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**TROKOSI, WORYOKWE, CULTURAL AND INDIVIDUAL  
RIGHTS: A CASE STUDY OF WOMEN'S EMPOWERMENT  
AND COMMUNITY RIGHTS IN GHANA**



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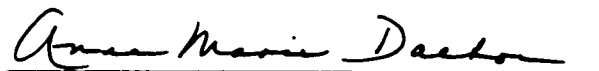
Submitted in partial fulfilment of the requirements  
for the degree of Master of Arts in  
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Saint Mary's University, Halifax, Nova Scotia

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August 22, 2000



Dr Linda Christiansen-Ruffman. Supervisor



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## **ABSTRACT**

Anita Mawusinu Heymann Ababio

### **TROKOSI, WORYOKWE, CULTURAL AND INDIVIDUAL RIGHTS: A CASE STUDY OF WOMEN'S EMPOWERMENT AND COMMUNITY RIGHTS IN GHANA**

August 22, 2000

This thesis is a product of work surrounding the abolition of a form of ritual slavery in Ghana known as the *trokosi* or *woryokwe*. Its contents reflect my years of work on feminist legal research and law reform. Inspired by the need to make the results of my work reflect in the daily lives of women, my participation in legal literacy and legal aid programmes in communities gave me a further insight into effective ways of using legal methods for empowerment. Part of my research goal was to identify and to develop in detail, the effects of various practices, which constitute violence against women in the society.

The case study of the *trokosis* or *woryokwes* formed part of a study I undertook on various customary practices that infringe on the rights of women. Through the use of informal methods and with the aim of research as empowerment, the lives of the *trokosis* portray the realities of the daily existence of women and how women remain powerless in spite of the guarantees of their human rights through domestic and international laws. This thesis examines the various ways in which the *trokosi* custom infringes on the rights of women, legal remedies available and how they can be used to empower women. The distances normally thought to exist between international law and domestic legal systems are explored, and new perspectives and insights are introduced through the use of customary law methods. Focusing on women's rights as human rights, within the context of cultural rights, the legal basis of empowerment lies in the balance that must be struck between the concept of the dignity of the human person as supreme and the interests of the community. Through feminist community building empowerment perspectives, this thesis formulates effective solutions to the practical realisation of the rights of women. The thesis contributes towards conceptualising women's empowerment and effective long-term strategies to achieving it. It stresses that changes in laws to address the injustices that women suffer are necessary in any society, however legal measures, if not backed by other measures such as education and programmes of implementation, have limited impact.

## **ACKNOWLEDGEMENTS**

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## **CHAPTER ONE**

### **INTRODUCTION**

#### **BACKGROUND**

##### **PROTECTION OF INDIVIDUAL HUMAN RIGHTS AND FREEDOMS**

The protection of individual human rights and freedoms within the context of international human rights norms recognises the rights of all human beings as "equal and inalienable."<sup>1</sup> It is also acknowledged that in order to fulfil the objective of protecting the human rights of any individual, there is the need for a balance to be struck between the dignity of the human being as supreme and inviolable and the interests of the community. Signatories to international human rights instruments such as Ghana<sup>2</sup> are obliged to promote these principles as the foundation to freedom, justice and peace in their respective countries.

The laws of Ghana are made up of the Constitution; enactments made by or under the authority of parliament, any orders, rules and regulations made by any person or authority under a power conferred by the Constitution; and the common law.<sup>3</sup> The 1992 Constitution of Ghana provides a system of remedies for violations of fundamental rights and freedoms. It also requires the state in the discharge of its social obligations, to be guided by international human rights

instruments that recognise and apply particular categories of basic human rights to development processes.<sup>4</sup>

## **CULTURAL RIGHTS**

Customary law forms part of the laws of Ghana and cultural rights and practices are recognised and protected under the Constitution. Under Article 26 (1):

Every person is entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion....

Cultural practices embody the customs, arts and social institutions of any particular community, and cultural values are reflected not only in language and religion but also in values which reflect the social, collective and individual lives of people. Ghana, in spite of its diverse languages, has a rich culture that portrays positive African cultural values. The kinship system, on which most customs are based, promotes respect and care not only for the aged in society but also one's relations. Under custom, since every individual has the duty to respect and consider her fellow beings without discrimination, this hand of togetherness also extends to neighbours and friends who are not blood relations. This is because every one is expected to contribute to the promotion of the moral well - being of society.

The spirit of tolerance and dialogue are also seen as relevant to fostering social relationships and building togetherness in communities. These positive values are recognised in article 29 of the African Charter on Human and Peoples Rights and in article 39 (2) of the Constitution; the state is obliged to promote culture in the following manner:

The state shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.

The state is also obliged under article 39(4) to:

Foster the development of Ghanaian languages and pride in Ghanaian culture.

Customary law determines the rights and obligations of an individual within the duties owed to one's community, and the legality of a customary practice is determined by other factors not related to human rights and freedoms of the individual. Under the laws of the country, customary laws are subject to their not being dehumanising or injurious to the physical and mental well being of a person and the determination of what is "dehumanising" is within the international human rights framework of the Constitution.<sup>5</sup>

## THE TROKOSIS AND WORYOKWES

The perspective of the paper is a feminist empowerment framework, which focuses on a particular customary practice and the women who are victims of the practice. The *trokosis* are virgin females who are made to serve fetish priests or priestesses as pacification to the gods for an offence committed by a member of their clan under the system of communal punishment. It is a customary practice of people in southeastern Ghana, and women serving sentences for such crimes are known as the *trokosi* (Ewe) or *woryokwe* (Danbge). In traditional religion, 'Tro in Ewe refers to a spiritual force that "transforms" or acts for anyone who observes the proper rites and ceremonies of a cult and keeps within its rules. It refers to any type of cult. 'Kosi means slave. In the same manner, Won in Adanbge or Ga means cult and yokwe means slave. A *trokosi* or *woryokwe* is the slave of a cult.

This custom is described as infringing on the rights of women because it confines its victims and obliges them to perform certain obligations as required by a particular cult.<sup>6</sup> In response to this criticism, some traditionalists say they should be allowed to determine what is dehumanising within the context of their culture, and not within the context of alien universal human rights rules. They claim they have the legal basis to promote and practice their religion and culture and manifest it as such, within the provisions of the Constitution.<sup>7</sup> These issues and factors that impede women's advancement under the custom are explored in this thesis.

## **OBJECTIVES**

The study has three major objectives:

- To develop a case study of the *trokosi* practice and attempts to abolish the practice in Ghana during the 1990's.
- To analyse the complex meanings and inter-relationships among individual rights, community rights and women's empowerment.
- To theorise on ways of challenging patriarchy by using international law and women's empowerment strategies to create changes in the daily lives of women as individuals and as members of their communities.

This thesis will demonstrate that in order for women's empowerment to occur, the constraints of community rights, the transformative agency of individual rights and women's collective action have significant roles to play in shaping the nature of balance of power relations in the community. It also focuses on the impact of government policies on women and argues that any changes in laws or policy will only be successful to the extent that women feel they have access to these instruments and that implementation of these laws and policies makes them have greater control over their lives.

## **METHODOLOGY**

The basis of this thesis is largely informed by my years of work on law reform. These include work on human rights, chieftancy, the legal system and customary arbitration. Working as a volunteer with non governmental organisations in communities, I was confronted with some of the day to day problems encountered in the implementation of some existing laws affecting the status of women in the society.<sup>8</sup> This posed a challenge to me to further research into socio-legal issues affecting the status of women in Ghana. As part of this long-term goal, I made sure that the revision and consolidation of laws concerning women were made part of the Law Reform Commission's yearly programme. I then concentrated my efforts on feminist legal research. The product of this work is currently reflected in various laws including amendments to the criminal code on violence against women. Other topics reflected in the thesis concerning the girl child are on early childhood marriages, the apprenticeship of children, and child labour in Ghana.<sup>9</sup> Research on property rights for women and the effect of laws governing family relations in Ghana on women are used to analyse the implementation of laws and the practical realisation of women's rights.

My work as an indigenous lawyer with the *trokosis* began about five years ago. The case study of the *trokosi* and *woryokwe* formed part of my work on the abolition of customary practices that infringe on the rights of women in the society. The thesis uses a research as empowerment framework in the methodology and case study. Research as empowerment in this study is

complex because empowerment for the *trokosis* has to happen both at the individual and community levels. Within this framework, the community and individual empowerment perspective is the criteria used to assess empowerment for the girls within the context of their cultures. Research as empowerment is also used as a method to stimulate the communities to discuss effective ways in which the law abolishing the practice can be implemented. Multiple methods are also used within the framework of research as empowerment.

Most of the data used in the community case study were gathered over a three week period spread over five months from April to August 1998 and formed part of a tracking survey of the first batch of released women and girls from the shrines. It is supplemented by quantitative analysis of data and qualitative work that was completed in September 1999. Settlements are rural and 14 communities in 4 districts were covered. In all 41 released slaves were interviewed including 20 women and 21 girls. 29 community members also formed part of the tracking survey. Other interviews were carried out with 9 social workers, 5 shrine officials and 21 police officers.

## **INDIVIDUAL RIGHTS/ COMMUNITY RIGHTS**

The empowering process of this thesis is critically assessed through a legal framework which uses international human rights law as the basis on which to empower victims of the practice and bring about change. This framework, focusing on women's rights as human rights, examines the various ways in which



the custom infringes on the rights of women and how such legal remedies can be used to empower women. Within the human rights framework, a person's duties and obligations to the community must be consistent with her rights and freedoms.<sup>10</sup> The benefits of a supportive community and the dangers of submerging individuality in collective decision-making that disempowers and victimises women as a group are considered in the paper. This approach makes the legal abolition of the *trokosi* system central to the process of empowerment of women within the community.

Within the context of cultural rights, the legal basis of empowerment lies in the balance that must be struck between the concept of the dignity of the human person as supreme and the interests of the community. The Declaration on the Right to Development provides in article 2 that:

All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being.<sup>11</sup>

The feminist community building approach<sup>12</sup> used in this thesis is intended to empower women in their individual capacity in a way that should not result in their being marginalised in their communities. Within this context, it is my view that to treat the *trokosis* individually as victims disempowers them since they were victimised as a group on behalf of their various families. This approach is

empowering not only for the *trokosi* but also for members of the community since it is in this way that traditional practices which are injurious to the health and well-being of women are abolished, while encouraging the integration of appropriate customary and cultural values which are adapted as an integral part of the growing needs of the society. This empowering process also preserves the unity of the communities while stressing the point that the intervention processes by government and non-governmental organisations in the practice are central to the process of empowerment of the *trokosi*.

## **OUTLINE**

### **WOMEN'S EMPOWERMENT**

Empowerment in this thesis is an individual and collective process of changing society and includes promoting the human rights of women who had been made victims of a customary practice. It recognises that harmful customary practices need to be changed so that they do not victimise women as individuals or as a group. Thus each chapter focuses on a different aspect of empowerment.

#### **The socio-political framework**

Women's empowerment in this paper is a multifaceted and holistic approach to legal, social and political changes in women's status in society. The political framework of empowerment recognises that the implementation of women's rights is critical to the attainment of such rights. The Convention on the

Elimination of All Forms of Discrimination against Women (CEDAW) suggests a programme of action for governments, citizens and non-governmental organisations to implement women's rights, as basic to development.<sup>13</sup> The empowerment framework requires the attainment and effective monitoring of international laws and conventions, which support the rights of women through the implementation of national laws and policies. The empowerment of the *trokosi* also entails continued access to the legal system that formed the basis of their freedom and the right to participate fully in the development process. The various ways in which people conceptualise empowerment including its application in different contexts are analysed in Chapter two, including its application in different contexts, and this thesis tries to seek an understanding of some of its complexities. The role of non-governmental organisations and government in identifying the problem of the *trokosis* and efforts at integrating them into their new world are also assessed in this chapter.

### **The community building empowerment framework under customary law**

Empowerment involves the critical examination of the problems posed by individual autonomy for the released women within the constraints of community support systems. Chapter three discusses the cultural perspectives of rights and analyses some of the issues related to community and individual rights and how to reconcile the two as central to the process of empowerment. It examines the impact of judicial decisions favouring women's rights and the impact these decisions have had on the abolition of dehumanising customary practices in

communities. As a way of promoting cultural rights and reconciling it with women's empowerment, in this chapter, I examine dispute resolution methods under customary law and argue that individual rights and accountability for one's actions are upheld in the communities. With some ideas about the long term and short-term effects of the practice on *trokosis* in mind, I believe that community rights and individual rights can lead to women's empowerment through the use of appropriate methods. I advocate the use of community building support systems as an efficient medium to educate people about the dehumanising nature of any practice, which would lead to support for its total eradication. Through awareness – raising in communities, people will reflect, acknowledge, become sensitive to change and adopt women's rights not only at the national level, but also at the local level.

#### **The feminist human rights empowerment framework**

The feminist perspective of empowerment under the law focuses on how to restore the dignity of released *trokosis*, within the context of restoration of personal liberties<sup>14</sup> and respect for human dignity.<sup>15</sup> Chapter four presents the legal theoretical framework from international and national perspectives and is a review of some of the strategies aimed at implementing the rights of women. The legal empowerment process examines the basis of human rights and its guarantees in the respect for human dignity and how these rights were abused in the lives of the *trokosi* in spite of its guarantees in national legislation. Issues that are considered are gender discrimination, which made girls sacrifice their lives to

pacify gods for crimes committed mainly by male relations. Other legal issues explored in the lives of the girls are the perpetuity of punishment enacted on particular families for an offence for generations, early marriage and servile marriage with its attendant risks to the health of the girl-child, including their lack of reproductive rights, rape and sexual abuse.

### **Community building empowerment evaluation through feminist perspectives**

Empowerment as an approach to feminist community building in the research is holistic in approach. Chapter five focuses on research in the communities and evaluates the role of stakeholders such as shrine officials, the community, clan leaders, chiefs and law enforcement officials in the intervention process.

Community participation in decision-making processes is also examined. This act of reformulating, reclaiming and reconstituting indigenous cultures becomes a matter of social justice, and some authors state that these factors make indigenous research a highly political activity, which can also be seen as a threatening activity.<sup>16</sup> Awareness-raising becomes not only empowering for the communities, but also rewarding for an indigenous researcher like myself who sees it as a process of networking and sharing knowledge with people who are marginalised in the society. Chapter five critically examines not only the interventions but also the coping strategies of the *trokosis* within their own environment.

## **Case study of victims of the practice**

The feminist community building perspective as stated earlier, while promoting co-operative efforts, affirms women's distinct needs and aspirations. The aim of using this approach is to consult and collaborate with the emancipated *trokosi* as part of a process of assessing the legal and social interventions of outside agencies such as the government and non-governmental organisations on their lives. Chapter six is a case study of the *trokosis* and *woryokwes* and like chapter five, it analyses and reflects on the results of fieldwork. The destitution of the girls as a result of their lack of economic rights in the shrines is examined within the context of their new won freedoms. The effect of legal interventions in their lives by their releases from unjust punishment are issues which are determined within the context of how the legal equality of men and women when attained not only *de jure* but *de facto* can be really empowering. Feminist research as empowering also means that information gathering would be aimed towards raising the awareness of the community towards promoting the human rights of women, supporting and educating community members on legal literacy and evaluating empowerment schemes put in place for the freed slave girls.

This thesis concludes that even though in Ghana, women's human rights are fully guaranteed in law, the actual implementation and protection of these rights are often impeded by a complex system of practices based on historical, cultural, religious and sometimes political reasons. The guarantees of human rights through international instruments are therefore not necessarily acknowledged,

respected and implemented in spite of national laws. The success of international human rights law can only be measured through an examination of its application in the daily lives of women worldwide. The intervention of non-governmental organisations, government and individuals like myself to empower women, is a challenge to customary law and community rights in Ghana since women's empowerment has individual and social consequences for everyone in the society. The final chapter brings together the dimensions of various aspects of the empowerment framework. It concludes by discussing the way forward and strategies to be adopted.

## End Notes

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<sup>1</sup> Article 1, Universal Declaration of Human Rights & Preamble to the International Covenant on Economic, Social and Cultural Rights. Most of the International Human Rights Instruments quoted in this thesis as at 1988 are from UN Human Rights – A Compilation of International Instruments, UN Doc. ST/HR/1/REV, NY, 1988.

<sup>2</sup> Ghana is situated in West Africa. Its population of 18.4 million is divided into 50 ethnic groups each with its own language and cultural heritage. The largest groups are the Akan, Dagomba, Ewe and Ga- Adangme. The size of Ghana is 92,100 square miles and the type of government is multi-party democracy.

<sup>3</sup> Article 11(1) of the Constitution.

<sup>4</sup> Article 37(3)

<sup>5</sup> Article 26 (2)

<sup>6</sup> Heymann Ababio Anita, “The Legal Basis for the Abolition of the *Trokosi* Practice” 1<sup>st</sup> National Workshop on the *Trokosi* System in Ghana, Accra/ Ghana, July 1995.

<sup>7</sup> Freedom of worship is guaranteed under Article 21.

<sup>8</sup> Mobile clinics on legal aid and legal literacy in communities on women and children’s rights formed part of my work with the Federation of women lawyers in Ghana. Work with International Needs another non-governmental organisation is reflected in the case study of the *trokosis*. Other work on violence against women was with the local organisation of the Inter African Committee on Traditional Practices, the Ghanaian Association for the Welfare of women.

<sup>9</sup> Feminist researches on violence against women reflected in current legislation include amendments to the criminal code on rape, defilement and other sexual offences. Others are on the abolition of female genital mutilation among some communities in Ghana (Act 484) including a revised draft to make the implementation of the law easier in 1998. Reproductive rights for women are in PNDCL 102. Issues concerning the girl child discussed above have been consolidated into The Children’s Act (Act 560).

<sup>10</sup> “Convinced that the full and complete development of a country... and the cause of peace require the maximum participation of women on equal terms with men in all fields.” Preamble to CEDAW.

<sup>11</sup> GA/Res. 41/128/Dec 1986.



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<sup>12</sup> The feminist community building approach is located within the cultural background of the *trokosis*. It views participatory development as more empowering for women since it applies the use of indigenous knowledge and the involvement of local people in affirming women's distinct needs and aspirations.

<sup>13</sup> Referred to as CEDAW/ GA resolution 34/180 of Dec 1979 /article 7.

<sup>14</sup> Article 14 of the Constitution & Article 5 (2) of International Covenant on Economic Social & Cultural Rights. GA Res. 2200 A (XXI) 1966.

<sup>15</sup> Article 15 of the Constitution & Article 7 of International Covenant on Civil and Political Rights. GA Res. 2200 (XXI) 1966.

<sup>16</sup> Smith Tuhiwai Linda, Decolonising Methodologies: Research & Indigenous Peoples, Zed Books Ltd, NY, 1999.

## **CHAPTER TWO**

# **TROKOSI, WORYOKWE AND THE SEARCH FOR EMPOWERMENT**

### **BACKGROUND TO THE PRACTICE – causes/common beliefs**

The *trokosi* practice is part of traditional religion. It is said to have developed over time in the communities as the next and most appropriate response to restoring community relationships after a criminal act. The Dangbe (*woryokwe*) and Ewe (*trokosi*) among whom this custom is practised in Ghana are neighbouring communities, understand and speak each other's languages and share a number of things in common including religious beliefs and practices.<sup>17</sup> The custom also stretches across parts of Togo, Benin, Cote d'Ivoire, Cameroon and parts of Nigeria. It is not difficult to trace the links of Togo and Benin with the custom.<sup>18</sup> Beyond Togo, there are groups of people who have cultural affinities with the Ewe e.g. the Fon in Benin whose aspects of social organisation, forms of religious belief and practices and language are fairly similar to those of the Ewe in Ghana and Togo.<sup>19</sup> Customary practices are also based on a unilineal system of patrilineal descent, which has the kinship system as the unifying feature.

In traditional religion, a breach or prohibition of anything displeasing to the ancestral spirits severed all good relationships and created confusion in the

community.<sup>20</sup> Once that sin was committed, the offender or his or her family must confess, do penance and offer a form of sacrifice to the gods. These three things were needed so as to restore peace, harmony and stability in the community. Community members believe that justice must be dispensed of as efficiently and quickly as possible so as to give a form of relief to the victim and assure the rest of the community that such a crime would not be repeated.<sup>21</sup>

Victims of crime in indigenous communities normally seek justice from the shrines for the retrieval of a lost item, the cause of a loved one's death or the determination of a culprit in a case. The crimes could range from petty thievery, to other serious crimes such as rape or murder. When consulted, the shrines quickly point to the source of the ill omen and the family concerned must give up a virgin female otherwise a curse is inflicted on the whole clan. The family could either start dying mysteriously or contract terminal diseases, and the only way to stop such an occurrence was through the family confessing that one of its members had committed the crime. Penance in the form of a series of rites will follow the confession to reverse the curse. The final sacrifice will normally be a virgin female to the cult.

Among such communities, an offender could face death or other serious punishment such as banishment from the community for a crime. According to oral history, most offenders, knowing the consequences of their acts, sometimes with the connivance of clan members ran away before they could be apprehended. Sometimes the offender would still be in the community but

probably due to sickness, age or other reasons bordering on taboos, would not be able to serve punishment for the crime. It was also realised that although sentencing a person to death did not prove a very useful alternative, a problem still remained to be solved, since the disappearance of the culprit or his inability to serve the crime did not mean that the crime would go unpunished. Offering of female virgins to serve in the shrines evolved as a more useful alternative form of punishment since the women would provide services in the shrines and perform community services. It would also lead to the peaceful coexistence of families since the victims of the crimes would have been appeased.

In the past the girls were confined to the shrines for a period of time and underwent some form of vocational and spiritual training on how to lead morally upright lives. They were also trained in traditional methods of healing and later released to lead economically independent lives in the communities. The priests themselves, as will be explained in chapter three, were supposed to be accountable to the gods and live morally upright lives.

## **DEFINITION OF PROBLEMS**

Even though some shrines still observe very strict rules and comply with the above, most of the shrines discussed in the thesis are where the practice has deteriorated. In some areas, the priests who are to take charge of the girls and instil moral discipline in them have themselves become so morally corrupt that they marry as many of the girls as they can at a time and use them as sources of

labour. They are also unable to look after them. Most *trokosis* are sent to shrines at very tender ages. The younger the better, as they are required to be pure and innocent in order not to create any conflicts in the shrines with regard to incidents of their past lives which may infringe on shrine values. On arrival at a shrine, a *trokosi* has to observe various rituals. First she undergoes a complete change of identity. She also has no time to play. It is all work. Some of her daily duties include working on the farm of a priest without any remuneration. Since she is not entitled to any part of the produce, she has to cultivate her own farm in addition for sustenance; the upkeep of a *trokosi* and her children are also entirely her responsibility even though under the custom her children belong to the shrine. Since the girls are in confinement, they are also unable to refuse the advances of the priests and some priests subject them to various forms of sexual abuse. Due to this, it is common for a *trokosi* to start bearing children soon after puberty with a man for whom she has no affection. Her movement and contact with people outside the shrines is also severely restricted. For most of the girls in such shrines, it is the priests who initiate them into adulthood and later release some of them into the community to marry. Liquor is not hard to come by in the shrines since it is used for a lot of rituals and because of the harsh treatment received at the hands of the priests, the individual survival strategies of some *trokosis* when they become adults, include the frequent use of alcohol to shut out a humiliating life.

While judicial decisions questioning the custom in the area of children's rights were made in the 1980's, public condemnation of the practice started in the 1990's. The Ghanaian media especially, played a very critical role in bringing the practice into public light. The Ghana National Commission on Children highlighted the issue during the celebration of the Organisation of African Unity (OAU) day of the African Child on 16<sup>th</sup> June 1993.<sup>22</sup> The International Federation of Women Lawyers in Ghana (Fida-Ghana) also organised a visit to the shrines in 1992 and came out with a preliminary report on the practice.<sup>23</sup> Other non-governmental organisations such as the Ghana Committee on Human and Peoples Rights and the Ghanaian Association for Women's Welfare also came out with reports on the matter.<sup>24</sup> The public outcry caught the attention of the President who is himself a citizen of one of the areas under discussion. In his usual frank manner for which he is noted, he made no qualms about his feelings in public and indicated that the government would not hesitate to modify customs and traditions in response to changing times and modern trends. He said the much condemned *trokosi* system and other obsolete and unprogressive customs; traditions and taboos would soon be thrown into the dustbins of history.<sup>25</sup> A few days after, the practice was condemned in Parliament. An investigation into the issue was called for and a parliamentary delegation was organised to visit the shrines to ascertain the truth or otherwise of allegations to obtain a first hand knowledge of the conditions of the slaves. The delegation was shocked by what it saw. It was discovered that most of the girls were malnourished and among other abuses were being treated as slaves.<sup>26</sup> Appeals were then made in the Ghanaian

press to those connected with law making to come out with proposals to deal with violence against women. *The Daily Graphic* also threw a challenge to people involved in interpreting and reforming laws to accept and defend women's rights.<sup>27</sup> The Catholic bishops of Ghana at the end of their annual meeting in July 1994 also lamented the increasing nature of the ongoing violence against women in Ghana.<sup>28</sup> They did not refer to any particular custom.

### **LIBERATION EFFORTS**

Public outcry against the practice also gave the needed impetus to non-governmental organisations to intervene and do something practical in the meantime, to free some of the girls in the shrines. Generally, non governmental organisations are defined, especially in Africa as playing a complimentary or occasionally a supplementary role to government in social development since most of their activities tend to focus on the poor, the disadvantaged or marginalised groups of the population in rural areas.<sup>29</sup> They are also generally seen as having a critical role to play in alleviating rural poverty and facilitating community development. Their social intervention into the lives of the *trokosis* was initially seen as a big relief and applauded by all, including state agencies like the Department of Social Welfare who did not have the resources to change the harsh lives of the *trokosis*.

Each organisation had its own programmes of liberation with no co-ordination or networking with others already in the field. The Fetish Slaves Liberation

Movement (Feslim), one such local organisation, liberated girls of a shrine at Fievie without any programmes of rehabilitation in place. It is still involved in campaigning for the release of more *trokosis*. Sentinel, another non-governmental organisation, out of sympathy quickly liberated girls of two shrines at Volo with substantial compensation packages to the shrines. This organisation was rumoured to have literally bought the girls in return for their freedom. The girls themselves were left out in the process. There were no programmes of rehabilitation, and they returned to the shrines. The priests, who had literally killed two birds with one stone, were very happy with the turn of events and quickly welcomed them back. Other organisations also liberated *trokosi* women and forgot about their children. The women were given their freedom whilst their children remained in the shrines. Since they could not bear the loss of their children and had no rights to them, they quickly went back to the shrines. The families of such girls were also not identified in the release process since everything was done in a hurry. Community members were astounded and encouraged the *trokosis* to go back to the shrines. Public interviews also blamed their families for being the cause of their plight, and they were described as primitive and wicked people. Community members, already angry with liberators campaigning for their releases, could not welcome such girls' back. If they had to be released by all means because of some western ideas and since the communities had already been described as so uncaring, then their liberators should provide them with shelter and take the place of their families. The girls felt very much isolated and miserable. As a solution to this problem, the idea of



putting them all up for adoption was even brought up. Some analysts simply cited the return of *trokosis* to the shrines as their support for the practice and said since *trokosis* spend the best part of their lives in the shrines, they should not be disturbed, as they would always keep returning to the shrines after their releases.

Women in the Lords Vineyard (WLV), another non-governmental organisation, thought it had taken a wiser step. It released 80 women and their 224 children from various shrines in 1995. The organisation's director in a press interview in February this year, five years after the releases said the *trokosis* and their families were receiving education under deplorable conditions and urgently needed clothing, food and shelter. She admitted that her organisation could neither take care of their needs nor provide facilities for their rehabilitation.<sup>30</sup> Her appeals to the government and other agencies in the private sector to help rehabilitate the *trokosis* had so far proved unsuccessful.

A number of non-governmental organisations also entered into communities and were challenged by shrine owners and priests better versed in the Bible and the law than they were. They were questioned as to the basis of their interventions and their burden of proof. In order to appease such people, other foreign non-governmental organisations involved in the liberation efforts took a different strategy. Since such organisations did not want to be accused of cultural imperialism, they decided to pride themselves on sensitivity to local cultures so as to work without hindrance at the local level. One such organisation favours the

idea of girls still being in confinement and attending the vocational schools, which it has set up near some of the shrines at Afife. It has so far not liberated any *trokosis* and does not seem keen on doing so. International Needs (Ghana), has so far been the only non-governmental organisation that has sustained its programmes of rehabilitation. It has liberated about a thousand girls from several shrines. As a follow up to the first national workshop on the *trokosi* held in July 1995, a number of activities including a *trokosi* transformation project, were launched. The aim of the project among others was to undertake the integration of released *trokosis* into the normal mainstream of society and also to whip up support for the eradication of the practice. With funding from donor agencies, it has set up programmes involving economic packages, educational programmes, and vocational training and counselling programmes. Nursery schools have also been established for children of the *trokosis*.<sup>31</sup>

## **EMPOWERMENT FOR WHOM?**

A number of non governmental organisations identified above, have defined what is “empowerment” from their own point of view and have ended up either isolating the people who are supposed to benefit from their programmes or colluding with the systems that need to be changed. The futility of liberating *trokosis* without identifying or providing any form of support systems in place is seen in the return of such girls to the shrines. For these types of organisations, the issues raised are whether or not the girls are being empowered and which (if any) structures are being reformed. Why liberation efforts provoked so much

antagonism by indigenous peoples and why most of such efforts failed, is also related to the patronising nature of such empowerment schemes in the communities.

In this thesis, the word “empowerment” is used in a different context, related to indigenous communities. Within the legal framework of the thesis, the community and individual empowerment perspective is the criteria used to assess empowerment for women within the context of their cultures. According to Smillie, “empowerment” is a word worth exploring in the context of women’s development, not just because it means different things to people but because its application can mean different things to the people who are supposed to benefit from its application. He points out that while there is no lack of literature on women, gender and development, there is an absence of substantive material on practical experiences whether grassroots, welfare, equity or empowerment oriented. This he says may not be because no practical work is being done, but because work at the grassroots level regardless of orientation, approach or theory, has had very mixed results.<sup>32</sup>

It is also realised in practice that finding occupations for women such as the *trokosi* is difficult because of low levels of education and the ages of some of the women involved. In view of this, other critics’ state that non-governmental projects to benefit women have neither increased women’s accesses to education, training, credit and land nor challenged structural inequalities in the

society.<sup>33</sup> In spite of these difficulties, this study agrees with the view that empowerment in both its social and economic manifestations, in spite of existing obstacles, should be the essential core of any activity that is serious about improving the lot of women.<sup>34</sup>

Through an analysis of the various conceptualisations of empowerment, I have highlighted the individualistic nature of some of the empowerment schemes that totally isolated the *trokosis* from their communities. Some strategies resulted in conflicts in the communities. Others created further economic and social hardships for the *trokosis*. Other attempts to respect culture “in toto” and be at peace with the communities resulted in support for the practice.

## **COMMUNITY PARTICIPATION IN PROGRAMMES**

A key strategy for achieving women’s empowerment, stressed throughout the thesis and ignored by efforts described above is that any programme aimed at reducing existing discriminatory practices against women should in the process also help to strengthen the community. Participation of people in their own development has been recognised as an empowering and liberating process since it promotes commitment on the part of the people in its implementation and assures sustainability.<sup>35</sup> It is stated that when people are allowed to participate in their own decisions, questions are framed differently, priorities are ranked differently, problems are defined differently and people participate on different terms.<sup>36</sup> Some writers also describe this process as a “trickle-up philosophy”

instead of a “trickle-down approach to development.”<sup>37</sup> The healing and beneficial outcomes of participatory processes also form part of the empowerment framework of the thesis and are seen in the results of research carried out among such communities in a later chapter.

It is also recommended that in formulating programmes at the grass roots, the social, economic and political environments of such communities be taken into consideration.<sup>38</sup> The thesis argues that without having identified the environment of the *trokosis* and their families, releasing them to live as individuals without any social support leads to their isolation. In order to make the empowerment of the *trokosis* a long lasting one the benefits of the use of community building support systems are explored in the next chapter. Another of the benefits of community participation is the adoption of alternative approaches and the utilisation of people’s knowledge where necessary.<sup>39</sup> Within this context, community systems of dispute resolution are also recommended in this thesis.

## **FEMINIST COMMUNITY BUILDING EMPOWERMENT FRAMEWORK**

The empowerment framework of this thesis is a holistic approach to development, which seeks the involvement of local communities in defining the empowerment process. Instead of organisations as seen above defining what is empowering for women at the grassroots, this framework seeks the views of community members as to their needs and explores barriers to their empowerment. The feminist community building empowerment perspective also

views participatory development as more empowering for women since it applies the use of indigenous knowledge and the involvement of local people in affirming women's distinct needs and aspirations. It also recommends that for women's empowerment to be made a reality, there must be genuine, and people oriented development, which acknowledges the fundamental needs of women.<sup>40</sup> Within this perspective, participation should not simply aim at bringing direct material benefits to women but also aim at a transformation of consciousness and a self-perception which would enable women to understand their social situation and see it as something that they can with others struggle to change.<sup>41</sup>

Within the feminist community building empowerment framework, development workers have to be familiar with the social and cultural systems in which they are working in order to successfully promote change. They should also respect the beliefs and traditions of indigenous people while at the same time helping them to analyse how these beliefs and traditions either provide them with social and economic support or contribute to discrimination against women. Development workers within this environment should help communities to become aware of these factors and to make their decisions on the basis of a conscious evaluation of what to change and what to retain. This participatory method will encourage the community concerned to make changes when they see that such changes are to their advantage. It is argued that the formal guarantees of women's rights can never be achieved if communities are isolated in the process. Participation of communities in programmes and empowerment of women as individuals are

necessary elements for social change. The thesis argues that a key strategy is for an interconnection to be made between individual and community rights so as to encourage the implementation of women's rights while sensitising local peoples about the need for change.

The basis of feminist community building is to involve all parties in the development process from the drawing up of the programmes to their implementation stages. Through this participatory and collaborative approach towards decision-making, women's empowerment is greatly enhanced.

## End Notes

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<sup>17</sup> *Trokosi* and *woryokwe* are used interchangeably in the thesis because they mean the same thing.

<sup>18</sup> Charles M. K. Mamattah, History of the Ewes. The Ewes of West Africa, (Oral Traditions: vol. 1) The Anlo-Ewes and their Immediate Neighbours, Advent Press, Accra, 1976.

<sup>19</sup> This is because the historic town of Notsie, the final stage of dispersal of the Ewe State of West Africa from a wicked king in 1670 is located in Togo. Women played an important role in planning the escape. The original home of the Adangbe speaking people is also said to have been in the Lake Chad area. After moving through northern Nigeria and Benin, they were said to have crossed the Volta River at the beginning of the sixteenth century and settled in Ghana. Their neighbours are the Ewes. Some of their clans are also of Ewe origin, hence the link between the *trokosi* and *woryoke*. Adangbes in the communities under discussion speak Ewe and Dangbe.

<sup>20</sup> Penance and Expiatory Sacrifice among the Ghanaian-Ewe & their Relevance to the Christian Religion. A Doctoral Dissertation by Rev. Ted Nelson-Adjakpey. Rome. 1982. See also article by Fiawoo D.K on "Some Reflections on Ewe Social Organisation." In Peuple du Golfe du Benin (Aja-Ewe) UNESCO, Paris, 1984.

<sup>21</sup> This is an issue, which is later discussed in the thesis, relating to community views on conflict resolution. With the traditional system, no legal fees are charged. The shrines are normally accurate in determination of culprits. Most community members also earn their living on a daily basis and have no time for long delays and adjournment of cases. There are also no problems with recollecting incidents, since they recount events as soon as they occur. It is also a system known to their forefathers, which is perceived, as never having failed them.

<sup>22</sup> See also a Ghana National Commission on Children Report on the Fiasidi Institution, April 1994.

<sup>23</sup> Report on the Vestal Virgins System in the Tongu, Anlo and Ada areas of the Volta Region, 9th April 1992. My work on the *trokosi* initially begun as a Fida resource person following up on this matter, since I was from one of the areas and also working with legislature.

<sup>24</sup> For further details, see vol. 1, .no 4, Oct-Dec, 1993 of the Ghana Human Rights Quarterly & Sept 1993 Report on The *Fiashidi* Institution, Ghanaian Association for Women's Welfare, Accra.



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<sup>25</sup> The President indicated this when he addressed a Women's Wing of the ruling National Democratic Congress in the Upper East Region. It was reported in the *Ghanaian Times* newspaper of 27<sup>th</sup> May, 1994.

<sup>26</sup> See the front-page story of the October 28 1994 edition of *The Ghanaian Times* on the parliamentary committee's tour of the *trokosi* shrines.

<sup>27</sup> It would be seen in the next chapter that there existed already abundant legislative basis on the abolition of the custom.

<sup>28</sup> Communiqué of the Catholic Bishops Conference, July 7-14, 1994.

<sup>29</sup> L.K Mwansa "Participation of non-governmental organisations in social development processes in Africa: Implications," *Journal of Social Development in Africa*, vol. 10, no 1, 1995 at p. 68.

<sup>30</sup> General News of Monday, 28 February, 2000 "Trokosi women, children appeal for help" <http://www.ghanaweb.com/5/21/00>

<sup>31</sup> *Trokosi* news (International Needs desk) Vol. 1 Jan 1996

<sup>32</sup> Smillie Ian, *The Alms Bazaar: Altruism Under Fire - Non-profit Organisations and International Development*, Ottawa, IDRC, 1995.at p. 88

<sup>33</sup> Robinson Mark, "NGOs and Rural Poverty Alleviation: Implications for scaling up." Michael Edwards & David Hulme (ed.) *Making a difference, non-governmental organisations and development in a changing world*, Earthscan Publications Ltd, London, 1994. p. 32.

<sup>34</sup> Smillie, op cit. at p. 97

<sup>35</sup> Stan Burkey, *People First, A Guide to Self-Reliant Participatory Development*, Zed Books Ltd, London, UK. 1993 at p.56.

<sup>36</sup> Smith op cit. at.p. 193

<sup>37</sup> Burkey op cit. at p. xii

<sup>38</sup> Lawa Macdonald, *Supporting Civil Society: The Political Role of Non-Governmental Organisations in Latin America*, Macmillan, London, 1997 at p.24.

<sup>39</sup> UN/ Economic Commission for Africa, *Underlying Principles for Enhanced Dialogue, Co-operation and Interface between Governments & People's Organisations*, Addis Ababa, Ethiopia, 1993 at p.7.

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<sup>40</sup> Sen Gita & Grown Caren, Development Crises and Alternative Visions, Third World Women's Perspectives, Monthly Review Press, USA, 1987 at p.47.

<sup>41</sup> Lawa, op cit. at p. 25.

## **CHAPTER THREE**

# **THE COMMUNITY BUILDING EMPOWERMENT FRAMEWORK UNDER CUSTOMARY LAW**

## **COMMUNITY RIGHTS**

The feminist community building perspective is located in this thesis within the cultural context of Ghana, where social norms are quite different from that of the western world. It recognises the strong network of community support necessary for individual empowerment and as stated in the preceding chapter, any empowering framework for women, while determining their needs and priorities, must also develop culturally sympathetic methods. The benefits of the community building systems are carefully considered in this chapter, and empowerment approaches are based on women as individuals and as members of their communities.

Customary laws are rules of law, which by custom are applicable to particular communities in Ghana. The rules of customary law including those determined by the superior court of judicature, the common law, and the rules generally known as the doctrines of equity, make up the common law of Ghana. The existing law is also made up of unwritten laws, most of which are presumed to include oral customary law.<sup>42</sup>

## **THE GOVERNING SYSTEM**

Under customary law, the jurisdiction of local communities falls under the authority of chiefs and queen mothers.<sup>43</sup> The institution of chieftaincy together with its traditional councils as established under customary law and usage, are guaranteed under the law. Chieftaincy is central to the whole governing process under customary law and is the starting point of any framework aimed at empowering individuals in the community. My reasons for acknowledging the existence of this institution within the context of the thesis are directed at its usefulness in the abolition of dehumanising customs, the empowerment process of the *trokosis* as individuals and the community building empowering process.

Under custom, a “chief or queen mother” is defined as:

A person who hailing from the appropriate family and lineage has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queenmother in accordance with the relevant customary law and usage.<sup>44</sup>

Chiefs and queen mothers are responsible for compiling unified systems of customary law in their respective areas. The important role of the chieftaincy institution also lies in its responsibility for the codification of customary law and its progressive study and interpretation through:

... An evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful.<sup>45</sup>

A key strategy for support to integrate *trokosis* into their various communities and ability to change customs which infringe on women's rights, is through chiefs, most of whom are clan leaders and shrine owners.

Communities through the traditional system have the right to determine who is to govern them and once installed, chiefs play a central role in maintaining law and order in their respective communities. Chiefs and queen mothers control land, stool properties, regalia and other fixed and moveable assets in the communities and also have the final authority in matters of adjudication concerning the community and its neighbours. Apart from the social status, power, wealth and prestige that accompanies its status, a chief or queenmother has to be law abiding in order to command respect and authority, and conviction of an offence, whether by custom or in a court of law, amounts to immediate destoolment. In order to minimise conflicts in the community, traditional rulers are banned by the Constitution from taking part in active politics.<sup>46</sup> It is illegal for them to openly identify with any political party whether in government or in the opposition. They are now required to concentrate on the development of their communities. This restriction however, does not preclude them from working in their professional capacities as civil servants or in any other capacity in the private sector. They could also be appointed to serve on commissions, boards of corporations or render any other service to the public.

The institution is responsible for the drawing up of lines of succession applicable to each stool or skin.<sup>47</sup> Their role in community building is so critical that a dispute over who is to be a chief could lead to the break up of communities, localised wars or conflicts.<sup>48</sup> Due to past experiences, under the present Constitution, the government has no power to interfere in the chieftaincy institution by intervening in chieftaincy disputes or conferring recognition or destoolment charges on any chief. The powerful nature of the chieftaincy institution has also been recognised by the fact that parliament, the highest legislative making body,

has no power to enact any law, which confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever; or in any way detract or derogate from the honour and dignity of the institution of chieftaincy. <sup>49</sup>

It is only the appropriate bodies enacted under customary laws that have these powers.<sup>50</sup> Chiefs who sit on stools can only be installed by queen mothers.

Queen mothers also play a critical role in the destoolment process. However the role of queen mothers is more limited in the northern parts of the country, where chiefs sit on skins.

While the role of chiefs or queen mothers under customary law are administrative, legal and political, that of the fetish priest or priestess is spiritual. Women or men can be called upon at tender ages to become priests or priestesses in a shrine.<sup>51</sup> They are treated with tremendous respect and there are

strict rules to be observed regarding their upbringing. Some of the taboos to be observed by everyone in the community, including their parents, are the rights not to be abused or threatened by any one. Female priests even though they have the freedom to marry, are also required to be virgins and go through certain customary rites before marriage. Men who violate such women before marriage can end up with relations becoming *trokosis*. In the same manner, illicit relationships with *trokosis* could also end up with one's family member becoming a *trokosi*. Priests or priestesses are entitled to all the rights conferred on other like-minded citizens to move around freely and adorn any attire in public. They are also entitled to practice other professions, get educated and live independent lives. Their knowledge of traditional rites and customs makes them eligible to be appointed as queen mothers or chiefs in the community.

The fetish priests and priestesses also play an important role in the installation and destoolment of chiefs in Ghana. While on the throne, the chief is protected from enemies through the fetish priest or priestess who also determine the appropriate date and timing of festivals, funerals and other social activities in the communities. For example with the Ga's, it is the Nai Wulomo, the chief fetish priest who heralds customary rites for the celebration of the Ga festival of Homowo. Preceding the festival, there is a ban on drumming and noise making in the capital city of Accra (which is the native soil of the Ga Traditional Area) for a month. All citizens must comply with this ban regardless of religious denomination. Another role of the fetish priests or priestesses is the spiritual protection of the whole community. Before every public event, they are called

upon to pour libation<sup>52</sup> and call on the ancestors to ensure the success of proceedings. When called upon, priests also play a very important role in protecting individual citizens from danger and ensuring the material and spiritual prosperity of citizens. Through this method, they contribute to the maintenance of law and order in the society. A number of them also derive their income from the protection and assistance which they offer to individual traders, business men and women and people from all walks of life who call on them for assistance.

Most Ghanaians rely on traditional methods of healing, and most fetish priests and priestesses act as “marabouts” or traditional healers. They are known for their extensive knowledge in the use of herbs for the cure of various types of illnesses, and some have boarding facilities attached to their shrines. Their spiritual role as “clairvoyants” also makes them generally feared, as they also derive their power from cases on the determination of “who” is the culprit. The cult of each priest determines the type of punishment. For some it is lightening and thunder. For others it could be anything including an accident or as stated earlier, any type of sickness. Decisions are then taken on confinement for the offending family or payment as reparation for the offence as seen in the case of the *trokosis* and the *woryokwes* in the previous chapter.



## COMMUNITY BUILDING SYSTEMS

Most ethnic groups in Ghana are united by their common languages, and the kinship system is normally organised into clans, which may be patrilineal or matrilineal. The determination of a person's citizenship is based on clan membership which is practised in various parts of Ghana e.g. *abusua* among the Ashantis who are matrilineal, *weku* among the Ga's and *hlo* among the Ewe who are patrilineal. In the Anlo State of the Ewes, kinship is normally traced to a common ancestor through the patrilineal line, and every citizen belongs to one of the fifteen clans around which the society is organised. Every clan also has its own sets of names that recur in alternate generations identifying a child with his or her ancestors. In some clans children are named according to the days of the week or to other fixed systems applicable to clan rules. Clan membership and rules vary from tribe to tribe and in the past the clan was collectively responsible for all crimes and injuries committed by any of its members. In the same manner, members were also entitled to any compensation paid for any crime or injury committed against any person or property of any of its members. Compensation for a crime from an offender was demanded from the family instead of from the individual wrong doer and was paid to the family instead of the individual who was wronged, since they were all collective responsibility for the crime. In the same way a wife or husband are not liable for debts or liabilities incurred by each other. For example, payment of a debt under customary law will be demanded from the family of a woman instead of from her husband. Women's economic rights are also guaranteed under customary law. Traditionally there is little

pooling of resources between husband and wife. Patterns of expenditure are also fixed, though they could be made flexible depending on the viability of the man's occupation and the woman's income based on market activities. This process allows women to earn and maintain separate incomes and plan their expenditure and investment patterns according to their own plans and within their own constraints. While women in some patrilineal societies have very limited rights in all spheres of their lives, women from the societies under discussion play significant roles in the political, social and economic lives of their communities. Customary law rules vary according to clan, tribe and religion.

In traditional communities, marriage is the concern not only of the man and woman contracting it but also of their kith and kin. The performance of the marriage contract just as under civil law creates a legally binding contract for both partners. In customary law, certain rules also apply to the family. As would be seen later in the lives of the *trokosis* in the next chapter, the absence of a valid marriage at customary law for which the *trokosis* had no option, created limits to their capacity as individuals to insist on their rights to redress and compensation under customary law. The birth and naming of children and deliberations concerning marriage among other things reinforce the values of the clan and the extended family.

The extended family is the smallest unit of the clan system, and members usually span about three generations. The head of family could either be a woman or a

man. Factors taken into consideration are age, status and personal qualities. This system of togetherness also fosters economic security and social assistance, which is extended to the sick, the unemployed, disabled persons, students, elderly persons or any other person who at one point in time or the other of his or her life, becomes vulnerable. It also provides a measure of social security for both the young and the old. The kinship system also encourages hospitality and co-operation, since loyalties within the family circle are not to one person only but to many, including friends. In time, a close friend could be easily absorbed into a family and the original relationship could be forgotten. In urban areas, in spite of the infiltration of western values, traditional systems of norms, values and behaviour are still extended to friends and neighbours. In view of these positive values, apart from upholding the rules of customary law, the state is also obliged to develop a pride in Ghanaian culture and adopt its values into the fabrics of national life.<sup>53</sup>

In Ghana, one has to learn to live in harmony with others and emphasis is placed on refraining from doing acts detrimental to the welfare of other persons, while contributing to the well being of the community. Within this context, to isolate oneself could lead to one's marginalisation in the society, and it is difficult to live like an individual in the true sense of the word, since the continuity of these traditional norms creates strong community networks. In the customary law context, an individual's rights and freedoms are inseparable from duties and obligations owed to the community.

## **JUDICIAL APPLICATION OF CUSTOMARY LAW**

Considering the fact that the isolation of the individual would remove the stabilising effect of the support systems, the community acts as a sort of intermediary between individual freedoms and the necessity of social constraints. In order to see how these two systems can be reconciled, I will examine women's individual rights first under the formal court process and then under the community system of dispute resolution. In addition to the formal court process identified below, there are several other administrative bodies charged with the settlement of disputes. Some of such bodies concerned with human rights are discussed in the next chapter.

As stated earlier, customary law also includes those determined by the superior court of judicature. The extent to which a person enjoys actual protection of customary law in matters which are brought before the courts, depends on the provisions of the constitution and on the judicial interpretation of the said custom. Under article 26 (2),

All customary practices, which dehumanise or are injurious to the physical and mental well being of a person, are prohibited.

Judges have over the years in a fair manner upheld traditions and customs, which prove useful to the community. In other controversial cases options to modify such practices are left to the communities concerned. The court rulings of

most of such cases have been very interesting. In one such case, *Tano v. Akosua Koko*,<sup>54</sup> a Krobo custom of the Adanbge's required that every female who reached the age of puberty be made to undergo a customary puberty rite called *dipo*<sup>55</sup> before becoming pregnant. Failure to observe this custom resulted in the said person not only being ostracised but liable to be banished from home and disowned by her parents. The issue before the court was, among other things, to denounce the *dipo* custom as harsh and invalid. It was the opinion of the judges of the Supreme Court that the moral objective of the custom could hardly be faulted. Even though the judges considered banishment as quite harsh, they said *inter alia*, that the court would not deny validity to such a sanction and that everything lay entirely with the Krobo people themselves. In their view, this type of custom was welcome in a present-day permissive society.

The enforcement of women's rights under the *woryokwe* custom began with the determination by the courts of a matter concerning the rights of children to inherit under the custom. In *Atomo v. Tekpetey*<sup>56</sup> the plaintiff's mother, one M, whilst a young girl, was given away in marriage by her family to a fetish priest, C to appease the fetish and stop it from killing members of M's family. After the death of the fetish priest, she got married to AL, father of the plaintiff and her two other sisters. The plaintiff's father, who had nothing to do with any shrine, died leaving behind considerable property. After the death of the head of family, the plaintiff who was by then of age, made several attempts to get the defendant, a paternal nephew of the deceased who was appointed by the head of the family as

caretaker, to hand over the properties to her and her sisters. They were entitled under custom to inherit from their father. The defendant resisted the claim saying that in accordance with Osudoku custom, their mother was a *woryokwe* (i.e. a woman given in marriage to a fetish priest to stop the fetish from causing the death of members of her family). It was stated that under the custom, all children born to her mother during and after the lifetime of the fetish priest were forever considered children of the fetish priest and not children of their natural father, AL. The judge, Apatu-Plange, quoting the decision of another judge in *Nkobiahene v. Dzaba*,<sup>57</sup> went on to state as follows:

It is plain then that this whole custom of *woryokwe* 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 recognised 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.

The court ruling on the above case, in effect denounced the *woryokwe* custom as unreasonable and brought to light the fact that the custom being an unjust one, is unenforceable in any court of law.

## THE IMPACT OF JUDICIAL DECISIONS

Most judicial decisions favouring women's individual rights and more specifically related to customary laws have had little impact on women and life continues as usual. The above case concerning the *woryokwe* is one of the few of such cases I have identified as coming before the courts. It is unknown and it is not surprising that the practice went on uninhibited. The decision applied only to the case in question. In several other instances the courts for a number of years declared the matrilineal system of inheritance (where women and children of deceased husbands were not entitled to inherit), as harsh and unjust. These decisions made little impact. Women for years were made victims of this practice till 1985 when an intestate succession law was passed. These decisions normally apply to the few individuals who have the means to pursue such matters in the courts in the first place. Whether judicial decisions will, in years to come have any meaningful impact on the daily lives of women still remains to be seen. In some cases, a number of women even after winning the case do not wish to enforce the court decision because they fear further isolation in their communities. A majority of women would rather suffer in silence than risk isolation. Women are empowered in theory but in practice nothing changes.<sup>58</sup> To effectively empower women in the society, the empowerment process should include the capacity by women to initiate and sustain their rights under the law.

This makes the community empowerment process an essential component to the empowerment of women in the society. This thesis stresses that for a number of women, and in Africa it includes the urban and rural woman, the law is seen as an intangible and incomprehensible object living very far away from their lives. Women's rights are enshrined in various legislations and yet women continue to suffer a lot of injustice. Most of such women are not even aware of their rights under customary law, and it is impossible to think of them claiming their rights under the constitution. Legal measures to protect women should be made more meaningful in their lives. The climate for the enforcement of women's rights can be facilitated through effective public awareness and education in the communities.

#### **DISPUTE RESOLUTION METHODS UNDER CUSTOMARY LAW**

Various categories of dispute resolution methods are also undertaken under customary law in the communities. Family heads, elders, fetish priests or priestesses, chiefs or queen mothers, could settle conflicts among members depending on the gravity of the offence. The facts of the case could also determine the bringing about of peaceful resolution either through mediation, conciliation or arbitration. Dispute resolution under customary law, which could encompass any of these processes, is normally referred to as the customary system of arbitration. The customary system of arbitration is legally recognised and acts as an alternative to civil suits and petty cases of crime in the



communities. However, it is the complexities of the settlement of such cases in shrines as seen in the case of the *woryokes* that have posed problems.

Some of the characteristics of customary arbitration are similar to that of the western form of arbitration. It is a consensual process and parties by taking their arbiter for better or for worse agree to be bound by the agreement. The time and cost of the arbitration process are also predictable and quantifiable. After the conclusion of the case, parties promise to be on good terms and although it is primarily consensual, implementation is supervised by elders in the community. The arbiter also performs an advisory role and the process is a learning one as it enables community members to communicate on better terms and learn how to compromise. The aftermath is a willingness to be educated and to accept methods to prevent the recurrence of such incidences. As stated earlier, the family, community and elders form part of an individual's legal network. Appeals from such cases to the courts are normally few and mostly in the area of enforcement of the award. In Ghana, the court process is generally seen as disruptive and time consuming since cases can drag on for years. The court atmosphere is also intimidating and proceedings are usually in English. The use of translators could sometimes be confusing and the whole process generally creates a lot of misery for the poor rural folk. The effect of this on community members has been one of bitterness.<sup>59</sup> The customary legal system has a wide and flexible range of procedures, norms and values. The goal of the dispute resolution process is to avoid escalation of a dispute beyond the disputants in a

particular case. Other goals of the customary dispute resolution process are explored under women's empowerment.

## **WOMEN'S EMPOWERMENT**

Through an analysis of the cultural background of the *trokosis*, I have shown through the exposure of unsuccessful examples that for empowerment to take place, the immediate environment of the *trokosis* needs to be taken into consideration. Within their cultural background, the empowerment process has to be a collective one. The individual cannot be isolated. On the other hand, the central focus of women's empowerment in this thesis is an argument for the abolition of dehumanising customary practices such as the *trokosi* that hold women responsible for the collective punishment of their clans. It is necessary that individual rights of women be upheld and made the rallying point of any process that will lead to the effective empowerment of women. This thesis is also concerned with the objective of the practical realisation of the rights of women, which means that the empowerment process should make a meaningful impact in the lives of the *trokosis*. Operating within this objective requires a further exploration of the inter relationships between individual rights and community rights. A balance needs to be struck between the two in order to formulate effective strategies for women's empowerment. Taking into account the history, environment and culture of the communities, my contention is that empowerment in the communities revolves around the following questions and approaches to analysis:

- ❖ The cultural question is how to reconcile the individual rights of the *trokosis* with the values of the community and the approach is using the community building empowerment framework.
- ❖ The strategic question is how to target the most appropriate people through the community support system and the approach is the importance of recognising community rights within the context of women's empowerment.
- ❖ The theoretical framework of how to implement the individual and community rights of the *trokosis* is located within a feminist legal framework.

#### **INDIVIDUAL RIGHTS WITHIN THE CONTEXT OF CUSTOMARY LAW**

Culture does not embody a unitary system of knowledge but should be conceived of as dynamic containing multiple traditions of knowledge and ways of knowing. Since traditional values frame the way people see things and organise themselves, the individual should also be seen as part of the reframing and restructuring of strategies to problems. Having identified how community rights help to affirm one's values in the society, the next step is how to eliminate the negative impacts of the support systems. It is stated that in order to lift the invisibility of women and better understand and remedy injustice in the society, feminist methods of legal, ethical and related analysis need to be applied to the circumstances of women's lives.<sup>60</sup> In addressing the issues of such communities,

one has to develop alternative approaches within the context of their history, which is related to resistance, struggle and emancipation from oppression. The significant roles women have played in the history of the communities are already present in the social and political hierarchies elaborated above. Several aspects of their philosophy, values and practices also need to be brought together and weighed against the *trokosi* practice. Challenges to rules are also manageable because by implication, these rules must fall within the general values and cultures of such communities. Within this context, the atmosphere exists for one to make a case against any custom infringing on women's rights.

Feminist theory also reveals that the dialectical process of rights is based on an understanding that any connections between apparent dualisms will only be partial and tentative and that distinctions will again emerge.<sup>61</sup> Getting the approach right means reinforcing their values, culture and identity, weighing it with the *trokosi* system and posing questions. Issues raised from this chapter posed to community members later in the thesis are whether within the cultural framework it serves the community any purpose in these modern times for an innocent person to be punished for a crime. Another issue is why only women serve life sentences in shrines for crimes committed by mainly male relations. My strategy is to see women's individual rights in terms of the shared values and sentiments of the communities and then identify acts under the *trokosi* practice as against those shared community norms of fostering togetherness and creating justice in the society. If, for example, women have played significant roles in the

society as identified above, then the *trokosi* practice can be stated to relate to the history of male dominance in all societies. Patriarchy holds women in low esteem and runs through different societies the world over.

Human rights values upheld in the communities include the principle of equality reflected in their social structures. What this means is that if community members are given the space and encouragement to reflect on the practice in the light of their own values including that of upholding the dignity of the individual, they will realise that the *trokosi* practice is an unjust one which has been to the advantage of men in two ways. First through the payment of their crimes and secondly through the violation of the self-dignity of women by other men in the shrines. Feminist views on equality between the treatment of sexes are that one should not be punished for following one's natural inclination in life by being a female or rewarded for following a male one. There should be equality between the treatment of sexes in the society.<sup>62</sup>

Under customary law, the onus of resolving the dispute is on the individuals involved in the dispute. This is contrary to the court process where the judge has to bring about successful resolution of the case. The community holds individuals responsible for their actions and individuals are asked for the rationale behind their actions. Through this process, there is an examination of the inner self and a search for truth. The parties are then allowed the "free will" to set their own goals and bring about their own ideas on how the conflict can best be resolved.

The focus is not on one's family, but on the individual who is made to stand out and is watched and judged from a distance by the community from the beginning of the process to the end. Another effect of this process is a self-commitment to a resolution of the problem.

In my view, a closer look at the customary system of arbitration shows that in spite of the community network, the principle of individual accountability exists. If an individual can be held accountable for his or her actions, then in a like manner the community should also condemn a violation of women's individual rights and hold such people responsible for their actions. Since women are generally not considered inferior to men in the African society, adopting culturally sensitive approaches should take into consideration the problems and issues which concern women and the way people are valued and respected in the society. Taking account of various local customs and traditions which have positive impact are also essential for the identification of immediate and long term goals of women's empowerment.

## **COMMUNITY RIGHTS**

Many western conceptions of empowerment distance and separate the individual from her environment – the community. In rural communities in Africa, for example, the individual is an integral part of the community and may not perceive of herself as an individual in the western sense. As stated above, freedom of the individual is linked to that of the family, the clan and the community and an

individual within the strict sense of the word would disconnect *trokosis* from their societies and their own ways of thinking, feeling and interacting with the outside world. This process of isolating an individual from her community with no support would make the empowerment scheme for women's individual rights outlined above meaningless. Smith calls it a process of fragmentation.<sup>63</sup>

Keeping in mind the long term and short term effects of the practice on *trokosis*, any empowering framework should incorporate appropriate methods which should include networking, community consultations and a sharing process of knowledge. The most appropriate people have already been identified through the social organisation of the communities, its relevance and its support groups. Rhode states that the central problem with rights-based frameworks is not that they are inherently limiting but that they have operated within a limited institutional and imaginative universe.<sup>64</sup> Within this context, empowerment cannot proceed without it being discussed by the community or it being supported by its governing systems, which are already well established. Taking advantage of the support system and its mentoring process means discussing such issues with them and allowing them to participate in their own decisions based on their own values and cultural practices. Most chiefs and queen mothers also have persuasive skills, know how to organise their own people and are willing to assume responsibility. They could also follow up on any empowerment schemes. As stated earlier it is within the power of the chieftancy institution to put such obsolete customs up for public scrutiny.

The outcome of decisions under the customary arbitration process also shows that community members have the desire to achieve orderly and constructive settlements of their problems and not by merely wrecking havoc on contesting families. If the community within its legal process can be seen as a protector of the rights and values of individuals, then adopting this framework should extend not only to the individual responsibility of offences to the *trokosi*, but also towards any scheme for the total abolition of dehumanising customs in the community. It is recognised that certain beliefs regulate the lives of individuals within the family and the clan and the ethics of the communities evolve around a number of issues concerning their quest for truth and responsibility for one's actions which makes them resort to the use of shrines. The new role of the fetish priests or priestesses after identifying a culprit will be for a settlement of the matter based solely on the offender. In case the offender is unable to pay the fine imposed community services and not incarceration could then be imposed on the individual concerned. In these modern times it will not be difficult to trace an offender. The effect of such decisions I believe will be more wide spread and far reaching than that of the formal courts. In my view, adopting such alternatives allows the society to achieve the empowerment of individuals through its own traditional networks. The educating aspects of this type of process are also useful in cohesive and interdependent communities such as these. Some of the benefits are that this process would serve as a deterrent to others since community members will develop a more informed understanding of what lies ahead in terms



of sanctions and change their conduct to conform to such rules. Networking with the community in my opinion is an efficient medium to educate people about the dehumanising nature of the practice, which would lead to support for its total eradication. The awareness is also raised that life's misfortunes cannot be solved in a certain manner and individuals are encouraged to initiate and participate in a process that can lead to effective compromise. Since it is their families that sent them there in the first place, getting the community to make *trokosis* aware that their experiences should not lessen their individual integrity will also make a positive impact on their integration into the society.

#### **SETTING THE LEGAL FRAMEWORK**

While recognising and valuing the local, social and political processes through which empowerment can take place, setting a theoretical framework is important because it helps people to realise further, the contradictions of the practice and its impact on the society. It also gives them the space to reflect, plan and take control of the plight of the *trokosis* and formulate their own course of action based on the information received. Theory can also protect people because it contains within it a way of putting reality into perspective. It is stated that if it is a good theory, then it also allows for new ideas and ways of incorporating without the need to search constantly for new theories.<sup>65</sup> The emancipation of the *trokosis* involves the critique and development of alternative ways of knowing by adopting culturally sensitive approaches which respects people while taking into consideration the problems and issues which concern them. Within this light, the

critical theory which is advanced below should lead to emancipatory results since it is based on the skill of matching the problem with a set of strategies.

In the next chapter, I examine how women's rights can be advanced through the implementation of legal measures. Within the human rights framework, a person's duties and obligations to the community must be consistent with her rights and freedoms. The framework also examines the dangers of submerging individuality in collective decision making that victimises women. It also goes beyond this approach to address issues that will make a difference in the lives of the *trokosis* i.e. initiatives towards practical legal empowerment. This is because feminist legal theory encourages a grounded and reflective appreciation of this interrelationship, its possibilities, its visions and its limits.<sup>66</sup>

## End Notes

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<sup>42</sup> Article 11 (4)

<sup>43</sup> Women who are chiefs are called queen mothers.

<sup>44</sup> Article 277

<sup>45</sup> Article 272 ( c)

<sup>46</sup> Article 276

<sup>47</sup> i.e. succession to the throne. In some communities, the throne is a specially carved stool or the skin of a type of animal, hence the name stool or skin.

<sup>48</sup> As will be seen in a later chapter, conflicts in chieftaincy disputes limited my research in certain communities.

<sup>49</sup> Article 270 (2)

<sup>50</sup> Article 270 (3) These are the traditional council, the regional house of chiefs, the national house of chiefs or a chieftaincy committee formed out of any of these institutions which has the power over the validity of the nomination, election, selection, installation or deposition of a person as a chief.

<sup>51</sup> In certain cases, young priestesses are sometimes referred to as *fiashidis* or *woye*. As one would notice, most of the early reports on the *trokosis* in the second chapter wrongly referred to *trokosis* as *fiashidis*. I have taken some time to explain their status because some people also use the freedom of movement of *fiashidis* to state that there is nothing wrong with the *trokosi* practice.

<sup>52</sup> A form of drink offering to the ancestors.

<sup>53</sup> Article 39

<sup>54</sup> (1974) 1Ghana Law Report, (GLR) 451 SC.

<sup>55</sup> A customary puberty rite which involves periods of confinement, rituals and other ceremonies initiating a girl into adulthood.

<sup>56</sup> (1980) GLR 738 HC.

<sup>57</sup> (1976) 1 GLR 172 HC. *Obeng alias Nkobiahene v. Dzaba*. It involved the reversal of a curse by a shrine. A number of such cases have come before the courts and they find themselves powerless to deal with such cases involving spiritual matters.

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<sup>58</sup> The findings of a nation-wide research on the impact of laws governing family relations in Ghana revealed that the lack of implementation and enforcement of the laws amounted to the non-functioning of these laws. Most women interviewed through questionnaire, radio programmes, community workshops and legal aid clinics came to the conclusion that women were still in the position they were before the implementation of the laws. Heymann Ababio Anita, "Report on the Impact of Laws Governing Family Relations in Ghana" Friedrich Ebert Stiftung/ Federation of Women Lawyers in Ghana (Fida – Ghana), Accra, October 1996. / "The Intestate Succession Law 1985 (PNDCL 111): Which Way Forward? Ten Years and After" Paper presented at a seminar for the Women's Wing of the Industrial & Commercial Worker's Union (ICU), Trades Union Congress, May 1996.

<sup>59</sup> Further discussions on community views of the court process and customary arbitration are made in the methodological framework. See chapter five.

<sup>60</sup> Cook Rebecca "State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women" Cook Rebecca (ed.) Human Rights of Women: National and International Perspectives, Univ. of Pennsylvania Press, Philadelphia, 1994 at p. 242

<sup>61</sup> Schneider Elizabeth M, "The Dialectic of Rights & Politics: Perspectives from the Women's Movement (1986)," Bartlett Katharine T & Kennedy Rosanne (eds.) Feminist Legal Theory, Westview Press Inc, Colorado, 1991.at p. 321.

<sup>62</sup> Littleton Christine A, "Reconstructing Sexual Equality (1981)" Bartlett Katharine T & Kennedy Rosanne (eds.) Feminist Legal Theory, Westview Press Inc, Colorado, USA, 1991 at p38.

<sup>63</sup> Op cit. at p. 28

<sup>64</sup> Rhode, Deborah L. "Feminist Critical Theories (1990)," Bartlett Katharine T & Kennedy Rosanne (eds.) Feminist Legal Theory: Readings in Law & Gender, Boulder, Westview Press Inc, Colorado, USA, 1991 at p.334

<sup>65</sup> Smith op cit. at p. 38

<sup>66</sup> Schneider op cit. at p.322

## **CHAPTER FOUR**

# **THE FEMINIST HUMAN RIGHTS EMPOWERMENT FRAMEWORK**

### **THE INTERNATIONAL LEGAL FRAMEWORK FOR WOMEN'S RIGHTS – CEDAW**

The feminist empowerment framework of the thesis affirms women's distinct needs and aspirations. In this thesis, women's rights are conceived as a key component for structural change. The Vienna Declaration and Programme of Action, states that:

The human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights.<sup>67</sup>

This framework, with the background slogan “women's rights as human rights,” uses the Convention on the Elimination of All Forms of Discrimination Against Women as the primary instrument for the achievement of women's rights.

Women's equality and protection from discrimination before the law not only creates the basis for the enforcement of women's rights but also serves as the starting point for any discussions on an empowerment framework for women's rights. In the words of one woman author, human rights have helped in the task of protecting women, by providing the legal foundation upon which women's struggle is based i.e. the principle of equality.<sup>68</sup>

## **EQUALITY OF RIGHTS**

CEDAW promotes equality of women as a means to achieving justice and the enforcement of women's rights. It reaffirms that discrimination against women violates the principles of equality of rights and respect for human dignity. It also states in its preamble that in order for a country to develop fully, the maximum participation of women and men on equal terms is required. State parties are required in article 2 to use all appropriate means to condemn and end discrimination against women in all its forms. Discrimination against women is defined in the convention as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>69</sup>

CEDAW<sup>70</sup> is also seen as a legal framework for the advancement of women's rights in development and another empowering effect of the document is that it does not only require governments to advance women's legal, economic and social status but also provides guidelines for legal, policy and programme development to promote equality as a means to achieving justice for women. In order to achieve full equality between men and women, it advocates a change in the traditional role of men and women in the society and in the family. It describes the strategic needs of women as those that empower women to

challenge patriarchal structures and states that unless the human capacity of women is fully recognised in law and in fact, countries cannot develop successfully.<sup>71</sup>

#### **PARTICIPATION IN DECISION MAKING**

Participation in public decisions and property rights to enable women to reach their potential as members of the societies in which they live is also stressed.<sup>72</sup> State parties are also to take into account the particular problems faced by rural women, and full participation is defined to include the rights of rural women to development, especially the role they play in the economic survival of their families. The document also stresses: access to training and education, including formal and informal training that relate to functional literacy; the benefit of community and extension services; and the right to participate in all community activities. Other areas of empowerment for the rural woman who is the subject of this thesis are their rights to credit, marketing facilities and appropriate technology.<sup>73</sup>

#### **THE BEIJING DECLARATION AND PLATFORM FOR ACTION**

The Beijing Declaration and Platform for Action<sup>74</sup> is also an international agreement among states oriented toward women's empowerment. Paragraph 9 of the Declaration states that:

The full realisation of human rights and fundamental freedoms of all women is essential for the empowerment of women.

It provides the legal basis for the immediate term, medium term and long term empowerment of women through a full implementation of women's economic, social, cultural and political rights. Its aim is to implement the Nairobi Forward Looking Strategies for the Advancement of Women<sup>75</sup> and to hasten further, the removal of all obstacles to women's participation in their public and private life. It also advocates the principle of power sharing and responsibilities between women and men at home, in the work place and in the wider national and international spheres.

#### **FEMINISATION OF POVERTY**

The document also acknowledges that one fourth of all households world -wide (as will be seen in the case of the *trokosis*) are headed by women and many other households are dependent on female income even where men are present. Female-maintained households are also recognised as still very often among the poorest.<sup>76</sup>

Some of the critical areas of concern in the document (which are analysed in the thesis stated) as needing strategic action are the increasing burden of poverty on women, unequal access to education and training, inadequate access to health care, violence against women, inequality in economic structures and policies and



access to all forms of productive activities and resources. Other relevant areas also stated, as critical areas of concern are inequality in decision making, inadequate promotion and protection of the human rights of women and violations of the rights of the girl child.<sup>77</sup>

### **Set backs**

Some of the set backs to women's development resort from the lack of implementation of women's rights. It is acknowledged in the Beijing document that most of the goals set out in the Nairobi Forward-looking Strategies for the Advancement of Women have not been achieved. Also despite the efforts of some governments as well as non-governmental organisations and women and men everywhere, barriers to women's empowerment still remain.<sup>78</sup> In June 2000, the general assembly of the United Nations met in New York to reaffirm the Platform for Action and the importance of women's human rights.

### **DOMESTIC IMPLEMENTATION OF WOMEN'S HUMAN RIGHTS**

The success of the Beijing Platform for Action and CEDAW, require a strong commitment on the part of governments, international organisations and institutions at all levels. Each country is also required under international law to adopt legislative or other measures necessary to give effects to rights recognised under the International Covenant of Civil and Political Rights. Since the most effective way to implement human rights is through a country's own legal system,

the adoption and implementation of CEDAW, the Beijing Platform for Action and other human rights instruments are examined not only through the laws of Ghana but also through an examination of strategies, policies and programmes implemented at the national level to give effect to the protection of the rights of women. These forms of assistance are also examined in the light of some human rights bodies established under the Constitution and how effective they have been in protecting the rights of women.

#### **PROTECTION OF RIGHTS UNDER THE CONSTITUTION**

The 1992 Constitution of Ghana as stated in chapter one, contains not only provisions that guarantee the rights and freedoms of the individual but also provides a system of remedies for violations of such rights. Under article 33, where a person alleges that a provision of the Constitution on the fundamental human rights and freedoms has been, or is likely to be contravened in relation to her, the person may apply to the High Court for redress. The High Court may then issue any such directions including orders or writs, which it may consider appropriate, with the aim of enforcing or securing the rights of the individual concerned. The protections of such rights under this section are without prejudice to other rights that are due to such a person under any other legislation.

## **HUMAN RIGHTS BODIES**

Article 216 of the Constitution established the Commission of Human Rights and Administrative Justice (CHRAJ).<sup>79</sup> The functions of the commission among others are:

- (a) To investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties...
- (c) To investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution
- (d) To take appropriate action to call for the remedying, correction and reversal of instances specified in earlier clauses through such means as are fair, proper and effective.
- (e) To investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps including reports to the Attorney-General and the Auditor-General, resulting from such investigations;
- (f) To educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia.

For the purposes of this chapter, subsections c, d and f are the most important as far as the protection of women's rights are concerned. Complaints can be made either orally or in writing and the commission has the mandate to initiate its own independent investigations to seek prosecution of violators of human rights of individuals. Some of the special powers of its investigation mechanism include the issuance of subpoenas requiring the attendance of any person before the

commission. The commissioner may also bring an action before any court in Ghana on behalf of any individual and may seek any remedy that may be available from that court. To make matters easier for such persons, all costs and expenses related to investigations into complaints are also to be borne by the commission. I find it potentially to be an effective organisation for any concerned individual to initiate an action on the infringement of women's rights compared to an ordinary court of law.

For a number of reasons however the potential of the commission for fostering women's human rights has not been fulfilled. As would be realised from its functions, the duties of the commission were combined with that of the Office of the former Ombudsman and it has since its inception been overburdened with cases dealing with wrongful dismissals. It was also urged to take on cases involving corruption against government appointees which was a highly political and sensitive issue, and thus women's issues were further pushed to the background. Amongst other problems, it has also been struggling with a high turnover of staff and high volume of work. Due to this, most of its functions concerning women's rights have been restricted to article 218 (f), that is, educating the public as to their human rights.

Article 231 of the Constitution also established the National Commission for Civic Education (NCCE). The functions of the commission among others under article 233 are:

- (a) To create and sustain within the society, the awareness of the principles and objectives of the Constitution as the fundamental law of the people of Ghana.
- (b) to educate and encourage the public to defend the Constitution at all times, against all forms of abuse and violation;
- (c) To formulate for the consideration of Government, from time to time, programmes at the national, regional and district levels aimed at realising the objectives of the Constitution.

The Commission has mainly been involved in efforts at educating the communities concerned on the evil nature of the *trokosi* practice, which has usually been at the invitation of non-governmental organisations operating in the areas concerned. Like the CHRAJ, due to various constraints, they have so far on their own initiative been unable to introduce any programme to bring a halt to the *trokosi* practice.

#### **INSTITUTIONALISED FORMS OF ASSISTANCE TO WOMEN VICTIMS**

In order to effectively address violence against women within the family and the society at large, CEDAW advocates for the provision of institutionalised forms of assistance to women victims in national legislations.<sup>80</sup> Following an increase in reports of wife battering, sexual abuse of children and the general maltreatment of women and under pressure from women lawyers and other women's groups, the government, as part of its policy of promoting the rights of women, established a special police unit to examine cases of violence against women and children. The Inspector General of Police (IGP), Mr. Peter Nanfuri, said the

units were to be manned mainly by police women, "who understand such issues better."<sup>81</sup> These units are known as "the women and juvenile unit of the police service" (WAJU). In spite of its limited staff and high volume of cases, since its establishment, there has been a considerable improvement in the arrest, investigation and prosecution of cases involving violence against women. Other measures by the state, still under discussion, are the adoption of proposals for affirmative action in parliament.<sup>82</sup>

## **THE LEGAL BASIS FOR THE ABOLITION OF THE TROKOSI PRACTICE**

### **VIOLENCE AGAINST WOMEN**

The legal process of empowerment focuses on a process of acknowledging the individual human rights of the *trokosis* who are mainly rural women. Within this context, it is difficult to understand why a patrilineal community, which traces its ancestors from a common male, cannot continue along that logic to trace the sins of clans through its male descendants. Later in the paper it will also be shown that most of the *trokosis* are maternal relations and not paternal relations of offenders.

It is the view of this study that a custom whereby only females have to be sacrificed with their lives to pacify gods for crimes committed mainly by male relations is clearly a case of discrimination based on one's gender. Article 5 of CEDAW calls on states to eliminate sex role stereotyping and the fact that it is almost always women that have to redeem families from curses amounts to sex

role stereotyping. Violence against women constitutes a violation of the rights and fundamental freedoms of women and girls, and failure to protect and promote these rights nullifies the enjoyment by women of such rights. The Declaration on the Elimination of Violence against Women defines violence against women to include:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>83</sup>

To the victims of this practice, the practical realisation of the principle of equality with men, stated in the Constitution<sup>84</sup> and various human rights instruments<sup>85</sup>, are yet to be attained.

#### **FREEDOM OF MOVEMENT**

The ritual of committal in the shrines severely restricts the freedom of movement of *trokosis* and deprives them of their personal liberties. Under article 14 every person is entitled to his or her personal liberty but *trokosis* are confined to shrines and can only leave with permission. Dressing is also restricted, and the various rituals which the girls are expected to observe include food taboos. They also have no right to marry freely when they come of age and when they do, at certain periods, they still have to visit the shrine and perform rituals. Their life is a series of obedience to commands and they cannot on their own initiate any undertaking

whether for social or economic reasons. Their failure to observe rules results in severe punishment.

#### **SLAVERY/FORCED LABOUR**

The servile status of *trokosis* is seen in the duties they perform in the shrines, for which no payments are made. The priests are also under no obligation to keep them either in a proper state of mind or health. Article 16 of the Constitution provides that:

- (1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced labour.

In spite of these provisions, *trokosis* are forced to work on the farm of priests from dawn to dusk. They are also required to feed themselves from whatever form of work they undertake and they undergo a lot of psychological hardship. Although the right to work is also recognised as a human right,<sup>86</sup> complete submission to the priest by a *trokosi* involves sharing proceeds of earnings from any work undertaken outside the shrines. Unfortunately for most *trokosis* when they are freed, they are still bound by rituals that keep them connected or attached to a shrine for life. Practically it means that these victims of ritual slavery always have the rights of ownership exercised over them. Under the article 7 of the Convention on Institutions and Practices Similar to Slavery, a “slave” is defined as:



A person over whom any or all of the powers attaching to the right of ownership are exercised.<sup>87</sup>

#### **RESPECT FOR HUMAN DIGNITY**

The contradictory roots of the practice are seen in the lives of the *trokosis* who lead isolated lives in the shrines, unable to interact with members of their communities. This is a special hardship in a country such as Ghana, considering the importance of the family network in the life of an individual in the communities concerned. Another contradictory nature of the practice is also found in the fact that a *trokosi* serves her “imprisonment” at the shrine where the case was lodged, which may not necessarily be the community in which she was living. The effect of this practice on a young child is to completely dislocate her identity and personality.

The Declaration on the Elimination of Violence against Women<sup>88</sup>, defines the human and fundamental freedoms to which women are entitled to include:

The right to life, the right to equality, the right to liberty and security of person, the right to equal protection under the law, the right to be free from all forms of discrimination and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment...

Article 15 of the Constitution also describes the dignity of all persons as inviolable and individuals are not to be subjected to torture or other cruel,

inhuman or degrading treatment or punishment. It also provides that no person shall be restricted in “a condition that detracts or is likely to detract from her dignity and worth as a human being. “

The unjustified and undignified aspect of the practice lies not only in punishing a person who has done no wrong but also in the perpetuity of the punishment; some *trokosis* are members of the second and third generations of their families serving an imprisonment for the same crime. Crimes are also not categorised and the penalties are the same. Once a case is reported to the shrine, whether it is for the theft of a fowl or rape, the punishment is the same. Trial by ordeal and threat of harm, already criminal offences under Ghana’s criminal code<sup>89</sup> are also practised in the shrines for those who disobey rules. In contrast, article 7 (2) of the African Charter on Human and People’s Rights provides that:

Punishment is personal and can be imposed only on the offender.<sup>90</sup>

#### **FORCED MARRIAGE**

The minimum age for marriage under the Children’s Act of Ghana is 18 years.<sup>91</sup> Forced marriages are also void.<sup>92</sup> Even though most customary laws in Ghana also hold that consent is essential if a marriage is to be considered valid, a *trokosi* girl-child is forced into an early and servile marriage with either very poor knowledge or no knowledge at all of her sexual and reproductive life. The effect of a non-existing marriage under customary law is that the priests have neither any contractual agreement existing between their families nor any obligation to

maintain the girls financially. In their deprived state, there is no support from their families. Most of the girls are badly treated and the priests are not held accountable to anyone for their actions. Also, due to the ease with which the slaves are acquired, some priests are so greedy that they marry too many girls at a time, sometimes as many as five or six. It is not surprising that they find it difficult to maintain the girls, and this sad situation compounds the already miserable situation of the girls, especially after bearing children.

Reproductive Rights are also recognised as an individual's basic human right but *trokosis* are unable to make such decisions free from fear and violence.<sup>93</sup> The Nairobi Forward Looking Strategies also acknowledges that:

The ability of women to control their own fertility is an important basis for the enjoyment of other rights.

Child marriages infringe on the rights of women and are an impediment to the educational, economic and social status of women.

#### **CHILDREN'S RIGHTS**

A *trokosi* child is forced to engage in employment ventures at a very early age when most children are still supposed to be playing and enjoying themselves. One can imagine the trauma a young child of six or seven years, separated from her parents, has to undergo at the shrine. De jure, she has the right to be protected from engaging in work that constitutes a threat to her health, education

or development.<sup>94</sup> De facto, her life is one of neglect, cruelty and exploitation, which are all stated to have negative effects on a child's physical, mental and moral development.

#### **EDUCATIONAL RIGHTS**

As slaves it is also a taboo for them to attempt to learn any skills, and most of them were kept out of school for this reason. Education for an individual ensures the free choice of means to achieve progress in one's life and is stated to be a human right. It is also recommended that in order to ensure women equal rights with men, discrimination against women in education should be eliminated.<sup>95</sup> The Constitution recognises this right and also makes education compulsory.<sup>96</sup> In spite of legislation to the contrary, children in the shrines are deprived of the opportunity to pursue their education, and the lack of educational rights for the *trokosis* is an infringement of their human rights. One of the other effects of the denial of access to education, vocational training and economic self-sufficiency for women is the inability of such women to make any meaningful contribution to the development of their communities.<sup>97</sup>

#### **PROMOTING PRACTICAL EQUALITY FOR WOMEN**

So far, the legal framework sounds empowering. The Ghana Constitution has been in existence since 1992, the human rights bodies were established in 1993 and the Criminal Code has been in force since 1960. Women's rights are formally recognised but ignored in practice. This means that women are still in an inferior

position because, in spite of these legal provisions, they remain powerless. Apart from the successes of the WAJU unit, which was only established in late 1998, the rest of the legal framework that has been in existence for so long has brought about very little changes in the lives of women generally and *trokosis* in particular.

The introductory chapter of this thesis also posed a number of questions. Some of these are whether women have benefited from legal changes over the years and whether legal reforms have effectively reduced gender inequality in the society. Another issue is whether formal legal rights have contradicted actual equality for women.

The United Nations has established that in many countries, there is a vast gap between women's rights on paper according to law and policy, and their actual experiences.<sup>98</sup> So far women have rarely sought to remedy rights violations in Ghana for a number of reasons. Fear of challenging patriarchal systems causes women not to exercise their right to freedom of movement and expression. Most women are also either unaware that they are entitled to protection of such rights or do not know where to seek redress or information concerning available remedies. Making such information inaccessible hinders the implementation of the rights of women because it is only when women are aware of their rights and can take advantage of them that the process of empowering women to assert and demand their rights and freedoms can become a reality. Access to the courts is also expensive and slow, and many women are unable to afford lawyers, while

court cases can drag on for years. It is the view of some authors that it is only when women are economically empowered that they can assert themselves in other areas of their lives, like insisting on their rights. They state that the self-empowerment of women is linked to the nature of one's work, its regularity, its security and the amount of income earned, otherwise the structures of inequity which act as barriers to women's empowerment cannot be overcome easily.<sup>99</sup>

### **RESETTING THE EMPOWERMENT FRAMEWORK FOR THE *TROKOSI***

In order to turn critical thought into emancipatory action, one has to see the *trokosi* culture as dynamic and receptive to change and view women's rights as a matter of social justice. As can be seen from the above, even though the *trokosi* practice has no legal basis and claimants have standing under the various laws to launch legal claims, these methods, like most issues concerning women's rights, have hardly been used. This is also in spite of the fact that there is judicial precedence on the issue and the executive have also given their backing to the abolition of dehumanising customs.

Lather states that the potential for creating reciprocal, dialogic research designs is rooted in the intersection between people's self understanding and the researchers efforts to provide a change-enhancing context.<sup>100</sup> Smith also states that feminist intervention or action research encourages the process of being proactive and of becoming involved as an interested worker for change.<sup>101</sup> She states that it is a necessary approach when faced with crisis situations and that it

is not ethical to walk away. I realised on further reading of the law that there were a number of loopholes especially dealing with the prosecution of offenders and the admissibility of evidence. Of particular difficulty was a provision in the criminal code, which by generally embodying social norms had disadvantaged women.

#### **RITUAL SERVITUDE**

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

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

What this section meant was that for anyone to successfully prosecute any of the fetish priests for engaging in slavery, it must be proved that the contract did not arise out of any family relations customarily observed in Ghana. I realised that this would be an uphill task considering the fact that the practice is one that goes on with the consent of parents, guardians and family members. The priests alone could also not be singled out because relations normally bring the girls to the shrines without any coercion per se from the priests. Even though one may say the coercion is spiritual as stated in *Nkobiahene v. Dzaba*,<sup>102</sup> it would be very

difficult to prove such an issue in court. The judicial process itself, an issue to be discussed again in detail in the next chapter, is also seen as an alien process of adjudication, full of technicalities and quite complex for indigenous peoples. It would also be difficult to expect *trokosis* already traumatised by their experiences to testify against their own family members. Indeed individuals bringing up actions are not likely to get the co-operation of very vital witnesses in the community.

As part of my research work on amending this provision, I recommended that a broader and more modern definition of “slavery” be used, which would cover all acts constituting violence against women and children. Unlike other human rights treaties, CEDAW does not solely address actions by the state or its agencies. Under article 2 (e) “any person, organisation or enterprise” can also take appropriate measures where necessary to eliminate discrimination against women. It is this change-enhancing context that formed the basis for my pursuing further research on how best this section could be revised and made more empowering for women.<sup>103</sup> A new law had to be drafted to specifically make ritual servitude a crime. The new definition had to include contemporary forms of slavery and related forms of violations of human rights covered by international conventions and national legislation.<sup>104</sup> These contemporary definitions of slavery and institutions similar to slavery include child labour, sale of children, debt bondage and serfdom, although they could be described as falling within the definition of a custom. Therefore, the giving up of-



A child or young person under the age of 18 years by either or both of his or her natural parents or guardian to another person whether for reward or not, with the view to the exploitation of the child or young person or his or her labour...

is described in the Convention as an institution or practice similar to slavery.

Slavery also includes the act of inducing dependants into servile status or any attempt to perform such acts and being an accessory thereto.<sup>105</sup>

#### **ECONOMIC EXPLOITATION OF THE GIRL CHILD**

Section 44 of the Labour Decree, although prohibiting the employment of young children, states that:

Except where the employment is with the child's own family and involves light work of an agricultural or domestic character only"

This definition of "agricultural undertaking " meant that it would not be easy prosecuting the priests under this decree because they would state that the work the children undertake is a light one. The provisions in the labour decree seemed to be obsolete compared with the provisions of the constitution, a much later document that prohibits inhuman or degrading treatment or punishment on children. Article 28 (4) provides that:

No child shall be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs.

In order to make the prosecution of exploitation of children's labour easier, this section of the law had to be amended. On a general note, it would also deter people from taking advantage of family members from rural to urban areas to exploit such children for economic benefit. I also found an amendment to this provision in article 32 of the 1989 UN Convention on the Rights of the Child, which also provided a conventional definition of child labour.<sup>106</sup> Its definition of child labour included economic exploitation and no exceptions were made to it, unlike that of the labour decree, which was passed in the 1970's. The Convention defines exploitative labour to mean:

Performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

#### **LAW ABOLISHING RITUAL SERVITUDE**

These recommendations were accepted and submitted to government on November 29 1995. But this was only the beginning of a long struggle. With the backing of the Ghana branch of the International Federation of Women Lawyers, support for the report had to be lobbied for the draft law first to be submitted to cabinet and then to parliament. The draft law took about two years in parliament because there was also effective lobbying being done by other organisations who

said there was nothing wrong with the practice. I then took part in a series of seminars and workshops for women and male parliamentarians to lobby for the passage of the law.<sup>107</sup> At the community level, non-governmental organisations already having problems with their intervention programmes saw the need for such a law and I also took part in a number of workshops in various communities. These campaigns and workshops, which were always carried in a congenial atmosphere, helped to prepare the minds of community members and convince them of the illegality of the practice and the need for change.<sup>108</sup> It also kept them abreast on other issues concerning violence in the family. These methods proved so useful that based on this information, a number of communities including the case study of this thesis released *trokosis* in their shrines well ahead of the law. Finally, on September 4, 1998, the Criminal Code (Amendment) Act, 1998, Act 554, came into effect to ban all customary practices of servitude such as the *trokosi* practice. The principal enactment was amended by the insertion of section 314A, which provides that:

(1) Whoever-

(a) Sends to or receives at any place any person; or

(b) Participates in or is concerned with any ritual or customary activity with the purpose of subjecting that person to any form of forced labour related to a customary ritual commits an offence and shall be liable on conviction to imprisonment for a term not less than three years.

(2) In this section "to be concerned in" means -

- (a) To send to, take to, consent to the taking to or receive at any place any person for the performance of the customary ritual; or
- (b) To enter into any agreement whether written or oral to subject any of the parties to the agreement or any other person to the performance of the customary ritual; or
- (c) To be present at any activity connected with or related to the performance of the customary ritual".

The recommendations for a ban on economic exploitation of children are now embodied in section 12 of The Children's Act of 1998.

#### **THE IMPLEMENTATION OF WOMEN'S RIGHTS**

As can be seen from the above, if the law could lead to the rapid releases of slaves during the period, then it means it has achieved its purpose. The introduction of the law contrary to what some sceptics thought, did not mean that anyone wanted whole communities to be imprisoned for practising a customary act which they think is lawful and is their traditional right. It would not have served any purpose. It should be realised that legal literacy, which changes attitudes that hamper the advancement of women, is also part of the empowerment framework for women. Women cannot make effective claims to rights in development if they are not aware of them. In the human rights context, the women in development (WID) "efficiency" rationale strategy also involves education, institution building and legal literacy as well as human rights in relation to women. This involves changes at the policy level, changes in attitudes and approaches and the

development of new strategies to overcome these obstacles.<sup>109</sup> Waring also states that the key tool needed to mainstream women in society is information which must be “well-based, reliable, timely and relevant.” In doing this, capacity to discern knowledge which is relevant, where to find it and how to use it so that women can benefit from any development process, depends on people who have access to such knowledge either in government or other institutions, take advantage of such situations in order to further the cause of women.<sup>110</sup>

The domestic implementation of women's rights also proves that actions have been taken by the Ghana government, on the national level as consistent with CEDAW, to challenge commonly held beliefs and customs that infringe on the rights of women. This has been an essential part of the empowerment framework because governments are sometimes seen as having no role to play. The thesis argues that if those in power do not back such claims, the framework cannot be set. The political will for sensitisation by those in power is central to women organising to demand and promote change.<sup>111</sup> The thesis also stresses that changes in laws to address the injustices that women suffer is necessary in any society, however legal measures if not backed by other measures such as education and programmes of implementation have only limited impact. The framework for monitoring compliance with human rights obligations as stated by Tomasevski should involve not only their transformation into national law but more importantly in the light of the above, their implementation.<sup>112</sup>

The chapter concludes with the view that the objective of empowering women should not only be with the aim of establishing legal equality but to work towards practical equality. Within the empowerment framework of the thesis, with the legal basis as the starting point for the illegality and intervention of any practice; practical equality with culturally enhancing methods, should then follow, with the aim of raising the consciousness of not only individuals but entire communities in order to bring about effective changes in the lives of women.

## End Notes

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<sup>67</sup> Para 18 of The Vienna Declaration and Programme of Action, June 1993. A/CONF.157/23/1993.

<sup>68</sup> Medina Cecilia, "Do International Human Rights Laws Protect Women?" Joanna Kerr (ed) Ours By Right: Women's Rights as Human Rights, Zed Books Ltd, North-South Institute, Ottawa, 1993 at p. 78

<sup>69</sup> Article 1

<sup>70</sup> Article 3

<sup>71</sup> Article 2: "... To ensure through law and other appropriate means, the practical realisation of this principle."

<sup>72</sup> Article 11 & 12

<sup>73</sup> Article 14, 2(d)/ see also article 13 of CEDAW.

<sup>74</sup> The Beijing Declaration and Platform for Action: Fourth World Conference on Women, Beijing, China, 4-15 Sept, 1995. United Nations, Department of Public Information, United Nations, New York, 1996. / Para 1 provides that: "Equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development and peace." The Declaration in para 2 also reaffirms the fundamental principles set out in the Vienna Declaration and Programme of Action. It also upholds CEDAW.

<sup>75</sup> GA.Res 40/108/Dec 1985. In paragraph 7 of the Declaration.

<sup>76</sup> Para 22

<sup>77</sup> Para 44

<sup>78</sup> Critical Area of concern, Para 42

<sup>79</sup> Act 456 of 1993.

<sup>80</sup> Para 258 of the Nairobi Forward Looking Strategies. See also article 2 (c) of CEDAW, which requires states to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

<sup>81</sup> At the inauguration of the units, the IGP explained that most policemen to whom reports of wife battering were made only referred to them as "family matters" and then asked the women to go back and settle them with their husbands. "But how can these

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women go back to settle any issue with the same men who have just beaten them?" the IGP asked. Ghanaian Times, July 15, 1998

<sup>82</sup> In accordance with article 35 of the Constitution and in conformity with article 4 of CEDAW, special measures are to be introduced to "accelerate de facto equality between men and women." Proposals include the implementation of 40% quota on public boards, government appointments and universities. It is hoped that with the introduction of this measure, the limited participation by women in public life will be increased. Currently, the percentage of women in Parliament stands at a mere 9%. Also out of 110 District Chief Executives, only 11 are women. Women are also largely underrepresented in all levels of education and in public and private organisations.

<sup>83</sup> Article 1 of the Declaration on the Elimination of Violence against Women. GA/Res/48/104/Dec 1993.

<sup>84</sup> Article 17(2)

<sup>85</sup> Article 26 of ICCPR, Article 3 of ICESCR/ para 36 of Vienna Declaration & Programme of Action, June 1993/ Article 2 & 15 of CEDAW / Article 3 & 19 of the African Charter on Human & People's Rights, Res. of Heads of State/OAU/June 1981.

<sup>86</sup> Article 11 of CEDAW recognises the right to equal pay and equal treatment. Article 13 also requires states to eliminate discrimination against women in all areas of economic life.

<sup>87</sup> The Supplementary Convention on the Abolition of Slavery, and Institutions and Practices Similar to Slavery, 1956. ECOSOC Res 608 (XXI)/1956. The Convention has been ratified and acceded to by Ghana. See also article 8 of ICCPR.

<sup>88</sup> Article 3 / A/RES/48/104/1993.

<sup>89</sup> Section 315 & 74 of Act 29, 1960.

<sup>90</sup> See also article 4 & 5 of the African Charter/ Res. of Heads of State/OAU/June 1981.

<sup>91</sup> The Children's Act of 1998, (Act 560) / under section 15 any person who contravenes this provision commits an offence and is liable to a fine or a term of imprisonment.

<sup>92</sup> S.100 & 109 of the criminal code of Ghana/ Article XXI of the African Charter on the Rights of the Child/Article 16 (2) of CEDAW.

<sup>93</sup> Article 1, Convention on Consent to Marriage, Minimum Age for Marriage & Registration of Marriages. G.A Res 1763 (XVII) of 1962 / Article 16 (1b) of CEDAW/G.A Res 34/180 1979.



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<sup>94</sup> Article 28 of the Constitution.

<sup>95</sup> Article 1 of the Convention against Discrimination in Education/ 14 Dec 1960 General Conference of UNICEF.

<sup>96</sup> Article 25 (1). See also The Education Act of 1961 (Act 87) which provides for compulsory education in Ghana. Under section 2 (2) of the Act, any parent who fails to comply, commits an offence and is liable on summary conviction to a fine. This provision is hardly enforced.

<sup>97</sup> Para 31 of the Beijing Declaration/ article 10 of CEDAW

<sup>98</sup> The UN and the Advancement of Women, (1945-1996) The United Nations, Blue Book Series, volume vi, Dept of Public Information, UN, N.Y., 1996 at p.7

<sup>99</sup> Deniz Kandiyoti “ Women & Rural Development Policies: The Changing Agenda” Development & Change, 1990, vol. 21, Institute of Social Studies, Sage Publications, London, 1990, & Smillie Ian, op cit.

<sup>100</sup> Patricia Ann Lather, Getting Smart, Feminist Research and Pedagogy With/in the Post-modern, Routledge, NY, 1991, at p. 60

<sup>101</sup> Smith op cit. at p. 147

<sup>102</sup> GLR op cit.

<sup>103</sup> Heymann Ababio A, The Impact of the Constitutional Provisions on the Customary Disabilities of Women in Ghana, “Report on the Abolition of Ritual Slavery, Forced Labour & Other Related Practices” Institute of Advanced Legal Studies, University of London, April 1995. Recommendations based on this research, later became a Law Reform Commission report to Government in November of that year. The *trokosi* practice was specifically stated to be a crime under the criminal code in the latter part of 1998.

<sup>104</sup> Supplementary Convention on the Abolition of Slavery, and Institutions and Practices Similar to Slavery. The Convention has been ratified and acceded to by Ghana. See also article 8 of ICCPR.

<sup>105</sup> The Convention, op cit., in article 1(d) & 6.

<sup>106</sup> See also para 39 of the Beijing Declaration.

<sup>107</sup> Heymann Ababio A, “Ritual Enslavement.” Paper presented at a seminar for the women’s caucus in parliament, on the criminal code amendment bill, organised by UNICEF, Accra, January 1998/ “Cultural Practices & The Implementation of the Rights

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of Women” Paper presented at a workshop for women in parliament, organised by Friedrich Ebert Stiftung/ Federation of Women Lawyers in Ghana, Sogakope, Volta Region. Nov 1997.

<sup>108</sup> Heymann Ababio A, “The abolition of dehumanising customary practices – the customary practice of ritual servitude.” Paper presented at a seminar for paramount chiefs/queen mothers of the North & South Tongu Districts of the Volta Region, Oct 1996.

<sup>109</sup> Carolyn Hannan-Andersson “Integrating, Not Separating Women in Development” Kerr (ed) op cit. at p. 19/For further reading on WID see Boserup Ester, Women’s Role in Economic Development, Earthscan Publications Ltd, London, 1989; Mermel Anita & Simons Judi, Women and World Development, OEF International, Washington D.C, USA, 1991; Tiano Susan “ Gender, Work & World Capitalism: Third World Women’s Role in Development” Beth B. Hess & Myra Marx Ferree (eds.), Analysing Gender, Sage Publications, California, USA, 1987. See also Moser in Smillie Ian op cit. at p. 85.

<sup>110</sup> Marilyn Waring, Three Masquerades, Essays on Equality, Work and Human Rights, University of Toronto Press, at p. 68.

<sup>111</sup> Sen & Grown op cit at p. 22.

<sup>112</sup> Katarina Tomasevski, Women and Human Rights, Zed Books Ltd, United Nations Non-Governmental Liaison Service, London, 1993.

## **CHAPTER FIVE**

# **COMMUNITY BUILDING EMPOWERMENT EVALUATION THROUGH FEMINIST PERSPECTIVES**

## **FEMINIST RESEARCH METHODOLOGY**

The feminist community building framework seeks to change the conditions of women's lives by making necessary linkages to the communities in which they live. The major goal of the research involved the evaluation of culturally relevant community based empowering strategies aimed at the:

- The emancipation of the *trokosis*.
- Building community support structures as part of a collaborative process towards women's empowerment.
- Raising the awareness of communities towards the promotion of the human rights of women.
- Community participation in decision making as a means to empowerment.

## **THE EMANCIPATION OF THE *TROKOSIS***

Intervention in action research means a process of being proactive and of becoming an interested worker for change.<sup>113</sup> The effect of the *trokosi* practice discussed in earlier chapters brings into sharp focus the effects of various acts of violence against women. I also raised a number of issues related to women's rights including women's economic rights and civil rights. In my research, I considered the eradication of the *trokosi* system as central to the system of women's empowerment in the communities and saw other processes of empowerment as connected to the emancipation of the *trokosis*.

Emancipatory social research calls for empowering research designs,<sup>114</sup> and I realised that even though the primary aim of the research was to track the impact of releases on the *trokosis*, merely releasing the girls would neither change their environment nor empower them. To operate within the feminist community building empowerment framework meant not only considering all those connected with the emancipation of the *trokosis* but how to ensure that everyone involved in the process felt a sense of their own agency and community connectedness.

## **DATA COLLECTION METHODS**

My research setting as already seen in discussions earlier, has been influenced by history, culture, language, political setting, religion and other factors, which

are the usual themes that normally face an indigenous researcher.<sup>115</sup> Issues such as cultural survival, independence, healing and restoration had to be combined with how to promote the rights of women in the society. These multiple goals meant that I had to use multiple approaches in order to operate within the empowerment framework.

Using the Ristock and Pennell triangulation method,<sup>116</sup> the example of multiple methods enabled me to look at the same subject from different angles. I also used different methods for different questions on the same topic and also different methods to explore the same sets of questions. Both quantitative and qualitative data collection methods were used. Open-ended interviews focus groups and participant observation all formed part of the data gathering methods. The aim of using the triangulation approach was to enhance the validity of the study so that it will “ring true” as an accurate reflection of the experiences of participants.<sup>117</sup>

In order to obtain data that were relevant to the research objectives, communities chosen for the study were in areas where releases had taken place and some of these areas were noted for the severity of treatment meted out to the *trokosis*. The focus was on 14 communities in 4 districts: Dangbe East District, the South Tongu District, the Kpong District and the North Tongu District. In these districts, the main occupations are the distilling of alcohol, salt winning, farming, animal husbandry, fish smoking, pottery, weaving, bead making and petty trade. Both

sexes can also be found in modern occupations such as tailoring and teaching.<sup>118</sup>

Group interviews as well as participant observation supplemented the interviews. As participants are indigenous peoples and I am a native researcher, culture and sensitivities are taken into account in the research process. By listening to people and bringing out their views, the research has both a factual and an ethical base. The need for participants to play an active role in the research meant recognising various perceptions of empowerment as valid.<sup>119</sup> Informal methods such as unstructured interviews played an important role within the cultural context in which I was working, because they facilitated and built upon the traditional methods of communication. I entered into the research thinking that traditional methods of communication would only be a feature of the older generation; surprisingly for me, I was wrong. I had young people well versed in culture, putting me through rigorous interviews. I benefited from the willingness of community members to share their thoughts with me and also became a focus of their interrogations. Reflexivity meant including myself in what was being studied, and it also gave me the opportunity to assess my role and that of others in the whole empowerment process. Sometimes a question or two would lead to a narration, proverbs and problem solving. Themes suggested by some responses were also explored, and a number of valuable suggestions emerged from discussions related to topics such as the role of the extended family, the role of

chiefs and elders in arbitration, women's empowerment, the integration of the *trokosis*, and the role of culture in a changing world.

I also approached the study fully aware of my position as a researcher and an indigenous person and the danger of potential conflict. The feed back was positive, and communities appreciated the opportunity to participate. I ran out of paper so I had to stop the interviews, but I was overwhelmed by participation. There was eagerness to participate by more people than could be dealt with.

#### **Limitations**

There were limitations to the research process. Some areas were engulfed in chieftaincy disputes and the atmosphere did not favour any research. In one area, two rival chiefs had been installed and shrines operating there refused to cooperate. A number of priests also had problems with non-governmental organisations and could not be interviewed, as they had threatened anyone who came to interview the *trokosis*. I had already on my own interviewed priests individually and I did not consider that to be a limitation. As expected of security agencies, some of the police officers were afraid to talk to me in spite of my having obtained permission to interview them.

## **COMMUNITY BUILDING SUPPORT STRUCTURES**

The type of participatory research which I felt would be empowering was for participants to examine the situation of the *trokosis* and take action based on their own culture and values. Part of the framework was to also allow people to reflect on their lives, have questions and priorities of their own, and bring out methods in which the community could support the empowerment of the *trokosis*. The community building support structures proved the most useful framework relevant to the study, as it would enable the girls to feel at home once more and remove obstacles to their self-empowerment. The community would also help heal the girls psychologically so that they would no longer blame themselves for being responsible for their conditions. I also expected the processes to be respectful, to enable people to heal and to learn.<sup>120</sup>

### **CHIEFS/SHRINE OWNERS & PRIESTS**

Since most indigenous communities have some form of governing system, I found it useful to work within an existing governing body, which would support the empowering process. As stated earlier, in these communities, the chiefs are not only political leaders but also spiritual leaders as well since they are in charge of shrines and have power over the fetish priests. Shrine owning also runs in families, and all the three shrine owners I spoke to were divisional chiefs. One said he inherited the shrine from his grandparents. The other said he owns it jointly with three other chiefs. The third did not state his position on ownership.



The other two-clan leaders I spoke to, one female and the other male, were not directly in charge of shrines but had relations at a shrine. The focal point of my discussions with them was their role in the promotion and evaluation of traditional customs and usages and the elimination of customs that infringe on women's rights. Shrine owners, chiefs and elders, as stated in the earlier chapter on community rights, have a duty as leaders to be law abiding so as to lead their people effectively. As expected, they all said they had no regrets releasing the girls and did not think that the custom could be sustained for long in a modern society.

The collaborative approach to enquiry also made it necessary for me to link groups that were potentially in conflict, like the non-governmental organisations and the priests. The issue of the liberation of the girls meant that this group of priests had to give up its power. The priests were bitter and their anger was directed at the non-governmental organisations involved in the liberation efforts for not paying much attention to them. The shrine owners held the view that the problem was the economic impact of the releases on the priests, and they stated that more financial assistance to them would improve the situation. They also suggested that since a lot of them derived their livelihood from the incarceration of those released, they should be given financial packages to make them independent. Cattle ranching are also a source of livelihood in the low lying plains of the communities and compensation packages to shrines in such communities consist of a sum of money, heifers and a bull. So far, the financial

assistance given to the priests has been long term, since they are to reap the fruits of their labour after a period of time. I realised that some of them were having second thoughts on this, because the benefits are not immediate. As part of my research, I followed up on the complaints of the priests from nine social workers that I interviewed later. They said it was the priests and shrine owners who determined the content of compensation packages. Funding for further compensation packages will also be difficult.

Priests I had spoken to earlier explained to me that the non-governmental organisation had other motives for liberating the girls and had used religion as a focus of their liberation efforts. This has been an issue that has been debated constantly in public with the organisation concerned. What is at stake for the priests, I realised, is not only an economic resource but also power, privilege and status. The priests are not amused at what is happening because their power is derived from the economic resource of the *trokosis* and their ability to confine the girls to the shrines. It is important to note that once the shrine owners agree to the releases, the priests have to accept it. Empowerment involved critically analysing the power of the priests who oppose change and how this power can be used responsibly.

## THE COMMUNITY

Community consultations confirmed the importance of empowerment of the *trokosis* beginning with the extended family support system as a first priority. Due to traditional networks, the link of *trokosis* with their families plays a very important part in the restoration and healing process, and discussions focused on the input of the extended family and empowerment of the *trokosis*. Twenty-nine community residents were interviewed, ranging in age from 16 to 75 years. Even though I found all the communities to be very open minded, the Danbge community was the most open to change and frank about issues.

The central focus of the empowering framework of the releases to the community, is the purification ceremony. The washing of the body with a type of herb and other rituals called "*flaxoxo*" are central to the releases. Community members told me that once the rites had been performed, the *trokosis* were welcome into the community.

The views of community members was one of pity for the girls since all of them were in one way or the other touched by the system. 63% of participants had relations at the shrine and only 37% did not have relations at the shrine, which shows how widespread the practice is. The practice is also no respecter of persons and two clan leaders I had spoken to earlier, told me they also had relations who were *trokosis*. Community members said *trokosis* were welcome

into their families because they were still their relations and were sent to the shrine through no fault of theirs. Discussions on the life of the *trokosis* also provided a framework for the development of the community in working harder towards the rehabilitation of their “fellow sisters” as they often called them. It also meant that a heavy burden had to be placed on the extended family system. The important role of customary law in supporting relations, is the belief that a family member is never turned away, and this framework is very empowering for the *trokosis*.

On the evils of the practice they said the girls were innocent victims who suffered too much in the shrines, were restricted in movements and not considered part of the society. All community members told me they were aware of the harsh treatment meted out to *trokosis* and stated that to be one of the reasons justifying an end to the practice. They said the girls were now free and could pursue their education. Community Members felt that apart from legislation, the government needed to put practical measures in place so that the custom would be completely eradicated. Only 3.0% of community members felt that the custom will not be eradicated. For most of them, authority to transform the practice will also have to come from fellow community members through education. They said law enforcement agents needed to set good examples so that they can be relied upon to dispense justice effectively. 97% of those interviewed were optimistic that the custom could be eradicated and hoped that with time, it will become one

of history, because since the releases of the girls, no evil has befallen the community.

For the elderly women, celebrating survival was their approach towards empowerment. Healing focused on positive events, which emphasised and affirmed their identity in the society. For one such lady, I realised that this attitude was inspiring for her niece, Asi, a *trokosi* who had been released from one of the shrines in Ada. Asi had problems adjusting to her new life and had tried all sorts of trades since her release, and seemed not to make it. She said the *trokosi* system would not destroy her belief in traditional religion because she had gained so much from her cultural identity and will rather affirm those positive gains. For Asi, her aunt's belief in celebrating survival formed a very important focal point for her empowerment. These words of encouragement gave her hope.

I admired the positive attitude of community residents including chiefs to the releases of the girls. In my opinion apart from family history and beliefs, the economic resources available for such a connection to be sustained have to be seriously considered since they all form part of the community support structures.

#### **AWARENESS RAISING – EDUCATION AS EMPOWERMENT**

Feminist participatory research also includes an educational component to assist people to further develop skills in collecting, analysing and utilising information.<sup>121</sup> The educational process is said to be potentially liberating as it provides a

way for people to develop a critical understanding of social problems, their underlying causes and possibilities for overcoming them.

Raising the awareness of the community to the whole empowerment process was one of my tasks. With regard to the hardships the girls had gone through, I saw the participation by community members in the planning, upgrading and support of the releases as an integral part of the healing process. It meant collaborating with them and informing them on social issues. Other challenges posed to me within the feminist empowerment framework were the type of knowledge that the community would gain from the study. Group interviews were educating and my role as a facilitator was that of a resource person to enable communities to analyse the *trokosi* system carefully and bring about change. This method would enhance the social and emotional lives of participants, and I saw the concept of collective investigation, education and action as relevant to the goal of participatory research among communities.<sup>122</sup>

It was also necessary to identify the different expectations that people have about others so as to remove uncertainties and conflicts. Most community members said there was the need to educate people on evil customary practices. In their opinion, if laws were obeyed and people learn to speak the truth, there would be no resort to diviners. Their main reason for consulting diviners is to ascertain the culprit. Where the culprit is known, most complaints go to the chief. My personal observations were that indigenous communities appreciate

openness and justification for ones actions including that of anyone they came into contact with and they also expect this to be reciprocated, which is becoming increasingly difficult due to urbanisation and infiltration of different cultures into the communities. As a facilitator, I encouraged them to come out with options that would help set frameworks for more empowering approaches.

Problem solving is not new to any community and this includes indigenous communities. Creating, on the part of the facilitator, is about channelling their collective creativity in order to produce solutions to indigenous problems. Smith says “creating” fosters interventions and discoveries and either facilitates improvements to people’s lives or uplifts their spirits.<sup>123</sup> Some of the options they came up with included an increased role for chiefs in settling disputes so as to lessen pressure on the need to go to shrines to seek vengeance. Other options included the need for animals to be offered as reparation to the shrines instead of sending girls to spend their lives there. They said since most of the shrine owners and priests were the diviners, they needed to be educated so that a compromise could be reached on reparation for any new cases that are brought before them, and there should be constant education on the issue. On how the releases can be made successful and the practice effectively abolished, chiefs in turn also suggested constant education on the illegality of the practice to the whole community.

Like networking, sharing is supposed to be a process, which is responsive to the marginalised contexts in which indigenous people live since it contains views about knowledge being of collective benefit.<sup>124</sup> Sharing is also related to the failure of existing systems to educate indigenous communities either adequately or appropriately to things happening around them. Questions and responses received from community members were shared as a means of education and problems were identified. Suggestions by the police on ways in which community members could be made aware of their rights and obligations included education through their members of parliament, chiefs, queenmothers, district assembly members and other opinion leaders. Literacy classes should also be promoted and laws simplified, translated into the local dialects and made available to communities. Under statute, this forms part of the work of the national council for civic education but is not being done. There was also the suggestion by the police that human rights education should be incorporated into the education system.

#### **COMMUNITY PARTICIPATION IN DECISION MAKING**

Operating within an indigenous context meant the use of facilitatory techniques that would respect and utilise the existence of local knowledge. Research as empowerment also meant creating a “context” for people to gain a voice in their own communities and also have an influence over decisions that would affect their lives.<sup>125</sup> Another empowering approach to generating knowledge is to respond to the experiences, desires and needs of peoples by focusing on their



understanding of their situations. Its goal should be to stimulate “a self-sustaining process of critical analysis and enlightened action.”<sup>126</sup> It should also not be imposed.

#### **CUSTOMARY SYSTEM OF ARBITRATION**

The study obtained information on the preferred rights of the community on their role in decision making and policy issues. They were asked questions not only about various alternatives, but also what they considered to be their role in the planning and implementation of programmes at the community level. Community members said traditional rulers should be encouraged to settle disputes in the communities, “since they rule the village, know the customs, arbitrate better and can be trusted.”

They said it is only when the chief failed to arbitrate that they would resort to the shrines. They ruled out the police. For most community residents, instituting action at the police stations was a waste of time and involved too much money and publicity. All community members told me that they would never report their cases to the police. They said police officers:

Sold justice to the highest bidder and justice would be bought by the rich. It is also an alien system of adjudication that brings further misunderstanding and confusion to the communities.

Arbitration by the chief was their preferred mode of conflict resolution and they suggested that in order for laws to be effective, law enforcement agents have to stop taking bribes to deal effectively with crime. The issue of secular courts not being relied upon is not a problem for the liberation exercise as a whole but part of a wider one nationally, which has to do with expensive and long drawn out litigations with its attendant animosity on litigants and their families. Court decisions favouring one party are sometimes misunderstood and end up with disruptions in social relationships. From my experience, sometimes it all evolves around one simple question: “why was I brought here in the first place?”

In my view, the customary system of arbitration is an empowering system of adjudication and should be encouraged. These rules among others discourage long drawn out litigations and create peace in the communities. It is also the system of adjudication known to indigenous people and has worked well. It combines the wisdom of their ancestors and the experiences of the customary legal system. Successful arbitration of conflicts is said to be achieved when recourse to such alternative remedial frameworks as seen under customary law are voluntary, agreed upon and founded upon a group consensus that supports the process.<sup>127</sup> Community members expressed misgivings about the low profile accorded to the governing processes under customary law and asked me if I thought it was fair. They felt that if the communal strategies of dispute resolution methods were supported, it would give them the space to contemplate on what was unlawful and ways of going about it. I myself had worked on the customary

system of arbitration in the past and told them that there are plans to promote alternative methods of dispute resolution, as it would ease the work burden on the courts.

In spite of customary law being part of common law, the effect of a breach of custom as stated earlier, is interpreted differently depending on the judge on the case. For example, slander is a very serious offence under customary law and a community member who takes such a case to court may feel aggrieved and belittled at a judgement that is not in his or her favour. The effect of this could create a potential for future conflict. Greetings also constitute an important part of their daily life and any adjudicating process that takes such issues lightly is likely to reinforce rather than resolve existing conflicts. What constitutes disagreement, conflict and dispute in communities may be regarded as trivial in the formal court process. In the same way communities are sometimes surprised at the severity of penalties under certain offences such as "the breach of peace." How they approach circumstances in which they perceive significant loss is also related to the recourse to shrines. It is important to note that some of the offences that sent *trokosis* to shrines in the first place also involved slander. In such a case, probably the one concerned was asked to make peace and refused and this led to recourse to the shrine to teach him and his descendants a lesson. In effect, the structures of the traditional adjudication framework reflect the culture and experiences of their lives. It is only by living in such communities and understanding their customs that one can effectively act as their advocate and

facilitator to give them the formal exposure to the legal process. Exposure to the law in its simplest form, for example in the area of human rights, could help settle their minds on the extent to which they should go to solve certain problems. This is also related to how the *trokosi* practice can be effectively abolished.

Even though a popularisation and promotion of the customary system of arbitration would in a long way relieve some of the pressures on an already heavily overburdened court system, a lot of lip service is still being played by government on alternative dispute resolution methods. From my research on customary arbitration as part of my work on law reform in the early 90's, I found that most communities have similar processes for such adjudication methods and the law can easily be codified.

Other issues raised were related to how the society could be transformed without sacrificing the positive role of culture on their lives. My general observation was that they felt marginalised in the running of their own affairs. The tension generated by a complex judicial process has also involved difficult choices for communities who see it as limiting their freedom. I went to the work site of some of the community members and I was most grateful for the time and the openness and frankness with which they expressed their opinions.

## **THE ROLE OF THE STATE**

Human development includes widening people's choices so as to raise the well being of all those engaged in the process.<sup>128</sup> Communities recommended that enabling policies by government should include among others, a strong role for communities in policy making and drawing up of programmes at the grassroots. They found my role as facilitator quite intriguing since I also provided a forum for discussions on the role of lawmakers, law enforcement agencies and the role of the state generally in the lives of community members.

The view of community members were that some state organs were either intolerant of criticism or did not respond to their complaints, and I found Smiths recommendations most useful. She states that intervening projects in indigenous communities should carry with them some working principles for communities, directed at changing institutions which deal with indigenous people and not at changing indigenous peoples to fit into those structures.<sup>129</sup> I had never thought of interviewing law enforcement officials as part of my research but the views of the communities were so strong that I had to inform them of their views and also find out their problems. The evaluation assessment of the police brought out a number of pertinent questions that involved a lack of confidence by the communities in the criminal justice system of the state.

I spoke to twenty- one police officers, 85% were male and 15% female. Their ages ranged from 25 - 55 years. Length of service in the force ranged from two to thirty five years. They told me that they were aware that community members had a low image of them and felt they were corrupt, and would take sides in cases under investigation. As a result, community members do not report cases to them. They however admitted that low salaries leads to bribery and corruption on the part of some officers but said major problems they faced in the administration of justice were lack of logistics like equipment, which often led to delay in investigations and mob action against understaffed police. Delay in the disposal of cases by the judiciary also discouraged people from reporting their cases. According to them, community members either interfered with cases under investigation or had most cases settled out of court. The few who report offenders also later withdrew such cases to the shrines. In fact most of the police stations I went to, were not busy. They ranked robbery cases as low in their areas of operation due to a number of reasons including the harsh punishment meted out to offenders under the *trokosi* custom.

A number of communities where the *trokosi* system is practised have islands under their jurisdiction. I asked them how they managed to enforce law and order on these islands. Most of them did not know how to swim and one officer posed this question to me: "how do I get to the other side of the island to arrest a culprit when the one who has to paddle the canoe is an interested party in the case in question?" Another problem police officers raised was that communities

often misled them and refused to give them needed information. Since a number of communities resist arrests and attack the police, they were very worried about mob attacks from communities that were hostile to them. The law enforcement agents lamented that unco-operative attitude of communities included interfering and obstructing justice, and even though community members needed to be aware of their rights they were not willing to be educated on the law. My contacts with community members showed otherwise. I had been working with these communities for some years on legal literacy projects and my view was that there was a deep thirst for knowledge. I felt the problem was one of approach.

On what they thought was the effect of shrine justice on the community, 79% of the police said shrine justice had a negative impact on the community. However 21% said its effect was positive and deters people from committing crimes. This meant that there are law enforcement officials who believe in the effectiveness of shrine justice. They said the communities found shrine justice quick and effective and could not be blamed, since most communities were traditional worshippers and lacked confidence in the police. Those who said it was negative said: "it breeds suspicion among people, divides families, destroys life; does not encourage an open and fair justice system with the overall effect of enslaving community members to their own ideas and leading to a downward trend in education." They said if cases could be dealt with expeditiously in the courts, it would improve their relations with members of communities. As stated earlier, long delays in cases is a national problem.

Rural communities often feel marginalised in matters affecting the nation. They feel their concerns are not being addressed or even considered and feel hurt as a result of this. Given the limited success of the implementation of laws, the study came to a conclusion that a key strategy for achieving empowerment at the national level is to take greater account of the views of people at the grassroots. Constraints to the community-building network can be surmounted by an improvement in relations with outside agencies, which come to work in communities.



## End Notes

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<sup>113</sup> Smith op cit. at p. 147

<sup>114</sup> Lather op cit. at p. 56

<sup>115</sup> Smith op cit. at p. 142

<sup>116</sup> Op cit., at p. 5.

<sup>117</sup> Ristock Janice L. & Pennell Joan, Community Research as Empowerment: Feminist Links, Postmodern Interruptions, Toronto, Oxford University Press, 1996, at p. 2 & p. 50.

<sup>118</sup> Fishing also includes shrimps, lobsters, oysters and crabs. The communities under discussion live in coastal areas bordering the atlantic ocean and on the banks of lakes, rivers and lagoons.

<sup>119</sup> Frances Rubin, A Basic Guide to Evaluation for Development Workers, Oxfam, Westview Press, Colorado, 1995 at p. 17.

<sup>120</sup> Smith op cit. at p. 127

<sup>121</sup> Maguire Patricia, Doing Participatory Research: A Feminist Approach, Amherst, University of Mass, USA, 1987 at p.vii.

<sup>122</sup> Lather op cit. at p. 56

<sup>123</sup> Smith op cit. at p.159

<sup>124</sup> Smith op cit. at p. 161

<sup>125</sup> Ristock & Pennell, op cit. at p 2.

<sup>126</sup> Patricia Ann Lather, op cit., at p. 65

<sup>127</sup> Carbonneau Thomas E, Alternative Dispute Resolution: Meeting the Lances and Dismounting the Steeds, University of Illinois Press, USA, 1989 at p. 165

<sup>128</sup> UNDP, Human Development Report, 1997 at p. 10

<sup>129</sup> Smith op cit. at p. 147

## **CHAPTER SIX**

### **CASE STUDY OF VICTIMS OF THE PRACTICE**

The case of Pauline is typical of most of the cases at the shrines. She was told that one of her ancestors was involved in theft and even though she was never informed of what was stolen or the circumstances, she has been aware that her family for about 40 years now has been paying with their lives for this crime. Her mother stayed for only two years at the shrine and died there, and Pauline at the age of six, was sent there by her relations to replace her mother. Before her release she said she got up everyday at dawn to buy fish from fishermen at the lake and then sold her produce in the market. Her earnings from the market were divided into two portions. She used her portion to look after her children and procure her needs and the other half was given to the priest who is the father of her children. On the day of her release in 1997, she was 22 years old and had two children with the priest. In a quiet voice she said: "I always wished for my freedom and I am glad it finally arrived."

Julie, was nine years old and in primary class two when she was taken to the shrine and had to stop school to atone for the crime of the brother of a first generation slave who was involved in theft. The first slave woman was her maternal aunt who died at the shrine at the age of 65 years. Most *trokosis* spend most of their lives in the shrines unless their freedom is bought. The effect of the

harsh conditions on *trokosis* as stated in earlier chapters, includes incidences of physical and sexual abuse, assault and trial by ordeal. Some of the girls are also committed to shrines run by fetish priestesses, but they are better treated as they are not raped and subjected to much punishment. Nevertheless the harshness of the economic and social nature of the environment is the same. They were not the focus of my study. Most female priestesses normally prefer to take on girls who are naturally called to become fetish priestesses like themselves and not as slaves. Those who take on *trokosis* are also few. As stated earlier, each shrine has its own rules and some are released after a number of years.

## **METHODOLOGY**

The aim of this empowerment evaluation research was to assess the impact of social, economic and legal interventions on the lives of some of these released slaves. The first releases of *trokosis* from the shrines took place in July 1996. In my interviews, I tried at all times to avoid treating *trokosis* as individual victims, since they had all been victimised as a group. Using a respectful, open ended and flexible approach to research as empowerment, enabled me to make space for their subjectivities, i.e. what the *trokosis* wanted for themselves and changes they wanted to see in their communities. Interviews also included questions about what could be done to curb the power of the shrines over the lives of women in the communities. With some of them, their testimonies made things easier for me because they talked about a lot of things which went beyond my questions but with others my role as a facilitator meant that power and

responsibility had to be recognised, since certain initial questions especially relating to their economic rights aroused emotions and tears which created discomforts for me. Reflexivity<sup>130</sup> meant being aware of how I observed their reactions to certain questions, which was related to the reshaping of the order and nature of the questions where necessary. The complexity of the research was also increased through the employment of an analytical approach that doubles back on itself.<sup>131</sup> This doubling-back is accomplished not only through reflexivity but also through transparency and for the purposes of my topic, I had to analyse individual consciousness within societal structures and how those changes could be sustained. This meant not only identifying how empowered *trokosis* were by their releases, but also to locate stumbling blocks to their effective empowerment.

All those interviewed were satisfied with being released and in this chapter I have also included individual case studies of some girls with whom I have spoken in my work on the subject, though not as part of this research. Generation gaps as expected, played a critical factor in responses. Elderly women who gave testimonies were very open; otherwise, a few were circumspect in their answers. There was also a general commitment by most *trokosis* to put their past lives behind them and move forward. Their values were clear and they emphasised empowerment for women and the need for an effective abolition of the practice. As expected, some were more assertive and felt more strongly than others about certain issues, which was related partly to the length of time spent in the shrine

and the extent of violation suffered. General themes explored from responses included how to promote culture so as to make it have a positive influence on women and strategies that can influence policy making in the community. Dissemination of legal information to the girls also formed part of my research.

## **EMPOWERMENT OF *TROKOSIS* AS INDIVIDUALS**

Pre and post-programmes for released *trokosis* as stated in an earlier chapter depends on the particular non-governmental organisation involved in the release. Some non governmental organisations collaborate with the Commission on Human Rights, the National Commission for Civic Education, chiefs, elders, priests, queen mothers, shrine owners and individuals like myself in pre and post educational campaigns to educate communities on the illegality of the practice and the need for change.<sup>132</sup>

In order to arrange for releases generally, the agency or individual concerned has to meet with all those in charge of the shrines which includes the priests, elders, chiefs and shrine owners to inform them of reasons why the *trokosis* should be released. If the meetings are successful, which could take some time, a deal is arrived at, on how much the shrines should be compensated. Compensations are not only for the economic loss suffered as a result of the abolition of the practice and the emancipation of the fetish slaves, but also depend on the specificities of the local economy, so as to provide alternative

income for the priests. Compensation is also to make up for the crimes that sent the *trokosis* there in the first place, so as to free their families from further curses.

## **FREEDOM OF MOVEMENT**

For the majority of the released *trokosis*, improved lifestyle, education, and freedom of movement are rights they were now enjoying for the first time and they felt empowered as a result of this. *Trokosis* are also very hardworking and particularly very neat in their surroundings which is related to their life in the shrines.

As stated in the last chapter, the purification ceremony plays a very important part in the spiritual releases of *trokosis* from the shrines, since running away from the shrines is considered a taboo and a curse for the family. Arrangements for releases also involve a period of rituals, drumming and dancing, which is climaxed by a durbar<sup>133</sup> at which the *trokosis* are released. I asked some of them about its impact and significance. Pauline said it was unheard of to run away from the shrines because of the spiritual repercussions involved and even seemed surprised at the question. Julie, whom I spoke to much later, had run away from another shrine. She told me that it was impossible for her to go back to that community. She was the second generation of her family serving an imprisonment for the same crime and even though she was living in another community, people pointed her out as not having gone through the purification ceremony. Julie is a very brave lady, very confident, without any inhibitions but

said this factor was an impediment to her freedom of movement because she said:

I wish I could go back to see people I knew and to prove to others what it is to live a life of freedom outside the shrines.

94% of *trokosis* who have gone through such rites said they could move around freely, since they knew they would not be forced to go back to the shrines. 6.0% said they could not, because they had run away from their shrines.

The normal attire for a fetish priestess, just like that of a fetish priest, is restricted while in the shrines. However, *trokosis*, unlike the priests and priestesses, do not have the option to dress the way they like in public. To most of them, this was a life of slavery in which they took no pride. There is also a saying that: "once a *trokosi*, always a *trokosi*." A *trokosi* whether married or single, living outside or inside the shrines, is among other things, required to wear a black cloth under any attire she puts on, to show her status in the society. The empowering effect of releases by outside agencies is the removal of permanent stigmas such as these, since a normal release from the shrines without any outside intervention would have still meant their being required to dress in a particular manner. They told me that they now felt empowered in their mode of dressing, since they would never have had the option to alternative attire in public. The words of Afi Awoyo, a 74-year-old farmer, summed up what most of them felt about their releases. She said:

What pleases me most is the fact that I can wear any attire I like and I can also move about freely.

## **RESTORATION OF HUMAN DIGNITY**

The majority of *trokosis* with whom I spoke, are not even aware of what crimes they were being punished for since it has been so many years since the first crime was committed. Now they are aware that legally they had neither reached the age of criminal responsibility to be punished nor were they supposed to be punished for the crime of others even though they were their relations. A restoration of their personal liberties also includes protection from unjust punishment and slavery in the shrines, which contributed so much to a life of misery and sexual abuse. Their new life of freedom also means that they are not obliged to observe any taboos, which includes food taboos. To Asi the empowering effect of her release is that:

I am no longer tied to any taboos and I also have the freedom to move around.

Names given at the shrines to *trokosis* also reveal their status. A restoration of their human dignity on their release includes the option to either keep their name or change it. The empowering effect of such name changing depends on how it conforms to customary law.



## **PROTECTION FROM FORCED MARRIAGES**

Julie said what she treasured most was her freedom from a forced marriage.

The permanent scars on her body that she revealed to me showed the extent of her ordeal.

I was young and disliked the old man I was forced to marry and because I often refused his sexual advances, I was described as an insolent girl. I was frequently punished and because of this, I run away. I also did not have sufficient food to eat while in the shrine. I am happy now living on my own.

Younger girls have also been saved from the traumas of the older ones in forced relationships. They can now get educated and are entitled to their reproductive rights in a marriage of their own free will and choice. Very young *trokosis* who have not been violated have the features of normal children. Considering the fact that they had never stepped in classrooms before, they are excited about school and told me that “we do not like it when we are on holidays.” When I asked them why, “they said we like going to school a lot.” I spoke to most of the children in their communities, since they were on holidays at that time.

## **ECONOMIC RIGHTS**

Released *trokosis* are now freed from forced labour on the farms of priests. They also feel empowered by the fact that they can keep income earned and are free to decide on what to do with the proceeds of their labour. Most *trokosis* did not

own any possessions as at the time of their release and the acquisition of assets like land, farms and even household items are rights which they told me, they were enjoying for the first time in their lives.

Patience is a child of a *trokosi* and grew up with her mother in the shrine. She said when she was young, she thought they were partners in family business and saving towards the future, since they worked so hard; but it was when she grew up that she realised that their legal status was that of slaves. "We came out of the shrines with nothing." She said bitterly. Apart from forced labour, most of them said the pariah nature of the custom also inhibited their capacity to develop their value on the job market since most people did not patronise their wares because of their status. With their releases, they have now regained their confidence and can engage in any economic venture and earn a living. Weaving of cloths and mats is a major occupation of the area Patience comes from. She now teaches weaving at the vocational school set up for the *trokosis*. Patience is a very serious and independent person, forward looking and intelligent. She does not smile much, but engages easily in conversation.

Compensation packages to the released *trokosis* to settle and earn a living depend on the agency involved. In the case of International Needs, it could consist of an amount of seed money, various amenities including clothing, and bedding and medical care. Elderly *trokosis* use the money for commercial activities and as part of the package, girls undergo vocational training before

working. I asked some of them about how they utilised their seed money. Da Adzoyo said she used her seed money well and the profit she made from it is what she uses to take care of her children and grandchildren. Korkor Okumah chose to enter into piggery. She said she chose the local breed because they were easier to look after and could withstand diseases. She was very cheerful and seemed to have put the past behind her. One elderly lady was the only one who said there has been no remarkable change in her lifestyle because she was defrauded of her seed money.

Korkor Atsia aged above 50, a child of a *woryokwe* (*yokwe bi*) used her seed money to expand on her farming of vegetables, which she sells on market days. She looked very resourceful and jovial and did not bear any traces of her past. She lives in Dawhenya, a commercial town, and had fitted well into her community. She said she did not have any problems and proudly told me that one of her sons had made it to a polytechnic and that she had so far been able to afford the fees. She said her life style has improved steadily since her release, and she was harvesting pepper to sell on the next market day when I spoke to her. I was surprised when she told me that she also owned a large tract of land around her including the buildings. For most *woryokwe* like Korkor, the acquisition of land, farms and moveable assets has brought relief into their lives. Most of them told me confidently that for the first time in their lives they felt independent.

Developing their interpersonal skills has been empowering for most *trokosis* considering the fact that they initially found it difficult to relate to outsiders because of their previous isolation. The self-esteem and confidence of one lady was amazing. She said:

The fact that I still have my two hands intact and can earn an income and manage the proceeds myself gives me not only happiness but hope for the future.

She in particular had reason to be particularly traumatised since her mother contracted a debilitating disease in the shrine just before their release and was undergoing treatment. On what expectations they had in life and how they could regain their confidence, most of them said they needed money:

To expand their trade, build a house, educate their children and feed themselves.

A few said they were okay at the moment. The younger girls said they would raise their self-esteem further through formal education. From my observations generally, liberated *woryokwe* in the Ada areas seemed to have gathered up their self-esteem faster than those of the other areas. They had not endured as much hardship as girls in the other areas.

## CHILDREN'S RIGHTS

On the effect of the practice on children, most of them simply said:

The shrines are not good places for children.

I did not ask them to elaborate since most of them were deprived of the joys of child hood in the shrines. An earlier chapter reaffirmed the customary position of children of *woryokwes*.<sup>134</sup> However, 96% of those released have custody of their children. A very empowering situation which would have been unlikely if they were still under bondage. They told me that even though they were pleased to have their children with them, their single parent status and the fact that priests under the custom are not obliged to look after their children has compounded their economic problems after their releases.<sup>135</sup> Most of them told me that their income goes into looking after their children. In order to relieve the financial burden of released women, in my view efforts should be made to track fathers of children of the *trokosis* so as to make them bear their parental responsibilities. Arrangements should also be made so that such fathers make monthly maintenance allowances for the education and welfare of their children.<sup>136</sup> It is my fear that when the going becomes tough for these mothers, education of their children would be the first thing to be sacrificed so as to survive, especially after the necessary assistance from funding agencies is terminated.

## EDUCATIONAL RIGHTS

The educational rights of *trokosis* clashed with their communal responsibilities, and 12% had no education at all. 83% had to drop out of primary school to serve in the shrines and 5.0% have been presently trained to the vocational level since their release.<sup>137</sup> Children of *trokosis* face a bright future now, since they will no longer have to face the same hardships as their parents inside the shrines. Children, whether *trokosis* or *yokwe bi*, now have access to education.

## RELATIONSHIPS

51% of those interviewed said they were previously married, but were now single, 36% were still married and 11% were separated. 4% were widows.<sup>138</sup>

For those married outside the shrines who were now single, they said their husbands were put under pressure to leave them because of their past. Others said their husbands were irresponsible and did not treat them well. Other general problems they faced in their marriages were problems associated in polygamous relationships such as jealousy, fights, quarrels and the inability of their men to maintain them financially. For those forced into marriages with priests, reasons given for their single status were problems of age disparity, lack of communication and physical abuse. As part of the rules of the practice, I am also aware, even though I did not ask them, that those whose husbands were not priests found it demeaning that a married *trokosi* is still supposed to be ready

during occasions such as festivities to spend her time in the shrine to perform rituals and any other duties required by the shrine.

Feminist research also calls for transparency in all stages of the research process, and it recognises that instead of denying or ignoring areas of tension, one must learn how to think through and work with areas concerning power relations as a way of enriching the research process and maintaining its integrity.<sup>139</sup> 33% of social workers revealed that there were continued interferences in the lives of released women by priests who gave verbal threats not only to field officers and teachers at the schools but also threatened to continue their affairs with the women. They also said that some priests who were dissatisfied with their compensation packages threatened to take portions of seed money given to released slaves.

A farmer and fisherman, Togbe Asra, aged 48, years, was the only male released slave I talked to, since male slaves are very few. I was not surprised that he was very bitter and complained about his ego being shattered as a result of his incarceration. He said “look at the extent to which I have been reduced, thirteen children with different women, why?” and he himself answered that it was because they abandoned him as soon as they got to know that he was a *trokosi*. The pariah nature of the practice among others is a reason for most of the *trokosis* being single and saddled with the upkeep of children. A number of them have now entered into new relationships, which they hope will be long lasting.

In my discussions with both men and women in the community and the *trokosis*, I did not see men in the society as being the cause of the problems of the *trokosis*. I also did not see any hostility towards the *trokosis* or pride in men seeing their “sisters” suffer. Neither did the girls bear any resentment towards men in the society.

## **EMPOWERMENT OF *TROKOSIS* WITHIN THE COMMUNITY**

### **CONNECTING WITH FAMILIES**

Connecting *trokosis* to their families involves not only the spiritual relationship of a restoration of specific rituals and practices but also actually settling them with their families, since connecting is also related to issues of identity and place and to community well-being. Smith calls it the importance of making, connecting and affirming connectedness.<sup>140</sup> She says “connectedness” positions individuals in sets or relationships with other people and with the environment in which they live, and “to be connected is to be whole.” I realised that ignoring this aspect of individual empowerment could obscure the impact of social conditions that could risk their isolation since the legal framework focuses attention on not only empowerment of the individual but also empowering others as a process of furthering the advance of women’s rights in the community.



For a number of the released girls most of whom were taken to the shrine by paternal relations, the *trokosi* practice destroyed their will power to achieve set goals in life. Since all of them sacrificed their dreams and well being for the sake of the survival of their families, I asked them about the attitude of their relations and the community generally, towards their releases. They said they do not face any isolation or discrimination from their families or their communities and are also not stigmatised. 74% of them said their relations were happy with their releases and had reunited with them, and for most *trokosis*, attitudes of community members towards their releases has been empowering. The lack of outward signs of bondage which previously reminded *trokosis* of their past such as dress, special names and links with shrines during festivities and other occasions, also makes it easier for them to re-enter society.

Some *trokosis* have settled in other towns but majority of them still stay in their areas and can be easily located. This is because living with relations is empowering for them in terms of language, environment and support. Others have moved to other towns where some of their relations are. Celestine, aged 25, has moved to Kpong a very busy and fast growing commercial town on the Volta Lake on her own. She has set up with her sewing and now has two apprentices. Her kiosk is located near the main road, which means a bright future for her as far as customers are concerned. Celestine is a very soft-spoken person and her apprentices looked more hardened and experienced in city life than she did. She opened up freely to questions and I asked her whether she

could control her “adult children”, since they came in late for work when I was there but she just smiled.

## **TRADITIONAL RELIGION**

In order to understand the interpersonal and structural relations that affect the lives of the *trokosis*, the validity of the research meant my not being limited to presenting only positive findings since research as empowerment also aims at being accountable to multiple audiences with conflicting interests.<sup>141</sup> Some of the issues that create complex interactions in the community are the immediate conversion of *trokosis* as soon as they are released to Christianity. 26.0% said their relations were either angry or indifferent to their releases and harassed them to go back to their shrines, otherwise calamity will befall the family. When I asked them why they said they were threatened because they had changed their religion. Only 39% of released *trokosis* still practice traditional religion. For those who have neither changed their names nor their religion, they said it is what ‘we know and are used to.’ They also said they saw the retention of positive cultural and spiritual values as part of the healing process. Most *trokosis*, especially the younger ones have abandoned the traditional form of worship and while various reasons could be attributed to this including the life of trauma in the shrines for which they cannot be blamed, a number of people are suspicious about this development and have spoken about it publicly.

Traditional religion alone cannot be blamed for the plight of the *trokosis* since it is related to a particular period in history just in the same way as other religions have committed mistakes in the past and even still continue to make mistakes today. Issues are far more complex and any analysis to eliminate the practice from its roots needs to focus on community involvement. It is also important to note that in spite of the *trokosi* practice and its injustices, there is still local respect for the spiritual authority of the shrines which is part and parcel of the life of most communities in Ghana, and the shrines will remain a strong force in communities for a long time to come. As seen in the earlier chapters, if religion is not detached from releases it could complicate the further releases of girls from other shrines. Presently communities watch on and see large numbers of *trokosis* immediately changing their religion and adopting Christian names as soon as they are released. For a number of communities in the Anlo areas where traditional religion is noted to be very strong and widely practised, they have vowed not to allow such mass exodus of their children to other faiths. They claim that conversion to Christianity is being used as a basis to free girls from shrines and destroy the foundation upon which the Anlo State and culture is built. In such areas, even though the girls are not violated or abused, their status is still that of *trokosis*. They argue that in trying to modify customs, Christianity should not be offered as an alternative since it has totally failed to instil honesty, morality, discipline, probity and accountability in various societies. For most traditionalists, immediate mass conversion of *trokosis* upon their release is seen as a breach of faith with such communities and the implementation of an agenda of creating

conflicts in families.<sup>142</sup> There are many shrines in the country that do not take girls as reparation for crimes and as stated in the earlier chapter if alternatives are found the practice will be eliminated.

From my interviews it also appeared that a lot of name changing might have taken place without the involvement of family members, which is contrary to customary law. As stated earlier, it is right for freed slaves to change their names after their releases. However as much as possible, this should be done with the involvement of their families so as to minimise conflict in the community, since any strategies for empowerment should foster the well being of *trokosis* and their families. Renaming could use original indigenous names, which would also help to restore their identities, since indigenous names carry histories of clans, places and events.

#### **THE MACRO-ECONOMIC CONTEXT**

Connecting with families also acknowledges the complexities and strengths of this approach, which includes building unity while analysing barriers to women's empowerment. Even though there are follow-up visits on the use of seed-money, I realised that the economic environment of some of the areas involved in the practice is a constraining factor to the empowerment of *trokosis*. Some of such constraints are pressure from relations and adult children. An elderly *trokosi* I spoke to lives with her two adult sons. She told me they had no meaningful work to do in the community. They also had children of their own and seemed to be

dependent on her. Another elderly lady also stays with her children and grandchildren. Part of her seed money, which she gave to a relation in the community, as a loan was never repaid. When I asked her why she gave her money out as a loan, she said:

I could not resist because the woman needed the money and was a relation.

Celestine also shares her rented room with her brothers and sisters whom she looks after. My observations were that both the adult and younger generation cannot afford the luxury of encouraging extreme individuality and there are attempts by all *trokosis* to meet family demands in the face of limited means. Even though I saw this as a constraining factor to their empowerment, being a traditional set up, they still needed their support since it is impossible as an African to live a happy life without community support. As stated by Smith a community's collaboration and active participation needs to be measured side by side with realistic assessments of the communities resources and capabilities even if there is enthusiasm and goodwill.<sup>143</sup>

I enquired about this from social workers and was informed that attempts have been made to solve this problem by providing micro-credit facilities to a wider group such as poor individuals in the community, but they stated, as mentioned in the earlier chapter, that long term funding as with all projects would be a major problem. In my view, since the most deprived areas are where the *trokosis* suffer

much hardship, there is the need for a whole range of development activities, in health, education and infrastructure that will benefit the wider society.

## **SUSTAINING STRATEGIES OF EMPOWERMENT**

The fact that women should no longer be expected to redeem their families from curses imposed upon them by the criminal acts of mainly male relations is an important step towards ending discrimination against women. Even though there are still a lot of shrines that have not released *trokosis*, the awareness has been created. The illegality of the practice has also been established and the secret nature of the cult and what goes on inside some of the shrines which includes the physical and moral degradation of the slaves has also been exposed.

While in the shrines, most *trokosis* lost contacts with the wider society because of their isolation; people were afraid to approach them because of spiritual repercussions. I asked them about what strategies they thought could be adopted by the community that would be empowering for them in order to live happily. Some of the suggestions were that:

The priests should be educated on the evil effects of the custom, and the police should arrest the recalcitrant ones.

Oppressed customs must be abolished and all shrines made to release girls in their custody.

Animals should be accepted as reparation and chiefs should be educated on laws in existence so that their policies would be in line with government legislation.

Some of the girls who were very bitter said “the shrines should be burnt down and all unreleased girls freed.” Togbe Asra felt there was the need for further social interaction and education by members of the community so as to make their integration and rehabilitation easier. He still felt that community attitudes to their releases were not very empowering. They all agreed that the law passed to abolish the custom is a step in the right direction and felt that it should be enacted into by-laws in the areas concerned so as to make sure that such laws are effectively passed down to the grass roots. Others were of the opinion that the law should be forcefully applied by the police, who from the research have their own problems with the community and resources. The elderly were more circumspect in their answers.

In my view, it is relevant that the priests be brought into the focus of events so that they will not inflict disaster on families. Isolating them will not help the empowerment process. How to prevent the practice from resurfacing is also central to women’s rights. A strategy that has sometimes been used is to demand large compensation forcing the family to give up a girl. Any compensation to stop deaths from occurring in families should be within the reach of the family otherwise as stated earlier, the offender should personally be asked to perform community services. Chiefs should make shrines operate within

certain rules and then hold family members and priests accountable for violating the law.

The role of social workers within non-governmental organisations fighting for change in the communities could not be underestimated. Some were teachers at the vocational school set up for the girls and others were project co-ordinators. The challenges facing them included connecting released *trokosis* to their families and helping them to readjust once more. Other challenges were the fear posed by threats of some priests who were disgruntled at having lost the labour and financial support girls provided in the shrines. They said others were just simply afraid of ancestral spirits and feared that the fetish will kill them for releasing the girls. I realised that most shrine owners had complied with the terms of releases and there was no breach in agreements with them. The girls also regularly attended the vocational centre, went home on holidays and normally came back to the school. Girls who stayed far from the school and could not commute daily were boarders. Social workers advocated more educational campaigns in order to make future releases of *trokosis* from shrines more successful.

It was agreed by participants generally that in order for women to be effectively empowered, there is the need for constant education in the communities in order to change attitudes that hinder women's advancement. Finally, it was also



recommended that government agencies get more actively involved and assist non-governmental organisations to release slaves still confined in shrines.

## End Notes

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<sup>130</sup> Ristock & Pennell op cit at p. 48.

<sup>131</sup> Ibid. at p. 179

<sup>132</sup> All *trokosis* under discussion were released by International Needs (Ghana), a non-governmental organisation with the support of The Danish International Development Agency in Ghana, (DANIDA).

<sup>133</sup> A traditional gathering.

<sup>134</sup> Atomo v. Tekpetey op cit.

<sup>135</sup> Many women and not only the *trokosis* encounter specific obstacles related to their family status particularly as single parents. Their socio economic status is also worsened by their lives in rural areas. Para 46 of the Beijing Declaration.

<sup>136</sup> Article 15 (d) of CEDAW also recommends that in all cases women are to be accorded the same rights and responsibilities in matters relating to their children. See also para 29 of the Beijing Declaration.

<sup>137</sup> Some of the empowering programmes within the CEDAW framework for girls and women who have left school prematurely are the reduction of female student dropout rates through continuing education including adult and functional literacy programmes.

<sup>138</sup> With reference to the earlier chapter on marriage under customary law, the word “married” is their voice.

<sup>139</sup> Ibid. at p. 67

<sup>140</sup> Op cit. at p. 148

<sup>141</sup> Ristock & Pennell op cit., at p. 4

<sup>142</sup> “Stop teaching Christianity in schools-Afrikania” <http://www.ghanaweb.com/12/14/99>  
See also Datey-Kumodzie Sammy, Report on *Fiasidi-Vestal Virgins, Hu-Yehweh*  
Research and Restoration Society, Accra/ Ghana, (undated).

<sup>143</sup> op cit. at p. 140

## **CHAPTER SEVEN**

### **CONCLUSION**

#### **STRATEGIES FOR CHANGE**

##### **WOMEN'S EMPOWERMENT**

The research process has been a flexible and open ended one of identifying and elaborating the significance of the realities of the daily existence of the *trokosis* and what can be concluded on the effects of violence against women. This thesis dealt with how the *trokosis* as individuals became part of the customary practice, the implications of their incarcerations and the complexity of their relationships with the society. Using the case study as an analysis, the individual lives of the slave girls have been transformed by their new taste of freedom, and it is hoped that their civil and economic rights will be further strengthened so that their integration into the society will not be interrupted.

In order to ensure women's full equality under the law, there is the need for a constant review of outmoded customs and practices. Awareness raising is also essential to the empowering process because it is supposed to initiate change and facilitate the abolition of dehumanising practices. As a long term measure, informal methods of human rights teaching and education should be developed

at all levels so as to change community attitudes with regards to customs that infringe on women's rights.

This thesis contends that the role of the state is necessary in the planning and implementation of women's empowerment strategies. It is only in such an environment that organisations and individuals can have the freedom to effect programmes to change people's lives. However a stronger role by government is still advocated for the practical realisation of women's rights. This involves strong political leadership in the implementation of government policies, further decentralisation of local decision making structures and effective communication with communities so as to create the congenial atmosphere for women's empowerment. It is hoped that through this method, women would be targetted with specific programmes in order to reduce their vulnerability to poverty. The government should also encourage programmes with specific economic and agricultural policies in support of female-headed households. There is the need to help rural women and girls overcome the many problems they face in the lack of opportunities for advancement and inadequate legal protection. Since women require particular attention, the current poverty alleviation programmes of district assemblies also need to be further strengthened and a percentage of their budget set-aside for rural women. The role of non-governmental organisations in providing programmes of rehabilitation for the *trokosis* and initiating change in the communities is evident from the case study. Participation by community members is a vital component of the empowerment process. In addition to this,

non-governmental organisations also need the support of the public sector and their successes cannot be sustainable if they do not result in policy changes through advocacy. Various attempts by some organisations to free *trokosis* from their predicament indicate that patronising attitudes to rural people is still a reality and are counter productive.

#### **INDIVIDUAL RIGHTS/ COMMUNITY RIGHTS/ CULTURAL RIGHTS**

The participation of women as individuals is acknowledged to be a key element in the empowerment process. Women's empowerment within this thesis has been studied within the background particularities of various historical, cultural, religious and ethical values of individuals and their communities so as to contribute to the realisation of this objective. The goal of the empowerment framework has been to put seemingly diverse traditions together; individual and community rights, isolating elements of contrast and seeking a common ground that acts as a basis for further improvement and networking. This thesis stressed that empowerment can best be promoted if we understand its application within a particular context, involving a review of various strategies. It states that a central challenge of international human rights law in its attempt to establish and maintain domestic implementation of human rights law is to counterbalance, reconcile and bring together apparently conflicting rules. This role is necessary in order to give effective participation to communities and also a means by which to promote a deeper understanding of laws as vehicles for social change.

Another aim of reconciling community and individual rights has been not only to discuss the complexities of individual rights but also to contribute towards an understanding of traditional legal systems that are indispensable to the legal empowerment framework. Recommendations of the thesis outline long term strategies that can facilitate the empowerment process of the *trokosis*. These include the abolition of dehumanising customs and improving conflict resolution in communities. This thesis states that attention needs to be given to certain policies that constrain individuals to act within a certain framework. The customary system of arbitration for example is a flexible and expeditious process for the determination of disputes and reflects the interests of the community. Through such culturally enhancing methods, parties can be given the opportunity to understand their problems, its repercussions and devise appropriate solutions. It states that there is the need for a more pragmatic way of acknowledging the role of traditional bodies in arbitration. If this is not done, local alternative dispute resolution processes already existing and under utilised may gradually fade out and the opportunity to resolve conflicts without resorting to the court process may be lost.

Community rights have not necessarily been regarded as part of empowerment frameworks because most empowerment schemes have been individualistic in nature. At the global level, states at the United Nations have attempted to use ideas such as cultural rights to undermine women's equality. The feminist community building empowerment perspective of this thesis views participatory

development as more empowering for women since it applies the use of indigenous knowledge and the involvement of local people in affirming women's distinct needs and aspirations. The community building approach of the thesis argues that building knowledge through consultative and collaborative processes is a way of not only raising the consciousness of individuals but also that of community members. An effective strategy is to build upon those favouring initiatives for women's empowerment and isolating those that inhibit women's advancement in order to reach a workable solution. It states that working within shared values and sentiments can induce empowerment. This thesis stresses that even though the support the girls derived from their communities had its costs, individuality cannot be redemptive either and is likely to be detrimental to their personal development and freedom of movement in the communities. A holistic examination of empowerment seeks to avoid separating *trokosis* from the larger context to which their lives are related. The empowering process also has to be a collective one since the strong network of support of kith and kin is an enriching system, which is particularly important in African societies as it protects individuals from "falling off the edge of society." It is necessary that the participation of community members in the planning and upgrading of the releases be encouraged so that they can all experience a healing process. This thesis stresses that women's rights must not be viewed in isolation but in terms of the community as a whole.

Culture has generally been regarded as a hindering factor to empowerment but I have viewed culture as dynamic and receptive to change. In effect, I have stated that empowerment for women should not necessarily undermine the traditional system but seek to work within it. People in traditional positions of importance are also sometimes regarded as limits to progress and ignored. Since they also have a role to play from their functions, isolating such people could lead to the unsustainability of such programmes. For me, exploring this process was necessary because empowerment should involve everyone and not just the *trokosis* or their families.

In empowerment schemes, history is also treated as irrelevant for current needs since the aim in the first place is to do away with an ancient practice. This thesis in its unusual approach has worked through history and used it to determine the relevance of the practice to community members. The use of interpretations of past events helped them to reflect on the continued objectives of the *trokosi* practice and what values it sought to achieve in a present day society.

## **THE WAY FORWARD**

The way forward is a commitment to open and transparent interaction, identification of individual interests and mutual respect for the interests of others so as to enhance the decision-making capacity of people at the grassroots. It cannot also be denied that the process of empowerment is a challenge to established interests which oppose change. Pressure to change when not



backed by the strong arm of the law in certain cases, is not effective. By doing this, people are made aware of how vital it is for everyone that practices that violate the human rights of women are effectively abolished. While the solution was found in the legal framework, the thesis stresses that if practical approaches are not used in the implementation of laws they will not have much effect in promoting women's rights. Advocacy skills also include the skills of dialogue, communications and strategic planning-ways of achieving influence.

Since development is linked to the status of women, the release of girls serving under bondage in shrines is a historic step, which should be commended and encouraged by all lovers of human rights and justice. Nevertheless, discrimination against women with respect to their individual rights of participation, their access to education, work, property and other economic, and social rights is still a reality which needs the active involvement of governmental and non governmental organisations to work together at the local level in order to bring about change.

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