

TROKOSI – THE PRACTICE OF SEXUAL SLAVERY IN GHANA: RELIGIOUS AND CULTURAL FREEDOM VS. HUMAN RIGHTS

I. INTRODUCTION

It is widely believed that slavery no longer exists, but surprisingly it is still very common.¹ “Contemporary forms of human bondage include such practices as forced labor, servile marriage, debt bondage, child labor, and forced prostitution.”² Most countries have outlawed slavery, yet it continues to exist in many countries and seems to be most concentrated in the Middle East, Asia, and Africa.³

One example of modern slavery is found in Africa where “[tens] of thousands of pre-teen [and teenaged girls⁴] are being kept as unpaid servants and sex slaves by West African voodoo priests to pay for the sins of their families against traditional gods and spirits.”⁵ As many as “35,000 virgin girls as young as eight in Ghana, Benin, Togo and Nigeria have been given to ‘fetish priests’ who treat them like serfs and often rape them.”⁶ For thousands of years, the religious tradition of making offers like cattle, money, and liquor to appease angry gods has existed; however, those offerings changed relatively recently.⁷ Now, young girls are given to shrine priests to make amends for family sins, which range from breaking the law

1. See Charles Jacobs, *Slavery: Worldwide Evil*, WORLD & I, Apr. 1996, at 110.

2. *Id.*

3. Among other areas, slavery has been reported in: Russia and Eastern Europe, see Christine S.Y. Chun, Note, *The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, 17 U. PA. J. INT’L ECON. L. 1155, 1173-74 (1996); China, see Susan Jeanne Toepfer & Bryan Stuart Wells, *The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 MICH. J. GENDER & LAW 83, 87-88 (1994); Mali, Niger, Sudan, Cameroon, Burundi, Rwanda, Botswana, Namibia, South Africa, Taiwan, Philippines, Nepal, Indonesia, India, Bolivia, Paraguay, Peru, see generally ANTI-SLAVERY INTERNATIONAL — INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS, *ENSLAVED PEOPLES IN THE 1990S: INDIGENOUS PEOPLES, DEBT BONDAGE AND HUMAN RIGHTS* (1997); Bosnia, Algeria, Uganda, see Barbara Crossette, *Violation: An Old Scourge of War Becomes Its Latest Crime*, N.Y. TIMES, June 14, 1998, § 4, at 1; and the Caribbean, see *Colombia Frees Child Sex Slaves*, SUN-SENTINEL (FORT LAUDERDALE), Sept. 27, 1998, at 12A.

4. Although the practice of Trokosi enslaves females of all ages, the tradition of atonement involves offering young girls to the shrines; thus, the term “girls” will be used throughout this note for simplicity.

5. Sam Kiley, *Child Slaves Used by West Africans to Appease Spirits*, TIMES LONDON, Sept. 17, 1996, available in 1996 WL 6519665.

6. *Id.*

7. See *Dateline: Innocents Lost* (NBC television broadcast, Aug. 30, 1998) [hereinafter *Dateline*].

to offending the gods.⁸

The United Nations and countries around the world have adopted several initiatives to recognize and establish general human rights standards and to eliminate harmful practices like sexual slavery. Some of these initiatives include: the Universal Declaration on Human Rights;⁹ the Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery;¹⁰ and the United Nations Convention on the Rights of the Child.¹¹ However, despite these efforts, sexual slavery and slavery-like practices continue.

This note focuses on Trokosi, the religious and cultural practice of sexual slavery in Ghana, Africa, and the human rights violations that arise from this practice. Part II analyzes the human rights movement and the issues raised when cultural and religious rights conflict with human rights. Part III provides background information on the Trokosi practice and describes experiences of some of the Trokosi system. Part IV discusses some of the international documents that prohibit human rights violations like sexual slavery. Part V discusses Ghana's Constitution and its provisions that prohibit Trokosi. This note concludes by evaluating the Trokosi practice by balancing the costs and benefits of the practice and concludes that Trokosi is a harmful cultural and religious practice that should be eliminated.¹² Additionally, this note (1) recommends that Ghana's president sign the recently passed law that specifically outlaws customary servitude to make it effective, (2) urges the government of Ghana through the Commission on Human Rights and Administrative Justice (CHRAJ), in conjunction with Non-Governmental Organizations (NGOs), to continue the educational efforts of the local leaders to eliminate sexual slavery in Ghana, and (3) urges human rights organizations, non-governmental organizations, and the international community to assist Ghana with its educational efforts by

8. *See id.*

9. Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217 III.A, U.N. GAOR, 34th Sess., Pt. I, at 71, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration], reprinted in IAN BROWNLIE, Q.C., BASIC DOCUMENTS ON HUMAN RIGHTS 21 (3d ed. 1992).

10. Slavery Convention, Sept. 25, 1926, 60 L.N.T.S., amended by Protocol of 7 December 1953, Dec. 7, 1953, 212 U.N.T.S. 17 [hereinafter Convention to Suppress Slavery], reprinted in IAN BROWNLIE, Q.C., BASIC DOCUMENTS ON HUMAN RIGHTS 52 (3rd ed. 1992); Supplementary Convention on the Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266 U.N.T.S. 3 [hereinafter Convention to Abolish Slavery], reprinted in IAN BROWNLIE, Q.C., BASIC DOCUMENTS ON HUMAN RIGHTS 58 (3d ed. 1992).

11. Convention on the Rights of the Child, G.A. Res. 44/25 Annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/25 (1989) [hereinafter UNCRC], reprinted in IAN BROWNLIE, Q.C., BASIC DOCUMENTS ON HUMAN RIGHTS 182 (3d ed. 1992).

12. The author is not advocating the elimination of the religions that observe the Trokosi system, only the practice of offering young girls to the shrines to atone for the sins of others.

providing the funding for workshops, training, and liberation ceremonies for those involved in Trokosi.

II. BALANCING HUMAN RIGHTS AGAINST RELIGIOUS AND CULTURAL PRACTICES

A. *The Debate*

Member states of the United Nations pledge their cooperation in solving the problems facing the international community “of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”¹³ However, “[s]tates will often justify discrimination and noncompliance with human rights conventions on the basis of custom or cultural practices. This obstacle is particularly difficult to overcome when the customs are founded on religion.”¹⁴

Using religion to justify practices that many believe are violations of human rights standards is not a new concept.¹⁵ Generally, states will protect their religious practices as a significant part of their culture and will decline to reprimand or prosecute those whose practices violate human rights standards.¹⁶ Additionally, many states do not expressly recognize such practices as “discriminatory or biased” because they have been instilled within these cultures as the “natural” order of things.¹⁷

Human rights and culture cannot be separated from each other.¹⁸ “[F]actors such as race, nationality, ethnicity, etc., are integral to the human

13. U.N. CHARTER art. 1, para. 3.

14. Elizabeth L. Larson, Comment, *United Nations Fourth World Conference on Women: Action for Equality, Development, and Peace (Beijing, China: September 1995)*, 10 EMORY INT'L L. REV. 695, 714 (1996) (examining the potential for changing the international status of women through the Beijing Conference and Platform, discussing the challenges present in human rights development, and analyzing how the Beijing Conference addresses those problems).

15. See Berta Esperanza Hernández-Truyol, *Women's Rights as Human Rights — Rules, Realities and the Role of Culture: A Formula for Reform*, 21 BROOK. J. INT'L L. 605, 659 n.207 (1996) (quoting Arthur Schlesinger, Jr., *The Opening of The American Mind*, N.Y. TIMES, July 23, 1989, at 1 (book review)). In her article, Hernández-Truyol explores “the roles played by rules of law and by the conflation of economic, social, political, religious, cultural, and historic realities in the marginalization of women in the international, regional, and domestic spheres worldwide” and proposes an “analytical model [that] deconstruct[s] and reconfigur[es] the human rights framework to ensure that women's rights that exist in theory become reality.” *Id.* at 606-07.

16. See Larson, *supra* note 14, at 714.

17. See *id.*

18. See Hernández-Truyol, *supra* note 15, at 666.

rights construct. However, there is a distinction to be made between considering or accommodating cultural customs and using culture as a pretext to deny the integrity and dignity of individuals on the basis of sex.”¹⁹ Culture should not be used as “a shield to protect practices that violate women’s human rights,” nor should human rights be used “as a sword, a weapon of subjugation, colonialism and moral imperialism, to oppress other communities and ways of life.”²⁰

B. *The Conflict between Religious Freedom and Women's and Children's Rights*

Religion, spirituality and belief play a central role in the lives of millions of women and men, in the way they live and in the aspirations they have for the future. The right to freedom of thought, conscience and religion is inalienable and must be universally enjoyed. This right includes the freedom to have or to adopt the religion or belief of their choice either individually or in community with others, in public or in private, and to manifest their religion or belief in worship, observance, practice and teaching. In order to realize equality, development and peace, there is a need to respect these rights and freedoms fully. Religion, thought, conscience and belief may, and can, contribute to fulfilling women’s and men’s moral, ethical and spiritual needs and to realizing their full potential in society. However, it is acknowledged that any form of extremism may have a negative impact on women and can lead to violence and discrimination.²¹

1. *Women's Rights*

Women’s rights is a predominant area of conflict between religious law and human rights law.²² “Religious law may incorporate elements hostile to

19. *Id.*

20. *Id.* at 666-67.

21. *Report of the Fourth World Conference on Women: Beijing Declaration and Draft Platform for Action*, G.A. Res. 1, U.N. GAOR, 16th plen. mtg., ch. II, ¶ 24, at 655, U.N. Doc. A/Conf.177/20 (1995), reprinted in 6 UNITED NATIONS, THE UNITED NATIONS AND THE ADVANCEMENT OF WOMEN, 1945-1996, at 649 (1996).

22. See Donna J. Sullivan, *Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination*, 82 AM. J. INT'L L. 487, 515 (1988).

various human rights, infringing upon those rights to differing degrees.”²³ On one level are rituals or practices that arguably do not have negative or lifelong effects on women, such as ear-piercing female infants.²⁴ On another level are dress codes, which reinforce the inferior status of women in certain societies.²⁵ However, on other levels are practices that do have significant, long lasting and possibly harmful effects on women, such as female genital mutilation (FGM),²⁶ “female infanticide, and reproductive controls, such as forced pregnancies or forced abortions.”²⁷ The common element among these practices is that they “interfere with women’s general well-being and perpetuate women’s second-class status and conditions.”²⁸ Unfortunately, because these practices are based on gender, they seem more easily justified

23. *Id.* at 514.

24. See Hernández-Truyol, *supra* note 15, at 673.

25. See Sullivan, *supra* note 22, at 514.

26. See generally Fitnat Naa-Adjeley Adjetey, *Reclaiming the African Woman's Individuality: The Struggle Between Women's Reproductive Autonomy and African Society and Culture*, 44 AM. U. L. REV. 1351, 1361-62 (1995) (examining several African customs and traditional practices that affect women’s autonomy and ways that the international human rights standards may be used in response to the problems women face).

There are three different types of FGM: clitoridectomy, excision, and infibulation or “pharaonic” circumcision. Clitoridectomy is the removal of the clitoral prepuce or tip of the clitoris. Excision is the removal of the clitoris and the inner lips of the female external genitalia or labia minora. Infibulation or “pharaonic circumcision” is the most extreme of these operations and involves the removal of the clitoris, labia minora and parts of the labia majora. The remaining skin of the labia majora is then scraped to form raw surfaces and stitched together with thorns. The wound is further kept together by binding the woman with pieces of cloth made into a rope, from thigh to ankle for several weeks to enable scar tissue to form, covering the urethra and most of the vagina. A small aperture, the size of the head of a match stick or the tip of a finger, is left open for the flow of urine and menstrual blood. Approximately eighty-five percent of all women who undergo FGM have the clitoridectomy or excision procedure and the remaining fifteen percent have undergone infibulation.

Id. An amendment to the Ghana Criminal Code makes it a second-degree felony with a minimum sentence of three years imprisonment to practice FGM. See *id.* at 1372 n.83.

27. Hernández-Truyol, *supra* note 15, at 673. Hernández-Truyol describes women’s sexual health rights and freedoms as a bundle of “rights critical to women’s existence, well-being and full personhood,” which include “life, health, privacy, family life, economic self-determination, political participation, education, and equality.” *Id.*

28. *Id.* at 637. According to Hernández-Truyol, other inflictions on women “justified or explained by culture and tradition [are]: genital mutilation, female infanticide, bride burning, foot-binding, slavery, face-hiding, wife-beating, honor-killing, forced pregnancy, forced abortion, and multiple, early and closely spaced, child-bearing and birthing, to name but a few.” *Id.* at 635-37.

by society than if they were rooted in another category, such as race.²⁹

2. Female Children's Rights

Another conflict that arises between human rights and cultural and religious rights is abuse of children — particularly affecting female children.³⁰ Historically, women's and children's rights have been linked together based on the presumption that they need "special protection."³¹ However, the connection between women's rights and the rights of the female child has not been significantly developed, even though it is widely accepted that the female child suffers abuses based on gender.³² "Female excision,³³ bride burning,³⁴ female infanticide,³⁵ sex slavery and

29. See *id.* at 637. "[A]lthough until recently culture and tradition were used to justify racial discrimination, including apartheid and slavery." *Id.*

30. See Kirsten M. Backstrom, Note, *The International Human Rights of the Child: Do They Protect the Female Child?*, 30 GEO. WASH. J. INT'L L. & ECON. 541 (1996/1997) (analyzing the problems the female child experiences and examining the various international legal responses to those problems).

31. *Id.*

32. See *id.*

33. Female excision is one form of FGM. See Adjetey, *supra* note 26, at 1361-62.

34. Bride burning is also known as dowry murder.

In the typical dowry dispute (in India), a groom's family will harass a woman they believe has not provided sufficient dowry. This harassment sometimes end[s] in the woman's death, which family members often try to portray as a suicide or kitchen accident. . . . Government figures show a total of 5,377 dowry deaths in 1993 Nonetheless, convictions in dowry death cases are rare [W]hen dowry is not met, if psychological and physical abuse does not drive the women to suicide, they are often victims of bride burning [I]n some parts of India the custom of *sati* still exists where a widow will be burned or buried alive along with the body of her deceased husband.

Hernández-Truyol, *supra* note 15, at 635-36 n.118 (quoting DEPARTMENT OF STATE, 103D CONG., 2D SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1993, at 1230 (Comm. Print 1994)).

35. "Female infanticide is defined as the killing of a child in its infancy because of the child's gender, and includes death through neglect." Backstrom, *supra* note 30, at 544.

[It occurs] in various rural communities where female children are drowned, abandoned, starved, or given such inadequate postnatal care that they die from disease or malnutrition. Although male children are sometimes abandoned by their families, the practice is much less common and usually occurs when the male child has a physical or mental disability. In many cases girls are not killed outright after their birth. Instead, they die more subtly during the first few years of life as a result of cultural practices that discriminate against them and increase their risk of death.

Id.

tourism,³⁶ and servile marriage³⁷ all affect the female child because she is female and a child — both positions of vulnerability in many societies.³⁸ As the female child matures, the state offers her less protection even though she becomes more vulnerable to human rights abuses.³⁹

C. *Protections for Religious and Cultural Practices*

In 1981, the United Nations adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.⁴⁰ It is “regarded throughout the world as articulating the fundamental rights of freedom of religion and belief.”⁴¹ The Declaration compels states to “prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.”⁴² It also provides that “[e]veryone shall have the right to freedom of thought, conscience and religion.”⁴³ However, these freedoms are distinguishable

36. Sexual slavery and tourism is a booming industry. See Eddy Meng, *Mail-Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J.L. REFORM 197, 200 (1994). “The industry is transnational, involving procurers who recruit women from developing countries and marriage agencies in industrialized countries that print catalogs to solicit potential husbands.” *Id.* at 200-01. After selecting a bridal package, the “consumer-husband visits potential brides in their home countries. If a meeting goes well and the parties decide to marry, the consumer-husband will apply for a fiancée visa, which allows his bride to come to the United States but which expires in ninety days unless she marries.” *Id.* at 209. “Many factors cause women in developing countries to become mail-order brides but, [sic] the foremost is poverty . . . Economics, however, is not the only reason for becoming a mail-order bride: social and other embedded cultural practices — sometimes working in conjunction with economic factors — also encourage women to enter into the trade.” *Id.* at 203. “[T]he same countries that export mail-order brides are also the prime destinations for sex tourism.” *Id.* at 224.

37. The practice can be described as follows:

Servile marriage takes place primarily in societies where women have low social status and cultural attitudes perpetuate the belief that a wife is a slave. Servile marriage includes forced marriage — where the female child has no right to refuse the proposed union — as well as the sale of women into marriage by their families.

Backstrom, *supra* note 30, at 549-50.

38. *Id.* at 541-42.

39. See *id.* at 542.

40. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Nov. 25, 1981, G.A. Res. 36/55, U.N. GAOR 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/684 (1981) [hereinafter Declaration to Eliminate Religious Intolerance], reprinted in IAN BROWNLIE, Q.C., BASIC DOCUMENTS ON HUMAN RIGHTS 109 (3d ed. 1992).

41. Sullivan, *supra* note 22, at 488.

42. Declaration to Eliminate Religious Intolerance, art. 4(1).

43. *Id.* art. 1(1).

from the freedom to exercise one's religion or belief, which may be limited in order to safeguard other societal interests.⁴⁴ The Declaration acknowledges restraints set forth in the law and those that are deemed necessary "to protect public safety, order, health or morals or the fundamental rights and freedoms of others."⁴⁵

The Declaration recognizes the right of parents and legal guardians to "organize family life in accordance with their religion or belief."⁴⁶ However, this control over children is restricted where it pertains to practices that are "injurious to [their] physical or mental health or to [their] full development."⁴⁷ This prohibition reflects the concern that children's health or survival may be threatened by some of these practices.⁴⁸

The United Nations also adopted the Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Peoples' Convention) in 1989.⁴⁹ It is considered the "most comprehensive and ambitious approach to protecting indigenous and tribal cultures."⁵⁰ While the Convention does not expressly refer to the "right of self-determination, self-government, or autonomy," it does guarantee "respect for indigenous institutions" by affirming that "indigenous peoples [have] an identity of their own" and that they are more "than groups of individuals sharing some racial or ethnic characteristic" but are "comprised [of] organized societies."⁵¹ However, despite the broad protections offered by the Peoples Convention, these protections are limited.⁵² For instance, indigenous peoples "shall have the right to retain their own customs and institutions" only as long as they "are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights."⁵³

44. See Sullivan, *supra* note 22, at 492-93.

45. Declaration to Eliminate Religious Intolerance, art. 1(3).

46. Sullivan, *supra* note 22, at 512.

47. Declaration to Eliminate Religious Intolerance, art. 5(5)

48. See Sullivan, *supra* note 22, at 513.

49. See Roger J.R. Levesque, *Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights*, 60 BROOK. L. REV. 959, 973 (1994) (referring to the International Labour Organisation Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, International Labour Conference, Draft Report of the Committee on Convention No. 107, App. I, C.C. 107/D.303 (1989), reprinted in 28 I.L.M. 1382 [hereinafter Peoples' Convention]). In his article, Levesque describes the general failure to view children's protection from sexual maltreatment as a basic human rights issue and examines this right against international human rights law.

50. Levesque, *supra* note 49, at 973.

51. *Id.* at 974 n.77.

52. See *id.* at 974.

53. Peoples' Convention, art. 8(2).

D. *Balancing Human Rights with Religious and Cultural Practices*

Human rights documents continually recognize that culture is an area that must be protected; however, culture is not relied on as a basis to diminish these protected rights.⁵⁴ To effectively evaluate a “perceived or claimed cultural conflict between a practice and a universal human right,” the practice should be considered from the perspective of the cultural advocate as well as the human rights advocate.⁵⁵ This same examination should be made in regard to the human rights standard being asserted.⁵⁶ “In this context, particular attention to cultural practices is necessary so that they may be carefully protected from the improper imposition of outsiders’ ideologies.”⁵⁷

When it appears that women are disadvantaged or disproportionately burdened by a cultural practice, the benefits of the cultural practice and the harm of the human rights violation must be weighed against each other.⁵⁸ Questions to consider include: “What is the origin and value of the cultural practice?; What is its level of significance to the culture and within the community?; What is its level of intrusion on a protected individual right?; and How significant is the human rights norm to the international community?”⁵⁹ The inquiry should also consider “the nature of the practice being challenged, who is challenging the practice (i.e., an insider versus an outsider), the challengers’ motives for opposing the practice, and the claimed harmful outcomes of the practice.”⁶⁰

54. See Hernández-Truyol, *supra* note 15, at 662.

55. *Id.* at 672. Hernández-Truyol’s article proposes and develops a theoretical and analytical model to reform the international human rights arena and increase women’s roles in this debate. See *id.* at 667. The article suggests that failure to focus on questions of gender, women, and culture is significant and due largely because women have been excluded from the global communication process. See *id.* at 669. Hernández-Truyol proposes three inquires: (1) “The Gender Question — Are there any gender implications of the rules or practices that otherwise appear neutral or objective? . . . [2] The Women’s Question — What will the implications of the rule or practice, as interpreted and enforced, be on the real lives of women, and how will women be disadvantaged? . . . [and 3] “The Culture Question — What are the cultural considerations driving the practices and rules?” *Id.* at 670-72.

56. See *id.* at 672.

57. *Id.*

58. See *id.*

59. *Id.*

60. *Id.* at 672-73.

III. BACKGROUND ON THE TROKOSI PRACTICE

A. *The Trokosi practice*

The girls are known as Trokosi, or "slaves of the gods."⁶¹ "Tro" means god and 'Kosi' can be translated as virgin, slave or wife.⁶² Reports indicate that there are "at least 4,000 girls and women bound to various shrines in the Trokosi system" in Ghana.⁶³ Additionally, there are an estimated 16,000 children of the slaves.⁶⁴ In some places more than 2,000 girls and women are enslaved to a single shrine.⁶⁵

Trokosi is a religious and cultural practice concentrated primarily in the Volta region of Ghana; it is found among the Ada and Ewe (pronounced

61. Howard French, *Girls Suffer for Sins of Fathers*, GUARDIAN, Jan. 30, 1997, available in 1997 WL 2363683. Trokosi is also spelled "Trocosi."

62. Emma Brooker, *Slaves of the Fetish*, INDEPENDENT, June 16, 1996, at 12, available in LEXIS, News Library, Non-US News File.

63. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1997, at 141 (1998) [hereinafter GHANA COUNTRY REPORT]. "Ghana is located on West Africa's Gulf of Guinea only a few degrees north of the Equator" and "became an independent state on March 6, 1957, when the United Kingdom relinquished its control over the Colony of the Gold Coast and Ashanti, the Northern Territories Protectorate, and British Togoland" after more than 100 years. U.S. Dep't of State, *Background Notes: Ghana*, Feb. 1998 (visited Oct. 9, 1998) <http://www.state.gov/www/background_notes/ghana_0298_bgn.html> [hereinafter *Ghana Background Notes*]. "The Constitution that established the Fourth Republic" of Ghana furnishes "a basic charter for republican democratic government" based on the English and American models. *Id.* The Constitution declares Ghana to be a "unitary republic with sovereignty residing in the Ghanaian people" and "calls for a system of checks and balances, with power shared between a president, a unicameral parliament, a council of state, and an independent judiciary." *Id.* "Ghana is active in the United Nations and many of its specialized agencies (including the World Trade Organization), the Nonaligned Movement, the Organization of African Unity (OAU), and the Economic Community of West African States." *Id.* "Ghana maintains friendly relations with all states, regardless of ideology." *Id.* "The United States has enjoyed good relations with Ghana at the nonofficial, personal level since Ghana's independence. Thousands of Ghanaians have been educated in the United States. Close relations are maintained between educational and scientific institutions, and cultural links, particularly between Ghanaians and African-Americans, are strong." *Id.* "After a period of strained relations in the mid-1980s, U.S.-Ghanaian official relations are stronger than at any other time in recent memory." *Id.* Among other things, "Ghanaian parliamentarians and other government officials have . . . acquainted themselves with U.S. Congressional and state legislative practices." Also, "[t]he U.S. and Ghanaian militaries have cooperated in numerous joint training exercises," and "[t]he Office of the President of Ghana [has] worked closely with the U.S. Embassy in Accra to establish an American Chamber of Commerce to continue to develop closer economic ties in the private sector." *Id.*

64. See Vincent t'Sas, *Ghana's Fetish Priests Free Slaves*, REUTERS WORLD SERVICE, Apr. 1, 1997, available in LEXIS, News Library, Non-US News File.

65. See *Dateline*, *supra* note 7.

Evay) ethnic groups.⁶⁶ By most western standards, Trokosi “is an especially severe abuse and a flagrant violation of children’s and women’s rights.”⁶⁷ The Trokosi shrines are usually found in “remote, inaccessible places”⁶⁸ among “the poorest and least developed parts”⁶⁹ of Ghana. The shrine priests are believed to be highly influential with the gods because they are

66. See Mawusi Afele, *Fetish Priests in Ghana Under Attack for Enslaving Young Girls*, DEUTSCHE PRESSE-AGENTUR, Jan. 21, 1996, available in LEXIS, News Library, Non-US News File. “Ethnically, Ghana is divided into small groups speaking more than 50 languages and dialects.” *Ghana Background Notes*, *supra* note 63. “Ghana’s principal ethnic groups are the Akans (Twi- and Fante-speaking), the Guans, Ewes, Dagombas, Gas, Gonjas, Dagabas, Walas, and Frafras.” Ghana Embassy, *Ghana: The New Gateway to Africa* (visited Sept. 4, 1998) <<http://www.ghana.gov/profile/index.html>>. The major tribal languages are Twi, Fante, Ga, Hausa, Dagbani, Ewe and Nzema. See *id.* In nearly all cases, a tribe and its language have the same name. See D.E.K. KRAMPAH, *LIFE IN GHANA I* (1977). English is Ghana’s official and commercial language and is taught in all schools. See *Ghana Background Notes*, *supra* note 63. “[I]n the absence of a native lingua franca, [English] is effectively the only means of communication between educated members of the various tribes.” KRAMPAH, *supra*, at 1.

67. GHANA COUNTRY REPORT, *supra* note 63, at 141.

68. Brooker, *supra* note 62. “The village [of Dofor] sits at the end of an isolated finger of land which points into Lake Volta and gets cut off for three months during the rainy season.” *Id.* While Accra, Ghana’s capital, is “only two hours away by road . . . Dofor has no electricity, no running water and only one vehicle — the village tractor.” *Id.*

69. *Id.* Ghana is primarily agricultural, “with a majority of its workers engaged in farming.” *Ghana Background Notes*, *supra* note 63. “About 70% of Ghana’s population live in the countryside and of the remainder only a fraction earn their living outside rural occupations.” KRAMPAH, *supra* note 66, at 4. Two-thirds of Ghana’s export revenues come from cash crops, primarily cocoa and cocoa products. See *Ghana Background Notes*, *supra* note 63. Other traditional occupations include:

weaving, basketry . . . pottery, lumbering, gold-, silver-, and black-smithing . . . oil-making from coconut and oil-palm fruits, carving in wood and ivory, shoe-making and cobbling, hairdressing and barbering, carpentering, tailoring and dressmaking, retail-trading, hawking of finished goods, food-selling and hawking, fishing, fish-mongering, palm-wine tapping and gin-distilling, cattle-, sheep-, goat- and poultry-rearing, charcoal burning, catering . . . cloth-dyeing, hair-dyeing, tanning, leatherwork-making, fore-skin surgery and trade-vending.

KRAMPAH, *supra* note 66, at 4-5. “By West African standards, Ghana has a diverse and rich resource base.” *Ghana Background Notes*, *supra* note 63. Ghana’s resource base includes: minerals, “such as gold, diamonds, manganese, bauxite, iron ore and various clay an salt deposits[;] [e]xtensive, rich forests with a wide range of fine tropical hardwoods[;] [a] wide variety of agricultural products and rich fishing resources[;] [u]nique tourist attractions.” Ghana Embassy, *supra* note 66. The Ghanaian government places great emphasis on tourism support and development because tourism is “one of Ghana’s largest foreign income earners (ranking third in 1997).” *Ghana Background Notes*, *supra* note 63. The tourism industry has grown in recent years as Ghana has become “a popular destination for African-Americans” tracing their cultural heritage. t’Sas, *supra* note 64. Ghana “helped feed the transatlantic slave trade that uprooted millions of Africans and shipped them to the Americas.” *Id.*

able to communicate with them.⁷⁰ After the current system of chieftaincy emerged,⁷¹ some of the traditional priests' powers diminished.⁷² However, the priests "remain the most revered, feared and powerful figures in many rural communities."⁷³

70. See Brooker, *supra* note 62. "Senior members of Ghana's armed forces, police service and a handful of government ministers are said to visit the shrines seeking promotion, protection and success in their operations." *Id.* Jerry Rawlings, Ghana's current president, himself an Ewe, "has spoken of Trokosi as an important part of Ghana's cultural heritage." *Id.* However, President Rawlings has been commended recently for his efforts in trying to abolish Trokosi. See Peter Bailey, *Mission Possible*, TORONTO STAR, Apr. 5, 1997, at L18, available in LEXIS, News Library, Non-US News File.

71. "Chieftaincy is the system of traditional rule. A chief is the embodiment of the collective aspirations of his subjects and their culture." KRAMPAH, *supra* note 66, at 2.

[I]n ancient times the various ethnic, tribal or clan groups were organised each in their separate areas. Each tribe had its own chief or ruler whose power was absolute in his own domain. Under him came divisional chiefs who ruled a section of the tribal area Each division consisted of a number of towns and villages.

Although the tribal chief was absolute in his own area, his rule was by no means despotic, for he could not [make] any decision against the advice of his council who represented the masses of his subjects. In this way the ordinary citizen was protected against the dangers of misrule

. . . .

Chieftaincy has never been tampered with except for the statutory right of the government to gazette, or approve, the enstoolment or enskinment, and destoolment or deskinning of a chief. (The terms enstoolment, destoolment, enskinment, derive from the fact that in the central and southern areas of Ghana, chiefs sit on wooden stools, while in the northern areas the chiefs sit on animal skins)

. . . [M]uch has been done by successive governments since [Ghana's] independence in 1957 to safeguard and enhance chieftaincy; for example, by establishing Regional Houses of Chiefs made up of all the paramount chiefs in the region, and a National House of Chiefs, attended by elected representatives from the Regional Houses of Chiefs. A Chieftaincy Secretariat was set up to deal with matters concerning destoolment, succession, stool-lands, disputes, etc.

. . . In theory, no law passed by the government or by-law passed by the local council would be obeyed if the chiefs disapproved of it. In practice this has never happened.

Id. at 3.

72. See Brooker, *supra* note 62.

73. *Id.* While there is no rigid class system akin to those existing in some countries of the West, Ghanaian society is not classless. See KRAMPAH, *supra* note 66, at 1. "Class differences in Ghana spring first from traditional status; next, from social status; and last, from wealth." *Id.* The traditional status system recognizes the king or the chief first, "then the clan or family heads, followed by the captains of the traditional militia and various civil office holders." *Id.* These positions "take precedence, in order of authority and dignity, over the general citizenry," although they are chosen by the council of elders. *Id.* These families are considered sovereign and sacrosanct. See *id.* This is by far the most exclusive class and

Trokosi is a belief⁷⁴ “that things do not happen without a cause”⁷⁵ and evolved from the same belief structure as voodoo.⁷⁶ Trokosi “is a system in which a young girl, usually under the age of 10,⁷⁷ is made a slave to a fetish

they “enjoy the highest respect in the locality.” *Id.* This exclusive class “is born of tradition; its roots lie in the inviolate past and no-one can change it.” *Id.* “No effort by a single individual can alter his traditional status, neither wealth nor learning nor alliance of any kind.” *Id.* Thus, every person “knows his rightful place in society and keeps to it.” *Id.* The other elite classes, based on social status and wealth, are not as rigidly set as the traditional elite. “One can easily work one’s way up into one or the other or even both, and one can as easily fall from them.” *Id.* First, is the social elite, “made up of highly educated people like politicians, public servants, professionals and people of similar standing and calibre.” *Id.* The other elite of wealth is the smallest. *See id.* at 2. “There are very few rich people in Ghana, but quite a large number of well-to-do. They are mostly big cocoa-farmers, traders and businessmen.” *Id.*

74. Animism “is the belief that every object of nature, both animate and inanimate is the abode of a soul or disembodied spirit.” KRAMPAH, *supra* note 66, at 24. “The traditional Ghanaian recognises a hierarchy of spirits presided over by God (Onyankopon or Onyame).” *Id.* After God comes “his wife the Earth Goddess (Asaase Efua),” then “the nature-spirits-gods (abosom) and sprites,” and finally “the ancestor spirits (nananom).” *Id.* There are “600 or more lesser gods, often associated with natural phenomena like thunder, mountains, rivers and lakes.” Brooker, *supra* note 62. These spirits are believed to participate directly in the affairs of humanity and mediate on humanity’s behalf “giving protection, adjudicating supernaturally in criminal cases, and punishing the guilty.” *Id.* The spirits are thought to be “most helpful when properly ministered to, but are very vengeful when offended.” KRAMPAH, *supra* note 66, at 24. The point is that when a deity helps someone, it must be rewarded. *See* Emile F. Short, Commissioner for Human Rights and Administrative Justice in Ghana, Trokosi — Legal or Illegal, Address before Ghanaian Committee (date unknown) (on file with the author). The reward shows appreciation and gratitude for the good fortune that the god has manifested. *See id.* Thus, animal sacrifices and rewards such as cloth, drinks, and money were presented to the gods. *See id.* “The traditional Ghanaian[,] therefore, strives to do right by the hierarchy of spirits and by society.” KRAMPAH, *supra* note 66, at 24. Ghanaians are “naturally moralistic” in life, their folklore consists of “stories which teach that evil follows upon evil and good comes when one does good.” *Id.* Ghanaians try “to remain in harmony with all forces about [them], material and immaterial.” *Id.* Therefore, every evil is “the result of disharmony,” and Ghanaians strive “to restore the harmony through expiation and sacrifice.” *Id.*

75. Short, *supra* note 74.

76. *See* Brooker, *supra* note 62. “Ghana is a secular state,” where “a wide variety of religions are practised.” *See* KRAMPAH, *supra* note 66, at 24. The three major religions are Islam, Christianity, and Animism. *See id.* An estimated 15% of Ghana’s population are Islamic, 62% Christians, and the remainder (23%) hold traditional beliefs of Animism. *See* JOHN S. POBEE, RELIGION AND POLITICS IN GHANA 12 (1991).

77. Some reports state that children as young as two have been given to a shrine for crimes committed by relatives. *See* Brooker, *supra* note 62. Other reports indicate girls as young as four, five, and six have been given to a shrine. *See* Bailey, *supra* note 70; Afele, *supra* note 66; t’Sas, *supra* note 64.

shrine for offenses allegedly committed by a member of the girl's family,"⁷⁸ like stealing⁷⁹ or improper sexual relations.⁸⁰ Originally, the girls were killed as a sacrifice to appease angry gods⁸¹ or "to ensure success in war."⁸² Then, the priests agreed to keep the girls as slaves "mainly to work the shrine's land, do the priest's housekeeping and share his bed."⁸³

The practice of Trokosi began as a system to "search for truth and knowledge" but now serves primarily as a device to punish wrongdoers.⁸⁴

78. GHANA COUNTRY REPORT, *supra* note 63, at 141. "In a majority of the tribal or ethnic groups in Ghana, the family is made up of brothers, sisters, cousins, and aunts on the maternal side together with their children." KRAMPAH, *supra* note 66, at 10. In a few areas, the basis of the family is the paternal line. *See id.* The souls of the departed, called "ancestral spirits," are also included in the family. *See id.* "The Ghanaian family is a large group of people with a common heritage, and common sentiments and aspirations. The average Ghanaian is never an isolated individual, even if he has neither wife, children nor home of his own." *Id.* The family usually lives in a neighborhood formed by a collection of their houses. *See id.* Generally, Ghanaians build their own homes by their own means. *See id.* at 12. They use inexpensive materials like swish or earth, "particularly in the rural areas where no attention is given to planning or environmental specifications." *Id.* "The typical Ghanaian house is a single storied rectangular or square building with an open central yard or compound around which all the rooms are arranged. The roof is usually a corrugated iron or aluminum sheets." *Id.* In certain areas, northern Ghana in particular, the rooms form a circle around the central yard and have thatched roofs. *See id.* Although earth is used in building the homes, the walls are usually plastered and painted, and the floors are usually cemented. *See id.* Typically, Ghanaian homes have a kitchen, bathroom, storage area, sitting room, and five to seven verandahs which are open or are enclosed by a short wall. *See id.* "The verandah is an essential part of the Ghanaian house where many household activities are carried on." *Id.* The husband and wife have separate bedrooms. *See id.* The girls live in one room until reaching puberty, when they leave the group and have their own rooms. *See id.* "The grown-up boys may each have their own room, or they may share a single room by themselves or with the younger boys." *Id.*

79. *See* GHANA COUNTRY REPORT, *supra* note 63, at 141.

80. *See* Kiley, *supra* note 5.

81. *See* t'Sas, *supra* note 64. For instance, some of the girls were fed to crocodiles. *See id.*

82. Kiley, *supra* note 5.

83. t'Sas, *supra* note 64.

84. *See* Short, *supra* note 74.

In the past, the essence of the deity was to protect the community. The fundamental problems and questions of everyday life are addressed to this deity

. . . . These days vestal virgins initiated into shrines are mostly cases where someone in the family might have committed a crime.

Whenever a crime was committed, the offended party became angry and approached a priest to look for the offender or wrongdoer. This search is done through the invocation of the gods. The aggrieved person demanded of the priest that his deity should punish the offender[']s family. After some time there were alarming calamities such as large death tolls in the family of the offender.

Ghanaians believe "the practice stems from a philosophy that sees justice and punishment as communal; an individual with no connection to a crime may be punished to spare others. Similarly, when one person's offence goes unpunished, vengeance may be wreaked upon the entire community."⁸⁵ The young girls "are offered at a shrine after a run of bad luck, disease, or a series of deaths in a clan"⁸⁶ or to prevent similar events in the future.⁸⁷

As custom demanded, the suffering family will conduct a search to find out the cause of this family tragedy Eventually the family consulted the shrine whose god had been involved and acknowledged the offence.

The priest would inform them of the necessary ritual for reparation. Central among the items demanded is a virgin girl who has not at the time menstruated to serve as a slave in the shrine. The period of servitude for the vestal virgin varies from place to place and could be from three (3) years to life.

Id.

85. French, *supra* note 61. The extended family system is the basis for a variety of features unique to the Ghanaian community, including "communal labor, collective liability to family or community commitments, [and] collective rights to opportunities or assets in the family or community." KRAMPAH, *supra* note 66, at 10. "The Ghanaian sees responsibility and rights as things that are to be collectively shared. He sacrifices personal ease and comfort to the collective wellbeing of the social unit of which he is a member, and the other man's joys and sorrows are equally his." *Id.* at 28-29.

A very special feature of Ghanaian life, deriving from the traditionally communalist concepts of rights and responsibility, is the idea of communal labour. The chief of a town or village and his elders may, in the interest of local development, decide upon a particular project. This project may involve manual labour and/or money. Once the decision has been taken by the people through their representatives and rulers, it is assumed that acceptance is unanimous

On the day chosen for work every adult citizen goes to the place and led by the chief, his elders and street or neighbourhood leaders, begins the work. Most often the work involves only the men, in which case the women are expected to provide free food

. . . .

If the project requires money, the sum involved is divided between men and women in the community; women pay half as much as men. The gonggong man announces the amount due and neighbourhood leaders or family heads are made responsible for collection. These are what are called in Ghanaian newspapers "voluntary contributions", and those who refuse to pay are renegades and are refused the right to share in the benefits of the completed project

Communal labour has remained and will remain a way of getting things done by local resources of manpower and materials and supplementing government efforts in the rural areas.

Id. at 4.

86. Kiley, *supra* note 5.

87. See CNN Newsroom/Worldview (CNN television broadcast, Apr. 23, 1997) [hereinafter CNN].

Traditionally, the offerings took the form of cattle, money, and liquor, but over time the practice changed from offering animals to offering girls.⁸⁸ The practice changed due to the priests' belief that only virgins could appease the gods.⁸⁹ The change may also have been economically based. Long ago, families started giving their daughters to the shrines because a girl was cheaper than a cow and more likely to please the priest.⁹⁰

The tradition requires that the girls begin their bondage as virgins.⁹¹ Once at the shrine, the priest is the only one who can decide when the girls have atoned for the sin and free them.⁹² "They are expected to stay with priests from the age of about eight up to 15 and sometimes much longer."⁹³ Sometimes, even lifelong servitude may not settle the debt to the gods.⁹⁴ Occasionally, the family must offer another female virgin if the Trokosi dies while at the shrine.⁹⁵ If the Trokosi is not replaced, it is alleged that the refusal "will lead to a recurrence of calamities in the family of the wrongdoer."⁹⁶ It can go on for generations.⁹⁷ Different girls pay for "the same offense, from generation to generation."⁹⁸ Today, there are some women bound to shrines who "represent the fifth successive generation to pay for a [single] crime."⁹⁹

Most Trokosi "are condemned to a lifetime of hard labour, sexual servitude and perpetual childbearing at the service of the village priest."¹⁰⁰ The girls work domestically for the priest by cooking, cleaning, and working the fields.¹⁰¹ The priests get all of the profits,¹⁰² but they are not obligated to provide "food, medical care or education for the girls or for the children

88. See *Dateline*, *supra* note 7. "Trokosi has undergone some transformation over the years and so with time reward of human beings became the norm. This reward of human beings has now become central to the Trokosi system." Short, *supra* note 74.

89. See Bailey, *supra* note 70.

90. See *Dateline*, *supra* note 7.

91. See French, *supra* note 61. The tradition of giving virgin girls to the shrine dates back at least as far as the 17th century. See *id.*

92. See *id.*

93. Kiley, *supra* note 5.

94. See *60 Minutes: Trokosi* (CBS television broadcast, Nov. 30, 1997) [hereinafter *60 Minutes*].

95. See Brooker, *supra* note 62.

96. Short, *supra* note 74.

97. See *Dateline*, *supra* note 7.

98. *60 Minutes*, *supra* note 94.

99. Brooker, *supra* note 62.

100. *Id.*

101. See *Dateline*, *supra* note 7. "Some [priests] have as many as 40 . . . trokosi . . . under their control." Bailey, *supra* note 70.

102. See Brooker, *supra* note 62.

they bear."¹⁰³ The families of the Trokosi are expected to provide food for the girls and their children and, eventually, to pay for the Trokosi's burial.¹⁰⁴ "Although the girls' families must provide for their needs . . . most are unable to do so"¹⁰⁵ or simply ignore the obligation.¹⁰⁶ In theory, the Trokosi marry the gods, but because the priest stands in place of the gods, the girls are his wives.¹⁰⁷ Unlike other wives in Ghana, the Trokosi have no rights, no assets, and cannot leave when they choose.

Trokosi are the sexual property of the priests, so by night, they are sex slaves.¹⁰⁸ "When a fetish slave starts menstruating, she undergoes an initiation ceremony after which the priest, or as the custom would have it, the god through the human channel of the priest, can have sex with her whenever he wants."¹⁰⁹ During this initiation ceremony, "the girl is sent naked into a dark room where she is told that 'the fetish' will have sex with her and [she] should therefore not resist. . . . [She is] then sexually assaulted"¹¹⁰

The Trokosi generally have "two or three children by their priest masters,"¹¹¹ and because they usually do not have access to education, they are usually unable to support themselves or their children when released from their enslavement, which ranges between three years to life.¹¹² Even if released, generally in poor health, with no family ties, no education, no skills or hope of marriage, "[m]any former slaves have to remain with the priests after serving the time agreed by their families because they are cut off from any other means of survival."¹¹³ Others remain after their release "because they can't overcome their fear of the priests who once ran their lives."¹¹⁴

If the Trokosi manage to run away, the outside world is not much better.¹¹⁵ After the girls have been branded as Trokosi slaves, their families

103. Bailey, *supra* note 70. The Trokosi are completely responsible for the children. See Telephone Interview with Emile Short, Commissioner of Human Rights and Administrative Justice for Ghana (Nov. 4, 1998).

104. See Brooker, *supra* note 62.

105. GHANA COUNTRY REPORT, *supra* note 63, at 141.

106. See Short, *supra* note 74.

107. See *60 Minutes*, *supra* note 94.

108. See *Dateline*, *supra* note 7.

109. Brooker, *supra* note 62. According to Mr. Aklidopko, a Trokosi priest, "[h]aving sex with a woman depends on love and affection. If the woman is not willing, you can't force it." *60 Minutes*, *supra* note 94.

110. Afele, *supra* note 66. Older women are sometimes kicked out of the shrines once they have lost their physical appeal. See *id.*

111. Kiley, *supra* note 5.

112. See Short, *supra* note 74.

113. Kiley, *supra* note 5.

114. Bailey, *supra* note 70.

115. See *60 Minutes*, *supra* note 94.

refuse to take them back, and they may become outcasts.¹¹⁶ "Their families wouldn't take them back even if I begged them," says Togbe Charmla, a fetish priest.¹¹⁷ "They're too afraid of angering the fetish."¹¹⁸

Gradually, Ghanaians and even some priests are realizing that the Trokosi system violates human rights.¹¹⁹ Some of Ghana's "more enlightened fetish priests have agreed to try to prevent families from handing over their daughters to atone for sins they fear they may have committed" and to convince them to offer a goat instead.¹²⁰ However, not all priests are so agreeable.¹²¹ "Despite the outcry against the dehumanising practice, some fetish priests turn a deaf ear to calls to abolish it."¹²² Many others "have flatly refused to cooperate."¹²³ The priests view Trokosi as a beneficial practice because it "deters others from committing crimes."¹²⁴ Some priests fear that abolition of the Trokosi system would destroy their religion.¹²⁵ Other priests have warned that if they can no longer receive women and girls as offerings to the gods, they cannot be held responsible for the "dire

116. *See id.* In addition to the social stigma, some shrines physically mark the Trokosi. *See Brooker, supra* note 62. However, there is some evidence that physical branding is not a widespread practice and that the Trokosi are not perceived as outcasts. *See Telephone Interview with Emile Short, supra* note 103.

117. Brooker, *supra* note 62. Charmla, who is also the headmaster in his village school, had a Christian upbringing, but converted to the traditional religion of the region after he began experiencing vision problems while in school to get his teaching certificate. *See id.* When the doctors told him nothing was wrong with his eyes, he realized "the fetish had entered [him] and was summoning [him] to become a priest." *Id.*

118. *Id.*

119. *See French, supra* note 61.

120. Kiley, *supra* note 5.

121. Pastor Mark Wisdom, a Ghanaian Baptist minister, has spent the last 15 years working to abolish Trokosi. *See Brooker, supra* note 62. "By 1982, [Wisdom] had persuaded all the fetish priests and shrine-owners in the region to gather for a big meeting at which they agreed the practice should be abolished." *Id.* The priests even agreed to perform a ceremony releasing the Trokosi. *See id.* However, one priest convinced the group to postpone the ceremony for two weeks. *See id.* If Wisdom was alive at the end of that time, "it would be a sign that the fetish gods were happy to let the women and girls go." *Id.* If he died, the tradition would continue. *See id.* Recalling his two week spiritual battle, Wisdom said, "The priests tried to kill me by all sorts of means. I had a boy who cooked for me. They gave him a fish hook attached to a thread and made him put it in my food. Fortunately I did not swallow it." *Id.* Every night for two weeks, Wisdom's home "reverberated with thuds and bangs." *Id.* Wisdom "wrestled with evil spirits sent by the fetish priests. 'Witches and wizards came to hypnotise and attack me,'" he said. *Id.* "They vowed to kill me at all costs." *Id.* In the end, although he survived, the priests decided to keep the Trokosi. *See id.*

122. Afele, *supra* note 66.

123. *CNN, supra* note 87.

124. *60 Minutes, supra* note 94. *See also Afele, supra* note 66.

125. *See Afele, supra* note 66. Leaders of the campaign against Trokosi, some of whom are affiliated with other religions, say their movement "is not aimed at asserting Christianity, but is rather a fight against human rights abuses." *Id.*

consequences to the community."¹²⁶ When confronted and asked what it would take to stop the enslavement of virgin girls, one priest replied that Trokosi was "the price of human sinfulness."¹²⁷ "If stealing stops, then my marrying will stop," he said, "[b]ut if the people continue to do wrong, then the women will keep coming."¹²⁸

B. *The Trokosi*

Those who have spoken with the Trokosi report the girls ache with a desire to be free.¹²⁹ Most of the girls do not play, chat or even smile, but are somber, weary, and subdued.¹³⁰ Some speak of committing suicide by taking poison.¹³¹

Abla Kotor's family took her to a shrine to atone for the rape her father committed against a niece (Abla's mother) several years before.¹³² Juliette,

126. *CNN, supra* note 87. The fetish priests say the war gods need virgin 'brides' and that they cannot change the gods' will. Bailey, *supra* note 70. One priest stated that the young girls "must be at the shrines because they perform certain chores which boys cannot do." Afele, *supra* note 66. The priests do not think force can be used to stop the practice, but some have expressed their openness to alternative approaches. *See id.* As one priest suggested, "[I]f we are educated to accept that we are wrong, we can think of a solution." *Id.*

127. *Dateline, supra* note 7.

128. *Id.*

129. *See id.*

130. *See* Brooker, *supra* note 62.

131. *See Dateline, supra* note 7.

132. *See* French, *supra* note 61.

Aged just 12, with a shy smile, Abla Kotor has begun a life of servitude and atonement for a crime she did not commit. For now her duties mostly involve sweeping the courtyard of a local fetish priest in . . . south-east Ghana's traditional juju religion. But her responsibilities will grow to include providing sexual favours to the priest.

Miss Kotor has little idea why she was sent to the shrine in Tefle by her family four months ago.

"My father brought me here, but he never explained why," she said in halting English and her native Ewe. "I was told that someone had done something bad in my family, but I was not told what it was."

. . . .

In exchange for a bottle of schnapps, the priest Miss Kotor serves as one of seven trokosi "wives" explained that Miss Kotor has been given to him to atone for a rape.

Not just any rape, he explained, with Miss Kotor listening silently, perhaps hearing the story for the first time, but the sex her father forced a young niece to engage in years ago. That act resulted in Miss Kotor's birth, the priest said.

He explained it in terms of his religion. "To you this may seem like a miscarriage of justice, but the girl will have to atone. It is the spirit, our fetish, who has made things work this way, and only he can explain."

along with twenty cows and ten crates of brandy, was expected to go to a shrine to atone for her father's crime of stealing a tape recorder.¹³³ Ten year-old Mewornovi Kokou was given to the shrine for a crime committed so long ago that no one remembers what the crime was or who did it.¹³⁴ Julie Dorbadzi was six when her family surrendered her at a shrine to atone

Id.

133. See *Dateline*, *supra* note 7.

DENNIS MURPHY: [Juliette] was only days away from being turned over to a priest for a crime her father Joshua had committed years ago. He'd stolen a tape recorder, and now the shrine had set a price to appease the gods: 20 cows, 10 crates of brandy, and Juliette.

KATE BLUETT: And she suffered nightmares, waking up screaming in the night begging her mother to help her out and not let her go to the shrine.

MURPHY: Juliette's mother, Shee-rah, hid her daughter away in panic. Her father went to bargain for Juliette's freedom with the priest and with the village elders. . . . The priest and Juliette's father bargained and threw shells, the god's vote on what the price of sin was to be.

[Joshua begged to get the price of atonement reduced.]

MURPHY: For hours the negotiations droned on.

. . . .

MURPHY: [Soon] the filmmakers realized that Juliette wasn't even up for discussion.

. . . .

MURPHY: During the entire negotiation, neither the father nor the priests asked about Juliette. In the end, the father's debt . . . was reduced [to 15 cows, 2 crates of brandy and Juliette.]

. . . .

MURPHY: In the end, the priests reversed themselves and said the family could keep Juliette for \$2,500, an impossibly high fine, more than ten years of earnings for [Joshua].

. . . .

STONE PHILLIPS: The filmmakers contacted a human rights organization that paid the fee for Juliette and won her freedom. Today Juliette is back in school and hopes to go to college.

Id.

134. See *Brooker*, *supra* note 62.

Mewornovi Koku has a delicate, solemn face and an air of resignation which makes her seem more like 75 than 10.

. . . .

Mewornovi's family had to give a virgin daughter to the shrine to atone for an ancestral crime, as required by the traditions [of their religion]. The original offence was committed so long ago that nobody can remember what it was, let alone who did it. "Human memory may be frail but the gods do not forget," says Togbe Charmla, . . . priest of the shrine . . . where Mewornovi will remain a virtual prisoner until she dies. "The fetish demands it," he explains. "If the family withheld her they would be cursed and die."

Id.

for a theft her grandfather committed.¹³⁵ Mercy Sanahee was in servitude for seventeen years and was the second in her family to be sent into slavery because her great-grandmother stole an earring two generations ago.¹³⁶ Grace Duga Cabanu was sent to the shrine at age eighteen, "not to atone for a criminal offense but as an offering to the gods to improve the harvests, an arrangement existing in her family since the early 19th century."¹³⁷ Yotia Dorgbadzi was twelve years old when she was taken to the shrine where she served for eighteen years.¹³⁸ She was released when she was no longer "attractive."¹³⁹

IV. INTERNATIONAL CONVENTIONS PROHIBIT TROKOSI

A. Overview

Protection from sexual abuse is recognized as a basic human right by the international community.¹⁴⁰ Several programs, conventions, and declarations have been signed, ratified and enacted that could be relied on as a foundation to eliminate the practice of Trokosi. However, none appear to have an appropriate enforcement mechanism to bring violators to justice. "While the international human rights system has given rise to an ever-increasing number of standards, supervisory organs, reporting processes, complaint procedures, and special rapporteurs, it still lacks effective

135. *See id.*

Julie Dorgbadzi was six when her family abandoned her at . . . [a] shrine, where she grew up with five other Trokosi.

Julie was paying for [a theft committed] by a great-grandfather. She was the fourth successive virgin sent by her family to atone for that crime. "By the time I was seven, the priest wanted to have sex with me, but I resisted until I was 12. I gave in because if you didn't sleep with him, the priest would beat you."

. . . Now 23, she recently ran away, . . . but [the two-inch scar] on her left cheek still marks her out as a Trokosi. "People notice it and, if they're from round [sic] here, they know what it means. I can tell some of them are afraid of me."

Id.

136. *See CNN, supra* note 87. "The priest first forced himself on her when she was 11 years old." *60 Minutes, supra* note 94. After years of servitude, Mercy ran away, but found assimilation back into society very hard. *See id.* "People ran away from me. Even my relatives turned their backs." *Id.* Interestingly enough, the priest that Mercy served is a government official with the Ministry of Health. *See id.* But "[b]y night, he's a husband to 10 slaves, who've borne him 60 children." *Id.*

137. *CNN, supra* note 87.

138. *See Afele, supra* note 66.

139. *See id.*

140. *See Levesque, supra* note 49, at 996.

implementation and enforcement mechanisms."¹⁴¹

B. *The African Charter on the Rights and Welfare of the Child*

The African Member States of the Organization of African Unity (OAU) adopted the African Charter on the Rights and Welfare of the Child (African Children's Charter) in 1990.¹⁴² Ghana is a member state of the OAU.¹⁴³ The purpose of the African Children's Charter is to balance human rights and culture.¹⁴⁴ It directs member states to eliminate customs and practices that are detrimental to children.¹⁴⁵ In particular, member states are to abolish "(a) those customs and practices prejudicial to the health or life of the child, and (b) those customs and practices discriminatory to the child on the grounds of sex or other status."¹⁴⁶

The Preamble recognizes the importance of human rights and sets forth the special safeguards and care needed for African children due to unique factors of "socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger."¹⁴⁷ Among the rights outlined in the Charter include protection against child abuse and torture,¹⁴⁸ protection against harmful social and

141. Justice Elizabeth Evatt, *Ours by Right: Women's Rights as Human Rights*, 7 HARV. HUM. RTS. J. 295, 299 (1994). Additionally, some see the system as "burdened by lack of coordination and resources, overlapping mandates, excessive use of reservations, and lengthy delays." *Id.*

142. African Charter on the Rights and Welfare of the Child, Organization of African Unity, Doc. CAB/LEG.24.9/49 (1990), reprinted in AFRICAN NETWORK FOR THE PREVENTION AND PROTECTION AGAINST CHILD ABUSE AND NEGLECT, CHARTER ON THE RIGHTS AND WELFARE OF THE AFRICAN CHILD 12 (1993) [hereinafter African Children's Charter].

143. See *Ghana Background Notes*, supra note 63.

144. See Hernández-Truyol, supra note 15, at 662.

145. See *id.*

146. *Id.*

147. African Children's Charter, pmbl.

148. See *id.* art. 16. Article 16 requires state parties to "take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse." *Id.*

cultural practices,¹⁴⁹ and protection against sexual exploitation.¹⁵⁰

The Charter establishes the Committee on the Rights and Welfare of the Child (Children's Rights Committee)¹⁵¹ whose principle mandate includes: (a) promoting and protecting the rights set forth in the Charter; (b) monitoring implementation and ensuring protection of the rights outlined in the Charter; and (c) interpreting provisions of the Charter at the request of a party.¹⁵² State parties are required to submit reports to the Committee on the steps taken to ensure the enjoyment of these rights two years after becoming a party and every three years thereafter.¹⁵³ The Committee may also use any appropriate method of investigation on matters within the Charter's jurisdiction.¹⁵⁴

Trokosi violates the Charter because it subjects children to degrading treatment and sexual abuse. Additionally, as a cultural practice, it is harmful to the welfare, dignity, and normal growth and development of the girls enslaved to the priests. Moreover, Trokosi discriminates on the basis of sex because only virgin girls are offered to appease the gods. While the declarations in the Charter are laudable, the obligations on the state parties to abide by its provisions are not binding. The Charter states that "[a]ny custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged."¹⁵⁵ Although discouraging inconsistent practices is important, it falls far short of protecting those affected by the Trokosi system. The Charter fails to provide for an effective enforcement mechanism to ensure that the state parties give full effect to the Charter. There is no mechanism for a member state or an aggrieved individual to bring a state party before a tribunal to account for violations. Similarly, it fails to make the Charter directly enforceable in the courts of the ratifying countries, instead relying on the domestic laws of each nation to

149. *See id.* art. 21. Article 21 of the Charter requires state parties to "take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child." *Id.* Article 21 focuses in particular on "(a) those customs and practices prejudicial to the health or life of the child; and (b) those customs and practices [that are] discriminatory to the child on the grounds of sex or other status." *Id.*

150. *See id.* art. 27. Article 27 of the Charter provides that state parties "shall undertake to protect the child from all forms of sexual exploitation and sexual abuse." *Id.* In particular, state parties are to "take measures to prevent: (a) the inducement, coercion or encouragement of a child to engage in any sexual activity; (b) the use of children in prostitution or other sexual practices; [and] (c) the use of children in pornographic activities, performances and materials." *Id.*

151. *See id.* arts. 32-41.

152. *See id.* art. 42.

153. *See id.* art. 43.

154. *See id.* art. 45.

155. *Id.* art. 1(3).

enforce the provisions recognized in the Charter.

C. *United Nations Human Rights Declaration*

On December 10, 1948, the United Nations General Assembly adopted and proclaimed the Universal Declaration of Human Rights (Universal Declaration), "as a common standard of achievement for all peoples and all nations" of the rights found therein.¹⁵⁶ While the Universal Declaration has significantly influenced customary law, "it is not an international agreement but a declaration of basic principles approved by the General Assembly."¹⁵⁷ The Universal Declaration proclaims that "[a]ll human beings are born free and equal in dignity and rights."¹⁵⁸ It establishes that "[e]veryone 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"¹⁵⁹ and that "[e]veryone has the right to life, liberty and security of person."¹⁶⁰ It further provides that "[n]o one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."¹⁶¹

The Trokosi system violates the Universal Declaration because the girls taken to the shrines are stripped of their liberty, security of person and dignity, as well as subjected to cruel, inhuman, and degrading treatment by being enslaved to other human beings against their will, having to work under the complete control of the priests, and having to satisfy the priests' sexual desires. The stories in Part III provide ample evidence of Trokosi's harmful effects.¹⁶² While the Universal Declaration has functioned as a

156. 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) [hereinafter Universal Declaration], reprinted in IAN BROWNLIE, Q.C., BASIC DOCUMENTS ON HUMAN RIGHTS 21 (3d ed. 1992).

157. Michelle Lewis Liebeskind, *Preventing Gender-Based Violence: From Marginalization to Mainstream in International Human Rights*, 63 REV. JUR. U.P.R. 645, 668 (1994) (focusing on peacetime violence against women committed by private individuals and analyzing several international documents that condemn violence against women).

158. Universal Declaration, art. 1.

159. *Id.* art. 2.

160. *Id.* art. 3.

161. *Id.* art. 5.

Rape and abuse may be considered violations of Articles 3 and 5 of the Universal Declaration, read against the definition of torture found in the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). Coupled together, these articles prevent the violations of an individual's bodily integrity, sexually or through other forms degrading or cruel acts.

Liebeskind, *supra* note 157, at 669.

162. See *supra* notes 129-39 and accompanying text.

model for over seventy human rights instruments, it is simply a statement of principles and is not legally enforceable.¹⁶³ Indeed, if it was enforceable, the subsequent conventions and declarations directed at women's and children's rights would be unnecessary.¹⁶⁴

D. The Convention to Suppress the Slave Trade and Slavery and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

In 1926, the Convention to Suppress the Slave Trade and Slavery (Convention to Suppress Slavery) was enacted by the League of Nations.¹⁶⁵ The Convention to Suppress Slavery defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."¹⁶⁶ The High Contracting Parties were charged with adopting all appropriate measures to prevent, suppress, and abolish slavery in all of its forms,¹⁶⁷ including compulsory and forced labor.¹⁶⁸

The United Nations adopted the Convention to Suppress Slavery in 1953 to allow state parties to continue the efforts begun by the League of Nations in abolishing slavery.¹⁶⁹ Then in 1956, the United Nations, aware that slavery still existed, augmented the Convention of 1926 with the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Convention to Abolish Slavery).¹⁷⁰ Ghana ratified the Slavery Convention of 1926, as well as the Convention to Abolish Slavery.¹⁷¹

The Convention to Abolish Slavery requires state parties to take all practical and necessary measures to abolish or abandon the following

163. See Backstrom, *supra* note 30, at 569 (citing IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 463 (1962)).

164. See Liebeskind, *supra* note 157, at 668.

165. See Slavery Convention, Sept. 25, 1926, 60 L.N.T.S., *amended by* Protocol of 7 December 1953, Dec. 7, 1953, 212 U.N.T.S. 17 [hereinafter *Convention to Suppress Slavery*], *reprinted in* IAN BROWNLIE, Q.C., *BASIC DOCUMENTS ON HUMAN RIGHTS* 52 (3rd ed. 1992).

166. *Id.* art. 1(1).

167. See *id.* art. 2.

168. See *id.* art. 5.

169. See *id.*

170. See Supplementary Convention on the Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266 U.N.T.S. 3 [hereinafter *Convention to Abolish Slavery*], *reprinted in* IAN BROWNLIE, Q.C., *BASIC DOCUMENTS ON HUMAN RIGHTS* 58 (3d ed. 1992).

171. See UNITED NATIONS, *HUMAN RIGHTS: INTERNATIONAL INSTRUMENTS, CHART OF RATIFICATIONS* 5 (1995), U.N. Doc. ST/HR/5, U.N. Sales No. E.87.XIV.2 (1995) [hereinafter *CHART OF RATIFICATIONS*].

institutions and practices: (a) debt bondage;¹⁷² (b) serfdom;¹⁷³ (c) forced marriage;¹⁷⁴ or (d) "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 for reward or not, with a view to the exploitation of the child or young person or of his labour."¹⁷⁵ Additionally, state parties are to make the enslavement or inducement of another into slavery a criminal offense and to hold those convicted liable.¹⁷⁶ Notably, state parties are not permitted to make reservations to the Convention to Abolish Slavery,¹⁷⁷ and any disputes arising between state parties that are not settled through negotiation "shall be referred to the International Court of Justice at the request of any one of the

172. *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.

Id.

173. *See id.* art. 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." *Id.*

174. *See id.* art. 1(c). The term forced marriage refers to any institution or practice whereby: (i) 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.

Id.

175. *Id.* art. 1(d).

176. *See id.* art. 6(1).

177. *See id.* art. 9.

A reservation is "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Reservations are permissible unless generally or specifically prohibited by a treaty, or when "the reservation is incompatible with the object and purpose of the treaty." Other states parties are considered to have accepted a reservation unless they object to it either within twelve months of notification or "by the date on which [they express their] consent to be bound by the treaty."

The effect of a reservation varies depending on the type of treaty.

Larson, *supra* note 14, at 702-03.

parties to the dispute.”¹⁷⁸ Thus, no country may legally permit slavery or slavery-like practices within its borders.

The Trokosi system violates the Convention to Abolish Slavery because it is slavery, and it involves serfdom as well as the exploitation of children and their labor. It appears that other state parties to the Convention could, after unsuccessfully negotiating with Ghana, refer Ghana to the International Court of Justice to resolve the conflict between the application of this Convention and the existence of Trokosi. However, this has not occurred, and historically, state parties have been reluctant to intervene.¹⁷⁹

E. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights¹⁸⁰ (ICCPR) requires states to protect against slavery and cruel, inhuman, or degrading treatment,¹⁸¹ and recognizes the rights of life, liberty, security and privacy of the person.¹⁸² The Covenant emphasizes that all of the enumerated rights are to be enjoyed without discrimination by sex, and that men and women are to be accorded equal status.¹⁸³ National emergencies which threaten the life of the nation permit derogations to liberty and security of one's person only if the temporary measures do not discriminate solely on the grounds of sex.¹⁸⁴

The state parties' obligations are specified in article 2 of the ICCPR, which requires a state to: “(1) respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant;”¹⁸⁵ (2) take the necessary steps to adopt “legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant;”¹⁸⁶ and (3) “ensure that any person . . . shall have an effective remedy” and that “competent authorities shall enforce such

178. Convention to Abolish Slavery, art. 10.

179. “[E]ven when morally unambiguous situations present themselves — when all agree that the practice should be stopped — nation states remain reluctant to intervene. Not only do they hesitate to interfere with other states, they do not even appear willing to enact responsible laws within their own countries.” Levesque, *supra* note 49, at 998.

180. International Covenant on Civil and Political Rights, Dec. 16, 1966, G.A.Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) [hereinafter ICCPR], reprinted in IAN BROWNLIE, Q.C., BASIC DOCUMENTS ON HUMAN RIGHTS 125 (3d ed. 1992). The ICCPR became effective in 1976. *See id.*

181. *See id.* arts. 7, 8.

182. *See id.* arts. 6, 9.

183. *See id.* arts. 2, 3, 26.

184. *See id.* art. 4(1).

185. *Id.* art. 2(1).

186. *Id.* art. 2(2).

remedies when granted.”¹⁸⁷ The Covenant also establishes the Human Rights Committee¹⁸⁸ and requires state parties to submit reports to that committee one year after ratification and upon the direction of the committee.¹⁸⁹ “Although freedom from torture is explicitly granted in the Political Covenant, it leaves torture undefined, and provides no criteria to distinguish between torture and acts of cruel or degrading treatment.”¹⁹⁰

The Trokosi system violates the ICCPR because it can be characterized as “torture,” “cruel or degrading treatment,” or both because the girls are under the complete control of the priests. The Trokosi are forced to work long hours in the fields of the shrine, without pay, and are forced to provide sexual favors to the priest and bear children for him. Additionally, Trokosi violates the ICCPR because it is slavery, degrading treatment, and discriminates on the basis of sex. Moreover it violates the liberty, security, and privacy of the enslaved girls and women. However, because Ghana has not ratified the ICCPR, Ghana is not subject to its enforcement mechanisms for noncompliance.

F. *United Nations Convention on the Rights of the Child*

The United Nations Convention on the Rights of the Child (UNCRC)¹⁹¹ became effective on September 2, 1990, when over 170 countries signed it or became state parties by ratification or accession.¹⁹² Ghana is a state party to the UNCRC.¹⁹³ There are four basic themes of children’s rights incorporated in the UNCRC: “(1) emphasis on the ‘best interests of the child’;¹⁹⁴ (2) recognition of the child’s ‘evolving capacities’;¹⁹⁵ (3) the principle of non-discrimination;¹⁹⁶ and (4) respect for the child’s human

187. *Id.* art. 2(3)(a), (c).

188. *See id.* art. 28.

189. *See id.* art. 40.

190. Liebeskind, *supra* note 157, at 672. *See also* ICCPR, art. 7.

191. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/25 (1989) [hereinafter UNCRC], reprinted in IAN BROWNLEE, Q.C., BASIC DOCUMENTS ON HUMAN RIGHTS 182 (3d ed. 1992).

192. *See* Backstrom, *supra* note 30, at 566. However, the success of the UNCRC is limited by the significant number of reservations attached by the member states. *See id.*

193. *See* CHART OF RATIFICATIONS, *supra* note 171, at 4. “The first twenty-one States Parties to the Convention on the Rights of the Child were: Ghana, Viet Nam, Ecuador, the Holy See, Belize, Guatemala, Sierra Leone, Bolivia, Sweden, Mongolia, Egypt, El Salvador, Guinea, St. Kitts & Nevis, Mauritius, Kenya, Senegal, Bhutan, Sudan, Bangladesh and Togo.” Cynthia Price Cohen, *The Developing Jurisprudence of the Rights of the Child*, 6 ST. THOMAS L. REV. 1, 24 n.126 (1993).

194. *See* UNCRC, arts. 3(1), 9(1), 18(1), 20(1), 21, 40(2)(b)(iii). For general discussion of the four themes, see Backstrom, *supra* note 30, at 565.

195. *See* UNCRC, arts. 5, 12(1), 14(2), 40(1), 40(2)(b)(iii).

196. *See id.* pmb., art. 2(1).

dignity.”¹⁹⁷

The two basic rights identified in the UNCRC are: (1) “[p]rotection from harm;” and (2) “[s]pecial care.”¹⁹⁸ Protection from harm includes protection from: physical, mental and sexual abuse and neglect;¹⁹⁹ economic, sexual and other exploitation;²⁰⁰ harmful labor;²⁰¹ armed conflict;²⁰² torture or cruel treatment;²⁰³ abduction, trafficking and illicit transfer abroad;²⁰⁴ harmful drugs;²⁰⁵ traditional practices harmful to health (such as female genital mutilation);²⁰⁶ and separation from parents.²⁰⁷ Special care includes the right of the child to an adequate standard of living,²⁰⁸ health care,²⁰⁹ nutrition²¹⁰ and education.²¹¹

Several provisions of the UNCRC focus on the rights and potential needs of the female child to a greater extent than any other human rights instrument.²¹² Although the UNCRC directs state parties to abolish “traditional practices prejudicial to the health of children,”²¹³ it does not adequately address the cultural discrimination the female child encounters in daily life.²¹⁴ Therefore, the operation of the UNCRC is limited as “cultural abuses . . . do not always implicate a health risk.”²¹⁵ Moreover, the female child is not adequately protected by the UNCRC from exploitations that take place within the family.²¹⁶

197. Backstrom, *supra* note 30, at 565. See also UNCRC, pmbi., arts. 23(1), 28(2), 39, 40.

198. Gerald Abraham, *Giannella Lecture: The Cry of the Children*, 41 VILL. L. REV. 1345, 1362-63 (1996) (reviewing the tragic condition of children around the world, discussing the two promises made by nations of the world to give their children a decent life, and examining the hopeful signs of these promises being implemented and conditions actually improved).

199. See UNCRC, art. 19.

200. See *id.* arts. 32, 34, 36.

201. See *id.* art. 32.

202. See *id.* art. 38.

203. See *id.* art. 37.

204. See *id.* arts. 11, 35.

205. See *id.* art. 33.

206. See *id.* art. 24.

207. See *id.* art. 9.

208. See *id.* art. 27.

209. See *id.* art. 24.

210. See *id.* art. 24(2)(c), (e).

211. See *id.* art. 28.

212. See Backstrom, *supra* note 30, at 566.

213. UNCRC, art. 24(3).

214. See *id.*

215. Backstrom, *supra* note 30, at 578.

216. See *id.*

The UNCRC emphasizes the need for the child to develop within the cultural framework and learn about community practices.²¹⁷ Additionally, the UNCRC provisions stress “the need to strengthen the family unit, perhaps even to the subordination of children’s rights. Together these two factors make it practically impossible for the female child to assert human-rights abuses based on cultural tradition or bias.”²¹⁸ Therefore, the UNCRC may justify cultural abuse based on gender, as well as mistreatment if it occurs within the family.²¹⁹

While the UNCRC imposes binding obligations on all of the nations that have ratified it, it does not have an effective enforcement mechanism.²²⁰ The UNCRC fails to establish a mechanism to permit any international tribunal to enforce decisions where a state party has violated the UNCRC, nor does it require that the UNCRC be “directly enforceable in the courts of a ratifying country.”²²¹ Direct enforceability is left to each nation to decide.²²²

The UNCRC created the Committee on the Rights of the Child to monitor the progress of state parties, which are required to make periodic reports to the committee,²²³ but it has no power to enforce its findings.²²⁴ “It

217. See UNCRC, art. 29(c).

218. Backstrom, *supra* note 30, at 578.

219. See UNCRC, art. 19.

220. See Abraham, *supra* note 198, at 1364.

221. *Id.* at 1364-65.

222. See *id.* at 1365.

223. See Backstrom, *supra* note 30, at 565. Ghana, in keeping with its obligations as a state party to the UNCRC, supplied lengthy written material to the Committee on its efforts to help and protect children. See *UN Committee on the Rights of the Child Concludes Fifteenth Session*, M2 PRESSWIRE, June 10, 1997, available in LEXIS, News Library, Non-US News File. The Committee

urged greater efforts in Ghana to combat discriminatory attitudes against girls and disabled children, especially those living in rural areas

. . . .

Among positive developments noted in the report of Ghana, the Committee pointed to the early establishment — long before ratification of the Convention — of the Ghana National Commission on Children. Concern was cited, among other things, about the persistence of customary law which in some areas, such as marriage, could conflict with the Convention.

Id. Some recommendations made by the Committee include the following:

that the current drafting of a comprehensive law on protection of children be modeled on the provisions and principles of the Convention; . . .
 . that coordination be improved in carrying out programmes and policies related to children; . . .

. . . .

that programmes be developed and pursued on a priority basis to prevent harmful practices such as early marriage, female genital mutilation, and Trokosi;

. . . .

is not a prosecutorial or adjudicatory body; instead, it tries to obtain compliance by persuasion, suggestion and assistance,"²²⁵ as well as by "education, facilitation, and cooperation, rather than confrontation," and "relies on domestic procedures and privatization to enforce the international rights it embodies."²²⁶

The Trokosi system violates the UNCRC because it separates girls and young women from their families, usually against their will;²²⁷ subjects them to physical and mental abuse, neglect, negligent treatment, maltreatment and exploitation, including sexual abuse;²²⁸ deprives the girls of a "standard of living adequate for the child's physical, mental, spiritual, moral and social development;"²²⁹ deprives the girls of their right to education in many instances;²³⁰ and economically exploits their labor to perform work that interferes with their right to education and that is harmful to their health or physical, mental, spiritual, moral or social development.²³¹ However, because the UNCRC has no enforcement mechanism, it cannot be used to hold Ghana, a member state, accountable for the Trokosi practice within its borders.

G. *Convention on the Elimination of All Forms of Discrimination Against Women*

The Declaration on the Elimination of Discrimination Against Women (DEDAW), adopted by the UN General Assembly in 1967,²³² and the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention), adopted unanimously by the UN General

[and] that legislation be reinforced to fully protect children from all forms of sexual abuse or exploitation

Id.

224. See Abraham, *supra* note 198, at 1366.

225. *Id.*

226. Backstrom, *supra* note 30, at 565.

227. See UNCRC, art. 9(1).

228. See *id.* art. 19(1).

229. *Id.* art. 27(1).

230. See *id.* art. 28.

231. See *id.* art. 32(1).

232. Declaration on the Elimination of Discrimination Against Women, Nov. 7, 1967, G.A. Res. 2263, U.N. GAOR, 22d Sess., Supp. No. 16, at X, U.N. Doc. A/6716 (1968), reprinted in UNIFO, INTERNATIONAL HUMAN RIGHTS INSTRUMENTS OF THE UNITED NATIONS, 1948-1982, at 103 (1983).

Assembly in 1979,²³³ and subsequently ratified by Ghana,²³⁴ were the first international instruments to independently address women's issues.²³⁵ The Women's Convention recognizes that culture may be misused as a basis for discrimination and urges states parties "[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."²³⁶

A broad reading of the Women's Convention defines discrimination in a manner that envelops both "public and private discrimination, [and] unintentional and intentional violations."²³⁷ The Convention establishes a committee and requires state parties to report to that committee within one year after their ratification of the Convention and every four years thereafter or upon request of CEDAW.²³⁸ "CEDAW considers children's rights paramount — a higher standard than that recognized in the UNCRC."²³⁹

While CEDAW addresses general discrimination against women, it has limited application to female children because the only pertinent provisions relate to early marriage and development of specific educational programs

233. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, G.A. Res. 180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. 46/A/34/46 (1980) [hereinafter CEDAW], reprinted in IAN BROWNLIE, Q.C., BASIC DOCUMENTS ON HUMAN RIGHTS 169 (3d ed. 1992).

234. See CHART OF RATIFICATIONS, *supra* note 171, at 4.

235. See Liebeskind, *supra* note 157, at 662.

236. CEDAW, art. 2(f).

237. Liebeskind, *supra* note 157, at 663.

Article 1 provides that discrimination includes any distinction, exclusion or restraint 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 by men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field

. . . . Article 2 . . . requires states to pursue "by all appropriate means and without delay a policy of eliminating discrimination against women" through constitutional, legislative, administrative, and other measures. Article 2(f) requires the modification or abolition of laws, regulations, customs or practices which constitute discrimination

Article 5 obligates state parties to "take all appropriate measures [inter alia] 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."

Id.

238. See CEDAW, art. 18.

239. Backstrom, *supra* note 30, at 573. The UNCRC states that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." UNCRC, art. 3(1).

for female dropouts.²⁴⁰ However, blending CEDAW and the UNCRC allows the “paramount interests of the child” to become superior to the general rights of the family.²⁴¹ Therefore, when the family endangers the health of the female child, the need to respect the family unit is outweighed by her best interests.²⁴² Additionally, integrating these treaty concepts allows for increased “enforcement of these rights by allowing for state-to-state complaints and individual petitions.”²⁴³ Even though women’s and children’s rights are furthered by both the UNCRC and CEDAW, “neither instrument adequately contemplates the unique abuses — those based on age and sex — encountered by the female child.”²⁴⁴

The Trokosi practice constitutes discrimination against women because only girls are sent to the shrines to redeem their families with the gods for the wrongful acts of other family members, usually males.²⁴⁵ Additionally, Trokosi violates article 16 of CEDAW, which declares a woman’s right to choose a spouse and consent to marriage, by forcing the girls to marry the priests.²⁴⁶ The Trokosi “are not free to choose whom they want to marry . . . [but] are forced to marry the priests at a very early age and are burdened with the rearing of children.”²⁴⁷

H. *International Criminal Court*

1. *Background*

On July 17, 1998, governments assembled in Rome for a diplomatic conference and enacted the Rome Statute establishing a permanent International Criminal Court (ICC).²⁴⁸ These governments “agreed, by an overwhelming 120 in favor, 21 abstentions and only 7 against, to embrace this essential institution for bringing the world’s worst human rights

240. See Backstrom, *supra* note 30, at 572.

241. See *id.* at 576.

242. See *id.*

243. *Id.*

244. *Id.* at 542.

245. See Short, *supra* note 74.

246. See *id.*

247. *Id.*

248. See Human Rights Watch, *Summary of the Key Provisions of the ICC Statute* (visited Oct. 15, 1998) <<http://www.hrw.org/hrw/campaigns/icc/icc-statute.htm>>. See also Rome Statute of the International Criminal Court, July 17, 1998 (visited Sept. 8, 1998) <<http://www.un.org/icc/part1.htm>> [hereinafter ICC].

criminals to justice.”²⁴⁹ Ghana was among the very first to sign the ICC.²⁵⁰ The statute will become effective after a minimum of sixty countries ratify the treaty.²⁵¹ The treaty is perceived as a compromise because each strength of the court is qualified by a weakness.²⁵² While establishing the ICC is an important step in eliminating human rights abuses, the ICC will not address all human rights abuses or past violations.²⁵³

2. Jurisdiction

a. Generally

The jurisdiction of the court is limited to the most serious crimes facing the international community; those crimes being “genocide,”²⁵⁴ “war crimes,”²⁵⁵ “crimes of aggression,”²⁵⁶ and “crimes against humanity.”²⁵⁷ The

249. Human Rights Watch, *supra* note 248. “At the request of the United States, the Statute was adopted by a non-recorded vote.” *Daily Summary* (visited Sept. 20, 1998) <<http://www.un.org/icc/pressrel/summary.htm>> .

250. See *International Criminal Court is Major Step Towards Universal Human Rights*, M2 PRESSWIRE, July 21, 1998, available in LEXIS, News Library, News Group File.

251. See Douglass W. Cassel, Jr., *U.S. Fears Undercut Tribunal*, CHI. DAILY L. BULL., Aug. 18, 1998, at 5, available in LEXIS, News Library, News Group File. Currently, the statute is supported by 51 of the required minimum 60 countries necessary to bring the court into existence. See *UN Human Rights Commissioner Against Rebel-prisoner Exchange Plan*, BRIT. BROADCASTING CORP., Oct. 30, 1998, available in LEXIS, News Library, News Group File.

252. See Cassel, *supra* note 251.

253. See *A Campaign to Establish a International Criminal Court — Factsheet* (visited Oct. 15, 1998) <<http://www.hrw.org/hrw/campaigns/icc/icc-fct.htm>> [hereinafter *Factsheet*].

254. See ICC, art. 6. Genocide is defined as

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

Id.

255. See *id.* “The court shall have jurisdiction in respect of war crimes in particular when committed as a part of a plan or policy or as part of a large-scale commission of such crimes.” *Id.* art. 8(1). War crimes are defined as

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by

Court will have jurisdiction only over persons of eighteen years of age or older,²⁵⁸ and will be permitted to impose only two types of penalties: imprisonment for a specified term or life imprisonment.²⁵⁹ By ratifying the treaty, the state “accepts the Court’s jurisdiction over all crimes within its scope.”²⁶⁰ A state party may not choose to have the ICC accept jurisdiction only over some crimes and not others.²⁶¹ The only exception to the automatic jurisdiction of the ICC is the opt out provision, pertaining to war crimes committed on the state’s territory or by its nationals, which is available for a limited period of time.²⁶²

Because the ICC will only have jurisdiction where a state has ratified the treaty or accepts the Court’s jurisdiction, the ICC will face a significant obstacle when the state of territory or nationality of the accused is the same as the non-party state.²⁶³ In the absence of an independent police force, state cooperation is essential at all stages.²⁶⁴ By signing the ICC and expressing the desire to eliminate Trokosi, Ghana should support the prosecution of Trokosi priests who continue to violate human rights.

b. *Prosecutorial Power*

The ICC Prosecutor may investigate allegations of crimes when referred by either the Security Council of the United Nations (UN), state parties, victims, non-governmental organizations, or any other reliable source.²⁶⁵ If the Security Council refers a situation to the ICC, it has the

military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (viii) Taking of hostages.

Id. art. 8(2)(a)(i)-(viii). The Court shall also have jurisdiction over “[o]ther serious violations of the laws and customs applicable in international armed conflict.” *Id.* art. 8(2)(b).

256. *See id.* 5(2). A provision defining “crimes of aggression” has not yet been adopted. *See id.* The Court will assume jurisdiction “once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.” *Id.*

257. *See id.* art. 5(1)(b). *See infra* notes 272-81 and accompanying text for a definition and discussion of crimes against humanity.

258. *See ICC*, art. 26.

259. *See id.* art. 77(1). “A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.” *Id.* art. 103(a).

260. Human Rights Watch, *supra* note 248.

261. *See id.*

262. *See ICC*, art. 124.

263. *See id.*

264. *See id.*

265. *See id.* art. 15(2), (3).

“unique consequence of binding all member states of the UN, whether or not parties to the statute.”²⁶⁶

If the Prosecutor decides a case should not proceed, the original source must be informed.²⁶⁷ If the Prosecutor decides there is a reasonable basis to proceed with an investigation, then after receiving pre-trial approval, all states that would ordinarily exercise jurisdiction must be notified of the Prosecutor’s intention to investigate.²⁶⁸ “[T]he ICC will not be a substitute for national systems, but will only be able to act where national systems . . . [fail to] investigate or prosecute, or where they are ‘unable’ or ‘unwilling’ to do so genuinely.”²⁶⁹ A state party or non-party may block prosecution by the ICC where the state has decided not to proceed with a prosecution, unless that decision was due to inability or unwillingness of the state.²⁷⁰ Parties that may challenge the admissibility of a case include: “an accused person; any state that has jurisdiction over the case because it is investigating or prosecuting the case or has investigated or prosecuted it; or the state of territory or nationality of the accused.”²⁷¹

3. *Crimes Against Humanity*

Although the ICC allows the prosecution of crimes against humanity, the practice of sexual slavery in Ghana may not qualify under the ICC’s jurisdiction. The statute provides that crimes against humanity are “acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”²⁷² It also requires that there be the “multiple commission of acts” and that they be carried out “pursuant to or in furtherance of a State or organizational policy” to bring

266. Human Rights Watch, *supra* note 248.

267. *See id.*

268. *See id.*

269. *Id.* The Court determines “inability” by considering “whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.” ICC, art. 17(3). To determine unwillingness, the Court considers:

whether one or more of the following exist, as applicable: (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility . . . ; (b) There has been an unjustified delay in the proceedings . . . inconsistent with an intent to bring the person concerned to justice; (c) The proceedings were not or are not being conducted independently or impartially.

Id. art. 17(2).

270. *See* Human Rights Watch, *supra* note 248.

271. *Id.*

272. ICC, art. 7(1).

it within the Court's jurisdiction.²⁷³ This double criteria imposes an unprecedented threshold for crimes against humanity.²⁷⁴

The acts which constitute crimes against humanity that are applicable to Trokosi include: enslavement;²⁷⁵ severe deprivation of physical liberty;²⁷⁶ torture;²⁷⁷ rape, sexual slavery, forced pregnancy, or any other form of sexual violence of comparable gravity;²⁷⁸ and "[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or . . . health."²⁷⁹

However, it is not clear whether the ICC will have jurisdiction over those involved in the practice of Trokosi. Jurisdiction depends on whether the ICC considers this practice as a "widespread or systematic attack directed against any civilian population"²⁸⁰ and "pursuant to or in furtherance of a State or organizational policy."²⁸¹ The Trokosi system is not a widespread or systematic attack on the population conducted pursuant to a state or organizational policy. It is a practice focused, isolated and performed among the Ewe and Ada ethnic groups. Ghana is working to eliminate Trokosi — not sustain it. Thus, because Ghana is working to eliminate this practice, the ICC may not have jurisdiction because Ghana is investigating and has pledged to prosecute offenders.

Even if the ICC has jurisdiction, it is not likely to be effective without educating the priests and Animists that the Trokosi system violates human rights. According to Betty Akuffo-Amoageng, Executive Secretary of Ghana's National Commission on Children, "using excessive force to break the tradition would only drive it underground" and then the "parents will

273. *Id.* art. 7(2)(a).

274. *See* Human Rights Watch, *supra* note 248.

275. *See* ICC, art. 7(1)(c). "'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children." *Id.* art. 7(2)(c).

276. *See id.* art. 7(1)(e). This section is not specifically defined other than to say "[i]mprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law." *Id.*

277. *See id.* art. 7(1)(f). "Torture" is defined as "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions." *Id.* art. 7(2)(e).

278. *See id.* art. 7(1)(g). Forced pregnancy is the only crime in this clause that is defined. It "means the unlawful confinement, of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law." *Id.* art. 7(2)(f).

279. *Id.* art. 7(1)(k). This section is not further defined. *See id.*

280. *Id.* art. 7(1).

281. *Id.* art. 7(2)(a).

simply take their children to neighbouring countries to give them to priests."²⁸²

V. GHANA'S CONSTITUTION PROHIBITS TROKOSI

A. *The Ghana Constitution*

1. *Generally*

The laws of Ghana are comprised of the Constitution, enactments by or under the authority of the Parliament, any orders, rules and regulations made by any person or authority given power under the Constitution, the existing law, and the common law.²⁸³ In Ghana, the Constitution is the supreme law of the land, and any other law that cannot be reconciled with it is void to the extent of the inconsistency.²⁸⁴

2. *Fundamental Human Rights and Freedoms*

The 1992 Constitution is Ghana's "most ambitious attempt at giving meaning to human rights in all their forms — civil, economic, social[,] political and cultural."²⁸⁵ The Constitution defines the fundamental human rights and freedoms that are to be respected and upheld by the government.²⁸⁶ These provisions are applicable to "every person in Ghana, regardless of race, place of origin, political opinion, color, religion, creed or gender."²⁸⁷ The fundamental human rights and freedoms that pertain to Trokosi include (1) respect for human dignity,²⁸⁸ (2) protection from slavery

282. Kiley, *supra* note 5.

283. See GHANA CONST. art. 11(1). The common law of Ghana is comprised of rules of law generally known as the common law, the doctrine of equity and the rules of customary law. See *id.* art. 11(2). Customary law means the rules of law that by custom are applicable to particular communities in Ghana. See *id.* art. 11(3).

Custom is an established usage or practice of society having the force of law. For a custom to carry the force of law, it must satisfy the conditions of common adoption and acquiescence, longevity, and compulsion for the place and time in question. . . .

. . . .

Religious beliefs also played an important part in the development of African customary law.

Adjetej, *supra* note 26, at 1365-66.

284. See GHANA CONST. art. 1(2).

285. Jacob Saah, *Ghana, The Constitution of 1992 and Human Rights*, AFR. NEWS, Oct. 16, 1998, available in LEXIS, News Library, News Group File.

286. See GHANA CONST. art. 12(1).

287. Saah, *supra* note 285.

288. See GHANA CONST. art. 15, § 1.

and forced labor,²⁸⁹ (3) cultural rights and practices,²⁹⁰ and (4) children's rights.²⁹¹

The Constitution allows any person who believes that his or her rights have been breached or are about to be breached 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.²⁹²

a. *Respect for Human Dignity and Protection from Slavery and Forced Labor*

"Slavery is illegal in Ghana."²⁹³ The Ghana Constitution explicitly outlaws slavery: "[n]o person shall be held in slavery or servitude" or be "required to perform forced labour."²⁹⁴ The Trokosi are subjected to slavery, servitude, and forced labor which violates article 16(1) and (2) because they are required to fulfill the needs of the shrine and priest.²⁹⁵ Additionally, article 15(1) of the Constitution provides that "[t]he dignity of all persons shall be inviolable."²⁹⁶ There is no dignity for the Trokosi who must fulfill the sexual pleasures of the fetish priest.²⁹⁷ "The Trokosi system pays no regard to the rights of the vestal virgins, whose rights under the Constitution are just as important as those of the fetish priests or their parents or guardians."²⁹⁸ The government of Ghana concedes that the Trokosi

289. *See id.* art. 16.

290. *See id.* art. 26.

291. *See id.* art. 28.

292. *See Saah, supra* note 285. The Judiciary in Ghana consists of the Superior Courts of Judicature comprised of the Supreme Court, the Court of Appeal and the High Court and Regional Tribunals and any lower courts or tribunals that the Parliament establishes. *See GHANA CONST.* art 126(1). The Supreme Court consists of a Chief Justice and not less than nine other Justices and is the final court of appeal. *See id.* arts. 128(1), 129(1). The Court of Appeal consists of a Chief Justice and not less than ten justices and has jurisdiction to hear and determine appeals from a judgment, decree, or order of the High Court and Regional Tribunals. *See id.* arts. 136, 137. The High Court consists of a Chief Justice and not less than twenty justices and has jurisdiction in all civil and criminal matters and the power to enforce the fundamental human rights and freedoms guaranteed by the Constitution. *See id.* arts. 139, 140. The Regional Tribunals are established in each region of Ghana and consist of a Chief Justice, a chairperson, and members who may or may not be lawyers to sit as a panel to try offenses against the State and public interest. *See id.* arts. 142, 143.

293. *Dateline, supra* note 7.

294. GHANA CONST. art. 16(1), (2).

295. *See Short, supra* note 74.

296. GHANA CONST. art. 15(1).

297. *See Short, supra* note 74.

298. *Id.*

system violates the constitutional rights of children²⁹⁹ but says it is tolerated out of respect for religious freedom.³⁰⁰

The Ghana Criminal Code provides that those who practice slavery are "guilty of a second degree felony as provided for in Section 314 of the [Ghana] Criminal Code."³⁰¹ However, because the Trokosi are usually coerced by their parents or relatives to serve in the shrines, it is questionable whether that criminal code section covers the customary practices.³⁰² Section 314 "does not apply to any such coercion 'as may lawfully be exercised by virtue of contracts of service between free persons, or by virtue of the rights of parents and other rights, not being contrary to law, arising out of family relations customarily used and observed in Ghana.'"³⁰³ But, the freedom to practice one's religion is subject to the provisions of the Constitution.³⁰⁴ Therefore, ritual slavery is banned under the Constitution,³⁰⁵ even though it may not be punishable under the Criminal Code.³⁰⁶

b. *Cultural Rights and Practices*

Except as limited by other provisions of the Constitution, "[e]very person is entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion."³⁰⁷ However, these customary practices are prohibited where they "dehumanise or are injurious to the physical and mental well-being of a person."³⁰⁸ This limitation on religious freedom demonstrates Ghana's recognition that some cultural traditions include practices that are contrary to 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."³⁰⁹ 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.

299. See Kiley, *supra* note 5.

300. See Dateline, *supra* note 7.

301. Short, *supra* note 74.

302. See *id.*

303. *Id.*

304. See *id.*

305. See *id.*

306. The Criminal Code of Ghana was recodified in early 1998, providing for a criminal penalty for practices like Trokosi. See discussion *infra* Part V(B).

307. GHANA CONST. art. 26(1).

308. *Id.* art. 26(2).

309. Short, *supra* note 74.

c. *Children's Rights*

Parliament is charged with enacting laws to ensure that (1) "every child has the right to the same measure of special care, assistance and maintenance as is necessary for its development,"³¹⁰ (2) "children and young persons receive special protection against exposure to physical and moral hazards,"³¹¹ (3) "[e]very child has the right to be protected from engaging in work that constitutes a threat to his health, education or development,"³¹² and (4) "[a] child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment."³¹³

The practice of Trokosi violates children's rights because the girls are torn from their families, denied access to education, denied payment for their work, and denied the shrine's support for the children they bear for the priests. Moreover, when the girls are left in the complete control of the shrine priests, they are often sexually abused and exploited for their labor — exposing the girls to moral and physical hazards.

3. *Commission on Human Rights and Administrative Justice*

a. *Generally*

The Constitution establishes a Commission on Human Rights and Administrative Justice (CHRAJ)³¹⁴ whose main function is to "investigate complaints of violations of fundamental rights and freedoms."³¹⁵ The CHRAJ's primary responsibilities are: "[1] to receive and investigate complaints of human rights violations and other acts of administrative injustice, [2] to investigate allegations of corruption by public officials and [3] to educate the public on human rights issues."³¹⁶ CHRAJ is obligated to remedy, correct, and reverse these violations through negotiation, reporting, initiation of court proceedings to secure termination of the offending action or conduct,³¹⁷ and "to educate the public as to human rights and freedoms."³¹⁸ The powers of the CHRAJ include the authority to compel

310. GHANA CONST. art. 28(1)(a).

311. *Id.* art. 28(1)(d).

312. *Id.* art. 28(2).

313. *Id.* art. 28(3).

314. *See id.* art. 216.

315. *Id.* art. 218(a).

316. Saah, *supra* note 285.

317. *See* GHANA CONST. art. 218(d).

318. *Id.* art. 218(f).

witnesses, require the production of evidence, seek court enforcement of its decisions, and seek judicial remedies.³¹⁹

These broad powers appear to make the Commission the most effective organization for dealing with Trokosi; however, no such cases have been brought before the Commission. Additionally, unless a parent is willing to come forward and testify, the priests cannot be singled out because they do not force parents to give up their children to the shrines.³²⁰ It is a long-standing belief by the parents that they must bring a child to the shrine or face the consequences of an angry god.

b. *Educational Efforts*

In recent years, the Ghana Commission for Human Rights and Administrative Justice (CHRAJ) "has conducted an awareness campaign with traditional leaders and practitioners in an effort to bring the practice to an end."³²¹ The CHRAJ's efforts, in conjunction with a non-governmental organization (NGO)³²² called International Needs,³²³ have "had some success in approaching village authorities and fetish priests at 10 of the 76 shrines, winning the release of 474 Trokosi slaves to date, and retraining them for new professions."³²⁴ Including work by other organizations, 672 slaves were released by the end of 1997.³²⁵

The methods used by CHRAJ and various NGOs are based mainly on educating the priests and local leaders on how the Trokosi system violates fundamental freedoms and human rights provisions of the Ghana

319. See Saah, *supra* note 285.

320. See Short, *supra* note 74.

321. GHANA COUNTRY REPORT, *supra* note 63, at 141.

322. Non-governmental organizations (NGOs) play a vital role in the examination of state reports by the Human Rights Committee of the United Nations. See *NGO Guide to the UN Human Rights Committee* (visited Oct. 14, 1998) <<http://www.lchr.org/ngo/ngoguide/MoveUp/move.htm>>. NGOs are relied on to highlight the "other side of the coin" to help prepare the Committee in their review of the governments. See *id.*

323. International Needs (IN) is a Christian-based organization whose mission is to promote human and community development for the relief of socio-economic, cultural, and religious injustices. See INTERNATIONAL NEEDS (GHANA): CORPORATE PROFILE 1 (n.d.). International Needs, headquartered in New Zealand, is spread throughout the world and found in Africa, Europe, and the Near and Far East. See *id.* at 3. In Africa, IN operates in Ghana and Uganda. See *id.* International Needs Ghana (ING) has initiated and implemented a number of projects aimed at rehabilitating and economically empowering disadvantaged people. See *id.* at 6. One of ING's main projects involves the freedom of Trokosi. See *id.* at 7. ING may be contacted by mail at International Needs Ghana, P.O. Box 690, Dansoman Estates, Accra, Ghana; by phone at (233-21) 226620; or by e-mail at intneeds@ncs.com.gh.

324. GHANA COUNTRY REPORT, *supra* note 63, at 141.

325. See *id.*

Constitution, as well as many of the human rights declarations to which Ghana has become a party.³²⁶ The practice of Trokosi has always violated the Constitution, but until recently, no criminal sanction for the violation existed.³²⁷ Now, the fetish priests must be educated on the criminal penalty for continuing the practice of Trokosi.³²⁸ To do this, CHRAJ organizes workshops and seminars for the village priests and leaders to impress upon them the need to abolish the system.³²⁹ Emile Short, Head of the Ghana Commission on Human Rights and Administrative Justice, stated that "this practice has gone on for so long, it is important to have a dialogue" with those involved to end the practice.³³⁰ The CHRAJ plans to perform random checks at the shrines with the Ghanaian police force and to prosecute the violators.³³¹ Other educational methods include the performance of drama troops in the communities, school debates, and the publication of literature about human rights and the abolition of the Trokosi system in local languages.³³²

Liberation ceremonies or rituals are performed to perfect the release of the Trokosi once a priest agrees to set them free,³³³ and the Trokosi are given certificates of emancipation.³³⁴ In the past, the priests agreed to release the girls in exchange for money and cows or goats, but now they are moving away from the notion of exchange and are simply releasing the girls.³³⁵ The

326. See Telephone Interview with Kathryn Fitrell, Human Rights Officer with the United States Embassy in Accra, Ghana (Nov. 2, 1998); Telephone Interview with Emile Short, *supra* note 103.

327. See Telephone Interview with Emile Short, *supra* note 103. While the Ghana Constitution expressly prohibits slavery, previously there was no criminal penalty for violating that provision until the recodification of the 1960 criminal code in early 1998, which now provides for a three year term of imprisonment for those that engage in customary servitude. See *infra* Part V(B).

328. See Telephone Interview with Emile Short, *supra* note 103.

329. See *id.*

330. *Id.*

331. See *id.*

332. See Telephone Interview with Kathryn Fitrell, *supra* note 326.

333. See *id.* See also Telephone Interview with Emile Short, *supra* note 103.

334. See t'Sas, *supra* note 64.

335. See Telephone Interview with Emile Short, *supra* note 103. Successful liberation ceremonies include one coordinated by Sentinelles, a Swiss-based group, who made an agreement with two shrines to accept cows or other domestic animals and drinks instead of virgin girls. See *Swiss Buy Freedom of 40 Women Enslaved in Ghana under Folk Custom*, DEUTSCHE PRESS-AGENTUR, Oct. 25, 1996, available in LEXIS, News Library, Non-US News File. The 40 women freed ranged in age between 8 and 60. See *id.* "Under the agreement, Sentinelles will assist the liberated slaves to go into trading while the young girls will be encouraged to go to school or learn a vocation." *Id.* The Sentinelles paid four million cedis (about \$2,300) to the shrines for the rituals to be performed to mark the freedom of the slaves. See *id.* It will also provide one cornmill to each shrine for the fetish priests to make a living. See *id.* Another successful liberation freed 45 slaves, including a six year-old girl.

proponents of the Trokosi system are not the only ones in need of education. After the girls are released, CHRAJ and NGOs provide funding for the Trokosi because many of them have been traumatized by the many years of bondage and servitude.³³⁶ "They are in desperate need of counselling, financial support and rehabilitation."³³⁷ It is also important for the girls to receive training in an occupation or be sent back to school so that they are able to support themselves.³³⁸

B. 1998 Update to the Ghanaian Criminal Code

Eager to eliminate child slavery,³³⁹ the CHRAJ sent teams of investigators to the shrines to study the practice.³⁴⁰ The investigators made recommendations to Parliament for changes in the law that would help eliminate the practice of Trokosi.³⁴¹ The Ghanaian Parliament recently enacted a new provision in the recodification of the criminal code of 1960 that specifically outlaws the practice of sexual slavery.³⁴² The provision refers to the Trokosi system and like practices as "customary servitude" and imposes a minimum three year sentence for violators.³⁴³

See t'Sas, *supra* note 64. In exchange, the priest got five cows, one bull, and the equivalent of about \$1,650. *See id.* Yet, another successful liberation freed 350 "voodoo slaves" with funding assistance generated in Australia by the Anti-Slavery Society and charity group International Needs. *See FED: Australians Help Free 350 Voodoo Slaves*, AAP NEWSFEED, Sept. 15, 1997, available in LEXIS, News Library, News Group File.

336. *See t'Sas, supra* note 64. *See also* Telephone Interview with Emile Short, *supra* note 103.

337. t'Sas, *supra* note 64.

338. *See* Telephone Interview with Emile Short, *supra* note 103.

339. *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.*

340. *See* Short, *supra* note 74.

341. *See id.*

342. Criminal Code (Amendment) Act, Act 554 of 1998, § 17 (amending Criminal Code 1960 (Act 29), by inserting new section 314A). The bill was passed on August 19, 1998; however, President Rawlings has not signed the bill to effectuate its amendments. *See* Telephone Interview with Kathryn Fitrell, *supra* note 326.

343. *See* Criminal Code (Amendment) Act, Act 554 of 1998, § 17. The new law provides:

(1) Whoever — (a) sends to or receives at any place any person; or (b) 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.

(2) In this section "to be concerned in" means — (a) to send to, take to, consent to the taking to or receive at any place any person for the performance of the customary ritual; or (b) to enter into any agreement

While the passage of this law is significant, there is not much confidence that the practice of Trokosi will end, especially in light of the fact that the Constitutional prohibition has been in place since 1992 and has not yet eradicated the practice.³⁴⁴ “The practice persists because of deeply entrenched traditional beliefs, and it is therefore unlikely that any legislative prohibition alone would eliminate the practice.”³⁴⁵ “Beliefs in traditional rituals and the spirit world permeate the highest levels of most West African societies, making it difficult to convince [traditional believers] to give up the [T]rokosi practice” even with the passage of this new legislation.³⁴⁶

VI. CONCLUSION

Sexual slavery violates basic human rights and fundamental freedoms expressed in the Ghana Constitution and several other human rights declarations and conventions to which Ghana is a voluntary party. Although respect for cultural and religious practices should be encouraged, the state government and international bodies should intervene when cultural or religious practices result in human rights violations and infringement of constitutionally-protected fundamental freedoms. There is no acceptable explanation, reason, or excuse for such violations of human dignity to continue.

Religious and cultural freedoms must be restricted by “the fundamental right to bodily integrity, freedom from torture and discrimination.”³⁴⁷ Even though this belief is not widely accepted in many third-world areas, it is readily acknowledged that religion cannot defend or pardon subjugation when dealing with well-recognized rights.³⁴⁸ Slavery is an example: while virtually all traditional religions accepted slavery at one time, it has been outlawed as “one of the most serious violations of human rights.”³⁴⁹

In studying this practice, even a cursory examination concludes that Trokosi violates women’s and children’s human rights in a variety of ways that cannot be justified on religious and cultural grounds. “Perhaps [the] most objectionable aspect of the Trokosi system has to do with sexual abuse.

whether written or oral to subject any of the parties to the agreement or any other person to the performance of the customary ritual; or (c) to be present at any activity connected with or related to the performance of the customary ritual.

Criminal Code (Amendment) Act, Act 554 of 1998, § 17.

344. See *Dateline*, *supra* note 7.

345. GHANA COUNTRY REPORT, *supra* note 63, at 141.

346. Kiley, *supra* note 5.

347. Liebeskind, *supra* note 157, at 653.

348. See *id.*

349. *Id.* at 653-54.

. . . [T]he Trokosi must have sexual intercourse with the priest whether she likes it or not. . . . This is the undignified fate of the Trokosi until she is turned out of the shrine."³⁵⁰ Advocates of the Trokosi system practice view it as beneficial because it deters wrongdoing. However, the cost to the young girls and women who are enslaved to the shrines is too high a price to pay. This is especially true considering that the girls offered to the shrine to atone for the offense are rarely the ones who commit the offenses, and many times, were not even born when the offense was originally committed. The abuses to these girls who are involuntarily taken to the shrines to atone for sins they did not commit cannot continue. These abuses result in lifelong, detrimental effects because the girls work long hours for little or no pay for priests that sexually abuse and impregnate them. It is not only those *outside* of Ghana or the Trokosi religion who are working to stop the enslavement of these girls. Many Ghanaians are actively seeking the freedom of the Trokosi as well.³⁵¹

Any of the aforementioned international conventions, as well as the Ghana Constitution, provide an adequate basis to eliminate Trokosi. However, reliance on these documents alone has not been successful due in part to Ghana's reluctance to infringe on religious or cultural practices. With the increasing interest and demand to eliminate Trokosi, Ghana has worked to strengthen the Constitutional prohibition of slavery by providing criminal penalties for violations. The President of Ghana, Jerry John Rawlings, has not signed the new law that specifically outlaws customary servitude.³⁵² Even though this law by itself may not end the practice, it does

350. Short, *supra* note 74.

351. Vivian Addy-Lampety, an Ewe woman in her early thirties who grew up in the Volta region, was appointed to negotiate with the priests. *See* Brooker, *supra* note 62.

She has neatly braided hair, pursed lips and a sweet, almost docile expression which conveniently distracts from the glint of steely determination in her eyes. Once a week she leaves the capital, bouncing over the rutted, red-dirt country roads in a car which rings out with the clanking of half a dozen green glass bottles of schnapps, on her way to pay reluctant homage to the fetishes of the Trokosi shrines. She presents booze and cash, removes her shoes, shirt and bra at the shrine gates and wraps up in a traditional garment so that she is fit to enter the sacred inner sanctums. Still clutching her handbag, she kneels in the dirt before the fetish priests, imploring them to grant her an audience, only to be regaled with hostility and abuse. But slowly she is making progress, winning their confidence.

Id. Vivian has joined forces with Emile Short, head of Ghana's Commission for Human Rights. *See id.*

352. *See* Telephone Interview with Kathryn Fitrell, *supra* note 326.

provide victims of Trokosi a way to gain their freedom and to punish those who continue with this practice.

The International Criminal Court (ICC) represents one alternative to punish some human rights criminals and deter potential criminals. However, it remains to be seen whether the ICC will be the proper tribunal to initiate proceedings to help end the practice of sexual slavery in Ghana. The uncertainty arises because the practice of Trokosi does not appear to be a systematic attack on the population supported by a State or organizational policy³⁵³ and also because Ghana is investigating the practice and pledges to prosecute offenders.

Additionally, Ghana, through CHRAJ, governmental agencies, and NGOs should increase the educational efforts to end this practice. “[B]y virtue of their office, the chiefs have a tremendous influence and a great power for good.”³⁵⁴ By educating the chiefs on the human rights violations of Trokosi and encouraging them to discourage this practice in their villages, their power to influence the priests and local leaders to stop this practice may continue to prove to be the most successful and effective means for eliminating the Trokosi practice. Finally, countries that deal with Ghana on an economic basis, like the United States,³⁵⁵ should work with Ghana to help eliminate the practice of Trokosi by assisting the appropriate agencies, like

353. Unlike the Holocaust, where the government, controlled by the Nazi's, implemented a state policy to eliminate the Jewish population (systematic attack on the population), the practice of Trokosi is not a state or organizational policy or a systematic attack on the population, but rather is concentrated in the Ewe and Ada ethnic groups.

354. KRAMPAH, *supra* note 66, at 3.

355. The United States is becoming increasingly interested in the markets of African countries. “With Africa’s vast market potential largely untapped, a forward-looking trade policy is in our own national interest. It is essential that we press ahead with our ongoing efforts to accelerate Africa’s full integration into the global economy” *United States and Africa: Carson Addresses US-Africa Trade Forum*, AFR. NEWS, Nov. 10, 1998, available in LEXIS, News Library, News Group File.

America’s commercial interests in Africa will deepen as companies begin to tap these . . . markets.

. . . .

[However, o]ur commercial policy is inextricably linked to our efforts to promote democracy and respect for human rights, resolve new and persisting conflicts, and to meet our second important policy goal — working with Africans to combat global threats — including terrorism.

CHRAJ, with the necessary resources and funding.

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