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Abolished by Law—Maintained in Practice: The Trokosi as Practiced in Parts of the Republic of Ghana

*Aziza Naa-Kaa Botchway**

INTRODUCTION

Imagine that you had a different childhood. You wake up on your eighth birthday and your family takes you to a remote village and leaves you with a strange man who does not take care of you financially or emotionally. Thus, your formal education stops at age eight. You are forced to clean and do daily chores for the man. When you reach puberty, one of your “chores” will be having sex with this man. You *might* be released in three years, 20 years, or you may *never* be released. If you die before you are released, your family may have to send another child. *If* you are eventually released, you will have lost your innocence, youth, and possibly your sanity. You may have lost contact with your family. To top everything, you will have nowhere to live and no employable skills. When you ask why you were sent to live with the man, you are told it is because of something that someone else, probably a male relative, did over *700 years ago*! No one knows exactly what happened, but you are still being punished for it—at age eight. Happy Birthday! (If you are a male—not to worry—this fate is not likely yours.)

This paper developed out of the author’s desire to focus attention on what happens to young, virgin girls in Ghana who are placed into the practice known as the Trokosi, where they become (sexual) slaves of a fetish

* Director, Joint Program on Law, Public Policy & Ethics, University of Miami School of Law and College of Arts & Sciences, Center for Ethics & Public Service. The author’s family is from Accra, Ghana. I would like to thank mother, Ms. Regina Adofo Bruce-Konuah, as well as Dr. Elizabeth NaNaa Bruce-Tagoe, Dr. Alexander Akufo Bruce-Tagoe, Professor Edgardo Rotman, Professor Francisco Valdes, Professor Anthony Alfieri, Professor Ambassador Ambler Moss, Dr. Bradford E. Brown, Dr. Michelle Maldonado, Professor Kaaryn Gustafson, Professor Solangel Maldonado, Cynthia McKenzie, Suzanne Nelson, Jan Jacobowitz, Yolanda Veloz, Michelle Mills, Carla Kerstens, and the editorial staff of the Florida International University Law Review.

This paper was presented at the twelfth annual Latino Critical Race Studies (“LatCrit”) Conference, in Miami, Florida. The group of young girls and women victimized by the Trokosi practice are the exact type of hyper-marginalized group that the LatCrit focuses on. For more information about LatCrit, visit: www.latcrit.org.

priest as punishment for the alleged sins and/or crimes of a family member in scenarios like the one above.

This paper offers a concise exploration of the law relating to the Trokosi, which is practiced in parts of the Volta Region of Ghana, Benin, and Nigeria.¹ This is not meant as an exhaustive discussion of human rights law, but rather, it is an attempt to analyze how human rights law does or does not impact the Trokosi practice in Ghana. The word Trokosi loosely translated from Ewe, a dialect spoken in Ghana, means “slavery to the Gods [or deity].”² The Trokosi is widely viewed as a form of slavery by most rea-

¹ See Yvette Turlings, “Modern-Day Slavery in Ghana,” Radio Netherlands, 12 May 2003. Turlings suggests that the Trokosi literally means ‘wife to the deity.’” *Id.* She contends that:

The practice originates in the Ewe and Dangme peoples in south and east Ghana, but also in neighbouring Togo and Benin. According to the tradition, young virgins are brought to a shrine to compensate for some dishonourable deed carried out by their families. They live there as slaves of the priest, and they become his possessions.

Id. She goes on to disturbingly note that:

If the Trokosi dies, a new young virgin should be brought to replace her. *The youngest Trokosi I ever came across was just three years old.* And don't forget, some of these girls are paying off 700-year-old crimes. It is a totally unfair system . . . *Trokosis have no rights whatsoever.* They have to wear a rope around their necks and a white or blue cloth on their upper bodies, so that everyone knows what they are. . . . They are the property of the priest, because he is the gods' representative. They have to work his land, do the housekeeping, and keep the shrine clean. He doesn't have to do anything in return – the Trokosi's family is responsible for feeding her. Sometimes they are abandoned because the families cannot afford the cost. Many Trokosi are systematically abused and raped. Any children that are born share the same lot as their mothers. Trokosi are social pariahs. Their fellow villagers reject them and dare not touch them, for fear of being cursed. They only have each other.

Id. (emphasis added). See also Nirit Ben-Ari, *Liberating girls from 'Trokosi': Campaign against ritual servitude in Ghana*, 15 AFRICA RECOVERY 26 (2001), available at <http://www.un.org/ecosocdev/geninfo/afrec/vol15no4/154troko.htm> (noting that the Trokosi is also practiced in Benin, Nigeria and Togo); Juliette Ayisi Agyei, *African Women: Championing Their Own Development and Empowerment-Case Study*, 21 WOMEN'S RTS. L. REP. 117, 124 (2000) (citing Rebecca Osei-Boateng, *Leading the Legal Battle: Gender Rights in Ghana*, in MAINTAINING THE MOMENTUM OF BEIJING: THE CONTRIBUTION OF AFRICAN GENDER NGOS, 68-69, 79, 91 (Nana Araba Apt et al. eds., 1998)) (noting that Trokosi is a custom practiced in the upper Volta Region of Ghana requiring “virgin females to serve fetish priests or priestesses in order to pacify the gods for an offense committed by a family member,” and questioning: (1) why only females should be made to serve life sentences in shrines for crimes committed by the relations who are often males? and (2) “[o]f what use does it serve a country for an innocent person to be punished?”); SLAVECHILD.COM, http://www.thinkwow.com/slavechild/about_the_trokosi_slaves.htm (last visited Aug. 21, 2007) (noting that some Trokosi “are as young as 4 years old”); Anthony Owusu-Ansah, *Trokosi' in Ghana: Cultural Relativism or Slavery?*, <http://www2.ncsu.edu/ncsu/aern/trokony.html> (last visited Aug. 21, 2007); Amy Small Bilyeu, *Trokosi - The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights*, 9 IND. INT'L & COMP. L. REV. 457, 469 n.77, 466 n.61 (1999) (citing Howard French, *Girls Suffer for Sins of Fathers*, GUARDIAN, Jan. 30, 1997, available at 1997 WL 2363683) (“some reports state that children as young as two have been given to a shrine for crimes committed by relatives”).

² Turlings, *supra* note 1.

sonable thinkers, and for that reason, the practice is violative of Ghanaian and International Laws, a fact discussed later.³ When analyzing the legality of the Trokosi practice, it is helpful to understand the competing doctrines of cultural relativism versus universal human rights, both of which are explored later. The issue of whether the definition and current practice of the Trokosi amounts to sexual slavery or a venerable cultural or religious practice is not the main focus of this paper. Rather, this paper examines arguments for and against the Trokosi, and ultimately acknowledges the notion that the current form of the Trokosi in Ghana is illegal. Part I defines the Trokosi practice, and Part II discusses some of the laws, already in existence, which make the Trokosi practice illegal. Thereafter, recommendations are provided about how to end the Trokosi practice without using an imperialistic framework.

I. THE TROKOSI DEFINED

The term Trokosi in this text is used to describe both the practice and the virgin female who is forced to serve the priest involved in the practice.⁴ The Trokosi is generally practiced with virgin females ranging from ages eight to 15.⁵ The young girl or slave, referred to as a Trokosi, is typically sentenced because of an alleged crime of a family member, or because of a streak of bad luck in a family or village.⁶ The Trokosi is sent to a shrine to

³ See Bilyeu, *supra* note 1, at 478-501 (concluding that the practice of Trokosi is violative of both international and Ghanaian law).

⁴ See *id.* at 466.

⁵ See *id.* at 472.

⁶ See *id.* at 469-473. Amy Small Bilyeu notes that:

Trokosi is a belief “that things do not happen without a cause” and evolved from the same belief structure as voodoo. Trokosi “is a system in which a young girl, usually under the age of 10, is made a slave to a fetish shrine for offenses allegedly committed by a member of the girl’s family,” like stealing or improper sexual relations. Originally, the girls were killed as a sacrifice to appease angry gods or “to ensure success in a war.” Then, the priests agreed to keep the girls as slaves “mainly to work the shrine’s land, do the priests housekeeping and share his bed.”

The practice of Trokosi began as a system to “search for truth and knowledge” but now serves primarily as a device to punish wrongdoers. 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.” The young girls “are offered at a shrine after a run of bad luck, disease, or a series of deaths in a clan” or to prevent similar events in the future.

Traditionally, the offerings took the form of cattle, money, and liquor, but over time the practice changed from offering animals to offering girls. The practice changed due to the priests’ belief that only virgins could appease the gods. 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.

“marry” the gods, but actually marries a fetish priest who is the proxy for the gods.⁷ The Trokosi and her family are often not told what the crime is.⁸ Neither the actual wrongdoers, nor the girls, are given fair and public hearings in front of impartial tribunals, or afforded due process of law as required by the Universal Declaration of Human Rights.⁹ This is, in part,

The tradition requires that the girls begin their bondage as virgins. Once at the shrine, the priest is the only one who can decide when the girls have atoned for the sin and free them. “They are expected to stay with priests from the age of about eight up to 15 and sometimes much longer.” Sometimes, even lifelong servitude may not settle the debt to the gods. Occasionally, the family must offer another female virgin if the Trokosi dies while at the shrine. 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.” It can go on for generations. Different girls pay for “the same offense, from generation to generation.” Today, there are some women bound to shrines who “represent the fifth successive generation to pay for a [single] crime.”

Most Trokosi “are condemned to a lifetime of hard labour, sexual servitude and perpetual child-bearing at the service of the village priest.” The girls work domestically for the priest by cooking, cleaning, and working the fields. The priests get all of the profits, but they are not obligated to provide “food, medical care or education for the girls or for the children they bear.” 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. “Although the girls’ families must provide for their needs . . . most are unable to do so” or simply ignore the obligation. In theory, the Trokosi marry the gods, but because the priest stands in place of the gods, the girls are his wives. 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. “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.” 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. . . .”

Id. (alterations in original) (internal citations omitted). *But cf.* 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], available at <http://www2.ohchr.org/english/law/crc.htm>; 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], available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

⁷ See generally TROKOSI: WIFE OF THE GODS (Cinema Guild 1994) (documentary filming the lives of Trokosi in Ghana and offering suggestions for ending the practice); Bilyeu, *supra* note 1, at 502.

⁸ See Bilyeu, *supra* note 1, at 476.

⁹ See Universal Declaration of Human Rights, G.A. Res. 217A, at art. 10, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948), available at <http://www.hrweb.org/legal/udhr.html> [hereinafter Universal Declaration] (“[e]veryone is entitled in full equality to a fair, and public hearing by an independent and impartial tribunal, in the determination of his [or her] rights and obligations and of any criminal charge against him”). In 1948, Ghana was still under British colonial rule and was called the Gold Coast. See Bilyeu, *supra* note 1, at 466 n.63.

According to the Office of the High Commissioner for Human Rights, “[t]he Universal Declaration of Human Rights sets the Guinness World Record for Most Translated Document!!” Official UN Universal Declaration of Human Rights Home Page, <http://www.unhcr.ch/udhr> (last visited Aug. 17, 2007). Of course, this does not mean that each translation was done well. That is, there are many dialects spoken in Ghana and some legal terms may not translate well, in part because they may not have equivalent legal or non legal meaning. For a concise, but salient, discussion of problems in legal trans-

because there is no allegation that the Trokosi has done anything wrong; she is merely serving a sentence for the original wrongdoer, who has not necessarily even been proven guilty.¹⁰ Of course, even if the actual wrongdoer were proven guilty, the practice would not be redeemed because it makes no sense for an innocent child to pay for the crimes of an adult. Moreover, even if, *arguendo*, it makes sense for a child to serve the sentence as a proxy for an adult, why does she have to be mistreated and molested while serving the sentence? Isn't being taken away from her family and education, and then being forced to do chores and hard labor for a possible life sentence enough? Why must she also be raped while serving the sentence of another?¹¹ It should be noted that the girls and women are considered the wives of the priests who are proxies for the gods.¹² As such, the priests are allowed to, and expected to, have sex with the Trokosi.¹³ Amy Small Bilyeu notes that:

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.¹⁴

However, it is not just that the cost to these young girls and women is too high, but also that this system does not deter wrongdoing.¹⁵ If it did, why would crime continue? Indeed, the Trokosi system may promote wrongdoing, because the actual wrongdoers know that they never have to be punished for the crimes or sins they commit. How are criminals deterred when they can have a proxy serve their sentence? Moreover, again, it is not entirely clear that the actual alleged wrongdoers have been proven guilty of the alleged offenses, and sometimes it is not even clear what the offenses are.¹⁶ How can you deter an offense when no one knows what the offense even is? As previously indicated, there is a large consensus that the Trokosi is a form of slavery, that it is violative of the rights of women and child-

lation, see Edgardo Rotman, *The Inherent Problems of Legal Translation: Theoretical Aspects*, 6 IND. INT'L & COMP. L. REV. 187 (1995).

¹⁰ See Bilyeu, *supra* note 1, at 475-477.

¹¹ See generally WIFE OF THE GODS, *supra* note 7.

¹² See Bilyeu, *supra* note 1, at 473.

¹³ See generally WIFE OF THE GODS, *supra* note 7 (interviewing priests who claim that they wait until the girls are of age or reach menstruation before they have sex with them).

¹⁴ Bilyeu, *supra* note 1 at 502.

¹⁵ See *id.* at 475.

¹⁶ See *id.* at 476.

ren.¹⁷ Indeed, Ghana passed a law that outlawed ritual servitude¹⁸ such as the Trokosi, yet the practice has proven difficult to completely eradicate, perhaps in part because of the lack of enforcement.¹⁹ It should also be noted that slavery in Ghana is not new. Ghana, which was once called the Gold Coast, was at the heart of the European slave trade.²⁰

A. The Origins of the Practice

There exists a divide about the original purpose or form of the Trokosi practice. For example, according to one commentator, Amy Small Bilyeu, the practice seems to have always been an arguably negative practice; girls used to be killed as sacrifices for the gods.²¹ However, according to Dr. E.K. Quashigah, it seems becoming a Trokosi was arguably, originally viewed as a positive step.²² Dr. E.K. Quashigah contends that:

[t]he practice is an aspect of a religious tradition which has become, over the years, corrupted and reduced into a rather [heinous] form of the original practice. The Trokosi practice was a system under which young virgin girls were sent into fetish shrines to atone for the misdeeds of relatives. *In its original conception, the young girls were sent there, not because any of their relatives had committed transgressions, but for the same reasons other girls entered convents.* From that perspective, the Trokosi system was designed to create a class of traditionally elite women, or “Fiasidi.” These “marriageable king’s initiates” were to become the mothers of the elite men and women of the society, the kings, the philosophers, the seers, and other men and women of virtue.

In its debased form, the priesthood demands young virgin girls as servants for the gods. While in the shrines, the girls are sexually abused and denied basic care, including medical care. They are also not given the opportunity to attend schools and are economically exploited. *They live in virtual slavery*, serving the needs and pleasures of the priests. In its present abused form, it represents a system ridden with debauchery, immorality, and resulting in the denigration of the purity

¹⁷ See, e.g., UNCRC and CEDAW, *supra* note 6.

¹⁸ See Bilyeu, *supra* note 1, at 500.

¹⁹ See *id.* at 477 (citing lack of enforcement mechanisms).

²⁰ See generally JOHN HOPE FRANKLIN, FROM SLAVERY TO FREEDOM: A HISTORY OF NEGRO AMERICA (Knopf 1980) (1967).

²¹ See Bilyeu, *supra* note 1, at 470.

²² See E.K. Quashigah, *Legislating Religious Liberty: The Ghanaian Experience*, 1999 BYU L. REV. 589, 602-603 (1999) [hereinafter Quashigah, *Legislating*] (citing E.K. Quashigah, *Religious Freedom and Vestal Virgins: the Trokosi Practice in Ghana*, 10 J. AFR. SOC’Y INT’L & COMP. L. 193 (1998) [hereinafter Quashigah, *Freedom*]). It is unclear when the Trokosi practice changed from the original conception that Quashigah mentions.

of womanhood; the exact opposite of what it was designed to achieve.²³

No matter how the Trokosi practice originated, it is clear that condemnation for the current form of the practice is well documented yet the practice still exists. As late as 2008, ten years after the enactment of a Ghanaian law outlawing the Trokosi practice, an article by the Ghanaian government's National Commission on Culture noted that: "A senior lecturer at the University of Ghana, Legon, S.K. Kufogbe, noted that before the law was enacted, there was as total of 278 Trokosi shrines in North Tongu, Ketu, Akatsi, Keta, Dangme East and West districts."²⁴ This number may seem relatively small compared to Ghana's population but, of course, for the 278 women in the practice the number is huge. Moreover, an earlier report by the internationally recognized Human Rights Watch indicated that the Trokosi is:

...a system in which a young girl, usually under the age of ten, is made a slave to a fetish shrine for offenses allegedly committed by a member of the girl's family. The belief is that if someone in that family has committed a crime, such as stealing, members of the family may begin to die in large numbers unless a young virgin girl is given to the local fetish shrine to atone for the offense. Most Trokosi girls and women are condemned to a lifetime of hard labor, sexual servitude, and perpetual childbearing at the service of the village priest. There are an estimated 3,500 girls and women bound to various shrines in the Trokosi system, a figure that does not include the slaves' children. Even if released, generally without skills or hope of marriage, a Trokosi woman often has continued obligations to the shrine for the duration of her life. In some cases when the fetish slave dies, the family is expected to replace her with another young girl for the fetish shrine. Some women in the shrines today represent the fifth successive generation to pay for a crime.²⁵

²³ Quashigah, *Legislating*, *supra* note 21, at 603 (citing Quashigah, *Freedom*, *supra* note 21).

²⁴ (Ghanaian) National Commission on Culture: Review of Trokosi Law—Research Study by Winston Tamakloe, Akatsi (July 3, 2007) (citing *The Ghanaian Times* Thursday, July 3, 2008, pp. 25), *available at* <http://www.ghanaculture.gov.gh/index1.php?linkid=65&archiveid=1080&page=1&adate=03/07/2008> (last visited September 27, 2008) (noting that "a research study of the practice of Trokosi in Ghana has revealed the need to review the Trokosi law, its implementation mechanism and the role of institutional agencies in abolishing the practice").

²⁵ HUMAN RIGHTS WATCH, *PROTECTORS OR PRETENDERS? GOVERNMENT HUMAN RIGHTS COMMISSIONS IN AFRICA* (2001), <http://www.hrw.org/reports/2001/africa/overview/contributions.html> [hereinafter *PROTECTORS OR PRETENDERS*]. An article in *Equality Now* notes that:

According to the *trokosi* tradition practiced in southeastern Ghana, virgin girls are given to village priests as a way of appeasing the gods for crimes committed by family members. The word *trokosi*

It is possible that after the law outlawing the Trokosi practice was enacted the priests perpetuating the practice, possibly fearing prosecution, took the practice underground.²⁶ As Human Rights Watch notes, estimates of how many girls and women are bound to shrines often do not include the children of the original Trokosi.²⁷ Thus, the actual number of victims of the Trokosi in Ghana may be much higher than the U.S. State Department reports.²⁸ Anthony Owusu-Ansah indicates that the Trokosi is a form of fetish slavery.²⁹ Additionally, Ansah notes that:

It is an aspect of African traditional religion, a cultural practice, and a science that evolved among the ancestors of two patrilineal groups in Ghana: the Ewes of Tongu and Anlo of Volta region and the [Ga] Dangmes of the Greater Accra region. Within these communities, the number of children a man has determines his status, thus a fetish priest elevates his status within the community by impregnating many Trokosi slaves. Under this type of slavery, a family must offer a virgin daughter to the gods to atone for the “sins and crimes” of a relative who, in most cases, may be long dead. These crimes may range in severity from murder to petty thefts. Whatever the crimes are, offending individuals and families have a duty to turn their young girls between the ages of eight and fifteen over to serve as slaves to the gods or risk living lives of perpetual misery, misfortune, diseases and even a succession of deaths within the family.³⁰

in the Ewe language means “slaves of the gods.” Once given to the priest, a girl becomes his property and is made to carry out domestic chores such as cooking and washing, as well as farming and fetching water. After the onset of menstruation, the bondage also involves sexual servitude.

Equality Now, *Slavery in Ghana: The Trokosi Tradition* (March 1998), http://www.equalitynow.org/action_eng_14_1.%20html.

²⁶ *Supra* note 18 (citing Professor Kufogbe who indicated that: “[A]fter the enactment [of laws outlawing the Trokosi], NGOs rushed to the various shrines to persuade and negotiate with the head priests to release the inmates. [Professor Kufogbe] explained that some of the priests agreed but others refused and went underground with the practice”).

²⁷ See PROTECTORS OR PRETENDERS, *supra* note 25.

²⁸ See U.S. DEPARTMENT OF STATE, GHANA INTERNATIONAL RELIGIOUS FREEDOM REPORT (2007), available at <http://www.state.gov/g/drl/rls/irf/2007/90100.htm> (“the number of Trokosis [is] declining considerably, with perhaps no more than 50 children serving . . . throughout the Volta Region. . . the decline is due to other belief systems attracting Trokosi adherents and a decline in the number of fetish priests”).

²⁹ Anthony Owusu-Ansah, *Trokosi’ in Ghana: Cultural Relativism or slavery?* (2007), <http://www2.ncsu.edu/ncsu/aern/trokony.html> (noticing that some people who believe in the current Trokosi practice may have a dual world view, that is, someone may identify themselves as Christian or a Muslim yet still believe in the Trokosi practice). To end the current form of the Trokosi practice, it may be helpful to point out to families that the current system has not always been the one practiced – people may then see that the current form of the Trokosi is not a necessary element of their religion. *Id.*

³⁰ *Id.*

B. The Stories of Dora and Mercy

Consider the story of Ms. Dora Galley (“Dora”), recounted by Nirit Ben-Ari.³¹ Dora was helped by the non-governmental organization (“NGO”) “International Needs Ghana” (“ING”), which attempts to help women reclaim their natural lives after escaping the Trokosi.³² Dora and another woman learned hairdressing skills at the vocational center. Dora had spent seven years in a shrine. Dora told of how she was compelled by the priest to work on the shrine’s farm from morning until evening without any payment or food. Dora explains:

I had to cut down trees and uproot tree stumps to burn into charcoal to sell and make some money to take care of myself. I did not have the right to take crops from the farm unless the priest allowed me to. Occasionally my parents sent me some food, but that was kept in the priest’s room and I had to request it any time I needed some. I was forced to have sex with the priest as one of the rituals in the shrine, *but luckily I did not get pregnant*.³³

In analyzing the mental experience of the slavery, iAbolish, an antislavery network, recounts the story of Mercy Ameyo Senahe, (“Mercy”), who was also enslaved from the tender age of ten, to twenty-three.³⁴ Mercy told researchers from Columbia University:

I never had the chance to tell the priest how I felt about him. I would have told him that he is the most wicked person on earth . . . I can’t trust anyone in my family now. Of course *I blame them for sending me to be punished for a crime I did not commit and for destroying my life. Maybe I could have been a doctor or teacher, but instead I am a single parent of four children from a wicked priest in a wicked system. . . I believe I can recover, but it is going to be a long and painful road*.³⁵

Mercy was “given,” by her parents, to the fetish priest at a local religious shrine in atonement for family sins: as penance for her grandmother’s theft of a necklace.³⁶ Understandably, Mercy blames her parents; but the

³¹ Ben-Ari, *supra* note 1. Dora was twenty-two years old at the time she recounted the story. *See id.*

³² Austin Cline, *International Religious Freedom Report 2003: Ghana*, ABOUT.COM, Dec. 18, 2003, http://atheism.about.com/library/irf/irf03/blirf_ghana.htm.

³³ Ben-Ari, *supra* note 1 (emphasis added).

³⁴ IABOLISH.ORG, *The Anti-slavery Portal: The Mental Experience*, <http://www.iabolish.org/today/experience/mental.htm> (last visited Oct. 18, 2004).

³⁵ *Id.* (emphasis added).

³⁶ Mercy Ameyo Senahe, *The Slave Experience: In their Words*, IABOLISH.ORG, http://www.iabolish.org/slavery_today/slave_experience/narratives/mercy_ameyo_senahe.html (last visited Aug. 21, 2007).

current Trokosi practice preys on the families' fears of the fetish priest.³⁷ It should be noted that fetish priests are not the same as Christian priests, and fetish priests are often considered very wise.³⁸ Sadly, the stories of what Dora and Mercy endured during their lives in the Trokosi may not be uncommon.³⁹ What may be uncommon is that Dora and Mercy were rescued from the Trokosi.⁴⁰ Again, sources vary, and it is not fully clear how many women are in the Trokosi, or how many ever escape.⁴¹ It is, however, clear that according to the laws discussed below, the current Trokosi practice is illegal.⁴²

II. ABOLISHED BY LAW—MAINTAINED IN PRACTICE

Interestingly, one commentator, Juliette Ayisi Agyei, notes that "[e]ven though literacy remains high among women as compared to men, women make up 91 percent of the Ghanaian labor force in agriculture, food processing, and sales."⁴³ The persistence of the Trokosi practice in Ghana may be a function of (1) culture, (2) sexism, and (3) economic crisis, coupled with a lack of governmental resources for enforcement of the laws condemning the practice.⁴⁴ However, it should be noted that the Ghanaian government has indicated that it will start enforcing laws against the Trokosi.⁴⁵ Still, it is not clear whether a single fetish priest has been prosecuted for the Trokosi practice.⁴⁶ As Rebecca J. Cook notes, many African countries tend to only pay lip service to human rights;⁴⁷ perhaps the plight of the girls in the Trokosi is not considered a priority for Ghana.

Generally, the Ghanaian Constitution respects religious freedom,⁴⁸ and Ghanaian statutes are not overtly discriminatory against women.⁴⁹ Indeed, the Ghanaian Constitution, in chapter six—the Directive Principles of State Policy, section (36) (6) states that:

The State shall afford equality of economic opportunity to all citizens; and, in particular, the State shall take all necessary steps so as to en-

³⁷ See, e.g., *id.*

³⁸ My mother used to say, "[a]n adult (or elderly person) with experience is wiser than a fetish priest." To say someone is wiser than a fetish priest underscores the importance of the experience of elders.

³⁹ See PROTECTORS OR PRETENDERS, *supra* note 25.

⁴⁰ See Cline, *supra* note 32.

⁴¹ See *id.*; see also PROTECTORS OR PRETENDERS, *supra* note 25.

⁴² See *infra* p. 20.

⁴³ Agyei, *supra* note 1, at 122.

⁴⁴ See Ben-Ari, *supra* note 1.

⁴⁵ See PROTECTORS OR PRETENDERS, *supra* note 25.

⁴⁶ See Ben-Ari, *supra* note 1.

⁴⁷ REBECCA J. COOK, HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, 431 (1994).

⁴⁸ See Bilyeu, *supra* note 1, at 494-95.

⁴⁹ Agyei, *supra* note 1.

sure the full integration of women into the mainstream of the economic development of Ghana.⁵⁰

Moreover, section (37) indicates that “[t]he State shall enact appropriate laws to ensure . . . (2) the protection and promotion of all other basic human rights and freedoms, including the rights of the disabled, the aged, children and other vulnerable groups in development processes.”⁵¹

Agyei also points out “Ghanaian women, like women all over the world have been denied equal opportunity with men in every aspect of life for centuries.”⁵² The Trokosi is in contravention of many treaties that Ghana is either a signatory of, or has ratified.⁵³ According to Amy Small Bilyeu, “[g]enerally, 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.”⁵⁴ Thus, some erroneously argue that the Trokosi should be protected as a religious practice,⁵⁵ but as Bilyeu notes, “States should not be able to use religious practices as a shield to hide behind in order to avoid complying with human rights standards.”⁵⁶

A. Cultural Relativism vs. Universal Human Rights

This is basically a debate between cultural relativism and universal human rights. The Trokosi practice implicates the issue of whether there should be a balancing of cultural relativism and universal human rights.

Generally, cultural relativism refers to the concept that ethical truths only hold relative to a specified culture.⁵⁷ Universal Human Rights generally refers to the principle that there are a set of basic rights which people have simply because we are human.⁵⁸ This principle is explored further below. Yet, from those broad definitions, it does not appear that the two concepts are necessarily mutually exclusive.⁵⁹ On the question of human rights, Kofi Annan, former Secretary General of the United Nations, said that:

⁵⁰ GHANA CONST. art. 36 § 6.

⁵¹ *Id.* at art. 37 § 2(2).

⁵² Agyei, *supra* note 1.

⁵³ See Bilyeu, *supra* note 1, at 477-502; Quashigah, Legislating, *supra* note 21, at 605.

⁵⁴ Bilyeu, *supra* note 1, at 502.

⁵⁵ See *id.* at 474.

⁵⁶ See *id.* at 502.

⁵⁷ According to cultural relativism, “it is never true to say simply that a certain kind of behavior is right or wrong; rather, it can only ever be true that a certain kind of behavior is right or wrong relative to a specified society.” Philosophyofreligion.info, Cultural Relativism, <http://www.philosophyofreligion.info/culturalrelativism.html> (last visited Aug. 21, 2007).

⁵⁸ See Bilyeu, *supra* note 1, at 459-60.

⁵⁹ See *id.* at 460.

*Human rights are what reason requires and conscience demands. They are us and we are them. Human rights are rights that any person has as a human being. We are all human beings; we are all deserving of human rights. One cannot be true without the other.*⁶⁰

Essentially, opponents of the Trokosi argue that it is a form of sexual slavery.⁶¹ Whereas, supporters of the Trokosi argue that the practice is not a form of slavery, does not violate human rights principles, but rather, is a valued exercise of religious freedom.⁶² We are forced to ask which path to take when human rights and cultural relativism collide.

Moreover, if human rights exist, the question remains as to whether human rights are universal. Dr. Kenneth Kaoma Mwenda, a Rhodes Scholar and former lecturer in the University of Warwick, UK, captures the issue well when he asks, “[a]re human rights simply human rights wherever we go, to such an extent that it is not necessary to talk about human rights in Africa as if they were different from human rights in Bosnia?”⁶³ Mwenda goes on to point out that both customary⁶⁴ and international law⁶⁵ recognize that the doctrine of *jus cogens* (norms from which no state can derogate),⁶⁶ includes aspects of universal human rights.⁶⁷ If commentators such as Mwenda are correct, and human rights fall within the concept of *jus cogens*, the question becomes whether the term “universal,” in universal human rights, is necessary, or mere surplusage. Black’s Law Dictionary defines Human Rights as “[t]he freedoms, immunities, and benefits that, according to modern values (especially at an international level), all human beings should be able to claim as a matter of right in the society in which they live.”⁶⁸ If there are basic freedoms, immunities and benefits that all humans should have, then what are they, and whose moral code or norms should we use to define universal human rights?

⁶⁰ UNICEF.org, Convention on the Rights of the Child and the UN and Human Rights, <http://www.unicef.org/crc/crc.htm> (last visited Oct. 10, 2004).

⁶¹ See Quashigah, Freedom, *supra* note 21.

⁶² See Bilyeu, *supra* note 1, at 474.

⁶³ See Kenneth Kaoma Mwenda, *Deconstructing the concept of human rights in Africa*, AFRICA ECONOMIC ANALYSIS, Sept. 9, 2000, <http://afbis.com/analysis/human%20right.htm> (last visited Aug. 21, 2007).

⁶⁴ See BLACKS LAW DICTIONARY 391 (7th ed. 1999) (defining customary law as law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of social and economic system that they are treated as if they were laws).

⁶⁵ See *id.* at 822 (defining international law as the international law relating to investment, economic relations, economic development, economic institutions, and regional economic integration).

⁶⁶ See *id.* at 864 (7th ed. 1999) (defining *jus cogens* as “compelling law;” a mandatory norm of general international law from which no to or more nations may exempt themselves or release one another).

⁶⁷ See Mwenda, *supra* note 63 (internal citations omitted).

⁶⁸ See BLACKS LAW DICTIONARY 745 (7th ed. 1999).

A nation's stage in development is not an excuse for non-compliance with a human rights treaty.⁶⁹ Thus, Ghana's status as a developing nation should not be an internationally-recognized excuse which allows slavery to persist. It seems that, at a minimum, international human-rights laws indicate that there is a consensus that "the book is closed" on certain practices. For example, amongst reasonable thinkers, the appropriateness of practices such as slavery and genocide are not subject to debate. Such practices are in contravention of the well-established internationally-adopted initiatives, such as the Convention to Abolish Slavery,⁷⁰ the Convention to Suppress the Slave Trade and Slavery, and the Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery.⁷¹

⁶⁹ See Mwenda, *supra* note 63. Mwenda contends that, on the topic of development, in Africa, "societal norms must deconstruct legal norms, which thrive unconsciously on the basis of Western values of individualism and are archaic to African societal norms." *Id.* Mwenda also contends that slogans propagating the "right to development" and "rights to self-determination" are ideologically bankrupt. *Id.* That is, while Mwenda recognizes that there is an established right to self-determination under international law, it is his view that there is no such thing as development because there is no corresponding duty on the other party to respect these so called rights. *Id.* He questions what duty there is on developed countries to uphold or support the right to development of Third-World Countries. *Id.*

⁷⁰ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Apr. 30, 1957, 266 U.N.T.S. 3, available at <http://www2.ohchr.org/english/law/slavetrade.htm>.

⁷¹ See Bilyeu, *supra* note 1, at 481-83. Bilyeu explains that:

[The Convention to Suppress Slavery has 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." The High Contracting Parties were charged with adopting all appropriate measures to prevent, suppress, and abolish slavery in all of its forms, including compulsory and forced labor.

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. *Id.* 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). Ghana ratified the Slavery Convention of 1926, as well as the Convention to Abolish Slavery.

The Convention to Abolish Slavery requires state parties to take all practical and necessary measures to abolish or abandon the following institutions and practices: (a) debt bondage; (b) serfdom; (c) forced marriage; 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." Additionally, state parties are to make the enslavement or inducement of another into slavery a criminal offense and to hold those convicted liable. Notably, state parties are not permitted to make reservations to the Convention to Abolish Slavery, 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 parties to the dispute." 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

Therefore, it follows that a notion of “universal human rights” exists in certain instances, and refers to a set of rights which are basic to all human beings, simply because they are humans.

B. Essentialism vs. Anti-Essentialism

One cannot adequately discuss “universal human rights” and women’s rights in Ghana without recognizing the debate over essentialism⁷² vs. anti-essentialism.⁷³ In examining “*First and Third World Feminisms*,” Hilary Charlesworth notes that:

A conceptual problem for all feminist analysis is that of essentialism: assuming that all women have similar attributes and experiences and ignoring the impact of other variables such as race, class, wealth and sexual preference on the position of women. This issue is particularly acute in international law, which by definition, is concerned with transnational standards, applicable in a vast range of circumstances.⁷⁴

Charlesworth is correct that the framework of essentialism does tend to generalize the experiences of all women, but still, there must be some basic human rights which remain with all women, irrespective of their attributes. Of course, some Trokosi have characteristics beyond their status as women, and some may be relatively better off than others; but at the end of the day, they are all oppressed by the Trokosi system. Solving the problem of the Trokosi must go beyond the classic essentialism vs. anti-essentialism debate—beyond the essentialist vs. anti-essentialist dichotomy. In terms of our discussion, how can sexual slavery be inherently inhumane

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.

Id. (internal citations omitted).

⁷² Jane Wong, *The Anti-Essentialism v. Essentialism Debate in Feminist legal Theory: The Debate and Beyond*, 5 WM. & MARY J. WOMEN & L. 273, 274-75 (1999). According to Wong:

Essentialism has been defined as “the set of fundamental attributes which are necessary and sufficient conditions for a thing to be [considered] a thing of that type.” To define a thing is to express its essence in words. Thus, definition involves two steps: first, distinguishing the object from other objects by referring to certain parts of its characterization in order to capture its intuitive essence, and second, characterizing the object within a single concept so as to permit the definition to move to a discursive understanding. The result is that the characteristics used to define a thing are thought to inhere in its very essence and, thus, to be unchangeable.

Id. (citations omitted).

⁷³ See *id.* at 286-96 (discussing essentialism and anti-essentialism; and, rejecting essentialism).

⁷⁴ Hilary Charlesworth, *What are “Women’s International Human Rights?”*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 62 (Rebecca J. Cook ed., 1999).

for western women but not for Ghanaian women? Perhaps the reason that the plight of these Ghanaian girls is not at the forefront of debate in Ghana is because Ghanaian women, like women in many nations, are economically disadvantaged. Indeed, women in Ghana, and similar countries facing structural development, continue to have economically invisible functions, such as “providing food, fetching water and fuel, and taking care of children, the sick, and the aged.”⁷⁵ Yet, the argument that the Trokosi is a necessary economic evil which helps poor families to support their children does not withstand scrutiny.

The economic situation of a poor girl is not improved by becoming a Trokosi. Indeed, priests do not support the Trokosi girls with food, medical care or education.⁷⁶ Rather, each girl’s family is expected to support her; but in many cases, the girl’s family loses contact with the Trokosi, who are often ostracized.⁷⁷ Furthermore, even if the priest financially supported the Trokosi, the practice would not be redeemed. The practice would be indistinguishable from allowing a child to be molested, and otherwise exploited, as long as the adult could afford to support her financially. Girls are made to work, often receiving no pay.⁷⁸ Yet, in some cases, the girls are expected to pay off the priests in order to be released.⁷⁹ Such pay-offs may perpetuate the Trokosi practice by creating an economic incentive for the practice, while compensating the priests with unclean hands.

The argument that the practice is beneficial, because it deters wrongdoing, is also based on faulty reasoning. Explicitly, as Amy Small Bilyeu notes:

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.⁸⁰

Even if one blindly accepts the argument that Trokosi practice does not constitute a form of slavery, although it clearly does, the practice, at the

⁷⁵ Akua Kuenyehia, *The Impact of Structural Adjustment Program on Women’s International Human Rights: The Example of Ghana*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, 425 (Rebecca J. Cook ed., 1999).

⁷⁶ See Bilyeu, *supra* note 1, at 473.

⁷⁷ See *id.*

⁷⁸ See *id.* (explaining that the Trokosi are forced to work and receive no pay).

⁷⁹ See International Needs Ghana, <http://www.intneedsgh.org/contents/projects/projectstories.php?projid=4&id=1> (explaining that “International Needs Ghana” is a NGO that works on release and financial sponsorship of Trokosi victims).

⁸⁰ See Bilyeu, *supra* note 1, at 502.

very least, still discriminates against women in violation of international initiatives such as the United Nations' Convention on the Elimination of Discrimination against Women.⁸¹ Thus, whether or not the Trokosi is characterized as slavery or discrimination is not the key issue. That is, international treaties protecting the rights of women and children from discrimination or slavery are not wanting. Rather, the problem is making those guarantees and rights, set forth in treaties, a reality. Again, as Kuenyehia astutely notes:

Even at the best of times most African governments pay only lip service to human rights. The fact that they are signatories to various international human rights treaties does not make the situation any better. Most of these governments fail to take the legislative steps necessary to make provisions of these international human rights instruments directly applicable to their citizens.⁸²

C. A Non-Imperialistic Framework

The current Trokosi practice is abhorrent and should be abolished immediately. However, as illegal and deplorable the Trokosi is, we must also be careful not to use an imperialistic framework to deconstruct the Trokosi. That is, even if people agree to the bottom line that the Trokosi should be abolished, the method to abolish the Trokosi must respect the culture and dignity of the people affected. Yet, we must not allow fears of imperialism, and transparent claims about religious freedom, to prevent enforcement of the rights of the Trokosi girls and women.

In discussing globalization, gay rights, and essentialism versus anti-essentialism, Professor Francisco Valdes notes: "Universal Human Rights is just the floor [Universal human rights can still be relative]. For some people, gay rights are about gay marriage, but that is if you have everything else."⁸³ Professor Valdes emphasizes that some people in the gay community may not be focused on gay marriage because their immediate need is immigration or healthcare.⁸⁴ He notes that "Essentialism is not about human-rights. Essentialism-scholarship [in women's rights] tries to document the situation of women, in order to set the stage [for human rights]"⁸⁵ In noting that globalization may not always be a bad thing, [as globalization is already here], Professor Valdes states that "if globalization means everyone in America has to speak English, if it means homogeneity, if globalization means imperialism then maybe that is not the kind of globalization we

⁸¹ CEDAW, *supra* note 6.

⁸² Kuenyehia, *supra* note 75, at 431.

⁸³ Interview with Francisco Valdes, Professor of Law, University of Miami, Fla. (Aug. 23, 2007).

⁸⁴ *Id.*

⁸⁵ *Id.*

agree on.”⁸⁶ Thus, while many may agree that the Trokosi practice should be ended, the particular method used to end the Trokosi is a more controversial step, and ending the Trokosi should not mean simply implementing imperialism. Nevertheless, states must comply with their legal obligations. Abdullahi Ahmed An-Na’im contends that “[s]tates are responsible for bringing their domestic practice in conformity with their obligations under international law to protect and promote human rights.”⁸⁷ Thus, Ghana must bring its domestic practices in conformity with international human-rights laws by taking affirmative measures to end the Trokosi. An-Na’im further contends that:

[E]very state has the responsibility to remove any inconsistency between international human rights law binding on it . . . This responsibility is fully consistent with the principle of state sovereignty in international law, since it does not purport to force any state to assume legal obligations against its will. It simply seeks to ensure that states effectively fulfill legal obligations they have already assumed under international law.⁸⁸

An-Na’im does not suggest that the above-mentioned responsibility should be founded on customary international law, because he contends that customary international law is “vague and difficult to prove.”⁸⁹ He correctly points out that the rationale of binding agreements is valid when a state is a party to a relevant treaty.⁹⁰ However, he notes that this rationale will not work where a state is not a party or has entered a reservation of a human rights treaty.⁹¹ Moreover, identifying the obligations of states which are parties to treaties may face problems of interpretation and operation of the provisions of the treaties.⁹²

D. Laws Opposing the Trokosi

Again, the 1993 Constitution of the Republic of Ghana generally respects religious freedom.⁹³ Moreover, as previously noted, Ghana is a signatory of many conventions and declarations respecting the rights of child-

⁸⁶ *Id.*

⁸⁷ Abdullahi Ahmed An-Na’im, *States Responsibilities Under International Human Rights Law to Change Religious and Customary Laws*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 167 (Rebecca Cook ed., 1994).

⁸⁸ *Id.* at 167.

⁸⁹ *Id.* at 168.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ See generally GHANA CONST, available at <http://www.ghanaweb.com/GhanaHomePage/rep/constitution.php?id=Gschedule1.html>.

ren and women.⁹⁴ It should be noted, that while declarations such as the United Nations Universal Declaration of Human Rights⁹⁵ are laudable and noteworthy models, they often lack enforcement power because they are just declarations.⁹⁶ For example, the following is a representative list of basic laws Ghana has ratified, which purportedly protect the rights of Trokosi:

- a. The African Charter on the Rights and Welfare of the Child.⁹⁷
- b. The Convention on the Rights of the Child⁹⁸
- c. The Convention on the Elimination of Discrimination Against Women⁹⁹
- 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 Slavery¹⁰⁰
- e. International Covenant on Civil and Political Rights¹⁰¹
- f. The Universal Human Rights Convention¹⁰²

According to Professor Francisco Valdes, “[in the law] [t]here is always a gap or a lag between the principle aspiration and reality. The question is how [do] you close the gap?”¹⁰³ For example, in *Brown v. Board of Education (Brown II)*,¹⁰⁴ the Court mandated that schools be desegregated

⁹⁴ See UNCRC and CEDAW, *supra* note 6.

⁹⁵ Universal Declaration, *supra* note 7, at art. 10.

⁹⁶ Bilyeu, *supra* note 1, at 480 (“While the Universal Declaration has functioned as a model for over seventy human rights instruments, it is simply a statement of principles and is not legally enforceable. Indeed, if it was enforceable, the subsequent conventions and declarations directed at women’s and children’s rights would be unnecessary.”).

⁹⁷ African Charter on the Rights and Welfare of the Child, (Nov. 29, 1999); available at http://www.africaunion.org/official_documents/Treaties_%20Conventions_%20Protocols/A.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf.

⁹⁸ UNCRC, *supra* note 6.

⁹⁹ CEDAW, *supra* note 6, at art. 1, art. 7.

¹⁰⁰ See *supra* note 69 and accompanying text.

¹⁰¹ See Bilyeu, *supra* note 1, at 483. Bilyeu notes that:

The International Covenant on Civil and Political Rights (ICCPR) requires states to protect against slavery and cruel, inhuman, or degrading treatment, and recognizes the rights of life, liberty, security and privacy of the person. 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. 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.

Id. (internal citations omitted).

¹⁰² See Mwenda, *supra* note 63.

¹⁰³ Interview with Francisco Valdes, Professor of Law, University of Miami, Fla. (Aug. 24, 2007).

¹⁰⁴ 349 U.S. 294 (1955).

“with all deliberate speed.”¹⁰⁵ But arguably, many schools in America were never fully integrated, and the gap between the law and school desegregation has never closed.¹⁰⁶ The United States of America has not ratified the Convention on the Rights of the Child.¹⁰⁷ According to UNICEF, however, the U.S. has signaled its intent to ratify by signing.¹⁰⁸

UNICEF notes that:

Non-discrimination—in the light of the provisions of the Convention on the Rights of the Child; namely, article 2 and other relevant international standards – means that no child should be injured, privileged or punished by, or deprived of, any right on the grounds of his or her race, colour or gender; on the basis of his or her language or religion, or national, social or ethnic origin; on the grounds of any political or other opinion; on the basis of caste, property or birth status; or on the basis of a disability.¹⁰⁹ This principle implies therefore that all children – girls and boys, rich and poor, living in urban and rural areas, belonging to minority or indigenous groups—should be given the opportunity to enjoy the rights recognized by the Convention.¹¹⁰

Article 2 provides that:

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

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.¹¹¹

CEDAW expressly acknowledges the dignity of the human person. Indeed:

¹⁰⁵ *Id.* at 301.

¹⁰⁶ See ERIC MARGOLIS & MARY ROMERO, *THE BLACKWELL COMPANION TO SOCIAL INEQUALITIES* 220 (2005).

¹⁰⁷ See UNCRC, *supra* note 6.

¹⁰⁸ See UNICEF.org, Path to the Convention on the Rights of the Child, http://www.unicef.org/crc/index_30197.html (last visited Oct. 1, 2008).

¹⁰⁹ See generally UNICEF, Convention on the Rights of the Child: Introduction, *available at* <http://www.unicef.org/crc/> (last visited Oct. 1, 2008).

¹¹⁰ See Marta Santos Pais, *A Human Rights Conceptual Framework for UNICEF* (1999), <http://www.gddc.pt/direitos-humanos/temas-dh/pdfs/essay-9.pdf>.

¹¹¹ See UNCRC, *supra* note 6.

In its preamble, the Convention explicitly acknowledges that ‘extensive discrimination against women continues to exist,’ and emphasizes that such discrimination ‘violates the principles of equality of rights and respect for human dignity.’ As defined in article 1, discrimination is understood as ‘any distinction, exclusion or restriction made on the basis of sex . . . in the political, economic, social, cultural, civil or any other field.’ The Convention gives positive affirmation to the principle of equality by requiring States parties to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”¹¹²

CEDAW monitors the implementation of the convention.¹¹³ “The committee monitors states parties’ compliance with a specific treaty by receiving and responding to reports from those countries by issuing reports on this activity.”¹¹⁴ Such committee reports are helpful, yet something more than a report and written response are necessary to end the Trokosi.¹¹⁵ The convention also spells out a plan for action by countries, yet whether the countries implement those plans is a separate issue. Relevant sections of the convention include, without limitation:

Article I

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

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

¹¹² See UN.org, Introduction to the Convention on the Elimination of All Forms of Discrimination Against Women, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (last visited Oct. 1, 2008).

¹¹³ See Office of the United Nations High Commissioner for Human Rights, Committee on the Elimination of Discrimination Against Women, <http://www2.ohchr.org/english/bodies/cedaw/index.htm> (last visited Oct. 1, 2008).

¹¹⁴ Bora Laskin Law Library, *International Women’s Human Rights and Humanitarian Law* (2004), <http://www.law-lib.utoronto.ca/Resguide/women2.htm>.

¹¹⁵ See generally Bilyeu, *supra* note 1.

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

As we have seen, there are significant initiatives and treaties in contravention of the Trokosi. The real focus needs to be implementation of such treaties. At the end of the day, what really matters to a girl or woman in the practice is whether her rights are enforced such that she can live a life free from the worry of being forced into slavery.¹¹⁶ What good are international laws pronouncing your rights to be free from servitude and discrimination if none of them can stop you from being in servitude or discriminated against?

III. CONCLUSION: WHERE DO WE GO FROM HERE?

As indicated, there is substantive Ghanaian and international law in place to strip the current Trokosi practice of any semblance of legality. However, the real issue is how to enforce the universal human rights of a woman in the Trokosi in a way that is not imperialistic. To end the harmful practice, perhaps Ghana should: 1) begin with parental education, 2) provide support groups for these women, and 3) punish the priests.

¹¹⁶ See generally Sarah C. Aird, *Ghana's Slaves to the Gods*, <http://www.wcl.american.edu/hrbrief/v7i1/ghana.htm> (last visited Oct. 1, 2008).

In conducting parental education, one should be very respectful of religious beliefs, and mindful of the fact that some people who believe in the current Trokosi practice may have dual world views such that they believe in a religion that includes the Trokosi, as well as, or as part of another religion such as Christianity or Islam.¹¹⁷ Additionally, to end the current form of the Trokosi practice, it may be helpful to point out to families that the current system is new and, indeed, has not always been the one practiced as part of their religion. Perhaps if people knew that this Trokosi system is a new, corrupted version of a sacred practice, they may see that the current form of the Trokosi is not a necessary element of their religion and would thus be willing to depart from the current practice.¹¹⁸

These women need financial and psychological support to survive or escape the Trokosi experience. For example, teaching girls to weave baskets or other skills is useful, but only if the girls are also shown how to form sustainable businesses. Skills without jobs are useless. Parental education need not denounce their religion but should provide the girls with viable options. Many parents do not want to send their children into the Trokosi, but feel they have no option, as they believe that their family will be cursed if they do not send a virgin girl.¹¹⁹ As mentioned, many girls released from the Trokosi have nowhere to go, and if they fail when they are released from the Trokosi, others in the village may continue to believe that the priest has a hold over the Trokosi. Thus, ending the Trokosi may hinge on the success of those who either escape, or refuse to enter the practice.

The picture is not completely bleak. Two NGOs, the aforementioned ING and the "Ghana Commission for Human Rights and Administrative Justice" ("CHRAJ") "ha[ve] conducted an awareness campaign with traditional leaders and practitioners in an effort to bring the practice to an end."¹²⁰ The efforts of ING and CHRAJ 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. Including work by other organizations, 672 slaves were released by the end of 1997. 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 Constitution, as well as many of the human rights declarations to which Ghana has become a party. The practice of Trokosi has always violated the Constitution, but until recently, no criminal sanction for the

¹¹⁷ See generally Bilyeu, *supra* note 1.

¹¹⁸ *Id.*

¹¹⁹ See Bilyeu, *supra* note 1, at 472.

¹²⁰ See *id.* at 502.

violation existed. The CHRAJ plans to perform random checks at the shrines with the Ghanaian police force and to prosecute the violators.¹²¹

One strategy that may be useful is focusing international attention on the plight of the girls in the Trokosi.¹²² It should be noted that the United Nations is aware of the Trokosi.¹²³ Indeed, during a 2006 meeting of Committee on the Rights of the Child (“CRC”), a committee member asked, “whether the National House of Chiefs had taken a public stand on the practice of customary enslavement, known as Trokosi, and other social customs and practices harmful to children.”¹²⁴ Additionally, the summary of the CRC’s second periodic report of Ghana notes that:

The statutory age for marriage was 18 for both males and females, and forced marriage was an offence under the Criminal Code. [Yet] [t]he statutory age for marriage contrasted with the cultural practice of early marriage, and many complaints of violation of that regulation had been received from under-age girls. The practice of Trokosi, referred to in the Criminal Code as “ritual enslavement,” had been an offence since 1998.¹²⁵

Again, we see that the problem of the Trokosi is not one created by a want of legislation; rather, existing legislation must be implemented. Otherwise, it is not worth the paper that it is printed on. Another CRC committee member, Ms. Ouedraogo, said that she was concerned about the failure to implement legislation.¹²⁶ “For example, the practice of Trokosi still occurred even though legislation had been adopted to prohibit it. She wished to know what steps the Government was taking to eliminate that practice.”¹²⁷

In response, Ms. Mahama, a representative of the Ghanaian Government said that:

[T]he Government in cooperation with civil society organizations was making concerted efforts to eliminate the practice of Trokosi. The majority of the shrines involved in the practice had been abolished, and the priests in charge of them had been compensated. Many for-

¹²¹ See *id.* at 498-99.

¹²² Interview with Ambler Moss, American Ambassador, Greenberg Traurig, LLP, in Miami, Fla. (suggesting that focusing the international attention of the United Nations on the Trokosi would be useful; it may be helpful for a U.N. Special Rapporteur to visit Ghana).

¹²³ See generally Ben-Ari, *supra* note 1.

¹²⁴ Convention on the Rights of the Child, Comm. on the Rights of the Child, Summary of the Record of the 1093rd Meeting (Chamber A) ¶ 2, U.N. Doc. CRC/C/SR.1093 [hereinafter UNCRC Summary] (Jan. 23, 2003).

¹²⁵ *Id.* at ¶ 9 (emphasis added).

¹²⁶ *Id.* at ¶ 10.

¹²⁷ *Id.* (emphasis added).

mer female victims of the practice had been provided with skills and training in an effort to reintegrate them into society.¹²⁸

How long must these young girls and women wait for real recognition and enforcement of their rights? Perhaps it is time to enforce tough criminal penalties against priests who continue the Trokosi practice. It should be noted that there are supposedly some priests who actually want to end the practice because they no longer want to hold slaves.¹²⁹ These priests claim to fear the gods, and possible curses, if they do not partake in the Trokosi ritual by providing something to appease the gods.¹³⁰ Thus, the priests take money in exchange for the Trokosi so that they still have something to appease the gods.¹³¹ Again, the practice of paying priests for freedom of women creates a market that is arguably indistinguishable from the one created during the transatlantic slave trade. Thus, education has been key, because barring a priest's sudden stroke of conscience—besides a few cases of priests abandoning the Trokosi to be homeless on the street and the deplorable market created by paying for their freedom—education is the only viable way that women will be released.

The problem of the Trokosi must be viewed in context. Ghana has problems beyond the Trokosi, many of which are rooted in poverty.¹³² For example, it is not unheard of for poor Ghanaians to give up their children as maids, or houseboys, to persons they perceive as wealthy.¹³³ Further, many who raise their own children face abject poverty, and perhaps this contributes to the lack of national concern about the Trokosi. Indeed, the UN CRC summary report notes that Ghanaian officials indicate that “according to a study conducted in 2000, many girls dropped out of school because poor families that were forced to choose which of their children to place in school tended to give preference to boys.”¹³⁴

Moreover, the situation of women in the Trokosi is not dissimilar from victims of domestic violence within marriage. Often, women who are victims of domestic violence, feel that they have no alternatives—so they remain despite their violent predicament.¹³⁵

This piece is by no means an exhaustive analysis of human rights law or the Trokosi practice. Rather, this paper serves as a reminder that unless the practice is abolished, the laws dealing with the subject are pure rhetoric.

¹²⁸ *Id.* at ¶ 11.

¹²⁹ *Modern-Day Slavery in Ghana* (Radio Netherlands broadcast May 12, 2003).

¹³⁰ *Id.*

¹³¹ See Bilyeu, *supra* note 1, at 457.

¹³² See generally *id.*

¹³³ See *id.* at 472.

¹³⁴ See UNCRC Summary, *supra* note 124, at ¶ 33.

¹³⁵ See Ellen J. Morrison, *Insurance Discrimination Against Battered Women: Proposed Legislative Protections*, 72 IND. L.J. 259, 261 (1996).

In order to improve the situation of women in the Trokosi, the Ghanaian government must take active steps to implement legislation. Such measures cannot be left solely to NGOs.

The Ghanaian government must adequately fund measures in order to end the Trokosi, and enforce the law.