

The 'African Concept of Human Rights': Justifiable on Grounds of Cultural Relativism? A Particular focus on Ghana's Trokosi System of Sexual Slavery

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Abstract:

Trokosi is a cultural and religious practice predominant in some regions of West Africa, where young virgin girls are brought by family to fetish shrines to become sex slaves as part of rites intended to prevent a communal disaster allegedly caused by the misdeeds and transgressions of members of the girls' family against the "gods of the land". This research paper provides additional insight into the concept, origins, evolution, and practice of Trokosi, particularly focusing on the cultural, socio-economic, and legal aspects of this practice in Ghana. It notes that although abolished by law, Trokosi is still maintained in practice, albeit on a small scale, owing mostly to illiteracy, inadequate enforcement procedures, and the government's lack of political will. This essay analyses Trokosi in the light of the universalism v cultural relativism of human rights debate. It characterizes Trokosi as the apex of sexual abuse against young women and the worst form of child servitude, prejudice, exploitation, and physical and psychological torture in the Volta region of Ghana. It further establishes that this practice, viewed by proponents as religious, sacrosanct, and crime-detering, is archaic and inhumane, violating girls' fundamental rights in a way that cultural relativism cannot justify.

Keywords: Trokosi, African Human Rights, Cultural Relativism, Human Rights, Universalism, Convention, Discrimination, Constitution, Sexual Slavery, United Nations

1. Introduction

Despite the existence of the Universal Declaration of Human Rights intended to guarantee a minimum package of rights to every individual on the sole ground of being human, varying degrees of human rights abuses remain unabated in many ways, especially in some parts of the continent of Africa.

Upon ratification, the universal human rights framework has given the world a strong rhetoric and legal structure that legitimizes struggles against breaches of fundamental human rights, including political, civil, economic, social, and cultural rights.² Regardless of this powerful framework, the rights of girls, women, and children for example, continue to be systematically violated with impunity. Quite obviously, the existence of the various international legal instruments guaranteeing the rights and protection of women, girls and children appears to have had little practical utility on the continent, as their rights continue to be violated.³ While several variables contribute to this phenomenon, such as the competition for limited economic resources, one of the greatest challenges affecting the rights of women and girls, particularly in developing countries, the demand for cultural rights that contradict the ethos of universal human rights is another hurdle to overcome.⁴ Women's rights are frequently, but not always, violated on cultural grounds. Universal human rights are branded as a 'Western imperialism' objective in the dominant patriarchal cultural milieu. In consequence, culture can be used to assert human rights while also being used to justify the infringement of the rights of others.⁵

¹ Author Information

² Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (2nd edition, University of California Press 2008) 302

³ Yakın Ertürk, Bandana Purkayastha, "Linking research, policy and action: A look at the work of the special rapporteur on violence against women" *Current Sociology* (International Sociological Association 2012) Vol.60 Issue 2 142–160.

⁴ Joseph Yaw Asomah, "Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society" *African Human Rights Law Journal* (Pretoria University Law Press 2015) 130

⁵ *Ibid*

Although it is often assumed that slavery is no longer a reality, it is still highly prevalent.⁶ Forced labour, servile marriage, debt bondage, child labour, and forced prostitution are all examples of modern-day human bondage.⁷ Even though slavery is still illegal in many nations, it appears to be most prevalent in the Middle East, Asia, and Africa.⁸

Imagine that you had a different childhood experience. On your ninth birthday, your family transports you to a faraway remote village and abandons you with a strange-looking man who feasts with 'the gods'; a man who neither provides for you financially nor emotionally. Suddenly, you become responsible for all domestic roles like cooking, washing and cleaning. One of your 'chores' when you reach puberty will be to have sex with this man.⁹ You could be released in six years, twenty years, or never at all. If you die before being released, your family may have to send another girl child in your place. You would have lost your innocence, youth, family and possibly your sanity if you are eventually released.¹⁰ When you question why you were assigned to live with the man, you are informed that it is due to something "sacrilegious" done more than 400 years ago by someone else, probably a relative! Nobody knows what exactly took place, but you're still being penalized for it - at the age of nine.¹¹

Africa is home to one such instance of modern slavery, where "[tens] of thousands of pre-teen and teenaged girls are 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."¹² As many as 35,000 virgin girls as young as eight have been handed over to "fetish priests" in Ghana, Benin, Togo, and Nigeria, who treat them like serfs and frequently rape them.¹³ One will be shocked to learn that although outlawed, Trokosi rites are still taking place, especially in my home nation, Ghana, where anywhere between 4,000 and 6,000 women and children are being held in servitude.¹⁴ The religious custom of offering "angry gods" vessels of propitiation like cattle, sheep, money, and liquor has existed for thousands of years; however, those offerings changed relatively recently.¹⁵ 'Tro' which means god or shrine and 'Kosi' which means wife, queen, or slave, is considered to be a sacrosanct spiritual act that involves female genital mutilation (a painful act of partially or totally removing the external genitalia of girls and young women without medical reasons), one of the most gruesome human rights violations that has troubled the continent of Africa for ages.¹⁶ To atone for family misdeeds, which might range from disobeying the law to offending the gods, young girls are now entrusted to shrine priests as tools of pacification.¹⁷

Numerous measures have been taken by the United Nations and nations around the world to recognize and create general human rights standards and to end harmful practices like sexual slavery. The Universal Declaration of Human Rights,¹⁸ the Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery¹⁹ and the United Nations Convention on the Rights of the Child²⁰ are a few of these endeavours. However, despite these initiatives, sexual slavery and practices similar to slavery persist in the name of cultural relativism of human rights or more specifically, an African concept of human rights.

These arguments fundamentally highlight the tension between global human rights and cultural and ethical relativism. Relativism prevents making value judgments hence a relativist cannot object to a particular cultural practice.

Many, including myself, however, are concerned about the effects of relativism, including the possibility that it would legitimize practices like headhunting, polygyny, female genital mutilation, the subordination of women and minority groups, arbitrary killings, torture, and so forth, and again, the possibility that it would weaken

⁶ Charles Jacobs, "Slavery: A World Wide Evil" World & I (Washington Times Corporation 1996) 110

⁷ *Ibid*

⁸ Anti-Slavery International – International Work Group For Indigenous Affairs, *Enslaved Peoples in the 1990s: Indigenous Peoples, Debt Bondage and Human Rights* (Anti-Slavery International & IWGIA 1997) 32

⁹ Aziza Naa-Kaa Botchway, "Abolished by Law - Maintained in Practice: The Trokosi as Practiced in Parts of the Republic of Ghana" FIU Law Review (Florida International University College of Law 2008) Vol.3 No.2 369

¹⁰ *Ibid*

¹¹ *Ibid*

¹² Sam Kiley, Child Slaves Used by West Africans to Appease Spirits, TIMES LONDON, Sept. 17, 1996,

¹³ *Ibid*

¹⁴ Adwoa Adubia, 'Double agony for the Trokosi girl, servitude and Female Genital Mutilation' (Ghana Web, November 13, 2019) <[Double agony for the Trokosi girl, servitude and Female Genital Mutilation \(ghanaweb.com\)](https://www.ghanaweb.com/GhanaHomePage/NewsArchive/DetailedStory/2019/11/13/Double-agony-for-the-Trokosi-girl-servitude-and-Female-Genital-Mutilation-ghanaweb.com)> accessed 5 July 2023

¹⁵ *Dateline: Innocents Lost* (NBC television broadcast, August 30, 1998)

¹⁶ *Ibid* (n6)

¹⁷ *Ibid*

¹⁸ Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217III.A, U.N. GAOR, 34th Sess., Pt. I, 71

¹⁹ 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

²⁰ Convention on the Rights of the Child, G.A. Res. 44/25 Annex, U.N. GAOR, 44th Sess., Supp. No. 49, 166

the entire human rights movement. The rationale for human rights will need to come from someplace if their legitimacy is no longer considered self-evident.

While there is a good amount of literature to help our overall appreciation of the Trokosi system, a critical examination of this ancient practice in the context of the cultural relativism versus universal human rights argument, with a focus on the ethics of cultural preservation is a thrust into murky waters.

This paper primarily focuses on filling this research gap using Trokosi, the cultural and religious practice of sexual slavery in Ghana, Africa, and its associated human rights violations. Chapter I gives background information and historical context of the Trokosi system and how it is viewed by apologists as a social and crime control mechanism. Chapter II analyzes the "African concept" of Human Rights and some comments on the challenges of cultural relativism. The human rights movement and the problems that arise when cultural and religious rights clash with universal human rights are also examined in this chapter, highlighting how a balance between both extremes can be achieved. Chapter III addresses a few of the international agreements that forbid violations of human rights, such as sexual slavery. Ultimately, Chapter IV encapsulates a call for the re-contemplation of Trokosi and suggests a couple of recommendations to totally eliminate this cancer of a practice. This paper concludes by evaluating the Trokosi practice by weighing its costs and advantages as well as what it means to its proponents; It beats the drum for the view that Trokosi is an unhealthy cultural and religious practice that cannot be justified in the name of cultural relativism of human rights.

1.1. Origin and Background of the Trokosi Practice

Social researchers have not been able to precisely define the meaning of 'Trokosi'. Etymologically, 'Tro', the initial segment of the term, signifies 'god' or 'spirit', but its second segment, 'Kosi', has sparked significant debate among researchers.²¹ 'Kosi' has been considered by some to signify slave, bride, virgin, or wife.²² Tro-kosi would then signify 'slave of the gods', 'wife of the gods' or 'bride of the spirits' in these circumstances.²³ This traditional custom has been observed for decades among the Ewes of Tongu and Anlo in the Volta region, as well as the Dangmes of the greater Accra region in Ghana but in a modified form since its 17th-century roots.²⁴ Trokosi slavery actually began in the 1600s as a military rite in Togo and Benin; before going into battle, warriors would go to religious shrines and present women as sacrifices²⁵ to the war gods in exchange for victory and a safe return.²⁶ Even today, many Ghanaians worship Trokosi shrine fetish priests because they believe that the priests commune directly with the war gods and are very powerful in the spirit world, even capable of determining life and death.²⁷ Trokosi, initially, began as a system to "search for truth and knowledge," but became somewhat corrupted over time, serving primarily as a device to punish wrongdoers.²⁸ According to Dr. E.K. Quashigah, being a Trokosi was first considered as a positive step.²⁹ He asserts:

the 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.³⁰

²¹ E.K. Quashigah, "Religious Freedom and Vestal Virgins: the Trokosi Practice in Ghana" African Journal of International and Comparative Law (Juta Law 1998) Vol.10 Issue 2 195

²² Emma Brooker, "Slaves of the Fetish" INDEPENDENT (16 June 1996) 12

²³ Dorvlo, Elom and K.Adzoyi, Report on Trokosi Institution, commissioned by International Needs, 1995, Box: 2, Folder: 5. Qiyamah A. Rahman papers, W103. Special Collections.

²⁴ Nicholas A. Bastine, "The role of the media in protecting women's and children's rights in democratic Ghana: Lensing the trokosi system in Ghana" Africa Media and Democracy Journal (Oxford University Press 2012) Vol.1 1

²⁵ Sam Kiley, *Child Slaves Used by West Africans to Appease Spirits*, TIMES LONDON, Sept. 17, 1996, available in 1996 WL 6519665.

²⁶ Sarah C. Aird, "Ghana's Slaves to the Gods" Human Rights Brief (American University Washington College of Law 1999) Vol.7, Issue 1, Article 3, 6

²⁷ *Ibid*

²⁸ Amy Small Bilyeu, "Trokosi - The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights" Indiana International and Comparative Law Review (Iupui University Library 1999) Vol.9 470

²⁹ E.K. Quashigah, "Legislating Religious Liberty: The Ghanaian Experience" BYU Law Review (The J. Reuben Clark Law School 1999) 589, 602-603

³⁰ Naa-Kaa Botchway (n8) 374

Quashigah further suggests that the institution was manipulated to serve contemporary economic and social needs at the behest of dishonest and self-serving custodians of customs and traditions as well as religious leaders; this shows that the practice deviated from its original intent.³¹

In its debased form, young virgin girls, usually between the ages of six and eight, are sacrificed to the gods as restitution for the crimes perpetrated by their families or because of a streak of bad luck in the family.³² For instance, Abla Kotor's family sent her to the Awlo-Korti Shrine in Tefle (Volta region, Ghana) when she was six years old to atone for a crime committed by her father (her father had raped his own niece). As argued by Aird:

Abla must now live and work for the local ... priests ... where she faces mental, physical, and sexual abuse, in hopes that by so doing, the gods will not bring vengeance upon the Kotor's family as retribution for the father's crime ... Denied access to education, prohibited from leaving, banished from family home ... Abla is just one of thousands of girls and women enslaved in this manner.³³

Juliette, along with twenty cows and ten containers of cognac was expected to go and atone for her father's crime of stealing a tape recorder.³⁴ Mewornovi Kokou, ten years old, was brought to the shrine for a crime committed so long ago that no one recalls what it was or who committed it.³⁵ Julie Dorbadzi was six years old when her family handed her over to a shrine to atone for a theft committed by her grandfather.³⁶ Mercy Sanahee was a slave for seventeen years and the second in her family to be sold since her great-grandmother stole an earring two generations before.³⁷ Yotia Dorgbadzi was twelve years old when she was taken to the shrine and spent eighteen years serving; she was released when she was no longer found "physically attractive".³⁸

The story of these girls epitomizes the Trokosi practice, which is founded on the religious belief that crimes such as murder, incest, thievery, and adultery are punishable by delivering a virgin girl to the shrine of the gods.³⁹ Upon her arrival at the shrine, her hair is shaved; she is stripped naked while kneeling before the priest in the midst of chants and is subsequently forced to undergo a ritual bath called "agbametsilele".⁴⁰ The families usually believe that unless the gods are appeased by their providing a virgin, they will suffer disease, misfortune, or even a succession of deaths.⁴¹ These girls have done nothing wrong but are subjected to life-long sentences for offences or "sacrilegious" acts for which they are clearly not liable. If a Trokosi dies in captivity, the family must replace her with another virgin daughter or pay a substantial sum of money to the priest, which is frequently beyond the family's financial capacity.⁴² Some families must send generation after generation of virgin females to the shrine as penitence for extremely heinous crimes such as homicide.⁴³ If a priest grows tired of a Trokosi slave, he may release her from the shrine; however, the family must replace her, and the priest may request for her return at any moment because she is a lifetime "slave of the gods".⁴⁴ "Trokosiviwo" are the offsprings born to the Trokosi who are also slaves of the priest.⁴⁵ When the fetish priest dies, his successor (also a priest) inherits his Trokosi slaves and Trokosiviwo children, and thus Trokosi becomes a perpetual tradition.⁴⁶ Once identified as Trokosi, the girls are considered as bonified properties of the gods.

³¹ Emmanuel Sarpong Owusu, "The Superstition that Enslaves Virgin Girls in Ghana: An Exploration of the Origins, Evolution, and Practice of Trokosi?" *Dignity: A Journal of Analysis of Exploitation and Violence* (Digital Commons 2023) Vol.8, Issue 1, Article 4, 7

³² Nana Boateng "The trokosi system in Ghana: Discrimination against women and children" in Rwomire, Apollo (ed) **The African women and children: Crisis and response** (Praeger 2001) 91.

³³ C. Aird (n25)

³⁴ Dateline: Innocents Lost (NBC television broadcast, Aug. 30, 1998)

³⁵ Emma Brooker, *Slaves of the Fetish*, **INDEPENDENT**, June 16, 1996, at 12, available in LEXIS, News Library, Non-US News File

³⁶ *Ibid*

³⁷ CNN Newsroom/Worldview (CNN television broadcast, Apr. 23, 1997)

³⁸ See Mawusi Afele, 'Fetish Priests in Ghana Under Attack for Enslaving Young Girls' (Deutsche Presse-Agentur 21 Jan 1996) available in LEXIS, News Library, Non-US News File.

³⁹ Nicholas A Bastine, "The role of the media in protecting women's and children's rights in democratic Ghana: Lensing the trokosi system in Ghana" *Oida Journal of Sustainable Development* (Ontario International Development Agency 2012) Vol.1 No.10 81

⁴⁰ Sarpong Owusu (n30) 12

⁴¹ A Bastine (n38)

⁴² *Ibid*

⁴³ *Ibid*

⁴⁴ *Ibid*

⁴⁵ *Ibid*

⁴⁶ *Ibid*

Moreso, the Trokosi shrines are run like businesses, with a focus on materialism and money.⁴⁷ It is worthy to note that within these communities, a man's rank and dignity in society is determined by the number of children he bears. Consequently, a fetish priest enhances his prestige within the society by impregnating many Trokosi slaves.⁴⁸ Morklis⁴⁹, for example, records that one head priest in Tongu (Ghana) fathered 522 children with 76 wives and an unknown number of concubines; similar findings have been reported by Kugogbe.⁵⁰ It is thus not surprising that when these girls have completed one menstrual cycle, priests rape them on a regular basis and justify this inhumane act by claiming that the Trokosi slaves are like priestesses who copulate with the gods through earthly servants, the priests, "whose genital organs have been dedicated to the gods".⁵¹ The girls are taken to the shrine to "marry" the gods, but instead marry a fetish priest who acts vicariously as a proxy for the gods.⁵² As a result, the usually 'way older enough to be parents and grandparents' priests are permitted and expected to have sex with the Trokosi under the guise of averting or stopping a communal disaster allegedly triggered by the crimes of the girls' family members, alive or deceased.⁵³ The priest has total dominance over the girl, beating her when she attempts to flee or defaults in the performance of her 'wifely duties'; the priest restricts her interactions with others, requiring work and sex from her, and denies her education, food, and basic health needs.⁵⁴ These girls lose their kinship identity and are cut off from their families, leaving them in classificatory limbo.⁵⁵ Because the belief or fear of being plagued by the gods is so entrenched, families often forcefully return escaped or released Trokosi slaves to shrines.⁵⁶ Even more devastating is the fact that the Trokosi and her family are frequently kept in the dark about the nature of the alleged crime that has been committed.⁵⁷ Neither the actual wrongdoers nor the girls are afforded the opportunity to be heard or given fair public hearings before impartial tribunals, as required by the Universal Declaration of Human Rights.⁵⁸ This is due, in part, to the fact that there is no allegation that the Trokosi committed any wrongdoing; she is just being penalized for the offence of the original perpetrator, who has not even been proven guilty yet.⁵⁹ Of course, even if the actual culprit were found guilty, the practice would still not be redeemed because it makes no sense for an innocent child to be held accountable for the ills done by an adult. Amy Small Bilyeu notes that:

Advocates of the Trokosi system practice view it as beneficial because, to them, 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 offence are rarely the ones who commit the offences, and many times, were not even born when the offence was originally committed.⁶⁰

However, not only is the cost to these young girls and women too steep, but this system also does not deter misconduct.⁶¹ If it did, why would crime persist? Indeed, the Trokosi system may encourage misbehaviour because the actual culprits are aware that they will never be punished for the crimes or sins they commit. How are criminals discouraged when a proxy can carry out their sentence? The irony is simply dumbfounding! Again, it is not even clear if the actual perpetrators are proven guilty and what the alleged offences are and if that is the case, how do you eradicate an offence if you have no idea what the offence is?

Furthermore, even if it makes sense for a child to serve the sentence as a proxy for an adult, why does she have to be abused and assaulted while doing so? Isn't being separated from her family and schooling, followed by

⁴⁷*Ibid* (n5) 6

⁴⁸*Ibid* 7

⁴⁹AEO Morkli, "The tradition behind the *trokosi* system" in Avt Ac V (ed) Progressive Utilisation Magazine (Proutist Universal 1995) Vol.2 2-5.

⁵⁰Sothenes K Kufogbe 'National study on the trokosi practice in Ghana' (2008), research report presented to International Needs, Accra, Ghana.

⁵¹*Ibid*

⁵²Trokosi: Wife of the gods (Cinema Guild 1994) (documentary filming the lives of Trokosi in Ghana and offering suggestions for ending the practice); Amy Small Bilyeu, "*Trokosi - The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights*" Indiana International and Comparative Law Review (Iupui University Library 1999) Vol.9 502

⁵³*Ibid*

⁵⁴C. Aird (n25)

⁵⁵Benjamin Rinaudo, "*Trokosi Slavery: Injustice in the name of religion*" African Studies Association of Australasia and the Pacific 2003 Conference Proceedings - African on a Global Stage (La Trobe University 2003) 1

⁵⁶C. Aird (n25) 7

⁵⁷Small Bilyeu (n6) 476

⁵⁸Universal 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)

⁵⁹Small Bilyeu (n6) 475 - 477

⁶⁰Small Bilyeu (n6) 502

⁶¹*Ibid* (n11)

being forced to do chores and hard labour for most likely a life sentence, enough? Why should she be raped while serving another's sentence? This is simply inhumane! It is quite fascinating, however, that these girls are given the endearing Ewe name "Mama", which means grandmother.⁶² This appears to lend some validity to the statement of people like Datey-Kumodzie that the initial plan was not to create a slave class out of these girls, but rather a respected class of women who would be the pride of society.⁶³ According to Dorvlo and Adzoyi, the ascription of respectability through the word "Mama" does not detract from their premise that the girls' condition is one of servitude and dehumanization. Mostly because, in the ordinary cultural experiences of the people, marriage and concubinage include women who do not enter the relationship on their own volition.⁶⁴

When presented with the question of what it would take to end the captivity of virgin females, one priest responded that Trokosi was "the price of human sinfulness."⁶⁵ "If stealing stops, my marrying will stop," he explained, "but if people continue to do wrong, the women will keep coming."⁶⁶

1.2. Trokosi as a Social and Crime Control Mechanism

The Ewe people, like the Akans and other African cultures, see the world as a mix of the living and the dead, natural and supernatural.⁶⁷ As Abotchie opines:

Southern Ewe cosmology ... is constructed upon a belief in a pantheon of omnipresent and omniscient, benevolent, supernatural forces regarded as the source of justice and fairplay, and who holds the power of life and death overman.⁶⁸

These spiritual and helpful forces oversee a moral code as the epitome of virtue. To maintain harmony with the supernatural entities that control life and death, one must faithfully adhere to the moral norms they prescribe and oversee.⁶⁹ To the indigenes, the strict observance of these moral norms ensures good tidings, as well as the availability and enjoyment of good physical and material possessions in life.⁷⁰ Consequently, a violation of these moral codes is an offence against the supernatural forces of the land and may result in curses and sufferings such as tragic deaths, accidents, unexplained sicknesses, starvation, and other disasters.⁷¹ Thus, as one traditional leader emphasized, such offenses "result in the gods withholding the good things of life from not only the individual offender but also society in general."⁷²

Abotchie emphasizes this idea, stating that "the awe-inspiring belief is held that the supernatural forces, sometimes, for reasons best known to them, choose to spare the wrongdoer and instead strike an innocent member of his lineage"⁷³ or the entire community.⁷⁴ In an attempt to justify why it is important for people to atone for crimes committed centuries ago by their family members, one traditional leader re-iterated:

The gods do not forget, and time does not and cannot erase sin; only atonement can. You have to understand that once sin or a crime that angers the gods has been committed, atonement would be required in order to pacify the gods and restore the state of harmony with them, so they do not withhold the good things of life from us. This is why it is extremely important for sinners (offenders) to be detected at all cost, and for sin to be atoned for, either by the sinners themselves or someone related to them.⁷⁵

⁶² *Ibid* (n11)

⁶³ Quashigah (n20)

⁶⁴ Dvlo and Adzoyi (n3) 2

⁶⁵ Dateline (n11)

⁶⁶ *Ibid*

⁶⁷ Chris Abotchie, "Social control in traditional southern Ewelnd of Ghana: Relevance formodern crime prevention" (Ghana Universities Press 1997)10

⁶⁸ *Ibid*

⁶⁹ Emmanuel Sarpong Owusu, "The Superstition that Enslaves Virgin Girls in Ghana: AnExploration of the Origins, Evolution, and Practice of Trokosi?" *Dignity: A Journal of Analysis ofExploitation and Violence* (Digital Commons 2023) Vol.8, Issue 1, Article 4, 11

⁷⁰ Abotchie (n46) 11

⁷¹ Sandra Elaine Greene, "Modern trokosi and the 1807 abolition in Ghana: Connecting past andPresent" *The William and Mary Quarterly*(Omohundro Institute of Early American History and Culture 2009) Vol. 66 Issue 4 959-974

⁷² Sarpong Owusu (n68) 11

⁷³ Abotchie (n46) 18

⁷⁴ *Ibid* (n50)

⁷⁵ Sarpong Owusu (n68) 11

When offenders or their family members are punished, not only are the gods appeased but harmony and good tidings are triggered from the gods while also serving as a deterrent to would-be offenders.⁷⁶

In summary, the primary objective of Trokosi is to function as a crime prevention and social control mechanism. Many proponents of the Trokosi system claim that the practice should be kept because it serves a moral purpose - and that moral goal is "the pursuit of truth, righteous living, and crime deterrence."⁷⁷ Fetish priests, for instance, view Trokosi as a successful deterrent to violating community norms. They see the Trokosi slaves as a conduit or interface of some sort between the "gods of the land" and the family, serving as a moral conscience for all family members to live exemplary lives. The priests believe that the Trokosi slaves serve as role models, protecting the entire family from punishment and setting an example that deters other community members from committing similar crimes.⁷⁸

The following are the words used by another traditional leader to emphasize this idea:

I wouldn't lie to you, young man, before the so-called Trokosi law was passed, crime was very rare in our communities. It was when this unnecessary law was passed that people began to commit all kinds of crime in our area. Don't get me wrong - I am not saying crime did not exist at all in our community; what I am saying is that the crime rate was very low. But now crimes, including very serious ones, are rampant in our society. Why do you think there has been a considerable increase in crime rates since the passing of that law? It's because the criminals are motivated by the knowledge that no member of their family will be made to atone for their sins [or transgressions] if they runaway or die.⁷⁹

Sarpong Owusu's interview with the traditional leader reaffirms the assertion that culture takes precedence over human rights in Trokosi-infested communities. However, there is no proof that criminals will refrain from committing crimes if they know that innocent young female family members will be forced to atone for their transgressions. Instead, a system like that might rather promote criminal activity. From the interview, it is clear that the human rights component of the Trokosi ritual receives little to no attention from the traditional leaders.⁸⁰ They believe that if slavery and the misery of innocent children might deter crime, then so be it.⁸¹

The apologists of traditional African religion contend that the Trokosi ritual does not violate any human rights. Universal human rights, according to them, are "foreign, imported values."⁸² They further claim that the Trokosi system is an important part of African traditional religion and culture and that the 1992 Ghanaian Constitution supports this by enshrining the freedom of religion in article 21(1).⁸³ Consequently, any attack on the Trokosi is invariably an attack on their freedom of religion and worship and thus, is unconstitutional.⁸⁴ Ironically, they disregard the rights of those who are affected by the Trokosi system but are protected by the same constitution they cite to support their claim to the right to freedom of religion.⁸⁵ Besides, the fundamental human rights and freedoms of every individual are guaranteed under Article 12(2) of Ghana's 1992 Constitution; this provision forbids persons from using their freedoms and rights in a way that endangers or violates the rights and liberties of others as demonstrated by the practice of Trokosi.⁸⁶ The Trokosi practice obviously violates the victims' universal human rights in a variety of ways, such as enslavement, sexual exploitation, and forced (child) labour.⁸⁷ According to Ghana's Constitution, specifically articles 16(1) and 16(2), no one may be held as a slave or be subject to servitude. Additionally, any customary practice that dehumanizes or jeopardizes the bodily or mental wellness of any citizen is prohibited by Article 26(2) of the 1992 Ghanaian Constitution. In light of this, the Trokosi practice is against these constitutional provisions that forbid all forms of slavery.

⁷⁶ R. K. Ameh, "Traditional religion, social structure, and children's rights in Ghana: The making of a trokosi child" In D. J. Johnson, D. L. Agbenyiga, & R. K. Hitchcock (Eds.), *Vulnerable Children* (Springer 2013) 239

⁷⁷ R. K. Ameh "Children's right, controversial traditional practices, and the trokosi system: A critical socio-legal perspective" In R. K. Ameh, D. L. Agbenyiga, & N.A. Apter (Eds.), *Children's Rights in Ghana: Reality or Rhetoric?* (Lexington Books 2011) 131-150

⁷⁸ C. Aird (n25) 7

⁷⁹ Sarpong Owusu (n68) 12

⁸⁰ *Ibid*

⁸¹ *Ibid*

⁸² Robert Kwame Ameh, "Reconciling human rights and traditional practices: The anti-trokosi campaign in Ghana" *Canadian Journal of Law and Society* (CUP 2004) Vol.19 54

⁸³ Yaw Asomah (n3) 140

⁸⁴ *Ibid*

⁸⁵ *Ibid*

⁸⁶ *Ibid*

⁸⁷ Ameh (n81)

Additionally, because the priests who engage in the Trokosi practice have numerous sexual partners, the victims are susceptible to contracting sexually transmitted diseases (STDs), such as HIV/AIDS, syphilis and Gonorrhoea amongst others.⁸⁸

Moreso, article 28(4) of the 1992 Constitution states that “no child shall be deprived by any other person of medical treatment, education, or any other social or economic benefit by religion or other beliefs.”⁸⁹A section of Ghana's Criminal Code was also amended in 1998 to make any "customary or ritual servitude" illegal; this amendment specifically addresses the Trokosi practice.⁹⁰Thus, the trokosi practice violates Ghana's constitution and laws by enforcing slavery and denying victims access to both education and medical care. Additionally, it violates the provisions of the United Nations Convention on the Rights of the Child, which guarantees children's rights to education and medical care.⁹¹

In conclusion, there is no question that the Trokosi practice violates both the victims' universal human rights and the Ghanaian Constitution. In order to preserve the Trokosi practice in this context, it is required by the Ghanaian Constitution, the African Charter, specifically the African Children's Charter, the African Women's Protocol, and international human rights laws and conventions that universal human rights take precedence over culture.⁹²

2. The African Concept of Human Rights; Universalism v Cultural Relativism of Human Rights Debate

Human rights violations appear to be evident upon the analysis of the Trokosi's plight.⁹³These girls are subjected to physical and sexual abuse, as well as forced labour and other humiliating forms of torture.⁹⁴To understand how the practice is tolerated, however, the African concept of human rights must be examined.

Each member of the community has a specific responsibility within the rural village structure that supports the Trokosi system.⁹⁵Individuals are linked together by familial, clan, and tribe relationships.⁹⁶In small rural communities, it is commonly argued that there is no such thing as an individual issue and that everything is interconnected and has a societal significance.⁹⁷ Strength is found in numbers, and a system of mutual aid and tribal solidarity in social, political, and economic activities is seen as the community's lifeblood.⁹⁸African notions of human rights are based on community values, as opposed to Western ideas that emphasize individual human rights.⁹⁹According to African scholars, western concepts of human rights are incompatible with Africa's daily realities.¹⁰⁰ To them, Western ideas, which are primarily concerned with individual rights, emphasize aims such as free speech and freedom of assembly¹⁰¹ and although these are significant objectives, many rural Africans place a higher weight on communal values than individual rights. Human rights must therefore encompass collective rights for social groups such as family and clan in order to be relevant to the African continent.¹⁰²As a result, African scholars argue that when it comes to the universalistic essence of human rights, western individualistic ideas are inadequate.¹⁰³The Trokosi system can therefore be more easily comprehended once the emphasis on community that characterizes Africa is recognized; the welfare of a village outweighs that of a young girl. According to the "Wayokwe" belief system, it is mandatory to sacrifice a girl as an atonement for the crime committed against the "spirits" in order to prevent the annihilation of an entire village.¹⁰⁴

⁸⁸ Bastine (n38) 27

⁸⁹ The 1992 Constitution of Ghana, article 28(4)

⁹⁰ Ameh (n81)

⁹¹ Boateng (n12)

⁹² Yaw Asomah (n3) 141

⁹³ What's Culture Got to Do with It? Excising the Harmful Tradition of Female Circumcision, Harvard Law Review. (The Harvard Law Review Association 1993) Vol.106 no.8 1958

⁹⁴ Brooker (n34)

⁹⁵ Jonathan C. Goltzman, “*Cultural Relativism or Cultural Intrusion Female Ritual Slavery in Western Africa and the International Covenant on Civil and Political Rights: Ghana as a Case Study*” International and Comparative Law Annually (Cambridge University Press 1998) Vol.4 57

⁹⁶ Jomo Kenyatta, “*Facing Mount Kenya: The Tribal Life of the Gikuyu*” in Henry J. Steiner & Philip Alston eds.”*International Human Rights in Context*” (Oxford University Press 1996) 184, 185

⁹⁷ *Ibid*

⁹⁸ *Ibid*

⁹⁹ C. Goltzman (n94)

¹⁰⁰ Winston P. Nagan, “*African Human Rights Process: A Contextual Policy Oriented Approach*” Southwestern University Law Review (Southwestern University Law Center 1992) Vol.21 63,71

¹⁰¹ *Ibid*

¹⁰² *Ibid* 72

¹⁰³ *Ibid*

¹⁰⁴ Howard W. French, The Ritual Slaves of Ghana: Young and Female, N.Y. TIMES, Jan. 20, 1997, at A5

The Trokosi system is again best analyzed through the lens of universal human rights and cultural relativism. A number of publications on the concept of human rights in Africa have recently been published by African and non-African Africanists.¹⁰⁵ Several of these scholars have offered arguments for a separate Africanist viewpoint on the debate on the cultural relativity of human rights from a variety of interdisciplinary perspectives.¹⁰⁶ The philosophical origins of the African concept of human rights and how this concept contrasts with Western notions and institutions that were later extended to the continent during the colonial era have been major subjects in these arguments.¹⁰⁷ To understand the Africanist discourse on the cultural relativity of human rights in Africa, some writers argue that the contemporary concept of human rights is a modern development that is founded on the Universal Declaration of Human Rights and hence, doesn't resonate with traditional societies in Africa and even other continents.¹⁰⁸ They advocate for an "African concept" of Human rights and seem to regard a moral universalist perspective as absolute, arrogant, and imperialistic because it is based on Western liberal philosophy and religious faith - Christianity.¹⁰⁹

The debate over moral principles in Africa centers on the idea of individual and cultural rights, both of which are significant in our globalizing society. The debate is predicated on the widely held belief that as the world becomes more interconnected, we are compelled to live by a global ethic. This ethic may occasionally minimize important cultural distinctions in order to focus operating rules on shared values that are determined by our shared humanity.¹¹⁰ These shared ideas form the foundation of the human rights discourse.

Two interconnected moral positions - moral universalism and cultural relativism - are used to discuss the individual and human rights. The premise of moral universalism asserts that regardless of their cultural circumstances, humans are entitled to a particular set of universal rights simply by virtue of being human.¹¹¹ These rights, which are seen as universal, are thought to be shared equally and unalienably by all people, ensuring human dignity in all cultures.¹¹² In other words, there is some degree of universality, at least in connection to some fundamental human rights ideas and precepts, notably those that touch on the rule of law, the sanctity of human life, and dignity, regardless of cultural influence and background.¹¹³ The Universal Declaration of Human Rights affirms this assertion; "everyone" has the right to liberty"; "all persons are entitled to equal protection"; "no one" shall be subjected to torture¹¹⁴ and "everyone" has the right to an adequate standard of living.¹¹⁵

On the other hand, recent efforts to create more plausible concepts of human rights whose philosophical roots are closely matched with culture-specific notions of human nature and/or dignity have served to promote the perception that human rights are culturally relative.¹¹⁶ Consequently, the cultural relativist's approach contends that moral rights and principles are embedded in, and contingent on the sociocultural context of local traditions and customs; In general, the idea that ethical truths only apply to a certain society or culture.¹¹⁷ Relativists believe that concepts of right, wrong, and morality vary worldwide due to cultural differences, and consequently, no culture should impose its ideas on another¹¹⁸ and that an attempt to do so inevitably leads to cultural imperialism and the suppression of local traditions and customs.¹¹⁹ Proponents of cultural relativism claim that local cultures are capable of sustaining human dignity in the context of a human rights framework. Cultural relativism

¹⁰⁵ Makau W. Mutua, "Limitations on Religious Rights: Problematising Religious Freedom in the African Context", Buffalo Human Rights Law Review (Martinus Nijhoff 1999) Vol.5 75-105

¹⁰⁶ *Ibid*

¹⁰⁷ Bonny Ibhawoh, "Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse"

Netherlands Quarterly of Human Rights (Sage Publications Ltd 2001) vol.19 no.1 50

¹⁰⁸ *Ibid*

¹⁰⁹ Mary Nyangweso Wangila, "Religion, the African Concept of the Individual, and Human Rights Discourse: An Analysis" Journal of Human Rights (Routledge 2010) 329

¹¹⁰ *Ibid* 326

¹¹¹ Nhina Le "Are Human Rights Universal or Culturally Relative?" Peace Review: A Journal of Social Justice (Taylor and Francis Ltd 2016) Vol.28 Issue 2, 203

¹¹² Mary Nyangweso Wangila, "Religion, the African Concept of the Individual, and Human Rights Discourse: An Analysis" Journal of Human Rights (Routledge 2010) 328

¹¹³ Ibhawoh (n18) 43

¹¹⁴ Universal Declaration of Human Rights, articles 3, 5

¹¹⁵ Henry J Steiner, Philip Alston, *International Human Rights in Context: Law Politics Morals* (1st edition OUP 1996) 192 - 193

¹¹⁶ Oritsegbubemi Anthony Oyowe, "An African Conception of Human Rights? Comments on the Challenges of Relativism" Human Rights Review (Springer 2014) 330

¹¹⁷ Naa - Kaa Botchway (n8) 379

¹¹⁸ Steiner and Alston (n26)

¹¹⁹ Jack Donnelly, "Cultural Relativism and Universal Human Rights" Human Rights Quarterly (Johns Hopkins University Press 1984) Vol.6, no.4 400

implies respect for cultural diversity and, as a result, requires sensitivity to cultures different than one's own.¹²⁰ In summary, the pro-cultural-relativist position claims that observing universal human rights is 'invasive and disruptive' to strongly held traditional systems for protecting people's lives, liberties, freedoms, and security of a people.¹²¹

2.1 The Debate - Balancing Human Rights with Culture

Human rights documents consistently recognize culture as an area that must be preserved; yet, culture can be no justification to undermine these protected rights.¹²² To successfully examine a "perceived or claimed cultural conflict between a practice and a universal human right," the practice should be considered from both the cultural and human rights advocates' perspectives.¹²³ The same scrutiny should be applied to the alleged human rights standard.¹²⁴ In this context, special attention must be paid to cultural practices in order to protect them from the improper imposition of outsiders' "ideologies".¹²⁵ The author is of the view that when it appears that women are being disadvantaged or disproportionately burdened by a cultural practice, the benefits of the cultural practice must be balanced against the harm of the human rights violation.¹²⁶ These questions, to him, seem important: What is the origin and value of the cultural practice? What is its level of significance to the culture and the community? What is the extent of its infringement on a protected individual right? How important is the human rights standard to the international community?¹²⁷ Again, the nature of the practice being contested, who is contesting the practice (i.e., an insider versus an outsider), the challengers' motivations for opposing the practice, and the stated adverse results of the practice should all be considered.¹²⁸

On the issue of human rights, former United Nations Secretary-General Kofi Annan stated:

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.¹²⁹

Opponents of the Trokosi system believe that the practice is essentially, a form of sexual slavery.¹³⁰ Proponents of the Trokosi, on the other hand, say that the practice is not a kind of slavery and does not violate human rights norms, but rather is a coveted exercise of religious and cultural freedom.¹³¹ We are thus, obliged to determine which course to choose when human rights and cultural relativism conflict. Furthermore, if human rights indeed exist, the question of whether they are universal or culturally relative remains a subject of constant debate. Dr. Kenneth Kaoma Mwenda, a Rhodes Scholar and former lecturer at the University of Warwick in the United Kingdom, encapsulates the issue well when he asks, "are human rights simply human rights wherever we go, to the extent that it is not necessary to talk about human rights in Africa as if they were different from human rights in Bosnia?"¹³² Mwenda goes on to emphasize that both customary and international law acknowledge that the idea of jus cogens (norms from which no state can deviate) incorporates some aspects of universal human rights.¹³³

¹²⁰Asomah (n3) 131

¹²¹ D Ayton-Shenker, "The challenge of human rights and cultural diversity (1995) <[The challenge of human rights and cultural diversity / \(un.org\)](#)> (accessed 10 July 2023)

¹²²Berta Esperanza Hernandez-Truyol, "Women's Rights as Human Rights - Rules, Realities and the Role of Culture: A Formula for Reform" Brooklyn Journal of International Law (Brooklyn Law School 1996) Vol.21 no.605 662

¹²³*Ibid* 672

¹²⁴*Ibid*

¹²⁵*Ibid*

¹²⁶*Ibid*

¹²⁷*Ibid*

¹²⁸*Ibid* 672-73

¹²⁹OHCHR, 'UNIVERSAL DECLARATION OF HUMAN RIGHTS ILLUMINATES GLOBAL PLURALISM AND DIVERSITY: STATEMENT BY SECRETARY-GENERAL KOFI ANNAN ON THE FIFTIETH ANNIVERSARY YEAR OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS' (10 November 1996), <[UNIVERSAL DECLARATION OF HUMAN RIGHTS ILLUMINATES GLOBAL PLURALISM AND DIVERSITY: STATEMENT BY SECRETARY-GENERAL KOFI ANNAN ON THE FIFTIETH ANNIVERSARY YEAR OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS | OHCHR](#)> accessed 15 July 2023

¹³⁰ E.K. Quashigah, "Religious Freedom and Vestal Virgins: the Trokosi Practice in Ghana" African Journal of International and Comparative Law (Juta Law 1998) Vol.10 Issue 2 193

¹³¹ Amy Small Bilyeu, "Trokosi - The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights" Indiana International and Comparative Law Review (Iupui University Library 1999) Vol.9 474

¹³² Kenneth Kaoma Mwenda, "Deconstructing the concept of human rights in Africa" Alternative Law Journal (Legal Service Bulletin Co-operative Ltd 2000) Vol. 25 292

¹³³ *Ibid* 292-294

If writers like Mwenda are correct, and human rights fall within the concept of *jus cogens*, the question now becomes whether the phrase "universal," as in universal human rights, is necessary or merely redundant.¹³⁴

According to Black's Law Dictionary, Human Rights are defined as "the 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."¹³⁵ If this definition is so, then what are the fundamental freedoms, immunities, and benefits that all humans should have, and what moral code or principles should we employ as a standard to define universal human rights?¹³⁶ The author is of the view that the stage of development of a country is not an excuse for non-compliance with a human rights convention and thus, Ghana's status as a developing country should not be used as an internationally recognized justification for the continuation of slavery.¹³⁷ At the very least, however, international human-rights rules appear to show that there is agreement that "the book is closed" on some practices.¹³⁸ For example, among reasonable individuals, the propriety of practices such as slavery and genocide is not even a subject for debate. These practices are in violation of well-established international initiatives such as the Convention to Abolish Slavery,¹³⁹ 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.¹⁴⁰

Member states of the United Nations have pledged their cooperation to solve 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."¹⁴¹ However, some states, especially in Africa, frequently resort to custom or cultural practices as justification for discrimination and violation of human rights conventions.¹⁴² This barrier is especially difficult to overcome when the customs in question are religious in nature.¹⁴³ Using culture or religion to excuse practices that many people believe violate human rights standards is not a novel concept.¹⁴⁴ In general, there is a tendency for some states to defend their religious and cultural practices and thus, refuse to condemn, prosecute, or penalize people whose practices as long as they are in harmony with culture, contravene human rights standards.¹⁴⁵ Furthermore, many states do not specifically recognize such practices as "discriminatory or biased" because they have been incorporated as an intricate part of the "natural" order of things.¹⁴⁶ Human rights and culture are inextricably linked.¹⁴⁷ Factors such as race, country of origin, and ethnicity, inter alia, are essential to the human rights framework. Nonetheless, there is a distinction to be made between taking into account or accepting cultural practices and utilizing culture as a justification to deny the integrity and dignity of individuals based on their gender.¹⁴⁸

2.2. The Challenge of Cultural Relativism

Advocates of the Trokosi system may contend that, despite persuasive arguments based on international law, applying such instruments to rural African politics or affairs lacks credibility. These international instruments

¹³⁴ Naa-Kaa Botchway (n8) 380

¹³⁵ Bryan A. Garner, *Black's Law Dictionary* (9th edition, Thomson Reuters 2009) 809

¹³⁶ Naa-Kaa Botchway (n8) 380

¹³⁷ *Ibid*

¹³⁸ *Ibid*

¹³⁹ Supplementary Convention on the Abolition of Slavery, and the Slave Trade, and Institutions and Practices Similar to Slavery, Apr. 30, 1956, 266 U.N.T.S. 3 <[Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery | OHCHR](#)> accessed 17 July 2023

¹⁴⁰ Small Bilyeu (n46) 481-83

¹⁴¹ U.N. CHARTER art. 1, para. 3

¹⁴² Small Bilyeu (n39) 459

¹⁴³ Elizabeth L. Larson, Comment, "United Nations Fourth World Conference on Women: Action for Equality, Development, and Peace" (Beijing, China: September 1995), *Emory International Law Review* (Emory University School of Law 1996) Vol.10 695

¹⁴⁴ Berta Esperanza Hernandez-Truyol, "Women's Rights as Human Rights - Rules, Realities and the Role of Culture: A Formula for Reform" *Brooklyn International Journal of International Law* n.207 (Brooklyn Law School 1996) Vol.21, no.207, 605, 659

¹⁴⁵ Larson (n38) 714

¹⁴⁶ *Ibid*

¹⁴⁷ Hernandez-Truyol (n39) 666

¹⁴⁸ *Ibid*

and conventions, they argue, were not designed to be used to impose Western concepts of human rights on third-world countries with distinct views and perspectives on moral and societal values.¹⁴⁹

Thus, Trokosi apologists represented by Dr. Sammy Dartey-Kumordzie, Osofo Kofi Ameve and the African Renaissance Mission (popularly known as Afrikania Mission) argue for the defence of cultural relativism.¹⁵⁰ They contend that because Trokosi is an aspect of African traditional religion (ATR) and culture, which are legitimized by the Ghanaian Constitution, any attack on Trokosi is an attack on religious freedom and is therefore unconstitutional.¹⁵¹ African Traditional Religion adherents and practitioners view human rights as imported, foreign principles that conflict with African traditional values. In reality, the anti-Trokosi movement in Ghana has been dubbed a Christian assault on African traditional religion and culture because the main participants and organizations in the campaign are Christians.¹⁵² To be fair to the apologists of ATR, there is no question that any effort to address the Trokosi issue, which is a component of the Southern Ewe's traditional religious traditions, must take into account the fact that the Ghanaian constitution guarantees freedom of religion. This issue puts to the forefront the fundamental issue addressed in this paper, namely, how to balance human rights with contentious traditional customs and cultures like Trokosi.

The arguments advanced by proponents of cultural relativism are worth considering in order to comprehend the viewpoint of individuals who cling to customary practices under investigation by the international community.¹⁵³ One school of thought holds that this philosophy encourages tolerance since it requires one ethnic group to respect the customs of another, despite significant differences.¹⁵⁴ This is an essential notion for non-western states since, in their opinion, western countries have mistreated third-world territories for ages through colonization and other means, and hence must learn to appreciate and refrain from intervening in non-western activities.¹⁵⁵ Cultural relativists also deny the notion of universal principles or morals that apply equally to all.¹⁵⁶ When they compare western and non-western priorities, this becomes clear to them. Although both Westerners and non-westerners appreciate human dignity, the former places an emphasis on individual terms, and the latter places an emphasis on communal identity.¹⁵⁷ Also, Westerners advocate for civil and political rights, as opposed to non-western nations, which are primarily concerned with economic, social, and cultural rights.¹⁵⁸ Proponents of cultural relativism may argue that these fundamental distinctions highlight the difficulties inherent in comparing first and third world behaviours, hence justifying the need for cultural relativism.

However, adopting cultural relativist arguments to justify human rights violations could generate some serious drawbacks. Human rights might be considered universal; the fact that one is shaped by particularly long-standing traditions and history does not make the rights to which one is entitled as a human being any less accessible.¹⁵⁹ The idea of culture must be explored more closely in order to demonstrate the flaws in utilizing cultural relativism as a shield. African culture encompasses many various facets of a people's way of life, such as social, economic, political, individual, and collective issues.¹⁶⁰ It includes both religious rites and daily secular activities. If culture is as active as its African advocates claim it to be, it must be susceptible to change rather than static in order to have been maintained through many generations of a given ethnic group, such as the Ewe people of the Volta region of Ghana.¹⁶¹ It is crucial to re-evaluate a culture in light of modern concepts and ideals. This is

¹⁴⁹ Katherine J. Brennan, "The Influence of Cultural Relativism on International Human Rights Law. Female Circumcision as a Case Study" *Law & Inequality: A Journal of Theory and Practice*, (University of Minnesota Law School 1989) Vol.7 Issue 3 article 2 370-371

¹⁵⁰ *Ibid* 370

¹⁵¹ Sammy Dartey-Kumordzie, "Re-defining Hu-Yehweh the Knowledge of Africa and the Various Organs for Development of Human Resources" *The Ghanaian Times* (1 July 2001) 14; Sammy Dartey-Kumordzie, "Trokosi or Fiasidi: Pillar of Africa's Survival" *Weekly Spectator* (15 July 1995) 5; Sammy Dartey-Kumordzie, Report on Fiasidi-Vestal Virgins (Accra: Hu-Yehweh Society, n.d.)

¹⁵² *Ibid*

¹⁵³ Jonathan C. Goltzman, "Cultural Relativism or Cultural Intrusion Female Ritual Slavery in Western Africa and the International Covenant on Civil and Political Rights: Ghana as a Case Study" *New England Journal of International and Comparative Law* (New England School of Law 1998) Vol.4 65

¹⁵⁴ J. Brennan (n148) 387

¹⁵⁵ *Ibid* 370

¹⁵⁶ Anne F. Bayefsky, "Cultural Sovereignty, Relativism, and International Human Rights: New Excuses for Old Strategies" *Ratio Juris* (Basil Blackwell 1996) Vol.9 Issue 1 65

¹⁵⁷ J. Brennan (n48) 371

¹⁵⁸ Hope Lewis, "Between Irua and 'Female Genital Mutilation': Feminist Human Rights Discourse and the Cultural Divide" *Harvard Human Rights Journal* (Harvard Law School 1995) Vol.8 18

¹⁵⁹ Note "What's Culture Got to Do with It? Excising the Harmful Tradition of Female Circumcision" *Harvard Law Review* (The Harvard Law Review Association 1993) Vol. 106 No.8 1958-1959

¹⁶⁰ *Ibid* 1959

¹⁶¹ *Ibid*

essential because if a culture is seen as incompatible with modern concepts and ideologies, it will no longer be significant.¹⁶² Therefore, it is important to criticize some traditions in order to strengthen the culture as a whole and support its preservation for future generations. For instance, some African customs that have been followed for hundreds of years, like the Muganda women's propensity to kneel as a sign of respect, not out of coercion, but of their own volition, while addressing an elder, still has relevance today.¹⁶³ Respect for the elderly is a common, universal value that has modern legitimacy because it shows a link to and admiration for one's heritage.¹⁶⁴

On the other hand, enslaving women is an unacceptable value. It starkly deviates from perceptions about women's role in contemporary society. It is vital to discard habits that may be plainly offensive, obsolete, or pointless while maintaining those that show modern legitimacy. For instance, one of the many, long-held justifications for female genital mutilation was that it helped women deal with the discomfort of child labour. However, the practice of its old purpose has been undercut by contemporary medicine. Support for female genital mutilation has reduced as a result of urbanization and education.¹⁶⁵ The practice of Trokosi, in the author's view, is in a similar circumstance. Through modernization and education, rural communities will recognize that a great deal of potential is wasted when a young girl spends her life in bondage.¹⁶⁶ Trokosi is of no use when viewed through the basic needs and values of the typical rural African village. Instead of satisfying the local priest's sexual demands, the girl could be a greater asset at home in the village, helping with daily activities.

Moreso, If the international community accepts cultural relativism without qualification, it could generate harmful ramifications since it would allow both state actors and private parties to treat citizens however they see fit.¹⁶⁷ Again, cultural relativism may be counterproductive if it is used to defend practices that enable abuses to be overlooked, even if it is necessary to encourage tolerance toward other cultures and acknowledge the fact that some issues are better handled by the local indigenous community.¹⁶⁸ Consequently, human rights advocates are powerless to condemn any conduct that is carried out in the name of culture.¹⁶⁹ Besides, it is no longer a valid argument to claim that activities taking place on a state's sovereign territory are immune from criticism by other governments. Modern human rights laws provide a means for governments to hold other states accountable for mistreating their citizens.¹⁷⁰ Cultural relativism, however, may act to undermine the international community's obligation to denounce any abuses of human rights.¹⁷¹

Cultural relativists also contend that even if some traditions, such as Trokosi, are deemed objectionable, only Africans should be responsible for solving these issues.¹⁷² To this end, it is agreeable that a challenge must be examined by people who are familiar with the indigenous population and the region's distinctive cultural setting in order to be resolved successfully.¹⁷³ Foreigners' criticisms are mostly not well received by groups that still adhere to long-standing traditions. Therefore, advocates of cultural relativism might claim that internal transformation is necessary for successful change to take place. It may be construed as cultural imperialism when Westerners enter a society with which they are unfamiliar and make an effort to change things.¹⁷⁴

The author believes that culture should not be utilized as a "shield to protect practices that violate women's human rights," nor should human rights be used as a weapon of subjugation or imperialism to oppress other cultures and ways of life.¹⁷⁵ The term "culture", used more or less as a justification for claiming and opposing certain human rights, is frequently employed in a broad and ambiguous sense to include not only indigenous or traditional practices but also political and religious ideals and institutional structures.

¹⁶² *Ibid*

¹⁶³ Ghana Web, 'All about African greeting positions and how they are used' (21 Nov. 2022) <[All about African greeting positions and how they are used | Photos \(ghanaweb.com\)](#)> accessed 21 August 2023

¹⁶⁴ *Ibid*

¹⁶⁵ J. Brennan (n48) 390

¹⁶⁶ *Ibid* 397

¹⁶⁷ *Ibid* 52

¹⁶⁸ Bayefsky (n155) 56

¹⁶⁹ *Ibid* 52

¹⁷⁰ R. Bilder, "An Overview of International Human Rights Law, in *International Law*" Barry E. Carter & Phillip R. Trimble eds (Transnational Publishers 1995) 894

¹⁷¹ *Ibid*

¹⁷² Lewis (n155) 10

¹⁷³ *Ibid*

¹⁷⁴ J. Brennan (n48) 370

¹⁷⁵ Hernandez-Truyol (n39) 666

This position is clearly contradictory to the fundamental human rights premise.¹⁷⁶ The assumption undergirding the presupposition that human rights are culturally specific, in the author's view, appears to be some form of "clever sophistry". The flagrant violation of people's human rights, particularly of women and children in the global south, as demonstrated by the Trokosi system, Witch camps,¹⁷⁷ and female genital mutilation inter alia undermines this assertion. In this light, fulfilling the demand for culturally-based human rights might be seen as legitimizing human rights violations. While acknowledging the importance of space for the expression of cultural uniqueness and identity, there must also be accommodation for a minimum standard of guarantees that eradicates the exercise of arbitrary discretionary powers. This balance is essential to prevent the door from opening to tyrannical rule or abuse due to the absence of commonly-enforceable standards.¹⁷⁸ If all cultures equally respect people's universal rights, then the existence of the universal human rights framework should not be a subject for contention, given that it presupposes the existence of shared ideals and goals for advancing human dignity. This shared objective should therefore serve as a unifying rather than dividing force.¹⁷⁹

Another argument in favour of cultural relativism is that having a universal set of moral or legal standards that ensures human freedoms and safety is ethically wrong and morally unjust because of the diversity and context-specificity of moral ideals and ambitions ingrained in different cultures.¹⁸⁰ This implies that no one set of moral norms is superior to another. As a result, the universal human rights agenda is portrayed as a form of 'cultural imperialism' from the West.¹⁸¹ Mutua, consequently contends that the universal human rights movement is an attack on the fundamental cultural fabric of states deemed inferior to Western standards.¹⁸² To him, the universal human rights campaign is a concerted effort not merely to 'civilize' the 'other' but also to guarantee the widespread acceptance and practice of liberal-multiparty democracy and capitalism, both of which advance Western interests.¹⁸³ To an extent, Mutua's perspective is agreeable because it is often mistakenly assumed that the enjoyment of universal human rights follows - almost automatically - the acceptance of capitalism and multi-party liberal democracy. In the same vein, Mégret contends that pursuing universal human rights is nearly synonymous with advancing political liberalism, such as the rule of law, good governance, and market capitalism.¹⁸⁴ Both Mégret and Mutua appear to imply that the human rights project is a ruse for a covert strategy to promote Western imperialism and liberalism in order to advance Western objectives. To some extent, their perspective is understandable, because acceptance of Western culture, Western-style democracy, and capitalism is widely promoted as a precondition for enjoying human rights.¹⁸⁵ However, as persuasive as Megret and Mutua's position is, this is not necessarily the case; the depiction of the human rights project as an imposition of Western-originated ideology and philosophy to serve purely Western interests, on the other hand, tends to distort the reality of human rights violations and the efficacy of human rights initiatives in general.¹⁸⁶ It, in particular, downplays the awful infringements of women's and girls' rights in many parts of the world, as well as the need for intervention to remedy the situation. In essence, universal human rights do not encapsulate a specific 'cultural standard, but rather a 'one legal standard' that reflects a collective consensus of the world community, even though law, to a certain degree, reflects cultural values.¹⁸⁷ Thus, in my view, attempting to primarily attribute human rights to a specific religion or cultural orientation is a flawed initiative. The origin of human rights should not matter as long as they serve and enhance the greater good of humanity.¹⁸⁸ The struggle of women for the full enjoyment of fundamental human rights is significantly hampered by the urge for cultural preservation. As contended by Erturk, women's human rights discourse and activities have become caught in a 'culture-versus-rights' debate.¹⁸⁹ This implies that

¹⁷⁶ Wangila (n20) 329

¹⁷⁷ Baba Iddrisu Musa, "*Ambivalence of Culture in Ghana's Alleged Witches' Camps: A Micro-Level Approach to Human Rights*" (Nomos Verlagsgesellschaft Baden-Baden, 2020) 37

¹⁷⁸ Asomah (n3) 132

¹⁷⁹ *Ibid*

¹⁸⁰ Diana Ayton-Shenker, The challenge of human rights and cultural diversity (United Nations. Department of Public Information 1995) <[The challenge of human rights and cultural diversity in SearchWorks catalog \(stanford.edu\)](#)> accessed 15 July 2023

¹⁸¹ Asomah (n3) 132

¹⁸² *Ibid*

¹⁸³ *Ibid*

¹⁸⁴ Frédéric Mégret, "*Where does the critique of international human rights stand? An exploration in 18 vignettes*" (McGill University, Faculty of Law 2010) 2

¹⁸⁵ Asomah (n3) 133

¹⁸⁶ *Ibid*

¹⁸⁷ *Ibid*

¹⁸⁸ Ayton-Shenker (n49) 2-3

¹⁸⁹ Yarkin Erturk, "culture versus rights dualism": A myth or a reality? (Springer 2012) 1 <[OpenDem_Culturerightsdualism_0412.pdf](#)> accessed 22 July 2023

the demand for cultural rights may also be a scheme to serve the interests of patriarchal culture, a male-dominated society that guarantees the subordination and oppression of women and girls.

Furthermore, cultural relativism ignores the possibility of cultural dynamism as a fundamental aspect of culture. This trend is likely to rob local cultures of needed social reform possibilities. The pursuit of cultural preservation should be judged exclusively on its benefits, not on the basis of wholesale preservation of cultural identity and customs when doing so would result in the destruction of others' dignity, liberty, security, and freedoms. This is even supported by Jeffers' idea on the "ethics of cultural preservation".¹⁹⁰

This paper contends that, cultural relativism, as seen through the lens of the universal human rights framework, should not be the foundation for the continuous violation of people's fundamental human rights.¹⁹¹ Universal human rights include, identify and encourage cultural rights such as the protection of cultural heritage and freedom of thought, conscience, and religion.¹⁹² Nonetheless, this acknowledgment of cultural rights ends at the point where cultural or religious practices are likely to violate the rights of others. Moreover, the exercise of one's rights at the expense of the rights of others is prohibited under international law. Universal human rights are symbolic of the world community's universal intention and commitment to respect and safeguard human dignity, which has greater legitimacy, precedence, and urgency than any cultural interest.¹⁹³ Human rights, in effect, reflect a larger consensus on human dignity than any single culture and thus, by extension, should not be rejected only on the basis of cultural norms, practices and values.¹⁹⁴

Again, granting the demand for culturally based human rights observance like in the case of Trokosi could undermine and contradict the essence of the universal human rights framework. Culturally specific human rights will almost certainly result in states exercising arbitrary discretion. As a result of disparities in cultural norms and beliefs, some of which are in direct conflict with the human rights framework, this will create a vacuum for the ineffective enforcement of human rights laws. This position is perfectly articulated by Ayton-Shenker as follows:

If cultural tradition alone governs state compliance with international standards, then widespread disregard, abuse and violation of human rights would be given legitimacy.¹⁹⁵

If culturally based human rights were strictly the norm, the reasons for potential violations wouldn't seem far-fetched. For starters, some states will have a justification to ignore their international human rights duties based on cultural relativism. Additionally, cultural ideas that contradict human rights would be prioritized.

It is important to note that cultural relativism or cultural rights is not dismissed in absolute terms when it comes to universal human rights. In reality, cultural relativism is especially important in finding a balance between any claim to cultural rights and universal human rights. For example, new emergent challenges being presented as human rights discourses, such as same-sex marriages, are particularly troubling and problematic due to global disparities in cultural values and orientations. Interestingly, cases brought before the European Court of Human Rights in which complainants essentially sought for the Court to grant same-sex marriage as a human right have not been upheld; article 12 of the European Convention on Human Rights that deals with marriage guarantees only marriage rights, or the right to marry, in accordance with national laws.¹⁹⁶ This decision highlights how universal human rights laws, depending on the relevant national legal framework, incorporate the cultural values and heritage of a people. Whether this decision is right or wrong is a subject for another day but the point remains that the court's decision emphasizes the importance of respecting cultural rights and cultural relativism within the confines of national laws in general, and in the African context in particular, in order to help ensure the sanctity of what is believed by most Africans to be "positive" African cultural and religious beliefs, traditions, and practices that are under threat from these new human rights movements.¹⁹⁷

However, this paper contends that in situations where states have ratified protocols on specific human rights issues, such as the right to human dignity, education, health, and the right to choose a marriage partner, as enshrined, for example, in respective national constitutions such as the African Charter on Human and Peoples'

¹⁹⁰Chike Jeffers, "The Ethics and Politics of Cultural Preservation" *The Journal Of Value Inquiry* (Springer 2014) Vol.49 205-220

¹⁹¹*Ibid*

¹⁹² Ayton-Shenker (n70)

¹⁹³ Asomah (n3) 134

¹⁹⁴*Ibid*

¹⁹⁵ Ayton-Shenker (n49) para.9

¹⁹⁶ Steve Doughty, 'Gay marriage is not a 'human right': European ruling torpedoes coalition stance' (Mail Online 20 March 2012) <[Gay marriage is not a 'human right': European ruling torpedoes Coalition stance | Daily Mail Online](#)> accessed 27 July 2023

¹⁹⁷ Asomah (n3) 135

Rights (African Charter), and the Protocol to the African Charter on the Rights of Women (African Women's Protocol), any claim to cultural ribbing is moot.¹⁹⁸

3. Anti-Trokosi Laws; Domestic Legislation, International Conventions and Case Law

The 1992 constitution of Ghana generally respects and guarantees religious and cultural freedom.¹⁹⁹ Moreso, as previously mentioned, Ghana has ratified a number of conventions and declarations protecting the rights of women and children. The international community recognizes protection from sexual abuse as a fundamental human right.²⁰⁰ To this end, several programs, conventions, and declarations have been signed, acceded, and legislated that could serve as a foundation to eradicate the practice of Trokosi. Regardless, none appears to have had a suitable enforcement mechanism in place to bring the perpetrators to justice.²⁰¹ While the international human rights system has generated a growing number of standards, supervisory bodies, reporting mechanisms, complaint procedures, and special rapporteurs, it still lacks an efficient implementation and enforcement mechanism.²⁰² Also, while declarations like the United Nations Universal Declaration of Human Rights are commendable and crucial models, they frequently lack enforcement power because they are only "declarations".²⁰³ In this regard, the following is a representative collection of child and female-friendly conventions, ratified by Ghana that profess to protect the rights of Trokosi girls: The African Charter on the Rights and Welfare of the Child,²⁰⁴ The Minimum Age Convention,²⁰⁵ Worst Forms of Child Labour Convention,²⁰⁶ Convention on the Elimination of All Forms of Discrimination against Women,²⁰⁷ The Universal Human Rights Convention,²⁰⁸ The Convention on the Rights of a Child,²⁰⁹ International Covenant on Civil and Political Rights, 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.²¹⁰ Consequently, Ghana must have policies and legislation that reflect the provisions of the international human rights treaties it has ratified.²¹¹ To accomplish this objective, several relevant new laws have been enacted, as well as modifications to existing laws.

3.1. Domestic Legislation – Criminal Offences (Amendment) Act, 1998 (Act 554)

The domestic legislation that directly and particularly addresses the Trokosi problem is the "Trokosi law", which was passed in 1998 after decades of anti-Trokosi protests by various human rights advocates.²¹² Consequently, the Criminal Offences (Amendment) Act 1998 (Act 554) amends the Criminal Code 1960 to raise the age of criminal and sexual responsibility, modify sexual offence laws, and, most notably, disallow and criminalize ritual/customary servitude (Trokosi).

Section 314A provides:

- a. Whoever - 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.

¹⁹⁸*Ibid*

¹⁹⁹The 1992 Constitution of Ghana, Article 21(1)(c)

²⁰⁰Roger J.R. Levesque, "Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights" Brooklyn Law Review (Brooklyn Law School 1994) Vol.60 Issue 3 Article 3 996

²⁰¹Amy Small Bilyeu, "Trokosi - The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights" Indiana International and Comparative Law Review (Iupui University Library 1999) Vol.9 477

²⁰²Justice Elizabeth Evatt, "Ours by Right: Women's Rights as Human Rights" (Harvard Law School 1994) Vol.7 295 299

²⁰³Small Bilyeu (n27) 480

²⁰⁴African Charter on the Rights and Welfare of the Child, Organization of African Unity, Doc. **CABILEG.24.9/49 (1990)**

²⁰⁵International Labour Organisation, The Minimum Age Convention, 1973 (No. 138)

²⁰⁶Worst Forms of Child Labour Convention, 1999 (No.182)

²⁰⁷Convention 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)

²⁰⁸The Universal Declaration of Human Rights, 1948

²⁰⁹Convention 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)

²¹⁰Supplementary Convention on the Abolition of Slavery, and the Slave Trade, and Institutions and Practices Similar to Slavery, Apr. 30, 1957, 266 U.N.T.S. 3 <[Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery](#) | OHCHR> accessed 4 August 2023

²¹¹Sarpong Owusu (n30) 17

²¹²*Ibid*

Many human rights advocates and non-governmental organizations (NGOs) have lauded Ghana's anti-Trokosi law as a significant step forward in the country's attempts to safeguard girls from harmful superstitions and cultural and religious practices.²¹³ According to Ameh, despite the fact that the remonstrances and protests against Trokosi prompted the passage of the law included in Section 314A of the Criminal Code, the law actually forbids Trokosi and other detrimental traditional practices and cultural beliefs in the country.²¹⁴

The Trokosi system was precisely declared inappropriate and unreasonable under common law and also condemned by the High Court of Ghana in the landmark case of *Atomo v. Tekpetey*.²¹⁵ Under the Trokosi system, all children born to a Trokosi girl, including those fathered by another man, during and after the fetish priest's lifetime were forever considered to be the priest's children rather than their biological father's.²¹⁶ As a result, such children had no claim to inherit their biological fathers or any portion of their possessions if they died.²¹⁷ In the *Atomo* case, the plaintiff's mother was married off to a fetish priest by her family while she was a young virgin girl to avoid a claimed impending catastrophe from befalling the family. Following the demise of the fetish priest, the mother married another man and had three children with him. The children were all girls including the plaintiff. The plaintiff's biological father died as well, leaving behind significant property. When the plaintiff reached the age of majority, she and her sisters attempted multiple times to gain access to or have a portion of their biological father's estate. However, the deceased's paternal nephew (the defendant), who was the keeper of the properties in question at the time, resisted on grounds of tradition and custom. He was of the view that the plaintiff's mother was a Trokosi, and so the plaintiff and her sisters could not be regarded as offspring of his late uncle and as a result, could not qualify for any of his uncle's assets. Judge Apatu-Plange issued the following statement, ruling in favour of the plaintiff:

It is plain then that this whole custom of Wayokwe [Trokosi] marriage is mixed up with beliefs in fetish being able to kill by some supernatural powers and this court is unable to use this as a basis in holding that any such custom is reasonable. Indeed, there is something to be said for the proposition being put forward by this court that, to deny a child the right to be recognized as the child of his or her natural father and to compel the natural father to disown and to disinherit him or her for what is after all not of their making seems to me to be out of step with modern reforms. It is my considered opinion therefore that the custom being relied on by the defendant to resist the claim of the plaintiff is unreasonable and repugnant to natural justice, equity and good conscience and cannot therefore be enforced in a court of law.²¹⁸

This judgment effectively condemned and wiped out, at the very least, that component of the Trokosi system that deprived children of the right to inherit part or whole of their biological fathers' estates.²¹⁹

3.2. The 1992 Constitution of Ghana

The laws of Ghana include 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.²²⁰ The Constitution of Ghana is the ultimate law of the land, and any other law that cannot be reconciled with it is declared null and void to the degree of inconsistency.²²¹ The Constitution is Ghana's "most ambitious attempt at giving meaning to human rights in all their forms - civil, economic, social, political and cultural".²²² The fundamental human rights and liberties that must be preserved and protected by the government are established and defined by the Constitution.²²³ These provisions are applicable to "every person in Ghana, regardless of race, place of origin, political opinion, colour, religion, creed or gender".²²⁴ The basic human rights and freedoms that have a direct nexus with the practice of Trokosi include protection from slavery and forced

²¹³ *Ibid*

²¹⁴ Robert Kwame Ameh "Children's right, controversial traditional practices, and the trokosi system: A critical socio-legal perspective" In R. K. Ameh, Debrenna Lafa Agbenyiga, Nana Araba Apt (Eds.), "Children's Rights in Ghana: Reality or Rhetoric?" (Lexington Books 2011) 131–150

²¹⁵ *Atomo v Tekpetey* [1980] GLR 738

²¹⁶ Sarpong Owusu (n30) 17

²¹⁷ *Ibid*

²¹⁸ *Atomo v Tekpetey* [1980] GLR 739

²¹⁹ Sarpong Owusu (n30) 18

²²⁰ The 1992 constitution of Ghana, article 11; Sam Kiley, 'Child Slaves Used by West Africans to Appease Spirits', TIMES LONDON, Sept. 17, 1996, available in 1996 WL 6519665.

²²¹ The 1992 constitution of Ghana, article 1(2)

²²² Jacob Saah, Ghana, *The Constitution of 1992 and Human Rights*, AFR. NEWS, Oct. 16, 1998, available in LEXIS, News Library, News Group File.

²²³ *Ibid* (n21) article 12(1)

²²⁴ Saah (n22) 285

labour,²²⁵ respect for human dignity,²²⁶ cultural rights and practices,²²⁷ and the rights of children.²²⁸ The Constitution empowers anybody who believes that his or her rights have been violated or are likely to be violated to seek redress before the High Court, with the option of appealing to the Court of Appeal and then finally to the Supreme Court.²²⁹

As earlier indicated, it is illegal to practice any form of slavery in Ghana. The Ghanaian Constitution expressly forbids slavery: “no person shall be held in slavery or servitude” or be “required to perform forced labour”²³⁰. Because they are obligated to meet the demands of the shrine and priest, the Trokosigirls are subjected to slavery, servitude, and forced labour, which violates articles 16(1) and (2).²³¹ Moreso, article 15(1) of the Constitution provides that “the dignity of all persons shall be inviolable”.²³² Apparently, there is no dignity for the Trokosi, more a less a sex tool, who must gratify the fetish priest's sexual desires.²³³ The Trokosi system utterly disregards the rights of vestal virgins, whose constitutional rights are just as important as those of the fetish priests or their parents or guardians.²³⁴ The Trokosi system breaches children's constitutional rights, the Ghanaian government admits,²³⁵ yet it is tolerated out of respect for religious freedom.²³⁶ It is however worthy to note that people who engage in slavery are guilty of a second-degree felony as provided for in Section 314 of the Ghana Criminal Code.²³⁷ Except as limited by other provisions of the Constitution, “every person is entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion.”²³⁸ Nonetheless, these customary practices are disallowed in circumstances where they “dehumanize or are injurious to the physical and mental well-being of a person.”²³⁹ This restriction on the exercise of religious freedom illustrates Ghana's appreciation of the fact that some cultural practices are simply incompatible with human rights standards. It therefore follows from this constitutional provision “that no religion or other belief of culture can be legitimately practiced in such a way as to deprive others of their rights, freedoms or to subject others to dehumanizing or degrading treatment”²⁴⁰. Consequently, the offer of young girls to shrines unequivocally violates the Ghanaian constitution; enslaving the Trokosi girls to fetish priests who subject them to humiliating and degrading treatment, as well as deprive them of their rights and freedoms is a breach of the constitution.

In the recodification of the criminal code of 1960, the Ghanaian parliament enacted a provision that particularly prohibits the practice of sexual slavery.²⁴¹ The Trokosi system and similar activities are referred to as “customary servitude” in the provision which also imposes on perpetrators, a minimum three-year sentence.²⁴²

Moreover, Ghana's parliament is also responsible for enacting laws that ensure that: a) every child has the right to the same measure of special care, assistance and maintenance as is necessary for their development;²⁴³ b) children and young persons receive special protection against exposure to physical and moral hazards;²⁴⁴ c) every child has the right to be protected from engaging in work that constitutes a threat to his health, education or development;²⁴⁵ d) a child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.²⁴⁶

The practice of Trokosi, thus violates children's rights since the girls are separated from their families, denied access to education, refused remuneration for their hard labour and denied support from the shrine for the

²²⁵The 1992 constitution of Ghana, article 16

²²⁶ *Ibid* articles 1 and 15

²²⁷ *Ibid* article 26

²²⁸ *Ibid* article 28

²²⁹ Saah (n22) 285

²³⁰The 1992 constitution of Ghana, article 16(1)(2)

²³¹ Amy Small Bilyeu, “*Trokosi - The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights*” *Indiana International and Comparative Law Review* (Iupui University Library 1999) Vol.9 495

²³²The 1992 constitution of Ghana, article 15(1)

²³³ Small Bilyeu (n27) 495

²³⁴ *Ibid*

²³⁵ Kiley (n24)

²³⁶ Dateline: Innocents Lost (NBC television broadcast, Aug. 30, 1998)

²³⁷ Ghana Criminal Code, section 314(a)

²³⁸ The 1992 constitution of Ghana, article 26(1)

²³⁹ *Ibid* article 26(2)

²⁴⁰ The 1992 constitution of Ghana, article 17

²⁴¹ Criminal Code (Amendment) Act, Act 554 of 1998

²⁴² *Ibid* section 17

²⁴³ *Ibid* article 28(1)a

²⁴⁴ *Ibid* article 28(1)(d)

²⁴⁵ *Ibid* article 28(2)

²⁴⁶ *Ibid* article 28(3)

children they bear for the priests.²⁴⁷ Moreover, while the girls are completely at the behest of the shrine priests, they are frequently sexually molested and exploited for their labour, exposing the girls to moral and physical dangers.²⁴⁸ However, despite these significant laws, the practice of Trokosi, although relegated to the underground, has not been totally eliminated because of strongly ingrained cultural beliefs. “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 Trokosi practice”²⁴⁹ even with the passage and the subsequent enforcement of laws.

3.3 United Nations Convention on the Rights of a Child

On September 2, 1990, the United Nations Convention on the Rights of the Child (UNCRC)²⁵⁰ came into force after being ratified or acceded to by over 170 nations.²⁵¹ Apparently, Ghana is one of the countries existing as a state party to the UNCRC.²⁵² The UNCRC incorporates four key elements regarding children's rights: “(1) emphasis on the “best interests of the child”²⁵³; (2) recognition of the child's “evolving capacities”²⁵⁴; (3) the principle of non-discrimination²⁵⁵; and (4) respect for the child's human dignity”.²⁵⁶

The UNCRC identifies two fundamental rights: (1) “protection from harm”: and (2) “special care”. Protection from harm encompasses safeguarding against physical, mental, and sexual abuse and neglect,²⁵⁷ economic, sexual and other exploitation;²⁵⁸ harmful labour;²⁵⁹ armed conflict;²⁶⁰ torture or cruel treatment;²⁶¹ abduction, trafficking and illicit transfer abroad;²⁶² harmful drugs;²⁶³ traditional practices harmful to health (such as female genital mutilation);²⁶⁴ and separation from parents.²⁶⁵ Special care encompasses the right of the child to an adequate standard of living,²⁶⁶ health care,²⁶⁷ nutrition²⁶⁸ and education.²⁶⁹

The UNCRC places a greater emphasis on the rights and potential needs of female children than any other human rights document in a number of its provisions.²⁷⁰ Despite requiring state parties to end “traditional practices prejudicial to the health of children,”²⁷¹ the UNCRC does not effectively address the cultural prejudice that female children face on a daily basis.²⁷² As a result, the UNCRC's capabilities are constrained because “cultural abuses... do not always implicate a health risk.”²⁷³ Additionally, the UNCRC does not effectively protect female children from exploitation that occurs within the family.²⁷⁴ The UNCRC places a strong emphasis on the necessity of the child developing within the cultural context and learning about local customs.²⁷⁵ The UNCRC's provisions

²⁴⁷Small Bilyeu (n27) 497

²⁴⁸*Ibid*

²⁴⁹ Kiley (n24)

²⁵⁰ 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)

²⁵¹ M. Backstrom (n56) 566

²⁵² 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) 4

²⁵³ UNCRC, arts. 3(1), 9(1), 18(1), 20(1), 21, 40(2)(b)(iii)

²⁵⁴*Ibid*, arts. 5, 12(1), 14(2), 40(1), 40(2)(b)(iii).

²⁵⁵*Ibid* preamble, 2(1)

²⁵⁶*Ibid* preamble, arts. 23(1), 28(2), 39, 40.

²⁵⁷ UNCRC, art. 19.

²⁵⁸ *Ibid* articles 32, 34, 36.

²⁵⁹ *Ibid* article 32

²⁶⁰*Ibid* article 38

²⁶¹ *Ibid* article 37

²⁶² *Ibid* articles 11, 35

²⁶³*Ibid* article 33

²⁶⁴*Ibid* article 24

²⁶⁵*Ibid* article 9

²⁶⁶*Ibid* article 27

²⁶⁷*Ibid* article 24

²⁶⁸ *Ibid* articles 24(2)(c), (e).

²⁶⁹*Ibid* article 28

²⁷⁰ M. Backstrom (n56) 566

²⁷¹ UNCRC, art. 24(3).

²⁷²*Ibid*

²⁷³ M. Backstrom (n56) 578

²⁷⁴*Ibid*

²⁷⁵ UNCRC art. 29(c)

also emphasize the need of preserving the family, possibly even at the expense of children's rights. These two variables work together to make it very impossible for female children to report human rights violations motivated by prejudice or cultural custom.²⁷⁶ Consequently, the UNCRC may defend gender-based cultural abuse as well as abuse that takes place within the family.²⁷⁷ All countries that have signed the UNCRC are subject to enforceable obligations, but there is no reliable way or system of enforcing those obligations.²⁷⁸ The UNCRC does not require that its provisions be directly enforceable in the courts of a ratifying country, nor does it establish a mechanism to allow any international tribunal to execute judgments where a state party has violated any of its provisions.²⁷⁹ Each country is free to decide whether direct enforceability exists.²⁸⁰

The Committee on the Rights of the Child was established by the UNCRC to keep an eye on state parties' development and progress in the protection of children's rights. State parties are obligated to submit regular reports to the committee,²⁸¹ but the committee lacks the authority to enforce its findings and recommendations.²⁸² "It is not a prosecutorial or adjudicatory body; instead, it tries to obtain compliance by persuasion, suggestion and assistance",²⁸³ 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".²⁸⁴

By separating girls and young women from their families - often against their will - the Trokosi system transgresses the provisions of the UNCRC;²⁸⁵ exposes them to mistreatment and exploitation, including sexual abuse, as well as to physical and emotional torture;²⁸⁶ deprives the girls of a "standard of living adequate for the child's physical, mental, spiritual, moral and social development;"²⁸⁷ in many cases denies girls their right to an education;²⁸⁸ commercially exploits their labour to carry out tasks that are injurious to their health or physical, mental, spiritual, moral, or social development;²⁸⁹ The UNCRC cannot, however, be used to hold Ghana, a member state, responsible for the Trokosi practice within its boundaries since it lacks an enforcement mechanism

3.4. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights²⁹⁰ (ICCPR), which affirms the rights to life, liberty, security, and the right to privacy of the individual,²⁹¹ obliges nations to protect against slavery and other forms of cruel, inhumane, or degrading treatment.²⁹² The Covenant underscores that all of the listed rights must be exercised without regard to a person's gender and that both men and women must be treated equally.²⁹³ National emergencies that endanger the nation's life allow for restrictions on one's liberty and security only if the interim measures do not discriminate mainly on the basis of sex.²⁹⁴ Article 2 of the ICCPR specifies the obligations of state parties, which oblige 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"²⁹⁵; (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;"²⁹⁶ and (3) "ensure that any person shall have an effective remedy" and that "competent authorities shall enforce such remedies when granted."²⁹⁷ The Covenant also creates the Human Rights Committee,²⁹⁸ to which reports are to be

²⁷⁶M. Backstrom (n56) 578

²⁷⁷UNCRC art. 19

²⁷⁸ Gerald Abraham, "Giannella Lecture: *The Cry of the Children*" Villanova Law Review (Charles Widger School of Law 1996) Vol.41, art. 5, 1364

²⁷⁹ *Ibid* 1364 - 65

²⁸⁰*Ibid* 1365

²⁸¹M. Backstrom (n56) 566

²⁸² Abraham (n86) 1366

²⁸³*Ibid*

²⁸⁴M. Backstrom (n56) 565

²⁸⁵ UNCRC art 9(1)

²⁸⁶*Ibid* art. 19(1)

²⁸⁷*Ibid* art. 27(1)

²⁸⁸ *Ibid* art 28

²⁸⁹*Ibid* art 32(1)

²⁹⁰ 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)

²⁹¹*Ibid* articles 6, 9

²⁹²*Ibid* articles 7, 8

²⁹³*Ibid* articles 2, 3, 26

²⁹⁴*Ibid* article 4(1)

²⁹⁵*Ibid* article 2(1)

²⁹⁶*Ibid* article 2(2)

²⁹⁷ *Ibid* article 2(3)(a) (c)

²⁹⁸*Ibid* article 28

submitted by state parties one year after ratification and at the committee's request.²⁹⁹ Although the Political Covenant expressly prohibits torture, it does not define it and offers no standards by which to distinguish it from acts of cruelty or degrading treatment.³⁰⁰

The Trokosi system is in violation of the ICCPR because it can be deemed to constitute "torture", "cruel or degrading treatment" or even both. The priest's incessant demands of sex from the girls, consequently bearing him children in exchange for the Trokosi girls' performance of lengthy hours of unpaid labour in the shrine's fields, in the author's view, is nothing short of torture. Trokosi also violates the ICCPR since it engages in sexism, slavery, and other forms of cruel or inhumane treatment. Additionally, it infringes on the enslaved women and girls' rights to liberty, security, and privacy. Ghana, however, is not subject to the ICCPR's enforcement provisions because Ghana is not a state party to the ICCPR.

3.5. The Minimum Age Convention, 1973 (No. 138)

The aims of the Convention are outlined in Article 1. These are intended to encourage member nations to:

Undertake to pursue national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to work to a level consistent with the fullest physical and mental development of young persons.³⁰¹

This paper urges member nations to draft legislation prohibiting child labour, although neither this paper nor any other in the Convention defines the term "child labour". If member states, however, do not know the kinds of work or practices they are required to outlaw, it will be challenging for them to deal with the cancer of child labour. As a result, this Convention gives member nations the latitude to choose what constitutes child labour.³⁰² Consequently, the definition of child labour will vary from nation to nation, which hinders the Convention's universal implementation.

Exploitative labour is defined by Ghana's Children's Act as work that deprives a child of his or her health, education, or development.³⁰³ The Act establishes 13 years for light work,³⁰⁴ 15 years for general employment,³⁰⁵ and 18 years for hazardous work³⁰⁶ as the minimum ages for admission to employment. The Act further lists a number of activities that are considered hazardous work, including seafaring, mining and quarrying, transporting heavy loads, working with chemicals, and working in environments where there is a possibility of being exposed to immoral behaviour.³⁰⁷ Hazardous work is defined by the Act as work that "poses a danger to the health, safety, or morals of a person".³⁰⁸

Furthermore, article 2(1) of the convention provides that:

Each member which ratifies this Convention shall specify in a declaration appended to its ratification a minimum age for admission to employment or work within its territory..... no one under that age shall be admitted to employment or work in any occupation.

The member nations are required by this Convention to set a minimum age requirement for employment in any occupation. This minimal age applies to all children in any type of work or employment, not only those who work in a particular industry or area, like agriculture. When the phrases "employment" or "work" are used, it indicates that the Convention's provisions apply to all work done by children, regardless of whether it is done so by a child who is an employee or self-employed.³⁰⁹ The terms of this provision imply that legislation should apply to those children working in family businesses and at home, regardless of whether they are paid or work under any

²⁹⁹*Ibid* article 40

³⁰⁰Lewis Liebeskind (n57) 672; ICCPR article 7

³⁰¹ Convention 138, article 1

³⁰² Rufaro Audrey Mavunga, "A CRITICAL ASSESSMENT OF THE MINIMUM AGE CONVENTION 138 OF 1973 AND THE WORST FORMS OF CHILD LABOUR CONVENTION 182 OF 1999" Potchefstroom Electronic Law Journal (The North West University 2013) Vol.16 No.5 126

³⁰³ The Children's Act, 1998, section 87(2)

³⁰⁴ *Ibid* section 90

³⁰⁵ *Ibid* section 89

³⁰⁶ *Ibid* section 91

³⁰⁷ *Ibid* section 91(3)

³⁰⁸ *Ibid* section 91(2)

³⁰⁹ Mavunga (n109)

kind of formal arrangement.³¹⁰The minimum age for labour or employment, according to article 2(3) of this Convention, should not be less than the age of completion of compulsory schooling and, in any case, not less than fifteen years.³¹¹ Sweptson is of the view that combining the ideas of minimum age and compulsory education presupposes the existence of the educational infrastructure required to deliver schooling up to a certain age.³¹²Thus, the Convention emphasizes the significance of compulsory education over the need for children to work. It does not refer to primary education specifically, but rather to compulsory schooling in general. The employment of children under the age of fifteen is therefore considered illegal.

Again, article 3(1) of the convention provides that:

The minimum age for admission to any type of employment or work which is by nature or the circumstances in which it is carried out likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years.

According to Creighton, the fundamental goal of this provision is to shield children from being exposed to dangerous employment before they have developed the judgment needed to carry out such activity safely.³¹³ Employment before they have developed this mental capacity puts both themselves and their co-workers in danger. Sadly, the provision is a bit ambiguous because it doesn't fully define or provide examples of the kind of labour that may fall under this category. The ILO has however established the Minimum Age Recommendation,³¹⁴ which is a non-binding instrument, to supplement Convention 138. According to Article 10 of the Recommendation, member states should consider work or employment involving hazardous materials, agents, or processes (including ionizing radiations), the lifting of heavy objects, and underground work.³¹⁵However, because the Recommendation is not a legally binding document, member nations are not required to abide by its requirements. Consequently, member states are left to decide on this type of work without much assistance from the Convention.

In light of the above provisions of the Convention and of Ghana's Children's Act, the practice of Trokosi constitutes a flagrant breach of the rights of the girl child. The Trokosi system violates the Minimum age convention because the young girls, who are typically under the age of 15, below the minimum age of employment specified under article 2(3) of the convention, and are taken to the fetish shrines are subjected to cruel, inhumane, and humiliating treatment by being forced to work and engage in involuntary sex; this also inevitably exposes them to circumstances that endanger their "health, safety, or morals" as young person's within the language of the convention.³¹⁶

Again, since these young girls who are "children" within the meaning of article 28(5) of Ghana's 1992 constitution and section 1 of Ghana's Children Act are mostly deprived of access to education, good health and development by reason of Trokosi, the practice, as asserted by this paper, constitutes Child or Exploitative labour, which also contravenes article 1 of the Minimum age convention.

3.6 Worst Forms of Child Labour Convention, 1999 (No.182)

The effective abolition of the worst types of child labour is the Convention's ultimate goal.³¹⁷ By creating frameworks for social integration and rehabilitation, the convention takes into account the significance of providing free basic education as well as the necessity of removing the affected children from all such tasks.³¹⁸

Article 1 provides that:

Each member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.³¹⁹

This provision suggests that efforts to end the worst forms of child labour are being made with a sense of urgency.³²⁰ The phrases "immediate" and "effective measures" as well as "as a matter of urgency" imply the

³¹⁰*Ibid* 130

³¹¹ Convention 138 article 2(3)

³¹²Mavunga (n109) 130

³¹³ *Ibid* 132

³¹⁴ ILO Minimum Age Recommendation 146 (1973).

³¹⁵*Ibid* article 10

³¹⁶ *Ibid* article 3

³¹⁷ Convention 182, Article 1

³¹⁸ Convention 182, Article 8

³¹⁹Convention 182, Article 1

³²⁰Mavunga (n109) 143

necessity of prioritizing the abolition of the worst types of child labour.³²¹The provision allows for the separation of child labour into the worst forms and the other forms which are at least to an extent, tolerable.³²²While it seems that lesser forms of child labour, such as the light work of children, are being neglected, current international campaigns and trends seek to emphasize the worst forms of child labour. Child labour is a reality, particularly in many African nations where culture plays a significant role and the Convention therefore deserves praise for pressuring its member nations to take action against the employment of children in these forms of labour beyond simply passing legislation.³²³

Article 3(a) of the convention particularly provides that the worst forms of child labour comprise:

all forms of slavery, or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.³²⁴

This particular category of activities in addition to that of paragraphs b and c of article 3 of the convention is subsumed under “unconditional worst forms of child labour.”³²⁵The reason they are referred to as “unconditional” is because altering the working circumstances will never make them legal.³²⁶

The type of work outlined in article 3(d), “work done which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”, on the other hand, is frequently referred to as hazardous work or a conditional worst form of child labour.³²⁷ This is because by changing the circumstances in which such work is carried out, the working conditions for this type of work can be enhanced. A child operating machinery in a warehouse without protective gear is an illustration of this.³²⁸ Such work has the potential to endanger the child's health or safety. However, If a safety device were to be attached to the machine, the work would no longer be harmful and would no longer be considered one of the "worst forms of child labour" as described in this article.³²⁹

The practice of Trokosi, if carefully observed in the light of the above-stated provisions, constitutes the worst form of child labour in that, the enslavement of the young girls who are forced to work as bonified properties of the gods, their mostly being raped by the fetish priests and the product, children, who are in turn also recognized as “belongings” of the priest is nothing short of serfdom and sexual slavery. Aside falling within the ambit of article 3(a) of the convention on what constitutes the worst form of child labour, the Trokosi practice also contravenes article 2 of the same convention since the victims are usually below the age of 18.³³⁰ Moreover, the practice of Trokosi would also qualify as an unconditional worst form of child labour since no change to the circumstance of the Trokosi will be sufficient to enhance their conditions as “sex slaves of the gods”.

3.7. The African Charter on the Rights and Welfare of the Child

In 1990, the African Member States of the Organization of African Unity (OAU), of which Ghana is no exception, adopted the African Charter on the Rights and Welfare of the Child (African Children's Charter).³³¹The African Children's Charter aims to strike a balance between human rights and culture.³³² It urges member states to eradicate harmful practices and customs that are detrimental to children.³³³Member nations, in particular, are to seek to eliminate “(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.”³³⁴ Moreso, the preamble recognizes the importance of human rights and outlines the additional safeguards and care required for African children due to their unique circumstances of “socio-economic, cultural, traditional and developmental

³²¹ *Ibid*

³²² Ben White "Defining the Intolerable; Child Work, Global Standards and Cultural Relativism" *Childhood: A Journal of Global Research* (Sage Journals 1999) Vol.6 Issue 1 133-14

³²³Mavunga (n109) 144

³²⁴Convention 182, Article 3(a)

³²⁵ ILO Child Labour 46.

³²⁶ *Ibid*

³²⁷ ILO Child Labour 47

³²⁸Mavunga (n109) 145

³²⁹*Ibid*

³³⁰Convention 182, Article 2

³³¹*Ibid* (n6)

³³²Hernandez-Truyol (n109) 662

³³³ *Ibid*

³³⁴ *Ibid*

circumstances, natural disasters, armed conflicts, exploitation and hunger.”³³⁵Protection against child abuse and torture,³³⁶Protection against harmful social and cultural practices,³³⁷and protection against sexual exploitation³³⁸ are among the rights enumerated in the Charter.³³⁹The Committee on the Rights and Welfare of the Child (Children’s Rights Committee) is established by the Charter.³⁴⁰ The core mandates of the committee include promoting and protecting the rights set forth in the Charter, monitoring implementation and ensuring the protection of the rights outlined in the Charter and interpreting provisions of the Charter at the request of a party.³⁴¹State parties must submit to the Committee, reports on the efforts they have taken to safeguard the enjoyment of these rights two years after becoming a party, and every three years afterward.³⁴² The Committee may also employ any suitable method of investigation on issues falling under the purview or jurisdiction of the Charter.³⁴³

Trokosi, as a cultural practice, violates the Charter by subjecting children to deplorable treatment and sexual abuse. Moreso, it is destructive to the welfare, dignity, and proper growth and development of the girls enslaved to the fetish priests. Also, Trokosi discriminates based on gender because only virgin females are offered as "bonified properties" of the gods. While the Charter's declarations are remarkable, the responsibilities imposed on state parties to observe its provisions are not legally binding. The Charter provides that:

any 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.³⁴⁴

While discouraging inconsistent practices is vital, it falls far short of adequately protecting the victims affected by the Trokosi system.³⁴⁵ The Charter lacks a strong enforcement mechanism to ensure that its provisions are fully implemented by the state parties.³⁴⁶ There is no mechanism in place for a member state or an aggrieved individual to hold a state party accountable for violations before a tribunal.³⁴⁷In a similar vein, it fails to make the Charter directly binding in the courts of the ratifying countries. Instead, it depends on each nation's internal legislation to enforce the charter's provisions.³⁴⁸

3.8 Convention on the Elimination of All Forms of Discrimination Against Women

The UN General Assembly's 1967 adoption of the Declaration on the Elimination of Discrimination Against Women (DEDAW)³⁴⁹ and its subsequent unanimous adoption of the Convention on the Elimination of All Forms of Discrimination Against Women³⁵⁰ (CEDAW) in 1979, later ratified by Ghana, were the first set of international instruments to address the issue of women in the country. The CEDAW takes cognizance of the disturbing issue that culture may be used as justification for discriminating against women and thus, urges state parties “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”.³⁵¹When the CEDAW is read holistically, it manages to define discrimination in a way to encompass both “public and private discrimination, [and]unintentional and intentional violations”.³⁵²The Convention establishes a committee and requires state parties to report to it within one year of ratifying the Convention and every four years thereafter, or upon CEDAW's request.”³⁵³CEDAW considers children's rights paramount - a higher standard than that recognized in the

³³⁵ African Children Charter, preamble.

³³⁶ *Ibid* article 16

³³⁷ *Ibid* article 21

³³⁸ *Ibid* article 27

³³⁹Small Bilyeu (n27) 479

³⁴⁰ *Ibid* (n24) articles 32-41

³⁴¹ *Ibid* article 41

³⁴² *Ibid* article 43

³⁴³ *Ibid* article 45

³⁴⁴ *Ibid* article 1(3)

³⁴⁵Small Bilyeu (n27) 479

³⁴⁶ *Ibid*

³⁴⁷ *Ibid*

³⁴⁸ *Ibid* 480

³⁴⁹ 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)

³⁵⁰ 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/34146 (1980)

³⁵¹ CEDAW, article 2(f).

³⁵² Michelle Lewis Liebeskind, “Preventing Gender-Based Violence: From Marginalization to Mainstream in International Human Rights” *Revista Juridica* (University of Puerto Rico 1994) Vol.63 662

³⁵³ CEDAW, article 18

UNCRC”.³⁵⁴ Although CEDAW tackles broad discrimination against women, its relevance to female children is restricted because the sole pertinent provisions concern early marriage and the implementation of specific educational programs for females who drop out of school.³⁵⁵ Nonetheless, combining CEDAW and the United Nations Convention on the Rights of a Child (UNCRC) allows the "paramount interests of the child" to take precedence over the general family rights.³⁵⁶ Consequently, when the family endangers the female child's health, the duty to honour the family unit is exceeded by her best interests.³⁵⁷ Furthermore, including these treaty ideas enables for improved enforcement of these rights through state-to-state complaints and individual petitions.³⁵⁸ Despite the fact that both the UNCRC and CEDAW promote women's and children's rights, neither instrument fully addresses the distinctive violations experienced by female children based on age and gender.³⁵⁹ It follows therefore that because only girls are sent to the shrines to redeem their families with the gods for the wrongful conduct of other family members, most at times, males, the Trokosi tradition unequivocally constitutes prejudice against women.³⁶⁰ Again by coercing young girls into marrying the fetish priests, the practice of trokosi also violates article 16 of the CEDAW, which declares a woman's right to choose a husband and to enter marriage voluntarily.³⁶¹

4. Conclusion

4.1. Where Do We Go From Here?

Trokosi exemplifies the contradiction that can exist between human rights frameworks and traditional customs, as well as the difficulty of harmonizing individual and collective rights.³⁶² As established, in the author's view, there is substantive Ghanaian and international law that delegitimizes the current Trokosi practice as the worst form of child labour.³⁶³ The fact that this traditional practice continues to exist despite the passage of the "Trokosi law" in Ghana, is alarming, as observed recently by the African Children's Committee.³⁶⁴ This implies that if any family member commits a transgression worthy of such sacrifices to the gods, then innocent virgin girls may still be subject to this inhumane practice. Although respect for cultural and religious traditions should be fostered, the state government and international authorities should intervene when cultural or religious activities violate human rights or violate constitutionally guaranteed fundamental freedoms. This paper demonstrates that the primary goal of Trokosi is to function as a crime prevention and social control mechanism. However, even though the practice is viewed as "sacrosanct" by apologists and valued in the communities where it is practiced, it violates the fundamental rights of girls because it is discriminatory and oppressive, exposes children to physical and moral dangers and prevents children from growing up with parents in a caring and peaceful environment, violating of Articles 5 and 6 of the Children's Act 1998.³⁶⁵ This practice simply constitutes the vilest and worst form of child labour and there is no rationale, reason, or excuse for such breaches of human dignity to persist.³⁶⁶ Religious and cultural freedoms must be limited by the "fundamental right to bodily integrity, freedom from torture, and freedom from discrimination."³⁶⁷ Nonetheless, the main challenge is how to uphold a girl child's universal human rights in the Trokosi-ingrained communities of Ghana in a non-imperialist manner, neutralizing the justification of the practice on grounds of cultural relativism. In essence, it is argued in this context that despite sounding reasonable, the call for cultural pluralism and the need to celebrate and respect cultural diversity should not take precedence over the minimum set of human rights that state parties, including Ghana, have ratified to safeguard human dignity, the welfare, and integrity of the general public.³⁶⁸ Additionally, culture is dynamic and ought to be open to fresh opportunities for social reform. Theoretically, culture can be preserved if

³⁵⁴ Kirsten M. Backstrom, "The International Human Rights of the Child: Do They Protect the Female Child?" George Washington Journal of International Law and Economics (George Washington University, National Law Center 1996/1997) Vol.30 573

³⁵⁵ *Ibid* 572

³⁵⁶ *Ibid* 576

³⁵⁷ *Ibid*

³⁵⁸ *Ibid*

³⁵⁹ *Ibid* 542

³⁶⁰ Small Bilyeu (n27) 489

³⁶¹ CEDAW, article 16

³⁶² Michael S. Talbot, "The Challenge of Trokosi: Ritual Servitude and the Framework of International Human Rights Law" Harvard Human Rights Journal (Harvard Law School 2018) Vol. 31,32

³⁶³ Naa-Kaa Botchway (n8) 389

³⁶⁴ African Children's Committee 'Committee on the Rights of the Child examines the report of Ghana' (OHCHR 2015) <COMMITTEE ON RIGHTS OF CHILD EXAMINES REPORT OF GHANA | OHCHR> accessed 28 August 2023

³⁶⁵ Ghana's Children's Act 1998

³⁶⁶ Small Bilyeu (n27) 501

³⁶⁷ Lewis Liebeskind (n359) 653

³⁶⁸ Asomah (n3) 148

doing so would not inevitably result in the violation of others' basic human rights, as the Trokosi practice amply demonstrates.³⁶⁹ The practice of Trokosi is an example of slavery and while almost all traditional religions tolerated slavery at one point, it has since been outlawed as "one of the most serious violations of human rights."³⁷⁰ Even a basic assessment of this practice reveals that Trokosi violates women's and children's human rights in various ways that cannot be defended on religious or cultural grounds.

"Perhaps [the] most objectionable aspect of the Trokosi system has to do with sexual abuse ... the 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."³⁷¹

Proponents of the Trokosi system see it as beneficial because it prevents misconduct. However, the price for the young women and girls who are enslaved to the shrines is too steep to bear. This is especially true in light of the fact that the girls sacrificed to the shrine to atone for the offence are almost not the ones who really commit the crimes and many times were not even born when the offence was first committed.³⁷² It is unacceptable to continue abusing these young women who are forcibly brought to the shrines to atone for sins they did not commit. Because the girls work long hours for little to no compensation for priests who sexually abuse and impregnate them, these abuses have long-lasting, negative impacts.

Moreover, within the international community, the idea of slavery as *jus cogens* trumps any theological or cultural importance that the Trokosi practice or any other slavery-like practice may have for a specific group of people.³⁷³ For instance, a Ghanaian woman who had been a victim of Trokosi was granted asylum by an immigration judge in January 1998.³⁷⁴ In a landmark decision, Judge Paul D. Grussendorf concluded that Evelyn Offei, a 41-year-old Ghanaian national who had illegally entered the United States in 1992, had a well-founded fear of persecution based on her experiences of being raped while in the custody of a fetish priest, and thus was eligible for asylum under INA section 208.³⁷⁵

4.2 Recommendations

Parental education should be conducted with the utmost respect for religious convictions. One should also be aware that some people who follow the current Trokosi practice may hold dual worldviews, meaning they endorse the Trokosi as part of one religion while also being a believer in Christianity or Islam.³⁷⁶ It may also be useful to remind families that the current system of Trokosi is outmoded and corrupted; that in fact, it has not always been the one followed as part of their religion. People might be willing to abandon the existing form of Trokosi if they understood that it is a modern, perverted version of a sacred ritual that has lost its original and true purpose of pacifying "the gods" with food commodities and animals.³⁷⁷ Many parents are reluctant to send their children into Trokosi but feel forced to do so because they think that if they do not send a virgin girl, the family will be cursed.³⁷⁸ Many girls who are released from the Trokosi have nowhere to go. If they are unsuccessful after being released from the shrines, other villagers may continue to think that the fetish priest still has a hold on them and thus they become susceptible to societal stigma and marginalization.³⁷⁹ Therefore, the success of those who either flee or refuse to engage in the ritual could determine the end of the Trokosi. In this regard, these young girls need to be empowered. They can be taught vocational skills like weaving, and sewing amongst others and even given proper formal education to enable them with the independence they need to be self-sufficient.

The situation is not entirely hopeless. In an effort to stop the practice, two NGOs - International Needs Ghana (ING) and the Ghana Commission for Human Rights and Administrative Justice (CHRAJ) - have launched an awareness campaign with traditional leaders and practitioners. ING and CHRAJ's activities 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

³⁶⁹ *Ibid*

"Perhaps [the] most objectionable aspect of the Trokosi system has to do with sexual abuse."³⁷⁰ Lewis Liebeskind (n359) 654

³⁷¹ Small Bilyeu (n27) 502

³⁷² *Ibid*

³⁷³ Manfred Nowak, "U.N. Covenant on Civil and Political Rights CCPR Commentary" at xxi (Cambridge University Press 1993).

³⁷⁴ *Ibid*

³⁷⁵ *Ibid*

³⁷⁶ Naa-Kaa Botchway (n8) 390

³⁷⁷ *Ibid*

³⁷⁸ Small Bilyeu (n27) 472

³⁷⁹ Naa-Kaa Botchway (n8) 390

become a party. The practice of Trokosi has always violated the Constitution, but until recently, no criminal sanction for the violation existed. The CHRAJ plans to perform random checks at the shrines with the Ghanaian police force and to prosecute the violators.³⁸⁰

Also, compared to other anti-Trokosi campaign organizations (ING) has assisted in the liberation of the majority of Trokosi victims, proving the importance of civil society in the fight for human rights among marginalized and vulnerable groups.³⁸¹ To address the most pressing and fundamental issues relating to human rights, including harmful cultural practices, civil society needs to be resilient, possessing culturally acceptable and sensitive strategies.³⁸² Additionally, as demonstrated by ING's activities, human rights campaigns necessitate a suitable and innovative combination of techniques including information politics, leverage politics, symbolic politics, and accountability politics.³⁸³ Also, the parent organization, International Needs, and its subsidiaries played an important part in the struggle by providing networking opportunities, financial assistance, and material support. This means that if we are to be successful in expanding universal human rights to vulnerable people around the world, a lot of resources, talents, and commitments will be required.³⁸⁴

Individuals, groups, and organizations dedicated to the abolition of harmful cultural traditions like Trokosi can learn a number of lessons from ING's operations. First, there is a need to demonstrate strong cultural sensitivity, particularly when approaching the powers that be in practicing communities, as exemplified by ING's offering of gifts and drinks and willingness to drink water from the calabash, as required by custom, in order to establish excellent rapport, mutual trust, and respect and also pave the way for meaningful critical dialogue to begin.³⁸⁵ Second, the establishment of a strong networking capacity to bring on board all parties with a stake in the practice and whose ideas, power, and influence can favourably impact the movement's outcomes cannot be overstated.³⁸⁶ Third, there must be ongoing education to raise public awareness about the ramifications and human rights concerns of the harmful cultural practices in question, specifically educating, dialoguing, and negotiating with custodians such as community leaders, priests, and chiefs on the human rights implications of these cultural practices in order to prevent future violations.

Fourth, it is worthwhile to engage local people to drive the campaign in order to capitalize on their insider knowledge and to localize the cause in order to refute conceptions of cultural imperialism.³⁸⁷ ING's strategy of allowing local people to spearhead the human rights movement and govern the organization in Ghana emphasizes the concept that local people have the solution to their problems. This implies that a bottom-up strategy is frequently more effective than a top-down approach.³⁸⁸

In addition to these lessons learned from ING's operations, it is recommended that ING and other movements of a similar nature in Africa increase their interaction with relevant human rights organizations, particularly the African Children's Committee, in order to hold the African Charter's signatories accountable for upholding human rights standards.³⁸⁹ Finally, those that have ratified international human rights instruments like the Minimum Age Convention, Worst Form Of Child Labour Convention, and the African Charter *inter alia* should endeavour to implement its provisions. The appropriate course of action for addressing the issue holistically should be discussed with practicing groups and communities, especially the top priests, as rigorous prosecution of those who engage in detrimental cultural traditions can push them underground.³⁹⁰

It is also important to note that the overall goal of the Trokosi practice is beneficial in the context of social and crime control since it serves as a warning to potential offenders that they run the prospect of having to sacrifice their cherished virgin girls to the gods.³⁹¹ However, the mechanisms put in place to accomplish this intent, which include imprisoning virgin girls for the rest of their lives despite the fact that they are innocent and did not commit the crimes for which they are serving life sentences, pose a problem. In any case, the perpetrators could be held directly accountable for their actions. The girls should not be punished for crimes that they never

³⁸⁰Small Bilyeu (n27) 498-99

³⁸¹Asomah (n3) 148

³⁸²*Ibid*

³⁸³*Ibid*

³⁸⁴*Ibid*

³⁸⁵*Ibid*

³⁸⁶*Ibid*

³⁸⁷ *Ibid*

³⁸⁸*Ibid*

³⁸⁹*Ibid*

³⁹⁰ Asomah (n3) 149

³⁹¹ Modern-Day Slavery in Ghana (Radio Netherlands broadcast May 12, 2003)

physically committed; instead, they should be given the opportunity to live normal lives. This paper does not purport to be a thorough examination of human rights law or the Trokosi way of life; instead, it serves as a reminder that the laws addressing the issue are merely symbolic unless the practice is outlawed. The Ghanaian government must actively work to execute legislation in order to better the position of the Trokosi girls and also provide sufficient funding for efforts to halt the practice by upholding the various international and domestic laws that seek to eliminate the practice. Such actions cannot be left to NGOs alone. Finally, given the inconsistencies in the Trokosi estimations, additional empirical research will help clear the air and offer pragmatic policy prescriptions in order to stamp out this practice.³⁹²

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