-law-problems-and-prospects/>. Retrieved on May 26, 2019.

³¹⁷ Jost Delbrueck, 1982, International Protection of Human Rights and State Sovereignty, pp. 567. Available at: <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2302&context=ilj> Retrieved on May 26, 2019.

³¹⁸ See, e.g., R. FALK, Human Rights and State Sovereignty at 3 passim (1981) (hereinafter cited as FALK, Human Rights). "Governments do not protect human rights, they violate them." Report of the Conference on Implementing a Human Rights Commitment in United States Foreign Policy (quoting Roger Baldwin), quoted in Shephard, Transnational Development of Human Rights: The Third World Crucible, in Global Human Rights: Policies, Comparative Resources, and NGO Strategies 213 (1981).

³¹⁹ See Oda, The Individual in International Law, in MANUAL OF PUBLIC INTERNATIONAL LAW 469 (M. Sorensen ed. 1968); El Erian, The Legal Organization of International Society, in MANUAL OF PUBLIC INTERNATIONAL LAW 55 (M. Sorensen ed. 1968).

³²⁰ Jost Delbrueck, 1982, International Protection of Human Rights and State Sovereignty, pp. 567. Available at: <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2302&context=ilj> Retrieved on May 26, 2019.

implement these international norms on the authority of their sovereign will.³²¹ From the above, the incompatibility of the international protection of human rights and state sovereignty to an extent can be regarded as one of the challenges in the effective implementation of international human rights standards.³²²

Furthermore, building from the universalism and cultural relativism discourse, and particularly with regards to the concept of cultural practices, “traditionalism” raises a major concern in the implementation of international human rights law in the quest to eradicate traditional practices which are considered harmful and a violation of human rights especially of women and girls. “Traditionalism” is basically the observance of the conception that international human rights deviates from traditional prescription for orderly social behaviour, and that within the boundaries of the group, the society has the sole responsibility of protecting the human rights of its members.³²³

Additionally, an initial objection to the CEDAW committee’s interpretation of article 5 (a) broadly to impose substantial obligations to change culture and stereotypes is that inherently, law is not suitable for such a task.³²⁴ A state may modify its laws and policies to ensure legal equality. On the other hand, the state cannot legislate cultural change; change in culture takes time and must be organic in nature.³²⁵ Only when culture mores change “will legal remedies, whether on a domestic or international level, have any significant effect”.^{326 327} The CEDAW Committee itself has acknowledged the difficulty of cultural change, noting that insufficient political will, represents an

³²¹ Jost Delbrueck, 1982, International Protection of Human Rights and State Sovereignty, pp. 567- 568. Available at: <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2302&context=ilj> Retrieved on May 26, 2019.

³²² Jost Delbrueck, 1982, International Protection of Human Rights and State Sovereignty, pp. 568. Available at: <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2302&context=ilj> Retrieved on May 26, 2019.

³²³ Carnegie Council for Ethics in International affairs, 2003, The Challenge to International Human Rights. Available at: https://www.carnegiecouncil.org/publications/articles_papers_reports/905. Retrieved on May 26, 2019.

³²⁴ Elizabeth S, Confronting the “Sacred and Unchangeable”: The Obligation to modify cultural patterns under the women’s discrimination treaty. P. 627, 2014

³²⁵ Elizabeth S, Confronting the “Sacred and Unchangeable: The Obligation to modify cultural patterns under the women’s discrimination treaty. p. 627, 2014.

³²⁶ See Mountis, supra note 12, at 143–44.

³²⁷ Anne F. Bayefsky, General Approaches to the Domestic Application of Women’s International Human Rights Law, in human rights of women: national and international perspectives 351 (Rebecca J. Cook ed., 1994)

impediment to progress.³²⁸ Legal, cultural or any other change cannot be achieved by a state only signing an international treaty. There must be a commitment of that state to ensure gender equality.³²⁹

Like other international law enforcement mechanisms, human rights treaty bodies, “are subject to fundamental limitations in the influence they can exert on developments at the national level”—irrespective of the quality of their substantive jurisprudence or practice.³³⁰ ³³¹ The CEDAW Committee “cannot impose any sanctions, even when there is an outright breach of the Convention’s provisions” as it has supervisory and monitory functions.³³² The relevance of human rights treaties, therefore, depends to a large extent on “the commitment by States parties to give effect to the obligations they have undertaken in their national laws and policies.”³³³ However, the Optional Protocol to CEDAW gives the CEDAW Committee a more effective method for enforcing compliance to the treaty.³³⁴ Under the Optional Protocol’s communications procedure, individuals and groups of women may file complaints of human rights violations with the Committee.³³⁵ The

³²⁸ Elizabeth S, *Confronting the “Sacred and Unchangeable”*: The Obligation to modify cultural patterns under the women’s discrimination treaty, p. 627, 2014. See CEDAW Committee, *supra* note 19, See also, Feride Acar, Chairperson of the CEDAW Comm., 2003–2004, Statement at the Occasion of the 25th Anniversary of the Adoption of the Convention on the Elimination of All Forms of Discrimination against Women 4 (Oct. 13, 2004)

³²⁹ Cartwright, *supra* note 16, at 2 (“Sometimes, however, it is obvious that States ratify the Convention simply because they want international approval. Support of its fundamental principles is limited.”). See also, Elizabeth S, *Confronting the “Sacred and Unchangeable: The Obligation to modify cultural patterns under the women’s discrimination treaty”*. p. 628, 2014.

³³⁰ Andrew Byrnes, *Toward More Effective Enforcement of Women’s Human Rights Through the Use of International Human Rights Law and Procedures*, in *Human Rights of Women: national and International Perspectives*, *supra* note 5, at 189, 193.

³³¹ Elizabeth S, *Confronting the “Sacred and Unchangeable: The Obligation to modify cultural patterns under the women’s discrimination treaty*. Pg. 632- 633, 2014.

³³² HOLTMAAT, *supra* note 13, at 78. See also, Hanna B, SS. (2004), *The Role of the Convention on the Elimination of All Forms of Discrimination Against Women and its Monitoring Procedures for Achieving Gender Equality in Political Representation*, P. 1

³³³ Elizabeth Evatt, *Finding a Voice for Women’s Rights: The Early Days of CEDAW*, 34 *GEO. WASH. INT’L L. REV.* 515, 519 (2002); see also Acar, *supra* note 166, at 4 (The lack of vigour in a State’s implementation of each and every one of the Convention’s provisions, particularly article 5, often impedes their ability to combat discrimination of women effectively).

³³⁴ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, Oct. 6, 1999, 2131 U.N.T.S. 97 (entered into force Dec. 22, 2000).

³³⁵ What is an Optional Protocol?, U.N. Division for the Advancement of Women, <https://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm> (Retrieved on May 22, 2019). See also, Amnesty Int’l, *Claiming Women’s Rights: The Optional Protocol to the UN Women’s Convention* (July 2002) (discussing the Optional Protocol and its individual complaints procedure and inquiry procedure).

Committee is also mandated to conduct inquiries into grave or systematic abuses committed by a state party to the Optional Protocol.³³⁶ Ghana is among the states which have ratified the Optional Protocol.

6.Recommendations and Conclusion

6.1 Recommendations

Violence against women represents both a cause and a consequence of discrimination against women and their inequality and subordination.³³⁷ In addition to the right of women to be free from discrimination, states have an obligation according to international standards of due diligence to respect, protect, promote and fulfil all human rights.³³⁸ Theoretically, the demonstration of the obligations of states is not enough to eliminate or find solutions to harmful traditional practices especially in West Africa. In the quest to eradicate harmful traditions and violence against women in general, it is important to create an environment where women can live freely from violence due to their gender³³⁹ and fully enjoy their human rights as women. Women will be made less vulnerable to violence when their rights are developed and strengthened. In a case such as the ‘tokosi’ practice where men are mostly the perpetrators, there is the need to involve men more effectively in the work of preventing and eliminating such harmful traditions which are often directed at women and to also tackle stereotypes and attitudes that perpetuate male violence against women.³⁴⁰

³³⁶ U.N. Division for the Advancement of Women supra note 198.

³³⁷ University of Oslo, Faculty of Law, 2012, State Responsibility and International Human Rights. A case of Domestic Violence Against Women in Norway, pp. 59. Available at: <https://www.duo.uio.no/bitstream/handle/10852/35938/HUMR5200-EmmaxGabrielxAlexander.pdf?sequence=1&isAllowed=y>. Retrieved on May 26, 2019.

³³⁸ University of Oslo, Faculty of Law, 2012, State Responsibility and International Human Rights. A case of Domestic Violence Against Women in Norway, pp. 59. Available at: <https://www.duo.uio.no/bitstream/handle/10852/35938/HUMR5200-EmmaxGabrielxAlexander.pdf?sequence=1&isAllowed=y>. Retrieved on May 26, 2019.

³³⁹ University of Oslo, Faculty of Law, 2012, State Responsibility and International Human Rights. A case of Domestic Violence Against Women in Norway, pp. 58. Available at: <https://www.duo.uio.no/bitstream/handle/10852/35938/HUMR5200-EmmaxGabrielxAlexander.pdf?sequence=1&isAllowed=y>. Retrieved on May 26, 2019.

³⁴⁰ University of Oslo, Faculty of Law, 2012, State Responsibility and International Human Rights. A case of Domestic Violence Against Women in Norway, pp. 58. Available at: <https://www.duo.uio.no/bitstream/handle/10852/35938/HUMR5200-EmmaxGabrielxAlexander.pdf?sequence=1&isAllowed=y>. Retrieved on May 26, 2019.

Another major area which could be targeted in order to eliminate the ‘trokosi’ practice is the educational sector. Legal arrangements, both international and national have contributed to the awareness of the grave violations of the human rights of women as a result of harmful traditional practices. However, the law is not enough. It is therefore required that the respective states focus on other measures of prevention which aims at eradicating the traditional perceptions should in the justifications of these harmful traditions against women and girls. For this reason, it is important for states to develop public awareness through the medium of education ³⁴¹ where the local people, particularly those involved in the practice will be made aware of their rights as human beings and the need to protect women from the ‘trokosi’ practice as it deprives them of the full enjoyment of their inherent rights as human beings.

There is also the need to increase the efficiency of the CEDAW process for a more effective state responsibility.³⁴² In order to make the system more effective, there should a collaboration of states on the decisions and recommendations issued by the Committee are not binding since they are not binding.³⁴³ The lack of State cooperation seems to result in a situation where the “CEDAW is law without sanctions.”³⁴⁴ Since the state is the ultimate actor in the realization of the CEDAW provisions, the willingness and motivation to comply should come directly from state practice. The CEDAW Committee is not able to impose compliance of the Convention on states,³⁴⁵ states can choose or not to either abide by or disregard the norms of the Convention.³⁴⁶

In addition, as mentioned in the previous chapters, inequality play a crucial role in the human rights of women in Africa. For this reason, in order to further promote the full enjoyment of, as well as avoid violations of women’s rights as a result of inequality of the sexes, it is important to

³⁴¹ OHCHR, Fact Sheet No. 22, Discrimination against Women: The Convention and the Committee, p. 5, www.ohchr.org/Documents/Publications/FactSheet22en.pdf. Last visited on 2nd July 2012

³⁴² Cigdem Kaya, 2009, State Responsibility Regarding Domestic Violence against Women with Focus on Turkey, pp.67.

³⁴³ Cigdem Kaya, 2009, State Responsibility Regarding Domestic Violence against Women with Focus on Turkey, pp.67.

³⁴⁴ Merry, *supra* note 209, p. 72.

³⁴⁵ *Ibid*, See also, Cigdem Kaya, 2009, State Responsibility Regarding Domestic Violence against Women with Focus on Turkey, pp.67

³⁴⁶ Cigdem Kaya, 2009, State Responsibility Regarding Domestic Violence against Women with Focus on Turkey, pp.67

acknowledge gender inequality as the root cause of violence against women.³⁴⁷ A gender-based approach should be incorporated into state policies to combat harmful traditions and also, to change the traditional gender roles and stereotypes in combating and preventing these practices.³⁴⁸ This will also help to efficiently target appropriate programmes and law enforcement mechanisms.³⁴⁹

6.2 Conclusion

The ‘trokosi’ practice to a large extent contributes to the violations of several human rights of young female children and women however, protection against ‘trokosi’ practice can be assessed only by examining the extent to which the obligations and duties imposed on States parties are applied at the national level. The implementation of treaties requires both the national measures as well as international measures and procedures adopted by States to review or monitor those national actions. Despite the existence of regional frameworks that address violence against women and girls,³⁵⁰ there is no legally binding international treaty which specifically deals with violence against women and girls or more specifically the ‘trokosi’ practice. Violence against women continue to exist even though various international human rights norms have been adopted by Ghana, Togo and Benin.

Nevertheless, General Comments of CEDAW and CRC can be viewed as authoritative interpretative instruments, which give rise to a normative consensus on harmful practices and the application of treaties.³⁵¹ The recently adopted Joint CEDAW/CRC General Comment on harmful practices of November 2014 clarifies for example the obligations of States parties to CEDAW and CRC by “providing authoritative guidance on legislative, policy and other appropriate measures that must be taken to ensure full compliance with their obligations under the two Conventions to eliminate harmful practices.”³⁵²

The driving force of the ‘Trokosi’ practice is the fear that is being instilled in the people which is deeply ingrained in the minds of the people. Enforcement of human rights laws, although drafted by countries like Ghana is still an issue. What often accounts for the inability to enforce the law in

³⁴⁷ Tuba Kabasakal, *Violence Against Women in Turkey: An Analysis of Barriers to the Effective Implementation of international Commitments*, pp. 67.

³⁴⁸ Tuba Kabasakal, *Violence Against Women in Turkey: An Analysis of Barriers to the Effective Implementation of international Commitments*, pp. 67.

³⁴⁹ Thomson Reuters Foundation, *Benin: The Law and FGM*, Appendix I: International and Regional Treaties, pp. 6.

³⁵⁰ *Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation*. p. 37.

³⁵¹ *Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation*. p.37.

³⁵² CEDAW/ CRC General comment.

banning the practice is because the practitioners say it's an African traditional religion, and there is a law that protects the right to practice one's own religion.³⁵³

It is however problematic to locate the line between respecting and maintaining a certain cultural value and practice and the protection of human rights. Children and women are being enslaved, starved, and raped under the guise of religious practice; however, these children's human rights are without question being abused. Meanwhile, as Perenyi discussed, the national pride stemming from traditional practices can wield great influence on people as well as the government and the media.³⁵⁴

The demand for the preservation of the trokosi practice, in the name of cultural relativism and freedom of religion, violates the basic human rights of the victims, as exemplified within the framework of the Constitution of Ghana, the African Charter, the African Women's Protocol, the African Children's Charter and recognized universal human rights laws and conventions which the state parties, including Ghana, have ratified.³⁵⁵

Although the call for cultural pluralism and the need to celebrate and respect the diversity of cultures sound legitimate, these demands should not be allowed to trump the minimum package of human rights which state parties have ratified.³⁵⁶

³⁵³ Carly Gillingham, The Trokosi System of Child Slavery and the Role of Cultural Relativism, <https://spiremagazine.com/2017/10/31/the-trokosi-system-of-child-slavery-and-the-role-of-cultural-relativism/>

³⁵⁴ Carly Gillingham, The Trokosi System of Child Slavery and the Role of Cultural Relativism, <https://spiremagazine.com/2017/10/31/the-trokosi-system-of-child-slavery-and-the-role-of-cultural-relativism/>

³⁵⁵ Joseph YA, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society, p. 147. http://www.ahrlj.up.ac.za/images/ahrlj/2015/Chapter%206_1_2015.pdf

³⁵⁶ Joseph YA, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society, p. 147. http://www.ahrlj.up.ac.za/images/ahrlj/2015/Chapter%206_1_2015.pdf

Also, culture is dynamic and should ideally be open to new possibilities for social transformation; conceivably, culture can be preserved if doing so will not necessarily lead to the infringement of the basic fundamental human rights of others, as the trokosi practice clearly illustrates.³⁵⁷

In light of the discussions of this thesis, in order for international law to be efficient in the elimination of harmful traditional practices such as the trokosi practice, it depends on the political will of states. As addressed in this paper, countries like Ghana, Togo and Benin who have ratified several of the international legal instruments aiming to prevent violence against women first of all implement fully the obligations imposed on them as states' members and also, adopt various measures outside the scope of the law like education, which will help to reduce the cultural ideologies surrounding this practice. Governments must also reconcile universalism with cultural relativism.

To conclude, the present thesis has examined the trokosi practice as a harmful tradition against women in West Africa in light of the states' obligations. In addition to effectively implementing and complying with these obligations, another critical aspect of eradicating harmful traditions against women is through the transformation of societal norms.

This research has demonstrated that most of the countries involved with the trokosi practice have to a large extent integrated the standards of international human rights law in their domestic legislations, however, more needs to be done by involving the people themselves in the quest to fully eliminate the trokosi practice.

The author of this work hopes that this thesis is useful and that it has contributed to previous research works aimed at understanding the underlying elements of harmful traditions against women and girls and also contribute to improving the collective responsibility of states to put more effort into making positive and significant changes.

³⁵⁷ Joseph YA, Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society, p. 148. http://www.ahrlj.up.ac.za/images/ahrlj/2015/Chapter%206_1_2015.pdf

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ⁱ Ben-Ari supra note 1. See also, Aziza N, K.B (2008), “Abolished by Law- Maintained in Practice: The Trokosi as Practised in Parts of the Republic of Ghana”. Pg. 377- 378.